

Executive summary

How do sentencing patterns in New South Wales compare with other jurisdictions? This is an important factor in any public debate on whether sentencing outcomes in New South Wales are too harsh or too lenient. Yet there are few studies of how New South Wales compares with other Australian states, or with equivalent overseas common law jurisdictions.

Ten years ago, the New South Wales Law Reform Commission referred to community concern about lenient sentencing but concluded:

“The Commission is not aware of any empirical studies which show that sentences in New South Wales are too lenient either in absolute terms or, for example, in comparison to sentences in other Australian jurisdictions.”¹

In 2004, the Chief Justice of the High Court, Murray Gleeson, speaking extra-judicially, observed:

“There is one topic on which the Australian public are given practically no information at all, and that is the way in which sentences in Australia compare with sentences imposed in similar places overseas.”²

Gleeson CJ said the question *how do sentences compare* is “... surely relevant to an accusation that sentencing judges in this country are ‘soft’ on violent crime.”³

1 New South Wales Law Reform Commission, *Discussion Paper 33: Sentencing*, 1996, Sydney, p 36. In 1992 and 1995, the New South Wales Bureau of Crime Statistics and Research reported that New South Wales had much higher imprisonment rates than Victoria: P Gallagher, “Why does New South Wales have a higher imprisonment rate than Victoria?” (1995) 23 *Crime and Justice Bulletin* 1. See also L Babb, “Imprisonment rates in NSW and Victoria: explaining the difference” (1992) 14 *Crime and Justice Bulletin* 1; A Freiberg, “What’s It Worth? A Cross-Jurisdictional Comparison of Sentence Severity”, in C Tata and N Hutton (Eds), *Sentencing and Society: International Perspectives*, 2002, Ashgate, Aldershot, pp 237–256.

2 AM Gleeson, “Out of Touch or Out of Reach?” (2005) 7(3) *The Judicial Review* 241 at 245.

3 *ibid.*

Using publicly available sentencing data from seven other common law jurisdictions, and the New South Wales Judicial Commission's Judicial Information Research System (JIRS),⁴ this study investigates how the use of full-time imprisonment by judges in New South Wales compares both nationally and internationally.

Key findings

This 25 page study found that across Australian and international jurisdictions New South Wales had the highest statutory maximum penalty available for sexual assault (natural life), and the equal second highest for robbery (25 years) and break and enter/burglary offences (25 years).

Comparing imprisonment rates per 100,000, New South Wales had a higher rate (170) than the Australian average (156), four Australian states and territories, New Zealand (168), Canada (129) and England (137).

In New South Wales the proportion of offenders sentenced to full-time imprisonment is higher than other Australian jurisdictions for sexual assault (96%), robbery (83%), and more serious robberies (86%), and higher than both Australian and international jurisdictions for break and enter/burglary offences (78%). For dangerous driving causing death in New South Wales, 88% of offenders who committed the offence under the influence of intoxicating liquor or drugs received full-time imprisonment, less than in England (95%). However, for aggravated dangerous driving causing death in New South Wales, an offence which includes more serious intoxication cases (0.15 and above), 99% of offenders received full-time imprisonment.

⁴ The jurisdictions compared are Victoria, Queensland, South Australia, Western Australia, New Zealand, England (including Wales) and the United States. Imprisonment rates per 100,000 head of population are also included for Tasmania, the Northern Territory, Australian Capital Territory, and Canada. See "Appendix A: The data" for sources of sentencing information in each jurisdiction.