

Firearms Offences

Current Sentencing Practices

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Firearms Offences

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Glossary of key terms

Accused	A person who is charged with a criminal offence.
Aggregate sentence	A single sentence imposed on multiple charges in one case. The value of an aggregate sentence (for example, length of imprisonment term or fine amount) relates to at least two charges sentenced in the same case. The individual sentence for each charge is not specified.
Base sentence	The offence within a case that received the most severe penalty.
Case	A collection of one or more proven charges against a person sentenced at the one hearing.
Charge	In this report, a single proven count of an offence.
Community correction order	A sentencing order, available since 16 January 2012, that may require the offender to comply with a range of conditions, including unpaid community work, treatment, supervision, curfews and restrictions on the offender's movements and associates (<i>Sentencing Act 1991</i> (Vic) pt 3A).
Council, the	The Sentencing Advisory Council.
Higher courts	In this report, the County Court of Victoria and the Supreme Court of Victoria.
Judiciary	The arm of government comprising the system of courts that interprets and applies the law. Distinguished from the legislature and the executive, the judiciary in Victoria comprises all judicial officers appointed to the various Victorian courts.
Legislature	The arm of government with the authority to make laws. Distinguished from the executive and the judiciary, the legislature in Victoria is the Parliament of Victoria.
Reference period	The five years from 1 July 2012 to 30 June 2017.
Offender	A person who has been found guilty of a criminal offence.

Executive summary

This report examines trends in the prevalence and sentencing of firearms offences in Victoria. It considers 132 firearms offence provisions sentenced in Victorian courts in the five years from 1 July 2012 to 30 June 2017 (the reference period).

The report also examines:

- the characteristics (age and gender) of firearms offenders;
- offences sentenced alongside firearms charges (co-sentenced offences) in each court;
- sentencing outcomes at the charge level for the offence of prohibited person possess, carry or use a firearm under section 5(1) of the *Firearms Act 1996* (Vic);
- sentencing factors present in cases sentenced in the higher courts (the County and Supreme Courts) during the reference period; and
- cumulation of sentences on firearms charges in the higher courts.

Prevalence

Overall, the number of sentenced charges of firearms offences increased by 34% over the reference period (from 2,375 to 3,191 sentenced charges annually). Between 2012–13 and 2016–17, the number of sentenced charges of firearms offences in Victoria more than doubled in the higher courts, doubled in the Children's Court and increased by approximately 30% in the Magistrates' Court, where the majority of firearms offences are sentenced. Over the reference period, 14,828 firearms offences were sentenced in Victorian courts.

This report only contains findings on firearms offences that were detected by law enforcement, charged and sentenced within the reference period. As further firearms offences may not have been detected, the data may underestimate the prevalence of these offences in Victoria. However, overall trends are unlikely to be affected.

Number and type of sentenced offences

Of the 132 firearms offence provisions examined for this report, 44 (33%) are categorised as offences relating to the possession, carriage or use of firearms (*possess/carry/use* offences). Almost half of all sentenced charges fell into this category (46% across all courts). As the firearms offences with the highest maximum penalties were all *possess/carry/use* offences, sentenced charges in the higher courts primarily comprised these offences (65%).

In the Magistrates' Court and the Children's Court, possession of cartridge ammunition by an unlicensed person under section 124 of the *Firearms Act 1996* (Vic) was the most frequently sentenced offence over the reference period (3,836 charges in five years), followed by the offence of prohibited person possess, carry or use a firearm (1,749 charges). In the higher courts, the most frequently sentenced offence was prohibited person possess, carry or use a firearm (328 charges).

Characteristics of offenders

The majority of offenders sentenced in Victorian courts for firearms offences were male (93%). The average age of adult firearms offenders was 34 years. The average age of firearms offenders sentenced in the Children's Court was 16.

The age of firearms offenders did not differ greatly from the age of offenders overall in each jurisdiction, although the average age of firearms offenders sentenced in the higher courts (33 years) was slightly younger than the average age overall in that jurisdiction (35 years).

Co-sentenced offences

Firearms offences tend to be associated with a high level of criminal activity. Most firearms cases (68%) over the reference period had at least two charges of other offences sentenced in the case. Firearms offenders in the Magistrates' Court were likely to be sentenced for a high number of other offences in their case. In all cases of a single firearms charge, there was an average of eight charges of other offences. Firearms offenders in the Magistrates' Court were also sentenced for a wide range of other offences, from trafficking non-commercial quantities of drugs (14% of cases) to unlicensed driving (10% of cases).

Firearms offenders in the Children's Court were most commonly co-sentenced for theft (62% of cases) and intentionally damage property (39% of cases). Almost one-quarter of all charges sentenced in firearms cases were theft (500 of 2,081 charges).

For firearms offenders in the higher courts, drug offences were common co-sentenced offences, as were offences against the person, such as armed robbery, and property offences, such as theft and dealing with property that is a suspected proceed of crime.

Sentencing outcomes

During the reference period, firearms offences carried maximum penalties ranging from 10 penalty units to 17 years' imprisonment. The Council examined the outcomes in each court for firearms charges that carried a maximum penalty of imprisonment. All analysis of sentencing outcomes relates to the subset of charges carrying a maximum penalty of imprisonment.

Of the 13,702 charges of firearms offences sentenced in the Magistrates' Court, 9,694 (71%) carried a maximum penalty of imprisonment. For firearms charges carrying a maximum penalty of imprisonment, fines were the most common sentencing outcome (26% of all charges sentenced). Over the reference period, however, the rate of fines decreased (from 31% in 2012–13 to 20% in 2016–17) and imprisonment and community orders became more common, accounting for 59% of all charges sentenced in 2016–17.

In the Children's Court, 132 firearms charges (66% of all 199 firearms charges sentenced in that jurisdiction) carried a maximum penalty of imprisonment. For the firearms charges that carried a maximum penalty of imprisonment, a youth justice centre order was the most common sentence imposed in 2016–17 (35% of all firearms charges). From 2013–14 to 2014–15, good behaviour bonds accounted for around one-third of these firearms charges.

In the higher courts, three-quarters (76%) of sentenced firearms charges carried a maximum penalty of imprisonment. Over the reference period, 84% of firearms charges that carried a maximum penalty of imprisonment received imprisonment, including 12% of charges that received a sentence of imprisonment combined with a community correction order (CCO).

In all jurisdictions, the majority of charges of prohibited person possess, carry or use a firearm received imprisonment. Of the 328 total charges of this offence sentenced in the higher courts, 300 (91%) received imprisonment. As the number of charges increased over the reference period, the proportion of charges that received imprisonment also increased, to 96% in 2016–17. In the Magistrates' Court, the percentage of charges of prohibited person possess, carry or use a firearm that received imprisonment each year increased from 40% in 2013–14 (111 of 278 charges) to 71% in 2016–17 (309 of 436 charges).

Sentencing factors

The Council examined all available sentencing remarks for firearms cases sentenced in the higher courts during the reference period (438 of 490 firearms cases or 89%). Sentencing remarks were analysed for a range of factors, including those specific to firearms offending, such as the number of firearms possessed by the offender, and those personal to the offender, such as their prior offence history.

Prior involvement with the criminal justice system

The majority of firearms offenders sentenced in the higher courts had significant prior involvement with the criminal justice system. A large proportion of offenders had a prior offence history (83%): 40% had drug priors, 34% had injury priors and 37% had weapons priors (including firearms priors).

Over one-third (34%) of offenders were on an order, such as bail or a CCO, at the time of the firearms offence.

Substance abuse

Over three-quarters (81%) of firearms offenders sentenced in the higher courts had substance abuse issues, whether alcohol and/or other drugs. Over half (65%) of offenders were identified as methylamphetamine users. The rates of substance abuse are higher than those of other cohorts of offenders examined in the Council's previous reports on current sentencing practices.

Criminal activity

A key consideration when sentencing firearms possession offences is whether the firearm is associated with other criminal activity. Where the illegal firearm possession is found to be for a criminal purpose, a more severe sentence is warranted. During the reference period, the majority of firearms offenders sentenced in the higher courts (84%) possessed the firearm for the purposes of other criminal activity.

Firearms charges in cases related to criminal activity were far more likely to receive imprisonment: 91% of firearms charges in cases of criminal activity received imprisonment, compared with 57% in cases not related to other criminal activity.

Family violence

During consultation, concern was expressed regarding the use of firearms in family violence offences. Stakeholders noted the particular dangers of persons who engage in family violence offences being in possession of a firearm, as it may be used to threaten or control their victims.

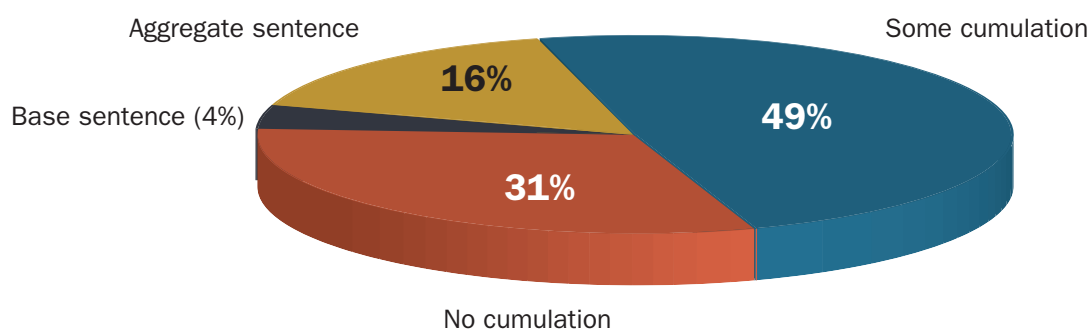
Of the higher courts sentencing remarks analysed, the firearms offender was noted to be a family violence offender in 11% of cases (46 of 438 cases). The majority of those 46 cases received a sentence of imprisonment on the firearms charge.

Cumulation

A proportion of imprisonment terms imposed for firearms offences were ordered to be served cumulatively upon a base sentence. This was examined for higher courts cases with available sentencing remarks.

Of the 853 firearms charges sentenced in all cases in the higher courts, 661 carried a maximum penalty of imprisonment, and 564 of these charges received a sentence of imprisonment (see below). Of the charges that received imprisonment, 4% were the base sentence. Almost half of the charges that received imprisonment (49%) had some amount of cumulation recorded. The average cumulated proportion across these firearms charges was 33% on the base sentence.

Percentage of sentences receiving cumulation for imprisonment terms, higher courts



The Council examined cumulation in cases in which a firearms offence was sentenced alongside an armed robbery offence. The aim was to examine courts' approaches to the issue of double punishment where an element of two offences overlapped (for example, a firearms possession offence and an armed robbery involving the use of the same firearm in the possession offence). There were no differences in the average proportion of cumulation imposed. Stakeholders noted the importance of considering the relationship between the firearms charge and other offences in the case in determining sentence.

Concluding remarks

This report highlights the increasing prevalence of firearms offences sentenced in Victoria over the reference period. As the prevalence of sentenced firearms offences has increased in each Victorian court, so has the proportion of charges receiving sentences of imprisonment.

The findings suggest that many firearms offenders sentenced in the higher courts are entrenched within the criminal justice system. They pose complex challenges for sentencing courts. In sentencing firearms possession offences, the inherent risk to the community of the unlawful possession of a firearm needs to be carefully considered. This is particularly so in light of the high proportion of firearms offenders who have conditions, such as methylamphetamine addiction, that may increase the risk to the community.

1. Background, scope and overview of legal framework

- I.1 The unlawful possession of firearms, along with their use in the commission of criminal offences, is of ongoing community concern.¹
- I.2 When introducing the Firearms Amendment Bill 2017 (Vic), the then Minister for Police, the Honourable Lisa Neville, MP, stated:

The risk of the illicit use of firearms clearly threaten[s] public safety. Statistics from both Victoria Police and the independent Crimes Statistics Agency show an increase in firearm-related violence with 'drive-by' and 'non-fatal' shootings, which are often linked to organised crime. Drive-by shootings in Victoria have risen from 27 non-fatal shootings in 2014, to 67 in 2016 and already 47 to date in 2017.²
- I.3 Concern over firearms offending extends to the sentencing of such offences.³ Current sentencing practices, however, represent just one component of a much larger criminal justice response to firearms offending, including national and state regulation, policing and prosecution practices. The behaviours and factors that relate to the sentencing of firearms offences, as covered by this report, must be considered in this broader context.
- I.4 This chapter outlines the scope of the report and provides an overview of the legislation that governs firearms offences in Victoria, including the most substantial amendments that occurred within the five-year reference period of this report, from 1 July 2012 to 30 June 2017.

Prior research

- I.5 A number of reports have considered the prevalence of firearms offences in Australia, as well as their sentencing outcomes.⁴ In 2008, the Australian Institute of Criminology published *Court Outcomes for Firearm Offences in Australia*, drawing on sentencing data from across Australia for the period between January 2002 and December 2004. The report found that the most frequently imposed penalty for firearms offences was a fine, followed by a sentence of imprisonment. The report noted several factors relevant to sentencing firearms offences, including whether the firearm was used in the commission of a separate offence, such as armed robbery, and the importance of general and specific deterrence for firearms offences.⁵

1. See for example, Tammy Mills, 'Gun Found Every Two Days in Melbourne's "Red Zone"', *The Age* (Melbourne) 18 June 2015 <<https://www.theage.com.au/national/victoria/gun-found-every-two-days-in-melbournes-red-zone-20150618-ghrak9.html>> at 19 March 2019; Australian Medical Association, 'Tighter Restrictions Needed on Gun Ownership', Media Release (2 January 2017) <<https://ama.com.au/media/tighter-restrictions-needed-gun-ownership>> at 19 March 2019; Philip Alpers and Amélie Rossetti, *Firearm Legislation in Australia 21 Years After the National Firearms Agreement* (2017); Ben Smee, 'Australian Gun Control Advocates Call for Federal Intervention to Save Firearms Pact', *The Guardian* (Australia) 26 March 2018 <<https://www.theguardian.com/australia-news/2018/mar/26/australian-gun-control-advocates-call-for-federal-intervention-as-states-bow-to-firearms-lobby>> at 19 March 2019.

2. Victoria, 'Firearms Amendment Bill 2017', *Parliamentary Debates*, Legislative Assembly, 21 September 2017, 2962 (Lisa Neville, Minister for Police).

3. See for example, Sentencing Advisory Council, *Sentencing Guidance in Victoria: Report* (2016) 136.

4. Megan Davies and Jenny Mouzos, *Court Outcomes for Firearm Offences in Australia*, Technical and Background Paper no. 31 (2008); Tom Gotsis, *Sentencing Outcomes for Firearms Offences*, Briefing Paper no. 2 (2016); Australian Criminal Intelligence Commission, *Illicit Firearms in Australia* (2016).

5. Davies and Mouzos (2008), above n 4, 29, 32–41.

- I.6 In addition, the Australian Criminal Intelligence Commission has reported on the illicit firearms trade in Australia. This report estimated that there were 260,000 firearms in the Australian domestic illicit market and noted that firearms can enter the illicit market in a number of ways. Some firearms may be diverted from the licit to the illicit market through theft. Firearms that were not surrendered or registered under the 1996 *Firearms Agreement* (existing in the 'grey market') may be also diverted onto the illicit firearms market. The report noted that the number of firearms illegally imported or manufactured was low.⁶
- I.7 The Sentencing Advisory Council ('the Council') has not previously examined the sentencing of firearms offences. During consultation with the Council for its review of sentencing guidance in Victoria, Crown Prosecutors flagged that the sentencing of firearms offences required examination.⁷ In *Sentencing Guidance in Victoria* (2016), the Council notes that further research is required to identify the precise issues with sentencing practices for this offence group.

Overview of this report

- I.8 This report examines trends in the prevalence and sentencing of firearms offences in Victoria. It considers 132 firearms offence provisions sentenced in Victorian courts in the five years from 1 July 2012 to 30 June 2017 (the reference period).
- I.9 The firearms offence provisions examined in this report and the number of firearms charges sentenced during the reference period are listed in Appendix 3.
- I.10 The key offence provisions examined in this report are contained in the following legislation:
- the *Firearms Act 1996* (Vic);
 - the *Control of Weapons Act 1990* (Vic); and
 - the *Crimes Act 1958* (Vic).
- I.11 Additional offence provisions covered in this report are contained in the:
- *Family Violence Protection Act 2008* (Vic);
 - *Personal Safety Intervention Orders Act 2010* (Vic);
 - *National Parks Act 1975* (Vic); and
 - *Forests (Recreation) Regulations 2010* (Vic).
- I.12 The sentencing of firearms offences was examined in all court jurisdictions in Victoria: the Magistrates' Court, the Children's Court and the higher courts (County Court and Supreme Court).

6. Australian Criminal Intelligence Commission (2016), above n 4, 1–11.

7. Sentencing Advisory Council (2016), above n 3, 54, citing a meeting that the Council held with a number of Crown Prosecutors on 11 February 2016.

Exclusions

- I.13 Some cases may have involved the use or possession of a firearm, but the offender was not charged with a firearms-specific offence. These cases are not considered in this report.
- I.14 This report also does not discuss the sentencing of offences involving other weapons, such as explosive devices or knives.⁸

Analysis of sentencing remarks

- I.15 In total, 438 cases sentenced in the higher courts were analysed in order to present the following information for the offence provisions examined in this report:
 - a profile of sentencing factors (for example, the number of firearms involved in the sentenced charges and whether the offender pleaded guilty);
 - profiles of particular groups of cases and their sentencing outcomes; and
 - discussion of cumulation for firearms offences co-sentenced with certain other offences.
- I.16 The sampling, method of analysis and coding of sentencing factors are detailed in Appendix 2.

Use of case studies

- I.17 The Council uses case studies drawn from published sentencing remarks⁹ in order to place the sentencing of firearms offences in context and illustrate factual circumstances that are commonly sentenced in Victorian courts.

Overview of legislative framework and key offences

- I.18 The lawful possession and use of firearms in Victoria are primarily governed by the *Firearms Act 1996* (Vic) ('the Act'). The Act contains a large number of offences relating to such issues as the regulated possession, sale and safe storage of firearms and ammunition. The Act also provides for offences related to the unlawful possession and use of firearms, including several indictable offences.
- I.19 The Act, which commenced operation on 17 December 1996, was part of a national response to the Port Arthur massacre. It restructured Victoria's approach to firearms and firearms offences.¹⁰

8. The offence of possess prohibited weapon (*Control of Weapons Act 1990* (Vic) s 5AA) prohibits the possession of a range of devices, including blow guns and pistol crossbows, and is not included in this report: *Control of Weapons Regulations 2011* (Vic) sch 3.

9. Where a case study is based on a single case, the Council has drawn on the published case on the Australasian Legal Information Institute (AustLII). For some case studies, the Council has drawn on a number of unpublished cases, as well as feedback provided during consultation, to develop an example that illustrates factors present in typical cases.

10. Australasian Police Ministers' Council, *Special Firearms Meeting 10 May 1996: Resolutions* (1996). The resolutions were adopted at the sixth Council of Australian Governments meeting on 14 June 1996, leading to what is known as the National Firearms Agreement: Davies and Mouzos (2008), above n 4, 7.

I.20 Among other things, the legislated purpose of the Act includes:

- (a) to give effect to the principle that the possession, carriage, use, acquisition and disposal of firearms are conditional on the need to ensure public safety and peace by—
 - (i) establishing a system of licensing and regulating the possession, carriage and use of firearms and related items which does not allow for self defence to be used as a reason for obtaining a licence to possess, carry or use a firearm; and
 - ...
 - (vii) providing for strict control on the possession, carriage, use, acquisition, disposal and storage of firearms.¹¹

I.21 The primary legal framework governing the lawful use of firearms in Victoria and providing criminal offences for unlawful use is the *Firearms Act 1996* (Vic) and its associated regulations.

Key offences

I.22 There are 132 firearms offences provisions in the Council's list of firearms offences sentenced during the reference period. Adopting categories used in the 2008 Australian Institute of Criminology's *Court Outcomes for Firearm Offences*, the offences have been categorised as follows:

- acquisition offences;
- administration offences;
- alteration offences;
- ammunition offences;
- collector offences;
- deal/dispose offences;
- dealer offences;
- manufacture offences;¹²
- possess/carry/use offences;
- safety offences; and
- storage offences.¹³

11. *Firearms Act 1996* (Vic) s 1.

12. The Council has added the category of *manufacture* for the manufacturing of firearm offences, on the basis that manufacturing of firearms does not easily sit within any of the existing categories, and there is growing concern around the use of new technologies, such as 3D printing, that may lead to an increase in offences in this category: see further Appendix 2.

13. A description of the offences that fall within these categories is presented in Appendix 3. Adopting this categorisation also allows for a historical comparison with the Victorian data from 2002 to 2004 presented in the Australian Institute of Criminology's report: Davies and Mouzos (2008), above n 4.

- I.23 The Act contains a number of offences concerning the unlawful possession, carriage or use of firearms. These offences generally distinguish between prohibited and non-prohibited persons.¹⁴ Offences relating to non-prohibited persons further distinguish between registered and unregistered firearms,¹⁵ as well as between longarms (separated into five subcategories)¹⁶ and handguns (separated into two subcategories).¹⁷

Prohibited person in possession offence

- I.24 It is an offence for a *prohibited person* to possess, carry or use a firearm.¹⁸ There are a number of circumstances in which a person may be treated as a prohibited person under the Act. In addition to other factors, a prohibited person is someone who:
- has been found guilty of an indictable offence (whether in Victoria or in another state or territory) in the last 12 months;¹⁹
 - is serving a term of imprisonment for certain offences;²⁰
 - has served a term of imprisonment of five years or more for certain offences in the past 15 years;²¹
 - is a *declared individual*²² or is subject to a control order under the *Criminal Organisations Control Act 2012* (Vic);²³ and/or
 - is subject to a final order under the *Family Violence Protection Act 2008* (Vic) or the *Personal Safety Intervention Orders Act 2010* (Vic).²⁴
- I.25 This offence carries a maximum penalty of 1,200 penalty units or 10 years' imprisonment.²⁵
- I.26 The Council has selected prohibited person possess, carry or use a firearm for particular consideration due to the prevalence of this offence during the reference period,²⁶ stakeholder interest in the sentencing of this offence²⁷ and the fact that much of the judicial commentary from the Court of Appeal on the sentencing of firearms offences arises from cases containing this offence.²⁸

14. See for example, *Firearms Act 1996* (Vic) ss 5, 6; see *Firearms Act 1996* (Vic) s 3 for the definitions of prohibited and non-prohibited persons.

15. *Firearms Act 1996* (Vic) ss 6–7, 7B. The maximum penalties for possess/carry/use unregistered firearms offences increase if the non-prohibited person has committed the offence previously: *Firearms Act 1996* (Vic) ss 6A, 7B.

16. Additionally, possess/carry/use registered longarms that do not fall into any of these subcategories is an offence: *Firearms Act 1996* (Vic) s 6(6).

17. See *Firearms Act 1996* (Vic) s 3 for the definitions of *longarm* and *handgun* and their respective categories.

18. *Firearms Act 1996* (Vic) s 5(1).

19. *Firearms Act 1996* (Vic) s 3(1).

20. *Firearms Act 1996* (Vic) s 3(1).

21. *Firearms Act 1996* (Vic) s 3(1).

22. A court may declare a person a *declared individual* under the *Criminal Organisations Control Act 2012* (Vic) in a number of circumstances, such as if the court is satisfied that the person is a member, former member or prospective member of a relevant organisation, the individual and at least one other current, former or prospective member are using the organisation for a criminal purpose and the activities pose a serious threat to public safety or order: see further *Criminal Organisations Control Act 2012* (Vic) ss 3(1), 19.

23. *Firearms Act 1996* (Vic) s 3(1); *Criminal Organisations Control Act 2012* (Vic) ss 3(1), 43(2)–(2B).

24. *Firearms Act 1996* (Vic) s 3(1); *Family Violence Protection Act 2008* (Vic) s 11, pt 4 div 4; *Personal Safety Intervention Orders Act 2010* (Vic) pt 3 div 6.

25. *Firearms Act 1996* (Vic) s 5(1).

26. The offence of possess cartridge ammunition was the most frequently sentenced offence overall during the reference period; however, there is very limited judicial commentary on the sentencing of this offence. It carries a maximum penalty of 40 penalty units: *Firearms Act 1996* (Vic) s 124(1).

27. Firearms Stakeholder Discussion Forum (5 March 2019).

28. See for example, *Berichon v The Queen* (2013) 40 VR 490; *DPP v Basic* [2017] VSCA 376 (15 December 2017).

Legislative change to the *Firearms Act 1996* (Vic) within the reference period

- I.27 The offence provisions in the Act have undergone a number of changes since its commencement. This section discusses the most substantial amendments that occurred within (or immediately prior to) the five-year reference period of this report.

Control of Weapons and Firearms Acts Amendment Act 2012 (Vic)

- I.28 Commencing on 16 May 2012, the *Control of Weapons and Firearms Acts Amendment Act 2012* (Vic) introduced substantial amendments to the most common offences in the *Control of Weapons Act 1990* (Vic) and the *Firearms Act 1996* (Vic).
- I.29 Specifically, the amending Act:
- introduced new indictable offences of possession of an imitation firearm;²⁹ and
 - removed the distinction between possession of a *registered* and *unregistered* firearm by a prohibited person.³⁰

Possession of imitation firearms

- I.30 The amendments introduced a new section 5AB(1) to the *Control of Weapons Act 1990* (Vic), making it an offence for a non-prohibited person to possess, carry or use an imitation firearm without an exemption or approval. The maximum penalty was set at 240 penalty units or two years' imprisonment.
- I.31 A separate indictable offence for prohibited persons was created by section 5AB(2), which makes it an offence for a prohibited person to possess, carry or use an imitation firearm. The maximum penalty was set at 1,200 penalty units or 10 years' imprisonment. This offence was also expressly made an indictable offence.³¹

Amended prohibited person in possession offence

- I.32 The Act also removed the distinction between possession, use or carriage of registered and unregistered firearms by prohibited persons. In the Second Reading Speech, the then Minister for Police and Emergency Services, the Honourable Peter Ryan, MP, stated:

The bill also amends the Firearms Act in relation to prosecutions where prohibited persons possess, carry or use a firearm. Currently, there are two relevant offences in section 5 of the Firearms Act, which make a distinction between a registered and unregistered firearm. The Victorian County Court recently ruled that in order to bring a successful prosecution against a prohibited person for possessing, carrying or using an unregistered firearm, it would have to be demonstrated that the accused had knowledge of the status of the firearm. This is very difficult to prove. The offences are intended to prevent prohibited persons from possessing, using or carrying any firearm, regardless of whether it is registered or unregistered. Therefore, this amendment will combine the two offences so that it is an offence for a prohibited person to possess, carry or use a firearm irrespective of its status.³²

29. *Firearms Act 1996* (Vic) s 5AB inserted by *Control of Weapons and Firearms Acts Amendment Act 2012* (Vic) s 4.

30. *Control of Weapons and Firearms Acts Amendment Act 2012* (Vic) s 8.

31. *Control of Weapons Act 1990* (Vic) s 11A as amended by *Control of Weapons and Firearms Acts Amendment Act 2012* (Vic) s 6.

32. Victoria, 'Control of Weapons and Firearms Acts Amendment Bill 2011', *Parliamentary Debates*, Legislative Assembly, 7 December 2011, 6214 (Peter Ryan, Minister for Police and Emergency Services).

- I.33 In combining the two offences, the maximum penalty was fixed at 10 years' imprisonment. This had been the prior maximum penalty for a prohibited person in possession of a *registered* firearm, rather than the 15 years that had been the prior maximum for a prohibited person in possession of an *unregistered* firearm.
- I.34 The explanatory memorandum stated that:
- By removing the word 'registered', the intention is for this offence to cover all firearms regardless of whether they are registered or unregistered. This will overcome an evidentiary hurdle that has hindered prosecutions of the offences in sections 5(1) and 5(1A).³³
- I.35 There is no explanation, however, either in the Second Reading Speech or in the Bill's Explanatory Memorandum, for the adoption of the lower maximum penalty.
- I.36 The policy behind the *prohibited person in possession* offence was clearly stated when the provisions were introduced in 1996. The then Minister for Police and Emergency Services said:
- I feel it is universally accepted in our community that firearms should not be in the hands of those who have demonstrated they cannot meet standards of behaviour approved by the community. The Firearms Bill is emphatic about this. Accordingly, a person who is classified a prohibited person under the bill will not be entitled to hold any licence or possess any firearm for a specified period of time.³⁴

Firearms Amendment (Trafficking and Other Measures) Act 2015 (Vic)

- I.37 On 1 December 2015, a number of changes to the Act came into effect as a result of the *Firearms Amendment (Trafficking and Other Measures) Act 2015 (Vic)*. These included:
- a person came to be considered in possession of a firearm if it is found in a vehicle they are in charge of or if it is found on land or in premises they are occupying, controlling, managing or caretaking;
 - the acquisition or disposal of more than three unregistered firearms in a 12-month period came to be considered firearm trafficking (the minimum number of unregistered firearms considered a traffickable quantity was reduced from 10 to four);³⁵
 - the illegal manufacture of a firearm became a specific offence:
 - the maximum penalty for the manufacture of a category A, category B or paintball marker without the appropriate licence was set at 600 penalty units or up to five years' imprisonment;
 - the penalty for the manufacture of any other firearm without the appropriate licence was set at 1,200 penalty units or up to 10 years' imprisonment; and
 - the theft of a firearm became a specific offence under section 74AA of the *Crimes Act 1958 (Vic)* with a maximum penalty of 15 years' imprisonment.³⁶

33. Explanatory Memorandum, Control of Weapons and Firearms Acts Amendment Bill 2011 (Vic) 3.

34. Victoria, *Parliamentary Debates*, 'Firearms Bill', Legislative Assembly, 31 October 1996, 1006 (William McGrath, Minister for Police and Emergency Services).

35. The period for the movements of traffickable quantities of firearms increased from seven days to 12 months. The *Justice Legislation Amendment (Police and Other Matters) Act 2019 (Vic)* makes a number of amendments to the *Firearms Act 1996 (Vic)*, including amending sections 7C and 101A(1)–(2) to capture trafficking in firearms that may be technically registered: *Justice Legislation Amendment (Police and Other Matters) Act 2019 (Vic)* ss 39, 42. See further Victoria, 'Justice Legislation Amendment (Police and Other Matters) Bill 2019', *Parliamentary Debates*, Legislative Assembly, 6 February 2019, 234 (Lisa Neville, Minister for Water, Minister for Police and Emergency Services).

36. *Firearms Act 1996 (Vic)* s 59A and *Crimes Act 1958 (Vic)* s 74AA as inserted by *Firearms Amendment (Trafficking and Other Measures) Act 2015 (Vic)* ss 5, 9.

Legislative change to the *Sentencing Act 1996* (Vic) within the reference period

- I.38 A number of changes were made to the *Sentencing Act 1991* (Vic) over the course of the reference period. This section discusses the most relevant amendments that occurred within the five-year reference period of this report.³⁷

Suspended sentences

- I.39 Suspended sentences were abolished in the higher courts for all offences committed on or after 1 September 2013 and in the Magistrates' Court for all offences committed on or after 1 September 2014.³⁸
- I.40 Therefore, suspended sentences were available for firearms offences sentenced in the higher courts and the Magistrates' Court for a portion of the five-year reference period.

Changes to the use of imprisonment combined with community correction orders

- I.41 Community correction orders (CCOs) became available as a sentencing option in Victoria on 16 January 2012, replacing a number of community orders, such as the community-based order and the intensive correction order.³⁹
- I.42 From January 2012 to 2014, a CCO could be combined with a fine or with a sentence of imprisonment of up to three months.⁴⁰ On 29 September 2014, the maximum term of imprisonment that could be combined with a CCO was increased to two years (with exceptions)⁴¹ and was later decreased to one year for sentences imposed on or after 20 March 2017.⁴²

Overview of key cases

- I.43 The only purposes for which sentences in Victoria can be imposed are:
- just punishment – to punish the offender in a way that is just in all the circumstances;
 - deterrence – to discourage the offender (known as specific deterrence) or other people (known as general deterrence) from committing the same or similar offences;
 - rehabilitation – to create conditions that help the offender to lead a law-abiding life;
 - denunciation – to denounce, condemn or censure the offender's behaviour (that is, to make it clear to the offender and the community that the behaviour is wrong); and
 - community protection – to protect the community from the offender.⁴³

37. Two changes to the *Sentencing Act 1991* (Vic) not considered by this report are the introduction of the standard sentence scheme and the introduction of Category 1 and Category 2 offences. In 2017, the Victorian Parliament passed laws creating standard sentences. The new laws commenced on 1 February 2018, which is outside the reference period for this report. Standard sentences are guideposts for sentencing 12 serious offences, including murder, rape and trafficking in a drug of dependence of a large commercial quantity. No firearms offences are included within the standard sentence scheme. In addition, the Victorian Government passed legislation limiting the courts' use of non-custodial orders for two classes of serious offences, described as *Category 1* offences and *Category 2* offences, for offences committed on or after 20 March 2017. No offences were sentenced within the reference period to which these provisions applied. For further discussion of these schemes, see Sentencing Advisory Council, *Guide to Sentencing Schemes in Victoria* (2018).

38. *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic) s 2.

39. *Sentencing Amendment (Community Correction Reform) Act 2011* (Vic).

40. *Sentencing Act 1991* (Vic) s 44 (since amended).

41. *Sentencing Amendment (Emergency Workers) Act 2014* (Vic) s 18.

42. *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic) s 12.

43. *Sentencing Act 1991* (Vic) s 5(1).

- I.44 A number of cases from the Court of Appeal have provided guidance on the sentencing of firearms offences, particularly in relation to the sentencing of the offence of prohibited person possess, carry or use a firearm.

General deterrence

- I.45 General deterrence is often a paramount consideration for firearms offences, as the court recognises such offences as serious. In *R v Graham*, Redlich JA stated:

The offence [of a prohibited person being in possession of a firearm] is an inherently serious one which ... is designed to deter those with particular prior convictions from possessing or carrying an illegal firearm.⁴⁴

- I.46 Where an offender is to be sentenced for multiple firearms offences, or offences involving particularly dangerous firearms, the need for general deterrence increases.⁴⁵

Specific deterrence

- I.47 While the relevance of specific deterrence in any given case hinges on the individual circumstances of the offender,⁴⁶ the need for general deterrence of firearms offences and community protection may heighten the need for specific deterrence when sentencing offenders for firearms offences.⁴⁷ Even in the absence of other aggravating features, a higher penalty may be warranted if the offender has a serious prior offence history.⁴⁸
- I.48 Consideration of the need for specific deterrence also raises the sentencing purpose of community protection. In *Murrell v The Queen*, Priest JA stated:

The applicant's prior convictions throw light on his moral culpability, his prospects of rehabilitation, his propensity to commit violent offences while armed with dangerous weapons (and thus the perspicuous need for community protection), and the increased importance of specific deterrence as a factor in sentencing, having regard to the failure of more moderate penalties.⁴⁹

44. *R v Graham* [2007] VSCA 252 (13 November 2007) [18]; see also *DPP v Graorowski* [2018] VSCA 332 (7 December 2018) [38].

45. *R v Henderson* [2009] VSCA 136 (16 June 2009). In relation to the seven firearms that had been seized, Warren CJ stated, '[i]n my view, the nature and number of weapons warrant important recognition as to general deterrence': at [215]; see also *DPP v Basic* [2017] VSCA 376 (15 December 2017) [88].

46. Arie Freiberg, *Fox and Freiberg's Sentencing: State and Federal Law in Victoria* (3rd ed., 2014) 250–256. In assessing the need for specific deterrence, the court needs to consider the offender's circumstances, including any prior offences: *Berichon v The Queen* (2013) 40 VR 490 [44]; Judicial College of Victoria, '39.4.2 – Specific Deterrence', *Victorian Sentencing Manual* (Judicial College of Victoria, 2016) <<http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#56954.htm>> at 20 March 2019. The sentencing purpose of rehabilitation is also closely linked with the circumstances of the offender. For discussions of rehabilitation that consider firearms offences in combination with the offenders' other charged offences, see also *McAleer v The Queen* [2015] VSCA 4 (February 2015); *Collins v The Queen* [2015] VSCA 106 (18 May 2015).

47. See for example, *Murrell v The Queen* [2014] VSCA 337 (18 December 2014) [52] (Priest JA).

48. See for example, *Berichon v The Queen* (2013) 40 VR 490, 497 [30], cited in *DPP v Basic* [2017] VSCA 376 (15 December 2017) [82] ('Each of the judgments [in *Berichon*] made clear that the prior history of an offender could lead to the conclusion that despite the absence of other aggravating features, a heavy penalty was warranted'); see further Judicial College of Victoria, '39.7 – Circumstances of the Offender', *Victorian Sentencing Manual* (Judicial College of Victoria, 2016) <<http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#56964.htm>> at 21 March 2019.

49. *Murrell v The Queen* [2014] VSCA 337 (18 December 2014) [52] (Priest JA); see also *R v Henderson* [2009] VSCA 136 (16 June 2009) [215] (Warren CJ) ('Specific deterrence might be expected to be of lesser significance for a man of the age and experience of the applicant. However, the applicant has not seized previous opportunities to rehabilitate himself. Instead, when his criminal history is reviewed ... specific deterrence is called for').

Denunciation and community protection

I.49 Community protection and denunciation are less frequently highlighted sentencing purposes, but they are sometimes referred to in discussions on deterrence.

I.50 For example, in *R v Novakovic*, Nettle JA stated:

[T]hese were serious offences which involved the appellant's second use of a firearm in a criminal setting ... the offending called for sentences which reflected both general and specific deterrence and denunciation. An immediate period of imprisonment was the only proper disposition[,] but with a non-parole period as could assist the appellant's re-entry into the community.⁵⁰

I.51 Similarly, community protection is often considered in the context of the need for specific deterrence, as well as in relation to the offender's prospects of rehabilitation. In *Berichon v The Queen*, Priest JA, in commenting on the prior offence history of the offender, stated that:

[T]he applicant had a very serious and disturbing prior history with respect to the use of firearms. Although, of course, he is not to be punished again for the prior offences, the applicant's prior history is relevant as an indicator of his moral culpability, his prospects of rehabilitation, his dangerous propensities and the community's need for protection, and the increased importance of specific deterrence as an animating factor in the sentencing process.⁵¹

Factors considered in sentencing

Objective gravity of the offence

I.52 In sentencing an offender, a court must have regard to the nature and gravity of the offence.⁵²

I.53 Courts have considered the following factors in assessing the objective gravity of a firearms offence:

- the quantity of ammunition;⁵³
- the type of firearm;⁵⁴
- whether the firearm is operational or functional;⁵⁵ and
- whether the firearm was used in the course of other offences (such as an armed robbery).⁵⁶

50. *R v Novakovic* [2007] VSCA 145 (6 July 2007) [29] (Nettle JA); see also *DPP v Faure* [2005] VSCA 91 (27 April 2005) [11] (Williams AJA); see further Judicial College of Victoria, '39.4.4 – Denunciation', *Victorian Sentencing Manual* (Judicial College of Victoria, 2016) <<http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#56956.htm>> at 21 March 2019.

51. *Berichon v The Queen* (2013) 40 VR 490, 499 [44] (Priest JA); *R v Armstrong* [2014] VSC 256 (2 June 2014); *Zotos v The Queen* [2014] VSCA 324 (10 December 2014); *R v Showell* [2005] VSC 407 (21 October 2005); see further Judicial College of Victoria, '39.4.5 – Community Protection' *Victorian Sentencing Manual* (Judicial College of Victoria, 2016) <<http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#56957.htm>> at 21 March 2019.

52. *Sentencing Act 1991* (Vic) s 5(2)(c).

53. *Arico v The Queen* [2018] VSCA 135 (24 May 2018) [364]; *DPP v Basic* [2017] VSCA 376 (15 December 2017); see also *The Queen v Roe* [2017] NTCCA 7 (25 July 2017).

54. *Arico v The Queen* [2018] VSCA 135 (24 May 2018) [364]; *DPP v Basic* [2017] VSCA 376 (15 December 2017).

55. *Arico v The Queen* [2018] VSCA 135 (24 May 2018) [364]; *DPP v Graorowski* [2018] VSCA 332 (7 December 2018) [36]; *DPP v Basic* [2017] VSCA 376 (15 December 2017). This point was also made in the Firearms Stakeholder Discussion Forum (5 March 2019).

56. *Arico v The Queen* [2018] VSCA 135 (24 May 2018) [364].

Functionality of the firearm

- I.54 All other things being equal, offences involving a working firearm are more serious than offences involving a non-functional firearm.
- I.55 In *R v Henderson*, a case involving a number of firearms, the court noted that the offence was 'a particularly bad example of that type' due to the fact that the firearms involved were 'capable of rendering dreadful harm in the community', and were all 'in working order and all with ammunition'.⁵⁷
- I.56 In contrast, a lack of functionality of the firearm can distinguish offending from more serious examples of the offence. In *Powell v The Queen*, Weinberg and Kyrou JJA stated:
- There are, in our view, several factors in relation to the appellant's offending which distinguish it from the cases where a more severe sentence has been imposed. For example, the evidence before the Court was that the handgun was not functional (by which we interpolate that it could not be fired – not merely that it was unloaded), and that the appellant did not possess ammunition for either that gun or the shotgun.⁵⁸
- I.57 However, a comparison can also be made between the sentencing of the offence of prohibited person possess, carry or use a firearm, and prohibited person possess, carry or use an *imitation* firearm. Both offences carry a maximum penalty of 1,200 penalty units or 10 years' imprisonment, despite the fact that imitation firearms are non-functional.⁵⁹
- I.58 Courts have noted that if the firearm is pointed at a victim, the fact that a firearm is not capable of being discharged does not decrease the potential consequences for the victim.⁶⁰ Therefore, the functionality of the firearm may be of limited relevance in certain circumstances.

Criminal purpose

- I.59 A key consideration when sentencing firearms possession offences is whether the firearm is associated with other criminal activity. Where the illegal firearm possession is found to be for a criminal purpose, a more severe sentence is warranted.
- I.60 In *Berichon v The Queen*, the Court of Appeal stated that the conduct of a prohibited person in possession of a firearm can be placed into 'one of two broad categories of seriousness':
- The first category of cases are those where the conclusion is not open that the possession of the firearm is associated with some ongoing criminal activity. Sentences of a low order of imprisonment are usually appropriate unless the previous criminal history of the offender warrants a more substantial sentence, proportionate to the gravity of the offence. The second category of cases are those where the evidence enables the conclusion that the possession is for the purpose of criminal activity or a specific criminal purpose[;] more severe sentences are then usually in order. Such sentences will be appropriate where the firearm is, for example, possessed in the context of a criminal activity to provide security or as a means of enforcement.⁶¹

57. *R v Henderson* [2009] VSCA 136 (16 June 2009) [214] (Warren CJ); *DPP v Graoroki* [2018] VSCA 332 (7 December 2018) [36].

58. *Powell v The Queen* [2015] VSCA 93 (6 May 2015) [26].

59. *Firearms Act 1996* (Vic) s 5(1); *Control of Weapons Act 1990* (Vic) s 5AB.

60. See for example, *DPP v Gatti* [2014] VCC 729 (16 May 2014); *DPP v Polos, Khoshoba & Younan* [2013] VCC 2098 (24 April 2013).

61. *Berichon v The Queen* (2013) 40 VR 490, 496 [26] (Redlich JA); see also *R v Graham* [2007] VSCA 252 (13 November 2007); *Armistead v The Queen* [2011] VSCA 84 (5 April 2011).

- I.61 In determining whether an offender possesses a firearm for a criminal purpose, the court may consider the offender's prior convictions alongside any circumstantial evidence, to assess whether the possession is for some other unlawful activity.⁶² The court may also consider the duration of possession of the firearm, or the use of the firearm, in making this assessment.⁶³
- I.62 Possession of a firearm for a specific criminal purpose should aggravate a sentence, but the lack of a criminal intent should not be said to mitigate it.⁶⁴

Reasons for offending

- I.63 Mitigation may apply where the motivation for the offence can be proven to have been influenced by the actions of a third party. For example, if an offender possessed a firearm due to fear for their own safety, such a circumstance could mitigate the sentence.⁶⁵

62. *Berichon v The Queen* (2013) 40 VR 490, 496 [26] (Redlich JA); see also *R v Graham* [2007] VSCA 252 (13 November 2007); *Armistead v The Queen* [2011] VSCA 84 (5 April 2011); *DPP v Graorowski* [2018] VSCA 332 (7 December 2018) [35], [38].

63. See for example, *R v Graham* [2007] VSCA 252 (13 November 2007) [17] (Redlich JA).

64. Freiberg (2014), above n 46, 134. Similarly, the 'absence of persuasion about a fact in mitigation is not the equivalent of persuasion of the opposite fact in aggravation': *Weininger v The Queen* [2003] HCA 14 (2 April 2003) [24] (Gleeson CJ, McHugh, Gummow and Hayne JJ).

65. See for example, *R v Motta & Campbell* [2009] VSC 197 (29 May 2009) [41] (Forest J); see also *Powell v The Queen* [2015] VSCA 93 (6 May 2015).

2. The prevalence of firearms offences

2.1 This chapter examines trends in the prevalence and type of firearms offences in Victoria.

Prevalence

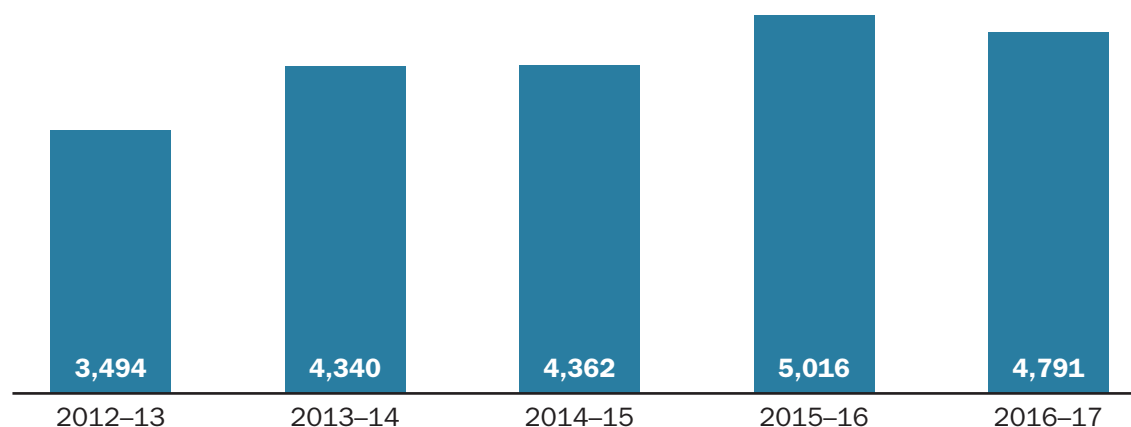
2.2 The Australian Criminal Intelligence Commission estimates that there are 260,000 firearms in the domestic illicit market.⁶⁶

2.3 Research suggests that firearms on the illicit market in Australia often originated from licensed gun owners or from 'rogue' firearms dealers.⁶⁷

Charged and recorded firearms offences

2.4 Figure 1 presents data on the number of firearms offences reported to or detected by Victoria Police over the course of the reference period.⁶⁸

Figure 1: Number of firearms offences recorded by Victoria Police, 2012–13 to 2016–17⁶⁹



Source: Crime Statistics Agency, unpublished data

66. This includes 250,000 longarms and 10,000 handguns. This estimate is based on a range of intelligence sources, including firearm importation figures and seizure trends over time: Australian Criminal Intelligence Commission (2016), above n 4, 7. In addition, research suggests that legal ownership of firearms in Australia is larger than it was before the Port Arthur massacre, amounting to over three million firearms: Philip Alpers, 'Australia's Gun Numbers Climb' (sydney.edu.au, 28 April 2016) The University of Sydney <<https://sydney.edu.au/news-opinion/news/2016/04/28/australia-s-gun-numbers-climb.html>> at 21 March 2019.

67. Philip Alpers, *The Origin of Australian Crime Guns: Statements from Those Involved in Curbing the Proliferation of Illicit Firearms* (2016) 2, quoting Australian Crime Commission, 'Frequently Asked Media Questions: Illicit Firearms' (crimecommission.gov.au, 2011) <<http://www.crimecommission.gov.au/publications/crime-profile-series-fact-sheet/illicit-firearms>>; Australian Criminal Intelligence Commission (2016), above n 4, 8.

68. Figure 1 presents data from the Crime Statistics Agency. For the purposes of the Crime Statistics Agency's statistics, an offence is counted and included in the data where it was reported to, or detected by, Victoria Police: Crime Statistics Agency, 'Explanatory Notes' (crimestatistics.vic.gov.au, 2019) <<https://www.crimestatistics.vic.gov.au/about-the-data/explanatory-notes>> at 29 March 2019. This data does not capture every criminal offence involving a firearm as, in some cases, an offender may use a firearm in the course of committing an offence or offences, but the use of the firearm does not receive a separate firearms charge.

69. The Crime Statistics Agency releases datasets regularly on broad categories of offences. The data in Figure 2 relates to specific firearms offences from the *Firearms Act 1996* (Vic), *Control of Weapons Act 1990* (Vic) and *Crimes Act 1958* (Vic). The count of offences recorded represents all criminal acts or omissions that were reported to, or detected by, Victoria Police in the five years to June 2017.

- 2.5 As further firearms offences may not have been reported or detected, the data may underestimate the prevalence of these offences in Victoria. However, trends in these offences are unlikely to be affected.

How many firearms offences were sentenced during the reference period?

- 2.6 Overall, the number of sentenced charges of firearms offences has increased by 34% (from 2,375 to 3,191 sentenced charges annually). Figure 2 shows that between 2012–13 and 2016–17, the number of sentenced charges in Victoria more than doubled in the higher courts, doubled in the Children's Court and increased by approximately 30% in the Magistrates' Court. Over the reference period, 14,828 firearms offences were sentenced.

Figure 2: Number of sentenced firearms charges, by Victorian court, 2012–13 to 2016–17

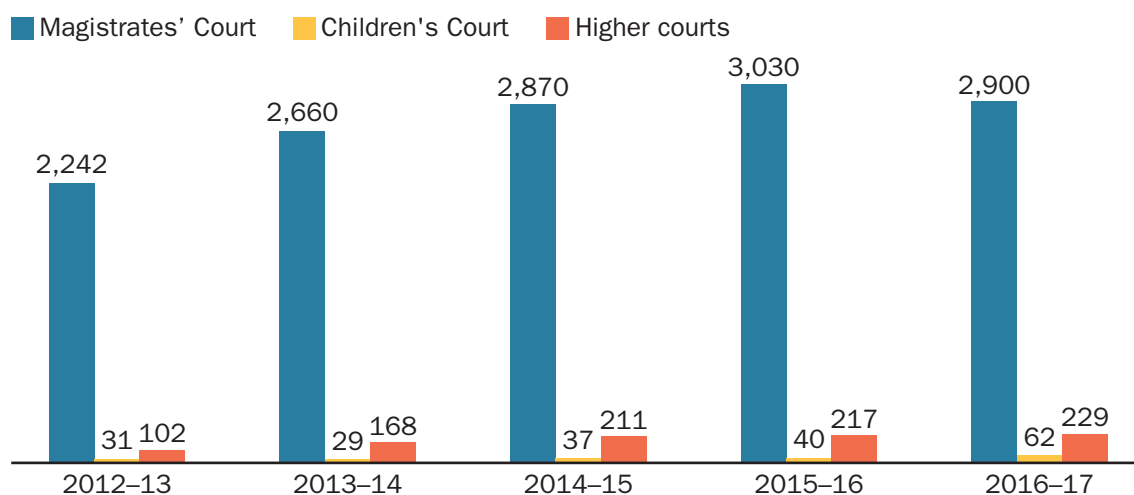
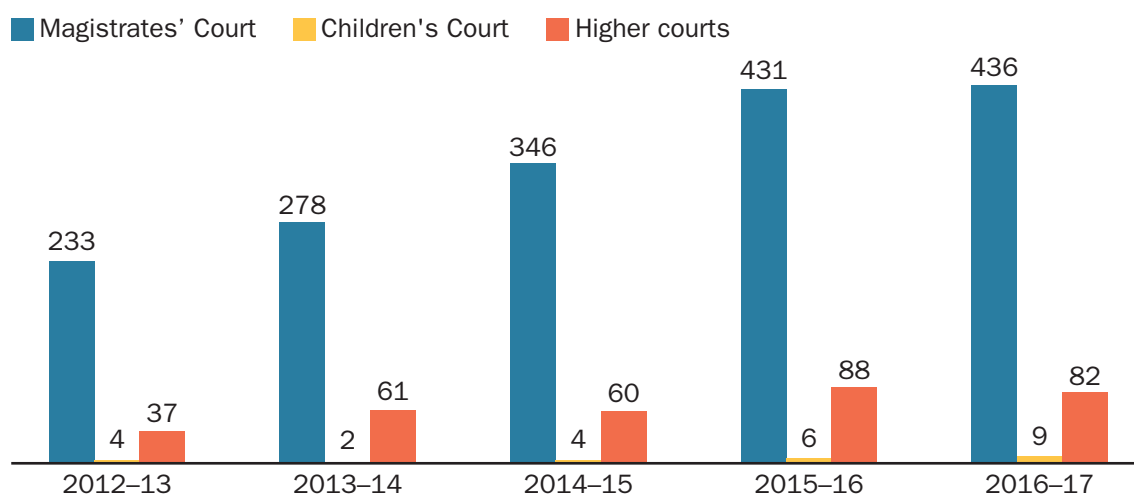


Figure 3: Number of sentenced charges of prohibited person possess, carry or use a firearm, by Victorian court, 2012–13 to 2016–17



- 2.7 The number of sentenced firearms charges in the five years to June 2017 is lower than the number of firearms offences charged and recorded in that period. This is for a range of reasons, such as a decision to not proceed with a prosecution due to evidentiary issues and offenders being acquitted of charges.⁷⁰
- 2.8 As shown in Figure 3 (page 14), the number of sentenced charges of the offence of prohibited person possess, carry or use a firearm⁷¹ increased in all courts over the reference period. The increase in sentenced charges for this offence was low relative to the overall increase in firearms offences sentenced across the courts.

Firearms offences by offence type

- 2.9 In all courts, possession/carry/use offences were most common, followed by ammunition offences (Table 1). As the higher courts generally hear more serious offences, almost two-thirds of charges sentenced there related to the possession or use of a firearm. As discussed in Chapter 6, cases sentenced in the higher courts regularly contained uplifted summary offences, and cases consisting of less serious firearms offences were rarely heard without the presence of more serious offences in the case.

Table 1: Number and percentage of sentenced firearms charges, by category of offence and court, 2012–13 to 2016–17

Firearms category	Magistrates' Court		Children's Court		Higher courts	
Possess/carry/use	6,101	45%	605	65%	114	57%
Ammunition	3,816	28%	223	24%	67	34%
Storage	2,378	17%	55	6%	11	6%
Safety	605	4%	6	1%	4	2%
Administrative	298	2%	1	<1%	1	1%
Alter	229	2%	20	2%	0	
Acquire	85	1%	0		0	
Collector	68	1%	2	0%	1	1%
Deal/dispose	60	<1%	11	1%	1	1%
Dealer	50	<1%	0		0	
Manufacture	12	<1%	4	<1%	0	
Total charges	13,702		199		927	

70. A stakeholder noted that, in plea negotiations between parties, matters often resolve on the basis that no firearm was present during the criminal incident. This may lead to a decrease in firearms matters sentenced in the courts: Firearms Stakeholder Discussion Forum (5 March 2019).

71. *Firearms Act 1996* (Vic) s 5(1); *Firearms Act 1996* (Vic) s 5(1A) as repealed by the *Control of Weapons and Firearms Acts Amendment Act 2012* (Vic) s 8(2).

Infringement offences

2.10 Sixteen primarily administrative and dealer offences in the *Firearms Act 1996* (Vic) ('the Act') may be dealt with by way of issuing an infringement notice.⁷² A relatively small number of infringements are issued each year, as shown in Table 2. The vast majority of offences under the Act are prosecuted in the courts.

Table 2: Infringement notices issued under the *Firearms Act 1996* (Vic), 2012–13 to 2016–17⁷³

Section	Offence	2012–13	2013–14	2014–15	2015–16	2016–17
88	Dealer fail to label firearm with number linked to record of transactions in register	0	0	0	1	0
97	Charge more than prescribed amount for acting as agent	0	0	0	1	0
124(1)	Possession of cartridge ammunition by unlicensed person	15	19	15	18	16
124(2)	Possess ammunition not suitable for category of licensed firearm (unless ammunition collector)	0	0	0	0	1
139	Fail notify Chief Commissioner of change of details within 14 days	11	21	9	14	7
Total		26	40	24	34	24

72. During the reference period, the infringeable offences were under *Firearms Act 1996* (Vic) ss 40(2), 56A(10), 56A(11), 56A(12), 58AAA(7), 58AAA(8), 58AAA(9), 75(3), 87(5), 87(6), 88, 97, 124(1), 124(2), 124(3), 139: *Firearms Regulations 2008* (Vic) Sch 7.

73. Department of Justice and Regulation, *Firearms Regulations 2018: Regulatory Impact Statement* (2017) 21.

3. Sentencing of firearms offences in the Magistrates' Court

Number and type of sentenced offences

- 3.1 In the five years to 30 June 2017, there were 13,702 charges of firearms offences sentenced in 7,052 cases in the Magistrates' Court of Victoria. As shown in Table 3, most of these charges (96%) were offences against the *Firearms Act 1996* (Vic) ('the Act').

Table 3: Number of charges sentenced in the Magistrates' Court, by legislation

Legislation	Charges	Percentage
<i>Firearms Act 1996</i> (Vic)	13,175	96%
<i>Control of Weapons Act 1990</i> (Vic)	437	3%
<i>National Parks Act 1975</i> (Vic)	57	<1%
<i>Crimes Act 1958</i> (Vic)	22	<1%
<i>Family Violence Protection Act 2008</i> (Vic)	5	<1%
<i>Forests (Recreation) Regulations 2010</i> (Vic)	5	<1%
<i>Personal Safety Intervention Orders Act 2010</i> (Vic)	1	<1%
Total firearms charges	13,702	100%

- 3.2 There were only five charges of *fail to immediately surrender a firearm or ammunition* under section 158(4) of the *Family Violence Protection Act 2008* (Vic), and all were sentenced in the Magistrates' Court.⁷⁴ During consultation, it was noted that the low numbers of charges for this offence is likely to result from the fact that respondents to family violence intervention orders generally comply with any direction from a Victoria Police member to surrender their firearm at the point that they are served with the order.⁷⁵
- 3.3 Table 4 presents the 20 most common firearms offences sentenced in the Magistrates' Court, by the number of charges sentenced, over the reference period. The most common offence is possession of cartridge ammunition by an unlicensed person, carrying a maximum penalty of 40 penalty units.⁷⁶ Some stakeholders noted that, in many cases, offenders were charged with possession of ammunition without evidence of a firearm, while others found that possession of cartridge ammunition was often co-sentenced with a charge of possession of a firearm.⁷⁷

74. Stakeholders noted that this offence only arises if a condition on the family violence intervention order requires the surrender of the firearm. A court will only impose this condition if it is aware of the offender's possession of a firearm, which may be brought to the attention of the court by the Police Prosecutor, by the affected family member or through inquiries by the court: Firearms Stakeholder Discussion Forum (5 March 2019); *Family Violence Protection Act 2008* (Vic) ss 94–95. Similarly, only one charge of fail to immediately surrender a firearm or ammunition was sentenced in the Magistrates' Court under section 115(4) of the *Personal Safety Intervention Orders Act 2010* (Vic): see Appendix 3.

75. Meeting with Victoria Police Crime Command (11 September 2018); Firearms Stakeholder Discussion Forum (5 March 2019).

76. *Firearms Act 1996* (Vic) s 124(1).

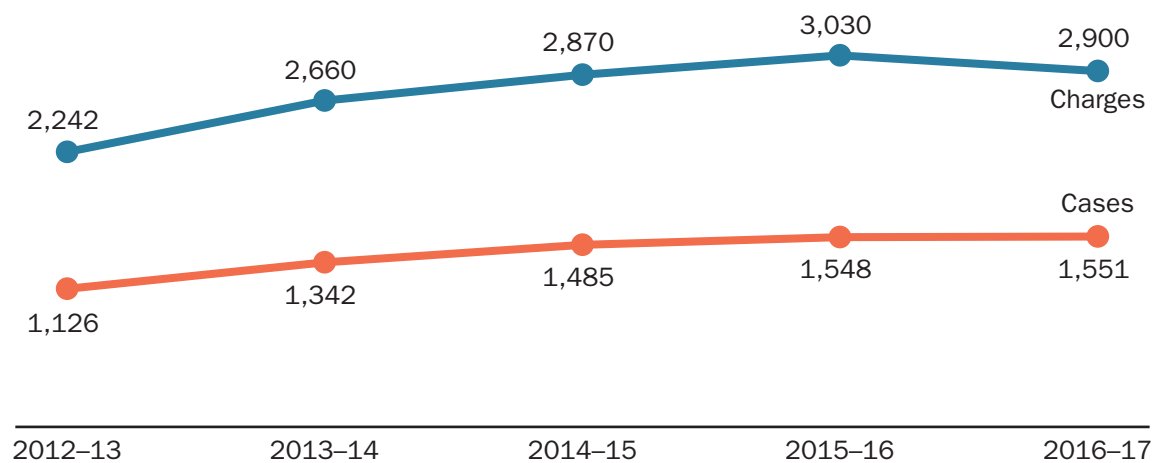
77. Firearms Stakeholder Discussion Forum (5 March 2019).

Table 4: 20 most common firearms offences sentenced in the Magistrates' Court, by the number of charges sentenced, 2012–13 to 2016–17

Offence	Legislation	Charges
Possession of cartridge ammunition by unlicensed person	<i>Firearms Act 1996</i> (Vic) s 124(1)	3,770
Prohibited person possess/carry/use a firearm (including unregistered firearm)	<i>Firearms Act 1996</i> (Vic) s 5(1); s 5(1A) (repealed)	1,724
Unlicensed person store firearm in an insecure manner	<i>Firearms Act 1996</i> (Vic) s 129A	1,040
Possess/carry/use an unregistered general category handgun	<i>Firearms Act 1996</i> (Vic) s 7B(1)	866
Fail to store category A or B longarm correctly	<i>Firearms Act 1996</i> (Vic) s 121(1)	752
Non-prohibited person possess/carry/use a registered category A longarm without a licence	<i>Firearms Act 1996</i> (Vic) s 6(1)	697
Non-prohibited person possess/carry/use an unregistered category A or B longarm	<i>Firearms Act 1996</i> (Vic) s 6A(1)	684
Fail to store category A or B longarm ammunition correctly	<i>Firearms Act 1996</i> (Vic) s 121(1A)	511
Non-prohibited person possess/carry/use imitation firearm without exemption or approval	<i>Control of Weapons Act 1990</i> (Vic) s 5AB(1)	271
Carry/use loaded firearm in public place	<i>Firearms Act 1996</i> (Vic) s 130(1)	268
Carry/use cartridge ammunition in a dangerous manner, or fail to take measures to prevent loss or theft	<i>Firearms Act 1996</i> (Vic) s 126(4)	224
Own category A or B longarm without a licence	<i>Firearms Act 1996</i> (Vic) s 135(1)	177
Non-prohibited person possess/carry/use a registered general category handgun without a licence for purpose other than collecting	<i>Firearms Act 1996</i> (Vic) s 7(1)	174
Prohibited person possess/carry/use an imitation firearm	<i>Control of Weapons Act 1990</i> (Vic) s 5AB(2)	166
Non-prohibited person possess/carry/use a registered category B longarm without a licence	<i>Firearms Act 1996</i> (Vic) s 6(2)	160
Carry/use category A or B longarm in a dangerous manner, or fail to take measures to prevent loss or theft	<i>Firearms Act 1996</i> (Vic) s 126(1)	155
Possess firearm with no serial number	<i>Firearms Act 1996</i> (Vic) s 134C(1)	140
Own category C or D longarm or a general category handgun without a licence	<i>Firearms Act 1996</i> (Vic) s 135(2)	135
Non-prohibited person possess/carry/use silencer or prescribed item without permit	<i>Firearms Act 1996</i> (Vic) s 57(1)	95
Prohibited person possess/carry/use a silencer or prescribed item	<i>Firearms Act 1996</i> (Vic) s 5(2)	89

- 3.4 As shown in Figure 4, the number of proven charges of firearms offences sentenced in the Magistrates' Court increased steadily in the four years to 30 June 2016. The number of charges sentenced in 2016–17 dropped 4% from the number of charges sentenced in 2015–16.
- 3.5 However, the number of cases sentenced also increased slightly, from 1,126 to 1,551, such that the rate of firearms charges was steady at around two charges per case in each year.

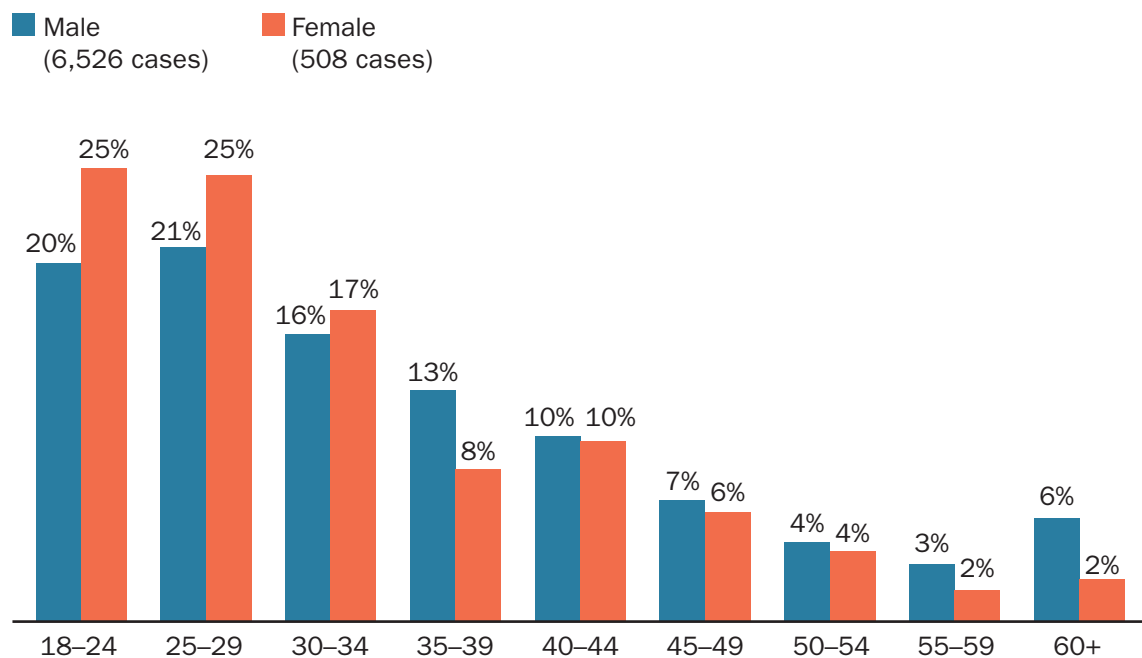
Figure 4: Number of firearms charges and cases sentenced in the Magistrates' Court, by year



Characteristics (age and gender) of firearms offenders in the Magistrates' Court

- 3.6 The majority of firearms offenders sentenced in the Magistrates' Court were male (93%, see Figure 5). Age at sentence was recorded for 7,034 cases. The average age was 35 years, which is the same as the average age of offenders in the Magistrates' Court generally.

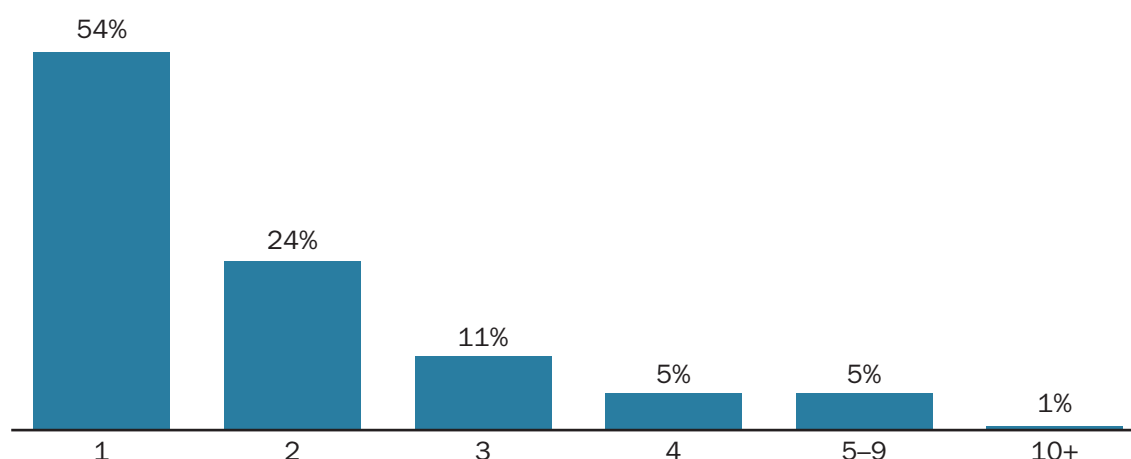
Figure 5: Percentage of firearms cases sentenced in the Magistrates' Court, by age group (in years) and gender of the offender



Co-sentenced offences

3.7 Firearms cases most commonly comprised a single charge of a firearms offence (54%). The remaining 46% of cases had more than one sentenced charge of a firearms offence (Figure 6). This is consistent with stakeholder comments that firearms offenders were often charged with possession of cartridge ammunition alongside an offence relating to possession of a firearm.⁷⁸ A total of 1,637 cases comprised solely firearms offences (3,214 charges). Offenders sentenced for firearms offences were likely to be sentenced for a large number of other offences in their case. In all cases of a single firearms charge, an average of eight charges of other offences were sentenced. Cases in which multiple firearms offences were sentenced had an average of 10 charges of other offences sentenced in the case.

Figure 6: Percentage of cases, by the number of proven firearms offences sentenced, Magistrates' Court



20 most common co-sentenced offences

3.8 In the five years to June 2017, there were 50,654 co-sentenced offences sentenced alongside firearms offences in the Magistrates' Court. Firearms offences made up 21% of the total charges sentenced in these cases (13,702 of 64,356 charges).

3.9 As mentioned, the majority of firearms charges were sentenced in the Magistrates' Court, and Table 5 reflects the overall distribution of co-sentenced offences. Offenders in the Magistrates' Court were sentenced for a wide range of offences, from trafficking non-commercial quantities of drugs (14% of cases) to unlicensed driving (10% of cases).

3.10 Stakeholders commented that a portion of the charges of possess a drug of dependence are 'just trafficks that you can't prove'. Offenders who possess drugs of dependence purely for personal use would be unlikely to possess a firearm, and it is likely that offenders' possession of the firearm indicates an involvement in drug trafficking activities.⁷⁹ One stakeholder noted that a common combination of charges is possession of a firearm, possess a drug of dependence or trafficking in a non-commercial quantity of a drug of dependence, and a proceeds of crime charge, often in relation to unexplained cash found on their person at the time of arrest. These offenders are often poly-drug users.⁸⁰

78. Firearms Stakeholder Discussion Forum (5 March 2019).

79. Firearms Stakeholder Discussion Forum (5 March 2019).

80. Firearms Stakeholder Discussion Forum (5 March 2019).

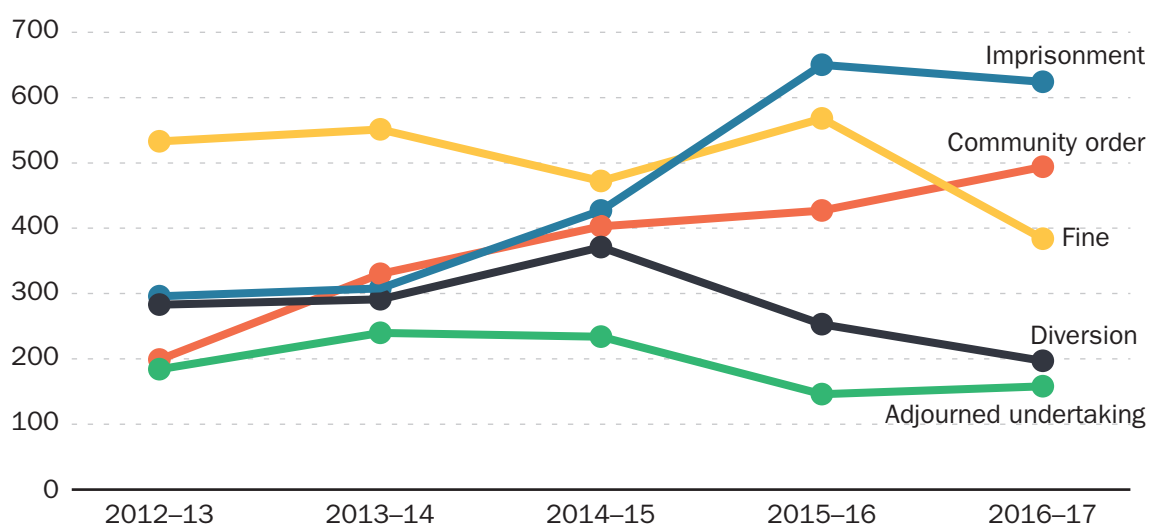
Table 5: 20 most common co-sentenced offences in firearms cases in the Magistrates' Court

	Offence	Charges	Percentage of charges	Cases	Percentage of cases
	Firearms offence	13,702	21%	7,052	100%
1	Possess a drug of dependence	7,361	11%	3,186	45%
2	Possess prohibited/controlled weapon without approval	4,079	6%	2,313	33%
3	Theft	5,142	8%	1,526	22%
4	Deal property suspected proceed of crime	2,330	4%	1,481	21%
5	Dishonestly receive stolen goods	2,999	5%	1,426	20%
6	Fail to answer bail	1,890	3%	1,124	16%
7	Drive whilst authorisation suspended	2,270	4%	1,102	16%
8	Commit indictable offence whilst on bail	1,717	3%	1,012	14%
9	Use unregistered motor vehicle on a highway	1,620	3%	961	14%
10	Trafficking in a non-commercial quantity of a drug of dependence	1,475	2%	961	14%
11	Use a drug of dependence	1,259	2%	926	13%
12	Unlicensed driving	1,334	2%	676	10%
13	Burglary	1,206	2%	543	8%
14	Intentionally damage property	816	1%	529	8%
15	Unlawful assault	576	1%	451	6%
16	Contravene a conduct condition of bail	775	1%	391	6%
17	Cultivate narcotic plant – cannabis	396	1%	381	5%
18	Forgery of documents and identification marks for a vehicle	452	1%	357	5%
19	Obtain property by deception	1,849	3%	347	5%
20	Contravene family violence intervention order	571	1%	300	4%
	Total	64,356		7,052	

High-level sentencing outcomes

- 3.11 Of the 13,702 charges of firearms offences sentenced in the Magistrates' Court, 9,694 (71%) carried a maximum penalty of imprisonment. This section examines the outcomes of these charges only. Of all firearms charges receiving imprisonment in the Magistrates' Court, 86% of the terms imposed were aggregate sentences.⁸¹
- 3.12 The maximum term of imprisonment that a magistrate can impose for a single charge is two years.⁸²
- 3.13 For all firearms offences sentenced in the Magistrates' Court over the reference period, fines were the most common sentencing outcome (26% of all charges sentenced). However, as the rate of fines decreased over the reference period (31% in 2012–13 to 20% in 2016–17), imprisonment and community orders became more common and accounted for 59% of all charges sentenced in 2016–17 (Figure 7). The rate of imprisonment increased by 16 percentage points in five years, from 17% (296 of 1,709 charges in 2012–13) to 33% (624 of 1,890 charges in 2016–17).

Figure 7: Number of firearms charges with a maximum penalty of imprisonment sentenced in the Magistrates' Court, by year and sentence imposed



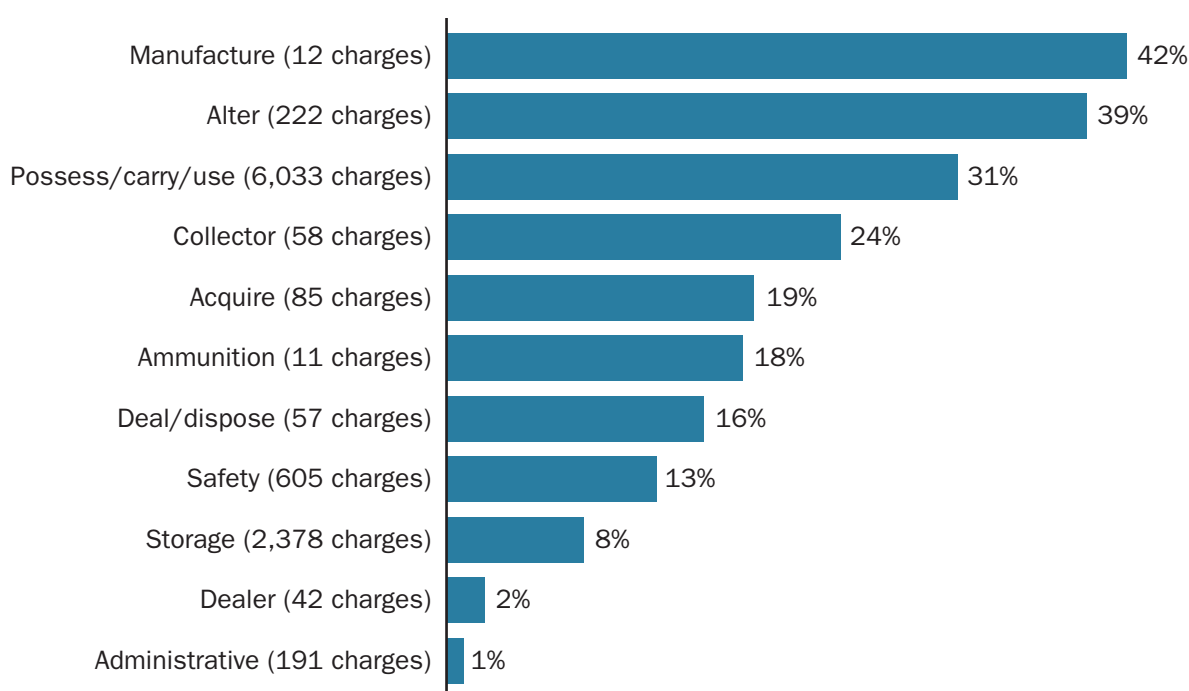
Other sentence types not shown here are suspended sentences, youth justice centre orders, drug treatment orders, dismissals and discharges, which together accounted for 7% of all outcomes for charges in the reference period that carried a maximum penalty of imprisonment.

81. In the Magistrates' Court, only imprisonment and fines imposed on charges have aggregate status clearly recorded. Other sentence types such as community correction orders are commonly imposed in relation to multiple charges, but they are not aggregate in name.

82. For multiple offences, the Magistrates' Court must not impose cumulative sentences of imprisonment for a term exceeding five years: *Sentencing Act 1991* (Vic) s 113B. For indictable offences heard and determined summarily, this is subject to any contrary intention appearing in any other Act: *Sentencing Act 1991* (Vic) ss 113–113A.

- 3.14 The increase in the use of imprisonment for firearms offences may partly result from the increasing seriousness of matters heard in the Magistrates' Court,⁸³ as well as a reflection of community expectations of the sentencing of firearms offences.⁸⁴ Imprisonment may be imposed as an aggregate sentence for the firearms offence and other co-sentenced offences.
- 3.15 Stakeholders noted that Victoria Police has a policy to generally not consent to diversion for firearms offences, and that Victoria Police Prosecutors must seek approval from Victoria Police's firearms licensing division before consenting to diversion for a firearms offence.⁸⁵ Diversion may be appropriate in relatively minor cases, such as offences arising from the improper storage of the firearm by firearms licence holders.⁸⁶
- 3.16 All categories of firearms offences were sentenced in the Magistrates' Court, and a proportion of the charges within each category received imprisonment (Figure 8). Five of 12 manufacture offences received imprisonment, while just two of 191 administrative offences received imprisonment. The most common sentence imposed for the administrative category was a fine (54%).

Figure 8: Percentage of charges receiving imprisonment for each firearms offence category carrying a maximum penalty of imprisonment



83. The change to the definition of serious injury in the *Crimes Act 1958* (Vic) from 1 July 2013 increased the seriousness of the section 18 causing injury offences heard in the Magistrates' Court. One stakeholder noted that a sentence for an injury offence in combination with a firearms offence in the Magistrates' Court would likely result in an aggregate sentence of imprisonment: Firearms Stakeholder Discussion Forum (5 March 2019).

84. Firearms Stakeholder Discussion Forum (5 March 2019).

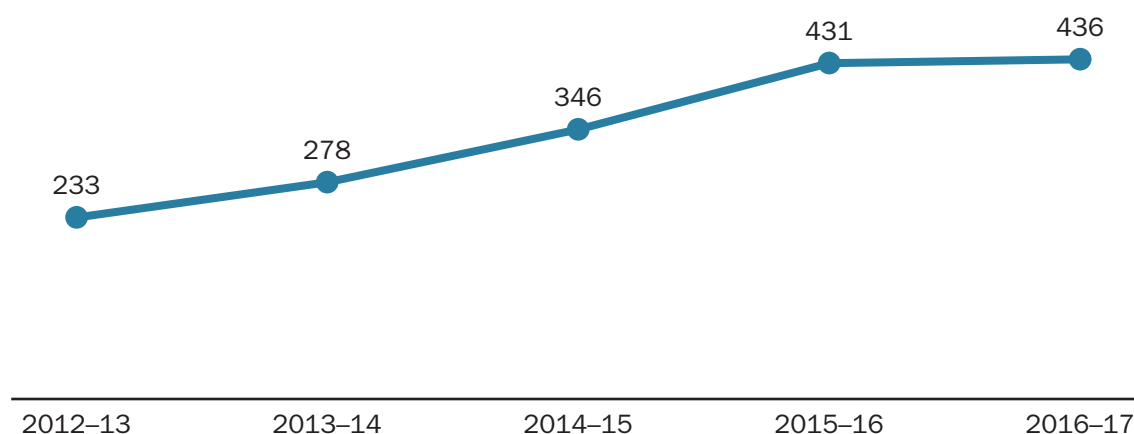
85. Firearms Stakeholder Discussion Forum (5 March 2019).

86. For example, diversion may be appropriate if the offender is a 'farmer who hasn't stored [the firearm] correctly, provided that they don't have other concerns regarding their "fit and proper person status": Firearms Stakeholder Discussion Forum (5 March 2019).

Sentencing outcomes in the Magistrates' Court for the offence of prohibited person possess a firearm

- 3.17 As noted at [1.26], the Council has selected the offence of prohibited person possess, carry or use a firearm for particular examination.⁸⁷ This is an indictable offence that is triable summarily.⁸⁸ While the offence carries a maximum penalty of 10 years' imprisonment,⁸⁹ the maximum term of imprisonment that can be imposed on a single charge is two years in accordance with the jurisdictional limits in the Magistrates' Court (see [3.12]).
- 3.18 The offence of prohibited person in possession of a firearm was sentenced 1,724 times in 1,418 cases in the Magistrates' Court between 2012–13 and 2016–17. The number of charges increased steadily each year, with an overall increase of 87% in five years (Figure 9).
- 3.19 Offenders sentenced for this offence were slightly younger than the general population of firearms offenders in the Magistrates' Court. Their average age was 32 years, and 97% were male offenders.

Figure 9: Number of charges of prohibited person possess a firearm sentenced in the Magistrates' Court, by year



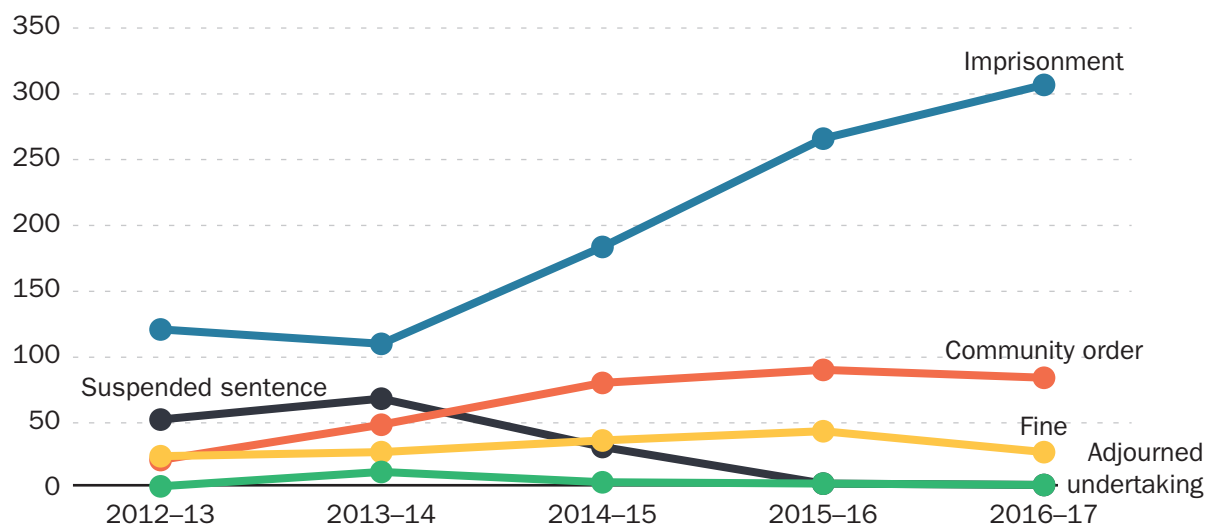
87. *Firearms Act 1996* (Vic) s 5(1).

88. *Criminal Procedure Act 2009* (Vic) s 28, sch 2.

89. *Firearms Act 1996* (Vic) s 5(1) carries a maximum penalty of 10 years' imprisonment. Prior to 16 May 2012, there were two offences: prohibited person possess, carry or use a registered firearm, carrying a 10-year maximum penalty (section 5(1)) and prohibited person possess, carry or use an unregistered firearm, carrying a 15-year maximum penalty (section 5(1A)). Section 5(1A) of the *Firearms Act 1996* (Vic) was repealed by the *Control of Weapons and Firearms Acts Amendment Act 2012* (Vic) s 8(2). See further discussion at [1.32]–[1.36]. There were 85 charges under the *Firearms Act 1996* (Vic) s 5(1A) (repealed) sentenced during the reference period in the Magistrates' Court.

- 3.20 Sentencing outcomes were substantially more serious for this offence than for the firearms offences sentenced in the Magistrates' Court overall. Imprisonment was the most common sentence imposed (Figure 10), and the percentage of charges receiving imprisonment increased each year, from 40% in 2013–14 (111 of 278 charges) to 71% in 2016–17 (309 of 436 charges). This increase appears to partly reflect the abolition of suspended sentences during the reference period, as well as an increase in the use of sentences of imprisonment combined with a community correction order (CCO).
- 3.21 Of the sentences of imprisonment imposed, 27% were sentences of imprisonment combined with a CCO.⁹⁰

Figure 10: Number of charges of prohibited person possess a firearm, by sentence imposed in the Magistrates' Court

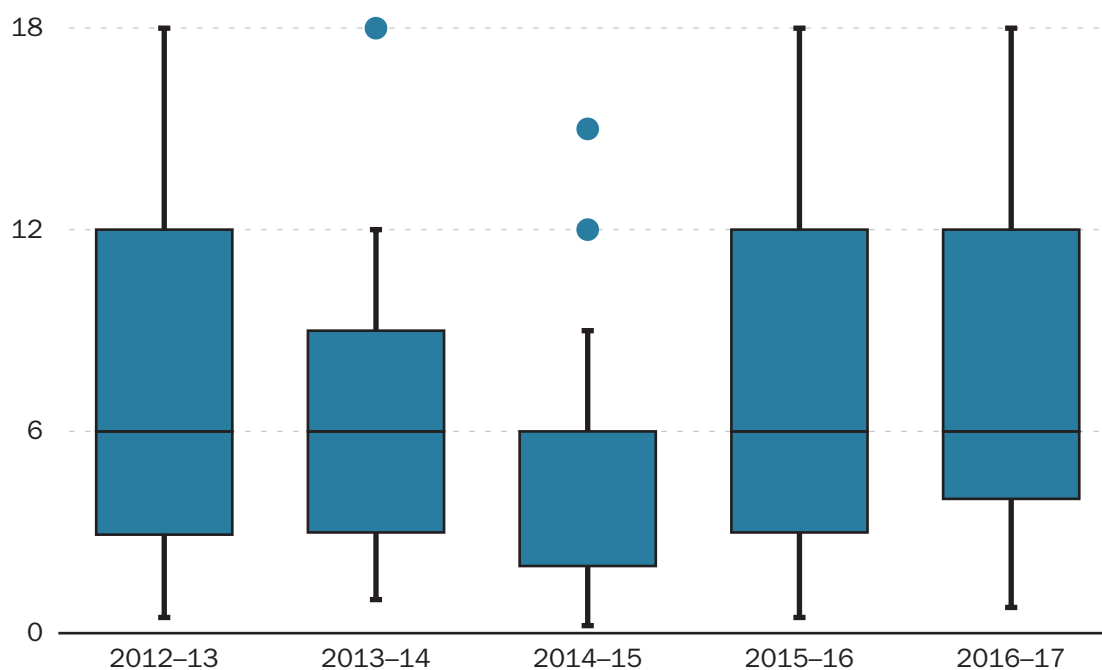


Other sentence types not shown here are drug treatment orders, youth justice centre orders, diversion, dismissals and discharges, which together accounted for 3% of all outcomes for charges of prohibited person possess a firearm.

90. For further discussion of the increase in the use of sentences of imprisonment combined with a CCO, see Sentencing Advisory Council, *Parole and Sentencing: Research Report* (2016).

- 3.22 While imprisonment was the most common sentence type imposed over the reference period, the vast majority of these sentences were imposed in aggregate with other charges in the case. Of 995 charges that received imprisonment, 159 (16%) of these sentences were imposed specifically for the offence of prohibited person possess a firearm. The longest non-aggregate sentence of imprisonment imposed on this offence was 18 months (imposed on seven charges), while the median sentence was six months in each year (Figure 11). Most sentences (77%) were less than one year.
- 3.23 Figure 11 shows the distribution of 159 non-aggregate imprisonment terms imposed on charges of prohibited person possess, carry or use a firearm over the reference period. Each box-and-whiskers-plot displays the shortest term, the range for the middle 50% of the terms in the distribution, the median and the longest term imposed in each year.

Figure 11: Distribution of non-aggregate imprisonment terms imposed on charges of prohibited person possess a firearm, Magistrates' Court, by year⁹¹



91. Statistical outliers are depicted in Figure 11 as blue dots (moderate) for each year. Outliers are based on the overall distribution and are designated by the standard measure: a value beyond the third quartile by more than one-and-a-half times the inter-quartile range (for moderate outliers) or three times the inter-quartile range (extreme outliers). See John Tukey, *Exploratory Data Analysis* (1977) 43-44.

4. Sentencing of firearms offences in the Children's Court

Number and type of sentenced offences

- 4.1 In the five years to June 2017, there were 199 charges of firearms offences sentenced in 153 cases in the Children's Court of Victoria. While most of these charges (89%) were offences against the *Firearms Act 1996* (Vic) ('the Act') (Table 6), a high proportion of offences involved imitation firearms (offences against the *Control of Weapons Act 1990* (Vic)) compared with the Magistrates' Court and the higher courts (see Tables 4 and 12, pages 18 and 36).

Table 6: Number of charges sentenced in the Children's Court, by legislation

Legislation	Charges	Percentage
<i>Firearms Act 1996</i> (Vic)	178	89%
<i>Control of Weapons Act 1990</i> (Vic)	20	10%
<i>Crimes Act 1958</i> (Vic)	1	1%
Total firearms charges	199	100%

- 4.2 Table 7 (page 28) presents the 20 most common firearms offences sentenced in the Children's Court, by the number of charges sentenced over the reference period. As in the Magistrates' Court, the most common offence is possession of cartridge ammunition by an unlicensed person, carrying a maximum penalty of 40 penalty units.⁹²
- 4.3 As shown in Table 7, only a few firearms offences were sentenced more than 10 times in the Children's Court during the reference period. The small number of sentenced offences limits the conclusions that can be drawn from statistical analysis of sentencing outcomes in this jurisdiction.
- 4.4 Stakeholders noted that it was unsurprising that more charges involved imitation firearms in the Children's Court (such as non-prohibited person possess/carry/use an imitation firearm without exemption or approval) than in the other jurisdictions. This may be due to children and young people being in possession of toy firearms of realistic appearance.⁹³

92. *Firearms Act 1996* (Vic) s 124(1).

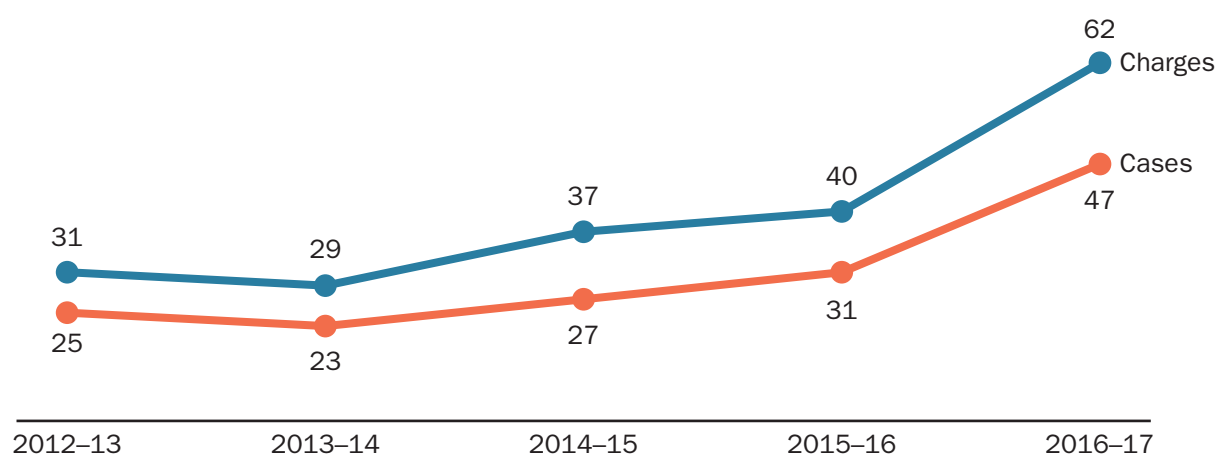
93. Firearms Stakeholder Discussion Forum (5 March 2019).

Table 7: Most common firearms offences sentenced in the Children's Court, by the number of charges sentenced, 2012–13 to 2016–17

Offence	Legislation	Charges
Possession of cartridge ammunition by unlicensed person	<i>Firearms Act 1996</i> (Vic) s 124(1)	66
Prohibited person possess/carry/use a firearm (including unregistered firearm)	<i>Firearms Act 1996</i> (Vic) s 5(1); s 5(1A) (repealed)	25
Non-prohibited person possess/carry/use imitation firearm without exemption or approval	<i>Control of Weapons Act 1990</i> (Vic) s 5AB(1)	19
Non-prohibited person possess/carry/use a registered category A longarm without a licence	<i>Firearms Act 1996</i> (Vic) s 6(1)	18
Possess/carry/use an unregistered general category handgun	<i>Firearms Act 1996</i> (Vic) s 7B(1)	17
Non-prohibited person possess/carry/use an unregistered category A or B longarm	<i>Firearms Act 1996</i> (Vic) s 6A(1)	10
Unlicensed person store firearm in an insecure manner	<i>Firearms Act 1996</i> (Vic) s 129A	7
Non-prohibited person possess/carry/use a registered category B longarm without a licence	<i>Firearms Act 1996</i> (Vic) s 6(2)	6
Carry/use loaded firearm in public place	<i>Firearms Act 1996</i> (Vic) s 130(1)	3
Non-prohibited person possess/carry/use a registered general category handgun for purpose other than collecting without a licence	<i>Firearms Act 1996</i> (Vic) s 7(1)	3
Own category C or D longarm or a general category handgun without a licence	<i>Firearms Act 1996</i> (Vic) s 135(2)	3
Non-prohibited person possess/carry/use an unprescribed longarm or paintball marker	<i>Firearms Act 1996</i> (Vic) s 6(6)	3

- 4.5 The number of proven charges of firearms offences increased steadily in the Children's Court over the five years, while the rate of charges per case was steady at between 1.2 and 1.4 firearms charges per case (Figure 12).

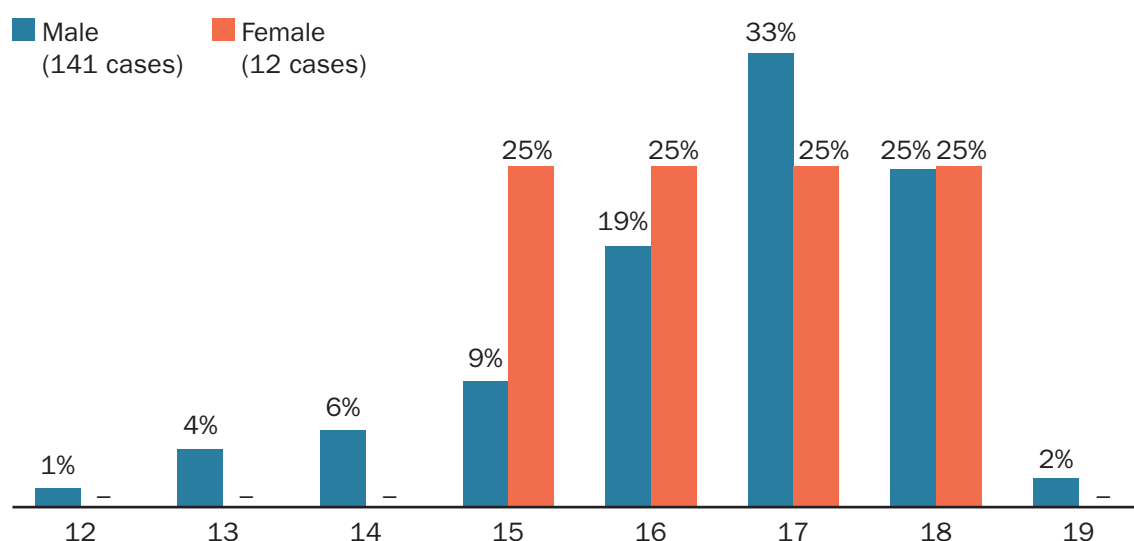
Figure 12: Number of firearms charges and cases sentenced in the Children's Court, by year



Characteristics (age and gender) of firearm offenders sentenced in the Children's Court

- 4.6 As shown in Figure 13, the majority of offenders sentenced in the Children's Court for firearms offences were male (92%). The average age of all offenders was 16.
- 4.7 It may be possible that some of the children and young people sentenced for firearms offences have been used as 'babysitters' for firearms by older offenders. However, stakeholders present at the Council's discussion forum noted that, in some cases, younger children can be leaders in offending involving firearms.⁹⁴

Figure 13: Percentage of offenders sentenced in the Children's Court, by age (in years) at sentence and by gender

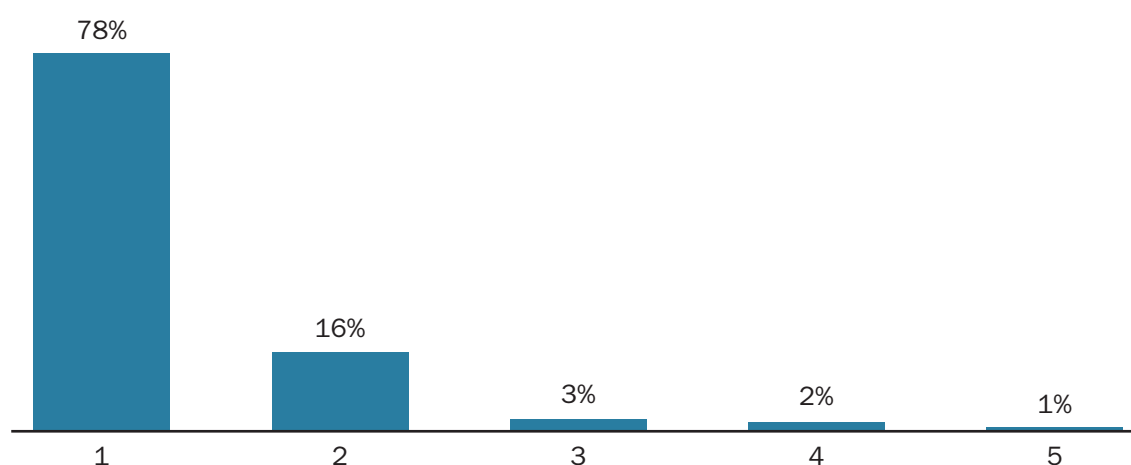


94. One stakeholder noted that they were aware of a case in which a young person was offending with older co-offenders and 'was the leader in the group ... carrying the handgun, and dictating things to the older ones': Firearms Stakeholder Discussion Forum (5 March 2019).

Co-sentenced offences

- 4.8 Firearms cases commonly comprised a single charge of a firearms offence, with 22% of cases having more than one charge of a firearms offence (Figure 14). Nine cases comprised solely firearms offences (14 charges). Offenders sentenced for firearms offences were likely to be sentenced for a high number of other offences in their case. In cases of single firearms charges, an average of 13 charges of other offences were sentenced. In cases of multiple firearms offences, an average of 11 charges of other offences were sentenced.

Figure 14: Percentage of cases, by the number of proven firearms offences sentenced



20 most common co-sentenced offences

- 4.9 Offenders sentenced for firearms offences in the Children's Court were most commonly co-sentenced for theft (62% of cases) and intentionally damage property (39% of cases). Almost one-quarter of all charges sentenced in firearms cases were theft (500 of 2,081 charges), while firearms offences made up 10% of the charges sentenced in these cases.
- 4.10 The range of offending presented in Table 8 suggests that offenders aged 12 to 19 engaged in a spectrum of offending behaviour in addition to a firearms offence or offences. The most commonly co-sentenced offences in the Children's Court differ from those in the Magistrates' Court (see Table 5), in that in the Magistrates' Court, possess a drug of dependence was the most commonly co-sentenced offence. In the Children's Court, the three most commonly co-sentenced offences are property offences.
- 4.11 Co-sentenced offences in cases involving offenders aged 12 and 13 are shown in Table 9 (page 32). The most common co-sentenced offences in this group are similar to those for the Children's Court overall, with the exception of seven offences (highlighted in the Table 9) that did not appear among the 20 most common offences.
- 4.12 The offence of intentionally damage property was present in every case involving a firearms offence for offenders of this age group. Notably, drug offences were absent from the co-sentenced offences for this age group. These offences are largely offences against property, and some offences (such as make a false call to emergency services) suggest a disruptive type of offending.⁹⁵

95. A stakeholder noted that they were aware of a case in which a young child was 'mucking around' while in possession of an imitation firearm and had made a call to emergency services, and that such offending was likely to be the result of children not understanding the potential consequences of their actions: Firearms Stakeholder Discussion Forum (5 March 2019).

Table 8: 20 most common co-sentenced offences in firearms cases in the Children's Court

Offence		Charges	Percentage of charges	Cases	Percentage of cases
Firearms offence		199	10%	153	100%
1	Theft	500	24%	95	62%
2	Intentionally damage property	159	8%	59	39%
3	Burglary	150	7%	53	35%
4	Commit indictable offence whilst on bail	95	5%	37	24%
5	Possess a drug of dependence	56	3%	37	24%
6	Dishonestly receive stolen goods	65	3%	35	23%
7	Possess prohibited/controlled weapon without approval	44	2%	34	22%
8	Unlawful assault	59	3%	30	20%
9	Unlicensed driving	50	2%	30	20%
10	Deal property suspected proceed of crime	28	1%	26	17%
11	Recklessly cause injury	36	2%	23	15%
12	Contravene a conduct condition of bail	60	3%	22	14%
13	Fail to answer bail	33	2%	22	14%
14	Go equipped to steal/cheat	20	1%	15	10%
15	Obtain property by deception	42	2%	13	8%
16	Armed robbery	31	1%	13	8%
17	Assault with weapon	17	1%	13	8%
18	Aggravated burglary	14	1%	11	7%
19	Use a drug of dependence	13	1%	11	7%
20	Use unregistered motor vehicle on a highway	12	1%	11	7%
Total		2,081		153	

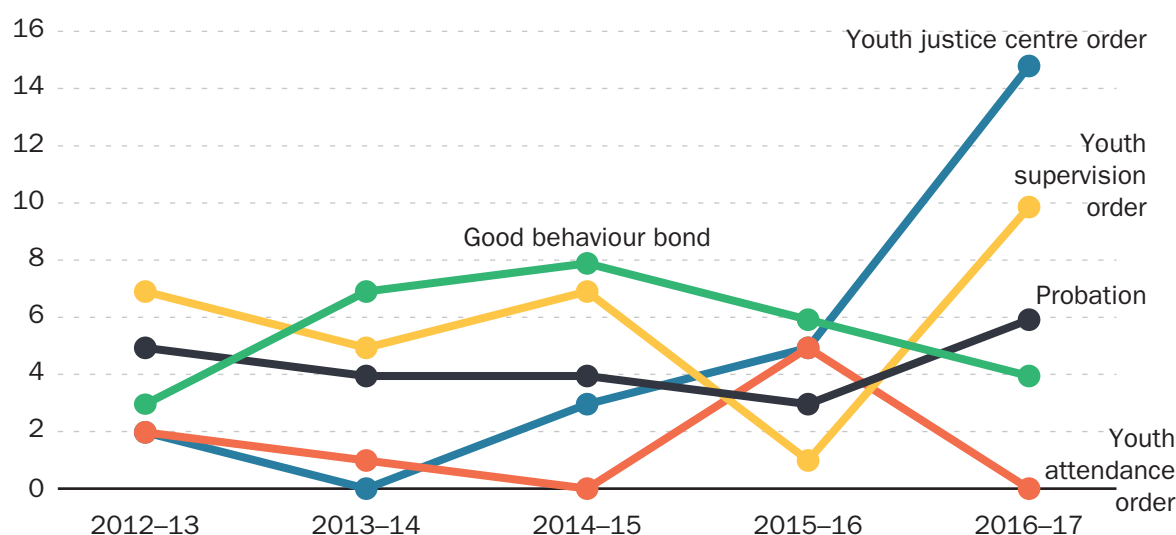
Table 9: 20 most common co-sentenced offences in firearms cases sentenced in the Children's Court, offenders aged 12 and 13

	Offence	Charges	Percentage of charges	Cases	Percentage of cases
	Firearms offence	8	4%	8	100%
1	Intentionally damage property	34	15%	8	100%
2	Theft	52	23%	7	88%
3	Burglary	11	5%	5	63%
4	Commit indictable offence whilst on bail	13	6%	4	50%
5	Unlawful assault	10	4%	4	50%
6	Assault with weapon	8	4%	4	50%
7	Possess controlled weapon without excuse	6	3%	4	50%
8	Fail to answer bail	4	2%	3	38%
9	Recklessly cause injury	3	1%	3	38%
10	Unlicensed driving	3	1%	3	38%
11	Wilfully damage property	3	1%	3	38%
12	Threat to inflict serious injury	9	4%	2	25%
13	Dishonestly receive stolen goods	6	3%	2	25%
14	Deal property suspected proceed of crime	2	1%	2	25%
15	Make a false call to emergency service	15	7%	1	13%
16	Make a false report to police	7	3%	1	13%
17	Arson	4	2%	1	13%
18	Contravene a conduct condition of bail	3	1%	1	13%
19	Make threat to kill	3	1%	1	13%
20	Cause false fire alarm to be given	2	1%	1	13%
	Total	224		8	

High-level sentencing outcomes

- 4.13 The sentences that may be imposed in the Children's Court are outlined in section 360 of the *Children, Youth and Families Act 2005* (Vic). The most severe sanction that may be imposed under the *Children, Youth and Families Act 2005* (Vic) is detention in a youth justice centre (if the child is aged 15 years or above)⁹⁶ or in a youth residential centre (if the child is under 15 years of age).⁹⁷ Custodial orders under the *Children, Youth and Families Act 2005* (Vic) may not exceed the maximum term applicable for an adult committing that offence. During the reference period, the maximum aggregate term was capped at three years for a child aged 15 years or over (two years for a single offence)⁹⁸ and two years for a child aged between 10 years and under 15 years (one year for a single offence).⁹⁹
- 4.14 While the number of firearms charges sentenced in the Children's Court increased (see Figure 12, page 29), the outcomes for these charges fluctuated.¹⁰⁰
- 4.15 Figure 15 presents the outcomes for 132 charges (66% of all 199 charges) of firearms offences with a maximum penalty of imprisonment. A youth justice centre order was the most common sentence in 2016–17 (35% of all charges), and good behaviour bonds accounted for around one-third of firearms charges sentenced from 2013–14 to 2014–15. The rate of probation and good behaviour bonds decreased over the reference period, to 14% and 9% respectively, in 2016–17.

Figure 15: Number of firearms charges with a maximum penalty of imprisonment sentenced in the Children's Court, by year and sentence imposed



Other sentences not shown here are fines, accountable and unaccountable undertakings, diversions and discharges with conviction, which together accounted for 14% of all outcomes for charges in the reference period that carried a maximum penalty of imprisonment.

96. *Children, Youth and Families Act 2005* (Vic) ss 360(1)(j), 412–413.

97. *Children, Youth and Families Act 2005* (Vic) ss 360(1)(i), 410–411.

98. *Children, Youth and Families Act 2005* (Vic) ss 413(2)–(3). Section 52 of the *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* (Vic) raised the maximum terms to four years (aggregate) and three years (single offence). These changes came into effect on 30 November 2017 (outside the reference period for this report).

99. *Children, Youth and Families Act 2005* (Vic) ss 411(1)–(2).

100. In the Children's Court data, only fines have aggregation recorded. As such, other sentence types only available in the Children's Court cannot be reliably ascertained to be specific to certain charges. For this reason, there is no analysis of sentence length for youth justice centre orders, youth attendance orders and youth supervision orders.

Sentencing outcomes for prohibited person possess a firearm

- 4.16 As noted at [1.26], the Council has selected the offence of prohibited person possess, carry or use a firearm for particular consideration.
- 4.17 There were 25 charges of the offence of prohibited person possess, carry or use a firearm sentenced in 24 cases in the Children's Court during the reference period. Almost half of these charges received a youth justice centre order. Probation and less severe penalties were imposed rarely, and no fines were imposed (Table 10).

Table 10: Number of charges of prohibited person possess a firearm sentenced in the Children's Court, by year and sentence imposed

Sentence imposed on charge	2012–13	2013–14	2014–15	2015–16	2016–17	Total
Youth justice centre order	2	0	1	3	7	13
Youth attendance order	2	0	0	2	0	4
Youth supervision order	0	0	0	1	1	2
Probation	0	0	1	0	0	1
Other ^a	0	2	2	0	1	5
Total charges	4	2	4	6	9	25

a. Other sentences imposed in the Children's Court for this offence are good behaviour bonds and discharges with conviction.

- 4.18 Case Study 1 provides an example of the circumstances in which an offender may be sentenced in the Children's Court for prohibited person possess, carry or use a firearm.

Case Study 1: an offender sentenced in the Children's Court for the offence of prohibited person possess, carry or use a firearm

A 17 year-old male offender is charged with 14 offences, including theft, burglary, possession of cannabis and prohibited person possess, carry or use a firearm. The offender has had a previous conviction in the Children's Court for burglary within the last year, leading to him being a *prohibited person* under the *Firearms Act 1996* (Vic). The offender is currently living in out-of-home care and has been known to the child protection system since early childhood. The accused began to use cannabis in his early teens.

The offender is sentenced to a youth attendance order for six months.

5. Sentencing of firearms offences in the higher courts

Overview

5.1 This chapter presents:

- data on the number, type and sentencing outcomes for firearms offences sentenced in the higher courts;
- discussion of the characteristics (age and gender) of firearms offenders;
- discussion of co-sentenced offences;
- high-level sentencing outcomes and sentencing outcomes for the offence of prohibited person possess, carry or use a firearm;
- discussion of sentencing factors present in firearms cases and a profile of case groups; and
- discussion of the cumulation for firearms offences co-sentenced alongside other offences.

Number and type of sentenced offences

5.2 In the five years to 30 June 2017, there were 927 firearms charges sentenced in 490 cases in the higher courts. The offence provisions are from three Acts, as shown in Table 11.

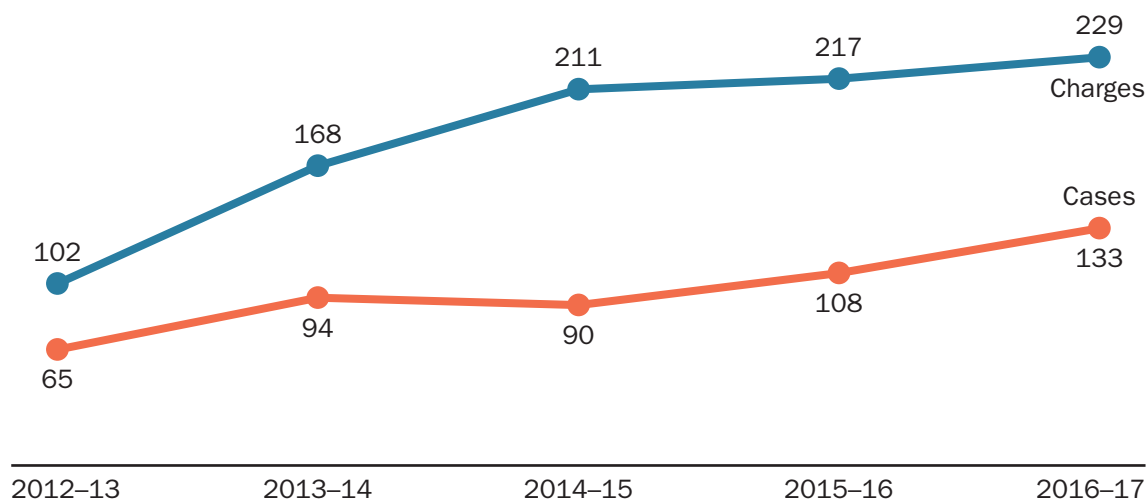
Table 11: Number and percentage of firearms charges sentenced in the higher courts, by Act

Legislation	Charges	Percentage
<i>Firearms Act 1996</i> (Vic)	885	95%
<i>Control of Weapons Act 1990</i> (Vic)	32	3%
<i>Crimes Act 1958</i> (Vic)	10	1%
Total	927	100%

5.3 Over the reference period, far fewer firearms charges were sentenced in the higher courts (927) than in the Magistrates' Court (13,702). This is because most sentenced firearms offences are summary offences, that is, offences that are generally sentenced in the Magistrates' Court.¹⁰¹

5.4 Over the five years to June 2017, the number of firearms charges sentenced in the higher courts increased by 125%, from 102 in 2012–13 to 229 in 2016–17 (Figure 16, page 36).

101. See Appendix 3 for a list of all offences examined in this report. To increase efficiency, when dealing with charges of indictable offences, the higher courts have the power to also hear and determine any outstanding charges of summary offences in respect of an accused: *Criminal Procedure Act 2009* (Vic) ss 242–243.

Figure 16: Number of firearms charges and cases sentenced in the higher courts, by year

5.5 As shown in Table 12, the most common firearms offence sentenced in the higher courts was prohibited person possess, carry or use a firearm, surpassing the offence of possession of cartridge ammunition, which was the most common offence in both the Magistrates' Court and the Children's Courts (see Tables 4 and 7, pages 18 and 28).

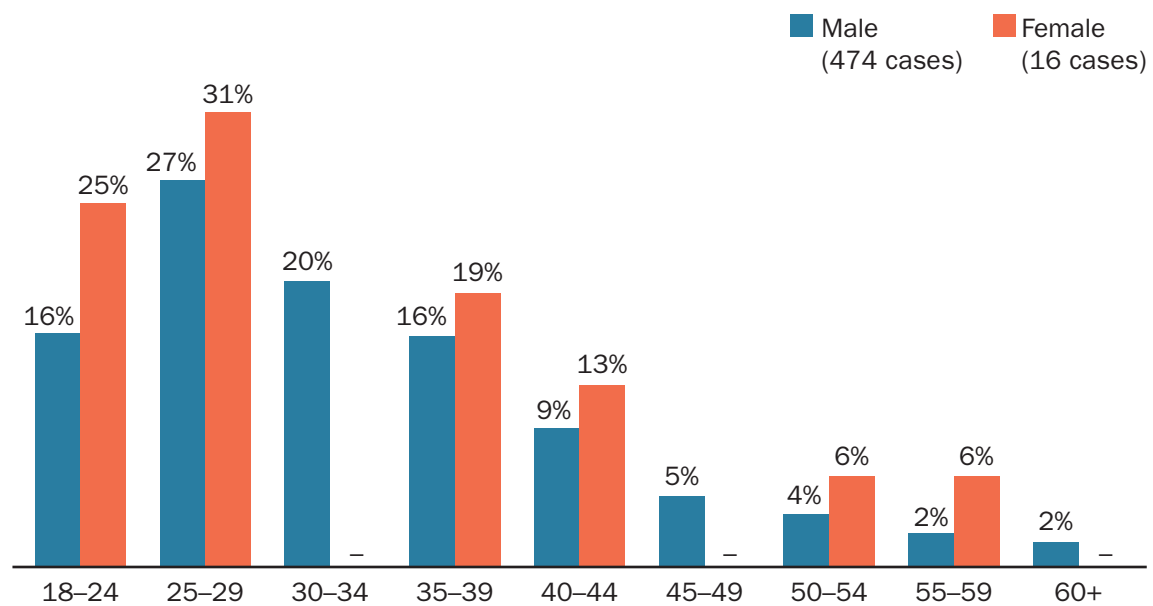
Table 12: Most common firearm offences sentenced in the higher courts, by number of charges, 2012-13 to 2016-17

Offence	Legislation	Charges
Prohibited person possess/carry/use a firearm (including unregistered firearm)	<i>Firearms Act 1996</i> (Vic) s 5(1); s 5(1A) (repealed)	328
Possession of cartridge ammunition by unlicensed person	<i>Firearms Act 1996</i> (Vic) s 124(1)	222
Possess/carry/use an unregistered general category handgun	<i>Firearms Act 1996</i> (Vic) s 7B(1)	54
Non-prohibited person possess/carry/use a registered general category handgun for purpose other than collecting without a licence	<i>Firearms Act 1996</i> (Vic) s 7(1)	48
Non-prohibited person possess/carry/use an unregistered category A or B longarm	<i>Firearms Act 1996</i> (Vic) s 6A(1)	34
Non-prohibited person possess/carry/use a registered category A longarm without a licence	<i>Firearms Act 1996</i> (Vic) s 6(1)	29
Unlicensed person store firearm in an insecure manner	<i>Firearms Act 1996</i> (Vic) s 129A	28
Prohibited person possess/carry/use an imitation firearm	<i>Control of Weapons Act 1990</i> (Vic) s 5AB(2)	25
Shorten the barrel of a longarm	<i>Firearms Act 1996</i> (Vic) s 134(1)	16
Fail to store category A or B longarm ammunition correctly	<i>Firearms Act 1996</i> (Vic) s 121(1A)	13
Fail to store category A or B longarm correctly	<i>Firearms Act 1996</i> (Vic) s 121(1)	12
Prohibited person possess/carry/use a silencer or prescribed item	<i>Firearms Act 1996</i> (Vic) s 5(2)	11

Characteristics (age and gender) of firearms offenders sentenced in the higher courts

5.6 The vast majority of the 490 cases related to male offenders (97%; see Figure 17). The average age for all offenders was 33 years, which is slightly younger than the average age of all offenders in the higher courts in the same period (35 years). Further discussion of the relationship between age and offending characteristics is outlined from [5.22].

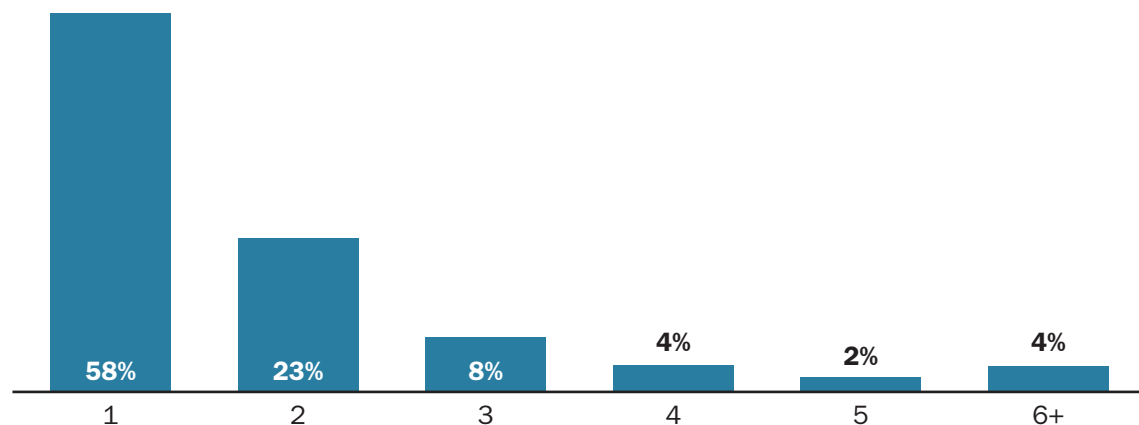
Figure 17: Percentage of cases, by gender and age group (in years) of the offender



Case contents and co-sentenced offences

5.7 Firearms cases most commonly comprised a single charge of a firearms offence, with 42% of cases having more than one charge of a firearms offence sentenced (Figure 18). Ten cases comprised solely firearms offences (containing 13 charges). In all cases of a single firearms charge, an average of five charges of other offences were sentenced. Cases in which multiple firearms offences were sentenced had an average of eight charges of other offences sentenced in the case.

Figure 18: Percentage of cases sentenced in the higher courts, by the number of firearms charges sentenced



20 most common co-sentenced offences

5.8 Table 13 presents the specific offences sentenced alongside firearms offences. The 20 most common co-sentenced offences are displayed. While drug trafficking offences featured prominently in the list, the other most common offences were offences against people and property. Drive whilst authorisation suspended¹⁰² was the most common traffic and vehicle regulation offence.

Table 13: 20 most common co-sentenced offences in firearms cases in the higher courts

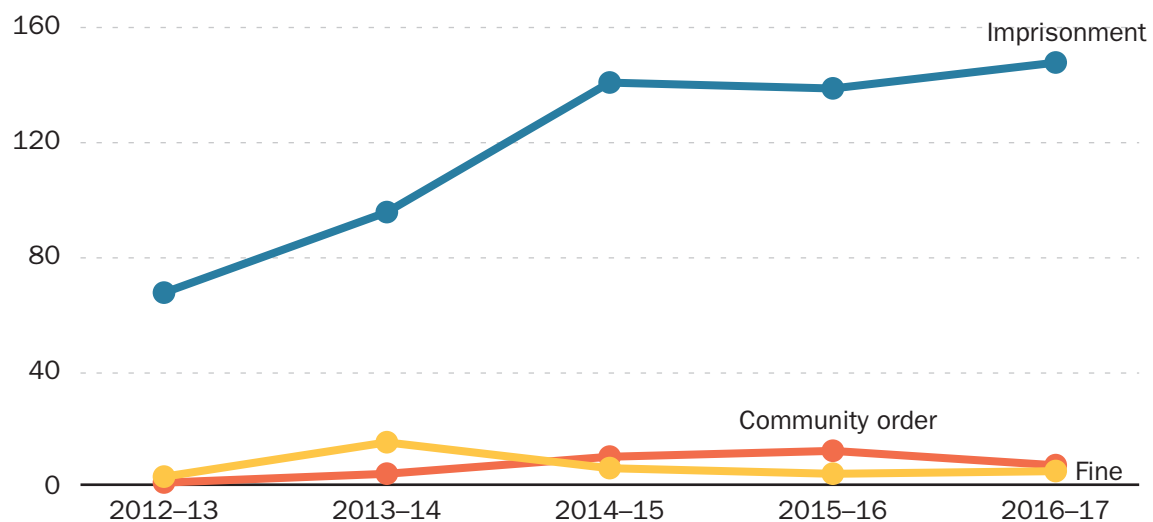
	Offence	Charges	Percentage of charges	Cases	Percentage of cases
	Firearms offence	927	23%	490	100%
1	Possess a drug of dependence	353	9%	186	38%
2	Possess prohibited/controlled weapon without approval	248	6%	140	29%
3	Theft	419	10%	132	27%
4	Trafficking in a non-commercial quantity of a drug of dependence	185	5%	117	24%
5	Deal property suspected proceed of crime	131	3%	96	20%
6	Armed robbery	159	4%	90	18%
7	Dishonestly receive stolen goods	138	3%	82	17%
8	Aggravated burglary	72	2%	63	13%
9	Recklessly cause injury	60	1%	52	11%
10	Burglary	90	2%	43	9%
11	Commit indictable offence whilst on bail	52	1%	41	8%
12	Trafficking in a commercial quantity of a drug of dependence	43	1%	38	8%
13	Drive whilst authorisation suspended	86	2%	36	7%
14	Intentionally damage property	68	2%	32	7%
15	Common law assault	42	1%	31	6%
16	Reckless conduct endanger serious injury	33	1%	27	6%
17	Trafficking in a large commercial quantity of a drug of dependence	28	1%	27	6%
18	False imprisonment	37	1%	26	5%
19	Unlicensed driving	32	1%	21	4%
20	Possess equipment/substance for trafficking in a drug of dependence	25	1%	19	4%
	Total	4,069		490	

102. Road Safety Act 1986 (Vic) s 30(1).

High-level sentencing outcomes

- 5.9 Firearms offences carried maximum penalties ranging from 10 penalty units to 17 years' imprisonment.¹⁰³ Three-quarters (76%) of firearms charges sentenced in the higher courts carried a maximum penalty of imprisonment. The following examination of sentencing outcomes looks only at the 703 firearms charges with a maximum penalty of imprisonment from a total of 927 firearms charges sentenced in the higher courts.
- 5.10 Over the five years, 84% of firearms charges received imprisonment. This includes 12% of charges that received a sentence of imprisonment combined with a community correction order (CCO). The rate of imprisonment was lowest in 2013–14, at 78% (96 of 123 charges), while 13% of charges received a fine (16 of 123 charges) (Figure 19).¹⁰⁴

Figure 19: Number of firearms charges with a maximum penalty of imprisonment sentenced in the higher courts, by year and sentence imposed



Other sentences not shown here are suspended sentences, youth justice centre orders, adjourned undertakings, dismissals and discharges, which together accounted for 5% of all outcomes for charges in the reference period that carried a maximum penalty of imprisonment.

Sentencing outcomes for prohibited person possess a firearm

- 5.11 As noted at [1.26], the Council has selected the offence of prohibited person possess, carry or use a firearm for particular examination.
- 5.12 This offence carries a maximum penalty of 10 years' imprisonment.¹⁰⁵ Of the 328 total sentenced charges of this offence, 300 (91%) received imprisonment, and 17% of those imprisonment sentences were aggregate sentences. The number of charges of this offence increased by 122%, from 37 in 2012–13 to 82 in 2016–17.

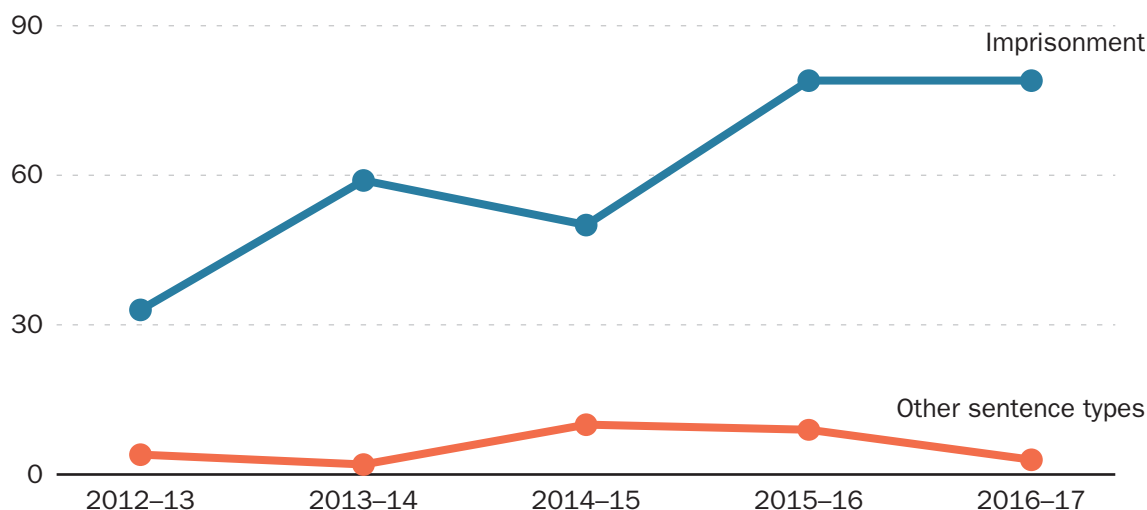
¹⁰³ The maximum penalty for a second or subsequent offence of possess, carry or use an unregistered category E handgun is 17 years' imprisonment: *Firearms Act 1996* (Vic) s 7B(2).

¹⁰⁴ In the higher courts, aggregate sentences are recorded for imprisonment, fines and community orders. Of the 592 charges receiving imprisonment, 16% were part of an aggregate sentence.

¹⁰⁵ *Firearms Act 1996* (Vic) s 5(1) carries a maximum penalty of 10 years' imprisonment. Prior to 16 May 2012, there were two offences: prohibited person possess, carry or use a registered firearm, carrying a 10-year maximum penalty (section 5(1)), and prohibited person possess, carry or use an unregistered firearm, carrying a 15-year maximum penalty (section 5(1A)). Section 5(1A) of the *Firearms Act 1996* (Vic) was repealed by the *Control of Weapons and Firearms Acts Amendment Act 2012* (Vic) s 8(2). See further discussion at [1.32]–[1.36]. There were 47 charges under the *Firearms Act 1996* (Vic) s 5(1A) (repealed) sentenced in the higher courts during the reference period.

In the same period, non-aggregate imprisonment sentences increased by 148%. Figure 20 shows that the proportion of charges receiving imprisonment increased steadily over the reference period.

Figure 20: Number of charges of prohibited person possess a firearm sentenced in the higher courts, by year and sentence imposed



Other sentences types comprise suspended sentences, community orders, fines and youth justice centre orders, which together accounted for 9% of all outcomes for charges of prohibited person possess a firearm.

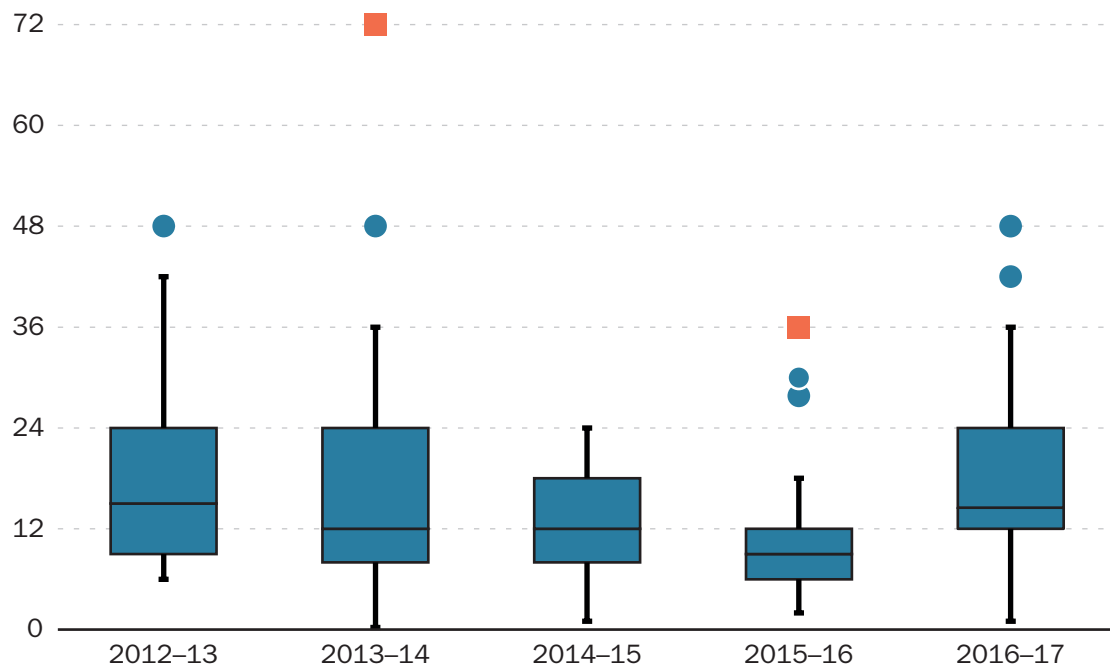
- 5.13 Figure 21 shows the distribution of 249 non-aggregate imprisonment terms imposed on charges of prohibited person possess, carry or use a firearm over the reference period. Each box-and-whiskers-plot displays the shortest term, the range for the middle 50% of the terms in the distribution, the median and the longest term imposed in each year. The median sentence overall was 12 months' imprisonment, ranging from nine months to 15 months across the five years.
- 5.14 Only one charge received a sentence of more than four years (a charge sentenced in 2013-14 that received six years' imprisonment).¹⁰⁶ The remaining charges received individual imprisonment sentences of between a few days and four years.¹⁰⁷
- 5.15 Overall, the longest aggregate sentence of imprisonment to include a charge of this offence was six years and three months. The two fines imposed for this offence were for \$300 and \$1,000.¹⁰⁸

106. This was a rolled-up charge, involving an offender who fired a firearm at or near police officers five times while being a prohibited person. The offender had a long history of firearms (and other) offending. This occurred in the context of a siege in which the offender had barricaded himself inside his home to evade authorities following a series of armed robberies: *R v Binse* [2014] VSC 253 (23 May 2014).

107. The offences receiving four-year terms generally involved offenders engaging in organised criminal activity, including drug trafficking and armed robberies. For example, one charge of prohibited person possess a firearm received a sentence of four years' imprisonment on the charge. The offender had a significant criminal history, possessed a firearm that was loaded and ready for use and was also sentenced for conspiracy to commit armed robbery, aggravated burglary and other offences: *DPP v Murrell & Ngaa* [2013] VCC 2050 (18 December 2013).

108. In both of these cases, the firearm in question was an air rifle and the offenders pleaded guilty at an early stage. One offender was older and had experienced adult hardship, while the other offender was younger and was assessed as having good prospects of rehabilitation: *R v Casey* [2016] VCC 1997 (20 December 2016); *DPP v Dinah* [2013] VCC 1092 (26 July 2013).

Figure 21: Distribution of non-aggregate imprisonment terms imposed on charges of prohibited person possess a firearm sentenced in the higher courts, by year¹⁰⁹



- 5.16 As shown in Figure 20 (page 40), only a small number of charges of prohibited person possess, carry or use a firearm received a sentence other than imprisonment in each year of the reference period. Case Study 2 provides an example of when an offender charged with prohibited person possess, carry or use a firearm received a non-custodial sentence for that offence.

Case Study 2: offender charged with prohibited person possess, carry or use a firearm receiving a non-custodial sentence

An offender pleaded guilty to multiple charges of prohibited person possess, carry or use a firearm, as well as charges related to drug trafficking. The offender had been suffering from a debilitating inflammatory disorder for most of his adult life. The condition gradually spread through his entire body and made simple daily activities, such as walking, dressing and showering, difficult and painful. He began taking marijuana and heroin to self-medicate. The pain eventually led him to cease employment. He began dealing in the drugs to support himself financially, eventually acquiring firearms for personal security.

In sentencing the offender, the judge noted the extraordinary burden the conditions had placed on him in remand, and made clear that the offender's significant health problems warranted a substantial sentence discount. While the offender received a term of imprisonment for the drug trafficking offences, a CCO was imposed for the offences of prohibited person possess, carry or use a firearm.

109. Statistical outliers are depicted in Figure 21 as blue dots (moderate) and orange squares (extreme) for each year. Outliers are based on the overall distribution and are designated by the standard measure: a value beyond the third quartile by more than one-and-a-half times the inter-quartile range. Most prominently, a 72-month sentence imposed in 2013-14 far exceeds the bulk of sentences imposed in that year and sits at the boundary for an extreme outlier (three times the inter-quartile range beyond the third quartile). See Tukey (1977), above n 91, 43-44.

- 5.17 The offence of prohibited person possess, carry or use an *imitation* firearm also carries a maximum penalty of 10 years' imprisonment.¹¹⁰ Of the 25 charges of the offence of prohibited person possess, carry or use an imitation firearm sentenced in the higher courts, 24 received imprisonment. The 22 non-aggregate imprisonment sentences ranged from three months to 16 months, with two combined with a CCO. By contrast, the sentencing outcomes for the 328 charges of prohibited person possess, carry or use a firearm sentenced in the higher courts ranged from a few days to six years (see discussion at [5.14]–[5.15]). Although the number of sentences for possession of imitation firearms is limited,¹¹¹ these findings may suggest that courts are treating the possession of an imitation firearm as inherently less serious than possession of a firearm, despite the offences carrying the same maximum penalty.

Sentencing factors

- 5.18 This section presents:
- a profile of sentencing factors for cases involving firearms offences in the higher courts; and
 - a profile of particular *case clusters*.
- 5.19 This section examines the sample of cases that were possible to code by reading sentencing remarks. Of the 490 firearms cases, 438 (89%) had sentencing remarks available. Sentencing remarks provide information about a case that is not available directly from the higher courts' sentencing database. The Council decided on a range of personal factors to extract for each case.

Profile of coded sentencing factors

- 5.20 The sentencing remarks for 438 cases were available for analysis. These cases were sentenced with a total of 853 charges of firearms offences, as outlined in Table 14.

Table 14: Number of cases and charges examined, by availability of sentencing remarks

Availability of remarks	Cases	Firearms charges
Remarks available	438	853
No remarks available	52	74
Total cases	490	927

- 5.21 Table 15 (page 43) lists the number and percentage of cases analysed in which a particular sentencing factor was referred to in the judicial officer's sentencing remarks for offenders sentenced during the reference period.

110. *Control of Weapons Act 1990* (Vic) s 5AB(2).

111. There were seven charges of non-prohibited person possess/carry/use imitation firearm without exemption or approval and 25 charges of prohibited person possess/carry/use an imitation firearm sentenced in the higher courts during the reference period: see Appendix 3.

Table 15: Number and percentage of cases containing a particular sentencing factor, all firearms offences, 2012–13 to 2016–17

Sentencing factor	Number of cases	Percentage of cases
Factors relating to the firearms offending		
Number of firearms – Not applicable	64	15%
Number of firearms – Not stated	12	3%
Number of firearms – 1	263	60%
Number of firearms – 2	47	11%
Number of firearms – 3 or more	52	12%
Purpose of possession (where possession charge) – Criminal activity	369	84%
Purpose of possession (where possession charge) – Not criminal activity	32	7%
Purpose of possession (where possession charge) – Not stated	37	8%
Number of co-offenders – 0	237	54%
Number of co-offenders – 1	112	26%
Number of co-offenders – 2	46	11%
Number of co-offenders – 3	13	3%
Number of co-offenders – 4 or more	29	7%
Number of co-offenders – Not stated	1	0%
Weapon or ammunition source – Family member/friend/accomplice	41	9%
Weapon or ammunition source – Purchased	13	3%
Weapon or ammunition source – Stolen	24	5%
Weapon or ammunition source – Manufactured	8	2%
Weapon or ammunition source – Not stated	352	80%
Factors relating to the offender		
Gender of offender – Male	423	97%
Gender of offender – Female	15	3%
Age at offending – Under 18	0	0%
Age at offending – 18–24 years	66	15%
Age at offending – 25–29 years	117	27%
Age at offending – 30–34 years	88	20%
Age at offending – 35–39 years	72	16%
Age at offending – 40–44 years	38	9%
Age at offending – 45–49 years	22	5%
Age at offending – 50–54 years	17	4%
Age at offending – 55–59 years	11	3%
Age at offending – 60 years and over	7	2%

Sentencing factor	Number of cases	Percentage of cases
On existing court order when offending – Any	149	34%
On existing court order when offending – None	250	57%
On existing court order when offending – Bail	51	12%
On existing court order when offending – CCO/CBO	52	12%
On existing court order when offending – Suspended sentence	39	9%
On existing court order when offending – Parole	12	3%
On existing court order when offending – Family violence order	16	4%
On existing court order when offending – Other	8	2%
On existing court order when offending – Not stated	39	9%
Plea and its timing – Guilty, early	299	68%
Plea and its timing – Guilty, late	49	11%
Plea and its timing – Guilty, stage not indicated	82	19%
Plea and its timing – Not guilty	7	2%
Plea and its timing – Not stated	1	0%
Family violence offender – Yes	46	11%
Family violence offender – No	389	89%
Family violence offender – Not stated	3	1%
Prior offending – Any	362	83%
Prior offending – None	76	17%
Prior offending – Homicide	8	2%
Prior offending – Injury	150	34%
Prior offending – Sexual	6	1%
Prior offending – Dangerous/negligent/endangering	26	6%
Prior offending – Abduction/harassment/intimidation	49	11%
Prior offending – Robbery/extortion	50	11%
Prior offending – Burglary/break and enter	68	16%
Prior offending – Theft	117	27%
Prior offending – Fraud/deception/dishonesty	111	25%
Prior offending – Drug	174	40%
Prior offending – Weapons (including firearms)	161	37%
Prior offending – Property/criminal damage	58	13%
Prior offending – Public order	34	8%
Prior offending – Driving/vehicle	139	32%
Prior offending – Justice procedures/breach	106	24%
Prior offending – Other	2	0%

Sentencing factor	Number of cases	Percentage of cases
Prior firearms offending – Yes	88	20%
Prior firearms offending – No	339	77%
Prior firearms offending – Not stated	11	3%
Prior firearms offence sentence – Dismissal	0	0%
Prior firearms offence sentence – Adjourned undertaking	3	1%
Prior firearms offence sentence – Fine	8	2%
Prior firearms offence sentence – CBO/CCO	8	2%
Prior firearms offence sentence – Suspended sentence	6	1%
Prior firearms offence sentence – Imprisonment	24	5%
Personal history of adversity – Any	391	89%
Personal history of adversity – None	47	11%
Personal history – Mental illness/cognitive impairment/acquired brain injury/ diagnosed medical condition	139	32%
Personal history – Substance abuse (alcohol and/or drug)	354	81%
Personal history – Adult ill-health/homelessness/trauma	59	13%
Personal history – Childhood abuse/neglect/family violence victim/trauma	117	27%
Personal history – Other	7	2%
Aboriginal or Torres Strait Islander – Yes	6	1%
Aboriginal or Torres Strait Islander – No	113	26%
Aboriginal or Torres Strait Islander – Not stated	319	73%
Country of birth – Australia	235	54%
Country of birth – Country other than Australia (40 countries noted)	80	18%
Country of birth – Not stated	123	28%
Remarks explicitly state offender is methylamphetamine user – Yes	287	66%
Remarks explicitly state offender is methylamphetamine user – No	151	34%
Prospects of rehabilitation – Positive	157	36%
Prospects of rehabilitation – Contingent/guarded	217	50%
Prospects of rehabilitation – Negative	23	5%
Prospects of rehabilitation – Not stated	41	9%
Assessment of remorse – Positive	163	37%
Assessment of remorse – Negative	25	6%
Assessment of remorse – Not stated	250	57%
Offender gave undertaking to assist law enforcement authorities – Yes	17	4%
Offender gave undertaking to assist law enforcement authorities – No	220	50%
Offender gave undertaking to assist law enforcement authorities – Not stated	201	46%

Discussion of factors

Age of offender

5.22 The age of the offender at the date of sentence was reported for 89% of the 438 cases analysed. Ages ranged from 18 years to 75 years.

Youthful offenders

5.23 There were 66 cases involving offenders aged between 18 years and 24 years.¹¹² Compared with all other offenders (372 cases), young adults sentenced for firearms offences were significantly¹¹³ more likely to:

- plead guilty early;
- be methylamphetamine users;
- have experienced childhood trauma; and
- have positive prospects of rehabilitation.

Older offenders

5.24 There were 35 cases in which the offenders were aged 50 years and older. Relative to all other offenders (403 cases), these older offenders were significantly:¹¹⁴

- less likely to possess a firearm for criminal activity;
- less likely to be methylamphetamine users;
- more likely to be family violence offenders;
- less likely to have substance abuse issues; and
- more likely to have adult ill-health or homelessness issues.

Co-sentenced offences

5.25 The overall offending of offenders aged under 25 years was characterised by deception, drug and violent offences. They were most commonly sentenced for armed robbery (47% of cases) and theft (30%).

5.26 The overall offending of offenders aged 50 years and older was characterised by deception and drug offences. They were most commonly sentenced for trafficking in a non-commercial quantity of a drug of dependence (29% of cases) and possessing a prohibited/controlled weapon (23%). These older offenders were commonly sentenced for other related drug trafficking offences, such as cultivating commercial and non-commercial quantities of narcotic plants and possessing equipment or a substance for trafficking in a drug of dependence.

Guilty pleas

5.27 Offenders pleaded not guilty in only seven of the 438 cases examined.

112. Offenders within this age group are described as *youthful offenders*. While there is no formal age limit above which a person ceases to be a youthful offender, the primacy of youth significantly diminishes as a relevant factor past the age of 25: *R v Mills* [1998] 4 VR 235, 241.

113. Statistically significant difference was determined using a t-test for difference in means and a z-test for difference in proportions, both at 0.05 level of significance.

114. *Ibid.*

- 5.28 In the Council's 2015 report *Guilty Pleas in the Higher Courts: Rates, Timing, and Discounts*, it was reported that, from 2009–10 to 2013–14, 72.4% of proven charges for all offences in the Supreme Court and 84.6% of proven charges in the County Court were resolved by a guilty plea.¹¹⁵ In that report, it was also noted that the offence of prohibited person possess, carry or use a firearm was one of five offences with the highest proportion of proven charges to be resolved by a guilty plea between 2009–10 and 2013–14.¹¹⁶
- 5.29 The high rate of guilty pleas for firearms offences is likely to be due to the fact that offenders are often caught in possession of the firearm or ammunition, limiting the possibility of contesting the charges.¹¹⁷

Prior involvement with the criminal justice system

- 5.30 A large proportion of offenders had a prior offence history (83%): 40% had drug priors, 34% had injury priors and 37% had weapons priors (including firearms priors).¹¹⁸
- 5.31 Over one-third (34%) of offenders were on an order, such as bail or a CCO, at the time of the firearms offence.
- 5.32 Stakeholders noted that, while this was not surprising for offences heard in the higher courts, the high proportion of offenders with significant prior offences indicates that firearms offenders are entrenched in the criminal justice system.¹¹⁹

Personal history of adversity

- 5.33 The majority (89%) of offenders had a personal history of adversity, such as having a mental illness, cognitive impairment, acquired brain injury or other condition (32%), had substance abuse issues (81%) or had experienced childhood abuse, trauma or neglect (27%).
- 5.34 These findings are similar to those in the Council's *Aggravated Burglary: Current Sentencing Practices* report, which examined sentencing factors present in aggravated burglary cases. However, the proportion of firearms offenders with substance abuse issues is particularly high compared with the Council's prior findings.¹²⁰

Substance abuse (including methylamphetamine use)

- 5.35 Of the 438 higher courts cases examined, 354 firearms offenders (81%) were identified by sentencing judges as having substance abuse issues. Further, 66% of firearms offenders were identified as users of methylamphetamine.¹²¹

115. Sentencing Advisory Council, *Guilty Pleas in the Higher Courts: Rates, Timing, and Discounts* (2015) 11.

116. Ibid 26.

117. Firearms Stakeholder Discussion Forum (5 March 2019).

118. Twenty per cent of offenders sentenced in the higher courts had prior firearms offences.

119. Firearms Stakeholder Discussion Forum (5 March 2019).

120. The most common sentencing factor present in aggravated burglary cases was substance abuse (68.0%), followed by non-sexual abuse, neglect or severe disruption as a child (42.1%) and mental illness (32.0%); Sentencing Advisory Council, *Aggravated Burglary: Current Sentencing Practices* (2011) 23. In another report, the Council found that 75% of offenders sentenced for trafficking in a large commercial quantity between 2008–09 and 2012–13 had a history of substance abuse: Sentencing Advisory Council, *Major Drug Offences: Current Sentencing Practices* (2015) 37.

121. The criterion for classifying a firearms offender as a methylamphetamine user was the mention, in sentencing remarks, of a substance abuse issue related to methylamphetamine in an offender's history or the involvement of methylamphetamine use in the specific offending related to the firearms case.

- 5.36 The high proportion of offenders who are users of methylamphetamine is consistent with prior studies finding an association between methylamphetamine use and violent offending and a greater risk of methylamphetamine users being arrested for weapons offences.¹²²
- 5.37 This section compares the 287 methylamphetamine users to the 151 other cases to identify any differences in personal characteristics of offenders and in their sentences. The co-sentenced offences of methylamphetamine users and other offenders may also highlight offending behaviour prominent among methylamphetamine users.
- 5.38 In terms of sentencing factors, some clear differences¹²³ between methylamphetamine users and other offenders were uncovered:
- methylamphetamine users were younger than other offenders, with an average age of 31 years compared with 38 years;
 - possession of a firearm for the purpose of criminal activity was very common in both groups, but more common among methylamphetamine users (89%) than other offenders (76%);
 - methylamphetamine users sentenced for firearms offences were more likely to be on an order at the time of the offence (41%) than other sentenced offenders (20%); and
 - almost one-third of methylamphetamine users had childhood issues, such as childhood trauma, neglect or exposure to family violence (30% compared with 21%), while adult ill-health for methylamphetamine users was less common (11% compared with 19%).
- 5.39 The number of firearms involved in sentenced charges was recorded for 83% of examined cases. Methylamphetamine users had substantially more unique firearms recorded at their sentences than did other offenders: 31% of methylamphetamine users were sentenced for offences related to two or more weapons, compared with 20% of other offenders.
- 5.40 Unsurprisingly, possess a drug of dependence and trafficking in a non-commercial quantity of a drug of dependence were more common among methylamphetamine users than other offenders (46% and 22% of cases respectively for possession, and 33% and 11% respectively for trafficking). Dishonestly receiving stolen goods was sentenced in 23% of cases related to methylamphetamine users and in 6% of cases related to other offenders. These frequencies suggest that methylamphetamine users sentenced for firearms offences are more likely to be involved in drug offending, and the firearms offence is possibly a secondary offence sentenced alongside more serious offending behaviour.
- 5.41 In contrast, in the 151 cases not related to methylamphetamine users, offences against the person – such as making threats to kill, reckless conduct endangering serious injury and common law assault – were slightly more common than in the cases involving methylamphetamine users.¹²⁴
- 5.42 Case Study 3 provides an example of a case in which an offender who is a methylamphetamine user is sentenced for multiple firearms offences.

122. Susan Goldsmid and Matthew Willis, *Methamphetamine Use and Acquisitive Crime: Evidence of a Relationship*, Trends & Issues in Crime and Criminal Justice no. 516 (2016) 1; Michelle Torok et al., *Comparative Rates of Violent Crime Amongst Methamphetamine and Opioid Users: Victimisation and Offending*, Monograph Series no. 32 (2008) 23. The Council has recently published data on the increase in the sentencing of minor drug offending driven by the use of methylamphetamine: Sentencing Advisory Council, *Trends in Minor Drug Offences Sentenced in the Magistrates' Court of Victoria* (2018) 10–11.

123. Statistically significant difference was determined using a t-test for difference in means and a z-test for difference in proportions, both at 0.05 level of significance.

124. Prior research has found methylamphetamine use to be associated with an increased risk of engaging in violent offences. However, the Council's findings in relation to methylamphetamine users and offences against the person may be explained by differences in the definition of *methylamphetamine user* in previous studies. The Australian Institute of Criminology has defined methylamphetamine users as those that self-reported methylamphetamine use in the 30 days prior to their arrest by police. In the Council's coding, an offender was noted to be a methylamphetamine user if the sentencing remarks explicitly stated that the offender was a methylamphetamine user at any time: Goldsmid and Willis (2016), above n 122, 4; Torok et al. (2008), above n 122, 6.

Case Study 3: offender who is a methylamphetamine user and is charged with multiple firearms offences

The offender was a 30 year-old male whose history of drug use began in his early 20s. Over the course of two weeks, the offender had been using methylamphetamine heavily and going without sleep for days at a time. Over the course of this period, the offender had committed a diverse range of offences including an attempted armed robbery of a liquor store, recklessly causing serious injury to one of the liquor store employees when the firearm accidentally discharged, theft of numerous motor vehicles, numerous driving offences and five charges of prohibited person possess, carry or use a firearm.

After being arrested, the offender could not remember large parts of what had occurred, but he made several admissions and was co-operative.

The psychiatric report tendered to the court described the offender's chronic amphetamine and methylamphetamine use as exacerbating his existing anxiety disorder, leading to a paranoid, hyper-vigilant, impulsive and aggressive state of mind. The judge concluded that the offender's methylamphetamine use led to an impaired sense of judgment that was relevant to the offending. Once the offender was arrested and placed on remand, his mental state quickly stabilised. The judge stated that, while it did not excuse the conduct, the offender's drug use did go a long way towards explaining it. In addition, the offender's exposure to family violence as a teenager was noted, as was his good prospects of rehabilitation, provided that he could avoid relapse into drug use.

On the five charges of prohibited person possess, carry or use a firearm, the offender received sentences of three years, five months, 12 months, nine months and 18 months. The base sentence was five years' imprisonment for the offence of recklessly causing serious injury. In total, 15 months of the five sentences on the charges of prohibited person possess, carry or use a firearm were cumulated on the base sentence. The offender was sentenced to a total effective sentence of eight years and eight months' imprisonment for 14 offences, with a non-parole period of six years.

Ice psychosis, paranoia and firearms

- 5.43 Research has found that the frequency and amount of methylamphetamine use and the severity of the methylamphetamine dependence are the factors most commonly associated with the development of *ice psychosis*.¹²⁵ In a number of cases involving methylamphetamine users, the court noted that the offender had developed symptoms of paranoia or psychosis. In several cases, the courts noted that the offender possessed the firearm or firearms for the purpose of self-protection, drawing a connection between the methylamphetamine use, the development of paranoia or psychosis and the possession of firearms.¹²⁶

125. Shalini Arunogiri et al., 'A Systematic Review of Risk Factors for Methamphetamine-Associated Psychosis' (2018) 52(6) *Australian & New Zealand Journal of Psychiatry* 514. The Council's research also found that almost one-third of methylamphetamine users had had adverse childhood experiences. This may support research that found adverse childhood experiences increase an individual's vulnerability to methylamphetamine-associated psychosis: Yingying Ding et al., 'Adverse Childhood Experiences and Interaction with Methamphetamine Use Frequency in the Risk of Methamphetamine-Associated Psychosis' (2014) 142 *Drug and Alcohol Dependence* 295; Shalini Arunogiri, 'Ice Psychosis: What Is It, and Why Do Only Some Users Get It?' (theconversation.com, 23 January 2018) *The Conversation* (Australia) <<https://theconversation.com/ice-psychosis-what-is-it-and-why-do-only-some-users-get-it-88248>> at 25 March 2019; Meeting with Dr Shalini Arunogiri, Turning Point (13 November 2018).

126. See for example, *DPP v Basdekis* [2014] VCC 104 (7 February 2014); *DPP v Mezeldzic* [2013] VCC 1634 (25 October 2013).

- 5.44 Although there has been no conclusive research on the behaviours associated with ice psychosis,¹²⁷ the use of ice may drive the acquisition of firearms in response to symptoms of paranoia, particularly for offenders involved in drug trafficking.
- 5.45 Stakeholders questioned the likelihood of a relationship between paranoia caused by methylamphetamine use and firearms acquisition. They noted that it is 'a neat explanation' but that it is more likely that persons who are involved in drug trafficking and possess firearms are doing so for the purposes of protecting or furthering their drug trafficking operations.¹²⁸
- 5.46 Several stakeholders noted that, while there is a cohort of offenders who have a mental illness and symptoms of paranoia, it is not often linked with the acquisition of firearms.¹²⁹ Where there is evidence that an offender has a substance abuse or mental health issue, this is put to the court on their plea, but often evidence of organised drug trafficking is inconsistent with the offender's self-reported levels of methylamphetamine use.¹³⁰

Family violence

- 5.47 During consultation, concern was expressed regarding the sentencing of the offence of murder or manslaughter in circumstances of family violence where the offender had used a firearm in the course of the offence.¹³¹ Further, stakeholders noted the particular dangers of persons who engage in family violence offences being in possession of a firearm, as it may be used to threaten or control their victims.¹³²
- 5.48 Sentencing remarks were examined for whether the offender was a family violence offender. An offender was coded as a family violence offender if the offending was in the context of family violence, the offending involved a breach of a family violence intervention order or safety notice,¹³³ or the offender had a prior history of family violence offending disclosed in the sentencing remarks.
- 5.49 Of the higher courts sentencing remarks analysed, in 46 of the 438 cases the offender was a family violence offender (11%). This analysis is limited by the fact that an offender may have committed prior offences in circumstances of family violence and this is not mentioned in the sentencing remarks. However, in the majority of cases, the offender did not appear to be a family violence offender.¹³⁴ In addition, this finding is broadly consistent with prior research:

127. Meeting with Dr Shalini Arunogiri, Turning Point (13 November 2018).

128. Firearms Stakeholder Discussion Forum (5 March 2019).

129. One stakeholder noted that it was more common to see persons affected by psychosis arming themselves with knives, particularly when they are homeless: Firearms Stakeholder Discussion Forum (5 March 2019).

130. Firearms Stakeholder Discussion Forum (5 March 2019).

131. Meeting with safe steps Family Violence Response Centre (14 March 2019).

132. The Family Violence Common Risk Assessment Framework notes that access to a weapon is a specific risk factor relevant to family violence risk assessments. In addition, the Framework notes that firearms are 'more accessible in rural communities'. This can increase a woman's vulnerability and is relevant to developing a risk management plan: Department of Human Services, *Family Violence Risk Assessment and Risk Management Framework and Practice Guides 1–3 (Edition 2)* (2012) 27, 34; Meeting with safe steps Family Violence Response Centre (14 March 2019). See also *R v Lai* [2015] VSC 346 (31 July 2015); *R v Torun* [2014] VSC 146 (4 April 2014). In these cases, the offending involved the use of a firearm, but the offender was not charged with a separate firearms offence.

133. *Family Violence Protection Act 2008* (Vic) ss 37, 37A, 123, 123A, 125A.

134. In a recent report on animal cruelty offences, the Council found that, of the 231 animal cruelty cases sentenced in the Magistrates' Court in 2016 and 2017, 35 were flagged as involving family violence, representing 15% of all animal cruelty cases in 2016 and 2017: Sentencing Advisory Council, *Animal Cruelty Offences in Victoria* (2019) 55. Stakeholders noted that the proportion of offenders with a family violence history was likely to increase subsequent to reforms implemented following the Royal Commission into Family Violence, such as fast-tracking of family violence matters: Firearms Stakeholder Discussion Forum (5 March 2019).

in 2015–16, 11% of sentenced cases in the Magistrates' Court¹³⁵ and approximately 17% of all prosecutions initiated by the Office of Public Prosecutions were identified as occurring in a family violence context.¹³⁶

- 5.50 In the 46 cases in which the offender was coded as a family violence offender, the majority received a sentence of imprisonment on the firearms charge. Only three cases in which the offender was coded as a family violence offender received a non-custodial sentence on a firearms charge carrying a maximum penalty of imprisonment.¹³⁷

Possession of firearm for criminal purpose

- 5.51 As discussed at [1.59], a key consideration when sentencing firearms possession offences is whether the firearm is associated with other criminal activity. Where the illegal firearm possession is found to be for a criminal purpose, a more severe sentence is warranted.¹³⁸
- 5.52 The purpose of the firearms possession was recorded for 92% of cases analysed.¹³⁹ In 369 (84%) of all cases, the purpose of the firearms possession was for other criminal activity. In 33 cases, the purpose of the firearm possession was not stated to be for a criminal purpose. Cases involving criminal activity contained on average slightly more total charges but the same number of firearms charges (Table 16).

Table 16: Number of cases and charges sentenced, by the purpose of the firearm possession

Purpose of possession	Cases	Charges	Total	Average charges per case
Criminal activity	369	Firearms	724	1.96
		All	3,115	8.44
Not criminal activity	33	Firearms	67	2.03
		All	183	5.55

- 5.53 In each year during the reference period, the majority of cases with a firearms offence involved firearms possession for a criminal purpose. Criminal activity was also noted in an increasing number of firearms cases during the reference period. However, as the total number of cases increased, the percentage of all cases deemed to have occurred in the context of criminal activity remained consistent between 80% in 2015–16 and 88% in 2016–17.¹⁴⁰
- 5.54 Firearms charges in cases related to criminal activity were far more likely to receive imprisonment: 91% of firearms charges in cases of criminal activity received imprisonment compared with 57% in cases not related to criminal activity. This is consistent with the guidance provided by the Court of Appeal in *Berichon v The Queen*, discussed at [1.60]–[1.62].

135. Between July 2015 and June 2016 in the Magistrates' Court, 11,270 sentenced cases were identified as occurring in a family violence context. This represents 11% of the 99,723 cases sentenced in the Magistrates' Court during that time: Sentencing Advisory Council, *Swift, Certain and Fair Approaches to Sentencing Family Violence Offenders: Discussion Paper* (2017) 34.

136. In the 2015–16 financial year, 477 matters were noted to have occurred in circumstances of family violence; this amounts to approximately 17% of all prosecutions initiated by the Office of Public Prosecutions: *ibid* 35.

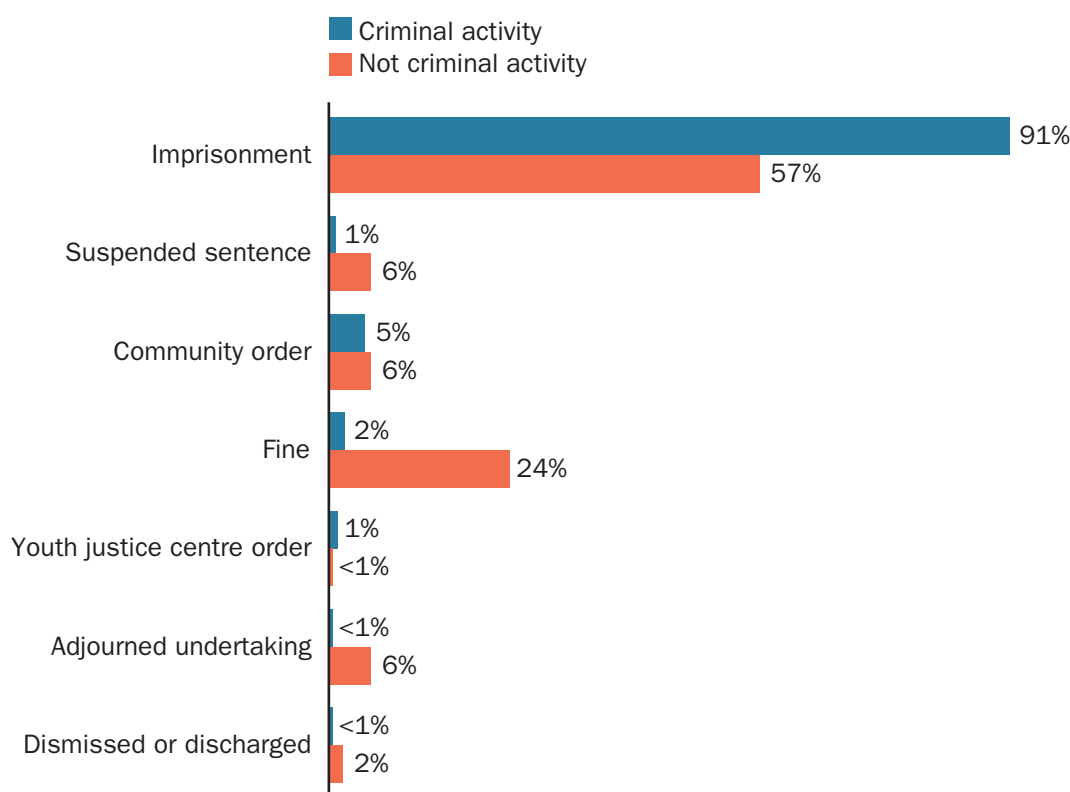
137. In two of these cases, the offenders were sentenced for sexual offences against family members and received terms of imprisonment as the base sentence. In the other case, the offender was sentenced for armed robbery and several other offences (none of which related to family violence) and received a CCO.

138. *Berichon v The Queen* (2013) 40 VR 490, 496.

139. For an explanation of how the Council coded for this factor, see Appendix 2.

140. Purpose of possession was not reliably recorded in 36 of the 438 cases examined (8%). The percentages shown here account for these cases.

Figure 22: Percentage of charges sentenced, by the purpose of firearm possession and sentence imposed on the firearms charge



5.55 Case Study 4 provides an example of when an offender may not receive a custodial sentence for firearms offending involving criminal activity.

Case Study 4: offender receiving a non-custodial sentence for firearms offending as part of criminal activity

The offender, having experienced the breakdown of a long-standing intimate relationship, struck up a friendship with a member of his local sporting club. This acquaintance introduced the offender to drug use as a coping tool, which quickly developed into addiction. The offender was soon recruited as a drug dealer in order to support his expensive methylamphetamine use. The offender was then apprehended by police, in possession of various drugs and firearms.

The judge noted that, while the offending was extensive, the offender was particularly vulnerable, as he was heavily addicted to methylamphetamine (and therefore not making any profit from his trade) and was at the very bottom of the drug operation's hierarchy. Additionally, the offender had no relevant prior offending. He had undergone drug treatment and courses while on remand and was assessed as having very good prospects for rehabilitation.

While the firearms were clearly linked to the offender's ongoing criminal enterprise, the judge found it appropriate to impose a non-custodial sentence.

- 5.56 With regard to the sentencing factors, there were some notable differences¹⁴¹ between offenders sentenced for a firearms offence where the firearm was possessed for a criminal purpose and others offenders. Offenders sentenced for possessing a firearm for a criminal purpose were significantly:
- more likely to be methylamphetamine users (69% compared with 33%);
 - more likely to be on an order at the time of the offence (37% compared with 12%);
 - more likely to have substance abuse issues (83% compared with 52%) and childhood trauma issues (28% compared with 12%); and
 - less likely to have positive prospects of rehabilitation (33% compared with 67%).
- 5.57 Furthermore, there was correlation between an offender's prospects of rehabilitation, the purpose of the firearms possession and the imposition of imprisonment. For example, 97% of cases received imprisonment where the firearms possession related to criminal activity and the offender had contingent/guarded prospects of rehabilitation.¹⁴² By comparison, 75% of cases received imprisonment where the firearms possession related to criminal activity and the offender had *positive* prospects of rehabilitation.

Cluster analysis

- 5.58 Cluster analysis¹⁴³ was utilised to examine all available sentencing factors in 438 cases. This was done to help discover groups of cases that were statistically different from each other, while each group's constituent cases were statistically similar to each other.
- 5.59 Due to limited availability and reliability of some data, not all of the coded factors were used in cluster analysis.¹⁴⁴ Some factors were categorised before being included. A final set of 13 factors and their categories were used to determine clusters:
- age of offender at sentence date;
 - purpose of firearm possession (criminal activity/not criminal activity/not stated);
 - methylamphetamine user (yes/no);
 - family violence offender (yes/no/not stated);
 - on order at time of offending (yes/no);
 - prior offending (yes/no);
 - prior firearms offending (yes/no/not stated);
 - mental illness/cognitive impairment/acquired brain injury/diagnosed mental condition (yes/no);
 - substance abuse (alcohol and/or drug) (yes/no);
 - adult ill-health/homelessness/trauma (yes/no);
 - childhood trauma/neglect/family violence/abuse (yes/no);
 - remorse expressed (yes/no/not stated); and
 - prospects of rehabilitation (positive/contingent/negative/not stated).

141. Statistically significant differences were determined using a t-test for difference in means and a z-test for difference in proportions, both at 0.05 level of significance.

142. This relates to cases in which imprisonment was the most serious penalty imposed on a firearms charge in that case.

143. For an explanation of the cluster analysis, see Appendix 2.

144. The coded factors of gender and guilty plea were not included in the clustering algorithm since their values were overwhelmingly skewed and would not have contributed usefully to grouping the offenders.

5.60 The 438 cases were split into three groups distinguished by their sentencing factors. The defining characteristics of each cluster are based on statistical testing.¹⁴⁵

5.61 The clusters are detailed in Appendix 4.

Cluster 1

5.62 Cluster 1 contains 158 cases (36% of the coded cases). Relative to offenders in the other clusters, offenders in Cluster 1 were significantly:

- less likely to possess firearms for criminal activity (77%);
- less likely to be on an order at the time of the offending (14%);
- less likely to be family violence offenders (4%);
- less likely to have prior sentenced offending (66%); and
- more likely to have positive prospects of rehabilitation (87%).

Cluster 2

5.63 Cluster 2 contains 123 cases (28% of the coded cases). Relative to the offenders in the other clusters, offenders in Cluster 2 were significantly:

- more likely to have had suffered childhood trauma (70%);
- more likely to have suffered a mental illness or cognitive impairment (70%); and
- more likely to be on an order at the time of the offending (67%).

Cluster 3

5.64 Cluster 3 contains 157 cases (36% of the coded cases). Relative to offenders in the other clusters, offenders in Cluster 3 were significantly:

- more likely to have contingent/guarded prospects of rehabilitation (84%); and
- less likely to have positive prospects of rehabilitation (0%).

5.65 The average number of charges per case did not differ significantly between clusters; each cluster had around two *firearms* charges and eight total charges per case on average.

Discussion

5.66 Cluster analysis defined firearms offenders on the basis of prior offending, childhood trauma and mental illness, among other personal factors recorded in the sentencing remarks. There were limited differences in the co-sentenced offences for each cluster and in the sentencing outcomes for cases in each cluster. Imprisonment was by far the most common total effective sentence in each cluster.

¹⁴⁵. Statistically significant differences were determined using a t-test for difference in means and a z-test for difference in proportions, both at 0.05 level of significance.

- 5.67 Some differences between the clusters include:
- all three levels of drug trafficking (non-commercial, commercial and large commercial) are among the co-sentenced offences of Cluster 3;
 - theft was the most common co-sentenced offence in Cluster 2 (38% of cases); and
 - offenders in Cluster 1 were the least likely to receive imprisonment both as the most serious penalty for firearms offences in their case (when imprisonment was the maximum penalty) and as the total effective sentence.
- 5.68 The results of the cluster analysis may suggest that the offenders are grouped in relation to their degree of prior contact with the criminal justice system. Offenders from Cluster 3 were more advanced in their criminal trajectories than those in Cluster 1, who were more likely to have positive prospects of rehabilitation. A stakeholder suggested that these clusters are likely to be similar to offender groups for other kinds of offending, in that ‘when you hit the system, you graduate [from Cluster 1 to Cluster 3]’.¹⁴⁶

Cumulation

- 5.69 While a general presumption is that every sentence of imprisonment will be served concurrently (subject to some exceptions), sentencing courts have the discretion to order that a term of imprisonment be served cumulatively, or partly cumulatively, upon another sentence.¹⁴⁷
- 5.70 In prior consultation, stakeholders expressed concerns regarding the low levels of cumulation for firearms charges co-sentenced alongside other offences. Stakeholders indicated that the sentences and cumulation on the firearms charge often did not reflect the criminality of the possession of the firearm.¹⁴⁸
- 5.71 In most of the cases examined in the higher courts, the firearms offence was not the base sentence in the case. In many cases, the relationship between the firearms offence and the base sentence is relevant to determining the sentence on the firearms charge, as well as the cumulation imposed. For example, if an offender is charged with prohibited person possess, carry or use a firearm as well as another offence involving use of the same firearm, cumulation may be appropriate where the evidence indicates that the offender possessed the firearm for a period of time extending beyond the use of the firearm in the other offending.¹⁴⁹
- 5.72 Of the 853 firearms charges sentenced in all cases, 661 carried a maximum penalty of imprisonment, and 564 of these charges did receive imprisonment. Almost half of the charges sentenced in the higher courts that received imprisonment (49%) had some amount of cumulation recorded.¹⁵⁰

146. Firearms Stakeholder Discussion Forum (5 March 2019).

147. *Sentencing Act 1991* (Vic) ss 16(1)–(1A). There are a number of exceptions to this presumption of concurrency, including terms of imprisonment imposed on a prisoner in respect of a prison or escape offence or terms of imprisonment imposed on persons who fall to be sentenced as *serious offenders* within the meaning of Part 2A of the *Sentencing Act 1991* (Vic).

148. Sentencing Advisory Council (2016), above n 3, 54, citing a meeting with a number of Crown Prosecutors (11 February 2016). See also Crown submissions in *DPP v Osborn*, involving a manslaughter and firearms offence, where two months’ cumulation on the firearms charge was described by the Crown as ‘derisory’: *DPP v Osborn* [2018] VSCA 207 (23 August 2018) [184].

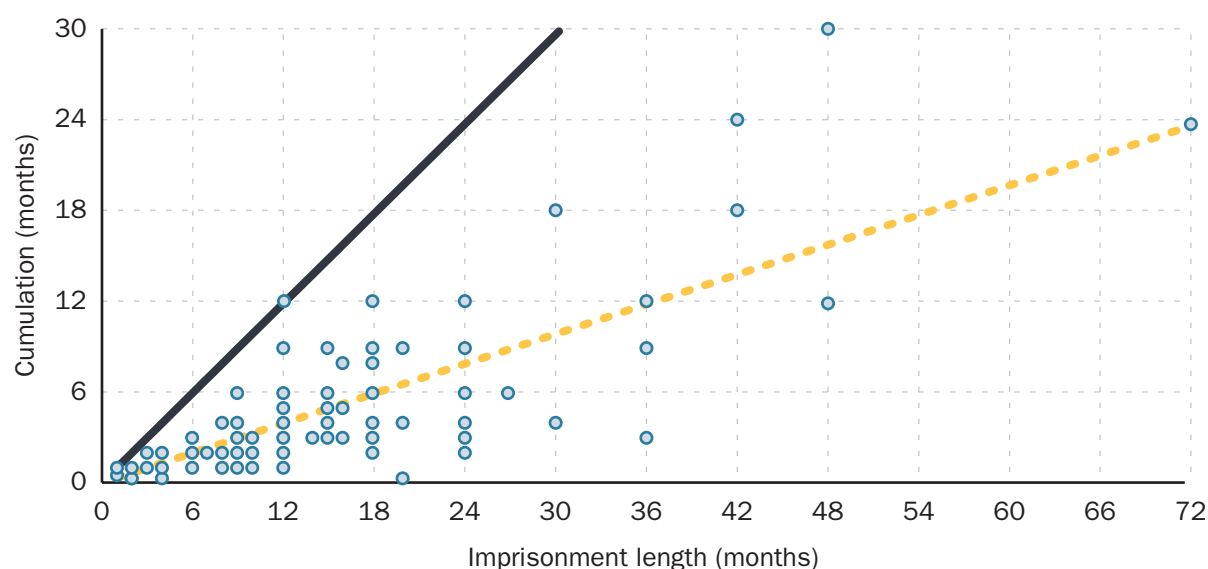
149. See for example, *DPP v Graorowski* [2018] VSCA 332 (7 December 2018). Cumulation may also be appropriate if the offender has been charged with an offence, and a firearm is located following a search of an offender’s premises or vehicle: see for example, the circumstances in *Arico v The Queen* [2018] VSCA 135 (24 May 2018).

150. Cumulation is examined for firearms charges that received immediate imprisonment (excluding partially suspended sentences). Some of these sentences were imposed in addition to a CCO. If an imprisonment term was imposed as the base sentence in a case, it is not counted as cumulative or concurrent and is excluded from this analysis. This is because base sentences for firearms offences are uncommon in firearms cases (10% of cases), and counting the base sentence as either fully concurrent or fully cumulative would skew the representation of cumulated proportions. Charges sentenced within an indictment that was partially cumulated upon another indictment are not included in this analysis, as the cumulation specific to each charge cannot be determined.

In comparison to prior research, this appears to be a high proportion of offences receiving cumulation. In the Council's *Secondary Offences in Victoria* report, it was found that less than 10% of the sentences for bail-related secondary offences received any cumulation.¹⁵¹

- 5.73 Firearms charges with cumulation had an average of 33% of their imprisonment term cumulated on a base sentence. Figure 23 depicts cumulation patterns by relating the original sentence imposed (horizontal axis) to the number of months of that sentence ordered to be cumulative (vertical axis). The dotted yellow line indicates the average cumulated proportion of all imprisonment terms, and the solid grey line indicates what would be full cumulation for the imprisonment length imposed. Each dot on a scatterplot represents at least one charge with the combination of term and cumulation ordered.

Figure 23: Scatterplot distribution of imprisonment lengths imposed on firearms charges, and number of months ordered to be served cumulatively



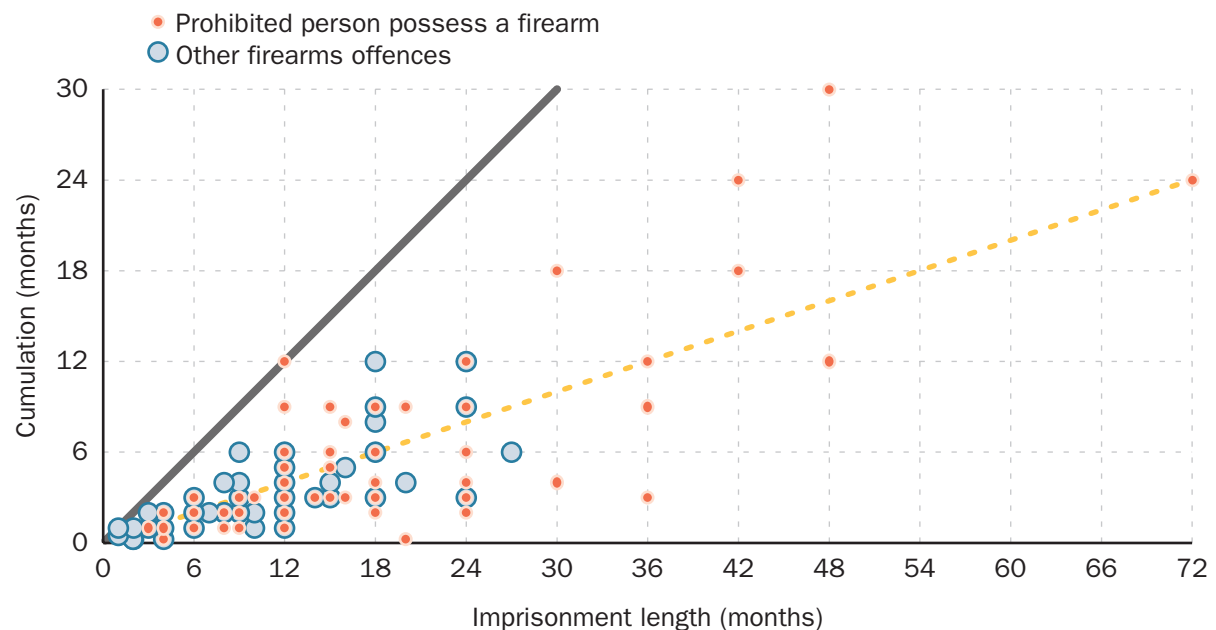
- 5.74 The offence of prohibited person possess, carry or use a firearm¹⁵² was the subject of 328 charges among 223 cases. Among cases that were coded, 157 charges of this offence (in 120 cases) had a cumulation value clearly defined by the sentencing judge.
- 5.75 As in Figure 23, Figure 24 (page 57) shows the distribution of imprisonment lengths and their cumulated terms but these are separated by offence type. Orange dots represent all charges of prohibited person possess a firearm that can be examined for cumulation. Blue circles represent all other firearms charges that can be examined for cumulation.
- 5.76 With an overall average cumulation proportion of 33% (for all 276 charges), 157 charges of prohibited person possess a firearm had on average 31% of their imprisonment term cumulated. The remaining firearms offences (119 charges) with cumulation recorded had on average 35% of their imprisonment term cumulated.

151. The bail-related offences were commit an indictable offence whilst on bail, contravene a conduct condition of bail and fail to answer bail. See further Sentencing Advisory Council, *Secondary Offences in Victoria* (2017) 20.

152. *Firearms Act 1996* (Vic) s 5(1) carries a maximum penalty of 10 years' imprisonment. Prior to 16 May 2012, there were two offences: prohibited person possess, carry or use a registered firearm, carrying a 10-year maximum penalty (section 5(1)), and prohibited person possess, carry or use an unregistered firearm, carrying a 15-year maximum penalty (section 5(1A)). Section 5(1A) of the *Firearms Act 1996* (Vic) was repealed by the *Control of Weapons and Firearms Acts Amendment Act 2012* (Vic) s 8(2). See further discussion at [1.32]–[1.36]. There were 47 charges under the *Firearms Act 1996* (Vic) s 5(1A) (repealed) sentenced in the higher courts during the reference period.

- 5.77 The longest sentence imposed specifically on a firearms offence (a non-aggregate sentence) was 72 months, of which 24 months was cumulated upon the base sentence. Despite this sentence being an outlier (see Figure 21, page 41), the cumulation of the sentence was in line with the overall average rate.¹⁵³

Figure 24: Scatterplot distribution of imprisonment lengths imposed on firearms charges and the proportion of the sentence ordered to be served cumulatively, by offence type



- 5.78 The Council also considered whether the fact that the offender possessed the firearm for a criminal purpose had an effect on the levels of cumulation imposed. There were 260 firearms offences sentenced in cases of criminal activity that were given imprisonment and had a cumulation amount stated. The average proportion cumulated among these charges was 34%. There were just eight firearms charges sentenced where the offender did not possess the firearm for a criminal purpose and a cumulation amount was stated. The imprisonment terms for these eight charges had an average of 18% cumulated upon the base sentence.

Double punishment

- 5.79 An accused may be at risk of double punishment in a number of circumstances. First, their act or omission constitutes an offence under more than one Act, or under both statute and at common law. Second, the act or omission may constitute an offence under the law of different Australian states or territories, or under both state and federal law.

- 5.80 The *Interpretation of Legislation Act 1984* (Vic) states that:

Where an act or omission constitutes an offence under two or more laws, the offender shall, unless the contrary intention expressly appears, be liable to be prosecuted under either or any or all of those laws but shall not be liable to be punished more than once for the same act or omission.¹⁵⁴

¹⁵³. This case related to an offender who received 14 years and two months' imprisonment for armed robbery. Other relatively long imprisonment sentences were between 52 months and 75 months. Those imprisonment terms were aggregate sentences and therefore not presented in Figure 24.

¹⁵⁴. *Interpretation of Legislation Act 1984* (Vic) s 51.

- 5.81 In *Pearce v The Queen*, the High Court took a pragmatic approach to the issue of double punishment, stating:

To the extent to which two offences of which an offender stands convicted contain common elements, it would be wrong to punish that offender twice for the commission of the elements that are common.¹⁵⁵

- 5.82 The Victorian Court of Appeal has emphasised that double punishment does not necessarily occur because an offender is sentenced on two offences where the same fact is an element of one and is also an element or a circumstance of aggravation of another. This is provided that the sentencing court takes into account the sentence imposed on the first offence when imposing a sentence on the second offence, to avoid punishing the offender twice for the same act.¹⁵⁶

Double punishment, cumulation and firearms offences

- 5.83 The issue of double punishment in regards to firearms offences generally arises when the firearm was used in the commission of another offence, and the offender is to be sentenced for a number of offences arising from a single event or a series of related events. This is because where 'a number of serious offences are committed in a course of a single incident, a separate count should generally be laid for each offence if such conduct is to be taken into account'.¹⁵⁷

- 5.84 Where offences do not amount to double conviction or double punishment but are closely related, a question remains as to whether ordering sentences to be served cumulatively, or partly cumulatively, amounts to double punishment. The principles relating to concurrent and cumulative sentences are closely related to the law on double punishment.¹⁵⁸

- 5.85 In relation to the sentencing of prohibited person possess, carry or use a firearm, in *Berichon v The Queen* Redlich JA provided a general statement of principle in explaining how to avoid double punishment where an offender faces a charge for possession of the firearm and a charge for an offence in which the firearm was used:

Where an offender faces two charges, the first being for a criminal offence committed in circumstances where in aggravation of that offence the offender uses or possesses a firearm and the second being a charge for possession of that unregistered firearm as a prohibited person, to avoid double punishment the criminal conduct the subject of the first charge cannot be relied upon in relation to the second charge of possession to elevate that possession into the more serious category [of possession with criminal intent]. For the second charge of possession to be placed in the more serious category, the state of the evidence must permit the conclusion that the possession was for some criminal purpose distinct from the unlawful activity the subject of the first charge.¹⁵⁹

- 5.86 Firearms offences are often charged alongside other offences, such as armed robbery or drug-related offences. In some cases, the elements of the offence of possession of the firearm overlap with the elements of another offence, such as armed robbery.¹⁶⁰ In other cases, the possession of the firearm may be considered an *aggravating factor* of another offence, such as making a threat to kill.

155. *Pearce v The Queen* (1998) 194 CLR 610 [40].

156. *Armistead v The Queen* [2011] VSCA 84 [9] (Redlich JA); see also *Moore v The Queen* (1995) 79 A Crim R 247, 254.

157. *R v King* [2007] VSCA 38 (15 March 2007) [7]; see also *R v De Simoni* (1981) 147 CLR 383. The issue of double punishment must be considered at the stage of laying charges as well as in determining orders for cumulation. For an example of a case in which a conviction for firearm possession was set aside on appeal see *R v Paoletti* [2012] VSCA 242 (5 June 2003); see also *Armistead v The Queen* [2011] VSCA 84 (5 April 2011) (in this case, two counts of possessing the same firearm while being a prohibited person amounted to double punishment, and a conviction for one of the charges was set aside); *Pearce v The Queen* (1998) 194 CLR 610 [43]–[45].

158. Freiberg (2014), above n 46, 788.

159. *Berichon v The Queen* (2013) 40 VR 490 [27] (Redlich JA).

160. Possession of a weapon is an element of the offence of armed robbery: *Crimes Act 1958* (Vic) s 75A. For further discussion, see [5.98].

- 5.87 In several cases, the Victorian Court of Appeal has examined sentences involving a charge of possession of a firearm alongside a charge of an offence in which the firearm was used. The Court of Appeal has cautioned against the treatment of the presence of a firearm as an 'aggravating feature' of an offence such as armed robbery, in circumstances where there is separate and significant punishment for the possession of the firearm in the same case.¹⁶¹ Therefore, the court must ensure that, in instances of overlap between offences, the actions that constitute one offence are not also used to justify aggravation of a second offence.¹⁶²
- 5.88 There are few prescriptive rules for cumulation; whether or not a total effective sentence is just and appropriate is generally a 'matter of impression'.¹⁶³ The total effective sentence imposed must not be excessive or 'crushing'.¹⁶⁴ The Court of Appeal has stated that in every case 'sound discretionary judgment' is necessary to determine whether to direct cumulation or concurrency.¹⁶⁵

Cumulation in firearms cases sentenced alongside drug trafficking and armed robbery

- 5.89 This section examines the issue of cumulation for the sentencing of firearms offences alongside two different offences: trafficking in a commercial or large commercial quantity of a drug of dependence, and armed robbery.
- 5.90 The Council did not examine in statistical detail the cumulation of imprisonment terms imposed on firearms offences with regard to the range of co-sentenced offences. The high volume of concurrent sentences suggests that co-sentenced offences in firearms cases are generally more serious than the firearms offence sentenced.

Sentencing offenders for firearms offences and trafficking in a commercial quantity of a drug of dependence

- 5.91 Over the reference period, there were 52 cases in which an offender was sentenced in the higher courts for trafficking in a commercial or large commercial quantity of a drug of dependence,¹⁶⁶ as well as for a firearms offence carrying a maximum penalty of imprisonment.¹⁶⁷
- 5.92 In the majority of these cases, the relationship of the firearms offence to the trafficking offence was that the firearm or imitation firearm was found during a search of a property. The firearm was often found alongside drugs of dependence or other objects, such as bags and scales, related to the trafficking of drugs.¹⁶⁸

161. See for example, *Kruzenga v The Queen* [2014] VSCA 10 (11 February 2014) [15]–[16], [19] (Weinberg JA), in which the Court of Appeal found that the sentence amounted to double punishment as the sentencing judge treated the shortening of the firearm as 'an aggravating feature of the armed robbery, as well as an offence in its own right'. See also *Saner v The Queen* [2014] VSCA 134 (27 June 2014) [118], [120]–[121] (Tate JA).

162. *Armistead v The Queen* [2011] VSCA 84 [9] (Redlich JA); see further Freiberg (2014), above n 46, 216.

163. *R v Aleksov* [2003] VSCA 44 (9 April 2003) [17].

164. The principle of totality provides that 'a judge who is sentencing an offender for a number of offences [must] ensure that the aggregation of the sentences appropriate for each offence is a just and appropriate measure of the total criminality involved', and that the overall sentence should not be "crushing" in the sense that it would destroy any reasonable expectation of a useful life after release: *DPP v Alsop* [2010] VSCA 325 (17 November 2010) [30]. For further discussion, see Freiberg (2014), above n 46, 795–802; *Postiglione v The Queen* (1997) 189 CLR 295, 307–308 (McHugh J), citing *Mill v The Queen* (1988) 166 CLR 59, 63; *R v Vaitos* (1981) 4 A Crim R 238.

165. *R v O'Rourke* [1997] 1 VR 246, 253.

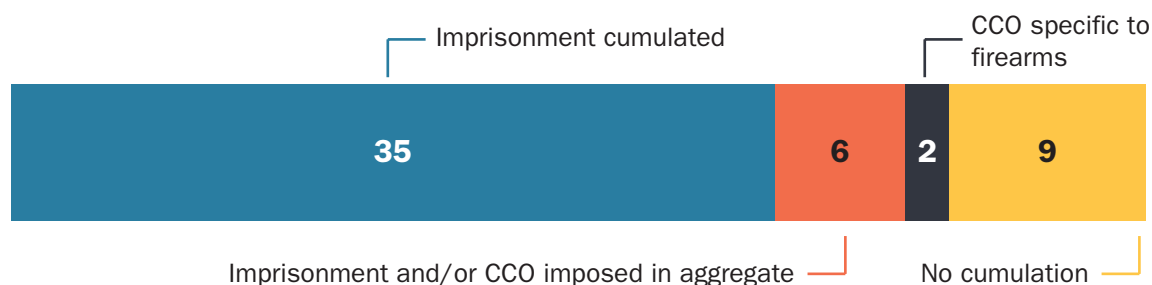
166. This includes trafficking in a commercial and in a large commercial quantity of a drug of dependence under sections 71 and 71AA respectively of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic). Of 71 charges, 28 were against section 71 and 43 were against section 71AA.

167. This would exclude cases in which the only firearms offence in the case was possession of cartridge ammunition contrary to section 124 of the *Firearms Act 1996* (Vic), which carries a maximum penalty of 40 penalty units.

168. See for example, *R v Lowe* [2014] VSC 543 (27 October 2014). In a few cases, the firearms offending, such as charges of attempting to possess an unregistered firearm, was detected through surveillance measures, such as interception of phone calls and text messages in which discussion of purchase of a firearm was detected. See also *Arico v The Queen*, discussing the admissibility of evidence of firearms in determining a charge of drug trafficking and firearms being a 'tool of the trade' for drug traffickers: *Arico v The Queen* [2018] VSCA 135 (24 May 2018) [105], [113].

- 5.93 Possession of a firearm is not an element of the offence of trafficking in a commercial quantity of a drug of dependence. However, in some instances, the offender's possession of a firearm was taken to indicate that they were a serious participant in the drug trafficking business.
- 5.94 Given the other charges in the case, the sentence on the firearms offence was not the base sentence in most of these cases.¹⁶⁹
- 5.95 In 35 cases, at least one of the sentences on a firearms charge received some cumulation on the base sentence. In a further two cases, the firearms offence or offences received a CCO imposed separately from the sentence imposed on the drug trafficking offences. In another six cases, an aggregate sentence of imprisonment, imprisonment combined with a CCO or a CCO alone was imposed on all charges.
- 5.96 In nine cases, there was no cumulation of the firearms offence on the base sentence. In some instances, the absence of cumulation could be explained by the disparity between the length of the sentence imposed on the base sentence (usually the trafficking offence) and the sentence imposed on the firearms offence.¹⁷⁰
- 5.97 The Council's analysis demonstrates that, in the majority of cases involving serious drug trafficking offences and firearms offences, some cumulation is being imposed on the sentence on the firearms charge (Figure 25).

Figure 25: Number of cases in which trafficking in a drug of dependence and a firearms possession offence were sentenced, by the cumulation ordered on the firearms charge



Sentencing offenders for firearms offences and armed robbery

- 5.98 An offender is guilty of armed robbery if they are found to have committed any robbery and had with them a firearm, imitation firearm, offensive weapon, explosive or imitation explosive.¹⁷¹ Therefore, in some cases, an offender can be charged with armed robbery involving the use of a firearm and be charged with a separate firearms offence referring to possession of the same firearm.
- 5.99 The potential overlap between elements of two charged offences creates a risk of double punishment, as discussed at [5.79]–[5.88].

169. In some cases, the trafficking offence and the firearms offences were dealt with on separate indictments. In a few of these cases, a firearms offence was the base sentence on one of the indictments.

170. For example, in the cases of *R v Lowe* and *R v Seckold*, the offenders were sentenced for murder and trafficking in a large commercial quantity of a drug of dependence, as well as for a number of firearms offences arising from the same circumstances. The sentences on the firearms offences were not cumulated on the sentence for murder, which is most likely explained by the length of the sentence imposed on the more serious offences: *R v Lowe* [2014] VSC 543 (27 October 2014); *R v Seckold* [2014] VSC 441 (12 September 2014).

171. The definitions of these terms are found in *Crimes Act 1958* (Vic) s 77(1A).

5.100 In *Armistead v The Queen*, an offender was charged with two counts of armed robbery and two counts of possessing an unregistered firearm while being a prohibited person. In considering an appeal, the court noted that:

The offences of being a prohibited person in possession of an unregistered firearm, though committed on the same days as the robberies, were discrete offences, comprising the elements that the appellant was a prohibited person within the meaning of s 3 of the *Firearms Act 1996*, and that at the time of being a prohibited person, he had in his possession an unregistered firearm.

The sentencing judge was therefore required to impose sentences on the possession counts that did not include any penalty for the possession or use of the firearm in the course of the armed robberies.¹⁷²

5.101 The Council identified 75 cases in which an offender was sentenced for at least one charge of armed robbery,¹⁷³ as well as for a firearms offence carrying a maximum penalty of imprisonment during the reference period.¹⁷⁴ These cases were reviewed to establish whether the firearm the subject of the firearms charge was the same firearm used in the commission of the armed robbery. The Council also examined the cumulation for the sentences in these cases.

5.102 Of the 75 cases examined, in 13 cases, the firearm the subject of a firearms offence was not used in any armed robbery in the case. In many of these cases, a knife was used in the armed robbery, and the firearm the subject of the separate firearms offence was found following a search of the offender's property or vehicle. In a further four cases, it was unclear whether the weapon used in the armed robbery was the same firearm the subject of the separate firearms charge.¹⁷⁵

5.103 In the remaining 58 cases, the firearm the subject of a separate firearms offence was used in at least one armed robbery offence in the case.¹⁷⁶

5.104 Of the 58 cases in which the possession of a firearm was both an element of the offence of armed robbery and the subject of a separate firearms charge, the sentencing court imposed partial cumulation for the sentence on the firearms charge in 34 of these cases.

5.105 As shown in Figure 26 (page 62), of the remaining cases:

- in nine cases an aggregate sentence of imprisonment, imprisonment combined with a CCO or a CCO alone was imposed;
- in 11 cases no cumulation was imposed;
- in one case a fine was imposed; and
- in three cases it was unclear from the sentencing remarks whether cumulation was imposed for the firearms offence.

172. *Armistead v The Queen* [2011] VSCA 84 (5 April 2011) [10]–[11] (Redlich JA).

173. *Crimes Act 1958* (Vic) s 75A.

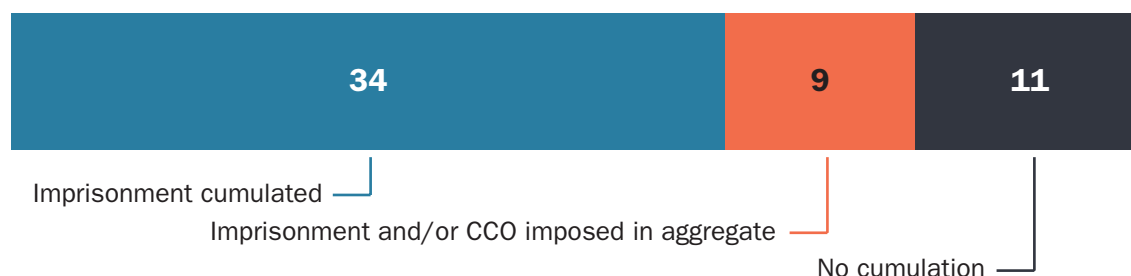
174. This therefore excludes offenders whose only firearms charge is possession of ammunition.

175. For example, in one case, it was not established that firearms that were stolen from a rural property were used in subsequent armed robberies: *DPP v Julian* [2013] VCC 930 (9 May 2013).

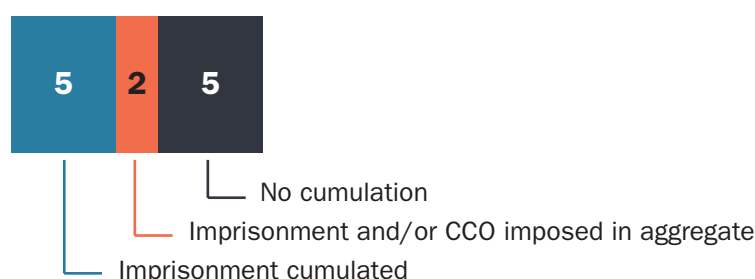
176. In some cases, offenders were charged with multiple armed robberies, some of which may have involved the use of a firearm. Included in this count are cases in which it was not explicitly stated that the same firearm was used in both offences, but it was strongly implied from the circumstances.

Figure 26: Number of cases in which armed robbery and a firearms possession offence were sentenced, by the cumulation ordered on the firearms charge

Firearm used in armed robbery is subject of the firearms charge



Firearm subject of a firearms charge is not used in armed robbery



- 5.106 In several cases, the presence of the firearm was considered an aggravating factor for the armed robbery.¹⁷⁷ In others, an aggregate sentence was imposed on both the armed robbery and the firearms offence to recognise the common elements of both offences.¹⁷⁸ Other courts addressed this issue by stating that, where there was overlap between the charge of armed robbery and the firearms offence, it was appropriate to make the sentence on the firearms charge wholly concurrent with the sentence on the armed robbery charge.¹⁷⁹
- 5.107 The Council has not examined sentences for armed robbery offences committed without the presence of a firearm and therefore has not been able to determine whether sentences for armed robbery are higher when an offender uses a firearm. Courts may elect to consider the presence of the firearm to aggravate the sentence on the armed robbery charge when sentencing a charge of armed robbery alongside a firearms charge.¹⁸⁰ In order to avoid doubly punishing the offender for the criminal use of the weapon, the sentencing court may then limit the sentence on the separate firearms charge and any cumulation.¹⁸¹
- 5.108 Figure 27 (page 63) shows the difference between firearms offences sentenced in cases with armed robbery (orange dot) and without (blue circle). While firearms offences sentenced in armed robbery cases received some of the higher imprisonment terms, sentences were generally two years or less. The average cumulated proportion in armed robbery cases was the same as the average cumulated proportion overall (33%).
- 5.109 Case Study 5 provides an example of when offenders sentenced for both armed robbery and firearms offences receive cumulation for the firearms offences in the higher courts.

177. See for example, *DPP v Pickering & McKay* [2014] VCC 2213 (18 December 2014); *DPP v Chaouk* [2016] VCC 1924 (9 December 2016).

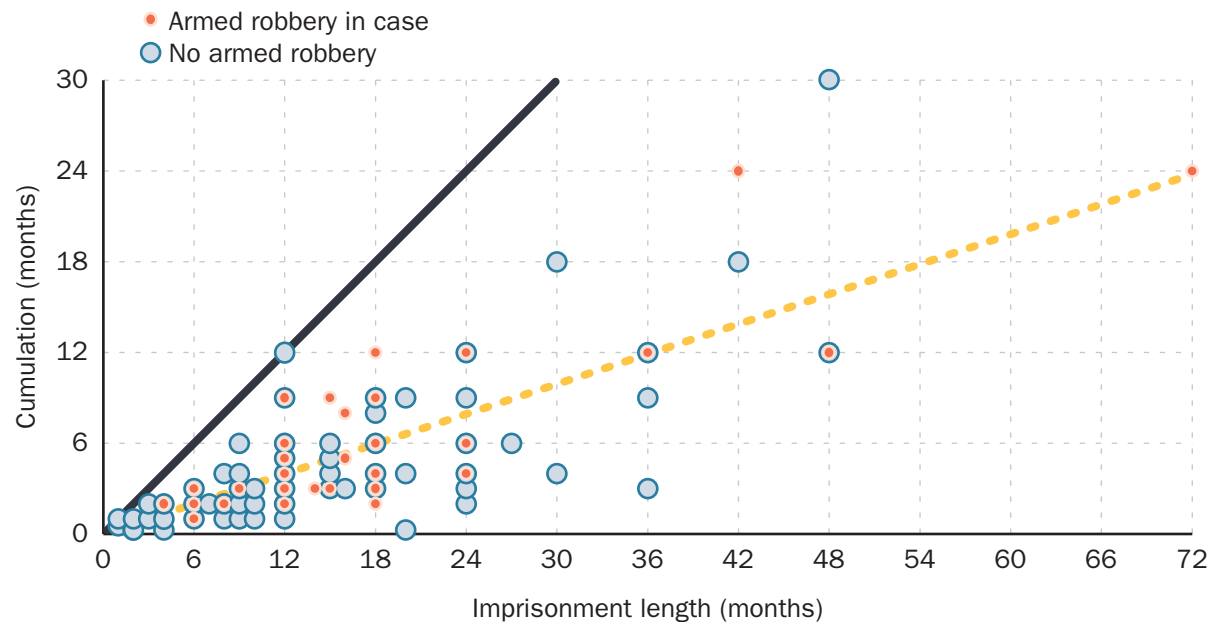
178. See for example, *DPP v Coleman* [2014] VCC 198 (3 March 2014).

179. See for example, *DPP v Smith* [2012] VCC (31 October 2012).

180. See for example, *DPP v Pickering & McKay* [2014] VCC 2213 (18 December 2014).

181. *Armistead v The Queen* [2011] VSCA 84 (5 April 2011) [10]–[11] (Redlich JA); Firearms Stakeholder Discussion Forum (5 March 2019).

Figure 27: Scatterplot distribution of imprisonment lengths imposed on firearms charges and the proportion of the sentence ordered to be served cumulatively, by the presence or absence of armed robbery



Case Study 5: a case involving both a firearms and an armed robbery offence that received cumulation in the higher courts

The offender pleaded guilty to one charge of armed robbery and one charge of being a prohibited person in possession of a firearm. The offender was sentenced for the armed robbery alongside two co-offenders, one of whom was also sentenced for trafficking in a drug of dependence. The offence involved the armed robbery of a hotel while the offender was in possession of a handgun.

Following the arrest of the offender, their property was searched and an assault rifle was detected. The handgun used in the armed robbery was never located.

The offender had a significant criminal history, including a prior offence of being a prohibited person in possession of a firearm. At the time of the armed robbery of the hotel, the offender was on a suspended sentence for prior drug trafficking offences.

In sentencing the offender for the offence of prohibited person possess, carry or use a firearm, the court noted several factors that called for cumulation on the sentence for the armed robbery. The firearm was a functional military assault rifle, capable of firing over long distances. The offender was involved in serious offences at the time that they possessed the firearm, and the court was satisfied that the possession of the firearm was for a purpose associated with ongoing criminal activity.

The offender was a long-term methylamphetamine user, with guarded prospects of rehabilitation.

The offender was sentenced to eight years' imprisonment for armed robbery and three years and six months for the offence of being a prohibited person in possession of a firearm. Two years of the sentence for prohibited person in possession of a firearm was cumulated on the armed robbery sentence, making a total effective sentence of 10 years' imprisonment with a non-parole period of seven years.

- 5.110 Stakeholders considered the average level of cumulation for firearms offences to be higher than expected, particularly when considering the issue of double punishment. However, it was noted that the level of cumulation depended on a number of factors, including the number and type of firearms charges in a case, as well as the nature of the base sentence and the relationship between the charges within the case.¹⁸²
- 5.111 Due to the numerous other factors that may influence whether a court elects to order cumulation for a particular sentence, it is difficult to draw any firm conclusions on the levels of cumulation for these offences.

Conclusion

- 5.112 This report highlights the increasing prevalence of firearms offences sentenced in Victoria over the reference period. As the prevalence of firearms offences sentenced has increased in each court jurisdiction, so has the proportion of charges receiving sentences of imprisonment.
- 5.113 Over the five-year reference period, 84% of firearms charges sentenced in the higher courts received imprisonment.¹⁸³ Almost half of the charges sentenced in the higher courts that received imprisonment (49%) had some amount of cumulation recorded (where the charge was not the base sentence nor fully concurrent). These charges had an average of 33% of their imprisonment term cumulated on a base sentence.
- 5.114 In most of the cases examined in the higher courts, the firearms offence was not the base sentence in the case. In many cases, the relationship between the firearms offence and the base sentence may affect the sentence on the firearms charge, as well as the cumulation imposed. Therefore, it is difficult to draw conclusions about the sentencing of firearms offences without reference to the relationship between the firearms charge and the other charges in the case.
- 5.115 Overall, firearms offences tend to be associated with a high level of criminal activity, and most firearms cases (68%) included at least two charges of other co-sentenced offences. In a large proportion of cases sentenced in the higher courts, the co-sentenced offences suggested a level of involvement in organised criminal activity, such as trafficking in commercial quantities of drugs of dependence.
- 5.116 Firearms offenders sentenced in the higher courts during the reference period had high rates of prior involvement with the criminal justice system (83% of offenders had a prior criminal history). Over one-third (34%) of firearms offenders sentenced in the higher courts were on an existing court order at the time of the firearms offending, and 11% were family violence offenders. In addition, 81% of firearms offenders sentenced in the higher courts had substance abuse issues: 66% of offenders were identified as methylamphetamine users. The majority of offenders had a personal history of adversity (89%), and almost one-third (32%) had a mental illness or related condition. For these reasons, over half (55%) of firearms offenders had guarded or negative prospects of rehabilitation.
- 5.117 These findings suggest that many firearms offenders sentenced in the higher courts are entrenched within the criminal justice system and pose complex challenges for sentencing courts. The inherent risk to the community of the unlawful possession of a firearm needs to be carefully considered in sentencing offences related to the possession of firearms. This is particularly the case in light of the high proportion of firearms offenders who have complex personal circumstances and conditions such as mental illness and methylamphetamine addiction, which may increase the risk to the community.

182. Stakeholders noted that a charge of prohibited person possess a firearm alongside an armed robbery charge may deserve a higher degree of cumulation than the cumulation for another firearms offence, in order to acknowledge the particular criminality of being a prohibited person: Firearms Stakeholder Discussion Forum (5 March 2019).

183. This is 84% of the 927 firearms charges sentenced in the higher courts that carried a maximum penalty of imprisonment.

Appendix 1: Consultation

Date	Meeting
11 September 2018	Meeting with Victoria Police Crime Command
17 September 2018	Meeting with Victoria Police Public Support Services
13 November 2018	Meeting with Dr Shalini Arunogiri, Turning Point
5 March 2019	Firearms Stakeholder Discussion Forum
14 March 2019	Meeting with safe steps Family Violence Response Centre

Appendix 2: Sampling, method of analysis and coding of sentencing factors

Number of cases and charges

Table A1 sets out the number of cases and charges of the 132 firearms offence provisions examined in this report and the percentage of cases sentenced in the higher courts with available sentencing remarks.

Table A1: Number of charges and cases sentenced in the higher courts with remarks available in the five years to 30 June 2017

Legislation	Remarks available	Remarks not available	Total charges
<i>Firearms Act 1996 (Vic)</i>	812	73	885
<i>Control of Weapons Act 1990 (Vic)</i>	31	1	32
<i>Crimes Act 1958 (Vic)</i>	10	0	10
Total charges	853	74	927
Total cases	438	52	490
Percentage of cases	89%	11%	100%

Alteration of sentence on appeal

The dataset in this report does not take into account any sentences or convictions altered on appeal.

Method of analysis

Cluster analysis

Cluster analysis is a way of 'organizing observed data (e.g., people, things, events, brands, companies) into meaningful taxonomies, groups, or clusters based on combinations of [variables]'.¹⁸⁴ A cluster analysis identifies groups of observations (sentenced cases) without any preconceived notion of how certain variables (in this case, sentencing factors) may be related. The cluster analysis technique:

provides no explanation as to why the clusters exist nor is any interpretation made. Each cluster thus describes, in terms of the data collected, the class to which its members belong. Items in each cluster are similar in some ways to each other and dissimilar to those in other clusters.¹⁸⁵

184. Robert Burns and Richard Burns, *Business Research Methods and Statistics Using SPSS* (2008) 553. See also 'Cluster Analysis', one of the book's 'additional advanced chapters' available at <https://studysites.uk.sagepub.com/burns/chapters.htm> at 27 March 2019.

185. *Ibid.*

Applied to sentencing, cluster analysis is a methodologically rigorous way of examining all available sentencing factors in parallel and determining whether particular combinations of sentencing factors are related (for example, the analysis may discover a group of cases in which offenders were more likely than in other cases to have shown remorse, had fewer prior convictions and demonstrated good prospects of rehabilitation).

A cluster analysis therefore respects the instinctive synthesis performed by sentencing judges – it recognises that sentencing results from the weighing up of many factors, and it does not test the effect of any individual factor on sentencing.

For this report, an adaptation of the standard, non-hierarchical *k-means* procedure was employed. Since cluster analysis is designed for variables with numeric outcomes that can be compared between observed cases, this clustering process was developed to handle mixed variable types (binary and nominal) as seen in the sentencing factors coded.¹⁸⁶

Sentencing factors

This section discusses the rationale for the selection of each sentencing factor examined by the Council. The selection of factors for analysis was informed by stakeholder consultation, judicial commentary and an examination of prior research in the area.

The selection of factors was not limited to only those factors known to directly influence sentencing outcomes. Instead, a broader approach was taken that sought to identify profiles of offending behaviour within firearms cases, in addition to identifying those factors that may have contributed to the sentence imposed.

Sentencing factors analysed

The analysis examined sentencing factors relating to the circumstances of the offence and the offender.

If one of these factors was referred to by the judge in the sentencing remarks, it was coded accordingly, regardless of the weight or degree of relevance attached to the particular factor by the judge. Most of the sentencing factors had binary values of 'yes' or 'no'. Some sentencing factors had multiple values; for example, prospects of rehabilitation had values of positive, negative, 'contingent/guarded' or not stated.

A number of the factors analysed are common to all sentenced cases in Victoria, such as plea type and prospects of rehabilitation. Several of the other factors are unique to firearms offences or have a particular relevance to firearms offences.

186. See Seyed Zadegan et al., 'Ranked K-Medoids: A Fast and Accurate Rank-Based Partitioning Algorithm for Clustering Large Datasets' (2013) 39 *Knowledge-Based Systems* 133.

Firearms offending: specific factors

Number of firearms involved in sentenced charges

The Council coded for the number of firearms in each sentenced charge to determine whether multiple firearms were rolled together into one charge.

Firearm type

The Council attempted to code the firearm type (such as shotgun, handgun, longarm or other firearm type). In the majority of cases, the firearm type was not specifically noted. Where cases did describe the firearm, a diversity of descriptions was used limiting the possibility of meaningful analysis.

Purpose of possession (for possession charge)

For charges involving possession of a firearm, the purpose of possession was coded in the broad categories of *criminal activity*, *not criminal activity* or *purpose not stated*.

The aim was to distinguish between criminal and legitimate purposes of possessing a firearm – for example, the possession of a handgun (for personal security) at a suburban residence that is the site of clandestine drug cultivation/manufacturing operations versus a rifle or shotgun on a farm for the protection of livestock.

If the sentencing remarks made an explicit finding as to the purpose of possession, the Council coded the factor in accordance with the views of the court. In other cases, the Council coded in accordance with the circumstances surrounding the possession, including co-sentenced offences.

Number of co-offenders

The Council also coded for the number of sentenced co-offenders in each case, irrespective of whether they were co-offenders specifically with respect to the firearms offending.

Factors relating to the offender

The Council coded for a number of different factors personal to the offender, in addition to gender and age (at the time of sentencing), in each case.

Offender was on an order when offending

The Council coded for whether the offender was on any of the following orders at the time of offending:

- bail;
- community-based order/community correction order;
- suspended sentence;
- parole;
- family violence intervention order; and/or
- other.

Prior offending

The Council coded for an offender's prior offending. Offences were categorised as follows:¹⁸⁷

- homicide;
- acts intended to cause injury/violent offences;¹⁸⁸
- sexual offences;
- dangerous/negligent/endangering offences;¹⁸⁹
- abduction/harassment/intimidation;
- robbery/extortion;
- burglary/break and enter;
- theft;
- dishonesty offences – fraud/deception;
- drug offences;
- weapons offences (including firearms offences);
- property/criminal damage;
- public order;
- driving/vehicle; and
- justice procedures/breach offences.

Prior firearms offending

In addition to coding the existence of prior weapons offences, the Council also coded for the *number* of prior firearms offences committed by an offender, as well as the sentences received for those offences, including:

- dismissal;
- adjourned undertaking;
- fine;
- community order;
- suspended sentence;
- youth justice centre order; and/or
- imprisonment.

Plea and its timing

The offender's plea was coded as one of the following:

- early;
- late;
- stage not indicated;
- not guilty; or
- not stated.

187. The categorisation was based largely on the divisions found in the Australian Bureau of Statistics' *Australia and New Zealand Offence Classification* (ANZOC): Australian Bureau of Statistics, *Australia and New Zealand Offence Classification*, cat. no. 1234.0 (2011).

188. As per ANZSOC, threat to kill was categorised as an *assault*, a part of Division 2: acts intended to cause injury: see further *ibid*.

189. This offence category includes dangerous/careless driving.

Any guilty plea, regardless of its timing, often leads to a significant reduction in sentence. This is due to the utilitarian benefit gained in avoiding the public expense of a trial, as well as sparing victims and witnesses the further trauma of giving evidence.

If a court decides to impose a less severe sentence because of the guilty plea, in certain circumstances it is required to state the sentence it would have otherwise imposed, as a recognition of the benefit gained by the offender's plea.¹⁹⁰

The timing of a guilty plea may affect the extent of the reduction of sentence. Generally, the later the plea, the less discount is applied to the sentence.

Assessment of remorse

Evidence of remorse, or feelings of regret or guilt about one's conduct, is a factor going to mitigation of sentence. Usually a guilty plea (especially an early one) is viewed by a court as evidence of remorse. However, the two are not synonymous. A court may find an absence of remorse, even where an offender has chosen to plead guilty purely for the sentence discount such a plea usually brings. The assessment of remorse was coded in the broad categories of *positive*, *negative* or *not stated*.

Prospects of rehabilitation

An offender's prospects of rehabilitation were coded in the categories of *positive*, *contingent*, *negative* or *not stated*. A majority of the sentencing remarks made some assessment of the offender's prospects of rehabilitation.

An offender's prospects were usually considered *contingent* (or guarded) where, for example, the offender had a relatively extensive prior history of similar offending, or where an offender's personal circumstances meant that future desistance would depend largely on their ability to effect significant lifestyle changes, such as avoiding bad influences or undergoing treatment for drug addiction or mental illness.

Offender's gender

The Council coded the offender's gender as identified in the sentencing remarks.

Offender's age at the time of offending

The remarks usually stated the offender's age at the time of offending. Alternatively, the age could be calculated by comparing an offender's birthday (if stated) with the date of the offence, or estimated by comparing the date of the offence with the age of the offender on the day of sentencing.

Personal history

Factors relating to the personal history of the offender were coded, including:

- mental illness/cognitive impairment/acquired brain injury/other diagnosed mental condition;
- substance abuse (including drug and/or alcohol);
- adult ill-health/homelessness/other trauma; and/or
- childhood abuse/neglect/family violence victim/other trauma.

¹⁹⁰. *Sentencing Act 1991* (Vic) s 6AAA.

The Council also coded specifically for whether the offender was a methylamphetamine user¹⁹¹ at the time of the offence, or if the offender's prior use of methylamphetamine was disclosed in the sentencing remarks.

These factors were coded not only to establish patterns in offender profiles but also to assess the extent to which these factors affected sentencing outcomes.

Family violence offender

An offender was coded as a *family violence offender* if:

- the offending was in the context of family violence (for example, the offender used a firearm to intimidate a family member);
- the offending otherwise involved a breach of a family violence intervention order or safety notice; or
- the offender had a prior history of family violence offending disclosed in the sentencing remarks.

Undertaking to assist police

The Council coded specifically for whether the offender gave an undertaking to assist law enforcement authorities in the investigation or prosecution of other offences. Such undertakings may result in the court imposing a less severe sentence. In such a case, the court must make a statement to that effect, as well as give the details of the undertaking.¹⁹²

This factor did not include *assistance* in the general sense of the offender being frank or making admissions, or otherwise being compliant with investigators.

Unreliable factors

The coded outcomes on the source of the firearm or ammunition were unreliable. Of those cases in which the court referred to it, 28% of weapons were stolen. However, there are issues with the reliability of this data, as it is unlikely that an offender would reveal the true source of the firearm.¹⁹³

Similarly, while the Council initially attempted to code the firearms type (such as shotgun, handgun, longarm or other firearm type), in the majority of cases the firearm type was not specifically noted. Where cases did describe the firearm, a diversity of descriptions was used limiting the possibility of meaningful analysis.

Both Indigenous status and country of birth cannot reliably be ascertained from the sentencing remarks. In the majority of cases, an offender's Indigenous status was not stated. In a large proportion of cases, the offender's country of birth was not stated. The majority of offenders were born in Australia.

The coding of whether an offender had prior offences or was a family violence offender is limited by the fact that not all prior offences may be mentioned in the sentencing remarks.¹⁹⁴ Only relevant prior offending is likely to be identified in the sentencing remarks.

191. Offenders who are described as 'ice' users fall within this category, as ice is a form of methylamphetamine: Alcohol and Drug Foundation, 'Ice' (adf.org.au, 2018) <<https://adf.org.au/drug-facts/ice/>> at 27 March 2019.

192. *Sentencing Act 1991* (Vic) s 5(2AB).

193. See for example, *DPP v Weightman* [2014] VCC 1149 (18 July 2014) [14].

194. Some priors may not have been brought to the attention of the court by either of the parties. In addition, the judicial officer may not mention all specific prior offences in their sentencing remarks if they are not relevant to the sentencing exercise.

Appendix 3: Data methodology

Firearms offences sentenced during the reference period, 2012–13 to 2016–17

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
Control of Weapons Act 1990 (Vic)	5AB(1)	Non-prohibited person possess/carry/use imitation firearm without exemption or approval	Possess/carry/use	2 years	271	19	7	297
	5AB(2)	Prohibited person possess/carry/use an imitation firearm	Possess/carry/use	10 years	166	1	25	192
Crimes Act 1958 (Vic)	29	Use a firearm to resist arrest	Possess/carry/use	10 years	2		4	6
Crimes Act 1958 (Vic)	31A	Carry firearm or imitation firearm when committing an indictable offence	Possess/carry/use	5 years	6			6
Crimes Act 1958 (Vic)	31B(2)	Carry weapon with criminal intent (incl. firearms)	Possess/carry/use	5 years	6		5	11
Crimes Act 1958 (Vic)	74AA(1)	Theft of a firearm	Possess/carry/use	15 years	8	1	1	10
Family Violence Protection Act 2008 (Vic)	158(4)	Fail to immediately surrender a firearm or ammunition	Possess/carry/use	60 penalty units for a firearm	4			4
				30 penalty units for ammunition	1			1

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
Firearms Act 1996 (Vic)	5(1)	Prohibited person possess/carry/use a firearm (including unregistered firearm)	Possess/carry/use	10 years	1,724	25	328	2,077
	5(2)	Prohibited person possess/carry/use a silencer or prescribed item	Possess/carry/use	8 years	89		11	100
Firearms Act 1996 (Vic)	6(1)	Non-prohibited person possess/carry/use a registered category A longarm without a licence	Possess/carry/use	2 years	697	18	29	744
Firearms Act 1996 (Vic)	6(2)	Non-prohibited person possess/carry/use a registered category B longarm without a licence	Possess/carry/use	2 years	160	6	6	172
Firearms Act 1996 (Vic)	6(3)	Non-prohibited person possess/carry/use a registered category C longarm without a licence	Possess/carry/use	4 years	41	1	2	44
Firearms Act 1996 (Vic)	6(4)	Non-prohibited person possess/carry/use a registered category D longarm without a licence	Possess/carry/use	4 years	9		1	10

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
Firearms Act 1996 (Vic)	6(5)	Non-prohibited person possess/carry/use a registered category E longarm without a licence	Possess/carry/use	7 years	46		3	49
Firearms Act 1996 (Vic)	6(5A)	Non-prohibited person possess/carry/use a paintball marker without a licence	Possess/carry/use	2 years	9			9
Firearms Act 1996 (Vic)	6(6)	Non-prohibited person possess/carry/use an unprescribed longarm or paintball marker	Possess/carry/use	4 years	17	3	2	22
Firearms Act 1996 (Vic)	6A(1)	Non-prohibited person possess/carry/use an unregistered category A or B longarm	Possess/carry/use	First offence: 2 years. Second/ subsequent: 10 years	684	10	34	728
Firearms Act 1996 (Vic)	6A(2)	Non-prohibited person possess/carry/use an unregistered category C or D longarm	Possess/carry/use	First offence: 4 years. Second/ subsequent: 10 years	48		7	55
Firearms Act 1996 (Vic)	6A(3)	Non-prohibited person possess/carry/use an unregistered category E longarm	Possess/carry/use	First offence: 7 years. Second/ subsequent: 10 years	68	2	4	74
Firearms Act 1996 (Vic)	6A(4)	Non-prohibited person possess/carry/use an unregistered paintball marker	Possess/carry/use	First offence: 2 years. Second/ subsequent: 10 years	6			6

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
Firearms Act 1996 (Vic)	7(1)	Non-prohibited person possess/carry/use a registered general category handgun for purpose other than collecting, without a licence	Possess/carry/use	4 years	174	3	48	225
	7(2)	Non-prohibited person possess/carry/use a registered category E handgun for purpose other than collecting, without a licence	Possess/carry/use	7 years	41	1		42
Firearms Act 1996 (Vic)	7(3)	Non-prohibited person possess/carry/use a registered general category handgun manufactured before 1 January 1947 for purpose other than collecting, without a licence	Possess/carry/use	4 years	4			4
	7(4)	Non-prohibited person possess/carry/use a registered general category E handgun for purpose of collecting, without a licence	Possess/carry/use	7 years	1	2		3

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
Firearms Act 1996 (Vic)	7A(1)	Licensed handgun target shooter possess/carry/use an unauthorised type of handgun	Possess/carry/use	4 years	9			9
Firearms Act 1996 (Vic)	7B(1)	Possess/carry/use an unregistered general category handgun	Possess/carry/use	First offence: 7 years. Second/ subsequent: 10 years	866	17	54	937
Firearms Act 1996 (Vic)	7B(2)	Possess/carry/use an unregistered category E handgun	Possess/carry/use	First offence: 14 years. Second/ subsequent: 17 years	64	1	3	68
Firearms Act 1996 (Vic)	7C(1)	Possess two or more unregistered firearms	Possess/carry/use	10 years	8		1	9
Firearms Act 1996 (Vic)	8	Acquire/dispose of/ possess/carry cartridge ammunition for purposes of collection, without a licence	Collector	12 months	55	1	2	58
Firearms Act 1996 (Vic)	24(1)(a)	Licensed firearms collector fail to keep register with record of firearms or enter particulars within 24 hours of dealing	Collector	2 years	3			3
Firearms Act 1996 (Vic)	36(1)	Fail to comply with conditions of a category A or B longarm licence	Administrative	12 months	34			34

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
Firearms Act 1996 (Vic)	36(2)	Fail to comply with conditions of a category C or D longarm or general category handgun licence	Administrative	2 years	5			5
	36(3)	Fail to comply with conditions of a category E longarm licence	Administrative	4 years	2			2
	36(4)	Fail to comply with conditions of junior licence, heirlooms licence, or collector's licence	Administrative	12 months		1		1
Firearms Act 1996 (Vic)	45(3)	Fail to dispose of a category A or B longarm to a licensed firearms dealer within 28 days of licence non-renewal or variation	Deal/dispose	12 months	6		1	7
Firearms Act 1996 (Vic)	53(1)	Fail to surrender firearm or cartridge ammunition and licence document to person serving notice, or to police station within 7 days if served by post	Administrative	4 years	11			11
Firearms Act 1996 (Vic)	57(1)	Non-prohibited person possess/carry/use silencer or prescribed item without permit	Possess/carry/use	2 years	95		4	99

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
<i>Firearms Act 1996 (Vic)</i>	57A(1)	Licensed handgun security guard possess/carry/use restricted ammunition	Ammunition	12 months	5			5
<i>Firearms Act 1996 (Vic)</i>	58AAA(7)	Member of a firearms collectors club fail to comply with conditions of permit	Administrative	2 years	2			2
<i>Firearms Act 1996 (Vic)</i>	58A(11)	Fail to comply with conditions of provisional licence	Administrative	2 years	1			1
<i>Firearms Act 1996 (Vic)</i>	59(1)	Carrying on the business of a firearms dealer in category A or B longarms without a licence	Deal/dispose	2 years	5		1	6
<i>Firearms Act 1996 (Vic)</i>	59(2)	Carrying on the business of a firearms dealer in category C, D or E longarms, handguns or unprescribed firearms, without a licence	Deal/dispose	4 years	15	1	7	23
<i>Firearms Act 1996 (Vic)</i>	59A(1)	Manufacture a category A or B longarm or paintball marker without a licence	Manufacture	5 years	2			2
<i>Firearms Act 1996 (Vic)</i>	59A(2)	Manufacture a firearm (other than category A or B longarm or paintball marker) without a licence	Manufacture	10 years	10		4	14

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
<i>Firearms Act 1996 (Vic)</i>	68	Fail to comply with conditions of a dealers licence	Dealer	60 penalty units	3			3
<i>Firearms Act 1996 (Vic)</i>	87(2)	Dealer fail to ensure register of transactions contains all prescribed particulars	Dealer	2 years	14			14
<i>Firearms Act 1996 (Vic)</i>	87(3)	Dealer fail to secure register on premises	Dealer	12 months	1			1
<i>Firearms Act 1996 (Vic)</i>	87(4)	Dealer fail to ensure record of a transaction made immediately	Dealer	30 penalty units	1			1
<i>Firearms Act 1996 (Vic)</i>	88	Dealer fail to label firearm with number linked to record of transactions in register	Dealer	10 penalty units	3			3
<i>Firearms Act 1996 (Vic)</i>	90(1)	Dealer fail to produce licence for inspection	Dealer	10 penalty units	1			1
<i>Firearms Act 1996 (Vic)</i>	91(7)	Dealer fail to comply with permit for display of firearms	Dealer	12 months	2			2
<i>Firearms Act 1996 (Vic)</i>	92(B)	Dealer fail to secure display to prevent removal of firearms	Dealer	2 years	1			1
<i>Firearms Act 1996 (Vic)</i>	94(1)	Dealer dispose of category A or B longarm to non-prescribed person	Dealer	12 months	1			1

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
<i>Firearms Act 1996 (Vic)</i>	95(1)	Dealer acquire category A or B longarm from person who is not licensed dealer or agent	Acquire	2 years	18			18
<i>Firearms Act 1996 (Vic)</i>	95(1A)	Dealer acquire paintball marker from person who is not licensed dealer or agent	Acquire	2 years	1			1
<i>Firearms Act 1996 (Vic)</i>	95(2)	Dealer acquire category C or D longarm from person who is not licensed dealer or agent	Acquire	4 years	5			5
<i>Firearms Act 1996 (Vic)</i>	95(2A)	Dealer acquire general category handgun from person who is not licensed dealer or agent	Acquire	5 years	8			8
<i>Firearms Act 1996 (Vic)</i>	95(3)	Dealer acquire category E longarm from person who is not licensed dealer or agent	Acquire	7 years	5			5
<i>Firearms Act 1996 (Vic)</i>	95(4)	Dealer acquire category E handgun from person who is not licensed dealer or agent	Acquire	10 years	2			2
<i>Firearms Act 1996 (Vic)</i>	96(1)	Dispose of category A or B longarm to person who is not licensed dealer or agent	Deal/dispose	2 years	16		1	17

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
<i>Firearms Act 1996 (Vic)</i>	96(2)	Dispose of category C or D longarm to person who is not licensed dealer or agent	Deal/dispose	4 years	4			4
<i>Firearms Act 1996 (Vic)</i>	96(2A)	Dispose of general category handgun to person who is not licensed dealer or agent	Deal/dispose	5 years	7			7
<i>Firearms Act 1996 (Vic)</i>	98(1)	Take possession of firearm by means other than personally	Deal/dispose	2 years	1			1
<i>Firearms Act 1996 (Vic)</i>	98(2)	Give possession of firearm by means other than personally	Deal/dispose	2 years	1			1
<i>Firearms Act 1996 (Vic)</i>	100(1)	Dealer dispose of category A or B longarm to place outside Victoria to person other than licensed dealer	Dealer	12 months	1			1
<i>Firearms Act 1996 (Vic)</i>	100(2)	Dealer dispose of category C or D longarm or general category handgun to place outside Victoria to person other than licensed dealer	Dealer	2 years	1			1

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
<i>Firearms Act 1996 (Vic)</i>	101(1)	Publishing advertisement for sale of firearms by unlicensed dealer or without statement that sale is through licensed dealer	Deal/dispose	40 penalty units	3			3
<i>Firearms Act 1996 (Vic)</i>	101A(1)	Acquire or dispose of two or more firearms within 12 months when not licensed dealer	Deal/dispose	10 years	1		1	2
<i>Firearms Act 1996 (Vic)</i>	102(1)	Acquire category A or B longarm without permit	Acquire	12 months	22			22
<i>Firearms Act 1996 (Vic)</i>	102(1A)	Acquire paintball marker without permit	Acquire	12 months	2			2
<i>Firearms Act 1996 (Vic)</i>	102(2)	Acquire category C or D longarm without permit	Acquire	2 years	4			4
<i>Firearms Act 1996 (Vic)</i>	102(2A)	Acquire general category handgun without permit	Acquire	5 years	12			12
<i>Firearms Act 1996 (Vic)</i>	102(3)	Acquire category E longarm without permit	Acquire	4 years	4			4
<i>Firearms Act 1996 (Vic)</i>	102(3A)	Acquire category E handgun without permit	Acquire	10 years	2			2
<i>Firearms Act 1996 (Vic)</i>	115(1)	Fail to notify Chief Commissioner of bringing firearm into state with intent to keep	Administrative	4 years	12			12

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
<i>Firearms Act 1996 (Vic)</i>	115(2)	Fail to notify Chief Commissioner of bringing firearm into state with intent to keep in the appropriate form within 7 days	Administrative	30 penalty units	2			2
<i>Firearms Act 1996 (Vic)</i>	116(1)	Fail to notify Chief Commissioner of removing firearm from state with intent to no longer keep	Administrative	4 years	6			6
<i>Firearms Act 1996 (Vic)</i>	118	Dealer fail to send written notice of transaction to Chief Commissioner within 28 days	Dealer	12 months	13			13
<i>Firearms Act 1996 (Vic)</i>	119(2)	Fail to comply with a notice from Chief Commissioner requiring information	Administrative	12 months	1			1
<i>Firearms Act 1996 (Vic)</i>	119A(2)	Fail to comply with a notice from Chief Commissioner requiring firearm stamped with a serial number within 28 days	Administrative	6 months	1			1
<i>Firearms Act 1996 (Vic)</i>	120	Fail to produce firearm for inspection by police	Administrative	12 months	11			11

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
<i>Firearms Act 1996 (Vic)</i>	121(1)	Fail to store category A or B longarm correctly	Storage	12 months	752	2	12	766
<i>Firearms Act 1996 (Vic)</i>	121(1A)	Fail to store category A or B longarm ammunition correctly	Storage	12 months	511	2	13	526
<i>Firearms Act 1996 (Vic)</i>	121(2)	Fail to store category C or D longarm correctly	Storage	2 years	29		1	30
<i>Firearms Act 1996 (Vic)</i>	121(2A)	Fail to store category C or D longarm ammunition correctly	Storage	2 years	28			28
<i>Firearms Act 1996 (Vic)</i>	121(3)	Fail to store category E longarm correctly	Storage	4 years	7			7
<i>Firearms Act 1996 (Vic)</i>	121(3A)	Fail to store category E longarm ammunition correctly	Storage	4 years	6		1	7
<i>Firearms Act 1996 (Vic)</i>	122(1A)	Fail to store 15 or fewer category A or B longarms correctly	Storage	2 years	5			5
<i>Firearms Act 1996 (Vic)</i>	122(4)	Ammunition collector fail to store ammunition correctly	Collector	10 penalty units	10			10
<i>Firearms Act 1996 (Vic)</i>	123(1)	Dealer fail to store category A or B longarm correctly	Dealer	12 months	3			3

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
<i>Firearms Act 1996 (Vic)</i>	123(2)	Dealer fail to store category C or D longarm or general category handgun correctly	Dealer	2 years	2			2
<i>Firearms Act 1996 (Vic)</i>	123(4)	Dealer fail to store ammunition correctly	Dealer	2 years	3			3
<i>Firearms Act 1996 (Vic)</i>	124(1)	Possession of cartridge ammunition by unlicensed person	Ammunition	40 penalty units	3,770	66	222	4,058
<i>Firearms Act 1996 (Vic)</i>	124(2)	Possess ammunition not suitable for category of licensed firearm (unless ammunition collector)	Ammunition	10 penalty units	31	1	1	33
<i>Firearms Act 1996 (Vic)</i>	124(3)	Possess ammunition not suitable for category of firearm for which person does not require licence	Ammunition	10 penalty units	4			4
<i>Firearms Act 1996 (Vic)</i>	125	Dispose of cartridge ammunition to unauthorised person	Ammunition	12 months	6			6
<i>Firearms Act 1996 (Vic)</i>	126(1)	Carry or use category A or B longarm in a dangerous manner, or fail to take measures to prevent loss or theft	Safety	12 months	155		1	156

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
<i>Firearms Act 1996 (Vic)</i>	126(2)	Carry or use category C or D longarm or general category handgun in a dangerous manner, or fail to take measures to prevent loss or theft	Safety	2 years	24		1	25
<i>Firearms Act 1996 (Vic)</i>	126(3)	Carry or use category E longarm in a dangerous manner, or fail to take measures to prevent loss or theft	Safety	4 years	17			17
<i>Firearms Act 1996 (Vic)</i>	126(4)	Carry or use cartridge ammunition in a dangerous manner, or fail to take measures to prevent loss or theft	Safety	12 months	224	1	4	229
<i>Firearms Act 1996 (Vic)</i>	127(1)	Permit unlicensed or not exempted person to carry or use category A or B longarm	Safety	12 months	34			34
<i>Firearms Act 1996 (Vic)</i>	127(3)	Permit unlicensed or not exempted person to carry or use category E longarm	Safety	4 years	1			1
<i>Firearms Act 1996 (Vic)</i>	128	Injure or damage property with firearm	Possess/carry/use	2 years	23		3	26
<i>Firearms Act 1996 (Vic)</i>	129	Use firearm in a dangerous manner	Safety	2 years	86	2		88

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
<i>Firearms Act 1996 (Vic)</i>	129A	Unlicensed person store firearm in an insecure manner	Storage	4 years	1,040	7	28	1,075
<i>Firearms Act 1996 (Vic)</i>	130(1)	Carry/use loaded firearm in public place	Possess/carry/use	10 years	268	3	6	277
<i>Firearms Act 1996 (Vic)</i>	131	Carry/use firearm on, or discharge shot onto or across, private property without owner's consent	Possess/carry/use	12 months	84	1		85
<i>Firearms Act 1996 (Vic)</i>	132(1)	Carry/use firearm when under influence of alcohol or drug	Safety	2 years	64	1		65
<i>Firearms Act 1996 (Vic)</i>	132(2)	Carry firearm concealed from view for purpose of committing indictable offence	Possess/carry/use	4 years	1			1
<i>Firearms Act 1996 (Vic)</i>	133	Dispose firearm to person under influence of alcohol or drug	Deal/dispose	2 years	1			1
<i>Firearms Act 1996 (Vic)</i>	134(1)	Shorten the barrel of a longarm	Alter	4 years	69		16	85
<i>Firearms Act 1996 (Vic)</i>	134(2)	Alter firearm rendered inoperable so as to make capable of discharge	Alter	4 years	2			2
<i>Firearms Act 1996 (Vic)</i>	134(3)	Deface or alter firearm ID	Alter	7 years	11		1	12

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
Firearms Act 1996 (Vic)	134A(1)	Alter firearm such that it becomes a different category, without consent of Chief Commissioner	Alter	60 penalty units	7			7
Firearms Act 1996 (Vic)	134C(1)	Possess firearm with no serial number	Alter	4 years	140		3	143
Firearms Act 1996 (Vic)	135(1)	Own category A or B longarm without a licence	Possess/carry/use	12 months	177		3	180
Firearms Act 1996 (Vic)	135(2)	Own category C or D longarm or a general category handgun without a licence	Possess/carry/use	2 years	135	3	9	147
Firearms Act 1996 (Vic)	135(3)	Own category E longarm without a licence	Possess/carry/use	4 years	25		2	27
Firearms Act 1996 (Vic)	135(4)	Own a paintball marker without a licence	Possess/carry/use	12 months	1			1
Firearms Act 1996 (Vic)	138	Make or cause false or misleading entry in register or record	Administrative	4 years	49			49
Firearms Act 1996 (Vic)	139	Fail to notify Chief Commissioner of change of details within 14 days	Administrative	30 penalty units	77		1	78
Firearms Act 1996 (Vic)	140	Fail to notify Chief Commissioner of loss/theft/destruction of firearm	Administrative	30 penalty units	21			21

Act	Section	Offence	Category	Maximum penalty	Magistrates' Court charges	Children's Court charges	Higher courts charges	Total
Firearms Act 1996 (Vic)	140A(1)	Knowingly make false statement in application	Administrative	4 years	19			19
Firearms Act 1996 (Vic)	140A(2)	Make false or misleading statement when required to identify	Administrative	4 years	37			37
Firearms Act 1996 (Vic)	150(2)	Fail to produce licence or permit to police	Administrative	30 penalty units	7			7
Forests (Recreation) Regulations 2010 (Vic)	39(1)(c)	Possess/carry/use a firearm within a forest reserve	Possess/carry/use	20 penalty units	5			5
National Parks Act 1975 (Vic)	44(1)	Possess/carry a firearm within a national park	Possess/carry/use	20 penalty units	51			51
National Parks Act 1975 (Vic)	44(2)	Use a firearm within a national park	Possess/carry/use	20 penalty units	6			6
Personal Safety Intervention Orders Act 2010 (Vic)	115(4)	Fail to immediately surrender a firearm or ammunition	Possess/carry/use	60 penalty units for a firearm	1			1 ^a
				30 penalty units for ammunition				
Total					13,702	199	927	14,828

^a Ammunition or firearm is not defined in this charge.

Categorisation of firearms offences

Category	Offences
Acquire	Acquire a firearm without dealer/agent; acquire firearm without a permit.
Administration	Failure to dispose of a firearm where licence expired/varied; failure to surrender firearms/ammunition when licence suspended/cancelled; failure to notify theft/loss/destruction of firearm; failure to produce licence/permit; failure to comply with licence conditions; failure to notify bringing firearm into the state; failure to notify change of address; failure to notify removal of firearm interstate; failure to produce firearm; failure to supply specified information to the Chief Commissioner of Police; knowingly make false statement in application.
Alteration	Possess firearm with defaced/altered serial number; shorten barrel of firearm.
Ammunition	Licence holder possesses/uses unsuitable ammunition; possesses ammunition without a licence.
Collector	Collector fails to store firearms correctly; fails to comply with conditions of collector's licence; acquires/disposes/possesses/carries ammunition without a collector's licence.
Deal/dispose	Disposes of firearm without a dealer/agent; dealing in firearms without a licence.
Dealer	Dealer acquires firearm from a non-suitable person; dealer disposes of firearm to a non-suitable person; dealer fails to store firearm correctly; dealer fails to keep register of firearms.
Manufacture	Manufacture firearm without dealer's licence.
Possess/carry/use	Carry firearm on private property without consent; possess/carry imitation firearm; possess/carry/use firearm without licence; possess/carry/use unregistered firearm; offences relating specifically to prohibited persons (e.g. possess/carry/use); carry/use loaded firearm in public place; discharge firearm without consent; damage property with firearm; possess/carry/use silencer without permit; use a firearm to resist/prevent arrest.
Safety	Carry firearm/ammunition in unsafe manner; carry/use firearm under the influence of alcohol; carry/use firearm in a dangerous manner; fail to ensure firearm used in a secure manner.
Storage	Failure to store firearm/ammunition properly/correctly; failure to safely store firearm/ammunition; failure to take precaution firearm is not stolen or lost; store firearm/ammunition in insecure manner.

Appendix 4: Cluster analysis

This appendix presents the factors used in calculating the clusters for Chapter 5 (pages 53–55). Table A2 shows the breakdown of each cluster by the sentencing factors used in the cluster analysis, and sentence outcomes and case details for the cases.

Sentencing factors that were excluded from the clustering algorithm due to lack of data (shaded) are included for the sake of interest.

Table A2: Description of the three clusters determined for firearms cases with sentencing remarks

		Cluster 1		Cluster 2		Cluster 3		Statistically significant differences in percentages or averages		
Cases		158		123		157		1 vs 2	1 vs 3	2 vs 3
Age	Minimum	18		19		19				
	Average	33		32		34				
	Maximum	66		75		68				
Purpose of firearm possession	Criminal activity	121	77%	110	89%	138	88%	✓	✓	
	Not criminal activity	23	15%	4	3%	6	4%	✓	✓	
	Not stated	14	9%	9	7%	13	8%			
Offender is methylamphetamine user	Yes	93	59%	86	70%	108	69%			
	No	65	41%	37	30%	49	31%			
Family violence offender	Yes	7	4%	17	14%	22	14%	✓	✓	
	No	150	95%	105	85%	134	85%	✓	✓	
	Not stated	1	1%	1	1%	1	1%			
Offender was on an order at time of offence	Yes	22	14%	83	67%	44	28%	✓	✓	✓
	No	136	86%	40	33%	113	72%	✓	✓	✓
Any prior offending noted	Yes	105	66%	110	89%	147	94%	✓	✓	
	No	53	34%	13	11%	10	6%	✓	✓	
Prior firearms offending stated	Yes	20	13%	27	22%	41	26%	✓	✓	
	No	133	84%	96	78%	110	70%		✓	
	Not stated	5	3%	0	0%	6	4%	✓		✓
Mental illness/ cognitive impairment/ acquired brain injury/ diagnosed mental condition	Yes	28	18%	86	70%	25	16%	✓		✓
	No	130	82%	37	30%	132	84%	✓		✓

		Cluster 1		Cluster 2		Cluster 3		Statistically significant differences in percentages or averages		
Cases		158		123		157		1 vs 2	1 vs 3	2 vs 3
Substance abuse (alcohol and/or drug)	Yes	116	73%	102	83%	136	87%		✓	
	No	42	27%	21	17%	21	13%		✓	
Adult ill-health/homelessness/trauma	Yes	18	11%	20	16%	21	13%			
	No	140	89%	103	84%	136	87%			
Childhood trauma/neglect/family violence/abuse	Yes	14	9%	86	70%	17	11%	✓		✓
	No	144	91%	37	30%	140	89%	✓		✓
Remorse expressed	Yes	65	41%	41	33%	57	36%			
	No	1	1%	12	10%	12	8%	✓	✓	
	Not stated	92	58%	70	57%	88	56%			
Prospects of rehabilitation	Positive	137	87%	20	16%	0	0%	✓	✓	✓
	Contingent	0	0%	85	69%	132	84%	✓	✓	✓
	Negative	4	3%	12	10%	7	4%	✓		
	Not stated	17	11%	6	5%	18	11%			✓
Gender	Male	150	95%	118	96%	155	99%			
	Female	8	5%	5	4%	2	1%			
Plea	Early	115	73%	79	64%	105	67%			
	Late	12	8%	16	13%	21	13%			
	Stage not indicated	28	18%	27	22%	27	17%			
	Not guilty	3	2%	1	1%	3	2%			
	Not stated	0	0%	0	0%	1	1%			
Number of unique firearms related to sentenced charges ^a	Average	1.57	1.97	1.69						
	Total	126	106	130						
Undertaking to assist	Yes	8	5%	4	3%	5	3%			
	No	74	47%	63	51%	84	54%			
	Not stated	76	48%	56	46%	68	43%			
Weapon source	Purchased	8	5%	3	2%	2	1%			
	Family member/friend/accomplice	20	13%	2	2%	19	12%	✓		✓
	Manufactured	2	1%	3	2%	3	2%			
	Stolen	6	4%	10	8%	8	5%			
	Not stated	122	77%	105	85%	125	80%			

		Cluster 1		Cluster 2		Cluster 3		Statistically significant differences in percentages or averages		
Cases		158		123		157		1 vs 2	1 vs 3	2 vs 3
Firearms charges sentenced in the case	Average	2.0	2.0	1.9						
	Total	316	241	296						
Total charges sentenced in the case	Average	8.4	8.7	7.8						
	Total	1,321	1,075	1,228						
Most serious penalty imposed for firearms offence in this case ^b (when maximum penalty of imprisonment is available)	Imprisonment	95	68%	106	93%	126	93%	✓	✓	
	Suspended sentence	5	4%	2	2%	1	1%			
	Community order	17	12%	3	3%	6	4%	✓	✓	
	Fine	14	10%	1	1%	3	2%	✓	✓	
	Youth justice centre order	1	1%	2	2%	0	0%			
	Adjourned undertaking	4	3%	0	0%	0	0%	✓	✓	
	Dismissed or discharged	3	2%	0	0%	0	0%			
Total effective sentence	Imprisonment	123	78%	113	92%	147	94%	✓	✓	
	Suspended sentence	10	6%	4	3%	4	3%			
	Community order	19	12%	4	3%	5	3%	✓	✓	
	Fine	3	2%	0	0%	1	1%			
	Youth justice centre order	1	1%	2	2%	0	0%			
	Adjourned undertaking	2	1%	0	0%	0	0%			
Total effective sentence of imprisonment length (months)	Minimum	1	0.5	1.7						
	Median	40	48	48						
	Maximum	147	218	384						

a The number of unique firearms related to sentenced charges was recorded in 80% of Cluster 1 cases, 86% of Cluster 2 cases and 83% of Cluster 3 cases.

b For each case in each cluster, the most serious penalty imposed on any firearms charge is counted once here. For example, if a case that had a charge of prohibited person possess/carry/use a firearm received a CCO and an administrative offence received a fine, the case is counted in this table in the *community order* row.

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