

SENTENCING
SPOTLIGHT ON...

child exploitation material offences



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Sentencing Spotlight on... child exploitation material offences

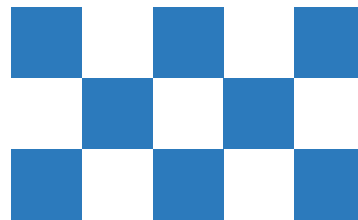
There are a range of offences under both Queensland and Commonwealth legislation relating to the access, possession, distribution and making of child exploitation material. This *Sentencing Spotlight* looks at sentencing outcomes for child exploitation material offences finalised in the Queensland Courts between 1 July 2006 and 30 June 2016.

Summary of offences 2006–07 to 2015–16

COURT and DIVERSION



3035 offenders
finalised;
responsible for **8198**
CEM-related offences

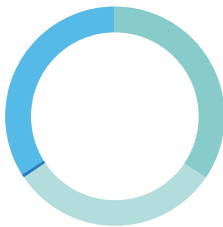


1470 offenders
under 17 years
diverted by police



1565 offenders
sentenced in court;
28 under 17 years

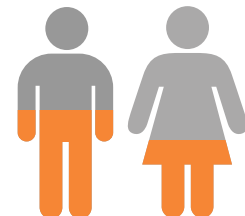
DIVERSION



Possess 35.4%
Distribute 34.4%
Make 29.7%
C'wealth offences 0.5%



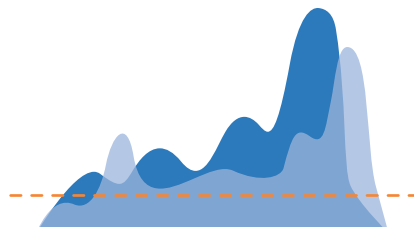
Majority sexting
offences



54.8% male
45.2% female



10.8%
Aboriginal and
Torres Strait Islanders



Average age
14.8 years

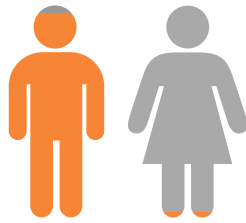


92.9%
formal caution,
7.1%
youth justice
conference

COURT



Possess 49.6%
Commonwealth
offences 34.3%
Make 8.3%
Distribute 7.9%



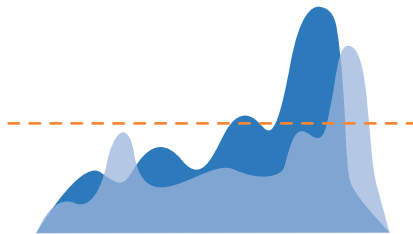
98.5% male
1.5% female



66.3% CEM-only offences
11.1% CEM + less serious
22.6% CEM + more serious



3.6%
Aboriginal and
Torres Strait Islanders



Average age
39.9 years



97.5%
pleaded
guilty



78.1%
custodial penalty;
of which
72.6%
suspended sentence



Median custodial
duration for CEM
most serious offence
11.8 months

Offences relating to Child Exploitation Material (CEM)

There are a range of offences under both Queensland and Commonwealth legislation relating to the access, possession, distribution and making of child exploitation material.

In Queensland, child exploitation material (CEM) is material likely to cause offence to a reasonable adult that describes or depicts a person, or a representation of a person, who is, or apparently is, a child under 16 years:

- a) in a sexual context, including engaging in a sexual activity
- b) in an offensive or demeaning context, or
- c) being subjected to abuse, cruelty or torture.²

Under Commonwealth legislation, there are also similar definitions relating to child abuse material and child pornography material.³

The key distinction between the Queensland and Commonwealth legislative provisions arises from the Commonwealth's responsibility for internet, telecommunications, postal services and border protection versus the states' constitutional authority over criminal matters.

Queensland offences relate broadly to the actual possession, distribution, or making of CEM, while the Commonwealth offences relate to the use of either a carriage service (such as the internet or telephone) or the postal service, in relation to such offending.⁴

The elements of Queensland and Commonwealth offences overlap but are not identical.⁵

An offender may be charged under both Queensland and Commonwealth legislation, and Queensland police and courts can deal with all offences together in the same matter.⁶

CEM offending covers a broad range of behaviour, from young people sexting⁷ images to their peers through to making and distributing CEM through online networks. There has also been significant legislative change over time,⁸ with new offences being established for more specific CEM-related behaviours (e.g. encouraging the use of a CEM website).⁹

For the purpose of this *Sentencing Spotlight*, we group the Commonwealth offences together, and classify the remaining Queensland offences into three broad categories: possess, distribute and make (see Appendix 1). As a shorthand, these offences have been called 'CEM offences' for the purposes of this *Sentencing Spotlight*.

Penalties for CEM-related offences

The current maximum penalties for CEM-related offences vary between offences, and between state and Commonwealth legislation. For example, the maximum penalty for possession of CEM (a Queensland offence) is 14 years,¹⁰ and the maximum penalty for using a carriage service to access CEM (a Commonwealth offence) is 15 years.¹¹

The *Penalties and Sentences Act 1992 (Qld)* (PSA) states that imprisonment must generally only be imposed as a last resort and a sentence allowing an offender to stay in the community is preferable.¹² However, these principles do not apply to CEM offences. Instead, s9(7) of the PSA requires a court sentencing a CEM offender to have regard primarily to:

- a) the nature of any image of a child that the offence involved, including the apparent age of the child and the activity shown
- b) the need to deter similar behaviour by other offenders to protect children
- c) the prospects of rehabilitation including the availability of any medical or psychiatric treatment to cause the offender to behave in a way acceptable to the community
- d) the offender's antecedents,¹³ age and character
- e) any remorse or lack of remorse of the offender
- f) any medical, psychiatric, prison or other relevant report relating to the offender, and
- g) anything else about the safety of children under 16 the sentencing court considers relevant.

As it is not unusual for offenders charged with Queensland CEM offences to also face charges under the Commonwealth Criminal Code, the *Commonwealth Crimes Act 1914* also influences sentencing in Queensland courts. It provides a list of considerations to be taken into account by a court when determining the sentence for a Commonwealth offence (including child pornography and child abuse material offences). The nature and circumstances of the offence are included in this list of considerations. Commonwealth legislation restricts sentencing to prison as a last resort, although case law establishes that imposing a sentence other than prison for CEM-related offenders is the exception.¹⁴

The appropriate penalty in any case will depend on the particular circumstances of the case before the court, and the sentences imposed may range from non-custodial orders (such as good behaviour bonds, fines, community service or probation orders) to all forms of imprisonment.

The principles applicable to sentencing for CEM offences that have been consistently identified by Australian appeal courts apply equally to state and Commonwealth offences.¹⁵

Young offenders

If, at the time of the offence, an offender was aged 10 to 16 years, they may be dealt with as a child under s176 of the *Youth Justice Act 1992 (Qld)* (YJ Act).¹⁶

If a young person admits to an offence and is willing, a police officer can divert him or her from the court process by administering a caution or referring the offence to a restorative justice process—a conference.¹⁷

If the child is proceeded against in court, the court also retains wide discretion in terms of sentences that may be imposed.¹⁸

Offenders dealt with for CEM offences

Between 1 July 2006 to 30 June 2016, 3035 offenders were dealt with by the criminal justice system in relation to CEM offending.¹⁹ Of these, 1470 young offenders were dealt with by Queensland Police Service (QPS) via a caution or conference and 1565 offenders (including both young offenders and adults) were sentenced in Queensland courts.

Figure 1 illustrates the total number of offenders dealt with for CEM-related offences over the 10-year period, separated based on whether they were diverted by QPS or sentenced in Queensland courts.

Of the 1470 young people diverted by QPS, the vast majority were formally cautioned (92.9%), with the remaining 7.1 per cent (n=105) attending a youth justice conference.

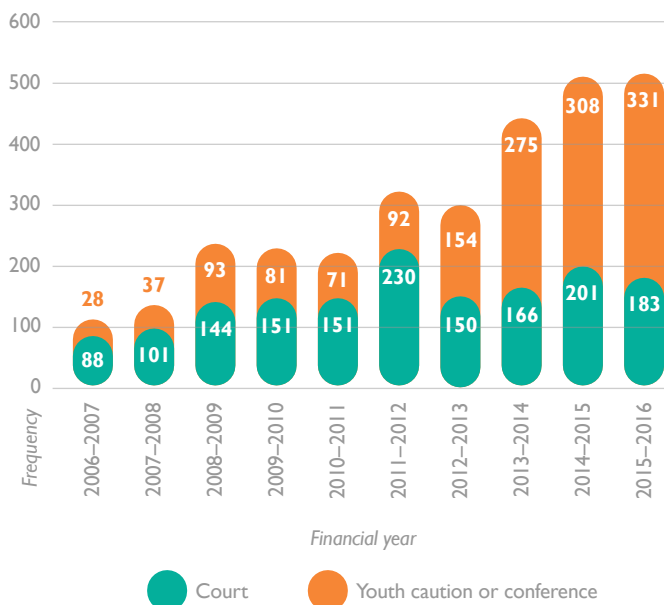
The total number of young people diverted from court via formal caution or conference (1470) was comparable to the number of offenders finalised through Queensland courts (1565). However Figure 1 demonstrates while the overall total number of CEM offenders dealt with by the criminal justice system has increased considerably over the period, there is some difference in the relative prevalence based on the type of justice intervention.

For offenders dealt with in the courts, while there has been some fluctuation over the period, overall there has been a slow but steady increase, ranging from only 88 offenders sentenced in 2006–07 to 183 offenders sentenced in 2015–16. In relation to the young offenders dealt with by QPS however, there has been an increasing trend, with 331 young offenders being cautioned or conferenced for CEM-related offences during 2015–16, compared to only 28 offenders in 2006–07.

Type of CEM offence

The 3035 offenders dealt with by either QPS or the courts, were responsible for 8198 CEM-related offences. The 1470 young defendants dealt with by the QPS by way of caution or conference involved a total of 3886 CEM-related offences, while the 1565 defendants sentenced in Queensland courts were responsible for a total of 4312 CEM-related offences.

Figure 1: All offenders dealt with for CEM offences in Queensland, 2006–07 to 2015–16

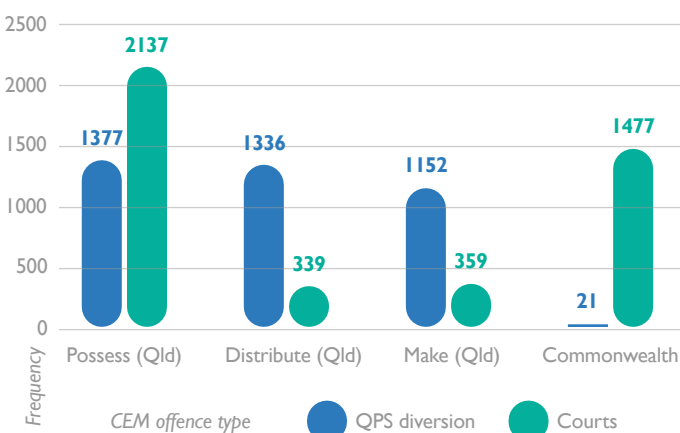


Source: QPS - QPrime database; Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

The type of CEM offences dealt with varied considerably. Offences dealt with by QPS by way of caution or conference fell into three Queensland offence categories, possession (35.4%), distribution (34.4%) and production (29.7%). Comparatively, Commonwealth offences accounted for less than one per cent of all offences by young people who were cautioned or conferenced over the 10-year period.

For offenders sentenced in Queensland courts, almost half (49.6%) were sentenced in relation to Queensland possession offences, followed by all relevant Commonwealth offences (34.3%). Figure 2 provides a breakdown of all finalised CEM offence types for all offenders over the 10-year period.

Figure 2: CEM offences finalised by QPS and Queensland Courts, by CEM type, 2006–07 to 2015–16



Source: QPS - QPrime database; Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

The type of CEM offending dealt with by QPS for young offenders, compared to the offending dealt with by the courts, highlights the considerable difference in the nature of offending relating to CEM for the different age groups.

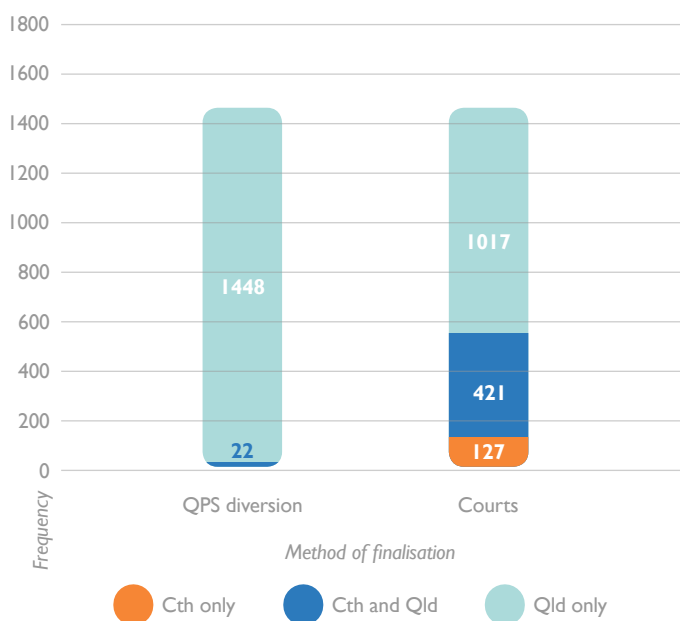
The QPS advised the majority of CEM offences for which young offenders were diverted from court relate to sexting.²⁰ Regardless of the age of the offender, sending sexualised images of children is a CEM offence. However the behaviour conducted by young people in this context often involves different circumstances to an adult sending or viewing CEM.

The QPS advised a November 2016 policy direction for officers responding to the issue of sexting was incorporated into the *Operational Procedures Manual*. This approach promotes an educative response for young people who are sexting unless specific circumstances warrant a more formal approach.

Overwhelmingly offenders dealt with via a diversion mechanism are less likely to include a Commonwealth offence. Of the 1565 CEM offenders sentenced in Queensland courts, 65.0 per cent (n = 1017) were charged with Queensland offences only. By comparison, 98.5 per cent (n=1448)²¹ of young offenders diverted were charged with Queensland offences only. A further 1.1 per cent (n=16) involved both Queensland and Commonwealth offences and the remaining 0.4 per cent (n=6) involved only Commonwealth offences.

Figure 3 shows the jurisdictional source of charges against offenders for CEM matters dealt with across the 10-year period.

Figure 3: CEM finalisations by diversion or court, by jurisdictional source, 2006–07 to 2015–16



Source: QPS - QPrime database; Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

CEM and associated offending

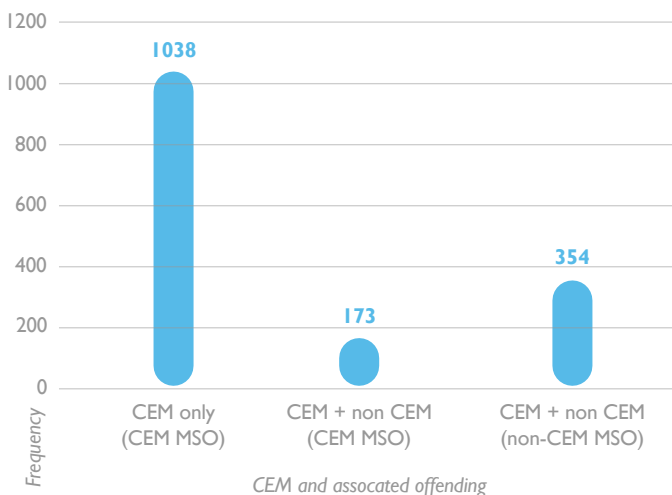
Offenders can be charged with CEM and non-CEM offences at the same time.

Of the 1565 offenders dealt with in court for CEM offences, in addition to the 4312 individual CEM offences, they were also sentenced for 4074 additional non-CEM offences.²²

For all offenders dealt with in the courts in relation to CEM offending, the majority of cases (77.4%) involved a CEM offence as the most serious offence (MSO) for which they were sentenced.

Of the 1565 defendants finalised in court, two-thirds (66.3%) involved CEM offences alone. Another 11.1 per cent of defendants were charged with CEM offences in addition to other offences considered to be less serious than CEM, and the remaining 22.6 per cent had committed CEM offences in conjunction with other, more serious offending (see Figure 4 below).

Figure 4: CEM and associated offending for those sentenced in Queensland courts, 2006–07 to 2015–16



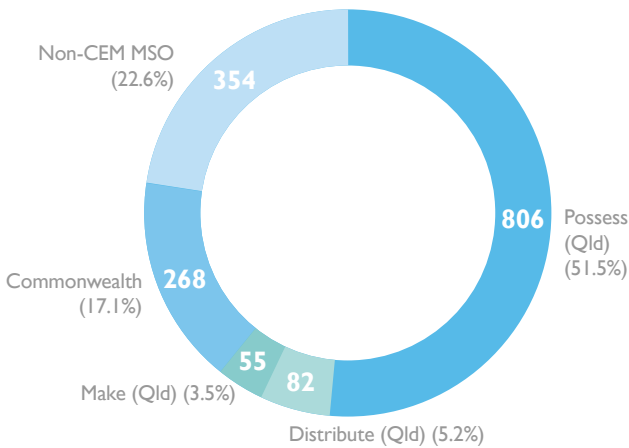
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Of the 354 offenders with a non-CEM offence as their MSO, 90.4 per cent (n=320) involved a contact offence as their MSO, including sexual offences and deprivation of liberty. Furthermore, almost a quarter of these offenders (23.7%, n=84) were also charged with an offence relating to the making of CEM and also had the highest number of total finalised offences, with a median of seven offences (mean=12.0).

Over half (51.5%) of the 1565 offenders dealt with by the courts for CEM offences, had a Queensland CEM possession offence as their MSO.

Figure 5 provides a breakdown of the types of CEM offences for offenders sentenced in Queensland courts based on their MSO.

Figure 5: Profile of all CEM offenders sentenced in Queensland courts based on MSO, 2006–07 to 2015–16



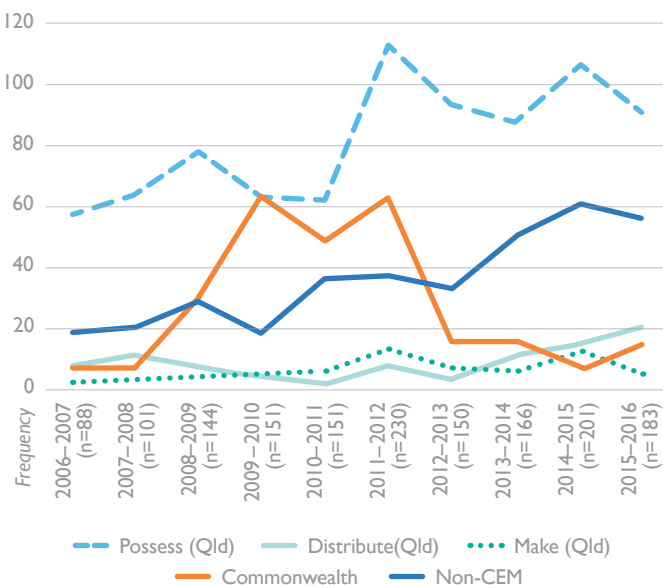
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

The type of MSO has varied considerably over the 10-year period. Figure 6 shows the number of offenders sentenced for each CEM offence type based on their MSO over the 10-year period.

Offenders with a possession offence MSO were consistently the most common CEM offender during the period. Offenders with a Commonwealth MSO increased considerably between 2009–10 and 2011–12, before a sharp decline in 2012–13.

The number of offenders sentenced for CEM making and distribution offences has remained relatively stable and low each year, although there has been a slight increase in distribution offences as the MSO recently. Offenders with a non-CEM MSO have increased steadily across the 10-year period.

Figure 6: Number of offenders sentenced in Queensland courts, by MSO and financial year, 2006–07 to 2015–16



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Characteristics of offenders dealt with for CEM offences

This section compares the age, gender and Aboriginal and Torres Strait Islander status of all offenders dealt with by the Queensland criminal justice system in relation to CEM offences between 2006–07 to 2015–16.

Age

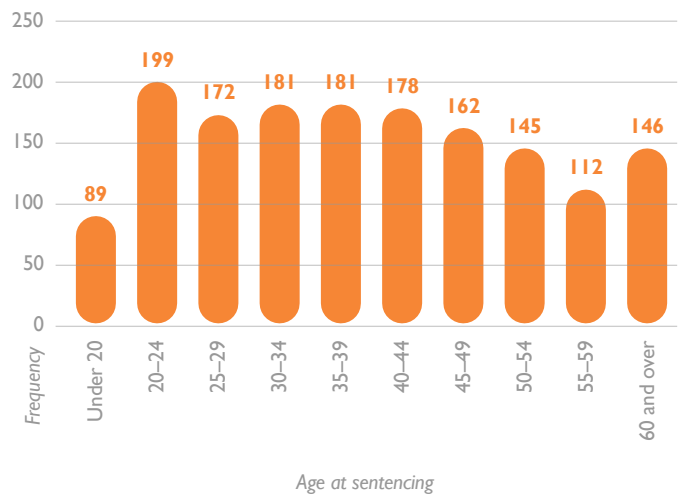
Over the 10-year period, the age of offenders either dealt with via QPS diversion or otherwise sentenced for CEM offences ranged from 10 to 88 years.

QPS diversion is only available to young offenders, however in some circumstances young offenders are sentenced by Queensland courts. Of the 1565 offenders sentenced for CEM-related offences, almost all were adults (1537; 98.2%). The remaining 28 offenders were young offenders.

The average age of young people diverted or conferenced by QPS was 14.8 years at the time of their finalisation,²³ while the average age of a young person at the time of sentencing in the courts was 16.7 years. By comparison, the average age of adult offenders finalised in court for CEM-related offences at the time of sentencing was 40.3 years (average age of all offenders finalised in court was 39.9 years).

Figure 7 shows the number of people sentenced in court for CEM-related offences during the period, by age at sentence. This shows CEM offenders are relatively evenly split between age groups, suggesting this type of offending is not restricted to a certain age group.

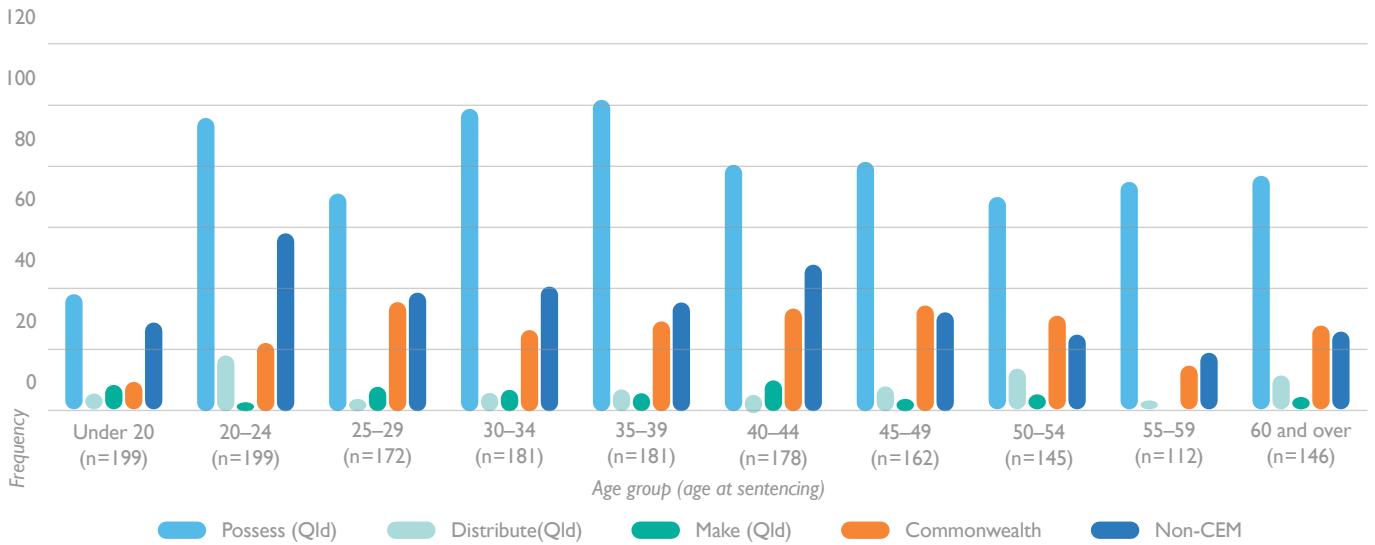
Figure 7: Number of offenders sentenced, by age at sentence, 2006–07 to 2015–16



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Across all age groups, CEM possession is the most common MSO dealt with by courts, as shown in Figure 8. Offenders aged 20–24 years old were more likely than other age groups to have a distribution offence, or a non-CEM offence as their MSO. The offence of making CEM remains low across all age groups.

Figure 8: Number of CEM offenders by MSO type and age group, 2006–07 to 2015–16



Source: Queensland Government Statistician’s Office, Queensland Treasury - Courts Database, extracted January 2017

Gender

Over the 10-year period, the vast majority of offenders either dealt with via QPS diversion or otherwise sentenced in court for CEM offences were male (n=2347, 77.3%), however the gender breakdown was significantly different for young people diverted.

Of the 1470 young people cautioned or conferenced by QPS, 45.2 per cent were female (n=664). Comparatively, only 1.5 per cent of offenders who had matters involving CEM in court were female (n=24), and of the 28 young offenders sentenced in court, only three were female.

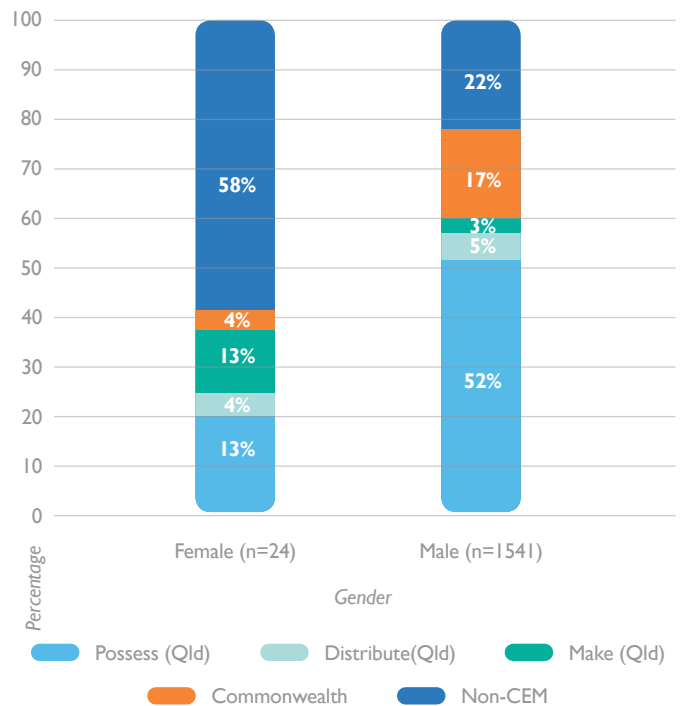
The average age of young offenders diverted by QPS was similar between genders, with an average age for female offenders of 14.5 years (median=14.5), and for male offenders of 15.05 years (median=15.1).

Comparatively, the average of offenders sentenced by a court differed between male and female offenders. Female offenders were younger than male offenders. The average age at time of sentencing for female offenders was 30.9 years (median=31.0), compared to 40.0 years (median=39.1) for male offenders.²⁴

The way men and women offended was also different. Figure 9 shows female offenders were most likely to have non-CEM offences as their MSO (58.3%), with CEM offences being a secondary offence. Comparatively, male offenders were most likely to have a CEM possession offence as their MSO (52.0%).

Of the 24 females sentenced for non-CEM offences, 25 per cent (n=6) were co-charged for the offence— all had a male co-offender.

Figure 9: CEM offence types as MSO by gender, 2006–07 to 2015–16



Source: Queensland Government Statistician’s Office, Queensland Treasury - Courts Database, extracted January 2017

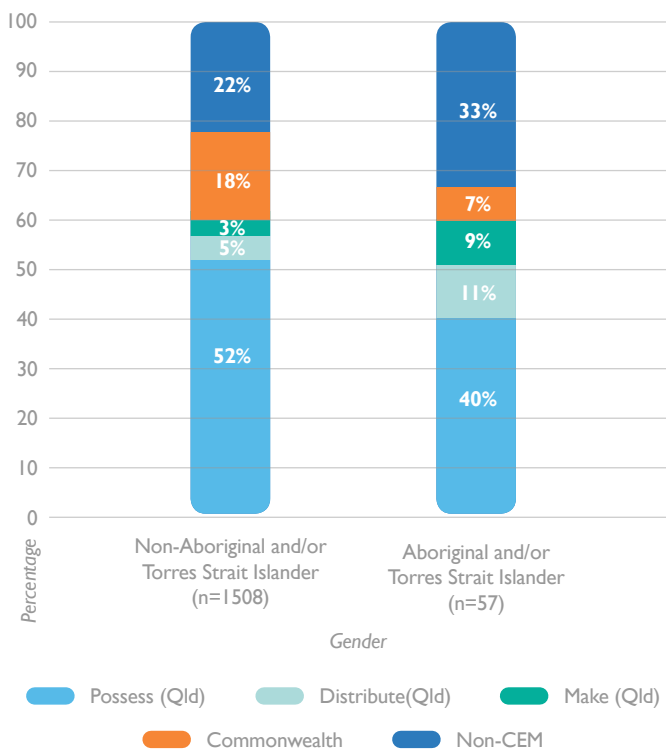
Aboriginal and Torres Strait Islander offenders

Of young people cautioned or conferenced by police, 159 (10.8%) were Aboriginal or Torres Strait Islander. By comparison, only 57 (3.6%) offenders who had matters involving CEM finalised at court were Aboriginal and Torres Strait Islanders.

Of the offenders diverted by QPS, the average age of Aboriginal and Torres Strait Islander young people was no different compared to the age of non-Aboriginal and Torres Strait Islander offenders. However, the average age of CEM offenders sentenced in court varied between Indigenous and non-Indigenous offenders. In particular, the average age at time of sentence of Aboriginal and Torres Strait Islander offenders was 31.4 years compared to 40.2 years for non-Aboriginal and Torres Strait Islander offenders.²⁵

As shown in Figure 10, the type of CEM offending based on MSO varies slightly by Aboriginal and Torres Strait Islander status. Of the 57 identified Aboriginal and Torres Strait Islander offenders, 40.4 per cent had a CEM possession offence as their MSO and 33.3 per cent had a non-CEM offence as their MSO. Comparatively, of the 1508 offenders who were not identified as Aboriginal or Torres Strait Islander, 51.9 per cent had a CEM possession offence as their MSO, and 22.2 per cent had a non-CEM offence as their MSO.

Figure 10: CEM offence types as MSO by Aboriginal and/or Torres Strait Islander status, 2006–07 to 2015–16



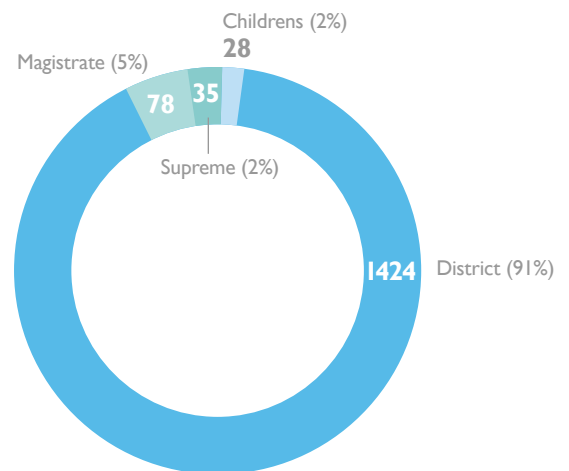
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Court level, location and plea

Level of court finalisations

While CEM offences are heard in all three court jurisdictions—Magistrates, District and Supreme—attesting to the very broad nature and type of offending, the overwhelming majority of those dealt with in court are finalised in the District Court. Figure 11 provides a breakdown of finalised matters by court for the 10-year period.

Figure 11: Profile of all CEM offenders sentenced in Queensland courts based on MSO, 2006–07 to 2015–16



Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

For the 28 young offenders finalised in the Childrens Court, over half (n=16) were sentenced in the Childrens Court of Queensland (the equivalent of the District Court). Of the 35 matters finalised in the Supreme Court, 71.4 per cent involved a non-CEM offence as their MSO.

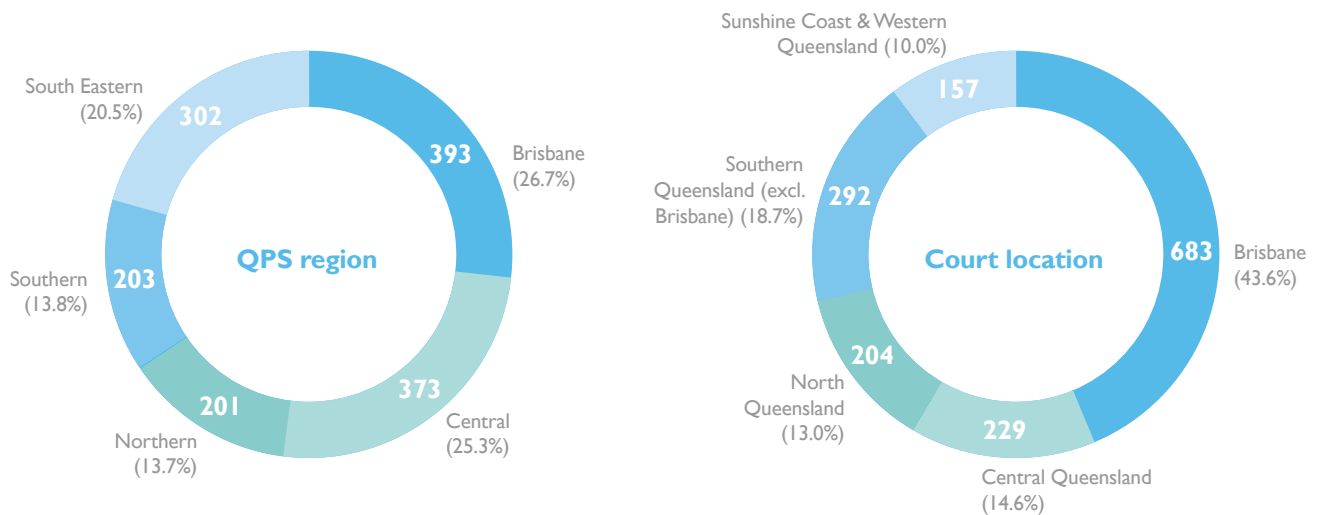
Location at finalisation

Figure 12 shows the distribution of CEM offenders based on police region and sentencing court location.

The 1470 young offenders diverted by QPS over the 10-year period, were well dispersed throughout Queensland police regions. Similar proportions were dealt with in both the Brisbane²⁶ and Central police regions (27.6% and 25.4% respectively), and smaller though similar proportions were also dealt with in the Northern and South Eastern police regions (13.7% and 13.8% respectively).

Of the 1565 offenders sentenced for CEM-related offences during the period of 2006–07 to 2015–16, there were over 40 different court locations in which matters were heard, ranging from Cairns to the far north, Mount Isa and Toowoomba to the west, and Brisbane to the south. While most were sentenced in Brisbane Courts (43.6%), matters were dispersed all around the state.

Figure 12: Finalised CEM offenders by police region and sentencing court location, 2006–07 to 2015–16



Source: QPS - QPrime database; Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Type of plea

All young offenders were required to admit guilt before a conference or diversion by QPS.

Over the 10-year period, almost all offenders (97.5%) sentenced by a court pleaded guilty to CEM offences. This proportion remains consistent, irrespective of gender or Aboriginal and Torres Strait Islander status, although reduces to 89.3 per cent when focussing only on the 28 young offenders sentenced in the courts.

There was little difference in relation to the type of CEM offence as their MSO and a guilty plea—98.0 per cent of possession offenders, 97.6 per cent of distribution offenders, 98.2 per cent of making offenders, 98.5 per cent of Commonwealth offenders, and 95.5 per cent of non-CEM MSO offenders.

The high rate of guilty plea is most likely explained by the strong evidence obtained by police leading to an offender's apprehension and charge.

Penalties and sentencing

There is no mandatory penalty of imprisonment for CEM offending.²⁷ Courts have wide discretion as to the types of penalties, with aggravating and mitigating circumstances required to be taken into consideration.

Of the 1565 offenders sentenced by a court, the majority (78.1%) received a custodial penalty of some sort.

Table 1 shows custodial penalties were the most likely sentencing outcome for CEM MSO offences and non-CEM offences. Over the 10-years, three-quarters of CEM MSO offenders received a custodial sentence, with the remaining 25 per cent receiving a non-custodial sentence. Comparatively, offenders with a CEM offence in conjunction with a more serious non-CEM offence were more likely to receive a custodial sentence (90.4%).

It is apparent that those with a making offence as their MSO were least likely to receive a custodial penalty, however it should be noted that these offenders are not involved

Table 1: Penalty outcomes by MSO, 2006–07 to 2015–16

| MSO | N | Custodial | Non-custodial |
|------------------|-------------|---------------------|--------------------|
| CEM MSO (total) | 1211 | 908 (75.0%) | 303 (25.0%) |
| Possess (Qld) | 806 | 590 (73.2%) | 216 (26.8%) |
| Distribute (Qld) | 82 | 71 (86.6%) | 11 (13.4%) |
| Make (Qld) | 55 | 37 (67.3%) | 18 (32.7%) |
| Commonwealth | 268 | 210 (78.4%) | 58 (21.6%) |
| Non-CEM MSO | 354 | 315 (89.0%) | 39 (11.0%) |
| Total | 1565 | 1223 (78.1%) | 342 (21.9%) |

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

in more serious contact offending. There were however an additional 84 offenders involved in making CEM in conjunction with other more serious offences, and these are included in the non-CEM MSO group.

In addition, it should also be noted that under current data recording conventions, a 'recognisance release order' is officially considered a non-custodial order. However, for Commonwealth offences, a recognisance release order may incorporate imprisonment or probation. Therefore, whilst officially 78.4 per cent of those with a Commonwealth MSO received a custodial order, this is likely to be an under estimate, and should be considered when interpreting tables 1 through 5.

Overall, female CEM offenders (58.3%) were less likely to receive a custodial order than male CEM offenders (78.5%), irrespective of MSO type. Similarly, for Aboriginal and Torres Strait Islander offenders (56.1%), overall they were less likely than non-Aboriginal or Torres Strait Islanders to receive a custodial sentence (79.0%), also irrespective of MSO type.

Convictions were recorded for all offenders sentenced to a custodial penalty, however no conviction was recorded in 213 matters (62.3%) where a non-custodial order was imposed.

Custodial penalties

This section examines the use of custodial sentencing outcomes for CEM offences. Table 2 shows the type of custodial penalties given in relation to their MSO over the 10-year period, including imprisonment, suspended sentences (wholly or partially) and intensive corrective orders whilst Table 3 provides the median sentence length for each type of custodial sentence. Figure 13 provides a summary of the duration of custodial orders received, for all CEM MSO offenders.

For those receiving a custodial penalty, suspended sentences were the most likely custodial sentence given with 36.7 per cent receiving a wholly suspended sentence, and 35.7 per cent receiving a partially suspended sentence. When focussing only on those with a CEM offence as their MSO who received a custodial penalty, 44.8 per cent received a wholly suspended sentence, and 34.1 per cent received a partially suspended sentence.

Overall, the median custodial sentence length was 14.8 months, though when focussing only on those with a CEM offence as their MSO, the median custodial sentence length reduced to 11.8 months. Offenders with a non-CEM MSO received the longest sentences, with a median custodial sentence length of 29.6 months and a median immediate prison sentence length of 48 months. For offenders with a CEM offence as their MSO, distribution offences tended to receive the longest sentences, with a median overall custodial sentence length of 17.7 months and median prison sentence length of 36 months.

Table 2: Custodial penalty types by MSO, 2006–07 to 2015–16

| MSO | Custodial penalty (N) | Imprisonment (n, % of custodial penalty) | Intensive correction order (n, % of custodial penalty) | Partially suspended (n, % of custodial penalty) | Wholly suspended (n, % of custodial penalty) |
|------------------|-----------------------|--|--|---|--|
| CEM MSO (total) | 908* | 131 (14.4%) | 57 (6.3%) | 310 (34.1%) | 407 (44.8%) |
| Possess (Qld) | 590 | 82 (13.9%) | 51 (8.6%) | 183 (31.0%) | 274 (46.4%) |
| Distribute (Qld) | 71 | 11 (15.5%) | 3 (4.2%) | 27 (38.0%) | 30 (42.3%) |
| Make (Qld) | 37 | 8 (21.6%) | 3 (8.1%) | 13 (35.1%) | 13 (35.1%) |
| Commonwealth | 210* | 30 (14.3%) | 0 (0.0%) | 87 (41.4%) | 90 (42.9%) |
| Non-CEM MSO | 315 | 143 (45.4%) | 4 (1.3%) | 126 (40.0%) | 42 (13.3%) |
| Total | 1223* | 274 (22.4%) | 61 (5.0%) | 436 (35.7%) | 449 (36.7%) |

* Note: For three Commonwealth offences the sentence suspension type is unknown

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Table 3: Custodial sentence lengths (median) by MSO, 2006–07 to 2015–16

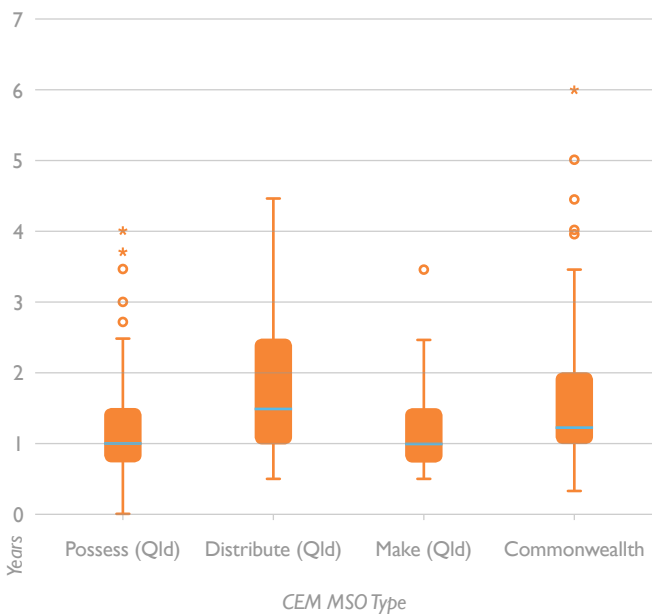
| MSO | N | All custodial (median length in months) | Imprisonment (median length in months) | Intensive correction order (median length in months) | Partially suspended (median length in months) | Wholly suspended (median length in months) |
|------------------|-------------|---|--|--|---|--|
| CEM MSO (total) | 908 | 11.8 | 12.0 | 11.8 | 17.7 | 11.8 |
| Possess (Qld) | 590 | 11.8 | 10.0 | 11.8 | 17.7 | 11.8 |
| Distribute (Qld) | 71 | 17.7 | 36.0 | 5.9 [^] | 24.0 | 14.8 |
| Make (Qld) | 37 | 11.8 | 9.9 | 11.8 [^] | 17.7 | 11.8 |
| Commonwealth | 210 | 14.8 | 41.4 | N/A | 17.7 | 11.8 |
| Non-CEM MSO* | 315 | 29.6 | 48.0 | 11.8 [^] | 24.0 | 16.3 |
| Total | 1223 | 14.8 | 36.0 | 11.8 | 17.7 | 11.8 |

* Note: There are three life sentences for non-CEM MSO offences which are not included in the median calculations

[^] caution: small sample sizes

Source: Queensland Government Statistician’s Office, Queensland Treasury - Courts Database, extracted January 2017

Figure 13: Boxplot of the duration of custodial orders received, where a CEM offence was the MSO, 2006–07 to 2015–16



Source: Queensland Government Statistician’s Office, Queensland Treasury - Courts Database, extracted January 2017

Note: For details on how to interpret the boxplot, refer to the Sentencing Spotlight technical information paper available via www.sentencingcouncil.qld.gov.au

Non-custodial penalties

This section examines the use of non-custodial sentencing outcomes for CEM offences over the 10-year period. This data relates to court outcomes as all young people diverted by police were provided with a non-custodial penalty of either a caution or youth justice conference.

Table 4 shows non-custodial penalties, by MSO over the 10-year period. A total of 342 offenders (21.9%) were sentenced to a non-custodial penalty, irrespective of their MSO. Probation was the most common non-custodial penalty ordered.

Table 5 shows the length of non-custodial penalties over the 10-year period. Across all CEM offence types, the median probation length was 24 months (meaning that half were shorter than 24 months and half were longer than 24 months).

For the 60 offenders who received a fine as the most serious penalty for their offending, the median fine amount was \$1000, with the majority (82%) of offenders having a CEM possession offence as their MSO. Few CEM distribution and making offenders received a non-custodial sentence (n=11 & n=18 respectively).

Only 55 offenders were given a community service order as their most serious penalty for their offending, with a median duration of 150 hours.

In relation to the 58 offenders with a Commonwealth offence as their MSO that received a non-custodial order, the majority of these received a recognisance order (55.2%). A recognisance order can be similar to a good behavior bond (a condition that the offender be of good behavior for a specified period with a liability to pay an amount of money if they do not comply), but it can also include a ‘recognisance release order’ which adds imprisonment (which can involve immediate release). It is not possible to determine from the data what the conditions of each recognisance order were.

Table 4: Non-custodial penalty types by MSO, 2006–07 to 2015–16

| MSO | Non-custodial penalty (N) | Convicted, not punished (n, % of non-custodial penalty) | Community Service (n, % of non-custodial penalty) | Fined (n, % of non-custodial penalty) | Good behaviour/ recognisance (n, % of non-custodial penalty) | Probation (n, % of non-custodial penalty) |
|------------------|---------------------------|---|---|---------------------------------------|--|---|
| CEM MSO (total) | 303 | 5 (1.7%) | 44 (14.5%) | 56 (18.5%) | 49 (16.2%) | 149 (49.2%) |
| Possess (Qld) | 216 | 5 (2.3%) | 36 (16.7%) | 49 (22.7%) | 14 (6.5%) | 112 (51.9%) |
| Distribute (Qld) | 11 | 0 (0.0%) | 4 (36.4%) | 1 (9.1%) | 0 (0.0%) | 6 (54.4%) |
| Make (Qld) | 18 | 0 (0.0%) | 2 (11.1%) | 2 (11.1%) | 3 (16.7%) | 11 (61.1%) |
| Commonwealth | 58 | 0 (0.0%) | 2 (3.4%) | 4 (6.9%) | 32 (55.2%) | 20 (34.5%) |
| Non-CEM MSO | 39 | 1 (2.6%) | 11 (28.2%) | 4 (10.3%) | 4 (10.3%) | 19 (48.7%) |
| Total | 342 | 6 (1.8%) | 55 (16.1%) | 60 (17.5%) | 53 (15.5%) | 168 (49.1%) |

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Table 5: Non-custodial sentence lengths (median), by MSO, 2006–07 to 2015–16

| MSO | Non-custodial sentence (N) | Community Service (median, hours) | Fined (median, \$) | Good behaviour/ recognisance (median, months) | Probation (median, months) |
|------------------|----------------------------|-----------------------------------|---------------------|---|----------------------------|
| CEM MSO (total) | 303 | 150 hours | \$1000 | 24.0 months | 24.0 months |
| Possess (Qld) | 216 | 135 hours | \$1000 | 10.3 months | 24.0 months |
| Distribute (Qld) | 11 | 175 hours [^] | \$300 [^] | N/A | 24.0 months [^] |
| Make (Qld) | 18 | 100 hours [^] | \$1165 [^] | 11.8 months [^] | 24.0 months |
| Commonwealth | 58 | 125 hours [^] | \$1250 [^] | 24.0 months | 24.0 months |
| Non-CEM MSO | 39 | 200 hours | \$1400 [^] | 11.8 months [^] | 24.0 months |
| Total | 342 | 150 hours | \$1000 | 17.7 months | 24.0 months |

[^] Caution: small sample sizes

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

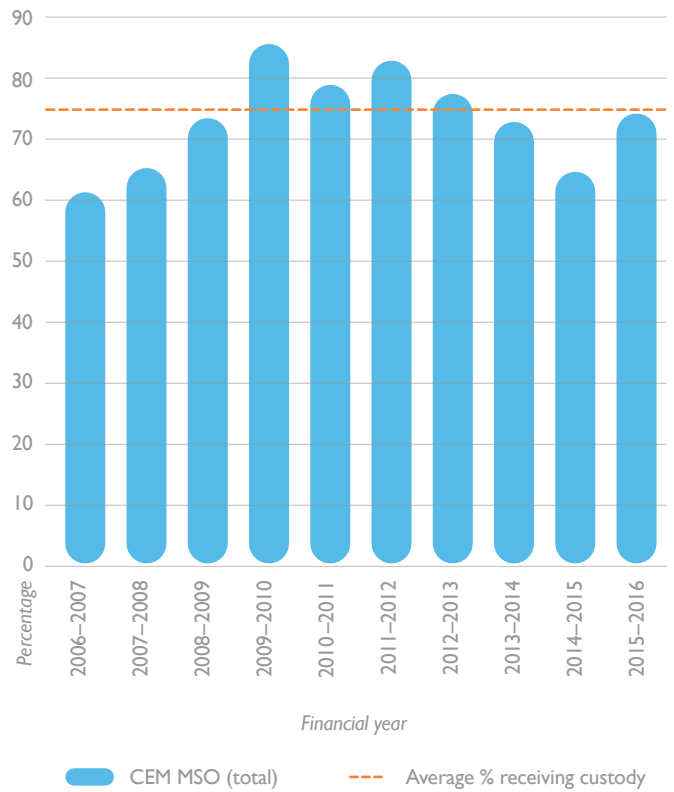
Sentencing trends over time

Over the 10-year period significant legislative changes were made to both Commonwealth and Queensland criminal codes for CEM offences. This included new offences under both Commonwealth and Queensland legislation and in 2013 increases to the maximum penalties for possession, making and distribution under Queensland legislation.²⁸ However, despite these changes the proportion of people receiving a custodial sentence has not increased accordingly.

Figure 14 shows the proportion of offenders with a CEM MSO who received a custodial penalty during the 10-year period. Offenders with a CEM MSO were likely to receive a custodial sentence, however offenders sentenced between 2009–10 and 2012–13 were more likely to receive a custodial sentence as compared to other periods of time.

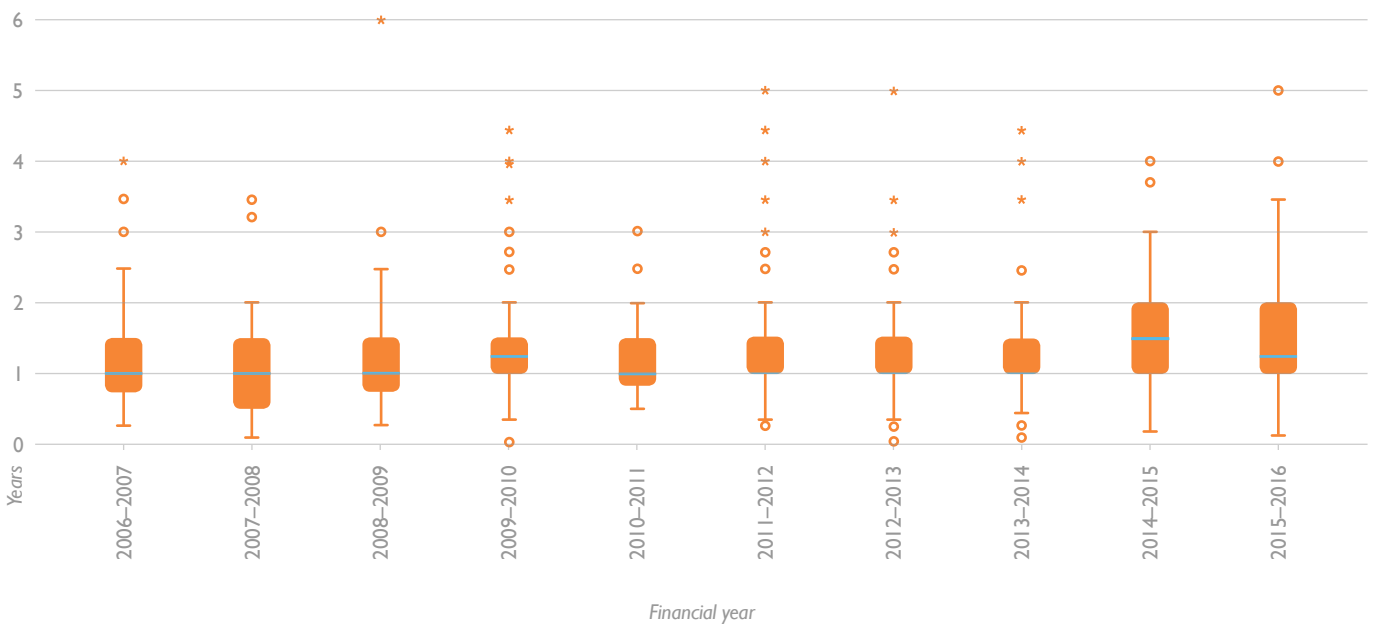
For offenders given a custodial penalty, these findings indicate that, in more recent years, the duration of custodial sentences (based on their MSO) has increased, though only slightly. In particular, Figure 15 shows there was a slight increase in sentence length in 2014–15 and 2015–16 for those receiving a custodial penalty. At least half of all offenders with a CEM MSO receiving a custodial order between one to two years imprisonment (which may have been wholly or partially suspended). The median custodial duration was highest in 2014–15, at 18 months (meaning half were shorter than 18 months and half were longer than 18 months).

Figure 14: Proportion of offenders with a CEM MSO who received a custodial sentence, by financial year, 2006–07 to 2015–16



Source: Queensland Government Statistician’s Office, Queensland Treasury - Courts Database, extracted January 2017

Figure 15: Boxplot of the duration of custodial orders received, where a CEM offence was the MSO, 2006–07 to 2015–16



Note: For details on how to interpret the boxplot, refer to the Sentencing Spotlight technical information paper available via www.sentencingcouncil.qld.gov.au
 Source: Queensland Government Statistician’s Office, Queensland Treasury - Courts Database, extracted January 2017

Case studies

Seven case studies were selected to demonstrate the diversity of circumstances associated with CEM offences. The variation in sentencing outcomes imposed for CEM offences reflects the high level of case variability for these offences. The case studies also highlight the discretionary options available to Queensland judges.

CEM possession, 12 months probation (unreported)

The offender pleaded guilty to one count of possessing CEM. The offender was aged 25 when offending.

The offender admitted to police during their investigation that he possessed 6 CEM videos, of which 3 involved children in penetrative sexual activity with an adult. He also admitted to browsing child pornography websites on a daily basis for approximately one hour per day.

When determining the sentence, the judge took into account that the offender cooperated with the police investigation by admitting to possession early on and helping them locate the CEM on his laptop. The judge also recognised the offender had: no prior criminal history; complied with bail conditions including having no internet at home or on his mobile; voluntarily committed to counselling; and at the time of the offending suffered from depression and anxiety. It was also relevant that the offender was employed and the psychological report advised the offender had made progress, including identifying mechanisms to ensure he did not reoffend.

Balancing the efforts towards rehabilitation, the judge noted that while general deterrence is an important consideration, the sentence should be just in all the circumstances.

The offender was sentenced to a 12-month probation order, under the condition that he submit to ongoing psychological treatment as directed by Queensland Corrective Services. The judge determined that given the offender's personal history, the small number of CEM files and substantial progress towards rehabilitation, no conviction should be recorded.

CEM possession, 18 months imprisonment, partially suspended

The offender pleaded guilty to one count of knowingly possessing CEM under Queensland legislation. The offender was aged 49 years when he committed the offence.

The police seized 14 hard drives from the offender, which all contained large quantities of adult pornography. Police analysis found nine hard drives contained a total of 552 CEM videos. Of those, more than 80 per cent involved penetrative sexual activity, sadism or bestiality. The CEM collection constituted only about one per cent of the offender's pornography collection.

When determining the sentence, the judge took into account the offender's early guilty plea, his cooperation with the police investigation, and that he had no criminal history. The judge emphasised that general deterrence was paramount, that the majority of the offender's CEM fell within the most serious categories and his offending contributed to the CEM market.

The offender was sentenced to 18 months imprisonment. To reflect the mitigating factors, the judge ordered imprisonment be suspended after six months, for an operational period of two years.

CEM possession, 12 months imprisonment

The offender pleaded guilty to two counts of knowingly possessing CEM under Queensland legislation. The offender was aged 30 years at the time of the offence. Police seized a computer hard drive and five CDs from the offender on which they found 71 images, 33 videos and two text files, all of which constituted CEM. The CEM was described as serious, concerning penetrative sexual activity of mainly young girls.

When determining the sentence, the judge emphasised the importance of general deterrence, that the case involved serious images—including of very young children—and that the offending contributed to the CEM market. The judge also considered the offender's late guilty plea, that cooperation with police came late in the investigation and that he had not sought any treatment in the two and a half years since the offences. The judge noted his criminal history was of little relevance and that he had had a difficult childhood in foster care.

The offender was sentenced to 12 months imprisonment on each count to be served concurrently, with parole eligibility set after four months.

CEM possession and distribution, 3 years imprisonment

The offender pleaded guilty to four counts of distributing CEM and one count of knowingly possessing CEM under Queensland legislation. The offender was aged 23 years at the time of the offence.

The offending was brought to the police's attention by his co-offender, a former partner. CEM was found on multiple devices, CDs and DVD seized by police. Forensic analysis revealed the offender possessed more than 16,000 images, several hundred videos and 32 text files, all classified as CEM. The material portrayed predominantly male children under 16 engaged in sexual acts with adult males. The offender had distributed CEM via two shareware programs and to his former partner via CDs and DVDs.

When determining the sentence, the judge emphasised there was a substantial number of serious images of children, including very young children, and the offending constituted gross depravity. The judge also noted the importance of general deterrence, and that his offending contributed to the CEM market. The judge balanced these considerations with the offender's young age, his early guilty plea, lack of a criminal history, cooperation with police and that some effort had been made at rehabilitation.

The offender was sentenced to three years imprisonment for each distribution count, with his parole eligibility date fixed after 12 months. He was sentenced to 12 months imprisonment for the possession count, all to be served concurrently.

CEM possession and distribution, 3.5 years imprisonment, partially suspended

The offender pleaded guilty to one count of knowingly possessing CEM and one count of distributing CEM under Queensland legislation. The offender was aged 39 years at the time of the offence.

Police seized several electronic devices owned by the offender and found a large volume of CEM, from which a sample was examined. To expedite the forensic analysis, the police applied a representative sampling technique to extrapolate that he possessed 14,477 CEM images and 6,737 videos. A large number of those files were assessed as very serious, involving penetrative sexual activity of children. The offender accepted that those calculations reflected the material he possessed.

During his interview with police, the offender also admitted he had used a social media program to access and share CEM. He indicated he had been distributing between two weeks to two months prior to his arrest. The distribution charge was based entirely on the offender's admissions to police.

When determining the sentence, the judge noted the offender had possessed a substantial amount of serious CEM, including images and videos of very young children. The judge balanced these considerations with the offender's early plea of guilty, his lack of a criminal history, that the distribution count was solely based on his own admissions and his cooperation with police, in particular saving police substantial time and wellbeing by not having to review all files.

The offender was sentenced to three years and six months imprisonment for the distribution count, suspended after 9 months, with an operational period of five years. He was sentenced to 12 months imprisonment for the possession count, suspended after 9 months followed by three years' probation. Both sentences were concurrent.

CEM possession and making, 3 years imprisonment, partially suspended

The offender pleaded guilty to one count of making CEM and two counts of knowingly possessing CEM under Queensland legislation. He was aged 39 years at the time of the offending.

Police seized computer equipment and external hard drives containing in excess of 48,000 CEM images. Of those 41,000 were the least serious category of CEM featuring images of children aged between two and 15 years of age.

The offender made CEM by using a motion-activated camera on his computer to record his teenage stepdaughter partially dressed. The judge accepted filming had been inadvertent, however he had deliberately created still images from that footage.

While on bail and receiving counselling, the offender purchased another computer, and police found an additional 1,094 images and 20 videos, all newly created but including some duplicates. The offender was then taken into custody on remand.

When determining the sentence, the judge emphasised the need to give weight to both deterrence and denunciation of this type of offending. He also noted the offender had possessed a substantial amount of serious CEM, and had reoffended after his arrest. The judge balanced these considerations with the offender's early guilty plea, demonstrated remorse, his lack of a criminal history, cooperation with police and that some effort had been made at rehabilitation. The judge also noted the offender experienced difficulties from a physical disability and time in custody would be more onerous.

The offender was sentenced to three years' imprisonment for the making count and 12 months imprisonment for each possession count. All sentences were to be served concurrently and suspended after 10 months, with an operational period of four years. The time already served during remand was recognised as time already served in relation to this sentence.

CEM possession, distribution and making, plus contact offending, 7 years imprisonment

The offender pleaded guilty to two counts of possessing CEM, one count of distributing CEM, eight counts of making CEM, four counts of indecent treatment of a child, under 12 and in care, and one count of rape. All counts were under Queensland legislation. The offender was aged 25 at the time of the offences.

Police found CEM on devices owned by the offender. These files included eight images of a four-year-old girl, as well as 16 videos of other young children engaging in penetrative sexual acts. The contact offences were perpetrated on the four-year-old girl over several days. She lived in the same building as the offender and sometimes played with children living in the offender's unit. The offender distributed images of the victim to his intimate partner.

When determining the sentence, the judge noted the aggravating factors of the case, in particular the seriousness of the offending, the extremely young age of the child and that the offender had been in a position of trust. He also recognised the devastating impact of the offending of the victim and her family. The judge noted that although the offender had a substantial criminal history, this did not include sexual offences, that he had had a difficult childhood and had ongoing problems with drug use. The judge acknowledged his early guilty plea.

The offender was sentenced to seven years imprisonment for the rape count, two years per indecent treatment count, three years per making CEM count, three and a half years for the distributing CEM count and 18 months per possessing CEM count. All counts were ordered to be served concurrently.

Endnotes

- ¹ The data is sourced from the Department of Justice and Attorney-General's Queensland Wide Inter-linked Courts (QWIC) database, as maintained by the Queensland Government Statistician (GovStats), as well as from the Queensland Police Records and Information Management Exchange (QPRIME) database, as maintained by the Queensland Police Service.
- ² Section 207A, Criminal Code (Qld).
- ³ See: Criminal Code 1995 (Cth), s473.1 re definition of both child abuse material and child pornography material.
- ⁴ See Appendix: CEM Offences, by CEM type.
- ⁵ As noted in the analogous Victorian context in *R v Fulop* [2009] VSCA 296 at [11] per Buchanan JA (Nettle JA agreeing).
- ⁶ *R v Mara* [2009] QCA 208 at [23] per Wilson J (de Jersey CJ and Keane JA agreeing); *R v Porte* [2015] NSWCCA 174 at [55] per Johnson J (Leeming JA and Beech-Jones J agreeing). See also R G Kenny, *An Introduction to Criminal Law in Queensland and Western Australia 7th Edition LexisNexis Butterworths Australia 2008*, 9 at [1.23] referring to s77(iii) of the Commonwealth Constitution and the *Judiciary Act 1903* (Cth).
- ⁷ The ESafety Commissioner defines sexting as 'the sending of provocative or sexual photos, messages or videos ... generally sent using a mobile phone but can also include posting this type of material online'. <<https://www.esafety.gov.au/esafety-information/esafety-issues/sexting>> accessed 14 February 2017.
- ⁸ See also timeline in QSAC consultation paper *Classification of child exploitation material for sentencing purposes* <<http://www.sentencingcouncil.qld.gov.au/research/child-exploitation-material>> accessed 30 March 2017.
- ⁹ Section 228DB Criminal Code (Qld).
- ¹⁰ Or 20 years if the offender uses a hidden network or an anonymising service in committing the offence, s228D(1)(a) Criminal Code (Qld).
- ¹¹ See Appendix: CEM Offences, by CEM type.
- ¹² *Penalties and Sentences Act 1992* (Qld) s9(2)(a).
- ¹³ Antecedents refers to prior offending history and personal background, both favourable and unfavourable, including personal, family, social, employment and vocational circumstances, and his or her current way of life and its interaction with the lives and welfare of others: *Jones v Morley* (1981) 29 SASR 57, 63.
- ¹⁴ *Kenworthy v The Queen* [No 2] [2016] WASCA 207 at [158] to [180], noting that while the Commonwealth Crimes Act 1914 s17A(1) prohibits a court from imposing imprisonment for a federal offence unless satisfied that no other sentence is appropriate in all the circumstances (the opposite of Queensland *Penalties and Sentences Act 1992* s9(6A)); the imposition of a sentence other than imprisonment for importing or accessing child pornography under the Commonwealth offences remains, in fact, exceptional.
- ¹⁵ See *R v Wood* [2015] NSWCCA 231 at [37] and [40] per Johnson J (Gleeson JA and Garling J agreeing).
- ¹⁶ As to the age limit for the definition of child, see *Youth Justice Act 1992* (Qld) Schedule 4. While legislative change is currently underway that will change the Queensland definition of a child for the purposes of criminal law, to cover those aged 10–17 years, for all those sentenced within the period considered here, the maximum age was 16 years.
- ¹⁷ See *Youth Justice Act 1992* (Qld) sections 14, 15, 16 regarding cautions and sections 22, 30, 31 and 33 regarding conferences.
- ¹⁸ *Youth Justice Act 1992* (Qld), s175
- ¹⁹ Note that these are not distinct individuals, but are the number of defendants dealt with, or finalised. If an offender was dealt with multiple times for different offences over the period, then they will be counted multiple times.
- ²⁰ The ESafety Commissioner defines sexting as 'the sending of provocative or sexual photos, messages or videos, generally sent using a mobile phone but can also include posting this type of material online'. <<https://www.esafety.gov.au/esafety-information/esafety-issues/sexting>> accessed 14 February 2017.
- ²¹ Of the 1470 offenders diverted, 1448 involved only Queensland offences; 16 involved both Queensland and Commonwealth offences and the remaining six involved only Commonwealth offences.
- ²² The QPS data available at the time of publication did not provide details of other associated offending.
- ²³ Note: In the QSAC consultation paper *Classification of child exploitation material for sentencing purposes*, the figure quoted in relation to the average age for youth offenders diverted from court was 14.3 years, however this was calculated using the age value provided by QPS which as an integer. Subsequently we have calculated age to two decimal points, and re-calculated the average age at time of finalisation of offenders.
- ²⁴ Independent samples t-test: $t=4.575$, $df=24.6$, $p=0.000$ (equal variances not assumed)

²⁵ Independent samples t-test: $t=4.608$, $df=1563$, $p=0.000$ (equal variances assumed)

²⁶ Note: Included in the Brisbane region are two matters dealt with that had their police region noted as 'state'.

²⁷ Except in the case of offenders convicted of a CEM offence with a serious organised crime circumstance of aggravation, in which case the court is required to impose an additional, mandatory seven-year term of imprisonment cumulative to the sentence for the base component.

²⁸ See timeline in QSAC consultation paper *Classification of child exploitation material for sentencing purposes* < <http://www.sentencingcouncil.qld.gov.au/research/child-exploitation-material>> accessed 30 March 2017.

²⁸ Sections 228A, 228B 228C and s228D Criminal Code (Qld).

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Appendix I: CEM offences, by CEM type

The first of the Queensland Criminal Code offences specifically targeting child exploitation material (CEM) came into force on 4 April 2005. Prior to that time, offences relating to production, sale and possession of material of this nature were prosecuted under the *Classification of Computer Games and Images Act 1995 (Qld)*, *Classification of Films Act 1991 (Qld)* and the *Classification of Publications Act 1991 (Qld)*.

These Acts remain in force, but the Criminal Code offences are preferred as being more appropriate. As a result, a policy set out in the Queensland Police Service *Operational Procedures Manual*, Chapter 7.11, states that officers investigating the production, distribution, sale and possession of CEM should only use the offence provisions in sections 228A-D of the Criminal Code and not the offence provisions in the classification Acts. The policy also requires police to charge under s228 of the Criminal Code regarding obscene publications and exhibitions.

| Legislation | Section | Description | Maximum penalties |
|---|-----------------|--|---------------------------------|
| Qld Possession related offences | | | |
| Criminal Code 1899 (Qld) | 228D | Possessing child exploitation material | 14 years (20 years) |
| <i>Classification of Publications Act 1991 (Qld)</i> | 13(c) | Possession of a prohibited publication (child abuse) for the purpose of publishing it | 600 penalty units, or 2 years |
| | 14 | Possession of child abuse publication or child abuse photograph | 300 penalty units or one year |
| | 17(2)(c); 17(4) | Copy/Attempt to copy a child abuse publication | 800 penalty units, or 3 years |
| <i>Classification of Computer Games and Images Act 1995 (Qld)</i> | 26(3) | Possession of a child abuse computer game | 250 penalty units, or 2 years |
| | 27(4) | Copy/Attempt to copy a child abuse computer game | 800 penalty units, or 3 years |
| <i>Classification of Films Act 1991 (Qld)</i> | 41(3) | Possession of a child abuse film | 150 penalty units, or 12 months |
| | 42(4) | Copy/Attempt to copy a child abuse film | 800 penalty units, or 3 years |
| Qld Distribution related offences | | | |
| Criminal Code 1899 (Qld) | 228C | Distributing child exploitation material | 14 years (20 years) |
| | 228DA | Administering child exploitation material website | 14 years (20 years) |
| | 228DB | Encouraging use of child exploitation material website | 14 years (20 years) |
| | 228DC | Distributing information about avoiding detection | 14 years (20 years) |
| | 228(2)(a) | Sale/distribution of obscene publications – child under 16 yrs | 5 years |
| | 228(2)(b) | Sale/distribution of obscene publications– child under 12 yrs | 10 years |
| | 228(3)(a) | Public exhibition of indecent show/performance– – child under 16 yrs | 5 years |
| | 228(3)(b) | Public exhibition of indecent show/performance– child under 12 yrs | 10 years |
| <i>Classification of Publications Act 1991 (Qld)</i> | 12(c) | Sale etc. of prohibited publication or child abuse photograph | 600 penalty units, or 2 years |
| | 15(c) | Exhibit or display a child abuse photograph | 600 penalty units, or 2 years |
| | 16(c) | Knowingly or recklessly leave child abuse photographs or prohibited publication in or on public place | 600 penalty units, or 2 years |
| | 20(c) | Knowingly or recklessly leave child abuse photographs or prohibited publication in or on private premises without occupiers permission | 300 penalty units, or one year |

| | | | |
|---|---------------|---|--|
| <i>Classification of Computer Games and Images Act 1995 (Qld)</i> | 22 | Demonstrate an objectionable child abuse computer game | 20 penalty units |
| | 23 | Demonstrate an objectionable child abuse computer game – to a minor | 100 penalty units |
| | 24 | Sale of objectionable child abuse computer game | 60 penalty units, or 6 months |
| | 25 | Keep together, for purposes of sale, objectionable child abuse computer games | 60 penalty units, or 6 months |
| <i>Classification of Films Act 1991 (Qld)</i> | 37 | Public exhibition, objectionable child abuse film | 20 penalty units |
| | 38 (2) | Exhibition to minor, objectionable child abuse film | 100 penalty units |
| | 39 (a) or (b) | Display for sale, objectionable child abuse film – if classified as an X18+ film; or otherwise | 60 penalty units or 6 months; 250 penalty units or 2 years |
| | 40 (a) or (b) | Keep together, for purposes of sale, objectionable child abuse film – if classified as an X18+ film; or otherwise | 60 penalty units or 6 months; 250 penalty units or 2 years |

Qld Making related offences

| | | | |
|--|-----------------|--|--------------------------------|
| Criminal Code 1899 (Qld) | 228A | Involving child in making exploitation material | 20 years (25 years) |
| | 228B | Making child exploitation material | 20 years (25 years) |
| Classification of Publications Act 1991 (Qld) | 17(1)(c); 17(3) | Print or produce prohibited publication (child abuse) | 800 penalty units, or 3 years |
| | 18 | Procure/attempt to procure a minor in production of child abuse photograph | 1000 penalty units, or 5 years |
| Classification of Computer Games and Images Act 1995 (Qld) | 27(3) | Making child abuse computer game | 1000 penalty units, or 5 years |
| | 28 | Obtaining minor for objectionable computer game | 800 penalty units, or 3 years |
| Classification of Films Act 1991 (Qld) | 42(3) | Make child abuse film | 1000 penalty units, or 5 years |
| | 43 | Procure minor for objectionable film | 800 penalty units, or 3 years |

Commonwealth offences

| | | | |
|--------------------------|--------|---|----------|
| Criminal Code 1899 (Cth) | 471.16 | Using a postal or similar service for child pornography material | 15 years |
| | 471.17 | Possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service | 15 years |
| | 471.19 | Using a postal or similar for child abuse material | 15 years |
| | 471.20 | Possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service | 15 years |
| | 471.22 | Aggravated offence – offence involving conduct on 3 or more occasions and 2 or more people | 25 years |
| | 474.19 | Using a carriage service for child pornography material | 15 years |
| | 474.20 | Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service | 15 years |
| | 474.22 | Using a carriage service for child abuse material | 15 years |

| | | | |
|-------------------------------|-----------|--|---|
| | 474.23 | Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service | 15 years |
| | 474.24A | Aggravated offence – offence involving conduct on 3 or more occasions and 2 or more people | 25 years |
| | 273.5 | Possessing, controlling, producing, distributing or obtaining child pornography material outside Australia | 15 years |
| | 273.6 | Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia | 15 years |
| | 273.7 | Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people | 25 years |
| <i>Customs Act 1901 (Cth)</i> | 233BAB(5) | Importing a tier 2 good (child abuse material or child pornography) | 2,500 penalty units, or 10 years, or both |
| | 233BAB(6) | Exporting a tier 2 good (child abuse material or child pornography) | 2,500 penalty units, or 10 years, or both |



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Sentencing Spotlight on... child exploitation material offences

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