

Director of Public Prosecutions (NSW) v PD – 2024/00409471

Opposing party, PD's, reply – 26 August 2025

1. The contradictor relies heavily upon what it characterises as the “intractable” or “plain language” of “(not exceeding 2 years)” in s 33(1)(g) *Children (Criminal Proceedings) Act 1987* (CCPA): contradictor’s submissions (CS) at [21], [23], [31]; see also CS [25], [27]-[28], [34]-[35]. The contradictor notes that Basten AJ reasoned that the CCPA does not pick-up s 53B *Crimes (Sentencing Procedure) Act 1999* (CSPA) and that the Director does not rely upon s 53B: CS [24]-[25], [34]. The contradictor relies upon the absence of a provision expressly permitting the Children’s Court to impose an aggregate control order of the same length as it is permitted to accumulate them, or of a provision in the nature of s 53B: CS [35]-[38].
2. The limitation in parentheses in s 33(1)(g) ought, however, be considered in light of the corresponding sentencing regime for offences committed by adults, being dealt with summarily in the Local Court.
3. As submitted by the Director, s 53B is a “declaratory” provision: Director’s submissions at [27]. The language of the section itself – “For the avoidance of doubt” – and the background to it, set out by the Director in her submissions at [26]-[27], indicate that the section was inserted for clarity, rather than as a new or separate source of power for the Local Court. Indeed, its heading says it is a “Limitation”.
4. This is in circumstances where, for an offence committed by an adult and being dealt with summarily, “*the maximum term of imprisonment that the Local Court may impose for an offence...is 2 years*” (or any lower maximum): ss 267(2), 268(1A) *Criminal Procedure Act 1987*; see also ss 5-7. Although the words used are obviously different, the effect is the same as “not exceeding 2 years” in s 33(1)(g) CCPA.
5. The clarity provided by s 53B is that the length of an aggregate sentence that the Local Court may impose - notwithstanding these maximums in ss 267-268 - is 5 years, consistently with the total period for which the Local Court may accumulate sentences.

6. As s 53B was for the purpose of the avoidance or doubt or clarity only, and although a similar provision was not inserted into the CCPA, sentencing in the Children's Court may be approached sympathetically. That is, notwithstanding the seemingly definite language of "not exceeding 2 years" in s 33(1)(g), an aggregate control order may extend to the period for which the Children's Court may accumulate control orders, viz 3 years.
7. Restricting aggregate control orders in the Children's Court is not merely a matter of "administrative inconvenience" for Children's Court magistrates: cf CS [41]-[46].
8. The restriction requires a return to the system of magistrates specifying multiple commencement, expiry and non-parole periods, which inevitably is more finicky and time consuming than imposing a single aggregate control order and gives rise to a greater possibility of error. This is significant to magistrates sentencing many defendants each day, many of whom will have multiple charges for sentence (although, admittedly, the outcomes will generally be lesser penalties than 2 or 3 year control orders). Multiple accumulated control orders, as opposed to a single control order, also complicates the work of those required to administer them, such as registry staff and Youth Justice officers. A single control order is also easier for a child defendant to understand, than multiple orders at different points in their terms. A single control order also means a child is also only at risk of breaching one, rather than multiple orders.



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