

# EAGP Practice Issues

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# What is EAGP?

- **Early**
- **Appropriate**
- **Guilty**
- **Plea**

# What is the scheme?

## Four distinct stages

- Brief Status.
- Charge Certification.
- Case Conferencing.
- Committed for Trial or Sentence.

Why the scheme?

# Why the scheme?

*“The underlying purpose of the amending legislation, it is apparent, was to streamline committal procedures, with significant emphasis on cooperation between the prosecution and legal representatives of the accused person with a view to the identification of a charge or charges to which the accused person is prepared to plead guilty and which the prosecution is prepared to accept as a sufficient answer to the charges initially preferred. For that reason, the package of reforms has been dubbed “The Early Appropriate Guilty Pleas Scheme”.*

per Simpson AJA in **Black -v- R** [2022] NSWCCA 17 at [8].

# Why were people not pleading early?

## Police

- Charged offences that did not fit the evidence.
- Did not properly investigate matters until the last minute.
- Leads to late service of relevant material on DPP and defence.

## Prosecutors

- No continuity.
- Prosecutors at early stages were inexperienced.
- Prosecutors at early stages did not have appropriate delegation to properly negotiate charges.

## Defence

- Not advising clients correctly in relation to evidence, discounts or appropriate offers.
- No continuity of representation and therefore advice.
- Just 'playing the system'.

# How to address the issues?

By amending the *Crimes (Sentencing Procedure) Act 1999 (NSW)* to insert Division 1A.

Simpson AJA again in **Black** at [2] (my emphasis):

*“Division 1A constitutes a mandatory and exclusive code for the application of sentencing discounts for the utilitarian value of pleas of guilty to charges of indictable offences: ss 25A(2), 25D(1) and 25E(1).”*

# What was the discount pre-EAGP? Or ... who remembers Thomas and Houlton?

It was essentially measured by the timing of the plea. Section 22(1) *Crimes (Sentencing Procedure) Act 1999 (NSW)* once said:

**22(1)** *In passing sentence for an offence on an offender who has pleaded guilty to the offence, a court must take into account:*

*(a) the fact that the offender has pleaded guilty, and*

*(b) when the offender pleaded guilty or indicated an intention to plead guilty, and*

*(c) the circumstances in which the offender indicated an intention to plead guilty,*

*and may accordingly impose a lesser penalty than it would otherwise have imposed.*



# Case Study 1: KB

- Charged with *Armed robbery dangerous weapon*.
- Getaway driver.
- Issue of duress.
- Issue of prior knowledge of co-accused's intent.
- Plea offer to *Accessory after the fact* – rejected at Case Conference.
- Committed for trial – defence of duress.
- Brief material in possession of police at the time of arrest but that was not disclosed until just before trial severely damaged the defence of duress.
- Discount: 10%.

# Case Study 2: BW

- Charged with various offences including:
  - *Armed robbery dangerous weapon;*
  - *Possession of firearm;*
  - *Discharge of firearm with intent.*
- Issue: who was the shooter?
- Charge Certifier and Case Conference Crown: BW was the shooter – no agreement to plead or facts otherwise.
- Committed for trial.
- Trial Crown: cannot prove BW was the shooter – pre-trial agreement to plead and adjust facts accordingly.
- Discount: 10%.

The real question: Does EAGP work?

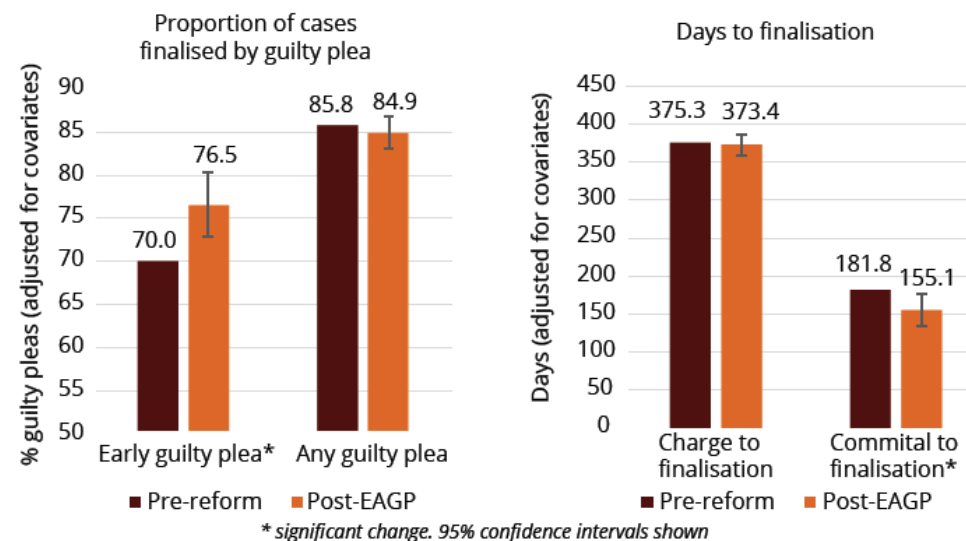
# Does EAGP work?

- A 2021 study by BOSCAR states:

*“The EAGP reforms have succeeded in increasing early guilty pleas and weekly finalisations in the DC. Further research, using a longer follow-up, will be necessary to gauge its effect on matters proceeding to trial in the DC.”*

## KEY FINDINGS

The proportion of cases with an early guilty plea increased after the reform, but time to case finalisation has shifted rather than decreased.



The proportion of cases committed to the DC which were finalised by a guilty plea in the Local Court (i.e., early guilty plea) increased by 6.5 p.p. after the EAGP reforms.

The average number of days from DC committal to case finalisation decreased by around 27 days. However, this was offset by an increase in time from charge to committal and thus, the average number of days between earliest charge date and finalisation did not change after the reforms. There was also no change in the proportion of total guilty pleas.

Additionally, we find an increase in the number of weekly finalisations in the DC after the reforms commenced of up to 12.3 cases a week. This increase is only apparent once adjusting for the demographic and offence composition of cases in the DC.

# What are the issues?

Some issues raised by Defence lawyers about the scheme include:

- Prosecutor's preparedness for the Case Conference:
  - a) Have they read the brief?
  - b) Have they consulted with the complainant?
  - c) Have they consulted with the OIC?
  - d) Have they considered any alternative charges?
  - e) Do they have the proper delegation to resolve the matter at case conference?

# What are the issues?

- Prosecutors' lack of good faith in negotiations or early stages. Defendants will lose their 25% discount if no agreement at case conference vs no practical effect on the Crown.
- Delays - Court/Prosecutors take the timetable for each step as a minimum, allowing multiple adjournments. This is particularly relevant where the defendant is bail refused.
- General understanding that the Local Court will not exercise its discretion under s68 to discharge if brief is not served or charges not certified in adequate time.

What can we do about it?