



Sentencing Council
Attorney General & Justice

Standard Minimum Non-Parole Periods

Questions for discussion

A consultation paper by the NSW Sentencing Council

September 2013

NSW Sentencing Council

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**The closing date for priority submissions on SNPPs
for child sexual assault offences is:**

Friday 11 October 2013

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1.1 This question paper deals with the following questions:

- What offences should be standard non-parole period (SNPP) offences under the SNPP scheme and how those offences should be identified.
- The level at which the SNPPs should be set for those offences.
- Who should identify/recommend changes to the SNPP offences in future.

Terms of reference

1.2 On 11 September 2013, the Attorney General asked us to review the following aspects of the standard non-parole period scheme, and report back by 20 December 2013:

- (a) the offences which should be included in the standard non-parole period Table
- (b) the standard non-parole periods for those offences, and
- (c) the process by which any further offences should be considered for inclusion in the Table and any further standard non-parole periods set and advise on options for reform of these aspects of the scheme.

1.3 In light of the establishment of the Parliamentary Select Committee inquiry into child sexual assault offences, the Attorney General has further asked us to prioritise consideration of SNPPs for child sexual assault offences and report back on the following matters by 31 October 2013:

- a) identification of child sexual assault offences that should be included in the standard non-parole period Table; and
- b) whether there are specific factors that should be taken into account to determine the standard non-parole periods for child sexual assault offences and, if so, what those factors are.

1.4 The Attorney General has also asked that our review include consultations with stakeholders and the community.

Previous reviews

- 1.5 The current terms of reference are set in the context of:
- the report of the Law Reform Commission (LRC) on sentencing, released in September 2013¹
 - the LRC's interim report on SNPPs, released in August 2012²
 - our background report on SNPPs, published to assist the LRC's review in November 2011,³ and
 - our report on SNPPs for dangerous driving offences which was published in January 2011.⁴
- 1.6 The LRC's report recommended that:
- the government should consult further with stakeholders and the community about the following aspects of the standard minimum non-parole period (SNPP) scheme:
- (a) the offences which should be included in the SNPP Table;
 - (b) the SNPPs for those offences; and
 - (c) the process by which any further offences should be considered for inclusion in the Table and any further SNPPs should be set.⁵

The SNPP scheme

What is an SNPP?

- 1.7 The SNPP scheme, which is set out in Part 4 Division 1A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) (CSPA), applies to a relatively small number of serious offences. Complex case law developed around the original statutory provisions (this is discussed in the Law Reform Commission's report on sentencing⁶). The Crimes (Sentencing Procedure) Amendment (Standard Non-parole Periods) Bill 2013 (NSW) which is currently before parliament will clarify the application of the SNPP scheme.
- 1.8 Under the Bill:
- A court is to take the SNPP for an offence into account when determining the appropriate sentence for an offence (together with the other matters that a court

1. NSW Law Reform Commission, *Sentencing*, Report 139 (2013).

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

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

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

5. NSW Law Reform Commission, *Sentencing*, Report 139 (2013) rec 7.1(2).

6. See generally NSW Law Reform Commission, *Sentencing*, Report 139 (2013) ch 7.

can or must take into account, such as the maximum penalty, the aggravating and mitigating factors set out in s 21A of the CSPA, and the factors and principles arising at common law).⁷

- The SNPP “represents the non-parole period for an [SNPP] offence ... that, taking into account only the objective factors affecting the relative seriousness of that offence, is in the middle of the range of seriousness”.⁸
 - The court must give reasons for setting a non-parole period that is different to the SNPP and must identify each factor that it took into account.⁹
- 1.9 The scheme, which commenced on 1 February 2003,¹⁰ originally applied to 24 offence categories. It now applies to over 30 offence categories with maximum penalties ranging from 7 years’ imprisonment to life imprisonment. The current SNPP offences are set out in Appendix A.

What are the policy objectives of the SNPP scheme?

- 1.10 The SNPP scheme was intended to give further guidance and structure to the sentencing discretion. The second reading speech given when the scheme was introduced identified the SNPP as being “a further important reference point” when judges sentence offenders for SNPP offences.¹¹ The current Bill maintains this objective.¹²
- 1.11 The second reading speech stressed that the reforms introduced at the time were not a form of “mandatory sentencing” but were aimed at providing “further guidance and structure to judicial discretion”. The reforms were “primarily aimed at promoting consistency and transparency in sentencing and also promoting public understanding of the sentencing process”.¹³ More specifically, the SNPP scheme was seen as ensuring “not only greater consistency in sentencing but also that proper regard is given to the community expectation that punishment is imposed that is commensurate with the gravity of the crime”.¹⁴
- 1.12 The SNPPs for each SNPP offence were set by “taking into account the seriousness of the offence, the maximum penalty for the offence and current sentencing trends for the offence as shown by sentencing statistics compiled by the Judicial Commission of New South Wales”. The SNPPs also took into account the

7. Proposed *Crimes (Sentencing Procedure) Act 1999* (NSW) s 54B(2); *Crimes (Sentencing Procedure) Amendment (Standard Non-parole Periods) Bill 2013* (NSW) sch 1[3].

8. Proposed *Crimes (Sentencing Procedure) Act 1999* (NSW) s 54A(2); *Crimes (Sentencing Procedure) Amendment (Standard Non-parole Periods) Bill 2013* (NSW) sch 1[2].

9. Proposed *Crimes (Sentencing Procedure) Act 1999* (NSW) s 54A(3); *Crimes (Sentencing Procedure) Amendment (Standard Non-parole Periods) Bill 2013* (NSW) sch 1[3].

10. *Crimes (Sentencing Procedure) Act 1999* (NSW) pt 4 div 1A, inserted by the *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002* (NSW).

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

12. NSW, Parliamentary Debates, Legislative Assembly, 18 September 2013, 67 (G Smith, Attorney General).

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

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

“community expectation that an appropriate penalty will be imposed having regard to the objective seriousness of the offence”.¹⁵

What are the outcomes of the SNPP scheme?

1.13 A study by the Judicial Commission of NSW published in 2010 compared the proportion of convicted offenders imprisoned specifically for SNPP offences by the NSW higher courts before the introduction of the SNPP scheme (3 April 2000 to 31 January 2003) and after the introduction of the SNPP scheme (1 February 2003 to 31 December 2007).¹⁶ Appendix B sets out a table showing the median non-parole periods for selected SNPP offences in the pre-SNPP period and in the post-SNPP period.

1.14 In overall terms, the Judicial Commission observed:

- The findings “support the conclusion that the greater the proportion of the standard non-parole period to the maximum penalty, the greater the increase in the sentences imposed”.
- Sentences tended to become relatively more severe for offenders who pleaded not guilty compared to those who pleaded guilty.
- In terms of consistency of sentencing, “[g]enerally it can be said that where the statutory scheme did not have a significant effect on the severity of sentences, there is evidence that sentencing outcomes became more uniform”.

Table 1.1 Statistically significant increases in median sentences for SNPP offences – defendants who pleaded not guilty (years)

Offence	Non-parole period			Head sentence		
	Pre-SNPP	Post-SNPP	% increase	Pre-SNPP	Post-SNPP	% increase
Murder	14	16.5	17.9%	18	23	27.8%
Wounding etc with intent to do bodily harm or resist arrest	2.5	5.6	125.0%	5	8	60.0%
Sexual assault	2.5	4	60.0%	4.7	6	28.6%
Aggravated sexual assault	4	4.5	12.5%	NSS	NSS	NSS

Source: P Poletti and H Donnelly, The Impact of the Standard Non-Parole Period Sentencing Scheme on Sentencing Patterns in New South Wales, Research Monograph No 33 (Judicial Commission of NSW, 2010). NSS = not statistically significant.

1.15 However, the Judicial Commission provided this important rider:

Of course, it is not possible to conclude that the statutory scheme has only resulted in a benign form of consistency or uniformity whereby like cases are being treated alike and dissimilar cases differently. To put it another way, it is

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

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

not possible to tell whether dissimilar cases are now being treated uniformly in order to comply with the statutory scheme.¹⁷

- 1.16 It is clear from the Judicial Commission analysis that the SNPP scheme has generally resulted in significant increases in sentence levels for the SNPP offences especially the offences involving violence, including sexual violence. This does not mean, however, that the median or average sentences actually given for these offences have approximated their SNPPs (as demonstrated by the analysis in Appendix B). We do not view this as being of concern or a failing in the scheme. There are likely to be many reasons for such a difference. The SNPP is intended to represent the NPP for offences in the mid-range of seriousness without account being taken of subjective factors. Also a large number of offences comprised in the database may have been of lower seriousness than mid-range; and the presence of a plea of guilty or favourable subjective factors will lead to an appropriate reduction in the sentence. The Judicial Commission study shows, however, that SNPPs have had a significant impact on sentencing levels, and to this extent it would seem to have operated as expected.
- 1.17 The study also reported that the guilty plea rate for what are now SNPP offences increased from 78.2% to 86.1% after the commencement of the scheme, while the guilty plea rate for non-SNPP offences remained relatively stable.¹⁸ Anecdotally it has been suggested that this increase was due to advice given, or an understanding acquired, that a guilty plea would avoid the application of the SNPP scheme and, in effect, achieve a discount on sentencing.
- 1.18 The impact of the High Court's 2011 decision in *Muldrock* on the trends noted in the study has not, however, been evaluated. In overruling the approach to the SNPP scheme that the NSW Court of Criminal Appeal has developed since the 2004 decision of *Way*¹⁹ it may have altered that trend. As already noted, a bill is currently before parliament that will make changes to the SNPP provisions to clarify how the courts should approach SNPP offences in light of the *Muldrock* decision.²⁰
- 1.19 Changes in levels of sentencing as a result of the SNPP scheme, particularly for high volume offences, have implications for the prison population.²¹ A change to the current scheme that would increase the time spent in custody for certain offences and the time spent under supervision would have resource implications for Corrective Services NSW.

17. P Poletti and H Donnelly, *The Impact of the Standard Non-parole Period Sentencing Scheme on Sentencing Patterns in New South Wales*, Monograph 33 (Judicial Commission of NSW, 2010) 59-61.

18. P Poletti and H Donnelly, *The Impact of the Standard Non-parole Period Sentencing Scheme on Sentencing Patterns in New South Wales*, Monograph 33 (Judicial Commission of NSW, 2010) 19.

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

20. Crimes (Sentencing Procedure) Amendment (Standard Non-parole Periods) Bill 2013 (NSW).

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

Criticisms of the SNPP scheme

- 1.20 In preparing the background report on SNPPs,²² we received a number of submissions that were critical of the SNPP scheme. The LRC received a number of similar preliminary submissions in response to the general sentencing reference, and again during the consultations held specifically on the SNPP scheme. Stakeholders' concerns are summarised below.

No consistent pattern in the SNPP Table

- 1.21 Some stakeholders have noted the absence of any consistent pattern in the relationship between the SNPPs and the maximum penalties for the offences.²³ The SNPP Table seems to indicate that Parliament, by nominating different SNPPs for offences, views some offences as requiring more time in custody, even though they share the same maximum penalty. This is not something that the legislature has stated clearly and it has been observed that it “would involve concepts which are new to the law of sentencing”.²⁴
- 1.22 A question arises whether a consistent pattern in the relationship between the SNPPs and the maximum penalties for the offences is necessary or desirable. Some offences may be of such a nature as to require an SNPP that is higher or lower than a particular proportion of their maximum penalties.

Difficulty of applying aggravated indecent assault SNPPs

- 1.23 A submission pointed out that in cases of aggravated indecent assault, the SNPPs are so close to the maximum penalties as to make a literal application of the SNPP legislation “quite irregular and illogical” because it effectively treats offences in the middle range of objective seriousness as being close to the most serious of their kind.²⁵ So, in such a case the specified SNPP for an offence in the midrange of objective seriousness equates to 80% of the maximum penalty although normally that would only apply to an offence in the top range of seriousness. This would also allow little opportunity for the period of release on parole that is otherwise the norm.

Difficulty of gauging public opinion on sentencing

- 1.24 There is some difficulty in gauging informed public opinion on sentencing. In our background report, we noted that a commonly expressed view was that the SNPP

22. NSW Sentencing Council, *Standard Non-parole Periods: A Background Report* (2011).

23. RO Blanch, *Preliminary Submission to the NSW Law Reform Commission PSE3*, 1-2; NSW Office of the Director of Public Prosecutions, *Preliminary Submission to the NSW Law Reform Commission PSE10*, 4-5; Legal Aid NSW, *Preliminary Submission to the NSW Law Reform Commission PSE18*, 9; Law Society of NSW, Criminal Law Committee, *Submission to the NSW Law Reform Commission SES4*, 1; Police Association of NSW, *Submission to the NSW Law Reform Commission SES9*, 3; R N Madgwick, *Submission SNPP11*, 1; NSW Bar Association, *Submission SNPP2*, 2 (supported by Law Society of NSW, *Submission SNPP4*, 1 and Legal Aid NSW, *Submission to the NSW Sentencing Council SNPP08*, 1); NSW Office of the Director of Public Prosecutions, *Submission to Sentencing Council SNPP10*, 2; P McClellan (*Submission SES5*, 2) observed that some SNPPs “do not seem to be justified or appropriate”; RO Blanch (*Submission SES1*, 2) described the present statutory provisions as “nonsensical”.

24. P Johnson, “Reforms to New South Wales Sentencing Law: The Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002” (2003) 6 *Judicial Review* 314, 335.

25. R O Blanch, *Preliminary Submission PSE3*, 2.

scheme was founded on a ‘flawed premise’ that the community expected there to be higher penalties for serious crimes.²⁶

- 1.25 Research by the Victorian Sentencing Advisory Council, like other similar studies, has found that, when members of the public were given more complete information about all the facts of a case, sometimes there was a “strong mitigating effect on severity”, for example, in instances of young offenders or first time offenders.²⁷

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

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

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Question 2.1

1. What offences should be SNPP offences?
2. What criteria should be used to assess whether an offence should be an SNPP offence?
3. How should the criteria be applied? (in what combination?)

- 2.1 Our first questions deal with identifying potential SNPP offences. We deal with questions about SNPP levels in the next chapter.
- 2.2 If viewed from the perspective of the existing list of SNPP offences, the questions involve determining which offences should be removed, which should be retained and which should be added, and on what basis?
- 2.3 We have identified a number of criteria which could be used to assess whether an offence should be an SNPP offence. They include:
- maximum penalty
 - type of offence
 - prevalence of the offence
 - community concern about the offence
 - whether the offence can be tried summarily
 - whether sentencing pattern does not sufficiently reflect its seriousness
 - any special need for general deterrence.

- 2.4 A combination of criteria may need to be employed to identify offences that are suitable for the SNPP scheme. For example, a high maximum penalty may not, by itself, be sufficient to identify a suitable SNPP offence if the offence is a basic one that covers a wide range of offending behaviour from less serious to highly serious criminal conduct. Compassing the deposition of the sovereign has a very high maximum penalty of 25 years, but could be considered unsuitable for inclusion in the scheme since it is not a prevalent offence.
- 2.5 It may be necessary to look to other criteria, for example, whether the offence includes aggravating elements that justify a higher penalty for offences lying in the mid range of objective seriousness or whether the offence is, in the vast majority of cases, dealt with summarily in the Local Court rather than on indictment in the District Court.
- 2.6 In its interim report on the SNPP scheme, the LRC observed:

Whether the reach of the scheme is extended or narrowed, it would seem appropriate for it to be confined to offences of the “more or most serious” kind, which occur sufficiently frequently to justify including them in the scheme. It would not be easy to draw a bright dividing line based upon a bare evaluation of the potential seriousness of the offences that are currently included in the scheme, or that could be included in the scheme, although no doubt a starting point for any such exercise would be the available maximum penalty for those offences, accompanied by a consideration of the incidence of their commission and their potential consequences.¹

Suggested criteria for identifying SNPP offences

Maximum penalty

Question 2.2

If the maximum penalty for an offence were to be a criterion for assessing whether an offence should be an SNPP offence, how should it be used?

- 2.7 There are a number of offences that are not currently SNPP offences that carry maximum penalties of life imprisonment, 25 years imprisonment, 24 years imprisonment, or 20 years imprisonment. These are outlined, by way of example, in Appendix C.
- 2.8 There are a large number of offences carrying terms of imprisonment of between 15 and 20 years. The LRC identified a number of these as being “serious” offences:²

1. NSW Law Reform Commission, *Interim Report on Standard Minimum Non-Parole Periods*, Report 134 (2012) [2.92].

2. NSW Law Reform Commission, *Interim Report on Standard Minimum Non-Parole Periods*, Report 134 (2012) appendix C.

- Fire a firearm at a dwelling-house or building during a public disorder or in the course of an organised criminal activity with reckless disregard for the safety of any person (Maximum penalty: 16 years' imprisonment).³
- Destroy or damage property by fire or explosives with intent to cause bodily injury (Maximum penalty: 16 years' imprisonment).⁴
- Adult procures child, or meets child following grooming, under the age of 14 years for unlawful sexual activity (Maximum penalty: 15 years' imprisonment).⁵
- Participate in a criminal group whose activities are organised and on-going and direct any of the activities of the group, knowing that it is a criminal group and knowing or being reckless as to whether that participation contributes to the occurrence of any criminal activity (Maximum penalty: 15 years' imprisonment).⁶

2.9 Parliament has already decided that the worst category of offending for each of the offences listed in Appendix C is sufficiently serious to warrant a serious maximum penalty. One question is whether any of these serious offences require the additional guidepost of an SNPP. The reasons given for adding to the list of SNPPs since 2003 have referred to many of the objectives that are also attributed to maximum penalties, such as deterrence, denunciation and protection of victims of particular vulnerability.⁷

Types of offence

Question 2.3

- (1) If the type of offence were to be a criterion for assessing whether an offence should be an SNPP offence, how should it be used?
- (2) What types of offence should be SNPP offences?

2.10 There are a number of types of offence that are arguably sufficiently serious to justify an SNPP. The list of SNPP offences already includes groups of offences involving offences against the person (sex and violence), drugs and firearms. There are a number of other offences in these categories which carry similar maximum penalties but are not included among the SNPP offences. We discuss these briefly in the following paragraphs together with some other categories of offence that could be considered for inclusion. We welcome submissions on other categories of offence that could be used to identify potential SNPP offences.

3. *Crimes Act 1900* (NSW) s 93GA(1A), (1B).

4. *Crimes Act 1900* (NSW) s 196(2)(b).

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

6. *Crimes Act 1900* (NSW) s 93T(4A).

7. Item 1A: NSW, *Parliamentary Debates*, Legislative Assembly, 6 April 2006; NSW, *Parliamentary Debates*, Legislative Assembly, 1 April 2009; Item 1B: NSW, *Parliamentary Debates*, Legislative Council, 17 October 2007; Items 4A-4D: NSW, *Parliamentary Debates*, Legislative Council, 17 October 2007; Items 15A, 15C, 21-24: NSW, *Parliamentary Debates*, Legislative Council, 17 October 2007; Item 9B: NSW, *Parliamentary Debates*, Legislative Council, 17 October 2007.

Sexual offences

- 2.11 In our review of penalties relating to sexual assault offences, in 2008, we identified a number of non-SNPP sexual offences that were subject to the same or a higher maximum penalty as the existing SNPP sexual offences.⁸ Our view was the persistent sexual abuse of a child⁹ should be an SNPP offence. As to the remaining non-SNPP sexual offences, we concluded that there did “not appear to be a sufficient incidence of offending as to justify their inclusion ... but it is important that there be a continuing review of each of these offences because of the message that their inclusion in the Table would convey”.¹⁰

Sexual assault offences against children

Question 2.4

What child sexual assault offences should be SNPP offences?

- 2.12 Sexual assault offences against children are particularly serious offences and the Attorney General has asked us specifically to prioritise a report on these offences, in light of the current Parliamentary Select Committee inquiry into child sexual assault offences. We would, therefore, appreciate receiving specific submissions on this question by 11 October 2013 so that they can be considered in the preparation of our interim report on the question.
- 2.13 Table D.1 in Appendix D sets out the current sexual offences against children in the *Crimes Act 1900* (NSW). In order to set the offences in context we have included all sexual offences against children, not only those that involve a direct “assault” (for example, the serious offences of grooming) and we have compared them against the similar offences where the victims are adults.
- 2.14 As noted above, we suggested including the offence of persistent sexual abuse of a child¹¹ in the list of SNPPs in order to overcome a problem with the courts’ treatment of that offence. According to the second reading speech for the bill establishing the offence, it was intended to “sit above, and in addition to, the current sexual offences contained in the Crimes Act 1900” and its maximum penalty of 25 years’ imprisonment would be “appropriately severe”. The courts had, however, interpreted the provision in a way that led to offenders being sentenced no more harshly than if they had been sentenced for a number of representative offences of sexual abuse of a child.¹² Our view was that including the offence in the list of SNPPs would make it clear that “the appropriate sentence to be imposed is one that

8. NSW Sentencing Council, *Penalties Relating to Sexual Assault Offences in New South Wales* (2008) vol 1 [3.57] and Table 6.

9. *Crimes Act 1900* (NSW) s 66EA.

10. NSW Sentencing Council, *Penalties Relating to Sexual Assault Offences in New South Wales*, Report (2008) vol 1 [3.59].

11. *Crimes Act 1900* (NSW) s 66EA.

12. See *R v Fitzgerald* (2004) 59 NSWLR 493 [13]; *R v Manners* [2004] NSWCCA 181 [21].

is proportionate to the seriousness of the offence”, that is in engaging in the persistent abuse of a child.¹³

- 2.15 In our 2011 background report we noted the need to consider whether various offences of sexual intercourse with a child between 10 and 16 years,¹⁴ should be added to the table because of the frequency of offending, and the fact that they are strictly indictable offences, attracting maximum penalties similar to existing SNPP offences. However, we noted that barring other valid grounds for inclusion in the SNPP list, there was no data to suggest that sentencing trends for these offences were currently inconsistent.¹⁵

Sexual offences against adults

- 2.16 Table E.1 in Appendix E sets out the sexual offences against adults with maximum penalties of 7 years or more that are currently not SNPP offences.
- 2.17 In our previous review, Legal Aid NSW submitted that sexual offences are not suitable for inclusion in the SNPP scheme, because sentencing for these offences is a highly complex exercise unsuited to the limitations and restrictions of SNPPs. They suggested that sexual assault offences are already subject to graduated sentencing, which takes into account the circumstances of aggravation as well as the circumstances of the victim.¹⁶

Offences against the person

- 2.18 The list of SNPPs currently includes a number of offences against the person carrying maximum penalties of 7 years or more.
- 2.19 Table E.2 in Appendix E sets out the other offences against the person (non-sexual offences) with maximum penalties of 7 years or more that are currently not SNPP offences. Some of them are very serious offences carrying maximum penalties of 25 years and a number of them involve the use of explosives.

Drugs

- 2.20 The list of SNPPs currently includes four drug offences under the *Drug Misuse and Trafficking Act 1985* (NSW) that have a maximum penalty of 20 years or more. A number of other very serious non-SNPP drug offences with a maximum penalty of 20 years or more are noted in Appendix C.
- 2.21 There are also a number of other penalty provisions in the *Drug Misuse and Trafficking Act 1985* (NSW) that set penalties of imprisonment for 15 years or more that are not included in the list of SNPPs. These include penalties for certain offences involving:

13. NSW Sentencing Council, *Penalties Relating to Sexual Assault Offences in New South Wales*, Report (2008) vol 1 [2.34].

14. *Crimes Act 1900* (NSW) s 66C(1), (2) and (4).

15. NSW Sentencing Council, *Standard Non-parole Periods: A Background Report* (2011) [3.32].

16. Legal Aid NSW, *Submission SNPP8A*, 1–2.

- cultivation or supply of non-commercial quantities of drugs other than cannabis (15 years);¹⁷
- commercial quantities or cultivation for a commercial purpose of cannabis (15 years);¹⁸
- the manufacture or production of prohibited drugs in the presence of children or procuring children to supply prohibited drugs (18 years);¹⁹ and
- enhanced indoor cultivation of prohibited plants in the presence of children (18 years).²⁰

Firearms and other weapons

- 2.22 Firearms and other weapons are a growing area of concern and of legislative activity in NSW, including the recent introduction of a bill to enhance police investigative powers in respect of people subject to firearm prohibition orders.²¹
- 2.23 Table E.3 in Appendix E sets out the firearms and other weapon offences with maximum penalties of 7 years or more that are currently not SNPP offences.
- 2.24 There is some overlap with offences against the person, for example, where a firearm or other weapon is used in a robbery. It is an offence of some prevalence but is subject to a guideline judgment²² and, when associated with a wounding, is an SNPP offence (item 11).

Fraud

- 2.25 In 2009, the old fraud offences were repealed and new offences of dishonestly obtaining by deception were inserted in the *Crimes Act 1900* (NSW).²³ These offences carry a relatively serious maximum penalty of imprisonment for 10 years.
- 2.26 While the new dishonesty offences are relatively high volume offences, the vast majority of these are dealt with summarily in the Local Court. Between February 2010 and December 2012:
- the Local Court has sentenced 994 offences of dishonestly obtaining property by deception²⁴ but only 4 have been sentenced in the higher courts;
 - the Local Court has sentenced 1037 offences of dishonestly obtaining financial advantage by deceptions²⁵ but only 7 have been sentenced in the higher courts.

17. *Drug Misuse and Trafficking Act 1985* (NSW) s 32(1)(g).

18. *Drug Misuse and Trafficking Act 1985* (NSW) s 33(2)(b).

19. *Drug Misuse and Trafficking Act 1985* (NSW) s 33AC(2)

20. *Drug Misuse and Trafficking Act 1985* (NSW) s 33AD(3)

21. Firearms and Criminal Groups Legislation Amendment Bill 2013 (NSW).

22. See para [2.52]-[2.54] below.

23. *Crimes Amendment (Fraud, Identity and Forgery Offences) Act 2009* (NSW).

24. *Crimes Act 1900* (NSW) s 192E(1)(a).

25. *Crimes Act 1900* (NSW) s 192E(1)(b).

- 2.27 There is currently insufficient data to show how the new offences operate in the higher courts. This may be partly a function of lead times to trial for such offences in the higher courts.

Offences that cover a wide range of offending behaviour

Question 2.5

In determining which offences should be SNPP offences, what should the approach be to offences that cover a wide range of offending behaviour?

- 2.28 If consistency is one of the aims of the scheme, then it could be argued that the list of SNPP offences should not include offences that are basic offences and that can cover a wide range of offending behaviours and objective seriousness.
- 2.29 The 2003 review of the law of manslaughter in NSW considered that manslaughter was omitted from the list of SNPP offences because the courts had consistently identified it as a crime “involving such a wide range of conduct that it is not possible to describe a ‘typical’ or ‘middle of the range’ offence”.²⁶
- 2.30 In 2004, we observed that a wide variation in the circumstances in which an offence is committed should not be a decisive reason for excluding an offence from the SNPP scheme. However, our view was that such factors should nevertheless be considered when deciding whether to include an offence in the SNPP list.²⁷ We observed in the case of attempt offences that culpability depends to a large extent on the particular offence attempted, and the circumstances of the attempt and referred to a submission which stated:
- Attempts may be constituted by, at the one end of the spectrum, acts that go a very short way beyond mere preparation and, at the other end, acts that fall just short, through sheer good luck, of the completed offence. It would be productive of injustice to seek to apply one standard non-parole period to all of the degrees of culpability that can be expressed by way of a conviction for attempting to commit a particular offence.²⁸
- 2.31 However, we concluded that in some instances, such as perverting the course of justice or bribery, the attempt may be as serious as the completed offence and the relevant sentencing principles applied.²⁹

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

27. NSW Sentencing Council, *Whether ‘Attempt’ and ‘Accessory’ Offences Should be Included in the Standard Non-Parole Sentencing Scheme*, Report (2004) [8.5].

28. NSW Sentencing Council, *Whether ‘Attempt’ and ‘Accessory’ Offences Should be Included in the Standard Non-Parole Sentencing Scheme*, Report (2004) 21 quoting P Zahra, *Submission*, 12 September 2003. See also *R v Schofield* [2003] NSWCCA 3; 138 A Crim R 19 [139] citing *R v Taouk* (1992) 65 A Crim R 387, 390.

29. NSW Sentencing Council, *Whether ‘Attempt’ and ‘Accessory’ Offences Should be Included in the Standard Non-Parole Sentencing Scheme*, Report (2004) 26.

Aggravated offences

Question 2.6

In determining which offences should be SNPP offences, what should the approach be to aggravated offences?

- 2.32 Arguably, it may be possible to identify offences for inclusion in the list of SNPP offences where there are circumstances of particular aggravation that warrant a higher maximum sentence. This could give effect to the intention of parliament where it has enacted an aggravated or more serious version of the basic offence that is clearly meant to occupy a space at the higher end of the sentencing range.
- 2.33 For example, the provisions setting out aggravating circumstances for sexual offences will often include such factors as the victim being under 16, the victim being under the authority of the offender or the victim having a physical disability or cognitive impairment. Some sexual offences that are not expressly identified as “aggravated” will also involve aggravating elements, such as persistent sexual abuse of a child.
- 2.34 Appendix F sets out the aggravating offences with maximum penalties of 7 years or more that are currently not SNPP offences. Some of these are already included among the offences against the person with a maximum penalty of 7 years imprisonment or more set out in Appendix D (sexual offences against children) and Tables E.1 and E.2 in Appendix E (sexual and non-sexual offences against the person).
- 2.35 Another form of “aggravation” that might justify including an offence in the scheme is that where harsher penalties are prescribed for a second or subsequent offence by an offender. Current examples of such offences include the offence of persistent child sex offending and the unauthorised sale of firearms on an ongoing basis. However, it could be possible to specify higher SNPPs for all second or subsequent SNPP offences without enacting an additional offence.

Prevalence of offences

Question 2.7

If the prevalence of an offence were to be a criterion for assessing whether an offence should be an SNPP offence, how should it be used?

- 2.36 The terms of reference for our previous review of SNPPs assumed that prevalence was important for determining whether an offence should be an SNPP offence. They required us to “monitor the rates of offending and sentencing patterns for sexual offences not contained in the Table of SNPPs, with a view to their possible inclusion in the Table at a later date”.
- 2.37 The prevalence of an offence can be determined by such measures as crime rates or the number of successful prosecutions in the higher courts.

- 2.38 If prevalence were to be an important factor in deciding whether an offence should be an SNPP offence, it might be necessary to consider adding some offences to the SNPP list which have a high prevalence in the higher courts. For example, Table G.1 in Appendix G sets out the non-SNPP offences that have been successfully prosecuted in the higher courts more than 200 times since 2006.
- 2.39 On the other hand, it might be necessary to consider removing some offences from the SNPP list which have a low prevalence. Table G.2 in Appendix G sets out the SNPP offences that have been successfully prosecuted in the higher courts on fewer than 50 occasions since 2006.
- 2.40 However, prevalence (whether high or low) is not necessarily a measure of seriousness or community concern and does not take account of the possibility that a harsh maximum penalty and inclusion in the list of SNPP offences might have a deterrent effect.
- 2.41 In our background report, we analysed the number of proven non-SNPP sexual offences for the period 2006-2010 and found that the incidence of the following offences was significant:
- Indecent Assault: *Crimes Act 1900* (NSW) s 61L;
 - Act of Indecency: *Crimes Act 1900* (NSW) s 61N;
 - Aggravated Act of Indecency: *Crimes Act 1900* (NSW) s 61O;
 - Sexual Intercourse – child between 10 and 16: *Crimes Act 1900* (NSW) s 66C;
 - Production, dissemination or possession of child abuse material: *Crimes Act 1900* (NSW) s 91H.³⁰
- 2.42 The first two offences in the list do not meet other seriousness criteria identified in this chapter. While they are sexual offences, the maximum penalty is 5 years in the case of s 61L, 2 years in the case of s 61N(1) and 18 months in the case of s 61N(2). These maximum penalties are all shorter than the maximums for any existing SNPP offences.
- 2.43 It should also be noted that the majority of convictions for each of these offences takes place in the Local Court as they can be tried summarily in accordance with Schedule 1 of the *Criminal Procedure Act 1986* (NSW).³¹
- 2.44 In the case of s 61L only 114 matters proceeded to sentence in the higher courts in the 7-year period from January 2006 until December 2012 and only 33 cases resulted in a sentence of full-time imprisonment. For s 61N offences, only 6 matters proceeded to sentence in the higher courts in the same period and only 3 of them resulted in full-time imprisonment.
- 2.45 In the 4-year period from April 2009 until March 2013, 479 offences against s 61L were sentenced in the Local Court and only 94 of these resulted in a term of full-

30. NSW Sentencing Council, *Standard Non-parole Periods*, Background Report (2011) [3.3]-[3.4].

31. See para [2.46]-[2.51] below.

time imprisonment. In the same 4-year period, 231 offences against s 61N were sentenced in the Local Court and only 55 of these resulted in a term of full-time imprisonment.

Indictable offences triable summarily

Question 2.8

In determining which offences should be SNPP offences, what should the approach be to indictable offences that can be tried summarily?

- 2.46 One suggestion has been to exclude those indictable offences that are specified in Schedule 1 of the *Criminal Procedure Act 1986* (NSW) as capable of being dealt with summarily, subject to election otherwise by:
- the prosecution or defendant (Table 1 offences); or
 - the prosecution (Table 2 offences).³²
- 2.47 All of the offences have an SNPP that is beyond the jurisdiction of the Local Court,³³ so that any NPP the Local Court fixes will necessarily fall well short of the SNPP. However, this does not exclude its relevance as a guide post in the same way that the jurisdictional limit does not exclude the maximum penalty as a marker.
- 2.48 Table H.1 in Appendix H sets out the current SNPP offences that are triable summarily and Table H.2 sets out the indictable offences that meet one or more of the criteria discussed above that are triable summarily.
- 2.49 The second reading speech for the bill which introduced Tables 1 and 2 to the *Criminal Procedure Act 1986* (NSW) noted that certain offences (such as dangerous driving and culpable navigation where death is occasioned, and certain sexual offences) should not be tried summarily because they were “sufficiently serious to warrant the consideration of a higher court”.³⁴ This implies that indictable offences that are triable summarily are not necessarily “sufficiently serious to warrant the consideration of a higher court”. This might provide an argument against including them in an SNPP scheme that was established with objectives that included ensuring that penalties for serious offences are “commensurate with the gravity of the crime”.³⁵
- 2.50 In our 2010 paper examining the sentencing powers of the Local Court, we made the following recommendation:

that a general review of the Crimes Act be undertaken to determine whether any additional offences should be included in the Tables, and whether any offences

32. NSW Office of the Director of Public Prosecutions, *Submission to the NSW Law Reform Commission SES7*, 5.

33. A maximum 2 years imprisonment for a single offence.

34. NSW, *Parliamentary Debates*, Legislative Council, 24 May 1995, 119.

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

currently included in the Tables should be re-categorised as strictly indictable offences.³⁶

In that report, we noted concerns about including SNPP offences in Tables 1 and 2, because the applicable SNPP for these offences, if dealt with on indictment, would exceed the Local Court's jurisdictional sentencing limit.³⁷

- 2.51 Some of the Table 1 and 2 offences that are included in the SNPP scheme can, depending on the objective facts of their commission, can potentially be quite serious. Any jurisdictional limit of the Local Court can obviously be overcome by the prosecution electing for trial in the District Court. Arguably, it would not be appropriate to exclude offences from the SNPP scheme, by reference only to whether or not they are Table 1 or Table 2 offences, as this approach could have significant consequences for dealing with serious offending behaviour.

Offences that are subject to a guideline judgment

Question 2.9

In determining which offences should be SNPP offences, what should the approach be to offences that are subject to a guideline judgment?

- 2.52 Offences subject to guideline judgments are not included in the list of SNPP offences. The Judicial Commission considers this is because the "Parliament took the view that judges have sufficient guidance".³⁸ The Second Reading speech for the Bill that introduced SNPPs proposed that the courts should continue to use the existing guideline judgments when sentencing for these offences.³⁹
- 2.53 The Court of Criminal Appeal has delivered the following guideline judgments for particular offences:
- **High range prescribed concentration of alcohol** under s 9(4) of the *Road Transport (Safety and Traffic Management) Act 1999* (NSW).⁴⁰
 - **Break, enter and steal** under s 112(1) of the *Crimes Act 1900* (NSW).⁴¹
 - **Armed robbery** under s 97 of the *Crimes Act 1900* (NSW).⁴²
 - **Dangerous driving** under s 52A of the *Crimes Act 1900* (NSW).⁴³

36. NSW Sentencing Council, *An Examination of the Sentencing Powers of the Local Court in NSW* (2005) 54

37. NSW Sentencing Council, *An Examination of the Sentencing Powers of the Local Court in NSW* (2005) 48.

38. Judicial Commission of NSW, *Sentencing Benchbook* [13.640].

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

40. *Attorney General's Application under s 37 of the Crimes (Sentencing Procedure) Act 1999 (No 3 of 2002)* [2004] NSWCCA 303, 61 NSWLR 305 [146].

41. *R v Ponfield* (1999) 48 NSWLR 327 [48].

42. *R v Henry* (1999) 46 NSWLR 346.

43. *R v Jurisic* (1998) 45 NSWLR 209; reformulated in *R v Whyte* (2002) 55 NSWLR 252 [252].

- 2.54 Not all of these guideline judgments are quantitative in their formulation neither do they indicate an appropriate non-parole period. A question arises accordingly as to whether any of these offences which were selected for guideline judgments because of their perceived seriousness, or inconsistency or undue leniency in sentencing trends, should now be included in the list of SNPPs.

Public opinion/community concern

Question 2.10

If community concern about an offence were to be a criterion for assessing whether an offence should be an SNPP offence:

- (a) how should it be identified and measured; and
- (b) how should it be used?

- 2.55 The courts currently accept that parliament represents the community's views about the appropriate punishment for particular offences when it sets the maximum penalty. This view could also be seen as leaving to the parliament to reflect the community's views in selecting offences for the SNPP scheme and in setting the level of the SNPP.⁴⁴
- 2.56 Otherwise, if community concern is to be taken into account, a question arises as to how it should be identified and measured and about how to respond to it when determining which offences should be SNPP offences.

Disparity in sentencing levels

Question 2.11

(1) If the disparity in sentencing levels for an offence were to be a criterion for assessing whether that offence should be an SNPP offence, how should it be used?

(2) How should that disparity be measured?

- 2.57 One of the stated aims of the SNPP scheme has been to achieve consistency. Disparity in sentencing levels for a particular offence may, therefore, be a relevant criteria when determining whether an offence should be an SNPP offence.
- 2.58 The Judicial Commission's review of SNPPs assessed consistency by measuring the spread or range of sentences around the median point,⁴⁵ a narrower range indicating greater consistency and a wider range indicating less consistency.⁴⁶

44. See *Muldrock v R* [2011] HCA 39 [31].

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

- 2.59 In our 2011 background report we observed, in relation to the most prevalent non-SNPP sexual offences that it was “not immediately apparent ... that there is sufficient disparity in sentencing trends for non-SNPP sexual offences as to require statutory intervention for the sole purpose of improving consistency”.⁴⁷
- 2.60 However, there may be cases where disparity is justified. For example, where an offence covers a wide range of offending behaviour and its prevalence is infrequent.

Complicity offences

Question 2.12

If forms of complicity were to be included in the SNPP scheme:

- (a) which forms of complicity should be included; and
- (b) to which SNPP offences should they relate?

- 2.61 A separate issue is whether any forms of complicity should be subject to the SNPP regime either for all SNPP offences generally, or only for particular SNPP offences. One form of complicity that might possibly be considered for inclusion is that of complicity. An offender convicted of an offence under the doctrine of joint criminal enterprise or extended joint criminal enterprise is taken to have committed the substantive offence and is within reach of the scheme.
- 2.62 Conspiracy to murder and attempt to murder are currently included in the list of SNPP offences.⁴⁸ The courts have, however, held that the offences of conspiracy and attempt to commit other SNPP offences are not to be treated as SNPP offences.⁴⁹ The second reading speech which introduced the SNPP scheme also expressly excluded attempts from the scheme.⁵⁰
- 2.63 It is generally noted that, despite being subject to the same maximum penalty as the completed offence, attempts are sentenced less severely.⁵¹ An attempt may result in no harm, or less harm to the victim than if the offence was completed.
- 2.64 In our 2004 report on attempts and the SNPP scheme we noted a major reason for attempt sentences being generally less severe than that for the completed offence was that the public feels that the completed offence is ‘worse’ because the

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

47. NSW Sentencing Council, *Standard Non-parole Periods*, Background Report (2011) [3.20].

48. Items 2 and 3.

49. *DAC v R* [2006] NSWCCA 265; *Diesing v R* [2007] NSWCCA 326.

50. NSW, Parliamentary Debates, Legislative Assembly, 23 October 2002, 5818. See *SAT v R* [2009] NSWCCA 172 [51].

51. NSW Sentencing Council, *Whether ‘Attempt’ and ‘Accessorial’ Offences Should be Included in the Standard Non-Parole Sentencing Scheme*, Report (2004) [8.2].

offender’s attempt generally causes less harm than the completed offence.⁵² This is currently reflected in the list of SNPP offences where murder (without special circumstances) attracts a maximum sentence of life imprisonment and an SNPP of 20 years, but conspiracy to murder and attempt to murder each attract a maximum sentence of 25 years imprisonment and an SNPP of only 10 years.

2.65 We concluded that it was inappropriate to include attempt offences in the SNPP scheme. While recognising the aim of the scheme was to provide a further reference point for courts when sentencing, we considered that:

locating the “middle range of objective seriousness” for attempt offences, and proceeding to quantify an appropriate non-parole period, would be a near-impossible task considering the vast array of behaviour involved, the lack of available sentencing data and the fact “that there is very little history of Crown appeals to the Court of Criminal Appeal with respect to attempt and accessorial offences”.⁵³

2.66 However, conspiracy and attempt are preliminary or inchoate offences and the CCA has left open the possibility that an offence of aiding and abetting an SNPP offence may fall within the reach of the scheme.⁵⁴

2.67 There continues to be little data on the sentencing of any of the complicity offences in the higher courts. For example, in the case of attempt, the numbers are counted in the tens rather than the hundreds. Table 2.1 shows a selection of figures for attempts compared with the figures for the completed offences.

Table 2.1: Selection of attempt offences sentenced in the higher courts compared with primary offence

Offence	Number sentenced	Number imprisoned (%)	Midpoint head sentence (years)	Midpoint NPP/fixed term (years)
<i>Crimes Act 1900 (NSW) s 61I sexual intercourse without consent - SNPP (item 7)</i>	232	208 (90)	5	2.5
<i>Crimes Act 1900 (NSW) s 61I attempt sexual intercourse without consent</i>	10	4 (40)	2.5	1
<i>Crimes Act 1900 (NSW) s 61J aggravated sexual assault - SNPP (item 8)</i>	216	208 (96)	8	4
<i>Crimes Act 1900 (NSW) s 61J attempt aggravated sexual assault</i>	10	9 (90)	5	3.5
<i>Crimes Act 1900 (NSW) s 97(1) robbery, being armed or in company</i>	1826	1476 (81)	4	2

52. NSW Sentencing Council, *Whether ‘Attempt’ and ‘Accessory’ Offences Should be Included in the Standard Non-Parole Sentencing Scheme*, Report (2004) [8.4].

53. NSW Sentencing Council, *Whether ‘Attempt’ and ‘Accessory’ Offences Should be Included in the Standard Non-Parole Sentencing Scheme*, Report (2004) 27, citing N Cowdery, *Submission*, 3 September 2003.

54. *SAT v R* [2009] NSWCCA 172 [45]–[56].

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<i>Crimes Act 1900 (NSW) s 97(1)</i> attempt robbery, being armed or in company	34	26 (76)	3.5	1.5
<i>Crimes Act 1900 (NSW) s 97(2)</i> aggravated robbery etc, being armed with a dangerous weapon	258	247 (96)	6	3
<i>Crimes Act 1900 (NSW) s 97(2)</i> attempt aggravated robbery etc, being armed with a dangerous weapon	9	9 (100)	3	1.5

Judicial Commission of NSW, Judicial Information Research System, April 2006 - March 2013.

3. At what level should the SNPPs be set?

Offence by offence assessment	26
An approach based on proportion of maximum penalty	27
Fixed percentage for all SNPP offences	27
Percentage range	27
SNPPs that are a high proportion of the maximum penalty	29
Life sentences	30

Question 3.1

What approach should be taken to setting the level of SNPPs?

- 3.1 Submissions and consultations to both the LRC and the NSW Sentencing Council have expressed concern about the apparent inconsistency in the ratios of the SNPPs to their maximum penalties, and the lack of transparency in or consultation about the manner in which they were set.¹
- 3.2 There are several SNPP offences which have the same maximum penalty but different SNPPs. For example, the SNPPs for offences with a maximum penalty of **25 years imprisonment**, currently vary from 7 years to 15 years imprisonment.
- 3.3 Assuming that the SNPP scheme is to be retained in some form or other, there was general support for a review of the levels at which the individual SNPPs are currently set, and for establishing a clear and transparent mechanism for conducting any such process.
- 3.4 On the introduction of the scheme, one commentator noted that this may show that the legislature regards some offences as being more serious than others even though they have the same maximum penalty and observed that “such an approach would involve concepts which are new to the law of sentencing”.²
- 3.5 This raises the question of what should the SNPP for any given offence be, and what approach should be taken to this question.

1. NSW Bar Association, *Submission SNPP2*, 2 (supported by Law Society of NSW, *Submission SNPP4*, 1; Legal Aid NSW, *Submission SNPP8*, 1); NSW Office of the Director of Public Prosecutions, *Submission SNPP10*, 1; R N Madgwick, *Submission SNPP11*, 1; R O Blanch, *Preliminary Submission to the NSW Law Reform Commission PSE3*, 1-2; NSW Office of the Director of Public Prosecutions, *Preliminary Submission to the NSW Law Reform Commission PSE10*, 4-5; Legal Aid NSW, *Preliminary Submission to the NSW Law Reform Commission PSE18*, 9; Police Association of NSW, *Submission to the NSW Law Reform Commission SES9*, 2; Law Society of NSW, Criminal Law Committee, *Submission to the NSW Law Reform Commission SES4*, 1. The Chief Judge of the Common Law Division submitted that SNPPs do not “seem appropriate for a number of offences”: P McClellan, *Submission to the NSW Law Reform Commission SES5*, 2.

2. P Johnson, “Reforms to New South Wales Sentencing Law: The Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002” (2003) 6 *Judicial Review* 314, 335.

- 3.6 We have identified two basic approaches:
- offence by offence assessment based on the objective feature of a midrange offence
 - an assessment based on a percentage or a range of percentages of the maximum penalty.
- 3.7 There may be others. In the following paragraphs we outline these approaches and ask how they might operate.

Offence by offence assessment

Question 3.2

If SNPPs are to be set on an offence by offence basis, how should the analysis be undertaken?

- 3.8 As already noted, amendments currently before the parliament state that the SNPP “represents the non-parole period for an [SNPP] offence ... that, taking into account only the objective factors affecting the relative seriousness of that offence, is in the middle of the range of seriousness”.³
- 3.9 One approach to fixing an SNPP for an offence would be to ask two questions:
- What are the objective features that would make up a typical offence in the mid range of seriousness?
 - What non-parole period, and overall sentence, would be appropriate for that offence?
- 3.10 The first question is, partially at least, factual.. Experts might assist in isolating those features of an offence that constitute mid-range offending.
- 3.11 The second question may be more contentious. One reference point might be the non-parole periods that judges have actually imposed for offences similar to a hypothetical mid-range offence, although this will be difficult since sentencing invariably involves the consideration of subjective features.
- 3.12 In addition, the likely overall head sentence will need to be taken into account, since the head sentence and the non-parole period will need to be set together in the sentencing exercise. Answering both of these questions could involve consulting with experts, stakeholders and the public.

3. Proposed *Crimes (Sentencing Procedure) Act 1999* (NSW) s 54A(2): Crimes (Sentencing Procedure) Amendment (Standard Non-parole Periods) Bill 2013 (NSW) sch 1[2].

An approach based on proportion of maximum penalty

- 3.13 Approaches that might address the perceived inconsistencies or anomalies in the existing SNPPs, include imposing:
- a fixed percentage relative to the maximum penalty; or
 - a narrow percentage range relative to the maximum penalty.
- 3.14 These approaches would apply to all SNPP offences except those that are subject to maximum penalties of life imprisonment since their SNPPs cannot be expressed as a proportion of the maximum penalty.

Fixed percentage for all SNPP offences

Question 3.3

If the SNPP for an offence is to be set as a fixed percentage of the maximum penalty for all SNPP offences, what should that percentage be?

- 3.15 This may provide an apparently simple solution, but it would not necessarily reflect the view that some offences, even if they have the same maximum penalty, are, on the whole, more objectively serious and that this should be reflected in specifying an SNPP that is individually appropriate for each offence.
- 3.16 If this approach is taken, the question then arises as to what the fixed percentage should be.

Percentage range

Question 3.4

If the SNPP for an offence is to be set as a percentage of the maximum penalty from within a range:

- (a) what should the range be, and
- (b) how should the amount be determined for each individual SNPP offence from within that range?

- 3.17 Allowing SNPPs to be set from within a percentage range may ensure a level of consistency while allowing scope to reflect the objective seriousness of a particular offence.
- 3.18 In our 2008 report on sentencing for sexual offences, we suggested that the nominated SNPPs could be standardised within a range of 40% to 60% of the

respective maximum penalties,⁴ subject to the possibility of individual exceptions, based on factors such as the incidence of offending and any other special considerations.⁵ We suggested that such an approach could encourage greater consistency in sentencing possibly resulting in fewer appeals.⁶

- 3.19 The NSW Bar Association (endorsed by the Law Society of NSW⁷ and Legal Aid NSW⁸) submitted that a range of 40% to 60% would be too high, and instead proposed a range of 25% to 40%. It observed:

[I]t is very difficult to see any reason for ever adopting a standard non-parole period that is greater than 40% of the available maximum penalty. The maximum penalty is usually reserved for the worst case and, even where imposed, it will be usual sentencing practice to impose a non-parole period that is 75% of that maximum penalty.⁹

- 3.20 To place these views in perspective it is noted that the SNPPs in the category of offences carrying a maximum penalty of **25 years imprisonment**, currently, with one exception, all fall within the 28-40% range of the maximum penalty. The SNPP of 15 years for the exception - sexual intercourse with a child under the age of 10 years (not in any other circumstances of aggravation)¹⁰ - stands well outside this range, at 60% of the maximum penalty of 25 years. It would be necessary to reduce the SNPP to between 6.25 years and 10 years in order to bring it within the 25% to 40% range, or otherwise to increase the maximum penalty.
- 3.21 The SNPP for the further aggravated form of the offence,¹¹ which carries a maximum sentence of imprisonment for life, is also imprisonment for 15 years. This raises a question as to whether the aggravating features of that offence are adequately reflected in the SNPP, or whether the SNPP is too high for the simpler form of the offence.
- 3.22 The existing SNPPs for all of the offences that carry a maximum penalty of **20 years imprisonment** are set at 50% of the maximum penalty, except the SNPP for aggravated break and enter, which is set at 25% of the maximum penalty. In order to bring them within the 25 to 40% range, the SNPPs of 10 years would need to be reduced to between 5 and 8 years.
- 3.23 Finally, the existing SNPPs, for the offences that carry a maximum penalty of **less than 20 years imprisonment**, are set within a range varying between 21.4% to 80% of the maximum penalty. The SNPP would need to be reduced for items 4D, 5, 6, 7, 9A and 9B to bring them into the 25% to 40% bracket. The largest reduction would apply to the indecent assault offences contained in items 9A and 9B.

4. NSW Sentencing Council, *Penalties Relating to Sexual Assault Offences in NSW* (2008) [3.68].

5. NSW Sentencing Council, *Penalties Relating to Sexual Assault Offences in NSW* (2008) xxiii.

6. NSW Sentencing Council, *Penalties Relating to Sexual Assault Offences in NSW* (2008) [3.68].

7. Law Society of NSW, *Submission SNPP4*, 1. However the Law Society submitted to the LRC that while there are anomalies, SNPPs "should be considered with other issues, such as the maximum penalties and section 21A, as part of the Commission's larger review of sentencing": Law Society of NSW, *Submission to the NSW Law Reform Commission SES4*, 1.

8. Legal Aid NSW, *Submission SNPP8*, 1.

9. NSW Bar Association, *Submission SNPP2*, 1-2. The ODP similarly supported setting the SNPPs within a range of 25-40% of the maximum penalty if SNPPs are to remain: NSW Office of the Director of Public Prosecutions, *Submission to the NSW Law Reform Commission SES7*, 2.

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

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

- 3.24 At present many of the SNPPs that have a high proportion compared with their statutory maximums are “aggravated”. It could be argued that a higher proportion was justified where the circumstances call for it, for example, where the victim has a special vulnerability.

SNPPs that are a high proportion of the maximum penalty

Question 3.5

In what circumstances, if any, would a high proportion of SNPP to maximum penalty (for example, 80%) be appropriate for an SNPP offence?

- 3.25 In identifying the appropriate percentage or range of percentages of the SNPP to the maximum penalty for an SNPP offence, there is a particular question about the desirability of SNPPs that are set at a very high proportion of the maximum penalty, particularly where that is above the presumptive ratio of the NPP to the head sentence that is currently established under s 44 of the CSPA.¹² Particular problems arise when courts must reconcile the SNPP, the maximum penalty and the presumptive ratio requirement. It has been suggested that this can result in sentencing outcomes that would be inconsistent with previously established sentencing practice.¹³
- 3.26 For example, the current offence of aggravated indecent assault of a child under 16¹⁴ has an SNPP of 8 years, which is 80% of the maximum penalty for the offence. This assumes that offending behaviour which sits within the mid-range of objective seriousness or higher should (depending on what other factors the court takes into account) attract a head sentence at the level of the maximum penalty if effect is to be given to the SNPP. Even then it would require a finding of special circumstances to justify departing from the presumptive ratio. On one view this would, in effect, classify offending behaviour in the mid-range of objective seriousness as being in the “worst category” for that offence.
- 3.27 Arguably such an outcome could be appropriate for offences with extreme aggravating circumstances, such as indecent assault of a child under 16 in circumstances where the offender is in company, or where the victim is under the authority of the offender or has a serious physical disability or has a cognitive impairment. In such cases, particularly where there is a lesser offence (without the additional circumstances of aggravation), parliament may have clearly intended for the NPPs to group around a higher median point.

12. The current presumptive ratio of NPP to head sentence is 75%, but may be reduced to two-thirds if the LRC’s recommendations are adopted: *Crimes (Sentencing Procedure) Act 1999* (NSW) s 44(2) and NSW Law Reform Commission, *Sentencing*, Report 139 (2013) rec 6.2(1).

13. NSW Law Reform Commission, *Sentencing: Interim Report on Standard Minimum Non-parole Periods*, Report 134 (2012) [2.11]-[2.13].

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

- 3.28 In light of the Attorney General's request to prioritise consideration of SNPPs for child sexual assault offences, we would appreciate receiving submissions on this question in relation to child sexual assault offences by 11 October 2013 so that we can consider them in writing our interim report on the issue.

Life sentences

Question 3.6

How should SNPPs be set for offences carrying a maximum penalty of imprisonment for life?

- 3.29 The current SNPPs for offences carrying a maximum penalty of life imprisonment range between 10 years and 25 years imprisonment. We note that those for murder occurring in different circumstances are broadly consistent with the models in SA, NT and Queensland.¹⁵
- 3.30 Obviously, it is not possible to express the SNPPs for these offences as a percentage of the maximum penalty, because a maximum sentence of life imprisonment is of indeterminate length. Nominating a numerical SNPP for each of these offences necessarily involves a policy decision that will have to take into account the potential seriousness of the offence, sentencing patterns and community expectations.
- 3.31 We note that this question does not arise where a whole of life sentence is imposed since, under current law, a court imposing such a sentence will not set an NPP.

15. In the federal jurisdiction, the court must fix a single non-parole period of at least three-quarters of a sentence for a minimum non parole period offence (certain offences involving treachery, terrorism offences, espionage, and treason and urging violence) and a sentence of imprisonment for life (where available) is taken to be 30 years for the purpose of calculating the non parole period for such offences: see *Crimes Act 1914* (Cth) s 19AG.

4. How should future SNPP offences be identified?

Who should assess potential SNPPs?	31
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Question 4.1

What procedures should be followed, in future, to determine whether an offence should be included in or removed from the SNPP scheme and the level of the SNPP for any offence included in the scheme?

- 4.1 Once the principles have been established for identifying offences that should be SNPP offences and for fixing their duration, the next question is what procedures should be followed in future to apply these principles.
- 4.2 The government can apply the principles whenever it creates offences, amends existing offences or adjusts penalty levels.

Who should assess potential SNPPs?

Question 4.2

- (1) Who should assess and recommend whether an offence should be included in the list of SNPP offences and the level of the SNPP for each offence included?
- (2) How should community views be taken into account in assessing whether an offence should be included in the list of SNPP offences and the level of the SNPP for each offence included?

- 4.3 In applying the principles, the government could seek the advice or input of a number of agencies, each of which can engage with the community and, in this way, assist the parliament in reflecting community views about offences that could or should be subject to an SNPP. These agencies include:
- Justice Policy (Department of Attorney General and Justice);
 - the Sentencing Council; and
 - a parliamentary committee.
- 4.4 The role could be a standing role or could be the subject of specific reference from government when the circumstances arise.
- 4.5 These agencies can engage with the community in many ways, including seeking advice from panels of experts, and conducting research on informed public attitudes

through structured surveys, focus groups, citizen jury approaches, or other methods. They can also engage with agencies that provide relevant information and data such as the Judicial Commission or BOCSAR.

Sentencing Council

- 4.6 The Sentencing Council is constituted under Part 8B of the *Crimes (Sentencing Procedure) Act 1999* (NSW) (CSPA),¹ with the aim of “promoting consistency and transparency in sentencing and promoting public understanding of the sentencing process”.²
- 4.7 The *Crimes (Sentencing Procedure) Act 1999* (NSW) gives the Sentencing Council the function “to advise and consult with the Minister in relation to offences suitable for standard non-parole periods and their proposed length” and “to monitor, and to report annually to the Minister on, sentencing trends and practices, including the operation of standard non-parole periods”.³ The Act further provides that “any advice given to the Minister by the Sentencing Council may be given either at the request of the Minister or without any such request”.⁴
- 4.8 The ALRC, in its report on sentencing federal offenders, summarised the arguments in favour of sentencing councils generally as follows:
- “being one step removed from political processes” they can “provide more objective information to legislators and courts on how the sentencing process should develop”
 - they can “promote the development of sentencing principles”
 - they can “recommend changes to make sentencing more socially defensible and scientifically based”, and
 - they can “ensure that the media receives accurate information about sentencing policy and practices”.⁵

Departmental review

- 4.9 The roles of Justice Policy (Legislation Policy and Criminal Law Review Division) in the Department of Attorney General and Justice include identifying the need for, and formulating changes to, the law and legal system, and providing quality legal policy to the Attorney General and Government.⁶

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

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

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

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

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

6. <http://www.lpcld.lawlink.nsw.gov.au/lpcld/lpcld_aboutus.html>.

- 4.10 The ALRC, in its report on the sentencing of federal offenders, made no specific recommendations on community input into policy development of federal sentencing. However, it observed that “there is no impediment to the OMFO or other areas of the Attorney-General’s Department engaging in community consultation to inform the policy development process”.⁷

Parliamentary committees or inquiries

- 4.11 The government could use parliamentary committees or inquiries to gather evidence and inform the parliament.
- 4.12 The NSW Parliament website notes that committees are able to examine issues in more detail and can “benefit the community by reviewing proposed laws, facilitating more informed policy-making and ensuring greater government accountability”.
- 4.13 There is currently a Legislative Council Standing Committee on Law and Justice. The functions of the committee include inquiring into and reporting on the criminal law. The Law and Justice Committee already has an ongoing role to review matters, where an Act specifies that a committee of the Legislative Council is to be charged with the responsibility of reviewing some of its operations, including the exercise of the functions of the Motor Accidents Authority (since 1999) and the Lifetime Care and Support Authority (since 2007).⁸
- 4.14 The Legislation Review Committee is a joint statutory committee of the parliament and scrutinises all bills introduced to parliament. Its current functions⁹ are aimed at assessing whether a bill represents an undue or inappropriate use of legislative power. At present, considering whether an offence should be an SNPP offence and the level of the SNPP would not seem to sit well with its existing functions.
- 4.15 The *Crimes (Sentencing Procedure) Act 1999* (NSW) could, conceivably, include a provision requiring an ongoing review of the operation of SNPPs by a committee of the parliament.

7. Australian Law Reform Commission, *Same Crime, Same Time: Sentencing of Federal Offenders*, Report 103 (2006) [19.37].

8. *Safety, Return to Work and Support Board Act 2012* (NSW) s 11.

9. Set out in *Legislation Review Act 1987* (NSW) s 8A.

Appendix A

Offences in the SNPP scheme

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

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Item No	Offence	SNPP (yrs)	Maximum penalty (yrs)	SNPP as a % of maximum
14	<i>Crimes Act 1900</i> s 154C(1) (taking motor vehicle or vessel with assault or with occupant on board)	3	10	30
15	<i>Crimes Act 1900</i> s 154C(2) (taking motor vehicle or vessel with assault or with occupant on board in circumstances of aggravation)	5	14	35.7
15A	<i>Crimes Act 1900</i> s 154G (organising car or boat rebirthing activities)	4	14	28.6
15B	<i>Crimes Act 1900</i> s 203E (bushfires)	5	14	35.7
15C	<i>Drug Misuse and Trafficking Act 1985</i> s 23(2) of the (cultivation, supply or possession of prohibited plants), being an offence that involves not less than the large commercial quantity (if any) specified for the prohibited plant concerned under that Act	10	Life and/or 5000 penalty units; or 20 years and/or 5000 penalty units for cannabis plant	N/A or in case of cannabis plant – 50
16	<i>Drug Misuse and Trafficking Act 1985</i> s 24(2) (manufacture or production of commercial quantity of prohibited drug), being an offence that: <ul style="list-style-type: none"> ▪ does not relate to cannabis leaf, and ▪ if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves less than the large commercial quantity of that prohibited drug 	10	20 and/or 3500 penalty units	50
17	<i>Drug Misuse and Trafficking Act 1985</i> s 24(2) (manufacture or production of commercial quantity of prohibited drug), being an offence that: <ul style="list-style-type: none"> ▪ does not relate to cannabis leaf, and ▪ if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves not less than the large commercial quantity of that prohibited drug 	15	Life and/or 5000 penalty units	N/A
18	<i>Drug Misuse and Trafficking Act 1985</i> s 25(2) (supplying commercial quantity of prohibited drug), being an offence that: <ul style="list-style-type: none"> ▪ does not relate to cannabis leaf, and ▪ if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves less than the large commercial quantity of that prohibited drug 	10	20 and/or 3500 penalty units	50
19	<i>Drug Misuse and Trafficking Act 1985</i> s 25(2) (supplying commercial quantity of prohibited drug), being an offence that: <ul style="list-style-type: none"> ▪ does not relate to cannabis leaf, and ▪ if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves not less than the large commercial quantity of that prohibited drug 	15	Life and/or 5000 penalty units	N/A
20	<i>Firearms Act 1996</i> s 7 (unauthorised possession or use of firearms)	3	14	21.4
21	<i>Firearms Act 1996</i> s 51(1A) or (2A) (unauthorised sale of prohibited firearm or pistol)	10	20	50
22	<i>Firearms Act 1996</i> s 51B (unauthorised sale of firearms on an ongoing basis)	10	20	50
23	<i>Firearms Act 1996</i> s 51D(2) (unauthorised possession of more than 3 firearms any one of which is a prohibited firearm or pistol)	10	20	50

Item No	Offence	SNPP (yrs)	Maximum penalty (yrs)	SNPP as a % of maximum
24	<i>Weapons Prohibition Act 1998</i> s 7 (unauthorised possession or use of prohibited weapon on indictment)	3	14	21.4

Appendix B

SNPPs and median non-parole periods

Offence (Item No in SNPP Table)	SNPP (max penalty) (years)	3 April 2000 to 31 January 2003		1 February 2003 to 31 December 2007	
		Pre-SNPP period median NPP (years)		Post-SNPP period median NPP (years)	
		Guilty plea	Not guilty plea	Guilty plea	Not guilty plea
Murder – in other cases (Item 1)	20 (life)	13.5	14	14.5	16.5
Wounding etc with intent to do bodily harm or arrest (Item 4)	7 (25)	3	2.5	3.5	5.625
Sexual assault (Item 7)	7 (14)	2.25	2.5	2.5	4
Aggravated sexual assault (Item 8)	10 (20)	3.5	4	4.125	4.5
Aggravated indecent assault (Item 9A)	5 (7)	1	Insufficient data	1.5	Insufficient data
Sexual intercourse – child under 10 (Item 10)	15 (25/life)	3	Insufficient data	4.25	Insufficient data
Robbery with arms etc and wounding (Item 11)	7 (25)	3	Insufficient data	3.5	Insufficient data
Aggravated break, enter and steal (Item 12)	5 (20)	1.5	Insufficient data	1.75	Insufficient data
Specially aggravated break, enter and commit serious indictable offence (Item 13)	7 (25)	3.125	Insufficient data	3.5	Insufficient data
Supply commercial quantity of heroin and amphetamines (Item 18)	10 (20 and/or 3,500 penalty units)	2.7 (heroin) 2 (amphetam ines)	Insufficient data	4 (heroin) 2.75 (amphetam ines)	Insufficient data
Supply large commercial quantity of prohibited drug (Item 19)	15 (life and/or 5,000 penalty units)	4	Insufficient data	4.75	Insufficient data

Source: 3 April 2000-31 December 2007: Judicial Commission of NSW, *The Impact of the Standard Non-parole Period Sentencing Scheme on Sentencing Patterns in New South Wales, Monograph 33 (2010)*.

Appendix C

Non-SNPP offences with a maximum penalty of 20 years or more

Maximum penalty of life imprisonment	
Manufacture or produce (or knowingly take part in) not less than the large commercial quantity of a prohibited drug and expose a child to the manufacturing or production process or to substances being stored for use in that process	<i>Drug Misuse and Trafficking Act 1985</i> (NSW) s 24(2A), s 33AC(4)
Adult who procures a person under 16 years of age to supply or take part in the supply of not less than the large commercial quantity of a prohibited drug (other than cannabis leaf)	<i>Drug Misuse and Trafficking Act 1985</i> (NSW) s 25(2D), s 33AC(4)
Maximum penalty of 25 years' imprisonment	
Compassing etc deposition of the Sovereign—overawing Parliament etc	<i>Crimes Act 1900</i> (NSW) s 12
Manslaughter	<i>Crimes Act 1900</i> (NSW) s 24
Impeding endeavours to escape shipwreck	<i>Crimes Act 1900</i> (NSW) s 32
Discharge firearm (or attempt to do so) with intent to cause grievous bodily harm or to prevent lawful arrest or detention	<i>Crimes Act 1900</i> (NSW) s 33A(1), (2)
Attempts to choke etc (garrotting)	<i>Crimes Act 1900</i> (NSW) s 37
Administer, or cause person to take, an intoxicating substance with intent to commit an indictable offence (either personally to assist a third party)	<i>Crimes Act 1900</i> (NSW) s 38
Intentionally or recklessly use gunpowder or other explosive substance or corrosive fluid to burn, maim, disfigure or cause grievous bodily harm (including sending such substance or putting or laying it at a place)	<i>Crimes Act 1900</i> (NSW) s 46, s 47
Attempt to have sexual intercourse with person under 10 years of age, or assault such person with intent to have sexual intercourse	<i>Crimes Act 1900</i> (NSW) s 66B
Persistent sexual abuse of a child	<i>Crimes Act 1900</i> (NSW) s 66EA
Kidnapping in company and involving actual bodily harm	<i>Crimes Act 1900</i> (NSW) s 86(3)
Contamination of goods intending to cause public alarm or anxiety or economic loss (or threatening to do so) and such contamination results in the death of or grievous bodily harm to any person and that was intended by the offender	<i>Crimes Act 1900</i> (NSW) s 93O
Aggravated robbery, assault with intent to rob or steal from the person, with wounding or the infliction of grievous bodily harm	<i>Crimes Act 1900</i> (NSW) s 96
Robbery etc or stopping a mail, being armed or in company, when armed with a dangerous weapon	<i>Crimes Act 1900</i> (NSW) s 97(2)
Enter dwelling-house with intent to commit a serious indictable offence (or break out of dwelling house having committed such an offence) with wounding or intentionally or recklessly causing grievous bodily harm and/or being armed with a dangerous weapon	<i>Crimes Act 1900</i> (NSW) s 109(3)
Breaking, entering and assaulting with intent to murder or inflict grievous bodily harm	<i>Crimes Act 1900</i> (NSW) s 110
Destroy or damage property with intent to endanger life	<i>Crimes Act 1900</i> (NSW) s 198

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Sabotage of a public facility	<i>Crimes Act 1900</i> (NSW) s 203B
Destroy or damage aircraft or vessel with intent to cause death or with reckless indifference to the safety of a person's life	<i>Crimes Act 1900</i> (NSW) s 204
Make a demand of a person together with a threat to destroy, damage or endanger the safety of an aircraft, vessel or transport vehicle or to kill or inflict injury on persons on board, and discharge a firearm, cause an explosion or wound or inflict grievous bodily harm	<i>Crimes Act 1900</i> (NSW) s 208(3)
Act (or omission of duty) in connection with the operation of a railway with intent to cause death, inflict grievous bodily harm or endanger safety	<i>Crimes Act 1900</i> (NSW) s 211(1)
Accessory after the fact to murder	<i>Crimes Act 1900</i> (NSW) s 349(1)
Adult who supplies (or knowingly takes part in supply) of not less than the commercial quantity of prohibited drug (other than cannabis leaf) to a person under 16 years of age	<i>Drug Misuse and Trafficking Act 1985</i> (NSW) s 25(2A), s 33AA(2)(b)
Adult who procures an under 16-year-old to supply, or take part in the supply of, an amount of a prohibited drug (other than cannabis leaf) which is not less than the commercial quantity applicable to the prohibited drug.	<i>Drug Misuse and Trafficking Act 1985</i> (NSW) s 25(2D), s 33AC(2)(b)
Piracy	<i>Piracy Punishment Act 1902</i> (NSW) s 5; <i>Crimes Act 1900</i> (NSW) s 431(3), s 431A(3)
Maximum penalty of 24 years' imprisonment	
Cultivate (or knowingly take part in cultivation of) not less than the large commercial quantity of prohibited plants, or same by enhanced indoor means and for a commercial purpose, and expose a child to that cultivation process or substances being stored for use in that process	<i>Drug Misuse and Trafficking Act 1985</i> (NSW) s 23A(2), (3), s 33AD(4)
Maximum penalty of 20 years' imprisonment	
Assault with intent to have sexual intercourse and intentionally or recklessly inflict actual bodily harm or threaten to do so with offensive weapon or instrument	<i>Crimes Act 1900</i> (NSW) s 61K
Sexual intercourse with person who is of or above the age of 10 years and under the age of 14 years in circumstances of aggravation	<i>Crimes Act 1900</i> (NSW) s 66C(2), (5)
Sexual assault by forced self-manipulation in circumstances of aggravation.	<i>Crimes Act 1900</i> (NSW) s 80A(2A)
Cause or intend to cause (or be reckless thereto) sexual servitude of a person who is under the age of 18 years and/or has a cognitive impairment	<i>Crimes Act 1900</i> (NSW) s 80D(2)
Kidnapping in company or involving actual bodily harm	<i>Crimes Act 1900</i> (NSW) s 86(2)
Robbery in circumstances of aggravation	<i>Crimes Act 1900</i> (NSW) s 95
Robbery etc or stopping a mail, being armed or in company, when armed with an offensive weapon	<i>Crimes Act 1900</i> (NSW) s 97(1)
Break out of dwelling-house having entered with intent to commit a serious indictable offence or being in it having committed such an offence in circumstances of aggravation	<i>Crimes Act 1900</i> (NSW) s 109(2)
Enter dwelling-house with intent to commit a serious indictable offence in circumstances of special aggravation	<i>Crimes Act 1900</i> (NSW) s 111(3)
Break and enter any dwelling house or other building with intent to commit serious indictable offence in circumstances of special aggravation	<i>Crimes Act 1900</i> (NSW) s 113(3)

Take control of an aircraft while another person is on board	<i>Crimes Act 1900</i> (NSW) s 154B(4)
Dealing with proceeds of crime knowing it is proceeds of crime and intending to conceal the fact	<i>Crimes Act 1900</i> (NSW) s 193B(1)
Supplying prohibited drugs on an ongoing basis	<i>Drug Misuse and Trafficking Act 1985</i> (NSW) s 25A(1)
Offences involving commercial quantities of prohibited drugs or cultivation for a commercial purpose	<i>Drug Misuse and Trafficking Act 1985</i> (NSW) s 33
Unauthorised manufacture of a prohibited firearm or pistol	<i>Firearms Act 1996</i> (NSW) s 50A(2)
Sell firearm parts on an ongoing basis	<i>Firearms Act 1996</i> (NSW) s 51BB(1)
Unauthorised sale of military-style weapon	<i>Weapons Prohibition Act 1998</i> (NSW) s 23A(2)
Sell prohibited weapons on an ongoing basis	<i>Weapons Prohibition Act 1998</i> (NSW) s 23B(1)
Unauthorised manufacture of military-style weapon	<i>Weapons Prohibition Act 1998</i> (NSW) s 25A(2)

Appendix D

Sexual offences against children

Table D.1 Sexual offences – against adults and children

Offences against children grouped under relevant "adult" offence. Offences against adults highlighted thus. Abbreviations: I: Indictable; S: Summary; I/S(1): Indictable, triable summarily, Table 1; I/S(2): Indictable, triable summarily, Table 2.

Crimes Act 1900	Offence	Maximum penalty	SNPP	Percentage of SNPP to maximum	Indictable/summary
61I	Sexual assault	14	7	50%	I
66A(2)	Sexual intercourse, child under 10 – aggravated offence	Life	15	N/A	I
66A(1)	Sexual intercourse, child under 10	25	15	60%	I
66B	Attempting or assaulting with intent, to have sexual intercourse, child under 10	25			I
66C(2)	Sexual intercourse, child between 10 and 14 – aggravated offence	20			I
66C(1)	Sexual intercourse, child between 10 and 14	16			I
66C(4)	Sexual intercourse, child between 14 and 16 – aggravated offence	12			I
66C(3)	Sexual intercourse, child between 14 and 16	10			I
73(1)	Sexual intercourse with child of 16 under special care	8			I
73(2)	Sexual intercourse with child of 17 under special care	4			I
66D	Attempting or assaulting with intent, to have sexual intercourse, child between 14 and 16	same as principal offence			I/S(1)
61J	Aggravated sexual assault	20	10	50%	I
61J	Aggravated sexual assault, victim under 16	20	10	50%	I
61JA	Aggravated sexual assault in company	Life	15	N/A	I
61K	Assault with intent to have sexual intercourse	20			I
61L	Indecent assault	5			I/S(2)
61M(2)	Indecent assault, victim under 16	10	8	80%	I/S(1)

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61M(1)	Aggravated indecent assault	7	5	72%	I/S(1)
61N(2)	Act of indecency	1.5			I/S(2)
61O(2A)	Act of indecency, victim under 16, knowing production of child abuse material	10			I/S(1)
61O(2)	Act of indecency, victim under 10	7			I/S(1)
61N(1)	Act of indecency, victim under 16	2			I/S(1)
61O(1A)	Aggravated act of indecency	3			I/S(2)
61O(1)	Aggravated act of indecency, victim under 16	5			I/S(2)
61P	Attempt to commit s 61I-61O	same as principal offence			I
80A(2)	Sexual assault by forced self-manipulation	14			I
80A(2A)	Sexual assault by forced self-manipulation, victim under 16	20			I
80A(2A)	Sexual assault by forced self-manipulation in circumstances of aggravation	20			I
80A(2A)	Sexual assault by forced self-manipulation in circumstances of aggravation, victim under 16	20			I
80D(1)	Cause sexual servitude	15			I
80D(2)	Cause sexual servitude, victim under 18	20			I
80D(1)	Cause sexual servitude – aggravated offence	20			I
80D(2)	Cause sexual servitude – aggravated offence, victim under 18	20			I
80E(1)	Conduct business involving sexual servitude	15			I
80E	Conduct business involving sexual servitude, victim under 18	19			I
80E	Conduct business involving sexual servitude – aggravated offence	19			I
80E	Conduct business involving sexual servitude – aggravated offence, victim under 18	19			I
80G	Incitement to commit sexual offence (under Part 3 div 10, 10A or 15A)	same as principal offence			I
91A	Procuring for purposes of prostitution	7			I/S(1)

91B	Procuring for purposes of prostitution by drugs, etc	10			I/S(1)
91D	Promoting or engaging in acts of child prostitution, child under 14	14			I
91E	Obtaining benefit from child prostitution, child under 14	14			I
91D	Promoting or engaging in acts of child prostitution, child 14-18	10			I
91E	Obtaining benefit from child prostitution, child 14-18	10			I
91F	Allow premises to be used for child prostitution, child under 18	7			I
91J(1)	Voyeurism	2 years and/or 100 PU			S
91J(3)	Voyeurism, victim under 16	5			I/S(1)
91J(3)	Voyeurism – aggravated offence	5			I/S(1)
91J(3)	Voyeurism – aggravated offence, victim under 16	5			I/S(1)
91K(1)	Film person engaged in private act	2 years and/or 100 PU			S
91K(3)	Film person engaged in private act, victim under 16	5			I/S(1)
91K(3)	Film person engaged in private act – aggravated offence	5			I/S(1)
91K(3)	Film person engaged in private act – aggravated offence, victim under 16	5			I/S(1)
91L(1)	Filming a person’s private parts	2 years and/or 100 PU			S
91L(3)	Filming a person’s private parts, victim under 16	5			I/S(1)
91L(3)	Filming a person’s private parts – Aggravated offence	5			I/S(1)
91L(3)	Filming a person’s private parts – Aggravated offence, victim under 16	5			I/S(1)
91M	Installing device to facilitate observation or filming	2 years and/or 100 PU			S
	No adult equivalent				I
66EA	Persistent sexual abuse of a child under 18 (3 or more separate occasions – s 61I, 61J, 61JA, 61K, 61L, 61M, 61N, 61O, 66A, 66B, 66C, 66D, 66F, 73, 74, 78H, 78I, 78K, 78L, 78N, 78O, 78Q, 80A)	25			I

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66EB(2)(a)	Procuring a child under 14 for unlawful sexual activity	15			I/S(1)
66EB(2)(b)	Procuring a child of 14 and 15 for unlawful sexual activity	12			I/S(1)
66EB(2A)	Meeting a child under 14 after grooming for sexual purposes	15			I/S(1)
66EB(2A)	Meeting a child of 14 or 15 after grooming for sexual purposes	12			I/S(1)
66EB(3)	Grooming a child under 14 for unlawful sexual activity	12			I/S(1)
66EB(3)	Grooming a child of 14 or 15 for unlawful sexual activity	10			I/S(1)
91G(1)	Use (or allow) child under 14 to produce child abuse material	14			I
91G(2)	Use (or allow) child 14-16 to produce child abuse material	10			I
91H	Production, dissemination or possession of child abuse material, child under 16	10			I/S(1)

Appendix E

Non-SNPP offences against the person with sentences of 7 years or more

Table E.1 Maximum penalties for non-SNPP sexual offences against adults

Section of Crimes Act 1900	Offence description	Max years
61K(a)	Intentionally or recklessly inflict actual bodily harm with intent to have sexual intercourse	20
61K(b)	Threaten to inflict actual bodily harm with intent to have sexual intercourse	20
66F(2)	Sexual intercourse with person who has an intellectual disability by person in authority	10
80A(2)	Sexual assault by forced self-manipulation	14
80D(1)	Cause a person to enter into or remain in sexual servitude	15
80D(2)	Cause a person to enter into or remain in sexual servitude in circumstances of aggravation	20
80E(1)	Conduct a business involving sexual servitude	15
80E(2)	Conduct a business involving sexual servitude in circumstances of aggravation	19
91A	Procure person for purposes of prostitution	7
91B	Procure person for purposes of prostitution by violence, threat, or abuse of authority, or by the use of any drug or intoxicating liquor	10
91E	Obtain benefit from child prostitution	10
91F	Exercise lawful control over premises at which a child participates in an act of child prostitution	7

Table E.2 Maximum penalties for non-SNPP offences against the person not involving sexual offending

Section of Crimes Act 1900	Offence Description	Max Years
32	Impeding endeavours to escape shipwreck	25
33A	Discharge firearm (or attempt to do so) with intent to cause grievous bodily harm or to prevent lawful arrest or detention	25
33B(1)	Use or possession of weapon to resist arrest or hinder investigation	12
33B(2)	Use or possession of weapon to resist arrest or hinder investigation in company	15
35A(1)	Cause dog to inflict grievous bodily harm	10
37	Attempts to choke etc (garrotting)	25
38	Using intoxicating substance to commit an indictable offence	25

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39	Using poison etc to endanger life or inflict grievous bodily harm	10
42	Injuries to child at time of birth	14
45	Female genital mutilation	7
46	Causing bodily injury by gunpowder	25
47	Using explosive substance or corrosive fluid with intent to burn, maim, disfigure, disable or cause grievous bodily harm	25
48	Causing explosives to be placed in or near building, conveyance or public place	14
52A(1)	Dangerous driving occasioning death	10
52A(2)	Aggravated dangerous driving occasioning death	14
52A(3)	Dangerous driving occasioning grievous bodily harm	7
52A(4)	Aggravated dangerous driving occasioning grievous bodily harm	11
52AB(1)	Failing to stop and assist after vehicle impact causing death	10
52AB(2)	Failing to stop and assist after vehicle impact causing grievous bodily harm	7
52B(1)	Dangerous navigation occasioning death	10
52B(2)	Aggravated dangerous navigation occasioning death	14
52B(3)	Dangerous navigation causing grievous bodily harm	7
52B(4)	Aggravated dangerous navigation causing grievous bodily harm	11
55	Possessing or making explosives or other things with intent to injure	10
59A(2)	Assault occasioning actual bodily harm during a large-scale public disorder	7
60A(2)	Assault occasioning actual bodily harm of a law enforcement officer (other than a police officer) while in the execution of duty	7
60A(3) person	Wounding or causing grievous bodily harm to a law enforcement officer (other than a police officer) while in the execution of duty, and being reckless as to causing actual bodily harm to that officer or any other	12
60E(2)	Assault occasioning actual bodily harm of a school student or member of staff of a school while attending a school	7
60E(3)	Wounding or causing grievous bodily harm to a school student or member of staff of a school while attending a school, and being reckless as to causing actual bodily harm	12
82	Procuring own miscarriage	10
83	Procuring another's miscarriage	10
86(1)	Kidnapping (basic offence)	14
86(2)	Kidnapping (aggravated offence, involving acting in company or occasioning actual bodily harm to the victim)	20
86(3)	Kidnapping (specially aggravated offence, involving acting in company and occasioning actual bodily harm to the victim)	25

87	Child abduction	10
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Table E.3 Maximum penalties for non-SNPP firearm and weapon offences

Offence	Maximum penalty (yrs)
<i>Crimes Act 1900 (NSW) s 33A(1), (2)</i> Discharge (or attempt to do so) with intent to cause grievous bodily harm or to prevent lawful arrest or detention	25
<i>Crimes Act 1900 (NSW) s 33B(1)</i> Use or possession of weapon to resist arrest or hinder investigation	12
<i>Crimes Act 1900 (NSW) s 33B(2)</i> Use or possession of weapon to resist arrest or hinder investigation in company	15
<i>Crimes Act 1900 (NSW) s 93G</i> Causing danger with firearm or spear gun	10
<i>Crimes Act 1900 (NSW) s 93GA(1)</i> Firing at dwelling-house or other building with reckless disregard for the safety of any person	14
<i>Crimes Act 1900 (NSW) s 93GA(1A)</i> Firing at dwelling-house or other building with reckless disregard for the safety of any person, during a public disorder	16
<i>Crimes Act 1900 (NSW) s 93GA(1B)</i> Firing at dwelling-house or other building with reckless disregard for the safety of any person, in the course of an organised criminal activity	16
<i>Crimes Act 1900 (NSW) s 93H(2)</i> Firing a firearm or spear gun in or into any building or on or on to any land	10
<i>Crimes Act 1900 (NSW) s 93I(2)</i> Possession of unregistered firearm in public place - aggravated offence	14
<i>Crimes Act 1900 (NSW) s 97(1)</i> Robbery etc or stopping a mail, being armed or in company, when armed with an offensive weapon	20
<i>Crimes Act 1900 (NSW) s 97(2)</i> Robbery etc or stopping a mail, being armed or in company, when armed with a dangerous weapon	25
<i>Crimes Act 1900 (NSW) s 109(3)</i> Enter dwelling-house with intent to commit a serious indictable offence (or break out of dwelling house having committed such an offence) with wounding or intentionally or recklessly causing grievous bodily harm and/or being armed with a dangerous weapon	25
<i>Crimes Act 1900 (NSW) s 208(3)</i> Make a demand of a person together with a threat to destroy, damage or endanger the safety of an aircraft, vessel or transport vehicle or to kill or inflict injury on persons on board, and discharge a firearm, cause an explosion or wound or inflict grievous bodily harm	25
<i>Firearms Act 1996 (NSW) s 36</i> Selling, purchasing, possessing or using a firearm that is not registered and the firearm is a prohibited firearm or pistol	10
<i>Firearms Act 1996 (NSW) s 43</i> Carrying on activities as a firearms dealer without a licence or possess a firearm as a firearms dealer that is not authorised.	7
<i>Firearms Act 1996 (NSW) s 44A</i> Prescribed person involved in firearms dealing business	14
<i>Firearms Act 1996 (NSW) s 50</i> Unauthorised purchase of a prohibited firearm or pistol	10
<i>Firearms Act 1996 (NSW) s 50A(1)</i> Unauthorised manufacture of a firearm	10
<i>Firearms Act 1996 (NSW) s 50A(2)</i> Unauthorised manufacture of a prohibited firearm or pistol	20

Offence	Maximum penalty (yrs)
<i>Firearms Act 1996 (NSW) s 50AA(2)</i> Unauthorised purchase a firearm part for any kind of prohibited firearm or pistol	10
<i>Firearms Act 1996 (NSW) s 51A</i> Unauthorised purchase of prohibited firearm or pistol	14
<i>Firearms Act 1996 (NSW) s 51BA(2)</i> Unauthorised sale of part of prohibited firearm or pistol	10
<i>Firearms Act 1996 (NSW) s 51BB(1)</i> Sell firearm parts on an ongoing basis	20
<i>Firearms Act 1996 (NSW) s 51D(1)</i> Unauthorised possession of more than 3 firearms.	10
<i>Firearms Act 1996 (NSW) s 51E</i> Holder of category H licence possessing or using pistol fitted with magazine of more than 10 round capacity	14
<i>Firearms Act 1996 (NSW) s 62</i> Shorten firearm or possess shortened firearm	10
<i>Firearms Act 1996 (NSW) s 63</i> Converting firearms	10
<i>Firearms Act 1996 (NSW) s 70</i> False or misleading application relating to a prohibited firearm or pistol	10
<i>Firearms Act 1996 (NSW) s 71A</i> Use false document to obtain firearm	10
<i>Firearms Act 1996 (NSW) s 72</i> Firearms dealer making false or misleading entry in a record in relation to a prohibited firearm or pistol	14
<i>Firearms Act 1996 (NSW) s 74(1)</i> Possess or use a prohibited firearm or pistol contrary to a firearms prohibition order	10
<i>Firearms Act 1996 (NSW) s 74(1)</i> Possessing or using a prohibited firearm or pistol in contravention of firearms prohibition order 10	10
<i>Firearms Act 1996 (NSW) s 74(3)</i> Sell or give a prohibited firearm or pistol contrary to a firearms prohibition order	10
<i>Firearms Act 1996 (NSW) s 74(3)</i> Sell or give a prohibited firearm or pistol to a person who is subject to a firearms prohibition order	10
<i>Weapons Prohibition Act 1998 (NSW) s 20</i> Carry on business of weapons dealer or theatrical weapons armourer without permit	7
<i>Weapons Prohibition Act 1998 (NSW) s 23A(1)</i> Unauthorised sale of prohibited weapon	14
<i>Weapons Prohibition Act 1998 (NSW) s 23A(2)</i> Unauthorised sale of military-style weapon	20
<i>Weapons Prohibition Act 1998 (NSW) s 23B(1)</i> Sell prohibited weapons on an ongoing basis	20
<i>Weapons Prohibition Act 1998 (NSW) s 25A(1)</i> Unauthorised manufacture of prohibited weapon	14
<i>Weapons Prohibition Act 1998 (NSW) s 25A(2)</i> Unauthorised manufacture of military-style weapon	20
<i>Weapons Prohibition Act 1998 (NSW) s 34(1)</i> Possess or use prohibited weapon contrary to a weapons prohibition order	10
<i>Weapons Prohibition Act 1998 (NSW) s 34(3)</i> Sell or give prohibited weapon contrary to a weapons prohibition order	10

Appendix F

Aggravated offences in the Crimes Act 1900 (NSW)

Note: Existing SNPP offences indicated in bold.

sec	Aggravated offence	Penalty (years)	Basic offence penalty (years)	Basic sec
52A(2)	Aggravated dangerous driving occasioning death	14	10	52A(1)
52A(4)	Aggravated dangerous driving occasioning grievous bodily harm	11	7	52A(3)
52B(2)	Aggravated dangerous navigation occasioning death	14	10	52B(1)
52B(4)	Aggravated dangerous navigation occasioning grievous bodily harm	11	7	52B(3)
61J	Aggravated sexual assault	20	14	61I
61JA(1)	Aggravated sexual assault in company	life	14	61I
61M(1)	Aggravated indecent assault	7	5	61L
61M(2)	Indecent assault where person under 16	10	5	61L
66A(2)	Sexual intercourse - child under 10 - aggravated offence	life	25	66A(1)
66C(2)	Sexual intercourse - child between 10 and 14 - aggravated offence	20	16	66C(1)
66C(4)	Sexual intercourse - child between 14 and 16 - aggravated offence	12	10	66C(3)
66EB(2)(a)	Procuring or grooming child for unlawful sexual activity - procuring child under 14 years	15	12	66EB(2)(b)
66EB(2A)	Procuring or grooming child for unlawful sexual activity - meeting child under 14 years following grooming	15	12	66EB(2A)
66EB(3)	Procuring or grooming child for unlawful sexual activity - grooming child under 14 years	12	10	66EB(2A)
80A(2A)	Sexual assault by forced self-manipulation in circumstances of aggravation	20	14	80A(2)
80D(2)	Causing sexual servitude in circumstances of aggravation	20	15	80D(1)
80E(2)	Conduct business involving sexual servitude in circumstances of aggravation	19	15	80E(1)
86(2)	Kidnapping - aggravated offence	20	14	86(1)
86(3)	Kidnapping - specially aggravated offence	25	14	86(1)
91J(3)	Voyeurism - aggravated offence	5	2 + 100 penalty units	91J(1)
91K(3)	Filming a person engaged in private act - aggravated offence	5	2 + 100 penalty units	91K(1)

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91L(3)	Filming a person's private parts - aggravated offence	5	2 + 100 penalty units	91L(1)
93I(2)	Possession of unregistered firearm in public place - aggravated offence	14	10	93I(1)
93N	Contaminate, threaten to contaminate, or make false statements concerning contamination of goods with intent to cause public alarm or economic loss - aggravated offence (unwarranted demand)	14	10	93K, 93L, 93M
93O	Contaminate or threaten to contaminate goods with intent to cause public alarm or economic loss - aggravated offence (causing or intending to cause death or grievous bodily harm)	25	10	93K, 93L
95	Robbery or stealing from the person in circumstances of aggravation	20	14	94
97(2)	Robbery etc or stopping a mail, being armed or in company - aggravated offence	25	20	97(1)
109(2)	Breaking out of dwelling-house after committing, or entering with intent to commit, indictable offence - Aggravated offence	20	14	109(1)
109(3)	Breaking out of dwelling-house after committing, or entering with intent to commit, indictable offence - Specially aggravated offence	25	14	109(1)
111(2)	Enter dwelling house - aggravated offence	14	10	111(1)
111(3)	Enter dwelling house - specially aggravated offence	20	10	111(1)
112(2)	Breaking etc into any house etc and committing serious indictable offence - aggravated offence	20	14	112(1)
112(3)	Breaking etc into any house etc and committing serious indictable offence - Specially aggravated offence	25	14	112(1)
113(2)	Breaking etc into any house etc with intent to commit serious indictable offence - aggravated offence	14	10	113(1)
113(3)	Breaking etc into any house etc with intent to commit serious indictable offence - specially aggravated offence	20	10	113(1)
154C(2)	Taking motor vehicle or vessel with assault or with occupant on board - aggravated offence	14	10	154C(1)
546D(2)	Impersonation of police officers - aggravated offence	7	2 + 100 penalty units	546D(1)

Appendix G

Prevalence of offences

Table G.1 Non-SNPP offences with high prevalence of sentencing in higher courts since 2006

Offence	Maximum penalty (yrs)	Total	Prison	Prison %
<i>Crimes Act 1900 (NSW) s 24</i> Manslaughter	25	255	233	91
<i>Crimes Act 1900 (NSW) s 97(2)</i> Robbery etc or stopping a mail, being armed or in company, when armed with a dangerous weapon	25	281	265	94
<i>Crimes Act 1900 (NSW) s 95</i> Robbery or stealing from the person in circumstances of aggravation	20	356	280	79
<i>Crimes Act 1900 (NSW) s 111(2)</i> Enter dwelling house - aggravated offence	14	230	138	60
<i>Crimes Act 1900 (NSW) s 113(2)</i> Breaking etc into any house etc with intent to commit serious indictable offence - aggravated offence	14	203	135	67
<i>Drug Misuse and Trafficking Act 1985 (NSW) s 25A(1)</i> Supplying prohibited drugs on an ongoing basis	20	631	497	79
<i>Crimes Act 1900 (NSW) s 97(1)</i> Robbery etc or stopping a mail, being armed or in company, when armed with an offensive weapon	20	1997	1611	81

Prevalence data from JIRS as at 28 August 2013.

Table G.2 SNPP offences with low prevalence of sentencing in higher courts since 2006

Offence	Maximum penalty (yrs)	Total	Prison	Prison %
Murder – where the victim was a police officer, emergency services worker, correctional officer, judicial officer, council law enforcement officer, health worker, teacher, community worker, or other public official, exercising public or community functions and the offence arose because of the victim's occupation or voluntary work	Life	0	0	N/A
<i>Crimes Act 1900 (NSW) s 26</i> (conspiracy to murder)	25	2	2	100
<i>Crimes Act 1900 (NSW) s 203E</i> (bushfires)	14	3	3	100
<i>Crimes Act 1900 (NSW) s 154C(1)</i> (taking motor vehicle or vessel with assault or with occupant on board)	10	8	7	87
<i>Firearms Act 1996 (NSW) s 51B</i> (unauthorised sale of firearms on an ongoing basis)	20	8	8	100

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Offence	Maximum penalty (yrs)	Total	Prison	Prison %
Murder – where the victim was a child under 18 years of age	Life	9	9	100
<i>Crimes Act 1900 (NSW) s 60(3)</i> (wounding or inflicting grievous bodily harm on police officer)	12	15	12	80
<i>Weapons Prohibition Act 1998 s 7</i> (unauthorised possession or use of prohibited weapon on indictment)	14	16	8	50
<i>Crimes Act 1900 (NSW) s 66A(2)</i> (sexual intercourse – child under 10)	Life	16	16	100
<i>Crimes Act 1900 (NSW) s 60(2)</i> (assault of police officer occasioning bodily harm)	7	17	11	65
<i>Crimes Act 1900 (NSW) s 154G</i> (organising car or boat rebirthing activities)	14	20	17	85
<i>Crimes Act 1900 (NSW) s 61JA</i> (aggravated sexual assault in company)	Life	20	20	100
<i>Firearms Act 1996 (NSW) s 51(1A) or (2A)</i> (unauthorised sale of prohibited firearm or pistol)	20	23	19	83
<i>Drug Misuse and Trafficking Act 1985 (NSW) s 24(2)</i> (manufacture or production of commercial quantity of prohibited drug), being an offence that: <ul style="list-style-type: none"> ▪ does not relate to cannabis leaf, and ▪ if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves less than the large commercial quantity of that prohibited drug 	20 and/or 3500 penalty units	30	27	90
<i>Crimes Act 1900 (NSW) s 27, 28, 29 or 30</i> (attempt to murder)	25	34	34	100
<i>Drug Misuse and Trafficking Act 1985 (NSW) s 24(2)</i> (manufacture or production of commercial quantity of prohibited drug), being an offence that: <ul style="list-style-type: none"> ▪ does not relate to cannabis leaf, and ▪ if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves not less than the large commercial quantity of that prohibited drug 	Life and/or 5000 penalty units	40	40	100
<i>Crimes Act 1900 (NSW) s 154C(2)</i> (taking motor vehicle or vessel with assault or with occupant on board in circumstances of aggravation)	14	42	38	90
<i>Firearms Act 1996 (NSW) s 51D(2)</i> (unauthorised possession of more than 3 firearms any one of which is a prohibited firearm or pistol)	20	46	21	46

Prevalence data from JIRS as at 28 August 2013.

Appendix H

Indictable offences triable summarily

Table H.1 SNPP offences triable summarily

Item No	Offence	SNPP (yrs)	Maximum penalty (yrs)
4A	<i>Crimes Act 1900</i> (NSW) s 35(1) Reckless causing of grievous bodily harm in company	5	14
4B	<i>Crimes Act 1900</i> (NSW) s 35(2) Reckless causing of grievous bodily harm	4	10
4C	<i>Crimes Act 1900</i> (NSW) s 35(3) Reckless wounding in company	4	10
4D	<i>Crimes Act 1900</i> (NSW) s 35(4) Reckless wounding	3	7
5	<i>Crimes Act 1900</i> (NSW) s 60(2) Assault of police officer occasioning bodily harm	3	7
9A	<i>Crimes Act 1900</i> (NSW) s 61M(1) Aggravated indecent assault	5	7
9B	<i>Crimes Act 1900</i> (NSW) s 61M(2) Aggravated indecent assault	8	10
14	<i>Crimes Act 1900</i> (NSW) s 154C(1) Taking motor vehicle or vessel with assault or with occupant on board	3	10
15	<i>Crimes Act 1900</i> (NSW) s 154C(2) Taking motor vehicle or vessel with assault or with occupant on board in circumstances of aggravation	5	14
15B	<i>Crimes Act 1900</i> (NSW) s 203E Bushfires	5	14
20	<i>Firearms Act 1996</i> (NSW) s 7 Unauthorised possession or use of firearms	3	14
24	<i>Weapons Prohibition Act 1998</i> (NSW) s 7 Unauthorised possession or use of prohibited weapon on indictment	3	14

Table H.2 Non-SNPP offences considered in this Question Paper that are triable summarily

Offence	Maximum penalty (yrs)	Total No
<i>Crimes Act 1900</i> (NSW) s 33B(1) Use or possession of weapon to resist arrest or hinder investigation	12	92
<i>Crimes Act 1900</i> (NSW) s 35A(1) Cause dog to inflict grievous bodily harm	10	0
<i>Crimes Act 1900</i> (NSW) s 39 Using poison etc to endanger life or inflict grievous bodily harm	10	3
<i>Crimes Act 1900</i> (NSW) s 52A(3) Dangerous driving occasioning grievous bodily harm	7	127
<i>Crimes Act 1900</i> (NSW) s 52A(4) Aggravated dangerous driving occasioning grievous bodily harm	11	66

Consultation Paper **Standard minimum non parole periods**

Offence	Maximum penalty (yrs)	Total No
<i>Crimes Act 1900</i> (NSW) s 52AB(1) Failing to stop and assist after vehicle impact causing death	10	4
<i>Crimes Act 1900</i> (NSW) s 52AB(2) Failing to stop and assist after vehicle impact causing grievous bodily harm	7	1
<i>Crimes Act 1900</i> (NSW) s 52B(3) Dangerous navigation causing grievous bodily harm	7	0
<i>Crimes Act 1900</i> (NSW) s 52B(4) Aggravated dangerous navigation causing grievous bodily harm	11	0
<i>Crimes Act 1900</i> (NSW) s 546D(2) Impersonation of police officers - aggravated offence	7	0
<i>Crimes Act 1900</i> (NSW) s 55 Possessing or making explosives or other things with intent to injure	10	1
<i>Crimes Act 1900</i> (NSW) s 59A(2) Assault occasioning actual bodily harm during a large-scale public disorder	7	0
<i>Crimes Act 1900</i> (NSW) s 60A(2) Assault occasioning actual bodily harm of a law enforcement officer (other than a police officer) while in the execution of duty	7	2
<i>Crimes Act 1900</i> (NSW) s 60E(2) Assault occasioning actual bodily harm of a school student or member of staff of a school while attending a school	7	0
<i>Crimes Act 1900</i> (NSW) s 61O(2) Commit act of indecency with or towards a child under 10 years, or incites a child under 10 years to an act of indecency	7	3
<i>Crimes Act 1900</i> (NSW) s 66EB(2)(a) Procuring or grooming child for unlawful sexual activity - procuring child under 14 years	15	1
<i>Crimes Act 1900</i> (NSW) s 66EB(2)(b) Procuring a child 14 or 15 years for unlawful sexual activity	12	1
<i>Crimes Act 1900</i> (NSW) s 66EB(2A)(a) Meeting child under 14 years following grooming	15	0
<i>Crimes Act 1900</i> (NSW) s 66EB(2A)(b) Meeting child 14 or 15 years following grooming	12	0
<i>Crimes Act 1900</i> (NSW) s 66EB(3)(a) Grooming a child under 14 years for unlawful sexual activity	12	0
<i>Crimes Act 1900</i> (NSW) s 66EB(3)(b) Grooming a child 14 or 15 years for unlawful sexual activity	10	1
<i>Crimes Act 1900</i> (NSW) s 82 Procuring own miscarriage	10	0
<i>Crimes Act 1900</i> (NSW) s 83 Procuring another's miscarriage	10	1
<i>Crimes Act 1900</i> (NSW) s 91A Procure person for purposes of prostitution	7	0
<i>Crimes Act 1900</i> (NSW) s 91B Procure person for purposes of prostitution by violence, threat, or abuse of authority, or by the use of any drug or intoxicating liquor	10	1
<i>Crimes Act 1900</i> (NSW) s 91H(2) Produce or disseminate child pornography	10	42

Offence	Maximum penalty (yrs)	Total No
<i>Crimes Act 1900 (NSW) s 91J(3)</i> Voyeurism - aggravated offence	5	0
<i>Crimes Act 1900 (NSW) s 91K(3)</i> Filming a person engaged in private act - aggravated offence	5	0
<i>Crimes Act 1900 (NSW) s 91L(3)</i> Filming a person's private parts - aggravated offence	5	0
<i>Crimes Act 1900 (NSW) s 93G</i> Causing danger with firearm or spear gun	10	49
<i>Crimes Act 1900 (NSW) s 93H(2)</i> Firing a firearm or spear gun in or into any building or on or on to any land	10	3
<i>Crimes Act 1900 (NSW) s 93I(2)</i> Possession of unregistered firearm in public place - aggravated offence	14	6
<i>Firearms Act 1996 (NSW) s 44A</i> Prescribed person involved in firearms dealing business	14	0
<i>Firearms Act 1996 (NSW) s 36</i> Selling, purchasing, possessing or using a firearm that is not registered and the firearm is a prohibited firearm or pistol	10	8
<i>Firearms Act 1996 (NSW) s 43</i> Carrying on activities as a firearms dealer without a licence or possess a firearm as a firearms dealer that is not authorised.	7	0
<i>Firearms Act 1996 (NSW) s 50</i> Unauthorised purchase of a prohibited firearm or pistol	10	0
<i>Firearms Act 1996 (NSW) s 50AA(2)</i> Unauthorised purchase a firearm part for any kind of prohibited firearm or pistol	10	0
<i>Firearms Act 1996 (NSW) s 51A</i> Unauthorised purchase of prohibited firearm or pistol	14	1
<i>Firearms Act 1996 (NSW) s 51BA(2)</i> Unauthorised sale of part of prohibited firearm or pistol	10	0
<i>Firearms Act 1996 (NSW) s 51D(1)</i> Unauthorised possession of more than 3 firearms.	10	1
<i>Firearms Act 1996 (NSW) s 51E</i> Holder of category H licence possessing or using pistol fitted with magazine of more than 10 round capacity	14	0
<i>Firearms Act 1996 (NSW) s 62</i> Shorten firearm or possess shortened firearm	10	13
<i>Firearms Act 1996 (NSW) s 63</i> Converting firearms	10	0
<i>Firearms Act 1996 (NSW) s 70</i> False or misleading application relating to a prohibited firearm or pistol	10	0
<i>Firearms Act 1996 (NSW) s 71A</i> Use false document to obtain firearm	10	0
<i>Firearms Act 1996 (NSW) s 72</i> Firearms dealer making false or misleading entry in a record in relation to a prohibited firearm or pistol	14	0
<i>Firearms Act 1996 (NSW) s 74(1)</i> Possess or use a prohibited firearm or pistol contrary to a firearms prohibition order	10	0
<i>Firearms Act 1996 (NSW) s 74(3)</i> Sell or give a prohibited firearm or pistol contrary	10	0

Offence	Maximum penalty (yrs)	Total No
to a firearms prohibition order		
<i>Weapons Prohibition Act 1998 (NSW) s 20</i> Carry on business of weapons dealer or theatrical weapons armourer without permit	7	0
<i>Weapons Prohibition Act 1998 (NSW) s 23A(1)</i> Unauthorised sale of prohibited weapon	14	0
<i>Weapons Prohibition Act 1998 (NSW) s 25A(1)</i> Unauthorised manufacture of prohibited weapon	14	0
<i>Weapons Prohibition Act 1998 (NSW) s 34(1)</i> Possess or use prohibited weapon contrary to a weapons prohibition order	10	0
<i>Weapons Prohibition Act 1998 (NSW) s 34(3)</i> Sell or give prohibited weapon contrary to a weapons prohibition order	10	0

Prevalence data from JIRS covers period January 2006-December 2012. NB some offences may have come into force after January 2006.