

## FEDERAL SENTENCING

### CHECKLIST

- s 4AA Penalty unit means \$170.
- s 4B(2) Where an offence is punishable by imprisonment only a pecuniary penalty can be imposed instead or in addition to imprisonment. The section sets out the formula to be used in determining the maximum pecuniary penalty available.
- s 4J Enables certain indictable offences to be dealt with summarily and establishes the maximum sentences when an offence is dealt with summarily.
- s 4JA Enables certain indictable offences which are punishable only by a pecuniary penalty to be dealt with summarily.
- s 4K Permits a court to impose one penalty in respect of charges against the same provision of a law of the Commonwealth "*founded on the same facts, or form, or are part of, a series of offences of the same or similar character*".
- One penalty can also be imposed for a number of offences on indictment (Section 52 of the Sentencing Act NT pick up by the Judiciary Act 1903 Cmth). But one penalty cannot be imposed for Territory and federal offences.
- s 16A(1) The primary obligation on a sentencing court is to impose a sentence or order that is of a severity appropriate in all the circumstances of the offence – *R v Hili* [2010] HCA 45, [24]. So there is not a judicially determined norm or starting point in terms of how much of the sentence of imprisonment should be served in prison before release.
- s 16A(2) This is a non-exhaustive list of matters to which the court is to have regard where *relevant and known* when passing sentence. The list is supplementary to relevant common law matters. Now the court is precluded from taking customary law or cultural practice into account to either mitigate or aggravate the seriousness of the criminal behaviour.
- s 16A(3) In determining whether a non-custodial sentence or order is appropriate regard must be had to the nature or severity of the conditions that may be imposed or may apply to the offender under the order.
- s 16B In sentencing, a court must have regard to any sentence (state, federal or territory) that the offender has not served or any sentence liable to be served through revocation of parole or licence (the totality principle). This is particularly relevant where an offender is to be sentenced when he/she has breached federal parole.
- s 16BA The Court can take other federal/external territory offences into account.

- s 16C When imposing a fine, the court must have regard to the ability of the offender to pay. The court is not prevented from imposing a fine because the financial circumstances of the offender cannot be ascertained by the court.
- s 19B Bond without conviction
- provide a copy of the bond to the offender
  - explain or cause to be explained the purpose of the order, the consequences which may follow if it is not complied with and that the recognisance may be varied.
- s 20 Bond with conviction
- as for bond without conviction.

A fully suspended or partially suspended federal sentence or sentences requires an ancillary order being made under s 20(1)(b).

- S 20(1)(b) Requires the Court to
- state the term of imprisonment to be served
  - the period after which the offender may be released (wholly suspended is forthwith)
  - the period of good behaviour, not more than 5 years
  - the amount of the recognisance to be forfeited only if the sentence is breached

s 20A Deals with breaches of bonds fully suspended and partially suspended sentences.

s 20AB Enables the Commonwealth to pick up and apply prescribed Territory sentencing options. Community based orders, community work orders, home detention and community custody orders have been prescribed. These are not available for some offences such as terrorism, treachery, treason and espionage.

s 20AC Deals with breaches of prescribed Territory sentencing options picked up under s 20AB.

When imposing a Community Based Order or an Intensive Correction Order, the court must explain the effect of the order, consequence of non-compliance and that variation of the order is possible – s 20AB(2).

s 20C This section incorporates all the Territory sentencing options for children or young persons. In respect of a “child or young person” which is not defined, the full range of Territory and federal options are available.

S 21B Where a person is convicted of a federal offence, or an order is made under s19B, the court may, in addition to the penalty (if any), order the offender to make reparation to the Commonwealth, a public authority or any person, by way of money payment or otherwise, in respect of any loss suffered or expense incurred by reason of the offence.

## IMPRISONMENT

s 17B(1) Imprisonment precluded if a defendant is convicted of one or more property/money offences against ss 29 and 131.1, 132.1, 132.6, 132.7, 134.1, 134.2, 135.1, 135.2, 135.4, 145.4 or 145.5 of the Criminal Code (and before 24 November 2001 to ss 29,29A,29B,29C,29D,71 and 72 of the *Crimes Act 1914* (Cth)) where the total value of the property/money does not exceed \$2,000 and the defendant has not previously been sentenced to imprisonment, unless exceptional circumstances exist.

s 17A Imprisonment is only to be imposed where a court is satisfied that no other penalty is appropriate in the circumstances of the case. The court must state this and reasons must be entered in court records though failure to do so will not invalidate any sentence.

s 16E Commencement of sentences and pre-sentence detention  
This section adopts territory law on commencement of sentences and non-parole periods for federal offenders – s 16E(1) but the *Crimes Act 1914* (Cth) has its own regime determining when a non-parole period or a recognisance release order ought be made – ss 19AB – 19AJ. So, the territory legislation has no application as to when a non-parole period or recognisance release order ought be made.

Backdating of sentences is permissible in accordance with section 16E of *Crimes Act 1914* (Cth) and section 63(5) of the Sentencing Act (NT).

s 16F If the court imposes a federal sentence and fixes a non parole period/recognisance release order it must explain, or cause to be explained, the purpose and consequence of fixing and non compliance with such a period or order.

s 19(2) Where multiple sentences are imposed the court must “by order direct” when each federal sentence imposed commences - simply stating only that sentences are to be concurrent, cumulative or cumulative to a nominated degree will not satisfy this section. This can be done by stating when each sentence will commence by reference to a date or by reference to the commencement of the other sentences – ***R v Alimic*** [2006] VSCA 273. Where an aggregate term of imprisonment is imposed this requirement will not apply – ***DPP v AB (No.2)*** (2006) 198 FLR 449.

Section 19(2) relates to the head sentence(s) not the non-parole period – see ***R v DS*** (2005) 153 A Crim R 194. The non-parole period will commence on the commencement of the first head sentence.

s 19AC(3) If sentence, or aggregate sentence does not exceed 6 months and the offender is not undergoing a federal term of imprisonment, a recognisance release order is not necessary. A straight sentence is possible here.

s 19AC(1) If sentence, or aggregate sentence does exceed 6 months but not exceed 3 years and the offender is not undergoing a federal term of imprisonment, a single recognisance release order and not a non-parole period is required. The sentence or aggregate must exceed 3 years for a non-parole period to be imposed.

- s 19AB(1) If sentence, or aggregate sentence is more than 3 years (ie 3 years and 1 day) and the offender is not undergoing a federal term of imprisonment, a single recognisance release order or a single non-parole period must be imposed/made.
- s 19AC(4) Court may decline to impose a recognisance release order where it is otherwise required to do so having regard to the nature and circumstances of the offence(s) and to the antecedents. Where the court considers that this is not appropriate reasons are to be stated and recorded in the court records.
- s 19AD This section is relevant where the offender is already subject to a federal non parole period when sentenced but is qualified by s 19AG in relation to sentences for terrorism, treachery, treason or espionage.
- s 19AE This section is relevant where the offender is already subject to a federal recognisance release order when sentenced but it is qualified by s 19AG in relation to sentences for terrorism, treachery, treason or espionage.
- s 19AJ Separate sentences must be imposed for federal/Territory offences. That is a single sentence cannot be imposed for both Territory and federal offences.
- Both a separate head sentence or sentences and a single non-parole or pre-release period for the federal offence(s) must be imposed on the federal offences. It is not possible to impose a single non-parole period in respect of federal and Territory sentences. Separate non-parole periods are required.
- s 19AQ Deals with the situation where a federal parole order or licence is automatically by the imposition of a sentence or sentences of more than 3 months – see ***R v Novak*** (2003) 141 A Crim R 507 and ***R v Piacentino*** [2007] 15 VR 501, [106]-[108].
- s 19AR Deals with the fixing of a new non-parole period where a parole order or licence is automatically revoked.
- s 19AU Deals with the situation where the federal Attorney-General decides to revoke federal parole.
- s 21E Court is to quantify reduction of sentence if an undertaking by an offender as to future co-operation in proceedings is given, and to state that the reduction is made for this reason. For s 21E to operate there must be a clear undertaking and it must be given in contemplation of the possible institution of some proceeding. Such s 21E reduction is not to include any mitigation of penalty consequent upon application of s 16A(2)(h) which relates to general co-operation with authorities. These are distinct and separate.