

***Sentencing Manual*, Judicial Commission of New South Wales,  
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**FOREWORD**

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The sentencing of convicted criminals is one of the most important tasks performed by the judiciary. Sentencing engages the interest, and sometimes the passion, of the public at large more than anything else Judges do. The public attitude to the way Judges impose sentences determines, to a substantial extent, the state of public confidence in the administration of justice.

Individual judicial officers call upon a vast body of collective experience of other judicial officers, both contemporary and past, to assist them in this task. This publication constitutes a distillation of the principles derived from that cumulative knowledge.

A former Chief Justice of New South Wales, Sir Frederick Jordan, once said with respect to sentencing that:

“The only golden rule is that there is no golden rule.”

There is a wide spectrum of legitimate opinion about appropriate levels of punishment for criminal offences. It is, of course, impossible for courts to satisfy all sections of the community with respect to a matter like sentencing, because there are such significant divisions of opinion within the community. However, the permissible range for the exercise of the sentencing discretion by the judiciary is necessarily narrower than the broad range of opinion held within the community. This is because the core value of fairness in the administration of criminal justice requires the range to be narrow, so that criminal justice is seen to operate reasonably equally.

The reason why debate about sentencing will know no rest is because the sentencing task has always been, and will continue to be, a process of balancing overlapping, contradictory and incommensurable objectives. The preservation of a broad sentencing discretion is critical to the ability of the criminal justice system to ensure justice is served in all of the extraordinary variety of circumstances of individual offences and of individual offenders. The ineluctable core of the sentencing task is a process of balancing overlapping, contradictory and incommensurable objectives, including deterrence, retribution and rehabilitation. These objectives do not always point in the same

direction. The requirements of justice and the requirements of mercy are often in conflict, but we live in a society which values both justice and mercy.

Centuries of practical experience lead to the conclusion that the balancing of such a multiplicity of factors requires the exercise of a broad discretion. Nevertheless, that discretion is a judicial one and must be exercised in accordance with principle. This volume summarises the principles applicable to the exercise of that discretion in the criminal justice system of New South Wales.

This publication incorporates many years of research about sentencing acquired by officers of the Judicial Commission of New South Wales. It serves one of the principal functions of the Commission – the promotion of consistency in sentencing. Although the work is primarily designed to assist judicial officers on a day-to-day basis, its general publication will enable it to serve as a resource for all legal practitioners and others who seek a better understanding of the principles and the practice of sentencing in New South Wales.

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