

**AN EXAMINATION OF THE
SENTENCING POWERS OF THE
LOCAL COURT IN NSW**

A Report of the NSW Sentencing Council

December 2010

An examination of the sentencing powers of the Local Court in NSW

A report of the NSW Sentencing Council pursuant to section 100J(1)(c) of the *Crimes (Sentencing Procedure) Act 1999*.

The views expressed in this report do not necessarily reflect the private or professional views of individual Council members or the views of their individual organisations. A decision of the majority is a decision of the Council – Schedule 1A, clause 12 *Crimes (Sentencing Procedure) Act 1999* (NSW).

Published in Sydney by the:

NSW Sentencing Council
GPO Box 6
SYDNEY NSW 2001
www.lawlink.nsw.gov.au/sentencingcouncil
Email: sentencingcouncil@agd.nsw.gov.au

© New South Wales Sentencing Council, Sydney, 2010.

Copyright permissions

This publication may be copied, distributed, displayed, downloaded and otherwise freely dealt with for any personal or non-commercial purpose, on condition that proper acknowledgement is included on all uses. However, you must obtain permission from the NSW Sentencing Council if you wish to:

- Charge others for access to this publication (other than at cost);
- Include all or part of the publication in advertising or a product for sale; or
- Modify this publication.

Disclaimer

While this publication has been formulated with due care, the NSW Sentencing Council does not warrant or represent that it is free from errors or omission, or that it is exhaustive. This publication deals with the law at the time it was first published and may not necessarily represent the current law. Readers are responsible for making their own assessment of this publication and should verify all relevant representations, statements and information with their own professional advisers.

ISBN 978-0-646-54966-8

THE COUNCIL

Hon Jerrold Cripps QC, Chairperson

Hon James Wood QC AO, Deputy Chairperson

Assistant Commissioner David Hudson APM, NSW Police

Professor David Tait, Justice Research Group, University of Western Sydney

Mr Howard W Brown OAM, Victims of Crime Assistance League

Ms Jennifer Mason, Department of Human Services

Mr Ken Marslew AM, Enough is Enough Anti-Violence Movement

Mr Nicholas Cowdery AM QC, Director of Public Prosecutions

Mr Harrold Hunt, Community Representative

Mr Mark Ierace SC, Senior Public Defender.

Ms Martha Jabour, Homicide Victims Support Group

Ms Megan Davis, Indigenous Law Centre, University of NSW

Hon Roderick Howie QC, Representative with expertise in criminal law

Ms Penny Musgrave, Department of Justice and Attorney General

Mr Ron Woodham, Corrective Services NSW

OFFICERS OF THE COUNCIL

Executive Officer

Anna Butler

Sarah Waladan¹

Research Officer

Huette Lam²

¹ Anna Butler resigned from the position of Executive Officer to the Sentencing Council in September 2010 and Sarah Waladan commenced in the role on 20 September 2010.

² Huette Lam was the Research Officer to the Council until 24 September 2010.

TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION

BACKGROUND.....	2
SCOPE OF THE INQUIRY.....	4
CURRENT JURISDICTIONAL LIMIT OF THE LOCAL COURT.....	5
RELEVANCE OF THE JURISDICTIONAL LIMIT.....	6
DETERMINING JURISDICTION.....	8
PROSECUTION RESPONSIBILITY	9

CHAPTER 2: PERSONAL VIOLENCE CASES IN THE LOCAL COURT

METHODOLOGY.....	13
SENTENCING FOR PERSONAL VIOLENCE OFFENCES.....	14
CASE ANALYSIS.....	15

CHAPTER 3: SUBMISSIONS CONCERNING AN INCREASE IN THE SENTENCING POWERS OF THE LOCAL COURT

INTRODUCTION.....	18
SUPPORT FOR INCREASE.....	18
Chief Magistrate of the Local Court.....	18
NSW Police Force	27
OPPOSITION TO INCREASE IN JURISDICTION.....	29
IMPACT ON OTHER SECTORS.....	31
Director of Public Prosecutions	31
Corrective Services (CSNSW).....	32
NSW State Parole Authority (SPA).....	32
Rural, remote and Indigenous communities	32
Indigenous communities	33
Rural and remote communities.....	34

CHAPTER 4: RESPONSE OF THE SENTENCING COUNCIL – JURISDICTIONAL LIMITS

INTRODUCTION.....	37
ENLARGING THE COURTS’ JURISDICTION	37
A UNIFORM 2 YEAR MAXIMUM JURISDICTIONAL LIMIT.....	41
REFERRAL POWER	42
NSW – No Referral Power.....	42
Other Jurisdictions.....	43
EVALUATION.....	43
AMENDING THE CRIMINAL PROCEDURE ACT.....	47

CHAPTER 5: APPEALS AGAINST SENTENCE FROM THE LOCAL COURT

INTRODUCTION.....	51
EXISTING AVENUES OF APPEAL FROM THE LOCAL COURT.....	51
APPEAL TO THE DISTRICT COURT	51
Appeal to the Supreme Court	52
Application to the Supreme Court for an inquiry into conviction or sentence.....	52
ISSUES.....	52

ANNEXURES

Annexure A: Table 1 & 2 Offences - offences which are triable both on indictment and in the Local Court.....	55
Annexure B: Jurisdictional limits in other jurisdictions.....	65
Annexure C: Personal violence offences finalised in the local court where the maximum penalty was imposed.....	75
Annexure D: Personal violence cases in the local courts.....	80
Annexure E: Personal violence cases in the local courts: Summary of magistrates’ comments.....	165
Annexure F: Relevant personal violence offences finalised in higher courts.....	179
Annexure G: Summary of referral powers in other Australian jurisdictions.....	190

CHAPTER 1: INTRODUCTION

BACKGROUND.....	2
SCOPE OF THE INQUIRY.....	4
CURRENT JURISDICTIONAL LIMIT OF THE LOCAL COURT.....	5
RELEVANCE OF THE JURISDICTIONAL LIMIT.....	6
DETERMINING JURISDICTION.....	8
PROSECUTION RESPONSIBILITY	9

BACKGROUND

1.1 In March 2009, the NSW Sentencing Council published a report on sentencing for alcohol-related violence¹. In that report, the Council did not make any formal recommendation for the alteration of current sentencing laws and practices, or for the creation of any new offences to deal with alcohol-related violence. It did, however, recommend that there be an ongoing review of cases finalised in the Local Court in order to determine whether there is any significant body of personal violence cases, prosecuted in the Local Court, where its jurisdictional limit has resulted in sentences that are not commensurate with the objective seriousness of the offence and the subjective circumstances of the offender. The Council indicated that depending on the outcome of that review, further consideration could be given, following consultation with relevant stakeholders and examination of the likely impact on the caseloads of the local and District Courts, to the possibility of increasing the jurisdiction of the Local Court².

1.2 In April 2009, the Attorney General sought the advice of the Council in relation to a proposal to increase the jurisdiction of the Local Court by:

- Increasing the length of the sentences of imprisonment that could be imposed in that Court from 2 years to 5 years; and
- Increasing the maximum property value for indictable 'break and enter' type offences that can be dealt with summarily from \$15,000 to \$60,000.

1.3 In July 2009, the Attorney General requested that the Sentencing Council conduct the review that was recommended in the alcohol-related violence report, with terms of reference as follows:

Pursuant to s 100J of the *Crimes (Sentencing Procedure) Act 1999* (NSW), the Sentencing Council is to conduct a review of personal violence cases finalised in the Local Court to determine whether the court's jurisdictional limit has produced a significant number of sentences that are not commensurate with the objective seriousness of the offence and the subjective circumstances of the offender.

¹ Report on Sentencing for Alcohol Related Violence, NSW Sentencing Council. This report can be found on the Council's website at:

http://www.lawlink.nsw.gov.au/lawlink/scouncil/ll_scouncil.nsf/pages/scouncil_publications

² Ibid at 113.

1.4 In August 2009, the Council provided the Attorney General with a preliminary response to the proposal to increase the sentencing jurisdiction of the Local Court, (in relation to the length of the sentence that could be imposed) but advised that delivery of a final report would need to await a cost/benefit impact assessment in relation to the Local and District courts, the Office of the Director of Public Prosecutions, and the Police Prosecutors. The Council indicated its provisional support in relation to the increase in property value for indictable break and enter type offences that could be dealt with summarily.

1.5 In December 2009, the Council received a further reference asking it to examine the relative merits of increasing the sentencing powers of the Local Court in respect of:

- (a) The maximum penalty that may be imposed in respect of a single offence (from two to five years imprisonment); and
- (b) The maximum property value in relation to indictable 'break and enter' offences that may be dealt with summarily under Chapter 5 of the Criminal Procedure Act 1986 (from \$15,000 to \$60,000).

In examining these proposals, the Council was required to specifically consider the following matters:

- An analysis of any cases currently heard in the Local Court in which there is an identifiable concern that the jurisdictional limit is leading to sentences that do not reflect the objective criminality of the offences;
- The impact of the proposals on the workloads of affected agencies including the Local and District Courts, police prosecutors, the Office of the Director of Public Prosecutions, Legal Aid Commission, Aboriginal Legal Service, Corrective Services NSW and the State Parole Authority and their capacity to accommodate the change in jurisdiction;
- Whether existing avenues of appeal are adequate;
- The potential impact of the proposals on the incidence of guilty pleas and jury trials;
- The likely effect on rural, remote and Aboriginal communities;

- Any other matter.

SCOPE OF THE INQUIRY

1.6 In April 2010, the Council confirmed, by letter to the Attorney-General, its earlier support for an increase in the property value for the summary trial of break and enter type offences. This recommendation led to the amendment of clause 8 of Schedule 1 to the *Criminal Procedure Act 1986 (NSW)*, extending the summary jurisdiction of the Local Court, in relation to offences arising under s. 112(1) of the *Crimes Act 1900 (NSW)*, involving the stealing or destruction of property whose value does not exceed \$60,000. This amendment came into effect on 28 June 2010. The \$15,000 value limit, however, remains in place in relation to offences under s 109(1) of the Crimes Act, and this will be the subject of consideration later in this report.

1.7 This Report will otherwise confine its attention to the outstanding aspects of the terms of reference, which are concerned firstly with the merits of increasing the length of sentences of imprisonment that can be imposed in Local Courts, and secondly with a consideration, in essence, of whether the current jurisdictional limits of the Court are leading to sentences in respect of personal violence cases that are not commensurate with the objective seriousness of those offences, and the subjective circumstances of the offenders.

1.8 In undertaking this inquiry the Council notes that the December 2009 Reference would potentially require an extremely protracted and expensive review of a very large body of cases decided in the Local Court, for which transcripts would need to be obtained. As the Council does not have the resources for such an exercise, it elected to confine its assessment to a review of a sample of cases involving personal violence, supplemented by a consideration of:

- the jurisdictional limits applicable in the other States and Territories; and
- the submissions received.

CURRENT JURISDICTIONAL LIMIT OF THE LOCAL COURT

1.9 In NSW, there is no general limit on the maximum pecuniary penalty that may be imposed for a summary offence. However, offences under the *Summary Offences Act 1988* (NSW) are generally punishable by up to two years imprisonment and/or a fine of up to 100 penalty units.

1.10 Indictable offences that may be dealt with summarily are listed in Table 1 and Table 2 of Schedule 1 to the *Criminal Procedure Act 1986* (NSW). See Annexure A for a summary of these offences. For Table 1 and Table 2 indictable offences tried summarily in the Local Court, the maximum term of imprisonment that the Court can impose is generally imprisonment for two years or the statutory maximum term of imprisonment for the offence, whichever is the shorter.³ There are a number of Table 1 and 2 offences, however, for which the maximum sentence of imprisonment available in the Local Court is less than 2 years⁴. See Annexure A for a summary of these offences. In one instance concerned with drug supply the available sentence is increased to 2 years 6 months⁵.

1.11 Subject to certain exceptions, the maximum that can be imposed by way of a sentence or sentences to be served consecutively, or partly consecutively and partly concurrently with an existing sentence, is five years after the date on which the existing sentence began.⁶

1.12 In general, the maximum fine that a Local Court can impose for a Table 1 offence is 100 penalty units or the statutory maximum fine for the offence, whichever is the smaller.⁷ Again, there are some offences for which a lesser maximum applies⁸. Where

³ *Criminal Procedure Act 1986* (NSW): ss 267(2), 268(1A). Ss 267(4)–(4A) and 268(2) specify the jurisdictional limits applicable to these offences.

⁴ *Criminal Procedure Act 1986* (NSW): ss 267(4)–(4A) and 268(2) specify the jurisdictional limits applicable to these offences.

⁵ *Criminal Procedure Act 1986* (NSW): s. 267(7A)- in respect of an offence against s 33A(2)(a) of the *Drug Misuse and Trafficking Act 1985*.

⁶ *Crimes (Sentencing Procedure) Act 1999* (NSW): s 58(1). This section does not apply if the new sentence relates to: (a)(i) an offence involving escape from lawful custody; or (ii) an offence against the person committed against a correctional officer or juvenile justice officer while the offender was a convicted inmate or person subject to control; and (b) any of the existing sentence(s) was imposed by: (i) a court other than the Local Court or the Children's Court; or (ii) the Local Court or the Children's Court, and the date on which the new sentence would end is not more than five years and six months after the date on which the existing sentence or the first of the existing sentences began: *Crimes (Sentencing Procedure) Act 1999*; s 58(3).

⁷ *Criminal Procedure Act 1986* (NSW): s 267(3).

⁸ *Criminal Procedure Act 1986* (NSW) s 267(4A). The maximum pecuniary penalties available for Table 2 offences ranges between 10 penalty units and 100 penalty units (*Criminal Procedure Act 1986* (NSW); s. 268(2)); or in the case of a corporation it may rise to 200 penalty units.

an offence committed by a body corporate is punishable by imprisonment only, the maximum fine that may be imposed for such offences by the Local Court is 100 penalty units.⁹ For certain indictable offences dealt with summarily, legislation may prescribe the maximum penalty that may be imposed—for example:

- for the offence of publishing any matter that identifies the victims of certain sexual offences—50 penalty units;¹⁰
- for an offence under Part 2 or Part 5 (other than s 40(2)) of the *Surveillance Devices Act 2007* (NSW)—200 penalty units.¹¹

1.13 The value of one penalty unit is currently \$110.¹²

1.14 The maximum pecuniary penalty or sentence that may be imposed by Local Courts in the other States and Territories (Magistrates Courts or Courts of Summary Jurisdiction), varies between jurisdictions. A brief overview of the jurisdictional limits applicable to these courts is contained in Annexure B.

RELEVANCE OF THE JURISDICTIONAL LIMIT

1.15 In *R v Doan*,¹³ a case in the District Court in which the appellant was sentenced for offences of assault and associated offences, that could have been tried summarily, the NSW Court of Criminal Appeal held that, for an offence that was triable in the Local Court, the sentence should be determined by reference to the prescribed maximum penalty for the offence. The Court's jurisdictional limit operates only to confine the penalty ultimately imposed:

The result of true construction of the statutory provisions in New South Wales is that, what has been prescribed is a jurisdictional maximum and not a maximum penalty for any offence triable within that jurisdiction. In other words, where the maximum applicable penalty is lower because the charge has been prosecuted within the limited summary jurisdiction of the Local Court, that court should impose a penalty reflecting the objective seriousness of the offence, tempered if appropriate by subjective circumstances, taking care only not to exceed the maximum jurisdictional limit. The implication of the argument of the appellant that, in lieu of prescribed maximum penalties exceeding two years imprisonment, a maximum of two years imprisonment for all offences triable summarily in the Local Court has been substituted, must be rejected.

⁹ *Criminal (Sentencing Procedure) Act 1999*; s 16(b).

¹⁰ *Crimes Act 1900* (NSW) s 578A(8).

¹¹ *Criminal Procedure Act 1986* (NSW); s 268(2)(1).

¹² *Crimes (Sentencing Procedure) Act 1999* (NSW) s 17.

¹³ *R v Doan* (2000) 50 NSWLR 115.

As must also be rejected, the corollary that a sentence of two years imprisonment should be reserved for a “worst case”.¹⁴

1.16 There is some support for concern that this principle is not always observed, and that if overlooked, it can result in an unjustifiably lenient sentence.

1.17 The manner in which the District Court should take into account the fact that a matter, which is before it for sentence, could have been determined summarily in the Local Court, was authoritatively stated in *R v Palmer* in favour of the following principles:¹⁵

(a) The first is that a judge in the District Court is not bound by the jurisdictional limit imposed on the Local Court when dealing with an offence on indictment which was capable of summary disposal, but may have regard to that limit when the case is one which could appropriately have been disposed of in the Local Court: *Regina v. Crombie* [1999] NSWCCA 297 at [16]; *Regina v. LPY* (2002) 136 A. Crim. R. 237 at 240 and *Regina v. El Masri* [2005] NSWCCA 167 at [30].

(b) Secondly, the fact that a matter could have been dealt with in the Local Court, had the prosecuting authority not elected otherwise, remains a relevant consideration in the exercise of the discretion reserved to the sentencing judge: *Crombie* (supra) at [15].

(c) Thirdly, however, the relevant decisions that establish that principle do not go so far as to require the sentencing judge to proceed upon the basis that the maximum available sentence is that which could have been imposed in the Local Court. At most they establish that the circumstance identified is to be taken into account. Depending upon the objective and the subjective criminality of the offender, it may properly be regarded as calling for some mitigation of the sentence that would otherwise be imposed in the District Court for an offence prosecuted upon indictment. Where it may properly justify the granting of leave to appeal: *Crombie* (supra) at [16].

(d) Fourthly, the significance of the loss of the chance of the matter being dealt with in the Local Court varies from case to case. In some cases it would contribute to mitigation of sentence. It is a matter to be taken into account, but is not a universal factor for the reduction of sentence: *Regina v. Doan* (2000) 50 NSWLR 115.

1.18 As noted above, a sentencing judge must sentence for the offence of which the accused has been convicted, following trial or entry of a plea of guilty by reference to the prescribed maximum sentence fixed for that offence. In imposing that sentence the court cannot take into account circumstances of aggravation that would have warranted

¹⁴ *R v Doan* (2000) 50 NSWLR 115, [35]. See also *Lapa v The Queen* [2008] NSWCCA 331, [15] [17], in which the NSW Court of Criminal Appeal held that it was open to the Drug Court to determine a starting point of sentence greater than its jurisdictional limit of two years, even though the maximum sentence that could ultimately be imposed was two years.

¹⁵ *R v Palmer* (2005) NSWCCA 349, [15].

a conviction for a more serious offence—otherwise it would violate the principle that a person must not be punished for an offence of which he or she has not been convicted¹⁶.

1.19 For example, when sentencing an offender for a common assault, the fact that actual bodily harm was suffered by the victim must not be taken into account because it would constitute circumstances of aggravation that would have warranted conviction for the more serious offence of assault occasioning actual bodily harm.¹⁷ Similarly, for the offence of assault occasioning actual bodily harm, a sentencing judge must not take into account the fact that the offence was committed maliciously, which would have warranted a conviction for the offence of maliciously inflicting grievous bodily harm.¹⁸

DETERMINING JURISDICTION

1.20 Current procedural requirements effectively divide offences into:

- Summary offences that are only triable in the Local Court;
- Table 1 indictable offences, in respect of which either the Prosecution or the accused can elect for trial in the District Court;
- Table 2 indictable offences, in respect of which only the Prosecution can elect for trial in the District Court; and
- Strictly indictable offences that cannot be tried in the Local Court.

1.21 The distinction between summary and indictable offences is largely based on historical factors, as is that between Table 1 and Table 2 offences.

1.22 Election depends firstly on the police officer in charge of the case, or the Police Prosecutor forming the view that the matter is sufficiently serious and likely to attract a sentence outside the Local Court jurisdiction, such as to warrant referral to the ODPP.

1.23 This occurs electronically. The ODPP has a set of guidelines to assist in the decision whether to elect for a District Court hearing.

1.24 Relevantly, they provide in relation to offences, other than those that are standard non-parole offences, (which must proceed by way of indictment if it is

¹⁶ *R v De Simoni* (1981) 147 CLR 383.

¹⁷ *R v Lardner* (Unreported, NSWCCA, 10 September 1998, BC9804715).

¹⁸ *Overall v The Queen* (1993) 71 A Crim R 170.

considered that no penalty other than imprisonment is appropriate and that the offence falls within the middle range of objective seriousness or higher for that offence) that an election should not be made unless:

“(i) the accused person’s criminality (taking into account the objective seriousness and his or her subjective considerations) could not be adequately addressed within the sentencing limits of the Local Court; and/or

(ii) for some other reason, consistently with these guidelines, it is in the interests of justice that the matter not be dealt with summarily (eg., a comparable co-offender is to be dealt with on indictment; or the accused person also faces a strictly indictable charge to which the instant charge is not a back-up).”¹⁹

1.25 Information provided by the NSW Police Force shows the following in relation to the number of matters dealt with by the ODPP between 2004 and 2009²⁰:

Offence Category	2004	2005	2006	2007	2008	2009
Strictly indictable charges	3819	3995	4420	4594	5186	5293
Charges referred to, and accepted by DPP	1378	1371	864	970	1110	988
Total charges with DPP	5197	5366	5284	5564	6296	6281

PROSECUTION RESPONSIBILITY

1.26 For the most part, proceedings determined in the Local Court are prosecuted by NSW Police Prosecutors. These prosecutors deal not only with proceedings initiated by the Court Attendance Notices (CANS) that the NSW Police Force issues, (approximately 285,000 per year), but also those initiated by CANS issued by the State Debt Recovery Office, where the recipient of a penalty notice, issued by one or other of the regulatory

¹⁹ Office of the Director of Public Prosecutions for NSW, Prosecution Guideline 8. The Guidelines are available at: <http://www.odpp.nsw.gov.au/guidelines/FullGuidelines.pdf>

²⁰ Submissions of the NSW Police Force at 8 and supplementary submissions provided by NSW Police to the Council (with updated figures).

agencies empowered to issue penalty notices²¹, elects to contest the notice by way of a hearing in the Local Court (approximately 40,000 per year). Police Prosecutors also deal with applications for apprehended violence orders (more than 37,000 per year).²² Additionally, Police Prosecutors deal with strictly indictable offences that come before the Local Court in relation to bail hearings and mentions. For matters that are likely to proceed to the District Court or Supreme Court, police are required to prepare a detailed brief. For matters that are dealt with to finality in the Local Court, briefs of varying detail are prepared by police depending on the seriousness of the matter, ranging from simple facts sheets for summary offences, to full briefs for Table 1 offences where the accused pleads not guilty²³.

1.27 The NSW Police Force currently appears in approximately 125 Local Courts per day across the State. The Council has been advised that about 10% of the prosecutors are legally qualified²⁴. While they are not officers of the Court or subject to the *Legal Profession Act 2004* (NSW), they are subject to compliance with the internal requirements of the NSW Police and to both internal and external oversight²⁵. Prosecutors do receive internal training, are required to sit an ethics examination and are instructed to act as if they were subject to the Bar Rules issued by the NSW Bar Association²⁶.

1.28 The ODPP prosecutes a limited number of offences in the Local Court, usually where there is a special public interest involved, cases involving the sexual assault of

²¹ Submission 6b: NSW Police at 4: For example, a large number of penalty notices are issued by the NSW Police Force and the Roads and Traffic Authority of NSW (RTA). The processing of these penalty notices is managed by the State Debt Recovery office (SDRO).

²² Ibid at 4.

²³ In November 2007, the Government commenced a trial of a suite of reforms to Local Court criminal case processes intended to free up police resources. Three of the reforms were achieved by legislative amendment. The first element of the reforms removed the requirement for police to serve a full brief of evidence in matters in Table 1 of the Criminal Procedure Act 1986 (such as break and enter, and steal motor vehicle) prior to the defense making a decision on whether to elect to have the matter heard in the District Court. This also had the effect of removing the right of the defense to obtain a full brief of evidence prior to entering a plea. Secondly, provision was made for the service of 'short' briefs of evidence in Table 2 and most summary offences, such as common assault and shoplifting. These short briefs include the key material evidence that proves the elements of the offence, but do not include low value, mainly corroborative statements. Thirdly, the reforms specified a number of summary matters for which no briefs of evidence would be provided, including offensive conduct and drink driving offences. Defendants in these cases are provided with a fact sheet and any primary evidence.

The reforms are currently under evaluation by BOCSAR and a report is expected in the first half of 2011.

²⁴ Ibid at 10.

²⁵ Ibid at 10.

²⁶ Ibid at 10.

children (but not child pornography save for cases involving a significant amount of such material), cases where the accused is a police officer or a person with a high profile in the community, or where a matter is referred back to the Local Court by a Superior Court in relation to an offence that is only triable summarily. Such prosecutions are usually conducted by solicitor advocates, who are legally qualified and subject to the ethical rules attaching to legal practitioners. Prosecutions in the Local Court conducted by the ODPP as summary matters number about 500 per year. Otherwise the ODPP conducts approximately 1700 cases that are committed for trial to the District Court and finalised.²⁷

²⁷ ODPP NSW Annual Report, 2008-2009 at 32-33.

CHAPTER 2: PERSONAL VIOLENCE CASES IN THE LOCAL COURT

METHODOLOGY.....	13
SENTENCING FOR PERSONAL VIOLENCE OFFENCES.....	14
CASE ANALYSIS.....	15

METHODOLOGY

2.1 The Council invited and received submissions from the Chief Judge of the District Court, the Chief Magistrate of the Local Court, the NSW Police Force, the Director of Public Prosecutions New South Wales, the Senior Public Defender, Corrective Services NSW, the Department of Juvenile Justice, the Community Relations Commission, the Law Society of NSW, the Bar Association of NSW, the NSW State Parole Authority, Legal Aid NSW, Young Lawyers of the NSW Law Society, Redfern Legal Centre, Armstrong Legal, the Shopfront Youth Legal Centre and the Shoalcoast Community Legal Centre Inc. in relation to the issues concerned with personal violence cases.

2.2 In addition, the Council has reviewed statistics available on the Judicial Commission of New South Wales' Judicial Information Research System (JIRS) database and as provided by the NSW Bureau of Crime Statistics and Research (BOCSAR).

2.3 In order to ascertain whether there are any concerns among magistrates about the constraint of the Local Court's jurisdictional limit on their ability to impose sufficient sentences, the Council has sought and examined 147 transcripts of personal violence cases, decided in the Local Courts, where the offender has received the jurisdictional maximum sentence.

2.4 Under s 4 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW), a 'personal violence offence' is defined as:

- (a) an offence under, or mentioned in, section 19A, 24, 26, 27, 28, 29, 30, 31, 33, 33A, 35, 35A, 37, 38, 39, 41, 44, 46, 47, 48, 49, 58, 59, 61, 61B, 61C, 61D, 61E, 61I, 61J, 61JA, 61K, 61L, 61M, 61N, 61O, 65A, 66A, 66B, 66C, 66D, 66EA, 80A, 80D, 86, 87, 93G, 93GA, 195, 196, 198, 199, 200, 562I (as in force before its substitution by the *Crimes Amendment (Apprehended Violence) Act 2006*) or 562ZG of the *Crimes Act 1900*, or
- (b) an offence under section 13 or 14 of this Act, or
- (c) an offence of attempting to commit an offence referred to in paragraph (a) or (b).

2.5 There are, however, a number of other offences against the person, contained in Part 3 of the Crimes Act, that the Council considers should fall within the ambit of the Report.²⁸ Personal violence offences that are strictly indictable offences cannot be finalised in the Local Court. A list of the offences, potentially involving personal violence, that are triable both on indictment and in the Local Court, is contained in Annexure A to this Report.

SENTENCING FOR PERSONAL VIOLENCE OFFENCES

2.6 A majority of the personal violence offences that are triable summarily have a jurisdictional limit so far as the Local Court is concerned, of two years imprisonment. However, of the 75 offences (as defined in the *Crimes (Domestic and Personal) Violence Act 2007* (NSW) or otherwise arising under the *Crimes Act 1900* (NSW)) considered, the following are subject to a lesser jurisdictional limit of 12 months if tried in the Local Court (as indicated in Annexure A), namely:

- injury by furious driving etc;²⁹
- causing grievous bodily harm (not involving motor vehicle);³⁰
- common assault;³¹
- act of indecency;³² and
- destroying or damaging property.³³
- Robbery or stealing from the person³⁴; and
- Being armed with intent to commit indictable offence.³⁵

²⁸ See for example, Submission 4: His Honour G. Henson, Chief Magistrate of the Local Court of NSW at 1.

²⁹ *Crimes Act 1900* (NSW) s 53; *Criminal Procedure Act 1986* (NSW), s 267(4)(b).

³⁰ *Crimes Act 1900* (NSW) s 54; *Criminal Procedure Act 1986* (NSW); s 267(4)(b).

³¹ *Crimes Act 1900* (NSW) s 61; *Criminal Procedure Act 1986* (NSW); s 268 (2)(b).

³² *Crimes Act 1900* (NSW) s 61N(2); *Criminal Procedure Act 1986* (NSW); s 268 (2)(b).

³³ *Crimes Act 1900* (NSW) s 195; *Criminal Procedure Act 1986* (NSW); s 268 (2)(c).

³⁴ *Crimes Act 1900* (NSW) s 94; *Criminal Procedure Act 1986* (NSW); s 268 (2)(c).

³⁵ *Crimes Act 1900* (NSW) s 114(1)(b); *Criminal Procedure Act 1986* (NSW); s 268 (2)(c).

2.7 The offence of predatory driving is subject to a maximum term of imprisonment in the Local Courts of 18 months;³⁶ as are the offences of dangerous driving³⁷, failing to stop and assist after an accident³⁸ and dangerous navigation³⁹.

CASE ANALYSIS

2.8 The Council has examined 147 transcripts of personal violence cases decided in the Local Court during the period 2007-2009, in which sentences equivalent to its maximum sentencing jurisdiction were imposed.

2.9 A summary of the offences for which sentences at the maximum jurisdictional level were imposed is contained in Annexure C. A summary of the 147 cases is contained in Annexure D.

2.10 In at least 52 cases, a weapon of some kind was involved. In at least 30 cases, the offender was affected by alcohol or some other substance.

2.11 In 19 of those 147 cases, the presiding magistrate made comments in relation to being constrained by the jurisdictional limit of the Court such that he or she was not able to impose an adequate sentence, taking into account the circumstances of the case. In general terms, such comments were either critical of the failure of the prosecution to elect for trial by indictment (5), or critical of the jurisdictional limit (14).

2.12 The Council does not consider it appropriate that it express any view concerning the adequacy or inadequacy of the sentence that was imposed in any of the 147 cases considered. However, for an understanding of the cases in which concerns were expressed, it provides in Annexure E, an extract of the magistrate's comments.

2.13 The Council has also given consideration to the range of sentences imposed in the Higher Courts (Annexure F) in relation to personal violence cases corresponding with those dealt with in the Local Court (as noted in Annexure C), and in relation to the percentage of cases determined in the Higher Courts which have resulted in a sentence of imprisonment of any duration.

³⁶ *Crimes Act 1900 (NSW)*: s 51A; *Criminal Procedure Act 1986 (NSW)*: s.267(4)(a).

³⁷ *Crimes Act 1900 (NSW)*: s. 52A; *Criminal Procedure Act 1986 (NSW)*: s. 267(4)(a).

³⁸ *Crimes Act 1900 (NSW)*: s. 52AB; *Criminal Procedure Act 1986 (NSW)*: s. 267(4)(a).

³⁹ *Crimes Act 1900 (NSW)*: s. 52B; *Criminal Procedure Act 1986 (NSW)*: s. 267(4)(a).

2.14 Although it is recognised that any comparison between sentencing trends in the Lower Court and Higher Court involves a very imprecise exercise, given the potential differences in objective and subjective circumstances involved, the Council has taken these tables into account when reaching the conclusions set out in Chapter 4 of this Report.

CHAPTER 3: SUBMISSIONS CONCERNING AN INCREASE IN THE SENTENCING POWERS OF THE LOCAL COURT

INTRODUCTION.....	18
SUPPORT FOR INCREASE.....	18
Chief Magistrate of the Local Court.....	18
NSW Police Force	27
OPPOSITION TO INCREASE IN JURISDICTION.....	29
IMPACT ON OTHER SECTORS.....	31
Director of Public Prosecutions	31
Corrective Services (CSNSW).....	32
NSW State Parole Authority (SPA).....	32
Rural, remote and Indigenous communities	32
Indigenous communities	33
Rural and remote communities.....	34

INTRODUCTION

3.1 In this chapter we give consideration to the submissions concerning the need for any increase in the sentencing powers of the Local Court and the consequences for offenders and key justice agencies. As the Council does not have the resources required for a detailed cost benefit analysis of any change in the jurisdiction of the Court, its analysis is largely dependent on the submissions received, the substance of which is noted in this chapter.

SUPPORT FOR INCREASE

3.2 Support for an increase in the jurisdiction of the local Court, to allow sentences of imprisonment of up to 5 years to be imposed by the Court, was foreshadowed by the Chief Magistrate of the Local Court and by the NSW Police Force (subject to resourcing and a staged implementation)⁴⁰.

Chief Magistrate of the Local Court

3.3 The Chief Magistrate observed that the number of personal violence offences that proceeded to finality in the Local Court has steadily increased and that the ODPP was electing less often to proceed on indictment, including cases where the maximum penalty significantly exceeded the jurisdictional limit of the Court⁴¹. It was noted that there was a 'strong feeling' throughout the Court that the objective seriousness of the offending in some matters challenges the legitimacy of the sentencing exercise (because of the jurisdictional limits)⁴².

3.4 It was also noted that there were Table offences that could be, and were, heard in the Local Court for which the Standard Non-Parole Period was greater than the jurisdictional limit of the Court. The following table was provided in relation to SNPP cases finalised in 2008⁴³:

⁴⁰ Submissions 6a, 6b: NSW Police Force; Submissions 4a-4c: Chief Magistrate of the Local Court.

⁴¹ Submission 4b: Letter of the Chief Magistrate of the Local Court to the Attorney-General, the Hon. John Hatzistergos MLC, dated 20 February 2009 at 3.

⁴² Ibid at 3.

⁴³ Submission 4a: Chief Magistrate of the Local Court at 4.

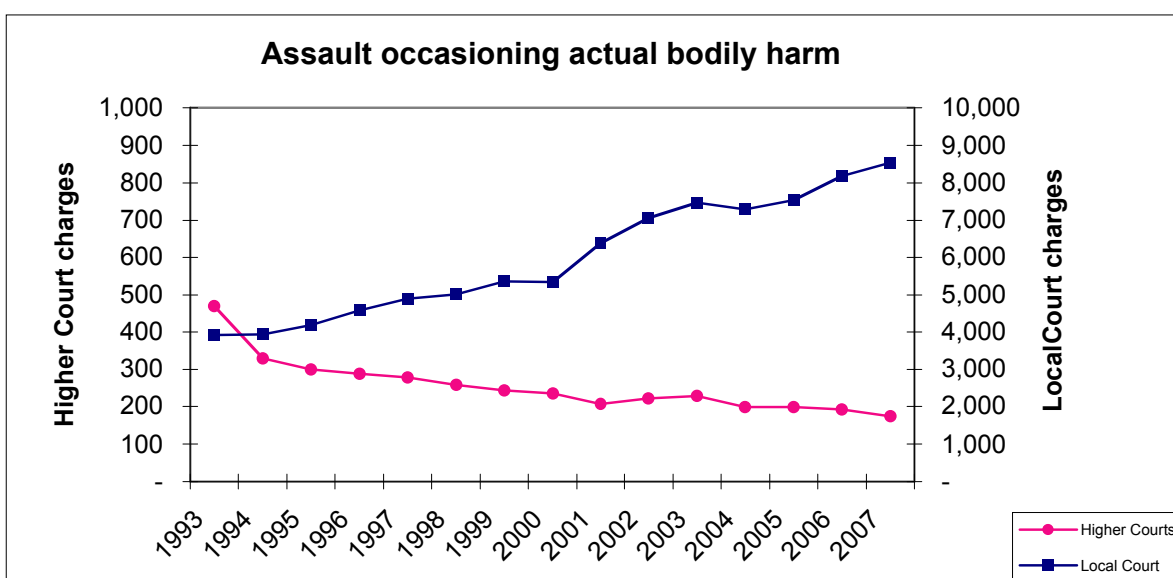
Offence	Standard non-parole period	Matters finalised in Higher Courts	Matters finalised in Local Court
Reckless causing of grievous bodily harm, including in company (s 35 Crimes Act)	5/4 years	506	134
Reckless wounding, including in company (s 35 Crimes Act)	4/3 years	466	139
Assault police officer in the execution of duty, actual bodily harm (s 60(2) Crimes Act)	3 years	13	180
Aggravated indecent assault (s 61M Crimes Act)	5/8 years	367	291

3.5 Several tables were provided showing increases in the number of cases finalised in the Local Court (with decreases in the dispositions of the District Court) between 1993 and 2007, in relation to the offences of assault occasioning actual bodily harm, recklessly causing grievous bodily harm, reckless wounding, affray, assault with intent to commit serious indictable offence, use of a weapon with intent to commit an offence, resist arrest, child pornography offences, and driving offences causing death or grievous bodily harm⁴⁴. The Council acknowledges that any trend towards allowing serious cases to be heard in the Local Court increases the prospect of the appropriate sentence exceeding the jurisdictional limit of the Court. It recognises however that this will be avoided so long as there is suitable election to proceed in the District Court. The tables are replicated below:

⁴⁴ Submission 4b: Chief Magistrate of the Local Court, 20 February 2009. Data obtained from the NSW DPP and from the NSW Bureau of Crime Statistics and Research.

Assault occasioning actual bodily harm⁴⁵

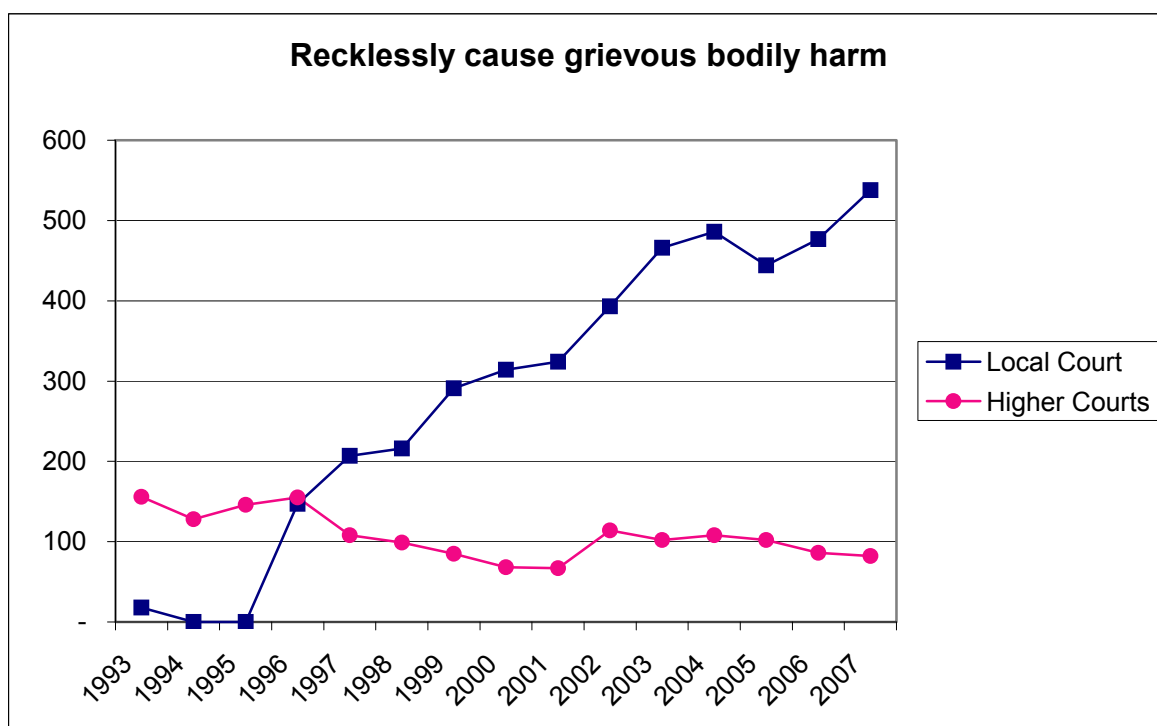
Assault occasioning actual bodily harm is an offence under section 59(1) of the *Crimes Act 1900* (NSW) carrying a maximum penalty of five years imprisonment. In 1993 3,920 charges were finalised in the Local Court. In 2007 this had increased to 8,539. Over the same period charges finalised in the District Court declined from 469 to 173.



⁴⁵ Submission 4b: The Chief Magistrate of the Local Court at 7.

Recklessly cause grievous bodily harm⁴⁶

This is an offence under section 35(2) of the Crimes Act carrying a maximum penalty of 10 years imprisonment or 14 years if committed *in company*. Prior to 2007 this offence was maliciously inflict grievous bodily harm⁴⁷. The number of recklessly cause/maliciously inflict grievous bodily harm charges finalised in the Local Court, increased between 1993 and 2007 from 18 to 538, whilst the number of charges finalised in the District Court nearly halved in that same period.

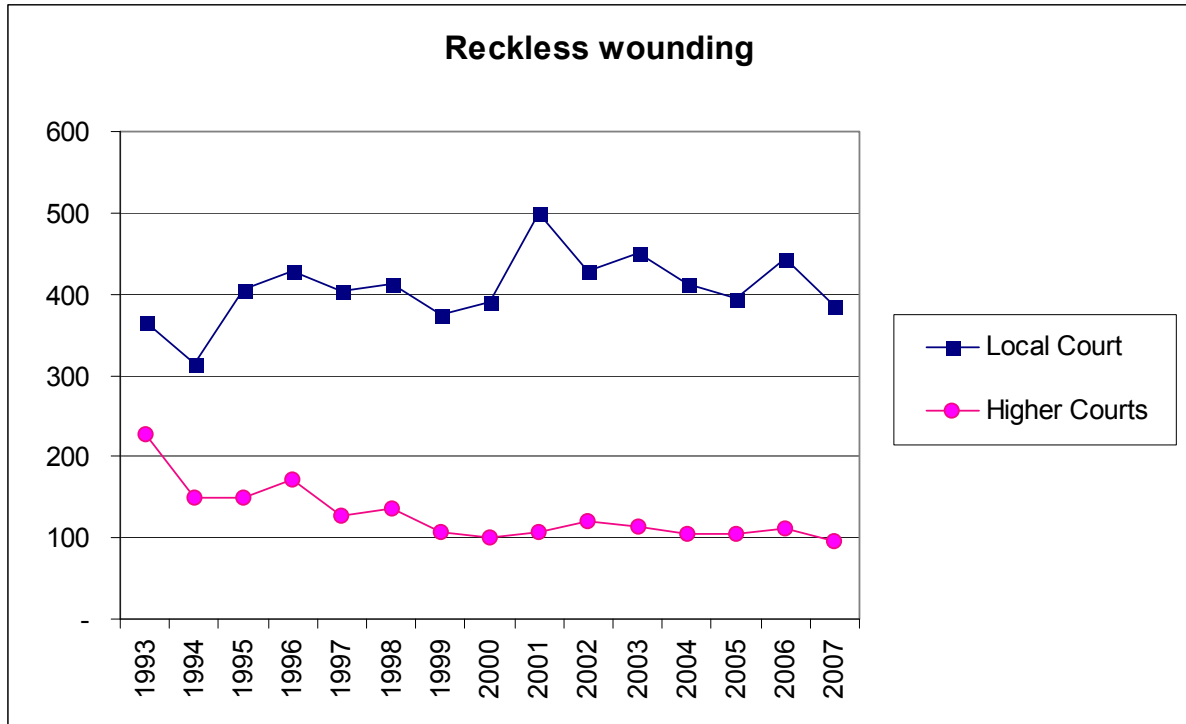


⁴⁶ Submission 4b: The Chief Magistrate of the Local Court at 8.

⁴⁷ This was an offence under section 35(1)(b) of the *Crimes Act* 1900 (NSW) (from 2007 this offence is replaced with recklessly causing grievous bodily harm under section 35(2) of the Crimes Act).

Reckless wounding⁴⁸

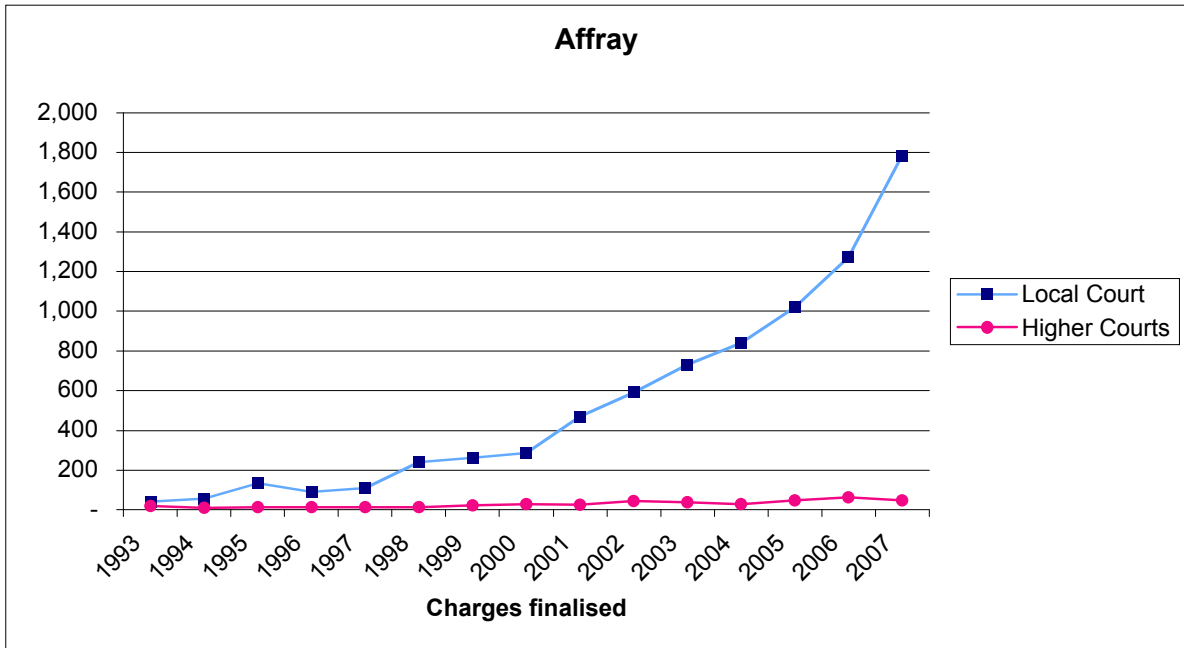
In the same period whilst the number of charges of Malicious Wounding (now Reckless wounding), which carries a maximum penalty of 7 years imprisonment or 10 years *in company*, finalised in the Local Court increased, the number finalised in the District Court reduced by 57%.



⁴⁸ Submission 4b: The Chief Magistrate of the Local Court at 9.

Affray⁴⁹

The offence of Affray under section 93C(1) of the *Crimes Act 1900* (NSW) carries a maximum penalty of 10 years imprisonment. The number of charges finalised in the Local Court between 1993 and 2007 increased from 40 to 1,784 whilst the number of charges finalised in the District Court has only marginally increased from 20 to 47.

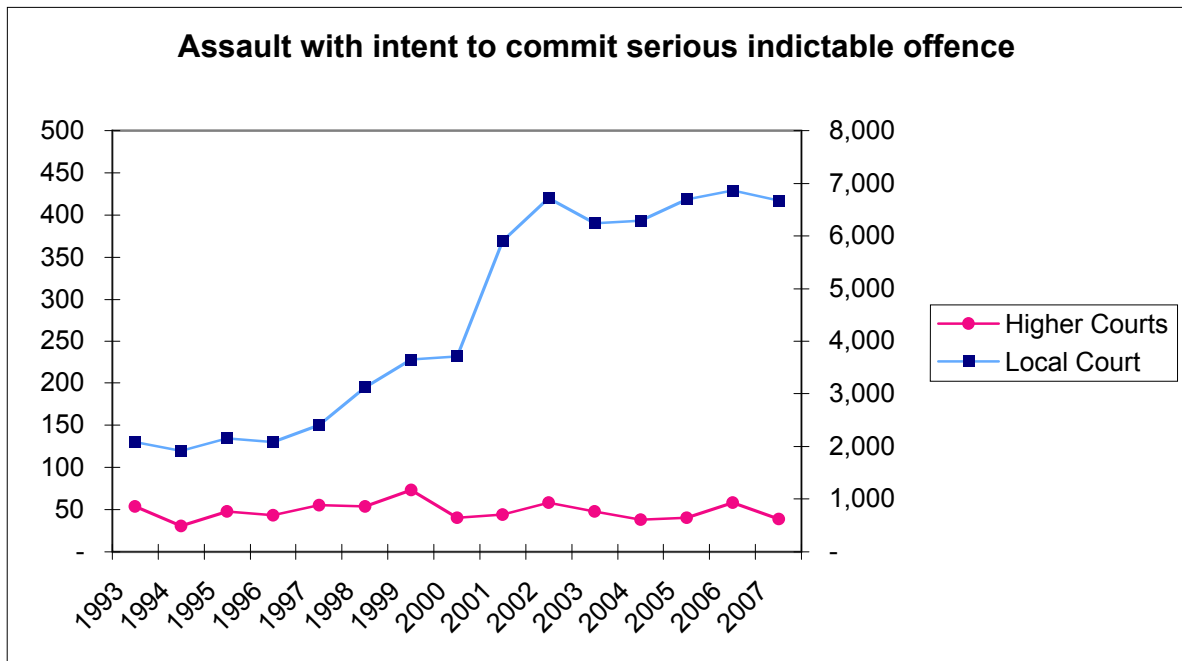


Assault with intent to commit serious indictable offence⁵⁰

The offence of Assault with Intent to Commit Serious Indictable Offence is an offence under section 58 of the *Crimes Act 1900* (NSW) and carries a maximum penalty of 5 years imprisonment. The number of charges finalised in the Local Court between 1993 and 2007 has increased from 2,085 to 6,667. The number of charges finalised in the District Court has declined in the same period time.

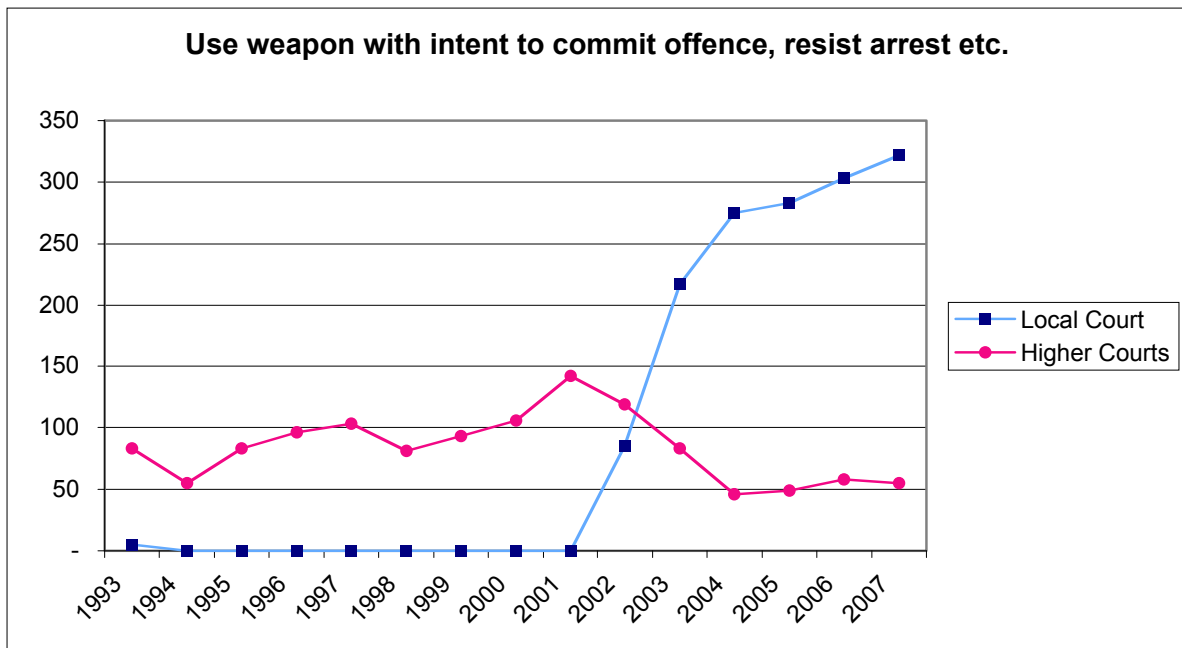
⁴⁹ Submission 4b: The Chief Magistrate of the Local Court at 10.

⁵⁰ Submission 4b: The Chief Magistrate of the Local Court at 11.



Use a weapon to commit offence, resist arrest etc.⁵¹

The offence under section 33B of the *Crimes Act 1900* (NSW) in relation to using a weapon with intent to commit offence, resist arrest etc. carries a maximum penalty of 12 years imprisonment. In the period between 1993 and 2007, the number of charges finalised in the Local Court has increased by 6,340%, whilst the number of charges finalised in the District Court has declined by 34%.



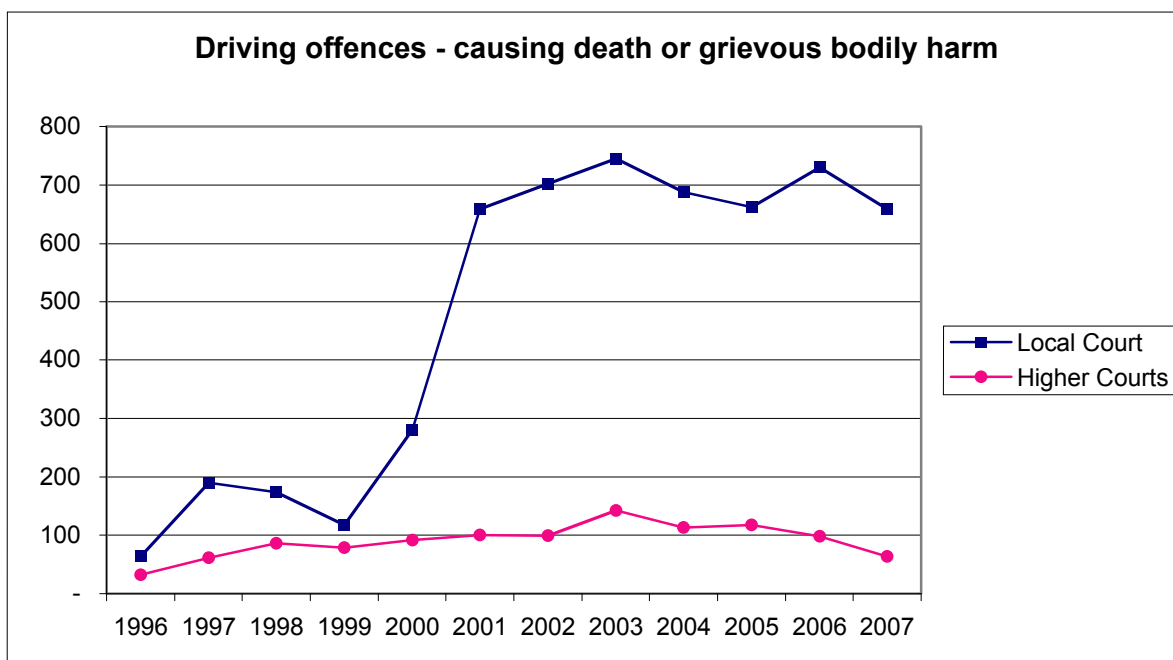
⁵¹ Submission 4b: The Chief Magistrate of the Local Court, at 12.

Driving offences causing death or grievous bodily harm⁵²

Driving offences causing death or grievous bodily harm include Negligent Driving occasioning death or grievous bodily harm under section 42 of the *Road Transport (Safety and Traffic Management) Act 1999* and Dangerous driving occasioning death or grievous bodily harm under section 52A of the *Crimes Act 1900*.

The introduction of a standard of negligence in the Road Transport Act offences in 1999 has allowed for an increase in prosecution of driving offences where previously the standard of dangerousness required under the Crimes Act, may not have been met. The increase in negligent driving occasioning death or grievous bodily harm offences has been almost exclusively prosecuted in the Local Court. There is also evidence that as a result of case conferencing, offences which may have previously proceeded on indictment (such as dangerous driving occasioning death, which is strictly indictable), charge bargaining has resulted in offences being prosecuted as negligent driving occasioning death or alternatively that dangerous driving causing grievous bodily harm is prosecuted summarily in the Local Court instead of on indictment.

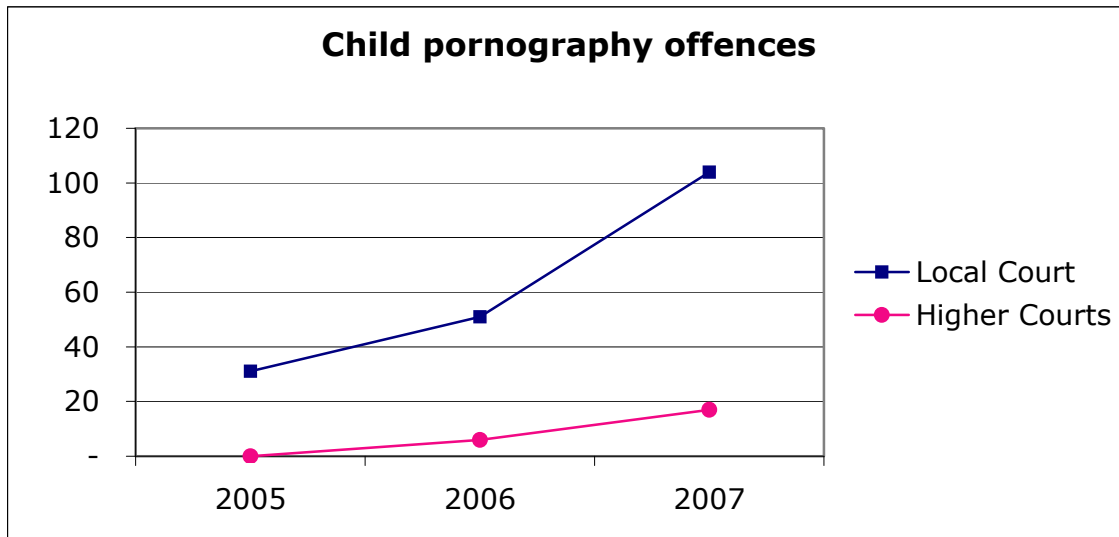
The graph below includes, cumulatively the offences of Dangerous driving occasioning death or grievous bodily harm under section 52A of the *Crimes Act 1900* and Negligent Driving occasioning death or grievous bodily harm under section 42 of the *Road Transport (Safety and Traffic Management) Act 1999*.



Child pornography offences⁵³

⁵² Submission 4b: The Chief Magistrate of the Local Court at 13.

Section 91H of the Crimes Act Production, dissemination or possession of child pornography carries a maximum penalty of 10 years imprisonment. Since its introduction as part of the Crimes Amendment (Child Pornography) Act 2004 there has been a steady increase in the number of offences prosecuted, with the overwhelming proportion of them prosecuted in the Local Court.



3.6 The Chief Magistrate noted that the introduction of the Table 1 offences has had a significant impact on the criminal workload of the Court, which has increased by about 56% between 1995 and 2008⁵⁴. It was recognised that any increase in the sentencing jurisdiction would increase this trend towards hearing increasingly complex and serious matters and would involve a commensurate investment in judicial resources⁵⁵.

3.7 The Chief Magistrate indicated, contrary to the views expressed by those who opposed any increase in the jurisdiction, that he did not anticipate that there would be any significant reduction in the guilty plea rate as a result of such a change. One factor that was said to be relevant was the incentive to enter an early plea in the Local Court so as to attract the maximum discount.

3.8 Additionally the Chief Magistrate did not anticipate any significant impact on the incidence of jury trials, as only a minority of matters are disposed of by way of a defended hearing (approximately 5.7% in 2008/09) or are committed for trial, in the

⁵³ Submission 4b: The Chief Magistrate of the Local Court at 14.

⁵⁴ Submission 4c: Chief Magistrate of the Local Court at 1.

⁵⁵ Ibid at 1.

District Court (approximately 1.2% in 2008/09). Additionally it was observed that defence election for trial on indictment in relation to Table 1 offences is rarely made.

NSW Police Force

3.9 The NSW Police force supported an increase in the sentencing jurisdiction of the Local Court, subject to the provision of additional funding and of time to prepare for any such change⁵⁶. In this respect, it pointed to the need for lead time to train the additional Police Prosecutors that would be required, the number of which would depend on the nature of any increase in the jurisdiction of the Court.

3.10 Allowing for the turnover, which sees up to 25 prosecutors leaving the NSW Police Force each year, it was noted that an annual increase of about 40 police prosecutors could be achieved. On the assumption that an increase of about 80 prosecutors would be necessary, at a cost of about \$7.5m per year⁵⁷, it was said that this could be accommodated within a two-year time frame. However, the NSW Police Force submitted that a staged implementation would be necessary to ensure a smooth transition. If a quicker implementation was required, then it was suggested that consideration would need to be given to the provision of short term additional funding to increase its training capacity and to an increase in prosecuting allowances to attract applicants.⁵⁸

3.11 The NSW Police Force noted that an increase in Local Court's sentencing powers would have certain potential ancillary benefits, including:

- A reduction in the number of briefs of evidence that must be prepared for strictly indictable offences, including a potential saving of up to 6000 hours of police time for every 1000 charges moved from the District Court to the Local Court⁵⁹; and
- Since matters are finalised more quickly in the Local Court than in the District Court⁶⁰, there would be a potential reduction in the time it takes for matters to

⁵⁶ Submission 6b: NSW Police Force at 11-14.

⁵⁷ Ibid at 12.

⁵⁸ Submission 6b: NSW Police Force at 12.

⁵⁹ The NSW Police Force advised that a Table 1 offence dealt with in the Local Court would only require a brief of evidence if the accused enters a plea of not guilty, which occurs in approximately one in three cases. On the basis of 5400 charges dealt with on indictment each year, it was estimated that for each 1000 charges moved from the District Court to the Local court, up to 660 less briefs will be required: Submission 6b: NSW Police Force at 13.

be finalised across the court system.⁶¹ Such a potential reduction it was suggested would benefit victims, witnesses and the police, and could also reduce the size of the remand population.⁶²

3.12 The likelihood of there being some additional incidental costs, for example in relation to an increase in victims support services and changes to the COPS computer system, was also identified⁶³.

3.13 The NSW Police Force also drew attention, in the course of its submissions, to some anomalies that it suggested were likely to continue if the jurisdiction of the Local Court remained unchanged. They relate to:

- The fact that there have been reported instances of common assault matters, dealt with in the Local Court, receiving sentences in excess of the 12 months jurisdictional limit applicable to such cases;⁶⁴
- The fact that the jurisdictional limit for a common assault is less than for breach of an AVO;⁶⁵ and
- The submission that the right of appeal from the Local Court (available as of right to the defendant, both in relation to sentence and conviction) is less restrictive than that applicable in the case of an appeal from the District Court to the Supreme Court (available only by leave or where there is an error of law) and that the introduction of the same precondition would save time and costs.

OPPOSITION TO INCREASE IN JURISDICTION

⁶⁰ The NSW Police Force submitted that all criminal proceedings that are to be dealt with on indictment at the District Court must be first listed in the Local Court, and can take up to 15 weeks to proceed through the Local Court to their first mention in the District Court – regardless of whether the accused pleads guilty; whereas Table 1 matters (including both contested and uncontested hearings) took an average of six weeks to be finalised; Submission 6b: NSW Police Force at 13, referring to Local Court Practice Note No 1 of 2010.

⁶¹ Submission 6b: NSW Police Force at 13.

⁶² Submission 6b: NSW Police Force at 13-14.

⁶³ “On the basis of a target ratio of two police prosecutors for each Local Court to accommodate the increased seriousness of the offences to be heard by the Court, and each prosecutor costing on average \$93,000 per year. This cost includes salary, overtime, work premises, travel, accommodation, computers, training and administrative support (including human resource management). Taking into account training, sick leave and recreational leave, each prosecutor is available 80% of the time – accordingly the target ratio is increased to 2.5 prosecutors per Local Court: Submission 6b: NSW Police Force at 10-12.

⁶⁴ See Submission 6b: NSW Police Force at 6.

⁶⁵ Submission 6b: NSW Police Force at 7.

3.14 Opposition was expressed, in relation to any increase in the length of sentences of imprisonment that could be imposed in the Local Court, by: The Chief Judge of the District Court; the Public Defenders; the NSW Bar Association; the Law Society of NSW; Legal Aid NSW; Redfern Legal Centre and Young Lawyers NSW. As much the same points were made, we note that the reasons variously advanced were as follows:

- a) The increase would result in a transfer of a significant part of the workload of the District Court to the Local Court, leading to delays in the Local Court, and loss of its efficiency as a trial court dealing with a large volume of less serious forms of criminality;⁶⁶
- b) It could lead to a decrease in pleas of guilty, because the current jurisdictional limit of the Local Court can act as an incentive for an accused to be tried in that court, particularly in circumstances where there is an automatic right of appeal (with a rehearing) to the District Court⁶⁷;
- c) Perhaps counter intuitively to the expectation that there would be a move of part of the District Court workload to the Local Court, the increase might lead to accused who are charged with Table 1 offences electing for jury trial in the District Court, thereby offsetting any savings otherwise arising⁶⁸;
- d) The proposal would be likely to result in an increase in appeals to the District Court with adverse consequences for its trial workload, for the timeliness of the finalisation of criminal proceedings and for the costs both to defendants and the system as a whole; with the further consequence that appeals would lie to a single judge of the District Court that currently would be determined by the NSWCCA⁶⁹;
- e) The resources of Legal Aid NSW, of other legal aid agencies and of solicitors appearing in the Local Court would be stretched in dealing with any increase in the work of that court, and some defendants facing serious charges could be left

⁶⁶ See Submission 3b: Law Society of NSW at 1.1-1.7; Submission 10: The NSW Bar Association at 1-2; Submission 14: The Law Society of NSW Young Lawyers at para 4; Submission 15: Redfern Legal Centre at 2; Submission 13: Legal Aid NSW at 1-2.

⁶⁷ See for example; Submission 13: Legal Aid NSW at 2; Submission 15: Redfern Legal Service at 3; and Submission 9: The Chief Judge of the District Court of NSW.

⁶⁸ Submission 13: Chief Judge of the District Court of NSW. It is noted however that the contrary view was expressed by the ODP in Submission 1b: Director of Public Prosecutions at 1.

⁶⁹ Although NSW Police suggested that any increase would be offset by having more matters heard in the Local Court: Submission 6b: NSW Police at 11-13.

without the legal assistance that they would have received had the matter been heard in the District Court, or would require more time in order to be properly advised thereby delaying the proceedings;⁷⁰

- f) If there is a significant shift of work to the Local Court, without election for trial in the District Court, the value of trial by jury, which permits community participation in the justice system, risks being diminished⁷¹;
- g) Unless the procedures and case management systems of the Local Court, including prosecution practices are revised, defendants in the Local Court who are involved in the more serious cases, would be deprived of the procedural advantages available in the District Court, for example, in relation to the provision of a prosecution brief (in place of a Facts Sheet)⁷²;
- h) Any transfer of a significant body of work in the Local Court would lead to delays in hearings and to adjournments, with a consequent risk of an increase in the remand population;⁷³
- i) Police Prosecutors do not have the legal qualifications or membership of legal professional association or the ethical obligations attaching to crown prosecutors and the ODPP staff, nor do they have the actual or ostensible independence which the latter possess⁷⁴;
- j) There is an absence of any clear evidence that the current jurisdictional limits are causing a problem in the imposition of appropriate sentences⁷⁵;
- k) There would be a potential for sentence inflation over time resulting in an insidious increase in the rates of imprisonment, and in the average length of the time of imprisonment⁷⁶;
- l) There would be a potential temptation to insert more offences into Table 1⁷⁷;

⁷⁰ Submission 15: Redfern Legal Service at 2; Submission 10: The NSW Bar Association at 1-2; Submission 3b: Law Society of NSW at 1.1-1.7.

⁷¹ See for example, Submission 10: The NSW Bar Association at 1-2; and Submission 15: Redfern Legal Service at 3.

⁷² Submission 3b: Law Society of NSW at 1.1-1.7.

⁷³ Submission 3b: Law Society of NSW at 5.1-5.5.

⁷⁴ Submission 10: The NSW Bar Association at 1-2; Submission 16: Senior Public Defender at 1.

⁷⁵ Submission 3b: Law Society of NSW at 5.1-5.5.

⁷⁶ Submission 10: The NSW Bar Association at 3; Submission 15: Redfern Legal Service at 1-2.

3.15 The Council notes additionally that the Chief Judge submitted that the NSW ODPP could be relied upon to elect for serious cases to be tried on indictment.⁷⁸ His Honour observed that the jurisdictional limit of the Local Court is ‘one of the key controls in the administration of criminal justice in the State’ and that interfering with it could result in a greater proportion of cases being committed to trial to the District Court, thus undoing all the reforms made during the last 20 years to reduce the backlog of cases in the District Court.⁷⁹

IMPACT ON OTHER SECTORS

Director of Public Prosecutions

3.16 Although the Director indicated that it had not been possible to undertake an examination of the financial implications for the ODPP of an increase in the jurisdiction of the Local Court, the attention of the Council was drawn to the fact that the Productivity Commission (Commonwealth) had reported, in 2009, that the cost per finalisation (with qualifications) of a criminal matter in the District Court was almost \$6000, and in the Local Court just over \$500⁸⁰. For the following year these figures were reported to be \$5780 and \$495 respectively.⁸¹

3.17 Additionally, it was noted that an increase in jurisdiction could result in less matters being reported to the ODPP for election, an outcome that was said to be consistent with the fall in elections that had been occurring for some years.

Corrective Services NSW (CSNSW)

3.18 Corrective Services NSW drew attention to the possibility that any increase in the jurisdiction of the Local Court could have consequences for CSNSW if it was to lead to sentencing creep. Its costs per prisoner, as at 2009, were estimated to be in the order of \$76,000 per year and it was noted that NSW is reported to have a higher imprisonment rate than the Australian average. Any lengthening in sentences, it noted,

⁷⁷ Submission 14: The Law Society of NSW Young Lawyers at para 1-4; Submission 13: Legal Aid NSW at 3.

⁷⁸ Submission 9: The Chief Judge of the District Court of NSW at 1-2.

⁷⁹ Submission 9: The Chief Judge of the District Court of NSW at 1-2.

⁸⁰ Submission 1b: Director of Public Prosecutions at 1; Report on Government Services 2009, Productivity Commission (Commonwealth) at 7.39 – 7.44.

⁸¹ Report on Government Services 2009, Productivity Commission (Commonwealth) at Table 7A.23.

could lead to a need for additional facilities and staff, if this resulted in a larger prison population.

NSW State Parole Authority (SPA)

3.19 Currently, an offender who receives a sentence (by way of full-time or home detention) of three years or less with a non-parole period is automatically released on parole at the expiry of the non-parole period. Accordingly, parole for sentences imposed by the Local Court – which currently must not exceed two years for any individual sentence, or five years for consecutive sentences – generally do not have to be administered by the SPA.

3.20 Any increase in the jurisdiction of the Local Court that resulted in offenders who currently receive sentences of two years or less in that Court, receiving sentences in excess of three years, would potentially increase the workload of the SPA. That, however, depends on the extent to which these cases would have been the subject of an election, under the current system, for trial in the District Court.

3.21 The SPA advised that a consequence of any resulting increase in sentences imposed by the Local Court would be the need for the provision of transcripts of Local Court judgements (that is, for those cases that resulted in sentences in excess of imprisonment for three years).

Rural, remote and Indigenous Communities

3.22 The question of the potential impact of any increase in jurisdiction on rural, remote and indigenous communities was addressed in some submissions. The NSW Police Force and the Chief Magistrate both suggested that it would have tangible benefits to rural and remote communities in terms of travel and access to justice, because there are more Local Courts than District Courts and the frequency of the hearings is greater⁸².

Indigenous Communities

3.23 Some concerns were identified in relation to the risk of sentence inflation in relation to the Indigenous community.

⁸² Submission 6b: NSW Police Force at 15; Submission 4c: Chief Magistrate of the Local Court of NSW at 3.

3.24 The Council notes that the imprisonment rate for Indigenous Australians has increased steadily since 2000.⁸³ Between 2000 and 2009, the national Indigenous adult imprisonment rate increased by 51% (or 57% in NSW alone), while the non-Indigenous imprisonment rate increased only by 5% (also 5% in NSW).⁸⁴ During this period, the ratio of Indigenous to non-Indigenous imprisonment has increased from 9.6 to 13.9—ie, Indigenous offenders are 13.9 times more likely to be imprisoned than non-Indigenous offenders in 2009.⁸⁵ The 2009 ratio is even higher than that noted in the report by the Royal Commission into Aboriginal Deaths in Custody in 1991.⁸⁶

3.25 A recent study by the NSW Bureau of Crime Statistics and Research (BOCSAR) showed that the substantial increase in Indigenous adult imprisonment rate in NSW between 2001 and 2008 was not due to a change in offending behaviour, but to changes in the criminal justice response to offending, including:

- higher rate of bail refusal;
- increased time spent on remand;
- greater proportion of Indigenous offenders receiving sentences of imprisonment and longer sentences; and
- increased number of Indigenous people convicted of offences against justice procedures.⁸⁷

3.26 It has been asserted that these changes in the criminal justice response have resulted in a greater increase in Indigenous imprisonment than in non-Indigenous

83. Australian Bureau of Statistics, *Prisoners in Australia* (2009) 47, 54. See also the discussion in Manuell, J., ‘The Fernando Principles: The Sentencing of Indigenous Offenders in NSW’ (NSW Sentencing Council, December 2009) iii–iv, at 1–3.

84. The figures are based on age standardised imprisonment rates: Australian Bureau of Statistics, *Prisoners in Australia* (2009) 54. Age standardised rates are used because Australia’s Indigenous population is much younger than its non-Indigenous population. Since the probability of imprisonment decreases with age, crude imprisonment rates for the Indigenous population will be higher because of the larger proportion of young people in the Indigenous population: Australian Bureau of Statistics, *Prisoners in Australia* (2009) at 68–9.

85. Australian Bureau of Statistics, *Prisoners in Australia* (2009) at 47, 54.

86. In its report, the Royal Commission into Aboriginal Deaths in Custody noted that Indigenous imprisonment rate was 13 times higher than the non-Indigenous imprisonment rate: Commonwealth of Australia, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 5.

87. Fitzgerald, J., ‘Why are Indigenous Imprisonment Rates Rising?’ (Crime and Justice Statistics Bureau Brief Issue Paper No 41, NSW Bureau of Crime Statistics and Research, 2009), at 5–6.

imprisonment—possibly because, compared with non-Indigenous offenders, Indigenous offenders are more likely to exhibit all of the factors that increase the likelihood of imprisonment, including: lengthy criminal records; prior conviction for serious violent offences; prior conviction for multiple offences; breach of previous court orders; and previous non-custodial sentences.⁸⁸

3.27 The Redfern Legal Centre noted the importance of the availability of diversionary programs for the Indigenous offenders, such as circle sentencing, MERIT, and the Mental Health Liaison Service, which rely on the participation of the Local Court. It expressed concerns that their availability could be negatively affected if the Local Court workload increased.

Rural and Remote Communities

3.28 The Council acknowledges that an increase in the Local Court's sentencing powers could also have consequences for offenders generally who live in rural and remote areas, unless the full range of non-custodial sentencing options is available in these areas. In its 2006 report, the NSW Legislative Council Standing Committee on Law and Justice expressed concern that the limited availability of non-custodial alternatives in rural and remote areas may result in a greater likelihood of imprisonment for offenders residing in these areas than urban offenders.⁸⁹

3.29 There is however conflicting evidence in this respect. A statistical analysis of the penalties imposed by the Local Courts in 2003 showed that community-based sentencing options were utilised more often in metropolitan areas than in rural and remote areas.⁹⁰ However, a BOCSAR study of adult offenders convicted in the NSW Local, District and Supreme Courts in 2005 found that, compared to urban offenders, offenders in rural and

88. Fitzgerald, J., 'Why are Indigenous Imprisonment Rates Rising?' (Crime and Justice Statistics Bureau Brief Issue Paper No 41, NSW Bureau of Crime Statistics and Research, 2009), 6; Snowball, L. and Weatherburn, D., 'Indigenous Over-representation in Prison: The Role of Offender Characteristics' (Crime and Justice Bulletin No 99, NSW Bureau of Crime Research and Statistics, 2006) at 14.

89. NSW Legislative Council Standing Committee on Law and Justice, *Community Based Sentencing Options for Rural and Remote Areas and Disadvantaged Populations* (2006) Chapter 3.

90. The analysis was provided by the Department of Corrective Services (now Corrective Services NSW) to the NSW Legislative Council Legislative Council Standing Committee on Law and Justice, based on data compiled by BOCSAR: NSW Standing Committee on Law and Justice, *Community Based Sentencing Options for Rural and Remote Areas and Disadvantaged Populations* (2006) at [3.6]–[3.7].

remote areas were *less* likely to receive a prison term.⁹¹ Several possible explanations for this finding have been suggested, including: offenders living in different areas differ in terms of certain unmeasured sentencing factors (eg, extent of remorse, strength of their community ties); inner metropolitan courts place more emphasis on punishment and deterrence than courts in regional or remote areas; or courts in regional or remote areas deliberately compensate for the limited availability of community-based sentencing options in those areas by favouring non-custodial options over imprisonment.⁹²

3.30 However, the introduction of Intensive Corrections Orders in place of Periodic Detention, which was not available in much of the State at the time of these studies, adds a valuable non-custodial option to the list of sentencing outcomes which will hopefully redress any regional disadvantage.

91. Snowball, L., 'Does a Lack of Alternatives to Custody Increase the Risk of a Prison Sentence?' (Crime and Justice Bulletin No 111, NSW Bureau of Crime Statistics and Research, 2008) at 3.

92. Snowball, L., 'Does a Lack of Alternatives to Custody Increase the Risk of a Prison Sentence?' (Crime and Justice Bulletin No 111, NSW Bureau of Crime Statistics and Research, 2008) at 4.

CHAPTER 4: RESPONSE OF THE SENTENCING COUNCIL – JURISDICTIONAL LIMITS

INTRODUCTION.....	37
ENLARGING THE COURTS’ JURISDICTION	37
A UNIFORM 2 YEAR MAXIMUM JURISDICTIONAL LIMIT	41
REFERRAL POWER	42
NSW – No Referral Power	42
Other Jurisdictions.....	43
EVALUATION.....	43
AMENDING THE CRIMINAL PROCEDURE ACT	47

INTRODUCTION

4.1 In light of the foregoing summary, with particular reference to the personal violence case sample, and the sentencing statistics contained in the Annexures to this Report, the Council has given consideration to four possible approaches:

- Enlarging the sentencing powers of the Local Court generally, so as to allow it to impose sentences of imprisonment for up to 5 years (i.e. in relation to offences that carry a maximum sentence of imprisonment for 5 years or more);
- Enlarging the Court's sentencing power in respect of those offences for which a current sentencing limit of imprisonment for less than 2 years applies, so as to bring that limit in line with the limit applicable to other offences;
- Conferring a power in the Local Court to refer cases to the District Court for sentence where it is of the view that its current jurisdictional limit precludes the imposition by it of an appropriate sentence; and
- Amending chapter 5 of the *Criminal Procedure Act* to make certain specific offences strictly indictable.

4.2 As noted earlier, the *Criminal Procedure Act* was amended in June 2010 to increase the monetary value limit for an s. 112(1) offence to \$60,000⁹³.

4.3 In accordance with its earlier advice, the Council understands that a similar increase is to be made in relation to the s 109(1) offence. As a result it offers no further comment in this respect.

⁹³ The Courts Legislation Amendment Bill 2010 was assented to on 28 June 2010. Schedule 1.8 to the bill amends schedule 1 of the *Criminal Procedure Act 1986* to increase the maximum property value for break and enter offences, dealt with summarily by the Local Court under chapter 5 of the *Criminal Procedure Act 1986*, from \$15,000 to \$60,000.

ENLARGING THE COURTS' JURISDICTION TO PERMIT SENTENCES OF IMPRISONMENT FOR UP TO 5 YEARS

4.4 Although the Council has identified a number of personal violence cases in which a sentence of imprisonment equivalent to the jurisdictional limit of the Local Court has been imposed, and some cases where magistrates have expressed a concern that this has resulted in a sentence that was inappropriately lenient, it does not support any general increase in the Court's jurisdiction.

4.5 As Annexure C, based on JIRS statistics shows, the percentage of those cases attracting a sentence at the maximum jurisdictional level, across the range of personal violence offences, is for the most part, quite low. The exceptions are:

OFFENCE	% CASES WHERE SENTENCE IMPOSED WAS AT MAXIMUM JURISDICTIONAL LIMIT
Send letter threatening to kill or injure	25%
Recklessly wound in company	25% <i>(SNPP offence)</i>
Negligent or wanton driving causing bodily harm	50% <i>(12 months jurisdictional limit)</i>
Negligent or unlawful act causing grievous bodily harm	60% <i>(12 months jurisdictional limit)</i>
Fire firearm or spear gun in or near public place	50%
Destroy or damage property by fire/explosives	<\$2000 – 31% >\$2000 – 33% <i>(12 months jurisdictional limit)</i>
Destroying or damaging property with intent to injure	33%
Use unauthorised pistol	100% <i>(SNPP offence)</i>

4.6 In relation to a significant proportion of these cases however, as shown in the Annexure, the proportion of offenders receiving a custodial sentence of any length was relatively small with the possible exception of reckless wounding in company.

4.7 The Annexure shows that the offence, which attracted the largest number of sentences at the maximum jurisdictional level, in the Local Court, was that of common assault (194, or 17% of the 1149 cases where full time custody was imposed), but it is an offence for which the current jurisdictional limit of the Local Court is set at 12 months imprisonment. Comparison with sentences of imprisonment imposed in the District Court reveals that only a small percentage of cases, determined in that Court, attracted a sentence of imprisonment in excess of 12 months, and none of these attracted a sentence greater than 2 years.

4.8 The Council is of the view that the sentencing statistics do not support the need for a general increase in the Local Court's jurisdiction. Additionally, it accepts that there are sound policy reasons for preservation of the status quo, as identified in the submissions earlier noted.

4.9 In summary they comprise the following:

- Any significant increase in the Local Court jurisdiction would have a real impact on the courts, increasing the workload of the Local Court and decreasing the workload of the District Court, with a consequent risk of delay in the Local Court and an inability to use the resources of the District Court to their full extent;
- While the Local Court has an advantage in that proceedings in that Court are likely to be quicker, more cost effective and less intimidating, any increase in its summary sentencing jurisdiction, risks reducing the incidence of trial by jury - a factor that could be of some significance in relation to Table 2 offences where the defendant is unable to elect for jury trial;
- A significant consequence of any such increase would be a likely increase in appeals to the District Court with adverse consequences for its trial lists and for the costs of those involved in such cases; as well as a potential reduction in

the opportunity for appellate review by the Court of Criminal Appeal whose decisions provide clear and published direction on sentencing issues;

- Any such increase would increase the workload of Police Prosecutors, requiring the provision of additional training and resources, or alternatively an increase in deployment of solicitor advocates attached to the ODPP to handle more serious cases;
- There is a possibility of an increase resulting in sentence creep, in which event there would be consequences for the Corrective Services NSW and the NSW State Parole Authority;
- Additional pressure would be imposed on Legal Aid when determining whether election for jury trial would be required in cases likely to attract higher sentences in the Local Court, or in providing adequate representation if those cases remain in the Local Court;
- A greater proportion of cases would be conducted by police prosecutors who although subject to a number of ethical or service requirements, are not subject to the same provisions and obligations attaching to legal practitioners;

4.10 Subject to the Recommendations contained later in this Report, the Council considers that the solution lies in ensuring that referrals for election for trial in the District Court are appropriately and consistently dealt with by the NSW Police, and by the ODPP, in those cases that warrant a sentence in excess of that available in the Local Court.

4.11 The Council notes in this respect that, while there is no formal Memorandum of Understanding between the NSW Police Force and the ODPP in relation to the referral for election process, the Police have an advice Protocol and Guideline to assist police prosecutors while the ODPP has its own prosecution guidelines (noted above). It was informed that, where a case involves a Table 1 or Table 2 offence, it is assessed by two police prosecutors for possible referral, and, if referred, that occurs electronically. Similarly once the matter is received by the ODPP, it is referred to a managing lawyer or trial advocate for decision following initial assessment.

4.12 It is, however, the case that human error can occur, particularly where a matter is handled by a number of prosecutors, or where the material available to Police or the ODPP is incomplete.

4.13 The Council accepts that for the most part, the system works tolerably well. However, it is of the view that measures could be adopted to improve the process, for example by improving the visibility of file notations in relation to referral, including recording its progress on a pro forma sheet in the police file, and by ensuring that any information concerning the facts supplied to the ODPP is both accurate and comprehensive. Such a process would assist in avoiding the kind of problem that arose in the case of *R v Elphick*.⁹⁴

Recommendation: The Council recommends that the jurisdictional limit of the Local Court, in respect of imposing sentences of imprisonment, not be enlarged. The Council additionally recommends that NSW Police and the ODPP review their processes in relation to electing to have cases heard by way of indictment, to determine whether any changes to those processes are required.

AMENDING THE CRIMINAL PROCEDURE ACT SO AS TO APPLY A UNIFORM 2 YEAR MAXIMUM JURISDICTIONAL LIMIT FOR ALL OF THE OFFENCES INCLUDED WITHIN TABLES ONE AND TWO

4.14 The Council notes that there are a number of offences for which the sentencing jurisdiction of the Local Court is limited to the imposition of imprisonment for 12 months or 18 months – as disclosed in Annexure B.

4.15 It is assumed that the lower limit has been adopted so as to encourage election by the ODPP in these cases, on the basis that they are potentially more serious than the remaining offences for which a two-year limit applies.

4.16 The Council is of the view that the jurisdictional limit should be the same for all Table 1 and Table 2 offences, (i.e. those that attract a maximum sentence of two years or more) and that the current system invites, or at least risks, error on the part

⁹⁴ *R v Elphick* [2010] NSWCCA 112.

of the police or prosecuting authorities in assuming that as a Table 1 or 2 matter it is likely that an appropriate sentence can be imposed in the Local Court.

4.17 Amendment of the *Criminal Procedure Act*, in this respect, would go a considerable way towards ensuring that the Local Court has adequate sentencing powers for these cases. Moreover, improvements in the procedure for referral of cases to the ODPP for election, as noted earlier in this chapter, should ensure that the more serious cases involving offences within this group are heard in the District Court.

Recommendation: The Council recommends that the *Criminal Procedure Act 1986* be amended to apply a uniform 2 year maximum jurisdictional limit to all Table 1 and 2 offences.

REFERRAL POWER

NSW – No Referral Power

4.18 A NSW magistrate was formerly empowered to abstain from hearing a matter if he or she was of the view that the case could not properly be disposed of summarily. The relevant provisions were found in s 476 of the *Crimes Act*.

4.19 Application of this principle, which resulted in the matter being referred to a superior court for sentence, was removed with effect from 1 September 1995, except in relation to offences charged before that date.⁹⁵ In his second reading speech in relation to the *Criminal Procedure Amendment (Indictable Offences) Bill 1995 (NSW)*, the then Attorney General explained:

Magistrates continue to exercise the discretion to offer the defendant summary jurisdiction at varying stages in the course of the proceedings. The law presently allows for the exercise of the discretion both at the close of the prosecution case and at the close of the defendant's case. This uncertainty is compounded by the

⁹⁵ Criminal Procedure Act 1986 (NSW) s 272(1), s 272(2) (inserted by Criminal Procedure Amendment (Indictable Offences) Act 1995 (NSW) s 3 (sch 1 [3]) with effect from 1 September 1995, repealed by Crimes Amendment Act 2007 (NSW) s 4 (sch 3.1 [1]) with effect from 27 September 2007); Crimes Act 1900 (NSW) s 475C(2) (inserted by Criminal Procedure Amendment (Indictable Offences) Act 1995 (NSW) s 4 (sch 2.3 [3])) with effect from 1 September 1995, repealed by Crimes Amendment Act 2007 (NSW) s 3 (sch 2 [28]) with effect from 27 September 2007).

fact that summary jurisdiction may be offered and accepted at the close of the defendant's case only to have the offer withdrawn as soon as the magistrate becomes aware of the defendant's criminal history. While the exercise of the discretion requires a magistrate to have regard to the defendant's criminal history, it is also fundamental to the integrity of our criminal justice system that the trier of the facts not be privy to that information before arriving at a verdict so that undue prejudice does not flow to the defendant. The prosecution and the defendant are in a far better position to determine the appropriate jurisdiction. The bill recognises this fact by removing from the magistrate any discretion relating to the choice of jurisdiction.⁹⁶

4.20 A study by the Judicial Commission of New South Wales showed that the removal of that discretion has resulted in a shift in the number of Table 1 offences dealt with in the District Court to the Local Courts, and to an increase in the severity of penalties imposed for those offences by the Local Courts.⁹⁷

Other Jurisdictions

4.21 A similar form of discretion or alternatively a limitation on jurisdiction persists in some of the other Australian jurisdictions. See Annexure G for a summary of these provisions.

EVALUATION

4.22 Empowering the Local Court to either abstain from hearing a case or to refer it to a superior court for sentence could alleviate the concerns that have been expressed by the Chief Magistrate. Arguments against the re-introduction of the power that previously existed include the following:

- permitting magistrates to exercise such a power at any stage of the proceeding could give rise to uncertainty, while restricting the exercise of the power to a particular stage of the proceedings may result in the decision being made on the basis of insufficient information;⁹⁸

⁹⁶ New South Wales, *Parliamentary Debates*, Legislative Council, 24 May 1995, 118–9 (the Hon J.W. Shaw, Attorney General and Minister for Industrial Relations).

⁹⁷ Ellson, K. and Poletti, T., 'Sentencing Offenders in the Local Courts' (Sentencing Trends No 19, Judicial Commission of New South Wales, 2000).

⁹⁸ New South Wales, *Parliamentary Debates*, Legislative Council, 24 May 1995, 118–9 (the Hon J.W. Shaw, Attorney General and Minister for Industrial Relations). See also *Melek v Borthwick* [1979] 1 NSWLR 350, 352–3; *Kiely v Henderson* [1989] 19 NSWLR 139, 143–4; *Hansford v Judge Neesham* (Unreported, Supreme Court of Victoria, Phillips J, 31 August 1994), decision affirmed on a different issue in *Hansford v His Honour Judge Neesham* [1995] 2 VR 233; *Fares v*

- while the exercise of the discretion needs to take into account the accused's criminal history, the magistrate's knowledge of that information before final determination of the case might be prejudicial to the accused;⁹⁹
- the prosecution and the defence should be regarded as being in a better position than the magistrate to decide whether a matter should be dealt with summarily, or on indictment;¹⁰⁰
- the exercise of any such power could result in delay, and increased cost to the parties and the courts;
- the potential for the matter to be referred to a superior court may reduce the incidence of pleas of guilty in the Local Court.

4.23 The ODPP noted that giving the Local Court a power to refer more serious matters to the District Court could well result in the referral of a significant number of cases, with a consequent shift of the cost and workload from police prosecutors to the ODPP, which would need additional resources and funding.¹⁰¹ The Council was advised that, while magistrates' power to refer matters to a higher court is not widely used in other states and territories, this does not necessarily mean that a similar referral power would be used infrequently in NSW.¹⁰² This was because magistrates in other Australian jurisdictions generally have greater sentencing powers than NSW magistrates, and more importantly, NSW is the only state that has a standard non-parole period sentencing scheme.¹⁰³

4.24 It was suggested that, if this option for reform is adopted, it should be accompanied by requirements for:

- the provision of mini-briefs, in the Local Court for all matters;
- the provision of a transcript of the proceedings in the Local Court; and

Longmore (1998) 148 FLR 255, 259–60.

⁹⁹ New South Wales, *Parliamentary Debates*, Legislative Council, 24 May 1995, 118–9 (the Hon J.W. Shaw, Attorney General and Minister for Industrial Relations); *Kiely v Henderson* [1989] 19 NSWLR 139, 142–3.

¹⁰⁰ New South Wales, *Parliamentary Debates*, Legislative Council, 24 May 1995, 118–9 (the Hon J.W. Shaw, Attorney General and Minister for Industrial Relations).

¹⁰¹ Submission 2: Director of Public Prosecutions for New South Wales at 1.

¹⁰² Submission 2: Director of Public Prosecutions for New South Wales at 1.

¹⁰³ Submission 2: Director of Public Prosecutions for New South Wales at 1.

- the supply of formal reasons as to why the sentencing powers of the Local Court were considered insufficient including relevant findings of fact.¹⁰⁴

4.25 The Sentencing Council favours, by a majority of its members, the introduction of a discretion, on the part of a magistrate, to refer a case to the District Court for sentencing where, following a plea of guilty or conviction after a hearing, it is satisfied that any sentence it could impose would not be commensurate with the seriousness of the offence.

4.26 It acknowledges that this might be said to introduce an element of uncertainty on the part of the accused as to whether to plead guilty to the offence in the Local Court, and a potential for delay in the final disposition of the case. However in a practical sense such a provision would tend to focus greater attention, on the part of the defendant and the prosecution, on the possibility of an election being made since each will have a knowledge of the facts of the offence and of the criminal antecedents of the defendant.

4.27 The exercise of such a discretion would need to be narrowly confined, and available very much as a backstop or safety valve for the exceptional case which would otherwise risk attracting an inappropriate sentence. Support for its introduction is accordingly based on the assumption that the current sentencing jurisdiction of the Local Court will not be increased so as to allow the imposition of sentences of imprisonment in excess of two years.

4.28 If, as suggested earlier, the procedures for referral of cases by the police to the ODPP for consideration of an election were placed on a more sound footing through the adoption of appropriate operating procedures and / or an inter-agency protocol, then again occasion for the use of the discretion would be limited. Otherwise the availability and capacity to exercise the discretion could be of importance to the public perception of sentencing practice, and in that sense be justified as a matter of public policy.

4.29 The Council is of the view that if this recommendation for the introduction of the discretion to refer a case to the District Court for sentence is adopted, it should be exercised after the magistrate has convicted the defendant; after a hearing; or following

¹⁰⁴ Submission 2: Director of Public Prosecutions for New South Wales at 2.

the entry of a guilty plea. In each case, referral would be considered once the magistrate has reviewed the offender's antecedents and taken into account any potential question of sentences being imposed concurrently for any other offences before the Court.

4.30 Where the defendant was convicted after a hearing in the Local Court, the District Court would then deal with the sentencing on the record, as well as with any appeal that the defendant wished to bring against the conviction in the Local Court. The defendant's rights of appeal against the sentence would need to be preserved, although; in this instance, the appeal would lie to the Court of Criminal Appeal.

4.31 Where the defendant entered a plea of guilty in the Local Court, however, it should be open to that party, upon referral, to apply for leave to withdraw the plea. Such an application would be dealt with in accordance with ordinary principles¹⁰⁵. The matter would then proceed as if committed for trial in the District Court. The absence of the opportunity for a committal hearing would be balanced by allowing the defendant the opportunity for a Basha inquiry¹⁰⁶ if the circumstances warranted.

4.32 The availability of this power could also be advantageous where it appears that the defendant has other matters pending which, by reason of their number or seriousness, would be better disposed of in the District Court.

4.33 Conferring upon the defendant a right to request that a matter heard in the Local Court be referred to the District Court for sentence would also be appropriate, in such circumstances, to allow an opportunity for all outstanding matters to be finalised, in a matter analogous to the Form 1 procedure.

Recommendation: The Council recommends the introduction of a narrowly confined discretion, on the part of a magistrate, to refer cases to the District Court for sentencing where, following a plea of guilty or conviction after a hearing, it is satisfied that any sentence it could impose would not be commensurate with the seriousness of the offence.

¹⁰⁵ Maxwell v The Queen (1996) 184 CLR 501; R v Lars (1994) 73 A Crim R.

¹⁰⁶ R v Basha (1989) 39 A Crim R 337: A Basha inquiry enables the pre-trial questioning of a witness who was not called at committal, before a judge sitting alone.

AMEND THE CRIMINAL PROCEDURE ACT TO MAKE CERTAIN OFFENCES STRICTLY INDICTABLE

4.34 This amendment would not increase the sentencing jurisdiction of the Local Court; on the contrary it would reduce the list of indictable offences that could be heard summarily in the Local Court. The Council has, however, observed that there are some offences which include a significant degree of criminality for example those involving the infliction of serious bodily harm that would, on their face, be more appropriate for trial in the District Court; that is, if the current jurisdictional limit of the Local Courts set at 2 years imprisonment.

4.35 The Council has not had the benefit of any submissions in this respect, and, in a practical sense, it would be premature for any concluded view to be expressed, without a detailed analysis of the number of cases potentially falling within this group, that are prosecuted in the Local Court, and without a comparative assessment of the sentence imposed for like offences in the Local Court and in the District Court.

4.36 The Council is aware of the background to the enactment of the *Criminal Procedure amendment (Indictable Offences) Act 1995* (NSW), which was a response to concerns that the pre-existing provisions of the *Crimes Act* led to inconsistencies in practice;¹⁰⁷ and to the fact that a large number of offences were being dealt with in the District Court resulting in sentences of imprisonment for less than two years being imposed.¹⁰⁸

4.37 The reforms were seen as advantageous in achieving savings in resources and workload and in reducing the need for committal hearings in the District Court, with consequent cost benefits to the parties; as well as advantageous to victims and witnesses in having their cases initiated and finalised in the one Court¹⁰⁹. It was also considered appropriate to impose the responsibility for electing the appropriate jurisdiction in the prosecution and defence, rather than in the Magistrate¹¹⁰.

¹⁰⁷ Second Reading Speech, *Criminal Procedure Amendment (Indictable Offences) Bill 1995* (NSW); Legislative Council, 24 May 1995, the Hon. Jeffrey W. Shaw QC MLC, Attorney General.

¹⁰⁸ Second Reading Speech, *Criminal Procedure Amendment (Indictable Offences) Amendment Bill 1995* (NSW); Legislative Council, 24 May 1995, per the Hon. JW Shaw: "In April 1992 'Aspects of Demand for District Court Time' found 78% of all penalties imposed in 1991 in the District Court were less than 2 years imprisonment".

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

4.38 The Council does not suggest that these amendments have been otherwise than successful in producing greater efficiency and simplicity in the administration of the criminal justice system. However it is of the view that, dependent on whether the sentencing jurisdiction of the Local Court is enlarged, a review of the offences that currently fall within Table 1 and Table 2 would be desirable.

4.39 By way of example, concerns were entertained by the Council, in relation to the possible summary disposition, in the Local Court, of indictable offences that potentially carry maximum sentences of imprisonment for 10 years.

4.40 Concerns also exist as to whether standard non-parole period offences should ever be included in the Tables since the applicable SNPP for these offences exceeds the jurisdictional limit of the Local Court. Currently, the following SNPP offences are included in the Tables:

Table	Offence	SNPP
1	Reckless grievous bodily harm or wounding (<i>Crimes Act</i>)	S 35(1): 5 years S 35(2): 4 years S 35(3): 4 years S 35(4): 3 years
1	Assault against police officers (<i>Crimes Act</i>)	S 60(2): 3 years
1	Aggravated indecent assault (<i>Crimes Act</i>)	S 61M(1): 5 years S 61M(2): 8 years
1	Taking motor vehicle or vessel with assault or with occupant on board (<i>Crimes Act</i>)	S 154C(1): 3 years S 154C(2): 5 years
1	Causing bushfire (<i>Crimes Act</i>)	S 203E: 5 years
2	Unauthorised possession or use of a firearm (<i>Firearms Act 1996 (NSW)</i>)	S 7: 3 years
2	Unauthorised possession or use of a prohibited weapon (<i>Weapons Prohibition Act 1998 (NSW)</i>)	S 7: 3 years

4.41 It is noted that reclassification of the more serious offences, as strictly indictable offences, would potentially go some of the way towards meeting any concerns that the Local Court and the NSW Police Force have, without the need to increase the overall jurisdictional limit of the Local Court.

4.42 The Council has not received any submissions in relation to the potential elevation of any of the Table offences to the strictly indictable category, and it is accordingly unable to express a concluded view in this respect. What is, in its view, now required, is a general review of the *Crimes Act* and allied criminal legislation, with a view to determining whether any additional offences should be included in the Tables, and whether any offences currently included in the Tables, should be re-categorised as strictly indictable offences.

Recommendation: The Council recommends 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 currently included in the Tables should be re-categorised as strictly indictable offences.

CHAPTER 5: APPEALS AGAINST SENTENCE FROM THE LOCAL COURT

INTRODUCTION.....	51
EXISTING AVENUES OF APPEAL FROM THE LOCAL COURT.....	51
APPEAL TO THE DISTRICT COURT	51
Appeal to the Supreme Court	52
Application to the Supreme Court for an inquiry into conviction or sentence.....	52
ISSUES.....	52

INTRODUCTION

5.1 In accordance with the terms of reference, the Sentencing Council has given consideration to the question of whether, in the event of the jurisdictional limits of the Local Court being increased, the existing avenues of appeal would be adequate.

EXISTING AVENUES OF APPEAL FROM THE LOCAL COURT

5.2 An appeal by the defendant against a conviction or sentence imposed by the Local Court lies to the District Court as of right¹¹¹. Appeals in relation to environmental offences determined in the Local Court lie to the Land and Environment Court;¹¹² while appeals cases determined by the the Chief Industrial Magistrate under industrial relations and occupational health and safety legislation, lie to the Full Bench of the Industrial Relations Commission in Court Session.¹¹³

5.3 An appeal lies as of right to the Supreme Court, by a defendant, against conviction on a ground of law alone, or otherwise by leave¹¹⁴, and as of right by the prosecutor against a sentence or a stay or a dismissal of summary proceedings, on a ground of law alone¹¹⁵.

Appeal to the District Court

5.4 The appeal is to be by way of a rehearing on the transcripts of the evidence given in the Local Court; however, fresh evidence may be received by leave of the court where it is in the interests of justice to do so.¹¹⁶ Such an appeal does not involve a de novo hearing, and the District Court judge is required to form his or her own judgment of the

¹¹¹ *Crimes (Appeal and Review) Act 2001 (NSW)* ss. 11 and 12. An appeal by the prosecutor to the district Court against sentence is also available as of right (*Crimes (Appeal and Review) Act*; s. 23) where the proceedings concern an indictable offence that was dealt with summarily, or where they concern a “prescribed summary offence”, or where they were proceedings for a summary offence that was prosecuted by or on behalf of the Director of Public Prosecutions.

¹¹² *Crimes (Appeal and Review) Act 2001 (NSW)* ss 29(1)(a), 31–33, 42–43; *Land and Environment Court Act 1979 (NSW)* ss 21A–21B.

¹¹³ *Industrial Relations Act 1996 (NSW)* s 197.

¹¹⁴ *Crimes (Appeal and Review) Act 2001 (NSW)* ss. 52 and 53.

¹¹⁵ *Crimes (Appeal and Review) Act* s. 56.

¹¹⁶ *Crimes (Appeal and Review) Act 2001 (NSW)* ss. 17, 18 and 26; *Sweeney v Fitzhardinge* (1906) 4 CLR 716, 728–30; *Drover v Rugman* [1951] 1 KB 380, 382; *Builders Licensing Board v Sperway Constructions (Syd.) Pty Ltd* (1976) 135 CLR 616, 620; *R v Hodder* (1986) A Crim R 295, 299; *Budget Nursery Pty Ltd v Commissioner of Taxation* (1989) 42 A Crim R 81, 86–7; *R v Longshaw* (1990) 20 NSWLR 554, 563–5.

facts recognising the advantage enjoyed by the Magistrate who saw and heard the witnesses in the lower court.¹¹⁷

5.5 The District Court may dismiss the appeal, or set aside the conviction or sentence or vary the sentence.¹¹⁸

5.6 Where the judge intends to increase or change the nature of the sentence substantially, the appellant should be forewarned.¹¹⁹

Appeal to the Supreme Court

5.7 The Supreme Court has similar powers in relation to the disposition of the appeal. It may also set aside a sentence and remit the matter to the Local Court for redetermination, in accordance with its directions.¹²⁰

Application to the Supreme Court for an inquiry into conviction or sentence

5.8 A convicted person (or another person on his or her behalf) may apply to the Supreme Court for an inquiry into a conviction or sentence imposed in the Local Court¹²¹. Such a review will be undertaken where there is a doubt or question as to the convicted person's guilt, as to any mitigating circumstances or as to any part of the evidence.¹²²

ISSUES

5.9 Appeals serve two main purposes: first, a review or 'private' purpose—correcting any judicial error and ensuring individualised justice; and secondly, a supervisory or 'public' purpose—preserving confidence in the justice system by showing that errors can be corrected, and clarifying and developing jurisprudence which provides predictability, consistency, fairness and certainty.¹²³ Appellate courts can provide

¹¹⁷ *R v Charara* (2006) 164 17 Crim R 39

¹¹⁸ *Crimes (Appeal and Review) Act 2001* (NSW) ss. 20 and 27.

¹¹⁹ *Parker v DPP (NSW)* (1992) 28 NSWLR 282, 294–7; *Jones v DPP (NSW)* (1994) 76 A Crim R 422, 424–5; *Baker v DPP (NSW)* (Unreported, NSW Court of Appeal, 30 August 1996); *Relic v DPP (NSW)* [2000] NSWCA 84, [20].

¹²⁰ *Crimes (Appeal and Review) Act 2001* (NSW) s 55.

¹²¹ *Crimes (Appeal and Review) Act 2001* (NSW) s 78(1).

¹²² *Crimes (Appeal and Review) Act 2001* (NSW) s 79(2).

¹²³ Freiberg, A. and Sallmann, P., 'Courts of Appeal and Sentencing: Principles, Policy and

guidance to lower courts by: providing the correct approach to the interpretation of a statute or reconciling conflicting case law; examining comparable cases and communicating their personal as well as collective experience; and considering sentencing patterns and ranges derived from sentencing statistics.¹²⁴

5.10 One problem concerning the appeals system in relation to Local Court decisions is that, (unlike appeals from the District Court), such decisions are not subject to a centralised system of appellate review, or to universal reporting of the outcome of the appeal.¹²⁵

5.11 One implication of any increase in the sentencing powers of the Local Court is that any appeal from a decision of that Court would lie to a single judge of the District Court, as opposed to three judges of the Court of Criminal Appeal, without the option of a further appeal. Additionally, unlike appeals to the Court of Criminal Appeal, the District Court is to rehear the case on appeal and is not guided by developed principles for review. This could be problematic if there was any significant increase in the Local Court's jurisdiction.

5.12 One option to address any concern in this regard would be to introduce a provision, which would allow an offender to bring an appeal from an appellate decision of a District Court judge to the NSWCCA with the leave of that Court. Support for such a concept was identified in a Report of the Law Reform Commission of Western Australia in 1979.¹²⁶

5.13 The Council notes the submission by the NSW Police Force that appeals from the Local Court to the District Court should be subject to a greater restriction than that which presently exists. However, this is outside the Council's Terms of Reference and is not dealt with in this Report, save for the observation of the Council noted above that the case for any greater limitation on appeals would be weakened by any increase in the jurisdiction of the Local Court.

Politics' (2008) 26(1) *Law in Context* 43, 46.

124. Freiberg, A. and Sallmann, P., 'Courts of Appeal and Sentencing: Principles, Policy and Politics' (2008) 26(1) *Law in Context* 43, 48–9.

125. Briese, CR, 'Future Directions in Local Courts of New South Wales' (1987) 10(1) *University of New South Wales Journal* 127, 134.

126. See Law Reform Commission of Western Australia, *Review of the Justices Act 1902—Part I: Appeals*, Project No 55 Part I (1979) [4.6].

5.14 Otherwise however, the Sentencing Council has not found any material inadequacy in the current rights of appeal available to a defendant or prosecutor, or in the procedures for the determination of those appeals.

ANNEXURE A

TABLE 1: OFFENCES WHICH ARE TRIABLE BOTH ON INDICTMENT AND IN THE LOCAL COURT

Offences which are not ‘personal violence’ offences for the purposes of this report are shaded grey.

Part	Section	Offence	SNPP	Maximum Penalty on indictment	Maximum penalty in Local Court
Pt 1	31	Documents containing threats		10 years	2 years
Pt 1	31C (1)	Aiding / abetting suicide		10 years	2 years
Pt 1	31C (2)	Counselling / inciting a person to commit suicide		5 years	2 years
Pt 1	33B (1)	Use or possession of weapon to resist arrest etc		12 years	2 years
Pt 1	33B (2)	Use or possession of weapon to resist arrest etc in company		15 years	2 years
Pt 1	35 (1)	Reckless grievous bodily harm in company	5 years	14 years	2 years
Pt 1	35 (2)	Reckless grievous bodily harm	4 years	10 years	2 years
Pt 1	35 (3)	Reckless wounding in company	4 years	10 years	2 years
Pt 1	35 (4)	Reckless wounding	3 years	7 years	2 years
Pt 1	35A (1)	Causing dog to inflict grievous bodily harm		10 years	2 years
Pt 1	39	Using poison etc to endanger life or inflict grievous bodily harm		10 years	2 years
Pt 1	41	Using poison etc to injure or to cause distress or pain		5 years	2 years
Pt 1	41A	Poisoning etc of water supply		5 years	2 years
Pt 1	43	Abandoning or exposing a child under 7 years		5 years	2 years
Pt 1	43A	Failure of persons with parental responsibility to care for child		5 years	2 years
Pt 1	44	Not providing wife or servant with food etc		5 years	2 years
Pt 1	49	Setting trap etc		5 years	2 years
Pt 1	51A	Predatory driving		5 years	18 months
Pt 1	52A (3)	Dangerous driving occasioning grievous bodily harm.		7 years	18 months
Pt 1	52A (4)	Aggravated dangerous driving occasioning grievous bodily harm.		11 years	18 months
Pt 1	52B (3)	Dangerous navigation causing grievous bodily harm.		7 years	18 months
	52B (4)	Aggravated dangerous navigation occasioning grievous bodily harm		11 years	18 months
Pt 1	53	Injuries by furious driving etc		2 years	12 months
Pt 1	54	Causing grievous bodily harm		2 years	12 months
Pt 1	55	Possessing or making explosives or other things with intent to injure		10 years	2 years
Pt 1	57	Assault on persons preserving wreck		7 years	2 years
Pt 1	60 (2)	Assault against police officers	3 years	7 years	2 years
Pt 1	60 (2A)	Assault against police officers during public disorder		9 years	2 years
Pt 1	60A (2)	Assault against law enforcement officers		7 years	2 years

Pt 1	60E (2)	Assault etc at schools		7 years	2 years
Pt 1	61M (1)	Aggravated indecent assault	5 years	7 years	2 years
Pt 1	61M (2)	Aggravated indecent assault where the other person is under the age of 16	8 years	10 years	2 years
Pt 1	61O (2)	Aggravated act of indecency towards a person under the age of 10 years		7 years	2 years
Pt 1	61O (2A)	Aggravated act of indecency towards a person under the age of 16 years knowing that the act is being filmed for purposes of production of child abuse material		10 years	2 years
Pt 1	66EB (2)(a)	Procuring child under 16 for unlawful sexual activity in the case where child is under 14		15 years	2 years
Pt 1	66EB (2)(b)	Procuring child under 16 for unlawful sexual activity		12 years	2 years
Pt 1	66EB (2A)(a)	Meeting a child or travelling with intent to meet a child who has been groomed for sexual purposes		15 years	2 years
Pt 1	66EB (2A)(b)	Meeting a child or travelling with intent to meet a child who has been groomed for sexual purposes, with the intention of procuring the child for unlawful sexual purposes		12 years	2 years
Pt 1	66EB (3)(a)	Engaging in conduct that exposes child to indecent material or providing child with intoxicating substance		12 years	2 years
Pt 1	66EB (3)(c)	Engaging in conduct that exposes child to indecent material or providing child with intoxicating substance with intention of procuring the child for unlawful sexual activity		10 years	2 years
Pt 1	66C (1)	Sexual intercourse – child between 10 – 14		16 years	2 years
Pt 1	66C (3)	Sexual intercourse – child between 14 – 16		10 years	2 years
Pt 1	S 66D	Attempting, or assaulting with intent, to have sexual intercourse with a child 10-16		Equal to penalty for offence	2 years
Pt 1	80	Attempt to commit bestiality		5 years	2 years
Pt 1	81C	Misconduct with regard to corpses		2 years	2 years
Pt 1	82	Administering drugs etc to herself by woman with child		10 years	2 years
Pt 1	83	Administering drugs etc to woman with intent		10 years	2 years
Pt 1	84	Procuring drugs etc		5 years	2 years
Pt 1	85	Concealment of birth		2 years	2 years
Pt 1	91A	Procuring etc		7 years	2 years
Pt 1	91B	Procuring person by drugs etc		10 years	2 years
Pt 1	91H	Production, dissemination or possession of child abuse material		10 years	2 years
Pt 1	91J(3)	Voyeurism (aggravated)		5 years	2 years
Pt 1	91K(3)	Filming a person engaged in private act (aggravated)		5 years	2 years
Pt 1	91L(3)	Filming a person's private parts (aggravated)		5 years	2 years
Pt 1	92	Bigamy		7 years	2 years
Pt 1	93	Participator in bigamy		5 years	2 years
Pt 2	94	Stealing any chattel, money or valuable security, exceeding \$5000		14 years	2 years

Pt 2	125	Larceny by bailee		5 years	2 years
Pt 2	126	Stealing cattle or killing with intent to steal		14 years	2 years
Pt 2	131	Unlawfully using etc another person's cattle		3 years	2 years
Pt 2	132	Stealing dogs		1 year	2 years
Pt 2	133	Taking money to restore dogs		1 year	2 years
Pt 2	139	Stealing etc metal, glass, wood etc fixed to house or land		5 years	2 years
Pt 2	140	Stealing etc trees etc in pleasure-grounds etc		5 years	2 years
Pt 2	148	Stealing property in a dwelling-house		7 years	2 years
Pt 2	150	Stealing goods in process of manufacture		3 years	2 years
Pt 2	151	Selling etc materials to be manufactured		4 years	2 years
Pt 2	152	Stealing from ship in port or on wharfs etc		7 years	2 years
Pt 2	156	Larceny by clerks or servants		10 years	2 years
Pt 2	157	Embezzlement by clerks or servants		10 years	2 years
Pt 2	159	Larceny by persons in Public Service		10 years	2 years
Pt 2	160	Embezzlement etc by persons in the Public Service		10 years	2 years
Pt 2	188 (1)(a)	Receiving stolen property where stealing a serious indictable offence (motor vehicle, motor vehicle part, vessel or vessel part)		12 years	2 years
Pt 2	188 (1)(b)	Receiving stolen property where stealing a serious indictable offence		10 years	2 years
Pt 2	189	Receiving etc where principal guilty of minor indictable offence		3 years	2 years
Pt 2	189A	Receiving etc goods stolen out of New South Wales		10 years	2 years
Pt 2	190	Receiving etc cattle unlawfully killed, or carcass etc		5 years	2 years
Pt 2	192	Receiving material or tools intrusted for manufacture		4 years	2 years
Pt 2	195 (1)(a)	Destroying or damaging property		5 years	2 years
Pt 2	195 (1)(b)	Destroying or damaging property by means of fire or explosives		10 years	2 years
Pt 2	195 (1A)(a)	Destroying or damaging property in the company of others		6 years	2 years
Pt 2	195 (1A)(a)	Destroying or damaging property by means of fire or explosives in the company of others		11 years	2 years
Pt 2	195 (2)(a)	Destroying or damaging property during public disorder		7 years	2 years
Pt 2	195 (2)(a)	Destroying or damaging property during public disorder by fire or explosives		12 years	2 years
Pt 2	S 192E	Fraud		10 years	2 years
Pt 2	192F	Intention to defraud by destroying or concealing accounting records		5 years	2 years
Pt 2	192G	Intention to defraud by false or misleading statement		5 years	2 years
Pt 2	192H	Intention to deceive members or creditors by false or misleading statement of officer of organisation		7 years	2 years
Pt 2	109 (1)	Breaking out of dwelling-house after committing, or entering with intent to commit, indictable offence where: <ul style="list-style-type: none"> the indictable offence intended is stealing or maliciously destroying or damaging property; or the indictable offence alleged is stealing or damaging property not 		14 years <i>[where there is no value limit]</i>	2 years

		in excess of \$15000			
Pt 2	111 (1)	Entering dwelling-house where the serious indictable offence intended is stealing or maliciously destroying or damaging property		10 years	2 years
Pt 2	113 (1)	Breaking etc into any house etc with intent to commit serious indictable offence where the serious indictable offence intended is stealing or maliciously destroying or damaging property		10 years	2 years
Pt 2	112 (1)	Breaking etc into any house etc and committing serious indictable offence where; <ul style="list-style-type: none"> the serious indictable offence alleged is stealing or maliciously destroying or damaging property; and the value is not in excess of \$60000 		14 years [where there is no value limit]	2 yrs
Pt 2	99 (1)	Demanding property with intent to steal		10 years	2 years
	99 (2)	Demanding property with intent to steal in company		14 years	2 years
Pt 2	114(1)(a)	Being armed with intent to commit indictable offence		7 years	2 years
Pt 2	114(1)(c)	Having face blackened with intent to commit indictable offence		7 years	2 years
Pt 2	114(1)(d)	Entering or remaining in building or on land used in connection with intent to commit indictable offence		7 years	2 years
Pt 2	115	Being convicted offender armed with intent to commit indictable offence		10 years	2 years
Pt 2	135	Stealing, destroying etc wills or codicils		7 years	2 years
Pt 2	138	Stealing, destroying etc records etc of any court or public office		7 years	2 years
Pt 2	153	Stealing from ship in distress or wrecked		10 years	2 years
Pt 2	154B(1)	Stealing aircraft		10 years	2 years
Pt 2	154C (1)	Taking motor vehicle or vessel with assault or with occupant on board	3 yrs	10 years	2 years
Pt 2	154C (2)	Taking motor vehicle or vessel with assault or with occupant on board in circumstances of aggravation	5 yrs	14 years	2 years
Pt 2	154D	Stealing firearms		14 years	2 years
Pt 2	154F	Stealing motor vehicle or vessel		10 years	2 years
Pt 2	196 (1)(a)	Destroying or damaging property with intent to injure a person		7 years	2 years
Pt 2	196 (1)(b)	Destroying or damaging property with intent to injure a person, with use of fire or explosives		14 years	2 years
Pt 2	196(2)(a)	Destroying or damaging property with intent to injure a person during public disorder		9 years	2 years
Pt 2	196(2)(b)	Destroying or damaging property during public disorder with intent to injure a person, with use of fire or explosives		16 years	2 years
Pt 2	197 (1)(a)	Dishonestly destroying or damaging property		7 years	2 years

Pt 2	197(1)(b)	Dishonestly destroying or damaging property, with use of fire or explosives		14 years	2 years
Pt 2	197 (2)(a)	Dishonestly destroying or damaging property during public disorder		9 years	2 years
Pt 2	197(2)(b)	Dishonestly destroying or damaging property during public disorder, with use of fire or explosives		16 years	2 years
Pt 2	199 (1)	Threatening to destroy or damage property		5 years	2 years
Pt 2	199 (2)	Threatening to destroy or damage property during public disorder		7 years	2 years
Pt 2	200 (1)	Possession etc of explosive or other article with intent to destroy or damage property		7 years or 3 years if the article is not an explosive	2 years
Pt 2	200 (2)	Possession etc of explosive or other article with intent to destroy or damage property during public disorder		9 years or 5 years if the article is not an explosive	2 years
Pt 2	201	Interfering with a mine		7 years	2 years
Pt 2	202	Causing damage etc to sea, river, canal and other works		7 years	2 years
Pt 2	203C	Threaten sabotage		14 years	2 years
Pt 2	203E	Causing bushfire	5 years	14 years	2 years
Pt 3	93B	Riot		15 years	2 years
Pt 3	93C	Affray		10 years	2 years
Pt 3	93K	Contaminating goods with intent to cause public alarm or economic loss		10 years	2 years
Pt 3	93L	Threatening to contaminate goods with intent to cause public alarm or economic loss		10 years	2 years
Pt 3	93M	Making false statements concerning contamination of goods with intent to cause public alarm or economic loss		10 years	2 years
Pt 3	93Q	Conveying false information that a person or property is in danger		5 years	2 years
Pt 3	93R	Leaving or sending an article with intent to cause alarm		5 years	2 years
Pt 3	93T (2)	Participation in criminal groups		10 years	2 years
Pt 3	93T (3)	Destroy or damage or threaten to destroy or damage property for participation in criminal groups		10 years	2 years
Pt 3	Part 4AB 192J	Dealing with identification information		10 years	2 years
Pt 3	192K	Possession of identification information		7 years	2 years
Pt 3	207	Placing etc dangerous articles on board an aircraft or vessel		7 years	2 years
Pt 3	208(4)	Threatening to destroy etc an aircraft, vessel or vehicle		5 years	2 years
Pt 3	209	False information as to plan etc to prejudice the safety of an aircraft or vessel or persons on board an aircraft or vessel		2 years	2 years
Pt 3	210	Destroying, damaging etc an aid to navigation		7 years	2 years
Pt 3	212	Endangering passengers etc on railway		3 years	2 years

Pt 3	213	Obstructing a railway		2 years	2 years
Pt 3	249B	Corrupt commissions or rewards (where benefit exceeds \$5000)		7 years [where there is no value limit]	2 years
Pt 3	249D	Corrupt inducements for advice (where benefit exceeds \$5000)		7 years [where there is no value limit]	2 years
Pt 3	249E	Corrupt benefits for trustees and others (where benefit exceeds \$5000)		7 years [where there is no value limit]	2 years
Pt 3	249C	Misleading documents or statements used or made by agents		7 years	2 years
Pt 3	249F	Aiding, abetting etc offence under Part 4A		7 years	2 years
Pt 3	249K (1)	Blackmail offence		10 years	2 years
Pt 3	249K (2)	Blackmail offence by accusation or threatened accusation that a person has committed a serious indictable offence		14 years	2 years
Pt 3	253	Forgery—making false document		10 years	2 years
Pt 3	254	Using false document		10 years	2 years
Pt 3	255	Possession of false document		10 years	2 years
Pt 3	256(1)	Making or possession of equipment etc for making false documents		10 years	2 years
Pt 3	308C	Unauthorised access, modification or impairment with intent to commit serious indictable offence		10 years	2 years
Pt 3	308D	Unauthorised modification of data with intent to cause impairment		10 years	2 years
Pt 3	308E	Unauthorised impairment of electronic communication		10 years	2 years
Pt 3	308F	Possession of data with intent to commit serious computer offence		3 years	2 years
Pt 3	308G	Producing, supplying or obtaining data with intent to commit serious computer offence		3 years	2 years
Pt 3	321	Corruption of witnesses and jurors		10 years	2 years
Pt 3	322	Threatening or intimidating judges, witnesses, jurors etc		10 years	2 years
Pt 3	323	Influencing witnesses and jurors		7 years	2 years
Pt 3	333(1)	Subornation of perjury		7 years	2 years
Pt 3	314	False accusations etc		7 years	2 years
Pt 3	315	Hindering investigation etc		7 years	2 years
Pt 3	315A	Threatening or intimidating victims or witnesses		7 years	2 years
Pt 3	316 (1)	Concealing serious indictable offence		2 years	2 years
Pt 3	316 (2)	Accepting benefit in consideration of concealing serious indictable offence		5 years	2 years
Pt 3	317	Tampering etc with evidence		10 years	2 years
Pt 3	325	Preventing, obstructing or dissuading witness or juror from attending etc		5 years	2 years
Pt 3	326	Reprisals against judges, witnesses, jurors etc		10 years	2 years
Pt 3	327	Offence of perjury		10 years	2 years
Pt 3	330	False statement on oath not amounting to perjury		5 years	2 years
Pt 3	335	False statements in evidence on commission		5 years	2 years
Pt 3	336	False entry on public register		5 years	2 years

Pt 3	337	False instruments issued by public officers		5 years	2 years
Pt 3	351A (1)	Recruiting persons to engage in criminal activity		7 years	2 years
Pt 3	351A (2)	Recruiting children to engage in criminal activity		10 years	2 years
Pt 3	310C	Aiding escape from lawful custody		7 years	2 years
Pt 3	310D	Escaping		10 years	2 years
Pt 3	310E	Tunnels to facilitate escape		10 years	2 years
Pt 3	310F (1)	Permitting escape wilfully		7 years	2 years
Pt 3	310F (2)	Permitting escape negligently		2 years	2 years
Pt 3	310G	Harbouring escapee		3 years	2 years
Pt 3	52AB (1)	Offence of failing to stop and assist after vehicle impact causing death		10 years	18 months
Pt 3	52AB (2)	Offence of failing to stop and assist after vehicle impact causing grievous bodily harm		7 years	18 months
Pt 3	546D(2)	Impersonation of police officers (aggravated)		7 years	2 years

Notes:

Table 1 offences are contained in Schedule 1 of the Criminal Procedure Act 1986 (NSW)

Sections refer to the Crimes Act 1900 unless otherwise stated.

The following ancillary offences are also included:

- attempting to commit any offence in the Table;
- being an accessory before or after the fact to any offence mentioned in the Table (other than minor indictable offences);
- aiding, abetting, counselling or procuring the commission of any offence in the Table other than a minor indictable offence;
- conspiring to commit any offence in the Table; and
- inciting to commission any offence in the Table.

This table does not include:

- Common law offence of false imprisonment (Table 1 Part 3); and
- Repealed provisions.

This table was compiled using NSW Government information sources that can be accessed at: www.legislation.nsw.gov.au
It is current as at December 2010.

TABLE 2: OFFENCES WHICH ARE TRIABLE BOTH ON INDICTMENT AND IN THE LOCAL COURT

Offences which would not ordinarily involve personal violence are shaded grey.

Table	Section	Offence	SNPP	Maximum Penalty on indictment	Maximum penalty in the Local Court
Pt 1	35A(2)	Cause dog to inflict actual bodily harm		5 years	2 years
Pt 1	49A	Throwing rocks and other objects at vehicles and vessels		5 years	2 years
Pt 1	51B (1)(a)	Police pursuits		3 years (first offence)	2 years
Pt 1	51B (1)(b)	Police pursuits		5 years (subsequent offence)	2 years
Pt 1	56	Obstructing member of the clergy in discharge of his or her duties		2 years	12 months
Pt 1	58	Assault with intent to commit a serious indictable offence on certain officers		5 years	2 years
Pt 1	59 (1)	Assault occasioning actual bodily harm		5 years	2 years
Pt 1	59 (2)	Assault occasioning actual bodily harm in company		7 years	2 years
Pt 1	59A (1)	Assault during public disorder		5 years	2 years
Pt 1	59A (2)	Assault during public disorder causing actual bodily harm		7 years	2 years
Pt 1	60(1)	Assault and other actions against police officers		5 years	2 years
Pt 1	60 (1A)	Assault and other actions against police officers during public disorder		7 years	2 years
Pt 1	60A(1)	Assault and other actions against law enforcement officers (other than police officers)		5 years	2 years
Pt 1	60B	Actions against third parties connected with law enforcement officers		5 years	2 years
Pt 1	60C	Obtaining of personal information about law enforcement officers		5 years	2 years
Pt 1	60E (1)	Assaults etc at schools		5 years	2 years
Pt 1	60E (4)	Assaults etc at schools (Entering school with intent)		5 years	2 years
Pt 1	61	Common assault prosecuted by indictment		2 years	12 months
Pt 1	61L	Indecent assault		5 years	2 years
Pt 1	61N (1)	Act of indecency towards a person under 16 years of age		2 years	12 months
Pt 1	61N (2)	Act of indecency towards a person 16 years of age or over		18 months	12 months
Pt 1	61O(1)	Aggravated act of indecency towards person under 16 years of age		5 years	2 years
	61O (1A)	Aggravated act of indecency towards person 16 years of age or above		3 years	2 years
Pt 1	S 13 <i>Crimes (Domestic)</i>	Stalking or intimidation with intent to cause fear of physical or mental harm		5 years	2 years

	<i>and Personal Violence) Act 2007</i>				
Pt 2	94	Robbery or stealing from the person		14 years	12 months
Pt 2	125	Larceny by bailee		5 years	12 months
Pt 2	126	Stealing cattle or killing with intent to steal		14 years	12 months
Pt 2	131	Unlawfully using etc another person's cattle		3 years	12 months
Pt 2	132	Stealing dogs		1 year	12 months
Pt 2	133	Taking money to restore dogs		1 year	12 months
Pt 2	139	Stealing etc metal, glass, wood etc fixed to house or land		5 years	12 months
Pt 2	140	Stealing etc trees etc in pleasure-grounds etc		5 years	12 months
Pt 2	148	Stealing property in a dwelling-house		7 years	12 months
Pt 2	150	Stealing goods in process of manufacture		3 years	12 months
Pt 2	151	Selling etc materials to be manufactured		4 years	12 months
Pt 2	152	Stealing from ship in port or on wharfs etc		7 years	12 months
Pt 2	156	Larceny by clerks or servants		10 years	12 months
Pt 2	157	Embezzlement by clerks or servants		10 years	12 months
Pt 2	159	Larceny by persons in Public Service		10 years	12 months
Pt 2	160	Embezzlement etc by persons in the Public Service		10 years	12 months
Pt 2	188(1)(a)	Receiving stolen property where stealing a serious indictable offence (where property is a motor vehicle or part or a vessel or vessel part)		12 years	12 months
Pt 2	188 (1)(b)	Receiving stolen property where stealing a serious indictable offence		10 years	12 months
Pt 2	189	Receiving etc where principal guilty of minor indictable offence		3 years	12 months
Pt 2	189A	Receiving etc goods stolen out of New South Wales		10 years	12 months
Pt 2	190	Receiving etc cattle unlawfully killed, or carcass etc		5 years	12 months
Pt 2	192	Receiving material or tools intrusted for manufacture		4 years	12 months
Pt 2	195(1)(a)	Destroying or damaging property		5 years	12 months
Pt 2	195 (1)(b)	Destroying or damaging property with fire or explosives		10 years	12 months
Pt 2	195 (1A)(a)	Destroying or damaging property in the company of others		6 years	12 months
Pt 2 Pt 2	195 (1A)(b)	Destroying or damaging property in the company of others with fire or explosives		11 years	12 months
	195 (2)(a)	Destroying or damaging property during public disorder		7 years	12 months
Pt 2	195 (2)(b)	Destroying or damaging property with fire or explosives during public disorder		12 years	12 months
Pt 2	249B	Corrupt commissions or rewards (where benefit exceeds \$5000)		7 years <i>[where there is no value limit]</i>	12 months
Pt 2	249D	Corrupt inducements for advice (where benefit exceeds \$5000)		7 years <i>[where there is no value limit]</i>	12 months
Pt 2	249E	Corrupt benefits for trustees and others (where benefit exceeds \$5000)		7 years <i>[where there is no value limit]</i>	12 months
Pt 2	249F	Aiding, abetting etc offence under Part 4A		7 years	12 months
Pt 2	114(1)(b)	Being armed with intent to commit indictable		7 years	12 months

		offence (implement of housebreaking)			
Pt 2	154A	Taking a conveyance without consent of owner		5 years	2 years
Pt 2	154H	Making, using and interfering with unique identifiers		7 years	12 months
Pt 2	154I	Possession of motor vehicle or vessel where unique identifier has been interfered with		5 years	12 months
Pt 2	154J	Possession of vehicle identification plate not attached to motor vehicle		5 years	12 months
Pt 2	192L	Possession of equipment etc to make identification documents or things		3 years	12 months
Pt 2	256(2)	Making or possession of equipment etc for making false documents		3 years	12 months
Pt 2	256 (3)	Making or possession of equipment etc for making false documents with intent to commit forgery		3 years	12 months
Pt 2A	530	Serious animal cruelty		5 years	2 years
Pt 2A	531	Killing or seriously injuring animals used for law enforcement		5 years	2 years
Pt 2A	93T(1)	Participation in criminal groups		5 years	2 years
Pt 4	93FA (1)	Possession supply or making of explosives		5 years	2 years
Pt 4	93FA (2)	Possession supply or making of explosives		3 years	2 years
Pt 4	93G	Causing danger with firearm or spear gun		10 years	2 years
Pt 4	93H (1)	Trespassing with firearm or spear gun		5 years	2 years
Pt 4	93H (2)	Dangerous use of firearm or spear gun		10 years	2 years
Pt 4	93I (1)	Possession of unregistered firearm in public place		10 years	2 years
Pt 4	93I (2)	Possession of unregistered firearm in public place in circumstances of aggravation		14 years	2 years
Pt 4	S 7 <i>Firearms Act 1996</i>	Unauthorised possession or use of prohibited firearms or pistols	3 years	14 years	2 years
Pt 4	S 7A <i>Firearms Act 1996</i>	Unauthorised possession or use of firearms generally		5 years	2 years
Pt 4	S 7 <i>Weapons Prohibition Act 1998</i>	Unauthorised possession or use of a prohibited weapon	3 years	14 years	2 years

Notes:

Table 2 offences are contained in Schedule 1 of the Criminal Procedure Act 1986 (NSW)

Sections refer to the Crimes Act 1900 unless otherwise stated.

The following ancillary offences are also included:

- *attempting to commit any offence in the Table;*
- *being an accessory before or after the fact to any offence mentioned in the Table (other than minor indictable offences);*
- *aiding, abetting, counselling or procuring the commission of any offence in the Table other than a minor indictable offence;*
- *conspiring to commit any offence in the Table; and*
- *inciting to commission any offence in the Table.*

This table does not include repealed provisions.

*This table was compiled using NSW Government information sources that can be accessed at: www.legislation.nsw.gov.au
It is current as at December 2010.*

ANNEXURE B

JURISDICTIONAL LIMITS IN OTHER JURISDICTIONS

VICTORIA.....	66
QUEENSLAND.....	67
WESTERN AUSTRALIA.....	69
SOUTH AUSTRALIA.....	70
TASMANIA, THE A.C.T. AND THE N.T.....	71

VICTORIA

1.1 Under the *Sentencing Act 1991* (Vic), the jurisdictional limit of the Magistrates' Court of Victoria applicable to a summary offence, or to an indictable offence dealt with summarily, is two years imprisonment.¹ The maximum cumulative term of imprisonment that can be imposed by the Court is five years, unless otherwise provided by legislation.²

1.2 Section 109(2) of the *Sentencing Act* prescribes the maximum fines that a court can impose in relation to 12 different levels of offences, ranging from 1 to 3000 penalty units.³ The maximum fine for a summary offence is 240 penalty units.⁴

1.3 If a body corporate is found guilty of a summary offence against the *Crimes Act 1958* (Vic) and the court has the power to fine the body corporate, the Magistrates Court may, unless the contrary intention appears, impose a fine not greater than five times the maximum fine that may be imposed on a natural person.⁵

1.4 Subject to any contrary intention in another Act, the maximum fine for an indictable offence dealt with summarily is 500 penalty units (or 2500 penalty units for a body corporate).⁶ A penalty unit refers to an amount fixed once each financial year by the Treasurer and published in the Government Gazette.⁷ For the financial year 2008–09, one penalty unit was \$113.42; for the financial year 2009–10, the amount is \$116.82.⁸

1.5 Where a person is found guilty of multiple offences founded on the same facts, or form or are part of a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment, or a single fine, in respect of those

1. *Sentencing Act 1991* (Vic): ss 113(1) & 113A. For an indictable offence dealt with summarily, this jurisdictional limit is subject to any contrary intention appearing in another Act: *Sentencing Act 1991* (Vic) s 113(2).

2. *Sentencing Act 1991* (Vic): s 113B.

3. *Sentencing Act 1991* (Vic): s 109 (2)

4. *Sentencing Act 1991* (Vic): ss 109, 112(2).

5. *Sentencing Act 1991* (Vic): s 113D(1).

6. *Sentencing Act 1991* (Vic): ss 112A, 113D(2).

7. *Sentencing Act 1991* (Vic): s 110; *Monetary Units Act 2004* (Vic) s 5(2)–(3).

8. Victoria, *Government Gazette* No S66 14 March 2008 and S 132 of 15 May 2009, 1; Office of the Chief Parliamentary Counsel (Victoria), *Penalty and Fee Units* <http://www.ocpc.vic.gov.au/CA2572B3001B894B/pages/faqs-penalty-and-fee-units> at 12 March 2010.

offences that does not exceed the total of the maximum sentences of imprisonment, or fines, that could have been imposed in respect of each of those offences.⁹

1.6 Indictable offences that may be dealt with summarily are listed in Schedule 2 to the *Criminal Procedure Act 2009* (Vic). The offences of burglary and aggravated burglary may be dealt with summarily if the value of the property, or the value of the damage to the property, does not exceed \$100,000.¹⁰

QUEENSLAND

1.7 In Queensland, where the maximum term of imprisonment is not prescribed by law, the maximum term of imprisonment that can be imposed for a summary offence is two years.¹¹ The maximum term of imprisonment for an indictable offence dealt with summarily depends on the way in which the Magistrates Court is constituted. Where the Court is constituted by:

- a magistrate not performing functions as a drug court magistrate—three years imprisonment;
- a drug court magistrate—if the prosecuting authority and the offender have consented to the offence being prosecuted summarily, four years imprisonment; otherwise three years imprisonment; and
- a justice of the peace—six months imprisonment.¹²

1.8 There is no express jurisdictional limit on the Magistrates Court in the imposition of consecutive sentences.¹³

1.9 Where an Act creates an offence without providing a sentence, the maximum fine that a Magistrates Court can impose for a single offence is 165 penalty units on an individual, or 835 penalty units on a corporation.¹⁴ The maximum fine for an indictable

9. Sentencing Act 1991 (Vic): ss 9, 51.

10. Criminal Procedure Act 2009 (Vic): Schedule 2, items 4.6–4.7.

11. Penalties and Sentences Act 1992 (Qld): s 153A.

12. Criminal Code Act 1899 (Qld): Schedule 1, s 552H(1).

13. All courts have the general power to order that terms of imprisonment be served cumulatively: Penalties and Sentences Act 1992 (Qld): s 155.

14. Penalties and Sentences Act 1992 (Qld): s 46(1).

offence dealt with summarily is 100 penalty units.¹⁵ Where the Act prescribing the fine does not expressly prescribe a different maximum fine for a body corporate, the maximum fine is an amount equal to five times the maximum fine for an individual.¹⁶ A penalty unit is defined as \$100.¹⁷

1.10 Where a person is found guilty of two or more offences that are founded on the same facts, or that form or are part of a series of offences of the same or a similar kind, the court may impose a single fine for all the offences that does not exceed the total of the maximum fines that could be imposed for each of the offences.¹⁸

1.11 Under the *Criminal Code* (Qld), the offences of burglary,¹⁹ and of entering or being in a dwelling or any premises and committing (or with intent to commit) an indictable offence,²⁰ must be dealt with summarily if the value of the property stolen, damaged or destroyed was not more than \$1000—unless the defendant elects to be tried by a jury.²¹ This limit on the value of the property involved does not apply if the defendant admits guilt and the Magistrates Court considers that ‘the offence is of a nature that the defendant may be adequately punished on summary conviction’.²²

1.12 Under an Act recently passed by the Queensland Parliament,²³ all non-aggravated burglary offences are to be dealt with summarily regardless of the value of the property involved.²⁴ In addition, the offences of entering or being in another’s dwelling and committing an indictable offence,²⁵ and of entering or being in any

15. *Criminal Code* (Qld): s 552H(1).

16. *Penalties and Sentences Act 1992* (Qld): s 181B.

17. *Penalties and Sentences Act 1992* (Qld): s 5. The value of a penalty unit for a local law, or an infringement notice under the *State Penalties Enforcement Act 1999* (Qld), is an amount not exceeding \$100, as prescribed by regulation.

18. *Penalties and Sentences Act 1992* (Qld): s 49.

19. *Criminal Code* (Qld): s 419.

20. *Criminal Code* (Qld): s 419(4) (entering or being in the dwelling of another and committing an indictable offence in the premises); s 421(1), (entering or being in any premises with intent to commit an indictable offence in the premises); s 421(2) (entering or being in any premises and committing an indictable offence); s 421(3) (entering the premises by any break and committing an indictable offence in the premises).

21. *Criminal Code* (Qld): s 552B(1)(c)(iii), (2).

22. *Criminal Code* (Qld): s 552B(3).

23. The Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010 (Qld) was passed by Parliament on 13 April 2010 and was assented to on 13 August 2010.

24. Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010 (Qld) cl 17. In accordance with this provision, certain aggravated forms of burglary—ie, use or threatened use of actual violence; offender was armed or pretended to be armed; or the property damage amounts to \$30,000 or more and the offender does not plead guilty—must be dealt with on indictment.

25. *Criminal Code* (Qld): s 419(4).

premises and committing (or with intent to commit) an indictable offence,²⁶ will have to be dealt with summarily unless the indictable offence committed in the dwelling or premises would be required to be dealt with on indictment if the charge were laid.²⁷

WESTERN AUSTRALIA

1.13 In Western Australia, the jurisdictional limits of the Magistrates Court for indictable offences dealt with summarily are indicated by the ‘summary conviction penalty’ that is contained in the legislative provision that created the offence.²⁸ The summary conviction penalties for indictable offences under the *Criminal Code* (WA)²⁹ range from nine months to three years imprisonment, and a fine of \$9000 to \$36,000—for example, for the offence of:

- indecent acts in public—the available sentence is nine months imprisonment and a fine of \$9000;³⁰
- indecent assault—the available sentence is two years imprisonment and a fine of \$24,000;³¹ and
- acts or omissions causing bodily harm or danger—the available sentence is three years imprisonment and a fine of \$36,000.³²

1.14 There is no limit on the cumulative terms of imprisonment that may be imposed by the Magistrates Court.³³

1.15 Where the statutory penalty for an offence is imprisonment only, a court may impose a fine instead. If the court is a court of summary jurisdiction, the maximum fine

26. *Criminal Code* (Qld): s 421(2).

27. Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010 (Qld) cl 17. This clause also provides that, where the offender gains entry to the premises by any break and commits an indictable offence in the premises contrary to s 421(3) of the *Criminal Code* (Qld), the offence must also be dealt with on indictment if the value of the damage caused by the break is \$30,000 or more and the offender does not plead guilty.

28. *Criminal Code* (WA): s 5.

29. *Criminal Code Compilation Act 1913* (WA): Schedule.

30. *Criminal Code* (WA): s 203.

31. *Criminal Code* (WA): s 323.

32. *Criminal Code* (WA): s 304.

33. All sentencing courts have the power to order that terms of imprisonment be served cumulatively:

Sentencing Act (1995); s 88(3)(c).

that may be imposed, in these circumstances, is limited to an amount calculated by the statutory penalty (in months) multiplied by 1000 (for a natural person), or multiplied by 5000 (for a body corporate).³⁴

1.16 When sentencing an offender for two or more offences that are founded on the same facts, or that form or are part of, a series of offences of the same or a similar kind, the court may impose a single fine for all of the offences that does not exceed the sum of the maximum fines for each of the offences.³⁵

1.17 The charge of burglary may be dealt with summarily only if the value of the property involved is \$10,000 or less.³⁶

SOUTH AUSTRALIA

1.18 In South Australia, the Magistrates Court has jurisdiction to hear and determine summary offences and minor indictable offences. Where the Magistrates Court is constituted by a magistrate, it may impose a maximum penalty of two years imprisonment or a fine of \$150,000 for a summary offence or for a minor indictable offence.³⁷

1.19 Where the legislation creating the offence does not prescribe a fine, the Magistrates Court may only impose a fine up to \$10,000.³⁸ It may not award more than \$20,000, or a greater prescribed amount, by way of compensation.³⁹

1.20 If a person is found guilty of multiple offences, a court may impose one penalty for all or some of the offences, provided that the sentence does not exceed the total of the maximum penalties for each of the offences.⁴⁰

34. *Sentencing Act 1995* (WA): s 41(6).

35. *Sentencing Act 1995* (WA): s 54.

36. *Criminal Code* (WA): s 401(3).

37. *Criminal Law (Sentencing) Act 1988* (SA): s 19(3)–(4). Where the Magistrates Court is constituted by a special justice instead of a magistrate, it may not impose a sentence of imprisonment: *Magistrates Court Act 1991* (SA) s 7A(2); *Criminal Law (Sentencing) Act 1988* (SA) s 19(1). Minor indictable offences are those for which the maximum penalty is a term of imprisonment of five years or less (with certain exceptions), or those that are not punishable by imprisonment but for which a fine exceeding \$120,000 is prescribed: *Summary Procedure Act 1921* (SA) s 5(3). Certain categories of offences that are punishable by a maximum term of imprisonment exceeding five years are defined as minor indictable offences—eg, the offence of recklessly causing harm to another: *Summary Procedure Act 1921* (SA) s 5(3)(a)(iii).

38. *Criminal Law (Sentencing) Act 1988* (SA): s 34(b)(iii).

39. *Criminal Law (Sentencing) Act 1988* (SA): s 53(5)(c).

1.21 Where an offence of serious criminal trespass was committed with the intent to commit an offence of dishonesty (not being an offence of violence) or certain property offences, the charge can be dealt with summarily if the value of property involved was \$30,000 or less.⁴¹

TASMANIA, THE AUSTRALIAN CAPITAL TERRITORY AND THE NORTHERN TERRITORY

1.22 As each of these jurisdictions has a two-tier court structure, rather than the three-tier structure that exists in the other jurisdictions, it was not thought to be helpful to record the jurisdictional limits of the Local or Magistrates Courts in these jurisdictions.

40. Criminal Law (Sentencing) Act 1988 (SA): s 18A. The courts may order that terms of imprisonment be served cumulatively: Criminal Law (Sentencing) Act 1988 (SA) s 31.

41. Summary Procedure Act 1921 (SA): s 5(3)(a)(iii)(E).

Table: Jurisdictional limits in the Local or Magistrates Courts in Australia

Jurisdiction	Imprisonment				Fine		Maximum property value for 'break and enter'/burglary offence to be summarily prosecuted
	Summary offences	When term of imprisonment not provided by law	Indictable offences dealt with summarily		Individual offender	Corporate offender	
			Maximum term for single offence	Maximum consecutive terms			
NSW	no stated limit - but generally up to 2 years under the <i>Summary Offences Act 1953</i> (NSW)	2 years or the statutory maximum term, whichever is the shorter term	2 years	5 years	<ul style="list-style-type: none"> summary offence - no general limit, but generally up to 100 penalty units (\$1100) under the <i>Summary Offences Act 1953</i> (NSW) indictable offence - 100 penalty units (\$1100) or the statutory maximum fine, whichever is the smaller amount 	offence punishable by imprisonment only - 100 penalty units (\$1100)	\$60,000

Jurisdiction	Imprisonment				Fine		Maximum property value for 'break and enter'/burglary offence to be summarily prosecuted
	Summary offences	When term of imprisonment not provided by law	Indictable offences dealt with summarily		Individual offender	Corporate offender	
			Maximum term for single offence	Maximum consecutive terms			
Vic	2 years	n/a	2 years (unless otherwise provided)	5 years (unless otherwise provided)	<ul style="list-style-type: none"> summary offence - 240 penalty units (\$28,036.80 for 2009-10) indictable offence - 500 penalty units (\$58,410 for 2009-10) 	<ul style="list-style-type: none"> summary offence under the <i>Crimes Act 1958</i> (Vic) for which the court may fine a body corporate - 5 times the maximum fine that may be imposed on a natural person indictable offence - 2500 penalty units (292,050 for 2009-10) 	\$100,000
Qld	as prescribed by law	summary offence - 2 years	<ul style="list-style-type: none"> magistrate - 3 years drug court magistrate (where parties consent to summary prosecution) - 4 years justice of the peace - 6 months 	no stated limit	<ul style="list-style-type: none"> where no sentence is provided - 165 penalty units (\$16,500) indictable offence - 100 penalty units (\$10,000) 	<ul style="list-style-type: none"> where no sentence is provided - 835 penalty units (\$83,500) where no maximum fine on a body corporate is prescribed - five times the maximum fine on an individual 	\$1000

ANNEXURE C

JIRS STATISTICS—PERSONAL VIOLENCE OFFENCES FINALISED IN THE LOCAL COURT WHERE THE MAXIMUM PENALTY WAS IMPOSED

Offence	Section	Table 1 or Table 2 offence	Maximum penalty on indictment	Maximum penalty in the Local Court	Review period	Total number of matters	Number of matters where full-time custody was imposed	Number of matters where maximum sentence imposed (percentage of custodial matters)
Send letter threatening to kill or injure	<i>Crimes Act 1900</i> s 31(1)	Table 1	10 years	2 years	Jul 2005–Jun 2009	15	4 (27%)	1 (25%)
Use weapon with intent to commit offence, resist arrest etc	<i>Crimes Act 1900</i> s 33B(1)(a)	Table 1	12 years	2 years	Jul 2005–Jun 2009	328	162 (49%)	14 (9%)
Threaten injury to with intent to commit offence, resist arrest etc	<i>Crimes Act 1900</i> s 33B(1)(b)	Table 1	12 years	2 years	Jul 2005–Jun 2009	25	10 (40%)	2 (20%)
Recklessly cause grievous bodily harm in company	<i>Crimes Act 1900</i> s 35(1)	Table 1	14 years	2 years	Sep 2007–Jun 2009	31	9 (29%)	2 (22%)
Malicious wounding (old)	<i>Crimes Act 1900</i> s 35(1) (old)	Table 1	7 years	2 years	Jul 2005–Jun 2009	513	186 (36%)	15 (8%)
Maliciously inflict grievous bodily harm (old)	<i>Crimes Act 1900</i> s 35(1) (old)	Table 1	7 years	2 years	Jul 2005–Jun 2009	508	185 (36%)	31 (17%)
Recklessly cause grievous bodily harm	<i>Crimes Act 1900</i> s 35(2)	Table 1	10 years	2 years	Sep 2007–Jun 2009	143	53 (37%)	9 (17%)
Maliciously inflict grievous bodily harm in company (old)	<i>Crimes Act 1900</i> s 35(2) (old)	Table 1	10 years	2 years	Jul 2005–Jun 2009	30	20 (66%)	1 (5%)
Recklessly wound in company	<i>Crimes Act 1900</i> s 35(3)	Table 1	10 years	2 years	Sep 2007–Jun 2009	29	16 (55%)	4 (25%)
Recklessly wound	<i>Crimes Act 1900</i> s 35(4)	Table 1	7 years	2 years	Sep 2007–Jun 2009	260	96 (37%)	12 (13%)
Negligent or wanton driving causing bodily harm	<i>Crimes Act 1900</i> s 53	Table 1	2 years	12 months	Jul 2005–Jun 2009	40	4 (10%)	2 (50%)

Offence	Section	Table 1 or Table 2 offence	Maximum penalty on indictment	Maximum penalty in the Local Court	Review period	Total number of matters	Number of matters where full-time custody was imposed	Number of matters where maximum sentence imposed (percentage of custodial matters)
Negligent or unlawful act etc causing grievous bodily harm—not involving motor vehicle	<i>Crimes Act 1900</i> s 54	Table 1	2 years	12 months	Jul 2005–Jun 2009	34	5 (15%)	3 (60%)
Assault, resist or obstruct officer in execution of duty	<i>Crimes Act 1900</i> s 58	Table 2	5 years	2 years	Jul 2007–Jun 2009	4875	474 (10%)	2 (0.4%)
Assault occasioning actual bodily harm	<i>Crimes Act 1900</i> s 59(1)	Table 2	5 years	2 years	Jul 2007–Jun 2009	8392	1305 (16%)	53 (4%)
Assault occasioning actual bodily harm in company	<i>Crimes Act 1900</i> s 59(2)	Table 2	7 years	2 years	Jul 2005–Jun 2009	409	88 (22%)	1 (1%)
Assault police officer in execution of duty	<i>Crimes Act 1900</i> s 60(1)	Table 2	5 years	2 years	Jul 2005–Jun 2009	807	114 (14%)	1 (1%)
Assault police officer in execution of duty—cause actual bodily harm	<i>Crimes Act 1900</i> s 60(2)	Table 1	7 years	2 years	Jul 2005–Jun 2009	247	77 (31%)	5 (6%)
Assault law enforcement officer (not police)	<i>Crimes Act 1900</i> s 60A(1)	Table 2	5 years	2 years	Jul 2005–Jun 2009	61	35 (57%)	1 (3%)
Assault law enforcement officer (not police)—inflict actual bodily harm	<i>Crimes Act 1900</i> s 60A(2)	Table 1	7 years	2 years	Jul 2005–Jun 2009	16	15 (94%)	1 (7%)
Common assault	<i>Crimes Act 1900</i> s 61	Table 2	2 years	12 months	Jul 2007 – Jun 2009	16,126	1149 (7%)	194 (17%)
Indecent assault	<i>Crimes Act 1900</i> s 61L	Table 2	5 years	2 years	Jul 2005–Jun 2009	430	99 (23%)	5 (5%)
Aggravated indecent assault	<i>Crimes Act 1900</i> s 61M(1)	Table 1	7 years	2 years	Jul 2005–Jun 2009	222	88 (40%)	10 (11%)
Aggravated indecent assault—person < 10 (old)	<i>Crimes Act 1900</i> s 61M(2) (old)	Table 1	10 years	2 years	Jul 2005–Jun 2009	60	28 (47%)	6 (21%)
Sexual intercourse with person 10–16 (old)	<i>Crimes Act 1900</i> s 66C(1) (old)	Table 1	8 years	2 years	Jul 2005–Jun 2009	6	1 (17%)	1 (100%)
Affray	<i>Crimes Act 1900</i> s 93C(1)	Table 1	10 years	2 years	Jul 2005–Jun 2009	2750	328 (12%)	14 (4%)

Offence	Section	Table 1 or Table 2 offence	Maximum penalty on indictment	Maximum penalty in the Local Court	Review period	Total number of matters	Number of matters where full-time custody was imposed	Number of matters where maximum sentence imposed (percentage of custodial matters)
Possess loaded firearm or spear gun—in public place	<i>Crimes Act 1900 s 93G(1)(a)</i>	Table 2	10 years	2 years	Jul 2005–Jun 2009	50	18 (36%)	4 (22%)
Fire firearm of spear gun in or near public place	<i>Crimes Act 1900 s 93G(1)(b)</i>	Table 2	10 years	2 years	Jul 2005–Jun 2009	52	4 (8%)	2 (50%)
Demand property with intent to steal	<i>Crimes Act 1900 s 99(1)</i>	Table 1	10 years	2 years	Jul 2005–Jun 2009	169	87 (51%)	6 (7%)
Assault with intent to take/drive motor vehicle	<i>Crimes Act 1900 s 154C(1)</i>	Table 1	10 years	2 years	Jul 2005–Jun 2009	12	9 (75%)	2 (22%)
Aggravated take motor vehicle/vessel with assault/occupant on board	<i>Crimes Act 1900 s 154C(2)</i>	Table 1	14 years	2 years	Jul 2005–Jun 2009	16	7 (44%)	1 (14%)
Destroy or damage property (up to \$2000) <i>to be looked at in the context of s 4 Crimes (Domestic and Personal Violence) Act 2007</i>	<i>Crimes Act 1900 s 195(1)(a)</i>	Table 2	5 years	12 months	Jul 2007–Jun 2009	5656	255 (5%)	18 (7%)
Destroy or damage property (>\$2000 and up to \$5000) <i>to be looked at in the context of s 4 Crimes (Domestic and Personal Violence) Act 2007</i>	<i>Crimes Act 1900 s 195(1)(a)</i>	Table 2	5 years	12 months	Jul 2005–Jun 2009	669	28 (4%)	2 (7%)
Destroy or damage property by fire/explosives (up to \$2000) <i>to be looked at in the context of s 4 Crimes (Domestic and Personal Violence) Act 2007</i>	<i>Crimes Act 1900 s 195(1)(b)</i>	Table 2	10 years	12 months	Jul 2005–Jun 2009	100	13 (13%)	4 (31%)
Destroy or damage property by fire/explosives (>\$2000 and up to \$5000) <i>to be looked at in the context of s 4 Crimes (Domestic and Personal Violence) Act 2007</i>	<i>Crimes Act 1900 s 195(1)(b)</i>	Table 2	10 years	2 years	Jul 2005–Jun 2009	23	3 (13%)	1 (33%)

Offence	Section	Table 1 or Table 2 offence	Maximum penalty on indictment	Maximum penalty in the Local Court	Review period	Total number of matters	Number of matters where full-time custody was imposed	Number of matters where maximum sentence imposed (percentage of custodial matters)
Destroy or damage property by fire/explosives (>\$5000 and up to \$15000) <i>to be looked at in the context of s 4 Crimes (Domestic and Personal Violence) Act 2007</i>	<i>Crimes Act 1900 s 195(1)(b)</i>	Table 1	10 years	2 years	Jul 2005–Jun 2009	25	11 (44%)	2 (18%)
Destroy or damage property by fire/explosives (> \$15000) <i>to be looked at in the context of s 4 Crimes (Domestic and Personal Violence) Act 2007</i>	<i>Crimes Act 1900 s 195(1)(b)</i>	Table 1	10 years	2 years	Jul 2005–Jun 2009	66	35 (53%)	6 (17%)
destroy or damage property with intent to injure by fire/explosives	<i>Crimes Act 1900 s 196(1)(b)</i>	Table 1	14 years	2 years	Jul 2005–Jun 2009	4	3 (75%)	1(33%)
Threaten or intimidate witness	<i>Crimes Act 1900 s 322(a)</i>	Table 1 (but not if intended to procure the conviction or acquittal of a person of any serious indictable offence)	10 years	2 years	Jul 2005–Jun 2009	8	5 (63%)	1 (20%)
Reprisal against witness or juror	<i>Crimes Act 1900 s 326(1)</i>	Table 1	10 years	2 years	Jul 2005–Jun 2009	22	9 (41%)	1 (11%)
Stalking or intimidation with intent to cause fear of physical or mental harm (repealed) <i>NB this offence is now found in other legislation - see below</i>	<i>Crimes Act 1900 s 545AB(1)</i> (repealed)	Table 2	5 years	2 years	Mar 2007–Jun 2009	1165	156 (13%)	3 (2%)

Offence	Section	Table 1 or Table 2 offence	Maximum penalty on indictment	Maximum penalty in the Local Court	Review period	Total number of matters	Number of matters where full-time custody was imposed	Number of matters where maximum sentence imposed (percentage of custodial matters)
Stalking or intimidation with intent to cause fear of physical or mental harm (repealed) <i>NB this offence is now found in other legislation - see below</i>	<i>Crimes Act 1900 s 562AB (repealed)</i>	Table 2	2 years	2 years	Jul 2005–Jun 2009	2107	280 (13%)	7 (3%)
Stalk or intimidate with intent to cause fear of physical or mental harm	<i>Crimes (Domestic and Personal Violence) Act 2007 s 13(1)</i>	Table 2	5 years	2 years	Mar 2008–Jun 2009	1431	179 (13%)	2 (1%)
Use unauthorised pistol	<i>Firearms Act 1996 s 7</i>	Table 2	14 years	2 years	Jul 2005–Jun 2009	3	1 (33%)	1 (100%)
TOTAL:						47,935	5654 (12%)	224 – 12months 226 – 24 months 450 total

* Percentages are rounded up or down

ANNEXURE D

PERSONAL VIOLENCE CASES IN THE LOCAL COURTS—OFFENDERS WHO RECEIVED THE MAXIMUM FULL-TIME CUSTODIAL SENTENCE (OR MORE) BETWEEN JANUARY 2005 – DECEMBER 2008

This table has been compiled using information and data obtained from the Judicial Commission of NSW and transcripts obtained from Local Courts.

TRANSCRIPT SUMMARY

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
1	<p>SHIELS, Jason Adam</p> <p><i>R v Jason Adam SHIELS</i></p>	4 Jun 2007	<p>Penrith</p> <p>Prosecutor: [not stated]</p>	RUSTIN	s 322(a)	-	<p>Charge(s): Threaten person with intent to influence witness; assault occasioning actual bodily harm (in company)</p> <p>Facts: The victim had previously made a witness statement to police about a charge against a Jason Buttress of malicious wounding with intent to murder. Earlier on the same day as the offence, the victim saw the offender at Carousel with Jason Buttress's brother. After the victim left the Carousel Inn, he saw a vehicle pulled up about 100 metres away, driven by the offender. The offender and the male passenger alighted from the vehicle, and both stated an intention to kill the victim. The offender struck the victim with a baseball bat, and the passenger hit and kicked the victim. The victim fell to the ground and the offender continued to hit the victim in the leg with the bat. The offender told the victim to drop the statement. The victim suffered from bruises and lacerations, and haematoma on one side of his face, jaw, flank and calf.</p> <p>Aggravating factor(s): Use of weapon; in company; offender ignored the victim's plea to stop and stated an intention to kill the victim before the assault began.</p> <p>Mitigating factor(s): Guilty pleas; strong prospects of rehabilitation; unlikely to reoffend in such a serious manner; some contrition and remorse</p>

1. References to sections are to sections of the *Crimes Act 1900* (NSW) unless otherwise stated.

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Sentence: Concurrent sentences for:</p> <ul style="list-style-type: none"> • threaten person with intent to influence witness— 2 years imprisonment, with NPP 16 months; and • assault occasioning actual bodily harm—2 years imprisonment, with NPP 16 months.
2	<p>GRAHAM, Nathan Leslie</p> <p><i>R v Nathan Leslie GRAHAM</i></p>	19 Oct 2006	<p>Tamworth</p> <p>Prosecutor: police sergeant</p>	SWAIN	s 35(1) *old*	inflict gbh	<p>Charge(s): Maliciously inflict grievous bodily harm; threaten violence cause fear; fail to comply with sentence passed/order made under s 20ab(1)</p> <p>Facts: There was a fracas between two households involving a number of people. The defendant hit the victim in the leg with an iron bar, seriously injuring him. The victim is likely to have ongoing problems because of the injuries occasioned to him by the defendant.</p> <p>Aggravating factor(s): Seriousness of offence; previous conviction for same offence in 2003.</p> <p>Mitigating factor(s): Plea of guilty; good prospects of rehabilitation.</p> <p>Sentence:</p> <ul style="list-style-type: none"> • Maliciously inflict grievous bodily harm - 2 years imprisonment, with non-parole period (NPP) 14 months; and • threaten violence – 3 months imprisonment (concurrent). <p>Failure to comply with periodic detention order - adjourned.</p>
3	<p>DALEY, Florence</p> <p><i>R v Florence DALEY</i></p>	7 November 2006	<p>Kempsey</p> <p>Prosecutor: police sergeant</p>	EVANS	s 35(2)*old*	inflict gbh	<p>Charge(s): Maliciously inflict grievous bodily harm in company of others</p> <p>Facts: The defendant and her co-accused were prison inmates. They believed they were being blamed for stealing property in prison. The co-accused was the main instigator but there was sufficient complicity by the defendant within the joint enterprise to enable a plea of guilty to be entered.</p> <p>Aggravating factor(s): [not specifically identified as such, but presumably offence committed while serving sentence for robbery whilst armed with an offensive weapon]</p> <p>Mitigating factor(s): Plea of guilty—her willingness to plead guilty was</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							'exceptional' for someone who was in a gaol environment. Sentence: 2 years imprisonment, with NPP 13 months.
4	NINNESS, Warren Cary <i>Police v Warren Cary NINNESS</i>	11 Dec 2006	Tamworth Prosecutor: assumed police (from case name)	SWAIN	s 60(2)	-	Charge(s): Resisting officers in the execution of their duty (x2) assaulting police officer in the execution of her duty; common assault; assaulting police officer in the execution of his duty causing actual bodily harm; contravening apprehended domestic violence order; breach of s 9 bonds Sentence: Aggregate sentence of 2 years imprisonment, with NPP 18 months—comprising of: <ul style="list-style-type: none"> • common assault – head sentence of 12 months imprisonment, with NPP 9 months; • assaulting police officer in the execution of her duty – total term of 12 months imprisonment, with NPP 9 months; • resisting officers in the execution of their duty (x2) – concurrent sentences of 9 months imprisonment, with NPP 6 months; • assaulting police officer in the execution of his duty occasioning actual bodily harm – 2 years imprisonment, with NPP 18 months; • contravening apprehended domestic violence order (ADVO) - - fixed term of 2 months. Two-year ADVO granted.
5	ATKINSON, Mark <i>Director of Public Prosecutions v Mark ATKINSON</i>	19 Dec 2006	Dubbo Prosecutor: assumed DPP (from case name)	HAMILTON	s 61M(1)	-	Charge(s): Aggravated indecent assault on victim under 16 (x3) [<i>NB: One sequence was dismissed, but it was not clear from the transcript what the sequence consists of—presumably one count of s 61M(1).</i>] Facts: The victim was the 13-year-old daughter of the offender's de facto partner. The offender was in the bedroom watching a pornographic DVD, when the victim asked him for permission to use the new phone. The offender touched the victim on the outside of her clothing in her vaginal area and on her breast, and masturbated beneath a towel. Aggravating factor(s): The victim was under the offender's authority. Sentence: Concurrent sentences of 2 years imprisonment, with

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							NPP 18 months. 5-year ADVO.
6	BAXTER, Warren Gordon <i>Police v Warren Gordon BAXTER</i>	17 Jan 2007	Dubbo Prosecutor: police sergeant	HAMILTON	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm (x2)</p> <p>Facts: The offender assaulted his then-partner on two different occasions. On the first occasion the offender punched the victim to the nose with a closed fist, breaking her nose. The victim ran from the home and hid in another person's premises. The offender went looking for her in those premises, and someone laid on top of the victim to prevent the offender from further assaulting the victim.</p> <p>A month or so later, the offender punched the victim a number of times to the face and head for no apparent reason. The victim was rendered unconscious, and the offender walked away without rendering any assistance.</p> <p>The offender was assessed by the Circle Sentencing Court as unsuitable to be dealt with at that Court.</p> <p>Aggravating factor(s): Violent offences.</p> <p>Mitigating factor(s): Guilty plea (entered when the matter was listed for hearing)</p> <p>Sentence:</p> <ul style="list-style-type: none"> • first offence - 20 months imprisonment, with NPP 15 months from 16/10/2006; and • second offence - 2 years imprisonment, with NPP 15 months from 16/1/2008. <p>10-year AVO.</p>
7	JAMIESON, Mathew <i>R v Mathew Jamieson</i>	18 Jan 2007	Gosford Prosecutor: police sergeant	ELLIOTT	s 35(1)*old*	inflict gbh	<p>Charge(s): Common assault (x3); maliciously inflict grievous bodily harm. Application to vary apprehended violence order.</p> <p>Facts: During an argument, defendant kicked a toddler's chair which struck his wife in the forehead. After further arguments the next morning, the defendant assaulted his wife, resulting in a fracture to her jaw.</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Aggravating factor(s): On a suspended sentence for similar offences at the time of the offences.</p> <p>Mitigating factor(s): Remorse; willingness to undertake courses and seek counselling.</p> <p>Discount factors: Plea of guilty to some counts.</p> <p>Sentence:</p> <ul style="list-style-type: none"> • s 12 bond revoked, suspended sentence of NPP of 4 months and parole period of 8 months to commence immediately; • breach of ADVO -- NPP 12 months, after which supervised parole; • assault - fixed term of 12 months; • assault (x2) - fixed term of 12 months (concurrent); • maliciously inflict grievous bodily harm - NPP 12 months, and 12 months parole. <p>ADVO extended for 5 years.</p>
8	<p>DAHLSTROM, Terrence</p> <p><i>R v Terrence DAHLSTROM</i></p>	22 Jan 2007	<p>Tamworth</p> <p>Prosecutor: police sergeant</p>	SWAIN	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm (x2); common assault (backup charge); fail to appear (x3); contravene apprehended violence order (x2)</p> <p>Facts: The defendant and the victim have been in a relationship for a number of years, and have two children aged 2 and 7.</p> <p>In relation to one of the contraventions of apprehended violence order, there was no actual violence, though the victim was frightened and called the police.</p> <p>Aggravating factor(s): Seriousness of offence; 'appalling' record of physical abuse against the same victim (including contravening ADVOs)</p> <p>Mitigating factor(s): Plea of guilty.</p> <p>Sentence:</p> <ul style="list-style-type: none"> • Assault occasioning actual bodily harm (1st) – 6 months

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<ul style="list-style-type: none"> imprisonment from 22/10/2006 Assault occasioning actual bodily harm (2nd) – 2 years imprisonment from 22/10/2007, with NPP 10 months Common assault – adjourned Fail to appear (x3) – 1 month imprisonment for each occasion from 22/10/2006 (concurrent) Contravene ADVO (1st) – 6 months imprisonment from 22/1/2007 (concurrent) Contravene ADVO (2nd) – 8 months imprisonment from 22/1/2007 (concurrent) <p>5-year ADVO made.</p>
9	STEWART, Evan John <i>Police v Evan John STEWART</i>	31 Jan 2007	Kempsey Prosecutor: police sergeant	EVANS	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm; common assault</p> <p>Facts: The defendant assaulted his partner and child. He grabbed his partner by the hair, and pushed her to the left side of her face. His assault on the child (one-week-old baby) resulted in substantial bruising to the face and retinal haemorrhage.</p> <p>Aggravating factor(s): Criminal record showing past violence.</p> <p>Sentence: Concurrent sentence of:</p> <ul style="list-style-type: none"> Assault occasioning actual bodily harm -- NPP 18 months and 6 months parole Common assault – 4 months imprisonment <p>5 year AVO granted.</p>
10	KAFOUALU, Sunia James <i>R v Sunia James KAFOUALU</i>	7 Feb 2007	Cessnock Prosecutor: police sergeant	CREWS	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm; inmate possesses mobile phone/SIM card</p> <p>Facts: The defendant was in prison when he struck the superintendent twice in the face before he went to the ground. The superintendent lost consciousness for a short period.</p> <p>Aggravating factor(s): Very serious assault; assault on correctional officer performing public function; history of violence; the defendant was serving sentences for robbery in company, assault occasioning actual bodily harm (x2), assault police (x2) and affray at the time of the offence.</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Sentence:</p> <ul style="list-style-type: none"> Assault occasioning actual bodily harm -- 3 years imprisonment, NPP 2 years to commence at the start of the existing parole period Inmate possesses mobile phone/SIM card -- fixed term of 6 months imprisonment from date of sentence, phone forfeited.
11	<p>NOLAN, Rebecca Therese</p> <p><i>R v Rebecca Therese NOLAN</i></p>	7 Feb 2007	<p>Kempsey</p> <p>Prosecutor: police sergeant</p>	EVANS	s 35(1)*old*	inflict gbh	<p>Charge(s): Inflicting grievous bodily harm</p> <p>Facts: The defendant was an inmate at Mid North Coast Correctional Centre. There was an ongoing dispute where the defendant and her co-accused had been accused of the theft of property by the victim. The co-accused had struck and punched the victim a number of times, when the defendant entered the room, pulling her co-accused off the victim and said, 'let me have a go'. The defendant struck the victim to the side of the face with a closed fist, and on the second punch, the victim claimed that the defendant had broken her cheekbone. The defendant responded 'I don't give a f*ck, I'll smash it some more'. At this point the prison officers became aware of the problem.</p> <p>Aggravating factor(s): Offence committed in company and whilst in custody.</p> <p>Mitigating factor(s): Plea of guilty.</p> <p>Sentence: 2 years imprisonment, NPP 14 months (part concurrently with existing sentence of imprisonment).</p>
12	<p>VARU, Charles</p> <p><i>R v Charles VARU</i></p>	12 Feb 2007	<p>Campbelltown</p> <p>Prosecutor: police sergeant</p>	PEARCE	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm; affray</p> <p>Facts: The victim was walking up the laneway with his son and heard a voice from behind saying 'hey buddy'. He turned around and was hit by the defendant (and co-defendant) for no reason. The defendant then hugged and apologised to the victim. The victim did not know the defendant. The defendant was intoxicated at the time.</p> <p>Aggravating factor(s): Offence committed while on parole for a robbery in</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							company charge. Mitigating factor(s): Plea of guilty. Sentence: 2 years imprisonment, NPP 18 months.
13	SMALL, Graham <i>R v Graham</i> <i>SMALL</i>	15 Feb 2007	Parramatta Prosecutor: [not stated]	GARBETT	s 35(1)*old*	wound	Charge(s): Malicious wounding Facts: The victim was stabbed in the lower left abdomen with a 15 cm knife. The defendant had some issues with the victim, but very little recollection of the incident. He has a lengthy criminal record. Sentence: NPP 18 months, and 6 months parole.
14	JACKSON, Peter <i>R v Peter</i> <i>JACKSON</i>	21 February 2007	Tamworth Prosecutor: police sergeant	SWAIN	s 59(1)	-	Charge(s): Larceny; assault occasioning actual bodily harm (x2); assault (x2); contravene apprehended violence order (x3) Facts: The defendant, while on bail and parole, sought out the victim who was trying to hide from him. He assaulted her, punching her and dragging her in the gravel. The defendant, again while on parole also stole a wallet containing \$300 from a woman's handbag in a pub. While a domestic violence order was in place protecting the victim from the defendant, the defendant assaulted her in a public park, punching her to the right eye and eventually causing her to fall to the ground. On another occasion, he attended her house against her will, breaking the bedroom door off its hinges so he could get to her and punch her and kick her in the head. The following morning he kicked and punched her in the nose and pushed her head into the wall. Aggravating factor(s): Offence committed while on parole (and also on bail in some cases); seriousness of offence; long criminal history, especially for matters of violence. Mitigating factor(s): Plea of guilty. Sentence: <ul style="list-style-type: none"> • Larceny – 4 months imprisonment from 28/4/2007; • Assault (1st) – 12 months imprisonment, NPP 9 months from

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<ul style="list-style-type: none"> 28/10/2007; Assault (2nd) – 12 month imprisonment, NPP 9 months from 28/10/2007; Assault occasioning actual bodily harm – 12 months imprisonment, NPP 9 months from 28/6/2007; assault occasioning actual bodily harm (2nd) – 2 years imprisonment, NPP 12 months from 28/2/2008; contravene AVO (1st) - 12 months imprisonment, NPP 9 months from 28/10/2007 (concurrent with the 1st assault); contravene AVO (2nd) - 12 months imprisonment, NPP 9 months from 28/10/2007 (concurrent with the 2nd assault); and contravene AVO (3rd) – 2 years imprisonment, NPP 12 months from 28/2/2008 (concurrent with the 2nd assault occasioning actual bodily harm). <p>5-year ADVO granted.</p>
15	ANDERSON, Robert James <i>R v Robert James ANDERSON</i>	28 Feb 2007	Tamworth Prosecutor: police sergeant	SWAIN	s 562AB(1) *repealed*	-	<p>Charge(s): Drive vehicle recklessly (x2); drive whilst disqualified (x2); drive with high range PCA; uninsured motor vehicle (x2); unregistrable vehicle (x2); common assault; stalk/intimidate cause fear; maliciously damage (x2)</p> <p>Facts: The defendant assaulted and intimidated the victim. He also damaged the inside of the victim's caravan. On another occasion, the defendant smashed the windows of the victim's car. He has also driven whilst disqualified, and on one occasion drove directly at police officers who took evasive action to avoid collision.</p> <p>Aggravating factor(s): Long history of convictions for similar offences; offence committed without regard for public safety; seriousness of the offences</p> <p>Mitigating factor(s): Plea of guilty</p> <p>Sentence: Aggregate term of imprisonment of 3 years, licence disqualification from 2032 to 2044, and total fine of \$2000—comprising: <i>Prison terms starting 15/12/2006:</i></p> <ul style="list-style-type: none"> intimidate to cause fear – 2 years imprisonment, NPP

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<ul style="list-style-type: none"> 18 months assault – 12 months imprisonment; maliciously damage (to caravan) – 12 months imprisonment; <p><i>Prison terms starting 15/12/2007:</i></p> <ul style="list-style-type: none"> malicious damage (to car) – 12 months imprisonment drive whilst disqualified – 2 years imprisonment, NPP 18 months; 2-year disqualification from 2032; declaration of habitual traffic offender resulting in disqualification for further 5 years from 2034; drive in a manner dangerous – 12 months imprisonment (concurrent); 2-year disqualification from 2032; driving car unregistered and uninsured - \$500 fine + court costs in each case; <p><i>Prison terms starting 15/12/2008:</i></p> <ul style="list-style-type: none"> drive in a manner dangerous (at Wee Waa) – 12 months imprisonment; 2-year disqualification from 2039; drive whilst disqualified – 2 years imprisonment, NPP 12 months, 2-year disqualification from 2039; driving with high range PCA – 2 years imprisonment, NPP 12 months; 5-year disqualification from 2039; and driving car unregistered and uninsured - \$500 fine + court costs in each case.
16	<p>SHIELDS, Corey David</p> <p><i>Police v Corey David SHIELDS</i></p>	16 Mar 2007	<p>Taree</p> <p>Prosecutor: assumed police (from case name)</p>	MCCOSKER	s 35(1)*old*	inflict gbh	<p>Charge(s): Maliciously inflict grievous bodily harm; assault occasioning actual bodily harm</p> <p>Facts: The defendant was attempting to stop a female leaving in a taxi. When the first victim tried to intervene, the defendant assaulted him and he lost a tooth. When the second victim saw the defendant abusing the first victim and the female, he knocked the defendant down three times. The second victim and the defendant wrestled and the defendant then kicked the second victim twice, once in the head while the second victim was either on his knees or bending down.</p> <p>Aggravating factor(s): Serious offences; criminal record featured matters of violence.</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Sentence:</p> <ul style="list-style-type: none"> Assault occasioning actual bodily harm – minimum term of 9 months imprisonment from date of sentence, and 3 months parole; maliciously inflict grievous bodily harm – NPP 15 months from date of sentence, and 7 months parole.
17	<p>BENNETT, John Dennis</p> <p><i>R v John Dennis</i> BENNETT</p>	19 Mar 2007	<p>Campbelltown</p> <p>Prosecutor: police sergeant</p>	RABBIDGE	s 58	officer on duty	<p>Charge(s): Use of offensive weapon to prevent lawful detention; assault officer in execution of duty (x4); assault (x3); drive vehicle recklessly/furiously or at a speed/manner dangerous; contravene apprehended violence order (x3); driving whilst disqualified; custody of knife in public place; resist officer in execution of duty</p> <p>NB: <i>In addition, the defendant pleaded not guilty to several charges (to be heard on another day): assault occasioning actual bodily harm; stalk/intimidate with intent to cause physical/mental harm; common assault.</i></p> <p>Facts: The defendant slapped the victim twice, once to the back of the head and once to the forehead. He yelled at her and used offensive language. The defendant and the victim had been in a domestic relationship and have one child together.</p> <p>On another occasion, the defendant was on a suspended sentence and an interim AVO order restricting him from approaching the victim except for the purposes of arranging or exercising access to the children. The victim and her two children were at home with four other relatives. The defendant had taken some Rivotol tablets. Following an argument he picked up his baby son and walked into the bedroom away from the victim. The victim attempted to take her son from the defendant, who then threatened the victim with a knife. After further arguments family members convinced the defendant to hand over the baby.</p> <p>Police attended the premises where the occupier wanted the defendant removed from the house. The defendant at first refused to leave the house, and slapped away the hand of a police officer attempting to stop him. Upon being ushered out of the house by the police, he picked up a shovel and threatened to take out the police, flinging it in their direction after being</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>sprayed with capsicum spray.</p> <p>On a different occasion, the defendant drove while disqualified, and drove in a manner dangerous to escape the pursuit of police. He crashed the car into a garden fence and attempted to run and hide from the police.</p> <p>Aggravating factor(s): Record of previous convictions; offence committed while offender on conditional liberty (suspended sentence); serious ongoing criminality; total disregard for the community, his partner and his children</p> <p>Sentence:</p> <ul style="list-style-type: none"> • assault (x3) –for each matter, 12 months imprisonment (concurrent); • assaulting police (x4) – for each matter, 2 years imprisonment, with NPP 18 months (concurrent); • resisting police – rising of the court; • knowingly contravene a restriction specified in an apprehended domestic violence order – 12 months imprisonment; • using the shovel as an offensive instrument – 12 months imprisonment; • drive in a manner dangerous – 12 months imprisonment; 2-year disqualification; • driving whilst disqualified – 12 months imprisonment; additional 2-year disqualification; declared Habitual Traffic Offender resulting in further 5 years disqualification; • custody of knife in a public place - \$100 fine <p>NB: In relation to the breach of s 12 bonds, the bonds were revoked and the defendant sentenced to the terms of imprisonment imposed but suspended at the time.</p>
18	<p>FEAR, Scott Michael</p> <p><i>Police v Scott Michael FEAR</i></p>	21 Mar 2007	<p>Newcastle</p> <p>Prosecutor: police sergeant</p>	ELLIOTT	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm (x2); common assault; contravention of apprehended domestic violence order (x2)</p> <p>Sentence:</p> <ul style="list-style-type: none"> • Common assault -- NPP 9 months, 3 months parole;

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<ul style="list-style-type: none"> Each of the other matters – [concurrent sentences of] NPP 18 months and parole of 6 months.
19	ROSER, Christopher <i>R v Christopher ROSER</i>	3 Apr 2007	Kempsey Prosecutor: police sergeant	ELLIOTT	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm; use violence causing fear</p> <p>Facts: The defendant had consumed alcohol and was trying to get into the Great Northern Hotel. At the same time security officers, who were outnumbered, were trying to keep others out. The victim was a security officer who used a baton on somebody. The defendant was offended by that, and punched the victim twice to the face and nose, causing it to break and bleed, and kicked at the victim's body and legs.</p> <p>Sentence: 2 years imprisonment, with NPP 18 months.</p>
20	BOWER, David John <i>R v David John BOWER</i>	13 Apr 2007	Port Macquarie Prosecutor: police sergeant	EVANS	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm (x2?)</p> <p>Facts: The victim was the defendant's 7-year-old son. The defendant, who had been drinking, flogged and bashed the victim to chastise the child for failing to bring home a wallet. The assault occurred in the presence of the victim's 12-year-old brother.</p> <p>Mitigating factor(s): Plea of guilty; regard for the needs of the children (subject to the involvement of the grandparents).</p> <p>Sentence: 2 years imprisonment, with NPP 6 months. 5-year AVO.</p>
21	HOUN, Tilac (Ty) <i>DPP v Houn</i> [2008] NSWLC 16	18 Apr 2007	Downing Centre Prosecutor: DPP	MALONEY, B.	s 35(1)*old*	wound	<p>Charge(s): Malicious wounding</p> <p>Facts: The defendant, who was intoxicated, approached the victim while she was using a public phone near her residence at about 1:15am. He approached the victim twice with his arms outstretched; each time the victim screamed and kicked out of the defendant. On the third occasion the defendant struck the victim with a broken bottle to the face. The victim suffered lacerations to her face which required deep sutures to control the bleeding and a follow-up by the plastics team. She also described symptoms of PTSD.</p> <p>Aggravating factor(s): Violent offence; use of a weapon; gratuitous cruelty;</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>substantial injury, emotional harm, loss or damage caused by offence; offence commissioned without regard for public safety.</p> <p>Mitigating factor(s): Defendant suffered from mental illness; is a person of good character; unlikely to reoffend; no previous convictions (except a prior PCA in respect of use of a vessel); good prospects of rehabilitation; remorse; plea of guilty.</p> <p>Sentence: 2 years imprisonment, NPP 15 months.</p>
22	<p>MELDER, Neil</p> <p><i>R v Neil MELDER</i></p>	19 Apr 2007	<p>Port Macquarie</p> <p>Prosecutor: [not stated]</p>	EVANS	s 93C(1)	-	<p>Charge(s): Affray</p> <p>Facts: The defendant, intended to pay back the victim, a 52 year old male, who he believed had sought to have someone else steal a boat. The defendant, supported by a number of other people, ran up the steps to the front verandah of a house, where the victim, a 29 year old female and six children between the ages of one and 10 were inside. He threatened them with a knife, and during the continuation of events, the dog was injured, the knife was thrown at a window while the female was shutting it and the defendant approached the door, banging. There was no physical contact between the defendant and the residents of the house.</p> <p>Aggravating factor(s): Seriousness of the offence; offence committed in company; two previous convictions for assault occasioning actual bodily harm.</p> <p>Mitigating factor(s): Plea of guilty; good prospects of rehabilitation.</p> <p>Sentence: 2 years imprisonment, NPP 15 months</p>
23	<p>KAHAKI, Duke Joshua</p> <p><i>R v Duke Joshua KAHAKI</i></p>	24 Apr 2007	<p>Tamworth</p> <p>Prosecutor: police sergeant</p>	SWAIN	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm (x2); common assault; stalk/intimidate with intent to cause fear; breach apprehended violence order; armed with intent to commit indictable offence</p> <p>Facts: The defendant pleaded not guilty to the offences which involved personal violence offences against the victim, his partner. On the first group of offences occurring from 14 October 2006, the defendant woke up the victim who had been asleep on the floor and punched her while she was</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>getting up. This left a redness on her eye which was observed by the police. An argument followed in which the defendant grabbed a knife and chased her outside. A friend intervened and the matter went no further.</p> <p>On 22 October 2006, there was an argument over the payment of maintenance for the victim's two older children while the victim was studying at university. The defendant grabbed her on the back of the neck and threw pencils at her.</p> <p>On 16 January 2007 (while an interim ADVO was in place), the defendant accused the victim of infidelity because there were bottles of wine in the garbage bin. An argument followed. The defendant grabbed the victim around the throat three times, causing bruising, that was photographed by the police. The defendant also threatened that he knew people who could sort her out, and were watching to see who had visited.</p> <p>Sentence: Partly concurrent, partly cumulative sentences for:</p> <ul style="list-style-type: none"> • assault occasioning actual bodily harm (1st) – 12 months imprisonment, NPP 6 months from 17/1/2007; • armed with intent to commit indictable offence – 18 months imprisonment, NPP 9 months from 17/1/2007; • assault – 4 months imprisonment from 17/5/2007; • assault occasioning actual bodily harm (2nd) – 2 years imprisonment, NPP 12 months from 17/7/2007; • intimidation offence – 12 months imprisonment, NPP 9 months from 17/7/2007; • contravene ADVO – 2 years imprisonment, NPP 12 months from 17/7/2007. <p>Domestic violence order for 5 years.</p>
24	SULLIVAN, Anzac Brian	26 April 2007	Broken Hill Prosecutor: police sergeant	PEARCE	s 59(1)		<p>Charge(s): Breach of apprehended violence order; assault; assault occasioning actual bodily harm</p> <p>Facts: Defendant assaulted a female victim on multiple occasions.</p> <p>Aggravating factor(s): Objective seriousness of offence; previous criminal history of violence</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Mitigating factor(s): Plea of guilty</p> <p>Sentence: 6 months imprisonment for assault and breach of AVO. 2 years imprisonment with NPP of 18 months for assault occasioning actual bodily harm to be served consecutively.</p>
25	<p>THOMSON, Asher Luke</p> <p><i>R v Asher Luke THOMSON</i></p>	10 May 2007	<p>Port Macquarie</p> <p>Prosecutor: police sergeant</p>	EVANS	s 93C(1)	-	<p>Charge(s): Affray</p> <p>Facts: The defendant, together with the co-accused, trespassed on a family home in order to confront a member of that family alleged to have stolen a boat. The defendant was armed with a knife. The co-accused was the person mainly involved and had a physical confrontation with the victim beforehand.</p> <p>The defendant was on a s 9 bond for assault at the time of the offence.</p> <p>Aggravating factor(s): Offender was armed with a knife; offence committed while subject to a s 9 bond for assault (in a domestic situation).</p> <p>Mitigating factor(s): Plea of guilty; good prospects of rehabilitation; first time in custody.</p> <p>Sentence: 2 years imprisonment, NPP 10 months.</p>
26	<p>BASANOVIC, Muho</p> <p><i>R v Muho BASANOVIC</i></p>	17 May 2007	<p>Downing Centre</p> <p>Prosecutor: police sergeant</p>	DILLON	s 35(1)*old*	inflict gbh	<p>Charge(s): Maliciously inflicting grievous bodily harm</p> <p>Facts: The defendant was asleep when he woke to hearing intoxicated people in his street. Fearing that damage would be caused to his property, he grabbed a sharp cutting instrument and went outside to protect his property. There was a confrontation between the defendant and the victim, and there probably was some provocation from the victim. During the fight the victim had the defendant in a headlock and was belting the defendant pretty hard in the face. The defendant had a broken nose and was heavily battered around the face. The victim was slashed about five times, and suffered a number of relatively superficial wounds, as well as a wound in his side so deep and gaping that the interior cavity of his torso was visible.</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Subjective circumstances: The defendant had a serious brain injury from a motor vehicle accident in 1990, suffers from chronic pain, and was being treated on an ongoing basis for management of head, brain and spinal injuries for some 17 years. Two months before sentencing (about a year after the offence was committed), the defendant had been assaulted, was diagnosed with a major depressive illness and had attempted suicide on two occasions since the assault.</p> <p>Aggravating factor(s): Use of a weapon; previous criminal history of violence (but the last offence was in 1989 so not of much weight); gratuitous cruelty to some degree (given the victim's very deep wound).</p> <p>Mitigating factor(s): Offence not planned—it was not the defendant's intention when he left his house to attack anybody, but only to defend himself and his property.</p> <p>Sentence: 24 months imprisonment, NPP 18 months.</p>
27	JOHNSON, Kevin	21 May 2007	Broken Hill Prosecutor: Assumed DPP (from case name)	PEARCE	s 59(1)		<p>Charge(s): Assault occasioning actual bodily harm; resisting arrest; intimidation of police officer</p> <p>Facts: Defendant punched and kicked female on multiple occasions causing injury. He then threatened police officers in the course of their duty.</p> <p>Aggravating factor(s): Objective seriousness of the offence; previous criminal history of violence;</p> <p>Sentence: Concurrent sentences for</p> <ul style="list-style-type: none"> • Assault occasioning actual bodily harm – 2 years imprisonment with NPP of 18 months • Resisting arrest – 3 months imprisonment • Intimidation of police – 6 months imprisonment
28	OXFORD, Leon Bruce <i>R v Leon Bruce OXFORD</i>	24 May 2007	Tamworth Prosecutor: police sergeant	SWAIN	s 61M(2)	-	<p>Charge(s): Indecent assault where victim under the age of 10 years</p> <p>Facts: The victim, the defendant's great niece, was four years old at the time of the assault. The victim and the defendant were in the lounge room alone. The girl had undone the defendant's shirt and sucked his breasts for 5–10</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>minutes and after that had undone the cord on his shorts and taken his penis out. The girl had then pulled her own pants down and lain on the defendant's stomach with his penis touching the outside of her vagina and had moved up and down on him for 10–15 minutes.</p> <p>The victim made no disclosure to the police when interviewed. The defendant made full admissions to the police when questioned. The defendant suffers from an intellectual disability but acted with knowledge about the wrongness of his actions.</p> <p>Aggravating factor(s): Injury and emotional harm caused by offence; serious nature of the offence.</p> <p>Mitigating factor(s): Plea of guilty at the very earliest opportunity; good character (although this carried less weight due to nature of offence); knew that the act was wrong but did not understand the issues underlying its illegality; good prospects of rehabilitation; unlikely to reoffend; assistance to authorities; hardship in custody due to the defendant's significant intellectual disability.</p> <p>Sentence: 2 years imprisonment, with NPP 10 months.</p>
29	<p>JOHNSON, Paul Henry</p> <p><i>R v Paul Henry JOHNSON</i></p>	19 Jun 2007	<p>Queanbeyan</p> <p>Prosecutor: police sergeant</p>	PROWSE	s 33B(1)(a)	-	<p>Charge(s): Range of offences including use or possession of weapon to resist arrest [Nb. Details of offences not on transcripts]</p> <p>Facts: Defendant pleaded guilty to a range of offences; defence made an application for him to be dealt with under s 33 of the <i>Mental Health (Criminal Procedure) Act 1990</i> (NSW). The application was refused and the defendant was dealt with in accordance with law. In the commission of the offences there were three instances of use of offensive weapon to prevent lawful detention, instances of assault of police and driving at a dangerous speed.</p> <p>Aggravating factor(s): Objective seriousness of the offences.</p> <p>Mitigating factor(s): Plea of guilty; defendant suffered from mental illness (paranoid schizophrenia).</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Sentence:</p> <ul style="list-style-type: none"> • Sequence 2 -- convicted without further order; • Sequences 4, 6, 10, 11 and 15 -- 12 months imprisonment— comprising NPP 7 months, and on parole for the balance to be of good behaviour with specified conditions (ie, supervised, attend intervention program, take medication as prescribed, and obey all directions of the Wollongong Community Mental Health team); • Sequence 14 -- 2 years imprisonment (NPP already served; defendant released on parole to be of good behaviour with the same conditions as above). • Sequence 17 -- 6 months imprisonment, disqualified from holding or retaining licence for 5 years. <p><i>[NB: Details of the sequences not on transcript]</i></p>
30	<p>DENYER, Jason Mathew</p> <p><i>R v Jason Mathew DENYER</i></p>	28 Jun 2007	<p>Ballina</p> <p>Prosecutor: police sergeant</p>	POGSON	s 35(1)*old*	wound	<p>Charge(s): Maliciously wound; malicious damage</p> <p>Facts: Defendant affected by alcohol and attacked victim with a knife, resulting in laceration to the arm.</p> <p>Aggravating factor(s): Serious offence. Use of weapon. Criminal record "littered with matters for violence".</p> <p>Mitigating factor(s): Plea of guilty to charge of maliciously wound (after matter was set for hearing).</p> <p>Sentence: Malicious wound -- 2 years imprisonment, with NPP 9 months; malicious damage -- fined \$400 and court costs \$67.</p>
31	<p>LAFFERTY, Scott</p> <p><i>R v Scott LAFFERTY</i></p>	29 Jun 2007	<p>Bankstown</p> <p>Prosecutor: [not stated]</p>	SPENCE	s 35(1)*old*	inflict gbh	<p>Charge(s): Maliciously inflict grievous bodily harm</p> <p>Facts: The victim told the defendant that his work services were no longer required and gave him 8 hours notice. Later, the defendant approached the victim, punched him, and fled the scene. The injuries to the victim resulted in the victim needing facial reconstruction surgery. The defendant was serving a gaol term at the time of sentencing for unrelated matters.</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							Sentence: 2 years imprisonment, NPP 18 months.
32	WALKER, Benjamin John <i>R v Benjamin John WALKER</i>	2 Jul 2007	Wollongong Prosecutor: [not stated]	WALKER	s 59(1)	-	<p>Charge(s): Malicious damage; assault occasioning actual bodily harm; assault (x3); common assault; take and drive; drive whilst disqualified; unlawfully take and drive a vehicle without consent; breach of apprehended violence order; breach of s 12 bond</p> <p>Facts: The defendant was charged with a number of assaults and breaches of apprehended violence orders against his partner (the victim). They have two young sons together. There were apprehended violence orders in place protecting the victim and their sons. The defendant had been in rehab for methamphetamine (ice) use.</p> <p>On one occasion, the defendant had stolen and driven the victim's car whilst disqualified.</p> <p>In relation to the less serious matters, the police had seen the defendant and this had given rise to a chase during which the defendant tried to escape from the police on foot and by getting into cars being driven on the road. After being caught and taken into custody, the defendant ripped the cord from the police fingerprint machine and wrapped it around his neck in an attempt to choke himself. The estimated damage was between \$700 and \$1400.</p> <p>Sentence: Aggregate sentence of 2 years imprisonment, NPP 18 months—comprising of:</p> <ul style="list-style-type: none"> (a) assault occasioning actual bodily harm - 12 months imprisonment; (b) assault occasioning actual bodily harm - 12 months imprisonment, cumulative on the breach of s 12 bond – 12 months imprisonment, with NPP 9 months; and (b) in regard to all the other matters, an additional 12 months imprisonment, which included: <ul style="list-style-type: none"> • goods in custody – 6 months imprisonment; • drive whilst disqualified - \$400 fine plus court costs, 2-year disqualification; • assault and intimidate police – 12 months imprisonment;

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<ul style="list-style-type: none"> malicious damage - \$300 fine; contravening domestic violence order (x2) – 2 years imprisonment, NPP 18 months; police matter with police gear - \$200 fine + \$700 compensation for damage to machine; and further \$400 in fines for two other offences. <p>Habitual offender declaration quashed. 12-month AVO to protect a male victim, and 2-year AVO to protect his partner.</p>
33	COSENTINO, Frank Christopher <i>Police v Frank Christopher COSENTINO</i>	6 Jul 2007	Downing Centre Prosecutor: police sergeant	MALONEY	s 35(1)*old*	inflict gbh	<p>Charge(s): Maliciously inflicting grievous bodily harm</p> <p>Facts: Around 10pm the victim entered the gaming lounge of a Vegas Hotel in Kings Cross. The victim was intoxicated and was asked to leave by security officers and the hotel manager. The defendant was one of the security officers. The manager and security officers escorted the victim off the premises. In the process, the victim uttered an obscenity at the defendant. The defendant approached the victim and an argument took place. The defendant pushed the victim with force onto the pavement, resulting in a fractured skull and rendering him unconscious.</p> <p>Aggravating factor(s): Actual use of violence; the injury, emotional harm, loss or damage suffered by the victim was substantial; and to a certain extent the commission of the offence was without regard to public safety.</p> <p>Mitigating factor(s): No prior record other than some minor traffic matter; good character; unlikely to reoffend; good prospects for rehabilitation; remorse; plea of guilty; went to the aid of the victim at the time.</p> <p>Sentence: 2 years imprisonment, NPP 9 months.</p>
34	WATERS, Vaughan Lee <i>Director of Public Prosecutions v Vaughan Lee WATERS</i>	13 Jul 2007	Tamworth Prosecutor: assumed DPP (from case name)	PEARCE	s 59(1)	-	<p>Charge(s): Common assault; assault occasioning actual bodily harm; enter building/land with intent to commit indictable offence</p> <p>Facts: The defendant turned up at his girlfriend's mother's house to see his girlfriend and ultimately entered the premises. The defendant had previously objected to the victim spending time in those premises in the company of the defendant's girlfriend. On this occasion, the defendant saw the victim at the</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>premises and struck him at least three times quite savagely, knocking him to the ground, unconscious.</p> <p>The defendant pleaded guilty to the other charges.</p> <p>Sentence: Aggregate minimum term 18 months imprisonment, and 6 months parole—comprising of:</p> <ul style="list-style-type: none"> • assault on police officer – 3 months imprisonment; • stalking; malicious damage; assault occasioning actual bodily harm (x2); fail to appear – fixed term of 12 months imprisonment; • savage attack on victim – 18 months of a 2-year sentence.
35	<p>THOMAS, Benjamin</p> <p><i>Director of Public Prosecutions v Benjamin THOMAS</i></p>	8 Aug 2007	<p>Wollongong</p> <p>Prosecutor: assumed DPP (from case name)</p>	JOHNSON	s 35(1)*old*	wound	<p>Charge(s): Malicious wounding (x2)</p> <p>Facts: The two victims were walking in Wollongong at 5:30pm when the 19-year old defendant and friends were walking in the other direction. The defendant stuck out his arm in an attempt to 'coat hanger' one of the victims. The victim ducked under the arm and there was no contact. A fight then started between the two groups and the defendant punched one of the victims on the side of the head. The defendant used a silver blade in the fight. The victims both suffered serious injuries. The defendant was affected by prohibited drugs at the time of the offences.</p> <p>The defendant was first charged with more serious offences; however he agreed to plead guilty to the two counts of malicious wounding.</p> <p>Aggravating factor(s): Serious violent offences; in company, previous convictions (although not a significant history for violent offences); offences committed while on conditional liberty.</p> <p>Mitigating factor(s): Plea of guilty to both charges at first opportunity (after more serious charges were withdrawn); offences not planned.</p> <p>Sentence: 2 years imprisonment, with 12 months parole.</p>
36	<p>ROBERTSON, Robert Thomas</p>	16 Aug 2007	Muswellbrook	PEARCE	s 35(1)*old*	inflict gbh	<p>Charge(s): Maliciously inflict grievous bodily harm</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
	<i>R v Robert Thomas ROBERTSON</i>		Prosecutor: police sergeant				<p>Facts: The defendant attacked his partner in a dispute about the keys to a vehicle. The attack was quite savage and involved kicking. The defendant had been previously diagnosed with schizophrenia but had stopped taking his medications four months before the offence. He has a lengthy criminal record, with some serious offences indicating a propensity for violence.</p> <p>At the time of sentence, the victim was expecting a child, fathered by the defendant, in about four weeks. She wrote a letter indicating that she forgave the defendant and wanted him to be helped rather than punished. <i>[NB: It would appear that the victim was 4–5 weeks pregnant at the time of the offence, but this was not mentioned in the sentencing remarks.]</i></p> <p>Sentence: NPP 18 months, and 6 months parole. Two-year ADVO.</p>
37	SHEATHER, Andrew Johann <i>R v Andrew Johann SHEATHER</i>	27 Aug 2007	Tumut Prosecutor: [not stated]	MOON	s 35(1)*old*	wound	<p>Charge(s): Malicious wounding; assault occasioning actual bodily harm; common assault (x2); malicious damage</p> <p>Facts: The defendant was yelling at the victim and accusing her of infidelity, which she denied. The defendant grabbed the victim by her shirt, dragged her off the lounge and pushed her over a stack of clothes. The defendant then followed the victim into the bedroom and pushed her face first onto the bed. He yelled and swore at the victim, then leant over and grabbed her by the back of the hair, pulling some of her hair out. He punched the victim to the head about five times with a high heel shoe, and then punched her to the upper arm with a closed fist while he held her hair in his hand.</p> <p>A short time later the defendant drove a kitchen knife into the victim's thigh, then put the knife up to the victim's throat and threatened to keep stabbing her if she screamed. The defendant began hitting the victim on the buttock and thigh with a long torch about 10 times, and punched her in the back with his fists. The defendant gestured to stab the victim with the screwdriver in his hand. He then left the room, picked up a pair of scissors and stabbed the hallway door. He returned to the bedroom and the victim told him that she needed to go to the hospital to get stitches.</p> <p>When they returned home from the hospital, the defendant became agitated about the hospital staff knowing what he had done. He kicked the stereo</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>through the bedroom wall, and then threw a can of deodorant at the wall over the top of the victim.</p> <p>The next morning the defendant verbally abused the victim again, and hit the victim with a wooden window curtain rod to the thigh and buttock about three times. He then pulled her off the lounge by the hair and dragged her to the bedroom. A short time later he slapped the victim across the side of the head twice. That evening the defendant verbally abused the victim again and slapped her around the head a few more times.</p> <p>Aggravating factor(s): Objective seriousness of offence; threats to use weapons; number of days over which the offences were committed.</p> <p>Mitigating factor(s): No significant criminal record (but there were past indicators of violent offending); first offence which resulted in him being in custody; chance of rehabilitation with treatment.</p> <p>Sentence: Aggregate term of 2 years imprisonment, with NPP 18 months, comprising of:</p> <ul style="list-style-type: none"> • malicious wounding & assault occasioning actual bodily harm -- concurrent term of 2 years imprisonment, with NPP 18 months, for each offence; • common assault (x2) -- concurrent terms of 12 months imprisonment, with no NPP; • malicious wounding -- concurrent term of 16 months imprisonment, with NPP 12 months. <p>Five-year AVO granted.</p>
38	BRUGGY, Adrian Paul	10 September 2007	Broken Hill Prosecutor: police sergeant	TOWNSDEN	s 59(1)		<p>Charge(s): Assault occasioning actual bodily harm</p> <p>Facts: [NB: details of offence not included in transcript]</p> <p>Aggravating factor(s): Objective seriousness of offence</p> <p>Mitigating factor(s): No previous record of violent offences</p> <p>Sentence: 2 years imprisonment with NPP of 3 months.</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
39	DEAN, James Aaron <i>Police v James Aaron DEAN</i>	13 Sep 2007	Wagga Wagga Prosecutor: police sergeant	STERLAND	s 35(1)*old*	wound	Charge(s): Maliciously wound Facts: The defendant and the victim, who were in a de facto relationship, had been drinking at a sports club and have had a fight. The defendant left the club, and the victim went to a male friend's house and continued drinking. The defendant came to the house and asked the victim to go home with him, which she refused. He stabbed the victim in stomach with a sharp instrument while she was sitting on a bed. According to the doctor, the woman was pregnant at the time. However there was no evidence as to whether the defendant knew about the pregnancy. Sentence: NPP 18 months; 6 months parole. 2-year DVO.
40	BIANCUCCI, John <i>R v John BIANCUCCI</i>	19 Sep 2007	Wollongong Prosecutor: police sergeant	JOHNSON	s 33B(1)(b)	-	Charge(s): Threaten injury to person with intent; unlawful take/drive vehicle; never licensed; refuse breath test (x2); driver state false name Facts: The defendant was drunk when he approached two men in Warilla and asked them for a lift to Wollongong, which they declined. The defendant then threatened the victim and dragged the victim from the vehicle. The defendant took the motor vehicle and drove away, with the other person still in it. He was then apprehended by the police. He did not have licence, refused a breath test, stated a false name and refused breath analysis. Aggravating factor(s): Very serious offences. Mitigating factor(s): Plea of guilty. Sentence: <ul style="list-style-type: none"> • Threaten injury to person with intent and unlawful take/drive vehicle -- concurrent sentences of NPP 18 months, with additional 6 months parole for each offence; • driving without a licence -- fined \$500, 3-year disqualification; • refusing breath test -- convicted but no penalty; • refusing breath analysis -- fined \$1000, court costs \$70, 3-year disqualification • giving a false name -- convicted but no penalty.
41	BELL, William	19 Sep 2007	Tamworth	SWAIN	s 61M(1)	-	Charge(s): Aggravated indecent assault; fail to appear; maliciously destroy

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
	Jethro <i>R v William Jethro BELL</i>		Prosecutor: [not stated]				<p>or damage property; accused in custody</p> <p>Facts: In relation to the aggravated indecent assault, the defendant had made sexual advances to a young girl under 16, which she rejected. Despite being rejected, the defendant returned. The victim was so scared she obtained a knife to protect herself.</p> <p>In relation to the malicious damage charge, the defendant smashed three windows of somebody else's property and injured himself in the process.</p> <p>At the time of the offence, the defendant was on a s 9 bond for resisting arrest and a s 10 bond for a 'never licensed' offence.</p> <p>Aggravating factor(s): Offence committed while the defendant was on conditional liberty; seriousness of the offence</p> <p>Mitigating factor(s): Dependency on alcohol; offender injured in commission of offence; need for assistance in rehabilitation; sentence will be served under harsher circumstances than other prisoners in that defendant will be on protection</p> <p>Sentence:</p> <ul style="list-style-type: none"> • aggravated indecent assault - 2 years imprisonment, NPP 12 months • fail to appear – 9 months imprisonment • breach of s 10 bond – no action • breach of s 9 bond – revoked, new 2-year bond imposed • malicious damage – 6 months imprisonment
42	RYAN, James Daniel <i>R v James Daniel RYAN</i>	24 Sep 2007	Batemans Bay Prosecutor: police sergeant	BONE	s 35(1)*old*	inflict gbh	<p>Charge(s): Maliciously inflict grievous bodily harm; common assault</p> <p>Facts: Without provocation or warning, the defendant took a hammer and began to hit his mother on the head, and continued to hit her until the head of the hammer came off because of the ferocity of the attack. The defendant threw the hammer handle at his father but it missed. The mother suffered cuts to her head, broken knuckles and bones to both hands, and extensive bruising and swelling to various parts of her body.</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Aggravating factor(s): Attack on mother (maliciously inflicting grievous bodily harm) at the top end of the range of seriousness of matters before the Local Court.</p> <p>Mitigating factor(s): Plea of guilty.</p> <p>Sentence: Concurrent sentences for maliciously inflict grievous bodily harm -- 2 years imprisonment, with NPP 18 months; and common assault -- 1 month imprisonment. 5-year AVO.</p>
43	<p>SULLIVAN, Ross</p> <p><i>R v Ross SULLIVAN</i></p>	27 Sep 2007	<p>Wee Waa</p> <p>Prosecutor: police sergeant</p>	MISZALSKI	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm</p> <p>Facts: Defendant continued to beat woman over the years.</p> <p>Sentence: 2 years imprisonment, minimum term of 18 months. Three-year AVO.</p>
44	<p>DEVENISH, Michael John</p> <p><i>Police v Michael John DEVENISH</i></p>	3 Oct 2007	<p>Wollongong</p> <p>Prosecutor: police sergeant</p>	MCROBERT	s 35(1)*old*	inflict gbh	<p>Charge(s): Break and enter (x2); drive conveyance without consent (x2); maliciously inflict grievous bodily harm</p> <p>Facts: Regarding the charge of maliciously inflict grievous bodily harm, the defendant and the victim exchanged punches, and the victim picked up a bar stool and struck the defendant over the head. The parties continued to hit each other over the head area and the defendant used a pair of scissors to strike the victim in the left chest area. The victim suffered relatively modest lacerations (requiring four sutures) and possibly fractured left ribs.</p> <p>At the time of sentence, the defendant was serving a sentence imposed by the District Court (NPP of 18 months and 18 months parole) for an offence that occurred before this incident.</p> <p>Aggravating factor(s): Extremely serious offences; previous record of offences of dishonesty; previously subject to good behaviour bonds.</p> <p>Mitigating factor(s): Plea of guilty for all charges; good candidate for rehabilitation.</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							Sentence: Maliciously inflict grievous bodily harm—2 years imprisonment, NPP 18 months; sentences for the remaining charges—concurrent sentence of 16 months imprisonment, with NPP 12 months. These sentences are to be served concurrently with the sentence imposed by the District Court, on the basis that the defendant was a good candidate for rehabilitation.
45	SAMUELS, Trevor <i>Police v Trevor SAMUELS</i>	19 Oct 2007	Parkes Prosecutor: police sergeant	MAIDEN	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm (x2); common assault; breach of s 9 bond</p> <p>Facts: <i>[Facts relating to the first occasion of the offence of assault occasioning actual bodily harm in May 2007 were not stated in the transcript.]</i></p> <p>In July 2007 a fight involving a lot of people, including the defendant, broke out in a hotel. The first victim, who was a co-owner of the hotel, touched the defendant on the back and asked him to stop fighting. The defendant turned and looked at the first victim and struck her using his closed fist. As a result she had three loose teeth, earaches for a period and blood from her gum (assault occasioning actual bodily harm). Later on, the defendant kicked the second victim and she went down to the ground (common assault).</p> <p>A short time later, the first victim went to attend to a person who was screaming in agony in a knee brace position. The defendant had been punching madly and accidentally struck the first victim again. The defendant tried to apologise to the first victim and said he had not meant to hit her.</p> <p>The defendant breached a s 9 bond when he approached the person who was benefiting by the order, but no violence was involved. <i>[The transcript did not show when this occurred.]</i></p> <p>Aggravating factor(s): Offences committed while on conditional liberty.</p> <p>Mitigating factor(s): Plea of guilty to common assault on date of hearing (minimal discount).</p> <p>Sentence: 2 years imprisonment, NPP 12 months.</p> <ul style="list-style-type: none"> • s 9 bond revoked, sentence of 7 days imprisonment from

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<ul style="list-style-type: none"> 22/9/2007 in lieu of the bond; assault occasioning actual bodily harm -- fixed term of 12 months imprisonment from 29/9/2007; assault occasioning actual bodily harm -- cumulative sentence of two years imprisonment, with NPP 12 months from 29/9/2008; and common assault -- fixed term of 6 months imprisonment from 29/9/2008.
46	LANZA, Jamie Daniel <i>R v Jamie Daniel LANZA</i>	22 Oct 2007	Bathurst Prosecutor: police sergeant	HODGSON	s 59(1)	-	Charge(s): Assault occasioning actual bodily harm Facts: The assault was a very serious domestic assault where the offender kicked, punched and bit the victim his then de facto partner she was pregnant. The offender claimed that he was too intoxicated to remember what he did. Aggravating factor(s): Bad record for matters involving violence and drugs. Mitigating factor(s): Guilty plea. Sentence: 2 years imprisonment, with NPP 18 months. 2-year ADVO.
47	OSMAN, Peter Vivian <i>R v Peter Vivian OSMAN</i>	24 Oct 2007	Campbelltown Prosecutor: police sergeant	STODDART	s 35(1) *old*	inflict gbh	Charge(s): Maliciously inflict grievous bodily harm Facts: There was an ongoing feud between the defendant and the victim. After an altercation with the defendant, the victim followed the defendant and threw unknown objects into the defendant's premises. The defendant went into the premises to grab a knife, and then struck the victim to the head with the knife causing him to fall on the ground. He then struck him seven more times before returning home. Injuries caused to the victim included partially severed nose, laceration to his left eye (no permanent loss of eyesight), permanent scarring, laceration to his chin extending to the bone; hand injury requiring physiotherapy. Aggravating factor(s): Objective seriousness of offence. Mitigating factor(s): Plea of guilty.

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							Sentence: 2 years imprisonment, with NPP 18 months.
48	WHITE, Tony Craig	31 Oct 2007	Albury Prosecutor: [not stated]	[not stated]	s 60(2)	-	<p>Charge(s): Assault police in the execution of duty occasioning actual bodily harm; assault occasioning actual bodily harm; fail to appear and other matters [not specified]</p> <p>Facts: Policemen attended a house to look for the defendant as there was a warrant for his arrest. The defendant closed his door on one of the policemen's hand, causing the officer lasting injuries.</p> <p>On another occasion, the defendant punched another person in the mouth causing the right side of her mouth to split and the inside of her mouth to bleed.</p> <p>Aggravating factor(s): Objective seriousness of offence; lengthy criminal history, including resisting officer in the execution of duty and custody of a knife in a public place, and escape.</p> <p>Sentence:</p> <ul style="list-style-type: none"> • Assault police in the execution of duty occasioning actual bodily harm - NPP 12 months, and 12 months parole; • assault occasioning actual bodily harm -- fixed term of 6 months imprisonment, subsumed in the other sentence; • fail to appear and other matters -- adjourned. <p>NB: Appealed to Wagga District Court – sentence for assault police in the execution of duty occasioning actual bodily harm varied to 18 months imprisonment, NPP 7 months.</p>
49	MAYAN, Elezebeth <i>Police v Elezebeth MAYAN</i>	21 Nov 2007	Burwood Prosecutor: police sergeant	BARKELL	s 35(1)*old*	inflict gbh	<p>Charge(s): Maliciously inflict grievous bodily harm; breach of recognisance; fail to appear (x2)</p> <p>Facts: The defendant, who suffered from a mental illness, was drunk and invited home by an elderly gentleman, who put it upon her to have sexual intercourse; she attacked him with a knife. The victim had a serious wound that required surgery.</p> <p>Aggravating factor(s): Seriousness of offence; breach of a bond for a</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							similar offence. Sentence: 2 years imprisonment, with NPP 12 months; parole subject to supervision including obeying all directions for psychiatric treatment.
50	PURAUTO, Manuel <i>Police v Manuel PURAUTO</i>	29 Nov 2007	Downing Centre Prosecutor: assumed police (from case name)	DILLON	s 35(1)*old*	inflict gbh	Charge(s): Maliciously inflicting grievous bodily harm Facts: The victim was an indentured employee of the defendant. He also lived in the defendant's house, as part of the employment contract was that the defendant would provide him with (or assist him in seeking) accommodation. While the victim was working at a construction site under the direction of the defendant, the defendant became angry with him for being too slow. The defendant grabbed the victim and struck him underneath the jaw using the flat of a hammer. The blow broke the victim's jaw and a number of his teeth. On a separate occasion, the defendant hit the victim on his broken jaw. Upon hospitalisation, the victim was found to be blind and to have a broken jaw. Evidence was admitted to show the defendant's history of violence, sustained abuse and deprivation inflicted on his employees. Aggravating factor(s): Gravity of the offence; very serious injury; use of weapon; deliberate and gratuitous cruelty; the defendant was in a position of authority (as he was both the de facto guardian and employer of the victim); the victim was unusually vulnerable due to his dependence on the defendant and his low intellect. Mitigating factor(s): No criminal record. Sentence: NPP 18 months, and 6 months parole.
51	KEARINES, Troy <i>R v Troy KEARINES</i>	30 Nov 2007	Liverpool Prosecutor: police sergeant	SHEPHERD	s 93C(1)	-	Charge(s): Affray; fail to appear (x5); assault; stalk/intimidate with intent to cause fear, physical or mental harm; possession of prohibited drug (x2) Facts: [Not in transcript] At the time of sentence, the defendant was serving a three and a half year prison term backdated to 16 August 2006. He has commenced giving evidence for the Crown in committal proceedings involving the manufacture and supply of a large commercial quantity of amphetamines.

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Mitigating factor(s): Assistance to law enforcement authorities; guilty plea.</p> <p>Sentence: All concurrent sentences on present sentence, for:</p> <ul style="list-style-type: none"> • affray – 24 months imprisonment, NPP 18 months; • assault – 8 months imprisonment, NPP 6 months; • intimidate – 12 months imprisonment, NPP 9 months; • fail to appear (x5) – 1 month imprisonment for each offence; and • possession of prohibited drug (x2) – 1 month imprisonment for each offence.
52	<p>TIGHE, Colin</p> <p><i>R v Colin TIGHE</i></p>	5 Dec 2007	<p>Tamworth</p> <p>Prosecutor: police sergeant</p>	SWAIN	s 35(1) *old*	inflict gbh	<p>Charge(s): Maliciously inflict grievous bodily harm; maliciously destroy or damage property; assault officer in execution of duty (x3); fail to appear; resist officer; behave in offensive manner in/near public place or school (x2)</p> <p>Facts: The defendant maliciously inflicted grievous bodily harm on one victim, assaulted three police officers, maliciously damaged another victim's wooden door. He also behaved offensively on a bus and outside the Imperial Hotel. Though pleading guilty, the sentencing had previously been postponed because the defendant had failed to appear and warrants had been issued for his arrest.</p> <p>Mitigating factor(s): Plea of guilty.</p> <p>Sentence: Concurrent sentences for:</p> <ul style="list-style-type: none"> • maliciously inflict grievous bodily harm – 2 years imprisonment, NPP 12 months; • malicious damage – 6 months imprisonment; • assault officer (x3) - concurrent 9 months imprisonment for each offence; and • resist officer – 6 months imprisonment. <p>In addition, the sentences for the following offences were cumulative upon the sentences above:</p> <ul style="list-style-type: none"> • fail to appear – 3 months imprisonment; and • behave in offensive manner (x2) – 2 months imprisonment for each offence (concurrent with fail to appear).

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
53	BRADLEY, Nathan <i>Police v Nathan BRADLEY;</i> <i>Police v Timothy COLES</i>	19 Dec 2007	Wyong Prosecutor: police sergeant	RAILTON	s 35(1)*old*	inflict gbh	<p>Charge(s): Maliciously inflict grievous bodily harm (Bradley); assault occasioning actual bodily harm (x2) (Coles)</p> <p>Facts: A couple (the victims) and their 16-year-old son were at home and heard the sound of window or glass breaking at about 1am. The wife came outside and saw three males (two of whom were the defendants). Bradley got very close to the wife's face and asked if she had called the police. He also called out to the husband to come down and fight. The husband came down in an aggressive manner and pushed Bradley first. A fight started between the three males and the victims. The husband was knocked to the ground, and was punched and kicked until he was unconscious. The defendants unsuccessfully raised self defence.</p> <p>Aggravating factor(s): Bradley was on bail at the time of the offence; very serious offence; and had a criminal record of continued use of violence.</p> <p>Sentence: Bradley (maliciously inflict grievous bodily harm) -- 18 months NPP, and additional 6 months on parole; AVO application by his mother granted for 4 years.</p>
54	OZKAN, Ayuan <i>Police v Ayuan OZKAN</i>	9 Jan 2008	Coffs Harbour Prosecutor: police sergeant	VAN ZUYLAN	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm</p> <p>Facts: The defendant and the 62-year-old victim were former partners and had been drinking together. The defendant asked to have sex with the victim which she refused. He kneeled on the bed and punched her twice to the side of her face, fracturing her eye socket which required an operation.</p> <p>Aggravating factor(s): Seriousness of offence; age of victim; 'appalling' injury; extremely poor record for violence and breaches of ADVOs.</p> <p>Mitigating factor(s): Mental health issues; on the disability pension; suffered from depression.</p> <p>Sentence: 2 years imprisonment; NPP 18 months. Three-year ADVO granted.</p>
55	MARIC, John	15 Jan 2008	Coffs Harbour	BAILEY	s 61M(2) *old*	-	<p>Charge(s): Indecent assault where victim under the age of 10 years (x2)</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
	<i>R v John MARIC</i>		Prosecutor: DPP				<p>Facts: The defendant committed the offences on the 8 year old child while in a relationship with the child's mother. The offences consisted of touching on the vagina. There was no charge of penetration.</p> <p>Aggravating factor(s): Seriousness of the crime; emotional harm caused by offence; offender abused position of trust; victim vulnerable due to age</p> <p>Mitigating factor(s): Offender unlikely to re-offend; plea of guilty; good character</p> <p>Sentence:</p> <ul style="list-style-type: none"> • (Sequences 2 – 4) - 2 years imprisonment, NPP 18 months • (Sequences 5 – 7) - 2 years imprisonment, NPP 6 months (cumulative)
56	AVERY, Andrew Anthony	22 January 2008	Grafton Prosecutor: police sergeant	POGSON	s 59(1)		<p>Charge(s): Assault occasioning actual bodily harm; breach of apprehended violence order</p> <p>Facts: The defendant attacked the female victim by striking her and pulling her hair. He then kicked her while she was on the ground, causing injury to her nose and face. This occurred while the defendant was on an AVO order restricting him from approaching the victim.</p> <p>Aggravating factor(s): Objective seriousness of offence; very violent offence; previous criminal history of violence; offence involved gratuitous cruelty</p> <p>Sentence: 2 years imprisonment with NPP of 18 months for assault ABH. 6 months fixed term imprisonment for breach of AVO served concurrently.</p>
57	JORDAN, Troy <i>R v Troy JORDAN</i>	6 Feb 2008	Cessnock Prosecutor: police sergeant	ELLIOTT	s 545AB(1) *repealed*	-	<p>Charge(s): Stalk; intimidate; assault; possess shortened firearm; possess ammunition; cultivate prohibited plant; possess unauthorised firearm; not keep firearm safely</p> <p>Aggravating factor(s): Possession of unlicensed firearm which has been shortened and disguised, and where insufficient precautions have been taken for its safety; seriousness of offence; intimidation; verbal abuse; threat to shoot; participation in the growing of cannabis; previous convictions for</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>possession of firearms.</p> <p>Sentence: Aggregate sentence of two years imprisonment, with NPP 15 months, comprising of:</p> <ul style="list-style-type: none"> • intimidation – NPP 15 months, 9 months parole; • assault – 9 months imprisonment; • possession of firearm – NPP 15 months; 9 months parole; • possession of ammunition without a licence – fined \$500 plus \$70 [court costs?]; • cultivation of cannabis – 6 months imprisonment; • not having an authorised license – 6 months imprisonment; • not having taken adequate precautions to ensure the safety of firearm – 6 months imprisonment; • driving with the illicit substance -- fined \$500 plus \$70 [court costs?]; 12-month disqualification.
58	<p>SCOTT, Richard Vincent</p> <p><i>R v Richard Vincent SCOTT</i></p>	6 Feb 2008	<p>Kempsey</p> <p>Prosecutor: police sergeant</p>	EVANS	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm; contravene prohibition/restriction in order</p> <p>Facts: In the early hours of the morning, the defendant, a 49 year old man, and the victim, the defendant's 21 year old wife were leaving a party and there was an argument, where the victim apparently stated an interest in other men. The defendant punched her once in the face with a closed fist. She attempted to run away but he chased her, grabbed hold of her hair and proceeded to punch her several more times to the face with a closed fist. She again tried to run away but he caught her, dragged her and again punched her. It is alleged he dragged her about 100–200 metres.</p> <p>The assault was in contravention of an order prohibiting his behaviour and seeking to protect her. The defendant and the victim have a child together.</p> <p>Mitigating factor(s): Plea of guilty.</p> <p>Sentence:</p> <ul style="list-style-type: none"> • Assault occasioning actual bodily harm – 2 years imprisonment, NPP 18 months; and • contravening order – 6 months imprisonment (concurrent).

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							5 year protection order for the victim under s 562 of the <i>Crimes Act 1900</i> (NSW).
59	GEERLIGS, Paul <i>R v Paul GEERLIGS</i>	13 Feb 2008	Bankstown Prosecutor: police sergeant	FALZON	s 33B(1)(a)	-	<p>Charge(s): Break and enter; driving whilst disqualified; possession of drugs; use of an offensive weapon to prevent lawful apprehension</p> <p>Facts: Two police officers were alerted to the possibility of someone breaking into a house, and chased after the defendant. The defendant swung a large metallic crowbar towards the head of one of the officers but missed. He refused to put down the crowbar at gunpoint and tried to escape in a car. The police officers attempted to stop him but did not succeed. One of the officers managed to take the crowbar from the defendant and started to hit the defendant with it but this did not deter the defendant. Eventually the car stopped because the key that was in the ignition snapped.</p> <p>The defendant had a history of substantial gaol terms, essentially for driving offences. His record showed numerous driving whilst disqualified offences, and he was disqualified for an extremely long period of time.</p> <p>Aggravating factor(s): Extremely serious offences.</p> <p>Sentence:</p> <ul style="list-style-type: none"> • Break and enter – 12 months imprisonment from 22/1/2008; • driving whilst disqualified – 18 months imprisonment from 22/1/2008, 2-year disqualification period; also declared a habitual offender – 5-year disqualification period; • possession of drugs – one month imprisonment (concurrent), drugs to be destroyed; • use of an offensive weapon to prevent lawful apprehension – 2 years imprisonment accumulative on Sequence 1 [from 22/1/2009, ie, end of sentence for break and enter], with NPP of 2 years.
60	MITCHELL, William John <i>Police v William John MITCHELL</i>	14 Feb 2008	Wagga Wagga Prosecutor: police sergeant	DARE	s 33B(1)(a)	-	<p>Charge(s): Contravention of apprehended domestic violence order (ADVO); maliciously damaging property; intimidating behaviour; using a weapon to prevent lawful detention; affray; assaulting officers in the execution of their duty; breach of good behaviour bonds (x3)</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Facts: The defendant, who was affected by alcohol, came to the victim's premises, in breach of an ADVO. The victim asked him to leave. Upon leaving, he approached a house where he banged on the door, smashed a window and smashed the front windscreen of a motor vehicle. Some two months after this incident, the defendant was residing in the victim's premises and was therefore in breach of the ADVO again. An interim ADVO was issued.</p> <p>Within a week of the issue of the interim ADVO, the defendant knocked on the victim's front door and asked to be let in. The victim refused. The defendant kicked and damaged the front door, and broke pieces of the front wooden fence, in breach of the interim ADVO. The victim was intimidated by the defendant's violent conduct.</p> <p>The next morning the police received a triple 0 call from the victim's premises. When police officers attended the premises, they heard the defendant yelling at the victim inside the premises. After the victim opened the front door to let the officers in, they saw him climb the rear fence and escape. The defendant returned to the premises shortly afterwards. The police again attended the premises, and as they were speaking to the victim, the defendant approached them brandishing two large kitchen knives. The defendant chased after the officers and threatened to stab them. He also yelled several times at the police to shoot him, and refused to put the knives down. An OC spray was used but it had little or no effect on the defendant. One of the officers drew his gun and shot the defendant in the arm. As the defendant was being taken to the hospital, he continued to be violent and aggressive towards the officers.</p> <p>Aggravating factor(s): History of violence; history of breaches of DVOs; objective seriousness of offence; offences were committed while on s 9 bonds.</p> <p>Mitigating factor(s): Plea of guilty; extra curial punishment for the shooting (but not of much weight).</p> <p>Sentence: Aggregate sentence of NPP 18 months and 12 months parole.</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							Interim ADVOs were made final orders for two years.
61	JAQUE, Lazarus <i>Police v Lazarus</i> <i>JAQUE</i>	27 Feb 2008	Wollongong Prosecutor: police sergeant	JOHNSON	s 93C(1)	-	<p>Charge(s): Common assault (x3); stalk/intimidate (x2); maliciously destroy or damage property; affray; assault occasioning actual bodily harm; possess unregistered unauthorised prohibited firearm in public place (x2); possess/use a prohibited weapon without permit (x2)—these offences also constituted breaches of four good behaviour bonds to which the defendant was subject at the time.</p> <p>Facts: The charges relate to five matters. On the first occasion, the defendant was a passenger in a car which was involved in a near collision with the victim's car. The defendant got out of the car carrying an axe and approached the victim's car. The defendant punched the victim in the face, kicked him in the stomach and swung the axe (but did not hit him with it). The defendant was on four good behaviour bonds at that time for three weeks. He was granted bail.</p> <p>On the second occasion, the defendant and a group of friends drove to The Farm at Dunmore to fire a sawn shotgun at a concrete wall. He was charged with possession of a prohibited weapon, and was again granted bail.</p> <p>On a different occasion, the defendant was on a train when he and a co-defendant punched the victim in the face repeatedly. The defendant was in a group of up to six people at the time and the group joined in the attack. The victim had cuts and abrasions to his face, legs, ribs and back, and his nose was bleeding. The defendant led the group out of the carriage to continue to pursue the victim when the train arrived at Unanderra station. The victim was knocked unconscious.</p> <p>On the fourth occasion, the defendant and his brother decided to try and force someone to pay for damage done to his brother's girlfriend's car. They forcefully placed a young man in a car, the defendant grabbed hold of the young man—around the neck at some stage—and they eventually went to the young man's parent's place at midnight making demands for payment.</p> <p>Finally, the defendant intimidated a woman from a former relationship. She had picked him up to take him to work. While in the car the defendant hit her</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>on the side of the head. Later on he took her phone and there was a struggle over the phone. He then tried to grab her keys and to get the phone again, spat at her and kicked the car. He pleaded not guilty to these matters but was found guilty. An AVO was granted for two years. Bail was refused.</p> <p>Aggravating factor(s): Extremely serious offences, some involving significant degree of violence; most of the offences were committed while the defendant was on bail. The defendant was also on four good behaviour bonds (imposed for resisting a police officer and intimidating police officers three times) at the time of the offences.</p> <p>Mitigating factor(s): Some remorse; rehabilitation is a significant factor (the defendant was 18–19 years old at the time of the offences);</p> <p>Sentence: All good behaviour bonds were revoked and concurrent sentences of 6 months imprisonment for breaches of the bonds. Sentences imposed partly cumulatively, totalling in NPP of 18 months and 12 months parole, comprising of:</p> <p><i>Road rage incident:</i></p> <ul style="list-style-type: none"> • assault occasioning actual bodily harm & possess/use a prohibited weapon without permit -- concurrent 6 months imprisonment from 5/9/2007; • possess unregistered unauthorised prohibited firearm in public place (x2) & possess/use a prohibited weapon without permit -- concurrent 6 months imprisonment from 5/9/2007 to 4/3/2008; <p><i>Demanding money for car damage incident:</i></p> <ul style="list-style-type: none"> • stalk/intimidate -- 6 months imprisonment from 5/3/2008 to 4/9/2008 (cumulative); <p><i>Incident involving former girlfriend:</i></p> <ul style="list-style-type: none"> • common assault (x2) -- concurrent 6 months imprisonment from 5/9/2008 to 4/3/2009; • maliciously destroy or damage property -- 1 month imprisonment from 5/3/2009 (cumulative); <p><i>Train incident:</i></p> <ul style="list-style-type: none"> • common assault -- 12 months imprisonment from 5/3/2008 to

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>4/3/2008;</p> <ul style="list-style-type: none"> • affray -- 2 years imprisonment from 5/3/2008 to 4/3/2010, NPP 12 months from 5/3/2008 to 4/3/2009. <p>Firearm and weapons to be forfeited and destroyed.</p>
62	<p>HAMID, Sam</p> <p><i>Police v Sam HAMID</i></p>	7 Mar 2008	<p>Burwood</p> <p>Prosecutor: police sergeant</p>	PIERCE	s 93G(1)(b)	-	<p>Charge(s): Possess loaded firearm in public place; fire firearm in or near public place; use unauthorised pistol</p> <p>Facts: Discharge of firearm at the tail-end of an altercation between two groups of males. The firearm was directed towards a fleeing white vehicle.</p> <p>Aggravating factor(s): Extremely serious offences; and terrible record that included violent offences (including a suspended sentence for assaulting an officer, fines for affray and intimidating a police officer, and convictions for assault and assault occasioning actual bodily harm).</p> <p>Mitigating factor(s): Employment; stable family life; reporting on bail daily.</p> <p>Sentence: Concurrent 2 years fixed term of imprisonment.</p> <p><i>[NB: This sentence was for Sequences 2 and 3 only; Sequence 1 was a back-up charge and was dismissed. However the transcript did not indicate which charge constitutes which sequence.]</i></p>
63	<p>BURGESS, Dean Clinton</p> <p><i>Police v Dean Clinton BURGESS</i></p>	17 Mar 2008	<p>Taree</p> <p>Prosecutor: police sergeant</p>	PEARCE	s 35(4)	-	<p>Charge(s): Recklessly wound any other person</p> <p>Facts: The victim gave the defendant \$50 for the purchase of marijuana; then changed his mind and asked for the money back, which the defendant refused. The defendant poured alcohol over the victim. The victim confronted the defendant by pushing and then throwing a punch towards the defendant. The defendant had an empty glass of beer in his hand and struck the victim with the glass. The defendant raised self defence.</p> <p>Aggravating factor(s): Serious offence; use of glass; public place. The defendant was on a bond for violence (resisting the police in the execution of their duty) at the time of the offence. Criminal record for possession of drugs.</p> <p>Mitigating factor(s): Not planned.</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							Sentence: NPP 18 months, 6 months parole; plus court costs and witness expenses.
64	HARRIS, Colin	25 March 2008	Broken Hill Prosecutor: DPP	PEARCE	S 59(1)		Charge(s): Assault occasioning actual bodily harm Facts: Defendant attacked female victim over a period of time. Serious injury was sustained. Aggravating factor(s): Objective seriousness of the offence; previous criminal history of violence; Mitigating factor(s): Plea of guilty; Sentence: 2 years imprisonment with NPP of 18 months. Apprehended domestic violence order.
65	DENNIS, John	1 April 2008	Broken Hill Prosecutor: police sergeant	PEARCE	s 59(1)		Charge(s): Assault occasioning actual bodily harm Facts: The defendant attacked the victim and proceeded to kick her while she was on the ground. He was wearing steel-capped boots at the time. He then ripped the home phone from the wall so that the victim could not call for help. Aggravating factor(s): Objective seriousness of the offence; previous criminal history of violence; offence committed in the home of the victim Mitigating factor(s): Plea of guilty Sentence: 2 years imprisonment with NPP of 18 months. Offence recorded as a domestic violence offence. <i>[NB: this does not appear to be the official order. The defendant seems to have already been sentenced by a previous magistrate at 12 February. The current magistrate appears to have made a mistake in making a final order.]</i>
66	DAVIS, Gordon <i>R v Gordon</i>	8 Apr 2008	Kempsey Prosecutor:	EVANS	s 59(1)	-	Charge(s): Assault occasioning actual bodily harm (x4); enter inclosed lands without lawful excuse (not prescribed premises)

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
	DAVIS		police sergeant				<p>Facts: On one occasion, the defendant went to the home of his son and his former partner, refused to leave when asked and assaulted them both when the son tried to take the brunt of the defendant's assault to allow the mother to flee. On another occasion the defendant assaulted his former partner at another location.</p> <p>Mitigating factor(s): Plea of guilty; remorse; prospects of rehabilitation</p> <p>Sentence:</p> <ul style="list-style-type: none"> assault occasioning actual bodily harm (x4) – for each occasion, 2 years imprisonment, with NPP 14 months—to be served concurrently; and unlawful entry - \$100 fine.
67	<p>NICHOLSON aka NICHALSON, Paul</p> <p><i>R v Paul NICHOLSON aka NICHALSON</i></p>	10 Apr 2008	<p>Penrith</p> <p>Prosecutor: police sergeant</p>	CLISDELL	s 58	officer on duty	<p>Charge(s): Assault officer; resist officer; malicious damage (x3); fail to appear; drive whilst disqualified (x2); mid range PCA; exceed speed > 15km/h < 30 km/h</p> <p>Facts: The defendant assaulted, and resisted arrest by, a police constable; maliciously damaged two police vehicles and a prisoner-holding dock; drove whilst disqualified; drove while affected by alcohol; and exceeded the speed limit.</p> <p>Aggravating factor(s): Eleven previous convictions for drive whilst disqualified.</p> <p>Sentence: Concurrent sentences for:</p> <ul style="list-style-type: none"> assaulting police – 2 years imprisonment, NPP 18 months; resisting police – 2 years imprisonment, NPP 18 months; maliciously damage (x3) – 12 months imprisonment for each offence; failing to appear – 12 months imprisonment; driving whilst disqualified (x2) – 2 years imprisonment, NPP 18 months for each offence; mid range PCA – 12 months imprisonment; aggregate disqualification period of 5 years; exceeding speed limit - convicted but no penalty.

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
68	HARRIS, Rick Douglas <i>R v Rick Douglas HARRIS</i>	21 Apr 2008	Bathurst Prosecutor: [not stated]	HODGSON	s 35(4)	-	Charge(s): Recklessly wound any other person Facts: The victim was stabbed once from behind with a hunting knife and received a 1.5 cm stab wound to the posterior left chest wall. Aggravating factor(s): Serious offence; record for malicious wounding as a juvenile and assaulting police as an adult. Mitigating factor(s): Plea of guilty; prospects for rehabilitation. Sentence: NPP 12 months, and 12 months parole.
69	AHMED, Adnan	23 April 2008	Downing Centre Prosecutor: police sergeant	BRADD	s 35(1)*old*	inflict gbh	Charge(s): Assault occasioning grievous bodily harm Facts: The defendant was a security guard who had a confrontation with the victim who was a patron where the defendant worked. The defendant and two friends followed the victim down the road with intent to assault him. One of the friends was carrying a block of wood wielded as a weapon. The victim was attacked by the three men and in the course of the attack the defendant stomped on the head of the victim causing serious injury. Aggravating factor(s): Objective seriousness of offence; offence committed in company; offence was a planned activity Mitigating factor(s): No prior criminal record Sentence: 2 years imprisonment with NPP of 12 months.
70	TUNSTALL, Peter David <i>Police v Peter David TUNSTALL</i>	12 May 2008	Wyong Prosecutor: police sergeant	VINEY	s 59(1)	-	Charge(s): Assault occasioning actual bodily harm; mid-range PCA; ADVO Facts: The defendant and the victim had been in a relationship for 12 years and had five children together. The victim had three children from a previous relationship. On the first occasion, the victim was asleep when the defendant kicked her in the back and the hip area about four times, and the victim sustained bruising to the back and side. The second incident involved the defendant heaving a pole above his head and striking the victim on the thigh three times, causing bruising and a cut to her skin. On the third occasion, the victim woke the defendant up by tapping him on his shoulder. He jumped up

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							and pushed her causing her to fall against a wardrobe. After she pushed him back and he fell to the ground, he got up and head butted the victim in the nose, which broke her nose. Sentence: 2 years imprisonment, with NPP 18 months. 5-year ADVO.
71	WOODBURY, Anthony <i>R v Anthony WOODBURY</i>	27 May 2008	Tamworth Prosecutor: police sergeant	SWAIN	s 59(1)	-	Charge(s): Assault occasioning actual bodily harm (x4); fail to appear Facts: The defendant embarked on a series of unprovoked attacks on people at various times, influenced by alcohol. On the first occasion, the defendant thought he had been threatened and took action. On the second occasion, the defendant reacted to the complainant insulting his girlfriend and assaulted the complainant. The last set of incidents involved the defendant taking pre-emptive action against people who he thought were associated with a Rebel bikie gang but were actually not involved with the gang. Sentence: Aggregate sentence of 2 years imprisonment, with NPP 8 months—comprising of: <ul style="list-style-type: none"> • first offences (x2) – for each matter, NPP 6 months and 6 months parole; • second offence -- 18 months imprisonment, with NPP 7 months; • third offence -- 2 years imprisonment, with NPP 8 months; • fail to appear - fixed term of 6 months imprisonment.
72	ALAMEDDINE, Phiris & EL HADAD, Mohammed <i>Police v Phiris ALAMEDDINE;</i> <i>Police v Mohammed EL HADAD</i>	26 Jun 2008	Downing Centre Prosecutor: police sergeant	BRADD	s 35(1)*old*	wound	Charge(s): Both parties charged with affray; Mr Alameddine charged with malicious wounding Facts: The defendants and the victims (Mr El Attri and Ms Tahal) were at an RSL club. An argument developed between El Hadad and El Attri. The defendants threw glasses and other items towards El Attri and attacked El Attri. El Attri was hit in the stomach with a glass and blood was visible through his clothing. When Tahal approached the group and touched Alameddine's wrist, he turned and shoved the broken glass he was holding to her face, causing severe damage to her upper lip area. Aggravating factor(s): In relation to the malicious wounding charge

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>(Alameddine)—seriousness of offence; severe damage to one of the victim's upper lip area using a broken glass.</p> <p>Sentence:</p> <ul style="list-style-type: none"> - Mr El Hadad - full term of 8 months imprisonment, with NPP 6 months. - Mr Alameddine: <ul style="list-style-type: none"> • affray -- 9 months • malicious wounding -- full term of 24 months imprisonment, with NPP 18 months.
73	<p>TEKANI, Kiri</p> <p><i>Police v Kiri TEKANI</i></p>	27 Jun 2008	<p>Burwood</p> <p>Prosecutor: police sergeant</p>	BARKELL	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm (x2); common assault; assault breach of an apprehended domestic violence order (ADVO); breach of s 12 bond</p> <p>Aggravating factor(s): Plea of guilty for 2 matters (although at a rather late stage); offences were committed while on a s 12 bond for a similar offence on the same victim.</p> <p>Sentence:</p> <ul style="list-style-type: none"> • breach of s 12 bond -- 6 months imprisonment from 31/3/2008; • assault occasioning actual bodily harm -- 8 months imprisonment from 21/10/2007; • common assault -- 6 months imprisonment from 21/6/2008; • assault occasioning actual bodily harm and breach of ADVO -- 2 years imprisonment, with NPP 12 months from 22/10/2008.
74	<p>SHAIGETZ, Jason</p> <p><i>Police v Jason SHAIGETZ</i></p>	1 Jul 2008	<p>Wollongong</p> <p>Prosecutor: assumed police (from case name)</p>	GUY	s 35(2)	-	<p>Charge(s): Common assault; assault occasioning actual bodily harm; recklessly causing grievous bodily harm</p> <p>Facts: The defendant was in a relationship with the victim. On the first occasion the defendant returned home in a heavily intoxicated state. They had an argument and there was a tug of war in relation to the victim's bag, which she eventually let go of. The defendant pushed the victim against the wall striking the back of her head.</p> <p>On a different occasion, the defendant punched the victim to the head, arms,</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>ribs and face at her home for over an hour. She suffered bruises, haematomas on the face, as well as fractures to her eye socket which required surgery.</p> <p>Aggravating factor(s): Serious assault; significant injury sustained by the victim; the defendant was on a bond at the time of the offence;</p> <p>Aggravating factor(s): Seriousness of crime.</p> <p>Sentence: Common assault -- fixed term of 4 months; recklessly inflict grievous bodily harm – NPP 18 months, with additional term of 6 months. The charge of assault occasioning actual bodily harm was withdrawn.</p>
75	<p>HINES, Allan</p> <p><i>R v Allan HINES</i></p>	7 Jul 2008	<p>Dubbo</p> <p>Prosecutor: police prosecutor</p>	HAMILTON	s 35(4)	-	<p>Charge(s): Breach of good behaviour bond; recklessly wounding</p> <p>Facts: Six months after being placed on a good behaviour bond for contravening an ADVO protecting the victim, the defendant had an argument with the victim, who indicated she wished to leave where the defendant was and go back into town. The defendant punched the victim in the chest. A family member intervened, allowing the victim to escape some distance. The defendant followed the victim (who was accompanied by a family member) and he called out to her to return. Upon reaching the victim, the defendant held onto her and struck her across the face a stick causing a laceration across her face, then struck her across the back.</p> <p>The victim is someone who is unable to hear and unable to speak.</p> <p>Aggravating factor(s): Offence committed while on conditional liberty; objective seriousness of offence; lengthy history of domestic violence</p> <p>Sentence: Aggregate term of imprisonment of 2 years and 3 months, comprising:</p> <ul style="list-style-type: none"> • Breach of good behaviour bond – bond revoked, 3 months imprisonment; and • Recklessly wound (recorded as domestic violence offence) – 2 years imprisonment, NPP 18 months—cumulative on the sentence for breach of bond.

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							5-year ADVO granted.
76	POTGER, Gordon Wade <i>R v Gordon Wade</i> <i>POTGER</i>	11 Jul 2008	Blacktown Prosecutor: [not stated]	MISZALSKI	s 195(1)(a)	up to \$2000	Charge(s): Common assault; breach of bond Facts: The defendant and the victim were in a relationship that had broken down at the time of the offences. The assault occurred in breach of a bond. Sentence: 12 month sentence, with NPP 4 months. Domestic violence order for 2 years.
77	STONEMAN, Lee Phillip <i>Police v Lee Phillip</i> <i>STONEMAN</i>	23 Jul 2008	Wollongong Prosecutor: police sergeant	JOHNSON	s 35(4)	-	Charge(s): Reckless wounding Facts: The victim and his partner were walking home after a night out. For some reason the defendant threw some punches at the victim that missed. The victim tackled the defendant to the ground, held him down by the throat for a few seconds and told the defendant he did not want to fight. The victim stood up and backed away, but the defendant pulled out a knife and chased the victim. In the process of tackling the defendant again, the victim fell to the ground and was stabbed by the defendant. The victim had cuts to the back of the neck and arm/elbow requiring stitches. The defendant had consumed a lot of alcohol at the time. He pleaded not guilty and raised the issue of self defence. Aggravating factor(s): Objectively serious offence; use of a weapon in a public place; injuries inflicted. Mitigating factor(s): No history of violence charges. Sentence: NPP 18 months imprisonment, 6 months parole.
78	MEDLYN, David Matthew <i>Police v David Matthew</i> <i>MEDLYN</i>	31 Jul 2008	Wollongong Prosecutor: police sergeant	JOHNSON	s 61M(1) *old*	-	Charge(s): Aggravated indecent assault (x7)—the defendant pleaded guilty to 3 of the charges, the rest of the charges were withdrawn Facts: While in a wave pool at Jamberoo Recreation Park the defendant touched three girls on the bottom. The first victim (aged 11) was touched once; the second victim (aged 14) was touched twice over a significant period of time, up to perhaps 10 minutes; the third victim (aged 12) was touched on three separate occasions, as the defendant followed her to different parts of the pool.

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Aggravating factor(s): Prior convictions for similar matters.</p> <p>Mitigating factor(s): Plea of guilty to three of the charges a day or two before the hearing.</p> <p>Sentence: Aggregate sentence of 2 years imprisonment (NPP 18 months, and 6 months parole), comprising of:</p> <ul style="list-style-type: none"> • offence against first victim -- 6 months imprisonment; • offence against second victim -- 9 months imprisonment; • offence against third victim -- NPP 18 months, and parole of 6 months.
79	<p>WALMSLEY, Josh</p> <p><i>Director of Public Prosecutions v Josh WALMSLEY</i></p>	13 Aug 2008	<p>Cobar</p> <p>Prosecutor: DPP</p>	MAIDEN	s 35(3)	-	<p>Charge(s): Recklessly wound other whilst in company</p> <p>Facts: The victim and the two offenders were in company with each other, when the victim sought to obtain a lift home from one of the offenders. The victim left the premises that the three were in and got into a motor vehicle with a female, who was asleep. The female woke up and for some reason screamed out or called out. The two offenders came out and proceeded to attack the victim. The victim suffered a fractured nose, suspected orbital fracture, multiple lacerations to his face and scalp, three chipped teeth and a ruptured ligament to his knee.</p> <p>Aggravating factor(s): Offences committed in breach of two s 9 bonds; seriousness of offences; gratuitous violence; criminal record contain matters for violence.</p> <p>Mitigating factor(s): Plea of guilty.</p> <p>Sentence:</p> <ul style="list-style-type: none"> • Breach of s 9 bonds -- bonds revoked; concurrent sentences of 3 years imprisonment; • recklessly wound other whilst in company -- 2 years imprisonment, with NPP 18 months.
80	TAYLOR, Cheryl	18 August 2008	Dubbo	HAMILTON	s 99(1)	-	Charge(s): Steal from the person; driving matters

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
	<i>R v Cheryl TAYLOR</i>		Prosecutor: police sergeant				<p>Facts: The defendant telephoned the victim, an elderly 79 year old man, causing him to go to the defendant's home.</p> <p>The defendant also committed certain offences relating to the use of a motorcycle on 9 April 2008.</p> <p>Aggravating factor(s): Elderly victim; offender clearly took advantage of the victim; offender breached ongoing relationship of trust with the victim; premeditation.</p> <p>Mitigating factor(s): Plea of guilty.</p> <p>Sentence:</p> <ul style="list-style-type: none"> • Steal from person – 2 years imprisonment, NPP 18 months; and • offences relating to the use of a motorcycle - \$150 for each matter plus court costs. <p>12-month ADVO.</p>
81	<p>MUMFORD, Benjamin</p> <p><i>Director of Public Prosecution v Benjamin MUMFORD</i></p>	29 Aug 2008	<p>Campbelltown</p> <p>Prosecutor: assumed DPP (from case name)</p>	STODDART	s 35(1)*old*	inflict gbh	<p>Charge(s): Maliciously inflict grievous bodily harm; common assault; breach of AVO; fail to attend court</p> <p>Facts: The offender was having a disagreement with the first victim, and they were pushing and shoving each other. The offender swing a bottle at the first victim, who ducked. The bottle struck the second victim (the first victim's wife), causing her to sustain very serious injury, including the loss of the sight of one eye.</p> <p>Three days before the offences, the offender was placed on a good behaviour bond for malicious damage and intimidation. When the offender was charged with the offences, he denied committing them and left for Queensland without attending court. He was expedited back to NSW over two years later.</p> <p>Aggravating factor(s): Use of weapon; offences committed while on a good behaviour bond; criminal record included breaches of AVO; offender absconded on bail.</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Mitigating factor(s): Guilty pleas (at a late stage).</p> <p>Sentence: Maliciously inflict grievous bodily harm - 2 years imprisonment, with NPP 18 months—to be cumulated with concurrent sentences for:</p> <ul style="list-style-type: none"> • common assault and fail to appear - 4 months imprisonment; and • breach of AVO - 1 month imprisonment. <p>Magistrate declined to take no action on the breach of the s 9 bonds.</p>
82	<p>GARDNER, Scott Timothy</p> <p><i>R v Scott Timothy GARDNER</i></p>	12 Sep 2008	<p>Campbelltown</p> <p>Prosecutor: police sergeant</p>	GOODWIN	s 33B(1)(a)	-	<p>Charge(s): Goods suspected stolen (x4); provide false misleading information to licensee (x4); conveyance taken without consent of owner; use offensive weapon to prevent lawful detention (x2); disobey request/signal to stop for breath test; drive vehicle recklessly/furiously or at a speed or in a manner dangerous; negligent driving [charge not proceeded with]; possess car breaking implements; goods in personal custody suspected of being stolen (x2); unlicensed driver</p> <p>Facts: Whilst driving a stolen car, the defendant drove at police officers, who moved aside and were not hit. Later on, whilst speeding the defendant did a three point turn and was spotted by another police officer, whom the defendant tried to ram. When the officer reversed, the defendant did another u-turn, accelerated and drove directly at the police car and rammed it. The police car was disabled and the officer was injured in the back and legs requiring hospital treatment. The defendant had some stolen property in the car. He had sold goods to the pawnbrokers that were not his.</p> <p>Aggravating factor(s): The defendant was on parole at the time of the offences.</p> <p>Mitigating factor(s): Plea of guilty (after pleading not guilty a number of times previously);</p> <p>Sentence: Aggregate sentence of 3 years imprisonment, with NPP 27 months—comprising of:</p> <ul style="list-style-type: none"> • goods in personal custody suspected of being stolen (x2), and goods suspected stolen (x4) -- fixed term of 6 months

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<ul style="list-style-type: none"> imprisonment; provide false misleading information to licensee (x4) -- conviction but no penalty; possess car breaking implements -- fixed term of 6 months imprisonment; disobey request/signal to stop for breath test -- conviction but no penalty; conveyance taken without consent of owner -- fixed term of 2 years; drive vehicle recklessly/furiously or at a speed or in a manner dangerous -- 2 years from 11/5/2008; use offensive weapon to prevent lawful detention (x2) -- 3 years imprisonment, with NPP 27 months, partially cumulative on the other sentences; unlicensed driver -- fixed term of 6 months, automatic 3-year disqualification.
83	JONES, Douglas	12 September 2008	Broken Hill Prosecutor: police sergeant	TOWNSDEN	s 35(4)		<p>Charge(s): Assault occasioning actual bodily harm; reckless wounding</p> <p>Facts: The defendant struck the victim with punches causing harm to his head. The defendant then stabbed the victim with a knife in the shoulder and neck from behind after a verbal confrontation causing serious injury.</p> <p>Aggravating factor(s): Very violent offence; objective seriousness of offence; previous criminal history of violence;</p> <p>Sentence: Concurrent sentences for</p> <ul style="list-style-type: none"> Assault occasioning actual bodily harm – 9 months Reckless wounding – 2 years imprisonment with NPP of 12 months.
84	BARR, Glen Douglas <i>R v Glen Douglas BARR</i>	15 Sep 2008	Blacktown Prosecutor: police sergeant	SWAIN	s 59(1)	-	<p>Charge(s): Assaulting occasioning actual bodily harm; breach of s 9 bond. [Breach of s 12 bond imposed by the District Court to be dealt with by that Court.]</p> <p>Facts: The defendant had been the victim's flat mate for about 3 weeks. They argued and the defendant pushed over the victim's TV and DVD, then punched the victim 6 or 7 times, tried to strangle her twice, and kicked her to</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>the arm. The victim suffered a bruised and swollen eye, a cut to her eyebrow and a fractured arm.</p> <p>Aggravating factor(s): At the time of the assault, defendant was on a s 9 bond, as well as a s 12 bond imposed by the District Court—both for violent offences.</p> <p>Sentence: Breach of s 9 bond -- fixed term of 4 months imprisonment; assault occasioning actual bodily harm -- total sentence of 2 years, with NPP of 12 months. Sentences to be served concurrently.</p>
85	<p>KENNEDY, Mark William</p> <p><i>Police v Mark William KENNEDY</i></p>	19 Sep 2008	<p>Blacktown</p> <p>Prosecutor: police</p>	BROWN	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm</p> <p>Facts: The defendant used a Samurai sword to cause two large gashes to the victim, who was the defendant's de facto factor at some stage.</p> <p>Aggravating factor(s): Violent attack; extremely poor history of violence, including a number of custodial terms, and recent breach of an AVO; use of weapon.</p> <p>Sentence: Fixed term of 2 years imprisonment.</p>
86	<p>GREATZ, Andrew</p> <p><i>R v Andrew GREATZ</i></p>	22 September 2008	<p>Dubbo</p> <p>Prosecutor: [not stated]</p>	HAMILTON	S33B		<p>Charge(s): Threatened to use an offensive weapon with intent to prevent lawful apprehension; driving whilst there was present in his blood the PCA; driving unregistered vehicle; driving while uninsured; fail to comply with police direction to stop; vehicle displaying unauthorised number plate</p> <p>Facts: When the police tried to pull over the defendant, the defendant motioned he was going to light the LPG gas bottle. During negotiations with police, the defendant continually flicked a cigarette lighter and informed police that he intended to ignite the vehicle and the police if they came any closer. A detective managed to seize the keys from the defendant's vehicle and wrestle with the defendant. During this time, the defendant managed to turn on the gas bottle and continued to flick the cigarette lighter towards the gas. The gas bottle was seized and removed by a second officer, preventing the defendant's attempts to hold the lighter to the escaping gas. His blood alcohol content was 1.36 [sic].</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Aggravating factor(s): Prior convictions including driving with a PCA and contravening AVOs; conduct demonstrated that he understood the danger to the police.</p> <p>Mitigating factor(s): Early plea of guilty (although not at the first opportunity).</p> <p>Sentence:</p> <ul style="list-style-type: none"> • Threatened to use an offensive weapon with intent to prevent lawful apprehension - 2 years imprisonment, with NPP 18 months; • driving with the PCA - 3-year s 9 bond; 2-year driving disqualification; and • driving unregistered vehicle; driving while uninsured; fail to comply with police direction to stop; and vehicle displaying unauthorised number plate - s 10A (ie, conviction but no penalty).
87	<p>BUGG, David Andrew</p> <p><i>Police v David Andrew BUGG</i></p>	30 Sep 2008	<p>Campbelltown</p> <p>Prosecutor: police sergeant</p>	PEARCE	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm (x2)</p> <p>Facts: The offender, who was affected by alcohol at the time, argued with his partner, who asked him to leave. The offender's daughter took him away from the scene. While they were in the car, the offender struck his daughter to the face several times and pulled her hair, causing serious injury to her eye, a cut to her ear and bleeding. They arrived at her home, and the offender started to punch his daughter's partner to the face with no provocation at all. There was a melee involving the offender's partner, possibly his partner's two teenage children and perhaps others, resulting in injuries to the offender—including bruising, scratch marks, and marks to his buttocks, arms and face.</p> <p>Aggravating factor(s): Previous convictions for breaches of DVOs and prison terms for serious violent matters; serious offences (especially when the offender and his daughter were in a confined space in the car, while she was driving).</p> <p>Mitigating factor(s):</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Sentence: Cumulative sentences for:</p> <ul style="list-style-type: none"> assault on daughter's partner - 6 months imprisonment; and assault on daughter - 2 years imprisonment, with NPP 6 months. <p>3-year DVOs.</p>
88	<p>STYLES, Deon</p> <p><i>R v Deon STYLES</i></p>	20 Oct 2008	<p>Port Macquarie</p> <p>Prosecutor: police sergeant</p>	EVANS	s 60(2)	-	<p>Charge(s): Assault officer occasioning actual bodily harm; intimidation; act in a manner offensive; damage property; trespass; assault officer; resist arrest</p> <p>Facts: Police went to the premises as a result of an emergency call made by the defendant's mother. When the police arrived he assaulted one of them causing actual bodily harm.</p> <p>[The rest of the facts not detailed in transcript]</p> <p>Aggravating factor(s): Criminal record include alcohol-related offences, drug-related offences and matters of violence</p> <p>Mitigating factor(s): Plea of guilty</p> <p>Sentence: Concurrent sentences for:</p> <ul style="list-style-type: none"> assault of police officer – 2 years imprisonment, NPP 14 months; intimidate – 4 months imprisonment; damage property – 1 month imprisonment; offensive behaviour – 1 month imprisonment; Trespass - \$400 plus court costs; assault officer – 12 months imprisonment, NPP 9 months; and resist arrest – 3 months imprisonment.
89	<p>FECKNER, Sean</p> <p><i>R v Sean FECKNER</i></p>	24 Oct 2008	<p>Port Macquarie</p> <p>Prosecutor: police sergeant</p>	EVANS	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm (x2); common assault (x2); damage to property; resisting arrest; possession/use of weapon; breach of s 12 bond; contravention of order (x3); breach of bail;</p> <p>Facts: The defendant and the victim were in a domestic relationship. The defendant was prohibited by an earlier court order to visit the premises of the</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>victim. At 4am on the day of the offence, the defendant visited the premises, claiming he wanted to check on the kids. At the time he was affected by intoxicating liquor and/or illicit substances. He punched the victim with his fist on two occasions, and also grabbed and squeezed her around the throat.</p> <p>Aggravating factor(s): Record of previous convictions.</p> <p>Sentence: For the breach of s 12 bond - bond revoked; 6 months imprisonment from 24/10/2009 to 23/4/2009. The following sentences all commenced on the date of sentence (24/10/2008):</p> <ul style="list-style-type: none"> • contravention of order - 6 months imprisonment; • resisting arrest - 4 months imprisonment; • possession/use of weapon (screwdriver) - 4 months imprisonment; • assault occasioning actual bodily harm (1st) – 2 years imprisonment, with NPP 12 months; • contravention of order – 12 months imprisonment, with NPP 9 months • breach of bail - no further action; • damage to the property – 3 months imprisonment; • assault occasioning actual bodily harm (2nd) – 2 years imprisonment, with NPP 18 months; • assault – 6 months imprisonment; and • contravention of order - 12 months imprisonment, with NPP 9 months. <p>The sentence for a further assault charge was 12 months imprisonment (with NPP 9 months), to commence at the end of the 12 months' NPP for the first assault occasioning actual bodily harm above.</p>
90	<p>OLIVER, Benjamin</p> <p><i>R v Benjamin OLIVER</i></p>	13 Nov 2008	<p>Blacktown</p> <p>Prosecutor: police sergeant</p>	OLIVER	s 545AB(1) *repealed*	-	<p>Charge(s): Common assault (x2); intimidation; take and drive; shoplifting (x2); possession of implement capable of entering a conveyance; goods in custody</p> <p>Facts: The defendant had assaulted the victim, his mother, on a number of occasions. On one occasion, the defendant had assaulted the victim, and taken her car after there was a struggle for it. On a separate occasion the defendant and victim had a scuffle where the victim ended up on the ground</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>before the defendant took the victim's car keys and car. On yet another occasion, the defendant had yelled at the victim and threw the phone on the floor, intimidating the victim to the extent that she hid the kitchen knives.</p> <p>Prior to the assault on the victim, the defendant had committed other offences—namely, shoplifting (x2), possession of implement capable of entering a conveyance, and goods in custody (a Rip Curl watch worth \$300).</p> <p>Aggravating factor(s): Lengthy criminal record.</p> <p>Mitigating factor(s): Plea of guilty; offences against the defendant's mother occurred within a 24-hour period.</p> <p>Sentence: Concurrent or partly concurrent sentences for:</p> <ul style="list-style-type: none"> • shoplifting (x2) – concurrent 4 months imprisonment for each matter from 3/12/2007; • possession of an implement (screwdriver) capable of entering a conveyance – 3 months imprisonment from 3/12/2007 (to be served concurrently with the shoplifting matters); and • goods in custody - 4 months imprisonment from 3/1/2008. <p>In addition, the following concurrent sentences for offences involving the defendant's mother were imposed, all commencing on 3/2/2008:</p> <ul style="list-style-type: none"> • assault (first offence) – 2 years imprisonment, NPP 12 months; • assault (scuffle that occurred before the defendant took the car keys and car) – 8 months imprisonment; • take and drive – 2 years imprisonment, NPP 12 months; and • intimidation – 2 years imprisonment, NPP 12 months.
91	HA, Phu <i>R v Phu HA</i>	19 Nov 2008	Campbelltown Prosecutor: police sergeant	MCROBERT	S 7(1)	use pistol	<p>Charge(s):</p> <ul style="list-style-type: none"> • possession of prohibited weapon without permit under s 7 <i>Weapons Prohibition Act</i> (max 2 years) • using a firearm whilst under the influence of alcohol or drugs under s 64 <i>Firearms Act</i> (max 5 years) • use of an unauthorised pistol under s 7 <i>Firearms Act</i> (max 14 years)

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<ul style="list-style-type: none"> • aggravated possession of an unregistered firearm in a public place without authority to possess the firearm under s 93I <i>Crimes Act</i> (max 10 years) • possession of a loaded firearm endangering life in non public place under s 93G <i>Crimes Act</i> (max 10 years) <p>Facts: The defendant attended a 21st birthday party of an occupant at the premises. He drove there in a motor vehicle. During the night he consumed and became severely affected by alcohol. He became aggravated by another male, speaking to him in a derogatory manner about having gang connections. The defendant's girlfriend tried to calm him down but he took the car keys and drove away. He returned, stopping the car in the middle of the road and had an argument with his girlfriend. Someone had locked the back gate of the premises against his entry and on discovering this, the defendant produced a 32 calibre semi automatic pistol and fired at least 2 bullets in the direction of the fence in the presence of about 20 people in the backyard. Police arrived and the defendant tried to hide the prohibited pistol under the car. The firearm was a self-loading pistol (and thus prohibited) and had no serial number, make or model on it.</p> <p>The defendant is the carer of his mother who was suffering from significant illnesses; no suggestion that another person would be available to provide care.</p> <p>Aggravating factor(s): Objective seriousness of the offence; criminal history included serious offences.</p> <p>Mitigating factor(s): No prior record of firearm offences; guilty plea.</p> <p>Sentence: Aggregate term of imprisonment of 2 years, with NPP 18 months, comprising of concurrent sentences as follows:</p> <ul style="list-style-type: none"> • use of an unauthorised pistol – 2 years imprisonment, NPP 18 months; • aggravated possession of an unregistered firearm in a public place without authority to possess the firearm – 2 years imprisonment, NPP 18 months;

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<ul style="list-style-type: none"> • possession of a loaded firearm endangering life in non public place - 2 years imprisonment, NPP 18 months; • possession of prohibited weapon without permit – 1 year imprisonment; and • using a firearm whilst under the influence of alcohol or drugs – 1 year imprisonment.
92	MATAROA, Bullwark <i>R v Bullwark MATAROA</i>	26 Nov 2008	Campbelltown Prosecutor: police sergeant	MCROBERT	s 154C(1)	assault	<p>Charge(s): Assault with intent to take/drive motor vehicle; shoplifting; common assault (x2)</p> <p>Facts: The offences occurred while the defendant was stealing property. He assaulted people in the course of that and committed the offence of car jacking during the course of his escape.</p> <p>Aggravating factor(s): Extensive criminal record; objective seriousness of offence; offence committed while on conditional liberty</p> <p>Sentence: Concurrent sentences for:</p> <ul style="list-style-type: none"> • assault with intent to take/drive motor vehicle – 2 years imprisonment; and • shoplifting and common assault (x2) – concurrent 6 months imprisonment for each offence..
93	TOWNE, Lee James <i>R v Lee James TOWNE</i>	27 November 2008	Campbelltown Prosecutor: police sergeant	STODDART	s 35(4)	-	<p>Charge(s): Recklessly wound</p> <p>Facts: The defendant and the victim were friends, and they had a number of arguments and disagreements from time to time. The defendant stabbed the victim in the side. He pleaded not guilty, claiming his action was in self-defence, as a result of an argument with the victim.</p> <p>The victim had memory difficulties as a result of a motor vehicle accident three years ago, and could not give reliable evidence. The prosecution's case, based on the evidence of the victim's then-girlfriend, was that there was no argument between the defendant and the victim; instead, there was a bizarre conversation during which the defendant asked the victim repeatedly where he would like to be stabbed. The defendant then called the ambulance claiming the victim 'fell over and done himself in the guts. ... Fell over on glass I think', after which the defendant pulled out a knife. The</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>victim's girlfriend ran out the door and went to one of the neighbours. Triple 0 was called. The victim's girlfriend went to stay at a friend's place, when the victim came to the front door. The victim's girlfriend took the victim back to his place, saw blood and rang the ambulance. The knife was never located.</p> <p>Other evidence, including the tapes of the ambulance and triple 0 calls, was consistent with the prosecution's case and the judge held that the prosecution had proved their case beyond reasonable doubt and negated self-defence.</p> <p>Aggravating factor(s): Offence committed while on bail for a very serious offence; long history of violence; very serious offence.</p> <p>Sentence: 2 years imprisonment, NPP 18 months.</p>
94	<p>MICALLEF, Paul John</p> <p><i>R v Paul John MICALLEF</i></p>	3 Dec 2008	<p>Campbelltown</p> <p>Prosecutor: police sergeant</p>	MCROBERT	s 35(4)	-	<p>Charge(s): Common assault; recklessly wound any other person</p> <p>Facts: The defendant had attended a social gathering at the premises and had consumed excessive amounts of alcohol. A dispute arose between his girlfriend's sister (the first victim) and the defendant, with the defendant being directed and pushed out the door to leave. The defendant recklessly threw a bottle of beer at the crowd of people in the direction of the first victim who ducked. The bottle then struck the face of the first victim's 5 year old sister, who sustained substantial laceration to the bridge of her nose. The defendant did not intend to hurt the child and apologised for his actions.</p> <p>Aggravating factor(s): Extremely serious offence; extensive escalating record, including violent offences, contravening ADVOs and non-compliance with court orders; caused horrific injury to a child.</p> <p>Mitigating factor(s): Plea of guilty at an early opportunity; genuine remorse shown at a very early opportunity.</p> <p>Sentence: Concurrent sentences for:</p> <ul style="list-style-type: none"> • recklessly wounding – 2 years imprisonment, NPP 1 year; and • common assault – 9 months imprisonment.

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
95	KOK, Erwin Volmar <i>DPP v Erwin Volmar KOK</i>	4 Dec 2008	Downing Centre Prosecutor: DPP (from case name only)	SYME	s 61M(1)	-	<p>Charge(s): Aggravated indecent assault of a victim under the age of 16 years (x2)</p> <p>Facts: The defendant was working as a volunteer for a local community group and the victim was a 12-year-old child performer for that group. On two separate occasions, an hour or two apart, on the pretext of adjusting the child's costume the defendant put his hand down the child's costume pants and held the child's genital area briefly. The second offence occurred despite the child having said no when the defendant offered to adjust the child's costume again. The defendant denied the offences.</p> <p>Aggravating factor(s): Serious offence; the second offence occurred despite the victim have indicated that he neither wanted nor encouraged assistance. NB: The defendant was one of many adults with some responsibility in the production so he had some duty of care to the victim, but was not in a particular position of trust to the victim.</p> <p>Mitigating factor(s): No prior convictions; prior good character.</p> <p>Sentence: Aggregate sentence of NPP 18 months and 12 months parole, consisting of:</p> <ul style="list-style-type: none"> • first offence -- fixed term of 12 months imprisonment; • second offence -- 2 years imprisonment, with NPP 12 months. <p>The sentences were partially accumulated—the second term was accumulated six months into the first term—because of the aggravating feature of the second offence.</p>
96	FETTES, Jason Craig <i>R v Jason Craig FETTES</i>	10 Dec 2008	Wollongong Prosecutor: police	JOHNSON	s 61M(1) *old*	-	<p>Charge(s): Aggravated indecent assault; procure child under 14 years for unlawful sexual activity; fail to appear</p> <p>Facts: The first offence involved the defendant committing an indecent assault on a 12-year-old cousin of his partner in the victim's bedroom. The second offence involved the defendant sending letters and text messages to the same victim procuring her for unlawful sexual activity. The defendant stated that he was under the influence of 'ice' at the time of the offences and</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>he had little to no recollection of what had occurred.</p> <p>Aggravating factor(s): The offence was committed in the home of the child; age of the child; defendant was in a position of trust.</p> <p>Mitigating factor(s): Plea of guilty; no criminal record of this sort of offence; the defendant is in a moderate low risk category of reoffending in relation to other male sexual offenders; remorse.</p> <p>Sentence: Total sentence of 2 years imprisonment, NPP 12 months. Fail to appear -- conviction but no penalty.</p>
97	<p>PATTEN aka PARIS, Stephen</p> <p><i>R v Stephen PATTEN aka PARIS</i></p>	11 Dec 2008	<p>Burwood</p> <p>Prosecutor: police sergeant</p>	BARCELL	s 33B(1)(a)	-	<p>Charge(s): Drive whilst disqualified (x3); custody of a knife; use offensive weapon to prevent lawful custody; fail to appear</p> <p>Sentence: Concurrent sentences for:</p> <ul style="list-style-type: none"> • use of offensive weapon to prevent lawful apprehension -- 2 years imprisonment, with NPP 12 months; • driving while disqualified (x3) -- 6 months imprisonment, 2-year disqualification; 8 months imprisonment, same 2-year disqualification; and 12 months imprisonment, same 2-year disqualification; • fail to appear -- fixed term of 4 months imprisonment; • custody of a knife in a public place -- fine \$100, knife forfeited.
98	<p>DAWSON, John Lee</p> <p><i>R v John Lee DAWSON</i></p>	11 Dec 2008	<p>Campbelltown</p> <p>Prosecutor: police sergeant</p>	MCROBERT	s 195(1)(b)	>\$15,000	<p>Charge(s): Damage property by fire; armed with intent to commit indictable offence</p> <p>Facts: The defendant had sent a threatening email to his sister, which had provoked heated telecommunication between himself and the victim, his brother. Armed with a crowbar, the defendant went in search of the victim, first at the victim's girlfriend's place and then to the granny flat in which the victim was staying where he used the crowbar to smash a glass door and enter. He then collected paper which he lit and distributed around the granny flat causing the entire flat to catch alight completely destroying it and its contents.</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Aggravating factor(s): Seriousness of offence; previous convictions (although somewhat dissimilar to the nature of the offences, which were about personal revenge).</p> <p>Mitigating factor(s): Plea of guilty.</p> <p>Sentence: Concurrent terms of two years imprisonment for all matters.</p>
99	<p>HAYEK, Fadi</p> <p><i>Police v Fadi HAYEK</i></p>	12 Dec 2008	<p>Liverpool</p> <p>Prosecutor: police sergeant</p>	BURDETT	s 33B(1)(a)		<p>Charge(s): Using offensive weapon to avoid lawful detention; drive in a manner dangerous; possess authorised firearm; possess unregistered firearm; not keep firearm safe; drive whilst disqualified (x3); obtain money by deception; illegal use of motor vehicle (x3); not provide particulars; larceny (x7); property damage; possess prohibited drug</p> <p>Facts: On 21 July 2006, the defendant smashed the rear quarter window of a motor vehicle and took \$500 worth of property. When arrested, he was released on bail (pre-dating the majority of his offences). On 5 June 2008, the defendant broke into a motor vehicle and stole \$660 worth of property. On 3 August 2008, the defendant was found to be in possession of .30 gram of methylamphetamine (a small quantity).</p> <p>The majority of matters (21 in total) occurred between 6 and 19 August 2008. These were 6 August (larceny from Masterton Homes of computers worth \$3000); 10 August (stealing laptop case, obtain money by deception relating to \$50 worth of petrol); 13 August (not keep firearm safe, possess unregistered firearm, and possess unauthorised firearm); 15 August (larceny of laptop worth \$200), 18 August (stealing from Kennard's Hire); 19 August (larceny relating to Mr Fang's property); drive in a manner dangerous; and a number of occasions of illegally driving conveyance taken without the owner's consent and drive whilst disqualified offences. The most serious matter is the use offensive weapon to prevent lawful detention which relates to the use of a motor vehicle.</p> <p>Aggravating factor(s): Offences committed while on bail; seriousness of the offences.</p> <p>Mitigating factor(s): Plea of guilty; time in custody spent in mental health</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>unit thus term of imprisonment harsher.</p> <p>Sentence: Using offensive weapon (motor vehicle) to avoid detention – 2 years imprisonment, NPP 10 months (cumulative on the 12 months imprisonment for illegal use of motor vehicle on 10 August 2008). The concurrent sentences are:</p> <p><i>Offences committed on 21 June 2006:</i></p> <ul style="list-style-type: none"> • property damage - \$500 fine plus court costs • larceny (\$500 worth of property) – 2 months imprisonment <p><i>Offence committed on 5 June 2008:</i></p> <ul style="list-style-type: none"> • larceny (\$660 worth of property) – 2 months imprisonment <p><i>Offence committed on 3 August 2008:</i></p> <ul style="list-style-type: none"> • possess prohibited drug - \$200 fine <p><i>Offence committed on 6 August:</i></p> <ul style="list-style-type: none"> • larceny (Masterton Homes \$3000 worth of computers) - 8 months imprisonment <p><i>Offences committed on 10 August 2008:</i></p> <ul style="list-style-type: none"> • drive whilst disqualified – 6 months imprisonment • larceny (laptop case) - \$400 plus court costs • obtain money by deception - \$400 fine plus court costs • illegal use of motor vehicle – 12 months imprisonment <p><i>Offences committed on 13 August 2008:</i></p> <ul style="list-style-type: none"> • drive whilst disqualified – 6 months imprisonment • drive in a manner dangerous – 12 months imprisonment • not provide particulars - \$100 fine plus court costs • possess unauthorised firearm – 8 months imprisonment • possess unregistered firearm – 8 months imprisonment • not keep firearm safe - \$800 fine • illegal use of motor vehicle – 12 months imprisonment <p><i>Offence committed on 15 August 2008:</i></p> <ul style="list-style-type: none"> • illegal use of motor vehicle - 12 months imprisonment • larceny (laptop worth \$200) - \$400 fine plus court costs <p><i>Offence committed on 18 August 2008:</i></p> <ul style="list-style-type: none"> • larceny (Kennard's) - \$1600 fine, 8 months imprisonment

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p><i>Offences committed on 19 August 2008:</i></p> <ul style="list-style-type: none"> • drive whilst disqualified – 12 months imprisonment • larceny (Mr Fang's property) - 8 months imprisonment
100	<p>CHEA, Noun</p> <p><i>R v Noun CHEA</i></p>	19 Dec 2008	<p>Downing Centre</p> <p>Prosecutor: police sergeant</p>	SYMES	s 35(4)	-	<p>Charge(s): Reckless wounding</p> <p>Facts: The victim was working as a hotel security officer when he informed a man that he was not allowed to smoke in the hotel's premises. The man's friend (the defendant) started arguing with the victim in a tense, agitated and verbally abusive manner. Another friend attempted to calm the defendant. The victim radioed for other guards to assist him in removing the defendant from the hotel. When the victim asked the defendant to leave the hotel, the defendant rose out of his seat and forcibly swung a 6-ounce glass at the victim's face. The victim reacted by turning his face away from the defendant and the glass struck the back of the victim's head, resulting in a cut on the head.</p> <p>Aggravating factor(s): Very serious offence committed upon a hotel security officer; occurred in a public place; use of a glass, which is a very serious and dangerous object.</p> <p>Mitigating factor(s): Prior good character; no prior convictions; plea of guilty (not at the first available opportunity but at the date of trial).</p> <p>Sentence: NPP 18 months, and further 6 months on parole.</p>
101	<p>COLE, Mark Andrew</p> <p><i>Police v Mark Andrew COLE</i></p>	19 Dec 2008	<p>Parkes</p> <p>Prosecutor: police sergeant</p>	MAIDEN	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm; common assault (withdrawn and dismissed)</p> <p>Sentence: 2 years imprisonment, NPP 15 months.</p>
102	<p>TRURAN, Eddie</p> <p><i>R v Eddie TRURAN</i></p>	4 August 2009	<p>Blacktown</p> <p>Prosecutor: police sergeant</p>	SWAIN	s 59(1)	-	<p>Charge(s): Assault occasioning actual bodily harm; contravening domestic violence order (x2); riding a bike without a helmet</p> <p>Facts: The victim was the defendant's 14-year-old daughter. There was a history of violence that the defendant had committed on the victim, and a domestic violence order was in place prohibiting him from going to the victim's home and from intimidating her. The victim was living with her</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>grandmother (the defendant's mother). In breach of the domestic violence order, the defendant went to his mother's place. He found the victim in bed with a 19-year-old male. Believing her to be drunk, the defendant assaulted and hit the victim over the head with an empty glass bottle, slitting her forehead. The next day, the defendant intimidated the victim by threatening her as she went down the street to buy lunch.</p> <p>Aggravating factor(s): Objective seriousness of the offence; abused position of trust or authority; disregard of court order prohibiting the defendant from going near the victim's home.</p> <p>Mitigating factor(s): Plea of guilty (especially saving his daughter from having to travel from Cootamundra and give evidence against him).</p> <p>Sentence: Concurrent sentences for:</p> <ul style="list-style-type: none"> • assault occasioning actual bodily harm - 2 years imprisonment, NPP 8 months; and • contravening domestic violence order (x2) – 2 years imprisonment, NPP 8 months. <p>For the offence of riding a bike without a helmet - convicted but no penalty (s 10A).</p> <p>Order for the assault charge to be classified as a domestic violence offence. In addition, order for two assaults charges dealt with at the Parramatta Local Court on 18 May 2007 to be declared domestic violence offences.</p>
103	<p>JEFFERY, Daniel</p> <p><i>R v Daniel JEFFERY</i></p>	30 November 2006	<p>Penrith</p> <p>Prosecutor: Police sergeant</p>	TOOSE			<p>Charge(s): Possess loaded firearm; resist officer in execution of duty; drive in a manner dangerous; low range PCA; drive whilst disqualified</p> <p>Facts: [Unclear from the transcript]</p> <p>Sentence: Concurrent sentences for</p> <ul style="list-style-type: none"> • Possess loaded firearm – 2 years imprisonment, NPP 6 months • Drive whilst disqualified – 9 months imprisonment, NPP 6 months; disqualified from holding licence for 2 years • Drive in a manner dangerous – 9 months imprisonment, NPP

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<ul style="list-style-type: none"> 6 months Resist officer in execution of duty – Section 9 bond for 2 years; disqualified from holding licence for 5 years Driving with low range PCA - \$500 fine (\$77 court costs); disqualified from holding licence for 12 months
104	BRYCE, John Keith	19 February 2008.	Bega Prosecutor: police sergeant	MALONEY	s 59(1)		<p>Charge(s): Assault occasioning actual bodily harm; stalking and intimidation</p> <p>Facts: The accused and the victim were romantically involved. While they were both in the victim's car the victim made an apparently inflammatory statement. The accused attacked the victim by striking, pushing and kicking her out of the car. The accused then forced the victim into the car and began driving. During the drive the accused threatened to kill the victim. The accused continued the attack when he stopped the car ten minutes later. He kicked the victim while she was on the ground multiple times. The accused then threatened to stab her with a knife. The victim suffered extensive bruising and injuries from the attack.</p> <p>Aggravating factor(s): Objective seriousness of offence; very violent offence; offence involved gratuitous cruelty</p> <p>Sentence: 2 years imprisonment with NPP 18 months.</p>
105	SWAN, Andrew Paul	22 May 2007	Moree Prosecutor: police sergeant	HOLMES	s 59(1)		<p>Charge(s): Assault occasioning actual bodily harm; common assault; breach of section 12 bond (x5)</p> <p>Facts: The accused and the victim had a verbal confrontation and the accused proceeded to attack the victim with a medal bar. The victim sustained some bruising and injuries.</p> <p>Aggravating factor(s): Objective seriousness of offence; offence involved the use of a weapon; extensive previous criminal history of violence; offence committed while on conditional liberty</p> <p>Sentence: all sentences served concurrently</p> <ul style="list-style-type: none"> 2 years imprisonment with NPP of 18 months for assault occasioning actual bodily harm 16 months for breach of s 12 bond – intimidation

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<ul style="list-style-type: none"> • 16 months for breach of s 12 bond – intimidation (second count) • 18 months for breach of s 12 bond – assault occasioning actual bodily harm • 6 months for breach of s 12 bond – assault • 6 months for further breach of s 12 bond – unspecified
106	CLARK, Troy	16 November 2007	Albury Prosecutor: police sergeant	PEARCE	s 59(1)		<p>Charge(s): Assault occasioning actual bodily harm; breach of s 9 bond</p> <p>Facts: The accused attacked the victim by punching and kicking him after a verbal confrontation. The accused was intoxicated. This occurred while the accused was on a s 9 bond.</p> <p>Mitigating factor(s): Plea of guilty</p> <p>Aggravating factor(s): Objective seriousness of offence; previous criminal history of violence</p> <p>Sentence: 2 years imprisonment with NPP of 18 months for assault. 6 months imprisonment for breach of s 9 bond to be served concurrently.</p>
107	FLIEDNER, John William	4 December 2008	Lithgow Prosecutor: police sergeant	KNIGHT	s 59(1)		<p>Charge(s): Assault occasioning actual bodily harm; assault; common assault; intimidation; breach of parole</p> <p>Facts: Accused attacked his pregnant wife and sister on multiple occasions while intoxicated. On one occasion he held his sister over the railing of a second floor stairway and threatened to drop her onto the floor below. On another occasion he kicked his pregnant wife in the stomach multiple times. On another occasion he attacked his wife while she was in bed beside their young child. The victim sustained bruising and injuries to the head and body.</p> <p>Mitigating factor(s): Plea of guilty</p> <p>Aggravating factor(s): Objective seriousness of offence; high degree of violence; gratuitous violence; previous criminal history of violence; offence was committed in the presence of children; victim was pregnant</p> <p>Sentence:</p> <ul style="list-style-type: none"> • 9 months fixed term imprisonment for common assault on sister.

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<ul style="list-style-type: none"> • 2 years fixed term imprisonment for two counts of assault occasioning actual bodily harm, served concurrently • 12 months imprisonment with NPP of 3 months for two common assaults and intimidate, served concurrently • 12 months fixed term imprisonment for assault • 8 months fixed term imprisonment for breach of parole • Total of 36 months imprisonment with NPP of 27 months
108	BUGMY, Benjamin Edward	17 January 2007	Wilcannia Prosecutor: police sergeant	PEARCE	s 59(1)		<p>Charge(s): Assault occasioning actual bodily harm; assault; stalk/intimidate; assault police (2); use of offensive weapon to prevent lawful detention</p> <p>Facts: The accused assaulted a female victim who sustained serious injury. He intimidated and assaulted police during the commission of their duties. He threatened police with a knife to forcing them to draw their pistols. There were children in the street observing during the commission of the offences.</p> <p>Mitigating factor(s): Plea of guilty</p> <p>Aggravating factor(s): Objective seriousness of offence; high degree of violence; victims were officials exercising public functions</p> <p>Sentence: to be served consecutively</p> <ul style="list-style-type: none"> • 3 months imprisonment for the use of an offensive weapon and stalk/intimidation • 9 months fixed term imprisonment for the assault on police officers • 18 months imprisonment with NPP of 12 months for assault occasioning actual bodily harm • 2 years imprisonment for assault occasioning actual bodily harm.
109	MARSH, Philip Adam & FOGG, Katrina	3 October 2008	Cessnock Prosecutor: police sergeant	ELLIOT	s 35(3)		<p>Charge(s): Recklessly wound other whilst in company</p> <p>Facts: After an argument in the late evening while returning home the defendants stabbed the victim in the back with a knife causing serious injuries.</p> <p>Mitigating factor(s): Plea of guilty</p> <p>Aggravating factor(s): Previous history of criminal violence; objective</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							seriousness of offence; Sentence: <ul style="list-style-type: none"> Marsh: 2 years imprisonment with NPP of 15 months. Fogg: 2 years imprisonment with NPP of 12 months.
110	BOND, Benjamin	6 February 2007	Orange Prosecutor: police sergeant	STEVENSON	s 59(1)		Charge(s): Assault occasioning actual bodily harm; common assault (x2); breach of AVO Facts: The accused assaulted the victim who was his partner over a period of time. He threatened her with violence on multiple occasions. This occurred in breach of an AVO intended to protect the victim. The victim sustained bruising and injuries to her eyes. Mitigating factor(s): Plea of guilty Aggravating factor(s): Objective seriousness of offence Sentence: to be served concurrently <ul style="list-style-type: none"> 2 years imprisonment with NPP of 18 months. 12 months imprisonment for common assaults.
111	CHATFIELD, Justin Lee	1 September 2008	Orange Prosecutor: police sergeant	LUCAS	s 35(1)*old*	wound	Charge(s): Assault occasioning actual bodily harm (x2); armed with intent to commit indictable offence; assault person with intent to commit indictable offence Facts: The victim, who was heavily intoxicated, was assaulted by the accused who punched her and kicked her before holding a knife to her neck. She sustained multiple injuries and bruising. Aggravating factor(s): Objective seriousness of offence; offence involved a high degree of violence Sentence: 2 years imprisonment with NPP of 18 months.
112	COATES, Stephen John	1 May 2008	Central Prosecutor: DPP	BAILEY	s 59(1)		Charge(s): Assault occasioning actual bodily harm Facts: The accused, who is a homeless man, assaulted another man after drinking methylated spirits.

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Mitigating factor(s): Plea of guilty</p> <p>Aggravating factor(s): Previous history of criminal violence</p> <p>Sentence: 2 years imprisonment with NPP 18 months.</p>
113	RYAN, Benjamin Michael	22 August 2007	Central Prosecutor: police sergeant	BRYDON	33B(1)(a)		<p>Charge(s): Use of weapon to resist arrest; threatening to use an offensive weapon with intent to prevent arrest; assault police; driving in a dangerous manner; shoplifting; vandalism; drive whilst disqualified (x4); common assault (x3); possess prohibited drug; aggravated assault with intent to take and drive a motor vehicle; breach of s 9 bond</p> <p>Facts: Accused ran at police officers with syringes filled with drugs and blood wielded as weapons in order to resist arrest. He committed numerous driving offences on various occasions.</p> <p>Mitigating factor(s): Plea of guilty (for some offences)</p> <p>Aggravating factor(s): Objective seriousness of offence; extensive previous criminal history of violence; victim was police officer exercising public functions</p> <p>Sentence: to be served concurrently</p> <ul style="list-style-type: none"> • 1 month imprisonment for breach of s 9 bond • \$270 fine for vandalism • 3 months imprisonment for driving whilst disqualified • 4 months imprisonment for driving whilst disqualified • 6 months imprisonment for driving whilst disqualified • 12 months imprisonment with NPP of 9 months for driving in a dangerous manner • 18 months imprisonment with NPP of 12 months for driving in a dangerous manner • 12 months imprisonment with NPP of 9 months for driving whilst disqualified • 6 months imprisonment for shoplifting • 30 months with NPP of 18 months for threatening to use an

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>offensive weapon with intent to prevent lawful apprehension</p> <ul style="list-style-type: none"> • 12 months with NPP of 9 months for four counts of assault police officers • 24 months with NPP of 16 months for use of offensive weapon to prevent lawful arrest • 30 months imprisonment with NPP of 18 months for aggravated assault with intent to take and drive a motor vehicle • 12 months imprisonment with NPP of 9 months for driving whilst disqualified • Rising of the court for possession of cannabis • 6 months imprisonment for resisting lawful arrest • 24 months with NPP of 16 months for use of weapon to resist lawful arrest <p>[NB: sentence correction at later date to reduce 30 month head sentences to 24 month head sentences]</p>
114	CURETON, Adrian	7 August 2008	Burwood Prosecutor: police sergeant	ELLIS	s 13(1) C(D&PV)A07		<p>Charge(s): stalk/intimidate with intent to cause physical harm</p> <p>Facts: The accused made threats and intimidated his mother who he lived with. When the police arrived he threw objects at them.</p> <p>Mitigating factor(s): Plea of guilty</p> <p>Aggravating factor(s): Previous criminal history of violence</p> <p>Sentence: 2 years imprisonment with NPP of 12 months for stalk/intimidate.</p>
115	EDSER, Michael John	24 August 2007	Tamworth Prosecutor: police sergeant	SWAIN	s 59(1)		<p>Charge(s): Assault occasioning actual bodily harm (x2); stalk/intimidate; common assault; possess prohibited drug; breach of s 9 bond</p> <p>Facts: The accused attacked his wife and attempted to choke her on two occasions. He struck her in the face multiple times. She sustained serious injuries to her face and neck. This occurred in breach of an ADVO and while the accused was on a s 9 bond. The accused also threatened to kill the victim.</p> <p>Mitigating factor(s): Plea of guilty for first count of assault occasioning</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>actual bodily harm</p> <p>Aggravating factor(s): Previous criminal history of violence</p> <p>Sentence: to be served partly concurrent and partly cumulative</p> <ul style="list-style-type: none"> • 12 months imprisonment with NPP of 9 months for assault occasioning actual bodily harm • 2 years imprisonment with NPP of 12 months for assault occasioning actual bodily harm • 18 months imprisonment with NPP of 9 months for intimidation • 12 months imprisonment with NPP of 6 months for common assault • 1 month imprisonment for possession of cannabis
116	MILLS, Luke Arthur	4 June 2008	Nowra Prosecutor: police sergeant	DICK	s 59(1)		<p>Charge(s): assault occasioning actual bodily harm; driving whilst disqualified</p> <p>Facts: The accused set a trap for his wife and assaulted her when she returned home. On a separate occasion, the accused forced his wife to drive dangerously to facilitate a road rage related assault. These incidents occurred while on s 9 bonds.</p> <p>Aggravating factor(s): Prior criminal history</p> <p>Sentence: 2 years imprisonment with NPP of 6 months.</p>
117	BROCKHURST, Ross Brian	8 May 2007	Nowra Prosecutor: police sergeant	DICK	s 35(1)*old*	wound	<p>Charge(s): Malicious wounding; assault; breach of apprehended domestic violence order; malicious damage to property</p> <p>Facts: The accused attacked the victim with a knife, causing serious lacerations to her throat and arms. On a separate occasion the accused attacked his wife and her sister causing injury. This was in breach of an ADVO.</p> <p>Aggravating factor(s): Extensive previous history of criminal violence; objective seriousness of offence; offence involved a high degree of violence</p> <p>Sentence: to be served concurrently</p> <ul style="list-style-type: none"> • 2 years imprisonment with NPP of 18 months

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<ul style="list-style-type: none"> • 12 months imprisonment for assault and breach of ADVO • \$500 fine for malicious damage to property
118	BLANCH, Garry	18 December 2007	Nowra Prosecutor: police sergeant	DICK	s 59(1)		<p>Charge(s): assault occasioning actual bodily harm</p> <p>Facts: When the accused's wife returned home he attacked her, striking her head and body. He then attempted to choke her. When she fell to the ground, he kicked her until she lost consciousness. The victim sustained serious injuries as a result. This offence occurred in the presence of two young children.</p> <p>Mitigating factor(s): Plea of guilty</p> <p>Aggravating factor(s): Previous criminal history of violence</p> <p>Sentence: 2 years imprisonment with NPP of 18 months.</p>
119	MCINTYRE, Ronald Bruce	6 May 2008	Nowra Prosecutor: police sergeant	DICK	s 61M(1)		<p>Charge(s): Aggravated indecent assault; assault occasioning actual bodily harm</p> <p>Facts: [not stated in transcript]</p> <p>Mitigating factor(s): Plea of guilty</p> <p>Aggravating factor(s): Objective seriousness of offence; substantial emotional harm caused to victim; offence committed in company</p> <p>Sentence: 2 years imprisonment with NPP of 15 months.</p>
120	JONES, Martin Conrad	9 December 2008	Nowra Prosecutor: police sergeant	DICK	s 195(1)(b)	>\$15000	<p>Charge(s): Malicious damage by fire; driving under the influence of alcohol; breach of s 12 bond</p> <p>Facts: The accused took his friend's car and set it on fire with permission in order to claim insurance.</p> <p>Aggravating factor(s): Objective seriousness of offence; extensive criminal record of similar offences; offence committed while on conditional liberty</p> <p>Sentence: 2 years with NPP of 18 months for malicious damage by fire.</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							\$1000 fine for DUI.
121	POTGER, Aaron	5 November 2008	Wellington Prosecutor: police sergeant	LUCAS	s 60A(1)	assault	Charge(s): Assault law officer (not police) Facts: The accused headbutted a corrections officer at Wellington Gaol after there was a delay in administering his methadone treatment. The corrections officer sustained minor damage to his eye. Aggravating factor(s): Previous criminal history of similar offences Sentence: 2 years imprisonment with NPP of 18 months.
122	ROSS, Ben	31 January 2007	Wagga Wagga Prosecutor: police sergeant and DPP	DARE	s 562AB(1)*re p*		Charge(s): Malicious damage; assault occasioning actual bodily harm; stalk/intimidate; steal property Facts: The accused assaulted his former partner and mother of his three children. Aggravating factor(s): Objective seriousness of offence; previous criminal history of similar offences Sentence: 2 years with NPP of 15 months for assault occasioning actual bodily harm.
123	SILVER, Troy David	7 June 2007	Gunnedah Prosecutor: (unclear)	KEADY	s 59(2)		Charge(s): Assault occasioning actual bodily harm in company; malicious damage to property; driving without a licence; menacing driving; intimidation; common assault Facts: The accused assault multiple victims over a period of time. One offence involved the assault of a victim in the victim's home while in company. On another occasion the accused stole a car and drove it at a victim before crashing the car. Mitigating factor(s): Plea of guilty Aggravating factor(s): Objective seriousness of offence; offence involved a high degree of violence; offence committed in the home of the victim; offence committed in company

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Sentence:</p> <ul style="list-style-type: none"> • 2 years imprisonment with NPP of 12 months for assault occasioning actual bodily harm. • 3 months imprisonment for malicious damage. • 1 month imprisonment for driving unlicensed. • 12 months with NPP of 8 months for menacing driving. • 8 months with NPP of 4 months for malicious damage and intimidation. • 3 months for common assault.
124	BAGGETT, Anthony Peter	27 November 2006	Central Prosecutor: (Federal police assuming from case name)	BRADD	s 93C(1)		<p>Charge(s): Assault federal police officer; assault police officer in the execution of duty; resisting lawful arrest; affray; assault transit officer</p> <p>Facts: The accused assaulted a federal police officer executing a lawful arrest by kicking and punching him. He then bit the police officer and spat on him as the handcuffs were being fastened.</p> <p>On a separate occasion, he resisted lawful arrest and caused affray to the extent that the a reasonable person in the position of the police officer would have feared for his or her safety.</p> <p>On a separate occasion, the accused attacked a transit officer while on duty. He then resisted arrest when police were called to the scene.</p> <p>Mitigating factor(s): Plea of guilty</p> <p>Aggravating factor(s): Objective seriousness of offence; offence involved a high degree of violence; offence was against police officers in the course of duty; extensive criminal record of similar offences</p> <p>Sentence: 2 years imprisonment with NPP of 12 months.</p>
125	MORRIS-JACKSON, Nina Leanne	13 October 2008	Central Prosecutor: police sergeant	CULVER	s 33B(1)(b)		<p>Charge(s): assault against police officers; larceny; common assault; threatening injury with intent to resist arrest</p> <p>Facts: The accused assaulted a police officer. On a separate occasion the accused robbed a person giving her a lift.</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Mitigating factor(s): Plea of guilty</p> <p>Aggravating factor(s): Objective seriousness of offence; offence against police officers executing public function; previous criminal history of violence; offence committed while on conditional liberty</p> <p>Sentence: to be served consecutively in part</p> <ul style="list-style-type: none"> • 6 months imprisonment for larceny • 12 months imprisonment for common assault • 2 years imprisonment with NPP of 14 months for threatening to cause injury with intent to resist arrest • 2 years imprisonment with NPP of 14 months for assault against police officers
126	SEYMOUR, Nicole Helene	29 July 2008	Central Prosecutor: (unclear)	PRICE	s 35(2)		<p>Charge(s): Recklessly causing grievous bodily harm</p> <p>Facts: The accused attacked an elderly victim who was exercising charitable functions in a public park. The victim sustained serious injuries.</p> <p>Mitigating factor(s): Plea of guilty</p> <p>Aggravating factor(s): Objective seriousness of offence; offence involved a high degree of violence; previous criminal history of violence; offence caused substantial injury to victim; victim vulnerable due to age</p> <p>Sentence: 2 years imprisonment with NPP of 18 months.</p>
127	ROQICA, Tracey Lee	11 September 2007	Central Prosecutor: (unclear)	BAILEY	s 562AB(1)*re p*		<p>Charge(s): (unclear)</p> <p>Facts: (unclear)</p> <p>Sentence: 2 years imprisonment with NPP of 9 months.</p>
128	JOHNSON, Keith William	11 November 2008	Central Prosecutor: (unclear)	MOORE	s 61L		<p>Charge(s): Indecent assault</p> <p>Facts: The accused accosted a 16 year old male on a train and attempted to take control of his genitals.</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Mitigating factor(s): Plea of guilty</p> <p>Aggravating factor(s): Previous criminal history of similar offences; high risk of reoffending</p> <p>Sentence: 2 years imprisonment with NPP of 18 months.</p>
129	MCLEOD, Rex Phillip	25 September 2007	Central Prosecutor: (unclear)	LYON	s 61L		<p>Charge(s): Indecent assault</p> <p>Facts: Accused indecently assault female on a train.</p> <p>Mitigating factor(s): Plea of guilty</p> <p>Aggravating factor(s): Objective seriousness of offence; previous criminal record of similar offences</p> <p>Sentence: 2 years imprisonment with NPP of 18 months.</p>
130	HAYEK, Peter Andrew	26 April 2007	Central Prosecutor: (unclear)	MOORE	s 93G(1)(a)	public place	<p>Charge(s): possess loaded firearm in public place; possess unauthorised firearm</p> <p>Facts: Police searched the accused and found a loaded pistol. This occurred in a public area.</p> <p>Mitigating factor(s): Plea of guilty</p> <p>Aggravating factor(s): Objective seriousness of offence; prior criminal history</p> <p>Sentence: 2 years imprisonment with NPP of 18 months.</p>
131	KENNEDY, Lloyd Junior	18 December 2008	Coonamble Prosecutor:	CONNELL	s 93C(1)		<p>Charge(s): breach of s 12 bond for charges of affray s 93C(1) of Crimes Act 1900 and of s 59(2) assault occasioning actual bodily harm whilst in company and break and enter s 112(1)(a) Crimes Act 1900.</p> <p>Facts: wrestled and struggled with another person after entering the premises in the presence of other company.</p> <p>Mitigating factor(s): Early plea of guilty</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Aggravating factor(s): The fact that the offender was on parole at the time of the offences</p> <p>Sentence: Concurrent sentences for:</p> <ul style="list-style-type: none"> • affray 2 yrs imprisonment with NNP of 18 months • Assault 16 months imprisonment with NNP 12 months • Break and enter offences 12 months for each with NNP of 9 months
132	RATUQA, Owen	23 July 2007	Central Prosecutor:	HEILPERN	s 60(2) Crimes Act 1900		<p>Charge(s): Assault, resisting police officer</p> <p>Facts: While a Police Officer was conducting a lawful search of the offender, the offender violently attacked the officer causing significant injuries to the officer.</p> <p>Mitigating factor(s): not-so early plea of guilty so less of a discount.</p> <p>Aggravating factor(s): offender was on parole at the time of this offence. 9 previous assault/resist police charges. The police officer's injuries were significant.</p> <p>Sentence: 2 years imprisonment with NNP 18 months.</p>
133	SHARPLEY, Geoffrey	25 October 2007	Walgett Prosecutor: Sergeant Cameron	QUINN	s 35(1) Crimes Act 1900		<p>Charge(s): Maliciously inflict grievous bodily harm</p> <p>Facts: the offender inflicted serious injuries, punched the victim in the face, kicked and dragged the victim by the hair. Injuries included black eyes and a broken jaw.</p> <p>Aggravating factor(s): no plea of guilty, seriousness of the offence, no remorse. Previous criminal record – but limited.</p> <p>Sentence: 2 years imprisonment with 20 months NNP</p>
134	AL MAJID, Zaldoun Mazin Salem	3 November 2008	Central Prosecutor:	MOORE	s 93G(1)(a)	Public place	<p>Charge(s): (1) affray, (2)+(3) firearm and weapon offences on separate occasions</p> <p>Facts: The offender participated in affray in Darling Harbour. The offender</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>ran to join the melee punching, kicking the victim with several others. On two other occasions the offender was in possession of firearms</p> <p>Mitigating factor(s): immediate plea of guilty, no previous record</p> <p>Aggravating factor(s): These offences were committed while he was on conditional liberty. Offences involving a weapon (loaded firearm)</p> <p>Sentence: Concurrent sentences for:</p> <ul style="list-style-type: none"> • possession of un-registered firearm 2 yrs imprisonment, • offensive weapon altered firearm 18 month • possession of ammunition 6 months • possession of loaded firearm in public place 2 yrs • affray 12 months imprisonment NNP 2 months
135	ZAAROUR, Anthony	21 May 2008	Central Prosecutor:	BRADD	s 61L		<p>Charge(s): act of indecency without consent</p> <p>Facts: The offender obtained the victims phone number from a website/newspaper ad seeking employment and persistently phoned her and arranged to meet her at her home on the pretext of her being employed by him as a masseur (despite the fact that the offender had no qualifications in massage). He asked the victim to massage him on the pretext of finding out whether she was suitable for the job. In the course of massaging him, he forced his hand and her to touch his penis. The offender also touched the victim's vagina without her consent.</p> <p>Mitigating factor(s): None</p> <p>Aggravating factor(s): previous convictions for similar matters and shows (served a term of imprisonment) that the offender carried out a great deal of planning and organisation in relation to seeking sexual gratification and achieving his objectives. The offence was committed in the home of the victim.</p> <p>Sentence: first count sentenced 2 years imprisonment, second count sentenced to a term of imprisonment of 2 years. No NNP</p>
136	MOLA, Frank	22 March	Central	MOORE	s 61M(2)		Charge(s): breach of section 12 bond

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
	Steven	2007	Prosecutor:				<p>Facts: The offender was in a position of authority over the young victim being of somewhat tender years. The offender touched the young victim on the penis and bottom region, causing the young child victim to be traumatized.</p> <p>Aggravating factor(s): past criminal history</p> <p>Sentence: For each matter whether it's touching, rubbing the penis region or the bottom region, the offender is convicted and sentenced 18 months imprisonment, additional 6 months.</p>
137	AL MAJID, Khaloun Mazin Salem	10 November 2008	Central	MOORE	s 93G(1)(a)	Public place	<p>Charge(s): (1) affray and (2) firearm offences</p> <p>Facts: for the offence of affray – the offender was with others in a group when a dispute broke out. The offender was seen to circle the building and place a knife in his hand (looked like a knuckleduster), and ran some distance to become involved in the physical confrontation. The offender, using unprovoked violence, and others pursued the victim for some distance, with the victim being stabbed twice. For the firearm offence – the offender was found in possession of a loaded nine millimetre semi-automatic pistol with a firing hammer engaged, with identifying marks removed.</p> <p>Mitigating factor(s): no previous record. An early plea entered. The offender presents as a person with significant involvement in the family by reason of considerable financial support for his parents and his wife.</p> <p>Aggravating factor(s): offence involving a loaded weapon and without regard to public safety, and showed a desire to use the weapon if challenged by rival persons. The offender was on conditional liberty when the second offence occurred. The offence involved actual or potential use of violence.</p> <p>Sentence: Served concurrently:</p> <ul style="list-style-type: none"> • Possession of loaded firearm and possession of loaded firearm with defaced/altered identification offences - 2 years imprisonment • Possession of unregistered firearm – 6 months imprisonment

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<ul style="list-style-type: none"> For offence of Affray – 12 months imprisonment with NNP 2 months
138	KENNEDY, Gregory	10 September 2008	Dubbo Prosecutor: Sergeant Madgwick	PEARCE	s 59(1) Crimes Act 1900		<p>Charge(s): Assault occasioning actual bodily harm</p> <p>Facts: Unclear from the transcript. Unprovoked, savage attack on the victim at the Dubbo RSL Club. According to the defendant it was because of the 'victim's loud mouth misses'. At the foyer of the RSL Club the defendant head-butted and caused serious injury to the victim</p> <p>Mitigating factor(s): the defendant has the support of referees, and he is gainfully employed.</p> <p>Aggravating factor(s): record for violence</p> <p>Sentence: 18 months imprisonment</p>
139	BUESNEL, Ronald	21 August 2007	Orange	PEARCE	s 59(1) Crimes Act 1900		<p>Charge(s): Assault occasioning actual bodily harm</p> <p>Facts: The accused went down to Orange looking for a house to rent, the accused believed that the victim was doing something which he was not and as a result struck him and occasioned actual bodily harm to him.</p> <p>Mitigating factor(s): plea of guilty</p> <p>Aggravating factor(s): previous record and has served terms for other serious matters. The accused has the propensity for violence.</p> <p>Sentence: 18 months and 2 years imprisonment</p>
140	DODDS, Glen Hopton	20 June 2007	Orange Prosecutor: Sergeant Croyston	STEVENSON	s 59(1) Crimes Act 1900		<p>Charge(s): Assault occasioning actual bodily harm, Disqualified driver, Drive unregistered and uninsured, Contravene AVO (x2), Application for AVO</p> <p>Facts: unclear from transcript</p> <p>Mitigating factor(s): plea of guilty</p> <p>Aggravating factor(s): prior assaults on the same person</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>Sentence: In relation to the drive disqualified: 2 year period of disqualification and then a 6 month period of imprisonment. In relation to assault: 2 year imprisonment with NPP 12 months. In relation to the contravene AVO: 12 month imprisonment. In relation to the breach: 6 month imprisonment. Served concurrently.</p>
141	FELSTEAD, Jason	14 January 2008	Orange	STEVENSON	s 59(1) and s 61 Crimes Act 1900		<p>Charge(s): assault occasioning actual bodily harm, contravening AVO, common assault, malicious damage</p> <p>Facts: unclear from transcript</p> <p>Aggravating factor(s): History of assaulting people including his previous partner, prior District Court sentence of NPP 18 months and 2 years for drug offences.</p> <p>Sentence: In relation to the assault occasioning actual bodily harm: 2 years imprisonment with NPP 12 months. In relation to contravening AVO: 2 year imprisonment concurrent with NPP 12 months. In relation to common assault: 12 month imprisonment. In relation to malicious damage: 12 month imprisonment.</p>
142	LUCAS, Jonathon	4 December 2007	Orange Prosecutor: Sergeant Donato	STEVENSON	s35(1) *old* s59(1) Crimes Act 1900		<p>Charge(s): Malicious wounding, Assault occasioning actual bodily harm</p> <p>Facts: unclear from transcript – inflicted serious injuries to the victim's skull and the victim spent considerable time in hospital</p> <p>Mitigating factor(s): young age, prospects of rehabilitation and the accused's poly drug and alcohol addiction problems.</p> <p>Aggravating factor(s): consistent history before the court including a prior control order made by a court for malicious wounding offence</p> <p>Sentence: 2 years imprisonment with NPP 10 months</p>
143	MILSON, Robert	25 September 2007	Orange	STEVENSON	s 59(1) Crimes Act 1900		<p>Charge(s): Assault occasioning actual bodily harm x 2 counts, contravening AVO</p> <p>Facts: Unclear from transcript - assaulting his partner by using his fists upon</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>her, punching her face and forehead with multiple blows. Friends of the accused intervened and pulled him away and then later he went on to a bottle shop and assaulted one of the workers at the bottle shop.</p> <p>Mitigating factor(s): Time the accused already spent in custody and his compliance with and completion of rehabilitation</p> <p>Aggravating factor(s): previous imprisonment sentence served for assaulting his same partner. Assault on the same woman on prior occasions</p> <p>Sentence: In relation to the first charge: 2 years imprisonment with NPP 8 months. In relation to the second assault charge: 12 month imprisonment with NPP 8 months. In relation to the contravene AVO: 2 year imprisonment with NPP 8 months.</p>
144	SCHULER, Patrick	20 May 2008	Orange Prosecutor: Sergeant Croyston	STEVENSON	s 59(1), 61 of Crimes Act 1900		<p>Charge(s): Common assault (x2), maliciously damaging property (x2), assault occasioning actual bodily harm, grievous harm, drive manner dangerous, drive unlicensed, negligent driving, breach AVO</p> <p>Facts: Assault against Mrs Anderson and Miss Wallace hitting Mrs Anderson several times on her head, pushed her to the floor, kicked to the head and face, and was bleeding from mouth in the presence of a small child. The accused also pushed Miss Wallace and punched to the mouth and struck her with a stick.</p> <p>A month later committed assault against Mrs Anderson in which the accused broke her arm (requiring surgery) and would not permit her to seek medical attention threatening to break her other arm if she didn't lay down and be quiet. He didn't allow her to go to hospital until the next morning and threatened to bash her if she told the hospital what happened.</p> <p>On 23 March there was an argument and the accused grabbed Miss Dennis by the hair, pulled her backwards and attempted to throw her off the veranda. She landed on the ground and hit her head on the brick wall. While she was down on the ground, the accused proceeded to punch and kick her to the head and elbow, threatening to kill her. He continued to assault her, grabbing at her eyes, attempting to poke them out. He grabbed her hair</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
							<p>again and forced her head up against the brick wall</p> <p>Aggravating factor(s): assault offence committed while on bail for other assaults.</p> <p>Sentence: In relation to the assault on 23 March: 2 years imprisonment. In relation to assault upon Mrs Anderson: 2 years imprisonment cumulative with NPP 12 months. In relation to assault upon Miss Wallace (common assault): 12 months imprisonment. In relation to assault upon Miss Dennis: 2 years imprisonment with NPP 12 months</p>
145	WEST, David	15 November 2007	Wellington Prosecutor: Sergeant Maher	Stevenson	s 59(1) Crimes Act 1900		<p>Charge(s): Assault occasioning actual bodily harm</p> <p>Facts: The accused ahs assaulted the same woman victim on three occasions and occasioning actual bodily harm. On the third occasion, the accused kicked the victim numerous times to the head, chest and stomach with children present at the time aged 14 years and 6 years old. The accused grabbed the youngest boy, went to a neighbours house and hid from the police.</p> <p>Mitigating factor(s): plea of guilty, and the accused was prepared to undertake rehabilitation</p> <p>Aggravating factor(s): prior occasions of assault on the same victim with previous gaol sentences</p> <p>Sentence: 2 years imprisonment with NPP 12 months</p>
146	RYAN, Benjamin	9 November 2007	Central	Brydon	s 33B(1)(a)		<p>Charge(s): sentence correction</p> <p>Facts: The accused has had a series of matters that came before the court on 22 August 2007 for sentence for a period of 30 months with a NPP of 18 months. The judge confirmed in court that for the accused to be eligible for the drug rehabilitation program, there be a minimum of 18 months NPP.</p> <p>Sentence: reduced to 24 months imprisonment with a NPP of 18 months to allow admission into the drug rehabilitation program.</p>
147	HUON, Tilak	18 April 2007	Central	Maloney	s 35(1)(a)	wound	<p>Charge(s): s 35(1)(a) malicious wounding</p>

No.	Defendant & case name	Sentence date	Local Court & prosecutor	Magistrate	Section ¹	Category	Case details
					old		<p>Facts: The offence occurred between 1.15am and 1.30am on 22 April 2006 at Darlinghurst. The victim had returned to her residence in Liverpool St, Darlinghurst after finishing late from work. She decided to make an overseas call from a public telephone. The offender was intoxicated at the time approached her carrying a broken bottle and lashed out and struck the victim on her face, he was later arrested by police and interviewed by police. The accused has a history of alcoholism, possible cerebral atrophy as well as possible mental illness, developmental delay, self harm and suffers from a depressive illness. The accused later stated he only had vague memories of the night he attacked to victim.</p> <p>Mitigating factor(s): plea of guilty, no previous convictions, the accused is of good character, the offender is unlikely to re-offend, he has good to excellent prospects of rehabilitation, he has shown remorse.</p> <p>Aggravating factor(s): Actual or threatened use of violence, use of a weapon, gratuitous cruelty, the injury, emotional harm, loss of damage caused by the offence were substantial, the commission of the offence without regard for public safety.</p> <p>Sentence: imprisonment 2 years with NPP 15 months</p>

ANNEXURE E

CASE SUMMARIES

The following summaries relate to the 19 cases in which concerns were expressed by magistrates in relation to the sentences that could be imposed, as mentioned in chapter 2.

These case summaries have been compiled using information and data obtained from the Judicial Commission of NSW, and transcripts obtained from Local Courts. They summarise personal violence cases heard in NSW Local Courts between January 2005 – December 2008 where offenders received the maximum full-time custodial sentence (or more) and where magistrates made comments critical of either (a) the failure of the prosecution to elect for trial by indictment or (b) the jurisdictional limit.

CASE 1

Charge: Malicious wounding: s 35(1) Crimes Act 1900 (NSW)

Aggravating factor(s): Violent offence; use of a weapon; gratuitous cruelty; substantial injury, emotional harm, loss or damage caused by offence; offence commissioned without regard for public safety.

Mitigating factor(s): Defendant suffered from mental illness; is a person of good character; unlikely to re-offend; no previous convictions (except a prior PCA in respect of use of a vessel); good prospects of rehabilitation; remorse; plea of guilty.

Magistrate's comments: 'In terms of objective criminality, the attack upon the Victim was a completely and utterly unprovoked one. She was a defenceless young woman going about her business making a phone call when she was inexplicably attacked by the offender with a broken bottle. Therefore, in purely objective terms one would have difficulty conceiving a more serious form of malicious wounding.'

'In the particular case at hand in sentencing the offender...the Court is restricted in applying the principles enunciated above because of the legislative limitation of two years imprisonment allowed. This legislative restriction has indeed been brought about because of the Office of the Director of Public Prosecution's prosecutorial discretion. Objectively the offence committed by the

offender is at the top end of the range for such offences and as such a sentence in the range of three and a half to five years would, in my view, be appropriate.’

‘... Taking into account those subjective and more particularly medical factors of H it would be appropriate to fix a non-parole period in the order of two years. However because of the legislative limitation imposed upon the jurisdiction of the Local Court I am unable to do so. ...’

Sentence: 2 years imprisonment with a non-parole period of 15 months.

CASE 2

Charge: Maliciously inflicting grievous bodily harm: s35(1) Crimes Act 1900 (NSW)

Aggravating factor(s): Use of a weapon; previous criminal history of violence (but the last offence was in 1989 so not of much weight); gratuitous cruelty to some degree (given the victim’s very deep wound).

Mitigating factor(s): Offence not planned—it was not the defendant’s intention when he left his house to attack anybody, but only to defend himself and his property.

Magistrate’s comments: ‘It was a very grievous wound, in fact it was one of the worst wounds I have ever seen on a person who survived the attack, possibly the worst wound in 11 years as a magistrate and so it is in my opinion from an objective point of view at the upper end of the scale of grievous bodily harm and in fact it comes as something of a surprise to me that this matter [h]as not been dealt with by the DPP and referred to the District Court. That said, this court of course has jurisdiction and someone else made that decision. My view it should have been dealt with in the District Court at least on the objective circumstances.’

Sentence: 24 months imprisonment with a non-parole period of 18 months.

CASE 3

Charge(s): Range of offences including use or possession of weapon to resist arrest.

Aggravating factor(s): Objective seriousness of the offences.

Mitigating factor(s): Plea of guilty; defendant suffered from mental illness (paranoid schizophrenia).

Magistrate's comments: In relation to Sequence 14 (which involved the ramming of a police car at speed from a great distance):

'Certainly on this occasion there was an extreme risk of danger to the community. The deployment of the spikes in the circumstances ... seems to me to be inherently dangerous and almost as dangerous as the driving complained of except in a different way. And the fact that the officer had to dive out of the way rather than being run over merely goes to underscore what it is that I have just said.'

'... In those circumstances it seems to me that this offence is deserving of a custodial period longer than the maximum penalty available. However I am constrained because of that to impose the maximum that this court can impose, but I do not think it is appropriate, notwithstanding what I have said, to make it accumulative because of the special circumstances that I have found.'

Sentence:

Sequence 2 -- convicted without further order;

Sequences 4, 6, 10, 11 and 15 -- 12 months imprisonment—comprising a non-parole period of 7 months, and on parole for the balance to be of good behaviour with specified conditions (ie, supervised, attend intervention program, take medication as prescribed, and obey all directions of the Wollongong Community Mental Health team);

Sequence 14 -- 2 years imprisonment (non-parole period already served; defendant released on parole to be of good behaviour with the same conditions as above).

Sequence 17 -- 6 months imprisonment, disqualified from holding or retaining licence for 5 years.

[Note: Details of the sequences not on transcript]

CASE 4

Charge(s): Malicious damage; assault occasioning actual bodily harm; assault (x3); common assault; take and drive; drive whilst disqualified; unlawfully take and drive a vehicle without consent; breach of apprehended violence order; breach of s 12 bond

Magistrate's comments: 'The reality is, if I go through the appropriate sentencing rules and go through the sentencing procedure, he'd be getting well over the jurisdiction that I have, I'd be

looking at three years actually. ... he's got a far less, a lighter sentence than he should be getting.'

Sentence: Aggregate sentence of 2 years imprisonment, non-parole period of 18 months comprising of:

(a) assault occasioning actual bodily harm - 12 months imprisonment;

(b) assault occasioning actual bodily harm - 12 months imprisonment, cumulative on the breach of s 12 bond – 12 months imprisonment, with a non-parole period of 9 months; and

(b) in regard to all the other matters, an additional 12 months imprisonment, which included:

goods in custody – 6 months imprisonment;

drive whilst disqualified - \$400 fine plus court costs, 2-year disqualification;

assault and intimidate police – 12 months imprisonment;

malicious damage - \$300 fine;

contravening domestic violence order (x2) – 2 years imprisonment, non-parole period of 18 months;

police matter with police gear - \$200 fine + \$700 compensation for damage to machine; and

further \$400 in fines for two other offences.

CASE 5

Charge: Maliciously inflicting grievous bodily harm

Magistrate's comments: '...this is another example, and I had one recently involving the sentencing of H where a matter such as this should not be dealt with by the Police Prosecution Unit. Not to disparage them or say they do not have the capacity to do it.'

'But it is another example of serious matters that have serious consequences and people are charged with a serious crime such as a s 33(1)(a) or (1)(b) matter that should strictly be the resolve of the Director of Public Prosecutions office in the prosecution of these offences. Because it makes a farce of the local court and decriminalises serious offences such as these that range from anything from seven to fifteen years penal servitude for one singular offence and because of

this statutory limit of only two years, this court can only for a worse possible case impose a sentence of two years.’

‘Although the court can look beyond that two years and applying the principles in *R v Doan*, and look beyond it and consider what a court, a far more senior court than this, can impose if this matter was dealt with at that court at first instance, but because of the Director of Public Prosecutions prosecutorial discretion being exercised, truth in sentencing fails the general public again, and again and again. And until something is done by way of increasing the legislative options by way of sentence that this court has, there will continually be negative comments about judicial officers not handing out appropriate sentences.’

‘And in my view should this matter have been pursued in another place, by the proper exercise of the DPP’s statutory discretion, a sentence in the order of three years would have been appropriate.’

‘[Defence counsel] suggests that this matter falls with the mid-range of seriousness for these offences. I tend to agree which is why I said earlier that if this matter had been dealt with in another place, a sentence of three years objectively would be appropriate. ...’

‘ ... the value of the plea of guilty is subsumed by the DPP’s exercise of its prosecutorial discretion and the statutory limit that this court can impose.’

Aggravating factor(s): Actual use of violence; the injury, emotional harm, loss or damage suffered by the victim was substantial; and to a certain extent the commission of the offence was without regard to public safety.

Mitigating factor(s): No prior record other than some minor traffic matter; good character; unlikely to re-offend; good prospects for rehabilitation; remorse; plea of guilty; went to the aid of the victim at the time.

Sentence: 2 years imprisonment, with a non-parole period of 9 months.

CASE 6

Charge(s): Maliciously inflict grievous bodily harm; common assault

Aggravating factor(s): Attack on mother (maliciously inflicting grievous bodily harm) at the top end of the range of seriousness of matters before the Local Court.

Mitigating factor(s): Plea of guilty.

Magistrate's comments: 'In my opinion the common assault upon his father is a relatively minor matter, a technical matter in the sense that there was no physical contact between father and son. The assault upon the mother is clearly at the top end of the range of seriousness of the matters that come before this court. ... I am of the view that there should not be cumulative sentences because the assault on the father is relatively minor and by cumulating them what I would really be doing is purely and simply giving the assault on the mother more than I can really give. I would be going about it in the wrong way, I would be giving him more than I can give under my jurisdiction if I was to cumulate.

' ... the assault on the mother ... is one of those assaults where clearly it would warrant more than the two years that I am able to give ... '

Sentence: Concurrent sentences for maliciously inflict grievous bodily harm -- 2 years imprisonment, with a non-parole period of 18 months; and common assault -- 1 month imprisonment. 5-year AVO.

CASE 7

Charge(s): Maliciously inflicting grievous bodily harm

Aggravating factor(s): Gravity of the offence; very serious injury; use of weapon; deliberate and gratuitous cruelty; the defendant was in a position of authority (as he was both the de facto guardian and employer of the victim); the victim was unusually vulnerable due to his dependence on the defendant and his low intellect.

Mitigating factor(s): No criminal record.

Magistrate's comments: ' ... this was a case, which, in my opinion, would have been more appropriately dealt with in the District Court. The allegations were that the victim had been blinded and had had his jaw broken by his employer. MP was acquitted of the blinding matter but in my opinion the inherent gravity of the two matters, especially taken together, as they were alleged to have been crimes committed as part of a course of conduct at all time suggested that they should be dealt with in the District Court. This is not an isolated case. I know of a number of matters in which magistrates have expressed similar concerns. I have had some previously myself.

'Years ago magistrates could refuse to deal with matters if they thought they were more appropriately dealt with, because of their inherent seriousness, in the District Court. I do not understand the policy of the DPP in regard to his election to deal with matters in the District

Court and I make no further comment but I do propose however to send a copy of my remarks to the DPP and the Attorney General for their consideration.’

Note also that during the defendant’s bail application, the magistrate said: ‘The gravity of the offence ... might be reflected at least ... in the fact that for the very first time in about twelve years as a magistrate I have imposed the maximum on somebody. That is how serious I think this offence is. ...’

Sentence: Non-parole period of 18 months, and 6 months parole.

CASE 8

Charge(s): Common assault; assault occasioning actual bodily harm; recklessly causing grievous bodily harm

Aggravating factor(s): Serious assault; significant injury sustained by the victim; the defendant was on a bond at the time of the offence;

Magistrate’s comments: ‘... this is a serious example of assault upon a female. It should, in an appropriate way, be condemned. The jurisdictional limit, quite simply, comes into play in this particular case. Had it been dealt with in the District Court I have absolutely no doubt that a sentence far beyond two years would have been imposed. In my view, against the maximum period of ten years, something towards in terms of a total sentence about four years in terms of a total sentence would be on the cards.’

Aggravating factor(s): Seriousness of crime.

Sentence: Common assault -- fixed term of 4 months; recklessly inflict grievous bodily harm – NPP 18 months, with additional term of 6 months. The charge of assault occasioning actual bodily harm was withdrawn.

CASE 9

Charge(s): Assault occasioning actual bodily harm

Aggravating factor(s): Violent attack; extremely poor history of violence, including a number of custodial terms, and recent breach of an AVO; use of weapon.

Magistrate's comments: 'Given the violence of the attack and the use of what was potentially a very brutal weapon [samurai sword], it seems to me that were I unconstrained, a sentence in the region of three years imprisonment would be entirely appropriate. That would, in the normal course, attract a fairly short non-parole period simply because it seems that there is very little to be achieved in periods on parole when somebody has such an extensive history of violence as you do. But noting there is a limit on the court's power in the present case, that whilst in the District Court the maximum sentence would be five years, but in this court it is limited to two years, the correct approach is to determine the proper sentence and then allow the jurisdictional limit to apply if it does so.'

Sentence: Fixed term of 2 years imprisonment.

CASE 10

Charge(s): Threatened to use an offensive weapon with intent to prevent lawful apprehension; driving whilst there was present in his blood the PCA; driving unregistered vehicle; driving while uninsured; fail to comply with police direction to stop; vehicle displaying unauthorised number plate

Aggravating factor(s): Prior convictions including driving with a PCA and contravening AVOs; conduct demonstrated that he understood the danger to the police.

Mitigating factor(s): Early plea of guilty (although not at the first opportunity).

Magistrate's comments: '... notwithstanding the seriousness of this matter I am constrained by the jurisdictional limit of this court to an upper limit of two years.'

Sentence:

Threatened to use an offensive weapon with intent to prevent lawful apprehension - 2 years imprisonment, with NPP 18 months;

driving with the PCA - 3-year s 9 bond; 2-year driving disqualification; and

driving unregistered vehicle; driving while uninsured; fail to comply with police direction to stop; and vehicle displaying unauthorised number plate - s 10A (ie, conviction but no penalty).

CASE 11

Charge(s): Assault with intent to take/drive motor vehicle; shoplifting; common assault (x2)

Aggravating factor(s): Extensive criminal record; objective seriousness of offence; offence committed while on conditional liberty

Magistrate's comments: ' ... I note that the assault with intent to take or drive motor vehicle is a matter which is of sufficient seriousness to warrant a sentence of ten years imprisonment as fixed by parliament, notwithstanding that this court has a jurisdictional limit of two years.'

'Taking into account [Doan's] case, a 2000 decision, I think it appropriate to take the view that in terms of objective seriousness, also noting the defendant's past prior record, this is a matter which would have to fall at least half way up the scale, therefore warranting a sentence of five years, but the court is bound by its jurisdictional limit and a term of two years should be imposed. ...'

Sentence: Concurrent sentences for:

assault with intent to take/drive motor vehicle – 2 years imprisonment; and

shoplifting and common assault (x2) – concurrent 6 months imprisonment for each offence..

CASE 12

Charge(s): Aggravated indecent assault; procure child under 14 years for unlawful sexual activity; fail to appear

Aggravating factor(s): The offence was committed in the home of the child; age of the child; defendant was in a position of trust.

Mitigating factor(s): Plea of guilty; no criminal record of this sort of offence; the defendant is in a moderate low risk category of reoffending in relation to other male sexual offenders; remorse.

Magistrate's comments: 'The non-parole period has to be reduced to extend the parole period, that's what has to happen in this court unless I cumulate the sentences ... but in this case that's the only way you can do it because he's facing 15 years in gaol, the parliamentarians say "What he did carries a maximum penalty of 15 years in gaol but we'll leave it in the Local Court where you only get two. That doesn't make sense to me at all.'

Sentence: Total sentence of 2 years imprisonment, NPP 12 months.

Charge(s): Damage property by fire; armed with intent to commit indictable offence

CASE 13

Charges: Damage property by fire; armed with intent to commit indictable offence

Aggravating factor(s): Seriousness of offence; previous convictions (although somewhat dissimilar to the nature of the offences, which were about personal revenge).

Mitigating factor(s): Plea of guilty.

Magistrate's comments: 'If I were to assess that matters fell towards the halfway mark of seriousness realistically I do not think they can be put much lower than that, he really ought to be sentenced to five years less his ... 25% discount in respect of the first matter and three and a half years in respect less his discount in respect of the second matter.'

'I am of the view that R v [Doan] realistically leaves me with no option other than to impose the jurisdictional limit available to this court in respect of each matter which still falls below what to my mind is a sentence which ought to apply having regard to the maximum penalty fixed by Parliament.'

Sentence: Concurrent terms of two years imprisonment for all matters.

CASE 14

Charge(s): Reckless wounding

Aggravating factor(s): Very serious offence committed upon a hotel security officer; occurred in a public place; use of a glass, which is a very serious and dangerous object.

Mitigating factor(s): Prior good character; no prior convictions; plea of guilty (not at the first available opportunity but at the date of trial).

Magistrate's comments: ' ... Considering that the maximum penalty is seven years imprisonment, and my jurisdictional limit is only two years imprisonment, it presents me with a somewhat difficult sentencing task.'

'In my view, if this matter was dealt with in a jurisdiction which the prosecution could have elected to take it to, but chose not to, the court would be considering a much longer term of imprisonment in my view. Considering that this is a matter for which the maximum penalty is seven years, and this is a lower to middle range offence, in my view the court would have at that time been considering a custodial sentence in excess, well in excess, of three years. Therefore, the

standard non-parole period that a court would have been considering would have used the guide post of three years. I am not in a position to do that because my sentencing jurisdiction is restricted for each particular offence to two years.'

'Doan's case, however, tells me that when considering sentencing in this matter I should not be restricted by the jurisdictional limit, but I should be restricted by the maximum penalty as set down by the Act. Therefore, you have already received a discount in my view, and you have received a discount by having the matter dealt with in this court, with my maximum jurisdictional limit being two years. ...'

'... Taking into account the serious nature of this offence, taking into account your plea of guilty, not at the first available opportunity but at the date of trial, that you would have been entitled to a discount for that plea of guilty, but considering my jurisdictional limit, in my view the only way of dealing with this matter is to sentence you to a period of full-time custody of two years.'

'Considering that in my view this matter is worth far more than two years, because of the nature of the offence, I have considered whether simply fixing a fixed term of two years is appropriate. Considering, however, the other factors that I must—that is your need for rehabilitation—I propose to order that you serve a minimum term of eighteen months imprisonment of a non-parole period, and a further period of six months on parole when you are entitled to do that.'

Sentence: NPP 18 months, and further 6 months on parole.

CASE 15

Charge(s): Assault occasioning actual bodily harm

Mitigating factor(s): Plea of guilty

Aggravating factor(s): Previous history of criminal violence

Magistrate's comments: 'In relation to the facts concerning this matter and the injuries sustained it is quite clearly a matter which comes into one of the more serious categories of this particular offence, which carries a maximum term of imprisonment of five years.'

'The maximum period of imprisonment which can be imposed, as I have said, is five years and notwithstanding a discount for a plea of guilty in respect to that matter, the appropriate sentence would still exceed that to which this court can impose and this court is limited to a two-year term of imprisonment.'

Sentence: 2 years imprisonment with NPP 18 months.

CASE 16

Charge(s): possess loaded firearm in public place; possess unauthorised firearm

Mitigating factor(s): Plea of guilty

Aggravating factor(s): Objective seriousness of offence; prior criminal history

Magistrate's comments: 'The court's jurisdiction, that is a statutory jurisdiction, is limited to two years in respect of the items unless the court accumulates up to five years and in respect to these offences, it would be most inappropriate for the court to accumulate for all the offences arose out of the same incident.'

'...you are entitled to a sizeable discount and that discount will come about by reason of the court's limited jurisdiction.'

'As I indicated, this offence carries a term of seven years imprisonment. By reason of the court's jurisdiction you gain a considerable discount well above that that was suggested in Thompson v Halton(?), by the Court of Criminal Appeal and certainly greater that should be granted by reason of the jurisdiction. There is not a great deal this court can do about the matter.'

Sentence: 2 years imprisonment with NPP of 18 months.

CASE 17

Charge(s): act of indecency without consent

Mitigating factor(s): None

Aggravating factor(s): previous convictions for similar matters and shows (served a term of imprisonment) that the offender carried out a great deal of planning and organisation in relation to seeking sexual gratification and achieving his objectives. The offence was committed in the home of the victim.

Magistrate's comments: 'Given the aggravating features of this matter...is such that I consider that the offences fall into the upper range of offences of this type and accordingly, the powers of

the Local Court are insufficient if the Local Court dealt with this matter in terms of pure concurrency as requested by the defence’.

‘a non-parole period is not set due to my view of the seriousness of the offences and the limitations of the Local Court’.

Sentence: first count sentenced 2 years imprisonment, second count sentenced to a term of imprisonment of 2 years. No NNP

CASE 18

Charge(s): breach of section 12 bond

Mitigating factor(s):

Aggravating factor(s): past criminal history

Magistrate’s comments: ‘It carries a custodial term of 7 years. Understandably the jurisdictional limit of this court is two years. But by reasons of the custodial term available of some seven years any discount which is applicable is already well in place by reason of the legislation providing to you a 5 year discount over and above that is available by reason of jurisdiction if the court deemed that this was the worst case scenario...it is not a worst case scenario but certainly one would have to suggest by reasoning of the difference between that time available, that being 7 years and the jurisdiction available, your discount is already in place.’

Sentence: For each matter whether it’s touching, rubbing the penis region or the bottom region, the offender is convicted and sentenced 18 months imprisonment, additional 6 months.

CASE 19

Charge(s): Common assault (x2), maliciously damaging property (x2), assault occasioning actual bodily harm, grievous harm, drive manner dangerous, drive unlicensed, negligent driving, breach AVO

A month later committed assault against A in which the accused broke her arm (requiring surgery) and would not permit her to seek medical attention threatening to break her other arm if she didn’t lay down and be quiet. He didn’t allow her to go to hospital until the next morning and threatened to bash her if she told the hospital what happened.

On 23 March there was an argument and the accused grabbed D by the hair, pulled her backwards and attempted to throw her off the veranda. She landed on the ground and hit her head on the brick wall. While she was down on the ground, the accused proceeded to punch and kick her to the head and elbow, threatening to kill her. He continued to assault her, grabbing at her eyes, attempting to poke them out. He grabbed her hair again and forced her head up against the brick wall

Mitigating factor(s):

Aggravating factor(s): assault offence committed while on bail for other assaults.

Magistrate's comments: "I am appalled – appalled – at the behaviour of the DPP...While PS was on bail in relation to some matters, he committed an offence of grievous bodily harm upon A. The DPP sought not to take these matters over...It would seem to me it was in community's interests and indeed the interests of PS if all of these matters had been subsumed by the DPP. A realistic picture could have been presented to the superior court in relation to these matters...a full and complete picture could have been presented to a judge who has wider sentencing powers."

Sentence: In relation to the assault on 23 March: 2 years imprisonment. In relation to assault upon A: 2 years imprisonment cumulative with NPP 12 months. In relation to assault upon W (common assault): 12 months imprisonment. In relation to assault upon D: 2 years imprisonment with NPP 12 months

Jurisdiction	Imprisonment				Fine		Maximum property value for 'break and enter'/burglary offence to be summarily prosecuted
	Summary offences	When term of imprisonment not provided by law	Indictable offences dealt with summarily		Individual offender	Corporate offender	
			Maximum term for single offence	Maximum consecutive terms			
WA	as prescribed by law	n/a	<ul style="list-style-type: none"> Criminal Code (WA) offences - up to 3 years 	no stated limit	<ul style="list-style-type: none"> Criminal Code (WA) offences - \$36,000 offence punishable by imprisonment only - statutory penalty (in months) x 1000 	offence punishable by imprisonment only - statutory penalty (in months) x 5000	\$10,000
SA	2 years	n/a	2 years	no stated limit	<ul style="list-style-type: none"> summary offences - \$150,000 where fine not prescribed - \$10,000 	as prescribed by law	\$30,000

ANNEXURE F

RELEVANT PERSONAL VIOLENCE OFFENCES# FINALISED IN HIGHER COURTS

This table has been compiled using information and data obtained from the Judicial Commission of NSW.

Offence	Section	Table 1 or Table 2 offence	Maximum penalty on indictment (Standard non-parole period)	Review period	Total number of matters	Number of matters where full-time custody was imposed (percentage)	Range of full-time custody	Midpoint of full-time custody	Percentage of custodial matters involving ≤ 2 years imprisonment	Percentage of custodial matters involving ≤ 3 years imprisonment	Percentage of custodial matters involving ≤ 4 years imprisonment	Percentage of custodial matters involving ≤ 5 years imprisonment
Send letter threatening to kill or injure	<i>Crimes Act 1900</i> s 31(1)(a)	Table 1	10 years	Jan 2002–Dec 2008	3	2	2.5–3 years	2.5 years	Nil	100%	-	-
Use or possess offensive weapon with intent to prevent lawful apprehension/detention	<i>Crimes Act 1900</i> s 33B(1)(a)	Table 1	12 years	Jan 2002–Dec 2008	107	87 (81%)	6 months–9 years	3 years	27%	66%	82%	95%
Threaten injury with intent to prevent lawful apprehension/detention	<i>Crimes Act 1900</i> s 33B(1)(b)	Table 1	12 years	Jan 2002–Dec 2008	3	2 (67%)	3.5–4.5 years	3.5 years	Nil	Nil	50%	100%

By reference to Table contained in Annexure C, namely personal violence offences where the maximum penalty was imposed in the Local Court.

Offence	Section	Table 1 or Table 2 offence	Maximum penalty on indictment (Standard non-parole period)	Review period	Total number of matters	Number of matters where full-time custody was imposed (percentage)	Range of full-time custody	Midpoint of full-time custody	Percentage of custodial matters involving ≤ 2 years imprisonment	Percentage of custodial matters involving ≤ 3 years imprisonment	Percentage of custodial matters involving ≤ 4 years imprisonment	Percentage of custodial matters involving ≤ 5 years imprisonment
Recklessly cause grievous bodily harm in company—subject to SNPP (Item 4A)	<i>Crimes Act 1900</i> s 35(1)	Table 1	14 years (SNPP 5 years)	Jan 2008–Dec 2008	6	5 (83%)	2.5–7 years	4 years	Nil	40%	60%	60%
Malicious wounding (old)	<i>Crimes Act 1900</i> s 35(1)(a) (old)	Table 1	7 years	Jan 2002–Dec 2008	396	255 (64%)	6 months–6 years	3 years	24%	74%	94%	99%
Maliciously inflict grievous bodily harm (old)	<i>Crimes Act 1900</i> s 35(1)(b) (old)	Table 1	7 years	Jan 2002–Dec 2008	359	242 (67%)	6 months–6 years	3 years	22%	58%	84%	96%
Recklessly cause grievous bodily harm—subject to SNPP (Item 4B)	<i>Crimes Act 1900</i> s 35(2)	Table 1	10 years (SNPP 4 years)	Jan 2008–Dec 2008	15	13 (87%)	18 months–5 years	3 years	23%	61%	84%	100%
Maliciously inflict grievous bodily harm in company (old)	<i>Crimes Act 1900</i> s 35(2) (old)	Table 1	10 years	Jan 2002–Dec 2008	92	58 (63%)	18 months–8 years	3 years	19%	61%	90%	98%
Recklessly wound in company—subject to SNPP (Item 4C)	<i>Crimes Act 1900</i> s 35(3)	Table 1	10 years (SNPP 4 years)	Jan 2008–Dec 2008	1	Nil	Nil	Nil	Nil	Nil	Nil	Nil

Offence	Section	Table 1 or Table 2 offence	Maximum penalty on indictment (Standard non-parole period)	Review period	Total number of matters	Number of matters where full-time custody was imposed (percentage)	Range of full-time custody	Midpoint of full-time custody	Percentage of custodial matters involving ≤ 2 years imprisonment	Percentage of custodial matters involving ≤ 3 years imprisonment	Percentage of custodial matters involving ≤ 4 years imprisonment	Percentage of custodial matters involving ≤ 5 years imprisonment
Recklessly wound—subject to SNPP (Item 4D)	<i>Crimes Act 1900</i> s 35(4)	Table 1	7 years (SNPP 3 years)	Jan 2008–Dec 2008	21	12 (57%)	18 months–4 years	2.5 years	16%	66%	100%	-
Injuries by furious driving, etc	<i>Crimes Act 1900</i> s 53	Table 1	2 years	Jan 2002–Dec 2008	3	1 (33%)	1 year	1 year	100%	-	-	-
Causing grievous bodily harm (not involving motor vehicle)	<i>Crimes Act 1900</i> s 54	Table 1	2 years	Jan 2002–Dec 2008	8	3 (38%)	12–18 months	1 year	100%	-	-	-
Assault, resist or obstruct certain officers in execution of duty	<i>Crimes Act 1900</i> s 58	Table 2	5 years	Jan 2002–Dec 2008	28	10 (36%)	6 months–3 years	18 months	90%	100%	-	-
Assault occasioning actual bodily harm	<i>Crimes Act 1900</i> s 59(1)	Table 2	5 years	Jan 2002–Dec 2008	445	196 (44%)	6 months–5 years	2 years	70%	91%	99%	100%
Assault occasioning actual bodily harm in company	<i>Crimes Act 1900</i> s 59(2)	Table 2	7 years	Jan 2002–Dec 2008	167	75 (45%)	6 months–3 years	18 months	87%	100%	-	-
Assault/harass/intimidate/stalk police officer	<i>Crimes Act 1900</i> s 60(1)	Table 2	5 years	Jan 2002–Dec 2008	22	14 (64%)	6 months–2 years	18 months	100%	-	-	-

Offence	Section	Table 1 or Table 2 offence	Maximum penalty on indictment (Standard non-parole period)	Review period	Total number of matters	Number of matters where full-time custody was imposed (percentage)	Range of full-time custody	Midpoint of full-time custody	Percentage of custodial matters involving ≤ 2 years imprisonment	Percentage of custodial matters involving ≤ 3 years imprisonment	Percentage of custodial matters involving ≤ 4 years imprisonment	Percentage of custodial matters involving ≤ 5 years imprisonment
Assault police officer in execution of duty cause actual bodily harm—not subject to SNPP	<i>Crimes Act 1900</i> s 60(2)	Table 1	7 years	Jan 2002–Dec 2008	16	13 (81%)	6 months–4 years	2.5 years	46%	77%	100%	-
Assault police officer in execution of duty cause actual bodily harm—subject to SNPP (Item 5)	<i>Crimes Act 1900</i> s 60(2)	Table 1	7 years (SNPP 3 years)	Feb 2003–Dec 2008	13	7 (54%)	2–4 years	2.5 years	14%	86%	100%	-
Assault law enforcement officer (not police)	<i>Crimes Act 1900</i> s 60A(1)	Table 2	5 years	Jul 2002–Dec 2008	1	1 (100%)	6 months	6 months	100%	-	-	-
Assault law enforcement officer (not police)—inflict actual bodily harm	<i>Crimes Act 1900</i> s 60A(2)	Table 1	7 years	Jul 2002–Dec 2008	1	1 (100%)	2.5 years	2.5 years	Nil	100%	-	-
Common assault	<i>Crimes Act 1900</i> s 61	Table 2	2 years	Jan 2002–Dec 2008	118	30 (25%)	6 months–2 years	1 year	100%	-	-	-
Indecent assault	<i>Crimes Act 1900</i> s 61L	Table 2	5 years	Jan 2002–Dec 2008	91	28 (31%)	1–4 years	2 years	64%	93%	100%	-

Offence	Section	Table 1 or Table 2 offence	Maximum penalty on indictment (Standard non-parole period)	Review period	Total number of matters	Number of matters where full-time custody was imposed (percentage)	Range of full-time custody	Midpoint of full-time custody	Percentage of custodial matters involving ≤ 2 years imprisonment	Percentage of custodial matters involving ≤ 3 years imprisonment	Percentage of custodial matters involving ≤ 4 years imprisonment	Percentage of custodial matters involving ≤ 5 years imprisonment
Aggravated indecent assault— not subject to SNPP	<i>Crimes Act 1900</i> s 61M(1)	Table 1	7 years	Jan 2002–Dec 2008	87	36 (41%)	1–6 years	2.5 years	33%	69%	83%	94%
Aggravated indecent assault— subject to SNPP (Item 9A)	<i>Crimes Act 1900</i> s 61M(1)	Table 1	7 years (SNPP 5 years)	Feb 2003–Dec 2008	76	47 (62%)	1–6 years	3 years	28%	66%	83%	94%
Aggravated indecent assault—child < 10—not subject to SNPP (old)	<i>Crimes Act 1900</i> s 61M(2) (old)	Table 1	10 years	Jan 2002–Dec 2008	37	21 (57%)	1–8 years	2.5 years	43%	62%	76%	86%
Aggravated indecent assault—child < 10—subject to SNPP (Item 9B— minimum 5 years) (old)	<i>Crimes Act 1900</i> s 61M(2) (old)	Table 1	10 years (SNPP 5 years)	Feb 2003–Dec 2008	36	30 (83%)	1–6 years	3 years	17%	67%	80%	93%
Aggravated indecent assault—child < 10—subject to SNPP (Item 9B— minimum 8 years) (old)	<i>Crimes Act 1900</i> s 61M(2) (old)	Table 1	10 years (SNPP 8 years)	Jan 2008–Dec 2008	9	9 (100%)	2–7 years	3 years	11%	56%	78%	78%

Offence	Section	Table 1 or Table 2 offence	Maximum penalty on indictment (Standard non-parole period)	Review period	Total number of matters	Number of matters where full-time custody was imposed (percentage)	Range of full-time custody	Midpoint of full-time custody	Percentage of custodial matters involving ≤ 2 years imprisonment	Percentage of custodial matters involving ≤ 3 years imprisonment	Percentage of custodial matters involving ≤ 4 years imprisonment	Percentage of custodial matters involving ≤ 5 years imprisonment
Sexual intercourse with child 10–16 (old)	<i>Crimes Act 1900</i> s 66C(1) (old)	Table 1	8 years	Jan 2002–Dec 2008	84	53 (63%)	6 months–8 years	3 years	25%	55%	76%	91%
Affray—committed before 15/12/2005	<i>Crimes Act 1900</i> s 93C(1)	Table 1	5 years	Jan 2002–Dec 2008	87	15 (17%)	6 months–3 years	18 months	87%	100%	-	-
Affray—committed on or after 15/12/2005	<i>Crimes Act 1900</i> s 93C(1)	Table 1	10 years	Dec 2005–Dec 2008	34	4 (12%)	1–3 years	2.5 years	25%	100%	-	-
Possessing loaded firearm/spear gun	<i>Crimes Act 1900</i> s 93G(1)(a)	Table 2	10 years	Jan 2002–Dec 2008	17	12 (71%)	18 months–7 years	3 years	17%	67%	83%	92%
Firing firearm/spear gun in public place	<i>Crimes Act 1900</i> s 93G(1)(b)	Table 2	10 years	Jan 2002–Dec 2008	17	10 (59%)	1–6 years	2.5 years	40%	80%	80%	90%
Demanding property with intent to steal	<i>Crimes Act 1900</i> s 99(1)	Table 1	10 years	Jan 2002–Dec 2008	126	85 (67%)	6 months–6 years	2.5 years	45%	80%	94%	99%
Take motor vehicle/vessel with assault/occupant on board—not subject to SNPP	<i>Crimes Act 1900</i> s 154C(1)	Table 1	10 years	Jan 2002–Dec 2008	1	1 (100%)	3 years	3 years	Nil	100%	-	-

Offence	Section	Table 1 or Table 2 offence	Maximum penalty on indictment (Standard non-parole period)	Review period	Total number of matters	Number of matters where full-time custody was imposed (percentage)	Range of full-time custody	Midpoint of full-time custody	Percentage of custodial matters involving ≤ 2 years imprisonment	Percentage of custodial matters involving ≤ 3 years imprisonment	Percentage of custodial matters involving ≤ 4 years imprisonment	Percentage of custodial matters involving ≤ 5 years imprisonment
Taking motor vehicle/vessel with assault/occupant on board — subject to SNPP (Item 14)	<i>Crimes Act 1900</i> s 154C(1)	Table 1	10 years (SNPP 3 years)	Feb 2003–Dec 2008	8	8 (100%)	3–5 years	4 years	Nil	13%	75%	100%
Aggravated take motor vehicle/vessel with assault/occupant on board—not subject to SNPP	<i>Crimes Act 1900</i> s 154C(2)	Table 1	14 years	Jan 2002–Dec 2008	10	9 (90%)	2–5 years	4 years	22%	44%	67%	100%
Aggravated take motor vehicle/vessel with assault/occupant on board—subject to SNPP (Item 15)	<i>Crimes Act 1900</i> s 154C(2)	Table 1	14 years (SNPP 5 years)	Feb 2003–Dec 2008	34	31 (91%)	2–8 years	4 years	3%	32%	61%	74%

Offence	Section	Table 1 or Table 2 offence	Maximum penalty on indictment (Standard non-parole period)	Review period	Total number of matters	Number of matters where full-time custody was imposed (percentage)	Range of full-time custody	Midpoint of full-time custody	Percentage of custodial matters involving ≤ 2 years imprisonment	Percentage of custodial matters involving ≤ 3 years imprisonment	Percentage of custodial matters involving ≤ 4 years imprisonment	Percentage of custodial matters involving ≤ 5 years imprisonment
Destroy or damage property <i>to be looked at in the context of s 4 Crimes (Domestic and Personal Violence) Act 2007</i>	<i>Crimes Act 1900 s 195(1)(a)</i>	Table 1 where property value > \$5000 Table 2 where property value ≤ \$5000	5 years	Jan 2002–Dec 2008	52	18 (35%)	6 months–2.5 years	6 months	89%	100%	-	-
Destroy or damage property by fire/explosives <i>to be looked at in the context of s 4 Crimes (Domestic and Personal Violence) Act 2007</i>	<i>Crimes Act 1900 s 195(1)(b)</i>	Table 1 where property value > \$5000 Table 2 where property value ≤ \$5000	10 years	Jan 2002–Dec 2008	90	60 (67%)	12 months–6 years	3 years	10%	55%	85%	98%
Destroy or damage property by fire/explosives with intent to injure	<i>Crimes Act 1900 s 196(1)(b)</i>	Table 1	14 years	Jan 2002–Dec 2008	6	4 (67%)	3–4 years	3.5 years	Nil	25%	100%	-

Offence	Section	Table 1 or Table 2 offence	Maximum penalty on indictment (Standard non-parole period)	Review period	Total number of matters	Number of matters where full-time custody was imposed (percentage)	Range of full-time custody	Midpoint of full-time custody	Percentage of custodial matters involving ≤ 2 years imprisonment	Percentage of custodial matters involving ≤ 3 years imprisonment	Percentage of custodial matters involving ≤ 4 years imprisonment	Percentage of custodial matters involving ≤ 5 years imprisonment
Threaten or intimidate judges, witnesses, jurors	<i>Crimes Act 1900</i> s 322	Table 1 (but not if intended to procure the conviction or acquittal of a person of any serious indictable offence)	10 years	Jan 2002–Dec 2008	12	9 (75%)	1–4 years	2.5 years	44%	67%	100%	-
Threaten/ cause injury or detriment to witness/juror	<i>Crimes Act 1900</i> s 326(1)	Table 1	10 years	Jan 2002–Dec 2008	4	4 (100%)	18 months–3 years	2 years	75%	100%	-	-
Threaten/ cause injury or detriment to judicial officer	<i>Crimes Act 1900</i> s 326(1)	Table 1	10 years	Jan 2002–Dec 2008	2	1 (50%)	18 months	18 months	100%	-	-	-
Threaten/ cause injury to potential witness/juror	<i>Crimes Act 1900</i> s 326(2)	Table 1	10 years	Jan 2002–Dec 2008	4	1 (25%)	18 months	18 months	100%	-	-	-

Offence	Section	Table 1 or Table 2 offence	Maximum penalty on indictment (Standard non-parole period)	Review period	Total number of matters	Number of matters where full-time custody was imposed (percentage)	Range of full-time custody	Midpoint of full-time custody	Percentage of custodial matters involving ≤ 2 years imprisonment	Percentage of custodial matters involving ≤ 3 years imprisonment	Percentage of custodial matters involving ≤ 4 years imprisonment	Percentage of custodial matters involving ≤ 5 years imprisonment
Stalking or intimidation with intent to cause fear of physical or mental harm (repealed) <i>NB this offence is now found in other legislation - see below</i>	<i>Crimes Act 1900</i> s 545AB(1) (repealed)	Table 2	5 years	Mar 2007–Dec 2008	3	Nil	Nil	Nil	Nil	Nil	Nil	Nil
Stalking, intimidation with intent to cause fear for personal safety (repealed) <i>NB this offence is now found in other legislation - see below</i>	<i>Crimes Act 1900</i> s 562AB (repealed)	Table 2	5 years	Jan 2002–Dec 2008	45	15 (33%)	6 months–2.5 years	18 months	87%	100%	-	-
Stalking or intimidation with intent to cause fear of physical or mental harm	<i>Crimes (Domestic and Personal Violence) Act 2007</i> s 13	Table 2	5 years	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Use unauthorised pistol—subject to SNPP (Item 20)	<i>Firearms Act 1996</i> s 7(1)	Table 2	14 years (SNPP 3 years)	Feb 2004–Dec 2008	4	3 (75%)	18 months–5 years	3 years	33%	67%	67%	100%

ANNEXURE G

SUMMARY OF REFERRAL POWERS IN OTHER AUSTRALIAN JURISDICTIONS

VICTORIA.....	191
QUEENSLAND.....	191
WESTERN AUSTRALIA.....	192
SOUTH AUSTRALIA.....	193
TASMANIA.....	194
A.C.T.....	194
NORTHERN TERRITORY.....	195

Victoria

1.1 Section 29 of the *Criminal Procedure Act 2009* (Vic) provides that the Magistrates' Court may hear and determine the charge if the accused consents to a summary hearing and the Court considers that the charge is appropriate to be determined summarily,¹ having regard to:

- (a) the seriousness of the offence including—
 - (i) the nature of the offence; and
 - (ii) the manner in which the offence is alleged to have been committed, the apparent degree of organisation and the presence of aggravating circumstances; and
 - (iii) whether the offence forms part of a series of offences being alleged against the accused; and
 - (iv) the complexity of the proceeding for determining the charge; and
- (b) the adequacy of sentences available to the court, having regard to the criminal record of the accused; and
- (c) whether a co-accused is charged with the same offence; and
- (d) any other matter that the court considers relevant.²

Queensland

1.2 Section 552D(1) of the *Criminal Code* (Qld) provides that the Magistrates Court must abstain from dealing with an indictable offence triable summarily:

‘if satisfied, at any stage, after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the accused, if convicted, may not be adequately punished on summary conviction’. For indictable offences that must be dealt with summarily unless the accused elects for a jury trial,³ the Court must not have regard to the accused’s criminal history when deciding whether he or she

¹ *Criminal Procedure Act 2009* (Vic) s 29(1).

² *Criminal Procedure Act 2009* (Vic) s 29(2).

³ *Criminal Code* (Qld) s 552B.

may be adequately punished on summary conviction.⁴ If the Court abstains from jurisdiction, it must conduct the charge as a committal proceeding.⁵

The Court has the discretion not to finally determine whether to deal with the case summarily up until the final disposal of the case.⁶ It may abstain from determining a case summarily at any stage before a conviction is recorded, despite any election by the accused to be dealt with summarily or the entry of a guilty plea.⁷

1.3 The *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010* (Qld) has amended s 552D(2) of the *Criminal Code* to provide that:

- (2) A Magistrates Court must abstain from dealing summarily with a charge under section 552BA [Charges of indictable offences that must be heard and decided summarily] if satisfied, on an application made by the defence, that because of exceptional circumstances the charge should not be heard and decided summarily.

Examples of exceptional circumstances—

- 1 There is sufficient connection between the offence the subject of the charge, and other offences allegedly committed by the defendant and to be tried on indictment, to allow all the offences to be tried together.
- 2 There is an important issue of law involved.
- 3 An issue of general community importance or public interest is involved, or the holding of a trial by jury is justified in order to establish contemporary community standards.⁸

Western Australia

1.4 Section 5 of the *Criminal Code* (WA) provides that an indictable offence triable summarily is to proceed to a summary hearing unless otherwise provided by legislation; or unless on an application by the prosecution or the accused before the plea, the Magistrates Court decides that the charge should be tried on indictment.⁹ The Court may decide that a charge should be tried on indictment only if it considers:

4. *Criminal Code (Qld)* s 552I(7)(b). There is no similar legislative requirement in relation to indictable offences that must be tried summarily if the prosecution elects to have a summary hearing listed under s 552A(1) of the *Criminal Code (Qld)*.

5. *Criminal Code (Qld)* s 552D(2). This will be renumbered as s 552D(3) by cl 18 of the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Bill 2010 (Qld)*.

6. *Fares v Longmore* (1998) 148 FLR 255, 260.

7. *Kelly v Simpson* [1956] St R Qd 552, 563; referred to in *R v Hall* [1980] Qd R 304, 306.

8. *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Bill 2010 (Qld)* cl 18.

9. *Criminal Code (WA)* s 5(2). Such a decision cannot be made after the accused has pleaded to the charge: *Criminal Code (WA)* s 5(6). If the charge is of an indictable offence that may be tried summarily, the Magistrates Court must give the prosecutor and the accused an opportunity to apply for the charge to be tried on indictment: *Criminal Procedure Act 2004 (WA)* s 40(2).

- (a) that the circumstances in which the offence was allegedly committed are so serious that, if the accused were convicted of the offence, the court would not be able to adequately punish the accused;
- (b) that the charge forms part of a course of conduct during which other offences were allegedly committed by the accused and the accused is to be tried on indictment for one or more of those other offences;
- (c) that a co-accused of the accused is to be tried on indictment;
- (d) that the charge forms part of a course of conduct during which other offences were allegedly committed by the accused and others and the accused or one of the others is to be tried on indictment for one or more of those other offences; or
- (e) that the interests of justice require that the charge be dealt with on indictment.¹⁰

1.5 In making that decision, the Magistrates Court may require the prosecutor to provide information, and may hear submissions from the prosecutor and the accused.¹¹

1.6 Upon conviction, the Magistrates Court may either impose the summary conviction penalty provided for the offence; or if it considers that any sentence that it could impose would not be commensurate with the seriousness of the offence, commit the accused to a court of competent jurisdiction for sentence.¹²

South Australia

1.7 Section 19(5) of the Criminal Law (Sentencing) Act 1998 provides that if the Court is of the opinion in any particular case that a sentence should be imposed that exceeds the jurisdictional limit of 2 years¹³, the Court may remand the defendant to appear for sentence before the District Court.¹⁴ A person who has been so remanded may only withdraw his or her plea of guilty before the District Court with the leave of that Court.¹⁵

¹⁰ *Criminal Code* (WA) s 5(3).

¹¹ *Criminal Code* (WA) s 5(4)(a).

¹² *Criminal Code* (WA) s 5(8), (9).

¹³ *Criminal Law (Sentencing) Act 1998*: s 19 (3)

¹⁴ *Criminal Law (Sentencing) Act 1998* s 19(5).

¹⁵ Where the accused has pleaded guilty in the Magistrates Court, he or she must demonstrate proper grounds in the District Court to be allowed to withdraw the plea of guilty. Section 111 of the *Summary Procedure Act 1921* (SA), which permits a person who has been 'committed' to a superior court for sentence to withdraw his or her plea of guilty as of right, does not apply to a person who has been remanded for sentence under s 19 of the Sentencing Act: *DPP (SA) v District Court of SA* (2005) SASC 260.

Tasmania

1.8 In Tasmania, where the Court of Petty Sessions consider ‘for any reason’ that a charge triable summarily should be dealt with in the Supreme Court,¹⁶ it must either:

- abandon the hearing prior to conviction and follow the procedure for dealing with indictable offences; or
- complete the hearing and convict or discharge the accused—if it convicts the accused then it must commit him or her to the Supreme Court for sentence.

ACT

1.9 In dealing with an offence punishable summarily, the ACT Magistrates Court must abstain from adjudication ‘if it appears to the court, on the close of the case for the prosecution, that the offence ought to be dealt with on indictment’.¹⁷

1.10 In determining whether a case can properly be disposed of summarily, the Magistrates Court must take into account: relevant representations by the prosecutor (which must be made in the accused’s presence) and by the accused; whether the court can impose an adequate penalty, having regard to the circumstances and the degree of seriousness of the case; and any other circumstances that make it more appropriate for the case to be dealt with on indictment.¹⁸

1.11 Under s 92A of the *Magistrates Court Act 1930* (ACT), if the Magistrates Court convicts the accused of an indictable offence, but considers that the accused should be sentenced by the Supreme Court because of his or her character and antecedents, it may commit the accused to the Supreme Court for sentence.¹⁹ The Supreme Court has the same sentencing powers as it would have had if the accused had been convicted in that court.²⁰

1.12 Where the Magistrates Court abstains from adjudication, it must conduct a committal proceeding.²¹ If the Magistrates Court accepts a plea of guilty to an offence punishable summarily, but either the Court does not consider it proper to deal with the

¹⁶ *Justices Act 1959* (Tas) s 72B(2).

¹⁷ *Magistrates Court Act 1930* (ACT) s22.

¹⁸ *Crimes Act 1900* (ACT) s 375(10).

¹⁹ *Magistrates Court Act 1930* (ACT) s 92A(1).

²⁰ *Magistrates Court Act 1930* (ACT) s 92A(3).

²¹ *Magistrates Court Act 1930* (ACT) s 22; *Justices Act* (NT) s 122A.

case summarily, or the accused has withdrawn his or her consent to the summary disposal, the Magistrates Court must commit the accused to the Supreme Court.²²

Northern Territory

1.13 In the Northern Territory, charges of certain indictable offences²³ may, with the consent of both the prosecutor and the defendant, be heard and determined summarily if the Court of Summary Jurisdiction is of the opinion that:

- the charge is not one that the Court has jurisdiction, apart from s 121A of the *Justices Act* (NT), to hear and determine in a summary manner; and
- the Court is of the opinion that the case can properly be disposed of summarily.²⁴

1.14 In determining whether to proceed summarily, the Court of Summary Jurisdiction may require the prosecutor or the informant to provide an outline of the evidence that will be presented for the prosecution.²⁵ The Court may refuse to deal with a indictable offence triable summarily if it appears to the Court that the offence, 'having regard to its seriousness, the intricacy of the facts or the difficulty of any question of law likely to arise at the trial or any other relevant circumstances, ought to be tried by the Supreme Court'.²⁶ In such circumstances, the Court of Summary Jurisdiction may conduct a preliminary examination of the offence.²⁷

1.15 The Court of Summary Jurisdiction constituted by a magistrate has jurisdiction to hear and determine a charge in respect of an offence against s 186 (unlawfully causes harm to another), s 188(2) (aggravated assault), s 189A(1) (assault on police) or s 189A(2)(a) (assault on police officer who suffers harm) of the *Criminal Code* (NT), but must not do so if it is of the opinion that the charge should be prosecuted on indictment.²⁸

²² *Crimes Act 1900* (ACT) s 375(12); *Magistrates Court Act 1930* (ACT) s 90A(7).

²³ Namely, indictable offences that are: (a) punishable by not more than 10 years imprisonment; or (b) against ss 210, 213, 228, 229, 240, 241, 243, 245, 246, 247, 251 or 252 of the *Criminal Code* (NT) and punishable by not more than 14 years imprisonment: *Justices Act* (NT) s 121A(1)(b).

²⁴ *Justices Act* (NT) s 121A(1).

²⁵ *Justices Act* (NT) s 121A(1AA).

²⁶ *Justices Act* (NT) s 122A.

²⁷ *Justices Act* (NT) s 122A.

²⁸ *Justices Act* (NT) s 131A.

1.16 It is understood that magistrates in England and Wales, whose sentencing jurisdiction admittedly is well below that available in the Local Court in NSW²⁹ follow a practice of warning a defendant, in a suitable case, that if convicted and the court considers its sentencing power to be insufficient, then he or she will be committed to the Crown Court for sentence.³⁰

²⁹ *Powers of Criminal Courts (Sentencing) Act 2000*: s 78. Under this provision, Magistrates do not have the power to impose imprisonment for more than 6 months in respect of any offence.

³⁰ *Powers of Criminal Courts (Sentencing) Act 2000*: s 3. Under this provision, the Court is empowered to commit the offender to the Crown Court for sentence where it considers that the offence(s) require a custodial sentence longer than that which the Court has the power to impose.

Offence	Section	Table 1 or Table 2 offence	Maximum penalty on indictment (Standard non-parole period)	Review period	Total number of matters	Number of matters where full-time custody was imposed (percentage)	Range of full-time custody	Midpoint of full-time custody	Percentage of custodial matters involving ≤ 2 years imprisonment	Percentage of custodial matters involving ≤ 3 years imprisonment	Percentage of custodial matters involving ≤ 4 years imprisonment	Percentage of custodial matters involving ≤ 5 years imprisonment
---------	---------	----------------------------	--	---------------	-------------------------	--	----------------------------	-------------------------------	--	--	--	--

TOTAL NUMBER OF MATTERS: 2798

* Percentages are rounded up or down

NB: JIRS statistics are rounded up eg 5 weeks would be shown as 2 months etc