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# Proposed Changes to Offence Provisions in the Weapons Act 1990 (Qld)

This Research Brief discusses:

- current firearms offence provisions under the *Weapons Act 1990* (Qld);
- proposed amendments to the offence provisions, with particular emphasis on the intended introduction of mandatory minimum custodial sentences for particular firearms offences as announced by the Queensland Premier, the Hon Campbell Newman MP, on 30 April 2012;
- comments and reactions to proposed mandatory minimum sentencing; and
- selected firearm related offences in other states and territories.

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## Key Points

1. In the wake of a number of shooting incidents in South-East Queensland in recent months, most of which appear to be 'bikie-gang' related, the new LNP State Government [announced](#) it would amend legislation to impose tougher penalties and minimum mandatory sentences for **firearm offences** as part of its plan to reduce crime.

2. On 30 April 2012, the Queensland Premier, the Hon Campbell Newman MP, said that while the proposed laws would undergo further detailed consideration and consultation, Cabinet had given in-principle support to amendments to the [Weapons Act 1990 \(Qld\)](#) including:

- a **5 year** mandatory minimum custodial **sentence** for **trafficking** in illegal firearms;
- a **3 year** mandatory minimum custodial **sentence** for **supplying** illegal firearms;
- an **18 month** mandatory minimum custodial **sentence** for **possession** of an illegal firearm **used in the commission of an indictable offence**;
- a **12 month** mandatory minimum custodial sentence for **unlawful possession** of an illegal firearm **for the purpose of committing or facilitating in the commission of an indictable offence**; and
- a **12 month** mandatory minimum custodial **sentence** for **possession of an illegal firearm in a public place**.

It was also announced that the legislation would also provide for a voluntary hand back scheme and registration amnesty (**Section 1** of this Research Brief).

3. Legislation in each Australian state and territory creates a number of firearm offences, including unlawful possession and use of firearms and unlawful supply and trafficking of firearms. In Queensland, the relevant legislation is the [Weapons Act 1990 \(Qld\)](#) and its Regulations. The legislation was amended in 1996 to implement [resolutions](#) made by state and territory Police Ministers under the **National Firearms Agreement** following the multiple fatal shootings at Port Arthur in Tasmania. At the **Commonwealth** level, Regulation 4F & Schedule 6 of the [Customs \(Prohibited Imports\) Regulations 1956 \(Cth\)](#) governs the **importation** of firearms. [Imported firearms](#) are subject to conditions, controls and permissions. It has been reported that Commonwealth authorities are concerned about the number of illegal firearms coming into the country and that 377 guns have been seized in Queensland between 2008 and 2011 (**Section 2.1**).
4. Under the **Queensland Weapons Act 1990**, a **licence** must be obtained under **Part 2** of the Act to possess or use a firearm. The applicant must, among other things, show that he or she is a fit and proper person to hold the licence, have a genuine reason for the firearm (e.g. occupational use, recreational shooting), have completed relevant training, and have access to secure storage. There are a number of licence classes under Part 3 of the Act (e.g. firearms licence to possess/use a category A firearm; a collector's licence etc.) (**Section 2.2.1**).

5. **Part 4, Division 1** of the Weapons Act 1990 creates a number of **firearm offences**, sets penalties, and provides qualifications and exceptions. Among the range of offences discussed in **Section 2.2.2** of this Brief are:

- **unlawful possession** (i.e. no licence) (s 50): maximum penalties depend on the number and category of weapons involved and range from a \$10,000 fine or 2 years

imprisonment, to a maximum of 13 years imprisonment;

- **unlawful supply** (s 50B): maximum penalties depend on the number and category of weapons involved and range from a \$20,000 fine or 4 years imprisonment, to 13 years imprisonment;
- **unlawful trafficking** (s 65): maximum penalties depend on the category of weapons involved and range from 15 years imprisonment to 20 years imprisonment;
- **carrying an exposed weapon** (maximum penalty of \$4,000 or 6 months imprisonment), **carrying a loaded firearm, capable of discharge** (\$12,000 or 2 years imprisonment), **discharging a weapon** in, into, towards, over or through a public place (\$20,000 or 4 years imprisonment) (s 57).

6. The LNP Government has [announced](#) that legislation will be amended to **increase penalties** and impose **mandatory minimum sentences** for certain offences. (As well, under incidental amendments to s 5 of the [Penalties and Sentences Act 1992 \(Qld\)](#), the value of a penalty unit will be increased from \$100 to \$110. The relevant legislation, the [Penalties and Sentences and Other Legislation Amendment Bill 2012 \(Qld\)](#), was introduced into the Queensland Parliament on 11 July 2012. The Bill passed on 1 August 2012 and the relevant increase takes effect 7 days after assent).
7. There has been considerable **reaction** to the proposal for mandatory minimum sentencing. Currently, the courts have some discretion regarding sentences they impose on defendants although subject to some limits set by the relevant offence provisions in the Weapons Act 1990 and by the [Penalties and Sentences Act 1992](#) (especially s 9) (**Sections 3.1.1-3.1.2**). The **Queensland Premier** has indicated that the mandatory minimum sentencing proposal was prompted by sentences that had been imposed on defendants that did not meet community standards. However, opposition has been expressed by bodies including the **Queensland Law Society** and, in relation to the possibility of mandatory minimum sentencing for violent offences in Victoria, by the **Law Institute of Victoria**. Arguments raised include:
  - sentencing decisions should rest with publicly accountable and highly trained judicial officers rather than with prosecutors and the police (who might offer the alternative of pleading guilty to a lesser charge in return for withdrawing the charge carrying the mandatory sentence);
  - it was better to educate the public about how sentences are determined; and
  - there needs to be adequate resourcing of police on the frontline (**Section 3.1.3**).
8. It is difficult to provide a true comparison of the penalties for firearms offences across all **Australian jurisdictions** due to lack of uniformity in state and territory legislation (e.g. in what amounts to 'possession', variation in penalty according to the category of firearm in question, types of exceptions and defences). With that caveat in mind, the following provides an overview of the penalties across jurisdictions (**Section 4**):
  - [New South Wales](#), the [Australian Capital Territory](#) and [Western Australia](#) appear to have the strictest penalties for unauthorised **possession/use** of a non-prohibited firearm (up to 5 years imprisonment);
  - of the jurisdictions that deal with firearms **trafficking**, [Tasmania](#) imposes the strongest maximum penalty of up to 21 years imprisonment, followed by [NSW](#) and the [ACT](#) (and Queensland) which impose a maximum penalty of 20 years imprisonment;

- no jurisdiction appears to impose mandatory minimum sentences for firearms offences of the type proposed by the Queensland Government.

*For further clarification and analysis of the relevant issues, the reader should consult the Research Brief and refer to the Explanatory Notes to the Bill as well as to the Bill itself.*



## 1 Introduction

In the wake of a number of shooting incidents in South-East Queensland in recent months, most of which appear to be 'bikie-gang' related, the new LNP State Government [announced](#) it would amend legislation to impose tougher penalties and minimum mandatory sentences for firearm offences as part of its plan to reduce crime.<sup>1</sup>

On 30 April 2012, the Queensland Premier, the Hon Campbell Newman MP, said that while the proposed laws would undergo further detailed consideration and consultation, Cabinet had given in-principle support to amendments to the [Weapons Act 1990 \(Qld\)](#) including:

- a 5 year mandatory minimum custodial sentence for trafficking in illegal firearms;
- a 3 year mandatory minimum custodial sentence for supplying illegal firearms;
- an 18 month mandatory minimum custodial sentence for possession of an illegal firearm used in the commission of an indictable offence;
- a 12 month mandatory minimum custodial sentence for unlawful possession of an illegal firearm for the purpose of committing, or facilitating in the commission of, an indictable offence; and
- a 12 month mandatory minimum custodial sentence for possession of an illegal firearm in a public place.

It was also announced that the legislation would also provide for a voluntary hand back scheme and registration amnesty and that there would be no moves to erode 'the rights of law abiding firearm owners'.<sup>2</sup>

This Research Brief discusses:

- the current offence provisions relating to firearms under the Weapons Act 1990 (Section 2.2 of the Research Brief);
- the proposed changes to the legislation (Section 3), with particular emphasis on the intended introduction of mandatory minimum sentences for particular firearms offences (Section 3.1.1-3.1.2);
- reactions to proposed mandatory minimum sentencing (Section 3.1.3); and
- selected firearm related offences in other states and territories (Section 4).

## 2 Current Legislative Framework

Legislation in each Australian state and territory creates a number of firearm offences, including unlawful possession (i.e. not having a licence or permit to possess the firearm) and use, and unlawful trafficking of firearms. In Queensland, the relevant legislation is the [Weapons Act 1990 \(Qld\)](#) and its Regulations.<sup>3</sup>

<sup>1</sup> Hon Campbell Newman MP, Premier, '[New Minimum Penalties for Gun Crime](#)', *Queensland Media Statements*, 30 April 2012.

<sup>2</sup> Hon Campbell Newman MP, Premier, 'New Minimum Penalties for Gun Crime'.

<sup>3</sup> [Weapons Categories Regulation 1997 \(Qld\)](#); [Weapons Regulation 1996 \(Qld\)](#). This legislation was most recently amended in 2011 (see [Weapons Amendment Act 2011 \(Qld\)](#)). A more detailed analysis of the main features of the [Weapons Act 1990](#), prior to those 2011 amendments, can be found in the Queensland Parliamentary Library's November 2010 Research Brief, [Firearms Offences in Queensland and in Other Jurisdictions](#). That Research

## 2.1 National Context

As was the case with firearms laws throughout the country, in 1996, the Queensland Act was amended to implement [resolutions](#) under the National Firearms Agreement signed at a meeting of the then Australasian Police Ministers' Council in May of that year. The Firearms Agreement was in response to the multiple fatal shootings at Port Arthur in Tasmania by a gunman armed with a semi-automatic rifle.<sup>4</sup>

One of the most significant outcomes of the Firearms Agreement was the prohibition of military style semi-automatic self-loading and pump action firearms. The impact on owners of such firearms was sought to be alleviated by the creation of an amnesty period (from 10 May 1996 to 30 September 1997) during which these firearms could be handed in to authorities in return for compensation under the Commonwealth Government's Firearms Buyback Scheme.<sup>5</sup>

Further amendments to legislation occurred following the National Firearm Trafficking Policy Agreement in 2002 and the National Agreement on Handguns the same year. These changes were mainly the creation of new firearm offences and an increase in penalties.<sup>6</sup>

### 2.1.1 Imports and Exports of Firearms

Importation of firearms into Australia is governed by Regulation 4F & Schedule 6 of the [Customs \(Prohibited Imports\) Regulations 1956 \(Cth\)](#), administered by the Australian Customs Service (ACS). Firearms brought into Australia are subject to compliance with certain conditions before import, are controlled on import, and permission to import must be sought from the police firearms registry in the relevant state or territory and/or the Commonwealth Attorney-General's Department (AGD).<sup>7</sup>

For example, in relation to the [importation](#) of category A or B firearms (such as air rifles, single or double barrel shotguns), a police certification must be issued (unless an exception applies) as well as permission obtained from the AGD if firearms are being imported for certain purposes such as for government use or for use by professional rural pest controllers. Permission must also be sought to import ammunition for use in such firearms. Unless an exception applies imported firearms must undergo ACS safety testing. The penalty for importing these firearms without approval is a fine of up to \$275,000, imprisonment for up to 10 years, or both.<sup>8</sup>

The news media reports the ACS and the Australia Federal Police (AFP) as having concerns about the number of illegal weapons coming into the country in international mail carried by boat and plane.<sup>9</sup> It has been reported that 377 guns, even machine guns, have been seized in Queensland between 2008 and 2011, a number higher than all other jurisdictions apart from New South Wales (which had 2,950 weapons seized). It was also reported, however, that the

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Brief compared firearms possession and use offences and applicable penalties across Australia as at November 2010.

<sup>4</sup> Queensland Police, 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.

<sup>5</sup> [National Firearms Program Implementation Act 1996 \(Cth\)](#), ss 3, 5. Compensation was extended to certain other automatic weapons in subsequent Implementation Acts.

<sup>6</sup> Janet Phillips et al.; S Bricknell, 'Firearm trafficking and serious and organised crime gangs', *Research and Public Policy Series 116: AIC Report*, 2012.

<sup>7</sup> Australian Customs Service (ACS), 'Importing Goods: Firearms and Weapons'.

<sup>8</sup> ACS, 'Importing Category A and B Firearms'.

<sup>9</sup> Tony Moore, 'Queensland ranks behind only NSW in weapons seizures', *Brisbane Times*, 27 May 2012.

ACS did not believe that Brisbane was becoming a more convenient port for illegal weapons to enter the country. It was also noted that waterfront crime investigation (Operation Polaris) was expanding to Brisbane and would target drugs, weapons and illicit cigarette imports.<sup>10</sup>

The Commonwealth Minister for Justice and Home Affairs, the Hon Jason Clare MP, has said that over the past five years, *'more than 7,000 guns have been stolen across the country'* from legitimate owners.<sup>11</sup> To counter this black market, in February 2012, the Minister established a national investigation into the illegal firearms market and, on advice from law enforcement bodies that intelligence was the key to combating the problem, had established a fusion between ACS officers and state police to enable intelligence to be shared. The Minister said that while Australia has firearms laws that are better than those in many parts of the world, there are still loopholes that needed to be closed and ways to do so would be discussed at a meeting of Police Ministers across the country in June 2012.<sup>12</sup>

## 2.2 Queensland's Weapons Act 1990

Section 3 of the [Weapons Act 1990 \(Qld\)](#) contains the principles and object of the legislation. Section 5 and Schedule 2 contain relevant definitions:

- A **'weapon'** is defined 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'** is defined in such a way as to fall within the definition of 'weapon', and generally covers different types of handguns, rifles and shotguns.

However, not all weapons are 'firearms' (e.g. crossbows, mace, knuckledusters are weapons but are not firearms).

The framework of the Act, bearing similarity to firearms legislation in other states and territories, is outlined below. Only a brief overview of the licensing arrangements, by way of providing context to the various offence provisions under the Act, is provided.

### 2.2.1 Licensing and Acquisition of Weapons (Parts 2 & 3)

A licence must be obtained (Part 2), by applying to the 'authorised officer' in the Weapons Licensing Branch of the Queensland Police Service (QPS),<sup>13</sup> to possess or use a weapon for a lawful purpose. Features of weapons licensing include:

- licences are issued according to the [category](#) of weapon<sup>14</sup> and its purpose/type of use;<sup>15</sup>
- the applicant must (s 10) be a fit and proper person to hold the licence;<sup>16</sup> have a genuine reason under s 11 for needing the firearm (e.g. sport, recreational shooting, occupational

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<sup>10</sup> Tony Moore.

<sup>11</sup> Kim Landers, ['Justice Minister admits gaps in gun control laws'](#), *The World Today – ABC Radio National*, 27 April 2012, quoting the Minister for Justice and Home Affairs.

<sup>12</sup> Kim Landers; Hon Jack Dempsey MP, ['Police Minister discusses unified policing with interstate colleagues'](#), *Media Statement*, 28 June 2012. See also, S Bricknell, ['Firearm trafficking and serious and organised crime gangs'](#), esp. pp 21-22.

<sup>13</sup> The QPS has recently implemented a streamlined [online licensing application](#) process.

<sup>14</sup> For instance, a licence can be given for the possession and use of 'category A' weapons which include firearms such as rifles.

<sup>15</sup> The categories of weapons are set out in the [Weapons Categories Regulation 1997 \(Qld\)](#). Other jurisdictions have similar categories of weapons.

requirement), and have access to secure storage for it. Applicants must also have recently completed the relevant approved safety training course under s 10A;<sup>17</sup>

- there are a number of licence classes (s 12 and Weapons Regulation 1996, Part 3) such as a 'firearms licence' to possess/use a firearm of a particular category (e.g. to possess or use a category A or B weapon or to possess/use a category D firearm for occupational culling of animals). Other classes include a dealer's licence, collector's licence, weapons collector's licence etc.;<sup>18</sup>
- conditions and authorities can be imposed on licences and licences generally remain in force for up to 5 years (ss 15-16, 20).

Once a person has a licence, the person can (see Part 3, Div 3 of the Act) acquire a firearm of the category endorsed on the licence (apart from certain instances – e.g. a minor's licence – where this is not allowed). This is done by obtaining a Permit To Acquire. Firearms must be registered and there may be restrictions on the number of weapons that may be owned.

### 2.2.2 Offences Relating to Possession and Use of Firearms (Part 4)

Part 4, Division 1 of the Act creates a range of offences concerning unlawful possession, supply, trafficking, and use of weapons and conduct involving weapons, as well as the maximum penalties for committing those offences.<sup>19</sup> In 2011, the Act and its Regulations were amended following an extensive review of, and public consultation on, the legislation. Among the changes, maximum penalties for 22 behavioural offences were doubled. When the Weapons Amendment Bill 2011 (Qld) was introduced, the [Explanatory Notes](#) (p 12) commented that while there had been a minor reduction in the rate of offending involving weapons, the QPS statistics did not indicate that the penalty regime then existing had made a significant difference to offence rates where knives or firearms were used.

Not all offences can be dealt with in Table 1 below nor can the various qualifications and exceptions (e.g. reasonable excuse) applying to a number of offences.<sup>20</sup>

**Table 1**

Offence	Maximum Penalty
<p><b>Unlawful possession</b><sup>21</sup> of a weapon<sup>22</sup> (s 50)</p> <p>(a licence authorises possession and use for a lawful purpose: s 49A)</p>	<p>The maximum penalty depends upon the number and category of weapons in one's unlawful possession.</p> <p>The penalties range from a fine of up to \$10,000<sup>23</sup> or imprisonment for up to 2 years (e.g. unlawful possession of a category A shotgun) to a maximum of 13 years imprisonment for unlawful possession of 10 or more weapons at least 5 of which are category D, E, H or R weapons).</p>

<sup>16</sup> Section 10B sets out what the authorising officer must consider in deciding if a licence applicant is a fit and proper person as well as disqualifying matters (e.g. if the applicant has, in the past 5 years, been convicted of a violent offence or has been the subject of a domestic violence order).

<sup>17</sup> Covering safety practices for the use, storage and maintenance of the relevant weapon (see s 10AA).

<sup>18</sup> Additional application requirements apply in relation to certain classes of licences (e.g. ss 18A, 18B, 18C).

<sup>19</sup> Various qualifications and exceptions are also provided for in Part 4, Division 1.

<sup>20</sup> For instance, s 51 deals extensively with unlawful possession of a knife in a public place or a school. Sections 52-55A set out when possession and/or use of a weapon is allowed or sometimes allowed (e.g. by an unlicensed person at an approved firing range).

<b>Possession of unregistered firearm</b> (s 50A)	A fine of up to \$12,000 applies.
<b>Unlawful supply</b> of a weapon (s 50B)	The maximum penalty depends upon the number and category of weapons supplied.  The penalties range from a fine of up to \$20,000 or imprisonment for up to 4 years for unlawful supply of a category A, B or M weapon to a maximum of 13 years imprisonment for unlawful supply of 5 or more weapons at least 1 of which is a category D, E, H or R weapon.
<b>Discharge/carriage</b> of a weapon on <b>private land</b> without owner's consent (s 56)	A fine of up to \$4,000 or up to 6 months imprisonment applies for <b>discharging</b> a weapon without the owner's consent and a fine of up to \$4,000 applies for <b>carrying</b> a weapon without the owner's consent.
Certain conduct involving a <b>weapon in a public place</b> (s 57)	The maximum penalties are as follows: <ul style="list-style-type: none"> <li>• <b>carrying an exposed weapon</b> – \$4,000 or 6 months imprisonment</li> <li>• <b>carrying a loaded firearm</b>, capable of discharge – \$12,000 or 2 years imprisonment</li> <li>• <b>discharging</b> a weapon in, into, towards, over or through a public place – \$20,000 or 4 years imprisonment.</li> </ul>
Engaging in <b>conduct</b> with weapon, alone or with another, <b>likely to cause</b> (s 58): <ul style="list-style-type: none"> <li>• <b>death or injury;</b></li> <li>• <b>destruction or damage,</b> or</li> <li>• <b>alarm</b> to another person</li> </ul>	The maximum penalty is \$20,000 or 4 years imprisonment.
<b>Unlawful trafficking</b> is a crime (s 65)	<ul style="list-style-type: none"> <li>• Unlawfully carrying on the business of trafficking in category H or R weapons incurs a maximum 20 years imprisonment and, if in relation to category A-E weapons</li> </ul>

<sup>21</sup> 'Possession' is defined in Sch 2 to include not only having the weapon in one's custody but also having it under one's control, 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 under one's control.

<sup>22</sup> As the definition of 'firearm' also covers 'a major component of a firearm' (in Sch 2), possessing just part of a firearm, provided it is a major part, amounts to possession of a firearm.

<sup>23</sup> Under s 5 of the [Penalties and Sentences Act 1992 \(Qld\)](#), a penalty unit is **\$100**. The [Penalties and Sentences and Other Legislation Amendment Bill 2012 \(Qld\)](#), introduced into the Queensland Parliament on 11 July 2012, proposed to increase the value of a penalty unit to **\$110**. The Bill passed on 1 August 2012 and the relevant increase takes effect 7 days after assent.

	etc., the maximum penalty is 15 years imprisonment. <sup>24</sup>
<b>Related possession/use offences</b>	<ul style="list-style-type: none"> <li>• Failure to keep weapon in a <b>secure storage</b> facility (s 60):<sup>25</sup> <ul style="list-style-type: none"> <li>by a licensee – a fine of up to \$10,000 or up to 2 years imprisonment;</li> <li>by a registered owner – a fine of up to \$10,000;</li> </ul> </li> <li>• <b>shortening or modifying</b> a firearm etc. – a fine of up to \$20,000 or up to 4 years imprisonment (ss 61-62);<sup>26</sup></li> <li>• <b>obtaining</b> a weapon by <b>deceit or fraud</b> – a fine of up to \$6,000 or up to 1 year’s imprisonment (s 64).</li> </ul>

In addition (also not discussed here), the Weapons Regulation 1996, ss 68C, 68CA, 68E-68E, also (among other things) restricts the use of certain category H weapons; prohibits possession of high capacity detachable magazines for category B weapons; and prohibits possession of high capacity magazines for category H weapons.<sup>27</sup>

### 3 Proposed Upcoming Amendments to the Weapons Act 1990

Following a spate of shootings in parts of South East Queensland, some possibly linked to bikie gang conflicts, the LNP Government [announced](#) it would amend legislation to impose tougher penalties and minimum mandatory sentences for firearm offences.

In addition to the proposed changes to the Weapons Act 1990, the Government has reportedly provided the police with more resources to counter the threat of bikie violence. These include recruitment of an extra 20 detectives for Taskforce Hydra and the Major Crime Squad on the Gold Coast and another 12 officers for a new ‘Operation Kilo Cajun’ directed at recent drive-by shootings in Brisbane suburbs.<sup>28</sup>

#### 3.1 Mandatory Minimum Sentences

The proposal for the introduction of minimum mandatory sentences for various offences under the Weapons Act 1990 (Qld) is possibly the most significant amendment warranting discussion.

##### 3.1.1 General Sentencing Principles

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

- to punish the defendant to an extent or in a way that is just in all the circumstances;
- to provide conditions in the court’s order that the court considers will help the defendant’s rehabilitation;
- to provide a deterrent;

<sup>24</sup> See also s 66 regarding dispatch of weapons other than as prescribed (maximum penalty: \$6,000 fine or 1 year’s imprisonment). Section 67 deals with possessing or acquiring restricted items (including laser pointers) (a fine of up to \$1,000).

<sup>25</sup> It is an offence (attracting a fine of up to \$1,000) not to report the loss or theft of a weapon immediately upon becoming aware of such (s 60A).

<sup>26</sup> It is an offence to deface or alter identifying marks on weapons or to possess, acquire or sell such a weapon (s 63).

<sup>27</sup> See also, [Explanatory Notes](#) (p 24) to the Weapons Amendment Bill 2011 (Qld).

<sup>28</sup> Robyn Ironside, ‘Newman vows to get tough’, *Courier Mail*, 5 June 2012, p 5.

- to make it clear that the community denounces the relevant offending conduct;
- to protect the community; or
- any two or more of the foregoing purposes.

Section 9(2) sets out 18 matters to which the court must have regard when sentencing an offender. These include mitigating and aggravating factors and whether the defendant has assisted law enforcement agencies. 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 or an offence resulting in physical harm to another person (s 9(3)). In such a case the court must have regard mainly to matters in s 9(4). These include factors such as (but see s 9(4) for the complete list of matters):

- the risk of harm to the community if a custodial sentence were not imposed;
- the circumstances of the offence (including death or injury or any loss or damage);
- the victim's personal circumstances;
- the defendant's antecedents, age and character as well as any medical, psychiatric or other report regarding the defendant;
- the nature and extent of any violence used or intended to be used;
- the defendant's remorse or lack thereof;
- whether there was disregard for the interests of public safety.

Another consideration is the defendant's past record, including any attempted rehabilitation and number of previous offences. Section 9(8) states that 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.<sup>29</sup>

### 3.1.2 Sentencing for Offences Involving Firearms

The use of a firearm has been seen as an aggravating factor in sentencing for a particular offence. In *R v Deans* Williams J of the Queensland Court of Appeal noted that:<sup>30</sup>

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.

[Research](#) for the Australian Institute of Criminology ([AIC Research](#)) in 2008 referred to a number of cases and sentencing remarks concerning armed robbery offences, noting that 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*'.<sup>31</sup>

In the context of general principles of sentencing, the seriousness of offences involving firearms (e.g. assault, robbery) would appear to be an aggravating factor indicating a longer sentence. However, the court can (and, under s 9(2) of the [Penalties and Sentences Act 1992 \(Qld\)](#), must) take into account mitigating factors, such as age and previous good character of the offender (see, for example, *R v Cay, Gersch and Schell; ex parte A-G (Qld)* [2005] QCA

<sup>29</sup> However, s 9(9) states that the sentence imposed must not be disproportionate to the gravity of the current offence.

<sup>30</sup> [2000] QCA 516, para [11], per Williams J.

<sup>31</sup> M Davies and J Mouzos, '[Court outcomes for firearms offences in Australia](#)' ([AIC Research](#)), Technical Background Paper No 31, Australian Institute of Criminology, June 2008, p 48.

467 where the age of the defendants (17 and 18), their previous good character, and that the victim had not suffered serious harm were among the matters considered).

### 3.1.3 Comments and Reaction to Proposed Introduction of Mandatory Minimum Sentences

Much of the reaction to the proposed changes to firearms laws has centred on the mandatory minimum sentences aspect, some of which, together with comments regarding mandatory minimum sentencing in other contexts, is summarised below.

**Queensland Premier, the Hon Campbell Newman MP** (as reported by the *Brisbane Times*):<sup>32</sup>

- In proposing the introduction of mandatory minimum sentences for certain firearm offences after having previously expressed reservations about such sentences at a media club function in June 2011, the Premier was reported as saying that he still did not like mandatory sentences. However, Mr Newman MP said, *'when you see sentences ... like that [referring to a 2010 sentencing of an offender with multiple guns charged with 13 offences to a 12 months suspended jail term] being handed down, it's clear that we need to actually have something that's tougher'*.
- The Premier is reported as saying that while he acknowledged that strong legislative penalties already existed, the sentences actually being imposed on convicted firearm offenders *'did not meet community standards'*.

**Tim Priest**, (former NSW Police Detective Sergeant) (as reported in the *Daily Telegraph*):<sup>33</sup>

- There have been 20 drive-by shooting incidents since the start of April 2012 (up to 24 April) and in *'one incident, shots were fired into residential premises where young children were nearby ...'*. While these may be *'targeted attacks'*, *'eventually ... bullets will miss their ... "targets" and either kill or wound an innocent person, such as ... young children ...'*.
- *'Mandatory minimum sentencing has a "knock-on" effect ... it not only incarcerates offenders and removes them from the streets, it also sends a chill down the spine of would-be gangsters that they might be next ...'*
- There could be *'escape valves'* in the legislation to ensure that offenders who cooperate with police are treated more leniently.

**Law Institute of Victoria (LIV)** ([Submission](#) to the Victorian Attorney-General regarding his having sought advice from that state's Sentencing Advisory Council on introducing mandatory minimum sentencing (MMS) for serious violent offences):<sup>34</sup>

- Under a mandatory sentencing regime, offenders are not motivated to assist police (because there is no possibility of cooperation being taken into account in sentencing) or to plead guilty, thus increasing court delay, legal aid costs and, also, postponing *'closure'* for victims (pp 5, 15-16);
- Under MMS for property crime (operating in the Northern Territory from 1997 to 2001) there was an increase in such crime during its operation and a decrease after its repeal,<sup>35</sup>

<sup>32</sup> Daniel Hurst, *'LNP sentencing policy goes full circle'*, *Brisbane Times*, 1 May 2012, online.

<sup>33</sup> Tim Priest, ['Do something Barry – time to apply the fear factor'](#), *Daily Telegraph*, 24 April 2012.

<sup>34</sup> Law Institute of Victoria (LIV), ['Mandatory Minimum Sentencing'](#), Submission to the Attorney-General (Victoria), 30 June 2011.

- The empirical basis to support the deterrence effect of MMS is ‘shaky at best’ because many crimes are committed impulsively and offenders are often driven by issues such as substance abuse (p 7);
- MMS may be seen as a means of protecting the community (because an incarcerated offender is unable to reoffend) but it can increase the amount of crime in the long run because of the ‘criminogenic’ effect of imprisonment (e.g. prisons acting as criminal learning environments). Prisons may do little to address any underlying causes of offending (e.g. drug abuse) and specialist courts might be better placed to do this (pp 9-10);
- MMS can lead to inconsistent sentencing outcomes in not allowing for the circumstances of the offending (e.g. offences committed out of extreme provocation), the offender’s willingness to cooperate and to rehabilitate, or his/her genuine remorse (pp 11, 12);
- MMS could require young offenders to be sent to an adult prison for a mandatory minimum term (p 11);
- Offenders might plead guilty to a lesser charge upon being advised by police or prosecutors that the charge carrying the MMS will be withdrawn (even if the offender thinks he/she has a complete defence and may have contested the higher charge), meaning that police and prosecutors become the main ‘gatekeepers’ of discretion rather than publicly accountable judges (p 13);
- Studies suggest that the general community has a limited understanding of what MMS entails and rely on media accounts which may not present the full picture. For instance, a recent Australian study asked 698 jurors from 138 trials, who had been fully informed about a certain case and the defendant’s circumstances, if the judge’s sentence was appropriate. It found that more than half would have imposed a lighter sentence than the judge actually imposed. After receiving further information about crime and sentencing, 90% said the sentence given by the judge was appropriate.<sup>36</sup> Perceptions change as the public becomes more informed (p 14);
- There is evidence to support the view that certainty of punishment produces a deterrent effect, particularly police presence on the streets (therefore, hiring more police officers would be more effective in reducing crime) (p 8). The LIV thus recommended, among other matters, that the Government recruit more police rather than introduce MMS.

Readers should refer to the full submission for further points made by the LIV.

#### **Queensland Law Society (QLS):**

- *‘Sentencing changes at this serious level should be referred to the Sentencing Advisory Council whose role is to research and advise the Attorney-General on such issues. [Mandatory sentencing] has proved to be unreasonable and counter-productive in the*

<sup>35</sup> LIV Submission, pp 6-7, citing NT Office of Crime Prevention, *Mandatory Sentencing for Adult Property Offenders – the Northern Territory Experience*, 2003, p 10.

<sup>36</sup> LIV Submission, p 14, referring to K Warner, et al., ‘[Public judgement on sentencing: final result from the Tasmanian Jury Sentencing Study](#)’, *Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology, February 2011. However, as the study notes throughout (and discusses on p 5), for offences involving sex, violence and drugs, ‘the split between less and more severe was much more even’.

*past in Queensland, the Northern Territory and Western Australia.'*

*'There are a multitude of situational reasons that can bring a person before the courts and they all need to be managed on a full understanding of the particular circumstances.'<sup>37</sup> ... To reduce crime we need to ensure the police, Department of Public Prosecutions and courts are sufficiently resourced...'<sup>38</sup>*

Some other arguments put forward by the QLS echo those raised by the LIV submission.

Note: In June 2012, the new LNP Government [introduced](#) the [Criminal Law Amendment Bill 2012 \(Qld\)](#), cl 17 of which proposes to abolish the Sentencing Advisory Council.

**Queensland Council for Civil Liberties (Terry O’Gorman):**

- *'Mandatory minimum sentencing forces judges to sentence according to what Parliament says and ... to ignore individual circumstances .... '<sup>39</sup>*

The New South Wales Premier has hinted at support for the introduction of mandatory minimum sentences for gun crime. In the wake of a number of drive-by shootings in Sydney suburbs in recent months, the Hon Barry O’Farrell MP, was asked if he supported the measure and responded that he was ‘open to all options’.<sup>40</sup> The NSW Premier said that the public expected that those caught in relation to the shootings should face the same type of serious sentences as were given for other gang-related activities.

## 4 Inter-Jurisdictional Comparison of Penalties for Selected Firearms Offences

It is difficult, for the reasons outlined later in this section, to provide a true comparison of penalties for firearms offences across all Australian jurisdictions due to lack of uniformity in state and territory legislation. With that caveat in mind, the following provides an overview of the penalties across jurisdictions:

[New South Wales](#), the [Australian Capital Territory](#) and [Western Australia](#) appear to have the strictest penalties for unauthorised **possession/use** of a non-prohibited firearm (up to 5 years imprisonment).

Of the jurisdictions that deal with firearms **trafficking**, [Tasmania](#) imposes the strongest maximum penalty of up to 21 years imprisonment, followed by [NSW](#) and the [ACT](#) (and Queensland) which impose a maximum penalty of 20 years imprisonment.

No jurisdiction appears to impose mandatory minimum sentences for firearms offences of the type proposed by the Queensland Government.

Table 2 provides a very basic summary of maximum penalties for certain firearms offences in each state and territory. The outlined offences are selected on the basis of their similarity to

<sup>37</sup> [‘Mandatory sentencing not an option’](#), *Queensland Law Society Media Release*, 3 May 2012.

See also, Chris Nyst, ‘Dumb law jumps gun’, *Gold Coast Bulletin*, 5 May 2012, p 56.

<sup>38</sup> QLS, [‘Mandatory sentencing not an option’](#). See also, [QLS Feedback to the Queensland Government’s community consultation](#) on standard non-parole periods following the release of the September 2011 [Minimum Standard Non-Parole Periods](#) Final Report by the Queensland Sentencing Advisory Council.

<sup>39</sup> [‘Newman’s mandatory sentencing plan a “knee-jerk reaction”](#)’, *ABC News*, 2 May 2012.

<sup>40</sup> Anna Patty & Nick Ralston, ‘O’Farrell tells judges to get tougher on gun crimes’, *Sydney Morning Herald* (online), 25 April 2012.

firearms offences in Queensland sought to be covered by the LNP Government's proposals. As noted in the [AIC Research](#), referred to earlier, there are differences in offence provisions and the applicable statutory penalties among jurisdictions, as well as lack of uniformity in matters including:<sup>41</sup>

- the type of firearm involved in an offence – in some jurisdictions, the penalty varies depending on the category of firearm in question (e.g. whether it is a category A firearm (e.g. a single or double barrel shotgun) or a category E longarm (e.g. a longarm machine gun) or whether it is a handgun);
- whether the relevant firearm is a 'prohibited firearm' (e.g. an automatic machine gun) or a 'restricted firearm' (the information in the table below deals only with firearms in general);
- whether the offender is a 'prohibited person'/'excluded person' (e.g. an offender with prior convictions for offences involving violence, firearms etc.). The information below does not cover such persons;
- what amounts to 'possession';
- exceptions, exclusions and defences;
- some jurisdictions having higher penalties for possession, sale etc. of more than one firearm and/or for unregistered firearms;
- approaches to sentencing – for instance, some jurisdictions allow for summary convictions to which lower penalties tend to apply.

Given the limitations of the information presented below, the reader should also consult the relevant firearms legislation in each jurisdiction for a complete picture.

**Table 2**

Jurisdiction	Offence and Penalty
Victoria	<p>The <a href="#">Firearms Act 1996 (Vic)</a> contains a vast array of offences and penalties<sup>42</sup> for many types of longarms and handguns, registered and unregistered (only some are considered here. The penalties given are for first offences only):</p> <ul style="list-style-type: none"> <li>• <b>unauthorised possession/use</b> of longarms, handguns by a non-prohibited person (ss 6-7B):<sup>43</sup> penalties range from a fine of \$15,022.80<sup>44</sup> or 2 years imprisonment to a fine of \$75,114 or 7 years imprisonment;<sup>45</sup></li> <li>• <b>possession of a traffickable quantity of unregistered firearms</b> (i.e. more than 10) attracts a fine of \$150,228 or 10 years imprisonment (s 7C);</li> </ul>

<sup>41</sup> For example, see, M Davies & J Mouzos, '[AIC Research](#)', pp 2-5.

<sup>42</sup> The Sentencing Act 1991 (Vic), [s 111](#), provides that a penalty set out in an offence provision of an Act must generally be construed as indicating that the offence is punishable by a penalty not exceeding that set out.

<sup>43</sup> The penalties are increased (s 5) if possession/use is by 'a prohibited person' (see s 3) and includes persons who have been imprisoned for certain serious/indictable offences etc.

<sup>44</sup> For the 2012-2013 financial year, 1 penalty unit is **\$125.19**: see [Sentencing Act 1991 \(Vic\)](#) s 110(2); [Victoria Government Gazette](#), 29 March 2012. The penalties shown for Victoria are as of 1 July 2012.

<sup>45</sup> Penalties are higher for certain unregistered handguns and increase significantly for repeat offences involving certain unregistered firearms.

	<ul style="list-style-type: none"> <li>• <b>unauthorised supply</b> of firearms (e.g. to an unlicensed acquirer) (s 94): penalties range from a \$7,511.40 fine or 12 months imprisonment (category A or B longarm) to a fine of \$30,045.60 or 4 years imprisonment for category E firearms etc.);</li> <li>• <b>acquisition or disposal of a traffickable quantity of unregistered firearms</b> (i.e. more than 10) within a period of 7 days without a dealer's licence (s 101A): penalty is a fine of \$150,228 or 10 years imprisonment;</li> <li>• <b>damaging property with a firearm</b> (s 128): penalty is a fine of \$15,022.80 or 2 years imprisonment;</li> <li>• <b>using a firearm in a dangerous manner</b> (s 129): penalty is a fine of \$15,022.80 or 2 years imprisonment;</li> <li>• <b>carrying/using a firearm in a town or populous place</b> or a place etc. open to public for vehicles (s 130): penalty is a \$7,511.40 fine or 12 months imprisonment;</li> <li>• <b>carrying a concealed firearm for the purpose of committing an indictable offence</b> (s 132(2)): penalty is a \$30,045.60 fine or 4 years imprisonment.</li> </ul> <p>Under the <a href="#">Crimes Act 1958 (Vic)</a>:</p> <ul style="list-style-type: none"> <li>• if a person is <b>found guilty of an indictable offence and carried a firearm</b> when committing the offence, the person is guilty of a further offence and is liable to a maximum of 5 years imprisonment (s 31A);<sup>46</sup></li> <li>• <b>a person with criminal intent armed with a firearm</b> is guilty of an indictable offence and liable to a maximum of 5 years imprisonment (s 31B).</li> </ul>
New South Wales	<p>Under the <a href="#">Firearms Act 1996 (NSW)</a> various offences are created and the penalty imposed depends on matters including the number of firearms possessed and whether the firearm is prohibited (see Sch 1 which includes things like machine guns) or not prohibited:</p> <ul style="list-style-type: none"> <li>• <b>unauthorised possession/use</b> of a firearm (s 7A): maximum penalty of 5 years imprisonment;</li> <li>• <b>unauthorised possession of more than 3 firearms</b> (s 51D): maximum penalty of 10 years imprisonment;</li> <li>• <b>selling a firearm to an unauthorised purchaser</b> (s 51(1)): maximum penalty of 5 years imprisonment (20 years maximum if prohibited firearm);</li> <li>• <b>selling a firearm in contravention of s 51 on 3 or more separate occasions over any consecutive period of 12 months</b> (s 51B): maximum penalty of 20 years imprisonment.</li> </ul> <p>Part 3A, Division 2 of the <a href="#">Crimes Act 1900 (NSW)</a> contains various firearms offences:</p> <ul style="list-style-type: none"> <li>• <b>possession of a loaded firearm in a public place, or in any other place so</b></li> </ul>

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The court must direct the sentence not be served concurrently with another sentence and must not make an order suspending the sentence.

	<p>as to <b>endanger the life</b> of another person (s 93G(1)(a)); or</p> <ul style="list-style-type: none"> <li>• <b>firing a firearm in or near a public place</b> (s 93G(1)(b)); or</li> <li>• <b>carrying/firing a firearm in a manner likely to injure or endanger life or safety or property, or with disregard for safety</b> (s 93G(1)(c)): maximum penalty is 10 years imprisonment;</li> <li>• <b>firing at a dwelling house or other building with reckless disregard</b> for safety: maximum 14 years imprisonment (s 93GA(1)); if occurring during <b>public disorder or in the course of organised criminal activity</b>: maximum 16 years imprisonment (s 93GA(1A), (1B));</li> <li>• <b>discharging a firearm or attempting to discharge a firearm with intent to cause grievous bodily harm</b> (s 33A): maximum penalty of 25 years imprisonment;</li> <li>• <b>being armed with intent to commit an indictable offence</b> (s 114): maximum 7 years imprisonment.</li> </ul>
South Australia	<p>Under the <a href="#">Firearms Act 1977 (SA)</a>:</p> <ul style="list-style-type: none"> <li>• <b>unauthorised possession/use</b> of a firearm (s 11): maximum penalties range from a fine of \$20,000 or 4 years imprisonment to a \$50,000 fine or 10 years imprisonment if a prescribed firearm<sup>47</sup> is involved (see s 11(7));</li> <li>• <b>unauthorised possession/use of a loaded or concealed firearm</b> is an <b>aggravated offence</b> and the maximum penalties range from \$35,000 or 7 years imprisonment to a fine of \$75,000 or 15 years imprisonment (s 11(7a)-(d));</li> <li>• <b>supply of a firearm to an unauthorised purchaser</b> (s 14A): depending on the type of firearm, the maximum penalties range from a \$35,000 fine or 7 years imprisonment to a \$75,000 fine or 15 years imprisonment (s 14A(6)).<sup>48</sup></li> </ul> <p>Under the <a href="#">Criminal Law Consolidation Act 1935 (SA)</a> (CLCA):</p> <ul style="list-style-type: none"> <li>• <b>causing, or intending to cause, serious harm</b> (s 23) – <b>where</b> it is an ‘<b>aggravated offence</b>’ (defined in s 5AA to include using/threatening to use a firearm in committing the offence): maximum of 25 years imprisonment;</li> <li>• <b>acting, or omitting to act, knowing it is likely to endanger the life of another, and intending to endanger the life or being recklessly indifferent</b> as to this endangerment (s 29(1) – <b>where</b> it is an ‘<b>aggravated offence</b>’ (s 5AA): maximum of 18 years imprisonment;<sup>49</sup></li> <li>• <b>possession/carriage of a firearm to commit an offence</b> punishable by at least 2 years imprisonment is an indictable offence (s 32): the penalty is 10 years imprisonment.</li> </ul> <p>On 13 June 2012, the SA Attorney-General introduced the <a href="#">Statutes</a></p>

<sup>47</sup> As defined in Firearms Regulation 2008 (SA), [r 4](#) (e.g. automatic firearms, military firearms).  
<sup>48</sup> For ss 11 and 14A offences, a first offender (where no prescribed firearm is involved) can be prosecuted for a summary offence (maximum penalty: \$10,000 or 2 years imprisonment) (ss 11(8), 14A(7)).

<sup>49</sup> Acts or omissions involving firearms creating risk of harm or serious harm attract maximum penalties of 7 years imprisonment and 12 years imprisonment, respectively (s 29(3), (2)).

	<p><a href="#">Amendment (Serious Firearm Offences) Bill 2012 (SA)</a> which seeks to strengthen firearms laws and the sentencing of offenders.</p> <p>A new category of ‘serious firearm offender’ will include a person who offends against the Firearms Act or the CLCA involving use of a firearm when subject to a prohibition order under the Firearms Act, or when the offence is committed to benefit a criminal organisation. It also includes a person who uses a fully automatic firearm, or who uses a firearm in the course of committing a serious drug offence (the full range is found in proposed ss 20AA, 20AAB of the <i>Criminal Law (Sentencing) Act 1988</i>). The consequence for this category of offender is that, among other things, there is a presumption of immediate imprisonment on conviction (e.g. no suspended sentence) and a presumption against bail.</p> <p>The Bill also inserts a proposed new s 32AA into the CLCA to provide a new offence for discharging a firearm intending to injure, annoy or frighten a person (up to 8 years imprisonment), or to damage property (up to 5 years imprisonment). Recklessness as to those consequences attracts up to 5 years imprisonment and up to 3 years imprisonment, respectively.<sup>50</sup></p>
Western Australia	<p>Under the <a href="#">Firearms Act 1973 (WA)</a>:</p> <ul style="list-style-type: none"> <li>• <b>unauthorised possession</b> of a firearm: penalty<sup>51</sup> is 5 years imprisonment (summary conviction penalty: imprisonment for 3 years or a fine of \$12,000) (s 19(1)(c), (1ad));<sup>52</sup></li> <li>• <b>unauthorised possession of a firearm</b> where person is <b>carrying both a firearm and a prohibited drug/plant</b>, or <b>unauthorised possession of a firearm</b> where person is <b>carrying both a firearm and an amount of money</b> at least of the prescribed amount, the person is liable to 14 years imprisonment (s 19(1ab));</li> <li>• <b>unauthorised possession of a firearm committed in any of the circumstances listed in s 19(1ac)</b> (e.g. possession of a handgun or prescribed firearm): penalty is 7 years imprisonment (summary conviction is 3 years imprisonment or a fine of \$12,000);</li> <li>• <b>sale of a firearm without a licence</b>: penalty is 5 years imprisonment (summary conviction penalty: imprisonment for 3 years or a fine of \$12,000) (s 19(1)(a), (1ad). If <b>selling 3 or more firearms</b> then liable to imprisonment for 14 years (s 19(1aa));</li> <li>• <b>sale of a firearm to an unauthorised purchaser</b> (s 19(2)): penalty is imprisonment for 3 years or a fine of \$12,000 (if a handgun or prescribed firearm, then imprisonment for up to 5 years);</li> <li>• <b>unauthorised carrying/using a firearm</b> attracts a penalty of 4 years imprisonment or a fine of \$16,000 (summary conviction penalty is imprisonment for 2 years or a fine of \$8,000) (s 23(3))<sup>53</sup>;</li> </ul>

<sup>50</sup> See also, ‘[Serious gun offenders face serious jail time](#),’ Hon John Rau MP, Attorney-General, *News Release*, 13 June 2012.

<sup>51</sup> Under the *Sentencing Act 1995* (WA), [s 9\(2\)](#), if the statutory penalty for an offence is, unless otherwise provided, a fine of a particular amount or a particular term of imprisonment, then that penalty is the maximum penalty that may be imposed for that offence.

<sup>52</sup> Unauthorised possession of 3 or more firearms attracts imprisonment for up to 10 years (s 19(1ab)(b)).

	<ul style="list-style-type: none"> <li>• <b>pointing a firearm at another person</b> (s 23(8)): penalty is imprisonment for 3 years or a \$12,000 fine;</li> <li>• <b>discharging a firearm</b> to the danger or, or in a manner to cause fear to, the public or any person (s 23(9a)): penalty is imprisonment for 3 years or a fine of \$12,000.</li> </ul> <p>Under the WA <a href="#">Criminal Code</a>:</p> <ul style="list-style-type: none"> <li>• <b>being armed with a firearm in a prescribed place</b> (i.e. a place of public entertainment or licensed premises, or within 50m of such) makes the person liable to imprisonment for 5 years (s 68B);</li> <li>• <b>being armed in public in the company of 2 or more persons</b> attracts 5 years imprisonment (s 68C);</li> <li>• <b>being armed with a firearm in circumstances likely to cause fear</b> in others makes the person liable to imprisonment for 7 years (s 68);</li> <li>• <b>having ready access to both a firearm and cash</b> equal or more than the prescribed amount (s 68D) or <b>having ready access to both a firearm and a prohibited drug/plant</b> (s 68E) attract 5 years imprisonment.</li> </ul> <p>In each of the cases above, the summary conviction penalty is imprisonment for 3 years and a fine of \$36,000.</p>
Tasmania	<p>Under the <a href="#">Firearms Act 1996 (Tas)</a>:</p> <ul style="list-style-type: none"> <li>• <b>unauthorised possession, use or acquisition</b> of a firearm (ss 9-10): maximum penalty is a fine<sup>54</sup> of \$6,500 or 2 years imprisonment, or both;</li> <li>• <b>unauthorised dealing</b> (includes <b>selling</b> (s 3)) in firearms (s 11): maximum penalty is a fine of \$6,500 or 2 years imprisonment, or both; <b>selling to an unauthorised purchaser</b> (s 25): maximum penalty is a \$13,000 fine;</li> <li>• <b>unlawful trafficking</b> (i.e. unregistered selling on 1 or more occasions) in firearms is an indictable offence punishable under the Criminal Code (s 110A). Under s 389(3) of the <a href="#">Criminal Code</a>, except where otherwise expressly provided, the punishment for any crime is imprisonment for 21 years, or a fine, or both;</li> <li>• <b>unlawful possession of a loaded firearm in a public place</b> (s 111): maximum penalty is a fine of \$13,000 or 3 years imprisonment, or both.</li> </ul> <p>The maximum penalty for the following offences is a fine of \$6,500 or 2 years imprisonment, or both:</p> <ul style="list-style-type: none"> <li>• <b>unlawful discharge of a firearm in a public place</b> (s 112);</li> <li>• <b>reckless discharge of a firearm or discharge within 250m of a dwelling house</b> (s 113);</li> <li>• <b>carrying a firearm with intent to commit a crime or resist arrest</b> (s 114).</li> </ul> <p>Under s 115 of the Firearms Act, a person is guilty of a crime under s 183 of the <a href="#">Criminal Code</a> (aggravated assault) if the person uses, or threatens to</p>

<sup>53</sup> The maximum penalty and summary penalty increase if a handgun or prescribed firearm is involved.

<sup>54</sup> Under s 4A(5) of the [Penalty Units and Other Penalties Act 1987 \(Tas\)](#), the value of the relevant penalty unit for the next financial year must be published in the Government Gazette before 1 July each year. For the 2012-2013 financial year, the value of a penalty unit is **\$130**.

	use, a firearm or was carrying a firearm in committing an assault (as defined in s 182) (imprisonment for 21 years, or a fine, or both: see s 389(3) of the Code).
Northern Territory	<p>Under the <a href="#">Firearms Act (NT)</a>:</p> <ul style="list-style-type: none"> <li>• maximum penalty for the following is a fine of \$28,200<sup>55</sup> or 12 months imprisonment if a category A or B firearm (\$56,400 or imprisonment for 2 years for other non-prohibited categories): <ul style="list-style-type: none"> <li>○ <b>unauthorised possession/use</b> of a firearm (s 58);</li> <li>○ <b>selling a firearm to an unauthorised purchaser or selling without sighting authority to purchase</b> (s 63(2), (3));<sup>56</sup></li> </ul> </li> <li>• <b>trafficking in firearms</b> (i.e. unauthorised sale under s 63 on 3 or more separate occasions during a 30 consecutive day period) (s 63A): maximum penalty for an individual is 5 years if a category A or B firearm (otherwise up to 10 years imprisonment);<sup>57</sup></li> <li>• <b>carrying a loaded firearm in a public place</b> (s 78(3)): maximum penalty is a fine of \$28,200 or 12 months imprisonment if a category A or B firearm (otherwise, up to \$56,400 or 2 years imprisonment);</li> <li>• <b>pointing or discharging a firearm at or in the direction of another person</b> (s 83): maximum penalty is a fine of \$7,050 or 12 months imprisonment). If the <b>discharge endangers, annoys or frightens</b> the public or a person (or is discharged in a manner likely to have those effects), the same maximum penalty applies (s 84).</li> </ul> <p>Under the <a href="#">Criminal Code (NT)</a>:</p> <ul style="list-style-type: none"> <li>• if a person is <b>assaulted and threatened with a firearm</b>, the offender is liable to imprisonment for up to 5 years (2 years if found guilty summarily) (s 188(2)(m));</li> <li>• <b>unlawfully entering a building with intent to commit an offence and being armed with a firearm</b> attracts imprisonment for up to 20 years and, if the building is a dwelling house, life imprisonment (s 213, esp. s 213(6)).<sup>58</sup></li> </ul>
Australian Capital Territory	<p>Under the <a href="#">Firearms Act 1996 (ACT)</a>:</p> <ul style="list-style-type: none"> <li>• <b>unauthorised possession of a firearm</b> (s 43): maximum penalty is imprisonment for 5 years (with the penalty increasing according to the number of firearms possessed and is up to 20 years imprisonment for possession of 10 or more firearms) (s 42 deals with prohibited firearms);<sup>59</sup></li> </ul>

<sup>55</sup> Pursuant to ss 3-6 of the [Penalty Units Act \(NT\)](#) and the Penalty Units Regulations (as amended by the [Penalty Units Amendment Regulations 2012](#)) the value of a penalty unit for the 2012-2013 financial year is **\$141**.

<sup>56</sup> See also, s 88: delivery of firearm to unlicensed persons.

<sup>57</sup> A person may be guilty of aggravated trafficking if the firearm involved in any of the offences is a prohibited firearm and is liable to up to 15 years imprisonment (s 63A(2)). Further, a person is guilty of trafficking in prohibited firearms if the firearm involved in each offence is a prohibited firearm, attracting a maximum of 20 years imprisonment (s 63A (3)).

<sup>58</sup> See also s 215: armed with a firearm with intent to unlawfully enter a building (up to 7 years imprisonment).

<sup>59</sup> Possession or use in contravention of a licence attracts a fine of up to \$55,000 or imprisonment for up to 5 years (s 45).

	<ul style="list-style-type: none"><li>• <b>disposal (selling) of a firearm to an unauthorised purchaser or disposal without sighting the relevant authority</b> (s 226): maximum penalty is imprisonment for 5 years;<sup>60</sup></li><li>• <b>trafficking</b> in firearms (i.e. contravening, among other provisions, s 226, on 3 or more occasions over a 12 month period) (s 220): maximum penalty is 20 years imprisonment;</li><li>• <b>possessing a firearm in or near a street or public place; or discharging a firearm in, near or onto a street or public place</b> (s 221(1)): maximum penalty is a \$11,000 fine<sup>61</sup> or 1 year's imprisonment, or both;</li><li>• <b>possessing a firearm in a place so as to endanger the life of another</b> (s 221(2): maximum penalty is a fine of \$5,500 or 6 months imprisonment, or both;</li><li>• <b>carrying or using a firearm in or on any premises</b> in a way likely to <b>injure or endanger the safety of another, or cause reasonable fear of injury, or destroy or damage any property; or carrying or using a firearm with disregard for safety</b> (s 223): maximum penalty is a fine of \$5,500 or 6 months imprisonment, or both.</li></ul>
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<sup>60</sup> If the firearm is a prohibited firearm, the maximum penalty is 10 years imprisonment.

<sup>61</sup> Under s 133 of the [Legislation Act 2001 \(ACT\)](#), a penalty unit is \$110.

## Key Documents and Links

### Act and Related Legislation

- [Weapons Act 1990 \(Qld\)](#)
- [Weapons Categories Regulation 1997 \(Qld\); Weapons Regulation 1996 \(Qld\)](#).

### Ministerial Media Statements

- Hon Campbell Newman MP, Queensland Premier, '[New Minimum Penalties for Gun Crime](#)', *Ministerial Media Statements*, 30 April 2012

### Related Queensland Parliamentary Library Publication

- [Firearms Offences in Queensland and in Other Jurisdictions](#), *e-Research Brief 2010/30*, November 2010

### Queensland Police Website

- [Weapons Licensing](#)
- [Weapons Amendment Act 2011 \(What's New\)](#)

### Mandatory Minimum Sentencing Articles

- Law Institute of Victoria (LIV), '[Mandatory Minimum Sentencing](#)', Submission to the Attorney-General (Victoria), 30 June 2011
- '[Mandatory sentencing not an option](#)', *Queensland Law Society Media Release*, 3 May 2012
- Tim Priest, '[Do something Barry – time to apply the fear factor](#)', *Daily Telegraph*, 24 April 2012
- Chris Nyst, 'Dumb law jumps gun', *Gold Coast Bulletin*, 5 May 2012, p 56

### Reports and Studies

- M Davies and J Mouzos, '[Court outcomes for firearms offences in Australia](#)', Technical Background Paper No 31, Australian Institute of Criminology, June 2008
- K Warner, et al., '[Public judgement on sentencing: final result from the Tasmanian Jury Sentencing Study](#)', *Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology, February 2011
- S Bricknell, '[Firearm trafficking and serious and organised crime gangs](#)', *Research and Public Policy Series 116: AIC Report*, 2012

### Newspaper Articles

- 'Newman vows to get tough', *Courier Mail*, 5 June 2012, p 5.
- 'Newman flags crackdown on firearms', *Courier Mail*, 1 May 2012, p 15
- 'LNP sentencing policy goes full circle', *brisbanetimes.com.au*, 1 May 2012

## Queensland Library Publications - 2012

No.	Title	Date
RBR 2012/01	Police Powers and Responsibilities (Motor Vehicle Impoundment) Amendment Bill 2011 (Qld)	Jan 2012
RBR 2012/02	The Heavy Vehicle National Law and the National Heavy Vehicle Regulator: Heavy Vehicle National Law Bill 2011 (Qld)	Feb 2012
RBR 2012/03	Shield Laws for Journalists	Feb 2012
RBR 2012/04	Review of Queensland's Marine Mammal Legislation	Apr 2012
RBR 2012/05	The Future for Manufactured Homes in Residential Parks in Queensland	May 2012
RBR 2012/06	e-Waste	May 2012
RBR 2012/07	Treasury (Cost of Living) and Other Legislation Amendment Bill 2012 (Qld): repeal of Sustainability Declarations Provisions	May 2012
RBR 2012/08	Proposed Changes to Offence Provisions in the Weapons Act 1990 (Qld)	Aug 2012