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Court outcomes for firearm offences in Australia

Megan Davies
Jenny Mouzos

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Foreword

The term 'firearm offence' captures a broad spectrum of offending behaviour, from insecure storage of firearms to use in the commission of a violent crime, and hence a similarly broad spectrum of criminal conduct. The primary legislative framework for sentencing of firearm offences is based on enacted legislation in each jurisdiction that defines specific firearm-related offences, alongside minimum and maximum penalties. While offences largely relate to use, possession, ownership, registration, purchase, sale and storage of firearms, jurisdictional variation occurs in the range and classification of these offences, and the associated statutory penalty. Judicial discretion and the relative restriction of sentencing procedures operating in different jurisdictions can further act to influence a varying regime in the type and severity of sentences handed down.

This research was undertaken in response to concerns about how effective firearm penalties are in preventing firearm-related offences. While not an evaluation of the effectiveness of penalties per se, the report examines data from New South Wales, Victoria, South Australia, Western Australia and the Australian Customs Service, to provide an overview of the type of firearm offences commonly brought before the courts, the outcomes from these proceedings, and the severity of sentences handed down.

Unauthorised or otherwise illegal possession (including carriage and use) was the most common offence prosecuted, followed by offences relating to improper safekeeping and storage of firearms. In most cases, the defendant was proven guilty, either by guilty plea or conviction by jury. Acquittals seldom occurred and were a less common scenario compared with withdrawal or dismissal of charges. Persons proven guilty mostly received a fine, with a smaller but sizeable proportion receiving a sentence of imprisonment. Terms of imprisonment tended to be imposed for offences relating to illegal sale, use or possession of a firearm.

An absence of directly comparable data precludes any assessment of interjurisdictional consistency of outcomes for persons charged with firearms offences, but there is some suggestion of variability in the severity of sentences imposed. However, a supplementary review of recent case law illustrates judicial concordance on the gravity and seriousness of firearms offences. Use of a firearm in the commission of another crime, such as armed robbery or drug trafficking, is considered a significant aggravating factor in determining sentence, as is the importance of deterrence. Further research, with more comparable data, would provide some guidance as to whether variability in court outcomes and sentencing does exist, how such variability relates to variation in firearms laws and sentencing legislation, and the role of offence specifics and offender characteristics in the shaping of court rulings on firearm offences.

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- New South Wales Bureau of Crime Statistics and Research (BOCSAR)
- New South Wales Police Firearms and Regulated Industries Crime Squad (FRICS)
- Office of the Commonwealth Director of Public Prosecutions (ODPP)
- Office of the Director of Public Prosecutions for Western Australia (ODPPWA)
- South Australian Office of Crime Statistics and Research (OCSAR).

Acronyms and abbreviations

ABS	Australian Bureau of Statistics
ACS	Australian Customs Service
ACT	Australian Capital Territory
ACTSC	Supreme Court of the Australian Capital Territory
ANCO	Australian National Classification of Offences
AustLII	Australasian Legal Information Institute
BOCSAR	Bureau of Crime Statistics and Research
FRICS	Firearms and Regulated Industries Crime Squad
GBB	good behaviour bond
NPP	non-parole period
NSW	New South Wales
NSWCCA	New South Wales Court of Criminal Appeal
NSWLR	New South Wales Law Reports
NT	Northern Territory
NTSC	Supreme Court of the Northern Territory
OCSAR	Office of Crime Statistics and Research
ODPP	Office of the Director of Public Prosecutions (Commonwealth)
ODPPWA	Office of the Director of Public Prosecutions for Western Australia
QCA	Queensland Court of Appeal
Qld	Queensland
SA	South Australia
SASC	Supreme Court of South Australia
Tas	Tasmania
TASSC	Supreme Court of Tasmania
Vic	Victoria
VSCA	Supreme Court of Victoria Court of Criminal Appeal
WA	Western Australia
WASCA	Supreme Court of Western Australia Court of Criminal Appeal
WinCAMS	Windows Case Analysis and Management System

Executive summary

This research was undertaken following concerns the Minister for Justice and Customs' Sporting Shooters and Firearms Advisory Council raised about the effectiveness of firearms penalties to prevent firearm-related offences. The research aimed to develop an understanding of court outcomes and sentencing practices in Australia for offences that involved firearms. National and jurisdictional firearms sentencing data were examined to address the following research questions:

- To what extent are perpetrators of firearm offences charged and prosecuted for their offences?
- What is the severity of sentences handed down for firearm offences (compared with severity of sentences handed down for other weapon offences)?
- What types of firearm offences and penalties associated with these offences are available in each jurisdiction?
- Do the courts regard possession/use of a firearm as an aggravating factor when sentencing for crimes (e.g. armed robbery and drug trafficking)?

Firearm sentencing data were analysed to answer the following questions:

- What types of firearm offences are brought before the courts?
- What are the outcomes for firearm offences brought before the courts?
- What types of penalties are imposed for proven firearm offences?
- What penalty quantities are imposed for proven firearm offences?

To assess whether the courts regard firearms as an aggravating factor in sentencing, the report presents a qualitative case study analysis of judicial sentencing remarks for convicted firearm offenders.

The study found that firearm possession offences (including carriage and use) appeared to be the most common firearm offence brought before the courts, followed by safekeeping and/or storage offences. The most frequent import/export charges were for importation of prohibited imports, including both firearms and other weapons. Most charges were proven guilty, with only a small proportion of firearm charges withdrawn, dismissed or proven not guilty.

The most frequently imposed penalty for firearm offences was a fine, followed by a sentence of imprisonment. Few persons convicted for firearm or weapon offences escaped penalty. Generally, imprisonment sentences were less frequently imposed for safety, safekeeping or storage offences. The most severe sentences were imposed for crimes considered more 'serious', such as those involving discharge, use, alteration or sale of firearms. The penalty distributions were fairly consistent across the type of weapon involvement (firearms versus other types of weapons) given the initial numbers of offences charged. It appears that overall, sentencing patterns for firearm offences are relatively consistent, although further research is required to comprehensively address sentencing trends across Australia.

Five themes emerged from the study of sentencing remarks as relevant factors in determining the appropriate sentence for firearm offenders:

- use of firearms, as opposed to other weapons, in armed robbery offences
- use of imitation, replica or unloaded firearms in armed robbery offences
- importance of deterrence (both individual and general) for firearm offences
- gravity of firearm offences and the seriousness with which the community views them
- presence of firearms as an aggravating factor in sentencing for other crimes.

Introduction

This research examined trends in court outcomes for, and sentencing of, firearm offenders in Australia. The report aims to develop a broad understanding of sentencing practices and to identify general trends in offences involving firearms. The analysis was undertaken in response to concerns the Minister for Justice and Customs' Sporting Shooters and Firearms Advisory Council raised about the effectiveness of firearm penalties in preventing firearm-related offences.

The research examined sentences imposed in Australia for firearm offences under relevant state and territory legislation, and import/export offences involving weapons under the *Customs Act 1901* (Cth), with a view to addressing the following research questions:

- To what extent are perpetrators of firearm offences charged and prosecuted for their offences?
- What is the severity of sentences handed down for firearm offences (compared with severity of sentences handed down for other weapons offences)?
- What types of firearm offences and penalties associated with these offences are available in each jurisdiction?
- Do the courts regard possession/use of a firearm as an aggravating factor when sentencing for crimes (e.g. armed robbery and drug trafficking)?

Sentencing data were collected from a range of sources for the period January 2002 to December 2004. These sources included state and territory offices of the Director of Public Prosecutions and criminal justice services, as well as statistical units from state and territory court and police services. Further data were obtained from the office of the Commonwealth Director of Public Prosecutions and the Australian Customs Service (ACS). The first part of the report – Firearm sentencing data analysis – presents analysis of these data to answer the following questions:

- What types of firearm offences are brought before the courts?
- What are the outcomes for firearm offences brought before the courts?
- What types of penalties are imposed for proven firearm offences?
- What penalty quantities are imposed for proven firearm offences?

To assess whether the courts regard firearms as an aggravating factor in sentencing, the second part of this report, 'Case study analysis: firearms as an aggravating factor in sentencing', presents a qualitative case study analysis of judicial sentencing remarks for convicted firearm offenders.

The meaning of 'firearm offences'

For the purposes of this report, a firearm offence is defined as:

- an offence under the relevant firearms legislation of each state or territory
- an offence which, by definition, involves use of a firearm.

For example, offences relating to possession, use, licensing, and storage of firearms are dealt with under the relevant firearms legislation of each jurisdiction. Other offences under the relevant crimes legislation in each jurisdiction necessarily involve use of a firearm, for example, shooting with intent or possession of a loaded firearm in a public place. However, further offences under the crimes legislation, such as armed robbery, may also commonly involve use of a firearm but, for the purposes of the statistical part of this report, are not considered a firearm offence. Such firearm-related crimes are considered in the chapter 'Case study analysis: firearms as an aggravating factor in sentencing', as sentencing remarks for these offences provide valuable insights into whether courts regard possession of a firearm as an aggravating factor in sentencing for other crimes.

A criminal matter for a firearm offence generally arises where police lay charges as a result of an alleged breach of criminal law. Most firearm offences are heard in lower courts, such as local or magistrates courts. Where they are dealt with on indictment in higher courts, firearm offences are usually heard in combination with other, more serious, offences (such as manufacture or supply of drugs). However, some firearm offences are strictly indictable and tried only before a judge and jury in a higher court (for example, in New South Wales, illegal and ongoing selling of firearms or firearm parts carries a maximum penalty of 20 years imprisonment). In some jurisdictions, firearm offences may be dealt with summarily unless the prosecutor or the person charged elects otherwise.

Framework for sentencing of firearm offences

Each jurisdiction has independent legislative power to enact criminal laws (including sanctions) concerning firearm offences, and each governs use, possession, ownership, registration, purchase, sale and storage of firearms under relevant firearms or weapons legislation.

While the Australian Government regulates discharge of firearms on or over Commonwealth land – as well as cross-border trafficking of firearms and import and export of firearms across Australian borders – the states and territories have primary control over firearm regulation and criminal penalties for firearm offences.

The primary legislative framework for sentencing of firearm offences is based on enacted legislation in each jurisdiction (Table 1) creating particular firearm-related offences with associated minimum and maximum penalties. In addition, all jurisdictions have dedicated sentencing legislation setting out, to varying degrees, lists of sentencing purposes, factors and principles to be taken into account in the exercise of judicial discretion.

How restrictive such sentencing procedures are and how much discretion is given to the judge varies in each jurisdiction, although most have little or no legislative prescription as to how they should be interpreted (Mackenzie 2005: 42). It seems that the 'principal responsibility for sentencing decisions has been entrusted by the legislature to the judiciary' (Warner 2002: 6). While the courts are constrained by statutory provisions that define the sentencing options available, the penalty quantity and the manner in which they may be combined lies with the judge, subject to appellate review. This wide judicial discretion is often attributed to the belief that 'good sentencing requires that the court's order be tailored to the circumstances of the particular offence and the characteristics of the offender' (Warner 2002: 6).

However, jurisdictions differ in the range and classification of sentencing options available and the way they are classified. For example, provision is made in New South Wales and the Australian Capital Territory (see *Crimes (Sentencing Procedure) Act 1999* (NSW); *Crimes (Sentencing) Act 2005* (ACT))

for sentences of periodic detention as an alternative to full-time imprisonment, but this is not an option in other jurisdictions (Morgan 2002). Where suspended sentences are available, there are differences in the characterisation of the sentence. A report on sentencing of violent offenders noted that the New South Wales legislation places suspended sentences together with non-custodial sentences, whereas the legislation in Western Australia categorises the suspended sentence as one of imprisonment (Morgan 2002). Hence, the relative order of severity of sentencing options is not consistent across jurisdictions.

Sentencing classification systems have been developed in Victoria and Western Australia (see *Sentencing Act 1991* (Vic) ss 5(3)–(7); *Sentencing Act 1995* (WA) s 39), but it is not clear whether such frameworks have had any impact on consistency in sentencing (ALRC 2006). Legislative variations in the statutory structure of sentencing – including the principles of sentencing, the range of options available and the hierarchy of sentencing options – will undoubtedly have some influence on sentencing outcomes produced in each jurisdiction.

This report aims to develop a broad understanding of sentencing practices and to identify general trends in offences involving firearms

Table 1: Main statutes and regulations governing sentencing of firearms offences in each jurisdiction, June 2006

Jurisdiction	Firearms	Sentencing
New South Wales	*Firearms Act 1996* Firearms (General) Regulation 1997	*Crimes (Sentencing Procedure) Act 1999* *Crimes (Administration of Sentences) Act 1999* *Crimes Act 1900*
Victoria	*Firearms Act 1996* Firearms Regulations 1997	*Sentencing Act 1991* *Crimes Act 1958* *Children and Young Persons Act 1989*
Queensland	*Weapons Act 1990* Weapons Regulation 1996	*Penalties and Sentences Act 1992* Criminal Code 1899
Western Australia	*Firearms Act 1973* Firearms Regulations 1974	*Sentencing Act 1995* *Sentence Administration Act 2003* Criminal Code 1913
South Australia	*Firearms Act 1977* Firearms Regulations 1993	*Criminal Law (Sentencing) Act 1988* *Criminal Law Consolidation Act 1935*
Tasmania	*Firearms Act 1996* Firearms Regulations 1996	*Sentencing Act 1997* *Criminal Code Act 1924* *Youth Justice Act 1997*
Northern Territory	Firearms Act Firearms Regulations	*Sentencing Act 1995* *Criminal Code Act 1983*
Australian Capital Territory	*Firearms Act 1996* Firearms Regulation 1997	*Crimes (Sentencing) Act 2005* *Crimes (Sentence Administration) Act 2005* *Magistrates Court Act 1930*

Policing practices, such as use of infringement and caution notices or court diversion programs, can also affect the number, type and seriousness of matters coming before the court (Morgan 2002: 21). Further differences in prosecution charging practices, and rates of guilty pleas in each jurisdiction, can also affect the type and quantity of sentence imposed on an offender.

The types of offences available in each jurisdiction vary according to the relevant legislation in each, as do the associated statutory penalties prescribed for each offence. Firearm legislation is often complex, and many overlaps can occur between different offences. One particular episode of offending behaviour may result in multiple breaches of the firearms law. For example, an unlicensed person caught with a loaded, unregistered sawn-off shotgun may be charged with unauthorised possession of a firearm, possession of an unregistered firearm, possession of a shortened firearm and possession of ammunition.

From the available offences, it is up to the Office of the Director of Public Prosecutions (ODPP) of the particular jurisdiction to choose the most appropriate charges to reflect the extent of offending behaviour, while ensuring the court has adequate sentencing powers to award an appropriate sentence for the criminality involved. The maximum penalty available for each offence is one of the considerations in this process. Determining the effects of these jurisdictional variations is a complex task.

Statutory penalties for firearm offences

The exact nature of individual state and territory firearm offences and their respective penalties are matters for each jurisdiction. While the Australian Government has constitutional power to regulate movement of firearms across Australian borders, relevant state and territory governments hold responsibility for regulating use, possession and sale of firearms in each jurisdiction. The states and territories have adopted various legislative schemes; there is therefore little uniformity in firearm offences and prescribed penalties among jurisdictions.

All jurisdictions have established an offence to possess or use a prohibited firearm or pistol unless authorised to do so by licence or permit. The penalties for illegal possession are detailed in Table 2 for comparative purposes. Some jurisdictions have additional penalties for illegal possession of multiple weapons, possession of unregistered firearms or possession by a prohibited or prescribed person, which are not included in the table. The maximum penalty for illegal possession of a firearm varies widely between jurisdictions, ranging from two to 14 years imprisonment. In some jurisdictions, the maximum penalty may be reduced on summary conviction.

Importation of firearms, including firearm parts, firearm accessories, firearm magazines, ammunition, and replica firearms, is restricted under the Customs (Prohibited Imports) Regulations 1956 (Cth). The maximum penalty for importing these goods without import approval is a fine not exceeding $275,000 or imprisonment for 10 years or both (see s 233BAB(5) *Customs Act 1901* (Cth)). Export of firearms and related goods, including firearm parts, accessories and ammunition, is controlled for both commercial exports and personal firearms under the Customs (Prohibited Exports) Regulation 1958 (Cth) Regulation 13E. To export firearms from Australia a permit must first be obtained from the Defence Trade Control and Compliance section within the Department of Defence. The maximum penalty for non-compliance with export controls on prohibited firearms is a fine not exceeding $275,000 or imprisonment for 10 years, or both (see s 233BAB(6) *Customs Act 1901* (Cth)).

Sentencing

While sentencing can be described as one of the most difficult judicial tasks, judges are guided by well-established sentencing principles contained in legislation and common law. Determination of the appropriate sentence is a matter for the individual judge exercising discretion within the parameters set by legislation, while being mindful of the sentencing principles established by previous appellate decisions. This process of determination is complicated by the complexity of the situation surrounding the offence, the subjective characteristics of the particular

Table 2: Penalties for unauthorised possession of a firearm, by jurisdiction		
Jurisdiction	**Category**	**Maximum penalty**
NSW	Prohibited firearm or pistol	Imprisonment for 14 years
	Firearm generally	Imprisonment for 5 years
Vic	Category A or B longarm	120 penalty units ($12,000) or 2 years imprisonment
	Category C or D longarm	240 penalty units ($24,000) or 4 years imprisonment
	Category E longarm	600 penalty units ($60,000) or 7 years imprisonment
	Longarm not category A, B, C, D or E	240 penalty units ($24,000) or 4 years imprisonment
	General category handgun	240 penalty units ($24,000) or 4 years imprisonment
	Category E handgun	600 penalty units ($60,000) or 7 years imprisonment
Qld	Category D, H or R weapon	300 penalty units ($22,500) or 7 years imprisonment
	Category C or E weapon	200 penalty units ($15,000) or 4 years imprisonment
	Category A, B or M weapon	100 penalty units ($7,500) or 2 years imprisonment
WA	Handgun or a prescribed firearm	Imprisonment for 7 years
	Any other firearm	Imprisonment for 5 years
SA	Prescribed firearm	$50,000 or imprisonment for 10 years
	Class C, D or H firearm	$35,000 or imprisonment for 7 years
	Any other firearm	$20,000 or imprisonment for 4 years
Tas	Any firearm	Fine not exceeding 50 penalty units ($50,000) or imprisonment for a term not exceeding 2 years, or both
NT	Category A or B firearm	200 penalty units ($22,000) or 12 months imprisonment
	Other firearms	400 penalty units ($44,000) or 2 years imprisonment
ACT	Prohibited firearm	200 penalty units ($20,000), 2 years imprisonment, or both
	Firearm generally	100 penalty units ($10,000), 12 months imprisonment, or both

Source: See identified legislation in Table 1

offender, the wide range of sentencing options available, and the need to balance various (and often competing) aims in sentencing.

Sentencing is often described as a 'balancing act' – not only between the legislative requirements and principles from previous case law, but also in reconciling the interests of the parties involved, such as the concerns of the victim and the best interests of the offender and the community in general. While the concept of balancing is an important part of judicial discretion, balancing different factors to determine a sentencing outcome appropriate in every case raises the issue of inconsistency in sentencing (Mackenzie 2005: 15).

The courts are faced with a vast array of firearm-related offences, from insecure storage offences to violent crimes, such as murder and armed robbery. Notwithstanding that even those crimes that appear less serious may have devastating consequences (such as failure to securely store a weapon), wide variations are likely to occur in the relative severity and nature of offences presented to the court (e.g. the type of weapon involved and the particular offending behaviour of the defendant). Differences in the 'objective seriousness' of firearm crimes is an important factor in sentencing that can make comparison of sentencing outcomes problematic.

However, when properly exercised, the judicial discretion available to sentencing judges is a strength (rather than a weakness) of our judicial system (Morgan 2002). No two cases are ever the same, and use of determinate sentencing schemes, such as sentencing grids or guidelines, do not necessarily produce fair outcomes (Mackenzie 2003: 289). Wide judicial discretion enables the sentencing court to consider a variety of factors and to tailor the sentence as considered appropriate for each case. The question is whether such discretion inevitably produces inconsistency of sentencing outcomes.

Sentencing principles

Australian courts have long recognised the need for general deterrence when dealing with firearms offences. In *R v Cromarty* [2004] NSWCCA 54, the NSW Court of Criminal Appeal allowed a Crown appeal involving possession of a large cache of prohibited and unregistered weapons. The court noted the principle and objects of the firearms legislation, and stated that the original sentencing judge appeared to have seriously understated the criminality involved in failing to register firearms and weapons. In the court's opinion, the gravity of these offences was such that they 'called for a sentence which unmistakably denounced the conduct, a sentence which would operate as a deterrent to likeminded offenders' [89] (Kirby J). Similarly, in *R v Howard* [2004] NSWCCA 348, the NSW Court of Criminal Appeal upheld a sentence for the offence of selling unauthorised pistols, noting the seriousness of the offence, and the objectives of general and personal deterrence in sentencing.

Other principles the judiciary consider when sentencing are 'totality' and the 'objective gravity of the offence'. In general terms, the sentence is required to be proportionate to the seriousness of the offence. The legislature has attempted to reflect this principle in prescribed penalties for firearms offences, by varying penalties according to the category of firearm involved, and invoking harsher penalties for prohibited or unregistered firearms. For example, NSW firearms legislation indicates that sale, purchase, possession or use of an unregistered firearm attracts a maximum penalty of imprisonment for 10 years for a prohibited firearm or pistol; and in any other case imprisonment for five years (see s 36(1) *Firearms Act 1996* (NSW)). However, the wide range of offending behaviour incorporated by firearm offences makes it difficult to compare the relative severity of offences.

In the United Kingdom, the courts have attempted to acknowledge differences in objective seriousness by developing a 'hierarchy' of seriousness of firearms offences. In The Queen v Avis (1998) 1 Cr. App. R 420, the Court of Appeal reviewed sentencing levels for firearms cases and acknowledged that some of the sentences imposed in the past for firearm offences had been too lenient. The court formulated four questions that are appropriate to be considered when sentencing a firearm offence:

- What sort of weapon was involved? Genuine weapons are more dangerous than imitations, loaded firearms than unloaded, and unloaded for which ammunition is available than those for which none is available. Possession of a firearm that has no lawful use, such as a sawn-off shotgun, is more serious than possessing a firearm capable of lawful use.
- What use, if any, was made of the firearm? The more prolonged, premeditated and violent the use, the more serious the offence is likely to be.
- With what intention, if any, did the defendant possess the firearm? The more prolonged, premeditated and violent the use, the more serious the offence is likely to be.
- What is the defendant's record? The seriousness of any firearm offence is increased if there is an established record of committing such offences or crimes of violence.

The NSW Court of Criminal Appeal noted a similar 'hierarchy' of firearm offences in order of escalating seriousness in *The Queen v Readman* NSWCCA (Unreported, Gleeson CJ, Samuels JA and Maxwell J, 9 April 1990):

> In the present case the gun the respondent used was loaded. As to this, this Court indicated in *R v Dicker*, 3 July 1980 that robberies can be viewed in escalating seriousness in terms of carrying a firearm, of a firearm being loaded, of the loaded firearm being discharged, and of discharge being deliberately aimed at a victim or important target.

While *The Queen v Readman* involved the specific offence of armed robbery, the principles discussed are nevertheless relevant to the sentencing of firearm offences in general. A further category to be added to the escalating categories of firearm offences may involve the type of firearms in question, and the place in which they are being possessed (NSW Sentencing Council 2004: 18). In *R v Deans* [2000] QCA 516, a case that involved negligent discharge of a firearm, the Queensland Court of Appeal acknowledged that the seriousness of an offence will vary according to the type of weapon used and the particular offending behaviour involved:

> The offence of unlawful wounding attracts a wide range of sentences because of the variety of circumstances in which it may be committed. The seriousness will often depend significantly on the nature of the weapon used. The use of a firearm will always be regarded as an aggravating circumstance [11] (Williams J, with Pincus AJ agreeing, Cullinane J dissenting).

In response to an increased incidence of armed robbery, the New South Wales Court of Criminal Appeal, in *The Queen v Henry* (1999) 106 A Crim R 149, developed a guideline judgment for sentencing of armed robbery offences. The statutory maximum penalty for armed robbery under s 97(1) of the *Crimes Act 1900* (NSW) is 20 years imprisonment. In justifying promulgation of a guideline judgment, the court referred to sentencing statistics that suggested both inconsistency and systematic leniency in sentencing practices for armed robbery, particularly in relation to imposition of non-custodial sentences [109–110] (Hulme J).

Although the *Henry* case involved use of a knife rather than a firearm, the guidelines that the court enunciated included consideration of the use of a weapon as one factor in determining the appropriate sentence for a 'typical' armed robbery. The judgment outlines 'typical' elements to guide sentencing options:

- young offender with no or little criminal history
- weapon like a knife, capable of killing or inflicting serious injury
- limited degree of planning
- limited, if any, actual violence but a real threat thereof
- victim in a vulnerable position, such as a shopkeeper or taxi driver
- small amount taken
- plea of guilty, the significance of which is limited by a strong Crown case.

In addition, Justice Hulme identified a number of circumstances particular to the offence of armed robbery and relevant to the sentencing exercise, including:

- nature of the weapon
- vulnerability of the victim
- position on a scale of impulsiveness/planning
- intensity of threat, or actual use, of force
- number of offenders
- amount taken
- effect on victim(s).

Under the guideline judgment, the 'typical' sentence for armed robbery is stated to be four to five years imprisonment. However, the presence of aggravating or mitigating factors will justify a sentence above or below this range. Use of firearms in an armed robbery would generally require more severe sentences, although wide variation in the factual circumstances of individual offences often makes application of guideline judgments highly problematic.

The purpose of a guideline judgment is to promote consistency in sentencing. However, guideline judgments on sentencing are not binding and the failure to sentence in accordance with a guideline is not itself a ground of appeal.

Firearm offences in Australia

The former Australasian Police Minister's Council instituted significant changes to firearm laws across Australia following the Port Arthur shootings in 1996. The resulting National Firearms Agreement constituted a national plan to regulate firearms, including restricting possession of military-style automatic and semi-automatic firearms and stringent limitations on firearms ownership. More recent amendments to Australian, state and territory legislation as part of the National Firearm Trafficking Policy Agreement (2002) and the National Agreement on Handguns (2002) have introduced new firearm offences and an increase in prescribed maximum penalties for such crimes (see the *Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002* (Cth); the *Firearms (Prohibited Pistols) Amendment Act 2003* (ACT), and the *Firearms and Crimes Legislation Amendment (Public Safety) Act 2003* (NSW)).

Extensive media attention paid to offences involving firearms gives the impression that such crimes occur frequently or are increasing (Williams & Poynton 2006). Recent data indicate that shooting offences in New South Wales (BOCSAR 2006; Williams & Poynton 2006) and nation wide (ABS 1994–1996; 1997–2007) are currently stable and in fact show

Table 3: Weapons used in recorded incidents of selected violent crimes, 2006						
	Murder		Attempted murder		Robbery	
Type of weapon	n	%	n	%	n	%
Firearm	46	16.5	61	25.3	1,192	6.9
Knife	94	33.7	85	35.3	3,721	21.5
Syringe	0	0.0	0	0.0	218	1.3
Bottle/glass	0	0.0	3	1.2	206	1.2
Bat/bar/club	6	2.2	6	2.5	606	3.5
Chemical	0	0.0	0	0.0	11	0.1
Other weapon	23	8.2	23	9.5	1,067	6.2
All weapons	*176*	*63.1*	*178*	*73.9*	*7,525*	*43.5*
No weapon recorded	103	36.9	63	26.1	9,759	56.5
Total	279	100.0	241	100.0	17,284	100.0

Source: ABS (1994–1996; 1997–2007)

a decreasing trend over the longer term. In 2006, knives were the most popular weapon involved in murder, attempted murder and armed robbery in Australia (Table 3), but firearms were the next most common, accounting for one-quarter of attempted murders, 17 percent of murders and seven percent of robberies (16% of armed robberies). The number of recorded firearm offences has been declining, with an 18 percent decrease in the number of people killed with a firearm and a 56 percent decrease in the number of robberies committed with a firearm over the period 1993–2006 (ABS 1994–1996; 1997–2007).

Sentencing of firearm offences

While sentencing may be the final outcome of a criminal proceeding, it is often the least understood and most criticised function undertaken by the courts (Mackenzie 2005: 1). Public perception of undue leniency in sentencing receives much media attention, particularly in relation to offences involving firearms. Calls for harsher and more consistent penalties for firearm offenders have raised concern over judicial discretion and the manner in which it is exercised.

Public perception of undue leniency, whether properly founded or not, reduces public confidence in the administration of justice. Public opinion plays an important role in sentencing policy and practice, although it may be that public dissatisfaction with the courts is fuelled by a lack of knowledge about sentencing patterns and practices (Hough & Roberts 2005). Research in the United States, the United Kingdom, Canada, Australia and New Zealand indicates that people have extensive misperceptions about the nature and extent of crime, about court outcomes, and about use of imprisonment and parole (Gelb 2006: 13). It is evident from the research that lack of knowledge about crime and the criminal justice system is a significant factor in perpetuating public misconceptions and misunderstanding (Gelb 2006: 14).

The NSW Sentencing Council (2004: 22) noted that perceptions of sentencing inconsistency may not consider the vast array of criminality presented by an offence, such as possession of a firearm, which may justify differences in penalties for the same offence. The broad scope of offending behaviour captured by the term 'firearm offence' ranges from very serious offences to minor infringements, which makes comparison of sentencing outcomes and quantities inherently problematic. It must also be noted that firearm offences cover a wide spectrum of criminal conduct and the most serious cases are usually dealt with in higher courts, where harsher penalties may be imposed. Further differences in the objective seriousness of the offence and the

subjective circumstances of the offender hamper efforts to assess whether sentencing of firearm offences is generally inconsistent or inadequate.

In late 2003, the NSW Attorney General commissioned the Hon Gordon Samuels, AC, CVO, QC, to conduct a review of firearm-related crime, to consider the merits of establishing a specialist gun court in New South Wales. The review considered current prosecution policies and guidelines of the NSW Director of Public Prosecutions and the NSW Police Force, as well as sentencing practices, for firearm-related crime. The review concluded that creation of a gun court in New South Wales was not necessary and that there 'is no evidence that the Courts are displaying undue leniency or inconsistency in the sentences imposed in gun related cases' (Samuels 2004: 26). The review found that the level of sentencing for persons found guilty of selected firearm offences in New South Wales (including unauthorised possession or use of a firearm, unregistered possession or use of a firearm, selling unauthorised firearms and shortening a firearm without a permit) remained stable or had somewhat increased over the period 2001 to 2002 (Samuels 2004: 12).

The Samuels inquiry in NSW found no evidence of undue leniency or inconsistency in sentences for firearms cases.

Jurisdictions do not maintain comprehensive data about the severity of sentences handed down for offences involving firearms. Court statistics provide some insight into the sentencing practices of each jurisdiction, although it is often difficult to isolate firearm offences from those not involving firearms. For example, the Australian Standard Offence Classification codes used by the Australian Bureau of Statistics (ABS) for reporting in the *Criminal courts Australia* series combine weapon and explosives offences in one category (Division 11, including prohibited and regulated weapons). This study specifically investigates penalties and sentencing for firearm-related offences across Australia and, where possible, analyses similar data for offences involving other weapons.

Firearm sentencing data analysis

Methodology

To examine firearm sentencing trends in Australia, various agencies were approached with requests for relevant data about firearm offences. These included state and territory police services, court services and statistical agencies. Where possible, data were collected relating to firearm offences between 2002 and 2004, including charge information, offender information, court outcomes and, where applicable, penalty and sentencing information. In some cases, data about other weapon offences could also be extracted for comparison. Table 4 outlines the relevant data sources and a brief description of the data provided.

Table 4: Data sources

Jurisdiction	Agency/department/ service	Data description
NSW	Bureau of Crime Statistics and Research	Firearm offences
	NSW Police, Firearms and Regulated Industries Crime Squad	Firearm offences
Vic	Department of Justice	Firearm offences
WA	Office of the Director of Public Prosecutions	Firearm and weapon offences
SA	Office of Crime Statistics and Research	Firearm and weapon offences
National	Office of the Commonwealth Director of Public Prosecutions	Firearm and weapon offences
	Australian Customs Service	Firearm and weapon offences

Note: Reference period 2002–04

While various agencies and departments from all jurisdictions were approached with requests for data provision, significant difficulties were encountered in obtaining relevant data. After consultation with various jurisdictions, it was understood that not all had the immediate capability needed to:

- record sentencing outcomes for all offenders in a single database accessible to the researchers
- extract relevant offences involving a firearm from the sentencing database in a convenient and timely manner.

Some data provided were not used in the final analysis; namely, data provided by the Office of the Commonwealth Director of Public Prosecutions and the NSW Police Force. This was due to doubling-up of information, as the data that these agencies provided could be matched to that provided by the ACS and the Bureau of Crime Statistics and Research (BOCSAR), respectively. In these cases, the larger data set was used for the analysis. Each data set was analysed individually using descriptive

statistics to address the research questions. See Appendix A for details and explanatory notes about each data set.

Data limitations

Only descriptive (univariate) statistics have been used in this report. More-complex data analysis was not attempted, due to the complexity and consistency of the data. Firstly, an offender may be sentenced more than once within the reporting period and this is not shown in the data. While individuals appearing in one instance for multiple offences were identified as one defendant, the same defendant may reappear in the data set at a later stage for another offence and this would not be identified as the same individual. Second, in most cases, details are not given as to the nature of the weapons for which offenders were sentenced. The definition of a firearm includes the full spectrum of firearm categories, ranging from an air rifle to a fully automatic handgun or sub-machine gun. The type of firearm involved in the offence is specified where possible, although these data are not routinely recorded in the data provided for this study.

While most firearm offences would come to the attention of police and the courts, a small minority might not be reported. For this reason, the data reported in this paper would be an underestimate of the actual occurrence of firearm crime, although trends in these offences should not be unduly affected (Williams & Poynton 2006:1). Data about caution or infringement notices received for firearm offences or firearm charges that do not proceed to prosecution could not be obtained from police services.

The data sources used may also affect the nature of the data analysed in the study. For example, Western Australian data were sourced from the Office of the Director of Public Prosecutions for Western Australia (ODPPWA), which only prosecutes offences heard in the higher (District and Supreme) courts. Firearm offences are usually only dealt with by this office where they are charged in conjunction with at least one other indictable offence. This explains low numbers in the Western Australian sample. Further data would need to be obtained from the Magistrates Court of Western Australia, which deals exclusively with summary offences, to gain a complete picture of firearm offences in that jurisdiction.

Sentences vary as a function of many potential variables, including offence type and jurisdiction. Further variables specific to the sentencing process, such as legislative framework, penalty structure, maximum and minimum statutory penalties, and court level can also influence the sentencing outcome, as do criminal justice system variables, including policing practices, rates of guilty pleas, and conviction rates. All such factors can potentially contribute to the sentencing outcome, and this may account for some perceived variability in sentencing practices. More specifically, variations in sentencing practices may be due to changes in firearm laws and sentencing legislation. In some instances, new offences were introduced or maximum penalties increased during the reporting period.

Some jurisdictional data sets contain only the principal offence charged, calculated on maximum penalty available for the offence, and in some cases only the principal penalty received, calculated using a penalty hierarchy. In addition, some collections record only one penalty for each offence convicted, while others may allow global sentencing where a single penalty may be imposed for multiple offences. This research examined only fines and imprisonment sentences in relation to penalty quantities. The number of penalties imposed in some data sets was too small for other sentencing dispositions to warrant further analysis.

In some jurisdictions, judges are able to take into account further offences when sentencing for the principle offence. In such cases (referred to as Form 1 matters in New South Wales), the court may take into account other offences to which the offender has admitted guilt, provided the offender agrees and the court considers it appropriate. An offender who adopts this procedure is entitled to expect the additional penalty to be significantly less than would have been imposed had separate charges been prosecuted (*R v AEM Snr; KEM; MM* [2002] NSWCCA 58). Thus, the final sentence imposed reflects not only the principal offence but also other offences taken into account, which may skew statistical results. Thus, sentences for similar

principal offences may appear more severe in jurisdictions where Form 1 procedures are available than those jurisdictions in which they are not. Conversely, it would be expected that offences taken into account on a Form 1 would receive lighter sentences than those prosecuted separately in other jurisdictions.

Significant jurisdictional differences exist across Australia, both in terms of what information is collected by each state or territory and the quality of the data. While some collections may be more relevant than others to this project, variability in data definitions and collection methods means consistency and reliability across jurisdictions may be compromised. There are also significant differences between jurisdictions in the way court systems are structured and how matters are allocated between court levels. Caution should be exercised in interpreting such statistical material, and in making comparisons between states and territories. As stated in a recent sentencing review by the ACT Department of Justice and Community Safety (2002: 7):

> While statistics can provide a useful overview of sentencing practices, they do not reflect the way in which sentencing decisions are made, or the reasons underpinning particular decisions or sentencing trends.

This research aims to develop an understanding of sentencing of firearm offences and to assess general penalty trends in each jurisdiction. It does not attempt to explain the exercise of judicial discretion or infer why a particular sentence was imposed, although relevant factors in sentencing are considered in the case study sample investigating aggravating matters.

As the researchers were unable to examine details of the individual offence and the circumstances of the particular offender, this study is constrained by the relevant sentencing data available at the time of data collection. From the data and statistics gathered for this report, the researchers were unable to assess the actual material tendered in cases themselves as to the objective seriousness of the offence and the particular circumstances of the offender. As well, the sentence, as pronounced in court, is not necessarily the same as the actual sentence served, due to remission, parole and other early-release schemes (Morgan 2002: 31). Further information and more comprehensive data sets would be needed to draw any final conclusions as to current sentencing practice.

Bureau of Crime Statistics and Research data

The BOCSAR is a statistical and research agency within the NSW Attorney General's Department (see http://www.bocsar.nsw.gov.au).

Type of firearm offences brought before the courts

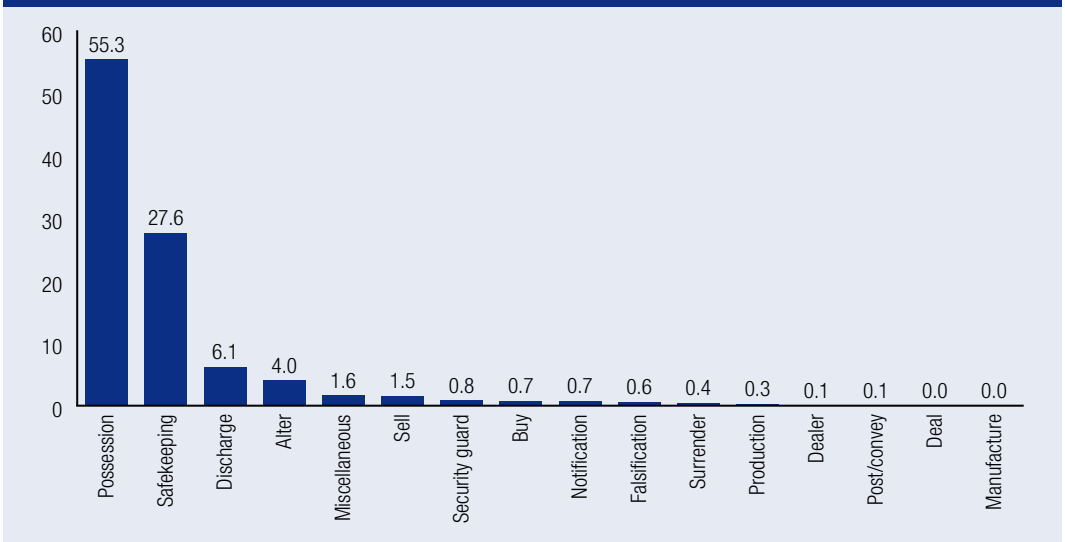
Most firearm offences charged in New South Wales related to unauthorised possession of firearms or ammunition (55%, n=4,391), while just over one-quarter related to safekeeping (27%, n=2,189) (Figure 1). Discharge offences accounted for six percent of all charges (n=486) and alteration offences accounted for approximately four percent of charges (n=317). Offences concerning dealers

Table 5: Outcomes for firearm charges, New South Wales, 2002–04

Outcome	n	%
Accused deceased	24	0.3
Adjourned to Drug Court	6	0.1
Arrest warrant issued	51	0.6
Dismissed after hearing	300	3.8
Dismissed through *Mental Health (Criminal Procedure) Act 1990 No. 10*	85	1.1
Non-appearance of parties	6	0.1
Not guilty	37	0.5
Offences taken into account	67	0.8
Plea accepted in full discharge	10	0.1
Proven guilty	6,512	82.1
Referred to Mental Health Review Tribunal	1	0.0
Remitted to local court	16	0.2
Withdrawn	821	10.4
Total	7,936	100.0

Source: BOCSAR firearm sentencing data 2002–2004 [computer file]

Figure 1: Firearm charges by offence type, New South Wales, 2002–04 (percent)



Note: Offence types of surrender, production, dealer, post/convey, deal and manufacture account for less than one percent of all firearms charges, and hence are difficult to distinguish on this chart

Source: BOCSAR firearm sentencing data 2002–2004 [computer file]; n=7,936

(n=11) and security guards (n=67) accounted for less than two percent of all charges. Only four charges related to manufacturing or dealing in firearms.

Outcomes for firearm offences brought before the courts

Of the total firearm charges brought to higher and magistrates courts in New South Wales, 82 percent were proven guilty (by verdict, judge or guilty plea within trial) and less than one percent were found not guilty (by direction or verdict) (Table 5). Approximately 10 percent of charges were withdrawn, either by Crown application or no evidence offered. Less than four percent of charges were dismissed after hearing and approximately one percent of charges were dismissed according to the *Mental Health (Criminal Procedure) Act 1990* (NSW). Less than one percent of charges were adjourned to the Drug Court.

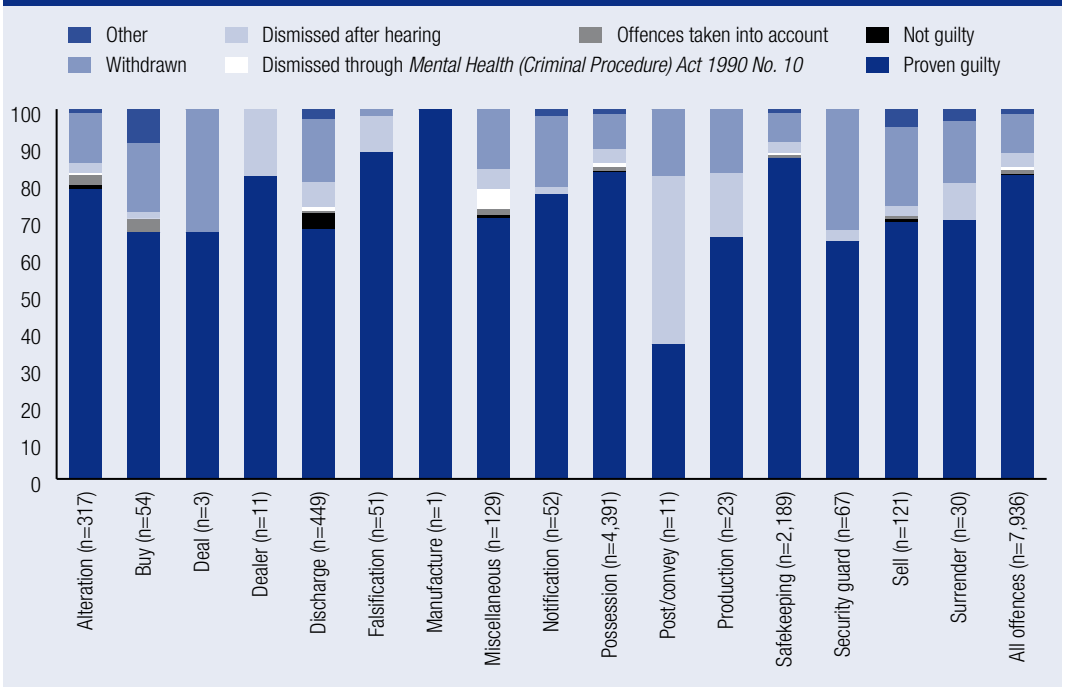
Figure 2 shows the variation in outcomes between different offence types, although caution must be applied due to small numbers for some offence categories. Most offences charged were proven guilty. The next-most common scenario was withdrawal of charges.

Penalties imposed for proven firearm offences

Of the 6,755 penalties for proven firearm offences in New South Wales, the most frequently imposed penalty was a fine (43%, n=2,892), followed by imprisonment (13%, n=867) (Table 6). A further 12 percent of charges proven guilty were dismissed with no conviction (n=819). Seven percent were discharged with recognisance (n=490), and 11 percent were subject to a good behaviour bond, with or without supervision (n=250 and n=476, respectively). Four percent of charges had a suspended sentence imposed (n=249), with approximately half of these sentences not subject to supervision (n=126). Community service orders were imposed for two percent of charges (n=143) and periodic detention orders for one percent of charges (n=101). Less than five percent of charges proven guilty received no penalty (n=339). Of these, 67 were offences taken into account and 10 were pleas accepted in full discharge of indictment.

Across offence types, distribution of penalties varied (although the small numbers of some offence types make meaningful comparisons difficult). Imprisonment was the commonest penalty for sales offences, discharge offences, and buying and alteration

Figure 2: Outcomes for firearm charges by offence type, New South Wales, 2002–04 (percent)



Note: 'Other' includes accused deceased, arrest warrant issued, remitted to local court, plea accepted in full discharge, adjourned to drug court, non-appearance of parties, and referred to Mental Health Tribunal

Source: BOCSAR firearm sentencing data 2002–04 [computer file]; n=7,936

Table 6: Penalties imposed for proven firearm offences, New South Wales, 2002–04

Penalty	n	%
Community service order	143	2.1
Discharged with recognisance	490	7.3
Dismissed no conviction	819	12.1
Fine	2,892	42.9
Good behaviour bond (s 9) [a]	476	7.1
Good behaviour bond with supervision (s 9) [a]	250	3.7
Imprisonment	867	12.9
No penalty	339	4.9
Other	129	1.9
Periodic detention	101	1.5
Suspended sentence (s 12) [a]	126	1.9
Suspended sentence with supervision (s 12) [a]	123	1.8
Total	6,755	100.0

a: *Crimes (Sentencing Procedure) Act 1999*

Note: Proven offences include those proven guilty, offences taken into account or plea accepted in full discharge of indictment

Source: BOCSAR firearm sentencing data 2002–04 [computer file]

offences, but was not used for manufacturing or dealing offences. Fines were less likely to be imposed for sales offences when compared with other offences.

Penalty quantities imposed for proven firearm offences

In New South Wales, most fines were imposed for possession offences (58%, n=1,669), followed by safekeeping offences (33%, n=964) (Table 7). The most severe fines, of $5,000, were imposed for possession of an unregistered prohibited firearm (n=1) and possession of a prohibited firearm (n=1), while most safekeeping offences attracted fines of $500 or less (86%, n=833). Ninety-four percent of offences relating to security guard employers received fines of $1,000 or less (n=29), although two offences received fines of $2,000 or more (for failure to keep a register of disposal of firearms and failure to keep a register of authorised firearms).

Table 7: Fines imposed by firearm offence type, New South Wales, 2002–04

Offence type	n	Minimum ($)	Maximum ($)	Mean ($)
Alteration	51	50	2,000	595
Buy	6	100	2,000	567
Deal	0	–	–	–
Dealer	2	500	1,500	1,000
Discharge	70	1	3,000	424
Falsification	31	100	2,500	615
Manufacture	1	1,000	1,000	1,000
Miscellaneous	19	100	1,500	582
Notification	26	50	1,000	298
Possession	1,669	20	5,000	368
Post/convey	0	–	–	–
Production	8	150	500	356
Safekeeping	964	10	4,400	390
Security guard	31	10	3,000	639
Sell	3	100	1,000	400
Surrender	11	50	600	341
Total	2,892	–	–	–
Mean	–	–	–	388

– = Not applicable

Source: BOCSAR firearm sentencing data 2002–04 [computer file]

The minimum and maximum fine amounts imposed for each offence type are shown in Table 7. Care must be taken when interpreting the mean fine amount due to the small sample sizes within offence categories. However, the mean fine amount imposed for possession offences appeared to be only slightly lower than those imposed for safekeeping offences ($368 vs $390). This may be because more serious possession offences are often sentenced to more severe penalties, such as imprisonment. Those offences for which fines are imposed represent less serious possession offences.

Most imprisonment sentences were imposed for possession offences (56%, n=483), followed by discharge offences (13%, n=117), safekeeping offences (10%, n=88), alteration offences (9%, n=80) and sales offences (7%, n=65). Five percent of all imprisonment sentences imposed were for one month or less in duration (n=46), and of these, were mainly for possession of ammunition (28%, n=13), possession of a general firearm (13%, n=6) or safekeeping of a general firearm (13%, n=6).

The most-severe imprisonment sentences (more than 60 months) were imposed for discharge and sales offences, in particular shooting at a person with intent to cause grievous bodily harm (n=4), discharging a firearm with intent to resist/prevent apprehension or detention (n=2) and selling more than three firearms within 30 days (n=1) (Table 8). While caution must be exercised when interpreting means, discharge offences and sale offences appeared to have the longest mean sentence length (21 months and 20 months, respectively). In contrast, possession offences had an average sentence length of 10 months, while safekeeping offences had an average sentence length of only five months.

Table 8: Imprisonment sentences by firearm offence type, New South Wales, 2002–04

Offence type	n	Minimum (months)	Maximum (months)	Mean (months)
Alteration	80	1	36	8
Buy	13	1	15	7
Deal	0	–	–	–
Dealer	0	–	–	–
Discharge	117	1	96	21
Falsification	2	6	12	9
Manufacture	0	–	–	–
Miscellaneous	17	2	12	7
Notification	0	–	–	–
Possession	483	1	60	10
Post/convey	0	–	–	–
Production	0	–	–	–
Safekeeping	88	1	12	5
Security guard	0	–	–	–
Sell	65	2	63	20
Surrender	2	6	9	8
Total	867	–	–	–
Mean	–	–	–	11

– = Not applicable

Source: BOCSAR firearm sentencing data 2002–04 [computer file]

Department of Justice data

The Department of Justice, Victoria, encompasses police; courts; prisons; emergency services; regulation of gaming, racing, liquor licensing and trade measurement; and victims' services (see http://www.justice.vic.gov.au).

Type of firearm offences brought before the courts

In Victoria, approximately three-quarters (76%, n=1,460) of charges related to possession, carriage or use of a firearm (Table 9). Fourteen percent related to storage offences (n=268) and nearly four percent involved ammunition offences (n=75). Less than one percent of charges related specifically to dealers and/or collectors (n=13).

Table 9: Firearm charges by offence type, Victoria, 2002–04

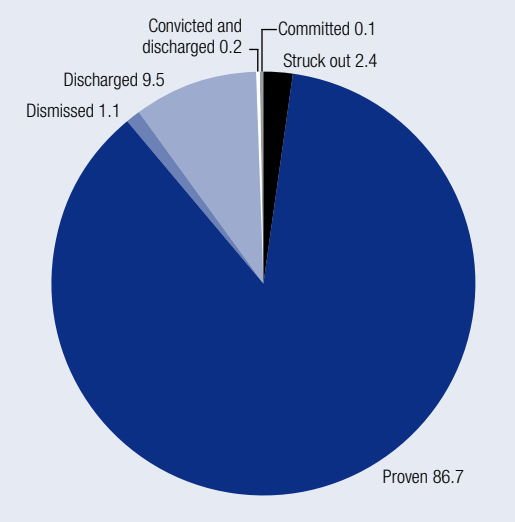
Offence charged	n	%
Acquire	2	0.1
Administration	42	2.2
Alteration	7	0.4
Ammunition	75	3.9
Collector	4	0.2
Deal/dispose	11	0.6
Dealer	9	0.5
Possess/carry/use	1,460	76.0
Safety	42	2.2
Storage	268	14.0
Unknown	1	0.1
Total	1,921	100.0

Source: Department of Justice, Victoria, firearm sentencing data 2002–04 [computer file]

Outcomes for firearm offences brought before the courts

In Victoria, most offences (87%, n=1,666) were proven and proceeded to sentencing (Figure 3). Ten percent of charges were discharged without conviction (n=183) and a further one percent was dismissed (n=22). Only three charges brought against a defendant resulted in a conviction from which the defendant was discharged. While 'proven' was the primary outcome for all offence types, one-third of charges relating to dealers were struck out and around 20 percent for storage and safety offences were discharged (Figure 4).

Figure 3: Outcomes for firearm charges, Victoria, 2002–04 (percent)



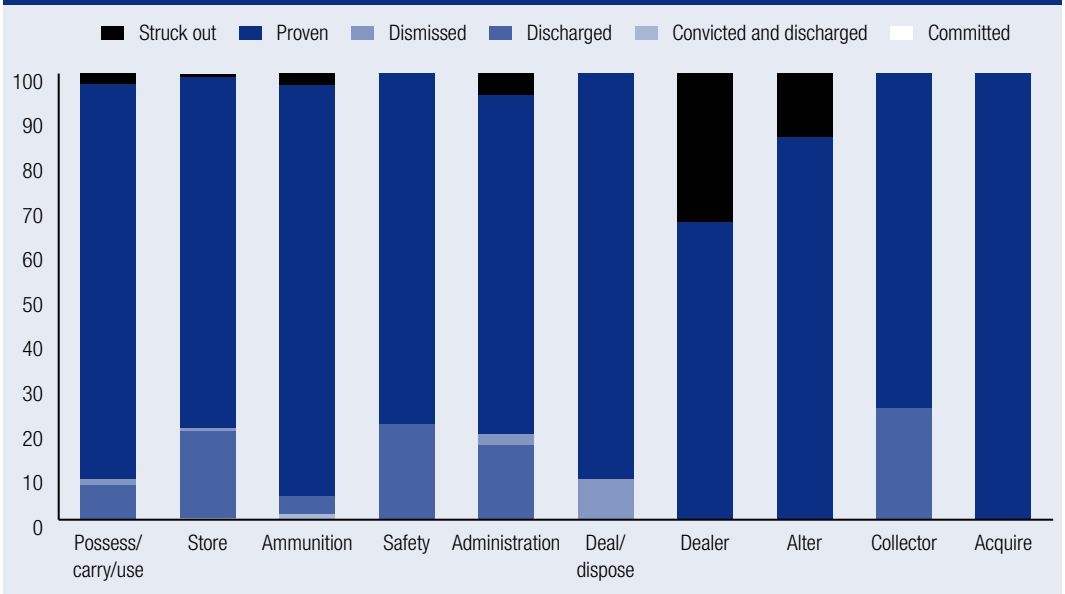
Source: Department of Justice, Victoria, firearm sentencing data 2002–04 [computer file]; n=1,921

Penalties imposed for proven firearm offences

The most frequently imposed penalty for proven firearm offences in Victoria was a fine (48%, n=795) (Table 10). Seventeen percent of recorded penalties related to an adjourned undertaking (n=281), and a further 17 percent were sentences of imprisonment (n=284). Only one offence was recorded with no penalty being imposed by the court.

While fines were the most frequently imposed penalty across all offences, they were less common in dealing/disposal offences and alteration offences. Adjourned undertakings were not received as penalties for acquisition or alteration offences. Imprisonment was used as a penalty mainly for acquisition, alteration, dealing/disposal, and possession/carriage/use offences. Imprisonment was less frequently used for administrative, safety, storage and ammunition offences, and was not used at all for dealer and collector offences, which only recorded fines or adjourned undertakings as

Figure 4: Outcomes for firearms charges by offence type, Victoria, 2002–04 (percent)



Note: Excludes one charge where offence type was unknown/missing and one single outcome of 'committed'

Source: Department of Justice, Victoria, firearm sentencing data 2002–04 [computer file]; n=1,921

Table 10: Penalties imposed for proven firearm offences, Victoria, 2002–04

Penalty	n	%
Adjourned diversion plan	182	10.9
Adjourned undertaking	281	16.9
Community-based order	52	3.1
Detention	5	0.3
Fine	795	47.7
Good behaviour bond	15	0.9
Imprisonment	284	17.1
Intensive correction order	19	1.1
No sentence imposed	1	0.1
Other order	10	0.6
Probation	3	0.2
Suspended sentence	17	1.0
Youth training centre	2	0.1
Total	1,666	100.0

Note: Adjourned undertaking may be with or without conviction; fine includes fine and aggregate fine; 'other order' includes non-custodial supervision order, hospital security order, and combined custody and treatment order; and suspended sentence may be partially or wholly suspended

Source: Department of Justice, Victoria, firearm sentencing data 2002–04 [computer file]

penalties. Community-based orders were most often used as a penalty for dealing/disposal offences, safety offences and possession/carriage/use of a firearm.

Penalty quantities imposed for proven firearm offences

While most fines imposed were less than $1,000 (77%, n=611) (Table 11), two dealer offences received fines of up to $5,000 (dealer failing to store a Category A/B longarm correctly). The maximum fine amount imposed was $15,000, which was an aggregate fine imposed for four firearm offences, including possession of an unregistered handgun without a licence. The mean fine amount for possession/carriage/use offences was $824, only slightly lower than the average fine amount imposed for storage offences ($876).

Most sentences received, regardless of offence type, were for 12 months or less (90%, n=181) (Table 12), but some possession/carriage/use offences (e.g. use of a firearm to resist or prevent arrest) received sentences of up to five years (60 months). No sentences of imprisonment were imposed for offences involving firearms collectors, firearms dealers or offences relating to dealing/disposal of firearms.

Table 11: Fines imposed by firearm offence type, Victoria, 2002–04

Offence type	n	Minimum ($)	Maximum ($)	Mean ($)
Acquire	1	1,000	1,000	1,000
Administrative	20	50	3,000	759
Alter	2	800	1,000	900
Ammunition	54	50	4,000	468
Collector	2	250	400	325
Deal/dispose	2	500	600	550
Dealer	5	50	5,000	2,360
Possess/ carry/use	570	20	15,000	824
Safety	15	200	3,000	970
Storage	124	20	15,000	876
Total	795	–	–	–
Mean	–	–	–	817

– = Not applicable

Source: Department of Justice, Victoria, firearm sentencing data 2002–04 [computer file]

Table 12: Imprisonment sentences imposed by firearm offence type, Victoria, 2002–04

Offence type	n	Minimum (months)	Maximum (months)	Mean (months)
Acquire	1	<1	<1	<1
Administrative	1	1	1	1
Alter	2	1	6	4
Ammunition	4	<1	12	5
Collector	0	–	–	–
Deal/dispose	0	–	–	–
Dealer	0	–	–	–
Possess/ carry/use	184	<1	60	7
Safety	1	12	12	12
Storage	8	<1	18	4
Total	201	–	–	–
Mean	–	–	–	7

– = Not applicable

Source: Department of Justice, Victoria, firearm sentencing data 2002–04 [computer file]

Office of Crime Statistics and Research data

The South Australian Office of Crime Statistics and Research (OCSAR) was established within the Attorney-General's Department in 1978 to monitor and report on crime trends within that state (see http://www.ocsar.sa.gov.au).

Type of firearm/weapon offences brought before the courts

Over four in 10 (44%, n=1,702) firearm offences charged in South Australia related to possession and almost one-third (29%, n=1,105) related to safety/storage offences (Table 13). Firearm usage offences, such as carrying or discharging a firearm, accounted for 18 percent of all firearm charges (n=687). Dealer offences, such as failure of a licensed firearm dealer to keep the prescribed

Table 13: Finalised offences by offence type and weapon involvement, South Australia, 2002–04

Offence type	Firearms	Other weapons	Total
Administrative	134 (26)	0	134 (26)
Ammunition	90 (15)	0	90 (15)
Buy	17 (5)	0	17 (5)
Dealer	57 (4)	0	57 (4)
Marking	20 (0)	0	20 (0)
Possession	1,702 (813)	698 (304)	2,400 (1,117)
Resist	21 (9)	0	21 (9)
Safety/storage	1,105 (140)	0	1,105 (140)
Supply	31 (14)	0	31 (14)
Usage	687 (238)	3,319 (1,266)	4,006 (1,504)
Total	3,864 (1,264)	4,017 (1,570)	7,881 (2,834)

Note: Excludes three hunting offences where weapon involvement was unknown. Numbers in brackets show cases where a firearm/weapon offence was the major charge for that case, determined on the basis of the maximum statutory penalty associated with each offence with which the defendant is charged.

Source: OCSAR firearm and weapon sentencing data 2002–04 [computer file]

records or failure to secure firearms by an approved method, accounted for approximately one percent of charges (n=57), as did supply offences (e.g. supplying a firearm to someone without a permit) (n=31). Of offences involving other weapons (n=4,017), approximately 83 percent involved use of a weapon (n=3,319) and 18 percent possession of a weapon (n=698).

Outcomes for firearm/weapon offences brought before the courts

In South Australia, the majority of charges were proven guilty (with or without conviction: 72%, n=5,654) (Table 14), with less than 20 percent of those proven guilty not receiving a conviction (18%, n=1,042). One-quarter (25%, n=1,991) of all charges were withdrawn or dismissed, and fewer than one percent (n=16) were recorded with an outcome of not guilty (15 were found not guilty by virtue of mental impairment under s 269 *Criminal Law Consolidation Act 1935* (SA)). Six charges were withdrawn and referred to a mental-health diversion program.

Of the 15 defendants found not guilty by virtue of mental impairment, 11 were conditionally released and subject to a supervision order, one was subject to a detention supervision order and three were unconditionally released. The detention supervision order and two of the unconditional release orders related to offences involving use of a firearm.

Penalties imposed for proven firearm/weapon offences

Across all charges proven guilty in South Australia (n=5,654, including all those found guilty with conviction, found guilty with no conviction, and those found proven/agreed), 9,593 penalties were imposed. However, only 39 percent of offences proven guilty (n=2,224) indicated the firearm/weapon offence was the major charge (1,019 firearms charges and 1,205 weapons charges). Of these, over one-third of offences (36%, n=805) had a global penalty handed down (586 firearms offences and 219 weapons offences). Note that more than one penalty may be imposed for each offence.

Table 14: Outcomes of charges by weapon involvement, South Australia, 2002–04

	Firearms		Other weapons		All weapons	
Outcome	n	%	n	%	n	%
Accused deceased	6	0.2	5	0.1	11	0.1
Committed for sentence	23	0.6	8	0.4	31	0.4
Committed for trial	115	3.0	30	0.7	145	1.8
Dismissed/discharged	294	7.6	287	7.1	581	7.4
Guilty – conviction	2,379	61.6	2,233	55.6	4,612	58.5
Guilty – no conviction	455	11.8	587	14.6	1,042	13.2
No action	9	0.2	18	0.4	27	0.3
Not guilty	0	0.0	1	0.0	1	0.0
Not guilty (s 269) [a]	4	0.1	11	0.3	15	0.2
Withdrawn	579	15.0	831	20.7	1,410	17.9
Withdrawn – diversion	0	0.0	6	0.1	6	0.1
Total	3,864	100.0	4,017	100.0	7,881	100.0

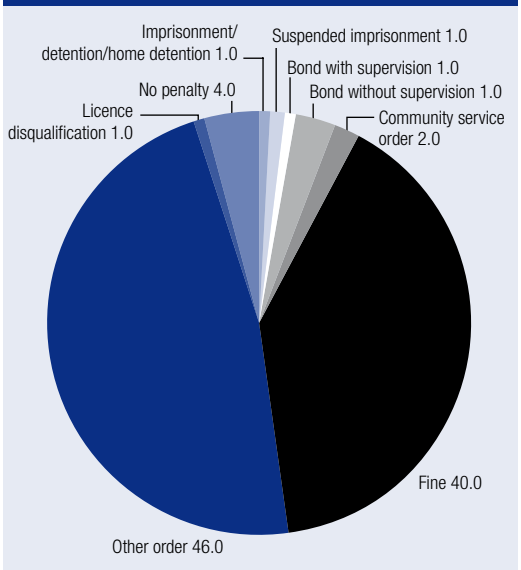
a: *Criminal Law Consolidation Act 1935*

Note: Excludes three hunting offences where weapon involvement was unknown. Categories: guilty includes all those convicted and all those found proved/agreed; withdrawn includes all charges withdrawn by prosecution application; dismissed/discharged includes dismissed at trial or dismissed for want of prosecution (no evidence tendered), and all those discharged from prosecution or found no case to answer.

Source: OCSAR firearm and weapon sentencing data 2002–04 [computer file]

For offences where a firearm/weapons charge was the major charge convicted, 3,536 penalties were handed down. Other orders (including restitution, confiscation and restraining orders) were the most frequent penalty imposed (47%, n=1,621), followed by fines (40%, n=1,429) (Figure 5). Other orders were usually imposed in combination with other penalties. Sentences of imprisonment and suspended imprisonment were imposed in one percent of charges (n=35 each). Only four percent (n=144) of charges proven guilty attracted no penalty.

Figure 5: Penalties imposed for charges proven guilty, South Australia, 2002–04 (percent)



Note: Only includes penalties where the major charge convicted was a firearm/weapon offence. Proven guilty includes all those found guilty with conviction, found guilty with no conviction, and those found proven/agreed.

Source: OCSAR firearm and weapon sentencing data 2002–04 [computer file]; n=3,536

Penalty distributions were fairly consistent across weapon involvement, given the initial numbers of offences charged (Figure 6). For example, comparisons between penalties imposed for weapon use and firearm use appear fairly similar, although fines were imposed for a larger percentage of firearm usage offences (55%, n=148) compared with weapon usage offences (35%, n=526). Other orders were more likely to be imposed for weapon usage (50%, n=75) and possession offences (53%, n=220) than for firearm usage (28%, n=75) or possession offences (44%, n=490). No penalty was imposed for approximately nine percent of firearm usage offences (n=23), compared with five percent of weapon usage offences (n=76). Comparisons across offence types are somewhat difficult given the different sample sizes in each category.

Penalty quantities imposed for proven firearm/weapon offences

Fines were imposed for approximately 40 percent of all major firearm/weapon charges proven guilty (n=1,429), with less than half indicating that a global penalty was imposed (45%, n=641). Over one-third of fines were imposed for use of other weapons (37%, n=526) and just under one-third for possession of firearms (31%, n=449) (Table 15). The maximum fine imposed was $2,500 (n=1) for possession of a firearm; the minimum was $15 (n=1) for carrying an offensive weapon.

Table 15: Fines imposed by offence type and weapon involvement, South Australia, 2002–04

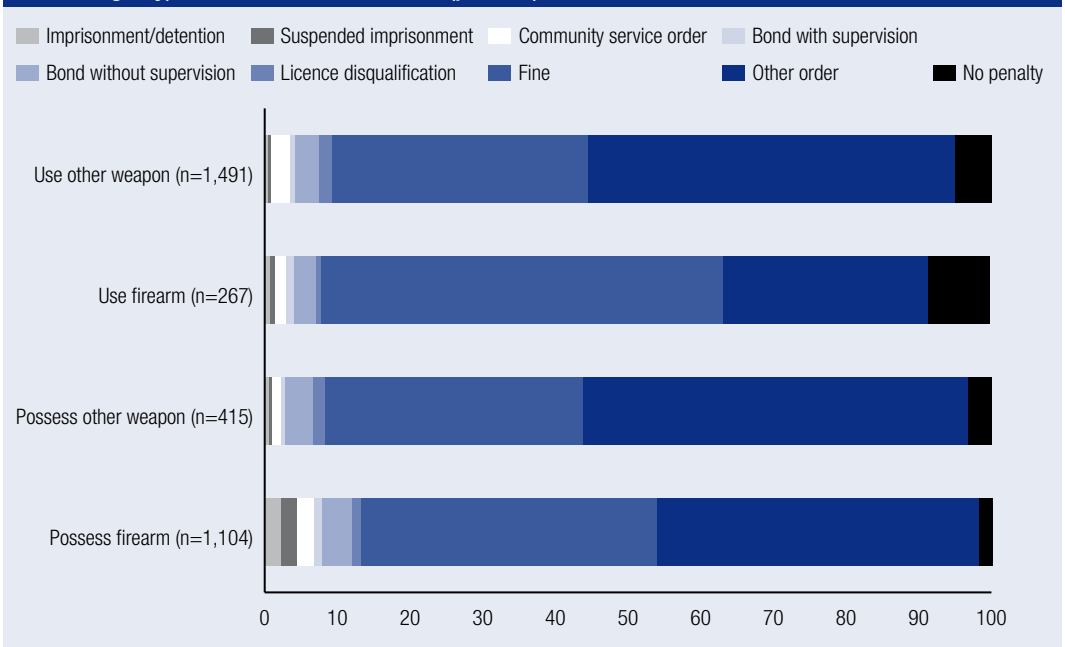
Offence type	n	Minimum ($)	Maximum ($)	Mean ($)
Administration	20	50	800	272
Ammunition	8	70	500	181
Buy	3	240	800	530
Dealer	2	150	200	175
Possess firearm	449	30	2,500	346
Possess other weapon	147	40	1,000	232
Resist	2	50	75	63
Safety	112	30	1,500	231
Supply	12	100	1,200	263
Use firearm	148	40	1,500	256
Use other weapon	526	15	1,000	186
Total	1,429	–	–	–
Mean	–	–	–	254

– = Not applicable

Note: Only includes fines where the major charge convicted was a firearm/weapon offence

Source: OCSAR firearm and weapon sentencing data 2002–04 [computer file]

Figure 6: Penalties imposed by offence type and weapon involvement (for selected offences proven guilty), South Australia, 2002–04 (percent)



Note: Only includes penalties where the major charge convicted was a firearm/weapon offence. Proven guilty includes all those found guilty with conviction, found guilty with no conviction, and those found proven/agreed.

Source: OCSAR firearm and weapon sentencing data 2002–04 [computer file]; n=3,277

Although caution should be exercised when interpreting the means of small sample sizes, offences of buying a firearm recorded the highest mean fine of $530, followed by offences involving possession of a firearm ($346) (Table 15). The average fine imposed for possession of a firearm was greater than the average fine imposed for possession of other weapons ($232). Use of a firearm reported a much higher mean fine than use of another weapon ($256 for use of a firearm compared with $186 for use of other weapons). Administrative offences recorded a mean fine of $272, including failure to register a firearm in the name of the owner, failure to notify firearm lost/stolen/destroyed, and providing false or misleading information (n=20).

Where the major charge convicted was a firearm/weapon offence, an imprisonment sentence (including detention or home detention) was imposed in less than one percent of all penalties handed down (n=35). Of these, 28 were global penalties. Four defendants who received sentences of imprisonment had their sentence suspended (all firearm possession offences). Sentences of imprisonment were most frequently imposed for possession offences involving firearms (n=24) (Table 16). The most severe sentence of 33 months was a global penalty imposed for possession of a firearm to commit an offence, with additional minor charges of possession/use of a dangerous article (other weapon). One firearm safety offence received an imprisonment sentence of 21 months for failure to secure a prescribed firearm.

The average imprisonment sentence for possession of a firearm (11 months) and possession of a weapon (eight months) was similar, as was the average imprisonment sentence for use of a firearm (eight months). However, the average sentence imposed for use of another weapon was only one month. Caution must be exercised in interpreting these means because of the small numbers in some of the offence groups.

Table 16: Imprisonment sentences imposed by offence type and weapon involvement, South Australia, 2002–04

Offence type	n	Minimum (months)	Maximum (months)	Mean (months)
Administration	0	–	–	–
Ammunition	0	–	–	–
Buy	0	–	–	–
Dealer	0	–	–	–
Marking	0	–	–	–
Possess firearm	24	<1	33	11
Possess other weapon	2	7	10	8
Resist	0	–	–	–
Safety	1	21	21	21
Supply	0	–	–	–
Use firearm	2	3	13	8
Use other weapon	6	<1	4	1
Total	35	–	–	–
Mean	–	–	–	9

– = Not applicable

Note: Only includes sentences where the major charge convicted was a firearm/weapon offence

Source: OCSAR firearm and weapon sentencing data 2002–04 [computer file]

Office of the Director of Public Prosecutions data

The ODPPWA is the independent prosecuting authority for Western Australia, responsible for prosecuting serious offences committed against that state's criminal law (see http://www.dpp.wa.gov.au).

Type of firearm/weapon offences brought before the courts

In Western Australia, nearly half of all firearm/weapon offences charged related to possession offences (45%, n=208), with 69 percent of these involving other weapons (n=144) and 31 percent involving firearms (n=64) (Table 17). The next most common offence was usage (26%, n=117), of which most involved other weapons (92%, n=108) and the remaining charges related to firearm offences.

Outcomes for firearm/weapon offences brought before the courts

Over 90 percent (n=428) of firearm and weapon-related charges in Western Australia were proven guilty and subject to sentencing, including those that entered a plea of guilty and those convicted by trial (Table 18). Where the prosecution withdrew was less than two percent (n=14) of charges (nolle prosequi). Less than one percent of charges were acquitted (n=8).

Table 17: Charges by offence type and weapon involvement, Western Australia, 2002–04

	Firearms		Other weapons		All weapons	
Offence type	n	%	n	%	n	%
Acquire	4	1.9	0	0.0	4	0.9
Alcohol/drugs	3	1.4	0	0.0	3	0.7
Alter	6	2.9	0	0.0	6	1.3
Other	8	3.9	0	0.0	8	1.7
Possession	64	30.9	144	57.1	208	45.3
Safety/storage	18	8.7	0	0.0	18	3.9
Sell/deliver	95	45.9	0	0.0	95	20.7
Use	9	4.3	108	42.9	117	25.5
Total	207	100.0	252	100.0	459	100.0

Source: ODPPWA firearm and weapon sentencing data 2002–04 [computer file]; n=459

Table 18: Charges by offence type and weapon involvement, Western Australia, 2002–04

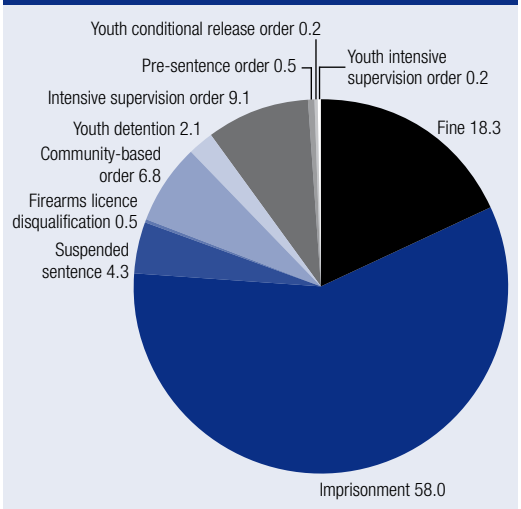
	Firearms		Other weapons		All weapons	
Outcome	n	%	n	%	n	%
Acquitted	2	1.0	6	2.4	8	1.7
Bench warrant issued	0	0.0	1	0.4	1	0.2
Convicted and sentenced	0	0.0	4	1.6	4	0.9
Convicted on some charges	1	0.5	1	0.4	2	0.4
Death certificate presented	0	0.0	2	0.8	2	0.4
Ineligible for Drug Court	0	0.0	1	0.4	1	0.2
No sentence imposed	0	0.0	2	0.8	2	0.4
Nolle prosequi	6	2.9	8	3.2	14	3.1
Plea of guilty	0	0.0	1	0.4	1	0.2
Sentenced	198	95.6	226	89.7	424	92.4
Total	207	100.0	252	100.0	459	100.0

Source: ODPPWA firearm and weapon sentencing data 2002–04 [computer file]

Penalties imposed for proven firearm/weapon offences

In Western Australia, the most frequent penalty was imprisonment (59%, n=254), followed by a monetary fine (19%, n=80) and an intensive supervision order (9%, n=40) (Figure 7). Information about the penalty was unknown for 18 offences, and only two offences (0.4%) received no penalty. Most sentenced charges (n=415, including those who pleaded guilty or were convicted and sentenced, excluding those with unknown penalties) were sentenced to one penalty (93%, n=389), although six percent had more than one penalty imposed (n=24). Less than one percent had no penalty imposed (n=2).

Figure 7: All penalties imposed, Western Australia, 2002–04 (percent)



Note: Excludes 18 cases in which information relating to penalties was missing

Source: ODPPWA firearm and weapon sentencing data 2002–04 [computer file]; n=440

An intensive supervision order (n=14) was the most common penalty for offences involving use of a firearm, followed by imprisonment (n=8, in which one of the sentences of imprisonment was suspended). Firearm possession offences that received penalties of imprisonment (n=51) were suspended in approximately 10 percent of cases (n=5). Imprisonment sentences were also suspended for a number of other weapon offences, mostly for usage offences (n=10) rather than possession (n=2).

A fine was the most frequently imposed penalty (n=9) for firearm safety/storage offences, followed by imprisonment (n=7) (Figure 8). Suspended sentences were used mostly in relation to weapon usage offences (n=10) and offences involving possession of a firearm (n=5). Community-based orders were only imposed for weapon usage offences (n=19), and offences involving possession of a weapon (n=9) or firearm (n=2). For 'other' offences, the most frequent sentence imposed was a fine (n=8); however, one penalty of a firearm licence disqualification was received.

Penalty quantities imposed for proven firearm/weapon offences

While most fines imposed across all offences were $200 or less (61%; n=49), offences involving use of a weapon appeared to incur the most severe fines above $1,000 (being armed in a way to cause fear, n=3). The maximum fine amount imposed for an offence involving firearms was $800 (delivery of a firearm, n=1). The 'other' firearm offences, including breaching the *Firearms Act 1973* (WA) or wilfully misrepresenting information, all received fines of $250 or less (n=8).

The greatest mean fine amount was recorded for offences involving use of a weapon ($1,125), although care should be taken when interpreting means of small sample sizes. The mean fine amounts imposed for possession of firearms ($275) and possession of other weapons ($261) were comparable (Table 19).

Most sentences of imprisonment in Western Australia were imposed for possession offences involving a weapon (n=81) or firearm (n=51), sale/delivery of a firearm (n=51) and usage of a weapon

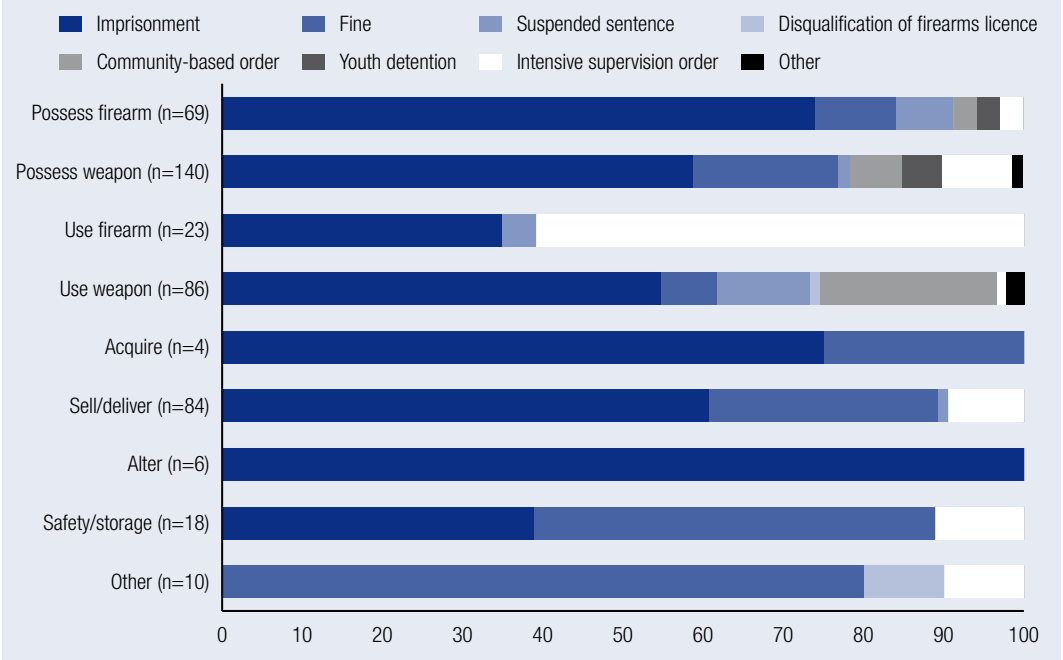
Table 19: Fines imposed by offence type and weapon involvement, Western Australia, 2002–04

Offence type	n	Minimum ($)	Maximum ($)	Mean ($)
Acquire	0	–	–	–
Alcohol/drugs	1	500	500	500
Alter	0	–	–	–
Other offence	8	100	250	119
Possess firearm	7	25	500	275
Possess other weapon	25	50	1,000	261
Safety/storage	9	50	500	217
Sell/deliver	24	50	800	250
Use firearm	0	–	–	–
Use other weapon	6	500	1,500	1,125
Total	80	–	–	–
Mean	–	–	–	308

– = Not applicable

Source: ODPPWA firearm and weapon sentencing data 2002–04 [computer file]

Figure 8: Penalties imposed by offence type, Western Australia, 2002–04 (percent)



Note: 'Other' penalties include pre-sentence order, youth conditional release order, youth intensive supervision order and no penalty imposed

Source: ODPPWA firearm and weapon sentencing data 2002–04 [computer file]; n=440

Table 20: Imprisonment sentences imposed by offence type and weapon involvement, Western Australia, 2002–04

Offence type	n	Minimum (months)	Maximum (months)	Mean (months)
Acquire	3	2	6	4
Alcohol/drugs	0	–	–	–
Alter	6	3	24	9
Other offence	0	–	–	–
Possess firearm	51	1	18	6
Possess other weapon	81	1	24	4
Safety/storage	7	3	36	17
Sell/deliver	51	1	36	7
Use firearm	8	2	36	10
Use other weapon	47	1	36	11
Total	254	–	–	–
Mean	–	–	–	7

– = Not applicable

(n=47). The most severe sentences (24 months or more) for firearm offences were imposed for sale/delivery, safety/storage, usage and possession, specifically: delivering a firearm without a licence (n=5); failure to take a reasonable precaution to ensure safekeeping (n=3); discharging in a way to cause fear (n=1); and altering or possessing an altered firearm (n=1). Sentences of imprisonment of 24 months or longer for offences involving weapons were imposed for use and possession offences only, specifically: being armed in a way to cause fear (n=1); and possessing a controlled weapon (n=1).

The mean sentence length for possession of a firearm (six months) was slightly greater than the mean sentence length imposed for possession of other weapons (four months) (Table 20). However, mean sentence lengths imposed for usage offences were similar for both firearms (10 months) and other weapons (11 months). The longest average sentence length of 17 months was recorded for safety and storage offences, although the small sample size means that results should be interpreted with caution.

Australian Customs Service data

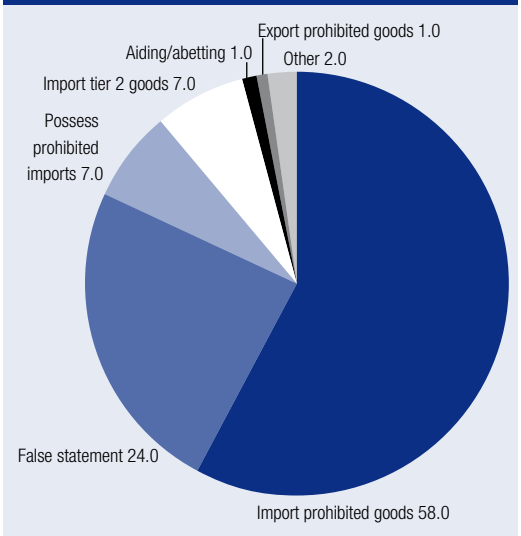
The Australian Customs Service (ACS) manages the security and integrity of Australia's borders. Protecting the Australian community through interception of illegal drugs and firearms is a high priority (see http://www.customs.gov.au).

Type of firearm/weapon offences brought before the courts

Between 2002 and 2004, the ACS laid 380 firearm and weapons charges. Of all offences charged (n=380), just over half related to an offence involving a firearm (51%, n=195), 35 percent involved other weapons (e.g. knives, throwing stars, crossbows, nunchaku and stun guns; n=134), and 13 percent involved both firearms and other weapons (n=51). The most common offence charged was importing prohibited goods (58%, n=222) (Figure 9), with approximately half of these offences relating to firearms only (n=113). Importing prohibited goods – along with providing a false statement (24%), possessing prohibited imports (7%) and importing 'tier 2 goods' (7%) – accounted for 96 percent of all offences charged (n=367). 'Tier 2 goods' are items listed in Part 2 of Schedule 1AA to the Customs Regulations 1926 (Cth), including firearms, munitions and military matériel, knives, daggers, and other like goods. Most false statement charges were laid in relation to completion of a B709 Customs clearance form. When sorted by most serious offence (for offence hierarchy, see explanatory notes for ACS data), most charges related to importation of prohibited goods (Table 21).

One-third of charges for firearms offences were brought in New South Wales (34%) and just over one-quarter (28%) in the Northern Territory. Four in 10 weapons offences were laid in New South Wales, and around 15–17 percent each in Queensland, Western Australia and the Northern Territory (Table 22).

Figure 9: Firearm and weapons charges, Australian Customs Service, 2002–04 (percent)



Note: Other includes 'Import animal/plant/good' (n=1), 'Leave quarantine vessel' (n=1), 'Allow person to leave quarantine vessel' (n=1), 'Move/alter/interfere with Customs goods' (n=1), 'Obstruct Commonwealth official' (n=1) and 'Enter port/airport' (n=1)

Source: ACS firearm and weapon sentencing data 2002–04 [computer file]; n=380

Outcomes for firearm/weapon offences brought before the courts

The ACS data indicate that 129 charges were proven with conviction (80%), 30 proven without conviction (19%) and two charges were dismissed (1%). Almost all charges were proven guilty. Table 23 shows the rates where convictions were recorded for offences involving firearms (0.75), for offences involving other weapons (0.90), and for offences involving firearms and other weapons (0.70). While the proportion of non-convictions to convictions was similar for offences involving firearms and offences involving firearms and other weapons (approximately one non-conviction for every three convictions), this ratio was much larger for offences involving other weapons (one non-conviction for every nine convictions).

Penalties imposed for proven firearm/weapon offences

The penalty imposed across all offences was most often a fine (n=128), followed by a good behaviour bond (n=29) and a self-recognisance order (n=22) (Figure 10). Only three percent of proven offences received no penalty (n=6), and only one percent was sentenced to a period of imprisonment (n=2). Community service orders were imposed in one percent of all penalties handed down (n=2).

While the penalty imposed on offenders was usually a fine only (63%, n=101), just over 10 percent of sentenced offenders were given the penalty combination of a fine and other order (n=18), while seven percent were given a good behaviour bond and recognisance order (n=12). Less than five percent of sentenced offenders were given a good behaviour bond, recognisance order and a fine (n=7), while less than four percent received no penalty (n=6).

Table 21: Most serious weapon offence by weapon involvement, Australian Customs Service, 2002–04

	Firearms		Other weapons		Firearms and other weapons	
Offence type	n	%	n	%	n	%
Export prohibited goods	2	1.0	1	0.7	0	0.0
False statement	2	1.0	1	0.7	0	0.0
Import prohibited goods	178	92.2	113	83.7	49	98.0
Import tier 2 goods	11	5.7	18	13.3	1	2.0
Possess prohibited goods	0	0.0	2	1.5	0	0.0
Total	193	100.0	135	100.0	50	100.0

Note: One case excluded where weapon type unknown. Excludes two charges of importation of plant and animal goods.

Source: ACS firearm and weapon sentencing data 2002–04 [computer file]

Table 22: Firearm and weapon charges by jurisdiction charge brought in, Australian Customs Service, 2002–04

	Firearms		Other weapons		Firearms and other weapons		All charges	
Jurisdiction	n	%	n	%	n	%	n	%
NSW	65	33	56	42	10	20	131	34
Vic	13	7	7	5	6	12	26	7
Qld	30	15	20	15	7	14	57	15
WA	23	12	20	15	18	35	60	16
SA	9	5	8	6	0	0	17	5
NT	55	28	23	17	10	20	89	23
Total	195	100	134	100	51	100	380	100

Note: No charges were brought in Tasmania or the Australian Capital Territory

Source: ACS firearm and weapon sentencing data 2002–04 [computer file]

Table 23: Outcomes for defendants, Australian Customs Service, 2002–04

		Outcome			
Offence type	No. of defendants	Charges dismissed	Proven without conviction	Proven with conviction	Conviction rate
Firearms	77	1	18	58	0.75
Other weapons	60	0	6	54	0.90
Firearms and other weapons	23	1	6	16	0.70
Unknown	1	0	0	1	1.00
Total	161	2	30	129	–
Mean	–	–	–	–	0.80

Note: Conviction rate equals the total number proven with conviction/total number of charges

Source: ACS firearm and weapon sentencing data 2002–04 [computer file]

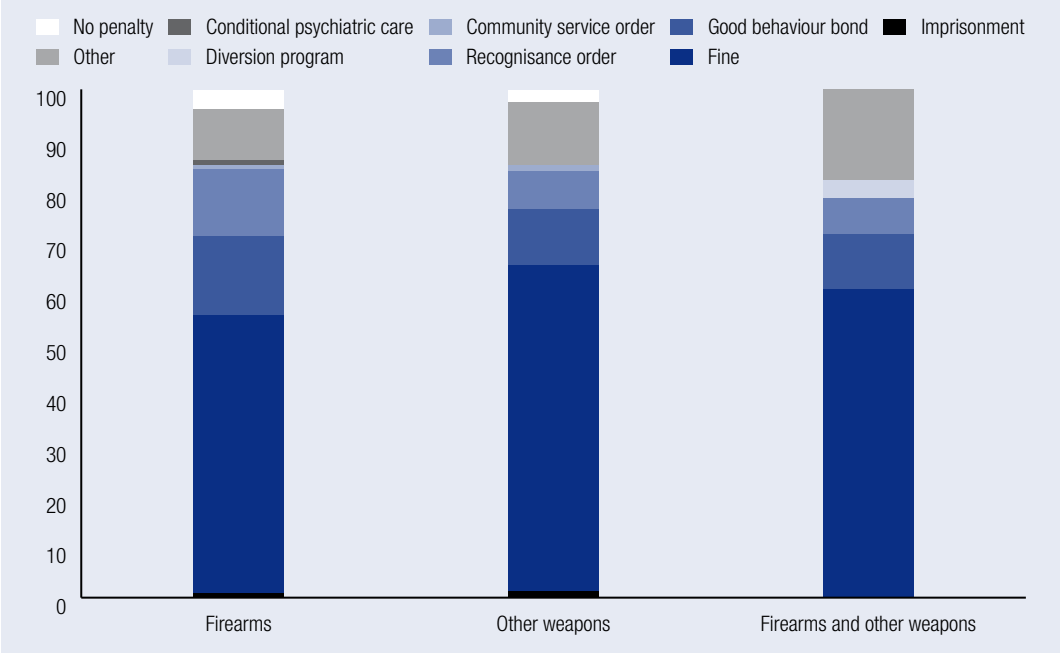
Penalty quantities imposed for proven firearm/weapon offences

Further analysis of penalties in relation to these data were undertaken for fines only, as the number of imprisonment sentences imposed was too small to warrant further analysis (n=2). Both offences that were analysed related to importation of tier 2 goods, one involving firearms (a silencer, for which a six-month sentence was imposed) and the other involving numerous weapons (including spring-bladed knives, throwing stars, an electronic shock device and one butterfly knife, for which a three-month sentence was imposed). It should be noted that different penalties might be imposed for civil and criminal offences. Under the legislation, importation of tier 2 goods is a criminal offence that may incur imposition of a fine or imprisonment of up to 10 years, or both. In contrast, the maximum penalty that may be imposed for the civil offence of importing, exporting or possessing prohibited goods is a monetary fine.

Just over 60 percent of all fines imposed were less than $2,000 (n=78), with offences involving firearms accounting for approximately 60 percent of these fines (n=48). Sixteen percent of all fines ranged from $4,501 to $7,500 (n=21), while less than three percent of all fines imposed were greater than $10,000 (n=3).

Most fines related to importation of prohibited goods (n=113, 88%), with fines for this offence ranging from $100 to $14,000 (Table 24). Most prohibited import offences received fines of $2,000 or less

Figure 10: Imposed penalties by weapon type, Australian Customs Service, 2002–04 (percent)



Note: One case excluded where weapon type unknown

Source: ACS firearm and weapon sentencing data 2002–04 [computer file]; n=217

Table 24: Fines by most serious offence and weapon type, Australian Customs Service, 2002–04

Offence type	n	Minimum ($)	Maximum ($)	Mean ($)
Export prohibited goods (firearm)	0	–	–	–
Export prohibited goods (other weapon)	2	1,250	1,500	1,375
False statement	3	200	1,300	584
Import animal/plant/good	1	3,000	3,000	3,000
Import prohibited imports (firearm)	68	150	14,000	2,531
Import prohibited imports (other weapon)	45	100	12,000	3,174
Import tier 2 goods (firearm)	4	200	6,000	2,225
Import tier 2 goods (other weapon)	5	513	10,500	3,923
Total	128	–	–	–
Mean	–	–	–	2,727

– = Not applicable

Note: One case excluded where weapon type unknown

Source: ACS firearm and weapon sentencing data 2002–04 [computer file]; n=129

(60%, n=68). However, the mean fine amount for prohibited import of other weapons was higher than the average fine imposed for prohibited import of firearms ($3,174 for other weapons compared with $2,531 for firearms). Similarly, the mean fine amount for importation of tier 2 goods involving other weapons ($3,923) was higher than the mean fine amount imposed for importation of tier 2 goods involving a firearm ($2,225). The mean fine amounts for export of prohibited goods was slightly lower ($1,375), although only two sentences for this type of offence were imposed.

Summary

Despite the methodological difficulties of comparing data across different jurisdictions, some broad trends can be identified.

Types of firearm offences brought before the courts

Analysis of state and territory data indicates that firearm possession offences (including carriage and use) appeared to be the most common firearm offences brought before the courts, followed by safekeeping and/or storage offences. Where comparative data were available for offences involving other weapons, the most common weapon offences related to usage or possession. Sales offences, dealing offences, and manufacturing and supply offences involving firearms were less frequently observed.

The most frequent charges were importation of prohibited imports. Importation of tier 2 goods was less common. While false statements accounted for approximately one-quarter of charges, these charges were usually made in conjunction with more serious offences, such as importation of prohibited goods.

Outcomes for firearm offences brought before the courts

Analysis of data from New South Wales, Victoria, South Australia and Western Australia indicates that most firearm charges were proven guilty, whether by guilty plea or conviction by jury. In each sample only a small number of charges were proven not guilty or dismissed, with more charges withdrawn or dismissed than acquitted. There was some variation in outcomes across offence types, although the small sample sizes made comparisons difficult.

Almost all charges for import and export offences prosecuted by the ACS were proven with or without conviction, although the conviction rate for offences involving firearms was lower than that for offences involving other weapons.

Penalties imposed for proven firearm offences

In all jurisdictions except Western Australia, the most frequently imposed penalty for firearm offences was a fine, followed by a sentence of imprisonment. Community service orders and good behaviour bonds were less frequently imposed. While a number of charges were dismissed without conviction, or adjourned upon the offender entering into an undertaking or diversion plan, the majority were sentenced with some form of penalty imposed. Only a minority of persons convicted for firearm or weapon offences received no penalty.

The Western Australian data reported higher rates of imprisonment than other jurisdictions. This difference is probably due to the impact of the prosecuting agency. Western Australian data were sourced from the ODPPWA. The ODPPWA prosecutes offences heard only in the higher courts, and which deal with firearm and weapons offences, where offenders are charged in conjunction with at least one other indictable offence.

Generally, imprisonment was mainly imposed for possession offences, sale offences, discharge offences, and dealing and alteration offences, but was less frequently imposed for safety, safekeeping or storage offences. The penalty distributions were fairly consistent across weapon involvement, given the initial numbers of offences charged. Fines were the most frequently imposed penalty for import and export offences, followed by a good behaviour bond or some other order.

Penalties imposed for proven firearm offences

The severity of penalties imposed on firearm and weapon offenders varied between jurisdictions. Sentencing patterns appeared generally consistent, although comparisons between different data sets were difficult for methodological reasons.

However, overall it appeared from the quantitative analysis of fines and imprisonment sentences that the most severe sentences were imposed for those offences considered more ‘serious’ crimes. For example, the longest terms of imprisonment were more often imposed on persons convicted of discharging, altering or selling firearms, as opposed to persons convicted of offences involving the safety, safekeeping or storage of firearms. Offences considered to be less serious criminal acts were often given more lenient sentences.

Case study analysis: firearms as an aggravating factor in sentencing

Introduction

One of the aims of this report was to assess whether courts regard possession or use of a firearm as an aggravating actor in sentencing for other crimes (e.g. armed robbery and drug trafficking). To investigate sentencing practices relating to firearms offences, a qualitative case study analysis was performed on a sample of relevant cases from each jurisdiction.

This analysis involved examination of judicial sentencing remarks for firearms-related offences, including armed robbery with a firearm and offences under the relevant firearms legislation in each jurisdiction. Sentencing remarks were used because they explain the sentencing decision to the offender, in addition to various parties with a legitimate interest in the sentencing outcome (for instance the victim, the Crown and the media).

In reviewing sentencing remarks, particular attention was paid to the judicial reasoning used to arrive at an appropriate sentence, by examining the reasons judges gave for imposing a particular sentence. Such reasons may include the seriousness of the offending, the personal circumstances of the offender, aggravating and mitigating factors, and consistency with previous sentences imposed for similar offences.

Methodology

The Australasian Legal Information Institute (AustLII) (http://www.austlii.edu.au) provides free Internet access to Australasian legal materials, including primary materials such as court judgments and decisions (case law). In March 2006, a search was conducted of all AustLII case law databases using the advanced search tool. A search for terms firearm*, sentenc* and aggravat* yielded over 600 results, which were viewed by database to ensure the sample represented cases from each jurisdiction. Of these results, 416 cases from relevant databases were selected for the sampling pool (i.e. higher courts only, including Supreme Courts or Courts of Appeal/Criminal Appeal from each jurisdiction). A court of appeal in any jurisdiction may correct sentences if, for example, it considers the sentence outside the available range for the particular offence, or otherwise wrong (e.g. that a principle in the relevant sentencing legislation has not been applied). These courts are best placed to give sentencing guideline judgments because of the number of sentencing decisions they review from all parts of the country. Higher courts were also selected because it would not be possible to identify which lower court cases had been appealed at a later date. Note that cases heard in upper courts are more likely to

involve charges for serious offences, as opposed to most firearms offences, which are heard in lower courts.

A sample of cases was taken from the pool by selecting every fourth entry and inspecting each case for relevance. If the case was not relevant, it was discarded and the next case was selected. Non-relevant cases included:

- where the principal offences or offences to be taken into account in sentencing were not a firearms offence or did not involve use of a firearm (e.g. in some cases a firearms offence was only mentioned in an offender's criminal history, or the case involved stolen firearms)
- where appeal on sentence was not an issue (e.g. appeal on conviction or on other point of law)
- where the charge involved murder or manslaughter.

This process was continued until all results were exhausted. In the final sample, 75 cases were selected for analysis and downloaded from AustLII. Summaries of each case were created, including the offence charged, facts of the case, sentencing remarks and the type of sentence imposed. Where on appeal, the grounds of appeal, the original sentence, the outcome of the appeal and the final sentence (where applicable), were noted. A brief summary of each case is presented in Appendix B. Selected cases are described in more detail in the Discussion section of this report.

Analysis

The composition of the final sample of cases selected from the sampling pool was: New South Wales (45%), Victoria (13%), Queensland (9%), Western Australia (13%), South Australia (7%), Tasmania (5%), the Northern Territory (5%) and the Australian Capital Territory (1%) (Table 25).

Of the 75 sample cases selected, 74 were appeal cases (Table 26). Most were appeals lodged by the offender on grounds that the sentence received was manifestly excessive (n=55, 74%). Of the 19 Crown appeals, 14 were successful (74%), whereas only 25 out of 55 appeals lodged by the offender were upheld (45%).

Table 25: Jurisdiction of cases in sampling pool and final sample

Jurisdiction	Sampling pool	Final sample
NSW Court of Criminal Appeal	178	34
Vic Court of Criminal Appeal	51	10
Qld Court of Criminal Appeal	57	7
WA Court of Criminal Appeal	45	10
Supreme Court SA	23	5
Supreme Court Tas	27	4
Supreme Court of NT	29	4
Supreme Court ACT	6	1
Total	416	75

Table 26: Outcome of appeal cases in final sample

Appeal by	Upheld	Dismissed	Total
Offender	25	30	55
Crown	14	5	19
Total	39	35	74

Case type

Cases were categorised according to the most serious offences heard (in decreasing order of severity) – armed robbery, charges with additional firearm charges, and firearm charges. Most cases involved armed robbery charges, including aggravated armed robbery, robbery with an offensive weapon, armed robbery in company, attempted armed robbery and conspiracy to commit armed robbery (68%, n=51). Additional charges associated with these cases included:

- reckless or negligent discharge of a firearm
- reckless endangerment of life
- being armed in public
- being armed with intent to commit indictable offence
- use of firearm to avoid apprehension
- threatening to harm
- unlawful possession of firearms
- other crimes of violence (such as assault and malicious wounding).

Approximately one-quarter of cases related to charges involving firearms (without more serious charges of armed robbery) (24%, n=18). The relevant firearms charges included:

- unlawful possession of a firearm
- possession of an unregistered firearm
- possession of a shortened firearm
- possession of a defaced firearm
- aggravated possession of a firearm
- carriage of a loaded firearm
- prohibited person in possession of a firearm
- receiving a firearm
- unauthorised sale of firearm (sale without a licence)
- unlawful possession of ammunition
- use of firearm on land without consent
- handling firearm under the influence of drugs or alcohol.

The remaining cases involved drugs charges (such as possession or supply) with additional firearms charges or firearms offences taken into account (n = 6, < 1%).

Discussion

Review of selected case law reveals that judges' sentencing remarks are generally comprehensive when detailing the factors they relied on to determine the appropriate sentence or decide the outcome of an appeal. These factors were also considered when comparing similar cases or distinguishing particular cases from one another.

Five themes emerged from the sentencing remarks as relevant to determining the appropriate sentence for firearms offenders, namely:

- the use of guns as opposed to the use of other weapons in armed robbery offences
- the use of imitation, replica or unloaded firearms in armed robbery offences
- the importance of deterrence (both individual and general) against such offences
- the gravity of firearms offences and the seriousness with which the community views such offences
- the presence of firearms as an aggravating factor in sentencing for other crimes.

Cases relevant to each theme have been selected for further discussion below.

Armed robbery offences

Use of firearms

The following cases highlight the emphasis placed on use of firearms in sentencing an offender for armed robbery. Several judges commented on use of firearms as a matter of significance in determining the appropriate sentence. In particular, firearms are distinguished from other weapons, such as knives, as involving increased criminality and carrying an attendant danger of loss of life or serious injury. Other factors, such as whether the firearm was loaded or used in a threatening manner, are also discussed.

In *Nelio Avelino Dasilva Serra v R* [1997] NTSC 21 (24 February 1997), the applicant was charged with aggravated robbery (robbery in company and armed with a rifle and a knife), for which he was sentenced to nine years' imprisonment with a non-parole period of four years. The sentencing judge noted the aggravating circumstances of being in company and being armed, stating:

> Like any offences, there are degrees of seriousness in relation to aggravated robbery, but this is amongst the worst type dealt with by this court in recent years [26].

On appeal, the court noted the offending behaviour as a serious example of the crime of armed robbery, though not in the 'worst case' category, which merits imposition of a substantial sentence of immediate imprisonment. In response to the applicant's submission that sentencing for armed robbery in the Northern Territory was usually in the vicinity of four to six years imprisonment – with longer sentences restricted to crimes involving actual violence or threats of violence – the court stated:

> We observe that it is not a fact that sentences for robberies of the present type – armed robbers holding up small enterprises at vulnerable times – attract sentences of from four to six years' imprisonment. Particularly where firearms are carried, as here, sentences

> of that order would often be completely inadequate; such cases should normally attract sentences of six to eight years, on a plea of guilty and absent other circumstances of aggravation [42].

The court held the nine-year sentence imposed lay within the proper exercise of the sentencing discretion and the appeal was dismissed.

In *R v Kirby* [2000] NSWCCA 330 (13 September 2000), the appellant was convicted on two counts of robbery and was sentenced to concurrent terms of 10 years imprisonment, with a non-parole period of six years and 10 months, on each count. It was submitted that the sentences were too severe for offences of the kind before the court, and that special circumstances should have been found. However, the court confirmed the sentence, stating there were a number of circumstances aggravating the objective criminality involved in the two offences:

> On each occasion firearms were used, a matter of some significance in an assessment of the appellant's criminality [88] (Wood CJ).

The court held that the sentences were not outside the legitimate sentencing range for the serious type of offences involved (Beazley JA, Wood CJ at CL and O'Keefe J):

> A number of aggravating circumstances, together with the subjective position of the appellant, and the stern approach taken by the NSWCCA in relation to serious armed robberies, justified the sentences imposed. No special circumstances existed to qualify the appellant for a reduction in the overall sentence.

R v Herbert [2003] WASCA 27 (4 March 2003) involved two Crown appeals against sentences imposed for armed robbery. On the first appeal, the respondent was convicted of one offence of armed robbery with threats of actual violence and one offence of stealing a motor vehicle. During the course of submissions relating to sentence, the respondent made it known through his counsel that he intended to plead guilty to a further offence of armed robbery in company with his brother (with a loaded, cut-down .22 rifle). The respondent was sentenced to imprisonment for six years for the first armed robbery, one year for stealing the motor vehicle and eight years for the armed robbery in company. All sentences were concurrent and the respondent was not made eligible for parole. On the second appeal, the respondent pleaded guilty to two further charges of armed robbery (with a loaded .22 rifle) and was sentenced to three years imprisonment. The prosecution argued that the sentences in both cases were manifestly inadequate and thus failed to reflect the seriousness of the offences.

The sentencing judge stated that the facts revealed 'a very serious chapter of criminality, particularly because of the use of a firearm in the robbery' [10] (Templeman J). The appeal judge held, in relation to the first appeal, that the sentence of eight years imprisonment for armed robbery in company was manifestly inadequate, given the seriousness of the offence:

> The range of 6 to 9 years' imprisonment established by *Miles v The Queen* applies to 'the conventional armed robbery of a bank or similar premises'. However, the present case was not a 'conventional' armed robbery. That is because a loaded firearm was used to threaten the victims. Furthermore, this was a robbery of a service station, a much more vulnerable target than a bank. Although the learned sentencing Judge referred to the use of the firearm, his Honour made no mention of the fact that the firearm had been loaded [23–24] (Templeman J).

Justice Wheeler added:

> In the present case, what seems to me to put the offence committed on 14 May 2001 into a particularly serious category is the carrying of a loaded firearm, the pointing of the firearm at two persons, and the determined manner in which the respondent proceeded over a period of time, while in the service station, to ensure that he obtained cash and to attempt to obtain a vehicle in which to escape. In my view, those circumstances, whatever the nature of the business targeted, would amply justify the sentence of 12 years' imprisonment which Templeman J suggested as an appropriate reflection of the seriousness of the offence [51] (Wheeler J).

The sentence of eight years was quashed and the offender was resentenced to nine years and four months imprisonment, to be served cumulatively on sentences for other offences.

The second appeal in relation to the three-year sentence for armed robbery was dismissed, as the court did not consider the sentence to be manifestly inadequate.

DPP v Gardner & Coates [2004] VSCA 119 (2 July 2004) involved a Crown appeal against sentences imposed against two offenders who robbed an Armaguard van with loaded firearms. Gardner was sentenced to eight years imprisonment for armed robbery, two years for reckless conduct endangering life, and 12 months on each count of theft (all to be served concurrently, with a non-parole period of five years). Coates received a sentence of seven years imprisonment for armed robbery, 12 months for recklessly endangering life and 12 months for each count of theft (all to be served concurrently, with a non-parole period of five years).

In summing up the nature of the armed robbery, the sentencing judge stated:

> The fact that the armed robbery was directed against a bank is a significant aggravating circumstance of that offence. It adds to the seriousness of the offence that it was so clearly planned and premeditated, high handed and audacious. It adds further to the seriousness of the offence that you chose to go armed with several loaded firearms. To carry a loaded firearm with the attendant danger of loss of life or serious injury is enough in itself to place the offence in the higher class of gravity. The fact that two of the weapons were fired and one of them repeatedly, makes it an even graver offence [10] (Winneke P).

On appeal, the court held that the robbery the respondents carried out was a very serious crime, and the sentence imposed was manifestly inadequate:

> The armed robbery was about as serious an example of that offence as can be imagined, short of one in which death or serious injury has been actually inflicted. It was planned, it was premeditated, it was callous in its execution, and it involved the use of weapons in circumstances which exposed the robbers' victims to the maximum prejudice – namely the firing of bullets into a confined space where the victims were trapped.

The appeal was allowed, and Gardner and Coates were both resentenced to a total effective sentence of 11 years imprisonment, with a non-parole period of eight years.

In *Kyriakidis v The Queen* [2004] WASCA 33 (12 March 2004), the applicant was sentenced to eight and a half years imprisonment after pleading guilty to one count of going armed in public so as to cause terror and to another of armed robbery in company. The sentence was appealed on the basis that it was manifestly excessive, specifically whether the judge erred in failing to apply the totality principle, whether the judge erred in categorising offence as 'top end of the scale', and whether the judge failed to give sufficient weight to mitigating factors.

In sentencing the offender, the sentencing judge had regard to the gravity of these offences and considered them to be extremely serious. The Court of Appeal agreed, but found that the sentence of eight and a half years imprisonment was not justified given the early plea of guilty and the applicant's undoubted psychiatric and psychological problems. While the use of a gun in the armed robbery added a 'new, and terrifying, dimension' [32] (Malcolm CJ and Steytler J), the appeal was upheld and the final sentence imposed was four years and five months imprisonment.

In *DPP v Crow* [2003] VSCA 104 (15 August 2003), the respondent was charged with the offences of armed robbery, and unlawfully and recklessly engaging in conduct placing a person in danger of serious injury (namely the discharge of the firearm). The Crown appealed sentences of 12 months imprisonment for the armed robbery and two years imprisonment for reckless endangerment, to be served concurrently. Twelve months of the term was to be suspended for two years. The Crown appeal was successful in that the court agreed the sentences were manifestly inadequate and failed to reflect the gravity of the offending:

> The respondent took with him a loaded firearm and, when the victim resisted the respondent's request for drugs, took the firearm from the position where it was hidden in the car and threatened the victim with it. When the victim further resisted the demands of the respondent, the latter discharged the firearm in close proximity to the victim for the purposes of

> reinforcing his demand. It is difficult to understand how those circumstances led his Honour to the view that this was a benign example of the offence of armed robbery … Nor do I share his Honour's view that the discharge of the firearm was to be considered discretely from the armed robbery and to be considered as an offence more culpable than the armed robbery. It was, in fact, part and parcel of the armed robbery – albeit an aggravating feature of that armed robbery [13–14] (Winneke P).

The appeal was allowed, and the offender's sentence was increased to three years imprisonment for the armed robbery and two years imprisonment for reckless endangerment, with three months to be served cumulatively.

DPP v Mobbs [2003] VSCA 148 (19 September 2003) involved a Crown appeal against sentence imposed for six counts of armed robbery with a firearm. The respondent was sentenced to a total effective sentence of five and a half years imprisonment, with a non-parole period of two years and nine months. The Crown appealed the sentence on the basis it was manifestly inadequate, as it failed to adequately reflect the gravity of the offences generally and failed to sufficiently take into account the aspects of general deterrence. The Court of Appeal agreed and set aside the original sentence, stating:

> In my opinion, when regard is had to the seriousness of the separate activities in which the respondents engaged which, it must not be forgotten, included the brandishing of a loaded firearm, the number of offences committed and the number of separate victims who were subjected to fear and violence, the individual sentences, the total effective sentence and the non-parole period fixed in the case of each of them were all manifestly inadequate. Neither the criminality involved in their activities nor the importance to be attributed to general deterrence as a sentencing consideration in cases of this type is properly represented in the dispositions upon which the judge decided [21] (Vincent JA).

The appeal was allowed and the offender was resentenced to a total effective sentence of seven and a half years imprisonment, with a non-parole period of three years and nine months.

In *R v McDonald* [2001] QCA 238 (22 June 2001), the appellant pleaded guilty to several offences and was sentenced to ten years imprisonment on each count of armed robbery and armed robbery in company. The applicant argued that he did not actually discharge a firearm in the commission of the offence and appealed against the severity of the sentence. The sentencing judge referred to the following additional matters that were relevant to the sentence:

> The applicant had pleaded guilty to numerous serious offences, the most serious of which were the armed robbery charges. On some occasions the applicant had used a loaded firearm or was in possession of a knife. Threats of violence were made although no actual violence was used on any person. There was no discharge of the firearm [21] (Thomas JA and Atkinson J).

Despite the lack of actual violence, the Court of Appeal agreed with the sentencing judge and took the view that a substantial custodial sentence was the only option:

> However, there was no doubt that his serious and persistent offending required a sentence in the order of that imposed by the learned sentencing judge. The application for leave to appeal against sentence should be refused [24] (Thomas JA and Atkinson J).

In *R v Orchard* [2005] QCA 141 (6 May 2005), the appellant pleaded guilty to armed robbery in company with a sawn-off .22 rifle, along with personal violence and other related offences. The offender was sentenced to nine years imprisonment, plus additional sentences imposed concurrently. The appeal related to a declaration made under s 161B(3) of the *Penalties and Sentences Act 1992* (Qld) that the applicant was convicted of a serious violent offence in relation to the armed robbery. The appeal was allowed and the sentence varied by deleting the violent offender declaration (Hellman J dissenting). The appeal judge noted:

> By contrast the robbery in the present case, although it involved the threat to use a firearm and a blow struck against one of the employees, resembles many other such offences that commonly come before the courts with regrettable frequency. Something more

> than that is ordinarily required to merit an additional sentencing order of the kind made here [7] (Macpherson JA).

In *R v Everett*; *R v Phillips, Adam Dez* (1994) 72 A Crim R 422, the Crown appealed two sentences of 12 months imprisonment – suspended on entering into a good behaviour bond for two years – imposed for the offence of aggravated armed robbery involving use of a firearm. In sentencing the offenders, the judge noted the nature of the crime warranted imposition of a custodial sentence, but the subjective features were such that the sentence should be suspended. The Crown argued too little weight was given to the need to impose a sentence of general deterrence for a crime of this nature.

In its judgment, the Court of Appeal stated:

> In recent decisions of this Court emphasis has been given to the seriousness of the crime of armed robbery and to the need for sentences to adequately address the requirement for general deterrence. While even armed robberies can vary in the degree of their seriousness, those where firearms are used (whether loaded or not) are viewed particularly seriously. There was in this case, therefore, a clear requirement that notwithstanding the youth and prior good behaviour of the offender and his prospects of rehabilitation, the sentence should reflect the need to deter others from engaging in this kind of conduct. In my respectful opinion a sentence of twelve months' imprisonment the further execution of which, after nearly three months' incarceration on remand, was wholly suspended, did not adequately recognise that need [14] (Cox J).

The Court of Appeal held (Zeeman J dissenting) that the wholly suspended sentence was inadequate, and resentenced Everett to a term of imprisonment for one year and six months, the last 12 months of which should be suspended upon entering into a good behaviour bond for two years, with supervision for one year. The respondent, Phillips, was resentenced to imprisonment for one year and nine months, the last 12 months of which should be suspended on the same conditions.

R v Blackman and Walters [2001] NSWCCA 121 (8 May 2001) involved a Crown appeal against sentences imposed for armed robbery with a dangerous weapon. The Crown argued that a suspended sentence of two years imprisonment was manifestly inadequate and the objective criminality involved was such that the sentence for armed robbery should not have been suspended. In considering the appeal, Justice Wood noted the offence was a particularly aggravated one having regard to the nature and the degree of the violence threatened, and the fact that it involved a home invasion of a frightening nature. The court identified a number of potentially aggravating factors, including the number of offenders, the number and nature of weapons carried, the vulnerability of the victims, the obvious planning involved, and the intensity of the threats [33] (Wood CJ). However, the Court of Appeal dismissed the Crown's argument and held the sentence was appropriately suspended, due to powerful subjective features that allow imposition of a non-custodial sentence for armed robbery.

In *R v Peckham* [2003] NSWCCA 293 (3 October 2003), the applicant pleaded guilty to armed robbery with a dangerous weapon with a shortened shotgun, for which the maximum penalty is 25 years imprisonment. The shotgun discharged during the course of robbery and the offender made threatening statements. With further offences taken into account, the offender was sentenced to imprisonment for eight years, with a non-parole period of six years. The applicant appealed the sentence on the basis it was manifestly excessive. In considering the appeal, the court distinguished the applicant's case from the *Henry* 4–5-year guideline, as the offence involved a sawn-off shotgun, was planned and other offences were to be taken into account. The court dismissed the appeal, stating:

> Courts must discourage those who may be tempted to use loaded firearms to impose their will on others by imposing penalties which are both heavy and seen to be so [18] (Hulme J).

R v Campbell [2000] NSWCCA 157 (3 May 2000) involved a Crown appeal against a sentence of six and a half years imprisonment for armed robbery while armed with a dangerous weapon with wounding. In considering the appeal, Justice Dunford referred to the guideline *R v Henry* guideline as a starting point, but distinguished the current case from *Henry* in that:

> The weapon was not a knife or a similar weapon, but a loaded shotgun, much more dangerous than a knife and much more readily capable of causing death or grievous bodily

> harm. Indeed, a loaded shotgun is probably the most dangerous weapon available on a personal basis in the community. In addition, a shotgun, even if not loaded, is prone to cause panic and fear in the minds of victims, and this was in fact the case in the present instance [22] (Dunford J).

His Honour also referred to *R v Readman*, where the ascending seriousness of armed robberies involving use of a firearm is discussed, and noted the situation in Campbell's case is 'at the top of the range' [24] (Dunford J). The appeal was successful on the basis that the sentence of six and half years was manifestly inadequate:

> I consider that although his Honour imposed a sentence greater than the guideline indicated in *Henry*, the sentence imposed should have been much higher and, having regard to the matters I have referred to, I consider that a total sentence of at least eight or nine years was called for [27] (Dunford J).

The original sentence was quashed and the offender resentenced to seven and a half years imprisonment, with a non-parole period of five and a half years.

In *Regina v SB* [2005] NSWCCA 76 (7 March 2005), the applicant pleaded guilty to three charges: armed robbery with a dangerous weapon, discharging a firearm in a public place and driving a conveyance without consent. A further three offences were taken into account on a Form 1: robbery with a dangerous weapon, robbery with an offensive weapon, and custody of a firearm in a public place. The applicant appealed a sentence of six a half years imprisonment for armed robbery, three years imprisonment for discharging the firearm and 12 months imprisonment for driving without consent, all to be served concurrently in juvenile detention. The applicant argued the parity principle had been offended and the sentencing judge had erred in imposing an identical sentence as SB's co-offender, when the subjective features of each case were different. In sentencing the offender, the trial judge had identified a range of relevant factors concerning the objective gravity of the offence:

> Aggravating features of the first offence are the large number of people terrorised and placed in fear of their lives, the fact that the weapon was loaded and discharged, the fact that the robbery was committed in company and the evidence of planning involved, including the use of a stolen car. In addition, both offenders were on probation at the time of the commission of these offences, which is a further aggravating feature in each case [8] (Spigelman CJ).

The Court of Appeal agreed with the sentencing judge, and held that the parity principle was not offended and the applicant did not have a legitimate sense of grievance in accordance with the authorities.

Use of imitations/replica firearms or unloaded firearms in armed robbery offences

The following cases demonstrate the court's attitude to the use of imitation or replica firearms, or the use of unloaded firearms, in armed robbery offences. While some concessions have been made in certain circumstances because of a lack of actual use of a weapon during an armed robbery, it appears that imitation or unloaded firearms do little to mitigate the seriousness of the offending behaviour.

In *R v Gee* [2000] NSWCCA 457 (1 November 2000), the prisoner's modus operandi was to approach a single female teller in the bank he intended robbing and to reveal the wooden handle of what would have appeared to have been a firearm. The appellant was found guilty in respect of four charges of armed robbery with an offensive weapon and was sentenced to a term of imprisonment of six years and eight months (with a non-parole period of five years) in respect of each armed robbery charge, to be served concurrently. The sentencing judge took into account the objective seriousness of all four offences, and the need to deter both the prisoner and others from committing similar offences. The Court of Appeal agreed and found the offences to be very serious, stating:

> The law regards robbery, with or without arms, as very serious offences indeed. In virtually every sentence it is to be treated as an offence of the utmost gravity, which should normally carry a custodial sentence [32] (Whealy J).

The court made allowances for the fact that the robberies were committed alone, that no weapon was actually used and that the only persons in

whom actual fear was engendered were the tellers. Although the penalty imposed was severe, the court held that the sentences were well within the discretionary range and were not manifestly excessive. Accordingly, the appeal was dismissed.

In *R v Tozer* [2003] NSWCCA 72 (27 March 2003), the appellant pleaded guilty to two offences of being armed with an offensive weapon and to one count of driving a conveyance without consent. On both occasions the appellant and his co-offender were armed with a hunting knife and what appeared to be a firearm (but was actually a tyre lever or pipe with a torch attached and covered in cloth to give the perception of a shotgun). Tozer was sentenced to imprisonment for three and a half years in relation to the first armed robbery offence, and two years imprisonment for the driving offence, to be served concurrently. In relation to the second armed robbery offence, he was sentenced to five and a half years imprisonment (non-parole period three and a half years) to be served cumulatively to the driving offence and partially concurrently with the first armed robbery offence.

Notwithstanding the appellant's extensive criminal history, the sentencing judge remarked that 'the use of weapons in robberies was far too prevalent and proper regard had to be had in his sentencing task to the considerations of protection of the public and deterrence, both general and personal' [16] (Studdert J). Some of the aggravating features the judge identified were the number of offenders, the use of weapons (being a hunting knife and a device concealed to make it look like a firearm), the degree of planning involved and the extent of the threats used. The court dismissed the appeal:

> Having regard to the applicant's total criminality and having regard to the nature and circumstances of the commission of these offences, the end result is not one which warrants interference from this Court [48] (Studdert J).

The fact that the firearm used in the offence was merely an imitation did little to mitigate the offending behaviour.

In *R v Mangan* [1999] NSWCCA 194 (21 July 1999), the applicant was convicted of armed robbery in company, involving the threatening use of an unloaded firearm, and sentenced to a total of 10 years and five months imprisonment (including an effective non-parole period of eight years). In sentencing the offender, the sentencing judge stated:

> He has committed an extremely serious offence for which the only answer is a lengthy period of full time custody. The community in my view requires that offences such as this involving the presentation of a gun at innocent people going about their business in the course of their employment must be met by very heavy sentences … to deter both this particular prisoner from a repetition of his conduct and other like-minded persons [8] (Studdert J).

On appeal, the appellant argued that the fact that the weapon was unloaded was a significant factor in assessing the gravity of the crime. In response, the Crown argued that an unloaded weapon should not diminish the very serious nature of a robbery offence:

> The Crown submitted that the dicta of Maxwell J in Readman should not be construed in such a way as to diminish the very serious nature of a robbery offence where an unloaded weapon is used. The fact that the weapon may not have been loaded means that the offence was not as serious as it may have been but it was still a very serious offence. I consider that submission to be correct [13] (Studdert J).

Despite this statement, the Court of Appeal held that the sentence imposed was beyond the upper limit of the appropriate sentencing range. The appeal was allowed, the original sentence quashed and the offender resentenced to eight years imprisonment, with a non-parole period of six years.

R v Kapitano [2002] QCA 496 (11 November 2002) involved a large number of charges, including several armed robberies with a replica firearm, for which the offender was sentenced to an effective term of imprisonment for 13 years. The appellant argued that although the offences were extremely serious, the firearm was a replica that could not be loaded or discharged, there was no actual violence inflicted and most of the offences were not in company. The court held that the sentence imposed was manifestly excessive, but mainly because the sentence did not give adequate recognition to the significant cooperation that the defendant had

provided authorities. The appeal was allowed and the appellant's sentence was reduced to 11 years imprisonment.

In *R v Guider* [2000] NSWCCA 355 (13 September 2000), the appellant was convicted of one count of conspiring to commit a robbery while armed with an offensive weapon and one count of being armed with a weapon with intent to commit an indictable offence, involving use of an imitation pistol. The offender received a sentence of 10 years imprisonment on the first count (a non-parole period of seven and a half years) and a concurrent term of three years imprisonment for the second count. The offender appealed the severity of this sentence, but the court held the sentence was not manifestly excessive and was within the appropriate range for criminal conduct of this type:

> While his Honour, in his remarks on sentence, pointed out that it was in the appellant's favour that the weapon in question was an imitation pistol which was not capable of killing or inflicting serious injury. Had the proposed robbery taken place it would have involved the terrorising of those in the bank who would not know that the pistol was an imitation one. Bank robberies are rightly considered by the criminal law as standing high in the criminal calendar. In this case the fact that the proposed robbery was to be carried out in company was an aggravating feature [73–74] (Newman J).

In the light of the nature of the offence, the court held there was no error in applying the relevant sentencing principles and the appeal against sentence was dismissed.

In *R v Jayasuria* [2004] QCA 238 (19 July 2004), the appellant was sentenced to a three-year term of imprisonment imposed for attempted armed robbery and a further cumulative six-year term imposed for robbery with violence. On appeal, the judge noted the extent of offending and the gravity of such offences:

> What was identified as the most serious, robbery with violence, which attracted the six-year term, involved his use of an apparently real firearm to rob a fast food outlet, although the applicant claimed that he thought it was a replica (de Jersey CJ).

The court was not persuaded that the sentence was manifestly excessive, given the need for community protection and special deterrence in the sentencing process as noted in previous cases, such as *The Queen v Burton* [1994] QCA 124, *R v McDonald* [2001] QCA 238, and *R v Tilley* [2002] QCA 144.

In *R v Govinden* [1999] NSWCCA 118 (19 May 1999), the appellant pleaded guilty to being an accessory after the fact to armed robbery and to a second charge of robbery in company, with maximum penalties of 14 and 20 years imprisonment, respectively. On the count of accessory after the fact, and taking into account possession of a shortened firearm on a Form 1, the offender was sentenced to recognisance of $500 to be of good behaviour for two years. On the charge of robbery in company, the offender was sentenced to 200 hours community service. The Crown appealed the sentence on the basis that it was manifestly inadequate.

In sentencing the offender, her Honour recognised the authorities to the effect that, except in the most exceptional circumstances, persons who commit armed robberies should receive sentences involving at least some period of full-time custody. However, she considered that in all the circumstances, and having regard to the respondent's excellent prospects of rehabilitation, this was one of those exceptional cases. The Court of Appeal agreed with the trial judge and stated that, while lenient, the sentence was appropriate given the subjective circumstances of the case:

> There was a lot of material before her Honour indicating positive prospects of rehabilitation, and although the weapon was intended to, and no doubt did, strike fear and terror into the victim, it was only a replica and there was therefore no prospect of the victim suffering any sort of gunshot wound [39] (Dunford J).

Accordingly, the Crown appeal was dismissed and the sentence upheld.

Slowiak v The Queen [2004] WASCA 112 (31 May 2004) involved the offender pretending to be armed with firearm to rob a bank. The applicant pleaded guilty to one count of armed robbery, for which he was sentenced to seven years imprisonment. On appeal, the court held that for an armed robbery of

the kind committed by the applicant, the appropriate range of sentence is six to nine years. The fact that the applicant pretended to be armed did not constitute a circumstance of mitigation:

> He pretended to be armed with a weapon by handing the bank teller a note indicating that he was committing a hold-up, demanding money from the teller, and stating that he was armed with a gun concealed in a paper bag. In my opinion, the applicant was entitled to very |little by way of discount, having regard to the seriousness of the offence and the nature of the circumstances of its commission [18] (Malcolm CJ).

The appeal was dismissed and the sentence of imprisonment upheld.

Deterrence

The following cases relate to the idea of deterrence, both general and specific, as a recurring theme in the sentencing of armed robbery offenders. From the sentencing remarks it appears that deterrence features heavily in the considerations of judges when determining appropriate sentences for offenders.

R v Smith [2003] SASC 263 (14 August 2003) involved armed robbery with a rifle. The appellant also pleaded guilty to four counts of creating risk of bodily harm, two counts of causing grievous bodily harm with intent to cause grievous bodily harm, two counts of illegal use of a motor vehicle and one count of unlawfully being on premises – convictions related to three separate groups of offences. He appealed a sentence of 30 years imprisonment (18 years non-parole period) on grounds that the sentence was manifestly excessive. The appeal was dismissed (Justice Gray dissenting), with Justice Lander noting the extreme gravity of his criminal conduct, and the importance of personal and general deterrence:

> Armed robbery is a crime in respect of which general deterrence is of particular importance and the trial Judge was bound to take into account aspects of general deterrence. So also, in the appellant's case, were matters of personal deterrence important [67] (Lander J).

In *R v Nguyen* [2002] SASC 341 (24 October 2002), the appellant pleaded guilty to two counts of armed robbery (firearm and knife) and one count of illegal use of a motor vehicle, and was sentenced to eight years imprisonment with a non-parole period of seven years. The sentencing judge correctly described the offences as very serious.

> The use of knives and guns to rob and terrify innocent members of the public is something that is now disturbingly prevalent. The fact that the cause of such behaviour may be an addiction to heroin is a very little consolation to your victims. General deterrence for offending as serious as this and as violent as this must take precedence [18] (Perry J).

It was held by the majority of the Court of Criminal Appeal (Gray J dissenting) the sentence was not manifestly excessive. In the view of the court, the serious nature of the offending was enough to justify the lengthy non-parole period in this case.

R v Murray [2000] NSWCCA 159 (3 May 2000) involved one count of receiving, one count of armed robbery and two counts of possession of a shortened firearm. The appellant was sentenced to two and a half years imprisonment (a non-parole period of one year) in relation to counts one and two, and sentenced to two years imprisonment for possession of a shortened firearm. In sentencing the offender, his Honour said in relation to the firearms offences:

> Their only possible purpose involved major illegality. Shortened pump action shotguns are not kept as protection, souvenirs, heirlooms nor for some innocent pursuit such as hunting. They were simply weapons designed or adapted to inflict destruction or to create terror. To my mind the possession of loaded shortened pump action shotguns represents criminal conduct of a very high order [12] (Carruthers AJ).

The appeal against the sentence was dismissed, as the court was unable to conclude that the sentences his Honour imposed were outside the sentencing discretion available to him. The court took a serious view of the firearms matters and held the sentence was not manifestly excessive:

> I would add only this: but for the applicant's age I would have regarded the sentence imposed on him, having regard particularly to the presence of two loaded shortened

> shotguns in the near vicinity of the balaclava when the maximum punishment prescribed for the possession of but one of those weapons for ten years, as woefully inadequate. If the community and its representatives are serious about getting rid of this sort of weapon, sentences far, far higher than disclosed in the statistics put before us should surely be imposed [25] (Hulme J).

In *Hillman v Police* [1998] SASC 6708 (11 May 1998), the appellant was charged with a string of housebreaking, receiving and larceny offences. Among other offences, the appellant was charged with a number of offences involving firearms: being in possession of a pistol which was reasonably suspected of having been stolen or obtained by unlawful means, being in possession of firearms without holding an appropriate firearms licence, and receiving two pistols and ammunition that had a combined value of about $3,000. Hillman was originally sentenced to 10 years imprisonment, with a non-parole period of eight years. However, the appeal was allowed and the sentence was reduced to four years imprisonment with a non-parole period of three years. The Supreme Court held that while the breadth of offending required a significant and lengthy period of imprisonment, the sentence given was, in its totality, far too high:

> The learned Magistrate was entitled to treat these offences as the more serious of their kind … The circumstances of the offences, the antecedents of the offender and the need for the personal and general aspects of deterrence, require that a significant penalty should be imposed. The penalty had to be one of a lengthy and immediate term of imprisonment … Notwithstanding the seriousness of these offences and the previous prior record of this offender, the sentence of 10 years imprisonment for receiving, in these circumstances, is manifestly excessive (Lander J).

Firearms offences

Seriousness

The following cases highlight the seriousness with which the courts view firearm offences. The objective gravity of the offence is a significant factor in determining the appropriate sentence. While the judges appear to have regard to the particular offending behaviour of the individual offender, firearm offences are viewed as a serious threat to the community. Accordingly, severe penalties are considered appropriate for offences of this kind.

R v Bortoli [2006] VSCA 62 (17 March 2006): involved two counts of armed robbery with firearms and further charges of conspiracy. The appellant was sentenced to a total effective sentence of six years and nine months' imprisonment, with a non-parole period of five years (first proceeding). Bortoli was later convicted of one count of possession of an unregistered firearm for which he was sentenced to 18 months imprisonment, to be served cumulatively on the sentence already serving (second proceeding). The appellant appealed the first sentence as manifestly excessive and in breach of the totality principle, but the court held that due to the seriousness of the offence, sentencing discretion had not miscarried:

> Armed robbery is a particularly serious offence because of the impact of threatened violence upon its victims and because the use of a weapon carries with it the risk of serious injury or death. An armed robbery involving the use of loaded firearms at secured premises, with a likely presence of security guards, increases the risk of serious injury or death in the course of the commission of the offence. The armed robberies committed by the appellant fell into this category [23] (Redlich AJA).

While the appeal on the first proceeding was dismissed, it was submitted on the appellant's behalf that the sentence of 18 months imprisonment for possession of a firearm was manifestly excessive in view of the maximum penalty of two years for the offence, the appellant's plea of guilty and the circumstances in which the offence was committed. The Court of Appeal stated:

> He submitted that, notwithstanding that the appellant had possession of a loaded shotgun in a public place and in the admitted circumstance that he was contemplating its use for the purpose of an armed robbery, a sentence of this order – being three-quarters of the maximum sentence – was outside the permissible range. There is considerable force

> in this submission. While it is undesirable to postulate what might constitute the worst type of case for such an offence, possession of a loaded firearm with the intent to commit murder or inflict serious injury would plainly be a more serious type of case.
>
> His Honour described the offences as of a most serious nature and considered it fortunate that more serious criminality had not occurred. He pointed to the potential for disaster and tragic consequences if the appellant had carried out the armed robbery and the police had intervened or the security guards had not cooperated. The sentencing judge was correct in taking these circumstances of aggravation into account, even if those matters might have formed the basis of a separate charge. Nevertheless, allowing for the circumstances of aggravation and the fact that the offences were committed whilst the appellant was on bail, I consider that the learned Judge placed undue weight upon the purpose for which these two offences were committed and too little weight upon the appellant's plea of guilty [40–42] (Redlich AJA).

The appeal on the second proceedings was allowed and Bortoli's sentence for firearm possession was reduced to 12 months imprisonment.

In *Quarrell v White* [2004] TASSC 45 (20 May 2004), the applicant pleaded guilty to and was convicted of seven offences: possession of ammunition, possession of a firearm without authorisation, possession of an unregistered firearm, possession of a shortened firearm, handling a firearm under the influence of drugs/alcohol, possession of cannabis and use of cannabis. White was sentenced to four months imprisonment and disqualified from holding a firearms licence for 10 years. White appealed the sentence on the grounds that it was manifestly excessive in light of the offender's circumstances, but his appeal was dismissed. In his reasons for judgment, Justice Crawford stated:

> Possession of an unregistered firearm that had been unlawfully shortened by him, and for which he had no licence to possess, deserved fairly substantial punishment for a man with his record and having regard to the fact that he was being sentenced for drug offences, albeit not overly serious in themselves, for the fourth time in six years, I am not persuaded that the sentence of four months' imprisonment that was imposed was manifestly excessive. The learned magistrate had a discretion to exercise and I have concluded that I would not be warranted in interfering [26] (Crawford J).

State of Western Australia v Sabek [2005] WASCA 207 (4 November 2005) involved a Crown appeal against a sentence imposed for receiving a .40 calibre semi-automatic handgun (count 1), attempted aggravated burglary (count 2) and three counts of making threats to harm (counts 3, 4 and 5). The respondent pleaded guilty to count 1, and following a two-day trial was further convicted on counts 2, 4 and 5. The jury returned a verdict of acquittal on count 3. On the attempted burglary charge he was sentenced to a term of 18 months imprisonment, suspended for 18 months. He also received fines of $1,000 in respect of count 1 and $4,000 in respect of each of counts 4 and 5. The sentencing judge emphasised the seriousness of the offences and described the particular circumstances of the offending, while noting that 'there is a Firearms Act in this State of which the respondent was well aware and the possession of unlicensed firearms is not condoned and is regarded seriously' [13] (Roberts-Smith JA). His Honour indicated that what the respondent had done was very serious indeed, as was indicated by the statutory maximum penalties.

The court considered the following arguments by the Crown as to whether sufficient weight had been afforded to the aggravating factor of being armed, among other factors, in sentencing the respondent:

> The other aggravating factors that the appellant submits are serious enough to have required the imposition of more severe sentences (that is, terms of immediate imprisonment), are:
>
> - the premeditated nature of the offending, which involved going to the complainants' home in the respondent's van – a vehicle that the complainants would not recognise – with Mr Moran hiding in the back
> - the intent to assault with a view to obtaining repayment of the debt
> - the physical force used in the attempt to gain entry to the premises

- the threats made to Mr Grant about a week before the offences
- pointing the gun at the complainants in counts 4 and 5, while laughing and smiling
- denying possessing any guns when police executed the search warrant on his house and consequently being found with weapons on his person and unlicensed and stolen firearms in his possession.

> By way of mitigation, defence counsel submitted that the respondent's cultural background had influenced the views he held about possessing firearms, that he had acquired weapons for his own protection and that there was no evidence that the respondent had intended to actually carry out the harm the subject of the threats [39–40] (Roberts-Smith JA).

The Court of Appeal held that the sentence imposed by the learned trial Judge was manifestly inadequate, but only in relation to the attempted aggravated burglary charge. The respondent was resentenced on that count to a term of 12 months' immediate imprisonment. In coming to this decision to overturn the suspended sentence, the court stated:

> It is plain the respondent took it upon himself to use threats of violence, force and an illegal handgun to act as a criminal enforcer and that he committed the offences in that capacity. Whatever the motivation for it may have been, this is egregious conduct in respect of which the need to impose sentences which individually and in combination were proportionate to the conduct which constituted the offending inevitably called for a term of immediate imprisonment [53] (Roberts-Smith JA).

R v Deans [2000] QCA 516 (19 December 2000) involved the negligent discharge of firearm, for which the appellant was sentenced to three years imprisonment with a non-parole period of one year. The sentencing judge noted the use of firearms to settle disputes is totally unacceptable and must be sternly discouraged. The Court of Appeal further noted that 'the use of a firearm will always be regarded as an aggravating circumstance' [11] (Williams J). Justice Williams added:

> Here that is mitigated to some extent because, though the firearm was pointed towards the complainant, it was accepted that the applicant had no intent to injure and that he should be sentenced on the basis of negligent use of a firearm. However, in my view, the fact that he had specifically acquired the firearm against the background of the feuding between he and the complainant, and the fact that he pointed the firearm in the general direction of the complainant from the door of the house before there was any exchange of abuse, makes this particular offence a serious one. That is compounded by the fact that he was on probation at the time [11–12] (Williams J).

The court dismissed the appeal (Cullinane J dissenting). Although the sentence was at the top of the permissible range, it was not manifestly excessive and the mitigating circumstances were reflected appropriately in the early parole recommendation.

In *Salzgeber v Hayward* [1995] NTSC 120 (21 November 1995), the applicant pleaded guilty to one count of doing a dangerous act, for which he was sentenced to 15 months imprisonment. The offence involved discharge of a firearm that proved unsafe and was not registered in the appellant's name. The applicant appealed the sentence on the basis that it was manifestly excessive. In sentencing the offender, his Honour highlighted the seriousness of the offence, stating:

> However ... neither you nor anybody else in this Territory should think for one minute that a person can point a firearm at another person and discharge that firearm intending to hit them without the matter being taken very seriously indeed [29] (Kearney J).

While the appeal judge also noted the extremely reckless nature of the appellant's behaviour, the court held inadequate weight was given to the circumstances in which the appellant carried out the offence. Extraordinary circumstances led the court to allow the appeal in relation to the dangerous act charge, as this was 'clearly a case where the appropriate sentence for that offence in all the circumstances was a suspended sentence of imprisonment' [48] (Kearney J).

Malatesta v Pinch [2001] WASCA 224 (30 July 2001) involved an appeal against a 12-month sentence in relation to an unlicensed and stolen firearm and ammunition, possessed by the applicant without a firearm licence. The appellant argued the sentence was manifestly excessive and questioned whether imprisonment was the only option available to the sentencing magistrate. In sentencing the offender, the magistrate pointed out the seriousness of the offence of conveying in a motor vehicle a high-powered and potentially dangerous weapon when it was reasonably suspected of having been stolen or unlawfully obtained. Although it was accepted that there was nothing sinister in the appellant's intended use of the firearm, the magistrate noted:

> The community, the courts and the law enforcement agencies are rightly concerned with the free flow of firearms within the community, and certainly are concerned with the proper licensing and control of firearms. No better example of the concerns of the community is had than here today [5] (Miller J).

While the Court of Appeal agreed that the magistrate rightly considered the offences that the appellant committed to be serious, the court felt the magistrate dismissed consideration of all the circumstances (including the appellant's age and relatively minor record, notwithstanding previous convictions for possession of unlicensed firearms and ammunition), which would have justified suspending the sentence of imprisonment. The appeal was allowed and a sentence of suspended imprisonment was imposed in lieu of the original 12-month sentence.

In *R v Middlebrook* [2004] NSWCCA 49 (5 February 2004), the appellant was charged with aggravated possession of firearms (involving more than three firearms, any one of which is a prohibited firearm, when the firearm is not registered and the person is not authorised by a licence or permit to possess firearms). Seven further offences were taken into account: cultivation of nine cannabis plants, possession of cannabis seeds, unauthorised possession of spud cannon, failure to ensure safekeeping of cannon, failure to ensure safekeeping of firearms, failure to ensure safekeeping of prohibited weapon and unauthorised possession of ammunition. While the maximum penalty for the aggravated possession offence is 20 years imprisonment, the offender was sentenced to four years imprisonment with a non-parole period of three years.

The appellant claimed the guns were for use on property and not to protect the cannabis plants, and appealed the sentence on grounds the judge had erred in assessing the objective criminality of the principal offence and the offences to be taken into account. On appeal, Justice James found that the sentencing judge had seriously overstated the objective gravity of the principal offence, given that there was nothing to suggest the applicant was in possession of the firearms for the purposes of trafficking in them [27–29]. The court also held the sentencing judge erred in considering the offences to be taken into account required imposition of an increased penalty, as the failure to keep the firearms safe and the risk of access to them had already been taken into account as a circumstance of aggravation in assessing the objective criminality of the principal offence.

> I have already stated my conclusion that the sentencing judge seriously over-estimated the objective gravity of the principal offence. However, the Legislature has made it clear that the possession of more than three firearms, if the firearms are not registered and the possessor is not authorised to possess them, is a serious offence and is an even more serious offence, if one of the firearms is a prohibited firearm. Although I consider that the sentencing judge over-estimated the likelihood of other persons having access to the applicant's firearms, there was a potential for such firearms to fall into wrong hands and to be used in the commission of crimes. In my opinion, a custodial sentence should be imposed and I do not consider that the Court should order that it be served by way of periodic detention or that any part of the sentence should be suspended [37–38] (James J).

The appeal was allowed and, considering the special circumstances of the offender, the court imposed a sentence of two years imprisonment, with a non-parole period of one year.

In *R v Howard* [2004] NSWCCA 348 (12 October 2004), the appellant pleaded guilty to two charges

of selling unauthorised pistols (involving an actual sale and an agreement to sell) and was sentenced concurrently to three and a half years imprisonment on the first charge, and two and a half years imprisonment on the second charge. The offender appealed the sentence on numerous grounds, all of which the Court of Criminal Appeal rejected. Chief Justice Spigelman dismissed the appeal, stating:

> These were, in my opinion, very serious offences, for all the reasons given by his Honour, to which I have referred above. I would give weight to one factor not highlighted by Ducker ADCJ. One of the pistols, the subject of the second charge, was equipped with a silencer. No doubt some recreational gun users have silencers. However, this is quintessentially a feature of weapons used in violent crimes. For a person to deal in weapons of the character not to have any concern about the identity of the purchaser is an aggravating feature.
>
> Where it appears that there are elements within the community who refuse to accept that firearms offences must be regarded as serious, the objectives of general and personal deterrence are entitled to substantial weight in sentencing for such offences. The availability of such weapons poses a major threat to the community particularly where, as here, an accused is completely indifferent to the persons who were to acquire them. The community has determined that trade in such weapons on any other than a strictly regulated basis is to be regarded as a serious offence. That must be reflected in the sentence imposed. His Honour's sentence should be upheld [66] (Spigelman CJ).

R v Cromarty [2004] NSWCCA 54 (22 March 2004) involved a large number of firearms offences, including:

- unauthorised possession of firearms in aggravated circumstances (three or more prohibited unregistered weapons) – sentenced to three years imprisonment (non-parole period of two years)
- possession of unregistered firearms – sentenced to 12 months imprisonment
- possession of firearms with defaced identification markings – sentenced to eight months imprisonment
- unauthorised possession of prohibited weapons – sentenced to 16 months imprisonment
- possession of shortened firearms – sentenced to 16 months imprisonment
- plus two matters on Form 1 taken into account (possession of ammunition and improper storage).

The court ordered the sentences to be served by way of periodic detention and the firearms were forfeited to the Crown. The Crown appealed the sentence as manifestly inadequate and argued that the sheer size of the cache, and the nature and type of weaponry recovered, required a heavier sentence to deter other people from committing like offences.

The appeal judge noted the principle and objects of the firearms legislation and stated that the sentencing judge appeared to 'seriously understate the criminality involved in failing to register firearms and weapons which he was authorised to possess' [86] (Kirby J). Justice Kirby emphasised the legislative policy behind firearms legislation and pointed out that failure to register a weapon, even if the offender was entitled to be in possession of it, was not to be treated lightly. In allowing the appeal, the court held that:

> The gravity of these offences was such that they called for a sentence which unmistakably denounced the conduct, a sentence which would operate as a deterrent to likeminded offenders [89] (Kirby J).

The original sentence was quashed and a new sentence imposed, namely:

- four years imprisonment (non-parole period of two years) for possession of firearms in aggravated circumstances
- cumulative sentence of two years for possession of unregistered firearms
- concurrent sentence of 18 months for possession of firearms with defaced identification markings
- concurrent sentences of 16 months each for unauthorised possession of prohibited weapons and possession of shortened firearms.

In *Cooper v R* [2005] NSWCCA 428 (12 December 2005), the applicant pleaded guilty to three charges: stealing in circumstances of aggravation, possession of five firearms without being authorised to do so and disposal of five stolen firearms. For these

offences he was sentenced to three and a half years imprisonment on the first charge (non-parole period of two years), and on each of the other charges a sentence of one year and nine months imprisonment, to be served concurrently. In considering his appeal, the court noted:

> The offences were serious ones of their kind, not least because one result of them was to enable others in the community to make use of the handguns. His Honour's finding was that it was the applicant's intention not to make the firearms available generally to persons in the community who would not be entitled to possess and use them, but rather to destroy the guns or dispose of them safely. Even so, the fact, unintended or otherwise, that the guns did as a result of the applicant's criminality become available to be so used, was a matter which in my opinion sounded in the sentence [20] (Barr J).

Bearing in mind the totality of the criminality and the concurrency of the sentences, the court held the sentences were unremarkable for offences as serious as these. The appeal was dismissed, as the sentence was not manifestly excessive and well within discretion.

R v Goktas [2004] NSWCCA 296 (25 August 2004) involved possession of a prohibited firearm, for which the maximum sentence is 14 years imprisonment. The applicant appealed a sentence of four years imprisonment with a non-parole period of two and a half years. The sentencing judge regarded possession of such a weapon, even for the short time encompassed by this offence, as 'criminal conduct of a very high order' [13] (Grove J). However, on appeal the court disagreed, stating:

> Paying particular regard to the very short period of the applicant's possession, its joint nature, the circumstances of his participation and guided by those available statistics, I have reached the conclusion that this sentence is excessive to the level that this court should intervene [26] (Grove J).

The appeal was allowed and the applicant was re sentenced to two years imprisonment with a non-parole period of 15 months.

DPP v Torney [2005] VSCA 187 (20 July 2005) involved a Crown appeal against sentences imposed upon the respondent for 22 counts of being a prohibited person in possession of a firearm. The respondent, who had convictions for armed robbery and murder, was sentenced to three months imprisonment on each count to be served concurrently, the service of the whole of which was suspended for 12 months. The prosecution appealed the sentence on the basis that it was manifestly inadequate, asserting that it failed to reflect the gravity of the offences, failed to take into account general and specific deterrence, and gave insufficient weight to the maximum penalty applicable to the offence (seven years imprisonment). Although the appeal judge agreed that in ordinary circumstances a sentence of three months imprisonment would be manifestly inadequate for the offence of the kind alleged, the appeal was dismissed because of the special circumstances of the respondent and the extraordinary history of the proceedings. The appeal judge stressed that the extreme leniency of the sentence imposed was the result of peculiar circumstances and could not be relied on as a precedent for later similar offences:

> The sentence can, of course, be no guide at all for any future purpose as to what might be an appropriate sentence for offences of this nature. Only the quite peculiar circumstances of this matter … can explain what would otherwise be perceived to be a sentence of extraordinary leniency [25–26] (Charles JA).

Drug offences (with associated firearms offences)

Firearms as an aggravating factor in sentencing for other crimes

The following cases refer to sentencing for drug-related crimes, where offenders are charged with additional firearms offences or have additional firearms offences taken into account. These cases highlight the use or possession of firearms as an aggravating factor in sentencing for other crimes.

In *R v Matthew John Wilson* [2002] ACTSC 14 (7 March 2002), the defendant pleaded guilty on one charge of possessing a trafficable quantity of a drug of dependence (methamphetamine) for the purpose of sale or supply, and a further charge of possessing

a trafficable quantity of a prohibited substance (MDA). A number of other offences were taken into account: possession for supply of cannabis and cocaine, possession of an anabolic steroid and cannabis oil, two offences of possession of an unlicensed firearm, possession of a prohibited weapon, possession of property reasonably suspected of having been stolen, possession of explosives in the form of fireworks, and possession of the proceeds of crime. In sentencing the offender to three years imprisonment with a non-parole period of one year, Chief Justice Miles noted that '[t]he seriousness of the offences charged in this case is aggravated substantially by the surrounding circumstances which are reflected in the matters to be taken into account on the Schedule' [32].

While a number of other offences besides those involving firearms were taken into account in the sentencing process, it is clear that the offences were taken to be aggravating factors and resulted in a heavier sentence. While strictly speaking the offender is not sentenced for offences taken into account on a Schedule or Form 1, such surrounding offences do influence sentencing outcomes. As noted by Justice Howie in *R v Tolley*:

> As was made clear in the Attorney General's Application under s 37 of the *Crimes (Sentencing Procedure) Act 1999* (No 1 of 2002) (2002) 56 NSWLR 146, the court does not sentence the offender for a matter taken into account on a Form 1. A charge on the Form 1, however, may increase the sentence otherwise appropriate for the principal offence by the court giving greater weight to personal deterrence and retribution than it would have done in the absence of the Form 1 [56] (Howie J).

R v Tolley [2004] NSWCCA 165 (26 May 2004) involved a Crown appeal against a sentence of two years imprisonment for a charge of manufacture of a prohibited drug, with two offences on a Form 1 to be taken into account (one previous charge of manufacture of a prohibited drug and one charge of possession of two unregistered firearms). The trial judge suspended this sentence upon the offender entering into a good behaviour bond for a period of two years. The Crown argued that such a sentence was manifestly inadequate and that the trial judge had erred in failing to take into account seriousness of firearms offences. On appeal, Justice Howie stated:

> It seems to me, with respect, that his Honour completely misunderstood the significance of the firearms offences and the weight to be attributed to them in sentencing the respondent. Although his Honour said that he was taking them into account in the sentence he was to impose, it is difficult to see how he could have done so in any meaningful way, having expressed the opinion that they were not 'terribly relevant'. The fact that the respondent was going to recondition the .22 rifle but changed his mind and never got around to surrendering either of them was no excuse and little by way of mitigation. The respondent clearly knew the law in relation to the possession of firearms and simply chose to ignore it. Nor was it a mitigating factor that the respondent was not going to use the rifle for any criminal purpose. If such had been the case it would have been an aggravating feature and would probably have resulted in a more serious offence [52] (Howie J).

The Crown appeal was allowed and suspension of the imprisonment sentence overturned.

In *R v Shankley* [2003] NSWCCA 253 (11 September 2003), police found the defendant in possession of a loaded .32 calibre pistol together with a further eight rounds of ammunition. Also found in the defendant's possession were items indicative of the supply of drugs and a significant amount of amphetamine. The defendant pleaded guilty to one count of supplying a commercial quantity of methylamphetamine and unauthorised possession of a firearm. Ten matters on a Form 1 were taken into account in respect of count 1 (the most serious charge being supply of methadone), and three matters on a Form 1 taken into account in respect of count 2 (involving further breaches of firearms legislation).

The offender was sentenced to an effective sentence of 11 years imprisonment with a non-parole period of seven years and three months. On appeal, the Crown proposed that the sentence was manifestly inadequate; arguments included that the sentence imposed failed to reflect the offences on the Form 1.

Justice Howie found that the sentence did not adequately reflect the seriousness of the criminality of the offence and the sentence fell far short of what was required to denounce the respondent's criminal conduct. His Honour stated:

> This offence was a serious one as recognised by the sentencing judge. The fact that the weapon was loaded, capable of being fired and found with additional ammunition indicated that the respondent intended to use it if necessary. His possession of the weapon was clearly part of his involvement in the supply of drugs but his Honour, correctly in my respectful opinion, considered it to be a separate act of criminality from that revealed by the first count.
>
> At the time of the commission of this offence the respondent was the subject of a number of bonds imposed in the Local Court for firearms offences. He readily admitted to police this fact and that he was aware that the maximum penalty for the unauthorised possession of the weapon was 14 years' imprisonment. The offence showed the contempt the applicant had for the law in respect of the possession of firearms and the risk he was prepared to run … to carry out his business of trafficking in drugs. It was an offence that itself required a substantial sentence at least … to deter the applicant from such conduct in the future.
>
> Further, when sentencing for this offence his Honour was required to reflect the fact that he was asked to take into account three matters relating to firearms on a Form 1. One of these matters related to a considerable amount of ammunition of various types found in the respondent's home. The two other matters concerned the possession by the respondent of firearms located in his premises; one charge related to two shotguns and the other to a blank-firing pistol [22–24] (Howie J).

The appeal was allowed and the respondent was resentenced to an effective sentence of 14 years imprisonment, with a non-parole period of eight years and three months.

R v Aslan [2005] NSWCCA 121 (4 April 2005) involved ongoing supply of drugs and pistols to undercover police officers. The applicant pleaded guilty to one count of supply of a prohibited drug on an ongoing basis, a second count of selling firearms on an ongoing basis and a third count of supplying a large commercial quantity of a prohibited drug. Also taken into account, pursuant to the Form 1 procedure, were a further six offences. The applicant appealed the effective sentence of 11 years and six months, with a non-parole period of seven years, on the basis that it was unduly harsh and severe. However, the appeal was unsuccessful.

The appeal judge noted that while the total effective sentence was undoubtedly a lengthy one, the sentence was not outside the range of his Honour's sound exercise of discretion. In sentencing the applicant, the sentencing judge observed that the offender had provided the pistols without regard for public safety and the appeal judge noted that 'his Honour was correct in taking into account the lack of regard for public safety in relation to all the counts with which he was dealing, the supply of drugs as well as the supply of what I have described as lethal weapons' [17] (Grove J). The supply of a lethal weapon was correctly regarded as an aggravating circumstance of the offence and was appropriately considered in the sentencing process.

Conclusion

Of the cases reviewed, it appears that use of a firearm (as opposed to other weapons) was considered to be an aggravating factor in sentencing, particularly in relation to armed robbery offences. While the judges noted other factors to be relevant to the sentencing exercise, most emphasised the seriousness of firearms offences, in particular in their sentencing remarks. The courts viewed possession or use of firearms as representing a high level of criminality, posing a significant threat to the community and carrying an attendant danger of loss of life or serious injury. Use of replica or imitation firearms appeared to do little by way of mitigating the seriousness of the offending behaviour.

Deterrence, both general and specific, was also a recurring theme in sentencing of armed robbery offenders. Furthermore, cases involving drug-related crimes with associated firearm charges highlighted use or possession of firearms as an aggravating factor in sentencing for other crimes.

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Appendix

Appendix A: Sentencing data analysis explanatory notes

Bureau of Crime Statistics and Research data

Data relating to firearms offences heard in NSW upper and lower courts for the period 2002–04 were collected from BOCSAR. While data were also obtained from the New South Wales Police Service Firearms and Regulated Industries Crime Squad (FRICS), these data were identified to be a subset of the data BOCSAR provided. The charges in the FRICS data set related mainly to drug sale, trafficking and dealing offences, and were not analysed further.

Description

The BOCSAR data file comprises de-identified unit record data from firearms offences heard in all NSW upper and lower courts. The file was originally two separate data sets containing information from upper and lower courts, which were merged into one unit record file. The file contains one row of data for each firearm offence in cases finalised in 2002–04, with related defendant characteristics, court outcomes and penalty values where applicable.

The BOCSAR unit record file contains data for:

- 7,936 charges
- 3,987 defendants.

The following variables appear in the data set:

- date of charge
- defendant characteristics – including age, sex and Indigenous status
- court venue
- charge description
- court outcome
- penalty and quantity (where applicable).

Data definitions

The BOCSAR data set contains offences under the *Firearms Act 1996* (NSW), the Firearms Regulation 1997 (NSW) and some related offences involving firearms under the *Crimes Act 1900* (NSW). For analysis, the authors coded the charges according to the following offence types:

- altered – altering/shortening a firearm, possessing an altered/shortened firearm or selling an altered/shortened firearm
- buy – buying/purchasing firearms
- dealing – selling, buying, advertising or offering for sale firearms or firearm parts without a dealer's licence, or possessing firearms or parts for sale/transfer/repair without a dealer's licence

- dealer – dealer specific offences, including recording of transactions, safe storage requirements, and requirements to inspect documents
- discharge – discharge or use of firearm, shoot or fire firearm, and attempted discharge
- falsification – providing false or misleading information, providing false or forged documents, and stealing documents
- manufacture – unauthorised manufacture of firearms
- miscellaneous – handling a firearm under the influence of alcohol or drugs, stealing a firearm, and entering a building/land with a firearm
- notification – failure to notify theft or loss of firearm or licence, failure to notify change of address, failure to notify genuine reason ceased, or failure to notify change in particulars
- possession – illegal possession or carriage of firearm
- post/convey – includes sending firearm by post/mail, and conveying firearm contrary to conditions
- production – failure to produce firearm, parts or licence on demand; and obstructing/hindering/interfering during inspection
- safekeeping – safekeeping and safe storage compliance, failure to prevent theft or loss of firearm, and allowing unauthorised possession of firearm
- security guard – specific offences relating to security guards, such as safe storage, register requirements and inspection requirements
- selling – specific sale offences, such as selling unregistered firearms or selling to an unauthorised person, or selling without inspection of documents or without dealer/witness present
- surrender – failure to surrender firearm or licence when licence revoked/suspended, and failure of unauthorised person to surrender possession of firearm.

The following case outcomes appear in the BOCSAR data set:

- accused deceased
- adjourned to Drug Court
- arrest warrant issued
- dismissed under *Mental Health (Criminal Procedure) Act 1990 No. 10*
- dismissed after hearing
- non-appearance of parties
- not guilty
- offences taken into account
- plea accepted in full discharge of indictment
- proven guilty
- referred to Mental Health Review Tribunal
- remitted to local court
- withdrawn.

The following penalties appear in the BOCSAR data set:

- community service order
- compensation
- discharged with recognisance
- dismissed
- driving licence suspended/disqualified
- fine
- forfeiture order
- home detention
- imprisonment
- juvenile detention
- no penalty
- order to attend alcohol/drug rehabilitation
- periodic detention
- rising of the court
- suspended sentence (with or without supervision)
- good behaviour bond (with or without supervision).

An indicator is included as to whether the penalty recorded was the principal penalty imposed (not used for the purposes of this report).

Data qualifications

The unit record data file contains one row of data for each firearm offence charge listed on cases finalised during 2002–04. Each row is defined to have a single firearm/weapon offence charge and a single corresponding penalty. However, a defendant may be charged with multiple offences. Unique identifiers were assigned for each distinct individual to allow these relationships to be identified in the data.

The data used for the purposes of analysis excluded those offences charged but stood out of the court list. Where multiple counts of the same offence and each count received the same outcome and the same penalty, the multiple counts are treated as a single charge. Where multiple counts of the same offence had different outcomes, they were treated as separate charges. Charges that were recorded with the outcome of 'second or other penalty for the offence' in the original data set were excluded from the total number of offences charged, although the second penalty imposed for the offence was included in the total number of penalties. That is, where multiple penalties were received for the same offence, all penalties imposed were included, but only a single charge was recorded.

Department of Justice data

Data relating to firearms offences heard in Victorian upper and lower courts for the period 2002–04 were sourced from Court Services within the Department of Justice, Victoria. The primary source of data was the Return of Prisoners Convicted forms (conviction returns) completed by the court when a defendant is sentenced, which is recorded in the Victorian courts database.

Description

The Department of Justice, Victoria, data file comprises de-identified unit record data from firearms offences proven guilty in Victorian upper and lower courts. The unit record data file contains one row of data for each firearm offence charged during 2002–04 with related defendant characteristics, court outcomes and penalty values where applicable.

The Department of Justice, Victoria, unit record file contains data for:

- 1,921 charges
- 1,844 individuals.

The following variables appear in the data set:

- date of finalisation
- defendant characteristics – including gender and age
- court venue
- charge description and statutory reference
- court outcome
- penalty and quantity (where applicable).

Data definitions

The data were extracted for Victorian defendants proven guilty in 2002, 2003 and 2004 for offences involving firearms under the *Firearms Act 1996* or the *Crimes Act 1958*, and the authors coded them into the following offence categories:

- acquisition – acquire a firearm without dealer/agent; acquire firearm without a permit
- administrative offences – failure to dispose of a firearm where licence expired/varied; failure to surrender firearms/ammunition when licence suspended/cancelled; failure to notify theft/loss/destruction of firearm; failure to produce licence/permit; failure to comply with licence conditions; failure to notify bringing firearm into the state; failure to notify change of address; failure to notify removal of firearm interstate; failure to produce firearm; failure to supply specified information to the Chief Commissioner of Police; knowingly make false statement in application
- alteration – possess firearm with defaced/altered serial number; shorten barrel of firearm
- ammunition – licence holder possesses/uses unsuitable ammunition; possesses ammunition without a licence
- collectors – collector fails to store firearms correctly; fails to comply with conditions of collector's licence; acquires/disposes/possesses/carries ammunition without a collector's licence
- dealer-specific – dealer acquires firearm from a non-suitable person; dealer disposes of firearm to a non-suitable person; dealer fails to store firearm correctly; dealer fails to keep register of firearms
- dealing and disposal – disposes of firearm without a dealer/agent; dealing in firearms without a licence
- possession/carriage/use – carry firearm on private property without consent; possess/carry imitation firearm; possess/carry/use firearm without licence; possess/carry/use unregistered firearm; offences relating specifically to prohibited persons (e.g. possess/carry/use); carry/use loaded firearm in public place; discharge firearm without consent; damage property with firearm; possess/carry/use silencer without permit; use a firearm to resist/prevent arrest

- safety – carry firearm/ammunition in unsafe manner; carry/use firearm under the influence of alcohol; carry/use firearm in a dangerous manner; fail to ensure firearm used in a secure manner
- storage – failure to store firearm/ammunition properly/correctly; failure to safely store firearm/ammunition; failure to take precaution firearm is not stolen or lost; store firearm/ammunition in insecure manner.

The following outcomes appear in the Department of Justice, Victoria, unit record file:

- adjourned
- committed
- proven
- convicted and discharged
- dismissed
- discharged
- struck out.

The following penalties appear in the Department of Justice, Victoria, unit record file:

- adjourned undertaking
- adjourned undertaking with conviction
- adjourned undertaking with diversion plan
- community based order
- detention
- fine (including fine or aggregate fine)
- good behaviour bond
- imprisonment (including partially suspended or wholly suspended)
- intensive corrections order
- no sentence received
- other (including other order, non-custodial supervision order, combined custody and treatment order, and hospital security order)
- probation
- suspended sentence (including partially suspended or wholly suspended sentence)
- youth training centre.

Data qualifications

Data pertaining to unproven charges were not recorded in the data file. Each row is defined to have a single firearms offence charge with one corresponding penalty. However, a defendant may be charged with multiple offences. Unique identifiers were assigned for each distinct individual to allow these relationships to be identified in the data.

In data from the lower courts, only the principal proven offence is recorded, meaning that some offences may not be captured if another offence received a higher penalty (e.g. armed robbery charges). In data from the higher courts, any offence proven is recorded, with an additional variable indicating whether it was the principal offence proven.

Office of Crime Statistics and Research data

Data relating to firearms and weapons offences heard in South Australian upper and lower courts during 2002–04 were sourced from the OCSAR. Specifically, the data relate to the Youth Court, as well as the Magistrates, District and Supreme courts.

Description

The OCSAR data file comprises de-identified unit record data from firearms/weapons offences heard in South Australian upper and lower courts. The unit record data file contains one row of data for each firearms offence finalised during 2002–04 with related defendant characteristics, court outcomes and penalty values, where applicable.

The unit record file contains data for:

- 7,884 charges
- 5,311 cases.

The following variables appear in the data set:

- charge description
- court outcome
- court venue
- date of finalisation
- defendant characteristics – including gender and Indigenous status
- penalty and quantity (where applicable)
- plea.

Data definitions

The data were extracted for South Australian court cases finalised in 2002, 2003 and 2004 for the following charges:

- all charges offence coded as 'weapons offences', i.e. with JANCO code 55 (possession and/or use of weapons). [JANCO is an adaptation of the Australian Bureau of Statistics' Australian National Classification of Offences (ANCO) system (ABS 1985 cat. no. 1234.0)]
- all charges under the *Firearms Act 1977*
- all charges under the Firearms Regulations 1993
- charges for selected firearms offences under the *National Parks and Wildlife Act 1972* (ss 68A(1), 68B(1), 68B(3), 68B(4), 70).

For the purposes of analysis, the authors further categorised offences into the following types:

- administrative – failure to notify change of address; failure to notify firearm lost/stolen destroyed; failure to notify alteration to firearm; firearm not registered in the name of owner; providing false or misleading information
- ammunition – obtain ammunition without appropriate licence; sell or supply ammunition to a person without appropriate licence or without permit to acquire; acquire/own/possess more than the prescribed amount of ammunition; own/possess amount of ammunition in excess of reasonable needs; possess banned ammunition; possess military ammunition
- buying – acquire a firearm without a licence or permit to acquire
- dealer-specific offences – failure to secure a firearm/receiver; failure to ensure premises are secured; failure to record particulars of a transaction; failure to submit a prescribed return; failure to compile duplicate records; failure to provide records of transfers; failure to compile records relating to repair/consignment/safekeeping.
- hunting – hunt without a permit or without permission of the landowner (may involve use of other weapons as well as firearms)
- marking – failure to mark an identification number on a firearm; failure to meet marking conditions; deface or alter identification marks
- possession – possess a firearm without appropriate licence; possess an unregistered firearm; possess a silencer; possess a proscribed receiver; possess or use a firearm for an unauthorised purpose; possess a firearm to commit an offence or when committing an offence; possess a firearm on court premises; borrower fails to return a firearm to its owner; accept transfer of possession not in accordance with the Act; possess or use a prohibited weapon; possess an object to damage property; possess or use a dangerous article (the latter three offences may involve use of a weapon other than a firearm)
- resisting – resist a police officer; failure to state name, address and age; failure to answer a question; failure to give information when requested.
- safety – failure to secure a class A/B/C/D/H/prescribed firearm; failure to store ammunition separately; failure to comply with prescribed transport requirements; carry a firearm and ammunition in the same vehicle.
- supply/transfer – sell/lend/give a firearm to a person without a permit; supply a firearm to a person without a permit; sell/lend/give a receiver not in accordance with the Act; transfer possession of a weapon to a borrower without inspecting licence; manufacture/sell/distribute/supply/deal in dangerous article; transfer possession to person under the influence of alcohol/drugs.
- usage – carry a loaded firearm in public; handle a firearm under the influence of alcohol/drugs; discharge a firearm to injure/annoy; failure to comply with licence conditions; carry an offensive weapon; carry an offensive weapon at night or on licensed premises (offensive-weapon offences may involve use of a weapon other than a firearm).

The following outcomes appear in the OCSAR unit record file:

- accused deceased
- charge withdrawn – prosecution application (not proceeded with)
- charge withdrawn – prosecution application (withdrawn)
- committed for sentence
- committed for trial
- discharged from prosecution
- dismissed – trial situation
- dismissed for want of prosecution (no trial) (TNE – tendered no evidence)

- found proved/agreed
- no action taken
- no case to answer
- nolle prosequi (discontinuance)
- not guilty
- not guilty under s 269
- proven guilty – no conviction
- proven guilty with conviction
- white certificate – where prosecution decides (due to circumstances) not to proceed with charges in superior court
- withdrawn on completion of mental health diversion program.

The following penalties appear in the OCSAR unit record file:

- bond with supervision
- bond without supervision
- community service order
- estreatment – breach of bail/bond orders
- imprisonment/detention/home detention
- monetary fine
- no penalty
- other order (e.g. restitution, confiscation of drugs, and restraining order)
- suspended imprisonment
- suspension of licence.

Data qualifications

The unit record data file contains one row of data for each firearm offence charge listed on cases finalised during 2002–04. Each row has a single firearm/weapon charge and any corresponding penalty. However, a defendant may be charged with multiple offences and there may be multiple defendants for each case. Unique identifiers were assigned for each individual to allow these relationships to be identified in the data. There is some potential for double counting in the South Australian data, as cases committed from the lower courts are included in addition to those finalised in higher courts.

If a person found guilty of a number of offences is charged on the one complaint or information, the court may impose a single or 'global' penalty for all or some combination of these offences. It is not possible to separately identify penalties for offences treated by the courts in this way at this time. When more than one penalty is imposed, the major penalty is the most serious penalty imposed.

For the purposes of this research, a case is a group of matters involving one defendant (co-defendants are assigned their own case), which were finalised before the same magistrate or special justice in the same court on the same day. A case is not considered finalised until all criminal charges involved in that case are dealt with. For example, if a case involves five offences and two are finalised at one hearing while the remaining three are finalised at a subsequent hearing, the case is considered finalised on that second hearing date. Adherence to this definition leads to a smaller count of cases than would result from using a definition based on the number of matters assigned a distinctive file number by the court (for administrative purposes, as the prosecution refines its case, so the court may choose to list the same group of matters under a number of different file numbers).

The major or most serious charge per case is determined on the basis of the maximum statutory penalty associated with each offence the defendant is charged with. The charge with the highest maximum statutory penalty from the set of charges on a case is defined as the major charge for that case.

Note that 'carrying' offences were categorised as usage, not possession offences. Some offences worded as 'possession and/or use' were categorised as possession offences for the purposes of analysis.

Office of the Director of Public Prosecutions data

Data relating to firearms offences charged in Western Australia by the ODPPWA between 2002 and 2004 were extracted from the ODPPWA case management system database, which records details of prosecutions conducted by the ODPPWA. The ODPPWA is the independent prosecuting authority for Western Australia, and is responsible for prosecuting all indictable offences committed against that state's criminal law.

Description

The ODPPWA unit record file contains one row of data for each weapons or firearms charge in cases finalised for 2002–04. The unit record data file contains one row of data for each firearm offence, with related defendant characteristics, court outcomes and penalty values, where applicable.

The unit record file contains data for:

- 459 charges
- 276 defendants.

No defendant characteristics appear in the data set, but the following variables are included:

- charge description
- court outcome
- court venue
- date of finalisation
- hearing type
- penalty and quantity (where applicable)
- plea
- region (metropolitan versus rural)
- verdict (where applicable).

Data definitions

The data were extracted for indictable offences committed to superior courts, prosecuted by the ODPPWA, finalised in 2002, 2003 and 2004 for the following offences involving firearms or weapons:

Firearms Act 1973 (WA)

- s 12(1)(a) No licence/permit shall be issued for an unsafe firearm
- s 19(1)(a) Sells, delivers or disposes of; (b) purchases or otherwise comes into possession of; or (c) is in possession of, any firearm or ammunition, without licence or permit
- s 19(2)(a) Sells, delivers, or disposes of a firearm or ammunition to another person, or otherwise permits another person to take possession of a firearm or ammunition; (b) purchases, or otherwise comes into, possession of a firearm or ammunition from another person; or (c) permits another person to be in possession of a firearm or ammunition, if the other person is not the holder of a licence or permit
- s 23(1) Permits possession of any firearm or ammunition to be taken by another person where there are reasonable grounds that the other person is affected by alcohol or drugs, or alcohol and drugs, or that the other person is of unsound mind
- s 23(2) Use, carry or otherwise possess a firearm whilst affected by alcohol or drugs
- s 23(3) Carries or uses a firearm without a licence or permit (contrary to licence/permit)
- s 23(5)(b) Possession of firearm where identification mark altered/defaced
- s 23(5)(c) Unlawfully alter firearm or possession of altered firearm
- s 23(7) Unlawfully possess silencer
- s 23(8) Point a firearm at another person
- s 23(9)(a) Fail to take reasonable precaution to ensure safekeeping
- s 23(9)(c) Unlawfully discharge firearm from or across road
- s 23(9)(d) Fail to store safely
- s 23(9a) Discharge firearm in a manner to cause fear
- s 23(11) Breach provision of the Act.

Firearms Regulations 1974 (WA)

- s 7(9) Wilfully misrepresenting material particulars in relation to licence/permit application.

Weapons Act 1999 (WA)

- s 6(1)(b) Carries or possesses a prohibited weapon
- s 7(1) Carries or possesses a controlled weapon
- s 8(1)(b) Carries or possesses article (not firearm, prohibited or controlled weapon) with intention to cause fear.

Criminal Code Act 1913 (WA)

- s 68 Armed in a way that may cause fear
- s 74(2)A Discharge loaded firearm into dwelling.

The authors further categorised offences into types, including:

- acquire firearm – acquire a firearm without a licence; purchase a firearm without a licence; and acquiring firearm from a person without a licence
- alcohol/drugs firearm – use, carriage or possession a firearm while affected by alcohol or drugs; permit person under the influence of alcohol or drugs to possess firearm

- alter firearm – alter a firearm; possession of firearm with an altered identification mark
- other firearm – any breach of the Act; provide false information
- possess weapon/firearm – possess a firearm without a licence/permit; permit possession of a firearm without licence/permit; possess a silencer; possess/use contrary to licence; possess an article in a way to cause fear; possess a controlled weapon; possess a prohibited weapon
- safety/storage firearm – failure to store safely; possess an unsafe firearm; failure to take reasonable precaution to ensure safekeeping of firearm
- sell/deliver firearm – deliver firearm without a licence; sell firearm to person without a licence; sell firearm without a licence
- use weapon/firearm – discharge a firearm to cause fear; discharge a loaded firearm into dwelling; being armed with a weapon in a way to cause fear; unlawfully discharge firearm from or across road.

The following outcomes appear in the ODPPWA unit record file:

- acquitted
- bench warrant
- convicted on some, trial remaining on other charges
- convicted and sentenced
- death certificate presented
- nolle prosequi (discontinuance)
- no sentence imposed
- application opposed – ineligible for Drug Court
- plea of guilty
- sentenced.

The following penalties occur in the ODPPWA unit record file:

- discharge without conviction
- fine
- good behaviour bond
- imprisonment
- no sentence received
- recognisance order
- released forthwith
- sentenced to the rising of the court.

Data qualifications

Each row is defined to have a single firearms/weapon offence charge with a number of corresponding penalties (i.e. more than one penalty may be received for each offence). However, a defendant may also be charged with multiple offences. Unique identifiers were assigned for each individual to allow these relationships to be identified in the data.

Western Australian data were sourced from the ODPPWA's prosecution of offences heard only in the higher courts. Firearms and weapons offences are usually only dealt with by the ODPPWA where they are charged in conjunction with at least one other indictable offence. This explains the smaller numbers in the ODPPWA data set. More data from the Magistrates Court of Western Australia, which deals exclusively with summary offences, would be required to get a total picture of firearms offences for Western Australia.

Offences under the *Weapons Act 1999* and the *Criminal Code Act 1913* may or may not involve use of firearms as dangerous or offensive weapons, except for s 74(2)A, which necessarily involves discharge of a firearm. All offences under these acts (apart from s 74(2)A) are categorised as weapons offences, while all offences under the *Firearms Act 1973* (and s 74(2)A) are considered firearms offences.

A number of charges that can be brought under the Western Australian Criminal Code include circumstances of 'aggravation'. Aggravation includes situations such as possession, threat or use of a weapon (which may be a firearm, knife, etc.) in the commission of an offence; committing an offence in company; or where children are present when the offence was committed. As a result, not all firearms-related offences could be identified and extracted from the case management system.

Australian Customs Service data

Data relating to firearms and weapons charges investigated by the ACS Investigations, Cargo and

Passenger branches, were extracted from ACS databases. The case management system the Investigations Branch uses is the Windows Case Analysis and Management System (WinCAMS).

The Investigations Branch receives referrals from both internal and external sources, including:

- air and sea cargo
- compliance assurance
- enforcement operations
- international agencies or governments
- members of the public
- other Commonwealth, state and territory agencies
- passenger processing
- postal compliance
- the government.

These referrals relate to movement of prohibited goods across the border and fraudulent activity encountered in the Customs environment. Referrals are made by email or telephone to the relevant regional Investigations Branch for assessment. For those referrals accepted as cases, the investigative process is followed and a final brief is prepared. This is then submitted to either the Commonwealth Director of Public Prosecutions or the Australian Government Solicitor (sometimes both) for possible initiation of criminal prosecution.

Description

The ACS unit record file contains one row of data for each defendant listed on cases involving weapons or firearms charges for 2002–04. In contrast to the other data sets examined, the ACS file contains one row of data for each defendant charged during 2002–04 with all applicable related charges, court outcomes and penalty values. The ACS unit record file contains data for:

- 381 charges
- 152 cases
- 161 individuals.

No defendant characteristics appear in the data set, but the following variables are included:

- charge description
- court outcome
- court venue
- date of finalisation
- description of weapon involved (where known)
- jurisdiction
- outcome of any appeals
- penalty and penalty unit (where applicable)
- whether a conviction was recorded.

Data definitions

The ACS data set contains offences involving firearms or weapons cases/incidents finalised in 2002, 2003 and 2004. These offences include both import/export offences under the *Customs Act 1901* (Cth), and other Commonwealth offences under quarantine legislation and the Commonwealth Criminal Code.

The following charges appear in the Customs data set:

- s 233BAB(5) *Customs Act 1901*(Cth) – import tier 2 good
- s 233(1)(b) *Customs Act 1901*(Cth) – import prohibited imports
- s 233(1)(c) *Customs Act 1901* (Cth) – export prohibited exports
- s 233(1)(d) *Customs Act 1901* (Cth) – possess prohibited imports
- s 234(1)(d) *Customs Act 1901* (Cth) – false statement
- s 33(1) *Customs Act 1901* (Cth) – move/alter/interfere with Customs goods
- s 236 *Customs Act 1901* (Cth) – aiding/abetting
- s 58 *Customs Act 1901* (Cth) – enter port/airport
- s 67(1)(a)(iii) *Quarantine Act 1908* (Cth) – import animal/plant/good
- s 29(1) *Quarantine Act 1908* (Cth) – master leave quarantined vessel
- s 29(2) *Quarantine Act 1908* (Cth) – master allow person to leave quarantined vessel
- s 30(1) *Quarantine Act 1908* (Cth) – person leave quarantined area
- s 149.1(1) Criminal Code (Cth) – obstruct Commonwealth official.

For the purposes of this report, the authors coded these offences according to the most serious offence charged, in the following hierarchy of decreasing seriousness:

- import tier 2 goods (criminal offence – maximum penalty: monetary fine not exceeding 2,500 penalty units or imprisonment for 10 years, or both – see s 233BAB(5))
- import prohibited imports (civil offence – maximum penalty: monetary fine – see s 233(1AA) and s 233AB(2))
- export prohibited goods (civil offence – maximum penalty: monetary fine – see s 233(1AA) and s 233AB(2))
- possess prohibited imports (civil offence – maximum penalty: monetary fine – see s 233(1AA) and s 233AB(1))
- import animal/plant/good (criminal offence – maximum penalty: imprisonment for 10 years – see s 67(1)(a)(iii))
- false statement (civil offence – maximum penalty: monetary fine – see s 234(2) and (3)).

The following outcomes appear in the ACS unit record file:

- charges dismissed
- conviction
- nil conviction recorded.

The following penalties/sentencing options occur in the ACS unit record file:

- community service order
- conditional psychiatric care
- diversion program
- good behaviour bond (s 19B *Crimes Act 1914* (Cth))
- imprisonment
- monetary fine
- no penalty
- other order (e.g. restitution, confiscation of drugs, and restraining order)
- recognisance order.

Data qualifications

Each row is defined to have a single defendant with corresponding penalty or penalties. However, a defendant may be charged with multiple offences (charge 1, charge 2, charge 3, etc.) and may receive either a single (global) penalty for all charges or multiple penalties (penalty 1, penalty 2, etc.). Where the defendant is charged with numerous offences, the court may impose a single penalty as a global sentence for all offences. More than one penalty and any combination of penalties may be imposed for a single offence. Penalty 1 does not necessarily correspond to charge 1; rather, the penalties are global in nature and relate to all charges laid against the offender.

Further, some cases involved multiple defendants. Unique identifiers were assigned for each case and individual to allow these relationships to be identified.

For simplicity, some sections of the analysis used the most serious offence charged, due to the wide array of charges in the data set, multiple charges being laid and the global nature of penalties.

'Tier 2 goods' are specified items as listed in Part 2 of Schedule 1AA to the Customs Regulations 1926 (Cth), including firearms, munitions and military warfare, knives, daggers and other like goods.

Most false statement charges related to completion of a B709 Customs clearance form.

Appendix B: Case study analysis table

Case reference	Jurisdiction	Appeal by	Outcome	Relevant offence	Weapon	Original sentence	Final sentence
Armed robbery offences							
John Raymond Black v R [1993] SASC 4008	SA	Applicant	Allowed	Conspiracy to commit armed robbery	Firearm	6 years	5 years 10 months (no NPP)
R v Everett; R v Phillips, Adam Dez (1994) 72 A Crim R 422	Tas	Crown	Allowed	Aggravated armed robbery	Shotgun	12 months, suspended on entering GBB 2 years	Everett 18 months (6 months NPP, 12 suspended on GBB 2 years); Phillips 1 year 9 months (9 NPP, 12 suspended on entering GBB 2 years)
James Dudley Bishop v R [1997] NTSC 105 (co-offender Dasilva)	NT	Applicant	Allowed	Aggravated armed robbery	Rifle	12 years (6 NPP)	10 years (5 years NPP)
Nelio Avelino Dasilva Serra v R [1997] NTSC 21 (co-offender Bishop)	NT	Applicant	Dismissed	Aggravated robbery	Rifle	9 years (4 NPP)	n.a.
R v Jeffrey Peter Radloff [1996] TASSC 93, No. CA 10/1996 Judgment No. A50/1996	Tas	Crown	Dismissed	Aggravated armed robbery	Shotgun	11.5 years	n.a.
R v Vanderwerff [1999] QCA 169	Qld	Applicant	Allowed	Armed robbery	Firearm	7 years	5 years
R v Newcombe & Middleton [1999] QCA 408	Qld	Applicant	Allowed	Armed robbery in company	Revolver	7 years (5.5 NPP)	Newcombe 5.5 years (4 years 5 months NPP) Middleton's appeal dismissed
R v Mangan [1999] NSWCCA 194	NSW	Applicant	Allowed	Armed robbery in company	Firearm	10 years 5 months (8 NPP)	8 years (6 years NPP)
R v Govinden [1999] NSWCCA 118	NSW	Crown	Dismissed	Accessory after the fact to armed robbery, and robbery in company (possession of shortened firearm taken into account)	Shortened firearm, replica pistol	GBB 2 years, $500 recog and 200 hours community service	n.a.
R v Dardovski [1999] VSCA 81	Vic	Applicant	Dismissed	Armed robbery	Sawn-off shotgun	4.5 years (3.5 NPP)	n.a.

Case reference	Jurisdiction	Appeal by	Outcome	Relevant offence	Weapon	Original sentence	Final sentence
Van De Worp v The Queen [2000] WASCA 154	WA	Applicant	Dismissed	Aggravated burglary with intent, stealing with violence and while armed in company	Loaded shotgun	2 years 9 months	n.a.
R v Kirby [2000] NSWCCA 330	NSW	Applicant	Dismissed	Armed robbery	Firearm	10 years (6 years 10 months NPP)	n.a.
R v Campbell [2000] NSWCCA 157	NSW	Crown	Allowed	Armed robbery with a dangerous weapon with wounding	Sawn-off shotgun	6.5 years (4.5 NPP)	7.5 years (5.5 years NPP)
R v Murray [2000] NSWCCA 159	NSW	Applicant	Dismissed	Receiving, armed robbery and possession of shortened firearm	12-gauge pump action shotgun	2.5 years (1 NPP)	n.a.
R v Gee [2000] NSWCCA 457	NSW	Applicant	Dismissed	Armed robbery with offensive weapon	Object resembling a firearm	6 years 8 months (5 NPP) in respect of each armed robbery charge, concurrent	n.a.
R v Guider [2000] NSWCCA 355	NSW	Applicant	Dismissed	Conspiracy to commit armed robbery with an offensive weapon, being armed with weapon with intent to commit indictable offence	Imitation pistol	10 years (7.5 NPP)	n.a.
R v Taha; R v Yuksel [2000] NSWCCA 520	NSW	Crown	Allowed	Yuksel – armed robbery with dangerous weapon (possession of firearm and possession of unregistered firearm taken into account) Taha – armed robbery with a dangerous weapon (one other offence taken into account)	Yuksel – long barrelled rifle Taha – knife	Both 5 years (2 years 3 months NPP)	Yuksel – 7 years (5 years 3 months NPP) Taha – 6 years (4 years NPP)
R v Blackman and Walters [2001] NSWCCA 121	NSW	Crown	Dismissed	Armed robbery with a dangerous weapon; break enter and steal and accessory before and after the fact	Handgun	2 years suspended sentence, GBB 4 years	n.a.
R v Marshall [2001] NSWCCA 283	NSW	Applicant	Allowed	Aggravated break, enter and steal, armed robbery	Replica self-loading pistol	10 years (7 NPP)	10 years (6 years NPP)

Case reference	Jurisdiction	Appeal by	Outcome	Relevant offence	Weapon	Original sentence	Final sentence
R v Cosier [2001] NSWCCA 513	NSW	Applicant	Dismissed	Conspiracy to commit armed robbery with a dangerous weapon, robbery with a dangerous weapon (further offences taken into account)	Shortened .22 rifle	10 years 5 months (7 years 5 months NPP)	n.a.
R v McDonald [2001] QCA 238	Qld	Applicant	Dismissed	Armed robbery	Pistol	10 years on each count	n.a.
R v Nikolich [2001] VSCA 128	Vic	Applicant	Dismissed	Armed robbery	Imitation pistol	72 months	n.a.
R v Kapitano [2002] QCA 496	Qld	Applicant	Allowed	Armed robbery	Replica pistol	13 years	11 years
R v Caplikas [2002] SASC 258	SA	Crown	Allowed	Armed robbery	Firearm	15 years 8 months (7 years 8 months NPP)	20 years (10 years NPP)
R v Nguyen [2002] SASC 341	SA	Applicant	Dismissed	Armed robbery	Knives and loaded sawn-off shotgun	8 years (7 NPP)	n.a.
R v Fear [2002] NSWCCA 361	NSW	Applicant	Dismissed	Armed robbery, possession of shortened firearm, break and enter (further firearms offences taken into account)	Tomahawk, revolver, replica pistol	12 years (9 NPP)	n.a.
R v Peckham [2003] NSWCCA 293	NSW	Applicant	Dismissed	Armed robbery with a dangerous weapon (further offences taken into account)	Sawn-off shotgun	8 years (6 NPP)	n.a.
R v Kim [2003] NSWCCA 167	NSW	Applicant	Dismissed	Break and enter armed with dangerous weapon and armed robbery with dangerous weapon	.22 rifle	12 years (8 NPP)	n.a.
R v Tozer [2003] NSWCCA 72	NSW	Applicant	Dismissed	Armed robbery with offensive weapon	Object resembling a firearm	3.5 years for 1st offence, 5.5 years (3.5 NPP) for 2nd offence, to be served partially cumulatively – total sentence 7.5 years (5.5 NPP)	n.a.
R v White; R v Piggin [2003] VSCA 174	Vic	Applicant	Allowed	Armed robbery	Firearm	17.5 years (15.5 NPP)	17.5 years (13 years NPP)

Case reference	Jurisdiction	Appeal by	Outcome	Relevant offence	Weapon	Original sentence	Final sentence
DPP v Mobbs; DPP v Elliott [2003] VSCA 148	Vic	Crown	Allowed	Armed robbery	Sawn-off shotgun	5.5 years (2 years 9 months NPP)	7.5 years (3 years 9 months NPP)
DPP v Crow [2003] VSCA 104	Vic	Crown	Allowed	Armed robbery and reckless discharge of firearm	Loaded firearm	2 years (12 months of term suspended for 2 years)	5 years (3 years 3 months NPP)
R v Herbert [2003] WASCA 27	WA	Crown	Allowed	Armed robbery	Loaded sawn-off .22 rifle	8 years	9 years 4 months
Bourne v The Queen [2003] WASCA 26	WA	Applicant	Dismissed	Armed robbery in company	Replica firearm	5 years	n.a.
R v Smith [2003] SASC 263	SA	Applicant	Dismissed	Armed robbery	Firearms	30 years (18 NPP)	n.a.
Devine v R [2003] TASSC 52	Tas	Applicant	Allowed	Aggravated armed robbery	Sawn-off firearm	9 years (7 NPP)	9 years (4.5 years NPP)
Slowiak v The Queen [2004] WASCA 112	WA	Applicant	Dismissed	Armed robbery	Firearm	7 years	n.a.
Biggers v State of Western Australia [2004] WASCA 47	WA	Applicant	Allowed	Aggravated armed robbery	Sawn-off shotgun	8 years in respect of each count (no NPP)	7 years on each count and eligibility for parole
Kyriakidis v The Queen [2004] WASCA 33	WA	Applicant	Allowed	Armed in public so as to cause terror, and armed robbery in company	Pistol	8.5 years	4 years 5 months
DPP v Gardner & Coates [2004] VSCA 119	Vic	Crown	Allowed	Armed robbery, reckless endangerment of life	Sawn-off shotgun, sawn-off .22 rifle, .38 revolver	Gardner 8 years (5 NPP) Coates 7 years (5 NPP)	Both 11 years (8 years NPP)
R v Jayasuria [2004] 238	Qld	Applicant	Dismissed	Attempted armed robbery, robbery with violence	Firearm	9 years 9 months	n.a.
R v Rahme [2004] NSWCCA 226	NSW	Applicant	Allowed	Armed robbery (and other charges), and further charges of armed robbery and possession of firearms	Firearm	Total effective sentence of 11 years 5.5 months (10 years 5.5 months NPP)	Sentence restructured – armed robbery 7 years (4 years NPP), possession of firearm 2 years

Case reference	Jurisdiction	Appeal by	Outcome	Relevant offence	Weapon	Original sentence	Final sentence
R v Samuel Samuelu; *R v Timothy Samuelu* [2004] NSWCCA 331	NSW	Crown	Allowed	Armed robbery, malicious wounding to prevent apprehension	Rifle, screwdriver	Total sentence – Sam 6.5 years (4.5 NPP), Tim 7 years (5 NPP)	Armed robbery sentences confirmed but malicious wounding sentence quashed – resentenced for that charge Sam 6 years (3 years NPP), Tim 7 years (4 years NPP)
Regina v WM [2004] NSWCCA 53	NSW	Crown	Allowed	Malicious wounding and discharge of firearm in public place, aggravated armed robbery, possession of firearm	Rifle	5 years (2.5 NPP)	9 years (6 years NPP)
R v McKeon [2004] NSWCCA 232	NSW	Applicant	Dismissed	Aggravated armed robbery (further matters taken into account)	Handgun	24 years (15 NPP)	n.a.
Regina v SB [2005] NSWCCA 76	NSW	Applicant	Dismissed	Armed robbery with a dangerous weapon, discharge of firearm in public place, (further offences taken into account, including custody of firearm in public place)	Loaded .22 pistol	6.5 years (3.5 NPP)	n.a.
R v Spinks [2005] NSWCCA 459	NSW	Applicant	Dismissed	Aggravated robbery (further matters taken into account)	Shortened .22 rifle	15 years (8 years 9 months NPP)	n.a.
Regina v John Shaopeng Yin [2005] NSWCCA 138	NSW	Applicant	Dismissed	Robbery with offensive weapon, robbery with a dangerous weapon (further armed robberies taken into account)	Handgun, knife	11 years (8 years 3 months NPP)	n.a.
Regina v Franks [2005] NSWCCA 196	NSW	Applicant	Allowed	Armed robbery, threatening to use firearm to avoid apprehension, possession of firearm without licence	Revolver	Effective sentence of 10 years 5 months (6 NPP) (threatening to use firearm 4 years, and robbery while armed 9 years, 4.5 NPP, partially cumulative)	Threatening to use firearm 3.5 years, and robbery while armed 8.5 years (4 years NPP)
R v Orchard [2005] QCA 141	Qld	Applicant	Allowed	Armed robbery in company	Firearm	9 years, violent offender declaration	No violent offender declaration

Case reference	Jurisdiction	Appeal by	Outcome	Relevant offence	Weapon	Original sentence	Final sentence
Tapueluelu v R [2006] NSWCCA 113	NSW	Applicant	Allowed	Robbery in company, armed robbery with offensive weapon	Handgun	Total sentence 8 years (6 NPP), (armed robbery 5 years, 3 NPP)	Resentenced in respect of armed robbery 5 years (2 years 3 months NPP)
Firearms offences							
Hillman v Police [1998] SASC 6708	SA	Applicant	Allowed	Unlawful possession of firearm	Pistol	10 years (8 NPP)	4 years (3 years NPP)
Coumbe v Whittaker [1999] WASCA 151	WA	Applicant	Allowed	Using firearm on land without consent	.243 rifle	$100 fine plus costs, no conviction recorded, forfeiture of firearms and licence disqualified	Set aside order for forfeiture (of unrelated firearms) and order for disqualification
DPP v Torney [2005] VSCA 187	Vic	Crown	Dismissed	Prohibited person in possession of firearm	Various firearms	3 months on each count served concurrently, whole term suspended for 12 months – special circumstances found	n.a.
R v Bortoli [2006] VSCA 62	Vic	Applicant	Allowed	Possession of unregistered firearm	Sawn-off shotgun	2 years 3 months	15 months
R v Van Boxtel [2005] VSCA 175	Vic	Applicant	Allowed	Prohibited person in possession of firearm	Firearm	8.5 years (6 NPP)	8.5 years (6 years NPP)
R v Bain [2000] VSCA 199	Vic	Applicant	Dismissed	Prohibited person in possession of firearm	Firearm	2.5 years (18 months NPP)	n.a.
Salzgeber v Hayward [1995] NTSC 120	NT	Applicant	Allowed	Dangerous act (discharge firearm)	Shotgun	15 months (4 NPP)	15 months suspended on entering into GBB 3 years
Hales v Dial [2000] NTSC 73	NT	Crown	Dismissed	Carrying a loaded firearm, possession of firearm and possession of unregistered firearm	Sawn-off shotgun	$600 fine	n.a.
Quarrell v White [2004] TASSC 45	Tas	Applicant	Dismissed	Possession of ammunition, unlawful possession of firearm, possession of unregistered firearm, possession of shortened firearm, handling firearm under the influence, additional drugs charges	.22 rifle	4 months and disqualified from licence, firearms seized	n.a.
R v Deans [2000] QCA 516	Qld	Applicant	Dismissed	Unlawful wounding (negligent discharge of firearm)	Shotgun	3 years (1 NPP)	n.a.

Case reference	Jurisdiction	Appeal by	Outcome	Relevant offence	Weapon	Original sentence	Final sentence
Malatesta v Pinch [2001] WASCA 224	WA	Applicant	Allowed	Unlicensed and stolen firearm with ammunition, without licence to possess	.243 rifle	12 months	12 months suspended sentence
Etheridge v The Queen [2004] WASCA 152	WA	Applicant	Dismissed	Threatening to kill, assaulting public officer	Replica revolver	18 months on each count, concurrently	n.a.
R v Middlebrook [2004] NSWCCA 49	NSW	Applicant	Allowed	Aggravated possession of firearms, plus other offences taken into account	12-gauge shotguns, .22 rifles	4 years (3 NPP)	2 years (1 year NPP)
R v Howard [2004] NSWCCA 348	NSW	Applicant	Dismissed	Selling unauthorised pistols	Pistols	3.5 years	n.a.
R v Cromarty [2004] NSWCCA 54	NSW	Crown	Allowed	Unauthorised possession of firearms in aggravated circumstances, possession of unregistered firearms, unauthorised possession of prohibited weapons, possession of shortened firearms and possession of defaced firearms (possession of ammunition and improper storage taken into account)	Various firearms, prohibited and not registered	3 years (2 NPP) to be served by way of periodic detention and firearms to be forfeited	4 years (2 years NPP)
R v Goktas [2004] NSWCCA 296	NSW	Applicant	Allowed	Possession of prohibited firearm	Sub-machine gun	4 years (2.5 NPP)	2 years (15 months NPP)
Cooper v R [2005] NSWCCA 428	NSW	Applicant	Dismissed	Possession of firearms, disposal of five stolen firearms, stealing in circumstances of aggravation	Pistols, revolvers and rifles	3.5 years (2 NPP)	n.a.
State of Western Australia v Sabek [2005] WASCA 207	WA	Crown	Allowed	Receiving firearm, attempted aggravated burglary, threats to harm	Firearm	18 months (suspended for 18 months), fine $5,000	12 months, fine $5,000
Drugs offences (with additional firearms charges or firearms charges taken into account)							
R v Davidson [2000] NSWCCA 393	NSW	Applicant	Allowed	Drug charges, with possession of firearm and not keeping a firearm safely taken into account	Firearm	27 months (9 months NPP)	3 year GBB
R v Matthew John Wilson [2002] ACTSC 14	ACT	n.a.	n.a.	Drugs charges, with possession of unlicensed firearm taken into account	Firearm	3 years (1 NPP)	n.a.

Case reference	Jurisdiction	Appeal by	Outcome	Relevant offence	Weapon	Original sentence	Final sentence
R v Shankley [2003] NSWCCA 253	NSW	Crown	Allowed	Drugs charge and possession of firearm (further breaches of firearms laws taken into account)	.32 pistol	11 years (7 years 3 months NPP)	14 years (8 years 3 months NPP)
R v Tolley [2004] NSWCCA 165	NSW	Crown	Allowed	Drugs charges, with possession of two unregistered firearms taken into account	Rifles	2 years, suspended on entering GBB 2 years	2 years (1 year NPP)
R v Mucenski [2004] NSWCCA 299	NSW	Applicant	Allowed	Drugs charges, unauthorised possession of firearm (further charges taken into account)	Replica pistol	6 years (4.5 NPP)	Sentence confirmed in respect of firearms charge, but restructured in respect of drugs charges 4 years 4 months (2.5 years NPP)
R v Aslan [2005] NSWCCA 121	NSW	Applicant	Dismissed	Drugs charges, selling firearms on ongoing basis (further offences taken into account)	Self-loading pistols	11.5 years (7 NPP)	n.a.

Note: GBB = good behaviour bond; n.a. = not applicable; NPP = non-parole period; recog = recognisance order

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