Sword or Feather?
The use and utility of suspended sentences in Tasmania

by

Lorana Bartels BA LLB LLM (UNSW) Grad Dip Leg Prac

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This thesis may be made available for loan and limited copying in accordance with the Copyright Act 1968 (Cth).
This thesis explores the use and utility of suspended sentences in Tasmania. Suspended sentences are currently available as a sentencing disposition in all Australian jurisdictions, but there is conflict between public and legal perceptions about the severity of the sanction, which may contribute to a lack of public confidence in the criminal justice system as a whole. The following issues are explored: How are suspended sentences used by judges and magistrates? What is the process for imposing a suspended sentence? How effective are suspended sentences as a specific deterrent or rehabilitative measure? How are breaches dealt with?

The study examines the history of suspended sentences and the arguments for and against their use, as well as considering the principles and practice governing their use in Australia and overseas. In-depth interviews with Tasmanian judges and magistrates provide an invaluable source of information on judicial views on a range of issues pertaining to the use of suspended sentences. A quantitative analysis presents empirical information on the use of suspended sentences in the Supreme and Magistrates’ Courts, while a qualitative analysis of sentencing remarks in the Supreme Court examines the relevance of a range of sentencing factors to the decision to suspend. The findings of a reconviction analysis are presented, indicating that suspended sentences may be an effective deterrent. Finally, a breach analysis examines offending conduct in breach of a suspended sentence, explores prosecution practices in respect of breaches and analyses judicial sentencing remarks in breach cases. The conclusion reviews the key findings and discusses how they support the main arguments for and against suspended sentences. The practical and policy implications of my findings are also considered. My research is not only of significance for Tasmania, but also has relevance and resonance for the Australian and international use of suspended sentences and will inform broader discussions about the utility of this sentencing option.
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INTRODUCTION

Purpose and themes
This thesis explores the use and utility of suspended sentences in Tasmania. Suspended sentences are currently available as a sentencing disposition in all Australian jurisdictions, but there is conflict between public and legal perceptions about the severity of the sanction, which may contribute to a lack of public confidence in the criminal justice system as a whole. My research examines the arguments for and against suspended sentences and discusses the principles and practice for their use in Australia and overseas. Quantitative and qualitative information is presented about the use of suspended sentences in Tasmania, while interviews shed light on judicial thinking about such sentences. My findings on reconviction and breach rates are analysed and the policy and practical implications of my findings considered. This thesis makes a vital contribution to understanding a highly controversial sentencing disposition.

The topic for this thesis arose out of an Australian Research Council Linkage-Project between the University of Tasmania and the Tasmanian Department of Justice entitled An Evaluation of the Use of Suspended Sentences. Accordingly, the key areas for analysis were informed by, although not restricted to, the stated aims of the project in the application for funding from the ARC, as set out in Appendix A. In this thesis, I sought to answer the following research questions: How are suspended sentences used by judges and magistrates? What is the process for imposing a suspended sentence? How effective are suspended sentence as a specific deterrent or rehabilitative measure? How are breaches dealt with?

This thesis also examines the incidence of net-widening and sentence inflation and the impact of suspended sentences on the prison population; the use of suspended sentences for serious offences; measures to increase the punitive and rehabilitative effect of the sentence; the role of public opinion and the importance of communication – not only with offenders and the public, but also with judicial officers, prosecutors and the media.

Overview of methodology
The questions of how judicial officers use suspended sentences and the process for imposing such a sentence are answered against the backdrop of an analysis of the relevant Australian case law. More significantly, I give judges and magistrates a rare opportunity to explain their reasoning and use of suspended sentences in their own words through in-depth interviews. I also undertake a quantitative analysis of all sentences imposed in the Magistrates’ Court in a one-year period and in the Supreme Court in a two-year period in order to present empirical data on patterns of use. This is supplemented by a qualitative analysis of the comments on passing sentence for all suspended sentences imposed in the Supreme Court over the same two year period to examine the factors cited in support of the decision to suspend the sentence.
Suspended sentences are often supported on the basis that they constitute an effective deterrent or rehabilitative measure. Critics, by contrast, regard such sentences as a mere slap on the wrist. There is currently no published research in Australia which examines reconviction rates following a suspended sentence. I therefore explore the effectiveness of suspended sentences by conducting a reconviction analysis of all offenders sentenced in the Supreme Court in a two-year period.

The consequences flowing from breach are intrinsic to the impact of suspended sentences. There is a strong argument for certainty that a breached sentence will be activated, but there is also a need for judicial and administrative discretion. I examine this issue by conducting an analysis of the offences committed in breach by all offenders in receipt of a partly or wholly suspended sentence over a two year period in the Supreme Court.

**Thesis structure**

Chapter 1 explains what a suspended sentence is and introduces some key aspects of sentencing in Tasmania. It sets out the history of suspended sentences and examines the principal arguments for and against the use of suspended sentences.

In Chapter 2, I set out the legislative provisions and case law on suspended sentences in Australia, as well as presenting data on the use of such sentences. I discuss the main High Court case on this issue and the process for imposing a suspended sentence. The provisions on the length of sentence and operational period which can be imposed are also considered. Provisions which increase the ‘bite’ of the suspended sentence by way of attaching conditions or combination orders are reviewed and the provisions for action on breach and partly suspended sentences discussed. Finally, information is presented on the use of suspended sentences in England, New Zealand and Canada.

Chapter 3 presents a qualitative analysis of my findings from interviews with the Tasmanian judiciary on their use of suspended sentences. These interviews provide an invaluable source of information on judicial views on a range of issues pertaining to the use of suspended sentences, including their purposes and objectives; the process for imposing a suspended sentence; information about such sentences; the role of public opinion and the media; breaches of order; partly suspended sentences and Commonwealth recognizance release orders; and options for reform.

Chapter 4 provides a quantitative analysis of the use of suspended sentences in the Supreme and Magistrates’ Courts. Data on frequency of use, the length of sentences and operational periods is presented and the incidence of possible sentence inflation and net-widening examined. Sentencing dispositions are analysed by offence type, prior criminal record, age, gender and judicial officer imposing the sentence. The offences for which an offender is most likely to receive a suspended sentence and the offences for which such sentences are most commonly imposed are also examined.

Chapter 5 builds on the quantitative analysis in Chapter 4 by undertaking a qualitative analysis of partly and wholly suspended sentences imposed in the Supreme Court. The importance of reasons for sentence is discussed and the
relevance of a range of sentencing factors to the decision to suspend a sentence considered. In particular, factors relating to the offender; factors relating to the offence; the response to the charges and the effect of the offence and sanction are examined. In addition, cases which suggest an improper reasoning process was applied in exercising the discretion are reviewed.

In Chapter 6, I present the findings of a reconviction analysis of offenders sentenced in the Supreme Court. This analysis compares reconviction rates on the basis of sentencing disposition and considers the relevance of age, gender, prior criminal record and offence type. Changes in the seriousness and frequency of offending are examined and the relevance of pseudo-reconvictions discussed. Reconviction outcomes for suspended sentences imposed in combination with other orders are also considered.

Chapter 7 presents a breach analysis of offenders who received a suspended sentence in the Supreme Court. Details of breach prosecutions are analysed and information on the nature of the offences committed in breach discussed. Breaches are also analysed by offence type, prior record, age, gender and length of sentence and operational period. Comments on passing sentence in the cases where breach action was taken are also discussed in an attempt to develop a clearer understanding of the applicable principles on breach proceedings.

In the Conclusion, I review the key findings of the project and discuss how these findings support the arguments for and against suspended sentences. I also make some suggestions for improving the use of suspended sentences in Tasmania. My findings confirm that, notwithstanding their limitations, suspended sentences remain a ‘valid and sound method of non-institutional reaction against crime, based on consideration of the personality of the offender’.¹ My research is not only of significance for Tasmania, but also has relevance and resonance for the Australian and international use of suspended sentences and will inform broader discussions about the utility of this sentencing option.