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Understanding of sentencing: Community knowledge of sentencing terms and outcomes

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OVERVIEW

AIM To explore how well the Queensland community understands sentencing terms and to explore the public's knowledge of sentencing outcomes.

METHOD Eight structured focus group sessions were conducted with 66 members of the public in three sites across Queensland (Brisbane, Mount Isa and Townsville). The two-hour focus group sessions incorporated practical activities involving a questionnaire administered to participants followed by group discussion.

RESULTS The findings of this study identified that while people in the sample were relatively confident in their understanding of sentencing terms, few were able to articulate this knowledge in focus group interviews. In estimating rates of custody and sentence lengths, participants consistently underestimated imprisonment rates across all offence types, and were generally unable to estimate the time to be served in custody prior to parole eligibility.

The focus group discussions revealed that most participants had a nuanced perspective of sentencing concepts and that they had considered several sentencing factors when estimating imprisonment rates and sentence lengths. The estimates given by participants were influenced by certain assumptions about legal terms and concepts (e.g., about the differences between murder and manslaughter), the sentencing process and how sentences are administered in Queensland (e.g., how parole operates). Overall, participants wanted to understand more about sentencing terms and outcomes.

Many participants were unaware of the extent of their lack of knowledge until after definitions or correct responses about imprisonment rates and sentencing outcomes had been provided. Most participants expressed surprise regarding typical sentencing practices in Queensland.

The findings presented in this paper demonstrate that while community members may have a high level of confidence in their understanding of sentencing terms, they may not understand their precise meaning. The findings further suggest that the public has limited knowledge of current sentencing practices, which may impact on community confidence in sentencing.

CONCLUSION An opportunity exists for enhancing confidence in the criminal justice system and the courts by improving the community's understanding of sentencing terms and outcomes. This suggests a need for targeted education and awareness strategies that are tailored to address the gaps in information available to the general community. The development of products that translate complex legal sentencing terms into plain English could have a positive impact on community understanding. The publication of sentencing statistics on current sentencing practices in a clear, transparent, and accessible format may help to improve community understanding of what sentences are imposed in Queensland.

INTRODUCTION

The purpose of this *Research Brief* is to answer the following questions:

- 1) How well does the public understand sentencing concepts in Queensland?
- 2) What is the public's knowledge of sentencing outcomes for different offences, namely, home burglary, murder, and drug trafficking?

Research published in Australia and other common law jurisdictions, such as the United Kingdom, Scotland and New Zealand, exploring public attitudes to sentencing has found the public has little knowledge about the severity of current sentencing practices.¹ Members of the public consistently underestimate the severity of sentences imposed and the majority consistently respond that they think courts are too lenient when surveyed.²

Doob and Roberts' research in 1983 was one of the first to demonstrate the link between the level of information provided to members of the public and views about the adequacy of sentences. This series of studies found that those respondents who were provided with more information on a case were also less likely to feel that a sentence was too lenient.³

More recent research has continued to explore the relationship between the level of information provided and punitiveness, concluding that the more information people have about a case the more likely they are to consider the sentence imposed to be appropriate.⁴

Other research has extended this concept to general sentencing knowledge (rather than case-specific information). For instance, a Victorian study asked the public to consider what sentence they thought was appropriate for real cases.⁵ When participants were provided with a talk about the aims and purposes of sentencing and sanction types beforehand, the sentences that participants came up with tended to be more lenient than the actual sentences imposed by the sentencing judge. While this study was largely quantitative, it also found in unprompted discussions that participants held differing views about the level of severity of the sentence considered appropriate to a case, and variation in the interpretation of the case facts. This study concluded that the current use of polls and large-scale systematic surveys relying on case vignettes as a basis for sentencing reform are an 'insult to a thoughtful public' and do not adequately assess public perspectives on sentencing.⁶ Criticisms of reliance on quantitative polls and survey-based measures to gauge public views is consistent across the literature.⁷ Nonetheless, research typically demonstrates that there is a relationship between the level of information the public has access to, their knowledge of sentencing and sentencing attitudes, and that current methodological approaches have limitations in understanding this relationship.

Recent research has begun exploring the relationship between the public's confidence in their own sentencing knowledge and their actual understanding of sentencing. The UK Sentencing Council identified that the public had a high level of confidence in their own sentencing knowledge; however, despite this confidence, few participants were able to demonstrate a high level of sentencing knowledge.⁸ In this study, over three-quarters of the sample were confident that they understood the meaning of a life sentence, yet the qualitative analysis revealed few accurately understood that offenders serving a life sentence would remain on parole for the rest of their life.⁹ Similarly, research undertaken for the Scottish Sentencing Council found that members of the public were confident they knew 'a little' (45%), 'a moderate amount' (42%) or 'a lot' (5%) about sentences given to people convicted of crimes in their country and were aware of most penalty options available, yet less than 20% of all respondents were able to accurately estimate the proportion of all sentences that were prison sentences.¹⁰ The emerging research demonstrates that confidence in sentencing knowledge does not necessarily indicate actual knowledge, with people typically overconfident in their knowledge of sentencing.

Many papers have identified that members of the public have little actual knowledge about crime trends and the types of sentences that are typically imposed by courts. Research also suggests that the public tends to underestimate the severity of sentencing outcomes.

Regarding crime trends, one United States (US) survey found that 6 in 10 adults believed crime had increased over the past 5 years, when crime generally, including violent crime, had decreased.¹¹ The researchers created a crime knowledge index by combining respondent answers about crime and imprisonment trends, and concluded that only one in five participants could be considered informed about crime and punishment in the US. Similar findings have been made in an Australian context, with a 2009 report identifying that the public tends to be misinformed about crime trends, thinking for the most part that crime trends are increasing when they are generally decreasing.¹² This Australian study also found a positive relationship between the desire for stiffer sentences and beliefs that crime was increasing.¹³

The public also generally has little knowledge of the types of sentences handed down by the courts. For example, one Australian study found that jurors typically underestimate the severity of sentences, believing fewer defendants¹⁴ receive custodial sentences compared to actual sentencing outcomes.¹⁵ Similarly, a crime survey undertaken in England and Wales identified that when members of the public were asked to estimate custody rates for certain offences, they routinely underestimated the use of prison sentences and less than one third estimated rates that

were close to actual practice.¹⁶ These findings indicate that members of the public generally do not have a strong understanding of sentencing outcomes.

While custody rates are typically inaccurately estimated, so too are the average length of prison terms. Research has identified that the public generally underestimates the length of prison sentences typically handed down by the courts. For example, one UK study which surveyed members of the general public found that when estimating the minimum terms of imprisonment to be served prior to being eligible for release on licence (parole), approximately one-quarter of respondents were broadly accurate, with one-third substantially underestimating the length of minimum terms, and a further one-quarter underestimating the term to a lesser extent.¹⁷ Similar findings have been reported in other jurisdictions, with members of the public typically underestimating the length of prison terms across a range of offences.¹⁸

This link between sentencing knowledge and public perceptions of sentencing is particularly relevant as many studies have demonstrated that the public typically thinks sentencing is too lenient,¹⁹ and most Australian research indicates that people typically want harsher sentences.²⁰ Public dissatisfaction with sentencing is often discussed in the literature alongside an underestimation of the severity of sentencing,²¹ and a generally inaccurate understanding of the estimated custody rate.²²

For example, research conducted in the UK found a link between lack of accurate knowledge regarding sentencing practices and perceptions of sentence leniency.²³ Those who thought sentences were too lenient typically also were significantly less accurate in their estimates of current sentencing trends, in particular underestimating the use of imprisonment.²⁴

At the heart of many studies on public attitudes to and knowledge of sentencing is the concept of punitiveness. Most studies conclude that those who are less knowledgeable about sentencing tend to hold punitive attitudes. While most research focuses on how demographic factors, political orientation, religious views, and media exposure relate to punitiveness, one Australian study identified that these were relatively weak predictors of punitive attitudes.²⁵ Rather, the strongest predictors of punitiveness were a lack of criminal justice knowledge and attitudes. This suggests that should the Australian public have greater knowledge regarding sentencing, this may correlate with fewer people being dissatisfied with sentencing trends. Not only is enhanced knowledge a strong factor in promoting public confidence in sentencing, but research has also identified that the more information a person has about a case, the more likely it is they will agree that the sentence imposed by the sentencing judge is appropriate.²⁶

The offence type may also be an important consideration when gauging public satisfaction with sentencing. Research has found that levels of satisfaction by members of the public with sentencing outcomes can vary depending on the type of offence they are asked about (or are thinking about

when responding), particularly if the offence involves violence. Most research exploring views of the general community has found that for violent offences, such as murder and sexual offences, the public typically expects harsher sentences and expresses greater dissatisfaction with sentencing.²⁷ Conversely, for non-violent offences, such as property crime or non-violent drug offences, the public typically agrees with the courts or leans toward non-custodial sentences.²⁸

The focus of the Council's research discussed in this paper was to explore public knowledge of sentencing. This included how the public understands Queensland sentencing terms and concepts and their knowledge of sentencing outcomes in Queensland. The study incorporated both qualitative and quantitative measures and explored perspectives across different types of offences to provide a rich understanding of public knowledge of sentencing in Queensland.

METHOD

This research utilised a mixed methods design with quantitative and qualitative elements.

Focus Groups

The Council adopted a focus group method for this research. The primary advantage of this approach is that it elicits far more detailed, thoughtful, and insightful responses than traditional surveys,²⁹ which is particularly useful when exploring opinions on a specific topic such as sentencing. Focus groups provide rich information about the personal attitudes of participants and the ability to gauge participants' understanding of sentencing concepts in a more in-depth way than is possible through a survey-based approach.

Recruitment

The sample selected for this study was not a random sample of, nor designed to be representative of, the Queensland population. However, Table 1 outlines the demographics of focus group participants and alignment to the general Queensland population based on the 2021 Census. Focus group participants were older compared to the general population, with fewer participants in the 18 to 34-year-old age group, and more participants in the 55 to 75-year-old age group. Participants had a higher level of education and were less likely to be formally employed compared to all Queenslanders.

Participants were recruited by an independent market research company. The sampling frame included a diverse range of ages with no participants aged under 18, an approximately even gender balance, a range of occupational statuses, people from culturally and linguistically diverse backgrounds, and at least one participant who identified as an Aboriginal or Torres Strait Islander person per location.

Three sites were selected, representing South-East Queensland (Brisbane), regional Queensland (Townsville), and remote Queensland (Mount Isa). In total 8 focus groups were held, with 4 in Brisbane and 2 each in Townsville and Mount Isa. Each session involved up to 10 participants. The focus groups were held between 13 to 22 June 2022. Participants were paid for their participation.

In total, 66 members of the public participated. The majority of participants lived in Brisbane ($n=35$), and there was a relatively even split of male and female participants ($n=31$ and $n=35$ respectively). Participants were selected from a randomly generated list of potential participants from the recruitment company's database.

Table 1: Demographics of focus group participants (n=66)

Demographic characteristic	Focus Groups %	2021 Census Queensland %
Gender		
Female	53.0	51.0
Male	47.0	49.0
Age		
18-34 years	7.6	29.2
35-54 years	39.4	34.1
55-75 years	47.0	28.6
Over 75 years	6.1	8.1
Indigenous status		
Aboriginal and/or Torres Strait Islander	12.1	4.3 ^a
Non-Indigenous	87.9	95.7 ^a
Highest education level		
Secondary Includes completion of Year 10, 11 or 12	19.7	35.3 ^{a,b}
Post-secondary Includes completion of TAFE, college diploma or other professional qualification	45.5	30.0 ^a
Tertiary Includes completion of undergraduate or postgraduate degree	34.8	27.9 ^a
Employment status		
Formally employed Includes full-time, part-time and self-employed	55.8	64.0 ^c
Not formally employed Includes home duties, pensioner, retiree, student and unemployed, or otherwise not categorised by ABS	47.8	36.0
Location		
South-East Queensland Brisbane	53.0	62.9 ^d Major cities
Regional Queensland Townsville	27.3	34.2 ^d Regional
Remote Queensland Mount Isa	19.7	2.6 ^d Remote

Source: Focus group interviews conducted 2022; Australian Bureau of Statistics (ABS): Population by age and sex release,³⁰ Aboriginal and Torres Strait Islander release,³¹ education release,³² employment release,³³ remoteness structure.³⁴

Notes:

- 2021 Census data includes people aged 15 to 17 years, and this age group was not able to be excluded.
- Does not include 6.8% with below Year 10 level in Queensland, or those otherwise missing from ABS figures.
- Employment-to-population ratio for November 2022 as presented by the ABS, includes full-time and part-time employment.
- Location data as of 2016 Census.

Structure

Participants attended a structured two-hour focus group session, incorporating group discussion and several activities which involved completing questionnaires and

estimating sentencing ranges for specific offences. The structured focus group discussions centred on understanding participants' perspectives of sentencing concepts generally and their understanding of sentencing terms and sentencing outcomes.

The written activities were designed to assess participants' knowledge of sentencing, and their attitudes toward the purposes of sentencing.

The first activity covered purposes of sentencing, and asked participants to define what sentencing means to them. A separate activity tested their knowledge of sentencing outcomes by asking participants to estimate the percentage of adults sent to prison (as opposed to receiving a different penalty), and how long on average adults spend in prison, for three different offence types: burglary, murder, and trafficking in dangerous drugs. The final activity was a questionnaire that asked a series of questions about participants' views on sentencing and their confidence in their understanding of sentencing terms.

After each activity, a group discussion was held to explore the variety of perspectives and participants' responses.

Ethical considerations

An ethics assessment was completed in line with the National Statement on Ethical Conduct in Human Research,³⁵ and the Australian Code for the Responsible Conduct of Research.³⁶ Due to the nature of the research, the project was considered to be low risk, and therefore did not require formal ethical approval through a human research ethics committee.

Courts Data

Other data used for this research included the Courts Database as maintained by the Queensland Government Statistician's Office (QGSO), Queensland Treasury. The Courts Database comprises of data collected by the Department of Justice and Attorney-General (DJAG) from the administrative information systems used by Queensland's criminal courts. The analysis contained within this report was conducted using data extracted from the Courts Database in December 2022.³⁷

An explanation of key data concepts referred to in this section and throughout this paper is contained in a separate technical paper available on the Council's website.

To assess focus group participants' understanding of sentencing trends, participants' responses to the focus group activities were compared to official sentencing statistics.

This research examined cases in which murder, drug trafficking, and home burglary were sentenced as the most serious offence (MSO) in the Magistrates Courts and higher courts over a 17-year period from 1 July 2005 to 30 June 2022. These 3 offences were selected on the basis that previous studies, on which the research design for this

study was based, explored sentencing outcomes for similar offence types, thereby enabling some comparisons to be drawn. The MSO is defined as the offence that received the most serious sentence as ranked by the classification scheme used by the ABS.³⁸ During the reference period, 25,970 cases sentenced involved a charge of either murder (*Criminal Code* (Qld), s 302), trafficking in dangerous drugs (*Drugs Misuse Act 1986* (Qld), s 5), or burglary (*Criminal Code* (Qld), s 419).

The measure of number of people 'sent to prison' used for the purposes of this research includes sentences of imprisonment where a defendant was sentenced to serve at least one day in actual custody, including partially suspended sentences, but does not include sentences of imprisonment with immediate release on court ordered parole where no pre-sentence custody was declared. As such, the imprisonment rates referred to throughout this report refer to instances where people sentenced have spent actual time in prison as part of their sentence, including time on remand declared by the sentencing judge as time served under the sentence. All cases involved defendants who were sentenced as an adult. Children sentenced under the *Youth Justice Act 1992* were not included in this analysis.

A 'case' is the collection of offences for a person sentenced that were finalised on the same day at the same court level and court location. Where there were multiple people sentenced together as part of the one court event, the event is recorded as separate cases. A single offender may appear in multiple cases over the reporting period.

Analysis

The analysis undertaken for this research consisted of both qualitative and quantitative procedures. A thematic analysis was conducted of the focus group interview transcripts in NVivo following the six-phase process outlined by Braun and Clarke.³⁹ The thematic analysis was undertaken by one member of the research team to maintain consistency; however, a codebook was collaboratively developed in advance and reviewed throughout to reduce unintentional researcher bias.⁴⁰

For the quantitative data, namely the written activities and analysis of courts data, descriptive statistics were conducted in Excel and SAS Enterprise Guide. Due to the relatively small sample, no weighting of the data was undertaken.

Limitations

The quantitative data presented in this report is a simplified representation of Queensland's complex criminal justice system and is subject to a range of limitations. Caution therefore should be used when interpreting this information. For instance, the courts data is derived from an administrative system that is designed for operational,

rather than research purposes. The accuracy of information presented in this *Research Brief* reflects how administrative information is structured, entered, maintained, and extracted from administrative systems.

Regarding the focus groups, the generalisability of the data is limited as the focus group participants were not a representative sample of the Queensland population. Other limitations reflect those generally associated with focus group-based research design, including participants may not feel comfortable presenting their honest views in front of others, particularly in regional and remote locations where participants are more likely to know each other. During focus group discussions, there is also a risk that one or more participants may dominate the discussion, even when facilitators seek to involve all participants equally. While these limitations are inherent to a focus group research design, every effort was made to ensure that the focus groups were run in a structured, inclusive, ethical, and respectful manner. As the primary intention of this research was to gain a deeper insight into public understanding of sentencing, the Council was confident these limitations did not restrict the potential benefits associated with the use of focus groups.

“I think we’re too quick to judge”

Participants were not given any prompts about the definition of sentencing until after this initial exercise. Their interpretation of sentencing generally changed throughout the focus group session as more information was imparted and scenarios were discussed. The impact this had on their understanding of sentencing was reflected upon by one participant.

When you say 'sentencing' [the] first thing, initially, what comes to mind is punishment, as we said, that's 'just'... Whereas now, we're going through the scenarios it's a very, very different... you know... It's really interesting, the psychology involved [laughs]. Thank you for the opportunity.

Female, Townsville, T4

Other similar reflections were made throughout these sessions by participants, specifically, regarding how their perspectives shifted over the course of the focus group sessions.

It makes you think though, doesn't it, because you don't really – I don't really think about the deep and meaningful of it all. You look at the cursory, you look at the headlines and/or just – whatever's going on without sitting down and really trying to understand and...evaluate it.

Male, Townsville, T12

I think we're too quick to judge.

Male, Mount Isa, M5

Everyone has their own moral compass and their own lens that they're looking through so if you think, 'wow, that deserves more', if there was information that was a bit more of a guideline, perhaps we wouldn't all be shooting off like loose cannons everywhere because that sense of justice and fairness is coloured by our own lenses and filters.

Female, Townsville, T4

This demonstrates that after being given the opportunity to consider different sentencing scenarios, people noticeably shifted their perspectives away from punishment towards a more nuanced understanding. The remainder of this paper discusses how participants considered different sentencing terms, their knowledge of sentencing outcomes, and their

reflections about their understanding of sentencing in Queensland.

Understanding of sentencing terms

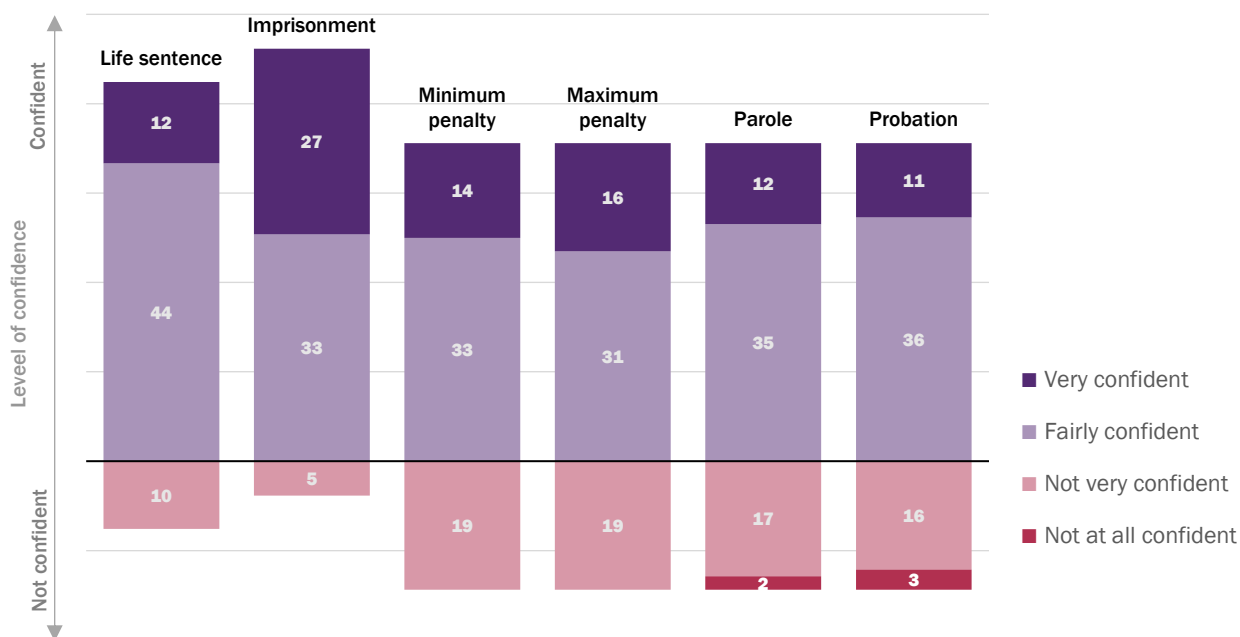
Focus group participants were provided with a printed questionnaire which asked them to self-assess their confidence in their level of understanding of different sentencing terms. These terms included 'life sentence', 'imprisonment', 'minimum penalty', 'maximum penalty', 'parole' and 'probation'.

This question was asked as past research found that the public tended to overestimate their confidence in their understanding of legal terms, yet few accurately understood what those terms meant.⁴¹ For example, Marsh et al. found that the majority of the public reported that they were confident that they understood terms such as 'life sentence' and 'on licence' however, when pressed for definitions in group discussions, members of the public were less certain about aspects such as the length of life sentences, and the requirement that the person subject to the life sentence remain 'on licence' (parole) for the rest of their life on their release from custody.⁴² Other research has also identified a lack of understanding by the public of sentencing concepts such as what is meant by a 'life sentence'.⁴³ This prior research suggests that while people have heard of sentencing terminology, they are not always sure what it means.

After completing this written questionnaire, participants in our study were provided with verbal definitions for three of these terms: 'life sentence', 'parole', and 'probation'. Participants were asked to discuss how well the definition provided aligned with their own understanding of what that term meant. **Table 2** **Table 1** provides the plain language definition that was provided for these terms.

The findings of our study reveal that overall, most participants initially felt relatively confident in their understanding of sentencing terms. The term that participants felt most confident with was 'imprisonment' (see **Figure 2**).

Figure 2: Self-assessed confidence in the understanding of sentencing terms



Source: Focus Group Activity 3, in response to “How confident would you say that you were in your understanding of the meaning of the following terms?”.

Table 2: Sentencing definitions

Term	Definition
Life sentence	<p>In Queensland, when a person is sentenced to life imprisonment, the minimum time they must spend in prison is set by law.</p> <p>For most offences the minimum time in prison is 15 years. For murder and repeat serious child sex offences the minimum is 20 years. For murder of a police officer the minimum is 25 years, and for murder of more than one person the minimum is 30 years.</p> <p>After serving the minimum term in prison, a person becomes eligible for parole. This doesn't mean that parole is guaranteed—it is a decision for the parole board.</p> <p>A person who has received a life sentence will either remain in prison or remain on parole for the rest of their life.</p>
Parole	<p>If a person is sentenced to prison, they could also spend time on parole. Time spent on parole counts as part of a person's sentence. For example, if a person is given a 5-year sentence, they may spend 3 years in prison, and then 2 years on parole. When a person is on parole, they are supervised in the community and must follow certain rules. If the person breaks those rules, they may have to go back to prison.</p>
Probation	<p>A probation order requires an offender to be monitored in the community by a corrective services officer. The offender is required to follow conditions including to not break the law, to participate in counselling and programs, to report to and receive visits from a probation officer, amongst other things. A court can also make any additional conditions that it sees fit, for example, requiring a person to keep away from a certain place.</p>

Source: For more details on sentencing definitions, see the Council's website or the Queensland Sentencing Guide.⁴⁴

After the sentencing terms had been explained to the participants, most reflected that they either had an inaccurate understanding of these terms or sought further clarification on these definitions.

Life sentence

For those who reflected on their understanding of 'life sentence' after being provided with these definitions, almost all participants admitted that it did not align with their initial definitions. Some participants thought a life sentence was time-limited and expressed surprise that the receipt of a life sentence meant that person would be under sentence for the rest of their natural life.

It's definitely different to what I thought. I didn't realise that life meant it was the whole life...

Male, Brisbane, B17

Yeah, but I had 30 years or more because I figured that's kind of like, I don't know, our definition of a lifetime.

Male, Brisbane, B35

Although 85 per cent of participants were confident (responding with either 'fairly confident' or 'very confident') that they understood the meaning of 'life sentence', the comments by most participants indicated they had overestimated their level of confidence. There were common misunderstandings that emerged from these

comments and participants often asked clarifying questions relating to some of their misinterpretations.

Interestingly, almost all comments and questions in relation to the meaning of a 'life sentence' came from participants who rated themselves as confident in their understanding, whereas the less confident participants stayed relatively silent in these discussions.

“So, it’s not life?”

Most participants who sought clarification about the meaning of a life sentence asked whether those subject to a life sentence spent the rest of their life in prison.

Unaware of minimum non-parole periods

Some participants were unaware that there was a minimum non-parole period, and that those on life sentences may be released on parole after serving this period. For these participants, the assumption was that a life sentence meant life in prison without the possibility of parole.

| So, it’s not life?

Female, Mount Isa, M10

| I mean, it’s a little bit confusing to me and yeah, I thought [a] life sentence should be [a] life sentence. It should be for life but like we don’t punish someone - or we don’t put someone out of the society unless we think that he’s really dangerous for the society.

Male, Brisbane, B35

| So, there is a limit on life? Like years in this scenario, there’s actually - if you’re sentenced to life in prison, life in prison is considered 20 years?

Female, Townsville, T5

Unaware that a person remains on parole for the rest of their life

Conversely, other participants were not aware that a life sentence in Queensland means a person must either remain in prison or on parole for the rest of their life. These participants sought clarification about the length of parole for life sentences.

| I didn't realise that after you - if you were let out on parole, you were on parole for all the rest of it as well. I didn't realise that.

Male, Brisbane, B17

| So, whether they get parole or not, that sentence still applies for the rest of their life?

Male, Brisbane, B35

| So, if you do a life sentence and you're granted parole, you're on parole for the rest of your life, is that what I heard?

Male, Brisbane, B15

“A person is a person”

Many participants were unaware of the different length of statutory minimum non-parole periods for life sentences, depending on the type of offence. In Queensland, the minimum non-parole period for life sentences ranges from

15 years to 30 years, depending on the specifics of the offence. For these participants, the focus of the discussions was on murder convictions, however, one participant did mention repeat serious child sex offences.

| I didn't realise killing a police officer got you higher life than... A person is a person.

Female, Mount Isa, M12

| I didn't realise there were different times for different crimes.

Male, Brisbane, B15

| When you sort of said the sex trafficking [sic; repeat serious child sex offence] thing was 20 years and then killing a police officer you get 25 or whatever it's like - just yeah. Why are they above - yeah. I suppose they're - that's their job putting themselves on the line [indistinct] every day so...

Female, Mount Isa, M9

Some participants had difficulty reconciling the fact that murder had a minimum non-parole period of 20 years in Queensland, while the murder of more than one person had a minimum non-parole period of 30 years. This might be illustrative of a lack of understanding that a judicial officer can order a non-parole period longer than the prescribed minimum period, and that parole eligibility does not equate to automatic release—it remains a decision for the Parole Board Queensland.

| I found it interesting what you said about if a couple are murdered if they're home and life sentence is issued, instead of 40 they get 15 each - 15. The person gets 15... That's not right. So, you know, dad gets 20 and mum gets 10, it's - I don't like it.

Female, Mount Isa, M11

Granting of parole

Several participants asked about the parole process for those on life sentences. For these participants, it was incorrectly assumed this process would involve an automatic release from custody.

| If they're knocked back for parole at 20 years, how long is the sentence? Before they're automatically let out?

Male, Townsville, T2

| Let's say they don't apply for parole, they've got a life sentence which means, in Queensland, 15 years. 15 years and a few days later, are they released?

Male, Brisbane, B27

“Life without parole?”

Several participants sought clarification about whether a life sentence could be imposed with no parole eligibility date. In Queensland, this option is not available to a court, although the court could sentence a person who would otherwise have been sentenced to a life sentence to an indefinite sentence if they are found to pose a serious danger to the community. Indefinite sentences are different to life sentences and special provisions apply that govern

their review. If the sentence is discharged because the person is no longer a serious danger to the community, the court must substitute the indefinite sentence with a life sentence and the person may apply for parole.

| In Australia, do we not have a life without parole?
Male, Brisbane, B29

| Is there ever any – where a person has committed a really heinous crime and the judge goes through everything and says, okay, you've committed this crime. You are not ever going to get out of jail, you are going to die in jail. Can the judge give that sort of sentence up here in Queensland or is that not...?
Male, Brisbane, B8

Overall, the findings in relation to confidence with the term 'life sentence' indicate that many participants overestimated their level of knowledge. There was confusion about the length of life sentences; that a person, if released, would remain on parole for the rest of their life; the process for parole being granted; and the different minimum periods that apply to life sentences in Queensland. Similar results have been found in previous research, namely public confusion regarding an offender on a life sentence remaining on parole for the rest of their life,⁴⁵ and parole not being granted automatically.⁴⁶ This also indicates that while participants were overconfident in their assessment of their knowledge, they were receptive to gaining an accurate understanding of the meaning of a life sentence and, for the most part, wanted to unpack where their definitions did not align.

Parole and probation

In total, 72 per cent of participants felt confident that they understood the meaning of 'parole' and similarly 72 per cent felt confident in their understanding of 'probation' (responding with either 'fairly confident' or 'very confident'). Notwithstanding this confidence, few participants volunteered information about their understanding of these terms in group discussions and how these aligned with the original definitions they had assigned. Those who reflected on this often acknowledged that their definitions aligned to those provided by the focus group facilitators. The comments made by these participants largely suggested confirmation of or agreement with the definition provided, such as "Roughly that's what I thought it meant" (Male, Brisbane, B15), or "That's what I thought it was" (Male, Townsville T9). In contrast to the discussion of life sentences, the participants who were not confident in their understanding of parole and probation were asking questions as much as those who rated themselves as confident.

"I always get the words mixed up"

A few participants admitted during the discussions that they were confused between the terms.

| I always get the words mixed up, parole and probation.
Female, Brisbane, B10

Other participants sought clarification from the facilitators of the differences between probation and parole.

"Is probation and parole very similar?"

Other participants, for the most part, either explained the differences after having the definitions explained to them or sought further information from the facilitators to differentiate parole and probation.

| So, is probation and parole very similar? I mean obviously one's after and one's before or as part of their punishment, but I mean the monitoring of it's basically the same?
Male, Townsville, T2

| So, is probation a bit like parole without the jail sentence?
Male, Brisbane, B15

| So, the difference between parole and probation is you get convicted of a crime, you get sentenced to probation which is like a suspended sentence, say, three years as opposed to parole where you go to prison and then the Parole Board – is that correct?
Male, Mount Isa, M10

In these discussions, probation was correctly seen to be less severe of a sentence compared to parole.

| There's a difference between parole and probation. Parole is fully monitored and time contingency. Probation is not the same strictness.
Female, Brisbane, B26

| They're not likely to get probation if it's something serious.
Male, Brisbane, B19

"What are the rules?"

In addition, there were some distinct nuances in how participants understood each of the terms parole and probation. For parole, participants began listing what parole conditions they were aware of or asked for clarification of what types of conditions those released on parole must comply with.

| Yeah, but I know... they get out on parole but not what that means. What [are] the certain behaviours they've got to have? What are the rules that they've got to follow?
Male, Brisbane, B3

| Yeah, normally they report weekly.
Female, Brisbane, B33

| They wear those bracelets, is it?
Female, Brisbane, B6

| I'd assume it'd be - what's the word? They'd be prohibited from doing certain things... while on parole.
Male, Brisbane, B35

Yeah, like for example, paedophiles cannot be around a school or places or institutions where there are a lot of children.

Female, Brisbane, B33

Confusion between penalty types

For probation, very few participants articulated their understanding of this term on its own. However, of those who did, probation was conflated with another penalty type, good behaviour bonds.

Is a good behaviour bond part of probation?

Female, Brisbane, B11

Probation, I just thought like a good behaviour bond when they put a - if you - you've got a \$500 bond. If you get caught doing something, you pay the court \$500. Or you're on 12 months, you do something wrong, you go in for 12 months.

Male, Brisbane, B3

In Queensland, a good behaviour bond is a distinct form of non-custodial order which, in some cases, can include conditions in addition to the requirement to be of good behaviour.

“Do they have to go back?”

While most participants claimed to have an understanding of parole and probation, most requested further clarification of these terms. The discussions among focus group participants included questions about the consequences of violating parole or failing to comply with probation conditions. These participants asked questions about whether a person is required to go to prison or if there are other penalties for not meeting parole or probation conditions, including by further offending.

If they did recommit [an offence] while they're on parole, do they go have to go back and get another sentence or do they go back and finish their sentence?

Female, Brisbane, B4

So, when someone's on parole, what is the offence that they could commit that would put them back inside?

Male, Brisbane, B15

Similar comments were made about the consequences of breaching the conditions of probation.

Do they have like a pre-determined - like a clause for if you break your probation then we're going to change your sentencing to this? What do they do?

Male, Brisbane, B29

Parole-specific processes

There were also discussions in relation to parole processes. Several participants sought clarification of the length of sentences to which parole applied, and parole board requirements for short sentences.

“Is it a mathematical equation?”

There was a small proportion of participants who asked questions about the length of parole relative to the head sentence. Specifically, the questions centred on whether parole terms carried through to the end of the sentence and how the time to be spent on parole was determined.

Once you're on parole, you stay on parole as long as you meet the conditions?... That you - you just stay on parole? Like until the end of your sentence or if you're life, until you die, I suppose?

Male, Brisbane, B35

When you talk about parole, how do they work out how much time you're going to get on parole? What's the equation? Is it a mathematical equation?... Or is it personality or what is it?

Male, Mount Isa, M1

“Do you have to go to the parole board?”

One participant asked about whether the parole board is involved in granting parole for short sentences.

On the three year one, or less than three years, when the judge sets your time, do you have to go to the parole board too?

Male, Mount Isa, M7

In Queensland, while the parole board typically makes decisions on applications for parole orders, for sentences with a court-ordered parole release date, this is not the case. In the case of court-ordered parole, the parole release date is fixed by the court meaning that the person is automatically released on that date without the involvement of the parole board. A court must fix a parole release date if it sentences a person to imprisonment for 3 years or less (but not for sexual offence or serious violent offence).⁴⁷ Some exceptions to this apply.

Overall, the findings in relation to confidence with the terms 'parole' and 'probation' indicated that most participants overestimated their level of knowledge. There were many who sought clarification of the differences between these terms and what conditions may be imposed, and who asked process-based questions, such as the consequence of failing to comply with probation or parole conditions, and how parole periods are determined based on the length of the sentence.

Interestingly, little research has been conducted that has explored public understanding of community-based orders. Of the research that does exist, it concludes that the public view community-based sentences (such as probation) as a soft option.⁴⁸ While this theme did come up in our study, it did not feature prominently. Rather, our research identified how the public understand these types of sentencing options in an Australian context. Importantly, the discussions and reflections by participants are consistent with these earlier findings, suggesting that while participants were overconfident in their knowledge, they wanted to understand more about these types of orders.

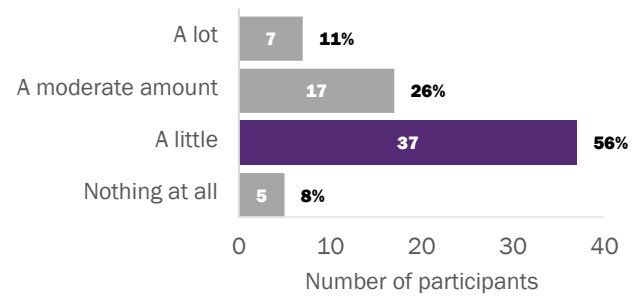
Understanding of sentencing outcomes

Focus group participants were asked to answer several questions about their sentencing knowledge, specifically, their confidence in their own knowledge of sentencing outcomes in Queensland, and then to estimate imprisonment rates for different offences.

Past research has found that the public tends to feel that they know ‘a little’ about sentencing practices,⁴⁹ yet demonstrates a limited understanding of actual sentencing trends. Most research has found that people tend to underestimate the proportion of people sentenced to prison. For instance, the New South Wales Bureau of Crime Statistics and Research (BOSCAR) in 2019 identified that participants underestimated the imprisonment rate for both burglary and murder.⁵⁰ This finding is relatively consistent across academic literature for different offence types, including murder, rape, and burglary.⁵¹ However, some studies have also reported imprisonment rates being overestimated for some offence types, such as assault, or participants equally overestimating and underestimating actual imprisonment trends.⁵² The public also tends to underestimate the length of average prison sentences when asked about sentencing outcomes for specific offences, such as burglary and rape, although fewer studies capture participant estimates for the length of imprisonment sentences.⁵³

While, as discussed in the previous section of this paper, most participants felt confident in their understanding of sentencing terms, most were only ‘a little’ confident in their knowledge of sentence outcomes given to people convicted of crimes in Queensland (see **Figure 3**). This finding is consistent with a previous Scottish study, on which this question was based, that also found most participants felt ‘a little’ confident about their knowledge of sentencing.⁵⁴

Figure 3: Confidence in knowledge about sentences given to people in Queensland



Source: Focus Group Activity 3, in response to “In general, how much, if anything, do you feel you know about the sentences given to people convicted of crimes in Queensland?”.

Imprisonment rate estimations

Definition: actual imprisonment

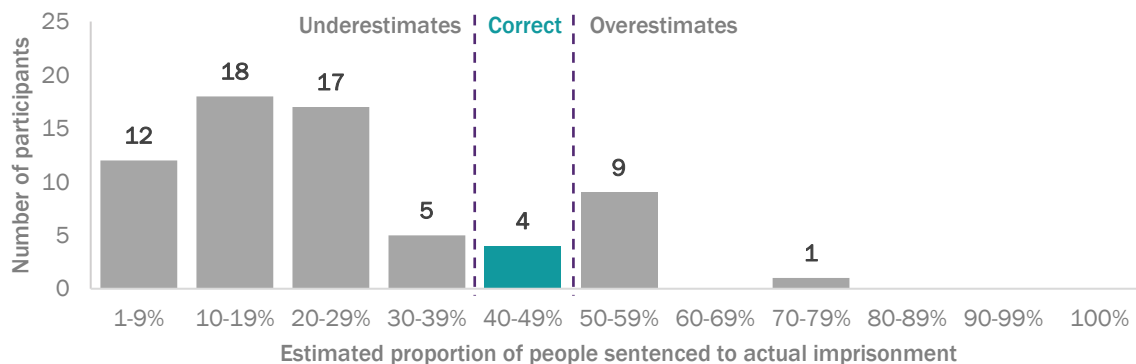
In this paper, a sentence of actual imprisonment is a sentence of imprisonment that involves the person spending at least one day in custody as part of their sentence. This includes time spent in pre-sentence custody (on remand) that is declared as time already served under the sentence.

Focus group participants were tested on their sentencing knowledge of imprisonment trends. Participants were asked to estimate the proportion of people sentenced to actual imprisonment for three different offence types: burglary, murder, and trafficking in dangerous drugs. These imprisonment estimates were then compared to sentencing statistics drawn from the Courts Database. The following charts demonstrate the estimated proportion of convicted offenders who served time in prison as part of their sentence, with the correct responses based on actual court outcomes highlighted (see **Figure 4**).

Figure 4: Estimated proportion of people sentenced to actual imprisonment by offence (MSO)

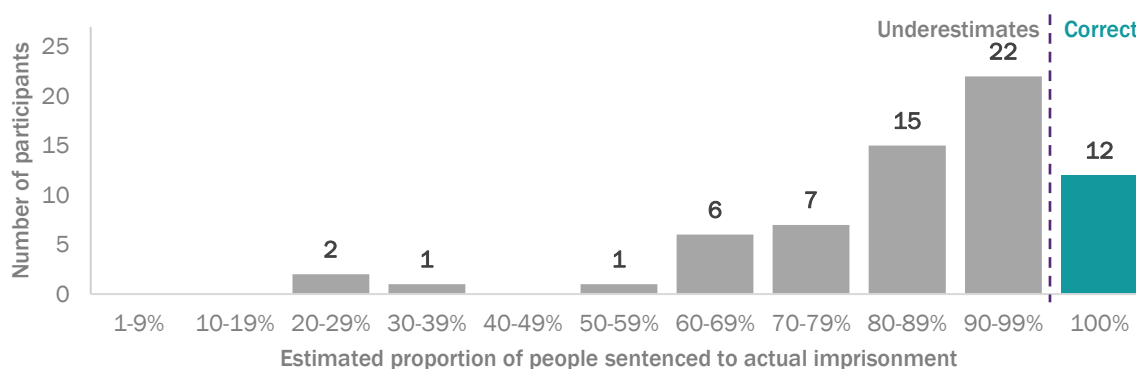
Home burglary

Answer: 49%



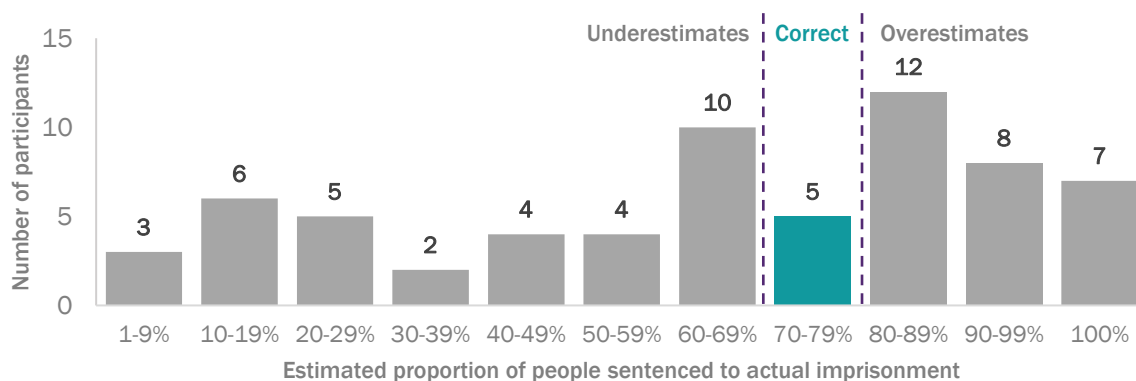
Murder

Answer: 100%



Trafficking dangerous drugs

Answer: 74%



Source: Focus Group Activity 4; answers are 2005-22 figures sourced from QGSO, Queensland Treasury – Courts Database, extracted December 2022.

Note: The ‘correct response’ was calculated using data from the Courts Database. It includes sentences of imprisonment where a defendant was sentenced to serve at least one day in prison, including time on remand declared by the sentencing judge as time served under the sentence. It does not include sentences of imprisonment where the sentenced person was immediately released on court ordered parole where no pre-sentence custody was declared. It also does not include wholly suspended sentences. Only cases involving adults were included, sentenced children were excluded from this analysis.

These charts demonstrate that the focus group participants generally underestimated the proportion of offenders who are sentenced to imprisonment who serve time in custody as part of their sentence. In fact, this was consistent across the different offence types, indicating a lack of knowledge regarding imprisonment trends that was not specific to any offence. The next series of charts demonstrates the length

of prison sentences as estimated by focus group participants, with correct responses again highlighted (Figure 5).

Sentence length estimations

Participants were asked to consider 'roughly how long on average do you think adults spend in prison?'. Participant responses were assessed against the minimum time people sentenced were required to serve in actual custody,

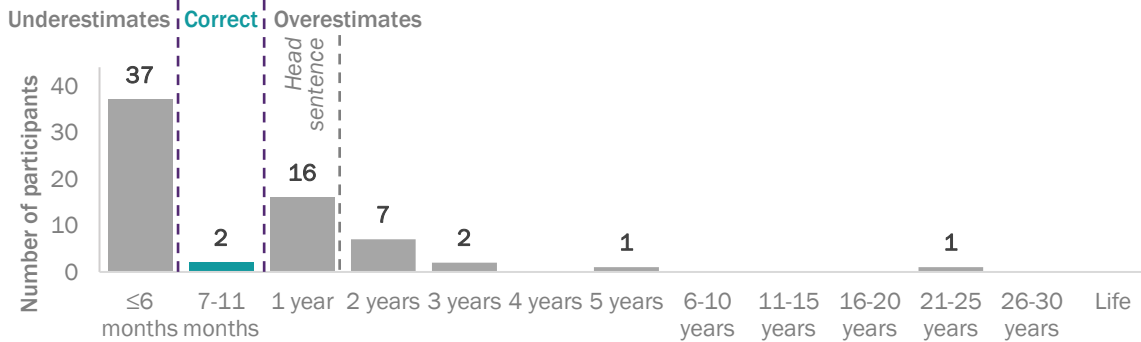
exclusive of any time served on parole—this is indicated by the 'correct' answers in the charts below. The 'head sentence' is displayed separately and represents the total length of the sentence imposed, including any time served on parole.

Figure 5: Estimated length of time required to be spent in prison by offence (MSO)

Home burglary

Average head sentence:^a 1 year 8 months

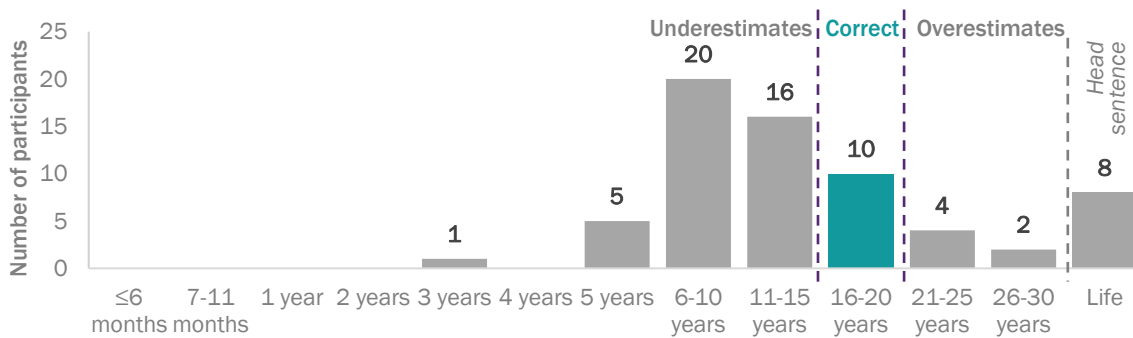
Average minimum time required to be served in actual custody:^b 7 months



Murder

Average head sentence:^a Life, 20 years parole eligibility

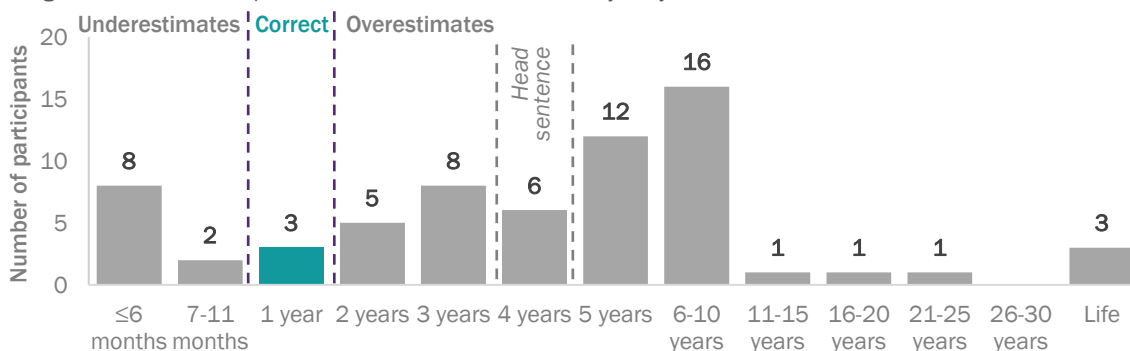
Average minimum non-parole period:^b 20 years



Trafficking dangerous drugs

Average head sentence:^a 4 years 6 months

Average minimum time required to be served in actual custody:^b 1 year 5 months



Source: Focus Group Activity 4; answers are 2005-22 averages sourced from QGSO, Queensland Treasury – Courts Database, extracted December 2022.

Notes: Courts figures presented are averages, with 'correct' figures representing 'time served' – see 'b' below.

- 'Head sentence' refers the total period of imprisonment imposed by a judge.
- 'Time served' refers to the minimum time required to be served in prison as part of a sentence. This includes time on remand declared by the sentencing judge to be time served under the sentence. For cases where a parole eligibility date or a parole release date was set by the sentencing judge, this was used to calculate the minimum time required to be served in actual custody. Where a parole release date or parole eligibility date were not set by the sentencing judge, then the a parole eligibility date was calculated at 50% of the period of imprisonment to which the prisoner was sentenced per s 184 *Corrective Services Act 2006* (Qld), for prisoners declared to be serious violent offenders parole eligibility was instead calculated at 80% of the term of imprisonment or 15 years (whichever is lesser) per s 182 *Corrective Services Act 2006* (Qld), for the offence of murder parole eligibility was determined to be 20 years per s 181(2)(c) *Corrective Services Act 2006* (Qld).

The above charts demonstrate relatively mixed results. Most focus group participants underestimated how much time, on average, is required to be served in prison for home burglary and murder and overestimated the length of time required to be served in custody for trafficking in dangerous drugs. In addition to the generally inaccurate estimations of custody lengths, there was also considerable variation in participants' estimates for each offence. For example, for trafficking in dangerous drugs, participants' responses ranged from 6 months or less, to life imprisonment.

Consistent with prior research, the comparable gap between the actual court outcomes data and participant estimates for all three offences suggests a general lack of awareness of sentencing trends rather than a trend specific to one offence.⁵⁵ Previous research similarly has found that the public tends to underestimate the severity of sentences. For example, BOCSAR, in a NSW study exploring public confidence in the criminal justice system, identified that people tend to underestimate the imprisonment rate for murder and home burglary, and this underestimation has not changed substantially over time.⁵⁶ Similarly, the UK Sentencing Academy found that the public underestimated the imprisonment rate for burglary and rape, and the length of average prison sentences for both these offences.⁵⁷ In this study, participants also generally underestimated the minimum term for murder required to be served before parole eligibility (20 years in the UK). The conclusions across both studies, and in other published research, tend to be that the public inaccurately estimates sentencing trends based on limited knowledge of current practices. The inaccurate estimations provided by participants in our study also indicates that participants had relatively limited sentencing knowledge. Using our focus group approach, we had the opportunity to explore some of the different considerations that factored into participants' estimates about how frequently sentences involving actual imprisonment are imposed for these offences.

General reasons for inaccurate estimates

Generally, across all three offence types, there were 3 common reasons given by participants for their general underestimation of imprisonment penalties. Participants in our study demonstrated that they had a nuanced understanding of sentencing concepts and had considered several sentencing factors when providing their estimates. This included an assumption that alternatives to imprisonment were used more often by the courts, a lack of news media coverage of typical sentences handed down by the courts, and many participants estimating time served by factoring parole into their estimations.

Alternatives to prison: "Not just straight to jail"

Some participants thought that non-custodial penalties were preferred by the courts, and therefore underestimated the proportion of offenders sent to prison. This perspective does have strong merit, as under section 9(2) of the *Penalties and Sentences Act 1992*, one of the principles a court must have regard to in sentencing an offender is that imprisonment should only be imposed as a last resort and a sentence which allows an offender to stay in the

community is preferable – although there are a number of statutory exceptions to this.

For most participants in our study who assumed that alternative options to imprisonment were preferred, they referred to community service orders when thinking about alternatives to prison.

I thought about they will do something else. Like not just straight to jail, like oh no, community work or something like that.

Female, Brisbane, B33

You don't really hear much at all about people that are in jail for break and enter. It's usually, you know, probation or your community service.

Female, Mount Isa, M12

I thought imprisonment would be lower just because in terms of – compared to murder and the drugs, it seems like one of them more rehabilitating things that you could look after, because you'd say most of the people who would be stealing are doing it because of socioeconomic reasons and- they feel like they need it. It's a good way and I thought that's a lot easier to rehabilitate and not imprison compared to violence and like yeah, running a drug business there unless someone's kind of stopped in their tracks in a way. You're not really going to stop anything.

Male, Brisbane, B29

So, if you have someone who has been abused or beaten for 30 years, and they intentionally kill that person, I think there is more chance of them being put somewhere for rehabilitation than into prison.

Female, Brisbane, B26

This perspective suggests that while on the surface participants appeared to be misinformed about sentencing trends, many participants had a more considered approach and factored in what they assumed to be a preference for community-based options instead of imprisonment. Evidently, this perspective may have swayed their estimates and contributed to their underestimations.

As identified in other research, when members of the public are presented with background information about an offence, they generally are no more punitive than the courts.⁵⁸ In our study, participants were provided with a basic overview of sentencing and sentencing options, including the purposes of sentencing, before they were asked to estimate sentencing outcomes. As demonstrated in the focus group discussion, while participants underestimated imprisonment trends, some did so because they considered alternatives to prison and assumed these alternatives would be preferable, and frequently used, by the courts.

Lack of news media coverage: "The media... paint the sensationalist cases"

When discussing potential reasons for underestimating the use of imprisonment, focus group participants frequently referenced topical cases, as well as news media reporting

which portrays sentencing as lenient. Participants recognised that news media coverage most often reports on particular high profile cases with exceptional circumstances, and that news media often critiques sentencing decisions made by the courts. In addition, many participants noted that everyday sentencing decisions are not often publicised, which potentially skews their understanding of sentencing.

I think the reason why some of us have got those low percentages is because you don't hear the stories that are in the paper and in the news that say, 'Hey, remember so-and-so who did that crime 20 years ago, well, he's still in there...and he's done his 20 years now...' Newspapers sell with, 'What, he only got 10 years?' So, because we hear those stories all the time our train of thought is, oh, they're going to get off in 10 years. They're only going to be [imprisoning] 75 per cent.

Male, Townsville, T16

I think the great source of all of our knowledge is the media and you know, they sort of paint the sensationalist cases and people that get off too lightly, well that type of thing rather than hearing the actual percentages which were quite surprising.

Female, Brisbane, B31

This finding regarding the impact of news media has also been identified in previous sentencing research. Many studies have identified that individuals typically rely on news media as a source of information for crime and criminal justice issues.⁵⁹ It is also well established that media coverage is particularly influential in perpetuating public views that sentencing is lenient.⁶⁰ Our findings add to this discussion and highlight that, despite the belief that the media are biased, there was a general awareness among participants that the media plays a strong role in shaping their perspectives of sentencing. While the underestimations about the use of imprisonment provided by participants may indicate they are 'uninformed', participants in our study consciously thought about the topical cases they see in the media, acknowledging the limitations of this perspective, but noting this was where they sourced their information from.

Estimating time served not sentenced: "What's the time in prison?"

Participants were asked to estimate "how long a person spends in prison" for each offence. As such, participants did not refer to the 'head sentence' when responding, but instead considered the amount of time a person spent in actual custody. A 'head sentence' refers the total period of imprisonment imposed by a judge, while 'time served' in our research refers to the estimated minimum time to be served in custody, including time spent on remand declared as time served under the sentence, up until a prisoner's parole eligibility date.

Based on the estimations and discussions, it was evident that people have more nuanced understandings about parole than previous research has identified. For instance, participants in our study correctly understood that people do not typically serve the entirety of their prison sentence

in custody, but are often released earlier. Although they had a good understanding that people serving prison sentences are often released on parole, participants underestimated the length of the non-parole period and assumed people were required to spend less time in prison that they actually are. **Figure 5** demonstrates that participant estimates, particularly for home burglary, aligned more closely with the actual court outcomes data on average time served in prison. The differences between head sentences and time served was reflected upon by some participants during the focus groups.

But is that with or without parole? These answers that you've given us? Is this the prison term that they're given or is this actual time spent in prison?... When you're presenting your findings from these consultations, you've got to be clear about those definitions... Saying that they sent drug dealers to spend four years in prison on average, that's not actually true. They might be sentenced to four years on average, but what's the time in prison. The community wants to know.

Female, Brisbane, B10

Over the course of the discussions, it became evident that some participants shared a nuanced understanding of the impact parole has on the actual time spent in custody for those sentenced to imprisonment. In fact, our study demonstrates that some members of the public may have a better understanding of concepts such as 'parole' than prior research has given them credit for.⁶¹ They understand that people will often be released before the end of their sentence, and participants may have considered the time served in custody to be shorter for this reason.

The findings of our research provide further context as to why the public may generally inaccurately estimate imprisonment trends.

Murder-specific underestimations

Participants described several offence-specific reasons they may have underestimated imprisonment trends in Queensland. For murder, participants attributed their underestimations to two main reasons. The first was confusion about the differences between murder and manslaughter. The second was the assumption that people with mental health issues (short of insanity) could not be prosecuted. These assumptions present unique implications, as the participants were not necessarily incorrect in their considerations, rather, they may have under-estimated imprisonment sentences because the vignette scenarios provided to them failed to adequately convey the full scenario.

Confusion about the differences between murder and manslaughter and the need for 'intent'

Most participants were confused about the differences between murder and manslaughter as well as the relevance of intent. Some spoke about the concept of 'justifiable homicide' (e.g. Female, Brisbane, B31), and reduced their estimates of imprisonment rates and time to be served in prison on the assumption that some offenders may not serve severe sentences for homicides committed in self-defence (a complete defence to murder),⁶² as a result of provocation,⁶³ or in the context of being a victim of serious

domestic violence⁶⁴ (both of which may reduce murder to manslaughter in Queensland) .

I was thinking about self-defence, but that's not intentionally killing, is it?

Female, Brisbane, B24

I thought there was justifiable homicide where if – like you were a victim of domestic abuse for years and you killed your partner, that you don't necessarily go to jail.

Female, Brisbane, B31

Further, murder for some participants was simply the act of unlawfully killing another person, irrespective of intent.

I think too many times when someone kills someone – I suppose not really fully intentionally killing someone, it's just like someone running over someone, I suppose.

Male, Townsville, T18

One participant reflected that the term 'murder' is used often in the community without thinking about what it means in a legal context. Broadly, the term murder was perceived to not be used accurately and tended to be used loosely when discussing topical cases. This may partially explain why there was consistent confusion among participants about the terms 'murder' and 'manslaughter'.

I think it's also we forget – I – this is just my opinion, when someone's killed someone it's up to the judge and the jury and whatever to determine intent... that's the hard part in itself and that's what makes it murder... Sometimes I would be thinking, okay – they might have been charged with manslaughter or murder but in my mind's eye when I'm aware of a case, and Townsville's ...still a small town to many of us... we go, 'oh, when so-and-so killed so-and-so'. But some of us will actually forget that the charge resulted in something different and we [unclear] oh, they killed him. Or she – he killed his wife or she killed her husband or they hit them with the car. It's just going, oh, hang on. It's actually – they do stop and think – they have more trust in the way that they determine that. It's – yeah. That's really improved my opinion.

Female, Townsville, T13

Once the element of 'intent' was emphasised by the facilitators as necessary to establish murder, at least one participant voiced the view that this distinction is important for sentencing. Participants were generally comfortable with the definition of murder and how it was distinguished from manslaughter but did not consistently consider these differences in their initial estimations of imprisonment rates and sentencing trends for murder. Overall, there was an evident lack of initial understanding of the term 'murder' that resulted in many participants underestimating both the rate at which those convicted of murder were imprisoned and the minimum custodial terms to be served.

Prosecuting people with mental health problems: "People play the mental health card"

The second reason for underestimating imprisonment rates and sentence lengths in relation to murder were

misunderstandings about how people with mental health issues are dealt with when charged with murder.

Some participants referred to the fact that if a defendant is found to not be fit for trial by the Mental Health Court, then they cannot be prosecuted. This assumption is correct in so far as that the Mental Health Court can find a person to be either temporarily or permanently unfit for trial.⁶⁵ The Mental Health Court may also make findings that the person was of unsound mind at the time of the offence (and therefore not criminally responsible for their conduct) or, in the case of murder, was of diminished responsibility due to their mental state.⁶⁶ If the Mental Health Court decides the person was of diminished responsibility for the offence of murder, that charge is discontinued however, proceedings can continue for another offence by the same act⁶⁷ (for example, manslaughter).

While the Mental Health Court may make orders that restrict a person's rights and liberties, they are not a sentencing court and if the Mental Health Court makes a finding, this is not a finding of guilt.

Some comments were also made by participants about people being detained in mental health facilities rather than in prison. Prisoners can be transferred to an inpatient unit of an authorised mental health service rather than being detained in a prison, including in circumstances where they have been convicted and sentenced to imprisonment but are found to be in need of treatment and care for a mental illness.

Yeah, I had a 10 per cent gap for people who maybe had to go to mental health hospitals or something like that instead.

Female, Brisbane, B13

I put 80 per cent because most of the people play the card for mental health and is not fit for trial so they go to the mental health court.

Female, Brisbane, B33

Is that only those who are found... are found fit to stand trial?

Male, Townsville, T12

What this demonstrates is that while participants were asked to only consider people who were being *sentenced* for murder, they nevertheless still considered those who may not have been convicted of or sentenced for this offence when giving their responses and, in some cases, may also have factored in the possibility of prisoners being detained in a mental health facility rather than in a correctional centre.

These types of issues raised by participants show that they had a higher level of understanding about sentencing and other aspects of the operation of the criminal justice system than previous research has concluded. Participants successfully and correctly identified parts of the criminal justice process, such as the need to assess a person's fitness for trial in some instances, and the role the Mental Health Court can play—although they may have incorrectly considered this court to be a sentencing court. What knowledge lies behind the responses given and any underlying assumptions is not something that is typically

considered when interpreting research findings on public estimations of imprisonment, particularly as a means of measuring sentencing knowledge.

Burglary-specific underestimations

For burglary specifically, there was one common explanation offered by participants for why their estimated imprisonment rates were low. Many participants assumed that the reported prevalence of burglary in their community suggested that imprisonment was not often used as a sentencing option.

“Happening all the time, then they mustn’t be in prison”

Several participants, after being advised of the imprisonment trends for burglary, expressed surprise that imprisonment penalties were higher than their estimates. They explained that as their local communities often experience or report burglaries, they assumed that sentences for burglary must not involve actual imprisonment.

I think it's because the prevalence of home break-ins at the moment. I guess my view was because there's so many happening all the time, then they mustn't be in prison, they must just be out roaming the streets.

Female, Brisbane, B13

It happens so often I didn't think that there'd be as many people probably going to jail.

Male, Townsville, T18

I never thought it would have been that high, not in my experience with the number of... We have at [Brisbane inner-city location], we have at least 10 break ins per night... They're the same guys, it's the same 10 guys. They know who they are. Nothing ever happens to them. Nothing. So, yeah, I had a way lower percentage.

Female, Brisbane, B26

That particular offence in our community is mostly at this time... committed by young people and... sending someone to custody below a particular age just isn't happening... I put the wrong kind of thing [estimate] here because my mind is just so clouded by the recidivism that's happening and the revolving door with those offences that so few people committing those offences are even getting caught so - yeah.

Female, Townsville, T13

In general, a person's perception of crime in their neighbourhood is known to be related to community confidence in sentencing and perceptions of sentencing leniency. For instance, one study found the majority of participants in their sample ranked leniency in sentencing as the biggest issue facing their community and, to these participants, this explained why crime was increasing.⁶⁸ Another study identified that the majority sampled thought recorded crime had risen and, more importantly, saw a direct link between lenient sentencing and their perceptions about a rising crime rate.⁶⁹ Our findings are consistent with this research, demonstrating that participants in Queensland also attribute perceived crime

in their community to be the result of lenient sentencing. As a result, participants underestimated the imprisonment rate for burglary.

Drug trafficking-specific overestimations

For drug trafficking offences, while not many participants articulated why they overestimated the imprisonment rate for this type of offence, the few that did, attributed it to an assumption that most drug traffickers are typically 'king pin' offenders.

High ranking offenders

For those who articulated why they overestimated the imprisonment rate, it emerged that some envisioned 'king pin' drug traffickers, or more serious offenders than the typical type of offender convicted in Queensland.

If you're running a business, you're make enough income to live on, so it's a turnover.

Male, Brisbane, B3

I thought the [average] sentence was pretty low, because I put eight years. A lot of these people have got multimillion dollar properties.

Female, Brisbane, B7

There is limited discussion in the literature about the assumption that offenders of drug trafficking generate a high income. In Queensland, offenders involved in illicit drug markets typically hold between \$100,000 and \$499,999 in assets, most often in real estate.⁷⁰ While this study covers only proceeds of crime, it demonstrates that the assumptions made by participants that drug trafficking generates a high income may not necessarily be accurate. This assumption may be a potential reason why participants in our study tended to overestimate the imprisonment trends for this type of offence.

DISCUSSION

This research set out to explore how the public understands sentencing terms in Queensland and the public's knowledge of sentencing outcomes, specifically, the imprisonment rates for different offences and average sentence lengths.

Understanding of sentencing terms

There was a clear contrast between participants' self-reported confidence in their understanding of sentencing terms and the reflections made by participants after having the definitions explained. While most participants indicated they were either fairly or very confident in their understanding of sentencing terms (ranging from 72% to 85%), few were able to demonstrate this knowledge in the focus group interviews by providing accurate explanations. Instead, most participants asked clarifying questions about each sentencing term suggesting that they did not understand these concepts as well as they thought.

For the term 'life sentence', our findings indicate that many participants overestimated their knowledge. There were misunderstandings and assumptions made about various aspects of the operation of life sentences, specifically participants generally

- underestimated the minimum length of time those subject to a life sentence were required to serve in custody;
- unaware that if released, a person subject to a life sentence would remain on parole for the rest of their life;
- unaware that parole decisions are made by a parole board, and that release on parole is not necessarily automatic; and
- unaware that minimum non-parole periods for life sentences vary by offence and, in the case of murder, the victim type and whether the person has been convicted of multiple counts of murder, and why this may be the case.

Previous research has made similar findings, namely public confusion relating to an offender subject to a life sentence remaining on parole for the rest of their life if released on parole,⁷¹ and that parole is not granted automatically.⁷²

For the terms 'parole' and 'probation', our findings indicate that, again, most participants overestimated their knowledge. Many participants made assumptions that were incorrect in some respects, or required further clarification about how these orders operated, specifically, participants generally were:

- unsure about the differences between parole and probation;
- uncertain about what conditions may be, or must be imposed;
- unaware of the consequences of failing to comply with the conditions of probation or parole;
- assumed parole was automatically granted; and
- uncertain about the length of these orders and, in the case of parole, how much time was required to be served on parole relative to the head sentence.

While community members may have a high level of confidence in their understanding of sentencing terms, they may not understand their precise meaning. In addition, the public's limited knowledge of current sentencing practices may impact on community confidence in sentencing. An opportunity exists for enhancing confidence in the criminal justice system and the courts by improving the community's understanding of sentencing terms and outcomes.

While prior research has pointed to the importance of enhancing knowledge as a mechanism to improve public confidence,⁷³ there are also broader implications for other stakeholders in the criminal justice system. For example, prior research has found that victims often do not have a full understanding of the sentences imposed on those convicted of perpetrating offences against them, with the potential to cause anger and disappointment with the criminal justice system response, as well as a loss of confidence in the system.⁷⁴ This prior research has concluded that the members of the public, including victims, are indeed capable of understanding what sentences mean in practice, and has identified an important role for bodies such as victim support agencies and sentencing councils, in providing relevant information. This capacity for understanding was demonstrated in our study. Participants were able to understand each sentencing term explained to them and displayed genuine interest in understanding the nuances inherent within these sentencing concepts by asking clarifying questions. This suggests that, by dispelling the misconceptions about sentencing terms, and making plain language definitions available to the public, it may enhance general sentencing knowledge and improve public confidence in sentencing and criminal justice system. Indeed, for our sample of participants, a substantial portion expressed greater faith in the courts as they learnt more about sentencing practices in Queensland.

Understanding of sentencing outcomes

The findings presented in this study demonstrate that participants were largely inaccurate in their estimates regarding rates of imprisonment and sentence lengths. This indicates that the sample of participants in our study had a low level of understanding of sentencing outcomes. This finding is consistent with previous research on public sentencing knowledge which has found that the public generally has little knowledge of the length and types of sentences handed down by the courts.⁷⁵

One of the benefits of the research design adopted by the Council is that it allowed the Council to explore some of the underlying assumptions and factors participants considered when providing their initial estimates. During discussions, participants demonstrated a more nuanced understanding of sentencing concepts, and it became apparent that they considered a range of factors when providing their initial estimates. This suggests that the public may be more considered in their views, thinking about factors such as:

- local crime trends;
- how mental health issues may factor into the legal process and alternative forms of disposition (for example, in circumstances where a person is found to be unfit for trial or not guilty due to their mental state) and options for transfer of sentenced prisoners to mental health facilities;
- alternatives to imprisonment and the use of imprisonment as a sentence of last resort;
- the relevance of pre-sentence custody and parole eligibility; and
- how the media might influence their attitudes.

Of note, participants tended to make assumptions about specific offences that were misinformed, which could explain why their estimates tended to be inaccurate. These included a misunderstanding about what constitutes murder as opposed to manslaughter, and a misinformed view of a typical drug trafficking offender in Queensland.

This suggests that had further clarifying information been provided and additional detail about the scenarios presented in advance of participants being asked about sentencing outcomes, their estimates might have been closer to actual outcomes.

Many participants were unaware of the extent of their lack of knowledge until after the correct responses were provided and were surprised that rates of imprisonment were higher than they had estimated and typical sentence lengths (based on the minimum time required to be served in custody) in many cases were longer than they had anticipated.

Participants were very open to receiving information about sentencing outcomes. Previous research has discussed the link between public satisfaction with sentencing and

the public's knowledge of sentencing outcomes.⁷⁶ This highlights the opportunity for bodies such as the Council to contribute to improving public confidence in courts by continuing its work in promoting community understanding of sentencing outcomes and by making this information readily available in Queensland.

Future research considerations

While this research did not set out to demonstrate shifts in perspectives, it was able to do so through the qualitative discussions. This research illustrated that after being given the opportunity and time to consider different sentencing scenarios, participants noticeably shifted away from a reflexive focus on punishment toward a more nuanced understanding of sentencing. Acknowledging that there are limitations in our research design and sample size that limits testing these relationships, future research could consider exploring how dimensions of punitiveness relates to sentencing knowledge, and how time to consider sentencing scenarios potentially changes public perspectives building on earlier research.

Implications

This research highlighted the need for targeted education and awareness strategies to improve public understanding of sentencing and to correct some of the misconceptions around sentencing that were found to be prevalent among the focus group participants.

The focus group participants were, in general, quite confident in their understanding of sentencing terms and were familiar with many of the terms discussed; however, the research found that they often misunderstood the precise meaning of the terms and concepts discussed. This was particularly evident when discussing life sentences, for which many participants misunderstood the statutory minimum non-parole periods which applied. This presents sentencing councils with an important opportunity to distil complex legal terms into plain English that can be readily understood by individuals who do not have a legal background. The most common questions asked by participants during these focus groups could serve as a convenient starting point for topics on which to publish easy-to-understand explanations.

The participants generally underestimated sentence lengths and were unaware of the average length of sentences that generally imposed by courts in Queensland – in particular, the minimum time required to be served in custody. Sentencing councils can play a critical role in correcting public misconceptions by providing sentencing data for specific offences which are up-to-date and reportable by the media.

Conclusion

The purpose of this *Research Brief* was to answer how well the public understands sentencing terms in Queensland, and what the public's knowledge of sentencing outcomes were for different offences. It incorporated both qualitative and quantitative measures and explored perspectives across different types of offences to provide a rich understanding of public knowledge of sentencing in Queensland. Ultimately, the findings of this study identified that while people in our sample were relatively confident in their understanding of sentencing terms, few were able to demonstrate this knowledge in the focus group sessions by offering accurate explanations. Further, focus group participants generally underestimated imprisonment rates, and this was consistent across different offence types, not specific to any offence. The focus group discussions which followed revealed that most participants had a nuanced perspective of sentencing concepts and considered several sentencing factors in arriving at their estimates. Assumptions about particular offences also influenced their responses. They expressed a strong desire to understand more about sentencing terms and outcomes. Many participants were unaware of the extent of their lack of knowledge until after definitions or correct responses were provided and expressed surprise or shock regarding typical sentencing practices. Ultimately, this paper identified how the community understands sentencing in a Queensland context.

ENDNOTES

- 1 Julian V Roberts et al, 'Public Knowledge of Sentencing Practice and Trends' (Research report, Sentencing Academy, January 2022) 1, 15–16.
- 2 Geraldine Mackenzie et al, 'Sentencing and public confidence: Results from a national Australian survey on public opinions towards sentencing' (2012) 45(1) *Australian & New Zealand Journal of Criminology* 45, 55; *ibid* 5–6.
- 3 Anthony N Doob and Julian V Roberts, 'Sentencing: An analysis of the public's view of sentencing' (Centre of Criminology, University of Toronto, November 1983) 6.
- 4 See Kate Warner et al, 'Public judgement on sentencing: Final results from the Tasmanian Jury Sentencing Study' (Trends and Issues in Crime and Criminal Justice No 407, Australian Institute of Criminology, 2011) 1, 6.
- 5 Austin Lovegrove 'Public opinion, sentencing and lenience: An empirical study involving judges consulting the community' [2007] *Criminal Law Review* 769.
- 6 *Ibid* 781.
- 7 See Karen Gelb, 'Measuring public opinion about sentencing' (Sentencing Advisory Council (Victoria), September 2008) 2.
- 8 Nicola Marsh et al, 'Public Knowledge of and Confidence in the Criminal Justice System and Sentencing—A Report for the Sentencing Council' (Research report, ComRes, August 2019), 1, 21–2.
- 9 *Ibid* 21.
- 10 Carolyn Black et al, 'Public perceptions of sentencing: National survey report' (Ipsos MORI Scotland for the Scottish Sentencing Council, September 2019) 1, 8–10.
- 11 *The NCSC Sentencing Attitudes Survey: A Report on the Findings* (Research report, Princeton Survey Research Associates International for the National Centre for State Courts, July 2006) 1, 14.
- 12 Lynne Roberts and David Indermaur, 'What Australians think about crime and justice: Results from the 2007 Survey of Social Attitudes' (Research and Public Policy Series No 101, Australian Institute of Criminology, 2009) 1, 9.
- 13 *Ibid* 19.
- 14 Although one recent Scottish study found overestimation occurring, particularly among those with no formal education, see Black et al (n 10) 9–10.
- 15 Kate Warner et al, 'Measuring jurors' views on sentencing: Results from the second Australian jury sentencing study' (2017) 19(2) *Punishment & Society* 180, 186–7.
- 16 Marsh et al (n 8) 21 reporting on the findings of the 2010/11 Crime Survey for England and Wales.
- 17 Julian V Roberts et al (n 1) 13–14.
- 18 Judy Paulin, Wendy Searle and Trish Knaggs, *Attitudes to crime and punishment: A New Zealand study* (Wellington NZ Ministry of Justice 2003) 1, 14–18.
- 19 Bobby Duffy et al, 'Closing the Gaps – crime and public perceptions' (2008) 22(1-2) *International Review of Law, Computers & Technology* 17, 36; Karen Gelb, 'Myths and Misconceptions: Public Opinion versus Public Judgment About Sentencing' (Research paper, Sentencing Advisory Council (Victoria), July 2006) 1, 11 ('Myths and Misconceptions'); Karen Gelb, 'More Myths and Misconceptions' (Research paper, Sentencing Advisory Council (Victoria), September 2008) 1, 4; Julian Roberts and Mike Hough, 'The State of the Prisons: Exploring Public Knowledge and Opinion' (2005) 44(3) *The Howard Journal of Crime and Justice* 286, 292; Paulin, Searle and Knaggs (n 18) 50.
- 20 Lynne Roberts and Indermaur (n 12) 1, 18–19; Gelb, 'Myths and Misconceptions' (n 19) 11–12.
- 21 Lorana Bartels, Robin Fitzgerald and Arie Freiberg, 'Public opinion on sentencing and parole in Australia' (2018) 65(3) *Probation Journal* 269, 279.
- 22 Marsh et al (n 8) 21.
- 23 Julian V Roberts et al (n 1) 13–14.
- 24 *Ibid*, 14.
- 25 Lynne D Roberts and David Indermaur, 'Predicting punitive attitudes in Australia' (2007) 14(1) *Psychiatry, Psychology and Law* 56, 61.
- 26 Warner et al 'Public judgement on sentencing: Final results from the Tasmanian Jury Sentencing Study' (n 4) 5.
- 27 Laura Hilderley et al, 'Sentencing for child homicide offences: Assessing public opinion using a focus group approach' (Research report No 21, Australian Institute of Criminology, 2021) 1, 14–15; Gelb, 'Myths and Misconceptions' (n 19) 12–13. See, however, findings reported by Warner et al, 'Measuring Jurors' Views on

28 Sentencing: Results from the Second Australian Jury Sentencing Study' (n 15). The study found some differences in jurors' ratings of the appropriateness of the judge's sentence based on offence type, but the effect size was small. Mackenzie et al (n 2) 9.

29 Gelb, 'Myths and Misconceptions' (n 19) 9.

30 See Australian Bureau of Statistics, *National, state and territory population* (Web page, 21 September 2022) Table 53: *Estimated Resident Population By Single Year Of Age, Queensland* <<https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/mar-2022>>

31 Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians* (Web page, 21 September 2022) <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/jun-2021>>.

32 See Australian Bureau of Statistics, *Education and Work, Australia* (Web page, 10 November 2022) Table 21: *Highest educational attainment by state/territory by sex, Persons aged 15-74 years* <<https://www.abs.gov.au/statistics/people/education/education-and-work-australia/latest-release#qualifications-held>> .

33 Australian Bureau of Statistics, *Labour Force, Australia* (Web page, 17 November 2022) <<https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>>

34 Queensland Government Statistician's Office, *Meshblock correspondence file (ASGS 2016)* (17 April 2019) <https://www.qgso.qld.gov.au/visualisations-geographies/geographical-hierarchies/meshblock-correspondence-file-asgs-2016>; drawing upon data from the Australian Bureau of Statistics, *Australian Statistical Geography Standard (ASGS): Volume 5 - Remoteness Structure* (Catalogue No. 1270.0.55.005, 16 March 2018).

35 *National Statement on Ethical Conduct in Human Research 2007 (Updated 2018)* (National Health and Medical Research Council, 2018) 85 [5.1.18]-[5.1.23].

36 Ibid 3-4.

37 The Courts Database is continually updated as more information is entered into administrative systems. The information presented in this report may vary from data published elsewhere due to differences in the dates data was extracted or differences in counting rules.

38 *Criminal Courts, Australia, 2018-19*, Appendix 3, *Sentence Type Classification*, Australian Bureau of Statistics (ABS).

39 Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3(2) *Qualitative Research in Psychology* 77, 87; Virginia Braun and Victoria Clarke, 'Thematic analysis' in Harris Cooper (eds), *APA handbook of research methods in psychology, Volume 2: Research designs: Quantitative, Qualitative, Neuropsychological, and Biological* (American Psychological Association, 2012) 57, 60-9.

40 Penny Mackieson, Aron Shlonsky and Marie Connolly, 'Increasing rigor and reducing bias in qualitative research: A document analysis of parliamentary debates using applied thematic analysis' (2019) 18(6) *Qualitative Social Work* 965, 973.

41 Marsh et al (n 8) 21-2; Barry Mitchell and Julian V Roberts, 'Sentencing for murder: Exploring public knowledge and public opinion in England and Wales' (2012) 52(1) *The British Journal of Criminology* 141, 150.

42 Marsh et al (n 8) 21-2.

43 Mitchell and Roberts (n 41), 150.

44 Queensland Sentencing Advisory Council, *Queensland Sentencing Guide* (4th ed, March 2023) 100-18.

45 Marsh et al (n 8) 21-2.

46 Mitchell and Roberts (n 41), 150.

47 *Penalties and Sentences Act 1992* (Qld) s 160B.

48 Marsh et al (n 8) 23.

49 Black et al (n 10) 8.

50 Elizabeth Moore, 'Public confidence in the New South Wales criminal justice system: 2019 update' (Crime and Justice Bulletin No 227, NSW Bureau of Crime Statistics and Research, June 2020), 18.

51 Mike Hough and Julian V Roberts, 'Sentencing Trends in Britain: Public Knowledge and Public Opinion' (1999) 1(1) *Punishment & Society* 11, 16 ('Sentencing trends in Britain'); Michael Hough and Julian V Roberts, 'Attitudes to punishment: findings from the British Crime Survey' (Home Office Research Study No 179, Research and Statistics, 1998), 1, 13-15 ('Attitudes to punishment'); Julian V Roberts et al (n 1) 10-12; Anna Butler and Katherine McFarlane, 'Public confidence in the NSW criminal justice system' (Monograph No 2, NSW Sentencing Council, 2009) 1, 13-16.

52 Black et al (n 10) 9-10; Roberts and Indermaur (n 20) 12.

53 Hough and Roberts, 'Attitudes to punishment' (n 51) 29-30; Julian V Roberts et al (n 1) 10-12.

54 Black et al (n 10) 8.

55 Julian V Roberts et al (n 1) 12-13.

56 Moore (n 50) 14.
57 Julian V Roberts et al (n 1) 10–14.
58 Kate Warner et al, 'Juror and Community Views of the Guilty Plea Sentencing Discount: Findings from a National
Australian Study' (2022) 22(1) *Criminology and Criminal Justice* 78, 89.
59 Roberts and Indermaur (n 20) 9; Gelb, 'More Myths and Misconceptions' (n 19) 6.
60 Marsh et al (n 8) 26–7.
61 See, eg, Robin Fitzgerald et al, 'How does the Australian public view parole? Results from a national survey on
public attitudes towards parole and re-entry' (2016) 40(6) *Criminal Law Journal* 307, 324; Bartels et al (n 21) 278.
62 *Criminal Code* (Qld) ss 271(2), 272 and 273.
63 Ibid s 304.
64 Ibid s 304B.
65 *Mental Health Act 2016* (Qld) s 21.
66 Ibid s 116(1).
67 Ibid s 120, provided that the person is also fit for trial.
68 Duffy et al (n 19) 36.
69 Hough and Roberts, 'Sentencing trends in Britain' (n 51) 21.
70 Crime and Corruption Commission, 'Assets of Queensland Drug Offenders: An analysis of Crime and Corruption
Commission proceeds of crime data, 2009–14' (Research paper, September 2015) 1, 4–5.
71 Marsh et al (n 8) 22–23.
72 Mitchell and Roberts (n 41), 150.
73 Ibid, 34–6.
74 Polly Rossetti et al, 'Victims' justice? What victims and witnesses really want from sentencing' (Research report,
Victim Support, November 2010) 1, 17.
75 Kate Warner et al (n 15) 186–7; Paulin, Searle and Knaggs (n 18) 14–18; Julian V Roberts et al (n 1) 13–14.
76 See, eg, Julian V Roberts et al (n 1) 13–14; Marsh et al (n 8) 21.

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