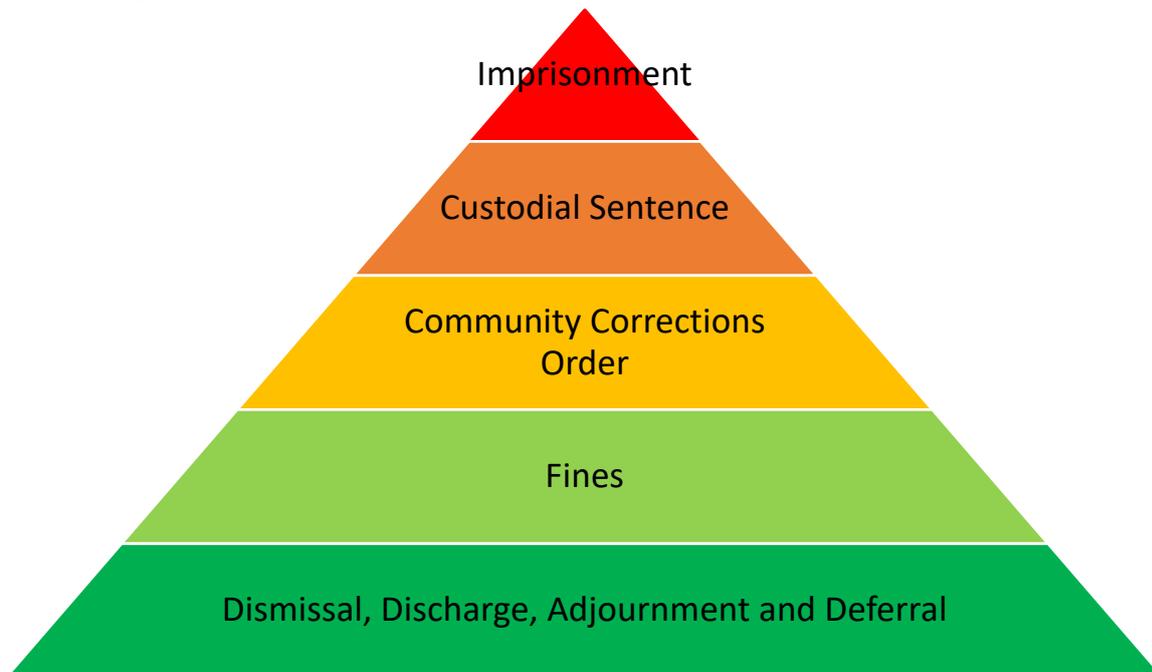


Sentencing Options



Indefinite sentence of imprisonment

- Person convicted of a 'serious offence' – more than 50 offences
- High degree of probability' that 'serious danger to the community'
- Should be confined to exceptional cases
- Regular review (after nominal sentence; every 3 years)

Custodial sentences

- Conviction recorded; offender detained in a prison (or youth detention centre) and deprived of freedom for a set period
- Parole: when must/may set; rationale

Community Correction Orders

- Replace community-based orders (CBOs) & intensive correction orders (ICOs) since 2012
- *Boulton v The Queen*: a guideline judgment about how to use the CCO option
- Flexible non-custodial orders, with possibility to attach various coercive, prohibitive, intrusive and rehabilitative conditions
 - Core conditions, e.g. not re-offending
 - Optional conditions
- Can be used together with other sentencing options

Negligence:

s.24 Negligently Causing Serious Injury

A person who by **negligently** doing or omitting to do an act causes **serious injury** to another person is guilty of an indictable offence

Penalty: Level 6 imprisonment (5 years maximum)

Mens Rea of Negligence

- Exceptional MR element for offences against the person; requires a breach of duty of care

Breach must involve 'such a great falling short of the standard of care which a reasonable person would have exercised, and which involved such a high risk that [serious injury] would follow that the doing of the act merits criminal punishment

C. Other offences against the person

Endangerment

s.22. Conduct Endangering Life

A person who, without lawful excuse, **recklessly** engages in conduct that places or may place another **person in danger of death** is guilty of an indictable offence

Penalty: level 5 imprisonment (10 years maximum)

s.23. Conduct Endangering Person

A person who, without lawful excuse, **recklessly** engages in conduct that places or may place **another person in danger of serious injury** is guilty of an indictable offence

Penalty: level 6 imprisonment (5 years maximum)

AR: Voluntary conduct which placed V in relevant danger

MR: A reasonable person would have realised they had placed another in danger AND Recklessness (D foresaw consequence as a probability)

Stalking

s.21A

An offence to act in a range of ways in relation to the victim or any other person, including the following, telephoning, sending emails, publishing on the internet, loitering, keeping under surveillance or 'otherwise act[ing] in a way that could be reasonably expected to arouse apprehension or fear in the victim for his or her own safety or that of any other person

AR: Engaging in prescribed course of conduct

MR: With:

- Intention to cause physical or mental harm to the victim, or to arouse apprehension or fear in the victim for his/her or another's safety OR

TOPIC#7 HOMICIDE

Categories of Homicide

Common Law Homicide (*Crimes Act 1958*)

Murder

s 3: Notwithstanding any rule of law to the contrary, a person convicted of murder is liable to:

- Level 1 imprisonment (life); or
- Imprisonment for such other term as is fixed by the court-

As the court determines.

Actus Reus

Kills

- A person kills
- Kills means that a person causes the death of a person

s 41 of Human Tissue Act 1982 (Vic):

Death occurs when there is either:

- a. Irreversible cessation of circulation of blood in the body of the person; or
- b. Irreversible cessation of all function of the brain of the person.

9AA Abolition of year-and-a-day rule

- (1) The rule of law known as the year-and-a-day rule (under which an act or omission that in fact causes death is not regarded as the cause of death if the death occurs more than a year and a day after the act or omission) is abolished.
- (2) This section does not apply to acts or omissions alleged to have occurred—
 - (a) before the commencement of the **Crimes (Year and a Day Rule) Act 1991**; or
 - (b) between two dates, one before and one after that commencement.

Human Being

- Legally a person is not in being until he or she is fully born in a living state
- A baby is fully and completely born when it is completely delivered from the body of its mother and it has a separate and independent existence in the case that it does not derive its power of living from its mother