

LEGAL STUDIES

Assess the role discretion plays in the sentencing and punishment of offenders.

According to the Australian Law Reform Commission (ALRC), Discretion is the authority to act or decide rendering of personal judgment and is exercised by ethics, principles and evidence and is played throughout the sentencing and punishment of offenders. The role discretion plays in the sentencing and punishment of offenders are only somewhat effective in the criminal justice system in Australia due to, The Australian Criminal Justice System is faced with discretionary decisions throughout the criminal justice process. Police and Judges carry out many roles and levels in order to be fair to the community involving, area of criminal investigation process, criminal trial process (limit your response to sentencing and punishment)and the sentencing and punishing process. However, these discretion have limits from the legislation, to protect the society from the misuse of their discretionary powers. It is clear, that the role discretion has on sentencing and punishment of offenders.

The law enforcement also known as the police has the power and right to obtain evidence, search and seize power and use technology to assist investigations. This right is under the Law enforcement (Powers and Responsibilities) Act 2002 (NSW), (LEPRA). These powers are limited by the law to protect the society from abuse and bias. This evidently shows that Police do not have unlimited powers. Evidence collected by the police must be respected by the Evidence Act 1995 (NSW), to allow the evidence to be admissible in court. This protects the offenders by the police not obtaining illegal evidence. However, there are some cases where illegal evidence, not followed by the Evidence Act 1995 (NSW) are better suited for the society as a whole then a individual protection of sentencing and punishment. This is outlined in the unlawful search in Ghani v Jones where the police officer inquired into a woman's disappearance without a warrant and the Troy Leonard case, where unlawful search evidence was used and the police carry out discretionary decision. This authority to appeal is under the NSW Court of Criminal Appeal Act 1912 where the judicial oversight protection against misuse of police, unlawful search. In addition, when dealing young offenders the police have responsibilities that they must follow, including no under age of 18 the offender must talk to a lawyer and the police must say that and the right to silence, this also comes under the (LEPRA). Also, covert searches allow the police to conduct searches without a warrant. This is highly evident in 2005, Terrorism Legislation Amendment (Warrants) Act (2005) in which this was passed to search suspect terrorist houses without warrant and this legislation is still used today. (This paragraph does not answer the question which asks about sentencing and punishment. Your answer should be confined to the relevant part of the syllabus)

The NSW Police have the discretion on what punishment they offer to minor crimes, this is underlined in The Crimes Legislation Amendment (penalty notices offences) Act 2002, where allowed ease to issue and not deal with paperwork. According to a recent Ombudsman's statement about police powers in 2017, police may also be racist and not give out cautions to indigenous Australians, instead giving high penalty fines. This just only increases, the court involvements when these young offenders cannot afford to pay the expense. Thus, police powers are exploitable, which benefit society a whole, however the role of discretion in sentencing and punishment offenders is only somewhat effective. (is the use of fines for strict liability offences an issue for sentencing and punishment? If you are going to discuss cautions and fines then be very clear that this is limited to 'punishment' and has nothing to do with sentencing.

Judges have the authority to decide how much weight the offender is punished for depending on the evidence and how serious the crime is. This judgment can be bias unfair

in the sentencing process and punishment for the offender. In *R v Skaf* (2008), Bilal Skaf was convicted of gang rape as such the judge has the discretion to receive a hearing as well as to take notes on a victim's impact statement during the decoding of the sentence. The statute that is mainly the source of sentencing law in NSW is the ~~Crimes Act 1999 (NSW)~~. Crimes (Sentencing Procedure) Act 1999. This act approves the maximum sentence which may be applied for numerous offences. Victim impact statements are solitary for indictable offences as opposed to summary offences and are introduced after the offender is discovered of being guilty, before the sentence is proceeding.

Sentencing and punishment, has actively involved the discretion of judges and magistrates completed by factors affecting a sentencing decision. The judiciary punishes offenders within the guidelines set by the Crimes (Sentencing Procedure) Act 1999 (NSW) and also guideline judgements. The Media Article "Die in Jail Carr's new sentences" elucidates how new laws will now retain judge's discretion to execute a penalty below the minimum standard, but Judges must give an explanation for their decision. Under this law, Judges must give the minimum prison sentence, unless there are mitigating factors. The objectives of sentencing and punishment aim for protection, rehabilitation and deterrence. Thus, Bias and unfair outcomes can be made by Judges due to discretionary powers, but it is only somewhat effective for sentencing and punishment offenders (I am not sure how this sentence follows from the previous one. If you can provide a case study to give evidence or strength to this argument it would help).

Ultimately, it is indubitably clear seen discretion can be effective and ineffective (which is it? It cannot be both?) in the role that it plays in the sentencing and punishment of offenders. This is evident in the Police and judge's discretionary powers while some may benefit the community, but some violent the crime procedure act causing an individual to be mistreated and unfairly punish for their crimes. Does Australia need to change its discretionary laws to protect individuals? (Never finish with a question. You are being examined on you capacity to answer questions – not ask them.)