

**SENTENCING
ADVISORY
COUNCIL**



**SENTENCING OF
CHILD SEXUAL OFFENCES
IN QUEENSLAND**

RESEARCH PAPER

Sentencing of child sexual offences in Queensland: Research paper

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Disclaimer

This paper is not intended to provide legal advice, and has been prepared by the Council only to respond to the Terms of Reference issued to it by the Attorney-General. While all reasonable care has been taken in the preparation of this publication, no liability is assumed for any errors or omissions.

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Background

This Research Paper provides information on the sentencing of child sexual offences committed by persons aged 17 years and over.

The data presented in this paper were developed in response to the *Sentencing of Offenders Convicted of Child Sexual Offences* Terms of Reference issued to the Sentencing Advisory Council (the Council) on 14 July 2011. This Research Paper is a companion document to the *Sentencing of Child Sexual Offences in Queensland Issues Paper* prepared by the Council.¹

The paper commences with a description of how data were analysed and the limitations of the data. Case summaries for child sexual offending are then provided to demonstrate variability in child sexual offences and how this variability may affect sentence outcomes. This is followed by information on the prevalence of child sexual offences in the Queensland courts, the personal characteristics of offenders sentenced for child sexual offences and the sentencing outcomes for offenders found guilty of child sexual offences.

Data sources and definitions

Information presented in this paper relates to matters finalised in the Queensland Magistrates, District and Supreme Courts in the period 2006 to 2010.

The types of sexual offences discussed in this paper are those specified in the Terms of Reference. They are ‘unlawful sodomy’, ‘indecent treatment’ ‘unlawful carnal knowledge of a child under 16’, ‘maintaining a sexual relationship with a child’, ‘rape’ and ‘attempted rape’ – hereafter referred to as *Reference offences*.² The offences of ‘indecent treatment’, ‘unlawful carnal knowledge of a child under 16’ and ‘maintaining a sexual relationship with a child’ can only be committed against a child under 16 years. Unlawful sodomy is an unlawful act for any person aged less than 18 years. The offences of rape and attempted rape can be committed against a child or adult victim.³

For the purpose of analyses included in this paper, *Reference defendants* are defined as adult defendants with a Reference offence listed on their indictment as their most serious offence.⁴ *Reference offenders* are Reference defendants who have been sentenced by the courts – that is, offenders sentenced with a Reference offence as their most serious offence. A distinction between Reference defendants and Reference offenders is made as not all persons before the courts for Reference offences will be convicted. *Other defendants or other offenders* refer to defendants or offenders being dealt with for an offence other than a Reference offence (including non-sexual offences) as their most serious offence.

Reference offences were categorised according to the 2008 Australian Bureau of Statistics (ABS) Australian Standard Offence Classification Scheme.

¹See the *Sentencing of Child Sexual Offences in Queensland Issues Paper* for more information on the Terms of Reference.

²Legislation sets out multiple sub-offence categories for some sexual offences referred to in the Terms of Reference. For example, ‘indecently deal, child under 12’, ‘exposing a child to indecent act’ and ‘exposing a child to indecent media’ are subcategories of ‘indecent treatment’. However, the number of cases within each sub-offence category was not sufficient to enable reliable data analyses for these subcategories when the most serious offence was used to structure data. Therefore, data were analysed at the highest offence level and reference offence categories include all relevant offence subcategories.

³The Council is analysing sentencing remark information to respond to the advice requested in the Terms of Reference. Preliminary analyses of sentencing remark information indicates that approximately 60 per cent of cases with a most serious offence of ‘rape’ involved victims aged less than 16 years. This research work will be presented more comprehensively in 2012.

⁴A defendant is a person against whom one or more criminal charges have been laid, and which are heard together as one unit of work by a court level (OESR 2011).

The most serious offence and the most serious penalty for the case were used to structure data analyses. The most serious offence was determined by whether or not the offence received a sentence and the severity of the sentence. That is, if a defendant had some offences that were sentenced and some that were not, the sentenced offences were defined as more serious. Among the sentenced offences, the most serious offence was the offence receiving the most serious penalty. Penalty seriousness was ranked according to the classification scheme used by the ABS. If none of the offences listed on the indictment received a penalty, then the ABS 2009 National Offence Index was used to determine the most serious offence.

Quantitative information was developed using Queensland courts data maintained by the Queensland Office of Economic and Statistical Research (OESR). These data were derived from administrative information collected by the Department of Justice and Attorney-General (DJAG). Case study information was obtained from the Queensland Sentencing Information System (QGIS).

Data limitations

The data discussed in this paper are a simplified representation of a complex criminal justice system and are subject to a range of limitations. Therefore, caution should be used when interpreting these data.

Key data limitations are summarised below:

- The child sexual offences discussed in this paper are those specified in the Terms of Reference. This means that information on the full scope of sexual offences that may properly be classified as ‘child sexual offences’ is provided.
- Information reflects data derived from government administrative systems. The accuracy of the information that follows will reflect how information is structured, entered and maintained in these systems, and how it is extracted from them.
- The use of the most serious offence and the most serious penalty means that offences or penalties not defined as most serious were not included in data analyses. This explains why the number of defendants before the courts for less serious offences may appear to be low.
- The use of the most serious offence to analyse data may misrepresent the prevalence of less serious Reference offences. For example, a defendant with a most serious offence of ‘rape’ may also have ‘indecent treatment’ offences listed on their indictment. In this example, the ‘indecent treatment’ offences will not be counted when the most serious offence is used to generate prevalence information.
- Information on the specific subcategories of ‘indecent treatment’ is not provided because not all subcategories of this offence category contain enough cases to ensure reliable analysis.
- Legislation relating to child sexual offences has changed over time and offenders are sentenced according to the legislation existing when offences were committed (including the relevant maximum penalty that applied at the time). For this reason, sentence outcome analyses presented in this paper were restricted to offences committed under the current legislative framework to reflect current sentencing practices.
- The OESR courts data is not updated to reflect changes in sentencing outcomes that may occur because of appeal decisions or re-trials.
- Courts data do not include comprehensive information on victim age; therefore the findings do not distinguish between the ‘rape’ or ‘attempted rape’ of an adult or child.
- Cases with missing information were excluded from analyses where relevant. For example, cases without Aboriginal and Torres Strait Islander status information (11%) were not included in analyses relating to Aboriginal and Torres Strait Islander people.

- The structure of DJAG’s administrative system means that most serious offence information will reflect information in a defendant’s original indictment. This means changes to most serious offence due to replacement indictments will not be captured in data analyses.
- Information on defendant disability status is not reported as this information is not collected by DJAG.

Variation in sexual offending

There is significant variability in unlawful sexual conduct. This behaviour can range from exposing a child to pornography, to touching someone’s genitals, to ‘rape’ with violence. A case can involve one sexual offence or multiple offences of a similar or different description. A case can also involve one or multiple victims. The types of offences sentenced and the types of sentences imposed for sexual offences reflect this variation.

The following case studies outline some of the differences in the types of offending behaviour sentenced for different Reference offences to demonstrate offence and case variability. These case studies show how sexual offences committed against children can differ in terms of offence characteristics (for example, the degree of harm caused and the length of offending), offender culpability (for example, the age of the offender, pre-planning of the offence), offender characteristics (for example, previous criminal history) and victim characteristics (for example, the age of the victim). The level of cooperation shown in the administration of justice (including whether or not the offender pleaded guilty) may also affect a sentence outcome (including where a parole eligibility date is set).⁵

Most serious offence is ‘unlawful carnal knowledge of a child under 16’

Case study 1:

***R v LCB* (Unreported, District Court of Queensland, Shanahan DCJ, 4 September 2009)**

The offender had unprotected sexual intercourse with the complainant. The complainant told the offender she was aged 17 years. The offender was not charged for this incident.

A few days later, the complainant returned to the offender’s home and the offender had unprotected sexual intercourse with the same complainant after being told she was aged 15 years. The complainant willingly participated in both sexual encounters.

The incident became known when the complainant became pregnant.

The offender was 18 at the time of the offence and pleaded guilty by way of ex-officio indictment. The case did not involve other offences.

The offender was sentenced to nine months probation. No conviction was recorded.

Case study 2:

***R v JTA* (Unreported, District Court of Queensland, Koppenol DCJ, 5 March 2009)**

The offender had sexual intercourse with the complainant in the context of a boyfriend–girlfriend relationship.

The offender was 19 at the time of the offences. The offender submitted that he thought the complainant was aged 16 years. The complainant was 12.

The offender pleaded guilty to two counts of ‘unlawful carnal knowledge’ and one count of ‘stealing’.

⁵The names of offenders involved in the summarised cases have been abbreviated to their initials as access to QGIS is restricted.

The offender was sentenced to two and a half years imprisonment for each count of 'unlawful carnal knowledge' and six months for 'stealing', and was ordered to pay restitution for stolen goods. The imprisonment terms were ordered to be served concurrently.

One of the key differences between case 1 and case 2 is the age of the complainant. The age of the complainant in case 1 was 15 years, compared with 12 years in case 2. Although the law provides that persons of this age in Queensland cannot lawfully engage in sexual activity, in both cases, the complainant willingly participated in the sexual behaviour. This may explain why sentences for 'unlawful carnal knowledge' tend to be lower than those imposed for other offences such as 'rape' and 'unlawful sodomy'.

Most serious offence is 'indecent treatment of a child under 12'

Case study 3:

***R v TM* (Unreported, District Court of Queensland, Rafter SC DCJ, 16 January 2009)**

The case involved four counts of 'indecent treatment of a child under the age of 12'.

The offender was 17 at the time of the offences.

The complainant was the offender's nephew, lived with the offender's family and was 11 at the time of the offences.

The first offence involved the offender showering with the complainant. The offender played with his own penis and told the complainant to play with his own penis.

The second offence involved the offender lying in the bath and touching the complainant's penis and moving his hand over it. The offender also self-masturbated in front of the complainant. The complainant left the bathroom after refusing the offender's request to lie in the bath with him.

Count three involved the offender moving his erect penis to the proximity of the complainant's buttocks. The offender desisted from further activity after the complainant resisted.

The final offence occurred when the complainant and offender were showering together. The offender began to masturbate the complainant, but desisted after the complainant told the offender to stop.

The offender pleaded guilty to the offences, cooperated with police, expressed remorse and had no previous criminal history.

The offender was diagnosed as suffering from a number of health issues including Asperger's syndrome and depression. The offender was taking medication to control sexual impulses at the time of sentencing.

The judge declared exceptional circumstances leading to a sentence that did not involve an actual period of imprisonment. The offender was sentenced to two years probation with a conviction recorded.

Case study 4:

***R v BJD* (Unreported, District Court of Queensland, Samios DCJ, 11 December 2009)**

The offender was sentenced for one count of 'burglary in the night', one count of 'indecent treatment of a child under 12' and one count of 'failing to comply' with reporting obligations.

The offence involved the offender breaking into the complainant's bedroom at night. The complainant was four at the time of the offence. The offender admitted to pulling the complainant's shorts and underpants down and looking at her before being interrupted by a member of the household. The offender made his escape by jumping out of the window.

The offender was 44 at the time of the offences and was a stranger to the complainant.

The offender had a long relevant criminal history. He had previous convictions for sexual offences in Queensland and in two other states. The offences occurred within the operational period of a partially suspended sentence imposed for a previous 'indecent treatment' offence.

The offender had also failed to complete a sexual offender treatment program recommended by the Court.

The judge acknowledged that the offender had had a difficult life, having been sexually abused by his father as well as by a worker engaged by Child Welfare Services.

The offender made full and frank admissions to the offences, pleaded guilty at committal and expressed remorse. The offence did not involve the use or threat of violence.

The offender was sentenced to four years imprisonment and ten months of the previous partially suspended sentence (breached by the offender) was activated to be served cumulatively to the four-year sentence. A cumulative sentence of one month was imposed for the 'failing to comply' offence.

The different sentence outcomes for these two cases are possibly explained by differences in offender culpability and offender characteristics, rather than offence characteristics. The offender in case 3 was arguably less culpable than the offender in case 4 as he was young. This offender also suffered from Asperger's syndrome. Case 4 was characterised by considerable age disparity and the targeting of a very young victim (aged four). The offender in case 4 had a long criminal history related to sexual offences, while the offender in case 3 was being sentenced for the first time. Neither case involved penetrative sexual behaviour. The absence of sexual penetration in 'indecent treatment' offences may explain why the sentences for such offences tend to be less severe than sentences given for other Reference offences such as 'rape' and 'unlawful sodomy'.

Most serious offence is 'maintaining a sexual relationship with a child'

Case study 5:

***R v DIM* (Unreported, District Court of Queensland, Rafter SC DCJ, 20 April 2007)**

The case involved one count of 'maintaining a sexual relationship with a child' and two counts of 'indecent treatment of a child under 12 under care'.

The offences involved the offender touching the complainant over her clothes. The offences were regular and occurred over one and a half years. On numerous occasions the offender touched or brushed against the complainant's back, breasts, bottom and vaginal area.

The offender was the complainant's uncle and lived with his mother and step-father. The offences occurred when the complainant was visiting her grandparents.

The complainant was aged 11 to 12 years at the time of the offences and the offender was aged around 40 at the time of the offences.

The offender's previous offence history was not related to the offences being sentenced.

The offender, rather than the complainant, reported the offences to the police. When interviewed by the police, the complainant stated that she did not remember the offences.

The offender had sought treatment for his problems with alcohol.

The offender received a two-year partially suspended sentence for the 'maintaining a sexual relationship with a child' offence, to be suspended after serving four months. Imprisonment probation orders were imposed for the 'indecent treatment' offences. The imprisonment probation orders included four months imprisonment.

Case study 6:

***R v AJM* (Unreported, District Court of Queensland, McGill SC DCJ, 20 October 2009)**

The offender was sentenced for one count of ‘maintaining a sexual relationship with a child’ with circumstances of aggravation’, three counts of ‘incest’, three counts of ‘indecent treatment of a child under 12 under care’ and four counts of ‘indecent treatment of a child under 16 under care’.

The offences initially involved indecent touching without penetration, but this escalated to simulated sexual intercourse, masturbation in the complainant’s presence, oral sex and digital/penile penetration of the complainant’s vagina. The offender also provided the complainant with a book of indecent photographs and took an indecent photograph of the complainant without her knowledge.

The offences listed on the indictment occurred while the complainant was aged 10 to 14 years. The offender was the complainant’s step-father.

The offences were committed without violence, but the offender threatened to abuse the complainant’s younger siblings if she did not cooperate with the offender.

The offender entered a late plea of guilty after the committal hearing and had no previous criminal convictions.

The offender was sentenced to nine years imprisonment.

The case information provided above shows that cases of ‘maintaining a sexual relationship with a child’ can involve non-penetrative offences only or both non-penetrative and penetrative offences. Case 5, which received the less severe sentence of the two cases, involved indecent treatment type behaviour only. Case 6 was characterised by more severe sexual offences involving penetration that were maintained over a longer period of time than those occurring in case 5. The use of violence was not evident in either case and both cases involved a circumstance of aggravation of ‘under care’. However, case 6 involved the use of emotional blackmail and the offender was the complainant’s step-father and responsible for her care.

Most serious offence is ‘rape’

Case study 7:

***R v JEH* (Unreported, District Court of Queensland, Martin SC DCJ, 19 April 2010)**

The offender pleaded guilty to two counts of ‘rape’.

The offences involved the digital penetration of a nine-year-old child. The offender penetrated the complainant’s vagina with his finger. The complainant resisted by moving away from the offender, but the offender followed and repeated the behaviour.

The offences did not involve undue force and no threat was made to the complainant.

The offender was a trusted family friend of the complainant and aged 26 years at the time of the offences.

The judge accepted that the offender was affected by the use of cannabis at the time of the offence and was remorseful.

The offender had a significant previous criminal history which included offences for violence, but not sexual offences.

The offender was sentenced to two years and ten months imprisonment.

Case study 8:

***R v ADA* (Unreported, District Court of Queensland, Britton SC DCJ, 18 November 2008)**

The offender was sentenced for one count of ‘indecent treatment of a child under 16 who was of lineal descendent under care’ and three counts of ‘rape’.

The complainant was aged 14 years at the time of the offences and was the biological daughter of the offender. The offender was 40 years of age.

The offences all occurred on the same evening while the complainant pretended to be asleep. They involved touching of the complainant's breasts under her clothing, licking and penetration of the vagina with a tongue and penetration of the vagina with a penis.

No violence was used to commit the offences.

The judge recognised that the offences represented a significant breach of trust, but accepted that the offender had not established normal father–daughter bonds with the complainant. With the exception of the three months before the offences, the complainant had not lived with the offender since the age of two.

The offender ultimately pleaded guilty to the offences after DNA evidence was submitted, but maintained that he did not remember the offences because of alcohol intoxication.

A report submitted by a psychologist indicated that the offender did not suffer any sexual pathology. The offences were believed to be explained by alcohol intoxication, head injury, sleep deprivation and possibly a depressive condition.

The offender's criminal history involved two traffic offences.

The offender was sentenced to seven years imprisonment.

Rape cases overwhelmingly result in a term of imprisonment (see Figure 5). The different terms of imprisonment imposed for the two 'rape' cases described above may be explained by offence and offender characteristics. Although both cases involved two counts of 'rape', case 8 involved a lineal relationship and sexual intercourse. Case 7 involved digital penetration of the vagina by a known rather than a related person, who was not responsible for the care of the complainant.

This section has described some of the variation in child sexual offending. This variation underpins the differences evident in sentence outcomes presented in the following sections.

Prevalence of Terms of Reference offences

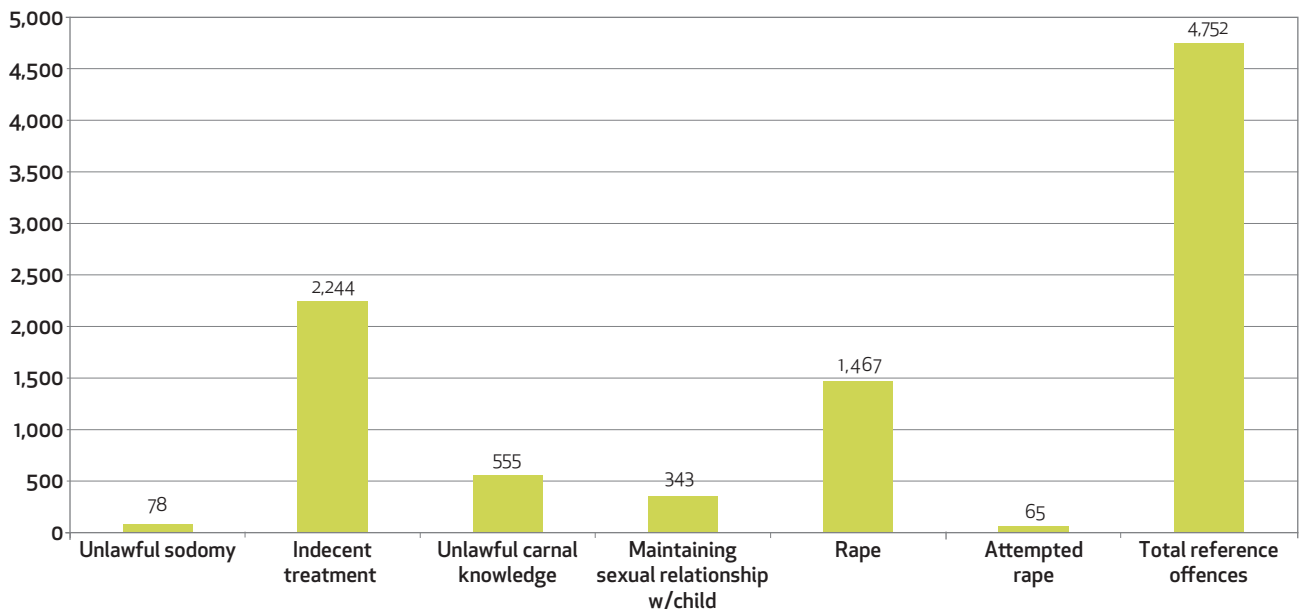
Less than 1 per cent (0.6%) of adult defendants before the Queensland courts in the period 2006 to 2010 had a Reference offence as their most serious offence. Although Reference offences are not highly prevalent in the Queensland court system, research has found that sexual offences are often not reported. For example, the 2005 Australian Personal Safety Survey found that fewer than one in five people (19%) experiencing sexual assault in the previous year reported the incident to the police (ABS 2006; cited in Gelb 2007).⁶

The number of Reference defendants (adult defendants with a Reference offence as their most serious offence on their indictment) appearing in the Queensland courts is shown in Figure 1. The most serious offence for nearly half (47%) of Reference defendants was 'indecent treatment', which covers a wide range of offending behaviour. This indicates that a large proportion of Reference defendants before the courts are appearing for sexual offences that do not involve sexual penetration. Rape was the most serious offence for about one in three Reference defendants (31%), while 12 per cent of

⁶Different studies show varying levels of sexual abuse depending on the definitions of sexual offending used and the population being measured. Price-Robertson, Bromfield and Vassallo (2010) suggest that comprehensive Australian studies indicate that 4 to 8 per cent of males and 7 to 12 per cent of females experience penetrative abuse and 12 to 16 per cent of males and 23 to 36 per cent of females experience non-penetrative abuse. The 2005 Australian Personal Safety Survey estimated that 101,600 women and 42,300 men experienced sexual assault in the previous year (ABS 2006 reissue). This survey defined sexual assault as 'acts of a sexual nature carried out against a person's will through the use of physical force, intimidation or coercion, or any attempts to do this'. Unwanted sexual touching was excluded from the definition (ABS 2006 reissue, p5).

Reference defendants had a most serious offence of ‘unlawful carnal knowledge’ and 7 per cent had a most serious offence of ‘maintaining a sexual relationship with a child’. The least prevalent Reference offences as the most serious offence were ‘attempted rape’ (1%) and ‘unlawful sodomy’ (2%).

Figure 1: Number of adult defendants with a Reference offence as most serious offence, Queensland courts 2006–10



Source: Queensland courts database maintained by OESR

Defendants sentenced for Terms of Reference offences

Figure 2 shows the proportion of Reference defendants that were sentenced by the courts by presenting the proportion of defendants that plead guilty and the proportion of defendants who were found guilty at trial.

While the majority (94%) of defendants before the courts received a sentence, just under half of Reference defendants (46%) were sentenced. This finding is consistent with other research (Eastwood, Kift & Grace 2006). Differences in the proportions of defendants receiving a sentence is also explained by the fact that most non-Reference defendants will be defendants dealt with in the Magistrates Court for relatively minor offences such as ‘offensive behaviour’ or ‘drive while disqualified’.

In total, about three-quarters (73%) of Reference defendants with a most serious offence of ‘unlawful carnal knowledge’ and 59 per cent of Reference defendants with a most serious offence of ‘maintaining a sexual relationship with a child’ were sentenced by the Queensland courts in 2006–10. This compares with approximately half of defendants with a most serious offence of ‘unlawful sodomy’ (51%) and ‘indecent treatment’ (49%) and approximately a third of ‘rape’ (30%) and ‘attempted rape’ (28%) defendants.

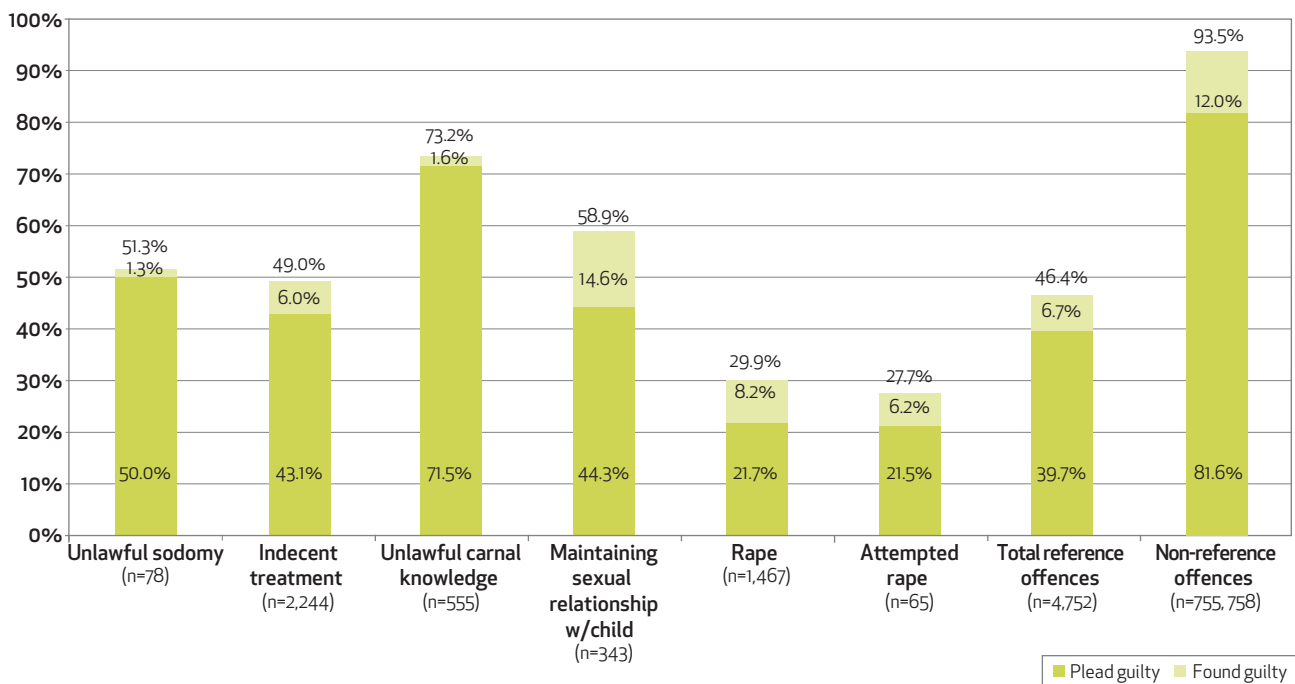
Reference defendants not sentenced were involved in cases that were discontinued or found not guilty at trial.

Reference defendants with a most serious offence of ‘unlawful carnal knowledge’ were most likely to plead guilty (72%), while Reference defendants with a most serious offence of ‘attempted rape’ (22%) and ‘rape’ (22%) were least likely. Half of the Reference defendants (50%) with a most serious offence of ‘unlawful sodomy’ pleaded guilty, compared with 43 per cent of ‘indecent treatment’ defendants and

44 per cent of ‘maintaining a sexual relationship with a child’ defendants. Reference defendants were less likely to plead guilty (40%) than other defendants before the courts (82%).

Some Reference defendants are sentenced after being found guilty at trial. The offence category with the largest share of Reference defendants found guilty was ‘maintaining a sexual relationship with a child’ (15%), while 2 per cent of defendants with a most serious offence of ‘unlawful carnal knowledge’ were found guilty. Less than 10 per cent of defendants with a most serious offence of ‘attempted rape’ (6%), ‘indecent treatment’ (6%) and ‘rape’ (8%) were found guilty at trial and about 1 per cent of defendants with a most serious offence of ‘unlawful sodomy’ were found guilty.

Figure 2: Proportion of Reference defendants pleading guilty, found guilty and being sentenced, Queensland courts 2006–10^{1,2,3}



Source: Queensland courts database maintained by OESR

1. Reference defendants are defendants with a Reference offence as their most serious offence on their indictment.
2. The ‘serious assault offences’ category includes serious assault resulting in injury (0211) and serious assault not resulting in injury (0212) as defined by the ABS 2008 Australian Classification Scheme. It does not include common assault.
3. Indecent treatment includes all subcategories of this offence category.

Characteristics of Terms of Reference offenders

This section briefly discusses some of the demographic characteristics of offenders sentenced for Reference offences.

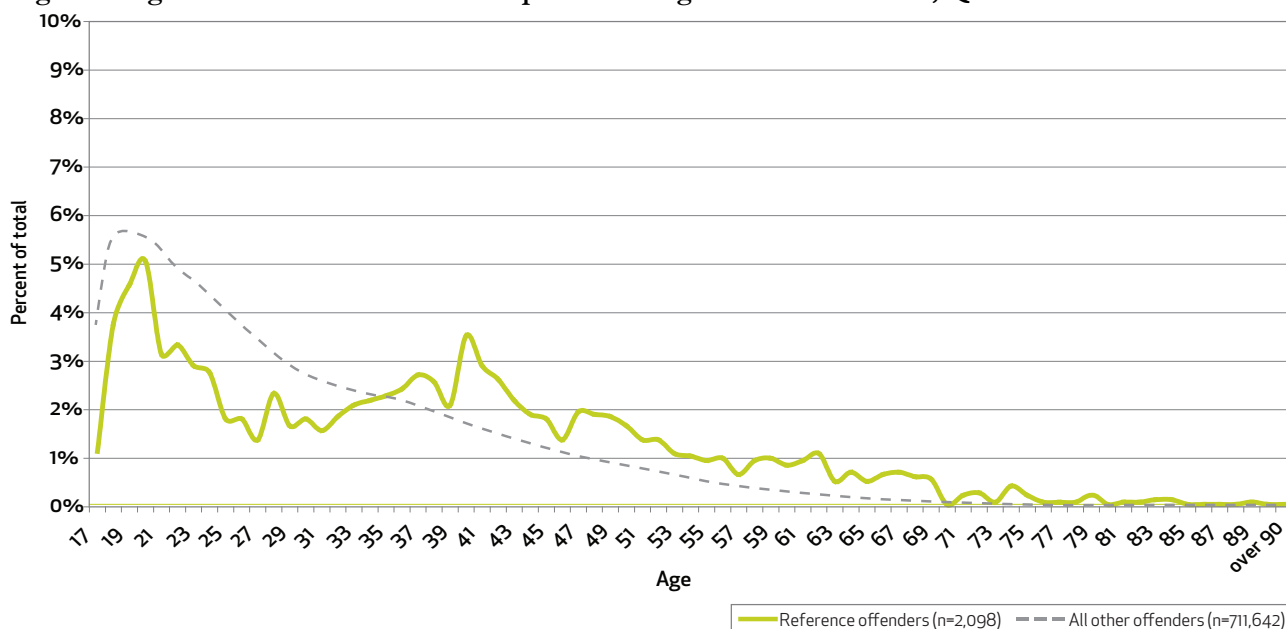
Nearly all Reference offenders (offenders sentenced with a Reference offence as their most serious offence) were male (98%). Female offenders accounted for 2 per cent of Reference offenders, yet represented 21 per cent of all other offenders. These findings are consistent with other research that shows that the majority of sexual offenders are male (Gelb 2007).

Reference offenders tended to be older than other offenders (see Figure 3). The average age of Reference offenders at the time of sentencing was 37 years compared with 27 years for other offenders.⁷ Just over one-quarter (27%) of Reference offenders at the time of sentencing were aged 17 to 24 years compared with 40 per cent of other offenders, while 30 per cent of Reference offenders were aged 45 years and over compared with 13 per cent of other offenders.

The different age profile of Reference offenders may be partly explained by the incidence of historical offending. That is, offenders convicted of sexual offences may be sentenced many years after being committed. It may also reflect the role of opportunity in the perpetration of sex crimes (Wortley & Smallbone 2006).⁸ Figure 3 shows a peak in the proportion of Reference offenders aged about 40 years that does not occur for other offenders. Because of parenting or step-parenting responsibilities, people around this age are likely to have greater access to children than younger or older people.

Eighteen per cent of Reference offenders were Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander people accounted for 15 per cent of other offenders.

Figure 3: Age of Reference offenders compared with age of other offenders, Queensland courts 2006–10¹



Source: Queensland courts database maintained by OESR

1. Reference offenders are offenders sentenced with a Reference offence as their most serious offence.

⁷The median was used to calculate average age because of the distribution of ages.

⁸Wortley & Smallbone (2006) have argued that greater consideration should be given to opportunity when researching sexual offenders. Not all people with paedophilic tendencies will sexually offend against children as they are not presented with or do not seek out opportunities to do so, and people who commit sexual offences against children may not necessarily have paedophilic tendencies.

Types of sentences imposed on Terms of Reference offenders

A range of penalties can be imposed by the courts in sentencing offenders. These include:

- full-time imprisonment
- partially suspended sentences (part of the term of imprisonment may be served in the community)
- wholly suspended sentences (a term of imprisonment served in the community)
- intensive correction orders (ICOs) (a term of imprisonment served in the community)
- community service orders (CSOs)
- probation
- recognisance orders
- fines, and
- restitution.⁹

Figure 4 shows the proportion of Reference offenders who are given a term of full-time imprisonment or a partially suspended sentence as their most serious penalty. Nearly all Reference offenders with a most serious offence of ‘attempted rape’ (95%), ‘rape’ (98%) and ‘maintaining a sexual relationship with a child’ (97%) were sentenced to a period involving time in custody. The majority of Reference offenders with a most serious offence of ‘attempted rape’ (74%), ‘rape’ (75%) and ‘maintaining a sexual relationship with a child’ (68%) received a full-time prison sentence.

Full-time imprisonment or a partially suspended sentence was the outcome for more than half of Reference offenders with ‘unlawful sodomy’ (66%) or ‘indecent treatment’ (52%) as their most serious offence. Reference offenders with ‘unlawful carnal knowledge’ as their most serious offence were least likely to receive full-time imprisonment or a partially suspended sentence as their most serious penalty (25%).

Some Reference offenders may have spent time in custody before being sentenced.¹⁰ This means that Reference offenders not sentenced to full-time imprisonment or a partially suspended sentence may still have served time in custody.¹¹

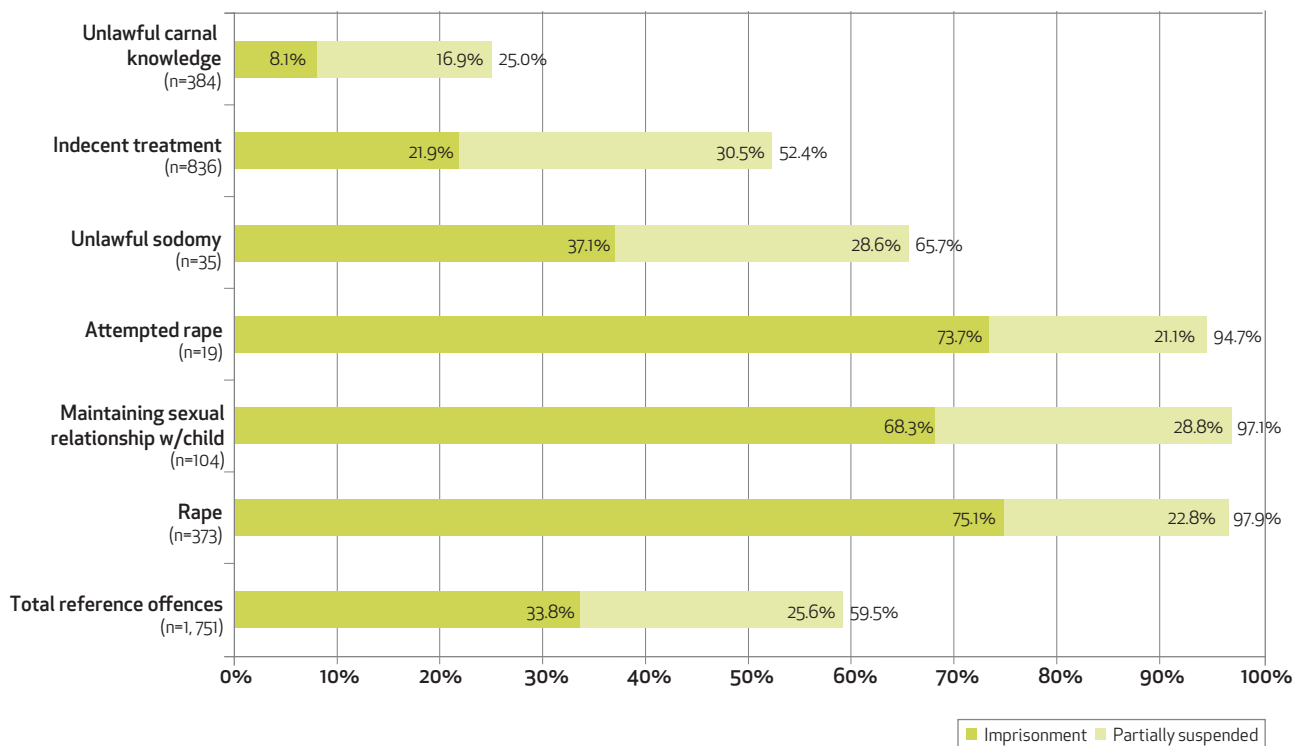
The proportion of sexual offenders sentenced to full-time imprisonment is likely to increase with amendments to the *Penalties and Sentences Act 1992* (Qld) that became effective on 26 November 2010. Legislation now provides that offenders convicted of a sexual offence involving a child aged less than 16 years must serve an actual term of imprisonment unless there are exceptional circumstances.

⁹Not all penalties are available to sexual offenders. For example, court-ordered parole available to offenders sentenced to full-time imprisonment for three years or less is not available to sexual offenders.

¹⁰A person may be in custody before being sentenced because they have been placed on remand or they are serving a prison sentence for other offences. Pre-sentence custody relating to offences being sentenced can be declared by the courts as time served in certain defined circumstances: see s 159A of the *Penalties and Sentences Act 1992* (Qld).

¹¹For example, an offender sentenced for one count of unlawful carnal knowledge who had spent 9.5 months in custody, of which only around 2 months could be declared as time served under that sentence pursuant to s 159A of the *Penalties and Sentences Act 1992* (Qld), was sentenced to 2 years imprisonment wholly suspended with an operational period of 3 years: *R v JGB* (Unreported, District Court of Queensland, Botting DCJ, 6 February 2009).

Figure 4: Proportion of Reference offenders receiving full-time imprisonment or a partially suspended sentence as their most serious penalty, Queensland courts 2006–10^{1,2}



Source: Queensland courts database maintained by OESR

1. Reference offenders are offenders sentenced with a Reference offence as their most serious offence.

2. Indecent treatment includes all subcategories of this offence category. This means the overall sentence outcomes for all subcategories of 'indecent treatment' is shown.

Figure 6 shows the proportion of Reference offenders that received a sentence other than full-time imprisonment or a partially suspended sentence. In total, 5 per cent of Reference offenders received an ICO, 13 per cent received a wholly suspended sentence, 5 per cent received a CSO and 12 per cent received a probation order as their most serious penalty.

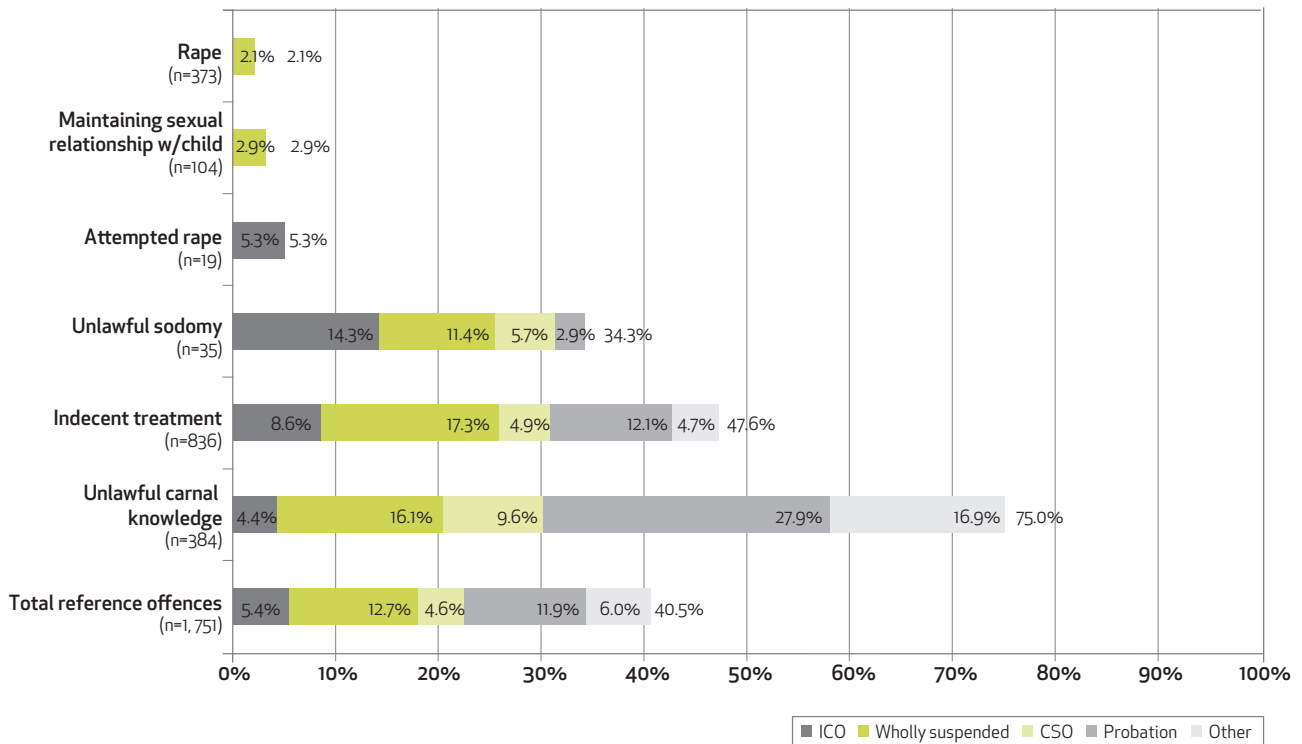
Reference offenders with 'unlawful carnal knowledge' as their most serious offence were most likely to receive a sentence not involving full-time imprisonment or a partially suspended sentence (75%). Twenty-eight per cent of these Reference offenders were given a probation order, 17 per cent were given a wholly suspended sentence and 10 per cent were given a community service order as their most serious penalty.

Wholly suspended sentences were given to 11 per cent of Reference offenders with a most serious offence of 'unlawful sodomy' and 17 per cent of Reference offenders with a most serious offence of 'indecent treatment'. Intensive correction orders were most prevalent among Reference offenders with a most serious offence of 'unlawful sodomy' (14%).

As explained above, not receiving full-time imprisonment or a partially suspended sentence does not necessarily mean that offenders do not spend time in custody. Furthermore, courts often combine orders to ensure that people sentenced for lower-end sexual offences are supervised in the community if they do not receive a sentence involving actual time in custody. For example, a wholly suspended sentence (which is not supervised) may be combined with a probation order (which is supervised by the Department of Community Safety, Queensland Corrective Services) if the offender is sentenced for

more than one offence.¹² This practice is not reflected in the data presented in this paper as only the most serious penalty for the case is shown.

Figure 5: Proportion of Reference offenders not receiving full-imprisonment or a partially suspended sentence as their most serious penalty, Queensland courts 2006–10^{1,2,3}



1. Reference offenders are offenders sentenced with a Reference offence as their most serious offence.
2. 'Other' includes fines, good behaviour bonds, restitution orders and recognisance orders.
3. Indecent treatment includes all subcategories of this offence category. This means the overall sentence outcomes for all subcategories of 'indecent treatment' are shown.

¹²An example of this is in *R v DLE* (Unreported, District Court of Queensland, Irwin DCJ, 2 June 2011), where the offender was sentenced for four counts of indecent treatment of a child under 16 years. For three of those counts, he was sentenced to 9 months imprisonment wholly suspended for an operational period of 2 years. For count 4, the offender was sentenced to probation for 2 years, which included a condition that he submit to any medical, psychiatric or psychological assessment and treatment as directed by an authorised Corrective Services Officer.

Average sentence lengths for Terms of Reference offenders

Table 1 shows average sentence lengths by most serious penalty and type of offence for Reference offenders.

Reference offenders most likely to receive imprisonment or partially suspended sentences tended to receive the longest sentences. The longest average lengths of imprisonment were for Reference offenders with a most serious offence of ‘rape’ (6.5 years), ‘maintaining a sexual relationship with a child’ (6.0 years) and ‘unlawful sodomy’ (6.0 years). The shortest average terms of imprisonment were for Reference offenders with a most serious offence of ‘indecent treatment’ (1.0 year) and ‘unlawful carnal knowledge’ (1.0 year).

The average length of partially suspended sentences imposed on Reference offenders ranged from 1.3 years for ‘indecent treatment’ to 3.5 years for ‘maintaining a sexual relationship with a child’. The average partially suspended sentence length for Reference offenders with a most serious offence of ‘unlawful sodomy’ was 2.5 years which compares with 3.0 years for ‘rape’.

The average sentence lengths for probation orders were generally longer than those for wholly suspended sentences and intensive correction orders. The average sentence for Reference offenders receiving a probation order ranged from 1.0 to 1.5 years, while the average sentence length for Reference offenders sentenced to a wholly suspended sentence was 0.8 year of a year, and 1.0 year was the average sentence length for Reference offenders receiving an intensive correction order.

Table 1: Average sentence lengths for Reference offenders by selected most serious penalty outcomes, Queensland courts 2006–10^{1,2,3}

Reference offence	Imprisonment		Partially suspended sentence ⁴		Wholly suspended sentence		Intensive correction order		Community service order		Probation	
	(years)	(n)	(years)	(n)	(years)	(n)	(years)	(n)	(hours)	(n)	(years)	(n)
Unlawful sodomy	6.0	13	2.5	10	–	4	–	5	–	2	–	0
Unlawful carnal knowledge	1.0	31	1.5	65	0.8	62	1.0	17	150	37	1.0	107
Maintaining sexual relationship w/child	6.0	71	3.5	30	–	3	–	0	–	0	–	0
Rape	6.5	279	3.0	85	–	8	–	0	–	0	–	0
Attempted rape	5.0	14	–	4	–	0	–	1	–	0	–	0
Indecent treatment ⁵	1.0	183	1.3	255	0.8	145	1.0	72	120	41	1.5	101
Total Reference offences	4.0	591	1.5	449	0.8	222	1.0	95	150	80	1.5	208

Source: Queensland courts database maintained by OESR

1. Reference offenders are offenders sentenced with a Reference offence as their most serious offence.

2. The median was used to calculate average sentences because of the distribution of sentence lengths. This explains why the average wholly suspended sentence for ‘unlawful carnal knowledge’ and ‘indecent treatment’ is not a round year.

3. The average sentence was not calculated for offence categories with an ‘n’ size of 10 or fewer.

4. Average partially suspended sentences refer to the whole period of imprisonment imposed – not the period of time served in custody.

5. Indecent treatment includes all subcategories of this offence category. This means the overall average for all subcategories of ‘indecent treatment’ is provided.

Summary

This paper has provided information on the sentencing of child sexual offences finalised in the Queensland courts in 2006–10. This information has shown how various types of sexual offences result in different sentence outcomes. It has also outlined some of the demographic characteristics of offenders sentenced for child sexual offences.

This paper has shown that:

- Sexual offences represented a very small proportion of total matters before the courts. Less than 1 per cent (0.6%) of all cases heard by the Queensland courts had a Reference offence (offences referred to in the Terms of Reference) as their most serious offence.
- Reference offences not involving penetration were more common than Reference offences involving penetration. ‘Indecent treatment’ was the most serious offence for just under half (47%) of Reference defendants (defendants with a Reference offence as their most serious offence). Rape was the most serious offence for 31 per cent of Reference defendants.
- Reference defendants were also less likely to be sentenced (46%) than all other defendants (94%). A finding consistent with other research. Reference defendants (40%) were also half as likely to plead guilty than other defendants (82%).
- Nearly all Reference offenders (sentenced persons with a Reference offence as their most serious offence) were male (98%).
- Reference offenders tended to be older than other offenders. The average age for Reference offenders at the time of sentencing was 37 years compared with 27 years for other offenders.
- Eighteen per cent of Reference offenders were Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander people accounted for 15 per cent of other offenders.
- Almost all Reference offenders with a most serious offence of ‘maintaining a sexual relationship with a child’ (97%), ‘rape’ (98%) and ‘attempted rape’ (95%) were sentenced to full-time imprisonment or a partially suspended sentence.
- One out of every four (25%) Reference offenders with a most serious offence of ‘unlawful carnal knowledge’ were sentenced to full-time imprisonment or a partially suspended sentence.
- Reference offenders most likely to receive full-time imprisonment or partially suspended sentences tended to receive the longest sentences. The longest average lengths of imprisonment were for Reference offenders with a most serious offence of ‘rape’ (6.5 years), ‘maintaining a sexual relationship with a child’ (6.0 years) and ‘unlawful sodomy’ (6.0 years).
- The shortest average terms of imprisonment were for Reference offenders with a most serious offence of ‘indecent treatment’ (1.0 year) and ‘unlawful carnal knowledge’ (1.0 year).

References

Australian Bureau of Statistics, *Personal Safety Survey Australia* (2006 reissue), cat no 4606.0

Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Australians, Australia* (2006), cat no 4713.0

Australian Bureau of Statistics, *National Offence Index* (2009), cat no 1234.0.55.001

Eastwood, C, S Kift and R Grace, 'Attrition in Child Sexual Assault Cases: Why Lord Chief Justice Hale Got it Wrong' (2006) 16(2) *Journal of Judicial Administration*

Gelb, K, *Recidivism of Sex Offenders Research Paper* (Sentencing Advisory Council of Victoria, 2007)

Office of Statistics and Economic Research, *Information Brief: Criminal Courts Queensland: 2009–10*, Office of Statistics and Economic Research, 2011)

Price-Robertson, R, L Bromfield and S Vassallo, *The Prevalence of Child Abuse and Neglect* (Australian Institute of Family Studies, 2010) <<http://www.aifs.gov.au/nch/pubs/sheets/rs21/rs21.pdf>>

Richards, K, 'Misperceptions About Child Sex Offenders' (Trends and Issues in Crime and Criminal Justice No 429, Australian Institute of Criminology, 2011)

Wortley, R and S Smallbone, 'Apply Situational Principles to Sexual Offences Against Children' in R Wortley and S Smallbone (eds), *Situational Prevention of Child Sexual Abuse* (Crime Prevention Series 19, Criminal Justice Press, 2006)