

Sentencing Principles in New South Wales

1. The purposes of sentencing must be taken into account.
2. Factors relevant to the determination of sentence must be taken into account in an instinctive synthesis (the "instinctive synthesis principle").
3. Advancement of systemic goals permits an exception to the instinctive synthesis principle.
4. The guidance provided by sentencing "guideposts" must be taken into account.
5. The sentencing court should seek to reflect legitimate community expectations.
6. The sentencing court should generally lean towards mercy.
7. A sentence may not be imposed solely to achieve preventative detention (the "proportionality principle").
8. A sentence reduced in order to advance systemic goals "must not be unreasonably disproportionate to the nature and circumstances of the offence".
9. There must be reasonable consistency in sentences.
10. There must not be disparate sentences for co-offenders (the "parity principle").
11. There must not be punishment for unforeseeable consequences.
12. There must not be punishment for another offence.
13. There must not be double punishment.
14. There must not be double counting.
14. When sentencing for more than one offence, account must be taken of the "totality" of the circumstances (the "totality principle").
16. There should be restraint when re-sentencing.
17. There must not be prospective sentencing if that would result in a heavier sentence.
18. Imprisonment is a sentence of last resort.
19. A sentencing court should engage in a final review before imposing sentence.

Sentencing Procedure in NSW

As a general proposition, a sentencing proceeding should proceed in accordance with ordinary legal principles applicable to a criminal trial:

- proceedings in public
- adversarial procedure in the sense that the parties (the prosecution, the offender) adduce evidence in the proceedings and determine what factual matters are in dispute and are to be determined by the sentencing court
- procedural fairness
- "accusatorial" elements (proof of aggravating facts beyond reasonable doubt; offender's right to silence)
- special duties on the prosecution
- rules of evidence apply

However, there are important qualifications to these general principles in sentencing proceedings:

- some facts relevant to the determination of that sentence will have been determined by the verdict of guilty (or, by a plea of guilty)
- some facts potentially relevant to determination of an appropriate sentence need not be determined at all
- informal procedures may be adopted, and are encouraged by the courts, particularly where there has been a plea of guilty (for example, providing an agreed statement of facts to the sentencing court)

Special procedures are adopted in sentencing proceedings in relation to a court, sentencing an offender for one offence, "taking into account" another offence that the offender admits having committed; obtaining pre-sentence reports from an appropriate government service; deferring passing sentence in order to better assess the offender's prospects of rehabilitation (or for some other proper purpose); obtaining a "victim impact statement"; obtaining a child background report.

Sentencing Factors in NSW

- objective seriousness
- motivation
- planning
- state of mind
- capacity to avert the offence
- entrapment
- age
- health
- mental abnormality
- intoxication
- addiction
- childhood disadvantage
- cultural background
- good character
- prior convictions
- prospects of rehabilitation
- future dangerousness
- repeat offending
- conditional liberty
- unlawfully at large
- plea
- assistance
- remorse
- voluntary cessation of offending
- ameliorative conduct
- assistance provided by others
- attitude of victim
- delay
- could have been sentenced in different court
- could have been charged with a lesser offence
- prior punishment
- non-curial punishment
- unrelated curial punishment
- anticipated impact of sentence on offender
- anticipated impact of sentence on third parties
- potential executive action