



Sentencing Council
Attorney General & Justice

Standard non-parole periods

A report by the NSW Sentencing Council

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NSW Sentencing Council

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- NSW Bureau of Crime Statistics and Research.
- Judicial Commission of NSW.

Executive summary

- 0.1 This is the final report on the Council's reference on standard non-parole periods (SNPPs). It follows a consultation paper issued in September 2013 and the interim report on SNPPs for sexual offences against children that we provided to the Attorney General on 5 November 2013.
- 0.2 This report proceeds on the basis that the SNPP has taken its place as a guidepost in the sentencing process following the High Court's decision in *Muldrock* and the amendments in the *Crimes (Sentencing Procedure) Amendment (Standard Non-parole Periods) Act 2013* (NSW). It represents the non-parole period for an offence that, taking into account only the objective factors affecting its relative seriousness, falls into the middle of the range of seriousness for that offence.
- 0.3 The legislation makes it clear that the SNPP operates in a wider framework. Its use as a guidepost is subject to settled principles of sentencing law and practice. The sentence imposed will be the result of taking into account all of the relevant considerations through a process of "instinctive synthesis".
- 0.4 This report proposes offences that should be retained in or added to the SNPP scheme and also proposes for each offence an SNPP that represents what we consider to be an appropriate guidepost.

Principles to identify SNPP offences (Chapter 2)

- 0.5 The factors that can be considered in deciding whether an offence should be an SNPP offence are whether the offence:
 - has a significant maximum penalty
 - is triable on indictment only
 - involves elements of aggravation
 - involves a vulnerable victim
 - involves special risk of serious consequences to the victim and the community
 - is prevalent
 - is subject to a pattern of inadequate sentencing, and
 - is subject to a pattern of inconsistent sentences.

The fact that an offence potentially encompasses a wide range of offending behaviour is a factor that can be considered in deciding whether to exclude an offence from the SNPP scheme. (Recommendation 2.1.)
- 0.6 The factors need to be applied flexibly and with careful judgement. It is not necessary for all of the factors to be present. A combination of some but not all of the factors will usually need to be taken into account.

Offences to be retained in or added to the SNPP scheme (Chapter 3)

- 0.7 We have drawn on the above principles to identify the offences that should be retained in, or added to, the SNPP scheme.

Existing SNPP offences

- 0.8 Our view is that the offences currently included in the SNPP scheme are sufficiently serious to be retained. Some submissions opposed retaining some offences on the grounds that they are either insufficiently serious or encompass too wide a range of offending behaviour. However, in our view, the individual factors that might support their removal are not sufficient, when considered together with all of the relevant principles.

Additional sexual offences against children

- 0.9 We have concluded that the following additional sexual offences against children in the *Crimes Act 1900* (NSW) should be included in the SNPP scheme (Recommendation 3.1):

Crimes Act 1900	Offence
s 66B	Attempt or assault with intent to have sexual intercourse with a child under 10 years
s 66C(1)	Sexual intercourse with a child 10-14 years
s 66C(2)	Sexual intercourse with a child 10-14 years, aggravated offence
s 66C(4)	Sexual intercourse with a child 14-16 years, aggravated offence
s 91G(1)	Use (or allow) a child under 14 years to produce child abuse material
s 66EB	Procuring or grooming a child under 16 years for unlawful sexual activity
s 91D	Promoting or engaging in acts of child prostitution (for a child under 14 years only)
s 91E	Obtaining benefit from child prostitution (for a child under 14 years only)

- 0.10 Each offence is appropriate for the SNPP scheme because it has a high to very high maximum penalty, its victims are children who are particularly vulnerable, and for whom there is a special risk of serious ongoing harm.
- 0.11 We have identified several other sexual offences against children that are currently in the *Crimes Act 1900* (NSW). Some of these might be suitable for inclusion, subject to certain concerns being addressed, while others would seem, at this time, to be unsuitable.

Additional other offences

- 0.12 We have concluded that the following further offences in the *Crimes Act 1900* (NSW) should be included in the SNPP scheme (Recommendation 3.2):

Crimes Act 1900	Offences
s 33A	Discharge firearm with intent to cause grievous bodily harm or to resist arrest or prevent lawful arrest or detention
s 38	Administer intoxicating substance with intent to commit indictable offence
s 93GA	Fire at building with reckless disregard for safety

- 0.13 The first two groups of offences have very high maximum penalties. All three groups involve indictable only offences that carry a risk of significant physical and other harm for victims and the community.
- 0.14 We have identified some additional *Crimes Act 1900* (NSW) offences not presently covered in the SNPP scheme that could be reviewed for inclusion in future. In each case further work and consultation is required on the patterns of sentencing, the types of offending that the offence may cover, and the circumstances in which the offences are likely to be charged.

Setting standard non-parole periods (Chapter 4)

- 0.15 There are some difficulties with and concerns about the SNPPs set under the current scheme, including the lack of transparency in the process by which the SNPPs were initially determined, and the significant variation in the ratio of some SNPPs to the maximum penalties. Significant difficulties exist for offences where the SNPP represents 70-80% of the maximum available penalty.
- 0.16 We recommend setting an SNPP for each offence using a common starting point of 37.5% of the maximum penalty and then moving the figure up (to no more than 50% of the maximum penalty for the offence) or down as is appropriate, having regard to the following matters (Recommendation 4.1):
- (a) the special need for deterrence
 - (b) the need to recognise the exceptional harm which the offence may cause
 - (c) the potential vulnerability of those who may be victims
 - (d) the extent to which the offence may involve a breach of trust or abuse of authority, and
 - (e) sentencing statistics and practice including relevant appellate guidance as to appropriate levels of sentencing for the offence.
- 0.17 A starting proportion of 37.5% better reflects the fact that the SNPP offences fall into the more serious categories of offending that would attract longer sentences.

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- 0.18 We prefer this approach to an offence by offence analysis which would be too complex to administer and which would involve major changes to the list of offences in the current scheme. We also prefer this approach to applying a fixed proportion of the maximum penalty to each offence, without allowing adjustment, as this would fail to take into account relevant considerations that might justify variation.
- 0.19 Our approach could assist in standardising the SNPPs, and in introducing a degree of consistency and transparency, while allowing for the recognition of the special factors that apply in the case of particular offences.
- 0.20 The resulting SNPP is then available for the courts to use as a guidepost together with the maximum penalty and all of the other matters that a court must take into account when sentencing an offender for offences in the SNPP scheme. In many cases, the wide range of matters that bear on the sentencing decision will result, appropriately, in an NPP that is lower than the SNPP.
- 0.21 Using a proportion of the maximum penalty as a common starting point will not assist in setting an SNPP for offences that have a maximum penalty of life imprisonment. At present, we consider that maintaining an SNPP within the current range of between 15 years and 20 years is appropriate.

Adjusting existing SNPPs

- 0.22 Drawing on the principles outlined above, we recommend changes to the following SNPP offences (Recommendation 4.2):
- **Aggravated indecent assault** – *Crimes Act 1900* (NSW) s 61M(1): Increase the maximum penalty to 8 years and reduce the SNPP to 4 years (50% ratio). This will remove the anomalous SNPP for s 61M(1).
 - **Indecent assault of a child under 16 years** – *Crimes Act 1900* (NSW) s 61M(2): Increase the maximum penalty to 12 years and reduce the SNPP to 6 years (50% ratio). This will remove the anomalous SNPP for s 61M(2).
 - **Wounding or causing grievous bodily harm with intent to resist arrest or prevent lawful arrest or detention** – *Crimes Act 1900* (NSW) s 33(2): Increase the SNPP to 9 years (36% ratio). This better reflects the significant law and order issue involved, and the inherent seriousness of the offending.
 - **Unauthorised possession of a pistol or prohibited firearm** – *Firearms Act 1996* (NSW) s 7: Increase the SNPP to 4 years (28.57% ratio) to reflect the serious criminality involved in the use or possession of unauthorised firearms.
 - **Unauthorised possession of prohibited weapon** – *Weapons Prohibition Act 1988* (NSW) s 7: Increase the SNPP to 5 years (35.71% ratio). The use or possession of some prohibited weapons can potentially cause exceptional harm. The special need for deterrence justifies an increase in the SNPP.

Setting new SNPPs

Sexual offences against children

0.23 We propose the following SNPPs for the additional sexual offences against children in the *Crimes Act 1900* (NSW) that we consider suitable for inclusion in the SNPP scheme (Recommendation 4.3):

Crimes Act 1900	Offence	Proposed SNPP (years)	% of maximum penalty
s 66B	Attempt sexual intercourse with a child under 10 years	10	40%
s 66C(1)	Sexual intercourse with a child 10-14 years	7	44%
s 66C(2)	Aggravated sexual intercourse with a child 10-14 years	9	45%
s 66C(4)	Aggravated sexual intercourse with a child 14-16 years	5	42%
s 66EB(2)	Procure a child under 14 years for unlawful sexual activity	6	40%
s 66EB(2)	Procure a child 14-16 years for unlawful sexual activity	5	42%
s 66EB(2A)	Meet a child under 14 years following grooming	6	40%
s 66EB(2A)	Meet a child 14-16 years following grooming	5	42%
s 66EB(3)	Groom a child under 14 years for unlawful sexual activity	5	42%
s 66EB(3)	Groom a child 14-16 years for unlawful sexual activity	4	40%
s 91D(1)	Induce a child under 14 years to participate in child prostitution	6	43%
s 91E(1)	Obtain benefit from child prostitution, child under 14 years	6	43%
s 91G(1)	Use a child under 14 years for pornographic purposes	6	43%

0.24 The ratios of the proposed SNPPs to the maximum penalties are higher than the 37.5% starting point. In all but one case (s 66C(2)), the SNPPs are the first round number that is 40% or more of the maximum penalty for the offence.

0.25 Setting the SNPP at or near to 40% reflects the following considerations:

- Each offence involves children younger than 16 years who are a class of particularly vulnerable victims.
- The fact that the offences involve children under 16 years is a feature of aggravation as are the degrees of planning involved in the grooming, prostitution and pornography offences.
- The offences involve exceptional risk to the victims as a result of the serious and long term harm that they are likely to cause.
- The offences require a special level of deterrence because they are difficult to detect.

- The offences will also often involve an abuse of authority or a breach of trust.

0.26 For a s 66C(2) offence, we have recommended an SNPP that stands at 45% of the maximum penalty because aggravated sexual intercourse with a child between 10 and 14 years involves a degree of aggravation that would exacerbate the circumstances set out above.

Other offences

0.27 We propose the following SNPPs for the additional *Crimes Act 1900* (NSW) offences that we consider suitable for inclusion in the SNPP scheme (Recommendation 4.3):

Crimes Act 1900	Offence	Proposed SNPP (years)	% of maximum penalty
s 33A(1)	Discharge firearm with intent to cause grievous bodily harm	9	36%
s 33A(2)	Discharge firearm with intent to resist arrest or prevent lawful arrest or detention	9	36%
s 38	Use intoxicating substance to commit an indictable offence	9	36%
s 93GA(1)	Fire at building with reckless disregard for safety	5	36%
s 93GA(1A)	Fire at building with reckless disregard for safety during public disorder	6	38%
s 93GA(1B)	Fire at building with reckless disregard for safety, organised criminal activity	6	38%

0.28 For each of these offences we have recommended an SNPP that is around 37.5% of the maximum penalty. This is appropriate because of the potential for serious consequences, the vulnerability of potential victims and the special need for deterrence.

Dealing with SNPP offences in future (Chapter 5)

0.29 The principles and the methodology set out above are of general application and should be applied when:

- considering whether any future offences or amended offences should be retained, included in, or removed from, the SNPP scheme, and
- setting the SNPPs for the offences that are retained or included in the scheme. (Recommendation 5.1)

0.30 The government should consult the Sentencing Council whenever a question is raised of including an offence in, or removing an offence from, the SNPP scheme or setting or adjusting an SNPP. (Recommendation 5.2) The Council can then report in accordance with the principles and methodology outlined in chapters 2 and 4, taking into account the collective views of its constituent members and evidence provided by agencies such as the Judicial Commission of NSW and the NSW Bureau of Crimes Statistics and Research. The Council could also consult with criminal justice system stakeholders. This is consistent with the functions and aims of the

Sentencing Council under Part 8B of the *Crimes (Sentencing Procedure) Act 1999* (NSW).

List of recommendations

2. Principles to identify SNPP offences		page
2.1	(1) The principles that should apply in deciding whether to include an offence in the SNPP scheme are whether it: <ul style="list-style-type: none">(a) has a significant maximum penalty(b) is triable on indictment only(c) involves elements of aggravation(d) involves a vulnerable victim(e) involves special risk of serious consequences to the victim and the community(f) is prevalent(g) is subject to a pattern of inadequate sentencing, and(h) is subject to a pattern of inconsistent sentences. (2) The fact that an offence potentially encompasses a wide range of offending behaviour should be a factor that can be considered in deciding whether to exclude an offence from the SNPP scheme.	9
3. Offences to be retained in or added to the SNPP scheme		page
3.1	Based on the principles in Recommendation 2.1, the following additional sexual offences against children in the <i>Crimes Act 1900</i> (NSW) should be included in the SNPP scheme: <ul style="list-style-type: none">(a) s 66B(b) s 66C(1)(c) s 66C(2)(d) s 66C(4)(e) s 91G(1)(f) s 66EB(2)(g) s 66EB(2A)(f) s 66EB(3)(i) s 91D (child under 14 years only), and(j) s 91E (child under 14 years only).	22
3.2	Based on the principles in Recommendation 2.1, the following offences in the <i>Crimes Act 1900</i> (NSW) should be included in the SNPP scheme: <ul style="list-style-type: none">(a) s 33A(1)(b) s 33A(2)(c) s 38(d) s 93GA(1)(e) s 93GA(1A), and(f) s 93GA(1B).	29
4. Setting standard non-parole periods		page
4.1	The process for specifying an SNPP for an SNPP offence should assume as a starting point a non parole period that is 37.5% of the maximum penalty for the offence. The resulting figure can then be reduced or increased (to no more than 50% of the maximum penalty for the offence) as is appropriate, having regard to the following matters: <ul style="list-style-type: none">(a) the special need for deterrence(b) the need to recognise the exceptional harm which the offence may cause	40

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- (c) the potential vulnerability of those who may be victims
 - (d) the extent to which the offence may involve a breach of trust or abuse of authority, and
 - (e) sentencing statistics and practice, including relevant appellate guidance as to appropriate levels of sentencing for the offence.
- 4.2 Based on the principles in Recommendation 4.1, the existing SNPP offences should be amended as follows: 44
- (a) *Crimes Act 1900* (NSW):
 - (i) s 61M(1) – maximum penalty: 8 years imprisonment; SNPP: 4 years imprisonment.
 - (ii) s 61M(2) – maximum penalty: 12 years imprisonment, SNPP: 6 years imprisonment.
 - (iii) s 33(2) – SNPP: 9 years imprisonment.
 - (b) *Firearms Act 1996* (NSW) s 7 – SNPP: 4 years imprisonment.
 - (c) *Weapons Prohibition Act 1988* (NSW) s 7 – SNPP: 5 years imprisonment.
- 4.3 Based on the principles in Recommendation 4.1, the SNPPs proposed for the offences in the *Crimes Act 1900* (NSW) that are identified in Recommendations 3.1 and 3.2 as additions to the SNPP scheme, are as follows: 47
- (a) s 33A(1) – 9 years imprisonment
 - (b) s 33A(2) – 9 years imprisonment
 - (c) s 38 – 9 years imprisonment
 - (d) s 66B – 10 years imprisonment
 - (e) s 66C(1) – 7 years imprisonment
 - (f) s 66C(2) – 9 years imprisonment
 - (g) s 66C(4) – 5 years imprisonment
 - (h) s 66EB(2) (child under 14 years) – 6 years imprisonment
 - (i) s 66EB(2) (child 14-16 years) – 5 years imprisonment
 - (j) s 66EB(2A) (child under 14 years) – 6 years imprisonment
 - (k) s 66EB(2A) (child 14-16 years) – 5 years imprisonment
 - (l) s 66EB(3) (child under 14 years) – 5 years imprisonment
 - (m) s 66EB(3) (child 14-16 years) – 4 years imprisonment
 - (n) s 91D(1) – 6 years imprisonment
 - (o) s 91E(1) – 6 years imprisonment
 - (p) s 91G(1) – 6 years imprisonment
 - (q) s 93GA(1) – 5 years imprisonment
 - (r) s 93GA(1A) – 6 years imprisonment, and
 - (s) s 93GA(1B) – 6 years imprisonment.

5. Dealing with SNPP offences in future		page
5.1	(1) The principles set out in Recommendation 2.1 should govern whether offences should be retained, included in, or removed from, the SNPP scheme in future. (2) The methodology set out in Recommendation 4.1 should apply in setting the SNPP for each offence.	51
5.2	The government should consult the Sentencing Council whenever a question is raised of including an offence in, or removing an offence from, the SNPP scheme or setting or adjusting an SNPP.	52

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This review

- 1.1 On 11 September 2013, the Attorney General asked us to review the following aspects of the standard non-parole period (SNPP) scheme, and report back by 20 December 2013:
- (a) the offences which should be included in the standard non-parole period Table;
 - (b) the standard non-parole periods for those offences; and
 - (c) the process by which any further offences should be considered for inclusion in the Table and any further standard non-parole periods set and advise on options for reform of these aspects of the scheme.
- 1.2 In light of the establishment of the joint select committee on sentencing of child sexual assault offenders, the Attorney General also asked us to give immediate consideration to SNPPs for child sexual assault offences and to report urgently on the following matters, if at all possible by 31 October 2013:
- (a) identification of child sexual assault offences that should be included in the standard non-parole period Table; and
 - (b) whether there are specific factors that should be taken into account to determine the standard non-parole periods for child sexual assault offences and, if so, what those factors are.
- 1.3 The Attorney General asked that our review include consultations with stakeholders and the community.
- 1.4 The terms of reference were set in the context of:
- the report of the Law Reform Commission (LRC) on sentencing, released in September 2013¹
 - the LRC's interim report on SNPPs, released in August 2012²

1. NSW Law Reform Commission, *Sentencing*, Report 139 (2013). See, especially, rec 7.1(2).
2. NSW Law Reform Commission, *Sentencing: Interim Report on Standard Minimum Non-Parole Periods*, Report 134 (2012).

- our background report on SNPPs, published to assist the LRC's review in November 2011,³ and
 - our report on SNPPs for dangerous driving offences which was published in January 2011.⁴
- 1.5 This is the final report on the reference. It follows a consultation paper issued in September 2013⁵ and the interim report on SNPPs for sexual offences against children that we provided to the Attorney General on 5 November 2013. The interim report has been made available to the joint select committee on sentencing of child sexual assault offenders.
- 1.6 The interim report proposed on a tentative basis a set of principles to assist our consideration of the issues that were to be addressed, proposed a number of sexual offences against children that were potentially suitable for inclusion in the SNPP scheme and discussed possible approaches to the method for setting SNPPs for each offence so identified.
- 1.7 This report confirms the interim report's principles taking into account the background discussion from the interim report, recommends a list of offences as suitable for inclusion in the SNPP scheme (including the sexual offences against children proposed in the interim report), recommends a methodology for setting an SNPP for each SNPP offence and, applying this methodology, recommends or confirms SNPPs for each existing offence in the SNPP scheme and for those further offences that we propose be included.

Operation and objectives of the SNPP scheme

The SNPP provisions

- 1.8 The SNPP scheme is currently set out in Part 4 Division 1A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) (CSPA). The SNPP scheme currently applies to the offence categories listed in the table to the Division as set out in Appendix A. The offences included carry maximum penalties ranging from 7 years imprisonment to imprisonment for life.
- 1.9 The CSPA explains its application in the following terms:

For the purposes of sentencing an offender, the standard non-parole period represents the non-parole period for an offence in the Table to this Division that, taking into account only the objective factors affecting the relative seriousness of that offence, is in the middle of the range of seriousness.⁶

3. NSW Sentencing Council, *Standard Non-Parole Periods*, Background Report (2011).

4. NSW Sentencing Council, *Standard Non-Parole Periods for Dangerous Driving Offences*, Report (2011).

5. NSW Sentencing Council, *Standard Minimum Non-parole Periods: Questions for Discussion*, Consultation Paper (2013).

6. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 54A(2).

- 1.10 From the time of its introduction, it is apparent that the SNPP scheme was intended to give further guidance and structure to the courts' sentencing discretion. The second reading speech delivered when the scheme was introduced identified the SNPP as being "a further important reference point" when judges sentence offenders for SNPP offences.⁷
- 1.11 The second reading speech disclosed that the SNPP for each offence was set by "taking into account the seriousness of the offence, the maximum penalty for the offence and current sentencing trends for the offence as shown by sentencing statistics compiled by the Judicial Commission of New South Wales". Each SNPP was said to take into account the "community expectation that an appropriate penalty will be imposed having regard to the objective seriousness of the offence".⁸ The manner in which these general principles were to be taken into account and applied to each offence was not, however, disclosed. This has led to a general criticism of the scheme as lacking transparency and delivering some anomalous sentencing outcomes.
- 1.12 The scheme was not intended to introduce a form of "mandatory sentencing". Rather the legislation was aimed at providing "further guidance and structure to judicial discretion". In particular, it was observed that the reforms were "primarily aimed at promoting consistency and transparency in sentencing and also promoting public understanding of the sentencing process".⁹ Importantly, the SNPP scheme was seen as ensuring "not only greater consistency in sentencing but also that proper regard is given to the community expectation that punishment is imposed that is commensurate with the gravity of the crime".¹⁰
- 1.13 The NSW Court of Criminal Appeal (CCA) initially determined the manner in which the SNPP scheme was to be applied in practice in *R v Way*.¹¹ In substance that decision required a court, when sentencing for an SNPP offence, to determine whether the offence was in the midrange of objective seriousness and then, if it did, to ask whether there were reasons for not imposing the SNPP. This required the court to examine with care the subjective circumstances of the offender.
- 1.14 Subsequent decisions of the CCA gave effect to the *Way* approach. However, in *Muldrock*, the High Court, in substance, removed the mandatory element of the SNPP scheme that *Way* considered had been intended by Parliament; noted that the SNPP should operate simply as a guidepost to sentencing (along with the maximum penalty); and re-emphasised the need to apply the instinctive synthesis approach rather than one effectively requiring a two-step approach.¹²

7. NSW, *Parliamentary Debates*, Legislative Assembly, 23 October 2002, 5817. The Attorney General cited *Ibbs v R* (1987) 163 CLR 447, 451-452 and *Thorneloe v Filipowski* [2001] NSWCCA 213; 52 NSWLR 60, 69 in support of the principle that a court must identify where in the spectrum of objective seriousness an offence lies.

8. NSW, *Parliamentary Debates*, Legislative Assembly, 23 October 2002, 5816.

9. NSW, *Parliamentary Debates*, Legislative Assembly, 23 October 2002, 5813.

10. NSW, *Parliamentary Debates*, Legislative Assembly, 23 October 2002, 5815.

11. *R v Way* [2004] NSWCCA 131; 60 NSWLR 168.

12. *Muldrock v R* [2011] HCA 39; 244 CLR 120.

1.15 Following that decision and the reports of the NSW Law Reform Commission,¹³ parliament has passed the *Crimes (Sentencing Procedure) Amendment (Standard Non-parole Periods) Act 2013* (NSW). The resulting amendments, which commenced on 29 October 2013, redefine the SNPP as follows in s 54A:

- (2) For the purposes of sentencing an offender, the standard non-parole period represents the non-parole period for an offence in the Table to this Division that, taking into account only the objective factors affecting the relative seriousness of that offence, is in the middle of the range of seriousness.

and go on to provide in s 54B:

- (2) The standard non-parole period for an offence is a matter to be taken into account by a court in determining the appropriate sentence for an offender, without limiting the matters that are otherwise required or permitted to be taken into account in determining the appropriate sentence for an offender.
- (3) The court must make a record of its reasons for setting a non-parole period that is longer or shorter than the standard non-parole period and must identify in the record of its reasons each factor that it took into account.
- ...
- (6) A requirement under this section for a court to make a record of reasons for setting a non-parole period that is longer or shorter than a standard non-parole period does not require the court to identify the extent to which the seriousness of the offence for which the non-parole period is set differs from that of an offence to which the standard non-parole period is referable.

1.16 Essentially, the amendment confirms the High Court's approach in *Muldrock*. In particular, it enshrines the SNPP as a guidepost in aid of the sentencing process along with that provided by the maximum sentence.

The SNPP's place in the wider sentencing context

1.17 Following the legislative amendments and the decision in *Muldrock*, the SNPP has taken its place in the sentencing process as one of two guideposts.

1.18 The first guidepost is the maximum penalty for the offence, which is reserved for the worst category of offending by reference to objective and subjective factors.

1.19 The second is the SNPP which, for an SNPP offence, is the guidepost that represents an offence in the midrange of objective seriousness. The High Court in *Muldrock* held that the SNPP "represents the non-parole period for an hypothetical offence in the middle of the range of objective seriousness without regard to the

13. NSW Law Reform Commission, *Sentencing: Interim Report on Standard Minimum Non-parole Periods*, Report 134 (2012); NSW Law Reform Commission, *Sentencing*, Report 139 (2013) ch 7.

range of factors, both aggravating and mitigating, that bear relevantly on sentencing in an individual case”.¹⁴ It also held:

The objective seriousness of an offence is to be assessed without reference to matters personal to a particular offender or class of offenders. It is to be determined wholly by reference to the nature of the offending”.¹⁵

1.20 The legislation makes it clear that the SNPP operates in a wider framework. Its use as a guidepost is subject to settled principles of sentencing law and practice. In sentencing an SNPP offence, a court must, as it would for any other offence, also have regard to:

- the purposes of sentencing (including those set out in s 3A of the CSPA)
- the fundamental common law principles of proportionality,¹⁶ parity,¹⁷ totality, and the requirement that offenders be sentenced only for the offence of which they are convicted (the De Simoni principle)¹⁸
- the requirement that a sentence of imprisonment should not be imposed unless the court is satisfied, after considering all possible alternatives, that no other penalty is appropriate¹⁹
- the factors currently set out in s 21A of the CSPA, including the subjective features relating to the offender
- the requirements in s 44 of the CSPA that, in imposing a sentence of imprisonment that is not a fixed term, part of an aggregate sentence, or a sentence of life imprisonment, “the balance of the term of the sentence must not exceed one-third of the non-parole period for the sentence, unless the court decides that there are special circumstances for it being more”
- the “discounting provisions” of the CSPA that require the court to take into account the fact that the offender has pleaded guilty,²⁰ or has cooperated in making pre-trial disclosure,²¹ or has provided assistance to law enforcement authorities,²² and
- the provisions of the CSPA that preclude the court from taking into account the consequences of the sentence in relation to registration and prohibitions on employment that apply to certain sexual offenders;²³ or the consequences arising under confiscation or forfeiture legislation;²⁴ or, in the case of child sexual offences, the fact that the offender was of good character or lacked prior

14. *Muldock v R* [2011] HCA 39; 244 CLR 120 [31].

15. *Muldock v R* [2011] HCA 39; 244 CLR 120 [27].

16. *Hoare v R* (1989) 167 CLR 348, 354.

17. *Green v R* [2011] HCA 49; 244 CLR 462; *Lowe v The Queen* (1984) 154 CLR 606.

18. *R v De Simoni* (1981) 147 CLR 383, 389 (Gibbs CJ).

19. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 5(1).

20. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 22.

21. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 22A.

22. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 23.

23. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 24A.

24. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 24B.

convictions if either of those factors was of assistance to the offender in committing the offence.²⁵

- 1.21 The sentence imposed will be the result of taking into account all of the relevant considerations through a process of “instinctive synthesis”. This has now been firmly established by the High Court as the correct way for courts to determine a sentence.²⁶
- 1.22 Therefore, a sentence for an SNPP offence that is imposed for an offence in the middle of the range of objective seriousness may be lower or higher than the SNPP “guidepost” depending on the matters set out above.

What has the SNPP scheme achieved?

- 1.23 A study by the Judicial Commission of NSW published in 2010 compared the proportion of convicted offenders imprisoned specifically for SNPP offences by the NSW higher courts before the introduction of the SNPP scheme (3 April 2000 to 31 January 2003) and after the introduction of the SNPP scheme (1 February 2003 to 31 December 2007).²⁷
- 1.24 In overall terms, the Judicial Commission observed:
- The findings “support the conclusion that the greater the proportion of the standard non-parole period to the maximum penalty, the greater the increase in the sentences imposed”.
 - Sentences tended to become relatively more severe for offenders who pleaded not guilty compared to those who pleaded guilty.
 - In terms of consistency of sentencing, “[g]enerally it can be said that where the statutory scheme did not have a significant effect on the severity of sentences, there is evidence that sentencing outcomes became more uniform”.
- 1.25 The impact of the High Court’s 2011 decision in *Muldrock* on the trends noted in the study has not yet been evaluated.
- 1.26 Changes in levels of sentencing as a result of the SNPP scheme, particularly for high volume offences, have implications for the prison population.²⁸ A change to the current scheme that would increase the time spent in custody for certain offences and the time spent under supervision would have resource implications for Corrective Services NSW. In addition, any changes that result in offenders serving sentences of more than 3 years, where they would otherwise serve sentences of 3 years or less, will result in an increased workload for the State Parole Authority.

25. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(5A).

26. *Markarian v R* [2005] HCA 25; 228 CLR 357 [51]; *Muldrock v R* [2011] HCA 39; 244 CLR 120 [26].

27. P Poletti and H Donnelly, *The Impact of the Standard Non-parole Period Sentencing Scheme on Sentencing Patterns in New South Wales*, Research Monograph 33 (Judicial Commission of NSW, 2010).

28. For example, in a sentencing guideline application the CCA received statistics on the likely negative effect that increases in the NPP for break, enter and steal would have on the total inmate population: *R v Ponfield* [1999] NSWCCA 435; 48 NSWLR 327 [33]-[36].

Further, any change that makes an offender a serious offender,²⁹ when he or she otherwise would not be, imposes an additional workload on the Serious Offenders Review Council.

- 1.27 However, as we note later in this report, we recognise that the number of convictions for these further offences is not high, and competing public interests arise in balancing the need for adequate punishment and incapacitation of serious offenders against the costs of maintaining a functioning corrections system.

Our approach

- 1.28 In this report we proceed on the basis that the role of the SNPP scheme is to provide a guidepost in accordance with the High Court's decision in *Muldrock* and the amendments introduced by the *Crimes (Sentencing Procedure) Amendment (Standard Non-parole Periods) Act 2013* (NSW).
- 1.29 The purpose of this report is, therefore, to identify or confirm offences that we consider to be suitable for inclusion in the SNPP scheme and to recommend an SNPP for each of these offences. The proposed SNPP will represent what we consider to be an appropriate non-parole period for an offence in the middle of the range of objective seriousness for each of the offences included in the scheme which a court is to take it into account "in determining the appropriate sentence for an offender, without limiting the matters that are otherwise required or permitted to be taken into account in determining the appropriate sentence for an offender".
- 1.30 We also note that several stakeholders identified objections in principle to the existence of an SNPP scheme and, hence, its retention or extension to additional offences, while at the same time offering suggestions as to how the scheme should apply if it is retained.³⁰ In basic terms the objections relate to the complexity that SNPPs add to the sentencing process and to the fetter imposed on the exercise of judicial discretion.

29. See *Crimes (Administration of Sentences) Act 1999* (NSW) s 3(1) definition of "serious offender" paragraph (c).

30. The Public Defenders, *Submission SNPP8*; Law Society of NSW, *Submission SNPP11*, *SNPP15*; NSW Young Lawyers, Criminal Law Committee, *Submission SNPP5*, *SNPP16*; NSW Bar Association, *Submission SNPP10*.

2. Principles to identify SNPP offences

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The offence covers a wide range of offending behaviour	18

Recommendation 2.1

(1) The principles that should apply in deciding whether to include an offence in the SNPP scheme are whether it:

- (a) has a significant maximum penalty
- (b) is triable on indictment only
- (c) involves elements of aggravation
- (d) involves a vulnerable victim
- (e) involves special risk of serious consequences to the victim and the community
- (f) is prevalent
- (g) is subject to a pattern of inadequate sentencing, and
- (h) is subject to a pattern of inconsistent sentences.

(2) The fact that an offence potentially encompasses a wide range of offending behaviour should be a factor that can be considered in deciding whether to exclude an offence from the SNPP scheme.

- 2.1 This chapter considers the principles to be applied in identifying offences that should be included in the standard non-parole period (SNPP) scheme. These principles were outlined in our interim report on SNPPs for sexual offences against children. We now confirm them as being of general application.
- 2.2 Accordingly, the factors that can be considered in deciding whether to include an offence in the SNPP scheme are whether it:
- has a significant maximum penalty
 - is triable on indictment only
 - involves elements of aggravation
 - involves a vulnerable victim
 - involves special risk of serious consequences to the victim and the community
 - is prevalent

- is subject to a pattern of inadequate sentencing, and
- is subject to a pattern of inconsistent sentences.

The fact that an offence potentially encompasses a wide range of offending behaviour is a factor that can be considered in deciding whether to exclude an offence from the SNPP scheme.

- 2.3 The factors need to be applied flexibly and with careful judgement when determining whether an offence is suitable for the SNPP scheme. None of them is by itself necessary or sufficient to include an offence in the SNPP scheme. Nor is it necessary for all of the factors to be present. A combination of some but not all of the factors will usually need to be taken into account. For example, a low prevalence offence with high risk of harm may be a candidate, whereas a high prevalence offence with a low risk of harm might not be a candidate.
- 2.4 Some of the identified factors will, for example, often be present in the case of sexual offences against children and clearly justify including them in the SNPP scheme. These offences always involve vulnerable victims, they are serious and the significant and long lasting harm they cause gives rise to a special risk of serious consequences to the victim and the community.
- 2.5 We note that some stakeholders have proposed that the SNPP scheme be confined to those offences which:
- carry a maximum penalty of 20 years imprisonment or more
 - are prevalent
 - do not encompass a wide range of offending behaviours, and
 - are not subject to a guideline judgment.¹
- 2.6 Some stakeholders identified the fact that the offence is subject to a guideline judgment as a circumstance that may justify exclusion, since a guideline judgment is likely to provide a more precise guide to sentencing.² However, this position depends very much on the nature of the guideline judgment and we note that it is possible for guideline judgments and SNPPs to complement each other. In some cases, for example, a guideline judgment could be employed to clarify the application of an SNPP.

The offence has a significant maximum penalty

- 2.7 The maximum penalty is an indication of parliament's view of the seriousness of an offence. A high maximum penalty tends to show parliament's expectation that the courts, in appropriate cases, will impose a significant prison term.

1. Legal Aid NSW, *Submission SNPP14*; NSW Young Lawyers, Criminal Law Committee, *Submission SNPP16*; Law Society of NSW, *Submission SNPP15*.

2. Legal Aid NSW, *Submission SNPP14*; NSW Young Lawyers, Criminal Law Committee, *Submission SNPP16*; Law Society of NSW, *Submission SNPP15*; NSW, Office of the Director of Public Prosecutions, *Submission SNPP17*.

- 2.8 Several stakeholders supported including a high maximum penalty in the criteria for identifying an SNPP offence.³ However, views varied as to what constituted a high maximum penalty. Some stakeholders favoured a threshold of 10 years imprisonment,⁴ while others argued for a threshold of 20 years imprisonment.⁵ We do not consider it is desirable to adopt a fixed threshold of this kind. A high maximum penalty should, in our view, be considered alongside other factors in determining seriousness and, accordingly, is a factor properly taken into account in determining whether an offence should be included in the SNPP scheme.
- 2.9 We note that the current list of SNPP offences includes 3 offence categories attracting a maximum penalty of 7 years imprisonment, one of which is the offence of aggravated indecent assault.⁶ Including aggravated indecent assault in the scheme can be justified on a combination of other grounds including the circumstances of aggravation that are necessary for its commission, the likely serious consequences for the victim and the fact that the majority of charges for this offence are dealt with in the higher courts.
- 2.10 As a general proposition we accept that the SNPP scheme should be concerned with offences that involve serious offending including aggravated offences that represent a high degree of public mischief, danger to the community or significant harm to victims.

The offence is triable on indictment only

- 2.11 That the offence is triable only on indictment provides a further indication of its seriousness. It shows that parliament considers it inappropriate for the offence to be prosecuted and punished in the Local Court, which cannot impose a sentence of imprisonment in excess of 2 years for a single offence. On that basis this is a factor that can appropriately be taken into account.
- 2.12 Three submissions supported this factor as a necessary condition for including an offence in the SNPP scheme.⁷
- 2.13 This raises a related argument, identified in some submissions, that would see indictable offences that can be tried summarily excluded from the SNPP scheme as being insufficiently serious.⁸

3. Bravehearts Inc, *Submission SNPP3*; Mental Health Coordinating Council, *Submission SNPP6*; Legal Aid NSW, *Submission SNPP7*; NSW, Victims Services, *Submission SNPP9*; NSW Bar Association, *Submission SNPP10*; Law Society of NSW, *Submission SNPP11*; NSW Young Lawyers, Criminal Law Committee, *Submission SNPP16*. See also Police Association of NSW, *Submission SNPP2*.

4. Bravehearts Inc, *Submission SNPP3*; NSW, Victims Services, *Submission SNPP9*; NSW, Office of the Director of Public Prosecutions, *Submission SNPP17*.

5. Legal Aid NSW, *Submission SNPP7*; Law Society of NSW, *Submission SNPP11*.

6. *Crimes Act 1900* (NSW) s 35(4), s 60(2) and s 61M(1).

7. Police Association of NSW, *Submission SNPP2*; Mental Health Coordinating Council, *Submission SNPP6*; NSW, Victims Services, *Submission SNPP9*.

8. NSW Bar Association, *Submission SNPP10*; NSW, Office of the Director of Public Prosecutions, *Submission to the NSW Law Reform Commission SES7, 5*; Legal Aid NSW, *Submission*

- 2.14 A number of existing SNPP offences, in addition to the aggravated indecent assault offences mentioned above,⁹ are currently triable summarily and have an SNPP that is beyond the jurisdiction of the Local Court.¹⁰ Some of these offences can be quite serious, depending on the objective facts of their commission. In 2012, 213 charges of indecent assault of a child under 16 years were finalised on indictment in the higher courts, while 252 charges were finalised summarily in the Local Court.
- 2.15 In our view the fact that an indictable offence can be tried summarily should not of itself determine whether it should or should not be included in the SNPP scheme. We therefore do not see a justification for removing the 12 existing SNPP offences that can be tried summarily.¹¹ Although the jurisdictional limit cannot be exceeded when imposing a sentence of imprisonment in summary proceedings, that limit does not replace the maximum penalty as a guidepost.¹² Both it and the SNPP continue to act as guideposts and may well justify imposing a sentence for a midrange offence at the upper end of the jurisdictional limit.
- 2.16 We previously recommended that there be a review of the *Crimes Act 1900* (NSW) to determine whether any more offences should be identified as indictable offences triable summarily and whether any indictable offences that are currently triable summarily should be recategorised as strictly indictable offences.¹³ We understand this is currently underway. This may resolve some of the difficulties.

The offence involves elements of aggravation

- 2.17 There are a number of offences that involve circumstances of aggravation, that is, they include elements that make the offence objectively more serious than a “basic” version of the offence. The existence of these circumstances has led parliament to impose a higher maximum penalty than it has for the basic offence. In turn, the higher penalty expresses parliament’s intention that the courts should treat the aggravated form of the offence more seriously.
- 2.18 For example, the offence of aggravated sexual assault is established if the offence of sexual assault is proved and the case is one in which:
- the offender intentionally or recklessly inflicts actual bodily harm on the victim, or threatens to inflict such harm with an offensive weapon or instrument
 - the offender is in the company of another person or other people

SNPP14; NSW Young Lawyers, Criminal Law Committee, *Submission SNPP16*; Law Society of NSW, *Submission SNPP15*.

9. Para [2.9].

10. Examples of offences in the *Crimes Act 1900* (NSW) falling into this category include: s 61O(2) act of indecency with a child under ten (7 years imprisonment); s 66EB grooming and procuring children for unlawful sexual activity (10-15 years imprisonment); s 91J-91L aggravated voyeurism and filming offences (5 years imprisonment).

11. *Crimes (Sentencing Procedure) Act 1999* (NSW) pt 4 div 1A Table, items 4A, 4B, 4C, 4D, 5, 9A, 9B, 14, 15, 15B, 20, 24.

12. *R v Doan* [2000] NSWCCA 317; 50 NSWLR 115 [35].

13. NSW Sentencing Council, *An Examination of the Sentencing Powers of the Local Court in NSW* (2010) 49.

- the offender breaks or enters into any building with the intention of committing the offence or some other serious indictable offence
- the offender deprives the victim of his or her liberty before or after the offence, or
- the victim is under 16 years of age, under the authority of the offender, or has a serious physical disability or cognitive impairment.¹⁴

Aggravated sexual assault attracts a maximum penalty of 20 years imprisonment compared with 14 years imprisonment for the basic offence of sexual assault.¹⁵

- 2.19 In the context of sexual offences against children, a number of other offences contain elements of aggravation based solely on the age of the victim. For example, the maximum penalty for sexual intercourse varies according to the age of the victim. For example, in the case of the offence of sexual intercourse with a child (without other circumstances of aggravation) the maximum penalties are as follows:
- a child under 10 years – 25 years imprisonment
 - a child between 10 and 14 years – 16 years imprisonment
 - a child between 14 and 16 years – 10 years imprisonment.
- 2.20 Having regard to the parliamentary intention that these offences attract significant sentences, and that the aggravating circumstances identified add to the seriousness of the offence, we accept that this factor should be relevant to selecting suitable offences for the SNPP scheme.

The offence involves a vulnerable victim

- 2.21 The factor that the offence involves a vulnerable victim can be seen as a subset of the elements of aggravation outlined above. However, we consider that it should be retained as a separate category because, in some cases, the vulnerability of victims does not expressly give rise to an aggravated form of the offence. For example, an SNPP of 25 years imprisonment is currently specified for murder where the victim was under 18 years of age, although that fact does not, of itself, constitute an aggravated form of the offence.¹⁶ This can be compared with an SNPP of 20 years imprisonment for an offence of murder in some other circumstances.¹⁷
- 2.22 The class of vulnerable victims can be seen as including children or people under authority or care, or those with a cognitive impairment or a serious physical disability; or more generally those whose employment exposes them to a special

14. *Crimes Act 1900* (NSW) s 61J. Similar circumstances of aggravation apply for the SNPP offences *Crimes Act 1900* (NSW) s 61JA and s 66A(2) and, in part, to s 61M(1) and s 61M(2).

15. *Crimes Act 1900* (NSW) s 61I.

16. *Crimes (Sentencing Procedure) Act 1999* (NSW) pt 4 div 1A Table, item 1B. Compare with *Crimes Act 1900* (NSW) s 19B which provides for a mandatory life sentence for the murder of a police officer in specified circumstances.

17. *Crimes (Sentencing Procedure) Act 1999* (NSW) pt 4 div 1A Table, item 1.

vulnerability, for example, police and emergency services workers, and the other workers referred to in item 1A of the SNPP table.¹⁸

- 2.23 A higher SNPP applies in the case of murder where the victim occupies certain offices, is exercising public or community functions and the offence arises because of that occupation. Voluntary workers were added to this list as part of a set of amendments that were intended to recognise explicitly the aggravating factor that applies where a person is murdered in the course of performing “frontline occupations”.¹⁹ Murder, where the victim was a child under 18 years of age was included because “this most serious category of murder recognises the terrible loss when the victim is both a vulnerable and valuable member of the community”.²⁰
- 2.24 We consider it appropriate to include this factor in the criteria to identify SNPP offences.

The offence involves a special risk of serious consequences to the victim or the community

- 2.25 The matters to be considered in determining whether an offence involves a special risk of serious consequences to the victim or the community will obviously depend on the nature of the offence and the context within which it is likely to be committed.
- 2.26 Sexual offences against children, for example, are offences of particular gravity and harm in both the short and long term. The significant and long lasting harms that arise for victims of such offences are of particular concern.²¹ We accept that it is a relevant factor of significant weight in determining whether sexual offences against children should be included in the SNPP scheme.
- 2.27 This factor can also be applied more generally to offences that have a wide ranging impact on the community such as the commercial manufacture or supply of illegal drugs and some offences related to organised criminal activities. The offence of recklessly causing grievous bodily harm and wounding (both individually and in company) was included in the list of SNPPs²² in order to:

send a clear message to the community that the Government will not tolerate crimes of personal violence, which are especially abhorrent when done in company. Crimes of this nature destroy lives and tear at the fabric of our community.²³

18. *Crimes (Sentencing Procedure) Act 1999* (NSW) pt 4 div 1A Table, item 1A.

19. NSW, *Parliamentary Debates*, Legislative Assembly, 6 April 2006, 22255.

20. NSW, *Parliamentary Debates*, Legislative Council, 17 October 2007, 2668.

21. See, eg, D Fergusson and P Mullen, *Childhood Sexual Abuse: An Evidence Based Perspective* (Sage Publications, 1999) ch 5; P Mullen and others, “Childhood Sexual Abuse and Mental Health in Adult Life” (1993) 163 *British Journal of Psychiatry* 721; M Cutajar, and others, “Suicide and Fatal Drug Overdose in Child Sexual Abuse Victims: A Historical Cohort Study” (2010) 192(4) *Medical Journal of Australia* 184; K J Zwi, and others “School-based Education Programmes for the Prevention of Child Sexual Abuse” (2009) 1 *The Cochrane Library* (online) 1, 3. See also *R v MJR* [2002] NSWCCA 2002; 54 NSWLR 368 [57].

22. *Crimes (Sentencing Procedure) Act 1999* (NSW) pt 4 div 1A Table, items 4A-4D.

23. NSW, *Parliamentary Debates*, Legislative Council, 17 October 2007, 2668.

- 2.28 The need to protect the community from the consequences of such offending is clear. This can be achieved, to an extent, by deterrence. We consider the question of deterrence when setting the amount of the SNPPs in chapter 4.

The offence is prevalent

- 2.29 Although not determinative by itself, prevalence or frequency of offending may provide some assistance in identifying potential SNPP offences. A higher prevalence may, amongst other things, give rise to a measure of public concern about a particular category of serious offending and also lead the courts to consider the need to make particular provision in a sentence for specific and general deterrence. On the other hand, the fact that an offence has low or no prevalence may suggest that it is unnecessary to include it in the SNPP scheme.
- 2.30 Some stakeholders supported adopting prevalence or frequency of offending as a factor to be considered in determining whether an offence should be an SNPP offence,²⁴ while one stakeholder expressly rejected its relevance on the ground that “the most prevalent offences are minor offences, such as assaults, shoplifting, and offensive language”.²⁵
- 2.31 A variety of different measures can assess prevalence, including crime rates, the number of charges for the relevant offence, or the number of successful prosecutions in the higher courts.
- 2.32 However, in the case of sexual offences against children, these measures may not provide a full picture given the likely degree of non-disclosure of offences, particularly where they occur within a family or other setting that involves continuing contact between the offender and the victim, and the level of attrition for such offences once they enter the criminal justice system.²⁶ There are a range of factors that contribute to victims, in particular children, not reporting sexual offences. These include:
- shame;
 - fear of retribution by the offender or the offender's family and friends;
 - fear of having to give evidence and be cross-examined;
 - fear of being identified in the media;
 - fear of not being believed;

24. Police Association of NSW, *Submission SNPP2*; Mental Health Coordinating Council, *Submission SNPP6*; Legal Aid NSW, *Submission SNPP7*; NSW Bar Association, *Submission SNPP11*; NSW Young Lawyers, Criminal Law Committee, *Submission SNPP16*; NSW, Office of the Director of Public Prosecutions, *Submission SNPP17*.

25. NSW Bar Association, *Submission SNPP10*.

26. K Gelb, *Recidivism of Sex Offenders*, Research Paper (Victoria, Sentencing Advisory Council, 2007) 3-7; J Fitzgerald, *The Attrition of Sexual Offences from the New South Wales Criminal Justice System*, Crime and Justice Bulletin No 92 (NSW Bureau of Crime Statistics and Research, 2006).

- a belief that the matter is too trivial or inappropriate to report, that it is not a real crime or that harm was not intended; and
- lack of knowledge and access to help.²⁷

In the case of sexual offences within a family, the victim or the offender's partner may fear the consequences for the family if the offender, who may be the sole source of income, is imprisoned.

- 2.33 Figures provided by the NSW Bureau of Crime Statistics and Research on the progress of sexual offences against children through the NSW criminal justice system in 2010 showed that 4886 sexual offence incidents involving a victim aged under 16 years were reported to police. Yet in the same year, only 603 people appeared in NSW courts charged with at least one child sex offence (2354 individual charges in all). Of these people, 367 were found guilty in relation 1096 charges.
- 2.34 We accept that prevalence (whether high or low and however measured) is not necessarily a measure of the potential harm caused by an offence; or of the extent of community concern about its commission; or of the adequacy or consistency of the sentences imposed.²⁸ Nevertheless we consider that it is a factor that can properly be taken into account along with the other factors mentioned, in particular the seriousness of the offence.

There is a pattern of inadequate sentences for the offence

- 2.35 Patterns of inadequate sentences could be measured by reference to public opinion, views formed by the government or other indicators such as the number of successful Crown appeals against sentences imposed for the offence.
- 2.36 The courts currently accept that parliament represents the community's expectation about the appropriate punishment for particular offences when it sets the maximum penalty. Parliament is also capable of responding to community concerns about the level of sentencing for any given offence by introducing an aggravated form of the offence or by increasing the maximum penalty for the offence. Consistently with this approach, parliament should also have the role of reflecting the community's views in selecting offences for the SNPP scheme and its expectation in setting the levels of the SNPPs.²⁹
- 2.37 If a wider measure of community concern is to be taken into account, however, a question arises about how it should be identified and measured, and about how to respond to it when determining which offences should be SNPP offences.
- 2.38 There is some difficulty in gauging informed public opinion on sentencing. In our background report, we noted that a commonly expressed view was that the SNPP

27. VicHealth, *Two Steps Forward, One Step Back: Community Attitudes to Violence Against Women* (2006) 60.

28. That is, unless there is sufficient prevalence to measure the consistency of sentencing patterns: Legal Aid NSW, *Submission SNPP14*.

29. See *Muldrock v R* [2011] HCA 39; 244 CLR 120 [31].

scheme was founded on a “flawed premise” that the community expected there to be higher penalties for serious crimes.³⁰

- 2.39 Research by the Victorian Sentencing Advisory Council, like other similar studies, has found that, when members of the public were given more complete information about all the facts of a case, sometimes there was a “strong mitigating effect on severity”, for example, in instances of young offenders or first time offenders.³¹
- 2.40 For this reason, considerable care would need to be taken in determining whether community opinion about the adequacy of a sentencing pattern is informed and justified. A better guide is likely to be provided by a pattern of successful Crown appeals, and by reference to the views of those involved in the justice system.
- 2.41 However, we note that one of the reasons for establishing the SNPP scheme was to ensure that appropriate sentences were imposed for offences included in the scheme. Accordingly we consider that a pattern of inadequacy can be included as a factor that, in certain cases, will justify including an offence in the scheme, although this would need to be taken into account along with the other factors. For example, it may be of limited weight for offences that have a low prevalence or that do not give rise to significant harm.

There is a pattern of inconsistent sentences for the offence

- 2.42 One of the stated aims of the SNPP scheme has been to achieve consistency in sentencing. Disparity in sentencing levels for a particular offence may, therefore, be a relevant factor to be taken into account with the other factors when determining whether an offence should be an SNPP offence.
- 2.43 The Judicial Commission’s review of SNPPs assessed consistency in sentencing by measuring the spread or range of sentences around the median point,³² with a narrower range indicating a greater degree of consistency and a wider range indicating a lesser degree of consistency.³³
- 2.44 We recognise that there may be cases where an appearance of disparity does not give rise to concern. For example, disparity can be expected and justified where an offence covers a wide range of offending behaviour with significant differences in consequences, particularly where its prevalence is infrequent.
- 2.45 While disparity should remain a factor, care must be taken in using it. Comparison between sentences is only meaningful where there is like offending, which means that attention needs to be given to the facts of each relevant case. We also note

30. NSW Sentencing Council, *Standard Non-parole Periods: A Background Report* (2011) [4.10]-[4.14].

31. K Gelb, *More Myths and Misconceptions* (Victoria, Sentencing Advisory Council, 2008) 4-7.

32. The Judicial Commission used two measures of spread – the interquartile range and the median absolute deviation.

33. P Poletti and H Donnelly, *The Impact of the Standard Non-parole Period Sentencing Scheme on Sentencing Patterns in New South Wales*, Research Monograph 33 (Judicial Commission of NSW, 2010) 17.

that care needs to be taken to ensure that too much weight is not given to mathematical disparity in sentencing statistics alone.³⁴

The offence covers a wide range of offending behaviour

- 2.46 We have also identified a circumstance that may justify exclusion: the fact that the offence potentially encompasses a wide range of offending behaviour.
- 2.47 If consistency is one of the aims of the scheme, then it could be argued that the list of SNPP offences should not include offences that are basic offences and that can cover a wide range of offending behaviours with significant potential differences in the degree of their objective seriousness.
- 2.48 The 2003 review of the law of manslaughter in NSW considered that manslaughter was properly omitted from the list of SNPP offences because the courts had consistently identified it as an offence “involving such a wide range of conduct that it is not possible to describe a ‘typical’ or ‘middle of the range’ offence”.³⁵ Manslaughter presents a particular problem because of the “defences” to murder that will reduce that crime to one of voluntary manslaughter arising out of provocation, excessive self defence or substantial impairment by abnormality of mind which can impact to a varying degree on the objective gravity of the offending. Similarly, involuntary manslaughter can encompass a variety of offending including an unlawful and dangerous act and gross negligence, which do not require proof of an intention to kill or to cause serious harm.
- 2.49 In 2004, we observed that a wide variety of circumstances in which a particular offence may be committed should not be a *decisive* reason for excluding that offence from the SNPP scheme. However, our view was that such facts could nevertheless be taken into account when deciding whether to include an offence in the SNPP list.³⁶
- 2.50 Five submissions identified the existence of a narrow range of objective criminality as being a ground for including an offence in the SNPP scheme or, conversely, identified the existence of a wide range of offending behaviour as a reason for excluding an offence from the list of SNPPs.³⁷ In each case the concern related to the difficulty in identifying a midrange offence.
- 2.51 We favour treating the fact that an offence potentially encompasses a wide range of objective criminality as a factor to be taken into account in determining whether it

34. Legal Aid NSW, *Submission SNPP14*; NSW Young Lawyers, Criminal Law Committee, *Submission SNPP16*; Law Society of NSW, *Submission SNPP15*. See *Hili v R* [2010] HCA 45; 242 CLR 520 [48]-[49].

35. M D Finlay, *Review of the Law of Manslaughter in New South Wales*, Report (NSW Attorney General's Department, 2003) [6.1].

36. NSW Sentencing Council, *Whether 'Attempt' and 'Accessory' Offences Should be Included in the Standard Non-parole Sentencing Scheme*, Report (2004) [8.5].

37. Legal Aid NSW, *Submission SNPP7*; NSW Bar Association, *Submission SNPP10*, Law Society of NSW, *Submission SNPP11*; NSW Young Lawyers, Criminal Law Committee, *Submission SNPP16*; Law Society of NSW, *Submission SNPP15*; NSW, Office of the Director of Public Prosecutions, *Submission SNPP17*.

should be excluded from the SNPP scheme. We do not consider that it should inevitably constitute a barrier to inclusion, for example, where it is possible to rank offending behaviour of the same type across a range of seriousness.

- 2.52 However, we accept that there may be offences that embrace a wide variety of behaviour with a clear differentiation in their seriousness that makes it inappropriate to specify a single SNPP. The existence of an SNPP in such a case may inappropriately limit the proper exercise of judicial discretion.³⁸
- 2.53 In some cases the preferable approach may be to break up a widely expressed offence into subcategories of conduct that reflect different levels of offending and to use the principles proposed above to decide whether to include some or each of those subcategories in the SNPP scheme. The offence of producing, disseminating or possessing child abuse material,³⁹ might be a candidate for such an approach. Another approach may be to seek a guideline judgment on aspects of such offences. We note that the NSW Director of Public Prosecutions is currently seeking a guideline judgment on certain types of manslaughter.⁴⁰

38. NSW Young Lawyers, Criminal Law Committee, *Submission SNPP16*.

39. *Crimes Act 1900* (NSW) s 91H(2).

40. G Smith, "R v Loveridge" (Media Statement, Attorney General and Minister for Justice, 14 November 2013).

3. Offences to be retained in or added to the SNPP scheme

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- 3.1 In this chapter we draw on the principles that we identified in chapter 2 to identify the offences that should be retained in, or added to, the standard non-parole period (SNPP) scheme.

Existing SNPP offences

- 3.2 The offences that are currently contained in the SNPP scheme are listed in Appendix A.
- 3.3 Some submissions argued for the removal of some of these offences from the SNPP scheme. For example, the Bar Association advocated removing SNPPs for all sexual offences against children,¹ while Legal Aid NSW and the Law Society of NSW proposed excluding from the scheme a number of existing offences including those with a maximum penalty of less than 20 years imprisonment,² as well as housebreaking offences under s 112 of the *Crimes Act 1900* (NSW) and conspiracy to murder.³ Broadly these submissions suggest that the offences identified are either insufficiently serious to be part of the SNPP scheme or encompass too wide a range of offending behaviour.⁴

1. *Crimes (Sentencing Procedure) Act 1999* (NSW) pt 4 div 1A Table, items 9B and 10: NSW Bar Association, *Submission SNPP10*, 2.

2. *Crimes (Sentencing Procedure) Act 1999* (NSW) pt 4 div 1A Table, items 4A, 4B, 4C, 4D, 5, 6, 7, 9A, 9B, 14, 15, 15A, 15B, 20 and 24.

3. *Crimes (Sentencing Procedure) Act 1999* (NSW) pt 4 div 1A Table, items 2, 12 and 13.

4. Legal Aid NSW, *Submission SNPP14*, 2, 4; Law Society of NSW, *Submission SNPP15*, 2-4.

- 3.4 Our view is that the offences currently included in the SNPP scheme are sufficiently serious to be retained. The individual factors that might support their removal are not sufficient when considered together with all of the principles outlined in chapter 2. We are therefore not persuaded that there is a need to remove any existing offences from the SNPP scheme, although we do suggest adjusting the SNPPs in four cases.⁵ We also suggest including some additional offences in the paragraphs that follow.

Additional sexual offences against children

Recommendation 3.1

Based on the principles in Recommendation 2.1, the following additional sexual offences against children in the *Crimes Act 1900* (NSW) should be included in the SNPP scheme:

- (a) s 66B
- (b) s 66C(1)
- (c) s 66C(2)
- (d) s 66C(4)
- (e) s 91G(1)
- (f) s 66EB(2)
- (g) s 66EB(2A)
- (f) s 66EB(3)
- (i) s 91D (child under 14 years only), and
- (j) s 91E (child under 14 years only).

- 3.5 We confirm our provisional conclusions in the interim report that the following additional offences in the *Crimes Act 1900* (NSW) should be included in the SNPP scheme:

Crimes Act 1900	Offence
s 66B	Attempt or assault with intent to have sexual intercourse with a child under 10 years
s 66C(1)	Sexual intercourse with a child 10-14 years
s 66C(2)	Sexual intercourse with a child 10-14 years, aggravated offence
s 66C(4)	Sexual intercourse with a child 14-16 years, aggravated offence
s 91G(1)	Use (or allow) a child under 14 years to produce child abuse material
s 66EB	Procuring or grooming a child under 16 years for unlawful sexual activity
s 91D	Promoting or engaging in acts of child prostitution (for a child under 14 years only)

5. Para [4.45]-[4.58].

- 3.6 Stakeholders expressed a wide variety of opinions about which sexual offences against children, if any, should be included in the SNPP scheme. One stakeholder supported including all sexual offences against children.⁶ Some stakeholders supported including only those sexual offences against children with maximum penalties of 10 years or more,⁷ or a variety of specific offences,⁸ or only one or two specific offences.⁹ Other stakeholders opposed including any sexual offences against children, principally on the grounds that the complex circumstances and range of behaviours involved in such offences make them unsuitable subjects for the SNPP scheme.¹⁰
- 3.7 We accept that in some instances, as discussed below, the range of behaviours potentially encompassed by an offence may make it unsuitable for inclusion in the SNPP scheme. However, we do not consider that this is a reason for the generic exclusion of all sexual offences against children. A number of such offences are properly the subject of an SNPP because of their potential for serious harm and the need for appropriate legislative guidance.
- 3.8 We note that an assessment of “consistency” is an important factor in the decision whether or not to include an offence in the SNPP scheme since that was one of the scheme’s stated purposes. In the time frame available we have been unable to assess the data that might relate to consistency.
- 3.9 We also note that the prevalence figures referred to in this chapter relate to charges finalised and do not necessarily reflect the actual incidence of offending due to the under-reporting that is a feature of sexual offending. The median sentencing figures, where available, are drawn from data covering the period from 2006, and provide some limited guidance concerning the adequacy of sentencing for the offences listed. These are set out in Appendix B.

Attempt or assault with intent to have sexual intercourse with a child under 10 years – s 66B

- 3.10 Our reasons for proposing the inclusion of the offence of attempting or assaulting with intent to have sexual intercourse with a child under 10 years¹¹ include the following:

6. NSW Health Education Centre Against Violence, *Submission SNPP1*.
 7. Bravehearts Inc, *Submission SNPP3*.
 8. NSW, Victims Services, *Submission SNPP9*.
 9. Police Association of NSW, *Submission SNPP2*; NSW, Office of the Director of Public Prosecutions, *Submission SNPP4*; Mental Health Coordinating Council, *Submission SNPP6*.
 10. Legal Aid NSW, *Submission SNPP7*; NSW Bar Association, *Submission SNPP10*; Law Society of NSW, *Submission SNPP11*.
 11. *Crimes Act 1900* (NSW) s 66B.

- The very high maximum penalty of 25 years imprisonment means that it is treated as seriously as the basic offence of sexual intercourse with a child under 10 years,¹² which is already an SNPP offence.
- It is an indictable only offence.
- Children under 10 years are particularly vulnerable.
- The offence carries with it a special risk of serious ongoing harm for victims.

3.11 The fact that only 5 charges were finalised in 2012 may suggest that the offence is not prevalent. However, we note that this is an offence that is particularly likely to be under reported. The low number of matters brought to trial means that we do not have adequate data on sentencing practice for this offence.

Sexual intercourse with a child between 10 and 14 years – s 66C(1)

3.12 Our reasons for proposing the inclusion of the offence of sexual intercourse with a child of 10 years or more and under 14 years¹³ include the following:

- It has a high maximum penalty of 16 years imprisonment, which suggests that it is considered more serious than the “basic” offence of sexual assault¹⁴ which carries a maximum penalty of 14 years imprisonment and is already an SNPP offence.
- It is an indictable only offence.
- Children under 14 years are particularly vulnerable.
- The offence carries with it a special risk of serious ongoing harm for victims.

3.13 The offence appears to be reasonably prevalent: 66 charges were finalised in 2012, resulting in 16 convictions.

3.14 The offence is recorded in sentencing statistics for the period 1 April 2006 – 31 March 2013 as having attracted a median non-parole period (NPP) of 1.7 years imprisonment and a median head sentence of 3.25 years imprisonment against a maximum penalty of 16 years imprisonment. About 34% of offenders did not receive a sentence of full-time imprisonment.¹⁵

Sexual intercourse with a child between 10 and 14 years, aggravated offence – s 66C(2)

3.15 Our reasons for proposing the inclusion of the aggravated offence of sexual intercourse with a child of 10 years or more and under 14 years¹⁶ include the following:

12. *Crimes Act 1900* (NSW) s 66A(1).

13. *Crimes Act 1900* (NSW) s 66C(1).

14. *Crimes Act 1900* (NSW) s 61I.

15. Appendix C, Table C1.

16. *Crimes Act 1900* (NSW) s 66C(2).

- Its very high maximum penalty of 20 years imprisonment suggests that it is considered more serious than the “basic” offence of sexual assault,¹⁷ which carries a maximum penalty of 14 years imprisonment and is already an SNPP offence.
 - It is an indictable only offence.
 - The offence specifies circumstances of aggravation (in addition to the age of the victim).
 - Children under 14 years are particularly vulnerable.
- 3.16 The offence has a relatively high prevalence with 87 charges finalised in 2012. This was the highest number of finalised charges of all sexual intercourse offences in 2012.
- 3.17 The offence is recorded in sentencing statistics for the period 1 April 2006 – 31 March 2013 as having attracted a median NPP of 4 years imprisonment and a median head sentence of 6 years imprisonment compared with a maximum penalty of 20 years. About 14% of offenders did not receive a sentence of full-time imprisonment.¹⁸

Sexual intercourse with a child between 14 and 16 years, aggravated offence – s 66C(4)

- 3.18 Our reasons for proposing the inclusion of the aggravated offence of sexual intercourse with a child of 14 years or more and under 16 years¹⁹ include the following:
- It has a relatively high maximum penalty of 12 years imprisonment.
 - It is an indictable only offence.
 - The offence specifies circumstances of aggravation (in addition to the age of the victim).
 - Although the vulnerability of children aged between 14 and 16 years is less than for younger children, they still fall into a class of vulnerable victims.
 - The offence carries with it a special risk of serious ongoing harm for victims.
- 3.19 The offence seems not to be particularly prevalent: 17 charges were finalised in 2012, resulting in only 1 conviction. This may reflect the fact that some instances of this form of offending will involve an offender who is near in age to the victim, an issue that we discuss below in relation to the basic offence of sexual intercourse with a child between 14 and 16.²⁰

17. *Crimes Act 1900* (NSW) s 61I.

18. Appendix C, Table C2.

19. *Crimes Act 1900* (NSW) s 66C(4).

20. Para [3.30].

- 3.20 The offence is recorded in sentencing statistics for the period 1 April 2006 – 31 March 2013 as having attracted a median NPP of 2 years imprisonment and a median head sentence of 3.75 years imprisonment compared with a maximum penalty of 12 years imprisonment. About 25% of offenders did not receive a sentence of full-time imprisonment.²¹

Use (or allow) a child under 14 years to produce child abuse material – s 91G(1)

- 3.21 Our reasons for proposing the inclusion of the offence of using (or allowing) a child under 14 years to produce child abuse material²² include the following:
- Children under 14 years of age are particularly vulnerable.
 - It has a relatively high maximum penalty of 14 years imprisonment.
 - It is an indictable only offence.
 - It presents a special risk of serious consequences to the victim and the community in that:
 - It promotes and encourages the market for child abuse material leading to increased demand for more images and harm to other vulnerable victims.
 - Long term harm may result for victims who grow up with the knowledge that such material may remain in circulation and be available to a wide variety of observers for their sexual gratification, on a long term basis as part of the body of child pornography permanently available on the internet.
 - The actual abuse and its recording in circumstances that emphasise powerlessness and degradation may give rise to psychological harm to victims.
 - The offence can be difficult to detect since technology allows offenders to conceal the identity of victims and make it difficult to trace those responsible.
 - The material may encourage offenders, who find it normalising, to move on to direct abuse of children themselves.
 - The material can also be used for grooming other potential victims.²³
- 3.22 The offence seems not to be particularly prevalent with 12 charges finalised in 2012. This may reflect the fact that the offence is difficult to detect.
- 3.23 The offence is recorded in sentencing statistics for the period 1 April 2006 – 31 March 2013 as having attracted a median NPP of 1.9 years imprisonment and a median head sentence of 2.6 years imprisonment compared to a maximum penalty

21. Appendix C, Table C3.

22. *Crimes Act 1900* (NSW) s 91G(1).

23. NSW Sentencing Council, *Penalties Relating to Sexual Assault Offences in New South Wales*, Report (2008) vol 1 [4.1]-[4.6].

of 14 years imprisonment. Only around 8% of offenders did not receive a sentence of full-time imprisonment.²⁴

Procuring or grooming a child under 16 years for unlawful sexual activity – s 66EB

3.24 Our reasons for proposing the inclusion of the offences of procuring, grooming and meeting after grooming, a child under 16 years for unlawful sexual activity²⁵ include the following:

- They have high maximum penalties ranging from 10 to 15 years imprisonment.
- Children under 16 years are particularly vulnerable. The proliferation of social networking on the internet has led to increased opportunities to access this group of potential victims.
- The offences carry with them a special risk of serious ongoing harm for victims, especially since their commission can expose children to damaging materials and, if successfully carried out, can lead to actual sexual abuse.

3.25 We note that the offences are indictable offences triable summarily, and have a very low prevalence in both the higher courts and the Local Court. This low prevalence may be due to the availability of the federal offences of using carriage services to procure and groom children under 16 years that attract penalties of 12-15 years imprisonment.²⁶ The prevalence of these federal offences is considerably higher than the state offences – with some 150 instances of NSW higher courts sentencing for offences under the *Criminal Code* (Cth) since October 2008. We note that some potential problems with the framing of the federal offences identified recently by the Victorian Court of Appeal²⁷ may lead to a greater reliance on the state offences.

Promoting or engaging in acts of child prostitution, child under 14 years – s 91D

3.26 Our reasons for proposing the inclusion of the offence of promoting or engaging in acts of child prostitution with a child under 14 years²⁸ include the following:

- It has a relatively high maximum penalty of 14 years imprisonment.
- It is an indictable only offence.
- Children under 14 years are particularly vulnerable.
- There is a special risk of serious consequences to victims and the community – including that it can promote and encourage the market for child prostitution, leading to harm to further vulnerable victims.

24. Appendix C, Table C4.

25. *Crimes Act 1900* (NSW) s 66EB(2), (2A), (3).

26. *Criminal Code* (Cth) s 474.26, s 474.27.

27. *DPP (Cth) v FM*[2013] VSCA 129.

28. *Crimes Act 1900* (NSW) s 91D.

3.27 The offence has a low prevalence with only 3 charges finalised in 2012.

Obtaining benefit from child prostitution, child under 14 years – s 91E

3.28 Our reasons for proposing the inclusion of the offence of promoting or engaging in acts of child prostitution with a child under 14 years²⁹ include the following:

- It has a relatively high maximum penalty of 14 years imprisonment.
- It is an indictable only offence.
- Children under 14 years are particularly vulnerable.
- There is a special risk of serious consequences to victims and the community – including that it can promote and encourage the market for child prostitution, leading to harm to further vulnerable victims.

3.29 The offence has a low prevalence with no charges finalised in 2012.

Potentially suitable offences – subject to further consideration

3.30 There are several other sexual offences against children contained in the *Crimes Act 1900* (NSW). Some of these might be suitable for inclusion, subject to certain concerns being addressed, while others would seem, at this time, to be unsuitable. They include the following:

- **Sexual intercourse with a child between 14 and 16 years** – s 66C(3). While the predatory offending caught by this section is suitable for inclusion, the offence as it currently stands includes consensual close in age sexual conduct, for example, between teenagers, that arguably should be excluded from the SNPP scheme. This may be the reason why this offence has the lowest percentage of prison sentences imposed of all of the sexual offences against children under s 66C.
- **Act of indecency with child under 16 years, aggravated offence and filmed for production of child abuse material** – s 61O(2A). We do not consider that it is necessary to include this offence in the SNPP scheme as it is adequately covered by offences that cover the same ground and that are subject to the same, or a higher maximum penalty.³⁰ For example, we have recommended including in the SNPP scheme the offence of using a child under 14 years to produce child abuse material.³¹
- **Production, dissemination or possession of child abuse material, child under 16 years** – s 91H. In our view, the current form of this offence is unsuitable for inclusion because of the complex range of offending behaviours it covers, ranging from producing and disseminating child abuse material to possessing it. In some cases production can involve creating pseudo images of children without involving an actual victim, while dissemination can range from a

29. *Crimes Act 1900* (NSW) s 91E.

30. *Crimes Act 1900* (NSW) s 91G(2): using a child between 14 and 16 years to produce child abuse material (maximum penalty: 10 years); and *Crimes Act 1900* (NSW) s 91G(1): using a child under 14 years to produce child abuse material (maximum penalty: 14 years).

31. Para [3.21]-[3.23].

single act of forwarding an image to a single individual to widespread distribution. Similarly, possession can involve a limited number of images or a vast “library” of child abuse material, in either case of varying depravity.

- **Sexual assault by forced self-manipulation (includes child under 16 years)** – s 80A(2A). This offence occurs when an offender forces a victim to self-manipulate by means of a threat the victim could not reasonably be expected to resist. The aggravated version applies when the victim is under 16, and in a range of other circumstances. An offence like this might be relevant in grooming cases, though the element of threat might be difficult to prove. However, no charges have been laid in at least the last 3 years, and no convictions have been recorded since at least 2006. In the circumstances, we do not consider it should be included at this time. We have no experience of this offence which covers victims other than children and potentially covers a range of offending behaviour that may not be easily characterised.
- **Sexual intercourse with child between 16 and 18 years under special care** – s 73. These cases are difficult to investigate and prosecute. While offences involving lack of consent can be dealt with under the sexual assault provisions, some members of the Council considered that the maximum penalty levels for these offences (currently set at 8 years for 16-year-old victims and 4 years for 17-year-old victims) should be reviewed to determine if they adequately reflect the seriousness of offending of this kind where a young person’s consent may be overborne by a person in authority. If higher penalties result, then the inclusion of these offences in the SNPP scheme can be reconsidered.
- **Persistent sexual abuse of a child under 18 years** – s 66EA. We have been advised that the provision is generally not used because of the structure of the offence and the fact that it will often be preferable to present an indictment with a series of discrete counts; and also because of the risk that on appeal an attempt will be made to break the offence down into its component parts and to exclude some of these as unsupported on the evidence. We understand that this section is under review. This form of offending could be considered for inclusion in the SNPP scheme if and when the provision is revised.

Additional other offences

Recommendation 3.2

Based on the principles in Recommendation 2.1, the following offences in the *Crimes Act 1900* (NSW) should be included in the SNPP scheme:

- (a) s 33A(1)
- (b) s 33A(2)
- (c) s 38
- (d) s 93GA(1)
- (e) s 93GA(1A), and
- (f) s 93GA(1B).

- 3.31 We have concluded that the following offences in the *Crimes Act 1900* (NSW) should be included in the SNPP scheme:

Crimes Act 1900	Offences
s 33A	Discharge firearm with intent to cause grievous bodily harm or to resist arrest or prevent lawful arrest or detention
s 38	Administer intoxicating substance with intent to commit indictable offence
s 93GA	Fire at building with reckless disregard for safety

Discharge firearm with intent – s 33A

- 3.32 Our reasons for proposing the inclusion of the offences of discharging a firearm with intent to cause grievous bodily harm or to resist arrest or prevent lawful arrest or detention³² include the following:

- The offences each have a very high maximum penalty of 25 years imprisonment.
- The offences are indictable only offences.
- They are similar to the offences of wounding under s 33 which are already included in the SNPP scheme. Using a firearm with intent to cause grievous bodily harm, or to resist arrest or prevent lawful arrest or detention, can be seen as aggravating those offences and as increasing the risk of serious harm both to ordinary members of the community and law enforcement officers.

- 3.33 The prevalence of these offences is relatively low, with only 11 charges being finalised in 2012. However, in our view, their inclusion in the SNPP scheme is justified because of their close relationship to the offences of wounding or causing grievous bodily harm with intent offences and their commission through the use of a firearm or other weapon.

Administer intoxicating substance with intent to commit indictable offence – s 38

- 3.34 Our reasons for proposing the inclusion of the offence of administering an intoxicating substance with intent to commit an indictable offence³³ include the following:

- It has a very high maximum penalty of 25 years imprisonment.
- It is an indictable only offence.
- This offence carries a risk of significant physical harm to victims and renders victims particularly vulnerable to offences such as sexual assault and aggravated sexual assault, as well as robbery or kidnapping.

32. *Crimes Act 1900* (NSW) s 33A(1) and (2).

33. *Crimes Act 1900* (NSW) s 38.

- The trickery or surreptitious way in which an offender can administer the substance and its ability to reduce or remove the victim's power to resist.
- 3.35 While the prevalence is relatively low, with 7 charges finalised in 2012, the potential use of the offence to facilitate sexual assault and aggravated sexual assault (both SNPP offences) as well as other serious offences, and the degree of planning or deception involved, make it an offence suitable for inclusion in the SNPP scheme.

Firing at buildings with reckless disregard for safety – s 93GA

- 3.36 Section 93GA of the *Crimes Act 1900* (NSW) covers three offences:
- fire firearm at building with reckless disregard for safety – s 93GA(1)
 - fire firearm at building with reckless disregard for safety, during public disorder – s 93GA(1A), and
 - fire firearm at building with reckless disregard for safety, in the context of organised criminal activity – s 93GA(1B).
- 3.37 These are relatively recently enacted offences. Section 93GA(1) was inserted in 2003, s 93GA(1A) was inserted in 2006 and s 93GA(1B) was inserted in 2012.³⁴
- 3.38 Our reasons for proposing the inclusion of these offences include the following:
- They have maximum penalties of 14-16 years imprisonment.
 - They are indictable only offences.
 - They carry a special risk, through their nature and the irresponsible circumstances of their commission, of causing harm to innocent members of the community who may become unintended victims of such shootings.
 - They cause apprehension in the communities in which they are committed and commonly occur in the context of organised crime-related activity.
- 3.39 The number of convictions for these offences has been low. From April 2006 until March 2013, 25 sentences were imposed for s 93GA(1) as the principal offence. Twenty of these (80%) received a sentence of imprisonment. The median head sentence is 4 years imprisonment and the longest term handed down has been 9 years. No sentences have been imposed for offences under s 93GA(1A) or s 93GA(1B).³⁵
- 3.40 However, incidents of this nature are being frequently reported. In 2012, for example, police recorded 95 incidents of discharging a firearm into premises.

34. *Firearms and Crimes Legislation Amendment (Public Safety) Act 2003* (NSW) sch 1 [2]; *Crimes Legislation Amendment (Gangs) Act 2006* (NSW) sch 1 [10]; and *Crimes Amendment (Consorting and Organised Crime) Act 2012* (NSW) sch 1 [1] [2].

35. Judicial Commission of NSW, *Judicial Information Research System – Sentencing Statistics* (accessed 11 December 2013).

Around 26.3% were recorded as being gang-related, 9.5% were recorded as organised crime related and 7.4% were recorded as drug-related.³⁶

3.41 When the offence under s 93GA(1) was introduced in 2003, it was intended as a specifically-targeted offence, representing:

an increase on the current 10-year penalty for the less specific offences of causing danger with a firearm or spear gun, and trespassing with, or dangerous use of, a firearm or spear gun currently in sections 93G and 93H of the Crimes Act.³⁷

3.42 When the offence under s 93GA(1B) was introduced in 2012, it was observed that:

The primary goal of the new offence is to recognise that a greater degree of criminality is involved where these shootings occur in connection with the activities of criminal groups, and to ensure that this is reflected in appropriately high penalties.³⁸

Potentially suitable offences – subject to further consideration

3.43 We consider that the following *Crimes Act 1900* (NSW) offences not presently covered in the SNPP scheme could be considered for inclusion in future. In each case further work and consultation is required on the patterns of sentencing, the types of offending that may be covered by the offence, and the circumstances in which the offences are likely to be charged:

- **Kidnapping in company and/or actual bodily harm** – s 86(2) and (3). These are aggravated forms of the basic offence of kidnapping (s 86(1)) carrying high maximum penalties of 20 and 25 years.
- **Aggravated forms of robbery** – s 95(1), 96, 97(2). These offences of robbery carry very high penalties of 20 and 25 years. There is a guideline judgment that deals with the basic offence of armed robbery under s 97(1) (one of the cases before the CCA involved the aggravated form of the offence under s 97(2)),³⁹ as well as more recent CCA authority on the adequacy of sentencing for armed robbery.⁴⁰
- **Dealing with known proceeds of crime with intent to conceal** – s 193B(1). We note that 42 charges for this offence were finalised in 2012. However, there is a line of authority relating to the potential overcharging of offences of dealing with known proceeds of crime which may have an impact on this charge's use in future.⁴¹ Although the offence tends to be related to organised criminal activity, and can have significant implications for cash reporting requirements and compliance with income tax laws, it can involve a wide variety of offending, motivation, and monetary amount. Depending on the responses currently under consideration, including the possible introduction of legislation targeting the

36. J Fitzgerald, *Non-fatal shootings in NSW*, Bureau Brief No 85 (NSW Bureau of Crime Statistics and Research, 2013) 6.

37. NSW, *Parliamentary Debates*, Legislative Council, 12 November 2003, 4737.

38. NSW, *Parliamentary Debates*, Legislative Assembly, 14 February 2012, 8130.

39. *R v Henry* [1999] NSWCCA 111; 46 NSWLR 346.

40. *Hamilton v R* [2010] NSWCCA 278 [61]-[63] and schedule.

41. *Thorn v R* [2009] NSWCCA 294. But see *Delaney v R* [2013] NSWCCA 150 [31]-[39].

proceeds of outlaw motorcycle gang activity, it may be desirable in future to consider including this offence or some other related offences in the SNPP scheme.

4. Setting standard non-parole periods

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- 4.1 The question of what standard non-parole period (SNPP) to allocate to a given offence is complex and controversial. Our consultation paper called for submissions on this question and identified a range of options.¹ Our interim report identified two potential methods for setting SNPPs for new offences, and for reviewing those that are currently included in the scheme.
- 4.2 In this chapter we outline some of the difficulties with the SNPPs set under the current scheme and set out our preferred method of fixing an SNPP for each offence – using a fixed proportion of 37.5% of the maximum penalty as a starting point and then moving the figure up or down depending on certain relevant considerations.

Current difficulties

- 4.3 Submissions to this reference have mirrored the courts' concerns about the way SNPPs have been set, and the levels at which they have been set. Those concerns are particularly about the lack of transparency in the process by which the SNPPs were determined, and the significant variation in the proportion that the SNPP bears to the maximum available sentences for all of the SNPP offences.

1. NSW Sentencing Council, *Standard Minimum Non-parole Periods: Questions for Discussion*, Consultation Paper (2013) ch 3.

No coherent criteria and considerable variation

- 4.4 The first point is important. No method was stated at the time the SNPP scheme was established. The variation in the SNPPs does not suggest an entirely coherent approach. In a sense, this reference invites us to place the scheme on a stronger conceptual and policy basis. In undertaking this work, we are driven to conclude that “retro-fitting” a coherent policy basis to the current scheme that will justify the current SNPPs is likely to be fruitless.
- 4.5 Table E.1 in Appendix E shows the following variations between the current SNPPs and relevant maximum penalties:
- The lowest ratio is set at 21.4% of the maximum penalty (items 20 and 24).
 - The highest ratio is set at 80% of the maximum penalty (item 9B).
 - In the case of 18 items the ratio is set at less than 50% of the maximum penalty (items 2, 3, 4, 4A, 4B, 4C, 4D, 5, 6, 11, 12, 13, 14, 15, 15A, 15B, 20 and 24).
 - In the case of 7 items the ratio is set at 50% of the maximum penalty (items 7, 8, 16, 18, 21, 22, 23).
 - In the case of 3 items the ratio is set above 50% of the maximum penalty (items 9A, 9B and 10).
 - In the case of offences carrying a maximum sentence of life imprisonment:
 - for 2 items the SNPP is set at 25 years (items 1A and 1B)
 - for 1 item the SNPP is set at 20 years (item 1)
 - for 4 items the SNPP is set at 15 years (items 9, 10, 17 and 19), and
 - for 1 item the SNPP is set at 10 years (item 15C).
 - Of the 6 items which carry a maximum head sentence of 25 years imprisonment (items 2, 3, 4, 10, 11 and 13), the SNPPs are variously:
 - 7 years (items 4, 11 and 12)
 - 10 years (items 2 and 3), and
 - 15 years (item 10 – s 66A(1)).

Anomalies in particular offences

- 4.6 Within this variation some particular offences create significant difficulties for sentencing. As we noted in the interim report, submissions² were particularly critical of the ratio of non-parole period (NPP) to maximum penalty that applies to the

2. NSW, Office of the Director of Public Prosecutions, *Submission SNPP4*; *Submission SNPP17*, 4; Legal Aid NSW, *Submission SNPP7*; *Submission SNPP14*, 7-8; Law Society of NSW, *Submission SNPP15*, 8; NSW Young Lawyers Criminal Law Committee, *Submission SNPP16*, 12; NSW Bar Association, *Submission SNPP10*, 6-7.

SNPP for item 9B.³ If the SNPP for a midrange offence represents 80% of the maximum available sentence, then it tends to suggest the need for a full term or head sentence to be set at or near the maximum available sentence, particularly if regard is to be had to the “statutory ratio” between the NPP and head sentence in accordance with s 44(2) of the *Crimes Act 1900* (NSW). If used in this way the effect of such an SNPP would be to reduce the discretion of the court in setting the balance of the term. In turn this would tend to equate the midrange offence to the worst case for which the maximum sentence is ordinarily reserved. In the case of this offence, courts are simply unable to give effect to all aspects of the sentencing legislation.

- 4.7 As the interim report also observed, a similar, though less extreme, difficulty arises for the s 66A(1) offence of sexual intercourse with a child under 10, where the 15 year SNPP for a midrange offence assumes the setting of a head sentence for that offence that would be appropriate for an offence in the upper level of seriousness.
- 4.8 Other apparent anomalies can be seen. For example, the SNPP of 8 years for a s 61M(2) offence of aggravated indecent assault committed on a victim aged under 16 years is not significantly less than the SNPP of 10 years for a s 61J aggravated sexual assault, although the s 61J offence is likely to be considerably more serious and carries a maximum penalty that is twice that for a s 61M(2) offence.

Imbalance between SNPPs and maximum penalties?

- 4.9 More generally, some cases have suggested that judges face a dilemma in balancing the relationship between the SNPP and the maximum penalty. This has been identified in several pre-*Muldrock* decisions concerned with item 12 (aggravated break and enter to commit a serious indictable offence),⁴ but is not confined to that item. The issue is about whether, in sentencing an offender for an SNPP offence, the court is to give more regard to the guidepost provided by the SNPP or to that provided by the maximum sentence. In *Marshall v R*, Justice Howie observed:

However, it is not an easy task to make sense of, and apply, the standard non-parole period provisions in relation to s 112(2) offences. Firstly, the standard non-parole period is 5 years as against a head sentence of 20 years. One would expect as a matter of logic and the application of ordinary sentencing principles that, if an offence was hypothetically of the mid-range of seriousness, it would carry a sentence of half the maximum penalty, that is a total term of ten years and, according to the statutory proportion under s 44 of the *Crimes (Sentencing Procedure) Act*, a non-parole period of seven and a half years. What then is to be made of the fact that the standard non-parole period is only 5 years? Does this disclose the intention of Parliament that the courts should take a more benign view of an offence under s 112(2) than the maximum penalty would seem to suggest? How does a court determine the sentence where the seriousness of the offence is somewhere above the mid-range of seriousness

3. *Crimes Act 1900* (NSW) s 61M(2).

4. *Crimes Act 1900* (NSW) s 112(2).

but below the most serious category of an offence under the section: by having more regard to the standard non-parole period or to the maximum penalty?⁵

- 4.10 Although the observations in this case were made in the context of an offence for which the SNPP was set at less than 50% of the maximum sentence (5 years SNPP against a maximum sentence of 20 years), the point made is also applicable where the SNPP is significantly higher than 50% of the maximum penalty.
- 4.11 This argument proceeds on the basis that for offending at the midrange level of objective seriousness, the appropriate head sentence is in the order of 50% of the maximum penalty. While this has an attractive simplicity, it is not clear that this is logically justified in all cases. The maximum penalty for offences indicates parliament's view of the penalty required for the worst or most serious case. It does not necessarily imply that the seriousness of offending will be evenly distributed over the penalty range, or that the midrange should be 50% of the maximum. The seriousness of levels of offending might be distributed differently for different offences, depending on the nature and consequences of the offending behaviour.

Effect of the SNPP scheme on sentencing?

- 4.12 The SNPP for offences in the scheme were all set considerably higher than the median and mean NPPs that had been imposed for those offences. Research has shown that, while NPPs and head sentences generally increased following the establishment of the SNPP regime,⁶ the mean and median penalties have continued to fall short of the SNPP. As we noted in the interim report this has become particularly apparent in the case of sexual offences against children.⁷ This may in part be explained by a distribution of seriousness of offending that falls below the hypothetical midrange of seriousness, and/or the presence in most cases of favourable subjective factors. The same observations may also be made about the mean and median lengths of the NPPs for the other SNPP offences.⁸
- 4.13 In light of the circumstances noted above, including the absence of any clear explanation of the way in which the SNPPs were set historically, we consider that the time has arrived to place the method by which SNPPs are set on a more transparent basis.

5. *Marshall v R* [2007] NSWCCA 24 [34]. The dilemma has been discussed concerning s 112(2) offences: *Maxwell v R* [2007] NSWCCA 304 [26]; *R v Merrin* [2007] NSWCCA 255 [44]; *R v Mitchell* [2007] NSWCCA 296 [36]-[38]; *XY v R* [2007] NSWCCA 72 [56]-[57].

6. P Poletti and H Donnelly, *The Impact of the Standard Non-parole Period Sentencing Scheme on Sentencing Patterns in New South Wales*, Research Monograph 33 (Judicial Commission of NSW, 2010).

7. NSW Sentencing Council, *Standard Non-Parole Periods: Sexual Offences Against Children*, Interim Report (2013) [4.17]-[4.18], table 4.2.

8. See Appendix B.

Methodology

Some basic principles

- 4.14 A mechanism to set SNPPs should take into account the fact that the decision in *Muldrock* and the amendment of s 54B of the *Crimes (Sentencing Procedure) Act 1999* (NSW) (CSPA) have relaxed the rigidity that was seen in the earlier application of the SNPP scheme. Each confirms the SNPP's use as a guidepost rather than as an inflexible direction that has to be carried out within the constraints of s 21A of the CSPA. Each also acknowledges that the sentencing exercise involved is one of instinctive synthesis which is not driven by the SNPP.
- 4.15 However, since the SNPP scheme is to be used as a guidepost, it remains necessary that:
- the SNPP for any given offence is proportional and consistent with proper sentencing practice
 - due consideration is given to any factors that justify singling an offence out for special treatment as an SNPP offence, and
 - the method of setting the SNPP is transparent and justifiable.
- 4.16 In the interim report we identified two possible options for setting an SNPP:
- **option 1:** conducting an analysis on an offence by offence basis; and
 - **option 2:** using a fixed proportion of the maximum sentence for an offence as a starting point that can be adjusted according to various relevant considerations.
- 4.17 In this report we identify, in more detail, the advantages and disadvantages of each approach, and explain why we prefer the second option.

Option 1: Offence by offence analysis

- 4.18 The offence by offence analysis approach, which we identified in the interim report, does not commence with any assumption as to the proportion that an NPP should bear to the maximum penalty.
- 4.19 Under this approach, the analysis would begin with establishing for each current or proposed SNPP offence a profile of the kind of offending behaviour that would occupy the midrange of hypothetical seriousness for that offence. This might require more than one profile to be built where the relevant offence is one for which parliament has specified varying circumstances of aggravation.
- 4.20 The second step would involve assigning to that hypothetical midrange offence a head sentence and an NPP, by reference to:
- established sentencing principles and practice
 - the factors that led to the inclusion of the offence in the SNPP scheme
 - the guidepost provided by the current maximum penalty for that offence, and

- any special features of the offence that call for a particular minimum level of full-time custody.
- 4.21 It is an exercise that would call for an independent assessment of an appropriate SNPP for each offence and would require a degree of expert input. This could be derived from the collective views of the members of the Sentencing Council, aided by submissions from stakeholders and/or the community followed by a process of consultation. Whatever process was undertaken there would need to be a report to the government that might aid it in selecting an SNPP for an offence.
- 4.22 A report disclosing the reasons for a suggested SNPP for an offence might assist the government in determining the level at which the SNPP should be set for that offence and also result in a measure of transparency.
- 4.23 However, some stakeholders opposed this option on the grounds that any approach would conflict with the role of judges in properly exercising their discretion to arrive at a fair sentence.⁹
- 4.24 The difficulty with this option is that it would potentially involve a comparatively complex approach that would take considerable time to complete. The outcome may result in more variation than arises under the current scheme or under the alternative approach. Unless confined to newly-added offences, it may result in a need for substantial adjustments to current SNPP levels, in some cases downwards, depending on the extent to which past sentencing trends are weighted in the analysis. In turn this could destabilise existing sentencing trends and result in an increased incidence of appeals until it was bedded down.

Option 2: Adjustment around a common starting point

Recommendation 4.1

The process for specifying an SNPP for an SNPP offence should assume as a starting point a non parole period that is 37.5% of the maximum penalty for the offence. The resulting figure can then be reduced or increased (to no more than 50% of the maximum penalty for the offence) as is appropriate, having regard to the following matters:

- (a) the special need for deterrence
- (b) the need to recognise the exceptional harm which the offence may cause
- (c) the potential vulnerability of those who may be victims
- (d) the extent to which the offence may involve a breach of trust or abuse of authority, and
- (e) sentencing statistics and practice, including relevant appellate guidance as to appropriate levels of sentencing for the offence.

9. Legal Aid NSW, *Submission SNPP14*, 7; Law Society of NSW, *Submission SNPP 15*, 7-8. The Law Society also considered that “the current illogical structure of SNPPs and maximum penalties demonstrates how the current scheme does not work well in practice”.

- 4.25 Our preferred approach to setting an SNPP is to use a fixed proportion of the maximum sentence for an offence as a starting point that can be adjusted according to various relevant considerations. The amount can then be adjusted according to particular features of the offence itself that we outline below. This recognises the need to find a flexible, transparent and consistent basis for setting SNPP amounts.
- 4.26 The resulting SNPPs are then available for the courts to use as a guidepost together with the maximum penalty and all of the other matters that a court must take into account when sentencing an offender for offences in the SNPP scheme.¹⁰
- 4.27 In many cases, the sentencing process will result in an NPP that is lower than the SNPP according to the particular circumstances of each case. This is not a failure of the scheme, or an inappropriate exercise of the sentencing discretion. It reflects the wide range of matters that bear on the sentencing decision.

The starting point

- 4.28 We prefer a formula devised from the general propositions that assumes:
- a midrange offence should attract a head sentence in the order of 50% of the maximum sentence, and
 - the NPP (before allowing for subjective circumstances) should be in the order of 75% of the head sentence (for non-life sentences) in accordance with s 44 of the CSPA.

This would result in a common starting point for calculating an SNPP that is 37.5% of the maximum penalty (that is, 75% of 50% of the maximum penalty).

- 4.29 We note that in its report on sentencing, the NSW Law Reform Commission recommended that the general “statutory ratio” between the NPP and term of the sentence be changed from three-quarters to two-thirds,¹¹ which would suggest the adoption of a starting point before adjustment of 33.3% rather than 37.5% of the maximum sentence. However, we consider that for current purposes, a 37.5% ratio should be retained. This would better reflect the fact the offences chosen for the SNPP scheme fall into the more serious categories of offending that would attract longer sentences and potentially longer periods of possible release on parole.

The process of adjustment

- 4.30 We propose that the common starting point of 37.5% of the maximum penalty could then be adjusted upwards or downwards for any given offence within a relatively narrow range, so as to take into account any particular features of the offence or sentencing concerns in relation to it.
- 4.31 This would permit regard to be had, in particular, to:
- the special need for deterrence

10. Para [1.20]-[1.21].

11. NSW Law Reform Commission, *Sentencing*, Report 139 (2013) rec 6.2.

- the need to recognise the exceptional harm which the offence may cause
 - the potential vulnerability of those who may be victims
 - the extent to which the offence may involve a breach of trust or abuse of authority, and
 - sentencing statistics and practice including relevant appellate guidance as to appropriate levels of sentencing for the offence.
- 4.32 We note that the use of a 37.5% ratio as a starting point, subject to adjustment within a relatively narrow range, would generally come within the 25% to 40% proportion that was proposed in the submissions of Legal Aid NSW, the Law Society of NSW and the NSW Bar Association,¹² albeit at the upper end of that range; and also within the proportion of 25% to 50% proposed by the Office of the Director of Public Prosecutions.¹³
- 4.33 We consider that this option is preferable to one that seeks to set the SNPP as a fixed proportion, or even as a fixed range, of the maximum penalty that would apply across the scheme. A universally applied fixed proportion does not recognise differences in the range and seriousness of offending behaviour covered by the offences included in the SNPP scheme.
- 4.34 The option we propose has a number of advantages. It is simple to apply since it is based on the maximum penalty and, subject to exposure of the reasoning process, it is transparent. It permits a level of flexibility in setting the SNPP that allows for the application of an informed judgement. It reflects, in some respects, the approach that was favoured in submissions, as well as the distribution of most of the SNPPs under the current scheme. Subject to adjustment based on identifiable and justifiable reasons, it has a capacity to accommodate the particular complexity that exists in sentencing for some offences. This has a particular relevance when sentencing those who are convicted of sexual offences against children.
- 4.35 A reasoned approach of this kind could assist in standardising the SNPPs, and in introducing a degree of consistency and transparency. Such an approach can, for example, take into account, for a particular offence, that every offence of its kind is particularly serious, and that there are unlikely to be many outliers that can be described as technical breaches or low level offences. Rather such offences might be seen to cluster towards the more serious end or in the midrange of the spectrum. Referring to past sentencing decisions could assist in this regard.
- 4.36 Moreover, preserving a capacity to adjust the starting point avoids the rigid and potentially arbitrary application of a single fixed ratio. It permits recognition to be given to the fact that not all of the offence categories included in the SNPP scheme necessarily share sufficiently common characteristics to permit the universal application of a fixed ratio. It allows recognition to be given to any special factors that led to the inclusion of the offence in the SNPP scheme, a matter that is particularly relevant for sexual offences against children.

12. Legal Aid NSW, *Submission SNPP7*; Law Society of NSW, *Submission SNPP11*; NSW Bar Association, *Submission SNPP10*.

13. NSW, Office of the Director of Public Prosecutions, *Submission SNPP17*.

- 4.37 It also permits adjustment for aggravated forms of offences, particularly those that provide for different circumstances of aggravation, not all of which will necessarily share the same degree of seriousness. Additionally, in the case of these offences, it would allow potential reference to be made to current and past sentencing trends, which, as we observed earlier, have tended not to reflect the current SNPPs.

An upper limit

- 4.38 We consider that SNPPs should not be set in excess of 50% of the maximum penalty for any offence, at least in the absence of compelling reasons to the contrary. This is consistent with the submission of the Office of the Director of Public Prosecutions.¹⁴ Setting the SNPP at a level above 50% assumes the imposition of an overall term that would seem to be disproportionate for an offence of hypothetical midrange seriousness.
- 4.39 If an SNPP in excess of 50% of a current maximum sentence was however considered to be warranted for any given offence, then this could justify reviewing the existing maximum sentence with the possibility of increasing it.

Making the adjustment

- 4.40 It follows from the above that the government would need to receive a reasoned advice on the level at which each SNPP might be fixed. In this respect a somewhat similar consideration of each offence to that required by option 1 is contemplated. However, using a common starting point is advantageous in that it would tend to simplify the process and encourage a greater degree of consistency than currently exists.
- 4.41 The Sentencing Council could formulate a recommendation in accordance with the matters outlined above, drawing on the expertise of its members, supplemented where necessary by submissions and consultations involving stakeholders and others.

Maximum penalties of life imprisonment

- 4.42 Using a fixed proportion as a starting point will obviously not assist in the case of offences that have a maximum penalty of life imprisonment.
- 4.43 Where a life sentence is in fact imposed the question does not arise, since under current law in NSW, a life sentence is a sentence of imprisonment for the term of the offender's natural life, without the option of release on parole.
- 4.44 However, for the remaining offences in this category an SNPP does need to be specified if they are to be part of the scheme. At present, it would seem that maintaining an SNPP within the current range of between 15 years and 20 years is appropriate.¹⁵

14. NSW, Office of the Director of Public Prosecutions, *Submission SNPP17*.

15. The Bar Association suggested a maximum SNPP of 20 years for offences that carry a life sentence, this being the SNPP currently set for Item 1 murder: NSW Bar Association, *Submission SNPP10*.

Setting SNPPs for existing and proposed SNPP offences

Adjusting existing SNPPs

Recommendation 4.2

Based on the principles in Recommendation 4.1, the existing SNPP offences should be amended as follows:

(a) *Crimes Act 1900* (NSW):

(i) s 61M(1) – maximum penalty: 8 years imprisonment; SNPP: 4 years imprisonment.

(ii) s 61M(2) – maximum penalty: 12 years imprisonment, SNPP: 6 years imprisonment.

(iii) s 33(2) – SNPP: 9 years imprisonment.

(b) *Firearms Act 1996* (NSW) s 7 – SNPP: 4 years imprisonment.

(c) *Weapons Prohibition Act 1988* (NSW) s 7 – SNPP: 5 years imprisonment.

4.45 Drawing on the principles outlined in Recommendation 4.1 and the collective views of the members of the Sentencing Council, we recommend changes to the following SNPP offences:

- **Aggravated indecent assault** - *Crimes Act 1900* (NSW) s 61M(1): Increase the maximum penalty to 8 years and reduce the SNPP to 4 years (50% ratio).
- **Indecent assault of a child under 16 years** - *Crimes Act 1900* (NSW) s 61M(2): Increase the maximum penalty to 12 years and reduce the SNPP to 6 years (50% ratio).
- **Wounding etc with intent to resist arrest** - *Crimes Act 1900* (NSW) s 33(2): Increase the SNPP to 9 years (36% ratio).
- **Unauthorised possession of a pistol or prohibited firearm** - *Firearms Act 1996* (NSW) s 7: Increase the SNPP to 4 years (28.57% ratio).
- **Unauthorised possession of prohibited weapon** - *Weapons Prohibition Act 1988* (NSW) s 7: Increase the SNPP to 5 years (35.71% ratio).

4.46 We decided not to recommend adjusting the SNPP for the offence of sexual intercourse of a child under 10 years,¹⁶ which currently stands at 60% of the maximum penalty for the offence even though this would exceed the cap of 50% that we believe should normally apply. We note that the offence already attracts a maximum penalty of 25 years imprisonment, with the aggravated form of the offence¹⁷ attracting a maximum penalty of life imprisonment. There is virtually no room to increase the maximum penalty for the s 66A(1) offence, while reducing the SNPP from 60% to 50% of the maximum available penalty might run the risk of

16. *Crimes Act 1900* (NSW) s 66A(1).

17. *Crimes Act 1900* (NSW) s 66A(2).

destabilising sentencing patterns in an area of exceptionally serious offending that is of particular concern to the community.

Indecent assault – Crimes Act 1900 (NSW) s 61M

- 4.47 The justification for fixing the ratio of the SNPP to the maximum sentence as high as 80% for s 61M(2) (indecent assault of a child under 16 years), or as high as that of 71.4% applicable to s 61M(1) (aggravated indecent assault), is not apparent. Nor is it clear what circumstances were taken into account when each offence was initially included in the scheme. What can be ascertained, however, is that while the SNPP for each offence was originally the same, that is 5 years, the SNPP for s 61M(2) was increased to 8 years from 1 January 2008.¹⁸ The stated purpose was to reflect the increased seriousness of the offence where the victim was a child aged under 10 years.¹⁹
- 4.48 Applying the limit of 50% of the maximum penalty would have an advantage in removing the apparently anomalous SNPPs for the s 61M offences which are the only offences apart from the s 66A(1) offence that currently attract an SNPP in excess of 50% of their respective maximum penalties. However, this would result in substantial decreases in the respective SNPPs.
- 4.49 The anomaly could be addressed by increasing the maximum penalty for those offences so that the SNPPs fit the constraints proposed above. However, this would be likely to result in maximum penalties that would be disproportionate to the kind of offending behaviour involved. For example, if the SNPP for the offence of aggravated indecent assault²⁰ is retained at 8 years imprisonment, and is to be set at say 50% of the maximum penalty, this would assume an increase in the maximum penalty from 10 years to 16 years imprisonment, placing the offence at a very high level of seriousness in the criminal calendar.
- 4.50 In the case of the two offences under s 61M, we therefore recommend a combined action of increasing the maximum penalty to reflect their seriousness and of reducing the SNPP in each case so that they are set at 50% of the new maximum penalties.
- 4.51 To carry this into effect, in the case of s 61M(1), we recommend increasing the maximum penalty to 8 years and setting the SNPP at 4 years, resulting in a 50% ratio of SNPP to the maximum term of imprisonment for the offence. In the case of s 61M(2) we recommend increasing the maximum penalty to 12 years and setting the SNPP at 6 years, also resulting in a 50% ratio.

Wounding etc with intent to resist arrest - Crimes Act 1900 (NSW) s 33(2)

- 4.52 Item 4 of the current SNPP table incorporates two offences under s 33 of the *Crimes Act 1900* (NSW):

18. *Crimes (Sentencing Procedure) Amendment Act 2007* (NSW).

19. NSW, *Parliamentary Debates*, Legislative Council, 17 October 2007, 2668.

20. *Crimes Act 1900* (NSW) s 61M(2).

- wounding or causing grievous bodily harm with intent to cause grievous bodily harm (s 33(1)), and
 - wounding or causing grievous bodily harm with intent to resist arrest or prevent lawful arrest or detention (s 33(2)).
- 4.53 For each offence, the current SNPP is set at 7 years or 28% of the maximum available sentence of 25 years imprisonment.
- 4.54 In our view wounding or causing grievous bodily harm with intent to resist arrest or prevent lawful arrest or detention should have an SNPP that is closer to the proportion of 37.5% of the maximum penalty, given the significant law and order issue involved, and the inherent seriousness of offending of this kind when it occurs in the course of a lawful arrest or detention of a person who has committed or is suspected of committing another offence. We therefore recommend an increase in the SNPP for the s 33(2) offence to 9 years imprisonment, resulting in a ratio of 36% to the maximum penalty for the offence of 25 years.
- 4.55 However, we have decided not to recommend any change to the SNPP for the s 33(1) offence. Even though it involves an intention to cause grievous bodily harm, and 95 charges for this offence were finalised in 2012, its consequences and the circumstances in which it is committed vary considerably in their seriousness.

Possession or use of prohibited firearms or prohibited weapons

- 4.56 For each of the offences of unauthorised possession or use of a pistol or prohibited firearm²¹ or a prohibited weapon²² the current SNPP is set at 3 years or 21.4% of the maximum penalty of 14 years imprisonment.
- 4.57 In our view these NPPs are disproportionately low for offences involving the unauthorised possession or use of a pistol or prohibited firearm or of a prohibited weapon. Again the potentially serious consequences for the community arising from these offences and the need for strongly deterrent sentences justify an increase in the SNPPs. We recommend that the SNPP for unauthorised possession or use of a pistol or prohibited firearm be increased to 4 years (resulting in a 28.6% ratio to the maximum penalty), and that the SNPP for unauthorised possession or use of a prohibited weapon be increased to 5 years (resulting in a 35.7% ratio to the maximum penalty).
- 4.58 The increased term for prohibited weapons is justified because prohibited weapons include military-style weapons such as bombs (including improvised explosive devices), grenades, rockets, missiles, mines and tear gas canisters, as well as other articles such as detachable firearm magazines.²³ The use or possession of these items can give rise to exceptional harm to potentially large numbers of victims and, accordingly, give rise to a special need for deterrence.

21. *Firearms Act 1996* (NSW) s 7.

22. *Weapons Prohibition Act 1988* (NSW) s 7.

23. *Weapons Prohibition Act 1998* (NSW) sch 1 cl 1A, cl 4(4).

Setting new SNPPs

Recommendation 4.3

Based on the principles in Recommendation 4.1, the SNPPs proposed for the offences in the *Crimes Act 1900* (NSW) that are identified in Recommendations 3.1 and 3.2 as additions to the SNPP scheme, are as follows:

- (a) s 33A(1) – 9 years imprisonment
- (b) s 33A(2) – 9 years imprisonment
- (c) s 38 – 9 years imprisonment
- (d) s 66B – 10 years imprisonment
- (e) s 66C(1) – 7 years imprisonment
- (f) s 66C(2) – 9 years imprisonment
- (g) s 66C(4) – 5 years imprisonment
- (h) s 66EB(2) (child under 14 years) – 6 years imprisonment
- (i) s 66EB(2) (child 14-16 years) – 5 years imprisonment
- (j) s 66EB(2A) (child under 14 years) – 6 years imprisonment
- (k) s 66EB(2A) (child 14-16 years) – 5 years imprisonment
- (l) s 66EB(3) (child under 14 years) – 5 years imprisonment
- (m) s 66EB(3) (child 14-16 years) – 4 years imprisonment
- (n) s 91D(1) – 6 years imprisonment
- (o) s 91E(1) – 6 years imprisonment
- (p) s 91G(1) – 6 years imprisonment
- (q) s 93GA(1) – 5 years imprisonment
- (r) s 93GA(1A) – 6 years imprisonment, and
- (s) s 93GA(1B) – 6 years imprisonment.

Sexual offences against children

4.59 We propose SNPPs for the following sexual offences against children contained in the *Crimes Act 1900* (NSW) that are not presently covered in the SNPP scheme but that we have recommended for inclusion:

Crimes Act 1900	offence	max penalty (years)	proposed SNPP (years)	% of maximum penalty
s 66B	Attempt sexual intercourse with a child under 10 years	25	10	40%
s 66C(1)	Sexual intercourse with a child 10-14 years	16	7	44%
s 66C(2)	Aggravated sexual intercourse with a child 10-14 years	20	9	45%

Report **Standard non-parole periods**

Crimes Act 1900	offence	max penalty (years)	proposed SNPP (years)	% of maximum penalty
s 66C(4)	Aggravated sexual intercourse with a child 14-16 years	12	5	42%
s 66EB(2)	Procure a child under 14 years for unlawful sexual activity	15	6	40%
s 66EB(2)	Procure a child 14-16 years for unlawful sexual activity	12	5	42%
s 66EB(2A)	Meet a child under 14 years following grooming	15	6	40%
s 66EB(2A)	Meet a child 14-16 years following grooming	12	5	42%
s 66EB(3)	Groom a child under 14 years for unlawful sexual activity	12	5	42%
s 66EB(3)	Groom a child 14-16 years for unlawful sexual activity	10	4	40%
s 91D(1)	Induce a child under 14 years to participate in child prostitution	14	6	43%
s 91E(1)	Obtain benefit from child prostitution, child under 14 years	14	6	43%
s 91G(1)	Use a child under 14 years for pornographic purposes	14	6	43%

4.60 The proposed SNPP levels in the above table are higher than the 37.5% starting point. In all but one case (s 66C(2)), the SNPPs are the first round number that is 40% or more of the maximum penalty for the offence.

4.61 Setting the SNPP at or near to 40% reflects a number of the matters set out in Recommendation 4.1. These matters were also relevant considerations in determining whether these offences should be included in the SNPP scheme.²⁴ The relevant matters that we have considered are:

- Each of the offences involves children younger than 16 years who are a class of particularly vulnerable victims.
- The fact that the offences involve children under 16 years is, in itself, a feature of aggravation as are the degrees of planning involved in the grooming, prostitution and pornography offences.
- The offences involve exceptional risk to the victims as a result of the serious and long term harm that they are likely to cause.
- The offences require a special level of deterrence given the difficulty of detection involved.

24. Chapter 3.

- The offences will also often involve an abuse of authority or a breach of trust, either that generally owed by adults to children or that especially owed by teachers, family members and community leaders.

4.62 We have recommended an SNPP of 9 years that stands at 45% of the maximum penalty for a s 66C(2) because aggravated sexual intercourse with a child between 10 and 14 years involves a particular degree of aggravation that would exacerbate the circumstances set out above. It would also represent an appropriate gradation in penalty when compared with the SNPP previously in place, and now proposed, for an aggravated indecent assault on a child under 16 years (s 61M(2)) of 6 years.

Other offences

4.63 We propose SNPPs for the following further *Crimes Act 1900* (NSW) offences that are not presently covered in the SNPP scheme but that we recommend for inclusion:

Crimes Act 1900	Offence	Max penalty (years)	Proposed SNPP (years)	% of maximum penalty
s 33A(1)	Discharge firearm with intent to cause grievous bodily harm	25	9	36%
s 33A(2)	Discharge firearm with intent to resist arrest or prevent lawful arrest or detention	25	9	36%
s 38	Use intoxicating substance to commit an indictable offence	25	9	36%
s 93GA(1)	Fire at building with reckless disregard for safety	14	5	36%
s 93GA(1A)	Fire at building with reckless disregard for safety during public disorder	16	6	38%
s 93GA(1B)	Fire at building with reckless disregard for safety, organised criminal activity	16	6	38%

4.64 For each of the offences listed above, we have recommended an SNPP that sits around 37.5% of each maximum penalty.

4.65 In our view the SNPP for the offences under s 33A of the *Crimes Act 1900* (NSW) should be 9 years imprisonment. This is the same SNPP we have recommended for the related offence of wounding or causing grievous bodily harm with intent to resist arrest or prevent lawful arrest or detention under s 33(2). We have recommended the same SNPP for the offences under both s 33A(1) and (2) because we consider the discharge of a firearm with the specific intent to cause grievous bodily harm is as serious as that of wounding or discharging a firearm with intent to resist arrest or prevent lawful arrest or detention. In each case, the proposed SNPP involves an appropriate gradation of the SNPPs for the associated offences related to the unauthorised possession or use of pistols or prohibited firearms currently included in the scheme (item 20) which do not require proof of any specific intent concerning their possession or use.

4.66 We consider that the SNPP for firing at a building with reckless disregard for safety (basic and aggravated offences under s 93GA) - should be set at around 37.5% of

the maximum penalty for each offence. While deterring such behaviour is an important consideration, particularly serious outcomes involving injury or death, particularly where that is specifically intended, will be covered by other offences with appropriate penalties (some of which are already included in the SNPP scheme).

- 4.67 Although a s 38 offence of using an intoxicating substance to commit an indictable offence may overlap with the commission of the substantive offence, giving rise to separate counts for which there are varying maximum penalties depending on the offence concerned, it does involve particularly serious offending behaviour in its own right. For the reasons identified above,²⁵ including the potential risk involved, the trickery or surreptitious behaviour involved in administering the substance, and the need for deterrence, we propose an SNPP of 9 years that is set at 36% of the maximum penalty.

25. Para [3.34].

5. Dealing with SNPP offences in future

What procedures should be followed?	51
Who should assess potential SNPPs?	52

- 5.1 This report has set out the principles for identifying offences that should be standard non-parole period (SNPP) offences and for fixing their duration and has recommended a number of additional offences to be included in the scheme and SNPPs for those offences.
- 5.2 This chapter is concerned with the procedures that should be applied in the future:
- to determine whether to include in the SNPP scheme a newly introduced offence or an offence which has been amended or had its penalty altered or to remove an offence from the scheme when circumstances have changed, and
 - to set the SNPP for a new offence in the scheme or to adjust the SNPP for an offence that is currently in the SNPP scheme when the relevant provisions are amended, the penalty is altered, or there is some other change in circumstances.
- 5.3 We have already identified in the course of this report some offences that should be reviewed with a view to potential change. Any amended offences that result could be considered as potential candidates for the SNPP scheme.

What procedures should be followed?

Recommendation 5.1

- (1) The principles set out in Recommendation 2.1 should govern whether offences should be retained, included in, or removed from, the SNPP scheme in future.
- (2) The methodology set out in Recommendation 4.1 should apply in setting the SNPP for each offence.

- 5.4 The principles set out in chapter 2 and the methodology set out in chapter 4 are of general application and should be applied when considering whether any future offences or amended offences should be included in the SNPP scheme, or removed from it.

Who should assess potential SNPPs?

Recommendation 5.2

The government should consult the Sentencing Council whenever a question is raised of including an offence in, or removing an offence from, the SNPP scheme or setting or adjusting an SNPP.

- 5.5 A number of agencies could advise the government and provide input in applying the principles and methodology outlined in chapters 2 and 4.
- 5.6 Each of these agencies could engage with the community and, in this way, assist the parliament in reflecting community views about offences that could or should be, or not be, subject to an SNPP. The agencies include:
- the Justice Policy section of the Department of Attorney General and Justice
 - the Sentencing Council, and
 - a parliamentary committee.
- 5.7 The role could be a standing role or could be the subject of specific reference from government when occasion arises.
- 5.8 These agencies can engage with the community in many ways, including seeking advice from panels of experts, and conducting research on informed public attitudes through structured surveys, focus groups, citizen jury approaches, or other methods. They can also engage with agencies that provide relevant information and data such as the Judicial Commission of NSW or the NSW Bureau of Crime Statistics and Research.
- 5.9 We received mixed responses from stakeholders to the question of what agencies should be involved in the process.
- 5.10 Some considered the Criminal Law Review Division of the Department of Attorney General and Justice (now part of Justice Policy) to be the appropriate body to consider new SNPP offences and to make recommendations to the government.¹ Others supported engaging the Sentencing Council as the body to make such recommendations.²
- 5.11 The Police Association of NSW considered that the government should seek the input of a number of agencies that can engage with the community and assist in reflecting community views, including the Department of Attorney General and Justice, the Sentencing Council, a parliamentary committee as well as agencies

1. NSW Bar Association, *Submission SNPP10*; NSW Young Lawyers, Criminal Law Committee, *Submission SNPP16*.

2. Legal Aid NSW, *Submission SNPP14* (relying upon evidence provided by agencies within the Justice cluster); Women in Prison Advocacy Network, *Submission SNPP 13* (with an appointed member with “lived experience”); NSW, Office of the Director of Public Prosecutions, *Submission SNPP17*.

- such as the Judicial Commission or BOCSAR that can provide relevant information and data.³
- 5.12 Our view is that, in most cases, the Sentencing Council could inform the parliament in accordance with the principles and methodology outlined in chapters 2 and 4, taking into account the collective views of its constituent members and evidence provided by agencies such as the Judicial Commission of NSW and the NSW Bureau of Crimes Statistics and Research.
- 5.13 The Sentencing Council is constituted under Part 8B of the *Crimes (Sentencing Procedure) Act 1999* (NSW) (CSPA),⁴ with the aim of “promoting consistency and transparency in sentencing and promoting public understanding of the sentencing process”.⁵
- 5.14 The CSPA gives the Sentencing Council the function “to advise and consult with the Minister in relation to offences suitable for standard non-parole periods and their proposed length” and “to monitor, and to report annually to the Minister on, sentencing trends and practices, including the operation of standard non-parole periods”.⁶ The Act further provides that “any advice given to the Minister by the Sentencing Council may be given either at the request of the Minister or without any such request”.⁷
- 5.15 The ALRC, in its report on sentencing federal offenders, summarised the arguments in favour of sentencing councils generally as follows:
- “being one step removed from political processes” they can “provide more objective information to legislators and courts on how the sentencing process should develop”
 - they can “promote the development of sentencing principles”
 - they can “recommend changes to make sentencing more socially defensible and scientifically based”, and
 - they can “ensure that the media receives accurate information about sentencing policy and practices”.⁸
- 5.16 Making recommendations to include an offence in the SNPP scheme and the setting of SNPPs is an exercise that involves judgement that should be informed by expertise and community views. Advice to government should be informed by an appreciation of the role of SNPPs as a guidepost that sits alongside the maximum penalty and the many other considerations that a court must take into account in sentencing. The Council is well placed to make such recommendations.

3. Police Association of NSW, *Submission SNPP12*.

4. Inserted by the *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002* (NSW).

5. NSW, *Parliamentary Debates*, Legislative Assembly, 23 October 2002, 5814.

6. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 110J(1)(a) and (c).

7. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 100J(2).

8. Australian Law Reform Commission, *Same Crime, Same Time: Sentencing of Federal Offenders*, Report 103 (2006) [19.31].

- 5.17 The Council is diverse in its membership and draws on the expertise and experience of legal, academic and community members. It is accustomed, after a process of consultation, to reach an informed decision in support of its recommendations and record those reasons in its report to the Minister. The Sentencing Council is in a position to supplement the expertise and experience of its legal, academic and community members, where necessary, by submissions and consultations involving criminal justice system stakeholders such as the NSW Police Force, the Office of the Director of Public Prosecutions, NSW Public Defenders, Legal Aid NSW, the Aboriginal Legal Service, the Law Society of NSW, and the NSW Bar Association. It could also engage with community groups and focus groups consisting of experts (experienced lawyers, retired judicial officers, and others working in the sentencing field), to assist it in advising the government on specific SNPPs.
- 5.18 In a complex area such as the operation of the SNPP system, consensus may not emerge on all issues. However, the analysis which the Council can produce could identify a range, rather than a specific adjustment, which the government could then take into account.
- 5.19 Discharging a function of this kind falls within the Sentencing Council's statutory powers. We accordingly propose that the Council perform the role of considering the suitability of adding further offences to, or removing them from, the SNPP scheme, delivering a report on that question and fixing SNPPs. This is a role that it can undertake in the course of its more general responsibility for monitoring and reporting to the Minister on the operation of SNPPs.

Appendix A: Crimes (Sentencing Procedure) Act 1999 (NSW) Part 4 Division 1A: Table – Standard non-parole periods

Item No	Offence	Standard non-parole period
1A	Murder —where the victim was a police officer, emergency services worker, correctional officer, judicial officer, council law enforcement officer, health worker, teacher, community worker, or other public official, exercising public or community functions and the offence arose because of the victim's occupation or voluntary work	25 years
1B	Murder —where the victim was a child under 18 years of age	25 years
1	Murder —in other cases	20 years
2	Section 26 of the Crimes Act 1900 (conspiracy to murder)	10 years
3	Sections 27, 28, 29 or 30 of the Crimes Act 1900 (attempt to murder)	10 years
4	Section 33 of the Crimes Act 1900 (wounding etc with intent to do bodily harm or resist arrest)	7 years
4A	Section 35(1) of the Crimes Act 1900 (reckless causing of grievous bodily harm in company)	5 years
4B	Section 35(2) of the Crimes Act 1900 (reckless causing of grievous bodily harm)	4 years
4C	Section 35(3) of the Crimes Act 1900 (reckless wounding in company)	4 years
4D	Section 35(4) of the Crimes Act 1900 (reckless wounding)	3 years
5	Section 60(2) of the Crimes Act 1900 (assault of police officer occasioning bodily harm)	3 years
6	Section 60(3) of the Crimes Act 1900 (wounding or inflicting grievous bodily harm on police officer)	5 years
7	Section 61I of the Crimes Act 1900 (sexual assault)	7 years
8	Section 61J of the Crimes Act 1900 (aggravated sexual assault)	10 years
9	Section 61JA of the Crimes Act 1900 (aggravated sexual assault in company)	15 years
9A	Section 61M(1) of the Crimes Act 1900 (aggravated indecent assault)	5 years
9B	Section 61M(2) of the Crimes Act 1900 (aggravated indecent assault)	8 years
10	Section 66A(1) or (2) of the Crimes Act 1900 (sexual intercourse—child under 10)	15 years
11	Section 98 of the Crimes Act 1900 (robbery with arms etc and wounding)	7 years
12	Section 112(2) of the Crimes Act 1900 (breaking etc into any house etc and committing serious indictable offence in circumstances of aggravation)	5 years
13	Section 112(3) of the Crimes Act 1900 (breaking etc into any house etc and committing serious indictable offence in circumstances of special aggravation)	7 years

Report **Standard non-parole periods**

Item No	Offence	Standard non-parole period
14	Section 154C(1) of the Crimes Act 1900 (taking motor vehicle or vessel with assault or with occupant on board)	3 years
15	Section 154C(2) of the Crimes Act 1900 (taking motor vehicle or vessel with assault or with occupant on board in circumstances of aggravation)	5 years
15A	Section 154G of the Crimes Act 1900 (organised car or boat rebirthing activities)	4 years
15B	Section 203E of the Crimes Act 1900 (bushfires)	5 years
15C	Section 23(2) of the Drug Misuse and Trafficking Act 1985 (cultivation, supply or possession of prohibited plants), being an offence that involves not less than the large commercial quantity (if any) specified for the prohibited plant concerned under that Act	10 years
16	Section 24(2) of the Drug Misuse and Trafficking Act 1985 (manufacture or production of commercial quantity of prohibited drug), being an offence that: (a) does not relate to cannabis leaf, and (b) if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves less than the large commercial quantity of that prohibited drug	10 years
17	Section 24(2) of the Drug Misuse and Trafficking Act 1985 (manufacture or production of commercial quantity of prohibited drug), being an offence that: (a) does not relate to cannabis leaf, and (b) if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves not less than the large commercial quantity of that prohibited drug	15 years
18	Section 25(2) of the Drug Misuse and Trafficking Act 1985 (supplying commercial quantity of prohibited drug), being an offence that: (a) does not relate to cannabis leaf, and (b) if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves less than the large commercial quantity of that prohibited drug	10 years
19	Section 25(2) of the Drug Misuse and Trafficking Act 1985 (supplying commercial quantity of prohibited drug), being an offence that: (a) does not relate to cannabis leaf, and (b) if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves not less than the large commercial quantity of that prohibited drug	15 years
20	Section 7 of the Firearms Act 1996 (unauthorised possession or use of firearms)	3 years
21	Section 51(1A) or (2A) of the Firearms Act 1996 (unauthorised sale of prohibited firearm or pistol)	10 years
22	Section 51B of the Firearms Act 1996 (unauthorised sale of firearms on an ongoing basis)	10 years
23	Section 51D(2) of the Firearms Act 1996 (unauthorised possession of more than 3 firearms any one of which is a prohibited firearm or pistol)	10 years
24	Section 7 of the Weapons Prohibition Act 1998 (unauthorised possession or use of prohibited weapon)—where the offence is prosecuted on indictment	3 years

Appendix B:

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Item 22: s 51B of the <i>Firearms Act</i> 1966 - Unauthorised sale of firearms on an ongoing basis	94
Item 23: s 51D(2) of the <i>Firearms Act</i> 1966-Unauthorised possession of more than 3 firearms any one of which is a prohibited firearm or pistol	95
Item 24: s 7 of the <i>Weapons Prohibition Act</i> 1998-Unauthorised possession or use of prohibited weapon	96

Notes:

- a In addition to excluding juvenile offenders, the analysis excludes offenders sentenced to imprisonment for life or to detention under the Mental Health (Forensic Provisions) Act 1990.
- b Includes ICOs (commenced on 1 October 2010), PD (ceased on 30 September 2010) and HD.
- c Includes s 10 dismissals, s 10 bonds, s 10A convictions, ROC, fines, s 9 bonds and CSOs.
- d The interquartile range (IQR) refers to the middle 50% range of sentences. It is the difference between the two values.
- e A prior offence is of the same type if the principal and prior offences fall within the same broad offence type. There are eight offence types, including drug, sexual, fraud, property, violent, driving, breach and other offences.
- f This information was not available for the pre-period.
- g For the purposes of comparison, cases in the pre-period refer to offences under s 35(2) (old) with a maximum penalty of 10 years.
- h Plea was missing in one case in the post-period (before Muldrock) and in two cases in the post-period (after Muldrock). The jury returned alternative verdicts following a verdict of not guilty to s 33.
- i For the purposes of comparison, cases in the pre-period refer to offences under s 35(1)(b) (rep) with a maximum penalty of 7 years.
- j Plea was missing in one case in the pre-period and in one case in the post-period (after Muldrock). The jury returned alternative verdicts following a verdict of not guilty to s 33.
- k For the purposes of comparison, cases in the pre-period refer to offences under s 35(2) (old).
- l For the purposes of comparison, cases in the pre-period refer to offences under s 35(1)(a) (rep).
- m Plea was missing in two cases in the pre-period. The jury returned alternative verdicts following a verdict of not guilty to s 33.
- n Plea was missing in three cases in the pre-period and in one case in the post-period (before Muldrock). The jury returned alternative verdicts following verdicts of not guilty to s 61J.
- o Plea was missing in one case in the post-period (after Muldrock). The jury returned an alternative verdict following a verdict of not guilty to s 61J.
- p Plea was missing in one case in the post-period (before Muldrock) and in one case in the post-period (after Muldrock). The jury returned alternative verdicts following a verdict of not guilty to s 25(2) involving a large commercial quantity.
- q Plea was missing in one case in the post-period (before Muldrock) and in one case in the post-period (after Muldrock). The jury returned alternative verdicts following a verdict of not guilty to s 25(2) involving a large commercial quantity.

Table B1: Item 1A: s 19A of the Crimes Act 1900 - Murder-prescribed victim ^a

Note: Numbers in red indicate that there were only 1 or 2 cases of the offence being sentenced to full-time imprisonment.

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	Life		Life		Life	
Standard non-parole period (SNPP)			25 years		25 years	
Number of cases	1		0		0	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	1	100.0				
Custodial alternatives ^b	0	0.0				
Suspended sentence	0	0.0				
Other ^c	0	0.0				
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	192.00	144.00				
Median	192.00	144.00				
Middle 50% range						
Interquartile range ^d						
Overall sentence (months)						
Mean	192.00	144.00				
Median	192.00	144.00				
Middle 50% range						
Interquartile range ^d						
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	0	0.0				
Form 1 matters (%)	1	100.0				
No priors (%)	1	100.0				
Priors-same type (%) ^e	0	0.0				
Previously imprisoned (%) ^f						
Previously imprisoned-same type (%) ^e	0	0.0				
Multiple offences (%)	0	0.0				
Consecutive sentences (%)	0	0.0				
Finding of special circumstances (%)	0	0.0				
Mean age		25.00 years				

Source: Judicial Commission of NSW.

Report Standard non-parole periods

Table B2: Item 1B: s 19A of the Crimes Act 1900 - Murder-child victim under 18 years ^a

Note: Numbers in red indicate that there were only 1 or 2 cases of the offence being sentenced to full-time imprisonment.

	Pre-period 1 Jan 2005-31 Dec 2007		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	Life		Life		Life	
Standard non-parole period (SNPP)	20 years		25 years		25 years	
Number of cases	na		3		2	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment			3	100.0	2	100.0
Custodial alternatives ^b			0	0.0	0	0.0
Suspended sentence			0	0.0	0	0.0
Other ^c			0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean			312.67	236.67	432.00	312.00
Median			312.00	240.00	432.00	312.00
Middle 50% range						
Interquartile range ^d						
Overall sentence (months)						
Mean			312.67	236.67	432.00	312.00
Median			312.00	240.00	432.00	312.00
Middle 50% range						
Interquartile range ^d						
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)			1	33.3	1	50.0
Form 1 matters (%)			0	0.0	0	0.0
No priors (%)			1	33.3	1	50.0
Priors-same type (%) ^e			2	66.7	0	0.0
Previously imprisoned (%) ^f			0	0.0	0	0.0
Previously imprisoned-same type (%) ^e			0	0.0	0	0.0
Multiple offences (%)			0	0.0	0	0.0
Consecutive sentences (%)			0	0.0	0	0.0
Finding of special circumstances (%)			0	0.0	1	50.0
Mean age				25.00 years		26.00 years

Source: Judicial Commission of NSW.

Table B3: Item 1: s 19A of the Crimes Act 1900 - Murder-in other cases ^a

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	Life		Life		Life	
Standard non-parole period (SNPP)			20 years		20 years	
Number of cases	82		48		58	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	82	100.0	48	100.0	58	100.0
Custodial alternatives ^b	0	0.0	0	0.0	0	0.0
Suspended sentence	0	0.0	0	0.0	0	0.0
Other ^c	0	0.0	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	231.00	169.62	262.13	193.06	274.34	201.16
Median	216.00	162.00	264.00	192.00	276.00	201.00
Middle 50% range	192-264	144-192.75	232.5-288	168-214.5	238.5-324	166.5-240
Interquartile range ^d	72	48.75	55.5	46.5	85.5	73.5
Overall sentence (months)						
Mean	235.54	173.98	268.56	200.25	283.14	209.64
Median	216.00	162.00	264.00	198.00	279.50	205.50
Middle 50% range	192-264	144-198	235.5-288	174-216	240-336	172.5-252
Interquartile range ^d	72	54	52.5	42	96	79.5
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	31	37.8	26	54.2	22	37.9
Form 1 matters (%)	9	11.0	4	8.3	6	10.3
No priors (%)	46	56.1	14	29.2	16	27.6
Priors-same type (%) ^e	20	24.4	26	54.2	36	62.1
Previously imprisoned (%) ^f			15	31.3	22	37.9
Previously imprisoned-same type (%) ^e	13	15.9	15	31.3	17	29.3
Multiple offences (%)	21	25.6	12	25.0	21	36.2
Consecutive sentences (%)	9	11.0	8	16.7	17	29.3
Finding of special circumstances (%)	23	28.0	12	25.0	21	36.2
Mean age		29.04 years		32.10 years		33.41 years

Source: Judicial Commission of NSW.

Report Standard non-parole periods

Table B4: Item 2: s 26 of the Crimes Act 1900 - Conspiracy to murder ^a

Note: Numbers in red indicate that there were only 1 or 2 cases of the offence being sentenced to full-time imprisonment.

	Pre-period 3 April 2000-31 January 2003		Post-period (before Muldrock) 5 October 2008-4 October 2011		Post-period (after Muldrock) 5 October 2011-31 March 2013	
Maximum penalty of imprisonment	25 years		25 years		25 years	
Standard non-parole period (SNPP)			10 years		10 years	
Number of cases	13		10		1	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	12	92.3	10	100.0	1	100.0
Custodial alternatives ^b	0	0.0	0	0.0	0	0.0
Suspended sentence	0	0.0	0	0.0	0	0.0
Other ^c	1	7.7	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	72.00	44.83	102.60	61.10	84.00	48.00
Median	66.00	45.00	96.00	57.00	84.00	48.00
Middle 50% range	54-92	25.5-69	67.5-139.5	33.75-85.5		
Interquartile range ^d	38	43.5	72	51.75		
Overall sentence (months)						
Mean	74.00	46.08	107.70	66.20	84.00	48.00
Median	66.00	45.00	106.50	64.50	84.00	48.00
Middle 50% range	54-102	25.5-72	67.5-156	39.75-91.5		
Interquartile range ^d	48	46.5	88.5	51.75		
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	7	58.3	9	90.0	1	100.0
Form 1 matters (%)	0	0.0	3	30.0	1	100.0
No priors (%)	8	66.7	4	40.0	1	100.0
Priors-same type (%) ^e	1	8.3	3	30.0	0	0.0
Previously imprisoned (%) ^f			4	40.0	0	0.0
Previously imprisoned-same type (%) ^e	1	8.3	2	20.0	0	0.0
Multiple offences (%)	4	33.3	3	30.0	0	0.0
Consecutive sentences (%)	1	8.3	2	20.0	0	0.0
Finding of special circumstances (%)	10	83.3	9	90.0	1	100.0
Mean age		42.17 years		40.80 years		29.00 years

Source: Judicial Commission of NSW.

Table B5: Item 3: s 27-30 of the Crimes Act 1900 - Attempts to murder ^a

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	25 years		25 years		25 years	
Standard non-parole period (SNPP)			10 years		10 years	
Number of cases	6		12		13	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	6	100.0	12	100.0	13	100.0
Custodial alternatives ^b	0	0.0	0	0.0	0	0.0
Suspended sentence	0	0.0	0	0.0	0	0.0
Other ^c	0	0.0	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	86.67	58.17	141.67	98.08	133.38	89.54
Median	78.00	58.50	138.00	93.00	144.00	96.00
Middle 50% range	49-126	22-78	100.5-180	72-132.75	86-176	54-126
Interquartile range ^d	77	56	79.5	60.75	90	72
Overall sentence (months)						
Mean	86.67	58.17	152.00	108.42	143.77	99.92
Median	78.00	58.50	146.00	102.00	156.00	108.00
Middle 50% range	49-126	22-78	100.5-207.5	72-142.25	86-200	54-144
Interquartile range ^d	77	56	107	70.25	114	90
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	4	66.7	8	66.7	9	69.2
Form 1 matters (%)	0	0.0	2	16.7	1	7.7
No priors (%)	5	83.3	2	16.7	5	38.5
Priors-same type (%) ^e	1	16.7	6	50.0	7	53.8
Previously imprisoned (%) ^f			4	33.3	6	46.2
Previously imprisoned-same type (%) ^e	0	0.0	3	25.0	5	38.5
Multiple offences (%)	2	33.3	7	58.3	6	46.2
Consecutive sentences (%)	0	0.0	2	16.7	5	38.5
Finding of special circumstances (%)	4	66.7	7	58.3	9	69.2
Mean age	39.33 years		37.08 years		34.31 years	

Source: Judicial Commission of NSW.

Table B6: Item 4: s 33 of the Crimes Act 1900 - Wounding etc with intent to do bodily harm or resist arrest ^a

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	25 years		25 years		25 years	
Standard non-parole period (SNPP)			7 years		7 years	
Number of cases	79		173		74	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	73	92.4	159	91.9	72	97.3
Custodial alternatives ^b	4	5.1	6	3.5	0	0.0
Suspended sentence	1	1.3	6	3.5	2	2.7
Other ^c	1	1.3	2	1.2	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	67.52	38.23	75.09	43.50	69.39	40.14
Median	60.00	36.00	72.00	36.00	65.50	36.00
Middle 50% range	46.5-84	24-51	54-96	30-54	48-80.25	24-50.75
Interquartile range ^d	37.5	27	42	24	32.25	26.75
Overall sentence (months)						
Mean	70.40	41.01	77.27	45.59	72.49	43.43
Median	60.00	36.00	72.00	40.00	66.00	36.00
Middle 50% range	48-87	24-54	54-96	30-60	48.75-86.25	27-54
Interquartile range ^d	39	30	42	30	37.5	27
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	49	67.1	132	83.0	51	70.8
Form 1 matters (%)	7	9.6	28	17.6	13	18.1
No priors (%)	20	27.4	22	13.8	19	26.4
Priors-same type (%) ^e	34	46.6	98	61.6	42	58.3
Previously imprisoned (%) ^f			71	44.7	30	41.7
Previously imprisoned-same type (%) ^e	17	23.3	52	32.7	24	33.3
Multiple offences (%)	27	37.0	56	35.2	34	47.2
Consecutive sentences (%)	11	15.1	33	20.8	25	34.7
Finding of special circumstances (%)	65	89.0	153	96.2	67	93.1
Mean age	31.41 years		29.72 years		30.38 years	

Source: Judicial Commission of NSW.

Table B7: Item 4A: s 35(1) of the Crimes Act 1900^g - Reckless causing of grievous bodily harm in company^a

	Pre-period 1 Jan 2005-31 Dec 2007		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	10 years		14 years		14 years	
Standard non-parole period (SNPP)			5 years		5 years	
Number of cases	51		51		17	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	31	60.8	40	78.4	14	82.4
Custodial alternatives ^b	4	7.8	5	9.8	0	0.0
Suspended sentence	16	31.4	6	11.8	3	17.6
Other ^c	0	0.0	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	37.74	21.77	44.08	22.88	45.93	24.57
Median	36.00	21.00	37.50	20.00	39.00	20.00
Middle 50% range	30-45	12-28	32-60	15-30	32.75-54	16.75-27.75
Interquartile range ^d	15	16	28	15	21.25	11
Overall sentence (months)						
Mean	39.00	23.23	45.18	24.08	47.00	25.86
Median	36.00	21.00	40.50	22.50	45.00	22.50
Middle 50% range	30-45	15-28	32-63	15-36	32.75-54	16.75-31.5
Interquartile range ^d	15	13	31	21	21.25	14.75
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%) ^h	27	87.1	37	92.5	11	78.6
Form 1 matters (%)	5	16.1	7	17.5	6	42.9
No priors (%)	2	6.5	8	20.0	2	14.3
Priors-same type (%) ^e	19	61.3	19	47.5	11	78.6
Previously imprisoned (%) ^f			15	37.5	9	64.3
Previously imprisoned-same type (%) ^e	7	22.6	11	27.5	8	57.1
Multiple offences (%)	7	22.6	17	42.5	7	50.0
Consecutive sentences (%)	6	19.4	10	25.0	2	14.3
Finding of special circumstances (%)	27	87.1	39	97.5	13	92.9
Mean age		26.55 years		25.00 years		22.43 years

Source: Judicial Commission of NSW.

Table B8: Item 4B: s 35(2) of the Crimes Act 1900ⁱ - Reckless causing of grievous bodily harm^a

	Pre-period 1 Jan 2005-31 Dec 2007		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	7 years		10 years		10 years	
Standard non-parole period (SNPP)			4 years		4 years	
Number of cases	149		152		58	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	98	65.8	118	77.6	46	79.3
Custodial alternatives ^b	19	12.8	14	9.2	5	8.6
Suspended sentence	24	16.1	17	11.2	4	6.9
Other ^c	8	5.4	3	2.0	3	5.2
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	36.09	20.28	40.69	22.64	42.26	23.98
Median	36.00	16.00	36.00	20.00	41.00	24.00
Middle 50% range	25.5-45.25	12-28	32-48	15-27	31.75-48.75	15-30.5
Interquartile range ^d	19.75	16	16	12	17	15.5
Overall sentence (months)						
Mean	37.80	21.64	41.78	23.75	44.41	26.26
Median	36.00	18.00	38.50	21.00	42.50	24.00
Middle 50% range	25.5-46.5	12-30	32-48.5	15.75-30	32-52.5	16.5-33
Interquartile range ^d	21	18	16.5	14.25	20.5	16.5
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%) ^j	88	89.8	113	95.8	43	93.5
Form 1 matters (%)	12	12.2	22	18.6	7	15.2
No priors (%)	10	10.2	17	14.4	7	15.2
Priors-same type (%) ^e	74	75.5	76	64.4	32	69.6
Previously imprisoned (%) ^f			52	44.1	23	50.0
Previously imprisoned-same type (%) ^e	44	44.9	44	37.3	20	43.5
Multiple offences (%)	26	26.5	39	33.1	13	28.3
Consecutive sentences (%)	16	16.3	18	15.3	8	17.4
Finding of special circumstances (%)	88	89.8	111	94.1	44	95.7
Mean age	30.42 years		30.43 years		31.76 years	

Source: Judicial Commission of NSW.

Table B9: Item 4C: s 35(3) of the Crimes Act 1900^k - Reckless wounding in company^a

	Pre-period 1 Jan 2005-31 Dec 2007		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	10 years		10 years		10 years	
Standard non-parole period (SNPP)			4 years		4 years	
Number of cases	39		50		21	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	19	48.7	36	72.0	19	90.5
Custodial alternatives ^b	5	12.8	4	8.0	1	4.8
Suspended sentence	12	30.8	9	18.0	1	4.8
Other ^c	3	7.7	1	2.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	32.16	15.89	33.86	19.31	36.00	18.00
Median	30.00	15.00	36.00	18.00	36.00	18.00
Middle 50% range	24-36	9-21	27.75-41.75	15-24	26-47	12-24
Interquartile range ^d	12	12	14	9	21	12
Overall sentence (months)						
Mean	33.16	17.05	34.69	20.14	42.16	24.16
Median	33.00	15.00	36.00	18.00	39.00	22.00
Middle 50% range	24-36	10-21	30-42	15-26.25	28-54	15-34
Interquartile range ^d	12	11	12	11.25	26	19
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	18	94.7	35	97.2	19	100.0
Form 1 matters (%)	4	21.1	12	33.3	5	26.3
No priors (%)	3	15.8	5	13.9	2	10.5
Priors-same type (%) ^e	12	63.2	27	75.0	13	68.4
Previously imprisoned (%) ^f			17	47.2	9	47.4
Previously imprisoned-same type (%) ^e	5	26.3	13	36.1	7	36.8
Multiple offences (%)	10	52.6	16	44.4	12	63.2
Consecutive sentences (%)	4	21.1	5	13.9	10	52.6
Finding of special circumstances (%)	19	100.0	34	94.4	18	94.7
Mean age	25.89 years		26.75 years		23.21 years	

Source: Judicial Commission of NSW.

Table B10: Item 4D: s 35(4) of the Crimes Act 1900 ^l - Reckless wounding ^a

	Pre-period 1 Jan 2005-31 Dec 2007		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	7 years		7 years		7 years	
Standard non-parole period (SNPP)			3 years		3 years	
Number of cases	162		129		66	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	99	61.1	82	63.6	44	66.7
Custodial alternatives ^b	9	5.6	12	9.3	3	4.5
Suspended sentence	41	25.3	28	21.7	16	24.2
Other ^c	13	8.0	7	5.4	3	4.5
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	33.22	18.19	32.20	17.11	33.80	19.09
Median	34.00	18.00	33.00	18.00	36.00	18.00
Middle 50% range	27-36	12-24	25.75-36	12-24	27-38.5	13-25
Interquartile range ^d	9	12	10.25	12	11.5	12
Overall sentence (months)						
Mean	34.87	19.66	33.95	18.67	34.80	20.18
Median	35.00	18.00	35.00	18.00	36.00	18.00
Middle 50% range	28-40	14-24	27-38.5	12-24	28.5-41.25	14-27
Interquartile range ^d	12	10	11.5	12	12.75	13
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%) ^m	91	91.9	79	96.3	42	95.5
Form 1 matters (%)	14	14.1	16	19.5	10	22.7
No priors (%)	10	10.1	9	11.0	2	4.5
Priors-same type (%) ^e	78	78.8	60	73.2	36	81.8
Previously imprisoned (%) ^f			49	59.8	30	68.2
Previously imprisoned-same type (%) ^e	58	58.6	39	47.6	24	54.5
Multiple offences (%)	31	31.3	31	37.8	16	36.4
Consecutive sentences (%)	17	17.2	19	23.2	12	27.3
Finding of special circumstances (%)	88	88.9	79	96.3	38	86.4
Mean age	31.74 years		30.79 years		31.43 years	

Source: Judicial Commission of NSW.

Table B11: Item 5: s 60(2) of the Crimes Act 1900 - Assault of police officer occasioning bodily harm ^a

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	7 years		7 years		7 years	
Standard non-parole period (SNPP)			3 years		3 years	
Number of cases	24		6		5	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	13	54.2	6	100.0	3	60.0
Custodial alternatives ^b	1	4.2	0	0.0	1	20.0
Suspended sentence	2	8.3	0	0.0	1	20.0
Other ^c	8	33.3	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	30.77	15.85	36.50	21.00	41.67	18.00
Median	27.00	12.00	36.00	21.00	36.00	18.00
Middle 50% range	18-39	7.5 -18	26.25-48	15.5-25.5		
Interquartile range ^d	21	10.5	21.75	10		
Overall sentence (months)						
Mean	33.31	18.38	39.50	24.00	49.67	26.00
Median	30.00	12.00	36.00	21.00	54.00	30.00
Middle 50% range	18-39	7.5-18	26.25-55.5	15.5-36		
Interquartile range ^d	21	10.5	29.25	20.5		
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	11	84.6	5	83.3	3	100.0
Form 1 matters (%)	8	61.5	1	16.7	1	33.3
No priors (%)	1	7.7	0	0.0	0	0.0
Priors-same type (%) ^e	10	76.9	6	100.0	3	100.0
Previously imprisoned (%) ^f			3	50.0	1	33.3
Previously imprisoned-same type (%) ^e	6	46.2	3	50.0	1	33.3
Multiple offences (%)	10	76.9	6	100.0	2	66.7
Consecutive sentences (%)	3	23.1	2	33.3	2	66.7
Finding of special circumstances (%)	9	69.2	6	100.0	3	100.0
Mean age	30.38 years		35.17 years		24.33 years	

Source: Judicial Commission of NSW.

Report Standard non-parole periods

Table B12: Item 6: s 60(3) of the Crimes Act 1900 - Wounding or inflicting grievous bodily harm on police officer ^a

Note: Numbers in red indicate that there were only 1 or 2 cases of the offence being sentenced to full-time imprisonment.

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	12 years		12 years		12 years	
Standard non-parole period (SNPP)			5 years		5 years	
Number of cases	1		6		5	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	1	100.0	4	66.7	5	100.0
Custodial alternatives ^b	0	0.0	0	0.0	0	0.0
Suspended sentence	0	0.0	2	33.3	0	0.0
Other ^c	0	0.0	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	24.00	12.00	35.75	20.50	30.80	14.40
Median	24.00	12.00	36.50	21.00	36.00	18.00
Middle 50% range			26.5-44.25	14.25-26.25	21-38	5-22
Interquartile range ^d			17.75	12	17	17
Overall sentence (months)						
Mean	24.00	12.00	39.25	24.00	33.60	16.00
Median	24.00	12.00	39.00	24.00	36.00	18.00
Middle 50% range			32.25-46.5	19.5-28.5	22-44	6-25
Interquartile range ^d			14.25	9	22	19
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	1	100.0	4	100.0	4	80.0
Form 1 matters (%)	0	0.0	3	75.0	4	80.0
No priors (%)	0	0.0	0	0.0	0	0.0
Priors-same type (%) ^e	1	100.0	4	100.0	2	40.0
Previously imprisoned (%) ^f			4	100.0	1	20.0
Previously imprisoned-same type (%) ^e	1	100.0	4	100.0	1	20.0
Multiple offences (%)	1	100.0	3	75.0	3	60.0
Consecutive sentences (%)	0	0.0	2	50.0	2	40.0
Finding of special circumstances (%)	1	100.0	4	100.0	5	100.0
Mean age		28.00 years		31.00 years		27.40 years

Source: Judicial Commission of NSW.

Table B13: Item 7: s 61I of the Crimes Act 1900 - Sexual assault ^a

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	14 years		14 years		14 years	
Standard non-parole period (SNPP)			7 years		7 years	
Number of cases	83		104		49	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	72	86.7	92	88.5	43	87.8
Custodial alternatives ^b	3	3.6	0	0.0	0	0.0
Suspended sentence	6	7.2	11	10.6	5	10.2
Other ^c	2	2.4	1	1.0	1	2.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	51.71	29.56	62.14	37.03	51.67	30.67
Median	48.00	27.00	60.00	30.00	45.00	25.50
Middle 50% range	36-60	18.25-36	36.5-74.25	24-48	36-63	18-39.25
Interquartile range ^d	24	17.75	37.75	24	27	21.25
Overall sentence (months)						
Mean	53.26	31.03	68.43	43.36	56.63	34.26
Median	48.00	27.00	60.00	36.00	48.00	30.00
Middle 50% range	36-62.25	19.5-40	39.5-80.25	24-53.75	36-75	18-48
Interquartile range ^d	26.25	20.5	40.75	29.75	39	30
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%) ⁿ	40	55.6	57	62.0	28	65.1
Form 1 matters (%)	13	18.1	18	19.6	13	30.2
No priors (%)	16	22.2	33	35.9	9	20.9
Priors-same type (%) ^e	13	18.1	10	10.9	2	4.7
Previously imprisoned (%) ^f			29	31.5	16	37.2
Previously imprisoned-same type (%) ^e	10	13.9	8	8.7	2	4.7
Multiple offences (%)	29	40.3	47	51.1	23	53.5
Consecutive sentences (%)	10	13.9	34	37.0	15	34.9
Finding of special circumstances (%)	66	91.7	76	82.6	42	97.7
Mean age		33.47 years		33.23 years		32.95 years

Source: Judicial Commission of NSW.

Table B14: Item 8: s 61J of the Crimes Act 1900 - Aggravated sexual assault ^a

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	20 years		20 years		20 years	
Standard non-parole period (SNPP)	10 years		10 years		10 years	
Number of cases	105		81		51	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	102	97.1	80	98.8	50	98.0
Custodial alternatives ^b	1	1.0	0	0.0	0	0.0
Suspended sentence	1	1.0	1	1.2	1	2.0
Other ^c	1	1.0	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	82.33	50.54	94.99	57.58	88.28	53.23
Median	72.00	42.00	92.50	48.00	87.00	54.00
Middle 50% range	52.5-97.5	27.75-70.25	66-120	36-76	65.25-108	33-72
Interquartile range ^d	45	42.5	54	40	42.75	39
Overall sentence (months)						
Mean	94.15	61.80	113.80	75.34	105.90	70.04
Median	72.00	45.00	107.50	66.00	96.00	60.00
Middle 50% range	60-108	32.25-72.75	72-144	42-106.5	81-129.75	48-89.25
Interquartile range ^d	48	40.5	72	64.5	48.75	41.25
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	67	65.7	57	71.3	30	60.0
Form 1 matters (%)	25	24.5	25	31.3	17	34.0
No priors (%)	38	37.3	28	35.0	14	28.0
Priors-same type (%) ^e	13	12.7	10	12.5	3	6.0
Previously imprisoned (%) ^f			25	31.3	16	32.0
Previously imprisoned-same type (%) ^e	6	5.9	9	11.3	2	4.0
Multiple offences (%)	80	78.4	66	82.5	42	84.0
Consecutive sentences (%)	31	30.4	54	67.5	32	64.0
Finding of special circumstances (%)	84	82.4	68	85.0	44	88.0
Mean age		34.20 years		34.90 years		36.48 years

Source: Judicial Commission of NSW.

Table B15: Item 8: s 61J of the Crimes Act 1900 - Aggravated sexual assault (child victim)^a

	Pre-period 3 Apr 2000 - 31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008 - 4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011 - 31 Mar 2013	
Maximum penalty of imprisonment	20 years		20 years		20 years	
Standard non-parole period (SNPP)			10 years		10 years	
Number of cases	51		29		31	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	49	96.1	29	100.0	30	96.8
Custodial alternatives ^b	0	0.0	0	0.0	0	0.0
Suspended sentence	1	2.0	0	0.0	1	3.2
Other ^c	1	2.0	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	68.04	41.00	82.86	49.21	85.43	51.04
Median	60.00	36.00	78.00	45.00	93.00	53.00
Middle 50% range	42.5-90	24-57	62-105	32-64	65.25-102	33-69.5
Interquartile range ^d	47.5	33	43	32	36.75	36.5
Overall sentence (months)						
Mean	74.88	47.43	98.31	64.21	103.70	69.30
Median	60.00	36.00	93.00	57.00	96.00	60.00
Middle 50% range	51 - 96	27.5-60	69-120	39 - 87	72-126.75	46.75-85.25
Interquartile range ^d	45	32.5	51	48	54.75	38.5
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	37	75.5	20	69.0	16	53.3
Form 1 matters (%)	13	26.5	8	27.6	11	36.7
No priors (%)	20	40.8	9	31.0	12	40.0
Priors - same type (%) ^e	5	10.2	5	17.2	3	10.0
Previously imprisoned (%) ^f			8	27.6	7	23.3
Previously imprisoned - same type (%) ^e	1	2.0	5	17.2	2	6.7
Multiple offences (%)	40	81.6	23	79.3	26	86.7
Consecutive sentences (%)	15	30.6	20	69.0	20	66.7
Finding of special circumstances (%)	43	87.8	27	93.1	26	86.7
Mean age		37.37 years		36.86 years		40.57 years

Source: Judicial Commission of NSW.

Report Standard non-parole periods

Table B16: Item 9: s 61JA of the Crimes Act 1900 - Aggravated sexual assault in company ^a

Note: Numbers in red indicate that there were only 1 or 2 cases of the offence being sentenced to full-time imprisonment.

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	Life		Life		Life	
Standard non-parole period (SNPP)			15 years		15 years	
Number of cases	1		2		6	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	1	100.0	2	100.0	6	100.0
Custodial alternatives ^b	0	0.0	0	0.0	0	0.0
Suspended sentence	0	0.0	0	0.0	0	0.0
Other ^c	0	0.0	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	84.00	48.00	151.50	96.00	139.00	67.00
Median	84.00	48.00	151.50	96.00	129.00	63.00
Middle 50% range					126-153	54-78
Interquartile range ^d					27	24
Overall sentence (months)						
Mean	84.00	48.00	199.50	138.00	229.00	157.00
Median	84.00	48.00	199.50	138.00	234.00	168.00
Middle 50% range					178.5-264	106.5-189
Interquartile range ^d					85.5	82.5
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	0	0.0	2	100.0	6	100.0
Form 1 matters (%)	0	0.0	1	50.0	6	100.0
No priors (%)	1	100.0	0	0.0	2	33.3
Priors-same type (%) ^e	0	0.0	1	50.0	2	33.3
Previously imprisoned (%) ^f			2	100.0	3	50.0
Previously imprisoned-same type (%) ^e	0	0.0	1	50.0	2	33.3
Multiple offences (%)	1	100.0	2	100.0	6	100.0
Consecutive sentences (%)	0	0.0	2	100.0	6	100.0
Finding of special circumstances (%)	1	100.0	2	100.0	6	100.0
Mean age		50.00 years		22.50 years		32.17 years

Source: Judicial Commission of NSW.

Table B17: Item 9A: s 61M(1) of the Crimes Act 1900 - Aggravated indecent assault ^a

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	7 years		7 years		7 years	
Standard non-parole period (SNPP)			5 years		5 years	
Number of cases	59		47		12	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	22	37.3	35	74.5	9	75.0
Custodial alternatives ^b	10	16.9	0	0.0	0	0.0
Suspended sentence	14	23.7	6	12.8	2	16.7
Other ^c	13	22.0	6	12.8	1	8.3
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	24.95	15.09	35.46	17.74	34.11	17.89
Median	20.50	11.00	36.00	15.00	30.00	14.00
Middle 50% range	16.5-31.5	7.5-18.75	25-39	12-24	23-45	9-25.5
Interquartile range ^d	15	11.25	14	12	22	16.5
Overall sentence (months)						
Mean	27.95	17.55	44.37	25.60	38.67	22.11
Median	20.50	11.00	36.00	21.00	36.00	18.00
Middle 50% range	16.5-36	7.5-21.75	30-51	14-30	25-57	13-33
Interquartile range ^d	19.5	14.25	21	16	32	20
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%) ^o	20	90.9	28	80.0	5	55.6
Form 1 matters (%)	4	18.2	7	20.0	1	11.1
No priors (%)	12	54.5	16	45.7	5	55.6
Priors-same type (%) ^e	6	27.3	8	22.9	2	22.2
Previously imprisoned (%) ^f			9	25.7	2	22.2
Previously imprisoned-same type (%) ^e	3	13.6	6	17.1	2	22.2
Multiple offences (%)	13	59.1	24	68.6	8	88.9
Consecutive sentences (%)	4	18.2	19	54.3	5	55.6
Finding of special circumstances (%)	17	77.3	32	91.4	8	88.9
Mean age	41.00 years		44.06 years		35.33 years	

Source: Judicial Commission of NSW.

Table B18: Item 9A: s 61M(1) of the Crimes Act 1900 - Aggravated indecent assault (child victim) ^a

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	7 years		7 years		7 years	
Standard non-parole period (SNPP)			5 years		5 years	
Number of cases	54		40		10	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	20	37.0	31	77.5	7	70.0
Custodial alternatives ^b	8	14.8	0	0.0	0	0.0
Suspended sentence	14	25.9	4	10.0	2	20.0
Other ^c	12	22.2	5	12.5	1	10.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	24.45	13.90	36.61	18.39	37.00	20.43
Median	20.50	11.00	36.00	15.00	36.00	24.00
Middle 50% range	18-30	8-18	27-42	12-24	26-48	12-27
Interquartile range ^d	12	10	15	12	22	15
Overall sentence (months)						
Mean	27.75	16.60	46.55	27.13	41.14	24.14
Median	20.50	11.00	42.00	24.00	36.00	24.00
Middle 50% range	18-34.5	8-20.25	31-54	15-33	26-60	14-36
Interquartile range ^d	16.5	12.25	23	18	34	22
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	19	95.0	24	77.4	4	57.1
Form 1 matters (%)	4	20.0	7	22.6	1	14.3
No priors (%)	12	60.0	14	45.2	3	42.9
Priors-same type (%) ^e	5	25.0	7	22.6	2	28.6
Previously imprisoned (%) ^f			8	25.8	2	28.6
Previously imprisoned-same type (%) ^e	2	10.0	5	16.1	2	28.6
Multiple offences (%)	13	65.0	21	67.7	6	85.7
Consecutive sentences (%)	4	20.0	18	58.1	3	42.9
Finding of special circumstances (%)	16	80.0	28	90.3	6	85.7
Mean age	40.45 years		44.06 years		33.86 years	

Source: Judicial Commission of NSW.

Table B19: Item 9B: s 61M(2) of the Crimes Act 1900 - Aggravated indecent assault, child under 16 ^a

Note: The current version of s 61M(2) commenced on 1 January 2009.

	Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	10 years		10 years	
Standard non-parole period (SNPP)	8 years		8 years	
Number of cases	26		21	
Penalty type for principal offence	n	%	n	%
Full-time imprisonment	21	80.8	12	57.1
Custodial alternatives ^b	0	0.0	0	0.0
Suspended sentence	5	19.2	6	28.6
Other ^c	0	0.0	3	14.3
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)				
Mean	39.14	21.52	40.33	22.64
Median	36.00	15.00	36.00	20.00
Middle 50% range	27 - 51	14.5 - 27	27.5 - 52.5	13 - 36
Interquartile range ^d	24	12.5	25	23
Overall sentence (months)				
Mean	46.14	27.81	43.58	26.00
Median	36.00	18.00	36.00	22.00
Middle 50% range	30 - 66	15 - 36	27.5 - 54	13.25 - 36
Interquartile range ^d	36	21	26.5	22.75
Sample characteristics (where full-time imprisonment)	n	%	n	%
Guilty plea (%)	20	95.2	12	100.0
Form 1 matters (%)	5	23.8	6	50.0
No priors (%)	10	47.6	7	58.3
Priors - same type (%) ^e	4	19.0	2	16.7
Previously imprisoned (%) ^f	7	33.3	3	25.0
Previously imprisoned - same type (%) ^e	3	14.3	2	16.7
Multiple offences (%)	14	66.7	6	50.0
Consecutive sentences (%)	8	38.1	5	41.7
Finding of special circumstances (%)	20	95.2	11	91.7
Mean age	41.57 years		42.33 years	

Source: Judicial Commission of NSW.

Report Standard non-parole periods

Table B20: Item 10: s 66A(1) of the Crimes Act 1900 - Sexual assault - child under 10 ^a

Note: The current version of s 66A(1) commenced on 1 January 2009.

	Post-period (before Muldrock) 5 Oct 2008 - 4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	25 years		25 years	
Standard non-parole period (SNPP)	15 years		15 years	
Number of cases	6		10	
Penalty type for principal offence	n	%	n	%
Full-time imprisonment	6	100.0	10	100.0
Custodial alternatives ^b	0	0.0	0	0.0
Suspended sentence	0	0.0	0	0.0
Other ^c	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)				
Mean	68.50	37.67	74.60	41.67
Median	66.00	36.00	70.50	36.00
Middle 50% range	44.25 - 94.5	20.5 - 51	38.25 - 101.25	19.5 - 63
Interquartile range ^d	50.25	30.5	63	43.5
Overall sentence (months)				
Mean	77.00	46.17	83.30	49.80
Median	72.00	42.00	73.50	42.00
Middle 50% range	45 - 115.5	21.25 - 72	40.5 - 73.5	21 - 66
Interquartile range ^d	70.5	50.75	33	45
Sample characteristics (where full-time imprisonment)	n	%	n	%
Guilty plea (%)	5	83.3	8	80.0
Form 1 matters (%)	2	33.3	5	50.0
No priors (%)	5	83.3	5	50.0
Priors - same type (%) ^e	0	0.0	3	30.0
Previously imprisoned (%) ^f	0	0.0	2	20.0
Previously imprisoned - same type (%) ^e	0	0.0	1	10.0
Multiple offences (%)	5	83.3	9	90.0
Consecutive sentences (%)	4	66.7	6	60.0
Finding of special circumstances (%)	5	83.3	10	100.0
Mean age	38.00 years		48.40 years	

Source: Judicial Commission of NSW.

Table B21: Item 10: s 66A(2) of the Crimes Act 1900 - Sexual assault - child under 10 (aggravated) ^a

Note: The current version of s 66A(2) commenced on 1 January 2009.

	Post-period (before Muldrock) 5 Oct 2008 - 4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011 - 31 Mar 2013	
Maximum penalty of imprisonment	Life		Life	
Standard non-parole period (SNPP)	15 years		15 years	
Number of cases	3		15	
Penalty type for principal offence	n	%	n	%
Full-time imprisonment	3	100.0	15	100.0
Custodial alternatives ^b	0	0.0	0	0.0
Suspended sentence	0	0.0	0	0.0
Other ^c	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)				
Mean	104.00	62.00	128.27	82.13
Median	108.00	66.00	120.00	72.00
Middle 50% range			90 - 156	54 - 108
Interquartile range ^d			66	54
Overall sentence (months)				
Mean	108.33	66.33	148.67	101.73
Median	112.00	70.00	144.00	96.00
Middle 50% range			108 - 213	70 - 156
Interquartile range ^d			105	86
Sample characteristics (where full-time imprisonment)	n	%	n	%
Guilty plea (%)	2	66.7	12	80.0
Form 1 matters (%)	0	0.0	6	40.0
No priors (%)	1	33.3	6	40.0
Priors - same type (%) ^e	0	0.0	1	6.7
Previously imprisoned (%) ^f	1	33.3	2	13.3
Previously imprisoned - same type (%) ^e	0	0.0	1	6.7
Multiple offences (%)	2	66.7	12	80.0
Consecutive sentences (%)	2	66.7	11	73.3
Finding of special circumstances (%)	3	100.0	13	86.7
Mean age		50.67 years		32.60 years

Source: Judicial Commission of NSW.

Table B22: Item 11: s 98 of the Crimes Act 1900 - Robbery with arms etc and wounding^a

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	25 years		25 years		25 years	
Standard non-parole period (SNPP)			7 years		7 years	
Number of cases	32		53		18	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	31	96.9	47	88.7	17	94.4
Custodial alternatives ^b	0	0.0	2	3.8	1	5.6
Suspended sentence	1	3.1	3	5.7	0	0.0
Other ^c	0	0.0	1	1.9	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	75.10	45.58	78.06	44.13	98.00	59.25
Median	72.00	42.00	72.00	42.00	84.00	48.00
Middle 50% range	48-96	24-60	60-96	27-60	72-114	35.25-85.5
Interquartile range ^d	48	36	36	33	42	50.25
Overall sentence (months)						
Mean	81.35	51.52	85.28	51.34	108.24	68.82
Median	72.00	42.00	78.00	45.00	96.00	57.00
Middle 50% range	54-102	27-67	60-108	36-66	79-132	42-93
Interquartile range ^d	48	50	48	30	53	51
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	25	80.6	41	87.2	16	94.1
Form 1 matters (%)	11	35.5	16	34.0	3	17.6
No priors (%)	10	32.3	8	17.0	4	23.5
Priors-same type (%) ^e	15	48.4	29	61.7	9	52.9
Previously imprisoned (%) ^f			26	55.3	9	52.9
Previously imprisoned-same type (%) ^e	9	29.0	21	44.7	8	47.1
Multiple offences (%)	18	58.1	30	63.8	8	47.1
Consecutive sentences (%)	7	22.6	20	42.6	7	41.2
Finding of special circumstances (%)	28	90.3	46	97.9	15	88.2
Mean age		26.65 years		24.68 years		26.94 years

Source: Judicial Commission of NSW.

Table B23: Item 12: s 112(2) of the Crimes Act 1900 - Breaking etc into any house etc and committing serious indictable offence in circumstances of aggravation ^a

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	20 years		20 years		20 years	
Standard non-parole period (SNPP)			5 years		5 years	
Number of cases	231		769		470	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	173	74.9	501	65.1	293	62.3
Custodial alternatives ^b	18	7.8	35	4.6	24	5.1
Suspended sentence	22	9.5	170	22.1	118	25.1
Other ^c	18	7.8	63	8.2	35	7.4
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	46.25	25.45	41.17	21.39	38.78	20.17
Median	40.00	21.00	36.00	18.00	36.00	18.00
Middle 50% range	30-58.5	12-30	30-48	12-27	27-45	12-24
Interquartile range ^d	28.5	18	18	15	18	12
Overall sentence (months)						
Mean	48.20	27.27	45.00	25.16	42.80	23.68
Median	42.00	24.00	42.00	23.00	36.00	20.00
Middle 50% range	32-60	14.5-36	30-60	14-32.5	30-48	13-30
Interquartile range ^d	28	21.5	30	18.5	18	17
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	160	92.5	481	96.0	279	95.2
Form 1 matters (%)	84	48.6	201	40.1	141	48.1
No priors (%)	28	16.2	20	4.0	12	4.1
Priors-same type (%) ^e	132	76.3	411	82.0	236	80.5
Previously imprisoned (%) ^f			348	69.5	215	73.4
Previously imprisoned-same type (%) ^e	84	48.6	285	56.9	176	60.1
Multiple offences (%)	84	48.6	262	52.3	154	52.6
Consecutive sentences (%)	18	10.4	174	34.7	95	32.4
Finding of special circumstances (%)	151	87.3	474	94.6	272	92.8
Mean age		26.09 years		26.66 years		27.92 years

Source: Judicial Commission of NSW.

Table B24: Item 13: s 112(3) of the Crimes Act 1900 - Breaking etc into any house etc and committing serious indictable offence in circumstances of special aggravation ^a

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	25 years		25 years		25 years	
Standard non-parole period (SNPP)			7 years		7 years	
Number of cases	10		36		28	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	10	100.0	34	94.4	28	100.0
Custodial alternatives ^b	0	0.0	0	0.0	0	0.0
Suspended sentence	0	0.0	2	5.6	0	0.0
Other ^c	0	0.0	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	69.40	39.80	72.79	43.44	78.93	46.54
Median	66.50	37.50	72.00	42.00	76.50	40.00
Middle 50% range	48-84	29.25-48.5	58.5-96	32.75-55.5	48-90.75	21.75-61.5
Interquartile range ^d	36	19.25	37.5	22.75	42.75	39.75
Overall sentence (months)						
Mean	73.00	44.90	75.24	46.44	83.75	51.14
Median	66.50	45.00	72.00	44.00	81.00	44.50
Middle 50% range	48-93	29.25-55.5	58.5-96	32.75-60	49.5-117	24.75-77.25
Interquartile range ^d	45	26.25	37.5	27.25	67.5	52.5
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	10	100.0	31	91.2	27	96.4
Form 1 matters (%)	6	60.0	11	32.4	7	25.0
No priors (%)	2	20.0	4	11.8	1	3.6
Priors-same type (%) ^e	6	60.0	20	58.8	19	67.9
Previously imprisoned (%) ^f			17	50.0	17	60.7
Previously imprisoned-same type (%) ^e	5	50.0	12	35.3	10	35.7
Multiple offences (%)	4	40.0	14	41.2	11	39.3
Consecutive sentences (%)	2	20.0	9	26.5	8	28.6
Finding of special circumstances (%)	10	100.0	34	100.0	27	96.4
Mean age		25.80 years		24.71 years		28.04 years

Source: Judicial Commission of NSW.

Table B25: Item 14: s 154C(1) of the Crimes Act 1900 - Car-jacking ^a

Note: Numbers in red indicate that there were only 1 or 2 cases of the offence being sentenced to full-time imprisonment.

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	10 years		10 years		10 years	
Standard non-parole period (SNPP)			3 years		3 years	
Number of cases	0		2		1	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment			1	50.0	1	100.0
Custodial alternatives ^b			0	0.0	0	0.0
Suspended sentence			0	0.0	0	0.0
Other ^c			1	50.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean			36.00	10.00	36.00	18.00
Median			36.00	10.00	36.00	18.00
Middle 50% range						
Interquartile range ^d						
Overall sentence (months)						
Mean			36.00	10.00	36.00	18.00
Median			36.00	10.00	36.00	18.00
Middle 50% range						
Interquartile range ^d						
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)			1	100.0	1	100.0
Form 1 matters (%)			0	0.0	1	100.0
No priors (%)			0	0.0	0	0.0
Priors-same type (%) ^e			1	100.0	1	100.0
Previously imprisoned (%) ^f			1	100.0	1	100.0
Previously imprisoned-same type (%) ^e			1	100.0	1	100.0
Multiple offences (%)			0	0.0	1	100.0
Consecutive sentences (%)			0	0.0	0	0.0
Finding of special circumstances (%)			1	100.0	1	100.0
Mean age				34.00 years		32.00 years

Source: Judicial Commission of NSW.

Table B26: Item 15: s 154C(2) of the Crimes Act 1900 - Car-jacking in circumstances of aggravation ^a

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	14 years		14 years		14 years	
Standard non-parole period (SNPP)			5 years		5 years	
Number of cases	5		23		8	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	5	100.0	22	95.7	8	100.0
Custodial alternatives ^b	0	0.0	1	4.3	0	0.0
Suspended sentence	0	0.0	0	0.0	0	0.0
Other ^c	0	0.0	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	46.80	27.00	54.50	30.05	62.25	40.13
Median	48.00	24.00	54.00	30.00	57.00	36.00
Middle 50% range	36-57	15-40.5	45-60	20.75-37.25	48-81	24.75-58.5
Interquartile range ^d	21	25.5	15	16.5	33	33.75
Overall sentence (months)						
Mean	52.80	34.20	64.05	38.55	80.25	54.38
Median	48.00	36.00	60.00	37.50	72.00	51.00
Middle 50% range	36-72	18-49.5	48-73.5	28.5-48	61.5-102	41.25-67.5
Interquartile range ^d	36	31.5	25.5	19.5	40.5	26.25
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	5	100.0	21	95.5	6	75.0
Form 1 matters (%)	4	80.0	6	27.3	2	25.0
No priors (%)	0	0.0	1	4.5	1	12.5
Priors-same type (%) ^e	4	80.0	18	81.8	6	75.0
Previously imprisoned (%) ^f			17	77.3	5	62.5
Previously imprisoned-same type (%) ^e	2	40.0	14	63.6	5	62.5
Multiple offences (%)	5	100.0	16	72.7	7	87.5
Consecutive sentences (%)	3	60.0	12	54.5	6	75.0
Finding of special circumstances (%)	2	40.0	21	95.5	6	75.0
Mean age		27.80 years		26.64 years		31.25 years

Source: Judicial Commission of NSW.

Table B27: Item 15A: s 154G of the Crimes Act 1900 - Organised car or boat rebirthing activities ^a

	Pre-period 1 Jan 2005-31 Dec 2007		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	14 years		14 years		14 years	
Standard non-parole period (SNPP)			4 years		4 years	
Number of cases	0		14		10	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment			11	78.6	9	90.0
Custodial alternatives ^b			2	14.3	1	10.0
Suspended sentence			1	7.1	0	0.0
Other ^c			0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean			44.27	25.09	36.22	21.67
Median			41.00	24.00	36.00	20.00
Middle 50% range			31-60	19-30	29.5-45	17.5-27
Interquartile range ^d			29	11	15.5	9.5
Overall sentence (months)						
Mean			44.55	25.36	39.56	24.67
Median			41.00	24.00	36.00	24.00
Middle 50% range			33-60	20-30	32-51	20-31.5
Interquartile range ^d			27	10	19	11.5
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)			10	90.9	8	88.9
Form 1 matters (%)			5	45.5	2	22.2
No priors (%)			3	27.3	1	11.1
Priors-same type (%) ^e			6	54.5	3	33.3
Previously imprisoned (%) ^f			1	9.1	3	33.3
Previously imprisoned-same type (%) ^e			1	9.1	2	22.2
Multiple offences (%)			2	18.2	6	66.7
Consecutive sentences (%)			1	9.1	5	55.6
Finding of special circumstances (%)			11	100.0	9	100.0
Mean age				29.55 years		30.44 years

Source: Judicial Commission of NSW.

Report Standard non-parole periods

Table B28: Item 15B: s 203E of the Crimes Act 1900 - Bushfires ^a

Note: Numbers in red indicate that there were only 1 or 2 cases of the offence being sentenced to full-time imprisonment.

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	14 years		14 years		14 years	
Standard non-parole period (SNPP)			5 years		5 years	
Number of cases	0		2		0	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment			2	100.0		
Custodial alternatives ^b			0	0.0		
Suspended sentence			0	0.0		
Other ^c			0	0.0		
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean			57.00	33.00		
Median			57.00	33.00		
Middle 50% range						
Interquartile range ^d						
Overall sentence (months)						
Mean			58.00	34.00		
Median			58.00	34.00		
Middle 50% range						
Interquartile range ^d						
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)			1	50.0		
Form 1 matters (%)			1	50.0		
No priors (%)			1	50.0		
Priors-same type (%) ^e			1	50.0		
Previously imprisoned (%) ^f			0	0.0		
Previously imprisoned-same type (%) ^e			0	0.0		
Multiple offences (%)			1	50.0		
Consecutive sentences (%)			1	50.0		
Finding of special circumstances (%)			2	100.0		
Mean age				36.00 years		

Source: Judicial Commission of NSW.

Table B29: Item 15C: s 23(2) of the Drug Misuse and Trafficking Act 1985 - Cultivation, supply or possession of large commercial quantity of prohibited plants ^a

	Pre-period 1 Jan 2005-31 Dec 2007		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	20 years		20 years		20 years	
Standard non-parole period (SNPP)			10 years		10 years	
Number of cases	61		71		35	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	53	86.9	68	95.8	31	88.6
Custodial alternatives ^b	3	4.9	1	1.4	1	2.9
Suspended sentence	4	6.6	2	2.8	3	8.6
Other ^c	1	1.6	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	46.72	27.45	55.94	31.59	46.16	24.42
Median	39.00	24.00	52.00	30.00	42.00	21.00
Middle 50% range	24-68	15-37	43.5-72	21-42	36-54	18-30
Interquartile range ^d	44	22	28.5	21	18	12
Overall sentence (months)						
Mean	46.72	27.45	56.65	32.29	46.35	24.61
Median	39.00	24.00	52.50	30.00	42.00	21.00
Middle 50% range	24-68	15-37	45-72	21-42	36-54	18-30
Interquartile range ^d	44	22	27	21	18	12
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	50	94.3	64	94.1	28	90.3
Form 1 matters (%)	11	20.8	36	52.9	12	38.7
No priors (%)	30	56.6	39	57.4	21	67.7
Priors-same type (%) ^e	7	13.2	14	20.6	6	19.4
Previously imprisoned (%) ^f			11	16.2	2	6.5
Previously imprisoned-same type (%) ^e	1	1.9	8	11.8	1	3.2
Multiple offences (%)	6	11.3	21	30.9	9	29.0
Consecutive sentences (%)	0	0.0	5	7.4	1	3.2
Finding of special circumstances (%)	51	96.2	63	92.6	31	100.0
Mean age		42.00 years		41.47 years		35.58 years

Source: Judicial Commission of NSW.

Table B30: Item 16: s 24(2) of the Drug Misuse and Trafficking Act 1985 - Manufacture or production of commercial quantity of prohibited drug (not cannabis leaf) ^a

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	20 years		20 years		20 years	
Standard non-parole period (SNPP)			10 years		10 years	
Number of cases	14		14		7	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	14	100.0	13	92.9	6	85.7
Custodial alternatives ^b	0	0.0	0	0.0	1	14.3
Suspended sentence	0	0.0	1	7.1	0	0.0
Other ^c	0	0.0	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	65.14	38.93	66.38	41.38	69.00	39.33
Median	72.00	38.50	72.00	45.00	58.50	28.50
Middle 50% range	54-77.25	34.5-48	52-78	32.5-50	42.75-106.5	21-70.25
Interquartile range ^d	23.25	13.5	26	17.5	63.75	49.25
Overall sentence (months)						
Mean	65.79	39.57	66.85	41.85	74.33	45.67
Median	72.00	38.50	72.00	45.00	64.50	39.00
Middle 50% range	56.25-77.25	34.5-48	52-79	32.5-52	47.25-117	23.25-77.75
Interquartile range ^d	21	13.5	27	19.5	69.75	54.5
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	11	78.6	12	92.3	6	100.0
Form 1 matters (%)	3	21.4	4	30.8	2	33.3
No priors (%)	1	7.1	0	0.0	1	16.7
Priors-same type (%) ^e	7	50.0	5	38.5	2	33.3
Previously imprisoned (%) ^f			3	23.1	0	0.0
Previously imprisoned-same type (%) ^e	5	35.7	2	15.4	0	0.0
Multiple offences (%)	5	35.7	2	15.4	5	83.3
Consecutive sentences (%)	1	7.1	1	7.7	4	66.7
Finding of special circumstances (%)	10	71.4	11	84.6	6	100.0
Mean age		34.36 years		37.15 years		28.67 years

Source: Judicial Commission of NSW.

Table B31: Item 17: s 24(2) of the Drug Misuse and Trafficking Act 1985 - Manufacture or production of large commercial quantity of prohibited drug (not cannabis leaf) ^a

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	Life		Life		Life	
Standard non-parole period (SNPP)			15 years		15 years	
Number of cases	4		13		15	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	4	100.0	13	100.0	15	100.0
Custodial alternatives ^b	0	0.0	0	0.0	0	0.0
Suspended sentence	0	0.0	0	0.0	0	0.0
Other ^c	0	0.0	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	69.50	41.25	119.54	77.69	110.60	70.27
Median	70.00	36.00	102.00	72.00	108.00	72.00
Middle 50% range	24.5-114	9-78.75	81-153	51-99	63-156	33-117
Interquartile range ^d	89.5	69.75	72	48	93	84
Overall sentence (months)						
Mean	69.50	41.25	125.54	83.69	115.00	74.67
Median	70.00	36.00	120.00	72.00	112.00	72.00
Middle 50% range	24.5-114	9-78.75	81-153	57-99	63-168	39-117
Interquartile range ^d	89.5	69.75	72	42	105	78
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	4	100.0	13	100.0	14	93.3
Form 1 matters (%)	0	0.0	7	53.8	9	60.0
No priors (%)	2	50.0	3	23.1	5	33.3
Priors-same type (%) ^e	1	25.0	5	38.5	5	33.3
Previously imprisoned (%) ^f			3	23.1	1	6.7
Previously imprisoned-same type (%) ^e	1	25.0	1	7.7	1	6.7
Multiple offences (%)	2	50.0	8	61.5	9	60.0
Consecutive sentences (%)	0	0.0	3	23.1	5	33.3
Finding of special circumstances (%)	3	75.0	11	84.6	14	93.3
Mean age	32.00 years		39.31 years		38.13 years	

Source: Judicial Commission of NSW.

Table B32: Item 18: s 25(2) of the Drug Misuse and Trafficking Act 1985 - Supplying commercial quantity of prohibited drug (not cannabis leaf) ^a

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	20 years		20 years		20 years	
Standard non-parole period (SNPP)			10 years		10 years	
Number of cases	97		165		118	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	90	92.8	155	93.9	110	93.2
Custodial alternatives ^b	4	4.1	5	3.0	3	2.5
Suspended sentence	2	2.1	2	1.2	5	4.2
Other ^c	1	1.0	3	1.8	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	53.28	30.59	65.79	37.10	65.32	36.99
Median	48.50	30.00	63.00	36.00	63.50	36.00
Middle 50% range	36-66.5	18-36	48-84	24-48	47.25-84	24-48
Interquartile range ^d	30.5	18	36	24	36.75	24
Overall sentence (months)						
Mean	53.98	31.33	71.07	41.90	70.29	41.74
Median	50.00	30.00	69.00	36.00	70.00	41.00
Middle 50% range	36-72	18-42	48-90	24-57	48-90.75	27-54
Interquartile range ^d	36	24	42	33	42.75	27
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%) ^p	83	92.2	149	96.1	98	89.1
Form 1 matters (%)	43	47.8	85	54.8	60	54.5
No priors (%)	38	42.2	40	25.8	40	36.4
Priors-same type (%) ^e	2	2.2	55	35.5	28	25.5
Previously imprisoned (%) ^f			35	22.6	27	24.5
Previously imprisoned-same type (%) ^e	1	1.1	20	12.9	11	10.0
Multiple offences (%)	36	40.0	84	54.2	69	62.7
Consecutive sentences (%)	5	5.6	64	41.3	46	41.8
Finding of special circumstances (%)	79	87.8	151	97.4	110	100.0
Mean age		34.61 years		33.24 years		35.23 years

Source: Judicial Commission of NSW.

Table B33: Item 19: s 25(2) of the Drug Misuse and Trafficking Act 1985 - Supplying large commercial quantity of prohibited drug (not cannabis leaf) ^a

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	Life		Life		Life	
Standard non-parole period (SNPP)			15 years		15 years	
Number of cases	59		86		68	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	58	98.3	85	98.8	67	98.5
Custodial alternatives ^b	0	0.0	0	0.0	0	0.0
Suspended sentence	1	1.7	1	1.2	1	1.5
Other ^c	0	0.0	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	86.31	54.57	106.60	67.07	106.31	66.20
Median	84.00	50.00	102.00	66.00	96.00	60.00
Middle 50% range	70.5-108	42-64.75	81.5-132	42-90	72-120	42-82.5
Interquartile range ^d	37.5	22.75	50.5	48	48	40.5
Overall sentence (months)						
Mean	88.59	56.69	110.67	71.35	113.72	72.58
Median	84.00	54.00	112.00	72.00	102.00	66.00
Middle 50% range	72-108	42-68.25	83-139.5	46.5-94	81-129	48-90
Interquartile range ^d	36	26.25	56.5	47.5	48	42
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	50	86.2	70	82.4	60	89.6
Form 1 matters (%)	23	39.7	42	49.4	33	49.3
No priors (%)	28	48.3	32	37.6	30	44.8
Priors-same type (%) ^e	13	22.4	19	22.4	16	23.9
Previously imprisoned (%) ^f			13	15.3	12	17.9
Previously imprisoned-same type (%) ^e	6	10.3	8	9.4	5	7.5
Multiple offences (%)	22	37.9	43	50.6	43	64.2
Consecutive sentences (%)	5	8.6	30	35.3	28	41.8
Finding of special circumstances (%)	45	77.6	77	90.6	62	92.5
Mean age		34.53 years		32.29 years		35.06 years

Source: Judicial Commission of NSW.

Table B34: Item 20: s 7 of the Firearms Act 1996 - Unauthorised possession or use of firearms ^a

	Pre-period 3 Apr 2000-31 Jan 2003		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	14 years		14 years		14 years	
Standard non-parole period (SNPP)			3 years		3 years	
Number of cases	19		56		40	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	10	52.6	49	87.5	30	75.0
Custodial alternatives ^b	1	5.3	0	0.0	5	12.5
Suspended sentence	4	21.1	5	8.9	3	7.5
Other ^c	4	21.1	2	3.6	2	5.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	28.00	19.10	37.73	21.71	35.60	18.13
Median	24.00	16.00	36.00	18.00	36.00	18.00
Middle 50% range	12-39	11.5-22.5	27-48	13.5-27.5	27-38.25	12-21.75
Interquartile range ^d	27	11	21	14	11.25	9.75
Overall sentence (months)						
Mean	34.00	20.90	42.82	26.76	43.00	25.20
Median	24.00	16.00	39.00	25.00	36.50	20.50
Middle 50% range	12-46.5	11.5-25.5	30-58.5	16.5-36	27-54.5	15-32.75
Interquartile range ^d	34.5	14	28.5	19.5	27.5	17.75
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	8	80.0	47	95.9	29	96.7
Form 1 matters (%)	3	30.0	32	65.3	14	46.7
No priors (%)	2	20.0	4	8.2	5	16.7
Priors-same type (%) ^e	0	0.0	0	0.0	0	0.0
Previously imprisoned (%) ^f			25	51.0	13	43.3
Previously imprisoned-same type (%) ^e	0	0.0	0	0.0	0	0.0
Multiple offences (%)	6	60.0	41	83.7	28	93.3
Consecutive sentences (%)	2	20.0	25	51.0	19	63.3
Finding of special circumstances (%)	5	50.0	38	77.6	28	93.3
Mean age		28.40 years		34.20 years		31.07 years

Source: Judicial Commission of NSW.

Table B35: Item 21: s 51(1A) or (2A) of the Firearms Act 1966 - Unauthorised sale of prohibited firearm or pistol ^a

	Pre-period 1 Jan 2005-31 Dec 2007		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	20 years		20 years		20 years	
Standard non-parole period (SNPP)			10 years		10 years	
Number of cases	8		10		13	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	4	50.0	8	80.0	12	92.3
Custodial alternatives ^b	1	12.5	1	10.0	0	0.0
Suspended sentence	3	37.5	1	10.0	1	7.7
Other ^c	0	0.0	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	39.00	19.50	56.88	30.50	57.67	31.45
Median	45.00	21.00	61.50	33.00	54.00	30.00
Middle 50% range	24-48	13.5-24	42-69.75	20.25-36	39-69	18-36
Interquartile range ^d	24	10.5	27.75	15.75	30	18
Overall sentence (months)						
Mean	39.00	21.00	61.50	35.13	68.92	41.58
Median	45.00	21.00	61.50	36.00	66.00	39.00
Middle 50% range	24-48	13.5-28.5	42.75-74.25	23.25-45.75	39-95.25	19.5-62.25
Interquartile range ^d	24	15	31.5	22.5	56.25	42.75
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	4	100.0	8	100.0	12	100.0
Form 1 matters (%)	2	50.0	7	87.5	7	58.3
No priors (%)	0	0.0	1	12.5	2	16.7
Priors-same type (%) ^e	0	0.0	0	0.0	0	0.0
Previously imprisoned (%) ^f			2	25.0	3	25.0
Previously imprisoned-same type (%) ^e	0	0.0	0	0.0	0	0.0
Multiple offences (%)	3	75.0	7	87.5	8	66.7
Consecutive sentences (%)	1	25.0	3	37.5	6	50.0
Finding of special circumstances (%)	4	100.0	8	100.0	12	100.0
Mean age	22.75 years		36.75 years		29.25 years	

Source: Judicial Commission of NSW.

Table B36: Item 22: s 51B of the Firearms Act 1966 - Unauthorised sale of firearms on an ongoing basis ^a

	Pre-period 1 Jan 2005-31 Dec 2007		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	20 years		20 years		20 years	
Standard non-parole period (SNPP)			10 years		10 years	
Number of cases	7		6		4	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	7	100.0	6	100.0	4	100.0
Custodial alternatives ^b	0	0.0	0	0.0	0	0.0
Suspended sentence	0	0.0	0	0.0	0	0.0
Other ^c	0	0.0	0	0.0	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	62.29	36.43	58.83	29.33	73.50	41.25
Median	56.00	33.00	60.00	34.50	66.00	37.50
Middle 50% range	48-84	24-48	35.75-76.5	9.75-40.5	55.5-99	24.75-61.5
Interquartile range ^d	36	24	40.75	30.75	43.5	36.75
Overall sentence (months)						
Mean	62.29	37.29	60.33	30.67	82.50	50.25
Median	56.00	33.00	61.50	34.50	84.00	54.00
Middle 50% range	48-84	24-48	35.75-78	9.75-43.5	58.5-105	32.25-64.5
Interquartile range ^d	36	24	42.25	33.75	46.5	32.25
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%) ^a	7	100.0	6	100.0	4	100.0
Form 1 matters (%)	5	71.4	3	50.0	3	75.0
No priors (%)	1	14.3	4	66.7	2	50.0
Priors-same type (%) ^e	0	0.0	0	0.0	0	0.0
Previously imprisoned (%) ^f	0	0.0	0	0.0	1	25.0
Previously imprisoned-same type (%) ^e	0	0.0	0	0.0	0	0.0
Multiple offences (%)	6	85.7	6	100.0	2	50.0
Consecutive sentences (%)	1	14.3	2	33.3	1	25.0
Finding of special circumstances (%)	7	100.0	6	100.0	4	100.0
Mean age	38.29 years		42.50 years		31.00 years	

Source: Judicial Commission of NSW.

Table B37: Item 23: s 51D(2) of the Firearms Act 1966 - Unauthorised possession of more than 3 firearms any one of which is a prohibited firearm or pistol ^a

	Pre-period 1 Jan 2005-31 Dec 2007		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	20 years		20 years		20 years	
Standard non-parole period (SNPP)			10 years		10 years	
Number of cases	21		31		16	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	9	42.9	12	38.7	9	56.3
Custodial alternatives ^b	3	14.3	2	6.5	1	6.3
Suspended sentence	4	19.0	12	38.7	5	31.3
Other ^c	5	23.8	5	16.1	1	6.3
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	40.89	22.00	50.75	25.25	62.00	33.67
Median	36.00	18.00	46.50	27.00	48.00	30.00
Middle 50% range	24-48	12-24	31.5-70.5	12.75-36	34.5-88.5	13.5-48
Interquartile range ^d	24	12	39	23.25	54	34.5
Overall sentence (months)						
Mean	44.78	25.89	58.00	32.50	76.78	48.11
Median	36.00	18.00	48.00	27.00	60.00	33.00
Middle 50% range	24-57	12-33	36-84	18-52.5	36.5-130.5	15.5-90
Interquartile range ^d	33	21	48	34.5	94	74.5
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	9	100.0	12	100.0	9	100.0
Form 1 matters (%)	8	88.9	8	66.7	9	100.0
No priors (%)	0	0.0	4	33.3	3	33.3
Priors-same type (%) ^e	0	0.0	0	0.0	0	0.0
Previously imprisoned (%) ^f			3	25.0	3	33.3
Previously imprisoned-same type (%) ^e	0	0.0	0	0.0	0	0.0
Multiple offences (%)	6	66.7	10	83.3	8	88.9
Consecutive sentences (%)	4	44.4	7	58.3	7	77.8
Finding of special circumstances (%)	9	100.0	12	100.0	9	100.0
Mean age	34.78 years		33.33 years		37.89 years	

Source: Judicial Commission of NSW.

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Table B38: Item 24: s 7 of the Weapons Prohibition Act 1998 - Unauthorised possession or use of prohibited weapon ^a

Note: Numbers in red indicate that there were only 1 or 2 cases of the offence being sentenced to full-time imprisonment.

	Pre-period 1 Jan 2005-31 Dec 2007		Post-period (before Muldrock) 5 Oct 2008-4 Oct 2011		Post-period (after Muldrock) 5 Oct 2011-31 Mar 2013	
Maximum penalty of imprisonment	14 years		14 years		14 years	
Standard non-parole period (SNPP)			3 years		3 years	
Number of cases	6		12		3	
Penalty type for principal offence	n	%	n	%	n	%
Full-time imprisonment	1	16.7	8	66.7	0	0.0
Custodial alternatives ^b	1	16.7	0	0.0	1	33.3
Suspended sentence	3	50.0	0	0.0	1	33.3
Other ^c	1	16.7	4	33.3	1	33.3
If full-time imprisonment	Full term	Fixed term/NPP	Full term	Fixed term/NPP	Full term	Fixed term/NPP
Sentence for principal offence (months)						
Mean	24.00	9.00	26.88	12.38		
Median	24.00	9.00	29.50	12.00		
Middle 50% range			19.5-36	7.5-14.75		
Interquartile range ^d			16.5	7.25		
Overall sentence (months)						
Mean	24.00	9.00	29.13	14.63		
Median	24.00	9.00	32.00	16.00		
Middle 50% range			24-38.25	7.5-20.25		
Interquartile range ^d			14.25	12.75		
Sample characteristics (where full-time imprisonment)	n	%	n	%	n	%
Guilty plea (%)	1	100.0	8	100.0		
Form 1 matters (%)	0	0.0	2	25.0		
No priors (%)	0	0.0	0	0.0		
Priors-same type (%) ^e	0	0.0	0	0.0		
Previously imprisoned (%) ^f			7	87.5		
Previously imprisoned-same type (%) ^e	0	0.0	0	0.0		
Multiple offences (%)	0	0.0	6	75.0		
Consecutive sentences (%)	0	0.0	3	37.5		
Finding of special circumstances (%)	1	100.0	6	75.0		
Mean age		21.00 years		34.88 years		

Source: Judicial Commission of NSW.

Appendix C: Judicial Information Research System statistics for proposed SNPP offences: Adult offenders

Table C1: Crimes Act 1900 s 66C(1): 1 April 2006 to 31 March 2013 ^a

Maximum penalty of imprisonment	16 years	
Number of cases	74	
Penalty type for principal offence	n	%
Full-time imprisonment	49	66.2
Custodial alternatives ^b	0	0.0
Suspended sentence	19	25.7
Other ^c	6	8.1
If full-time imprisonment	Full term	Fixed term/NPP
Sentence for principal offence (months)		
Mean	45.39	23.33
Median	39.00	20.50
Middle 50% range	30.5-54	15-30
Interquartile range ^d	23.5	15
Overall sentence (months)		
Mean	54.45	31.82
Median	45.00	24.00
Middle 50% range	36-67.5	17.5-36
Interquartile range ^d	31.5	18.5
Sample characteristics (where full-time imprisonment)	n	%
Guilty plea (%) ^e	44	89.8
Form 1 matters (%)	17	34.7
No priors (%)	13	26.5
Priors - same type (%) ^f	8	16.3
Previously imprisoned (%)	19	38.8
Previously imprisoned - same type (%) ^f	7	14.3
Multiple offences (%)	35	71.4
Consecutive sentences (%)	28	57.1
Finding of special circumstances (%)	47	95.9
Mean age		35.06 years

Source: Judicial Commission of NSW

Table C2: Crimes Act 1900 s 66C(2): 1 April 2006 to 31 March 2013 ^a

Maximum penalty of imprisonment	20 years	
Number of cases	36	
Penalty type for principal offence	n	%
Full-time imprisonment	31	86.1
Custodial alternatives ^b	0	0.0
Suspended sentence	3	8.3
Other ^c	2	5.6
If full-time imprisonment	Full term	Fixed term/NPP
Sentence for principal offence (months)		
Mean	75.74	44.35
Median	72.00	48.00
Middle 50% range	54 - 96	36 - 60
Interquartile range ^d	42	24
Overall sentence (months)		
Mean	90.68	59.23
Median	90.00	60.00
Middle 50% range	60 - 108	36 - 72
Interquartile range ^d	48	36
Sample characteristics (where full-time imprisonment)	n	%
Guilty plea (%) ^e	25	80.6
Form 1 matters (%)	13	41.9
No priors (%)	13	41.9
Priors - same type (%) ^f	3	9.7
Previously imprisoned (%)	5	16.1
Previously imprisoned - same type (%) ^f	3	9.7
Multiple offences (%)	25	80.6
Consecutive sentences (%)	23	74.2
Finding of special circumstances (%)	27	87.1
Mean age		42.65 years

Source: Judicial Commission of NSW

Table C3: Crimes Act 1900 s 66C(4): 1 April 2006 to 31 March 2013 ^a

Maximum penalty of imprisonment	12 years	
Number of cases	24	
Penalty type for principal offence	n	%
Full-time imprisonment	18	75.0
Custodial alternatives ^b	0	0.0
Suspended sentence	5	20.8
Other ^c	1	4.2
If full-time imprisonment	Full term	Fixed term/NPP
Sentence for principal offence (months)		
Mean	46.22	25.17
Median	45.00	24.00
Middle 50% range	32.5 - 57	17.25 - 36
Interquartile range ^d	24.5	18.75
Overall sentence (months)		
Mean	59.89	38.00
Median	48.00	25.00
Middle 50% range	36.75 - 87	22 - 55
Interquartile range ^d	50.25	33
Sample characteristics (where full-time imprisonment)	n	%
Guilty plea (%) ^e	18	100.0
Form 1 matters (%)	5	27.8
No priors (%)	11	61.1
Priors - same type (%) ^f	0	0.0
Previously imprisoned (%)	3	16.7
Previously imprisoned - same type (%) ^f	0	0.0
Multiple offences (%)	15	83.3
Consecutive sentences (%)	13	72.2
Finding of special circumstances (%)	16	88.9
Mean age		33.06 years

Source: Judicial Commission of NSW

Table C4: Crimes Act 1900 s 91G(1): 1 April 2006 to 31 March 2013 ^a

Maximum penalty of imprisonment	14 years	
Number of cases	12	
Penalty type for principal offence	n	%
Full-time imprisonment	11	91.7
Custodial alternatives ^b	0	0.0
Suspended sentence	1	8.3
Other ^c	0	0.0
If full-time imprisonment	Full term	Fixed term/NPP
Sentence for principal offence (months)		
Mean	47.36	25.55
Median	31.00	23.00
Middle 50% range	24 - 72	6 - 42
Interquartile range ^d	48	36
Overall sentence (months)		
Mean	55.55	33.73
Median	54.00	36.00
Middle 50% range	30 - 76	13 - 48
Interquartile range ^d	46	35
Sample characteristics (where full-time imprisonment)	n	%
Guilty plea (%) ^e	11	100.0
Form 1 matters (%)	4	36.4
No priors (%)	6	54.5
Priors - same type (%) ^f	3	27.3
Previously imprisoned (%)	2	18.2
Previously imprisoned - same type (%) ^f	2	18.2
Multiple offences (%)	7	63.6
Consecutive sentences (%)	2	18.2
Finding of special circumstances (%)	11	100.0
Mean age		39.00 years

Source: *Judicial Commission of NSW*

End Notes:

- a In addition to excluding juvenile offenders, the analysis excludes offenders sentenced to imprisonment for life or to detention under the Mental Health (Forensic Provisions) Act 1990.
- b Includes ICOs (commenced on 1 October 2010), PD (ceased on 30 September 2010) and HD.
- c Includes s 10 dismissals, s 10 bonds, s 10A convictions, ROC, fines, s 9 bonds and CSOs. As it happens all "other" sentences were s 9 bonds in this table.
- d The interquartile range (IQR) refers to the middle 50% range of sentences. It is the difference between the two values.
- e Plea was missing in one s 66C(1) case. This offender was tried for an offence under s 61J. However, the offender had offered to plea guilty to an alternative charge under s 66C(1) but the offer was rejected by the Crown. The jury returned a verdict of guilty to that charge.
- f A prior offence is of the same type if the principal and prior offences fall within the same broad offence type. There are eight offence types, including drug, sexual, fraud, property, violent, driving, breach and other offences.

Appendix D: Prevalence of existing and proposed SNPP offences: charges finalised in higher courts, 2012

This table includes charges finalised in the higher courts (District and Supreme Courts) as follows:

- guilty plea
- guilty by verdict
- not guilty - by direction
- proven outcome not further described
- not guilty - by verdict
- remitted to Local Court
- no further proceedings directed - Crown application
- accused deceased
- plea accepted in full discharge of indictment
- offences taken into account
- stay of proceedings
- referred to Mental Health Tribunal
- not guilty by reason of mental illness/health.

This table does not include

- charges finalised before committal
- charges finalised in the Children's Court
- charges finalised after summary trial in the Local Court
- charges relating to offenders aged 17 years and under at finalisation.

Item (SNPP)	Provision	Description	Charges
1A	Murder	where the victim was a police officer, emergency services worker, correctional officer, judicial officer, council law enforcement officer, health worker, teacher, community worker, or other public official, exercising public or community functions and the offence arose because of the victim's occupation or voluntary work	(See item 1)
1B	Murder	where the victim was a child under 18 years of age	(See item 1)
1	Murder	in other cases	99 (includes 1A and 1B)
2	<i>Crimes Act 1900 (NSW) s 26</i>	Conspiracy to murder	12
3	<i>Crimes Act 1900 (NSW) s 27</i>	Wound, cause grievous bodily harm, poison, etc with intent to murder	24
3	<i>Crimes Act 1900 (NSW) s 28</i>	Damage property with intent to murder	0

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Item (SNPP)	Provision	Description	Charges
3	<i>Crimes Act 1900</i> (NSW) s 29	Poison, shoot, drown, suffocate, etc with intent to murder	12
3	<i>Crimes Act 1900</i> (NSW) s 30	Attempt murder by other means	0
4	<i>Crimes Act 1900</i> (NSW) s 33(1)	wound, cause grievous bodily harm with intent to cause grievous bodily harm	131
4	<i>Crimes Act 1900</i> (NSW) s 33(2)	wound, cause grievous bodily harm with intent to resist arrest or prevent lawful arrest or detention	1
	<i>Crimes Act 1900</i> (NSW) s 33A(1)	Discharge firearm to cause grievous bodily harm	8
	<i>Crimes Act 1900</i> (NSW) s 33A(2)	Discharge firearm to prevent arrest or detention	3
4A	<i>Crimes Act 1900</i> (NSW) s 35(1)	Reckless grievous bodily harm in company	25
4B	<i>Crimes Act 1900</i> (NSW) s 35(2)	Reckless grievous bodily harm	49
4C	<i>Crimes Act 1900</i> (NSW) s 35(3)	Reckless wounding in company	35
4D	<i>Crimes Act 1900</i> (NSW) s 35(4)	Reckless wounding	96
	<i>Crimes Act 1900</i> (NSW) s 38	Administer intoxicating substance with intent to commit indictable offence	7
5	<i>Crimes Act 1900</i> (NSW) s 60(2)	Assault, actual bodily harm, police officer	9
6	<i>Crimes Act 1900</i> (NSW) s 60(3)	Reckless wound or grievous bodily harm, police officer	6
7	<i>Crimes Act 1900</i> (NSW) s 61I	Sexual assault	229
8	<i>Crimes Act 1900</i> (NSW) s 61J	Aggravated sexual assault	306
9	<i>Crimes Act 1900</i> (NSW) s 61JA	Aggravated sexual assault in company	14
9A	<i>Crimes Act 1900</i> (NSW) s 61M(1)	Aggravated indecent assault	187
9B	<i>Crimes Act 1900</i> (NSW) s 61M(2)	Indecent assault, child under 16 years	213
10	<i>Crimes Act 1900</i> (NSW) s 66A(1)	Sexual intercourse, child under 10 years	23
10	<i>Crimes Act 1900</i> (NSW) s 66A(2)	Sexual intercourse, aggravated, child under 10 years	24
	<i>Crimes Act 1900</i> (NSW) s 66B	Attempt sexual intercourse or assault with intend, child under 10 years	5
	<i>Crimes Act 1900</i> (NSW) s 66C(1)	Sexual intercourse, child 10-14 years	66
	<i>Crimes Act 1900</i> (NSW) s 66C(2)	Sexual intercourse, aggravated, child 10-14 years	87
	<i>Crimes Act 1900</i> (NSW) s 66C(4)	Sexual intercourse, aggravated, child 14-16 years	17
	<i>Crimes Act 1900</i> (NSW) s 66EB(2)	Procure child under 14 years for unlawful sexual activity	3
	<i>Crimes Act 1900</i> (NSW) s 66EB(2)	Procure child 14-16 years for unlawful sexual activity	0

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Item (SNPP)	Provision	Description	Charges
	<i>Crimes Act 1900</i> (NSW) s 66EB(2A)	Meet child under 14 years after grooming for sexual purposes	0
	<i>Crimes Act 1900</i> (NSW) s 66EB(2A)	Meet child 14-16 years after grooming for sexual purposes	0
	<i>Crimes Act 1900</i> (NSW) s 66EB(3)	Groom child under 14 years for unlawful sexual activity	4
	<i>Crimes Act 1900</i> (NSW) s 66EB(3)	Groom child 14-16 years for unlawful sexual activity	2
	<i>Crimes Act 1900</i> (NSW) s 91D (child under 14 years only)	Promote/engage in child prostitution, child under 14 years	3
	<i>Crimes Act 1900</i> (NSW) s 91E (child under 14 years only)	Obtain benefit from child prostitution, child under 14 years	0
	<i>Crimes Act 1900</i> (NSW) s 91G(1)	Use or allow child under 14 years to produce child abuse material	12
	<i>Crimes Act 1900</i> (NSW) s 93GA(1)	Fire at building with reckless disregard for safety	11
	<i>Crimes Act 1900</i> (NSW) s 93GA(1A)	Fire at building with reckless disregard for safety, during public disorder	0
	<i>Crimes Act 1900</i> (NSW) s 93GA(1B)	Fire at building with reckless disregard for safety, organised criminal activity	0
11	<i>Crimes Act 1900</i> (NSW) s 98	Rob with offensive weapon or in company, with wounding or grievous bodily harm	20
12	<i>Crimes Act 1900</i> (NSW) s 112(2)	Commit serious indictable offence and break out of building (aggravated)	4
12	<i>Crimes Act 1900</i> (NSW) s 112(2)	Break and enter building and commit serious indictable offence or break out after committing serious indictable offence (aggravated)	581
13	<i>Crimes Act 1900</i> (NSW) s 112(3)	Commit serious indictable offence and break out of building (specially aggravated)	0
13	<i>Crimes Act 1900</i> (NSW) s 112(3)	Break and enter building and commit serious indictable offence or break out after committing serious indictable offence (specially aggravated)	37
14	<i>Crimes Act 1900</i> (NSW) s 154C(1)	Taking motor vehicle or vessel with assault or with occupant on board	2
15	<i>Crimes Act 1900</i> (NSW) s 154C(2)	Taking motor vehicle or vessel with assault or with occupant on board, aggravated	6
15A	<i>Crimes Act 1900</i> (NSW) s 154G	Organise car or boat rebirthing activities	7
15B	<i>Crimes Act 1900</i> (NSW) s 203E	Cause fire, reckless as to spread	0
15C	<i>Drug Misuse and Trafficking Act 1985</i> (NSW) s 23(2)	Possess, supply or cultivate prohibited plant (cannabis), large commercial quantity – s 33(3)(b)	6

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Item (SNPP)	Provision	Description	Charges
15C	<i>Drug Misuse and Trafficking Act 1985 (NSW) s 23(2)</i>	Possess, supply or cultivate prohibited plant (not cannabis), large commercial quantity – s 33(3)(a)	10
16	<i>Drug Misuse and Trafficking Act 1985 (NSW) s 24(2)</i>	Manufacture or produce prohibited drug, commercial quantity - s 33(2)(a)	10
17	<i>Drug Misuse and Trafficking Act 1985 (NSW) s 24(2)</i>	Manufacture or produce prohibited drug, large commercial quantity - s 33(3)(a)	18
18	<i>Drug Misuse and Trafficking Act 1985 (NSW) s 25(2)</i>	Supply prohibited drug, commercial quantity - s 33(2)(a)	133
19	<i>Drug Misuse and Trafficking Act 1985 (NSW) s 25(2)</i>	supply prohibited drug, large commercial quantity - s 33(3)(a)	55
20	<i>Firearms Act 1996 (NSW) s 7</i>	Unauthorised possession of pistol or prohibited firearm	88
20	<i>Firearms Act 1996 (NSW) s 7</i>	Unauthorised use of pistol or prohibited firearm	5
21	<i>Firearms Act 1996 (NSW) s 51(1A)</i>	Unauthorised supply of prohibited firearm or pistol	8
21	<i>Firearms Act 1996 (NSW) s 51(2A)</i>	Unauthorised supply of prohibited firearm or pistol	3
22	<i>Firearms Act 1996 (NSW) s 51B</i>	Unauthorised supply of firearms, 3 or more times in 12 months	1
23	<i>Firearms Act 1996 (NSW) s 51D(2)</i>	unauthorised possession of 3+ firearms at least 1 prohibited	12
24	<i>Weapons Prohibition Act 1998 (NSW) s 7</i>	Unauthorised use or possession of prohibited weapon (on indictment)	115

Source: NSW Bureau of Crime Statistics and Research, NSW Criminal Courts Statistics 2010 to 2012 Ref: HcLc13-11598mr, Ref: HcLc13-11586mr and Ref: jh13-11713.

Appendix E: SNPPs as a proportion of the maximum penalty

Table E.1: Current SNPP offences

Item No	Offence	SNPP (yrs)	Maximum penalty (yrs)	SNPP as % of maximum
1A	Murder – where the victim was a police officer, emergency services worker, correctional officer, judicial officer, council law enforcement officer, health worker, teacher, community worker, or other public official, exercising public or community functions and the offence arose because of the victim's occupation or voluntary work	25	Life	N/A
1B	Murder – where the victim was a child under 18 years of age	25	Life	N/A
1	Murder – in other cases	20	Life	N/A
2	<i>Crimes Act 1900 s 26</i> (conspiracy to murder)	10	25	40
3	<i>Crimes Act 1900 s 27, 28, 29 or 30</i> (attempt to murder)	10	25	40
4	<i>Crimes Act 1900 s 33</i> (wounding etc with intent to do bodily harm or resist arrest)	7	25	28
4A	<i>Crimes Act 1900 s 35(1)</i> (reckless causing of grievous bodily harm in company)	5	14	35.7
4B	<i>Crimes Act 1900 s 35(2)</i> (reckless causing of grievous bodily harm)	4	10	40
4C	<i>Crimes Act 1900 s 35(3)</i> (reckless wounding in company)	4	10	40
4D	<i>Crimes Act 1900 s 35(4)</i> (reckless wounding)	3	7	42.9
5	<i>Crimes Act 1900 s 60(2)</i> (assault of police officer occasioning bodily harm)	3	7	42.9
6	<i>Crimes Act 1900 s 60(3)</i> (wounding or inflicting grievous bodily harm on police officer)	5	12	41.7
7	<i>Crimes Act 1900 s 61I</i> (sexual assault)	7	14	50
8	<i>Crimes Act 1900 s 61J</i> (aggravated sexual assault)	10	20	50
9	<i>Crimes Act 1900 s 61JA</i> (aggravated sexual assault in company)	15	Life	N/A
9A	<i>Crimes Act 1900 s 61M(1)</i> (aggravated indecent assault)	5	7	71.4
9B	<i>Crimes Act 1900 s 61M(2)</i> (aggravated indecent assault)	8	10	80
10	<i>Crimes Act 1900 s 66A(1)</i> (sexual intercourse – child under 10)	15	25	60
10	<i>Crimes Act 1900 s 66A(2)</i> (sexual intercourse – child under 10)	15	life	N/A
11	<i>Crimes Act 1900 s 98</i> (robbery with arms etc and wounding)	7	25	28
12	<i>Crimes Act 1900 s 112(2)</i> (breaking etc into any house etc and committing serious indictable offence in circumstances of aggravation)	5	20	25

Report Standard non-parole periods

Item No	Offence	SNPP (yrs)	Maximum penalty (yrs)	SNPP as % of maximum
13	<i>Crimes Act 1900 s 112(3)</i> (breaking etc into any house etc and committing serious indictable offence in circumstances of special aggravation)	7	25	28
14	<i>Crimes Act 1900 s 154C(1)</i> (taking motor vehicle or vessel with assault or with occupant on board)	3	10	30
15	<i>Crimes Act 1900 s 154C(2)</i> (taking motor vehicle or vessel with assault or with occupant on board in circumstances of aggravation)	5	14	35.7
15A	<i>Crimes Act 1900 s 154G</i> (organising car or boat rebirthing activities)	4	14	28.6
15B	<i>Crimes Act 1900 s 203E</i> (bushfires)	5	14	35.7
15C	<i>Drug Misuse and Trafficking Act 1985 s 23(2)</i> (cultivation, supply or possession of prohibited plants), being an offence that involves not less than the large commercial quantity (if any) specified for the prohibited plant concerned under that Act	10	Life	N/A
15C	<i>Drug Misuse and Trafficking Act 1985 s 23(2)</i> (cultivation, supply or possession of prohibited plants), being an offence that involves not less than the large commercial quantity (if any) specified for the prohibited plant concerned under that Act - in the case of cannabis plant	10	20	50
16	<i>Drug Misuse and Trafficking Act 1985 s 24(2)</i> (manufacture or production of commercial quantity of prohibited drug), being an offence that: does not relate to cannabis leaf, and if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves less than the large commercial quantity of that prohibited drug	10	20	50
17	<i>Drug Misuse and Trafficking Act 1985 s 24(2)</i> (manufacture or production of commercial quantity of prohibited drug), being an offence that: does not relate to cannabis leaf, and if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves not less than the large commercial quantity of that prohibited drug	15	Life	N/A
18	<i>Drug Misuse and Trafficking Act 1985 s 25(2)</i> (supplying commercial quantity of prohibited drug), being an offence that: does not relate to cannabis leaf, and if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves less than the large commercial quantity of that prohibited drug	10	20	50
19	<i>Drug Misuse and Trafficking Act 1985 s 25(2)</i> (supplying commercial quantity of prohibited drug), being an offence that: does not relate to cannabis leaf, and if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves not less than the large commercial quantity of that prohibited drug	15	Life	N/A
20	<i>Firearms Act 1996 s 7</i> (unauthorised possession or use of firearms)	3	14	21.4
21	<i>Firearms Act 1996 s 51(1A) or (2A)</i> (unauthorised sale of prohibited firearm or pistol)	10	20	50
22	<i>Firearms Act 1996 s 51B</i> (unauthorised sale of firearms on an ongoing basis)	10	20	50
23	<i>Firearms Act 1996 s 51D(2)</i> (unauthorised possession of more than 3 firearms any one of which is a prohibited firearm or pistol)	10	20	50
24	<i>Weapons Prohibition Act 1998 s 7</i> (unauthorised possession or use of prohibited weapon on indictment)	3	14	21.4

Appendix F: Submissions

SNPP1	NSW Health Education Centre Against Violence, 2 October 2013
SNPP2	Police Association of NSW, 8 October 2013
SNPP3	Bravehearts Inc, 8 October 2013
SNPP4	NSW, Office of the Director of Public Prosecutions, 9 October 2013
SNPP5	NSW Young Lawyers, Criminal Law Committee, 11 October 2013
SNPP6	Mental Health Coordinating Council, 11 October 2013
SNPP7	Legal Aid NSW, 11 October 2013
SNPP8	The Public Defenders, 11 October 2013
SNPP9	NSW, Victims Services, 11 October 2013
SNPP10	NSW Bar Association, 14 October 2013
SNPP11	Law Society of NSW, 14 October 2013
SNPP12	Police Association of NSW, 22 October 2013
SNPP13	Women in Prison Advocacy Network, 23 October 2013
SNPP14	Legal Aid NSW, 24 October 2013
SNPP15	Law Society of NSW, 25 October 2013
SNPP16	NSW Young Lawyers, Criminal Law Committee, 25 October 2013
SNPP17	NSW, Office of the Director of Public Prosecutions, 18 October 2013

