

Bail and Weapons Offences Review Taskforce

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Bail and Weapons Offences Review Taskforce

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1. Executive Summary

Bail is an important process in the criminal justice system. The issue of whether to grant bail to an accused person is complex and requires balancing the presumption of innocence and the general right of a person to be at liberty against the risk to community of an accused offender not being held in custody until trial. This is a difficult balancing act and forms part of considerations when applying presumptions against bail.

Calls to amend the *Bail Act 1982* (the Bail Act) are often the first reaction to addressing community safety. This includes calls to widen the range of offences to which the presumption against bail applies as a measure to reduce the potential risk to community safety. Amending the Bail Act will not completely eliminate the risk of an accused person committing further offences (whether on bail or not) as this is influenced by numerous external variables and other features of the criminal justice system. The aim, therefore, should be targeted mitigation that seeks to balance the safety of the community on the one hand, and the rights of the individual accused person on the other.

In April 2023, the Bail and Weapons Offences Review Taskforce (the Taskforce) was established to review the presumptions of bail for adult and youth offenders in relation to offences involving weapons. The Taskforce also considered the need for any other legislative amendments to penalties and powers related to offences involving weapons to improve community safety. The Taskforce further considered the outcome of any evaluations or reviews as to the effectiveness of bail reform relating to weapons offences in comparable jurisdictions in improving community safety and risk management of offenders.

Upon consideration of the data, the Taskforce does not recommend any amendments be made to the Bail Act or the Criminal Code. As the majority of bail episodes¹ for adults and youths charged with a weapons offence did not end in another violence offence and where they did, the majority of those cases triggered a presumption against bail anyway. The overall conclusion of the Taskforce was that expanding the scope of presumptions against bail is an ineffective way of dealing with the remaining small risk.

This conclusion is because of the following factors:

- The types of offences to which a presumption against bail applies are some of the widest and most comprehensive in Australia (a jurisdictional comparison is at Attachment A to this report);
- 91% of bail episodes for adults and youths charged with a **serious violence offence** did not end in another violence offence being committed while on bail (reoffending). Of those nine percent who do reoffend while on bail, 40% trigger an existing presumption against bail;
- 89% of bail episodes for adult and youths charged with a **weapons offence** did not end in a new violent offence being committed; 60% of those 11% who do reoffend trigger an existing presumption against bail; and
- The data indicates that there are large numbers of defendants charged with weapons offences who are not captured by the other presumptions against bail, relatively few of whom commit new violent offences while on bail. This category of defendant therefore presents a low risk of committing new violent offences while on bail. Introducing a presumption against bail for this group would capture a large number of defendants who pose a low risk to community safety and could put undue pressure on an already overcrowded prison system.

¹ The term 'bail episode' represents a period of time in which a defendant is on consecutive or overlapping bail orders. If the defendant is remanded, the bail episode ends.

Additionally, there are review mechanisms in the Bail Act to conduct bail reviews where it is considered that a decision by a court to grant bail should be reviewed².

While no amendment is proposed to the Bail Act, the Taskforce does recommend a minor amendment to the *Weapons Control Act 2001* (Weapons Control Act) to clarify that a knife includes a machete for the purposes of being a controlled weapon. This will allow machetes to be captured in the definition of knife as a controlled weapon, including for the purpose of bail.

The Taskforce also makes a number of ancillary recommendations concerning education and training for prosecutors and judges with respect to the risks posed by certain defendants with regards to their likelihood to reoffend; mechanisms to reduce the time a person spends on bail, noting the increased likelihood of reoffending the longer a person is on bail; the delivery of bail support programs for youths and adults; and that further consideration be given to the inclusion and/or development of diversionary and other programs and laws similar to Queensland's *Police Powers and Responsibilities (Jack's Law) Amendment Act 2023* in the Territory, with a view seizing and destroying weapons located using those laws.

The recommendations considered the data to conclude that amending the Bail Act will not 'increase community safety' as it does not operate as a preventative mechanism to reduce weapons offending. Rather, the Taskforce considers that the following measures will pre-emptively target potential offenders before an offence occurs and provide a more targeted risk mitigation that will benefit the community as a whole:

1. developing a targeted knife strategy for the Northern Territory to address knife crime (this is supported by the geographical variations in weapon offending across the NT);
2. strengthening and extending bail support programs and bail supported accommodation;
3. speedier resolution of matters through the court;
4. greater education of the judiciary and prosecutors about the risk of reoffending by certain groups of defendants; and
5. A law similar to Queensland's *Police Powers and Responsibilities (Jack's Law) Amendment Act 2023* to help detect weapons before they are used in offending and better powers to seize and confiscate weapons when found.

While the majority of the Taskforce supports these recommendations, the Northern Territory Police, Fire and Emergency Services (NTPFES) consider that the types of weapons that trigger a presumption against bail should be expanded to include specific references to machetes and axes. The issue of machetes has been resolved by clarifying that machetes are knives³ and are therefore already controlled weapons and subject to the new presumption against bail in section 7A(1)(e) of the Bail Act. The NTPFES position on axes is not supported by the majority of the Taskforce as the existing presumptions against bail in the Bail Act already identify the population that are the highest risk for re-offending using weapons, therefore there is no need to extend the presumption to axes or to make axes a controlled weapon. Furthermore, concerns exist that widening presumptions will result in victim-survivors of domestic and family violence who defend themselves from domestic and family violence using a controlled or prohibited weapon will facing time in prison on remand until their matter is heard.

The majority of the Taskforce does however recommend that, for the avoidance of doubt as to whether a machete is a knife, that paragraph (a) of the definition of controlled weapon in the Weapons Control Act be amended to clarify that a knife includes a machete, noting that this will not expand the scope of the presumption or the weapons control regime.

² See sections 34 to 36A of the Bail Act.

³ noting the proposed amendment to the *Weapons Control Act 2001* to clarify this position

2. Background

On 22 March 2023, the Hon Natasha Fyles MLA, Chief Minister of the Northern Territory, announced a review into the presumptions for and against bail pursuant to the Bail Act in relation to offences involving a weapon. This review was to consider bail presumptions for both adult and youth offenders. It was also to consider current penalties for offences involving a weapon.

The Bail and Weapons Offences Review Taskforce (the Taskforce) was established for this purpose. The Taskforce has representation from across government agencies including the Northern Territory Police, Fire and Emergency Services (NT Police), the Department of the Attorney General and Justice (AGD) (Aboriginal Justice Unit (AJU), Legal Policy, Northern Territory Correctional Services (NTCS), and Criminal Justice Research and Statistics Unit (CJRSU)), the Director of Public Prosecutions (DPP), and the Department of Territory Families, Housing and Communities (TFHC) (Youth Justice and Strategic Services).

The Terms of Reference of the Taskforce, as endorsed by the Children and Families Standing Committee on 31 May 2023, is at Attachment B to this report.

The Taskforce met nine times with its inaugural meeting on 6 April 2023. Its primary purpose was to provide recommendations on any changes necessary to bail presumptions for charges involving weapons and penalties related to weapon offences, with the overall aim to increase community safety.

The Taskforce has considered the following matters:

Priority 1

Consider and make recommendations for further legislative amendment to the bail presumptions for adult and youth offenders under the Bail Act where a person has been charged with an offence involving a weapon.

Priority 2

Based on the outcome of the review under Priority 1, the Taskforce will:

- a) advise on any other recommendations deemed necessary for the Bail Act to improve community safety and risk management of offenders in relation to offences involving a weapon;
- b) review and make recommendations regarding offences and penalties under the the Weapons Control Act; and
- c) review and make recommendations on charges involving weapons (including penalties) within the Criminal Code.

2.1. General considerations for young offenders

The Taskforce acknowledged that there are specific considerations for young people in relation to granting bail, and any bail reform that affects young offenders must take those into account, noting that children who interact with the youth justice system come with a range of complex health, mental health and cognitive disabilities that are often exacerbated by early criminalisation. For the majority of young people involved in crime, statutory and judicial criminal justice responses significantly increase the likelihood of reoffending. National and international research shows that, if a child is exposed to the full extent of the youth justice system and placed in detention, this will increase the seriousness and frequency of future offending and lead to longer detention periods. This underpinned the recommendations of the 2017 Royal Commission into the Protection and Detention of Children in the Northern Territory (Royal Commission) and has driven the Northern Territory's reform of the youth justice system over the past six years. Amendments to bail laws in

2021 resulted in a significant rise in young people on remand, reversing the downward trend from 2016 and making the Northern Territory one of the only jurisdictions to have increasing rates of young people in detention over recent years. Any further changes to bail laws should be considered in the context of the very small numbers of unique young people involved in serious violent offending, and the different options available in the youth justice system to address a young person's offending behaviour.

2.2. Other considerations

The Taskforce is also cognisant of the broader landscape within which the Bail Act operates, including that there are obligations and commitments made by the Northern Territory including through the National Agreement on Closing the Gap, the recommendations of the Royal Commission into Aboriginal Deaths in Custody, and international obligations, for example, the International Covenant on Civil and Political Rights, which, amongst other things, at Article 9.3, provides that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any stage of the judicial proceedings, and, should occasion arise, for execution of the judgement”.⁴

2.3. What is bail?

Bail is a decision about whether a person who has been charged with a crime will be allowed to remain in the community whilst awaiting trial or hearing. Bail is a decision that can be made by police or a court and is, in most cases, considered before a person has been found guilty of an offence. The purpose of bail is to allow a person who has not been found guilty to remain at liberty whilst ensuring that the accused person appears or re-appears in court to face charges or be sentenced, to prevent further re-offending, and to prevent interference with evidence and/or witnesses.

Bail is not a crime prevention strategy as it only applies after a person has been charged with an alleged offence.

For this reason, a person charged with an offence may be given bail subject to conditions including but not limited to a promise to appear in court when next required, a promise not to attend a certain place, a requirement to report to a police station, a promise not to associate or contact a certain person, etc.

Presumptions against bail

In the Northern Territory the grant or otherwise of bail is determined under the Bail Act. Section 7A of the Bail Act contains presumptions against bail that apply to adults⁵ if certain circumstances are present. For example, there is a presumption against bail where, amongst other things, a person is charged with certain offences such as murder, serious sexual offences and some drug offences, or where the person is an adult on bail for a serious offence (being an offence punishable by imprisonment for five or more years) and commits another serious offence while on bail. These presumptions against bail operate so that bail must not be granted to a person accused of an offence to which section 7A applies unless the person satisfies an authorised member or the court that bail should be granted. This means that a presumption against bail will not automatically mean a person will be remanded. A flowchart detailing how the presumptions against bail operate is attached at Attachment C to this report.

Section 7B of the Bail Act relates to youth offenders. A flowchart outlining how presumptions apply in relation to youth is at Attachment D. Section 7B provides that bail must not be granted to a youth who has engaged in a serious breach of bail unless the youth enters into a strict set of conditions imposed by the

⁴United Nations International Covenant on Civil and Political Rights (1966), Article 9.3.

⁵ The presumption against bail at section 7A(1)(e) of the Bail Act also applies to youths, see section 7A(2B).

legislation called a conduct agreement. A conduct agreement includes electronic monitoring or to reside at supported bail accommodation, or if those options are not appropriate because the youth resides at a remote location, another premises. A serious breach of bail includes where the youth:

- is on bail and commits a prescribed offence (see regulation 2A of the *Bail Regulations 1983*);
- breaches a curfew set as a condition of their bail conduct agreement; or
- interferes with, removes or destroys an electronic monitoring device or fails to allow the placing, installation or retrieval of anything necessary for the effective operation of the monitoring device, where the breach is not judged trivial or technical or for which there are no exceptional circumstances.

Prescribed offences include offences for which there is a presumption in favour of bail for adults accused of committing the same offence while on bail. This makes it harder for youths to be granted bail for those offences

Bail decisions

The decision whether to grant bail or not first lies with Northern Territory Police. The decision to grant bail by a member of police is governed by the legislation and the Northern Territory Police General Orders. In general, where there is a presumption against bail, police will refuse bail and the matter of bail may then be considered by a court if the accused person, or a person representing their interests, requests a review in accordance with the Bail Act.

In determining whether bail should be granted for an adult, an authorised member (for police bail) or the court (for court, i.e., where police have not granted bail) may only consider the matters listed at section 24 of the Bail Act. These include, amongst other things:

- the probability of the person appearing in court at each stage of a criminal matter;
- the risk that the accused person would interfere with evidence, witnesses or jurors;
- the risk that the accused person would commit an offence, a breach of the peace, or a breach of the conditions of bail; and
- the risk that would result from the accused person's release on bail to the safety and welfare of the alleged victim or the community.

For youths, in addition to the matters set out in section 24 of the Bail Act, an authorised member or the court must also consider the matters at section 24A of the Bail Act in determining whether to grant bail. These include, amongst other things:

- the need to consider all other options before remanding the youth in custody;
- the need to strengthen and preserve the relationship between the youth and the youth's family, a responsible adult in relation to the youth or the youth's carers;
- the desirability of allowing the living arrangements of the child to continue without interruption or disturbance;
- the desirability of allowing the education, training or employment of the youth to continue without interruption or disturbance;
- the need to minimise the stigma to the youth resulting from being remanded in custody;
- the likely sentence should the youth be found guilty of the offence;

- the youth's prior exposure to, experience of and reaction to trauma;
- the cognitive capacity, health and developmental needs of the youth; and
- if the youth is an Aboriginal person – any issues that arise due to the youth's Aboriginality, including:
 - the youth's cultural background, including the youth's ties to extended family or place; and
 - any other relevant cultural issue or obligation.

Any recommendation or information in relation to the youth provided by a bail support service must be taken into account.

Section 24A was inserted into the Bail Act in 2019 as part of a suite of reforms responding to the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory. Section 24A was designed to improve the application of bail for young people, ensuring that appropriate youth-specific considerations are given to bail options and that the complex needs of young offenders are taken into account when making bail determinations.

Section 8 of the Bail Act provides for a presumption in favour of bail for adults and section 8A for youths. An adult is entitled to a presumption in favour of bail for any offence to which section 7A does not apply. A youth is entitled to a presumption in favour of bail for any offence other than a prescribed offence. (See attached flow chart of both adult and youth bail presumptions.)

2.4. Current situation in the Northern Territory with respect to weapons related apprehensions

Between January 2020 and March 2023, apprehensions for offences where the involvement of weapons⁶ can be identified have averaged nearly 200 instances per month, with an average of 236 in the first three months of 2023. Numbers have increased at approximately 11% per annum since 2020-21, though data showed a drop during the months when COVID19 movement restrictions occurred. Over this period adults have accounted for 87% of the apprehensions and young people for 13%.

2.5. Adults

During the period examined, 5,262 individual adults were identified as apprehended for weapons-related offences on 6,809 occasions. Of the adult weapons-related apprehensions, 78% involved a violent offence, 40% involved an offence such as possessing a weapon in public or being armed with an offensive weapon (an apprehension may involve multiple types of weapons offences), and 3% involved a property offence. Serious violence offences involving a controlled or prohibited weapon occurred in 16% of all adult weapons-

⁶ The data considered offences involving possessing a weapon (being any offence under the *Weapons Control Act 2001*—this includes offences for offensive weapons such as rocks and sticks as well as controlled or prohibited weapons, and offences described as going armed (Criminal Code Act 1983 sections 62, 69)); violent offences where “weapon” is mentioned in the charge wording, including serious violence offences involving a controlled or prohibited weapon; and property offences (unlawful entry/intended unlawful entry) where “weapon” is mentioned in the charge wording (CC 213(6), 215(6) as in force before the commencement of the *Criminal Code Amendment (Property Offences) Act 2022*). Use of a weapon is not an aggravating factor for murder or sexual offending, which means that the involvement of a weapon is not recorded. Hence persons using weapons in these types of offences are not included in this data, though persons charged with these offences already face other presumptions against bail.

related apprehensions, and in 21% of adult apprehensions involving violence and weapons (the serious violence offences involving a controlled or prohibited weapon group is a subset of the violent group).

2.6. Youths

During the period examined, 559 individual young people were identified as apprehended for weapons-related offences on 1,046 occasions. Fifty-eight (58) percent of the youth weapons-related apprehensions involve a violent offence, while 45% involve possessing a weapon in public and 17% involve a property offence. Serious violence offences involving a controlled or prohibited weapon occurred in 20% of all youth weapons-related apprehensions, and in 34% of youth apprehensions involving violence and weapons.

2.7. New bail episodes ending in a violent offence

Ten (10) percent of bail episodes for adult offenders who were on bail for a weapons related offence resulted in a new violent offence while on bail (345 out of 3438, 1 January 2020 to 21 April 2023).

Of these 345, 56% (194) of the episodes were for offenders who would have triggered one or more presumptions against bail that existed prior to 1 April 2023. This means that the existing presumptions identified slightly more than half of the episodes in which offenders committed a new violent offence. Overall, 1,295 (38%) of the adult bail episodes triggered one or more of the existing presumptions.

Of 734 bail episodes for young people on bail for a weapons-related offence during the same period, 124 (17%) resulted in a new violent offence while on bail. A total of 339 episodes (46%) triggered the presumption against bail associated with a serious breach of bail. Of these 339, 86 episodes (25%) resulted in a new violent offence while on bail. This means that the existing presumption (which only existed for part of the period) identified 69% of the episodes in which a young person went on to commit a new violent offence.

The Taskforce has considered options for reforms with a view to increasing the number of bail episodes which trigger a presumption against bail without disproportionately impacting the broader cohort that are low risk (i.e., who do not go on to commit a violence offence on bail).

2.8. Effect of the Bail Amendment Act 2023

On 1 April 2023, the *Bail Amendment Act 2023* came into force. That Act amended the presumptions against bail at section 7A of the Bail Act to insert new subsection (1)(e). This new subsection creates a presumption against bail, applicable to both adults and youths, for a serious violence offence involving the use or threatened use of a controlled weapon or prohibited weapon, as defined by section 3 of the Weapons Control Act.

These amendments are too new to accurately gauge their impact. However, the following data suggest that the amendments are having some effect:

- From 1 April 2023 to 25 June 2023, 50 individuals (39 adults and 11 youths) have been charged with a serious violence offence involving a controlled or prohibited weapon;
- With regards to bail:
 - Of the 47 individuals arrested, 13 initially received bail and 34 were initially remanded (refused bail); and
 - Seven of the 50 individuals have re-offended (three adults, four youths); and

- Two adults have also been charged as co-offenders in the same incidents but not for serious violence offences involving controlled or prohibited weapons. One was a co-offender for an adult offender, and one for a youth offender. Both were arrested and initially remanded, however one received court bail the next day.

The Taskforce is aware of concerns raised by non-government organisations that work in the domestic, family and sexual violence space with regards to the potential for the new amendments to apply a presumption against bail to victim-survivors of domestic violence who use a weapon to defend themselves against a domestic violence perpetrator and are charged with a violent offence themselves. With regards to gender and domestic violence incidents:

- In the same period 10 of the 50 individuals charged were female, ranging in age from 18 to 54. In nine of those 10 case cases, the weapon used was described as a knife (one of these cases also involved scissors) and in the tenth case, the weapon used was described as a machete (which would also be a knife for the purposes of being a controlled weapon under the new bail presumption); and
- Eight of the 10 defendants (80 percent) had a domestic violence flag.
 - In seven of those eight incidents the female defendant was the only person charged.
 - At least six of the seven incidents had a male victim, and in three of those six the male victim had prior charges for assaulting the female defendant.
 - In one of the eight incidents, a male and a female were charged with assaulting each other. The female defendant was charged with using a knife, the male was not charged with using a knife. The male defendant in that matter had a prior charge for assaulting the female defendant.

While not providing any determinative information with regards to the particular circumstances surrounding these matters, it is noteworthy that 80 percent (eight of ten) of the matters involving female defendants, captured by the new presumption, had a domestic violence flag, and that four of those matters involved a male victim previously charged with assaulting the female defendant. This does tend to suggest that the impact of the new bail presumption on domestic violence victim-survivors should be monitored closely.

3. Options considered by the Taskforce to the Bail Act Presumptions

3.1. Amending the definition of serious violence to include other offences or amending section 7A(1)(e) of the Bail Act to include additional offences

Section 7A(1)(e) of the Bail Act creates a presumption against bail for any person (including a youth) charged with a serious violence offence involving the use or threatened use of a prohibited weapon⁷ or controlled weapon⁸, as defined by the Weapons Control Act. Knives of different types fall into one of these categories along with a long list of other weapons which are outlined in Attachment E to this report. Section 7A(1)(df) of the Bail Act creates a presumption against bail for a serious offence if the person accused of that offence has, within 10 years of the alleged commission of that serious offence, been found guilty of a serious violence offence.

Amending the definition of a serious violence offence would also have an effect on the presumption at section 7A(1)(df) of the Bail Act as it would expand the serious violence offences to which that presumption applies.

A serious violence offence is defined at section 3 of the Bail Act to mean an offence against certain provisions of the Criminal Code that are punishable by imprisonment for 5 or more years. A complete list of the serious violence offences which would have a presumption against bail under section 7A(1)(e) of the Bail Act if they involve the use or threatened use of a prohibited weapon or controlled weapon is at Attachment F to this report.

The scope of the offences covered by the presumption at section 7A(1)(e) does not include such offences as entering building with intention to commit an offence (s220 Criminal Code) burglary (section 221 Criminal Code), going armed to legislative assembly (s62 Criminal Code), going armed in public (s69 Criminal Code), or going equipped for theft and related offences while in possession of a firearm or other dangerous or offensive weapon (s225(3) Criminal Code). These offences either fall below the minimum 5 years imprisonment required by and/or are not provisions prescribed for, the definition of serious violence offence in the Bail Act.

The Taskforce considered the following possible reforms with respect to the above:

Option one

The first option was whether the term 'serious violence offence' should be amended to include offences in other divisions in the Criminal Code, such as those outlined above.

This would significantly expand the types of offences that would trigger the operation of section 7A(1)(df). An additional consideration is that the above offences are defined as property and weapons offences for statistical purposes and are considered distinctly from violent offences, of which serious violence offences

⁷ Under section 3 of the Weapons Control Act 'prohibited weapon' means an article prescribed by regulation to be a prohibited weapon.

⁸ Under section 3 of the Weapons Control Act, 'controlled weapon' means a knife (other than a knife that is a prohibited weapon or an article that is prescribed by regulation to be a controlled weapon).

are a subset. Defining property offences as violence offences for bail would result in confusion in reporting for both violent and property offending.

Option two

The second option considered by the Taskforce was to amend the presumption against bail at section 7A(1)(e) to specifically include the above property and possession of weapons offences in that presumption against bail. This would have the effect of making a presumption against bail for burglary and other property offences in circumstances involving a controlled weapon or prohibited weapon.

The table below outlines the overall effect of both options insofar as the number of bail episodes that would not otherwise have had a presumption against bail but for the amendments, and the number of episodes that resulted in new violent offences. The percentage of such episodes that do not already trigger a presumption and that result in a new violent offence is very low:

Offences	Bail episodes with no presumption against bail		Episodes in which new violent offences were committed	
	Adults	Youths	Adults	Youths
Property offences involving a weapon	47	76	4% (2 episodes)	7% (5 episodes)
Possessing a weapon in public offences	806	131	8% (67 episodes)	8% (11 episodes)

In summary, amending section 7A(1)(e) to apply to additional offences or amending the definition of serious violence offence to include further offences, would likely have a minimal effect on preventing further violent offences but would introduce a presumption against bail to apply to a large cohort of defendants, the majority of whom, according to the data, would not likely go on to commit violent offences while on bail.

For that reason, neither option is recommended.

3.2. Amending section 7A(1)(de) of the Bail Act

Section 7A(1)(de) of the Bail Act creates a presumption against bail where an adult is already on bail for a serious offence and is then charged with a further serious offence.

The Taskforce considered amending the presumption against bail at section 7A(1)(de) to include weapons offences⁹ because a substantial proportion of people who commit weapons offences while already on bail go on to commit new violent offences on bail. However, this is not recommended because the majority of episodes for adults who commit a weapons offence whilst on bail already trigger at least one existing presumption. The number of bail episodes for adults and young people who did not trigger a presumption and went on to commit new violent offences is a small group to target legislatively; see table below (data is for bail episodes from 2020 through mid-April 2023).

⁹ Being offences involving possessing a weapon (such as offences under the *Weapons Control Act 2001*—this includes offences for offensive weapons such as rocks and sticks as well as controlled or prohibited weapons, and offences described as going armed (*Criminal Code Act 1983* sections 62, 69)); violent offences where “weapon” is mentioned in the charge wording, including serious violence offences involving a controlled or prohibited weapon; and property offences (burglary, unlawful entry/intended unlawful entry) where “weapon” is mentioned in the charge wording.

	Bail episodes for individuals who committed a weapons offence on bail		Bail episodes resulting in a new violent offence	
	Adults	Youths	Adults	Youths
Triggered an existing presumption	191	193	85 (45%)	51 (26%)
Did not trigger a presumption	99	87	24 (24%)	15 (17%)
Total	290	280	109 (38%)	66 (24%)

An alternative approach to reduce the risk associated with adults who already trigger this presumption is discussed later.

3.3. Amending section 7A(1)(e) to include ‘offensive weapons’

The presumption against bail at section 7A(1)(e) of the Bail Act applies to controlled weapons and prohibited weapons as defined by the Weapons Control Act (see Attachment E).

The Weapons Control Act also defines another category of weapons as ‘offensive weapons’:

“**offensive weapon** means an article:

- (a) made or adapted to cause damage to property or to cause injury or fear of injury to a person; or
- (b) by which the person having it intends to cause damage to property or to cause injury or fear of injury to a person;

but does not include a prohibited weapon, controlled weapon or body armour.”

Offensive weapons might include, amongst other things, rocks, sticks, bottles, scissors, shovels/spades, baseball bats and screwdrivers- in other words, any object used or adapted to cause injury or fear of injury to a person or damage to property or by which the person having it intends to cause injury or fear of injury to a person or damage to property.

Knives (a controlled or prohibited weapon, depending on the type) were the most frequently mentioned weapon in weapons related apprehensions, appearing in 16% of adult weapons-related apprehensions and 26% of youth weapons-related apprehensions. Rocks were the second-most frequently mentioned weapon for young people, appearing in 13% of weapons-related apprehensions, and rocks and sticks each appeared in 11% of adult weapons-related apprehensions. Bottles were mentioned in 9% of youth apprehensions and 7% of adult apprehensions.

The Taskforce considered amending the presumption against bail at section 7A(1)(e) to include offensive weapons. However, this is not recommended.

Since 2020, 2,595 adult bail episodes have involved persons charged with a serious violence offence and an offensive weapon. Of these, 1,067 (41%) met one of the existing presumptions against bail, and 1,528 did not. However, only 7% (103) of the remaining 1,528 bail episodes resulted in the defendant being charged with a new violent offence while on bail. As such, making such an amendment would add a presumption against bail to a large group of defendants who individually pose relatively little risk.

The Taskforce is also aware of concerns raised by stakeholders in the NGO sector that the implementation of a presumption against bail for serious violence offences involving the use of a controlled or prohibited weapon is likely to have a detrimental impact on female victim-survivors of domestic and family violence, particularly Aboriginal women, who use weapons to defend themselves against domestic and family violence. Expanding the application of section 7A(1)(e) of the Bail Act to further include offensive weapons would only serve to worsen that impact. In 2022-23, domestic violence was involved in 60% of the recorded violent offences that involved controlled or prohibited weapons, and 64% of the recorded violent offences involving offensive weapons.

3.4. Amending section 7A(1)(e) of the Bail Act to apply to machetes and axes.

The Taskforce considered whether section 7A(1)(e) of the Bail Act should be amended to specifically include serious violence offences that involve the use or threatened use of machetes and axes. This is because, according to police, these weapons are not included in the list of controlled weapons or prohibited weapons in the Weapons Control Act (except for axes modified for throwing) and based on the Police members' frontline experiences these types of weapons being frequently used in weapons-related offending.

The Taskforce does not recommend amending section 7A(1)(e) of the Bail Act so as to apply to serious violence offences involving the use or threatened use of machetes, or axes. However, NTPFES take the position that an amendment to the Weapons Control Act and Regulations is necessary to include axes and machetes as controlled weapons which would trigger the existing presumption against bail in section 7A(1)(e) of the Bail Act.

The majority of the Taskforce takes the view that machetes are already controlled weapons as they are a type of knife. However, the taskforce recommends refining the definition of knife in the Weapons Control Act to avoid any doubt that a machete is to be interpreted by the court as a knife.

The majority of the taskforce did not recommend an amendment to the Bail Act for the following reasons:

- The data shows that the existing presumptions already apply to a substantial proportion of defendants charged with using these weapons who go on to commit new violent offences on bail. Essentially, the existing presumptions appear to identify the highest risk subset of these defendants. This means that those charged with using these weapons who aren't targeted represent relatively little risk on an individual basis, making it inefficient to target them further based on the weapons-type criteria. Bail operates on a risk management approach not a zero risk approach. It is not a crime prevention tool. With the exception of bail granted post-conviction, bail operates largely in a space where there is only an unproved allegation against a person. Any presumption against bail should therefore be considered in light of how significant a risk the person poses with respect to going on to commit a further violent offence while on bail. In this case the data indicates that the cohort not already captured by the existing presumption represents relatively little risk on a per-person basis;
- The data also indicates that the type of weapon involved in weapons offences varies on a geographic basis. The use of an axe in offending between 2020 and mid-April 2023 tended to be a lower percentage of total weapons offences in urban areas but was a higher proportion of the total weapons offences than would be expected in certain rural and remote areas. Extending the presumption to axes would further entrench barriers to being granted court bail for remote and rural defendants who already face additional difficulties due to, amongst other things, language or

interpretation issues, the absence of appropriate accommodation, and the lack of bail monitoring technology in those areas;

- For both adults and youths, the number of defendants charged with using an axe who go on to commit a new violent offence while on bail is small. An equivalent result might be achieved, without requiring legislative amendment, by a stricter application of the existing presumptions against bail, which might be effected by additional training of prosecutors and judges (see below ancillary recommendations);
- Prescribing specific types of weapons may lead to a statutory interpretation problem. For example, an argument might be made that listing axes, but not knives and other types of weapons, limits the types of controlled and prohibited weapons to which the presumption applies, so as to only capture controlled and prohibited weapons which are also axes;
- The Taskforce takes the view that a machete is already covered by section 7A(1)(e) of the Bail Act, as it is essentially a large knife. However, an amendment might be made to the definition of controlled weapon at section 3 of the Weapons Control Act to put this issue beyond doubt (see Priority 2 recommendations); and
- The Taskforce echoes concerns voiced by the NGO sector that victim-survivors of domestic and family violence who defend themselves from DV using a controlled or prohibited weapon but are charged with an assault will already be disadvantaged by the presumption at section 7A(1)(e) and will face time in prison on remand until their matter is heard.

3.5. Amending section 7A(1)(e) of the Bail Act to apply to all serious violence offences

The taskforce considered whether section 7A(1)(e) of the Bail Act should be amended so that a presumption against bail applies to any serious violence offence (not just one where a weapon is involved).

The Taskforce does not recommend this amendment because the data show that most of the defendants in the relevant broader cohort do not go on to commit further violent offences.

From January 2020 – mid April 2023, there were 5,656 adult bail episodes, involving 4,240 unique individuals, where the defendant was charged with a serious violence offence. Of those, 91% did not end with a new violent offence committed whilst on bail. Of the 5,656 episodes, defendants in 1,067 episodes already triggered one or more of the existing presumptions¹⁰. Of the remaining 4,589 episodes where no presumption was triggered, 4,255 episodes (93%) did not result in a new violent offence whilst on bail. The data shows that most of these defendants do not go on to commit further violent offences whilst on bail.

In the same time period, there were 714 youth bail episodes, involving 392 unique individuals, where the defendant was charged with a serious violence offence. Of those, 84% of the episodes did not end in a new violent offence being committed whilst on bail. Of the 714 episodes, defendants in 326 episodes were charged with committing a prescribed offence while on bail, and so triggered a presumption against bail (though this presumption only came into being partway through the analysis period). Of the remaining 388 episodes where the youth did not have a presumption against bail, 361 episodes (93%) did not end in a further serious violent offence being committed whilst on bail.

¹⁰ Excluding section 7A(1)(e) which was only operative for a small proportion of the time.

In summary, extending the presumption against bail so that it applies to any serious violence offence committed by youths or adults would result in a large number of individuals facing a presumption against bail, who individually pose a relatively low risk of committing a new violent offence while on bail.

The Bail Act takes a risk management approach, not a zero-risk approach. The proposed change would impinge on the liberty of a substantial group of defendants who do not go on to reoffend. It would also place an unnecessary burden on Corrections, Court, DPP and Police resources. Therefore, changing the legislation to target reoffenders using serious violence offences as a criterion is not warranted.

4. Other Bail Act reforms considered by the Taskforce regarding community safety and risk management

The Taskforce considered the following possible amendment to the Bail Act with regard to improving community safety and risk management otherwise than by way of amending the presumptions for or against bail.

4.1. Amending section 24 of the Bail Act to require a court to consider whether a weapon is alleged to have been used in the alleged offence

Subject to section 24A (which provides additional consideration for youth bail matters), section 24 of the Bail Act sets out the only matters that a court may consider in determining whether to grant bail to an accused person. Section 24(3) requires a court, in assessing risks to others that could result from the release of the accused person on bail, to have regard to whether there is a risk:

- Of violence or intimidation;
- Of property damage;
- Of harassment; or
- Any other risk to safety or welfare.

Section 24(3A) of the Bail Act requires the court to consider certain matters in assessing the risk to others under subsection (3).

The Taskforce considered whether an amendment should be made to subsection (3A) to insert a requirement to consider whether the allegations against the accused person includes the use or threatened use of any weapon and the circumstances of that use or threatened use.

Such an amendment would:

- not affect the presumptions for or against bail,
- apply to the use of any weapon, including assaults with offensive weapons and possession of weapons;
- would give a clear indication to the court that the use of any weapon in the commission of an offence is something the court should specifically consider in determining whether there is a risk to the community and whether a grant of bail is appropriate; and
- allow the court to consider whether the use of a weapon arose in a domestic violence setting so as not to negatively impact victim-survivors of domestic violence who use a weapon to defend themselves.

The Taskforce has determined that section 24(3) of the Bail Act is broadly framed so that the Court can already take into account all the circumstances relevant to risk, including the charged offence and previous offending. A risk of violence necessarily takes into account the circumstances of the offence, including the circumstance of whether a weapon is used. For that reason, the Taskforce considers such an amendment is not required.

5. Options to amend the Weapons Control Act 2001 and Criminal Code considered by the Taskforce

The Taskforce has considered the following reforms options with respect to weapons offences and penalties in the Weapons Control Act and the Criminal Code.

5.1. Increasing the penalty for Weapons Control Act offences

The Taskforce considered whether to increase penalties for offences against sections 6, 7, 7A and 8 of the Weapon Control Act, which are the main offences in that Act focused on regulating the possession, carrying, and using of prohibited weapons, controlled weapons, and offensive weapons. After considering the penalties for equivalent offences in other Australian jurisdictions the Taskforce notes that:

- With respect to possessing using or carrying prohibited weapons, the maximum penalty, in terms of imprisonment, in the Northern Territory is two years imprisonment¹¹. Queensland¹², South Australia¹³, Tasmania¹⁴ and Victoria¹⁵ have an equivalent sentence of imprisonment. The ACT¹⁶ (5 years imprisonment) and Western Australia¹⁷ (three years imprisonment) have slightly higher penalties, and in New South Wales¹⁸, unless the prosecution elect to deal with an offence on indictment, the matter is heard summarily in the Local Court in which case the maximum penalty that may be imposed for an offence is two years imprisonment¹⁹.

¹¹ Weapons Control Act, section 6.

¹² *Weapons Act 1990* (Qld), section 50(1)(c)(iii). In addition, the bulk of equivalent prohibited weapons fall under Category M in the Queensland regime but some fall within category R weapons, which has a higher penalty for unlawful possession of seven years imprisonment, section 50(1)(c)(i), or are restricted items which carries a 10 penalty unit fine for unlawful possession. Queensland also has a separate penalty for possessing multiple weapons; for example the possession of 10 or more weapons, which are not category D, E, H, or R weapons has a maximum penalty of 10 years imprisonment or 500 penalty units.

¹³ *Summary Offences Act 1953* (SA), section 21F.

¹⁴ *Police Offences Act 1935* (Tas), section 15C.

¹⁵ *Control of Weapons Act 1990* (Vic), section 5AA. This increases to four years imprisonment if the offence occurs in a licenced premises or in a public place in the immediate vicinity of a licenced premises, section 5(1A).

¹⁶ *Prohibited Weapons Act 1995* (ACT), section 5.

¹⁷ *Weapons Act 1999* (WA), section 6.

¹⁸ *Weapons Prohibition Act 1998* (NSW), section 7.

¹⁹ See Schedule 2 of the *Criminal Procedure Act 1986* (NSW) the effect of which is that an offence against s7 of the *Weapons Prohibition Act 1998* (NSW) is to be heard summarily unless the prosecutor elects to try the matter on indictment. If heard summarily the maximum penalty for a single offence is two years imprisonment (s268, Criminal Procedure Act) or five years imprisonment for an aggregate sentence involving multiple offences. If an election is made and the offence is tried on indictment the maximum penalty is 14 years imprisonment.

- With respect to possessing, using, or carrying controlled weapons or offensive weapons, the maximum penalty, in terms of imprisonment, in the Northern Territory is 12 months' imprisonment, which is doubled if the offence occurs at night²⁰.
- Not all jurisdictions have provisions for controlled weapons. Some jurisdictions only provide for prohibited weapons, others effectively combine controlled and offensive weapons, and others have specific offences for certain weapons such as knives. The absence of uniformity across jurisdictions makes a comparative analysis difficult with respect to controlled weapons and offensive weapons.
- However, in general terms:
 - In Victoria, the maximum penalty for possessing, carrying, or using a controlled weapon is imprisonment for one year²¹. This increases to two years if it is in a licenced premises or in a public place in the immediate vicinity of a licenced premises²². For a dangerous article, which is the equivalent of an offensive weapon, it is 6 months imprisonment²³ increasing to one year if it occurs in or in the immediate vicinity of a licenced premises²⁴;
 - In South Australia, an offensive weapon includes a knife or sword²⁵. The maximum penalty is imprisonment for 6 months²⁶ or imprisonment for 18 months for a dangerous article²⁷. This increases to two years, if committed at night in certain circumstances²⁸. Similarly, a person who carries or uses an offensive weapon, or carries an offensive weapon in certain circumstances is liable to imprisonment for two years²⁹. A person who has possession of a knife in a public place or school is liable to imprisonment for six months for a first offence and 12 months for a subsequent offence³⁰;
 - In Western Australia, the definition of controlled weapon also captures offensive weapons³¹. Carrying or possessing a controlled weapon without a lawful excuse carries a maximum penalty of two years imprisonment, as does carrying or possessing other articles³²;
 - In New South Wales, a person who uses, wields, or has custody of a knife, or an offensive implement, in a public place or school, or who uses or has custody of a laser pointer in a public place, is liable to imprisonment for two years³³;
 - In Queensland possessing a knife in a public place or school has a maximum penalty of imprisonment for one year³⁴; and

²⁰ Weapons Control Act, section 7. There is an equivalent penalty for a youth who possesses a crossbow that is a controlled weapon, section 7A, when read with section 11A.

²¹ *Control of Weapons Act 1990* (Vic), section 6(1).

²² *Ibid*, section 6(1A).

²³ *Ibid*, section 7(1).

²⁴ *Ibid*, section 7(1A).

²⁵ *Summary Offences Act 1953* (SA), section 21A.

²⁶ *Ibid*, section 21C.

²⁷ *Ibid*, section 21C(2).

²⁸ *Ibid*, section 21C(3).

²⁹ *Ibid*, section 21C(7).

³⁰ *Ibid*, section 21E.

³¹ *Weapons Act 1999* (WA), section 3.

³² *Ibid*, sections 7 and 8.

³³ *Summary Offences Act 1988* (NSW), sections 11B, 11C, 11E and 11FA.

³⁴ *Weapons Act 1990* (Qld), section 51.

- In Tasmania, the definition of dangerous article includes a knife, any weapon that is not a firearm and also captures what would be offensive weapons in the Territory³⁵. A person who unlawfully uses, carries, or possesses a dangerous article in a public place is liable to imprisonment for two years³⁶.

In summary, the Northern Territory Weapons Control Act maximum penalties tend to either be on par with or slightly lower than the maximum penalties for equivalent offences in other jurisdictions. However, the Taskforce does not consider this to be a problem requiring amendment. This is because the maximum penalties for Territory offences are not significantly lower than the maximum penalty for equivalent offences in other jurisdictions. Also, offences against the Weapons Control Act are often charged with other offences (e.g. assaults) which reflect the seriousness of the behaviour, and as such the average sentence for these types of offences reflect aggregate sentences imposed across a range of offending that the offender is being sentenced for. However, the penalties imposed by the court for offences against sections 6, 7, 7A and 8 of the Weapons Control Act average approximately \$800 for a fine or 56 days in prison, depending on the penalty given³⁷. These are well below the maximum penalties that might be imposed for those offences. Increasing the maximum penalties for these offences is, therefore, unlikely to increase public safety and would have little effect on the average sentences that are imposed by a court for these offences.

5.2. Prescribing additional weapons as controlled weapons under the Weapons Control Act

The Taskforce has considered the scope of weapons regulated by the Weapons Control Act and has determined that the Northern Territory's weapons control regime does not require the addition of further weapons.

NT Police take the view that machetes and axes should be prescribed as controlled weapons based on information provided to the Taskforce by its Police members whose experience suggests that machetes and axes are commonly used in weapons offences.

With regards to machetes, the Taskforce considers that a machete likely falls within the definition of a knife and is therefore already a controlled weapon. However, for the avoidance of doubt, the Taskforce recommends that an amendment could be made to paragraph (a) of the definition of controlled weapon under section 3 of the Weapons Control Act, to clarify that a knife includes a machete. The majority of the Taskforce takes the view that this does not expand the scope of the Weapons Control Act, it merely clarifies the existing scope of that regime.

With respect to axes, the majority of the Taskforce does not support prescribing axes as controlled weapons for the following reasons:

- Whereas machetes already likely fall under the definition of controlled weapon, axes (other than those modified for throwing) have not previously been prescribed as controlled weapons, presumably because they are a fairly common implement.
- Prescribing axes as controlled weapons would bring them under the presumption against bail at section 7A(1)(e) of the Bail Act. Data shows that the existing presumptions are already targeting a

³⁵ *Police Offences Act 1935* (Tas), section 3.

³⁶ *Ibid*, section 15C.

³⁷ This includes circumstances where the Weapons Control Act offence is part of an aggregate sentence or is the only or most serious offence charged. The type of penalty given depends in part on the other offences for which the defendant is found guilty.

substantial proportion of defendants charged with using axes who go on to commit new violent offences on bail. Essentially the existing presumptions appear to identify the highest risk subset of these defendants. This means that those charged with using these weapons who are not targeted represent relatively little risk on an individual basis, making it unnecessary to target them further based on using an axe. Bail operates on a risk management approach not a zero risk approach. It is not a crime prevention tool. With the exception of bail granted post-conviction, bail operates largely in a space where there is only an unproved allegation against a person. Any amendment affecting a presumption against bail should therefore be considered in light of how significant a risk the person poses with respect to going on to commit a further violent offence while on bail. In this case the data indicates that the cohort not already captured by the existing presumptions against bail represents relatively little risk.

- The data also indicates that the type of weapon involved in weapons offences varies on a geographic basis. Weapons offences involving axes between 2020 and mid-April 2023 tend to be a lower percentage of total weapons offences in urban areas but are a higher proportion of the total weapons offences than would be expected in certain rural and remote areas. Extending the presumption to those weapons would further entrench barriers to being granted court bail for remote and rural defendants who already face additional difficulties due to, amongst other things, language/interpretation issues, the absence of appropriate accommodation, and availability of bail monitoring technology in those areas.
- A more efficient approach that might better address axe crime in those areas, and therefore better protect the community, might be a targeted police response in geographic areas which are identified as having a high incidence of axe-related weapons offences relative to the total number of weapons offences within that geographic area. For example, three percent of all weapons offences in the Territory occur in Anindilyakwa (Groote Eylandt and surrounding areas) but 10 percent of all weapons offences involving axes in the Territory occur in that area; seven percent of all weapon offences in the Territory occur in Thamarrurr (Wadeye and surrounding areas) but 28% of all weapons offences involving axes occur in that geographic area. A targeted response by police, in cooperation with those communities, might see a significant reduction in axe related weapons offending in the Territory;
- For both adults and youths, the number of defendants charged with using one of these weapons who go on to commit a new violent offence while on bail is small. An equivalent result, without requiring legislative amendment, might be achieved by a stricter application of the existing presumptions against bail, which might be effected by additional training of prosecutors and judges.

NT Police takes the view that axes are commonly used in weapons offending and should therefore be prescribed as a controlled weapon.

5.3. Weapons offences and penalties in the Criminal Code

The Criminal Code contains a number of offences which specifically refer to a weapon or going armed. For some of these offences, the use or possession of a weapon elevates the maximum penalty that may be imposed. Cross jurisdictional analyses showing relevant provisions in the Territory and other Australian jurisdictions are at Attachment G(a) and G(b) to this report. A like for like comparison for many of these offences is difficult noting the differences between jurisdictions. For example, in the Northern Territory where a person threatens or assaults someone with a weapon the structure of the Criminal Code means that a person is charged with an aggravated form of assault, even if there is no harm caused to a person. However,

other jurisdictions have different offences that reflect the seriousness of an assault, for example in New South Wales the offence that a person is charged with depends on the type of physical harm a person experiences. Additionally, in some jurisdictions the issue of a weapon being used in a criminal offence is not taken into account until a person is found guilty and is being sentenced for the offence.

However, overall, while there are some discrepancies between the different jurisdictions, the scope of conduct regulated by these offences is fairly similar and the penalties between jurisdictions are comparable and reflect the seriousness of the behaviour covered.

Noting the above, the Taskforce does not consider that any amendment is required to Criminal Code offences that refer to weapons, or the penalties for those offences.

6. Ancillary issues

The Taskforce has considered the following matters that do not fall squarely within its terms of reference but are relevant to community safety.

6.1. Education and training for relevant actors with respect to bail and risk

Data indicates that defendants charged with weapons offences who are subject to the presumption against bail at section 7A(1)(de) of the Bail Act pose a relatively high risk of committing a new violent offence while on bail. Being on bail when a weapons offence was committed was the strongest predictor of committing a new violent offence if bailed again. The data show that a number of weapons defendants who trigger this presumption are nonetheless granted bail despite the presumption.

The DPP has indicated a willingness to implement additional education and training for prosecutors so that they may draw the attention of the court to the high risk of re-offending posed by weapons defendants in this cohort. The Taskforce takes the view that additional education should also be provided to judges about these risks.

6.2. Reducing the length of time that an accused person spends on bail

The longer a defendant is on bail, the greater the likelihood of bail ending in new offending. For instance, the likelihood of bail ending in a new violent offence for adult weapons offenders was 6% after two months, 10% after four months, 13% after six months, and nearly 20% after twelve months. For youth weapons offenders the likelihood of bail ending in a new violent offence was 13% after two months, 17% after four months, 20% after six months, and 22% after 12 months.

Resolving prosecutions more efficiently would reduce the likelihood of persons re-offending, not only while on bail but also in the general sense, noting that one of the purposes of sentencing is to rehabilitate offenders and reduce recidivism (*Sentencing Act 1995* (NT), s 5(1)(b)(c)).

6.3. Bail support programs

The Taskforce supports the continued implementation and delivery of bail support programs with a view to reducing breaches of bail and improving compliance with bail conditions.

The Northern Territory has already established a supported bail accommodation program for youth offenders. This was introduced in late 2017 and is designed to enable young people to comply with court

and police conditions and have access to support in an alternative setting to remand. The existing bail support program for youth offenders was evaluated in 2022. Insights and recommendations from that evaluation included a recommendation to establish a supported bail accommodation facility for young females in the Top End.

For adults, the Open House Bail Support program in Darwin was established in January 2023, followed by the Alice Springs site which commenced in March 2023. The Bail Support Programs are operated by the Salvation Army and funded by NT Community Corrections. The Bail Support Programs provide integrated support and accommodation services to improve the prospects that an accused person will be released on bail, and to help individuals to comply with their bail conditions and obligations. The goal of the Bail Support Programs is to reduce the overall number of people that are remanded in custody.

The Bail Support Programs focus on timely provision of specialist case management, individualised case planning, structured therapeutic services, life skills development, employment support and an opportunity to establish rental histories and references. The literature suggests that the primary focus of bail support programs should be support and provision of interventions and services, rather than supervision and monitoring of compliance. This follows from findings that intensive supervision programs do not reduce offending, while treatment-oriented programs are much more effective.

Often people charged with offences do not have safe or stable housing. The risk of homelessness is addressed in the Open House program through delivery of safe and stable short and medium term accommodation for people without access to suitable and appropriate accommodation who are on bail or assessed as potential candidates for bail. Open House 49, Darwin is a 30-bed facility and Open House Alice Springs will increase its capacity to 27 beds by September 2023. Occupancy rates for both sites have continued to increase with Darwin reaching an occupancy rate of 96% and Alice Springs reaching 100% occupancy.

The Bail Support Programs share a strong commitment to partnering with local Aboriginal Health Corporations and agencies. Formal partnerships have already been established between Red Dust in Alice Springs and Danila Dilba Health Services in Darwin. The Partnership with Danila Dilba aims to ensure participants in the program have access to the Empowerment Project's Cultural, Social and Emotional Wellbeing (CSEWB) program and regular health checks. Future grant funding agreements will specify collaboration with local Aboriginal Health Organisations as a key objective of any funded activity to ensure bail support service delivery models are culturally responsive and uphold culturally safe practice to meet the needs of Aboriginal and Torres Strait Islander people.

6.4. Matters that might be considered further by government

The Taskforce has considered that the following matters might be further considered with a view to improving community safety.

The inclusion and/or development of diversionary and other programs for adult defendants charged with weapons possession type offences, including expanded alternatives to custody for that cohort. This notes that diversionary programs already exist for young offenders and any changes to those programs should be considered in light of the current review of diversion being undertaken by TFHC which is focusing, among other things, on limiting the time between when a young person is apprehended and when they are diverted into a targeted and place-based diversion option;

The implementation of laws in the Territory similar to the *Police Powers and Responsibilities (Jack's Law) Amendment Act 2023* (Queensland), including additional options allowing police to seize and destroy weapons located via exercise of powers under those laws.

These matters could be considered further as part of the Government's Knife Strategy.

7. Recommendations

7.1. Priority 1 recommendations

1. Taking into account the matters considered in this paper, the Taskforce does not recommend that any further amendments be made to the presumptions for and against bail in the Bail Act.

7.2. Ancillary recommendations

The following recommendations relate to matters that are relevant to the overall objective of the Taskforce but do not fall squarely within its terms of reference.

The Taskforce recommends:

2. Additional education and training for judges and prosecutors with respect to the risks posed by defendants who commit weapons offences and trigger the presumption against bail at section 7A(1)(de) of the Bail Act, insofar as their likelihood of re-offending.
3. To facilitate the speedier resolution of prosecutions, the Taskforce recommends that the Government consult with the DPP, defence agencies (such as NAAJA, and NTLAC), Local Court and Supreme Court, and DTFH Youth Outreach and Re-engagement Teams, to ascertain what further resources are required to enable them to have adequate staff, training, and to implement policies and practice directions aimed at achieving expedited outcomes, and to allocate resources accordingly. Options that may be considered specifically in relation to young offenders are:
 - a. Establishing a mechanism for judges in the Youth Justice Court to provide sentencing indications. This would enable a young person to ask the Judge what sentence they would impose if the young person were to plead guilty, and allow the young person to make an informed choice as to whether they apply for bail or plead guilty and finish the matter.
 - b. Requiring pre-court conferences between relevant parties, including the defence and prosecution lawyers, community youth justice officer, case manager, and the young person and their family, to determine a resolution before the matter proceeds before the Judge.
4. Delivery of locally responsive and adaptable bail support programs for both youth and adult defendants in the Northern Territory.
5. That the Knife Strategy Working Group led by the Department of the Attorney-General and Justice consider:
 - (a) the inclusion and/or development of diversionary and other programs for adult defendants charged with weapons possession type offences, including considering expanding alternatives to custody for that cohort (noting that diversionary programs already exist for young offenders and any changes to those programs should be considered in light of the current review of diversion being undertaken by TFHC which is focusing, among other things, on limiting the time between when a young person is apprehended and when they are diverted into a targeted and place-based diversion option);
 - (b) the implementation of laws in the Territory similar to the *Police Powers and Responsibilities (Jack's Law) Amendment Act 2023* (Queensland), including additional options allowing police to seize and destroy weapons located via exercise of powers under those laws.

7.3. Priority 2 recommendations

6. Noting the outcome of Priority 1, the Taskforce does not consider it necessary to further amend the Bail Act to improve community safety and risk management of offenders in relation to offences involving a weapon.
7. The Taskforce has considered the offences and penalties in the Weapons Control Act and does not make any recommendations with respect to those offences and penalties. The Taskforce notes that the Territory's Weapons Control Act offences are largely consistent with other jurisdictions in terms of their scope and intent, and data suggests that individuals on bail for weapons possession-type offences who do not already trigger an existing presumption are relatively low risk individually in terms of going on to commit a new violent offence while on bail.
8. The Taskforce recommends, for the avoidance of any doubt as to whether a machete is a controlled weapon, that paragraph (a) of the definition of controlled weapon at section 3 of the Weapons Control Act be amended so that a controlled weapon means '(a) a knife, including a machete, other than a knife that is a prohibited weapon';
9. The Northern Territory Police Force considered that axes should be considered controlled weapons thereby triggering the existing presumption against bail at section 7A(1)(e) of the Bail Act based on members' experiences these types of weapons are frequently used in weapons offending.
10. For the following reasons the majority of the Taskforce does not support the NTPF position:
 - a. Whereas machetes already likely fall under the definition of controlled weapon, axes (other than those modified for throwing) have not previously been prescribed as controlled weapons, presumably because they are a fairly common implement.
 - b. Data shows that a substantial proportion of defendants charged with using axes who go on to commit new violent offences on bail are already captured under presumptions against bail. Essentially the existing presumptions appear to identify the highest risk subset of these defendants. This means that those charged with using these weapons who are not targeted represent relatively little risk on an individual basis, making it unnecessary to target them further based on using an axe. Bail operates on a risk management approach not a zero risk approach. It is not a crime prevention tool. In this case the data indicates that the cohort not already captured by the existing presumptions against bail represents relatively little risk.
 - c. The data also indicates that the type of weapon involved in weapons offences varies on a geographic basis, with a lower percentage of total weapons offences in urban areas but a higher proportion of the total weapons offences than would be expected in certain rural and remote areas. This presents barriers to being granted court bail for remote and rural defendants who already face additional difficulties due to, amongst other things, language/interpretation issues, the absence of appropriate accommodation, and availability of bail monitoring technology in those areas.
 - d. For both adults and youths, the number of defendants charged with using one of these weapons who go on to commit a new violent offence while on bail is small. An equivalent result, without requiring legislative amendment, might be achieved by a stricter application of the existing presumptions against bail, which might be effected by additional training of prosecutors and judges.
11. The Taskforce has considered offences involving weapons (including penalties) in the Criminal Code (see cross jurisdictional comparison table). The Taskforce does not recommend any changes be made

with respect to those offences and penalties. The offences are largely consistent with those of other jurisdictions.

Jurisdictional Analysis of Adult Bail - a presumption against bail for a weapons offence

Jurisdiction	Test	Test applied	Offence
NT	Presumption For and Presumption Against Bail	There is a presumption of bail in the NT <i>Bail Act 1982</i> (section 8) unless the offence falls into any category outlined in section 7 of the <i>Bail Act 1982</i> where the presumption that applies is a presumption against bail.	<ul style="list-style-type: none"> • Presumption against bail for a serious violent offence involving a prohibited or controlled weapon whether harm caused or not; • presumption against bail for a serious offence (where there is a prior for a serious violence offence in the past 10 years) involving a prohibited or controlled weapon whether harm caused or not; • Presumption against bail for a serious offence if on bail for a serious offence
NSW	Show cause	A 'show cause' offence is an offence for which the accused must 'show cause' why their continuing detention is not justified. This means that instead of the prosecution bearing the onus of showing that the person poses an unacceptable risk if released on bail, the defence must show cause for why the person should be released.	<ul style="list-style-type: none"> • Serious violent offence involving wounding if previously found guilty of serious violent offences; • Offences that involve use of a firearm; • Any offence that involves a military style weapon knives, guns included.
Victoria	Exceptional Circumstances Test	The bail decision maker must refuse bail unless satisfied that exceptional circumstances exist that justify the grant of bail. The accused bears the burden of satisfying the bail decision maker as to the existence of exceptional circumstances.	<ul style="list-style-type: none"> • Armed robbery or use of firearm whilst on bail for another serious violent offences. • Armed robbery or use of firearm when serving sentence for another Schedule 2 offence.

ACT	Presumption against bail	A court or an authorised officer must not grant bail to the accused person unless satisfied that special or exceptional circumstances exist favouring the grant of bail.	<ul style="list-style-type: none"> Only applies if a person is on bail for a serious offence and commits another serious offence. A serious offence would include armed robbery.
QLD	Show cause	The court or police officer shall refuse to grant bail unless the defendant shows cause why the defendant's detention in custody is not justified and, if bail is granted or the defendant is released under section 11A, must include in the order a statement of the reasons for granting bail or releasing the defendant.	<ul style="list-style-type: none"> Indictable offence involving an offensive weapon or firearm.
SA	Presumption against bail	Despite section 10, bail is not to be granted to a prescribed applicant unless the applicant establishes the existence of special circumstances justifying the applicant's release on bail.	<ul style="list-style-type: none"> Serious firearm offence.
WA	Exceptional circumstances	The judicial officer must refuse to grant bail unless satisfied there are exceptional reasons why the accused should not be kept in custody.	<ul style="list-style-type: none"> Serious offence while on bail or release for another serious offence.
TAS	Presumption in favour of bail	A justice must release a person on bail if satisfied the person is not a prescribed person and has not been taken into custody for an offence or breach of duty.	<ul style="list-style-type: none"> Person subject to restraint order (use of weapon or firearm not specified).

Terms of Reference

Bail and Weapons Offences Review Taskforce

1. Background

On 22 March 2023, the Hon Natasha Fyles MLA, Chief Minister of the Northern Territory, announced a review into the presumptions for and against bail pursuant to the *Bail Act 1982* in relation to offences involving a weapon. This review will consider bail presumptions for both adult and youth offenders. It will also consider current penalties for offences involving a weapon.

The *Bail and Weapons Offences Review Taskforce* (the Taskforce) has been established for this purpose. The Taskforce will include representation from across government agencies including the Northern Territory Police, Fire and Emergency Services (NT Police), the Department of the Attorney-General and Justice (AGD) (Aboriginal Justice Unit (AJU), Legal Policy, Northern Territory Correctional Services (NTCS), and Criminal Justice Research and Statistics Unit (CJRSU)), the Director of Public Prosecutions (DPP), and the Department of Territory Families, Housing and Communities (TFHC) (Youth Justice and Strategic Services).

The Taskforce will be formed for three months initially and will provide recommendations on any changes necessary to bail presumptions for charges involving weapons and penalties related to weapon offences, with the overall aim to increase community safety.

The Taskforce will report their final recommendations to the Chief Minister through the Attorney-General.

2. Purpose

The Taskforce is a cross-agency group with responsibility to undertake a review of the presumptions of bail for adult and youth offenders in relation to offences involving weapons. The Taskforce will also consider any other legislative amendments required to penalties and powers related to offences involving weapons to improve community safety.

In undertaking this review, the Taskforce will consider, where relevant, the outcome of any evaluations or reviews as to the effectiveness of bail reform relating to weapons offences in comparable jurisdictions in improving community safety and risk management of offenders.

3. Key Responsibilities

The Taskforce will address the following matters in order of priority:

Priority 1

Consider and make recommendations for further legislative amendment to the bail presumptions for adult and youth offenders under the *Bail Act 1982* where a person has been charged with an offence involving a weapon.

Priority 2

Based on the outcome of the review under Priority 1, the Taskforce will:

- (a) advise on any other recommendations deemed necessary for the *Bail Act 1982* to improve community safety and risk management of offenders in relation to offences involving a weapon;

- (b) review and make recommendations regarding offences and penalties under the *Weapons Control Act 2001*; and
- (c) review and make recommendations on charges involving weapons (including penalties) within the Criminal Code.

4. Membership

The Chief Executive Officer, AGD, Ms Gemma Lake, has sought nominations for the Taskforce from the following agencies and units of AGD:

- NT Police;
- Youth Justice, TFHC;
- Strategic Services, TFHC;
- AJU, AGD;
- Legal Policy, AGD;
- NTCS, AGD;
- CJRSU, AGD; and
- DPP.

The Taskforce will be chaired by Ms Leonique Swart, Deputy CEO representing AGD.

5. Meetings

The Taskforce will commence meetings from the week commencing 3 April 2023. Meetings will be required on a fortnightly basis until the furnishing of recommendations by 6 July 2023.

It is requested that members attend meetings and that proxies are not provided.

Prior to each meeting, the Chairperson should prepare a brief agenda and distribute to the group via email. Secretariat support will be provided by AGD.

6. Reporting

The Taskforce may make recommendations or refer issues on related matters that do not fall within these Terms of Reference to other NT Government agencies, or other committees or working groups.

The Taskforce reports to Ms Gemma Lake, Chief Executive Officer, AGD, and through to the Children and Families Standing Committee.

A report on the progress of the Taskforce is due on 6 June 2023 to the Chief Minister. The final report outlining the recommendations is to be provided on 6 July to the Chief Minister, through the Attorney-General.

Operation of Bail Presumptions in April 2023

Sections 7A, 8 & 8A of the Bail Act 1982

Charge is laid
Adult Offenders

Youth Offenders

Murder: s156 Criminal Code
Terrorism: s54 Criminal Code
Sabotage: s242 Criminal Code
Arson: s243(1) Criminal Code
Threats to persons involved in Criminal investigation, Judicial Proceedings or against Public Officers: s103A Criminal Code
Serious Sexual Offence - A Territory or Commonwealth Sexual offence punishable by imprisonment for 7 or more years
Misuse of Drugs Acts Act offence: punishable by 7 or more years imprisonment
Customs Act offence: punishable by 10 or more years imprisonment
Cth Crim Code (Div 307): 10 or more years imprisonment
Serious Crime Control Act: ss36, 37, 38 or 55
Serious Violence Offence involving the use or threatened use of a controlled or prohibited weapon

Serious Harm: s 181 Criminal Code
Breach DVO: s 120 DFVA

Serious Offence against Criminal Code
Any offence punishable by imprisonment for 5 or more years

Breach DVO: s 120 DFVA

New offence raises a breach of a current suspended sentence of imprisonment (s40 of Sentencing Act)

Offences other than prescribed offences

PRIOR GUILT FOR
Murder: s156 Criminal Code
Serious Harm: s181 Criminal Code
Assault Worker: s188A Criminal Code
Assault Police: s189A Criminal Code
Sexual Assault: s192 Criminal Code
Similar offence (as above) interstate or in another country
Breach DVO offence within the last 2 years

PRIOR GUILT FOR
Serious violence offence within 10 last years

Breach DVO offence within the last 2 years

Unless:
Breach is so minor that a court is unlikely to regard it as a breach of the suspended sentence.

Serious violence offence involving the use or threatened use of a controlled or prohibited weapon

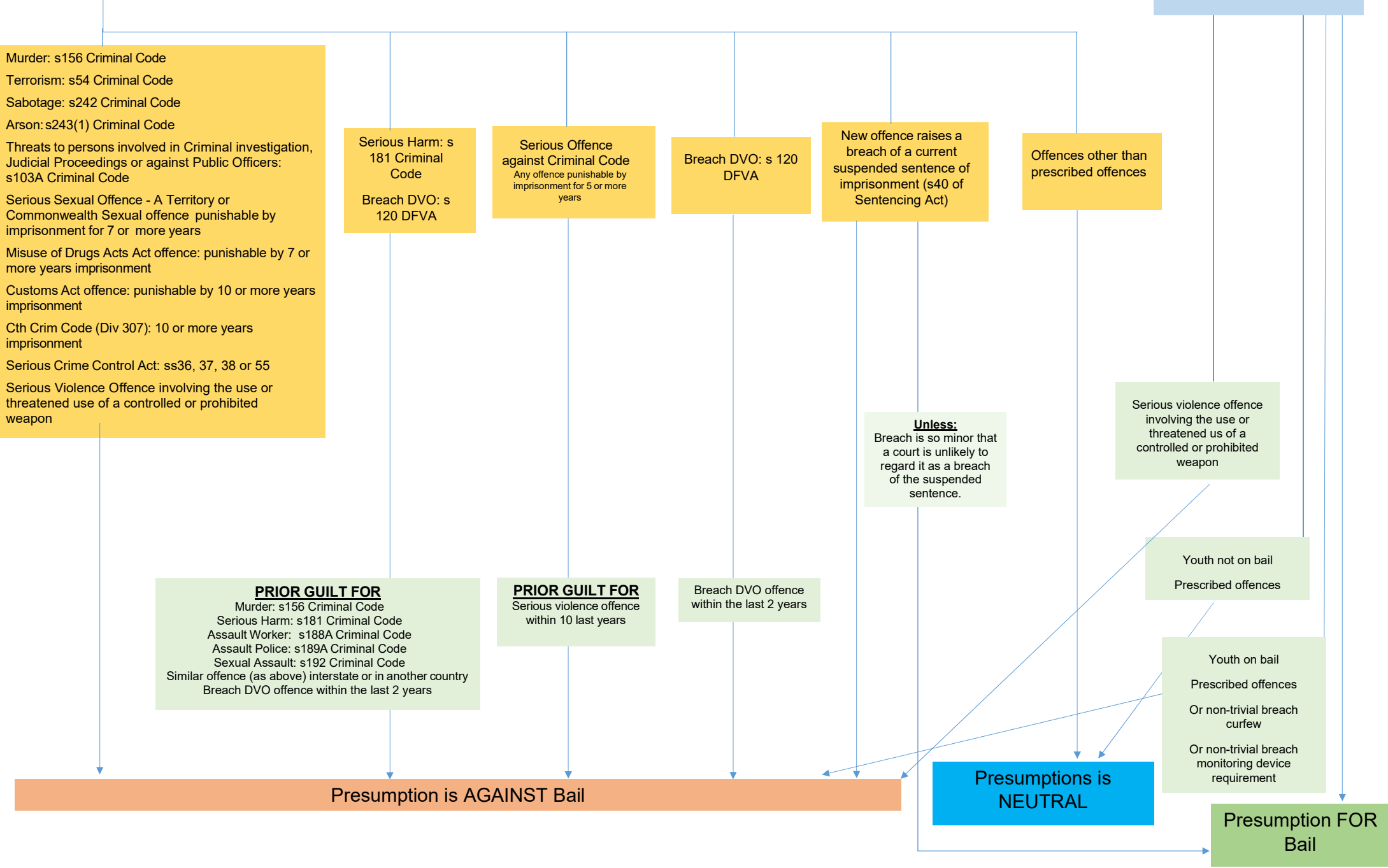
Youth not on bail
Prescribed offences

Youth on bail
Prescribed offences
Or non-trivial breach curfew
Or non-trivial breach monitoring device requirement

Presumption is AGAINST Bail

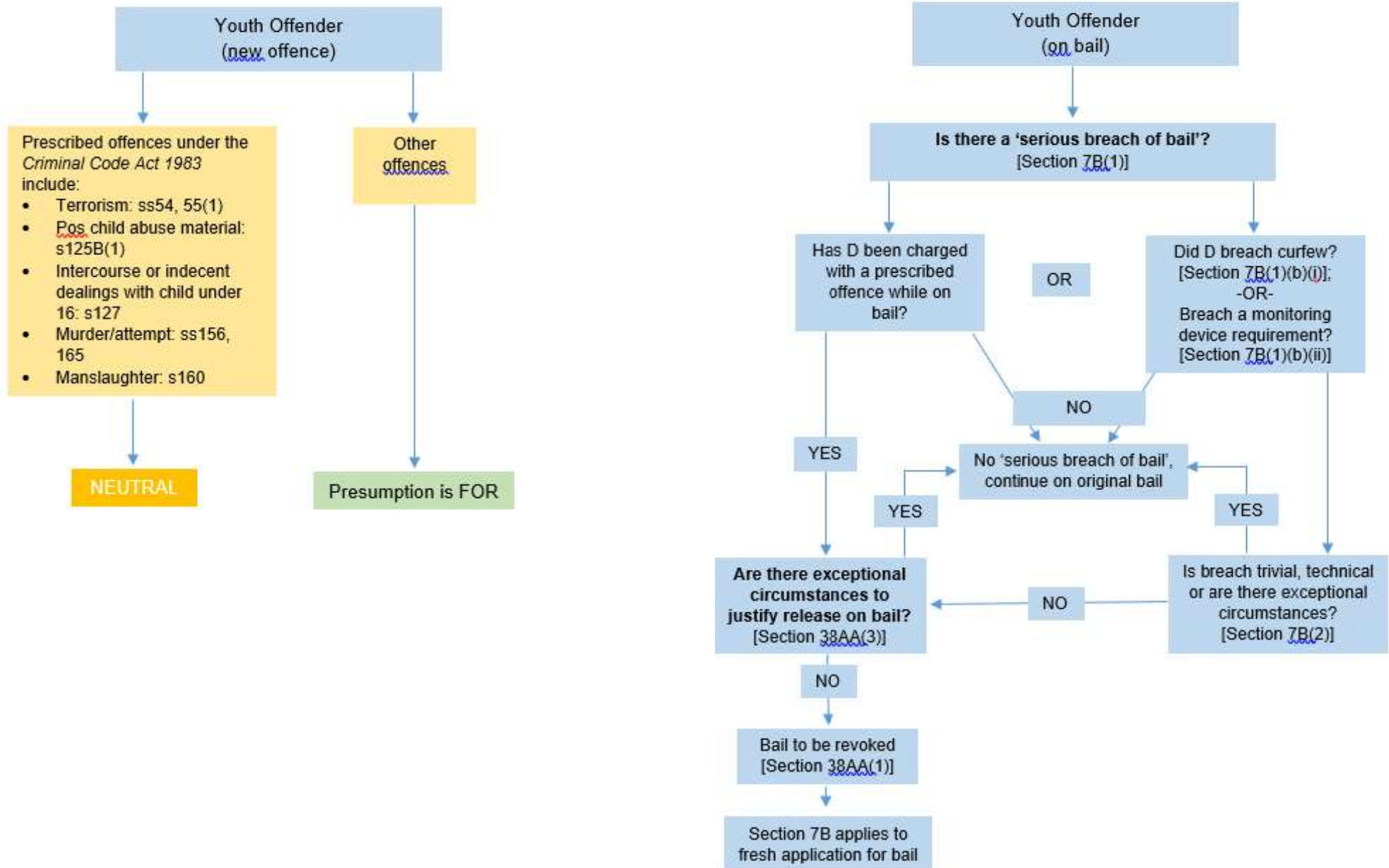
Presumptions is NEUTRAL

Presumption FOR Bail



Presumption of Bail

Sections 7A, 8 & 8A of the *Bail Act 1982*



Definitions of controlled weapon and prohibited weapon from section
3 of the *Weapons Control Act 2001*

&

Weapons prescribed as controlled weapons and prohibited weapons
at Schedules 1 and 2 of the *Weapons Control Regulations 2001*

Section 3 Definitions

In this Act:

...

controlled Weapon means:

- (a) a knife, other than a knife that is a prohibited weapon; or
- (b) an article that is prescribed by regulation to be a controlled weapon;

...

prohibited weapon means an article prescribed by regulation to be a prohibited weapon.

Schedule 1 **Controlled weapons**

regulation 2

1. A crossbow, being a type of bow fixed transversely on a stock grooved to direct a dart, bolt or arrow (other than a type of crossbow listed as a prohibited weapon in Schedule 2).
2. A spear-gun.
3. A baton or cudgel, being a short stout stick, made of any material, designed as a weapon, including the weapon commonly known as a "police nightstick".
4. A dagger, being a sharp pointed stabbing instrument (other than an oyster knife or an instrument such as a sword or bayonet) ordinarily capable of being concealed on the person and having:
 - (a) a flat blade with cutting edges (whether serrated or not serrated) along the length of both sides; or
 - (b) a needle-like blade, the cross section of which is elliptical or has 3 or more sides.
5. A bayonet, being a thrusting, striking or cutting weapon designed to be attached to a firearm.
6. A sword, being a thrusting, striking or cutting weapon with a long blade having one or 2 cutting edges and a hilt.
7. A cattle prod.
8. A catapult, shanghai, slingshot or hunting sling (other than a catapult, shanghai, slingshot or hunting sling to which item 15 of Schedule 2 relates).
9. A whip with metal lashes.
10. A cat o'nine tails with knotted lashes.
11. A hand-held battery-operated article, commonly known as a "laser pointer", designed or adapted to emit a laser beam with an accessible emission limit of greater than 1 mW.
12. An article that consists of a baton or stick constructed in such a way that it can be unscrewed or broken so as to form 2 or more parts joined by chain, rope or cord, including the martial arts weapons known as "Baton-chucks" or "Bo-chucks".
13. A scythe, or sickle-shaped article designed as a weapon, that:
 - (a) has a fixed or folding blade; and

- (b) may or may not have a chain attached,
and includes the martial arts weapon known as "Kama".
14. An article consisting of a chain, rope or cord with a wooden or metal baton, stick or rod attached at each end, including the martial arts weapons known as "Kasari-Fundo", "Kusari-Fundo" and "Manrikigusari".
 15. A stick or rod, of any material, designed as a weapon to be applied to the pressure points of the human body, including the martial arts weapon known as "Kubotan".
 16. An article that consists of 2 sticks, rods or batons joined by a cord, rope or chain, including the martial arts weapon known as "Nunchaku".
 17. A "Sai" or "Jitte", being a short, tapered, metal rod, dull at the point, with flared metal prongs guarding the handle.
 18. An article consisting of a curved blade pointed at both ends with a handle attached to the middle, including the martial arts weapon known as "Suan Ywe Gou".
 19. An article consisting of a blade or blades with cord, rope or chain attached for the purpose of enabling the blade to be thrown and retrieved, including the martial arts weapon known as "Shoge", "ninja Kyokeysu-Shoge" or "Kyotetsu Shoge".
 20. An article consisting of a handle and an edged blade, joined by chain or a combination of chain and metal pieces or steel rods, designed to be used as a whip, including the martial arts weapon commonly known as "Chinese whip", "whip spear", "7 piece iron chain", "9 piece iron chain", "Bian Tzu Chiang" or "Lien Tzu Chiang".
 21. The martial arts weapon known as a "Butterfly Sword".
 22. The martial arts weapon known as a "Tonfa".

Schedule 2 Prohibited weapons

regulation 3

1. A "flick knife", being a knife designed or adapted so that the blade is concealed when folded or recessed into the handle and that opens by gravity or centrifugal force or by any pressure applied to a button, spring or device in or attached to the handle of the knife.
2. A "knuckle knife", being an open or exposed blade or similar instrument attached to a handle that is designed or adapted to be held between the knuckles (including the device commonly known as the "Urban Pal Knife").
3. An article that is designed to include a concealed knife or sword blade, including but not limited to:
 - (a) a belt, or similar article, designed or adapted to hold a knife, dagger or similar instrument so that the presence of the knife, dagger or instrument is concealed or disguised as part of the belt or article when it is worn (for example, an article known as the "Bowen Knife Belt");
 - (b) a "swordstick", being a cane, stick or similar article designed or adapted to hold the blade of a sword so that it is concealed from view until withdrawn from the cane, stick or article; and
 - (c) a riding crop designed or adapted to hold a blade or spike so that it is concealed from view until withdrawn from the crop.
4. A "butterfly knife", being a knife with a 2 piece handle that folds together to cover both edges of the blade (whether the blade is serrated or not serrated).
5. A "double-end knife", being a knife that has the appearance of 2 overlapping curved blades joined together so as to form an ellipse shape.
6. A knife that is designed or adapted so that the blade is concealed by a plastic, wooden or metal sheath that retracts into the handle of the knife by gravity or centrifugal force or by any pressure applied to a button, spring or device in or attached to the handle of the knife (including the knife commonly known as the "Black Eagle Knife").
7. A "push knife" or similar device designed as a weapon that consists of a single-edged or multi-edged blade or spike of any material that has a handle fitted transversely to the blade or spike and allows the blade or spike to be supported by the palm of the hand so that stabbing blows or slashes can be inflicted by a punching or pushing action.
8. A "trench knife" or similar device that consists of a single-edged or multi-edged blade or spike (of any material) fitted with a handle made of a hard substance that can be fitted over the knuckles of the hand of the user to protect the knuckles and increase the effect of a punch or blow.

9. A "throwing blade", being a knife or axe of any material that is designed to be thrown or modified to enable it to be thrown.
10. A "ballistic knife", being a device or instrument designed or adapted to fire or discharge a knife, dagger or similar instrument by mechanical, percussive or explosive means.
11. A "non-metal/ceramic knife", being a knife, blade or spike of which no part is metallic, but not including plastic cutlery.
12. A crossbow that is reasonably capable of being:
 - (a) carried or concealed about the person; and
 - (b) raised and discharged by one hand.
13. A "blow gun", being a blow pipe or similar device or instrument designed to propel an arrow, dart or similar projectile by air expelled from the mouth.
14. A dart designed to be projected from a blow-gun or similar device.
15. A catapult, shanghai, hunting sling or slingshot:
 - (a) designed or adapted to be used with an arm brace that fits or rests on the forearm to support the wrist from the tension of the elastic material used to propel the projectile (whether or not the brace is home-made and including the device commonly known as the "Saunders Falcon Hunting Sling"); or
 - (b) that is manufactured and intended for commercial distribution (including a frame or stock, and a sling, that is marketed or intended for use as a part for a catapult, shanghai, hunting sling or slingshot).
16. A dart projector (for example, an article commonly known as the "Darchery Dartslinger") or any similar device that is manufactured and intended for commercial distribution.
17. An article designed or adapted to discharge oleoresin capsicum spray.
18. An article designed or adapted to emit or discharge an offensive, noxious or irritant liquid, powder, gas or chemical so as to cause disability, incapacity or harm to another person.
19. An article designed or adapted to emit an electric current into a human body for the purposes of incapacitation or injury.
20. An acoustic anti-personnel device that is designed to cause permanent or temporary incapacity or disability or to otherwise physically disorientate a person.
21. A "shark dart" or any other similar device that is designed to expel, on or after contact, any gas or other substance capable of causing bodily harm.

22. An "extendable baton", being a baton designed or adapted so that the length of the baton extends by gravity or centrifugal force or by any pressure applied to a button, spring or device in or attached to the handle of the baton.
23. A "knuckle-duster", being a device or instrument designed or adapted to be worn across a knuckle or knuckles of the hand, finger, fingers or thumb so as to:
 - (a) increase the force or impact of a punch or blow when striking another person with the hand, finger, fingers or thumb; or
 - (b) protect the knuckle or knuckles from injury when striking another person with the hand, finger, fingers or thumb.
24. A "weighted glove", being a glove (including a fingerless glove), or any other similar article, that:
 - (a) is designed or constructed to be used as a weapon; and
 - (b) has weighted material sewn into it to increase the effect of a punch or blow.
25. A "studded glove", being a glove (including a fingerless glove), or any other similar article, that:
 - (a) is designed or constructed to be used as a weapon; and
 - (b) has a number of raised studs or spikes made of a hard substance and positioned over the back of the glove to increase the effect of a punch or blow.
26. A mace or any other similar article capable of causing injury that consists of a club or staff fitted with a flanged or spiked head, other than a ceremonial mace made for and used solely as a symbol of authority on ceremonial occasions.
27. A flail or any other similar article that consists of a staff or handle that has fitted to one end, by any means, a freely swinging striking part that is armed with spikes or studded with any protruding matter.
28. An article designed to be attached to, or worn on the hands or feet, that has claws attached, including the martial arts weapons known as "ninja climbing claws", "ninja hand claws" and "ninja foot claws".
29. A "throwing star", being a sharpened star-shaped article designed for throwing, including the martial arts weapon known as "Surikan", "Suriken" or "Shaken" (including where the throwing star is attached to a belt-buckle).
30. An imitation firearm.
31. A "WASP injection knife" or any similar device that has a blade from which

compressed gas can be expelled.

Serious violence offences

The following offences in the Criminal Code are 'serious violence offences', as defined by section 3 of the *Bail Act 1982*:

Part V Acts injurious to the public in general, Division 2:

Division 2 (offences against morality):

125B Possession of child abuse material

125E Using child for production of child abuse material or pornographic or abusive performances;

127 Sexual intercourse or gross indecency involving child under 16 years;

128 Sexual intercourse or gross indecency involving child over 16 years under special care, but only if the child is under the age of 17 years;

130 Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person;

131 Attempts to procure child under 16 years, but only if the offender is an adult;

131A Sexual relationship with child;

132 indecent dealing with child under 16 years;

134 incest

Part VI Offences against the person and related matters, Divisions 3 to 6A;

Division 3 Homicide: suicide: concealment of birth:

156 Murder;

160 Manslaughter;

161A Violent act causing death;

162 Assisting and encouraging suicide;

165 attempt to murder

166 threats to kill

170 killing unborn child

Division 3A Recklessly endangering life and serious harm, negligently causing serious harm and related offences involving vehicles and vessels, namely:

174C Recklessly endangering life;

174D Recklessly endangering serious harm;

174E Negligently causing serious harm

174F Driving motor vehicle causing death or serious harm;

174FA Hit and run

174FB Dangerous driving during pursuit;

174FC Navigating vessel causing death or serious harm

Division 4 Miscellaneous offences against the person:

175 Disabling in order to commit indictable offence;

176 Stupefying in order to commit indictable offence;

177 Acts intended to cause serious harm or prevent apprehension

178 Preventing escape from wreck;

179 Intentionally endangering safety of persons travelling by railway or roadway;

180 intentionally endangering safety of persons travelling by aircraft or ship;

181 Serious harm

182 Attempting to injure by explosive substances;

183 Failure to supply necessities;

184 Endangering life of child by exposure;

186 Harm

186AA Choking, strangling or suffocating in a domestic relationship;

Division 4 Female genital mutilation

186B Female genital mutilation;

186C Removal of person from Territory for female genital mutilation;

Division 5 Assaults

188 Common Assault, but only if a circumstance in subsection (2) applies, which includes if the person assaulted is threatened with a firearm or a dangerous or offensive weapon;

188A Assaults on workers, but only if the offence is heard on indictment;

189A Assaults on police or emergency workers;

189 Unlawful stalking, but only if the person was in contravention of bail or a court injunction, or the person was, on any occasion to which the charge relates, in possession of an offensive weapon;

190 Assaults on the Administrator or judges;

191 Assaults on member of crew of aircraft;

192 Sexual intercourse and gross indecency without consent;

192B Coerced sexual self-manipulation;

Division 5A Assault with intent to steal:

193B Assault with intent to steal

Division 6 Offences against liberty: kidnapping: abduction:

194 Kidnapping for ransom;

195 Kidnapping;

196 Deprivation of liberty;

201 Abduction, enticement or detention of child under 16 years for immoral purpose;

202 Abduction of child under 16 years, but only if the offender is an adult or the child is under the age of 14 years;

Division 6A Sexual servitude and deceptive recruiting for sexual services:

202B Sexual servitude

202C Conducting business involving sexual servitude;

202D Deceptive recruiting for sexual services

Section 218 Robbery;

Cross jurisdictional comparison of select offences involving a weapon

Offence	NT	WA	ACT	QLD	NSW	VIC
Assault: 1) threatened with weapon	5 years	No harm 3 years Harm 5 years	No harm 3 years Harm 7 years	Harm and weapon 10 years	Harm 5 years	5 years
Unlawful striking (1)possess weapon	5 years			Causing death: Life		
Assault with intent to steal (1) weapon	14 years	10 years	5 years	14 years		15 years
Burglary (dwelling house) and weapon	life	20 years	20 years	life	Agg. 14 years S/Agg. 20 years	25 years
Burglary (other property) and weapon	20 years	20 years	20 years	life	Agg. 14 years S/Agg. 20 years	25 years
Robbery (weapon)	life	20 years	25 years	life	25 years	25 years

Comparative Jurisdictional Analysis

Key Objectives:

- This table looks at the criminal codes/crimes Acts for all Jurisdictions as well the Bail Acts to determine presumption re Bail.
- Offences relate specifically to possession/use of an offensive/dangerous weapon ***For offences including: assaults, theft/burglary, robbery, threats, murder and attempted murder***
- The table also identifies the example of the weapons the penalty applies to

Assault or endangerment with a weapon (not including aggravated assault or serious harm)

Jurisdiction	Legislation and Section	Penalty	Example of weapons that apply
NT	s188 common assault <i>Criminal Code Act 1983</i>	firearm or other dangerous or offensive weapon liable to imprisonment for 5 years.	offensive weapon means any article made or adapted to cause injury or fear of injury to the person or by which the person having it intends to cause injury or fear of injury to the person. Greater penalty if offender uses a firearm or other dangerous or offensive weapon
NSW	S61, common assault prosecuted by indictment S 59 Assault occasioning actual bodily harm s33B Use or possession of weapon to resist arrest etc <i>Crimes Act 1900</i>	2 years imprisonment (no increase of maximum penalty if weapon used) 5 years imprisonment (no increase to maximum penalties if weapon used) Liable to imprisonment for 15 years	Crimes Act 1900, s4, Definitions Offensive weapon or instrument means (a) a dangerous weapon, or (b) any thing that is made or adapted for offensive purposes, or (c) any thing that, in the circumstances, is used, intended for use or threatened to be used for offensive purposes, whether or not it is ordinarily used for offensive purposes or is capable of causing harm.
VIC	s320A Maximum term of imprisonment for common assault in certain circumstances <i>Crimes Act 1958</i>	an offensive weapon, a firearm or an imitation firearm and the victim is a police officer (recklessness) and knowledge that conduct would arouse apprehension or fear, the maximum term of imprisonment for common	offensive weapon means any article (other than a firearm or an imitation firearm) made or adapted for use for causing injury to or incapacitating a person, or which at the time of an assault the person having it with them intends or threatens to use for such a purpose;

		assault is level 5 imprisonment (10 years maximum)	
QLD	s339 Assaults occasioning bodily harm <i>Criminal Code Act 1899</i>	armed with any dangerous or offensive weapon or instrument imprisonment for 10 years.	
ACT	s27 Acts Endangering life etc <i>Crimes Act 1900</i>	offensive weapon 10 years.	offensive weapon means— (a) anything made or adapted for use, or capable of being used, for causing injury to or incapacitating a person; or (b) anything intended for that use by the person who is carrying it or otherwise has it in his or her possession; and includes an imitation or replica of an offensive weapon.
TAS	s170 Acts intended to cause grievous bodily harm or prevent apprehension <i>Criminal Code Act 1924</i>	offensive weapon is guilty of a crime. Charge: Committing an unlawful act intended to cause bodily harm	offensive weapon includes anything that has the appearance of a firearm or a gun or pistol of any kind, whether capable of being discharged or not
SA	s20 Assault with the use of an offensive weapon <i>Criminal Law Consolidation Act 1935</i>	imprisonment for 4 years causes harm, imprisonment for 5 years	offensive weapon means: a) an article or substance made or adapted for use for causing, or threatening to cause, personal injury or incapacity including: (i) a firearm or imitation firearm (ie an article intended to be taken for a firearm); or (ii) an explosive or an imitation explosive (ie an article or substance intended to be taken for an explosive); or b) an article or substance that a person has: (i) for the purpose of causing personal injury or incapacity; or (ii) in circumstances in which another is likely to feel reasonable apprehension that the person has it for the purpose of causing personal injury or incapacity;
	s5AA Aggravated Offences (*) any offence can become an aggravated offence if an offensive weapon was used during offence <i>Criminal Law Consolidation Act 1935</i>		
	s19 Unlawful threats <i>Criminal Law Consolidation Act 1935</i>	Imprisonment ranges from 5 – 12 years depending on conduct	
	s23 Causing serious harm <i>Criminal Law Consolidation Act 1935</i>	Imprisonment ranges from 15 – 25 years depending on whether conduct	
	s24 Causing harm <i>Criminal Law Consolidation Act 1935</i>	Imprisonment ranges from 8 - 13 years depending on whether conduct	
	s29 Acts endangering life or creating risk of serious harm	endanger life, imprisonment for 18 years cause serious harm, imprisonment for 12 years	

	<i>Criminal Law Consolidation Act 1935</i>	cause harm, imprisonment for 7 years	
WA	s318 serious assault (with a weapon) <i>Criminal Code Act Compilation Act 1913</i>	Imprisonment for 10 years	Dangerous or offensive weapon includes a knife under the Weapons Act 1999

Serious harm or aggravated assaults with a weapon

Jurisdiction	Legislation and Section	Penalty	Example of weapons that apply
NT	s174G increased penalty for aggravated offences <i>Criminal Code Act 1983</i>	The following are circumstances of aggravation: the offence was committed by the use or threatened use of an offensive weapon. 174C Recklessly endangering life Maximum penalty: Imprisonment for 10 years or, for an aggravated offence, 14 years. 174D Recklessly endangering serious harm Maximum penalty: Imprisonment for 7 years or, for an aggravated offence, 10 years.	offensive weapon means any article made or adapted to cause injury or fear of injury to the person or by which the person having it intends to cause injury or fear of injury to the person.
NSW	s61J Aggravated sexual assault <i>Crimes Act 1900</i>	by means of an offensive weapon is liable to imprisonment for 20 years	Crimes Act 1900, s4, Definitions Offensive weapon or instrument means (a) a dangerous weapon, or (b) any thing that is made or adapted for offensive purposes, or (c) any thing that, in the circumstances, is used, intended for use or threatened to be used for offensive purposes, whether or not it is ordinarily used for offensive purposes or is capable of causing harm. Dangerous weapon means— (a) a firearm, or an imitation firearm, within the meaning of the Firearms Act 1996, or

ATTACHMENT G(b) to Report

			<p>(b) a prohibited weapon within the meaning of the Weapons Prohibition Act 1998, or</p> <p>(c) a spear gun.</p> <p>Armed, in relation to a weapon, or instrument, or an offensive weapon, or instrument, that is a dangerous weapon, includes bearing or having the immediate physical possession of the weapon, or instrument.</p>
VIC	<p>s15A Causing serious injury intentionally in circumstances of gross violence</p> <p><i>Crimes Act 1958</i></p>	<p>an offensive weapon, firearm or imitation firearm and in fact used the offensive weapon, firearm or imitation firearm</p> <p>Penalty: Level 3 imprisonment (20 years maximum).</p>	<p>offensive weapon means any article made or adapted for use for causing injury to or incapacitating a person, or which the person having it with him or her intends or threatens to use for such a purpose.</p>
	<p>s15B Causing serious injury recklessly in circumstances of gross violence</p> <p><i>Crimes Act 1958</i></p>	<p>an offensive weapon, firearm or imitation firearm and in fact used the offensive weapon, firearm or imitation firearm</p> <p>Penalty: Level 4 imprisonment (15 years maximum).</p>	
QLD	<p>s340 Serious assaults armed with a dangerous or offensive weapon or instrument</p> <p><i>Criminal Code Act 1899</i></p>	<p>14 years imprisonment</p> <p>Same imprisonment for assaults on corrective services officers and public officers.</p>	
ACT			
TAS	<p>s170 Acts intended to cause grievous bodily harm or prevent apprehension</p> <p><i>Criminal Code Act 1924</i></p> <p>Note: duplication</p>	<p>offensive weapon is guilty of a crime. Charge: Committing an unlawful act intended to cause bodily harm</p>	<p>offensive weapon includes anything that has the appearance of a firearm or a gun or pistol of any kind, whether capable of being discharged or not</p>
SA			

WA			
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Armed with a weapon (including in a public place and intent)			
Jurisdiction	Legislation and Section	Penalty	Example of weapons that apply
NT	s62 going armed to legislative assembly <i>Criminal Code Act 1983</i>	a firearm or other dangerous or offensive weapon liable to imprisonment for 3 years	offensive weapon means any article made or adapted to cause injury or fear of injury to the person or by which the person having it intends to cause injury or fear of injury to the person.
	s69 going armed in public <i>Criminal Code Act 1983</i>	goes armed liable to imprisonment for 3 years	
NSW	s33B Use or possession of weapon to resist arrest etc <i>Crimes Act 1900</i>	offensive weapon or instrument liable to imprisonment for 12 years.	Crimes Act 1900, s4, Definitions Offensive weapon or instrument means— (a) a dangerous weapon, or (b) any thing that is made or adapted for offensive purposes, or (c) any thing that, in the circumstances, is used, intended for use or threatened to be used for offensive purposes, whether or not it is ordinarily used for offensive purposes or is capable of causing harm. Dangerous weapon means— (a) a firearm, or an imitation firearm, within the meaning of the Firearms Act 1996, or (b) a prohibited weapon within the meaning of the Weapons Prohibition Act 1998, or (c) a spear gun. Armed, in relation to a weapon, or instrument, or an offensive weapon, or instrument, that is a dangerous weapon, includes bearing or having the immediate physical possession of the weapon, or instrument.
VIC			

QLD	s61 Riot <i>Criminal Code Act 1899</i>	armed with a dangerous or offensive weapon, instrument or explosive substance 7 years imprisonment;	
ACT			
TAS	s248 Being armed, &c., with intent to commit a crime <i>Criminal Code Act 1924</i>	armed with any dangerous or offensive weapon or instrument, with intent to commit a crime Charge: Being found prepared for the commission of a crime	offensive weapon includes anything that has the appearance of a firearm or a gun or pistol of any kind, whether capable of being discharged or not
SA	S83B, Riot <i>Criminal Law Consolidation Act 1935</i>	imprisonment for 10 years	offensive weapon means: a) an article or substance made or adapted for use for causing, or threatening to cause, personal injury or incapacity including: (i) a firearm or imitation firearm (ie an article intended to be taken for a firearm); or (ii) an explosive or an imitation explosive (ie an article or substance intended to be taken for an explosive); or b) an article or substance that a person has: (i) for the purpose of causing personal injury or incapacity; or (ii) in circumstances in which another is likely to feel reasonable apprehension that the person has it for the purpose of causing personal injury or incapacity
	S83C, Affray <i>Criminal Law Consolidation Act 1935</i>	imprisonment for 5 years	
WA	s68B Being armed in or near place of public entertainment <i>Criminal Code Act Compilation Act 1913</i>	armed with any dangerous or offensive weapon or instrument imprisonment for 5 years. Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000	
	s68C Being armed in public in company <i>Criminal Code Act Compilation Act 1913</i>	armed with any dangerous or offensive weapon or instrument imprisonment for 5 years. Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.	

	s68 Being armed in a way that may cause fear <i>Criminal Code Act Compilation Act 1913</i>	armed with any dangerous or offensive weapon or instrument liable to imprisonment for 7 years. Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.	
	s407 Person found armed with intent to commit crime <i>Criminal Code Act Compilation Act 1913</i>	armed with any dangerous or offensive weapon or instrument, with intent to commit a crime Charge: Being found prepared for the commission of a crime	

Intention to commit a crime with a weapon (including robbery, stealing)

Jurisdiction	Legislation and Section	Penalty	Example of weapons that apply
NT	s193B Assault with intent to steal <i>Criminal Code Act 1983</i>	a firearm or any other dangerous or offensive weapon liable to imprisonment for 14 years	
	S218(1) Robbery <i>Criminal Code Act 1983</i>	aggravated offence, imprisonment for life	
	s219 Circumstances of aggravation robbery <i>Criminal Code Act 1983</i>	circumstance of aggravation a firearm or any other dangerous or offensive weapon	
	s222 Circumstances of aggravation for burglary <i>Criminal Code Act 1983</i>	circumstance of aggravation (c) the defendant has possession of a firearm or any other dangerous or offensive weapon when committing the offence; imprisonment for 20 years	

		(d) the building is a dwelling-house and the defendant has possession of a firearm or any other dangerous or offensive weapon when committing the offence is life imprisonment	
NSW	s97 Robbery etc or stopping a mail, being armed or in company <i>Crimes Act 1900</i>	when armed with a dangerous weapon imprisonment for 25 years.	Crimes Act 1900, s4, Definitions Offensive weapon or instrument means— (a) a dangerous weapon, or (b) any thing that is made or adapted for offensive purposes, or (c) any thing that, in the circumstances, is used, intended for use or threatened to be used for offensive purposes, whether or not it is ordinarily used for offensive purposes or is capable of causing harm. Dangerous weapon means— (a) a firearm, or an imitation firearm, within the meaning of the Firearms Act 1996, or (b) a prohibited weapon within the meaning of the Weapons Prohibition Act 1998, or (c) a spear gun. Armed, in relation to a weapon, or instrument, or an offensive weapon, or instrument, that is a dangerous weapon, includes bearing or having the immediate physical possession of the weapon, or instrument.
	s98 Robbery with arms etc and wounding <i>Crimes Act 1900</i>	liable to imprisonment for 25 years.	
	s111 Entering dwelling-house <i>Crimes Act 1900</i>	Aggravation – 14 years Special Aggravation– 20 years	
	s112 Breaking etc into any house etc and committing serious indictable offence <i>Crimes Act 1900</i>	Aggravation – 20 years Special Aggravation – 25 years	
	s113 Breaking etc into any house etc with intent to commit serious indictable offence <i>Crimes Act 1900</i>	Aggravation – 14 years Special Aggravation – 20 years	
	s115A Alternative verdicts <i>Crimes Act 1900</i>		
VIC	s31B Being armed with criminal intent <i>Crimes Act 1958</i>	armed with a firearm, an imitation firearm, a prohibited weapon or a controlled weapon is guilty of an indictable offence. Penalty: Level 6 imprisonment (5 years maximum)	
	s75A armed robbery <i>Crimes Act 1958</i>	Armed with a firearm, imitation firearm, offensive weapon, explosive or imitation explosive liable to level 2 imprisonment (25 years maximum).	offensive weapon means any article made or adapted for use for causing injury to or incapacitating a person, or which the person having it with him or her intends or threatens to use for such a purpose.

	s77 Aggravated burglary <i>Crimes Act 1958</i>	firearm or imitation firearm, any offensive weapon or any explosive or imitation explosive liable to level 2 imprisonment (25 years maximum)	As above
	s77A Home invasion <i>Crimes Act 1958</i>	a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive liable to level 2 imprisonment (25 years maximum)	explosive, firearm, imitation explosive, imitation firearm, and offensive weapon have the same meanings as in section 77
	s77B Aggravated home invasion <i>Crimes Act 1958</i>	As above	
QLD	s412 Attempted robbery <i>Criminal Code Act 1899</i>	armed with any dangerous or offensive weapon or instrument imprisonment for 14 years. armed with any dangerous or offensive weapon, instrument or noxious substance, liable to imprisonment for life.	
	s411 Punishment of robbery <i>Criminal Code Act 1899</i>	armed with any dangerous or offensive weapon or instrument offender is liable to imprisonment for life	
	s419 Burglary <i>Criminal Code Act 1899</i>	armed with a dangerous or offensive weapon, instrument or noxious substance the offender is liable to imprisonment for life.	
ACT	s310 Aggravated robbery <i>Criminal Code 2002</i>	Has an offensive weapon Maximum penalty: 2 500 penalty units, imprisonment for 25 years or both	offensive weapon includes the following: (a) anything made or adapted for use for causing injury to or incapacitating a person; (b) anything that a person has with the intention of using, or threatening to use, to cause injury to or incapacitate someone else; (c) a firearm, or anything that may reasonably be taken in the circumstances to be a firearm; (d) a knife, or anything that may reasonably be taken in the circumstances to be a knife; (e) an explosive, or anything that may
	s312 Aggravated burglary <i>Criminal Code 2002</i>	Has an offensive weapon Maximum penalty: 2 000 penalty units, imprisonment for 20 years or both.	

ATTACHMENT G(b) to Report

			reasonably be taken in the circumstances to be or contain an explosive. knife includes— (a) a knife blade; and (b) a razor blade; and (c) any other blade.
	s380 Possession of offensive weapons and disabling substances <i>Criminal Code 2002</i>	offensive weapon imprisonment for 6 months	offensive weapon means— (a) anything made or adapted for use, or capable of being used, for causing injury to or incapacitating a person; or (b) anything intended for that use by the person who is carrying it or otherwise has it in his or her possession; and includes an imitation or replica of an offensive weapon.
	s381 Possession of offensive weapons and disabling substances with intent	offensive weapon imprisonment for 1 year	
TAS	s240 Robbery <i>Criminal Code Act 1924</i>	firearm or other dangerous or offensive weapon or Charge: Armed robbery. aggravated robbery and is armed with a firearm or other dangerous or offensive weapon or instrument Charge: Aggravated armed robbery.	offensive weapon includes anything that has the appearance of a firearm or a gun or pistol of any kind, whether capable of being discharged or not
	s245 Aggravated burglary <i>Criminal Code Act 1924</i>	offensive weapon or instrument or any explosive substance Charge: Aggravated burglary	
SA	s137 Robbery <i>Criminal Code Act 1924</i>	imprisonment for life	offensive weapon means: a) an article or substance made or adapted for use for causing, or threatening to cause, personal injury or incapacity including: (i) a firearm or imitation firearm (ie an article intended to be taken for a firearm); or (ii) an explosive or an imitation explosive (ie an article or substance intended to be taken for an explosive); or b) an article or substance that a person has: (i) for the purpose of causing personal injury or incapacity; or

			(ii) in circumstances in which another is likely to feel reasonable apprehension that the person has it for the purpose of causing personal injury or incapacity;
WA	s392 Robbery <i>Criminal Code Act Compilation Act 1913</i>	armed with any dangerous or offensive weapon or instrument imprisonment for life	
	s393 Assault with intent to rob <i>Criminal Code Act Compilation Act 1913</i>	armed with any dangerous or offensive weapon or instrument imprisonment for life; or armed with any dangerous or offensive weapon or instrument imprisonment for 14 years	
	Chapter XXXIX — Offences in or in respect of buildings etc; and s400, Terms used <i>Criminal Code Act Compilation Act 1913</i>	circumstances of aggravation is or pretends to be armed with a dangerous or offensive weapon or instrument	
	s401 Burglary <i>Criminal Code Act Compilation Act 1913</i>	imprisonment for 20 years	