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Firearms Offences in Queensland and in Other Jurisdictions

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BACKGROUND

Each Australian jurisdiction has legislation which makes unlawful possession of a firearm (i.e. possession without the authority of a licence or permit) an offence. In Queensland, the relevant legislation governing the registration and the use and possession of weapons is the [Weapons Act 1990 \(Qld\)](#) and the [Weapons Regulation 1996 \(Qld\)](#). Other states and territories have similar laws. As noted on the Queensland Police Service's (QPS') [weapons licensing](#) website, many of the Act's objectives reflect the [resolutions](#) made at the May 1996 meeting of the then Australasian Police Ministers' Council following the fatal shooting of 35 people at Port Arthur in Tasmania by an assailant with a semi-automatic rifle.¹ The National Firearms Agreement was signed by all Police Ministers and represented a national plan to regulate firearms,² including the specification of common standards to be applied across each jurisdiction regarding possession.³ One of the most significant changes was the prohibition of military style semi-automatic self-loading and pump action firearms, the impact of which was sought to be alleviated by the creation of an amnesty period (from 10 May 1996 to 30 September 1997) during which such firearms could be handed in to the relevant authorities in return for an amount of compensation under the Commonwealth Government's Firearms Buyback Scheme.⁴

The National Firearms Agreement resulted in the replacement or amendment of existing firearms legislation in all jurisdictions to conform to the resolutions made under the Agreement.⁵ Common to all state and territory firearms legislation – albeit with some variations – is the requirement to register all firearms; the need for licence applicants to show a genuine reason for obtaining a licence to possess a firearm; more uniformity in the classification of firearms for licensing purposes and the categories of licences issued; the need to have a permit to purchase a firearm; stricter safe storage obligations; and restrictions on the purchase or acquisition of firearms including that all sales must be by or through a licensed firearms dealer.⁶ There are 5 main categories into which firearms are divided for licensing purposes and licences and permits are issued in relation to the category of firearm and its purpose of use. While those categories and uses are similar across all jurisdictions, each jurisdiction has its own system of classification and licensing of firearms.

Queensland's [Weapons Act 1990](#) has recently undergone review and legislation to replace this Act and its Regulations is likely to be introduced into the Legislative Assembly in the near future. The QPS' [Weapons Bill 2010 Discussion Draft website](#) notes that periodic reviews are undertaken to ensure the legislation remains up to date and continues to protect the community. It was noted that a 2008 review recommended that the Act be amended to make it more user-friendly and, accordingly, a Ministerial Weapons Act Review Committee (comprising a number of representatives of stakeholder groups such as the weapons industry, civil rights and Government) was established to rewrite the Act and its Regulations. The resulting [Discussion Draft Weapons Bill 2010 \(Qld\)](#) and [Discussion Draft Weapons Regulation 2010](#) were released for public consultation on [4 August 2010](#) to outline the proposed changes. The consultation period ran until 14 September 2010, at the end of which it was reported that around 1,200 submissions had been received from gun owners.⁷

The proposals to amend the existing legislation are aimed at increasing community safety and at making the legislation easier to read by consolidating existing and new provisions to clarify the rights and responsibilities of weapons' owners and users. The proposed changes include:

- doubling the maximum penalty for behavioural offences including possessing a knife in a public place or discharging a weapon in a public place;
- introducing tougher knife laws, including an expanded definition of bladed weapons in line with national standards;
- tightening the regulation of rifles designed to use high capacity magazines;
- tightening regulation on imitation weapons in line with a national approach;
- removing requirements for permanently deactivated public monuments to be registered or licensed;
- introducing a requirement for prospective licensees to complete an approved safety training course;
- regulating the use of laser pointers greater than 1 milliwatt;
- clarifying legislation regarding a Sikh possessing a Kirpan (short sword) in a public place for genuine religious purposes;
- introducing online processing of licence applications and permits; and
- introducing new fees for selected weapons transactions.

The LNP Shadow Police Minister, Vaughan Johnson MP, has [criticised](#) the proposals as merely creating more red tape, particularly in relation to imitation or replica guns, while *'doing little to increase penalties and*

*guarantee real jail time for criminals who used real guns and real knives and other weapons in robberies and assaults’.*⁸

UNLAWFUL POSSESSION OF FIREARMS

As noted above, firearms legislation throughout the country was overhauled or amended in response to state and territory commitments under the National Firearms Agreement. Further changes to legislation have occurred following the National Firearm Trafficking Policy Agreement in 2002 and the National Agreement on Handguns the same year. These have mainly been the creation of new firearm offences and an increase in penalties for firearms offences.⁹

This section attempts to provide an overview of the main offence provisions in the firearms legislation of the states and territories relating to unlawful possession of a firearm. As has been noted in [research](#) by the Australian Institute of Criminology (AIC), there is a vast amount of variation among jurisdictions in the range and classification of possession and use offences and the applicable statutory penalties.¹⁰ The complexity of firearms legislation, and the lack of uniformity in firearm offences among the states and territories, make it hard to provide the information in a tabulated format. Comparisons across jurisdictions are compounded further by issues including:

- inconsistencies in the approach taken regarding the type of firearm involved in the offence. For instance, the Victorian legislation extensively deals with the penalties pertaining to a range of categories of firearms and those penalties depend upon the category of firearm in question and the number of such firearms in the offender’s use or possession;
- that, although the basic meaning of ‘firearm’ is similar in each jurisdiction, there is disparity concerning what devices are being included in, or excluded from, the ‘firearm’ definition;
- that, while the categories of firearms for the purpose of issuing a licence are broadly similar across jurisdictions, with each category containing similar sorts of firearms, some jurisdictions have additional categories or impose higher penalties for the possession of ‘prohibited firearms’ or ‘restricted firearms’;
- differences in what amounts to ‘possession’ for the purpose of the relevant offences and in the exceptions and defences applying to the offence provisions;
- some jurisdictions have higher penalties for possession of a number of weapons or firearms, or for possession of unregistered firearms, or for possession by a prohibited/prescribed/excluded person;
- that, as noted by the AIC research (p 4), there is often overlap between different offences where one type of offending conduct can amount to multiple breaches of the firearms legislation. An example might be an unlicensed person in possession of an unregistered shotgun who could potentially be prosecuted for unlawful possession of a firearm as well as possession of an unregistered firearm. The maximum penalty available for each offence may well be a consideration for authorities in the charge laid;
- that, there is, between, and even within, each jurisdiction, variation in sentencing legislation and approaches taken.

Adding to the complexity created by differences in sentencing legislation among jurisdictions is the array of sentencing options, the way in which these are classified, and the amount of discretion given to judges about how sentencing laws are interpreted.¹¹ For instance, notes the AIC research (pp 2-3), the New South Wales and ACT sentencing legislation allow for periodic detention as an alternative to full time imprisonment while laws in other jurisdictions tend not to. Some jurisdictions allow the maximum penalty to be lower on a summary conviction. When exercising his or her sentencing discretion in determining the appropriate sentence for an offender, a judge is guided by sentencing principles, sentencing aims, previous cases etc. but he or she will also have regard to a range of (often competing) matters such as the traits of the offender, interests of the victim, the public interest and other factors that need to be considered to determine the sentence. All of these complex circumstances tend to give rise to what many people may see as inconsistent sentencing outcomes (p 5).

The AIC research (p 6) noted that some courts – in the United Kingdom and in NSW – have developed certain approaches to sentencing for firearms offences in order to reflect the objective seriousness of those offences. For instance, the Court of Appeal in the UK thought that there were four questions to be asked: what sort of weapon was involved? (e.g. possession of a sawn-off shotgun is more serious than a firearm capable of lawful use); what use was made of the firearm? (e.g. violent use is more serious than no use); what was the intention of the possession?; and what is the defendant’s record regarding violent crimes?¹²

In the AIC's comparison of data regarding firearms offences across jurisdictions between 2002 and 2004, it was found that possession offences were the most common and, in all jurisdictions, apart from Western Australia, the most frequently imposed penalty was a fine followed by imprisonment. Only a small number of those convicted for firearm or weapon offences received no penalty.¹³

With the above caveats in mind about the creation of a table for comparing maximum penalties for unauthorised use or possession of firearms, the table below sets out a **very basic** overview of the situation regarding the unauthorised possession/use of a firearm in each jurisdiction. For a more complete picture, the reader should also consult the information in the sections below pertaining to each state and territory, because the table shows only selected offences, and, as explained earlier, some jurisdictions have higher penalties for possession of a number of weapons or firearms, or for possession of unregistered firearms, or for possession by a prohibited/prescribed/excluded person.

Penalties for Unauthorised Possession/Use of a Firearm by Jurisdiction		
Jurisdiction	Category	Maximum Penalty
Queensland (current laws)	Category D, H or R weapon Category C or E weapon Category A, B or M weapon	\$30,000 or 7 years imprisonment \$20,000 or 4 years imprisonment \$10,000 or 2 years imprisonment
Queensland (proposed laws)	If offender is an 'excluded person' (draft Sch 5): Category D, H or R weapon Category C or E weapon Category A, B or M weapon Where the offender is not an 'excluded person'	\$40,000 or 9 years imprisonment \$30,000 or 6 years imprisonment \$20,000 or 4 years imprisonment The penalties are the same as those currently existing (see above)
New South Wales	Firearm generally Prohibited firearm or pistol	5 years imprisonment 14 years imprisonment
Victoria	Category A or B longarm Category C or D or H longarm Category E longarm Longarm that is not a category A, B, C, D or E General category handgun If by a 'prohibited person'	\$14,334 or 2 years imprisonment \$28,668 or 4 years imprisonment \$71,670 or 7 years imprisonment \$28,668 or 4 years imprisonment \$28,668 or 4 years imprisonment \$143,340 or 10 years imprisonment
South Australia	Prescribed firearm Class C or D firearm or handgun Any other kind of firearm Person subject to a firearms prohibition order	\$50,000 or 10 years imprisonment \$35,000 or 7 years imprisonment \$20,000 or 4 years imprisonment \$75,000 or 15 years imprisonment
Western Australia	Handgun or prescribed firearm Any other kind of firearm	7 years imprisonment (summary conviction – 3 years imprisonment or \$12,000) 5 years imprisonment (summary conviction – 3 years imprisonment or \$12,000)

Tasmania	Any firearm	\$6,500 or 2 years imprisonment
Australian Capital Territory	Prohibited firearm	10 years
	Firearm generally	5 years
Northern Territory	Category A or B firearm	\$26,600 or 12 months imprisonment
	Firearm generally	\$53,200 or 2 years imprisonment
	Prohibited firearm	\$53,200 or 2 years imprisonment

Note: The relevant legislative provisions for the offences and for determining the applicable fines in each jurisdiction are discussed below.

Possession and use offences in each state and territory tend to contain provisions for circumstances which can increase the applicable penalty (for instance, if the firearm is a prohibited or restricted firearm or weapon) as well as a varying range of exemptions from the need to have a licence (e.g. possession of firearms at a shooting gallery) and exemptions for certain persons, such as members of the defence force and police force and prison officers. None of these matters are uniform among jurisdictions. Similarly, the defences that apply to some offence provisions also differ. Due to the difficulty in making direct comparisons among the states and territories, there will be very little discussion of these exceptions, exemptions and defences in considering the legislation applying in each jurisdiction. However, in discussing the relevant Queensland provisions, some detail about these matters will be provided.

QUEENSLAND

Section 3 of the [Weapons Act 1990 \(Qld\)](#) contains the principles and object of the legislation. The object is to prevent the misuse of weapons (s 3(2)) and the underlying principles are that weapon possession and use are subordinate to the needs of ensuring public and individual safety; and that such safety is improved by imposing strict controls on the possession of weapons and requiring the safe and secure storage and carriage of weapons (s 3(1)).

A 'weapon' is defined (see s 5 & Sch 2, Dictionary) as a firearm or another thing prescribed to be a weapon or within a category of weapon, or a thing that would be a weapon if it were not temporarily inoperable or incomplete. A 'firearm' means, in brief (see Sch 2, Dictionary for full definition), a gun or thing ordinarily described as a firearm; or a thing ordinarily described as a weapon that, if used in the way for which it is designed or adapted, is capable of being aimed at a target and causing death or injury by discharging a projectile or a noxious, corrosive or irritant liquid, powder, gas, chemical or other substance. Such a thing can still be a firearm if it is temporarily inoperable or incomplete or it is a major component part of a firearm.¹⁴

Thus, a firearm is within the definition of 'weapon' and generally covers handguns, rifles and shotguns. However, not all weapons are 'firearms' (e.g. crossbows, mace, knuckledusters)¹⁵ In other jurisdictions, the equivalents to the provisions of the Queensland *Weapons Act 1990* are found in their respective Firearms Acts and/or Weapons Acts.

Authority to Possess a Weapon

Section 49A of the [Weapons Act 1990 \(Qld\)](#) provides that a licence issued under Part 2 of the Act is the authority allowing a person or body to possess and use a weapon for a lawful purpose, subject to any relevant Regulation or condition. In each Australian jurisdiction, with some variations in the process for doing so, weapons are divided into categories (see Attachment to this e-Research Brief) and licences are issued according to the category of weapon and its purpose/type of use.¹⁶ Under s 10 of the Queensland Act, the applicant must be a fit and proper person¹⁷ to possess a firearm and be able to show a specified and genuine reason for needing it (e.g. sport, target or recreational shooting, occupational requirement, collections by a collector of weapons: see s 11).¹⁸ Applicants must have somewhere for secure storage of weapons and will usually have to undertake a weapons safety course (ss 10, 10A). An authorised police officer in the Weapons Licensing Branch of the QPS has the power to issue a licence to an applicant meeting the legislative criteria.¹⁹

The main licence classes are (s 12 of the Act and Part 3 of the [Weapons Regulation 1996 \(Qld\)](#) (the Regulation)):

- a blank-fire firearms licence (i.e. a licence for a firearm or replica incapable of discharging a projectile) – which can only be issued to an individual, theatrical, athletic or other sporting organisation for an authorised purpose (e.g. to start a sporting event) (s 15 of the Regulation);

- a concealable firearms licence. This authorises the licensee to possess or use any pistol not in category R (which includes military type weapons such as automatic machine or sub-machine guns which are generally prohibited for use or possession)²⁰ for the purpose stated in the licence (e.g. sports or target shooting, occupational use)²¹ but not for recreational shooting (see ss 16 and s 21A of the Regulation);
- a firearms licence which can only be given for:
 - a category A or B weapon to authorise possession and use of any weapon in the category endorsed on the licence (s 18 of the Regulation);
 - a category C shotgun for clay target shooting but only to a member of an approved shooting club taking part in, or affiliated with, a body that participates in national/international clay target shooting competitions and who has a physical need (e.g. due to a medical condition) for a category C shotgun (s 19 of the Regulation also imposes other restrictions);
 - a category C rifle and/or category C shotgun for an occupational rural purpose on rural land to satisfy the need stated on the licence (s 20 of the Regulation);
 - a category C weapon for a commercial fisher who has a need on a particular vessel for one such weapon for the need stated on the licence (s 20A of the Regulation); or
 - a category D firearm for occupational culling of animals, for up to one year only, but only to satisfy the need stated on the licence (s 21 of the Regulation).

Other licence classes set out in s 12 include: firearms licence (instructor); dealer's licence; armourer's licence; collector's licence (heirloom) or (weapons); minor's licence; security licence (organisation) or (guard); theatrical ordnance supplier's licence; or another prescribed licence, such as a visitor's licence (see s 11 of the Regulation).

The Regulation sets out the various conditions and authorities for these licences and other conditions might be imposed by the police officer issuing a licence. Weapons have to be registered (and a fee is payable) and there may be restrictions on the number of weapons that can be owned and on the maximum duration of a licence (e.g. one year for category D licences).

Once a person has a licence, he or she may (see Part 3, Div 3 of the Act) acquire a firearm of the category endorsed on his or her licence (unless it is a minor's licence or a security licence (guards)-employee's licence which does not allow this)²² and can do so by obtaining a Permit to Acquire (PTA). Once the PTA is obtained, the holder may buy or acquire the relevant firearm or other weapon.

Unlawful Possession

Section 50 makes it an offence to unlawfully possess (i.e. not having a licence) a weapon.

'Possession' is defined in Sch 2 of the Act to include not just having the weapon in one's custody but also having it under one's control in any place, even if not in one's custody. It also covers having an ability to obtain custody of the weapon at will and having a claim to custody even if it is temporarily not in one's control.

Given that the definition of 'firearm' also covers 'a major component of a firearm' (see Sch 2), having possession of just part of a firearm will amount to possession of a firearm provided that the part is a major component of the firearm.

The maximum penalty for unlawful possession depends upon the number and/or category of weapon(s) in the person's unlawful possession (s 50(1)):

- unlawful possession of 10 or more weapons at least 5 of which are category D, E, H or R weapons (see Attachment for description of the weapons in those categories) attracts up to 13 years imprisonment;
- if (a) does not apply, unlawful possession of 10 or more weapons incurs a fine of up to \$50,000²³ or 10 years imprisonment;
- if (a) and (b) do not apply:
 - unlawful possession of a category D, H or R weapon incurs a fine of up to \$30,000 or 7 years imprisonment;
 - unlawful possession of a category C or E weapon attracts a fine of up to \$20,000 or 4 years imprisonment;

- (iii) unlawful possession of a category A, B or M weapon incurs a fine of up to \$10,000 or 2 years imprisonment.

In sentencing, the court may take into account whether the person stored the weapon in the prescribed manner (s 50(2)).²⁴

Note that, under s 53 of the Act, a person not having a licence, or who is a licensee but is not authorised to possess the relevant weapon, may physically possess and use a weapon at an approved range for the category of weapon provided the requirements of that provision are complied with. The range officer must ensure the person is supervised at all relevant times. A maximum fine of \$2,000 applies for breach of the foregoing requirements by the range officer. Other exceptions are also set out regarding allowing possession or use of weapons in certain circumstances: s 54 (unlicensed person engaged in primary production on the primary producer's land subject to the restrictions in s 54(2)); s 55 (customers using a shooting gallery provided they are above the specified age); s 55A (use and possession of a weapon supplied by a theatrical ordnance supplier under s 118 for use in theatre, film or television if the use is personally supervised by the supplier).

A range of other offences pertaining to weapons are found in ss 56-76, including the possession or use of a weapon while under the influence of liquor or a drug; conduct involving a weapon in a public place; engaging in dangerous conduct with a weapon; shortening of firearms and failing to ensure secure storage of weapons.²⁵ The firearms legislation in other jurisdictions contains similar offence provisions but these additional offences will not be considered in this e-Research Brief.

Under s 3 of the [Weapons Regulation 1996 \(Qld\)](#) the possession or use of a weapon under a licence is unlawful to the extent that a licence of another class is needed to authorise that possession or use.²⁶

Under s 50A of the Act, a licensee must not possess an unregistered firearm (i.e. the information about it is not entered in the firearms register under s 49 of the Act) and doing so attracts a fine of up to \$6,000. A licensed dealer or armourer does not breach this provision if the unregistered firearm is entered in the dealer's or armourer's weapons register under s 71.

Proposed Changes Contained in Draft Weapons Bill 2010

Under the proposals contained in the [Draft Weapons Bill 2010](#), draft cl 178 (contained in the draft Ch 6 Offences) provides that a person must not unlawfully possess a weapon.

Under draft cl 6, a weapon continues to be defined to mean a firearm (as well as other prescribed things within a category of a weapon). A 'firearm' (see draft cl 8) has a similar meaning to the current term under the Act but has some additional exclusions to what constitutes a firearm. Exclusions include (see cl 8(2)) an antique firearm; a permanently deactivated category A, B or C weapon; a public monument (see draft cl 10 – which defines 'public monument' as a prescribed category R weapon that is permanently incapable of being discharged and permanently and lawfully displayed in a public place for memorial or commemorative purposes (e.g. permanently deactivated WWI artillery displayed permanently on RSL club grounds); a crossbow, longbow or spear gun (or imitation of such things); a slingshot; a captive bolt humane killer, or an explosive tool. Note also that a firearm is a weapon and/or a firearm even if it is temporarily deactivated or incomplete (see cls 6(3), 8(3)).

Further, the note to draft cl 8(1) states that an imitation of a firearm is not a 'firearm' but it might still be a cl 6 weapon if prescribed to be within a category of weapon. An 'imitation' is defined in cl 11 as a 'reasonable copy' of a weapon, crossbow, longbow or spear gun; and not capable of causing death or injury by discharging a projectile or a corrosive, noxious or irritant chemical, gas, liquid, powder or other substance; and could reasonably be taken to be the weapon, crossbow, longbow or spear gun.

The proposed penalties applicable to a breach of draft cl 178 (unlawful possession of weapon) depend upon whether the offender is or is not an 'excluded person'. An 'excluded person' is defined in draft Sch 5 (Dictionary) to mean a person who has been convicted of various serious offences such as murder; manslaughter; armed robbery; unlawful wounding; grievous bodily harm; offences involving drugs, weapons or violence punishable by at least 7 years imprisonment. The new definition is also intended to include a person who has been convicted of a prescribed offence (defined as an offence involving drugs, violence or weapons) within the previous 5 years, or who has, within the previous 5 years: been named as a respondent in a protection order, detained under mental health legislation, been refused a licence or has had a licence cancelled due to no longer being fit and proper person to hold a licence, is named as a respondent in a current temporary protection order (see draft Sch 5 definition for the full range of 'excluded persons').

For an unlawful possession of a weapon by someone who is not an 'excluded person', the penalties are the same as existing penalties under s 50(1) of the current Act (see draft cl 178(1)(b)). However, for an 'excluded person' it is proposed that (draft cl 178(1)(a)):

- (i) unlawful possession of 10 or more weapons at least 5 of which are category D, E, H or R weapons (these categories will be set out in the new Weapons Categories Regulation 2010) is punishable by a term of imprisonment of up to 15 years;
- (ii) if (i) does not apply, unlawful possession of 10 or more weapons will incur a fine of up to \$60,000 or 12 years imprisonment;
- (iii) if (i) and (ii) do not apply, then unlawful possession of:
 - (A) a category D, H or R weapon will attract a fine of up to \$40,000 or 9 years imprisonment;
 - (B) a category C or E weapon will incur a fine of up to \$30,000 or 6 years imprisonment;
 - (C) a category A, B or M weapon will attract a fine of up to \$20,000 or 4 years imprisonment;

Some further proposed matters are set out as new cl 178(2) to (5) of the draft Bill as follows:

- that a person who possesses a disguised category A weapon or a disguised category B weapon is taken to possess a category H weapon. A disguised category A weapon is (see new Sch 5) a weapon mentioned in the proposed new Weapons Categories Regulation 2010 disguised as a thing other than a weapon (e.g. a shotgun or rim-fire rifle disguised as a walking cane or poacher's stick). A disguised category B weapon is a weapon mentioned in the proposed new Weapons Categories Regulation 2010 disguised as a thing other than a weapon (e.g. a centre-fire rifle disguised as a walking cane or poacher's stick);
- where the weapon in question in draft cls 178(1)(a)(iii) or 178(1)(b)(iii), (see discussion above), is an imitation of a weapon (see cl 11), a permanently deactivated firearm (see cl 12) or an heirloom weapon (defined in draft cl 178(5) as a weapon, other than a category R weapon, ownership of which has passed by testamentary disposition or the laws of succession) the maximum penalty is proposed to be half of the maximum penalty mentioned in the relevant provision;
- as is presently the case under s 50(2) of the Act, in sentencing, the court may take into account whether the person stored the weapon in secure storage facilities for the weapon.

The draft cl 179 proposes that if a licensee, without reasonable excuse, possesses a weapon, the prescribed particulars of which have not been entered in the register as required under the Act, he or she is taken to be in unlawful possession of the weapon and may be prosecuted under cl 178.

Draft cl 180 proposes that it be an offence for a licensee to possess a firearm²⁷ or a prescribed part (body, frame or receiver) of a firearm unless the firearm is a registered weapon, or the prescribed part is, or is part of, a registered weapon, as the case may be. It is also an offence for a licensee to possess a conversion unit (as mentioned in the Weapons Categories Regulation 2010) unless it is registered. In each case the proposed maximum penalty is \$12,000.

A number of instances of lawful possession of weapons other than under a licence are set out in proposed cls 181-182 and as prescribed by Regulation.²⁸ Draft cls 183-185 deal with unlawful alteration of weapons (e.g. shortening a firearm) and draft cls 186-191 cover various types of unlawful conduct involving weapons etc. such as carrying a loaded firearm in public (many of which are similar to existing offences under the Act).²⁹

PENALTIES FOR UNLAWFUL POSSESSION OR USE OF A WEAPON/FIREARM IN OTHER JURISDICTIONS

Each Australian state and territory has legislation making unlawful possession or use of a firearm an offence. Commonwealth offence provisions will not be considered here as it is the states and territories that have the primary legislative power to deal with possession and use of firearms. Due to constitutional limitations, Commonwealth legislation is more or less restricted to dealing with discharging firearms on or over Commonwealth land and with the importing and exporting of firearms.³⁰

The possession and use of weapons or prohibited weapons other than firearms will not be covered in this e-Research Brief. As noted earlier, for Queensland, the *Weapons Act 1990* covers firearms offences as well as weapons offences. Further, the discussion below is restricted to considering just those provisions in other jurisdictions that relate to possession and/or use of firearms and does not cover additional types of offences such as carrying a firearm in a public place, shortening of firearms, or those relating to purchase, acquisition, disposal or storage of firearms.

New South Wales

Under the [Firearms Act 1996 \(NSW\)](#), the penalty for:

- possession or use of a firearm (defined in s 4)³¹ without a licence or permit or otherwise than as authorised by such – up to 5 years imprisonment (s 7A);
- possession or use of a prohibited firearm (Sch 1 lists 17 types, e.g. a machine gun or sub-machine gun capable of propelling projectiles in rapid succession during one pressure of the trigger; a self-loading rim-fire rifle or centre fire rifle or pump action shotgun etc.) or pistol (see s 4C which lists 3 kinds, e.g. pistol with calibre more than .38 inch) without a licence or permit or otherwise than as authorised by such – 14 years imprisonment (s 7);
- possession or use of an unregistered firearm – up to 10 years imprisonment if it is a prohibited firearm or pistol, otherwise 5 years (s 36(1)) (defences and exceptions apply – see s 36(2)-(4));
- possession of more than 3 firearms if unregistered and no licence or permit to possess – up to 10 years imprisonment (s 51D(1));
- possession of more than 3 firearms, any one of which is a prohibited firearm or pistol, if unregistered and no licence or permit – up to 20 years imprisonment (s 51D(2)).³²

‘Possession’ is defined in s 4(1) as including where a person knowingly: has custody of the firearm; has it in the custody of another person; or has the firearm in or on any premises, place, vehicle, vessel or aircraft whether or not belonging to or occupied by the person. Under s 4A, a firearm is taken to be in an offender’s possession so long as it is in or on any premises owned, leased or occupied by, or in the care, control or management of the offender, unless the court is satisfied that it was placed/brought by or on behalf of a person lawfully authorised to possess the firearm; or the offender did not know and could not reasonably be expected to have known it was in or on the premises; or on the evidence, the offender was not in possession of the firearm.

Victoria

Under the [Firearms Act 1996 \(Vic\)](#), there is a vast array of offences and penalties for a number of different categories of firearms – various categories of longarms and handguns – not all of which can be considered here. Thus, just the main types will be discussed. Accordingly, the key offences and corresponding maximum penalties include:

- possession (defined, in s 3, to include physical possession, or the custody or control of a firearm or having and exercising access to it either alone or in common with others),³³ carriage or use of a firearm (defined in s 3)³⁴ by a prohibited person (s 5(1));
- if firearm is registered – \$143,340 (1,200 penalty units)³⁵ or 10 years imprisonment;
- if firearm is not registered – \$215,010 or 15 years imprisonment.

A ‘prohibited person’ is defined extensively in s 3 and has some similarities to the term ‘prohibited person’ used in the Queensland Act and, more particularly to ‘excluded person’ in the draft Weapons Bill. It means persons who are, or have been (within a specified prior period), imprisoned for an indictable offence or certain serious offences involving assault, drugs or weapons; persons who are or have been, within the past 10 years, imprisoned for certain *Crimes Act 1958* offences or interstate equivalents; persons subject to, or recently subject to, *Family Violence Protection Act 2008* orders or orders under other specified legislation; or have been found guilty of an offence against the Firearms Act or against another Act involving possession or use of firearms (but see s 3 for the full range);

- possession, carriage or use of the following registered longarms³⁶ by a non-prohibited person without a licence or not in accordance with the licence (s 6):
- a category A longarm (includes airguns; rim-fire rifles other than semi-automatic; shotguns other than pump action or semi-automatic, etc. (see s 3)) or a category B longarm (includes muzzle-loading firearms; centre-fire rifles other than automatic or semi-automatic, etc.) – \$14,334 or 2 years imprisonment;
- a category C longarm (i.e. semi-automatic rim-fire rifles with a magazine capacity of no more than 10 rounds; semi-automatic or pump action shotguns with a magazine capacity of no more than 5 rounds; tranquiliser guns) or a category D longarm (includes semi-automatic rim-fire rifles with a magazine capacity of more than 10 rounds; semi-automatic or pump action shotguns with a magazine capacity of more than 5 rounds; semi automatic centre-fire rifles) – \$28,668 or 4 years imprisonment;

- a category E longarm (includes longarm machine guns; tear gas guns or projectors; shotguns or rifles with a length of less than 75cm measured parallel to barrel) – \$71,670 or 7 years imprisonment;
- a longarm that is not a category A, B, C, D or E longarm – \$28,668 or 4 years imprisonment;
- possession, carriage or use of unregistered category A, B, C, D and E longarms by non-prohibited persons are offences under s 6A. The applicable penalty depends upon the category of longarm and reflects the penalties applying to the unlicensed possession of the respective categories of longarm. For second or subsequent offences in all instances – \$143,340 or 10 years imprisonment;
- possession, carriage or use of registered handguns by non-prohibited persons without a licence or not in accordance with the licence (s 7):
- if a general category handgun (i.e. other than a category E handgun)³⁷ for purposes other than collecting handguns – \$28,668 or 4 years imprisonment;
- if a category E handgun (includes handgun machine guns, any prescribed handguns, any other firearm declared to be a category E handgun) for purposes other than collecting handguns – \$71,670 or 7 years imprisonment;³⁸
- possession, carriage or use of an unregistered handgun (s 7B):³⁹
- if a general category handgun – \$71,670 or 7 years imprisonment and, for a second or subsequent offence – \$143,340 or 10 years imprisonment;
- if a category E handgun – \$215,010 or 14 years imprisonment and, for a second or subsequent offence – \$250,845 or 17 years imprisonment;
- possession of more than 10 unregistered firearms (unless the person has given the relevant notice to the Chief Commissioner regarding 1 of the 10 firearms) – \$143,340 or 10 years imprisonment (s 7C).

South Australia

The relevant legislation in South Australia is the [Firearms Act 1977 \(SA\)](#). A 'firearm' is defined in s 5.⁴⁰

Section 11 creates the offence of unauthorised possession and use of firearms. A person who possesses a firearm without holding a licence or possesses or uses a firearm for a purpose not authorised by the licence, is guilty of an offence.⁴¹

Under s 5(14), a person will have 'possession of a firearm' if the person has custody of the firearm or has the firearm in the custody of another; or has and exercises access to the firearm; or occupies, or (unless s 5(15) applies) has the care, control or management of, premises, or is in charge of a vehicle, vessel or aircraft, where the firearm is found.⁴²

The maximum penalty for an offence against s 11 is as follows (s 11(7)):⁴³

- where the firearm is a prescribed firearm (i.e. by reg 4 of the [Firearms Regulations 2008 \(SA\)](#)) – \$50,000 or imprisonment for 10 years;
- where the firearm is of the type below – \$35,000 or imprisonment for 7 years:
 - a class C firearm (see s 5: self loading rim-fire rifles with a magazine capacity of 10 rounds or less; self loading and pump action shot guns with a magazine capacity of 5 rounds or less and includes receivers of such firearms but not revolving chamber rifles or their receivers);
 - a class D firearm (see s 5: self loading rim-fire rifles with a magazine capacity of more than 10 rounds; self loading centre fire rifles; self loading or pump action shotguns with a magazine capacity of more than 5 rounds and includes receivers of class D firearms but not revolving chamber rifles or their receivers);
 - a class H firearm (which means (see s 5) a handgun);
- where the firearm is any other kind of firearm – \$20,000 or imprisonment for 4 years.

The maximum penalty for an 'aggravated offence' (i.e. where it is proved that the offender was carrying a loaded firearm or a firearm and a loaded magazine that can be attached to and used in conjunction with the firearm; or the offender has concealed the firearm about his or her person (s 11(7a)-(7d)) is:

- where the firearm is a prescribed firearm – \$75,000 or imprisonment for 15 years;

(b) where the firearm is a class C, D or H firearm – \$50,000 or imprisonment for 10 years;

(c) where the firearm is any other kind of firearm – \$35,000 or imprisonment for 7 years.

Sections 11(4), (4a), (4b) and 11(5) provide for a number of exceptions to the offence provisions.

A person against whom a firearms prohibition order is in force must not acquire, possess or use a firearm. The maximum penalty in the case of a firearm is \$75,000 or 15 years imprisonment: s 10C. A firearms prohibition order can be issued against a person if the Registrar is satisfied that possession by the person of a firearm would be likely to result in undue danger to life or property; or the person is not a fit and proper person to possess a firearm; and it is in the public interest to prohibit the person from possessing and using a firearm (s 10B. Section 10A deals with interim firearms prohibition orders issued by a police officer).

Western Australia

The relevant legislation in Western Australia is the [Firearms Act 1973 \(WA\)](#) and the [Firearms Regulations 1974 \(WA\)](#).

Under s 19(1) of the Act, any person who is in possession of any firearm (defined in s 4(1))⁴⁴ without a licence or permit commits a crime unless s 19(1ae) or s 19AA (see below) provide otherwise or s 8 (exemptions from needing a licence) applies. Section 19(1) also deals with selling, delivering, disposing of or purchasing firearms or ammunition.⁴⁵

'Possession' is defined in s 4(1) to mean, in addition to actual physical possession, the custody or control of a firearm, or having and exercising access to it in any place either alone or in common with others.

A person found guilty of the foregoing crime is liable to imprisonment for 5 years (summary conviction penalty is imprisonment for 3 years or a fine of \$12,000) (s 19(1ad)). Other relevant aspects are:

- a person who is guilty of a crime under s 19(1) where the person is carrying both a firearm and a prohibited drug or prohibited plant without authorisation, or an amount of money equal to or more than the prescribed amount is liable to 14 years imprisonment; (s 19(1ab)(a));
- a person who is guilty of a crime under s 19(1) where the person was in possession of 3 or more firearms without authorisation is liable, on conviction, to 10 years imprisonment (s 19(1ab)(b));
- a person who is guilty of a crime under s 19(1) committed in any of the circumstances set out s 19(1ac) (which includes possession of a handgun⁴⁶ or a prescribed firearm) is liable to imprisonment for 7 years (summary conviction is 3 years imprisonment or a \$12,000 fine).⁴⁷

If the person in possession of the firearm has been a holder of a specified licence and the licence had expired (but was still capable of being renewed under s 9A), and if the possession would not have been an offence if the licence had been immediately renewed, the offence is not a crime but is triable summarily and punishable by a fine of \$2,000 instead of the penalty that would otherwise apply (s 19AA).⁴⁸

Section 6 states that Regulations can be made to prohibit possession etc. of firearms due their potentially dangerous nature and the need to exercise special precautions or it is otherwise in the public interest (see reg 26 of the Firearms Regulations 1974 and its Table). Possession of a prohibited firearm, where no penalty is specifically provided, attracts a penalty of up to 5 years imprisonment for a first offence and 10 years for a subsequent offence. Summary conviction penalty for a first offence is imprisonment for 3 years or a fine of \$12,000 (s 6(3)).

Tasmania

Under the [Firearms Act 1996 \(Tas\)](#), s 9, a person must not possess or use a firearm (defined in s 3)⁴⁹ unless the person is the holder of a firearms licence of the appropriate category as specified in Division 2 in respect of that firearm. A breach of this provision attracts a fine not exceeding \$6,500⁵⁰ or imprisonment for a term not exceeding 2 years, or both. Under s 26, the licence holder must not possess or use a firearm for any purpose that is not specified in the licence; or at any premises that are not specified in the licence (but see s 26(2) for the exception in relation to possession and use at an approved range). The relevant penalty is, in most cases, a fine of up to \$6,500.⁵¹

'Possession' includes custody or control (s 3) and, also, if a person knowingly has a firearm in the custody of another person, the first-mentioned person is still taken to possess the firearm; and if 2 or more persons possess parts of a firearm, each of them is taken to possess the firearm (s 4).

A firearms prohibition order prohibits a person from possessing or using a firearm if, in the Commissioner's opinion, the person is unfit, in the public interest, to possess or use a firearm (s 130). A person who is the subject of a firearms prohibition order must not possess or use a firearm in contravention of that order and the relevant penalty is a fine not exceeding \$6,500 or imprisonment for a term not exceeding 2 years, or both

(s 132). Under s 133, a prohibited person possesses a firearm if it is found on any premises etc. and the person is in, on, or in occupation of such premises etc.

Australian Capital Territory

Under s 43 of the [Firearms Act 1996 \(ACT\)](#), it is an offence for a person without a licence or permit to possess or use:

- 10 or more firearms (defined in s 6)⁵² – incurring a term of imprisonment for up to 20 years;
- 3 or more firearms but less than 10 – attracting a term of imprisonment for up to 7 years;
- 1 or 2 firearms – attracting a term of imprisonment for up to 5 years.

‘Possession’ is defined in s 10 as covering physical possession or where the person has the firearm at premises owned, leased or occupied by the person; or the person otherwise has the care, control or management of the firearm.⁵³

Under s 42 of the Act, it is an offence for a person without a licence or permit to possess or use:

- (i) 10 or more prohibited firearms – which attracts a term of imprisonment for up to 20 years; or
- (ii) 3 or more, but less than 10, prohibited firearms – attracting a term of imprisonment for up to 14 years; or
- (iii) 1 or 2 prohibited firearms – which attracts a term of imprisonment for up to 10 years.

A ‘prohibited firearm’ is defined in s 7 as a firearm described in Schedule 1; prescribed by Regulation; and declared to be a prohibited firearm under s 31; and includes a modified firearm. A prohibited firearm includes (see Sch 1) a machine gun, submachine gun or other firearm capable of propelling projectiles in rapid succession during one pressure of the trigger; a self-loading rim-fire or centre-fire rifle; a self-loading or pump action shotgun; or certain types of pistols etc.

It is also an offence (s 45) to possess or use:

- a prohibited firearm in contravention of the licence or permit – attracting a fine of up to \$110,000⁵⁴ or up to 10 years imprisonment, or both; or
- any other firearm in contravention of the licence or permit – attracting a fine of up to \$55,000 or up to 5 years imprisonment, or both.⁵⁵

Northern Territory

Under s 58(1) and (2) of the [Firearms Act 1997 \(NT\)](#), it is an offence to possess or use a firearm (defined in s 3)⁵⁶ unless authorised by a licence or permit (or if the person uses it for any purpose otherwise than in connection with the purpose established as being the genuine reason for possessing or using the firearm). The penalty for such offence is a fine of up to \$53,200⁵⁷ or imprisonment for 2 years.⁵⁸

If the possession or use offence relates to a category A firearm (air rifles; rim-fire rifles, other than self-loading; shotguns, other than pump action or self-loading; and shotgun and rim-fire rifle combinations (see Sch 2)) or a category B firearm (muzzle-loading firearms; centre-fire rifles, other than self-loading; and shotgun and centre-fire rifle combinations (see Sch 3)), the maximum penalty is \$26,600 or imprisonment for 12 months.⁵⁹

To ‘possess or use’ a firearm includes to carry, have under control, test, discharge and store the firearm (s 3).

A person must not possess or use a prohibited firearm unless the Act authorises it or a fine of up to \$53,200 or imprisonment for up to 2 years may apply (s 58(6)). A ‘prohibited firearm’ is any of the 15 items in Sch 1 and includes machine guns, sub-machine guns or other firearms capable of propelling projectiles in rapid succession during one pressure of the trigger; self-loading rim-fire rifles; self-loading centre-fire rifles; self-loading or pump action shotguns etc.⁶⁰

PENALTIES FOR USE OF FIREARMS IN ROBBERY

Although firearms are often used in crimes such as robbery, such offences are usually not covered by the abovementioned firearms legislation. Rather, it is necessary to go to the relevant criminal legislation in each jurisdiction to ascertain the extent to which the use of a firearm affects the penalties that apply for the relevant offence. While the legislation discussed below sets out the maximum penalties applicable to armed robbery or aggravated armed robbery, the court retains a degree of discretion regarding the sentence actually imposed on the defendant. The main considerations for the court when deciding on the appropriate sentence tend to be contained in the sentencing laws of the relevant jurisdiction and these can be broadly divided into factors going to mitigation of the defendant's liability (e.g. cooperation with the police, pleading guilty, attempting restitution) versus any aggravating factors (e.g. use of violence) that increase the defendant's culpability. Another relevant factor is the purpose to be achieved by imposing a sentence (which may depend upon the seriousness of the crime). For instance, the purpose of sentencing for offences such as armed robbery or murder may be more for punishment and deterrence than for rehabilitation which might be relevant to graffiti or drug offences.⁶¹

Each jurisdiction has legislation similar to Queensland's [*Penalties and Sentences Act 1992 \(Qld\)*](#), s 9 of which sets out sentencing principles to which the court must have regard in sentencing an offender. The s 9(1) principles are that the only purpose for imposing a sentence are:

- to punish the defendant to an extent or in a way that is just in all the circumstances; or
- to provide conditions in the order that the court considers will help the defendant's rehabilitation; or
- to provide a deterrent; or
- to make it clear that the community denounces the relevant offending conduct; or
- to protect the community; or
- any two or more of the foregoing purposes.

While s 9(2)(a) provides that the court must have regard to the principle that imprisonment is a penalty of last resort, this does not apply in sentencing a defendant for any offence involving violence against another person or that resulted in physical harm to another person (s 9(3)). In such a case the court must have regard mainly to matters such as (s 9(4)):

- the risk of physical harm to the community if no custodial sentence was imposed and the need to protect any members of the community from this risk;
- the circumstances of the offence, including death or injury to others or any loss or damage;
- the personal circumstances of the victim;
- the nature or extent of the violence used or intended to be used;
- any disregard for the interests of public safety;
- the defendant's past record and any attempted rehabilitation and number of prior offences. In relation to the latter point, the yet to commence new s 9(8)⁶² provides that when determining the appropriate sentence for an offender with prior convictions, the court must treat each previous conviction as an aggravating factor if the court considers that it can reasonably be treated as such having regard to: the nature of the previous conviction and its relevance to the offence at hand; and the time elapsing since the conviction. However, new s 9(9) states that the sentence imposed must not be disproportionate to the gravity of the current offence;
- the defendant's antecedents, age and character and any medical, psychiatric, prison or other relevant report regarding the defendant;
- any remorse or lack thereof by the defendant;
- anything else about public safety considered relevant.

Other matters the court must consider in sentencing the defendant are set out in s 9(2). Many reflect those considerations set out in s 9(4) but additional matters include things such as the nature of the offence and its seriousness, including physical or mental harm to a victim; the defendant's intellectual capacity; the presence of any aggravating or mitigating factor (see also s 9, subsections (8) & (9), discussed above, regarding prior convictions as an aggravating factor); the amount of help the defendant provided to law enforcement agencies; other sentences imposed on the defendant; his or her compliance with court orders, and time already served for the offence. If the offender is an Aboriginal or Torres Strait Islander person, any sentencing submissions made

by a community justice group representative such as cultural considerations; or considerations regarding programs and services in which the group participates etc. must be considered (see also, s 9(7)).

Ultimately, the determination of the appropriate sentence is the result of having regard to the purpose to be achieved by the sentence and the balancing of all competing factors – factors going to mitigation against those going to aggravation.⁶³

The use of a firearm has been seen as an aggravating factor in sentencing for a particular offence. In [*R v Deans*](#)⁶⁴ Williams J of the Queensland Court of Appeal noted that:

The offence of unlawful wounding attracts a wide range of sentences because of the variety of circumstances in which it may be committed. The seriousness will often depend significantly on the nature of the weapon used. The use of a firearm will always be regarded as an aggravating circumstance.

As noted by the [AIC Research](#),⁶⁵ referred to earlier, which reviewed a number of cases and sentencing remarks concerning armed robbery offences, the courts have regarded the *'possession or use of firearms as representing a high level of criminality, posing a significant threat to the community and carrying an attendant danger of loss of life or serious injury'*. Further, the fact the firearm was a replica/imitation seems to do little to mitigate the seriousness of the behaviour. In addition, deterrence was also a consideration in the sentencing of armed robbery offenders in the cases reviewed.

However, while the seriousness of an armed robbery offence would appear to warrant a prison term, there may be countervailing mitigating factors and other circumstances of the defendant that the court will consider. This can result in a wide variation in sentences imposed on different offenders. The Judicial Conference of Australia's [Judge for Yourself - A Guide to Sentencing in Australia](#) (p 28) gives the example of an armed robbery by two men with different characteristics and backgrounds. One may be older with a long criminal record, which includes violent offences, while the other offender may be someone younger who followed the lead of the older man and who also helped the police in arresting the co-offender. In such a situation, the older man may receive a more severe penalty than the younger one for the same armed robbery.

In a March 2007 [speech](#) the Chief Justice of the Queensland Supreme Court, the Hon Paul de Jersey AC noted that judicial officers were tasked with sentencing offenders within the legislative framework set by the Parliament. He said that sentencing was an *'... exercise of a judicial discretion which has regard to all relevant considerations – and experience shows a myriad of infinitely various combinations of circumstances.'*⁶⁶ His Honour commented that sentencing was *'most often a difficult task'*, requiring a *'fine balance'* to be struck between the interests of the community, the interests of the offender and his or her family, and the interests of the victim and his or her family.

By way of illustration of the exercise of judicial discretion under the *Penalties and Sentences Act 1992* (Qld), in [*R v Irving*](#),⁶⁷ the defendant was sentenced to 9 years imprisonment for the armed robbery of a bank. The defendant had gone into the bank wearing a balaclava and holding a sawn-off semi-automatic rifle. He pointed the rifle at the first teller and demanded 'all the cash' and, similarly, with the second teller. On exiting with the bag of money, he pointed the firearm at one of the customers. The defendant was aged 38, was a long term heroin addict with an extensive criminal history since 1974, including being armed with offensive instruments, burglary, receiving and drug offences, and had been in prison many times. The offence in question here was committed while the defendant was on parole for a similar offence of bank robbery with actual violence while pretending to be armed, for which he was imprisoned for 6 years. The victims of the crime suffered a great deal of distress. In mitigation was that the defendant confessed to the crime and pleaded guilty, although this consideration was lessened by the fact that he knew that the evidence against him was strong. In weighing up these matters, the court found that a 9 year prison sentence for a second robbery offence, with much the same personal consequences for the victims, which was committed while he was still on parole for an earlier similar offence was not excessive or out of the conventional range.⁶⁸ The defendant's argument here was that the sentence was made cumulative on the balance of the 6 years left on the earlier sentence, making it a total of 11 years imprisonment to be served. However, while McPherson JA observed that the sentence could have been moderated by the sentencing judge, it *'was not unjust or excessive, and ... there was no error in the sentencing discretion in this matter that would justify this Court in interfering with it.'*⁶⁹ Ambrose and Cullinane JJ agreed with the reasons given by McPherson JA.

Another example of the exercise of judicial discretion (albeit in relation to judges' discretion under s 12 of the *Penalties and Sentences Act 1992* (Qld) not to record a conviction against the defendant), is the decision of the Queensland Court of Appeal in [*R v Cay, Gersch and Schell; ex parte A-G\(Qld\)*](#).⁷⁰ The decision was to dismiss the Attorney-General's appeal against the sentencing judge's order that no convictions be recorded against three armed robbers. The defendants had been sentenced to 2 years probation. Keane JA observed that, even though it is in only the most exceptional case of armed robbery that no conviction would be recorded, there appeared to be a number of exceptional factors weighing against recording a conviction in this case. Those countervailing factors were the age of the defendants (18 and 17) and their previous good character, their attempt to 'make a go' of living away from home in straitened circumstances, the hesitant and amateurish

way in which they committed the offence, that the victim had not suffered serious harm or long term consequences, that the defendants had served a substantial pre-sentence period in custody, and the negative impact of a conviction on the defendants' work prospects.⁷¹

In contrast, in [*R v Briese, ex parte Attorney-General*](#),⁷² the Queensland Court of Appeal upheld the Attorney-General's appeal in determining that a conviction be recorded against the defendant in relation to two armed robberies and attempted stealing. Thomas and White JJ (at p 8) found that the 19 year old defendant had had a difficult life which had recently been fraught with drug problems of which he had tried to cure himself. However, their Honours thought that there was nothing special in his favour in that factor. Although the defendant's youth helped his case, the impact of a conviction being recorded in respect of his employment chances would not seem great because the defendant had not appeared to have '*devoted much attention to the matter of employment, and his economic and social wellbeing appear to depend upon provision by the state*'. The defendant had committed three offences, including two armed robberies with a knife, over a period of 15 days and had previously stolen to purchase heroin. Thomas and White JJ found (at p 8) that these factors, particularly the nature and seriousness of the offence, made it a '*very clear case calling for the recording of a conviction*.'

QUEENSLAND

Under the Queensland [Criminal Code](#), s 411, *any person who commits the crime of robbery is liable to imprisonment for 14 years. However, if the offender is, or pretends to be, 'armed with any dangerous or offensive weapon or instrument, ... or if, at or immediately before or immediately after the time of the robbery, the offender wounds or uses any other personal violence to any person, the offender is liable to imprisonment for life'*.⁷³

'Robbery' is defined in s 409 as stealing anything, and, at or immediately before or immediately after the time of stealing it, using or threatening to use, actual violence to any person or property in order to obtain the thing stolen or to prevent or overcome resistance to its being stolen.

Further, under s 412 (attempted robbery), if the offender assaults someone with intent to steal and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual violence in order to obtain the thing or to prevent or overcome resistance to its being stolen, the offender is liable to 7 years imprisonment. If the offender is, or pretends to be, armed with any dangerous or offensive weapon or instrument, the offender is liable to 14 years imprisonment. If, when armed with any dangerous or offensive weapon, instrument or noxious substance, and at or immediately before or immediately after the time of the assault, the offender wounds, or uses other personal violence to, any person by the weapon etc., the offender is liable to life imprisonment.

As noted above, the relevant sentencing legislation is the [Penalties and Sentences Act 1992 \(Qld\)](#).

WESTERN AUSTRALIA

Under the Western Australian [Criminal Code](#), s 392 provides that if a person commits robbery (defined in s 392(a) and (b) almost identically to 'robbery' under the Queensland Criminal Code), and if immediately before, at, or immediately after the commission of the offence, the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed, the offender is liable to imprisonment for life.

Similarly to the situation in Queensland, if a person intends to steal and uses violence or threatens to use violence to do so, the person is guilty of a crime and liable to 10 years imprisonment (s 393(a), (b) & (e)).

If, immediately before, at, or immediately after, the commission of the offence, the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed, the offender is liable to imprisonment for 14 years (s 393(d)). The same penalty applies if the offence is committed in circumstances of aggravation. The phrase 'circumstances of aggravation' is defined in s 391 (e.g. does bodily harm or threatens to kill).

If, immediately before, at, or immediately after, the commission of the offence, the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed; and, in addition, the offence is committed in circumstances of aggravation, the offender is liable to life imprisonment (s 393(c)).

The relevant sentencing legislation is the [Sentencing Act 1995 \(WA\)](#).

TASMANIA

Under the Tasmanian [Criminal Code Act 1924](#), s 240(3), a person who commits robbery (which is defined in s 240(1) similarly to the term 'robbery' in other jurisdictions), and is armed with a firearm or other dangerous or offensive weapon or instrument at the time of committing that robbery, is guilty of the crime of armed robbery.

A person who commits aggravated robbery (e.g. where the offender causes bodily harm to any person immediately before, at, or immediately after the time of committing that robbery) and is armed with a firearm or

other dangerous or offensive weapon or instrument at the time of committing that robbery is guilty of the crime of aggravated armed robbery (s 240(4)).

Upon an indictment for a crime, the accused person may be convicted of attempting to commit that crime (s 342).

Under s 389(3) of the Criminal Code, subject to the provisions of the [Sentencing Act 1997 \(Tas\)](#) or of any other statute, and except where otherwise expressly provided, the punishment for any crime is 21 years imprisonment, or a fine, or by both, and shall be such as the judge of the court of trial shall think fit in the circumstances of each particular case.

NEW SOUTH WALES

Under s 94 of the [Crimes Act 1900 \(NSW\)](#), a person who robs or assaults with intent to rob any person, shall, except where the Act provides for a greater punishment, be liable to 14 years imprisonment.

If the robbery or assault with intent to rob occurs in circumstances of aggravation, the offender is liable to 20 years imprisonment (s 95(1)). 'Circumstances of aggravation' means circumstances that (immediately before, or at the time of, or immediately after the robbery, assault or larceny) involve the offender using corporal violence on any person; and/or intentionally or recklessly inflicting actual bodily harm on any person; and/or depriving any person of his or her liberty (s 95(2)).

If there is robbery or an assault with intent to rob in circumstances of aggravation, and the offender wounds or inflicts grievous bodily harm on any person, the offender is liable to 25 years imprisonment (s 96).

Pursuant to s 97(1), if a person, armed with an offensive weapon or instrument,⁷⁴ robs, or assaults with intent to rob, any person, he or she is liable to 20 years imprisonment. If the person commits the foregoing offence when armed with a dangerous weapon,⁷⁵ the person is liable to 25 years imprisonment (s 97(2)).⁷⁶

If, being armed with an offensive weapon or instrument, a person robs, or assaults with intent to rob, any person, and immediately before, or at the time of, or immediately after, such robbery or assault, the person wounds or inflicts grievous bodily harm upon such person, he or she is liable to imprisonment for 25 years (s 98).

The legislation applying to sentencing an offender is the [Crimes \(Sentencing Procedure\) Act 1999 \(NSW\)](#).

While not binding on Queensland courts, the seminal case of [R v Henry](#)⁷⁷ is seen as providing a guideline judgement in relation to s 97(1) of the [Crimes Act 1900](#) offences. The Court said that offenders convicted of armed robbery under s 97 should expect a full-time prison sentence save in exceptional circumstances. What will amount to 'exceptional circumstances' will depend upon the facts of each case. At para 110, Spigelman CJ said that '*statistics strongly suggest both inconsistency in sentencing practice and systematic excessive leniency in the level of sentences. They justify the promulgation of a guideline judgment.*' His Honour thought that Courts should identify a narrow sentencing range within which cases would be expected to fall.

At para 165, Spigelman CJ said that a sentence of between 4 and 5 years imprisonment should generally be imposed for offences with the following characteristics set out in para 162: a young offender with no or little criminal history; the involvement of a weapon, like a knife, capable of killing or inflicting serious injury; a limited degree of planning; little, if any, actual violence although a real threat of such; a vulnerable victim (e.g. shopkeeper); small amount taken; and a guilty plea (the significance of which may depend upon the strength of the Crown case).

In addition to the foregoing factors, there are circumstances particular to armed robbery (per Spigelman CJ at para 170). Those circumstances include: the nature of the weapon; vulnerability of the victim; position on a scale of impulsiveness/planning; intensity of threat, or actual use, of force; number of offenders; the amount taken; and the effect on the victim(s).

At para 169 it was noted that the narrow range of 4 and 5 years was a starting point and that aggravating and mitigating factors will justify a sentence below or above the range. Drug addiction was not generally regarded as a mitigating factor (paras 178-208).

VICTORIA

Pursuant to s 75 of the [Crimes Act 1958 \(Vic\)](#), a person guilty of robbery, or of an assault with intent to rob, is guilty of an indictable offence and liable to level 4 imprisonment (15 years maximum). A person is guilty of robbery if he or she steals, and immediately before or at the time of doing so, and in order to do so, he or she uses force on any person or puts or seeks to put any person in fear that the person or another person will be then and there subjected to force.

Under s 75A, a person is guilty of armed robbery if he or she commits any robbery and, at the time has with him or her, a firearm (as defined in the *Firearms Act 1996*), imitation firearm⁷⁸ or offensive weapon.⁷⁹ A person guilty of armed robbery is guilty of an indictable offence and liable to level 2 imprisonment (25 years maximum).

The applicable sentencing legislation is the [Sentencing Act 1991 \(Vic\)](#).

SOUTH AUSTRALIA

Under s 137 of the [Criminal Law Consolidation Act 1935 \(SA\)](#), a person who commits theft is guilty of robbery if he or she uses force, or threatens to use force, against another in order to commit the theft; or in order to escape from the scene of the offence; and the force is used, or the threat is made, at the time of, or immediately before or after, the theft. The maximum penalty is 15 years imprisonment. For an aggravated offence, it is life imprisonment. 'Aggravated offences' are defined in s 5AA to, among other things, cover the situation where the offender uses, or threatens to use, an offensive weapon⁸⁰ to commit, or when committing, the offence.

The sentencing legislation that is relevant in South Australia is the [Criminal Law \(Sentencing\) Act 1988 \(SA\)](#).

AUSTRALIAN CAPITAL TERRITORY

Pursuant to s 309 of the [ACT Criminal Code 2002](#), it is an offence (robbery) if a person commits theft; and, when doing so, or immediately before or immediately after committing the theft, the person uses force on someone else; or threatens to use force then and there on someone else; with intent to commit theft or to escape from the scene. The offender is liable to a fine of up to \$154,000⁸¹ or imprisonment for up to 14 years or both.

A person commits the offence of aggravated robbery if the person commits robbery, and at the time of the robbery, has an offensive weapon⁸² with him or her. The maximum penalty is a fine of \$275,000 or 25 years imprisonment, or both.

The [Crimes \(Sentencing\) Act 2005 \(ACT\)](#) applies in relation to sentencing offenders.

NORTHERN TERRITORY

Under the NT [Criminal Code](#), s 211, if a person steals and immediately before, or at the time, or immediately after doing so, uses or threatens to use violence in order to obtain the thing stolen, to prevent or overcome resistance to it being stolen or to prevent or hinder pursuit, the person is guilty of robbery and liable to 14 years imprisonment.

If the offender is armed with a firearm or any other dangerous or offensive weapon,⁸³ or if, immediately before, at or immediately after the time of the robbery he or she causes harm to any person, he or she is liable to imprisonment for life.

Pursuant to s 212, if a person assaults another with intent to steal and is armed with a firearm or any other dangerous or offensive weapon, or if such assault causes harm, he or she is liable to imprisonment for up to 14 years. If the offender is armed with a firearm and immediately before, at or immediately after such assault injures any person by discharging it, he or she is liable to imprisonment for life.

The [Sentencing Act \(NT\)](#) applies to the sentencing of offenders.

ATTACHMENT

CATEGORIES OF WEAPONS (QUEENSLAND)

The relevant weapon categories into which weapons are divided to assist in the licensing process are set out in the [Weapons Categories Regulation 1997 \(Qld\)](#) and for present purposes include (not all items are set out for each category; thus ss 2-9 of the Regulation should be consulted):

- **category A weapons:** unless rendered permanently inoperable (Reg, s 2) include things such as air rifles, rim-fire rifles (not self-loading), single or double barrel shotguns, blank-fire firearms at least 75cm long;
- **category B weapons:** unless rendered permanently inoperable (Reg, s 3) include things such as muzzle-loading firearms, single shot or double barrel or repeating centre-fire rifles; break action shotguns and rifle combinations;
- **category C weapons:** unless rendered permanently inoperable (Reg, s 4) include things such as semiautomatic rim-fire rifles with a magazine capacity no greater than 10 rounds; semiautomatic shotguns with a magazine capacity no greater than 5 rounds; pump action shotguns with a magazine capacity no greater than 5 rounds;
- **category D weapons:** whether or not rendered permanently inoperable (Reg, s 5) include things such as self-loading centre fire rifles designed or adapted for military purposes or firearms substantially duplicating such rifles; non-military style self-loading centre fire rifles with either an integral or detachable magazine; self-loading shotguns with either an integral or detachable magazine with a capacity of more than 5 rounds and pump action shotguns with a capacity of more than 5 rounds; self-loading rim-fire rifles with a magazine capacity of more than 10 rounds;
- **category E weapons:** which include bulletproof or protective body vests or armour designed to prevent penetration of small arms projectiles (Reg, s 6);
- **category H weapons:** whether or not rendered permanently inoperable, firearms including air pistols and blank-fire firearms, under 75cm long, other than a powerhead, (Reg, s 7 and see also s 7AA for category H weapons classes);
- **category M weapons:** include many assorted items such as clothing etc designed to hide weapons or cutting or piercing instruments; items primarily for controlling native or feral animals (e.g. noxious gas or substance); knives designed as a weapon; certain crossbows; flails designed as a weapon; knuckledusters; weighted gloves designed as a weapon; mace (see s 7A of the Reg for full range).
- **category R weapons:** include things such as automatic machine or submachine guns or a replica of such that is not a toy; units or devices for converting firearms to automatic machine or submachine guns; firearms capable of firing 50 calibre BMG cartridge ammunition; certain anti-personnel devices; rocket launchers; hand grenades; silencers etc. (see s 8 of the Reg for full range). The kinds of weapons in category R includes those which are designated as 'prohibited weapons' in some jurisdictions.⁸⁴ Licences are not generally issued for category R weapons but a collector's licence might be obtainable for permanently inoperable weapons of this category (s 77(1) of the Act) and, for some types of weapons, a theatrical ordinance supplier's licence might be obtainable regarding theatrical productions (s 118 of the Act).

ENDNOTES

- ¹ Queensland Police Service (QPS), Weapons Licensing, [Legislation](#). See also, Janet Phillips, Malcolm Park & Catherine Lorimer, 'Firearms in Australia: a guide to electronic resources', Background Note No 1, 2007-08, Australian Parliamentary Library, 6 August 2007.
- ² M Davies & J Mouzos, '[Court outcomes for firearms offences in Australia](#)', Technical and Background Paper No 31, Australian Institute of Criminology, June 2008, p 7.
- ³ A Sekar, Weapons and Dangerous Goods – Weapons: General, *Halsbury's Laws of Australia*, LexisNexis, Ch 443, para [443-1], updated 20 November 2008 (QPL Online Collections Database – External Databases. Please contact Front Desk for assistance in accessing this database).
- ⁴ [National Firearms Program Implementation Act 1996 \(Cth\)](#), ss 3, 5. Compensation was extended to certain other automatic weapons in subsequent Implementation Acts. See also, Janet Phillips et al.
- ⁵ See also, A Sekar, para [443-1].
- ⁶ Janet Phillips et al.
- ⁷ Robyn Ironside, 'Gun owners shoot down laws for toys', *Courier Mail*, 11 October 2010, p 3.
- ⁸ Vaughan Johnson MP, Shadow Minister for Police and Corrections, 'Labor ignores criminals to crack down on toy guns', Opposition Media Statement, 5 August 2010, QPL Online Collections Database.
- ⁹ M Davies & J Mouzos, p 7; Janet Phillips et al.
- ¹⁰ See, for example, M Davies & J Mouzos, pp 2-5.
- ¹¹ M Davies & J Mouzos, Abstract & p 2.
- ¹² *The Queen v Avis* (1998) 1 Cr App R 420, cited in M Davies & J Mouzos, p 6. See also, the 'guideline judgement' of *R v Henry* (1999) 46 NSWLR 346, [\[1999\] NSWCCA 111](#), discussed later in the context of sentencing for armed robbery offences.
- ¹³ M Davies & J Mouzos, p 29.
- ¹⁴ A 'firearm' currently does not include an antique firearm, explosive tool, captive bolt humane killer, spear gun, longbow or crossbow; a replica of a spear gun, longbow or crossbow; or a slingshot, shanghai or sword (Sch 2, Dictionary).
- ¹⁵ QPS, Weapons Licensing, '[What is a weapon](#)'.
- ¹⁶ A Sekar, para [443-10].
- ¹⁷ A person will not be a fit and proper person to hold a licence if he or she has been convicted of certain offences involving misuse of drugs or weapons or violence within the past five years or has been the subject of a domestic violence protection order within that time (s 10B(2)). The issuing officer needs to also consider, among other matters, the mental and physical fitness of the person, whether the person has knowingly said anything false or misleading regarding the licence application; criminal intelligence information; and the public interest (s 10B(1)).
- ¹⁸ Certain types of weapons do not require a licence such as items that are not within the definition of a 'firearm' (see Sch 2, Dictionary and see also s 2(1)). Possession of some weapons, firearms and articles are allowed without needing a licence by certain persons such as police officers, defence force personnel or protective service officers (s 2). The licensing process is not dealt with in this e-Research Brief nor are the licensing provisions governing firearm dealers, repairers of firearms, armourers, and collectors.

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- 19 See QPS, Weapons Licensing '[About Legislation and Us](#)'; see also the [Weapons Act 1990 \(Qld\)](#), s 15 (authorised officer decides original licence application and issues licence) and s 153 (for the definition of an 'authorised officer' under the Act).
- 20 See s 8 of the [Weapons Categories Regulation 1997 \(Qld\)](#) which specifies the range of Category R weapons.
- 21 QPS, Weapons Licensing, [Concealable Firearms Licence](#).
- 22 QPS, Weapons Licensing, [Acquiring & Disposing of Weapons](#).
- 23 Under s 5 of the [Penalties and Sentences Act 1992 \(Qld\)](#), 1 penalty unit is currently \$100.
- 24 If a licensed collector possesses an unregistered weapon without lawful excuse, that collector is taken to unlawfully possess a weapon in breach of s 50 (s 84). This is also the case for licensed theatrical ordnance suppliers (s 122).
- 25 Under s 67 of the Act, it is an offence to possess or acquire a restricted item without a reasonable excuse and doing so may incur a fine of up to \$1,000. A 'restricted item' is prescribed under s 9 of the [Weapons Categories Regulation 1997 \(Qld\)](#) and includes items such as handcuffs, kung-fu sticks or similar devices, batons capable of causing bodily harm or studded gloves. Section 51 of the Act makes it an offence for a person to physically possess a knife in a public place or school without a reasonable excuse, attracting a fine of up to \$2,000 or up to 6 months in gaol. This issue is not dealt with further in this e-Research Brief nor is unlawfully supplying weapons, an offence under s 50B (which, to some extent in terms of penalties, is similar to s 50).
- 26 The note to s 3 of the Regulation gives a number of examples of this point.
- 27 The reference to a firearm does not include a reference to a major component part (draft cl 180(5)).
- 28 See Notes to Chapter 6, Div 2.
- 29 Offences involving the acquisition and disposal of weapons are covered by draft cls 192-201; and offences involving licences and permits are found in draft cls 202-205.
- 30 For a discussion of Commonwealth legislation and policy, see Janet Phillips et al., '[Firearms in Australia: a guide to electronic resources](#)'. For example, the [Customs Legislation Amendment \(Criminal Sanctions and Other Measures\) Act 2000 \(Cth\)](#) amended the [Customs Act 1901 \(Cth\)](#) so that the combined effect of s 233BAB of that Act and the [Customs \(Prohibited Imports\) Regulation 1956](#), s 4F, make it an offence to import certain firearms, parts etc. into Australia. See also, M Davies & J Mouzos, p 2.
- 31 'Firearm' means a gun or other weapon that is (or at any time was) capable of propelling a projectile by means of an explosive, and includes a blank fire firearm or an airgun, but does not include anything declared by the Regulations not to be a firearm.
- 32 Possession or use of a pistol fitted with a magazine of more than a 10 round capacity by the holder of a category H (sport/target shooting) licence attracts up to 14 years imprisonment (s 51E).
- 33 In offence proceedings, evidence that a person occupies any land or premises on or in which any firearm is found is evidence, and, in the absence of evidence to the contrary, is proof that that person possessed the firearm: s 145.
- 34 'Firearm' means: any device, whether or not assembled or in parts and whether or not operable or complete or temporarily or permanently inoperable or incomplete, which is designed or adapted to discharge shot or a bullet or other missile by the expansion of gases produced in the device by the ignition of strongly combustible materials or by compressed air or other gases, whether stored in the device in pressurised containers or produced in the device by mechanical means; or which has the appearance of such a device. There are a number of exclusions to the definition (see s 3(c)-(j)).

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- 35 One penalty unit is currently \$119.45: see s 110 of the [Sentencing Act 1991 \(Vic\)](#), s 5 of the [Monetary Units Act 2004 \(Vic\)](#) and the [Victoria Government Gazette](#), 11 March 2010, p 449.
- 36 Defined in s 3 as a firearm other than a handgun. The categories of longarms are also set out in s 3: Category A longarm to Category E longarm.
- 37 The types of handguns are defined in s 3.
- 38 Section s 7(3)-(6) covers possession, carriage or use of handguns for collection purposes.
- 39 See also, s 7A which creates offences for possession, carriage or use of certain types of handguns by persons holding a handgun target shooting licence unless authorised to do so by the Chief Commissioner.
- 40 A 'firearm' means: a device designed to be carried by hand and to fire shot, bullets or other projectiles by means of burning propellant or by means of compressed air or other compressed gas; or a device of a kind declared by Regulation to be a firearm. Inclusions and exclusions are also found in the definition.
- 41 Section 11(3) provides that where the evidence gives rise to a reasonable inference that the purpose of possession or use was not authorised by the licence, the onus shifts to the defendant to establish that the use or possession was so authorised.
- 42 However, s 5(14)(c) does not apply if the person establishes that he or she did not know, and could not reasonably be expected to have known, that the firearm was on or in the premises, vehicle, vessel or aircraft; or the firearm was in the lawful possession of another or he or she believed on reasonable grounds that the firearm was in the lawful possession of another. See s 11(6) for when a person does not have possession for the purposes of s 11.
- 43 Further, s 11(8) states that if the defendant has not previously been found guilty of a s 11 offence, the prosecution has a discretion to prosecute the defendant for a summary offence, unless the firearm is a prescribed firearm. The maximum penalty on summary conviction is \$10,000 or 2 years imprisonment.
- 44 'Firearm' includes any lethal firearm and any other weapon of any description from which any shot, bullet, or other missile can be discharged or propelled or which, by any alteration in the construction or fabric thereof, can be made capable of discharging or propelling any shot, bullet or other missile, but does not include anything that is prescribed in regulations to be a prohibited weapon or a controlled weapon.
- 45 This e-Research Brief does not deal with possession of ammunition.
- 46 Meaning any lethal firearm and any other weapon of any length of barrel which is reasonably capable of being carried or concealed about the person; and which, when used, can be aimed and fired or discharged with one hand; and from which any shot, bullet or other missile can be discharged or propelled or which can be altered to allow this to occur (see s 4).
- 47 See also, s 19(2) making it an offence to, among other things, come into possession of a firearm from another person who does not hold a licence or permit. The penalty is up to 5 years imprisonment for handgun possession; otherwise, it is 3 years imprisonment or a \$12,000 fine.
- 48 It is not an offence under s 19(1) to be in possession under s 30(2) as agent of a person it is to be delivered to (s 19(1ae)).
- 49 A 'firearm' means a gun or other weapon that is capable of propelling anything wholly or partly by means of an explosive; a blank fire firearm; an air rifle; an air pistol; an imitation firearm other than a toy; any other prescribed thing; and any thing that would be a firearm if it did not have something missing from it or a defect or obstruction in it.

Pursuant to ss 4 and 4A of the [Penalty Units and Other Penalties Act 1987 \(Tas\)](#), 1 penalty unit is currently \$130 unless s 37 of the [Acts Interpretation Act 1931](#) applies.

Possession or use of an unregistered firearm attracts a fine of up to \$6,500 or imprisonment for up to 2 years, or both: s 74. See also, ss 13 and 13A.

‘Firearm’ means a gun, or other weapon, that is, or at any time was, capable of propelling a projectile by means of an explosive force, however caused. The term includes a blank fire firearm; an airgun; a paintball marker; something declared to be a firearm under s 31; and a modified item (as defined in s 6(3)). Various exclusions are set out in s 6(2).

Section 10(2) provides for where parts of a firearm are in the possession of 2 or more persons. Section 11 deals with when firearms being at the person's premises is not evidence of possession and s 12 assists in working out when a person has care, control or management of a firearm. See also, s 13 (taking possession under a credit contract) and s 14 (temporary possession and use of firearms).

Under s 133 of the [Legislation Act 2001 \(ACT\)](#), 1 penalty unit is currently \$110 for an individual.

See s 45(3) for an exception. The same penalties apply for possession or use of an unregistered firearm or an unregistered prohibited firearm (s 177), unless the defences or exceptions thereunder apply.

A ‘firearm’ means a device or part of a device (whether or not assembled, operable or temporarily or permanently inoperable) that is designed or adapted to discharge shot, a bullet or other projectile: (a) by expanding gases produced in the device; (b) by igniting combustible material; or (c) by compressed air or other compressed gases (whether stored in the device or attached to the device in pressurised containers).

Under ss 3-6 of the [Penalty Units Act \(NT\)](#) and s 3 of the [Penalty Units Regulations](#), 1 penalty unit is currently \$133.

See also, s 58(2A).

Various exceptions and defences apply (see s 58(1A)-(5)).

Section 59 makes possession or use of an unregistered firearm an offence attracting a maximum penalty of a fine of \$6,650 or imprisonment for 12 months or, where the offence relates to a category A firearm or category B firearm, a fine of up to \$1,330 or imprisonment for 3 months (see also s 59(2)). See also, s 76 regarding possession or use of ‘unsafe’ firearms.

Judicial Conference of Australia, [Judge for Yourself - A Guide to Sentencing in Australia](#), pp 16-20. The JCA is a non-profit organisation and is the national representative body for Australian judicial officers with a membership of over 600 current and retired judges and magistrates (p 2).

Inserted by s 5 of the [Penalties and Sentences \(Sentencing Advisory Council\) Amendment Act 2010 \(Qld\)](#) which received assent on 5 November 2010. To check whether the relevant provisions of this new Act have commenced, please click [here](#).

JCA, Judge for Yourself - A Guide to Sentencing in Australia, p 16.

[R v Deans](#) [2000] QCA 516, para [11], per Williams J.

M Davies & J Mouzos, p 48.

Hon Paul de Jersey AC, Chief Justice of the Queensland Supreme Court, [Launch of the Queensland Sentencing Information Service](#), Banco Court, 27 March 2007, p 1.

[\[2001\] QCA 472](#).

[\[2001\] QCA 472](#), para [6], per McPherson JA.

69 [\[2001\] QCA 472](#), para [8], per McPherson JA.

70 [\[2005\] QCA 467](#).

71 [2005] QCA 467, para [50], per Keane J. See also paras [32]-[36].

72 [\[1998\] 1 Qd R 487](#).

73 Most of the robbery/armed robbery offences in the jurisdictions discussed in this section have, as an alternative element to causing harm or having a weapon etc., the being in company with other person(s). This aspect, being in company with other person(s), will not be discussed here.

74 Defined in s 4(1) as a dangerous weapon, or any thing that is made or adapted for offensive purposes, or any thing that, in the circumstances, is used, intended for use or threatened to be used for offensive purposes, whether or not it is ordinarily used for offensive purposes or is capable of causing harm.

75 A 'dangerous weapon' means (s 4(1)) a firearm, or an imitation firearm, under the [Firearms Act 1996 \(NSW\)](#), or a prohibited weapon under the [Weapons Prohibition Act 1998 \(NSW\)](#), or a spear gun.

76 However, if the jury is not satisfied that the defendant is guilty under s 97(2), it may find the defendant guilty of an offence under s 97(1) if so satisfied on the evidence (s 97(3)).

77 (1999) 46 NSWLR 346, [\[1999\] NSWCCA 111](#).

78 Defined in s 77(1A) as meaning anything that has the appearance of being a firearm, whether capable of being discharged or not.

79 Defined in s 77(1A) as meaning any article made or adapted for use for causing injury to or incapacitating a person, or which the person having it with him or her intends or threatens to use for such a purpose.

80 Defined in s 5 as an article or substance made or adapted for use for causing, or threatening to cause, personal injury or incapacity including a firearm or imitation firearm (i.e. an article intended to be taken for a firearm). A 'firearm' basically has the same meaning given to it under the *Firearms Act 1977* (SA).

81 The [Legislation Act 2001 \(ACT\)](#), s 133, currently provides that, for an individual, 1 penalty unit is \$110.

82 Which the Dictionary in the [ACT Criminal Code 2002](#) defines as including, among other things, a firearm, or anything that may reasonably be taken in the circumstances to be a firearm.

83 Defined in s 1 as any article made or adapted to cause injury or fear of injury to the person or by which the person having it intends to cause injury or fear of injury to the person.

84 A Sekar, para [443-15].