



New South Wales
Law Reform Commission

Companion Report
139-A

Sentencing - Patterns and Statistics

July 2013

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Cataloguing-in-publication

Cataloguing-in-publication data is available from the National Library of Australia.

ISBN 978 0 7347 2685 8

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This report on sentencing patterns and statistics is published as part of the Law Reform Commission's review of sentencing. It is intended as a companion report to the main Report 139, *Sentencing*.

Acknowledgments

We gratefully acknowledge the assistance of the following organisations in preparing this report:

- NSW Bureau of Crime Statistics and Research;
- Corrective Services NSW;
- Judicial Commission of NSW;
- SA Office of Crime Statistics and Research;
- Victorian Sentencing Advisory Council; and
- NSW Sentencing Council.

1. Introduction

- 1.1 This report aims to present a comprehensive aggregation of the available data and research about the sentencing options currently in use in NSW. It is intended as a companion report to our Report 139 *Sentencing*, to position that review in its broader context.
- 1.2 Throughout the report, we look in detail at sentencing practices in NSW over time. We also present the available evidence on recidivism. In *NSW 2021: A Plan to Make NSW Number One*, the government committed to preventing and reducing crime and preventing and reducing the level of reoffending.¹ Sentencing practices are very relevant to both goals, as effective rehabilitative sentences can decrease the likelihood that an offender will reoffend, which also results more generally in reduced crime. For this reason, as well as describing current sentencing practice in NSW, we focus on post-sentence recidivism as a measure of the effectiveness of each type of sentence in preventing reoffending and reducing crime.
- 1.3 Chapter 2 of this report summarises the existing data about crime levels and general recidivism levels in NSW over time, in order to provide background information for the more detailed sentencing statistics contained in later chapters. Chapter 2 also discusses the financial costs of different sentencing practices.
- 1.4 Chapters 3 to 5 use data from the courts to describe the NSW courts' use of specific sentences over time and draw tentative comparisons with sentencing practices in other jurisdictions. These chapters also use corrective services statistics to describe the offenders being held in corrective services facilities and those being supervised in the community over time. The chapters are divided into full-time imprisonment (Chapter 3), custodial alternatives to imprisonment (Chapter 4) and non-custodial penalties (Chapter 5).
- 1.5 As each sentence is discussed in Chapters 3 to 5, we present the available empirical evidence on levels of reoffending following the sentence and the effectiveness of the sentence in reducing recidivism. Chapter 6 brings together the information of the previous three chapters and shows an overview picture of sentencing practice in NSW since 1997. This chapter also compares NSW sentencing practices with those in other jurisdictions, primarily Victoria, SA and NZ.
- 1.6 Chapter 7 focuses on two particular categories of offender—female offenders and Aboriginal and Torres Strait Islander offenders—who experience very different sentencing patterns to NSW offenders in general. This chapter highlights the large and continuing disparity between the sentences imposed on Aboriginal and Torres Strait Islander offenders and those imposed on offenders in general.
- 1.7 Chapter 8 discusses the intervention and diversion programs that currently exist in NSW and presents the results of any available research on how effective they are in preventing recidivism. The chapter covers the pre-sentencing Magistrates Early Referral Into Treatment (MERIT) and Court Referral of Eligible Defendants Into

1. NSW Department of Premier and Cabinet, *NSW 2021: A Plan to Make NSW Number One* (2011) 34-35.

Treatment (CREDIT) programs as well as three programs that are alternatives to traditional sentencing: forum sentencing, circle sentencing and the NSW Drug Court.

- 1.8 Chapter 9 is divided into three sections and presents statistics on rates of sentence appeals in NSW since 2000, the numbers of juveniles in the adult criminal justice system, and the use of non-association and place restriction orders.
- 1.9 Throughout the report, the statistics presented relate only to the adult criminal justice system. Court-based statistics are confined to data from the NSW Local, District and Supreme Courts and do not include the Children’s Court. Corrective services statistics only report those offenders managed in custody or the community by Corrective Services NSW. Offenders managed by Juvenile Justice NSW are not included.
- 1.10 Some children under the age of 18 years are sentenced in adult courts and managed by Corrective Services NSW. These children are included in the data. Similarly, some adults up to the age of 21 are under the control of Juvenile Justice NSW. These adults are not included in the corrective services material presented in this report.
- 1.11 Chapter 10 contains more detailed information about the counting rules, methodology and sources of the statistics presented in this report.

2. Context: crime, recidivism and costs

Crime rates, general reoffending rates and the comparative costs of different sentencing options are important to keep in mind when considering sentencing practices. Over the past two decades, crime rates have been generally decreasing though reoffending rates are still significant. The per offender operating costs of prisons are more than ten times the costs per offender of supervised community-based sentences.

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- 2.1 This chapter looks at data from five areas in the NSW criminal justice system: crime rates, mix of offences committed, age profile of offenders, recidivism, and the costs of different sentencing options. Although not directly about sentencing, information on these five areas is presented here to provide background and context for the more detailed sentencing statistics discussed in the rest of this report.
- 2.2 Crime rates, the mix of offences committed and age profile of offenders can go some way to explain courts' sentencing practices, although it is not always clear how these variables interact. Increasing crime rates may lead to more offenders being sentenced or to more severe sentences. If the mix of offences changes and in general the offences committed become either more or less serious, this may change courts' use of either more serious custodial or less serious non-custodial penalties. The age profile of offenders and of the general population is linked to crime rates and so may also affect sentencing patterns.
- 2.3 Recidivism rates and the costs of different sentencing options are relevant from a policy perspective. Financial cost is relevant for a policy-maker determining the appropriate mix and use of different sentencing options. Recidivism rates provide some information about the general success of the current sentencing options and patterns in terms of reducing reoffending.

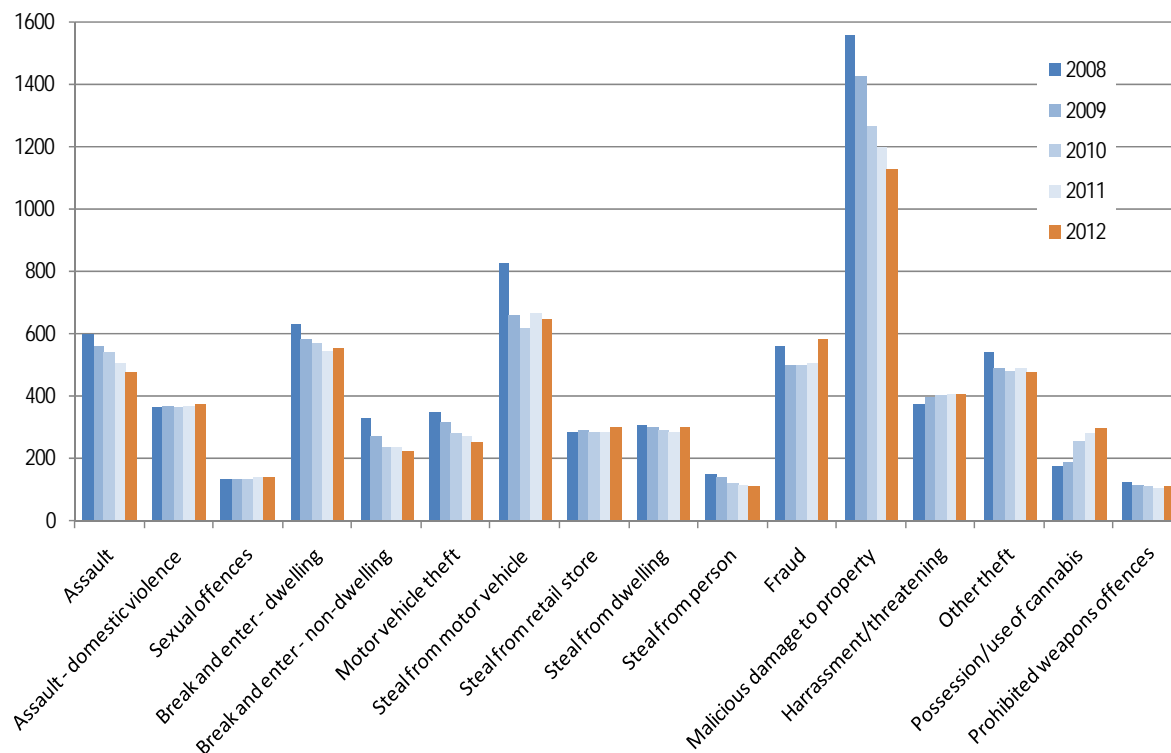
Crime rates

- 2.4 A useful indication of crime rates in any one category is the number of incidents that are recorded by the police.¹ Recorded incidents count all incidents reported to and

1. D Weatherburn, *Uses and Abuses of Crime Statistics*, Crime and Justice Bulletin No 153 (NSW Bureau of Crime Statistics and Research, 2011) 1.

recorded by police, whether or not any suspect is identified or charged.² Figure 2.1 shows recorded incidents per capita of selected offences over six years to 2012 in NSW.

Figure 2.1 NSW recorded incidents of selected crime per 100 000 population 2008-2012



Source: NSW Bureau of Crime Statistics and Research, *Crime Statistics - Ranking Dataset (2012)*. "Assault" refers to non-domestic violence assault. See also methodological notes at the end of this report.

2.5 Recorded incidents per capita decreased between 2007 and 2012 for 10 of the 16 categories of crime shown in Figure 2.1.³ Of the categories of crime that did have an increase in per capita rate, only *possession/use of cannabis* shows a consistent increase. The four crime categories with the highest per capita rates (*malicious damage to property*, *steal from motor vehicle*, *break and enter-dwelling* and *assault*) all decreased over the past five years.

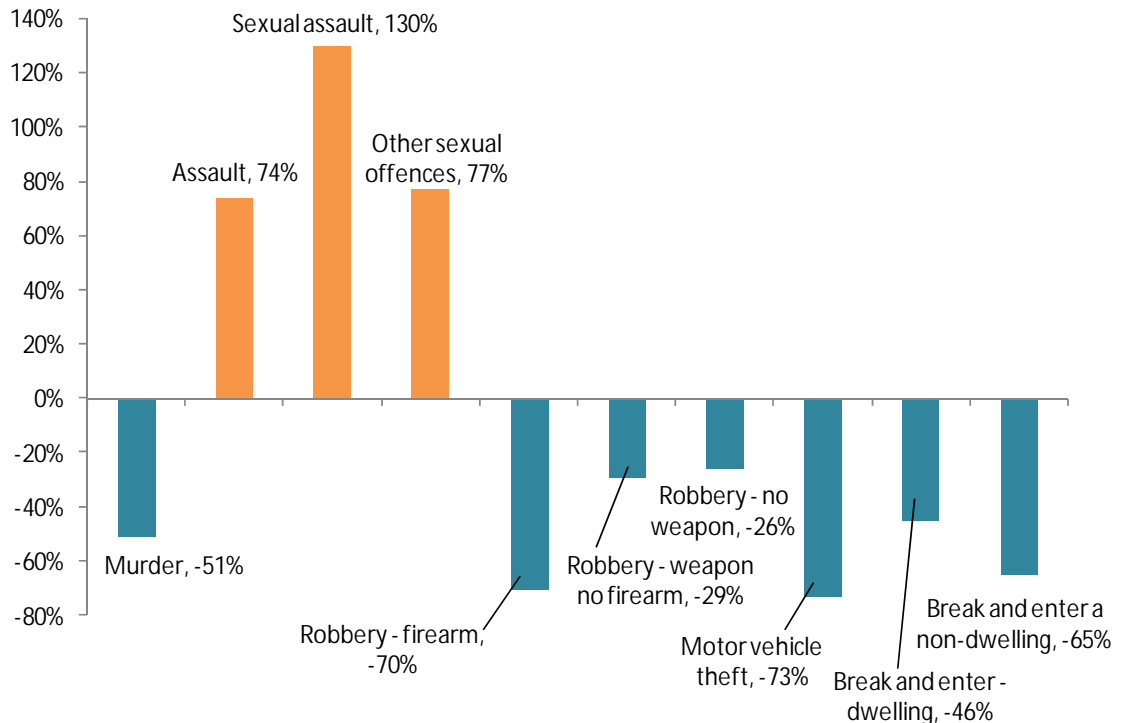
2.6 The NSW Bureau of Crime Statistics and Research (BOCSAR) has also published longer-term studies of police recorded incidents from 1990 onwards, measuring the

2. Recorded incidents are not offences proven in the courts and reporting rates and policing policies may heavily influence the numbers in particular categories. As a result, recorded incident data may understate or overstate the true level of crime.

3. Recorded incidents in the following minor offence categories are reported in the BOCSAR data but excluded in Figure 2.1: *offensive conduct*, *offensive language*, *resist or hinder officer*, *liquor offences*, *trespass* and *transport regulatory offences*. Recorded incidents for *robbery*, *arson* and *receiving stolen goods* were excluded because there are fewer than 100 recorded incidents per 100 000 population each year. The categories of *breach AVO* and *breach bail* were excluded because these are categories relating to breach of other justice orders.

changes in the per capita rates of recorded incidents across a more limited number of categories of property and violent crime (see Figure 2.2).⁴

Figure 2.2 Percentage change in selected per capita crime rates 1990-2012



Source: S Moffat and D Goh, *An Update of Long-term Trends in Property and Violent Crime in New South Wales: 1990-2012*, Bureau Brief No 84 (NSW Bureau of Crime Statistics and Research, 2013).

- 2.7 Per capita rates of recorded incidents in 7 out of 10 categories of property and violent crime decreased between 1990 and 2012. Rates of recorded incidents increased for assault, sexual assault and other sexual offences. However, the per capita rate of assault in NSW peaked in 2002 and has declined by 17% since then to 2012. The per capita rates of sexual assault and other sexual offences peaked in the late 1990s and have been stable since 2000. The most recent BOCSAR study also notes that increases in these crime categories may be a result of increased reporting of these offences by victims.⁵ Overall, per capita crimes rates have been trending down for violent crime since 2003 and for property crime since 2001.⁶
- 2.8 These long term trends are broadly consistent with an Australia-wide trend of decreasing crime rates:

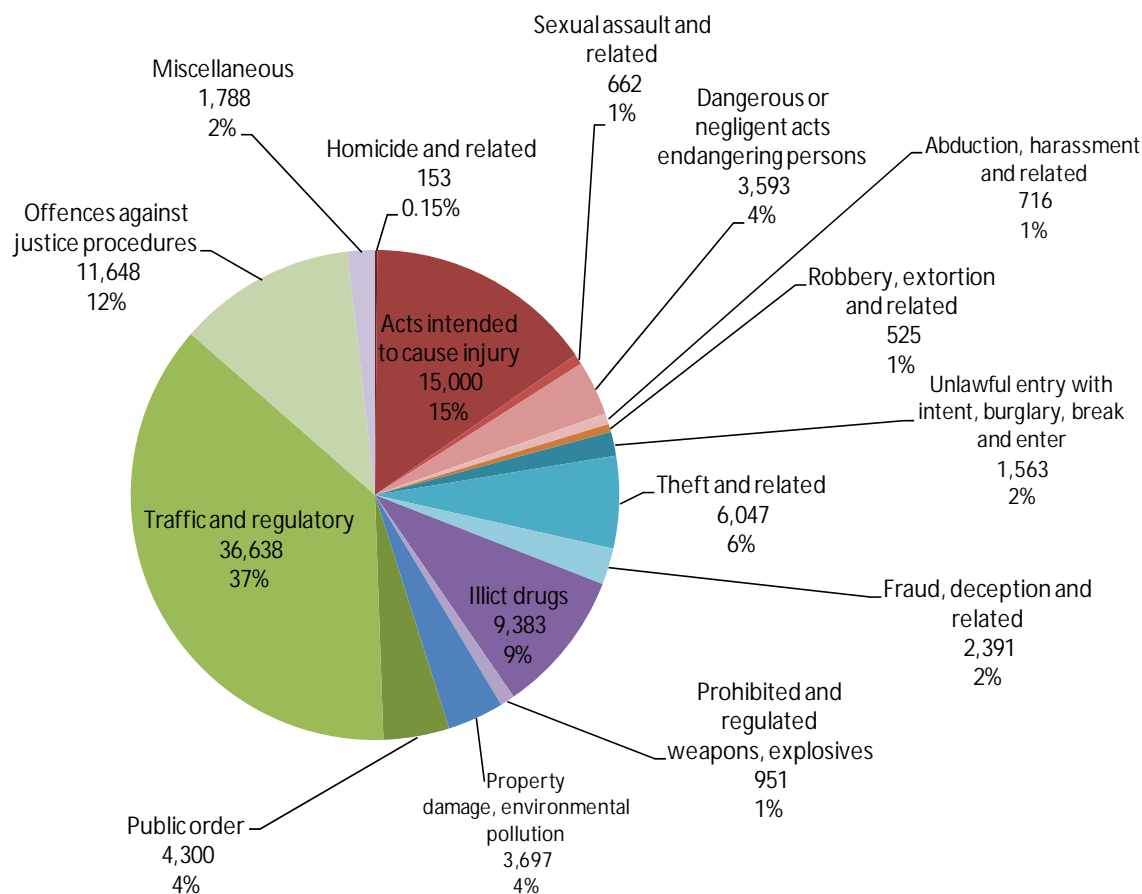
4. S Moffat and S Poynton, *Long-term Trends in Property and Violent Crime in New South Wales: 1990-2004*, Crime and Justice Bulletin No 90 (NSW Bureau of Crime Statistics and Research, 2006); S Moffat and D Goh, *An Update of Long-term Trends in Property and Violent Crime in New South Wales: 1990-2008*, Bureau Brief No 39 (NSW Bureau of Crime Statistics and Research, 2009); S Moffat and D Goh, *An Update of Long-term Trends in Property and Violent Crime in New South Wales: 1990-2011*, Bureau Brief No 78 (NSW Bureau of Crime Statistics and Research, 2012).
5. S Moffat and D Goh, *An Update of Long-term Trends in Property and Violent Crime in New South Wales: 1990-2012*, Bureau Brief No 84 (NSW Bureau of Crime Statistics and Research, 2013) 3.
6. D Goh and S Moffat, *NSW Recorded Crime Statistics 2011* (NSW Bureau of Crime Statistics and Research, 2012) 7.

Between 2000 and 2009, the Australian national murder rate fell by 39 per cent, the national robbery rate fell by 43 per cent, the national burglary rate fell by 55 per cent, the national motor vehicle theft rate fell by 62 per cent and all forms of other theft fell by 39 per cent. Australia is now into its 11th straight year of falling or stable crime rates [as at 2011]. Property crime rates in some States are lower than they've been in more than 20 years.⁷

Offences committed in NSW

- 2.9 The offences for which courts sentence offenders are also relevant to any analysis of sentencing practice. Figure 2.3 shows the most serious offence committed by offenders sentenced in the NSW Local, District or Supreme Courts in 2012. The offence categories are drawn from the Australian and New Zealand Standard Offence Classification (ANZSOC) and are not the same as the offence categories used above for recorded incidents of crime.⁸

Figure 2.3 Most serious offence of offenders sentenced in the Local, District and Supreme Courts 2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)*. Values of <0.5% are shown to two decimal places. The category "homicide and related offences" includes murder, attempted murder, manslaughter and driving causing death offences. See Australian Bureau of Statistics, 1234.0 Australian and

7. D Weatherburn, *Uses and Abuses of Crime Statistics*, Crime and Justice Bulletin No 153 (NSW Bureau of Crime Statistics and Research, 2011) 1.
8. The ANZSOC categories are published in full in Australian Bureau of Statistics, 1234.0 *Australian and New Zealand Standard Offence Classification (ANZSOC)*, Australia (2011).

New Zealand Standard Offence Classification (ANZSOC), Australia (2011) for more details. See also methodological notes at the end of this report.

- 2.10 In 2012, approximately half of all offenders sentenced in NSW adult courts had committed “traffic and regulatory offences” or “offences against justice procedures” as their most serious offence.⁹
- 2.11 A recent study by the Judicial Commission of NSW analysed the offences for which offenders were sentenced in the Local Court in 2002, 2007 and 2010, excluding those offenders who were being dealt with for breach of a previous order (many of those counted in the “offences against justice procedures” group reported above fall into this category). It found that the statutory offences for which offenders are sentenced in the Local Court has been fairly stable (see Table 2.1).

Table 2.1 Most common principal offences sentenced in the NSW Local Court 2010

Offence	Rank in 2002	Rank in 2010
Mid-range PCA (prescribed concentration of alcohol – mid-range drink driving)	1	1
Common assault	2	2
Low-range PCA	6	3
Possess prohibited drug	7	4
Drive whilst disqualified	4	5
Assault occasioning actual bodily harm	11	6
Drive whilst suspended	10	7
Knowingly contravene an Apprehended Violence Order	9	8
Destroy or damage property	8	9
Larceny	3	10

Source: G Brignell, Z Baghizadeh and P Poletti, Common Offences in the NSW Local Court: 2010, Sentencing Trends and Issues No 40 (Judicial Commission of NSW, 2012).

- 2.12 A similar study of offences in the higher courts found that the most common offences in 2010 were similar to those in 2002 (see Table 2.2).

9. “Offences against justice procedures” includes breaches of custodial orders (escape custody and breaches of suspended sentences), breaches of community-based orders (breaches of Community Service Orders, parole, bail or good behaviour bond), breaches of non-violence and restraining orders, offences against government operations, offences against government security and offences against justice procedures (subvert the course of justice, resist or hinder police officer, prison regulation offences). For more details, see Australian Bureau of Statistics, 1234.0 *Australian and New Zealand Standard Offence Classification (ANZSOC), Australia* (2011).

Table 2.2 Most common principal offences sentenced in the NSW higher courts 2010

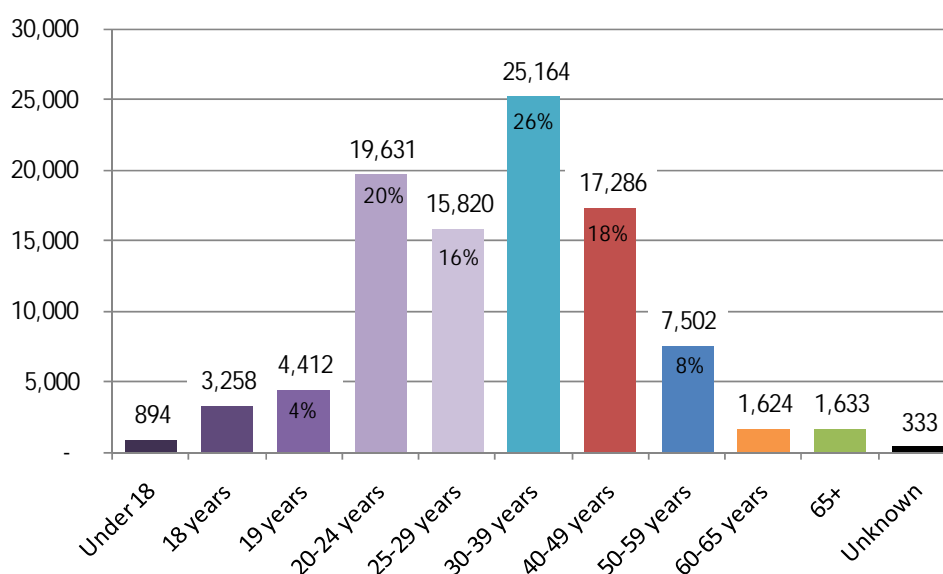
Offence	Rank in 2002	Rank in 2010
Supply or knowingly take part in supply prohibited drug – less than a commercial quantity	2	1
Robbery etc being armed or in company	1	2
Aggravated break, enter, etc and commit a serious indictable offence	7	3
Break, enter, etc and commit a serious indictable offence	3	4
Robbery or stealing from the person	5	5
Wounding or grievous bodily harm with intent	19	6
Cultivate or knowingly take part in cultivate prohibited plant – commercial quantity	-	7
Ongoing supply of prohibited drug	6	8
Supply or knowingly take part in supply prohibited drug – commercial quantity	18	9
Assault occasioning actual bodily harm in company	-	10

Source: P Poletti, Z Baghizadeh and P Mizzi, *Common Offences in the NSW Higher Courts: 2010, Sentencing Trends and Issues No 41 (Judicial Commission of NSW, 2010)*.

Age of offenders in NSW

2.13 Figure 2.4 shows the age distribution of defendants sentenced in the NSW Local, District or Supreme Courts in 2012.

Figure 2.4 Age distribution of NSW defendants sentenced in NSW adult courts 2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)*. The majority of offenders aged under 18 are not included as they appear in the Children’s Court. See also methodological notes at the end of this report.

- 2.14 In 2012, 44% of defendants found guilty in the NSW adult courts were aged 29 years or under, but only 22% of the NSW adult population was aged 29 or under.¹⁰ This indicates that young people are disproportionately likely to be sentenced for an offence compared to people in older age brackets. Offenders aged 18 or 19 were 7% of the defendants found guilty in the Local, District or Supreme Courts but 3.4% of the NSW adult population in 2012.¹¹
- 2.15 These findings about the age of offenders are relevant to any measure presented in this report that is a rate per 100 000 adult population shown over time, like per capita crime rates. For example, if the age distribution of the NSW adult population changes over time in terms of the proportion of 18-19 year olds, this is likely to have a flow on effect on the per capita rates of crime.¹² Researchers have found that the structural ageing currently occurring in the Australian population may be an important factor in the reduced crime rates shown in Figure 2.2.¹³

Recidivism in NSW

- 2.16 Recidivism is defined differently in different publications, but in broad terms it refers to the extent to which offenders who are sentenced go on to commit a further offence. Recidivism is a key measure of the success or failure of any one sentence type in terms of both deterrence and rehabilitation.
- 2.17 Recidivism is measured and reported in many different ways. The Productivity Commission's *Report on Government Services* presents three nationally agreed measures of recidivism:
- the proportion of offenders who were proceeded against by police more than once in a year;
 - the proportion of adults released from prison in a given year who returned to corrective services (either prison or community corrections) within two years; and
 - the proportion of adults discharged from community corrections supervision who returned to corrective services (either prison or community corrections) within two years.¹⁴
- 2.18 Unfortunately, none of these indicators can provide the full picture of recidivism. The first measure only counts repeat offenders where they were proceeded against by police more than once in the same year. The second measure only reflects the recidivism of released prisoners, and only where the subsequent offence attracts a

10. Australian Bureau of Statistics, ABS 3101.0 *Australian Demographic Statistics* (March 2012).

11. Australian Bureau of Statistics, ABS 3101.0 *Australian Demographic Statistics* (March 2012).

12. L Rosevear, *The Impact of Structural Ageing on Crime Trends: A South Australian Case Study*, Trends and Issues in Crime and Criminal Justice No 431 (Australian Institute of Criminology, 2012).

13. L Rosevear, *The Impact of Structural Ageing on Crime Trends: A South Australian Case Study*, Trends and Issues in Crime and Criminal Justice No 431 (Australian Institute of Criminology, 2012).

14. Productivity Commission, *Report on Government Services* (2013) C.20.

sentence that involves corrective services.¹⁵ This will not include unsupervised suspended sentences, unsupervised s 9 good behaviour bonds, fines, s 10A orders and s 10 orders without bonds or with unsupervised bonds. The third measure captures the recidivism of offenders discharged from a sentence that involved corrective services where the new offence also attracted a sentence that involved corrective services.

- 2.19 In this section, we present the broadest available indicators of recidivism that are available for NSW, which focus on the proportion of offenders who are convicted of any offence (and sentenced to any penalty) who are later convicted of any subsequent offence (and sentenced to any penalty). This broader indicator can be measured in two different ways: as a backward looking measure or as a forward looking measure.
- 2.20 Backward looking measures of recidivism take a person at conviction and consider whether he or she has offended in the past. This measure describes the past offending history of people currently appearing in court. It can be potentially misleading in that, if the trend in reoffending is downward, a backwards looking rate will understate the likelihood of reoffending today.
- 2.21 Forward looking measures of recidivism take a person at conviction and look at whether he or she reoffends within a specified period. This method requires a considerable time lag to allow for follow up but is the most relevant measure for policy evaluation purposes. It also allows for a calculation of the likelihood of reoffending after experience of one particular sentence compared to another. Under *NSW 2021: A Plan to Make NSW Number One*, the NSW Government has committed to a forward looking measure of recidivism that calculates reoffending over a one year period from conviction.
- 2.22 However, even this measure cannot provide the full picture of recidivism. As the Director of BOCSAR has observed:

To use court data as a measure of re-offending, we need to be able to assume that higher rates of conviction are an indication of higher rates of offending. This is a fairly safe assumption when comparing similar groups of offenders in a particular jurisdiction at the same time and where the definition of 'reconviction' excludes offences whose incidence is strongly affected by policing policy (e.g. breaches of court orders). It is not a safe assumption when examining trends in reconviction over time or when comparing differences in reconviction across jurisdictions (eg between States or over time). The passage of time can change the ability of police to detect offending, their willingness to prosecute offenders and their effectiveness in prosecuting offenders. Differences in laws, prosecution policy and offender characteristics, on the other hand, can result in differences between jurisdictions in reconviction rates that have nothing to do with re-offending.¹⁶

- 2.23 Other potentially distorting variables include the period of time selected from original conviction to measure the occurrence of recidivism, changes in the profiles of

15. This indicator of recidivism is still one of the best specific measures of the recidivism of released prisoners (ie, those who have received a sentence of full-time imprisonment) so it is discussed in Chapter 3, which deals with full-time imprisonment.

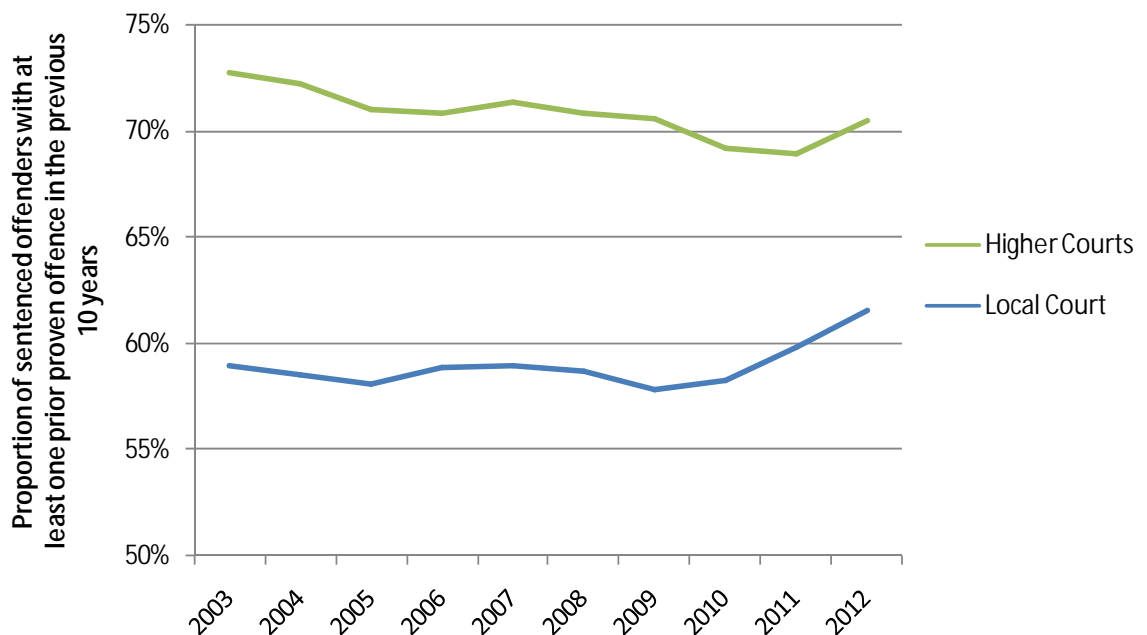
16. D Weatherburn, *Uses and Abuses of Crime Statistics*, Crime and Justice Bulletin No 153 (NSW Bureau of Crime Statistics and Research, 2011) 3.

offenders coming through the system over time and whether unsentenced imprisonment is included or excluded. For these reasons, caution should be exercised when considering the recidivism data presented in this report.

A backward looking measure: prior proven offence

- 2.24 This backward looking measure of recidivism records the number of defendants found guilty in each court who have had at least one offence proved against them in the preceding 10 years. Figure 2.5 shows the proportion of recidivist defendants sentenced in the NSW courts between 2003 and 2012.

Figure 2.5 Proportion of NSW sentenced defendants with prior proven offence



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2003-2012)*. See also methodological notes at the end of this report.

- 2.25 The number of defendants with prior proven offences according to this measure has been fairly stable but may have been increasing in recent years. Most offenders are sentenced in the Local Court, and over nine years the proportion of offenders sentenced in the Local Court with a prior proven offence in the preceding 10 years has remained between 57.8% and 61.5%.
- 2.26 A higher proportion of offenders sentenced in the higher courts have had an offence proven against them in the previous 10 years. This is to be expected given that more serious offences and offenders are dealt with in the higher courts. The proportion of offenders sentenced in the higher courts with a prior proven offence has still fallen slightly over the past nine years.
- 2.27 In the Local Court, approximately 60% of the recidivist offenders dealt with each year (37.5% of all offenders sentenced in that year) have previously committed an offence of the same type. In the higher courts, about 44% of the recidivist offenders

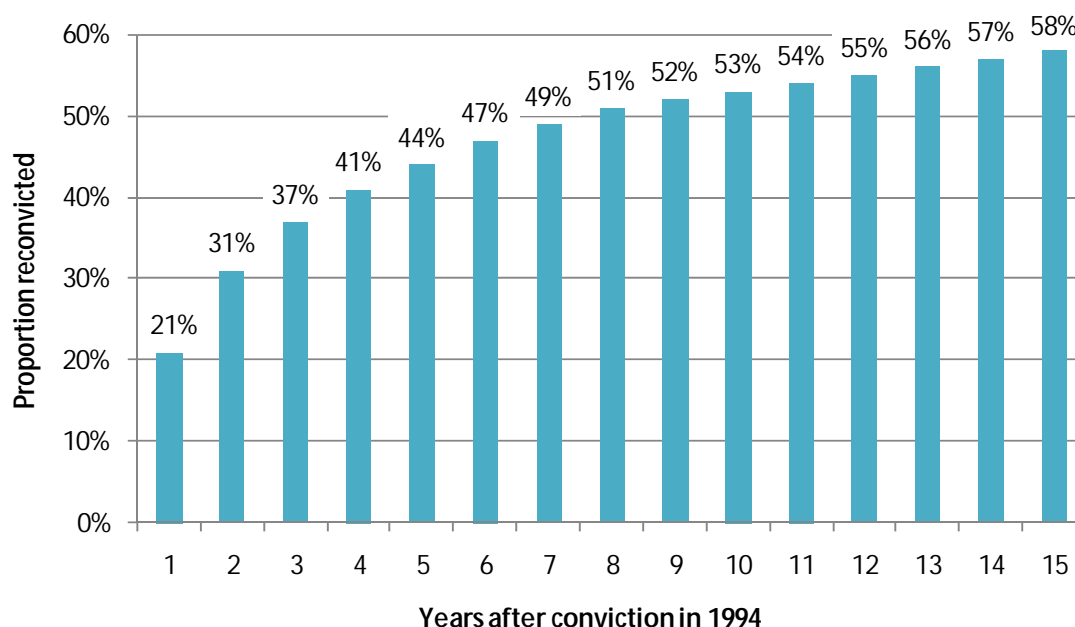
convicted in any one year (31% of all offenders sentenced in the higher courts in that year) have previously had an offence of the same type proved against them.¹⁷

2.28 Overall, this measure of recidivism indicates that a majority (about 60%) of the offenders sentenced in NSW adult courts are recidivists.¹⁸

A forward looking measure: from conviction to reconviction

2.29 BOCSAR has reported that, of the adult offenders convicted of any offence in 2008, 26.3% were convicted of another offence within two years.¹⁹ BOCSAR has also undertaken a longer term study of recidivism in NSW using the adult offenders that were convicted of any offence in 1994.²⁰ Overall, 58% of the offenders convicted in 1994 were reconvicted of any offence within 15 years (see Figure 2.6).

Figure 2.6 Proportion of offenders reconvicted within 15 years in NSW



Source: J Holmes, *Re-offending in NSW*, Bureau Brief No 56 (NSW Bureau of Crime Statistics and Research, 2012). The study did not control for any time the offender spent imprisoned as a result of the 1994 conviction.

2.30 Figure 2.6 also reveals that approximately three-quarters of the offenders who were reconvicted within 15 years were actually reconvicted within five years. About half of the offenders who were reconvicted within 15 years were reconvicted within just two years.

17. NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics* (2003-2012).

18. NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics* (2012). This is a combined proportion for the Local, District and Supreme Courts and does not include the Children’s Court.

19. NSW Bureau of Crime Statistics and Research, *Reoffending Summary Statistics* (2010).

20. J Holmes, *Re-offending in NSW*, Bureau Brief No 56 (NSW Bureau of Crime Statistics and Research, 2012).

- 2.31 As part of *NSW 2021: A Plan to Make NSW Number One*, the NSW Government committed to reducing the level of reoffending in NSW. One of the key indicators of reoffending that will be used to measure achievement against this objective is the proportion of convicted adult offenders who are reconvicted within 12 months. The baseline proportion—taken from adult offenders convicted in 2008-09 who were reconvicted by June 2010—is stated to be 16%.²¹ Of adult offenders convicted in 2009-10, 14.9% were reconvicted by June 2011 and of those convicted in 2001-11, 14.6% were reconvicted by June 2012.²²
- 2.32 We will discuss rates of reoffending after specific sentences in the following chapters.

Cost of sentencing options

- 2.33 The balance of sentencing options and use of these options affect the costs of the criminal justice system. According to the Productivity Commission, the total net operating expenditure and capital cost of NSW prisons in 2011-12 was \$1.044 billion. The total net operating expenditure and capital cost of the corrections system (prisons and community corrections combined) in NSW in 2011-12 was \$1.216 billion.²³
- 2.34 In 2011-12, the cost to NSW per day per person imprisoned was \$293, slightly below the national average of \$305 per day. This daily amount is more than 10 times the average daily cost of \$28.75 per day for a NSW offender in community-based corrections.²⁴ A NSW Auditor-General audit in 2010 found that the cost per day per person held in prison was still about four times the daily cost of supervising an offender on home detention, the most intensive community-based option.²⁵
- 2.35 Figure 2.7 shows the cost per person per day of the prison and community corrections systems of each Australian state and territory in 2011-12. The costs are calculated by taking the total daily recurrent costs of the prison and community corrections systems divided by the number of prisoners or offenders supervised.

21. NSW Government, *NSW 2021 Performance Report 2012-2013*, Part 2, 7.

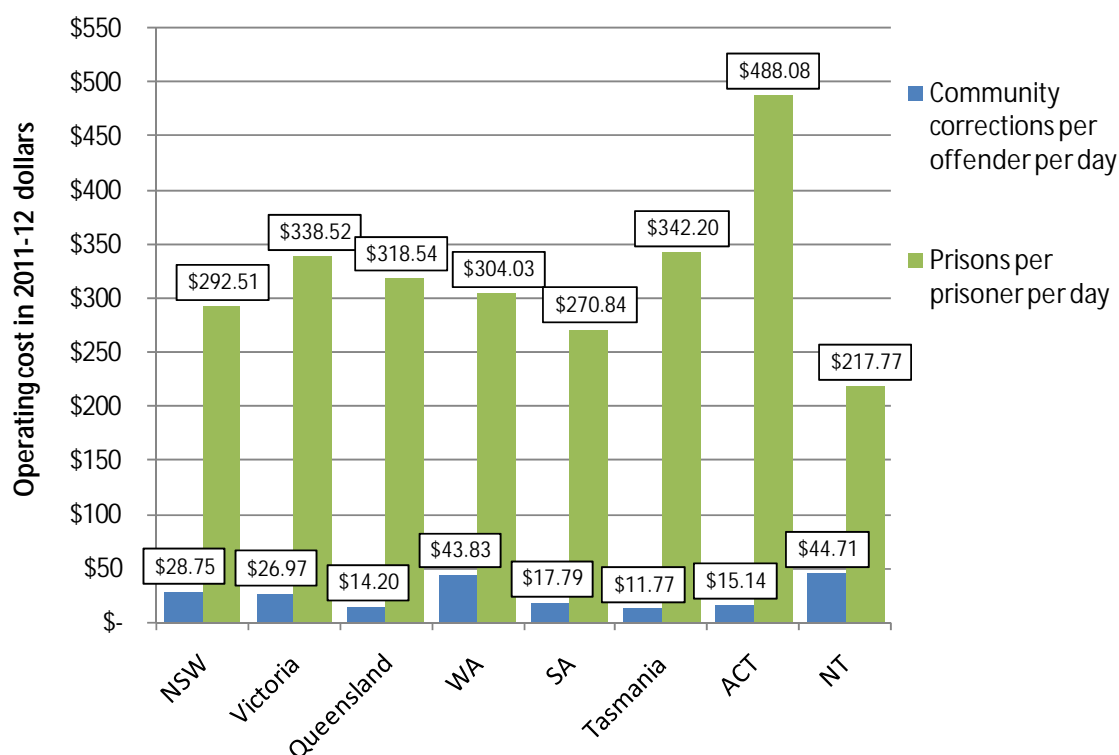
22. NSW Government, *NSW 2021 Performance Report 2013-2014*, Part 2, 11.

23. Productivity Commission, *Report on Government Services* (2013) Tables 8A.25, 8A.30.

24. Productivity Commission, *Report on Government Services* (2013) Table 8A.7.

25. Audit Office of NSW, *NSW Auditor-General's Report: Home Detention*, Performance Audit Report (NSW Auditor-General, 2010) 26.

Figure 2.7 Operating costs per person per day 2011-12



Source: Productivity Commission, *Report on Government Services (2013) Chapter 8 (see Attachment Table 8A.7)*. Prison costs per prisoner per day apply to both sentenced and unsentenced prisoners.

2.36 Although costs vary across jurisdictions, community corrections costs are a fraction of the daily cost of prisons in every state and territory. The relative costs of imprisonment and community corrections mean that reducing imprisonment and increasing the use of community-based sentences may dramatically reduce the overall cost of criminal justice. Increasing use of community-based sanctions may be an attractive policy option if targeted appropriately, given that imprisonment does not seem to be any more effective at preventing reoffending than other community options (see Chapter 3 for more about imprisonment and reoffending).

2.37 At the same time, sentencing an offender to a community-based sentence does not necessarily mean that the community has saved the difference in cost between that sentence and imprisonment. Some hidden costs are:

- the cost of net-widening, if the community sentence is not truly an alternative to imprisonment but actually replaces a lesser (cheaper) sanction like a good behaviour bond or a fine;
- marginal costs (the cost of imprisonment is only significantly reduced if enough offenders are sentenced to community-based sanctions that some correctional centres can be closed and resources redirected);
- the cost of any offending that would be prevented through the offender being incapacitated by imprisonment; and

- the extent to which breach of community-based sentences results in imprisonment anyway.²⁶
- 2.38 Still, using community-based sentences rather than imprisonment may generate significant savings for the community.

The cost of recidivism

- 2.39 Recidivism represents a particular cost to the criminal justice system.²⁷ Preventing reoffending, and particularly reimprisonment, is thus another key way to reduce costs. A BOCSAR study in 2009 estimated that a 10% reduction in the NSW reimprisonment rate would save \$28 million annually.²⁸

26. NZ Ministry of Justice, *Review of Community-based Sentences in New Zealand* (1999) 81-84.

27. Audit Office of NSW, *NSW Auditor-General's Report: Home Detention*, Performance Audit Report (NSW Auditor-General, 2010) 27.

28. D Weatherburn, G Froyland, S Moffat and S Corben, *Prison Populations and Correctional Outlays: The Effect of Reducing Re-Imprisonment*, Crime and Justice Bulletin No 138 (NSW Bureau of Crime Statistics and Research, 2009).

3. Full-time imprisonment

The number of sentenced prisoners in NSW reached historically high levels in 2009 but has been falling since then. At the same time, courts' use of imprisonment as a proportion of all sentences imposed has been fairly steady, though it has increased recently. NSW courts seem to use imprisonment more than courts in other jurisdictions, particularly Victoria, despite the fact that it does not work well to prevent reoffending and may even cause increased reoffending compared to other sentences.

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- 3.1 This chapter focuses on the use of sentences of full-time imprisonment in NSW and draws some tentative comparisons with the use of imprisonment in other jurisdictions. The data is confined to full-time imprisonment and does not include the community-based sentences that are ways of serving terms of imprisonment outside a correctional institution (these sentences are considered in Chapter 4).
- 3.2 There are several ways to measure and report on levels of use of sentences of full-time imprisonment, including prisoner counts, imprisonment rates, sentence length and the likelihood of an offender being imprisoned for a particular offence. Each of

these measures can be affected and distorted by a number of interrelated factors including:

- population levels;
- crime levels, per capita crime rates and crime and offence seriousness;
- crime reporting rates by victims;
- policing, arrest rates and the ratio of reported incidents to charges laid;
- the total number of defendants and the proportion of defendants convicted;
- the number and proportion of defendants sentenced to imprisonment;
- the length of sentences of imprisonment imposed;
- parole policies, rates of parole and breaches of parole;
- recidivism and return to prison rates; and
- legislative changes, such as to maximum penalties, standard non-parole periods, or the types of alternative penalties available.

3.3 As a result, the measures of imprisonment presented in this report should be interpreted cautiously. It is also important to note that none of the statistics presented in this report can describe the seriousness of offences committed or how the mix of offence seriousness may have changed over time. Offence seriousness is a key input into the sentencing exercise carried out by the courts. It is not possible to come to any definite conclusions about changes in the severity of sentencing and the use of imprisonment over time without a general measure of the seriousness of crimes committed in NSW year on year. For the same reason, it is also impossible to make conclusive comparisons between NSW and other jurisdictions.

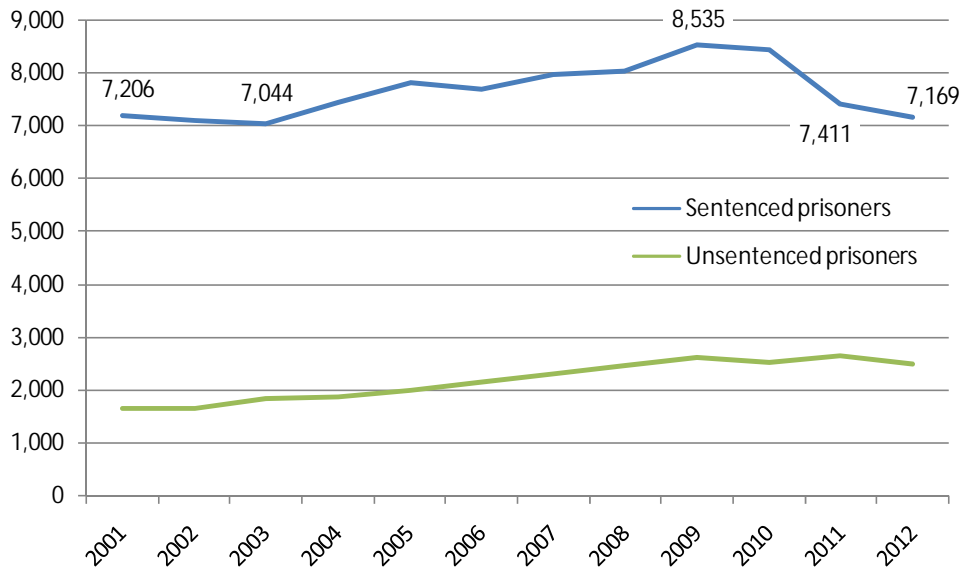
Use of imprisonment in NSW

Adult prisoner numbers

3.4 Viewed on a long-term basis, the number of sentenced prisoners in NSW prisons has reached historically high levels in recent years, though it has been falling again since the peak in 2009. Figure 3.1 shows the number of sentenced and unsentenced prisoners in NSW adult prisons counted on the night of 30 June each year since 2001.¹

1. Unsensentenced prisoners are those in custody awaiting trial. Unsensentenced prisoners are not considered further here. For more information, see NSW Law Reform Commission, *Bail*, Report 133 (2012) ch 4.

Figure 3.1 Sentenced prisoners in NSW 2001-2012



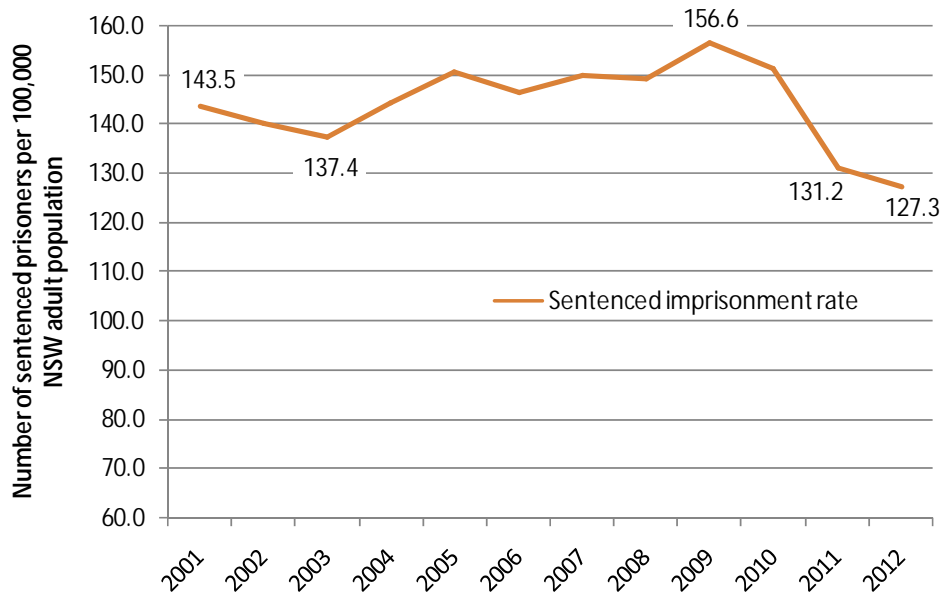
Source: ABS 4517.0 Prisoners in Australia (2011, 2012). See also methodological notes at the end of this report.

- 3.5 Sentenced prisoner numbers increased by 21.2% between 2003 and 2009. Since 2009, the number of sentenced prisoners has been falling and there were 7169 sentenced prisoners on 30 June 2012.

Sentenced imprisonment rate

- 3.6 An imprisonment rate measures the number of prisoners compared to the adult population, testing whether changes in the number of prisoners are a result of population changes (see Figure 3.2).

Figure 3.2 Sentenced imprisonment rate in NSW 2001-2012



Source: ABS 4517.0 Prisoners in Australia (2011, 2012). See also methodological notes at the end of this report.

- 3.7 If changes in the number of sentenced prisoners could be explained by population changes, the imprisonment rate would be stable.² As Figure 3.2 shows, the NSW imprisonment rate for sentenced prisoners fell from 2001 to 2003 and then increased by 14% between 2003 and 2009. This means that 14% of the increase in sentenced prisoners between 2003 and 2009 cannot be explained by population increases. The rate fell sharply after 2009 to 127.3 per 100 000 in 2012, which is the lowest rate in more than 10 years.
- 3.8 Changes in per capita crime rates are a possible explanation for the movement of the imprisonment rate shown in Figure 3.2. If crime per capita in NSW increased between 2003 and 2009, and then decreased between 2009 and 2012, this could explain changes in the number of sentenced prisoners per capita.³ However, as discussed in Chapter 2, the recorded incidents per capita of most offences actually appear to have been decreasing over the long term.⁴

Use of imprisonment by courts

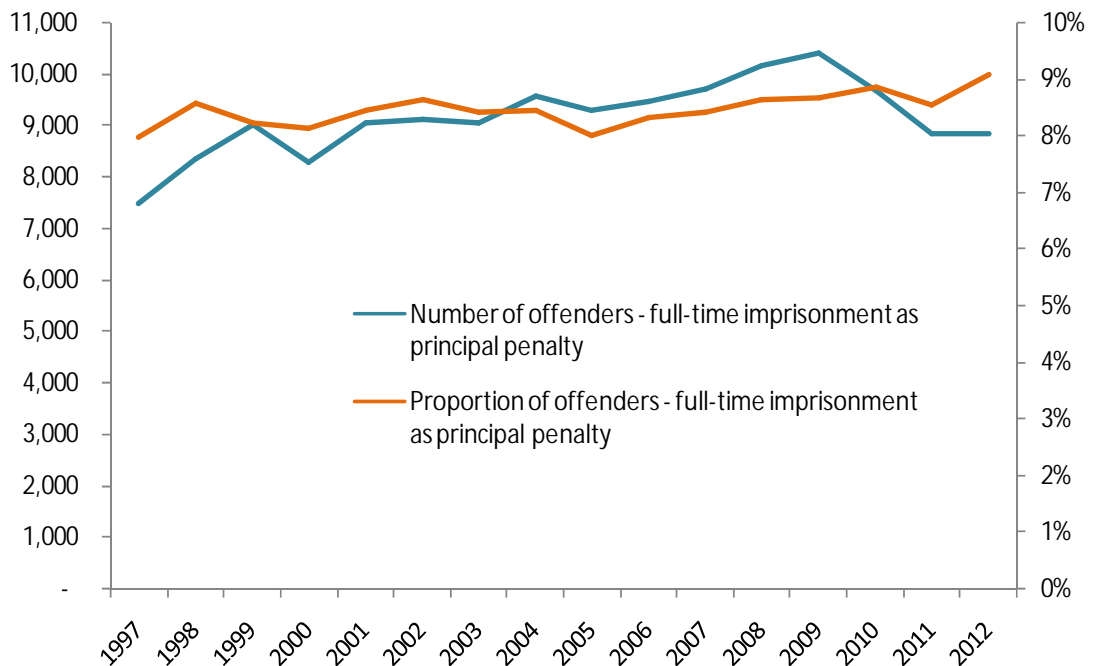
- 3.9 Even if recorded crime per capita is decreasing, the number of sentenced prisoners per capita may increase if the courts' sentencing practices become more severe or the profiles of the offences or offenders being dealt with by the courts change significantly.
- 3.10 Figure 3.3 shows the use of full-time imprisonment by NSW Local, District and Supreme Courts between 1997 and 2012. The chart shows the *number* of offenders who received a sentence of full-time imprisonment as their principal penalty and also, of all sentenced offenders, the *proportion* who received a sentence of full-time imprisonment as their principal penalty.

2. Though note the qualification discussed earlier in this report regarding the age distribution of the population. This statement is only true if the age profile of the population remains stable.

3. Though note that there will be a lag between recorded crime incidents and the conviction and sentencing of an offender.

4. The actual relationship between crime rates and the prison population is more complex than this because some offences are more likely to result in imprisonment (eg, armed robbery) than others (eg, traffic offences). In order to come to a firm conclusion about the effect of recorded crime rates on prison numbers, the trends in the offence categories linked to higher imprisonment would be more relevant than the trends in other categories.

Figure 3.3 Use of full-time imprisonment by NSW adult courts 1997-2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)*. See also methodological notes at the end of this report.

- 3.11 When measured as a proportion of the total offenders sentenced (the orange line), the use of full-time imprisonment in NSW adult courts has been fairly stable, though it may have begun to trend upwards in recent years. Since 1997, the proportion of offenders sentenced to full-time imprisonment has remained between 7.96% and 9.07%.
- 3.12 In contrast, the trend in the number of offenders sentenced to full-time imprisonment seems to match the pattern observed in the number of sentenced prisoners and the sentenced imprisonment rates (compare Figure 3.3 with Figures 3.1 and 3.2). As the proportion of offenders sentenced to full-time imprisonment has remained reasonably steady but the *number* of offenders sentenced to full-time imprisonment each year increased to 2009 and then decreased, there must have been corresponding changes in the overall number of offenders being sentenced by the courts (see Table 3.1 over).

Number of offenders sentenced by courts overall

- 3.13 Table 3.1 shows the number of offenders sentenced to full-time imprisonment and the number of offenders sentenced overall in the NSW adult courts between 1997 and 2012.

Table 3.1 Number and proportion of offenders sentenced to full-time imprisonment in NSW adult courts 1997-2012

	Number sentenced to full-time imprisonment as principal penalty	Total number sentenced	Proportion sentenced to full-time imprisonment
2012	8,844	97,493	9.07%
2011	8,849	103,653	8.54%
2010	9,678	109,118	8.87%
2009	10,390	120,041	8.66%
2008	10,159	117,837	8.62%
2007	9,712	115,540	8.41%
2006	9,468	114,024	8.30%
2005	9,296	116,127	8.01%
2004	9,557	113,260	8.44%
2003	9,055	107,786	8.40%
2002	9,103	105,447	8.63%
2001	9,062	107,242	8.45%
2000	8,283	101,975	8.12%
1999	9,019	109,880	8.21%
1998	8,348	97,306	8.58%
1997	7,469	93,827	7.96%

Source: NSW Bureau of Crime Statistics and Research, Criminal Courts Statistics (1997-2012). "Total number sentenced" is counting the number of principal sentences, not number of unique offenders. Note that, in order to improve comparability across years, offenders with a principal sentence of licence disqualification, detention in a juvenile justice institution or compensation order are not included in "total number sentenced". See also methodological notes at the end of this report.

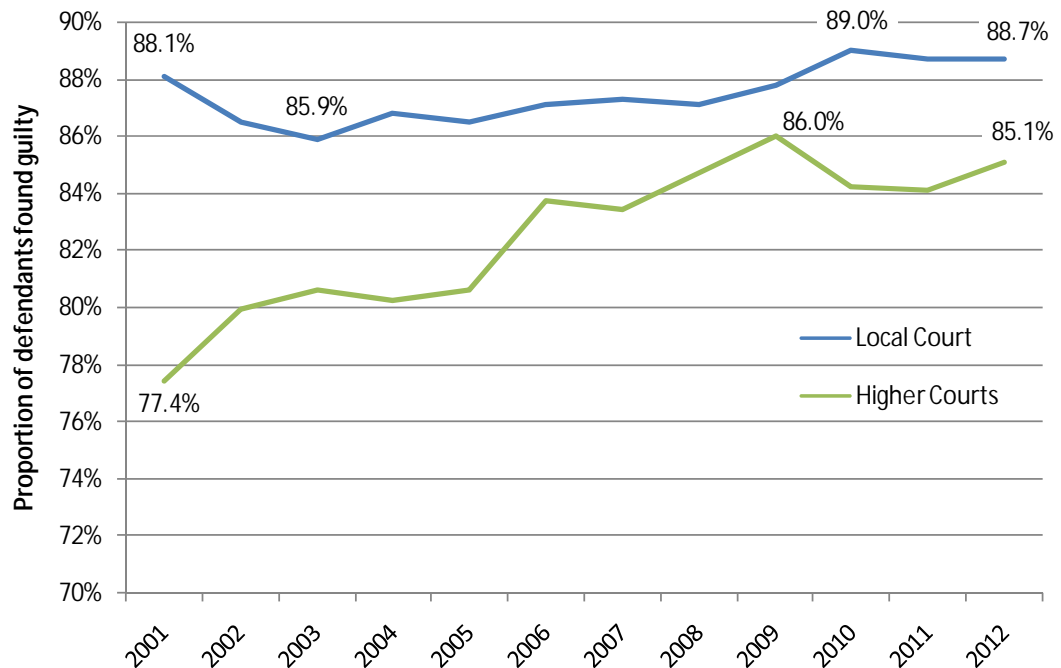
- 3.14 The number of offenders being sentenced to any penalty by NSW adult courts grew from 107 786 in 2003, to 120 041 in 2009, then fell to 97 493 in 2012 (approximately 1998 levels). This matches the trend in the number of people sentenced to full-time imprisonment and the number of sentenced prisoners. There are two possible contributors to this movement in the overall number of offenders being sentenced:
- the proportion of defendants facing court who were found guilty and sentenced changed over time; and/or

- changes in pre-court factors (like policing practices, reporting rates or clear-up rates) led to changes in the number of defendants facing court.⁵

Conviction rates

- 3.15 Figure 3.4 looks at the first possible contributor, tracking the proportion of defendants in NSW adult criminal courts that were found guilty between 2001 and 2012.

Figure 3.4 Proportion of defendants found guilty in NSW adult courts 2001-2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2000, 2001, 2003, 2005, 2007, 2009, 2011, 2012)*. See also methodological notes at the end of this report.

- 3.16 Figure 3.4 shows that the proportion of defendants found guilty in the higher courts did significantly increase between 2001 and 2009 and then fell again to 2011. However, it increased again in 2012. Also, only a small fraction of defendants appear in the higher courts so this increase is not enough to explain the large increases to 2009 in overall numbers of offenders sentenced.
- 3.17 Overall, the conviction rate increased in the Local Court by 3.1 percentage points between 2003 and 2010. Given the volume of defendants in the Local Court (between 115 000 and 140 000 each year), even a small increase in the proportion found guilty can increase the annual number of offenders being sentenced to any penalty by several thousand. It is likely, therefore, that some of the movement in the number of offenders being sentenced to any penalty is a result of changing conviction rates in the Local, District and Supreme Courts. At the same time, the

5. Changes in crime rates could also have led to changes in the number of defendants facing court but, as discussed in Chapter 2, recorded incidents in most crime categories seem to have been decreasing over the longer term.

changes in conviction rates shown in Figure 3.4 do not seem to explain the large decrease in number of offenders sentenced between 2010 and 2012.

- 3.18 It is likely, therefore, that pre-court factors are also relevant and have changed the number of defendants facing court, which in turn has led to changes in the number of offenders being sentenced each year. In 2001, there were 136 799 defendants facing court. In 2009, the number was similar at 137 424 but it has decreased substantially to 111 825 in 2012.⁶ Unfortunately, it is not possible to test the effect of changes in policing or other pre-court factors on the number of defendants facing court.

BOCSAR's 2012 study

- 3.19 In late 2012, the NSW Bureau of Crimes Statistics and Research (BOCSAR) reported on possible causes of the fall in the NSW prison population between 2009 and 2011.⁷ The report found that, between 2009 and 2011, there had been a significant fall in the proportion of NSW prisoners who had assault, a traffic/regulatory offence, break and enter or theft offence as their most serious offence. The report then looked at changes to conviction rates, sentence lengths and likelihood of being imprisoned for these four offence categories between 2009 and 2011.
- 3.20 A decreasing number of offenders were found guilty and sentenced for offences in these categories over the period (and fewer offenders were sentenced overall, as shown above in Table 3.1). The report also found that a decreasing proportion of offenders found guilty of assault or a theft offence were imprisoned between 2009 and 2011. The proportion of offenders found guilty of these offences who were sentenced to imprisonment decreased by 12% for assault and 15% for theft. The median length of sentences imposed on offenders imprisoned for assault, break and enter and traffic offences also decreased; by 13% for assault, 11% for break and enter, and 7% for traffic offences.

Overall patterns in use of imprisonment in NSW

- 3.21 In summary, the number of sentenced prisoners in NSW reached historically high levels in 2009 but has fallen substantially since then. This trend can also be observed in the sentenced imprisonment rate, so the pattern of increase and then decrease in the number of sentenced prisoners has not been a result of fluctuations in population.
- 3.22 At the same time, courts' use of full-time imprisonment has been fairly stable (when measured as a proportion of all offenders sentenced). The increases and decreases in the number of sentenced prisoners are likely to be a result of similar movement in the overall number of offenders sentenced in the adult courts. This movement (peaking in 2009 and decreasing since then) cannot be fully explained by changes

6. NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics* (2001-2012).

7. J Fitzgerald and S Corben, *Why is the NSW Prison Population Falling?* Bureau Brief No 80 (NSW Bureau of Crime Statistics and Research, 2012).

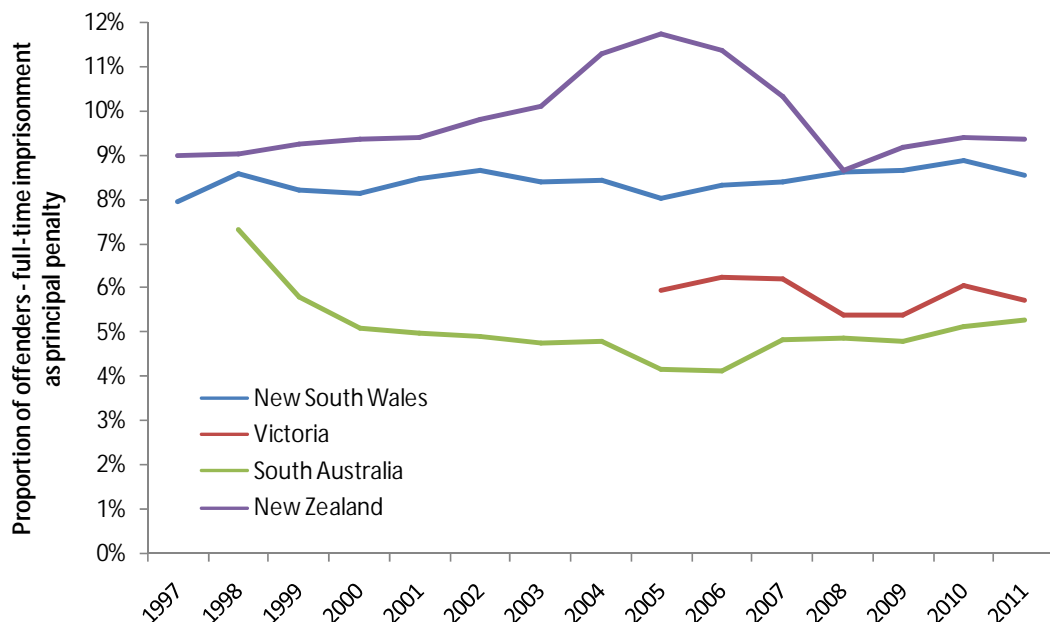
in conviction rates so there must be other pre-court factors at work that have created similar changes in the number of defendants facing court.

Use of imprisonment in other jurisdictions

Use of imprisonment by courts

- 3.23 Figure 3.5 compares the use of full-time imprisonment by courts in NSW, Victoria, SA and NZ. These jurisdictions were selected for comparison because their published sentencing statistics use similar data sources and counting rules to BOCSAR's *Criminal Courts Statistics* for NSW. Figure 3.5 looks at the courts' use of imprisonment as a proportion of all sentences imposed.

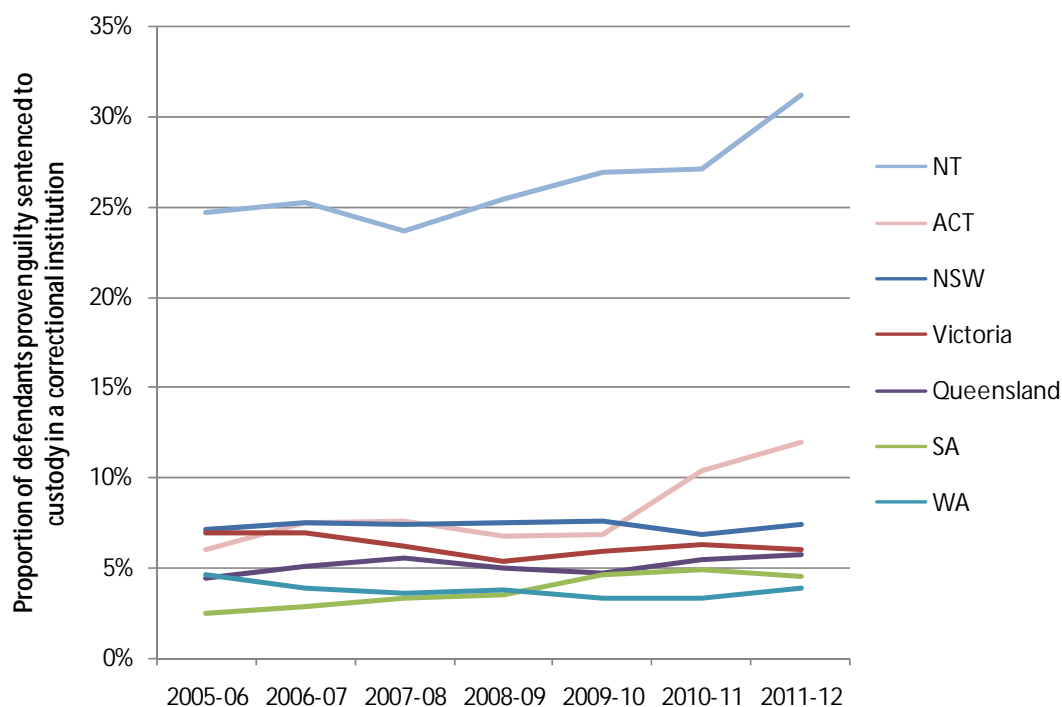
Figure 3.5 Full-time imprisonment in NSW compared to other jurisdictions 1997-2011



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1999-2011)*; SA Office of Crime Statistics and Research, unpublished data (1998-2011); Victorian Sentencing Advisory Council *Sentencing Statistics 2004-05 to 2011-12*; Statistics New Zealand. New sentences were introduced in NZ as alternatives to full-time imprisonment in 2007-08. Note that the comparable NZ proportion is in reality lower as offenders found guilty and then discharged without conviction are not included in the NZ denominator. See also methodological notes at the end of this report.

- 3.24 On this measure, full-time imprisonment is more commonly used in NSW than in Victoria and SA. On the data presented in Figure 3.5, full-time imprisonment is used slightly more in NZ than in NSW, although the chart is likely to overstate the use of imprisonment in NZ because NZ offenders sentenced with the equivalent of a NSW s 10 non-conviction order are not included in the NZ statistics.
- 3.25 Australian Bureau of Statistics (ABS) data allows another measure of criminal courts' use of imprisonment that is comparable across Australia. Figure 3.6 shows the number of defendants sentenced to custody in a correctional institution (that is, full-time imprisonment or periodic detention) as a proportion of the total defendants found guilty.

Figure 3.6 Proportion of defendants found guilty sentenced to custody in a correctional institution across Australia



Source: ABS 4513.0 Criminal Courts (2010-11, 2011-12). Tasmania has been excluded due to a significant break in the data series in 2008-09. See also methodological notes at the end of this report.

- 3.26 The NT is a significant outlier, with its courts sentencing offenders to imprisonment at more than 2.5 times the rate of the ACT, the next highest in 2011-12. It is worth noting that NSW sentenced offenders to imprisonment at the highest rate in Australia after the NT in the five years from 2005-06 to 2009-10, falling to third highest behind the ACT only in 2010-11 and 2011-12.
- 3.27 A Judicial Commission of NSW study published in 2007 compared the use of full-time imprisonment in the District Court of NSW with comparable courts in Victoria, Queensland, SA, WA, NZ, England and Wales, and the US for selected serious offences.⁸ The study found that:
- NSW imprisons a higher proportion of convicted sexual assault offenders than any other jurisdiction;
 - NSW imprisons a higher proportion of offenders convicted of robbery than Victoria, Queensland, SA, WA or NZ;
 - NSW imprisons a higher proportion of offenders convicted of break and enter or burglary than any other jurisdiction; and

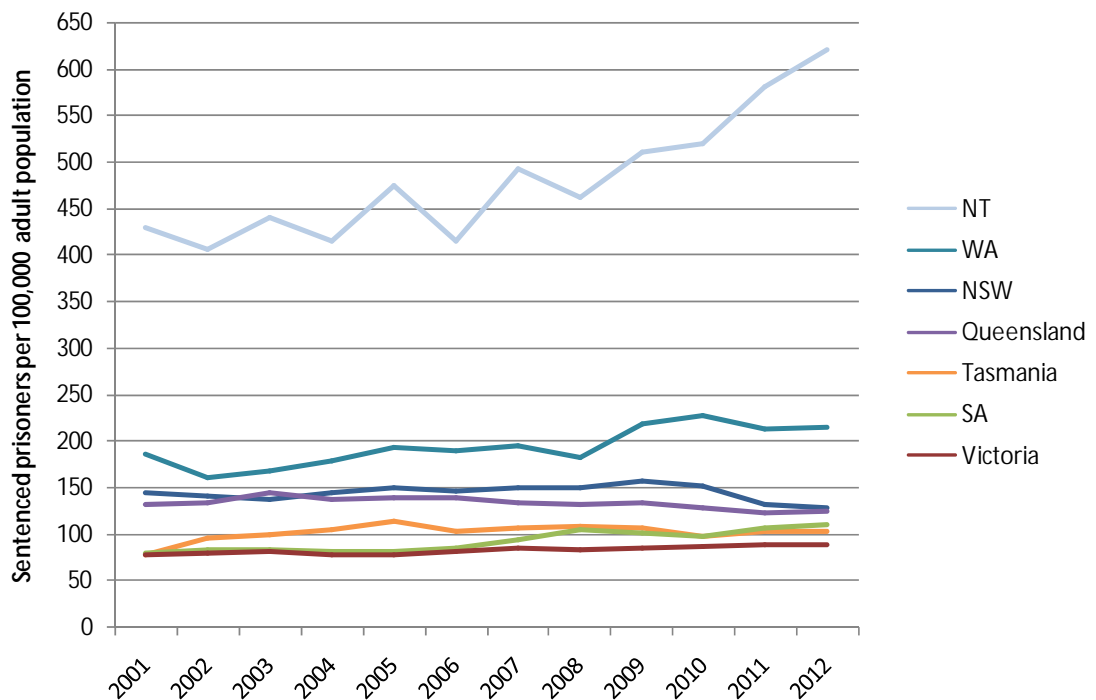
8. S Indyk and H Donnelly, *Full-time Imprisonment in New South Wales and Other Jurisdictions: A National and International Comparison*, Research Monograph No 29 (Judicial Commission of NSW, 2007). The study was of sentencing in the middle courts in each jurisdiction (eg, the District Court in NSW) and counted the sentence for each offender's principal offence. The data years analysed for each jurisdiction varied. Some of the differences found may be due to differences in the ambit of the middle court's jurisdiction in each place.

- for break and enter, the proportion of convicted offenders imprisoned in NSW (78%) was 27 percentage points higher than the next highest Australian jurisdiction (WA at 51%).

Comparison of imprisonment rates

- 3.28 The ABS also publishes imprisonment rates per 100 000 adult population for all Australian states and territories. Figure 3.7 shows the imprisonment rate for sentenced prisoners since 2001.

Figure 3.7 Sentenced imprisonment rates across Australia 2001-2012



Source: ABS 4517.0 Prisoners in Australia (2011, 2012). The ACT has been excluded as approximately half of all ACT prisoners were held in NSW prisons (and counted in NSW totals) until 2009. See also methodological notes at the end of this report.

- 3.29 The imprisonment rate for sentenced prisoners is far higher in the NT than any other jurisdiction and still increasing (621.6 sentenced prisoners per 100 000 adult population in 2012). WA also has a higher rate than NSW at 214.9 per 100 000 in 2012. The NSW sentenced imprisonment rate (127.3 in 2012) is slightly higher than the rate in Queensland (123.5 in 2012) and significantly higher than the rates in Victoria, SA and Tasmania (88.9, 110.0, and 102.4 in 2012 respectively).⁹
- 3.30 In 2007, the Judicial Commission of NSW compared the imprisonment rate in NSW with rates in other jurisdictions and found that the NSW rate was higher than the

9. Note that these comparisons of imprisonment rates in Australian states and territories are only valid if states and territories have similar age distributions. Any jurisdiction with a significantly different age distribution may have a distorted imprisonment rate per 100 000 adults.

average rate across Australian states and territories and also higher than rates in NZ, England and Wales, and Canada.¹⁰

- 3.31 It is important to reemphasise at this point that comparisons of the use of imprisonment across jurisdictions only allow valid conclusions about the comparative severity or leniency of criminal courts if one assumes that the seriousness of crimes committed in each jurisdiction is exactly the same.¹¹ Comparing imprisonment rates will also show a different ranking of states and territories than comparing courts' use of imprisonment because of the effect of per capita crime rates and policing policies in different jurisdictions.

NSW compared to Victoria

- 3.32 On all of the measures presented in this chapter, NSW has a consistently higher use of imprisonment than Victoria (see Figures 3.5, 3.6 and 3.7). Analysis by BOCSAR in 2010 of ABS data from the 2008-09 financial year concluded that NSW had a higher sentenced imprisonment rate than Victoria because:

- NSW has a larger number of defendants appearing in court each year per 100 000 adults than Victoria – it is about 26% higher in NSW;
- NSW has a higher conviction rate than Victoria (that is, a larger proportion of those defendants are found guilty and sentenced) – it is about 79% in Victoria compared to 86% in NSW;
- NSW imprisons a higher proportion of convicted defendants compared to Victoria – 4.1% in Victoria compared to 6.1% in NSW.¹²

- 3.33 The large difference in the number of defendants per capita is partly explained by higher per capita crime rates in NSW and possibly also more serious crime. It is also likely to be a result of more severe policing and enforcement policies in NSW, especially for particular categories of crime like traffic offences. The researchers suggested that the higher conviction and imprisonment rates in NSW may be due to NSW crimes being more serious or differences in the profiles of offenders between the two states.¹³ Overall, the study presents a picture of the NSW criminal justice system as more geared towards imprisonment than Victoria's, with people more likely to be charged, convicted and imprisoned in NSW.

10. S Indyk and H Donnelly, *Full-time Imprisonment in New South Wales and Other Jurisdictions: A National and International Comparison*, Research Monograph No 29 (Judicial Commission of NSW, 2007) 13. The comparison was of the overall imprisonment rates (ie, sentenced and unsentenced prisoners) in these jurisdictions.

11. One must also, for example, assume that each jurisdiction has the same number of imprisonable offences and comparable positions on mandatory imprisonment.

12. D Weatherburn, K Grech and J Holmes, *Why Does NSW have a Higher Imprisonment Rate than Victoria?*, Crime and Justice Bulletin No 145 (NSW Bureau of Crime Statistics and Research, 2010).

13. D Weatherburn, K Grech and J Holmes, *Why Does NSW have a Higher Imprisonment Rate than Victoria?*, Crime and Justice Bulletin No 145 (NSW Bureau of Crime Statistics and Research, 2010) 4-5.

Sentence length

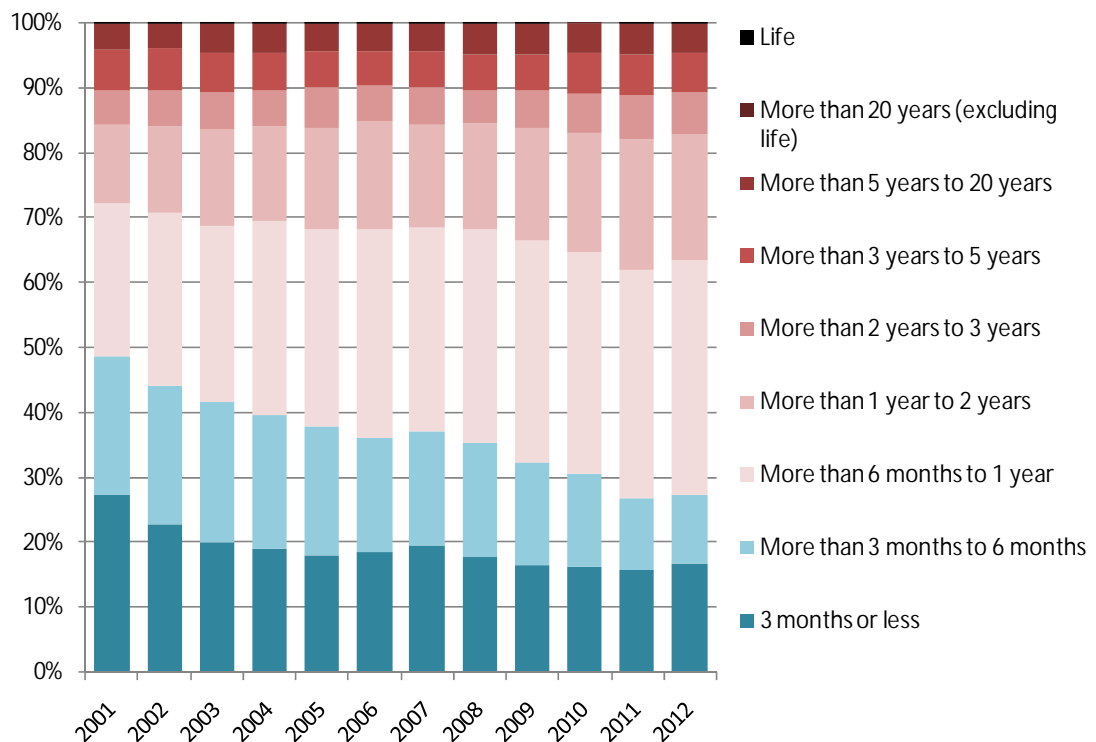
- 3.34 Sentence lengths affect the number of sentenced prisoners at any point in time. Sentence lengths can be analysed either in terms of *flow* (the lengths of sentences that courts impose in a given year) or *stock* (the lengths of the sentences of imprisonment being served by prisoners in custody, counted on a particular day).

Sentence length in NSW

A “flow” analysis

- 3.35 Figure 3.8 looks at the flow of prisoners, and shows the lengths of the head sentences imposed by the NSW Local, District and Supreme Courts between 2001 and 2012.

Figure 3.8 Length of head sentences of full-time imprisonment imposed by NSW adult courts 2001-2012



Source: NSW Bureau of Crime Statistics and Research (unpublished data, ref: HcLc1311319dg). Note that length of time spent on remand before sentencing may affect sentence lengths.

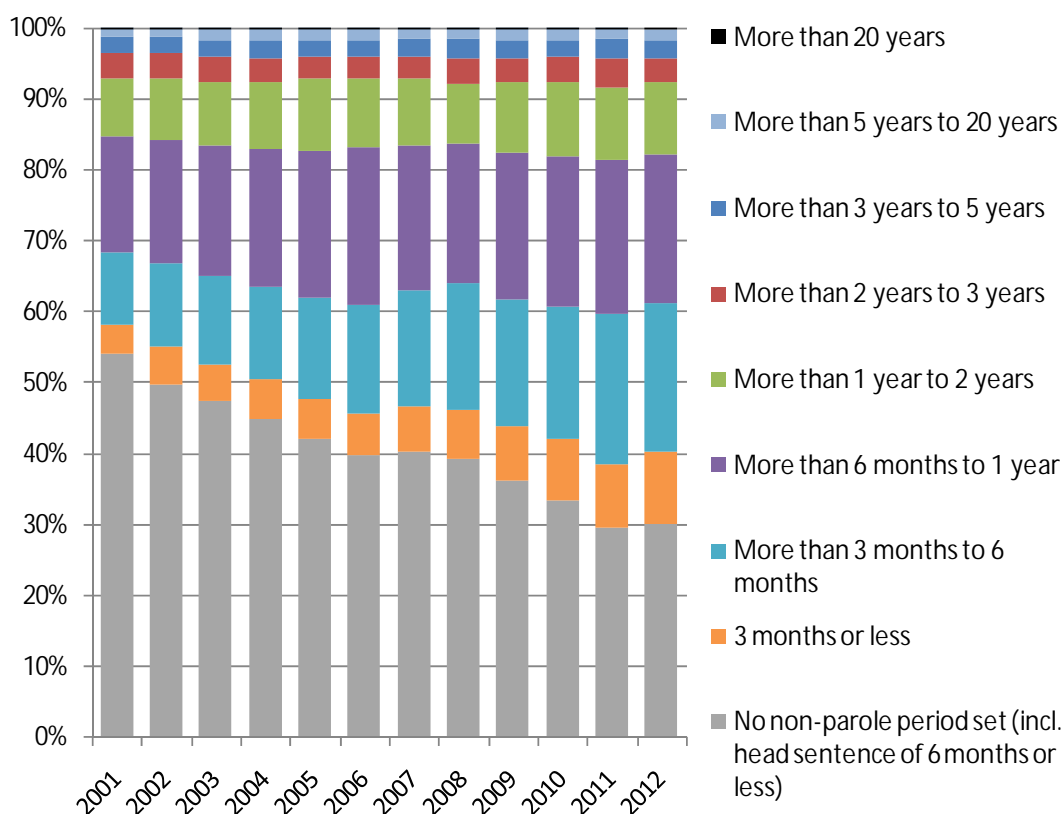
- 3.36 There has been a noticeable shift in the lengths of head sentences imposed by the courts since 2001, with sentences gradually increasing in length. In 2001, almost 50% of all sentences of full-time imprisonment imposed were of six months or less. By 2012, this proportion had decreased to 27%.
- 3.37 Over the same period, the proportion of head sentences of more than six months but less than two years increased. In 2001, about 23% of sentences were of more than six months but less than one year, and 11% were of more than one year but

less than two years. All together, sentences of more than six months but less than two years made up 34% of all sentences of full-time imprisonment.

3.38 In 2012, these proportions had increased to 36% for sentences of more than six months but less than one year and 19% for sentences of more than one year but less than two years. All together, head sentences of more than six months but less than two years made up 56% of all sentences of full-time imprisonment in 2012.

3.39 Figure 3.9 looks at the length of non-parole periods imposed in the Local, District and Supreme Courts since 2001.

Figure 3.9 Length of non-parole periods imposed by NSW adult courts 2001-2012



Source: NSW Bureau of Crime Statistics and Research (unpublished data, ref: HcLc1311319dg). Note that length of time spent on remand before sentencing may affect sentence lengths and non-parole period lengths.

3.40 Figure 3.9 shows that, as the use of sentences of six months or less has fallen, courts have made greater use of non-parole periods of less than six months.¹⁴ Overall, the lengths of non-parole periods have gradually increased, matching the pattern in the lengths of head sentences shown in Figure 3.8.

3.41 BOCSAR has studied in detail the average length of non-parole periods imposed by NSW courts for selected offences between 1993 and 2007.¹⁵ The study found that

14. Courts cannot set a non-parole period and a parole period if the sentence is of six months or less: *Crimes (Sentencing Procedure) Act 1999* (NSW) s 46.
 15. R Lulham and J Fitzgerald, *Trends in Bail and Sentencing Outcomes in New South Wales Criminal Courts: 1993-2007*, Crime and Justice Bulletin No 124 (NSW Bureau of Crime Statistics and Research, 2008).

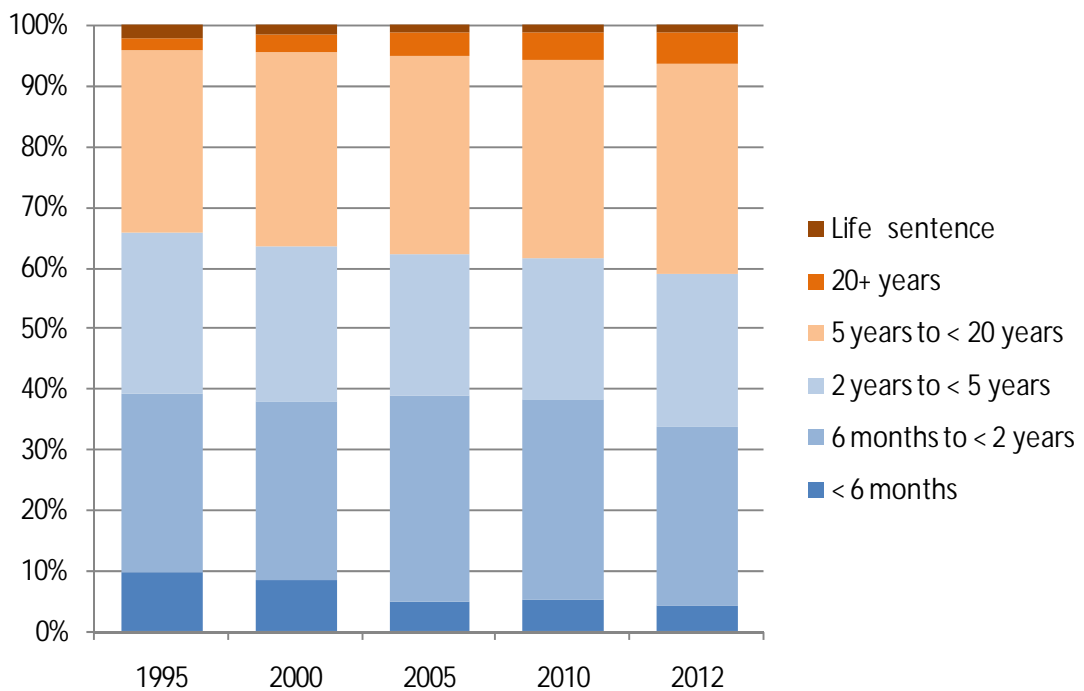
the average non-parole period imposed in the higher courts over the 15 year period significantly increased for offenders convicted of murder, assault, sexual assault and motor vehicle theft; was stable for offenders convicted of manslaughter, robbery, break and enter, theft and drug offences; and decreased only for offenders convicted of fraud.

- 3.42 In the Local Court over the 15 years to 2007, there was a statistically significant increase in average non-parole periods for offenders convicted of assault, sexual assault, break and enter, theft, fraud, drug offences, property damage, high range PCA and breach of a domestic violence order. Average non-parole periods were stable for offenders convicted of robbery and motor vehicle theft and did not decrease in the Local Court for any of the selected offence categories.¹⁶

A “stock” analysis

- 3.43 Prisoners serving longer sentences tend to accumulate over time. Figure 3.10 (below) shows the lengths of the total sentences being served by prisoners in Corrective Services NSW custody, counted on the night of 30 June in 1995, 2000, 2005, 2010 and 2012.

Figure 3.10 Distribution of total sentence lengths in NSW 1995-2012



Source: Corrective Services NSW, *NSW Inmate Census (1995, 2000, 2005 and 2012)*. Note that length of time spent on remand before sentencing may affect sentence lengths. Note also that the information provided in the chart is a snapshot of prisoners being held by Corrective Services NSW and so can reflect sentences imposed before “truth in sentencing” reforms and other changes to maximum penalties and courts’ sentencing practices. See also methodological notes at the end of this report.

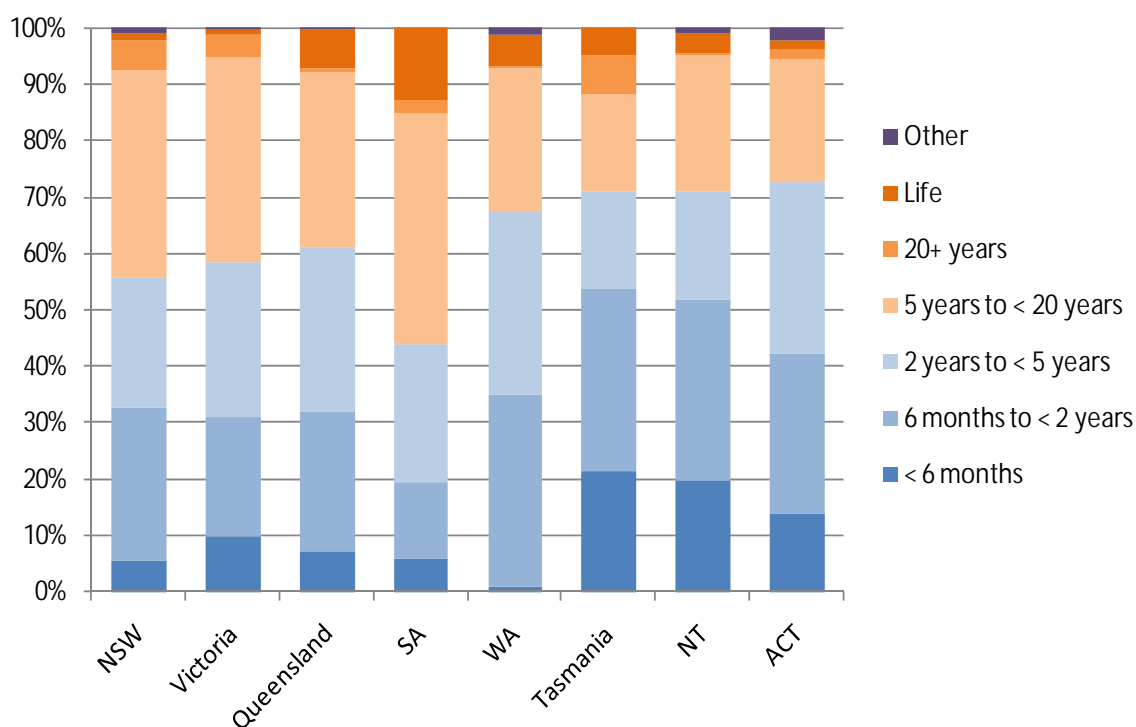
16. R Lulham and J Fitzgerald, *Trends in Bail and Sentencing Outcomes in New South Wales Criminal Courts: 1993-2007*, Crime and Justice Bulletin No 124 (NSW Bureau of Crime Statistics and Research, 2008) 6.

3.44 The proportion of prisoners serving longer sentences has slightly increased since 1995. In 1995, prisoners serving sentences of less than five years made up 65.8% of the total. By 2012, 58.8% of prisoners were serving a sentence of less than five years. This is mostly the result of a small increase in the number of prisoners serving a sentence of 20+ years (from 2.2% of prisoners to 5.2%) and a larger increase in the number of prisoners serving a sentence of more than five years and less than 20 years (from 29.9% to 34.7% of prisoners).

Sentence lengths across Australia

3.45 Figure 3.11 shows the distribution of sentence lengths being served by sentenced prisoners being held in Australian states and territories on 30 June 2012 (a “stock” analysis).

Figure 3.11 Distribution of sentence lengths in Australian jurisdictions 2012



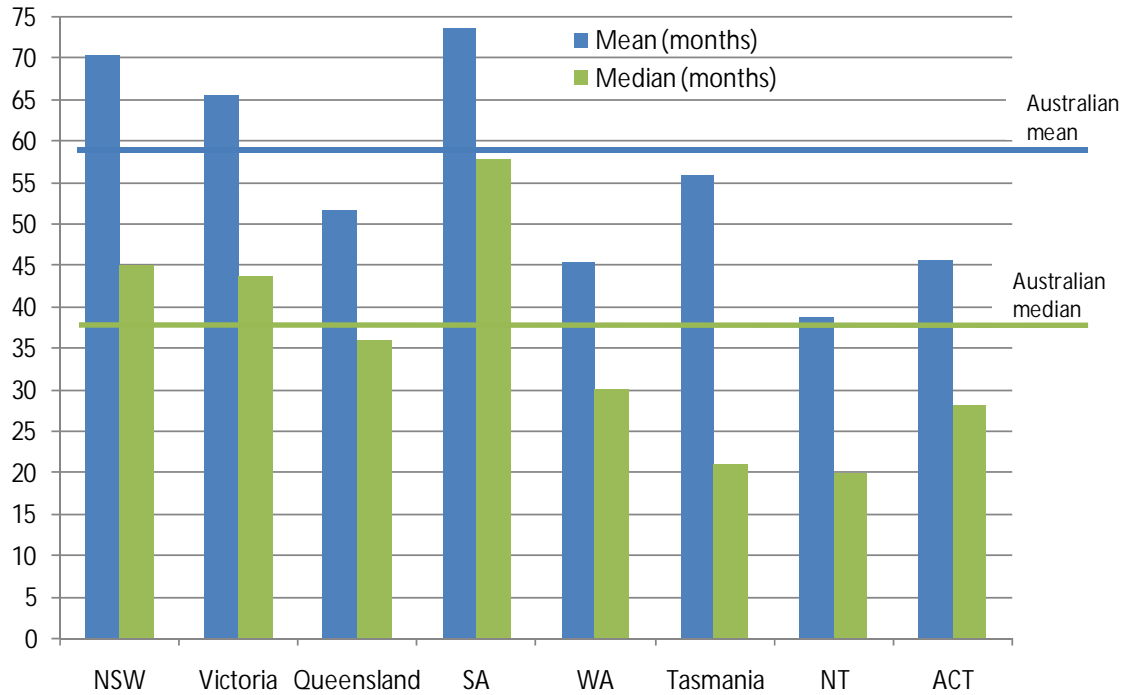
Source: ABS 4517.0 Prisoners in Australia (2012). Note that length of time spent on remand may affect sentence lengths as previous time in custody is taken into account when setting the length of a sentence of imprisonment. The “other” category relates to prisoners serving indeterminate periods in detention other than indeterminate life sentences (in NSW these are mainly forensic patients). See also methodological notes at the end of this report.

3.46 In 2012, NSW had one of the lowest proportions in Australia of prisoners serving a sentence of less than five years, second only to SA. NSW also had a much lower proportion of prisoners serving a sentence of less than 2 years compared to Tasmania, the NT and the ACT, although the NSW proportion was similar to the proportions in Victoria, Queensland and WA.

3.47 Figure 3.12 shows the mean and median total sentence lengths across Australia being served by sentenced prisoners being held in custody on 30 June 2012. NSW had the second highest median sentence length in Australia at 45.0 months (above

the Australian median of 37.9 months) and also the second highest mean at 70.5 months (above the Australian mean of 59.9 months).¹⁷

Figure 3.12 Mean and median aggregate sentence across Australia 2012



Source: ABS 4517.0 Prisoners in Australia (2012). Note that length of time spent on remand may affect sentence length. See also methodological notes at the end of this report.

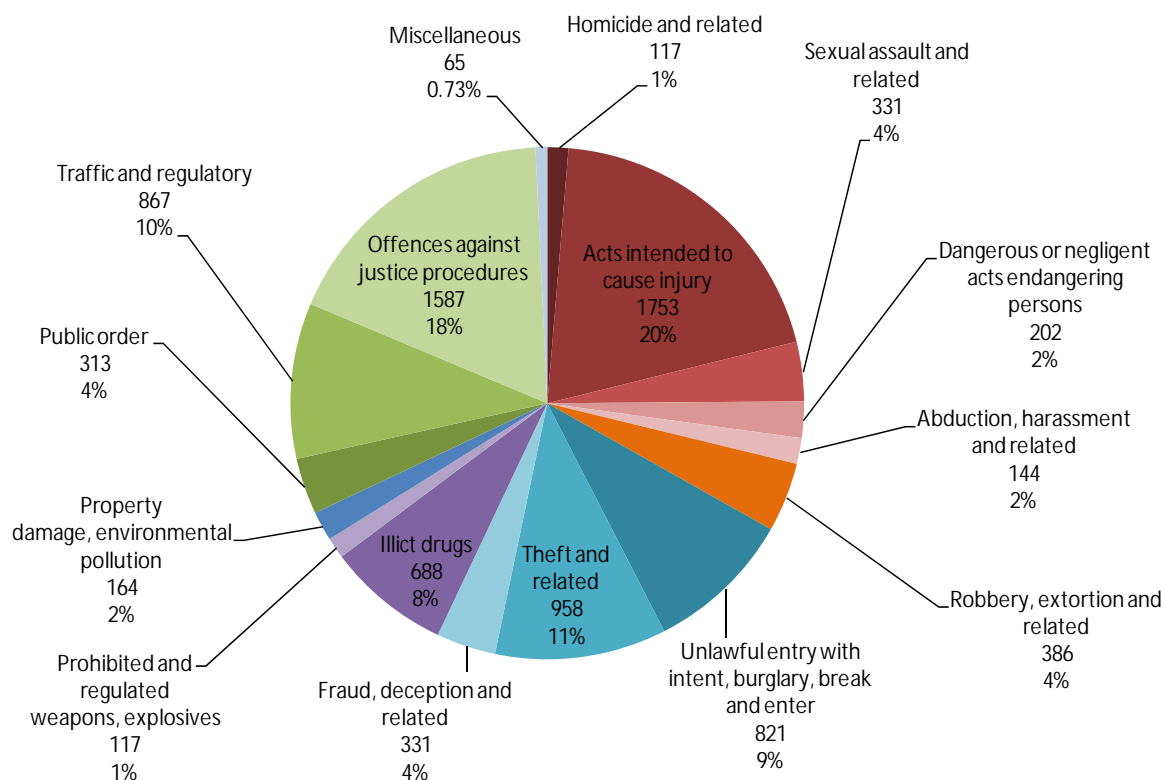
Other factors that affect prisoner numbers and use of imprisonment in NSW

Use of imprisonment across specific offence categories

3.48 Figure 3.13 shows the most serious offence committed by offenders sentenced to full-time imprisonment by the Local, District and Supreme Courts during 2012.

17. Sentence length may be affected by many variables, including the profile of offences resulting in sentences of full-time imprisonment in each jurisdiction. For example, NSW may be a gateway into Australia from overseas, potentially resulting in a higher proportion of offenders in custody for drug importation offences, which attract long sentences.

Figure 3.13 Most serious offence committed by NSW offenders sentenced to full-time imprisonment 2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)*. Values of <1% are shown to two decimal places. See also methodological notes at the end of this report.

- 3.49 Of the offenders whose most serious offence was categorised as “offences against justice procedures” (1587 offenders), 488 were sentenced to full-time imprisonment after breach of a suspended sentence, 132 were resentenced to imprisonment after breach of a community service order and 300 were resentenced to imprisonment after revocation of a good behaviour bond.¹⁸ The courts’ practices upon breach of other lesser sentences can therefore have a significant effect on imprisonment and sentenced prisoner numbers.
- 3.50 Another way of analysing the use of imprisonment for particular offences involves looking at the proportion of offenders convicted of a particular offence who were imprisoned. This is effectively a measure of the likelihood that an offender will be imprisoned after being convicted of a particular offence.
- 3.51 BOCSAR has analysed the proportion of convicted offenders who were imprisoned across selected offence categories in the NSW Local, District and Supreme Courts between 1993 and 2007.¹⁹ The study concluded that between 1993 and 2007 in the Local Court:
- there was a statistically significant upward trend in the proportion of convicted offenders imprisoned for eight of 11 offence categories (assault, sexual assault

18. NSW Bureau of Crime Statistics and Research (unpublished data, ref: kg13-11321).

19. R Lulham and J Fitzgerald, *Trends in Bail and Sentencing Outcomes in New South Wales Criminal Courts: 1993-2007*, Crime and Justice Bulletin No 124 (NSW Bureau of Crime Statistics and Research, 2008).

and related offences, break and enter, theft, motor vehicle theft and related offences, drug offences, property damage, high range PCA); and

- the proportion of convicted offenders imprisoned was stable for three of 11 offence categories (robbery, fraud and related offences, breach of domestic violence order).

3.52 In the higher courts between 1993 and 2007:

- there was a statistically significant upward trend in the proportion of convicted offenders imprisoned for eight of 10 offence categories (assault, sexual assault and related offences, robbery, break and enter, theft, motor vehicle theft and related offences, fraud and related offences, drug offences); and
- the proportion of convicted offenders imprisoned was stable for two of 10 offence categories (murder and manslaughter).

3.53 On the other hand, more recent analysis carried out by BOCSAR that focused on assault, break and enter, theft and traffic offences found a statistically significant downward trend in the proportion of offenders convicted of assault and theft who were imprisoned between 2009 and 2011.²⁰

Imprisonment for Standard Non-Parole Period offences

3.54 The Judicial Commission of NSW has analysed the proportion of convicted offenders imprisoned specifically for Standard Non-Parole Period (SNPP) offences by the NSW higher courts. The SNPP scheme commenced on 1 February 2003 and aims to give guidance to courts by setting a standard minimum non-parole period for more than 20 categories of serious indictable offence. The Judicial Commission of NSW study found the following statistically significant differences in imprisonment rates after the introduction of the SNPP scheme:

- an increase for aggravated indecent assault: between April 2000 and January 2003 (pre-SNPP scheme) 37.3% of offenders were imprisoned compared to 59.3% between February 2003 and December 2007 (post-SNPP scheme);
- an increase for aggravated indecent assault on a child: between April 2000 and January 2003 (pre-SNPP scheme) 57.1% of offenders were imprisoned compared to 81.3% between February 2003 and December 2007 (post-SNPP scheme);
- a decrease for aggravated break, enter and commit serious indictable offence: between April 2000 and January 2003 (pre-SNPP scheme) 74.9% of offenders were imprisoned compared to 67.6% between February 2003 and December 2007 (post-SNPP scheme).²¹

3.55 The Judicial Commission has also analysed the head sentences imposed on offenders for SNPP offences in the higher courts to test whether the introduction of

20. J Fitzgerald and S Corben, *Why is the NSW Prison Population Falling?* Bureau Brief No 80 (NSW Bureau of Crime Statistics and Research, 2012).

21. P Poletti and H Donnelly, *The Impact of the Standard Non-Parole Period Sentencing Scheme on Sentencing Patterns in New South Wales*, Research Monograph No 33 (Judicial Commission of NSW, 2010) 19.

the SNPP scheme increased head sentence lengths.²² The study reported that there was no overall difference in the median length of head sentence for offenders imprisoned for SNPP offences after the SNPP scheme commenced operation compared to the pre-SNPP period of April 2000 to January 2003.

- 3.56 However, when the study confined the analysis to defendants who pleaded not guilty but were subsequently convicted and imprisoned for an SNPP offence, it found that the median term did significantly increase. Between April 2000 and January 2003, the median term imposed on offenders sentenced for SNPP offences in the higher courts after pleading not guilty was 6 years, compared to 8 years in the post-introduction period of February 2003 to December 2007. This is an increase in median term of 33.3% (for increases for specific offences see Table 3.2 below). The study found a small increase in median prison term of 6.7% for defendants who pleaded not guilty and who were convicted and sentenced for non-SNPP offences over the same period.

Table 3.2 Statistically significant increases in median sentences for SNPP offences – defendants who pleaded not guilty (years)

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

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

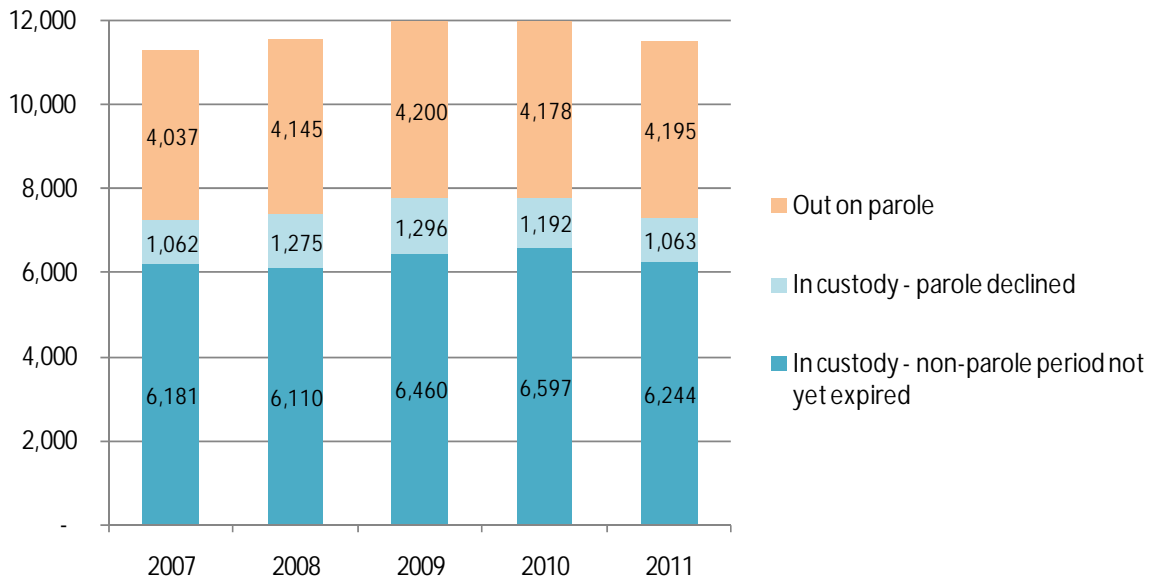
Parole

- 3.57 Changes to parole policies, the granting of parole and policing of parole breaches can significantly increase or decrease the number of sentenced prisoners in custody at any one time.
- 3.58 On 30 June 2011, 14.5% of the sentenced prisoners in NSW prisons were past the expiry of their non-parole period but had parole refused.²³ Figure 3.14 shows the number of sentenced prisoners in custody on the night of 30 June each year from 2007 to 2011 who were not eligible for parole or who had parole denied. It also shows the number of offenders who were in the community being supervised on parole on 30 June each year.

22. P Poletti and H Donnelly, *The Impact of the Standard Non-Parole Period Sentencing Scheme on Sentencing Patterns in New South Wales*, Research Monograph No 33 (Judicial Commission of NSW, 2010) 19.

23. Corrective Services NSW, *NSW Inmate Census* (2011).

Figure 3.14 Parole in NSW 2007-2011



Source: Corrective Services NSW, *NSW Inmate Census (2007-2011)*; Corrective Services NSW, *Community Offender Census (2007-2010)* and unpublished data provided by Corrective Services NSW.

- 3.59 The proportion of sentenced prisoners in custody who had parole refused has decreased since 2008 from 17.3% of prisoners to 14.6% in 2011.
- 3.60 Most parole orders are court-based orders that take effect automatically when an offender serving a sentence of less than three years reaches the end of their non-parole period. In 2011, a total of 5447 offenders were released on parole during the calendar year and 4411 of these offenders (81%) were on court-based parole orders.²⁴ The remaining offenders released on parole were released on orders made by the State Parole Authority (SPA). Figure 3.15 shows the number of court-based and SPA parole orders made each year since 2007 and also the number of orders revoked by SPA. The numbers in Figure 3.15 do not match those in Figure 3.14 because they report all those released on parole orders each year. Figure 3.14 shows the number of offenders out on parole at a particular point in time.

24. NSW State Parole Authority, *Annual Report 2011* (2012) 13.

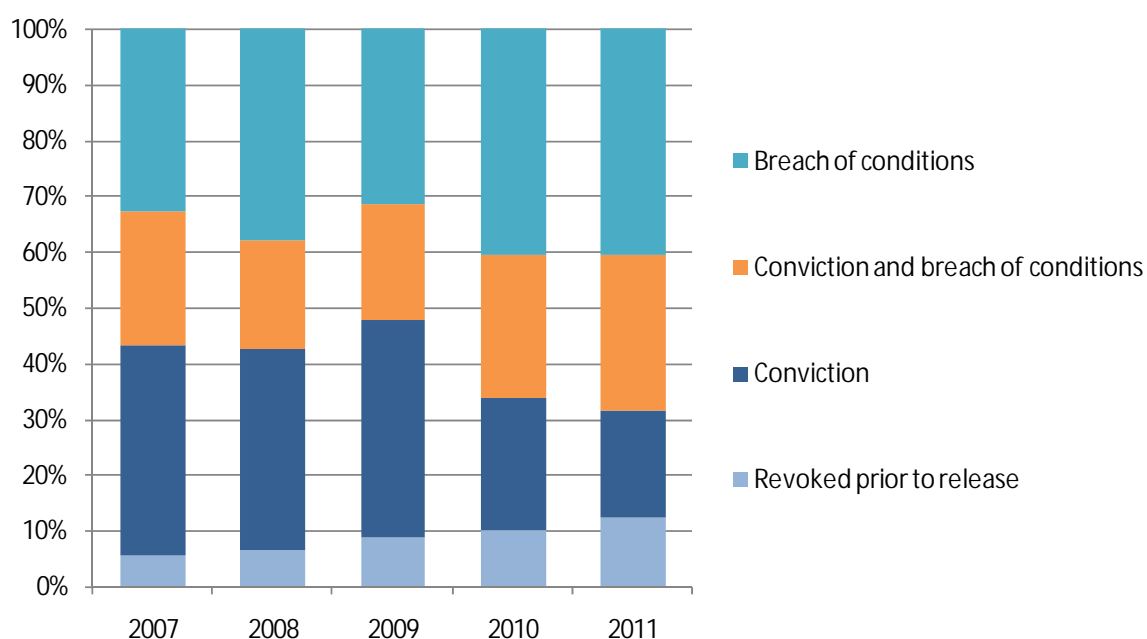
Figure 3.15 Parole orders made and revoked in NSW 2007-2011



Source: NSW State Parole Authority, Annual Report 2011 (2012).

3.61 The number of orders revoked in any one year compared to the number of orders made grew from 2007 to 2009 and then fell again to 2011. This result matches the observed changes in the number of sentenced prisoners (see Figure 3.1). The number of revocations as a proportion of offenders out on parole in each year also increased from 44% in 2007 to 54% in 2010. The reasons for revocation of parole can be complex. Figure 3.16 shows the reasons for revocation of parole orders split into four broad categories between 2007 and 2011.

Figure 3.16 Reasons for revocation of NSW parole orders 2007-2011



Source: NSW State Parole Authority, Annual Report 2011 (2012).

- 3.62 The sharp drop from 2009 to 2010 in the proportion of parole orders that were revoked due to a conviction matches the overall drop in the number of defendants that were found guilty between 2009 and 2010. The proportion of revoked parole orders that were revoked prior to release increased steadily from 5% in 2007 to 12% in 2011. The proportion of revoked orders that were revoked solely due to a breach of conditions also increased from 33% in 2007 to 41% in 2011, perhaps indicating increased parole supervision which may lead to increased detection of breaches of conditions.

Imprisonment, incapacitation and recidivism

- 3.63 Most researchers believe that the experience of imprisonment is not very effective in deterring reoffending.²⁵

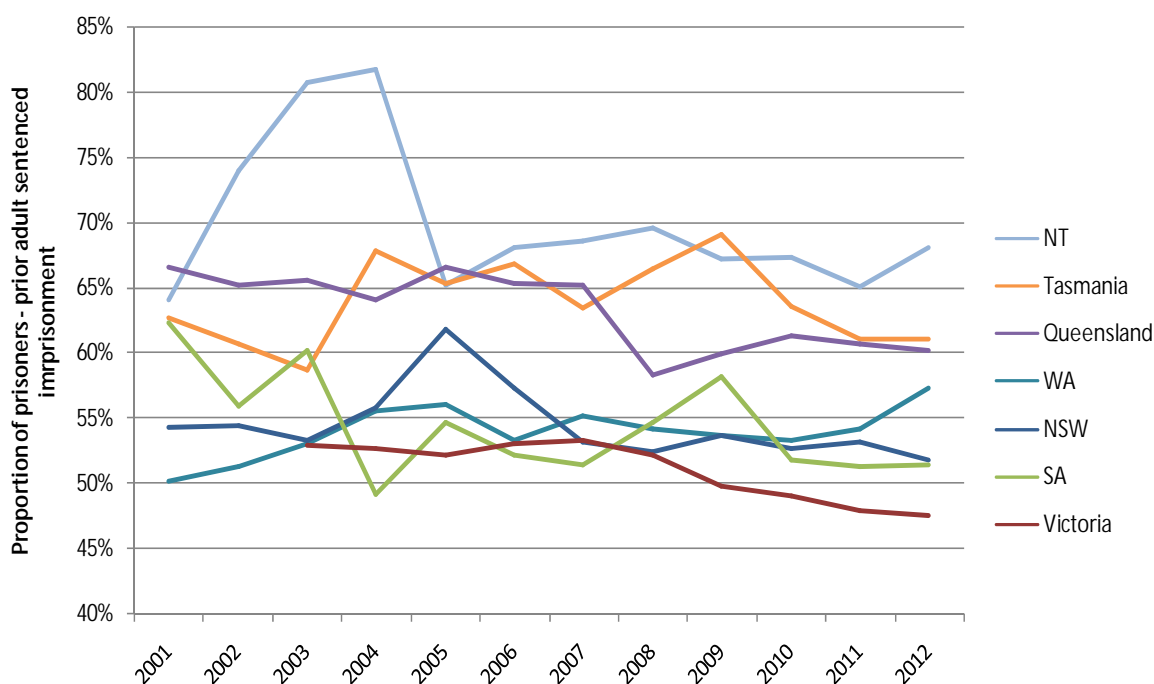
Previous imprisonment

- 3.64 In particular, return to prison rates in NSW and other jurisdictions suggest that full-time imprisonment does not work well to prevent reoffending. The annual census by Corrective Services NSW records the proportion of prisoners who have experienced a previous period of sentenced full-time imprisonment as an adult. On 30 June 2012, 53.2% of the prisoners in NSW adult correctional institutions had previously served a sentence of imprisonment for any type of offence.²⁶ The ABS publishes similar data and Figure 3.17 shows the proportion of prisoners who had previously served a sentence of full-time imprisonment across Australia between 2001 and 2012.

25. D Ritchie, *Does Imprisonment Deter? A Review of the Evidence* (Victorian Sentencing Advisory Council, 2011) 23; K Gelb, G Fisher and N Hudson, *Reoffending Following Sentencing in the Magistrates' Court Of Victoria* (Victorian Sentencing Advisory Council, 2013) 30-31; D Weatherburn, J Hua and S Moffat, *How Much Crime Does Prison Stop? The Incapacitation Effect of Prison on Burglary*, Crime and Justice Bulletin No 93 (NSW Bureau of Crime Statistics and Research, 2006) 2.

26. Corrective Services NSW, *NSW Inmate Census* (2011) 22. This includes prisoners on remand (ie, 52.2% of all prisoners, both sentenced and unsentenced, had experienced a previous episode of sentenced full-time imprisonment).

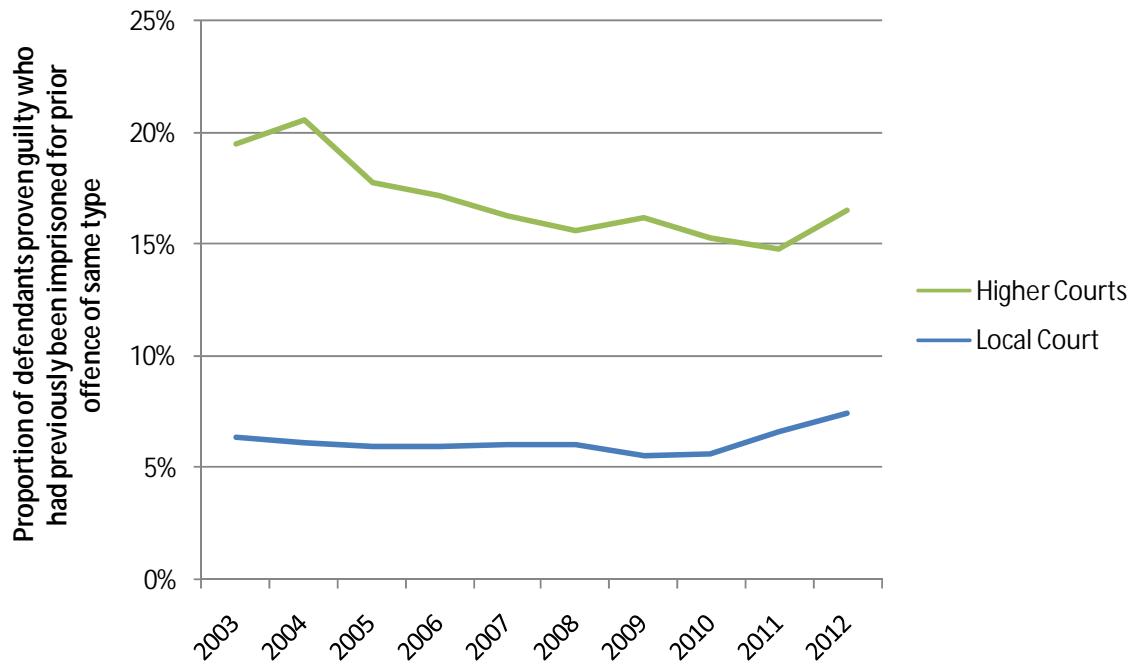
Figure 3.17 Proportion of prisoners with prior adult sentenced imprisonment 2001-2012



Source: ABS 4517.0 Prisoners in Australia (2011, 2012). The ACT has been excluded as the majority of ACT prisoners were held in NSW prisons until 2009. Data for Victoria in 2001 and 2002 is not comparable to later Victorian data and have not been shown. Data is for the whole prison population (both sentenced and unsentenced) prior sentences of full-time imprisonment. See also methodological notes at the end of this report.

- 3.65 As Figure 3.17 shows, the proportions are quite volatile but in 2012 ranged from 47.5% of prisoners with a prior sentence of imprisonment in Victoria to 68.0% of prisoners in the NT. At 51.7% according to the ABS data, the proportion in NSW was slightly below the Australian average of 54.7%.
- 3.66 Since 2003, BOCSAR has been recording the number of defendants found guilty each year who have been imprisoned within the preceding 10 years for a prior offence of the same type (see Figure 3.18).

Figure 3.18 Proportion of defendants found guilty in NSW adult courts who had previously been imprisoned (preceding 10 years) for offence of same type 2003-2012



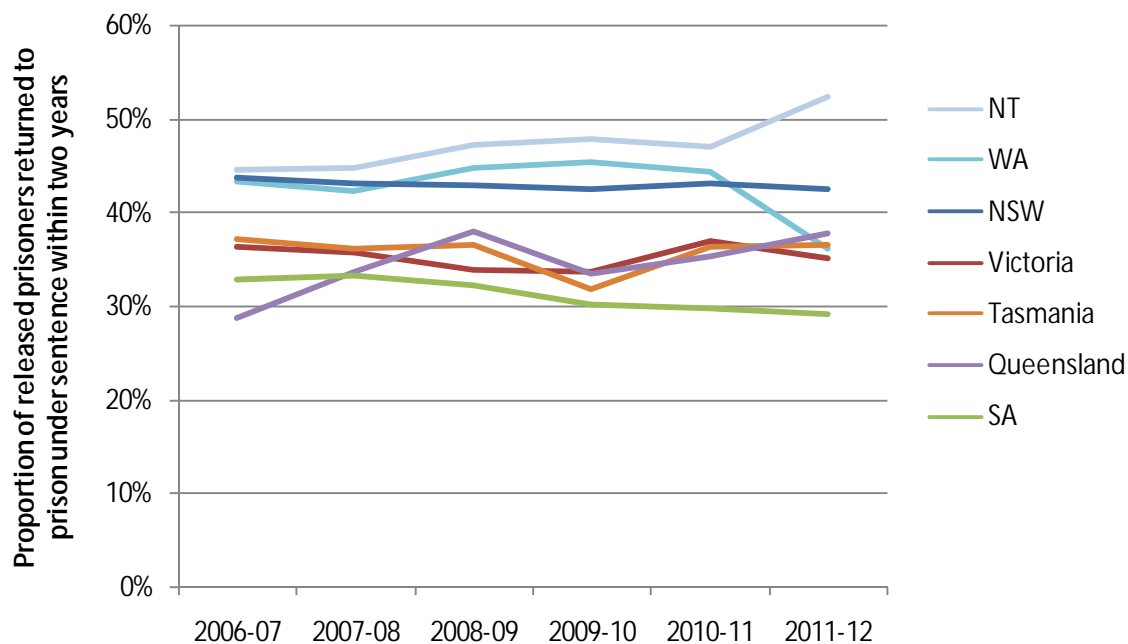
Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2003-2012)*. See also methodological notes at the end of this report.

- 3.67 The proportion of defendants found guilty in the Local Court who had previously been imprisoned for a prior offence of the same type was about 6% but has increased to 7.5% in 2012. The proportion is higher in the higher courts but has fallen since 2003, from around 20% to 16.5%
- 3.68 Some particular offence types show much higher proportions of defendants found guilty who have previously been imprisoned for that type of offence. In 2012 in the Local Court, burglary/break and enter and other theft offences had particularly high proportions at 32.4% and 21.6% respectively.

Recidivism of released prisoners

- 3.69 Other data looks at the recidivism of sentenced prisoners released from prison and measures the proportion that have been reconvicted or reimprisoned within a selected period. Figure 3.19 shows the proportion of released prisoners who return to prison under a new sentence of imprisonment within two years across Australian states and territories. It includes released prisoners who were returned to prison following the revocation of a parole order. The proportion shown for 2011-12 relates to prisoners released in 2009-10 who had been returned to prison by 2011-12.

Figure 3.19 Proportion of released prisoners returned to prison under sentence within two years



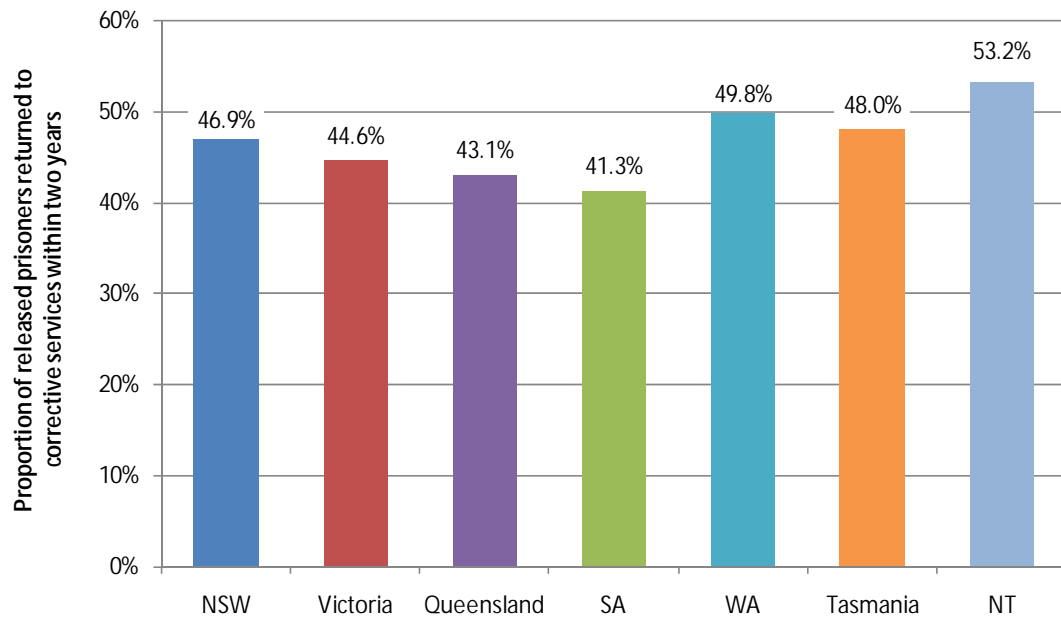
Source: Productivity Commission, *Report on Government Services (2013) Part C* (see Table C.5, Justice Sector Overview). Note that the years shown in this chart relate to the two year time period (ie, the proportion shown in 2011-12 for NSW of 42.5% means that 42.5% of the prisoners released in 2009-10 had returned to prison under sentence by 2011-12). Data for the ACT is not published as most ACT prisoners were held in NSW prisons until 2009. See also methodological notes at the end of this report.

- 3.70 At 42.5% in 2011-12, the proportion of NSW released prisoners who had been returned to prison under sentence within two years is higher than the Australian average of 39.3% and higher than the proportion in all other jurisdictions except the NT. It is not clear whether these results are actually comparing and measuring rates of recidivism or simply each jurisdiction’s likelihood of imprisoning an offender with prior convictions when he or she is reconvicted.²⁷ The measure may also be distorted by different jurisdictions’ enforcement policies for parole breaches.
- 3.71 A better comparative measure of recidivism amongst released prisoners may be the proportion that returns to corrective services management—either in custody or the subject of another sanction like a supervised good behaviour bond or community work order—within two years (see Figure 3.20).²⁸

27. Productivity Commission, *Report on Government Services (2012) C.20*.

28. Note that this measure of recidivism will still be less than the proportion of released prisoners reconvicted of any offence within two years, as it does not count released prisoners who were reconvicted but received a sentence that did not involve corrective services management, eg, a fine.

Figure 3.20 Proportion of prisoners released 2009-10 returned to corrective services management within two years



Source: Productivity Commission, *Report on Government Services (2013) Part C* (see Table C.4, Justice Sector Overview). The ACT has been excluded as the majority of ACT prisoners were held in NSW prisons until 2009. See also methodological notes at the end of this report.

- 3.72 The proportion of NSW prisoners released in 2009-10 that returned to Corrective Services NSW management within two years was 46.9%, slightly higher than the Australian average of 46.1%. The small difference between the proportion shown in Figure 3.20 for return to correctives services management (46.9%) and Figure 3.19 for return to prison (42.5%) indicates that most released NSW prisoners who returned to corrective services management in fact returned to full-time custody. Rates of reoffending after a period of full-time imprisonment are clearly high in all jurisdictions.
- 3.73 Separate research by BOCSAR has looked at reconviction as well as return to prison or return to correctives services management. The study found that the likelihood of a released prisoner reoffending is strongly associated with the prisoner's number of prior convictions.²⁹ A released prisoner with 11 or more prior convictions was six times more likely to be reconvicted within two years than someone with only one prior conviction. The study also found that the following facts were associated with higher rates of reconviction: being younger at release, being of Aboriginal or Torres Strait Islander background, having served more than two months but less than 12 months in prison, and having a prior conviction for a non-aggravated violent offence, a theft offence or breaching a justice order. Overall, the BOCSAR study found that 61.45% of the prisoners released in 2004 were reconvicted and/or returned to prison for breach of parole within two years. The

29. N Smith and C Jones, *Monitoring Trends in Re-offending Among Offenders Released from Prison*, Crime and Justice Bulletin No 117 (NSW Bureau of Crime Statistics and Research, 2008) 7.

proportion was 96% for released prisoners with all of the characteristics listed above.³⁰

- 3.74 BOCSAR has also looked at the effect of mental health disorders on the recidivism of released prisoners and found that reoffending rates of those with comorbid substance-related and non-substance mental health disorders were significantly higher than rates for other released prisoners. Reoffending rates for released prisoners were similar for prisoners with only a substance-related mental health disorder, or a non-substance mental health disorder, or no mental health disorder.³¹

Reoffending on parole

- 3.75 Of the NSW prisoners released on parole in 2001-2002, 64% had been reconvicted by September 2004 and 68% appeared in court charged with another offence.³² Overall, 41% of the parolees were returned to prison within two years. It is to be expected that reconviction rates after two years might be slightly higher for parolees (64%) compared to all released prisoners (61.45%) due to the different profiles of offenders released on parole compared to the overall profile of released prisoners.³³ A parole period is only possible for prisoners who have been sentenced to a term of imprisonment of more than six months.³⁴

- 3.76 Similarly, the reoffending rates within two years for both released prisoners and parolees (approximately 60%) are significantly higher than those for the total population of convicted offenders (about 26% reconvicted after two years, as discussed at paragraph 2.29).

Reoffending after imprisonment compared to other sentences

- 3.77 A BOCSAR study has matched offenders who are imprisoned with similar offenders who are given a non-prison sanction to test the effect of imprisonment on reoffending.³⁵ The study used 96 matched pairs of burglars and 406 matched pairs of offenders convicted of non-aggravated assault in 2003-2004 and tested for reoffending over the following five years. After controlling for other variables like prior convictions, age, age at first court appearance, number of concurrent offences,

30. N Smith and C Jones, *Monitoring Trends in Re-offending Among Offenders Released from Prison*, Crime and Justice Bulletin No 117 (NSW Bureau of Crime Statistics and Research, 2008) 7. Note that in this study, revocation of parole and return to prison was counted as “reconviction” even if no conviction was recorded. This may affect the results.

31. N Smith and L Trimboli, *Comorbid Substance and Non-substance Mental Health Disorders and Re-offending Among NSW Prisoners*, Crime and Justice Bulletin No 140 (NSW Bureau of Crime Statistics and Research, 2010).

32. C Jones, J Hua, N Donnelly, J McHutchison and K Heggie, *Risk of Re-offending Among Parolees*, Crime and Justice Bulletin No 91 (NSW Bureau of Crime Statistics and Research, 2006) 5.

33. These proportions are not directly comparable as the measure of recidivism of parolees (64%) relates to parolees released in 2001-02, and the measure of recidivism of all released prisoners (61.45%) relates to prisoners released in 2004. There may be variations in the risk profiles and likelihood of reoffending of prisoners released in one year compared to another.

34. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 46.

35. D Weatherburn, *The Effect of Prison on Adult Re-offending*, Crime and Justice Bulletin No 143 (NSW Bureau of Crime Statistics and Research, 2010).

bail status and prior violent offences, the study found that imprisonment had no effect on reoffending rates for burglary offenders. Burglars who were imprisoned reoffended—that is, were reconvicted of any offence—at the same rate as burglars given a non-prison penalty. For offenders convicted of non-aggravated assault however, imprisonment seemed to increase the likelihood of reoffending compared to non-prison penalties.

- 3.78 A similar study has also compared reoffending rates of released prisoners with matched offenders given a suspended sentence.³⁶ It found that, for offenders with no prior prison experience, there was no difference in reoffending rates between those imprisoned and those given a suspended sentence. For those with a prior episode of imprisonment, however, the offenders who were imprisoned were more likely to reoffend than those given a suspended sentence. A comparable Victorian study of matched offenders sentenced in the Magistrates' Court of Victoria found that those imprisoned were 25% more likely to reoffend than those sentenced to a suspended sentence.³⁷

Imprisonment and incapacitation

- 3.79 Although return to prison rates are high and imprisonment does not seem to deter reoffending any more than other penalties, imprisonment may still work to reduce offending through the effects of incapacitation. This simply means that offenders who are imprisoned are mostly unable to reoffend during the period they are in custody.³⁸
- 3.80 Incapacitation through imprisonment is an effective way of protecting the community from a person's offending while that person is in custody. However, there is only limited research on whether incapacitation is also an effective way to reduce crime rates more generally. If imprisonment actually increases rates of reoffending compared to other penalties, long sentences may be needed for incapacitation to be effective in reducing crime.³⁹
- 3.81 BOCSAR has studied the incapacitation effect of imprisonment on burglary rates and found that much longer sentences would be needed (about double the current length) in order to reduce the burglary rate by eight percentage points.⁴⁰ Given the high daily costs of imprisonment (see Chapter 2), it is not clear whether incapacitation would be a cost-effective crime control strategy. It is also not known

36. R Lulham, D Weatherburn and L Bartels, *The Recidivism of Offenders Given Suspended Sentences: A Comparison With Full-time Imprisonment*, Crime and Justice Bulletin No 136 (NSW Bureau of Crime Statistics and Research, 2009).

37. K Gelb, G Fisher and N Hudson, *Reoffending Following Sentencing in the Magistrates' Court Of Victoria* (Victorian Sentencing Advisory Council, 2013) 25.

38. J Chan, *The Limits of Incapacitation as a Crime Control Strategy*, Crime and Justice Bulletin No 25 (NSW Bureau of Crime Statistics and Research, 1995) 1.

39. D Weatherburn, J Hua and S Moffat, *How Much Crime Does Prison Stop? The Incapacitation Effect of Prison on Burglary*, Crime and Justice Bulletin No 93 (NSW Bureau of Crime Statistics and Research, 2006) 8; D Brown, "The Limited Benefit of Prison in Controlling Crime" (2010) 22(1) *Current Issues in Criminal Justice* 137.

40. D Weatherburn, J Hua and S Moffat, *How Much Crime Does Prison Stop? The Incapacitation Effect of Prison on Burglary*, Crime and Justice Bulletin No 93 (NSW Bureau of Crime Statistics and Research, 2006) 9.

whether a replacement effect operates, where new offenders decide to commit offences while the original population of offenders is incarcerated.⁴¹

Overall relationship between imprisonment and reoffending

- 3.82 It is clear that reoffending rates after a period of full-time imprisonment are high for all Australian jurisdictions. Full-time imprisonment does not seem to deter reoffending and, when compared to other less serious sentences, may actually increase the likelihood that a person will reoffend.

41. J Chan, *The Limits of Incapacitation as a Crime Control Strategy*, Crime and Justice Bulletin No 25 (NSW Bureau of Crime Statistics and Research, 1995) 3.

4. Custodial alternatives to full-time imprisonment

The custodial sentencing options that involve supervision in the community (home detention and intensive correction orders) appear to be underused as they make up just over 1% of the sentences imposed. Use of suspended sentences is fairly stable at 5% of sentences imposed. However, since suspended sentences were reintroduced in 2000 they have tended to displace less serious non-custodial penalties instead of cutting into the courts' use of full-time imprisonment.

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- 4.1 Some community-based sentences are categorised as “custodial” sentences because a court must sentence an offender to a term of imprisonment before these sentences are imposed. This chapter looks at sentencing patterns for four current custodial community-based sentences (home detention, intensive correction orders, suspended sentences and rising of the court) and one recently abolished custodial option (periodic detention).

Home detention

- 4.2 A court that has sentenced a person to imprisonment for a term not exceeding 18 months may order that the sentence be served by way of home detention.¹ The offender must be of good behaviour, remain in his or her home except when authorised, not consume alcohol or prohibited drugs, submit to electronic monitoring, obey reasonable directions, engage in personal development activities and undertake community service work as directed when not otherwise employed.² Corrective Services NSW oversees the conditions of a home detention order and a court may only sentence an offender to home detention after a Corrective Services NSW suitability assessment. If a home detention order is revoked, the offender

1. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 6(1). For more information about home detention see NSW Law Reform Commission, *Sentencing*, Report 139 (2013) ch 9.

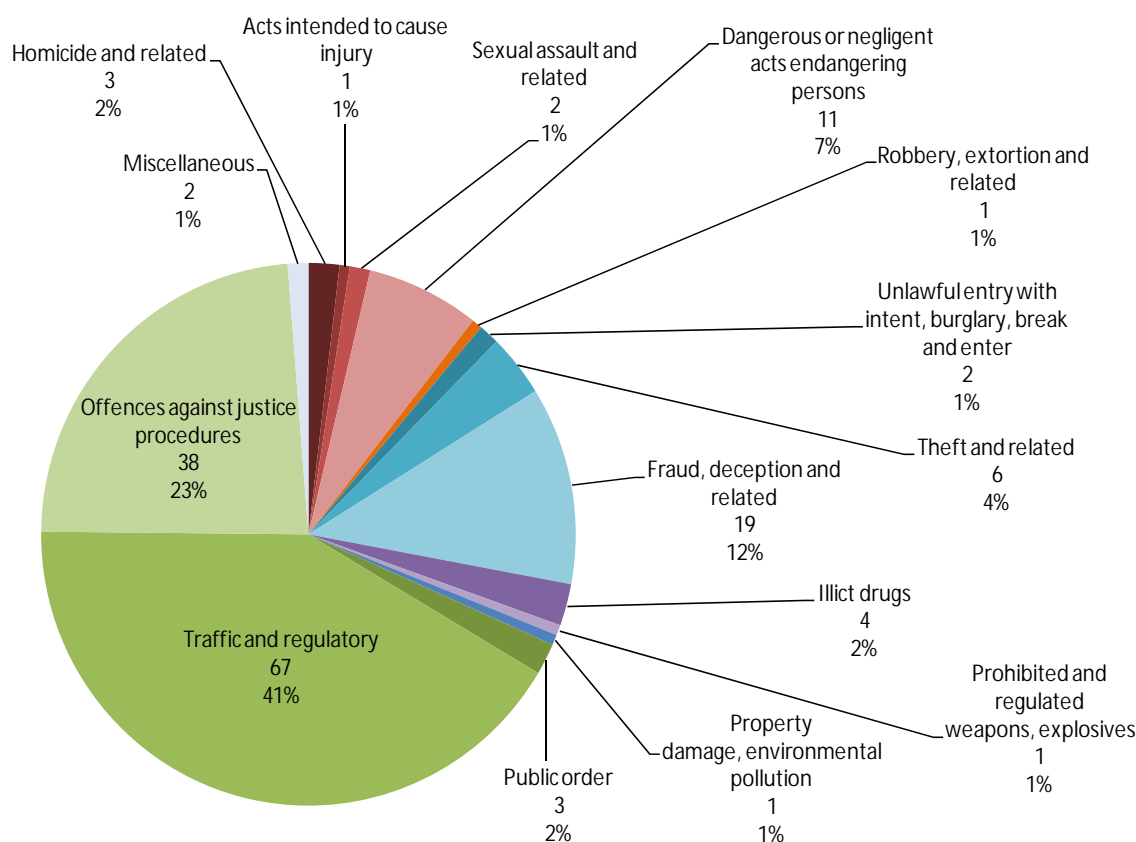
2. *Crimes (Administration of Sentences) Regulation 2008* (NSW) cl 200.

must serve the remainder of the sentence in full-time custody unless the order is later reinstated.

Use of home detention in NSW

- 4.3 The average length of a sentence of home detention imposed in the Local Court in 2012 was 6.6 months. The average in the higher courts was 12.4 months.³ Figure 4.1 shows the most serious offence committed by offenders sentenced to home detention by the Local, District and Supreme Courts in 2012.

Figure 4.1 Most serious offence committed by NSW offenders sentenced to home detention 2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)*. The offences shown in this chart in the “homicide and related offences” category were all manslaughter/driving causing death offences dealt with in the Local Court. See also methodological notes at the end of this report.

- 4.4 Figure 4.1 shows that home detention has primarily been used as a sentence for traffic offenders and for “offences against justice procedures”. Home detention is little used where the most serious offence involves violence. This is partly due to the restrictions on use of home detention for offenders who have committed certain types of offences.⁴ In 2012, the “offences against justice procedures” category contained mostly offenders being resentenced to home detention after failure of another penalty: 24 of 38 offenders for breach of a suspended sentence, 8

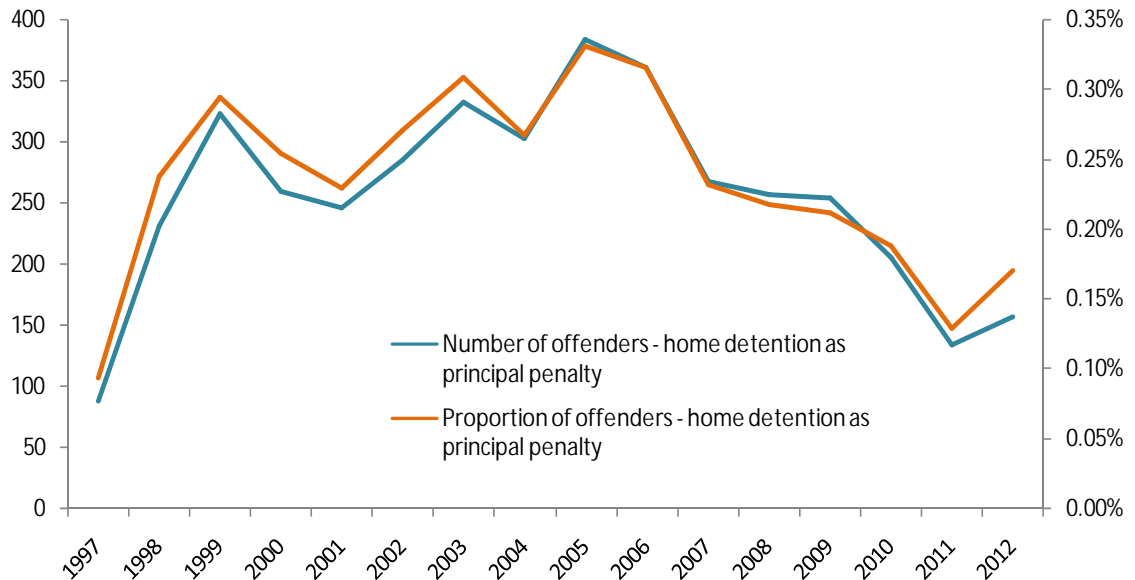
3. NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)*.

4. *Crimes (Sentencing Procedure) Act 1999 (NSW) s 76*.

offenders after revocation of a community service order and 3 offenders after revocation of a good behaviour bond.⁵

- 4.5 Figure 4.2 shows that, at its peak use in 2005, only 0.33% of offenders in NSW received a home detention order as their principal penalty.

Figure 4.2 Use of home detention in NSW adult courts 1997-2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)*. See also methodological notes at the end of this report.

- 4.6 In 2005, 375 people in the Local Court and 9 people in the higher courts received home detention as their principal penalty. Just 0.13% of offenders (133 people) received home detention as their principal penalty in 2011. There was a slight increase in home detention in 2012, but only to 0.17% of offenders (161 people).
- 4.7 The NSW Auditor-General's 2010 review of home detention found that, despite earlier reviews recommending expanded use of home detention, barriers to its use remained. Problems included that:
- it was only available in limited locations;
 - in 2008-09, only 35 of the 47 Local Courts with access to home detention referred any offenders for a suitability assessment; and
 - an increasing proportion of referred offenders were assessed as unsuitable.⁶
- 4.8 In response to the review, Corrective Services NSW undertook to expand the geographical availability of home detention and to promote home detention to Local Court magistrates in 2010 and the first half of 2011.⁷ The 2012 data in Figure 4.2

5. NSW Bureau of Crime Statistics and Research (unpublished data, ref: kg13-11321).

6. Audit Office of NSW, *NSW Auditor-General's Report: Home Detention*, Performance Audit Report (NSW Auditor-General, 2010) 19-20.

7. Audit Office of NSW, *NSW Auditor-General's Report: Home Detention*, Performance Audit Report (NSW Auditor-General, 2010) 5.

shows that these changes may have helped to prevent further decline in the use of home detention.

Use of home detention in other jurisdictions

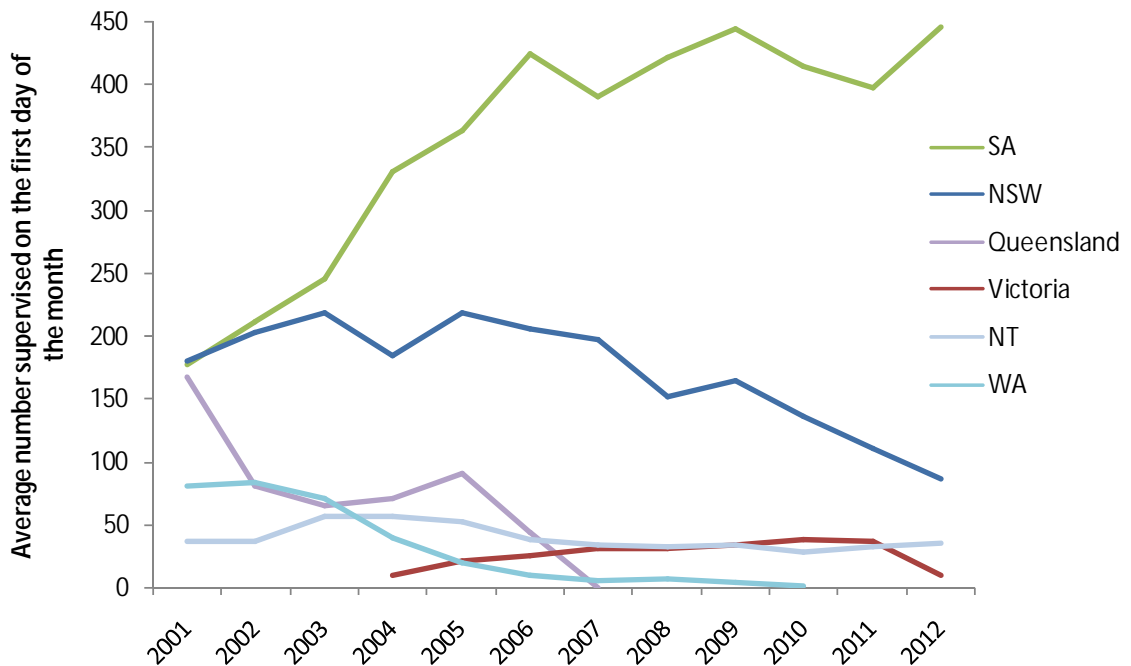
- 4.9 Home detention is also little used in other jurisdictions. It has never been used in Tasmania and has been abolished as a sentence in WA (in 2003), the ACT (in 2005), Queensland (in 2006) and Victoria (in 2011). It is still used in the NT and NZ.
- 4.10 In SA, home detention exists as an annexure to other sentences rather than as a sentence in its own right. An offender who has been sentenced to a term of imprisonment that has been suspended on compassionate grounds may have a home detention condition as part of the bond attached to their suspended sentence.⁸ At the discretion of SA Correctional Services, some prisoners are able to serve the last year of their non-parole period by way of home detention.⁹ Home detention may also form part of bail supervision conditions in SA.¹⁰
- 4.11 Figure 4.3 shows the number of people managed by corrective services on “restricted movement” type orders in Australia, counted on the first day of the month. “Restricted movement” is the category used by corrective services around Australia to describe home detention type orders. Where Figure 4.3 shows offenders being supervised on restricted movement orders in a jurisdiction beyond the year that home detention was abolished, the figures relate to offenders serving sentences of home detention imposed before the abolition date.

8. *Criminal Law (Sentencing) Act 1988* (SA) s 38.

9. *Correctional Services Act 1982* (SA) pt 4 div 6A.

10. B Merner, C Ross and G Gardiner, *Sentencing Legislation Amendment (Abolition of Home Detention) Bill 2011*, Research Brief No 8 (Victorian Parliamentary Library, 2011) 10.

Figure 4.3 Use of “restricted movement” type orders (home detention) across Australia 2001-2012



Source: ABS 4512.0 *Corrective Services, Australia* (June 2012, March 2009, March 2006 and March 2003 releases). The ACT has been excluded due to small numbers (<5). See also methodological notes at the end of this report.

- 4.12 Less than 50 offenders were supervised on home detention at any one time in the NT over the past 12 years. Similarly, less than 50 offenders have been supervised at one time in Victoria. An evaluation of the Victorian home detention program in 2006 found that less than half of the budgeted home detention places were occupied at any one time.¹¹ Use of home detention was low and falling in Queensland and WA in the period leading up to the abolition of the sentence.
- 4.13 Only SA has experienced an increase in the number of offenders being supervised under home detention arrangements but the numbers are still small at 446 offenders in 2012. Overall, less than 580 offenders were being supervised across Australia on home detention orders in 2012.
- 4.14 Home detention is more often used in NZ than any Australian state or territory. In 2011, 3.3% of offenders in NZ (2800 people) received home detention as their most serious sentence.¹²

Home detention completion and reoffending rates

- 4.15 Australian jurisdictions report annually to the Productivity Commission on the successful completion rates for restricted movement type orders. An order is

11. Melbourne Centre for Criminological Research, *Home Detention in Victoria: Final Evaluation Report* (Corrections Victoria, 2006) 31-32.

12. Statistics New Zealand, *Convicted Offenders by ANZSOC 1980-2011*, available at <www.stats.govt.nz>.

successfully completed when its term comes to an end without the order being revoked due to a breach by the offender.

- 4.16 Completion rates in NSW averaged 77% between 1996-07 and 2004-05 but steadily improved to 90.5% in 2011-12.¹³ Completion rates in 2011-12 were 86.0% for the NT and 81.6% for SA.¹⁴ In Victoria, the completion rate in 2011-12 was 96.6%.¹⁵ This rate relates to offenders who commenced on Victorian orders before home detention was abolished. Completion rates in Queensland averaged 87% over 1996-07 to 2004-05 (home detention was abolished in Queensland in 2006).¹⁶ Recent completion rates are not published for NZ but averaged 89% from 1999-00 to 2004-05.¹⁷
- 4.17 The NSW Auditor-General reported in 2010 that, of the offenders who completed home detention in 2006-07 in NSW, 36% had reoffended within two years.¹⁸ This is significantly lower than the reoffending rate for offenders released from full-time custody: the NSW Bureau of Crime Statistics and Research (BOCSAR) found that, of the offenders released from prison in 2004, 61% were reconvicted within two years.¹⁹ These results are not directly comparable due to the differences in index years (2004 compared to 2006-07) and in the characteristics of offenders who serve their sentences in full-time custody compared to those who serve them in home detention, as offenders at lower risk of reoffending are more likely to be suitable for home detention. However, the large disparity in reoffending rates, as well as high home detention completion rates, suggest that home detention may be an effective sentence. At the same time, the very small number of people receiving the sentence raises questions about its potential.

Intensive correction orders

- 4.18 Intensive correction orders (ICOs) were introduced in October 2010 in place of the sentence of periodic detention.²⁰ A court that has sentenced a person to up to two

13. M Henderson, *Benchmarking Study of Home Detention Programs in Australia and New Zealand* (National Corrections Advisory Group, 2006) 74; Productivity Commission, *Report on Government Services* (2013) Table 8A.31.

14. Productivity Commission, *Report on Government Services* (2013) Tables 8A.37, 8A.49, 8A.55 and 8A.75.

15. Productivity Commission, *Report on Government Services* (2013) Tables 8A.37, 8A.49, 8A.55 and 8A.75.

16. M Henderson, *Benchmarking Study of Home Detention Program in Australia and New Zealand* (National Corrections Advisory Group, 2006) 74.

17. M Henderson, *Benchmarking Study of Home Detention Program in Australia and New Zealand* (National Corrections Advisory Group, 2006) 74.

18. Audit Office of NSW, *NSW Auditor-General's Report: Home Detention*, Performance Audit Report (NSW Auditor-General, 2010) 28.

19. N Smith and C Jones, *Monitoring Trends in Re-offending Among Offenders Released from Prison*, Crime and Justice Bulletin No 117 (NSW Bureau of Crime Statistics and Research, 2008) 7. See also ch 3 at [3.73].

20. For more information about ICOs see NSW Law Reform Commission, *Sentencing*, Report 139 (2013) ch 9; NSW Sentencing Council, *Sentencing Trends and Practices* (2011).

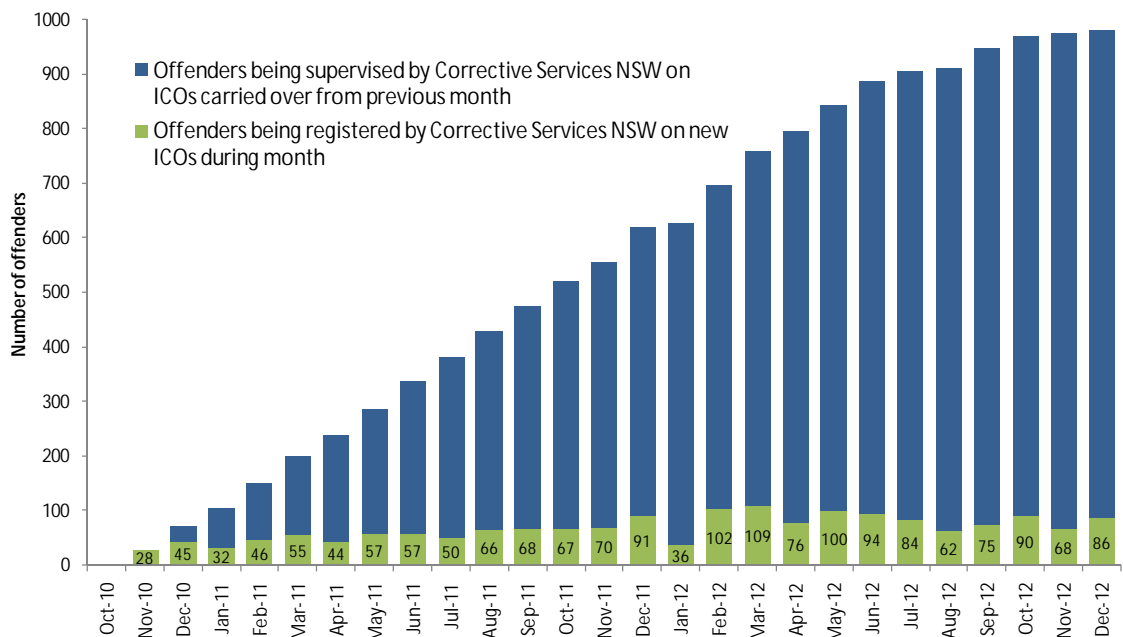
years imprisonment may order that the sentence be served in the community by way of an ICO.²¹

- 4.19 All ICOs include mandatory conditions about reporting and place of residence, curfews and submitting to electronic monitoring if required, intervention programs, drug and alcohol testing and 32 hours per month of community service.²² A court may also impose additional conditions relating to employment, association and alcohol consumption and any other condition the court deems necessary to reduce the likelihood of the person reoffending.²³ Corrective Services NSW monitors the offender's compliance with the conditions. If an ICO is revoked, the offender must serve the remainder of the sentence in full-time custody unless it is later reinstated.

Use of ICOs in NSW

- 4.20 The first ICO was made by a NSW court in November 2010. In 2012, 0.92% of all NSW offenders (898 people) sentenced in the Local, District or Supreme Courts received an ICO as their principal penalty.²⁴ Figure 4.4 shows the number of offenders commencing ICOs with Corrective Services NSW each month and the total number being supervised each month between October 2010 and December 2012.

Figure 4.4 Use of ICOs in NSW since their introduction

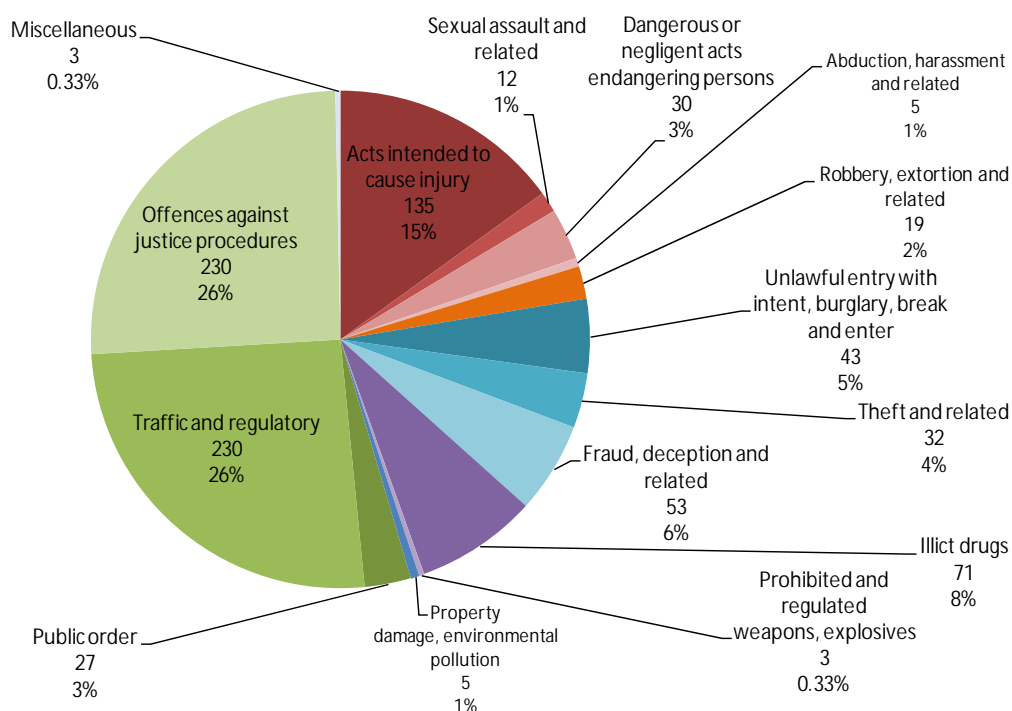


Source: Corrective Services NSW (unpublished data). The low number of commencements in January 2012 is likely due to the part closure of the courts in that month. See also methodological notes at the end of this report.

21. Crimes (Sentencing Procedure) Act 1999 (NSW) s 7.
22. Crimes (Administration of Sentences) Regulation 2008 (NSW) cl 175.
23. Crimes (Administration of Sentences) Regulation 2008 (NSW) cl 176; Crimes (Administration of Sentences) Act 1999 (NSW) s 81(4)(b).
24. NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics* (2012).

- 4.21 The number of offenders commencing on ICOs each month has increased since their introduction in October 2010 to a peak in March 2012 but seems to have slowed since then. In December 2012 (the latest available data), Corrective Services NSW had an intake of 86 new offenders on ICOs, and overall there were 980 offenders being managed on ICOs at the end of the month.²⁵
- 4.22 The NSW Bureau of Crime Statistics and Research (BOCSAR) has reported that the profile of offenders receiving ICOs is similar to the profile of offenders sentenced to periodic detention before its abolition.²⁶ Figure 4.5 shows the most serious offence committed by offenders sentenced to an ICO in 2012.

Figure 4.5 Most serious offence committed by NSW offenders sentenced to an ICO in 2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)*. The offences shown in this chart in the “homicide and related offences” category were all manslaughter/driving causing death offences. Values of <0.5% are shown to two decimal places. See also methodological notes at the end of this report.

- 4.23 The most serious offence of offenders sentenced to an ICO in 2012 were more varied than the offences of those sentenced to home detention (compare Figure 4.1). However, the most serious offences of the majority of offenders were still traffic/regulatory offences or an offence against justice procedures. There were 208 offenders sentenced to an ICO for “offences against justice procedures” who were actually being resentenced after a breach of another penalty: 149 after breach of a suspended sentence, 17 after revocation of a community service order and 42 after revocation of a good behaviour bond.²⁷

25. Corrective Services NSW (unpublished data).

26. C Ringland, *Intensive Correction Orders vs Other Penalties: Offender Profiles*, Crime and Justice Bulletin No 163 (NSW Bureau of Crime Statistics and Research, 2012).

27. NSW Bureau of Crime Statistics and Research (unpublished data, ref: kg13-11321).

- 4.24 A court may only impose an ICO after Corrective Services NSW has assessed the offender as suitable.²⁸ BOCSAR has analysed all the suitability assessments carried out by Corrective Services NSW until September 2012 and found that about 55% resulted in an ICO.²⁹ Of those offenders who did not receive an ICO after the suitability assessment process, 58% served their sentence in full-time imprisonment, 4% served it by way of home detention and 24% received a suspended sentence. During the period, 14% of the assessed offenders who did not receive an ICO also did not receive a custodial penalty.

Use of ICOs (or similar) in other jurisdictions

- 4.25 Orders similar to the ICO currently exist in WA and Queensland. In WA, the intensive supervision order (ISO) may be imposed for up to two years and carries a compulsory supervision requirement. A court may also attach optional conditions requiring intervention programs, community service or a curfew.³⁰
- 4.26 The most recent published data for WA with unique offender counts indicates that 1215 distinct adult offenders commenced on an ISO in 2006 and, as at 31 December 2006, there were 1671 adult ISOs in operation in WA.³¹ However, use of the ISO seems to have fallen since then, as there were only 1037 adult ISOs in operation on 13 June 2013.³²
- 4.27 In Queensland, a court may make an ICO for a period of up to 12 months.³³ All Queensland ICOs include mandatory supervision and reporting conditions and require that the offender participate in intervention programs and community service “as directed”.³⁴ The offender cannot be required to attend programs or perform community service for more than 12 hours per week.³⁵ The default position is that the offender will spend one-third of the directed hours participating in programs and two-thirds of the directed hours performing community service but the ratio can be altered at the discretion of the court or Corrective Services.³⁶ As in WA, use of the ICO in Queensland seems to be declining. In 2006-07, 571 distinct offenders were managed on an ICO in Queensland over the year. This dropped to only 215 distinct offenders in 2011-12.³⁷
- 4.28 ICOs were used in Victoria until they were abolished in January 2012. The Victorian ICO was available for offenders sentenced to a term of imprisonment of up to one

28. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 67(1).

29. C Ringland, *Sentencing Outcomes for Those Assessed for Intensive Correction Order Suitability*, Bureau Brief No 86 (NSW Bureau of Crime Statistics and Research, 2013).

30. *Sentencing Act 1995* (WA) pt 10.

31. N Loh, M Mallah and R Walsh, *Community and Parole Orders: Western Australia 2006* (University of Western Australia Crime Research Centre, 2009) 5. The number of current ISOs will be greater than the number of offenders serving those orders as an offender can be serving more than one ISO at a time.

32. WA Department of Corrective Services, *Weekly Offender Statistics Report* (20 June 2013).

33. *Penalties and Sentences Act 1992* (Qld) s 112.

34. *Penalties and Sentences Act 1992* (Qld) s 114(1).

35. *Penalties and Sentences Act 1992* (Qld) s 114(2).

36. *Penalties and Sentences Act 1992* (Qld) s 114(3).

37. Qld Department of Community Safety, *Annual Report 2011-12* (2012) 20.

year and included core supervision conditions. Offenders were also required to participate in intervention programs and community service for at least 12 hours per week for either the duration of the ICO or a shorter term set by the court.³⁸ On average, approximately 2% of Victorian offenders (between 1200 and 1600 offenders annually) received an ICO as their principal penalty when the order was in use.³⁹

- 4.29 In NZ, the sentence of intensive supervision was introduced in 2007 and is somewhat similar to an ICO. Courts may impose sentences of intensive supervision for up to two years and they are explicitly directed at the offender's rehabilitation and reintegration needs.⁴⁰ Offenders are subject to mandatory reporting and supervision requirements and the court may also impose special conditions relating to intervention programs. However, the court is specifically excluded from requiring the offender to perform any community work as a condition of the sentence.⁴¹ Use of the sentence has been slowly growing since it was introduced and, in 2011, 1.8% of offenders (1540 people) were sentenced to intensive supervision as their most serious sentence.⁴²

Breach and completion of ICOs

- 4.30 As at the end of December 2011, 120 offenders had successfully completed a NSW ICO and 67 people had had their ICO revoked, giving a successful completion rate of 64.2%.⁴³ The majority of revocations were a result of breaches of the good behaviour or community work components of the order.⁴⁴ Queensland reported a similar completion rate of 68% in 2011-12, up from 57% in 2006-07.⁴⁵ The completion rates for ISOs in WA and intensive supervision in NZ are not published.
- 4.31 BOCSAR is currently undertaking a study of reoffending and ICOs but it was not complete at the time of publication of this report.

Suspended sentences

- 4.32 A court that has sentenced an offender to up to two years imprisonment may order that the execution of the sentence be suspended on the condition that the offender enters into a good behaviour bond.⁴⁶ The bond may include supervision conditions, in which case the offender is managed by Corrective Services NSW for the duration

38. *Sentencing Act 1991* (Vic) s 20 (as at 1 January 2012 – since amended).

39. Victorian Sentencing Advisory Council, *Sentencing Statistics Magistrates Court and Higher Courts, 2004-05 to 2011-12*, <<http://www.sentencingcouncil.vic.gov.au/landing/about-sentencing/sentencing-statistics>>.

40. *Sentencing Act 2002* (NZ) s 54B-54C.

41. *Sentencing Act 2002* (NZ) s 54G-I.

42. Statistics New Zealand, *Convicted Offenders by ANZSOC 1980 – 2011*, <www.stats.govt.nz>.

43. NSW Sentencing Council, *Sentencing Trends and Practices* (2011).

44. NSW Sentencing Council, *Sentencing Trends and Practices* (2011).

45. Queensland Department of Community Safety, *Annual Report 2011-12*, 19.

46. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 12. For more on suspended sentences, see NSW Law Reform Commission, *Sentencing*, Report 139 (2013) ch 10; NSW Sentencing Council, *Suspended Sentences: A Background Report by the NSW Sentencing Council* (2011).

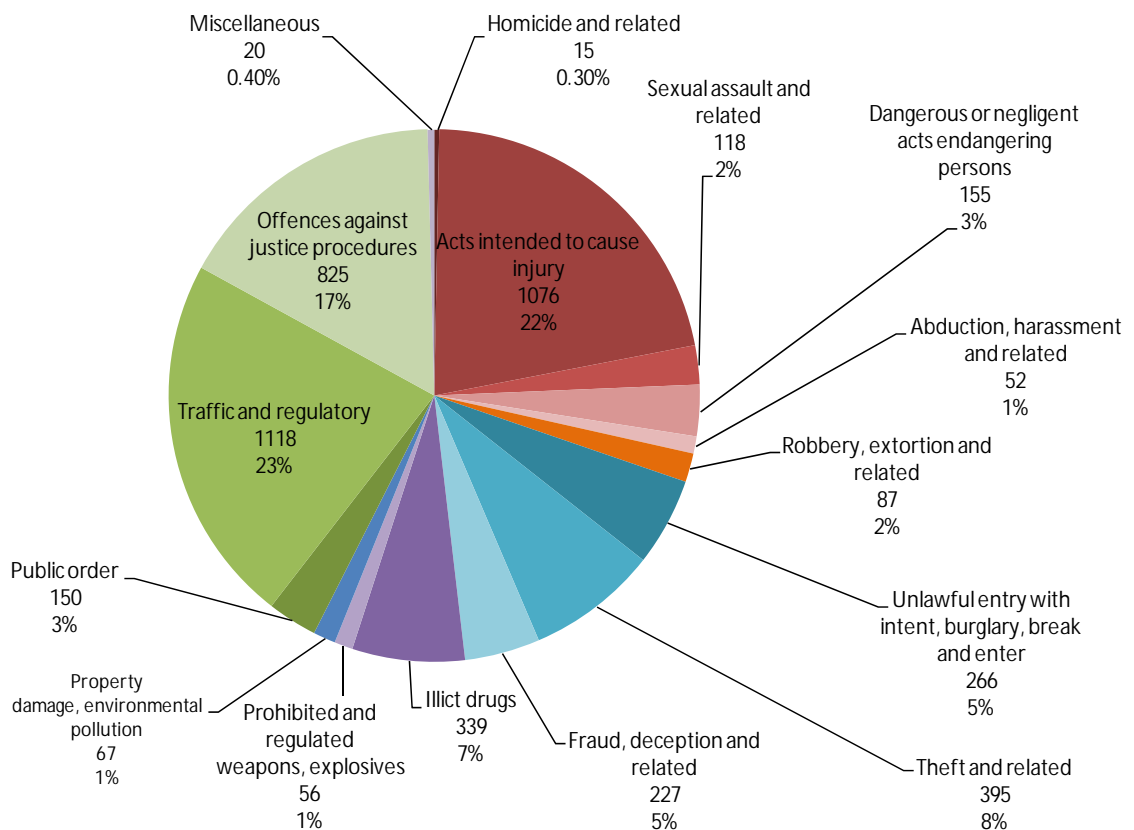
of those conditions. If the bond attached to a suspended sentence is revoked due to a breach, the offender then usually serves the sentence of imprisonment that was suspended.⁴⁷

Use of suspended sentences in NSW

4.33 Suspended sentences were reintroduced in April 2000. Approximately 5% of offenders received a suspended sentence as their principal penalty in 2012 and the average length of suspended sentences imposed in the Local Court was 9.7 months. The average length in the higher courts was 18.7 months.⁴⁸ The NSW Sentencing Council has reported that the median duration of suspended sentences imposed during 2010 in the Local Court was 9 months and the most common duration was 12 months (26.2%).⁴⁹ In the higher courts, the median duration was 18 months and the most common duration was 24 months (32.2%).⁵⁰

4.34 Figure 4.6 shows the most serious offences of offenders sentenced to a suspended sentence in the Local, District or Supreme Courts in 2012.

Figure 4.6 Most serious offence committed by NSW offenders sentenced to a suspended sentence in 2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)*. Values of <0.5% are shown to two decimal places. See also methodological notes at the end of this report.

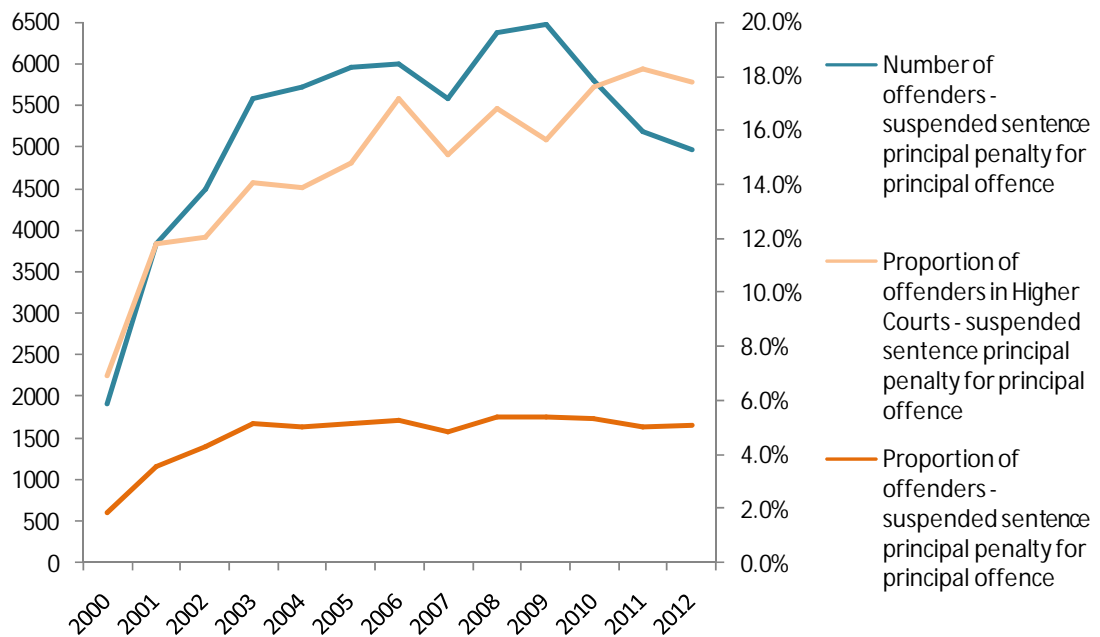
47. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 98(3) and 99(1)(c).
 48. NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)*.
 49. NSW Sentencing Council, *Suspended Sentences (2011)* [3.10].
 50. NSW Sentencing Council, *Suspended Sentences (2011)* [3.11].

- 4.35 The most serious offences of the majority of offenders who had a suspended sentence imposed in 2012 were categorised as “acts intended to cause injury”, “traffic and regulatory offences” or “offences against justice procedures”. Assault was the most common offence in the “acts intended to cause injury” category (882 of 1076 offenders). Offenders who have committed offences involving violence are more likely to receive a suspended sentence than home detention or an ICO (compare Figures 4.1, 4.5 and 4.6).⁵¹
- 4.36 Of offenders with the most serious offence categorised as “offences against justice procedures” (825 offenders), 497 were being resentenced after a breach of a previous sentence. Twenty of these offenders were given a new suspended sentence for breach of a previous suspended sentence, 204 were being resentenced after revocation of a community service order, and 273 were being resentenced after revocation of a good behaviour bond.
- 4.37 BOCSAR research has found that this offence profile has changed over time. A significantly higher proportion of offenders given a suspended sentence had driving and traffic offences as their most serious offence in 2009 compared to when they were first reintroduced in 2000.⁵² In 2000, 20.4% of the offenders who received suspended sentences had driving and traffic offences as their most serious offence compared to 27.3% in 2009. Over the same period there has been a commensurate decrease in the number of offenders given suspended sentences who are property offenders, from 28.1% in 2000 to 18.0% in 2009.
- 4.38 Use of suspended sentences has been generally stable since 2003 with approximately 5% of all offenders receiving a suspended sentence as their principal penalty (see Figure 4.7).

51. Although, as noted above at [4.4], there are restrictions on the use of home detention for violent offences: *Crimes (Sentencing Procedure) Act 1999* (NSW) s 76.

52. L Snowball, *The Profile of Offenders Receiving Suspended Sentences*, Bureau Brief No 63 (NSW Bureau of Crime Statistics and Research, 2011) 5.

Figure 4.7 Use of suspended sentences in NSW 2000-2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2000-2012)*. See also methodological notes at the end of this report.

- 4.39 Although the use of suspended sentences is stable overall, their use is still increasing in the higher courts. In 2003, when their use stabilised in the Local Court, 14.04% of offenders in the higher courts (412 people) received a suspended sentence as their principal penalty but this had increased to 17.8% (498 people) by 2012.
- 4.40 Since BOCSAR records of supervision conditions began in 2004, the proportion of suspended sentences that carry a supervision condition has been fairly stable in both the Local Court and the higher courts. On average, just over half of the suspended sentences imposed in the Local Court are supervised, compared to about two-thirds of suspended sentences imposed in the higher courts.⁵³
- 4.41 Suspended sentences were reintroduced as an alternative to full-time imprisonment and were intended to reduce the number of offenders receiving full-time custodial sentences.⁵⁴ However, researchers have found that the introduction of suspended sentences in 2000 has had only a small effect on rates of full-time imprisonment. Instead, suspended sentences have tended to displace lesser, non-custodial penalties like community service orders.⁵⁵

53. NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2004-2012)*.

54. L Snowball, *The Profile of Offenders Receiving Suspended Sentences*, Bureau Brief No 63 (NSW Bureau of Crime Statistics and Research, 2011) 1.

55. G Brignell and P Poletti, *Suspended Sentences in NSW*, Sentencing Trends and Issues No 29 (Judicial Commission of NSW, 2003); P Poletti and S Vignaendra, *Trends in the Use of Section 12 Suspended Sentences*, Sentencing Trends and Issues No 34 (Judicial Commission of NSW, 2005); L McInnis and C Jones, *Trends in the Use of Suspended Sentences in NSW*, Bureau Brief No 47 (NSW Bureau of Crime Statistics and Research, 2010).

4.42 The effect has been largest in the higher courts, where use of both community service orders and s 9 good behaviour bonds has decreased since the introduction of suspended sentences.⁵⁶ The trend of increasing use of suspended sentences in the higher courts shown in Figure 4.7 indicates that this displacement may not yet have stabilised.

Use of suspended sentences in other jurisdictions

4.43 Figure 4.8 compares the use of suspended sentences in NSW, Victoria and SA. Victoria and SA were selected for comparison because their published sentencing statistics use similar data sources and counting rules to BOCSAR’s *Criminal Courts Statistics* for NSW.

Figure 4.8 Suspended sentences in NSW, Victoria and SA 1999-2011



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1999-2011)*; SA Office of Crime Statistics and Research, unpublished data (1999-2011); Victorian Sentencing Advisory Council *Sentencing Statistics 2004-05 to 2011-12* (earlier comparable data is not available for Victoria). See also methodological notes at the end of this report.

4.44 Figure 4.8 shows that suspended sentences are used more often in SA and Victoria compared to NSW. In SA, there is no limit on the period of imprisonment that may be suspended by a court and, unlike in NSW, the court may order that a sentence be partially served in custody with the remainder suspended.⁵⁷

4.45 In Victoria, the Magistrates’ Court may impose a suspended sentence of up to two years. Suspended sentences are available in the Victorian higher courts for up to

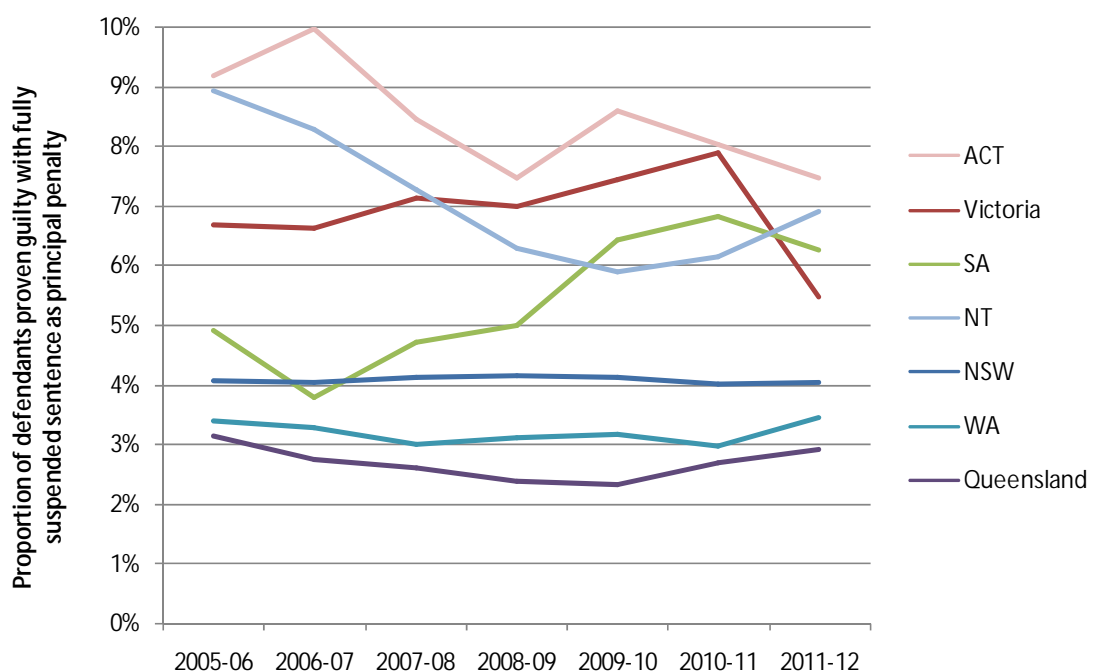
56. L McInnis and C Jones, *Trends in the Use of Suspended Sentences in NSW*, Bureau Brief No 47 (NSW Bureau of Crime Statistics and Research, 2010) 3.

57. *Criminal Law (Sentencing) Act 1988* (SA) s 38.

three years.⁵⁸ The Victorian sentencing legislation was amended in 2011 so that courts are only able to impose a suspended sentence for an offence that is not a “serious” or “significant” offence.⁵⁹ In 2013, the Victorian Government legislated to phase out suspended sentences completely.⁶⁰

- 4.46 The Australian Bureau of Statistics (ABS) also collects and publishes data on the use of suspended sentences of imprisonment across Australia. Figure 4.9 shows the use of fully suspended sentences as a proportion of total offenders found guilty in each state or territory. Note that the data in Figure 4.9 is not comparable to that in Figure 4.8 due to different counting rules (see methodological notes at the end of this report for more details).

Figure 4.9 Use of fully suspended sentences across Australia



Source: ABS 4513.0 Criminal Courts (2010-11, 2011-12). Tasmania has been excluded due to a significant break in the data series in 2008-09. See also methodological notes at the end of this report.

- 4.47 Figure 4.9 confirms that suspended sentences are more commonly used in Victoria, SA, the ACT and the NT, than they are in NSW. Use of fully suspended sentences in Victoria dropped sharply in 2011-12, probably as a result of the amendments to restrict the use of suspended sentences to offences that are not “serious” or “significant”. Queensland and WA have slightly lower use of suspended sentences than NSW, though it is within 1.5 percentage points.

58. *Sentencing Act 1991* (Vic) s 27.

59. *Sentencing Act 1991* (Vic) s 27.

60. *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic); Victoria, *Parliamentary Debates*, Legislative Assembly, 17 April 2013, 1259 (Robert Clark, Attorney-General).

Breach of suspended sentences and recidivism

- 4.48 The NSW Sentencing Council has reported that, of the offenders who received a suspended sentence in the Local Court in 2008, approximately 25% committed a further offence during the period of their sentence suspension.⁶¹ In other words, suspended sentences had a successful completion rate of approximately 75%. Offenders who had supervision as a condition of the bond attached to their suspended sentence were slightly more likely to reoffend during their sentence period. This is probably a result of the characteristics of offenders placed on supervised rather than unsupervised suspended sentences or the fact that breaches of supervised suspended sentences are more easily detected.⁶²
- 4.49 Offenders on long suspended sentences of one year or more have been found to be somewhat less likely to reoffend than offenders serving a suspended sentence of less than one year.⁶³ Of the offenders who received a suspended sentence in the NSW Local, District or Supreme Courts between 2006 and 2008, 52.3% of those with a suspended sentence of one year or more had reoffended after three years, compared to 58.1% of the offenders serving a suspended sentence of less than one year. The effect remained even after other variables were controlled for.
- 4.50 Some researchers have also analysed recidivism rates for offenders sentenced with a suspended sentence compared to offenders who received other penalties. They have found that suspended sentences (either supervised or unsupervised) do no more to deter reoffending than a supervised good behaviour bond.⁶⁴ When variables like offence seriousness, plea, prior convictions and prior imprisonment were controlled for, the recidivism rates of offenders on suspended sentences were the same as rates for those on supervised bonds.
- 4.51 There is also no significant difference in recidivism rates for offenders who received a suspended sentence compared to those who received a full-time custodial sentence, as long as the offenders had not experienced a prior prison sentence.⁶⁵ The study compared matched offenders who received either a suspended or a custodial sentence between 2002 and 2004, and whether they had reoffended up to 2007. For offenders who had not previously been imprisoned, recidivism rates were the same for both custodial and suspended sentences. When the analysis was confined to offenders who had previously experienced imprisonment, however, offenders who received a custodial sentence were significantly more likely to

61. NSW Sentencing Council, *Suspended Sentences: A Background Report by the NSW Sentencing Council* (2011) 23.

62. NSW Sentencing Council, *Suspended Sentences: A Background Report by the NSW Sentencing Council* (2011) 23-24.

63. S Poynton, D Weatherburn and L Bartels, "Good behaviour bonds and reoffending: The effect of bond length" (2013) *Australian and New Zealand Journal of Criminology* (in press); see also S Poynton, *Bonds, Suspended Sentences and Re-offending: Does the Length of the Order Matter?* (BOCSAR's Applied Research in Crime and Criminal Justice conference, 2013).

64. D Weatherburn and L Bartels, "The Recidivism of Offenders Given Suspended Sentences in New South Wales, Australia" (2008) 48 *British Journal of Criminology* 667, 677.

65. R Lulham, D Weatherburn and L Bartels, *The Recidivism of Offenders Given Suspended Sentences: A Comparison With Full-Time Imprisonment*, Crime and Justice Bulletin No 136 (NSW Bureau of Crime Statistics and Research, 2009) 10.

reoffend than those who received a suspended sentence.⁶⁶ A Victorian study found an even stronger result, with offenders who were imprisoned 25% more likely to reoffend than those who received a suspended sentence after controlling for other factors.⁶⁷

- 4.52 Of the 824 NSW offenders dealt with by a court for breach of a suspended sentence in 2012, 488 (59%) had the suspended term of imprisonment imposed. Another 173 offenders (21%) had the term of imprisonment imposed but were ordered to serve it by way of an ICO or home detention, and 129 (16%) offenders did not have a new penalty imposed.⁶⁸

Rising of the court

- 4.53 Courts in NSW can sentence an offender to the “rising of the court”, which means the offender is sentenced to imprisonment until the court adjourns. In practice, the court usually adjourns as soon as the sentence has been imposed.⁶⁹
- 4.54 In 2012, only 29 offenders were sentenced to the rising of the court. Figure 4.10 shows the use of this penalty in NSW since 1997.

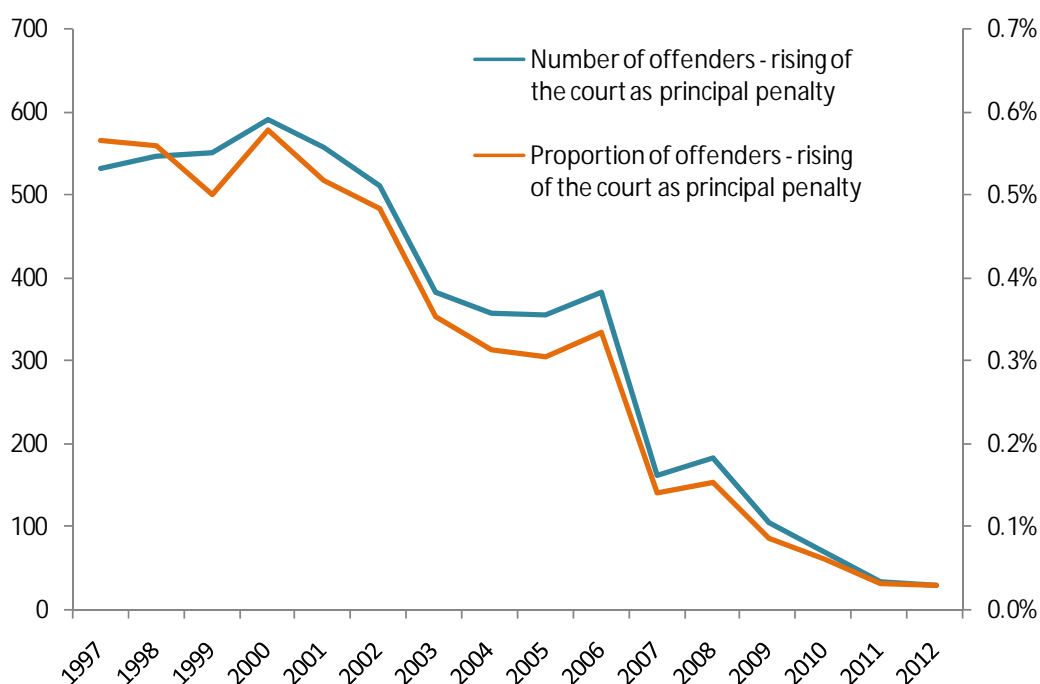
66. R Lulham, D Weatherburn and L Bartels, *The Recidivism of Offenders Given Suspended Sentences: A Comparison With Full-Time Imprisonment*, Crime and Justice Bulletin No 136 (NSW Bureau of Crime Statistics and Research, 2009) 10.

67. K Gelb, G Fisher and N Hudson, *Reoffending Following Sentencing in the Magistrates' Court Of Victoria* (Victorian Sentencing Advisory Council, 2013) 25.

68. NSW Bureau of Crime Statistics and Research (unpublished data, ref: kg13-11321). A small number of cases are not included due to data recording issues.

69. I MacKinnell, *Sentenced to the Rising of the Court*, Sentencing Trends No 11 (Judicial Commission of NSW, 1996).

Figure 4.10 Use of rising of the court in NSW 1997-2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)*. There is a discontinuity in the trend lines between 2003 and 2004 is due to a reordering of the seriousness of the lesser penalties by BOCSAR at that time. See also methodological notes at the end of this report.

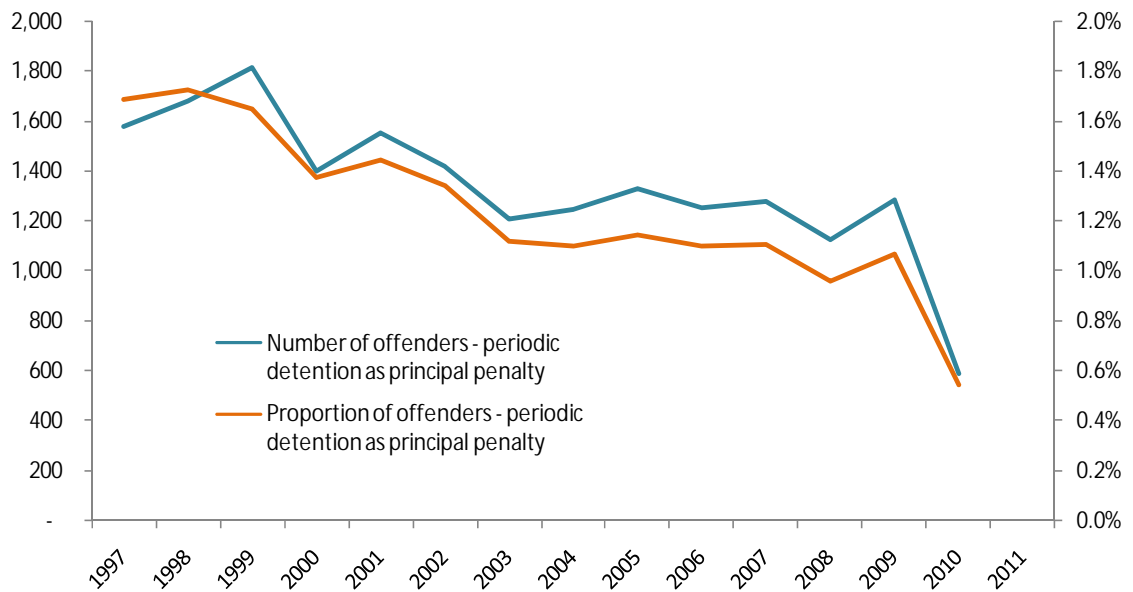
- 4.55 The sharpest drop in use of this penalty came in 2007 after the introduction of s 10A of the *Crimes (Sentencing Procedure) Act 1999* (NSW), which allows courts to convict an offender with no other penalty.

Periodic detention

- 4.56 Periodic detention was a sentence of imprisonment that involved the offender remaining in custody two days per week (usually the weekend) and living in the community five days per week. Subject to the offender's compliance, later stages of the sentence could involve two days per week of community service work instead of two days detention in custody.⁷⁰ Periodic detention was used in NSW until it was abolished in October 2010. Figure 4.11 shows the use of the sentence of periodic detention by the NSW Local, District and Supreme Courts from 1997 until 2010.

70. NSW Sentencing Council, *Review of Periodic Detention* (2007) 24-25.

Figure 4.11 Use of periodic detention in NSW 1997-2010



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2011)*. See also methodological notes at the end of this report.

- 4.57 It is clear from Figure 4.11 that periodic detention was never a frequently used sentence in NSW courts and that its use was declining even before it was abolished. In 2009, the last full year of periodic detention in NSW courts, approximately 1% of offenders received a sentence of periodic detention as their principal penalty.
- 4.58 Across Australia, periodic detention is currently only used in the ACT.⁷¹

71. *Crimes (Sentencing) Act 2005* (ACT) s 11.

5. Non-custodial sentences

Community service may be underused in NSW, as use of community service orders seems to be lower than in other jurisdictions and has been steadily decreasing since 1997. Use of fines has also steadily decreased, although fines are still the most commonly used sentence in NSW. Use of s 10 non-conviction orders has been fairly steady but the use of s 9 and s 10 good behaviour bonds has substantially increased since 1997.

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Community service orders

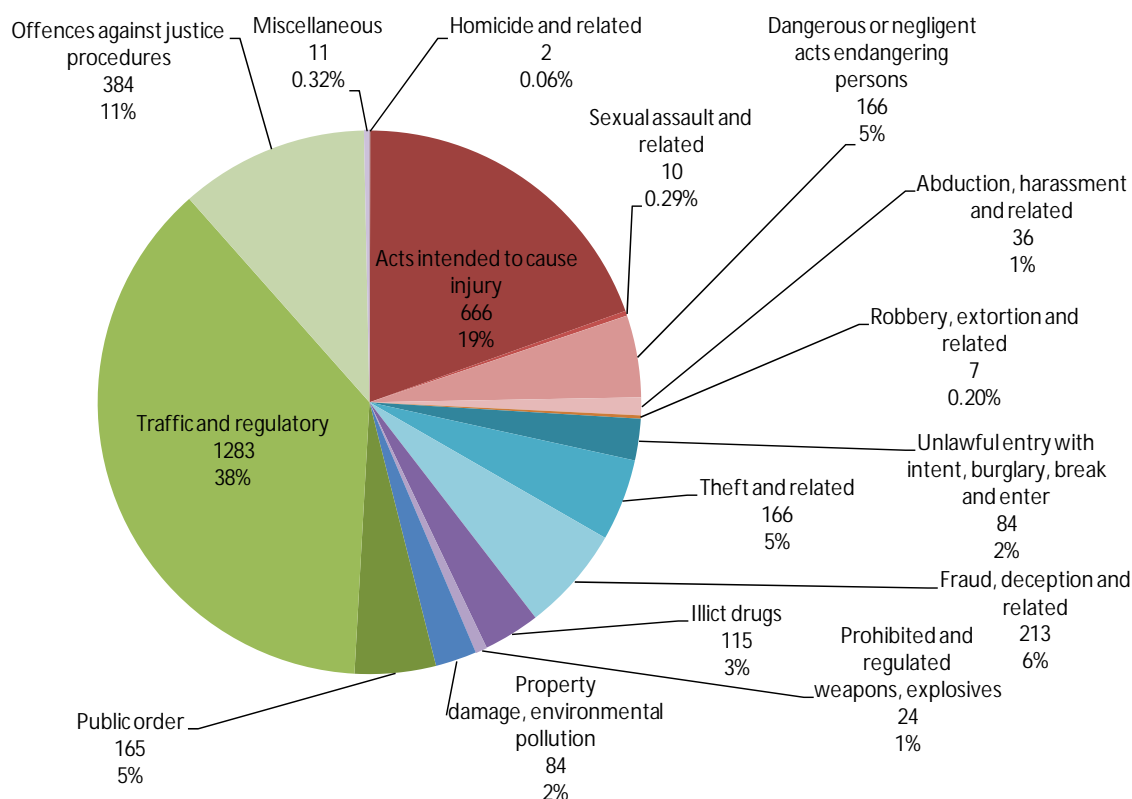
- 5.1 Courts may make a community service order (CSO) directing an offender to perform community service work for up to 500 hours.¹ Corrective Services NSW allocates offenders on CSOs to community work placements.

Use of CSOs in NSW

- 5.2 Figure 5.1 shows the most serious offence of offenders sentenced to a CSO by the Local, District or Supreme Courts in 2012.

1. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 8. For more information about community service orders see NSW Law Reform Commission, *Sentencing*, Report 139 (2013) ch 12.

Figure 5.1 Most serious offence committed by NSW offenders sentenced to a CSO as principal penalty in 2012



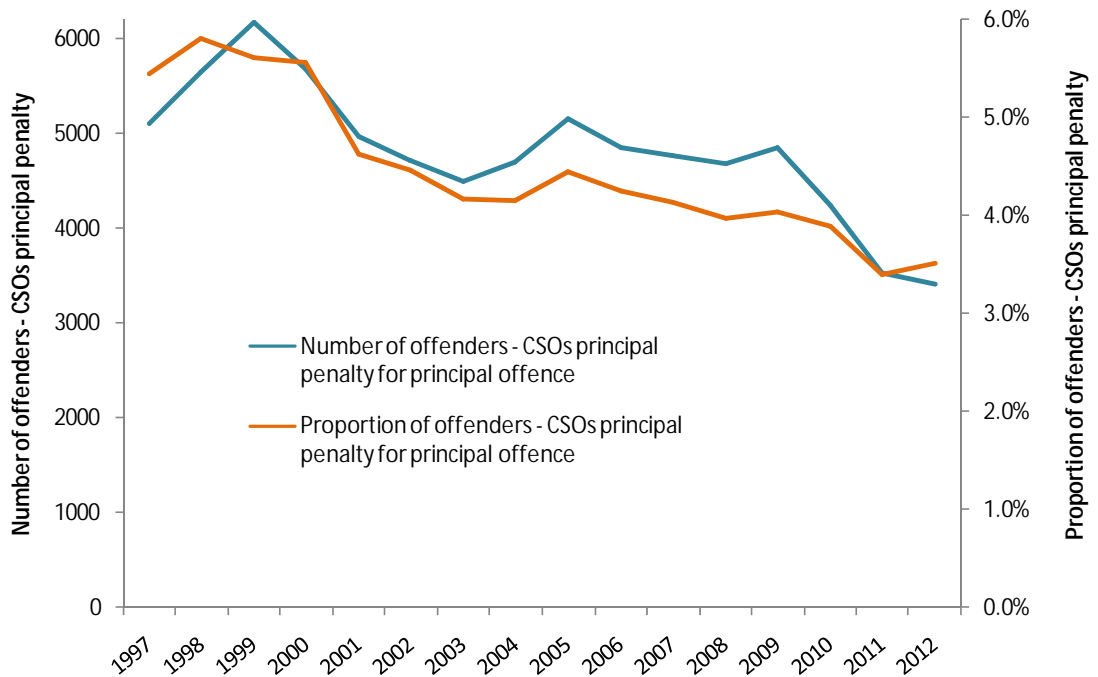
Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)*. The offences shown in this chart in the “homicide and related offences” category were all manslaughter/driving causing death offences. Values of <0.5% are shown to two decimal places. See also methodological notes at the end of this report.

- 5.3 The majority of CSOs are imposed for offences categorised as “traffic and regulatory offences”, “acts intended to cause injury” or “offences against justice procedures”. Of offenders whose most serious offence was categorised as “offences against justice procedures” (384 offenders), 65 received a CSO after breach of a previous CSO and 162 after revocation of a good behaviour bond.²
- 5.4 In 2012, the average number of hours of community work required under CSOs imposed in the Local Court was 138.5 hours. The average in the higher courts was 228.6 hours.³
- 5.5 The courts’ use of CSOs seems to have been in gradual decline over the past 16 years. Over 6000 offenders received a CSO as their principal penalty in the Local, District and Supreme Courts in 1999 but this has dropped to just 3416 in 2012. Use of CSOs has also been trending slowly downwards when measured as a proportion of sentences imposed in the Local, District and Supreme Courts. In 1997, 5.44% of offenders received a CSO as their principal penalty but this had fallen to 3.50% by 2012 (see Figure 5.2).

2. NSW Bureau of Crime Statistics and Research (unpublished data, ref: kg13-11321).

3. NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)*.

Figure 5.2 Use of community service orders in NSW 1997-2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)*. See also methodological notes at the end of this report.

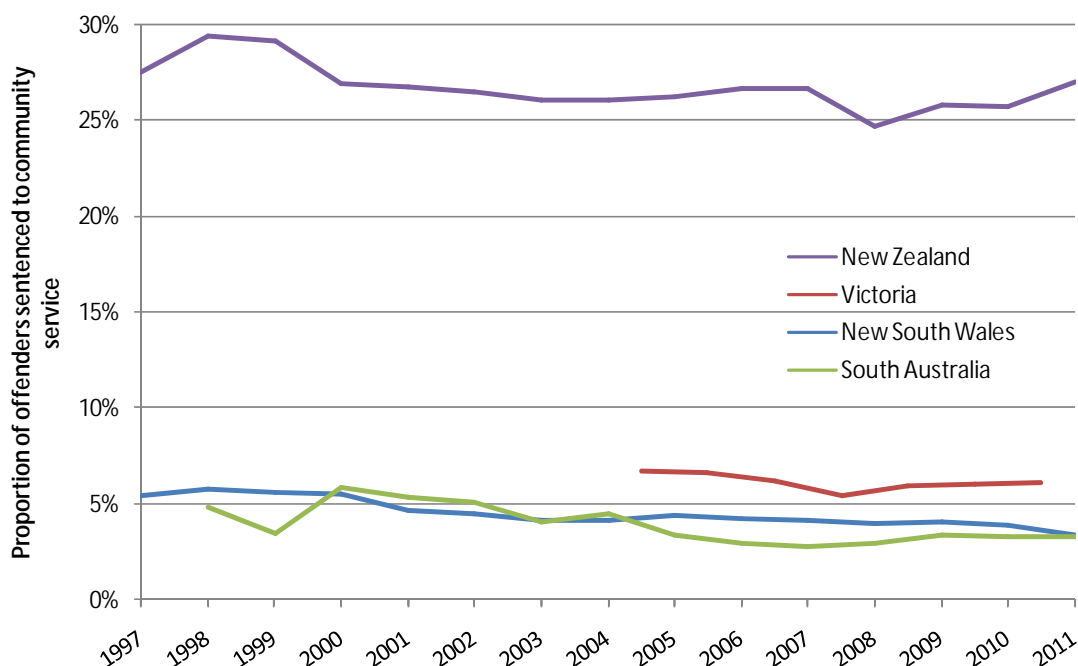
5.6 This observation is confirmed in a NSW Bureau of Crime Statistics and Research (BOCSAR) study from 2010.⁴ The study found that use of non-custodial penalties and particularly CSOs fell markedly after the introduction of suspended sentences in 2000. The study looked at offenders who received penalties more serious than fines. It found that 20.4% of people sentenced in the Local Court (excluding people sentenced with fines as the most serious penalty) received a CSO in 1999 but this nearly halved to 11.5% by 2008. Although the use of CSOs in the higher courts was already in decline in 2000, the study also reported that this trend was accelerated through the increasing use of suspended sentences from that time. In 1999, 9.1% of people receiving a penalty more serious than a fine in the higher courts received a CSO (a total of 252 people). By 2008, only 1% of these offenders (27 people) received a CSO.

Use of CSOs (or similar) in other jurisdictions

5.7 Community service work is available as a non-custodial sentencing option across Australia and NZ.⁵ Figure 5.3 compares the use of community service as a sentencing option in NSW, Victoria, NZ and SA over time. These jurisdictions were selected for comparison because their published sentencing statistics use similar data sources and counting rules to BOCSAR's *Criminal Courts Statistics* for NSW.

4. L McInnis and C Jones, *Trends in the Use of Suspended Sentences in NSW*, Bureau Brief No 47 (NSW Bureau of Crime Statistics and Research, 2010).
 5. Productivity Commission, *Report on Government Services* (2013) Table 8A.24.

Figure 5.3 Use of community service orders (or similar) in NSW and other jurisdictions 1997-2011



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2011)*; SA Office of Crime Statistics and Research, unpublished data (1998-2011); Statistics New Zealand; Victorian Sentencing Advisory Council *Sentencing Statistics 2004-05 to 2011-12* (earlier Victorian data has been excluded due to a break in the data series). Note that the comparable NZ proportion is in reality lower as offenders found guilty and then discharged without conviction are not included in the NZ denominator. See also methodological notes at the end of this report.

- 5.8 It is immediately apparent from Figure 5.3 that the sentence of community work is much more used by sentencing courts in NZ than in NSW, Victoria or SA. In NZ, courts may sentence offenders to between 40 and 400 hours of community work, which may also be later converted by the court into hours of training in basic work and living skills.⁶ The higher use of community work in NZ may be partially because NZ does not use good behaviour bonds, which are a common non-custodial option in Australia. Since 2005, NSW CSOs have been more frequently used than the equivalent SA community service order, although this may have changed in 2011.⁷
- 5.9 Figure 5.3 also shows that CSOs may be less used in NSW than the Victorian community-based order (replaced in 2012 by the broader community correction order).⁸ The community-based order included some supervision and at least one of the following “program” conditions: community service, strict supervision, drug or alcohol treatment, education programs, or drug or alcohol testing.⁹ Counts for the community-based order are therefore not directly comparable to the NSW CSO as

6. *Sentencing Act 2002* (NZ) s 55 and s 66A.

7. *Criminal Law (Sentencing) Act 1988* (SA) s 47. In SA a court may sentence a person to between 16 and 320 hours of community service over a maximum period of 18 months, to be performed at a rate of at least 4 hours per week.

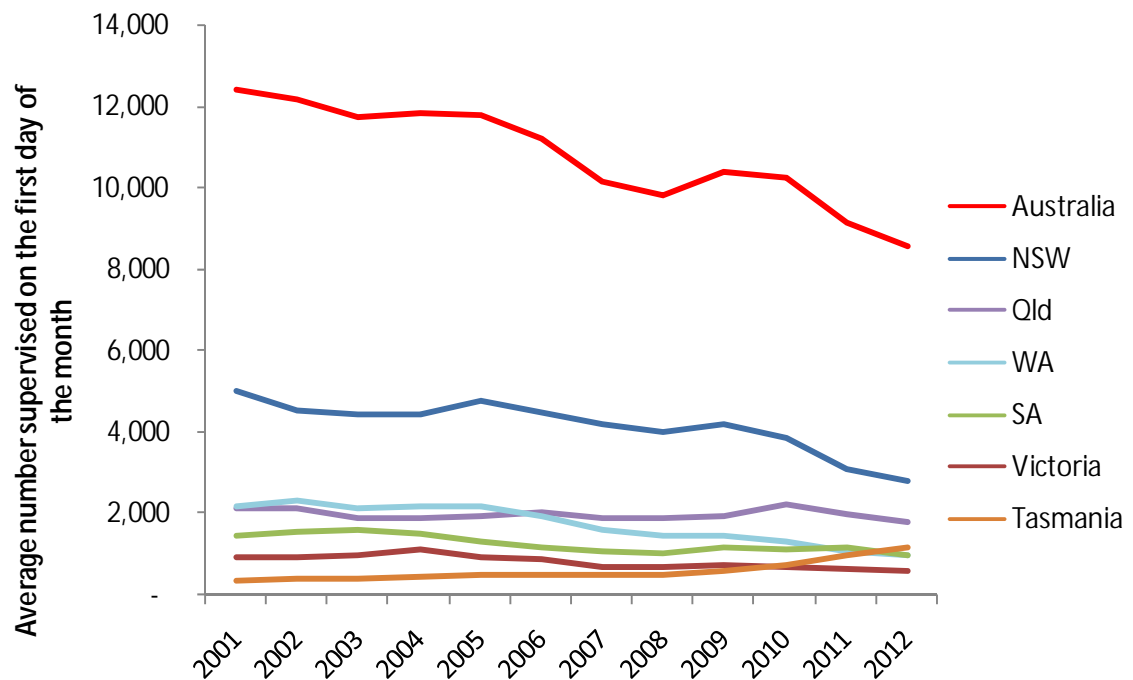
8. *Sentencing Act 1991* (Vic) s 37-38 (as at 1 January 2012 – since amended).

9. G Fisher, *Community Sentences in Victoria: A Statistical Profile* (Victorian Sentencing Advisory Council, 2007) 2.

the community-based order did not always involve a community work component. However, a study by the Victorian Sentencing Advisory Council found that in 2006-07, 78.5% of the community-based orders imposed included a community work condition.¹⁰ When this proportion is applied to the number of people who received community-based orders in Victoria to create an estimate of the use of community work as a sentence, the proportion of people being sentenced with community work in Victoria was still slightly higher than in NSW.

5.10 Another way of comparing the use of community service as a penalty across Australia is to examine the average number of offenders being supervised by corrective services on that type of order. Nationally, all Australian jurisdictions report on the number of offenders supervised on “reparation” type orders. The reparation category is limited to orders that involve an unpaid community work component and no other conditions.¹¹ The Australian Bureau of Statistics (ABS) further divides reparation orders into CSO type orders (“reparation–community service”), and reparation orders that require community work to pay a fine, like the NSW work and development order¹² (“reparation–fine option”). Figure 5.4 shows the average number of offenders supervised on the first day of the month in each state and territory on “reparation–community service” type orders, the closest approximation to a CSO.

Figure 5.4 Use of “reparation–community service” type orders across Australia



Source: ABS 4512.0 *Corrective Services, Australia* (June 2012, March 2009, March 2006 and March 2003 releases). The ACT and NT have been excluded due to small numbers (<300) but are included in the Australia total. See also methodological notes at the end of this report.

10. G Fisher, *Community Sentences in Victoria: A Statistical Profile* (Victorian Sentencing Advisory Council, 2007) 10.
 11. National Corrections Advisory Group, *Data Collection Manual 2011-12* (2012) 30.
 12. For more on the work and development order, see *Fines Act 1996* (NSW) pt 4 div 8.

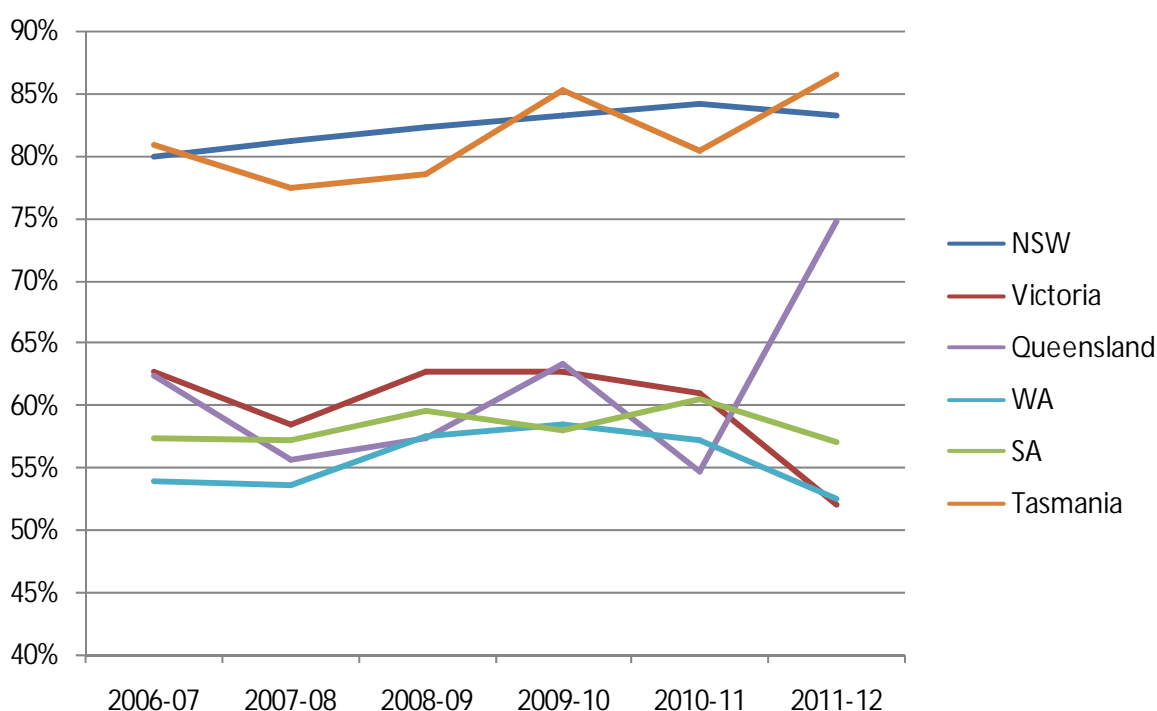
5.11 Use of community service seems to be declining across Australia, as well as in NSW. All jurisdictions except Tasmania appear to have stable or slowly falling use of “reparation–community service” type orders. The Australia-wide trend for falling numbers of people being managed on community service is significant given the overall increase in population at the same time.

Completion, breach and recidivism

5.12 According to Corrective Services NSW, the successful completion rate of CSOs has gradually increased from 79.91% in the 2006-07 financial year to 83.08% in the 2011-12 financial year.¹³

5.13 Nationally, all Australian jurisdictions report on the successful completion rates of reparation type orders. Figure 5.5 below shows the comparative completion rates for reparation orders across Australia since 2006-07. The data includes both “reparation–community service” and “reparation–fine option” type orders.

Figure 5.5 Completion rates for reparation type orders across Australia



Source: Productivity Commission, *Report on Government Services 2013, Chapter 8 Attachment Tables* (see Table 8A.19). The ACT and the NT have been excluded due to the volatility of the trends in their completion rates. See also the methodological notes at the end of this report.

5.14 In some jurisdictions, completion rates are also published separately for their CSO equivalent. In SA in 2007 (the most recent published data) the completion rate for

13. NSW Department of Attorney General and Justice, *Annual Report 2011-12* (2012) 59. The successful completion rates during this time were: 79.91% in 2006-07; 81.15% in 2007-08; 82.25% in 2008-09; 83.20% in 2009-10, 84.19% in 2010-11 and 83.09% in 2011-12.

community service orders was 55.76%.¹⁴ Queensland achieved completion rates that fluctuated between 57% and 63% for its community service order between 2006-07 and 2011-12.¹⁵ In 2011-12, WA had an average completion rate for community work orders of 81% in metropolitan areas and 47% in rural areas.¹⁶

- 5.15 On either measure, NSW completion rates for CSOs appear to be significantly higher than jurisdictions other than Tasmania. There are several possible explanations for this. NSW may have more stringent criteria for assessing an offender's suitability for a CSO, leading to a population of offenders more likely to complete the order successfully. In NSW, a court that is considering imposing a CSO on an offender must have regard to an assessment report on the offender, the offender's suitability, and any relevant evidence from a Probation and Parole officer.¹⁷ The court may only impose a CSO if the assessment report indicates that the offender is suitable. By comparison, suitability assessments are not mentioned in SA and Tasmanian legislation, are optional in WA and are required but do not have so many components in the NT, Queensland and Victoria.¹⁸
- 5.16 Another possible explanation is differences between jurisdictions in the conduct that constitutes a breach (or failure to complete) a CSO. In NSW, for example, CSOs do not include a standard condition that the offender be of good behaviour (not reoffend) during the order. A NSW offender on a CSO may reoffend but still be counted as successfully completing his or her order. In Tasmania, Victoria, the NT and Queensland, however, reconviction will constitute a breach of the community work order which may result in the order being revoked.¹⁹
- 5.17 In 2012, 1138 NSW offenders were dealt with by a court for breach of a CSO.²⁰ Of these, 132 (12%) were imprisoned, 204 (18%) received a suspended sentence, 25 (2%) were sentenced with another custodial penalty (home detention or an ICO), 236 (21%) received a s 9 good behaviour bond and 54 (5%) were fined. Sixty-five (6%) were resentenced with another CSO and 13 (1%) were either convicted or discharged with no further penalty. The remaining 409 offenders were not resentenced as a result of the proceedings.
- 5.18 A recent BOCSAR study compared reoffending rates for NSW offenders who received a CSO with reoffending rates for matched offenders given a s 9 good behaviour bond. The analysis was confined to offenders sentenced for common assault, theft offences or traffic offences in 2007-2009 and looked at the proportion of offenders who were reconvicted within two years. After matching on numerous factors, this research showed that offenders who received a CSO had lower levels of reoffending than offenders who received a good behaviour bond. This result held

14. SA Office of Crime Statistics and Research, *Crime and Justice in South Australia: Adult Courts and Corrections* (2007) Table 4.30.

15. Qld Department of Community Safety, *Annual Report 2011-12* (2012) 19.

16. WA Department of Corrective Services, *Annual Report 2011-12* (2012) 41.

17. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 86.

18. *Sentencing Act 1995* (WA) s 61; *Sentencing Act* (NT) s 35; *Penalties and Sentences Act 1992* (Qld) s 101; *Sentencing Act 1991* (Vic) s 36 (as at 1 January 2012 – since amended).

19. *Penalties and Sentences Act 1992* (Qld) s 103; *Sentencing Act 1997* (Tas) s 28; *Sentencing Act* (NT) s 39; *Sentencing Act 1991* (Vic) s 37 (as at 1 January 2012 – since amended).

20. NSW Bureau of Crime Statistics and Research (unpublished data, ref: kg13-11321).

even after controlling for other factors known to influence reoffending. It is important to note, however, that the propensity score method used in this analysis only matched the CSO and bond groups on variables that could be measured at the time of analysis. The higher rate of reoffending among those who received a bond may still be due to differences between the groups in factors BOCSAR was unable to measure (for example, drug and alcohol use). If this is true, then the effect of CSOs on reoffending rates found in the study would be because of omitted variable bias rather than being an effect of the penalty imposed.²¹

- 5.19 A NZ study of recidivism rates following a sentence of community work found that 57% of offenders sentenced to community work in 2002-03 were reconvicted within 5 years.²²

Good behaviour bonds under s 9

- 5.20 A court may, following a conviction, direct an offender to enter into a bond to be of good behaviour for a specified period of up to five years.²³ Good behaviour bonds made under s 9 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) may also contain other conditions like supervision, in which case Corrective Services NSW will supervise the offender.

Use of s 9 bonds in NSW

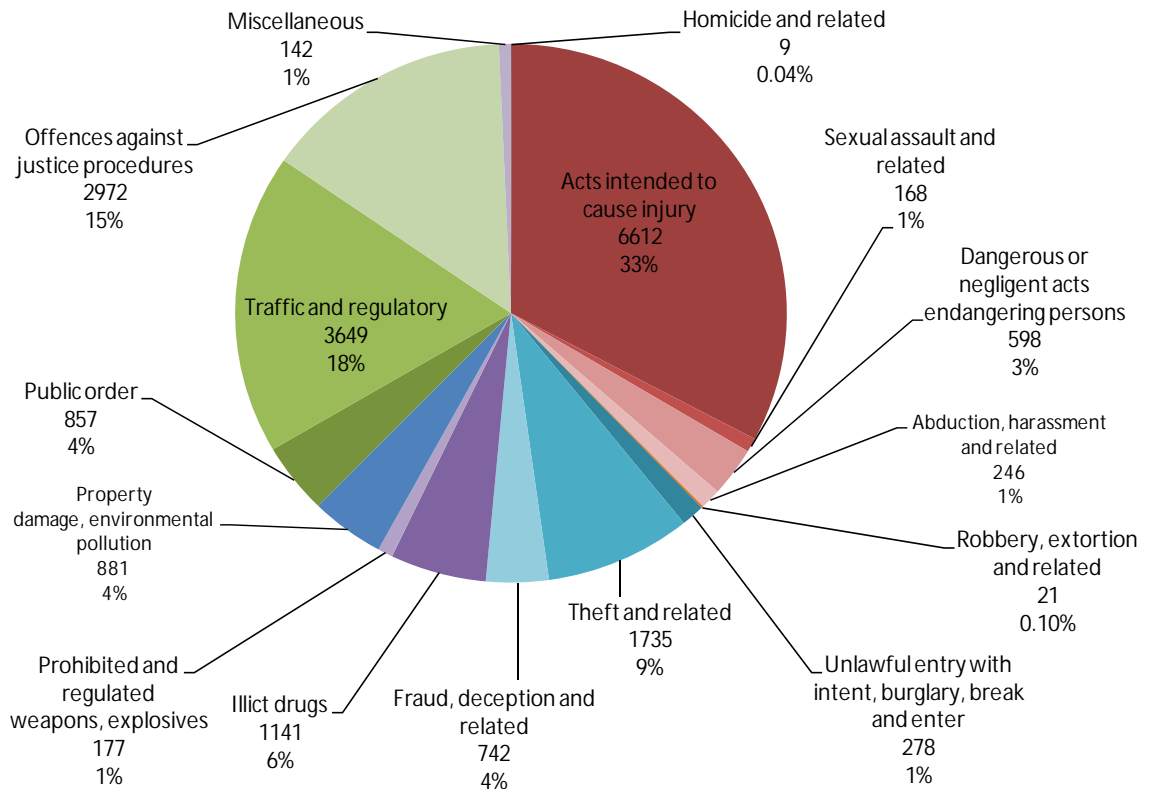
- 5.21 Figure 5.6 shows the most serious offence committed by offenders sentenced to a s 9 bond in 2012.

21. L Snowball, *CSOs Versus Bonds: A Comparison of Reoffending*, Crime and Justice Bulletin No 171 (NSW Bureau of Crime Statistics and Research, 2013).

22. A Nadesu, *Reconviction Patterns of Offenders Managed in the Community: A 60 Month Follow-up Analysis* (NZ Department of Corrections, 2009) 7.

23. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 9. For more information about good behaviour bonds, see NSW Law Reform Commission, *Sentencing*, Report 139 (2013) ch 12.

Figure 5.6 Most serious offence committed by NSW offenders sentenced to a s 9 good behaviour bond in 2012

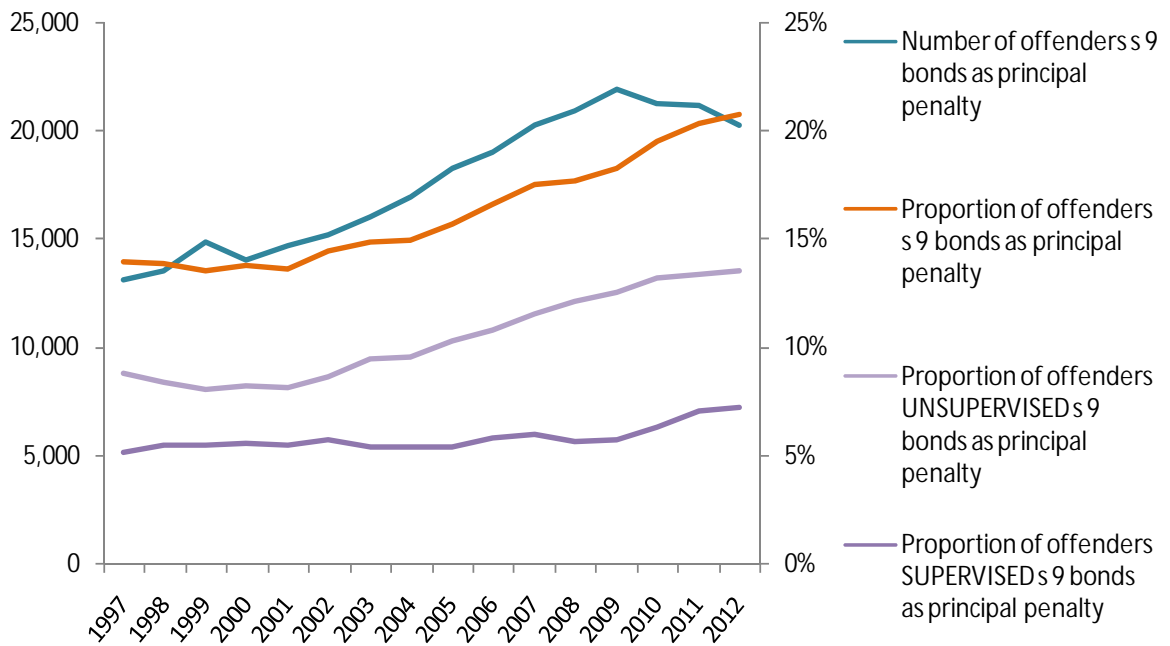


Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)*. The offences shown in this chart in the “homicide and related offences” category were, with one exception, manslaughter/driving causing death offences. Values of <0.5% are shown to two decimal places. See also methodological notes at the end of this report.

- 5.22 Of the offenders with a most serious offence categorised as “acts intended to cause injury” (6612 offenders), 5162 were sentenced for assault. Of the offenders sentenced to a s 9 good behaviour bond for “offences against justice procedures” (2972 offenders), 236 were sentenced to a s 9 bond after revocation of a CSO and 817 after revocation of a previous s 9 bond.²⁴
- 5.23 The courts’ use of s 9 bonds in NSW has increased over the past 15 years, particularly since 2001. In 1997, a s 9 bond was the principal penalty for 13 120 offenders (approximately 13.9% of all offenders). By 2001, the number of offenders who received a bond as their principal penalty had increased to 14 658 offenders but the proportion was still relatively stable at 13.6%. By 2012, more than 20 000 offenders received a s 9 bond as their principal penalty (20.7% of all offenders).
- 5.24 Figure 5.7 shows that this overall increase has primarily come from an increase in unsupervised s 9 good behaviour bonds, though the use of supervised good behaviour bonds has also been increasing since 2009.

24. NSW Bureau of Crime Statistics and Research (unpublished data, ref: kg13-11321).

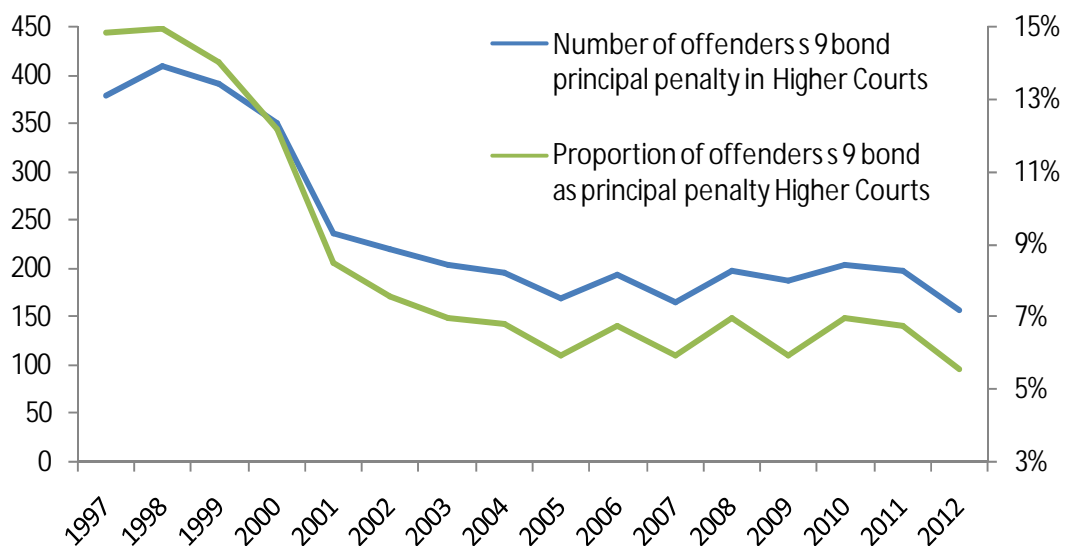
Figure 5.7 Use of s 9 good behaviour bonds in NSW 1997-2012



Source: NSW Bureau of Crime Statistics and Research, Criminal Courts Statistics (1997-2012). See also methodological notes at the end of this report.

5.25 At the same time that the use of s 9 bonds has been increasing overall, usage has declined in the higher courts. Figure 5.8 shows the number and proportion of offenders who received a s 9 bond as their principal penalty in the higher courts since 1997.

Figure 5.8 Section 9 good behaviour bonds in the NSW higher courts 1997-2012



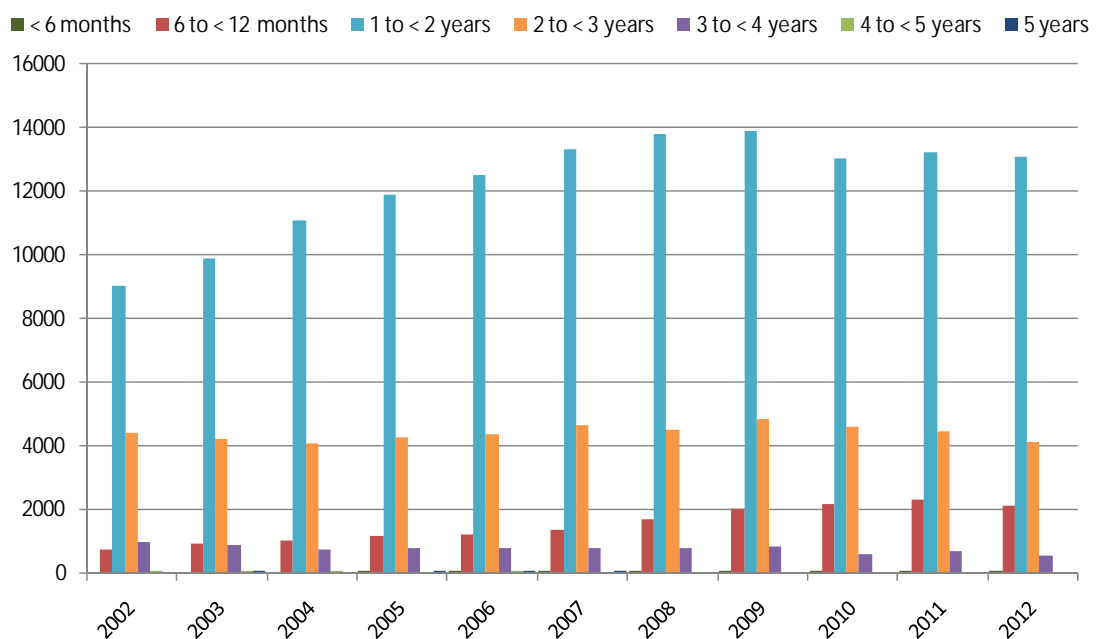
Source: NSW Bureau of Crime Statistics and Research, Criminal Courts Statistics (1997-2012). See also methodological notes at the end of this report.

5.26 Although in decline from 1998, use of s 9 bonds in the higher courts dropped most sharply after 2000. This coincides with the reintroduction of suspended sentences.

BOCSAR has also attributed the declining use of s 9 bonds in the higher courts to increasing use of suspended sentences.²⁵ It is not known why the availability of suspended sentences has affected the use of bonds in the higher courts but not the Local Court, or why the use of bonds in the higher courts appears to have quickly stabilised at approximately half the previous rate. This stabilisation can be contrasted with the gradual but apparently ongoing decline in the use of CSOs over the same period.

5.27 Although courts may impose s 9 bonds for up to five years, most s 9 bonds are in fact shorter. In 2012, the average length of a s 9 bond imposed by the Local Court was 14.7 months. The average length in the higher courts was 21.4 months.²⁶

Figure 5.9 Length of s 9 bonds imposed in NSW adult courts 2002-2012



Source: NSW Bureau of Crime Statistics and Research (unpublished data, ref: kg13-11321). Data shown here only relates to s 9 bonds where the bond was the offender's principal penalty. Some bonds have been excluded due to errors in recording their length. See also methodological notes at the end of this report.

5.28 In 2012, 76.5% of s 9 bonds imposed as principal penalties in the NSW Local, District and Supreme Courts were of less than two years duration and 97.2% were of less than three years duration. Only 0.1% of s 9 bonds were of four or more years duration. Section 9 bonds have also become slightly shorter between 2002 and 2012. In 2002, 64.2% of s 9 bonds were of less than two years and 93.2% were of less than three years.

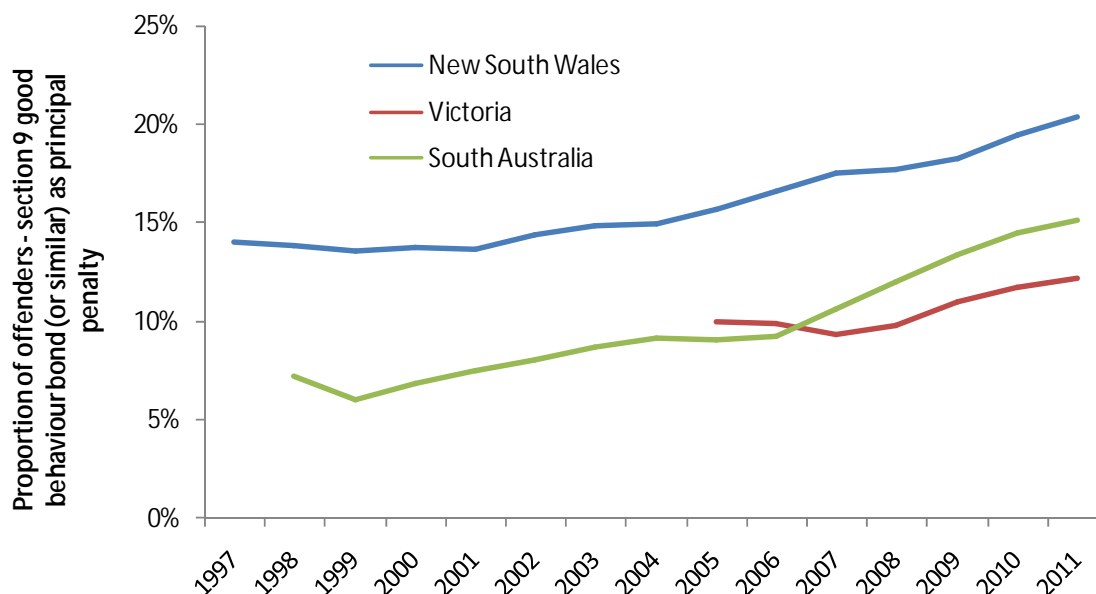
25. L McInnis and C Jones, *Trends in the Use of Suspended Sentences in NSW*, Bureau Brief No 47 (NSW Bureau of Crime Statistics and Research, 2010) 3.

26. NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics* (2012).

Use of bonds in other jurisdictions

- 5.29 Bonds are difficult to compare across jurisdictions as not all jurisdictions have this type of penalty. Figure 5.10 compares the use of bonds or their equivalent in NSW, Victoria and SA. These jurisdictions were selected for comparison because their published sentencing statistics use similar data sources and counting rules to BOCSAR’s *Criminal Courts Statistics* for NSW (note that NZ does not use good behaviour bonds as a sentencing option).

Figure 5.10 Section 9 bonds (or similar) in NSW, Victoria and SA 1997-2011



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2011)*; SA Office of Crime Statistics and Research, unpublished data (1998-2011); Victorian Sentencing Advisory Council *Sentencing Statistics 2004-05 to 2011-12* (earlier Victorian data is not comparable due to a break in the data series). See also methodological notes at the end of this report.

- 5.30 Figure 5.10 shows that s 9 bonds have been more common than the equivalent in Victoria over the period that comparable data is available. In Victoria, a court may, upon convicting an offender, order an adjournment of up to five years if the offender gives an undertaking to be of good behaviour, to appear before the court when called upon to do so and to comply with any other conditions that the court imposes.²⁷
- 5.31 Section 9 bonds are also more commonly used than the SA equivalent, though the use of bonds in SA seems to be increasing at a similar rate to the increase in NSW. SA bonds are very similar to s 9 bonds and the Victorian “adjourned undertaking” except they are limited in term to three years instead of five.²⁸

27. *Sentencing Act 1991* (Vic) s 72.

28. *Criminal Law (Sentencing) Act 1988* (SA) s 39-40.

Bond breach rates and recidivism

- 5.32 Approximately 9.4% of offenders placed on unsupervised s 9 bonds by the Local Court during the first half of 2010 had breached the bond within 12 months.²⁹ The rate was higher for supervised bonds at 21.5%. This difference in breach rates is likely a reflection of the characteristics of offenders placed on supervised as opposed to unsupervised bonds and also the increased likelihood that breaches will be detected when the bond is supervised.
- 5.33 A BOCSAR study that used a matched sample of offenders on supervised and unsupervised s 9 bonds found that supervision had no effect on recidivism rates.³⁰ Differences in reoffending rates could be explained by other characteristics of the two groups, rather than whether the offender was supervised during the bond.
- 5.34 To nuance this result, BOCSAR then undertook a survey of NSW Probation and Parole Officers. The aim of the survey was to establish whether, in the opinion of the officers, the level of supervision on supervised bonds was adequate for effective rehabilitation. Overall, officers reported that a significant number of offenders on supervised bonds were not receiving the services, support and supervision required for rehabilitation due to cost, waiting lists or unavailability of the services.³¹
- 5.35 Another recent study has found that offenders on longer s 9 bonds are less likely to reoffend than offenders on shorter bonds.³² Of the offenders sentenced to a s 9 bond between 2006 and 2008, 42.5% on a bond of two years or more had reoffended within three years, compared to 47.8% of the offenders on a bond of less than two years. This effect remained even when other variables were controlled for. The study found that the effect held true for both supervised and unsupervised bonds; that is, offenders on long bonds of either type were less likely to reoffend than offenders on shorter bonds.
- 5.36 Researchers have also compared the recidivism rates of matched offenders on supervised bonds and on suspended sentences.³³ The study found that, when variables like offence seriousness, plea, prior convictions and prior imprisonment were controlled for, the recidivism rates of offenders on suspended sentences were the same as rates for those on supervised s 9 bonds. In other words, a non-custodial good behaviour bond does as much to deter reoffending as a suspended sentence of imprisonment.

29. NSW Bureau of Crime Statistics and Research (unpublished data, ref: mai11/10151lccc).

30. D Weatherburn and L Trimboli, *Community Supervision And Rehabilitation: Two Studies Of Offenders On Supervised Bonds*, Crime and Justice Bulletin No 112 (NSW Bureau of Crime Statistics and Research, 2008).

31. D Weatherburn and L Trimboli, *Community Supervision And Rehabilitation: Two Studies Of Offenders On Supervised Bonds*, Crime and Justice Bulletin 112 (NSW Bureau of Crime Statistics and Research, 2008) 17.

32. S Poynton, D Weatherburn and L Bartels, "Good behaviour bonds and reoffending: The effect of bond length" (2013) *Australian and New Zealand Journal of Criminology* (in press); see also S Poynton, *Bonds, Suspended Sentences and Re-offending: Does the Length of the Order Matter?* (BOCSAR's Applied Research in Crime and Criminal Justice conference, 2013).

33. D Weatherburn and L Bartels, "The Recidivism of Offenders Given Suspended Sentences in New South Wales, Australia" (2008) 48 *British Journal of Criminology* 667, 677.

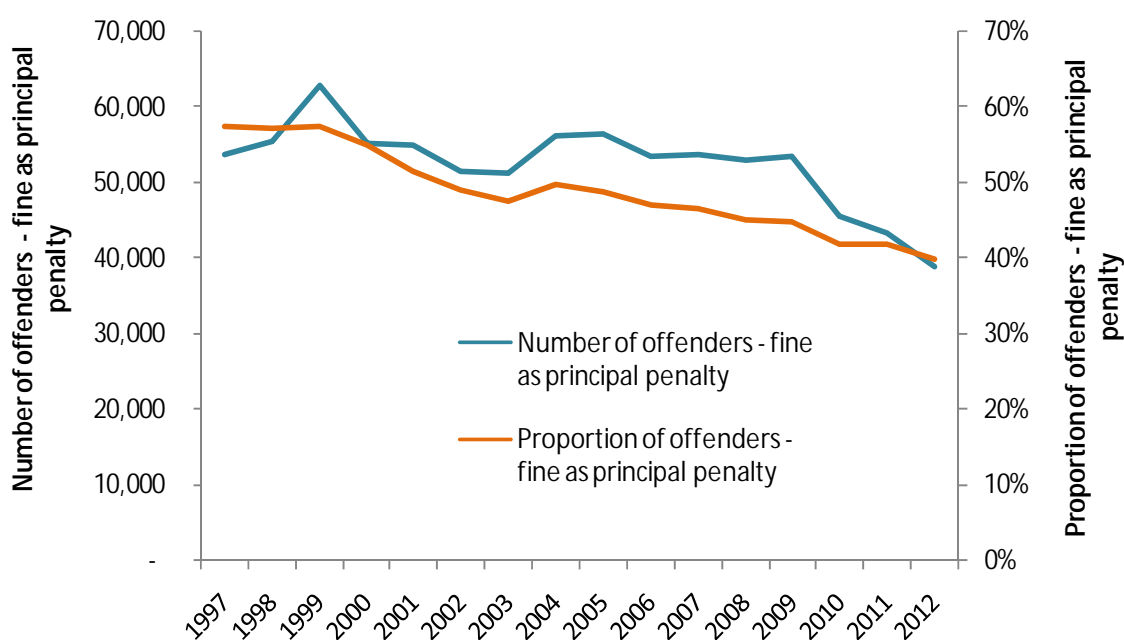
5.37 Of the 2807 offenders dealt with by the courts for breach of a s 9 bond in 2012, 300 (11%) were resentenced to imprisonment for the original offence to which the bond related, 273 (10%) were given a suspended sentence, 162 (6%) were resentenced to a CSO and 817 (29%) received another s 9 bond. One hundred and eighty-four offenders were fined (7%), 45 (2%) received another custodial penalty and 33 (1%) received an order under s 10 or 10A of the *Crimes (Sentencing Procedure) Act 1999* (NSW). The remaining 993 offenders were not given a new sentence as a result of the proceedings, likely because the court did not consider the breach in question sufficient reason to revoke the bond.³⁴

Fines

Use of fines in NSW

5.38 Fines are the most commonly used penalty in NSW. In 2012, 39.8% of offenders (38 794 people) received a fine as their most serious penalty. Nearly all of these offenders (all but 12 people) were fined in the Local Court. However, the use of fines in NSW has been steadily decreasing since 1997 (see Figure 5.11).

Figure 5.11 Use of fines in NSW 1997-2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)*. The spike in the trend lines between 2003 and 2004 is due to a reordering of the seriousness of the lesser penalties by BOCSAR at that time. See also methodological notes at the end of this report.

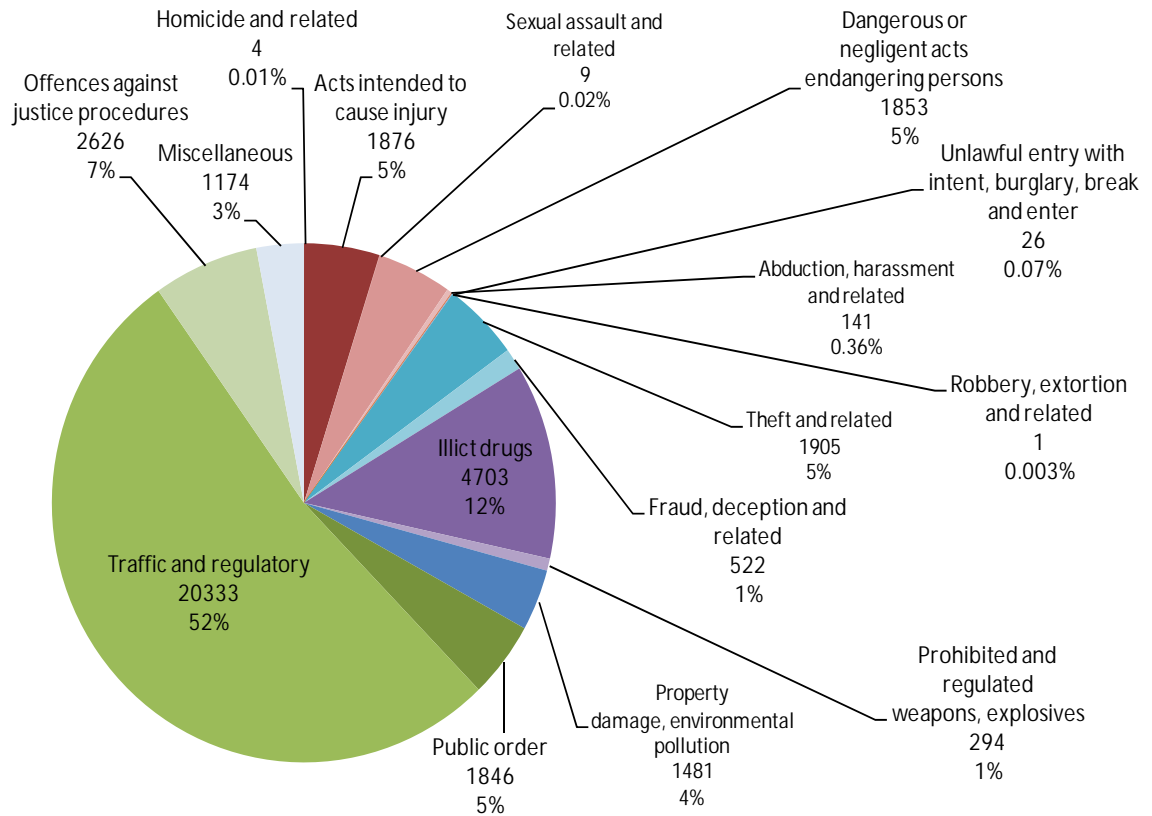
5.39 The average fine imposed by the Local Court in 2012 was \$628.³⁵

34. NSW Bureau of Crime Statistics and Research (unpublished data, ref: kg13-11321).

35. NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)*.

5.40 Fines tend to be imposed for the less serious offences. In 2012, approximately two-thirds of the offenders who had a fine as their most serious penalty were sentenced for a principal offence in the categories of “public order offences”, “traffic and regulatory offences” or “offences against justice procedures” (see Figure 5.12).

Figure 5.12 Most serious offence of offenders sentenced to a fine as their principal penalty in 2012



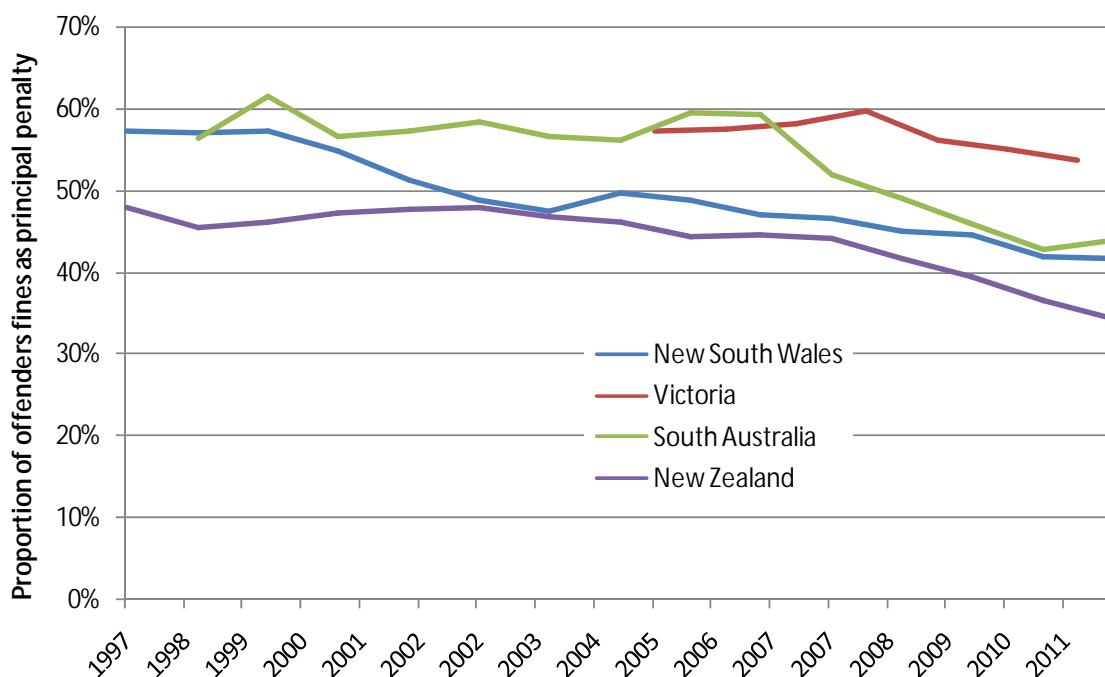
Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)*. Values of <0.5% are shown to two decimal places. See also methodological notes at the end of this report.

5.41 Only about 10% of offenders who had a fine imposed as the principal penalty in 2012 were being sentenced for an offence involving violence as their most serious offence. Of the 2626 offenders fined for “offences against justice procedures”, 54 were fined after revocation of a CSO and 184 after revocation of a s 9 bond.

Use of fines in other jurisdictions

5.42 Fines are also one of the most often used penalties in other jurisdictions. Figure 5.13 compares fine use in NSW, Victoria, SA and New Zealand. These jurisdictions were selected for comparison because their published sentencing statistics use similar data sources and counting rules to BOCSAR’s *Criminal Courts Statistics* for NSW.

Figure 5.13 Use of fines in NSW and other jurisdictions 1997-2011



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2011)*; SA Office of Crime Statistics and Research, unpublished data (1998-2011); Statistics New Zealand; Victorian Sentencing Advisory Council *Sentencing Statistics 2004-05 to 2011-12* (earlier Victorian data is not comparable). The spike in the NSW trend line between 2003 and 2004 is due to a reordering of the seriousness of the lesser penalties by BOCSAR at that time. Note that the comparable NZ proportion is in reality lower as offenders found guilty then discharged without conviction are not included in the NZ denominator. See also methodological notes at the end of this report.

5.43 Figure 5.13 indicates that the use of fines may be slowly declining in all these jurisdictions as other non-custodial penalty types become more common.

Fines and recidivism

5.44 Little is known about the deterrent effect of fines, despite the fact that fines are the most common penalty across jurisdictions.³⁶ One BOCSAR study has tested the recidivism rates of offenders fined for driving offences in the Local Court between 1998 and 2000. The study found that there was no relationship between the amount of the fine and the rate at which offenders were convicted of a new driving offence.³⁷ In other words, the amount of the fine had no significant deterrent effect on offenders.

36. S Moffat and S Poynton, *The Deterrent Effect of Higher Fines on Recidivism: Driving Offences*, Crime and Justice Bulletin No 106 (NSW Bureau of Crime Statistics and Research, 2007) 1.

37. S Moffat and S Poynton, *The Deterrent Effect of Higher Fines on Recidivism: Driving Offences*, Crime and Justice Bulletin No 106 (NSW Bureau of Crime Statistics and Research, 2007) 9.

Conviction with no other penalty and non-conviction orders

- 5.45 A sentencing court that convicts an offender may dispose of the proceedings without imposing any penalty except the recorded conviction.³⁸ This sentencing option was introduced in November 2006 as s 10A of the *Crimes (Sentencing Procedure) Act 1999* (NSW). In the remainder of this report, we refer to this sentencing option as a s 10A order.
- 5.46 After a guilty plea or finding of guilt, a court may also discharge an offender without recording a conviction.³⁹ Non-conviction orders may stand alone or be accompanied by a good behaviour bond made under s 10 of up to two years duration.⁴⁰ If the good behaviour bond includes supervision conditions, then Corrective Services NSW will oversee the offender's compliance with the bond. In the remainder of this report we refer to these sentencing options as s 10 non-conviction orders.

Use of s 10 and s 10A orders in NSW

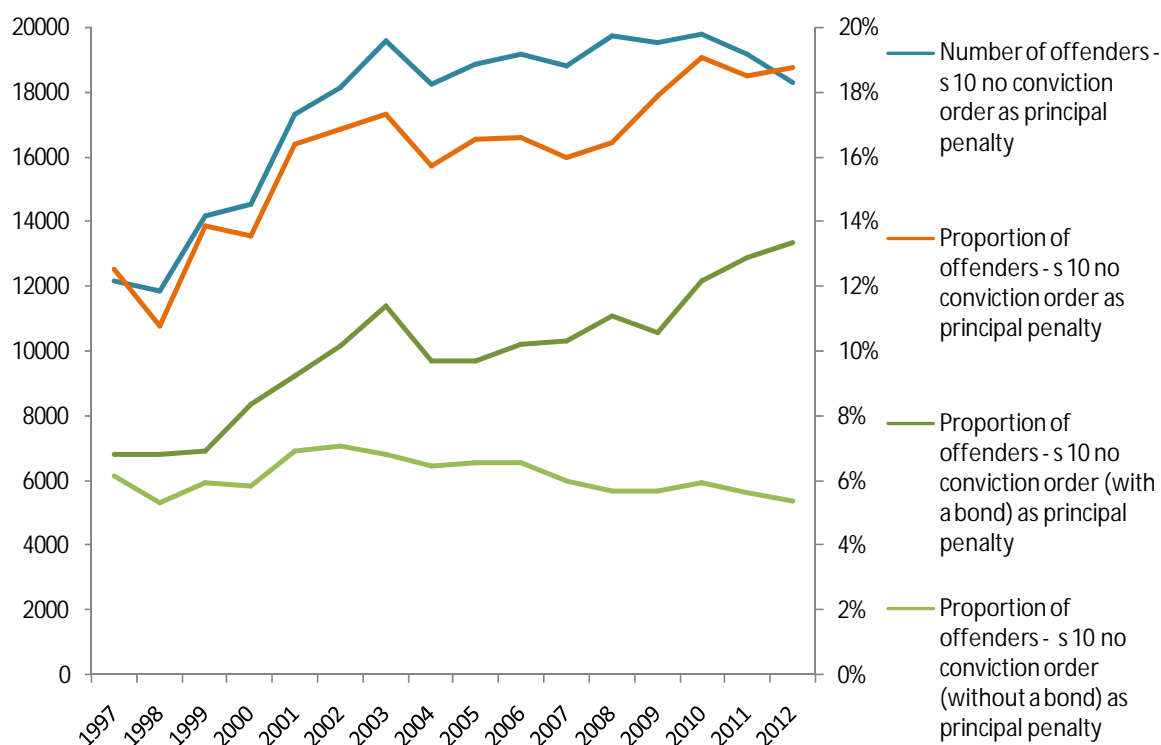
- 5.47 Use of s 10 non-conviction orders has slowly increased over the past 16 years. In 1997, 12.5% of offenders sentenced in the Local, District and Supreme Courts received a non-conviction order as the principal penalty for their principal offence. By 2012, this had increased to 18.8% of offenders (see Figure 5.14).

38. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 10A. For more on orders under s 10A, see NSW Law Reform Commission, *Sentencing*, Report 139 (2013) ch 12.

39. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 10. For more on non-conviction orders, see NSW Law Reform Commission, *Sentencing*, Report 139 (2013) ch 12; NSW Sentencing Council, *Good Behaviour Bonds and Non-Conviction Orders: A Report of the NSW Sentencing Council* (2011).

40. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 10(1)(b).

Figure 5.14 Use of s 10 orders in NSW 1997-2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)*. The dip in the trend lines between 2003 and 2004 is due to a reordering of the seriousness of the lesser penalties by BOCSAR at that time. See also methodological notes at the end of this report.

- 5.48 The increase in the use of s 10 non-conviction orders has come entirely from non-conviction orders with attached good behaviour bonds. This increase may be related to the increased use of s 9 bonds over the same period (see Figure 5.7). In 2012, 23% of s 10 bonds were for less than 12 months, 61% were for more than 12 months but less than two years, and 16% were for exactly two years (the maximum allowable duration).⁴¹
- 5.49 The use of s 10A orders increased sharply from their introduction in 2006 but still forms only a small proportion of the overall sentences imposed. In 2012, 1.93% of offenders received a s 10A order as the principal penalty for their principal offence (see Figure 5.15).

41. NSW Bureau of Crime Statistics and Research (unpublished data, ref: kg13-11321).

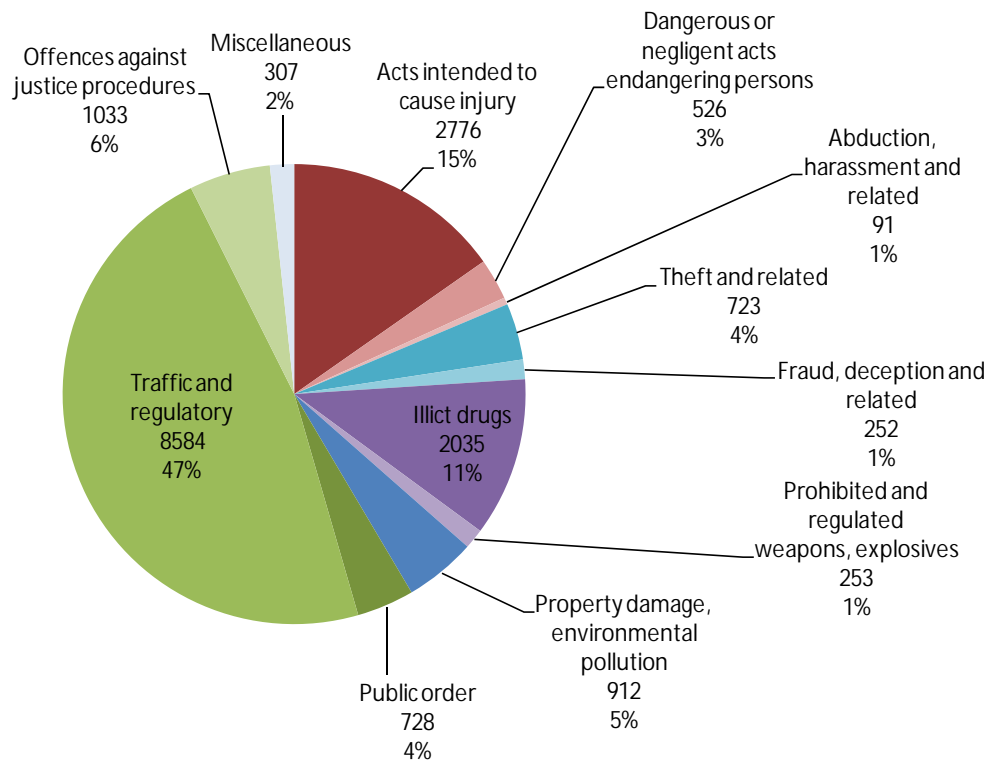
Figure 5.15 Use of s 10A orders in NSW since their introduction



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2005-2012)*. See also methodological notes at the end of this report.

5.50 Figures 5.16 and 5.17 show the offence profile of offenders sentenced with a s 10A order or s 10 non-conviction order in 2012.

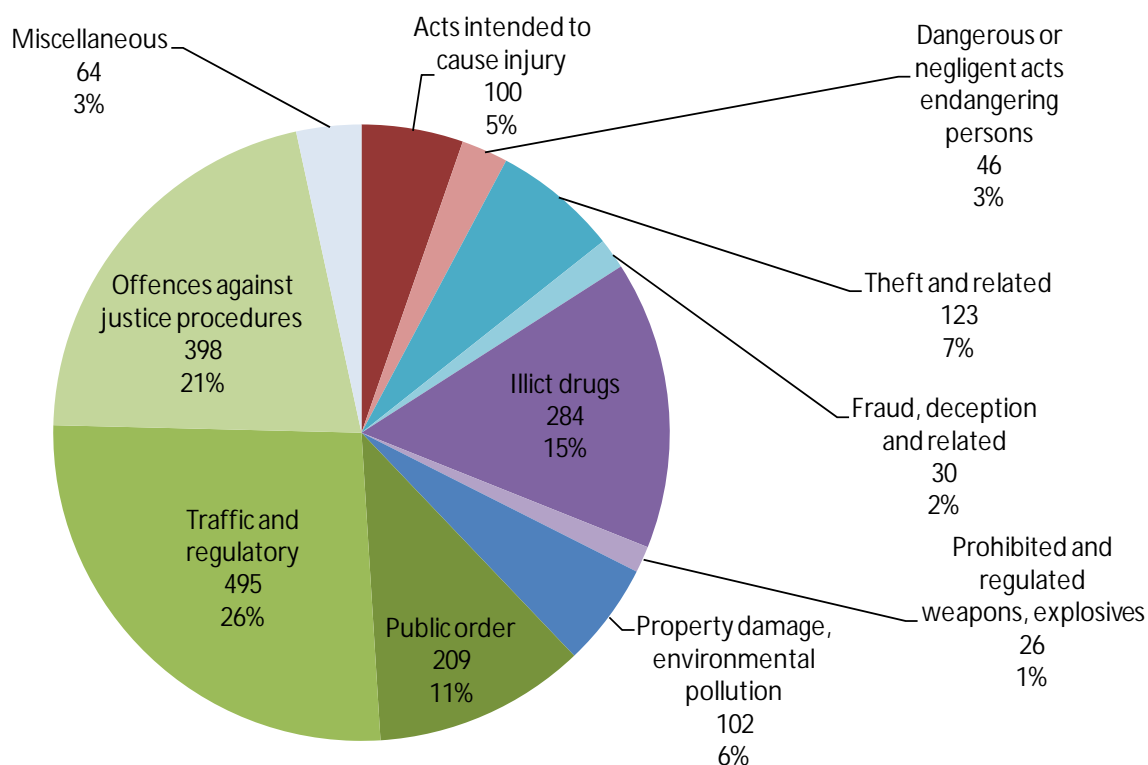
Figure 5.16 Most serious offence of offenders who received a s 10 non-conviction order as their principal penalty in 2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)*. Values of <0.5% are shown to two decimal places. Offence categories with <50 have been excluded. See also methodological notes at the end of this report.

5.51 Almost half of all non-conviction orders in 2012 were imposed on offenders who had committed a traffic or regulatory offence as their most serious offence. “Acts intended to cause injury” was the next most common offence category and overall, offences against the person made up about 19% of the total. This is quite different to the offence profile for s 10A orders (see Figure 5.17).

Figure 5.17 Most serious offence of offenders who received a s 10A order as their principal penalty in 2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)*. Values of <0.5% are shown to two decimal places. Offence categories with <25 have been excluded. See also methodological notes at the end of this report.

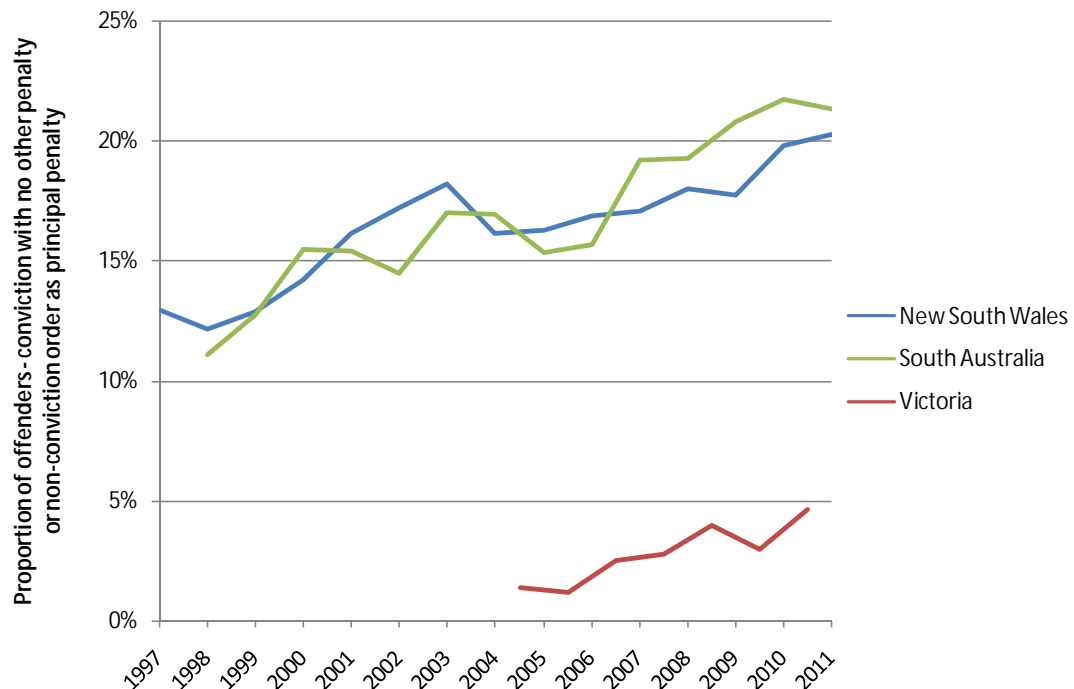
5.52 Comparing Figures 5.16 and 5.17, a greater proportion of offenders with an offence involving violence as their most serious offence were given a non-conviction order. Of those given a s 10A order whose most serious offence was categorised under “offences against justice procedures” (398 offenders) 10 of these were being resentenced for breach of a CSO and 18 after revocation of a s 9 bond.⁴²

Discharge with no penalty in other jurisdictions

5.53 Figure 5.18 compares the use of s 10 and 10A orders in NSW with the equivalents in Victoria and SA.

42. NSW Bureau of Crime Statistics and Research (unpublished data, ref: kg13-11321).

Figure 5.18 Conviction with no penalty and discharge without conviction in NSW, Victoria and SA 1997-2011



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2011)*; SA Office of Crime Statistics and Research, unpublished data (1998-2011); Victorian Sentencing Advisory Council *Sentencing Statistics 2004-05 to 2011-12* (earlier Victorian data is not comparable due to a break in the data series). The sharp dip in the NSW trend line between 2003 and 2004 is a result of a reordering of the lesser penalties by BOCSAR in 2004. See also methodological notes at the end of this report.

- 5.54 NSW courts make significantly more use of s 10 and s 10A orders than the courts of Victoria do of their equivalents.⁴³ Since 2007, SA courts have used these orders slightly more than NSW courts.⁴⁴ The use of these types of orders seems to be increasing in all three jurisdictions.

Breach of the bond attached to a s 10 order

- 5.55 Section 10 orders with attached good behaviour bonds are only rarely imposed on offenders with any previous convictions.⁴⁵ Perhaps as a result of this fact, s 10 bonds have lower breach rates than s 9 bonds. In NSW, approximately 4% of the offenders who received a s 10 bond as their principal penalty in the Local Court between January and June 2010 had breached the bond by June 2011.⁴⁶

43. In Victoria a court may discharge an offender after recording a conviction, release an offender with a good behaviour undertaking of up to 5 years without recording a conviction, or unconditionally release an offender without conviction: *Sentencing Act 1991* (Vic) s 73, s 75-76.

44. In SA, an offender may be convicted and discharged with no penalty or found guilty but discharged with no conviction: *Criminal Law (Sentencing) Act 1988* (SA) s 15.

45. NSW Sentencing Council, *Good Behaviour Bonds and Non-Conviction Orders: A Report of the NSW Sentencing Council* (2011) 32, 37.

46. NSW Bureau of Crime Statistics and Research (unpublished data, ref: mai11/10151lccc).

6. Overview of sentencing practices

Sentencing patterns in NSW have changed since 1997. The balance of penalties has shifted towards increased use of more serious penalties at the higher end of the sentencing spectrum but also increased use of non-conviction orders at the less serious end of the spectrum. Compared to other jurisdictions, NSW has tended to use more full-time imprisonment and fewer custodial alternatives to full-time imprisonment, like home detention, intensive correction orders and suspended sentences.

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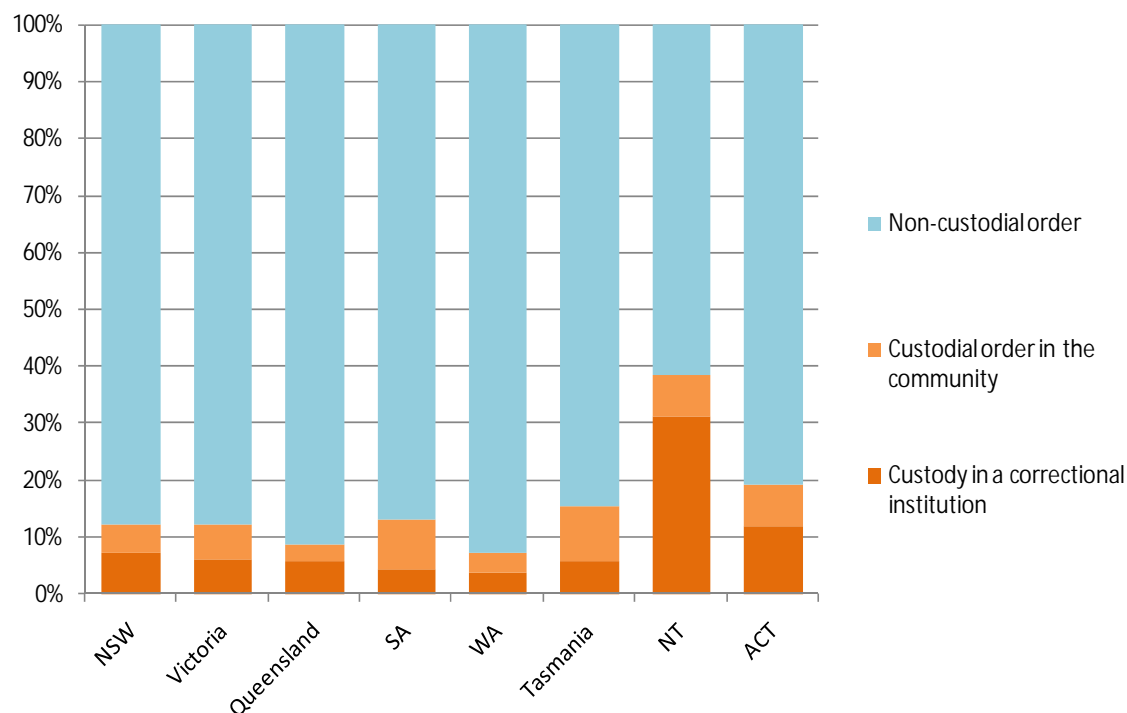
- 6.1 This chapter provides an overview of the use of custodial and non-custodial sentencing options in NSW and other jurisdictions. It also looks at the use of specific penalties over time and how the balance of sentencing has changed in NSW, Victoria, SA and NZ. These jurisdictions were selected for comparison because their published sentencing statistics use similar data sources and counting rules to BOCSAR’s *Criminal Courts Statistics* for NSW.
- 6.2 It is important to keep in mind that the profile of offences committed in each jurisdiction in terms of seriousness is, in effect, a hidden variable in the comparisons presented in this chapter. For example, one jurisdiction may experience more serious crime than another, and so its use of more severe penalties is greater even though the methodology and approach of courts in the two jurisdictions are actually the same.

Balance of custodial and non-custodial sentencing options

- 6.3 In NSW, full-time imprisonment, home detention, intensive correction orders (ICOs) and suspended sentences are technically classified as custodial penalties under the *Crimes (Sentencing Procedure) Act 1999* (NSW). All other sentences are non-custodial penalties, including community service orders, good behaviour bonds, fines and non-conviction orders.
- 6.4 Figure 6.1 uses Australian Bureau of Statistics (ABS) data to compare the use of custodial and non-custodial sentencing options by criminal courts across Australian states and territories in 2011-12. Custodial orders are further categorised as “custody in a correctional institution” (full-time imprisonment and periodic detention)

and “custodial order in the community” (for example, home detention, ICOs and suspended sentences).

Figure 6.1 Custodial and non-custodial penalties across Australia 2011-12



Source: ABS 4513.0 Criminal Courts (2011-12). Note that the ABS includes licence disqualifications and diversionary options such as referral to conference and treatment referrals as non-custodial penalties, causing non-custodial sentencing options to form a higher overall proportion of sentences than when data is drawn from other sources. It is not known what effect this had on the proportions shown. See also methodological notes at the end of this report.

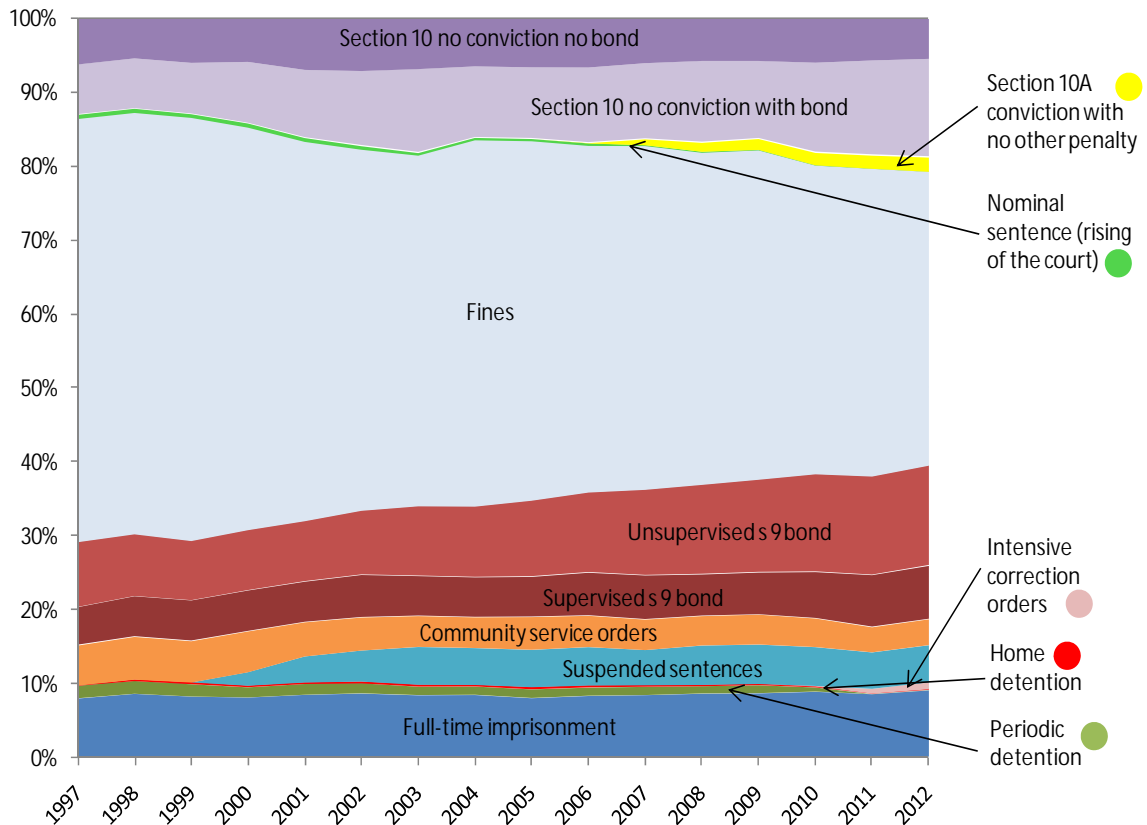
6.5 NSW’s use of custodial sentencing options (both “custody in a correctional institution” and “custodial order in the community”), at 12.2% of all sentences according to ABS data, is below the Australian average of 15.9%. It also below the lower Australian average of 12.7% when the NT is excluded as an outlier from the calculation. At the same time, the proportion of NSW sentences that are “custody in a correctional institution” (the most serious category of sentence) is higher than all jurisdictions except the ACT and NT. This may indicate that there are opportunities to increase the use of mid tier community custody options in NSW, although without controlling for crime rates and crime seriousness these comparisons are inconclusive.

Sentencing practices in NSW over time

6.6 Figure 6.2 looks in more detail at the use of specific penalties in NSW and the balance between them over time, drawing together the statistics about the use of the different sentencing options presented in Chapters 3 to 5. It is not directly comparable to the data shown in Figure 6.1 due to differences in counting rules between the ABS and NSW Bureau of Crime Statistics and Research (BOCSAR) data. It shows full-time imprisonment, periodic detention (abolished 2010), home

detention, intensive correction orders (introduced 2010), suspended sentences (introduced 2000), community service orders, unsupervised and supervised s 9 good behaviour bonds,¹ fines, rising of the court, s 10A orders (introduced 2006), s 10 non-conviction orders with an attached good behaviour bond and s 10 orders where no bond is attached.² The sentencing options are displayed in approximate order of seriousness, starting with full-time imprisonment (the most serious penalty) at the bottom of the chart

Figure 6.2 Balance of penalties in NSW adult courts 1997-2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)*. The sharp spike in fines and fall in s 10 non-conviction orders with bonds between 2003 and 2004 is due to a reordering of the lesser penalties by BOCSAR from 2004, which changes the penalty classified as the “principal penalty”. See also methodological notes at the end of this report.

6.7 Figure 6.2 confirms that the proportion of offenders sentenced to full-time imprisonment by NSW adult courts has held fairly steady since 1997. It also shows that the re-introduction of suspended sentences in 2000 significantly changed the balance between custodial and non-custodial penalties. In 1999, about 10% of the penalties imposed by NSW courts were custodial penalties; that is, full-time

1. These are good behaviour bonds imposed under the *Crimes (Sentencing Procedure) Act 1999* (NSW) s 9. Where the offender must accept supervision from Corrective Services NSW as a condition of the bond, they are termed “supervised” bonds.
2. Under s 10(1)(a) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) a court can make a finding of guilt but dismiss the charge without recording a conviction against the person. Under s 10(1)(b), a court can decide not to record a conviction but impose a good behaviour bond of up to two years.

imprisonment, periodic detention or home detention. By 2003, this had increased to about 15% as suspended sentences were added as a custodial penalty. Suspended sentences almost entirely displaced non-custodial instead of custodial penalties and this “net-widening” effect may have escalated the penalties imposed in NSW and exposed an increasing number of offenders to the risk of imprisonment.³

- 6.8 Figure 6.2 also shows the increasing use of s 9 good behaviour bonds. Most of this increase has come from unsupervised bonds at the expense of fines. At the same time, use of more lenient penalties that allow an offender to be discharged without recording a conviction also increased. In 1997, 13% of offenders found guilty were discharged by the courts without conviction. In 2012, the proportion was 18.8% of offenders. Most of this increase has come from s 10 non-conviction orders with an attached good behaviour bond.
- 6.9 Overall, Figure 6.2 shows that the proportion of offenders sentenced with more serious penalties has slowly but steadily increased. In 1997, approximately 29% of offenders were sentenced with a penalty more serious than a fine (imprisonment, periodic detention, home detention, CSO or s 9 bond). By 2012, 39.5% of offenders were receiving a penalty more serious than a fine (imprisonment, home detention, ICO, suspended sentence, CSO or s 9 bond).

Other possible sentencing options

NZ community-based alternatives

- 6.10 NZ uses quite a different mix of sentencing options than most Australian states and territories. Full-time imprisonment, home detention, community work and fines are used in NZ but suspended sentences and good behaviour bonds are not. Instead, the intermediate community-based options of “community detention”, “intensive supervision” and “supervision” as well as community work and home detention sit between the custodial option of imprisonment and the monetary option of fines.
- 6.11 Community detention is a short term sentence of no more than six months that involves an electronically monitored curfew.⁴ As such, it is a lesser version of the sentence of home detention.
- 6.12 Intensive supervision, as discussed above, is somewhat similar to the NSW ICO except that it does not involve community work. Attention is focused on the supervision and rehabilitation of offenders with reintegration needs.⁵ The NZ

3. G Brignell and P Poletti, *Suspended Sentences in NSW*, Sentencing Trends and Issues No 29 (Judicial Commission of NSW, 2003); P Poletti and S Vignaendra, *Trends in the Use of Section 12 Suspended Sentences*, Sentencing Trends and Issues No 34 (Judicial Commission of NSW, 2005); L McInnis and C Jones, *Trends in the Use of Suspended Sentences in NSW*, Bureau Brief No 47 (NSW Bureau of Crime Statistics and Research, 2010); NSW Sentencing Council, *Suspended Sentences: A Background Report* (2011) 28.

4. *Sentencing Act 2002* (NZ) s 69C.

5. *Sentencing Act 2002* (NZ) s 54C.

sentence of “supervision” may be made for up to one year and is similar in effect to a supervised s 9 bond in NSW.⁶

- 6.13 Overall, the NZ community-based sentences of home detention, community detention, intensive supervision, community work and supervision made up over 40% of the principal penalties of convicted NZ offenders sentenced in 2011.⁷ In NSW in 2011 (and 2012), offenders sentenced with similar community-based penalties (home detention, ICOs, suspended sentences, CSOs and s 9 good behaviour bonds) made up around 30% of the total.⁸
- 6.14 These proportions from NZ and NSW cannot be directly compared as the NZ data does not include offenders who were found guilty but discharged without conviction (the equivalent of a NSW s 10 non-conviction order), or who admitted guilt but were diverted from court by the NZ police-operated adult diversion scheme.⁹ In 2011, 9375 NZ offenders were either discharged without conviction or diverted through the adult diversion scheme.¹⁰

Victoria’s community correction order

- 6.15 In January 2012, Victoria abolished several mid tier sentencing options including home detention, the Victorian ICO and the community-based order. These sentencing options were replaced with a single community correction order (CCO) with the stated purpose of providing a community based sentence that may be used for a wide range of offending behaviours while addressing the individual circumstances of the offender.¹¹
- 6.16 The CCO may be made by the Victorian Magistrates Court for a period of up to two years and by the higher courts for a period up to the maximum sentence of imprisonment possible for the offence.¹² When making the order, the court can attach conditions relating to any of the following: community service, treatment programs, rehabilitation programs, supervision, non-association, restrictions on place of residence, restrictions on certain locations, curfews, alcohol prohibition, judicial monitoring or any other condition the court thinks fit except a monetary penalty.¹³ The court may also set an “intensive compliance period” of any length as part of the CCO and specify that the offender must comply with or complete certain conditions during that period.¹⁴

6. *Sentencing Act 2002* (NZ) s 45.

7. Statistics New Zealand, <http://www.stats.govt.nz/tools_and_services/tools/TableBuilder/criminal-conviction.aspx>.

8. NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics* (2011-2012).

9. New Zealand Police, *Adult Diversion Scheme Policy* (2012).

10. Statistics New Zealand, <http://www.stats.govt.nz/tools_and_services/tools/TableBuilder/criminal-conviction.aspx>.

11. *Sentencing Act 1991* (Vic) s 36.

12. *Sentencing Act 1991* (Vic) s 38.

13. *Sentencing Act 1991* (Vic) s 48-48K.

14. *Sentencing Act 1991* (Vic) s 39.

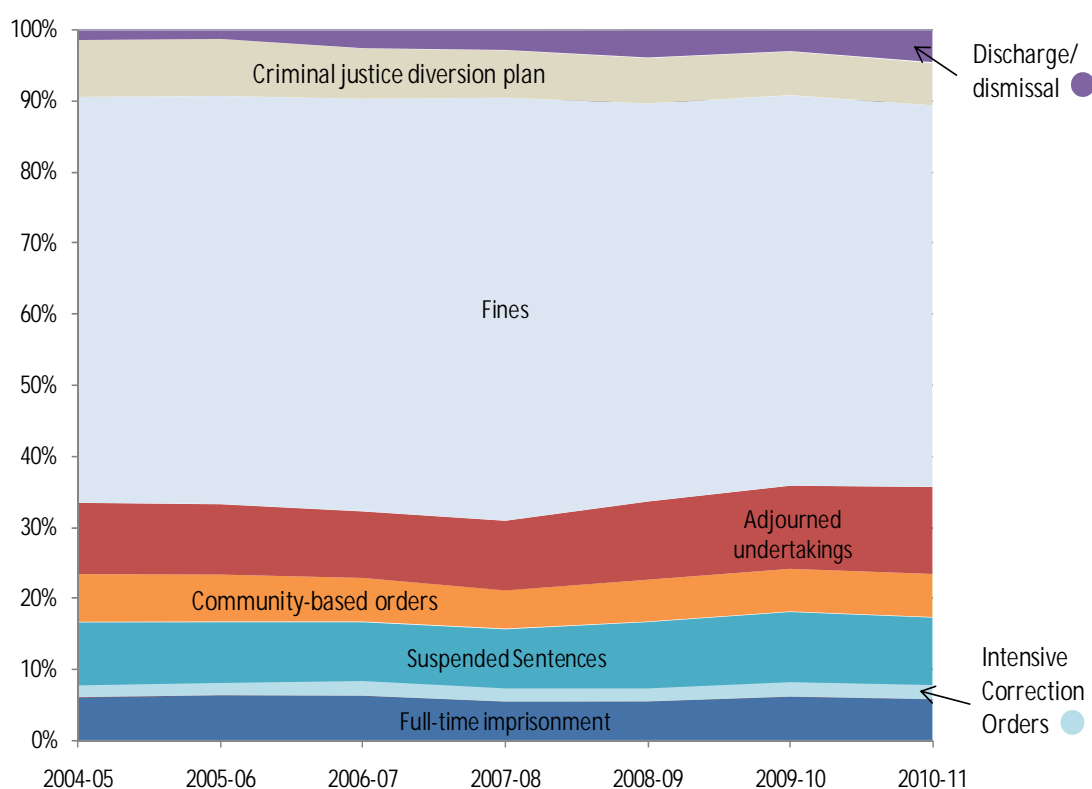
6.17 No comprehensive data is available yet on use of the CCO.¹⁵ It may substantially change the sentencing practices of Victorian courts and the use Victorian courts make of the other sentences discussed in this report.

Comparison with sentencing practices in Victoria, SA and NZ

Victoria

6.18 Figure 6.3 shows the balance of penalties in Victoria between 2004-05 and 2010-11 (the date range of available comparable data). It shows the penalties used in Victoria between these dates, though some of these penalties have been abolished since 2010-11. Community-based orders and the Victorian intensive correction order were abolished and replaced with community correction orders in 2012. Availability of suspended sentences was restricted from 2012 and from 2013 suspended sentences will be phased out completely in Victoria.¹⁶

Figure 6.3 Balance of penalties in Victoria 2004-05 to 2010-11



Source: Victorian Sentencing Advisory Council *Sentencing Statistics 2004-05 to 2010-11*. A break in the data series means that data before 2004-05 is not comparable. See also methodological notes at the end of this report.

15. But see preliminary data published by the Victorian Sentencing Advisory Council, <<http://www.sentencingcouncil.vic.gov.au/page/about-sentencing/sentencing-statistics/court-statistics/magistrates-court-recent-trends>>.

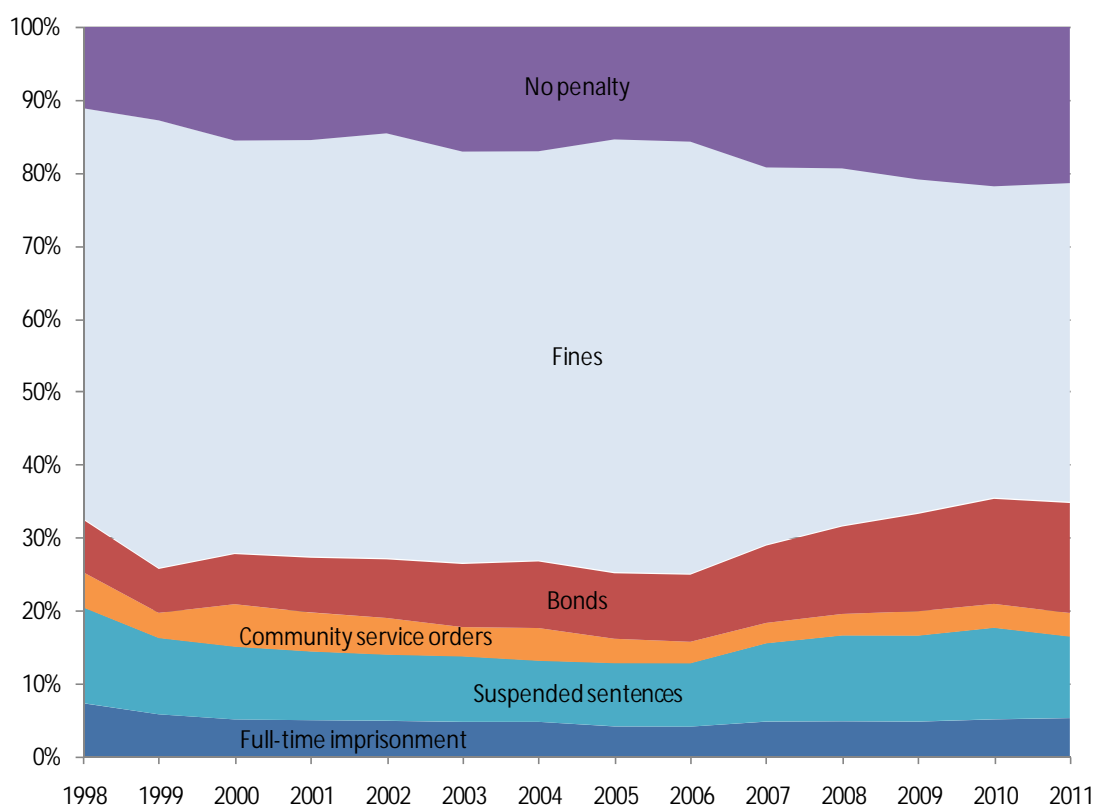
16. *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic); Victoria, *Parliamentary Debates*, Legislative Assembly, 17 April 2013, 1259 (Robert Clark, Attorney-General)

6.19 In Victoria between 2004-05 and 2010-11, custodial penalties (full-time imprisonment, intensive correction orders and suspended sentences) formed a slightly larger overall proportion of sentences than they did in NSW. However, Victoria’s use of full-time imprisonment is much lower than NSW (9.07% of penalties in NSW in 2012 compared to 5.72% of penalties in Victoria in 2010-11). Victorian custodial penalties are more likely to be the “custody in the community” penalties of suspended sentences and intensive correction orders. Victoria also tends to use non-conviction or conviction without penalty orders less than NSW. It is unknown what effects Victoria’s substantial 2012 and 2013 amendments to sentencing options will have.

South Australia

6.20 Figure 6.4 explores the balance of penalties in SA between 1998 and 2011 using data provided by the SA Office of Crime Statistics and Research.

Figure 6.4 Balance of penalties in SA 1998-2011



Source: SA Office of Crime Statistics and Research, unpublished data (1998-2011). Suspended sentences form a greater proportion on these counts than in Figure 6.4 as ABS data only counts fully suspended sentences. In SA, sentences may also be partially suspended and both types are counted here as suspended sentences. See also methodological notes at the end of this report.

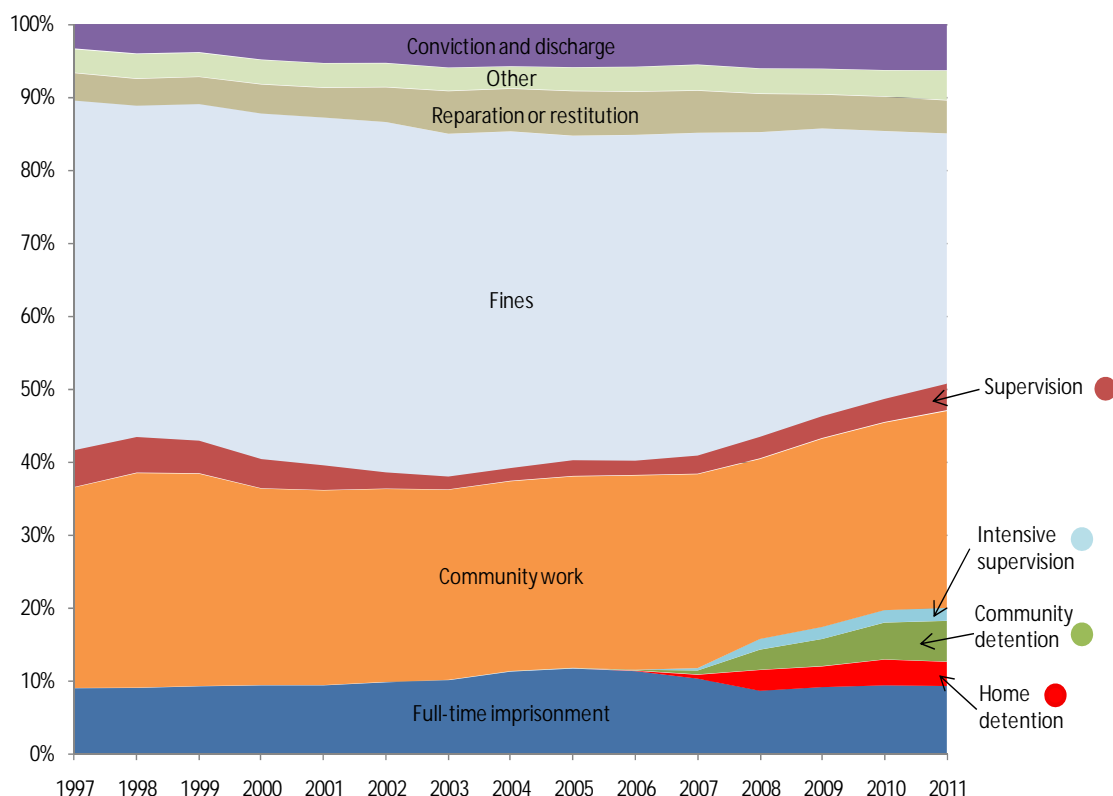
6.21 A much larger proportion of penalties are custodial penalties in SA compared to NSW or Victoria. As in Victoria, though, full-time imprisonment is less used in SA than it is in NSW. Suspended sentences make up a far larger proportion of the custodial penalties in SA compared to NSW or Victoria.

6.22 The other noticeable difference between SA and NSW is that, in SA, penalties more serious than fines made up approximately 43% of all penalties in 2011. In NSW, it was 38% and in Victoria 33%. SA’s use of the “no penalty” sentence (which may be imposed with or without conviction) is similar though slightly lower than use of s 10 and s 10A orders in NSW. Use of the SA no penalty sentence has grown in a comparable way to use of the s 10 non-conviction order in NSW.

New Zealand

6.23 Figure 6.5 looks at the balance of penalty options in NZ over 15 years since 1997.

Figure 6.5 Balance of penalties in NZ 1997-2011



Source: Statistics New Zealand. See also methodological notes at the end of this report.

6.24 The proportions shown in Figure 6.5 are not directly comparable to those for NSW, Victoria and SA as the NZ data does not include non-conviction orders. The penalty “conviction and discharge” is the equivalent of a NSW s 10A order. In NZ, offenders may also be discharged without conviction under s 106 of the *Sentencing Act 2002* (NZ) but this is not captured in Figure 6.5.

6.25 Still, it is interesting to note the effect of the introduction of new custodial penalties in NZ from 2007. As with the introduction of suspended sentences in NSW, there seems to have been some net-widening effect in NZ. Proportions for community work and supervision have remained stable but fines have decreased as the range of higher penalties was expanded. However, unlike NSW, NZ has also experienced a replacement effect, with use of full-time imprisonment decreasing as a result of the new penalties.

7. Particular categories of offender

The overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system is severe and increasing. Aboriginal and Torres Strait Islander people are sentenced to more serious custodial penalties at greater rates compared to offenders overall. As a result, sentenced Aboriginal and Torres Strait Islander prisoner numbers and the imprisonment rate are extremely high. In contrast, female offenders are less likely to receive a custodial penalty compared to offenders in general and are much more likely to be sentenced with a non-conviction order.

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- 7.1 This chapter focuses on sentencing patterns for two particular categories of offender. The first part of the chapter looks at the sentencing of Aboriginal and Torres Strait Islander offenders and compares this to the sentencing of offenders overall. The second part of the chapter explores the sentencing of female offenders.

Aboriginal and Torres Strait Islander offenders

- 7.2 It is well known that Aboriginal and Torres Strait Islander people are overrepresented in the criminal justice system. There were 16 997 Aboriginal and Torres Strait Islander defendants in the NSW Local, District and Supreme Courts in 2012, out of a total of 111 825 defendants.¹ This means that Aboriginal and Torres Strait Islander people made up 15.2% of defendants in NSW adult courts in 2012 despite being only 1.8% of the NSW adult population.²
- 7.3 Conviction rates for Aboriginal and Torres Strait Islander defendants are similar to those for all defendants. In 2012, the conviction rate for all defendants in the Local Court was 88.7%. For Aboriginal and Torres Strait Islander defendants it was 86.5%. In the higher courts, the overall conviction rate was 85.1% compared to 87.4% for Aboriginal and Torres Strait Islander defendants.³

Full-time imprisonment

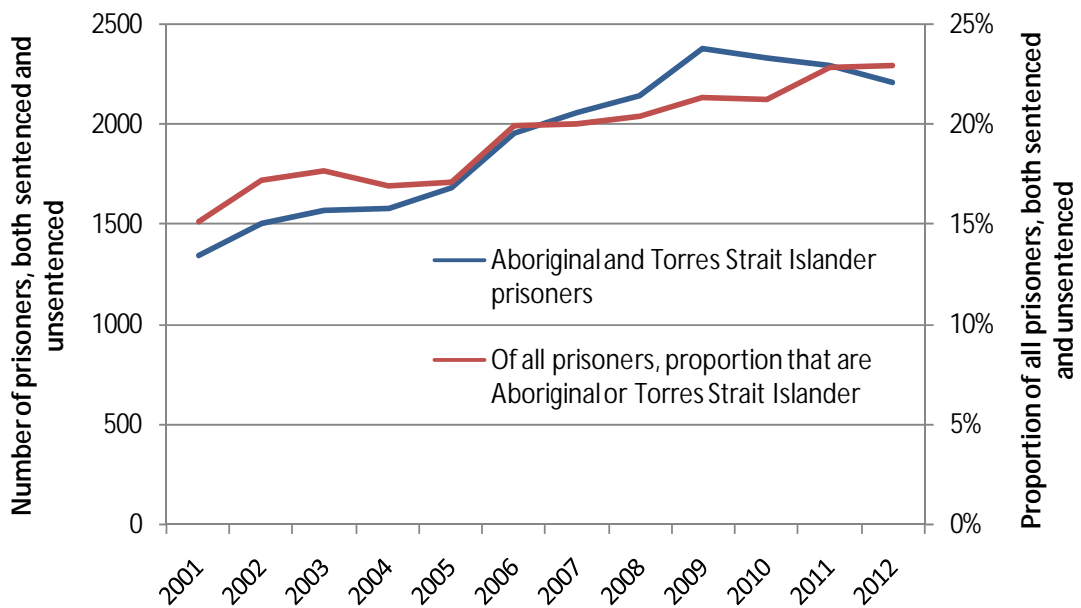
- 7.4 Aboriginal and Torres Strait Islander people form an even higher proportion of the NSW prison population than they do of the defendants in the adult courts. Figure 7.1 shows the number of Aboriginal and Torres Strait Islander prisoners (including both sentenced and unsentenced prisoners) being held in NSW adult prisons on the night of 30 June every year since 2001.

1. NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics* (2012). See also methodological notes at the end of this report for more detail about how defendants are counted.

2. Estimates for the NSW adult population and the NSW adult Aboriginal and Torres Strait Islander population in 2012 used to generate this percentage were derived from the imprisonment rates published in ABS 4517.0 *Prisoners in Australia* (2012), in accordance with the method outlined in S Corben, *Trends in the Adult Indigenous Inmate Population in NSW 1998-2010: the Impact of Changes in Measurement*, Research Bulletin No 32 (Corrective Services NSW, 2011).

3. NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics* (2012).

Figure 7.1 Aboriginal and Torres Strait Islander prison population in NSW 2001-2012

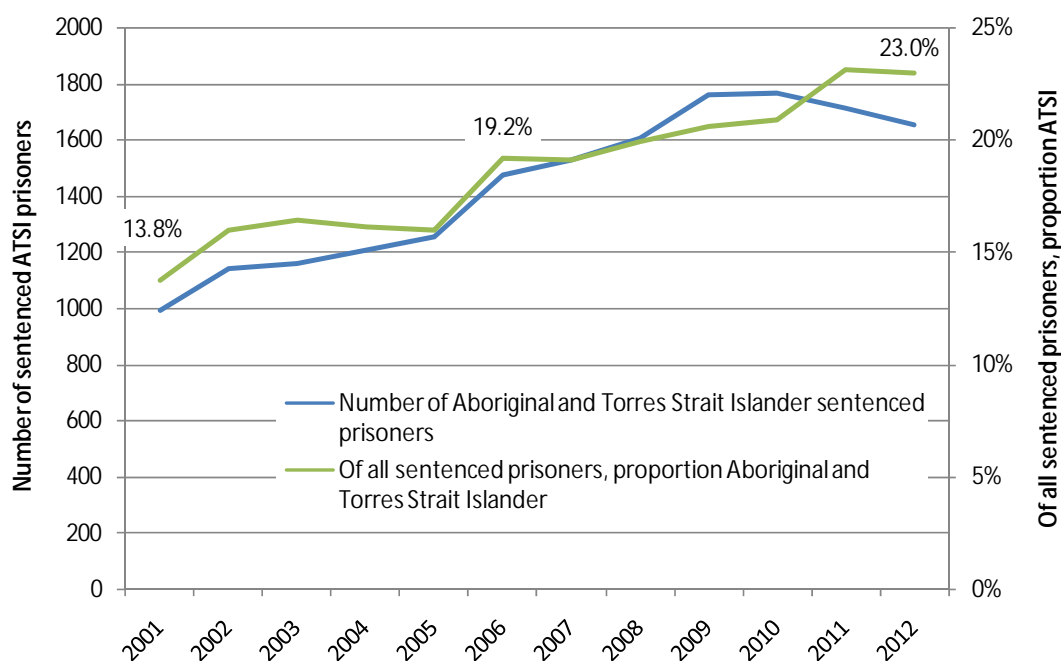


Source: ABS 4517.0 Prisoners in Australia (2001-2012). Counts up to 2009 include some ACT prisoners held in NSW prisons. See also methodological notes at the end of this report.

- 7.5 The proportion of prisoners that identify as Aboriginal or Torres Strait Islander has increased since 2001, although some of this increase (particularly the sharp increase between 2005 and 2006) may be attributable to changes in the way Aboriginal and Torres Strait Islander status is recorded and reported.⁴ As some of the prisoners counted in Figure 7.1 are unsentenced prisoners, these increases may also be related to changing bail practices.
- 7.6 Figure 7.2 shows the *sentenced* Aboriginal and Torres Strait Islander prisoners in NSW prisons on the night of 30 June between 2001 and 2012, and compares these numbers with the overall number of sentenced prisoners by tracking over time the proportion of all sentenced prisoners that are Aboriginal and Torres Strait Islander.

4. S Corben, *Trends in the Adult Indigenous Inmate Population in NSW 1998-2010: the Impact of Changes in Measurement*, Research Bulletin No 32 (Corrective Services NSW, 2011).

Figure 7.2 Sentenced Aboriginal and Torres Strait Islander prisoners in NSW 2001-2012



Source: ABS 4517.0 Prisoners in Australia (2001-2012). Counts up to 2009 include some ACT prisoners held in NSW prisons. See also methodological notes at the end of this report.

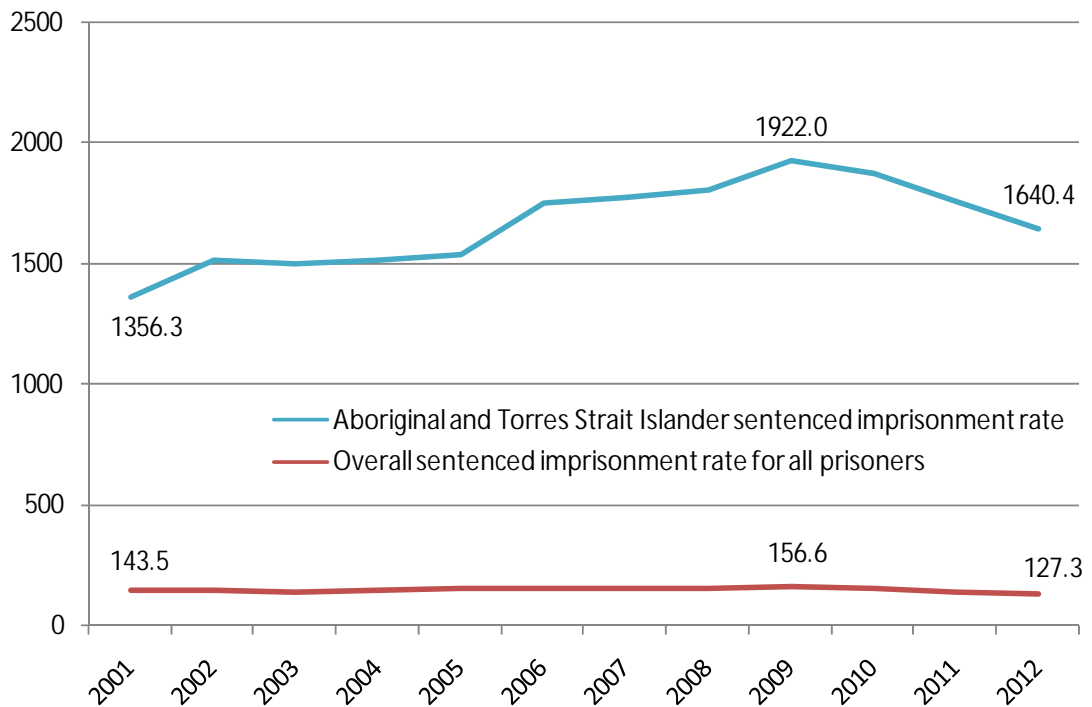
- 7.7 Figure 7.2 confirms that both bail issues and sentencing practices have contributed to increases in the overall Aboriginal and Torres Strait Islander prisoner population. Aboriginal and Torres Strait Islander offenders formed 13.8% of the NSW sentenced prisoner population in 2001 but this grew to 23.0% in 2012. This means that, in 2012, Aboriginal and Torres Strait Islander offenders made up 23% of the sentenced adult prison population in NSW but only 1.8% of NSW's total adult population.
- 7.8 Figure 7.2 also shows that even though the number of sentenced Aboriginal and Torres Strait Islander prisoners decreased after 2009 along with the overall decrease in sentenced prisoner numbers, Aboriginal and Torres Strait Islander numbers did not fall as far. Overall, the NSW sentenced prison population decreased by 16% between 2009 and 2012 but Aboriginal and Torres Strait Islander prisoner numbers only decreased by 6% over the same period (compare Figure 3.1 in Chapter 3).⁵ This explains the trend observed in Figure 7.2 from 2009 where the overall number of sentenced Aboriginal and Torres Strait Islander prisoners fell but the proportion of sentenced prisoners that were Aboriginal and Torres Strait Islander increased.

Imprisonment rate

- 7.9 Figure 7.3 compares the number of sentenced Aboriginal and Torres Strait Islander prisoners to the NSW Aboriginal and Torres Strait Islander adult population through an imprisonment rate.

5. ABS 4517.0 Prisoners in Australia (2012).

Figure 7.3 Aboriginal and Torres Strait Islander sentenced imprisonment rate in NSW 2001-2012



Source: ABS 4517.0 *Prisoners in Australia (2001-2012)*. Counts up to 2009 include some ACT prisoners held in NSW prisons. See also methodological notes at the end of this report.

- 7.10 Sentenced imprisonment rates for Aboriginal and Torres Strait Islander offenders are very much higher than the overall NSW sentenced imprisonment rate. In 2012, there were 127.3 sentenced prisoners for every 100 000 adults in NSW in general but 1640.4 sentenced Aboriginal and Torres Strait Islander prisoners for every 100 000 Aboriginal and Torres Strait Islander adults in NSW.
- 7.11 It is important to note that the age profile of the Aboriginal and Torres Strait Islander population does significantly inflate the imprisonment rate. The NSW Aboriginal and Torres Strait Islander population is skewed towards younger age brackets compared to the general NSW population, and offending tends to occur more in younger age brackets (see Figure 2.4 in Chapter 2).⁶ The Australian Bureau of Statistics also publishes an age standardised imprisonment rate for Aboriginal and Torres Strait Islander people to account for this (though the age standardised rate includes both sentenced and unsentenced prisoners). In 2012, the age standardised imprisonment rate for Aboriginal and Torres Strait Islander offenders was 14% below the “crude” imprisonment rate.⁷ Still, it is clear that Aboriginal and Torres Strait Islander people are extremely overrepresented in the sentenced prisoner population.

6. Australian Bureau of Statistics, ABS 4517.0 *Prisoners in Australia (2012)* explanatory notes 33-38.

7. Australian Bureau of Statistics, ABS 4517.0 *Prisoners in Australia (2012)*.

7.12 Changes to the sentenced imprisonment rate for Aboriginal and Torres Strait Islander offenders follow a similar pattern to the overall sentenced imprisonment rate, except the drop after 2009 is less pronounced. The overall sentenced imprisonment rate decreased by 18.7% between 2009 and 2012 to well below the 2001 rate. For Aboriginal and Torres Strait Islander people, however, the sentenced imprisonment rate decreased by 14.7% between 2009 and 2012 and remains above the 2001 rate (compare Figure 3.2 in Chapter 3).

Use of full-time imprisonment by courts for Aboriginal and Torres Strait Islander offenders

7.13 Figure 7.4 shows the courts' use of full-time imprisonment for Aboriginal and Torres Strait Islander offenders since 1997. The purple lines relate to Aboriginal and Torres Strait Islander offenders. The orange line provides a point of comparison, showing the overall proportion of all offenders (both Aboriginal and non-Aboriginal) who were sentenced to full-time imprisonment. The orange line in Figure 7.4 shows the same information as the orange line in Figure 3.3 in Chapter 3.

Figure 7.4 Use of full-time imprisonment for Aboriginal and Torres Strait Islander offenders in NSW adult courts 1997-2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)* and unpublished data (ref: HcLc1311319dg). See also methodological notes at the end of this report.

7.14 In 2012, 9.07% of all offenders who were sentenced in the NSW Local, District and Supreme Courts were sentenced to full-time imprisonment as their principal penalty. By contrast, 21.73% of all Aboriginal and Torres Strait Islander offenders sentenced in the Local, District and Supreme Courts were sentenced to full-time imprisonment. There is a clear disparity in the proportion of Aboriginal and Torres Strait Islander

offenders sentenced to imprisonment compared to the proportion overall and this disparity seems to be increasing over time.

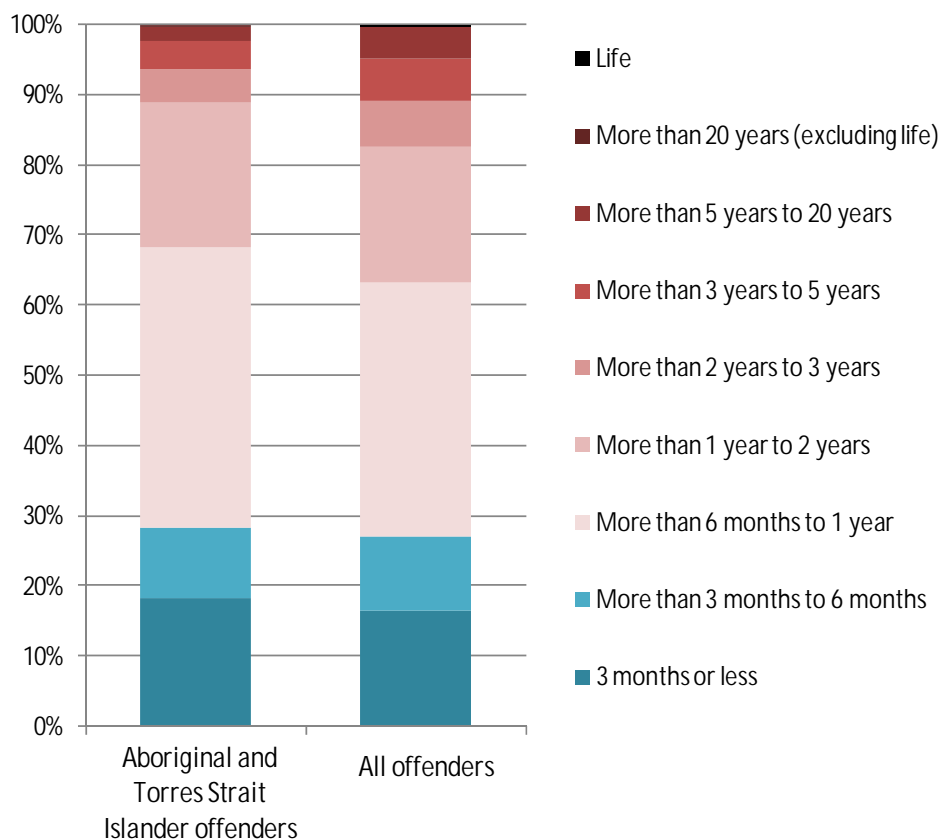
- 7.15 Aboriginal and Torres Strait Islander offenders may present with significantly different characteristics to other offenders (like number of prior offences and seriousness of offending) which could account for this disparity. A recent study published by the Australian Institute of Criminology tested this hypothesis through an analysis of Local Court sentencing decisions between 1998 and 2008. The researchers found that, after controlling for other factors like age, criminal history, seriousness of offending and bail status, Aboriginal and Torres Strait Islander offenders in NSW were still 1.3 times more likely to be sentenced to full-time imprisonment than non-Aboriginal offenders.⁸ However, rather than being a result of differential treatment, this study could simply reflect the operation of other factors that were not controlled for.

Sentence length

- 7.16 Figure 7.5 shows the lengths of head sentences imposed in the NSW Local, District and Supreme Courts (a “flow” analysis) for Aboriginal and Torres Strait Islander offenders compared to all offenders in 2012.

8. S Jeffries and C Bond, *Indigenous Disparity in Lower Court Imprisonment Decisions: A Study of Two Australian Jurisdictions 1998 to 2008*, Trends and Issues in Crime and Criminal Justice No 447 (Australian Institute of Criminology, 2012). See also Victoria: Victorian Sentencing Advisory Council, *Comparing Sentencing Outcomes for Koori and Non-Koori Adult Offenders in the Magistrates Court of Victoria* (2013) 41.

Figure 7.5 Length of head sentence imposed in NSW adult courts, comparing offenders overall and Aboriginal and Torres Strait Islander offenders 2012



Source: NSW Bureau of Crime Statistics and Research (unpublished data, ref: HcLc1311319dg). Note that length of time spent on remand may affect sentence lengths as previous time in custody is taken into account when setting the length of a sentence of imprisonment. See also methodological notes at the end of this report.

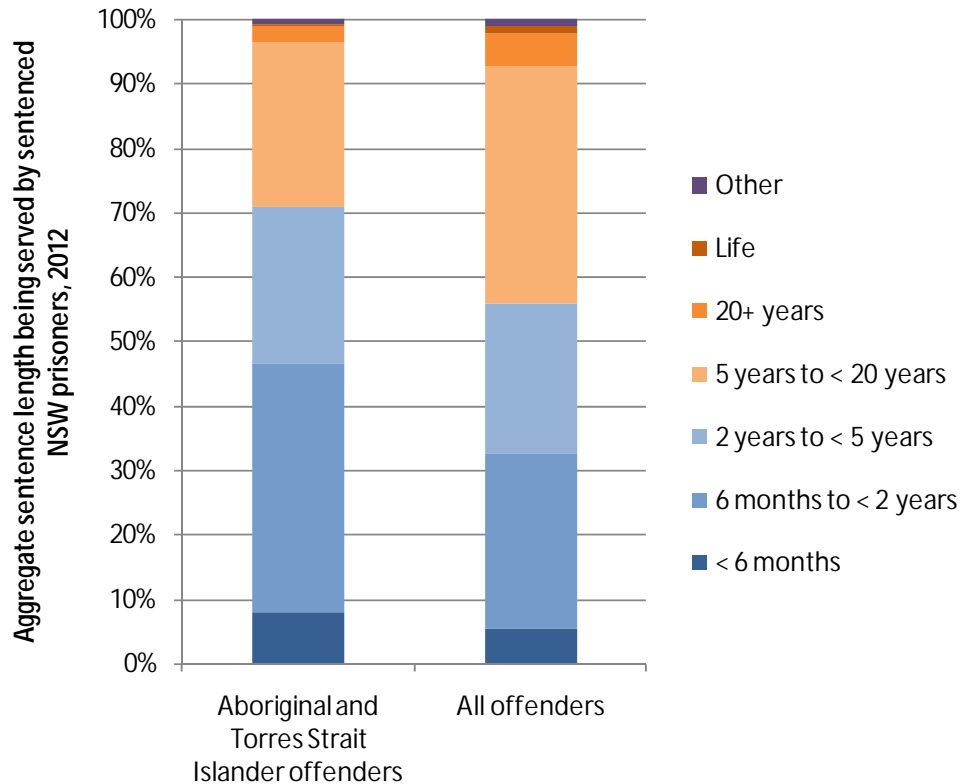
7.17 In 2012, courts tended to impose shorter sentences of imprisonment on Aboriginal and Torres Strait Islander offenders compared to offenders overall. Of the Aboriginal and Torres Strait Islander offenders sentenced to full-time imprisonment, 28.5% received a sentence of six months or less, and 68.4% received a head sentence of one year or less. Overall, 27.0% of all offenders received a sentence of six months or less and 63.2% received a head sentence of one year or less. Aboriginal and Torres Strait Islander offenders may be more likely to receive a shorter head sentence because they are much more likely to be sentenced to full-time imprisonment compared to offenders overall (see above Figure 7.4). Aboriginal and Torres Strait Islander people are also more likely to be refused bail, which may result in a shorter recorded head sentence to account for time already spent in custody.⁹

7.18 Differences in sentence length are also visible in an analysis of the distribution of sentences being served by Aboriginal and Torres Strait Islander prisoners compared with NSW prisoners overall (a “stock” analysis). Aboriginal and Torres Strait Islander prisoners tend to be serving shorter sentences than the overall sentenced prisoner population. As at June 2012, 71% of Aboriginal and Torres

9. NSW Law Reform Commission, *Bail*, Report 133 (2012) 59.

Strait Islander prisoners were serving a sentence of less than five years, compared to 56% of prisoners overall.

Figure 7.6 Distribution of sentence lengths being served by NSW prisoners, comparing prisoners overall and Aboriginal and Torres Strait Islander prisoners on 30 June 2012



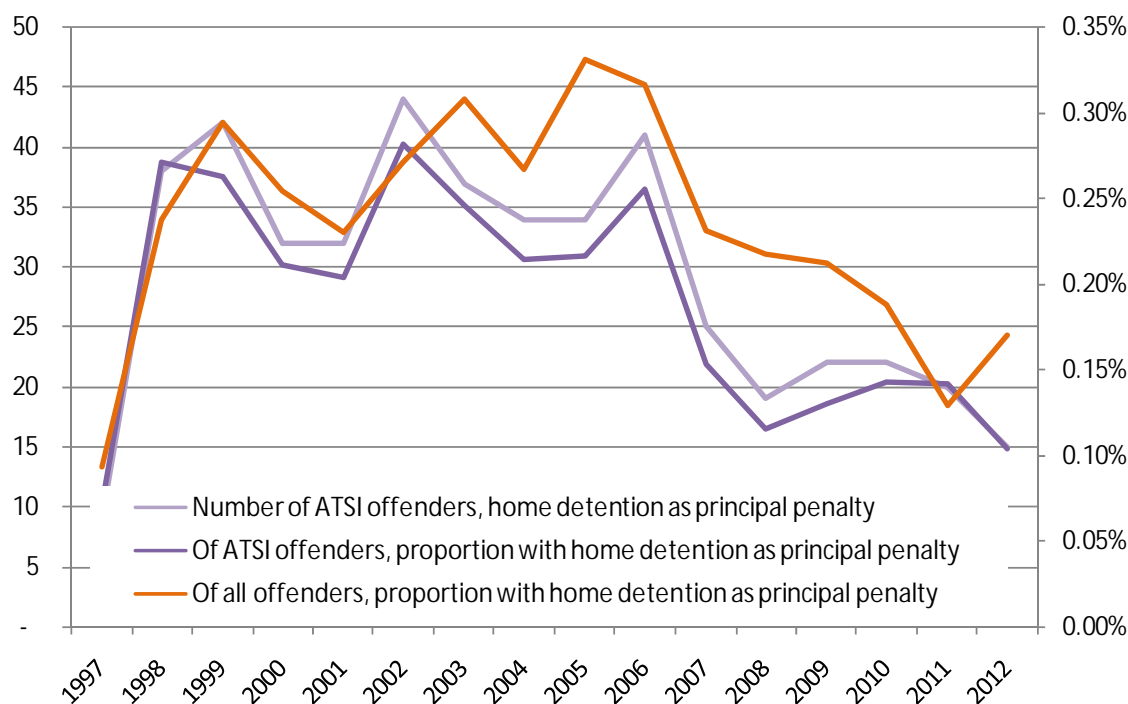
Source: ABS 4517.0 Prisoners in Australia (2012). Note that length of time spent on remand may affect sentence lengths as previous time in custody is taken into account when setting the length of a sentence of imprisonment. See also methodological notes at the end of this report. The "other" category relates to prisoners serving indeterminate periods in detention other than indeterminate life sentences (in NSW these are mainly forensic patients). See also methodological notes at the end of this report.

Custodial alternatives to full-time imprisonment

Home detention

- 7.19 Figure 7.7 shows the Local, District and Supreme Courts' use of home detention for Aboriginal and Torres Strait Islander offenders since 1997. The chart compares the proportion of Aboriginal and Torres Strait Islander offenders who received home detention as their principal penalty (the dark purple line) with the proportion of offenders overall who were sentenced to home detention as their principal penalty (the orange line). Again, the orange line in Figure 7.7 shows the same information as the orange line in Figure 4.2 in Chapter 4.

Figure 7.7 Use of home detention for Aboriginal and Torres Strait Islander offenders in NSW 1997-2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)* and unpublished data (ref: HcLc1311319dg). See also methodological notes at the end of this report.

7.20 Since 1997, a slightly higher proportion of offenders overall (the orange line) than Aboriginal and Torres Strait Islander offenders (the dark purple line) have received home detention as their principal penalty but the numbers have always been small for both groups. In 2011, the use of home detention overall dropped to the point where the same proportion of offenders overall and proportion of Aboriginal and Torres Strait Islander offenders received home detention as their principal penalty; approximately 0.13%. In 2012, however, use of home detention began to increase for offenders overall to 0.17% but fell further for Aboriginal and Torres Strait Islander offenders to 0.10%.

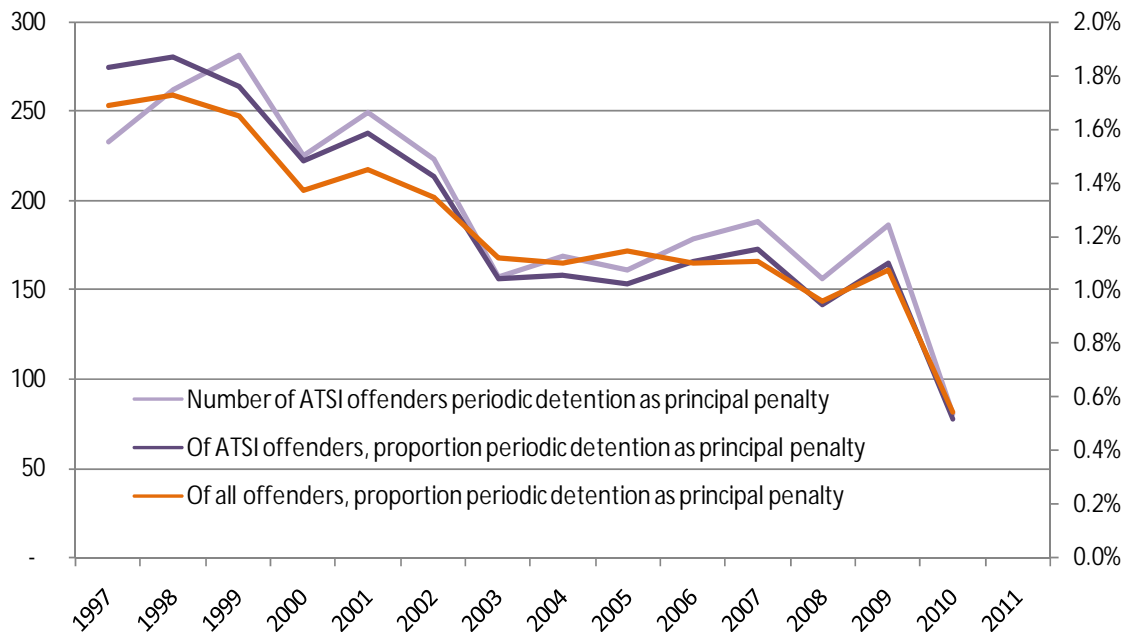
ICOs and periodic detention

7.21 ICOs were introduced in October 2010 to replace the sentence of periodic detention. In 2011, the first full year of operation for ICOs, 0.63% of Aboriginal and Torres Strait Islander offenders received an ICO as their principal penalty. The proportion for offenders overall was similar at 0.60%. In 2012, the use of ICOs had increased for both groups to 0.92% for offenders overall and a slightly higher 1.08% for Aboriginal and Torres Strait Islander offenders.¹⁰

7.22 Figure 7.8 shows the use of periodic detention for Aboriginal and Torres Strait Islander offenders before its abolition.

10. NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)* and unpublished data (ref: HcLc1311319dg).

Figure 7.8 Use of periodic detention for Aboriginal and Torres Strait Islander offenders in NSW from 1997 until abolition in 2010



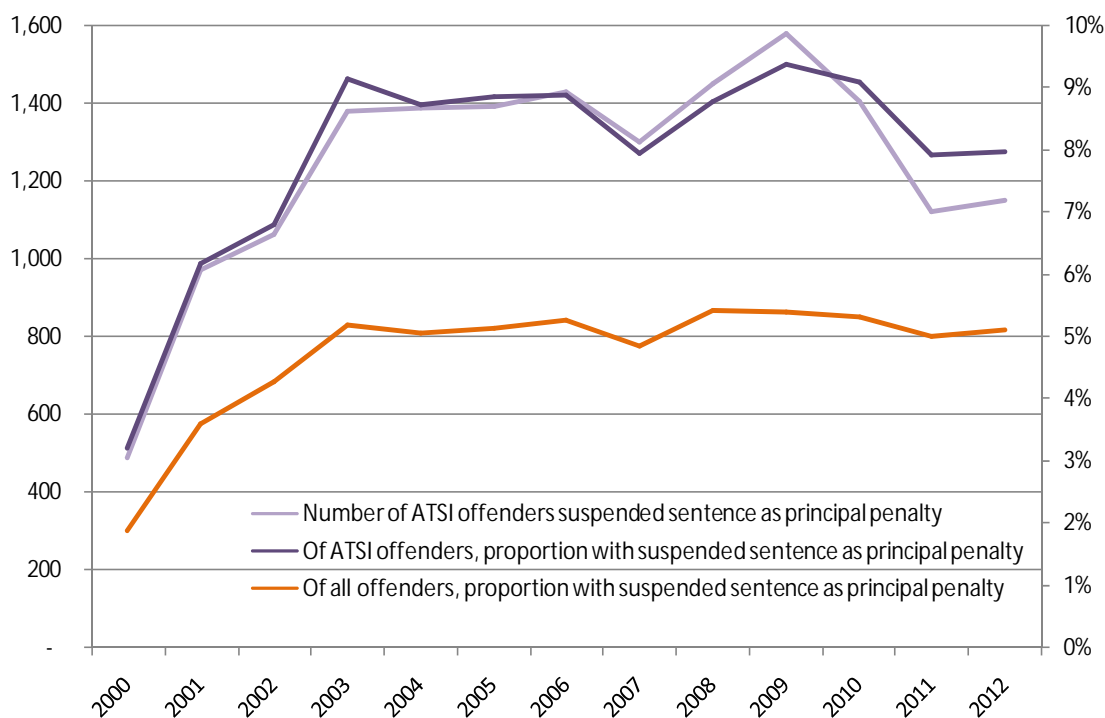
Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2010)* and unpublished data (ref: HcLc1311319dg). See also methodological notes at the end of this report.

- 7.23 While periodic detention was in operation, it was used in a similar way for both Aboriginal and non-Aboriginal offenders and gradually decreased in a similar way over time. For most of the time that periodic detention was available, larger proportions of both Aboriginal and Torres Strait Islander offenders and offenders overall received periodic detention as their principal penalty than have subsequently been receiving ICOs.

Suspended sentences

- 7.24 There is a clear disparity in the use of suspended sentences for Aboriginal and Torres Strait Islander offenders compared to offenders overall (see Figure 7.9).

Figure 7.9 Use of suspended sentences for Aboriginal and Torres Strait Islander offenders in NSW 2000-2012



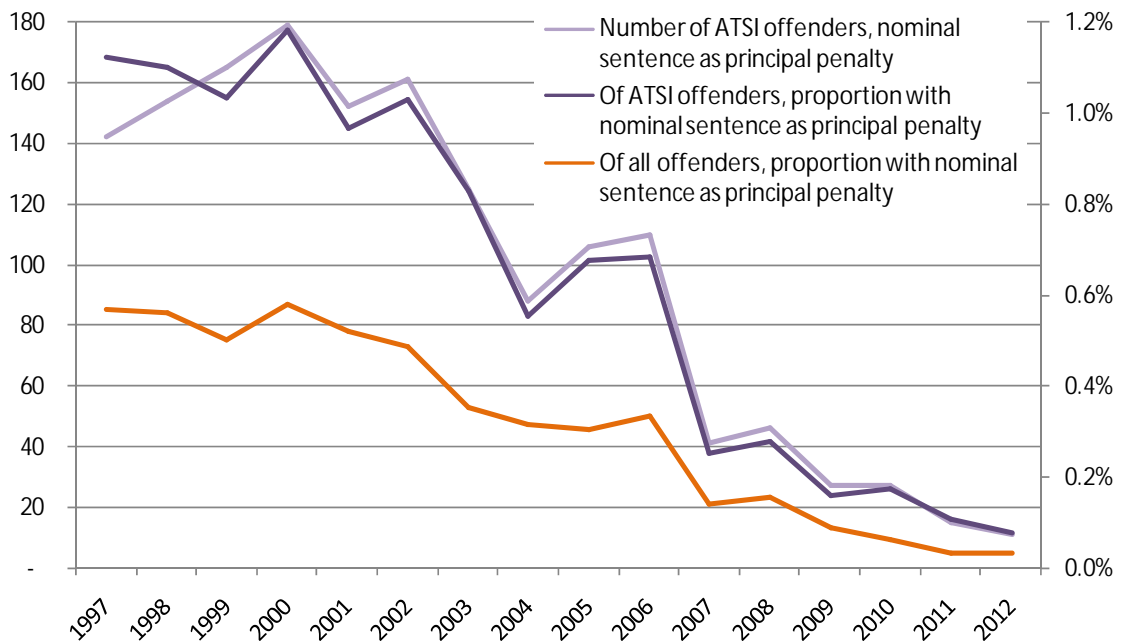
Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)* and unpublished data (ref: HcLc1311319dg). See also methodological notes at the end of this report.

7.25 Since the introduction of suspended sentences in 2000, a higher proportion of Aboriginal and Torres Strait Islander offenders have received a suspended sentence as their principal penalty compared to offenders overall. In 2012, 7.97% of Aboriginal and Torres Strait Islander offenders were sentenced with a suspended sentence as the principal penalty. For offenders overall, the proportion was 5.09%. It is not known to what extent this disparity can be accounted for by differences in Aboriginal and Torres Strait Islander offenders and offences compared to offenders in general and to what extent it is a result of differential treatment.

Rising of the court

7.26 Rising of the court involves the person being sentenced to imprisonment until the court adjourns, which in practice usually happens as soon as the sentence is imposed.

Figure 7.10 Use of rising of the court for Aboriginal and Torres Strait Islander offenders in NSW 1997-2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)* and unpublished data (ref: HcLc1311319dg). Nominal sentence = rising of the court. See also methodological notes at the end of this report.

- 7.27 Over the past 16 years, the courts have used rising of the court more often as a penalty for Aboriginal and Torres Strait Islander offenders compared to offenders in general. This may be related to bail practices, as Aboriginal and Torres Strait Islander offenders are refused bail at a greater rate than other offenders.¹¹ Rising of the court is commonly imposed to recognise that a term of imprisonment is appropriate but the person has already served sufficient time in custody through being refused bail.
- 7.28 For both Aboriginal and Torres Strait Islander offenders and offenders overall, rising of the court has been rarely used since the introduction of s 10A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) in 2006, which allows a court to convict an offender with no other penalty.

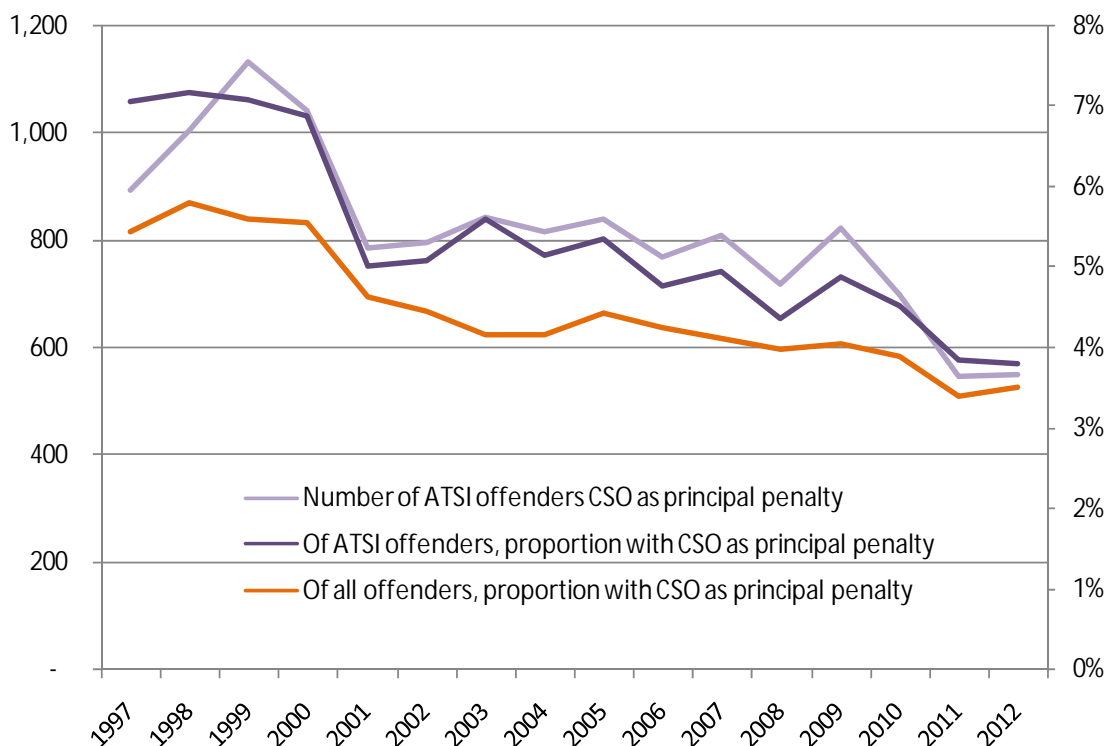
Non-custodial sentences

Community service orders

- 7.29 A slightly higher proportion of Aboriginal and Torres Strait Islander offenders are sentenced to community service orders (CSOs) compared to offenders overall (see below Figure 7.11).

11. NSW Law Reform Commission, *Bail*, Report 133 (2012) [4.36].

Figure 7.11 Use of CSOs for Aboriginal and Torres Strait Islander offenders in NSW 1997-2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)* and unpublished data (ref: HcLc1311319dg). See also methodological notes at the end of this report.

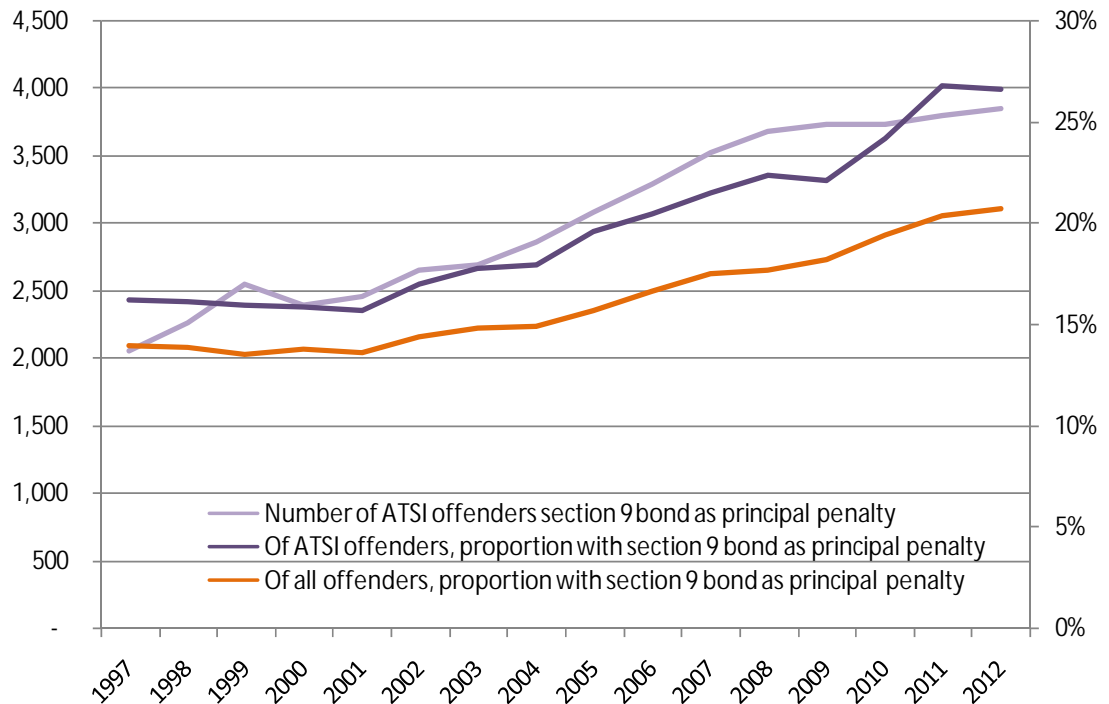
7.30 Use of CSOs has gradually declined for both groups. The sharpest drop was after 2000, when suspended sentences were introduced. Suspended sentences seem to have displaced CSOs particularly for Aboriginal and Torres Strait Islander offenders.¹² In 2000, 6.85% of Aboriginal and Torres Strait Islander offenders received a CSO as their principal penalty but this fell to 5.00% in 2001 and 3.79% in 2012.

Section 9 good behaviour bonds

7.31 Courts impose s 9 good behaviour bonds on a large and growing proportion of Aboriginal and Torres Strait Islander offenders.

12. NSW Bureau of Crime Statistics and Research has reported that suspended sentences have displaced CSOs to some extent for offenders in general: L McInnis and C Jones, *Trends in the Use of Suspended Sentences in NSW*, Bureau Brief No 47 (NSW Bureau of Crime Statistics and Research, 2010).

Figure 7.12 Use of s 9 bonds for Aboriginal and Torres Strait Islander offenders in NSW 1997-2012



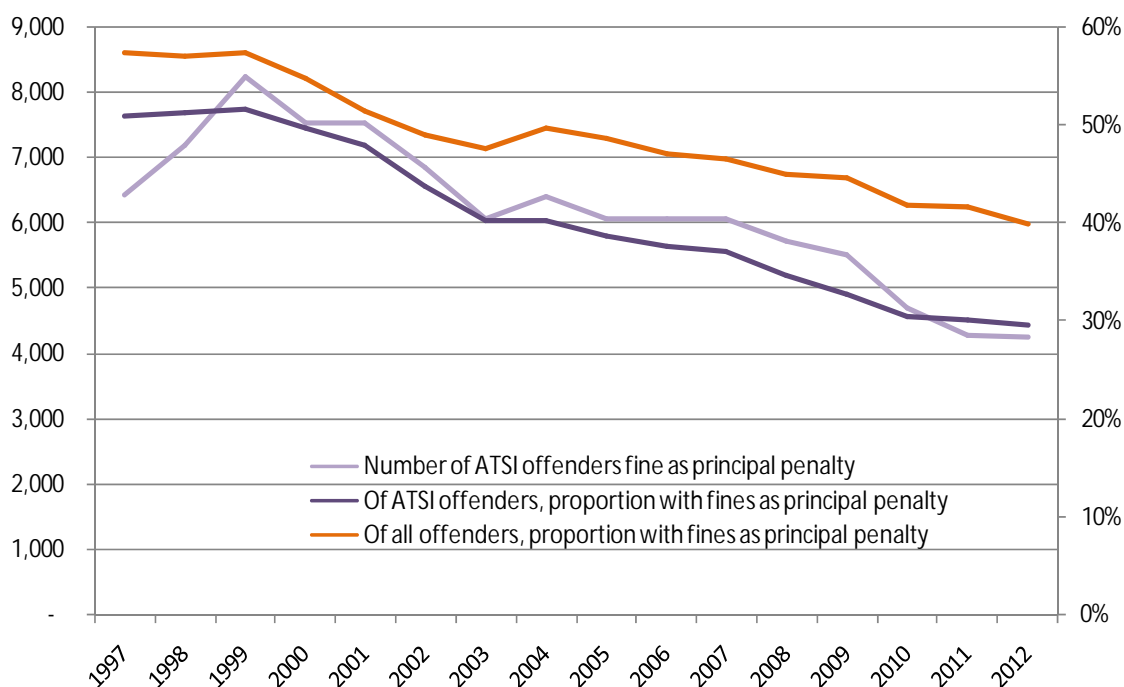
Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)* and unpublished data (ref: HcLc1311319dg). See also methodological notes at the end of this report.

- 7.32 A consistently higher proportion of Aboriginal and Torres Strait Islander offenders are sentenced with s 9 bonds compared to offenders overall. In 2012, 26.6% of Aboriginal and Torres Strait Islander offenders received a s 9 bond as their principal penalty. Use of s 9 bonds has been increasing for Aboriginal and Torres Strait Islander offenders and for offenders in general, although it seems to have been increasing slightly faster for Aboriginal and Torres Strait Islander offenders.
- 7.33 The s 9 bonds imposed on Aboriginal and Torres Strait Islander offenders are more likely to have supervision attached as condition compared to s 9 bonds in general. For offenders overall in 2012, 35% of s 9 bonds were supervised compared to 47% for Aboriginal and Torres Strait Islander offenders.

Fines

- 7.34 A lower proportion of Aboriginal and Torres Strait Islander offenders are sentenced with fines as a principal penalty compared to offenders over all. This is likely to be a result of the courts appropriately recognising the limited capacity of some Aboriginal and Torres Strait Islander offenders to pay a fine.

Figure 7.13 Use of fines for Aboriginal and Torres Strait Islander offenders in NSW 1997-2012



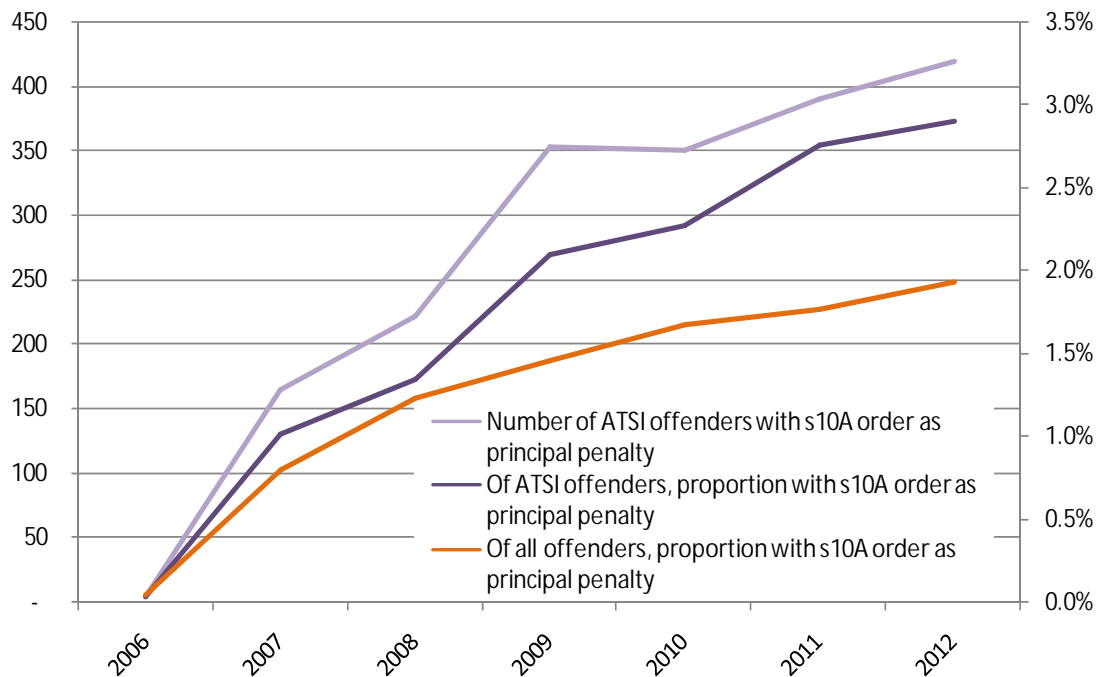
Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)* and unpublished data (ref: HcLc1311319dg). The spike in the trend lines between 2003 and 2004 is due to a reordering of the seriousness of the lesser penalties by BOCSAR at that time. See also methodological notes at the end of this report.

7.35 Use of fines has been decreasing for both groups but the decline appears to be more pronounced for Aboriginal and Torres Strait Islander offenders. In 1997, 51% of Aboriginal and Torres Strait Islander offenders received a fine as their principal penalty compared to 29% in 2012.

Conviction with no other penalty and non-conviction orders

7.36 Orders made under s 10A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) allow a court to convict an offender without imposing any other penalty. Section 10A orders are more often imposed as the principal penalty for Aboriginal and Torres Strait Islander offenders compared to offenders in general.

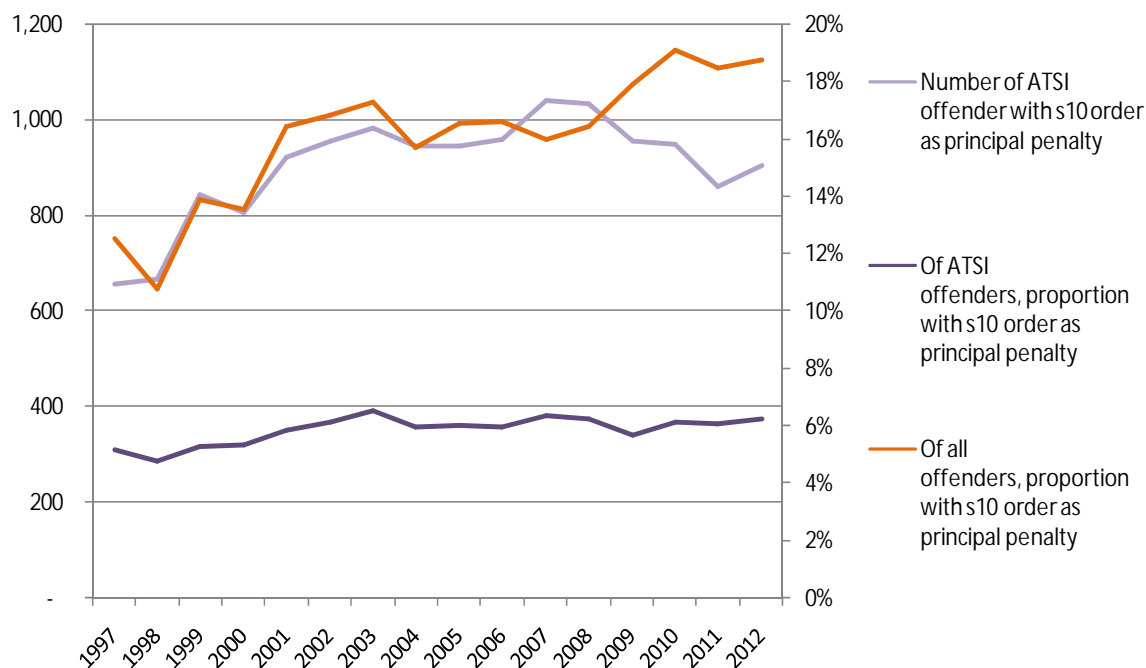
Figure 7.14 Use of s 10A orders for Aboriginal and Torres Strait Islander offenders 2006-2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2006-2012)* and unpublished data (ref: HcLc1311319dg). See also methodological notes at the end of this report.

- 7.37 The use of s 10A orders for Aboriginal and Torres Strait Islander offenders could be connected to the difference in bail status and the decreasing use of rising of the court (compare Figure 7.10).
- 7.38 As well as convicting an offender with no further penalty under s 10A, a court can also decide not to record a conviction through an order under s 10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW). There is a large disparity in use of s 10 non-conviction orders for Aboriginal and Torres Strait Islander offenders compared to offenders overall. In 2012, 18.8% of offenders overall received a s 10 order (either with or without a bond) as their principal penalty. Only 6.25% of Aboriginal and Torres Strait Islander offenders received a s 10 order in 2012 (see Figure 7.15).

Figure 7.15 Use of s 10 non-conviction orders for Aboriginal and Torres Strait Islander offenders in NSW 1997-2012



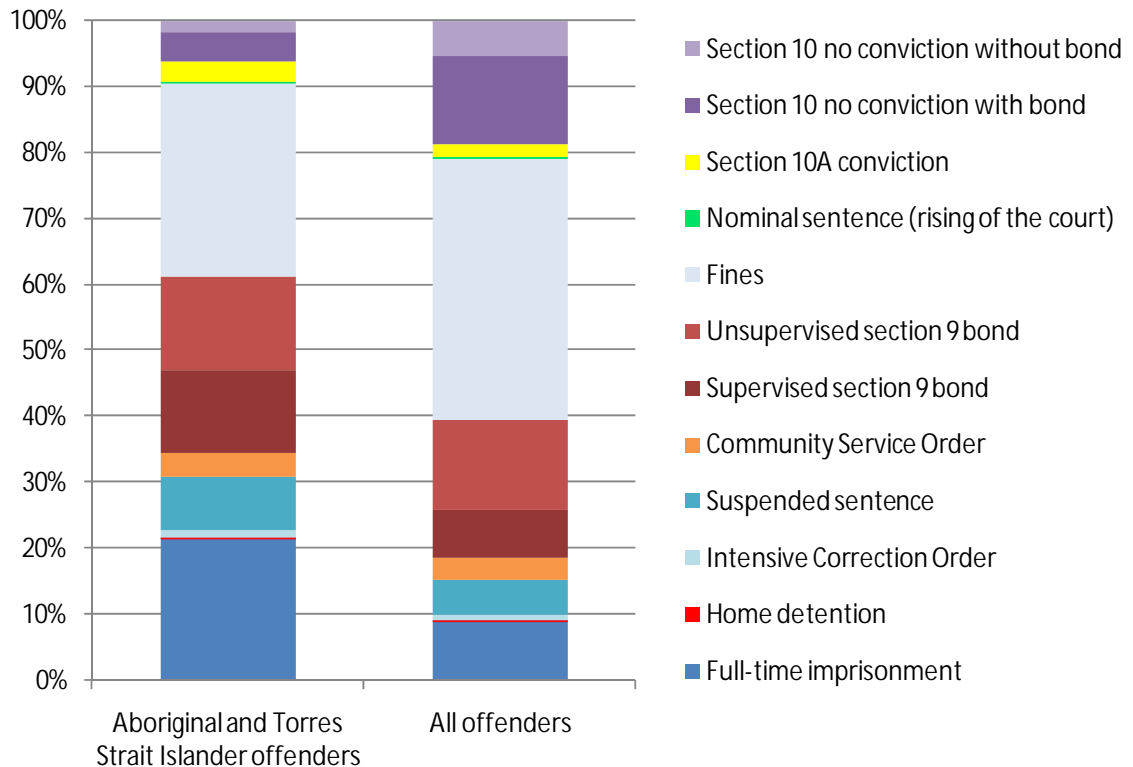
Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)* and unpublished data (ref: HcLc1311319dg). The dip in the trend lines between 2003 and 2004 is due to a reordering of the seriousness of the lesser penalties by BOCSAR at that time. See also methodological notes at the end of this report.

- 7.39 Use of s 10 orders for Aboriginal and Torres Strait Islander offenders also seems to be fairly stable, compared to the gradually increasing use of these orders for offenders in general.
- 7.40 The ratio between s 10 orders with and without bonds is reasonably similar for both Aboriginal and Torres Strait Islander offenders and offenders overall. In 2012, 71% of the s 10 orders imposed on offenders overall included a good behaviour bond. Of the s 10 orders imposed as the principal penalty of Aboriginal and Torres Strait Islander offenders, 72% included a bond.

Overall balance of penalties for Aboriginal and Torres Strait Islander offenders

- 7.41 The data presented in the preceding sections of this chapter makes it clear that Aboriginal and Torres Strait Islander offenders are more often sentenced with custodial penalties (a category that includes full-time imprisonment, home detention, ICOs/periodic detention, suspended sentences, rising of the court) compared to offenders overall. In 2012, 15% of the principal penalties imposed on offenders in general were custodial. By contrast, 31% of the principal penalties imposed on Aboriginal and Torres Strait Islander offenders were custodial (see Figure 7.16).

Figure 7.16 Balance of penalties Aboriginal and Torres Strait Islander offenders compared to all offenders in NSW adult courts 2012



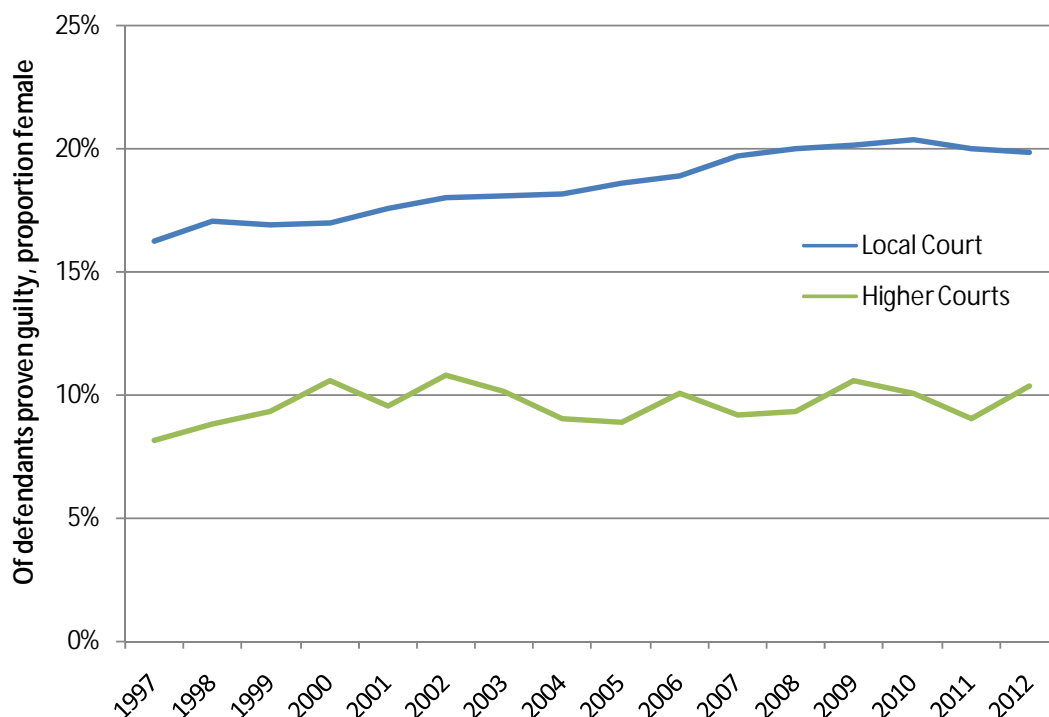
Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)* and unpublished data (ref: HcLc1311319dg). See also methodological notes at the end of this report.

- 7.42 The majority of this large disparity comes from full-time imprisonment and a corresponding disparity at the other end of the sentencing spectrum in the use of non-conviction orders. These differences can be partly explained through the differences that exist between Aboriginal and Torres Strait Islander offenders and offenders overall in terms of offence seriousness, criminal history, and other variables such as bail refusal.

Women

- 7.43 Women are underrepresented in the criminal justice system compared to their share of the NSW population. Figure 7.17 shows that, in 2012, approximately one in five offenders sentenced in the Local Court were female, and only one in ten offenders sentenced in the higher courts were female.

Figure 7.17 Of NSW defendants found guilty in NSW adult courts, proportion female 1997-2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)*. See also methodological notes at the end of this report.

- 7.44 For offenders being sentenced by the higher courts, the ratio of women to men has remained fairly stable over time. However, the proportion of offenders sentenced in the Local Court who are women has been gradually increasing, from about 16% of all offenders sentenced in the Local Court in 1997 to stabilise at about 20% by 2012. Most offenders are sentenced in the Local Court, so the overall proportion of offenders sentenced who are female in the Local, District and Supreme Courts increased a similar amount from 16% in 1997 to 19.6% in 2012.
- 7.45 BOCSAR has conducted research into the proportion of suspected offenders known to the police who are female. The study found that, between 1999 and 2009, the proportion of “persons of interest” who were female did increase but only from 18.3% in 1999 to 19.0% in 2009.¹³

Full-time imprisonment

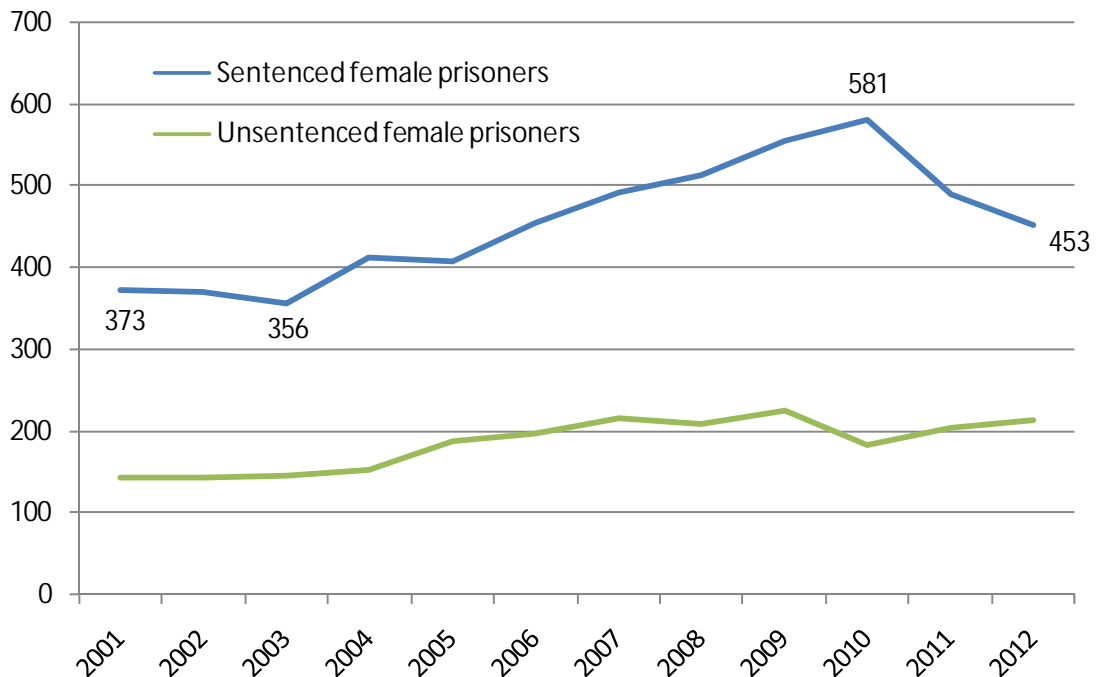
- 7.46 Compared with their share of the population, women make up an even smaller proportion of NSW prisoners than they do of the offenders being sentenced.

13. J Holmes, *Female Offending: Has There Been An Increase?*, Bureau Brief No 46 (NSW Bureau of Crime Statistics and Research, 2010).

Female prisoners and sentenced imprisonment rate

- 7.47 On the night of 30 June 2012, there were 453 sentenced female prisoners being held by Corrective Services NSW in full-time custody compared to 6704 sentenced male prisoners.¹⁴ Female sentenced prisoners thus made up 6.3% of the total sentenced prisoner population, a significantly lower proportion than the proportion of all sentenced offenders that are female.

Figure 7.18 Sentenced female prisoners in NSW 2001-2012

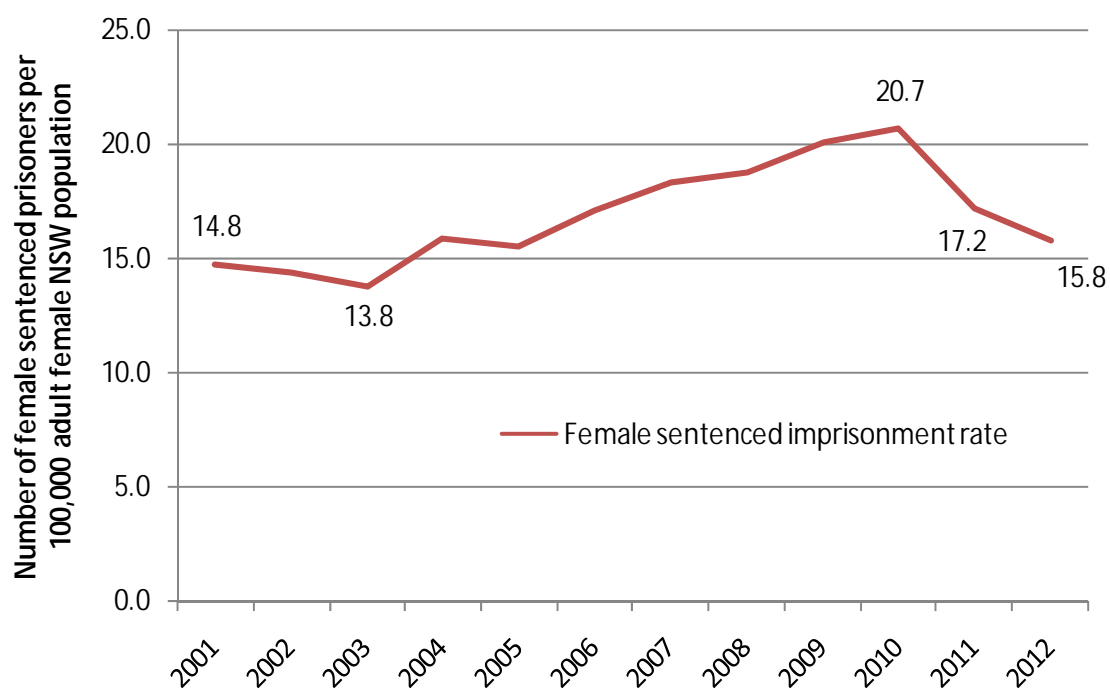


Source: Corrective Services NSW, *NSW Inmate Census (2001-2012)*. Counts up to 2009 may include some ACT prisoners held in NSW prisons. Counts do not include periodic detainees but do include forensic patients. See also methodological notes at the end of this report.

- 7.48 The trend in the number of female prisoners shown in Figure 7.18 is similar to the trend in overall prisoner numbers over the same period (compare Figure 3.1), although it peaks later in 2010 instead of 2009. However, the increase in female sentenced prisoners between 2003 and 2010 was even more rapid than the general trend. Between 2003 and 2010, the number of sentenced prisoners in total increased by 20.5% but the number of female sentenced prisoners increased by 63.2%.
- 7.49 Figure 7.19 shows the number of female sentenced prisoners per 100 000 adult women in NSW.

14. These figures do not include periodic detainees. The total number of male and female sentenced prisoners according to these figures ($453 + 6704 = 7157$) is different to the total number of sentenced prisoners shown for 2012 in Figure 3.1 (7169) due to different data sources.

Figure 7.19 Female sentenced imprisonment rate in NSW 2001-2012



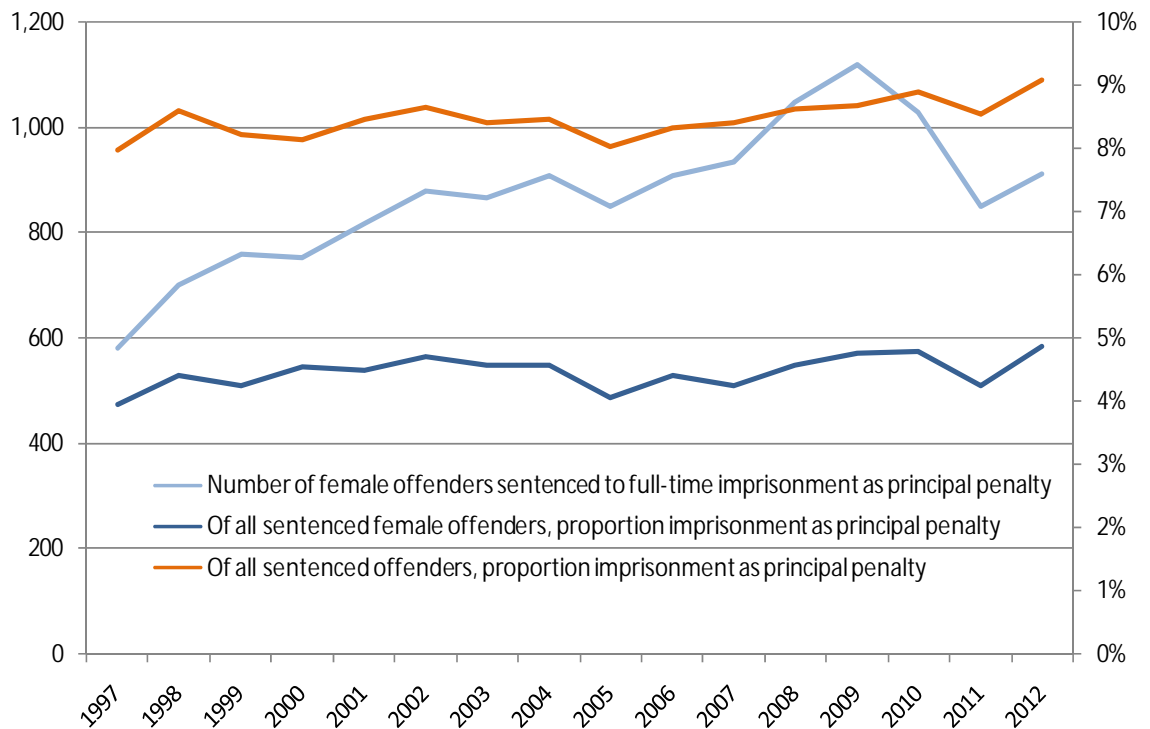
Source: Number of sentenced female prisoners sourced from Corrective Services NSW, NSW Inmate Census (2001-2012). Estimates of NSW adult female population sourced from ABS 3101.0 Australian Demographic Statistics (June 2012). See also methodological notes at the end of this report.

7.50 Corresponding with the small number of female sentenced prisoners, the female sentenced imprisonment rate is much lower than the overall sentenced imprisonment rate. In 2012, the overall sentenced imprisonment rate was 127.3 per 100 000 adults compared to 15.8 per 100 000 adult women. However, unlike the overall sentenced imprisonment rate in NSW, the female sentenced imprisonment rate in 2012 has not fallen to below 2001 levels (compare Figure 3.2).

Use of imprisonment by courts for female offenders

7.51 Matching their low imprisonment rate and small fraction of the sentenced prison population, female offenders are less likely to be sentenced to full-time imprisonment as their principal penalty compared to offenders overall. Figure 7.20 compares the proportion of female offenders who received a term of full-time imprisonment as their principal penalty (the dark blue line) with the proportion of offenders in general who were sentenced to full-time imprisonment as their principal penalty. The orange line in Figure 7.20 shows the same information as the orange lines in Figures 7.4 and 3.3.

Figure 7.20 Use of full-time imprisonment for female offenders, NSW adult courts 1997-2012



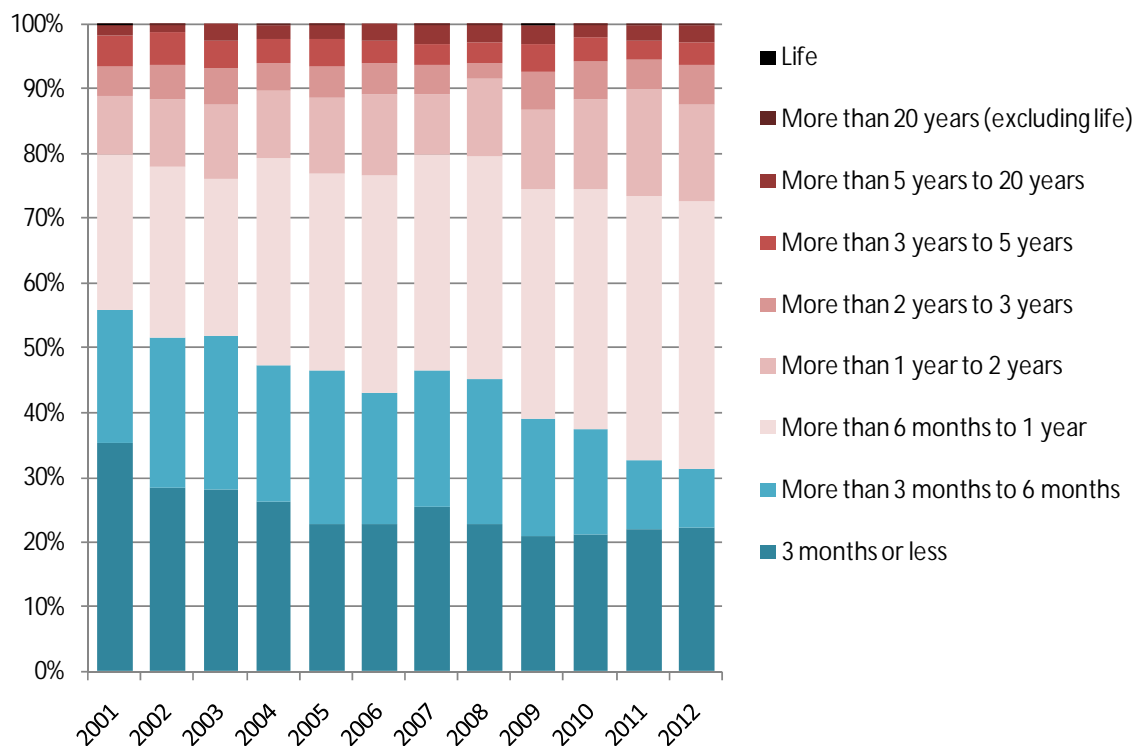
Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)* and unpublished data (ref: HcLc1311319dg). See also methodological notes at the end of this report.

- 7.52 In 2012, 4.85% of female offenders received a term of full-time imprisonment as their principal penalty in the Local, District and Supreme Courts. The rate for offenders overall was just under double this, at 9.07%. Although female offenders are consistently sentenced to full-time imprisonment at about half the rate of offenders in general, the two proportions follow a similar pattern and may have begun to trend upward in recent years.

Sentence length

- 7.53 The lengths of head sentences imposed on female offenders in the NSW Local, District and Supreme Courts are shown below in Figure 7.21.

Figure 7.21 Lengths of head sentences imposed on female offenders in NSW adult courts 2001-2012

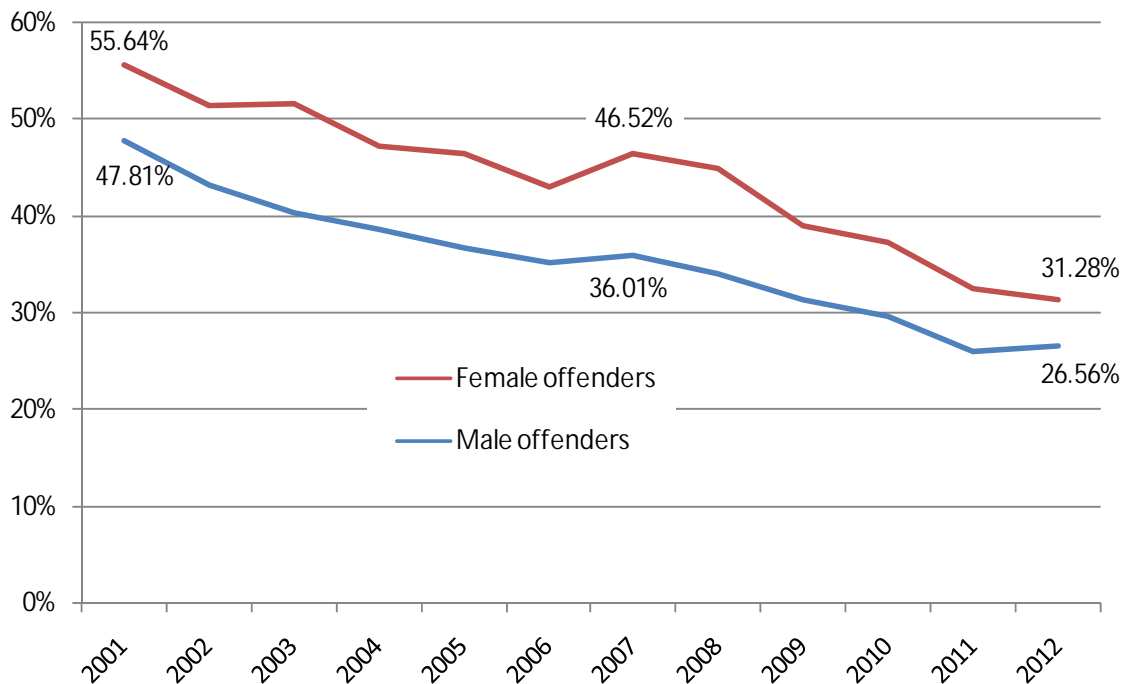


Source: NSW Bureau of Crime Statistics and Research (unpublished data, ref: HcLc1311319dg). See also methodological notes at the end of this report.

- 7.54 Of the female offenders sentenced to full-time imprisonment, the proportion who received a head sentence of two years or less has been reasonably stable. In 2001, 88.7% of female offenders sentenced to full-time imprisonment received a sentence of two years or less. The proportion was similar in 2012 at 87.0%.
- 7.55 However, the distribution of sentences two years or less has changed significantly, with a large increase in the proportion of female offenders who received a sentence of more than six months but less than one year between 2001 and 2012. In 2001, 24% of female offenders sentenced to a term of full-time imprisonment received a head sentence of more than six months to one year, compared to 41% in 2012. This change follows the trend in lengths of head sentences for offenders in general but is more pronounced (compare Figure 3.8).
- 7.56 As sentences of more than six months to one year have become more common, the prevalence of sentences of six months or less has decreased. Figure 7.22 compares the rates at which female and male offenders are sentenced to a sentence of six months or less; that is, to a fixed term of full-time imprisonment.¹⁵

15. Courts cannot set a non-parole period and a parole period if the sentence is of six months or less: *Crimes (Sentencing Procedure) Act 1999* (NSW) s 46. As a result, any sentence of six months or less must be a fixed term of full-time imprisonment.

Figure 7.22 Proportion of female and male offenders sentenced to imprisonment that were sentenced to a term of six months or less in NSW adult courts 2001-2012



Source: NSW Bureau of Crime Statistics and Research (unpublished data, ref: HcLc1311319dg). See also methodological notes at the end of this report.

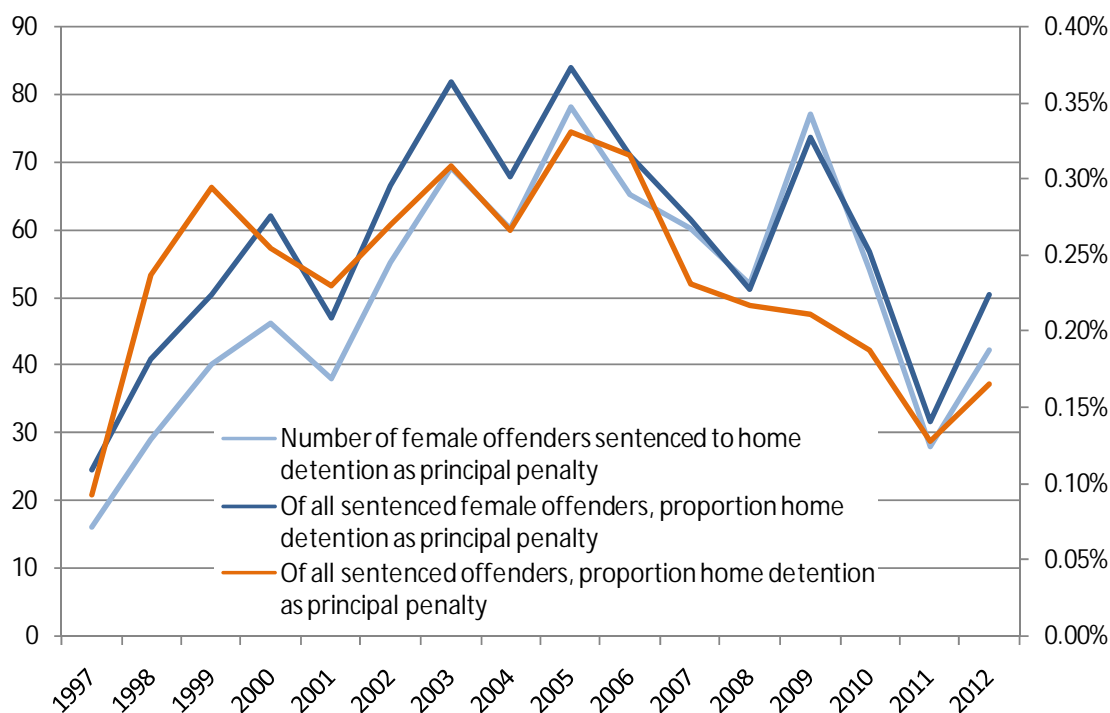
- 7.57 Use of short sentences of imprisonment has been steadily decreasing for both male and female offenders since 2001. However, as shown in Figure 7.22, short sentences are still more regularly used for female offenders, although the gap may be closing. In 2012, 31.3% of all female offenders sentenced to full-time imprisonment were sentenced to a term of six months or less, compared to 26.6% of male offenders.

Custodial alternatives to full-time imprisonment

Home detention

- 7.58 Home detention has been little used for either male or female offenders between 1997 and 2012 in the NSW Local, District or Supreme Courts (see Figure 4.2 in Chapter 4). Figure 7.23 compares the proportion of female offenders who received home detention as their principal penalty with the proportion of offenders overall who were sentenced to home detention as their principal penalty.

Figure 7.23 Use of home detention for female offenders in NSW 1997-2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)* and unpublished data (ref: HcLc1311319dg). See also methodological notes at the end of this report.

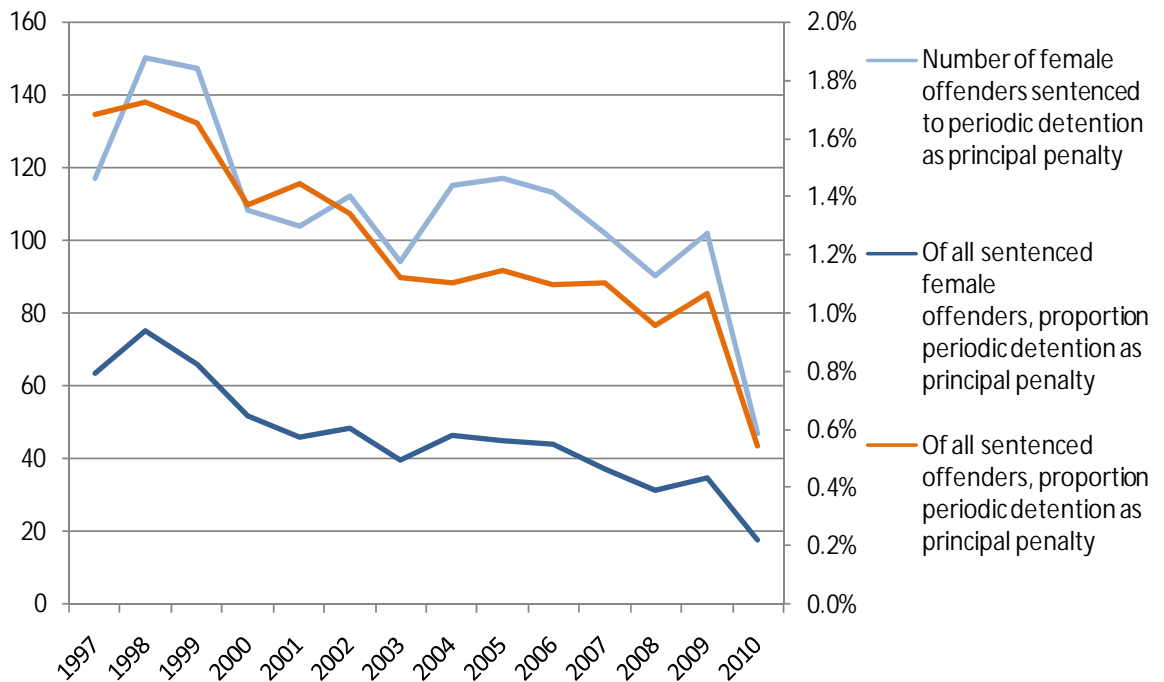
7.59 At its peak use in 2005, 0.33% of all offenders and 0.37% of female offenders received home detention as their principal penalty. Use of home detention for both male and female offenders increased in 2012 but rates are still low at less than 0.25%.

ICOs and periodic detention

7.60 In 2012, the first full year of operation of ICOs, 0.30% of all sentenced female offenders had an ICO imposed as their principal penalty, compared to 0.60% of all offenders. In 2012, this increased to 0.46% for female offenders and 0.92% for all offenders.

7.61 Similarly, during the operation of periodic detention between 1997 and 2010, female offenders were sentenced to periodic detention at about half the rate of offenders overall in the Local, District and Supreme Courts (see Figure 7.24).

Figure 7.24 Use of periodic detention for female offenders in NSW 1997-2010



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2010)* and unpublished data (ref: HcLc1311319dg). See also methodological notes at the end of this report.

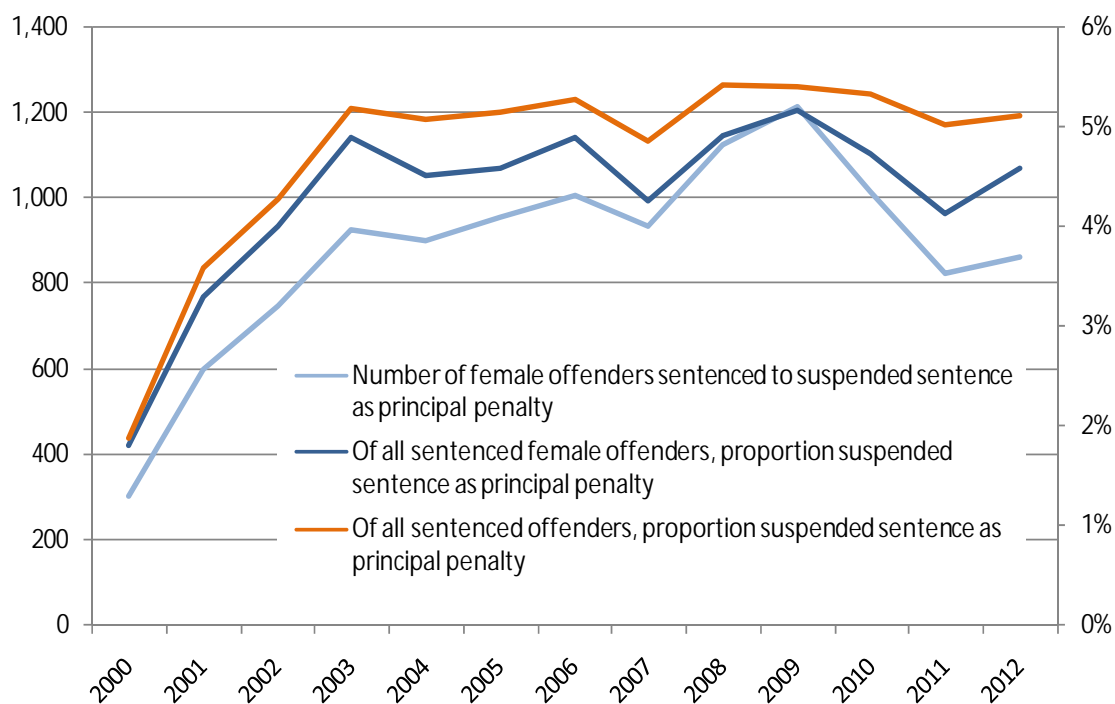
- 7.62 In 2009, the last full year when periodic detention was in operation, 0.43% of female offenders were sentenced to periodic detention as their principal penalty compared to 1.07% of all offenders. We have previously reported that low use of periodic detention for female offenders was primarily due to transportation problems to and from the only periodic detention centre open to women, as well as difficulty in making satisfactory care arrangements for dependent children.¹⁶

Suspended sentences

- 7.63 Female offenders seem to receive suspended sentences at a fairly similar rate to offenders overall in the NSW Local, District and Supreme Courts, though female offenders are slightly less likely to receive a suspended sentence (see Figure 7.25).

16. NSW Law Reform Commission, *Sentencing*, Discussion Paper 33 (1996) [8.1].

Figure 7.25 Use of suspended sentences for female offenders in NSW 2000-2012



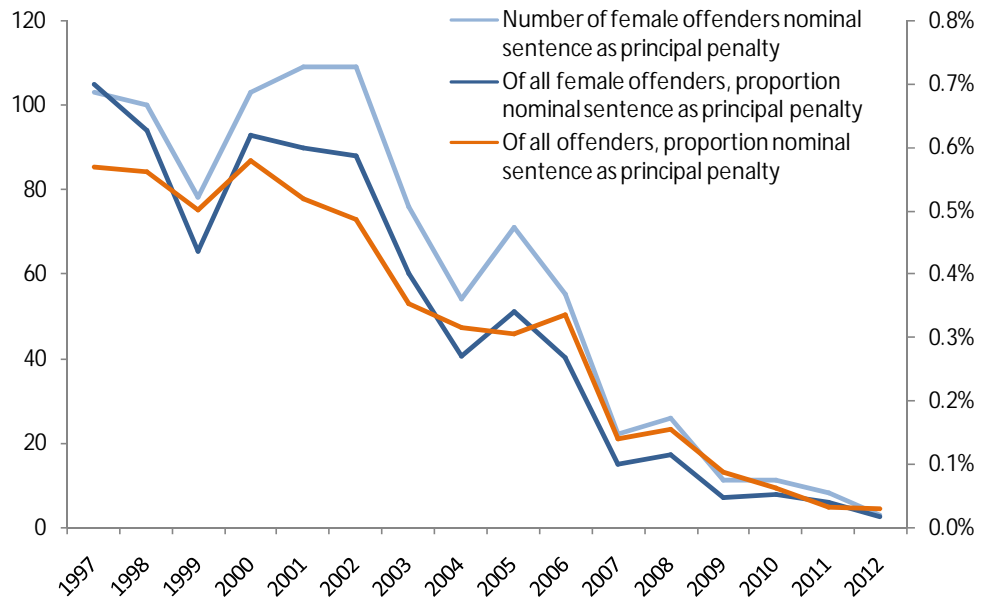
Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2000-2012)* and unpublished data (ref: HcLc1311319dg). See also methodological notes at the end of this report.

7.64 In 2012, the proportion of female offenders sentenced to a suspended sentence as their principal penalty was 4.57%. The proportion for all offenders was 5.09%.

Rising of the court

7.65 For female offenders and all offenders, use of rising of the court has steadily declined. As is the case for offenders overall, use of the rising of the court for female offenders dropped most sharply between 2006 and 2007 after the introduction of s 10A of the *Crimes (Sentencing Procedure) Act 1999* (NSW).

Figure 7.26 Use of rising of the court for female offenders in NSW 1997-2012



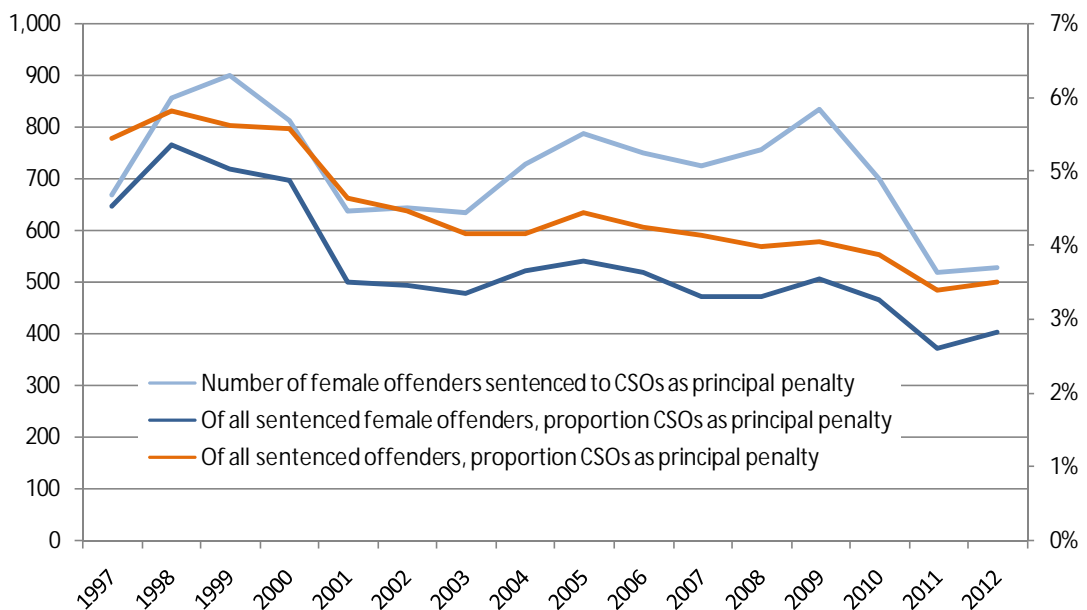
Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)* and unpublished data (ref: HcLc1311319dg). See also methodological notes at the end of this report.

Non-custodial sentences

Community service orders

7.66 Since 1997, the proportion of female offenders sentenced to a CSO in the NSW adult courts has been slightly lower than the use of CSOs for offenders overall.

Figure 7.27 Use of CSOs for female offenders in NSW 1997-2012



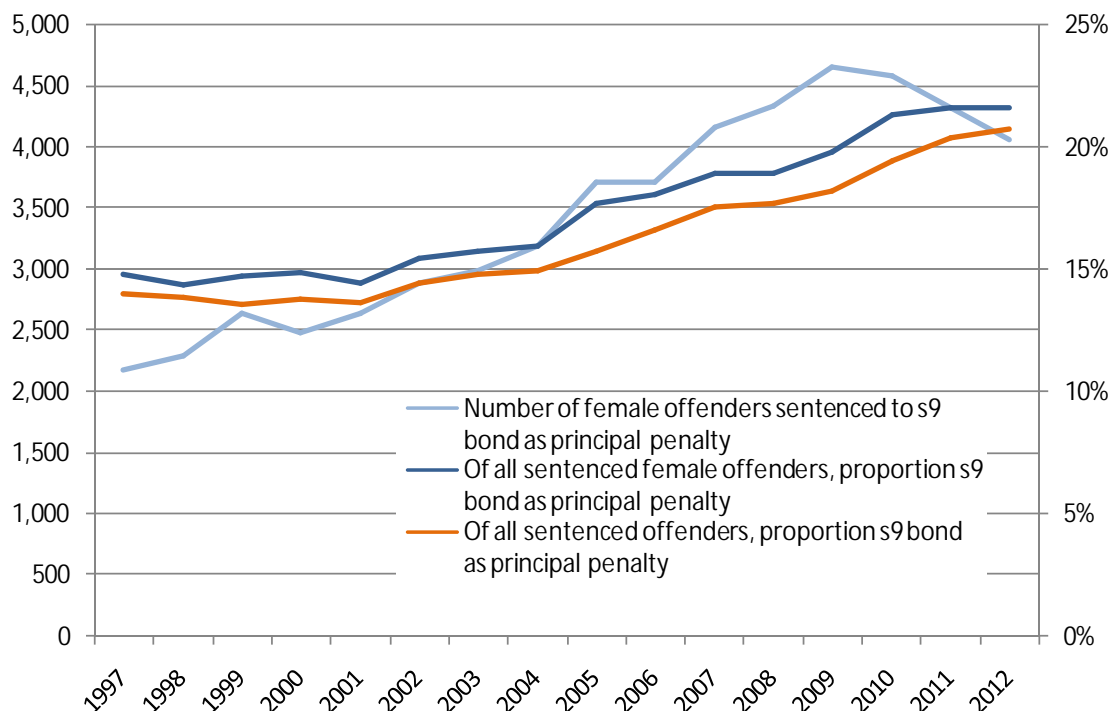
Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)* and unpublished data (ref: HcLc1311319dg). See also methodological notes at the end of this report.

7.67 CSO use has been falling at a similar rate for female offenders and offenders overall, and both groups experienced a small increase in CSO use in 2012.

Section 9 good behaviour bonds

7.68 Use of s 9 good behaviour bonds has substantially increased for both female offenders and offenders overall since 1997.

Figure 7.28 Use of s 9 bonds for female offenders in NSW 1997-2012



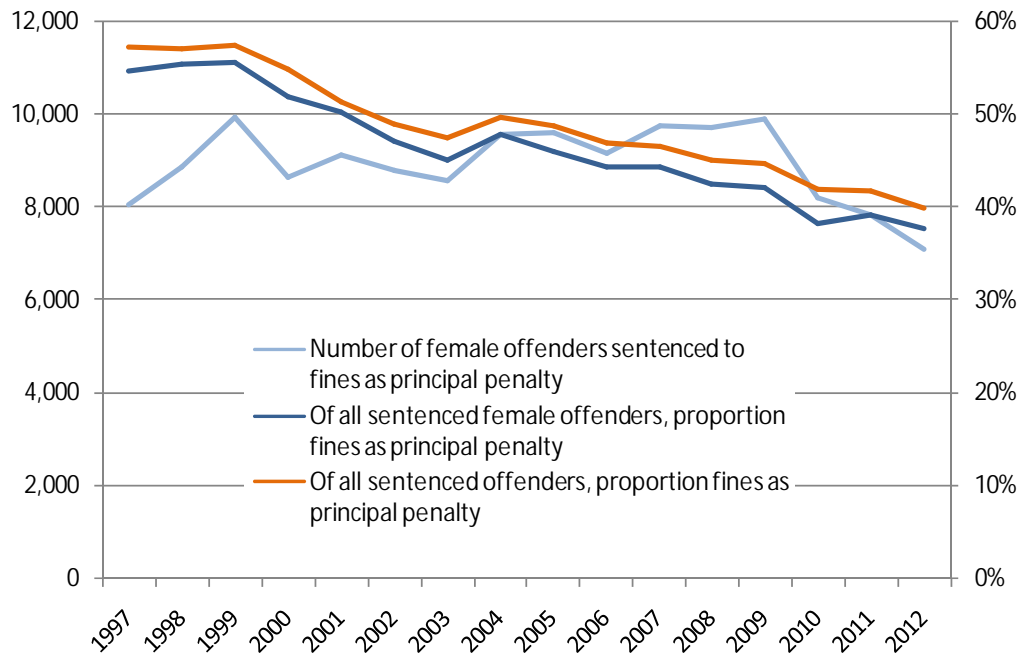
Source: NSW Bureau of Crime Statistics and Research, Criminal Courts Statistics (1997-2012) and unpublished data (ref: HcLc1311319dg). See also methodological notes at the end of this report.

7.69 Throughout this period, female offenders have been slightly more likely to receive a s 9 bond as their principal penalty compared to all offenders sentenced in the NSW adult courts. In 2012, the proportion of s 9 bonds that had supervision attached as a condition was similar for both groups: 37% of the s 9 bonds imposed on female offenders were supervised compared to 35% for offenders overall.

Fines

7.70 Female offenders are slightly less likely to be sentenced with a fine than offenders overall. In 2012, 37.6% of female offenders received a fine as their principal penalty in the Local, District and Supreme Courts, compared to 39.8% of all offenders.

Figure 7.29 Use of fines for female offenders in NSW 1997-2012

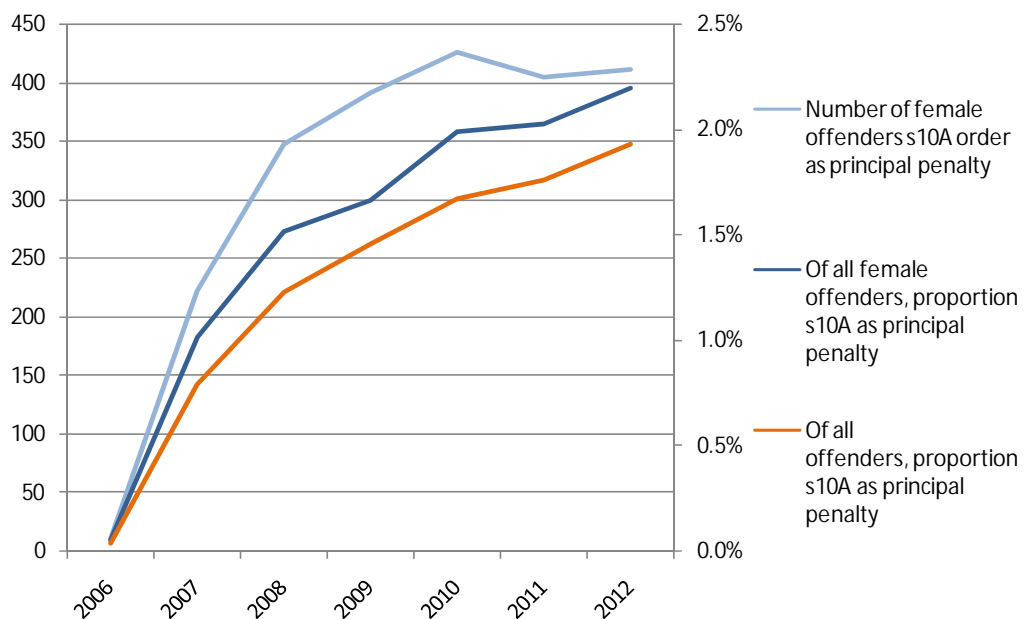


Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)* and unpublished data (ref: HcLc1311319dg). The spike in the trend 2003- 2004 is due to a reordering of the seriousness of the lesser penalties by BOCSAR at that time. See also methodological notes at the end of this report.

Conviction with no other penalty and non-conviction orders

7.71 Female offenders are more likely to receive either a s 10 non-conviction order or a s 10A order as their principal penalty than offenders overall.

Figure 7.30 Use of s 10A orders for female offenders in NSW from introduction to 2012

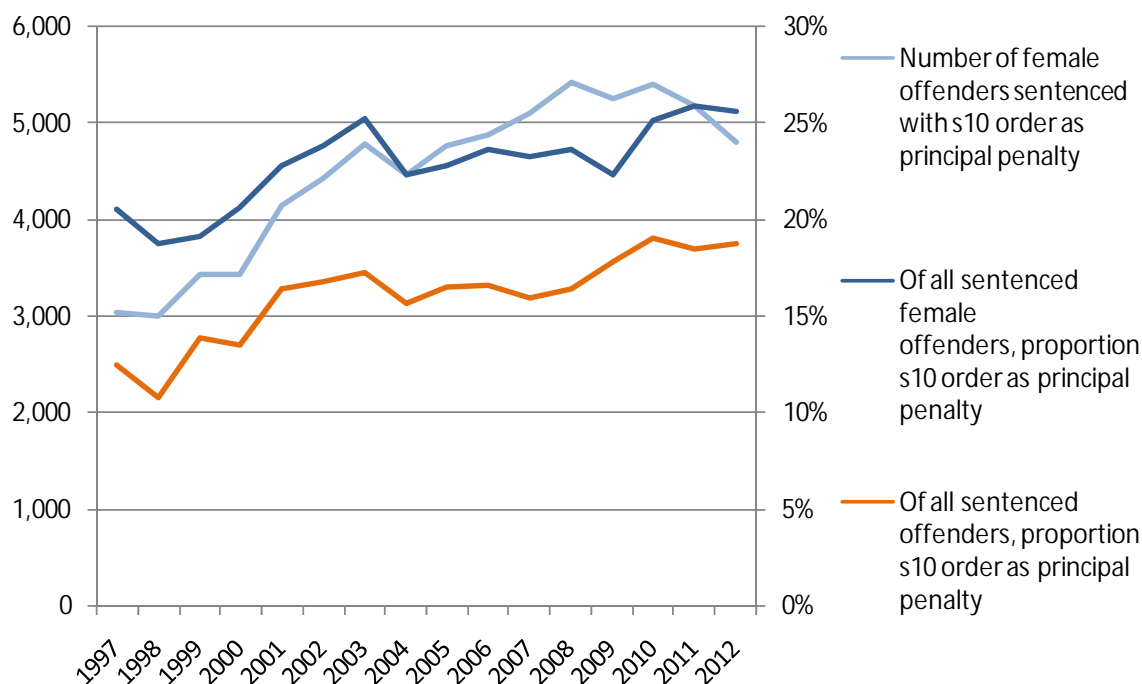


Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2006-2012)* and unpublished data (ref: HcLc1311319dg). See also methodological notes at the end of this report.

7.72 Use of s 10A orders after their introduction in 2006 increased faster for female offenders than for offenders overall, although the proportion of offenders who receive a s 10A order as their principal penalty is still small for both groups. In 2012, 2.19% of female offenders were sentenced with a s 10A order compared to 1.93% of all offenders.

7.73 Female offenders are much more likely to receive a s 10 non-conviction order as their principal penalty than offenders generally (see Figure 7.31).

Figure 7.31 Use of s 10 orders for female offenders in NSW 1997-2012



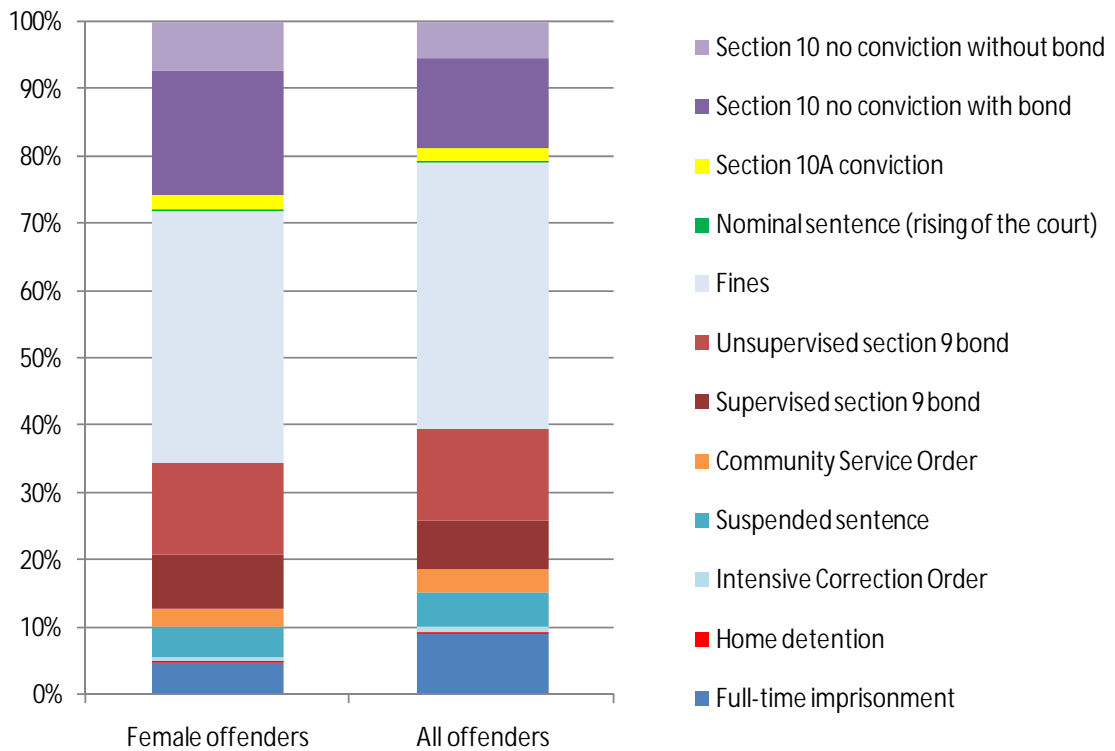
Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (1997-2012)* and unpublished data (ref: HcLc1311319dg). The dip in the trend lines between 2003 and 2004 is due to a reordering of the seriousness of the lesser penalties by BOCSAR at that time. See also methodological notes at the end of this report.

7.74 In 2012, over one quarter (25.6%) of all female offenders received a s 10 order as their principal penalty. The proportion for offenders overall was 18.8%. Section 10 orders were imposed with bonds at a similar rate for female offenders as for all offenders. For both groups, approximately 70% of the s 10 orders imposed included a good behaviour bond in 2012.

Overall balance of penalties for female offenders

7.75 The distribution of penalties for female offenders sentenced in the NSW adult courts is noticeably different to the balance of penalties imposed on offenders overall. The most significant differences are at opposite ends of the spectrum: female offenders are less likely to be sentenced to a term of full-time imprisonment and more likely to receive s 10 non-conviction orders compared to all offenders.

Figure 7.32 Balance of penalties for female offenders in NSW adult courts 2012



Source: NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2012)* and unpublished data (ref: HcLc1311319dg). See also methodological notes at the end of this report.

- 7.76 It is not known to what extent the difference in sentencing for female offenders compared to offenders generally may be a result of different relevant characteristics (for example, seriousness of principal offence, age or criminal history) or differential treatment.

Aboriginal and Torres Strait Islander women

- 7.77 In common with the pattern for female offenders in general, Aboriginal and Torres Strait Islander women make up less than half of the Aboriginal and Torres Strait Islander people in contact with the criminal justice system. At the same time, they still have higher levels of contact with the criminal justice system compared to women overall. For example, on 30 June 2012, 6.9% of all NSW prisoners (both sentenced and unsentenced) were female but 8.7% of Aboriginal and Torres Strait Islander prisoners were Aboriginal and Torres Strait Islander women.¹⁷

17. Corrective Services NSW, *NSW Inmate Census (2012)*.

8. Intervention and diversion

Early court-referred pre-sentence treatment programs are commonly used around Australia and the NSW MERIT program has been shown to reduce reoffending. On the other hand, alternative sentencing programs (forum sentencing and circle sentencing) have not been effective in preventing further offending. An evaluation of the NSW Drug Court has shown it works well to reduce reoffending and this result has been replicated for similar drug courts in other jurisdictions.

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- 8.1 NSW has several intervention and diversion programs that are part of the sentencing landscape but not part of the traditional sentencing process. This chapter presents statistics on the use and evaluation of these programs.

Early court-referred treatment programs

- 8.2 Two court referral programs operate in NSW to allow Local Court magistrates to refer defendants to intervention and treatment to address the causes of their offending. Referral takes place before sentencing and the magistrate may take a defendant's successful completion of the program into account when formulating a sentence.

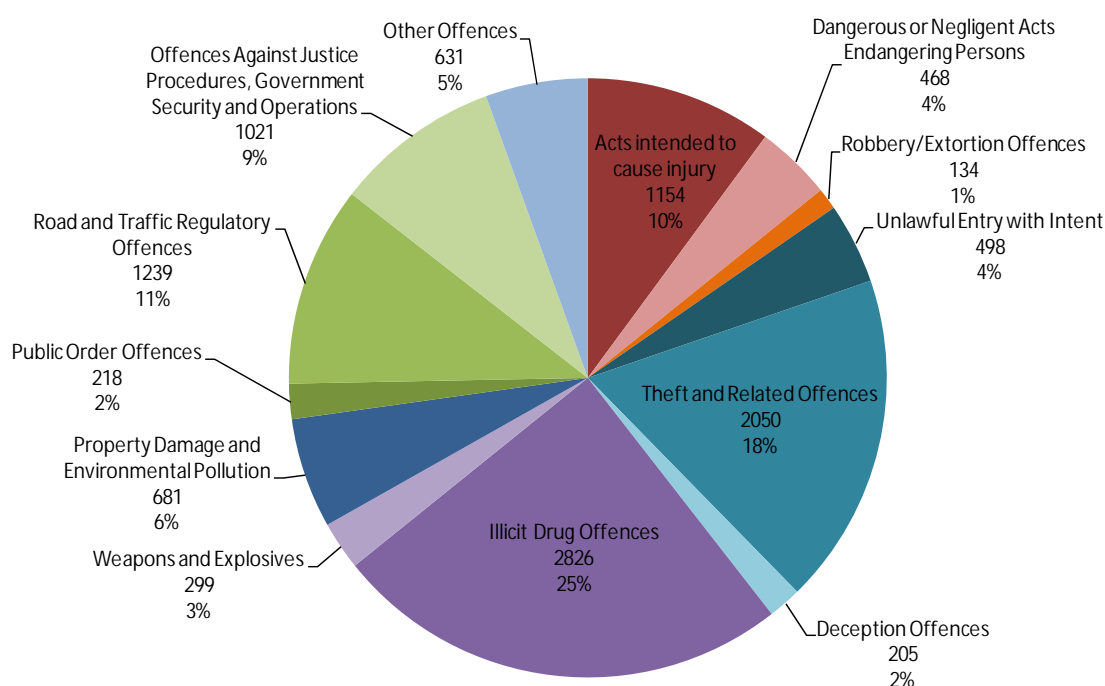
Magistrates Early Referral into Treatment program

- 8.3 The Magistrates Early Referral into Treatment (MERIT) program provides targeted treatment for defendants with drug or alcohol problems while on bail. Defendants must be willing to consent to a treatment program, have a suitable treatable problem and be approved by a magistrate to participate. Defendants charged with physical violence and sexual assault offences are not eligible. Treatment usually takes three months. Magistrates are provided with a comprehensive report on the

defendant’s participation in the MERIT program and may take this into account at sentencing.¹

8.4 A total of 27 276 referrals were made to the MERIT program between 2000 and 2011, with the number of referrals generally increasing each year (3311 defendants were referred to MERIT in 2011). The acceptance rate of those referred has remained stable since 2004 at between 60% and 65%.² Figure 8.1 shows the principal offence of those accepted into the MERIT program between 2007 and 2010.

Figure 8.1 Principal offence of those accepted into MERIT 2007-2010



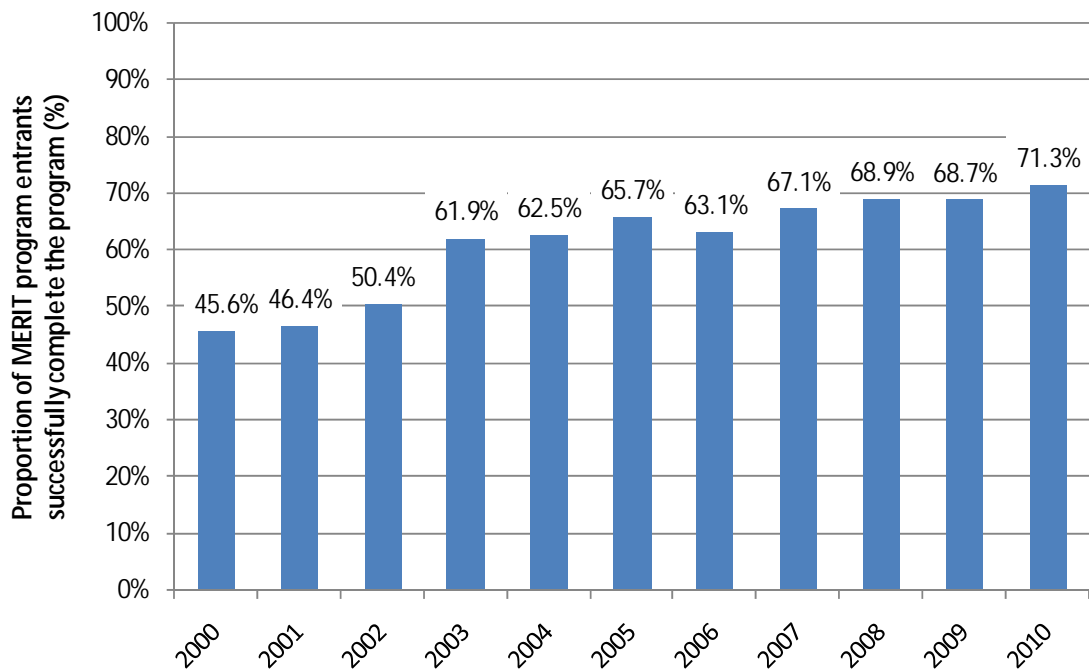
Source: NSW Department of Attorney General and Justice, MERIT Annual Reports (2007-2010).

8.5 Only one quarter of those offenders accepted into the MERIT program had an illicit drug offence as their principal offence between 2007 and 2010, yet all the offenders had an identified drug use problem. Drugs of principal concern were, from most common to least common: cannabis, stimulants, narcotics, anaesthetics/sedatives, alcohol, and other substances.³

8.6 Completion rates for those offenders accepted into the MERIT program have been slowly increasing since 2000 (see Figure 8.2). A total of 1024 defendants successfully completed the program in 2011.⁴

1. M V A Howard and K A Martire, *Magistrates Early Referral into Treatment: An overview of the MERIT Program as at June 2011*, Crime Prevention Issues Bulletin No 9 (NSW Department of Attorney General and Justice, 2011) 1.
2. NSW Department of Attorney General and Justice, *MERIT Annual Report (2010)* 10; Office of the Chief Magistrate, *NSW Local Court Annual Review (2011)* 21.
3. NSW Department of Attorney General and Justice, *MERIT Annual Reports (2007-2010)*.
4. Office of the Chief Magistrate, *NSW Local Court Annual Review (2011)*, 21.

Figure 8.2 MERIT program completion rates 2000-2010



Source: NSW Department of Attorney General and Justice, *MERIT Annual Report (2010)* 23.

- 8.7 A study on the participation of Aboriginal and Torres Strait Islander defendants in the MERIT program found that Aboriginal defendants were referred to MERIT at similar rates to non-Aboriginal defendants but they were less likely to be accepted and also less likely to complete the program.⁵ The NSW Auditor-General has made a number of recommendations for increasing Aboriginal participation in MERIT.⁶
- 8.8 Program completion is associated with different sentencing outcomes compared to non-completion.⁷ Between 2002 and 2009, program completers were more likely than non-completers to be sentenced with periodic detention, a suspended sentence, a community service order or a good behaviour bond under s 9 of the *Crimes (Sentencing Procedure) Act 1999* (NSW). They were also more likely to be discharged without conviction under s 10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW). Program non-completers were significantly more likely than completers to be sentenced to imprisonment or a fine.⁸ It is not clear whether program completion led to different sentencing outcomes, or whether the characteristics of those likely to complete the program meant that these offenders were also those likely to attract a non-prison or non-fine penalty.

5. S Larney and K Martire, *Aboriginal Participation in MERIT*, Crime Prevention Issues Bulletin No 6 (NSW Department of Attorney General and Justice, 2009).

6. Audit Office of NSW, *NSW Auditor-General's Report: Helping Aboriginal Defendants through MERIT*, Performance Audit Report (NSW Auditor-General, 2009).

7. M Passey, J Bolitho, J Scantleton and B Flaherty, "The Magistrates Early Referral Into Treatment (MERIT) Pilot Program: Court Outcomes and Recidivism" (2007) 40(2) *Australian and New Zealand Journal of Criminology* 199.

8. NSW Department of Attorney General and Justice, *MERIT Annual Reports (2005-2010)*.

- 8.9 The NSW Bureau of Crime Statistics and Research (BOCSAR) has investigated whether the MERIT program helps to reduce recidivism. The study looked at all the offenders who were accepted into MERIT between July 2002 and June 2005 and a control group of similar offenders who were eligible for MERIT but did not participate. The study found that completion of the MERIT program reduced reoffending by 12% for any offence and 4% for theft offences. The study also found that participation alone (whether or not the program was completed) reduced theft reoffending by 4%.⁹

Court Referral of Eligible Defendants into Treatment program

- 8.10 The Court Referral of Eligible Defendants into Treatment (CREDIT) program currently operates as a pilot program at the Burwood and Tamworth Local Courts. Defendants may be referred to the CREDIT program by a magistrate, police, their legal representative or staff involved in other court-based programs like MERIT or the Statewide Community and Court Liaison Service. Referrals to CREDIT may be made either pre-plea or post-plea.
- 8.11 Participants must possess an identifiable problem related to their offending behaviour (for example, substance or other addictions, mental health conditions, unstable housing and poor employment history or prospects), be motivated to address the identifiable problem and reside within areas where they are able to participate. Defendants will be ineligible to participate in CREDIT if they are on remand, being managed by Corrective Services NSW, have been convicted of a sex offence in the last five years or if the relevant charge is a sex offence.¹⁰
- 8.12 Between the program's commencement in August 2009 and August 2011, 719 referrals were made to CREDIT and 451 defendants participated in the program. The majority of referrals and participants from Burwood Local Court had mental health and housing issues. The majority of referrals and participants from Tamworth Local Court had mental health and alcohol use issues.¹¹ In 2011, 375 referrals were made to the program, 257 defendants were accepted, and 159 successfully completed their case management plans.¹² More information and statistics about CREDIT are available in our report on *People in the Criminal Justice System with a Cognitive or Mental Health impairment: Diversion*.¹³
- 8.13 A recent BOCSAR study looked at the effects of the CREDIT program on reoffending and found that recidivism rates were similar for CREDIT participants and a matched control group. However, the results may have been affected by the

9. R Lulham, *The Magistrates Early Referral Into Treatment Program: Impact Of Program Participation On Re-Offending By Defendants With A Drug Use Problem*, Crime and Justice Bulletin No 131 (NSW Bureau of Crime Statistics and Research, 2009).

10. L Trimboli, *NSW Court Referral of Eligible Defendants into Treatment (CREDIT) Pilot Program: An Evaluation*, Crime and Justice Bulletin No 159 (NSW Bureau of Crime Statistics and Research, 2012) 4.

11. L Trimboli, *NSW Court Referral of Eligible Defendants into Treatment (CREDIT) Pilot Program: An Evaluation*, Crime and Justice Bulletin No 159 (NSW Bureau of Crime Statistics and Research, 2012) 9-12.

12. Office of the Chief Magistrate, *NSW Local Court Annual Review* (2011) 24.

13. NSW Law Reform Commission, *People in the Criminal Justice System with a Cognitive or Mental Health Impairment: Diversion*, Report 135 (2012) 182-192.

small number of CREDIT participants, the short follow-up period and the inability to control for variables like drug use or mental illness.¹⁴

Similar programs in other jurisdictions

- 8.14 Most states and territories operate programs similar to MERIT and/or CREDIT, although those with MERIT-like programs often do not accept offenders with alcohol rather than illicit drug problems.
- 8.15 In Victoria, the Court Referral for Evaluation for Drug Intervention and Treatment/Bail Support Program operates at eight Magistrates Courts and is available to defendants with substance dependence, mental health, anger management and housing issues. In 2011-12, 2604 defendants were referred to the program.¹⁵ The Victorian Court Integrated Services Program (CISP) was established in 2006 and is similar to CREDIT, operating in three Magistrates Courts. In 2011-12, 1900 referrals were made to CISP and 960 of these offenders were engaged in case management.¹⁶ A study of reoffending after CISP completion found that, over a 600 day follow-up period, 40% of those who completed CISP had reoffended compared to 48% of a control group, although this difference was not found to be significant.¹⁷
- 8.16 South Australia operates the Treatment Intervention Program (TIP) for defendants with a mental impairment or substance dependence. It replaced the Court Assessment and Referral Drug Scheme in 2010 and currently accepts defendants at two locations. In 2010-11, 62 defendants were referred to the program, 49 were accepted and 16 completed treatment.¹⁸
- 8.17 The Queensland Magistrates Early Referral Into Treatment Program (QMERIT) began in 2006.¹⁹ In 2011-12, 236 defendants were referred to QMERIT with 166 accepted and 105 graduating from the program.²⁰ Until recently, the program was complemented by the Special Circumstances Court Diversion Program (SCCDP) for defendants who are homeless or who have impaired decision-making due to mental illness, intellectual disability or cognitive impairment. The SCCDP links these defendants to services to help them address their offending behaviour either as part of their bail or sentence conditions. In 2011-12, 376 defendants were referred to the program with 180 accepted and 113 successful completions.²¹ The Queensland

14. N Donnelly, L Trimboli and S Poyton, *Does CREDIT Reduce the Risk of Reoffending?* Crime and Justice Bulletin No 169 (NSW Bureau of Crime Statistics and Research, 2013).

15. J King, B Fletcher, S Alberti and J Hales, *Court Diversion Program Evaluation Volume Two: Process Evaluation and Policy and Legislative Review* (Health Outcomes International and Turning Point Alcohol and Drug Centre, November 2004) 54; Magistrates Court of Victoria, *Annual Report 2011-12* (2012) 98.

16. Magistrates Court of Victoria, *Annual Report 2011-12* (2012) 97.

17. S Ross, *Evaluation of the Court Integrated Services Program Final Report* (University of Melbourne, December 2009) 115.

18. SA Courts Administration Authority, *Annual Report 2010-11* (2011) 37-38.

19. L Berends and others, *Queensland Magistrate's Early Referral into Treatment (QMERIT) Pilot Program Evaluation Report 2: Outcomes* (Turning Point Alcohol and Drug Centre, November 2010) 10.

20. Magistrates Court of Queensland, *Annual Report 2011-12* (2012) 27.

21. Magistrates Court of Queensland, *Annual Report 2011-12* (2012) 26.

Government announced in September 2012 that the SCCDP program would be discontinued.²²

- 8.18 CREDIT NT was established in 2003 as a pre-sentence program to divert defendants with illicit drug and alcohol issues into treatment.²³ According to a November 2011 study of the CREDIT NT program, a total of 484 participants were accepted into the CREDIT NT program between July 2003 and December 2008 and the overall successful treatment completion rate was 73.1%.²⁴ The program was discontinued in 2011 in favour of the NT Substance Misuse Assessment and Referral for Treatment (SMART) Court.²⁵
- 8.19 Tasmania's Court Mandated Drug Diversion Program enables Tasmanian magistrates to refer eligible offenders to drug treatment either pre-plea or as a condition attached to a community-based sentence. In its first year of operation (2007-08), 250 offenders were referred for a suitability screening and 157 were accepted into the program.²⁶ It currently has capacity for approximately 80 defendants at any one time.²⁷
- 8.20 In the ACT, the Court Alcohol and Drug Assessment Service (CADAS) is similar to MERIT and refers defendants charged with alcohol or other drug related crimes to treatment. Between 2003 and 2007, 1084 CADAS assessments were completed, 606 offenders participated in CADAS treatment plans and 383 completed them.²⁸

Court-referred intervention programs post-plea and before sentencing

- 8.21 Under s 350 of the *Criminal Procedure Act 1986* (NSW), a court may adjourn proceedings for up to 12 months in order for a defendant to participate in an intervention program. The programs currently specified as intervention programs in the *Criminal Procedure Regulation 2010* (NSW) for the purposes of this section are forum sentencing, circle sentencing, and the Traffic Offender Intervention Program. A court may also adjourn proceedings after a finding or plea of guilty under s 11 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) in order for the offender to participate in these and other programs.

22. T Moore, "Diversionary Courts Fall Victim to Funding Cuts", *Brisbane Times*, 13 September 2012.

23. NT Department of the Attorney General and Justice, *CREDIT NT Program Guidelines* (2012) 1.

24. P Rysavy, T Cunningham and R O'Reilly-Martinez, "Preliminary analysis of the Northern Territory's illicit drug court diversion program highlights the need to examine lower program completion rates for indigenous clients" (2011) 30 *Drug and Alcohol Review* 671, 673.

25. *Alcohol Reform (Substance Misuse and Referral for Treatment Court) Act* (NT).

26. Success Works, *Tasmania's Court Mandated Drug Diversion Program Evaluation Report* (Tasmanian Department of Justice, November 2008).

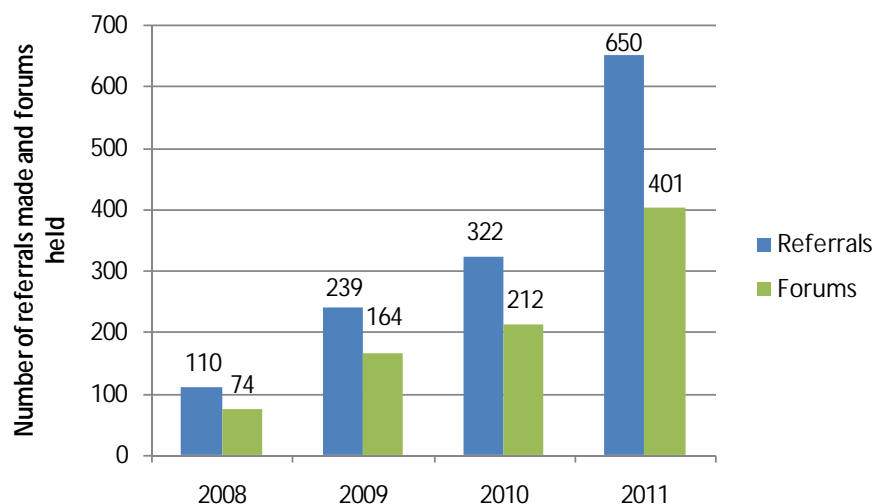
27. Tasmania Magistrates Court, *Annual Report 2011-12* (2012) 14.

28. Implementation and Evaluation Group ACT Alcohol, Tobacco and other Drug Strategy 2004-2008, *2006-07 Evaluation Reports* (ACT Government Health, 2008) 14-15.

Forum sentencing

- 8.22 Under the forum sentencing program, a forum is convened that includes the offender, the victim, others affected by the offence, support people and the police. At the forum, the offender's conduct is discussed and an intervention plan agreed upon to repair the harm of the offence. Once the court has approved the intervention plan, the offender undertakes the actions in the plan before, or as part of, his or her sentence.
- 8.23 In order to be eligible for forum sentencing, an offender must be likely to serve a sentence of imprisonment in the referring court's view, not be charged with or previously convicted of an offence that would exclude participation, be assessed as a person suitable for participation and be considered likely by the referring court to enter into an agreement to participate in a forum.²⁹
- 8.24 Use of the forum sentencing program has increased each year. Figure 8.3 shows the number of referrals made and forums held between 2008 and 2011.

Figure 8.3 Forum sentencing referrals made and forums held 2008-2011



Source: Office of the Chief Magistrate, *NSW Local Court Annual Review (2008-2011)*.

- 8.25 However, a 2009 BOCSAR study that compared all offenders who participated in forum sentencing between October 2005 and May 2008 with a matched sample of offenders who would have been eligible for forum sentencing but did not participate found that participation in forum sentencing did not have any effect on the likelihood of reconviction or the time taken to reconviction.³⁰ This result matches the finding of a recent meta-analysis of evaluations of restorative justice programs, which found that overall there was little reliable evidence that such programs reduced reoffending.³¹ At the same time, other evaluations of restorative justice programs

29. *Criminal Procedure Regulation 2010* (NSW).

30. C Jones, *Does Forum Sentencing Reduce Re-Offending?* Crime and Justice Bulletin No 129 (NSW Bureau of Crime Statistics and Research, 2009).

31. D Weatherburn and M Macadam, "A Review of Restorative Justice Responses to Reoffending" (2013) 1 *Evidence Base*.

have found that they are effective in reducing reoffending.³² It is also important to keep in mind that reducing reoffending is only one of seven stated objectives of the forum sentencing program.³³

Circle sentencing

Circle sentencing is a similar program but is targeted specifically at Aboriginal and Torres Strait Islander offenders. Offenders, magistrates, community elders and occasionally victims and support people sit in a circle to discuss the impacts and circumstances of offences and determine sentences tailored to offenders. In order to be eligible to participate in the circle sentencing program, an Aboriginal offender must be assessed as suitable to participate by an Aboriginal Community Justice Group, enter into an agreement to participate and be likely to otherwise be sentenced to a custodial sentence, a CSO or a good behaviour bond.³⁴ A total of 511 circles were conducted between 2008 and 2011, with 117 of these in 2011.³⁵

- 8.26 A 2008 BOCSAR study examined the effect of circle sentencing participation on the frequency of conviction, time to reconviction and the seriousness of reconvicted offences. It found that participants were convicted less frequently in the 15 months after their circles than they were in the 15 months before taking part in the circles. However, the study found there was no significant difference in the time to reconviction and the seriousness of reconvicted offences between circle sentencing participants and the matched control group of Aboriginal offenders. Accordingly, the study suggested that circle sentencing participation has no effect on the frequency, timing or seriousness of offences that result in convictions for its participants.³⁶ However, similarly to forum sentencing, reducing reoffending is only one of eight stated objectives of the circle sentencing program.³⁷

Similar programs in other jurisdictions

- 8.27 All Australian jurisdictions except Tasmania operate a program similar to circle sentencing, aiming to undertake sentencing of Aboriginal and Torres Strait Islander offenders in a culturally relevant way.³⁸ However, as with circle sentencing, the number of offenders sentenced through these programs is generally quite low compared to the overall number of Aboriginal and Torres Strait Islander offenders.³⁹

32. J Bonta and others, "Restorative justice and recidivism: Promises made, promises kept?" in D Sullivan and L Tiffit (ed) *Handbook of Restorative Justice: A Global Perspective* (Routledge, 2006).

33. *Criminal Procedure Regulation 2010* (NSW) cl 61.

34. *Criminal Procedure Regulation 2010* (NSW) cl 36.

35. Office of the Chief Magistrate, *NSW Local Court Annual Review* (2008-2011).

36. J Fitzgerald, *Does Circle Sentencing Reduce Aboriginal Offending?* Crime and Justice Bulletin No 115 (NSW Bureau of Crime Statistics and Research, 2008).

37. *Criminal Procedure Regulation 2010* (NSW) cl 35.

38. Koori Court (Victoria), Murri Court (Queensland), Galambany Circle Sentencing Court (ACT), Nunga Courts (SA), Kalgoorlie-Boulder Community Court (WA), Community Court (NT).

39. E Marchetti, *Indigenous Sentencing Courts*, Brief 5 (Indigenous Justice Clearinghouse, 2009). See also A Morgan and E Louis, *Evaluation of the Queensland Murri Court: Final report*, Technical and Background Paper No 39 (Australian Institute of Criminology, 2010); J Tomaino, *Aboriginal (Nunga) Courts* (SA Office of Crime Statistics and Research, September 2004); M Harris, "A Sentencing Conversation" *Evaluation of the Koori Courts Pilot Program October*

No program has been conclusively proved to reduce reoffending rates and the Queensland Government has announced that it is discontinuing the Queensland Murri Court for this reason.⁴⁰

- 8.28 Fewer jurisdictions operate programs like forum sentencing that are based on restorative justice principles and open to adult offenders, though many have similar programs for juvenile offenders. The ACT's Restorative Justice Unit convenes restorative justice conferences for adult offenders, which operate in a similar way to forum sentencing.⁴¹ Twenty-four conferences were held in the September 2012 quarter, and 851 were held between the program's inception in 2005 and the end of September 2012.⁴² These statistics indicate that, on a population basis, the ACT makes more use of the program than NSW does of forum sentencing.

Traffic Offender Intervention Program

- 8.29 Magistrates may refer offenders who plead guilty to or are found guilty of a traffic offence to the Traffic Offender Intervention Program. The program aims to educate drivers to develop positive attitudes towards driving and safer driving behaviours.⁴³ The program is delivered by non-government organisations, typically in weekly two hour sessions over six to eight weeks. The magistrate will adjourn sentencing until the offender has completed the program.⁴⁴
- 8.30 BOCSAR has studied the reoffending of participants in the Traffic Offender Intervention Program who were referred to the program from Blacktown Local Court between 1994 and 2011.⁴⁵ A total of 11 605 offenders participated in the program at Blacktown over this period. Most of the participants had no prior convictions and were sentenced with a fine or a s 10 bond after their participation in the program. The study found that 15.2% of participants committed a new offence in the two years following their commencement on the program, and most of these (10.5% of the total) were new traffic offences. Offenders aged under 20 years and those with prior convictions were more likely to reoffend.

2002 – October 2004 (Victorian Department of Justice, 2006); H Aquilina and others, *Evaluation of the Aboriginal Sentencing Court of Kalgoorlie* (Shelby Consulting, 2009).

40. E Marchetti, *Indigenous Sentencing Courts*, Brief 5 (Indigenous Justice Clearinghouse, 2009); T Moore, "Diversory Courts Fall Victim to Funding Cuts", *Brisbane Times*, 13 September 2012.
41. *Crimes (Restorative Justice) Act 2004* (ACT).
42. ACT Justice and Community Safety Directorate, *ACT Criminal Justice Statistical Profile* (September 2012) 14.
43. *Criminal Procedure Regulation 2010* (NSW) cl 92.
44. P Rourke and C Jones, *Risk of Reconviction Among Offenders Who Commence the Blacktown Traffic Offender Program*, Bureau Brief No 81 (NSW Bureau of Crime Statistics and Research, 2012).
45. P Rourke and C Jones, *Risk of Reconviction Among Offenders Who Commence the Blacktown Traffic Offender Program*, Bureau Brief No 81 (NSW Bureau of Crime Statistics and Research, 2012).

The Drug Court

- 8.31 The Drug Court of NSW operates as a separate, specialist court to deal with offenders who are dependent on illicit drugs. The Drug Court is located at Parramatta, the Hunter region and the Downing Centre, accepting referred offenders from Local and District Courts within designated catchment areas. In order to be eligible, an offender must be pleading guilty, be highly likely to be sentenced to a term of imprisonment, be dependent on prohibited drugs, not be charged with an offence of violence or sexual assault, and not be suffering from a serious mental health condition.⁴⁶ Where there are more eligible referred offenders than program places, a ballot is held to determine which offenders are accepted by the Drug Court.
- 8.32 Once accepted by the Drug Court, the offender is remanded in custody for detoxification, assessment and development of a treatment program. The offender is then sentenced by the Drug Court and the sentence is suspended for the duration of the offender's treatment program. A treatment program may require the offender to enter a residential rehabilitation program or allow the offender to live in accommodation approved by the court. Each participant's program has three phases with distinct goals that must be achieved before the participant can progress to the next phase. Each phase involves drug screening and rewards and sanctions for compliance and non-compliance. Sanctions can include imprisonment for up to two weeks.⁴⁷ Once the program is either successfully completed or terminated due to non-compliance, the Drug Court reconsiders the sentence initially imposed on the offender and may substantially reduce the sentence if the offender has successfully completed the program.⁴⁸
- 8.33 Since 2006, offenders who have already been convicted and sentenced to imprisonment may also be referred to the Drug Court from Local and District Courts within the catchment areas. The Drug Court may then impose a Compulsory Drug Treatment Order, causing the offender to serve his term of imprisonment in a special drug treatment detention facility under the supervision of Corrective Services NSW and overseen by the Drug Court. Compulsory drug treatment detention is also structured in three phases and participants move from closed detention through semi-open detention to community custody as they progress.⁴⁹ Currently, compulsory drug treatment detention is only available for male offenders.⁵⁰

Participation in the NSW Drug Court program

- 8.34 A total of 14 565 charges were adjourned to the Drug Court from the Local Court between 2003 and 2012. In 2012, 2276 charges were adjourned (0.9% of all

46. *Drug Court Act 1998* (NSW) s 5-6.

47. *Drug Court Act 1998* (NSW) s 16.

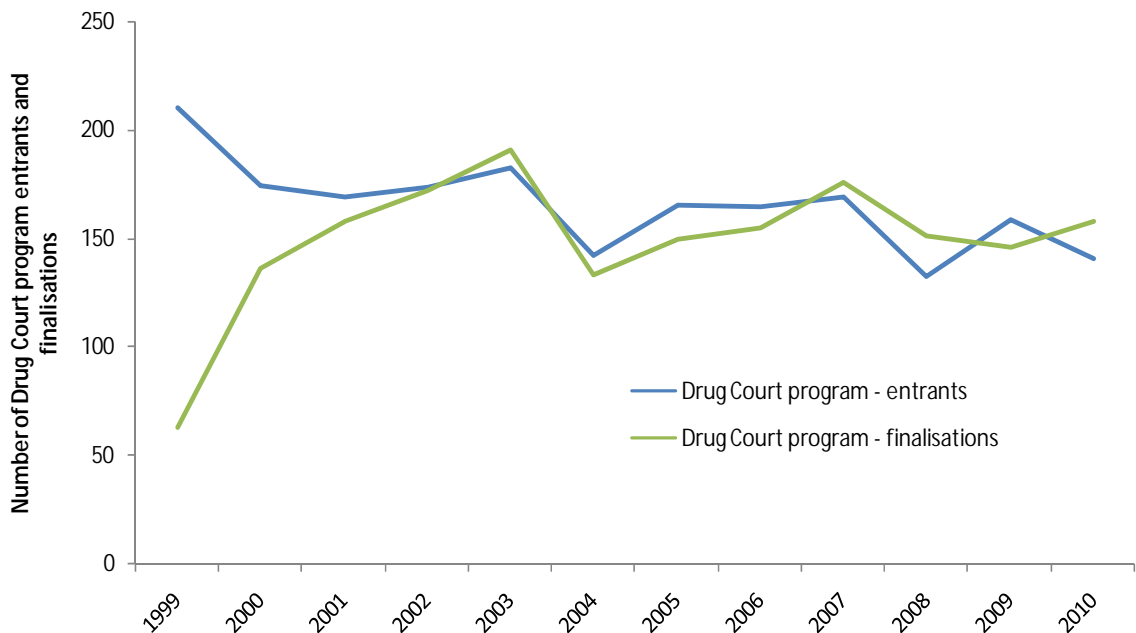
48. *Drug Court Act 1998* (NSW) s 12.

49. *Crimes (Administration of Sentences) Act 1999* (NSW) pt 4A.

50. J Dekker, K O'Brien and N Smith, *An Evaluation of the Compulsory Drug Treatment Program* (NSW Bureau of Crime Statistics and Research, 2010) vii.

finalised charges in the NSW Local Court).⁵¹ Figure 8.4 shows the number of entrants and the number of departing offenders of the Drug Court program since its commencement in 1999, including both offenders sentenced by the Drug Court and those serving a term of imprisonment by way of compulsory drug treatment detention. Finalisations in Figure 8.4 include both successful completions and those offenders who have had their program terminated due to non-compliance.

Figure 8.4 Drug Court program entrants and finalisations 1999-2010



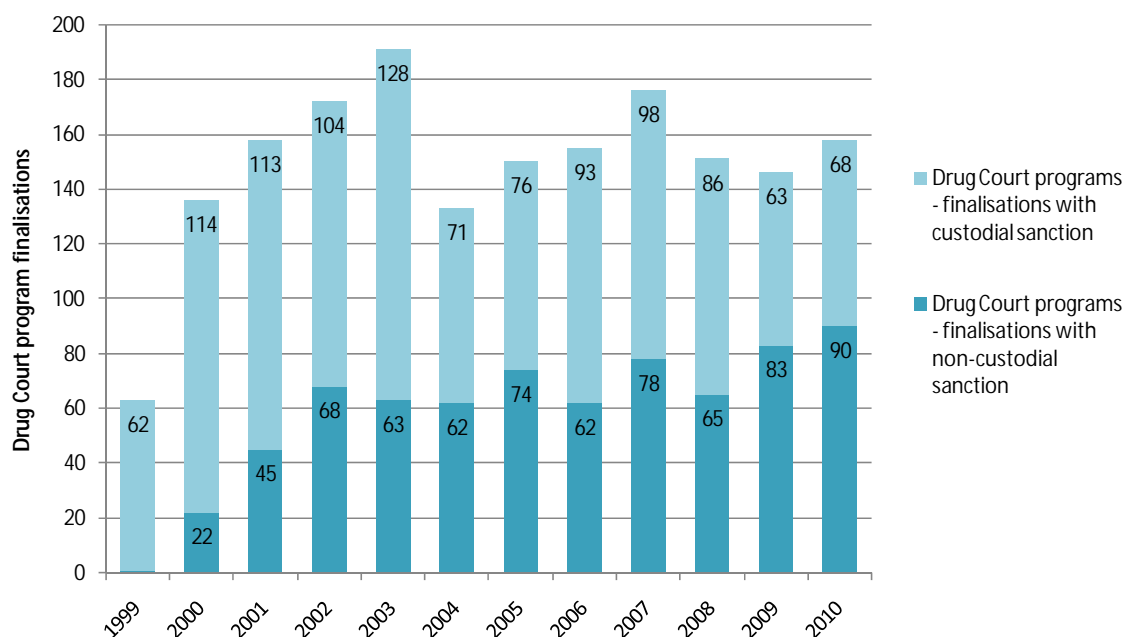
Source: NSW Department of Attorney General and Justice, *2006 NSW Drug Court Annual Review (2007)*, 12; NSW Department of Attorney General and Justice, *2010 NSW Drug Court Annual Review (2011)*, 7. The second location (in the Hunter) for the Drug Court commenced operations in March 2011, which is likely to increase the numbers for 2011 onwards compared to previous years.

- 8.35 On average, 165 offenders have entered the program each year. Most program entrants have a theft offence as their principal offence. Participants with a drug offence as their principal offence are more likely to complete the program than offenders with theft, violence, or other categories of offences as their principal offence.⁵²
- 8.36 In the initial years of the program, most finalisations resulted in a custodial sanction for the offender. This balance has shifted in more recent years, with 57% of finalised offenders in 2010 receiving a non-custodial sanction (see Figure 8.5).

51. NSW Bureau of Crime Statistics and Research, *Criminal Courts Statistics (2003-2012)*.

52. D Weatherburn and others, *The NSW Drug Court: A Re-evaluation of its Effectiveness*, Crime and Justice Bulletin No 121 (NSW Bureau of Crime Statistics and Research, 2008) 7-10.

Figure 8.5 Drug Court program finalisations and resulting sanction 1999-2010



Source: NSW Department of Attorney General and Justice, 2006 NSW Drug Court Annual Review (2007), 12; NSW Department of Attorney General and Justice, 2010 NSW Drug Court Annual Review (2011), 7.

8.37 In 2010, the Drug Court began trialling increased levels of judicial supervision for some participants. BOCSAR’s initial evaluation of the trial found that participants who were subject to intensive judicial supervision (mandatory interview with the court twice per week) were less likely to return to drug use in Phase 1 of the program compared with a group subject to usual supervision.⁵³

Recidivism and the NSW Drug Court

8.38 A 2008 BOCSAR study on the effect of the Drug Court program on recidivism found that participants in the Drug Court program (whether or not the program was completed) were 17% less likely than a matched control group to be reconvicted of any offence within the follow-up period. The participants were also 30% less likely to be reconvicted of a violent offence and 38% less likely to be reconvicted of a drug offence. There was no significant difference between participants and non-participants in terms of likelihood of being reconvicted of a property offence. Those successfully completing the Drug Court program were 37% less likely than the control group to be reconvicted of any offence during the follow-up period, 65% less likely to be reconvicted of a violent offence, 35% less likely to be reconvicted of a property offence and 58% less likely to be reconvicted of a drug offence.⁵⁴

53. C Jones, *Intensive Judicial Supervision and Drug Court Outcomes: Interim Findings from a Randomised Controlled Trial*, Crime and Justice Bulletin No 152 (NSW Bureau of Crime Statistics and Research, 2011).

54. D Weatherburn and others, *The NSW Drug Court: A Re-evaluation of its Effectiveness*, Crime and Justice Bulletin No 121 (NSW Bureau of Crime Statistics and Research, 2008) 9-12.

- 8.39 BOCSAR has also reported on the cost effectiveness of the Drug Court. In 2002, a study found that the Drug Court was at least as cost effective in reducing recidivism as the conventional sentencing options.⁵⁵ This was confirmed in a second study in 2008, which found that the Drug Court was marginally less expensive than conventional sentencing and also provided cost savings in terms of reduced reoffending.⁵⁶

Drug courts in other jurisdictions

- 8.40 Drug courts currently exist either as separate courts or as specialist divisions of the mainstream courts in all Australian states and territories except Tasmania and the ACT.⁵⁷ As in NSW, drug courts in other jurisdictions impose orders which involve judicially supervised detoxification and drug treatment. Also like NSW, the drug court is only accessible at limited locations in most jurisdictions. Tasmania does not have a specialist drug court division but the Tasmanian Magistrates Court may impose and oversee a Drug Treatment Order, which is similar in practice to an order of a drug court.⁵⁸
- 8.41 Evaluations of drug courts in other Australian states and territories have matched BOCSAR's results in terms of the ability of drug courts to reduce recidivism. A 2006 review of the Perth Drug Court, for example, found that 53% of those who successfully completed had reoffended and returned to corrective services management within two years, compared to 71% of a control group of offenders sentenced to imprisonment.⁵⁹ Similarly, an evaluation of the SA Drug Court found that 52% of those who successfully completed had been re-arrested within 12 months of release from the program, compared to 59% of a control group of released prisoners.⁶⁰ Results from the South East Queensland Drug Court showed that 34% of those who successfully completed reoffended within the follow-up period compared to 47% of the control group of released prisoners.⁶¹

55. B Lind and others, *New South Wales Drug Court Evaluation: Cost Effectiveness* (NSW Bureau of Crime Statistics and Research, 2002) 62.

56. S Goodall, R Norman and M Haas, *The Costs of the NSW Drug Court*, Crime and Justice Bulletin No 122 (NSW Bureau of Crime Statistics and Research, 2008).

57. *Drug Court Act 2000* (Qld); *Alcohol Reform (Substance Misuse and Referral for Treatment Court) Act* (NT); Perth Drug Court, see <http://www.courts.dotag.wa.gov.au/D/drug_court.aspx?uid=5227-1163-1055-5774>; SA Drug Court, see <<http://www.courts.sa.gov.au/OurCourts/MagistratesCourt/InterventionPrograms/Pages/-Drug-Court.aspx>>; Victorian Drug Court, see <<http://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/drug-court>>.

58. *Sentencing Act 1997* (Tas) pt 3A.

59. WA Department of the Attorney General, *A Review of the Perth Drug Court* (2006) 25.

60. E Ziersch and J Marshall, *The South Australian Drug Court: A Recidivism Study* (SA Office of Crime Statistics and Research, 2012) 24.

61. T Makkai and K Veraar, *Final Report on the South East Queensland Drug Court*, Technical and Background Paper Series No 6 (Australian Institute of Criminology, 2003) 36. See also J Payne, *Final Report on the North Queensland Drug Court*, Technical and Background Paper Series No 17 (Australian Institute of Criminology, 2005); J Payne, *The Queensland Drug Court: A Recidivism Study of the First 100 Graduates*, Research and Public Policy Series No 83 (Australian Institute of Criminology, 2008).

- 8.42 Specialist drug courts are also used in many overseas jurisdictions, including Canada, the UK and US.⁶² A five year pilot of an Alcohol and Other Drug Treatment Court commenced in NZ in 2011.⁶³ In general, evaluations of drug courts in overseas jurisdictions have also reported reductions in recidivism compared to conventional sanctions. A meta-analysis of evaluations from the US, Canada and Australia conducted by Canadian researchers in 2006 found that, overall, drug courts reduced recidivism by 14% compared to traditional criminal justice responses.⁶⁴

Victoria's Neighbourhood Justice Centre

- 8.43 Victoria has established in one location another innovative type of problem-solving court. Called the Neighbourhood Justice Centre (NJC), the court is presided over by a single magistrate and has the jurisdiction of the Magistrates' Court of Victoria, Children's Court, Victims of Crime Assistance Tribunal and the Victorian Civil and Administrative Tribunal. The NJC model combines programs like CREDIT with elements of the drug court model into a community justice model that is "about restorative justice, problem-solving and working with client, victim and community to get a better justice result for all parties – one where the client is strongly supported to not re-offend".⁶⁵ In the NJC, the court facilitates access to service providers for those involved in court processes. The court may supervise a person's engagement with services but people can also access services without any court involvement. A unit within the NJC is responsible for supervising the community-based orders imposed and linking offenders to therapeutic services.
- 8.44 Hearings at the NJC commenced at the end of 2007 and the caseload has steadily increased since that time. Between July 2008 and June 2009, the NJC court dealt with 2550 matters at a monthly average of 212 matters.⁶⁶ Offenders who were sentenced by in the NJC and received NJC services have been found to have a lower rate of re-conviction (34%) than a control group of offenders sentenced at other courts (41%), though this difference was not statistically significant.⁶⁷

62. J Kerr and others, *The Dedicated Drug Courts Pilot Evaluation Process Study*, Ministry of Justice Research Series 1/11 (UK Ministry of Justice, 2011); Washington DC Urban Institute, *Recidivism Rates for Drug Court Graduates: Nationally Based Estimates Final Report* (2003); J Latimer, K Morton-Bourgon and J Chretien, *A Meta-Analytic Examination of Drug Treatment Courts: Do They Reduce Recidivism?* (Department of Justice Canada, 2006).

63. For more information see NZ Ministry of Justice, *Alcohol and Other Drug Treatment Court: Information for Participants in the AODT Court Programme* (2012).

64. J Latimer, K Morton-Bourgon and J Chretien, *A Meta-Analytic Examination of Drug Treatment Courts: Do They Reduce Recidivism?* (Department of Justice Canada, 2006). See also D Wilson, O Mitchell and D Mackenzie, "A Systematic Review of Drug Court Effects on Recidivism" (2006) 2 *Journal of Experimental Criminology* 459.

65. D Fanning, "The Neighbourhood Justice Centre" (Speech delivered at the Richmond Drug and Health Community Forum, 18 November 2011).

66. S Ross and others, *Evaluation of the Neighbourhood Justice Centre, City of Yarra: Final Report* (University of Melbourne, Brotherhood of St Laurence and Flinders University, 2009) 71.

67. S Ross and others, *Evaluation of the Neighbourhood Justice Centre, City of Yarra: Final Report* (University of Melbourne, Brotherhood of St Laurence and Flinders University, 2009) 10, 157-158.

9. Other statistics

The number of juveniles sentenced as adults in the higher courts for serious offences has been small each year. The number of sentence appeals each year has been reducing since 2000, although the success rates of both prosecution and offender appeals have been fairly steady. Non-association and place restriction orders have been little used since their introduction.

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- 9.1 This chapter presents data on three ancillary areas of sentencing: the extent to which juveniles are sentenced in the NSW adult courts; the number and success rates of sentence appeals in the NSW Court of Criminal Appeal; and the use of non-association and place restriction orders.

Juveniles

- 9.2 Some defendants under 18 years of age may be dealt with by the Local, District or Supreme Courts rather than the Children's Court. In 2012, 813 defendants under the age of 18 were found guilty and sentenced in the Local Court. These juvenile defendants were convicted of driving and traffic offences over which the Children's Court has no jurisdiction.¹ The Local Court is empowered to deal with and sentence these matters according to the *Children (Criminal Proceedings) Act 1987* (NSW) as if it was the Children's Court.²
- 9.3 In the higher courts, 81 defendants under the age of 18 were found guilty and sentenced in 2012. These juveniles were sentenced in the higher courts either because they were charged with a serious children's indictable offence over which the Children's Court had no jurisdiction, or because they were charged with an indictable offence that the Children's Court decided was more appropriately dealt with by the higher courts.³ Juveniles are dealt with in the higher courts according to law and are sentenced as adults under the *Crimes (Sentencing Procedure) Act 1999* (NSW).⁴ Figure 9.1 shows the offences for which juveniles were sentenced by the higher courts in 2012.

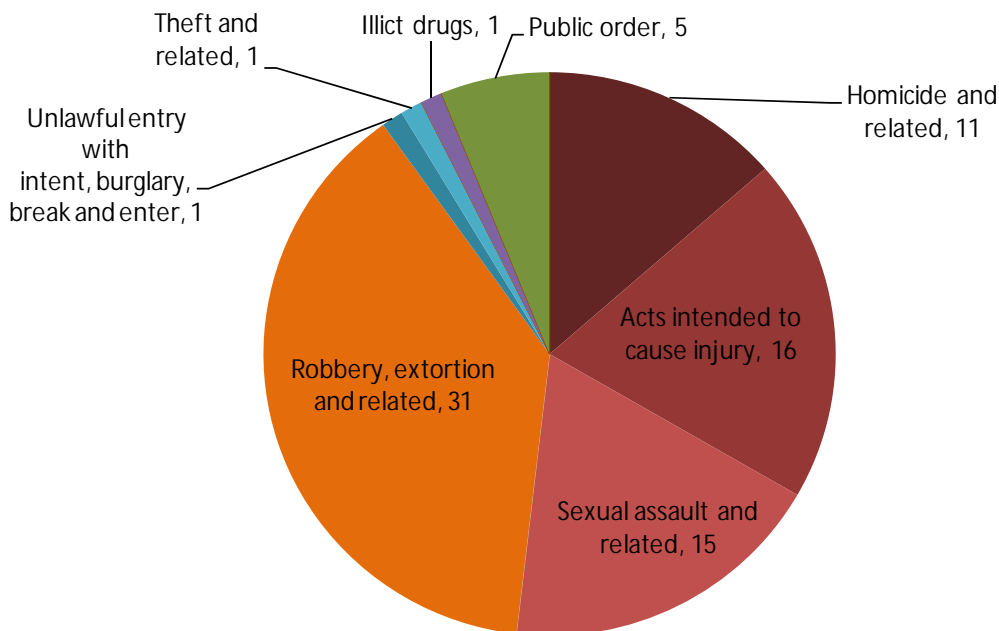
1. *Children (Criminal Proceedings) Act 1987* (NSW) s 28(2).

2. *Criminal Procedure Act 1986* (NSW) s 210.

3. *Children (Criminal Proceedings) Act 1987* (NSW) s 28(1), s 31(3). A "serious children's indictable offence" is homicide, an offence punishable by 25 years imprisonment or more, a serious sexual assault or serious child sex offence, or a firearms offence punishable by more than 20 years imprisonment or more: *Children (Criminal Proceedings) Act 1987* (NSW) s 3; *Children (Criminal Proceedings) Regulation 2011* (NSW) cl 32.

4. *Children (Criminal Proceedings) Act 1987* (NSW) s 17.

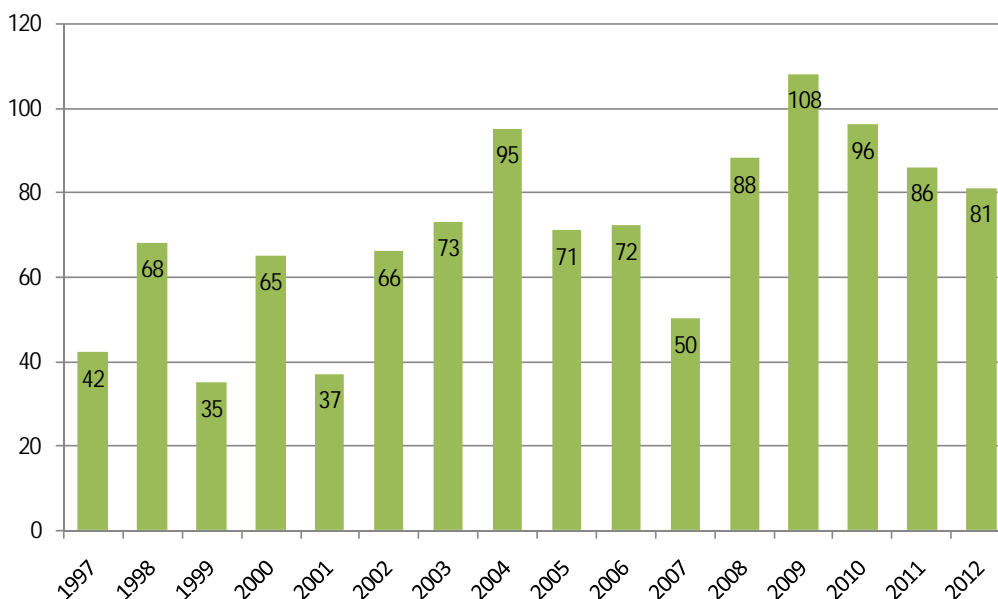
Figure 9.1 Most serious offence of juvenile offenders sentenced at law in the higher courts, 2012



Source: NSW Bureau of Crime Statistics and Research, Criminal Courts Statistics (2012). See also methodological notes at the end of this report.

9.4 Figure 9.2 shows the number of defendants aged under 18 that were sentenced as adults in the higher courts between 1997 and 2012.

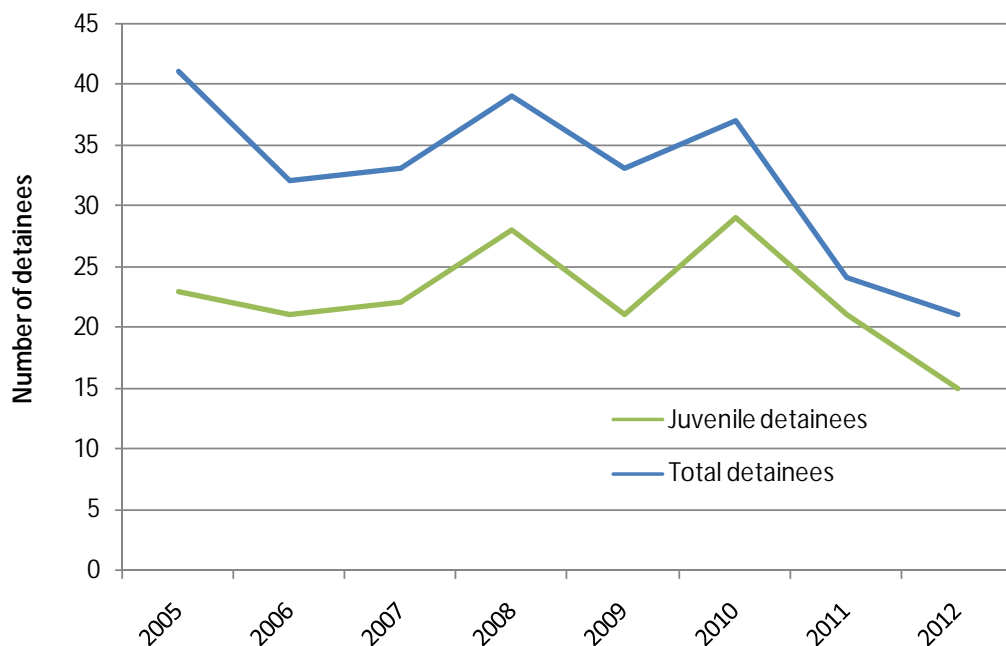
Figure 9.2 Juveniles sentenced at law in the NSW higher courts 1997-2012



Source: NSW Bureau of Crime Statistics and Research, Criminal Courts Statistics (2012). See also methodological notes at the end of this report.

- 9.5 Although it varies year to year, the number of offenders under 18 sentenced as adults in the higher courts is still always small. It peaked at 108 juveniles out of 3133 offenders sentenced in the higher courts in 2009.
- 9.6 Juvenile offenders sentenced to imprisonment by adult courts may serve the term of imprisonment as a juvenile offender in a detention centre managed by Juvenile Justice NSW, or may serve the term in Kariong Juvenile Correctional Centre which is managed by Corrective Services NSW.⁵ Inmates of juvenile detention centres with behaviour problems may also be transferred to Kariong Juvenile Correctional Centre if the Director-General of Juvenile Justice NSW and the Commissioner for Corrective Services agree.⁶
- 9.7 Kariong Juvenile Correctional Centre is a medium security centre for young male detainees.⁷ Due to the challenging nature of the detainees, Corrective Services NSW took over the management of the centre from Juvenile Justice in December 2004.⁸ Figure 9.3 shows the number of juveniles being managed by Corrective Services NSW and the total number of detainees at Kariong on the night of 30 June each year from 2005. Some of these detainees were sentenced and some were on remand.

Figure 9.3 Juvenile detainees managed by Corrective Services NSW and total detainees at Kariong Juvenile Correctional Centre 2005-2012



Source: Corrective Services NSW, *NSW Inmate Census (2005-2012)*. See also methodological notes at the end of this report.

5. *Children (Criminal Proceedings) Act 1987* (NSW) s 19.
6. *Children (Detention Centres) Act 1987* (NSW) s 28.
7. Corrective Services NSW, *NSW Inmate Census (2011)*.
8. NSW Ombudsman, *Kariong Juvenile Correctional Centre: Meeting the Challenges* (2011) 1.

Sentence appeals

- 9.8 The number of appeals determined each year by the NSW Court of Criminal Appeal can be used as another measure of the effectiveness of sentencing. The Judicial Commission of NSW has analysed the appeals between 2000 and 2011 and their success rates (see Table 9.1 below).

Table 9.1 Appeals against sentence in the NSW Court of Criminal Appeal 2000-2011

Year	Severity appeals by offender				Crown appeals against sentence			
	Allowed	Dismissed	Total	Success rate	Allowed	Dismissed	Total	Success rate
2000	127	186	313	41%	42	42	84	50%
2001	138	205	343	40%	34	21	55	62%
2002	148	183	331	45%	49	31	80	61%
2003	109	163	272	40%	32	33	65	49%
2004	131	154	285	46%	52	49	101	52%
2005	141	177	318	44%	34	24	58	59%
2006	106	153	259	41%	47	29	76	62%
2007	94	148	242	39%	35	24	59	59%
2008	83	133	216	38%	32	30	62	52%
2009	78	152	230	34%	31	17	48	65%
2010	84	132	216	39%	49	20	69	71%
2011	93	95	188	50%	15	19	34	44%
Total:	1332	1881	3213	42%	452	339	791	57%

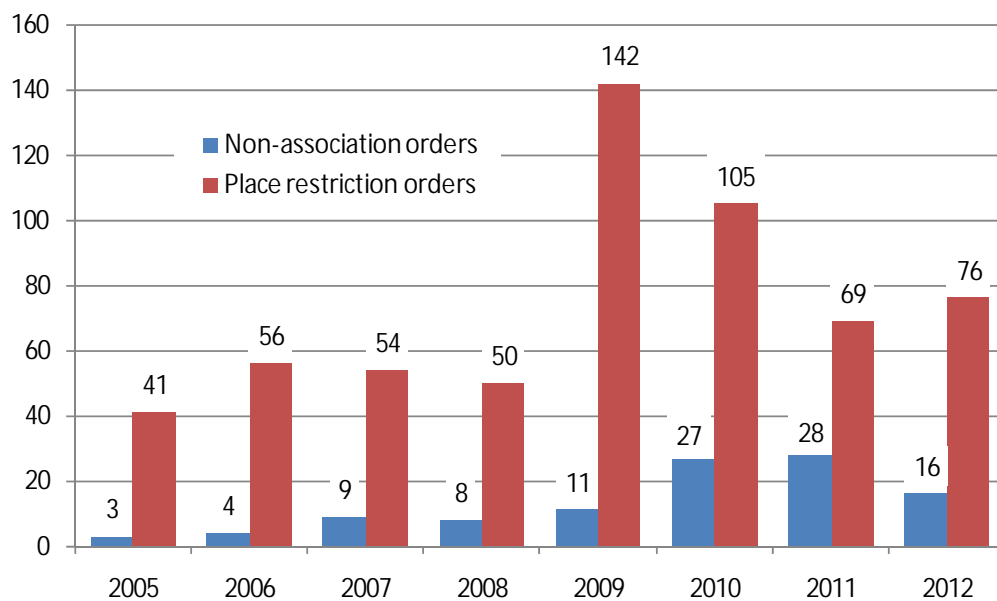
Source: Judicial Commission of NSW, Sentencing Bench Book, [70-010]. Percentages are rounded to the nearest whole number.

- 9.9 Table 9.1 shows that there are far more appeals by offenders against the severity of sentences than there are Crown appeals against sentence each year. However, Crown appeals are more likely to be successful, with an average success rate of 57% between 2000 and 2011. By contrast, offender appeals had an average success rate of 42%. Table 9.1 also shows that the number of appeals has gradually been decreasing. In 2000, there were 313 offender appeals against sentence and 84 Crown appeals. By 2011, this had fallen to 188 offender appeals against sentence and 34 Crown appeals.

Non-association and place restriction orders

- 9.10 Non-association and place restriction orders are orders that may be imposed by a court for any offence punishable by more than six months imprisonment in addition to another sentencing option. Non-association orders require an offender not to associate or communicate with a specified person. Place restriction orders require an offender not to visit a particular place or district.
- 9.11 Non-association and place restriction orders are not often used in NSW.

Figure 9.4 Use of non-association and place restriction orders in NSW 2005-2012



Source: NSW Bureau of Crime Statistics and Research (unpublished data, ref: HCLC1311394dg). See also methodological notes at the end of this report.

- 9.12 Between 2005 and 2012, an average of 13 non-association orders and 74 place restriction orders were imposed each year. A review by the NSW Ombudsman of the orders imposed between 2002 and 2004 found that only 20 such orders were made during that period.⁹

⁹. NSW Ombudsman, *Review of the Justice Legislation Amendment (Non-Association and Place Restriction) Act 2001* (2006) 71.

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- 10.1 It is important to note that statistics drawn from correctives services measures (for example, receptions to corrective services or number of people being held in prisons on any one day) are not directly comparable to statistics about court outcomes (that is, number of people receiving a certain sentence in any one year).
- 10.2 All the data in this report has attempted to exclude the juvenile criminal justice system. In most cases, offenders under 18 are shown in the data only where they are sentenced by adult courts or held in correctional institutions managed by adult corrective services.

NSW data

BOCSAR's Criminal Courts Statistics publications

- 10.3 Data drawn from the NSW Bureau of Crime Statistics and Research (BOCSAR) *Criminal Courts Statistics* publication are confined to counts from the Local, District and Supreme Courts and exclude counts from the Children's Court. However, juveniles sentenced in adult courts will still be included in the counts.
- 10.4 The *Criminal Courts Statistics* publications report principal penalties for the principal offence in each criminal case in a year. As a result, the counts do not reflect the number of community service orders (CSOs) imposed in a year but the number of offenders who received a CSO as the principal penalty for their principal offence. Counts are of principal penalties for principal offences in finalised appearances (a criminal case). They are not unique person counts. A person sentenced on two unrelated occasions (two finalised appearances) in a year will be counted twice.
- 10.5 People who received a Commonwealth sentence for a federal offence, a licence disqualification, detention in a juvenile justice institution, an order under the Migration Act, a compensation order, or "no action taken" as their only penalty or as their most serious penalty have been excluded. These outcomes have been excluded to confine the data to the NSW adult sentencing system, and to improve comparability of the data across years and across jurisdictions.

- 10.6 The counts also do not include those diverted from traditional sentencing, for example to the NSW Drug Court. Counts do include offenders sentenced for a Commonwealth offence where a NSW penalty was imposed.
- 10.7 When offence categories are shown based on BOCSAR data, the categories are taken from the Australian and New Zealand Standard Offence Classification (ANZSOC). Explanation of these categories and the types of offences included in each group can be found in Australian Bureau of Statistics, 1234.0 *Australian and New Zealand Standard Offence Classification (ANZSOC), Australia* (2011).
- 10.8 Where an offence is recorded as “offences against justice procedures” in BOCSAR data, this category will include offences like immigration offences and offences of resisting or hindering a police officer. It will also include new sentences imposed after breaches of previously imposed orders such as a previous good behaviour bond, even when breach of the bond is not technically itself an offence. For this reason, offence types reported in Corrective Services NSW data will differ from offence types recorded with BOCSAR data. For example, if an offender receives a CSO for assault and subsequently breaches the CSO and is resentenced by the court to home detention, Corrective Services NSW would record this as a sentence of home detention imposed for assault, while BOCSAR would record this as a sentence of home detention for “offences against justice procedures”.
- 10.9 In Figures 4.10, 5.11, 5.13, 5.14, 5.18, 6.2, 7.10, 7.13, 7.15, 7.26, 7.29 and 7.31 data from 2004 onwards is **not directly comparable** with earlier years as the ranking of penalties was changed by BOCSAR at that time. Before 2004, a s 10 bond without conviction was ranked as a more serious penalty than a fine or a nominal sentence. From 2004, it was ranked as more serious only than a s 10 dismissal with no bond. This change of ranking will affect the counts of the lower penalties as only the principal (ie most serious) penalty is recorded. See the Explanatory Notes at the end of the *Criminal Courts Statistics* publications for more detail.
- 10.10 In Chapter 7, data relating to the penalties imposed for Aboriginal and Torres Strait Islander offenders was sourced from BOCSAR in 2013 (ref: HcLc1311319dg). BOCSAR has changed the method by which it identifies Aboriginal and Torres Strait Islander offenders several times since 1997. The data presented in this chapter applies current counting rules back to 1997 and so is not comparable with the data published in the *Criminal Courts Statistics* publications.

Corrective Services NSW data

- 10.11 In Figure 3.10, data shown is of the length of the aggregate sentence being served by prisoners in NSW adult prisons counted on 30 June of each year. Prisoners being held in custody following a breach of parole are the exception to this. The data shown for these prisoners is only the aggregate sentence being served since their return to custody following the breach. Periodic detainees in custody on the night of the count are not included.

Judicial Commission of NSW data

- 10.12 The appeals data presented in Chapter 9 includes appeals in Commonwealth cases.

SA data

- 10.13 South Australian data was provided by the SA Office of Crime Statistics and Research (OCSAR). It is not comparable to the data published by OCSAR in *Crime and Justice in South Australia: Adult Courts and Corrections* publications due to changes in counting rules.
- 10.14 Data is confined to counts from the Magistrates Court and higher courts and exclude counts from the Youth Court.
- 10.15 Counts are of the major penalty for the major offence of which the offender was convicted or found guilty in a criminal case. The counts are not unique person counts. Where two charges on the same case receive the same penalty or a penalty of equal severity, the major charge convicted or found guilty is determined by the maximum statutory penalty as stated in SA law. A case is a group of charges finalised in the same court involving a single defendant. Multiple defendants are counted as separate cases. Multiple cases finalised on a single day involving the same defendant are counted as separate cases. Each retrial is counted as a separate case. Procedural hearings, appeals and applications are excluded.
- 10.16 People who received a licence disqualification, compensation order, restraining order or “other” order as their most serious penalty have been excluded.
- 10.17 Despite similarities to the data published for NSW by BOCSAR, caution should be used when making any comparisons between NSW data and SA OCSAR data.

Victorian data

- 10.18 Victorian data was drawn from the Victorian Sentencing Advisory Council (VSAC) website.¹ Although data is available back to 1998-99, counts used in this report begin in 2004-05 due to a break in the data series at that time.
- 10.19 Counts are of sentences in criminal cases (which may involve one or more charges and/or offences) and record the most serious sentence imposed in each criminal case. The counts are not unique person counts. If a person appears in more than one criminal case in a year they will be counted each time. The data is confined to counts from the Magistrates’ Court and higher courts, and excludes the Children’s Court. However, any juveniles sentenced in adult courts will still be included in the counts.

1. <<http://sentencingcouncil.vic.gov.au/landing/about-sentencing/sentencing-statistics>>.

- 10.20 Cases where the principal penalty was a Commonwealth order, a youth supervision order or detention in a youth residential centre are not included in totals or the denominators for proportions shown.
- 10.21 Victorian data is for financial rather than calendar years. In all charts based on VSAC data, the data points charted are financial years.
- 10.22 In Figure 5.3, data relates to the Community-Based Order. In Victoria until 16 January 2012 a court was able to make a Community-Based Order that included some core supervision conditions and also at least one of the following ‘program’ conditions: community service, strict supervision, drug or alcohol treatment, education programs, or drug or alcohol testing. Counts for the Community-Based Order are therefore not directly comparable to the NSW CSO as it did not always involve a community work component.
- 10.23 In Figure 5.10, Victorian data relates to counts of “adjourned undertakings”.
- 10.24 Despite similarities to the data published for NSW by BOCSAR, caution should be used when making any comparisons between NSW data and Victorian VSAC data.

NZ data

- 10.25 New Zealand data was drawn from the Statistics New Zealand website.²
- 10.26 Counts are of the most serious sentence imposed on an offender for their main offence in that year. They are unique person counts. If an offender appears in several unrelated cases in a year he or she will only be counted once.³
- 10.27 Sentences are recorded in the year the conviction for the relevant offence was recorded, not in the year the sentence was imposed. As a result, some sentences may be recorded as imposed on offender (for example community detention in 2006) before that sentence was introduced (community detention was introduced in 2008). This also means that the data used in this report was current at date of access (November 2012) but will have subsequently changed as new sentences are backdated to the year of conviction.
- 10.28 Counts are drawn from all NZ courts and include offenders aged 17 and over.
- 10.29 In Figure 5.3, NZ data from 2002 onwards relates to sentences of “community work”. Prior to 2002 the counts include sentences of periodic detention, “community service” and “community programme”.
- 10.30 NZ data includes offenders convicted and then discharged (the equivalent of the NSW s 10A order) but does not include the equivalent of a NSW s 10 (non-conviction) order. As such, NZ data is less comparable to NSW counts than

2. <http://www.stats.govt.nz/tools_and_services/tools/TableBuilder/criminalconviction.aspx>.

3. For more information on how the most serious sentence and main offence are selected, see <http://www.stats.govt.nz/tools_and_services/tools/tablebuilder/criminalconviction/info-about-the-data/sentence-types.aspx>.

Victorian and SA counts and can only be used to give a general indication of NZ sentencing practices. NZ proportions for use of the sentences described in this report will be inflated by comparison to the NSW, SA and Victorian proportions.

Australia-wide data

Data from the Report on Government Services

- 10.31 The *Report on Government Services* published by the Productivity Commission splits community-based sentences into three categories: restricted movement (eg home detention), reparation (eg community service) and supervision (eg probation, parole, bail).
- 10.32 Data in the *Report on Government Services* is provided to the Productivity Commission by each state and territory government. Each jurisdiction's reporting body decides the categories to which the sentencing options of that jurisdiction belong, according to general guidelines developed by the National Corrections Advisory Group. As a result, any comparisons between jurisdictions based on this data can be guides only.

Australian Bureau of Statistics data

- 10.33 In Figures 3.1, 3.2, 3.7, 3.17, 7.1, 7.2 and 7.3, counts for NSW up to 2008 include ACT prisoners held in NSW prisons. Each year (2001-2008) there were approximately 100 to 120 ACT prisoners held in NSW.
- 10.34 All counts of sentenced prisoners from the Australian Bureau of Statistics publication *Prisoners in Australia* (ABS 4517.0) include periodic detainees if those detainees happened to be in the prison on census night. As a result, some but not all periodic detainees are included in the counts. The sentenced imprisonment rate for NSW shown in Figures 3.2, 3.14 and 7.3 has been calculated using a count of sentenced prisoners that includes some periodic detainees.
- 10.35 All counts of sentenced prisoners are of prisoners being held in adult correctional institutions. These counts also include a small number of forensic patients being held for "indeterminate" periods of detention.
- 10.36 In Figures 3.2 and 3.7, the sentenced imprisonment rate has been generated by multiplying the overall published imprisonment rate in *Prisoners in Australia* by the percentage published for the proportion of prisoners that are sentenced.
- 10.37 In Figures 3.11, 3.12 and 7.6 sentence length is the length of the total effective sentence being served by the prisoner (not the length of the non-parole period being served). Detainees serving sentences of periodic detention are not included in the counts. If a prisoner is in custody for breach of parole, his or her sentence length is counted as if it began on their return to custody. In Figure 3.11, the "other" category for length of sentence refers to prisoners serving an indeterminate period in detention other than an indeterminate life sentence (mainly forensic patients). In Figure 3.12, detainees serving indeterminate detention periods and life sentences are not included in the calculation of the mean and the median sentence length.

- 10.38 In Figures 4.3 and 5.4, data for 2012 is for the June 2012 quarter only.
- 10.39 In Figures 3.6 and 4.9, counts are of finalised defendants in a year, grouped into criminal cases. They are not unique person counts. The data is confined to counts from the magistrates and higher courts in each state or territory, and excludes the Children’s Court. However, any juveniles sentenced in adult courts will still be included in the counts. The denominator includes all defendants found guilty, including those sentenced to a principal penalty of licence disqualification, compensation order, youth-specific order or Commonwealth order and those diverted from traditional sentencing.
- 10.40 Figure 4.9 shows the use of fully suspended sentences across Australia as a proportion of total people found guilty in each state and territory. The numerator only includes fully suspended sentences which were the principal penalty for an offender. Partially suspended sentences are excluded. The denominator includes all persons found guilty in that state or territory, including those sentenced to a principal penalty of licence disqualification, compensation order, youth-specific order or Commonwealth order and those diverted from traditional sentencing. The denominator is thus significantly different to that used in figures that are based on BOCSAR data from the *Criminal Courts Statistics* publications.



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ISSN 1030-0244
ISBN 978-0-7347-2685-8