



**New South Wales
Law Reform Commission**

Sentencing Question Paper 7

Non-custodial sentencing options

June 2012
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- 7.1 In this Question Paper we consider the currently available non-custodial sentencing options and also ask whether any other non-custodial sentencing options should be introduced. Readers should be aware that the question of combining various sentencing options (whether custodial or non-custodial) and the framework for managing such combinations will be the subject of a future question paper. Questions concerning the operation of orders that are currently ancillary to sentencing, including reparation and compensation orders, forfeiture orders, licence disqualification and non-association and place restriction orders, will also be dealt with by a future question paper.

Community service orders

- 7.2 Instead of imposing a sentence of imprisonment, a court may make a community service order (CSO) directing the offender to perform community service work for a specified number of hours.¹
- 7.3 In the period 2006-2011 approximately 3-4% of all people found guilty in the Local Court were sentenced to undertake CSOs. In 2011, the Local Court sentenced 3,485 offenders to undertake CSOs.² In 2006-2011, less than 2% of all people found guilty in the higher courts were sentenced to undertake CSOs. In 2011, the higher courts sentenced 35 offenders to undertake CSOs.³
- 7.4 Corrective Services NSW describes the operation of the CSO program as follows:
- The CSO program is administered by Probation and Parole Officers who allocate offenders to work with voluntary community organisations, including services to the young, sick, disabled and elderly, as well as in environmental projects. Offenders are carefully screened for appropriate placement and are supervised for the duration of their hours, both in terms of work and behaviour. Community Offender Services supervises approximately 4,600 offenders with Community Service Orders, who perform around \$12 million worth of unpaid community work for 1,600 non-profit organisations.⁴
- 7.5 Statistics from the NSW Department of Attorney General and Justice show that between 80% and 84% of offenders have successfully completed their CSOs each year since 2006/07.⁵
- 7.6 Other Australian jurisdictions have sentencing options available, under a variety of names, that are similar to CSOs, either as stand-alone options or as part of broader orders.⁶

Availability

- 7.7 It has been held that a court need not be considering the imposition of a term of imprisonment in a particular case in order to impose a CSO.⁷ It is arguably unclear whether s 8 of the Act, which states that CSOs may be made “[i]nstead of imposing a sentence of imprisonment on an offender”, requires that the offence must carry a maximum penalty that includes imprisonment, or whether it is open to impose CSOs

1. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 8.

2. NSW Bureau of Crime Statistics and Research, *NSW Criminal Court Statistics* (2006)-(2011).

3. NSW Bureau of Crime Statistics and Research, *NSW Criminal Court Statistics* (2006)-(2011).

4. Corrective Services NSW, "Offender Management in the Community" <www.correctiveservices.nsw.gov.au/offender-management/offender-management-in-the-community#service_orders> (accessed 20 June 2012).

5. NSW Department of Attorney General and Justice, *Annual Report 2010/11*, 96.

6. CSOs: *Penalties and Sentences Act 1992* (Qld) s 100-108; *Criminal Law (Sentencing) Act 1988* (SA) pt 6; *Sentencing Act 1997* (Tas) pt 4; community work orders: *Sentencing Act* (NT) s 33A-39; unpaid community work as part of a community-based order: *Sentencing Act 1991* (Vic) s 39; a community service requirement as part of a community based order: *Sentencing Act 1995* (WA) s 67; a community service condition under a good behaviour order: *Crimes (Sentencing) Act 2005* (ACT) s 13(3)(b).

7. *R v El Masri* [2005] NSWCCA 167 [32].

for any offence.⁸ When CSOs were first introduced, s 4(1) of the *Community Service Orders Act 1979* (NSW) stated expressly that a CSO could only be made when an offender was being sentenced for “an offence punishable by imprisonment”. This clear requirement is not present in the current legislation. As a matter of practice, CSOs have been imposed on rare occasions for some offences where the maximum sentence is a fine.⁹

- 7.8 However, the provisions in the Regulations for calculating the length of a CSO according to the maximum term of imprisonment for the offence¹⁰ suggest an intention to limit CSOs to offences punishable by imprisonment.
- 7.9 In this context, it should also be noted that special provision has been made for the imposition of community service work in relation to a limited number of specific offences where the only available penalty is a fine or where the court imposes a fine rather than imprisonment.
- 7.10 For example, the offences of damaging or desecrating protected places (including war memorials), which attract fines only as maximum penalties, include a special provision allowing the court to direct the person to perform community work under s 8 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) (‘the Act’).
- 7.11 A court that imposes a fine on an offender for an offence under the *Graffiti Control Act 2008* (NSW) can make a “community clean up order” which requires the offender “to perform community clean up work in order to satisfy the amount of the fine”.¹¹ The order may be made at the time the fine is imposed or afterwards, so long as part of the fine remains unpaid and has not been referred to the State Debt Recovery Office for enforcement.¹² The duration of the community clean up order is calculated at the rate of one hour for each \$30 of the amount of the fine or the part of the fine that is unpaid.¹³

Eligibility and exclusions

- 7.12 A court may impose a CSO if it is satisfied:
- (a) that the offender is a suitable person for community service work, and
 - (b) that it is appropriate in all of the circumstances that the offender be required to perform community service work, and

8. See, eg, R Howie, “Amendments to the Law of Sentencing” (2000) 7(3) *Criminal Law News* [1135] (ix) and G Zdenkowski, “Non-financial Non-custodial Sentencing Options in the Crimes (Sentencing Procedure) Act 1999” (2003) 6(2) *Judicial Review* 189, 197-198. See also NSW Sentencing Council, *Good Behaviour Bonds and Non-Conviction Orders*, Report (2011) [2.3].

9. Such as low-range prescribed concentration of alcohol, drive unlicensed, drive unregistered, negligent driving not causing death or grievous bodily harm and offensive language: Judicial Commission of NSW, *Common Offences in the NSW Local Court: 2007*, Sentencing Trends and Issues 37 (2008) 7.

10. *Crimes (Sentencing Procedure) Regulation 2010* (NSW) cl 23. See para [7.15].

11. *Graffiti Control Act 2008* (NSW) s 9B(1).

12. *Graffiti Control Act 2008* (NSW) s 9B(2)-(4).

13. *Graffiti Control Act 2008* (NSW) s 9G.

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- (c) that arrangements exist in the area in which the offender resides or intends to reside for the offender to perform community service work, and
 - (d) that community service work can be provided in accordance with those arrangements.¹⁴
- 7.13 An offender must be assessed as suitable for community service before the court can make a CSO, however the court may refuse to make a CSO “for any reason it considers sufficient”¹⁵ even if the offender is assessed as suitable.¹⁶
- 7.14 In its 2006 report on community based sentencing options for rural and remote areas and disadvantaged populations, the NSW Legislative Council Standing Committee on Law and Justice found that the lack of available community service work in many rural and remote areas means that courts are sometimes unable to impose a CSO on an otherwise suitable offender.¹⁷ The Committee heard evidence suggesting that offenders in rural and remote areas may “harshly” receive a suspended sentence if community service work is unavailable or if they are unable to travel to their place of work.¹⁸

Duration

- 7.15 The maximum number of hours of community service work that may be imposed under a CSO is linked to the maximum term of imprisonment available for the offence for which the offender is being sentenced. The Regulation provides that the maximum number of hours is:
- 100 hours, where the maximum sentence is six months or less;
 - 200 hours, where the maximum sentence is greater than six months but no more than one year; and
 - 500 hours, where the maximum sentence is greater than one year.¹⁹
- 7.16 The maximum time an offender can be directed to perform community service per day is eight hours with five hours per day being the maximum for participation in a development program. Each limit may be varied on agreement of the offender and the assigned officer.²⁰
- 7.17 Where an offender is serving an existing CSO, a further CSO may only be imposed in relation to another offence if the combined hours of work that remain to be performed do not exceed 500 hours.²¹ Hours of community service work under

14. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 86(1).

15. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 86(4).

16. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 86(3).

17. NSW Legislative Council Standing Committee on Law and Justice, *Community Based Sentencing Options for Rural and Remote Areas and Disadvantaged Populations* (2006) [4.21], [4.38]-[4.40].

18. NSW Legislative Council Standing Committee on Law and Justice, *Community Based Sentencing Options for Rural and Remote Areas and Disadvantaged Populations* (2006) [4.23].

19. *Crimes (Sentencing Procedure) Regulation 2010* (NSW) cl 23.

20. *Crimes (Administration of Sentences) Regulation 2008* (NSW) cl 213.

21. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 87(1).

multiple orders are to be served concurrently unless the new order provides otherwise.²²

Conditions and restrictions

- 7.18 Standard conditions applicable to all CSOs include those that relate to meeting reporting requirements, participating in community service work without the influence of drugs or alcohol, undertaking work at the direction of an assigned officer or supervisor, providing advance notice of failure to attend, submitting to home visits by the assigned officer or supervisor and to medical examinations, complying with requirements relating to dress, maintenance of clothing and equipment, and standards of safety.²³
- 7.19 The court may impose additional conditions so long as those conditions are not inconsistent with the mandatory conditions and do not require the offender to make any payment.²⁴ However, the payment of a fine, compensation, forfeiture or restitution may be required as a further penalty for the same offence independent of a CSO.²⁵ The court may require an offender to participate in development programs (that is, personal development, educational or other programs), and may also require the offender to undergo testing or assessment for alcohol or drug use.²⁶
- 7.20 In appropriate cases the court may recommend that the offender undertake community service work that includes the removal of graffiti.²⁷ If a recommendation to that effect is made, “the work performed by the offender must, if practicable, include such work”.²⁸ The Jumbunna Indigenous House of Learning has suggested that courts should have greater power “to choose the type of community service work that might be performed, or programs that are available as part of community service work”.²⁹
- 7.21 A CSO cannot be combined with a good behaviour bond.³⁰ It follows that a suspended sentence cannot include a condition that a person perform community service, because the sentence is suspended upon condition that the offender enter into a bond.³¹
- 7.22 Both the Chief Magistrate³² and the Law Society of NSW³³ have questioned the need for the prohibition on directing an offender to enter into a good behaviour bond

22. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 87(3).

23. *Crimes (Administration of Sentences) Regulation 2008* (NSW) cl 211(1).

24. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 90.

25. Judicial Commission of NSW, *Sentencing Bench Book* [4-410].

26. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 85 and s 90(2).

27. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 91.

28. *Crimes (Administration of Sentences) Act 1999* (NSW) s 112(2).

29. Jumbunna Indigenous House of Learning, *PSE15 Attachment – Criminal Justice Reform Submission made by the NSW Bar Association*, 6.

30. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 13.

31. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 12(1)(b).

32. G Henson, *Preliminary Submission PSE5*, 11.

33. Law Society of NSW, *Preliminary Submission PSE8*, 7.

and making a CSO in relation to the same offence.³⁴ The Chief Magistrate stated that:

there may be a place for a strengthened non-custodial sentence that allows both a community service order and good behaviour bond to be imposed for an offence. ... Such a sentence would, in practical terms, amount to a 'non-custodial [Intensive Correction Order]' and may be of particular utility in circumstances where a judicial officer is not satisfied that the offending conduct requires a sentence of imprisonment to be imposed, but is of the view that neither a bond or CSO alone will adequately meet the purposes of sentencing set out in s 3A of the Act.³⁵

Breach and revocation

7.23 There are two ways of dealing with a breach of the conditions of a CSO:

- In response to a breach which “was trivial in nature” or where “there are good reasons for excusing” the breach,³⁶ the Commissioner of Corrective Services can increase the hours of community work to be performed by an offender by up to 10 hours.³⁷
- The sentencing court, a court of like jurisdiction or a superior court to the sentencing court can revoke the CSO.³⁸ An application for revocation “may be made by the offender’s assigned officer” in response to a breach of the order, or by either the offender or the offender’s assigned officer where intervening circumstances mean “it would...be in the interests of justice to revoke the order”.³⁹

7.24 An offender is taken to have breached a CSO if he or she fails “to perform the required number of hours of community service work...within the relevant maximum period for the order”.⁴⁰ Breach of one CSO is treated as a breach of all CSOs the offender is currently serving.⁴¹

7.25 There is no separate offence of breach of a CSO. If the court decides to revoke the order it may re-sentence the offender for the original offence.⁴² Approximately 16-20% of CSOs were not completed successfully between 2006/07 and 2010/11.⁴³

Question 7.1

1. Are community service orders working well as a sentencing option and should they be retained?

34. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 13.

35. G Henson, *Preliminary Submission PSE5*, 11.

36. *Crimes (Administration of Sentences) Act 1999* (NSW) s 113(1).

37. *Crimes (Administration of Sentences) Act 1999* (NSW) s 113(2).

38. *Crimes (Administration of Sentences) Act 1999* (NSW) s 115(1).

39. *Crimes (Administration of Sentences) Act 1999* (NSW) s 115(2).

40. *Crimes (Administration of Sentences) Act 1999* (NSW) s 115(6)(a).

41. *Crimes (Administration of Sentences) Act 1999* (NSW) s 115(6)(b).

42. *Crimes (Administration of Sentences) Act 1999* (NSW) s 115(3).

43. NSW Department of Attorney General and Justice, *Annual Report 2010/11*, 96.

2. What changes, if any, should be made to the provisions governing community service orders or to their operational arrangements?

Section 9 bonds

- 7.26 Section 9 of the Act provides that a court may, following a conviction, “instead of imposing a sentence of imprisonment” direct an offender to enter into a bond to be of good behaviour for a specified period of not more than five years.⁴⁴
- 7.27 Section 9 bonds represent a significant proportion of the sentences imposed by the Local Court. In the period 2006-2011, s 9 bonds represented 16-20% of the total number of people found guilty in the Local Court. In the same period, s 9 bonds imposed by the higher courts represented 5-7% of the total number of people found guilty in those courts.⁴⁵
- 7.28 It is unclear whether the phrase “[i]nstead of imposing a sentence of imprisonment on an offender” in s 9 requires that the offence must carry a maximum penalty that includes imprisonment, or whether it is open to impose a s 9 bond for any offence.⁴⁶

Question 7.2

1. Is the imposition of a good behaviour bond under s 9 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) working well as a sentencing option and should s 9 be retained?
2. What changes, if any, should be made to the provisions governing the imposition of good behaviour bonds under s 9?

Good behaviour bonds

- 7.29 Good behaviour bonds may also be imposed when no conviction is recorded under s 10 and are also imposed together with suspended sentences imposed under s 12.⁴⁷
- 7.30 Good behaviour bonds, whether imposed in relation to s 9, s 10 or s 12, are generally governed by Part 8 of the Act. These provisions are discussed in the immediately following paragraphs. The chief differences in operation between s 9, s 10 and s 12 relate to duration and the court’s powers upon breach.
- 7.31 Good behaviour bonds must contain two conditions:
- that the person under the bond will appear before the court if called on to do so at any time during the term of the bond; and

44. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 9.

45. NSW Bureau of Crime Statistics and Research, *NSW Criminal Court Statistics* (2006)-(2011).

46. See para [7.7] in relation to CSOs; see also G Zdenkowski, “Non-financial Non-custodial Sentencing Options in the Crimes (Sentencing Procedure) Act 1999” (2003) 6(2) *Judicial Review* 189, 197-198; NSW Sentencing Council, *Good Behaviour Bonds and Non-Conviction Orders*, Report (2011) [2.3].

47. For s 10 bonds, see para [7.60]-[7.87]. For s 12 bonds, NSW Law Reform Commission, *Intermediate Custodial Sentencing Options*, Sentencing Question Paper 6 (2012) [6.53]-[6.72].

- that the person will be of good behaviour during the term of the bond.⁴⁸
- 7.32 It is generally considered that good behaviour means refraining from committing a further offence,⁴⁹ however, it has been suggested that the condition is only breached if the person subject to the bond commits an offence that is related in some way with the original offence or that is sufficiently serious.⁵⁰
- 7.33 A good behaviour bond may also contain conditions but may not require the person to perform community service work, or to make any payment, whether in the nature of a fine, compensation or otherwise.⁵¹
- 7.34 Corrective Services NSW describes its role in the supervision of offenders who are subject to probation as part of these other conditions as follows:
- An offender may be placed on probation as a condition of a Good Behaviour Bond. Probation is a flexible sentence which imposes a penalty within a framework of constructive case management. The offender is assisted in the development of pro-social goals and skills directed towards a law-abiding lifestyle. Probation incorporates a range of intervention strategies, requiring the Probation and Parole Officer to have regular contact with the offender, both at an office and in the offender's home, as well as contact with significant people in the offender's life and other checks to monitor compliance with conditions of the bond. Case work intervention may also involve participation in a group work program targeting the offending behaviour. Probation and Parole Officers also engage the support of community agencies to assist the offender.⁵²
- 7.35 Other than the provision relating to intervention programs,⁵³ the Act does not give any guidance about the types of additional conditions that may be attached to a good behaviour bond. The NSW Sentencing Council considered, but rejected, the option of specifying the conditions that may be attached to a good behaviour bond.⁵⁴
- 7.36 In *R v Bugmy*,⁵⁵ Justice David Kirby set out the principles courts must consider when attaching conditions to a good behaviour bond:
- First, the discretion as to conditions that may be attached to a bond is broad but not unlimited. The conditions must reasonably relate to the purpose of imposing a bond, that is, the punishment of a particular crime. They must therefore relate either to the character of that crime or the purposes of punishment for that crime, including deterrence and rehabilitation.

48. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 95(a), (b).

49. NSW Sentencing Council, *Good Behaviour Bonds and Non-Conviction Orders*, Report (2011) [2.53].

50. *Devine v The Queen* (1967) 119 CLR 515 (Windeyer J); G Zdenkowski, "Non-financial Non-custodial Sentencing Options in the Crimes (Sentencing Procedure) Act 1999" (2003) 6(2) *Judicial Review* 189, 191.

51. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 95(c).

52. Corrective Services NSW, "Offender Management in the Community" <www.correctiveservices.nsw.gov.au/offender-management/offender-management-in-the-community#probation> (accessed 20 June 2012).

53. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 95A.

54. NSW Sentencing Council, *Good Behaviour Bonds and Non-conviction Orders*, Report (2011) 55-56.

55. [2004] NSWCCA 258.

- Secondly, the conditions must each be certain, defining with reasonable precision conduct which is proscribed.
- Thirdly, the conditions should not in their operation be unduly harsh or unreasonable or needlessly onerous.⁵⁶

7.37 Where the court directs the making of a good behaviour bond and the offender fails to enter into such a bond, the court may sentence the offender as if the bond had never been made.⁵⁷ Such a provision would not be necessary if good behaviour bonds were imposed like other sentences without the need to obtain the offender's consent.

Breach and revocation

7.38 If a court suspects that an offender may have failed to comply with any of the conditions of a good behaviour bond, the court that sentenced the offender, a court of like jurisdiction, or a court of superior jurisdiction (with the offender's consent) may call on the offender to appear before it.⁵⁸ In the case of good behaviour bonds imposed under s 9 or s 10, where satisfied that an offender has failed to comply with any of the conditions of a good behaviour bond, a court may:

- take no action;
- vary the conditions of the bond or impose further conditions on the bond; or
- revoke the bond.⁵⁹

7.39 If a court elects to revoke a good behaviour bond made under s 9, the court may re-sentence the offender for the original offence.⁶⁰ The court must take into account any period of compliance with the obligations under the bond when sentencing on revocation.⁶¹ Fundamentally the offender is to be punished not for the breach but for his or her original offence.⁶² Hence the sentence imposed must not exceed the sentence that is appropriate for the original offence, however it should reflect the fact that the offender has rejected the trust placed in him or her by the previous sentencing court, demonstrating a lack of remorse and casting doubt on his or her prospects of rehabilitation.⁶³

Breach proceedings before other courts

7.40 The requirement that a court of superior jurisdiction may only deal with the breach of a good behaviour bond with the consent of the offender has caused problems in

56. *R v Bugmy* [2004] NSWCCA 258 [61].

57. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 97.

58. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 98(1).

59. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 98(2).

60. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 99(1)(a).

61. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 24(b).

62. *R v Morris* (Unreported, New South Wales Court of Criminal Appeal, Kirby ACJ, Badgery-Parker and Bruce JJ, 14 July 1995); *Ho v DPP (NSW)* (1995) NSWLR 393; *Champion v The Queen* (1992) 64 A Crim R 244, 253-4.

63. *R v Morris* (Unreported, New South Wales Court of Criminal Appeal, 14 July 1995), quoted with approval in *R v Doyle* (1996) 84 A Crim R 287, 289-291.

circumstances where an offender, who is subject to a bond previously imposed by the Local Court (under either s 9, s 10 or s 12 of the Act), appears for sentence before the District Court in relation to a subsequent offence. In such cases, if the offender's consent is withheld or withdrawn belatedly, the District Court Proceedings must be adjourned so that the Local Court can deal with the breach of the bond. The DPP has proposed the removal of the requirement of the offender's consent so that courts of superior jurisdiction can deal with the breach of a bond irrespective of the wishes of the offender.⁶⁴

- 7.41 The question arises whether the section should also confirm that the court of superior jurisdiction is limited to imposing a penalty for the breach of the bond imposed in the Local Court that is of no greater severity than that which the Local Court itself could have imposed.⁶⁵
- 7.42 The DPP similarly raises for consideration whether the Local Court, when it deals with another charge against an offender, should have exclusive power to deal with the breach of a bond imposed by a higher court as a result of an offender's appeal against a sentence imposed in the Local Court, so as to ensure one court deals with all of the offender's matters wherever possible, and to prevent delays and 'forum shopping'.⁶⁶
- 7.43 Following the breach of a good behaviour bond a court may revoke the bond and re-sentence the offender. Usually the next option in the sentencing hierarchy would be a CSO. The Homeless Person's Legal Service ('HPLS') observed, however, that people with mental illness/cognitive disability are usually not assessed as suitable for a CSO, hence there is a risk that such offenders inappropriately receive a suspended sentence, given the nature of the offending involved.⁶⁷ HPLS submits that the Act should provide legislative guidance to courts that, in the event that a s 9 bond is breached, they should take into consideration the particular circumstances and needs of the offender in determining whether the bond should be varied or revoked. Such circumstances should include whether the offender is suitable for any appropriate intermediate sentencing options.⁶⁸

Question 7.3

1. Are the general provisions governing good behaviour bonds working well, and should they be retained?
2. What changes, if any, should be made to the general provisions governing good behaviour bonds or to their operational arrangements?

64. L Babb, Letter to P Musgrave, Criminal Law Review Division, Department of Attorney General and Justice (14 February 2012).

65. See the similar restriction when a higher court hears an appeal from the Local Court: *Crimes (Appeal and Review) Act 2001* (NSW) s 71.

66. L Babb, Letter to P Musgrave, Criminal Law Review Division, Department of Attorney General and Justice (14 February 2012).

67. Homeless Persons' Legal Service, *Preliminary Submission PSE7*, 10.

68. Homeless Persons' Legal Service, *Preliminary Submission PSE7*, 11.

Fines

- 7.44 The ways in which fines can be imposed vary depending on the relevant statutory provision. For example, a fine can be imposed in addition to, or instead of, a sentence of imprisonment or as a stand-alone penalty in its own right (where the maximum penalty for an offence is expressed only as a fine). There are some limitations on the imposition of fines in conjunction with penalties other than a sentence of imprisonment.⁶⁹
- 7.45 The fine is the most frequently imposed penalty in the Local Court, accounting for some 42% of all penalties imposed for a principal offence in 2011. Fines are imposed infrequently in the higher criminal courts. In 2011, the District Court and the Supreme Court imposed only three fines.⁷⁰
- 7.46 Fines are the only effective sentencing option available for dealing with corporate offenders.⁷¹ Many of the fines imposed on corporate offenders do not appear in the criminal court statistics as they are often imposed in relation to offences subject to summary criminal enforcement proceedings in the Land and Environment Court and in relation to offences which, until recently, were finalised in the Industrial Relations Commission of NSW under the *Occupational Health and Safety Act 2000* (NSW).⁷²
- 7.47 Courts have a wide discretion to impose a fine up to the maximum, taking into account the requirement that the court consider the ability of the offender to pay the fine.⁷³
- 7.48 Our recent [report on penalty notices](#) deals with the enforcement of penalty notices but, since the same enforcement provisions apply to fines, it is also relevant to the enforcement of fines.⁷⁴

Identifying the maximum amount

- 7.49 The maximum amount that a court can impose as a fine can be found either in the penalty provision relating to the offence in question or, if no specific provision is made for a fine in relation to the offence, in a provision of more general application.
- 7.50 In many cases, the court is restricted to imposing a fine that does not exceed the amount specified in the penalty provisions that relate to the particular offence. The

69. Limitations on combining sentencing options will be discussed in a future Question Paper.

70. NSW Bureau of Crime Statistics and Research, *NSW Criminal Court Statistics* (2011) Tables 1.7 and 3.8.

71. NSW Law Reform Commission, *Sentencing: Corporate Offenders*, Report 102 (2003) [5.2]-[5.13].

72. Since moved to the jurisdiction of the Local Court and District Court in its summary jurisdiction by *Work Health and Safety Act 2011* (NSW) s 229B.

73. *Fines Act 1996* (NSW) s 6.

74. NSW Law Reform Commission, *Penalty Notices*, Report 132 (2012) ch 8 and 9.

maximum fine amounts in such cases can range from \$1,100,000⁷⁵ all the way down to \$20.⁷⁶

7.51 In other cases, where any other penalty is specified (including a sentence of imprisonment), but no maximum fine is specified, special provision is made:

- In the case of an indictable offence, tried on indictment, the court may impose on an individual, instead of, or in addition to any other penalty, a maximum fine of 1,000 penalty units (\$110,000).⁷⁷
- In the case of an indictable offence dealt with summarily by a Local Court, the maximum fine that may be imposed is 100 penalty units (\$11,000).⁷⁸

7.52 In the case of an offence committed by a body corporate, where a sentence of imprisonment only is specified, the court may instead impose a fine:

- not exceeding 2,000 penalty units (\$222,000) in the case of the Supreme Court, Court of Criminal Appeal, Land and Environment Court, Industrial Relations Commission or District Court; or
- not exceeding 100 penalty units (\$11,000) in the case of any other court.⁷⁹

7.53 Under these general provisions the maximum fine that may be imposed does not necessarily correspond with the relative seriousness of the conduct.

7.54 An alternative approach is a penalty scale such as that in Victoria. Offences under Victorian law specify as the maximum penalty a level under either the imprisonment or fine tables in s 109 of the *Sentencing Act 1991* (Vic). For example, a level 5 imprisonment offence is punishable by 10 years imprisonment while a level 5 fine offence is punishable by a fine of 1200 penalty units (\$146,568 in 2011/12).⁸⁰ An offence punishable by imprisonment, other than life imprisonment, may attract a fine of up to “10 times more than the maximum number of months of imprisonment that may be imposed” instead of or as well as imprisonment.⁸¹ An exception is when an offender is convicted of an offence punishable by level 2 imprisonment (25 years). The offender may receive a level 2 fine as well as, but not instead of, a term of imprisonment.⁸²

7.55 The *Crimes Act 1914* (Cth) provides that where a Commonwealth offence, “is punishable by imprisonment only, the court may...impose, instead of, or in addition to, a penalty of imprisonment, a pecuniary penalty”. The maximum fine in penalty

75. See, eg, *Environmental Planning and Assessment Act 1979* (NSW) s 126(1) and (2); *Native Vegetation Act 2003* (NSW) s 12(2); *Water Management Act 2000* (NSW) s 60A, s 60B, s 60C, s 60D, s 91A, s 91B, s 91C, s 91D, s 91E, s 91F, s 91G, s 91H, s 91I(2), s 91J, s 91K(2), s 120(4), s 256(1), s 318A, s 336C(1), s 340A(1), s 342, s 343(1), s 345(2), s 363B.

76. *Summary Offences Act 1988* (NSW) s 11(1) and (5B) (possession of liquor by minors).

77. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 15.

78. See also, *Criminal Procedure Act 1986* (NSW) s 267(5).

79. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 16.

80. *Sentencing Act 1991* (Vic) s 109. In Victoria in the 2011/12 financial year one penalty unit equates to \$122.14.

81. *Sentencing Act 1991* (Vic) s 109(3).

82. *Sentencing Act 1991* (Vic) s 109(3A).

units⁸³ is calculated by multiplying the maximum sentence for the offence (in months) by five.⁸⁴ A court sentencing a person for an offence under Commonwealth law which is punishable by imprisonment for life may impose a fine of up to 2000 penalty units (\$220,000) instead of, or as well as, a term of imprisonment.⁸⁵

- 7.56 In NSW, there is precedent for adjusting the maximum duration of a non-custodial sentencing option according to the maximum term of imprisonment for the offence in that there is a scale of maximum hours for a CSO of 100, 200 and 500 hours based on the maximum term of imprisonment available for the offence.⁸⁶

Question 7.4

1. Are the provisions relating to fines in the *Crimes (Sentencing Procedure) Act 1999* (NSW) working well, and should they be retained?
2. Should the provisions relating to fines in the *Crimes (Sentencing Procedure) Act 1999* (NSW) be added to or altered in any way?
3. Where a particular offence specifies a term of imprisonment but does not specify a maximum fine, how should the maximum fine be calculated?

Conviction with no other penalty

- 7.57 Under s 10A of the Act, a court that convicts an offender may dispose of the proceedings without imposing any other penalty. The section commenced on 29 November 2006.⁸⁷
- 7.58 Section 10A was introduced to deal with circumstances where a s 10 bond was considered inappropriate, because the offence was not trivial, but it was inconvenient to impose any further penalty.⁸⁸ For example, an appropriate use of the section would be where an offender has been sentenced to imprisonment for a principal offence, and is before the court in relation to additional offences where the maximum penalty is a fine.⁸⁹
- 7.59 Since their introduction there has been a gradual, consistent increase in the use of s 10A orders in the Local Court, ranging from 0.8% of the total number of people sentenced in the Local Court in 2007 to 1.8% in 2011.⁹⁰

83. One penalty unit is equal to \$110: *Crimes Act 1914* (Cth) s 4AA.

84. *Crimes Act 1914* (Cth) s 4B(2).

85. *Crimes Act 1914* (Cth) s 4B(2A).

86. *Crimes (Sentencing Procedure) Regulation 2010* (NSW) cl 23.

87. Inserted by *Crimes and Courts Legislation Amendment Act 2006* (NSW).

88. Judicial Commission of NSW, *Sentencing Bench Book* [5-300].

89. L Wells, "Crimes and Courts Legislation Amendment Act 2006" (2006) 18(11) *Judicial Officers' Bulletin* 1, see also Judicial Commission of NSW, *Local Court Bench Book* [10-000]; *Nikolovski v Sewell* [2010] NSWIRComm 26, 28.

90. NSW Bureau of Crime Statistics and Research, *NSW Criminal Court Statistics* (2007)-(2011).

Question 7.5

1. Is the recording of no other penalty under s 10A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) working well as a sentencing option and should it be retained?
2. What changes, if any, should be made to the provisions governing the recording of no other penalty or to its operational arrangements?

Non-conviction orders

Dismissal of charges and conditional discharge under s 10

- 7.60 Section 10 of the Act allows a court, following a guilty plea or a finding of guilt, to discharge an offender without recording a conviction. Non-conviction orders under s 10 represent a significant proportion of the Local Court's sentencing dispositions. In the period 2006-2011, s 10 dispositions in the Local Court represented 16-18% of the total number of people found guilty in the Local Court. In the same period, s 10 dispositions in the higher courts represented less than 1% of the total number of people found guilty in those courts.⁹¹
- 7.61 The Sentencing Council has recently released a report on good behaviour bonds and non-conviction orders which examines a number of options for reform of non-conviction orders and makes recommendations to restrict the use of them in relation to drink driving offences.⁹²

Imposition

- 7.62 In relation to any offence the court may direct that no conviction be recorded and:
- (a) direct "that the relevant charge be dismissed";
 - (b) discharge the person on condition that he or she "enter into a good behaviour bond for a term not exceeding 2 years"; or
 - (c) discharge the person on condition that he or she enter into an agreement to participate in an "intervention program" and comply with any resulting intervention plan.⁹³
- 7.63 A good behaviour bond may be imposed if the court is satisfied:
- (a) that it is inexpedient to inflict any punishment (other than nominal punishment) on the person, or
 - (b) that it is expedient to release the person on a good behaviour bond.⁹⁴

91. NSW Bureau of Crime Statistics and Research, *NSW Criminal Court Statistics* (2006)-(2011).

92. NSW Sentencing Council, *Good Behaviour Bonds and Non-Conviction Orders*, Report (2011).

93. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 10(1). The court may make such an order if it is "satisfied that it would reduce the likelihood of the person committing further offences by promoting the treatment or rehabilitation of the person": s 10(2A). The intervention program is one of the intervention programs available in accordance with pt 8C of the Act: s 10(2B).

- 7.64 The good behaviour bond must not contain any condition that punishes the offender, for example, requiring the payment of a fine. This is based on the common law principle that “a person who has not been convicted of an offence should [not] be punished by order of a court”.⁹⁵ There are, however, many statutory exceptions to this principle.
- 7.65 Discharge on condition that the offender undertake an intervention program, requires the court to be satisfied “that it would reduce the likelihood of the person committing further offences by promoting the treatment or rehabilitation of the person”.⁹⁶ The person must also be assessed as eligible and suitable for the proposed intervention program.⁹⁷ The declared intervention programs are circle sentencing, forum sentencing and the traffic offender intervention program.⁹⁸ However, these options are currently only available in relation to orders deferring sentencing under s 11 of the Act. Intervention program orders will be discussed in a future question paper on options for deferral or diversion.
- 7.66 Before making an order the court is required to consider each of the following:
- (a) the person’s character, antecedents, age, health and mental condition,
 - (b) the trivial nature of the offence,
 - (c) the extenuating circumstances in which the offence was committed,
 - (d) any other matter that the court thinks proper to consider.⁹⁹
- 7.67 The trivial nature of the offence must be ascertained not simply by reference to the provision which prescribes the maximum penalty but by reference to the conduct of the offender and the actual circumstances in which the offence is committed.¹⁰⁰ The offence itself does not need to be trivial for s 10 to be applied.¹⁰¹

Eligibility and exclusions

- 7.68 A court must not apply s 10 in circumstances where a person is charged with one of the following offences and the person has received a s 10 bond or non-conviction order for any of these offences within the past five years:
- negligent driving occasioning death or grievous bodily harm;
 - furious or reckless driving, or driving at a speed or in a manner which is dangerous to the public;

94. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 10(2).

95. *R v Ingrassia* (1997) NSWLR 447, 450 (Gleeson CJ).

96. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 10(2A).

97. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 10(2B), pt 8C.

98. *Criminal Procedure Regulation 2010* (NSW) pt 6-8; *Criminal Procedure Act 1986* (NSW) s 346-347.

99. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 10(3); *R v Paris* [2001] NSWCCA 83 [42].

100. *Walden v Hensler* (1987) 163 CLR 561, 577 (Brennan J).

101. *Chin v Ryde City Council* [2004] NSWCCA 167 [38] (Hodgson JA).

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- certain offences relating to driving under the influence of alcohol or drugs, menacing driving or failing to stop and assist after impact causing injury;
- failing to stop and assist after vehicle impact causing death or grievous bodily harm;
- a severe risk breach of a mass, dimension or load restraint requirement for a heavy vehicle; and
- aiding, abetting, counselling or procuring any of the above offences.¹⁰²

Breach and revocation

- 7.69 The procedure relating to breach of a conditional non-conviction order is the same as for breach of a s 9 good behaviour bond.¹⁰³
- 7.70 If a s 10 bond is imposed on an offender and the court revokes the bond “it may convict and sentence the offender for the offence to which the bond relates”.¹⁰⁴

Effect of the order

- 7.71 Despite no conviction being recorded, an offender given an order under s 10 is treated as having been convicted for the purposes of restitution of property and victim’s compensation,¹⁰⁵ bail applications,¹⁰⁶ the recording of domestic violence offences,¹⁰⁷ the making of apprehended violence orders,¹⁰⁸ habitual traffic offender declarations,¹⁰⁹ supervisory intervention orders under the *Dangerous Goods (Road and Rail Transport) Act 2008* (NSW),¹¹⁰ and the confiscation of proceeds of crime.¹¹¹
- 7.72 A non-conviction order will also have the same effect as a conviction for certain business and employment-related regulations including: working with children restrictions;¹¹² restrictions on practicing in certain professions,¹¹³ running certain businesses¹¹⁴ or being on certain committees;¹¹⁵ licensing for security activities;¹¹⁶

102. *Road Transport (General) Act 2005* (NSW) s 187(6).

103. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 98. See para [7.38]-[7.39].

104. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 99(1)(b).

105. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 10(4); *Victims Support and Rehabilitation Act 1996* (NSW) Dictionary, s 44, 46, 49, 71, 77B, 79, pt 2 div 9.

106. *Bail Act 1978* (NSW) s 4.

107. *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 3(4), 12.

108. *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 3(4), 39.

109. *Road Transport (General) Act 2005* (NSW) s 198, 199.

110. *Dangerous Goods (Road and Rail Transport) Act 2008* (NSW) s 49(2)(b), 53

111. *Confiscation of Proceeds of Crimes Act 1989* (NSW) s 5(1)(b).

112. *Commission for Children and Young People Act 1998* (NSW) s 33, 33B, 33C-33E.

113. *Legal Profession Act 2004* (NSW) s 11, 17-19, 25, 42, 48; *Health Practitioner Regulation National Law* (NSW) s 5, 55, 74, 138, 144, 149C.

114. *Assisted Reproductive Technology Act 2007* (NSW) s 61; *Health Practitioner Regulation National Law* (NSW) s 139C; *Public Health (Tobacco) Act 2008* (NSW) s 32.

115. *Commission for Children and Young People Act 1998* (NSW) s 33B, 45G.

116. *Security Industry Act 1997* (NSW) s 16(1)(b).

disciplinary action against certain employees and professionals;¹¹⁷ and Ombudsman investigations into employees with reportable convictions.¹¹⁸

- 7.73 The making of a non-conviction order does not prevent an offender appealing against a finding of guilt.¹¹⁹

Appropriate use

- 7.74 The *Sentencing Bench Book* has emphasised the importance of limiting the use of s 10 on the grounds that:

excessive or inappropriate use can undermine confidence in the administration of justice. Section 10 provides a useful safety valve for ensuring that justice can be served in circumstances where, despite a *breach of the law*, there are such extenuating circumstances or the matter is so trivial that punishment does not seem appropriate.¹²⁰

- 7.75 It has been held that the scope for the operation of s 10 decreases in circumstances “where the offence committed is objectively a serious one and where general deterrence and denunciation are important factors in sentencing for that offence” and that s 10 “must operate in the context of the general principle that the penalty imposed for any offence should reflect the objective seriousness of the offence committed”.¹²¹ In the context of driving with a high range prescribed concentration of alcohol, a guideline judgment has observed that, given the seriousness of the offence, it will be uncommon that the circumstances of a particular case will justify the use of s 10.¹²²
- 7.76 Courts have recognised that the capacity to find a defendant guilty without recording a conviction reflects “the willingness of the legislature, and thus the community, to provide to first offenders, in certain circumstances, a second chance to maintain a reputation of good character”.¹²³ The additional consequences of conviction are “a relevant consideration in the exercise of the statutory discretion”.¹²⁴

117. *Ambulance Services Regulation 2005* (NSW) cl 21; *Education (School Administrative and Support Staff) Act 1987* (NSW) s 32C; *Fire Brigades Regulation 2008* (NSW) cl 35; *Legal Profession Act 2004* (NSW) s 498; *Public Sector Employment and Management Act 2002* (NSW) s 48; *Teaching Service Act 1980* (NSW) s 93K; *Technical and Further Education Commission Act 1990* (NSW) 22K; *Tow Truck Industry Act 1998* (NSW) s 42.

118. *Ombudsman Act 1974* (NSW) s 25A.

119. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 10(5).

120. Judicial Commission of New South Wales, *Sentencing Bench Book* [5-020].

121. *Application by the Attorney General under Section 37 of the Crimes (Sentencing Procedure) Act for a Guideline Judgment Concerning the Offence of High Range Prescribed Concentration of Alcohol Under Section 9(4) of the Road Transport (Safety and Traffic Management) Act 1999 (No 3 of 2002)* [2004] NSWCCA 303; 61 NSWLR 447 [132] (Howie J).

122. *Application by the Attorney General under Section 37 of the Crimes (Sentencing Procedure) Act for a Guideline Judgment Concerning the Offence of High Range Prescribed Concentration of Alcohol Under Section 9(4) of the Road Transport (Safety and Traffic Management) Act 1999 (No 3 of 2002)* [2004] NSWCCA 303; 61 NSWLR 447 [130]. The number of people receiving a s 10 discharge for high range PCA has declined since the guideline judgement: M Karpin and P Poletti, *Common offences in the NSW Local Court: 2007*, Sentencing Trends and Issues 37 (Judicial Commission of NSW, 2008) 13.

123. *R v Nguyen* [2002] NSWCCA 183 [50].

124. Judicial Commission of NSW, *Sentencing Bench Book* [5-030].

- 7.77 However, in *R v Mauger*,¹²⁵ the Court of Criminal Appeal observed that the recording of a conviction (as would occur on the imposition of a s 9 bond) was not a matter of special significance or importance so as to dilute or downgrade the significance of the imposition of the bond itself (as would occur without conviction under s 10) and considered that the purposes of sentencing, such as denunciation and general deterrence were adequately met by the terms and duration of the bond imposed without the need for conviction.¹²⁶ The court considered that the fact that the offender would face “onerous consequences” if he were to re-offend during the two year bond period “would...impress the seriousness with which the Court was treating the respondent's conduct upon an objective and reasonable member of the community”.¹²⁷ It was further observed that it is wrong to assume that a decision not to record a conviction is “automatically or necessarily coextensive with the imposition of an inadequate, or even a particularly lenient, sentence”.¹²⁸
- 7.78 It has been held that courts must not use a non-conviction order to avoid imposing a further statutory sanction that would be applicable if a conviction is recorded.¹²⁹ However, the Law Society has observed that non-conviction orders are more likely to be used when there is an “inappropriate fetter on judicial discretion” such as mandatory licence disqualification.¹³⁰ The NSW Government is currently considering a recommendation of the Sentencing Council for “good behaviour licences”¹³¹ for those who are found guilty of drink-driving offences but currently receive a non-conviction order.¹³²
- 7.79 The Sentencing Council also considered whether the use of non-conviction orders should remain a matter for judicial discretion and considered, but rejected, the possibility of there being restrictions based on the subjective circumstances of the offender, for example, prior offending or the previous imposition of non-conviction orders, and the seriousness of the offence.¹³³

Question 7.6

1. Are non-conviction orders under s 10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) working well as a sentencing option and should they be retained?
2. What changes, if any, should be made to the provisions governing s 10 non-conviction orders or to their operational arrangements?

125. *R v Mauger* [2012] NSWCCA 51.

126. *R v Mauger* [2012] NSWCCA 51 [36]-[37].

127. *R v Mauger* [2012] NSWCCA 51 [38].

128. *R v Mauger* [2012] NSWCCA 51 [38].

129. *R v Fing* (Unreported, NSW Court of Criminal Appeal, 4 October 1994).

130. Law Society of NSW, *Submission to NSW Sentencing Council on the use of non-conviction orders and good behaviour bonds* (8 September 2009) 5.

131. Similar to those available under *Road Transport (Driver Licensing) Act 1998* (NSW) s 16(8).

132. NSW Sentencing Council, *Good Behaviour Bonds and Non-Conviction Orders*, Report (2011) [5.27]-[5.34]; G Smith, “Drink Drivers on Notice After Sentencing Report” (Media Release, 12 March 2012).

133. NSW Sentencing Council, *Good Behaviour Bonds and Non-Conviction Orders*, Report (2011) [5.17]-[5.21].

Use with other sentencing options

- 7.80 Given the criticisms of s 10 orders as they currently operate in NSW, it may be that courts should have an option to impose some other form of punishment or supervision on defendants discharged without a conviction recorded under s 10. Such punishments could be other non-custodial sentencing options, or ancillary orders. Such an approach could alleviate concerns relating to the perceived leniency of non-conviction orders, while still allowing an offender to avoid a criminal conviction.
- 7.81 This approach has been taken in other Australian jurisdictions. For example, Queensland allows for a number of penalties to be imposed “whether or not a conviction is recorded”, including CSOs, probation orders, fines, non-contact orders, place-restriction orders (“banning orders”), restitution and compensation orders and recognisance with or without sureties.¹³⁴
- 7.82 In South Australia an offender can be discharged without conviction upon entering into a bond for up to three years. Conditions of the bond may include:
- being under the supervision of a community corrections officer;
 - undertaking community service (governed by the same provisions as relate to CSOs) or an intervention program;
 - attending and completing a specified education program;
 - undergoing medical or psychiatric treatment;
 - abstaining from drugs or alcohol,
 - restoring property, and
 - compensating victims for injury, loss or damage.¹³⁵
- 7.83 In Victoria, if satisfied that an offender is guilty, a court may dismiss the charge or adjourn the proceedings for up to 60 months and release the offender with a conditional undertaking (similar to a good behaviour bond). In addition, the court may also order compensation or restitution.¹³⁶
- 7.84 In Tasmania, without recording a conviction a court may:
- dismiss the charge;¹³⁷
 - make a probation order in respect of the offender without recording a conviction if the offender is over the age of 18 years;¹³⁸ or
 - make a rehabilitation program order in the case of a family violence offence.¹³⁹

134. *Penalties and Sentences Act 1992* (Qld) pts 3-5.

135. *Criminal Law (Sentencing) Act 1988* (SA) s 39-44.

136. *Sentencing Act 1991* (Vic) pt 3B, div 2, subdiv 3.

137. *Sentencing Act 1997* (Tas) s 7(h).

138. *Sentencing Act 1997* (Tas) s 7(d).

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- 7.85 In the ACT, a court may, without convicting an offender, make orders in relation to restitution, compensation, costs, forfeiture, destruction or disqualification, loss or suspension of a licence or privilege.¹⁴⁰
- 7.86 Finally, in the Northern Territory, an offender who is found guilty may be released without conviction either with no penalty or upon entering a good behaviour bond of up to five years and giving security.¹⁴¹ A court may also make compensation and restitution orders without recording a conviction.¹⁴²
- 7.87 One criticism of this idea is that the offender has not been convicted and so should not be punished. However, the use of a non-conviction order is prefaced upon a finding of guilt. It can be argued that the offender's guilt or blameworthiness in committing a certain crime is what gives rise to his or her liability to being punished, not the subsidiary issue of whether or not a conviction is recorded (which can be seen as part of the punishment itself).¹⁴³ The question arises why an offender in an appropriate case should be exempt from some form of appropriate punishment, such as a modest fine and/or a limited number of community service hours, when he or she has been found guilty of the offence. This is especially the case in light of the fact that the court is extending leniency by not recording a conviction.

Question 7.7

Should it be possible to impose other sentencing options in conjunction with a non-conviction order? If so, which ones?

Other options

- 7.88 We outline below proposals for a “fine held in trust” and for an extension of work and development orders. There may also be other options for reform. To aid in the consideration of alternatives, we have included a brief outline of the non-custodial options available in other Australian jurisdictions in Annexure A.
- 7.89 Some of these sentencing options are almost the same as those available in NSW or share features with sentencing options available in NSW. Each jurisdiction varies as to whether any, or all, of the options can be combined or imposed separately, and whether they can be imposed with or without recording a conviction. The issues of combining sentencing options, and imposing orders without recording a conviction will be addressed in a future question paper. Some orders, such as licence disqualification, place restriction and non-association orders, and reparation orders are ancillary orders in NSW (and some other jurisdictions) and will be discussed in more detail in a future question paper that deals with ancillary orders.
- 7.90 We welcome your views in relation to any other sentencing options.

139. *Sentencing Act 1997* (Tas) s 7(ea).

140. *Crimes (Sentencing) Act 2005* (ACT) s 18.

141. *Sentencing Act* (NT) s 10, 11.

142. *Sentencing Act* (NT) s 87.

143. For a detailed discussion of varying levels of moral culpability for different types of dangerous driving causing serious injury or death, see *R v Whyte* [2002] NSWCCA 343; 55 NSWLR 252.

Question 7.8

Should any other non-custodial sentencing options be adopted?

Fine held in trust

- 7.91 A new sentencing option that could be considered is a ‘fine held in trust’, which would be paid ‘up front’ at the time of sentencing but held on trust by the State to be returned to the offender at the end of a period fixed by the court on the condition that the offender does not commit any further offence during that period.
- 7.92 The concept is based on the common law power to bind a person over with a monetary surety, for example, to be of good behaviour for a period of time or risk forfeiting that sum.¹⁴⁴ It is also used frequently in bail agreements, where a condition of bail might be that cash or some other form of surety must be lodged with the court registry before the person can be released to bail.¹⁴⁵
- 7.93 There is a similar model in the *Crimes Act 1914* (Cth) s 20 which permits a court to release a Federal offender on conditions, including that he or she provide a monetary surety. The court can release the person without passing sentence, upon condition that he or she provide sureties and satisfies other conditions such as to be of good behaviour, make reparation, or pay compensation or a fine within a specified period. Instead, the court may proceed to sentence the person, but order that he or she be released on recognisance after providing security, either immediately or after serving a specified period of the sentence.
- 7.94 Other Australian jurisdictions have penalties which are similar in some ways to the concept of a recognisance with a monetary condition:
- South Australian courts, when imposing a bond, may fix a sum of money that will be forfeited if an offender does not comply with the conditions of the bond, and require the offender to find guarantors.¹⁴⁶
 - Courts in the ACT may allow offenders time to pay a fine and may direct the offender to give security, with or without sureties, for payment of the fine.¹⁴⁷
 - Queensland courts have the power to adjourn sentencing proceedings and to release the offender into a recognisance with or without sureties.¹⁴⁸ For matters dealt with on indictment, instead of any other penalty, or in addition to such penalty, the court may order the offender to be “released if the offender enters into a recognisance, with or without sureties, in such amount as the court considers appropriate” to keep the peace and be of good behaviour for a

144. NSW Law Reform Commission, *Sentencing*, Discussion Paper 33 (1996) [9.37]. See also *Griffiths v The Queen* (1977) 137 CLR 293, 305 (Barwick CJ) and 319 (Jacobs J) and early British legislation recognising the practice, such as *Criminal Consolidation Acts 1861* (UK), and in particular, the *Larceny Act 1861* (UK) 24 Vic c 96, s 117; *Malicious Injuries to Properties Act 1861* (UK) 24 Vic c 97, s 73; *Forgery Act 1861* (UK) 24 Vic c 98, s 51; *Coinage Offences Act 1861* (UK) 24 Vic c 99, s 38; and *Offences Against the Person Act 1861* (UK) 24 Vic c 100, s 71; and NSW legislation such as *Criminal Justice Amendment Act 1852* (NSW) s 1, 19, 26; *Criminal Law Amendment Act 1883* (NSW) s 398; and *Crimes Act 1900* (NSW) s 432, 433, 547, 556A.

145. See *Bail Act 1978* (NSW) s 36(2)(e)-(h). The cash or surety is returned to the accused person if the condition is revoked, bail is dispensed with entirely or at the end of the proceedings, provided that he or she abides by the bail agreement in the meantime.

146. *Criminal Law (Sentencing Act) 1988* (SA) s 41.

147. *Crimes (Sentencing) Act 1995* (ACT) s 15A(1).

148. *Penalties and Sentences Act 1992* (Qld) s 24.

nominated period. The court can order the person to be imprisoned before entering into the recognisance, up to a maximum of one year.¹⁴⁹

Arguments for fines in trust

- 7.95 The option would represent a combination of punishment, in that money would have to be found to be paid up front, but with a rehabilitative aspect in that the offender (and/or third parties) who deposited funds could reclaim that money if the offender does not commit any new offence during the period nominated by the court. The offender would have a financial incentive not to commit a further offence during that period. If the money was paid by an appropriate third party, such as a family member, relation or friend (as is often the case in bail), this could place appropriate additional moral pressure on the offender not to commit any further offence.¹⁵⁰
- 7.96 Court administrative procedures already in place for bail applications provide a model for fines in trust. For example, court registry staff check the particulars of the security for bail.
- 7.97 Collection of fines up front may improve the net revenue to the State, as there can be difficulties in collecting court-imposed fines.¹⁵¹

Arguments against fines in trust

- 7.98 It could be argued that it is unfair for people who have little money to have to pay a fine 'up front'. It should, however, be noted that fines are the most frequently imposed penalty in the Local Court, and there is already a requirement for the court to consider an offender's capacity to pay before imposing a fine.¹⁵²
- 7.99 It might be argued that it is inappropriate to allow third parties to 'pay' the fine on behalf of an offender, thereby relieving the offender of the financial obligation to pay, and exposing the third party to the risk of losing their money if the offender commits a further offence.¹⁵³ Moreover, family members may be subjected to inappropriate pressure to find the money to pay the fine up front.
- 7.100 There could be an effect on the net revenue to the State from fines as a whole, as fines in trust would be returned to all the offenders who successfully completed this

149. *Penalties and Sentences Act 1992* (Qld) s 30.

150. The NSW Sentencing Council observed that while the payment of a fine by a third party such as a large corporate employer of an offender will generally reduce the level of punishment for the offender and the effectiveness of the fine as a deterrent, nonetheless a fine likely to be paid by a third party (such as a family member) may be appropriate "where it is likely to place the offender under a sense of obligation": *The Effectiveness of Fines as a Sentencing Option: Court-imposed Fines and Penalty Notices*, Interim Report (2006) [2.34]. The Council also discussed the idea of linking the partial or complete reduction of a fine to a 'rewards' scheme. The reward for complying with the bond (for example, the successful completion of a financial counselling program) would be the partial or full refund of the fine: *The Effectiveness of Fines as a Sentencing Option: Court-imposed Fines and Penalty Notices*, Interim Report (2006) [2.271]-[2.274].

151. The NSW Sentencing Council noted that it had received informal advice from the Attorney General's Department "that courts fail to collect approximately 80 percent of all fines imposed", although the Council noted that this did not necessarily reflect default rates for fines imposed by the courts and that the State Debt Recovery Office indicated a slightly better recovery rate of 25% of all court-imposed fines: *The Effectiveness of Fines as a Sentencing Option: Court-imposed Fines and Penalty Notices*, Interim Report (2006) [2.146]-[2.156].

152. *Fines Act 1996* (NSW) s 6.

153. See also our discussion of the true value of third party assurances in the context of bail: NSW Law Reform Commission, *Bail*, Report 133 (2012) [13.15]-[13.18].

sentencing option. Court imposed fines, even if not collected in the majority of cases, contribute significantly to State revenue.

Implementation

7.101 Administrative issues relating to the implementation of a fine in trust option would include:

- the maximum amount and duration of a fine in trust;
- the time within which the payment must be made and procedures to refer the matter back to court if there was a failure to pay;¹⁵⁴
- payments by appropriate third parties and their possible discharge or substitution during the period of the fine in trust;
- which government agency or agencies would hold the funds and be able to apply the interest generated to fund programmes and/or defray costs;
- forfeiture, including whether it would be triggered by a s 10 non-conviction order for a further offence committed in the period; and
- any categories of offences or circumstances in which the option would be inappropriate; for example, if the offender had been found guilty of fraud and the defrauded funds or property had not already been returned in full to the victim(s).

Question 7.9

Should a fine held in trust be introduced as a sentencing option? If so, how should it be implemented?

Work and development orders

7.102 Work and development orders ('WDOs'), which have been established in NSW as a means of mitigating fine or penalty notice debt accrued by members of vulnerable groups, are worth considering as a sentencing option for meeting the particular needs of vulnerable groups in the sentencing process.

7.103 WDOs were established, following a suggestion by the NSW Sentencing Council,¹⁵⁵ as a pilot fine mitigation program to allow members of vulnerable groups to address their fine or penalty notice debt through non-financial means by performing unpaid work with an approved organisation, or by undertaking a particular course or treatment.¹⁵⁶ In 2011, WDOs were evaluated and found to be an effective and

154. See the *Bail Regulations 2008* (NSW) for examples of the details of administrative requirements for bail agreements.

155. NSW Sentencing Council, *The Effectiveness of Fines as a Sentencing Option: Court-Imposed Fines and Penalty Notices*, Interim Report (2006) [3.130].

156. *Fines Further Amendment Act 2008* (NSW).

appropriate response to offending by vulnerable people.¹⁵⁷ They are now permanent.¹⁵⁸

7.104 WDOs are available to people who have a mental illness, intellectual disability or cognitive impairment; people who are homeless; people who are experiencing acute economic hardship; and people with “serious addiction to drugs, alcohol or volatile substances”.¹⁵⁹ Each application for a WDO must be made to the State Debt Recovery Office (‘SDRO’) by or on behalf of the offender, and be supported by an ‘approved person’ or by a health practitioner who is to supervise the offender in complying with the order. The guidelines set out the criteria and process for approval of practitioners and organisations.¹⁶⁰

7.105 A WDO is defined as an order requiring a person to do one or more of the following:

- undertake unpaid work for, or on behalf of, an approved organisation (with the agreement of that organisation);
- undergo medical or mental health treatment in accordance with a health practitioner’s treatment plan;
- undertake an educational, vocational or life skills course;
- undergo financial or other counselling;
- undergo drug or alcohol treatment;
- if the person is under 25 years of age, undertake a mentoring program.¹⁶¹

Under the WDO regime, participation in these activities reduces the offender’s fine debt at defined rates.

7.106 The SDRO may only issue a WDO if a fine enforcement order has been issued, the person is not subject to a CSO and the application satisfies all of the statutory requirements.¹⁶²

7.107 WDOs appear to be working well and have received a measure of community support.¹⁶³ The 2011 evaluation by the Department of Attorney General and Justice found that WDOs are highly beneficial to individuals while still “enforcing the

157. NSW Department of Attorney General and Justice, *A Fairer Fine System for Disadvantaged People* (2011).

158. *Fines Amendment (Work and Development Orders) Regulation 2011* (NSW).

159. *Fines Act 1996* (NSW) s 99B(1)(b).

160. *Fines Act 1996* (NSW) s 99A; NSW Department of Justice and Attorney General, *Work and Development Order (WDO) Guidelines* [5.1]-[5.3].

161. *Fines Act 1996* (NSW) s 99A.

162. *Fines Act 1996* (NSW) s 99B(1).

163. See, eg, the submissions to the NSWLRC’s review of Penalty Notices: Homeless Persons’ Legal Service, Public Interest Advocacy Centre Ltd, *Submission PN28*, 21; The Law Society of NSW, *Submission PN31*, 9; The Shopfront Youth Legal Centre, *Submission PN33*, 12; UnitingCare Burnside, *Submission PN12*, 5; Illawarra Legal Centre, *Submission PN27*, 8-9; Wollongong/Illawarra Roundtable Meeting, *Consultation PN18*, Wollongong NSW, 1 March 2011; People with Mental Health and Cognitive Impairment Roundtable Meeting, *Consultation PN6*, Sydney NSW, 27 January 2011.

importance of accountability to their community".¹⁶⁴ The evaluation particularly identified the benefits of WDOs as being:

- reduced re-offending;
- engagement of clients in appropriate activities;
- reduced stress and hopelessness;
- promotion of agency and self-efficacy;
- building client skills and an incentive to work; and
- reduced costs to government relating to enforcement, offending behaviour, welfare dependency, mental health problems and drug and alcohol problems.¹⁶⁵

7.108 An issue is whether WDOs, with necessary changes, could be adopted as a sentencing option rather than having them solely to mitigate the failure of fines as a sentencing option. They would be distinct from CSOs and ICOs which, while offering the possibility of requiring participation in development programs and drug and alcohol testing and assessment,¹⁶⁶ are not specifically aimed at helping members of vulnerable groups to address their offending behaviour, and, in the case of ICOs, are only available when a sentence of imprisonment is being considered.

7.109 The current roll-out of the WDO scheme includes the establishment of a regional network of WDO support teams. These teams will promote WDOs and provide information, advice and other support to organisations, health practitioners and eligible individuals.¹⁶⁷ This developing network could be adapted to support WDOs as a sentencing option.

7.110 However, it is possible that such an approach may distort the existing scheme. The WDO scheme currently depends on the approved practitioners and organisations which effectively supervise WDOs. The effect on these practitioners and organisations of making WDOs available as a sentencing option is currently not known. Sentences involving supervision are traditionally managed by the Probation and Parole Service and practitioners and organisations may be unwilling to supervise sentencing orders, especially if they are seen to impose an unreasonable burden on them.

7.111 Also, arguably, this option might simply replicate the effect of existing sentencing options which allow for conditions to be placed upon offenders. An alternative approach might be to adapt the CSO program to incorporate aspects of the WDO

164. NSW Department of Attorney General and Justice, *A Fairer Fine System for Disadvantaged People* (2011) 125. For a summary of the findings of the DAGJ evaluation, see: NSW Law Reform Commission, *Penalty Notices*, Report 132 (2012) [9.40]-[9.45].

165. NSW Department of Attorney General and Justice, *A Fairer Fine System for Disadvantaged People* (2011) 40-41.

166. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 90(2) and *Crimes (Administration of Sentences) Act 1999* (NSW) s 81.

167. For further details, see: NSW Law Reform Commission, *Penalty Notices*, Report 132 (2012) [9.46].

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program to ensure the particular needs of members of vulnerable groups are adequately met.

Question 7.10

1. Should work and development orders be adopted as a sentencing option?
2. Alternatively, should the community service order scheme be adapted to incorporate the aspects of the work and development order scheme that assist members of vulnerable groups to address their offending behaviour?

Annexure A: Non-custodial options in other Australian jurisdictions

Victoria

7.112 The following non-custodial options are available in Victoria:

- **Community-based orders**¹⁶⁸ subject to a number of requirements including that the offender must not commit an offence punishable by imprisonment, and to which the court must attach at least one of the following conditions:¹⁶⁹
 - **unpaid community work** (of not more than 600 hours);
 - **treatment and rehabilitation**, which may include assessment and treatment for drug or alcohol abuse or dependency, medical or mental health assessment and treatment, and programs that address factor related to offending behaviour, and employment, educational, cultural and personal development programs;
 - **supervision**, including supervision, monitoring and management as directed by the Secretary to the Department of Justice;
 - **non-association** with specified people or classes of people;
 - **residence restriction or exclusion**;
 - **place or area exclusion**;
 - **curfew**;
 - **alcohol exclusion**; and
 - **judicial monitoring**.
- **Fines**.¹⁷⁰
- **Release on conviction**,¹⁷¹ either unconditionally or subject to an order for compensation or restitution.
- **Release without conviction**¹⁷² with or without an order for compensation or restitution.

Queensland

7.113 Queensland makes provision for the following non-custodial sentencing orders:

168. *Sentencing Act 1991* (Vic) s 36-48.

169. *Sentencing Act 1991* (Vic) pt 3A div 4.

170. *Sentencing Act 1991* (Vic) s 49-69.

171. *Sentencing Act 1991* (Vic) s 73-74.

172. *Sentencing Act 1991* (Vic) s 76-77.

- **Order releasing the offender** (without recording a conviction)¹⁷³ either absolutely or subject to a recognisance of not more than 3 years duration. The court may, in addition to any other appropriate condition, impose a condition that the offender attend a drug assessment and education session.
- **Release on entering into a recognisance**¹⁷⁴ (whether or not a conviction is recorded) subject to good behaviour and such other conditions as the court considers appropriate.
- **Orders for restitution and compensation**¹⁷⁵ in relation to property damaged or taken, or personal injury caused, in connection with the commission of an offence.
- **Non-contact orders**¹⁷⁶ (whether or not a conviction is recorded) requiring that the offender not contact a victim (or an associate of the victim) against whom the offender has committed a personal offence and/or requiring that the offender not go to a stated place or within a stated distance of a stated place.
- **Banning orders**¹⁷⁷ (whether or not a conviction is recorded) prohibiting a person from entering or remaining in, or in the vicinity of, certain licensed premises, or public events where liquor will be sold.
- **Fines**¹⁷⁸ whether or not a conviction is recorded.
- **Probation orders**¹⁷⁹ (whether or not a conviction is recorded) involving release (immediately or after a sentence of imprisonment) under the supervision of an authorised corrective services officer for a period not more than 3 years. The orders may require participation in counselling and other programs as directed by the court, submission to medical, psychiatric or psychological treatment, and/or other conditions considered necessary to address the offender's behaviour and offending.
- **Community service orders**¹⁸⁰ (whether or not a conviction is recorded) involving the performance of unpaid community service of between 40 and 240 hours.

Western Australia

7.114 Each of the non-custodial options available in Western Australia is listed in s 39 of the *Sentencing Act 1995* (WA) so that it is exclusive of all others and a court must not use an option unless satisfied that "it is not appropriate to use any of the options listed before that option".

- **Release without sentence.**¹⁸¹

173. *Penalties and Sentences Act 1992* (Qld) s 16-21.

174. *Penalties and Sentences Act 1992* (Qld) s 29-33A.

175. *Penalties and Sentences Act 1992* (Qld) s 34-43.

176. *Penalties and Sentences Act 1992* (Qld) s 43A-43F.

177. *Penalties and Sentences Act 1992* (Qld) s 43G-43O.

178. *Penalties and Sentences Act 1992* (Qld) pt 4.

179. *Penalties and Sentences Act 1992* (Qld) s 90-99.

180. *Penalties and Sentences Act 1992* (Qld) s 100-108.

181. *Sentencing Act 1995* (WA) pt 6.

- **Conditional release orders**¹⁸² of not more than 24 months, so that the offender may be resentenced if he or she commits another offence and must comply with any requirement imposed by the court that is necessary to secure good behaviour (but does not require supervision, direction or instruction by a community corrections officer, or require the payment of compensation or restitution).
- **Fines.**¹⁸³
- **Community based order**¹⁸⁴ which must contain at least one of three primary requirements: a supervision requirement whereby the offender is regularly monitored in the community and receives regular counselling; a programme requirement (involving medical, psychiatric or social work assessment, drug or alcohol assessment or treatment, educational, vocational or personal development courses); and a community service requirement involving unpaid community work of up to 120 hours.

South Australia

7.115 The following non-custodial options are available in South Australia:

- **Fines.**¹⁸⁵
- **Discharge without sentence upon entering into a bond**¹⁸⁶ with or without recording a conviction. The bond can be no longer than 3 years duration and conditions may include being under the supervision of a community corrections officer, undertaking community service (governed by the same provisions as relate to community service orders) or an intervention program, attending and completing a specified education program, undergoing medical or psychiatric treatment, abstaining from drugs or alcohol, restoring property, and compensating victims for injury, loss or damage.
- **Community service orders**¹⁸⁷ for the performance of community service of between 16 and 320 hours with or without an ancillary order placing the offender under the supervision of a community corrections officer. Attendance at any approved educational or recreational course of instruction may be taken to be performance of community service.
- **Restitution**¹⁸⁸ of misappropriated property.
- **Compensation**¹⁸⁹ for injury, loss or damage resulting from the offence.

182. *Sentencing Act 1995* (WA) pt 7.

183. *Sentencing Act 1995* (WA) pt 8.

184. *Sentencing Act 1995* (WA) pt 9.

185. *Criminal Law (Sentencing) Act 1988* (SA) s 34.

186. *Criminal Law (Sentencing) Act 1988* (SA) s 39-44.

187. *Criminal Law (Sentencing) Act 1988* (SA) pt 6.

188. *Criminal Law (Sentencing) Act 1988* (SA) s 52.

189. *Criminal Law (Sentencing) Act 1988* (SA) s 53.

Tasmania

7.116 The following non-custodial options are available in Tasmania, in combinations permitted in accordance with a hierarchy of penalties set out in s 8 of the *Sentencing Act 1997* (Tas):

- **Community service orders**¹⁹⁰ requiring satisfactory performance of community service of up to 240 hours, including attending educational and other programs as directed by a probation officer.
- **Probation orders**¹⁹¹ requiring that the offender submit to the supervision of a probation officer. Additional conditions may require attendance at educational and other programs, assessment and treatment for alcohol or drug dependency, submission to testing for alcohol and drug use and submission to medical, psychological or psychiatric assessment or treatment.
- **Fines.**¹⁹²
- **Rehabilitation program orders**¹⁹³ to attend and participate in "a structured treatment program designed to reduce the likelihood of a person who has committed a family violence offence re-offending".
- **Driving disqualification orders**¹⁹⁴ in relation to a reckless driving offence¹⁹⁵ or an "indictable offence arising out of the driving, operation or use of a motor vehicle or in the commission of which a vehicle was used or the commission of which was facilitated by a motor vehicle".
- **Orders discharging the offender**¹⁹⁶ with conviction recorded.
- **Orders dismissing the charge without recording a conviction.**¹⁹⁷

Australian Capital Territory

7.117 The Australian Capital Territory offers the following non-custodial sentencing options, which may be imposed in any combination of two or more, including, where the offence is punishable by imprisonment, full-time detention, periodic detention or a suspended sentence:¹⁹⁸

- **Good behaviour orders**¹⁹⁹ which may include any or all of the following conditions: provision of security for compliance with the order, a community service condition, a rehabilitation program condition, a probation condition, compliance with a reparation order.

190. *Sentencing Act 1997* (Tas) pt 4.

191. *Sentencing Act 1997* (Tas) pt 5.

192. *Sentencing Act 1997* (Tas) pt 6.

193. *Sentencing Act 1997* (Tas) pt 6A.

194. *Sentencing Act 1997* (Tas) pt 7.

195. *Against Traffic Act 1925* (Tas) s 32.

196. *Sentencing Act 1997* (Tas) s 7(g), s 58.

197. *Sentencing Act 1997* (Tas) s 7(h), s 58.

198. *Crimes (Sentencing) Act 2005* (ACT) pt 3.6.

199. *Crimes (Sentencing) Act 2005* (ACT) s 13.

- **Fine orders.**²⁰⁰
- **Driver licence disqualification orders** for motor vehicle theft²⁰¹ which are separate to the disqualification provisions in relation to offences under road transport legislation.
- **Non-conviction orders**²⁰² with or without a good behaviour order.
- **Reparation orders**²⁰³ for the return of, or the restoration of the value of, stolen property.
- **Non association and place restriction orders.**²⁰⁴

Northern Territory

7.118 The Northern Territory offers the following non-custodial sentencing options:

- **Release without conviction**²⁰⁵ either unconditionally or subject to a bond of not more than 5 years duration.
- **Release on conviction**²⁰⁶ either unconditionally or subject to a bond of not more than 5 years duration.
- **Fines.**²⁰⁷
- **Community work orders**²⁰⁸ involving the performance of work (for no more than 480 hours) that is of benefit to the community.
- **Community based orders**²⁰⁹ involving supervision by a probation officer (as well as the possible use of monitoring devices), the possible performance of community work and the imposition of at least one of the following conditions: undertaking prescribed programs; undergoing assessment and treatment for misuse of alcohol or drugs; submitting to medical psychological or psychiatric assessment and treatment; or refraining from consuming or purchasing alcohol or drugs.

Commonwealth

7.119 The following non-custodial options are available in respect of Federal offenders:

- **Orders dismissing the charge.**²¹⁰

200. *Crimes (Sentencing) Act 2005* (ACT) s 15, s 15A.

201. *Crimes (Sentencing) Act 2005* (ACT) s 16.

202. *Crimes (Sentencing) Act 2005* (ACT) s 17.

203. *Crimes (Sentencing) Act 2005* (ACT) s 20.

204. *Crimes (Sentencing) Act 2005* (ACT) pt 3.4.

205. *Sentencing Act* (NT) s 10, s 11.

206. *Sentencing Act* (NT) s 12, s 13.

207. *Sentencing Act* (NT) s 16-26.

208. *Sentencing Act* (NT) s 33A-39.

209. *Sentencing Act* (NT) s 39A-39R.

210. *Crimes Act 1914* (Cth) s 19B(1)(c).

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- **Orders discharging the person without conviction,**²¹¹ subject to conditions.
- **Orders for conditional release after conviction,**²¹² including the following conditions: that the offender be of good behaviour for up to 5 years, make reparation or restitution or pay compensation as ordered, pay any pecuniary penalty, and comply with other conditions the court thinks fit to impose including submitting to the supervision of a probation officer.
- **Additional sentencing alternatives.**²¹³ A court may, in respect of a State or Territory offender, where the law of a participating State or Territory empowers a court to do so, pass a sentence or make an order "known as a community service order, a work order, a sentence of periodic detention, an attendance centre order, a sentence of weekend detention or an attendance order, or to pass or make a similar sentence or order or a sentence or order that is prescribed for the purposes of [s 20AB of the *Crimes Act 1914* (Cth)]". However, in doing so, the court exercising Federal jurisdiction is not required to pass another sentence or make another order, if the law of the State or Territory would otherwise require it before the sentence can be passed.

211. *Crimes Act 1914* (Cth) s 19B(1)(d).

212. *Crimes Act 1914* (Cth) s 20.

213. *Crimes Act 1914* (Cth) s 20AB.



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