



COMMUNITY VIEWS ON RAPE AND SEXUAL ASSAULT SENTENCING

FINAL REPORT

Dr Dominique Moritz, Dr Ashley Pearson and Dr Dale Mitchell

June 2024

**Sexual Violence Research and Prevention Unit
University of the Sunshine Coast**



Table of Contents

List of Tables	iii
List of Figures	iii
Acknowledgements	1
Research Team	2
Executive Summary	3
1.0 Background	7
2.0 Introduction	9
3.0 Methodology	11
3.1 Focus Groups.....	11
Recruitment.....	11
Facilitation	14
Structure and activities.....	14
3.2 Ethical Considerations	16
3.3 Analytic Strategy.....	16
Quantitative analysis.....	16
Qualitative analysis	16
4.0 Key Findings	17
Finding 1: Without exposure to broader contextual information, offence type influences community views on sentencing purposes..	18
Finding 2: The community differentiates the importance of sentencing purposes based on contextual factors.....	19
A. Community protection is linked to the perceived dangerousness of a perpetrator..	20
B. Denunciation has value when responding to family and domestic violence.	22
C. Punishment is favoured in circumstances involving a vulnerable victim-survivor or an increase in community vulnerability.	24
Finding 3: Victim-survivor perspectives on the importance of sentencing purposes mirrors general participant responses.....	25
Finding 4: Harm and culpability factors emerged as key considerations when determining the seriousness of sexual assault and rape offences..	29
A. Long-term psychological harm needs special consideration at sentencing for sexual assault and rape offences.....	29
B. The perpetrator's relationship to the victim-survivor is a complex culpability factor in determining seriousness.	31
Finding 5: The community is victim-survivor centred when ranking the seriousness of sexual assault and rape offences.....	34

Finding 6: Contextual factors matter when ranking the seriousness of offences.	35
A. Sexual offences against children were ranked as more serious than similar offences against adults.	35
B. Non-sexual offences involving potential lethality were ranked more serious than sexual offences.	36
C. The nature of sexual acts affected offence seriousness determinations	37
5.0 Limitations	40
Registration and Recruitment	40
First Nations Participation	40
Scheduling	41
Content	41
6.0 Concluding Remarks	43
Sentencing Purposes	43
Seriousness of Sexual Assault and Rape Offences	43
References	45
Appendix	48

List of Tables

Table 1: Participant demographics	13
Table 2: Research questions and key findings	17

List of Figures

Figure A: Most important sentencing purpose – without background context	18
Figure B: Comparison of views on sentencing purposes for sexual assault (with and without background context)	19
Figure C: Comparison of views on sentencing purposes for rape (with and without background context).....	20
Figure D: Comparison of sentencing purposes – sexual assault (victim-survivor vs general)	26
Figure E: Comparison of sentencing purposes – rape (victim-survivor vs general).....	26
Figure F: Sexual offences with contextual factors – victim-survivor comparison	27

Acknowledgements

We acknowledge the Traditional Custodians of the land on which we live, work and study. We pay our respects to Indigenous Elders past, present and emerging and recognise the strength, resilience and capacity of all Aboriginal and Torres Strait Islander people.

The research team acknowledges the significant contributions by many in the completion of this research project. We thank Natalee Cairns and Dr Samantha Kay for their work as research assistants on the various stages of this project; Dimity Adams and Dr Stephanie Price for advice and support during the project activities, data analysis and report writing; Sydney Smith for advice and guidance as First Nations cultural advisor in project planning and liaising with Aboriginal and Torres Strait Islander communities; Jason Scott for assistance in planning and facilitating the Goondiwindi focus group; and the Queensland Sentencing Advisory Council team – Samuel Jeffs, Laura Hilderley, Claire McLean and all QSAC team members for advice and support throughout all stages of the research.

We would like to specially acknowledge all focus group participants for attending the focus groups and engaging so meaningfully with the research. The content was sensitive and challenging to discuss and we really appreciate your time in sharing your views.

Research Team

The project team, comprising **Dr Dominique Moritz**, **Dr Ashley Pearson** and **Dr Dale Mitchell**, are situated within the *Sexual Violence Research and Prevention Unit*.

The [Sexual Violence Research and Prevention Unit](#) (SVRPU) is based at the University of the Sunshine Coast (UniSC), and aims to understand, prevent, and respond to sexual violence and abuse at a local, national and international level. The SVRPU brings together a community of academics, government and non-government industry partners, and students with a shared interest in sexual violence and abuse prevention practice and research. Collectively, the work of the SVRPU aims to reduce victimisation and address perpetration through innovative and evidence-based knowledge and practice. By disseminating research to industry professionals and to the broader community, the SVRPU bridges the gap between research and practice.

The SVRPU leadership team (**Dr Nadine McKillop**, **Dr Susan Rayment-McHugh** and **Dr Lara Christensen**) are recognised internationally as experts in sexual violence and abuse prevention. Their collective contributions to evidence-informed prevention and intervention are demonstrated by over \$3.5 million in externally funded research projects. Their academic contributions include over 90 peer-reviewed publications (journal articles, books, book chapters, and government reports), which document research, best-practice, and consultancies. Together, their work has led to changes in government agenda setting, policy, and practice frameworks.

Dr Dominique Moritz (Project Lead and Chief Investigator) is the Associate Dean (Learning & Teaching), a Senior Lecturer in law at the *University of the Sunshine Coast* and Adjunct Member of the *Sexual Violence Research and Prevention Unit*. Dominique holds a PhD in law. She has extensive expertise in criminal law and regulatory concepts with a particular interest in sexual violence criminalisation. Dominique's research work has attracted almost \$1 million in external grant funding and she has published 19 peer reviewed articles in high quality journals. Dominique is a qualified lawyer, being admitted to the Supreme Court of Queensland in 2013. Dominique was also a police officer employed by the *Queensland Police Service* prior to entering academia.

Dr Ashley Pearson (Chief Investigator) is the Law Program Coordinator, and Lecturer in law at the *University of the Sunshine Coast* and an Adjunct Member of the *Sexual Violence Research and Prevention Unit*. Ashley holds a PhD in law and is an experienced interdisciplinary researcher. Her work engages with legal intersections of theory, culture, and practice with an emerging focus on child exploitation material and developing technologies. Ashley's work has been published in leading academic journals such as the *Australian Feminist Law Journal*, *Sexuality and Culture*, and *Law, Technology and Humans*.

Dr Dale Mitchell (Chief Investigator) is a Lecturer in law at the *University of the Sunshine Coast* and an Adjunct Member of the *Sexual Violence Research and Prevention Unit*. Dale's scholarship explores the intersection between law and culture, drawing upon multidisciplinary approaches to explore emergent understandings of law and justice. In 2022, Dale was awarded the Julien Mezey Dissertation Prize from the US-based *Association for the Study of Law, Culture and Humanities*, who hailed his work as 'innovative and rigorous' and demonstrating a 'theoretical clarity that pushes legal analysis forward in creative and engaging ways'. Dale has been invited to present his work at national and international conferences, and has published in high-ranking journals and presses. Dale was admitted as a lawyer to the Supreme Court of Queensland in 2014.

Executive Summary

Rape and sexual assault offending are a prevalent community issue. Sexual violence causes long-lasting, detrimental effects to victim-survivors and the broader community. Given the significant harm caused by sexual offending, and the high level of victim-survivor experiences within the public, the Queensland community is particularly invested in the outcomes of rape and sexual assault cases. Sentencing of rape and sexual assault offences is one legal response to address sexual violence in the community. There is a clear need for an alignment between the criminal justice system and the Queensland community's views to ensure sentencing is perceived as reliable and reflects public sentiment.

The University of the Sunshine Coast's Sexual Violence Research Prevention Unit was awarded funding to advise the Queensland Sentencing Advisory Council on the community views of rape and sexual assault sentencing. More specifically, the research project sought to gather community views on the sentencing of rape and sexual assault offences, and aimed to address two key research questions:

1. How does the community view the importance of the sentencing purposes of just punishment, denunciation and community protection for sexual assault and rape offences?; and
2. How does the community rank the seriousness of sexual assault and rape offences compared to other offences committed in Queensland?

Focus group research was used to collect community views. Two-hour focus groups were conducted with Queenslanders from rural, regional and metropolitan areas. Inclusion criteria for the focus groups involved participants who were 18 years of age or older, reside in Queensland, spoke conversational English, and had not been previously accused or convicted of a rape or sexual assault offence.

There were 89 participants across 19 focus groups. Participants were grouped according to gender and whether they identified as a victim-survivor, or immediate family member of a victim-survivor, of a rape or sexual assault offence. Focus groups were held in-person at the Sunshine Coast, Brisbane, Cairns and Goondiwindi as well as online to capture views from community members who were located in more regional areas or otherwise unable to attend in-person.

There were several notable features of the participant demographics. This research project did not intend to be representative of the Queensland population, but as much diversity was sought as possible using recruitment strategies and a First Nations cultural advisor. Difficulties recruiting male and Aboriginal and Torres Strait Islander participants were reflected in the project results. Approximately 40% of all participants identified as a victim-survivor, or immediate family member, which provides very representative views of this cohort.

Focus groups contained two key sections. In the first section, participants engaged in ranking exercises of two offences and ranking exercises of three short vignettes based upon real Queensland judgements in the first section. In the second section, participants were required to determine which offence was most serious from pairs of offending behaviour, including both sexual and non-sexual offences. Opportunities for discussion were provided in both sections for community members to explain and explore their responses.

Following focus group completion, all data was de-identified and audio recordings were transcribed. A mixed methods research design was utilised. Descriptive and comparative analysis techniques were used for quantitative analysis. For the qualitative analysis, data was coded to categorise segments of the data according to themes using NVIVO software.

Six key findings emerged from the focus group research, three in relation to each research question.

Finding 1

Without exposure to broader contextual information, offence type influences community views on sentencing purposes.

When broader contextual information about an offence is not available, the community uses the offence type to determine which sentencing purposes are most aligned with that offence. Without background context, participants viewed sexual assault and rape as attracting different primary sentencing purposes based purely on the kind of offence perpetrated. In the absence of context, participants considered denunciation, deterrence and punishment, almost equally, as important sentencing purposes for a sexual assault

offence. In contrast, when a rape offence was considered without background context, participants overwhelmingly identified punishment as a key sentencing purpose, followed by community protection. Finding 1 illustrates that offence type influences views on sentencing purposes in the absence of context. This is notable given that the community regularly assesses sexual violence sentencing without context, such as through news and social media commentary.

Finding 2

The community differentiates the importance of sentencing purposes based on contextual factors.

The second finding suggests that exposure to the context and circumstances of an offence helps community members to differentiate between sentencing purposes, and their importance. When presented with a specific sexual assault or rape case scenario that contained more information about the circumstances of the offending, in contrast to those that had no additional contextual information, the community's views on sentencing purposes were more strongly delineated between categories.

Three considerations emerged from the data:

1. Community protection is linked to the perceived dangerousness of a perpetrator.

Contextual information that increased perceptions of the offender's dangerousness (such as offences perpetrated by strangers, in public places, in broad daylight, and as pre-mediated acts) were considered by participants as increasing the offender's threat to the community and therefore demanded a greater community protection response.

2. Denunciation has value when responding to family and domestic violence.

Denunciation, overall, held less weight than other sentencing purposes in relation to rape and sexual violence as the community indicated that there already was (or should be) widespread

understanding and condemnation that sexual violence is wrong. However, community discussion revealed that denunciation may have particular value when sexual violence occurs within a family or domestic violence context as a way to condemn sexual violence in these contexts. The data suggests that denunciation may serve a role to prevent normalising sexual violence within intimate partner relationships, which is pertinent given its current prevalence.

3. Punishment is favoured in circumstances involving a vulnerable victim-survivor or an increase in community vulnerability.

Punishment was a favourable sentencing purpose for participants in circumstances of victim-survivor vulnerability, such as when a perpetrator targeted a child, or where the offending behaviour made the community vulnerable. The community believed the punishment should be commensurate to the level of harm the perpetrator caused the vulnerable victim-survivors. Notably, participants had difficulty conceptualising punishment separately to imprisonment and often conflated the sentencing purpose with the sentencing outcome because of the tangible consequences that imprisonment produces.

Finding 3

Victim-survivor perspectives on the importance of sentencing purposes mirrors general participant responses.

General participant responses and victim-survivor responses on sentencing purposes for rape and sexual assaults broadly aligned. The only significant difference in views on sentencing purposes between the two groups were instances where sexual violence was perpetrated against a child. In those scenarios, the victim-survivor cohort identified community protection as most important, followed

by punishment and denunciation in almost equal amounts. The general participants, on the other hand, identified punishment as the most important sentencing purpose, followed by community protection. Such a response indicates victim-survivors view sexual offending responses more strategically and value primary prevention strategies above secondary prevention.

Finding 4

Harm and culpability factors emerged as key considerations when determining the seriousness of sexual assault and rape offences.

The community identified that the level of harm suffered by the victim-survivor, the circumstances that led to the offending, and the culpability of the perpetrator for the suffering inflicted, all contributed to offence seriousness. When determining the seriousness of sexual offences, two significant considerations emerged:

1. Long-term psychological harm needs special consideration at sentencing for sexual assault and rape offences.

Participants considered the cumulative effects of physical, emotional and psychological harm suffered by victim-survivors of a rape or sexual assault offence as significant for determining seriousness. The community placed a high emphasis on the psychological harm for rape and sexual assault offences, indicating that such offences would have long-lasting impacts on the victim-survivor on potentially every aspect of their lives. Some community members were unconvinced that the criminal justice system adequately considered psychological harm due to the difficulty in measuring it, and particularly because the extent of the harm might not be known at the time of sentencing.

2. The perpetrator's relationship to the victim-survivor is a complex culpability factor in determining seriousness.

The nature of the relationship (or lack thereof) between the perpetrator and victim-survivor was significant in determining seriousness and had a bearing on the severity of the harm done to the victim-survivor. Overall, participants concluded that a stranger or unknown relationship as more serious than known parties, such as intimate partners or friends. In discussion, however, the community often attributed offenders known to the victim-survivor with higher culpability for the offences perpetrated due to the breach of trust that occurred in addition to the sexual offence. The community strongly condemned the use of positions of power and trust as a means of offending, such as power dynamics occurring in familial relationships, teacher-student and employer-employee relationships. Breaches of trust in familial relationships were considered to be most serious to participants within this category.

Finding 5

The community is victim-survivor centred when ranking the seriousness of sexual assault and rape offences.

When determining the seriousness of rape and sexual assault offences, the community adopted a victim-survivor-centered mindset; participants put themselves in the position of the victim-survivor and imagined how the sexual offending might feel, as well as the impacts of experiencing such offending. Some participants recognised their own limitations in centering their perspective from what a victim-

survivor might feel, acknowledging that cultural or societal biases may interfere with their ability to put themselves in the victim-survivor's position. Some participants also acknowledged how ill equipped they were to comprehend the magnitude of harm done to a victim-survivor. The community, then, supports sentencing approaches which centre victim-survivors in the process.

Finding 6

Contextual factors matter when ranking the seriousness of offences.

Participants identified contextual factors when ranking the seriousness of offences, particularly when comparing sexual offences with non-sexual offences. Three main considerations emerged:

1. Sexual offences against children were ranked as more serious than similar sexual offences against adults.

Sexual offending against a child was overwhelmingly considered as more serious than similar sexual offences perpetrated against an adult. Participants referenced the greater vulnerability, lack of understanding or coping mechanisms, and the longevity of the harm as being salient factors in making child sexual abuse as more serious.

2. Non-sexual offences involving potential lethality were ranked more serious than sexual offences.

Offences that resulted in death, or were potentially lethal, emerged as most serious of all offences. In general, the community considered intentionally killing a person as the most heinous behaviour due to the finality of the harm. Offences that were potentially, but not actually, lethal (such as grievous bodily harm and strangulation) were ranked as approximately equivalent in seriousness as high-level sexual offences, such as multiple party rape, while sexual offending against child victim-survivors emerged as more serious than potentially lethal offences.

3. The nature of sexual acts affected offence seriousness determinations.

The nature of the sexual acts such as how the perpetrator penetrated the victim-survivor (digital, penile, object) and where that penetration occurred (oral, vaginal, anal) impacts how the community view the seriousness of the offending. Participants considered the size of the penetrating instrument, the pain associated with the site of penetration, and potential consequences of penetration (e.g., pregnancy or infection) when determining seriousness. Generally, penile penetration was more serious than digital or object while oral penetration was considered less serious than vaginal or anal. Notably, the impact of the nature of the sexual act on seriousness was moderated when considering offences against children.

Overall, the research demonstrated that the Queensland community views rape and sexual assault offences as heinous crimes with long-term physical and psychological impacts on the victim-survivor. While participants were challenged to differentiate between types of offending behaviour, victim-survivors and circumstances of the offending, participants were united in their strong condemnation of all sexual violence. The community aligned with victim-survivor perspectives, and evaluated the harm suffered from rape and sexual assault offences from a victim-survivor-centered mindset. The community recognised the importance of engaging with the research and acknowledged the value of the broader project to investigate sexual violence legal responses.

1.0 Background

Rape and sexual assault are serious and violent criminal offences punishable by imprisonment. Rape involves sexual penetration without consent and the legal definition of rape extends to a person engaging in penile intercourse; penetrating a person's vulva, vagina or anus with something other than a penis; or penetrating a person's mouth with a penis.¹ The maximum penalty for rape is life imprisonment.² Sexual assault encompasses broader sexual behaviours and the offence can be satisfied where a person unlawfully and indecently assaults another; or procures another person to commit or witness an act of gross indecency without their consent.³ Aggravated sexual assault, where the sexual assault involves a weapon or the gross indecency involves penetration of a person's vagina, vulva or anus with a thing that is not a penis, has life imprisonment as a maximum penalty.⁴ There is a 14 year maximum penalty for aggravated sexual assault involving bringing genitalia or the anus of a person in contact with any part of another person's mouth.⁵ Ten years imprisonment is the maximum penalty for non-aggravated sexual assault.⁶

Rape and sexual assault offending is prevalent in the community and the impact of these offences cannot be understated. One in five women and one in 20 men experience sexual violence.⁷ More than one quarter of children aged 16 – 24 have experienced

sexual abuse, with females more likely than males to be maltreated in this way.⁸ While impacts of violent offending depend on the characteristics and circumstances of the victim-survivor, some literature underscores the unique and profound impacts of sexual offending owing to its intimate nature and connection to identity and social functioning.⁹ Human rights literature describes it as a 'grave and systematic human rights violation .. that could amount to torture' and as 'a crime against humanity'.¹⁰ Victim-survivors of sexual offending experience a broad and long-lasting range of physical, psychological, emotional, behavioural, social, religious, and socio-economic impacts (such as lower educational attainment and poorer employment outcomes), as well as detrimental impacts on interpersonal relationships and increased vulnerability to further offending.¹¹ Impacts can be lifelong and depend on the nature and circumstances of the offending, and the criminal justice and system response to it.¹² Sexual violence is widely underreported in the community which makes determining its true prevalence particularly challenging.¹³ Determining appropriate responses to rape and other sexual offending in the community is a significant and ongoing issue.

The law has a comprehensive system to investigate, prosecute and sentence sexual violence offenders.

¹ *Criminal Code 1899* (Qld) s 349.

² *Ibid* s 349(1).

³ *Ibid* s 352.

⁴ *Ibid* ss 349, 352(3).

⁵ *Ibid* s 352(2).

⁶ *Ibid* s 352(1).

⁷ Women's Safety and Justice Taskforce, *Hear her voice: Women and girls' experiences across the criminal justice system* (2022) <<https://www.womenstaskforce.qld.gov.au/publication/s>>.

⁸ Daryl J. Higgins et al, 'The prevalence and nature of multi-type child maltreatment in Australia' (2023) 218 *The Medical Journal of Australia* 19.

⁹ Kaitlin Boyle, 'Sexual Assault and Identity Disruption: A Sociological Approach to Posttraumatic Stress' (2017) 7(2) *Society and Mental Health* 69; Sarah Crome and Marita P. McCabe, 'The Impact of Rape on Individual, Interpersonal, and Family Functioning' (1995) 1(1) *Journal of Family Studies* 58; Cate Fisher et al, 'The impacts of child sexual abuse: A rapid evidence assessment, Summary report' (Independent Inquiry into Child Sexual Abuse, UK, July 2017); Orla T Muldoon et al, 'Sexual violence and traumatic identity change: Evidence

of collective post-traumatic growth' (2023) 53(7) *European Journal of Social Psychology* 1372.

¹⁰ Office of the High Commissioner United Nations Human Rights, 'Rape as a grave and systematic human rights violation and gender-based violence against women' (Special Rapporteur on violence against women and girls, Call for Input, 5 August 2020) <<https://www.ohchr.org/en/calls-for-input/rape-grave-and-systematic-human-rights-violation-and-gender-based-violence-against>>. See also Dubravka Simonovic and Yasmeen Hassan, 'Rape as a grave and systemic human rights violation and gender-based violence against women: Expert Group Meeting Report 2020' (United Nations Human Rights Special Procedure and Equality Now, Expert Group Meeting, 27 May 2020) 8-9.

¹¹ Fisher et al (n 9) 4-12.

¹² Kristine M Chapleau and Debra L Oswald, 'A System Justification View of Sexual Violence: Legitimizing Gender Inequality and Reduced Moral Outrage Are Connected to Greater Rape Myth Acceptance' (2014) 15(2) *Journal of Trauma & Dissociation* 204.

¹³ Queensland Sentencing Advisory Council, 'Sentencing Spotlight on Sexual Assault 2024' (v1.0, November 2023).

Sentencing is an important legal response to address sexual violence offending. Sentencing trends for rape in Queensland shows a steady increase in the number of rape cases over the last decade with a slight decline in recent years, and with almost all offenders being male and sentenced to periods of imprisonment.¹⁴ For sexual assaults in Queensland, an overwhelming majority occur in non-aggravating circumstances with male perpetrators while only 65% receive a custodial sentence.¹⁵ Despite Queensland's existing sentencing framework, there are opportunities to consider the effectiveness of current sentencing practices for sexual offences.

In response to the significant issue of sexual violence offending, the former Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, the Honourable Shannon Fentiman MP requested the Queensland Sentencing Advisory Council (QSAC) examine and report on sentencing for sexual assault and rape offences and provided Terms of Reference to guide QSAC's investigation. The Queensland *Penalties and Sentences Act 1992* established QSAC as an independent, statutory body to advise the Attorney-General on matters relating to sentencing, research sentencing matters and obtain the community's views on sentencing matters, among other things.¹⁶ More specifically, the Terms of Reference requested QSAC:

determine whether penalties currently imposed adequately reflect community views about the seriousness of this form of offending and the sentencing purposes of just punishment, denunciation and community protection.¹⁷

Following a Request for Quote process with the Department of Justice and Attorney-General, the University of the Sunshine Coast's Sexual Violence Research and Prevention Unit was awarded funding to progress a project titled "Focus groups on community views of rape and sexual assault offences".

The research aimed to address the following questions:

1. How does the community view the importance of the sentencing purposes of just punishment, denunciation and community protection for sexual assault and rape offences?; and
2. How does the community rank the seriousness of sexual assault and rape offences compared to other offences committed in Queensland?

¹⁴ Queensland Sentencing Advisory Council, 'Sentencing Spotlight on Rape 2024' (v2.0, December 2023).

¹⁵ Queensland Sentencing Advisory Council, 'Sentencing Spotlight on Sexual Assault' (n 13).

¹⁶ *Penalties and Sentences Act 1992* (Qld) ss 198-9.

¹⁷ Queensland Sentencing Advisory Council, 'Review of sentencing for sexual assault and rape offences: About the Terms of Reference – Part 1' (Background Paper 1, September 2023) 2.

2.0 Introduction

The *Penalties and Sentences Act 1992* (Qld) (PSA) establishes five purposes for which a sentence may be imposed.¹⁸ The court may draw upon any of these factors or their combination when sentencing an offender: just punishment, rehabilitation, deterrence, denunciation, and community protection.¹⁹ The Terms of Reference focus on three of these five purposes for this project (just punishment, denunciation, and community protection), all of which connect to notions of community. The purpose of denunciation in sentencing is ‘to make it clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved’: s9(1)(d). Likewise, community protection aims ‘to protect the Queensland community from the offender’: s9(1)(e). Just punishment is, as its naming suggests, more punitive. When drawing upon this purpose, the court imposes a sentence ‘to punish the offender to an extent or in a way that is just in all circumstances’: s9(1)(a).

A sentence imposed upon a perpetrator must be proportionate to the behaviour. The principle of proportionality provides that ‘the seriousness of the crime should be matched by the hardship of the sentence’.²⁰ The seriousness of criminal conduct may be determined by examining the harm and culpability of an offender’s actions.²¹ Harm is the ‘degree of injury done or risked by the act’, while culpability refers to ‘factors of intent, motive and circumstance that bear on the actor’s blameworthiness’.²² Despite their distinction, these factors are not separate. Culpability affects how harm is assessed as an individual is only to be held responsible ‘for the foreseen consequences of their own actions’.²³ Put simply, the seriousness of a crime is determined by examining both the potential

and actual harm suffered, and the responsibility of the offender for this harm. This seriousness impacts on the sentence provided: ‘the more culpable a person is, the more serious the offence will be assessed to be and the more severe the sentence.’²⁴ Such an alignment between harm and culpability can be seen in the PSA, which requires a court to consider the nature of an offence and the associated harm suffered (s9(2)(c)), the damage, injury and loss caused by the offender (s9(2)(d)), and the amount the offender is to blame for the offence (s9(2)(e)) when imposing a sentence. In advocating for this connection between harm and culpability in determining the seriousness of a crime, Andrew von Hirsch gestures towards public sentiment: ‘[p]eople have a sense that punishments scaled to the gravity of offence are fairer than punishments that are not’.²⁵ Community perspectives on sexual violence have changed over time, with sexual violence offending being considered more serious than ever before, and proportionality, then, can be used as a sentencing principle to ensure community protection from sexual offending.²⁶

Yet, despite the importance of the proportionality principle to sentencing provisions in Queensland and abroad, a gap exists in understanding the depth of this supposed public sentiment, especially for sexual offences. Bagric and Alexander advise ‘there is considerable work and further research that must be undertaken to give effect to the proportionality principle...there is no absolute or relative ranking of harm stemming from criminal offences that is applied or has been developed by sentencing judges.’²⁷ While von Hirsch and Ashworth suggest legislatures and institutions have ranked crimes by seriousness with relative ease,²⁸ Ryberg cautions against the blind acceptance of a populist

¹⁸ *Penalties and Sentences Act 1992* (Qld), s 9(1).

¹⁹ Queensland Sentencing Advisory Council, *Queensland Sentencing Guide* (March 2023) <https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0004/572161/QLD-Sentencing-Guide.pdf> 34.

²⁰ Mirko Bagaric, and Theo Alexander, ‘A rational approach to the evaluation of harm in the sentencing calculus’ (2021) 50 *Australian Bar Review* 251.

²¹ Andrew von Hirsch, ‘Commensurability and Crime Prevention: Evaluating Formal Sentencing Structures and their Rationale’ (1983) 74(1) *Journal of Criminal Law and Criminology* 209, 214.

²² *Ibid.*

²³ *Ibid.*

²⁴ Queensland Sentencing Advisory Council, *Queensland Sentencing Guide* (n 19) 37.

²⁵ Andrew von Hirsch, ‘Proportionality in the Philosophy of Punishment’ (1992) 16 *Crime and Justice* 55, 56.

²⁶ Brian Francis, Keith Soothill and Regina Dittrich, ‘A new approach for ranking “serious” offences’ (2001) 41 *British Journal of Criminology* 726.

²⁷ Bagric and Alexander (n 20) 273.

²⁸ Andrew von Hirsch and Andrew Ashworth, *Proportionate Sentencing: Exploring the Principles* (Oxford University Press, 2005) 143.

framework: '[e]ven if it is correct that there is general agreement between people as to how the seriousness of different crimes should be rated, this does not of itself show that the rating should be morally accepted.'²⁹ Attentiveness towards the punitive positioning of judgment makes this more problematic. As Sofronoff P has stated:

Punishment under the law is a problem in the application of legal principles. It is true that a sentence serves to satisfy the legitimate emotional needs of the community, but it can only do so justly when the judge engages in the dispassionate application of legal rules and principles in order to serve those needs.³⁰

The need for the alignment between sentencing and public opinion is fundamental as '[s]ignificant disparity between public opinion and judicial sentencing conduct will eventually lead to a reduction in the perceived legitimacy of the legal system'.³¹ It is for this reason that former Chief Justice Gleeson concluded that there is 'no aspect of the administration of justice in which public acceptance of judicial decision making is more important, or more difficult to sustain, than the sentencing of offenders'.³² This project is therefore grounded in moral and institutional necessity.

When considering the offences of rape and sexual assault, and the varying contexts within which these crimes may occur – social and domestic; stranger and spouse; vulnerable and powerful – questions of seriousness, proportionality and justice are naturally provoked. Because sexual offending is so prevalent in the community, causes such considerable harm and is generally abhorrent behaviour, the community is particularly invested in sentencing outcomes for sexual offences. Therefore, sexual offences connect to the notion of community which is central to sentencing purposes like just punishment, denunciation and community protection.

With such a high proportion of the population becoming impacted by rape and sexual offences,³³ community perspectives on sentencing may be influenced by personal experiences. As former Chief Justice Mason described:

because sentencing seems to be less complex than other judicial decisions, people feel that *they* understand the issue and are confident in the view they form, even if they are unaware of the relevant circumstances.³⁴

People not only feel they understand the issue as former Chief Justice Mason describes, but rather they may *know* the experience as a victim-survivor of a sexual offence or they may know of a victim-survivor's experience. The consideration of public attitudes to sentencing practices for rape and sexual assault therefore demands a nuanced, carefully designed approach informed by best practice at the apex of legal, criminological and psychological analysis.

²⁹ Jesper Ryberg, *The Ethics of Proportionate Punishment: A Critical Investigation* (Springer, 2004) 60.

³⁰ *R v Patrick* (a pseudonym); *R v Patrick* (a pseudonym); *ex parte Attorney-General (Qld)* [2020] QCA 51, [42] (Sofronoff P).

³¹ *R v Jurisic* (1998) 45 NSWLR 209, 223 (Spigelman CJ).

³² Murray Gleeson, "Sentencing: The Law's Communication Problem," a speech delivered to the Criminal Bar Association (19 November 1993).

³³ Women's Safety and Justice Taskforce (n 7).

³⁴ Anthony Mason, 'The Courts and Public Opinion' (2002) 11 *Bar News: Journal of the NSW Bar Association* 30, 34. (Emphasis in original).

3.0 Methodology

This project adopted a mixed method design, incorporating qualitative research with quantitative components. In line with UniSC's approved ethics protocols (A232001) focus groups were used to engage a wide range of Queenslanders to gauge community views on the sentencing of rape and sexual assaults, including seriousness of the offending.

3.1 Focus Groups

Focus groups was the chosen data collection method. Focus groups allow individuals to share and challenge personal views, consider competing perspectives and explore complex considerations and factors contributing to participants' views on sentencing, resulting in rich, in-depth data.³⁵ For these reasons, focus group research is widely used to understand community views in relation to sentencing outcomes including for example, child homicide³⁶ and drug offences.³⁷

Recruitment

A convenience sampling strategy was initially used to recruit general participants through marketing programs across community organisations, university campuses and via social media marketing. Specifically, recruitment involved sharing project information and recruitment materials through:

- > Community group newsletters (e.g., Lions Queensland, RSL Queensland, Surf Lifesaving Clubs);
- > Displays in community groups, supermarkets, and noticeboards;
- > Digital advertising to staff and students across UniSC campuses; and
- > Paid social media posts to target individuals who were underrepresented in registrations (e.g., location and gender).

This recruitment strategy was subsequently extended using a snowball sampling approach. Community members were advised to share the project details and recruitment materials with others.

Community members were eligible to participate in focus groups according to prescribed inclusion criteria:

1. 18 years of age or over;
2. Permanently reside in Queensland;
3. Can speak conversational English; and
4. Never having been accused or convicted of committing a sexual violence offence.

Participants were asked to address the inclusion criteria during the initial participant registration process and any participants not meeting the inclusion criteria did not proceed to focus group selection. Participants provided consent prior to participation. The Research Participation Information Sheet and consent form are included in Appendix 1 and 2 respectively.

Initially, the general recruitment process attracted 171 individuals. After screening for eligibility, some participants could not be included because they did not reside in Queensland or had disclosed that they had been accused or convicted of committing a sexual offence. Others were not available to attend their scheduled focus group, or following confirmation did not attend their scheduled focus group, resulting in some participant drop-out. Targeted recruitment also occurred, with a community justice group used to convene a focus group for First Nations male participants. A final sample of 89 participants were engaged in the focus group research. The majority of participants lived on the Sunshine Coast (n=28), followed by Brisbane (n=19) and Cairns (n=17). There were more female participants (n=64) than male participants (n=23). Only a small number of participants identified as

³⁵ Samuel Jeffs et al, 'Understanding of sentencing: Community knowledge of sentencing terms and outcomes', *Queensland Sentencing Advisory Council* (Research Brief, 3 April 2023); Amy Kirby and Jessica Jacobson, 'Public attitudes to the sentencing of drug offences' (2014) 14(3) *Criminology & Criminal Justice* 334.

³⁶ Elena Marchetti et al, 'Sentencing for Child Homicide Offences: Assessing Public Opinion using a Focus Group Approach', *Australian Institution of Criminology* (Report no. 21, 2021).

³⁷ Kirby and Jacobson (n 35).

Aboriginal or Torres Strait Islander identity (n=14). Approximately 40% (n=34) identified as victim-survivors, or immediate family members of victim-survivors, of sexual violence.

The proportion of victim-survivor participants exceeded recorded proportions of victim-survivors in the Queensland community.³⁸ This result is also contrary to previous research indicating a general reluctance to identify victim-survivor status for official purposes,³⁹ although four participants, including one male, declined to confirm their victim-survivor status. While previous research found that obtaining victim-survivor participants for focus group based research is difficult, the final number of victim-survivor participants (n=34) exceeds expectations for qualitative research of between 10 and 20 participants.⁴⁰ The high proportion of victim-survivor participation might reflect the under-reported nature of sexual violence and hence be a more accurate reflection of the true proportion of the population who have directly or indirectly experienced sexual violence.⁴¹ The high proportion of victim-survivor participants in this study could also reflect particular interest victim-survivors might have in criminal justice responses to sexual violence - including sentencing, as well as recruitment strategies leveraging relationships with and targeting sexual violence related agencies and services, and the trauma-informed nature of the research which may have encouraged participation through explicit use of psycho-social safety strategies and techniques. The project team's trauma-informed approach is set out in Appendix 3. However, recruiting male victim-survivors was challenging, as reflected in the final participant numbers for male victim-survivors (n=2).

Participant demographics are reported over page in Table 1.

³⁸ Women's Safety & Justice Taskforce (n 7).

³⁹ Higgins et al. (n 8); Queensland Sentencing Advisory Council, *Sentencing Spotlight on Sexual Assault* (n 13).

⁴⁰ Laura Peeters et al, 'Current care for victims of sexual violence and future sexual assault care centres in

Belgium: the perspective of victims' (2019) 19(1) *BMC International Health and Human Rights* 21.

⁴¹ Higgins et al. (n 8); Queensland Sentencing Advisory Council, *Sentencing Spotlight on Sexual Assault* (n 13).

Table 1: Participant demographics

Demographic	Particulars	Sample (%)
Gender	Female	64 (72%)
	Male	23 (26%)
	Non-binary	0 (0%)
	Prefer not to say	2 (2%)
Age	18 – 29	17 (19%)
	30 – 39	18 (20%)
	40 – 49	21 (24%)
	50 – 59	20 (22%)
	60 – 69	5 (6%)
	70+	3 (3%)
	Prefer not to say	5 (6%)
Aboriginal or Torres Strait Islander identity	Yes	14 (16%)
	No	71 (80%)
	Prefer not to say	4 (4%)
Highest level of Education	Year 7 or below	0 (0%)
	Year 8, 9 or 10	5 (6%)
	Year 11 or 12	10 (11%)
	Certificate or Diploma	14 (16%)
	Bachelor's Degree	28 (31%)
	Postgraduate Degree	27 (30%)
	Prefer not to say	5 (6%)
Employment status	Employed including home duties	61 (69%)
	Student	11 (12%)
	Retired	4 (4%)
	Not currently employed (incl. unable to work)	7 (8%)
	Prefer not to say	6 (7%)
Geographical location	Sunshine Coast	28 (32%)
	Brisbane	19 (22%)
	Cairns	17 (19%)
	Goondiwindi	11 (12%)
	Gold Coast	4 (5%)
	Ipswich	2 (2%)
	Gympie	1 (1%)
	Rockhampton	2 (2%)
	Toowoomba	3 (3%)
	Weipa	1 (1%)
	Mt Isa	1 (1%)
Victim-survivor (or immediate family)	Victim-survivor female	32 (36%)
	Victim-survivor male	2 (2%)
	Not victim-survivor	40 (45%)
	Prefer not to say	15 (17%)
Total Participants		89 (100%)

Facilitation

Participants attended a two-hour structured focus group. Nineteen focus groups were held across Queensland. The focus groups aimed for 8 to 12 participants in each session though most focus groups had fewer participants attend. The smaller focus group sizes ($n \leq 7$) allowed more detailed discussion amongst participants to explore the themes and provide quality contributions to the research project.

Participants were convened into focus group cohorts according to gender, to limit social-desirability bias,⁴² to increase likelihood of participants sharing their views about rape and sexual assault sentencing and to facilitate open and honest discussions. Participants were further separated according to whether they identified as a victim-survivor, or an immediate family member of a victim-survivor, of sexual violence, to increase the psychological and physical safety for those participants.⁴³ During recruitment, participants who chose not to disclose a victim-survivor background were allocated to the general, gendered focus groups. One victim-survivor participant chose to attend a general focus group rather than a designated victim-survivor focus group to attend with a friend.

The First Nations focus group contained only male participants and was convened in a culturally sensitive way. A community justice group coordinator facilitated the First Nations focus group, with guidance from project researchers. Research activities were adapted to be responsive to the group and cultural sensitivities. For example, the first sentencing purposes activity was not undertaken and fewer research activities were addressed.

The research did not aim to be representative of the entire Queensland population, however, through its online participation opportunities and considered approach to participant selection, this project provided a broad yet nuanced understanding of Queenslanders' views on sentencing. It is significant

to note the research does not reflect the views or interests of Aboriginal and Torres Strait Islander

people in Queensland. This perspective is imperative given the prevalence of sexual violence perpetrated against, and by, First Nations People and is attended to in detail within the limitations of this report. Focus groups were held in Cairns, Sunshine Coast, Brisbane, Goondiwindi and online. These locations were chosen to capture a diverse sample, and for participant convenience. More focus groups were located in South East Queensland than regional and remote locations, given the respective population numbers. The online focus groups incorporated participants from Gold Coast, Ipswich, Gympie, Rockhampton, Toowoomba, Weipa, Mareeba and Mt Isa. In that way, participants represented a range of metropolitan, regional and remote locations from across Queensland.

Participants received an \$80 electronic payment for their participation; Goondiwindi participants were provided a catered lunch in lieu of payment.

Structure and activities

Focus group activities consisted of scenarios and vignettes being presented to participants, who were asked to rank sentencing purposes for two behaviours, identify the most important sentencing purpose based upon vignettes and choose the more serious offending behaviour from pairs of offences. A combination of written activities and group discussion was used to collect participant views. The participant booklets are included in Appendix 4.

Because the focus groups explored community views of sentencing rape and sexual assault offences, relevant legal concepts were described to participants to ensure basic participant understanding. The focus group facilitators explained:

- > The responsibility of the parliaments, courts and executive in sentencing;
- > Sentencing purposes of just punishment, denunciation, community protection, deterrence (general and specific) and rehabilitation; and

⁴² Social-desirability bias occurs when participants feel limited in their capacity to share their honest opinions in front of others as they believe their views may prompt judgment: Nicole Bergen and Ronald Labonté, "Everything is Perfect, and We Have No Problems": Detecting and Limiting Social Desirability Bias in

Qualitative Research' (2020) 30(5) *Qualitative Health Research* 783.

⁴³ Rebecca Campbell, Rachael Goodman-Williams and McKenzie Javorka, 'A Trauma-Informed Approach to Sexual Violence Research Ethics and Open Science' (2019) 34 *Journal of Interpersonal Violence* 4765.

- > What consent means and the age at which a person can consent to sexual intercourse.

During the focus groups, where participants misunderstood or misrepresented the legal concepts, facilitators clarified. However, participant quotations may not have all used the correct legal or scholarly terminology. Clarification has been provided, throughout this report, where participant views have deviated from legal terminology or correctness.

All five sentencing purposes from the *Penalties and Sentences Act 1992* (Qld) were presented to the participants to limit bias towards the three targeted sentencing purposes (i.e., punishment, denunciation and community protection). The following sentencing purposes definitions were provided to participants, both verbally and in writing:

1. *Punishment*: to punish the person in a way that is just.
2. *Denunciation*: to send a strong message to the person and community that the person's behaviour won't be tolerated.
3. *Community Protection*: to protect the Queensland community from the person.
4. *Deterrence*: to discourage the person and other people from committing crimes like this.
5. *Rehabilitation*: to help the person so they won't offend again.

Where participants referred to deterrence in their discussion, they were prompted to clarify whether they were referring to specific, general or both types of deterrence.

Vignettes

To answer research question 1, participants were asked to individually rank the five sentencing purposes from 1 (most important) to 5 (least important) for one non-aggravated sexual assault and one rape without contextual factors. This ranking activity, conducted in the focus groups, formed a quantitative component of this research. The First Nations focus group (n=11) did not undertake this activity. Three vignettes were also developed and presented to participants. These vignettes were factually detailed, providing aggravating and mitigating circumstances relevant to the defendant's behaviour as well as relevant victim-survivor characteristics. The vignettes were

based upon real Queensland judgments. The full vignettes are set out in Appendix 5.

Participants were asked to choose the most important sentencing purpose for each of these vignettes, which was followed by group discussion. Participants were then given the opportunity to reconfirm their selection, or select another sentencing purpose to determine whether their views changed and why.

Scenarios

To answer research question 2, 14 short, fictional scenarios were developed for participant consideration. Scenarios included age, descriptions of body parts and relationships between perpetrator and victim-survivor. The scenario descriptions are listed in Appendix 6. Importantly, the scenarios depicted a range of sexual and non-sexual offences with differing maximum penalties under the *Criminal Code 1899* (Qld) from 3 years imprisonment to life imprisonment. Those scenarios were then paired with each other to produce 26 pairs of offences that were presented to participants. Sexual offences were paired with other sexual offences and non-sexual offences.

For each pair of offences, participants were asked to rank the most serious offending of the two scenarios. The 26 pairs were not enough to produce a full data set nor designed for that purpose; however, each scenario was reproduced two to five times to allow an offence seriousness ranking to emerge. The paired comparisons are outlined in Appendix 7. Participants were given the opportunity to discuss their reasoning for ranking seriousness in the pairs of offences. This ranking activity, conducted throughout the focus groups, reflects another quantitative component of this project.

3.2 Ethical Considerations

All names used in the vignettes and scenarios were fictional. To avoid any unintended cultural or racial bias from participants in the focus groups, the perpetrators in each scenario were given 'D' names as the defendant and the victim-survivors were given 'V' names. All parties were given the same age (35), where age was not relevant to the offending, and to remove age as a consideration for sentencing purposes, following the methodology in Hudson.⁴⁴

The person accused or convicted of committing the sexual violence offence has largely been referred to as the "perpetrator" where party names were not used. Other terms such as "defendant", "accused" or "offender" have also been used interchangeably throughout. Appellate court judgments refer to the perpetrator as the "respondent" which should be noted, for clarity, here.

The other party to the offence is the person who has had the offending perpetrated against them. We note "victim" is contentious terminology because it reduces a person to a vulnerable, offence focused and limiting identity that emphasises their lack of control, thereby restrictive recovery from abuse while reinforcing empowerment of the perpetrator instead of empowering the recipient of the abuse.⁴⁵ In keeping with state and national policy and the non-government service sector,⁴⁶ focus group facilitators have used the term "victim-survivor" to acknowledge the harm done by sexual offending, to promote recovery from victimisation, to acknowledge that 'many victims not only survive but ultimately thrive after experiencing abuse'⁴⁷ and to offer choice of identity for those who have suffered harm as the result of offending behaviour.⁴⁸ "Victim-survivor" terminology is used throughout this report. We note case law refers to "complainant" as the terminology for victim-survivor.

3.3 Analytic Strategy

Focus group data was analysed using a combination of quantitative and qualitative methods.

Quantitative analysis

Quantitative data was exported from Microsoft Forms and collated into a single excel spreadsheet for analysis of community views on sentencing purposes and offence seriousness. A series of descriptive analyses were conducted to identify the preferred sentencing purposes for the vignettes and scenario pairings. Data were also imported into SPSS v.29 to enable comparative analyses to be performed. Seriousness rankings for the paired comparison scenarios was calculated by comparing the count of participant choice as 'most serious'. Bivariate (e.g., chi-square) analyses were conducted to compare differences in responses between the victim-survivor and non-victim-survivor groups, as well as by offence type (with and without contextual background information). Because participants were given the choice to decline to answer questions, some missing data ($n < 4$) was evident in the seriousness rankings, which are included in Appendix 8. As such, where quantitative data does not equal 89 (whole sample), this indicates some participants chose not to answer that question.

Qualitative analysis

A thematic analysis was conducted from the focus group transcripts and written comments made on focus group documentation. Braun and Clarke's⁴⁹ six-step approach to conducting a thematic analysis was adopted. This included (1) familiarisation with data; (2) generating data coding; (3) searching for themes; (4) reviewing themes; (5) defining and naming themes; and (6) writing report.

⁴⁴ Nina Hudson, 'Community Attitudes to Offence Seriousness' (Victorian Sentencing Advisory Council, May 2012) 22.

⁴⁵ Boyle (n 9); *Royal Commission into Family Violence* (Report, March 2016) vol 1, 10; Shirley Jülich, Julienne Molineaux, and Malcolm David Green, 'The strategic use of terminology in restorative justice for persons harmed

by sexual violence' (2020) 3(2) *The International Journal of Restorative Justice* 215.

⁴⁶ *Royal Commission into Family Violence* (n 45).

⁴⁷ Women's Safety and Justice Taskforce (n 7).

⁴⁸ Jülich, Molineaux and Green (n 45).

⁴⁹ Virginia Braun and Victoria Clarke, 'Using thematic analysis in psychology' (2006) 3(2) *Qualitative Research in Psychology* 77.

4.0 Key Findings

Six key findings emerged from the focus group research.

There were three key findings in relation to each research question which are set out in Table 2.

Table 2: Research questions and key findings

Research Question 1:	
How does the community view the importance of the sentencing purposes of just punishment, denunciation and community protection for sexual assault and rape offences?	
Finding 1	Without exposure to broader contextual information, offence type influences community views on sentencing purposes.
Finding 2	<p>The community differentiates the importance of sentencing purposes based on contextual factors.</p> <ul style="list-style-type: none"> A. Community protection is linked to the perceived dangerousness of a perpetrator; B. Denunciation has value when responding to family and domestic violence; and C. Punishment is favoured in circumstances involving a vulnerable victim-survivor or an increase in community vulnerability.
Finding 3	Victim-survivor perspectives on the importance of sentencing purposes mirrors general participant responses.
Research Question 2:	
How does the community rank the seriousness of sexual assault and rape offences compared to other offences committed in Queensland?	
Finding 4	<p>Harm and culpability factors emerged as key considerations when determining the seriousness of sexual offences.</p> <ul style="list-style-type: none"> A. Long-term psychological harm needs special consideration at sentencing for sexual assault and rape offences; and B. The perpetrator's relationship to the victim-survivor is a complex culpability factor in determining seriousness.
Finding 5	The community is victim-survivor centred when ranking the seriousness of sexual assault and rape offences.
Finding 6	<p>Contextual factors matter when ranking the seriousness of offences.</p> <ul style="list-style-type: none"> A. Sexual offences against children were ranked as more serious than similar offences against adults; B. Nonsexual offences involving potential lethality were ranked more serious than sexual offences; and C. The nature of sexual acts affected offence seriousness determinations.

Research Question 1:

How does the community view the importance of the sentencing purposes of just punishment, denunciation and community protection for sexual assault and rape offences?

Finding 1: Without exposure to broader contextual information, offence type influences community views on sentencing purposes.

Findings suggest that when community is asked to consider sentencing purposes in the absence of contextual offence information, offence type matters. Focus group participants had an opportunity to consider sentencing purposes without exposure to any background context, in the first instance, and asked to select the most important sentencing purpose for each offence type: sexual assault and rape. Figure A shows the frequency of participant responses. In the absence of context, participants considered denunciation, deterrence

and punishment, almost equally, as important sentencing purposes for sexual assault. Community protection and rehabilitation were deemed least important. In contrast, when the rape offence was considered without background context, participants overwhelmingly identified punishment as a key sentencing purpose, followed by community protection. Very little importance was given to denunciation, deterrence or rehabilitation. Hence, offence type influences views on sentencing purposes, in the absence of context.

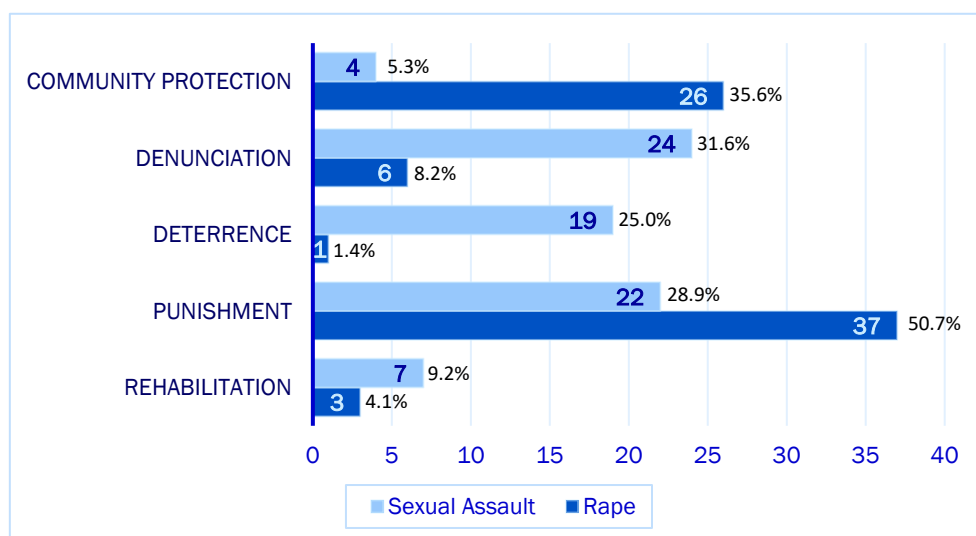


Figure A: Most important sentencing purpose – without background context

The community views on sentencing purposes without context, according to offence type, is notable. When sentencing outcomes are reported in the community, often through news or social media outlets, very little contextual information is provided. The community, then, are regularly forming views on

sentencing in the absence of contextual detail. Understanding community views of sentencing purposes of sexual assault and rape, without context, indicates the importance of ensuring contextual information is communicated with sentencing outcomes.

Finding 2: The community differentiates the importance of sentencing purposes based on contextual factors.

Findings suggest that exposure to context and circumstances of the offence helps community members to differentiate between sentencing purposes, and their importance. When presented with case scenarios containing detailed contextual background and offence information, there was more delineation in the preferred sentencing options, regardless of offence type. In fact, there was a significant shift in community views when presented with background information, with 29% ($n = 22$) of participants opting to change at least one of their responses as a result of being exposed to more contextual information, across the scenarios presented. For example, for the offence of sexual assault, community members initially indicated almost equal preference for denunciation, punishment and deterrence. However, once presented with a specific sexual assault case example, community protection was considered

most important (followed by punishment), with reductions in preferences for denunciation and deterrence observed (See Figure B), which aligned more closely with community views of rape offences (Figure C).

A similar result can be interpreted from participant responses for rape offences, see Figure C. Without any background context, the community emphasised punishment and community protection. When contextual information was provided, participants reconfirmed community protection, but placed less importance on punishment as a sentencing purpose. Rather, they endorsed denunciation and rehabilitation as important to sentencing, with all four being almost equal in weighting. Deterrence was valued least, regardless of context.

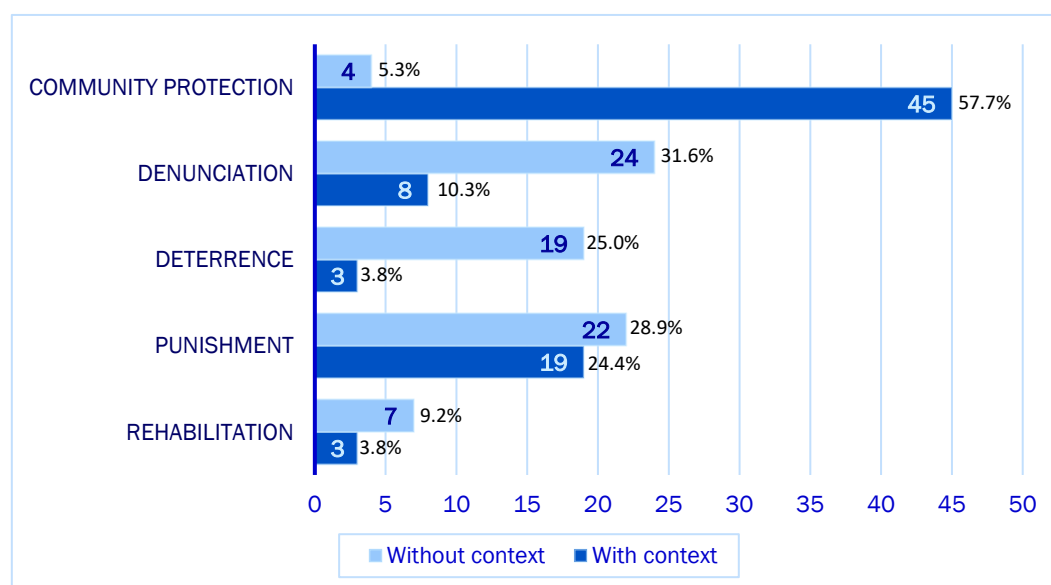


Figure B: Comparison of views on sentencing purposes for sexual assault (with and without background context)

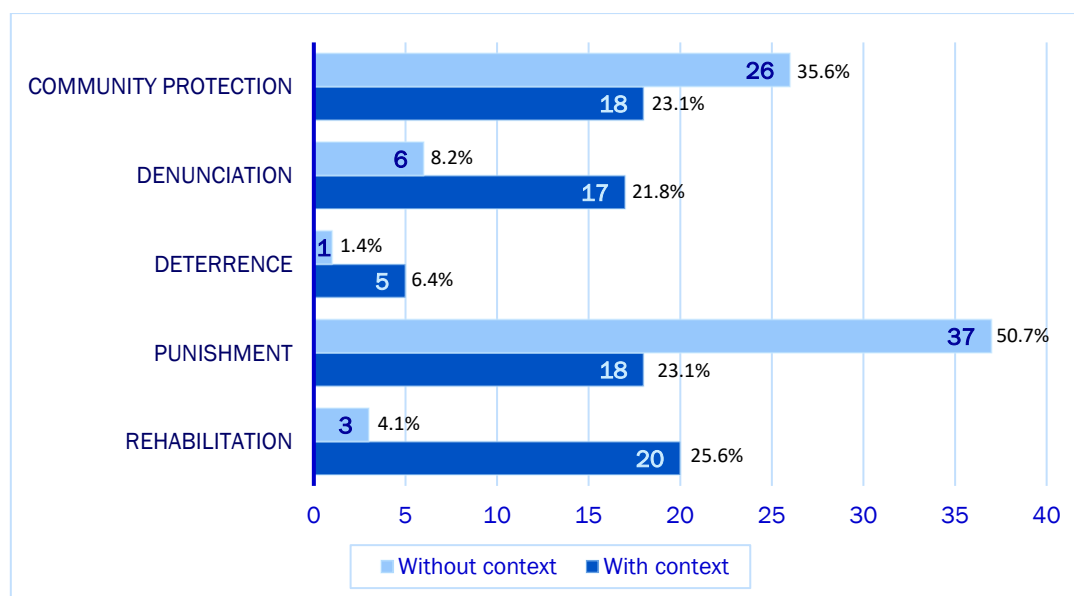


Figure C: Comparison of views on sentencing purposes for rape (with and without background context)

Contextual factors, and their respective weighting or importance to participants, were also considered during focus group discussion. Eighteen of the total focus group participants changed their selection of most important sentencing purpose in relation to one or more of the vignettes containing contextual factors. Deterrence remained unchanged but there was movement across the other sentencing purposes by up to three points. For rape with context, denunciation passed rehabilitation as the most important sentencing purpose although the span was still relatively even across community protection, denunciation, punishment and rehabilitation. For the sexual assault with context, community protection, as the most important sentencing purpose, remained and increased by two places. Contextual factors influenced community views about most important sentencing purposes for sexual assault and rape offences in several key ways. Three significant considerations emerged from the research data:

- A. Community protection is linked to perceived dangerousness of a perpetrator;
- B. Denunciation has value when responding to family and domestic violence; and
- C. Punishment is favoured in circumstances where vulnerability of the victim-survivor or community was indicated.

These considerations will be further explored in turn.

A. Community protection is linked to the perceived dangerousness of a perpetrator.

Community protection as a sentencing purpose for sexual assault and rape offences was particularly important to participants when there was contextual information that increased perceptions of dangerousness. Dangerousness related to circumstances such as stranger offences, offending in public places and offending during daylight. Dangerousness, then, increased the threat to the broader community, necessitating community protection as an appropriate sentencing response.

Sexual offences perpetrated by strangers increased perceptions of danger because there is a wider pool of potential victims, placing anyone at risk; “it seems like he could be anywhere, anytime. There's more than one victim.” (FG8) Hence it becomes a public safety issue which community protection, as a sentencing purpose, serves to address:

“I'm thinking how many other people might this person attack? Pretty much any person walking past could be a potential victim. For me it was kind of the number of people that this person might be targeting made me go with community protection, because that's all the people in the community.” (FG7)

Particular concern was raised for vulnerable members of the community. Potential victims who may not be able to defend themselves due to age, strength, or disability, for example, were at

significant risk of sexual violence, according to community members:

"What's stopping him from doing that to someone else? A mother or a child or a teenager or someone else or maybe couldn't have screamed for help or couldn't get it out verbally. That's what scares me a little bit." (FG17)

Participants were also concerned about offending occurring in public spaces, and in broad daylight. The brazen and public nature of the offending increased perceptions of dangerousness for participants because, *"if you are going to do this in public, in broad daylight, what are you going to do behind closed doors?"* (FG12)

Not being able to predict when the offending might occur was also concerning to participants thus warranting a community protection response. The concept of 'brazenness' was raised as an element of the perpetrator's potential danger to the community.

"I also chose community protection. ...it's such a brazen opportunistic offence ...not being able to predict when or if they would behave in such a way, so I think community protection is the most paramount need at this point in time." (FG6)

Participants also highlighted that premeditation and an offenders' modus operandi increased perceptions of dangerousness. In particular, a perpetrator's intentional concealment prior to offending, a potential victim-survivor being unaware, and being in circumstances where they reasonably expected to feel safe, were important considerations. One participant highlighted such vulnerabilities, *"she was not considering herself vulnerable in that environment. She was just going about her day"* (FG17), while others remarked on the predatory nature of the offence, *"concealment, the waiting in a particular location in bushes. So that's premeditated, that's actually waiting for the right kind of victim to come along."* (FG18) Overall, it is the unpredictable, predatory aspects that posed potential risks to anyone in the community that were the most salient factors driving the need for community protection as a sentencing purpose.

Community members considered sexual violence to have a ripple effect beyond the immediate impacts

on the victim-survivor, extending to risks more broadly impacting the community. Participants referred to the *"legitimacy of the community"* (FG12) being undermined by perpetrators of sexual violence, stating with conviction the need for individuals to feel safe within their community. Specifically, *"[y]ou don't want this type of bloke living within your community."* (FG19) One participant stated, *"I really don't care about their punishment anymore. I care about keeping the community safe from them."* (FG7) Community protection, then, can result in a *"push to eliminate from our community."* (FG19)

Participants noted that their trust in others within the community impacted upon their ability to participate in society, influencing their everyday movements and choices within public spaces. *"There needs to be certain frameworks, there needs to be certain trusts that we have within the community, by the community, for the community that women can, men can go out at certain times and be safe.... community protection ...is a fundamental principle to a democracy and to a community..."* (FG12) as *"the consequences of not having community protection is significant."* (FG12). Another participant elaborated further:

"These are the scenarios that prevent women from walking at night or going on their own to places or living their life in a full and rich way, because these things potentially sit in the back of the mind and going, well, there could be someone hiding in the bushes tonight or behind that car or whatever it might be. And this is the kind of thing that as repeatedly occurs in the community, starts to impact on how we live our lives." (FG8)

Community protection, therefore, appears to be an important sentencing purpose for rape and sexual assault offences, particularly linked to perceived dangerousness. Brennan J, in High Court of Australia authority, stated that *"[t]he necessary and ultimate justification for criminal sanctions is the protection of society from conduct which the law proscribes"*.⁵⁰ Participants in these focus groups approached community protection from this perspective as well, aligning the use of this sentencing purpose with the need to protect the community from sexual violence perpetrators.

⁵⁰ *Channon v R* (1978) 20 ALR 1, 5 (Brennan J).

B. Denunciation has value when responding to family and domestic violence.

There were two significant considerations in relation to denunciation as a sentencing purpose for sexual assault and rape offences. Firstly, participants questioned the value of denunciation because they felt there was already widespread understanding that sexual violence is wrong. Secondly, participants identified most value in denunciation as a sentencing purpose in circumstances of domestic and family violence. Overall, denunciation, as a sentencing purpose, held less weight for focus group participants than community protection or punishment as a sentencing purpose.

Challenges of denunciation as a sentencing purpose

Denunciation, largely, was not considered enough to address the real and ongoing effects of sexual violence in the community. In fact, denunciation, according to participants, was a problematic sentencing purpose because condemning behaviour which perpetrates sexual violence will not, of itself, address the issue in the community. Resultingly, some participants saw little value in it.

"We are getting denunciation wrong, but also there's so much wrong in society or amongst the people who are just broken, families broken, people broken, communities broken that they've got nothing to lose. They don't care. How can you do denunciation if people have got nothing to lose?" (FG7)

Denunciation was also criticised because social and cultural issues are influencing how denunciation might work: *"I'm unlikely to ever choose that [denunciation] because of my sense of the fragmentation of our society right now. And I don't have a great faith that there would actually be a message communicated."* (FG7) Other participants shared this view.

"A lot of people at the moment are thinking, 'What the hell is happening to society...'... 'And to our world?' And so, if we can get denunciation right, then there's a really good opportunity to change the way that people are behaving out there. But I don't know how to get that right. I think it's really important." (FG7)

Domestic and family violence

Community members felt denunciation, as a sentencing purpose, has most value when sexual violence occurs in the context of family and domestic violence. Participants, in their exploration of denunciation as a sentencing purpose, strongly condemned violence in a domestic relationship and identified that their understanding of sexual violence prevalence in domestic circumstances suggested that strong condemnation was needed to ensure the behaviour does not continue. Importantly, the fact that perpetrators have easier access to victim-survivors and the domestic relationship between the perpetrator and victim-survivor normalises the offending behaviour were important considerations by community members. Participants were also highly critical of perpetrators who take advantage of their domestic situation to commit sexual offences. However, participants also expressed some clear challenges about the importance, or lack thereof, of denunciation as a sentencing purpose for rape and sexual assault offences. Namely, participants considered that the abhorrence of sexual violence was so widely promulgated and understood as part of normal society that further condemnation should not, in fact, be needed.

Participants referred to the repeated offending which is characteristic of domestic and family violence: *"It's repeated and he has no regard for her... He's seriously dangerous"* (FG17) and *"I did choose denunciation because of ...there's just zero tolerance... it's a repeated behaviour."* (FG17) Participants identified that denunciation might play a role in responding to repeat offending within intimate partner relationships. In fact, *"...there's just this mentality that regardless of what they do, continue to offend or breach the orders, that nothing will be done."* (FG14) Denunciation, then, is a logical response. The prevalence is also relevant because, *"we've got such a massive problem with domestic violence, sexual violence. It doesn't seem to be getting any better and it seems to be happening a lot in relationships."* (FG17)

The intimate nature of the perpetrator and victim-survivor relationship, according to participants, normalises the offending through a pattern of behaviours designed to dominate and control the victim-survivor to ensure their compliance.⁵¹ Denunciation can play a role in condemning sexual

⁵¹ Queensland Women's Safety & Justice Taskforce (n 7).

violence in a relationship. One participant identified that a perpetrator may feel a sense of ownership or entitlement over a victim-survivor in a domestic relationship which justifies sexual offending; denunciation is needed so the community understands that sexual offending is not acceptable conduct between domestic partners: *“assuming that they can do whatever they want because they are in a relationship. ...People will assume that you're mine because you're in a relationship with me or something like that.”*⁵² (FG2) Participants suggested that a romantic relationship could, to some perpetrators, suggest consent is always assumed: *“I feel that it can be assumed, especially among men, that consent is just a given because you're together, which is completely false.”* (FG16) One participant questioned the perpetrator's knowledge and/or reckless disregard of the law criminalising sexual violence (especially in a domestic relationship):

“I had denunciation because I felt like, ‘Jeez, this guy has not got the message yet.’ He needs some kind of slap around the face to realise that this is not okay. He doesn't seem to care or realise that this is not okay... I just felt like there's no message getting through here and I really wanted that message to get through.” (FG7)

Participants believed denunciation promulgated the message to the community that rape and sexual assault is wrong: *“[W]e've got systematic things in place, we've got laws in place, they're trying to do these things, but these men like Derek aren't taking any notice of that stuff.”* (FG17) However, participants also identified the challenges of denunciation for sexual assault and rape in a domestic relationship.

Participants were very clear that being in a domestic relationship is not an excuse for sexual violence and the law should respond accordingly. Participants expressed concern that denunciation was not needed because the community already knows that sexual violence is wrong: *“I didn't personally pick denunciation because people know that raping your partner is bad.”* (FG15) Participants highlighted how access to a victim-survivor in a domestic relationship does not excuse sexual violence. Perpetrators should know better: *“[H]e's already had domestic violence orders, or protection orders. He already*

knows it's the bad thing. He is not meant to be doing it.” (FG15) The community should also know better: *“I feel like within the context of a relationship these kind of actions... they're still not taken seriously by the people who are offending necessarily or by the community as a whole.”* (FG10)

Domestic Violence Orders were given specific consideration from focus group participants, in relation to denunciation as a sentencing purpose. The significance of DVOs were identified in the focus group responses: *“Domestic violence orders are really traumatic for people to go through to install. And then when you see the offender riding over that, it gives a sense of hopelessness and despair, [which] adds to the trauma that the victim's suffering.”* (FG4) Some participants felt that where an offender had breached a Domestic Violence Order there was a need to move beyond denunciation: *“He's got a DV order and he's still continued anyway. What is the next step for him to get this message across?”* (FG2) Some community members interpreted a disregard for Domestic Violence Orders, in the form of sexual violence, as requiring a more punitive approach to sentencing: *“So I just think that to go soft on this person, I would be really disappointed to read that kind of outcome in report or to hear it”* (FG4). Participants viewed denunciation as being unable to provide this response: *“He doesn't seem to understand orders, feels that he can get away with them. It just made me think he needed something stronger.”* (FG12)

In sentencing a perpetrator for a sexual violence offence in a domestic relationship, Lorry J noted the need to ‘send a message to other men’ regarding sexual violence offending and to impose a sentence which reflects ‘the community's condemnation of violence committed towards women, [and] sexual violence committed towards woman in the context of a domestic relationship.’⁵³ In this way, participant views reflect judicial commentary in relation to domestic and family sexual violence.

Participants were, therefore, mixed in their opinions of denunciation as a sentencing purpose for sexual assault and rape. Denunciation was not a strong sentencing purpose for rape and sexual assault offences. It had particular value where the sexual violence was perpetrated in a domestic and family relationship.

⁵² In response to a facilitator question asking why denunciation was their primary sentencing purpose.

⁵³ *R v DJT* [2023] QDCSR 93 (Lorry J).

C. Punishment is favoured in circumstances involving a vulnerable victim-survivor or an increase in community vulnerability.

Punishment was a frequent choice for sentencing purposes for participants in sexual assault and rape offences. In relation to punishment, generally, participants equated punishment with retributive consequences and had difficulty separating the sentencing purpose from a sentencing outcome. In relation to using punishment as a sentencing purpose, focus group commentary overwhelmingly related to the value of punishment in circumstances of vulnerability. Both victim-survivor and community vulnerability were identified as necessitating a retributive outcome at sentencing.

Conceptualising punishment

In conceptualising punishment as a sentencing purpose, participants had difficulty articulating what punishment would mean without prescribing a type of punishment. Namely, many participants chose punishment *“purely with the thought of incarceration in mind...”* (FG1) or *“punishment equates to jail term effectively accomplishing all options”*⁵⁴ (FG1) despite punishment being a sentencing purpose and incarceration being a sentencing outcome because *“I feel the term punishment is ambiguous without knowing a sentence.”* (FG1)

In fact, punishment was a particularly favourable sentencing purpose because it produced, what the community considered to be, a tangible outcome in the form of imprisonment. Community members discussed punishment in terms of *“some kind of consequence for him where he would actually face like, “Oh, I did something wrong””* (FG3) for offending behaviour. Punishment, for many participants, had to be imprisonment.

There was a strong correlation between punishment and community protection as well. In fact, the focus groups identified how punishment, in the form of imprisonment, resulted in community protection because the perpetrator is removed from the community and is no longer a threat to the community. For example, *“if Daniel has a lifetime of punishment, the community is protected for Daniel's lifetime.”* (FG4)

According to participants, then, punishment was the most significant and retributive response out of the sentencing purposes, so it was particularly favourable in circumstances of victim-survivor vulnerability, a significant finding arising from focus group discussion. This was especially notable in circumstances where children were the victim-survivor and/or where the offending behaviour made the community vulnerable.

Children as vulnerable

Children were recognised in the focus group discussions as inherently vulnerable, which mirrors judicial precedent.⁵⁵ Participants felt offences against children warranted a punitive response. Participants considered that children *“are the most vulnerable and that they should have the highest levels of protection purely because they don't have any way of helping themselves.”* (FG1)

Participants were scathing in their condemnation of sexual offending against children. Long term effects on the child were considered: a *“child will carry that all their life”* (FG7) because the sexual offending results in *“a total shattering of innocence”* (FG13). Namely, *“that perpetrator has stuffed up that little child's life and taken away their innocence and their childhood and that should be punished.”* Further, *“[t]he potential life impact is actually potentially far greater.”*⁵⁶ (FG18)

Punishment commensurate to the level of harm inflicted on the child was needed in response: *“You need to be punished. You need to be punished as long as that little girl's going to be punished, she will never forget that.”* (FG5) In that way, participants linked sentencing purposes to the proportionality principle.

Community vulnerability

Circumstances of community vulnerability also indicated, to participants, that punishment was an important sentencing purpose. Participants, generally, considered the community to be vulnerable when the perpetrators' criminal history, risk of reoffending and the length of offending behaviour indicated they posed a risk to the community. Community members indicated that punishment is an appropriate sentencing response to recidivism *“because it's happened more than*

⁵⁴ Referring to all options for sentencing purposes.

⁵⁵ *R v Stable (a pseudonym)* (2020) 6 QR 617.

⁵⁶ In relation to a child victim-survivor in comparison to an adult victim-survivor.

once. And for him to think that it was okay on any occasion, whether it's once or whether it's five times." (FG9) In addressing criminal history as an indicator for propensity for offending, many participants indicated that criminal history was not an accurate record of the perpetrator's offences: "criminal history implies you've been caught. That's not to say you hadn't done it before or it doesn't play into much considering the three years of offending." (FG6)

While understanding sentencing outcomes was beyond the scope of this research, punishment was the sentencing purpose which most aligned with sentencing outcomes for participants. Preference

for punitiveness at sentencing has been identified in other research as well.⁵⁷ Participants considered punishment in relation to consequences for a perpetrator in response to causing individual or community harm and many automatically considered punishment to be imprisonment because of the nature of sexual assault and rape being so serious to the community. Circumstances of community vulnerability or individual victim-survivor vulnerability made punishment particularly important to the community, as a sentencing purpose, because vulnerability should not be exploited, and strong consequences need to follow exploitation.

Finding 3: Victim-survivor perspectives on the importance of sentencing purposes mirrors general participant responses.

As outlined above, participants were given the opportunity to rank sentencing purposes with and without contextual factors in relation to sexual assault and rape offences. When the results from victim-survivors are compared with the general participants, there is very little difference in views.⁵⁸ When considering sentencing purposes for offence types, victim-survivor responses mirror the general participant responses which is similar for offences with contextual factors where the victim-survivor is an adult. The only significant difference in views of sentencing purposes between victim-survivor and general participants is where the sexual violence occurs against a child.

Sexual assault offence type (no background context) was compared between victim-survivor participants and the general participants (see Figure D). Participant reported very similar preferences, balancing punishment, deterrence and denunciation as the most important sentencing purposes, $\chi^2 (4, 72) = 0.644, p = 0.958$.

Rape offence type was also compared between victim-survivor participants and general participants (see Figure E). Trends in participant responses were very similar, emphasising punishment and community protection as most important, respectively, $\chi^2 (4, 69) = 3.36, p = 0.499$.

⁵⁷ Caroline A Spiranovic, Lynne D Roberts and David Indermaur, 'What Predicts Punitiveness? An Examination of Predictors of Punitive Attitudes towards Offenders in Australia' (2012) 19(2) *Psychiatry, Psychology and the Law* 249.

⁵⁸ The 'general' comparison group for the purpose of the figures and chi-square data comprised of participants who did not identify as having lived experience or did not

identify as having a family member with lived experience of sexual assault or rape offences. Fifteen participants were not included in the 'general' comparison group as they either chose not to disclose their victim-survivor status when asked (n=4) or the project team were advised not to request this data due to cultural sensitivities (n=11).

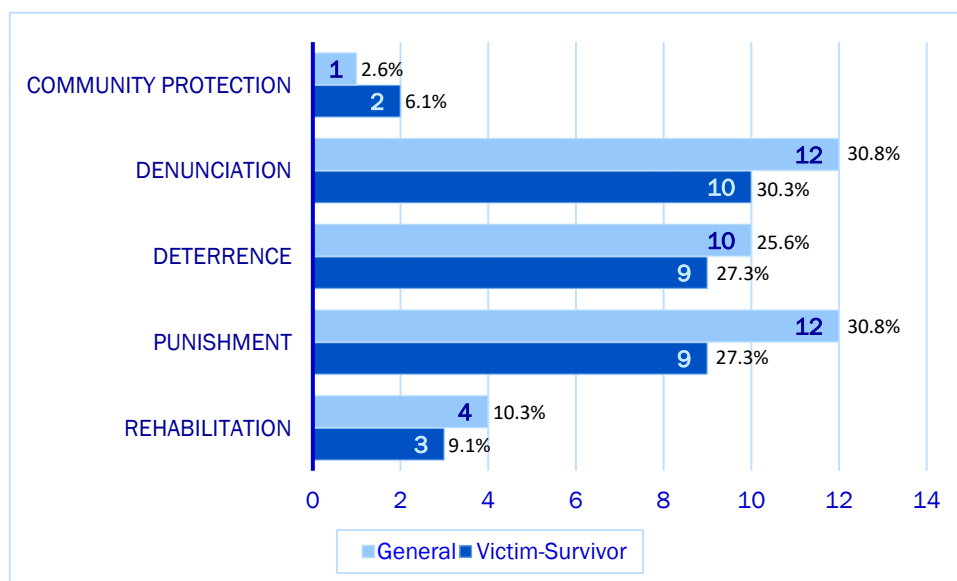


Figure D: Comparison of sentencing purposes – sexual assault (victim-survivor vs general)

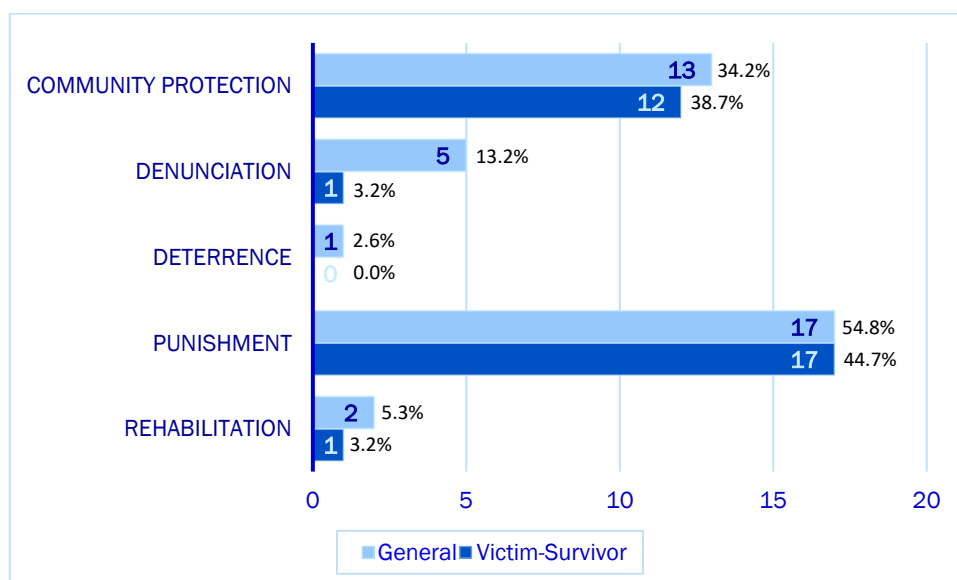


Figure E: Comparison of sentencing purposes – rape (victim-survivor vs general)

Victim-survivor responses were also compared to general participants when focus groups considered the sentencing purposes for sexual offences with contextual factors. Where contextual circumstances were considered, and for the sexual violence actions against adult victim-survivors, there was little difference between victim-survivor and general participant responses similarly to the results above. Figure F shows the comparison between victim-survivor and general participants for each of the three vignettes.

More specifically, for vignette 1 (rape in a domestic relationship), the sentencing purposes were quite evenly distributed, $\chi^2 (4, 74) = 6.86, p = 0.14$. Denunciation was most important for victim-survivors, followed by punishment, while rehabilitation was the most important for general participants followed by community protection. However, the percentage spread shows both types of participants considered most of the sentencing purposes quite evenly. Deterrence was the least important sentencing purpose among both sets of participants.

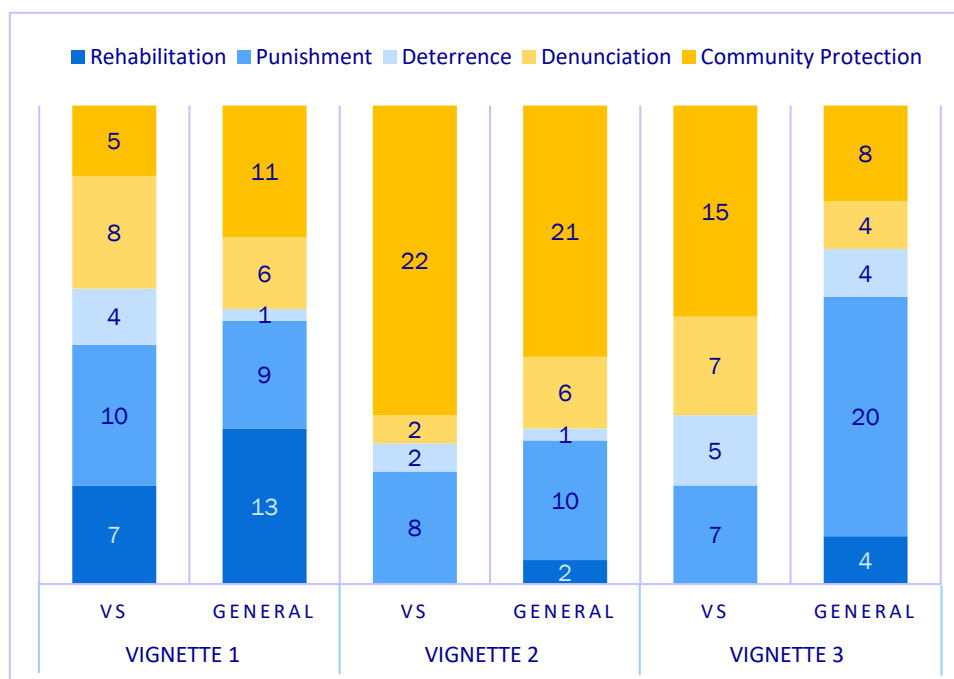


Figure F: Sexual offences with contextual factors – victim-survivor comparison

Participant responses to the second vignette (sexual assault, stranger, public place) indicated similarities between participant groups, $\chi^2(4, 74) = 4.12, p = 0.39$. Both victim-survivors and general participants found community protection to be the most important sentencing purpose followed by punishment. No participants within the victim-survivor group suggested rehabilitation was the most important sentencing purpose for this vignette.

The third vignette (sexual offences against a child) created the most disparity between the two types of participants, $\chi^2(4, 74) = 12.92, p = 0.012$. Adjusted residuals indicated differences between the two groups on the sentencing purposes of community protection and punishment. Victim-survivors identified community protection to be most important. Victim-survivor participants were particularly sensitive to child victim-survivors: “Children I found I wanted to be centred and protected” (FG18) and “[c]hild sexual abuse is a major problem and sentencing of these offenders needs to be reviewed” (FG4). Punishment and denunciation then followed. For general community members though, punishment was the most important sentencing purpose followed by

community protection. Denunciation, deterrence and rehabilitation were equally weighted after punishment and community protection for general participants.

The victim-survivor perspective is a particularly important one for this study. Participants who identified as victim-survivors comprised 38% of the focus group participants. Given the significant prevalence of sexual violence in the community, with only approximately 5.2% of all sexual violence being reported to police,⁵⁹ the representativeness of victim-survivors compared to general participants reflects, unfortunately, the reality of sexual violence in the community at present.

Overall, victim-survivor views aligned with the general participants. Both groups consistently applied similar sentencing purposes to the offence types and contextual cases. However, victim-survivors were more responsive to the importance of community protection as a sentencing purpose for sexual violence against children. Such a response indicates victim-survivors view legal sexual offending responses more strategically and value primary prevention strategies above secondary prevention.

⁵⁹ Australian Bureau of Statistics, *Sexual violence*. (2023) <<https://www.abs.gov.au/statistics/people/crime-and-justice/sexual-violence/latest-release>>.

Victim-survivor perspectives are crucial to inform legal and justice responses to sexual violence. Considering victim-survivor perspectives encourages reporting, supports their participation in criminal justice system processes, and contributes to a reduced prevalence of victimisation.⁶⁰ These perspectives are considered particularly powerful in truth and reconciliation commissions, as well as restorative justice models.⁶¹ Furthermore, the concept of ‘voice’ is central to trauma informed processes that are seen to support victim-survivor involvement in criminal justice system process and enhance recovery for both victims and offenders.⁶² However, the voices of the survivor are often missing from legal and policy responses to sexual violence.

Consideration and recognition of victim-survivor perspective in sentencing processes and outcomes in Queensland would be an impactful reform response. One victim-survivor participant poignantly noted:

“I wonder why there is no sentencing purpose which echoes the voices of the survivor. [T]he judge ... [should] at least consider the [v]ictim impact statement more heavily in sentencing...The victim’s voice is missing heavily in many sentencing outcomes... and often does not take into account these long term impacts and harm.” (FG14)

Research Question 2:

How does the community rank the seriousness of sexual assault and rape offences compared to other offences committed in Queensland?

The focus group research resulted in two main findings in relation to seriousness of sexual assault and rape offences at sentencing. Firstly, the community recognised and reflected on the significant overlap between harm and culpability factors when determining the seriousness of rape and sexual assault offences. Secondly, contextual factors, again, influenced the community’s ranking of sexual assault and rape seriousness compared to other offences committed in Queensland.

Overall, sexual assault and rape offences were mostly considered more serious than other offences, particularly where a child is harmed, although there were complex harm and culpability factors at play in participant considerations. Participants weighted both physical and psychological harm as important considerations, with a significant focus on the long-term impact of victim-survivors. Relationships were also important to participants when assessing

seriousness; from the participants’ perspectives, stranger perpetrators create fear and community danger while sexual offending between known parties breaches trust and care. Nevertheless, both have very serious consequences that should be considered in sentencing.

Regarding contextual factors, there were several key considerations. Firstly, the community was particularly victim-survivor-centred in ranking offence seriousness, especially in relation to ongoing harm. Secondly, sexual violence against children was deemed overwhelmingly more serious than the same offences against adults. Thirdly, non-sexual offences causing death or the potential to cause death emerged as more serious than sexual violence offences. Finally, the nature of the sexual acts performed influenced perceived seriousness of the sexual violence. These results are further explored below.

⁶⁰ Marianne Hester et al., ‘What Is Justice? Perspectives of Victims-Survivors of Gender-Based Violence. Violence Against Women’ (2023) *Violence Against Women* 1.

⁶¹ Rosemary Nagy, ‘Settler Witnessing at the Truth and Reconciliation Commission of Canada’ (2020) 21 *Human Rights Review* 219; Kathleen Daly, ‘Sexual violence and victims’ justice interests’ in Estelle Zinsstag and Marie Keenan (eds), *Restorative Responses to Sexual Violence: Legal, Social and Therapeutic Dimensions* (Routledge 2017).

⁶² Sarah Ailwood et al., ‘Beyond Women’s Voices: Towards a Victim-Survivor-Centred Theory of Listening in Law Reform on Violence Against Women’ (2023) 31 *Feminist Legal Studies* 217; Nicole C. McKenna and Kristy Holtfreter, ‘Trauma-Informed Courts: A Review and Integration of Justice Perspectives and Gender Responsiveness’ (2021) 30(4) *Journal of Aggression, Maltreatment & Trauma* 450; Marg Camilleri, ‘Victims’ Participatory Rights’ in Marg Camilleri and Alistair Harkness (eds), *Australian Courts: Controversies, Challenges and Change*. (Palgrave Macmillan, 2022).

Finding 4: Harm and culpability factors emerged as key considerations when determining the seriousness of sexual assault and rape offences.

To determine how the community ranks the seriousness of sexual assault and rape offences compared to other offences in Queensland, the seriousness of offending is characterised by a consideration of the harm inflicted and the culpability of the offender for that harm. As Henry J provides:

*In sentencing, the seriousness of the crime to be punished is assessed not only by reference to the offender's culpability, in the sense of the degree of deliberation or wickedness with which the offender acted. It is also assessed by reference to the consequences of the offender's actions.*⁶³

The community largely concurs with the consideration of the harm suffered by the victim-survivor, the circumstances which led to that offending, and the culpability of the offender for the suffering inflicted in determining offence seriousness. There are, however, important takeaways regarding the weighting of an offender's actions, the seriousness of sexual offending – particularly offences actions against a child – and the quantification of harm. How the community used harm and culpability in determining seriousness, then, is particularly significant. Focus group research identified significant overlap between harm and culpability factors. In considering seriousness of sexual offences, two key considerations emerged.

- A. Long-term psychological harm needs special consideration at sentencing for sexual assault and rape offences; and
- B. The perpetrator's relationship to the victim-survivor is a complex culpability factor in determining seriousness.

These will be addressed in the following sections.

A. Long-term psychological harm needs special consideration at sentencing for sexual assault and rape offences.

The sentencing process is a complex one. The court has previously recognised that 'sentencing an offender is not, and cannot be undertaken as an exercise in addition or subtraction.'⁶⁴ Instead, sentencing requires judges to engage in an 'instinctive synthesis' by which they 'identify all of the factors that are relevant to the sentence, discusses their significance and then makes a value judgment as to what is the appropriate sentence given all of the factors of the case.'⁶⁵ As mentioned above, harm is an important sentencing consideration. Judges consider 'any physical, mental or emotional harm done to a victim', including harm mentioned in a victim impact statement.⁶⁶ Without prompting, participants identified the importance of considering harm in assessing seriousness: "[T]he nature of harm is really important... So there's sort of a...scale of harm in my mind" (FG11) Types of harm, then, are relevant to sentencing.

In this study, considering both physical and psychological harm was important to participants in determining offence seriousness for sexual assault and rape offences. Participants suggested measuring harm was not "a battle between psychological and physical" (FG7) but "more adding those two together." (FG7) Harm, according to participants was "psychological harm, cumulative impacts of trauma, how that impacts relationships, sense of self, also physical harm." (FG14) Impacts to the victim-survivor were a notable consideration, long-term impact on the victim-survivor indicated greater seriousness to participants: "[t]he length of which you're going to be suffering from the outcomes of those crimes is probably one of the biggest things." (FG18)

However, participants felt that psychological, rather than physical, harm was particularly significant for determining the seriousness of sexual assault and rape offences. "[I considered] mental harm as well

⁶³ *R v BDZ* [2023] QCA 59, [15] (Henry J).

⁶⁴ *Barbaro v the Queen* [2014] HCA 2, [34] (French CJ, Hayne, Kiefel and Bell JJ). See also *R v Eric* (a

pseudonym); *Ex parte Attorney-General* (2021) 7 QR 601, [13] (Sofronoff P).

⁶⁵ *Markarian v R* (2005) 228 CLR 357, [51] (McHugh J).

⁶⁶ *Penalties and Sentences Act 1992* (Qld) s 9(2)(c)(i).

and the intent behind it [the offending].” (FG6) In fact, in some circumstances, “psychological damage is far worse than physical damage” (FG8) and: “[i]t depends on what the physical harm is.” (FG9) Participants also recognised the gravity of psychological harm: “The ongoing psychological trouble you’re going to have, the impacts on every aspect of your life.” (FG17) and the potential significant consequences of psychological harm included becoming “suicidal later on in life or turn[ing] to alcohol and drugs.” (FG19)

Given the magnitude of psychological harm in assessing the seriousness of rape and sexual assault offending, participants expressed concern that, perhaps, the legal system did not account for psychological harm as well as it did for physical harm because “mental damage ...[is] very hard to calculate.” (FG13) Participants questioned “how can you measure mental damage? You can’t really.” (FG13) The legal system, according to participants, has more work to do in recognising psychological harm arising from sexual violence, especially where that harm is long-term:

“We know that the person who was the victim of that crime is going to suffer all their life and ...we know that the harm is emotional and heart harm. But because it’s a courtroom about like, “Well, no hearts here. These are all people that don’t have hearts. We’re just going with the list, the rules, the algorithm.” Maybe we haven’t got that balance right now.” (FG7)

Participants expressed a strong desire for psychological harm to be given just as much weighting as physical harm in sentencing: “I hope the unseen injuries (psychological) begin to carry the weight of seen, physical injuries.” (FG17) Requiring victim-survivors to demonstrate psychological harm in rape and sexual assault sentencing is problematic because “you’re incentivising people essentially to do poorly in their recovery in order to get justice done. And that to me is horrifying. That’s the

victimisation that the system does to humans.” (FG7) Community members identified that courts should be able to assume that sexual violence causes psychological harm: “I would be doing more of an analysis of, objectively, what are the kinds of harm that this conduct would create psychologically? So you don’t even need to show me testimony of how they’re a basket case in the corner.” (FG7)

Ensuring a sentence is proportionate to the harm is an underlying principle of sentencing. Yet determining how psychological trauma and harm should factor into a sentencing decision, in practice, is more difficult to measure. Sentencing courts can assume that sexual offences might cause long-term harm to victim-survivors.⁶⁷ The long-term harm assumption is primarily used, in practice, in Victorian and New South Wales jurisdictions and is not featured well in Queensland case law and could be an area for further statutory and judicial consideration.⁶⁸ However, some uncertainty remains, particularly, the ‘absence of clear guidance regarding the extent of harm which can be attributed to the offender’.⁶⁹ Courts have remarked that there is ‘no right or wrong sentence’, but rather ‘a range of sentences which is appropriate for a particular offence or offences.’⁷⁰ It is the judge’s responsibility to determine an appropriate punishment based on the factors of the offending before them, but as long as they fall within this range, the sentence may be appropriate.⁷¹

While the proportionality principle provides that ‘the seriousness of the crime should be matched by the hardship of the sanction’,⁷² the sentencing process is the only opportunity for psychological impact to contribute to the punishment of an offender. There is a significant burden on the sentencing process to capture and appropriately punish offenders for mental, social and emotional injury resulting from sexual offences. This is particularly problematic given some of the long-term harms from sexual offences are not known at the time of sentencing,⁷³

⁶⁷ *DPP (Vic) v Dalglish (a Pseudonym)* (2017) 262 CLR 428.

⁶⁸ See, eg, *Adamson v The Queen* (2015) 47 VR 268; *Stewart v R* [2012] NSWCCA 183.

⁶⁹ Bagaric and Alexander (n 20) 277.

⁷⁰ *Allen v R* [2012] NSWCCA 173, [3] (Hoeben CJ).

⁷¹ *R v Nemer* [2003] SASC 375, [8] (Doyle CJ).

⁷² Mirko Bagaric, ‘Redefining the circumstances in which family hardship should mitigate sentence severity’ (2019) 42(1) *UNSW Law Journal* 154, 156; *Hoare v The Queen*

(1989) 167 CLR 328, 354. This principle is captured in the *Penalties and Sentences Act 1992* (Qld) s 9(1)(a).

⁷³ Cate Fisher et al, ‘The impacts of child sexual abuse: A rapid evidence assessment’ (Summary Report, Independent Inquiry into Child Sexual Abuse, July 2017) <<https://www.iicsa.org.uk/reports-recommendations/publications/research/impacts-csa>>; Rebecca M Loya, ‘Rape as an Economic Crime: The Impact of Sexual Violence on Survivors’ Employment and

“You've got to make a decision on how serious this is based on how much harm you think it's going to do him over a lifetime. We don't know that, but we've got to still make a decision with that.” (FG1) Incidentally, one participant drew attention to the long-term impact of sexual offences when discussing sentencing of a scenario involving a child victim-survivor:

“[T]hat child has now been changed forever. And when they go through their lives, they're going to find it hard to have relationships. They're going to find it hard to believe in themselves. All of their trajectory now in life has been fucked because of that one act that person did for their own gratification. And that is immeasurable for me. That is a whole life sentence for that person. I think about armed robbery and how much the sentences often are for armed robbery compared to sexual offences. If you were in a gas station and you were held up with a knife, it would be terrifying. But I think that you would still be able to have relationships in your life. You'd probably still be able to have sex. You'd probably still be able to create intimacy. You'd probably eventually get to the point when you were not afraid anymore. But a little person or anybody who's sexually assaulted, it affects so much of who they are as a person moving forward. To me, that's a big impact.” (FG7)

B. The perpetrator's relationship to the victim-survivor is a complex culpability factor in determining seriousness.

The nature of the relationship between the perpetrator and victim-survivor was significant for participants in determining seriousness. The community autonomously identified, through their discussions, that the relationship (or lack thereof) between the perpetrator and victim-survivor had a bearing on the type or severity of harm done to the victim-survivor, as well as the culpability or level of blame attributed to the offender. Harm emerged both as a consequence of culpability and independent to culpability regarding relationship

dynamics between the perpetrator and victim-survivor.

Participants strongly condemned the use of positions of power and trust as a means of offending, or a relationship which enabled such offending, in line with the judicial position.⁷⁴ These power dynamics were commonly identified by participants as occurring in familial, teacher-student and employer-employee relationships, and other circumstances where one individual may have had a duty of care or been morally responsible for the other. Breaches of trust in familial relationships were the most serious to participants, followed by teacher-student exploitation; however, despite participants viewing employer-employee sexual violence as being less serious than sexual offending in other relationships with authority, participants still considered the employer-employee sexual exploitation to be more serious than non-sexual, non-lethal offences.

Participants also viewed the stranger or unknown relationship between parties as notable, and highly relevant, when determining the culpability of the offender and/or the level of harm in the sexual offending. Overall, participants concluded that the long-term impacts of offences perpetrated by strangers were more serious than where parties are known, such as intimate partners or friends, which goes to the harm factor. Conversely, participants attributed those offenders known to the victim-survivor with higher culpability for the offences perpetrated due to the breach of trust of the relationships that occurred in addition to the offence.

Community views in relation to positions of trust and authority, as well as known vs unknown parties, are explored further below.

Positions of trust and authority

Sentencing courts acknowledge that breaches of trust, or using a position of power to perpetrate sexual offending, should be included as culpability factors when determining sentencing.⁷⁵ In similar ways, participants considered relationships that

Economic Well-Being' (2015) 30(16) *Journal of Interpersonal Violence* 2793; Laura Tarzia, “‘It Went to the Very Heart of Who I Was as a Woman’: The Invisible Impacts of Intimate Partner Sexual Violence” (2021) 31(2) *Qualitative Health Research* 287; Jeanie Santaularia, ‘Relationships between sexual violence and chronic

disease: a cross-sectional study’ (2014) 14 *BMC Public Health* 1.

⁷⁴ *R v SDO* [2021] QCA 263; *R v NAC* [2022] QCA 210; *R v Rac*; *Ex Parte Attorney-General (Qld)* [2018] QCA 178.

⁷⁵ See, eg, *R v BDQ* [2022] QCA 71; *R v CLN* [2016] QDC 111; *R v KAK* [2013] QCA 310.

involved a power dynamic to increase the culpability of the offender because *“their victim is vulnerable”* (FG4), the victim-survivor is *“reliant on them in some way”* (FG10) and the sexual offending resulted in a *“level of betrayal.”* (FG17) Furthermore, *“the extent to which coercion could be contributing”* (FG10) was also raised as a factor in these types of relationships. People in positions of power, then, are more culpable for their actions and the nature of that relationship should be considered in determining seriousness for the purpose of sentencing.

Participants found that sexual offending that occurred within relationships had different consequences depending on the kind of power dynamic that was in play. In discussing sexual offences occurring at school from a teacher to a student, at work from an employer to an employee, and in the home between family members, participants recognised the differing levels of trust placed in those individuals. Where the sexual offending targeted a child victim-survivor, the severity of the power dynamic was compounded with the breach of trust that attaches to adult – child relationships more broadly. These dynamics, discussed below, related to seriousness of the offending with some relationships resulting in more serious sexual offending behaviour than others according to community members.

Firstly, participants identified a teacher-student relationship involved a position of trust and duty to nurture and support. Participants noted a higher sense of responsibility because there was *“a professional duty of care”* (FG1) which *“was at a different level”* (FG1) because of the position that the teacher occupied which goes to a perpetrator’s culpability. Teachers *“have an automatic authority in the school”* (FG17) which, then, goes to culpability because *“they’ve automatically got power over the children there.”* (FG17) In fact, one participant identified how the teacher-student relationship involved *“some degree of grooming.”* (FG5) Grooming is a process whereby a perpetrator prepares a victim-survivor to submit to abuse, and not resist or report the abuse;⁷⁶ for teachers, grooming involves gaining the trust of parents and

colleagues as well as the victim-survivor.⁷⁷ Participants also noted the *“chance of offending against other individuals”* (FG14) referring to further sexual offending being perpetrated against other students because of *“that unfettered access to everyone’s child”* (FG4). A teacher’s breach of trust results in *“individuals being harmed”* (FG14). Almost all participants found a teacher perpetrating an aggravated sexual assault, against a student, to be more serious than aggravated burglary with participants responses at 83:3.⁷⁸ Importantly, focus group participants were presented with a scenario involving a 16-year-old victim-survivor and participants were aware the age to consent to sexual relationships is 16; however, this did not change how participants viewed the breach of trust that occurred: *“The fact that he’s 16 and there’s just a power imbalance”* (FG2).

Secondly, relationships between adult and child family members, where sexual violence occurs, were found to be more serious than other breaches of power resulting in sexual violence. For example, participants found the case of digital rape of a 10-year-old child, where the child’s uncle was the perpetrator, to be more serious than the case of an aggravated sexual assault against a 16-year-old student by a teacher, at a rate of 65:20.⁷⁹ In addition to the 10-year-old’s age being persuasive, the nature of the relationship also accounted for seriousness. Breach of trust, between family members, pertains to a perpetrator’s culpability which, in turn, affects the level of harm to a victim-survivor.

There were several factors which participants attributed to the seriousness of family member relationships involving sexual violence. The home environment, and family within it, should be a safe place for children: *“Family is that safe place that you should have as a child. It shouldn’t be taken away from you. Same with at home. That’s your one safe spot that you can go to.”* (FG17) Because of the illusion of safety at home and amongst family, perpetrators offending against family members were considered *“more coercive”* (FG6) than an outside party. One participant also raised that reporting a family member for sexual violence may have added

⁷⁶ Charol Shakeshaft et al, ‘School Employee Sexual Misconduct: Red Flag Grooming Behaviors by Perpetrators’ in Ersi Kalfoglou and Sotirios Kalfoglou (eds), *Sexual Abuse-An Interdisciplinary Approach*. (IntechOpen, 2021); James L Knoll, ‘Educator Sexual Misconduct’ in Robert R Hazelwood and Ann Wolbert

Burgess (eds), *Practical Aspects of Rape Investigation* (CRC Press, 5th ed, 2016).

⁷⁷ Shakeshaft et al (n 76).

⁷⁸ Paired Comparison 8.

⁷⁹ Paired Comparison 4.

pressures: *“there's going to be family members that go, ‘Oh, why did you do that? Why couldn't you just be quiet?’”* (FG17)

Recovery, for the victim-survivor, will be particularly difficult when sexual offending occurs in the home environment, according to participants. Participants noted recovery may be affected by complex family dynamics because their *“lives are entangled with each other”* (FG17) and the victim-survivor may remain in a *“lifetime relationship”* (FG14) with the offender, *“seeing him at functions, family get togethers.”* (FG14) One participant indicated that the familial relationship may impact upon *“how the victim is going to rationalise what has happened to them.”* (FG18) A victim-survivor may feel less at fault with a stranger perpetrator than, *“where the perpetrator is family... it's a higher likelihood that [the victim-survivor] is going to take some of the blame and actually accept some of the blame for what's happened.”* (FG18) Ultimately, victim-survivors of a familial sexual offending will be *“traumatised for the rest of her life.”* (FG19)

Thirdly, the employer-employee relationship was also identified as one which involves trust and authority, although it featured in discussion less frequently than the other relationships. In determining seriousness, participants referred to the victim-survivor being able to voluntarily remove themselves from the power dynamic to prevent further exploitation, *“I would find it easier to get away from my job than my husband.”* (FG15) Less trust was attributed to an employer than other relationships: *“It's not like you put all your trust in your boss.”* (FG15) However, some participants noted difficulties for victim-survivors removing themselves from their workplace due to financial constraints: *“Do I risk my entire livelihood and move on?”* (FG16) Importantly, though, despite participants considering employer-employee sexual violence as less serious than in other relationships, participants found sexual assault in the workplace to be more serious than aggravated burglary, at a score of 66:19.⁸⁰ Consequently, while employer sexual exploitation may be less serious than other breaches of trust, it is still sexual violence and more serious than non-sexual, non-lethal offences.

Known vs unknown parties

Participants also compared the seriousness of sexual assault and rape between known and unknown parties. When penetrative rape by a stranger was compared to an intimate partner relationship with a similar penetrative offence, the stranger sexual offending was ranked more serious, at a score of 71:13.⁸¹ There were several reasons for participant responses to consider an unknown perpetrator to be more serious according to harm and culpability considerations.

The pre-existing sexual relationship between two individuals was a major consideration for judging intimate partner sexual violence as less serious than stranger perpetration. In categorising the harm, one participant stated, *“at least if they're a familiar person to them, hopefully the trauma that they experience won't be as severe as a stranger that you've never met...maybe it softens a little bit the harm.”* (FG2) Participants spoke about the impact of sexual violence *“is going to be worse for the stranger victim because now they're going to more likely be hypervigilant or [have] difficulty trusting any new man that they meet”* (FG15). Participants emphasised that *“every incident is wrong”* (FG2), referring to sexual violence; however, an unknown perpetrator made the sexual violence more serious to most participants when they were asked to choose.

Conversely, the participants who found intimate partner sexual offending to be more serious than a stranger perpetrator considered the breach of trust. Participants considered the *“sacredness of that relationship”* (FG17) as indicating trust and *“that person is supposed to be safe in that relationship”* (FG17). When *“that trust is broken without consent”* (FG14), it indicates seriousness of the behaviour. Additional complexities to intimate partner sexual violence related to *“potential divorce, ...finances”* (FG16) and *“a whole array of circumstances that have occurred around that relationship historically”* (FG11) that may impact upon the nature of the sexual violence interaction amongst intimate partners.

⁸⁰ Paired Comparison 7.

⁸¹ Paired Comparison 2.

Finding 5: The community is victim-survivor centred when ranking the seriousness of sexual assault and rape offences.

Participants focused their considerations of seriousness from a victim-survivor centred mindset. In that way, participants were victim-survivor focused when approaching rape and sexual assault offence sentencing. When considering the impact of the crime on the victim-survivor, participants included physical, psychological, emotional, relational, familial and economic impacts as well as the recovery potential for the victim-survivor.

Importantly, participants often determined seriousness by putting themselves in the position of the victim-survivor and imagining how the crime would feel *“within my body.”* (FG7) This was present in the process participants used to compare types of offending, with participants often putting themselves in the position of the victim-survivor and imagining, *“[w]hich one would be the more horrible?”* (FG7) Some participants referred to a physicality when engaging in this process of selection including using terminology such as *“weight”* (FG8, FG12, FG15) or *“heaviness”* (FG16) of the crime. One participant considered the prevalence of sexual violence in the community to mean, *“Nobody is not a victim.”* (FG5) The experience of the victim-survivor, then, was the starting point for how the community determines offence seriousness.

Participants acknowledged where there were challenges perceiving or imagining the harm or impact upon victims. Participants referred to scenarios as being more serious where it was possible to imagine the offending: *“I can imagine the horror in that moment. It’s so clearly detailed.”* (FG7) As a result, sometimes participants wished for *“more information”* (FG14, FG15) about the offending, with some acknowledging their choice was swayed by *“more details in [the] description”* (FG7) of the behaviour. At times, however, the nature of the offending was so serious as to seem beyond imagining: *“I can’t even fathom this second scenario.*

So, by default, the first one has more impact, because I can actually comprehend that.” (FG7)

Sometimes challenges perceiving or imagining the harm or impact upon victims indicated broader cultural and societal issues. This was most apparent when considering the scenario of a teacher-student oral-penile intercourse. Some participant responses reflected a potential gender bias in their reasoning when considering the female offender and male victim-survivor in this scenario, with some describing it as *“an element of horny teenagers”* (FG12) and a *“whole fantasy”* (FG15) for the male student, including *“perhaps there’s been prior behaviours between the two of them which have escalated”* (FG12). One participant stated that they would *“have more of an issue”* (FG15) if it was a male offender and a female victim-survivor. However, this was certainly a minority view, with most participants acknowledging the harm of sexual violence regardless of the perpetrator gender because *“victim impact is not necessarily any different for a male victim in those kinds of instances compared to a female”* (FG18).

There is value in considering victim-survivor experience, as a matter of priority, during sentencing. Maxwell, Redlich and Beach JJA, identified the ‘vindication of the community’s social value’ in sentencing and that ‘the individual victim justifiably feels betrayed and devalued’ when courts don’t appropriately regard sentencing objectives.⁸² Victim-survivor mindset and focus in sentencing, therefore, is a crucial legal consideration. For victim-survivors, justice is ‘a continually shifting pattern, constantly refracted through new circumstances and understandings’.⁸³ Previous law reform has called for greater positioning of victim-survivors within the criminal justice process.⁸⁴ Participants, in these focus groups, emphasised the victim-survivor experience as essential to sentencing. The community, then, supports sentencing approaches which centres victim-survivors in the process.

⁸² *Director of Public Prosecutions v Charlie Dalglish (pseudonym)* [2016] VSCA 148, [124] (Maxwell ACJ, Redlich JA, Beach JA).

⁸³ Clare McGlynn and Nicole Westmarland, ‘Kaleidoscopic Justice: Sexual Violence and Victim-Survivors’ Perceptions of Justice’ (2019) 28(2) *Social and Legal Studies* 179, 186.

⁸⁴ Nicole Bluett-Boyd and Bianca Fileborn, ‘Victim/survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions’ (Research Report No. 27, Australian Institute of Family Studies, 2014).

Finding 6: Contextual factors matter when ranking the seriousness of offences.

When establishing how the community ranks seriousness of sexual assault and rape offences compared to other offences, various contextual factors influence their decision-making. While Finding 4 related to how the community used harm and culpability in determining seriousness, Finding 6 explores what seriousness ranking emerged in the focus group research, particularly when comparing sexual and non-sexual offenders. Participants found sexual violence so abhorrent that, generally, *“sexual behaviour was more serious than nonsexual”* (FG2), with some notable departures.

Focus groups identified three main considerations in relation to contextual factors influencing the community ranking of seriousness of sexual assault and rape offences. These considerations were:

- A. Sexual offences against children were ranked as more serious than similar offences against adults;
- B. Non-sexual offences involving potential lethality were ranked more serious than sexual offences; and
- C. The nature of sexual acts affected offence seriousness determinations.

The following sections outline these considerations in detail.

A. Sexual offences against children were ranked as more serious than similar offences against adults.

When considering offence seriousness of sexual violence against a child, compared to offences against adults, participants organically considered sentencing factors prescribed in section 9(6) of the *Penalties and Sentences Act 1992* (Qld). Age of the child, permanency of the injury and degradation to the victim-survivor were all factors which participants considered. While sexual offending against children was overwhelmingly considered more serious than sexual and non-sexual offending against adults, which is consistent with other

research in this area,⁸⁵ there were notable exceptions discussed below.

When ranking the seriousness of child sexual abuse compared to adult sexual violence that were similar in nature, sexual offences against children were ranked as more serious. For example, the digital rape of a 10-year-old child was almost unanimously ranked as more serious than adult penile-anal rape at 84:1,⁸⁶ or a stranger penile-vaginal rape at 76:10.⁸⁷ Similarly, an aggravated sexual assault of a 16-year-old child by his teacher was strongly ranked as more serious in comparison to an adult aggravated sexual assault at a score of 77:7.⁸⁸

When determining why child sexual abuse is more serious than adult sexual violence, participants considered harm to be a persuasive factor. A child victim-survivor may have difficulty *“understand[ing] what has happened to her.”* (FG5) Their *“developmental trajectories”* (FG10) may be impacted because, *“they can’t process it in the same way ...the brain side of things is still growing.”* (FG2) As a result, there may be a *“greater impact on their life course”* (FG10) than offending against an adult victim-survivor.

While age and vulnerability of a child victim-survivor was a significant factor for participants to determine sexual offending seriousness, it did not override all other harm and culpability factors. Participants spoke to the *“layers of decision making... with age being the first”* (FG10) when determining seriousness. However, participants also considered other factors such as permanency of physical injury, resulting from a dangerous driving causing grievous bodily harm as more serious than aggravated sexual assault to a 16-year-old at a score of 50:34⁸⁹ because, *“[i]t’s a permanent disability with no chance of rehabilitation”* (FG3) and *“[t]o not have your legs. That’s a life sentence.”* (FG5) While the adult sexual violence scenario involving two perpetrators and both penile-vaginal and penile-anal rape was also considered seriously because the adult victim-survivor was so *“degraded”* (FG12), *[i]t would’ve destabilised her sense of self to such a degree... and the consequences of that are*

⁸⁵ Janet Ransley and Kristina Murphy, ‘Working Paper on the Development of the Queensland Crime Harm Index’ (Research Report, Griffith Criminology Institute, March 2024).

⁸⁶ Paired Comparison 3.

⁸⁷ Paired Comparison 1.

⁸⁸ Paired Comparison 5.

⁸⁹ Paired Comparison 15.

significant” (FG12) and “she may never get over that” (FG5), participants still found the digital rape of a child victim-survivor as marginally more serious at a ratio of 43:42.⁹⁰ Participant departures from child sexual violence being considered more serious than adult sexual offences showed more division amongst participants, with participants finding those seriousness rankings morally challenging: “those two questions sucked.” (FG5)

B. Non-sexual offences involving potential lethality were ranked more serious than sexual offences.

When determining how the community ranks seriousness of rape and sexual assault offences compared to other offences in Queensland, offences involving lethality emerged as among the most serious. The lethality, or likelihood of death resulting from the act, related to offences such as murder, grievous bodily harm and strangulation. Participants weighed the finality of ending life, or potentially ending life, with the lifetime of trauma and ongoing suffering which sexual violence victim-survivors experience.

Murder compared to rape

The quantitative rankings taken from the paired comparisons emphasise the seriousness of murder when compared to rape. Participants ranked murder as more serious than a digital rape of a child at 66:19;⁹¹ and 59:25⁹² ranked murder as more serious than the multiple perpetrator rape of a 19-year-old. The focus group discussions provided further context surrounding participant decision-making in this area.

When comparing a murder offence to sexual violence offences, participants grappled with categorising harm and culpability factors to rank seriousness. One participant identified the challenges in ranking a serious rape offence with murder: “I’m feeling very conflicted... because both offenders don’t value life.” (FG2) Some participants felt that even with the most serious sexual violence offences, there was still a chance for the victim-survivor to “overcome the horrible thing that happened to her... have good relationships and a happy life” (FG7) while there was not that option for

a murder victim. Many participants found ranking murder and rape very difficult.

Participants often considered the intentional death of the victim as the worst harm that could be done to an individual, and therefore highest on the scale of seriousness. In explaining why murder was the most serious offence, participants referred to finality of the harm as “[h]er life’s over” (FG7) and “you can’t go back from that” (FG17) as well as the impact on family members: “the life of her family is now forever ruined.” (FG7)

Those participants who considered rape to be worse than the murder offence identified the nature and condition of ongoing trauma or suffering as being more serious than ending life. In fact, participants considered how sexual violence is still a “life sentence... They’re just still breathing.” (FG12) At times, many of them noted that the sexual, non-lethal crimes perpetrated against others resulted in the victim-survivors also having “lifelong trauma” (FG12) that has “significant impacts across all fractions of her life” (FG1) and so participants asked, “what level of life is it that they’re left with after that?” (FG17)

Potentially lethal offences compared to sexual offences

Participants were also asked to rank seriousness between potentially lethal offences and sexual offences. In the relevant scenarios provided to participants, the victim-survivors did not die; however, participants considered the circumstances of behaviour to be such that they were potentially lethal. Acts intended to cause grievous bodily harm⁹³ and choking, suffocation or strangulation in a domestic setting⁹⁴ were compared to several sexual offences. Participant consensus was much more evenly split between the potentially lethal offences and the sexual offences when compared.

Some sexual offences were ranked very highly, in terms of seriousness, when compared to the potentially lethal offences. When the strangulation offence was compared to aggravated sexual assault (oral rape of a 16-year-old male by a female teacher), the sexual offence was found to be slightly more serious at 44:40.⁹⁵ The multiple perpetrator rape against the grievous bodily harm attack with a claw

⁹⁰ Paired Comparison 20.

⁹¹ Paired Comparison 10.

⁹² Paired Comparison 9.

⁹³ *Criminal Code 1899* (Qld) s 317.

⁹⁴ *Criminal Code 1899* (Qld) s 315A.

⁹⁵ Paired Comparison 14.

hammer, again, was more serious at a rate of 47:37.⁹⁶ These results indicated that serious sexual offences were comparable in seriousness to potentially lethal offences.

Other sexual offences were not considered as serious as the potentially lethal offences. For example, the grievous bodily harm attack with a claw hammer was ranked 57:27⁹⁷ against the penile vaginal rape of a woman by a stranger, and a strangulation offence was ranked 56:26⁹⁸ as more serious than the digital rape of a female by a friend. Likewise, a dangerous driving causing permanent paralysis, which could have resulted in death, was ranked more serious than employer sexual assault at 77:10;⁹⁹ aggravated sexual assault by a teacher at 50:34;¹⁰⁰ and husband penile-anal rape at 59:24.¹⁰¹

Participants considered various factors when ranking seriousness between potentially lethal and sexual offences. Using a physical weapon was considered particularly serious, *“it's not like a punch or a penetration, it's actually finding something additionally to do harm”* (FG17) as was a physical injury, *“skull fractures and permanent scarring.”* (FG15) In fact, participants were particularly concerned with *“the visibility of the scarring”* (FG15) as a more long-term, physical impact that needed to be considered when determining seriousness: *“it's a story that you're carrying around on your face.”* (FG17) Further, *“[n]o amount of makeup or reconstruction surgery, or anything else that they're going to be put through, is going to take away from that.”* (FG15)

Participants were critical of the strangulation behaviour and emphasised the particular seriousness. Participants considered strangulation to be *“a major, major red flag”* (FG14) and potentially lethal because the *“risk of death and the escalation around the strangulation.”* (FG14) Participant views that strangulation is an established *“pre-indicator of future homicide”* (FG1) reflects current research¹⁰² and also the public

legislative changes that occurred in Queensland in 2016 in response to the *Not Now, Not Ever* report that recommended governments strengthen their response to strangulation as a serious crime in its own right.¹⁰³

Overall, participants considered the risk of death as the most indicative when ranking seriousness of sexual assault and rape offences when compared to other offences. The finality of death for the victim-survivor outweighed all other offending behaviour, although participants flagged the ongoing and lifelong recovery needed from sexual violence. Participants had difficulty choosing a lethal offence as more serious, over a sexual offence, although *“in every case it was that risk of death, that consequence of the action, rather than ...forming an opinion around the action itself.”* (FG14) Ultimately, *“the magnitude of killing someone is far more extensive than ...harming them.”* (FG11)

C. The nature of sexual acts affected offence seriousness determinations.

Focus group commentary demonstrated how the nature of sexual penetration impacts the seriousness of the offending. How the perpetrator penetrated the victim-survivor (digital, penile, object) and where that penetration occurred (oral, vaginal, anal) were all relevant to determining seriousness. For some participants, this involved a scale of seriousness with *“brushing someone's breast at the lower end of the spectrum and forced penetrative intercourse at the other end of the spectrum”* (FG10) which leads to *“the magnitude of sexual contact and maybe the degree of violence and part of the body”* (FG10) all being relevant to seriousness determinations. This impact, however, is moderated when considering offences against children.

Penile vs digital

The community view penile penetration as more serious than digital penetration. Participants described penile penetration as *“more personal”* (FG17) and *“an organ”* (FG16) connected to the

⁹⁶ Paired Comparison 19.

⁹⁷ Paired Comparison 21.

⁹⁸ Paired Comparison 25.

⁹⁹ Paired Comparison 16.

¹⁰⁰ Paired Comparison 15.

¹⁰¹ Paired Comparison 17.

¹⁰² Heather Douglas and Robin Fitzgerald, ‘Strangulation, Domestic Violence and the Legal Response’ (2014) 36(2) *Sydney Law Review* 231.

¹⁰³ Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an end to Domestic and Family Violence in Queensland* (Department of Justice and Attorney General, 28 February 2015) <<https://www.justice.qld.gov.au/initiatives/end-domestic-family-violence/about/not-now-not-ever-report>>.

offender, with one participant describing the penis as “a weapon.” (FG17) The “potential consequence of carrying an unwanted child” (FG13) was noted as a consideration. Penile penetration was considered as being more painful than digital penetration due to “the size of the object.” (FG5) Although, one participant stated, “penetration is penetration” (FG13), indicating that all penetration is a bodily violation and should be considered seriously.

Previous judicial commentary found digital rape as less serious than penile penetration because ‘it may be less invasive, would not carry a risk of pregnancy, and would ordinarily carry substantially reduced risk of infection’.¹⁰⁴ However, more recent judicial authority has emphasised that individual case circumstances need consideration ‘rather than...formulaic compartmentalisation of offending, or generalisations as to what kind of rape is worse or more serious’.¹⁰⁵

While penile penetration was overwhelmingly considered more serious than digital penetration, sexual violence against a child reversed that view. Where participants were asked to determine the more serious behaviour between non-consensual vaginal-penile penetration with an adult victim-survivor and a digital-vaginal penetration on a child victim-survivor, the digital-vaginal penetration was overwhelmingly more serious at 76:10 participants.¹⁰⁶ However, harm and culpability factors, here, aligned more with the child victim-survivor rather than the distinction between penile and digital penetration because, as one participant noted, “the first thing I looked at was age and then the relationships” (FG11) rather than the nature of the sexual acts.

Penile vs object

Participant data suggests that penile penetration was more serious than penetration using an object. Offending which involved penetration by an object was compared with non-consensual stranger penile-vaginal intercourse; participants noted that the “penis is worse than the sex toy” (FG2), in relation to vaginal rape, at a score of 78:7.¹⁰⁷ One participant identified penile offending as being “more aggressive” (FG15) than the sex toy offending, and theorised that a victim-survivor may be more able to recover from the sex toy offence: “I feel like you

could separate yourself from it a bit more from the offending compared to knowing that the offender was physically inside you.” (FG15) Discussion of the severity of this offending was impacted by the complexities of the relationships in the comparator scenarios and went to culpability. As one participant remarked, “it was the penis and the sex toy, but it was also a stranger, husband...the behaviour and his penis is worse than a husband and a sex toy.” (FG2)

Other rankings, in relation to object penetration, emerged as well. Aggravated sexual assault with a sex toy was considered more serious than sexual assault by an employer at a score of 59:27.¹⁰⁸ However, non-consensual teacher-student oral-penile intercourse was considered more serious than aggravated sexual assault with a sex toy at 77:7.¹⁰⁹

Vaginal vs anal

There was not a clear determination from participants about whether vaginal or anal penetration, with a penis, was worse. Participants identified anal rape “could have hurt like hell” (FG5), especially for victim-survivors “who don’t have or never have had anal sex” (FG5) because, “it doesn’t have any self-lubrication method. It’s going to be very dry, it’s going to hurt a lot more, and there’s going to be more chance of damage to ...the bodily organ.” (FG13)

The stigma associated with anal rape was also raised in relation to penile-anal rape in a domestic relationship:

“The traumas that are associated with gay men in this world are significant and they’re held in the body. And I think when someone violates that in intimate partnerships it’s particularly brutal and it has significant consequences that aren’t socially supported. Men don’t always have the opportunity to get helped with that kind of abuse, and so for me it felt significantly worse.” (FG12)

In a scenario involving non-consensual penile penetration of vagina versus anus, participants chose vaginal penetration as more serious at a ratio

¹⁰⁴ *R v Colless* [2010] QCA 26.

¹⁰⁵ *R v Wallace* [2023] QCA 22 [13] (Bowskill CJ).

¹⁰⁶ Paired Comparison 1.

¹⁰⁷ Paired Comparison 18.

¹⁰⁸ Paired Comparison 6.

¹⁰⁹ Paired Comparison 5.

of 71:13.¹¹⁰ However, the anal penetration involved a domestic relationship while the vaginal penetration occurred to a stranger. As mentioned above, participants were concerned about the potential for pregnancy resulting from penile-vaginal penetration. Participants described the vaginal penetration as “*totally life altering*” (FG16), particularly in relation to a risk of pregnancy, and rendering the trauma “*intergenerational*” (FG4) and “*ongoing*.” (FG6)

Oral penetration

There was also limited discussion of oral penetration during the focus groups. This may be, in part, because the oral-penile penetration involved a teacher-student relationship. The comparative seriousness of this offending appeared to be based on the teacher-student positioning, which took precedence over the nature of the penetration. It may also be due to the offending present in this scenario, with the offender placing the victim-survivor’s penis in their mouth, rather than the victim-survivor being penetrated. One participant described oral intercourse as a “*higher base*” on the “*pecking order*” of sexual activity. (FG12) The participant described this as the “*pecking order*” during their teenage years. (FG12) The ranking of sexual behaviours by young people as ‘bases’ suggests an incremental build up or working towards vaginal intercourse and the loss of virginity.¹¹¹

¹¹⁰ Paired Comparison 2.

¹¹¹ Ruth Lewis, Cicely Marston and Kaye Wellings, “Bases, Stages and ‘Working your Way Up’: Young

People’s Talk about Non-Coital Practices and ‘Normal’ Sexual Trajectories’ (2013) 18(1) *Sociological Research Online* 233, 236-7.

5.0 Limitations

Throughout the project, there were limitations which arose requiring mitigation and problem solving. Those limitations are outlined below. The research did not intend to be representative of the Queensland population but as much diversity was sought as possible, as demonstrated in Table 1 above. Apparent ethnic diversity was observed by facilitators during focus groups, although this was not specifically measured.

Registration and Recruitment

Converting participants from focus group registration to attendance was one limitation. Of the 171 registrants from general recruitment, 78 participated in focus groups (not including the additional 11 from the First Nations focus group). Several were excluded at registration because they did not meet the inclusion criteria of Queensland residency or disclosed that they had been accused or convicted of a sexual violence offence. Of those registrants who did not convert from registration to focus group attendance, some were not available to attend at the scheduled time and were invited to another focus group, where possible. Others confirmed their attendance and then did not attend their scheduled focus group. Adverse weather may have affected attendance, with significant rainfall and dangerous road conditions occurring over several scheduled in-person focus groups. Failure to attend was a significant issue with the male participants and were one of the reasons for low participation rates amongst that population.

Recruiting male participants was particularly challenging. The final participant numbers, according to gender, reflects those difficulties. These results reflect other research findings that men are 60% less likely to participate in sexual violence programs than women.¹¹² Male participants were purposely targeted to increase representation through paid social media campaigns and contact with male-oriented organisations (such as surf lifesaving, RSL Qld, Lions

Club and Rotary Club, for example). Analysis of gender differences may not be accurate due to the low rate of male participants.

The participant numbers in the focus groups were generally lower than the anticipated 8 – 12 per focus group. While the original recruitment strategy allowed for smaller focus groups at the discretion of the project team, organising focus groups according to gender as well as victim-survivor profile created challenges; there were potentially four profiles (female general, female victim-survivor, male general, male victim-survivor) to balance. As such, a more flexible approach was needed to allow smaller, yet more frequent, focus groups.

The research design originally included non-binary focus groups to allow gender diversity in focus group composition. However, there was little engagement, at registration, from non-binary individuals. While non-binary registrants were given the opportunity to select preferred gender focus groups, the final participant demographics did not reflect non-binary participation.

First Nations Participation

Aboriginal and Torres Strait Islander people continue to experience the ongoing effects of colonisation and intergenerational trauma.¹¹³ Research with First Nations Peoples, therefore, needs to be 'culturally secure'.¹¹⁴ In acknowledgement that the study's recruitment strategy and considered approach to participant selection had the potential to recruit Aboriginal and Torres Strait Islander people, the project team developed a strategy to ensure that the research project was culturally sensitive and responsive. A key component of this strategy was the engagement of a cultural advisor, to guide and advise the research team on cultural matters relating to conducting the research and its findings, as well as to adopt a liaison role with community justice groups, to increase participation of these groups within the research. The project team

¹¹² William G Axinn, Mira D Vale and Sarah R Brauner-Otto, 'Student reports of attendance at programs to reduce campus sexual assault and harassment' (2023) 71(2) *Journal of American College Health* 543.

¹¹³ Sven R Silburn, et al. 'The intergenerational effects of forced separation on the social and emotional wellbeing of Aboriginal children and young people' (Australian

Institute of Family Studies, Family Matters, No 75, February 2007).

¹¹⁴ Pamela Laird et al, 'Conducting decolonizing research and practice with Australian First Nations to close the health gap' (2021) 19(1) *Health Research Policy and Systems* 1, 2.

followed the cultural advisor's advice in relation to engaging with First Nations people and devising appropriate research strategies.

However, the short timeframe hindered the development of cultural relationships required for effective and collaborative research with First Nations Peoples. Indeed, considerable research suggests that the history of mistrust and exploitation of First Nations people emphasises the importance of time in developing these relationships; in fact, equal partnership in research is essential to progress relationships between researchers and the First Nations community.¹¹⁵ Despite engaging with cultural advisors, researchers, the Queensland Sentencing Advisory Council's Aboriginal and Torres Strait Islander Advisory Panel's contacts, and undertaking preliminary conversations with the team's cultural advisor and community justice group coordinators, only one targeted First Nations focus groups was able to be negotiated and actioned within the project timeframe. Furthermore, focus group participants were all male and from one regional SEQ community. Hence, the voices of females within First Nations communities are also underrepresented. Overall, in this study, 16% (n=14) of research participants self-identified as Aboriginal or Torres Strait Islander peoples, with a further 4% (n=4) preferring not to disclose. Due to low numbers, perspectives of these participants were incorporated within the project's overall results and not reported separately. Thus, the research is not representative of First Nation Peoples voices or opinions on sentences for sexual offending behaviour; and the findings of this study cannot be generalised at this stage.

Given the sensitive nature of rape and sexual assault offence sentencing, and the overrepresentation of First Nations people as perpetrators and victims of sexual offences,¹¹⁶ the researchers maintain a strong view that community justice group members were the most suitable First Nations participants for this research given their expertise in understanding and discussing sensitive content. Further research, then, which relates solely to Aboriginal and Torres Strait Islander views is

urgently needed to ensure these perspectives are included in policy or law reform considerations.

Scheduling

Focus group scheduling was also problematic. The team had originally scheduled focus groups in Rockhampton and Mt Isa. However, there was an adverse weather event at the time of the scheduled travel (cyclone and flooding) and with the low participant numbers in those areas, the planned travel did not eventuate. However, participants from those areas were invited to attend online focus groups and some were captured within the data.

The online focus groups had the anticipated challenges of participant internet connectivity issues and technology difficulties. However, an unintended challenge in one online focus group arose when focus group participants from a previous focus group shared the Zoom link and registration details with others who had not registered. Individuals logged on for a focus group who had not participated in the registration process; circumventing the registration process meant facilitators were not able to confirm their gender to assign them the correct gender group, establish whether they needed a victim-survivor group, ensure they had not previously participated in a focus group and confirm the other inclusion criteria including that the participant had never been accused or convicted of a sexual violence offence. Researchers did not run this scheduled focus group as a result. There was only one instance where online focus group details were shared and so only one focus group needed to be cancelled.

Content

The paired comparisons all used gendered language. Drafted scenarios to remove the gendered language, such as "Declan (35) non-consensually penetrates the anus of their husband (35) with their penis" made the scenarios potentially confusing for the general population and with so many scenarios to work through within the timeframe, very clear scenario language was needed. As a result, the scenarios unfortunately did not reflect the non-binary community.

¹¹⁵ Richard T Oster and Patrick Lightning, 'Commentary: Developing Relationships through Trust in Indigenous Health Research' (2022) 17(4) *Healthcare Policy* 56.

¹¹⁶ Queensland Sentencing Advisory Council, *Sentencing Spotlight on Rape* (n 14); Queensland Sentencing Advisory Council, *Sentencing Spotlight on Sexual Assault* (n 15).

Social-desirability bias may have occurred due to the sensitive nature of issues discussed and the opportunity for perceived judgement to occur in the group discussion context. However, capacity to share their honest opinions in front of others was encouraged by holding gender specific focus groups and by explicitly stating prior to commencement that collection of a diverse range of views was the purpose of the research.

6.0 Concluding Remarks

The community views sexual assault and rape offences as “*heinous crimes*” (FG8). While the community regard sentencing of this criminal activity to be “*difficult*” (FG8, FG10, FG11, FG12, FG14, FG15, FG16, FG17), the key findings of this report show that Queenslanders believe a focus on the context of sexual offending is necessary when sentencing rape and sexual assault offences. The community also views the experiences of victim-survivors as central to the sentencing process.

Sentencing Purposes

The context and circumstances of the sexual assault and rape offending impacts the community’s view on the purpose of sentencing. Data suggests that in the absence of context, the offence type influences views on sentencing purposes. Absent the context of offending, the community is more likely to prefer more punitive sentencing purposes and unlikely to consider rehabilitative sentencing purposes for sexual assault and rape offences. Community views on sentencing are shaped by the context and circumstances of offending. Access to this information influences community perspectives of sentence decision-making.

Nonetheless, the community interprets the impact of contextual factors in sentencing in differing ways. The connection between context and circumstance in the sentencing of sexual assault and rape offences is apparent when examining how the community views each sentencing purpose and justifies their enactment. Contextual factors override offence types when considering sentencing purposes which demonstrates the important role context plays in sentencing decisions.

Participants viewed community protection, as a sentencing purpose, to be associated with the perceived danger of the perpetrator. The greater the risk of harm to the public – particularly the vulnerable and infirm – the increased likelihood that the community views this sentencing purpose as justified. Where an offender was unpredictable and brazen in their offending, such as engaging in stranger rape, participants viewed community protection as a necessary sentencing purpose.

The community believes denunciation has value as a sentencing purpose when sexual violence occurs in the context of family and domestic violence. The

Queensland community condemns family and domestic violence, and views sexual offending in these relationships as serious due to both the breach of trust and the repeated access to the victim-survivor. Yet, the Queensland community also expressed some concern that judicial denunciation (targeted towards the person or the community) may be unable to effectively respond to the deeper social and cultural issues leading to sexual offending and domestic violence. Participants also felt the community already know sexual violence is wrong so were not convinced denunciation served a purpose with sexual offences.

Punishment, as a retributive consequence, is favoured by the community in circumstances where vulnerability of the victim-survivor or community was indicated. Participants frequently equated this sentencing purpose with incarceration. As a result, the community favoured punishment as a sentence purpose for sexual assault and rape crimes as the Queensland community views these crimes as leading to long-term injury to the victim-survivor. The Queensland community abhors sexual offending against a child, seeing punishment as a justified sentencing purpose in response to this offending. The community views this sentencing purpose as appropriate where an offender has a history of repeated offending.

Finally, victim-survivor perspectives on the importance of sentencing purposes largely mirror the general participant responses. Namely, with or without context, victim-survivor views did not differ from general participant views of sexual assault and rape sentencing purposes except for offending against children. Victim-survivors found community purposes most important, with punishment and denunciation also playing a role in sentencing offenders who perpetrate child sexual offences.

Seriousness of Sexual Assault and Rape Offences

When determining the seriousness of sexual assault and rape offences, the community recognises the significant overlap between harm and culpability factors. As a result, the community seems focused on both the harm suffered by the victim-survivor and the responsibility of the offender for this injury. The Queensland community takes a broad view of harm when considering the impact of sexual assault and

rape crime on victim-survivors, including physical, mental and emotional harm. Overwhelmingly, the community believes that long-term psychological harm needs to be a key consideration when determining offence seriousness. This focus upon psychological injury was driven by an ethics of care for victim-survivors, and a want to protect the community from this type of offending.

With this mental harm focus, it perhaps makes sense that the nature of the relationship between the perpetrator and the victim-survivor was significant to the community when determining the seriousness of the sexual offending. Where positions of trust and authority (teacher-student, employer-employee, family) contributed to offending, the criminal behaviour was seen as more serious. Sexual violence involving breaches of trust was more serious than non-sexual, non-lethal offences. Where the sexual assault or rape involved a stranger, these offences were considered particularly heinous due to the need to protect the community from random, opportunistic crimes. When compared to sexual offences, non-sexual offences with potential lethality were considered more serious, in part due to the finality of this harm, the use of weapons, the visibility of physical scarring, or the potential escalation to murder.

The contextual factors of sexual assault and rape offending shape the way the community views the seriousness of the crime. Adopting a survivor-focused approach, participants imagined the harm and suffering of the victim-survivor when determining offence seriousness. Aligning with the focus by participants upon long-term psychological trauma and its impacts, the Queensland community finds sexual offences against children to be particularly abhorrent, with data suggesting the community views child victim-survivor crimes as more serious than similar offences against adults. This contextual positioning also flows to the offending behaviour. The community views the nature of sexual penetration as relevant to offence seriousness, with penile penetration appearing to be the most serious form of penetration. Notably, the nature of sexual penetration was not a significant factor when participants determined the seriousness of child sexual offences.

The community appreciated *“the opportunity for community members of broad demographics to have a say on the workings of the criminal justice system.”* (FG9) One victim-survivor reflected

“personally this was well worth being a part of if it can help others going through or about to go through sexual abuse.” (FG12) As such, the community recognised the importance of engaging with the research and acknowledged the value of the broader project to investigate sexual violence legal responses.

References

A. Articles, Books and Reports

- Ailwood, Sarah., Rachel Loney-Howes, Nan Seuffert and Cassandra Sharp, 'Beyond Women's Voices: Towards a Victim-Survivor-Centred Theory of Listening in Law Reform on Violence Against Women' (2023) 31 *Feminist Legal Studies* 217
- Axinn, William G., Mira D Vale and Sarah R Brauner-Otto, 'Student reports of attendance at programs to reduce campus sexual assault and harassment' (2023) 71(2) *Journal of American College Health* 543
- Bagaric, Mirko and Theo Alexander, 'A rational approach to the evaluation of harm in the sentencing calculus' (2021) 50 *Australian Bar Review* 251
- Bagaric, Mirko, 'Redefining the circumstances in which family hardship should mitigate sentence severity' (2019) 42(1) *UNSW Law Journal* 154
- Bergen, Nicole and Ronald Labonté, "Everything is Perfect, and We Have No Problems": Detecting and Limiting Social Desirability Bias in Qualitative Research' (2020) 30(5) *Qualitative Health Research* 783
- Bluett-Boyd, Nicole and Bianca Fileborn, 'Victim/survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions' (Research Report No. 27, Australian Institute of Family Studies, 2014)
- Boyle, Kaitlin, 'Sexual Assault and Identity Disruption: A Sociological Approach to Posttraumatic Stress' (2017) 7(2) *Society and Mental Health* 69
- Braun, Virginia and Victoria Clarke, 'Using thematic analysis in psychology' (2006) 3(2) *Qualitative Research in Psychology* 77
- Braun Virginia, Victoria Clarke and Paul Weate. 'Using thematic analysis in sport and exercise research' in Brett Smith and Andrew C Sparkes (eds), *Routledge handbook of qualitative research in sport and exercise* (Routledge, 2016)
- Camilleri, Marg, 'Victims' Participatory Rights' in Marg Camilleri and Alistair Harkness (eds), *Australian Courts: Controversies, Challenges and Change* (Palgrave Macmillan, 2022)
- Campbell, Rebecca., Rachael Goodman-Williams and McKenzie Javorka, 'A Trauma-Informed Approach to Sexual Violence Research Ethics and Open Science' (2019) 34 *Journal of Interpersonal Violence* 4765
- Chapleau, Kristine M and Debra L Oswald, 'A System Justification View of Sexual Violence: Legitimizing Gender Inequality and Reduced Moral Outrage Are Connected to Greater Rape Myth Acceptance' (2014) 15(2) *Journal of Trauma & Dissociation* 204
- Crome, Sarah and Marita P. McCabe, 'The Impact of Rape on Individual, Interpersonal, and Family Functioning' (1995) 1(1) *Journal of Family Studies* 58
- Daly, Kathleen, 'Sexual violence and victims' justice interests' In Estelle Zinsstag and Marie Keenan (eds), *Restorative Responses to Sexual Violence: Legal, Social and Therapeutic Dimensions* (Routledge 2017)
- Douglas, Heather and Robin Fitzgerald, 'Strangulation, Domestic Violence and the Legal Response' (2014) 36(2) *Sydney Law Review* 231
- Fisher, Cate et al, 'The impacts of child sexual abuse: A rapid evidence assessment' (Summary Report, Independent Inquiry into Child Sexual Abuse, July 2017) <<https://www.iicsa.org.uk/reports-recommendations/publications/research/impacts-csa>>
- Francis, Brian., Keith Soothill and Regina Ditttrich, 'A new approach for ranking "serious" offences' (2001) 41 *British Journal of Criminology* 726
- Hester, Marianne., Emma Williamson, Nathan Eisenstadt, Hilary Abrahams, Nadia Aghtaie, Lis Bates, Geetanjali Gangoli, Amanda Robinson, Sarah-Jane Walker, Elizabeth McCarthy, Andrea Matolcsi and Mulvihill, Natasha, 'What Is Justice? Perspectives of Victims-Survivors of Gender-Based Violence. Violence Against Women' (2023) *Violence Against Women* 1
- Higgins, Daryl. J., Ben Mathews, Rosana Pacella, James G Scott, David Finkelhor, Franziska Meinck, Holly E Erskine, Hannah J Thomas, David M Lawrence, Divna M Haslam, Eva Malacova and Michael P Dunn, 'The prevalence and nature of multi-type child maltreatment in Australia' (2023) 218 *The Medical Journal of Australia* 19
- Hudson, Nina, 'Community Attitudes to Offence Seriousness' (Victorian Sentencing Advisory Council, May 2012)
- Jeffs, Samuel., Siobhan Allen, Eva Klambauer and Laura Hilderley, 'Understanding of sentencing: Community knowledge of sentencing terms and outcomes' (Research Brief, Queensland Sentencing Advisory Council, 3 April 2023)

- Kirby, Amy and Jessica Jacobson, 'Public attitudes to the sentencing of drug offences' (2014) 14(3) *Criminology & Criminal Justice* 334
- James L Knoll, 'Educator Sexual Misconduct' in Robert R Hazelwood and Ann Wolbert Burgess (eds), *Practical Aspects of Rape Investigation* (CRC Press, 5th ed, 2016)
- Laird, Pamela et al, 'Conducting decolonizing research and practice with Australian First Nations to close the health gap' (2021) 19(1) *Health Research Policy and Systems* 1
- Lewis, Ruth., Cicely Marston and Kaye Wellings, 'Bases, Stages and 'Working your Way Up': Young People's Talk about Non-Coital Practices and 'Normal' Sexual Trajectories' (2013) 18(1) *Sociological Research Online* 233
- Loya, Rebecca M, 'Rape as an Economic Crime: The Impact of Sexual Violence on Survivors' Employment and Economic Well-Being' (2015) 30(16) *Journal of Interpersonal Violence* 2793
- Marchetti, Elena., Laura Hilderley, Marni Manning and Anne Edwards, 'Sentencing for Child Homicide Offences: Assessing Public Opinion using a Focus Group Approach', *Australian Institution of Criminology* (Report no. 21, 2021)
- Mason, Anthony 'The Courts and Public Opinion' (2002) 11 *Bar News: Journal of the NSW Bar Association* 30
- McGlynn, Clare and Nicole Westmarland, 'Kaleidoscopic Justice: Sexual Violence and Victim-Survivors' Perceptions of Justice' (2019) 28(2) *Social and Legal Studies* 179
- McKenna, Nicole C and Kristy Holtfreter, 'Trauma-Informed Courts: A Review and Integration of Justice Perspectives and Gender Responsiveness' (2021) 30(4) *Journal of Aggression, Maltreatment & Trauma* 450
- Muldoon, Orla T et al, 'Sexual violence and traumatic identity change: Evidence of collective post-traumatic growth' (2023) 53(7) *European Journal of Social Psychology* 1372
- Nagy, Rosemary, 'Settler Witnessing at the Truth and Reconciliation Commission of Canada' (2020) 21 *Human Rights Review* 219
- Office of the High Commissioner United Nations Human Rights, 'Rape as a grave and systematic human rights violation and gender-based violence against women' (Special Rapporteur on violence against women and girls, Call for Input, 5 August 2020) <<https://www.ohchr.org/en/calls-for-input/rape-grave-and-systematic-human-rights-violation-and-gender-based-violence-against>>
- Oster, Richard T and Patrick Lightning, 'Commentary: Developing Relationships through Trust in Indigenous Health Research' (2022) 17(4) *Healthcare Policy* 56
- Peeters, Laura., Anke Vandenberghe, Bavo Hendriks, Christine Gilles, Kristien Roelens and Ines Keygnaert, 'Current care for victims of sexual violence and future sexual assault care centres in Belgium: the perspective of victims' (2019) 19(1) *BMC International Health and Human Rights* 21
- Queensland Sentencing Advisory Council, *Queensland Sentencing Guide* (March 2023) <https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0004/572161/QLD-Sentencing-Guide.pdf>
- Queensland Sentencing Advisory Council, 'Review of sentencing for sexual assault and rape offences: About the Terms of Reference – Part 1' (Background Paper 1, September 2023)
- Queensland Sentencing Advisory Council, 'Sentencing Spotlight on Rape 2024' (v2.0, December 2023)
- Queensland Sentencing Advisory Council, 'Sentencing Spotlight on Sexual Assault 2024' (v1.0, November 2023)
- Ransley, Janet and Kristina Murphy, 'Working Paper on the Development of the Queensland Crime Harm Index' (Research Report, Griffith Criminology Institute, March 2024)
- Royal Commission into Family Violence (Report, March 2016) vol 1
- Ryberg, Jesper, *The Ethics of Proportionate Punishment: A Critical Investigation* (Springer, 2004)
- Santaularia, Jeanie., Monica Johnson, Laurie Hart, Lori Haskett, Ericka Welsh and Babalola Faseru, 'Relationships between sexual violence and chronic disease: a cross-sectional study' (2014) 14 *BMC Public Health* 1
- Shakeshaft, Charol et al, 'School Employee Sexual Misconduct: Red Flag Grooming Behaviors by Perpetrators' in Ersi Kalfoglou and Sotirios Kalfoglou (eds), *Sexual Abuse-An Interdisciplinary Approach*. (IntechOpen, 2021)
- Silburn, Sven R et al. 'The intergenerational effects of forced separation on the social and emotional wellbeing of Aboriginal children and young people' (Australian Institute of Family Studies, Family Matters, No 75, February 2007)
- Simonovic, Dubravka and Yasmeen Hassan, 'Rape as a grave and systemic human rights violation and gender-based violence against women: Expert Group Meeting Report 2020' (United Nations Human

Rights Special Procedure and Equality Now, Expert Group Meeting, 27 May 2020)

Smith, Brett and Kerry R McGannon, 'Developing rigor in qualitative research: problems and opportunities within sport and exercise psychology' (2018) 11 *International Review of Sport and Exercise Psychology* 101

Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an end to Domestic and Family Violence in Queensland* (Department of Justice and Attorney General, 28 February 2015) <<https://www.justice.qld.gov.au/initiatives/end-domestic-family-violence/about/not-now-not-ever-report>>

Spiranovic, Caroline, A., Lynne D Roberts and David Indermaur, 'What Predicts Punitiveness? An Examination of Predictors of Punitive Attitudes towards Offenders in Australia' (2012) 19(2) *Psychiatry, Psychology and the Law* 249

Tarzia, Laura, "It Went to the Very Heart of Who I Was as a Woman": The Invisible Impacts of Intimate Partner Sexual Violence' (2021) 31(2) *Qualitative Health Research* 287

von Hirsch, Andrew, 'Commensurability and Crime Prevention: Evaluating Formal Sentencing Structures and their Rationale' (1983) 74(1) *Journal of Criminal Law and Criminology* 209

von Hirsch, Andrew, 'Proportionality in the Philosophy of Punishment' (1992) 16 *Crime and Justice* 55

von Hirsch, Andrew and Andrew Ashworth, *Proportionate Sentencing: Exploring the Principles* (Oxford University Press, 2005)

Women's Safety and Justice Taskforce, *Hear her voice: Women and girls' experiences across the criminal justice system* (2022) <<https://www.womenstaskforce.qld.gov.au/publications>>

B. Cases

Allen v R [2012] NSWCCA 173

Barbaro v the Queen [2014] HCA 2

Channon v R (1978) 20 ALR 1

Director of Public Prosecutions v Charlie Dalglish (pseudonym) [2016] VSCA 148

Hoare v The Queen (1989) 167 CLR 328

Markarian v R (2005) 228 CLR 357

R v BDQ [2022] QCA 71

R v BDZ [2023] QCA 59

R v CLN [2016] QDC 111

R v Colless [2010] QCA 26

R v DJT [2023] QDCSR 93

R v Eric (a pseudonym); Ex parte Attorney-General (2021) 7 QR 601

R v Jurisic (1998) 45 NSWLR 209

R v KAK [2013] QCA 310

R v NAC [2022] QCA 210

R v Nemer [2003] SASC 375

R v Patrick (a pseudonym); R v Patrick (a pseudonym); ex parte Attorney-General (Qld) [2020] QCA 51

R v Rac; Ex Parte Attorney-General (Qld) [2018] QCA 178

R v SDO [2021] QCA 263

R v Stable (a pseudonym) (2020) 6 QR 617

R v Wallace [2023] QCA 22

Veen v R (No 2) (1988) 164 CLR 465

C. Legislation

Criminal Code 1899 (Qld)

Penalties and Sentences Act 1992 (Qld)

D. Other

Australian Bureau of Statistics, *Sexual violence*. (2023) <<https://www.abs.gov.au/statistics/people/crime-and-justice/sexual-violence/latest-release>>

Gleeson, Murray, "Sentencing: The Law's Communication Problem," a speech delivered to the Criminal Bar Association (19 November 1993)

Appendix

Appendix 1: Research Project Information Sheet.....	49
Appendix 2: Consent Form	51
Appendix 3: Trauma-Informed Approach.....	52
Appendix 4: Participant Booklet.....	53
Appendix 5: Sentencing Purposes Vignettes – Research Question 1	59
Appendix 6: Scenario Descriptions – Research Question 2.....	60
Appendix 7: Paired Comparisons – Research Question 2	61
Appendix 8: Seriousness Rankings.....	63

Appendix 1: Research Project Information Sheet



Research Project Information Sheet

Focus groups on community views of rape and sexual assault offences

Ethics Approval Number: A232001

Research Team Contact Details

Chief Investigator

Dr Dominique Moritz
Email: sentencing@usc.edu.au
Phone: (07) 5456 5494

Partner Investigator

Dr Ashley Pearson
Email: sentencing@usc.edu.au
Phone: (07) 5456 5522

Partner Investigator

Dr Dale Mitchell
Email: sentencing@usc.edu.au
Phone: (07) 5456 5697

Project Description

The purpose of this research project is to collect community views on the sentencing of rape and sexual assaults, including the seriousness of the offending.

This project is funded by the Queensland Department of Justice and Attorney General. The funding organisation will not know who participates or have access to any individual data.

Participation

The following participants are eligible to participate in this research:

- Adults who are 18 years or over;
- Permanently reside in Queensland;
- English speaking; And
- Have never been accused or convicted of committing a sexual violence offence.

If you agree to participate in this research project, you will be asked to attend a [focus group/workshop](#), with approximately 7 – 11 other attendees from the community, which will be facilitated by Dr Dominique Moritz, Dr Ashley Pearson, Dr Dale Mitchell or Natalee Cairns. The focus group/workshop will take place at a date and location to be confirmed [and](#) will take approximately 120 minutes.

Topics to be discussed will be how the community ranks the seriousness of sexual assault and rape offences compared to other offences committed in Queensland and what is the importance of the sentencing purposes of just punishment, denunciation and community protection for sexual assault and rape offences.

The focus groups will be audio-recorded and transcribed.

The types of questions may be considered sensitive. If at any time you are feeling uncomfortable, please let one of the research team know and they will direct you to the appropriate services.

Your participation is voluntary. If you decide to take part and later change your mind, you are free to withdraw up to the point at which data is aggregated and analysed. Please contact the Chief Investigator (listed above) to discuss withdrawal.

Consent

You will be asked to provide written or verbal consent. Consent is for your data and information to be collected and stored in a non-identifiable format, and used in analysis and publications in a non-identifiable format.

Consent is sought for this research project only.

Risks and Benefits

Exposure to distressing or confronting themes, namely rape and sexual assault, is a risk of participating in this research. You are not required to answer questions you don't want to answer and you may discontinue or pause the focus group at any time if required. If you need to talk to someone you may wish to contact:

- family or friends;
- your General Practitioner;
- your Employee Assistance Program;
- Lifeline (131114);
- Headspace (www.headspace.org.au);
- Beyond Blue (1300 224 636); and/or
- Queensland Sexual Assault Helpline (1800 010 120)

A psychological distress protocol will be provided to participants of the focus groups.

We ask that you respect your fellow participants by keeping all discussions confidential.

It is not anticipated that this research project will directly benefit you but we appreciate your input as a contribution.

Privacy, Confidentiality and Results

Any data collected as a part of this research project will be stored securely as per UniSC's Research Data Management Procedures. All comments and responses will be treated confidentially unless required by law.

The research team will be able to identify if you choose to participate. The focus groups will be audio recorded. Only the project team members and professional transcription service will have access to the audio recording.

Data/transcriptions/recordings will be de-identified. The funding body will have access to the de-identified transcripts. Participation status or identifiable individual comments will not be shared with funding body.

The recording will be destroyed after transcription, at the end of the project, after 5 years.

The deidentified results of this research project may be presented at external or internal conferences or meetings, or by publication. If you would like a summary of findings of this research project, please contact the Chief Investigator (listed above).

Concerns or Complaints

If you have any concerns or complaints about the way this research project is being conducted you can raise them with the Chief Investigator (listed above). If you prefer an independent person, you may contact the Chair of the UniSC Human Research Ethics Committee: (c/- Office of Research, University of the Sunshine Coast, Maroochydore DC 4558; telephone (07) 5430 2823; email humanethics@usc.edu.au).

Please save the information above if you choose to participate.

Appendix 2: Consent Form

Consent – Written

Consent to Participate in Research



Focus groups on community views of rape and sexual assault offences

Ethics approval number: A232001

- ☐ I have read, understood, and kept a copy of the Research Project Information Sheet. Any questions I have about my participation have been answered and I consent to participate.
- ☐ I consent for my data and information to be used for this project.
- ☐ I acknowledge that I am 18 years or over, I reside in Queensland and can speak conversational English.

Participant

Name

Signature

Date

Appendix 3: Trauma-Informed Approach

The focus group design and delivery was undertaken from a trauma-informed perspective. Several strategies were adopted including:

- An evidence-based psychological distress protocol was used for navigating participant distress during the focus group fieldwork;¹¹⁷
- Participants were asked to disclose their victim-survivor profile during the registration process and were assigned to victim-survivor focus groups accordingly;
- A list of gender and culturally specific (male, female, Aboriginal and Torres Strait Islander, LGBTQIA+, etc) support services was included in recruitment materials and shared with all participants at the commencement and conclusion of focus groups;
- One of the focus group facilitators has background and experience in trauma-informed practice;
- The trauma-informed facilitator established safety and respect expectations of the group, including specific suggestions regarding affect regulation and self-care techniques before and after the focus group;
- Participants were requested not to disclose identity or personal experiences and to keep all focus group discussions confidential;
- Breaks were scheduled and encouraged during the focus group sessions;
- Trigger warnings were given regarding the nature and verbal delivery of sensitive content throughout focus groups; and
- The trauma-informed facilitator monitored and responded to participant responses and co-facilitator contributions with support or containment strategies as required throughout and immediately following the focus groups.

Verbal and written feedback from participants, and particularly victim-survivor participants, indicated support for the trauma-informed approach in achieving a safe, respectful, and supportive investigation of a sensitive and potentially traumatising, but 'important', topic.

¹¹⁷ Clare Whitney and Jane Evered, 'The Qualitative Research Distress Protocol: A Participant-Centered Tool for Navigating Distress During Data Collection' (2022) 21(1) *International Journal of Qualitative Methods* 1.

Appendix 4: Participant Booklet

1



PARTICIPANT BOOKLET

COMMUNITY VIEWS OF RAPE AND SEXUAL ASSAULT OFFENCES: FOCUS GROUPS

Booklet to be returned at the end of the focus group
2024

2

PARTICIPANT DATA COLLECTION

The following data is being collected for statistical purposes only. It will not be used to identify you. Please answer the following.

1. What is your gender?
 - ☐ Female
 - ☐ Male
 - ☐ Non-binary
 - ☐ Prefer not to say
2. What is your age??
 - ☐ 18 - 29
 - ☐ 30 - 39
 - ☐ 40 - 49
 - ☐ 50 - 59
 - ☐ 60 - 69
 - ☐ 70+
3. Do you identify as an Aboriginal or Torres Strait Islander Person?
 - ☐ Yes
 - ☐ No
 - ☐ Prefer not to say
4. What is your highest level of education?
 - ☐ Year 7 or below
 - ☐ Year 8, 9 or 10
 - ☐ Year 11 or 12
 - ☐ Certificate or Diploma
 - ☐ Bachelor's Degree
 - ☐ Postgraduate Degree
 - ☐ Prefer not to say
5. What is your current employment status?
 - ☐ Employed including home duties
 - ☐ Student
 - ☐ Retired
 - ☐ Not currently employed (including unable to work)
 - ☐ Prefer not to say
6. Which focus group location are you attending?
 - ☐ Cairns
 - ☐ Mt Isa
 - ☐ Rockhampton
 - ☐ Sunshine Coast
 - ☐ Brisbane
 - ☐ Online
7. If you are attending the online focus group, what city/town do you live in?
 - ☐ _____

3

OUTLINE OF OUR LEGAL SYSTEM

As participants of our focus groups, it is important to understand some key concepts in relation to the legal system which are relevant to sentencing.

Members of Parliament are our elected representatives from the community. Those representatives share community views from their electorates and will vote, in Parliament, on behalf of their community members. Those Members of Parliament are responsible for creating legislation which are a set of binding community standards and tell the community what behaviour is acceptable and what behaviour is not tolerated. Generally, behaviour which harms another person, or the community as a whole, is against the law and consequences apply to individuals who break the law.

When a person allegedly breaks the law, police, who enforce the law, will investigate that person's conduct and determine whether they need to be prosecuted. If that person is charged with a criminal offence, they are brought before a court. If that person pleads guilty, or they are found guilty, the court will determine what consequences they may face. The process of determining consequences is called sentencing. Some examples of sentences for breaching criminal law include a period of imprisonment, a fine or community service.

4

The judge or magistrate, the court's decision-makers, must ensure the sentence they prescribe is a fair one and they must carefully consider many different factors to determine an appropriate sentence.

The law guides a judge or magistrate when they are using their discretion to determine an appropriate sentence. There are five reasons, in Queensland, for a judge or magistrate to sentence a person. These are:

Punishment: to punish the person in a way that is just.

Denunciation: to send a strong message to the person and community that the person's behaviour won't be tolerated.

Community Protection: to protect the Queensland community from the person.

Deterrence: to discourage the person and other people from committing crimes like this.

Rehabilitation: To help the person so they won't offend again.

The judge or magistrate might rely on one of these purposes or multiple purposes. These purposes are the reasons why a person receives a sentence from a court.

These focus groups relate, specifically, to sentencing rape and sexual assault offences. Rape and sexual assault generally refer to committing sexual acts against another person without their consent. Consent, then, is very relevant to these offences.

5

Consent means a person agreed to participate in the sexual activity. That agreement has to be given freely and voluntarily. So if someone agrees because they are threatened, intimidated, forced, they fear being harmed, they are tricked, they are following a person in a position of authority or they misunderstood who the person is, this is not free and voluntary and so there is no consent. If the person does not understand what the sexual activity involves because of disability, illness, age, intoxication or anything else that might affect their understanding, they cannot consent to any sexual activity either. A person can consent to, or refuse, to participate in sexual activity using words or actions.

It is also important to remember that only a person who is 16 years or over can lawfully engage in sexual intercourse.

6

PART I ACTIVITIES

Please wait for your focus group facilitator to guide you through these activities.

There will be a short break after Part I.

7

Rank the five sentencing purposes from 1 (most important) to 5 (least important) in the order of your choice.

Please write your answers in the boxes below.

Touching a person's breast without consent

<input type="checkbox"/>	Punishment
<input type="checkbox"/>	Denunciation
<input type="checkbox"/>	Community Protection
<input type="checkbox"/>	Deterrence
<input type="checkbox"/>	Rehabilitation

Your answers will not be shared with the group

8

Rank the five sentencing purposes from 1 (most important) to 5 (least important) in the order of your choice.

Please write your answers in the boxes below.

Having penetrative sexual intercourse with a person without consent

<input type="checkbox"/>	Punishment
<input type="checkbox"/>	Denunciation
<input type="checkbox"/>	Community Protection
<input type="checkbox"/>	Deterrence
<input type="checkbox"/>	Rehabilitation

Your answers will not be shared with the group

9

Read

Derek* (35M) and Vanessa* (35F) were in a relationship which involved domestic violence. Vanessa had a protection order which prevented Derek from being with her within 12 hours of drinking alcohol.

One morning Vanessa woke and saw Derek had been drinking. He started engaging in sexual activity with her, but she said "no" several times. Derek ignored her, wrapped his arm around her so that she could not move and forced his penis into her vagina for around 3 minutes before he ejaculated.

A few days later Vanessa was in bed, unwell. Derek put his hands inside her pyjamas and touched her on the vagina. She said, "stop", "no", "get your hands off me" and "don't touch me" several times. He continued to touch her. Vanessa contacted the police the next day.

Derek pleaded guilty. He had a criminal history involving other offences from a previous domestic relationship, as well as offences relating to not following the conditions of a domestic violence order in respect of Vanessa. Derek had a good work history as a registered nurse but has been de-registered due to alcohol dependence. One factor contributing to this was his exposure to stress as a nurse. At the time of sentence, he had engaged in counselling for his mental health issues and taken steps to address his alcoholism.

* Names are fictional.

Choose which sentencing purpose is most important. Circle one only.

- Punishment
- Denunciation
- Community Protection
- Deterrence
- Rehabilitation

If you would like to change your answer after listening to the discussion, indicate which sentencing purpose you now believe is most important:

Punishment

Denunciation

Community Protection

Deterrence

Rehabilitation

Why?

10

Read

David* (35M) was sitting in the bushes and saw Vivian* (35F) walking through a park at 7am on the way to a train station. Vivian did not know David. He tried to talk to her, but she ignored him. David followed her and then grabbed her from behind and carried her towards a secluded area. David began touching Vivian on her breasts. He undid the top button of her pants and pressed his finger against her anus. Vivian was crying and shouting for help. David placed his hand over her mouth to stop her from yelling. A passerby heard Vivian and called 000. David ran away but was later found by police.

David pleaded guilty. He had a criminal history of violence (robbing a petrol station with a replica gun, but it was a while ago when he had a problem with alcohol). He had completed two years of an apprenticeship and had been employed for about 3 years.

* Names are fictional.

Choose which sentencing purpose is most important. Circle one only.

- Punishment
- Denunciation
- Community Protection
- Deterrence
- Rehabilitation

If you would like to change your answer after listening to the discussion, indicate which sentencing purpose you now believe is most important:

Punishment

Denunciation

Community Protection

Deterrence

Rehabilitation

Why?

11

Read

Daniel* (35M) had a daughter Veronica* (3-6F). On one occasion Daniel put honey on his penis and told Veronica (3F) to suck it. Daniel ejaculated in her mouth. On another occasion, Daniel asked Veronica (5F) to suck his penis. She said no and he bribed her with the promise of chocolate. On another occasion Daniel rubbed Veronica's (6F) vagina with his penis outside her clothing.

When Daniel was questioned about the offending by Veronica's mother, Daniel admitted one act, minimising his role. Once charged, he pleaded guilty. He had no criminal history. At the time of sentence, Daniel had attended 19 sessions with a psychologist and was considered to have a low risk of reoffending but to require further counselling. There was a safety plan in place to ensure there is only supervised contact between Daniel and Veronica.

* Names are fictional.

Choose which sentencing purpose is most important. Circle one only.

- Punishment
- Denunciation
- Community Protection
- Deterrence
- Rehabilitation

If you would like to change your answer after listening to the discussion, indicate which sentencing purpose you now believe is most important:

Punishment

Denunciation

Community Protection

Deterrence

Rehabilitation

Why?

12

PART II ACTIVITIES

Please wait for your focus group facilitator to guide you through these activities.

13 CIRCLE THE MOST SERIOUS BEHAVIOUR FOR EACH OF THE PAIRS BELOW.

Dominic (35) non-consensually penetrates the vagina of a stranger (35) with his penis.

1

Douglas (35) uses his fingers to penetrate the vagina of his niece, Verity (10), without her consent.

Dominic (35) non-consensually penetrates the vagina of a stranger (35) with his penis.

2

Declan (35) non-consensually penetrates the anus of his husband (35) with his penis.

Declan (35) non-consensually penetrates the anus of his husband (35) with his penis.

3

Douglas (35) uses his fingers to penetrate the vagina of his niece, Verity (10), without her consent.

Douglas (35) uses his fingers to penetrate the vagina of his niece, Verity (10), without her consent.

4

Dorothy (35) is Vaughn's (16) school teacher. Dorothy put Vaughn's penis in her mouth without his consent.

Dorothy (35) is Vaughn's (16) school teacher. Dorothy put Vaughn's penis in her mouth without his consent.

5

Daniel (35) forces Vicki (35) to penetrate her vagina with a sex toy, without her consent.

14 CIRCLE THE MOST SERIOUS BEHAVIOUR FOR EACH OF THE PAIRS BELOW.

Daniel (35) forces Vicki (35) to penetrate her vagina with a sex toy, without her consent.

6

Damien (35) is Vivienne's boss. Damien uses his hands to touch Vivienne's (35) breasts over the top of her clothing without her consent.

Damien (35) is Vivienne's boss. Damien uses his hands to touch Vivienne's (35) breasts over the top of her clothing without her consent.

7

Darryl (35) enters a house at night intending to take items without permission. He takes property belonging to the sleeping occupants but does not harm any of them.

Darryl (35) enters a house at night intending to take items without permission. He takes property belonging to the sleeping occupants but does not harm any of them.

8

Dorothy (35) is Vaughn's (16) school teacher. Dorothy put Vaughn's penis in her mouth without his consent.

Dustin (35) intentionally kills his ex-girlfriend, Violet (35).

9

Dorian (35) and Darren (35) take Veronica (19) to a secluded location. Dorian non-consensually penetrates Veronica's vagina with his penis. Immediately after Dorian ejaculates, Darren non-consensually penetrates Veronica's vagina and anus with his penis.

Dustin (35) intentionally kills his ex-girlfriend, Violet (35).

10

Douglas (35) uses his fingers to penetrate the vagina of his niece, Verity (10), without her consent.

15

Declan (35) non-consensually penetrates the anus of his husband (35) with his penis.	11	Duncan (35) punches Viggo (35) in the head and chest. Duncan and Viggo were strangers and did not speak prior to the incident. Viggo did not suffer any physical injuries.
Duncan (35) punches Viggo (35) in the head and chest. Duncan and Viggo were strangers and did not speak prior to the incident. Viggo did not suffer any physical injuries.	12	Daniel (35) forces Vicki (35) to penetrate her vagina with a sex toy, without her consent.
Dexter (35) and his wife, Virginia (35) are arguing. Dexter puts his hands on Virginia's throat, stopping her breathing for a short period of time.	13	Damien (35) is Vivienne's boss. Damien uses his hands to touch Vivienne's (35) breasts over the top of her clothing without her consent.
Dexter (35) and his wife, Virginia (35) are arguing. Dexter puts his hands on Virginia's throat, stopping her breathing for a short period of time.	14	Dorothy (35) is Vaughn's (16) school teacher. Dorothy put Vaughn's penis in her mouth without his consent.
Denise (35) drives her car over the speed limit while drunk and hits another car. The accident leaves the other driver, Val (35), permanently unable to use her legs.	15	Dorothy (35) is Vaughn's (16) school teacher. Dorothy put Vaughn's penis in her mouth without his consent.

16 **CIRCLE THE MOST SERIOUS BEHAVIOUR FOR EACH OF THE PAIRS BELOW.**

Denise (35) drives her car over the speed limit while drunk and hits another car. The accident leaves the other driver, Val (35), permanently unable to use her legs.	16	Damien (35) is Vivienne's boss. Damien uses his hands to touch Vivienne's (35) breasts over the top of her clothing without her consent.
Declan (35) non-consensually penetrates the anus of his husband (35) with his penis.	17	Denise (35) drives her car over the speed limit while drunk and hits another car. The accident leaves the other driver, Val (35), permanently unable to use her legs.
Dominic (35) non-consensually penetrates the vagina of a stranger (35) with his penis.	18	Daniel (35) forces Vicki (35) to penetrate her vagina with a sex toy, without her consent.
Dorian (35) and Darren (35) take Veronica (19) to a secluded location. Dorian non-consensually penetrates Veronica's vagina with his penis. Immediately after Dorian ejaculates, Darren non-consensually penetrates Veronica's vagina and anus with his penis.	19	Duke (35) and Vera (35) had ended their relationship. Duke did not accept this and struck Vera three times in the head with a claw hammer. Vera had multiple skull fractures and permanent scarring.
Dorian (35) and Darren (35) take Veronica (19) to a secluded location. Dorian non-consensually penetrates Veronica's vagina with his penis. Immediately after Dorian ejaculates, Darren non-consensually penetrates Veronica's vagina and anus with his penis.	20	Douglas (35) uses his fingers to penetrate the vagina of his niece, Verity (10), without her consent.

17	Duke (35) and Vera (35) had ended their relationship. Duke did not accept this and struck Vera three times in the head with a claw hammer. Vera had multiple skull fractures and permanent scarring.	21	Dominic (35) non-consensually penetrates the vagina of a stranger (35) with his penis.
	Duke (35) and Vera (35) had ended their relationship. Duke did not accept this and struck Vera three times in the head with a claw hammer. Vera had multiple skull fractures and permanent scarring.	22	Dexter (35) and his wife, Virginia (35) are arguing. Dexter puts his hands on Virginia's throat, stopping her breathing for a short period of time.
	Denise (35) drives her car over the speed limit while drunk and hits another car. The accident leaves the other driver, Val (35), permanently unable to use her legs.	23	Darryl (35) enters a house at night intending to take items without permission. He takes property belonging to the sleeping occupants but does not harm any of them.
	Donald (35) uses his fingers to penetrate his friend, Velma's (35) vagina, without her consent.	24	Declan (35) non-consensually penetrates the anus of his husband (35) with his penis.
	Donald (35) uses his fingers to penetrate his friend, Velma's (35) vagina, without her consent.	25	Dexter (35) and his wife, Virginia (35) are arguing. Dexter puts his hands on Virginia's throat, stopping her breathing for a short period of time.
	Donald (35) uses his fingers to penetrate his friend, Velma's (35) vagina, without her consent.	26	Duncan (35) punches Viggo (35) in the head and chest. Duncan and Viggo were strangers and did not speak prior to the incident. Viggo did not suffer any physical injuries.

Final Comments

[illegible]

THANK YOU FOR
PARTICIPATING IN THE
FOCUS GROUP

Appendix 5: Sentencing Purposes Vignettes – Research Question 1

Vignette 1

Derek* (35M) and Vanessa* (35F) were in a relationship for 2 years. Vanessa had a protection order which prevented Derek from being with her within 12 hours of drinking alcohol. One morning Vanessa woke and saw Derek had been drinking. He started engaging in sexual activity with her, but she said "no" several times. Derek ignored her, wrapped his arm around her so that she could not move and forced his penis into her vagina for around 3 minutes before he ejaculated. A few days later Vanessa was in bed unwell. Derek put his hands inside her pyjamas and touched her on the vagina. She said, "stop", "no", "get your hands off me" and "don't touch me" several times. He continued to touch her. Vanessa contacted the police the next day. Derek pleaded guilty. He had a criminal history starting 5 years ago and other offences from a previous domestic relationship. Two years ago he was sentenced for not following the conditions of a domestic violence order in respect of Vanessa. Derek had a good work history as a registered nurse but has been de-registered due to alcohol dependence. One factor contributing to this was his exposure to stress as a nurse. At the time of sentence, he had engaged in counselling for his mental health issues and taken steps to address his alcoholism.

Vignette 2

David* (35M) was sitting in the bushes and saw Vivian* (35F) walking through a park at 7am on the way to a train station. Vivian did not know David. He tried to talk to her, but she ignored him. David followed her and then grabbed her from behind and carried her towards a secluded area. David began touching Vivian on her breasts. He undid the top button of her pants and pressed his finger against her anus. Vivian was crying and shouting for help. David placed his hand over her mouth to stop her from yelling. A passerby heard Vivian and called 000. David ran away but was later found by police. He pleaded guilty. He had a criminal history of violence (robbing a petrol station with a replica gun, but it was a while ago when he had a problem with alcohol). He had completed two years of an apprenticeship and had been employed for about 3 years.

Vignette 3

Daniel* (35M) had a daughter Veronica* (3-6F). On one occasion Daniel put honey on his penis and told Veronica (3F) to suck it. Daniel ejaculated in her mouth. On another occasion, Daniel asked Veronica (6/5F) to suck his penis. She said no and he bribed her with the promise of chocolate. On another occasion Daniel rubbed Veronica's (6F) vagina with his penis outside her clothing. When Daniel was questioned about the offending by Veronica's mother, Daniel admitted one act, minimising his role. Once charged he pleaded guilty. He had no criminal history. At the time of sentence Daniel had attended 19 sessions with a psychologist and was considered to have a low risk of reoffending but to require further counselling. There was a safety plan in place to ensure there is only supervised contact between Daniel and Veronica.

Appendix 6: Scenario Descriptions – Research Question 2

Scenario	Offence	Maximum Penalty	Provision
Dominic (35) non-consensually penetrates the vagina of a stranger (35) with his penis.	Rape – Penile intercourse non-consent	Life	S349(2)(a)
Declan (35) non-consensually penetrates the anus of his husband (35) with his penis.	Rape – Penile intercourse non-consent	Life	S349(2)(a)
Dorian (35) and Darren (35) take Veronica (19) to a secluded location. Dorian non-consensually penetrates Veronica's vagina with his penis. Immediately after Dorian ejaculates, Darren non-consensually penetrates Veronica's vagina and anus with his penis.	Rape – Penile intercourse non-consent (in company; party offences)	Life	S349(2)(a)
Donald (35) uses his fingers to penetrate his friend, Velma's (35) vagina, without her consent.	Rape – Digital penetration non-consent	Life	S329(2)(b)
Damien (35) is Vivienne's boss. Damien uses his hands to touch Vivienne's (35) breasts over the top of her clothing without her consent.	Sexual Assault – Indecent assault	10 years	S352(1)(a)
Dorothy (35) is Vaughn's (16) school teacher. Dorothy put Vaughn's penis in her mouth without his consent.	Sexual Assault – indecent assault (aggravating – s352(2))	14 years	S352(1)(a)
Daniel (35) forces Vicki (35) to penetrate her vagina with a sex toy, without her consent.	Sexual Assault – gross indecency (aggravating – s352(3)(b))	Life	S352(1)(b)
Douglas (35) uses his fingers to penetrate the vagina of his niece, Verity (10), without her consent.	Rape - child	Life	S349(2)(a)
Duke (35) and Vera (35) had ended their relationship. Duke did not accept this and struck Vera three times in the head with a claw hammer. Vera had multiple skull fractures and permanent scarring.	Act intended to cause grievous bodily harm or other malicious acts	Life	S317
Darryl (35) enters a house at night intending to take items without permission. He takes property belonging to the sleeping occupants but does not harm any of them.	Burglary	Life	S419
Dustin (35) intentionally kills his ex-girlfriend, Violet (35).	Murder	Life	S302
Denise (35) drives her car over the speed limit while drunk and hits another car. The accident leaves the other driver, Val (35), permanently unable to use her legs.	Dangerous operation of a vehicle – Drink driving causing grievous bodily harm	14 years	S328A(4)
Duncan (35) punches Viggo (35) in the head and chest. Duncan and Viggo were strangers and did not speak prior to the incident. Viggo did not suffer any physical injuries.	Common Assault	3 years	S335
Dexter (35) and his wife, Virginia (35) are arguing. Dexter puts his hands on Virginia's throat, stopping her breathing for a short period of time.	Choking, suffocation or strangulation in a domestic setting	7 years	S315A

Appendix 7: Paired Comparisons – Research Question 2

No.	Scenario A	Scenario B
1	Dominic (35) non-consensually penetrates the vagina of a stranger (35) with his penis.	Douglas (35) uses his fingers to penetrate the vagina of his niece, Verity (10), without her consent.
2	Dominic (35) non-consensually penetrates the vagina of a stranger (35) with his penis.	Declan (35) non-consensually penetrates the anus of his husband (35) with his penis.
3	Declan (35) non-consensually penetrates the anus of his husband (35) with his penis.	Douglas (35) uses his fingers to penetrate the vagina of his niece, Verity (10), without her consent.
4	Douglas (35) uses his fingers to penetrate the vagina of his niece, Verity (10), without her consent.	Dorothy (35) is Vaughn's (16) school teacher. Dorothy put Vaughn's penis in her mouth without his consent.
5	Dorothy (35) is Vaughn's (16) school teacher. Dorothy put Vaughn's penis in her mouth without his consent.	Daniel (35) forces Vicki (35) to penetrate her vagina with a sex toy, without her consent.
6	Daniel (35) forces Vicki (35) to penetrate her vagina with a sex toy, without her consent.	Damien (35) is Vivienne's boss. Damien uses his hands to touch Vivienne's (35) breasts over the top of her clothing without her consent.
7	Damien (35) is Vivienne's boss. Damien uses his hands to touch Vivienne's (35) breasts over the top of her clothing without her consent.	Darryl (35) enters a house at night intending to take items without permission. He takes property belonging to the sleeping occupants but does not harm any of them.
8	Darryl (35) enters a house at night intending to take items without permission. He takes property belonging to the sleeping occupants but does not harm any of them.	Dorothy (35) is Vaughn's (16) school teacher. Dorothy put Vaughn's penis in her mouth without his consent.
9	Dustin (35) intentionally kills his ex-girlfriend, Violet (35).	Dorian (35) and Darren (35) take Veronica (19) to a secluded location. Dorian non-consensually penetrates Veronica's vagina with his penis. Immediately after Dorian ejaculates, Darren non-consensually penetrates Veronica's vagina and anus with his penis.
10	Dustin (35) intentionally kills his ex-girlfriend, Violet (35).	Douglas (35) uses his fingers to penetrate the vagina of his niece, Verity (10), without her consent.
11	Declan (35) non-consensually penetrates the anus of his husband (35) with his penis.	Duncan (35) punches Viggo (35) in the head and chest. Duncan and Viggo were strangers and did not speak prior to the incident. Viggo did not suffer any physical injuries.
12	Duncan (35) punches Viggo (35) in the head and chest. Duncan and Viggo were strangers and did not speak prior to the incident. Viggo did not suffer any physical injuries.	Daniel (35) forces Vicki (35) to penetrate her vagina with a sex toy, without her consent.
13	Dexter (35) and his wife, Virginia (35) are arguing. Dexter puts his hands on Virginia's throat, stopping her breathing for a short period of time.	Damien (35) is Vivienne's boss. Damien uses his hands to touch Vivienne's (35) breasts over the top of her clothing without her consent.
14	Dexter (35) and his wife, Virginia (35) are arguing. Dexter puts his hands on Virginia's throat, stopping her breathing for a short period of time.	Dorothy (35) is Vaughn's (16) school teacher. Dorothy put Vaughn's penis in her mouth without his consent.

15	Denise (35) drives her car over the speed limit while drunk and hits another car. The accident leaves the other driver, Val (35), permanently unable to use her legs.	Dorothy (35) is Vaughn's (16) school teacher. Dorothy put Vaughn's penis in her mouth without his consent.
16	Denise (35) drives her car over the speed limit while drunk and hits another car. The accident leaves the other driver, Val (35), permanently unable to use her legs.	Damien (35) is Vivienne's boss. Damien uses his hands to touch Vivienne's (35) breasts over the top of her clothing without her consent.
17	Declan (35) non-consensually penetrates the anus of his husband (35) with his penis.	Denise (35) drives her car over the speed limit while drunk and hits another car. The accident leaves the other driver, Val (35), permanently unable to use her legs.
18	Dominic (35) non-consensually penetrates the vagina of a stranger (35) with his penis.	Daniel (35) forces Vicki (35) to penetrate her vagina with a sex toy, without her consent.
19	Dorian (35) and Darren (35) take Veronica (19) to a secluded location. Dorian non-consensually penetrates Veronica's vagina with his penis. Immediately after Dorian ejaculates, Darren non-consensually penetrates Veronica's vagina and anus with his penis.	Duke (35) and Vera (35) had ended their relationship. Duke did not accept this and struck Vera three times in the head with a claw hammer. Vera had multiple skull fractures and permanent scarring.
20	Dorian (35) and Darren (35) take Veronica (19) to a secluded location. Dorian non-consensually penetrates Veronica's vagina with his penis. Immediately after Dorian ejaculates, Darren non-consensually penetrates Veronica's vagina and anus with his penis.	Douglas (35) uses his fingers to penetrate the vagina of his niece, Verity (10), without her consent.
21	Duke (35) and Vera (35) had ended their relationship. Duke did not accept this and struck Vera three times in the head with a claw hammer. Vera had multiple skull fractures and permanent scarring.	Dominic (35) non-consensually penetrates the vagina of a stranger (35) with his penis.
22	Duke (35) and Vera (35) had ended their relationship. Duke did not accept this and struck Vera three times in the head with a claw hammer. Vera had multiple skull fractures and permanent scarring.	Dexter (35) and his wife, Virginia (35) are arguing. Dexter puts his hands on Virginia's throat, stopping her breathing for a short period of time.
23	Denise (35) drives her car over the speed limit while drunk and hits another car. The accident leaves the other driver, Val (35), permanently unable to use her legs.	Darryl (35) enters a house at night intending to take items without permission. He takes property belonging to the sleeping occupants but does not harm any of them.
24	Donald (35) uses his fingers to penetrate his friend, Velma's (35) vagina, without her consent.	Declan (35) non-consensually penetrates the anus of his husband (35) with his penis.
25	Donald (35) uses his fingers to penetrate his friend, Velma's (35) vagina, without her consent.	Dexter (35) and his wife, Virginia (35) are arguing. Dexter puts his hands on Virginia's throat, stopping her breathing for a short period of time.
26	Donald (35) uses his fingers to penetrate his friend, Velma's (35) vagina, without her consent.	Duncan (35) punches Viggo (35) in the head and chest. Duncan and Viggo were strangers and did not speak prior to the incident. Viggo did not suffer any physical injuries.

Appendix 8: Seriousness Rankings

Paired Comparison	Most Serious Offence	Compared Offence	Most Serious Score	Compared Score	Did Not Answer	Total
1	Digital-vaginal rape, child, niece (Douglas)	Stranger penile-vaginal rape (Dominic)	76	10	3	89
2	Stranger penile-vaginal rape (Dominic)	Husband penile-anal rape (Declan)	71	13	5	89
3	Digital-vaginal rape, child, niece (Douglas)	Husband penile-anal rape (Declan)	84	1	4	89
4	Digital-vaginal rape, child, niece (Douglas)	Teacher-student oral sexual assault (Dorothy)	65	20	4	89
5	Teacher-student oral sexual assault (Dorothy)	Sex toy-vaginal sexual assault (Daniel)	77	7	5	89
6	Sex toy-vaginal sexual assault (Daniel)	Employer-employee sexual assault (Damien)	59	27	3	89
7	Employer-employee sexual assault (Damien)	Burglary (Darryl)	66	19	4	89
8	Teacher-student oral sexual assault (Dorothy)	Burglary (Darryl)	83	3	3	89
9	Murder, domestic (Dustin)	Penile-vaginal, penile-anal rape in company (Dorian & Darren)	59	25	5	89
10	Murder, domestic (Dustin)	Digital-vaginal rape, child, niece (Douglas)	66	19	4	89
11	Husband penile-anal rape (Declan)	Stranger common assault (Duncan)	71	14	4	89
12	Sex toy-vaginal sexual assault (Daniel)	Stranger common assault (Duncan)	74	10	5	89
13	Domestic strangulation (Dexter)	Employer-employee sexual assault (Damien)	78	6	5	89
14	Teacher-student oral sexual assault (Dorothy)	Domestic strangulation (Dexter)	44	40	5	89
15	Speeding drunk driver - permanent paralysis (Denise)	Teacher-student oral sexual assault (Dorothy)	50	34	5	89
16	Speeding drunk driver - permanent paralysis (Denise)	Employer-employee sexual assault (Damien)	77	10	2	89
17	Speeding drunk driver - permanent paralysis (Denise)	Husband penile-anal rape (Declan)	59	24	6	89
18	Stranger penile-vaginal rape (Dominic)	Sex toy-vaginal sexual assault (Daniel)	78	7	4	89
19	Penile-vaginal, penile-anal rape in company (Dorian & Darren)	Domestic intention to cause grievous bodily harm (Duke)	47	37	5	89
20	Digital-vaginal rape, child, niece (Douglas)	Penile-vaginal, penile-anal rape in company (Dorian & Darren)	43	42	4	89
21	Domestic intention to cause grievous bodily harm (Duke)	Stranger penile-vaginal rape (Dominic)	57	27	5	89
22	Domestic intention to cause grievous bodily harm (Duke)	Domestic strangulation (Dexter)	75	9	5	89
23	Speeding drunk driver - permanent paralysis (Denise)	Burglary (Darryl)	81	5	3	89
24	Husband penile-anal rape (Declan)	Friend digital-vaginal rape (Donald)	47	36	6	89
25	Domestic strangulation (Dexter)	Friend digital-vaginal rape (Donald)	56	26	7	89
26	Friend digital-vaginal rape (Donald)	Stranger common assault (Duncan)	73	13	3	89