Queensland Sentencing Round-up

Queensland Sentencing Advisory Council

2023: Third Quarter

Note to readers:

The Sentencing Round-up summarises select sentencing publications and developments in Queensland between 1 July and 30 September 2023 as identified by the Council. It is not intended to be exhaustive. Decisions and cases in this document are as at date of publication and may be subject to appeal. The Council welcomes feedback on additional resources that might be referenced in future issues.

Supreme Court of Queensland sentencing remarks

Childrens Court of Queensland sentencing remarks and and appeal decisions

District Court of Queensland s 222 decisions

Academic articles, journals and reports of interest

Practice Directions

Magistrates Court Practice Direction No 2 of 2023: Pronunciation of names and preferred forms of address (6 July 2023)

This Practice Direction recognises that pronouncing names correctly, using appropriate gender pronouns and titles is a matter of respect to any party, witness or other participant in a hearing. It provides a process for legal practitioners and self-represented parties to inform the Court of these matters.

Queensland Sentencing Advisory Council publications

***Background Paper 1, Review of sentencing for sexual assault and rape offences: About the Terms of Reference – Part 1* (7 September 2023) and *Background Paper 2, Review of the aggravating factor for domestic and family violence offences: About the Terms of Reference – Part 2* (7 September 2023)**

These papers provide background context for the Council's review of sexual and domestic violence sentencing. They explain:

- What we have been asked to do – this includes the key issues the Council must consider as set out in the Terms of Reference.
- What is out of scope – this sets out what aspects are out of scope including the penalties imposed for children sentenced under the *Youth Justice Act 1992* (Qld) ('YJA'); Commonwealth offences; the *Mental Health Act 2016* (Qld) and detailed consideration of post-sentence schemes such as the *Dangerous Prisoner (Sexual Offenders) Act 2003* (Qld).
- Why this issue was referred to the Council – this includes a summary of the Women's Safety and Justice Taskforce reports 1 & 2.
- Our approach to the review – this includes a table of the key dates and milestones for each stage of the review.

Legislative amendments

***Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* (Qld)**

The following provisions of this Act, passed by the Queensland Parliament on 22 February 2023, commenced on 1 August 2023:

- Amendments to the *Criminal Code 1899 ('Criminal Code')* including:
  - changes to the conduct which constitutes the offence of unlawful stalking and the introduction of a new circumstance of aggravation if a domestic relationship exists, with a maximum penalty of 7 years imprisonment
  - increasing the maximum penalty for contravening a restraining order to 120 penalty units or 3 years imprisonment.
  - modernising and updating sexual offence terminology: 'carnal knowledge' is replaced with the term 'penile intercourse' and the title of the offence of 'maintaining a sexual relationship with a child' under section 229B of the *Criminal Code* is replaced with 'repeated sexual conduct with a child'.

- Amendments to the *Domestic and Family Violence Protection Act 2012* (Qld) including to include reference to a 'pattern of behaviour' in the definitions of domestic violence (section 8), emotional or psychological abuse (section 11) and economic abuse (section 12).
- Amendments to the *Penalties and Sentences Act 1992* (Qld) ('PSA') which now require a court, when sentencing an offender who is a victim of domestic violence, to treat the effect of the domestic violence on the offender and the extent to which the commission of the offence is attributable to the effect of the violence, as a mitigating factor, unless the court considers it is not reasonable to do so because of exceptional circumstances. A court may also consider the offender's history of domestic violence orders made or issued against an offender when determining an offender's character.
- Amendments to the YJA which introduce as a legislative mitigating factor for child offenders who are victims of domestic violence in addition to those who have been exposed to domestic violence. In this case, these changes do not allow for this factor not to be treated as mitigating, such as if there are exceptional circumstances.

Justice and Other Legislation Amendment Act 2023

One of the principal objectives of the Act is to clarify, strengthen and update legislation concerning the administration of justice, including legislation relating to the operation of courts and tribunals, the regulation of the legal profession, the conduct of civil proceedings and electoral matters.

The Act was passed by the Queensland Parliament on 20 September 2023.

The following amendments relating to substantive criminal procedure will commence on 3 October 2023:

- Remove restrictions in the *Criminal Law (Sexual Offences) Act 1978* which prohibit identification of an adult defendant charged with a prescribed sexual offence prior to finalisation of committal proceedings.

The following amendments relating to sentencing will commence on a day to be fixed by proclamation:

- Requirement for the courts to treat the death (destruction) of an unborn child as an aggravating factor when sentencing a person for certain serious offences in the *Criminal Code* (murder, manslaughter, grievous bodily harm, wounding, dangerous operation of a vehicle, assaults occasioning bodily harm) and the *Transport Operations (Road Use Management) Act 1995* (section 83, careless driving of motor vehicles).

Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023

The Act was passed by the Queensland Parliament on 1 September 2023.

The following provisions of the Act commenced on the date of assent (1 September 2023):

- The *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (Qld) ('CPOROPO Act') is restructured and amendments are made aimed at capturing advances in technology that can be used by child sexual offenders to offend against children and to conceal their offending (such as anonymising software, vault and black hole applications and Media Access Control addresses) by classifying this as information that an offender must report to police under the CPOROPO Act and setting out information that a court must consider before making an offender reporting order (new s 12D).
- Amendments to the *Police Powers and Responsibilities Act 2000* (Qld) to expand offences that can allow for a device inspection;
    - The repeal of sections 8 of the *Summary Offences Act 2005* (Qld) to decriminalise the offence of begging; and
- Amendments to the YJA in respect of holding young people in police watchhouses (some of these provisions were taken to have commenced on 23 August 2023).

Amendments to commence on a day to be fixed by proclamation include:

- Amendments to the *Summary Offences Act 2005* (Qld) to:
    - repeal section 10 to decriminalise the offence of public intoxication; and

- amend the offence of public urination to require a police officer to consider, whether in all the circumstances, it is more appropriate to take no action before taking enforcement action and listing certain matters the police officer must take into account being: (a) whether any vulnerability, or special health needs, of the person contributed to the person committing the offence; and/or (b) whether the person, when committing the offence, took reasonable steps to avoid offending or embarrassing anyone.

Parliamentary inquiries and reports

Legal Affairs and Safety Committee, *Inquiry into Justice and Other Legislation Amendment Bill 2023* (Report No. 50, 57th Parliament, July 2023)

The report presents a summary of the Legal Affairs and Safety Committee's examination of the Justice and Other Legislation Amendment Bill 2023. The Committee recommended that the Bill be passed and makes 6 further recommendations to support the Bill's effective implementation and improving safety for victims of domestic and family violence. The Committee's recommendations also include a suggestion that the Queensland Government consider changing 'woman' to 'pregnant person' in s 319A (Termination of pregnancy performed by an unqualified person') of the *Criminal Code* (Qld) to 'better reflect diversity and modern community expectations' (p. 15).

Queensland Court of Appeal decisions

R v Schulz; Ex parte Director of Public Prosecutions (Cth) [2023] QCA 150

Keywords: Child sexual offences; Commonwealth Director of Public Prosecutions appeal; Commonwealth and state offences; *Nagy* approach; non-parole period; totality; manifestly inadequate.

The Commonwealth Director of Public Prosecutions appealed a sentence on the grounds that it was manifestly inadequate. The appeal was allowed and the original sentence of 9 years' imprisonment with non-parole period of 4.5 years' imprisonment imposed taking into account all of Schultz's offending, was increased to 13 years' imprisonment with a non-parole period of 7.5 years.

Schulz was convicted of 28 Commonwealth child sex offences and 4 Queensland child sex offences. The offending involved Schulz communicating with a woman in the Philippines with whom he arranged to pay for the provision of sexual materials involving the woman's daughter, niece and other children. The offending was described as 'predatory, persistent and protracted, involving victims who were young children with a particular vulnerability due to their impoverished circumstances' [3]. Dalton J noted that '[t]here a very few decisions as to the appropriate sentences for these types of cases' [75].

The Court of Appeal by majority (McMurdo JA dissenting), agreed with the Commonwealth Director of Public Prosecutions that the 9-year sentence was manifestly inadequate.

The Court discussed structuring a sentence where there are Commonwealth and state offences (see *Crimes*

Act 1914 (Cth) ss 16, 19, 19AJ). In this case, the Court considered that the *Nagy* approach (increasing the sentence for one offence to take into account the overall criminality involved) should not be applied. Instead, an appropriate total sentence could be achieved by changing the commencement date of each sentence [66].

R v WBX [2023] QCA 151

Keywords: Contravention of a domestic violence order; domestic violence offence; manifestly excessive.

Leave to appeal refused against a sentence of 6 months' imprisonment with immediate parole release and a $10,000 compensation order for assault occasioning bodily harm (domestic violence offence). WBX was also convicted and not further punished for 7 contraventions of a domestic violence order involving manipulative text messages sent to the complainant in the days following the offence.

The Court of Appeal did not consider the sentence was manifestly excessive and found:

> The protracted nature of the applicant's criminal conduct, including the repeated contraventions of the domestic violence order in the following days, was of a nature where the imposition of a sentence of imprisonment fell well within a sound exercise of the sentencing discretion, notwithstanding the early pleas of guilty, lack of criminal history, psychological conditions, prospects of rehabilitation and the payment of compensation ([35]).

The Court of Appeal also commented that a case used by the WBX in support of his appeal (*R v Hollis* [2020] QCA 7) was not useful as that offending was not a domestic violence offence and *Hollis* did not have repeated contraventions of a domestic violence order following the violent act.

R v Granz-Glenn [2023] QCA 157

Keywords: applying the 'one-third' principle; manslaughter; no parole eligibility date.

Leave to appeal against a sentence of 9 years' imprisonment with no parole eligibility date set refused for the offence of manslaughter (meaning Granz-Glenn would need to serve half of the sentence before being eligible for release on parole).

Granz-Glenn pleaded guilty on the factual basis that there had been a common plan between 5offenders to rob the deceased and her partner. It was contemplated by the offenders that violence would be used with the probable consequence of an unintentional, unlawful killing.

Granz-Glenn argued that he should have received an immediate parole eligibility date as he had already spent about 3.5 years in prison prior to the sentence (just over one-third of the 9-year imprisonment sentence given). The Court noted that it is a practice of the courts to reduce the non-parole period to the one-third mark to reflect a plea of guilty, but it is 'not a hard and fast rule' [12]. The Court noted that Granz-Glenn's head sentence was reduced based on his mitigating circumstances. This was of considerable benefit as the head sentence may have been 10 years or more (meaning he would not be eligible for release on parole until serving 80% of the sentence due to the requirement he be declared convicted of a serious violent offence if sentenced to 10 years or more).

R v Willemyns [2023] QCA 163

Keywords: diminished responsibility; specific error; manslaughter.

Application for leave to appeal against sentence was dismissed. Willemyns was sentenced to 10 years' imprisonment for one count of manslaughter (meaning Willemyns was subject to a non-parole period of 80% due to the Serious Violent Offences scheme). He plead guilty after an indictment with manslaughter was presented, replacing an earlier indictment which contained a count of murder. The count of murder was reduced to manslaughter on the basis that the applicant was of diminished responsibility per s 304A of the *Criminal Code*.

Six grounds formed the appeal, including that the sentencing judge failed to take into account the applicant's mental health, the judge made an error in assessing the risk of the applicant's likelihood to reoffend, the sentencing judge failed to take into account the benefit of the applicant being supervised on extended parole, and that the sentencing judge took into account an irrelevant consideration being that the victim may have been alive when the applicant left the offence location. The Court of Appeal found that none of these grounds had merit and the primary judge had not made an error.

R v Zahran [2023] QCA 169

Keywords: delay; drug offences; mitigating factors; partially suspended sentence; rehabilitation.

Application for leave to appeal against sentence refused.

Zahran pleaded guilty and was sentenced for trafficking in cannabis to 3.5 years' imprisonment, suspended after 12 months, with an operational period of 3.5 years (MSO). His argument on appeal included that the primary judge did not give sufficient weight to certain mitigating factors.

There was some delay in his case, with the applicant being arrested in April 2020 and pleading guilty in September 2022 and he was ultimately sentenced in March 2023.

The Court said of delay: 'delay of prosecution not caused by a defendant may be relevant by reason of the state of uncertainty offenders are left in as to their fate and by reason of it allowing the Court to know of material, rehabilitated progress' (4, Henry J citing *R v L; Ex parte Attorney-General* [1996] 2 Qd R 63).

There was evidence of the applicant's rehabilitation and the sentencing judge took into account in the applicant's favour that he stopped offending on his own volition.

The Court of Appeal found that the mitigating circumstances were not exceptional and the suspension of the sentence after 12 months was an appropriate sentencing response (5, Henry J (Dalton JA and Flanagan JA agreeing)).

R v ABF; R v MDK [2023] QCA 171

Keywords: sexual offences against children; multiple complainants; cumulative sentence; totality; manifestly excessive; serious violence offence declaration.

The appeals against conviction for both appellants were dismissed. MDK's application for leave to appeal against sentence was refused.

MDK and ABF were convicted by jury of sexual offences involving 2 female complainants (victims) aged between 14 and 15 years. MDK was sentenced to 2 years' imprisonment for one count of maintaining a sexual relationship with a child, and lesser prison terms to be served at the same time (concurrently) on the remaining counts. However, those sentences were ordered to be served on top of (cumulatively) a sentence of 16 years and 8 months' imprisonment that MDK was presently serving (for 26 sexual offences committed against 3 separate female complainants over a period of 5 years).

MDK argued that the effect of the 2-year sentence to be served on top of on his present sentence was manifestly excessive when regard is had to totality.

Boddice JA (with whom Flanagan JA and Bradley J agreed) observed:

> If regard is had to the principle of totality, it cannot be said that an effective head sentence of 18 years and 8 months imprisonment for sexual offending over a period of five years, against five separate female complainants, two of whom were MDK's biological children and one of whom was the child of his partner, was crushing or plainly unjust. That was particularly telling when that sexual offending involving maintaining a sexual relationship with two of those complainants over an extended period, with multiple occasions of oral, vaginal and anal penetration ([99]).

R v LBC [2023] QCA 178

Keywords: sexual offences against children; manifest excess; serious violence offence declaration; manifestly excessive.

The application for leave to appeal against sentence was refused.

The applicant, LBC, had pleaded guilty to one count of maintaining a sexual relationship with a child (domestic violence offence), for which he was sentenced to 10 years' imprisonment (meaning LBC was subject to a non-parole period of 80% due to the operation of the Serious Violent Offences scheme).

The applicant appealed on the basis that the sentence was manifestly excessive and argued that a sentence of 9 years' imprisonment with no recommendation as to parole eligibility would be appropriate (meaning he would have to serve half of his sentence before being eligible for parole).

The Court, after considering a number of cases relied on by the applicant said to be comparable, and which supported a sentence of less than 10 years' imprisonment, found that the offending in those cases was not as serious as in LBC's case and that there was no misapplication of principle. LCS's offending was described as 'extremely serious and called in the circumstances for a significant sentence' ([24]).

R v Crowden [2023] QCA 187

Keywords: cumulative sentence; serious violence offence declaration; participating in a criminal organisation; drug offences; violence offences.

Leave to appeal refused against a sentence of 11 years' imprisonment.

Crowden was sentenced for 14 offences (drugs and violence) to sentences of 6 years' imprisonment and 5 years' imprisonment to be served cumulatively. The appeal only concerned the sentence of 5 years' imprisonment, imposed for trafficking in a dangerous drug. It was argued that, based on comparable cases, this sentence was manifestly excessive.

The applicant's argument was not accepted. The Court of Appeal noted if 'a sentence is manifestly inadequate or manifestly excessive is not to be decided by reference to a predetermined range of available sentences but by reference to all of the factors relevant to sentence.' ([22] c*iting R v Goodwin; Ex parte Attorney-General (Qld)* [2014] QCA 345, [5] (Fraser JA)). It was also noted that the fact that the offending committed in the context of Crowden being the president of a criminal organisation made the offending more serious [25].

R v Abdullah [2023] QCA 189

Keywords: manifestly excessive; no victim impact statement; partially suspended sentence; sexual assault.

Application for leave to appeal dismissed against a sentence of 18 months' imprisonment, suspended after 5 months for an operational period of 18 months.

Abdullah pleaded guilty to sexually assaulting 2 young women, in their home, who were strangers to him.

One ground of appeal was whether the sentencing judge could conclude that a complainant (victim) suffered harm without a victim impact statement. The Court of Appeal stated:

> Merely because a victim does not wish to provide a victim impact statement does not prevent the court from either acting on a submission that the offence nevertheless may be inferred to have caused harm, nor from forming a view – having regard to the circumstances of the offence – as to whether the offence may have caused harm. For this purpose, "harm" means physical, mental or emotional harm (see s 179I). The express statement in s 179K(5) that an absence of impact "cannot be inferred" necessarily carries with it the notion that the presence of (some, or even significant) impact may be inferred. [23]

In this case, it was plainly open to the sentencing judge to infer that the complainant had suffered harm considering the circumstances of the offending including: the victim's young age, that the offending occurred outside her own home, that it was brazen and not fleeting, and involved some persistence. After considering comparable cases and the aggravating factors present in this case, the Court also rejected the argument that the sentence was manifestly excessive.

R v NAF [2023] QCA 197

Keywords: biological daughter; child exploitation material; maintaining a sexual relationship with a child; manifest excess

An application for extension of time to appeal against conviction and sentence was refused.

The applications for an extension of time to appeal related to the sentence of 15 years' imprisonment imposed for one count of maintaining offence a sexual relationship with a child (domestic violence offence) (MSO) which carried a mandatory declaration that NAF be declared convicted of a serious violent offence, meaning he would have to serve 80% of this sentence before being eligible for parole).

The maintaining count involved NAF offending against his biological daughter when she was aged between 7 and 13, multiple times a week. He persisted in offending against her even when she asked him to stop. The applicant recorded much of his offending, which he revisited. The Court of Appeal observed that:

> the applicant's conduct involved a depravity which went beyond sexual defilement of his own daughter. It included humiliation by persisting in that conduct despite obvious pain, distress and attempts at resistance and filming of that conduct, thereby maintaining a permanent record of his depravity…the sentence imposed fell within a sound exercise of the sentencing discretion. [47]

R v Venn [2023] QSC 173

Keywords: domestic violence offence; manslaughter; mental illness; parole eligibility.

Venn pleaded guilty to one count of manslaughter (domestic violence offence) of her husband and was sentenced to 8.5 years' imprisonment with a parole eligibility date of the day of sentence (this was just under a third and the court recognised her 1,081 days of pre-sentence custody). A charge of murder was withdrawn following the Mental Health Court finding Venn to be of diminished responsibility at the time of the offence. Venn was suffering from a major depressive disorder that was so severe 'it distorted [her] cognitive abilities which impaired [her] capacity to know that [she] ought not do the act' [16].

The deceased had a past history of bipolar spectrum disorder and manic-depressive illness and his condition had deteriorated in the 18 months before his death. He was physically and verbally abusive towards Venn.

Justice Williams considered the comparative cases and noted that punishment and rehabilitation were the primary sentencing purposes in this type of case. The sentence reflected the criminal culpability involved, balanced with an extended period of parole supervision to support Mrs Venn's ongoing mental health treatment.

R v Eckl [2023] QSC 178

Keywords: Commonwealth offences; extensive mitigating factors; money laundering; wholly suspended sentence.

Eckl was found guilty by a jury of 5 counts of money laundering charges (*Criminal Code Act 1995* (Cth)) and sentenced to 3 years' imprisonment, wholly suspended for a period of 5 years.

The facts of this case were unique. Eckl was described as 'an instrument used by the scammers' and 'was not one of the people who profited from the enterprise' [50]. Eckl had herself been a victim of a financial scam, losing around $600,000 – her family's life savings. The judge recognised that while she had participated in the current scam, it was done so with 'the absence of any intention to obtain a profit or benefit, except for a vague promise that those giving her instructions would assist her to recover the family's savings lost in 2010' [131].

Justice Freeburn determined a sentence of 3 to 4 years' imprisonment was within discretion but justified reducing this due to 2 factors:

1) there is a place for leniency should a judge determine it should help an offender to reform (*R v Osenkowski* (1982) 30 SASR 212); and

2) section 17A(1) of the *Crimes Act 1914* (Cth) requires a court not pass a sentence of imprisonment for a federal offence unless satisfied no other sentence is appropriate.

Justice Freeburn determined that due to Ms Eckl's extensive mitigating factors, imprisonment was not appropriate. A condition of the order was that Ms Eckl continue to see her treating psychologist. Justice Freeburn noted that Ms Eckl was significantly impacted by the trial (she was diagnosed with an acute stress reaction to her court matters) and that it was regrettable that she had not been able to secure legal representation (because she continued to be employed up to and during her trial she was not eligible for legal aid).

R v DT [2023] QChC 8

Keywords: property offences; retrospective legislation; serious repeat offender; violence offences.

DT pleaded guilty in the Childrens Court of Queensland to offences including burglary, armed robbery in company with personal violence and unlawfully using a motor vehicle with a circumstance of aggravation committed when aged 16. The offences breached a conditional release order, a probation order and a restorative justice order.

An issue at the sentence was the impact of a recent legislative change which allows a court to declare a child to be a 'serious repeat offender'.[1] This declaration lasts 12 months after the child is released from detention. If another court sentences a child declared a 'serious repeat offender' for a certain offence committed during those 12 months, there are different primary sentencing considerations that apply. This legislative change was made after DT had committed the offences, but before he was sentenced.

It was held that the legislation was valid and could apply retrospectively (meaning that it applied to an offence committed before the law came into effect).

The sentencing judge set out his reasons for declaring DT to be a 'serious repeat offender', which included his previous detention order, his offending and bail history which included serious offences, and his efforts of rehabilitation, the high degree of probability that will offender and the strong need to protect members of the community (see [94]). The child was sentenced to a head sentence of 2 years' detention, with release after serving 60 per cent. Convictions were recorded for 6 offences.

1. YJA s 150A; see also *Strengthening Communities Safety Act 2023* (Qld) which introduced the separate sentencing regime for 'serious repeat offenders'.

JSK v Office of the Director of Public Prosecutions (Qld) [2023] QChC 12

Keywords: excessive sentence; manifestly excessive; probation order; restorative justice referral.

This was a successful appeal against sentence on the grounds that the Magistrate failed to meaningfully consider the option of restorative justice.

The applicant child plead guilty to an assault occasioning bodily harm while in company. He was 15 years' old at the time of offending and had no prior convictions. He was sentenced to 9 months' probation.

The Magistrate was not told whether the victim or child were willing to participate in restorative justice conference, or whether the child was suitable to participate. The Court found that simply saying "RJ considered" did not show a consideration by the Magistrate of that provision of the YJ Act. The Court also found that the Magistrate failed to explain the conditions of the probation order, or ask if the child was willing to comply with the order as required by s 194 of the YJA. The Crown accepted that the sentence was manifestly excessive and a restorative justice referral was appropriate.

The Court re-sentenced JSK, ordering him to participate in a restorative justice process.

WO v Office of the Director of Public Prosecutions (Qld) [2023] QChC 13

Keywords: violence offences; probation; property offences; recording a conviction; supervised release order; youth detention.

This was a successful appeal against sentence.

The applicant child, WO, was sentenced for charges of common assault and an attempted enter premises and commit an indictable offence. At the time of sentence, the Magistrate also breached WO in relation to community-based orders (a supervised release order and combined probation and community service order).

The Magistrate resentenced WO to 3 months' detention followed by 12 months' probation and 73.5 hours

of community service for each new offence and the offences subject to the community based orders. Convictions were recorded for all of the offences. WO was also ordered to serve the unexpired portion of a detention order.

The Crown accepted that the appeal should be allowed in relation to the recording of convictions and the breach proceedings.

While the Magistrate was entitled to resentence WO in relation to the offences for which he was on probation and community service, the Court found that the Magistrate made an error in resentencing without knowing the facts of the original offending.

For the new offences, the Court observed that a good behaviour bond was appropriate given the amount of time spent on remand, the facts of the offending and the WO's significant and relevant disability.

The Court also found that having regard to WO's age, his intellectual disability and his positive attachment to his NDIS workers, it would be inappropriate to order convictions be recorded. found that the Magistrate failed to explain the conditions of the probation order, or ask if the child was willing to comply with the order as required by s 194 of the YJA. The Crown accepted that the sentence was manifestly excessive and a restorative justice referral was appropriate.

The Court re-sentenced JSK, ordering him to participate in a restorative justice process.

PK v Office of the Director of Public Prosecutions (Qld) [2023] QChC 14

Keywords: community service; manifestly excessive; minor drug offences; property offences; restorative justice.

This was a successful appeal against sentence.

The applicant child, PK, was 14 years' old and had no criminal history at the time of offending, although he was on bail at the time some of the offences were committed. He pleaded guilty to 12 property and minor drug offences. In relation to 2 offences, he was diverted to restorative justice, and in relation to the others, he was ordered to undertake 20 hours of community service.

The Court found that while the minimum period of community service was within range, there was no logical reason not to refer all of the offences for diversionary restorative justice. The Court set aside the orders

District Court of Queensland s 222 decisions

Stevenson v Commissioner of Police [2023] QDC 126

Keywords: common assault; suspended sentence; compensation; manifestly excessive

Appeal allowed against a sentence of 6 months' imprisonment, to be suspended after serving 3 months with an operational period of 12 months for common assault. Stevenson offered, and was ordered to pay, $1,000 in compensation to the complainant (victim). Stevenson was found guilty after a summary trial.

Stevenson appealed on the basis that the sentence was manifestly excessive. The offending involved the appellant swearing and spitting at the complainant while she was working at McDonald's after there were errors in his order. The offence happened during the period of time when it was common for people to wear face masks and, fortunately, the spittle landed on the top of the face mask, and did not land on the complainant's skin.

The cases referred to by the police prosecutor and described by the Magistrate as 'yardsticks' all involved the more serious offence of serious assault (s 340, *Criminal Code*) which carried a higher maximum penalty.

The Crown accepted that a sentence involving actual custody may have been a miscarriage of the sentencing discretion, and that the serious assault cases may have influenced the Magistrate.

The Court allowed the appeal, and imposed a sentence of 4 months' imprisonment, suspended after serving 12 days (the amount of time the appellant had served at the time of appeal) with an operational period of 9 months.

Academic articles, journals and reports of interest

Julie Stubbs et al, *Rethinking Community Sanctions: Social Justice and Penal Control* (Emerald Publishing Ltd, August 2023)

Rethinking Community Sanctions: Social Justice and Penal Control redresses the invisibility of community sanctions in a popular imaginary dominated by the prison, resulting in their being seen as 'not prison', 'not punishment', a 'let off', or expression of mercy. Based on insights from interviews with key participants in 3 Australian jurisdictions, case studies of selected programmes and policies, and the international literature, the authors focus on the effects of community sanctions.

KPMG & RMIT University's Centre for Innovative Justice, *Exploring justice system experiences of complainants in sexual offence matters: An interview study* (NSW Bureau of Crime Statistics and Research, August 2023)

This New South Wales study was based on 34 interviews with adult sexual offence complainants who had reported the incident to police. The interviews explored reasons for a complainant's positive or negative experience and any barriers to participating in the criminal justice process. There were 5 key findings from the interviews and 14 recommendations made for reform, including the exploration of the development of a sexual violence restorative justice service (recommendation 13).

NSW Bureau of Crime Statistics, *NSW Criminal Justice Aboriginal over-representation: Quarterly report* (June 2023)

A statistical quarterly report on the disproportionate representation of Aboriginal and Torres Strait Islander people in the NSW criminal justice system. Provides a statistical overview of First Nations adults and young people in custody, court proceedings, bail (refusal and breaches) and reoffending rates.

ANROWS Evidence Portal

The ANROWS Evidence Portal of interventions to addressing ending violence against women was launched in September 2023. It is a living resource of evaluations of interventions from high-income countries that aim to address and end violence against women.

Paper Chained, Issue 11

Paper Chained is a journal of writing and artistic expression from individuals affected by incarceration.

Commonwealth Senate's Legal and Constitutional Affairs References Committee, *Current and proposed sexual consent laws in Australia* (September 2023)

The Commonwealth Senate referred Terms of Reference to the Legal and Constitutional Affairs References Committee ('Committee') for an inquiry on current and proposed sexual consent laws in Australia. The Committee received 79 submissions from individuals and organisations, held 3 public hearings and made 17 recommendations.

Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse (Report, August 2023)

The Tasmanian Commission of Inquiry was established on 15 March 2021 to examine allegations and incidents of child sexual abuse in Tasmanian Government institutions.

The Commission received 143 submissions, held 132 sessions with Commissioners, hosted 21 consultations (including 10 consultations with Aboriginal communities) and reviewed more than 95,000 documents. The Commission made 191 recommendations.

The Commission have released an *Easy Read Guide* and *Animated Easy Read Guide*.

The Commission made 191 recommendations, some of which related to sentencing, including that the Tasmanian Government:

- ensure any legislation designed to amend or replace the *Youth Justice Act 1997* (Tas) provide that: rehabilitation is the primary purpose of sentencing a child; that a custodial sentence must only be imposed as a last resort and for the minimum period necessary; in sentencing a child, the court must consider a range of factors, including the child's experience of trauma, developmental issues, mental illness, neurological difficulties or developmental issues; and if sentencing an Aboriginal child, the court must consider additional factors such as the consequences of intergenerational trauma (recommendation 12.15)
- assist the Magistrates Court to establish a new division of the Court to hear and determine both child protection matters and criminal charges against children, to be independently evaluated after three years (recommendation 12.15)
- fund the Magistrates and Supreme Court to provide professional development for judicial officers hearing matters involving children and young people in the adult jurisdiction (recommendation 12.15)
- introduce legislation to amend section 11A of the *Sentencing Act 1997* (Tas) to provide that the acquiescence or apparent consent of the victim is not a mitigating circumstance when sentencing an offender for a child sexual abuse offence(recommendation 16.18)
- advocate at a national level for changes to the National Redress Scheme to allow access to people who have been sentenced to imprisonment for five years or longer (recommendation 17.1).

Australian Institute of Health and Welfare (AIHW) *Young people returning to sentenced youth justice supervision 2021–22* (2023)

This report presents data on the number of young people released from a supervised youth justice sentence (includes both community-based and detention sentences) who then returned – that is, young people who received another supervised sentence after the end of their first, or index sentence. The AIHW found that '[o]f young people aged 10-17 who were under sentenced youth justice supervision at some time between 2000-01 and 2021-22, 41% returned to sentenced supervision before turning 18'.