

THE EFFECTIVENESS OF CURRENT LEGAL PENALTIES IN ACHIEVING THEIR OBJECTIVES (notes from Nicholas Cowdery lecture 2009)

The Purpose of Punishment

- to operate on the offender
- to give confidence to the community that something is being done to make up for what has happened

However, when we enforce the law through punishment only very rarely are people actually punished into goodness.

Purposes of punishment are found in the *Crimes (Sentencing Procedures) Act 1999* (NSW). This act also lists the aggravating and mitigating circumstances that need to be taken into account by the sentencing court.

Types of Punishment

The types of punishment available for specific offenders are set out in legislation. This act sets out the maximum penalties prescribed for offenders, and the maximum should only be used for the worse of cases, this act also states a non-parole period.

In NSW, except for minor regulatory offences (ie traffic, speeding, parking offences), there are no fixed sentences or penalties or mandatory sentences.

The act also states that if a sentence of 6 months or less is imposed, it must be done so only because there was no other alternative, non custodial penalty that was appropriate in that case.

Custodial punishments

- fulltime imprisonments is the most severe type of punishment
- weekend or mid week detention (although periodic detention is now being phased out)
- home detention
- suspended sentence

Non-Custodial punishments

- fines
- community service orders
- bonds of various kinds

In some cases, non association and place restriction orders may be made.

There are also quite a few divisionary schemes of various types – these take the offender away from the mainstream type of punishment

These schemes include:

- The NSW Drug Court and Youth Drug Court (but this is limited geographically to the western Sydney area)
- The MERIT Scheme – Magistrates' Early Referral into Treatment for drug and alcohol addiction
- Community Conferencing for both adult and youth offenders
- Circle Sentencing for Aboriginal Offenders

Some of these may operate before sentencing is imposed, while some are by way of treatment after sentencing. However these are applied in a very piecemeal fashion and not equally offered to all offenders.