

Australian Sentencing

Introduction

The sentencing landscape and structure of the commentary

The nature of sentencing

- Sentencing provides a system for punishing offenders.
- Sentencing is politically sensitive and is responsive to social and political developments.

Snapshot

- From 30 June 2009 to 1 July 2010 there were over half a million sentencing hearings and determinations in Australia. WA made up 17% of these hearings.
- Approximately 77% of defendants were male.
- In the higher courts more than 60% of defendants were under 35 years of age.
- In the Magistrates' Court, the portion of defendants under 35 was higher, at 64%.

Punishment and sentencing

The interdependence of punishment theory and sentencing practice

- In pragmatic terms = punishment is a hardship or deprivation; depriving someone of something of value for a wrong committed "Crime and Punishment" in P Singer (ed), A Companion to Ethics (1991) 366.
- The main issue with punishment is the justification of punishment. How can we justify deprivation of liberties?
- First;
 - We must establish on what basis punishment is justified and why we are punishing. Is it *lex talionis* - an eye for an eye theory of punishment- or is it to stress the wrongfulness of the crime to the offender.
- **Philosophical discussion** centres around the **justification for punishment** whereas **legal analysis** focuses on the **issues of sentencing**. Often these two overlap.
- Ultimately. Once we have determined why we are punishing and individual we can tailor a sentence to achieve that outcome.

Overview of two main theories: utilitarianism and retributivism

- Two main theories.
- Retributivism
 - Those guilty deserve punishment and that this is the sole justification for punishment.
 - The punishment must be equivalent to the level of wrongdoing.

Australian Sentencing Australian Sentencing

**MIRKO & EDNEY BAGARIC (RICHARD &
ALEXANDER, THEO.)**

Australian Sentencing Australian Sentencing:

Sentencing and Sanctions in Western Countries Michael Tonry, Richard Frase, 2001-05-31 This collection of original essays surveys the evolution of sentencing policies and practices in Western countries over the past twenty five years Contributors address plea bargaining community service electronic monitoring standards of use of incarceration and legal perspectives on sentencing policy developments among other topics Sentencing and Sanctions in Western Countries provides a range of scholars and students excellent cross national knowledge of sentencing laws and practices when and why they have changed over time and with what effects Modern Criminal Law of Australia Jeremy Gans, 2016-12-05 Modern Criminal Law of Australia 2nd edition is a comprehensive guide to interpreting and understanding every statutory offence provision in every Australian jurisdiction The text takes a unique approach to explaining Australian criminal law emphasising the importance of statutory interpretation official discretion element analysis and sentencing in order to appreciate the meaning and effect of any offence provision This book sets out the rules and skills needed to advise clients on the potential application of criminal law throughout Australia Its scope extends to both serious and minor regulatory regimes as well as the entire contemporary breadth of criminal law ranging from pollution to public order traffic to trafficking and domestic violence to work safety It covers the common law traditional code and model code systems and includes detailed examples from all states As such this unique book provides students with the skills to practice law anywhere in Australia

Australian Cartel Regulation Caron Beaton-Wells, Brent Fisse, 2011-04-25 Cartel regulation is a prime element of competition policy and an essential means of minimising the adverse effects of cartel activity on economic welfare However effective cartel regulation poses distinct challenges for governments competition authorities and commentators across the globe In Australian Cartel Regulation leading competition law experts Caron Beaton Wells and Brent Fisse reflect on developments in anti cartel law in Australia over the last 30 years They provide a comprehensive account of the current law on cartels as well as discussing key issues that may arise in the future This definitive volume not only identifies the practical and theoretical issues but also recommends workable solutions and does so with the benefit of comparative analysis of the anti cartel laws of major overseas jurisdictions Many of the issues identified and discussed in Australian Cartel Regulation are common to any scheme designed to regulate cartel conduct **Sentencing of Federal Offenders** Australia. Law Reform Commission, 1980

Principles of Sentencing Geraldine Mackenzie, Nigel Stobbs, Jodie O'Leary, 2010 Sentencing in all Australian jurisdictions is now largely governed by legislation which prescribes some basic guidelines and principles At the same time the High Court and the State appeal courts have been more active in developing a sentencing jurisprudence effectively standardising many of the core principles of sentencing law However judges and magistrates retain a wide discretion in almost every case and lawyers argue many different often disparate and sometimes inherently complex factors The authors of this book burrow through the maze of developing sentencing law to isolate explain and critique the principles

which operate across and between jurisdictions They identify the key themes analyse examples from the different jurisdictions and examine the exercise of judicial discretion both in the scope of factors that may be taken into account and in the choice of sanctions

The Australian Criminal Justice System Duncan Chappell, Paul R. Wilson, 1994 *Indigenous People, Crime and Punishment* Thalia Anthony, 2013-07-24 *Indigenous People Crime and Punishment* examines criminal sentencing courts changing characterisations of Indigenous peoples identity culture and postcolonial status Focusing largely on Australian Indigenous peoples but drawing also on the Canadian experiences Thalia Anthony critically analyses how the judiciary have interpreted Indigenous difference Through an analysis of Indigenous sentencing remarks over a fifty year period in a number of jurisdictions the book demonstrates how judicial discretion is moulded to dominant white assumptions about Indigeneity More specifically *Indigenous People Crime and Punishment* shows how the increasing demonisation of Indigenous criminality and culture in sentencing has turned earlier gains in the legal recognition of Indigenous peoples on their head The recognition of Indigenous difference is thereby revealed as a pliable concept that is just as likely to remove concessions as it is to grant them *Indigenous People Crime and Punishment* suggests that Indigenous justice requires a two way recognition process where Indigenous people and legal systems are afforded greater control in sentencing dispute resolution and Indigenous healing

Australian Sentencing Richard Edney, Mirko Bagaric, 2007-08-09 This 2007 book analyses and evaluates existing standards and practices and suggests how sentencing law should be reformed

Subject Guide to Australian Business, Commerce & Law Books John E. Simkin, 1992 A guide to the 5490 books in these fields in the Australian Books in Print database as at June 1992 and out of print titles notified since December 1989 with titles indexed under 3617 subject headings

Sentencing New South Wales. Law Reform Commission, 1996

Proceedings of Roundtable on Sentencing and Indigenous Peoples Rick Sarre, Digby Wilson, 1998 This collection of papers address current concerns in relation to the interface of Indigenous Australians and the criminal justice system Issues discussed include customary law including the potential for differential sentencing systemic issues within the criminal justice system a multi agency resocialisation program and communication issues One paper describes the African American experience and the implications for Australia There is also an extensive compilation of research abstracts

APAIS 1992: Australian public affairs information service, Crime and the Criminal Justice System in Australia Duncan Chappell, 2000 The Australian Law Journal Reports Australia. High Court, 2004

The Sentencing Process Martin Wasik, 1997 This volume is concerned with how information is provided for sentencers and how those decisions are made

Australian Current Law Reporter, 2004

Sentencing in Australia MIRKO & EDNEY BAGARIC (RICHARD & ALEXANDER, THEO.), 2019

Australian Journal of Human Rights, 2001 APAIS, Australian Public Affairs Information Service, 1996 Vol for 1963 includes section Current Australian serials a subject list

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