



Full-time imprisonment in New South Wales and other jurisdictions

A national and international comparison



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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.

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Introduction

Comparisons between jurisdictions have become an accepted indicator of sentencing severity or leniency. Yet there have been only a handful of studies comparing New South Wales with other jurisdictions. One reason for the lack of widespread sentencing comparisons is that jurisdictions can vary in offence definitions, sentencing practices, statistical methods and cultural differences.⁵ As Professor Arie Freiberg notes:

“cross-jurisdictional comparisons of sentence severity have been few and their findings relatively narrow and inconclusive. To some degree this is not surprising as international criminal justice data are rarely completely comparable and there are even significant variations between jurisdictions within federalised nations.”⁶

It is accepted that these difficulties do not prevent comparison, they merely indicate that results must be interpreted in light of local conditions. There is a growing body of comparative sentencing scholarship published by both governments and peer-reviewed journals.⁷ Cross-jurisdictional analysis is becoming more frequent and its findings more precise as sentencing information is made available through government and professional sources.⁸

5 For example, the fundamental differences in Australia and the United States compared to Northern European countries: see D Chappell, “Sentencing of Offenders: A Consideration of the Issues of Severity, Consistency and Cost” (1992) 66 *Australian Law Journal* 423 at 430–432. See also R Frase, “Comparative Perspectives on Sentencing Policy and Research” in M Tonry and R Frase (Eds), *Sentencing and Sanctions in Western Countries*, 2001, Oxford University Press, Oxford, pp 281–286.

6 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. Professor Freiberg is Dean of the Faculty of Law at Monash University and Chair of the Victorian Sentencing Advisory Council.

7 In addition to Freiberg’s article in *Sentencing and Society*, see K Pease, “Cross-national Imprisonment Rates” (1994) 34 *British Journal of Criminology* 116–130; J Lynch, “A Cross-national Comparison of the Length of Custodial Sentences for Serious Crimes” (1993) 10(4) *Justice Quarterly* 639–660; W Young and M Brown, “Cross-national Comparisons of Imprisonment” (1993) 17 *Crime and Justice* 1–50; DP Farrington, PA Langan and M Tonry (Eds), *Cross-national Studies in Crime and Justice*, 2004, US Department of Justice, Washington; G Barclay and C Tavares, *International Comparisons of Criminal Justice Statistics 2000*, 2002, United Kingdom Home Office, London.

8 For example, the Victorian Sentencing Advisory Council hosted the international conference, “Sentencing and the Community: Politics, Public Opinion and the Development of Sentencing Policy” in July 2006. See “Appendix A” for sources of sentencing information in each jurisdiction.

The imprisonment threshold

It is recognised within comparative sentencing analysis that the decision to send an offender to gaol — the use of full-time imprisonment — is “the best measure of punitiveness that is readily accessible.”⁹ With the exception of capital punishment in some jurisdictions, full-time imprisonment is the most serious form of punishment available under the rule of law.¹⁰

At common law, full-time imprisonment was always regarded as the sanction of last resort.¹¹ That principle is now enshrined in s 5(1) of the *Crimes (Sentencing Procedure) Act 1999* (NSW),¹² which provides that:

“A court must not sentence an offender to imprisonment unless it is satisfied, having considered all possible alternatives, that no penalty other than imprisonment is appropriate.”

Equivalent provisions can be found in most common law jurisdictions, including Victoria, Queensland, South Australia, Western Australia, the Commonwealth, New Zealand, England and Canada.¹³

Some jurisdictions provide additional thresholds that require courts to impose the most lenient type of penalty appropriate to the offender. Victoria, Western Australia and England require courts to consider whether some less severe penalty should be imposed.¹⁴ In England, overcrowding of the prison system has become an important factor for the judge to consider in deciding whether to sentence an offender to full-time imprisonment.¹⁵ In Queensland, the principle of last resort has been abolished for cases involving actual or threatened violence or where harm is inflicted against a victim, while in New Zealand there is a statutory presumption of imprisonment for sexual assault offenders.¹⁶

9 W Young and M Brown, “Cross-national Comparisons of Imprisonment” (1993) 17 *Crime and Justice* 1 at 2.

10 Among the jurisdictions included in this study, only the United States has retained the death penalty.

11 *Dinsdale v R* (2000) 202 CLR 321 at [14]; *Parker v DPP* (1992) 28 NSWLR 282 at 296; *R v James* (1985) 14 A Crim R 364.

12 *R v Way* (2004) 60 NSWLR 168 at [115].

13 Section 5(4) *Sentencing Act 1991* (VIC); s 9(2)(a) *Penalties and Sentences Act 1992* (QLD); s 11 *Criminal Law (Sentencing) Act 1988* (SA); ss 6(4) and 39(3) *Sentencing Act 1995* (WA); s 17A *Crimes Act 1914* (Cth); s 8(g) *Sentencing Act 2002* (NZ); s 152(2) *Criminal Justice Act 2003* (UK); s 718.2(d) *Criminal Code 1985* (CAN). The text of these provisions can be accessed in “Appendix B: Sentencing regimes”.

14 Section 5(4A)–(7) *Sentencing Act 1991* (VIC); s 39(3) *Sentencing Act 1995* (WA); s 148(1) *Criminal Justice Act 2003* (UK), extracted in “Appendix B”.

15 *R v Scarth* [2006] EWCA Crim 856 at [20]: “When prisons are overcrowded the result is to hinder or prevent the valuable work of rehabilitation that a prison should normally provide. The fact that prisons are overcrowded may, for this reason, be a relevant factor where the sentencer’s decision is on the cusp, so that there is a real issue as to whether a community sentence can be justified, rather than a custodial sentence.”

16 Section 9(3) *Penalties and Sentences Act 1992* (QLD); s 128B *Crimes Act 1961* (NZ).

The range of penalties

Common law jurisdictions are remarkably similar in the range of penalties other than full-time imprisonment available to sentencing courts.¹⁷ All jurisdictions have provisions for suspended sentences, community service orders and good behaviour bonds. Some jurisdictions provide for a short custodial sentence followed by supervision or rehabilitation programs.¹⁸

At the more severe end of the spectrum of penalties, New South Wales provides for periodic and home detention. Only Victoria and England offer similar custodial alternatives to full-time imprisonment.¹⁹

Indicators in this study

This study compares the use of full-time imprisonment — the decision by a court to send an offender to gaol — across Australian and other jurisdictions. As a leading review of comparative sentencing studies observed:

“Trend analysis and cross-jurisdictional comparisons of prison populations have the potential to offer rich insights not only into how *forms* of punishment vary but also the extent to which jurisdictions differ in the severity of punishment.”²⁰

There are a number of ways of measuring the use of full-time imprisonment, each with its own strengths and frailties. To provide the most complete view of how lenient or severe sentencing is in each jurisdiction, this study uses a range of imprisonment indicators:

- Imprisonment rates per 100,000.
- Statutory maximum penalties.
- Full-time imprisonment rates for specific offences.

Other indicators may also provide useful insights: for example, a comparison of the actual duration of sentences imposed on offenders in each jurisdiction for specific offences. However, comparing sentence lengths presents its own difficulties. It would need to take into account more complex variables such as remissions, truth in sentencing (the actual time served) and parole regimes in each jurisdiction.

17 “Appendix C: Major sentencing options other than full-time imprisonment” provides references to the relevant statutory regimes in each jurisdiction.

18 Victoria (ss 18Q–W *Sentencing Act* 1991); England (s 181 *Criminal Justice Act* 2003).

19 Home detention order in Victoria (ss 18ZT–ZZR *Sentencing Act* 1991); intermittent custody order in England (ss 183–186 *Criminal Justice Act* 2003).

20 Young and Brown, op cit n 9, 2.

Imprisonment rates per 100,000 population

The imprisonment rate of prisoners per 100,000 head of population has long been regarded as one reliable general indicator of the use of full-time imprisonment in common law jurisdictions. Because it includes both sentenced prisoners and those on remand, it provides a measure of the severity of both bail and sentencing law. Prisoners on remand and stricter bail laws can have major impacts on the overall prison population.²¹

The imprisonment rate per 100,000 is a common method for making general comparisons between jurisdictions within federalised states,²² as well as international comparisons.²³

This study compares New South Wales with other Australian jurisdictions, as well as with New Zealand, England (including Wales), Canada and the United States.²⁴

Different counting procedures may introduce artificial discrepancies, but this study has reduced a number of possible variables. Both remand and sentenced prisoners are

21 See J Fitzgerald, “Increases in the NSW remand population” (2000) (Nov) *Crime and Justice Statistics Bureau Brief*, NSW Bureau of Crime Statistics and Research 1; J Fitzgerald and D Weatherburn, “The impact of the *Bail Amendment (Repeat Offenders) Act 2002*” (2004) 83 *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research 1.

22 For example, Australian Bureau of Statistics, *Corrective Services, June Quarter 2006*, 2006, Canberra, p 3; Australian Bureau of Statistics, *Prisoners in Australia 2005*, 2005, Canberra, p 4; and K Beattie, “Adult Correctional Services in Canada 2004–2005” (2006) 26(5) *Juristat* 1 at 8. See also P Gallagher, op cit n 1.

23 R Frase, “Sentencing Laws and Practices in France” (1995) 7(6) *Federal Sentencing Reporter* 275–280; Young and Brown, op cit n 9, 1–50.

24 The prison population is calculated either at a particular time, or as a daily average over a 12 month period. Comparative sentencing scholarship accepts that the average daily measure provides a more accurate representation of prisoner population than a pinpoint census. Imprisonment rates per 100,000 referred to in this study utilise average daily populations for Australia, Canada and England.

included for all jurisdictions. Young offenders not imprisoned in an adult correctional facility are excluded, as far as possible.²⁵

The rate of imprisonment per 100,000 population encompasses the sentencing practices of all three tiers of the criminal courts. Corrective Services statistics in New South Wales indicate that sentences of six months or less, usually imposed by lower courts, have a significant impact on the prison population.²⁶

Australia

In 2004, the Australian Bureau of Statistics reported that Australia's prison population had grown 50% in the last ten years, while Australia's general population grew only 15% over the same period.²⁷

In 1997, Australia reported an imprisonment rate of 126 per 100,000. This placed Australia below Canada (153), New Zealand (145) and the United States (645), and slightly higher than England (120).²⁸

25 In England, young offenders under 21 are included in the imprisonment rate used in this study, as reported by the United Kingdom Home Office. Juveniles are also included for United States and New Zealand figures, however according to the International Centre for Prison Studies, juveniles included in these figures comprise less than 2% of the total prison population. In Australia and Canada, only prisoners in adult correctional facilities are included. The Australian Bureau of Statistics notes that juvenile offenders may be imprisoned in adult correctional facilities in exceptional circumstances. The definition of adult may vary slightly in each jurisdiction, although in most Australian states, as in Canada, it is 18 years and over. In Queensland, a person is considered an adult if aged 17 years and over.

26 In 2000–2001, offenders sentenced to less than six months in prison accounted for 63% of all prison receptions for that year: New South Wales Legislative Council Select Committee on the Increase in Prisoner Population, *Inquiry on the Increase in Prisoner Population: Final Report*, 2001, Sydney, p 30. According to the New South Wales Bureau of Crime Statistics and Research in 2002, “it is estimated that, if all those who currently receive sentences of six months or less were instead given non-custodial penalties, the number of new prisoners received in NSW prisons would drop from about 150 per week to about 90 per week, the NSW prison population would be reduced by about 10 per cent, and there would be savings of between \$33 million and \$47 million per year in the recurrent cost of housing prisoners”: B Lind and S Eyland, “The impact of abolishing short prison sentences” (2002) 73 *Crime and Justice Bulletin* 1. In England, where prison over-crowding is a particular concern, short-term prison sentences were significantly reformed by ss 181–195 *Criminal Justice Act 2003*: A Ashworth, *Sentencing and Criminal Justice*, 2005, Cambridge University Press, Cambridge, p 271.

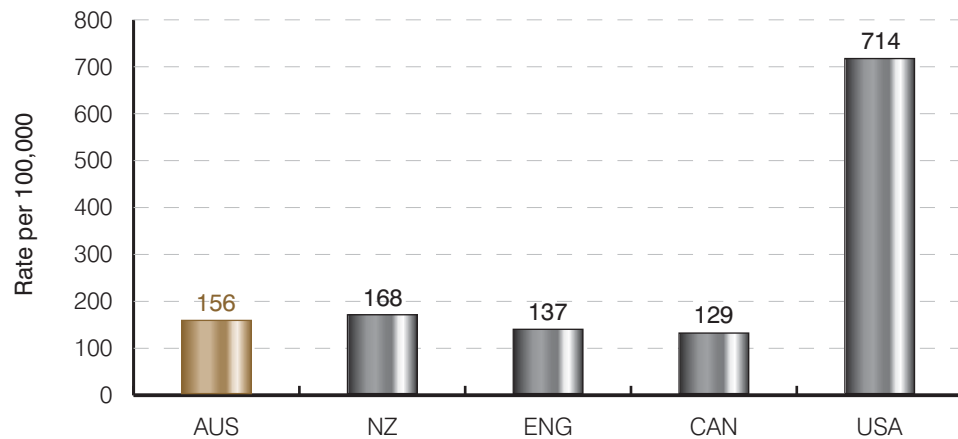
27 Australian Bureau of Statistics, *Press Release: Prisoner numbers have increased by 50% over past 10 years*, 22/1/2004, Canberra.

28 Australian Bureau of Statistics, *Corrective Services, December Quarter 1998*, 1999, Canberra, p 7; P White, *The Prison Population in 1997*, 1998, United Kingdom Home Office, London, p 3; K Beattie, “Adult Correctional Services in Canada 2004–2005” op cit n 22. Data for Canada from 1995/1996. Data for New Zealand and the United States from R Walmsley, *World Prison Population List*, 1999, United Kingdom Home Office, London.

Today, Australia’s imprisonment rate has exceeded and grown faster than some comparable jurisdictions. As *Figure 1* illustrates, the national imprisonment rate is now 156 per 100,000,²⁹ less than New Zealand (168) and the United States (714), but higher than Canada (129) and England (137).³⁰

Australia’s imprisonment rate has grown 24% since 1997, while the increase in New Zealand, England and the United States was less than 16% over a similar period, and Canada’s imprisonment rate decreased. In Australia in 2005–2006, the total net recurrent and capital expenditure on prisons was \$2.2 billion.³¹

Figure 1: Current international imprisonment rates per 100,000



Measurements for particular countries are a broad indicator of punitiveness but they disguise the sentencing practices of particular states within each country. In Australia, the United States and Canada, states or provinces are primarily responsible for enforcement of the law and the punishment of offenders.

For this reason, it is more accurate to measure prison population per 100,000 in individual states where relevant, to show whether a particular state (in comparison with others) is more punitive or lenient.

29 Australian Bureau of Statistics, *Corrective Services, June Quarter 2006*, op cit n 22.

30 R Cuncell, *The Prison Population in 2002, 2003*, United Kingdom Home Office, London, p 3; K Beattie, “Adult Correctional Services in Canada 2004/2005” op cit n 22. Data for New Zealand and the United States from R Walmsley, *World Prison Population List, 2005*, International Centre for Prison Studies, King’s College, London. Results have been selected for each jurisdiction using the most recent published data. For Australia, the period was 2005, for New Zealand and Canada, 2004, for the United States, 2003 and for England, 2002.

31 Productivity Commission, *Report on Government Services 2007, 2007*, Canberra, p 7.3.

New South Wales

In Australia in 2005, the Australian Bureau of Statistics reported that the Northern Territory (557) and Western Australia (228) had by far the highest imprisonment rates relative to their population (*Figure 2*). After the Northern Territory and Western Australia, Queensland (177) and New South Wales (170) had the next highest imprisonment rates.

The high proportion of Indigenous persons incarcerated in the Northern Territory contributes substantially to that jurisdiction's overall imprisonment rate. Out of the Northern Territory's average of 791 prisoners in 2005, 629 were Indigenous Australians (80%).³²

In 2007, the Productivity Commission reported that the imprisonment rate per 100,000 in New South Wales had risen for five consecutive years since 2000.³³ An earlier study by the Judicial Commission found that the proportion of offenders convicted in the District and Supreme Courts and sentenced to full-time imprisonment rose from 48% in 1990–1993 to 69.6% in 2002.³⁴ Similarly, the New South Wales Bureau of Crime Statistics has reported that the proportion of offenders sentenced to prison in New South Wales “has remained stable or increased” for broad categories of offences since 1990.³⁵

The actual number of prisoners in New South Wales is higher than any other Australian jurisdiction (8925). Queensland had a total prisoner population of 5351, Victoria 3610, and Western Australia 3445.³⁶ Given that New South Wales is the most populous Australian state (6.8 million),³⁷ its sentencing and bail laws heavily influence Australia's overall imprisonment rate per 100,000.

The daily cost of an inmate in full-time secure custody in New South Wales is \$186.80.³⁸ The total net recurrent and capital expenditure on prisons in New South Wales in 2005–2006 was \$875 million.³⁹

32 Australian Bureau of Statistics, *Corrective Services, June Quarter 2006*, op cit n 22, pp 10, 14.

33 Productivity Commission, *Report on Government Services 2007*, op cit n 31, p 7.5.

34 J Keane, P Poletti, H Donnelly, “Common Offences and the Use of Imprisonment in the District and Supreme Courts in 2002” (2004) 30 *Sentencing Trends and Issues* 1.

35 J Baker, “Are the courts becoming more lenient?” (1998) 40 *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research 1 at 9; J Fitzgerald, “Trends in sentencing in the NSW Criminal Courts: 1990–2000” (2001) 62 *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research 1 at 3.

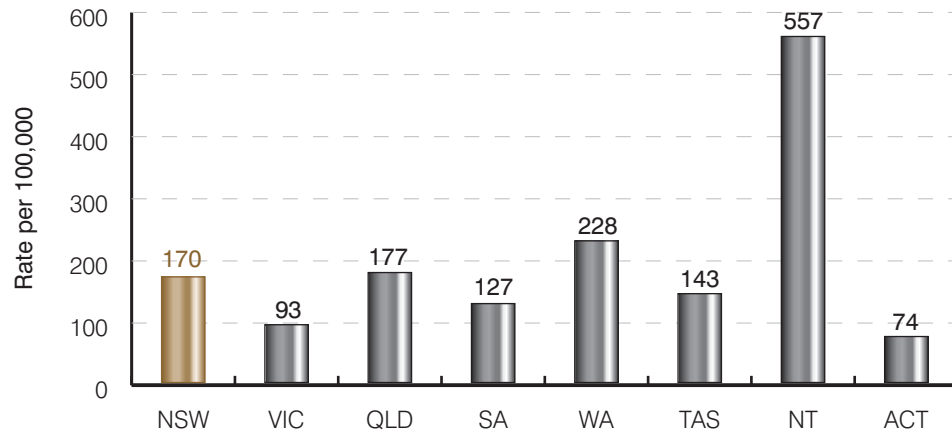
36 Australian Bureau of Statistics, *Corrective Services, June Quarter 2006*, op cit n 22.

37 Australian Bureau of Statistics, *Australian Demographic Statistics, June Quarter 2006*, 2006, Canberra, 1.

38 New South Wales Department of Corrective Services, *Latest Facts and Figures*, 2006, Sydney.

39 Productivity Commission, *Report on Government Services 2007*, op cit n 31, Table 7A.6.

Figure 2: Australian imprisonment rates per 100,000⁴⁰



New South Wales appears particularly punitive when compared internationally. It has a higher imprisonment rate (170) than the Australian average (156), New Zealand (168), England (137) and all but two of Canada’s provinces and territories, as well as Canada overall (129).

However, there are recognised difficulties in relying on the broad measure of imprisonment rate per 100,000 alone. A more targeted indicator of sentence severity is the number of offenders imprisoned as a proportion of those convicted for specific offences.⁴¹

40 Australian Bureau of Statistics, *Corrective Services, June Quarter 2006*, op cit n 22. Results are based on average daily prison populations for 2005.

41 K Pease, “Cross-national imprisonment rates” (1994) 34 *British Journal of Criminology* 116 at 120: “[T]he measurement of national differences in ‘punitiveness’ is elusive. Restricting oneself to admissions under sentence as the numerator and convictions as the denominator and analysing separately by offence type is perhaps the closest one can get in a non-experimental situation to assessing national differences in ‘punitiveness’ of sentencing as defined by the imposition of custody.”

Full-time imprisonment for specific offences

The second part of this study focuses on the proportion of offenders receiving full-time imprisonment for four specific offences:

- Sexual assault.
- Dangerous driving causing death.
- Robbery.
- Break and enter/burglary.

Results for each of these offences are compared across eight similar common law jurisdictions:

- New South Wales.
- Victoria.
- Queensland.
- South Australia.
- Western Australia.
- New Zealand.
- England (including Wales).
- United States.

These offences were chosen because the elements or criminal conduct covered by each are relatively similar across jurisdictions. The availability and comparability of sentencing data was also a factor in isolating these offences and choosing which jurisdictions to compare.⁴²

Importantly, these are some of the most common crimes largely dealt with on indictment in the middle tier of the adult court system in each jurisdiction. They are serious offences which involve the infliction of severe harm or fear.

42 See “Appendix A” for further details on sources of sentencing information and the time period covered in each jurisdiction. “Appendix D: Offence definitions” reproduces the offence definitions in each Australian jurisdiction, New Zealand and England.

In New South Wales, Queensland, South Australia and Western Australia, the middle-tier is known as the District Court; in Victoria, the County Court; while in England it is the Crown Court. New Zealand has only a two-tier court system at first-instance, comprising the District and High Courts.

For each offence, this study also compares the statutory maximum penalties set by Parliament in each jurisdiction. As four members of the High Court said in *Markarian v The Queen*:

“Legislatures do not enact maximum available sentences as mere formalities. Judges need sentencing yardsticks. It is well accepted that the maximum sentence available may in some cases be a matter of great relevance.”⁴³

A maximum penalty for an offence is a reflection of how serious the conduct is regarded by the Parliament. When the legislature increases a maximum penalty for an offence the courts have interpreted it as an intention that the offence should attract a heavier sentence.⁴⁴ In New South Wales, the maximum penalties for sexual assault, dangerous driving, and break and enter have been increased in the last 15 years.⁴⁵

Sexual assault

Sexual assault or rape, in all the jurisdictions selected in this study, involves an act of sexual penetration without consent. In New South Wales, the Court of Criminal Appeal observed that sexual assault has:

“come to be regarded as requiring increased sentences ... by reason of a change of community attitudes [or] ... change in objective circumstances, e.g. an increase in prevalence of the offence.”⁴⁶

New South Wales and Western Australia are the only jurisdictions in this study that provide separate offences for more aggravated forms of sexual assault. Section 61I *Crimes Act* 1900 (NSW) and s 325 *Criminal Code* (WA) provide an offence of sexual assault, while s 61J (aggravated sexual assault), s 61JA (aggravated sexual assault in company) and s 326 cover the various aggravated forms. Other jurisdictions provide one form of the offence for all sexual assaults, with additional aggravating features taken into account by the judge at sentence.⁴⁷

43 (2005) 215 ALR 213 at [30].

44 *R v Way* (2004) 60 NSWLR 168 at [52]; *Baumer v The Queen* (1988) 166 CLR 51 at 56.

45 The impact of the increase in statutory maximums on sentencing practices for sexual assault was considered in *R v Hartikainen* (unrep, 8/6/93, NSWCCA) per Gleeson CJ; for dangerous driving see *R v Slattery* (1996) 90 A Crim R 519; for break and enter see *R v Li* (unrep, 9/7/97, NSWCCA).

46 *R v MJR* (2002) 54 NSWLR 368 per Spigelman CJ at [11].

47 Victoria (s 38 *Crimes Act* 1958), Queensland (s 349 *Criminal Code* 1899), South Australia (s 48 *Criminal Law Consolidation Act* 1935), New Zealand (ss 128–128B *Crimes Act* 1961) and England (ss 1–2 *Sexual Offences Act* 2003).

Comparing statutory maximum penalties

With the introduction of the aggravated sexual assault offence in s 61JA in 2001, the New South Wales statutory maximum of natural life elevates this state above the highest penalties in all other jurisdictions.⁴⁸

Victoria has a single statutory maximum of 25 years, while in New Zealand and Western Australia (for aggravated sexual assault) the maximum is 20 years. *Table 1* details the range of statutory maximum penalties for sexual assault, by jurisdiction.

Table 1: Range of statutory maximum penalties for sexual assault⁴⁹

Jurisdiction	Statutory Maximum
New South Wales	14 – Natural Life
Victoria	25
Queensland	Life
South Australia	Life
Western Australia	14 – 20
New Zealand	20
England	Life

Offenders sentenced to full-time imprisonment

New South Wales had the highest proportion of sexual assault offenders sentenced to full-time imprisonment among all Australian jurisdictions.

For aggravated sexual assault under ss 61J and 61JA, the imprisonment rate was 100%. For sexual assault under s 61I, the proportion was 94%. The combined imprisonment rate for all sexual assault offenders in New South Wales under these sections was 96%.

Among the other Eastern seaboard states, Queensland and Victoria both reported a 79% full-time imprisonment rate.⁵⁰ *Figure 3* details the proportion of offenders sentenced to full-time imprisonment for sexual assault, by jurisdiction.

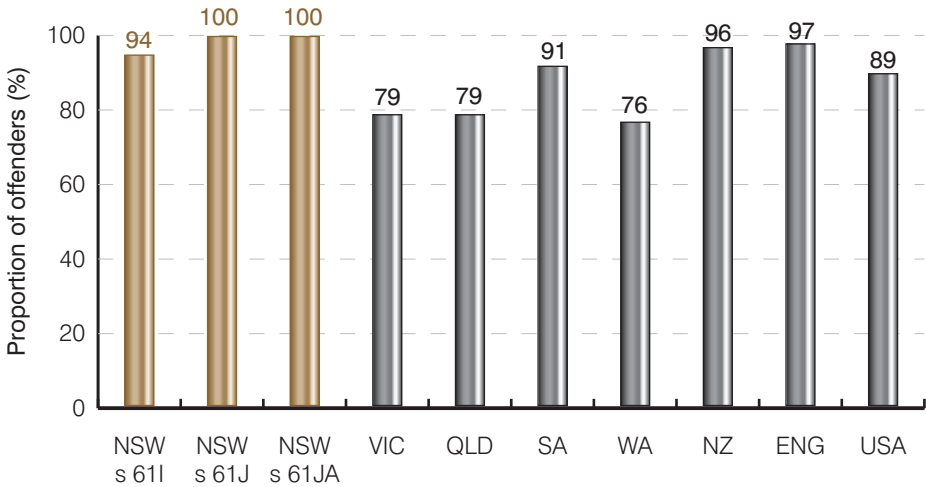
48 Section 61JA(2) provides: “a person sentenced to imprisonment for life for an offence under this section is to serve that sentence for the term of the person’s natural life.”

49 Statutory maximums are not included for the United States, where each of the 50 states may establish their own penalties for offences. “Appendix D: Offence definitions” reproduces the offence definitions for Australian jurisdictions, New Zealand and England.

50 It should be stated that in New South Wales the 94% figure represents persons sentenced for s 61I offences committed on or after 1 February 2003, after the introduction of standard non-parole periods in New South Wales. For offences before this reform, there was an imprisonment rate of 86% for 145 offenders, still higher than any of the Eastern states.

While the high New South Wales figures are unsurprising given the objective seriousness of the crime, the comparison between New South Wales and other jurisdictions is particularly stark considering the imprisonment rate for s 61I sexual assault is higher than combined figures that include aggravated sexual assaults in other Australian states.

Figure 3: Proportion of offenders sentenced to full-time imprisonment for sexual assault offences⁵¹



Dangerous driving causing death

Most jurisdictions provide different offences depending on whether a person is seriously injured or killed due to dangerous driving,⁵² however Queensland and New Zealand do not make this statutory distinction.⁵³ New South Wales, Victoria, Queensland, South Australia and Western Australia have also created separate offences for the most aggravated forms of dangerous driving causing death or serious injury.

Because of these differences in offence definitions combined with how sentencing data is collected for each offence, a more limited range of jurisdictions is available for comparison. Only New South Wales, Victoria, South Australia and England report data on full-time imprisonment rates for offenders convicted of dangerous driving

51 For numbers of offenders in each jurisdiction, see “Appendix A: The data”. Results for Victoria include all offences under s 38 *Crimes Act* 1958; Queensland s 349 *Criminal Code* 1899; South Australia s 48 *Criminal Law Consolidation Act* 1935; Western Australia ss 325–326 *Criminal Code*; New Zealand ss 128–128B *Crimes Act* 1961; England s 1 *Sexual Offences Act* 2003. Results for Western Australia, England and the United States include attempted sexual assaults.

52 For dangerous driving offences causing death, see s 52A(1), (2) *Crimes Act* 1900 (NSW); ss 318–319 *Crimes Act* 1958 (Vic); s 19A(1)(b) *Criminal Law Consolidation Act* 1935 (SA); s 59(3)(a)(i) *Road Traffic Act* 1974 (WA); ss 1 and 3A *Road Traffic Act* 1988 (UK).

53 Section 328A *Criminal Code* 1899 (Qld); ss 36(1), 61 *Land Transport Act* 1998 (NZ).

causing death. New South Wales alone reports data for both the basic and aggravated forms of this offence. Victoria only reports sentencing results for that jurisdiction's most aggravated form of dangerous driving causing death.

Comparing statutory maximum penalties

Sentencing in this area of the law was significantly altered when the maximum penalties for dangerous driving causing death or grievous bodily harm were almost tripled in New South Wales in 1994.⁵⁴ The New South Wales Court of Criminal Appeal promulgated a guideline judgment in 1998, and reformulated it in 2002, stating inter alia: “a custodial sentence will usually be appropriate unless the offender has a low level of moral culpability ...”⁵⁵

The statutory maximum in New South Wales for aggravated dangerous driving causing death (14 years) is the same as Queensland and England.

Victoria (20 years), Western Australia (20 years) and South Australia (life) have higher statutory maximums for their most aggravated forms of dangerous driving. New Zealand legislation provides for a maximum of only five years. These penalties are outlined in *Table 2*.

Table 2: Range of statutory maximum penalties for dangerous driving causing death⁵⁶

Jurisdiction	Statutory Maximum
New South Wales	10 – 14
Victoria	5 – 20
Queensland	7 – 14
South Australia	15 – Life
Western Australia	4 – 20
New Zealand	5
England	14

Offenders sentenced to full-time imprisonment

Figure 4 depicts the proportion of offenders sentenced to full-time imprisonment for dangerous driving causing death.

⁵⁴ *Crimes (Dangerous Driving Offences) Amendment Act 1994*; *R v Slattery* (1996) 90 A Crim R 519.

⁵⁵ *R v Whyte* (2002) 55 NSWLR 252 at [214].

⁵⁶ “Appendix D: Offence definitions” reproduces the offence definitions in each jurisdiction.

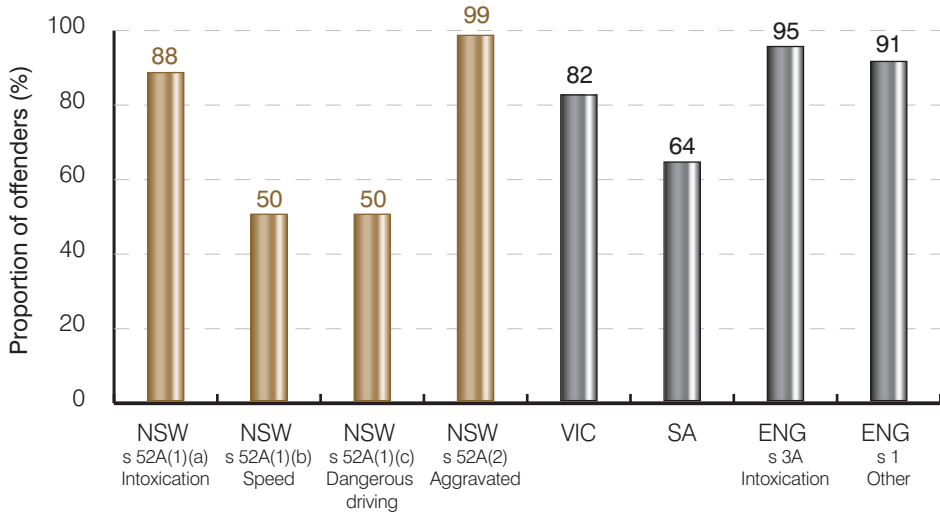
For dangerous driving causing death in New South Wales, 88% of offenders (44 out of 50) who committed the offence under the influence of intoxicating liquor or drugs received full-time imprisonment.⁵⁷

The statistics for other jurisdictions do not differentiate cases involving intoxication, except for England where 95% of offenders who were intoxicated were sentenced to full-time imprisonment.

In New South Wales, offenders with a blood alcohol level of 0.15 or more are charged, convicted and sentenced under the aggravated form of the offence in s 52A(2).⁵⁸ The imprisonment rate for s 52A(2) was 99% (66 out of 67).

Offences involving speed can be dealt with under the aggravated form in s 52A(2). There were only two cases of offenders sentenced for the basic offence of driving at a speed dangerous to another person under s 52A(1)(b), with one receiving full-time imprisonment (50%). The imprisonment rate for offenders sentenced for driving in a manner dangerous to others under s 52A(1)(c) was also 50% (112 out of 225). According to the New South Wales Court of Criminal Appeal, offenders not sentenced to full-time imprisonment under s 52A(1)(c) would include those who have “a low level or moral culpability, as in the case of momentary inattention or misjudgment.”⁵⁹

Figure 4: Proportion of offenders sentenced to full-time imprisonment for dangerous driving causing death⁶⁰



57 Section 52A(1)(a) *Crimes Act* 1900.
 58 In s 52A(2), aggravated dangerous driving includes: an offender whose blood alcohol level is 0.15 or more; or the speed of the car exceeds the speed limit by more than 45km/h; or the offender was escaping a police pursuit; or the offender’s ability to drive was very substantially impaired by drugs.
 59 *R v Whyte* (2002) 55 NSWLR 252 at [214].
 60 For numbers of offenders in each jurisdiction, see “Appendix A: The data”. Results for Victoria include all offences under s 318 *Crimes Act* 1958; South Australia, s 19A(1) *Criminal Law Consolidation Act* 1935; England, ss 1 and 3A *Road Traffic Act* 1988.

Robbery

The essence of robbery is the use of actual or threatened violence to force a victim to part with property.⁶¹

Many jurisdictions recognise a hierarchy of seriousness of elements which contribute to the gravity of a robbery. Common distinctions include whether the offender was armed, in company, or whether the victim was wounded as a result of the robbery.

Comparing statutory maximum penalties

New South Wales provides a range of different statutory maximums that recognise the more serious nature of some robberies. For a basic offence of robbery (s 94 *Crimes Act* 1900), the statutory maximum is 14 years. For an aggravated robbery (s 95), the maximum is 20 years or 25 years where a victim is wounded (s 96).

For a robbery whilst armed or in company (s 97(1)), the maximum is 20 years for a basic offence and 25 years for an aggravated offence using a dangerous weapon (s 97(2)) or wounding a victim (s 98).

Other jurisdictions, such as Victoria, have less diversified statutory schemes providing fewer offence categories and statutory maximums for basic and more aggravated robberies.⁶² England provides a single offence for all robberies.⁶³

As *Table 3* reveals, after those jurisdictions which provide for a maximum penalty of life, New South Wales has the equal highest statutory maximum for robbery.

Table 3: Range of statutory maximum penalties for robbery⁶⁴

Jurisdiction	Statutory Maximum
New South Wales	14 – 25
Victoria	15 – 25
Queensland	14 – Life
South Australia	15 – Life
Western Australia	14 – Life
New Zealand	10 – 14
England	Life

61 *Smith v Desmond & Hall* [1965] AC 960 at 992–993 per Lord Pearce.

62 See ss 75–75A *Crimes Act* 1958 (Vic); ss 409–413 *Criminal Code* 1899 (Qld); s 137 *Criminal Law Consolidation Act* 1935 (SA), ss 391–393 *Criminal Code* (WA), ss 234–236 *Crimes Act* 1961 (NZ).

63 Section 8 *Theft Act* 1968.

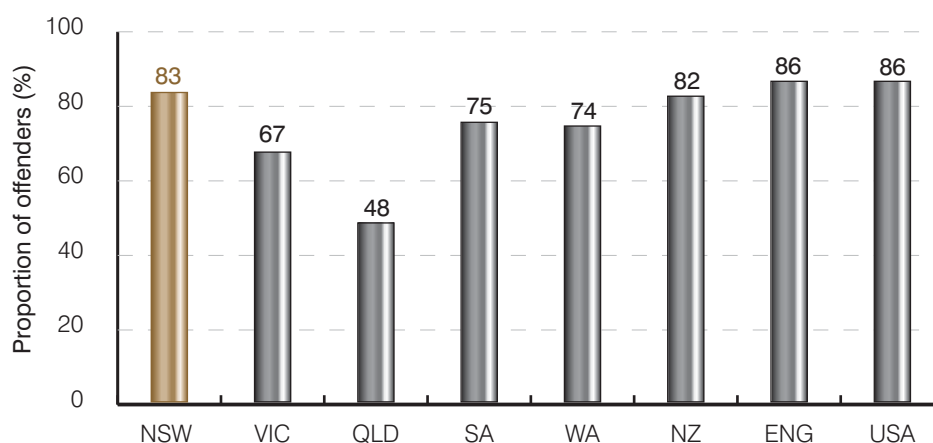
64 In Queensland, Western Australia and New Zealand the separate, lesser offence of “assault with intent to rob” has been excluded from the table of statutory maximums. In New South Wales, Victoria and England, “assault with intent to rob” is included as a form of the substantive offence of robbery, with the same maximum penalty. “Appendix D: Offence definitions” reproduces the offence definitions in each jurisdiction.

Offenders sentenced to full-time imprisonment

New South Wales had the highest imprisonment rate for all robbery offenders in Australia (83%). Internationally, only the United States and England were higher (86%).

New Zealand (82%), South Australia (75%) and Western Australia (74%) were similar to New South Wales. But among other Eastern seaboard states, Victoria's imprisonment rate (67%) and Queensland's (48%) were substantially below New South Wales. *Figure 5* depicts the proportion of offenders sentenced to full-time imprisonment for robbery offences across each jurisdiction.

Figure 5: Proportion of offenders sentenced to full-time imprisonment for robbery offences⁶⁵



Most jurisdictions provide for separate offences to recognise more serious forms of robbery, such as the use of a weapon, committing the offence in company with others, or the wounding of a victim.⁶⁶

As depicted in *Figure 6*, when the more serious forms of robbery are isolated as a discrete group, New South Wales again reported the highest imprisonment rate in Australia (86%).

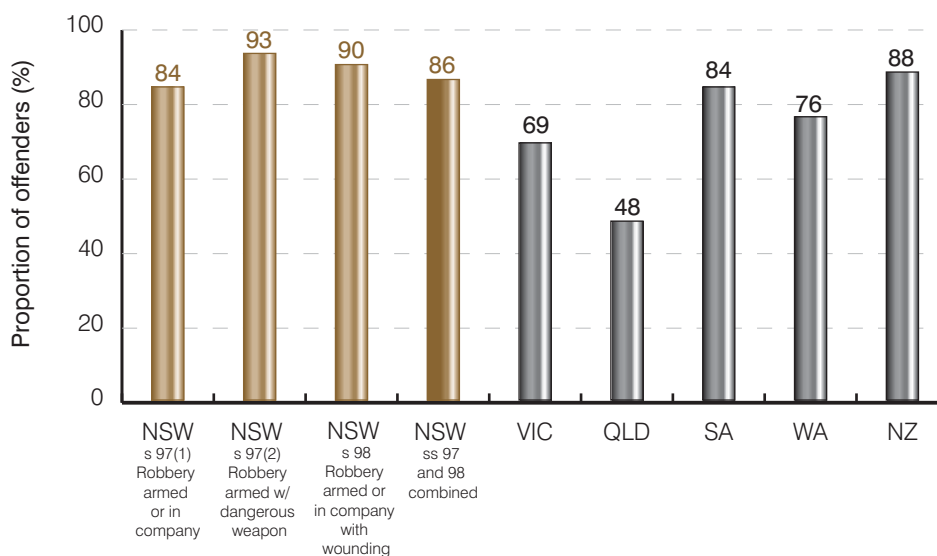
⁶⁵ For numbers of offenders in each jurisdiction, see "Appendix A: The data". Results for New South Wales include offences under ss 94, 95, 96, 97(1), 97(2) and 98 *Crimes Act* 1900; Victoria, ss 75 and 75A *Crimes Act* 1958; Queensland, ss 409 and 411 *Criminal Code* 1899; South Australia, ss 137, 270B *Criminal Law Consolidation Act* 1935; Western Australia, ss 391–393 *Criminal Code*; New Zealand ss 234–236 *Crimes Act* 1961; England, s 8 *Theft Act* 1968. Results for New South Wales, Queensland and Victoria exclude assault with intent to rob and inchoate offences. Other jurisdictions include these offences. However, in New South Wales, JIRS statistics for 1999–2006 reveal that full-time imprisonment was imposed on 274 out of 342 offenders convicted of assault with intent to rob offences committed under ss 94–98. This 80% figure remains higher than all other Australian jurisdictions.

⁶⁶ Of all the jurisdictions included in this study, England alone provides for a single offence of robbery, with the various aggravating features of the crime taken into account at sentencing.

Within this overall rate for New South Wales, 84% of offenders sentenced for armed robbery or robbery in company under s 97(1) received full-time imprisonment. Where a dangerous weapon was used under s 97(2),⁶⁷ 93% of offenders received full-time imprisonment. For robberies, armed or in company, involving the wounding of a victim under s 98, 90% of offenders received a punishment of full-time imprisonment.

South Australia was close to the overall imprisonment rate for more serious robberies in New South Wales (84%), while New Zealand was higher internationally (88%). Among Eastern seaboard states, New South Wales had a higher imprisonment rate than Victoria (69%) and Queensland (48%).

Figure 6: Proportion of offenders sentenced to full-time imprisonment for more serious forms of robbery only⁶⁸



Break and enter or burglary

The offence of break and enter, commonly described as burglary, is a collective expression covering the range of conduct where a person trespasses on private property with intent to commit a more serious crime, usually theft.

67 A “dangerous weapon” is defined in s 4(1) *Crimes Act* 1900 (NSW) as: “(a) a firearm (within the meaning of the *Firearms Act* 1996) or (b) a prohibited weapon within the meaning of the *Weapons Prohibition Act* 1998 or (c) a spear gun.”

68 For numbers of offenders in each jurisdiction, see “Appendix A: The data”. Results for Victoria include armed robbery under s 75A *Crimes Act* 1958; for Queensland, robbery armed, in company or with wounding or personal violence under s 411(2) *Criminal Code* 1899; for South Australia, armed robbery under ss 5AA(1), 137, 270B *Criminal Law Consolidation Act* 1935; for Western Australia, armed robbery under ss 392(c), 393 *Criminal Code*; for New Zealand, robbery armed, in company or causing grievous bodily harm under s 235 *Crimes Act* 1961. Results for New South Wales, Victoria, Queensland and New Zealand do not include assault with intent to rob offences. JIRS statistics from 1999–2006 for assault with intent to rob offences under ss 97–98 reveal the same overall imprisonment rate (202 out of 235 offenders, or 86%).

As noted by the England and Wales Court of Appeal in a guideline judgment for burglary:

“The seriousness of the offence can vary almost infinitely from case to case. It may involve an impulsive act involving an object of little value (reaching through a window to take a bottle of milk, or stealing a can of petrol from an outhouse). At the other end of the spectrum it may involve a professional, planned organisation, directed at objects of high value. Or the offence may be deliberately directed at the elderly, the disabled or the sick; and it may involve burglaries of the same premises. It may sometimes be accompanied by acts of wanton vandalism.”⁶⁹

New South Wales divides break and enter/burglary offences into two main provisions. Section 112 *Crimes Act* 1900 covers conduct where an offender breaks into premises and commits a serious indictable offence, usually stealing. Section 113 is relied on where an offender breaks into premises with intent to commit a serious indictable offence.

The distinction drawn by New South Wales between an intention to commit a serious indictable offence, and succeeding in that endeavour, is not made by other jurisdictions except Queensland and Western Australia.⁷⁰

Another difference is that many jurisdictions provide higher maximum penalties where a burglary is committed in residential premises.⁷¹

Comparing statutory maximum penalties

As *Table 4* reveals, despite the different legislative schemes for break and enter/burglary offences, the statutory maximums in each jurisdiction cover similar ranges.

Table 4: Range of statutory maximum penalties for break and enter/ burglary⁷²

Jurisdiction	Statutory Maximum
New South Wales	10 – 25
Victoria	10 – 25
Queensland	10 – Life
South Australia	10 – Life
Western Australia	14 – 20
New Zealand	10 – 14
England	10 – Life

69 *R v Brewster* [1998] 1 Cr App R (S) 181 at 185–186; *R v McInerney and Keating* [2003] 2 Cr App R (S) 39.

70 Sections 419(1), (4), 421(1), (2) *Criminal Code* 1899 (Qld); s 401(1), (2) *Criminal Code* (WA).

71 Sections 112(2), 113(2) and 105A(1)(f) *Crimes Act* 1900 (NSW); s 419(1), (4) *Criminal Code* 1899 (Qld); s 77(1)(b) *Crimes Act* 1958 (Vic); s 170 *Criminal Law Consolidation Act* 1935 (SA); s 400(1)(b) *Criminal Code* (WA); s 9(3)(a) *Theft Act* 1968 (UK).

72 “Appendix D: Offence definitions” reproduces the offence definitions in each jurisdiction.

The lowest statutory maximum in most jurisdictions is 10 years, with 14 years in Western Australia. The highest statutory maximum in New South Wales is 20 years for an aggravated offence under s 112, and 25 years in specially aggravated circumstances, the equal highest available penalty after life across jurisdictions.

The highest statutory maximum in Victoria is also 25 years, above South Australia and Western Australia (20 years), and New Zealand (14 years).

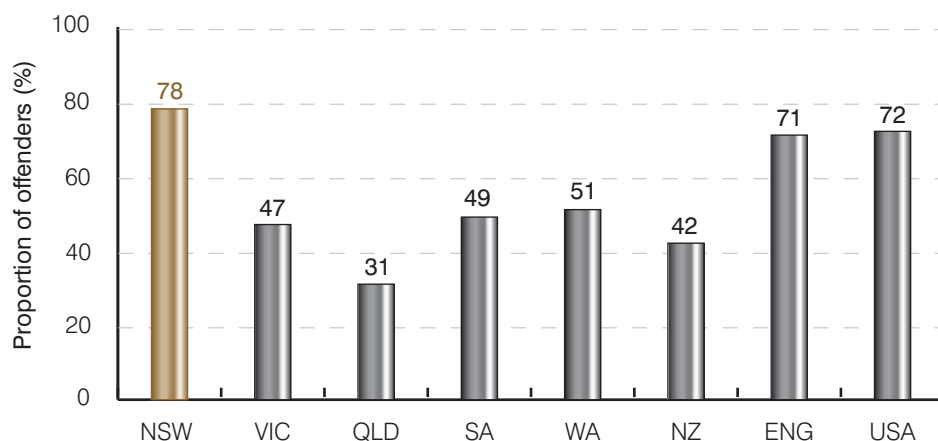
Offenders sentenced to full-time imprisonment

To obtain the most comparable sentencing results, the broadest range of break and enter/burglary offences was selected for each jurisdiction. This avoids individual divisions between basic and aggravated forms, residential and non-residential burglaries, or those involving intent or commission distinctions.

New South Wales had the highest proportion of break and enter/burglary offenders receiving full-time imprisonment (78%) across all jurisdictions, both in Australia and internationally.

Within Australia, the next highest imprisonment rate was Western Australia (51%). Among Eastern seaboard states, Victoria reported a 47% imprisonment rate, and Queensland reported 31%. *Figure 7* illustrates the proportion of break and enter/burglary offenders sentenced to full-time imprisonment across jurisdictions.

Figure 7: Proportion of break and enter/burglary offenders sentenced to full-time imprisonment⁷³



73 For numbers of offenders in each jurisdiction, see “Appendix A: The data”. Results for New South Wales include all offences under ss 112 and 113 *Crimes Act* 1900. For Victoria, offences under ss 76–77 *Crimes Act* 1958; Queensland ss 419 and 421 *Criminal Code* 1899; South Australia ss 168–170 *Criminal Law Consolidation Act* 1935; Western Australia, s 401 *Criminal Code*; New Zealand, ss 231–232 *Crimes Act* 1961; England, ss 9–10 *Theft Act* 1968. New South Wales, Victoria and Queensland exclude inchoate offences.

Conclusion

New South Wales has the fourth highest imprisonment rate per 100,000 in Australia, after the Northern Territory, Western Australia and Queensland. It is higher than the Australian average. Internationally, the imprisonment rate in New South Wales is higher than the rate in New Zealand, England and Canada.

Across seven Australian and international jurisdictions, New South Wales has the highest statutory maximum penalties available for sexual assault, and the equal second highest for robbery and break and enter/burglary offences.

New South Wales has the highest full-time imprisonment rate for sexual assault, robbery, and more serious robbery offences across Australian jurisdictions. New South Wales also has the highest full-time imprisonment rate in both Australia and internationally for break and enter/burglary offences. Only the imprisonment rate for dangerous driving causing death is lower than other jurisdictions, for some forms of the offence, but the differences are relatively narrow.

These findings suggest that calls for more severe sentences, at least comparatively speaking, are pushing an open door.

Appendix A — The data

Data sources

Sentencing results are based on official court data from each jurisdiction. Only cases dealt with on indictment in the middle tier of the adult court system (the District and High Courts in New Zealand, felonies sentenced in state courts in the United States) are included in the study. Only offenders sentenced for the principal offence in each category are included, with the exception of Western Australia.⁷⁴

The full-time imprisonment rate for each offence excludes community sentences, suspended sentences and periodic detention regimes. Victoria provides partially suspended sentences as an available penalty, but these have also been excluded from the full-time imprisonment rates. See “Appendix C: Major sentencing options other than full-time imprisonment” for further details.

Young offenders dealt with in children’s courts are excluded. However, in some serious cases a child will be sentenced “according to law” by the middle tier adult court in each jurisdiction. These offenders are included for all jurisdictions other than Queensland. Some jurisdictions also grant power to middle courts to impose children’s court penalties, which can include a form of full-time imprisonment in a youth detention centre. New South Wales and Queensland alone exclude these offenders from their sentencing results. In any event, the number of children in New South Wales who received a Children’s Court penalty not involving imprisonment in the District Court is too small to impact upon the overall imprisonment rate.

Apart from the Eastern seaboard Australian states, South Australia, Western Australia, New Zealand, England and the United States include inchoate offences such as attempt and conspiracy in their results for some offences. However, even when attempt offences are added to the New South Wales data, JIRS statistics reveal there is little change to the overall rate, due to the small number of inchoate cases compared with substantive offences, and the relatively high imprisonment rate among those preparatory crimes. For example, in New South Wales there were only 16 offenders convicted of attempted sexual assault between 1999 and 2006; 14 were sentenced to full-time imprisonment (88%).

⁷⁴ Western Australia only records convictions and full-time imprisonment rates for each offence count, rather than the principal offence for each offender.

Data for New South Wales was obtained from the Commission's *Judicial Information Research System* (JIRS). Sentencing results for sexual assault, robbery, and break and enter offences cover the period 1 February 2003 to 31 March 2006. For dangerous driving offences, the time period is from 1 April 1999 to 31 March 2006.

In Victoria, the Sentencing Advisory Council has released a *Sentencing Snapshot* for each offence detailed in this study. The time period for the robbery and burglary *Snapshots* is 2000/2001 to 2004/2005; for dangerous driving it is 1998/1999 to 2003/2004; for sexual assault it is 1999/2000 to 2003/2004.

Queensland results are from QGIS, the *Queensland Sentencing Information Service*, a joint project between the Queensland Department of Justice and Attorney-General and the Judicial Commission of New South Wales. The time period for results is 1 July 1999 to 31 March 2006.

In South Australia, the Office of Crime Statistics and Research releases an annual report on *Crime and Justice in South Australia*. The time period used in this study was 1 January 2000 to 31 December 2004 for all offences except break and enter/burglary which was 1 January 2001 to 31 December 2004.

The Western Australian Crime Research Centre, a joint project between the State Government and the University of Western Australia, publishes a *Crime and Justice Statistics* Annual Report. Western Australia recently introduced a new sentencing regime designed to reduce the state's imprisonment rate (the second highest in Australia after the Northern Territory) and create greater "truth in sentencing". To reflect the new sentencing arrangements, data in this study for Western Australia is confined to 2004 only.

The New Zealand Ministry of Justice published *Conviction and Sentencing of Offenders in New Zealand: 1995 to 2004* in 2006. Results from the five years from 1 January 2000 to 31 December 2004 are used in this study.

In England, the United Kingdom Home Office releases the Annual Report of *Criminal Statistics, England and Wales*. This study uses results from 1 January 2002 to 31 December 2004.

In the United States, offence definitions and sentencing outcomes can vary widely between states. The U.S. Department of Justice — Bureau of Justice Statistics has released an overall analysis of sentencing results in state courts, *Felony Sentences in State Courts, 2002, 2004*. The results are based on a nationally representative sample of 300 out of the nation's 3,100 counties, covering every state except Nevada, South Dakota and Wyoming. The time period of the results is confined to 2002 only.

Conviction and imprisonment data for specific offences

Table A1: Offenders sentenced to full-time imprisonment for sexual assault offences

Jurisdiction	Section	Date range	No. Convicted	No. Imprisoned	Percentage
NSW	s 61I	1/2/03 – 31/3/06	48	45	94%
	s 61J	1/2/03 – 31/3/06	33	33	100%
	s 61JA	1/2/03 – 31/3/06	4	4	100%
VIC	s 38	99/00 – 03/04	166	131	79%
QLD	s 349	1/7/99 – 30/6/06	246	195	79%
SA	s 48	1/1/00 – 31/12/04	57	52	91%
WA	ss 325 – 326	1/1/04 – 31/12/04	383	290	76%
NZ	s 128B	1/1/00 – 31/12/04	1122	1074*	96%
ENG	s 1	1/1/02 – 31/12/04	2070	2003	97%
US	–	1/1/02 – 31/12/02	10,980	9772	89%

* New Zealand imprisonment numbers are an approximation, based on reported imprisonment rate and numbers convicted.

Table A2: Offenders sentenced to full-time imprisonment for dangerous driving causing death

Jurisdiction	Section	Date range	No. Convicted	No. Imprisoned	Percentage
NSW	s 52A(1)(a)	1/4/99 – 31/3/06	50	44	88%
	s 52A(1)(b)	1/4/99 – 31/3/06	2	1	50%
	s 52A(1)(c)	1/4/99 – 31/3/06	225	112	50%
	s 52A(2)	1/4/99 – 31/3/06	67	66	99%
VIC	s 318	98/99 – 03/04	164	135	82%
SA	s 19A(1)	1/1/00 – 31/12/04	45	29	64%
ENG	s 1	1/1/02 – 31/12/04	701	637	91%
	s 3A	1/1/02 – 31/12/04	188	178	95%

Table A3: Offenders sentenced to full-time imprisonment for robbery offences

Jurisdiction	Section	Date range	No. Convicted	No. Imprisoned	Percentage
NSW	ss 94 – 98	1/2/03 – 31/3/06	1254	1037	83%
VIC	ss 75 – 75A	00/01 – 04/05	1490	1000	67%
QLD	ss 409, 411	1/7/99 – 30/6/06	926	445	48%
SA	ss 137, 270B	1/1/00 – 31/12/04	394	294	75%
WA	ss 391 – 393	1/1/04 – 31/12/04	287	212	74%
NZ	ss 234 – 236	1/1/00 – 31/12/04	2061	1680*	82%
ENG	s 8	1/1/02 – 31/12/04	17,213	14,833	86%
US	–	1/1/02 – 31/12/02	38,430	33,050	86%

* New Zealand imprisonment numbers are an approximation, based on reported imprisonment rate and numbers convicted.

Table A4: Offenders sentenced to full-time imprisonment for more serious robbery offences

Jurisdiction	Section	Date range	No. Convicted	No. Imprisoned	Percentage
NSW	s 97(1)	1/2/03 – 31/3/06	780	656	84%
	s 97(2)	1/2/03 – 31/3/06	128	119	93%
	s 98	1/2/03 – 31/3/06	31	28	90%
VIC	s 75A	00/01 – 04/05	1364	940	69%
QLD	s 411(2)	1/7/99 – 30/6/06	823	395	48%
SA	ss 5AA(1), 137, 270B	1/1/00 – 31/12/04	247	208	84%
WA	ss 392(c), 393	1/1/04 – 31/12/04	182	138	76%
NZ	s 235	1/1/00 – 31/12/04	1383	1214*	88%

* New Zealand imprisonment numbers are an approximation, based on reported imprisonment rate and numbers convicted.

Table A5: Offenders sentenced to full-time imprisonment for break and enter/burglary

Jurisdiction	Section	Date range	No. Convicted	No. Imprisoned	Percentage
NSW	ss 112 – 113	1/2/03 – 31/3/06	1025	796	78%
VIC	ss 76 – 77	00/01 – 04/05	781	369	47%
QLD	ss 419, 421	1/7/99 – 30/6/06	2583	810	31%
SA	ss 168 – 170	1/1/01 – 31/12/04	571	282	49%
WA	s 401	1/1/04 – 31/12/04	1246	635	51%
NZ	ss 231 – 232	1/1/00 – 31/12/04	14,893	6227*	42%
ENG	ss 9 – 10	1/1/02 – 31/12/04	33,560	23,722	71%
US	–	1/1/02 – 31/12/02	100,640	72,461	72%

* New Zealand imprisonment numbers are an approximation, based on reported imprisonment rate and numbers convicted.

Appendix B — Sentencing regimes

The most relevant sections from each jurisdiction's sentencing legislation are reproduced fully or in part below.

Victoria

Sentencing Act 1991

5 Sentencing guidelines

- (1) The only purposes for which sentences may be imposed are —
 - (a) to punish the offender to an extent and in a manner which is just in all of the circumstances; or
 - (b) to deter the offender or other persons from committing offences of the same or a similar character; or
 - (c) to establish conditions within which it is considered by the court that the rehabilitation of the offender may be facilitated; or
 - (d) to manifest the denunciation by the court of the type of conduct in which the offender engaged; or
 - (e) to protect the community from the offender; or
 - (f) a combination of two or more of those purposes.

- (2) In sentencing an offender a court must have regard to —
 - (a) the maximum penalty prescribed for the offence; and
 - (b) current sentencing practices; and
 - (c) the nature and gravity of the offence; and
 - (d) the offender's culpability and degree of responsibility for the offence; and
 - (daa) the impact of the offence on any victim of the offence; and
 - (da) the personal circumstances of any victim of the offence; and
 - (db) any injury, loss or damage resulting directly from the offence; and
 - (e) whether the offender pleaded guilty to the offence and, if so, the stage in the proceedings at which the offender did so or indicated an intention to do so; and
 - (f) the offender's previous character; and
 - (g) the presence of any aggravating or mitigating factor concerning the offender or of any other relevant circumstances.

- (2BA) In sentencing an offender, a court —
- (a) must not have regard to the fact that the offender is subject to an extended supervision order under the *Serious Sex Offenders Monitoring Act 2005* but, if relevant to the conditions of any sentence imposed by it, may have regard to the conditions of that order and the terms of any current directions or instructions given by the Adult Parole Board under section 16 of that Act;
 - (b) must not have regard to any possibility or likelihood of an application being made under that Act for an extended supervision order in respect of the offender.
- (3) A court must not impose a sentence that is more severe than that which is necessary to achieve the purpose or purposes for which the sentence is imposed.
- (4) A court must not impose a sentence that involves the confinement of the offender unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by a sentence that does not involve the confinement of the offender.
- (4A) A court must not impose a combined custody and treatment order unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by a drug treatment order.
- (4B) A court must not impose a drug treatment order unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by an intensive correction order.
- (5) A court must not impose an intensive correction order unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by a community-based order.
- (6) A court must not impose a community-based order unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by imposing a fine.
- (7) A court must not impose a fine unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by a dismissal, discharge or adjournment.

Queensland

Penalties and Sentences Act 1992

9 Sentencing guidelines

- (1) The only purposes for which sentences may be imposed on an offender are —
- (a) to punish the offender to an extent or in a way that is just in all the circumstances; or
 - (b) to provide conditions in the court's order that the court considers will help the offender to be rehabilitated; or
 - (c) to deter the offender or other persons from committing the same or a similar offence; or
 - (d) to make it clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved; or
 - (e) to protect the Queensland community from the offender; or
 - (f) a combination of 2 or more of the purposes mentioned in paragraphs (a) to (e).

- (2) In sentencing an offender, a court must have regard to —
- (a) principles that —
 - (i) a sentence of imprisonment should only be imposed as a last resort; and
 - (ii) a sentence that allows the offender to stay in the community is preferable; and
 - (b) the maximum and any minimum penalty prescribed for the offence; and
 - (c) the nature of the offence and how serious the offence was, including any physical or emotional harm done to a victim; and
 - (d) the extent to which the offender is to blame for the offence; and
 - (e) any damage, injury or loss caused by the offender; and
 - (f) the offender's character, age and intellectual capacity; and
 - (g) the presence of any aggravating or mitigating factor concerning the offender; and
 - (h) the prevalence of the offence; and
 - (i) how much assistance the offender gave to law enforcement agencies in the investigation of the offence or other offences; and
 - (j) time spent in custody by the offender for the offence before being sentenced; and
 - (k) sentences imposed on, and served by, the offender in another State or a Territory for an offence committed at, or about the same time, as the offence with which the court is dealing; and
 - (l) sentences already imposed on the offender that have not been served; and
 - (m) sentences that the offender is liable to serve because of the revocation of orders made under this or another Act for contraventions of conditions by the offender; and
 - (n) if the offender is the subject of a community based order — the offender's compliance with the order as disclosed in an oral or written report given by an authorised corrective services officer; and
 - (o) if the offender is an Aboriginal or Torres Strait Islander person — any submissions made by a representative of the community justice group in the offender's community that are relevant to sentencing the offender, including, for example —
 - (i) the offender's relationship to the offender's community; or
 - (ii) any cultural considerations; or
 - (iii) any considerations relating to programs and services established for offenders in which the community justice group participates; and
 - (p) anything else prescribed by this Act to which the court must have regard; and
 - (q) any other relevant circumstance.
- (3) However, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender for any offence —
- (a) that involved the use of, or counselling or procuring the use of, or attempting or conspiring to use, violence against another person; or
 - (b) that resulted in physical harm to another person.
- (4) In sentencing an offender to whom subsection (3) applies, the court must have regard primarily to the following —
- (a) the risk of physical harm to any members of the community if a custodial sentence were not imposed;
 - (b) the need to protect any members of the community from that risk;
 - (c) the personal circumstances of any victim of the offence;

- (d) the circumstances of the offence, including the death of or any injury to a member of the public or any loss or damage resulting from the offence;
 - (e) the nature or extent of the violence used, or intended to be used, in the commission of the offence;
 - (f) any disregard by the offender for the interests of public safety;
 - (g) the past record of the offender, including any attempted rehabilitation and the number of previous offences of any type committed;
 - (h) the antecedents, age and character of the offender;
 - (i) any remorse or lack of remorse of the offender;
 - (j) any medical, psychiatric, prison or other relevant report in relation to the offender;
 - (k) anything else about the safety of members of the community that the sentencing court considers relevant.
- (5) Also, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender for any offence of a sexual nature committed in relation to a child under 16 years.
- (6) In sentencing an offender to whom subsection (5) applies, the court must have regard primarily to the following —
- (a) the effect of the offence on the child;
 - (b) the age of the child;
 - (c) the nature of the offence, including, for example, any physical harm or the threat of physical harm to the child or another;
 - (d) the need to protect the child, or other children, from the risk of the offender reoffending;
 - (e) the need to deter similar behaviour by other offenders to protect children;
 - (f) the prospects of rehabilitation including the availability of any medical or psychiatric treatment to cause the offender to behave in a way acceptable to the community;
 - (g) the offender's antecedents, age and character;
 - (h) any remorse or lack of remorse of the offender;
 - (i) any medical, psychiatric, prison or other relevant report relating to the offender;
 - (j) anything else about the safety of children under 16 the sentencing court considers relevant.

South Australia

Criminal Law (Sentencing) Act 1988

10 Matters to which a sentencing court should have regard

- (1) A court, in determining sentence for an offence, should have regard to such of the following matters as are relevant and known to the court:
- (a) the circumstances of the offence;
 - (b) other offences (if any) that are to be taken into account;
 - (c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character — that course of conduct;
 - (d) the personal circumstances of any victim of the offence;
 - (e) any injury, loss or damage resulting from the offence;
 - (ea) in the case of an offence committed by an intruder in the home of another — the need to give proper effect to the policy stated in subsection (2);

- (eb) in the case of arson or causing a bushfire — the need to give proper effect to the policy stated in subsection (3);
 - (ec) in the case of a sexual offence committed against a child — the need to give proper effect to the policy stated in subsection (4);
 - (f) the degree to which the defendant has shown contrition for the offence —
 - (i) by taking action to make reparation for any injury, loss or damage resulting from the offence; or
 - (ii) in any other manner;
 - (g) if the defendant has pleaded guilty to the charge of the offence — that fact;
 - (h) the degree to which the defendant has co-operated in the investigation of the offence;
 - (i) the need to protect the community from the defendant's criminal acts;
 - (j) the deterrent effect any sentence under consideration may have on the defendant or other persons;
 - (k) the need to ensure that the defendant is adequately punished for the offence;
 - (ka) if a forfeiture of property (other than a forfeiture that merely neutralises a benefit that has been obtained through the commission of the offence) is, or is to be imposed, as a result of the commission of the offence — the nature and extent of the forfeiture;
 - (l) the character, antecedents, age, means and physical or mental condition of the defendant;
 - (m) the rehabilitation of the defendant;
 - (n) the probable effect any sentence under consideration would have on dependants of the defendant;
 - (o) any other relevant matter.
- (2) A primary policy of the criminal law is to protect the security of the lawful occupants of the home from intruders.

11 Imprisonment not to be imposed except in certain circumstances

- (1) A sentence of imprisonment may only be imposed —
- (a) if, in the opinion of the court —
 - (i) the defendant has shown a tendency to violence towards other persons; or
 - (ii) the defendant is likely to commit a serious offence if allowed to go at large; or
 - (iii) the defendant has previously been convicted of an offence punishable by imprisonment; or
 - (iv) any other sentence would be inappropriate, having regard to the gravity or circumstances of the offence; or
 - (b) if a sentence of imprisonment is necessary to give proper effect to the primary policy stated in section 10(2).
- (2) This section does not apply to a sentence of imprisonment imposed for the enforcement of sentence.

Western Australia

Sentencing Act 1995

6 Principles of sentencing

- (1) A sentence imposed on an offender must be commensurate with the seriousness of the offence.
- (2) The seriousness of an offence must be determined by taking into account —
 - (a) the statutory penalty for the offence;
 - (b) the circumstances of the commission of the offence, including the vulnerability of any victim of the offence;
 - (c) any aggravating factors; and
 - (d) any mitigating factors.
- (3) Subsection (1) does not prevent the reduction of a sentence because of —
 - (a) any mitigating factors; or
 - (b) any rule of law as to the totality of sentences.
- (4) A court must not impose a sentence of imprisonment on an offender unless it decides that —
 - (a) the seriousness of the offence is such that only imprisonment can be justified; or
 - (b) the protection of the community requires it.
- (5) A court sentencing an offender must take into account any relevant guidelines in a guideline judgment given under section 143.
- (6) For the purpose of subsection (4), an order under section 58 that a person be imprisoned is not a sentence of imprisonment.

39 Sentences for a natural person

- (2) Subject to sections 41 to 45, a court sentencing an offender may —
 - (a) with or without making a spent conviction order, under Part 6 impose no sentence and order the release of the offender;
 - (b) with or without making a spent conviction order, under Part 7 impose a CRO and order the release of the offender;
 - (c) with or without making a spent conviction order, under Part 8 impose a fine and order the release of the offender (unless an order under section 58 is made);
 - (d) with or without making a spent conviction order, under Part 9 impose a CBO and order the release of the offender;
 - (e) under Part 10 impose an ISO and order the release of the offender;
 - (f) under Part 11 impose suspended imprisonment and order the release of the offender;
 - (g) under Part 12 impose CSI and order the release of the offender; or
 - (h) under Part 13 impose a term of imprisonment.
- (3) A court must not use a sentencing option in subsection (2) unless satisfied, having regard to Division 1 of Part 2, that it is not appropriate to use any of the options listed before that option.

Commonwealth of Australia

Crimes Act 1914

17A Restriction on imposing sentences

- (1) A court shall not pass a sentence of imprisonment on any person for a federal offence, or for an offence against the law of an external Territory that is prescribed for the purposes of this section, unless the court, after having considered all other available sentences, is satisfied that no other sentence is appropriate in all the circumstances of the case.
- (2) Where a court passes a sentence of imprisonment on a person for a federal offence, or for an offence against the law of an external Territory that is prescribed for the purposes of this section, the court:
 - (a) shall state the reasons for its decision that no other sentence is appropriate; and
 - (b) shall cause those reasons to be entered in the records of the court.

New Zealand

Sentencing Act 2002

7 Purposes of sentencing or otherwise dealing with offenders

- (1) The purposes for which a court may sentence or otherwise deal with an offender are —
 - (a) to hold the offender accountable for harm done to the victim and the community by the offending; or
 - (b) to promote in the offender a sense of responsibility for, and an acknowledgment of, that harm; or
 - (c) to provide for the interests of the victim of the offence; or
 - (d) to provide reparation for harm done by the offending; or
 - (e) to denounce the conduct in which the offender was involved; or
 - (f) to deter the offender or other persons from committing the same or a similar offence; or
 - (g) to protect the community from the offender; or
 - (h) to assist in the offender's rehabilitation and reintegration; or
 - (i) a combination of 2 or more of the purposes in paragraphs (a) to (h).
- (2) To avoid doubt, nothing about the order in which the purposes appear in this section implies that any purpose referred to must be given greater weight than any other purpose referred to.

8 Principles of sentencing or otherwise dealing with offenders

In sentencing or otherwise dealing with an offender the court —

- (a) must take into account the gravity of the offending in the particular case, including the degree of culpability of the offender; and
- (b) must take into account the seriousness of the type of offence in comparison with other types of offences, as indicated by the maximum penalties prescribed for the offences; and
- (c) must impose the maximum penalty prescribed for the offence if the offending is within the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate; and
- (d) must impose a penalty near to the maximum prescribed for the offence if the offending is near to the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate; and

- (e) must take into account the general desirability of consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offenders committing similar offences in similar circumstances; and
- (f) must take into account any information provided to the court concerning the effect of the offending on the victim; and
- (g) must impose the least restrictive outcome that is appropriate in the circumstances; and
- (h) must take into account any particular circumstances of the offender that mean that a sentence or other means of dealing with the offender that would otherwise be appropriate would, in the particular instance, be disproportionately severe; and
- (i) must take into account the offender's personal, family, whanau, community, and cultural background in imposing a sentence or other means of dealing with the offender with a partly or wholly rehabilitative purpose; and
- (j) must take into account any outcomes of restorative justice processes that have occurred, or that the court is satisfied are likely to occur, in relation to the particular case (including, without limitation, anything referred to in section 10).

England

Criminal Justice Act 2003

142 Purposes of sentencing

- (1) Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing —
 - (a) the punishment of offenders,
 - (b) the reduction of crime (including its reduction by deterrence),
 - (c) the reform and rehabilitation of offenders,
 - (d) the protection of the public, and
 - (e) the making of reparation by offenders to persons affected by their offences.
- (2) Subsection (1) does not apply —
 - (a) in relation to an offender who is aged under 18 at the time of conviction,
 - (b) to an offence the sentence for which is fixed by law,
 - (c) to an offence the sentence for which falls to be imposed under section 51A(2) of the *Firearms Act 1968* (c. 27) (minimum sentence for certain firearms offences), under subsection (2) of section 110 or 111 of the *Sentencing Act* (required custodial sentences) or under any of sections 225 to 228 of this Act (dangerous offenders), or
 - (d) in relation to the making under Part 3 of the *Mental Health Act 1983* (c. 20) of a hospital order (with or without a restriction order), an interim hospital order, a hospital direction or a limitation direction.
- (3) In this Chapter “sentence”, in relation to an offence, includes any order made by a court when dealing with the offender in respect of his offence; and “sentencing” is to be construed accordingly.

148 Restrictions on imposing community sentences

- (1) A court must not pass a community sentence on an offender unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.

- (2) Where a court passes a community sentence which consists of or includes a community order —
 - (a) the particular requirement or requirements forming part of the community order must be such as, in the opinion of the court, is, or taken together are, the most suitable for the offender, and
 - (b) the restrictions on liberty imposed by the order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

152 General restrictions on imposing discretionary custodial sentences

- (1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one —
 - (a) fixed by law, or
 - (b) falling to be imposed under section 51A(2) of the *Firearms Act* 1968 (c. 27), under 110(2) or 111(2) of the *Sentencing Act* or under any of sections 225 to 228 of this Act.
- (2) The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence.
- (3) Nothing in subsection (2) prevents the court from passing a custodial sentence on the offender if —
 - (a) he fails to express his willingness to comply with a requirement which is proposed by the court to be included in a community order and which requires an expression of such willingness, or
 - (b) he fails to comply with an order under section 161(2) (pre-sentence drug testing).

Canada

***Criminal Code* 1985**

718 Purpose

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

718.1 Fundamental principle

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

718.2 Other sentencing principles

A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
 - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,
 - (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,
 - (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,
 - (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
 - (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization, or
 - (v) evidence that the offence was a terrorism offence shall be deemed to be aggravating circumstances;
- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

Appendix C — Major sentencing options other than full-time imprisonment

Victoria

Sentencing Act 1991

- Combined Custody and Treatment Order (ss 18Q–8W)
- Drug Treatment Order (ss 18X–18ZS)
- Home Detention Order (ss 18ZT–18ZZR)
- Intensive Correction Order (ss 19–26)
- Suspended and partially suspended sentences of Imprisonment (ss 27–31)
- Youth Training Centre and Residential Centre Orders (ss 32–35)
- Community Based Order (ss 36–48)
- Fine (ss 49–69)
- Undertaking (ss 72–79)
- Dismiss/Discharge (ss 73 & 76)

Queensland

Penalties and Sentences Act 1992

- Suspended Sentences (wholly or partially) (ss 143–151A)
- Intensive Correction Order (ss 111–119)
- Community Service Order (with or without conviction recorded) (ss 100–108)
- Probation (with or without conviction recorded) (ss 90–99)
- Fine (with or without conviction recorded) (ss 44–89)
- Release on Recognisance (with or without conviction recorded) (ss 29–33A)

South Australia

Criminal Law (Sentencing) Act 1988

- Suspended sentence (ss 38)
- Community Service and Supervision Orders (ss 45–51)
- Bond (ss 36–44)
- Fines (ss 13, 34)

Western Australia

Sentencing Act 1995

- Suspended sentence (ss 76–84R)
- Intensive Supervision Order (ss 68–75)
- Community Based Order (ss 61–67)
- Conditional Release Order (ss 47–52)
- Fine (ss 53–60)

New Zealand

Sentencing Act 2002

- Community work (ss 55–69A)
- Periodic detention and community service (replaced by community work in *Sentencing Act 2002*)
- Supervision (ss 45–54A)
- Reparation (ss 32–38)
- Fine (ss 39–41)
- To come up for sentence if called on (ss 110–111)
- Suspended sentence, formerly a penalty under *Criminal Justice Act 1985*, was abolished in *Sentencing Act 2002*

England

- Suspended Sentence (ss 189–194 *Criminal Justice Act 2003*)
- Intermittent custody (custody and community order) (ss 183–186 *Criminal Justice Act 2003*)
- Deferment of sentence (s 278 *Criminal Justice Act 2003*)
- Community sentence (ss 148, 177–180, 196–223 *Criminal Justice Act 2003*)
- Discharge (absolute or conditional on good behaviour) (ss 12–15 *Powers of Criminal Courts (Sentencing) Act 2000*)
- Binding an Offender Over [Bond] (*Justice of the Peace Act 1361* and 1968)
- Fine (ss 163–164 *Criminal Justice Act 2003*)
- Compensation order (s 130 *Powers of Criminal Courts (Sentencing) Act 2000*)

Appendix D — Offence definitions

The relevant legislation is reproduced below for each of the specific offences included in this study.

Sexual Assault

Victoria

Crimes Act 1958

38 Rape

- (1) A person must not commit rape.
Penalty: Level 2 imprisonment (25 years maximum).
- (2) A person commits rape if —
 - (a) he or she intentionally sexually penetrates another person without that person's consent while being aware that the person is not consenting or might not be consenting; or
 - (b) after sexual penetration he or she does not withdraw from a person who is not consenting on becoming aware that the person is not consenting or might not be consenting.
- (3) A person (the offender) also commits rape if he or she compels a male person
 - (a) to sexually penetrate the offender or another person with his penis, irrespective of whether the person being sexually penetrated consents to the act; or
 - (b) who has sexually penetrated the offender or another person with his penis, not to withdraw his penis from the offender or that other person, irrespective of whether the person who has been sexually penetrated consents to the act.
- (4) For the purposes of sub-section (3), a person compels a male person (the victim) to engage in a sexual act if the person compels the victim (by force or otherwise) to engage in that act —
 - (a) without the victim's consent; and
 - (b) while being aware that the victim is not consenting or might not be consenting.

Queensland

Criminal Code 1899

349 Rape

- (1) Any person who rapes another person is guilty of a crime.
Maximum penalty — life imprisonment.
- (2) A person rapes another person if —
 - (a) the person has carnal knowledge with or of the other person without the other person's consent; or
 - (b) the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent; or
 - (c) the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.
- (3) For this section, a child under the age of 12 years is incapable of giving consent.

South Australia

Criminal Law Consolidation Act 1935

48 Rape

- A person who has sexual intercourse with another person without the consent of that other person —
- (a) knowing that that other person does not consent to sexual intercourse with him; or
 - (b) being recklessly indifferent as to whether that other person consents to sexual intercourse with him, shall (whether or not physical resistance is offered by that other person) be guilty of rape and liable to be imprisoned for life.

Western Australia

Criminal Code

319 Interpretation

- (1) In this Chapter —
“circumstances of aggravation”, without limiting the definition of that expression in section 221, includes circumstances in which —
 - (a) at or immediately before or immediately after the commission of the offence —
 - (i) the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed;
 - (ii) the offender is in company with another person or persons;
 - (iii) the offender does bodily harm to any person;
 - (iv) the offender does an act which is likely seriously and substantially to degrade or humiliate the victim; or
 - (v) the offender threatens to kill the victim; or
 - (b) the victim is of or over the age of 13 years and under the age of 16 years.

325 Sexual penetration without consent

A person who sexually penetrates another person without the consent of that person is guilty of a crime and is liable to imprisonment for 14 years.

326 Aggravated sexual penetration without consent

A person who sexually penetrates another person without the consent of that person in circumstances of aggravation is guilty of a crime and liable to imprisonment for 20 years.

New Zealand***Crimes Act 1961*****2 Interpretation**

“sexual connection” means —

- (a) connection effected by the introduction into the genitalia or anus of one person, otherwise than for genuine medical purposes, of —
 - (i) a part of the body of another person; or
 - (ii) an object held or manipulated by another person; or
- (b) connection between the mouth or tongue of one person and a part of another person’s genitalia or anus; or
- (c) the continuation of connection of a kind described in paragraph (a) or paragraph (b)

128 Sexual violation defined

- (1) Sexual violation is the act of a person who —
 - (a) rapes another person; or
 - (b) has unlawful sexual connection with another person.
- (2) Person A rapes person B if person A has sexual connection with person B, effected by the penetration of person B’s genitalia by person A’s penis, —
 - (a) without person B’s consent to the connection; and
 - (b) without believing on reasonable grounds that person B consents to the connection.
- (3) Person A has unlawful sexual connection with person B if person A has sexual connection with person B —
 - (a) without person B’s consent to the connection; and
 - (b) without believing on reasonable grounds that person B consents to the connection.
- (4) One person may be convicted of the sexual violation of another person at a time when they were married to each other.

128B Sexual violation

- (1) Every one who commits sexual violation is liable to imprisonment for a term not exceeding 20 years.

- (2) A person convicted of sexual violation must be sentenced to imprisonment unless, having regard to the matters stated in subsection (3), the court thinks that the person should not be sentenced to imprisonment.
- (3) The matters are —
 - (a) the particular circumstances of the person convicted; and
 - (b) the particular circumstances of the offence, including the nature of the conduct constituting it.

England

Sexual Offences Act 2003

1 Rape

- (1) A person (A) commits an offence if —
 - (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,
 - (b) B does not consent to the penetration, and
 - (c) A does not reasonably believe that B consents.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents
- (3) Sections 75 and 76 apply to an offence under this section.
- (4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Dangerous Driving Causing Death

Victoria

Crimes Act 1958

318 Culpable driving causing death

- (1) Any person who by the culpable driving of a motor vehicle causes the death of another person shall be guilty of an indictable offence and shall be liable to level 3 imprisonment (20 years maximum) or a level 3 fine or both.
- (2) For the purposes of sub-section (1) a person drives a motor vehicle culpably if he drives the motor vehicle —
 - (a) recklessly, that is to say, if he consciously and unjustifiably disregards a substantial risk that the death of another person or the infliction of grievous bodily harm upon another person may result from his driving; or
 - (b) negligently, that is to say, if he fails unjustifiably and to a gross degree to observe the standard of care which a reasonable man would have observed in all the circumstances of the case; or

- (c) whilst under the influence of alcohol to such an extent as to be incapable of having proper control of the motor vehicle; or
 - (d) whilst under the influence of a drug to such an extent as to be incapable of having proper control of the motor vehicle.
- (2A) Without limiting sub-section (2)(b), negligence within the meaning of that sub-section may be established by proving that —
- (a) a person drove a motor vehicle when fatigued to such an extent that he or she knew, or ought to have known, that there was an appreciable risk of him or her falling asleep while driving or of losing control of the vehicle; and
 - (b) by so driving the motor vehicle the person failed unjustifiably and to a gross degree to observe the standard of care which a reasonable person would have observed in all the circumstances of the case.

319 Dangerous driving causing death or serious injury

- (1) A person who, by driving a motor vehicle at a speed or in a manner that is dangerous to the public having regard to all the circumstances of the case, causes the death of, or serious injury to, another person is guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum).
- (2) In this section “serious injury” has the meaning given by section 15.

Queensland

Criminal Code 1899

328A Dangerous operation of a vehicle

- (4) A person who operates, or in any way interferes with the operation of, a vehicle dangerously in any place and causes the death of or grievous bodily harm to another person commits a crime and is liable upon conviction upon indictment to imprisonment for 7 years unless at the time of committing the offence the offender is adversely affected by an intoxicating substance in which case he or she is liable upon conviction upon indictment —
 - (a) to imprisonment for 10 years; or
 - (b) if the intoxicating substance is alcohol and the offender was, at that time, over the high alcohol limit — to imprisonment for 14 years.
- (5) In this section —

“operates, or in any way interferes with the operation of, a vehicle dangerously” means operate, or in any way interfere with the operation of, a vehicle at a speed or in a way that is dangerous to the public, having regard to all the circumstances, including —

 - (a) the nature, condition and use of the place; and
 - (b) the nature and condition of the vehicle; and
 - (c) the number of persons, vehicles or other objects that are, or might reasonably be expected to be, in the place; and
 - (d) the concentration of alcohol in the operator’s blood or breath; and
 - (e) the presence of any other substance in the operator’s body.

“prescribed offence” means —

- (a) an offence against this section; or
- (b) an offence charged on indictment involving the driving or operation of a vehicle at a speed causing or likely to cause injury to anyone; or
- (c) an offence against the *Transport Operations (Road Use Management) Act 1995*, section 79(1), (2), (2A), (2B), (2D) or (2J).²³

“place” does not include a place being used to race or test vehicles and from which other traffic is excluded at the time.

“the public” includes passengers in a vehicle whether in a public or private place.

South Australia

Criminal Law Consolidation Act 1935

19A Causing death or harm by dangerous use of vehicle or vessel

- (1) A person who —
 - (a) drives a vehicle or operates a vessel in a culpably negligent manner, recklessly, or at a speed or in a manner dangerous to the public; and
 - (b) by that culpable negligence, recklessness or other conduct, causes the death of another, is guilty of an indictable offence.

Maximum penalty:

- (a) where a motor vehicle or motor vessel was used in the commission of the offence —
 - (i) for a first offence that is a basic offence — imprisonment for 15 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver’s licence for 10 years or such longer period as the court orders;
 - (ii) for a first offence that is an aggravated offence or for any subsequent offence imprisonment for life and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver’s licence for 10 years or such longer period as the court orders;

5AA Aggravated offences

- (1a) For the purposes of section 19A, an aggravated offence is an offence committed in the following circumstances:
 - (a) the offender committed the offence in the course of attempting to escape pursuit by a police officer;
 - (b) the offender was, at the time of the offence, driving a vehicle knowing that he or she was disqualified, under the law of this State or another State or Territory of the Commonwealth, from holding or obtaining a driver’s licence or that his or her licence was suspended by notice given under the *Road Traffic Act 1961*;
 - (c) the offender committed the offence as part of a prolonged, persistent and deliberate course of very bad driving or vessel operation;
 - (d) the offender committed the offence while there was present in his or her blood a concentration of .08 grams or more of alcohol in 100 millilitres of blood;

- (e) the offender was, at the time of the offence, driving a vehicle in contravention of section 45A, 47 or 47BA of the *Road Traffic Act 1961* or operating a vessel in contravention of section 70(1) of the *Harbors and Navigation Act 1993*.

Western Australia

Road Traffic Act 1974

59 Dangerous driving causing death, injury, etc.

- (1) If a motor vehicle driven by a person (the “driver”) is involved in an incident occasioning the death of, or grievous bodily harm to, another person and the driver was, at the time of the incident, driving the motor vehicle —
 - (a) while under the influence of alcohol, drugs, or alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle; or
 - (b) in a manner (which expression includes speed) that is, having regard to all the circumstances of the case, dangerous to the public or to any person, the driver commits a crime and is liable to the penalty in subsection (3).
- (2) For the purposes of this section —
 - (b) it is immaterial that the death or grievous bodily harm might have been avoided by proper precaution on the part of a person other than the person charged or might have been prevented by proper care or treatment;
 - (c) when an incident occasions grievous bodily harm to a person and that person receives surgical or medical treatment, and death results either from the harm or the treatment, the incident is deemed to have occasioned the death of that person, although the immediate cause of death was the surgical or medical treatment if the treatment was reasonably proper in the circumstances and was applied in good faith; and
- (3) A person convicted on indictment of an offence against this section is liable —
 - (a) if the offence is against subsection (1)(a), or the offence is against subsection (1)(b) and is committed in circumstances of aggravation, to a fine of any amount and to imprisonment for —
 - (i) 20 years, if the person has caused the death of another person; or
 - (ii) 14 years, if the person has caused grievous bodily harm to another person; or
 - (b) in any other circumstances, to imprisonment for 4 years or a fine of 400 PU, and, in any event, the court convicting that person shall order that he be disqualified from holding or obtaining a driver’s licence for a period of not less than 2 years.

59B Section 59 and 59A offences: ancillary matters and defence

- (3) For the purposes of sections 59 and 59A a person commits an offence in “circumstances of aggravation” if at the time of the alleged offence —
 - (a) the person was unlawfully driving the vehicle concerned without the consent of the owner or person in charge of the vehicle;
 - (b) the person was driving the vehicle concerned on a road at a speed that exceeded, by more than 45 km/h, the speed limit (if any) applicable to that length of road; or
 - (c) the person was driving the vehicle concerned to escape pursuit by a member of the Police Force.

New Zealand

Land Transport Act 1998

7 Drivers not to be reckless or dangerous

- (1) A person may not drive a motor vehicle, or cause a motor vehicle to be driven, recklessly.
- (2) A person may not drive a motor vehicle ..., or cause a motor vehicle to be driven ..., at a speed or in a manner which, having regard to all the circumstances, is or might be dangerous to the public or to a person.

36 Contravention of section 7 or section 22 involving injury or death —

- (1) A person commits an indictable offence if the person —
 - (a) drives or causes to be driven a motor vehicle recklessly and by that act or omission causes an injury to or the death of another person; or
 - (b) drives or causes a motor vehicle to be driven at a speed or in a manner which, having regard to all the circumstances, is or might be dangerous to the public or to a person and by that act or omission causes an injury to or death of another person; or
 - (c) without reasonable excuse, contravenes section 22 by failing to stop and ascertain whether any person has been injured, and render assistance, after an accident where a person has been injured or killed.
- (2) If a person is convicted of an offence against subsection (1), —
 - (a) The maximum penalty is imprisonment for a term not exceeding 5 years or a fine not exceeding \$20,000; and
 - (b) The court must order the person to be disqualified from holding or obtaining a driver licence for 1 year or more.
- (3) The imposition of a mandatory disqualification under this section is subject to section 81.

61 Person in charge of motor vehicle causing injury or death

- (1) A person commits an indictable offence if the person is in charge of a motor vehicle ... and causes bodily injury to or the death of a person while —
 - (a) The proportion of alcohol in the breath of the person in charge, as ascertained by an evidential breath test subsequently undergone by that person under section 69, exceeds 400 micrograms of alcohol per litre of breath; or
 - (b) The proportion of alcohol in the blood of the person in charge, as ascertained from an analysis of a blood specimen subsequently taken from that person under section 72 or section 73, exceeds 80 milligrams of alcohol per 100 millilitres of blood.
- (2) A person commits an indictable offence if the person is in charge of a motor vehicle ... and causes bodily injury to or the death of a person while the person in charge is under the influence of drink or a drug, or both, to such an extent as to be incapable of having proper control of the vehicle.
- (3) If a person is convicted of an offence against subsection (1) or subsection (2), —
 - (a) The maximum penalty is imprisonment for a term not exceeding 5 years or a fine not exceeding \$20,000; and

- (b) The court must order the person to be disqualified from holding or obtaining a driver licence for 1 year or more in the case of a first or second offence against this section or section 56(1) or (2), or section 58(1), or section 60(1).

England

Road Traffic Act 1988 (as amended by Road Traffic Act 1991)

1

A person who causes the death of another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.

3A

- (1) If a person causes the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, and —
- (a) he is, at the time when he is driving, unfit to drive through drink or drugs, or
 - (b) he has consumed so much alcohol that the proportion of it in his breath, blood or urine at that time exceeds the prescribed limit, or
 - (c) he is, within 18 hours after that time, required to provide a specimen in pursuance of section 7 of this Act, but without reasonable excuse fails to provide it, he is guilty of an offence.
- (2) For the purposes of this section a person shall be taken to be unfit to drive at any time when his ability to drive properly is impaired.
- (3) Subsection (1)(b) and (c) above shall not apply in relation to a person driving a mechanically propelled vehicle other than a motor vehicle.

Criminal Justice Act 2003

285 Increase in penalties for certain driving-related offences

- (3) In the entry relating to section 1 of the *Road Traffic Act 1988* (c. 52) (causing death by dangerous driving), in column 4, for “10 years” there is substituted “14 years”.
- (4) In the entry relating to section 3A of that Act (causing death by careless driving when under influence of drink or drugs), in column 4, for “10 years” there is substituted “14 years”.

Robbery

Victoria

Crimes Act 1958

75 Robbery

- (1) A person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear that he or another person will be then and there subjected to force.

- (2) A person guilty of robbery, or of an assault with intent to rob, is guilty of an indictable offence and liable to level 4 imprisonment (15 years maximum).

75A Armed robbery

- (1) A person is guilty of armed robbery if he commits any robbery and at the time has with him a firearm, imitation firearm, offensive weapon, explosive or imitation explosive within the meaning assigned to those terms for the purposes of section 77(1).
- (2) A person guilty of armed robbery is guilty of an indictable offence and liable to level 2 imprisonment (25 years maximum).

Queensland

Criminal Code 1899

409 Definition of “robbery”

Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain the thing stolen or to prevent or overcome resistance to its being stolen, is said to be guilty of “robbery”.

411 Punishment of robbery

- (1) Any person who commits the crime of robbery is liable to imprisonment for 14 years.
- (2) If the offender is or pretends to be armed with any dangerous or offensive weapon or instrument, or is in company with 1 or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, the offender wounds or uses any other personal violence to any person, the offender is liable to imprisonment for life.

South Australia

Criminal Law Consolidation Act 1935

5 Interpretation

- (1) In this Act —
“offensive weapon” means —
 - (a) an article or substance made or adapted for use for causing, or threatening to cause, personal injury or incapacity including —
 - (i) a firearm or imitation firearm (ie an article intended to be taken for a firearm); or
 - (ii) an explosive or an imitation explosive (ie an article or substance intended to be taken for an explosive); or
 - (b) an article or substance that a person has —
 - (i) for the purpose of causing personal injury or incapacity; or
 - (ii) in circumstances in which another is likely to feel reasonable apprehension that the person has it for the purpose of causing personal injury or incapacity;

5AA Aggravated offences

- (1) Subject to this section, an aggravated offence is an offence committed in the following circumstances:
- ...
- (b) the offender used, or threatened to use, an offensive weapon to commit, or when committing, the offence;

137 Robbery

- (1) A person who commits theft is guilty of robbery if —
- (a) the person —
- (i) uses force, or threatens to use force, against another in order to commit the theft; or
 - (ii) uses force, or threatens to use force, against another in order to escape from the scene of the offence; and
- (b) the force is used, or the threat is made, at the time of, or immediately before or after, the theft.

Maximum penalty:

- (a) for a basic offence—imprisonment for 15 years;
- (b) for an aggravated offence—imprisonment for life.

270B Assaults with intent

- (1) Subject to subsection (2), a person who assaults another with intent to commit an offence to which this section applies is guilty of an offence.
- (2) Where under a provision of any other Act, or any other provision of this Act, an assault with intent to commit an offence to which this section applies is constituted as an offence, this section —
- (a) does not apply in relation to that offence; and
 - (b) does not operate to create a further or alternative offence with which a person who commits the former offence might be charged.
- (3) The penalty for assault to which this section applies shall be —
- (a) imprisonment for a term not exceeding seven years; or
 - (b) imprisonment for a term not exceeding the maximum term that may be imposed for an attempt to commit the principal offence, whichever is the greater maximum penalty.
- (4) This section applies to the following offences:
- (a) an offence against the person;
 - (b) theft or an offence of which theft is an element;
 - (c) an offence involving interference with, damage to, or destruction of property punishable by imprisonment for 3 years or more.

Western Australia

Criminal Code

391 Definition for sections 392 and 393

In sections 392 and 393 —

“circumstances of aggravation” means circumstances in which —

- (a) immediately before or at or immediately after the commission of the offence —
 - (i) the offender is in company with another person or persons;
 - (ii) the offender does bodily harm to any person; or
 - (iii) the offender threatens to kill any person; or
- (b) the person to whom violence is used or threatened is of or over the age of 60 years.

392 Robbery

A person who steals a thing and, immediately before or at the time of or immediately after doing so, uses or threatens to use violence to any person or property in order —

- (a) to obtain the thing stolen; or
- (b) to prevent or overcome resistance to its being stolen, is guilty of a crime and is liable —
- (c) if immediately before or at or immediately after the commission of the offence the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed, to imprisonment for life;
- (d) if the offence is committed in circumstances of aggravation, to imprisonment for 20 years; or
- (e) in any other case, to imprisonment for 14 years.

393 Assault with intent to rob

A person who, with intent to steal a thing, uses or threatens to use violence to any person or property in order —

- (a) to obtain the thing intended to be stolen; or
- (b) to prevent or overcome resistance to its being stolen, is guilty of a crime and is liable —
- (c) if —
 - (i) immediately before or at or immediately after the commission of the offence the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed; and
 - (ii) the offence is committed in circumstances of aggravation, to imprisonment for life;
- (d) if —
 - (i) immediately before or at or immediately after the commission of the offence the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed; or
 - (ii) the offence is committed in circumstances of aggravation, to imprisonment for 14 years; or
- (e) in any other case, to imprisonment for 10 years.

New Zealand

Crimes Act 1961

234 Robbery

- (1) Robbery is theft accompanied by violence or threats of violence, to any person or property, used to extort the property stolen or to prevent or overcome resistance to its being stolen.
- (2) Every one who commits robbery is liable to imprisonment for a term not exceeding 10 years.

235 Aggravated robbery

Every one is liable to imprisonment for a term not exceeding 14 years who —

- (a) robs any person and, at the time of, or immediately before or immediately after, the robbery, causes grievous bodily harm to any person; or
- (b) being together with any other person or persons, robs any person; or
- (c) being armed with any offensive weapon or instrument, or any thing appearing to be such a weapon or instrument, robs any other person.

236 Assault with intent to rob

- (1) Every one is liable to imprisonment for a term not exceeding 14 years who, with intent to rob any person —
 - (a) causes grievous bodily harm to that person or any other person; or
 - (b) being armed with any offensive weapon or instrument, or any thing appearing to be such a weapon or instrument, assaults that person or any other person; or
 - (c) being together with any other person or persons, assaults that person or any other person.
- (2) Every one who assaults any person with intent to rob that person or any other person is liable to imprisonment for a term not exceeding 7 years.

England

Theft Act 1968

8 Robbery

- (1) A person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.
- (2) A person guilty of robbery, or of an assault with intent to rob, shall on conviction on indictment be liable to imprisonment for life.

Break and enter/burglary

Victoria

Crimes Act 1958

76 Burglary

- (1) A person is guilty of burglary if he enters any building or part of a building as a trespasser with intent —
 - (a) to steal anything in the building or part in question; or
 - (b) to commit an offence—
 - (i) involving an assault to a person in the building or part in question; or
 - (ii) involving any damage to the building or to property in the building or part in question — which is punishable with imprisonment for a term of five years or more.
- (2) References in sub-section (1) to a building shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.
- (3) A person guilty of burglary is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

77 Aggravated burglary

- (1) A person is guilty of aggravated burglary if he or she commits a burglary and —
 - (a) at the time has with him or her any firearm or imitation firearm, any offensive weapon or any explosive or imitation explosive; or
 - (b) at the time of entering the building or the part of the building a person was then present in the building or part of the building and he or she knew that a person was then so present or was reckless as to whether or not a person was then so present.
- (2) A person guilty of aggravated burglary is guilty of an indictable offence and liable to level 2 imprisonment (25 years maximum).

Queensland

Criminal Code 1899

419 Burglary

- (1) Any person who enters or is in the dwelling of another with intent to commit an indictable offence in the dwelling commits a crime.

Maximum penalty — 14 years imprisonment.

- (2) If the offender enters the dwelling by means of any break, he or she is liable to imprisonment for life.
- (3) If —
 - (a) the offence is committed in the night; or

- (b) the offender —
 - (i) uses or threatens to use actual violence; or
 - (ii) is or pretends to be armed with a dangerous or offensive weapon, instrument or noxious substance; or
 - (iii) is in company with 1 or more persons; or
 - (iv) damages, or threatens or attempts to damage, any property;
 the offender is liable to imprisonment for life.

- (4) Any person who enters or is in the dwelling of another and commits an indictable offence in the dwelling commits a crime.

Maximum penalty — imprisonment for life.

421 Entering or being in premises and committing indictable offences

- (1) Any person who enters or is in any premises with intent to commit an indictable offence in the premises commits a crime.

Maximum penalty — 10 years imprisonment.

- (2) Any person who enters or is in any premises and commits an indictable offence in the premises commits a crime.

Maximum penalty — 14 years imprisonment.

- (3) If the offender gains entry to the premises by any break and commits an indictable offence in the premises, he or she is liable to imprisonment for life.

South Australia

Criminal Law Consolidation Act 1935

168 Serious criminal trespass

- (1) For the purposes of this Act, a person commits a “serious criminal trespass” if the person enters or remains in a place (other than a place that is open to the public) as a trespasser with the intention of committing an offence to which this section applies [see Note 1, p 58].
- (2) A place is to be regarded as open to the public if the public is admitted even though —
 - (a) a charge is made for admission; or
 - (b) the occupier limits the purposes for which a person may enter or remain in the place by express or implied terms of a public invitation.
- (3) A person who enters or remains in a place with the consent of the occupier is not to be regarded as a trespasser unless that consent was obtained by —
 - (a) force; or
 - (b) a threat; or
 - (c) an act of deception.
- (4) A reference in this section to the “occupier” of a place extends to any person entitled to control access to the place.

Note 1:

ie theft or an offence of which theft is an element; an offence against the person; or an offence involving interference with, damage to, or destruction of property punishable by imprisonment for 3 years or more.

169 Serious criminal trespass — non-residential buildings

- (1) A person who commits a serious criminal trespass in a non-residential building is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (2) A person who commits a serious criminal trespass in a non-residential building is guilty of an aggravated offence if —
- (a) the person has, when committing the serious criminal trespass, an offensive weapon in his or her possession; or
 - (b) the person commits the serious criminal trespass in company with one or more other persons.

Maximum penalty: Imprisonment for 20 years.

- (3) In this section —

“non-residential building” means a building or part of a building that is not a place of residence.

170 Serious criminal trespass — places of residence

- (1) A person who commits a serious criminal trespass in a place of residence is guilty of an offence.

Maximum penalty: Imprisonment for 15 years.

- (2) A person who commits a serious criminal trespass in a place of residence is guilty of an aggravated offence if —
- (a) the person has, when committing the trespass, an offensive weapon in his or her possession; or
 - (b) the person commits the trespass in company with one or more other persons; or
 - (c) another person is lawfully present in the place and the person knows of the other’s presence or is reckless about whether anyone is in the place.

Maximum penalty: Imprisonment for life.

- (3) In this section —

“place of residence” means a building, structure, vehicle or vessel, or part of a building, structure, vehicle or vessel, used as a place of residence.

Western Australia

Criminal Code

400 Definitions

(1) In this Chapter —

“circumstances of aggravation” means circumstances in which —

- (a) immediately before or during or immediately after the commission of the offence the offender —
 - (i) is or pretends to be armed with a dangerous or offensive weapon or instrument;
 - (ii) is or pretends to be in possession of an explosive substance;
 - (iii) is in company with another person or other persons;
 - (iv) does bodily harm to any person;
 - (v) threatens to kill or injure any person; or
 - (vi) detains any person (within the meaning of section 332(1)); or
- (b) immediately before the commission of the offence the offender knew or ought to have known that there was another person (other than a co-offender) in the place;

401 Burglary

- (1) A person who enters or is in the place of another person, without that other person’s consent, with intent to commit an offence in that place is guilty of a crime and is liable —
 - (a) if the offence is committed in circumstances of aggravation, to imprisonment for 20 years;
 - (b) if the place is ordinarily used for human habitation but the offence is not committed in circumstances of aggravation, to imprisonment for 18 years; or
 - (c) in any other case, to imprisonment for 14 years.
- (2) A person who commits an offence in the place of another person, when in that place without that other person’s consent, is guilty of a crime and is liable —
 - (a) if the offence is committed in circumstances of aggravation, to imprisonment for 20 years;
 - (b) if the place is ordinarily used for human habitation but the offence is not committed in circumstances of aggravation, to imprisonment for 18 years; or
 - (c) in any other case, to imprisonment for 14 years.

...
- (4) If a person convicted of an offence against subsection (1) or (2) committed in respect of a place ordinarily used for human habitation was a repeat offender at the time of committing that offence, the court sentencing the person shall sentence the offender —
 - (a) to at least 12 months imprisonment notwithstanding any other written law; or
 - (b) if the offender is a young person (as defined in the *Young Offenders Act 1994*) either to at least 12 months imprisonment or to a term of at least 12 months detention (as defined in that Act), as the court thinks fit, notwithstanding section 46(5a) of that Act.
- (5) A court shall not suspend a term of imprisonment imposed under subsection (4).
- (6) Subsection (4)(b) does not prevent a court from making a direction under section 118(4) of the *Young Offenders Act 1994* or a special order under Division 9 of Part 7 of that Act.

New Zealand

Crimes Act 1961

231 Burglary

- (1) Every one commits burglary and is liable to imprisonment for a term not exceeding 10 years who —
 - (a) enters any building or ship, or part of a building or ship, without authority and with intent to commit a crime in the building or ship; or
 - (b) having entered any building or ship, remains in it without authority and with intent to commit a crime in the building or ship.
- (2) In this section and in section 232, “building” means any building or structure of any description, whether permanent or temporary; and includes a tent, caravan, or houseboat; and also includes any enclosed yard or any closed cave or closed tunnel.
- (3) For the purposes of this section and section 232 —
 - (a) entrance into a building or ship is made as soon as any part of the body of the person making the entrance, or any part of any instrument used by that person, is within the building or ship; and
 - (b) every one who gains entrance to a building or ship by any threat or artifice used for that purpose is to be treated as having entered without authority.

232 Aggravated burglary

- (1) Every one is liable to imprisonment for a term not exceeding 14 years who —
 - (a) while committing burglary, has a weapon with him or her or uses any thing as a weapon; or
 - (b) having committed burglary, has a weapon with him or her, or uses any thing as a weapon, while still in the building or ship.
- (2) Every one is liable to imprisonment for a term not exceeding 5 years who is armed with a weapon with intent to commit burglary.

United Kingdom

Theft Act 1968

9 Burglary

- (1) A person is guilty of burglary if —
 - (a) he enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection (2) below; or
 - (b) having entered any building or part of a building as a trespasser he steals or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.
- (2) The offences referred to in subsection (1)(a) above are offences of stealing anything in the building or part of a building in question, of inflicting on any person therein any grievous bodily harm ... therein, and of doing unlawful damage to the building or anything therein.

- (3) A person guilty of burglary shall on conviction on indictment be liable to imprisonment for a term not exceeding —
 - (a) where the offence was committed in respect of a building or part of a building which is a dwelling, fourteen years;
 - (b) in any other case, ten years.
- (4) References in subsections (1) and (2) above to a building, and the reference in subsection (3) above to a building which is a dwelling, shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.

10 Aggravated burglary

- (1) A person is guilty of aggravated burglary if he commits any burglary and at the time has with him any firearm or imitation firearm, any weapon of offence, or any explosive; and for this purpose —
 - (a) “firearm” includes an airgun or air pistol, and “imitation firearm” means anything which has the appearance of being a firearm, whether capable of being discharged or not; and
 - (b) “weapon of offence” means any article made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him for such use; and
 - (c) “explosive” means any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with him for that purpose.
- (2) A person guilty of aggravated burglary shall on conviction on indictment be liable to imprisonment for life.

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