



### Sentencing of Juveniles

Last Update: December 2014

#### Contents

Jurisdiction .....	1
Available sentencing options .....	1
Sentencing factors of particular relevance .....	2

#### Jurisdiction

1. Pursuant to s 20C of the *Crimes Act 1914*, a juvenile prosecuted for Commonwealth offences may be dealt with as if the juvenile was charged with State or Territory offences and therefore may be subject to the applicable State or Territory court processes. Section 4J of the *Crimes Act 1914* does not limit or circumscribe the application of s 20C of the *Crimes Act 1914*. The State or Territory provisions are picked up by virtue of section 68 of the *Judiciary Act 1903* and applied as a law of the Commonwealth "so far as it is applicable" to a person charged with a Commonwealth offence.
2. The terms "child" and "young person" are not defined for the purposes of s 20C. However, as s 20C evinces a legislative intention that federal offenders be subject to applicable juvenile sentencing legislation, the question of who is a child or young person is determined by reference to the appropriate State or Territory laws. The term "juvenile" is used here in the same sense.

#### Available sentencing options

3. The CDPP's view is that section 20C of the *Crimes Act 1914* is a facilitative provision and does not exclude other sentencing options available under Commonwealth law. Consequently, s 20C allows a State or Territory court exercising federal jurisdiction to rely on any special sentencing options available under State or Territory law in the case of a juvenile, but does not compel it to do so. A court exercising federal jurisdiction is therefore not limited to the orders available under State or Territory law in sentencing a juvenile, but may instead rely on any other sentencing option available under Commonwealth law. The practical effect of this is that restrictions in State or Territory laws as to the imposition of a term of imprisonment or as to the maximum fine are inapplicable when courts are sentencing juveniles for Commonwealth offences under Commonwealth law.
4. Although sentencing options for juveniles under State or Territory laws are generally available in respect of Commonwealth offences, parts of those laws cannot be enforced against federal offenders and should not be relied upon.<sup>1</sup> For example, while the *Children (Criminal Proceedings) Act 1987* (NSW) s 33(1)(b) and (e) provide for conditional release on recognisance or probation respectively, there is no Commonwealth law which applies s 41, relating to the enforcement of such orders, to federal offenders. Section 41 of the *Children (Criminal Proceedings) Act 1987* (NSW) is not applied by s 20C, and s 20A of the *Crimes Act 1914* only applies to orders made under ss 19B(1) and 20(1) of that Act. In such cases, reliance should instead be placed on equivalent provisions of Part 1B of the *Crimes Act 1914*.

<sup>1</sup> *Newman v A (a child)* (1992) 9 WAR 14.

### **Sentencing factors of particular relevance**

5. Paragraphs 2.15 and 2.16 of the *Prosecution Policy of the Commonwealth* note factors to be given particular regard in decisions to prosecute juveniles. In a similar way, several of the factors in paragraph 2.16 should be given special attention in the formulation of prosecution sentencing submissions concerning juvenile offenders, namely:

- the seriousness of the alleged offence;
- the age and apparent maturity and mental capacity of the juvenile;
- the juvenile's family circumstances, particularly whether the parents of the juvenile appear able and prepared to exercise effective discipline and control over the juvenile; and
- the juvenile's antecedents, including the circumstances of any previous caution the juvenile may have been given.