

	State ⁱ	Cth ⁱⁱ	Features of Commonwealth Legislation
SENTENCING OUTCOMES			
Discharge without conviction	s.10(1)(a)	s.19B(1)(c)	<ul style="list-style-type: none"> Bond can be for up to 3 years Facts to consider are set out in
Fines	ss.14 – 16	ss. 16C etc	<ul style="list-style-type: none"> Court must take into account financial circumstances of the person before imposing a fine
Bond without conviction	s.10(1)(b)	s.19B(1)(d)	<ul style="list-style-type: none"> Conditions are not exhaustively listed. They can include reparation, restitution, compensation or supervision. Supervision no more than 2 years, even if bond is for 3 (s.19B(1)(d)(iii))
Good Behaviour Bond	s.9	s.20(1)(a)	<ul style="list-style-type: none"> Maximum five years for length of bond (s.20(1)(a)(i)) Orders re payment of fines/costs/compensation etc can be made conditional and payment date can be specified (inc. by installments) (s.20(1)(a)(ii) and (iii)) Supervision no more than 2 years (s.20(1)(a)(iv)) Note – a ‘pecuniary penalty’ can be imposed as a condition even if no fine set out in offence provision. Standard penalty then applicable is 60 p.u if Local Court, 300 p.u. if DC (s.20(5))
Community Service Order	s.8	s.20AB	<ul style="list-style-type: none"> Court can impose CSO for commonwealth offences in accordance with the relevant law of NSW because specified in regulation.
Home Detention	s.6	s.20AB (1)	<ul style="list-style-type: none"> Court can impose HD for commonwealth offences in accordance with the relevant law of NSW because specified in regulation.
Suspended sentence	s.12	s.20(1)(b)	<ul style="list-style-type: none"> Provides for partially suspended sentences. Can suspend sentences of up to 5 years.
“Griffiths remand”/s.11	s.11	-----	Not available for Commonwealth offences
ICO	s.7	s.20AB(1)	<ul style="list-style-type: none"> Court can impose HD for commonwealth offences in accordance with the relevant law of NSW.
Imprisonment	s.5	s.18	<ul style="list-style-type: none"> Can be imposed with or without hard labour See also – s.17B – imprisonment cannot be imposed for property offences under \$2000 if no other imprisonment on record.
SENTENCING PRINCIPLES			
Purpose/objective of sentencing	s.3A	s.16A(1)	<ul style="list-style-type: none"> Sentence imposed must be of a severity appropriate in all the circumstances of the offence
Imprisonment as sentence of last resort	s.5	s.17A(1)	<ul style="list-style-type: none"> Sentence of imprisonment is one of last resort <u>and</u> shortest sentence possible should be imposed
Explanation of sentence	-	s.16F	<ul style="list-style-type: none"> Court required to explain sentence to offender
Pre-sentence custody	s.24	s.16E(2)	<ul style="list-style-type: none"> Allows Court to order that sentence imposed is to commence on the date the offender was taken into custody. See also s.16B – Court to have regard to other sentences of imprisonment not yet served/for other offences etc (<i>Mill v The Queen, Pearce</i> etc)
Victims	ss.26-30A	s.16A(2)(d) s.16A(2)(ea)	<ul style="list-style-type: none"> Court to take into account: personal circumstances of victim and victim impact statement

Guilty plea	s.21A(3)(k) s.22	s.16A(2)(g)	<ul style="list-style-type: none"> The 'fact' of the plea of guilty to a Cth offence is to be taken into account. Court not requires to specify a quantifiable discount , but it is not an error if it does so: See <i>Lee v R</i> [2012] NSWCCA 123 at [58] and <i>Marjaruab v The Queen</i> {2005} 228 CLR 357 at [24]
Future assistance	s.23	s.21E	<ul style="list-style-type: none"> Court to specify amount of discount for promised future assistance. Provides for the CDPP to appeal where there has been non-compliance with promise etc.
Past assistance	s.23	s.16A(2)(h)	<ul style="list-style-type: none"> The 'degree' to which the offender has cooperated is to be taken into account
Contrition/remorse	s.21A(i)	s.16A(2)(f)	<ul style="list-style-type: none"> Should be reflected separately to the plea of guilty (<i>Tiknius v R</i> [2011] NSWCCA 215)
General Deterrence	s.3A(b)	CL	<ul style="list-style-type: none"> <i>DPP v El Karhani</i> (1990) 51 A Crime R 123 – even though general deterrence is not specifically provided for
Specific Deterrence	s.3A(b)	s.16A(2)(j)	<ul style="list-style-type: none"> Court to take into account the possible deterrent effect of sentence or other order being considered
Punishment	s.3A(a)	s.16A(2)(k)	<ul style="list-style-type: none"> Need to ensure adequate punishment
Rehabilitation	s.3A s.21A(3)(h)	s.16A(2)(n)	<ul style="list-style-type: none"> Prospect of rehabilitation (note no mention of the need for there to be 'good' prospects)
Effect on family etc	CL	s.16A(2)(p)	<ul style="list-style-type: none"> Must find that the effect is <i>probable</i>
Mental Health	CL	s.16A(2)(m)	<ul style="list-style-type: none"> Mental health is an important consideration. It cannot be disregarded entirely because of section 16A(2)(k) – the need for adequate punishment
SENTENCING PROCEDURE			
Summary offences	s.6 CPA	s.4H	<ul style="list-style-type: none"> Where the maximum penalty is no more than 12 months or there is no penalty of imprisonment
Indictable offences dealt with summarily	ss. 5, 8, Table 1 + 2	s.4G	<ul style="list-style-type: none"> Where the maximum penalty is between 12 months and 10 years imprisonment
Strictly indictable	See above	s.4J	<ul style="list-style-type: none"> Where the maximum penalty is no more than 10 years imprisonment
Form 1	ss 32-33	s.16BA	<ul style="list-style-type: none"> Allows for matters to be dealt with on a schedule – which is equivalent to a Form 1. State offences cannot be dealt with on a commonwealth 'schedule'.
Aggregate Sentences	s.53A	s.4K(4)	<ul style="list-style-type: none"> Multiple offences can have single sentence imposed BUT only in Local Court when exercising summary jurisdiction. Otherwise, on indictment – principles in <i>Pearce v the Queen</i> (1998) 194 CLR 610 still apply.
Cumulative/Concurrent	ss. 55-60	s.19	<ul style="list-style-type: none"> Cumulative, concurrent, partly cumulative – permitted. Proscribes interaction between state and Cth sentences
Non-parole orders/periods	s.44 etc	s.19AB	<ul style="list-style-type: none"> NPP must be imposed if sentence is for more than 3 years Statutory ratio of 75% for certain offences (s. 19AG)
Recognizance Release order	Doesn't exist	s.19AC	<ul style="list-style-type: none"> A RRO is an order under s.20(1)(b) and is similar to a good behaviour bond RRO must be imposed if sentence is less than 3 years
Breach no conviction bond	s.98 s.99(1)(b)	s.20A(5)(a)	<ul style="list-style-type: none"> Revoke and resentence/convict or Take no action
Breach of good behavior bond)	s. 98 s. 99(1)(a)	s.20A(5)(b)	<ul style="list-style-type: none"> Impose pecuniary penalty of up to 10 p.u Revoke and resentence or Take no action

Breach of HD or ICO or CSO	ss. 89, 115 and 167 (CASA)	s.20AC	<ul style="list-style-type: none"> • Impose pecuniary penalty of up to 10 p.u • Revoke and resentence or • Take no action
Breach suspended sentence	s.98, 99(3) etc	s.20(1)(b)	<ul style="list-style-type: none"> • Impose penalty of no more than \$1000 • Amend and extend the original order for good behavior • Revoke and make a new order under s.20AB e.g HD/ICO/CSO etc • Revoke and sentence to imprisonment (the fixed part as ordered originally) or • Take no action
Release on parole	CASA	ss 19AL – 19AZD	<ul style="list-style-type: none"> • Automatic right of release if sentence is less than 10 years • Note – no federal parole board. Delegate of the Cth A-G receives breach reports and determines other applications for parole.
Penalty Unit	s.17 (\$110)	s.4AA	<ul style="list-style-type: none"> • \$170

ⁱ All references in this column are to the *Crimes (Sentencing Procedure) Act 1986* (NSW) unless they refer to the ‘CASA’ which is the *Crimes (Administration of Sentences) Act* or ‘CL’ which simply means the common law.

ⁱⁱ All references in this column are to the *Crimes Act 1914* (Cth)