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**NSW Parliamentary
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Sentencing Outcomes for Firearms Offences

Briefing Paper 2/2016

by Tom Gotsis

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ISSN 1325-5142

ISBN 978-0-7313-1943-5

May 2016

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SUMMARY

“Firearms offences” is a generic term that covers a broad range of offences in both the *Firearms Act 1996* and the *Crimes Act 1900*. Firearms offences include: possessing, using, discharging, manufacturing, altering and supplying various categories of firearms, firearm parts and ammunition. Despite the breadth of the term, the unifying characteristic of firearms offences is the underlying threat to public safety posed by the misuse of firearms: [1].

This paper sets out the recent history of firearms offences, including the origins of the *Firearms Act 1996* in the aftermath of the Port Arthur massacre. It then outlines the distinction between non-strictly indictable and strictly indictable firearms offences, and considers the significance of that distinction on the sentencing of firearms offences. The role and effect of standard non-parole periods on the sentencing of firearms offences is also considered. Sentencing statistics for firearms offences are then presented: [1].

The paper further provides a discussion of the objectives and main features of the recent amendments to firearms offences that were introduced by the *Firearms and Weapons Prohibition Legislation Amendment Act 2015* and the *Crimes (Sentencing Procedure) Amendment (Firearms Offences) Act 2015*: [1].

Recent history

The *Firearms Act 1996* was enacted as part of a national response to the Port Arthur Massacre. Introducing the legislation, the then Minister for Police, Paul Whelan MP, stated that it “represents the toughest controls on firearms ever enacted in New South Wales”. Over the next 20 years, firearms offences have remained the subject of ongoing amendment, either in response to national initiatives (such as the 2002 National Agreement on Handguns) or State concerns (such as drive-by shootings and gang-related firearm theft): [2].

Non-strictly indictable and strictly indictable firearms offences

Many firearms offences that carry large maximum penalties are not strictly indictable. They are “Table 2” offences that may be dealt with summarily by the Local Court unless the prosecutor elects to have the offence dealt with on indictment. The maximum term of imprisonment that the Local Court can impose for a single offence is two years: [3]. An election to have an offence dealt with on indictment is made by the prosecution in accordance with Guideline 8 of the *Prosecution Guidelines*: [3.1].

The question of the extent to which it is appropriate for firearms offences to be dealt with summarily by the Local Court is long-standing. In its 2004 report, *Firearms offences and the standard non-parole sentencing scheme*, the Sentencing Council, by majority, recommended that those firearms offences with a statutory maximum penalty of 10 years or more should be dealt with strictly on indictment: [3.1].

Standard non-parole periods

In 2002 the Carr Government enacted the *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002* to establish a system of standard non-parole periods in order to provide “further guidance and structure to judicial discretion”: [4]. A

standard non-parole period is the “non-parole period ... that, taking into account only the objective factors affecting the relative seriousness of [an] offence, is in the middle of the range of seriousness”. Of relevance to the distinction between non-strictly indictable and strictly indictable firearms offences, standard non-parole periods do not apply to offences dealt with summarily in the Local Court: [4].

The application of standard non-parole periods by the courts has not been without difficulty. Most notably, the NSW Court of Criminal Appeal was found by the High Court of Australia to have erred in the manner it applied standard non-parole periods. In contrast to the approach adopted by the NSW Court of Criminal Appeal in *R v Way*, which ascribed a pivotal role to standard non-parole periods in the sentencing process, the High Court in *Muldock v The Queen* said it was erroneous for sentencing courts to treat standard non-parole periods as having “determinative significance”. Instead, the High Court said that a sentencing court should treat the maximum penalty and standard non-parole period as two “legislative guideposts”: [4]

Research into the effectiveness of standard non parole periods has found that, while standard non-parole periods have generally resulted in increased sentences, average sentences have also generally fallen below the standard non-parole period. Significantly, that was the position before *Muldock* and it remains to be seen what the position will be since the role of standard non-parole periods in the sentencing process has been diminished: [4]

Sentencing statistics and outcomes

Sentencing data for 15 offences under the *Firearms Act 1996* and 6 offences under the *Crimes Act 1900* are presented in Tables 5A–25: [5]. The data includes, for each offence: the number of cases dealt with in the Local Court and the higher courts; average sentence lengths; sentence ranges; modes (most frequently imposed sentences); and an indication of how the sentences imposed compare to the standard non-parole period and maximum penalty.

The sentencing data suggests that a high proportion of non-strictly indictable firearms offences are being prosecuted in the Local Courts: [5.7.1]. Even with a statistical period for the Local Courts that is 3 years shorter than the period for the higher courts; for the non-strictly indictable firearms offences considered in this paper, 84.5% of cases are dealt with in the Local Court: [5.7.1]

The statistics also reveal that in most cases the terms of the non-parole periods imposed by the courts fell below the relevant standard non-parole period: [5.7.2]. In particular, in the higher courts between July 2008 and June 2015:

- There were 165 cases where the principal offence was unauthorised possession or use of pistols or prohibited firearms, contrary to 7(1) of the *Firearms Act 1996*. Of the 138 cases where a term of imprisonment was imposed, the non-parole period equalled or exceeded the then applicable standard non-parole period of 3 years in 16 cases (12%).
- There were 75 cases where the principal offence was possess more than 3 firearms, including a pistol or prohibited firearm, contrary to s 51D(2) of the *Firearms Act 1996*. In 37 cases the court imposed a sentence of imprisonment. In

no case did the non-parole period imposed by the court equal or exceed the standard non-parole period of 10 years.

- There were 16 cases where the principal offence was supply firearms on an ongoing basis, contrary to s 51B(1) of the *Firearms Act 1996*. In all 16 cases the court imposed a sentence of imprisonment. In no case did the non-parole period imposed by the court equal or exceed the standard non-parole period of 10 years.
- There were 38 cases where the principal offence was supply pistol or prohibited firearm to an unauthorised person, contrary to s 51(1A) of the *Firearms 1996*. The court imposed a sentence of imprisonment in 35 cases. There was no case where the non-parole period imposed by the court equalled or exceeded the standard non-parole period of 10 years.

When considering these statistics it has to be borne in mind that the standard non-parole period represents the non-parole period that, taking into account only the objective factors affecting the seriousness of an offence, is in the middle of the range of seriousness. In theory, it is possible that all cases in a given population of cases fall into the lower range of objective seriousness; however, the larger the population of cases, the more likely it is that some cases will fall into the middle of the range of seriousness. Another consideration is that the sentences also reflect any favourable subjective factors that were present in each case: [5.7.2].

The 2015 amendments

In response to the Martin Place siege and its tragic outcomes, the NSW Government announced that it would enact new firearms offences and increase the penalties for existing firearms offences. The resulting legislation, the *Firearms and Weapons Prohibition Legislation Amendment Act 2015*, increased the maximum penalties of 8 non-strictly indictable firearms offences to 14 years imprisonment and created 2 new non-strictly indictable firearms offences: [6.1].

Implementing recommendations made by the Sentencing Council in 2013 and commitments made during the 2015 election, the NSW Government also enacted the *Crimes (Sentencing Procedure) Amendment (Firearms Offences) Act 2015*, so as to increase a standard non-parole period that already applied to a firearms offence and to introduce new standard non-parole periods for other firearms offences: [6.2].

Conclusion

Firearms offences and the sentencing of firearms offences are clearly matters of public concern. Whether the objectives of the *Firearms and Weapons Prohibition Legislation Amendment Act 2015* and the *Crimes (Sentencing Procedure) Amendment (Firearms Offences) Act 2015* will be met will become apparent over time. The sentencing data presented in this paper can form a useful point of reference in that regard. That data suggests that the number of non-strictly indictable firearms offences dealt with by the Local Court and the effectiveness of standard non-parole periods for firearms offences are areas worthy of future consideration: [7].

1. INTRODUCTION

“Firearms offences” is a generic term that covers a broad range of offences in both the *Firearms Act 1996* and the *Crimes Act 1900*. Firearms offences include: possessing, using, discharging, manufacturing, altering and supplying various categories of firearms, firearm parts and ammunition. Despite the breadth of the term “firearms offences”, the unifying characteristic of the offending it encompasses is the underlying threat to public safety posed by the misuse of firearms.

This paper sets out the recent history of firearms offences, including the origins of the *Firearms Act 1996* in the aftermath of the Port Arthur massacre. It then outlines the distinction between non-strictly indictable and strictly indictable firearms offences, and considers the significance of that distinction on the sentencing of firearms offences. The role and effect of standard non-parole periods on the sentencing of firearms offences is also considered.

Sentencing statistics for a range of firearms offences are presented. The paper then details the objectives and main features of the recent amendments to firearms offences that were introduced by the *Firearms and Weapons Prohibition Legislation Amendment Act 2015* and the *Crimes (Sentencing Procedure) Amendment (Firearms Offences) Act 2015*.

2. RECENT HISTORY AND OBJECTIVES OF FIREARMS OFFENCES

Following the Port Arthur Massacre on 28 April 1996, where 35 people were killed and 18 others wounded, the Australasian Police Ministers Council agreed to a national plan for the regulation of firearms.¹ That national plan led to the NSW Government enacting the *Firearms Act 1996*.²

In New South Wales, the *Firearms Act 1996* implemented the resolutions of the Australasian Police Ministers Council’s meeting of 10 May 1996, as well as incorporating existing provisions from the *Firearms Act 1989*. Introducing the legislation, the then Minister for Police, Hon. Paul Whelan MP, stated that it ‘represents the toughest controls on firearms ever enacted in New South Wales...The proposed Act will improve public safety by imposing strict controls on the possession and use of firearms, promoting the safe and responsible storage and use of firearms and facilitating a national approach to the control of firearms.’

The history of the *Firearms Act 1996* — one of concerted action following tragedy — is reflected in its underlying principles, which s 3(1) sets out as being:

- (a) to confirm firearm possession and use as being a privilege that is conditional on the overriding need to ensure public safety, and
- (b) to improve public safety:

¹ R Johns, [Firearms Restrictions: Recent Developments](#), 2004, NSW Parliamentary Library Research Service, p 2.

² R Johns, [Firearms Restrictions: Recent Developments](#), 2004, NSW Parliamentary Library Research Service, pp 2–3, referring to the *Firearms Bill* Second Reading speech, *NSWPD*, 19 June 1996, p 3204.

- (i) by imposing strict controls on the possession and use of firearms, and
- (ii) by promoting the safe and responsible storage and use of firearms, and
- (c) to facilitate a national approach to the control of firearms.

That history is also reflected in the Act's objects, which s 3(2) sets out as being:

- (a) to prohibit the possession and use of all automatic and self-loading rifles and shotguns except in special circumstances,
- (b) to establish an integrated licensing and registration scheme for all firearms,
- (c) to require each person who possesses or uses a firearm under the authority of a licence to prove a genuine reason for possessing or using the firearm,
- (d) to provide strict requirements that must be satisfied in relation to licensing of firearms and the acquisition and supply of firearms,
- (e) to ensure that firearms are stored and conveyed in a safe and secure manner,
- (f) to provide for compensation in respect of, and an amnesty period to enable the surrender of, certain prohibited firearms.

Over the following 20 years, firearms offences in both the *Firearms Act 1996* and the *Crimes Act 1900* have been the subject of ongoing amendment; either in response to national initiatives, such as ([the National Agreement on Handguns of 2002](#));³ or State concerns (such as drive-by shootings and gang-related firearm theft).⁴ That ongoing process of amendment has, generally speaking, involved a multifaceted approach of refining existing offences, introducing new offences and standard non-parole periods, and increasing existing maximum penalties.⁵

3. NON-STRICTLY INDICTABLE AND STRICTLY INDICTABLE FIREARMS OFFENCES

Following the commencement of the *Criminal Procedure Amendment (Indictable Offences) Act 1995*:⁶

[T]he system of summary disposal of indictable offences was expanded and overhauled with the introduction of "Table 1" and "Table 2" offences: "Table 1" offences being those indictable offences that are to be dealt with summarily unless [the] prosecutor or person

³ L Roth, [Gun Violence: An update](#), 2012, NSW Parliamentary Library Research Service, e-brief 5/2012, p 1, quoting M Davies and J Mouzos, [Court outcomes for firearms offences in Australia](#), 2008, Australian Institute of Criminology, p 7. See also M Davies and J Mouzos, [Firearms Legislative Review](#), 2007, Australian Institute of Criminology.

⁴ R Johns, [Firearms Restrictions: Recent Developments](#), 2004, NSW Parliamentary Library Research Service, pp 9–15 and pp 26–32.

⁵ See, for instance, the discussion of the *Firearms and Weapons Prohibition Legislation Amendment Act 2015* and the *Crimes (Sentencing Procedure) Amendment (Firearms Offences) Act 2015* at Chapter 6. See also R Johns, [Firearms Restrictions: Recent Developments](#), 2004, NSW Parliamentary Library Research Service; M Davies and J Mouzos, [Firearms Legislative Review](#), 2007, Australian Institute of Criminology; and M Davies and J Mouzos, [Court outcomes for firearms offences in Australia](#), 2008, Australian Institute of Criminology.

⁶ *Firearms Offences and the Standard Non-Parole Sentencing Scheme*, 2004, NSW Sentencing Council p 38. The new scheme removed the discretion of the magistrate in deciding upon jurisdiction, which had been provided for by s 52(2)(b) of the *Firearms Act 1989*.

charged elects otherwise; “Table 2” offences being those indictable offences that are to be dealt with summarily unless [the] prosecutor elects otherwise. ...

Many firearms offences that carry large maximum penalties are not strictly indictable. They are “Table 2 offences”⁷ that may be dealt with summarily by the Local Court unless the prosecutor elects to have the offence dealt with on indictment.⁸ The maximum term of imprisonment that the Local Court may impose for a single offence is two years.⁹ Where there is more than one offence, the Local Court may impose an accumulated term of imprisonment of no more than 5 years.¹⁰

Table 1: Non-strictly indictable and strictly indictable firearms offences

Non-strictly indictable		
<i>Firearms Act 1996</i>		
Section	Offence	Maximum Penalty
s 7(1)	Unauthorised possession or use of pistols or prohibited firearms.	14 years
s 7A(1)	Unauthorised possession or use of firearms generally	5 years
s 36(1)	Supply, acquire, possess or use unregistered firearm	5 years / 14 years*
s 43	Firearms dealers must be licensed	7 Years
s 44A	Prescribed persons not to be involved in firearms dealing business	14 years
s 50	Acquisition of firearms	5 years / 14 years*
s 50A(1)	Unauthorised manufacture of firearms	10 years
s 50AA(1)	Acquisition of firearm parts	5 years
s 50AA(2)	Acquisition of firearm parts (pistol or prohibited firearm)	14 years
s 50B	Give possession of firearm/parts to unauthorised persons	5 years/14 years*
s 51(1)	Supply firearm to unauthorised person	5 years
s 51(2)	Supply firearm to person not a licensed firearms dealer	5 years
s 51A	Restrictions on acquiring firearms	5 years/14 years*
s 51BA(1)	Supply firearm part	5 years
s 51BA(2)	Supply firearm part (pistol or prohibited firearm)	14 years
s 51D(1)	Unauthorised possession of more than 3 firearms	10 years
s 51E	Possess or use pistols with magazine of more than 10 rounds	14 years
s 51F(1)	Possess digital blueprints for manufacture of firearms	14 years
s 51H(1)	Stolen firearms or firearm parts	14 years
s 58(2)	Unauthorised possession of pistol barrel	5 years
s 62(1)	Shortening firearms	14 years
s 63(1)–(4)	Converting firearms	14 years
s 64	Restrictions where alcohol or other drugs concerned	5 years
s 66(1)	Deface or alter firearms or firearm parts	14 years
s 70	False or misleading applications	5 years / 14 years *
s 71A(1)	Using forged/fraudulently altered licence or permit to obtain firearm	10 years

⁷ Referring to Schedule 1 Table 2 of the *Criminal Procedure Act 1986*.

⁸ *Firearms Act 1996* s 84; *Criminal Procedure Act 1986*, s 260 and Schedule 1 (Table 2).

⁹ *Criminal Procedure Act 1986*, s 268. The Local Court may also impose a fine of 50 penalty units “in addition to or instead of any term of imprisonment that may be imposed”: *Criminal Procedure Act 1986*, s 268(2AA).

¹⁰ *Crimes (Sentencing procedure) Act 1999*, s 58(1).

Table 1: Non-strictly indictable and strictly indictable firearms offences

s 72(1)	Falsifying or altering records	5 years / 14 years*
s 74(1)–(5)	Contravene firearms prohibition order	5 years / 14 years*
Crimes Act 1900		
Section	Offence	Maximum Penalty
s 93G(1)	Causing danger with firearm or spear gun	10 years
s 93H(1)	Trespassing with firearm or spear gun	5 years
s 93H(2)	Dangerous use of firearm or spear gun	10 years
s 93I(1)	Possess unregistered firearm in public place	10 years
s 93I(2)	Aggravated possess unregistered firearm in public place	14 years
Strictly indictable Firearms Act 1996		
Section	Offence	Maximum Penalty
s 50A(2)	Unauthorised manufacture of pistol or prohibited firearm	20 years
s 51(1A)	Supply pistol or prohibited firearm to unauthorised person	20 years
s 51(2A)	Supply pistol or prohibited firearm to person not licensed firearms dealer	20 years
s 51B(1)	Supply firearms on an ongoing basis	20 years
s 51BB(1)	Supply firearm parts on an ongoing basis	20 years
s 51D(2)	Unauthorised possess more than 3 firearms / pistol or prohibited firearm	20 years
Crimes Act 1900		
Section	Offence	Maximum Penalty
s 33A(1)	Discharge firearm with intent to cause grievous bodily harm	25 years
s 33A(2)	Discharge firearm with intent to resist arrest	25 years
s 93GA(1)	Firing at dwelling-house or building	14 years
s 93GA(1A)	Firing at dwelling-house or building during public disorder	16 years
s 93GA(1B)	Firing at dwelling-house or building during organised criminal activity	16 years

* Maximum penalty of 14 years imprisonment only in respect of pistol or prohibited firearm. *Note:* Summary offences under the *Firearms Act 1996* and regulations are not set out in this table. *Source:* *Firearms Act 1996*, s 84 and *Criminal Procedure Act 1986*, Sch 1 Table 2 Part 4.

3.1 Prosecutorial discretion

The objective seriousness of an offence is ultimately a matter to be assessed by the courts on a case by case basis. However, in the case of offences which are indictable but not strictly so, it falls to the prosecution to first elect whether the offence is dealt with summarily or on indictment. That decision is to be made in accordance with the *Prosecution Guidelines* of the Office of the Director of Public Prosecutions; in particular, Guideline 8, which states that an election to deal with an offence on indictment should *not* be made unless:¹¹

- (i) the accused person's criminality (taking into account the objective seriousness and his or her subjective considerations) could not be adequately addressed within the sentencing limits of the Local Court;
- (ii) for some other reason, consistently with these guidelines, it is in the interests of justice that the matter not be dealt with summarily.

In relation to offences attracting a standard non-parole period, Guideline 8 states that an

¹¹ *Prosecution Guidelines*, Office of the Director of Public Prosecutions (NSW), 2007, [Guideline 8](#).

election should be made for the offence to be dealt with on indictment if:¹²

[T]he view is taken that no penalty other than imprisonment is appropriate and that the offence falls within the middle of the range of objective seriousness or higher.

The NSW Law Reform Commission described the application of Guideline 8 in the following terms:¹³

The primary consideration for prosecutors when deciding whether to elect for trial in the District Court turns on their assessment of whether the case can be adequately addressed within the Local Court's sentencing limits. In some cases, the assessment made at the beginning of a case will not accord with the assessment made at the end of the day by the magistrate in possession of all the facts.

The problem is caused by the "hard line" of a sentencing limit, no matter the level at which this limit is set. We acknowledge that the jurisdictional line is arbitrary. It is set based on a legislative judgement about the appropriate sentencing jurisdiction for the summary disposal of a criminal prosecution. ... The preferable approach continues to be improved prosecutorial practice, to ensure that the prosecution appropriately elects for serious cases to be heard in the District Court.

3.2 Discussion of the issue

The question of the extent to which it is appropriate for firearms offences to be dealt with summarily by the Local Court, where the maximum term of imprisonment that can be imposed is two years, has been raised in Parliament and considered by independent reviews and by the NSW Sentencing Council.

In 2003, during the Second Reading speech for the *Firearms and Crimes Legislation Amendment (Public Safety) 2003*, the then Minister for Police, John Watkins MP, said:¹⁴

The Government is also considering making more serious firearm crimes strictly indictable in order for such crimes to be tried in the District Court or the Supreme Court and, therefore, attract higher sentences. It is also examining measures to ensure that more cases are dealt with on indictment, and ensuring that the Commissioner for Police instructs prosecutors to instigate immediate appeals if firearms criminals receive sentences that the community views as inappropriate.

In his 2004 *Review to Consider the Merits of Establishing a Specialist Gun Court in NSW*, Gordon Samuels, former Governor of NSW and Supreme Court Justice, commented that it is the facts of each case, rather than a broad statistical analysis, that ultimately matters; and that, overall, "the spread of matters which the statistics reveal between the Local Court and the Higher Courts seems reasonable".¹⁵

In its 2004 report, *Firearms Offences and the Standard non-parole sentencing scheme*, the

¹² *Prosecution Guidelines*, Office of the Director of Public Prosecutions (NSW), 2007, [Guideline 8](#).

¹³ *Sentencing*, NSW Law Reform Commission, 2013, p 422.

¹⁴ [NSWPD, 29 October 2003, p 4353 \(J Watkins\)](#).

¹⁵ G Samuels, *Review to Consider the Merits of Establishing a Specialist Gun Court in NSW*, 2004, pp 7, 8.

Sentencing Council, referring to sentencing statistics for the preceding 5 years, said:¹⁶

The vast majority of firearms and weapons offences are disposed of in the Local Court ... [T]here are well over 2,600 sentences imposed in the Local Court in the past 5 years against the *Firearms Act 1996*. In stark contrast, 42 sentences were imposed in the higher courts over the same period against the *Firearms Act 1996*. [T]here are 163 firearms offences against the *Crimes Act 1900* sentenced in the Local Court in the past 5 years and only 64 such that were sentenced in the higher courts over the same period.

The Sentencing Council pointed out that the sentencing statistics from the Judicial Commission's Judicial Information Research System relate to the principal offence, and that firearm offences are often prosecuted on indictment in combination with other more serious offences.¹⁷ Further, it recognised that there are savings in the administration of justice when matters are resolved at the earliest opportunity and the resources of the District Court are freed to deal with the more serious matters.¹⁸ Nevertheless, by majority, the Sentencing Council recommended that those firearms offences with a statutory maximum penalty of 10 years or more should be dealt with strictly on indictment:¹⁹

The majority of the Sentencing Council believes that it is incongruous to have a procedure whereby serious indictable offences with maximum penalties of 10 years or more are regularly disposed of in the Local Court with its jurisdictional limit of 2 years. In making this recommendation, the Sentencing Council is aware of implications in making further firearms offences strictly indictable. Such implications include increased costs to the Office of the DPP, the Legal Aid Commission, the Public Defenders Office and the Courts, decreased incentives to pleas of guilty and possible delays in the disposal of matters in the District Court. The Sentencing Council has also taken into account that some of these offences involve a wide spectrum of culpability. The majority of the Sentencing Council nevertheless recommends that offences against these sections should properly be dealt with on indictment bearing in mind the maximum penalty as compared to the jurisdictional limit of the Local Court, the need for general deterrence, and the clear potential harm to persons or property of the offence. Further, although there is a jurisdictional ceiling on the sentence which may be imposed by the Local Court, there is no lower limit on the sentence which may be imposed by the District Court, and the District Court may properly impose a non-custodial sanction in appropriate circumstances.

In its 2013 report *Sentencing* the NSW Law Reform Commission considered whether the jurisdictional maximum of the Local Court should be increased to 5 years. As part of that consideration, it noted that:²⁰

The Chief Magistrate of the Local Court has been concerned for some time that the current

¹⁶ *Firearms offences and the standard non-parole sentencing scheme*, 2004, NSW Sentencing Council, pp 14–15. See also: *How Best to Promote Consistency in Sentencing in the Local Court*, 2005, NSW Sentencing Council; and *An examination of the sentencing powers of the Local Court in NSW*, 2010, NSW Sentencing Council.

¹⁷ *Firearms offences and the standard non-parole sentencing scheme*, 2004, NSW Sentencing Council, p 16.

¹⁸ *Firearms offences and the standard non-parole sentencing scheme*, 2004, NSW Sentencing Council, p 39.

¹⁹ *Firearms offences and the standard non-parole sentencing scheme*, 2004, NSW Sentencing Council, p 39.

²⁰ *Sentencing*, 2013, NSW Law Reform Commission, pp 419–420.

jurisdictional limit of the Local Court can lead to inappropriately lenient sentences in some cases. ...The Chief Magistrate submitted that increasingly serious criminal conduct is being dealt with summarily and that such serious offences receiving sentences within the two year limit challenges the legitimacy of the sentencing exercise that the Local Court undertakes.

4. STANDARD NON-PAROLE PERIODS

4.1 Operation of standard non-parole periods

In 2002 the Carr Government enacted the *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002* to introduce standard non-parole periods in order to provide “further guidance and structure to judicial discretion”.²¹ A standard non-parole period is the non-parole period that, taking into account only the objective factors affecting the relative seriousness of an offence, is in the middle of the range of seriousness.²² The offences which attract standard non-parole periods and the value of the standard non-parole period for each offence are set out in the Table to Part 4 Division 1A of the *Crimes (Sentencing Procedure) Act 1999*.²³ Of relevance to the distinction between non-strictly indictable and strictly indictable firearms offences discussed at [3]–[3.1], standard non-parole periods do not apply to offences dealt with summarily in the Local Court.²⁴

Table 2: Standard non-parole periods (SNPP) for firearms offences* prior to the *Crimes (Sentencing Procedure) Amendment (Firearms Offences) Act 2015*

Act and section	Offence	SNPP
<i>Firearms Act 1996</i> , s 7	Unauthorised possession/use	3 years
<i>Firearms Act 1996</i> , s 51(1A)/(2A)	Unauthorised supply	10 years
<i>Firearms Act 1996</i> , s 51B	Unauthorised supply on ongoing basis	10 years
<i>Firearms Act 1996</i> , s 51D(2)	Unauthorised possession (aggravated)	10 years

*Section 7 of the *Weapons Prohibition Act 1998* (possesses/use prohibited weapon) also carries a standard non-parole period and can apply to certain types of ammunition offences. However, s 7 of the *Weapons Prohibition Act 1998* has not been included as a firearms offence for the purposes of this paper because it primarily focuses on other types of weapons.

The application of standard non-parole periods by the courts has not been without difficulty.²⁵ The courts,²⁶ the Judicial Commission²⁷ and the Sentencing Council²⁸ have all noted a lack of a consistent or meaningful ratio between maximum penalties and standard non-parole periods. Justice Hulme in *R v Najem*²⁹ described the maximum penalty and standard non-parole period for s 7 of the *Firearms Act 1996* as “two irreconcilable

²¹ [NSWPD \(Second Reading\), 23 October 2002, p 5813 \(B Debus\)](#).

²² *Crimes (Sentencing Procedure) Act 1999*, s 54A(2).

²³ *Crimes (Sentencing Procedure) Act 1999*, s 54A(1).

²⁴ *Crimes (Sentencing Procedure) Act 1999*, s 54D(2).

²⁵ *Sentencing*, 2013, NSW Law Reform Commission, Ch 7.

²⁶ *R v Najem* [2008] NSWCCA 32.

²⁷ P Poletti and H Donnelly, *The impact of the standard non-parole period sentencing scheme on sentencing patterns in NSW*, 2010, Judicial Commission of NSW, at 1.3, pp 4–9.

²⁸ *Standard non-parole periods*, NSW Sentencing Council, 2013, pp ix and 36–37.

²⁹ *R v Najem* [2008] NSWCCA 32 (Beazley JA and Latham J agreeing).

standards against which ... offending has to be measured".³⁰ Moreover, the NSW Court of Criminal Appeal was found by the High Court of Australia to have erred in the manner it applied standard non-parole periods. In contrast to the approach adopted by the NSW Court of Criminal Appeal in *R v Way*,³¹ which ascribed a pivotal role to standard non-parole periods in the sentencing process, the High Court in *Muldrock v The Queen*³² said it was erroneous for sentencing courts to treat standard non-parole periods as having "determinative significance".³³ Instead, the High Court said that a sentencing court should treat the maximum penalty and standard non-parole period as two "legislative guideposts".³⁴

As Justice Hulme said in an article entitled *After Muldrock — sentencing for standard non-parole period offences in NSW*:³⁵

Way had held that the proper approach to sentencing for standard non-parole period offences was to determine whether there were reasons for not imposing the standard non-parole period. That involved considering first, the objective seriousness of the offence so as to determine whether it fell into the middle of the range of seriousness for an offence of the relevant kind and second, the circumstances of aggravation, and of mitigation, which are present in the subject case or which apply to the particular offender.

Conversely, *Muldrock* held that it was "a mistake to give primary, let alone determinative, significance" to what was thought in *Way* to be a requirement of s 54B(2) of the *Crimes (Sentencing Procedure) Act 1999* ... to impose the standard non-parole period unless there were reasons for imposing a longer or shorter period.

Following the High Court's decision in *Muldrock*, as well as reports from the NSW Law Reform Commission on the standard non-parole period³⁶ and sentencing,³⁷ Parliament enacted the *Crimes (Sentencing Procedure) Amendment (Standard Non-Parole Periods) Act 2013*.³⁸ As to the effect of that enactment, the NSW Sentencing Council said:³⁹

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

³⁰ *R v Najem* [2008] NSWCCA 32 at [38]. See also *Thalari v R* [2009] NSWCCA 170 at [84], where the court referred to Hulme J's comments in *Najem*.

³¹ (2004) 60 NSWLR 168, especially at [117]–[118].

³² (2011) 244 CLR 120, especially at [26]–[27] and [31].

³³ As the High Court said in *Muldrock v The Queen* (2011) 244 CLR 120 at [32]: "The Court of Criminal Appeal erred by treating the provision of the standard non-parole period as having determinative significance in sentencing the appellant."

³⁴ *Muldrock v The Queen* (2011) 244 CLR 120 at [27].

³⁵ RA Hulme, "After Muldrock — sentencing for standard non-parole period offences in NSW" (2012) 24(10) *Judicial Officers' Bulletin* 81. See also: *Standard non-parole periods*, NSW Sentencing Council, 2013, p 3.

³⁶ *Sentencing: Interim Report on Standard Minimum Non-parole Periods (Report 134)*, 2012, NSW Law Reform Commission.

³⁷ *Sentencing*, 2013, NSW Law Reform Commission.

³⁸ See [NSWPD \(Second Reading Speech\), 18 September 2013, p 23736–23737 \(G Smith\)](#) and *Standard non-parole periods*, NSW Sentencing Council, 2013, p 4.

³⁹ *Standard non-parole periods*, NSW Sentencing Council, 2013, p 4.

4.2 Evaluation of the effect of standard non-parole periods

A 2010 study by the Judicial Commission found that the introduction of standard non-parole periods “generally resulted” in an increase in the severity of penalties imposed.⁴⁰ The Judicial Commission study was considered by the NSW Law Reform Commission as part of its 2012 *Interim report on standard minimum non-parole periods*.⁴¹ The Law Reform Commission said:⁴²

It is clear from the Judicial Commission analysis that the SNPP scheme has generally resulted in significant increases in sentence levels for the Table [SNPP] offences especially the offences involving violence, including sexual violence. This does not mean, however, that the median or average sentences actually given for these offences have approximated their SNPPs ... We do not view this as being of concern or a failing in the scheme.

There are likely to be many reasons for the existence of a difference. The SNPP is intended to represent the NPP for offences in the mid-range of seriousness and it may well be that a large number of offences comprised in the database were of lower seriousness than mid-range. Additionally, the presence of a plea of guilty or favourable subjective factors will lead to an appropriate reduction in the sentence. The Judicial Commission study shows, however, that SNPPs have had a significant impact on sentencing levels, and to this extent it would seem to have operated as expected.

In its 2013 report *Standard non-parole periods*, the NSW Sentencing Council pointed out that “[t]he impact of the High Court’s 2011 decision in *Muldrock* on the trends noted in the study has not yet been evaluated”.⁴³ With respect to the Judicial Commission’s pre-*Muldrock* evaluation, the Sentencing Council said:⁴⁴

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, 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. 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

In short, standard non-parole periods have generally resulted in increased sentences but, despite the increase, average sentences have generally fallen below the standard non-parole period. That, moreover, was the position before *Muldrock* and it remains to be seen what the position will be since the role of standard non-parole periods in the sentencing process was diminished.

⁴⁰ P Poletti and H Donnelly, *The impact of the standard non-parole period sentencing scheme on sentencing patterns in NSW*, 2010, Judicial Commission of NSW, p 60.

⁴¹ [Sentencing: Interim report on standard minimum non-parole periods](#), 2012, NSW Law Reform Commission.

⁴² [Sentencing: Interim report on standard minimum non-parole periods](#), 2012, NSW Law Reform Commission, p 17

⁴³ *Standard non-parole periods*, 2013, NSW Sentencing Council, p 6.

⁴⁴ *Standard non-parole periods*, 2013, NSW Sentencing Council, p 38 and Appendix B.

5. SENTENCING STATISTICS AND OUTCOMES

5.1 Source of the data

The data presented in this paper is derived from the sentencing statistics component of the Judicial Commission's Judicial Information Research System.

5.2 Scope of the data

Statistics are presented from the NSW Local Court dataset and the NSW "higher courts" dataset (which covers both the NSW District Court and the NSW Supreme Court).

Statistical data covering all cases dealing with a particular offence is presented in summary form in Tables 5A–24. Additionally, the higher courts dataset provides direct access to the sentences imposed in individual cases and that information has been used to prepare Tables 4A–4E.

Sentencing data from the NSW Children's Court has not been presented due to the different sentencing considerations and outcomes that apply in that jurisdiction under the *Children (Criminal Proceedings) Act 1987*.

5.3 Timeframe covered

The Local Court and higher courts datasets cover different periods of time. At the time of writing, the NSW Local Court dataset was current as at October 2015 and covered the 4 year period of July 2011 to June 2015. At the time of writing, the higher courts dataset was current as at December 2015 and covered the 7 year period of July 2008 to June 2015.

5.4 Rounding up of data

The Judicial Commission's data is rounded upwards, so that a term of 5 weeks is shown as 2 months and a term of 7 months is shown as 12 months. This includes all ranges and frequencies reported in this paper. The average terms of imprisonment reported in this paper have also been calculated using the rounded up data.

5.5 Data relates solely to the principal offence

The data in this paper relates solely to sentence outcomes for the principal offence. All secondary offences have been excluded. The Judicial Commission defines principal offence in the following terms:⁴⁵

Where two or more charges are proved against a person, the offence with the most severe penalty is selected as the principal offence. If two or more charges attract the same sentence, the offence which carries the highest maximum penalty is selected as the principal offence. If two or more offences have the same statutory maximum penalty and the same sentence, the offence with a Form 1 attached ... is selected.

As such, the sentencing statistics and data presented in this paper do not cover firearms

⁴⁵ Judicial Commission of NSW, Judicial Information Research System, "Explaining the statistics" (as at 17 March 2016).

offences in cases where another type of offence constituted the principal offence.

5.6 Offences selected

Ten offences under the *Firearms Act 1996* and 6 offences under the *Crimes Act 1900* were selected for examination. The offences were selected to cover the following main categories of firearms offending: acquisition, possession, use, supply and manufacture. Although, broadly speaking, 16 offences have been selected, multiple sets of data are presented for each offence; reflecting the Local Court / higher courts distinction, legislative subsections and particular elements of an offence.

5.7 Results

5.7.1 Number of cases dealt with by the Local Court

The data presented in this paper suggests that a high proportion of non-strictly indictable offences are being prosecuted in the Local Court. Even with a statistical period for the Local Courts that is 3 years shorter than the period for the higher courts; for the non-strictly indictable firearms offences considered in this paper, 84.5% of cases were dealt with in the Local Court.

Table 3: Mode of prosecution of non-strictly indictable firearms offences

Offence	Maximum penalty	Summary (July 2011 to June 2015)	On indictment (July 2008 to June 2015)
Firearms Act 1996			
s 7(1) Unauthorised possess/use pistols/prohibited firearms	14 years	300	165
s 7A(1) Unauthorised possess/use firearms	5 years	364	16
s 36(1) Unregistered firearms	5 years/10years* [†]	431	7
s 50 Acquire firearms	5 years/10 years* [†]	4	0
s 50A(1) Manufacture firearm	10 years	1	1
s 50AA(1) Acquire firearm part	5 years	1	0
s 50AA(2) Acquire firearm part (pistol/prohibited firearm)	10 years [†]	0	0
s 51(1) Supply firearm to unauthorised person	5 years	10	0
s 51(2) Supply firearm to person not licensed dealer	5 years	3	0
s 51D(1) Unauthorised possess more than 3 firearms	10 years	12	1
s 62(1) Shorten firearms	10 years [†]	76	10
Crimes Act 1900			
s 93G(1) Causing danger with firearm or spear gun	10 years	97	34
s 93I(1) Possess unregistered firearm in public place	10 years	13	1
s 93I(2) Aggravated possess unregistered firearm in public place	14 years	6	6
Total cases		1318	241
*Maximum penalty of 10 years imprisonment only in respect of pistol or prohibited firearm			
[†] Increased to 14 years on 24 November 2015			

5.7.2 Application of standard non-parole periods for firearms offences

For the offences set out in Tables 4A–4E, which were the only firearms offences with standard non-parole periods before the commencement of the *Crimes (Sentencing*

Procedure) Amendment (Firearms Offences) Act 2015,⁴⁶ the statistics reveal that in most cases the terms of the non-parole periods imposed by the courts fell below the relevant standard non-parole period.

It has to be borne in mind, however, that the standard non-parole period represents the non-parole period that, taking into account only the objective factors affecting the seriousness of an offence, is in the middle of the range of seriousness. In theory, it is possible that all cases in a given population of cases fall into the lower range of objective seriousness; however, the larger the population of cases, the more likely it is that some cases will fall into the middle of the range of seriousness. Another consideration is that the sentences also reflect any favourable subjective factors that were present in each case.

**Table 4A: Application of standard non-parole period to *Firearms Act 1996*, s 7:
Unauthorised possession or use of pistols or prohibited firearms**

	Number	%
Higher court cases (July 2008–June 2015)	165	100
Term of imprisonment imposed	138	84
Non-parole period imposed equalled or exceeded standard non-parole period	16	12

**Table 4B: Application of standard non-parole period to *Firearms Act 1996*, s 51(1A):
Supply pistol or prohibited firearm to unauthorised person**

	Number	%
Higher court cases (July 2008–June 2015)	38	100
Term of imprisonment imposed	35	88
Non-parole period imposed equalled or exceeded standard non-parole period	0	0

**Table 4C: Application of standard non-parole period to *Firearms Act 1996*, s 51(2A)
Supply pistol or prohibited firearm to person not licensed firearms dealer**

	Number	%
Higher court cases (July 2008–June 2015)	9	100
Term of imprisonment imposed	8	89
Non-parole period imposed equalled or exceeded standard non-parole period	0	0

**Table 4D: Application of standard non-parole period to *Firearms Act 1996*, s 51B(1):
Supplying firearms on an ongoing basis**

	Number	%
Higher court cases (July 2008–June 2015)	16	100
Term of imprisonment imposed	16	100
Non-parole period imposed equalled or exceeded standard non-parole period	0	0

**Table 4E: Application of standard non-parole period to *Firearms Act 1996*, s 51D(2):
Unauthorised possession of more than 3 firearms including a pistol or prohibited firearm**

	Number	%
Higher court cases (July 2008–June 2015)	75	100
Sentence of imprisonment imposed	37	49
Non-parole period imposed equalled or exceeded standard non-parole period	0	0

⁴⁶ Excluding s 7 of the *Weapons Prohibition Act 1998* (unauthorised possession or use of a prohibited weapon); as “prohibited weapon”, while including certain types of ammunition, focuses on a broad range of items that are unrelated to firearms.

5.7.3 Summary of sentence outcomes

Sentence outcomes are presented in summary form in Tables 5A–25 for the two distinct timeframes stated above (at 5.3). The statistics reveal considerable variation in rates of imprisonment and terms of imprisonment for the different firearms offences, both within and across the Local Court and higher courts jurisdictions.

Tables 5A–25 use months as the unit of measure for all the following variables:

- Range: lowest to highest term of imprisonment.
- Mode: most frequently imposed term of imprisonment.
- Mean: average term of imprisonment.
- Max: maximum penalty that applied during the statistical period.
- SNPP: standard non-parole period that applied during the statistical period.

“Term of imprisonment” refers to the non-parole period plus the parole period that was imposed by the court. Where there is only 1 case in a given category, the range, mode and mean cannot be calculated, so are represented as “n/a”.

Table 5A: Possess unauthorised prohibited firearm: *Firearms Act 1996, s 7(1)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Local Court	148	38 (26%)	3–24	12, 24	13.5	n/a	168 [†]
Higher courts	77	64 (83%)	12–60	36	36.6	36*	168

* Increased to 4 years on 21 August 2015 [†]Jurisdictional limit of 24 months applies

Table 5B: Possess unauthorised pistol: *Firearms Act 1996, s 7(1)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Local Court	146	43 (29%)	2–24	12	12.7	n/a	168 [†]
Higher courts	81	69 (85%)	18–96	36	42	36*	168

* Increased to 4 years on 21 August 2015 [†]Jurisdictional limit of 24 months applies

Table 5C: Use unauthorised prohibited firearm: *Firearms Act 1996, s 7(1)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Local Court	3	0	n/a	n/a	n/a	n/a	168 [†]
Higher courts	5	4 (80%)	12–48	n/a	27	36*	168

* Increased to 4 years on 21 August 2015 [†]Jurisdictional limit of 24 months applies

Table 5D: Use unauthorised pistol: *Firearms Act 1996, s 7(1)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Local Court	3	0	n/a	n/a	n/a	n/a	168 [†]
Higher courts	2	1	n/a	n/a	n/a	36*	168

* Increased to 4 years on 21 August 2015 [†]Jurisdictional limit of 24 months applies

Table 6: Unauthorised possession of firearm: *Firearms Act 1996, s 7A(1)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Local Court	364	39 (11%)	3–20	18	11.5	n/a	60 [†]
Higher courts	16	9 (56%)	6–30	18	16	n/a	60

[†]Jurisdictional limit of 24 months applies

Table 7: Unregistered firearms: *Firearms Act 1996, s 36(1)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Local Court	391 [*]	20 (5%)	2–22	6, 9	8.5	n/a	60/120 ^{*†}
	33 [†]	8 (24%)	3–18	12	11.75	n/a	60/120 ^{*†}
	2 ^{**}	0	n/a	n/a	n/a	n/a	60/120 ^{*†}
	2 ^{††}	2 (100%)	3–18	n/a	10.5	n/a	60/120 ^{*†}
	1 [§]	0	n/a	n/a	n/a	n/a	60/120 ^{*†}
	1 ^{§§}	1 (100%)	n/a	n/a	n/a	n/a	60/120 ^{*†}
	1 ^{§§§}	0	n/a	n/a	n/a	n/a	60/120 ^{*†}
Higher courts	7 ^{***}	6 (86%)	6–36	n/a	21	n/a	60/120 [*]

^{*} possess unregistered firearm (not prohibited firearm/pistol) [†] possess unregistered firearm (pistol)

^{**} use unregistered firearm (not prohibited firearm/pistol) ^{††} supply unregistered firearm (not prohibited firearm/pistol)

[§] supply unregistered firearm (pistol) ^{§§} supply unregistered firearm (prohibited firearm) ^{§§§} acquire unregistered firearm

(prohibited firearm) ^{***} possess/use unregistered firearm ^{*} maximum penalty of 120 months applies only in respect of pistol

or prohibited firearm and was increased to 168 months on 24 November 2015 [†] Jurisdictional limit of 24 months applies

Table 8: Acquire firearms: *Firearms Act 1996 s 50*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Local Court	2 [*]	0	n/a	n/a	n/a	n/a	60/120 ^{*†}
	1 [†]	1 (100%)	n/a	n/a	n/a	n/a	60/120 ^{*†}
	1 ^{**}	0	n/a	n/a	n/a	n/a	60/120 ^{*†}
Higher courts	0	n/a	n/a	n/a	n/a	n/a	60/120 [*]

^{*} acquire firearm without licence/permit and without authorisation (not prohibited firearm/pistol) [†] acquire firearm without licence/permit and without authorisation (pistol) ^{**} acquire firearm without licence/permit and without authorisation (prohibited firearm) ^{*} maximum penalty of 120 months applies only in respect of pistol or prohibited firearm and was increased to 168 months on 24 November 2015 [†] Jurisdictional limit of 24 months applies

Table 9: Unauthorised manufacture of firearm: *Firearms Act 1996, s 50A(1)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Local Court	1	0	n/a	n/a	n/a	n/a	120 [†]
Higher courts	1	0	n/a	n/a	n/a	n/a	120

[†] Jurisdictional limit of 24 months applies

Table 10: Unauthorised manufacture pistol/prohibited firearm: *Firearms Act 1996, s 50A(2)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Higher courts	3 [*]	2 (66%)	36–120	n/a	78	n/a	240
	1 [†]	1 (100%)	n/a	n/a	n/a	n/a	240

^{*} manufacture prohibited firearm without licence or permit [†] manufacture pistol without licence or permit

Table 11: Acquire firearm part: *Firearms Act 1996, s 50AA(1)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Local Court	1	0	n/a	n/a	n/a	n/a	60*
Higher courts	0	n/a	n/a	n/a	n/a	n/a	60

* Jurisdictional limit of 24 months applies

Table 12: Supply firearm to unauthorised person: *Firearms Act 1996, s 51(1)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Local Court	8*	1 (13%)	n/a	n/a	n/a	n/a	60**
	2 [†]	0	n/a	n/a	n/a	n/a	60**
Higher courts	0	n/a	n/a	n/a	n/a	n/a	60

* supply firearms to unauthorised person [†] supply firearm without inspecting prescribed documents ** Jurisdictional limit of 24 months applies

Table 13: Supply pistol or prohibited firearm to unauthorised person: *Firearms Act 1996, s 51(1A)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Higher courts	19*	15 (79%)	24–96	48	53.6	120	240
	18 [†]	17 (94%)	18–96	60	51.0	120	240
	1 ^{††}	1 (100%)	n/a	n/a	n/a	n/a ^{††}	240**
	1 [§]	1 (100%)	n/a	n/a	n/a	120	240

* supply prohibited firearm to unauthorised person [†] supply pistol to unauthorised person ^{††} Attempt case, which ordinarily does not attract a standard non-parole period: see *R v DAC* [2006] NSWCCA 265 at [10] [§] supply pistol without inspecting prescribed documents ** Section 51CA of the *Firearms Act 1996* provides that the maximum penalty that ordinarily applies to the commission of an offence also applies to attempts to commit the offence.

Table 14: Supply firearm to person not licensed firearms dealer: *Firearms Act 1996, s 51(2)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Local Court	3	1 (33%)	n/a	n/a	n/a	n/a	60*
Higher courts	0	n/a	n/a	n/a	n/a	n/a	60

* Jurisdictional limit of 24 months applies

Table 15: Supply pistol or prohibited firearm to person not licensed firearms dealer: *Firearms Act 1996, s 51(2A)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Higher courts	6*	6 (100%)	30–72	36	42	120	240
	3 [†]	2 (66%)	24–42	n/a	33	120	240

* supply prohibited firearm without dealer/police witness [†] supply pistol without dealer/police witness

Table 16: Supply firearms on an ongoing basis: *Firearms Act 1996, s 51B(1)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Higher courts	1*	1 (100%)	n/a	n/a	n/a	n/a*	240
	16	16 (100%)	36–108	72	72	120	240

* This case was finalised before the standard non-parole period applied

**Table 17: Unauthorised possession of more than 3 unregistered firearms:
*Firearms Act 1996, s 51D(1)***

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Local Court	12	1 (8%)	n/a	n/a	n/a	n/a	120*
Higher courts	1	0	n/a	n/a	n/a	n/a	120

* Jurisdictional limit of 24 months applies

Table 18: Unauthorised possession of more than 3 unregistered firearms including pistol or prohibited firearm: *Firearms Act 1996, s 51D(2)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Higher courts	1*	1 (100%)	n/a	n/a	n/a	n/a*	240
	75	37 (49%)	24–144	36	51.9	120	240

* This case was finalised before the standard non-parole period applied

Table 19: Shorten firearms: *Firearms Act 1996, s 62(1)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Local Court	2*	0	n/a	n/a	n/a	n/a	120* [†]
	73 [†]	34 (47%)	2–24	18	12.8	n/a	120* [†]
	1**	0	n/a	n/a	n/a	n/a	120* [†]
Higher courts	10	5	24–36	36	31.2	n/a	120 [†]

* Shorten firearm without authorised permit. [†]Possess shortened firearm without authorised permit. ** Supply shortened firearm to another person. *Jurisdictional limit of 24 months applies [†]Increased to 168 months on 24 November 2015

Table 20: Discharging firearm etc with intent to cause grievous bodily harm: *Crimes Act 1900, s 33A(1)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Higher courts	17	16 (94%)	60–192	72	91.5	n/a*	300

* A standard non-parole period of 9 years was introduced on 21 August 2015

Table 21: Discharging firearm etc with intent to resist arrest: *Crimes Act 1900, s 33A(2)*

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Higher courts	2	2 (100%)	48–72	n/a	60	n/a*	300
	1 [†]	1 (100%)	n/a	n/a	n/a	n/a [†]	300

* A standard non-parole period of 9 years was introduced on 21 August 2015 [†] Attempt to discharge firearm with intent to resist arrest. Attempt cases do not ordinarily attract standard non-parole periods: see *R v DAC* [2006] NSWCCA 265 at [10]

**Table 22: Causing danger with firearm or speargun:
Crimes Act 1900, s 93G(1)**

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Local Courts	37*	12 (32%)	6–24	6, 12, 16	14	n/a	120*
	3 [†]	1 (33%)	n/a	n/a	n/a	n/a	120*
	42**	9 (21%)	6–24	24	18.3	n/a	120*
	15 ^{††}	4 (27%)	12–24	12	17	n/a	120*
Higher courts	10 [§]	9 (90%)	18–48	18	28.7	n/a	120
	11**	10 (91%)	18–60	36	33.6	n/a	120
	13 ^{††}	11 (85%)	12–54	42	36.5	n/a	120

* possess loaded firearm or spear gun in public place [†] possess loaded firearm or spear gun in a non-public place
 ** fire a firearm or spear gun in or near a public place ^{††} carry or fire a firearm or spear gun in a manner likely to injure a person or property [§] possess a loaded firearm or spear gun *Jurisdictional limit of 24 months applies

**Table 23: Fire at dwelling-house or building:
Crimes Act 1900, s 93GA(1)**

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Higher courts	33	29 (88%)	30–96	36, 72	55.7	n/a*	168

* A standard non-parole period of 5 years was introduced on 21 August 2015

**Table 24: Possess unregistered firearm in public place:
Crimes Act 1900, s 93I(1)**

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Local Court	13	3 (23%)	3–24	n/a	13	n/a	120*
Higher courts	1	1 (100%)	n/a	n/a	n/a	n/a	120

* Jurisdictional limit of 24 months applies

**Table 25: Possess unregistered firearm in public place
in circumstances of aggravation: Crimes Act 1900, s 93I(2)**

	Total Cases	Imprisonment imposed	Range	Mode(s)	Mean	SNPP	Max
Local Court	4*	2 (50%)	4–13	n/a	8.5	n/a	168**
	2 [†]	2 (100%)	12–18	n/a	15	n/a	168**
Higher courts	2*	2 (100%)	30–84	n/a	57	n/a	168
	4 [†]	4 (100%)	24–84	n/a	54	n/a	168

* possess unregistered pistol in a public place [†] possess unregistered prohibited firearm in a public place

** Jurisdictional limit of 24 months applies

6. THE 2015 AMENDMENTS

6.1 Firearms and Weapons Prohibition Legislation Amendment Act 2015

In response to the Martin Place siege and its tragic outcomes, the NSW Government announced that it would enact new firearms offences and increase the penalties for existing firearms offences.⁴⁷ Those changes were incorporated in the *Firearms and*

⁴⁷ NSW Government Media Release, [New Laws to combat terrorism and illegal firearms](#), 28 August 2015;

Weapons Prohibition Legislation Amendment Act 2015. As Deputy Premier and Minister for Justice and Police, Troy Grant MP, said:⁴⁸

The amendments to the *Firearms Act 1996* and the *Weapons Prohibition Act 1998* give effect to the recommendations of the joint Commonwealth and New South Wales Martin Place siege review report to strengthen the laws relating to illegal firearms.

The Deputy Premier further said:⁴⁹

These amendments to the *Firearms Act* ... are part of a suite of initiatives to better control and manage illegal firearms in our State. They are not targeted at legitimate, licensed firearms owners. Rather, they are targeted at criminals who think they can steal or modify firearms or manufacture firearms from 3D blueprints. Those who think they can skirt the law will find themselves facing some of the toughest penalties for firearms offences in this country.

The *Firearms and Weapons Prohibition Legislation Amendment Act 2015* amended key firearms offences in order to:⁵⁰

[P]rovide a consistent maximum penalty of 14 years imprisonment for the possession, use, supply or acquisition of a firearm where the firearm involved is a pistol; a prohibited firearm; defaced—that is, it has its identifying marks or numbers removed; unregistered; stolen or not authorised by licence or permit to be in possession of that person.

Commencing on 24 November 2015 the following offences in the *Firearms Act 1996* — all of which are not strictly indictable — had their maximum penalties increased to 14 years:

Table 26: Increases to maximum penalties under the Firearms Act 1996		
Section	Offence	Increase
s 36(1)*	Supply, acquire, possess or use unregistered firearm	10 to 14 years
s 50*	Acquisition of firearms — pistols or prohibited firearms	10 to 14 years
s 50AA(2)*	Acquisition of firearm parts — pistols or prohibited firearms	10 to 14 years
s 51BA(2)*	Supply firearm part — pistol or prohibited firearm	10 to 14 years
s 62(1)*	Shorten firearms	10 to 14 years
s 63(1)–(4)*	Convert firearms	10 to 14 years
s 66(1)*	Defaced or altered firearms or firearm parts	5 to 14 years
s 70*	False or misleading applications — pistol or prohibited firearm	10 to 14 years

* Not strictly indictable offence. Source: *Firearms and Weapons Prohibition Legislation Amendment Act 2015*, Sch 1. The amendments commenced on 24 November 2015.

The *Firearms and Weapons Prohibition Legislation Amendment Act 2015* also created two new firearms offences.⁵¹ The first of the two new offences is s 51F, which prohibits the possession of a digital blueprint for the manufacture of a firearm on a 3D printer or on an electronic milling machine. Section 51F carries a maximum penalty of 14 years imprisonment.

⁴⁸ [“New NSW bail and firearm laws announced in response to Lindt Café Sydney siege”](#), 28 August 2015, ABC News. [NSW Government response to the Martin Place siege: Joint Commonwealth—NSW Review](#).

⁴⁹ [NSWPD, 27 October 2015, p 5094 \(T Grant\)](#).

⁴⁹ [NSWPD, 27 October 2015, p 5094 \(T Grant\)](#).

⁵⁰ [NSWPD, 27 October 2015, p 5094 \(T Grant\)](#).

⁵¹ A new s 66 offence (defaced or altered firearms or firearm parts) replaced a narrower s 66 offence (defacing or altering identification marks).

The second of the two new offences is s 51H, which prohibits the use, supply, acquisition or possession of a stolen firearm or firearm part. Section 51H further prohibits giving possession of a stolen firearm or firearm part to another person. Section 51H also carries a maximum penalty of 14 years imprisonment. Sections 51F and 51H are both non-strictly indictable offences.

6.2 Crimes (Sentencing Procedure) Amendment (Firearms Offences) Act 2015

Implementing recommendations made by the Sentencing Council in 2013⁵² and commitments made during the 2015 election,⁵³ the Baird Government enacted the *Crimes (Sentencing Procedure) Amendment (Firearms Offences) Act 2015* in order to increase an existing standard non-parole period and introduce new standard non-parole periods for firearms offences; so as to “better and more appropriately punish criminals who seek to create fear or hurt other members of the community with guns”.⁵⁴ The amendments apply only to offences committed, or allegedly committed, on or after 21 August 2015.⁵⁵

Table 27: Increased and new standard non-parole periods (SNPP) for firearms offences

Act and section	Offence	SNPP
Increased non-parole period		
<i>Firearms Act 1996</i> , s 7(1)	Unauthorised possession / use	From 3 to 4 years
New standard non-parole period		
<i>Crimes Act 1900</i> , s 33A(1)	Discharge firearm/intent to cause grievous bodily harm	9 Years
<i>Crimes Act 1900</i> , s 33A(2)	Discharge firearm/intent to resist arrest	9 years
<i>Crimes Act 1900</i> , s 93GA(1)	Fire at dwelling house or building	5 years
<i>Crimes Act 1900</i> , s 93GA(1A)	Fire at dwelling house or building/public disorder	6 years
<i>Crimes Act 1900</i> , s 93GA(1B)	Fire at dwelling house or building/organised criminal activity	6 years
Source: <i>Crimes (Sentencing Procedure) Act 1999</i> , s 54A and associated Table. <i>Crimes (Sentencing Procedure) Amendment (Firearms Offences) Act 2015</i> , Sch 1. The amendments apply only to offences committed, or alleged to have been committed, on or after 21 August 2015: s 2 and Sch 1[5].		

In the Second Reading speech for the *Crimes (Sentencing Procedure) Amendment (Firearms Offences) Act 2015*, Attorney General Gabrielle Upton articulated the Government’s view of standard non-parole periods and its expectations concerning the implementation of standard non-parole periods by the courts:⁵⁶

Standard non-parole periods are an important mechanism in our sentencing laws. They are a bridge between the Legislature and the courts. They say to courts, in the clearest possible terms, “We see these types of offences as among the most serious that exist, and we want to ensure that the sentences imposed are consistent, adequate and appropriate, and that they

⁵² *Standard non-parole periods*, NSW Sentencing Council, 2013, p 29 (Recommendation 3.2) and p 44 (Recommendation 4.2). The standard non-parole period for offences against s 7 of the *Weapons Prohibition Act 1998* was also increased, although from 3 to 5 years.

⁵³ Media Release: “[A re-elected Baird Government will deliver tougher sentencing for serious crimes](#)”.

⁵⁴ [NSWPD, 2 June 2015, p 1226 \(G Upton\)](#).

⁵⁵ *Crimes (Sentencing Procedure) Amendment (Firearms Offences) Act 2015*, s 2 and Sch 1[5].

⁵⁶ [NSWPD, 2 June 2015, p 1226 \(G Upton\)](#).

meet community expectations." That is why the Government is today proposing the addition of a number of new offences to the standard non-parole period scheme.

Both the courts and the Attorney General have used spatial metaphors to refer to the role of standard non-parole periods. There appears, however, to be a subtle but significant difference between the two metaphors, with "bridge" a stronger symbol of intended destination than "guidepost". With respect to firearms offences sentenced between July 2008 and June 2015, that metaphorical difference is reflected in the sentencing statistics detailed above at 5.7.2. How that situation continues to develop, particularly since *Muldrock*, is a matter for future research.

7. CONCLUSION

The data presented in this paper suggests that the number of non-strictly indictable firearms offences dealt with by the Local Court and the effectiveness of standard non-parole periods for firearms offences are two areas warranting future consideration. Whether the objectives of the *Firearms and Weapons Prohibition Legislation Amendment Act 2015* and the *Crimes (Sentencing Procedure) Amendment (Firearms Offences) Act 2015* will be met will become apparent over time. The sentencing data presented in this paper forms a useful point of reference in that regard.