

COMMUNITY VIEWS ON RAPE AND SEXUAL ASSAULT SENTENCING

SUPPLEMENTARY MATERIALS

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June 2024

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Introduction

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

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

The research results have been synthesised into six key findings which address the two research questions. The key findings of the research are set out in the Final Report.

The purpose of these supplementary materials is to provide a more detailed overview and discussion of the results according to the specific research activities which participants undertook in the focus groups. There is some overlap between these supplementary materials and the Final Report. Relevant, and notable, participant quotations have been provided in full below. Participant quotations are labelled according to focus group number, rather than individual participant ("FG").

Community Views on Sentencing Purposes

When considering the importance of sentencing purposes, community members, in their discussions, acknowledged the overlapping and conflicting nature of sentencing purposes.¹

"I went to community protection because to me that means they're taken off the streets, which is almost the same as punishment just from a slightly different angle." (FG8)

Participants had specific views about just punishment, denunciation, and community protection for rape and sexual assault offences. This section sets out the general community views in relation to specific sentencing purposes according to three vignettes containing rape and sexual assault particulars.

Community members, overwhelmingly, felt punishment is a favourable sentencing purpose for sexual violence. Participants liked that punishment results in a tangible consequence for perpetrators of sexual violence offences.

"When I'm thinking punishment, my idea of the punishment is I know that we said it is not necessarily jail time, but there would be some kind of consequence for him where he would actually face like, 'Oh, I did something wrong.' This is the immediate response to that, even if immediately means two years down the track when it goes to court and whatever. At least there's some kind of response to that, that says this is not okay." (FG3)

Community members considered denunciation and punishment as overlapping sentencing purposes. Many participants felt they connected, considered them together and found it difficult to differentiate between the two sentencing purposes.

"Because for me it's like to punish the person, whereas all of the other things, it's sending a message to protect, to discourage. Whereas this is to punish. And so for me, it's like absolutely punishment is the only sentencing purpose for that because it's unacceptable." (FG2)

"At first when I chose punishment I thought, well, the punishment will then send a clear message of denunciation in essence of choosing that. It also will provide community protection because if he's going through the system, that inadvertently makes a community much more safe because it is denouncing his behaviours, he is getting a punishment." (FG12)

"...I did have denunciation because I just thought, God, that whole thing about get this message through to this person. But then I just thought no, what's actually the most significant aspect of this for me is that it's just so wrong to hurt a child like that. And that child will carry that all their life. And that person, that perpetrator has stuffed up that little child's life and taken away their innocence and their childhood and that should be punished." (FG7)

"...The first one [Vignette 1] was like the message has to be out there to the community that it's not okay to abuse a partner. Whereas this one [Vignette 2] it's like, well everyone knows you don't attack a stranger. Therefore, you need to be punished because that's like everyone knows you shouldn't be doing that." (FG2)

"I'd like to say something on the denunciation. For me the message to the person of denunciation goes right into punishment. I will choose punishment to denunciation to the person, but for denunciation to the community, I'm unlikely to ever choose that because of my sense of the fragmentation of our society right now. And I don't have a great faith that there would actually be a message communicated." (FG7)

¹ Muldrock v The Queen (2011) 244 CLR 120.

Community members; however, indicated there were problems with denunciation as a sentencing purpose. Some participants felt denunciation, as a sentencing purpose on its own, is failing to prevent sexual violence.

"I think there's too many people out there who are traumatized to whom a quick visit to the police station and then off you go kind of thing is not going to deter anybody. And so we are getting denunciation wrong, but also there's so much wrong in society or amongst the people who are just broken, families broken, people broken, communities broken that they've got nothing to lose. They don't care. How can you do denunciation if people have got nothing to lose?" (FG7)

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

Community protection from sexual violence was significant to community members. Community members acknowledged the fundamental need for individuals to feel safe and so there is a broader perspective to sentencing practices for sexual violence beyond an individual's behaviour.

"We need community protection. There needs to be certain frameworks, there needs to be certain trusts that we have within the community, by the community, for the community that women can, men can go out at certain times and be safe. And if they're not, yeah. I totally went with community protection because that is a fundamental principle to a democracy and to a community... Otherwise people start staying inside, you get mental health problems. The consequences of not having community protection is significant... I've chosen community protection here simply because this type of predatory behaviour, we need to be protecting all citizens from sexual abuse." (FG12)

"...The community needs to have protection from people like that. And because of the legitimacy of a community will be undermined if those things aren't protected. And this is denunciation, deterrence. Those are woven into community protection." (FG12)

"Protection of our community would be the most important thing. Every community's got their issues, some of them good, some of them bad, some of them real bad. The real bad ones we try to push, to eliminate from our community. But then again, some other community's going to inherit that problem. So the court system will... Jail is the place for them to be, because no community wants to go through this type of stuff. There's a lot of things." (FG19)

To further explore the importance of punishment, denunciation and community protection, as a sentencing purpose, for sexual offences, specific scenarios were used to provide context to the offending. Providing participants with relevant particulars allowed them to consider the broader nature and impacts of the offending to better understand sentencing purposes. The results of those activities are set out below.

Three vignettes were developed and presented to participants. These vignettes were factually detailed, providing aggravating and mitigating circumstances relevant to the defendant's behaviour as well as relevant victim-survivor characteristics. The vignettes were based upon real Queensland judgments because case law provides more authentic scenarios than hypotheticals while also allowing the research team to draw upon, and consider, relevant judicial commentary during the data analysis stage of the project. The vignettes were also chosen to demonstrate a range of sexual behaviours, settings and relationships. Participants were not given the case names or real sentences imposed on the defendants for any of the vignettes so as not to influence their responses or divert their focus away from the aims of the research.

Participants were asked to choose the most important sentencing purpose for each of these vignettes. Individual determinations of the most important sentencing purposes for each of the three vignettes was followed by group discussion. Participants were also given the opportunity to select another sentencing purpose following the group discussion to determine whether their views changed and what influenced their changing views. Requesting participants select only one sentencing purpose challenged participants to consider the value of each sentencing purpose with respect to the relevant circumstances. One only, was also requested, to encourage participants to identify key factors influencing their decisions on sentencing purposes. The group discussion, then, elicited the relevant circumstances which participants considered

when evaluating the sentencing purposes and spoke to what the community views are about the importance of sentencing purposes.

The outcomes from the community views of sentence purposes, for each of the three vignettes, are set out below. Importantly, participants were asked to consider all sentencing purposes under the *Penalties and Sentences Act 1992* (Qld), that is, just punishment, denunciation, community protection, deterrence and rehabilitation. While the research questions only sought community views in relation to just punishment, denunciation and community protection, excluding deterrence and rehabilitation may have misrepresented community views about sentencing purposes for rape and sexual assault offences. Discussion relating to all sentencing purposes are captured below. The key findings in the Final Report focus on the three targeted sentencing purposes.

Vignette 1: Derek and Vanessa

Derek* (35M) and Vanessa* (35F) were in a relationship for 2 years. Vanessa had a protection order which prevented Derek from being with her within 12 hours of drinking alcohol. One morning Vanessa woke and saw Derek had been drinking. He started engaging in sexual activity with her, but she said "no" several times. Derek ignored her, wrapped his arm around her so that she could not move and forced his penis into her vagina for around 3 minutes before he ejaculated.

A few days later Vanessa was in bed unwell. Derek put his hands inside her pyjamas and touched her on the vagina. She said, "stop", "no", "get your hands off me" and "don't touch me" several times. He continued to touch her. Vanessa contacted the police the next day. Derek pleaded guilty. He had a criminal history starting 5 years ago and other offences from a previous domestic relationship. Two years ago he was sentenced for not following the conditions of a domestic violence order in respect of Vanessa. Derek had a good work history as a registered nurse but has been de-registered due to alcohol dependence. One factor contributing to this was his exposure to stress as a nurse. At the time of sentence, he had engaged in counselling for his mental health issues and taken steps to address his alcoholism.

Vignette 1 contained rape and sexual assault behaviours in a domestic relationship. Significant particulars of the vignette included an adult victim-survivor, perpetrator's criminal history and guilty plea. This vignette was a particularly important one, given the domestic nature of the relationship between the victim-survivor and the perpetrator and the domestic violence behaviours. Vignette 1 was analogous to *R v DJT*² which was sentenced in the District Court of Queensland.

Participants identified punishment, rehabilitation and community protection as the most important sentencing purposes for Vignette 1.

Details of the participants' selections for Vignette 1 are specified in the table above.

Table 1: Vignette 1 results

Community Protection	Denunciation	Deterrence	Punishment	Rehabilitation	No Purpose Selected	Total
18	17	6	25	21	2	89

Several themes arose in the focus groups which explained how participants determined the importance of sentencing purposes. Intoxication and alcoholism, treatment and counselling, offender's employment, repeated nature of the offending, criminal history and the domestic nature of the relationship were all factors which participants identified as relevant to choosing sentencing purposes.

Each of these factors are explored further below within the sentencing purposes discussion.

² [2023] QDCSR 93.

Punishment

Participants identified the importance of punishment as a sentencing purpose for Vignette 1. They spoke to Derek's repeated Domestic Violence Order (DVO) breaches were indicative of punishment being needed. More specifically, the DVO breaches indicated Derek was not changing his behaviour, had a history of violent behaviour and he needs to learn his actions will not be tolerated.

"A bit of denunciation comes in here, I feel like too, this is obviously a romantic relationship. And I feel that it can be assumed, especially among men, that consent is just a given because you're together, which is completely false. So I felt like punishment is appropriate here because he's done it multiple times. It needs to be understood that consent not just given through a relationship. So he needs to understand, and I think others need to understand that it's not okay. That's probably why I leaned more towards punishment. "Punishment" sounds like such a strong word, I feel, but yeah." (FG16)

"I guess similar to yourself [a participant that chose denunciation]...the part that troubled me was the fact that he had a domestic violence order and he's still gone ahead regardless. And this may be my lack of knowledge of understanding the legal processes side of things. But just how do we get that message across to him that it's not okay and he needs to leave her be? Because clearly, he's got a DV order and he's still continued anyway. What is the next step for him to get this message across? I put down punishment, but like I said, it might be my lack of understanding of what then that looks like in comparison to sentencing from another means. But just basically still though trying to get the message across to him that that's not okay." (FG2)

"I went with punishment. I pretty much just looked at he had a criminal history, seems he hasn't learned a lot. He doesn't seem to understand orders, feels that he can get away with them. It just made me think he needed something stronger." (FG12)

"I chose punishment and part of the thinking process was that there appeared to be a long history of perpetrating such crimes, and given the long history, it seems that there probably wasn't anything that was going to do anything to perhaps stop further acts of sexual violence." (FG11)

"But it's not the first time he's done it. He's done it previously. So he might have done rehab, but it didn't help. Because he's had previous issues and similar crimes, and rehab is not a... in that situation, you don't want him around the community ...because he's a re-offender." (FG19)

Community Protection

In the same way that punishment was a suitable sentencing purpose for Derek's repeated offending behaviour, community protection was also important:

"Community protection, because in the sentencing and that kind of thing, there's usually something. If he'd been found guilty before, he would've been given opportunities previously to rehabilitate, go through courses and such. He's still chosen to do it again. It's clearly a pattern of behaviour for him, that he has either chosen not to fix, doesn't think that there's a problem, or whatever his reasoning might be. At this point, I chose community protection because he's not capable or willing to protect his community himself." (FG3)

The connection between community protection and the risk of offender recidivism has likewise been recognised by the judiciary. As described by Henry J:

An assessment of future risk of re-offending is logically relevant to that sentencing purpose [community protection], in that it will inform the weight to be given in an individual case to that purpose, relative to other sentencing purposes, such as rehabilitation of the offender.³

³ *R v Wano; Ex parte Attorney-General (Qld)* [2018] QCA 117, [37] (Henry J).

Community protection was also raised in relation to Derek's employment history as a registered nurse. Despite no longer being employed as a nurse (he was deregistered),⁴ some participants favoured community protection because his previous role as a nurse put him in regular contact with community members:

"The community needs to be protected from Derek...because this is just me basing off of his history as a registered nurse, being deregistered due to alcohol dependence, but also having a history of domestic violence. I personally don't believe someone like that working within the healthcare industry is safe either. I believe that could pose a risk to potential patients that they're working with. So I believe the community should be protected." (FG7)

"[Being] in a position of responsibility over other people...that kind of aggravated a bit in my opinion." (FG6)

"I did select community protection...[Derek's] work as a registered nurse was weighing on my mind...Even though he's deregistered at the moment, because of alcoholism, there's a very good chance that he probably could have that restored at some stage. Again, just with essentially the violence, I think he started down. There's certainly all of these coercive behaviours, and physically coercive behaviours that may put the public at risk as well." (FG14)

Denunciation

Similarly to punishment and community protection, denunciation, as a sentencing purpose, factored heavily in the minds of some participants when considering the repeated nature of this offending:

"I found it hard to choose, but I did choose denunciation because of the, won't be tolerated, that there's just zero tolerance of this repeated... it's a repeated behaviour. And I think, yeah, I didn't think punishment or rehabilitation, I don't know because it is such a repeated behaviour and a danger that it's important for the community and him to know there's just no way that this is in any way okay." (FG17)

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

"He's already had domestic violence orders, or protection orders. He already knows it's the bad thing. He is not meant to be doing it. Yeah. I'm actually changing mine to denunciation. I think he's had too many chances. Have you already had a protection order, and he's done it again?" (FG15)

The community strongly condemned violence in a domestic relationship. Often, participants expressed frustration with the way they felt courts are responding to these criminal activities. Denunciation was particularly persuasive as a sentencing purpose for violence within a domestic relationship according to participants:

"I decided on denunciation...Domestic violence is such a prevalent issue at the moment in society. It seems that the perpetrators who have domestic violence orders continue to re-offend. There doesn't seem to be a just punishment that the courts are giving them. I think because of that, there's just this mentality that regardless of what they do, continue to offend or breach the orders, that nothing will be done. I think victims feel that way as well. I think there does need to be a strong message to the community that this won't be tolerated, and it's not acceptable." (FG14)

"The reason why I picked denunciation is because we've got such a massive problem with domestic violence, sexual violence. It doesn't seem to be getting any better and it seems to be happening a lot

⁴ The deregistration of a nurse (or other professional) as a result of their conviction may be considered as extra-curial punishment during sentencing. See, for example, *Buksh v R* [2013] NSWCCA 60, [23] (Campbell J). However, '[t]he fact that an offender has suffered extra-curial punishment will not necessarily result in a significantly reduced sentence': *Boehmke v R* [2011] QCA 174, [27] (McMurdo P).

in relationships. So I want to send a clear message out to the community that we're not tolerating that." (FG17)

"There's going to be a stand taken against domestic violence. People will no longer be able to continue to get away with this kind of behaviour." (FG14)

"Domestic violence orders are really traumatic for people to go through to install. And then when you see the offender riding over that, it gives a sense of hopelessness and despair, [which] adds to the trauma that the victim's suffering. And to me that actually has to be considered a lot more. It also sounds as though the rehabilitation aspect's not working... Also, there are boundary breaches in here, which is that point that you made, where even if you were pissed, you wouldn't resort to that unless you've had an exposure to breach boundaries. I'd be very unsurprised if Derek had come from a family where the boundaries were really loose. So I just think that to go soft on this person, I would be really disappointed to read that kind of outcome in report or to hear it. So I'm with denunciation." (FG4)

"We've got systematic things in place, we've got laws in place, they're trying to do these things, but these men like Derek aren't taking any notice of that stuff." (FG17)

"In my opinion, it's the characteristics of their being in a relationship and assuming that they can do whatever they want because they are in a relationship. That was my view. People will assume that you're mine because you're in a relationship with me or something like that." (FG2)

"If the sentencing was strong enough, it would then send that message through to other people in society" (FG13)

"I picked denunciation as well, and because Derek is a nurse and understanding what nursing requires and that there's ethics that you have to go through, he understands how to be ethical and excusing it by alcohol is not enough for me." (FG17)

"I chose denunciation mostly because I feel like within the context of a relationship, these kinds of actions feel to me as though they're still not taken seriously by the people who are offending necessarily or by the community as a whole. So it is sort of like I feel like you could still get comments such as, "Well, why is she still with him? Why is she letting him..." And to me, this is one of those areas where there still needs to be a message that this is still against the law, that this is wrong, even within a relationship and even if you're starting to be rehabilitated that this is not acceptable as a community and in a relationship. I thought I would be a little bit more like rehab, community protection, but I just feel like this kind of scenario I feel like we hear about or at least I hear about more than we should if as a community we actually knew and black and white, it is still wrong." (FG10)

In sentencing the offender, the sentencing judge likewise considered the need to 'send a message to other men' regarding non-consensual offending and to impose a sentence which reflects 'the community's condemnation of violence committed towards women, [and] sexual violence committed towards woman in the context of a domestic relationship.'⁵

Other participants did not choose denunciation as they felt that the message ought to be obvious, "I didn't personally pick denunciation because people know that raping your partner is bad." (FG15)

⁵ *R v DJT* [2023] QDCSR 93 (Loury J).

Rehabilitation

Rehabilitation was a factor in the real *Derek's sentencing. In sentencing the offender in *R v DJT*, the sentencing judge suspended the sentence, in part, because the offender had 'taken steps...to deal with your alcoholism and your mental health issues.'⁶ The sentencing judge in *R v DJT* further recommended the offender 'embrace whatever courses are available to you within the prison system' to treat his alcoholism and mental health issues 'so that, upon release, you can, perhaps, become, once again, a functioning, productive member of our society.'⁷ Loury J, therefore, considered sentencing to involve rehabilitation.

The perpetrator's participation in treatment for alcoholism and counselling for mental health was persuasive for the community to weight rehabilitation as important:

"I think rehabilitation...Because I think as well the fact that he pled guilty and is doing this counselling and stuff shows that he does have that capacity to A, recognise that what he did was wrong and B, overcome that and work through that. For me it was less about punishing him or protecting the community because he doesn't seem a threat to the community. More so just his partner's, which is obviously still a threat." (FG12)

Derek's use of alcohol, prior to offending, was considered by participants. Participants did not, consistently, find the perpetrator's use of alcohol as relevant to sentencing purposes and there were mixed responses from participants. Some participants recognised alcohol as contributing to the behaviour. Targeting substance abuse through sentencing was relevant to sentencing purposes.

"I chose rehab[ilitation] because of the potential for the substance use to be the driver of the behaviour, and my sense that there was not yet enough time related data of whether sobriety would make a difference to this person's risk of offending." (FG7)

"I said rehabilitation. I think because they're a...couple who have, I guess he's attending counselling, he's getting help for his alcoholism and I think alcohol stems a lot to people having no control when they're sexually doing what they're doing. So yeah, I think the alcohol is his main issue. So, if he can stop drinking, then he probably would be okay." (FG4)

However, participants were also clear that substance abuse should not excuse bad behaviour and so sentencing purposes were otherwise unaffected:

"And whilst the alcohol dependence is a factor, that doesn't mitigate his responsibility in the situation." (FG8)

"Not for me because he'd already had the protection order on it so it just comes back into, he's got even more history stacking up on each other there." (FG16)

"Derek was well and truly aware that he had a protection order which prevented him from seeing Vanessa, but that didn't stop him from drinking per se. So no, I just didn't find that as a viable excuse for what he did." (FG11)

"I think as an adult you can't use [alcohol] as an excuse for offending. I don't think that's a mitigating circumstance, but that is one of those things I think it's like you know what you're doing when you do it." (FG18)

These community views align with judicial and statutory authorities which regard the voluntary intoxication of an offender as not being a mitigating factor in sentencing.⁹

⁶ Ibid.

⁷ Ibid.

⁸ In response to a prompt as to whether alcohol factored into their perspective of the offending.

⁹ 'Voluntary intoxication is not a mitigating factor in sentencing an offender': *R v Clark* [2009] QCA 361, [23] (Keane JA). In 2014 this principle was captured in legislation: 'Voluntary intoxication of an offender by alcohol or drugs is not a mitigating factor for a court to have regard to in sentencing the offender.': *Penalties and Sentences Act 1992* (Qld) s 9A.

Deterrence

Deterrence, for Vignette 1, was raised in relation to Derek's work history as a registered nurse and contact with the community:

"I believe that, DV, it doesn't matter what job history or part of society you're sitting at, being a registered nurse is a bit of a smoke screen. Also, given that he is a registered nurse, he has a responsibility to the community. He might be coming into contact with other victim survivors of DV that have experienced this sort of thing. If he's also perpetrating, yeah, I thought deterrence would be a more appropriate sentencing purpose for him." (FG14)

"I also looked at the fact of his kind of good behaviour pleadings, that Derek had a good work history, had alcohol dependence, he was engaging in counselling for his mental health. I felt like that this can also be a ruse for perpetrators to display good behaviour as a way of grooming and also as a way of not having a strong punishment. But I thought with deterrence, the judge could include perhaps rehabilitation if the judge felt like that. That's why I chose deterrence."¹⁰ (FG17)

Cultural factors which sustain domestic violence and non-consensual sexual activity within a domestic relationship are difficult to address. Deterrence, then, might not be enough.

"I think deterrence within our culture is very weak in terms of the fact that the cultural ideals that these offences are actually [enabled by], "Okay, is a guy being a guy?, the wife is not giving him enough sex at home, blah, blah, blah." Those are so much stronger than any court deterrence can effectively make. So people just think, "Oh, well he shouldn't have done that," but I don't think it's an effective form. I think the culture that we live in is so much stronger than that, that it would...take an entire cultural change and cultural shift for deterrence to be really effective... I think it's in terms of community, I think if someone reads it, someone sees it on the news and thinks, "Oh wow, he got two years jail. Oh, I won't do that." But, I just don't think that's strong. I think the culture that we live in is so much stronger than that. It gives permission for behaviour that's incredibly unacceptable and yet we continue to just wipe it off." (FG1)

¹⁰ The participant expressed that the deterrence chosen was general and personal.

Vignette 2: David and Vivian

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

A passerby heard Vivian and called 000. David ran away but was later found by police. He pleaded guilty. He had a criminal history of violence (robbing a petrol station with a replica gun, but it was a while ago when he had a problem with alcohol). He had completed two years of an apprenticeship and had been employed for about 3 years.

Vignette 2 involved a sexual assault. Significant considerations of the vignette were an adult victim-survivor, who was also unknown to the perpetrator. The sexual assault occurred in a public place. The perpetrator had a minor criminal history of violence but no previous history involving sexual violence. Vignette 2, being a sexual assault committed by a stranger, provided a useful comparison to Vignette 1 involving the rape of a domestic partner. Vignette 2 was based upon the Queensland Court of Appeal's judgment in *R v Kane, ex parte Attorney-General (Qld)*.¹¹

Participants identified community protection and punishment as the most important sentencing purposes for Vignette 2.

Details of the participants' selections for Vignette 2 are specified in the table below.

Table 2: Vignette 2 results

Community Protection	Denunciation	Deterrence	Punishment	Rehabilitation	No Purpose Selected	Total
48	8	4	22	3	4	89

When determining the importance of sentencing purposes, for this vignette, participants primarily considered community danger and offender characteristics. Participants also considered alcohol use and criminal history as relevant. These offence characteristics are addressed below with respect to the sentencing purposes.

¹¹ [2022] QCA 242.

Punishment

Participants considered punishment, as an important sentencing purpose, in relation to several factors. Vignette 2 involved a stranger perpetrator, a random attack, and predatory behaviour as all being persuasive in favour of punishment being appropriate.

"I think what influenced me the most as to why I chose punishment was because it's a stranger victim. And so that, to me, increased their risk of escalating their offending." (FG10)

"Just purely because it was an opportunistic attack, I put punishment. And again, probably just because thinking about I was like, yes, he needs to be punished because he's just attacked a stranger." (FG2)

"I chose punishment for this one. ...it's a much more calculated random attack. It's very clear that they don't know each other, not to mention that you just don't just chill out in the bushes and then attack someone. Yeah, to me, that's a real violation of human rights and I believe that they should absolutely be punished for doing that to someone." (FG7)

"I chose punishment because that is quite a random attack. Like he's had in public, and he's just chosen somebody, getting about their daily life. Punishment I thought would be the number one thing for him." (FG3)

"...everyone knows you don't attack a stranger. Therefore, you need to be punished because that's like everyone knows you shouldn't be doing that." (FG2)

"It was predatory. He had thought it through, he had planned it. It wasn't opportunistic. They haven't outlined that there's any other influencing factors or I don't know any other issues that he might be experiencing. Also, I mean she clearly told him to stop. It wasn't consensual in any way at all. He ran away. That shows guilt as well. The alcohol, the bottom part is relevant to me. The crime is a crime. His situation on what he's doing, what he's not doing. To me that was straight-up punishment. No question about it." (FG8)

The victim survivor's perspective was acknowledged as something which sentencing purposes should consider. The participant suggested a victim-survivor may want punishment for the perpetrator:

"Looking at it from the victim's point of view, she was just walking innocently through a park to a train station. She didn't know the person. He tried to talk to her, she ignored him. And to me, that's her way of not consenting for that conversation and that engagement. And, he has then gone through with the act. I think for me, the way that I think of it, for her point of view, is that she would want some retribution or punishment to the incident that happened to her." (FG9)

Community Protection

Community members expressed concern about the danger which perpetrators of sexual offences, like David, pose to the community.

"I'm writing this person off in terms of the benefits of sentencing being done to them and I now am only focusing on benefits to the community." (FG7)

"I really don't care about their punishment anymore. I care about keeping the community safe from them. Because I mean that kind of conduct of randomly going and, aside from the sexual nature, the violent nature, the lack of one's human life existing, it all switches to community for me." (FG7)

"I went with that community protection. You don't want this type of bloke living within your community. Basically, he's a paedophile and a rapist, and he's going to attempt that all the time." (FG19)

Participants emphasised, strongly, the importance of community protection because this perpetrator was a danger to the entire community, not just the individual victim-survivor:

"I chose community protection as well because of the diversity of his criminal activity. He's not confined to attacking women and sexual activity. He's spread his wings elsewhere. And how far can he go?" (FG8)

"I also chose community protection. I guess, it's such a brazen opportunistic offense and we don't... At this point in time, there's no information as to the reason behind the behaviour, power control, sexual preferences, that sort of thing. And not being able to predict when or if they would behave in such a way, so I think community protection is the most paramount need at this point in time." (FG9)

"I picked community protection because there seems like there's an escalation and there's a very public nature and an aggression to this particular crime. And it didn't seem to discriminate. Obviously she's a female and the goal was a sexual assault or more. But it seems like he could be anywhere, anytime. There's more than one victim. I thought community protection was priority." (FG8)

"I put community protection because if he did that to Vivienne, what's stopping him from doing that to someone else? A mother or a child or a teenager or someone else or maybe couldn't have screamed for help or couldn't get it out verbally. That's what scares me a little bit." (FG17)

"I chose punishment to begin with ... my automatic response when I see something like that is a harsher punishment. However, I do agree with what people saying around community protection. I can see that by reading that response again, how it was quite an opportunistic offence and how it would be important to protect the community." (FG9)

"That definitely needs to be community protection...If he's capable of doing that, he is going to continue to do it. And there's nothing that we can do to stop him doing it. He's not scared, he's brazen and he's going to keep doing it." (FG5)

Further, the offence occurring during daylight, and earlier in the morning, highlighted the need for community protection:

"This one with Vivian being a stranger, that is not a regular occurrence that people offend against complete strangers. That's quite a... It happens, but it's a rare thing. The fact too that it's 7:00 AM in the morning. Is he actually out looking to offend? It's 7:00 AM. What's he doing out at a train station at 7:00AM. It hasn't been as though he's just come back from a night and he's with his partner. And that's absolutely wrong with partners. But it's to me next level of seeking something possibly at 7:00AM." (FG2)

"It was in broad daylight as well, which scares me, if you are going to do this in public, in broad daylight, what are you going to do behind closed doors? That really made my blood boil a little bit." (FG12)

The circumstances relating to how the perpetrator was attempting to attack community members was particularly concerning to research participants. Namely, the perpetrator was hiding in the bushes and waiting for a potential victim; in this way, all community members became a potential victim because the perpetrator made a conscious effort to conceal himself until he could target a potential victim. The victim-survivor was unaware she was in danger and in circumstances where she reasonably expected to feel safe. The term 'predatory' was used repeatedly to describe the behaviour. These factors were persuasive in the community finding community protection to be an important sentencing purpose.

"The predatory behaviour for me was that he was sitting in the bushes. That to me reminds me of National Geographic watching lions looking for their prey." (FG17)

"I think the fact that you are going about your day and getting the shock factor of the rape in that circumstance, I feel would be much more, not much more extreme, but to a more extreme level." (FG18)

"Singling her out.¹² I mean he was going to single someone out obviously, but it was about the fact that she was not considering herself vulnerable in that environment. She was just going about her day and he turned that experience for her into a very distasteful one, a very unpleasant one. And I just felt in my head that was like she was being singled out." (FG17)

"I also chose community protection. ...community protection to protect community from a person from that type of behaviour. It looks like the person David was doing predatory behaviour, hiding in a bush and that isn't anything for the community to feel safe about. And that what happened afterwards first, he's hiding in a bush. It's not safe for anybody." (FG6)

"...it seems to me that that kind of behaviour is behaviour that's going to ramp up. If he's not, that's where he first started. If he hadn't have been caught, where would he have gone? And they quite often, they start with looking through people's windows, then they do something else and it's a ramping type thing when not a known person to the, it's a stranger and it could very well ramp up." (FG5)

"I went with community protection ...because of the opportunist nature of it. The impulsive nature of it. The fact that this is relatively unpredictable. This person, he seems to just... Yeah, he's a predator." (FG12)

"I had community protection also, and there are plenty of others that sparked for me. But I think for this one, because this person was hiding in the bushes and looking, I suppose it seemed for random people walking past, I'm thinking how many other people might this person attack? Pretty much any person walking past could be a potential victim. For me it was kind of the number of people that this person might be targeting made me go with community protection, because that's all the people in the community. But I still do agree with what the other people said as well." (FG7)

"I moved towards more of community protection ...the word brazenness, the way this was perpetrated just seems to me this is somebody who has to be removed from the community for want of a better term...this person actively hid and was opportunistic and attacked someone in an open space, and probably if not for the passerby getting a triple zero call, may have continued and done a lot more than what is listed here. So there's something a little bit more predatory about this scenario... But again, this to me seems very, very predatory." (FG11)

"The second two for me (Vignette 2 and Vignette 3) are very much community protection orientated because it would suggest to me in the nature of that offending that they were both premeditated. So you had in the second case concealment, the waiting in a particular location in bushes. So that's premeditated, that's actually waiting for the right kind of victim to come along." (FG18)

"But he's actually going out looking for that to offend against or looking for a female to take advantage of. And he only stopped because someone else intervened. Clearly it was going to escalate. To me, community protection, because this is a different thought process.¹³" (FG2)

There were also thoughtful reflections about the detrimental impacts which sexual offending has on the broader community, especially in relation to community members feeling safe:

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

"It's quite scary to think that someone would grab you while you're just walking through a park. So I flitted between punishment and community protection. I seriously want him punished but I changed

¹² In response to being questioned in relation to what it was about the perpetrator's behaviour that was predatory.

¹³ "A different thought process" in comparison to Vignette 1 involving a domestic partner.

it to community protection because I want the community to know they can walk through a park, especially women.” (FG17)

“I put down community protection for this one. And I suppose for me, the elements that made me do that was the fact that they weren't known to each other. He apprehended her in a park. And so to me that speaks to that, he could do that to anybody at any time. And so community protection felt to me to be the biggest priority in that situation.” (FG4)

“There's that individual level where punishment for the person is a separate part or component to this dynamic. But the wider community, ecological safety for me around this person and the impacts of this kind of behaviour is not just on poor Vivian. It's also that whole dog park's going to hear about it or that whole running park. Everyone's going to know about it. People aren't going to want to go there. This changes societies really quickly.” (FG12)

The perpetrator's dehumanising of the victim-survivor was also a factor that emphasised the importance of community protection as a sentencing purpose.

“Because ... he wasn't treating Vivian as a human being. There was absolutely no human interaction at all. He was using her as something to be used. A person who doesn't respect anyone as a human being doesn't deserve to be walking around amongst human beings.” (FG8)

However, others considered that any previous offending against other community members involving violence, whether or not it was sexual, was enough to establish a risk to the community. Community protection was considered an important sentencing principle when the perpetrator had a criminal history. As such, any criminal history was relevant:

“I took into account his criminal history, that's also against public people.” (FG17)

“I think it was more of just the ensuring that doesn't happen, but I guess having a history of violence makes you think it's going to happen again.” (FG18)

“I also was really disturbed by the replica gun scenario, which suggests that there's no boundaries to this kind of violence, that it's not even restricted to sexual violence, that we are looking at physical intimidation of all sorts. So I am doubly circling community protection.” (FG4)

“I chose community protection for this one, given David's criminal history of violence with the petrol station. It seems like, and the fact that he was just targeting someone in the community, I feel like it would be worthwhile to have some protection in place from this person, because as the other participant was saying, it seems sort of opportunistic and I don't know if there's a pattern to his behaviour. So, it's hard to predict what he might do to someone else. So yeah, I went down that route of community protection.” (FG9)

“For me personally, if you've got a criminal history of holding a petrol station up with a replica gun that says to me you have an absolute potential for violence that goes above and beyond just the normal hitting someone with your fist kind of stuff. You could escalate that to a knife or holding someone hostage or whatever.” (FG7)

“I chose community protection. Again, the history of violence and the brazen attack, you might say. I guess there were a couple of others too that definitely came close, but the community needs to be protected from people like that.” (FG11)

“Community protection is quite important as well because as we've said, he had a history of violent behaviour previously. And also the manner in which he grabbed her, felt her up, covered her mouth. I think that's all quite violent as well.” (FG12)

“He's got a history of violence and robbing and whatever. He's just looking for a new crime day-by-day.” (FG19)

“The first one is only the beginning. So, better off protecting the community straight away from criminals. Again, people say, “Why did the judge let him out?” Because he's got a history of re-offending. Like I said, he's always looking for a different thing to do, that's not good. Robbing a service

station with a gun, he probably had that gun on him when he tried to jump the girl, he might have tried to get his hand on a new one, a real one. So he is a danger to the society, and to himself.” (FG19)

The importance of community protection, and denunciation, was also affirmed in *R v Kane* in relation the respondent’s criminal history, with Mullins, Dalton and Flanagan JJA stating ‘the respondent’s prior history for offending which included the use of violence, was such that community protection and denunciation warranted a significant penalty that had to be determined in the context of an offence.’¹⁴

Denunciation

While denunciation was given less consideration than punishment or community protection, some participants still recognised the importance of denunciation because of the opportunistic nature of the offending behaviour.

“I see this scenario as perhaps an opportunistic episode and I chose denunciation for that reason.” (FG9)

“I did denunciation purely on the basis of the social norm isn't to... You don't do these things. But on the basis of if there are other people out there in the community that think the same way and think that doing these things are okay to random strangers or people that you're in a relationship with, or whoever, I thought that was the one thing that should be the purpose of sentencing to be that should be, it's not tolerated at all in terms of behaviour wise.” (FG2)

Rehabilitation

Rehabilitation was mostly discounted as a valuable sentencing purpose in Vignette 2. Participants considered David’s actions and alcohol use. Participants were opposed to perpetrators using substance abuse as an excuse for sexual offending.

“I think while we look at the previous criminal history being a robbery, I think there's no doubt there's an overstepping of certain boundaries there in terms of crime type, but this is progressing into another crime type, again, that is, again, for me, it's an escalation. And so I think that's very clearly a community protection issue. The age of the individual as well means that from a rehabilitation perspective, that's going to be a hard one to rehabilitate simply because you're dealing with more deviant aspects of behaviour rather than purely opportunistic.” (FG18)

“I'm thinking community protection as in put him away and have him where he can't continue because I don't know about rehabilitation here. Yes, I know he is only robbed a petrol station and that sort of stuff, so it hasn't... But for me the sexual violence element takes it to a whole new level. Whether he's done it, whether he is been caught for it or not, I'll just, yeah, not okay.” (FG2)

“I don't believe that you can use the excuse of alcohol or drugs or anything. I know lots of people who can be extremely drunk and they still don't think along those lines of doing something like that to someone. As far as I'm concerned, the book should be thrown at him. And the thing is, we're trying to do this deterrence. We're trying to do rehabilitation, we're trying to do all that. How many of these guys do we let out after 2, 3, 4 years and they end up doing something worse.” (FG5)

One participant also identified their view of offending as a choice and some offenders choose to stay in prison rather than further endanger the community, knowing they might reoffend:

“Re-offenders. They're all re-offenders. In all the scenarios, they're all re-offenders. And that didn't say the rehabilitation, he took it upon himself to become a better man, away from other people... A lot of people say, “I don't want to get out. I'm happy in here where I am. I don't trust myself.” They don't go for parole. “Leave me in here.” Probably the majority of them in jail, they'll rather commit another

¹⁴ *R v Kane, ex parte Attorney-General (Qld)* [2022] QCA 242, [27] (Mullins, Dalton and Flanagan JJA).

offence in jail so they get sentenced in jail. You know their life is in there. They still kill people in jail so they don't get out.” (FG19)

Deterrence

The primary sentencing judge in *R v Kane* found that the respondent’s alcohol use caused his offending, suggesting general and specific deterrence were appropriate.¹⁵ The Appellate Court affirmed alcohol did not diminish the respondent’s culpability.¹⁶ Focus group participants also connected the perpetrator’s alcohol use with deterrence:

“I think once you have alcohol or drugs involved, those deterrents don't work anymore. They don't always work. So that's the problem I have with that. A lot of these things may not have worked or may not have happened without alcohol or drug abuse.” (FG1)

“Here he was intoxicated, but being a drunk is different and committing that act while being drunk is another different crime. So a deterrence sentencing purpose would help resolve the issue.” (FG5)

¹⁵ Ibid.

¹⁶ Ibid.

Vignette 3: Daniel and Veronica

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

Vignette 3 involved a sexual violence offence with a child victim-survivor. The vignette related to a domestic violence offence, where the perpetrator is the child's parent, a lineal descendent. The offending behaviour occurred on multiple occasions. Vignette 3 was based upon the Queensland District Court's judgment in *R v DMN*.¹⁷

Participants identified punishment and community protection as the most important sentencing purposes for Vignette 3. Details of the participants' selections for Vignette 3 are specified in the table below.

Table 3: Vignette 3 results

Community Protection	Denunciation	Deterrence	Punishment	Rehabilitation	No Purpose Selected	Total
24	13	8	38	4	2	89

Participants identified the offending within Vignette 3 as being particularly serious and repugnant in nature due to the young age of Veronica, the victim-survivor, the familial breach of trust that had occurred, and Daniel's minimisation of his involvement in the offending. In *R v DMN*,¹⁸ the sentencing judge also identified some of these points, in particular that the defendant had 'committed in a gross violation of trust against your daughter who was very young at the time'. A key difference in the judgement provided by the sentencing judge and the community views in the vignette based on the same case was that the community were not swayed by the defendant's rehabilitation prospects.

The community chose punishment and community protection as the leading sentencing purposes under consideration. The sentencing judge, on the other hand, preferred deterrence and denunciation as the primary sentencing purposes, with just punishment and rehabilitation as secondary purposes under consideration. Notions of community protection for the victim-survivor in *R v DMN* was limited to the judge's discussion of the safety plan in place that would regulate further contact between the defendant and his daughter; community members expressed concern about ongoing contact between the perpetrator and victim-survivor. Sentencing purposes, and additional sentencing factors, are set out below, with relevant participant discussion; deterrence was not a featured discussion point for participants in relation to Vignette 3 so has not been further addressed.

¹⁷ [2023] QDCSR 491.

¹⁸ Ibid (Rackemann J).

Punishment

There was an initial desire or ‘gut instinct’ for participants to choose punishment as the most important sentencing purpose for Daniel. This desire to choose punishment reflected an emotional reaction amongst participants.

“This was so difficult for me. I slammed it down on punishment first because of the long-term harm, that Veronica... Just, yeah, punishment is just my natural instinct. But in the long run I went with deterrence.” (FG12)

“This one was hard because immediately my brain went to punishment and understandably so, I'd say. Considering that it's someone who Veronica trusted extremely. Who more than your own father? I think that's why immediately it was punishment and then I tried to consider a bit more, thinking more, it's from what I understand is that a lot of the time where consent is broken, it commonly is in the home from a relative of some kind. This is a scenario as such so I ended up choosing denunciation. I felt, I think that would be the most important here is sending a strong message to the community that this shouldn't have happened. It shouldn't happen at all. Especially in your home.” (FG16)

“I mean, there is a temptation to jump to punishment, in all honesty. You get so aggressive about it. And that if we're looking at it from a victim centred perspective, it would be possible to jump to that.” (FG18)

“They¹⁹ all should be punished.” (FG19)

In choosing punishment, the young age of the victim (between 3 – 6 years old) prompted discussions on the lifelong impact that the offending would have on Veronica, more so than the victims in the other vignettes (both aged 35), especially because of her vulnerability. Participants pointed to Veronica's age as meaning that she likely lacked the ability to comprehend what had happened to her—as she was unlikely to have knowledge of sexual acts or sexual offending at such a young age – and that she was also unlikely to have developed sufficient coping skills to be able to respond to the trauma inflicted upon her.

“Yeah, for me, this is about victim impact and when we look at the age range and the vulnerability, we're talking 3 to 6-year-old. Their ability to process what's happened is not the same as you would see for the other two victims in the other two scenarios. The potential life impact is actually potentially far greater. And so when we look at that from an impact perspective, that's a real issue.” (FG18)

“It's just not right at all. But to your own daughter, that's the ultimate betrayal. And it's just, yeah, it's just a total shattering of innocence.” (FG13)

“I chose punishment rather than community protection, purely with the thought of incarceration in mind as the punishment...I think pretty much everyone would agree that these types of [child] victims are the most vulnerable and that they should have the highest levels of protection purely because they don't have any way of helping themselves.” (FG1)

When choosing punishment, some participants considered the proportionality of the impact upon Veronica to the severity or length of the punishment required for Daniel in order for the punishment to be just.

“You need to be punished. You need to be punished as long as that little girl's going to be punished, she will never forget that.” (FG5)

“The most significant aspect of this for me is that it's just so wrong to hurt a child like that. And that child will carry that all their life. And that person, that perpetrator has stuffed up that little child's life and taken away their innocence and their childhood and that should be punished.” (FG7)

¹⁹ Participant, here, referred to “paedophiles”.

Community Protection

Community protection, as a significant sentence principle, aligns with common law considerations, especially with regard to child sexual offences:

The need to protect the community is also particularly important in cases of paedophilia. Even if long sentences do not deter offenders or others with similar inclinations, such sentences at least have the effect of putting paedophiles in a place where they cannot harm children for the time being.²⁰

Participants, in this research, also identified community protection to be an important sentencing purpose for child sexual offences. Factors used to justify the choice of punishment, such as the victim's innocence and the abuse of power often were also similarly used to justify community protection as a preferred sentencing purpose.

"I chose community protection because he's obviously got no boundaries when it comes to his sexual activity if he can prey upon an absolute minor and not see that it's not right. And maybe I've got a closed mind about it, but that's how I feel about crimes, particularly against young children." (FG8)

"And so community protection for me is an extreme need and the multiple taboos of not only a child but the incest taboo, that is just so escalating to me in terms of the risk." (FG7)

Participants identified the similarities between punishment and community protection as sentencing purposes as they achieve the same outcome when imprisonment is used.

"I think they're like two sides of a coin that does the same purpose, but in a way one is more around thinking about society as a whole, and one is about thinking about something that is equivalent for Veronica [Vignette 3] and Vanessa [Vignette 1]. So if Vanessa has a lifetime of difficulty around her future relationships or Veronica has a lifetime of difficulty around her future relationships, then Daniel should have a lifetime of punishment." (FG4)

"Totally agree. And that's where I'd struggle with, well do you protect the community first or do you punish them? I like your two sides of the coin... And if Daniel has a lifetime of punishment, the community is protected for Daniel's lifetime." (FG4)

Denunciation

Several participants also noted that regardless of their choice of sentencing purpose, they hoped that the sentencing would send a message to the victim-survivor that what had happened to her was not acceptable and demonstrate that the law would hold the perpetrator accountable for his actions. The sentencing discussions here appeared to be aimed more directly at ensuring the child victim-survivor understood that the conduct was wrong and not to be tolerated more so than sending the message to the public more broadly.

"I mean look, I'm very aware of the rehabilitation that goes on with pedophiles around the world. I have done a lot of research on that stuff, but I just do not believe that the child especially should go through life without knowing that this person was absolutely punished for what they had done to them because they're a child." (FG7)

"Well, if the main thing is that this offender is being punished, that's sending a strong message to the offender that you've done the wrong thing, and then it shows the child, this person is being held accountable for what they did." (FG17)

"I chose community protection again because, to me, I don't want to give him any more, I don't know, attention about it. I want it to be about the victim and about the protection of other victims. And the priority, to me, would be not ever allowing it to happen again. And because of that priority, if you're thinking about that... I mean, in my mind, you can say punishment and it's like what is an appropriate punishment for this? I'm not even sure that there is one. So to me I'm like, "Screw him, forget him."

²⁰ Ryan v The Queen (2001) 206 CLR 267, [47] (McHugh J).

Gross. Let's focus on not allowing it to ever happen again." And so, to me, that falls under community protection of in the options that we had. So that was sort of my reasoning behind it." (FG10)

Discussions also captured the sense that denunciation or deterrence, at times, may be unnecessary as sexual offending against a child is well-known to be wrong by society.

"There's a full understanding in their mind that it's not okay. It's not accidental. To someone who decides to do that, is deterrence actually going to work because they've already decided to do the most abhorrent thing to their own child." (FG8)

"He knows what he's doing is wrong and he's trying to dilute it and downplay it and stuff." (FG13)

"...I think everyone knows that doing anything like that towards a child is taboo. Definitely wrong. That's why he's gone to great lengths to hide it." (FG17)

Rehabilitation

Discussions on rehabilitation often doubted its effectiveness in successfully changing the behaviour or inherent character of the offender.

"I went straight to punishment for this one. I sort of felt like the risk had been mitigated for this poor young girl, but for me, I definitely got angry about this one and I don't think someone like that can be rehabilitated." (FG10)

"...there are statistics that show that people who engage in paedophilia, which is what it is, they don't, can't be rehabilitated." (FG5)

"There is some evidence in relation to people who offend against children actually being rehabilitated, but that is in relation to and only relates on re-offending rates and re-conviction rates. And there's an enormous amount of offending that occurs where conviction is not actually able to be accomplished. So there is an enormous amount of offending that occurs that never actually gets punished in the end. There's no information in the community that says someone who offends against children ever stops offending against children." (FG1)

"A man who can put his penis in a little girl's mouth, you're dumb. I don't care what you do to better yourself. There just nothing, there is no good in that person at all, in my opinion, no matter what he does." (FG5)

"Most of them,²¹ you can't help if somebody is like that in their head." (FG19)

In discussion, participants often focused on Daniel's minimisation of his own role in the offending as an indicator that he perhaps was not genuinely prepared to receive the help that rehabilitation aims to provide or that he may still pose a risk to the community based on that minimisation.

"But he minimized his role, so I don't know how much responsibility he's taken. That's why I went deterrence instead of rehabilitation. I think to be rehabilitated. There's got to be enough awareness that what you're doing is wrong and that the power dynamic is at play and you've got to recognize that to do something about it." (FG8)

"He minimised his behaviour at the time of confessing, and so therefore, not taking accountability. So, I consider him still a risk to other children in the community... I understand he had these sessions with a psychologist who deemed him a low-risk of re-offending, but by his actions, he's indicating a sexual preference towards children. And I think any risk of re-offending, low, high, medium is a risk that we need to ensure the community is protected." (FG9)

When asked about the rehabilitation that had taken place, the 19 sessions with a psychologist, multiple participants questioned the perpetrator's motivations. They raised the perpetrator's history of manipulative behaviour, as evidenced by the nature of the offending and Daniel's minimisation of his involvement.

²¹ Participant, here, was referring to men who commit sexual offences against children.

Participants suggested his engagement with the counselling was not genuine or was potentially a method to achieve a more lenient sentence.

"It also annoyed me even more that he was seeking the help of a psychologist. Because I thought that was just some really manipulative way of trying to get a lenient sentence through the court." (FG14)

"He has already had 19 sessions with a psychologist. I think he's bullshit [his] way through that quite well with a history of manipulation on a minor." (FG6)

"Well, he's had 19 sessions, which is a very large number of sessions... Either the psychologist isn't very high quality, or he's also learned how to work around the system for her or him. Whoever the psychologist is to say that he's low risk, I would question where that's coming from." (FG2)

"And especially with all the 19 counselling sessions. I mean that's just because he is probably been told to go by to have it. So of course he's going to rock up. But that's just because he's forced to do it." (FG5)

Other Sentencing Factors

When considering sentencing purposes for Vignette 3, there were additional factors which influenced participants' views and were notable. These factors include relevance of criminal history and continuing contact between perpetrator and victim-survivor.

Relevance of criminal history

Participants overwhelmingly did not believe the offender's lack of criminal history should be considered at sentencing. Daniel's history of manipulation and the type of offending he was engaging with suggested to participants that criminal history, or lack of, were not relevant to sentencing purposes. The consensus was regularly that there was a high likelihood that other offending had taken place previously and not been captured by the criminal system, or that even if there had not been previous offending, the heinousness of the offending meant that the lack of prior criminal history was irrelevant.

"You also read no history of offending, but invariably, almost invariably there is a history of offending, just haven't been caught." (FG4)

"It's not to say criminal history implies you've been caught. That's not to say you hadn't done it before or it doesn't play into much considering the three years of offending." (FG6)

"I did consider that, but I just thought that does not mean a damned thing. Just because he hasn't got a criminal history doesn't mean he hasn't been doing criminal acts, he just hasn't been caught. There's that line and you just don't cross it and he's crossed it."²² (FG17)

"It [the criminal history] might have [influenced the decision-making] had the deception not been there, but given the level of deception, it seems to me that this might've been something that, criminal history or not, that was going to continue. I'm not sure how it came about that Veronica's mother questioned him or how he apparently got caught, but at 3, at 5, at 6, if not being caught, what would've happened at 11,14 or beyond? So no, the criminal history had no bearing on my thought processes."²³ (FG11)

"I don't also believe that he hasn't a criminal history, he's probably done this before and never been caught, because children don't tend to have a voice." (FG17)

"And I'll say again, he had no prior, but up until that point he's probably acted so cautiously and so calculating. That's why he hasn't got caught and somewhere along the line. He's messed up now." (FG13)

²² In response as to whether the lack of criminal history of the offender factored into their decision making.

²³ In response as to whether the lack of criminal history of the offender factored into their decision making.

Continued contact with the child victim-survivor

Another strong theme that emerged from discussion of Vignette 3 was the sense that the provisions for supervised contact between the perpetrator and his daughter prioritised the maintenance of the familial relationship over protecting the victim from re-traumatisation. Participants expressed concern about the continued impact that ongoing contact with the perpetrator to the victim-survivor.

"I find it hard to stomach that he would be given time with her even if it is supervised. I understand that that is a thing that happens, or I get it. I don't believe that as a society, we are protecting the community if we allow that to continue happening. Because she at 6 years old, presumably that's how old she is when this sentencing would occur, she doesn't have the capacity to protect herself. That is then against society's place, court's place, the law's place to say that's not okay. Saying that you can see her supervised is not what I would deem a responsible act by society." (FG3)

"You're still providing contact with this person that's potentially traumatized them for their whole life. And it's almost like if there's a lighter sentencing then, it's like again, it dismisses what's actually unfolded." (FG8)

"I don't think contact should be allowed in that kind of situation simply because it's not recognizing the victim impact, especially long term." (FG18)

"...the fact that he is going to have continued supervised contact with the victim child, just I think is completely wrong, that you would expose the child to her perpetrator ongoingly for what purpose? So, they can have a father-daughter relationship. Well, he ruined that when he's sexually offended against her." (FG9)

"I just had another thought pop into my mind that I find bothersome about the last scenario that he's continuing to have access to the child, albeit through supervised visits, but I don't know how psychologically healthy that would be, although, of course, there's attachment issues and might be other cultural factors at play... I thought, 'I hope that doesn't actually happen in real life.' Yeah, it's pretty horrific that a 6-year-old that's been so badly abused by a father would be seeing their abuser again. Whether it's supervised or not, it's just terrible, I think." (FG10)

"And I think what concerns me is the fact that you have a safety plan in place to ensure that there's only supervised contact, but no actual thought in that. And I know this is hypothetical, but there's no actual thought in that for the victim and the impact of that contact and whether they have any self-agency or control over that." (FG18)

Community Views on Seriousness of Sexual Assault and Rape Offences

The research project also sought to address how the community ranked the seriousness of sexual assault and rape offences compared to other offences committed in Queensland. Ranking the seriousness of offences was undertaken using paired comparisons and participant discussion.

Following each section of the paired comparisons (grouped as 1-5, 6-15, 16-26), participants were asked how they determined which behaviour was more serious from the two pairs. Participants were not directed to legal definitions of seriousness to ensure that their individual views were uninfluenced and accurately captured. Participants had the discretion to guide conversation around paired comparisons they wanted to discuss, with some guidance provided by facilitators where needed. As such, some paired comparisons were featured more prominently in the discussion than others. Participant discussion tended to focus on paired comparisons where:

1. participants could identify a clear distinction between the behaviour and could articulate why they felt one was more serious than the other;
2. the paired comparisons were so closely weighted, according to participants, that they had difficulty deciding; and
3. where the behaviour of one or both scenarios in a paired comparison was particularly abhorrent in a paired comparison.

Legal definitions of seriousness are central to interpreting the community views of the seriousness of rape and sexual assault offences. As described in the Final Report, the seriousness of offending is characterised by considering the harm inflicted and the culpability of the offender for that harm. As Henry J provides:

In sentencing, the seriousness of the crime to be punished is assessed not only by reference to the offender's culpability, in the sense of the degree of deliberation or wickedness with which the offender acted. It is also assessed by reference to the consequences of the offender's actions.²⁴

The community largely concurs with the consideration of the harm suffered by the victim, the circumstances which led to that offending, and the culpability of the offender for the suffering inflicted in determining offence seriousness. The remainder of these supplementary materials sets out participant responses in relation to seriousness of rape and sexual assault offences compared to non-sexual offences. These responses explain which offences are more serious than others and why participants viewed some as more serious than others. Legal definitions of seriousness have been reflected in these responses. Importantly, too, some participants felt compelled to explain how they approached determining seriousness overall in their deliberations:

"... I also considered the age of the victim in considering the seriousness of the comparisons. If the situation involves a younger victim who just recently turned an adult, then I would consider that situation to be more serious." (FG9)

"... Intent is huge, protection of people also high priority." (FG10)

"... I hope the unseen injuries (psychological) begin to carry the weight of seen, physical injuries." (FG17)

"... I found when I started I had very limited decision making in this area, being power dynamic, then it moved to levels, like trust/betrayal, intent, what weapons were used, harm caused, injuries. Children I found I wanted to be centred and protected. I came up against my preconceived conditioned bias, like murder is the worst, when 'rib[?]' lifelong injuries of rape could be worse." (FG17)

²⁴ *R v BDZ* [2023] QCA 59, [15] (Henry J).

"I took most into account the length of crime ie the person who was kidnapped that would impact the depth that that would impact the victim over say the lady who's boss brushed her breast ,also when it's a stranger I imagine it being a lot more aggressive crime. It was very difficult to decide which crime was more horrific ultimately I would decide mainly by how the crime would impact the victim." (FG10)

*"They're probably things you got to live with. Like we got to live with them if the court system don't do the rights things, and we as a community still got to live with that within our community."*²⁵ (FG19)

Some participants also reflected on how they found sexual offences to be generally more serious than non-sexual offences.

"So for me, sexual behaviour was more serious than nonsexual. Then, if they were both sexual, then it was the power imbalance...[It's not as serious when] you have the ability to withdraw, whereas the niece potentially could be abused over and over and over again." (FG2)

"Obviously all these crimes can cause serious mental effects, but I feel like when it's sexual in nature, it just feels so much heavier... I feel like when I say heavy, it is almost hard to explain and almost, reading these scenarios and hearing them is not easy and it just almost feels like there's just a heavier weight. If I could put it as a physical term, it feels like a heavier weight pressing down on me. So I think when I say heavier, it's probably the word would be more serious would be another way to define it. But I use heavier because for me personally, I feel a weight of heaviness upon me." (FG16)

"Often sometimes people compare criminal violence or killing people or whatever to sexual violence in that. And I can see sometimes where a lot of the time people can be like, oh, well, they're still alive, it's fine. And I think that, as a society, just needs to change. You can't base it off of that because that person's life at the end of the day is changed in a matter of seconds. Yeah. The person that they used to be died with that." (FG2)

"I honestly think that rape and sexual offences should be curtailed. It's doing a whole lot more harm in our society today. To the young ones, to the old ones. Nobody is not a victim." (FG5)

Paired Comparisons

When providing comments in relation to the paired comparisons, participants communicated in one of two ways. For some paired comparisons, participants spoke to the specific pairs, articulating why one type of behaviour was more serious or identifying why they found it difficult to decide between the two. For some of the discussion, participants spoke to the behaviour more broadly, capturing multiple scenarios together. Where participants communicated their views in relation to the individual compared comparisons, their views have been captured below, in full. Where participants provided high level commentary about sentencing seriousness beyond individual paired comparisons, these views were mostly captured within the synthesised findings set out in the Final Report.

The below commentary notes each of the paired comparisons, the quantitative results of participant views determining seriousness and the participant quotations in relation to each paired comparison. Several of the 26 paired comparisons had little to no participant commentary given time limitations and/or because focus groups may have focused on other paired comparison discussion.

²⁵ When asked how participants determine which behaviour is more serious.

Paired Comparison 1

1	Douglas (35) uses his fingers to penetrate the vagina of his niece, Verity (10), without her consent.	Dominic (35) non-consensually penetrates the vagina of a stranger (35) with his penis.
	76	10

Paired comparison 1 compared two sexual violence offences. The first scenario related to a penile-vaginal rape of a stranger while the second scenario compared with a digital-vaginal rape of a child of lineal descent. Participants found the digital-vaginal rape of a child of lineal descent more serious at a rate of 76:10.

Participants who identified the digital-vaginal rape of a child more serious identified the child's age and ongoing impact of the harm as they reason it was more serious:

"For me, it was age. The first one, at 35, even though as you said it's still a terrible offense, someone who is 35 potentially would have a better coping mechanism than a 10-year-old girl. And I feel that that would have more lasting consequences for a 10-year-old girl than a 35-year-old person. Because it doesn't say if they're male or female. Oh it does, female vagina. So yeah, for me it was about the age and the coping mechanisms, and what potentially that could cause in the future." (FG2)

"For me it was because of the age was well, because they couldn't even give consent if they wanted. There's no way. If you're 35, you could still potentially give consent if you wanted. But in the age case, it's a child." (FG2)

"The first thing I went to was the age. Because for children the impact of trauma from such a young age can stunt their growth. And trauma for an adult is just as valid, but I guess I come from the idea that for children, they can't process it in the same way. That can have that long-term effect on their life, whereas adults, their mental development and emotional development is further along, like their coping mechanisms and so on. For children, the brain side of things is still growing, to even process and their understanding of the world as well. So it's even that whole child side of things." (FG2)

"That was the age thing, and it's a young girl, again, who probably for all intents and purposes, would've thought she'd be in a safe place. In a safe space, but she's taken advantage of in a way that presumably she wouldn't have expected. So it's that, again, I use that phraseology in the previous scenarios we were talking, it's that innocence that's lost by virtue of her being a 10-year-old girl...And having to deal with that, I suppose, which would be vastly different for a 10-year-old than a 35-year-old." (FG11)

Participants who found the penile-vaginal rape more serious identified the instrument used (penis as opposed to fingers) to be significant here given size and risk of pregnancy:

"I would say just my personal belief why a penis inside a vagina is worse than the fingers in the vagina is because both for the recipient or the victim and just objectively speaking, the implication that a penis inside a vagina is there is the potential consequence of carrying an unwanted child. So there's a lot of implications to it plus the burdens." (FG13)

"The penis was going to be larger than the fingers. I don't know. So maybe that was... Because it was the size of the object as such." (FG5)

Paired Comparison 2

2	Dominic (35) non-consensually penetrates the vagina of a stranger (35) with his penis.	Declan (35) non-consensually penetrates the anus of his husband (35) with his penis.
	71	13

Paired comparison 2 also compared two sexual violence offences. The first scenario of the pair involved penile-vaginal rape of a stranger compared with a penile-anal rape in a domestic relationship. The penile-vaginal rape of a stranger was found to be more serious at a rate of 71:13.

Some participants found it difficult to determine which behaviour was more serious: “Yeah, I had trouble with that one.” (FG2)

“And then my second layer was stranger versus known. Because for me, if they're offending against a stranger in my eyes takes it to the next level. So if they're offending against someone that they know, so not okay, but then it's next level for people to feel game and comfortable to go and offend sexually against a complete stranger. But very difficult to differentiate between male on female and male on male. And I can sort of see within that scenario, it's the same. It's just you can't really put anyone's pain above someone else's pain.” (FG2)

Most participants determined sexual offending by a stranger was more serious than similar behaviour within a domestic relationship. Justifications for the stranger rape being more serious included the risk of reoffending against other community members and harm from sexually transmitted diseases.

“I picked Dominic for number two because of the non-consensual penetration of a stranger, because in my thinking, it was that propensity to re-offend, and there is that element which is slightly more heightened being a stranger and so forth.” (FG14)

“I think the offending, they're basically this same, except for the example of it being a stranger. I think the impacts it's going to have for the stranger victim as opposed to the second example where it's his husband, where I'm assuming they've had sex before, I feel like the impact on the victim would be worse for a stranger.” (FG15)

“I feel like their ability to...deal with the impacts of being sexually assaulted is going to be worse for the stranger victim because now they're going to more likely be hypervigilant or difficulty trusting any new man that they meet or whatever, as opposed to Declan's husband now has to live with the fact that his partner raped him. He's not going to hopefully assume every man he meets is going to do that, whereas the stranger, I just feel like the scope of the impacts is bigger when it's been a stranger.” (FG15)

“A stranger doing something to someone, you've then got all of the types of things, a rape kit, you've got HIV, you've got plan B, you've got all these drug tests, you've got everything like that that comes out of being, having anything to do with a stranger... Whereas when it's their partner or someone that they know, it can be easier to prosecute. It can be just a little bit more knowledge for them. They know who has done what to them. Well, you would think that they would know whether that person had Hep C, whether that person had anything like that. That's why I put them last.” (FG5)

“For some reason within these scenarios, it came for me as to familiar and unfamiliar. If the perpetrator was familiar to them. For me, husband versus stranger sort of thing was a big part of where I went to. And you feel conflicted because every incident is wrong. But I guess at least if they're a familiar person to them, hopefully the trauma that they experience won't be as severe as a stranger that you've never met. You don't know. You might have different smells and visions or whatever, but I guess if they're familiar then maybe it softens a little bit the harm.” (FG2)

"I went with the stranger one [Dominic], on the left. But again, could have gone either way. Because if it's the husband, that's obviously a trusted, loving person who is betraying all of that. It's not of a much in terms of terribleness." (FG3)

"Yeah, that was very hard, that one. I personally chose the scenario where the penetration occurred to the stranger rather than the husband. It's a very hard choice, obviously, because both I see as being quite equal in seriousness. It doesn't matter if you're legally married to someone or not. It's still non-consensual. But for me, the stranger aspect, because whilst it is common for sexual assault to happen within marriage and relationships, that to me just seems more serious. And while there's no motive given, it sounds pretty nefarious." (FG7)

"The stranger. Yeah, I don't think kind of assume they've been hunted in the other example or something along those lines." (FG6)

"I also chose Dominic and the stranger because that was more predatory behaviour. But also the circumstances leading up to it. But I suppose now that I reconsider Declan and the husband, there's a level of trust there. And being in a relationship with each other, there's a level of trust that potentially being now broken. But yeah, I still think that the more serious of the two would be a stranger." (FG6)

For participants who determined that the stranger rape was more serious, they referred to various factors. These included a breach of trust, there might be difficulty in determining clear consent between partners and the potential breakdown of the marriage occurring after the offending.

"Being in a trusting mutual intimate partner relationship, that sort of thing, where that trust is broken without consent, where there should be an understanding that consent should be easily qualified. Then that to me also constituted a big breakdown there." (FG14)

"What I was thinking was like when you enter into a relationship with someone, I think standard is that that person is supposed to be safe in that relationship, and so one person is really doing some further abuse with abusing that trust and that sacredness of that relationship." (FG17)

"For me, more serious was Declan because of the intimacy of relationship, there's a betrayal trauma there...And I think when someone violates that in intimate partnerships it's particularly brutal and it has significant consequences that aren't socially supported." (FG12)

"And the reason I say that is because both are equally abhorrent, but the relationship that exists between Declan and his husband, how do you say this without sound horrendous? There could be a whole array of circumstances that have occurred around that relationship historically and in the relationship now that might have an impact on that. Whereas with Dominic and a stranger, there are two people who are unknown to each other. So that to me, is a little bit more problematic." (FG11)

"...then you've got the whole marital situation. They then knock on, do they have kids that they then have to explain a potential divorce? Well, everything going on with finances and everything kind of just knotted up together with it being a marital situation." (FG16)

"I felt most torn with the two husbands and the stranger. So scenario two, I think it is, but I ultimately chose where there was more trust in the relationship. So I guess maybe trust, I guess maybe the factor of the fact that it should have been a safe place for these people and it wasn't probably came into play a lot for me...I chose Declan's behaviour [as more serious] and I think I chose it because that should have been a safe place for the husband." (FG16)

"It was a stranger or a husband. For that one that was hard for me to pick, but I chose the husband over the stranger just because the stranger is probably a once-off offence where, in relation to just reading further into the husband one, that's probably an ongoing crime that they're experiencing." (FG9)

"The two men that were in a relationship together, and there was anal penetration, I believe, for example, where the other party didn't consent. So that to me is an intimate partner relationship that's very trusting and that would have a profound impact, I believe, on the victim in that scenario...they're all awful, but it's that trust in the relationship that weighs heavily for me." (FG14)

Paired Comparison 3

3	Douglas (35) uses his fingers to penetrate the vagina of his niece, Verity (10), without her consent.	Declan (35) non-consensually penetrates the anus of his husband (35) with his penis.
	84	1

The third paired comparison compared two sexual offences that both appeared in paired comparisons 1 and 2. The first scenario was a penile-anal rape in a domestic relationship which was compared to a digital-vaginal rape of a child of lineal descent. Participants found the digital rape of a child victim-survivor to be more serious at a rate of 84:1.

While little commentary was undertaken for this paired comparison, one participant identified the family connection and the child made the digital rape more serious:

“Noting that it the second comparison worse based on the familial nature (as well as child).” (FG15)

In contrast, one participant who determined the penile-anal rape to be more serious indicated it was because penile was more serious than digital:

“Oh, mine's just on gut feeling. I can't... Yeah, sorry. I'm not really articulating my choices very well. With the first example, it's both examples of penetration, if it's digital or if it's penile, but because the second example is offending against a family member... Yeah. Yeah, I think with my first, it's because it's like a penis over digitally penetrating. Just something about that, just grosser. I know it's a child, but I don't know. Just something... Yeah, it does feel more aggressive when it's penile.” (FG15)

Paired Comparison 4

4	Douglas (35) uses his fingers to penetrate the vagina of his niece, Verity (10), without her consent.	Dorothy (35) is Vaughn's (16) school teacher. Dorothy put Vaughn's penis in her mouth without his consent.
	65	20

In paired comparison 4, the two sexual offences involving children were compared with one another. The first scenario was a digital-vaginal rape of a child of lineal descent which was compared to an oral sexual assault between a teacher and student. The digital-vaginal rape of a child of lineal descent was found to be more serious at a rate of 65:20.

Given that both victim-survivors were children, when working through paired comparison 4 discussion turned to the developmental differences in the ages as well as other factors that the scenario presented, such as the relationships of power that both offenders abused in order to perpetrate the offence. Some participants had considerable difficulty differentiating the scenarios in terms of their seriousness:

"It's a toss of a coin for me. On that, I put the school teacher. However, you justify it, either way, it's terrible. I couldn't say that one's necessarily worse than the other. Yeah...I would've closed my eyes and picked one. Because both of them are, as far as my reasoning goes, is that they're both vulnerable. They're both not able to say no effectively. One's in a position of power, and the other one is obviously a child. They're both equally traumatic, I would suggest." (FG3)

Most participants determined the scenario with the 10-year-old victim-survivor to be more serious. This was because of her age and the breach of trust that occurred from the perpetrator being a family member:

"A big difference between 16 and 10 I think. But one is also the familial type. It's much easier to tell your teacher to get fucked, but maybe not so much for an uncle who's always been there and is kind of... If the family doesn't know, then why aren't you listening to your uncle kind of deal. So it's kind of more coercive." (FG6)

"It probably came back to again the age as opposed to the gender because the reality is there's going to be no difference in terms of trauma impacts. Based on gender as a victim, the issue for me that tipped me over towards the first scenario [10-year-old Verity] in that as being the one I clicked was because of the age of the victim. And again, the more complex dynamics of the family scenario playing out." (FG18)

Whereas while the second scenario there is really serious because there's still power and control dynamics, the age of the victim means there's going to be a degree of resilience potentially there that the younger victim won't have. But also, it's not family, which means that there's going to be a separation from that, a clear separation at some point for that victim in their life. Whereas it's going to be a much more challenging life for the 10-year-old victim." (FG18)

"Yeah, I guess for me, that person holds a lot of power over that child being an authority figure, school teacher. I guess the age 16. I think there was an age 10. Oh, no. That was a family member. Yeah. I don't know. Yeah, just in my head, I feel like that the school teacher, they have that power and authority to be able to say no. However the age of that child though they're sitting on that 16. There's probably a bigger discussion to have because I can see both sides of it. As a 16-year-old child, probably they're sitting right on that age gap of being able to consent. However, the child didn't consent. Does that make sense?" (FG9)

"I think that one was really tricky for me to choose between. I think it's hard because being the position of a school teacher, you would think the student would hold a lot of respect and teachers are meant to protect their students. So that would have really severe consequences for Vaughan, I would imagine. I think I chose the uncle penetrating the vagina of his niece, because I think the idea of..."

Oh, I don't know. That's tricky as well. I was just thinking about the idea of the penetration. That just seemed so forceful, and that her age, I chose that as the more serious behaviour. I think that one's really tricky, because I think both age 10 and age 16, something like that can have equally lasting effects. So I don't know. That's a tricky one." (FG9)

"I thought a 16-year-old boy, he's probably got hormones raging round. I know it says without his consent, but I just thought... I don't know. I just felt that a 10-year-old wouldn't know much. She'd know a bit, but not as much as a 16-year-old boy. If my grandson's anything to go by when he's 16, he'll be 10 foot tall and he would've easily fought off a teacher." (FG1)

"Question four, tricky as well. I think based our opinion of the perception of vulnerability of the victim. I guess, stereotypically speaking, a ten-year-old is more vulnerable than a sixteen-year-old student. However, they're both, perpetrators, are in a position of power and control. So I think the only differing factor is that age of consent. I certainly could argue that a sixteen-year-old may have lasting effects or trauma from the abuse of his teacher, but I guess when we rate on the scale of vulnerability, a ten-year-old seems in our mind more vulnerable. Yeah, tough one." (FG9)

"I found that the hardest one for all those reasons, I think they were pretty close to equal, but I went with Verity because of her age, just not having the awareness of what sex even is, but knowing this horrible thing's being done to her and she's got no way to get away. But I still can't see that guy walking out of that without trauma, because it was non-consensual, as you say. It was very hard to choose." (FG1)

"For me personally, I found... Again, this is a very hard one because they both involve underage people or people just on the cusp of legal. For me, I've faced this more so on the familial aspect with the uncle versus the teacher, which comes up to be a very controversial subject it seems, because in recent times, I suppose you could say, there's been cases similar to that in the media. And in some cases, and I do not like saying this because I do not want to downplay any victim that's had to go through anything, but there are situations where the teenage boys will be like, "We wanted this. That's what we wanted to happen." And whilst it says he's done that without his consent, it could also be played out in a number of ways. So it's hard for me to tell." (FG7)

"The victim's age was my discriminator because of the difference pre and post puberty, the damage to a 10-year-old child is...too much." (FG7)

"I chose the other one [Dorothy and Vaughn as more serious] purely because in a school setting, the trust that you put into individuals that have access to that amount of children, regardless of age, it's just... Yeah. It's beyond comprehension, really, somebody... But also an uncle having access to a niece. But the age difference, I think I should really have taken that into account."²⁶ (FG7)

Participants who chose the sexual offending against the 16-year-old victim-survivor to be more serious said:

"I really had to get analytical with it, because it was both children. In the end, the reason that I picked Dorothy and Vaughan was purely based on the fact that Dorothy was in a level, a position where she was engaging with lots of children and was in a position of power. Not that Douglas wasn't also in a position of power, but I think it was just the reach of children that Dorothy had access to in comparison to Douglas was the only way, and that was a real hard decision to make." (FG1)

"I just wanted to add with the number four, with the same with those two and four, that was hard to pick, but the reason why I ended up picking Vaughn was one, because I already picked out Verity before, but there's this idea that with a boy at school and if there's a conquest like, "Oh, we slept with the female teacher", and I don't like that idea that that's still out there, so that's one." (FG17)

"I found the school teacher, the more serious one. I see they have a duty to care more people, more students and have put in a position of inherited responsibility." (FG6)

²⁶ The participant originally chose the Dorothy and Vaughn scenario (16-year-old) and then changed their answer to the Douglas and Verity (10-year-old) as being more serious.

Paired Comparison 5

5	Dorothy (35) is Vaughn's (16) school teacher. Dorothy put Vaughn's penis in her mouth without his consent.	Daniel (35) forces Vicki (35) to penetrate her vagina with a sex toy, without her consent.
	77	7

Paired comparison 5 involved two sexual offences. The first was an oral sexual assault between a teacher and student. The second scenario related to a sex-toy vaginal sexual assault. Participants found the teacher perpetrator scenario to be more serious at a rate of 77:7.

There was little commentary provided for paired comparison 5. One participant explained why the teacher perpetrator was more serious to them:

"She's not consenting. I then went with the boy because we read so much about these teachers falling in love with these boys, and then they have babies. And they groom them. They groom them so that when they're out of jail, the boy still wants them. And to do that, there probably be some degree of grooming. And grooming as well is scary. And then I go on the assumption that a 35-year-old at least knows what's happening to her. And I'm not saying it's right because some rapes are just downright vicious." (FG5)

Another participant questioned the circumstances of the sex toy scenario, suggesting that, in some circumstances, having the sex toy might have indicated consent at some point, which is also relevant to seriousness, according to them:

"What I did there, and this is assuming a lot, and that's the problem with these things. I'm thinking if Daniel and Vicky, if Daniel has a sex toy, do you think that perhaps they know each other, have had consenting sex prior? Not that that means you can have it again, but would someone bring along a sex toy? Well, they might. Would someone bring along a sex toy to something if they were wanting to do something to someone?" (FG5)

Paired Comparison 6

6	Daniel (35) forces Vicki (35) to penetrate her vagina with a sex toy, without her consent.	Damien (35) is Vivienne's boss. Damien uses his hands to touch Vivienne's (35) breasts over the top of her clothing without her consent.
	59	27

Paired comparison 6 involved two sexual violence offences. The first was a sex-toy vaginal sexual assault which was compared to a sexual assault between an employer and employee. Participants found the sex toy sexual violence to be more serious than the employer-employee scenario at a rate of 59:27.

No qualitative commentary was undertaken in relation to this specific paired comparison.

Paired Comparison 7

7	Damien (35) is Vivienne's boss. Damien uses his hands to touch Vivienne's (35) breasts over the top of her clothing without her consent.	Darryl (35) enters a house at night intending to take items without permission. He takes property belonging to the sleeping occupants but does not harm any of them.
	66	19

Paired comparison 7 considered a sexual offence compared to a non-sexual offence. The sexual offence scenario included a sexual assault between an employer and employee while the non-sexual offence was a burglary. Participants identified the sexual offence to be more serious than the non-sexual offence at a rate of 66:19.

Participants who found the sexual offence to be more serious indicated that it was because it related to nudity and the employer relationship:

"For me, it was the problem I had with that was that it was her boss especially. It's putting her in an awkward position there. Her job, that was the big one." (FG1)

"When you're going into nudity, that gets more serious, and then penetration, squeezing, but definitely, punching and choking and sticking stuff where it doesn't belong. It just completely tops the list. I can't think of anything more ...I've seen with things being cut off and things like that." (FG1)

Some participants articulated that they found the sexual offence, touching breasts, to be inoffensive, although did not clarify whether they determined the sexual offence as more or less serious than the burglary:

"For me, touching of the breast doesn't count. I think this is where it comes down to an individual. I'll grab your balls. I grew up tough, so I don't really give a shit." (FG1)

"It's our age...We have survived. But when it came to nakedness and touching the body, that's the home of the story, through the clothes." (FG1)

"Your comment about the age, of the breast, I don't know if it's so much an age thing, because I also didn't find that as offensive. But maybe it's that thing about women maybe not seeing the breast so sexually, because they used it being children and things like that. Maybe we don't consider them so sexual these days. I just thought." (FG1)

For participants who found the non-sexual offence to be more serious, they considered the circumstances of the offence. The invasion of a home was considered frightening:

"That came up for me in number seven with Daryl going into the house at night. Even though it didn't hurt anyone, geez, that's so frightening. And it's such a... What's the word? Invasion of your home. And my strange little brain went, "Yes, Damien was totally in the wrong touch Vivienne's breasts on the outside of her clothing," but to me the invasion of that is not as big as the invasion of someone coming in while you're sleeping." (FG7)

Paired Comparison 8

8	Dorothy (35) is Vaughn's (16) school teacher. Dorothy put Vaughn's penis in her mouth without his consent.	Darryl (35) enters a house at night intending to take items without permission. He takes property belonging to the sleeping occupants but does not harm any of them.
	83	3

Paired comparison 8 compared a sexual and non-sexual offence. The non-sexual offence was a burglary which was compared to an oral sexual assault between a teacher and student. Participants overwhelmingly found the sexual offence more serious at a rate of 83:3.

No qualitative commentary was undertaken in relation to this specific paired comparison.

Paired Comparison 9

9	Dustin (35) intentionally kills his ex-girlfriend, Violet (35).	Dorian (35) and Darren (35) take Veronica (19) to a secluded location. Dorian non-consensually penetrates Veronica's vagina with his penis. Immediately after Dorian ejaculates, Darren non-consensually penetrates Veronica's vagina and anus with his penis.
	59	25

Paired comparison 9 compared a sexual violence offence with a non-sexual violence offence. Intentional killing in a domestic relationship, as the non-sexual offence, was compared to a penile-vaginal and penile-anal rape in company. Participants identified the murder offence to be more serious at a rate of 59:25.

Participants often considered the death of the victim, in response to the murder scenario, as the ultimate harm that could be done to an individual, and therefore high on the scale of seriousness. In explaining why death was the most serious, participants referred to the inability of victims to 'come back from' a lethal crime, as the victim would not be able to continue their lives or heal from the traumatic experience.

"I think murder is the most serious crime. I mean, you can't go back from that. The highest level of violence is to take someone's life... Well, the person can't come back. She's dead. So this other person, yes, she was assaulted, raped terribly, but she's still alive." (FG8)

"The woman who is raped by the two guys, Veronica being raped by Dorian and Darren in number nine, even though it was hard to even read that, let alone think about it, there is a chance that she may overcome the horrible thing that happened to her and still live a life and have good relationships and a happy life. There's more chance of her doing that than Violet, the girlfriend. Her life's over and the life of her family is now forever ruined." (FG7)

"Even though I'm feeling very conflicted because I genuinely think there's probably more harm within that [the gang rapes of Veronica]. But I guess, in my moral code I have to honour life. In a view of hope, I guess, for the world, in my head I couldn't devalue someone's life being taken. But at the same point, my heart absolutely breaks for Veronica because, I don't know. It probably is worse. There's a good chance it is, but in my moral code I had to honour life and death. In the end, that's where I came back to ultimately for me, because I had to circle something, I went for life and death, but I feel very torn. Because both offenders don't value life." (FG2)

"That was tough until I thought for the parents of Violet versus the parents or friends and family of the other girl. At least there's hope that Veronica, there's hope for her, where Violet's gone forever. That's how I ended up choosing the murder." (FG1)

"I chose the murder, but because it was intimate partner violence and she's in a much... She had that expectation of trust with him and, yeah, I just think that that holds a lot of weight because... Yeah, I don't know, I just thought that that just holds a lot more that held... They're equally bad, clearly. But yeah, I just felt that that had... Because she had that trust in him and there's a position of power there as well, potentially long-term. It almost comes back to the physically dead or the psychologically when you have to compare it on... They're both heinous crimes, so you have to drill it down. But then I do take your point, would you want to be alive? But that's not really our choice to make for her." (FG8)

For the participants who did not choose the murder over the sexual offence, they pointed to the nature and condition of ongoing trauma or suffering as being more serious than ending life. At times, many of them noted that the sexual, non-lethal crimes perpetrated against others resulted in the victim-survivors also effectively having a life sentence of trauma that they would need to work through and strive to heal from for the rest of their lives.

“...what value are we placing on this human's life even though they might still be, they're alive, but what level of life is it that they're left with after that?” (FG17)

“That person is dead. I know that it harms everyone around them, but that person is dead, and the people in the other scenarios, they've got to go on.” (FG17)

“I think that I was thinking because, for me, Violet's gone and he hopefully would be going to jail in relation to that. But Veronica now has this lifetime of trauma that the significant impacts across all fractions of her life in relation to that, that she then has to continue with.” (FG1)

“For me, I ended up leaning towards and going with a moral sort of judgment, which is you should never take someone's life. But I'm struggling with that one because the other two individuals are left with lifelong trauma, whereas a poor Violet, don't get me wrong, I really feel for Violet and Violet's family, Violet's suffering is over, whereas the other two are going to be living with that for the rest of their lives.” (FG12)

“[They] have still had the life sentence given to them. They're just still breathing.” (FG12)

“Well, I feel like naturally my brain is like the worst crime you can commit is killing and taking a life because well, I mean the person loses their life and then there's so many roll on effects of that Violet's family, Violet's friends, all of that. And then I ultimately chose the sexual crimes, and I think I chose them because, and I hope this doesn't sound wrong, but because those victims have to live with the crime that was committed against them, if that makes sense.” (FG16)

“I think that I was thinking because, for me, Violet's gone and he hopefully would be going to jail in relation to that. But Veronica now has this lifetime of trauma that the significant impacts across all fractions of her life in relation to that, that she then has to continue with. I don't know. It was a real...tough one.” (FG1)

“I think the only one that had to come back to, because it is too... Both of them are so serious that it's really hard to pick between, but the sexual one eventually took over because it's one, the age gap. Two, it's involving more than one offending party. We don't know if it was premeditated or planned or anything like that, but it's out in the middle of nowhere, which means they're probably her only way of getting back home.” (FG16)

“Dorian and Darren. Darren takes an individual to a secluded location. So it's obviously very calculated. It's very much like, you want to do this in a place where you're not going to get interrupted, and you want to do this in a place where no one's going to know. And, if anything, who knows if they did anything more than that, or if that was their intent. At least that was what I was thinking in my head.” (FG2)

“So number nine for me was more serious than murder, because again, it's the victim, the impact on the victim is more serious, because that person's still living with that multiple rape scenario. Whereas I guess the person has been killed and so they're not having to live with that for the rest of their life. But in saying that, if I was Violet's mother, then I would be thinking differently, potentially.” (FG2)

“The rape scenario for me is like, you might as well be dead if you're going to be treated that way. Not saying any kind of relationship history justifies murder, but we also don't know if this is just someone killed someone, whereas there are two people out there in community that are behaving this way that's really concerning. So it's the two versus one, for me.” (FG8)

“But I think my other point that really stuck out to me was the two of them, like two criminals being out there versus one in terms of community protection. Like, Dorian and Darren could also be going out there killing people if they're doing it spiritually and psychologically in that sense.” (FG8)

“I think for me, number nine, just because both scenarios are very equal in the sense that they both have long-lasting impacts to both families and people involved. Obviously, Dustin intentionally kills his ex-girlfriend Violet, that's a very... That's an end. It was hard for me to pick... I did end up going with the scenario on that one where they took Veronica to the secluded location, just because I felt

that was very... I mean, both are premeditated obviously. But it just has, for me, more of a flavour of aggression.” (FG7)

“What led to my decision was here it was two people who actively did something over one person. So two people were in control of the situation. I know there's not lot of detail here, but based off this I'm assuming that the two males were both consenting to undertake activity with that young person in going to a secluded area. So there was a bit of a plan or an intent. Yeah. And draw terms as two consenting individuals with a plan. Yet Dustin had an intention to kill his ex-girlfriend was a single person's activity or undertaking.” (FG6)

Some participants discussed the paired comparison without identifying which of the two scenarios were more serious. They expressed the difficulties comparing two very serious behaviours.

“I think, for me, the hardest one was number nine, that he potentially killed the ex-girlfriend, or the two people raped the one girl. I just really, whoa, that was really tough.” (FG1)

“Nine was definitely, I had to really think about that, because on the other hand you could see that that was very calculated, and that was meant to hurt someone. But then to kill someone intentionally, you just don't value who they are as a person.” (FG2)

“There's a lot more details in that description as well. I think it was quite hard to visually imagine that occurring, whereas Dustin intentionally kills his ex-girlfriend could... It doesn't hold as much emotional sway or detail in that description.” (FG7)

“I will say, on the notion of sex crime versus murder, in my head, it's very much like in the '80s when I did my personal reckoning about capital punishment in the USA. And I had to just say, I don't feel it, but I choose to live and lobby that the death penalty is wrong. But I don't feel it. Eventually I did feel it. And I do the same thing on this. At murder, I choose to make that the worst crime, but I don't feel it in this scenario, especially because that second one is just off the chain.” (FG7)

“It's a hard one, and that's part of the reason that it was so hard for me because yes, Violet does not have that chance to recover. But on the other hand, it wasn't a... And I hate to use this term, it wasn't on the low end of a sexual assault. It was full penetration. It has the full risk of a pregnancy, which in itself is totally life altering.” (FG16)

Paired Comparison 10

10	Dustin (35) intentionally kills his ex-girlfriend, Violet (35).	Douglas (35) uses his fingers to penetrate the vagina of his niece, Verity (10), without her consent.
	66	19

Scenario 10 compared a non-sexual offence with a sexual offence. The non-sexual offence was a murder in a domestic relationship while the sexual offence was a digital-vaginal rape of a child of lineal descent. Participants found the murder offence more serious at a rate of 66:19.

Similar to paired comparison 9, participants who considered murder to be more serious considered the finality of the harm.

“Again, for me, it's with Dustin and Violet, you extinguish all hope. There's nothing left. Where at every other scenario, you hope there's some resilience and you know at least there's hope. But when you get to the point where that person's gone forever, there's no hope at all. I think that's where, for me, that has to be the worst case scenario.” (FG1)

“That one did actually weigh on the murder with it being planned and premeditated.” (FG16)

“The difference for me there is that, is just... How do I phrase this? The weight of the murder is so, so close to number nine that moving on to number 10, there was almost no way for me to rationalize a premeditated murder to be less impactful. Hang on...Yes. Okay. Yes. To be less impactful than the finger penetration. Just because in the penetration incident and the sexual incident, you have remedies for that now, you can seek therapy, you can seek help in other systems because it's happened so early, if that makes sense, versus if that happened at 16 in school or you're keeping on going and the situation with the boss, for example, that's life ruining because now you've got the social pressure of what do I do about work? Do I stay here? Do I risk my entire livelihood and move on? Yeah.”²⁷ (FG16)

“I would agree, I'd say murder is the more serious ... For me, I'd also like to look at rehabilitation, but also what contributing factors to the perpetrators or to the D named people. What state of mind they're in, what can contribute to changes of behaviour or reeducation and addressing underlying issues as well...What leads them to offend or what's going on for them? Is alcohol a contributing factor? Is it stress and that was their stress outlet? Did something happen to the person when they were a child? And they think, oh happen to me which happened to others, compared to me that it's normal. And not necessarily punishing people without understanding.” (FG6)

One participant identified why they found the sexual offence more serious in this comparison. Namely, the perpetrator's ongoing access to the victim-survivor was concerning:

“Yeah, 10 was tough, but I ultimately came down to the fact that Douglas still has access to Verity. This crime can keep happening. But I think, yeah, for me it was just the fact that Douglas could still keep doing this to Verity. Obviously it doesn't matter if it's, sorry, obviously it doesn't make it less if it only happened once, it's still extremely serious. But I think for me, I thought here of potential risk factors is that this crime would still keep happening if Douglas is never caught. And yeah, the obvious mental health issues that will arise.” (FG16)

“She's got to live with it, but what's her life expectation after that, living with that? She'll become suicidal and all that stuff. And this family's got to live with that and bear with that issue. You've got

²⁷ When asked whether the participant meant there was more opportunity for Verity to recover, the participant responded “Yes”.

some people who are strong and some people who aren't. She'll be traumatised for the rest of her life." (FG19)

"I'll say the thing with the niece is probably worse. The effects that she'll be living with for the rest of her life?" (FG19)

Paired Comparison 11

11	Declan (35) non-consensually penetrates the anus of his husband (35) with his penis.	Duncan (35) punches Viggo (35) in the head and chest. Duncan and Viggo were strangers and did not speak prior to the incident. Viggo did not suffer any physical injuries.
	71	14

Paired comparison 11 compared a sexual offence and non-sexual offence. The sexual offence related to a penile-anal rape in a domestic relationship. This rape was compared to a common assault of a stranger which was non-sexual in nature. Participants found the rape scenario to be more serious at a rate of 71:14.

There was very little commentary about scenario 11, with one participant describing the decision as 'easy' when choosing the rape scenario as more serious than the common assault:

"So Viggo gets punched in the head by rando. Which happens, it's not as serious as raping your husband. Yeah, that's an easy one." (FG6)

Paired Comparison 12

12	Daniel (35) forces Vicki (35) to penetrate her vagina with a sex toy, without her consent.	Duncan (35) punches Viggo (35) in the head and chest. Duncan and Viggo were strangers and did not speak prior to the incident. Viggo did not suffer any physical injuries.
	74	10

Scenario 12 compared a sexual offence with a non-sexual offence. The non-sexual offence involved a common assault of a stranger while the sexual offence involved a sex toy vaginal sexual assault. Participants viewed the sexual assault scenario as more serious than the non-sexual offence at a rate of 74:10.

No qualitative commentary was undertaken in relation to this specific paired comparison.

Paired Comparison 13

13	Dexter (35) and his wife, Virginia (35) are arguing. Dexter puts his hands on Virginia's throat, stopping her breathing for a short period of time.	Damien (35) is Vivienne's boss. Damien uses his hands to touch Vivienne's (35) breasts over the top of her clothing without her consent.
	78	6

Paired comparison 13 considered a sexual and non-sexual offence. The non-sexual offence was a strangulation in a domestic setting offence while the sexual offence was a sexual assault in an employer-employee relationship. Participants chose the strangulation offence as more serious than the sexual offence at a rate of 78:6.

No qualitative commentary was undertaken in relation to this specific paired comparison.

Paired Comparison 14

14	Dorothy (35) is Vaughn's (16) school teacher. Dorothy put Vaughn's penis in her mouth without his consent.	Dexter (35) and his wife, Virginia (35) are arguing. Dexter puts his hands on Virginia's throat, stopping her breathing for a short period of time.
	44	40

Paired comparison 14 involved a non-sexual offence compared to a sexual offence. The non-sexual offence was a strangulation in a domestic setting offence which was compared to an oral-penile sexual assault between a teacher and student. Participant responses were fairly equal in comparing the sexual and non-sexual offences but the sexual offence was ultimately determined as more serious at a rate of 44:40.

The closeness of the ratios, alongside the qualitative comments, reflect the difficulty for participants in determining the seriousness of the discussed offences.

"Sexual abuse, to me, is both physical and emotional pain and suffering. Yeah, your physical body might get better, may not too, but you still have that emotional residue which could be triggered by physical pain again and so on, so forth... that hierarchy worked for me until I got to number 14 when my logic was stopped with hands on the throat to stop breathing of the adults, whether they're male or female. And that teacher thing, again, with the student. It was a tough one for me. That was the one that caught me." (FG1)

Participants who chose the sexual offence as more serious did so because of the victim-survivor's age and perpetrator's authority:

"Because he didn't kill her, I went the other way for paired comparison number 14. With Vaughn being the younger kid, that one being a bit more significant for me at least." (FG2)

"There's age, but also, especially because Vaughn's 16, he's still considered a minor in certain... He can give consent, but he's still considered a minor. And the aspect of... I mean for a lack of a better way of saying it, Dexter had the ability to stop and not kill his wife, whereas Dorothy was very much just like, no, this is what I want then and there, cool, I'm going to have it right now. Especially to a young person, more specifically her, what's the word, a kid in the classroom ...You have authority." (FG2)

"And I did deviate in that [paired comparison 14] because although choking, the stats are there that it can lead to death, that it is an intention to stop somebody's breath and somebody's life, there is a potential for harm in that scenario with Dexter and his wife. Whereas in the school child's... I think that is harm being perpetrated. Even though both of them are harmful and choking is absolutely potentially life-ending, I put the immediacy of the harm to the young person as more present." (FG7)

Participants who found the non-sexual offence more serious considered harm, in terms of potential lethality, and the ongoing relationship between the parties.

"Number 14 was quite difficult, but I still put Dexter, again, as the higher priority because of the risk of imminent death. And likely, Dorothy and Vaughan, he's not going to die from that. So I've looked at it in terms of predictive loss of life." (FG14)

"I had the choking. ... I think, again, I keep going back to this impact on the victim, the impact of being nearly killed and choked, that is a long-lasting threat that forever lives with you then and would make that person, that victim more fearful of her partner, and would then possibly allow that partner to have more control over her. And so to me, that's a bigger and more long-lasting impact than the school kid. As long as this is just one instance, he could then move on and rebuild his life and put it behind him. This wife is never going to be able to put that choking behind her because she's living with the perpetrator right there and it could happen again at any time. And it was that threat of death

that really made me make that, that constraint, that relationship constraint as well. That individual is locked within that relationship... And the chance of things escalating further beyond that, going from choking her to something more extreme I think can be quite high. It's a tough one, but I agree with all of you.” (FG7)

Paired Comparison 15

15	Denise (35) drives her car over the speed limit while drunk and hits another car. The accident leaves the other driver, Val (35), permanently unable to use her legs.	Dorothy (35) is Vaughn's (16) school teacher. Dorothy put Vaughn's penis in her mouth without his consent.
	50	34

Paired comparison 15 required participants to identify the more serious offending behaviour between a non-sexual and sexual offence. The non-sexual offence was a dangerous operation of a vehicle offence involving speeding and drunkenness, causing permanent injury. The non-sexual offence was compared to an oral-penile sexual assault between a teacher and student. Participants found the non-sexual offence causing permanent physical injury more serious at a rate of 50:34.

The difficulty of confronting this comparison appeared to arise due to the multiple intersecting forms of harm (physical, psychological, emotional), and the permanency of injury. Participants found this comparison to be particularly challenging:

"I think that last one's [paired comparison 15] particularly hard for most people because you're having to weigh up between a permanent, physical harm and a very interpersonal trauma, which arguably both are a severe loss." (FG14)

"I am still confused about 15." (FG4)

"That [paired comparison 15] was a bit tricky." (FG5)

"I mean, just to not use your legs anymore. And obviously the friend was drunk intentionally. And then the second is serious, so it's like, I don't know, it was really hard to choose to make a decision...It was very difficult" (FG5)

Participants who considered the sexual offence to be more serious mostly considered culpability factors. More specifically, they considered the perpetrator's intention to harm the victim-survivor and the power imbalance that occurred. The potential for psychological harm was also raised here. Age was less of a consideration for participants within this paired comparison than some of the other paired comparisons although was still raised.

"I don't know if people will agree with me for number 15, but I actually put the sex crime worse than the driving. I thought if Denise drives her car over the speed limit while drunk and that it was full stop, I think mostly people would put the sex crime, but it just seemed to be unfortunate that the accident left Val unable to use her legs, whereas this person set out to harm someone." (FG4)

"I guess on 15, I chose Dorothy as more serious crime just because I don't think she's got impaired judgment like Denise. And so I guess with all of them I was looking at intention and how targeted it was towards the victim. Like, in that one you know what happened to Val's legs is horrific. But I guess because Denise had that impaired judgment and she did a really horrible thing where Dorothy was quite intentional and that's what created the seriousness for me." (FG8)

"That last one too. I think for me it was like drunk driving and speeding is just a really stupid decision that you made. And the consequence was not intentional, even though it was really dumb. Whereas for the sexual assault, that is intentional, that's intentionally hurting somebody. And so to me that one, the clincher for me was the intention. You were just really stupid. You made stupid decisions versus you intentionally potentially groomed somebody. You intentionally harmed them. Yeah, for me it was intention that made that decision for me." (FG10)

"And then the other side of the things was the power imbalance with the teacher. For me, someone who's drunk driving isn't as serious as, again, the teacher taking non-consensual, student, again it's a power imbalance." (FG2)

"Well, [the harm suffered by Val] did factor in [to the comparison], but I'm thinking again, okay, Vaughn's 16, but we don't know. For me, it's about that power imbalance. We don't know about Vaughn. So for me it's like, there's mature 16-year-olds, there's intellectually disabled, 16-year-olds. So for me, there's not enough information. The fact that he's 16 and there's just a power imbalance, for me is the most important thing. Yes, it's absolutely terrible. And that's the thing, they're both terrible." (FG2)

"I guess for me it's like the knowledge and intention behind a teacher who's in that position of power violating a 16-year-old, I find... I don't know how to describe it. There's a deeper seriousness, potentially, in that that needs to be addressed from a societal point of view. Whereas Denise's actions are more like an internal problem, like substance abuse and disregard of the consequences for her actions where Dorothy knows her actions are going to have direct consequences on a young person. That's where I saw the seriousness." (FG8)

"Val is still alive. She can't use her legs, but she could probably still live a[n] okay, meaningful life. But we don't know the trauma that Vaughn's going to suffer for the rest of his life because he's been abused by a teacher." (FG2)

"I was thinking that at 35, you have experienced some life at least of having walked around and run around and all the things you would do with your legs. The one thing that made me think for that was maybe, if you hadn't had children yet and you wanted to experience that sort of thing, that would be a little bit more extreme for... I don't know; if you're at that age of childbearing and stuff like that and you lose the ability to walk, would be pretty extreme. But obviously, the time of which you're suffering, so obviously from 16 onwards versus 35 onwards, is, I guess, the determining factor for that one. The length of which you're going to be suffering from the outcomes of those crimes is probably one of the biggest things." (FG18)

Participants who found the non-sexual offence more serious mostly considered harm factors. The permanency of the injury was persuasive for participants in determining seriousness. While participants generally acknowledged the potential psychological injuries arising from the sexual offence, the permanent physical injury was the most significant factor for them. One participant also discounted alcohol as being mitigating to the circumstances.

"I found number 15 the hardest... After listening to what everyone said about the teacher situation and the control, I thought, well, actually, they're right. That is a control thing.... But then, when Denise got into her car and destroyed Val's life, I thought, well, Vaughan might get over his episode with his little fling with Dorothy, but Val will never get on with... Well, she will get on with her life but in a wheelchair, and Vaughan can go on to be a CEO big company...[It's] the impact it's had on Val's lifetime, rather than Vaughan who is 16 and get over it. He'll get over it hopefully." (FG1)

"I actually chose the drunk driver as the greater offence because, to me, the harm is permanent. It's a permanent disability. And although the teacher and the pupil is a horrendous situation, 16 years of age is the age of consent, according to the law, as we've discussed. So that person, that young man, did have the opportunity to consent, whereas the person that's now an invalid has no opportunity to consent to a drink-driver hitting them. And that is a permanent, lifetime, whereas the 16-year-old, in my head, with good therapy, counselling, if the teacher is jailed and all of those things fall into place, I felt that the drink-driving scenario was more serious in that situation." (FG14)

"To not have your legs. That's a life sentence. And the boy, and we talked about this before, he's obviously been groomed and whatever, but I would feel confident that with the correct therapy and correct counselling, I'd be fairly confident that that boy is going to come out of it okay and move on in life." (FG5)

"The last one was really hard...I was like which one is worse? But then I thought from the side that Denise could have killed Val. So that's worse for me than the sexual offence. Yeah, that's where I based my decisions." (FG2)

"If somebody is permanently unable to use her legs, then I find that infinitely worse than a 16-year-old boy with a teacher, because although they're probably both permanent, one is to me, in that case, the physical outweighs the psychological, but that's not always the case. Sometimes psychological damage is far worse than physical damage. It is difficult to decide sometimes. I also realised that factor in that particular example of the teacher, the female teacher with male student is the amount of physical force. How much physical force can a female ever perpetrate upon a male? In that case, obviously, it's an authority sort of thing rather than a physical thing. But I do think that in other scenarios that plays a factor too. Perhaps we haven't got an example there, but in my mind, a female... If a male wishes to rape a female, there is very little that she can do about it. It's a physical force imbalance that underlines everything. And I'm not sure that that comes out in any of these examples." (FG8)

"It's a teacher and authority that's the power imbalance that the physical has to be sort of in the back of your mind as well. But he could be in a wheelchair or paralysed or something as well, and that changes everything." (FG8)

"15 was tricky. I think I chose the disabled driver, victim because that's permanent. It's a permanent disability with no chance of rehabilitation." (FG8)

"I don't think being impaired by alcohol and someone has chosen to drink that alcohol, there's any excuse or any mitigation whatsoever, but I'm probably harder on that than most people are." (FG8)

Paired Comparison 16

16	Denise (35) drives her car over the speed limit while drunk and hits another car. The accident leaves the other driver, Val (35), permanently unable to use her legs.	Damien (35) is Vivienne's boss. Damien uses his hands to touch Vivienne's (35) breasts over the top of her clothing without her consent.
	77	10

For paired comparison 16, participants considered the more serious offending behaviour between a non-sexual and sexual offence. The non-sexual offence was a dangerous operation of a vehicle offence involving speeding and drunkenness, causing permanent injury. The sexual offence comparator was an employer-employee sexual assault. Participants found the non-sexual offence causing permanent physical injury more serious at a rate of 77:10.

Participants who found the non-sexual offence to be more serious considered harm. The permanent physical injury was significant here.

"Funnily enough, 16 for me was the hardest one here... I ended up going with Denise being worse in that one, because it is permanently damaging in the whole unable to use her legs thing compared to the potentially a life altering with doing something about Damien." (FG16)

The perpetrator's intention to offend was significant to participants who found the sexual offence more serious.

"I really struggle with 16 too. Yeah, because physical consequences are massive. I ultimately went with the workplace scenario... Maybe Denise is running late for birthday party, maybe running late for work. I don't know, but to me I could be wrong, but it doesn't suggest that Denise intentionally went to injure Val. Damien, he's probably been annoying to Vivienne for a while and he's used his power over her. Denise was neglect, in my opinion. Whereas Damien, there was intention and I think that's ultimately what it mainly came down to for me. But it was a very hard one because both are going to have serious mental ramifications. Physical ones too for both. Probably both differently. Val with not being able to use her legs and Vivienne, there could be physical ones of not wanting intimacy or, you know. But yeah, I think intention may have been the deciding factor for me." (FG16)

Paired Comparison 17

17	Denise (35) drives her car over the speed limit while drunk and hits another car. The accident leaves the other driver, Val (35), permanently unable to use her legs.	Declan (35) non-consensually penetrates the anus of his husband (35) with his penis.
	59	24

Paired comparison 17 required participants to identify the more serious offending behaviour between a non-sexual and sexual offence. The non-sexual offence was a dangerous operation of a vehicle offence involving speeding and drunkenness, causing permanent injury. The sexual offence comparator was a penile-anal rape where the perpetrator was the victim-survivor's husband. Participants found the non-sexual offence causing permanent physical injury more serious at a rate of 59:24.

Participants who found the non-sexual offence found it difficult to articulate why they considered it more serious.

"Number 17, I actually put down that the more serious was the Val being left permanently disabled. And then looking back at it, I was like, why did I do that? And I don't know why I did that at the time." (FG2)

Where participants found the sexual offence more serious, they considered the perpetrator's intention to harm the victim-survivor.

"I started thinking about the car accident. Because as much as she was drunk and speeding, it wasn't her intention to. It was an accident even though she was doing something that she shouldn't. But on the other case, on the other hands, it's like something premeditated and they knew what they were doing, intentionally harming someone. I might've changed my choice if I thought about that." (FG2)

"Denise driving her car, she didn't get up that morning and going, I'm going to get drunk and smash out legs. But that's still... It's more harm done than Darryl entering a house and taking a few things. But there was another one for her as well- ... compared to 17, where Declan raped his husband, it's obviously more... Well, premeditation I suppose in that... I guess on the other side with Denise, that's kind of accidents happen kind of territory. I said she didn't get up in the morning and say, "I'm going to go drive over her legs or whatever." But at some point Declan's going, "Yeah, I'm going to do this." (FG6)

Paired Comparison 18

18	Dominic (35) non-consensually penetrates the vagina of a stranger (35) with his penis.	Daniel (35) forces Vicki (35) to penetrate her vagina with a sex toy, without her consent.
	78	7

For paired comparison 18, participants considered the more serious offending behaviour between two sexual offences. A stranger penile-vaginal rape was compared to a sex-toy vaginal sexual assault. Participants found the rape offence to be more serious than the sexual assault offence at a rate of 78:7.

While there was very little commentary on this paired comparison, one participant identified the instrument used (i.e. penis vs sex toy) and the perpetrator relationship to be relevant to determining seriousness:

“The penis is worse than the sex toy... for me, I guess it was the thing, it was the penis and the sex toy, but it was also a stranger, husband. Again it was like, okay, a complete stranger. The behaviour and his penis is worse than a husband and a sex toy.” (FG2)

Paired Comparison 19

19	Dorian (35) and Darren (35) take Veronica (19) to a secluded location. Dorian non-consensually penetrates Veronica's vagina with his penis. Immediately after Dorian ejaculates, Darren non-consensually penetrates Veronica's vagina and anus with his penis.	Duke (35) and Vera (35) had ended their relationship. Duke did not accept this and struck Vera three times in the head with a claw hammer Vera had multiple skull fractures and permanent scarring.
	47	37

Paired comparison 19 required participants to identify the more serious offending behaviour between a non-sexual and sexual offence. The non-sexual offence was an intention to cause grievous bodily harm in a domestic setting. The sexual offence comparator was a penile-vaginal and penile-anal rape in company. Participants found the sexual offence more serious at a rate of 47:37.

For participants who found the sexual offence more serious, they considered the perpetrators' culpability. More specifically, they considered the pre-meditated actions and aggressiveness of the behaviour although not all participants could articulate why the sexual offence was more serious for them.

"Number 19 was probably one of the hardest ones where it was the difference between someone almost dying but also a very calculated, premeditated thing for me. And I ended up going towards the calculated one because Duke seemed like he did it in a flurry of emotions. Whereas Dorian and Darren willingly and it looks like they planned to harm this individual. Not to say what Duke is not right. (FG2)

"I found 19 difficult. Because I could imagine the terror for the victim, but then I could also imagine the terror for the victim for both of them. And it was, I don't even know how, or why I chose one over the other. Maybe it was a bit of my own stuff, thinking like that would be terrifying. I just found that one really difficult to choose... With the Dorian and Darren taking her to a secluded place. And I think because I could imagine like, "Oh, am I going to die?" I guess because that's sort of all... I don't know, there's just that depiction I guess of that you imagine from movies you see, and society, I guess of... That that's just really bad.... I don't know, I don't know why, but I just... Visually probably could imagine that more and I'm not sure why." (FG10)

"I picked that one²⁸ as well as the most serious. I think a few things for me, I felt like it was more premeditated than heat of the moment in anger. And I also thought, well, there was two people, so they really had to make a decision to do it. And I sort of saw it as, I guess three different acts as well. Whereas I know that Vera was struck three times that technically that's three acts as well. But yeah, I think that's what made me choose it." (FG10)

"And this 19 jumped out at me, because I can imagine the horror in that moment. It's so clearly detailed... Whereas I can't in this scenario, when I'm trying to weigh the two within my body. Which one would be the more horrible? I can't even fathom this second scenario. So, by default, the first one has more impact, because I can actually comprehend that." (FG7)

Participants who considered the non-sexual offence more serious considered the potential lethality of the behaviour for the victim-survivor.

"Vera. She could have died in that situation and physical trauma as well as the psychological trauma. Yeah. So much for effort... because he could have taken her life." (FG2)

²⁸ The participant was referring to the Dorian and Darren perpetrator facts.

"What got me over the line was I felt like the Dorian and Darren was sort of opportunistic. Let's just go out, do this one bad thing for kicks. Whereas Duke trying to pretty much nearly kill his ex-partner was like, "She doesn't want to be with me, so I'm going to show her." That was more like, there was more thought, meaning behind that. So, that's why I went with that one. But it was very hard." (FG7)

"It was really difficult. And I ended up doing this the same. I crossed out one and I think I went... So, I went with Duke and Vera. Hitting somebody three times in the head with a hammer, and the fact that she survived that, I think that's attempted murder, really. That was the only thing that pushed me over the line is that murder kind of space with that one." (FG7)

"I noticed that I feel like I have less of a focus on the victim in the scenario, because of all of my years being an insider in the legal system. And I don't know how I feel about that, but I have flagged it and I think it's a genuine, genuine difference, that the things you guys were talking about didn't even come up to me, before the point at which I was crystal clear... And then again, it's almost like I have my algorithm, and I want the world to know that if you come to my court, this algorithm will be used. And it is that the taking of a life is a number one taboo. And so, the hitting with the hammer I view as attempted murder. So, to me it's there." (FG7)

Other participants found both behaviours equally serious and could not separate the comparisons to determine the most serious:

"I think for me...I really personally struggled with question 19 to make a definitive choice on that. Because to me, both are very equal. I mean, they both hold very serious consequences for the victim. Yeah. I couldn't come to an answer for that. So, I've left myself in the middle, because I'd view them both as quite serious." (FG7)

"With the scenario of taking Veronica to the secluded location, as I mentioned before, that has connotations where, to me, are very aggressive. But then also, it's the same for me with Duke not accepting that the relationship's over, and then attacking Vera with a claw hammer. That is very life changing as well. And yeah, very hard to pick one." (FG7)

Paired Comparison 20

20	Douglas (35) uses his fingers to penetrate the vagina of his niece, Verity (10), without her consent.	Dorian (35) and Darren (35) take Veronica (19) to a secluded location. Dorian non-consensually penetrates Veronica's vagina with his penis. Immediately after Dorian ejaculates, Darren non-consensually penetrates Veronica's vagina and anus with his penis.
	43	42

For paired comparison 20, participants considered the more serious offending behaviour between two sexual offences. A penile-vaginal and penile-anal rape in company was compared to a digital-vaginal rape of a child of lineal descent. Participants found the digital-vaginal rape of the child to be more serious than the in-company rape offence at a close rate of 43:42.

Participants who considered the digital-vaginal rape of a child to be more serious considered several factors. The age of the victim-survivor, as well as access and ongoing relationship with the perpetrator were the main considerations in finding this behaviour more serious.

"I think I just kept looking at... Was it a stranger or did they know them? I don't know why I'm thinking about it reflecting on it now. But I do choose a stranger over someone they know and also the age. So I think for this comparison, 20, I chose the Verity one with the young girl, over Veronica and the two blokes just because of the age...So I think that's, in my mind, that's the worst." (FG10)

"Well, 20 as an example. That one's very hard to decide between. But again, it came down to Douglas still has access to Verity, as far as we know, this could keep happening. And I guess I'm just assuming that Dorian and Darren will never see Veronica again. Pretty safe to say, hopefully." (FG16)

"Number 20, that was like, I just kept vacillating between the two because I was like, oh, they're just both... I was like how do I determine what's worse? And it eventually just came down to the age of the niece. It was like, she's only 10. I still don't even think that it's right. I just want to do no, no, no, neither of those." (FG2)

"For me, I thought about the age of the victim. And also in that specific question that it's his niece, so it's also harming his brother or sister because of this whole family scenario, it's he's harming more than just... The trauma for her I think is quite... Well, the trauma for both is massive, but for the young girl being a niece, there's a power play. And also then if he gets prosecuted, then there's going to be a breakdown within the family. There'll be guilt complex for the poor young girl. It's not just dealing with the situation, it'll be the impact. But 20 was really difficult." (FG2)

"And then it's like but she's only 10...And she probably doesn't even know what sex is. A young child who doesn't even know what's happening and has been brought into this other world. And then the fact that it's the uncle, so she would feel the conflict." (FG2)

"I ended up going with the child, purely because the child hasn't... Well, I'm assuming the child hasn't got as many coping strategies as a 19-year-old. I ended up coming down on that basis. But it was a very, very, very difficult choice." (FG8)

"This one was purely based off age for me, considering she was 10, so it was more vulnerability." (FG8)

For other participants who found the multiple rape scenario with multiple perpetrators more serious, they considered harm to the victim-survivor. Namely, the length of the assault, the violence it involved and how the assault was perpetrated to be relevant.

“Yes, for me with saying previously it was about the tool. And so for me now listening again, it's like yes, the penis in her vagina and then the penis in her anus and ejaculating, that behaviour is worse than a finger in a vagina.” (FG2)

“The other one is, and the fact that it's two guys...You also, there's a massive power play there. And the fact too, that the Veronica thing though would've gone on for.... It would've just been such a long experience for her. And I'm not downplaying the young girl, but it's not just a five, 10 minute thing. It would've gone on for hours.” (FG2)

“I went with the double rape, for that one. I found that extremely hard, as well. But I think because there seemed to be a very violent... It was a very violent crime. And I'm making assumptions, but with the niece, I wondered if there was more grooming, bribery? As damaging as that is, this double rape's... The violent nature of it, I just wondered how anyone recovers after something like that.” (FG8)

“What made me say that this was violent? I think the nature of it, there being two men, one female, and the fact that they used her like a toy one after the other. And the second one penetrated her in her anus and her vagina. That is painful. If it's not consensual, then her physical body is not prepared for that, so I don't see how that isn't violent. Whereas I can see how this, whilst this is violating and horrific with the ten-year-old, I can see how it could be done in a way that isn't violent but is damaging still. Whereas this, I don't see how it's not violent. Maybe you guys disagree, but he has to have an erect penis. She's not giving consent, so she's not wanting that, and it's going to happen anyway. There's a huge power and control happening here with two men, one woman.” (FG8)

Paired Comparison 21

21	Duke (35) and Vera (35) had ended their relationship. Duke did not accept this and struck Vera three times in the head with a claw hammer. Vera had multiple skull fractures and permanent scarring.	Dominic (35) non-consensually penetrates the vagina of a stranger (35) with his penis.
	57	27

Paired comparison 21 considered the more serious offending behaviour between a sexual and non-sexual offence. Participants considered whether a penile-vaginal rape by a stranger was more serious than an intention to cause grievous bodily harm in a domestic setting. Participants found non-sexual offence to be more serious than the sexual offence at a rate of 57:27.

For the participants who found the stranger rape to be more serious, the psychological damage was a significant factor.

"For [paired comparison number] 21, I actually chose the Dominic non-consensually penetrates the vagina of a stranger, with his penis, over the skull fractures. And I did have a reason for that, because Duke and Vera, Vera has been physically harmed. She would've had to go to the hospital or whatnot, and she's going to have that physical support, potentially. That's a physical injury, there'd be psychological as well. But I felt like the sexual violence of Dominic was worse, was more serious, because that person has other consequence. That was a stranger, [so there was] psychological damage, potentially." (FG17)

"I think there's a heaviness or... "Heaviness" is not the right word, but there's something about sexual assault that just makes it so much more serious, versus a physical assault that's equally as serious." (FG8)

"I went with the sexual assault, which is... Yeah, it was very, very, very hard. I feel like it's really splitting hairs, because obviously there's high lethality with multiple varied blows to a head. But there's also high lethality in terms of a stranger sexual assault, and what that potentially has meant for that person who's been flung or thrown or pushed or... I think it was very, very hard." (FG8)

Other participants who found the non-sexual offence to be more serious considered harm arising from the behaviour. Namely, the offence could have been potentially lethal and the victim-survivor will suffer permanent scarring as a result of the perpetrator's actions.

"It was a hard one too, but I picked the multiple skull fractures of permanent scarring because, again, they're both going to be affected, probably for the rest of their lives, but that could have ended up in death very easily. It's horrific and Vera will probably have headaches and long-term abuse where with this non-consensual penetration, it's still awful, but I feel like there's possibly more of a chance of this person will be more resilient or survive without as much scarring necessarily." (FG1)

"I think it's the visual imagery that the first one gives me. To see that in my mind is just that's horrific. Not that the second one's not horrific, but it's just such an extreme...Yeah, I didn't know what that would potentially look like. I think maybe some of these other scenarios, had they been described in a more graphic way... we wouldn't make the same decisions." (FG1)

"To me, it was big chance of death with the first one and it seemed intentional that could easily have killed her, whereas the other one's shocking, but I can't see any sign of trying to kill the person, so that's why I went for that." (FG1)

"I guess the impact. If it's blunt force trauma, if it's nearly killing someone. There's obviously strangulation. There's trauma. There's stealing things. There's different lethality, and different in how that scales in harm." (FG8)

"The relationship didn't really factor into that for me. It was just the violence of that one. Again, with a claw hammer, if you are smacking someone in the head with a claw hammer, I would deem that to be a decent attempted murder. Whereas the other one, which although terrible, it's not a threat of death if we're looking at things on that comparison." (FG3)

Paired Comparison 22

22	Duke (35) and Vera (35) had ended their relationship. Duke did not accept this and struck Vera three times in the head with a claw hammer. Vera had multiple skull fractures and permanent scarring.	Dexter (35) and his wife, Virginia (35) are arguing. Dexter puts his hands on Virginia's throat, stopping her breathing for a short period of time.
	75	9

For paired comparison 22, participants considered the more serious offending behaviour between two non-sexual offences. An intention to cause grievous bodily harm in a domestic setting was compared to a domestic strangulation. Participants found the intention to cause grievous bodily harm offence to be more serious at a rate of 75:9.

In discussion, participants noted that the paired comparisons were relatively similar in terms of seriousness. Some had difficulty discerning the more serious because they both involved a domestic setting.

*"They're both going to cause lifelong repercussions for the victim. You can never know what those repercussions are going to be. But I would suggest in both of them, they're going to be life-altering."*²⁹ (FG3)

"Yeah, it was a tough one too. 22. I agree they're both forms of domestic violence. I also just circled Duke and Vera just because I couldn't decide, so I just forced myself to circle. I think both are at such high risk... [Risk of] further domestic violence for the physical violence against them. Yeah, because stopping the air going into the lungs can have serious physical effects and the obvious skull fractures, serious effects. But I think I've probably struggled the most when comparing different types of rape to each other." (FG16)

Amongst the participants who found the intention to cause grievous bodily harm to be more serious, some found Duke's choice of using an external weapon as an aggravating factor that made the offence more aggressive or violent than the strangulation scenario.

"I just feel like having a weapon physically in your hand, not something you possess, so it's not like a punch or a penetration, it's actually finding something additionally to do harm. And that the physical result of that, not the psychological result, but the physical result of that, is pretty traumatic, fairly devastating which is why I also, in 22, chose that [Duke and Vera] over Dexter choking Virginia." (FG17)

'We would all think a claw hammer could be used as a weapon, but we wouldn't necessarily think hands or a penis would be seen as a weapon.' (FG17).

"I agree they're both forms of domestic violence. I also just circled Duke and Vera just because I couldn't decide, so I just forced myself to circle. I think both are at such high risk." (FG16)

"They're in the same ballpark, but there's something about the claw hammer enough for skull fractures and scarring that just put it over the top... They're both having an argument, they're both getting heated about something. One party goes, maybe they have a moment, maybe they've whatever, but then they make that choice to escalate it to physical violence. Neither of which are fantastic, but having a moment and going for her throat for a short amount of time, which obviously will leave its own trauma. Compared to picking up a claw hammer, having multiple swings and probably being borderline murder." (FG16)

²⁹ Participant response when asked about measuring harm for this scenario.

"Yeah. So Duke and Vera, they use a weapon. The other one going at face value, they're just arguing and then he snapped and grabbed it by the throat or whatever. He's obviously gone and found a hammer and come back again. So that's definitely up in the ante a bit. As well as skull fractures and permanent scarring as opposed to just maybe passing out or not being able to breathe is definitely a big difference there." (FG6)

In contemplation of the long-term impacts for the victim-survivors, participants also noted particularly the physical scarring that Vera had as a result of the claw hammer assault that may act as an unpleasant reminder for Vera, as well as expose her to questions from outside parties.

"Vera's going to have permanent look in the mirror every day and be reminded of [that]." (FG1)

"I think the permanent scarring, it's a story that you're carrying around on your face." (FG15)

"And then that psychological damage of the scars. When you meet a person, you go on appearance. As shallow as that sounds, you go on appearance and how you see that person. They're going to have facial scars. You can't hide that. No amount of makeup or reconstruction surgery, or anything else that they're going to be put through, is going to take away from that. It's going to be so hard to meet people that aren't going to judge them and just take them as a person, not face value. So that's going to be hard." (FG17)

"I did end up choosing the multiple skull fractures. I'm not sure. Maybe I'm just visualizing a hammer at my head more so. Well, maybe it's the visibility of the scarring I find more of, would be quite difficult. Like a constant reminder." (FG15)

"See, I chose the first one for that one because I felt that, again, skull fractures, scarring, damage is done, no going back. She's going to suffer from forever. Where often I chose the other scenario as the most dangerous part because there's that chance of death and, where's that heading? But in that case, I thought, "Damage is done. Nothing you can do about it." Where Virginia, there's at least hope that she gets out of the relationship. It's still severe." (FG1)

"Because if you had a particularly angry prosecutor, they could both be attempted murder. I would suggest that in sentencing, from my observation, the skull fractures would receive a much harsher punishment than the putting their hands on the throat. But I would view them as being equally serious...Why are they equally serious? Because they're both life-threatening injuries at the hands of somebody who is supposed to be in a position of trust." (FG3)

Other participants identified the strangulation offence as being more serious because the parties were married and there was an ongoing relationship between them.

"I went with Virginia because it's his wife, so there's a chance that it may continue, whereas Vera had ended her relationship and could get an order taken against her, not that that probably piece of paper means any much, but there was the... they'd finished. They weren't a couple whereas Dexter and his wife still are a couple, whether after someone throttled me, we wouldn't be a couple, but that was my logic behind that." (FG1)

"It would've been worse in my belief if the relationship had ended a week or more ago rather than... Because if something's happened and a transaction is complete, going back to that and revisiting something which is now being consensually finished or consent has been removed in comparison to Dexter put his hands around Virginia's throat." (FG6)

Paired Comparison 23

23	Denise (35) drives her car over the speed limit while drunk and hits another car. The accident leaves the other driver, Val (35), permanently unable to use her legs.	Darryl (35) enters a house at night intending to take items without permission. He takes property belonging to the sleeping occupants but does not harm any of them.
	81	5

For paired comparison 23, participants considered the more serious offending behaviour between two non-sexual offences. A dangerous operation of a vehicle offence causing permanent paralysis was compared to a burglary offence. Participants found the dangerous driving offence to be more serious at a rate of 81:5.

Harm was the main factor which participants considered when finding the dangerous operation of a vehicle offence to be more serious.

"I actually went with Denise for the- there is now guaranteed permanent damage there that's not recoverable." (FG16)

"Yeah, that's where I guess where you're sort of weighing up the damage versus the intent. It's pretty confronting having your house broken into, but so it's losing your legs as well. So yeah, harm done, but is kind of the bottom line I guess in that one." (FG6)

Participants who chose the burglary as more serious identified the potential for harm from the burglary as well as the role of alcohol in the dangerous operation of a vehicle offence.

"Darryl had entered the house without permission at nighttime while people were sleeping. Anything could have happened with Daryl entering the house. Anything could have happened. There were non-consenting people laying there. Violence could have become a thing. Yeah, anything could have happened while people are laying there not consenting, asleep, leaving their houses and identity vulnerable. And also if drink driving alcohol is a very large problem in Australia, Denise would not have intentionally sped drove over the limit, intentionally hit another vehicle and intentionally leaving Vial with permanent disability, but if it wasn't for alcohol. So I chose Daryl entering a house at night with the intent to take items is a more serious one because anything else could have happened...Yeah, the potential of harm being in people's personal space non-consensually. Yeah. Val was left with a permanent disability, not sexually assaulted. But Denise in her own free will and accord would not have done those actions if it wasn't for contributing factor of alcohol. But Daryl did have intent and free will and accord to enter a house, not belonging to or enter property, take property, not belonging to him with people being there." (FG6)

Paired Comparison 24

24	Declan (35) non-consensually penetrates the anus of his husband (35) with his penis.	Donald (35) uses his fingers to penetrate his friend, Velma's (35) vagina, without her consent.
	47	36

For paired comparison 24, participants considered the more serious offending behaviour between two sexual offences. A penile-anal rape in a domestic relationship was compared to a digital-vaginal rape. Participants found the penile-anal rape offence to be more serious at a rate of 47:36.

Participants who found the penile-anal rape in a domestic relationship more serious came from two perspectives. Firstly, they considered how the perpetrator penetrated the victim-survivor. These participants concluded that penile penetration was more serious than digital.

"The penis was going to be larger than the fingers. I don't know. So maybe that was... Because it was the size of the object as such." (FG5)

"...it was the penis and the finger for me. The relationship didn't come into it" (FG2)

"In my mind, both are just as bad as each other, but I think maybe it's just a natural human assumption that that organ is worse. I don't think I can explain it to me. I'm sorry. Yeah, just I didn't even think or consider why it would be worse, but I guess maybe I see both as equally harmful."³⁰ (FG16)

"That one was difficult... I think I ultimately decided that, I think it came down to what part of the body was used in that instance? Because both instances are safe spaces as one would assume, a friend situation, a marital situation. But I ultimately chose the marital situation as because of the body part used, which if you want me to clarify was a penis." (FG16)

"I put that the non-consensual penetration of the anus of his husband was more serious than Donald using his fingers. And I was like, okay, how am I differentiating between two sexual behaviours? And the only thing that came to my mind was that is penetration of a penis worse than penetration of fingers. And for me it was just the tool or the thing that was worse, because they're both as bad as each other. But for me a penis is worse than a finger." (FG2)

"And then the one that I really got stuck on was the husband penetrating the husband, and the other person penetrating the friend. I think that's number 24... I found that one really hard. So, I just went with what would've hurt the most...It was hard to imagine, because I didn't know all the details of the circumstances. It's going to sound really silly, but... a penis is bigger than a finger and I just thought that would probably hurt more. But I couldn't know, because I didn't know the circumstances. But yeah, I did catch myself thinking, oh, but they were husband and husband, so they get up to this kind of thing all the time. And then I went, "No." Because consent is consent." (FG7)

"I don't know. I'm sort of going on face value, but you kind of have to assume you've been pinned down or whatever to facilitate that. And she might've been as well, but I think penetration is probably going a step up from using fingers." (FG6)

Secondly, participants considered the relationship between the perpetrator and victim-survivor. They found the breach of trust by the husband to be relevant to seriousness.

³⁰ Participant response when prompted about why they had determined a penis is worse than fingers as the type of penetration.

"Just having that betrayal from someone you thought was you better half or whatever, compared to friends, which could be just like a casual friend, or whoever else. If it was a best friend, maybe it'd be a different story, but yeah." (FG10)

"I did the greater breach of trust. Do you know that that's a husband relationship, that that seemed more violent and more significant. Not to say the friend... but the friend, there's some ability of the friend to escape that situation. They may not live together. They may not necessarily have a lot of regular contact, but Declan and his husband I assume are probably living in the same home. There's that fear of the power and the control, and that it's such a significant breach of that relationship. That seemed more serious for me." (FG1)

"But I did go with the husband in the end just because I think there's a strong relationship there. You're breaking more of a bond sort of thing, I guess. And especially being a husband, that's a really strong relationship. It's hard for me to reflect on this, because I can't put myself in that position at all, but I'm assuming that would hurt way more, from your spouse or your husband or your wife than friends." (FG10)

"24? I ended up going with the Declan side as well. And it's not mentioned here, but for me it was again, looking at the potential knock ons. While with the marital one, while they are obviously together, we have no idea if that was something they did regularly. So if this was a new encounter, it could spread things like STDs. Or he could already have an STD and they've just been using protection in the past. And then you've got the whole marital situation. They then knock on, do they have kids that they then have to explain a potential divorce? Well, everything going on with finances and everything kind of just knotted up together with it being a marital situation." (FG16)

"Again, that was like a coin toss. It could be same, same. I would say, again, because it's the husband. It's an elevated position of, again, trust, care, all that stuff. Whereas a friend, obviously, that's terrible as well, but friends are more likely to be coming and going, I guess." (FG3)

For participants who found the digital rape by a friend to be more serious, the lack of sexual relationship indicated seriousness here.

"The fact that there being a domestic relationship or domestic partnership of Declan and the husband, there is a level of trust they would've had together. The relationship and centrally there's a trust, but being with a friend, there was never that established relationship or potentially of sexual activity... As a friendship, there was probably never that established relationship. This is a sexual thing, so it was gone over a barrier." (FG6)

"I've realized that I had a gender bias, coming from a female's perspective. When I was weighing up between the husband, Declan and his husband, and then Dominic and Velma, I probably identified with Velma, rather than [Declan]... And I found that something I had to think through, I had to recognize." (FG17)

"Twenty-four was really hard because, to me, I really can't differentiate between those two acts. The two people who have a close relationship, there are two instances of penetration that were non-consensual. So really, it goes to that cultural thing that we were talking before. Does a relationship give you... It doesn't give you the right to do something non-consensual, but I think that is ingrained in you. That's why I picked the other one. Because they weren't in a relationship, but to me they're exactly the same. There is no difference between the situations." (FG1)

Paired Comparison 25

25	Dexter (35) and his wife, Virginia (35) are arguing. Dexter puts his hands on Virginia's throat, stopping her breathing for a short period of time.	Donald (35) uses his fingers to penetrate his friend, Velma's (35) vagina, without her consent.
	56	26

Paired comparison 25 considered the more serious offending behaviour between a sexual and non-sexual offence. Participants considered whether a digital-vaginal rape by a friend was more serious than strangulation in a domestic setting. Participants found non-sexual offence to be more serious at a rate of 56:26.

Specific commentary did not arise in focus groups for this paired comparison.

Paired Comparison 26

26	Donald (35) uses his fingers to penetrate his friend, Velma's (35) vagina, without her consent.	Duncan (35) punches Viggo (35) in the head and chest. Duncan and Viggo were strangers and did not speak prior to the incident. Viggo did not suffer any physical injuries.
	73	13

Paired comparison 26 considered the more serious offending behaviour between a sexual and non-sexual offence. Participants considered whether a digital-vaginal rape by a friend was more serious than a common assault. Participants found the sexual offence to be more serious at a rate of 73:13.

The potential for harm was considered in finding the common assault more serious for one participant:

"Again, it was the seriousness of it. It's a really short snapshot of what is going on. Being punched in the head and chest though potentially also very dangerous. It said he didn't suffer any physical injuries, but that is not really, or should not be in my view, a consideration in sentencing. Because you don't know what the repercussions are going to be. You take the action, and then that's where your control ends. The fact that he didn't suffer any physical injuries didn't really factor into it for me. It was potential, I think, for damaging effect were pretty equal to me. It took me some time... I went with the punch, again, because of that potential for things to get wrong. Whereas with this one, we know that this was the thing that happened." (FG3)

Seriousness Rankings

Seriousness rankings for the paired comparisons were calculated by comparing which offences were ranked as the 'most serious' when compared against others. The offences are ranked below from 1 to 13 in order of most to least serious as determined by participants. The data collected from the paired comparisons was not designed to produce a comprehensive ranking but is sufficient to support a general ranking of offences. Rankings were therefore based off which offences were determined to be more serious than other offences and also the margins by which they won or lost to other offences in order to infer relative seriousness between offences that were not directly compared.

Some offences were directly compared to other offences close to them in ranking. For example, the murder offence lost to no other ranked offence and was held to be more serious by participants than the digital rape of the 10-year-old niece in paired comparison 10 (59:25) and the rape in company in paired comparison 9 (66:19). Paired comparison 20 then directly compared the digital rape of the 10-year-old niece to the rape in company of a 19-year-old and determined the child digital rape to be more serious at a close ratio of 43:42. These direct comparisons allowed the ranking order to be more definitively determined based on the data available.

In instances when offences were not directly compared in such a manner as above, ranking was inferred using a shared comparator when available. For example, rape by a stranger is never directly compared for seriousness against the drunk driver causing paralysis. However, both scenarios are determined by participants to be more serious than the rape of the husband by differing margins. These margins, or how strongly or weakly an offence was considered to be more serious than the comparator offence, was then used to order remaining offences. Some offences did not have direct or indirect comparator offences and so share a ranking as there was no way to differentiate them.

Seriousness rankings are set out in Table 4 and 5 below. Scenario descriptions, offences, relevant statutory provisions and maximum penalty are included for context.

Table 4 outlines the seriousness rankings for sexual and non-sexual offences.

Table 4: Seriousness rankings comparing sexual and non-sexual offences

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

12	Duncan (35) punches Viggo (35) in the head and chest. Duncan and Viggo were strangers and did not speak prior to the incident. Viggo did not suffer any physical injuries.	Common Assault	3 years	S335
13	Darryl (35) enters a house at night intending to take items without permission. He takes property belonging to the sleeping occupants but does not harm any of them.	Burglary	Life	S419

Table 5 ranks sexual offences only. Ranking 1 demonstrates the offence which participants determined, overall, was most serious. Rankings for sexual offences go to ranking 6 which is the offence ranked as least serious according to participants.

Table 5: Seriousness rankings comparing sexual offences

Rank	Scenario	Offence	Maximum Penalty	Provision
1	Douglas (35) uses his fingers to penetrate the vagina of his niece, Verity (10), without her consent.	Rape - child	Life	S349(2)(a)
2	Dorian (35) and Darren (35) take Veronica (19) to a secluded location. Dorian non-consensually penetrates Veronica's vagina with his penis. Immediately after Dorian ejaculates, Darren non-consensually penetrates Veronica's vagina and anus with his penis.	Rape – Penile intercourse non-consent (in company; party offences)	Life	S349(2)(a)
3	Dominic (35) non-consensually penetrates the vagina of a stranger (35) with his penis.	Rape – Penile intercourse non-consent	Life	S349(2)(a)
4	Dorothy (35) is Vaughn's (16) school teacher. Dorothy put Vaughn's penis in her mouth without his consent.	Sexual Assault – indecent assault (aggravating – s352(2))	14 years	S352(1)(a)
4	Declan (35) non-consensually penetrates the anus of his husband (35) with his penis.	Rape – Penile intercourse non-consent	Life	S349(2)(a)
5	Donald (35) uses his fingers to penetrate his friend, Velma's (35) vagina, without her consent.	Rape – Digital penetration non-consent	Life	S329(2)(b)
6	Daniel (35) forces Vicki (35) to penetrate her vagina with a sex toy, without her consent.	Sexual Assault – gross indecency (aggravating – s352(3)(b))	Life	S352(1)(b)

General Comments About Sentencing

While this research focused on sentencing purposes and seriousness, participants also made some insightful and thoughtful comments about other sentencing considerations, both in relation to sexual offences and sentencing criminal conduct in general. The media role in communicating sentencing outcomes, today's society and culture, and proportionality all featured in participant reflections at various points in the focus group data collection. These factors will be outlined, briefly, below.

The way sentencing outcomes are communicated to the community, then, are relevant to community views on sexual assault and rape offending and particularly how the community ranks offence seriousness and sentencing purposes. The media has a significant role in communicating sentencing outcomes. While the media reports matters of public interest, and sexual offence sentencing outcomes certainly fall within that purview, emotive media reporting can risk undermining the criminal justice system because the complex sentencing factors contributing to a sentence are not always well communicated.³¹ Extra-curial punishment,³² especially in relation to sexual offence sentencing, then, is especially relevant yet not widely considered as a sentencing factor.³³ Extra-curial punishment, in relation to sexual offences, may warrant further research and investigation.

"The rationale for that was... that there's the aspect of publicity around a case that may or may not make it big." (FG18)

"Yeah, because I guess, and it's difficult not to be influenced by, I guess, media and what we see and we read generally in the public domain." (FG18)

Community views were also expressed about today's culture and society. Participants reflected that there were many factors influencing challenges for community members interacting with the legal system, as offenders, victim-survivors or community members:

"I think there are so many things at play that are stuffing up our society at the moment and I could list a whole load of things and not include everything, but I'm thinking things like breakdown in family, intergenerational trauma, lack of trust in the system, the system or politicians not having people's best interests at heart and just trying to get up the ladder and do their own little journey." (FG7)

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

While the length of sentences imposed was not within the scope of this project, sentencing outcomes were mentioned in relation to community members expressing frustration in sentencing outcomes. Those frustrations related to proportionality:

"To me that means at this point in time, we have got a lot of people who have lost a lot of trust in the justice system because they're seeing sentences be given out to people. And this is not just for sexual assaults, this is for really anything that goes on out there that aren't fitting the crime. You've got paedophiles who are getting the most minimal sentences when you've got real simple low level drug offenders, for example, getting higher sentencing rates and they're in there for longer. And just to me, that's really out of balance and I think that reflects very highly in the community's trust of authority and the sentencing and the justice system." (FG7)

³¹ Arie Freiberg, *Fox & Freiberg's Sentencing: State and Federal Law in Victoria* (Thomson Reuters, 3rd ed, 2014) 907–10; Paul McGorery, 'Should Media Coverage Affect Sentencing', *Victorian Sentencing Advisory Council* (Report, 2022).

³² *Silvano v R* [2008] NSWCCA 118.

³³ *DPP v Pell* [2019] VCC 260.