GILSHENAN & LUTON
LEGAL PRACTICE



Commonwealth offences sentencing

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There are certain criminal offences which constitute Federal (or 'Commonwealth') crimes as opposed to State-based crimes. Commonwealth offences include drug importation, terrorism, Australian Tax Office and Medicare fraud. Anyone who pleads guilty or is found guilty of an offence against the Commonwealth is sentenced according to the laws of the Commonwealth (rather than the State).

"Federal offender" is defined by the *Crimes Act 1914* (Cth) (the Act) as a person convicted of a federal offence; that is, an offence against a law of the Commonwealth.

Basic principles for Commonwealth sentencing

The Act sets out the basic principles governing the formulation of Commonwealth sentences. In essence, the court must impose a sentence that is:

"of a severity appropriate in all the circumstances of the offence."

The sentencing options available to the court when dealing with federal offenders are vast and they include the below.

Recording a conviction

Recorded convictions in Commonwealth matters are hard to avoid because they are attached to most sentencing options. Whereas in State-based matters, a conviction is only attached to a sentence involving a term of imprisonment.

When sentencing an offender in relation to a Commonwealth offence, the court **must** record a conviction unless it imposes a good behaviour bond pursuant to section 19B of the Act.

Section 19B - Good behaviour bond without conviction

Section 19B of the Act is the only Commonwealth sentencing option where the court can sentence an offender and **not** record a conviction.

When considering whether to record a conviction, the court will have regard to the following matters:

- character, antecedents, age, health or mental condition of the person; or
- the extent (if any) to which the offence is of a trivial nature; or
- the extent (if any) to which the offence was committed under extenuating circumstances.

The Court may dismiss the charge/s or impose a good behaviour bond for a period of up to three (3) years and probation for a period of up to two (2) years may be imposed as a condition of the bond.

A good behaviour bond is an agreement between the court and the offender. It’s a promise by the offender to be of good behaviour for a certain period. If a person breaches the bond, they may be required to forfeit to the court, the sum of the bond.

Good behaviour bond with conviction

Section 20(1)(a) of the Act empowers the court to impose a good behaviour bond for a period of up to five (5) years and probation for a period of up to two (2) years may be imposed as a condition of this type of bond. When sentencing under this section of the Act, a conviction will be recorded.

Other conditions may also be imposed by the court, such as the offender must undertake specified counselling, education or treatment program during a specified part of, or throughout, the specified period.

Probation

Probation is a community-based order where the offender is under the supervision of a corrective services officer and must comply with certain conditions.

A probation order may only be imposed as a condition of either of the above good behaviour bonds. There is no power to impose a "stand-alone" probation order as part of a Commonwealth sentence.

A probation order can require an offender to:

- report to a corrective services officer at the place and within the time specified in the order;

- report to and receive visits from the officer as directed by the officer; and
- take part in counselling.

Unlike when being sentenced for State offences, the consent of the convicted person is **not** required as a pre-requisite to the imposition of probation (as a condition of a Commonwealth good behaviour bond).

Reparation payments

Under Commonwealth law, where the court has ordered a good behaviour bond (either with or without a conviction), it also has the discretion to order that an offender pay reparation to any person, by way of a monetary payment or otherwise, in respect of any loss suffered or any expense incurred by reason of the offence (s21B).

Losses or expenses suffered may include:

- medical expenses;
- counselling expenses;
- loss/damage to property; and/or
- loss of wages.

Community service

Community service can be imposed in the same way as it can for those convicted of State offences.

Community service is unpaid work that an offender is ordered to perform. Community service work includes many different activities, including:

- cleaning up public spaces;
- nature conservation; and
- garden and lawn work.

Imprisonment

Section 17A of the Act stipulates that a sentence of imprisonment may only be imposed if no other sentence is appropriate in all the circumstances.

Where an offender is sentenced to a term of imprisonment of 3 years or less, the court can order the sentence of imprisonment be followed by release on a good behaviour bond, either immediately, or after a specified period in actual custody.

Where the head sentence is more than 3 years, the sentencing court must fix a non-parole period. There is no option to impose a bond for a sentence of more than 3 years.

Get help from a criminal lawyer

If you have been charged with a Commonwealth offence, we recommend that you contact us urgently.

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