Queensland Sentencing Round-up

Queensland Sentencing Advisory Council

2024: Second Quarter

Note to readers:

The Sentencing Round-Up summarises select sentencing publications and developments in Queensland between 1 April and 30 June 2024 as identified by the Council. It is not intended to be exhaustive. Decisions and cases in this document are as at date of publication and may be subject to appeal. The Council welcomes feedback on additional resources that might be referenced in future issues.

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Sentencing Spotlight on choking, suffocation or strangulation in a domestic setting (updated May 2024)

The Council's *Sentencing Spotlight* on choking, suffocation or strangulation in a domestic setting updates an earlier Spotlight published in May 2019 with a further 5 years of data.

The Council found people sentenced for this offence are receiving longer terms of imprisonment. In the 7 years since the strangulation offence was introduced, the average length of imprisonment increased from 2.0 years in 2016-17 to 2.7 years in 2022-23, with an average sentence length of 2.5 years over the entire 7-year period.

A total of 1,971 people have been sentenced for 2,012 cases involving strangulation and almost all people sentenced received a custodial sentence.

Guide to the Sentencing of Children in Queensland (2nd edition) (updated June 2024)

The second edition of the *Guide to the Sentencing of Children in Queensland* reflects legislative amendments made to the *Youth Justice Act 1992* (Qld) ('YJA') since the Guide's initial release. It includes new content aimed at informing the public about key principles and factors that guide courts in sentencing children in Queensland as well as available sentencing options.

Changes to the YJA discussed in the Guide include the introduction of a new 'serious repeat offender' declaration scheme that requires courts, when a declaration is made, to prioritise principles such as the need to protect members of the community and the nature and extent of any violence used by the child in committing the offence when deciding the sentence.

The Guide also includes expanded information on sentencing orders and penalties, such as what it means for an offence to be 'particularly heinous', changes made to the maximum duration of a conditional release order, and information about other types of orders including compensation orders against parents, and protection orders for domestic violence offences.

The Honourable Chief Justice Helen Bowskill, 'Persuasion, Reasons, Restraint and Reasonable Apprehension' (Sir Buri Kidu Lecture, Port Moresby, Papua New Guinea, 24 April 2024)

The Honourable Chief Justice Bowskill in the Sir Buri Kidu Lecture in Papua New Guinea considers effective advocacy and the role of the lawyer, as well as the role of judicial officers and the obligation to give reasons. She explores the importance of oral and written submissions in support of judicial decision-making and advice about the elements and style of good submissions.

Her Honour provided advice about how judicial officers should approach the giving of reasons, and notes the obligation may appropriately be discharged through the delivery of oral reasons, given the benefits to the parties, the public, and the courts of 'swift but fair and reasoned disposition of cases'. Reference is made to the common practice in Queensland of the delivery of ex tempore sentencing remarks.

The exercise of restraint and what constitutes a reasonable apprehension of bias are also discussed.

The Honourable Justice Peter Applegarth AM, 'Fast and Slow Thinking by Judges and Other Human Beings' (Final Address – Bar Practice Course 81, 2 May 2024)

In an address to the Bar Practice Court, His Honour Justice Applegarth discusses his interest in decision-making theory and behavioural economics. He refers to the reliance on intuitive thinking on 'schemas or heuristics' referred to as 'recognition-primed decision making' and the importance of legal practitioners in making submissions of helping judicial decision-makers avoid cognitive biases. His Honour explores the role of heuristics and implicit biases and research which suggests that judges are susceptible to these in the same way as other decision-makers, which may produce systemic errors in decision-making. For example, anchoring may affect sentences imposed based on the starting points used in submissions on sentence with the 'inclination to think that the right answer lies in the middle of these anchoring points'. He emphasises the importance of legal practitioners in helping judicial officers avoid deciding cases based on stereotypes and intuitive thinking.

The Honourable Justice Peter Applegarth AM, 'Non-publication and Supression Orders' (Queensland Magistrates' State Conference, 24 May 2024)

In an address to the Queensland Magistrates' State Conference delivery in May 2024, His Honour discusses the principle of open justice and the use of non-publication orders, including in bail cases and amendments made to the *Criminal Law (Sexual Offences) Act 1978* (Qld) that permit an application for a non-publication order.

With respect to sentencing, he acknowledges the difficulties that may arise when proceedings are conducted in accordance with section 13A of the *Penalties and Sentences Act 1992* (Qld) and tensions between seeking to avoid adverse consequences for informants, with acting in accordance with the principle of open justice, as well as what the implications might be for public perceptions about the adequacy of sentences.

As an area for future, he suggests courts in high-profile matters seek to enhance open justice by permitting the recording and broadcasting of sentencing remarks, with reference to the sentencing of Cardinal Pell by Chief Judge Kidd noting the problems with live feeds.

Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024 (Qld)

Introduced on 21 May 2024, the Bill implements the third major tranche of legislative reforms arising from the recommendations of the Women's Safety and Justice Taskforce.

Relevant to sentencing, amendments are made to:

- the *Corrective Services Act 2006* (Qld) to insert a new section 344AB into the Act to provide that an admission made by a prisoner as part of their participation in a program or service (established or facilitated under section 266 of that Act) is not admissible against the prisoner in any legal proceedings about the alleged offence for which the prisoner is detained on remand to remove perceived barriers to participation in programs and services for people who are remanded in custody. Evidence of an admission or derivative evidence of the admission will be inadmissible (unless the prisoner agrees to this) in a criminal proceeding (including a sentencing proceeding), or a civil or administrative proceeding that relates to the facts constituting the offence for which the prisoner was detained on remand at the time of the admission.
- the *Criminal Code* (Qld) to introduce a new offence under section 210A, "Sexual acts with a child aged 16 or 17 under one's care, supervision or authority" (position of authority offence) to Chapter 22 of the Criminal Code with a maximum penalty of 10 years or 14 years depending on the type of conduct, and a second limb to the existing course of conduct offence of "Repeated sexual conduct with a child" in section 229B with a maximum penalty of life imprisonment.
- the *Penalties and Sentences Act 1992* (Qld) sections 42C(2)(a) and (b) to extend the maximum duration of non-contact orders from 2 years to 5 years, and to increase the maximum penalty for breach of a non-contact order under section 43F(1) of the Act from 40 penalty units or 1 year's imprisonment to 120 penalty units or 3 years imprisonment

Queensland Community Safety Bill 2024 (Qld)

Introduced on 1 May 2024, the Bill seeks to amend several Acts 'to enhance community safety by implementing comprehensive measures to optimise and strengthen law enforcement capabilities and efficiencies, improve crime prevention strategies, and address key issues affecting public security and wellbeing'.

The Bill includes several amendments that will impact on sentencing, including those:

- increasing the maximum penalties for:
    - possessing a knife in a public place or school charged under s 51 of the *Weapons Act 1990* (Qld) from 40 penalty units or one year's imprisonment to 50 penalty units or 18 months imprisonment for a first conviction of the offence, or 100 penalty units or 2 years imprisonment for a second or subsequent conviction;
    - dangerous operation of a vehicle causing death or grievous bodily harm from 10 years to 14 years imprisonment, and from 14 years to 20 years imprisonment for the offences where aggravating circumstances apply under ss 328A(4)(b) and (c);
- introducing a new circumstance of aggravation for:
    - dangerous operation of a vehicle causing death or grievous bodily harm where the offender was evading police with a 20 year maximum penalty;
    - wilful damage, unlawful use or possession of motor vehicles, aircraft or vessels or unlawful entry of vehicles for committing an indictable offence where the property/vehicle is an emergency vehicle, with a maximum penalty of 14 years;

- going armed so as to cause fear (*Criminal Code* (Qld) s 69), dangerous operation of a vehicle (*Criminal Code* (Qld) s 328A(1)), common assault (*Criminal Code* (Qld) s 335), assaults occasioning bodily harm (*Criminal Code* (Qld) s 339), burglary (*Criminal Code* (Qld) s 419(1)), possession of a knife in a public place or school (*Weapons Act 1990* (Qld) s 51) – which will carry higher maximum penalties (for example, 4 years for common assault and 8 years for assaults occasioning bodily harm) in circumstances where the person publishes material on a social media platform or an online social network to advertise the offender's involvement in the offence or the act or omission constituting the offence;
- introducing a new offence under *the Summary Offences Act 2005* (Qld) for publishing material on a social media platform or an online social network depicting conduct that constitutes a prescribed offence (the definition which includes offences involving driving or operating a vehicle, using or threatening violence, property offences and weapons offences) where the purpose of publication was to glorify the conduct or increase someone's reputation because of their involvement in committing the prescribed offence, with a maximum penalty of 2 years imprisonment; and
- clarifying the application of principle 18 of the Charter of Youth Justice Principles in the *Youth Justice Act 1992* (Qld) to provide 'a child should be detained in custody, where necessary, including to ensure community safety, where other non-custodial measures of prevention and intervention would not be sufficient, and for no longer than necessary to meet the purpose of detention'.

Changes will also be made to the *Childrens Court Act 1992* (Qld) to ensure a victim, a relative of a deceased victim, a victim's representative, an accredited media entity and a person who, in the court's opinion, has a proper interest in the proceeding can be present during Childrens Court criminal proceedings where a matter is not heard on indictment. A court is enabled on its own initiative, or on application from a party to the proceeding, to exclude a representative of a victim, an accredited media entity or a person who, in the court's opinion, has a proper interest in the proceeding from the courtroom if satisfied (a) the order is necessary to prevent prejudice to the proper administration of justice; or (b) the order is necessary for the safety of any person, including the child, and in doing so, must consider a number of prescribed matters.

Respect at Work and Other Matters Amendment Bill 2024

Introduced on 14 June 2024, the Bill seeks to amend several Acts, including:

- the *Penalties and Sentences Act 1992* (Qld) 'to implement an aggravating sentencing factor, as recommended by the Queensland Sentencing Advisory Council (QSAC) in its *Final Report on Penalties for Assaults on Public Officers'*; and
- the Penalties and Sentences Act and the *Youth Justice Act 1992* (Qld) 'to reflect current court practices with respect to the recording of reasons for imprisonment or detention orders' (Exp Notes 1).

'The amendment to section 9 of the Penalties and Sentences Act will require a sentencing court to treat as an aggravating factor the fact that an offence involving violence against, or that resulted in physical harm to, a person was committed against that person while that person was performing functions of the victim's office or employment, or because of the performance of those functions or employment' (Exp Notes 21).

Amendments to section 10 of the Penalties and Sentences Act and section 209 of the Youth Justice Act are technical amendments to ensure the existing court practices regarding the recording of reasons (which are not always 'in writing' given the digitalisation of court recordings) are reflected in legislation.

Agriculture and Fisheries and Other Legislation Amendment Act 2024 (Qld)

The Act, passed on 18 April 2024, included changes to:

- double the maximum fines for failure to take reasonable steps to ensure a dog does not attack to more than $92,000;
- set maximum fines up to $108,000 and up to 3 years imprisonment for the owner of a dog that kills or seriously injures a person; and
- ban 5 dog breeds.

The changes come after a review of the *Animal Management (Cats & Dogs)* Act 2008 (Qld) and recommendations of a taskforce including the Department of Agriculture and Fisheries (DAF), participating local governments, the Local Government Association of Queensland and RSPCA Queensland.

As well as updating the *Animal Management (Cats and Dogs) Act*, passage of the Act also broadens the offence of obstructing an authorised fisheries officer from carrying out their roles to include abusive and intimidatory behaviour.

Corrective Services (Promoting Safety) and Other Legislation Amendment Act 2024 (Qld)

The Act, passed on 21 May 2024, amends the Corrective Services Act 2006 (Qld) and other legislation 'to promote the safety of victims of crime, frontline corrective services officers, offenders, and the broader community' (Exp Notes 1). It makes changes, commencing on 6 June 2024 (date of assent) to:

- the Victims Register to:
    - allow referral entities, including victim support organisations, to obtain an eligible person's consent to forward their details for registration
    - clarify eligibility for registering against prisoners on post-sentence orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003*
    - allow victims of a homicide offence, including the deceased person's immediate family, to register against a person who has completed their sentence for the homicide offence but been returned to custody or Queensland Corrective Services ('QCS') supervision for subsequent offending of any kind'
    - 'provide flexibility for the Board to accept a submission from an eligible person about a prisoner's parole application that is not in writing' (such as via a voice recording, by telephone or via video link) (Exp Notes 10–11), and
    - 'clarify what information the Victims Register may provide an eligible person where appropriate' including 'other matters relevant to the prisoner's parole (including suspension or cancellation)' and 'the fact and details of' the person's alteration of their recorded sex, and their deportation or removal status under the *Migration Act 1958* (Cth) if known by QCS (Exp Notes 11).
- require representation for victims on the Parole Board Queensland 'to increase victims' input into parole decisions' (Exp Notes 1)
- require that at least one professional board member is a First Nations person 'to improve the cultural awareness of decision making by ensuring the prisoner population, where First Nations people are overrepresented, is adequately represented in the make-up of the Board' (Exp Notes 6)
- provide 'discretion for decision makers acting under the CSA not to disclose certain information in decision making' to 'protect the use of victim and intelligence information to support effective decision making' (Exp Notes 1,5).

To commence on a day to be fixed by proclamation, other amendments to the Act aim to 'strengthen powers to respond to abuse of prisoner communication channels to protect the community from prisoners who seek to inflict harm from behind bars' (Exp Notes 1). This includes allowing contacts to be revoked if the chief executive reasonably the believes the person they are seeking to have contact with is a victim or alleged victim of an offence committed or alleged to be committed by the person or the call is likely to be used to engage in prohibited prisoner communication (including in breach of a domestic violence order or which constitutes domestic violence).

Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024 (Qld)

The Act, passed on 2 May 2024, establishes a decriminalised framework for the sex work industry based on the recommendations of the Queensland Law Reform Commission (QLRC) report: *A decriminalised sex-work industry for Queensland* (the QLRC Report)' (Exp Notes 1).

The Act creates three new offences in Chapter 22 of the *Criminal Code* (Qld):

- section 217A creates an offence of obtaining commercial sexual services from a person who is not an adult. The maximum penalty is 10 years imprisonment. If the child is under 16 years of age the maximum penalty is 14 years imprisonment, and if the child is under 12 years of age the maximum penalty is life imprisonment.
- section 217B creates an offence of allowing a person who is not an adult to take part in commercial sexual services with a maximum penalty of 14 years imprisonment.
- section 217C creates an offence for conduct relating to the provision of commercial sexual services by a person who is not an adult. The maximum penalty is 14 years imprisonment.

These offences are included in Schedule 1C of the *Penalties and Sentences Act 1992*, meaning they will be subject to the operation of Part 9D of the Act which establishes a circumstance of aggravation for serious organised crime offences.

The provisions of this Act are due to commence on a day to be fixed by proclamation.

***Police Powers and Responsibilities and Other Legislation Amendment Act 2024* (Qld)**

Introduced on 21 March 2024 and passed with amendment on 21 May 2024, this Act recognises the rights of trans and gender diverse Queenslanders by amending gendered language in legislation and makes changes to the *Corrective Services Act 2006*. Several provisions under the Act are to commence on a day to be fixed by proclamation.

In relation to the rights of trans and gender diverse Queenslanders, the Act made a range of amendments to the following legislation:

- *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004;*
- *Crime and Corruption Act 2001;*
- *Mental Health Act 2016;*
- *Police Powers and Responsibilities Act 2000;*
- *Public Health Act 2005;*
- *Summary Offences Act 2005*; and
- *Terrorism (Preventative Detention) Act 2005*.

The Act also makes amendments to the *Corrective Services Act* 2006, which commenced on the 6 June 2024 (date of assent), in relation to reapplying for parole after a parole application is refused and promoting timely prisoner safety order decisions. In relation to parole applications, the Act provides the Parole Board Queensland with broader discretion to set a longer period during which the person cannot reapply for parole after having an application refused.

Under the amendments, the maximum period the making of a new application for parole can be restricted is:

- for prisoners serving a life sentence, up to 5 years
- for prisoners serving a term of 10 years or more, other than a life sentence, up to 3 years
- for all other sentenced prisoners, up to 1 year.

Victims' Commissioner and Sexual Violence Review Board Act 2024 (Qld)

The Act, passed on 20 April 2024, establishes:

- a new statutory office of the Victims' Commissioner to promote and protect victims' rights; and
- a Sexual Violence Review Board to identify and review systemic issues in relation to the reporting, investigation and prosecution of sexual offences.

Under the Act, the Victims' Commissioner's statutory functions include to identify and review systemic issues relating to victims, conduct research and consultation on victims' matters, deal with alleged contraventions of the *Charter of Victims' Rights*, provide advice and recommendations to the government on issues affecting victims, and monitor recommendation implementation.

The Act relocates the *Charter of Victims' Rights* from the *Victims of Crimes Assistance Act 2009* (Qld) to the new Act. Consequential amendments are made to the *Penalties and Sentences Act 1992* (Qld) ss 172A, 172C, 179I–179K.

The new Sexual Violence Review Board is to be chaired by the Victims' Commissioner and include four government members and four non-government members. The Board's functions are to:

- review government policy, practices, procedures and systems to identify systemic issues;
- review and analyse data and information held by government entities and non-government entities;
- make recommendations to the Minister, government entities and non-government entities about improvements to government policy, practices, procedures and systems as a result of a review carried out by the Board; and
- monitor the implementation of recommendations.

On 28 June 2024, a proclamation was made fixing 29 July 2024 as the date of commencement of several provisions, including to establish the position of Victims' Commissioner and Office of the Victims' Commissioner (with certain functions, including the office's complaints functions, not yet commenced).

Other sections, including to establish the new Sexual Violence Review Board, are yet to be proclaimed into force.

Community Safety and Legal Affairs Committee, *Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024* (Report No. 7, 57th Parliament)

Tabled on 12 April 2024, this report presents a summary of the Community Safety and Legal Affairs Committee's examination of the Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024. In addition to recommending the Bill be passed, the Committee made a further 3 recommendations, including that the Government should:

- Consider allowing prisoners to make non-written parole applications;
- Consider the merit of amending the new section s 340AA to:
    - Provide for a public interest test in relation to decisions to determine whether the impact of disclosure outweighs the right to natural justice
    - Require that decision makers keep a record of reasons, even if they are not required to disclose these reasons to a prisoner
    - Clarify that the section does not apply to statements of reason under the *Judicial Review Act 1991.*
- Conduct a Privacy Impact Assessment before implementing provisions relating to the use of body-worn cameras.

In its response tabled on 21 May, the Queensland Government accepted recommendations 2 and 3 in principle, and recommendation 4 in full.

Housing, Big Build and Manufacturing Committee, *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024* (Report No. 4, 57th Parliament)

Tabled on 12 April 2024, this report presents the summary of the Housing, Big Build and Manufacturing Committee's examination of the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024. In addition to passing the Bill, the Committee made a recommendation that:

- Amendments to the *Planning Regulation 2017* which support a decriminalised sex work framework, reflect the principle that the regulation of sex work, including land use and planning applications related to sex work businesses, be no more and no less than for other legal businesses.

Community Safety and Legal Affairs Committee, *Victims' Commissioner and Sexual Violence Review Board Bill 2024* (Report No. 9, 57th Parliament)

Tabled on 19 April 2024, this report presents the Community Safety and Legal Affairs Committee's findings on its examination of the Victims' Commissioner and Sexual Violence Review Board Bill 2024, In addition to recommending the Bill be passed, the Committee made recommended that the Queensland Government should:

- Consider whether the complaints mechanism of the Bill is sufficient in relation to the ability of children to make a complaint where they lack an advocate or willing adult to make a complaint on their behalf.

In its response tabled in Parliament on 30 April, the Government accepted that recommendation and 'its intent to ensure that children are empowered to make complaints about alleged contraventions under the *Charter of Victims' Rights*.

Community Support and Services Committee, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2024* (Report No. 43, 57th Parliament)

Tabled on 10 May 2024, this report presents a summary of the Community Support and Services Committee's examination of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2024. In addition to recommending that the Bill be passed, the Committee made 3 additional recommendations:

- The Queensland Police Service conduct appropriate training of officers and staff that focuses on diversity and intersection of LGBTIQA+ individuals encountering the criminal justice system as part of the implementation of the Bill.
- The Minister for Police and Community Safety provide further clarification of the circumstances in which it is not 'reasonable practicable' to accommodate a gender preference.
- Queensland Corrective Services ('QCS') address the current difficulties in recruiting qualified psychologists with a proactive recruitment campaign.

In its response tabled on 21 May 2024, the Government accepted recommendations 2 and 3 and provided in principle support for recommendation 4, referencing QCS' Psychological Services Workforce Planning Project.

R v Singh [2024] QCA 50

Keywords: Breach of trust – taxi/Uber driver; honest but unreasonable belief as to consent – whether mitigating; partially suspended sentence; sexual assault

Application for leave to appeal was refused. Singh received a head sentence of 10 months' imprisonment, suspended after serving 4 months, for an operational period of 15 months, for 3 counts of sexual assault. Singh was also ordered to pay $5,000 restitution to the victim.

Although Singh held an honest but unreasonable belief as to consent for count 1 only, his conduct had persisted after the victim had said 'no'. Therefore, this did not mitigate the breach of trust that occurred. A term of actual custody was open notwithstanding Singh's good character, remorse and lack of criminal history. The sentence imposed at first instance was determined to not be manifestly excessive given the circumstances of the offending.

R v OAB [2024] QCA 51

Keywords: actual imprisonment unless exceptional circumstances; mental health in moderation of general deterrence; recording of a conviction.

Application for leave to appeal granted and appeal allowed. OAB was sentenced to 6 months' imprisonment wholly suspended for an operational period of 12 months for one count of possession child exploitation material. The sentence was set aside and a sentence of 2 years' probation with a condition of ongoing psychiatric treatment was imposed with no conviction recorded.

While the offence was very serious, the images in OAB's case were less serious than in others. The Court of Appeal agreed with the sentencing judge that OAB had demonstrated exceptional circumstances but also considered there was a link between his mental health and offending which moderated the significance between denunciation and general deterrence. Therefore, adequate weight was not given to OAB's circumstances in mitigation in determining the appropriate penalty and in recording a conviction.

There were 3 reports (two from forensic and clinical psychologists, one of whom was treating him) assessing his risk of recidivism as low. His treating psychologist said the offending was done as a coping mechanism when experiencing chronic life stresses and he had developed a risk management plan. OAB was responsible for managing the needs of his two disabled adult children wife who was mentally unwell. OAB's mental health justified some 'moderation of the significance of denunciation and general deterrence for the sentence' ([17]).

R v OAC [2024] QCA 52

Keywords: *De Simoni* principle; discretionary serious violent offence declaration made; mental health in moderation of general deterrence; prospects of rehabilitation

Application for leave to appeal refused for a sentence of 9 years' imprisonment for torture (domestic violence offence) with a serious violent offence (SVO) declaration. This means OAC must serve 80 per cent of the sentence before being eligible for release on parole (7 years and 2.5 months).

OAC pleaded guilty to 32 charges. Most of the offences related to physical and sexual domestic violence offences committed against his partner over 7 months. An issue in the appeal was evidence of uncharged acts of domestic violence were used in the sentence and the SVO declaration. The Court of Appeal found that the uncharged acts were not relied upon but formed part of the relevant background of domestic violence and had been appropriately confined as such.

The Court of Appeal found the SVO declarations were appropriately made. There was no mental abnormality at the time of the offending and no reason for the sentencing judge to place less weight on general deterrence in consideration the SVO declarations.

R v MDU [2024] QCA 113

Keywords: Application of s 538 *Criminal Code*; attempted murder (domestic violence offence); desistance as mitigating factor; finding of fact in original sentence

Application for leave to appeal refused for a head sentence of 9 years' imprisonment with parole eligibility after 4 years, for the attempted murder by the applicant of his ex-wife.

At sentence, MDU submitted he desisted in the offending, which means he should be liable to a lower maximum penalty of 14 years imprisonment instead of life imprisonment (*Criminal Code Act 1899* (Qld), sch 1, s 538). The sentencing judge did not agree.

On appeal, Dalton JA and Davis J found that MDU had desisted before forming the belief that the complainant was dead and therefore the sentencing judge had erred. However, the circumstances of the offending were so serious that even with the benefit of a reduced maximum penalty, the original sentence imposed was 'very generous to the applicant' and the appeal was dismissed.

Morrison JA disagreed and concluded that s 538 was not engaged, however agreed that the sentence could not be considered manifestly excessive.

R v Liu [2024] QCA 58

Keywords: cumulative sentences; Nagy approach – not used; no ability to partially cumulate; totality principle; serious violent offences (SVO) scheme; whether sentence was manifestly excessive

Application for leave to appeal granted but appeal dismissed as there was no error and the sentence imposed not manifestly excessive. Liu was sentenced to a total of 12 years' imprisonment which was the result of 6 years' imprisonment for malicious act with intent being cumulative on 6 years' imprisonment for trafficking in a dangerous drug (with lesser concurrent terms for other offending). It was mandatory for the offences to be declared a serious violence offence (meaning he would have to serve 80 per cent (about 9.5 years) before being eligible for release on parole).

Liu was between 21 and 22 years old. Despite his youth, the offending was viewed as being extremely serious.

Dalton JA discussed the approach to sentencing for more than one offence (see *R v Azzopardi* (2011) 35 VR 43). This was not an appropriate case to apply *Nagy* (to increase one sentence to reflect the total offending conduct) because it would 'result in such a significant inflation that the sentence, and the appellant's criminal record, would be distorted.' [36]. As it is not possible to partially cumulate sentence, a cumulative approach was the 'only appropriate approach' [37]. Because of the SVO scheme, a reduction for totality of the cumulative sentences and his youth, the sentencing judge had given Lui a significant and sufficient reduction in the individual head sentences. Boddice JA agreed with Dalton JA.

Bradley J (dissenting) did not agree and considered the sentence manifestly excessive. He would have reduced the trafficking sentence to 3.5 years cumulative (total sentence 9.5 years imprisonment) and ordered a parole eligibility date after 4 years and 10 months.

R v MRB [No 2] [2024] QCA 65

Keywords: Commonwealth office; delay between offending and sentence; principles of parity

Application for leave to appeal refused for a sentence of 16 years' imprisonment, with parole eligibility after serving 9 years and 8 months for an offence of importing a commercial quantity of a border-controlled drug. MRB had no criminal history and was a professional engineer who organised for a generator containing 98kg of cocaine to be delivered to his work, where he used a forklift and loaded it to a truck driven by another man who took the drugs to Sydney. Police discovered the importation not long after and questioned MRB who lied to them. Police took time to access encrypted messages so it was 5 years after the offending he was sentenced. During this time, he worked, did not engage with associates and took steps in rehabilitation. The court discussed delay and the circumstances it is relevant. No error was found.

R v SEG [2024] QCA 95

Keywords: conviction recorded; 'Serious Repeat Offender' declaration and the Youth Justice Act 1992 (Qld) (YJA); experiencing 'separation' in custody

Application for leave to appeal refused for a head sentence of 18 months' detention, and convictions recorded for the 3 most serious offences. SEG was 16 at the time of the offence and 17 at sentence. He came before the Court of Appeal as one of the first to be subject to the serious repeat offender declaration regime. The Court discussed the meaning of 'high probability' in s 150A of the YJA, concluding

> we do not think it a phrase capable of precise explanation more than the fact that it imports a higher degree of satisfaction than the civil standard and a lower degree of satisfaction than the criminal standard. [48]

The Court of Appeal commented on SEG's experience in detention and 'separation' he experienced:

> The confinement was largely due to staff shortages at the youth detention centres. The period of separation was, as the sentencing judge quite aptly stated, *"a disgrace and an embarrassment to every right-minded member of our community."* It serves the applicant and the community no benefit if a youth offender is ordered to serve detention, but then has minimal access to rehabilitation to assist the offender to change his or her behaviour before being released into the community and entering into adulthood. ([78] *emphasis in original)*

R v MKT [2024] QSCSR 68

manslaughter; whether an offence is 'particularly heinous' (*Youth Justice Act 1992* (Qld) s 176); release after 50%

MKT pleaded guilty and was sentenced to a head sentence of 7 years' imprisonment, with release after 50 per cent of the sentence served, for one count of manslaughter (lesser concurrent sentences for two other offences). Convictions were recorded for all three offences.

MKT and his co-offenders were driving a stolen car when they saw the victim (a 75-year-old stranger) waiting at a taxi stand with a backpack. They decided to rob the victim. MKT exited the car and approached the victim from behind. MKT pushed the victim in the upper back, grabbed the backpack from the ground and ran to his co-offenders. The victim was frail and vulnerable and was not able to brace for the fall. He fell head-first onto the road and was knocked unconscious, resulting in a life-threatening cervical spine injury. His life support was turned off several days later in hospital.

MKT spent 474 days on remand of which the first 15 days were in an adult watch-house. The judge took into account MKT's early plea of guilty, full admissions and demonstrated remorse. The judge also noted MKT's lack of any history of violence and his good performance on remand suggesting he had good rehabilitation prospects. Further, MKT had a deprived upbringing with parental neglect and exposure to domestic violence and drug addiction from 9 years old. Although not sought by the Crown, the judge observed that no finding of the offence being 'particularly heinous' could be made and the 10-year maximum penalty applied.

R v HST [2024] QSCSR 65

Keywords: murder, whether an offence is 'particularly heinous' (*Youth Justice Act 1992* (Qld) s 176); release after 70% served.

HST pleaded guilty and received a head sentence of 14 years' detention, with release after 70 per cent of the sentence served for the offence of murder (lesser concurrent sentences for other offences). Convictions were ordered for the four most serious offences.

HST and a co-offender entered the victim's house (a stranger), armed with a knife and with the intention to steal. The victim and her husband woke and confronted them. A physical fight started, and the victim was stabbed in the heart and died.

HST was 17 years old (a child) at the time and 19 years old at sentence. The sentencing judge considered whether the offence was 'particularly heinous' to allow a detention order for more than 10 years. This consideration includes the circumstances of the offence and the person being sentenced. In this case, the circumstances of the murder offence were considered together with his deprived upbringing, exposure to violence, parental neglect, lack of supervision and schooling, exposure to excessive alcohol and drug use, loss of family members. In this case, the offence was considered 'particularly heinous'.

W (a child) v Commissioner of Police [2024] QChC 4

Keywords: dismissing a charge and referral to a restorative justice process (YJA s 24A); discretionary and mandatory licence disqualification under the YJA.

Appeal allowed against reprimand order for driving under the influence and obstructing police and a 3-month mandatory licence disqualification. On appeal the charges were dismissed and referred to a restorative justice process.

The appeal concerned the Magistrate's refusal to dismiss the charge, referring it to a restorative justice process (YJA s 24A). The Court notes police are required to consider alternatives and a referral to restorative justice process (YJA ss 11, 22). It was discussed whether the sentencing court, under section 24A, was simply reviewing the police decision. The Court did not consider this was the case:

> My conclusion is that a court deciding an application pursuant to section 24A of the YJA must have regard to all relevant facts and circumstances, whether or not those circumstances existed at the time a police officer chose not to make a referral for a restorative justice procedure. [25]

The Court discussed the discretionary and mandatory licence disqualification requirements ([29] and YJA s 254). The mandatory licence disqualification would apply if a restorative justice process referral was made ([36] and YJA s 162), but not if the charge was dismissed and referred to a restorative justice process (s 24A). The reasons for the court's decision as to the appropriate penalty were his age (17), no prior traffic or criminal history, his father had recently passed away, a licence disqualification would cause particular hardship to his family, and he was remorseful.

R v GA [2024] QChCSR 10

Keywords: armed robbery; probation; steps taken in rehabilitation.

GA pleaded guilty and was sentenced to 18 months' probation for armed robbery in company. He was 15 at the time of the offence and with a group who came across a 17-year-old victim. The group robbed the victim by taking a neck and wrist chain, his jumper, shoes and phone. This occurred in a store in a shopping centre.

GA had left school quite young, witnessed domestic violence in the home, abused alcohol and cannabis and 'fell in with a bad crowd'. Since the offending he had begun to address psychological issues with counselling, engaged in a service to address his cannabis abuse and obtained full time work as an apprentice. The court considered 'There are some positive signs … that you have turned things around.' Probation was ordered to 'keep [him] on track'.

Alexander v Commissioner of Police [2024] QDC 62

Keywords: s 222 appeal; breach of suspended sentence; concurrent or cumulative sentence (and order to serve); victim of domestic violence.

Appeal allowed against a total sentence of 9 months' imprisonment. The head sentence was reduced to 6 months' imprisonment.

Alexander pleaded guilty to 34 offences involving fraud, property and drugs. She was sentenced to 6 months' imprisonment. The offending also breached a probation order and a 3-month suspended imprisonment order, which was activated and ordered to be served cumulatively (resulting in a total sentence of 9 months' imprisonment). The sentencing Magistrate considered '[s]he had exhausted all leniency… People had been "ripped off" or "defrauded" and punishment and protection loomed far above rehabilitation.' ([11]).

On appeal, the District Court Judge considered her circumstances demonstrated rehabilitation was still an important consideration. The applicant was homeless and the motivation for the offending was to support her son. She had been the victim of significant domestic violence, which was a mitigating factor (s 9(10B) PSA). The court held it was open to activate the suspended imprisonment and for it to be served cumulatively and served last instead of first (amendments to the PSA meant *R v Gander* [2005] QCA 45; 2 Qd R 317 [24] was not applicable law). However, due to mitigating factors (plea of guilty, steps towards rehabilitation, experiencing domestic violence) the suspended imprisonment was ordered to be served concurrently and she was released on parole immediately.

R v BJH [2024] QDCSR 289

Keywords: domestic violence; strangulation in a domestic setting

Head sentence of 3 years' imprisonment for strangulation in a domestic setting and lesser concurrent sentences for other offending imposed. BJH had spent 299 days in custody which was counted as time served. Parole release was set as the day of sentence.

BJH accused his partner of cheating on him. Both had consumed methamphetamine and he attacked her, applying pressure to her throat but not restricting her breathing (common assault), punched her in the face (assault occasioning bodily harm), grabbed her hair and pushed her on the bed causing her to hit her head on the bedframe (common assault), grabbed her from behind and put his arm around her neck and squeezed so she could not breathe (strangulation in a domestic setting). He released her and pushed her to the ground then kicked her in the ribs and stomped on her head (assault occasioning bodily harm). She repeatedly tried to escape and ultimately barged through a ground floor door window smashing it, screaming for help. His 9-year-old daughter woke and witnessed part of the attack.

The Court said:

> offences of domestic violence like this warrant sentences reflective of considerations of both personal and general deterrence; and I am also imposing these sentences to make it clear that the community, acting through the Court, absolutely denounces this sort of conduct. It was brutal, cowardly and protracted [20].

R v GT [2024] QDCSR 105

Keywords: contravention of domestic violence order with circumstance of aggravation; time spent in custody not declared

GT was sentenced to 6 months' imprisonment, wholly suspended for an operational period of 16 months. At the time of sentence, he had been in custody for 291 days which was taken into account but not declared as time

served under the sentence. A protection order was in place in favour of his mother and brother, which required him to be of good behaviour and prevented him from attending a certain address. He was invited to the address by his mother. While there, he got involved in an argument with his brother which constituted the breaches of the orders. At the time of the offences, he was on parole. His parole was suspended and he was subsequently returned to custody. The sentencing judge said:

> Personal deterrence is important because you need to understand you have to comply with domestic violence protection orders. They are not optional. You must comply with those orders, and you need to understand that if you do not, there will be serious consequences as a result. That has to be balanced, though, against the matters in your favour, including your early plea and the prospects of your rehabilitation. It also has to be balanced against the reality that you have been back in jail for a long time now, and while that is attributable to the suspension of parole, it also arises from your commission of the present offences (p 3).

R v MKWT [2024] QDCSR 169

Keywords: dangerous operation of a vehicle, causing grievous bodily harm and leaving the scene; victim of domestic violence; application of section 9(2)(gb) of the PSA.

MKWT was sentenced to 3 years' imprisonment, wholly suspended for an operational period of 4 years and disqualified from driving for 2 years after pleading guilty to dangerous operation of a vehicle, causing grievous bodily harm and leave the scene.

MKWT was driving on the highway intoxicated. The victim was cycling on the left side of the highway. Because she was drunk, she veered off the road and hit the cyclist. She accelerated away and then crashed the car. She claimed she did not see the cyclist. The cyclist suffered injuries consistent with grievous bodily harm.

She was 23 years old at the time of the offence and 25 years old at sentence. The judge considered the extent to which the offence was wholly or partly attributable to her being a victim of domestic violence:

> This is an unusual case because the evidence establishes that on this very night you had been subject to domestic violence, and, in part, your decision to drive while intoxicated with the resulting offence came entirely from those circumstances. That, of course, is not to say it excuses what you did, nor is it to diminish the effect of you being drunk at the time, which no doubt had had its own effect on your mental processes. But the legislation requires that I consider the extent to which your offending is partly attributable to the domestic violence, and that is, as I have said, an unusual and significant factor. (p 4)

The sentencing judge highlighted it was not usual for there to be a close connection between being a victim of domestic violence and a case like this.

Queensland Government Statistician's Office, Queensland Treasury, *Crime Report, Queensland, 2022-23: Recorded Crime Statistics* (May 2024)

This report provides an overview of the volume and nature of crime in Queensland, as reported to or detected by the Queensland Police Service. The report sets out detailed statistics relating to recorded victims of offences against the person and alleged offenders in all offence categories, as well as statistics for recorded and cleared offences.

This is a companion report to the Justice Report, also released in May 2024.

Queensland Government Statistician's Office, Queensland Treasury, *Justice Report, Queensland, 2022-23: Recorded Crime Statistics* (May 2024)

This report provides an overview of the volume of criminal justice matters in Queensland and includes statistics relating to criminal courts, youth justice and adult corrective services. This 2022–23 edition is the sixth annual report by Queensland Government Statistician's Office (QGSO) on the state's criminal justice system. Detailed statistics relating to finalised appearances and charges in the higher and lower criminal courts are featured in this report, as well as statistics on youth detention and supervised youth justice orders, and imprisonment and community-based corrections for adult offenders.

Brigitte Gilbert, *Attrition of Sexual Assaults from the New South Wales Criminal Justice System: Bureau Brief*, NSW Bureau of Crime and Statistics Research (May 2024)

This paper tracked the progress of sexual assaults reported to the NSW Police Force in 2018 through the NSW criminal justice system. It examines the attrition of incidents, defendants and charges from the reporting stage through to the sentencing of a proven matter. The study found that only 8 per cent of reported contemporary child sexual assault incidents, 7 per cent of reported historic sexual assault incidents and 6 per cent of reported adult sexual assault incidents resulted in a criminal conviction. The largest point of attrition was at the investigation stage, with no legal action taken against 85 per cent of reported sexual assault incidents. For the cases which progressed to court, less than half (41%) of defendants had a sexual offence proven against them, either by way of a guilty plea or guilty verdict following a trial. However, where a person was found guilty, almost two-thirds of offenders received a custodial penalty (77%).

Victorian Sentencing Advisory Council, *Reforming Sentence Deferrals in Victoria: Final Report (May 2024)*

The Victorian Sentencing Advisory Council's report examines the use of sentence deferrals (or postponing) in Victoria. A reason to postpone or formally defer a sentence (for up to 12 months) is to allow a person to participate in a program to reduce risk of reoffending and to ensure a court has all the information it needs at sentence to inform the sentencing process.

The report examined sentence referrals in Victoria since various legislative changes to the order had been made in 2012. The Council concluded that sentence deferrals are a powerful tool that provide a flexible approach to respond to individual circumstances, in particular the needs of those who are chronically marginalised or disadvantaged.

The report makes 10 recommendations intended to increase the effectiveness of the deferral as a therapeutic option for a broad range of offenders and circumstances. The success of these recommendations, the Council noted, would largely depend on the availability of suitable, effective, accessible and culturally safe and appropriate programs designed to deliver sentence deferral pathways.

The Law Reform Commission of Western Australia, *Project 113 Sexual Offences: Final Report* (May 2024)

The Law Reform Commission's Final Report examines issues explored as part of its review of sexual offences and makes 134 recommendations to modernise and improve Western Australia's sexual offence laws. The Commission reviewed a range of issues, including the definition of consent, the circumstances where there is no consent, the defence of mistaken belief in consent, directions given by judges to juries in sexual offence trials, the current structure of sexual offences in Western Australia and the maximum penalties that apply.

Don Weatherburn et al. *Towards A Theory of Indigenous Contact With the Criminal Justice System: Research Report No. 32*, Australian Institute of Criminology (May 2024)

The majority of Aboriginal Australians are never arrested or imprisoned. This paper examines 'the factors which differentiate those are who are arrested, and in many cases imprisoned, and the majority who are not' (p. 7). The paper argues the key to understanding the disproportionate representation of Aboriginal and Torres Strait Islanders in prison is to understand the factors driving the high rate of Indigenous arrest. The paper sets out two sets of factors, one of which increases the risk of arrest and the other which reduces that risk.

The Australian Indigenous imprisonment rate is currently 16.7 times the non-Indigenous imprisonment rate, and Indigenous Australians are arrested at a rate almost 9 times that of the rate of non-Indigenous Australians. The rate of arrest is part of the reason for high imprisonment rates. The paper identifies three other important factors: (1) higher court appearances; (2) higher arrests for violence offences and (3) more frequent arrests for breaching the conditions of court orders.

Western Australia Government, *Legislative Responses to Coercive Control: Consultation Outcomes Report* (June 2024)

The Department of Justice (WA) and The Office of the Commissioner for Victims of Crime conducted extensive community consultations to understand coercive control in the Western Australian context. The report makes 24 recommendations.

A clear finding was there needs to be a whole-of-government and whole-of-community approach to respond to coercive control behaviours. The report also provides insight into how offenders' histories of violence fail to inform judicial assessments of risk and dangerousness in sentencing men convicted of intimate feminicide across Australia. 'At the heart of these recommendations is the requirement for a system that can respond to patterns of abuse, correctly identify the victim and provide a meaningful response wherever coercive control occurs.' (p. vii).

Victorian Sentencing Advisory Council, *Sentencing in Victoria 2012-13 to 2021-22* (June 2024)

This statistical report presents data on sentencing practices in Victoria for a 10-year data period (July 2012 to June 2022). The data includes the number and gender of people sentenced each year, the types of offences people were sentenced for, the types of sentences people received, and the imprisonment or detention lengths and fine amounts imposed in the Supreme Court, County Court, Magistrates' Court and Children's Court.

Victorian Sentencing Advisory Council, *The Criminal Justice Diversion Program in Victoria: Second Statistical Profile* (June 2024)

This statistical profile examines the use of diversion plans in the Magistrates' Court of Victoria for the 10 years from 1 July 2011 to 30 June 2021. The Criminal Justice Diversion Program is a pre-plea diversion program available for eligible defendants in the Magistrates' Court of Victoria and primarily aimed at first-time offenders. It involves adjourning proceedings for up to 12 months so that the person can complete a diversion

plan, which will involve certain conditions (e.g., apologising to the victim, compensating the victim, completing an education course or undertaking counselling or treatment).

The review found that more than 50,000 people received a diversion plan in the data period, and most of those plans were successfully completed (93.3%). Although men made up the majority of people receiving diversion plans (67.3% of plans), women were much more likely than men to receive a diversion plan (8.7% of all women's cases, compared to 5.2% of men's).

This is the Council's second statistical profile of the Criminal Justice Diversion Program in Victoria. The first statistical profile examines the use of diversion plans from July 2006 to June 2007.

Kate Fitz-Gibbon et al, *Securing Women's Lives: Examining System Interactions and Perpetrator Risk in Intimate Femicide Sentencing Judgments Over a Decade in Australia* (Monash University and University of Liverpool, Report, 2024)

This report examines system interactions and perpetrator risk in intimate femicide sentencing judgments over a decade in Australia. 'Intimate Femicide' is where a current or former male kills a female partner. This report analysed 235 intimate femicide sentencing judgments from across Australia (excluding Queensland) between 2007 and 2016. This report presented findings that identified significant prior criminal justice system involvement among perpetrators.

- 71 per cent of offenders had contact with at least two legal points (police, legal setting or child protection) prior to the intimate femicide
- 10 per cent of offenders were on bail or parole at the time of the intimate femicide
- 65 per cent of offenders had had prior criminal convictions; 34 per cent of these were for DFV-related incidents with 25 per cent having been previously listed as the primary aggressor on a civil order.

Oona Brooks-Hay, Michele Burman and Jenn Glinski, *Victim-Survivor Views and Experiences of Sentencing for Rape and Other Sexual Offences* (Submitted to the Scottish Sentencing Council, published in May 2024)

This report presents findings from a qualitative study that aimed to explore victim survivors' views and experiences of sentencing for rape and other sexual offences in Scotland. It draws upon research undertaken with 14 adult victim survivors of rape and/or sexual offences whose case resulted in a conviction and a subsequent sentence between 2021–2024. The report makes several recommendations seeking to improve victims' experiences, such as providing them with information on what to expect at the sentencing hearing and the different disposal options available to the judge.

Findings and recommendations are provided to inform the development of sentencing guidelines for sexual offences by the Scottish Sentencing Council and contribute to improving policy and practice around sentencing in relation to victim survivors.

Nicky Padfield and Laura Janes, 'The Extended Sentence: Law and Practice' [2024} 5 *Criminal Law Review* 288

This article examines the increasing use of extended sentences in England and Wales. These sentences may involve longer periods of detention than deemed necessary by the sentencing court for the purpose of punishment and explores how and why this has happened, looking at both law and practice. It also highlights human rights concerns, including delays and extended periods in custody often resulting in less or no supervision in the community on licence, which undermines the original preventative purpose of the extended sentence.

FOCUS ON: Non-fatal strangulation and suffocation*

* This section includes articles and resources released in Q1 and Q2.

Heather Douglas et al. 'Domestic Violence, Sex, Strangulation and the 'Blurry' Question of Consent', *The Journal of Criminal Law* Vol 88(1) (February 2024)

This paper examines the Queensland offence of choking, strangulation or suffocation in a domestic setting (Criminal Code, s 315A) through interviews with service support workers from the domestic violence and men's behaviour change sectors. Consistent with other research focus group participants reported that many of their clients felt the use of strangulation during sex was 'normal'.

The paper also provides an overview of the complexities in prosecuting these cases in Queensland courts (notably the lack of consent element of the offence) and the Court of Appeal jurisprudence for rape cases where the accused claimed strangulation was part of rough sex. It is noted there is 'no statutory definition of consent provided for the strangulation offence in Queensland' nor 'has there been any judicial consideration of consent in the context of the strangulation offence in Queensland'.

Heather Douglas et al. *'Strangulation During Sex Among Undergraduate Students in Australia: Towards Understanding Participation, Harm, and Education', Sexuality Research and Social Policy* (February 2024)

This research provides a preliminary examination of participation and perceptions about strangulation during sex among Australian undergraduates. A confidential, cross-sectional online survey was conducted with 168 undergraduate students at an Australian university and explored their awareness of the harms of strangulation, understanding of criminalisation, and the impact of education on their views. More than half reported ever being strangled during sex (56%) and having ever strangled a partner (51%). Participants generally did not understand the harm and risk involved with strangulation. Referring to the Queensland offence, the researchers argue that 'consent cannot be free and voluntary if the person is not aware of the potential risk and harm of the behaviour'.

Sentencing Council for England and Wales, *Non-Fatal Strangulation and Suffocation Offences: Consultation Paper* (May 2024)

The Council is reviewing the sentencing guidelines for non-fatal strangulation and suffocation offences and was seeking public and practitioner views to inform their drafting. Separate offences for non-fatal strangulation and non-fatal suffocation came into force on 7 June 2022. The statutory maximum penalty for either offence is 5 years imprisonment. Circumstances of aggravation involving racial or religious motivation increase the maximum penalty to 7 years imprisonment.

Sentencing Council for England and Wales, *Non-Fatal Strangulation and Suffocation Offences: Statistical Bulletin* (May 2024)

This bulletin provides information on volumes and sentence outcomes for adult offenders (aged 18 or over at the time of conviction) sentenced for offences covered by the Sentencing Council's draft *Non-Fatal Strangulation and Suffocation Guideline*. Those offences are non-fatal strangulation or suffocation (5-year maximum penalty) and racially or religiously aggravated non-fatal strangulation or suffocation (7-year maximum penalty).

The report examines sentencing outcomes for the relevant offences between July 2022 and June 2023. During that 12-month period, around 700 people were sentenced for non-fatal strangulation or suffocation offences. Most people received a custodial penalty with an average sentence length for an immediate custody sentence of 17 months' imprisonment.

Heather Douglas and Robin Fitzgerald, *'Prosecuting Strangulation Offences: Understanding Complainant Withdrawal Using a Social Entrapment Lens', Current Issues in Criminal Justice* (May 2024)

In recent years many countries, including Australia and England and Wales, have introduced discrete offences of strangulation – a behaviour commonly associated with domestic and family violence and coercive control. This paper aims to improve understanding of complainant withdrawal in strangulation cases. Using a sample of strangulation offence prosecution casefiles in Queensland, the authors applied a social entrapment lens to better understand the factual context in which complainants withdraw their support for prosecution and the implications for prosecution practice.

Heather Douglas et al. 'Prevalence of Sexual Strangulation/Choking Among Australian 18-35 Year-Olds', *Archives of Sexual Behaviour* (June 2024)

This research aimed to determine the prevalence of strangulation during sex and examine predictors of positive perceptions toward sexual strangulation in Australia. Confidential, cross-sectional surveys conducted with 4,702 Australians aged 18-35 years found more than half (57%) reported ever being strangled (61% women, 43% men, 79% trans or gender diverse) and just over half (51%) reported ever strangling a partner (40% women, 59% men, 74% trans or gender diverse). This research suggests that 'exposure and awareness of sexual strangulation among young Australian adults is widespread and is a sexual behavior that has become mainstream' (11). It also found there was a general perception 'that consent could be provided once, and no further consent or negotiation at subsequent events would be required' (14).

Sentencing Council for England and Wales, *Non-fatal Strangulation and Suffocation Statistical Bulletin* (May 2024)

The Sentencing Council has published a statistical bulletin and data tables, with information about current sentencing practice for non-fatal strangulation and suffocation offences.

The release of this Bulletin occurred in advance of the launch of the Council's consultation on the draft Non-fatal strangulation and suffocation guideline, which was published on 15 May 2024.

In case you missed it

Jonathan Gu, *The Effect of Judge-Alone Trials on Criminal Justice Outcomes: Crime and Justice Bulletin*, NSW Bureau of Crime and Statistics Research (March 2024)

The proportion of judge-alone criminal trials in the NSW District and Supreme Courts (higher courts) increased from 6 per cent in 1999 to 18 per cent of trials in 2019. This study compared acquittal rates, imprisonment rates, prison sentences and trial lengths for 5,064 jury and 805 judge-alone trials in NSW higher courts between January 2011 and December 2019. Compared to jury trials, judge-alone trials were associated with an increase in the probability of acquittal and a decrease in average sentence length on conviction.

The study also interviewed 12 legal practitioners, including District and Supreme Court judges, prosecutors and defence lawyers, to identify factors motivating judge-alone applications that may be correlated with the outcomes of interests. The three judges interviewed spoke to the 'personal burden that judge-alone trials place on judicial officers, particularly the added layers of pressure from scrutiny of legal reasoning and factual interpretation on appeal' (pp. 33-34).