

Types of Totality

Facts that indicate the issue:

- Terms of imprisonment served prior to sentencing for other offences
- Terms of imprisonment still liable to serve for other offending
- Terms of imprisonment served in other jurisdictions
- Effect of new sentencing order on older existing orders

Penalties and Sentences Act s 9(2) (j) – (k)

(j) time spent in custody by the offender for the offence before being sentenced; and

(k) sentences imposed on, and served by, the offender in another State or a Territory for an offence committed at, or about the same time, as the offence with which the court is dealing; and

(l) sentences already imposed on the offender that have not been served; and

(m) sentences that the offender is liable to serve because of the revocation of orders made under this or another Act for contraventions of conditions by the offender

Mill v The Queen (1988) 166 CLR 59; 36 A Crim R 468 at 64; 471 citing Street CJ in *R v Todd* [1982] 2 NSWLR 517 at 519-520:

it would be wrong, in my opinion, to disregard the practical situation that the appellant had already served a substantial period of imprisonment in Queensland for offences so closely related in time and character to the Sydney offences ... ***Where there has been a lengthy postponement, whether due to an interstate sentence or otherwise, fairness to the prisoner requires weight to be given to the progress of his rehabilitation during the term of his earlier sentence, to the circumstance that he has been left in a state of uncertain suspense as to what will happen to him when, in due course, he comes up for sentence on the subsequent occasion, and to the fact that sentencing for a stale crime, long after the committing of the offences, calls for a considerable measure of understanding and flexibility of approach*** – passage of time between offence and sentence, when lengthy, will ***often lead to considerations of fairness to the prisoner in his present situation playing a dominant role in the determination of what should be done in the matter of sentence; at times this can require what might otherwise be a quite undue degree of leniency being extended to the prisoner.*** .. further citing Todd *“the proper approach which his Honour should have taken was to ask what would have been likely to have been the effective head sentence imposed if the applicant had committed all three offences of armed robbery in one jurisdiction and had been sentenced at the one time.”*