

## Legislation update for prosecuting agencies

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### *Sentencing practice: the return of prosecution submissions on penalty*

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May 2016

In our previous prosecution updates (October & December 2015) we summarised the effect of the High Court's decision in *Barbaro v The Queen*<sup>1</sup>, and the various judgments which subsequently considered that case. Until recently, the position was that the principle from *Barbaro* restricted a prosecutor's ability to make submissions on penalty in criminal matters, though not in pecuniary penalty or disciplinary proceedings.

Once again, the position has changed: the *Barbaro* principle has now been effectively extinguished.

From 5 May 2016, section 15 the *Penalties and Sentences Act 1992* has been amended to permit a party to a proceeding to make submissions to a court on the sentence, or range of sentences, the party considers appropriate. Given that the amendment is a procedural one, the change will apply to both current and future proceedings (including proceedings commenced before the amendment took effect).

Note however, that the *Barbaro* principle may remain the applicable law for prosecutions which fall outside the ambit of the *Penalties and Sentences Act* (such as, for example, prosecutions of federal offences under *Crimes Act 1914* (Cth)).

**For further inquiries or assistance, please contact Glen Cranny, Principal, Gilshenan & Luton Legal Practice on 3361 0240 or [gcranny@gnl.com.au](mailto:gcranny@gnl.com.au)**

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<sup>1</sup> *Barbaro v The Queen* (2014) 253 CLR 58.