



Queensland Sentencing
Advisory Council

Sentencing of Sexual Assault and Rape: The Ripple Effect

Appendices

December 2024

Contents

Appendix 1: Terms of Reference	1
Appendix 2: Project Board membership	4
Appendix 3: Stakeholder consultation and submissions.....	5
3.1 Individuals, agencies and organisations consulted, and forums held (29 May 2023 – December 2024)	5
3.2 Victim survivor consultation	6
3.3 Subject Matter Expert ('SME') interview participants	6
3.4 Preliminary Submissions	6
3.5 Submissions in response to <i>Consultation Paper: Issues and Questions</i>	7
Appendix 4: Sentencing trends and outcomes for sexual assault and rape offences.....	8
4.1 By the numbers – the sentencing of sexual assault and rape offences in Queensland.....	8
4.2 An overview of sentenced cases involving rape and sexual assault.....	9
4.3 Demographics of people sentenced for rape and sexual assault.....	12
4.4 Context of offending.....	13
4.5 Characteristics of sentenced cases involving rape and sexual assault.....	20
4.6 Recidivism of people sentenced for rape and sexual assault	29
4.7 Sentencing outcomes for rape	33
4.8 Sentencing outcomes for sexual assault.....	66
4.9 Sentencing outcomes for comparator offences.....	101
Appendix 5: Data tables.....	113
Appendix 6: Thematic analysis of sentencing remarks	115
6.1 Understanding sentencing practices: A thematic analysis of sentencing remarks.....	115
6.2 Sentencing practices for sexual assault and rape offences.....	115
Appendix 7: Sentencing submissions analysis.....	142
7.1 Appeal decisions relied upon at sentence at first instance by the prosecution service	142
7.2 Appeal decisions relied upon at sentence at first instance by defence practitioners.....	143
Appendix 8: Structured interview guides for interviews.....	144
Appendix 9: Cross-jurisdictional analysis of sentencing outcomes	164
Appendix 10: Developments in Victoria: A case study.....	167
10.1 About this appendix.....	167
10.2 Developments in Victoria: A case study.....	167
Appendix 11: Section 9 <i>Penalties and Sentences Act 1992</i> (Qld) [extract as at 19 September 2024].....	175
Appendix 12: Section 9 <i>Penalties and Sentences Act 1992</i> (Qld) [historical as at 24 November 1992]	187
Appendix 13: Criminal Code (Qld) [extract].....	190
Appendix 14: Cross-jurisdictional comparison of the legislative purposes of sentencing	193
Appendix 15: Cross jurisdictional comparison of rape and sexual assault offence and penalties	198
15.1 Australian jurisdictions	198
15.2 International jurisdictions.....	221
Appendix 16: Cross-jurisdictional comparison of good character.....	232
Appendix 17: Cross-jurisdictional analysis of guiding information on how to prepare victim impact statements	238
Appendix 18: Cross-jurisdictional comparison of victim impact statement regimes	242

List of Figures

Figure A1: Number of rape cases (MSO), 2005–06 to 2022–23	10
Figure A2: Number of sexual assault cases (MSO), 2005–06 to 2022–23	10
Figure A3: Most common 8 offences co-sentenced with rape (MSO).....	11
Figure A4: Most common 8 offences co-sentenced with sexual assault (MSO)	12
Figure A5: Plea type for sexual assault (MSO) by circumstances of aggravation and court level	22
Figure A6: Plea type for rape (MSO) by Aboriginal and Torres Strait Islander status.....	22
Figure A7: Plea type for sexual assault (MSO) by circumstances of aggravation, court level, and Aboriginal and Torres Strait Islander status	23
Figure A8: Median number of days between criminal justice system events for guilty pleas to rape (MSO) sentenced, 2005–06 to 2022–23.....	25
Figure A9: Median number of days between criminal justice system events for not guilty pleas to rape (MSO) sentenced, 2005–06 to 2022–23	25
Figure A10: Median number of days between criminal justice system events for guilty pleas to sexual assault (MSO) sentenced in the higher courts, 2005–06 to 2022–23	26
Figure A11: Median number of days from committal hearing to sentence by circumstance of aggravation, for guilty pleas to sexual assault (MSO) sentenced in the higher courts, 2005–06 to 2022–23.....	27
Figure A12: Median number of days between criminal justice system events for not guilty pleas to sexual assault (MSO) sentenced in the higher courts, 2005–06 to 2022–23.....	27
Figure A13: Median number of days from committal hearing to sentence by circumstance of aggravation, for not guilty pleas to sexual assault (MSO) sentenced in the higher courts, 2005–06 to 2022–23	28
Figure A14: Median number of days between criminal justice system events for guilty pleas to sexual assault (MSO) sentenced in the lower courts, 2005–06 to 2022–23.....	28
Figure A15: Methodology for prior offending	29
Figure A16: Methodology for subsequent offending	29
Figure A17: Most common prior offences for people sentenced for rape, 2020–21 to 2022–23	30
Figure A18: Most common subsequent offences for people sentenced for rape, 2014–15 to 2016–17	31
Figure A19: Most common prior offences for people sentenced for sexual assault, 2020–21 to 2022–23.....	32
Figure A20: Most common subsequent offences for people sentenced for sexual assault, 2014–15 to 2016–17	33
Figure A21: Custodial penalty type for rape (MSO).....	35
Figure A22: Custodial penalty type imposed for rape (MSO), by year of sentence (grouped)	37
Figure A23: Summary of custodial penalty length for rape (MSO) by year of sentence	37
Figure A24: Length of custodial sentences by type of rape and age of victim survivor (MSO)	41
Figure A25: Rape (MSO) by Aboriginal and Torres Strait Islander status and year.....	46
Figure A26: Custodial penalty type for rape (MSO) by Aboriginal and Torres Strait Islander status	47
Figure A27: Proportion of cases sentenced to a custodial sentence for rape (MSO) that had co-sentenced offences.	51
Figure A28: Penalty type for co-sentenced offences with a partially suspended sentence for rape (MSO)	52
Figure A29: Penalty type for co-sentenced offences with a wholly suspended sentence for rape (MSO)	53
Figure A30: Proportion of cases that received a probation order within the same court event as a suspended sentence, by offence type	53
Figure A31: Time to serve in custody for rape (MSO) before being eligible for release on parole, by plea type, 2011–12 to 2022–23.....	55
Figure A32: Time before a person is eligible for release on parole as a proportion of the head sentence for rape (MSO), by plea type, 2011–12 to 2022–23.....	56
Figure A33: Time to serve before release for partially suspended sentence for rape (MSO), by plea type, 2011–12 to 2022–23	57
Figure A34: Proportion of a partially suspended sentence to be served before release for rape (MSO), by plea type, 2011–12 to 2022–23.....	58
Figure A35: Length of imprisonment orders for rape (MSO) by SVO	59
Figure A36: Parole application outcomes for prisoners sentenced for rape (MSO).....	60
Figure A37: Breach of partially suspended sentences for rape (MSO).....	62
Figure A38: Breach of wholly suspended sentences for rape (MSO).....	63
Figure A39: Use of pre-sentence custody for rape (MSO), 2011–12 to 2022–23.....	64
Figure A40: Number of sexual assault cases (MSO) by circumstance of aggravation and court level	68
Figure A41: Penalty type for sexual assault (MSO) by circumstances of aggravation and court level.....	69
Figure A42: Custodial penalty types sentenced for sexual assault (MSO), by circumstance of aggravation and court level.....	70

Figure A43: Non-custodial penalty types sentenced for non-aggravated sexual assault (MSO), by court level	73
Figure A44: Proportion of custodial penalties for non-aggravated sexual assault (MSO), by court level and year of sentence (grouped).....	74
Figure A45: Penalties imposed for non-aggravated sexual assault (MSO) in the Magistrates Courts, by year of sentence (grouped).....	75
Figure A46: Summary of custodial penalty length for non-aggravated sexual assault (MSO) imposed in the Magistrates Courts, by year of sentence.....	76
Figure A47: Penalties imposed for non-aggravated sexual assault (MSO) in the higher courts, by year of sentence (grouped).....	77
Figure A48: Summary of custodial penalty length for non-aggravated sexual assault (MSO) imposed in the higher courts, by year of sentence	78
Figure A49: Penalty type by conduct for non-aggravated sexual assault cases involving 'indecent touching' (MSO).....	80
Figure A50: Sexual assault (MSO) by Aboriginal and Torres Strait Islander status and year	84
Figure A51: Proportion of cases sentenced for sexual assault (MSO) that had co-sentenced offences, by custodial penalty type and court level	89
Figure A52: Penalty type for co-sentenced offences with a partially suspended sentence for sexual assault (MSO), by court level	90
Figure A53: Penalty type for co-sentenced offences with a wholly suspended sentence for sexual assault (MSO), by court level	90
Figure A54: Proportion of cases that received a probation order within the same court event as a suspended sentence, by circumstance of aggravation.....	91
Figure A55: Time to serve in custody for sexual assault (MSO) on an imprisonment order, before being eligible for release on parole, by plea type and court level, 2011–12 to 2022–23	93
Figure A56: Proportion of imprisonment sentence to be served before being eligible for release on parole for sexual assault (MSO), by plea type and court level, 2011–12 to 2022–23.....	94
Figure A57: Time to serve before release for partially suspended sentence for sexual assault (MSO), by plea type and court level, 2011–12 to 2022–23.....	95
Figure A58: Proportion of partially suspended sentence to be served before release for sexual assault (MSO), by plea type and court level, 2011–12 to 2022–23.....	96
Figure A59: Breach of partially suspended sentences for sexual assault (MSO)	97
Figure A60: Breach of wholly suspended sentences for sexual assault (MSO)	98
Figure A61: Subsequent outcomes for partially suspended sentences for sexual assault (MSO), by circumstance of aggravation and court level.....	99
Figure A62: Subsequent outcomes for wholly suspended sentences for sexual assault (MSO), by circumstance of aggravation and court level	99
Figure A63: Use of pre-sentence custody for sexual assault (MSO), 2011–12 to 2022–23	101
Figure A64: Proportion of sentenced cases by penalty type (MSO), comparator offences, 2020–21 to 2022–23.....	104
Figure A65: Average length of custodial orders (MSO), comparator offences, 2020–21 to 2022–23.....	105
Figure A66: Distribution of length of custodial orders (MSO), comparator offences, 2020–21 to 2022–23	106
Figure A67: Penalty imposed for ASOC 031 sexual assault (MSO) sentenced in the higher courts, July 2020 to June 2023 ...	109
Figure A68: Custodial sentence lengths for ASOC 031 sexual assault (MSO) sentenced in the higher courts, July 2020 to June 2023.....	110
Figure A69: Penalty imposed for ASOC 031 sexual assault and selected comparison offences (MSO) sentenced in the Magistrates Courts, July 2018 to June 2023.....	111
Figure A70: Custodial sentence lengths for ASOC 031 sexual assault (MSO) and selected comparison offences sentenced in the Magistrates Courts, July 2018 to June 2023	112

List of Tables

Table A1: Demographics of people sentenced for rape (MSO) and sexual assault (MSO).....	13
Table A2: High-level relationship categories for cases involving rape and sexual assault (MSO).....	14
Table A3: Detailed relationship categories for cases involving rape and sexual assault (MSO).....	15
Table A4: Victim survivor gender for cases involving rape and sexual assault (MSO).....	16
Table A5: Victim survivor age for cases involving rape and sexual assault (MSO)	16
Table A6: Type of conduct for cases involving rape (MSO)	17
Table A7: Type of conduct by relationship for cases involving rape (MSO)	18
Table A8: Type of conduct for sexual assault cases (MSO).....	19
Table A9: Type of conduct by relationship for cases involving sexual assault (MSO).....	20
Table A10: Summary of custodial sentence lengths for rape (MSO), by penalty type	36
Table A11: Proportion of penalty type received for cases involving rape (MSO).....	39
Table A12: Median sentence length of custodial sentences by victim survivor age for cases involving rape (MSO)	40
Table A13: Median custodial sentence lengths for cases involving rape (MSO) by age of the victim survivor	43
Table A14: Custodial sentence lengths for cases involving rape (MSO) by relationship group and conduct.....	43
Table A15: Custodial sentence lengths for cases involving rape (MSO) by specific relationship and conduct.....	44
Table A16: Summary of custodial sentence lengths for rape (MSO) by penalty type, gender and Aboriginal and Torres Strait Islander status	48
Table A17: Custodial penalty type and summary statistics for rape (MSO) by offence type	50
Table A18: Appeal status of rape (MSO) cases sentenced in 2018–19	66
Table A19: Summary of custodial sentence lengths for sexual assault (MSO) by circumstance of aggravation, court level and custodial penalty type.....	71
Table A20: Number of penalties by conduct for non-aggravated sexual assault cases (MSO).....	79
Table A21: Average and median length of custodial sentences for non-aggravated sexual assault cases (MSO) involving 'indecent touching', by type of conduct.....	81
Table A22: Relationship type by custodial outcomes for non-aggravated sexual assault cases (MSO).....	81
Table A23: Proportion of custodial sentences by relationship and conduct type for sexual assault cases involving 'indecent touching' (MSO)	82
Table A24: Sexual assault (MSO) by circumstance of aggravation and Aboriginal and Torres Strait Islander status	83
Table A25: Penalty type imposed for sexual assault (MSO), by Aboriginal and Torres Strait Islander status, by circumstance of aggravation and court level.....	86
Table A26: Summary statistics of time to serve in custody for sexual assault (MSO) on an imprisonment order, before being eligible for release on parole, by plea type and court level, 2011–12 to 2022–23.....	94
Table A27: Average and median length of custodial orders (MSO), comparator offences, 2020–21 to 2022–23	107
Table A28: All offences categorised under ASOC 031 sexual assault sentenced in the higher courts, July 2020 to June 2023	108
Table A29: Summary of custodial penalty lengths imposed for sexual assault (MSO), by Aboriginal and Torres Strait Islander status, court level and offence type.....	113
Table A30: Total mentions of each sentencing purpose in the rape and sexual assault sentencing remarks	118
Table A31: Victim impact statements for rape	133
Table A32: Victim impact statements for sexual assault	133
Table A33 Summary outcomes by selected principal offence (03 Sexual assault & related offences), Higher Courts, 2022– 23, select Australian jurisdictions.....	164
Table A34: Summary outcomes by selected principal offence (03 Sexual assault & related offences), Magistrates Courts, 2022–23, select Australian jurisdictions	166
Table A35: Cross-Jurisdictional comparison of purposes of sentencing: Victim harm and perpetrator accountability	193
Table A36: Queensland compared to other Australian jurisdictions: comparison of rape and sexual assault offence and penalties.....	198
Table A37: Queensland compared to select international jurisdictions: comparison of rape and sexual assault offence and penalties.....	221
Table A38: Cross-jurisdictional comparison of good character.....	232
Table A39: Cross-jurisdictional analysis guiding the preparation of victim impact statements.....	238
Table A40: Cross-jurisdictional Comparison Table – Legislative Requirements Surrounding the Provision of a Victim Impact Statement	242

Appendix 1: Terms of Reference

TERMS OF REFERENCE

QUEENSLAND SENTENCING ADVISORY COUNCIL

SENTENCING FOR SEXUAL VIOLENCE OFFENCES AND AGGRAVATING FACTOR FOR DOMESTIC AND FAMILY VIOLENCE OFFENCES

I, Shannon Fentiman, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, having regard to:

- the report of the Special Taskforce on Domestic and Family Violence *Not Now, Not Ever: Putting an end to domestic and family violence in Queensland*;
- amendments made in the *Criminal Law (Domestic Violence) Amendment Act 2015* to the *Domestic and Family Violence Protection Act 2012* to increase the maximum penalties for contravening a domestic violence order and to the *Penalties and Sentences Act 1992* to provide for notations to indicate the domestic and family violence context of criminal offending;
- further amendments made in the *Criminal Law (Domestic Violence) Amendment Act 2016* to the *Penalties and Sentences Act 1992* making domestic and family violence an aggravating factor on sentence;
- the Queensland Sentencing Advisory Council research brief No.1, May 2021, *The impact of domestic violence as an aggravating factor on sentencing outcomes*;
- the report of Women's Safety and Justice Taskforce, *Hear her voice: Report one*, including recommendation 73 of that report;
- the report of Women's Safety and Justice Taskforce, *Hear her voice: Report two*;
- commentary expressing that penalties currently imposed on sentences for sexual assault and rape offences may not always meet the Queensland community's expectations;
- the maximum penalties provided in the Criminal Code for sexual assault and rape offences;
- the general expectation of the Queensland community that penalties imposed on offenders convicted of domestic and family violence offences and sexual assault and rape offences are appropriately reflective of the nature and seriousness of domestic and family violence and sexual violence;
- the need to protect victims from domestic and family violence and sexual violence;
- the need to hold domestic and family violence and sexual violence offenders to account;
- the sentencing principles and purposes of sentencing as outlined in the *Penalties and Sentences Act 1992*
- the need to maintain judicial discretion to impose a just and appropriate sentence in individual cases; and
- the need to promote public confidence in the criminal justice system.

refer to the Queensland Sentencing Advisory Council, pursuant to section 199(1) of the *Penalties and Sentences Act 1992*, a review of sentencing practices for sexual assault and rape offences and the operation and efficacy of section 9(10A) of the *Penalties and Sentences Act 1992*.

Scope

In undertaking this reference, the Queensland Sentencing Advisory Council will:

- review national and international research, reports and publications relevant to sentencing practices for sexual assault and rape offences and in sentencing adult offenders for domestic violence offences;

i. Sentencing practices for sexual assault and rape offences

- examine the penalties currently imposed on sentences under the *Penalties and Sentences Act 1992* for sexual assault and rape offences and review sentencing practices for these offences including the types of sentencing orders, duration and (any) time ordered to be served in custody prior to the offender being released into the community or being eligible for release on parole;
- determine whether penalties currently imposed on sentence under the *Penalties and Sentences Act 1992* for sexual assault and rape offences adequately reflect community views about the seriousness of this form of offending and the sentencing purposes of just punishment, denunciation and community protection;
- identify any trends or anomalies that occur in sentencing for sexual assault and rape offences;
- assess whether the existing sentencing purposes and factors set out in the *Penalties and Sentences Act 1992* are adequate for the purposes of sentencing sexual assault and rape offenders and identify if any additional legislative guidance is required;
- identify and report on any legislative or other changes required to ensure the imposition of appropriate sentences for sexual assault and rape offences;
- advise on options for reform to the current penalty and sentencing framework to ensure it provides an appropriate response to this type of offending;
- examine relevant offence, penalty, and sentencing provisions in other Australian and international jurisdictions to address offending behaviour relating to sexual assault and rape and any evidence of the impact of any reforms on sentencing practices;

ii. Operation and efficacy of section 9(10A) of the *Penalties and Sentences Act 1992* and impact of increase in maximum penalties for contravention of a domestic violence order

- review sentencing practices for domestic violence related offences following changes to the *Penalties and Sentences Act 1992* by the *Criminal Law (Domestic Violence) Amendment Act 2016* to make the fact a person is convicted of a domestic violence offence an aggravating factor for the purposes of sentencing, except if it is not reasonable because of the exceptional circumstances of the case;
- advise on the impact of the operation of the aggravating factor in section 9(10A) of the *Penalties and Sentences Act 1992* on sentencing outcomes for all domestic violence related offences including for charges involving non-physical violence and coercive control;
- identify any trends or anomalies that occur in application of the aggravating factor in section 9(10A) of the *Penalties and Sentences Act 1992* or in sentencing for domestic violence-related conduct generally that create inconsistency or constrain the sentencing process;
- examine whether section 9(10A) of the *Penalties and Sentences Act 1992* is impacting victims' satisfaction with the sentencing process and if so, in what way;
- consider how sentencing trends and outcomes for contravention of a domestic violence order may have changed following the 2015 increase in the maximum penalties following amendments by the *Criminal Law (Domestic Violence) Amendment Act 2015 (Qld)*;

Consultation

- consult with key stakeholders, including but not limited to the judiciary, victims/survivors of domestic and family violence and sexual violence, the legal profession, key First Nations community representatives and organisations, domestic and family violence services, sexual violence advocacy groups, community legal centres and relevant government departments and agencies (e.g. Queensland Police Service and Director of Public Prosecutions);

Impact of recommendations and other matters

- advise on the impact of any recommendation on the disproportionate representation of Aboriginal and Torres Strait Islander people in the criminal justice system;
- advise whether the legislative provisions that the Queensland Sentencing Advisory Council reviews in the *Penalties and Sentences Act 1992*, and any recommendations are compatible with rights protected under the *Human Rights Act 2019*; and
- advise on any other matters relevant to this reference.

The Queensland Sentencing Advisory Council is to provide to the Attorney-General and Minister for Justice, Minister for Women, and Minister for the Prevention of Domestic and Family Violence a report on its examination of:

- (i) sentencing practices for sexual assault and rape offences by **16 September 2024**; and
- (ii) the operation and efficacy of section 9(10A) of the *Penalties and Sentences Act 1992* and impact of increase in maximum penalties for contravention of a domestic violence order by **30 September 2025**

Dated the *17th* day of *May* 2023



SHANNON FENTIMAN MP

Attorney-General and Minister for Justice, Minister for Women, and Minister for the Prevention of Domestic and Family Violence

Appendix 2: Project Board membership

Professor Elena Marchetti

Project Sponsor

Julie Dick SC

Senior User

Debbie Kilroy OAM

Senior User

Jo Bryant

Senior User

Matt Jackson

Senior User

Ann Lyons AM

Senior User (from July 2024)

Boneta-Marie Mabo

Senior User (until February 2024)

April Chrzanowski

Senior Supplier

Appendix 3: Stakeholder consultation and submissions

3.1 Individuals, agencies and organisations consulted, and forums held (29 May 2023 – December 2024)

Date	Agency / Organisation
20 June 2023	Aboriginal and Torres Strait Islander Panel Meeting
11 July 2023	Practitioner Consultative Forum Meeting
12 July 2023	Research Consultative Forum Meeting
17 July 2023	Meeting with Geraldine Mackenzie
19 July 2023	Meeting with Queensland Corrective Services at Arthur Gorrie Correctional Centre and Wolston Correctional Centre
24 August 2023	Aboriginal and Torres Strait Islander Panel Meeting
25 August 2023	Meeting with Kate Warner
11 October 2023	Research Consultative Forum Meeting
30 November 2023	Aboriginal and Torres Strait Islander Panel Meeting
9 November 2023	Meeting with Queensland Sexual Assault Network ('QSAN')
14 November 2023	Practitioner Consultative Forum Meeting
2 February 2024	Meeting with Parole Board Qld
29 February 2024	Aboriginal and Torres Strait Islander Panel Meeting
11 March 2024	Brisbane Consultation Event
20 March 2024	Research Consultative Forum Meeting
21 March 2024	Cairns Consultation Event
3 April 2024	Online Consultation Event
16 April 2024	Online Consultation Event
18 April 2024	Aboriginal and Torres Strait Islander Panel Meeting
19 April 2024	Meeting with representatives from Victims Assist Queensland ('VAQ')
7 May 2024	Meeting with representatives from The Public Advocate
9 May 2024	Meeting with Deputy Family Responsibilities Commission
16 May 2024	Meeting with Australian Psychological Society
5 June 2024	Practitioner Consultative Forum Meeting
24 June 2024	Aboriginal and Torres Strait Islander Panel Meeting
25 June 2024	Practitioner Consultative Forum Meeting
26 June 2024	Research Consultative Forum Meeting
28 June 2024	Meeting with Queensland Police Service ('QPS')
9 July 2024	Meeting with Queensland Law Society – Criminal Law Committee
23 July 2024	Meeting with Director of Public Prosecutions ('DPP')
30 August 2024	Aboriginal and Torres Strait Islander Panel Meeting
2 October 2024	Research Consultative Forum Meeting
31 October 2024	Aboriginal and Torres Strait Islander Panel Meeting
5 December 2024	Aboriginal and Torres Strait Islander Panel Meeting

3.2 Victim survivor consultation

Date	Participant
15 February 2024	Victim Survivor Interview 1
15 February 2024	Victim Survivor Interview 2
17 March 2024	Victim Survivor Interview 3
1 May 2024	Victim Survivor Interview 4
21 June 2024	Victim Survivor Interview 5
17 July 2024	Victim Survivor Interview 6
24 September 2024	Victim Survivor Interview 7
15 February 2024	Victim Survivor Support Workers Group 1
14 March 2024	Victim Survivor Support Worker Individual 2
1 May 2024	Victim Survivor Support Workers Group 3

3.3 Subject Matter Expert ('SME') interview participants

Participant Group	Number of Interviews
Legal Practitioner (including from private defence, Legal Aid Queensland, Aboriginal and Torres Strait Islander Legal Service practitioners and public prosecutors from QPS and the DPP)	16
Judicial Officer (Magistrates Courts, District Court, Supreme Court)	10

3.4 Preliminary Submissions

No	Organisation
1	Name withheld
2	Small Steps 4 Hannah Foundation
3	The Public Advocate
4	Justice Reform Initiative
5	Queensland Sexual Assault Network ('QSAN')
6	Brisbane Rape and Incest Survivors Support Centre ('BRISSC Collective')
7	Aboriginal and Torres Strait Islander Legal Service ('ATSILS')
8	No to Violence
9	Parole Board Queensland
10	Queensland Indigenous Family Violence Legal Service ('QIFVLS')
11	DV CONNECT
12	Queensland Family and Child Commission ('QFCC')
13	Not published
14	The Salvation Army Australia
15	Not published
16	Legal Aid Queensland ('LAQ')
17	Fighters against child abuse Australia ('FACAA')
18	Not published
19	Not published
20	North Queensland Women's Legal Service
21	Women's Legal Service Queensland

22	Relationships Australia Queensland
23	Full Stop Australia
24	Not published
25	Queensland Corrective Services ('QCS')
28	Australian Psychological Society ('APS')
27	Name withheld
28	Sisters Inside Inc

3.5 Submissions in response to *Consultation Paper: Issues and Questions*

No	Organisation
1	Name withheld
2	Not published
3	Queensland Health
4	Rita Lok
5	Not published
6	Stewart W Boyd
7	Chris Ishonay
8	Not published
9	Not published
10	Confidential
11	Not published
12	QUT – School of Justice
13	Justice Reform Initiative
14	Your Reference Ain't Relevant
15	Fighters against child abuse Australia ('FACCA')
16	Uniting Church in Australia, Queensland Synod
17	Queensland Network of Alcohol and Other Drug Agencies Ltd ('QNADA')
18	Rape and Sexual Assault Research and Advocacy ('RASARA')
19	Basic Rights Queensland ('BRQ')
20	DV Connect
21	Dispute Resolution Branch, DJAG
22	TASC Legal and Social Justice Services
23	Legal Aid Queensland ('LAQ')
24	Queensland Sexual Assault Network ('QSAN'); Addendum ('QSAN')
25	Respect Inc and Scarlet Alliance
26	Office of the Interim Victims' Commissioner ('OIVC')
27	Name withheld
28	Aboriginal and Torres Strait Islander Legal Service ('ATSILS')
29	Queensland Mental Health Commission
30	Youth Advocacy Centre ('YAC')
31	Queensland Corrective Services ('QCS')
32	Sisters Inside Inc.
33	The Royal Australian & New Zealand College of Psychiatrists ('RANZCP')
34	Confidential
35	C Murphy

Appendix 4: Sentencing trends and outcomes for sexual assault and rape offences

4.1 By the numbers – the sentencing of sexual assault and rape offences in Queensland

This section provides information about the way offences of rape and sexual assault have been sentenced in Queensland. As Chapter 4 of this report outlines, the Council has drawn on a range of sources. The information in this Appendix includes analysis of:

- administrative datasets, including data obtained from Courts and Corrective Services (see section 4.1 for a discussion of the methodology); and
- content extracted from sentencing remark transcripts (see section 4.2.1 for how this information was extracted).

A broad range of topics are addressed in this Appendix in relation to the sentencing of sexual assault and rape offences. These include:

- an overview of sentenced cases involving charges of rape and sexual assault, including information about trends in the volume of sentenced cases over time, characteristics of these cases, co-sentenced offences, and time between court events (section 4.2);
- demographics of sentenced people (section 4.3);
- the context of the offending, including information about whether the perpetrator was known to the victim survivor and the type of conduct involved in the commission of the offence (section 4.4);
- recidivism of people sentenced for rape and sexual assault (section 4.3);
- sentencing outcomes for rape, including appeal rates (section 4.7);
- sentencing outcomes for sexual assault (section 4.7.11); and
- sentencing outcomes for comparator offences (section 4.9).

For some analysis, the information was not available in the administrative data for the entire period, so a shorter time period was used. Unless stated otherwise, the data focuses on people sentenced as adults for sexual assault or rape as the most serious offence (MSO). Sentencing outcomes for rape and sexual assault are presented separately, noting the different conduct captured within these offences and different maximum penalties that apply.

4.2 An overview of sentenced cases involving rape and sexual assault

The administrative courts dataset (described in section 4.1) used for this analysis covers an 18-year data period, and focuses on all adults sentenced from July 2005 to June 2023¹.

4.2.1 The volume of sentenced cases involving rape and sexual assault

Over the 18-year period, 2,576,406 cases were sentenced in Queensland's criminal courts.² Cases involving sexual violence³ accounted for 0.4 per cent of cases sentenced (n=9,914). The offence of rape was sentenced in 2,233 cases, representing 22.5 per cent of cases involving sexual violence offences and 0.1 per cent of all sentenced cases. The offence of sexual assault was sentenced in 2,543 cases, representing 25.7 per cent of cases involving sexual violence offences and 0.1 per cent of all sentenced cases.

Collectively, cases that involved rape and/or sexual assault (n=4,492) represented 45.3 per cent of all sentenced cases involving sexual violence offences and only 0.2 per cent of all matters sentenced between July 2005 and June 2023.

In 2022–23, there were 167 sentenced cases involving rape, making up 26.4 per cent of cases involving sexual violence offences and 0.1 per cent off all sentenced cases. Similarly, there were 232 sentenced cases involving sexual assault, which accounted for over one-third of cases involving sexual violence offences (36.7%) and 0.2 per cent of all cases sentenced in 2022–23. Collectively, there were 377 cases sentenced in 2022–23 which involved rape and/or sexual assault offences, accounting for 59.6 per cent of sentenced cases involving sexual violence offences and 0.3 per cent of all sentenced cases that year.

Figure A1 shows the number of rape cases sentenced (MSO) during the 18-year period.⁴ There was a steady increase in the number of cases sentenced between 2013–14 and 2019–20. This increase plateaued in 2020–21, then dropped in 2021–22 and 2022–23. This drop in recent years contrasts with the trend observed for sexual assault offences (MSO), which, as can be seen in Figure A2, continued to increase through to 2022–23.

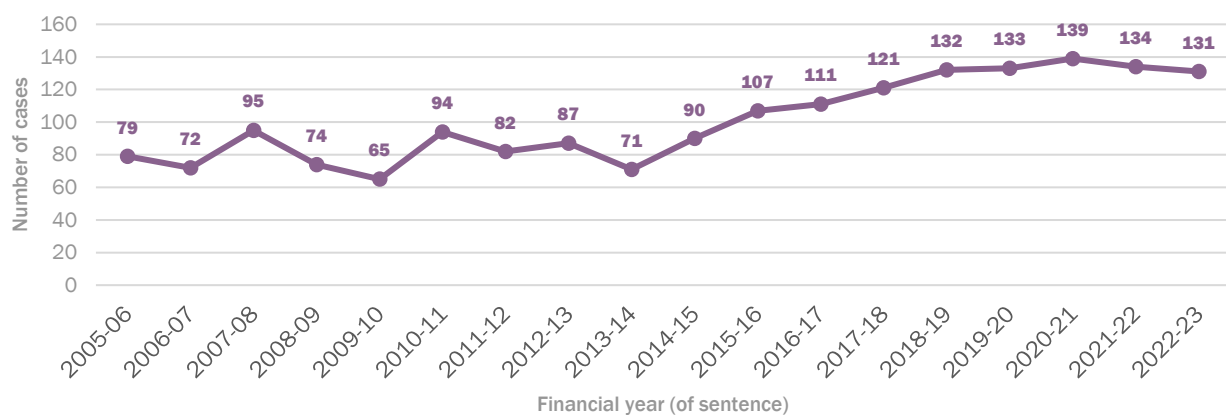
¹ For details regarding children sentenced for these offences, please refer to the Sentencing Spotlights on both rape and sexual assault.

² This includes offences committed by individuals and does not include offences committed by businesses/corporations.

³ In this context, offences of sexual violence include offences classified under the category of 'aggravated sexual assault', (subdivision 031) from the *Australian and New Zealand Standard Offence Classification (ANZSOC)*, 2011, Australian Bureau of Statistics.

⁴ In 2011–12, 1 rape (MSO) case was sentenced in the Magistrates Courts. This case has not been included in this review. One rape (MSO) case sentenced in 2019–20 was included in this review but was later identified as a historical offence and should have been excluded.

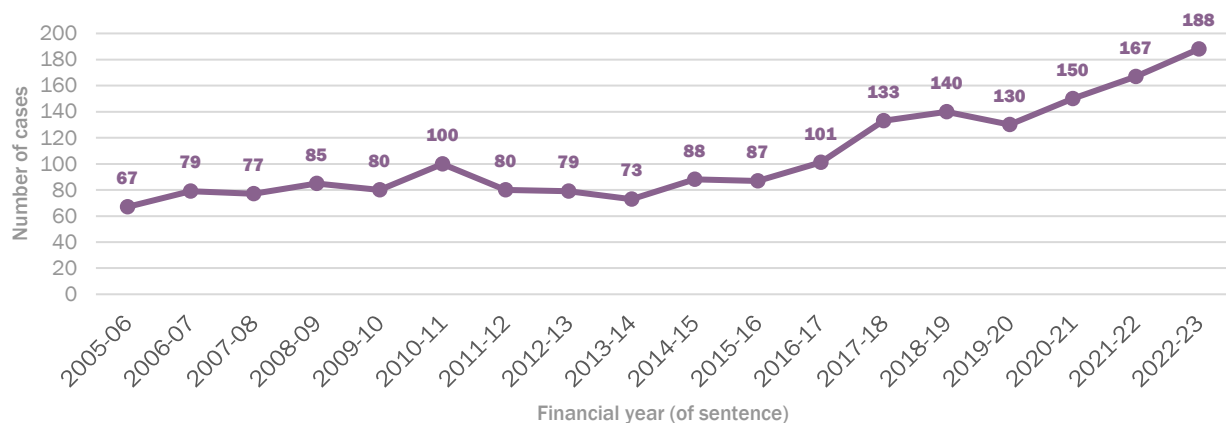
Figure A1: Number of rape cases (MSO), 2005–06 to 2022–23



Data notes: Rape (MSO), adults, higher courts, 2005–06 to 2022–23.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Figure A2: Number of sexual assault cases (MSO), 2005–06 to 2022–23



Data notes: Sexual assault (MSO), adults, higher and lower courts, 2005–06 to 2022–23.

Note: Initially, 188 cases were identified in the courts database as involving a charge of sexual assault as the MSO in 2022–23. However, one case was later excluded as it did not meet the inclusion criteria – the MSO had been mislabelled in the administrative court dataset and a review of the transcript of court proceedings showed that the MSO was not a sexual assault but was a charge of 'assault with intent to commit rape'.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

4.2.2 Co-sentenced offences

A court will sometimes sentence a person for more than one offence at the same court event. This does not necessarily mean the offences were committed as part of the same incident or even that they were committed on the same day. Analysis of offences that are sentenced together can provide context about the type of offending that is commonly associated with rape.

This section looks at how frequently other offences were sentenced at the same court event as a charge of rape or sexual assault.

Later in this Appendix, we explore whether there is any apparent difference in the sentence outcome by penalty type or length of sentence, where there are co-sentenced offences, and also look at the likelihood of a person receiving a suspended sentence for rape and a supervised order for a co-sentenced offence. See section 4.7.6 for this analysis for rape offences, and section 4.8.8 for sexual assault cases.

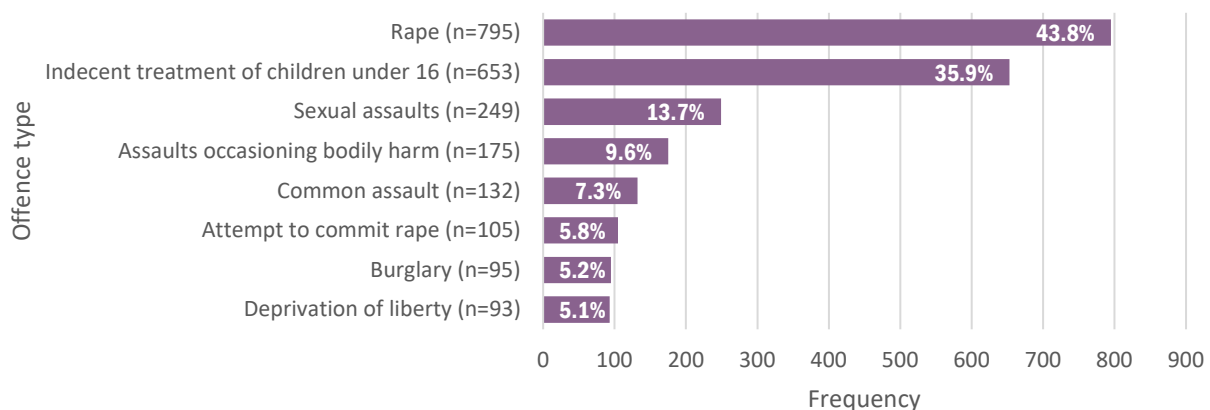
Most common co-sentenced offences for rape

There were 1,817 sentenced cases where rape was the MSO during the 18-year period. There were an additional 416 sentenced cases involving a charge of rape where rape was not the MSO. In these cases, at least one of the co-sentenced offences charged with rape received a penalty that was more serious than the penalty given for the rape offence. In these cases, the MSO was most commonly another serious sexual offence, such as repeated sexual conduct with a child (82.9%)⁵ or attempted rape (2.2%); or a serious violence offence such as torture (3.4%) or murder (2.9%).

The remainder of this section discusses the 1,817 sentenced cases where rape was the MSO and looks at the non-MSO offences that were sentenced alongside the primary charge of rape.

Of the 1,817 sentenced rape cases (MSO), four in five (79.8%) were also sentenced for other offences at the same court event. This most commonly involved additional charges of rape, with 43.8 per cent of cases having multiple rape offences sentenced. Over one-third of rape (MSO) cases involved at least one indecent treatment of a child offence (35.9%).

Figure A3: Most common 8 offences co-sentenced with rape (MSO)



Data notes: Non-MSO offences sentenced with a rape MSO, adults, higher courts, 2005–06 to 2022–23. A case may have more than one offence sentenced with a rape (MSO) therefore totals may add to more than 100%.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Most common co-sentenced offences for sexual assault

There were 1,904 cases sentenced for sexual assault (MSO) over the 18-year period. There were an additional 639 cases involving a charge of sexual assault where it was not the MSO. In these cases, at least one of the co-sentenced offences charged with the sexual assault received a penalty that was more serious than the penalty given for the sexual assault charge.

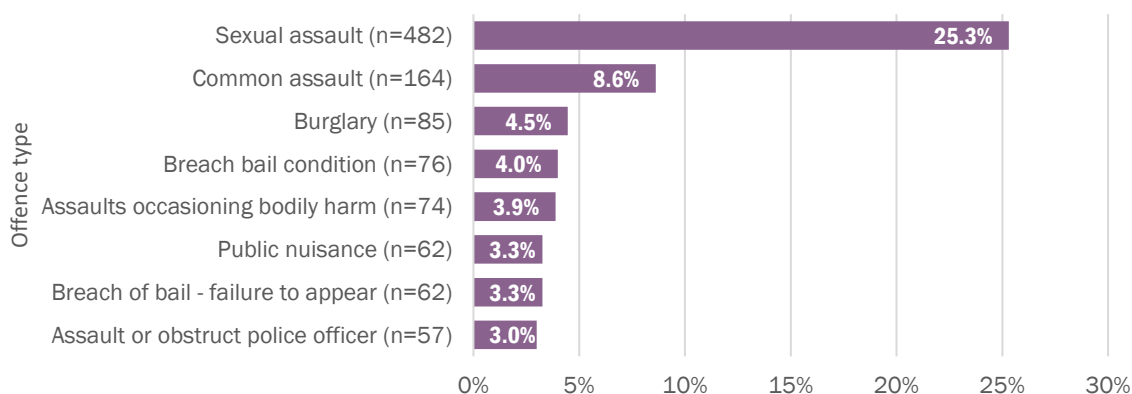
In these 639 cases, the MSO was most commonly a charge of rape (38.5%), indecent treatment of a child under 16 (11.3%), burglary (8.3%), repeated sexual conduct with a child (7.5%)⁶ or assault occasioning bodily harm (6.6%).

⁵ During the 18-year data period, this offence was named maintaining a sexual relationship with a child. It was renamed in 2023.

⁶ This offence was called maintaining an unlawful sexual relationship with a child during the 18-year data period. It changed names in 2023.⁷ As at 30 June 2021. See Australian Bureau of Statistics, Estimates of Aboriginal and Torres Strait Islander Australians, Table 7.3, available at accessed 8 October 2024.

The remainder of this section discusses the 1,904 sentenced cases where sexual assault was the MSO and looks at the non-MSO offences that were sentenced alongside the primary charge of sexual assault. Of the 1,904 sentenced rape cases (MSO), just under half (47.6%) were also sentenced for other offences at the same court event. This most commonly involved additional charges of sexual assault, with 25.3 per cent of cases having multiple sexual assault offences sentenced. Common assault and burglary were the next most common offence co-sentenced with sexual assault (MSO).

Figure A4: Most common 8 offences co-sentenced with sexual assault (MSO)



Data notes: Non-MSO offences sentenced with a sexual assault MSO, adults, Magistrates and higher courts, 2005–06 to 2022–23. A case may have more than one offence sentenced with a rape (MSO) therefore totals may add to more than 100%. Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

4.3 Demographics of people sentenced for rape and sexual assault

The demographics of people sentenced for sexual assault (MSO) and rape (MSO) are discussed in this section.

Given the high rates of under-reporting, and high rates of attrition through the criminal justice system, the descriptive data presented below is unlikely to be reflective of all cases involving sexual assault or rape. A complex range of historical, structural, community and individual-level factors impact the reporting of these offences, as well as who is charged with, convicted of and sentenced for these offences. The findings discussed below should be read with these limitations in mind. For further discussion, see **Chapter 2** of this report.

Almost all people sentenced for rape (MSO) and sexual assault (MSO) from July 2005 to June 2023 were male. For sexual assault (MSO), 98.5 per cent of the people sentenced were male, while for rape this proportion was 99.0 per cent.

Aboriginal and Torres Strait Islander peoples were disproportionately represented in both rape and sexual assault offences. Although Aboriginal and Torres Strait Islander peoples represent approximately 4.0 per cent of Queensland's population (aged 18 years and over),⁷ they accounted for almost a quarter of people sentenced for sexual assault (20.5%) and rape (23.3%) during the 18-year period.

For comparison, Aboriginal and Torres Strait Islander adults were sentenced for 16.8 per cent of all offences (not just sexual offences) sentenced in Queensland between July 2005 and June 2023. In

⁷ As at 30 June 2021. See Australian Bureau of Statistics, Estimates of Aboriginal and Torres Strait Islander Australians, Table 7.3, available at accessed 8 October 2024.

Queensland, Aboriginal and Torres Strait Islander peoples are disproportionately represented in a range of offence categories. This is a result of multiple, complex current and historical factors that continue to impact the lives of Aboriginal and Torres Strait Islander peoples. Rape was committed by younger people compared with sexual assault. On average, people sentenced for rape were younger at the time they committed the offence (34.3 years) than those who committed the offence of sexual assault (37.8 years). For comparison, the average age of all sentenced offences committed by adults (not just sexual offences) was 32.3 years.

Non-Indigenous people who committed these offences were, on average, older than Aboriginal and Torres Strait Islander peoples. On average, Aboriginal and Torres Strait Islander peoples committed rape at the age of 30.3 years and sexual assault at 32.9 years (35.4 years and 39.0 years, respectively, for non-Indigenous people).

While the analysis found that Aboriginal and Torres Strait Islander peoples who were sentenced for rape or sexual assault were younger than non-Indigenous people who were sentenced, this may be because the average age of the Aboriginal and Torres Strait Islander population is younger compared with the non-Indigenous population.

Table A1: Demographics of people sentenced for rape (MSO) and sexual assault (MSO)

Offence	Rape (MSO)	Sexual assault (MSO)
Sample size	1,817	1,904
Men	99.0%	98.5%
Aboriginal and Torres Strait Islander peoples	23.3%	20.5%
Average age at offence	34.3 years	37.8 years

Data notes: Rape (MSO): adults, higher courts, 2005–06 to 2022–23; Sexual assault (MSO), adults, higher and lower courts, 2005–06 to 2022–23.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

4.4 Context of offending

Note: This section has a shorter data period compared with the other data reported in the rest of this Appendix. This section includes analysis of cases sentenced between July 2020 and June 2023.

Limited data is available in administrative datasets about the specifics of individual offences of rape and sexual assault, such as the type of criminal behaviour that took places and whether the perpetrator was known to the victim survivor. To overcome this limitation, the Council extracted this information from court transcripts for a sample of cases. The data presented in this section is the result of a content analysis of these sentencing remarks. For more information about the methodology used to obtain this data, refer to section 4.3.1 in **Chapter 4**.

For cases involving a sentence for rape (MSO), all cases sentenced between July 2020 and June 2023 (a 3-year period) were included in this analysis (n=403⁸).

⁸ Initially, 404 cases were identified in the courts database as involving a charge of rape as the MSO from 2020-21 to 2022-23. A manual review of court transcripts identified that in one case, the defendant had pleaded guilty to a lesser charge of sexual assault and had not been convicted or sentenced for rape. This reduces the size of the population from N=404 to N=403.

For cases involving a sentence for sexual assault (both aggravated and non-aggravated) (MSO), all cases sentenced in 2022–23 (a one-year period) were included in this analysis (n=187⁹). The vast majority of these cases were non-aggravated sexual assault (n=182); 6 cases involved aggravated sexual assault.

4.4.1 Was the perpetrator known to the victim survivor?

Relationship information was coded based on the victim survivor’s point of view (did the victim survivor know the perpetrator) and was not coded from the perpetrators point of view. See section 4.3.1 in **Chapter 4** for a detailed description of the methodology used for this analysis.

Rape was most often committed by someone known to the victim survivor, most often an ‘other known person’ or a family member of the victim survivor.

Comparatively, sexual assault (MSO) offences were mostly committed by a stranger. In this context, a stranger was defined as someone that the victim survivor did not know, only knew by hearsay, or someone the victim survivor had only met that day.

Table A2: High-level relationship categories for cases involving rape and sexual assault (MSO)

Type of relationship	Cases involving rape (MSO)		Cases involving sexual assault (MSO)	
	Cases	%	Cases	%
Stranger	45	11.2	81	43.3
Other	140	34.7	79	42.2
Family	136	33.7	14	7.5
Partner	82	20.3	13	7.0
Total	403	100.0	187	100.0

Source: Content analysis of sentencing remarks – see section 4.3.1 in Chapter 4 for a description of the methodology. Rape cases included those matters sentenced between 2020–21 and 2022–23 (a 3-year period), sexual assault cases include matters sentenced in 2022–23 (a one-year period).

Table A3 provides a more detailed breakdown of the types of relationships.

⁹ Initially, 188 cases were identified in the courts database as involving a charge of sexual assault as the MSO in 2022–23. However, one case was excluded as it did not meet the inclusion criteria – the MSO had been mislabelled in the administrative court dataset and a review of the transcript of court proceedings showed that the MSO was not a sexual assault but was a charge of ‘assault with intent to commit rape’

Table A3: Detailed relationship categories for cases involving rape and sexual assault (MSO)

Relationship category	Specific relationship	Cases involving rape (MSO)		Cases involving sexual assault (MSO)	
		Cases	%	Cases	%
Partner	Current partner	47	11.7	10	5.3
Partner	Ex-partner	28	6.7	2	1.1
Partner	Someone I went on a few dates with (includes one date only)	7	1.7	1	0.5
Family	Parent	77	19.1	4	2.1
Family	Sibling	20	5.0	5	2.7
Family	Other	39	9.7	5	2.7
Other known person	Friend or housemate	37	9.2	17	9.1
Other known person	Acquaintance or neighbour	64	15.9	9	4.8
Other known person	Employer/manager/supervisor	5	1.2	3	1.6
Other known person	Co-worker	4	1.0	7	3.7
Other known person	Teacher/tutor	2	0.5	0	0.0
Other known person	Client/patient/customer	4	1.0	24	12.8
Other known person	Medical practitioner (e.g. doctor, psychologist, nurse, counsellor)	8	2.0	11	5.9
Other known person	Carer	2	0.5	1	0.5
Other known person	Other known person (not elsewhere defined)	14	3.5	7	3.7
Stranger	met that day/night	31	7.7	16	8.6
Stranger	known by hearsay (e.g. friend of friend)	2	0.5	8	4.3
Stranger	true stranger; never met; not known by hearsay	12	3.0	57	30.5
Total		403	100.0	187	100.0

Source: Content analysis of sentencing remarks – see section 4.3.1 in Chapter 4 for a description of the methodology. Rape cases include matters sentenced between 2020–21 and 2022–23 (a 3-year period), sexual assault cases include matters sentenced in 2022–23 (a one-year period).

For cases involving an offence of rape (MSO), the most common relationship between a victim survivor and the offending person was a parental relationship (including step-parents) (19.2%), followed by an acquaintance or neighbour (15.9%) and a current partner (11.7%). Very few rape (MSO) offences were

committed by someone who was a total stranger to the victim survivor, with only 3 per cent of all cases falling into this category.

For cases involving a charge of sexual assault (MSO), the most common perpetrator was a stranger who was completely unknown to the victim survivor (30.5% of cases). An additional 12.9 per cent of cases involved a stranger who was known to the victim survivor in some way, having either met earlier that day (8.6% of cases), or through having some knowledge about who the person is despite having never met (4.3% of cases). The second most common category was that of 'other known person' (n=79, 42.2% of cases). This most often involved a client/patient/customer (12.8% of cases), a friend of roommate (9.1% of cases) or a medical practitioner (5.9% of cases).

4.4.2 Victim survivor demographics

Table A4 shows the number and proportion of cases in which the victim survivor was a male or female.

For both cases involving rape and sexual assault, most victim survivors were female. This was slightly higher for rape cases, in which 94.3 per cent of victim survivors were female compared to sexual assault cases where 93.0 per cent of the victim survivors were female.

Table A4: Victim survivor gender for cases involving rape and sexual assault (MSO)

Victim survivor gender	Cases involving rape (MSO)		Cases involving sexual assault (MSO)	
	Cases	%	Cases	%
Female	380	94.3	174	93.0
Male	23	5.7	13	7.0
Total	403	100.0	187	100.0

Source: Content analysis of sentencing remarks – see section 4.3.1 in Chapter 4 for a description of the methodology. Rape cases include matters sentenced between 2020–21 and 2022–23 (a 3-year period), sexual assault cases include matters sentenced in 2022–23 (a one-year period).

Table A5 shows the number and proportion of cases in which the victim survivor was an adult or a child.

Table A5: Victim survivor age for cases involving rape and sexual assault (MSO)

Victim survivor age	Cases involving rape (MSO)		Cases involving sexual assault (MSO)	
	Cases	%	Cases	%
Adult	201	49.9	163	87.2
Child	202	50.1	24	12.8
Total	403	100.0	187	100.0

Source: Content analysis of sentencing remarks – see section 4.3.1 in Chapter 4 for a description of the methodology. Rape cases include matters sentenced between 2020–21 and 2022–23 (a 3-year period), sexual assault cases include matters sentenced in 2022–23 (a one-year period).

For cases involving a charge of rape (MSO), there was an even split between adult and child victim survivors, 49.9 per cent (n=201) and 50.1 per cent (n=202) respectively. For cases involving an MSO charge of sexual assault, most victim survivors were adults (87.2%, n=163).

4.4.3 Conduct involved in the commission of the offence

A different scheme was used to classify the conduct involved in rape cases as opposed to sexual assault cases. See section 4.3.1 in **Chapter 4** for a detailed description of this methodology.

A single case may contain multiple charges of rape or sexual assault. For this analysis, to avoid counting a single case multiple times where it involved multiple charges of the same offence or where there were different types of conduct, only one type of conduct was included in the analysis for each case.

The type of conduct was coded based on the charge that received that most serious penalty (the MSO). That is, if a person was sentenced for more than one count of rape or sexual assault, only the charge that received the most serious penalty was coded. If more than one charge resulted in the same penalty, or if the MSO charge involved multiple types of conduct, then the conduct to be analysed was selected based on the type of conduct. Section 4.2.1 contains details of which type of conduct was included in this analysis.

Type of conduct in rape cases

Table A6 shows the type of conduct most often involved in offences sentenced for rape (MSO).

Table A6: Type of conduct for cases involving rape (MSO)

Conduct	Cases	%
Penile–vaginal	187	46.4
Digital–vaginal	132	32.8
Oral	39	9.7
Penile–anal	35	8.7
Object	6	1.5
Digital–anal	2	0.5
Body part	2	0.5
Total	403	100.0

Source: Content analysis of sentencing remarks – see section 4.3.1 in Chapter 4 for a description of the methodology. Data includes matters sentenced between 2020–21 and 2022–23 (a 3-year period).

Penile–vaginal rape was the most common type of conduct involved in cases sentenced during the 3-year period, involved in almost half of the cases sentenced (n=187, 46.4%).

Digital–vaginal rape was the second most common type of offending conduct and was present in 32.8 per cent (n=132) of cases sentenced.

The remaining types of conduct were less common, with oral rape and penile–anal rape each comprising just under 10 per cent of cases (9.7% and 8.9%, respectively). Rape involving penetration by an object (1.5%), a body part (0.5%) and digital-anal rape (0.5%) were the least common types of offending conduct within the 3-year period.

Further analysis was undertaken to compare whether there was variation in the type of conduct based on the relationship between the victim survivor and the perpetrator—see Table A7.

Table A7: Type of conduct by relationship for cases involving rape (MSO)

Conduct	Partner	Family	Other known person	Stranger	Total
Penile–vaginal	56	45	55	31	187
Digital–vaginal*	7	47	68	10	132
Oral	1	30	6	2	39
Penile–anal	14	11	8	2	35
Object	2	2	2	0	6
Digital–anal	0	1	1	0	2
Body part	2	0	0	0	2
Total	82	136	140	45	403

Source: Content analysis of sentencing remarks – see section 4.3.1 in Chapter 4 for a description of the methodology. Data includes matters sentenced between 2020–21 and 2022–23 (a 3-year period).

Penile–vaginal rape was a common type of offending conduct across most relationship categories. Penile–vaginal rape was the most common type of rape for instances involving a partner (68.3% of partner rape cases, n=56/82) and by a stranger (70.5% of stranger rape cases, n=31/44). It was also a common type of conduct in cases involving the rape of a family member (33.1% of family rape cases, n=45/136), and for rape by other known persons (39.3% of these cases, n=55/140).

For cases involving rape by a family member or another known person, the type of offending conduct was more varied. For both these relationships, the most common type of offending conduct involved digital–vaginal rape (34.6% of cases involving the rape by a family member, n=47/136; and 48.6% of cases involving rape by an ‘other known person’, n=68/140), followed by vaginal–penile rape as described above (31.1%, n=45/136 and 39.3%, n=55/140 respectively).

Oral rape was relatively uncommon across most categories, but was more common for cases involving family rape, where it was the most serious conduct in 22.1 per cent of cases (n=30/136).

Type of conduct in sexual assault cases

Table A8 shows the type of conduct most common in cases involving a charge of sexual assault (MSO).

Almost all cases of sexual assault (MSO) involved some form of indecent physical touching (n=177, 94.7%). A small number of cases involved the perpetrator masturbating in the presence of the victim survivor (n=5, 2.7%).

In 8.6 per cent of cases (n=16), there was indecent touching involving the mouth of a person coming in contact with genitals in 7 cases (3.7% of cases), and almost all of these were charged as the aggravated form of sexual assault (n=6). The remaining 9 cases involved a mouth coming in contact with another body part; this involved a breast in 2 cases, and a kiss on the lips, face, neck or hand in the remaining 7 cases.

Most cases involved indecent touching other than with a person's mouth (n=158, 84.5%). This most often involved the touching of something other than genitals, which occurred over clothing (n=57, 30.5%). However, the touching of genitals occurred in almost half of cases (n=89, 47.6%). While this usually occurred with the touching of genitals over clothing (n=51, 27.3% of cases), it was also common for the conduct to involve on-skin touching of genitals (n=38, 20.3% of cases).

Table A8: Type of conduct for sexual assault cases (MSO)

Category	Conduct type	Cases	%
Indecent touching	Genitals – on skin	38	20.3
Indecent touching	Genitals – over clothes	51	27.3
Indecent touching	Other body part – on skin	12	6.4
Indecent touching	Other body part – over clothes	57	30.5
Indecent touching	Indecent touching (not further defined)	3	1.6
Indecent touching (with mouth)	Genitals – on skin*	6	3.2
Indecent touching (with mouth)	Genitals – over clothes*	1	0.5
Indecent touching (with mouth)	Other body part – on skin	9	4.8
Other	Masturbation	5	2.7
Other	Not stated	1	0.5
Other	Other	4	2.1
Total		187	100.0

* Please note that 6 of the cases involving indecent touching (with mouth) were sentenced under the aggravated form of this offence. This included 5 cases from the category 'Genitals – on skin' and one case from the category 'Genitals – over clothes'. As discussed below, these cases are excluded from the analysis below that relates to sentencing outcomes.
Source: Content analysis of sentencing remarks – see section 4.3.1 in Chapter 4 for a description of the methodology.
Data includes matters sentenced in 2022–23 (a one-year period).

Further analysis was undertaken to compare whether there was variation in the type of conduct based on the relationship between the victim survivor and the perpetrator (see Table A9).

Touching of genitals with direct skin contact was less common for conduct involving a stranger – only occurring in 16.0 per cent of cases (n=13/81) involving strangers when compared to cases involving an 'other known person' (24.1%, n=19/79).

The touching of genitals over clothing, however, was more common for strangers, occurring in 35.8 per cent of cases (n=29/81) involving strangers, compared with 20.3 per cent of cases (n=16/79) involving 'other known persons'.

The touching of another body part over clothing was one of the more common types of offending conduct and was commonly committed by both an 'other known person' (34.2%, n=27/79) and strangers (32.1%, n=26/81).

Table A9: Type of conduct by relationship for cases involving sexual assault (MSO)

Conduct	Conduct type	Partner	Family	Other known person	Stranger	Total
Indecent touching	Genitals – on skin	3	3	19	13	38
Indecent touching	Genitals – over clothes	3	3	16	29	51
Indecent touching	Other body part – on skin	2	3	3	4	12
Indecent touching	Other body part – over clothes	0	4	27	26	57
Indecent touching	Not further defined	0	0	2	1	3
Indecent touching (with mouth)*	Genitals – on skin	2	0	3	1	6
Indecent touching (with mouth)*	Genitals – over clothes	0	0	1	0	1
Indecent touching (with mouth)*	Other body part – on skin	0	0	5	4	9
Other	Masturbation	0	0	2	3	5
Other	Not stated	1	0	0	0	1
Other	Other	2	1	1	0	4
Total		13	14	79	81	187

* Please note that 6 of the cases involving indecent touching (with mouth) were sentenced under the aggravated form of this offence. This included 5 cases from the category 'Genitals – on skin' and one case from the category 'Genitals – over clothes'. As discussed below, these cases are excluded from the analysis below that relates to sentencing outcomes.
Source: Content analysis of sentencing remarks – see section 4.3.1 in Chapter 4 for a description of the methodology.
Data includes matters sentenced in 2022–23 (a one-year period).

4.5 Characteristics of sentenced cases involving rape and sexual assault

4.5.1 Sentencing court

In almost all cases, the offence of rape is usually dealt with in the higher courts (the District Court or the Supreme Court). There is one exception where the defendant can elect that a matter be dealt with in the Magistrates Courts; this is where the victim survivor is 14 years of age or older and the defendant pleads guilty. This exception is subject to a Magistrate's overriding discretion not to deal with the matter in the

Magistrates Courts because the defendant may not be able to be adequately punished under the three-year maximum imprisonment available in the Magistrates Courts jurisdiction.

Most rape cases were sentenced in the District Court (n=1,795, 98.9%), with a small number sentenced in the Supreme Court (n=22). Over the 18-year data period, only one rape (MSO) case was sentenced in the Magistrates Courts and this case has been excluded from further analysis in this report.

For a sexual assault (either non-aggravated, aggravated or aggravated life), as with the offence of rape, the defendant can elect for the matter to be dealt with in the Magistrates Court if the victim survivor is 14 years of age or older and the defendant pleads guilty. Again, though, this is subject to a Magistrate's overriding discretion to not deal with the matter if they think the person may not be adequately punished if dealt with in the Magistrates Courts.

For non-aggravated sexual assault (MSO) cases, there was a fairly even split between being sentenced in the District Court (n=964, 53.1%) and the Magistrates Courts (n=852, 46.9%). All cases sentenced for sexual assault (aggravated or aggravated life) (MSO) over the period were dealt with in the District Court (n=88).

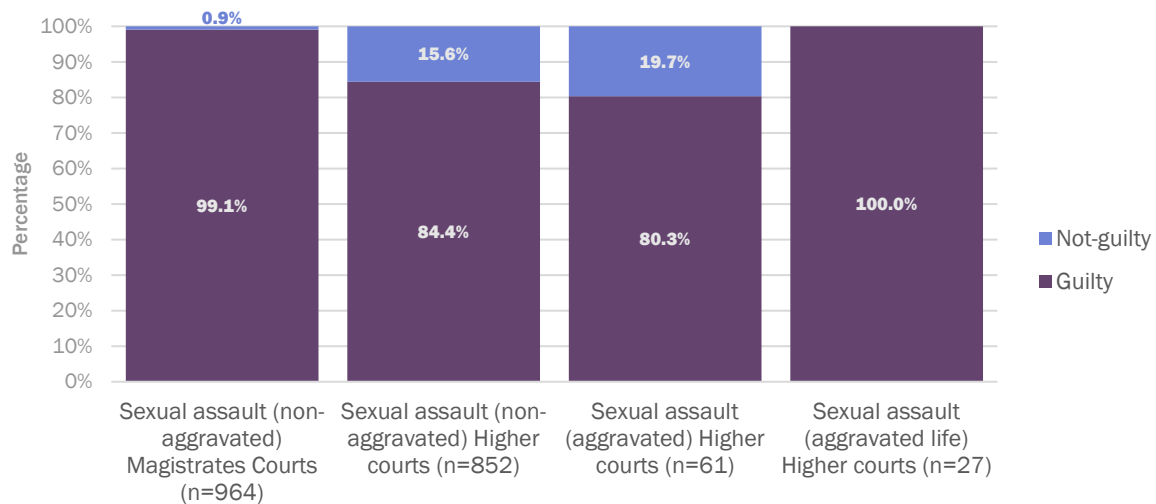
In all cases, a charge for sexual assault or rape may also be sent to the Supreme Court for sentencing if the defendant has a more serious charge being dealt with in the Supreme Court, so all charges can be dealt with together.

4.5.2 Type of plea

In general, sentenced cases involving any sexual offences have a higher proportion of not guilty pleas (11.4%) compared with all other sentenced cases involving other types of offences, where less than 1 per cent plead not guilty. Sentenced cases involving the offence of rape have an even higher proportion of not guilty pleas, with close to one-third of sentenced defendants having entered a plea of not guilty (n=569, 31.3%). Comparatively, the offence of sexual assault had a lower proportion of not guilty pleas (n=154, 8.1%) than either the offence of rape or sexual offences in general, but this was still much larger than the proportion of not guilty pleas for all sentenced offences.

Most people sentenced for sexual assault (MSO) enter a guilty plea (91.9%). This varies slightly by court level and offence type, with sexual assault (aggravated) sentenced in the higher courts having the lowest proportion of guilty pleas at 80.3 per cent, and sexual assault (aggravated life) having the highest (100.0%). In the Magistrates Courts, 99.1 per cent of sexual assault (non-aggravated) cases had a guilty plea, compared to 84.4 per cent of sexual assault (non-aggravated) cases in the higher courts.

Figure A5: Plea type for sexual assault (MSO) by circumstances of aggravation and court level



Data notes: Sexual assault, MSO, adults, Magistrates Courts and higher courts, 2005–06 to 2022–23

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

When plea type is considered by Aboriginal and Torres Strait Islander status, overall few differences are seen.

As noted above, the majority of people sentenced for rape (MSO) enter a guilty plea (68.7%). A slightly higher proportion of Aboriginal and Torres Strait Islander peoples sentenced for rape (MSO) pleaded guilty compared to their non-Indigenous counterparts (71.5% compared to 68.1%). However, this was not significant difference.¹⁰

Figure A6: Plea type for rape (MSO) by Aboriginal and Torres Strait Islander status



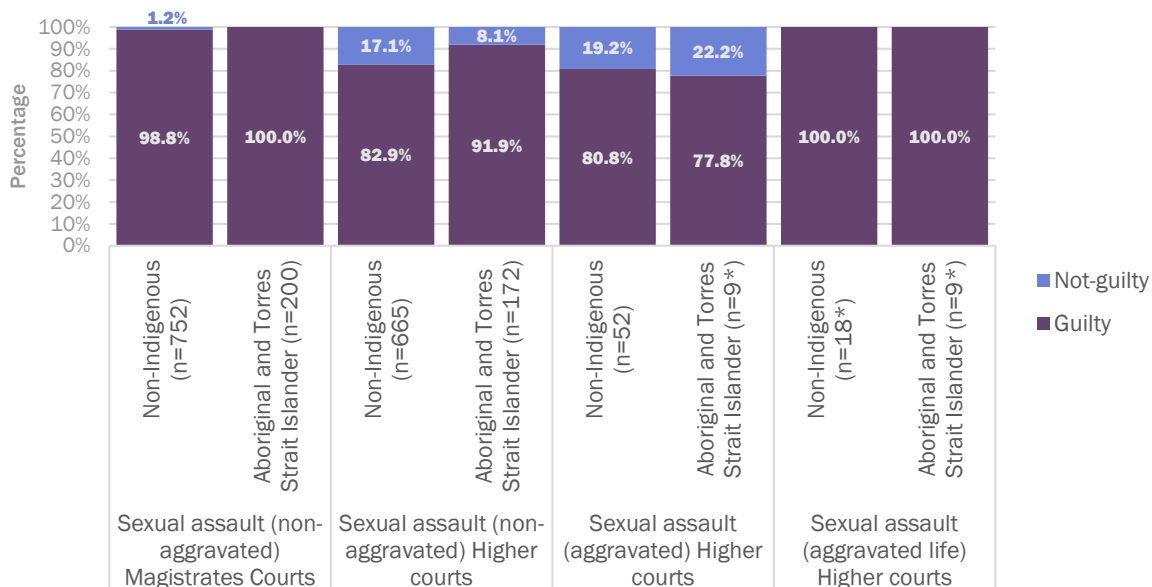
Data notes: Rape (MSO), adults, higher courts, 2005–06 to 2022–23. 23 cases were excluded where Indigenous status was unknown.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

¹⁰ Pearson's Chi-Square Test: $\chi^2(1) = 1.78$, $p = .1823$, $V = 0.03$.

However, for sexual assault (non-aggravated) offences (MSO) sentenced in the higher courts, Aboriginal and Torres Strait Islander peoples were significantly more likely to plead guilty (91.9%) compared to non-Indigenous people (82.9%).¹¹

Figure A7: Plea type for sexual assault (MSO) by circumstances of aggravation, court level, and Aboriginal and Torres Strait Islander status



Data notes: Sexual assault, MSO, adults, Magistrates Courts and higher courts, 2005–06 to 2022–23. 27 cases were excluded where Indigenous status was unknown (Sexual assault (non-aggravated) higher courts n=15, sexual assault (non-aggravated) Magistrates Courts n=12).

* small sample size. Caution should be used when interpreting these results.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

4.5.3 Time between court events

In some instances, cases can take considerable time to progress through the criminal justice system. This section explores the amount of time it takes for rape and sexual assault (MSO) cases to progress from the lower courts to their finalisation (in either the Magistrates, District or Supreme Courts).

Rape

Serious offences such as rape are usually dealt with in the higher courts.¹² However, almost all charges commence in the Magistrates Courts before progressing up to the higher courts by way of a committal hearing.

¹¹ Pearson's Chi-Square Test: $\chi^2(1) = 8.55$, $p = .0035$, $V = 0.10$.

¹² A defendant may elect (choose) for an offence of rape to be dealt with (be sentenced) in the Magistrates Court if the person pleads guilty and the victim is 14 years of age or older: *Criminal Code Act 1899 (Qld)* sch 1, s 552B(1)(a) ('*Criminal Code (Qld)*'). However, a Magistrate has an overriding discretion not to deal with the matter if the defendant may not be adequately punished under summary conviction: s 552D. The maximum sentence of imprisonment a Magistrate can give for rape is 3 years' imprisonment: s 552H(1)(b). If a person is charged with rape and a serious organised crime circumstance of aggravation, it cannot be dealt with in the Magistrates Court: s 552D(2A).

A committal hearing is where a Magistrate first decides whether there is sufficient evidence on which a jury could convict the person charged at trial. In some circumstances, the prosecution can bypass the committal proceeding by presenting an 'ex officio indictment' to the higher court.¹³

Following a committal hearing, the DPP has 6 months to present an indictment in the District Court or Supreme Court.¹⁴ An indictment is a written document that contains the offences charged against the person, and proceedings in the higher court will not start until the prosecution presents an indictment.

Following the presentation of an indictment, the defendant may enter a plea to the charges alleged on that indictment. If a person pleads guilty, the matter will proceed to sentence. If a person pleads not guilty, then the matter will proceed to trial. If a person is found guilty and convicted at trial, the matter will then proceed to sentence.

This section explores how long a case involving an offence of rape (MSO) takes to progress from the committal hearing to sentence. It also looks at the median number of days between the committal hearing, the presentation of an indictment, the entering of a plea and the sentence.

Cases involving a not guilty plea took significantly longer to progress from committal hearing to sentence hearing than cases with a guilty plea, taking a median of 413 days compared with 280 days.¹⁵ The sections below separately look at cases involving guilty and not guilty pleas.

Guilty plea

Guilty pleas were entered in over than two-thirds of rape (MSO) cases (68.7%, n=1,246/1,813).¹⁶ When a guilty plea was entered, the median time for the court process from committal hearing to sentence, was 280 days (approximately 9.2 months).

The median time between committal and indictment was 124 days (approximately 4.1 months), then 134 days from indictment to final plea (approximately 4.4 months). In the majority of cases (98.9%, n=1,232/1,246), sentencing occurred on the same day the final plea was entered, making the median time from plea to sentence 0 days. When the sentence did not occur on the same day as the plea (n=14), the median time from plea to sentence was 24 days.

There were 32 rape cases (2.6%, n=32/1,246) that were *ex officio* indictments where the committal, indictment, plea, and sentence all occurred on the same date.

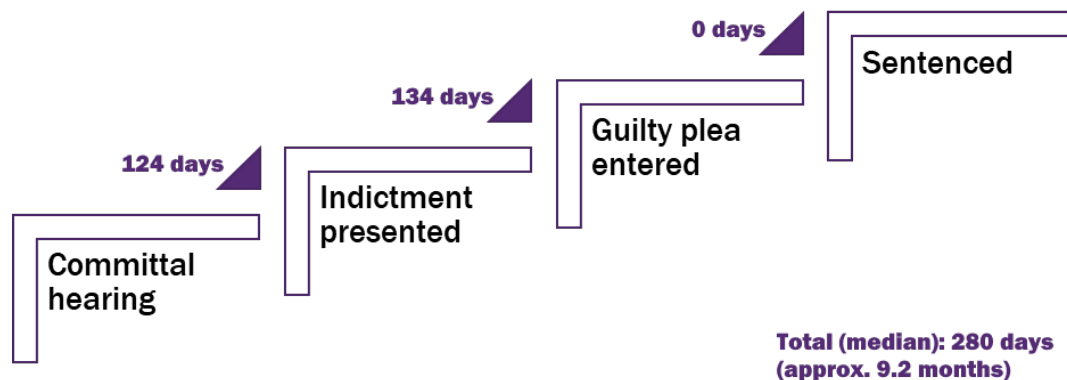
¹³ Criminal Code (Qld) s 561.

¹⁴ Criminal Code (Qld) s 590(1).

¹⁵ Wilcoxon rank-sum: Ws=651,501.0, z=13.28, p=<.1, r=0.3

¹⁶ 2 rape (MSO) cases with a guilty plea were excluded from this analysis due to missing date variables.

Figure A8: Median number of days between criminal justice system events for guilty pleas to rape (MSO) sentenced, 2005–06 to 2022–23



Data notes: Rape (MSO), guilty pleas, adults, higher courts, 2005–06 to 2022–23.

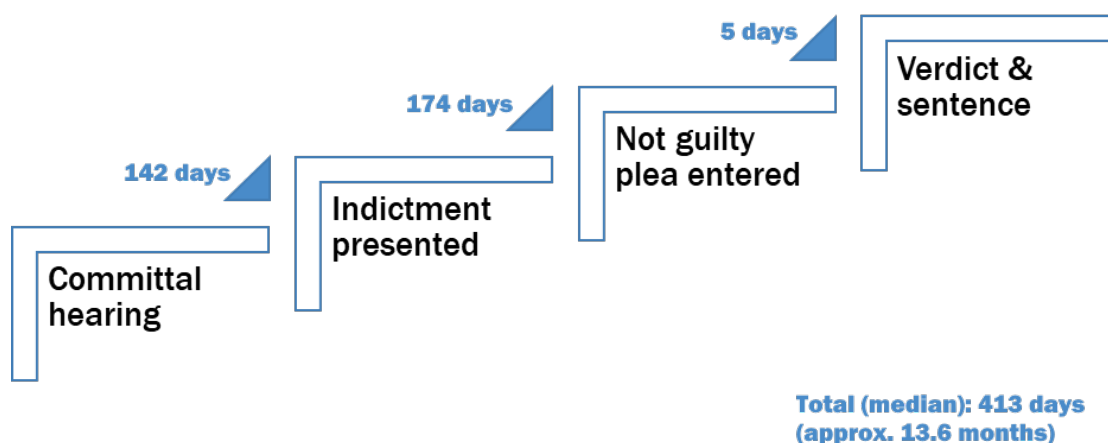
Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

Not guilty plea

Pleas of not guilty were entered in less than one-third of rape (MSO) cases (31.3%, n=567/1,813).¹⁷ When a not guilty plea was entered, the median time for the court process from committal hearing to sentence to be completed was 413 days (approximately 13.6 months).

The median time between committal to indictment was 142 days (approximately 4.7 months), and then 174 days from indictment to final plea (approximately 5.7 months). The median time from plea to a verdict following a trial, was 5 days. In all cases, the verdict and the sentencing occurred on the same date.

Figure A9: Median number of days between criminal justice system events for not guilty pleas to rape (MSO) sentenced, 2005–06 to 2022–23



Data notes: Rape (MSO), not guilty pleas, adults, higher courts, 2005–06 to 2022–23.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

Sexual assault (sentenced in the higher courts)

This section explores how long a case involving an offence of sexual assault (MSO), which is ultimately finalised in the higher court, takes to progress from the committal hearing to sentence. It also looks at

¹⁷ 2 rape (MSO) cases with a not guilty plea were excluded from this analysis due to missing date variables.

the median number of days between the committal hearing, the presentation of an indictment, the entering of a plea and the sentence.

As with cases involving rape (MSO), cases involving sexual assault that were finalised in the higher courts and had a not guilty plea took significantly longer to progress from committal hearing to sentence hearing, than cases with a guilty plea (with a median of 331 days compared with 250 days).¹⁸ The main difference for those with and without a guilty plea was seen in the time taken from indictment to plea – 90.5 days for a guilty plea and 164 days for a not guilty plea. The other time points within the process are comparable.

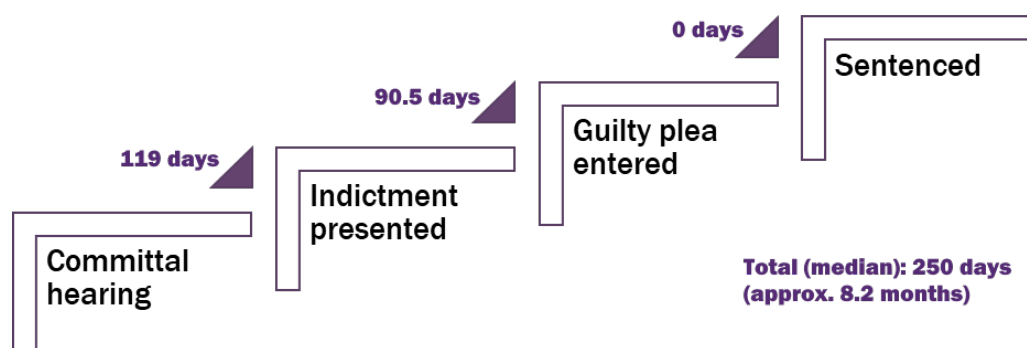
Guilty pleas

Guilty pleas were entered in most of the sexual assault (MSO) cases sentenced in the higher courts (84.5%, n=792/938). When a guilty plea was entered, the median time for the court process from committal hearing to sentence to be completed was 250 days (approximately 8.2 months).

The median time between committal to indictment was 119 days (approximately 3.9 months), and then 90.5 days from indictment to final plea (approximately 3.0 months). In the majority of cases (99.5%, n=788/792), sentencing occurred on the same day the final plea was entered, making the median time from plea to sentence 0 days.

There were 23 sexual assault (MSO) cases sentenced in the higher courts (2.9%) that involved an ex-officio indictment, where the committal, indictment, plea and sentence all occurred on the same date.

Figure A10: Median number of days between criminal justice system events for guilty pleas to sexual assault (MSO) sentenced in the higher courts, 2005–06 to 2022–23



Data notes: Sexual assault (MSO), guilty pleas, adults, higher courts, 2005–06 to 2022–23.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

When examining the type of sexual assault offence, sexual assault (aggravated) offences involving a guilty plea had the longest median time from committal hearing to sentence at 273 days (approximately 9 months), while sexual assaults (non-aggravated) involving a guilty plea that were sentenced in the higher courts took 248 days (approximately 8.1 months).

¹⁸ Wilcoxon rank-sum: $W_s=84373.50$, $z=5.46$, $p<.1$, $r=0.3$.

Figure A11: Median number of days from committal hearing to sentence by circumstance of aggravation, for guilty pleas to sexual assault (MSO) sentenced in the higher courts, 2005–06 to 2022–23

Sexual assault (non-aggravated)	Sexual assault (aggravated)	Sexual assault (aggravated life)
n=716 median 248 days	n=49 median 273 days	n=27 median 264 days

Data notes: Sexual assault (MSO), guilty pleas, adults, higher courts, 2005–06 to 2022–23.

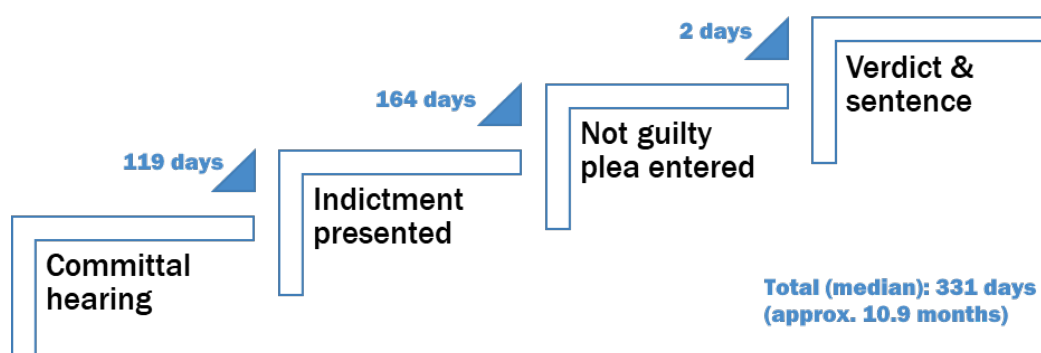
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Not guilty plea

Pleas of not guilty were entered in 15.5 per cent of sexual assault (MSO) cases sentenced in the higher courts (n=145/938). When a not guilty plea was entered, the median time for the court process from committal hearing to sentence to be completed, was 331 days (approximately 10.9 months).

The median time between committal to indictment was 119 days (approximately 3.9 months), then 164 days from indictment to final plea (approximately 5.4 months). The median time from plea to a verdict following a trial, was 2 days. In all but one case, the verdict and the sentencing occurred on the same date.

Figure A12: Median number of days between criminal justice system events for not guilty pleas to sexual assault (MSO) sentenced in the higher courts, 2005–06 to 2022–23



Data notes: Sexual assault (MSO), not guilty pleas, adults, higher courts, 2005–06 to 2022–23.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Sexual assault (non-aggravated) cases involving a not guilty plea had a longer median time from committal hearing to sentence at 344 days (approximately 11.3 months), while sexual assault (aggravated) took 316 days (approximately 10.4 months), noting that sample size for aggravated sexual assault is quite small (n=12).

Figure A13: Median number of days from committal hearing to sentence by circumstance of aggravation, for not guilty pleas to sexual assault (MSO) sentenced in the higher courts, 2005–06 to 2022–23

Sexual assault (non-aggravated)	Sexual assault (aggravated)
n=133 median 344 days	n=12* median 316 days

Data notes: Sexual assault (MSO), not guilty pleas, adults, higher courts, 2005–06 to 2022–23.

* small sample size. Consider this data with caution.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

Sexual assault (sentenced in the lower courts)

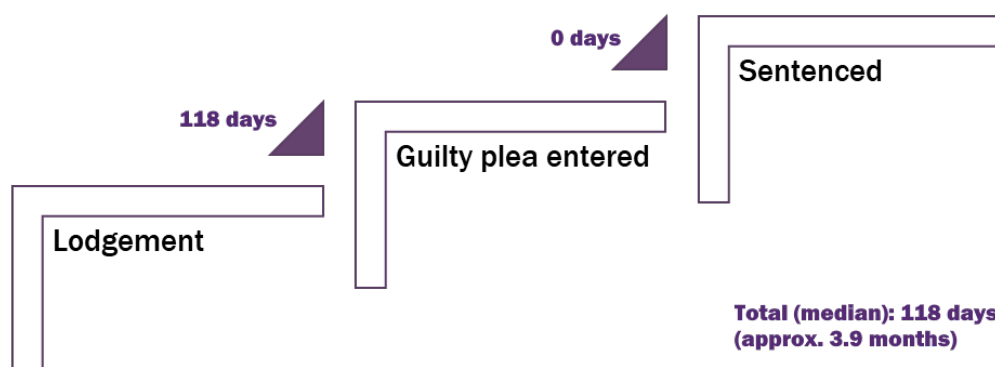
All sexual assault (MSO) cases sentenced in the lower courts involved a guilty plea (n=964) and all were non-aggravated sexual assaults.

The median time for the court process to be completed – that is, from lodgement to sentence – was 118 days (approximately 3.9 months).

The median time between presentation to plea was 118 days (approximately 3.9 months). In the majority of cases (99.5%, n=956/964), sentencing occurred on the same day the final plea was entered, making the median time from plea to sentence 0 days.

There were 48 sexual assault (MSO) cases (5.0%) where the presentation, plea and sentence all occurred on the same date.

Figure A14: Median number of days between criminal justice system events for guilty pleas to sexual assault (MSO) sentenced in the lower courts, 2005–06 to 2022–23



Data notes: Sexual assault (MSO), guilty pleas, adults, lower courts, 2005–06 to 2022–23.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

4.6 Recidivism of people sentenced for rape and sexual assault

Note: This section has a different data period compared with the other data reported in this Appendix. For prior offending, the sample includes cases sentenced between July 2020 and June 2023 (a 3-year period). For subsequent offending, the sample includes cases sentenced between July 2014 and June 2017 (a 3-year period).

Recidivism analysis was conducted on a sample of people sentenced for rape or sexual assault to determine whether they had previously committed offences and/or whether they later went on to commit other offences. To examine prior offending, a sample of people sentenced for rape or sexual assault between 2020–21 and 2022–23 was examined for prior offences (see Figure A15). For the reoffending analysis, a separate sample of people sentenced for rape or sexual assault between 2014–15 and 2016–17 was examined to identify whether they had committed any subsequent offences (see Figure A16).

Figure A15: Methodology for prior offending

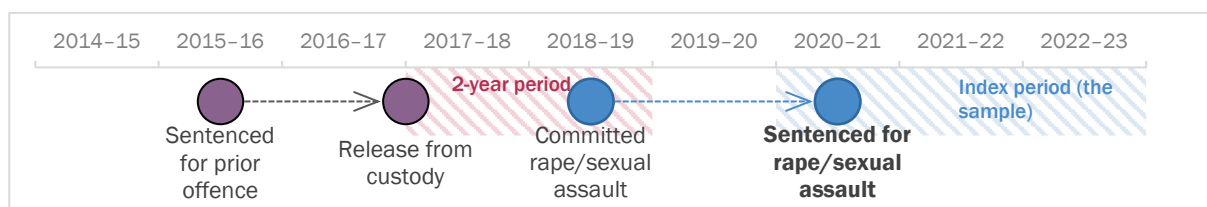


Figure A16: Methodology for subsequent offending



Many people sentenced for sexual offences serve a long period of time in prison, where the opportunity for reoffending while in custody is reduced. For this reason, separate samples were used to analyse prior offending and reoffending rates. This enabled us to allow for a period of up to four years of incarceration in this recidivism analysis.

Recidivism was operationalised as any criminal offence committed within 2 years of a person's expected release from custody or, for sentences that did not involve custody, within 2 years of the date of the sentence hearing for the rape or sexual assault offence (the index offence).

The '2-year period' refers to the time during which an offence must be committed for it to be included in the recidivism analysis. The person must have committed a new offence within 2 years of being released from custody for a prior offence.

4.6.1 Recidivism for rape offences

Prior offending

There were 403 cases sentenced for rape between July 2020 and June 2023 (the index period). The data for these people was analysed to determine whether they had committed any offences before committing the offence of rape.

Less than one-third of people sentenced in those cases had convictions for prior offences 31.4 per cent, n=127/403). Of these, only 5.5 per cent had previously been sentenced for committing a sexual offence (n=7/127). Of those people sentenced within the index period, none had previously been sentenced for an offence of rape. In fact, none of the most common prior offences were sexual offences (see Figure A17). The most common prior sentenced offence was unlicensed driving (8.4%; n=34/403).

Figure A17: Most common prior offences for people sentenced for rape, 2020–21 to 2022–23

Offence	Prior sentenced cases	Unique people
 Unlicensed driving <i>Transport Operations (Road Use Management) Act 1995 (Qld) s 78</i>	40	34 (8.4%)
 Possessing dangerous drugs <i>Drugs Misuse Act 1986 (Qld) s 9</i>	41	32 (7.9%)
 Contravention of a domestic violence order <i>Domestic and Family Violence Protection Act 2012 (Qld) s 177</i>	45	29 (7.2%)
 Possession of drug utensils <i>Drugs Misuse Act 1986 (Qld) s 10</i>	36	27 (6.7%)
 Vehicle offences involving liquor or other drugs <i>Transport Operations (Road Use Management) Act 1995 (Qld) s 79</i>	32	27 (6.7%)
 Breach of bail – failure to appear <i>Bail Act 1980 (Qld) s 33</i>	33	22 (5.5%)
 Contravene direction or requirement of police officer <i>Police Powers and Responsibilities Act 2000 (Qld) s 791</i>	26	22 (5.5%)
 Stealing <i>Criminal Code (Qld) s 398</i>	26	21 (5.2%)

Date note: A person can have more than one prior offence so may be counted more than once in the 'prior sentenced cases' column.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.










Subsequent offending

There were 338 cases sentenced for rape between July 2014 and June 2017. The data for these people was analysed to determine whether these people had committed any subsequent offences within 2 years of being sentenced for the rape offence (or, for those who went into custody following sentencing, within 2 years of their release from custody).

Less than one-quarter of the people sentenced in these cases were sentenced for the commission of subsequent offences (24.0%, n=81/338). Of these, only 4 people (4.9%) went on to commit another sexual offence (n=4/81). Only one person was sentenced for committing a subsequent rape offence.

The most common subsequent offence was failing to comply with reporting obligations under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPOA). When rape is committed against a child (under 18 years), depending on the type of sentence imposed,¹⁹ this Act requires those who have committed sexual or other serious offences against children to report personal details to police for a prescribed period.

Figure A18: Most common subsequent offences for people sentenced for rape, 2014–15 to 2016–17

Offence	Subsequent sentenced cases	Unique people
 Failure to comply with reporting obligations <i>CPOROPOA 2004 (Qld) s 50</i>	65	49 (14.5%)
 Commit offence during suspended sentence <i>Penalties and Sentences Act 1992 (Qld) s 146</i>	15	15 (4.4%)
 Unlicensed driving <i>Transport Operations (Road Use Management) Act 1995 (Qld) s 78</i>	12	12 (3.6%)
 Contravene requirement of community-based orders <i>Penalties and Sentences Act 1992 (Qld) s 123</i>	11	10 (3.0%)
 Possessing dangerous drugs <i>Drugs Misuse Act 1986 (Qld) s 9</i>	10	8 (2.4%)
 Assault or obstruct police officer <i>Police Powers and Responsibilities Act 2000 (Qld) s 790</i>	9	8 (2.4%)
 Breach of bail – failure to appear <i>Bail Act 1980 (Qld) s 33</i>	9	6 (1.8%)
 Contravention of a domestic violence order <i>Domestic and Family Violence Protection Act 2012 (Qld) s 177</i>	8	6 (1.8%)
 Wilful Damage <i>Criminal Code (Qld) s 469</i>	7	6 (1.8%)

Data note: A person can have more than one subsequent offence so may be counted more than once in the 'subsequent sentenced cases' column.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

4.6.2 Recidivism for sexual assault offences










Prior offending

There were 210 cases sentenced for sexual assault between July 2020 and June 2023. Less than one-third of people sentenced in those cases had committed prior offences in the period analysed (32.4%, n=68/210). Only 5.9 per cent of those with prior offending had offended with a prior sexual offence (n=4/68) and 2 of those cases had been previously sentenced for an offence of sexual assault.

The most common prior sentenced offences were assaulting or obstructing a police officer, breach of bail (failure to appear), unlicensed driving and possessing dangerous drugs (10.5%, n=16).

¹⁹ The person must be sentenced to an order that has an element of supervision, and a conviction must be recorded.

Figure A19: Most common prior offences for people sentenced for sexual assault, 2020–21 to 2022–23

Offence	Sentenced cases	Unique people
 Assault or obstruct police officer <i>Police Powers and Responsibilities Act 2000 (Qld) s 790</i>	22	16 (10.5%)
 Unlicensed driving <i>Transport Operations (Road Use Management) Act 1995 (Qld) s 78</i>	21	16 (10.5%)
 Breach of bail – failure to appear <i>Bail Act 1980 (Qld) s 33</i>	20	16 (10.5%)
 Possessing dangerous drugs <i>Drugs Misuse Act 1986 (Qld) s 9</i>	19	16 (10.5%)
 Vehicle offences involving liquor or other drugs <i>Transport Operations (Road Use Management) Act 1995 (Qld) s 79</i>	14	14 (9.2%)
 Public nuisance <i>Summary Offences Act 2005 (Qld) s 6</i>	19	13 (8.5%)
 Contravention of a domestic violence order <i>Domestic and Family Violence Protection Act 2012 (Qld) s 177</i>	17	12 (7.8%)
 Possession of drug utensils <i>Drugs Misuse Act 1986 (Qld) s 10</i>	15	11 (7.2%)
 Contravene direction or requirement of police officer <i>Police Powers and Responsibilities Act 2000 (Qld) s 791</i>	14	11 (7.2%)










Data note: A person can have more than one prior offence so may be counted more than once in the 'prior sentenced cases' column.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

Subsequent offending

There were 153 cases sentenced for sexual assault between 2014–15 and 2016–17. Less than one-third of the people sentenced in these cases had committed subsequent offences (30.7%, n=47/153). Only 3 people (6.4%) went on to commit another sexual offence (n=3/47) and 2 were subsequently sentenced for committing sexual assault.

Figure A20: Most common subsequent offences for people sentenced for sexual assault, 2014–15 to 2016–17

Offence	Sentenced cases	Unique people
 Failure to comply with reporting obligations <i>CPOROPOA 2004 (Qld) s 50</i>	18	12 (7.8%)
 Public nuisance <i>Summary Offences Act (Qld) 2005 s 6</i>	15	10 (6.5%)
 Contravention of a domestic violence order <i>Domestic and Family Violence Protection Act 2012 (Qld) s 177</i>	14	9 (5.9%)
 Offences involving liquor or other drugs <i>Transport Operations (Road Use Management) Act 1995 (Qld) s 79</i>	10	9 (5.9%)
 Breach of bail – failure to appear <i>Bail Act 1980 (Qld) s 33</i>	8	8 (5.2%)
 Wilful Damage <i>Criminal Code (Qld) s 469</i>	10	7 (4.6%)
 Commit offence during suspended sentence <i>Penalties and Sentences Act 1992 (Qld) s 146</i>	7	7 (4.6%)
 Possessing dangerous drugs <i>Drugs Misuse Act 1986 (Qld) s 9</i>	8	6 (3.9%)
 Contravene requirement of community-based orders <i>Penalties and Sentences Act 1992 (Qld) 123</i>	6	6 (3.9%)

Data note: A person can have more than one subsequent offence so may be counted more than once in the 'subsequent sentenced cases' column.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

The most common subsequent offence was failing to comply with reporting obligations under the CPOROPOA (n=12). When sexual assault is committed against a child (under 18 years), depending on the type of sentence imposed, this Act requires those who have committed sexual or other serious offences against children to report personal details to police for a prescribed period.

4.7 Sentencing outcomes for rape

Over the 18-year data period, there were 2,234 cases involving an adult sentenced for at least one offence of rape. Of those cases, 1,818 involved a rape offence being sentenced as the MSO. All but one of these cases (excluded from further analysis in this Appendix)²⁰ were sentenced in the higher courts and almost all were sentenced in the District Court (98.7%, n=1,795), with 22 cases sentenced in the Supreme Court.

The following analysis explores the penalty outcomes for the 1,817 rape (MSO) offences sentenced in the higher courts between July 2005 to June 2023.

²⁰ A defendant may elect (choose) for an offence of rape to be dealt with (be sentenced) in the Magistrates Court if the person pleads guilty and the victim is 14 years of age or older: *Criminal Code Act 1899 (Qld) sch 1, s 552B(1)(a)* ('*Criminal Code (Qld)*'). However, a Magistrate has an overriding discretion not to deal with the matter if the defendant may not be adequately punished under summary conviction: s 552D. The maximum sentence of imprisonment a Magistrate can give for rape is 3 years imprisonment: s 552H(1)(b). If a person is charged with rape and a serious organised crime circumstance of aggravation, it cannot be dealt with in the Magistrates Court: s 552D(2A).

Summary statistics for rape

- 1 Almost all people sentenced for rape had to serve time in prison as part of their sentence.**

Over the 18 years, 98.7 per cent of all penalties imposed for rape were custodial and of those, 96.5 per cent required the person to serve time in prison.
- 2 The use of partially suspended sentences is increasing.**

The proportion of prison sentences with a parole eligibility date decreased over the data period as the proportion of partially suspended sentences increased.
- 3 Custodial sentence lengths have remained relatively stable over the 18 years.**

The median custodial sentence length for rape ranged each year from between 5.0 and 6.0 years (with the average ranging between 5.1 to 6.3 years).
- 4 Most people who received a suspended sentence for rape did not breach the suspended sentence.**

Under one-third of partially suspended sentences (28.2%) and less than half of wholly suspended sentences (44.1%) were breached during the operational period.
- 5 Aboriginal and Torres Strait Islander peoples were more likely to be given a sentence of imprisonment than non-Indigenous people.**

Aboriginal and Torres Strait Islander peoples were no more or less likely than non-Indigenous people to receive a custodial penalty (98.8% v 98.6%), though were more likely to receive a sentence of imprisonment (80.0% vs 65.0%), and less likely to receive a partially suspended sentence (16.2% vs 31.1%) than non-Indigenous people. These findings are statistically significant.
- 6 Rape cases that occurred in a domestic and family violence context were more likely to receive a sentence of imprisonment than non-DFV offences.**

Rape offences sentenced as a domestic violence offence were more likely to receive a sentence of imprisonment than a non-DV rape offence (71.8% vs 63.2% of custodial penalties); with the difference being statistically significant.
- 7 Most people had parole eligibility fixed at or below 50 per cent of their head sentence.**

Since July 2011, three-quarters of people who pleaded guilty (74.4%) had their parole eligibility set below 50 per cent, and more than half (55.8%) had it set at or below one-third of the head sentence. In contrast, for people who were found guilty following a trial, only 17.6 per cent had parole eligibility set below 50 per cent of the head sentence.

4.7.1 Custodial penalties

Of the 1,817 rape offences (MSO) sentenced between July 2005 and June 2023, almost all received a custodial penalty (98.7%, n=1,793), with this proportion remaining relatively stable over time. This section explores the Council's data findings for custodial penalties sentenced for rape over this period.

Type of custodial penalty

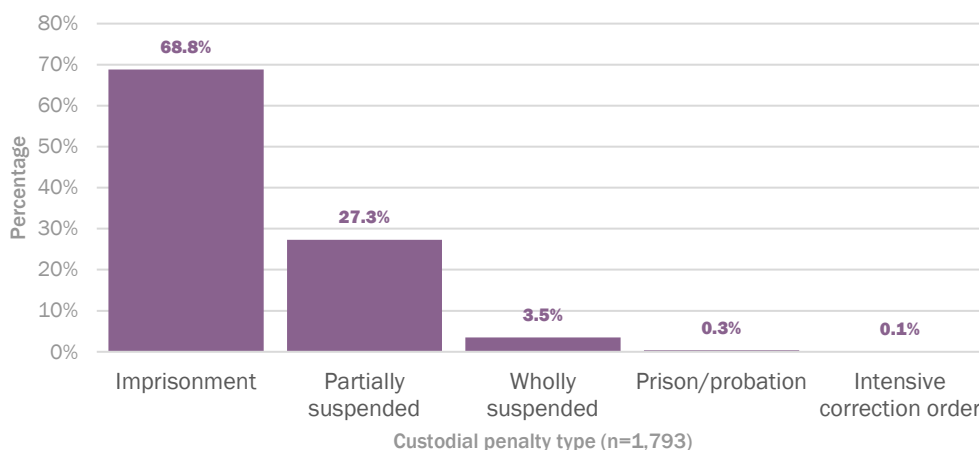
Figure A21 sets out the types of custodial penalties ordered over the 18-year data period. The most common penalty was a sentence of imprisonment (68.8%), followed by partially suspended sentences (27.3%). The high use of immediate imprisonment orders is unsurprising given the seriousness of this offence rape.

Wholly suspended sentences accounted for a small proportion (3.5%, n=62) of all custodial penalties. The Council briefly reviewed the sentencing remarks for 45 of those cases to better understand the reasons why a wholly suspended sentence was made. The key reasons were:

- The person committed the rape offence/s when they were a child.
- Substantial time was spent in custody prior to sentence, which was taken into account in deciding the sentence but not formally declared as time served pursuant to section 159A(3B)(c) of the PSA.

Figure A21 shows that very few prison/probation or intensive correction orders ('ICO') were made during the data period.

Figure A21: Custodial penalty type for rape (MSO)



Data notes: MSO, adults, higher courts, 2005–06 to 2022–23

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Length of custodial penalties

Table A10 sets out the sentence lengths imposed for custodial penalties for rape (MSO). The median imprisonment sentence for rape was 6.5 years, with the average slightly higher at 6.6 years.²¹ The longest term of imprisonment imposed on an MSO charge of rape was life imprisonment, and this was imposed in 7 cases.

The median sentence length for partially suspended sentences was 3.0 years (average 3.4 years), suspended after a median duration of 1.0 years (average 1.1 years).

The median wholly suspended sentence was 2.5 years (average 2.6 years).

²¹ This excludes combined prison-probation orders which are presented separately within Table A10.

Table A10: Summary of custodial sentence lengths for rape (MSO), by penalty type

Custodial penalty type	N	Average (years)	Median (years)	Minimum (years)	Maximum (years)
Imprisonment (excludes prison-probation orders)	1,234	6.6	6.5	0.3	Life*
Partially suspended sentence					
Sentence length	490	3.4	3.0	1.0	5.0
Time before suspension	490	1.1	1.0	0.0	3.0
Wholly suspended sentence	62	2.6	2.5	0.5	5.0
Imprisonment with probation	6^	-	-	-	-
Intensive correction order	1^	-	-	-	-
All custodial penalties	1,786	5.5	5.0	0.2	Life*

Data notes: Rape (MSO), adults, higher courts, 2005–06 to 2022–23.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

*7 life sentences were imposed for rape. These have been included in the sample size totals but excluded from the mean and median calculations for imprisonment

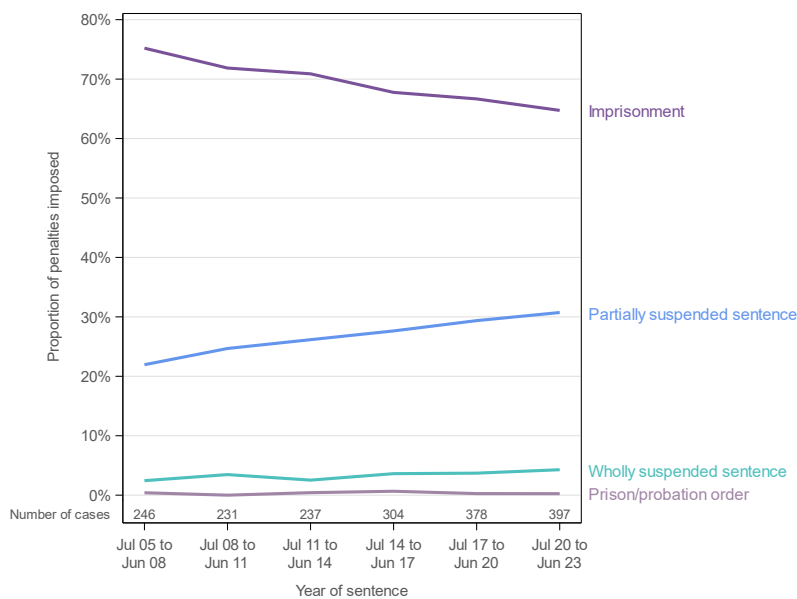
^ Summary statistics for sample sizes less than 10 have not been presented.

Custodial penalties over time

The Council has been asked to assess whether sentencing practices are adequate for rape. To inform this assessment, the Council wanted to know whether there had been any change in the penalty outcomes, including custodial penalty lengths over the 18-year period.

Our analysis found that almost all rape cases received a custodial penalty (98.7%), and that while the proportion of custodial penalties was consistently high (at, or just below, 100%), the proportion of sentences of imprisonment decreased while those receiving partially suspended sentences increased over the data period, as shown in Figure A22. The use of wholly suspended sentences and combined prison/probation orders remained consistently low across the data period.

Figure A22: Custodial penalty type imposed for rape (MSO), by year of sentence (grouped)

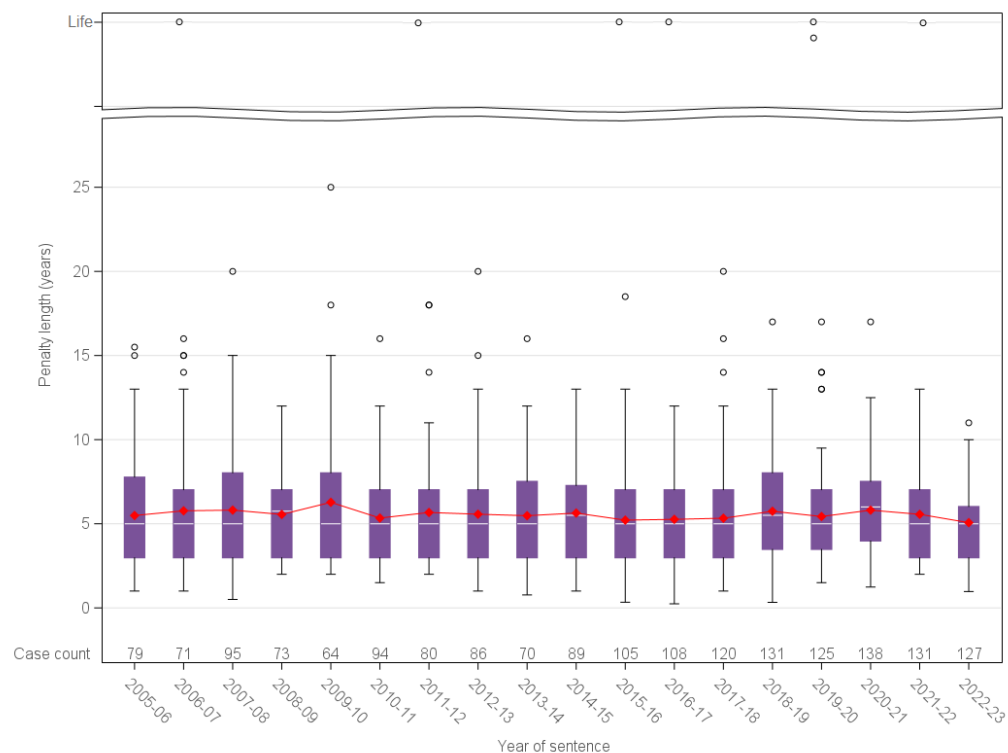


Data notes: MSO, adults, higher courts, 2005–06 to 2022–23. Intensive correction orders (n=1) were included in the calculations but have not been presented in the figure.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Focusing on sentence duration, the boxplot shown in Figure A23 shows the distribution of the length of all custodial penalties combined imposed for rape (MSO) each year.

Figure A23: Summary of custodial penalty length for rape (MSO) by year of sentence



Data notes: Custodial penalty (MSO), adults, higher courts, 2005–06 to 2022–23.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Our analysis suggests there has been little variation in the lengths of custodial penalties for rape over the 18-year data period. The median custodial sentence has ranged between 5.0 and 6.0 years, with the average ranging between 5.1 and 6.3 years, over this time.

Life sentences

Over the 18-year data period (from 2005–06 to 2022–23), 7 cases resulted in a sentence of life imprisonment being imposed. In 4 of these cases, the court's imposition of a life sentence was mandatory due to the operation of the repeat serious child sex offence scheme under section 161E of the PSA.²²

Of the remaining 3 cases, 2 resulted in the sentence being reduced on appeal:

- The first involved a person convicted following a trial of one count of maintaining a sexual relationship with a child and 2 counts of rape of a girl aged between 5 and 7 years involving multiple instances of penile rape. He was a close family friend of the complainant's family. On appeal, the sentences of life imprisonment imposed on each count were set aside and a sentence of 18 years was substituted.²³ The court considered a number of factors, including the impact of the *Dangerous Prisons (Sexual Offences) Act 2003 (Qld)*²⁴ and that, compared with earlier decisions, the offending did not warrant a life sentence.
- The second involved over 30 offences, including multiple counts of rape, committed against a 13-year-old girl over a 15-hour period while she was held captive in the person's home. On appeal, this sentence was reduced to 18 years taking into account the applicant's intervention to prevent the child's death at the hands of his co-offender and his cooperation with police.²⁵

The final case involved a person who had pleaded guilty to over 50 offences, including 18 counts of rape. The offences were committed against a 22-year-old woman he was in a relationship with over a period of 23 days during which the complainant was subjected to extreme physical and sexual violence.

The small number of life sentences for rape over the data period is consistent with statements made by the Court of Appeal that the imposition of life imprisonment for an offence other than murder, to which a mandatory life sentence applies, is exceptional.²⁶

4.7.2 Non-custodial penalties

Of the 1,817 rape offences sentenced in the higher courts over the data period, only 24 (1.3%) resulted in a non-custodial penalty. Of those 24 cases, 21 involved an offence committed by a person who was a child at the time of the offence but sentenced as an adult.²⁷ The remaining 3 cases involved an adult offender.

²² See section 7.2.3 for a discussion of this scheme.

²³ *R v Robinson* [2007] QCA 99 ('Robinson').

²⁴ This is no longer a sentencing consideration but at the time of this case the 'existence of this regime makes it unnecessary to speculate whether an offender will "probably commit further offences upon young girls" at the end of what might otherwise be a sentence for the term of imprisonment less than life' [37].

²⁵ *R v Mahony & Shenfield* [2012] QCA 366 ('Mahony & Shenfield').

²⁶ *Robinson* [38] (Keane JA). See also *Mahony & Shenfield* [39] (Gotterson JA, Muir and Applegarth JJA agreeing) affirming this earlier statement.

²⁷ This meant when determining an appropriate sentence, the judge had to consider section 144 of the YJA. See section 6.7.5 of "Sentencing of Sexual assault and Rape: The ripple effect. Consultation paper: Background" for a further discussion.

The most common non-custodial penalty imposed was a probation order (n=17, 70.8%), with a median sentence of 2.0 years (average 2.4 years). Of these, all except one were an offence committed as a child (n=16). Of the remaining 7 people receiving non-custodial penalties:

- 3 received a community service order (all for an offence committed as a child);
- 2 received a good behaviour order (all for an offence committed as a child); and
- 2 were convicted of the offence but not further punished.²⁸

No conviction recorded

Of the 24 non-custodial penalties imposed for rape (MSO), 83.3 per cent (n=20) did not have a conviction recorded. All except one of those cases (n=19) were people who committed the offence while they were a child but were sentenced as an adult.

Most of the cases that did not have a conviction recorded received a probation order (n=14, 70.0%), 3 received a community service order, 2 received a good behaviour order and one was convicted with no further punishment.

4.7.3 Sentencing outcome by type of conduct, age of victim and relationship

Consistent with the data presented for the full 18-year period, almost all rape cases sentenced between 2020–21 and 2022–23 resulted in a custodial penalty (98.0%, n=395/403). Imprisonment was the most common penalty imposed for offences of rape, comprising 63.8 per cent of all penalties received, followed by a partially suspended sentence (30.3% of cases).

Table A11: Proportion of penalty type received for cases involving rape (MSO)

Penalty	Cases	Percentage
Imprisonment	257	63.8
Partially suspended	122	30.3
Wholly suspended	16	4.0
Prison/probation	1	0.2
Probation	6	1.5
Good behaviour, recognisance	1	0.2
Total	403	100.0

²⁸ The sentencing remarks were available for one of the people who received a sentence of convicted with no further punishment. This case involved a man sentenced for rape of his daughter while holidaying in Queensland. Before the sentence in Queensland, he was convicted in Victoria of several sexual offences against his daughter and sentenced to imprisonment for those offences. The Queensland offences were committed during the period of offending in Victoria. The Queensland sentence took into account the sentence he had already served.

Data includes matters sentenced between 2020–21 and 2022–23 (a 3-year period).

Source: Content analysis of sentencing remarks – see section 4.3.1 of Chapter 4 for a description of the methodology.

Rape cases with an adult victim survivor receive custodial sentences that are 9 months longer, on median, compared to cases in which the victim survivor is a child (5.5 years compared to 4.8 years, respectively, MSO) (Table A12). This difference is driven primarily by the type of conduct observed in cases where the victim survivor is a child.

Table A12: Median sentence length of custodial sentences by victim survivor age for cases involving rape (MSO)

Victim survivor age	Median sentence length	Number of cases
Adult	5.5	201
Child	4.8	194

Data includes cases sentence between 2020–21 and 2022–23 (a 3-year period).

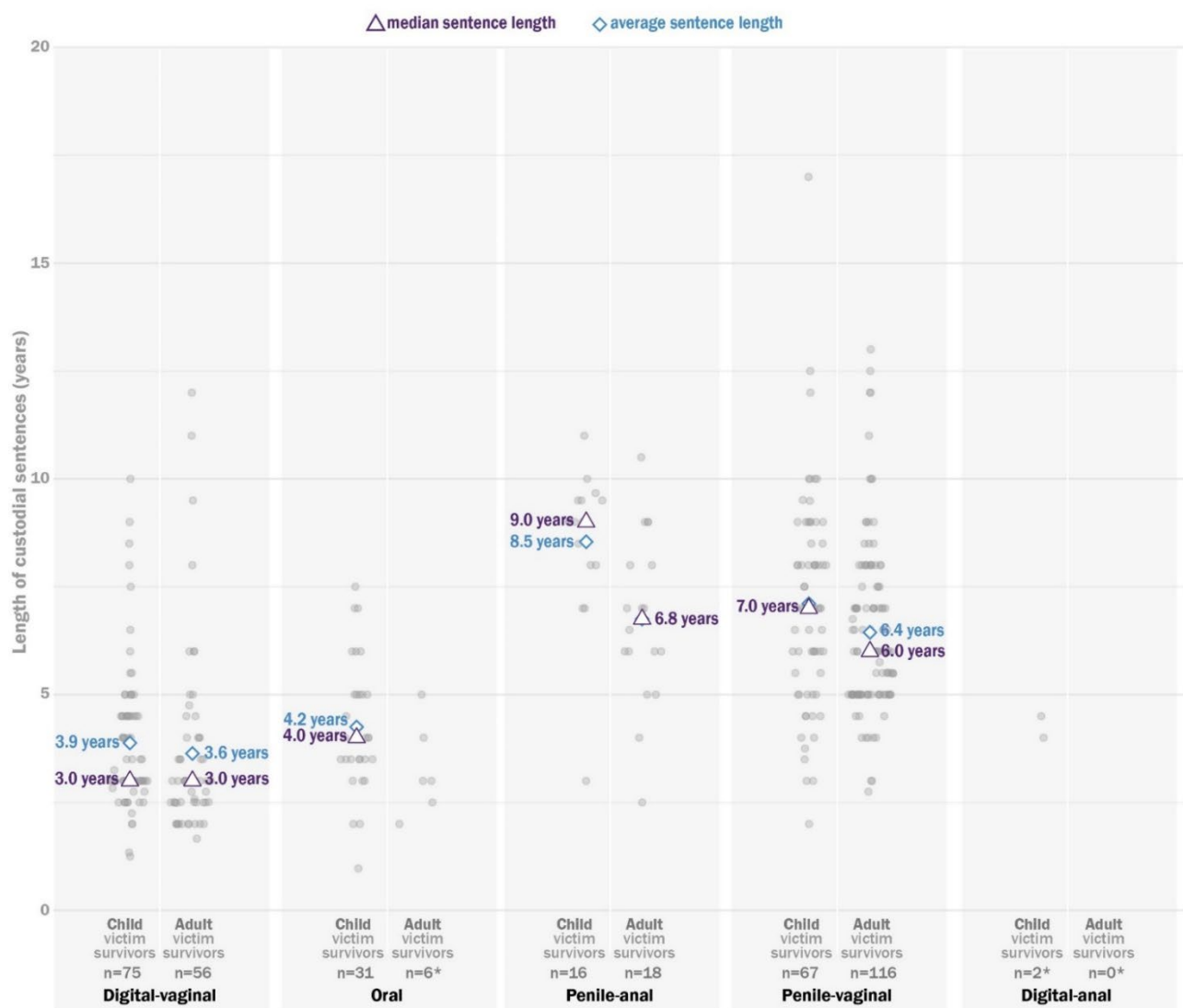
This analysis does not include seven cases that received a non-custodial sentence and one case which received a life sentence.

Source: content analysis of sentencing remarks – see section 4.3.1 of Chapter 4 for a description of the methodology.

Cases in which the victim survivor is a child more commonly involve digital–vaginal rape (39.2% of cases, compared with 27.9% for adults) or oral rape (16.0% of cases, compared with 3.0% for adults). In contrast, cases in which the victim survivor is an adult are more likely to involve penile–vaginal rape (57.7% of cases, compared with 33.3% for children).

Figure A24 shows that when controlling for a particular type of conduct, these trends reverse, and cases involving a child victim survivor generally result in the same, or higher sentences, compared to cases involving an adult victim survivor. Figure A24 illustrates the spread of penalties imposed, with the median and average sentences annotated. Custodial sentences were longer (on median) if the offending conduct involved a form of penile rape.

Figure A24: Length of custodial sentences by type of rape and age of victim survivor (MSO)



Data includes matters sentenced between 2020–21 and 2022–23 (a 3-year period).

One case involving the digital-vaginal rape of a child victim survivor resulted in a sentence of life imprisonment, this case is not displayed.

* Medians and averages were not calculated for categories with less than 10 cases sentenced.

Source: Content analysis of sentencing remarks – see section 4.3.1 of Chapter 4 for a description of the methodology.

For offences committed against a child victim survivor, penile–vaginal rape (7.0 years median) resulted in sentences more than twice as long when compared to digital–vaginal rape (3.0 years median). Similarly, sentences for penile–anal rape were three times longer (9.0 years on median) than sentences for digital–vaginal rape.

This was also the case for offences committed against adult victim survivors. Penile–vaginal rape (6.0 years median) and penile–anal rape (6.8 years median) both resulted in sentences approximately double the length of those received for digital–vaginal rape (3.0 years median).

For cases involving penile rape, the median sentence length was longer in instances where the offence was committed against a child. For penile–vaginal rape, offences against a child resulted in custodial sentences with a median length of 7.0 years, compared with 6.0 years for offences committed against adults. Similarly, for penile–anal rape, offences committed against a child resulted in custodial sentences with a median length of 9.0 years, compared with 6.8 years for offences committed against adults.

For cases involving digital-vaginal rape, there was no difference in the median sentence length for offences committed against adults compared to offences committed against children (3.0 years median).

We acknowledge that offences of rape committed against children are often prosecuted differently from those committed against adults. Where there has been more than one unlawful sexual act (potentially including offence/s of rape) committed against a child over a period of time, the offending person will usually be charged on indictment and sentenced pursuant to section 229B of the *Criminal Code* as repeated sexual conduct with a child (which may attract a higher sentence), rather than for individual counts of rape, or an offence of rape charged together with other sexual offences on indictment.

There is no equivalent offence that applies in circumstances where the victim is an adult. In these circumstances, adopting the approach in *Nagy*,²⁹ the court will usually impose a higher sentence on the most serious offence (MSO) to reflect the overall criminality involved in the offending. This may suggest that there is a smaller 'gap' between sentences imposed for the same type of conduct committed against a child victim versus an adult victim than in fact is the case had these additional considerations been factored in.

Table A13 shows a further breakdown by the specific type of custodial penalty imposed. Medians were unable to be calculated for some cells due to the small number of cases sentenced.

Unsuspending imprisonment was the only penalty with enough sentenced cases to allow for a comparison across the different types of conduct. For cases involving penile-vaginal rape, sentences were (on median) 6 months longer for cases where the victim survivor was a child (7.5 years, compared with 7.0 years for adults). Similarly, for cases involving penile-anal rape, sentences were 2.0 years longer when the victim survivor was a child (9.0 years, compared with 7.0 years for adults). By contrast, for cases involving digital-vaginal rape, sentences were slightly longer in instances that involved an adult victim survivor (4.3 years, compared with 4.0 years for children).

²⁹ *R v Nagy* [2004] 1 Qd R 63.

Table A13: Median custodial sentence lengths for cases involving rape (MSO) by age of the victim survivor

	Digital-vaginal		Penile-anal		Penile-vaginal		Oral		Digital-anal	
	Child	Adult	Child	Adult	Child	Adult	Child	Adult	Child	Adult
Imprisonment	4.0	4.3	9.0	7.0	7.5	7.0	5.0	-	-	-
n	46*	20	15	15	57	83	18	1	1	0
Partially suspended	3.0	2.8	-	-	-	5.0	3.5	-	-	-
n	29	32	0	3	8	29	13	4	1	0
Wholly suspended	-	-	-	-	-	-	-	-	-	-
n	4	4	1	0	2	4	0	1	0	0
Custodial	3.0	3.0	9.0	6.8	7.0	6.0	4.0	-	-	-
n	76*	56	16	18	67	116	31	6	2	0

Data includes matters sentenced between 2020–21 and 2022–23 (a 3-year period).

Note: medians were not calculated for cells with less than 10 cases sentenced.

Cases that did not result in a custodial sentence are not included (n=7).

Cases with conduct involving an object or body part were not included due to small sample sizes (n=8), see **Table A6** for counts.

* One case involving the digital-vaginal rape of a child victim survivor resulted in a sentence of life imprisonment, this case was not included in median calculations.

Source: Content analysis of sentencing remarks – see section 4.3.1 of Chapter 4 for a description of the methodology.

Table A14 shows the length of custodial sentences by type of relationship. This is disaggregated further into specific types of relationships in Table A15.

Rape offences involving family members generally received longer custodial sentences, on median. This was particularly so for cases involving both types of penile rape (median=9.0 years for penile–anal, 7.5 years for penile–vaginal).

Table A14: Custodial sentence lengths for cases involving rape (MSO) by relationship group and conduct

Relationship category		Digital–anal	Digital–vaginal	Oral	Penile–anal	Penile–vaginal
Partner	median	-	4.0	-	6.0	5.5
	n	0	7	1	14	55
Family	median	-	3.0	4.0	9.0	7.5
	n	1	46	28	10	43
Other	median	-	3.0	3.8	8.5	6.0
	n	1	68	6	8	55
Stranger	median	-	3.5	-	-	7.0
	n	0	10	2	2	30

Data includes matters sentenced between 2020–21 and 2022–23 (a 3-year period).

Cases that did not result in a custodial sentence are not included (n=7).

* One case involving the digital-vaginal rape of a child victim survivor resulted in a sentence of life imprisonment, this case was not included in median calculations.

* Medians were not calculated for categories with less than 5 cases sentenced

Source: Content analysis of sentencing remarks – see section 4.3.1 of Chapter 4 for a description of the methodology.

Further exploring these sentencing outcomes by the specific relationship between the offender and the victim survivor, the longest median sentence length (10.0 years) was imposed for cases of penile–vaginal rape where the perpetrator was a ‘true’ stranger to the victim survivor, meaning that they had never heard of the perpetrator or encountered them before the offence took place – see Table A15.

In cases where the perpetrator was an ex-partner of the victim survivor, sentences were one year longer (on median) compared with cases where the perpetrator was a current partner of the victim survivor.

The median sentence length for penile–vaginal rape and oral rape was higher when the perpetrator was a parent of the victim survivor compared with other family relationships.

Table A15: Custodial sentence lengths for cases involving rape (MSO) by specific relationship and conduct

Relationship category	Specific relationship		Digital-anal	Digital-vaginal	Oral	Penile-anal	Penile-vaginal
Partner	Current partner	median	-	4.0	-	6.0	5.0
		n	0	7	0	7	29
Partner	Ex-partner	median	-	-	-	7.0	6.0
		n	0	0	1	5	22
Partner	Someone I went on a few dates with (includes 1 date only)	median	-	-	-	-	-
		n	0	0	0	2	4
Family	Parent	median	-	3.5	4.4	9.0	8.5
		n	1	25	18	6	25
Family	Other	median	-	3.0	4.0	-	7.0
		n	0	16	5	3	15
Family	Sibling	median	-	3.0	2.0	-	-
		n	0	5	5	1	3
Other	Acquaintance or neighbour	median	-	3.0	-	7.5	6.5
		n	1	25	3	6	29
Other	Carer	median	-	-	-	-	-
		n	0	1	0	0	0
Other	Client/patient/customer	median	-	-	-	-	-
		n	0	1	0	1	2
Other	Other - Co-worker	median	-	-	-	-	-
		n	0	3	0	0	1
Other	Employer/manager/supervisor	median	-	-	-	-	-
		n	0	2	2	0	1
Other	Friend or housemate	median	-	2.6	-	-	6.0
		n	0	18	1	1	17
Other	Medical practitioner (e.g., doctor, psychologist, nurse, counsellor)	median	-	2.8	-	-	-
		n	0	6	0	0	1
Other	Other known person (not elsewhere defined)	median	-	4.0	-	-	-
		n	0	10	0	0	4

Relationship category	Specific relationship		Digital-anal	Digital-vaginal	Oral	Penile-anal	Penile-vaginal
Other	Other - Teacher/tutor	median	-	-	-	-	-
		n	0	2	0	0	0
Stranger	known by hearsay (e.g., friend of friend)	median	-	-	-	-	-
		n	0	1	0	0	1
Stranger	met that day/night	median	-	3.5	-	-	6.0
		n	0	6	1	1	22
Stranger	true stranger; never met; not known by hearsay	median	-	-	-	-	10.0
		n	0	3	1	1	7

Data includes matters sentenced between 2020–21 and 2022–23 (a 3-year period).

Cases that did not result in a custodial sentence are not included (n=7).

Cases with conduct involving an object or body part were not included due to small sample sizes (n=8).

* One case involving the digital-vaginal rape of a child victim survivor resulted in a sentence of life imprisonment, this case was not included in median calculations.

* Medians and averages were not calculated for categories with less than cases sentenced.

Source: Content analysis of sentencing remarks – see section 4.3.1 of Chapter 4 for a description of the methodology.

4.7.4 Penalties for specific cohorts

The following section focuses specifically on the sentencing outcomes for women, Aboriginal and Torres Strait Islander peoples, and children sentenced as adults.

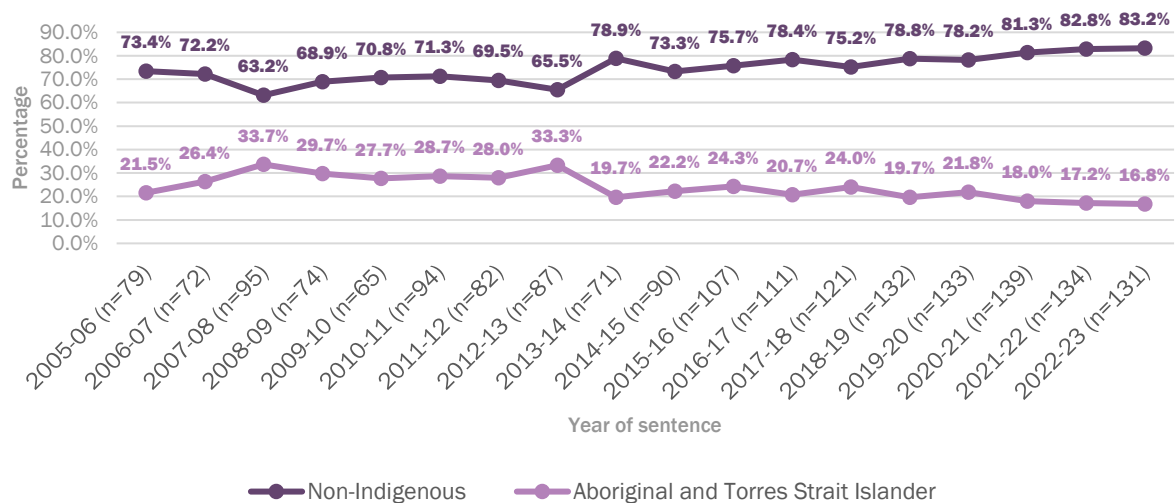
Women sentenced for rape

Over the 18-year data period, only 18 women were sentenced for rape (MSO), all of whom received a custodial penalty. As shown in Table A16, the most common penalty received was an imprisonment order (66.7%, n=12), with a median length of 6.0 years (average 6.3 years), compared with 6.5 years for men (average 6.6 years). A further 22.2 per cent (n=4) received a partially suspended sentence, with the remaining 11.1 per cent (n=2) receiving a wholly suspended sentence. No combined prison and probation orders, ICOs or life imprisonment sentences were imposed on women for rape (MSO).

Aboriginal and Torres Strait Islander peoples sentenced for rape

Over the 18-year period, there were 424 cases sentenced that involved an Aboriginal or Torres Strait Islander defendant (23.3%). Overall, the proportion of Aboriginal or Torres Strait Islander peoples sentenced for rape (MSO) each year has gone down over the data period from 21.5 per cent in 2005–06 to 16.8 per cent in 2022–23.

Figure A25: Rape (MSO) by Aboriginal and Torres Strait Islander status and year



Data notes: Rape (MSO), adults, 2005–06 to 2022–23. There were 23 cases where Indigenous status was unknown which are included in the totals but not presented in the figure.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Of the 424 cases which involved an Aboriginal or Torres Strait Islander defendant, 5 resulted in a non-custodial penalty, while the remaining 419 resulted in a custodial penalty, with no difference in the likelihood of a custodial penalty for Aboriginal and Torres Strait Islander peoples (98.8%) compared with non-Indigenous people (98.6%).³⁰

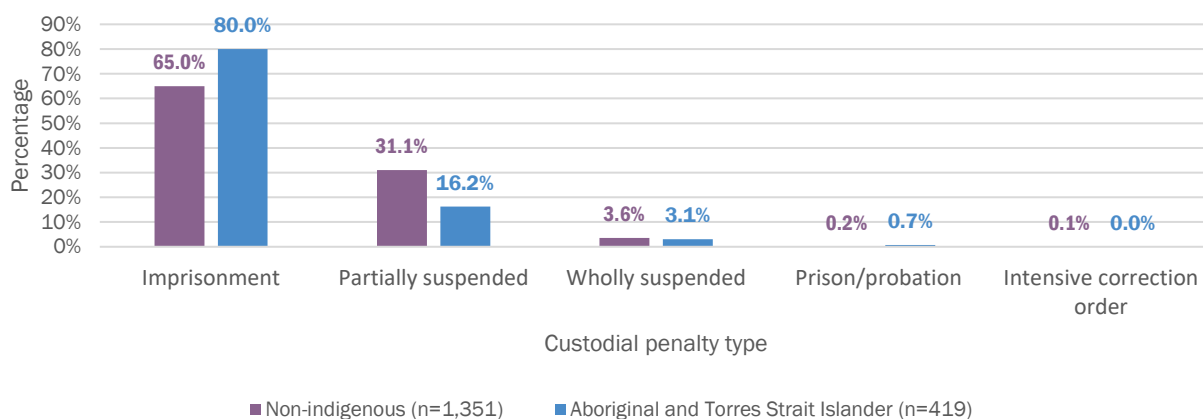
There were, however, statistical differences in the type of custodial penalty imposed on Aboriginal and Torres Strait Islander peoples compared with non-Indigenous people.³¹ Aboriginal and Torres Strait Islander peoples were more likely to have received a sentence of imprisonment for rape – see Figure A26. Four in 5 Aboriginal and Torres Strait Islander peoples received imprisonment (80.0%) compared with around 3 in 5 non-Indigenous people (65.0%) and this difference was statistically significant. Conversely, non-Indigenous people were significantly more likely to receive a partially suspended sentence for rape (31.1% vs 16.2%).

A complex range of historical, structural and social factors impact the higher rates of recorded sexual violence offending by Aboriginal and Torres Strait Islander peoples and these may also help to explain differences in sentencing outcomes. Other factors that may be relevant include the different nature and seriousness of these offences, the personal circumstances of those being sentenced (including any relevant prior criminal history) and whether the person has been in custody on remand or in the community prior to being sentenced (which might affect their ability to demonstrate to a court that they have actively taken steps towards their rehabilitation prior to sentence and do not require supervision).

³⁰ Pearson's Chi-Square Test: $\chi^2(2) = 0.42$, $p = .8110$, $V = 0.01$.

³¹ Pearson's Chi-Square Test: $\chi^2(4) = 38.92$, $p < .0001$, $V = 0.15$.

Figure A26: Custodial penalty type for rape (MSO) by Aboriginal and Torres Strait Islander status



Data notes: MSO, adults, higher courts, 2005–06 to 2022–23. 23 cases were excluded where Indigenous status was unknown. Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

The average imprisonment length for rape (excluding prison/probation orders) was 6.6 years across all demographic sub-groups, and there were no significant differences in the average sentence length by Aboriginal and Torres Strait Islander status across any custodial penalty type presented. All life sentences were imposed on non-Indigenous men (n=7).

All cases involving combined prison and probation orders and ICOs were imposed on men, and they were imposed equally upon non-Indigenous and Aboriginal and Torres Strait Islander men. Combined prison and probation orders and ICOs were excluded from Table A16 due to small sample sizes.

Table A16: Summary of custodial sentence lengths for rape (MSO) by penalty type, gender and Aboriginal and Torres Strait Islander status

	N	Average	Median	Minimum	Maximum
Imprisonment (years)					
Female	12	6.3	6.0	2.5	10.0
Male	1,222	6.6	6.5	0.3	Life*
Aboriginal or Torres Strait Islander	335	6.7	6.5	1.0	20.0
Non-Indigenous	878	6.5	6.2	0.3	Life*
Partially suspended					
Sentence length (years)					
Female	4^	-	-	-	-
Male	486	3.4	3.0	1.0	5.0
Aboriginal or Torres Strait Islander	68	3.3	3.0	1.3	5.0
Non-Indigenous	420	3.4	3.0	1.0	5.0
Time to be served (years)					
Female	4^	-	-	-	-
Male	486	1.1	1.0	0.0	3.0
Aboriginal or Torres Strait Islander	68	1.0	1.0	0.1	3.0
Non-Indigenous	420	1.1	1.0	0.0	3.0
Wholly suspended (years)					
Female	2^	-	-	-	-
Male	60	2.5	2.3	0.5	5.0
Aboriginal or Torres Strait Islander	13	2.5	2.0	0.5	5.0
Non-Indigenous	49	2.6	2.5	0.8	5.0

Data notes: MSO, adults, all courts, 2005–06 to 2022–23. Intensive correction orders (n=1) and prison/probation orders (n=6) have not been presented. Cases where Aboriginal and Torres Strait Islander status was unknown have been excluded (n=23).

*7 life sentences were imposed for rape which have not been included in the sentence length calculations for imprisonment.

^ summary statistics for sample sizes less than 10 have not been presented.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

Children sentenced as an adult for rape offences

If a person has committed an offence when they were a child (aged 10 years or over but under 18 years),³² in some cases they can be sentenced as an adult. When sentencing a person in these circumstances, the court must take certain factors into account, such as the sentence that might have been imposed had they been sentenced as a child.³³

Of the 1,817 adults sentenced in the higher courts for rape, 84 committed the offence when they were a child, and of those, all were male, and most (n=63, 75.0%) were non-Indigenous.

Most received a custodial penalty (n=63, 75.0%). One-quarter (n=21, 25.0%) received an imprisonment sentence, with a median duration of 3.0 years (average 3.7 years). This is around half of the length of imprisonment sentences for all adults sentenced for rape (median 6.5 years, average 6.6 years).

Roughly the same number of cases received a partially suspended sentence (n=23, 27.4%), with a median sentence length of 3.0 years (average 2.8 years). Almost 2 in 5 people received a wholly suspended sentence (n=16), with a median sentence length of 2.0 years (average 2.0 years). On average, sentence lengths for partially and wholly suspended sentences were 6 months shorter for adults sentenced for rape as a child than for all adults sentenced for rape (see Table A10).

Two cases received a combined prison-probation order, and one case received an ICO. The remaining 21 cases received a non-custodial penalty, most receiving a probation order (n=16). Three received a community service order and two received a good behaviour order.

4.7.5 Rape as a domestic violence offence

Note: This section has a shorter data period compared with the other data reported in this Appendix. This section includes analysis of cases sentenced between July 2016 and June 2023.

Of the 901 rape (MSO) offences sentenced between July 2016 and June 2023, 35.5 per cent (n=320) were charged as a domestic violence offence ('DV offence').

Table A17 shows the most common custodial sentence for both DV and non-DV offences was a period of imprisonment; however, a higher proportion of imprisonment sentences were imposed for DV rape offences. With 70.9 per cent compared with 63.2 per cent for non-DV rape offences, this difference was statistically significant.³⁴

Imprisonment sentence lengths were slightly longer for DV rape, with a median length of 6.0 years (average 6.6 years)³⁵ than for non-DV rape (median 6.0 years, average 6.5 years)³⁶; however, this difference was not statistically significant.³⁷

³² Prior to February 2018 and the commencement of the *Youth Justice and Other Legislation (Inclusion of 17-year-olds Persons) Amendment Act 2016* (Qld), young offenders aged 17 were dealt with in the adult system.

³³ Youth Justice Acts 144(2)(b).







³⁴ Pearson's Chi-Square Test: $\chi^2(2) = 18.62, p < .001, V = 0.11$.

³⁵ The average and median calculations exclude 2 life sentences (n=566).

³⁶ The average and median calculations exclude 2 life sentences (n=314).

³⁷ Independent groups T-Test: $t(517.96) = -0.54, p = 0.6$, two-tailed (equal variance not assumed).

Table A17: Custodial penalty type and summary statistics for rape (MSO) by offence type

Offence type	Penalty type	Proportion	Average (years)	Median (years)
Rape (MSO) – not charged as a domestic violence offence (n=568)	Imprisonment	 63.2%	6.5	6.0
	Partially suspended sentence	 32.2%	3.3	3.0
	Wholly suspended sentence	 5.6%	2.8	2.5
Rape (MSO) – charged as a domestic violence offence (n=316)	Imprisonment	 70.9%	6.6	6.5
	Partially suspended sentence	 26.3%	3.8	4.0
	Wholly suspended sentence^	 1.6%	-	-

Data notes: 1) Custodial penalty types (MSO), adults, higher courts, 2016–17 to 2022–23.

2) Intensive correction orders (n=1) and prison/probation orders (n=3) have been included in the proportion calculations but have not been presented due to the small number of cases.

3) Life sentences have not been included (DV n=2, non-DV n=2)

^ average and median sentence lengths for cases with a DV rape that received a wholly suspended sentence have not been presented due to the small sample size (n=5)

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

When a DV rape offence received a partially suspended sentence, order lengths were significantly longer than for non-DV rape offences (median 4.0 years vs 3.0 years, average 3.8 years vs 3.3 years).³⁸ The time to serve before release on a partially suspended sentence was also slightly longer for DV rape offences as compared to non-DV rape offences (median 13 months vs 12 months, average 14 months vs 13 months).

There were 4 DV rape offences that received a non-custodial order – all of which were probation orders. Of the 13 non-DV rape offences that received a non-custodial penalty, the majority received a probation order (n=9). The remaining cases received a community service order (n=2), a good behaviour order (n=1) or a conviction with no further punishment (n=1).

4.7.6 Co-sentenced offences and sentencing outcomes

As noted above (section 4.7.1), over the 18-year period 1,793 cases were sentenced for rape (MSO) and received a custodial penalty.

Co-sentenced offences were common across all custodial penalty types, though they were most frequent where an imprisonment sentence was ordered. Across all custodial order types, there was an apparent increase in sentence length where there were co-sentenced offences.

Of those who received an imprisonment sentence for the rape MSO, 82.5 per cent were also sentenced for other offences within the same court event – see Figure A27. The median imprisonment sentence where other offences were also sentenced was 7.0 years (average 6.8 years)³⁹ compared with 5.5 years

³⁸ Independent groups T-Test: $t(258) = 3.33$, $p < .001$, two-tailed (equal variance assumed).

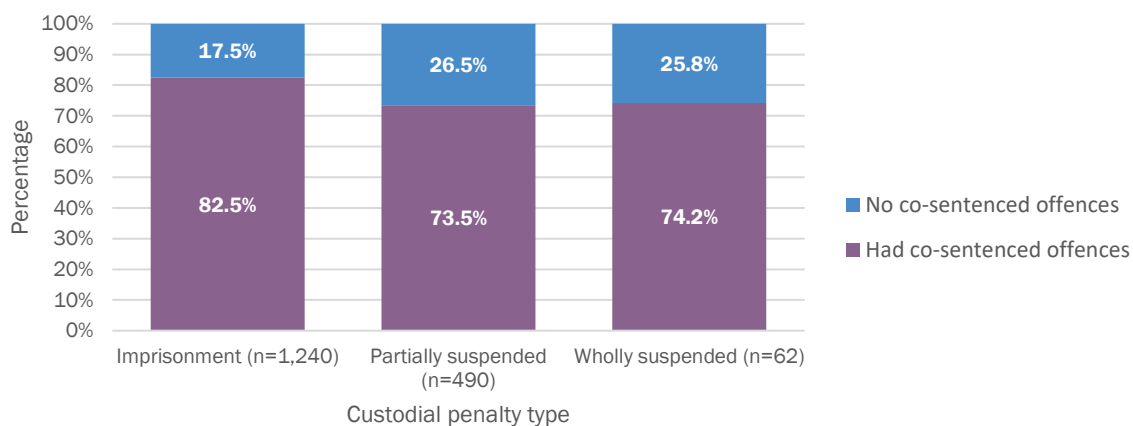
³⁹ This calculation excludes life sentences (n=7).

(average 5.2 years) when no other offences were sentenced, with this difference being statistically significant.⁴⁰

Of those that received a partially suspended sentence, nearly three-quarters (73.5%, n=360) were also sentenced for other offences within the same court event, though the median sentence duration was the same, at 3.0 years, regardless of whether other offences were also sentenced (average 3.4 years with co-sentenced offences, compared with 3.2 years without).

A similar proportion of cases with a wholly suspended sentence for rape had co-sentenced offences (74.2%, n=46). The median wholly suspended sentence with co-sentenced offences was 2.5 years (average 2.7 years), which was slightly longer than when there were no co-sentenced offences, with a median sentence of 2.0 years (average 2.2 years).⁴¹

Figure A27: Proportion of cases sentenced to a custodial sentence for rape (MSO) that had co-sentenced offences.



Data notes: Imprisonment and suspended sentences (MSO), adults, higher courts, 2005–06 to 2022–23

Note: Imprisonment includes prison-probation orders.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

Suspended sentences and penalties for co-sentenced offences

This section explores how frequently suspended sentences were combined with a supervised parole order for a co-sentenced offence, and whether this differed for sexual offences compared to other offence types.

For rape offences (MSO) that received a partially suspended sentence, the most common penalty order for co-sentenced offences was another partially suspended sentence – Figure A28. Of the 360 cases that received a partially suspended sentence for rape that were also sentenced for other offences in the same sentencing event, three-quarters of cases received at least one additional partially suspended sentence (75.6%), with a median sentence of 3.0 years (average 2.8 years).⁴²

Over one-third of these cases received an imprisonment order with a sentence length less than or equal to the time required to be served before suspension for the rape offence (38.0%), with the median

⁴⁰ Independent groups T-Test: $t(433.64) = 9.36, p < .001$, two-tailed (equal variance not assumed).

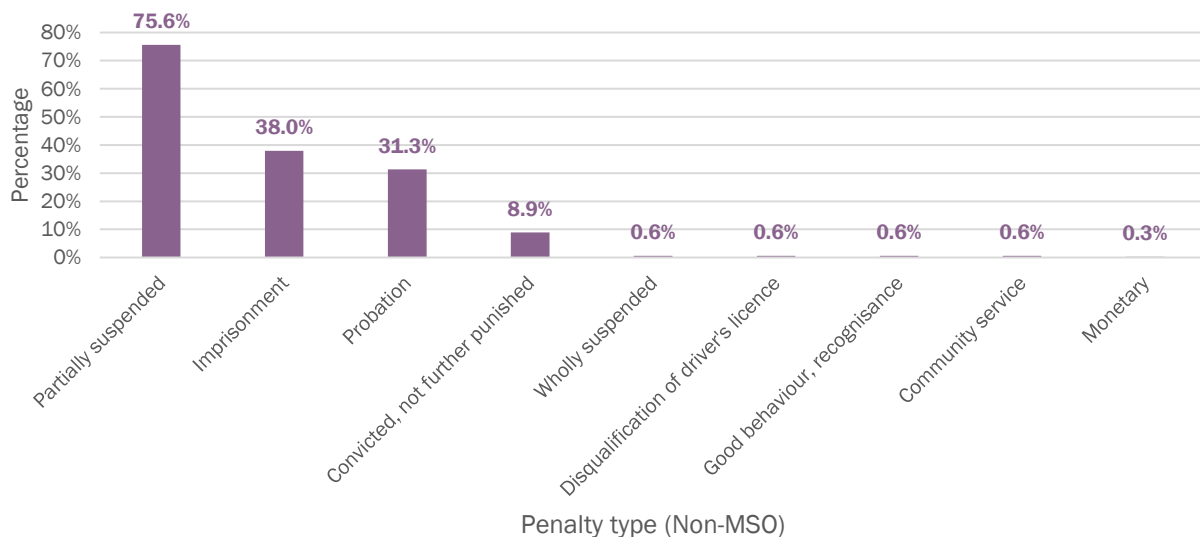
⁴¹ Note small sample size, n=16

⁴² Where more than one partially suspended sentence was imposed within the case, only the longest sentence was included in these calculations.

imprisonment sentence for an offence co-sentenced with a rape offence being 9.0 months⁴³ (average 10.4 months).

In just under one-third of all cases receiving a partially suspended sentence with a co-sentenced offence, a probation order was received (31.3%), therefore providing for a defendant to be supervised on release. The median length of a probation order when co-sentenced with a partially suspended sentence for rape (MSO) was 3.0 years (average 2.6 years).⁴⁴

Figure A28: Penalty type for co-sentenced offences with a partially suspended sentence for rape (MSO)



Data notes: Partially suspended sentence (MSO) with co-sentenced offence/s (n=360), adults, higher courts, 2005–06 to 2022–23, a case may have more than one co-sentence penalty applied so totals will add to more than 100%.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Similar to the partially suspended sentences, for cases that received a wholly suspended sentence for rape (MSO) that also had co-sentenced offences, the most common penalty imposed for a co-sentenced offence was an additional wholly suspended sentence. Of cases with co-sentenced offences nearly three-quarters received an additional wholly suspended sentence (71.1%) on a co-sentenced offence, and more than half received a supervised probation order (n=26, 56.5%).

For offences that were co-sentenced with a wholly suspended sentence for rape (MSO), the median length of the additional wholly suspended sentence was 2.0 years (average 2.4 years)⁴⁵ and the median length of the probation orders were 3.0 years⁴⁶ (average 3.0 years).

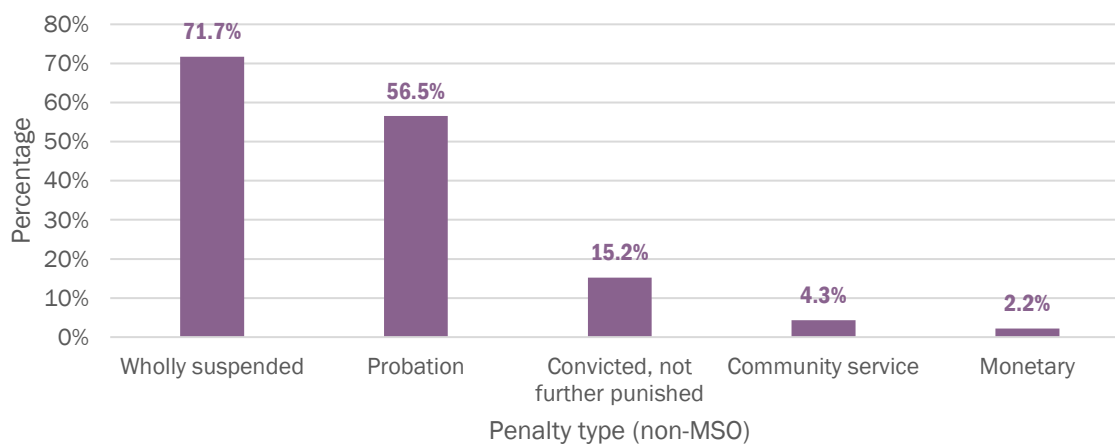
⁴³ Where more than one imprisonment order was imposed within the case, only the longest sentence was included in these calculations.

⁴⁴ Where more than one probation order was sentenced within the case, only the longest probation sentence was included in these calculations.

⁴⁵ Where more than one wholly suspended sentence was imposed within the case, only the longest probation sentence was included in these calculations.

⁴⁶ Where more than one probation order was sentenced within the case, only the longest probation sentence was included in these calculations.

Figure A29: Penalty type for co-sentenced offences with a wholly suspended sentence for rape (MSO)



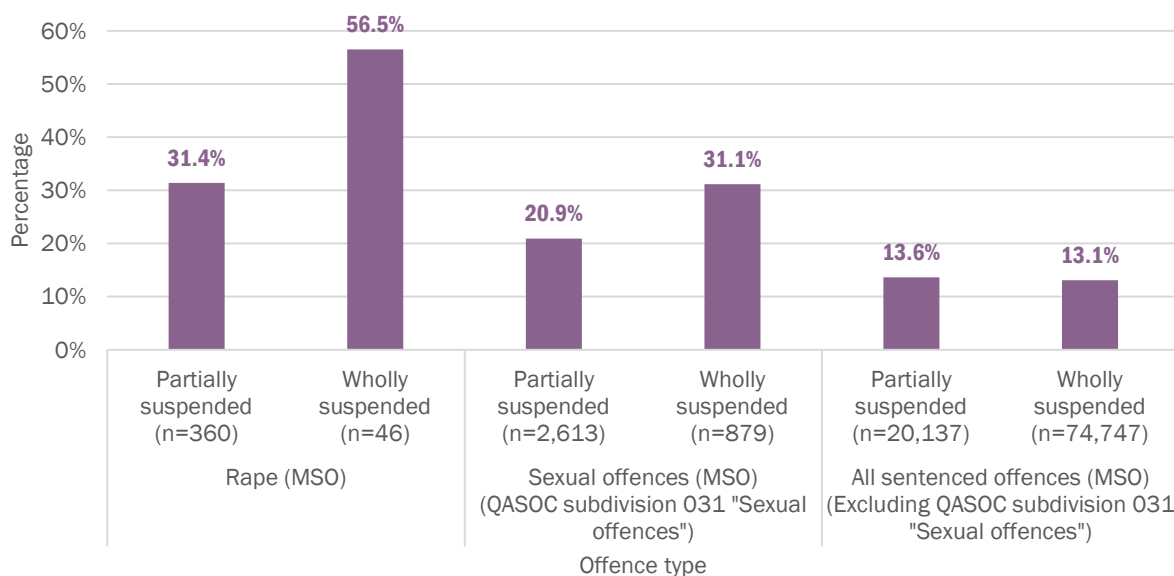
Data notes: Wholly suspended sentence (MSO) with co-sentenced offence/s, adults (n=46), higher courts, 2005–06 to 2022–23. This is a case count so a case may have more than one co-sentenced penalty applied therefore totals will add to more than 100%.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Given the prevalence of combining a suspended sentence with a probation order, further analysis looked at whether the proportion of cases that received a probation order in conjunction with a suspended sentence for an MSO offence differed for sexual offences compared to other offence types.

Figure A30 shows that combining probation orders with a suspended sentence (either partially or wholly) is more common where the MSO is a sexual offence compared to a non-sexual offence. Specifically, it is much more common within rape offences compared to other sexual offences and non-sexual offences, with more than half of all wholly suspended sentences also receiving a probation order on a co-sentenced offence during the 18-year period (56.5%).

Figure A30: Proportion of cases that received a probation order within the same court event as a suspended sentence, by offence type



Data notes: Suspended sentence (MSO) with co-sentenced offence/s, adults, Magistrates Courts and higher courts, 2005–06 to 2022–23

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

4.7.7 Time served in custody for rape

Note: This section has a shorter data period compared with the other data reported in this Appendix. This section includes analysis of cases sentenced between July 2011 and June 2023.

An important part of understanding sentencing outcomes for rape and whether these are adequate or appropriate is understanding the minimum time that must be served in custody before being eligible for release on parole if sentenced to imprisonment, or before being released if sentenced to a partially suspended sentence.

In this section, we explore this aspect of sentencing for rape (MSO). Due to the limitation of information about parole eligibility and parole release dates in the administrative data, this analysis only includes cases sentenced from July 2011 to June 2023.

A court must take a person's guilty plea into account when sentencing and may reduce the sentence the court would have imposed had the person not pleaded guilty.⁴⁷ Courts have different ways of taking a person's plea into account. This includes a decision to set an earlier parole eligibility date (for a sentence of imprisonment) or an earlier release date (for a partially suspended sentence). For this reason, we present these outcomes based on plea.

Time in custody before being eligible for release on parole

Overall, during the period, regardless of plea, the median time to be served in prison for rape, prior to being eligible for parole, was 2.5 years (average 3.1 years). Release on parole is not automatic and requires the person to make an application to the Parole Board Queensland. For more information about this process, see section 1.4.3.

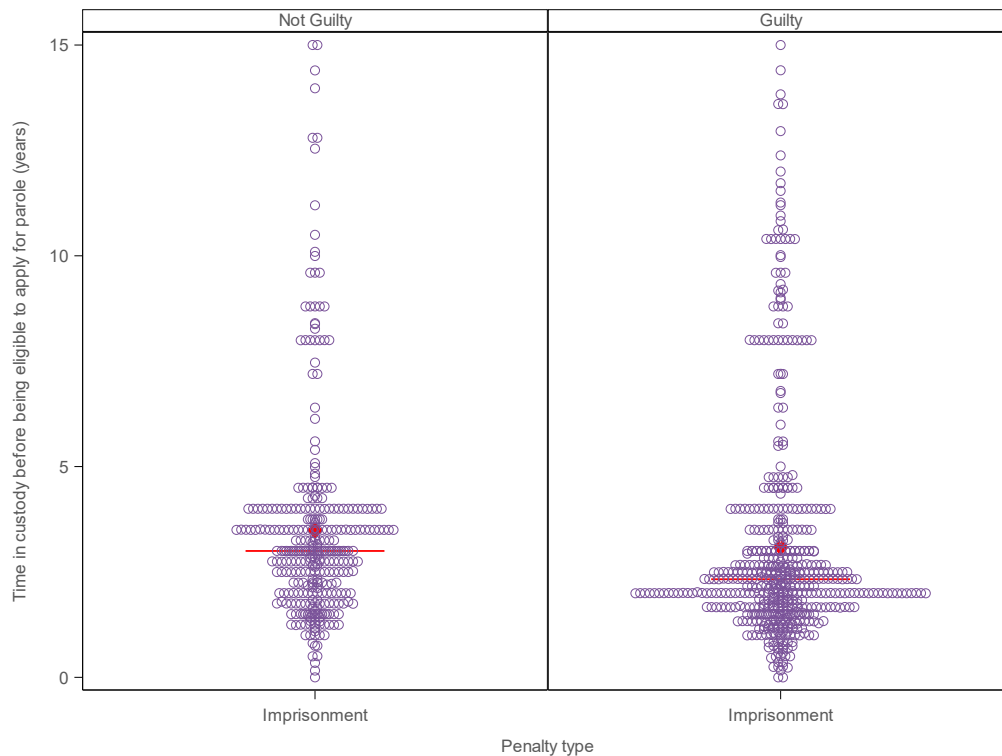
Generally, a guilty plea (along with other factors in mitigation) in Queensland is recognised by a court in the non-parole period being set at about the one-third mark (that is, at one-third of the head sentence). In contrast, when a person pleads not guilty and is convicted at trial, a court will often decline to set a parole eligibility date. This means the person will be eligible for parole after serving 50 per cent of their sentence by operation of statute.⁴⁸ There are exceptions to this if the person is declared convicted of a serious violent offence ('SVO'), in which case the person must serve 80 per cent of the sentence in custody or 15 years (whichever is less) before being eligible for parole.

Figure A31 shows that there is a difference in the minimum time required to be served in custody on an imprisonment order before becoming eligible for parole, depending on whether a person pleaded guilty or went to trial. The red line indicates the median and the red diamond indicates the average.

⁴⁷ *Penalties and Sentences Act 1992* s 13. See Appendix 3.

⁴⁸ *Corrective Services Act 2006* (Qld) s 184(2).

Figure A31: Time to serve in custody for rape (MSO) before being eligible for release on parole, by plea type, 2011–12 to 2022–23



	N	Average (years)	Median (years)	Minimum (years)	Maximum (years)
Not guilty	319	3.5	3.0	0.0	15.0
Guilty	535	3.1	2.3	0.0	15.0
TOTAL	869	3.2	2.5	0.0	15.0

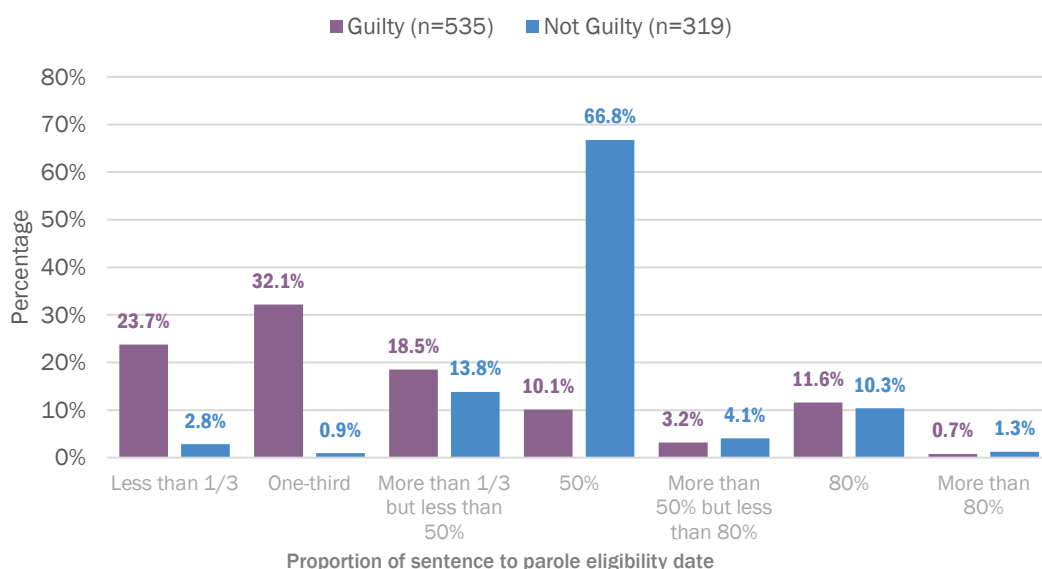
Data notes: Imprisonment sentence (MSO), adults, higher courts, 2011–12 to 2022–23. Excludes cases where the expected parole eligibility date exceeds the length of the head sentence due to a longer parole eligibility date being applied to a different offence. Cases receiving a prison-probation order have also been excluded. Cases with no plea type entered (n=15) have been included in the total row of the table but not included in all other analysis.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

People who pleaded guilty had short non-parole periods. The median time before parole eligibility was 2.3 years (average 3.1 years) for a person who pleaded guilty to rape (MSO), compared with 3.0 years (average 3.5 years) for a person who pleaded not guilty.

Most people had parole eligibility set at 50 per cent or below. The difference a guilty plea made to the minimum proportion of time to be served is shown in Figure A32.

Figure A32: Time before a person is eligible for release on parole as a proportion of the head sentence for rape (MSO), by plea type, 2011–12 to 2022–23



Plea type	N	Average proportion	Median proportion	Minimum proportion	Maximum proportion
Not guilty	319	51.1%	50.0%	0.0%	89.9%
Guilty	535	39.8%	33.4%	0.0%	90.0%
TOTAL	869	44.2%	44.3%	0.0%	90.0%

Data notes: Imprisonment sentence (MSO), adults, higher courts, 2011–12 to 2022–23.

Excludes cases where the expected parole eligibility date exceeds the length of the head sentence due to a longer parole eligibility date being applied to a different offence. Cases receiving a prison-probation order have also been excluded. Life sentences (n=6) have been excluded. Cases with no plea type entered (n=15) have been included in the total row of the table but not included in all other analysis.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Of the 535 people who pleaded guilty to rape (MSO) between July 2011 and June 2023 and received an imprisonment order, three-quarters (74.4%) had parole eligibility set below the halfway mark, and 55.8 per cent had their parole eligibility date set at or below the one-third mark. For these cases, the average proportion of the head sentence to serve before parole eligibility was 39.8 per cent (median 33.4%).

In contrast, of the 319 people who did not plead guilty, two-thirds (66.8%) were only eligible for parole after serving half of their head sentence and a much smaller proportion than for those who pleaded guilty (17.6%) had their parole eligibility date set below 50 per cent of the head sentence. Most commonly people were required to serve 50.0 per cent of their sentence before becoming eligible for release on parole. Unlike the guilty pleas, there was no concentration at the one-third mark, suggesting other sentencing considerations, such as specific factors in personal mitigation, were being applied to those set below the halfway mark.

Regardless of plea type, a small but noticeable proportion of people were eligible for release on parole after serving 80.0 per cent of their sentence, indicating the court had made a serious violent offence ('SVO') declaration.⁴⁹ Of the 15.7 per cent of people who pleaded not guilty and had parole set beyond

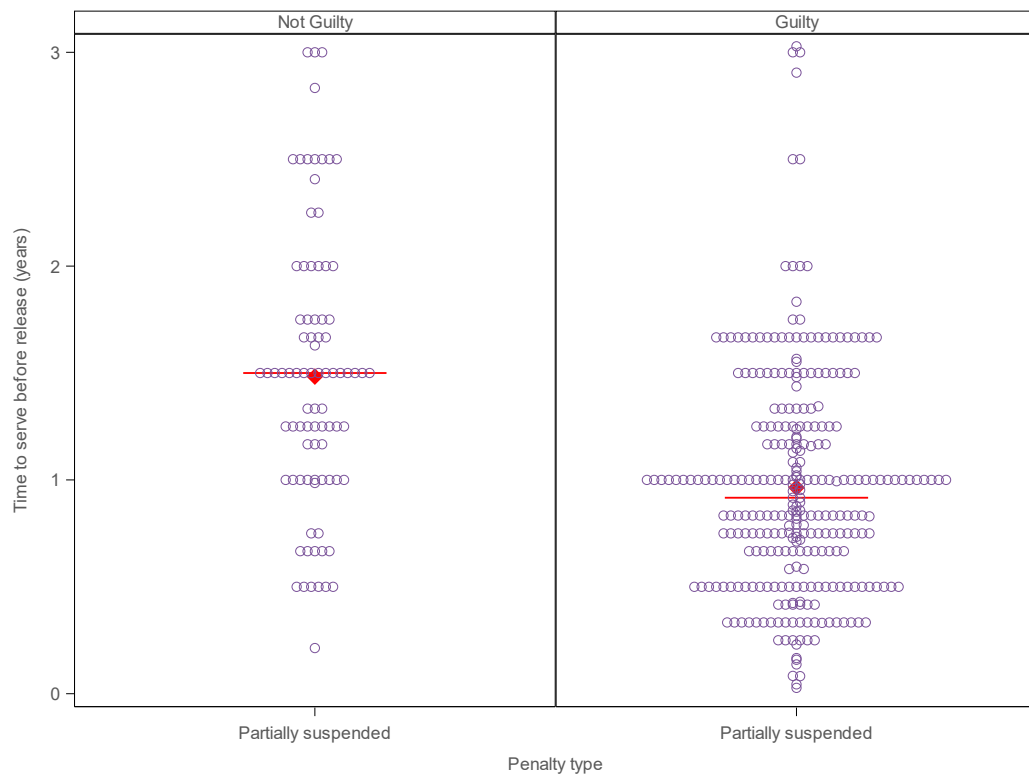
⁴⁹ PSA Part 9A.

the halfway mark, most clustered at the 80 per cent mark (10.3%, n=33). There were no noticeable differences based on plea status as to whether an SVO declaration was made by the court, meaning parole eligibility was fixed at 80 per cent suggesting a guilty plea in these matters is less important than the nature of the offending conduct itself.

Time to serve before release for partially suspended sentences

Figure A33 shows the distribution of the time in custody before release for a partially suspended sentence for rape (MSO), by plea type. The red line indicates the median and the red diamond indicates the average. People who pleaded guilty spent a median of 0.9 years in custody before being released (average 1.0 years), compared to 1.5 years for those who pleaded not guilty (average 1.5 years). More people sentenced to a partially suspended sentence had pled guilty (n=290) than not guilty (n=85).

Figure A33: Time to serve before release for partially suspended sentence for rape (MSO), by plea type, 2011–12 to 2022–23



Plea type	N	Average (years)	Median (years)	Minimum (years)	Maximum (years)
Not guilty	85	1.5	1.5	0.2	3.0
Guilty	290	1.0	0.9	0.0	3.0
TOTAL	379	1.1	1.0	0.0	3.0

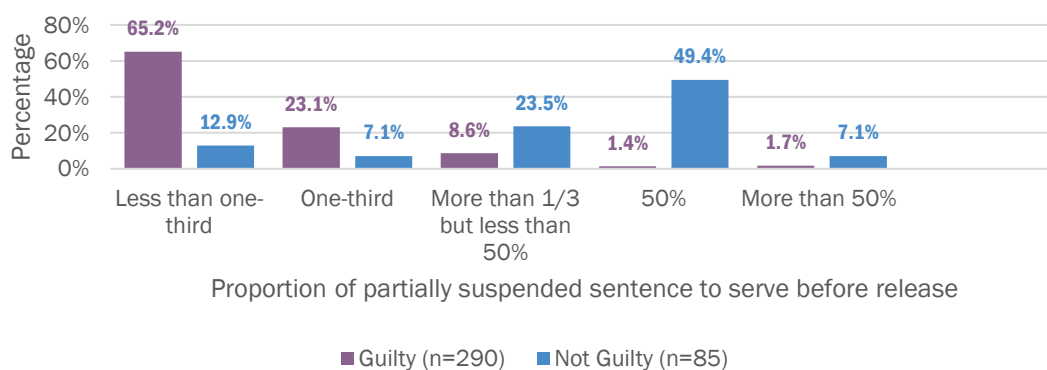
Data notes: Partially suspended sentence (MSO), adults, higher courts, 2011-12 to 2022-23. Cases with no plea type entered (n=4) have been included in the total row of the table but not included in all other analysis.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Of those receiving a partially suspended sentence, half the people who did not plead guilty had their release date set at 50 per cent of their sentence (49.4%). A further 7.1 per cent of people who did not plead guilty had their release date set above 50 per cent. In contrast the majority (88.3%) of people who pleaded guilty had their release date set at one-third of the length of their sentence or less– see Figure A34.⁵⁰

For those people who received a partially suspended sentence for rape and pleaded not guilty, the median proportion of their sentence they were required to serve in custody, prior to being released was 50 per cent (average 44.2%). In contrast, those who pleaded guilty were required to serve a median proportion of 27.8 per cent of their partially suspended sentence before being released (average 27.1%).

Figure A34: Proportion of a partially suspended sentence to be served before release for rape (MSO), by plea type, 2011–12 to 2022–23



Plea type	N	Average proportion	Median proportion	Minimum proportion	Maximum proportion
Not guilty	85	44.2%	50.0%	7.1%	81.5%
Guilty	290	27.1%	27.8%	0.5%	75.7%
TOTAL	379	31.0%	30.0%	0.5%	81.5%

Data notes: Partially suspended sentence (MSO), adults, higher courts, 2011–12 to 2022–23.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Serious Violent Offence (SVO) declaration

Note: This section has a shorter data period compared with the other data reported in this Appendix. This section includes analysis of cases sentenced between July 2011 and June 2023.

Schedule 1 of the PSA provides a list of offences that are classified as 'serious violence offences'. The offences of rape and sexual assault are both included in this list of offences. When a person is being sentenced for one of these offences, an SVO declaration can be made by a sentencing judge. When a declaration is made, the sentenced person must serve 80 per cent of their sentence (or 15 years, whichever is less) in prison before being eligible for release on parole. These SVO declarations are mandatory in situations where a person is being sentenced for a relevant listed offence, and where they receive a term of imprisonment of 10 years or more. For sentences of imprisonment greater than 5 years

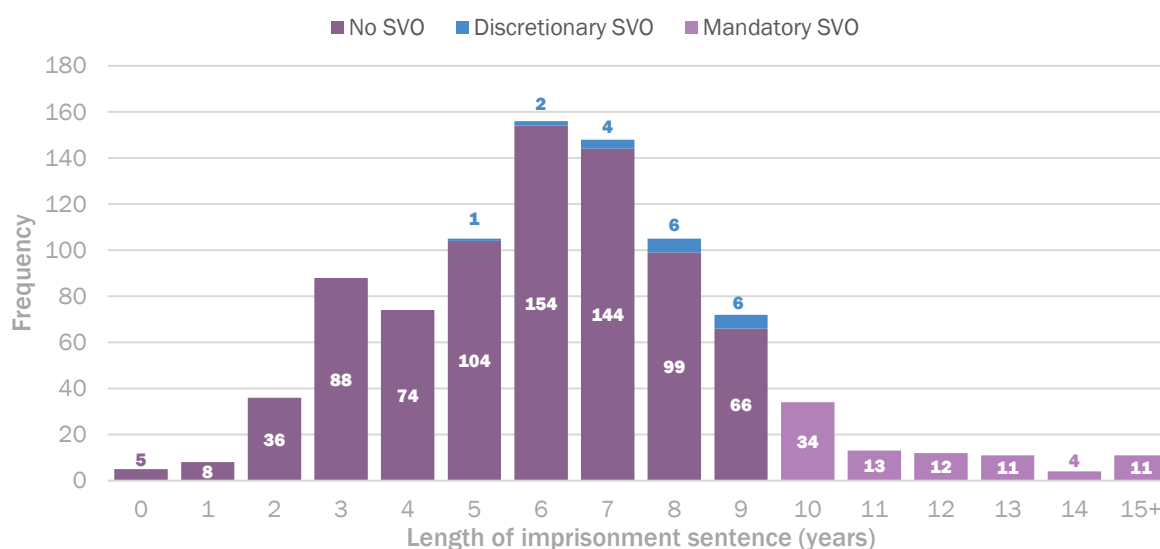
⁵⁰ Four cases were excluded from this analysis because plea type was not available the data.

and less than 10 years, it is not mandatory for an SVO declaration to be made; however, a sentencing judge has the discretion to make such a declaration. Life offences are not eligible for the SVO scheme.

Between July 2011 and June 2023, 888 people received an imprisonment sentence for rape (MSO), and of these, 6 had a life sentence imposed.

Of the 882 imprisonment sentences (excluding life sentences), 104 (11.8%) had an SVO declaration made. Most of these (81.7%, n=85) were mandatory declarations as the imprisonment sentence was 10 years or longer. The remaining 19 cases were discretionary SVO's, imposed on sentences between 5 and 10 years. The discretionary SVOs make up 3.2 per cent of sentences between 5 and 10 years (n=19/586).

Figure A35: Length of imprisonment orders for rape (MSO) by SVO



Data notes: Rape MSO, adults, higher courts, 2011–12 to 2022–23. Imprisonment orders. Excluding life sentences (n=6).
Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

4.7.8 Applications for parole

Note: This section has a shorter data period compared with the other data reported in this Appendix. This section includes analysis of cases sentenced between July 2021 and June 2023.

A sample of cases were selected to analyse parole outcomes for those sentenced to imprisonment. This data was from Queensland Corrective Services (QCS). The sample comprised all prisoners who were sentenced to imprisonment for rape (MSO) and were expected to be able to apply for parole between 1 July 2021 and 30 June 2023.

During the COVID-19 pandemic, there were considerable delays in parole board decisions, which affected the data about parole outcomes. For this analysis, a more recent data period was used that was less affected by delays caused by the pandemic.

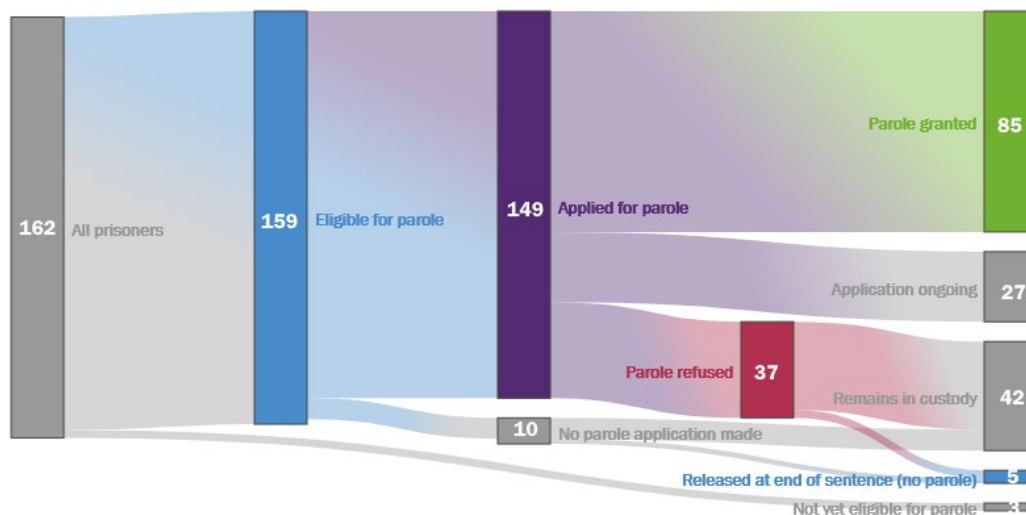
After data cleaning⁵¹, 162 prisoners who had been sentenced for rape (MSO) were included in this analysis. Most of this sample of prisoners were eligible to apply for parole (n=159, 98.1%), that is, they had reached their parole eligibility date.

A small proportion (n=3, 1.9%) were not yet eligible for parole. One prisoner was subject to an indefinite sentence imposed for a different offence and two were subject to a DPSOA order.

Of the 159 prisoners who were eligible for parole, 93.7 per cent had applied for parole (n=149). Of those, just over half (57.0%, n=85) were granted parole, while 18.1 per cent (n=27) were still awaiting the outcome of their application.⁵² Parole was refused for nearly one-quarter of applicants (24.8%, n=37) and the majority of these prisoners remained in custody (n=34). There were three prisoners who were refused parole who were later released after serving the full sentence.

There were 10 prisoners who had yet not made/did not make a parole application, despite being eligible to do so (6.3%). Most of these prisoners remained in custody (n=8), however, 2 served the full sentence and were then released.

Figure A36: Parole application outcomes for prisoners sentenced for rape (MSO)



Data notes: Parole outcomes for imprisonment penalty for rape (MSO) with a parole eligibility date between 1 July 2021 and 30 June 2023. If more than one parole application was made, the earliest completed outcome or the earliest outcome that resulted in parole being granted has been counted.

Source: QCS unpublished data, extracted May 2024.

Actual time served

Of the people who had been released on parole (n=84)⁵³, on average they served 1,228.1 days (approximately 3.4 years) in prison (median 1149.0 days or approximately 3 years and 2 months) before being discharged (including any declared pre-sentence custody), serving an average of 55.8 per cent of their sentence (median 52.0%).⁵⁴

⁵¹ Exclusions include those granted appeals, those subject to interstate transfers, those subject to cumulative sentences or were excluded for other reasons.

⁵² Some of these applicants had previously applied for parole and had been refused.

⁵³ One person was excluded from the analysis as they had been granted parole but had not yet been released when the data was extracted (June 2024) therefore did not yet have a discharge date.

⁵⁴ This analysis includes 13 cases with an SVO declaration. The sample was too small to be considered separately. An SVO declaration requires a person to serve 80 per cent of their sentence or 15 years (whichever is less) which will increase the percentage of time to be served before release. See section 7.2.3 for discussion of SVO offences.

The median time served in prison beyond the parole eligibility date before being released was 211.5 days (average 267.8 days).⁵⁵



Note: the median time served before parole eligibility date (top box) and median time between parole eligibility date and release date (middle box) are separate calculations measuring the central point of distinct data items. As such, these will not sum to be the median total time served (bottom box).

4.7.9 Breach of suspended sentences

Note: This section has a shorter data period compared with the other data reported in this Appendix. This section includes analysis of cases sentenced between January 2009 and June 2023.

To consider the effectiveness of suspended sentences, further data was analysed to determine whether suspended sentences imposed for rape (MSO) were subsequently breached.

The courts database as maintained by QGSO does not include information about the operational period of suspended sentences. The Council requested and obtained additional data from Court Services Queensland about whether the suspended sentence was breached during the operational period and the court imposed further sentences. Sections 146 and 147 of the PSA provide the consequences of such a breach. This may include an order to extend the operational period of a suspended sentence or ordering a person to serve all or part of their suspended sentence.

Court Services Queensland provided the Council with data pertaining to these orders. That is, orders to extend the operational period of a suspended sentence, or orders to serve all, or part, of a suspended sentence. Analysis of this data provided some insight into the effectiveness of suspended sentences. As discussed in **Chapter 4**, due to limitations in the administrative data available, we were unable to obtain information regarding the context of what prompted the formal breach action. However, this analysis provided some insight into the effectiveness of suspended sentences.

Partially suspended sentences

There were 428 partially suspended sentences imposed for rape (MSO) from January 2009 to June 2023; however, cases where the operational period had not expired as at 30 June 2023 were excluded from this analysis, because these suspended sentences may still be breached. This analysis therefore includes only 276 cases.

Figure A37 illustrates the volume of partially suspended sentences for rape (MSO) that were breached, and the associated action in response to the breach.

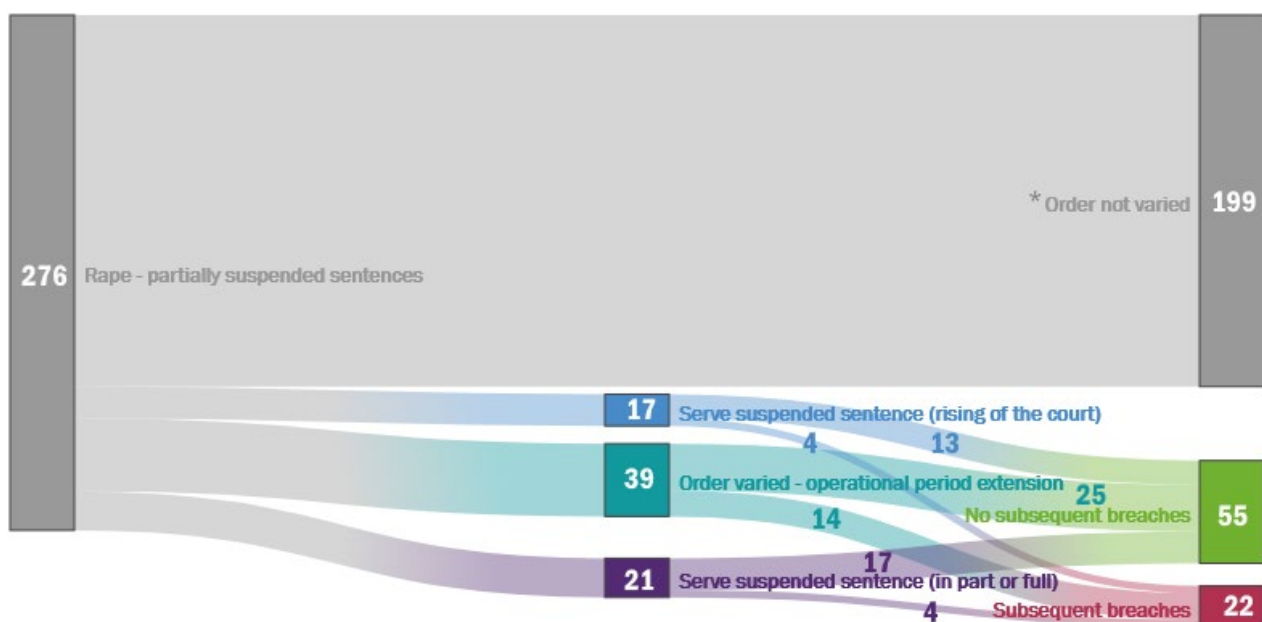
The majority of offenders that received a partially suspended sentence for rape (MSO) did not breach their suspended sentence (72.1%, n=199/276). Under one-third of the partially suspended sentences (MSO) for rape (27.9%, n=77/276) were breached.

Of the 77 cases where the partially suspended sentence was breached, half had the operational period extended (50.6%, n=39/77). There were 21 orders made, resulting in the defendant being ordered to serve all or part of the partially suspended sentence (28.6%) and 17 cases where the suspended sentence was continued (rising of the court).

Most of the cases that had a breach order imposed did not go on to have further breach orders made during the operational period (n=25/39), meaning they did not breach the suspended sentence again (71.4%, n=55/77). Additional breach orders were most common when the operational period was extended in the first instance. Over one-third of cases where a suspended sentence breach resulted in an operational period extension went on to have further order variations made (35.9%, n=14/39).

Of the 22 offenders who had more than one breach order imposed, 16 had 2 breach orders made, 4 people had 3 breach orders, one had 4 breaches and one had 5 breaches.

Figure A37: Breach of partially suspended sentences for rape (MSO)



Data notes: Data notes: Partially suspended sentences for rape (MSO) sentenced between January 2009 and June 2023, with an operational period than ends on or prior to June 2023, adults, higher courts.

* Order not varied means that the partially suspended sentence imposed for rape (MSO) was not activated and the operational period was not extended.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023 and Court Services Queensland, extracted May 2024.

Wholly suspended sentences

There were 53 wholly suspended sentences imposed for rape (MSO) from January 2009 to June 2023; however, this analysis includes only 35 cases. Cases where the operational period imposed for rape (MSO) had not expired as at 30 June 2023 were excluded because these suspended sentences may still be breached.

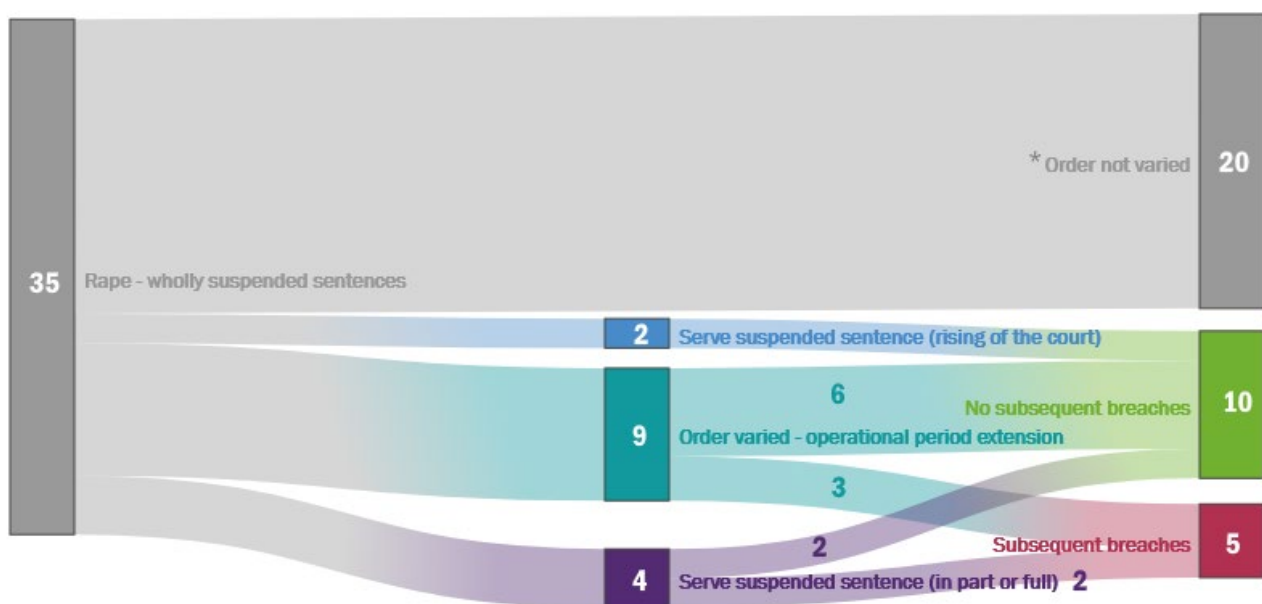
Figure A38 illustrates the volume of wholly suspended sentences for rape (MSO) that were breached, and the associated action in response to the breach.

Less than half of the wholly suspended sentences imposed for rape (MSO) were breached within the operational period (42.9%, n=15/35). This also means that 57.1 per cent of wholly suspended sentences for rape (MSO) were not breached (n=20/35).

Of the 15 cases where the wholly suspended sentence (MSO) was breached, 9 cases (60.0%) received an extension to the operational period, 4 were ordered to serve all or part of the suspended sentence (26.7%) and 2 cases had the suspended sentence continued (rising of the court).

Two-thirds of the wholly suspended sentences that were breached did not have any subsequent variations made (66.7%, n=10/15). There were 5 cases that had additional breach orders made as the suspended sentence was breached more than once – 3 people had 2 breach orders made, one person had 3 breach orders made and one person had 4.

Figure A38: Breach of wholly suspended sentences for rape (MSO)



Data notes: Data notes: Wholly suspended sentences for rape (MSO) sentenced between January 2009 and June 2023, with an operational period that ends on or prior to June 2023, adults, higher courts.

* Order not varied means that the wholly suspended sentence imposed for rape (MSO) was not activated and the operational period was not extended.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023 and Court Services Queensland, extracted May 2024.

4.7.10 Sentencing and pre-sentence custody for rape

Note: This section has a shorter data period compared with the other data reported in this Appendix. This section includes analysis of cases sentenced between July 2011 and June 2023.

Of the 888 cases where an imprisonment sentence⁵⁶ was imposed for rape from July 2011 to June 2023,⁵⁷ approximately one-third had no declared time in pre-sentence custody (31.0%). Approximately two-thirds (68.7%) had pre-sentence time declared, which was less than the sentenced amount. This

⁵⁶ This includes prison/probation orders (n=6) as there were too few of these to analyse separately.

⁵⁷ Pre-sentence custody was recorded in the data from July 2011 onwards.

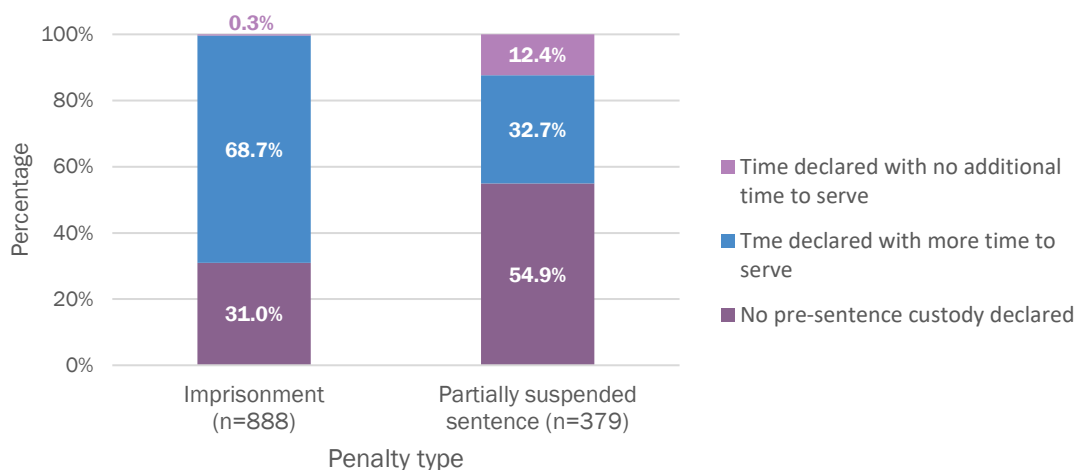
means they had served part of their sentence on remand, but further time in custody was required following sentencing.

There were 3 cases (0.3%) with time declared that equalled the length of the imprisonment sentence. This means that these people had fully served their imprisonment sentence while on remand and had no further time to serve in custody. These cases were all combined prison/probation orders, meaning they were released onto probation on their sentence date (see Figure A39).

The median declared time in pre-sentence custody for an imprisonment sentence was 313.0 days (average 325.4 days).

Cases in which pre-sentence custody was declared had longer sentences compared to cases where no pre-sentence custody was declared. Where no pre-sentence custody was declared, the median (and average) imprisonment sentence for rape (MSO) was 5.5 years. In comparison, the median (and average) imprisonment sentence was 7.0 years where some pre-sentence custody was declared. This is a statistically significant difference.⁵⁸

Figure A39: Use of pre-sentence custody for rape (MSO), 2011–12 to 2022–23



Data notes: Imprisonment order (including combined prison-probation orders) and partially suspended sentence, rape (MSO), adults, higher courts, 2011–12 to 2022–23.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Of the 379 partially suspended sentences imposed for rape (MSO), just over half had no pre-sentence custody declared (54.9%). One-third had some time declared but still had additional time to serve in custody (32.7%). For the remaining 12.4 per cent (n=47), their declared pre-sentence time in custody was equal to the time required to serve before the sentence was suspended, meaning they were able to be released immediately after being sentenced.

The median number of days declared as pre-sentence custody time for a partially suspended sentence was 189 days (average 216.9 days).

When pre-sentence time was declared, the median partially suspended sentence was of 3.5 years (average 3.6 years), which was longer than those with no-presentence custody, which had a median

⁵⁸ Independent groups t-test: $t(548.66) = 7.97$, $p < .001$, two-tailed (equal variance not assumed).

sentence length of 3.0 years (average 3.3 years). This is a statistically significant difference between the average sentence lengths.⁵⁹

When pre-sentence custody was declared, the median time required to be served prior to release was 1.0 years (average 1.2 years) while for those with no declared pre-sentence custody, the median time to serve was also 1.0 years (average 1.0 years). This is a statistically significant difference between the average sentence lengths.⁶⁰

4.7.11 Appeal rates in rape cases

Note: This section has a shorter data period compared with the other data reported in this Appendix. This section includes analysis of cases sentenced in 2018–19.

Appeals can be made against conviction, against sentence or for both reasons. For this review, it was important to understand how frequently rape matters are appealed, particularly on the basis of sentence. It was also necessary to understand what the outcomes of those appeals were.

In its previous work, the Council identified that 53.0 per cent of rape cases that were declared to be serious violent offences had been subject to an appeal.⁶¹ However, as noted in section 6.1.2 above, only 11.8 per cent of rape cases were declared serious violent offences and were subject to the serious violent offence scheme.

With the assistance of Court Services Queensland, the Council examined all rape (MSO) cases sentenced during 2018–19 and reviewed Court of Appeal decisions for those cases. The year 2018–19 was chosen to provide sufficient time for any appeals to have been finalised.

Of the 132 rape (MSO) cases sentenced in 2018–19, one-quarter appealed their case (25.0%, n=33). Two-thirds of those were appeals against conviction (66.7%), with 21.2 per cent against sentence only, and the remaining 12.1 per cent appealed against both conviction and sentence.

In terms of outcomes, of all cases appealed, the majority were dismissed by the Court of Appeal (54.5%, n=18), or otherwise abandoned (36.4%, n=12). Only 3 appeals (9.1%) were allowed by the court, and of these 2 were appeals against sentence and the court ultimately varied the sentence. In *R v WBK*,⁶² the Court of Appeal reduced the parole eligibility date, while in *R v GBD*,⁶³ the Court decreased the term of imprisonment from 4 months to 3 months.

For the case appealed against conviction, it was a little more complex. The Court of Appeal ordered a retrial,⁶⁴ which subsequently took place, and all 4 defendants were reconvicted of rape (MSO). That outcome was appealed by 3 of the offenders⁶⁵ and in 2023 the Court of Appeal dismissed the appeal for 2 offenders and acquitted the third of all convictions of rape.⁶⁶

⁵⁹ Independent groups t-test: $t(377) = -2.37$, $p < .05$, two-tailed (equal variance assumed).

⁶⁰ Independent groups t-test: $t(337) = -2.44$, $p < .05$, two-tailed (equal variance assumed).

⁶¹ Queensland Sentencing Advisory Council, The '80 per cent Rule': The Serious Violent Offences Scheme in the Penalties and Sentences Act 1992 (Qld) (*Final report*, May 2022) 108-109 [8.1.3].

⁶² [2020] QCA 60.

⁶³ *R v GBD* [2018] QCA 340.

⁶⁴ *R v Peter*; *R v Anau*; *R v Ingui*; *R v Banu* [2020] QCA 228.

⁶⁵ The fourth offender discontinued his appeal.

⁶⁶ *R v Peter*; *R v Banu*; *R v Ingui* [2023] QCA 1.

Table A18: Appeal status of rape (MSO) cases sentenced in 2018–19

	Conviction		Sentence		Conviction & Sentence		Total	
	N	%	N	%	N	%	N	%
Appeal allowed	1	4.5	2	28.6	0	0.0	3	9.1
Appeal abandoned	5	22.7	3	42.9	4	100.0	12	36.4
Appeal dismissed or refused	16	72.7	2	28.6	0	0.0	18	54.5
TOTAL	22	100.0	7	100.0	4	100.0	33	100.0

Data notes: Rape (MSO), adults, higher courts, sentenced 2018–19.

Source: A manual review of cases was conducted by Court Services Queensland.

4.8 Sentencing outcomes for sexual assault

Over the 18-year data period from July 2005 to June 2023, there were 2,543 cases involving an adult sentenced for a sexual assault offence. Of those, 1,904 had a sexual assault offence sentenced as the MSO.

The analysis below focuses on these sexual assault (MSO) cases.

Summary statistics for sexual assault	
1	<p>Almost all sexual assaults are non-aggravated offences.</p> <p>A total of 95.4 per cent of all sexual assaults were non-aggravated offences (10-year maximum penalty) and just over half were sentenced in the Magistrates Courts (53.1%). All cases involving circumstances of aggravation (14-year and life maximum penalties) were sentenced in the higher courts.</p>
2	<p>The use of custodial sentences for non-aggravated sexual assault has increased in the Magistrates Courts while remaining relatively stable in the higher courts.</p> <p>In the Magistrates Courts, sentences of imprisonment and wholly suspended sentences both increased over the 18-year period, while the use of monetary penalties decreased.</p> <p>In the higher courts, the use of wholly suspended sentences has increased over time for non-aggravated sexual assault while the use of imprisonment has decreased.</p>
3	<p>Wholly suspended sentences were the most common penalty imposed for non-aggravated sexual assault in both the lower and higher courts.</p> <p>Wholly suspended sentences were ordered in just over one-quarter of all cases in the Magistrates Courts (25.2%) with a median sentence length of 6 months. Just over one-third of all sentences for non-aggravated sexual assault in the higher courts (37.4%), with a median sentence of 9 months.</p>
4	<p>Almost all aggravated sexual assaults received custodial penalties.</p>

	A custodial penalty was imposed in 95.1 per cent of sexual assault (aggravated) and 96.3 per cent of sexual assault (aggravated life) cases. The most common penalties were partially suspended sentences and imprisonment.
5	<p>The median custodial sentence length for non-aggravated sexual assault offences was 12 months in the higher courts and 6 months in the Magistrates Courts.</p> <p>Approximately one-third of custodial penalties in the Magistrates Courts were sentences of imprisonment (31.8%), with an average length of 9.7 months (median 9.0 months).</p> <p>Comparatively, just under 20 per cent of custodial penalties for non-aggravated sexual assault dealt with in the higher courts were sentences of imprisonment (19.4%), for an average of 1 year and 9 months (median 1 year and 3 months).</p>
6	<p>Almost all people sentenced committed the offence as an adult.</p> <p>Only 13 cases involved the person committing the offence when they were a child.</p>
7	<p>Very few sexual assaults were committed in a domestic and family violence context.</p> <p>Since 2016, only 7.2 per cent of cases have been sentenced as a domestic violence offence. Aggravated sexual assault offences were slightly more likely to be domestic violence offences.</p>
8	<p>Aboriginal and Torres Strait Islander peoples were more likely to receive a custodial penalty than non-Indigenous people.</p> <p>One in 5 sexual assault (MSO) cases were committed by an Aboriginal and Torres Strait Islander person and the overwhelming majority were for non-aggravated sexual assault (95.4%). The majority of Aboriginal and Torres Strait Islander peoples sentenced for sexual assault (MSO) received a custodial penalty (81.8%) compared with under two-thirds of non-Indigenous people sentenced (60.2%).</p>
9	<p>Over half of all people sentenced to a custodial penalty were sentenced for another offence</p> <p>Over half (55.2%) of all cases with a custodial penalty were sentenced for another offence at the same hearing. In those cases, the person was more likely to receive a longer head sentence for their sexual assault (MSO). It was more common to combine a suspended sentence with a probation order for sexual assault and other sexual offences, as compared to other offence types.</p>

Sexual assault by maximum penalty

As noted in **Chapter 3**, there are different maximum penalties for sexual assault, depending on whether the offence involves circumstances of aggravation. Broadly, those are:

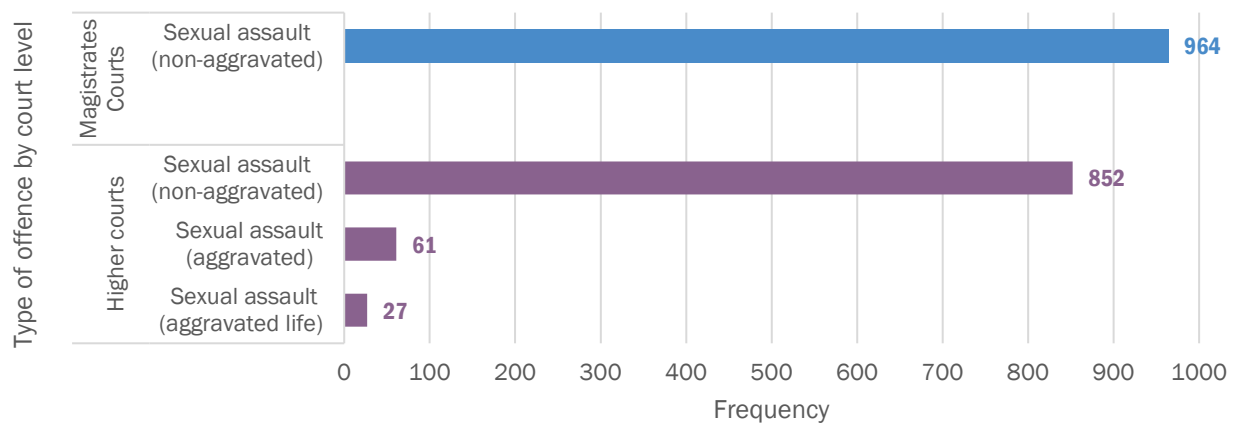
- sexual assault (non-aggravated) with a maximum penalty of 10 years' imprisonment;
- sexual assault (aggravated) with a maximum penalty of 14 years' imprisonment; and
- sexual assault (aggravated life) with a maximum penalty of life imprisonment.

A defendant may also elect (choose) for an offence of sexual assault to be sentenced in the Magistrates Court if the person pleads guilty and the victim is 14 years of age or older.⁶⁷ However, a Magistrate has

⁶⁷ *Criminal Code* (Qld) s552B(1)(a).

the ultimate discretion to not deal with the matter summarily if they form the view that the defendant may not be adequately punished in the summary jurisdiction, where the maximum sentence of imprisonment which can be imposed by a Magistrate is 3 years.⁶⁸ In these circumstances, the Magistrate may commit the matter to a higher court for sentence to ensure that the criminality is adequately reflected in the final sentence imposed.

Figure A40: Number of sexual assault cases (MSO) by circumstance of aggravation and court level



Data notes: MSO, adults, Magistrates and higher courts, 2005–06 to 2022–23

Note: a single case may involve multiple different circumstances of aggravation. To avoid double-counting, the chart above reports each case according to the most serious circumstance of aggravation recorded for that matter.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

Non-aggravated sexual assault accounts for almost all the sexual assault offences sentenced in the courts over the period July 2005 to June 2023 (n=1,816, 95.4%); of these, just over half the adults sentenced for a non-aggravated sexual assault (MSO) were sentenced in the Magistrates Courts (n=964, 53.1%), with the remaining 46.9 per cent (n=852) of these cases sentenced in the higher courts.

In contrast, all the cases involving circumstances of aggravation (n=88) were sentenced in the higher courts.

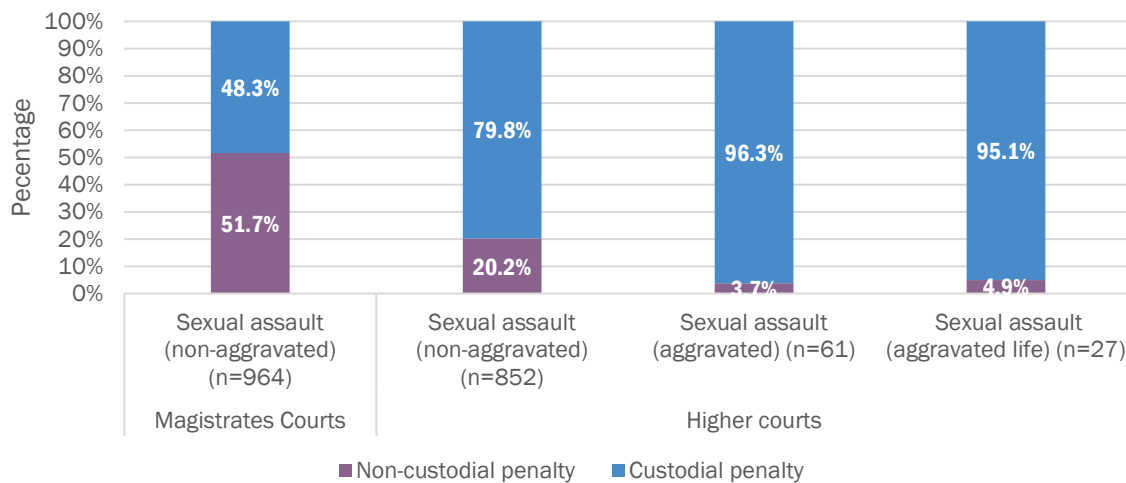
This section considers the penalties sentenced for all versions of the offence. Generally, the results presented aim to distinguish by both maximum penalty and court level; however, due to the relatively small numbers of sexual assault offences involving circumstances of aggravation, this may not always be possible. Generally, the term 'circumstances of aggravation' will be used to refer to the sexual assault (aggravated) and sexual assault (aggravated life).

4.8.1 Sentencing outcomes - overall

During the 18-year data period, just under half of the penalties imposed in the Magistrates Courts for a non-aggravated sexual assault were custodial penalties (n=466, 48.3%), while in the higher courts, almost 80 per cent of non-aggravated sexual assault penalties involved custody. By comparison, sexual assault (aggravated) cases received custodial penalties in 96.3 per cent of cases, and sexual assault (aggravated life) cases received a custodial penalty in all but one case.

⁶⁸ Ibid s 552H(1)(b).

Figure A41: Penalty type for sexual assault (MSO) by circumstances of aggravation and court level



Data notes: MSO, adults, Magistrates Courts and higher courts, 2005–06 to 2022–23
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

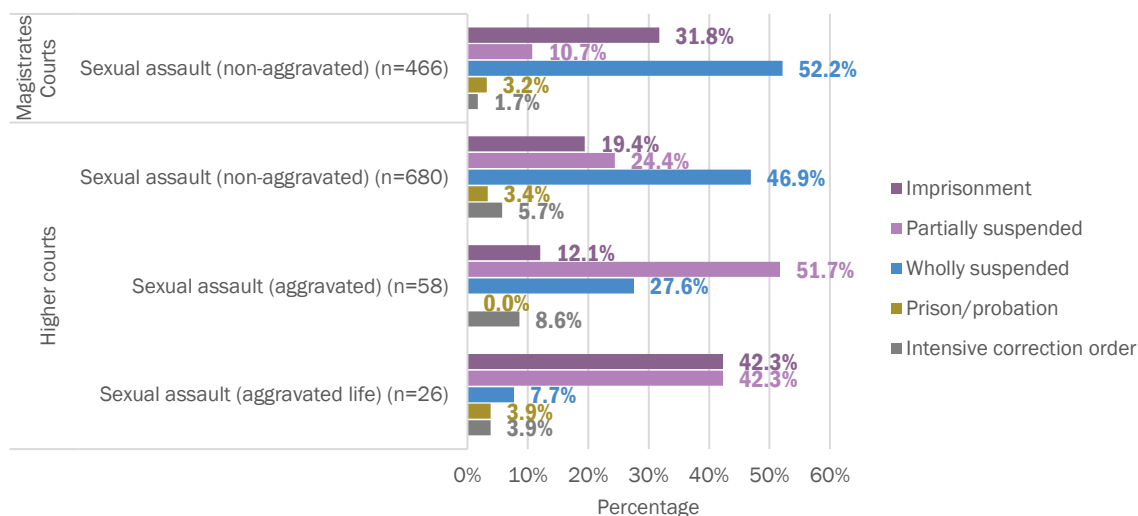
4.8.2 Custodial penalties

Type of custodial penalty

The most common custodial penalty imposed in the Magistrates Courts was a wholly suspended sentence, imposed in over half of all cases receiving a custodial penalty (52.1%). Approximately one-third of custodial penalties in the Magistrates Courts were sentences of imprisonment (31.8%).

Similarly, for non-aggravated sexual assault dealt with in the higher courts, wholly suspended sentences were the most common custodial penalty imposed, comprising almost half of all custodial sentences (46.9%). Just under 20 per cent of custodial penalties for non-aggravated sexual assault offences dealt with in the higher courts involved sentences of imprisonment (19.4%).

Figure A42: Custodial penalty types sentenced for sexual assault (MSO), by circumstance of aggravation and court level



Data notes: MSO, adults, higher and lower courts, 2005–06 to 2022–23. Rising of the court was included in the calculations but not presented in the figure.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

However, in cases where circumstances of aggravation were present, a penalty that required the defendant to spend at least some time in prison was preferred, with partially suspended sentences and sentences of imprisonment comprising 63.8 per cent of custodial sentences for matters with a maximum penalty of 14 years, and 84.6 per cent of custodial sentences where the maximum penalty was life imprisonment.

Length of custodial penalty

When considering sentencing length for custodial penalties in the Magistrates Courts, the median imprisonment sentence for a non-aggravated sexual assault was 9.0 months, with an average of 9.7 months. The longest term of imprisonment ordered was 3 years, the maximum sentence able to be imposed in the Magistrates Courts.

The median partially suspended sentence in the Magistrates Courts was 9.0 months with an average of 10.0 months, and a median time to serve before release of 3.0 months (average 3.2 months). The median wholly suspended sentence was 6 months (average 6.3 months).

For non-aggravated sexual assault dealt with in the higher courts, the median wholly suspended sentence was 9 months (average 9.1 months), while the median imprisonment sentence was 1 year and 3 months (average 1 year and 9 months). The median partially suspended sentence length was 1 year and 3 months (average 1 year 5 months) with the median time to serve before release being 4 months (average 5.6 months).

The median partially suspended sentence (MSO) for sexual assault (aggravated) was 1 year 6 months (average 1 year 7 months), with a median of 4 months to serve before release (average 5.4 months). For wholly suspended sentences the median sentence length was 1 year 1 month (average 1 year 3 months).

The median imprisonment sentence for sexual assault (aggravated life) was 3.0 years (average 3.0 years). The median partially suspended sentence was 2.5 years (average 2.5 years), serving a median duration of 10.5 months before release (average 9.8 months).

Table A19: Summary of custodial sentence lengths for sexual assault (MSO) by circumstance of aggravation, court level and custodial penalty type

Penalty type	N	Average (years)	Median (years)	Min (years)	Max (years)
Higher courts					
Sexual assault (aggravated life)					
Imprisonment	11	3.0	3.0	0.8	6.0
Partially suspended					
Sentence length	11	2.5	2.5	1.5	4.5
Time before suspension	11	0.8	0.9	0.3	1.5
Wholly suspended	2	-	-	-	-
Imprisonment with probation	1^	-	-	-	-
Intensive correction order	1^	-	-	-	-
All custodial penalties	26	2.5	2.5	0.1	6.0
Sexual assault (aggravated)					
Imprisonment	7^	-	-	-	-
Partially suspended (years)					
Sentence length	30	1.6	1.5	0.8	3.0
Time before suspension	30	0.5	0.3	0.0	1.5
Wholly suspended	16	1.3	1.1	0.7	2.0
Intensive correction order	5^	-	-	-	-
All custodial penalties	58	1.6	1.5	0.5	3.8
Sexual assault (non-aggravated)					
Imprisonment	132	1.8	1.3	0.0	7.0
Partially suspended					
Sentence length	166	1.4	1.3	0.3	5.0
Time before suspension	166	0.5	0.3	0.0	1.6
Wholly suspended	319	0.8	0.8	0.1	2.5
Imprisonment with probation					
Imprisonment portion	23	0.5	0.5	0.1	1.0
Probation portion	23	2.0	2.0	0.8	3.0
Intensive correction order	39	0.8	1.0	0.3	1.0
All custodial penalties	680	1.1	1.0	0.0	7.0
All custodial penalties for sexual assault offences sentenced in the higher courts	764	1.2	1.0	0.0	7.0

Penalty type	N	Average (years)	Median (years)	Min (years)	Max (years)
Magistrates Court					
Sexual assault (non-aggravated)					
Imprisonment	148	0.8	0.8	0.1	3.0
Partially suspended					
Sentence length	50	0.8	0.8	0.3	1.8
Time before suspension	50	0.3	0.2	0.0	0.8
Wholly suspended	243	0.5	0.5	0.1	1.5
Imprisonment with probation					
Imprisonment portion	15	0.3	0.3	0.1	0.8
Probation portion	15	1.7	1.5	0.8	3.0
Intensive correction order	8^	-	-	-	-
All custodial penalties	466	0.6	0.5	0.0	3.0
All non-aggravated sexual assault custodial penalties (Magistrates Courts and higher courts)	1,146	0.9	0.8	0.0	7.0
All custodial penalties (Aggravated & non-aggravated. Magistrates Courts & higher courts)	1,230	1.0	0.8	0.0	7.0

Data notes: MSO, adults, Magistrates Courts and higher courts, 2005–06 to 2022–23. Rising of the court has not been presented in the table

^ summary statistics for sample sizes less than 10 have not been presented.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

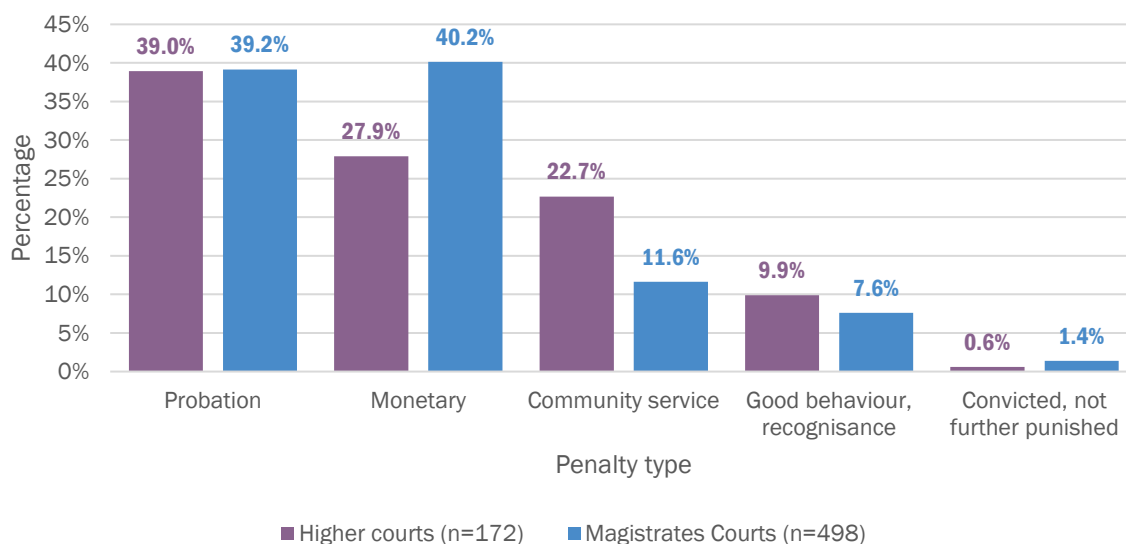
4.8.3 Non-custodial penalties

Overall, just over half the penalties imposed in the Magistrates Courts for sexual assault were non-custodial penalties (51.7%). Of the 498 non-custodial penalties imposed, monetary penalties and probation orders were the most common (40.2% and 39.2% respectively). The median length of a probation order was 15 months (average 16.2 months). The median monetary amount ordered was \$1,000 (average \$1041.25).

Of those cases sentenced in the higher courts for non-aggravated sexual assault, 172 (20.2%) received a non-custodial penalty. Of these penalties the most common was a probation order (39.0%) followed by a monetary order (27.9%) and community service (22.7%). Only one case resulted in the perpetrator being convicted but not further punished. The median length of a probation order was 18 months (average 19.6 months). The median monetary amount ordered was \$1,200 (average \$1,939.58).

Only 4 cases of aggravated sexual assault (MSO) received a non-custodial penalty, with three receiving probation, and one case of aggravated life, receiving a recognisance order.

Figure A43: Non-custodial penalty types sentenced for non-aggravated sexual assault (MSO), by court level



Data notes: MSO, adults, Magistrates Courts, 2005–06 to 2022–23.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

No conviction recorded

Considering all non-custodial orders imposed for sexual assault (MSO), over two-thirds (69.7%, n=470/674,) did not have a conviction recorded.

Nearly all the non-custodial orders that did not have a conviction recorded were for non-aggravated sexual assault (99.4%, n=467/470). Three cases of aggravated sexual assault (MSO) did not have a conviction recorded.

Over three-quarters (77.0%, n=362/470) of the sexual assault (MSO) cases that did not have a conviction recorded (and received a non-custodial penalty) were sentenced in the Magistrates Courts.

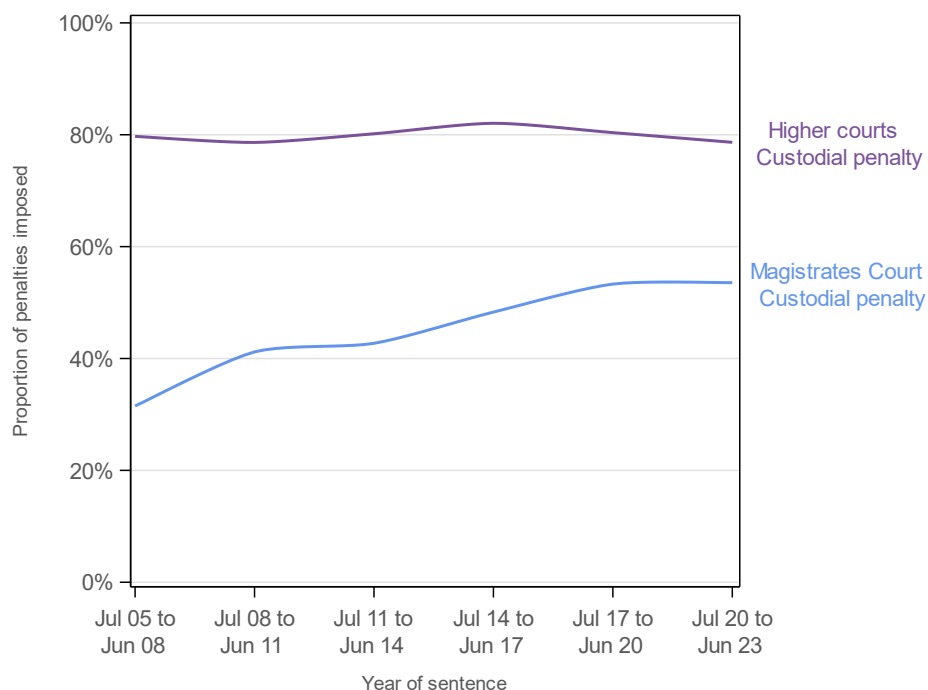
Of the 176 cases that received a non-custodial order in the higher courts, 61.4 per cent did not have a conviction recorded (n=108). All except 3 of these were non-aggravated sexual assault.

Of the 470 cases that did not have a conviction recorded for a sexual assault (MSO), 38.7 per cent received a monetary order, 35.3 per cent received a probation order, 14.9 per cent received a community service order, 10.4 per cent received a good behaviour order and 3 people (0.6 %) were convicted with no further punishment.

4.8.4 Penalties over time

As depicted in Figure A44, the use of custodial penalties for non-aggravated sexual assault offences in the Magistrates Courts has shown an upward trend over the data period. By contrast, the use of custodial penalties for non-aggravated sexual assault in the higher courts has remained relatively stable over the data period.

Figure A44: Proportion of custodial penalties for non-aggravated sexual assault (MSO), by court level and year of sentence (grouped)



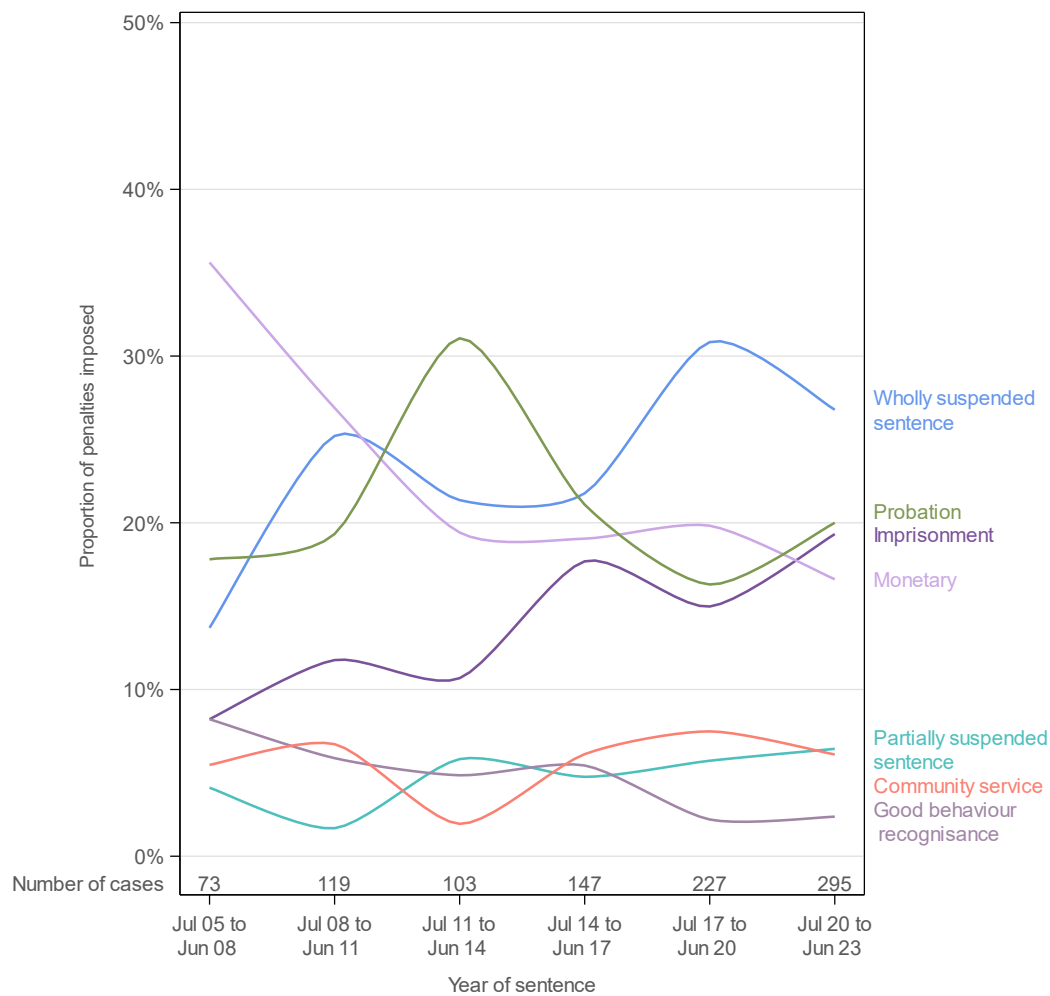
Data notes: Non-aggravated sexual assault (MSO), adults, Magistrates Courts and higher courts, 2005–06 to 2022–23.
Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

Magistrates Courts

As noted previously, custodial penalties for non-aggravated sexual assault in the Magistrates Courts increased over time. In particular, sentences of imprisonment and wholly suspended sentences both increased over the data period. Conversely, the use of monetary orders decreased over the data period, whilst partially suspended sentences and community service orders remained stable (see Figure A45).

Given the changes over time, based on cases sentenced over the most recent 3-year period (July 2020 to June 2023), the most common penalty imposed for non-aggravated sexual assault cases sentenced in the Magistrates Courts was a wholly suspended sentence (26.8%), followed by probation (20.0%), imprisonment (19.3%) and monetary penalties (16.6%).

Figure A45: Penalties imposed for non-aggravated sexual assault (MSO) in the Magistrates Courts, by year of sentence (grouped)



Data notes: Non-aggravated sexual assault (MSO), adults, Magistrates Courts, 2005–06 to 2022–23. Rising of the court (n=1), Convicted - not further punished (n=7), intensive corrections order (n=8), and combined prison/probation orders (n=15) were included in the calculations but have not been presented in the figure. Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023

The boxplot⁶⁹ in Figure A46 shows the distribution of length of custodial sentences imposed for sexual assault (MSO) in the Magistrates Courts each year.

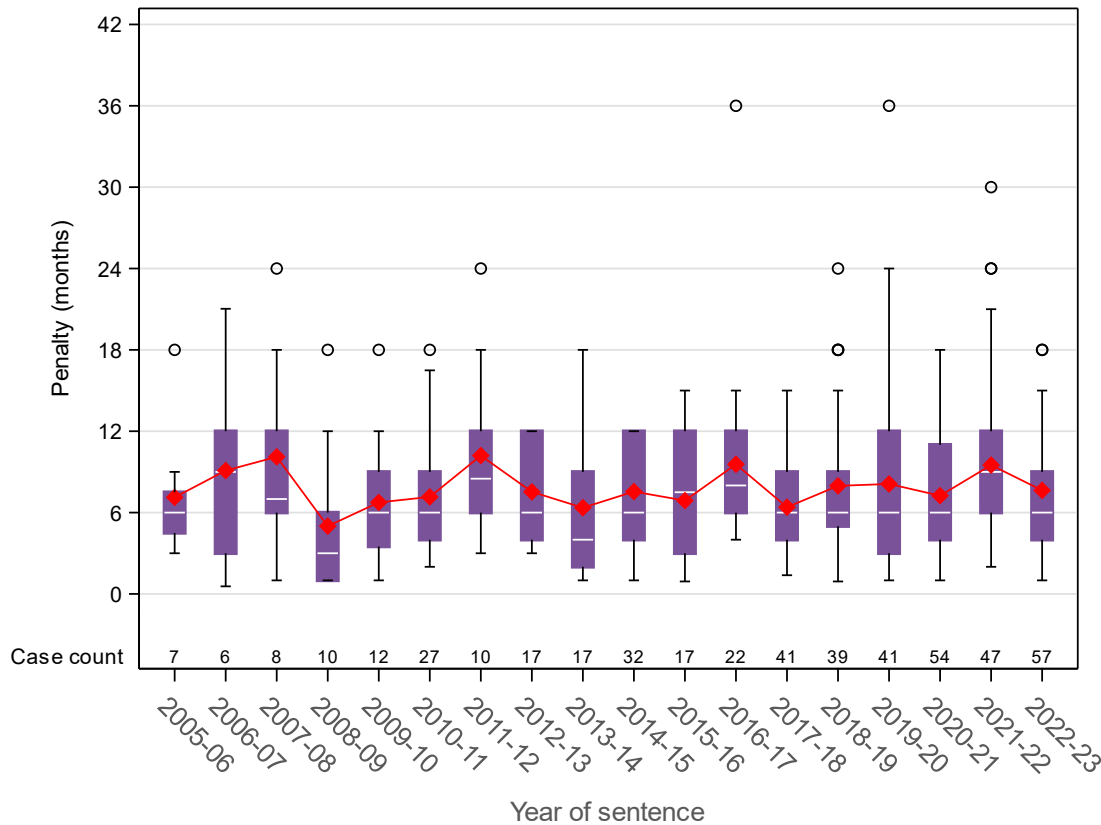
Overall, there has been little change in the median (represented by the white line) or average (represented by the red diamond) sentence length over the period, with only limited variation seen in the custodial sentence lengths imposed in the Magistrates Courts for sexual assault (MSO) each year.

The median sentence length has generally fluctuated around the 6-month mark. Comparatively, the highest average custodial sentences were in 2007–08 at 10.5 months; however, the number of custodial penalties that year was very small (n=8) so the average would easily be affected by an unusual sentence length and may not be reliable reflection of all custodial penalties imposed.

⁶⁹ Interpreting the boxplot: The red diamond within each box shows the average sentence. The purple box is the interquartile range which shows how spread out the sentences are. The white line within the purple box shows the median, that is the centre of the dataset. The dots are the sentences that are outliers, that is a sentence that is 1.5 times higher/lower than the interquartile range.

The sample sizes are more robust from 2017–18 onwards, where the median ranges from 6.0 months in 2017–18 (average 6.3 months) to 9.0 months (average 9.5 months) in 2021–22.

Figure A46: Summary of custodial penalty length for non-aggravated sexual assault (MSO) imposed in the Magistrates Courts, by year of sentence



Data notes: MSO, adults, Magistrates Courts, 2005–06 to 2022–23. Rising of the court (n=2), was not included in these calculations.

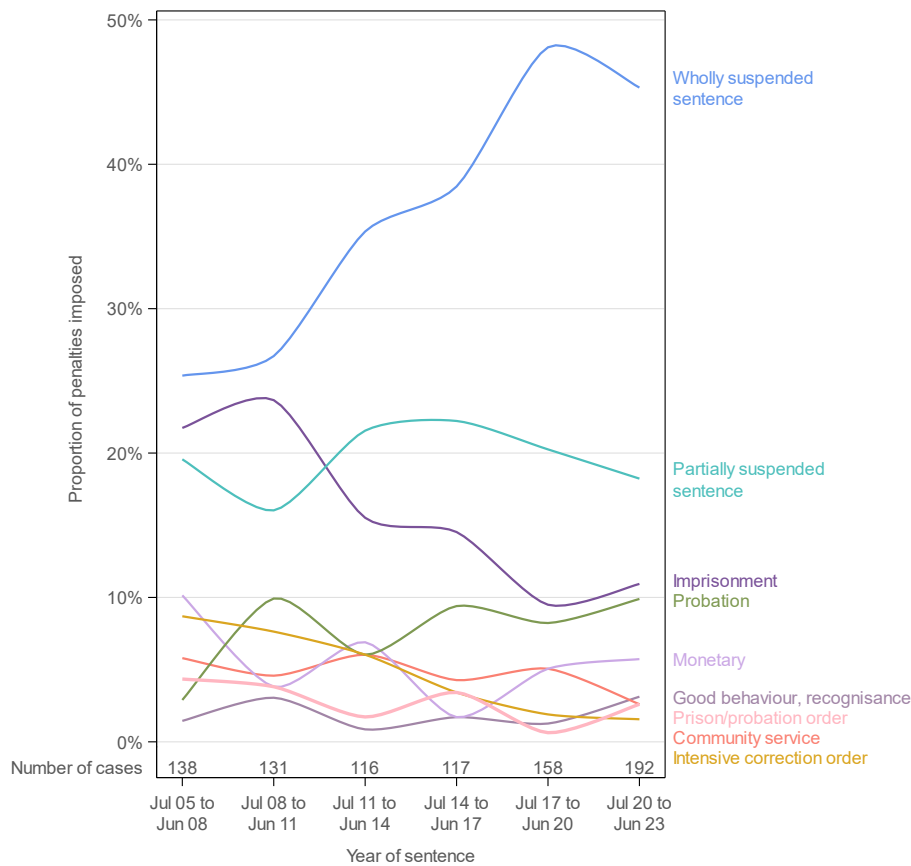
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023

Higher courts

Wholly suspended penalties were the most common penalty imposed in the higher courts for sexual assault and the use of this penalty type increased over the data period. Partially suspended sentences were also commonly used and remained relatively stable over the data period. The use of imprisonment sentences decreased while probation orders fluctuated over time.

Given the changes over time, based on cases sentenced over the most recent 3-year period (July 2020 to June 2023), the most common penalty imposed for non-aggravated sexual assault cases sentenced in the higher courts was a wholly suspended sentence (45.3%), followed by partially suspended sentences (18.2%) and imprisonment (10.9%).

Figure A47: Penalties imposed for non-aggravated sexual assault (MSO) in the higher courts, by year of sentence (grouped)

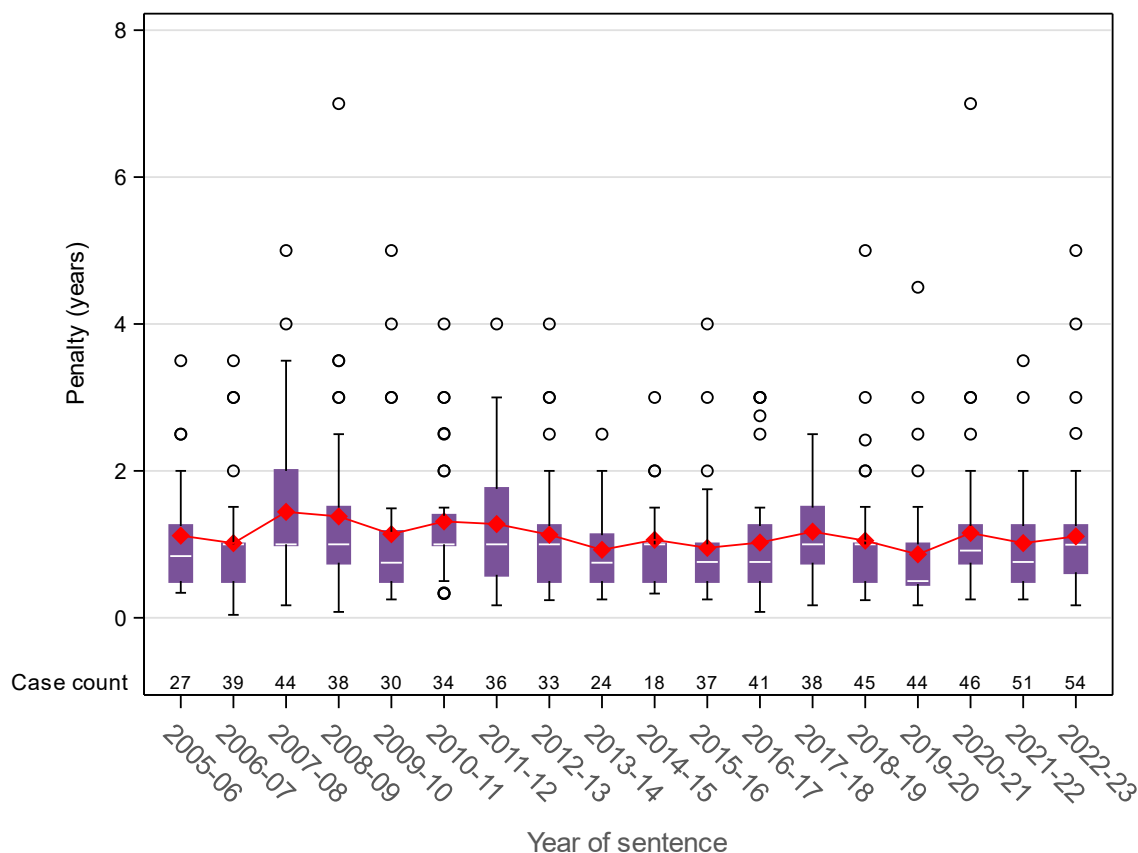


Data notes: Non-aggravated sexual assault (MSO), adults, higher courts, 2005–06 to 2022–23. Rising of the court (n=1) and convicted not further punished (n=1) were included in the calculations but have not been presented in the figure.
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Figure A48 shows that, overall, for non-aggravated sexual assault sentenced in the higher courts (n=852), there has been little change in the median or average custodial sentence length over the period.

Generally, the median custodial sentence length has fluctuated at or below the one-year mark, while the highest average custodial penalty length was in 2007–08 at 17.3 months (median 12 months), and the lowest average custodial penalty length being 10.4 months in 2019–20 (median 6 months).

Figure A48: Summary of custodial penalty length for non-aggravated sexual assault (MSO) imposed in the higher courts, by year of sentence



Data notes: Non-aggravated sexual assault (MSO), adults, higher courts, 2005–06 to 2022–23. Rising of the court (n=1) was excluded from this analysis. See the supplementary data table for more detail regarding the data underlying this figure.
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

4.8.5 Sentencing outcome by type of conduct and relationship

This section explores how sentencing outcomes varied by both the nature of conduct involved in the sexual assault, and the relationship between the parties, based on the coding summarised above in section 1.3.

For this analysis, due to the small number of cases involving circumstances of aggravation, the focus is on cases involving non-aggravated sexual assault.

Type of conduct

As noted above, the offence of sexual assault covers a broad range of conduct and attracts a range of different types of sentencing options. Table A20 illustrates this spread – it shows that out of the 181 sentenced cases of non-aggravated sexual assault, there was a wide spread of conduct and penalties for each type of conduct.

Generally, offending involving on-skin contact was more likely to result in a custodial penalty with 73.7 per cent to 75.0 per cent of cases resulting in a custodial sentence, depending on whether the conduct involved another body part or genitals, respectively. The exception is where on-skin contact involved a person's mouth, in which 55.6 per cent of cases resulted in custody – as mentioned above, this conduct involved either contact with a breast (n=2) or kissing the lips, face, neck or hand (n=7).

Over-clothes sexual assaults resulted in custody in 58.8 per cent of cases involving genitals, and 49.1 per cent of cases involving other body parts. Further analysis by the specific type of penalty is limited due to the small number of cases sentenced at this level of disaggregation.

Table A20: Number of penalties by conduct for non-aggravated sexual assault cases (MSO)

Conduct	Conduct type	Imprisonment	Partially suspended	Wholly suspended	Community service	Probation	Monetary	Good behaviour, recognisance	Convicted, not further punished	% custodial
Indecent touching	Genitals - on skin	7	4	17	0	6	3	1	0	73.7
Indecent touching	Genitals - over clothes	11	6	13	3	8	9	1	0	58.8
Indecent touching	Other body part - on skin	2	2	5	0	1	2	0	0	75.0
Indecent touching	Other body part - over clothes	9	2	17	4	9	14	2	0	49.1
Indecent touching	not further defined	0	1	1	0	0	0	1	0	-
Indecent touching (with mouth)	Genitals - on skin	0	1	0	0	0	0	0	0	-
Indecent touching (with mouth)	Other body part - on skin	1	2	2	0	1	1	2	0	55.6
Other	Masturbation	2	2	0	0	1	0	0	0	-
Other	Not Stated	0	0	0	0	0	1	0	0	-
Other	Other	0	1	2	0	0	0	0	1	-

Source: Content analysis of sentencing remarks – see section 4.3.1 of Chapter 4 for a description of the methodology. Data includes matters sentenced during 2022–23 (a one-year period).

To further examine the relationship between penalty type and conduct – particularly for cases involving indecent touching, which have a larger sample size – Figure A49 provides a breakdown of penalty type by type of conduct involved in the commission of the sexual assault.

Community service orders were rarely used and were never used for conduct that involved skin-on-skin contact.

Wholly suspended sentences were the most common type of order and were most used for conduct that involved skin-on-skin contact.

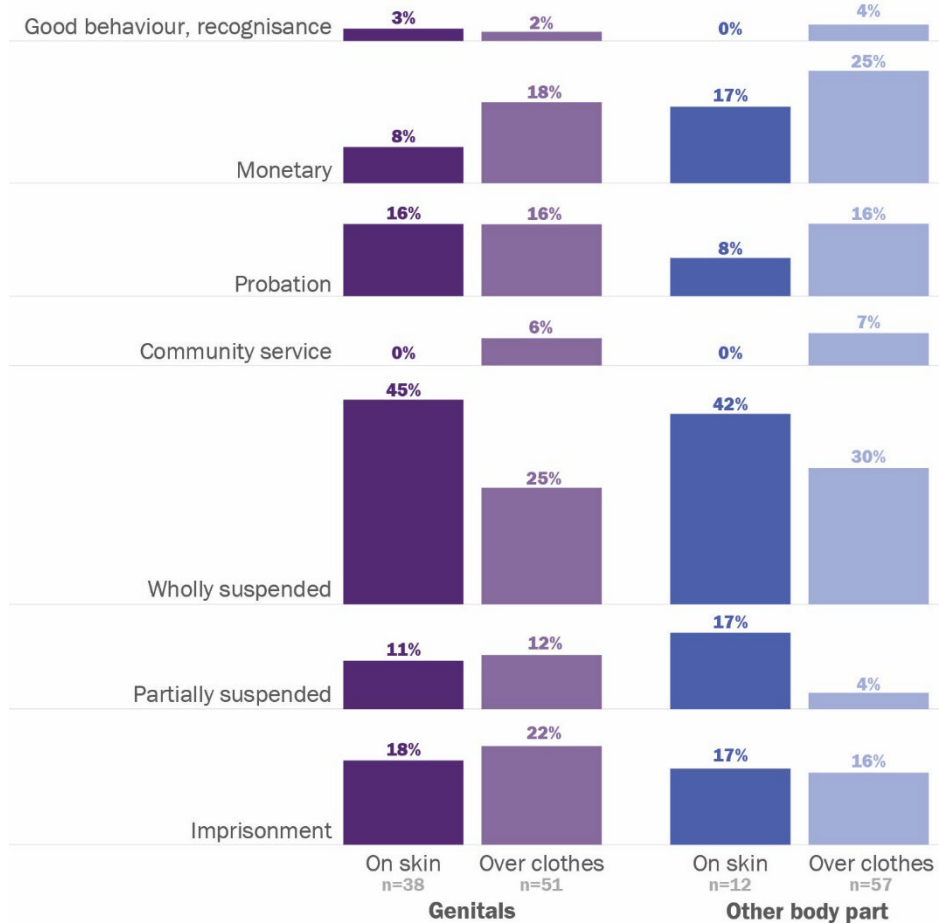
Imprisonment was used in 18 per cent and 22 per cent of cases involving genitals where the touching was on skin or over clothes, respectively. It was used less often for the touching of another body part (in 17% of cases for on-skin and 16% of cases for over-clothes touching).

Monetary orders were most commonly used for touching that occurred over-clothes (18% of cases where it involved genitals, and 25% of cases where it involved another body part). For conduct that involved on-

skin touching, monetary penalties were used in some cases involving genitals (8% of cases), and in more cases involving other body parts (17% of cases).

Probation orders were used in 16 per cent of cases for all types of conduct, except for on-skin touching of another body part where they were used less often (in 8% of cases).

Figure A49: Penalty type by conduct for non-aggravated sexual assault cases involving 'indecent touching' (MSO)



Only includes cases with conduct from the category of 'indecent touching'. Cases involving indecent touching with mouth or that were not further defined are not reported due to small sample sizes.

Source: Content analysis of sentencing remarks – see section 4.3.1 of Chapter 4 for a description of the methodology.

Data includes matters sentenced in 2022–23 (a one-year period).

Table A21 provides some limited insight into the length of custodial sentences for non-aggravated sexual assault cases involving 'indecent touching'. This table only includes custodial sentences – that is, imprisonment and suspended sentences.

It shows that, on average, custodial sentences for conduct involving on-skin conduct result in longer penalties. That is, when the conduct involved genitals, on-skin offending received an average custodial sentence length of 1.0 year, compared with 0.8 years for over clothes (median=1.0 years and 0.8 years respectively). Similarly, for conduct that involved another body part, on skin offending received an average length of 1.3 years custodial sentence compared with 0.6 years for over clothes (median=0.8 years and 0.5 years, respectively).

However, this analysis must be interpreted with caution. As we saw above in Figure A49, offending that involves on-skin conduct has a much higher proportion of wholly suspended sentences compared with

over-clothes offending. While the length of custodial penalties is longer for on-skin conduct, this is driven predominantly by the large proportion of wholly suspended sentences and may not indicate that sentences are necessarily more severe. A shorter sentence that results in actual custody may be considered more serious than a longer wholly suspended sentence that may have no actual time spent in prison.

Table A21: Average and median length of custodial sentences for non-aggravated sexual assault cases (MSO) involving ‘indecent touching’, by type of conduct

Conduct	Conduct type	Number of cases with a custodial penalty	Custodial sentence length (in years)	
			Average	Median
Indecent touching	Genitals - on skin	28	1.0	1.0
Indecent touching	Genitals - over clothes	30	0.8	0.8
Indecent touching	Other body part - on skin	9	1.3	0.8
Indecent touching	Other body part - over clothes	28	0.6	0.5
Indecent touching	Not further defined	2*	-	-

Summary statistics not calculated for categories with less than 10 sentenced cases.

Source: Content analysis of sentencing remarks – see section 4.3.1 of Chapter 4 for a description of the methodology. Data includes matters sentenced in 2022–23 (a one-year period).

Relationship between victim and offender

Of non-aggravated sexual offences, those committed against a partner received the highest proportion of custodial penalties, with almost three-quarters of these cases resulting in a custodial penalty (72.7%, n=8). Other known persons were the next most likely to result in custodial penalties (64.5% of cases), followed by strangers (57.5%) and family (50.0%).

Table A22: Relationship type by custodial outcomes for non-aggravated sexual assault cases (MSO)

Relationship	Non-custodial	Custodial	Custodial %
Partner	3	8	72.7
Other known person	27	49	64.5
Stranger	34	46	57.5
Family	7	7	50.0
Total	71	110	62.0

Cases involving circumstances of aggravation (n=6) are not included in this analysis.

Source: Content analysis of sentencing remarks – see section 4.3.1 of Chapter 4 for a description of the methodology. Data includes non-aggravated sexual assault matters sentenced in 2022–23 (a 1-year period).

There were 6 aggravated sexual assault offences included in the analysis. Of these cases, 3 were committed by an 'other known person', 2 were committed by a partner and one was a stranger. A custodial penalty was imposed in all of these cases.

As noted in section 1.3, the type of conduct involved in the sexual assault was associated with the nature of the relationship. Table A23 shows the proportion of custodial sentences by type of conduct and type of relationship for those cases involving 'indecent touching'.

Table A23: Proportion of custodial sentences by relationship and conduct type for sexual assault cases involving 'indecent touching' (MSO)

Conduct	Partner	Family	Other known person	Stranger
Indecent touching - Genitals - on skin	*	*	84.2% (N=19)	69.2% (N=13)
Indecent touching - Genitals - over clothes	*	*	62.5% (N=16)	55.2% (N=29)
Indecent touching - other body part - on skin	*	*	*	*
Indecent touching - other body part - over clothes	*	*	48.1% (N=27)	46.2% (N=26)
Indecent touching (not further defined)	*	*	*	*

* percentages not calculated for categories with less than 10 sentenced cases.

Source: Content analysis of sentencing remarks – see section 4.3.1 of Chapter 4 for a description of the methodology. Data includes matters sentenced in 2022–23 (a one-year period).

4.8.6 Penalties for specific cohorts

The following section focuses specifically on the sentencing outcomes for women, Aboriginal and Torres Strait Islander peoples and children sentenced as adults.

Women sentenced for sexual assault

Over the 18-year data period, 29 women were sentenced for sexual assault (MSO), representing only 1.5 per cent of all cases sentenced for sexual assault. Of these, 19 were sentenced in the Magistrates Courts – all for non-aggravated sexual assault – and the remaining 10 women were sentenced for sexual assault in the higher courts – all for non-aggravated sexual assault aside from one sexual assault (aggravated life) offence.

Nearly 60 per cent of all women sentenced for sexual assault (MSO) obtained a non-custodial order (58.6%, n=17), with the most common penalty being a probation order (37.9%, n=11). The most common custodial penalty was a wholly suspended sentence (24.1%, n=7).

In the Magistrates Court, nearly two-thirds of women sentenced for sexual assault (MSO) received a non-custodial penalty (n=12), with the most common penalty being a probation order (36.8%, n=7/19). Comparatively in the higher courts, for those sentenced for non-aggravated sexual assault, 44.4 per cent received a custodial penalty (n=4/9).

Aboriginal and Torres Strait Islander peoples sentenced for sexual assault

Over the 18-year period, 200 cases sentenced in the Magistrates Court for non-aggravated sexual assault involved an Aboriginal and Torres Strait Islander defendant, and 190 cases involving an Aboriginal and Torres Strait Islander defendant were sentenced in the higher courts for sexual assault (MSO), with the majority of these cases being sentenced for non-aggravated sexual assault (90.5%, n=172).

A similar proportion of non-aggravated cases were seen for non-Indigenous defendants sentenced for sexual assault compared with Aboriginal and Torres Strait Islander defendants across both the lower and higher courts. Although a slightly higher proportion of Aboriginal and Torres Strait Islander peoples were sentenced for sexual assault (aggravated life), this was not statistically significant.⁷⁰

Table A24: Sexual assault (MSO) by circumstance of aggravation and Aboriginal and Torres Strait Islander status

Offence type (MSO)	Non-Indigenous		Aboriginal and Torres Strait Islander		Total	
	n	%	n	%	n	%
Sexual assault (aggravated life)	18	1.2	9	2.3	27	1.4
Sexual assault (aggravated)	52	3.5	9	2.3	61	3.2
Sexual assault (non-aggravated) – higher courts	665	44.7	172	44.1	852	44.7
Sexual assault (non-aggravated) – Magistrates Court	752	50.6	200	51.2	964	50.6
Total	1,487	100.0	390	100.0	1,904	100.0

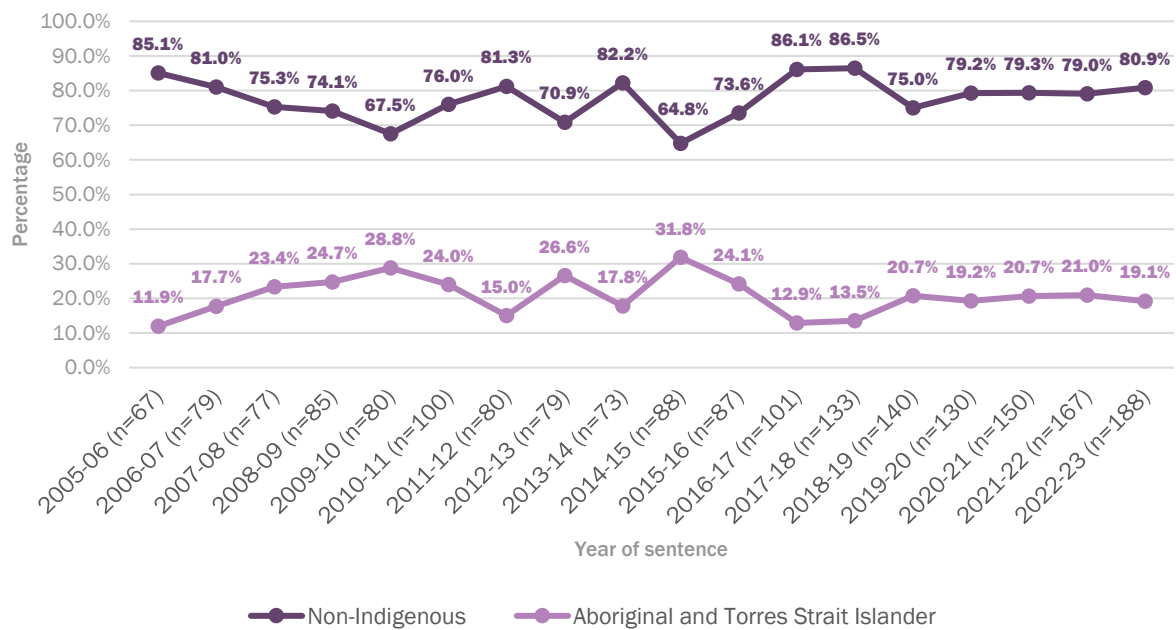
Data notes: MSO, adults, higher courts and Magistrates Court, 2005–06 to 2022–23. Total includes cases where Aboriginal and Torres Strait Islander status was unknown (n=27).

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023

Overall, the proportion sexual assault (MSO) cases involving an Aboriginal and Torres Strait Islander defendant increased slightly over the data period from 11.9 per cent in 2005-06 to 19.1 per cent in 2022-23.

⁷⁰ Pearson's Chi-Square Test: $\chi^2(6) = 6.23$, $p = .3977$, $V = 0.0$.

Figure A50: Sexual assault (MSO) by Aboriginal and Torres Strait Islander status and year



Data notes: Sexual assault (MSO), adults, 2005–06 to 2022–23. 27 cases where Indigenous status was unknown were included in calculations but not presented.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Type of penalty

Across all sexual assault offences (MSO), Aboriginal and Torres Strait Islander peoples were more likely to receive a custodial penalty, with 81.8 per cent of Aboriginal and Torres Strait Islander peoples receiving a custodial penalty, compared with 60.2 per cent of non-Indigenous people.⁷¹ As discussed in section 17.4.1, a complex range of reasons exist for the disproportionate representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system.

⁷¹ Pearson's Chi-Square Test: $\chi^2(1) = 63.14$, $p < .001$, $V = 0.18$.

Table A25 shows the proportion of penalties imposed by court level, offence type and Aboriginal and Torres Strait Islander status. The coloured text in each column indicates the penalty most commonly sentenced within that sub-group.

In the Magistrates Courts, 41.0 per cent of non-Indigenous people received a custodial penalty for non-aggravated sexual assault, significantly lower than 76.5 per cent of Aboriginal and Torres Strait Islander peoples.⁷² In the higher courts 78.4 per cent of non-Indigenous people and 86.1 per cent of Aboriginal and Torres Strait Islander peoples received a custodial penalty for non-aggravated sexual assault.⁷³

A sentence of imprisonment was the most common sentence for Aboriginal and Torres Strait Islander defendants for a sexual assault (MSO) case dealt with in the Magistrates Courts (42.5%), followed by wholly suspended sentences, which were imposed in 21.5 per cent of cases. By comparison, for non-Indigenous people, nearly equal proportions of people received a wholly suspended sentence (25.9%), a monetary order (24.1%) or a probation order (23.0%).

Of the 466 custodial penalties imposed for sexual assault (MSO) in the Magistrates Courts, one-third were imposed on Aboriginal and Torres Strait Islander peoples (32.8%, n=153).

In exploring the penalties imposed in the higher courts, Table A25 shows that for non-aggravated sexual assault, two in five non-Indigenous people received a wholly suspended sentence (42.1%) while this penalty is received for less than one in five Aboriginal and Torres Strait Islander peoples (18.0%). The most common custodial penalty for Aboriginal and Torres Strait Islander peoples sentenced for non-aggravated sexual assault in the higher court was a period of imprisonment (33.7%), which was imposed for 11.1 per cent of non-Indigenous people. These are statistically significant differences.⁷⁴

For sexual assault (aggravated) a partially suspended sentence is the most common penalty, received by similar proportions of Aboriginal and Torres Strait Islander peoples and non-Indigenous people (55.6% and 48.1% respectively, noting the small sample size for Aboriginal and Torres Strait Islander peoples).

While the sample size is small for Aboriginal and Torres Strait Islander peoples sentenced for sexual assault (aggravated life), a partially suspended sentence was imposed in two-thirds of cases (66.7%), compared with just one-third of cases for non-Indigenous people (27.8%), who most commonly received a period of imprisonment (50.0%).

⁷² Pearson's Chi-Square Test: $\chi^2(1) = 79.91$, $p < .001$, $V = 0.29$

⁷³ Pearson's Chi-Square Test: $\chi^2(1) = 5.05$, $p < .05$, $V = 0.08$

⁷⁴ Pearson's Chi-Square Test: $\chi^2(10) = 87.6$, $p < .001$, $V = 0.32$

Table A25: Penalty type imposed for sexual assault (MSO), by Aboriginal and Torres Strait Islander status, by circumstance of aggravation and court level

		Non-Indigenous people			
		Magistrates court	Higher courts		
		Sexual assault (non-aggravated) (n=752)	Sexual assault (non-aggravated) (n=665)	Sexual assault (aggravated) (n=52)	Sexual assault (aggravated life) (n=18)
Custodial penalty	Imprisonment	8.4%	11.1%	9.6%	50.0%
	Partially suspended	4.0%	18.0%	48.1%	27.8%
	Wholly suspended	25.9%	42.1%	26.9%	5.6%
	Intensive correction order	1.1%	4.8%	9.6%	5.6%
	Prison/probation	1.3%	2.3%	0.0%	5.6%
Non-custodial penalty	Community service	6.5%	4.1%	0.0%	0.0%
	Probation	23.0%	8.9%	5.8%	0.0%
	Monetary	24.1%	6.6%	0.0%	0.0%
	Good behaviour, recognisance	4.8%	2.0%	0.0%	5.6%
	Convicted, not further punished	0.7%	0.2%	0.0%	0.0%

		Aboriginal and Torres Strait Islander peoples			
		Magistrates court	Higher courts		
		Sexual assault (non-aggravated) (n=200)	Sexual assault (non-aggravated) (n=172)	Sexual assault (aggravated) (n=9*)	Sexual assault (aggravated life) (n=9*)
Custodial penalty	Imprisonment	42.5%	33.7%	22.2%	22.2%
	Partially suspended	10.0%	25.0%	55.6%	66.7%
	Wholly suspended	21.5%	18.0%	22.2%	11.1%
	Intensive correction order	0.0%	4.1%	0.0%	0.0%
	Prison/probation	2.5%	4.7%	0.0%	0.0%
Non-custodial penalty	Community service	3.5%	5.8%	0.0%	0.0%
	Probation	10.5%	4.7%	0.0%	0.0%
	Monetary	7.5%	1.2%	0.0%	0.0%
	Good behaviour, recognisance	1.0%	2.3%	0.0%	0.0%
	Convicted, not further punished	1.0%	0.0%	0.0%	0.0%

Data notes: MSO, adults, Magistrates Courts and higher courts, 2005–06 to 2022–23. Rising of the court (Aboriginal and Torres Strait Islander n=1, non-Indigenous n=2) was included in the calculations but not presented in the table.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Non-custodial orders were rarely imposed in the higher courts where a circumstance of aggravation was present for a sexual assault. There were 3 probation orders imposed for sexual assault (aggravated) and one good behaviour order for a sexual assault (aggravated life).

Non-custodial orders were more common in the higher courts for non-aggravated sexual assault, imposed in 20.2 per cent of cases (n=172). These are most commonly probation orders (39.0%), monetary orders (27.9%) or community service orders (22.7%).

Length of custodial penalty

There was little difference in the average or median sentence for any custodial penalty type received in the Magistrates Court when Aboriginal and Torres Strait Islander status was considered.

The median imprisonment sentence for Aboriginal and Torres Strait Islander peoples was 8 months (average 9.6 months), compared with 9 months (average 9 months) for non-Indigenous people. Similarly, the median partially suspended sentence for Aboriginal and Torres Strait Islander peoples was 12 months (average 10.3 months), compared with 9 months (average 9.8 months) for non-Indigenous people.

As with matters sentenced in the Magistrates Court, there was also little difference in the average or median sentence for any custodial penalty type received in the higher court when Aboriginal and Torres Strait Islander status was considered.

The median imprisonment sentence for non-aggravated sexual assault dealt with in the higher courts was 1 year 3 months (average approximately 1 year 10 months) for non-Indigenous people, very similar to that of Aboriginal and Torres Strait Islander peoples (median 1 year 3 months, average approximately 1 year 8 months). The median partially suspended sentence was also similar, with a median of 1 year 3 months for Aboriginal and Torres Strait Islander peoples, compared with 1 year 1.5 months for non-Indigenous people (average approximately 1 year 5 months and 1 year 6 months respectively).

Refer to the data table in **Appendix 5** for detailed information on sentence type and length of custodial penalty for sexual assault by Aboriginal and Torres Strait Islander status.

Children sentenced as an adult for sexual assault

There were 13 cases where an adult was sentenced for sexual assault for offences they committed while they were a child (but were sentenced as an adult). In all but one of these cases, the defendant pleaded guilty. Three of the 13 cases were sentenced for aggravated sexual assault (aggravated life). Of the 13 cases, 5 (38.5%) received a custodial penalty, and all the cases of aggravated sexual assault received a custodial penalty. The remaining 8 people (61.5%) who committed sexual assault as children but were sentenced as adults received a non-custodial penalty.

4.8.7 Sexual assault as a domestic violence offence

Note: This section has a shorter data period compared with the other data reported in this Appendix. This section includes analysis of cases sentenced between July 2016 and June 2023.

Of the 1,009 sexual assault (MSO) offences sentenced between July 2016 and June 2023, 7.2 per cent (n=73) were charged as a domestic violence offence ('DV offence').

The proportion of cases sentenced as a domestic violence offence remained consistent over the past 7 years, and offences with aggravating circumstances were significantly more likely to be domestic violence offences.⁷⁵

A significantly higher proportion of DV offences received a custodial penalty (84.9%) than non-DV offences (63.8%).⁷⁶ A wholly suspended prison sentence was the most common penalty imposed for both a DV offence (32.9%, n=24/73) and a non-DV offence (34.7%, n=325/936). The average wholly suspended sentence imposed for a DV offence was 10.6 months (median 8.5 months), significantly longer than an average of 7.9 months (median 6.0 months) for a non-DV offence.⁷⁷

4.8.8 Co-sentenced offences and sentencing outcomes

Over the 18-year data period 1,230 cases sentenced for sexual assault (MSO) received a custodial penalty. Of those cases, just over half (55.2%, n=679) were also sentenced for another offence at the same sentencing event.

Of the 163 people who received an imprisonment sentence for sexual assault in the Magistrates Courts,⁷⁸ 79.1 per cent (n=129) were also sentenced for other offences within the same court event (see Figure A51). The median imprisonment sentence where other offences were also sentenced was 2.0 years (average 2.0 years), compared with 0.8 years (average 0.9 years) when no other offences were sentenced.

Similarly, of the 174 people who received a prison sentence for sexual assault⁷⁹ in the higher courts, 71.3 per cent (n=124) were also sentenced for other offences within the same court event (see Figure A51). The median sentence of imprisonment where other offences were also sentenced was 0.8 years (average 0.8 years), compared with 0.5 years (average 0.5 years) when no other offences were sentenced.

Of those who received a partially suspended sentence in the Magistrates Courts, nearly three-quarters (74.0%, n=37) were also sentenced for other offences within the same court event. The median partially suspended sentence of imprisonment, where other offences were also sentenced was 1.0 years (average 0.9 years), compared with 0.8 years (average 0.7 years) when no other offences were sentenced.

By comparison, of those that received a partially suspended sentence (MSO) in the higher court, nearly two-thirds (64.7%, n=134) were also sentenced for other offences within the same court event. The median partially suspended sentence where other offences were also sentenced was 1.5 years (average 1.7 years), compared with 1.0 years (average 1.1 years) when no other offences were sentenced.

Nearly half of all cases with a wholly suspended sentence for sexual assault in the Magistrates Courts had co-sentenced offences (44.9%, n=109). The median wholly suspended sentence with co-sentenced offences was 0.5 years (average 0.5 years). There was no difference in the average or median sentence length when there were no co-sentenced offences.

In contrast, a smaller proportion of cases with a wholly suspended sentence for sexual assault sentenced in the higher courts had co-sentenced offences (38.0%, n=128). The median wholly suspended sentence

⁷⁵ Pearson's Chi-Square Test: $\chi^2(1) = 25.49$, $p < .0001$, $V = 0.16$.

⁷⁶ Pearson's Chi-Square Test: $\chi^2(1) = 13.37$, $p = .0003$, $V = 0.11$.

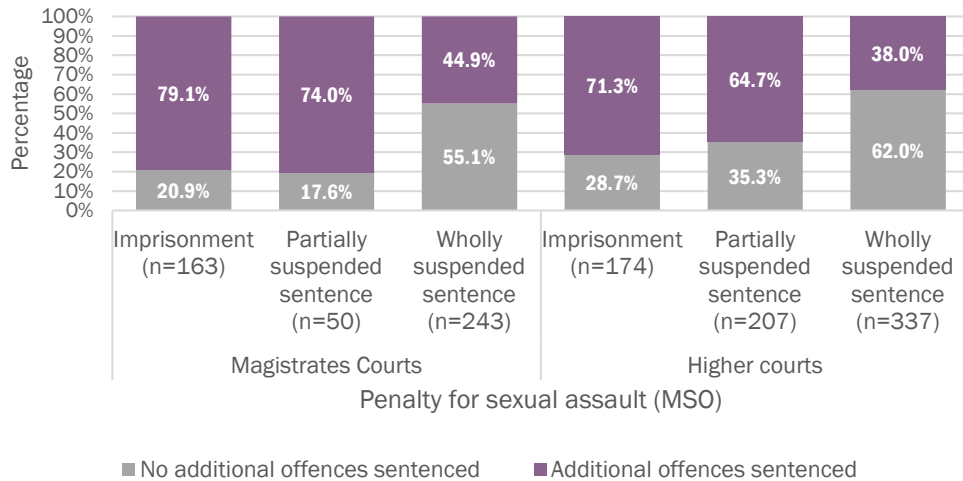
⁷⁷ Independent groups T-Test: $t(347) = -2.66$, $p < .05$, two-tailed (equal variance assumed).

⁷⁸ This includes 148 imprisonment orders and 15 prison/probation orders.

⁷⁹ This includes 150 imprisonment orders and 24 prison/probation orders.

with co-sentenced offences was 1.0 years (average 0.9 years). When there were no co-sentenced offences, the median wholly suspended sentence was 0.8 years (average 0.7 years).

Figure A51: Proportion of cases sentenced for sexual assault (MSO) that had co-sentenced offences, by custodial penalty type and court level



Data notes: Imprisonment (including prison-probation orders) and suspended sentences (MSO), adults, Magistrates Courts and higher courts, 2005–06 to 2022–23.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

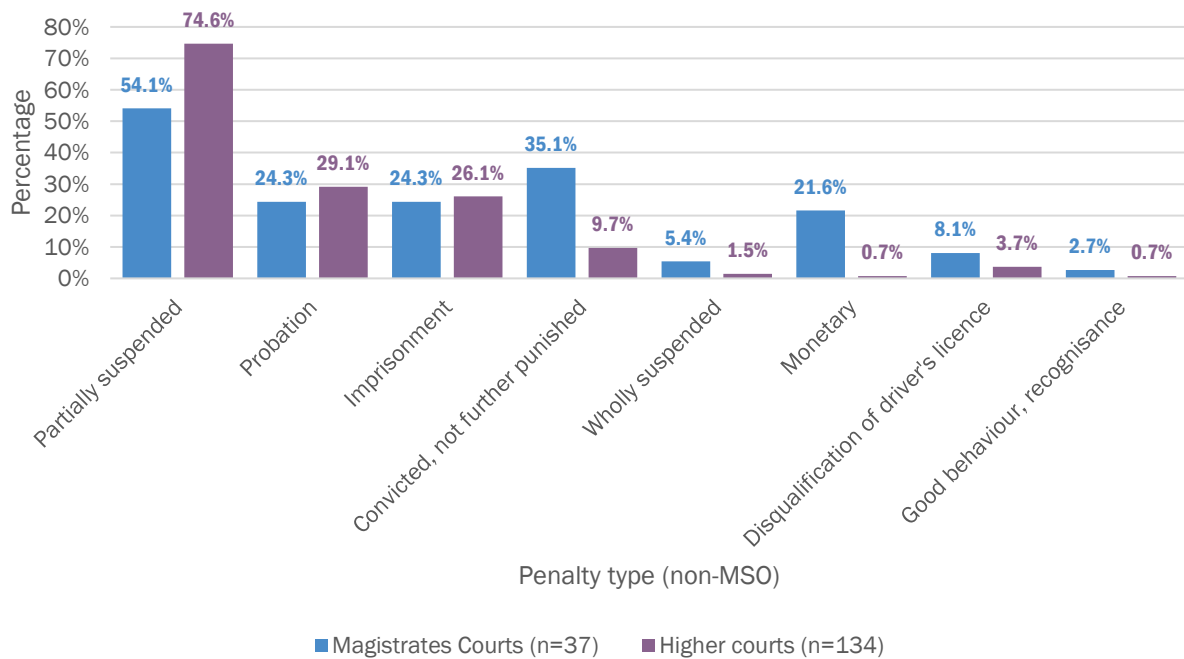
Suspended sentences and penalties for co-sentenced offences

This section looks at the sentencing outcomes for co-sentenced offences, particularly where the defendant received a suspended sentence for sexual assault as their MSO.

In the Magistrates Courts, over half of the cases that received a partially suspended sentence, where there was a co-sentenced offence, received a further partially suspended sentence (54.1%) and approximately one-quarter received a probation order in addition to the partially suspended sentence MSO.

Of the 134 partially suspended sentences that were sentenced in the higher courts for more than one offence, most commonly they received additional partially suspended sentences (74.6%). Just over one-quarter of cases also received at least one probation order (29.1%) and a further one-quarter of cases received at least one imprisonment sentence (26.1%).

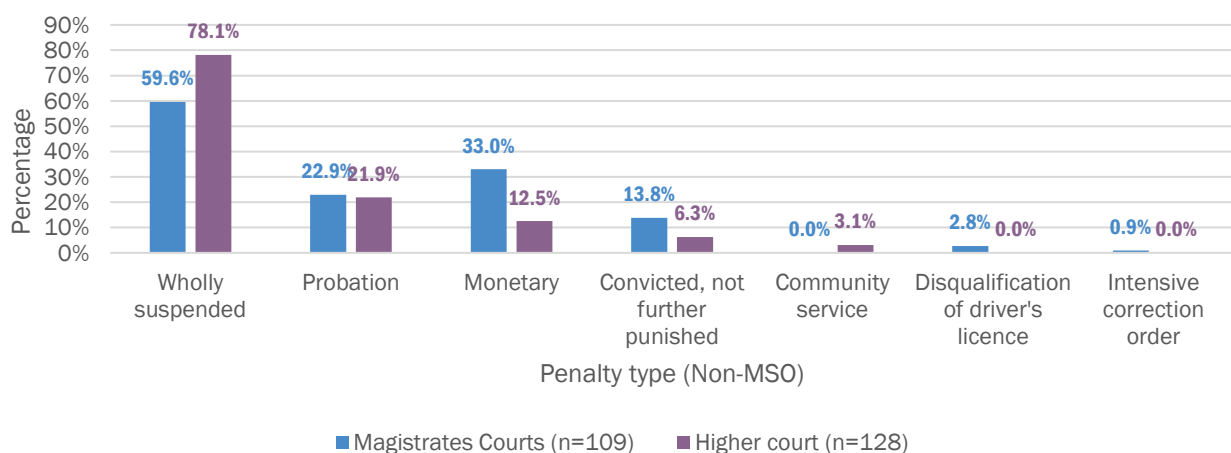
Figure A52: Penalty type for co-sentenced offences with a partially suspended sentence for sexual assault (MSO), by court level



Data notes: Partially suspended sentences (MSO), adults, Magistrates Courts and higher courts, 2005–06 to 2022–23. A case may have more than 1 offence sentenced with a rape (MSO) therefore totals may add to more than 100%.
Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

Of the 109 wholly suspended sentences that were sentenced in the Magistrates Courts and involved more than one offence, most commonly an additional wholly suspended sentence was received (56.9% of cases). This was similar in the higher courts, with an additional wholly suspended sentence also being the most common penalty received in addition to a wholly suspended sentence for the sexual assault MSO (78.1%).

Figure A53: Penalty type for co-sentenced offences with a wholly suspended sentence for sexual assault (MSO), by court level

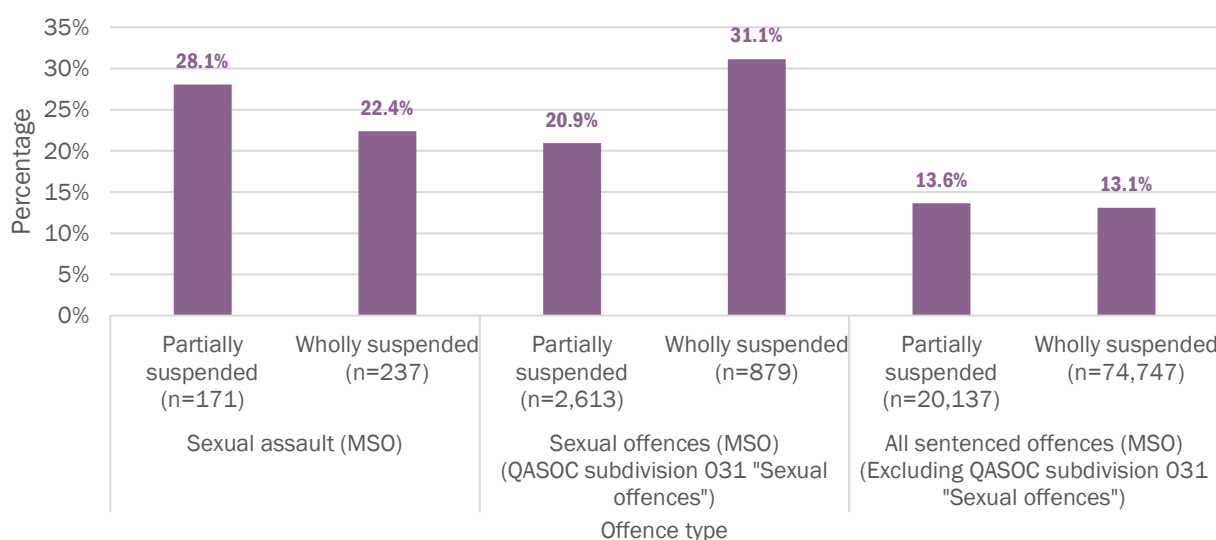


Data notes: Wholly suspended sentences (MSO), adults, Magistrates Courts and higher courts, 2005–06 to 2022–23. A case may have more than one offence sentenced with a rape (MSO) therefore totals may add to more than 100%.
Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

Given the prevalence of combining a suspended sentence with a probation order, further analysis looked at whether the proportion of cases that received a probation order in conjunction with a suspended sentence for sexual assault MSO offence differed compared with other sexual offences and all other offence types.

Figure A54 shows that combining probation orders with a partially suspended sentence is more common where the MSO is sexual assault, compared with both other sexual offences and non-sexual offences. Combining probation orders with a wholly suspended sentence is more common for sexual offences more broadly, than for sexual assault (MSO).

Figure A54: Proportion of cases that received a probation order within the same court event as a suspended sentence, by circumstance of aggravation



Data notes: Suspended sentence (MSO) with co-sentenced offence/s, adults, Magistrates Courts and higher courts, 2005–06 to 2022–23

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

4.8.9 Time served in custody for sexual assault

Note: This section has a shorter data period compared with the other data reported in this Appendix. This section includes analysis of cases sentenced between July 2011 and June 2023.

An important part of understanding sentencing outcomes for sexual assault and whether these are adequate or appropriate is understanding the minimum time that must be served in custody before being eligible for release on parole if sentenced to imprisonment, or before being released if sentenced to a partially suspended sentence. In this section we explore this aspect of sentencing for sexual assault (MSO). Due to the limitation of information about parole eligibility and parole release dates in the administrative data, this analysis only includes cases sentenced from July 2011 to June 2023.

A court must take a person's guilty plea into account when sentencing and may reduce the sentence the court would have imposed had the person not pleaded guilty.⁸⁰ Courts have different ways of taking a person's plea into account. This includes a decision to set an earlier parole eligibility date (for a sentence

⁸⁰ PSA s 13. See Appendix 3.

of imprisonment) or an earlier release date (for a partially suspended sentence). For this reason, we present these outcomes based on plea.

The analysis in this section is not split by aggravating circumstances of the offence but rather by court level.

Time in custody before being eligible for release on parole

Since July 2011, regardless of plea or court level, the median imprisonment length to serve for a non-aggravated sexual assault before being eligible for release on parole is 0.3 years (approximately 4 months) with an average of 0.4 years (approximately 5 months). If circumstances of aggravation are present, the median time spent in custody is 1.1 years (average 1.1 years) – noting that the sample size for this sub-group is small (n=12).

The total time to be served varies by both plea and court level.

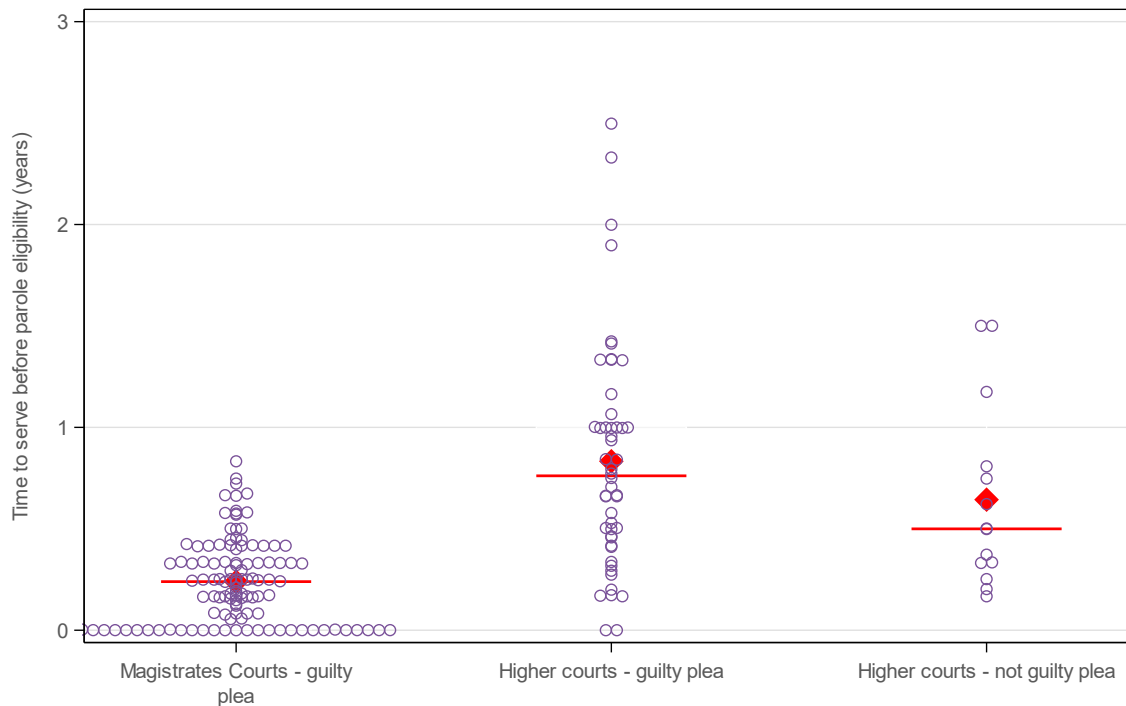
The median imprisonment length to serve before being eligible for release on parole (after pleading guilty) for non-aggravated sexual assault sentenced in the Magistrates Courts was 0.2 years (approximately 2.5 months) (average 0.2 years). The red line in Figure A55 indicates the median and the red diamond indicates the average. Figure A55 shows a gathering of cases at 0 months. These are cases that only had to serve a short amount of time (under 1 month) or were able to apply for parole immediately, usually due to time served in pre-sentence custody.

In the higher courts, those who pleaded guilty were eligible for release on parole after serving a median of 0.8 years (approximately 10 months) with an average time to serve of 0.8 years.⁸¹ Those who did not plead guilty had to serve a median of 0.5 years (approximately 6 months) prior to parole eligibility with an average time to serve of 0.6 years (approximately 7 months). However, the sample size for those who pleaded not guilty was small (n=14) compared with that for people who pleaded guilty (n=50).

If a person does not plead guilty to a charge of non-aggravated sexual assault, they must have the matter dealt with in a higher court, regardless of how serious the alleged conduct is. This may mean that, considered as a whole, the seriousness of cases sentenced in the higher courts where the person has pleaded guilty may be higher than for cases where no guilty plea was entered, some of which might have been sentenced in the Magistrates Courts if the person had pleaded guilty. This may provide a partial explanation for the shorter time to parole eligibility in these cases.

⁸¹ Three cases were excluded from this analysis because plea type was not available.

Figure A55: Time to serve in custody for sexual assault (MSO) on an imprisonment order, before being eligible for release on parole, by plea type and court level, 2011–12 to 2022–23



Court level	Plea type	N	Average (years)	Median (years)	Minimum (years)	Maximum (years)
Magistrates Courts	Guilty	114	0.2	0.2	0.0	0.8
Higher courts	Guilty	50	0.8	0.8	0.0	2.5
	Not guilty	14	0.6	0.5	0.2	1.5
TOTAL	Combined	180	0.4	0.3	0.0	2.5

Data notes: Imprisonment (MSO), adults, Magistrates Courts and higher courts, 2011–12 to 2022–23. Higher courts cases include aggravated and non-aggravated forms of sexual assault due to small sample sizes.

Excludes cases where the expected parole eligibility date exceeds the length of the head sentence due to a longer parole eligibility date being applied to a different offence. Cases receiving a prison-probation order have also been excluded. Cases with no plea type entered in the higher courts (n=3) have been included in the total row of the table but excluded in all other analysis.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Of sentences imposed in the Magistrates Courts (guilty plea), the average sentence proportion served before parole eligibility was 27.1 per cent (median 31.7%). In the higher courts, for those who pleaded guilty, the average sentence proportion served before parole eligibility was 33.4 per cent (median 33.3%), compared with 47.6 per cent for those who did not plead guilty (median 49.9%). The sample size for not guilty pleas in the higher court is small (n=14) and any findings should be treated with caution.

Table A26: Summary statistics of time to serve in custody for sexual assault (MSO) on an imprisonment order, before being eligible for release on parole, by plea type and court level, 2011–12 to 2022–23

Court level	Plea type	N	Average proportion	Median proportion	Minimum proportion	Maximum proportion
Magistrates Courts	Guilty	114	27.1%	31.7%	0.0%	99.5%
Higher courts	Guilty	50	33.4%	33.3%	0.0%	99.7%
	Not guilty	14	47.6%	49.9%	33.2%	58.7%
TOTAL	Combined	180	30.5%	33.1%	0.0%	99.7%

Data notes: Imprisonment (MSO), adults, Magistrates Courts and higher courts, 2011–12 to 2022–23. Higher courts cases include aggravated and non-aggravated forms of sexual assault due to small sample sizes.

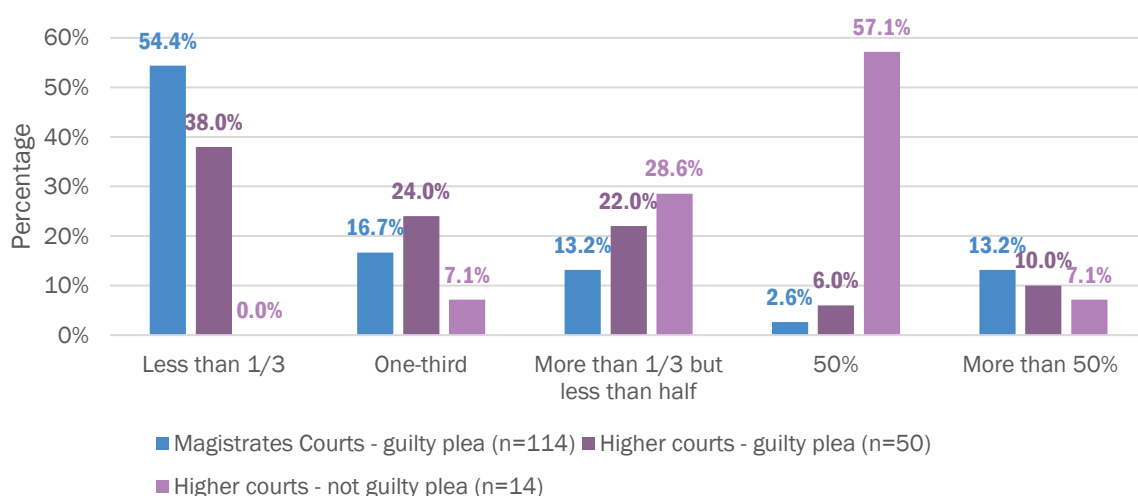
Excludes cases where the expected parole eligibility date exceeds the length of the head sentence due to a longer parole eligibility date being applied to a different offence. Cases receiving a prison-probation order have also been excluded. Cases with no plea type entered in the higher courts (n=3) have been included in the total row of the table but excluded in all other analysis.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Of people who received an imprisonment sentence in the Magistrates Courts (guilty plea) for sexual assault (MSO), more than two-thirds (71.1%) were eligible for release on parole after serving one-third or less of the head sentence.

In the higher courts, the majority of people who did not plead guilty had to serve half of their sentence before being eligible for parole (57.1%), compared with less than 10 per cent of people who pleaded guilty (6.0%). Over half of people who pleaded guilty were eligible for parole at or below one-third of their sentence (62.0%) compared with only 7.1 per cent of people who did not plead guilty (although this was only based on a very small sample size of 14 cases).

Figure A56: Proportion of imprisonment sentence to be served before being eligible for release on parole for sexual assault (MSO), by plea type and court level, 2011–12 to 2022–23



Data notes: Imprisonment (MSO), adults, Magistrates Courts and higher courts, 2011–12 to 2022–23. Higher courts cases include aggravated and non-aggravated forms of sexual assault due to small sample sizes.

Excludes cases where the expected parole eligibility date exceeds the length of the head sentence due to a longer parole eligibility date being applied to a different offence. Cases receiving a prison-probation order have also been excluded. Cases with no plea type entered in the higher courts (n=3) have been excluded.

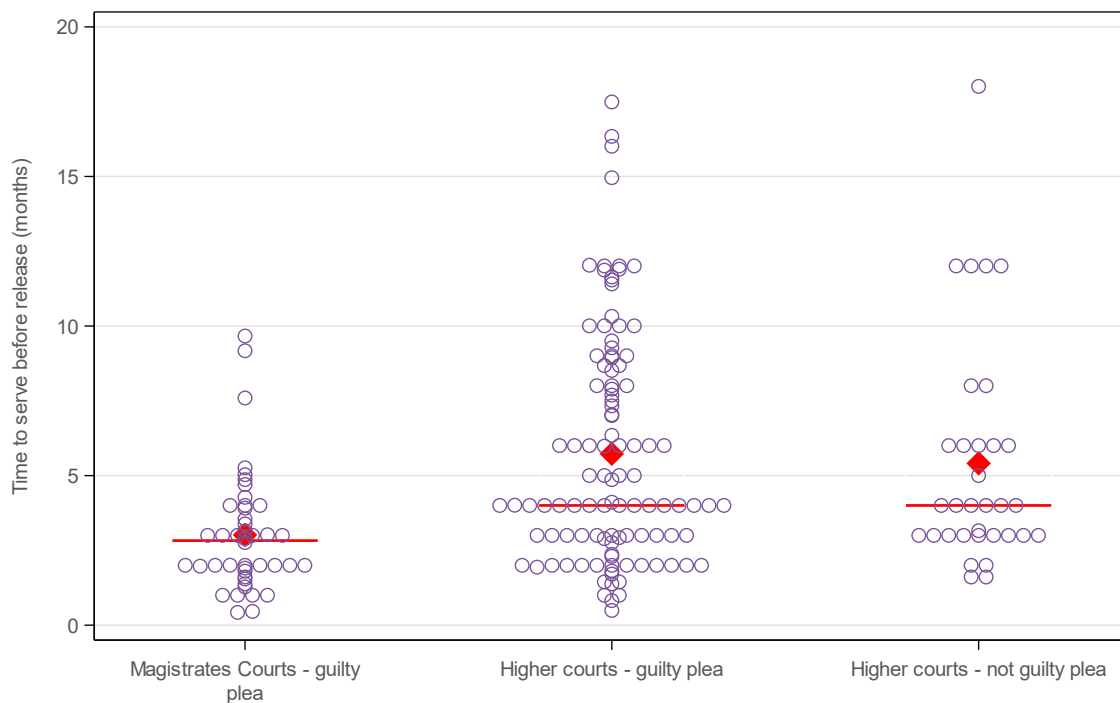
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Time to serve before release for partially suspended sentences

Figure A57 shows that for those sentenced in the Magistrates Courts (only guilty pleas) to a partially suspended sentence for sexual assault, the median time to serve was 2.9 months (average 3.0 months), ranging from 0.4 months to 9.7 months. The red line in Figure A57 indicates the median and the red diamond indicates the average.

In the higher courts,⁸² a person sentenced to a partially suspended sentence after pleading guilty for sexual assault had to serve between 0.5 and 17.5 months before being released, with a median time to serve before release of 4.0 months (average 5.7 months). By comparison, the median time to serve was similar for those who did not plead guilty, with a median time to serve of 4.0 months (average 5.4 months), ranging from 1.6 months to 18.0 months.

Figure A57: Time to serve before release for partially suspended sentence for sexual assault (MSO), by plea type and court level, 2011–12 to 2022–23



Court level	Plea type	N	Average (months)	Median (months)	Minimum (months)	Maximum (months)
Magistrates Courts	Guilty	45	3.0	2.9	0.4	9.7
Higher courts	Guilty	105	5.7	4.0	0.5	17.5
	Not guilty	33	5.4	4.0	1.6	18.0
TOTAL	Combined	189	5.0	4.0	0.4	18.0

Data notes: Partially suspended sentence (MSO), adults, Magistrates Courts and higher courts, 2011-12 to 2022-23. Cases with no plea type entered in the higher courts (n=6) have been included in the total row of the table but excluded in all other analysis.

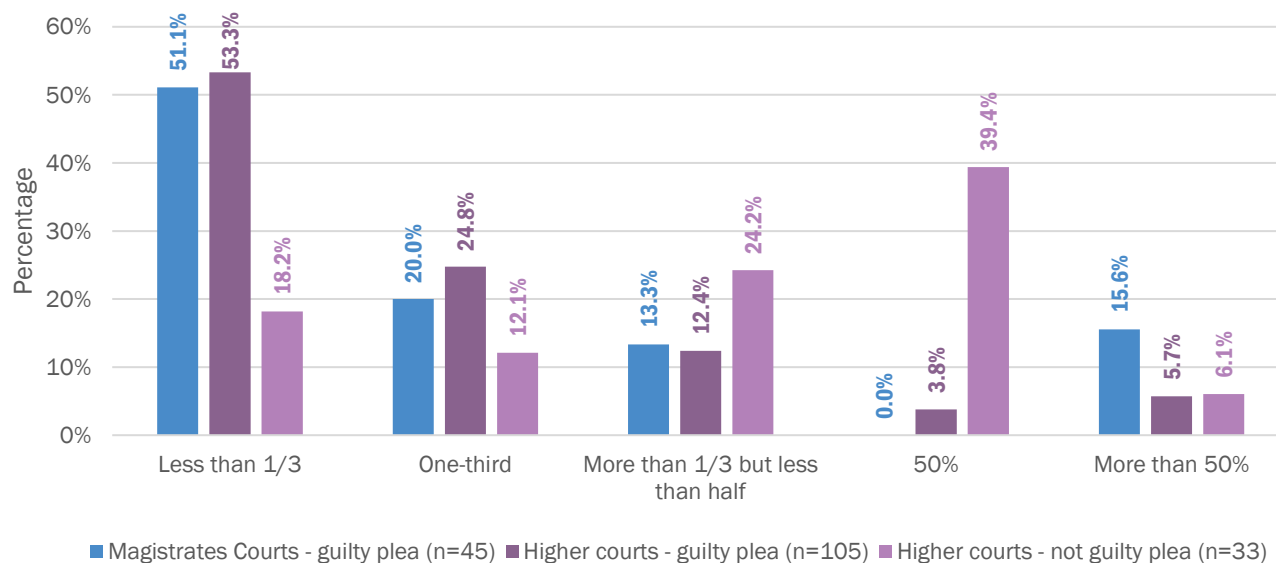
Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

⁸² Six cases were excluded from this analysis because plea type was not available.

In the Magistrates Courts (guilty pleas only), nearly three-quarters of cases receiving a partially suspended sentence for sexual assault served one-third or less of the sentence before being released (71.1%).

Similarly, in the higher courts, over three-quarters of people who entered a guilty plea had to serve one-third or less of their suspended sentence before being released (78.1%), compared with approximately one-third of people who pleaded not guilty (30.3%). One-quarter of those with a not guilty plea had to serve 50 per cent of their sentence before being released (24.2%).

Figure A58: Proportion of partially suspended sentence to be served before release for sexual assault (MSO), by plea type and court level, 2011–12 to 2022–23



Data notes: Partially suspended sentence (MSO), adults, Magistrates Courts and higher courts, 2011–12 to 2022–23. Cases with no plea type entered in the higher courts (n=6) have been excluded.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

4.8.10 Breach of suspended sentences

Note: This section has a shorter data period compared with the other data reported in this Appendix. This section includes analysis of cases sentenced between January 2009 and June 2023.

To consider the effectiveness of suspended sentences, further data was analysed to determine whether suspended sentences imposed for sexual assault (MSO) were subsequently breached.

The courts database as maintained by QGSO does not include information about the operational period of suspended sentences. The Council requested and obtained additional data from Court Services Queensland about whether the suspended sentence was breached during the operational period and the court imposed further sentences. Sections 146 and 147 of the PSA provide the consequences of such a breach. This may include an order to extend the operational period of a suspended sentence or ordering a person to serve all or part of their suspended sentence.

Court Services Queensland provided the Council with data pertaining to these orders. That is, orders to extend the operational period of a suspended sentence, or orders to serve all, or part, of a suspended sentence. Analysis of this data provided some insight into the effectiveness of suspended sentences.

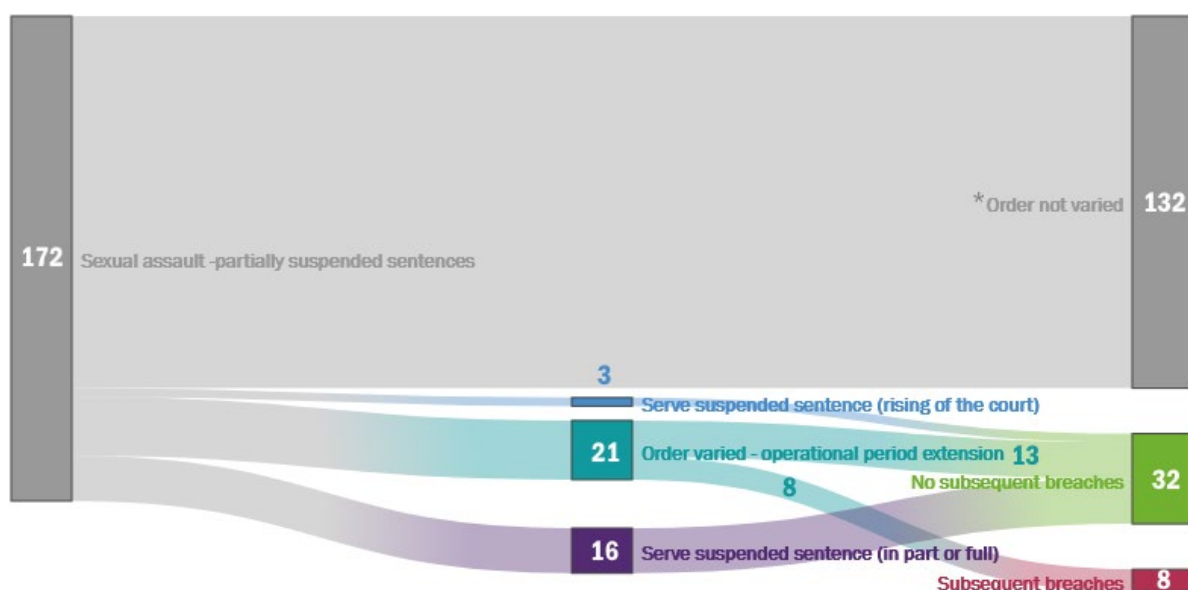
There were 217 partially suspended sentences imposed for sexual assault (MSO) between January 2009 and June 2023; however, this analysis includes 172 cases. Cases where the operational period had not expired as at 30 June 2023 were excluded, as these suspended sentences may still be breached.

Figure A59 illustrates the volume of partially suspended sentences for sexual assault (MSO) that were breached.

Over three-quarters of partially suspended sentences for sexual assault (MSO) (76.7%, n=132/172) were not breached within the operational period. Of the 40 partially suspended sentences (MSO) that were breached, more than half received an extension to the operational period (52.5%, n=21/40), while in 16 cases the offender was ordered to serve all or part of the suspended sentence. In 4 cases, the suspended sentence was continued (rising of the court).

The majority of the people who breached their suspended sentence did not further breach their order – 32 of the 40 cases (80.0%) did not have any further breach orders made. Of the 8 people who had further breaches, 7 had 2 breach orders made and one had 3 breach orders made.

Figure A59: Breach of partially suspended sentences for sexual assault (MSO)



Data notes: Partially suspended sentences for sexual assault (MSO) sentenced between January 2009 and June 2023, with an operational period ending on or prior to 30 June 2023, adults, Magistrates and higher courts.

* Order not varied means that the partially suspended sentence imposed for sexual assault (MSO) was not activated and the operational period was not extended.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023 and Court Services Queensland, extracted May 2024.

Figure A60 illustrates the volume of wholly suspended sentences for sexual assault (MSO) that were breached.

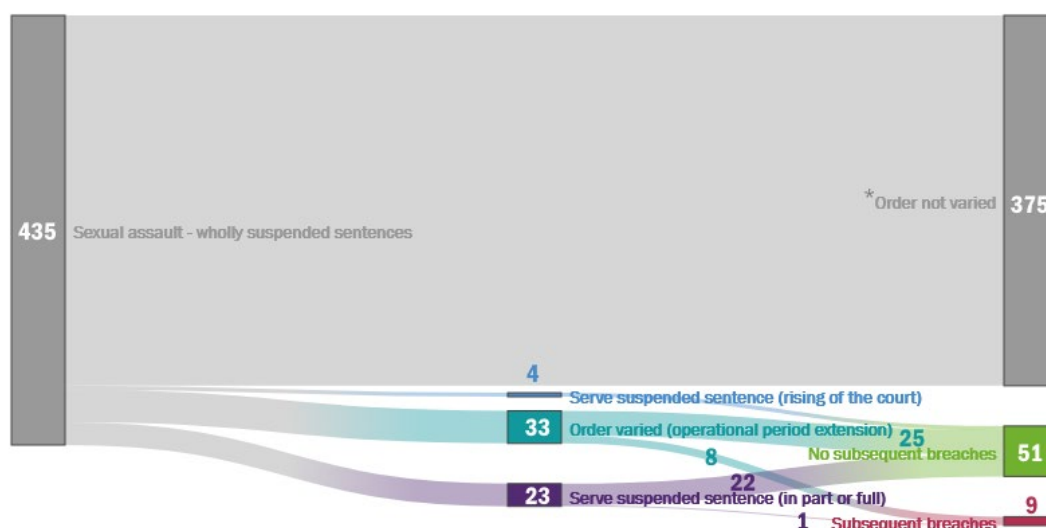
There were 523 wholly suspended sentences imposed for sexual assault (MSO) between January 2009 and June 2023; however, this analysis includes 435 cases. Cases where the operational period had not

expired as at 30 June 2023 were excluded, as these suspended sentences may still be breached. Of the 435 wholly suspended sentences imposed for sexual assault (MSO) 86.2 per cent were not breached (n=375/435).

Of the 60 cases where a breach order was imposed, more than half received an extension to the operational period (55.0%, n=33/60). There were 23 cases where an order was made to serve all or part of the wholly suspended sentence, while the remaining 4 cases had the suspended sentence continued (rising of the court).

The majority of the wholly suspended sentences that had a breach order imposed did not have any further breach orders imposed, meaning they did not breach their suspended sentence again (85.0%, n=51/60). Of the 9 people who had subsequent breaches, 4 people had 2 breach orders imposed and 5 people had 3 breach orders imposed.

Figure A60: Breach of wholly suspended sentences for sexual assault (MSO)



Data notes: Wholly suspended sentences for sexual assault (MSO) sentenced between January 2009 and June 2023, with an operational period ending on or prior to 30 June 2023, adults, higher courts.

* Order not varied means that the wholly suspended sentence imposed for sexual assault (MSO) was not activated and the operational period was not extended.

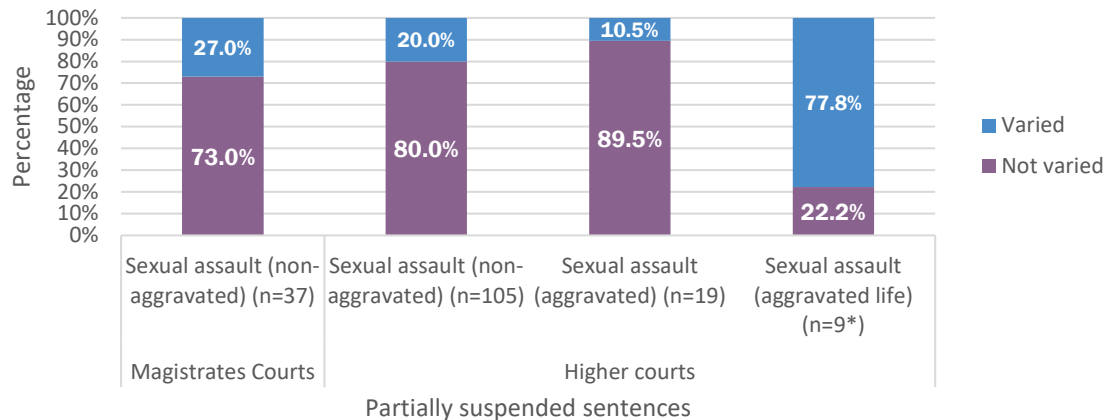
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023 and Court Services Queensland, extracted May 2024.

Partially suspended sentence for sexual assault by circumstance of aggravation

The majority of partially suspended sentences were not varied subsequent to the original sentence – 73.0 per cent of non-aggravated sexual assault (MSO) sentenced in the Magistrates Courts, 80.2 per cent of non-aggravated sexual assault (MSO) sentenced in the higher courts, and 90.0 per cent of aggravated sexual assault (MSO) in the higher courts. The sample size for sexual assault (aggravated life) is too small to be reliably considered but has been presented for completeness.

The highest proportion of breaches of partially suspended sentences were for non-aggravated sexual offences sentenced in the Magistrates Courts where more than one one-quarter of partially suspended sentences were varied (27.0%).

Figure A61: Subsequent outcomes for partially suspended sentences for sexual assault (MSO), by circumstance of aggravation and court level



Data notes: Partially suspended sentences for sexual assault (MSO) sentenced between January 2009 and June 2023, with an operational period ending on or prior to June 2023, adults, Magistrates and higher courts.

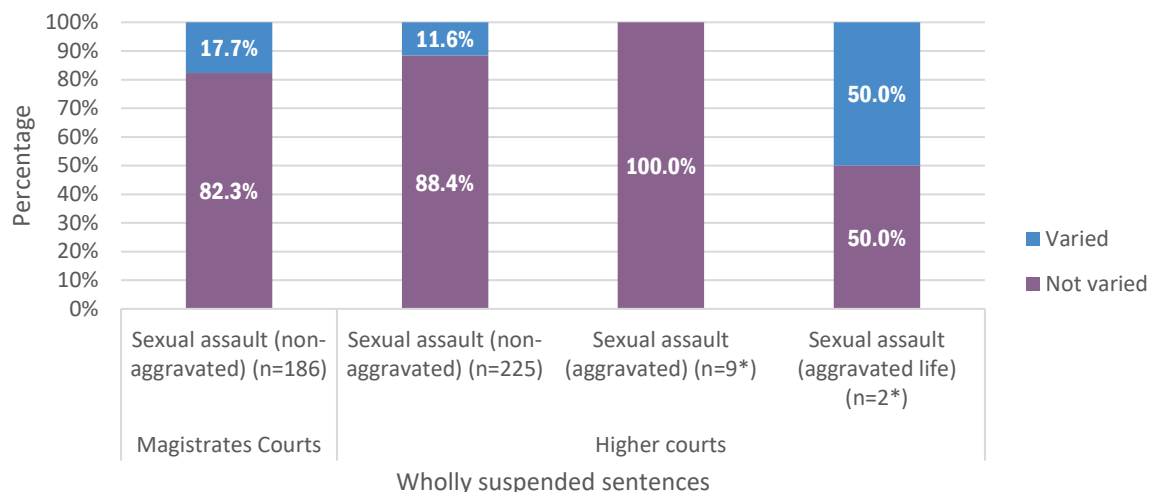
* small sample size. Caution should be used when interpreting these results.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023 and Court Services Queensland, extracted May 2024.

Wholly suspended sentence for sexual assault (MSO) by circumstance of aggravation

The majority of wholly suspended sentences were not varied subsequent to the original sentence – 83.0 per cent of non-aggravated sexual assault (MSO) sentenced in the Magistrates Courts and 88.7 per cent of non-aggravated sexual assault (MSO) sentenced in the higher courts. The sample sizes for sexual assault (aggravated) and sexual assault (aggravated life) are too small to be reliably considered but have been presented for completeness.

Figure A62: Subsequent outcomes for wholly suspended sentences for sexual assault (MSO), by circumstance of aggravation and court level



Data notes: Wholly suspended sentences for sexual assault (MSO) sentenced between January 2009 and June 2023, with an operational period ending on or prior to June 2023, adults, Magistrates and higher courts.

* small sample size. Caution should be used when interpreting these results.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023 and Court Services Queensland, Queensland, extracted May 2024.

4.8.11 Sentencing and pre-sentence custody for sexual assault

Note: This section has a shorter data period compared with the other data reported in this Appendix. This section includes analysis of cases sentenced between July 2011 and June 2023.

Considering higher courts and Magistrates Courts combined, of the 237 cases where an imprisonment sentence was imposed⁸³ for sexual assault (MSO) from July 2011 to June 2023,⁸⁴ 2 in 5 had no declared time in pre-sentence custody (41.8%). A similar proportion (42.6%) had pre-sentence time declared which was less than the sentence length. This means that they had served part of their sentence in remand, but further time in custody was required before being eligible for parole. The remaining 15.6 per cent (n=37) had pre-sentence time declared, which equalled the length of the prison sentence. This means these people had fully served their prison sentence while on remand and had no further time to serve in custody.

The median declared time in pre-sentence custody for an imprisonment sentence was 116 days (average 160.3 days).

Cases in which pre-sentence custody was declared had longer sentences compared with cases where no pre-sentence custody was declared. The median imprisonment sentence for sexual assault (MSO) where no pre-sentence custody was declared was 9 months (average 12 months). In comparison, the median imprisonment sentence was 12 months (average 6 months) where some pre-sentence custody was declared. This is a statistically significant difference.⁸⁵

Of the 189 partially suspended sentences imposed for sexual assault (MSO), more than half had no pre-sentence custody declared (51.3%). More than one-in-four had time declared which equalled the time to serve before release (28.6%). For the remaining 20.1 per cent (n=38), their declared pre-sentence time in custody was less than the time required to serve before the sentence was suspended, meaning they had further time to serve in custody before release.

The median days declared pre-sentence custody for a partially suspended sentence was 92.5 days (average 139.1 days).

For partially suspended sentences, both the sentence length and the time to serve before release were significantly longer when there was declared pre-sentence custody compared with no declared time.⁸⁶

The median partially suspended sentence where no time was declared was 12 months (average approximately 1 year 2 months), with a median of 3.0 months (average of 4.2 months) to be served before release. By comparison, when pre-sentence custody was declared, the median sentence length was 1 year 3 months (average 1 year 6 months) and median time to serve before release was 4.9 months (average 5.9 months).

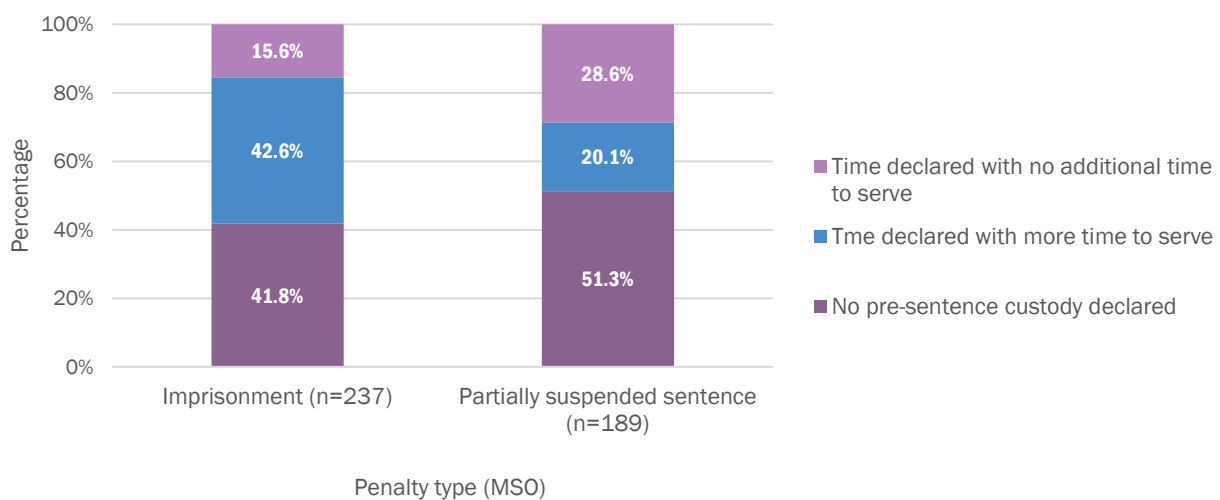
⁸³ This includes prison/probation orders (n=25) as there were too few of these to analyse separately.

⁸⁴ Pre-sentence custody was recorded in the data from July 2011 onwards.

⁸⁵ Independent Groups T-Test: $t(234.26) = 2.40$, $p < 0.05$, two-tailed (equal variance not assumed).

⁸⁶ Independent Groups T-Test: $t(154.12) = 2.67$, $p < .01$, two-tailed (equal variance not assumed), Independent groups t-test: $t(167.45) = 3.13$, $p < 0.01$, two-tailed (equal variance not assumed).

Figure A63: Use of pre-sentence custody for sexual assault (MSO), 2011–12 to 2022–23



Data notes: MSO, adults, higher and lower courts, 2011–12 to 2022–23.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

4.9 Sentencing outcomes for comparator offences

Note: This section has a shorter data period compared with the other data reported in this Appendix. This section includes analysis of higher court cases sentenced between July 2020 and June 2023 and Magistrates Courts cases sentenced between July 2018 and June 2023.

One way to assess the appropriateness of sentencing for rape and sexual assault is to compare the types of sentences received for different types of offences.

Higher courts data in this section is limited to cases sentenced in the past 3 years, from 2020–21 to 2022–23. This period was selected to ensure the analysis reflects current sentencing practices.

Two types of comparator analysis for offences sentenced in the higher courts are presented below. The first (see section 4.9.1) compares sentencing for sexual assault and rape with a broad range of non-sexual offences with different levels of seriousness, different maximum penalties, and different types of harm. The second analysis (see section 4.9.2) compares the offences of rape and sexual assault with other sexual offences.

The comparator analysis of sentencing in the Magistrates Courts uses a wider data period, from 2018–19 to 2022–23. This was to ensure a sample size large enough to allow further sexual offences to be included in the analysis.

4.9.1 Comparator analysis with non-sexual offences

A range of offences were selected to be used as comparators. These offences vary in seriousness, maximum penalties and whether they involve personal violence, property or drug related harms. Several offences were chosen because they align with offences selected by the University of the Sunshine Coast as part of its focus group research for this review (see section 7.3.1 for more information), thereby allowing for a quantitative comparison with those findings.

Common assault⁸⁷ was selected as an example of a violence offence that is less serious, resulting in no physical harm, and with a maximum penalty of 3 years. Assault occasioning bodily harm ('AOBH')⁸⁸ was selected as an example of a violence offence resulting in bodily harm with a maximum penalty of 7 years. Where circumstances of aggravation are present, the maximum penalty increases to 10 years⁸⁹ – matching the maximum penalty for non-aggravated sexual assault.

Choking, suffocation or strangulation in a domestic setting ('strangulation')⁹⁰ is a serious violence offence with a maximum penalty of 7 years and is comparable to AOBH.

The offence of acts intended to cause grievous bodily harm ('GBH')⁹¹ and other malicious acts ('malicious acts')⁹² has a maximum penalty of life imprisonment. This is a serious violence offence involving an intentional act to maim, disfigure or disable a person or to cause them GBH.

Dangerous operation of a motor vehicle causing death or GBH ('dangerous driving causing death/GBH') is a serious offence that attracts a maximum penalty of 10 years,⁹³ increasing to 14 years where circumstances of aggravation are present.⁹⁴ The administrative data recorded by courts does not make it possible to separate offences that resulted in GBH from offences that resulted in death.

Burglary – the unlawful entry of a person's home – is a serious property offence with a maximum penalty of 14 years.⁹⁵ When circumstances of aggravation are present⁹⁶ or if the defendant commits an indictable offence during the course of the burglary⁹⁷ ('Burglary and commit') the maximum penalty is raised to life imprisonment – matching the maximum penalty for rape.

Fraud is a serious financial offence that does not involve violence with a maximum penalty of 5 years' imprisonment.⁹⁸ Where circumstances of aggravation are present, the maximum penalty may increase to 14 years⁹⁹ or to 20 years.¹⁰⁰

Trafficking in dangerous drugs is a serious drug offence that results in widespread harm across the community. The maximum penalty is life imprisonment.¹⁰¹ The administrative data recorded by courts does not make it possible to determine the volume or types of drugs involved in cases.

Use of imprisonment

Figure A64 shows the proportion of sentenced cases that resulted in a sentence of imprisonment (MSO). The offences are ranked in order based on the proportion of cases that resulted in either imprisonment

⁸⁷ *Criminal Code* (Qld) (n 20) s 335.

⁸⁸ *Ibid* s 339(1).

⁸⁹ *Ibid* s 339(2).

⁹⁰ *Ibid* s 315A.

⁹¹ Grievous bodily harm means a) the loss of a distinct part or an organ of the body; or b) serious disfigurement; or c) any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health; whether or not treatment is or could have been available: *Ibid* s 1.

⁹² *Ibid* s 317.

⁹³ *Ibid* s 328A(4)(a).

⁹⁴ *Ibid* s 328A(4)(b).

⁹⁵ *Ibid* s 417(1).

⁹⁶ *Ibid* ss 417(2) and (3).

⁹⁷ *Ibid* s 417(4).

⁹⁸ *Ibid* s 408C(1).

⁹⁹ *Ibid* s 408C(2).

¹⁰⁰ *Ibid* s 408C(2A): where the value of the fraud was at least \$100,000 or the offender carries on the business of committing fraud.

¹⁰¹ *Drugs Misuse Act 1986* (Qld) s 5. The maximum penalty was increased from 25 years to life imprisonment in May 2023.

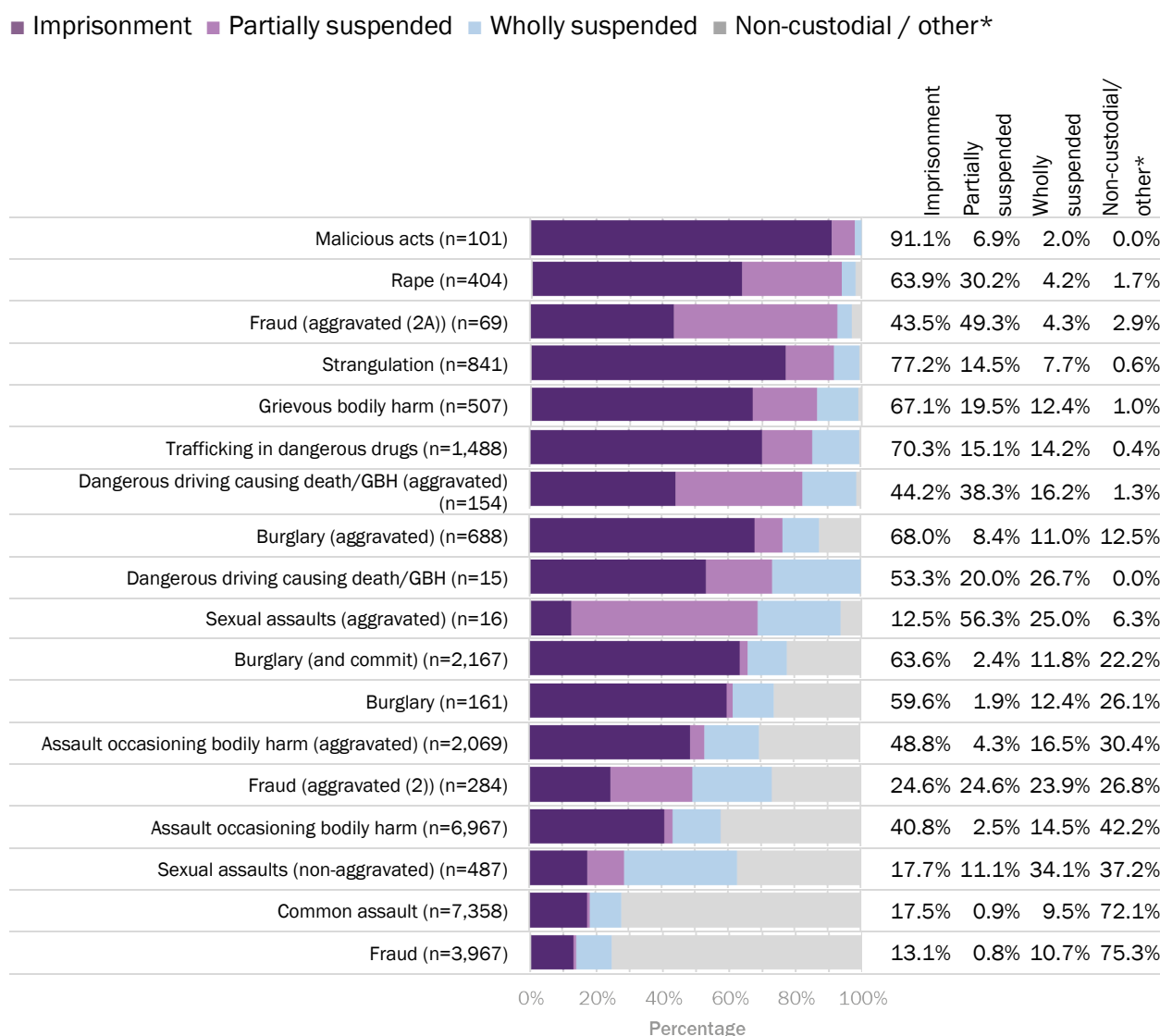
or partially suspended imprisonment. Sentences of wholly suspended imprisonment are highlighted in light blue.

In the 3-year data period, the offence of malicious acts had the highest use of imprisonment sentences, with every case resulting in either a sentence of imprisonment (91.1%) or a suspended sentence (8.9%). Rape had the second highest use of imprisonment at 94.1 per cent resulting in either unsuspended imprisonment or a partially suspended sentence; however, this involved a larger proportion of suspended sentences compared with several other offences. For example, the offences of strangulation, trafficking in dangerous drugs and aggravated burglary all had higher proportions of unsuspended imprisonment compared with rape.

Aggravated sexual assault had few cases sentenced in this 3-year period to draw many conclusions (n=16, MSO). However, the majority of these cases resulted in a partially suspended sentence (56.3%).

Non-aggravated sexual assaults had a relatively low rate of imprisonment sentences compared with the other offences included in this analysis. The proportion of unsuspended imprisonment sentences for non-aggravated sexual assault was comparable to that of common assault (17.7% compared with 17.5%, respectively, MSO) – although non-aggravated sexual assault had a higher rate of suspended sentences. The proportion of imprisonment sentences, including suspended sentences for non-aggravated sexual assault, was more comparable to non-aggravated AOBH (62.9% compared with 57.8%, respectively, MSO).

Figure A64: Proportion of sentenced cases by penalty type (MSO), comparator offences, 2020–21 to 2022–23



Data notes: includes cases (MSO) sentenced from 2020–21 to 2022–23. Imprisonment includes combined prison-probation orders.

Cases sentenced for aggravated sexual assault under s 352(3) where the maximum penalty is life imprisonment were not included due to the small number of cases sentenced (n=2).

* 'Other' includes a small number of custodial orders of intensive correction orders and rising of the court. The values above are sorted in descending order based on the time spent in actual custody (defined as a period of imprisonment or the proportion of a partially suspended sentence in which the person was required to serve before the sentence was suspended).

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Length of custodial sentences

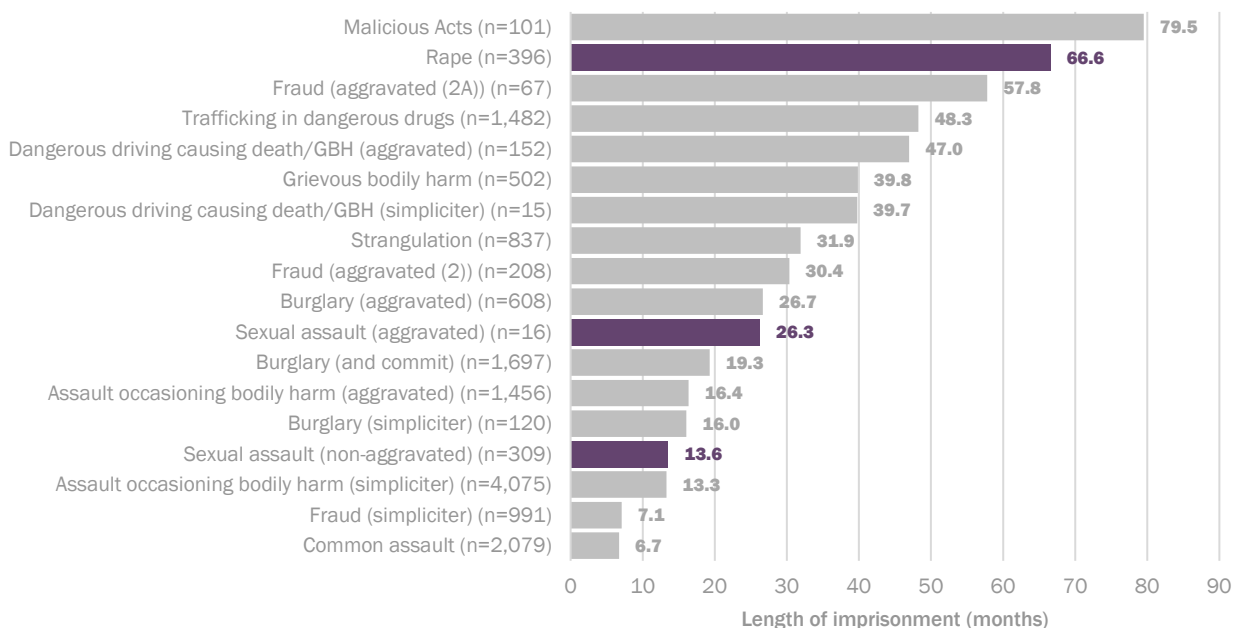
Figure A65 shows the average length of custodial sentences during the 3-year data period. In this chart, custodial sentences include sentences of imprisonment, whether suspended or not, and intensive correction orders. While sentences of rising of the court are technically considered to be an order of imprisonment, they have not been included in the analysis in this section due to the nominal nature of the penalty.

On average, malicious acts had the longest periods of custodial sentences at 79.5 months (6.6 years). This was followed by rape with an average length of 66.6 months (5.5 years).

Non-aggravated sexual assault had an average length of 13.6 months (1.1 years). This was slightly longer than the average custodial sentence imposed for non-aggravated AOBH (13.3 months, 1.1 years) and slightly shorter than the average sentence imposed for non-aggravated burglary (16.0 months, 1.3 years).

There were not enough cases sentenced to a custodial sentence in the past 3 years to calculate an average for aggravated sexual assault (n=2), and this offence has not been displayed.

Figure A65: Average length of custodial orders (MSO), comparator offences, 2020–21 to 2022–23



Data notes: includes cases (MSO) sentenced to imprisonment from 2020–21 to 2022–23. Excludes life sentences. Custodial sentences included in this figure include sentences of imprisonment (including suspended imprisonment and combined prison-probation orders), and intensive correction orders. Sentences of rising of the court are not included. Cases sentenced for aggravated sexual assault under s 352(3) where the maximum penalty is life imprisonment were not included due to the small number of cases sentenced (n=2).
Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023, updated April 2024.

Distribution of custodial sentences

Figure A66 shows the distribution of custodial sentences for each of the comparator offences. The offences are arranged from the longest to the shortest median sentence.

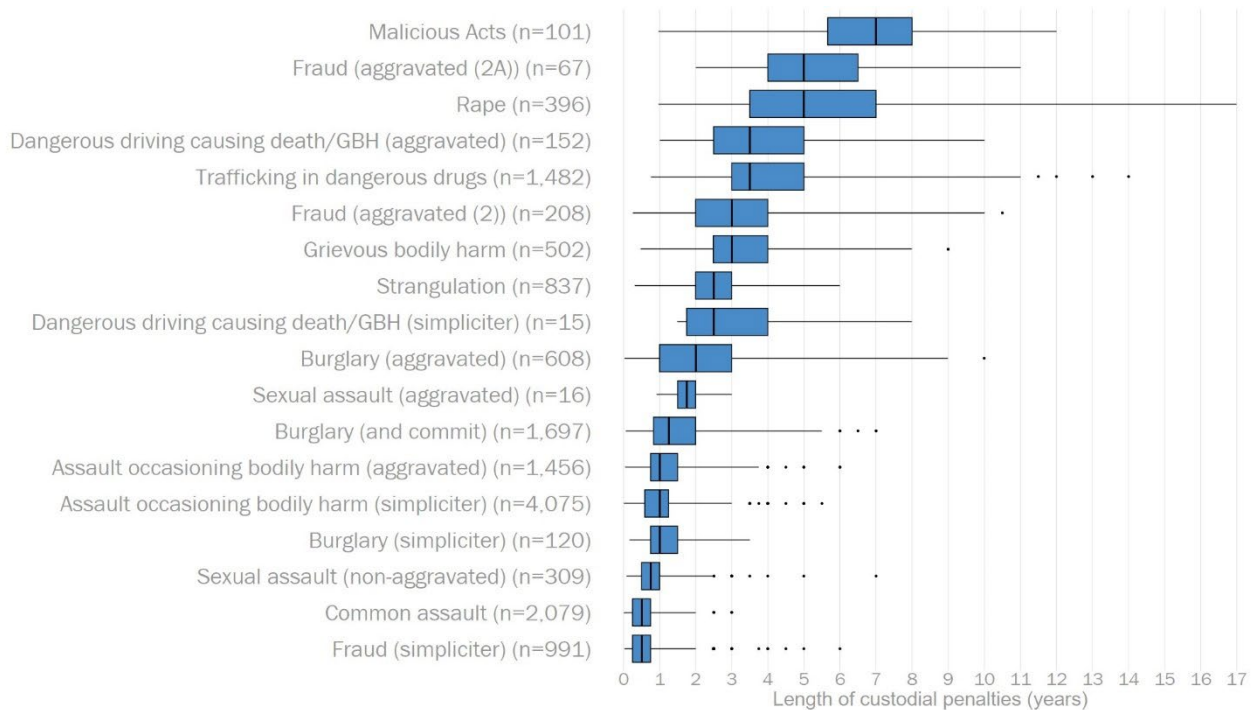
Malicious acts had the longest median sentence of 7 years, with sentences ranging between one and 12 years. This was closely followed by aggravated fraud and rape, which both had a median custodial sentence length of 5 years' imprisonment. For aggravated fraud, this ranged from 2 years to 11 years. For rape, this ranged from one year to 17 years.

Rape had the broadest range of sentences out of all the comparator offences that were analysed reflecting the range of circumstances involved with this offence and the high maximum penalty.

Non-aggravated sexual assault had a median custodial sentence of 0.8 years (9.0 months). This was lower than non-aggravated AOBH and strangulation, which had medians of 1.0 years and 2.5 years

respectively. AOBH and strangulation both have 7-year maximum penalties. AOBH aggravated (maximum penalty 10 years) also had a higher median than non-aggravated sexual assault, of one year.

Figure A66: Distribution of length of custodial orders (MSO), comparator offences, 2020–21 to 2022–23



Data notes: includes cases (MSO) sentenced from 2020–21 to 2022–23. Box plots exclude life sentences. Sexual assault (aggravated) and sexual assault (aggravated life) have not been presented due to small sample sizes.

Custodial sentences included in this figure include sentences of imprisonment (including suspended imprisonment and combined prison-probation orders), and intensive correction orders. Sentences of rising of the court are not included.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023, updated April 2024.

Table A27: Average and median length of custodial orders (MSO), comparator offences, 2020–21 to 2022–23

Offence	Frequency	Average (years)	Median (years)
Malicious acts	101	6.8	7.0
Fraud (aggravated (2A))	67	5.2	5.0
Rape	396	5.5	5.0
Dangerous driving causing death/GBH (aggravated)	152	3.9	3.5
Trafficking in dangerous drugs	1,482	4.0	3.5
Fraud (aggravated (2))	208	3.1	3.0
Grievous bodily harm	502	3.3	3.0
Strangulation	837	2.6	2.5
Dangerous driving causing death/GBH (simpliciter)	15	3.3	2.5
Burglary (aggravated)	608	2.2	2.0
Sexual assault (aggravated)	16	1.8	1.8
Burglary (and commit)	1,697	1.4	1.3
Assault occasioning bodily harm (aggravated)	1,456	1.3	1.0
Assault occasioning bodily harm (simpliciter)	4,075	1.0	1.0
Burglary (simpliciter)	120	1.3	1.0
Sexual assault (non-aggravated)	309	0.9	0.8
Common assault	2,079	0.5	0.5
Fraud (simpliciter)	991	0.6	0.5

Data notes: includes cases (MSO) sentenced from 2020–21 to 2022–23. Excludes life sentences. Sexual assault (aggravated life) has not been presented due to small sample sizes.

Custodial sentences included in this figure include sentences of imprisonment (including suspended imprisonment and combined prison-probation orders), and intensive correction orders. Sentences of rising of the court are not included.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023, updated April 2024.

4.9.2 Comparison of sentencing for rape and sexual assault to other sexual offences sentenced in the higher courts

This section compared the offences of rape and sexual assault with other offences sentenced in the higher courts that involve sexual violence.

The basis for selecting comparator sexual offences was to use offences classified as 'sexual assault' under subdivision 031 of the Australian Standard Offence Classification (ASOC) as maintained by the Australian Bureau of Statistics (ABS).

Between 1 July 2020 and 30 June 2023, the majority of offences within this classification were sentenced in the higher courts. Four in five sexual offences (MSO) were sentenced in the higher courts (80.9%, n=1,425/1,762). Of the 337 sexual offences sentenced in the Magistrates Courts, 86.7 per cent were non-aggravated sexual assault (MSO). As there are few other sexual offences within this category that are sentenced in the Magistrates Courts to compare with sexual assault, the analysis in the remainder of this section considers only sexual offence cases (MSO) sentenced in the higher courts.

Sexual offences sentenced in the higher courts from July 2020 to June 2023

The most common sexual offences sentenced in the higher courts were indecent treatment of a child under 16 (aggravated), very closely followed by maintaining a sexual relationship with a child (now named repeated sexual conduct with a child), indecent treatment of a child under 16 (non-aggravated) and rape offences— (see Table A28).

Table A28: All offences categorised under ASOC 031 sexual assault sentenced in the higher courts, July 2020 to June 2023

Offence type	Frequency	%
Indecent treatment of child under 16 (aggravated)	219	15.5
Maintaining a sexual relationship with a child	216	15.3
Indecent treatment of child under 16 (non-aggravated)	210	14.9
Rape (child victim)	202	14.3
Rape (adult victim)	201	14.3
Sexual assault (non-aggravated)	190	13.5
Carnal knowledge with or of child under 16	85	6.0
Abuse of persons with an impairment of the mind	19	1.3
Attempt to commit rape	19	1.3
Sexual assault (aggravated)	16	1.1
Incest	13	0.9
Assault with intent to commit rape	7	0.5
[Repealed] Unlawful sodomy	5	0.4
[Cth] Child sex offences outside Australia	4	0.3
Sexual assault (aggravated life)	2	0.1
Attempts to procure commission of criminal acts	1	0.1

Data notes: Offences in ASOC subdivision 031 'Sexual assault', MSO, adults, higher courts, 2020–21 to 2022–23.

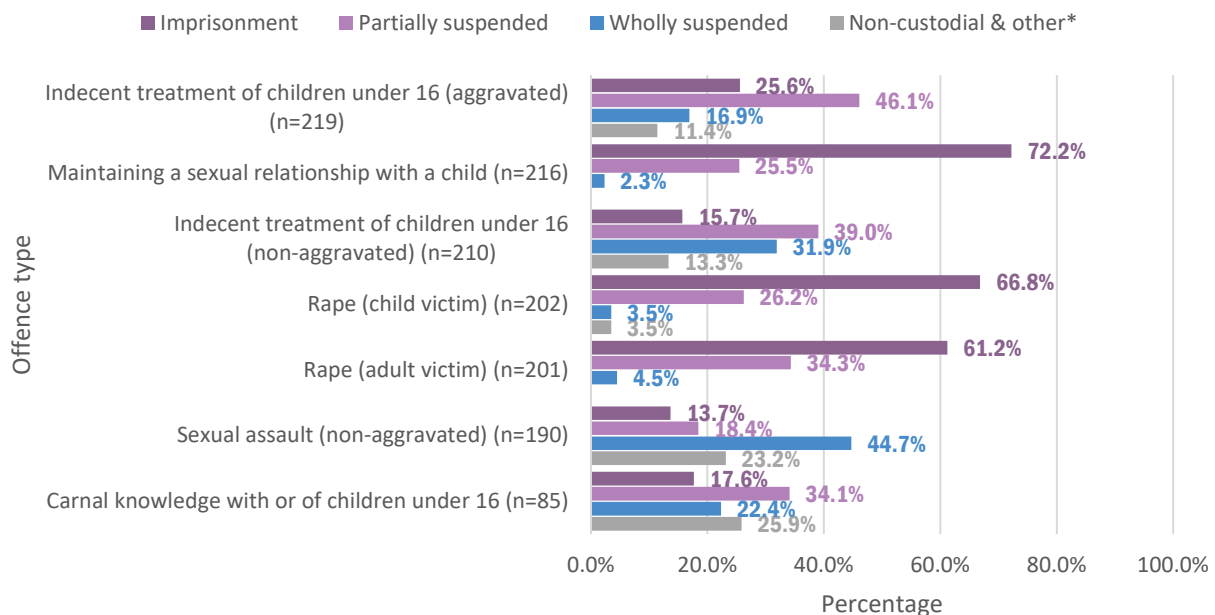
Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023, updated April 2024.

Figure A67 shows the types of penalties given for each of the comparator sexual offences with more than 20 sentenced cases during the 3-year data period.

Sentenced charges of rape that involved a child victim (MSO) were more likely to result in a sentence of imprisonment that was not suspended (66.8%) compared with charges involving an adult victim (61.2%, MSO). The only offence with a higher proportion of imprisonment sentences was maintaining a sexual relationship with a child (now called repeated sexual conduct with a child, 72.2%, MSO).

Non-aggravated sexual assault (MSO) charges resulted in a sentence of imprisonment in 13.7 per cent of cases during this 3-year data period (MSO). This is comparable to non-aggravated indecent treatment of children under 16 (15.7%) and carnal knowledge with or of children under 16 (17.6%), although both of these offences had a much higher proportion of partially suspended sentences compared to non-aggravated sexual assault which had a high proportion of wholly suspended sentences.

Figure A67: Penalty imposed for ASOC 031 sexual assault (MSO) sentenced in the higher courts, July 2020 to June 2023



Data notes: Offences in ASOC subdivision 031 'Sexual assault', MSO, adults, higher courts, 2020–21 to 2022–23.

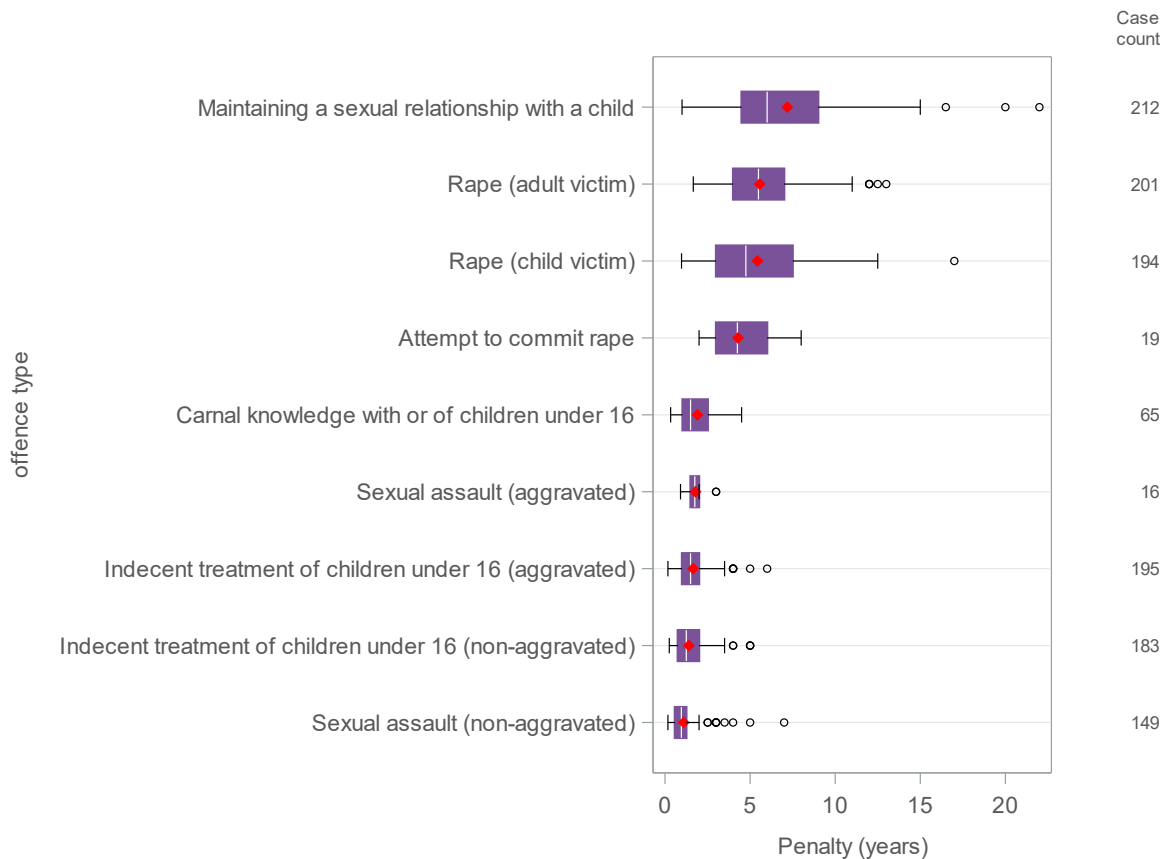
* 'Other' includes a small number of custodial orders of intensive correction orders and rising of the court.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023, updated April 2024.

Figure A68 shows the distribution of custodial sentences for each offence type (MSO) sentenced in the higher courts from 2020–21 to 2022–23, sorted by the average sentence length (longest to shortest).¹⁰² Maintaining a sexual relationship with a child (now called repeated sexual conduct with a child) has the longest average custodial sentence of offences within 031 'sexual assault', at 7.2 years (median 6.0 years). The average custodial sentence for rape of an adult (MSO) sentenced between July 2020 and June 2023 is 5.6 years (median 5.5 years) compared with 5.4 years for rape of a child (median 4.8 years). Life sentences were imposed for both maintaining (n=4) and rape (n=1) within the data period.

¹⁰² Interpreting the boxplot: The red diamond within each box shows the average sentence. The purple box is the interquartile range which shows how spread out the sentences are. The white line within the purple box shows the median, that is the centre of the dataset. The dots are the sentences that are outliers, that is a sentence that is 1.5 times higher/lower than the interquartile range.

Figure A68: Custodial sentence lengths for ASOC 031 sexual assault (MSO) sentenced in the higher courts, July 2020 to June 2023



Data notes: Custodial orders for ASOC subdivision 031 'Sexual assault', MSO, adults, higher courts, 2020–21 to 2022–23. Life sentences for maintaining a sexual relationship with a child (n=4) and for rape (n=1) are excluded from this figure. Offences with less than 10 cases receiving a custodial order are excluded from this analysis – Attempts to procure commission of criminal acts, [Cth] Child sex offences outside Australia, [Repealed] Unlawful sodomy, Assault with intent to commit rape, Sexual assault (aggravated life), Incest, and Abuse of persons with an impairment of the mind, Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023, updated April 2024.

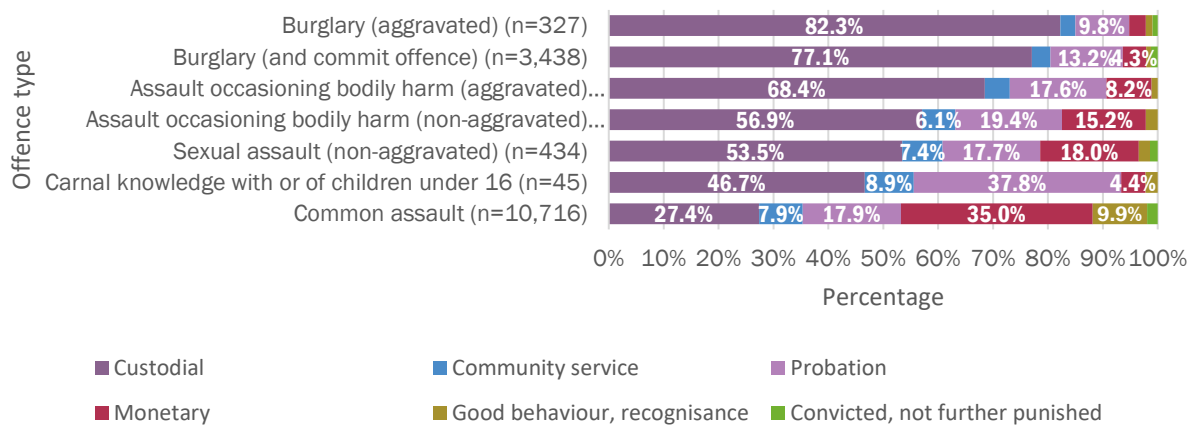
4.9.3 Comparison of sentencing for rape and sexual assault to other offences sentenced in the Magistrates Courts

This section compares the offences of rape and sexual assault with other offences sentenced in the Magistrates Courts, both sexual violence offences as well as selected offences commonly sentenced in the Magistrates Courts.

Sexual assault (non-aggravated) made up the majority of all sexual offences sentenced in the Magistrates Courts from July 2018 to June 2023 (MSO, 86.5%). Carnal knowledge with/of children under 16 and indecent treatment of children under 16 made up a small proportion of cases (MSO) (6.6% and 5.7% respectively).

Figure A69 shows the penalty types imposed for selected offences sentenced in the Magistrates Courts from July 2018 to June 2023.

Figure A69: Penalty imposed for ASOC 031 sexual assault and selected comparison offences (MSO) sentenced in the Magistrates Courts, July 2018 to June 2023



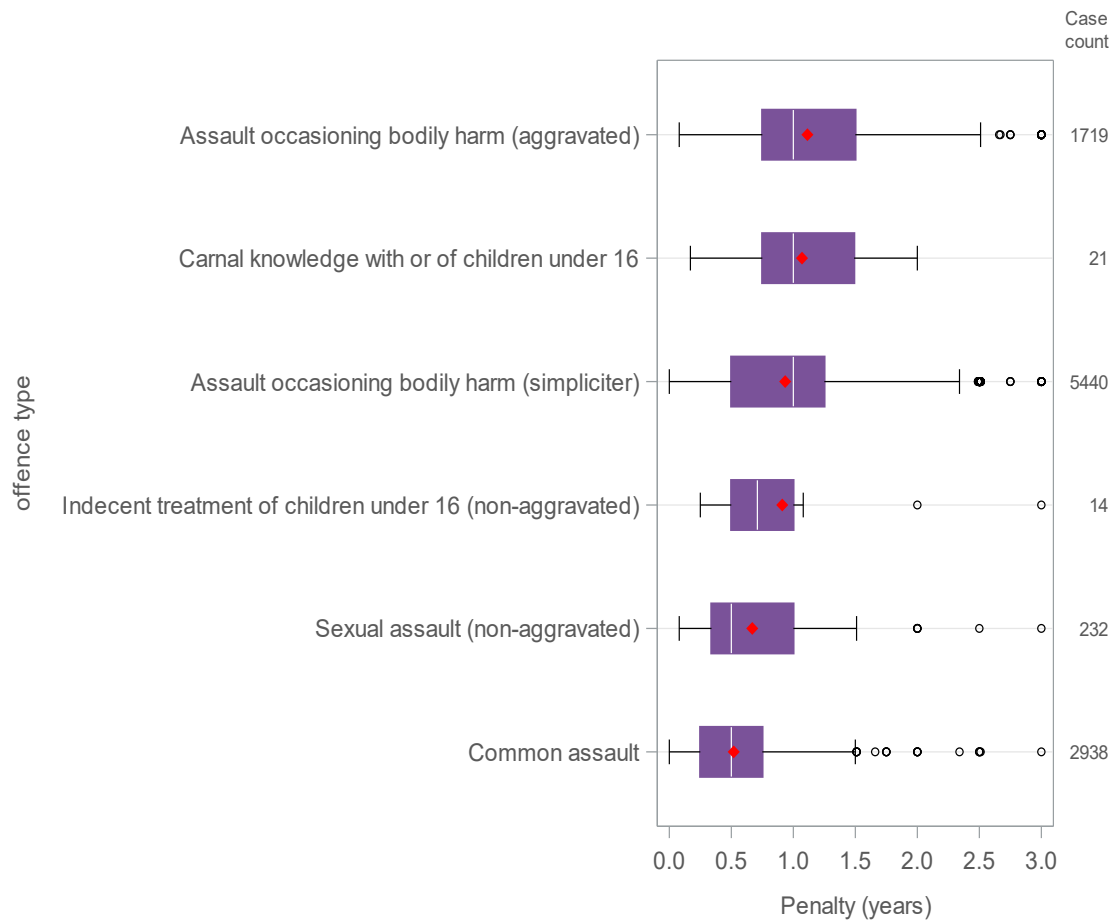
Data notes: Offences in ASOC subdivision 031 'Sexual assault' and selected comparison offences, MSO, adults, Magistrates Courts, 2018–19 to 2022–23.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023.

Figure A70 shows the distribution of custodial sentences for offences sentence under ASOC 031 Sexual assault as well as selected comparison offences (MSO) sentenced in the Magistrates Courts from 2018–19 to 2022–23, sorted by the average sentence length (longest to shortest).¹⁰³ AOBH (aggravated) and carnal knowledge both had the longest average custodial penalty at 1.1 years (median 1.0 years). AOBH (non-aggravated) and indecent treatment (non-aggravated) also had the same average custodial penalty of 0.9 years (however AOBH had a higher median, at 1.0 years, compared with 0.7 years for indecent treatment). Sexual assault (non-aggravated) had an average custodial order of 0.7 years (median 0.5 years).

¹⁰³ Interpreting the boxplot: The red diamond within each box shows the average sentence. The purple box is the interquartile range which shows how spread out the sentences are. The white line within the purple box shows the median, that is the centre of the dataset. The dots are the sentences that are outliers, that is a sentence that is 1.5 times higher/lower than the interquartile range.

Figure A70: Custodial sentence lengths for ASOC 031 sexual assault (MSO) and selected comparison offences sentenced in the Magistrates Courts, July 2018 to June 2023



Data notes: Custodial orders for ASOC subdivision 031 'Sexual assault' and selected comparison offences, MSO, adults, Magistrates Courts, 2018–19 to 2022–23.

Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted September 2023.

Appendix 5: Data tables

Table A29: Summary of custodial penalty lengths imposed for sexual assault (MSO), by Aboriginal and Torres Strait Islander status, court level and offence type

Penalty type	Aboriginal and Torres Strait Islander peoples					Non-Indigenous people				
	N	Average (years)	Median (years)	Min (years)	Max (years)	N	Average (years)	Median (years)	Min (years)	Max (years)
Sexual assault (non-aggravated) – Magistrates Court										
Imprisonment	85	0.8	0.7	0.1	3	63	0.8	0.8	0.1	3
Partially suspended										
Sentence length	20	0.9	1	0.3	1.8	30	0.8	0.8	0.3	1.5
Time to serve before release	20	0.3	0.2	0.1	0.8	30	0.3	0.2	0	0.8
Wholly suspended	43	0.5	0.5	0.1	1.3	195	0.5	0.5	0.1	1.5
Prison/probation	5^	-	-	-	-	10	0.4	0.3	0.1	0.8
Intensive correction order	0	-	-	-	-	8^	-	-	-	-
All custodial orders	153	0.7	0.5	0.1	3	308	0.6	0.5	0	3
Sexual assault (non-aggravated) – Higher courts										
Imprisonment	58	1.7	1.3	0	5	74	1.8	1.3	0.3	7
Partially suspended										
Sentence length	43	1.4	1.3	0.3	3.5	120	1.5	1.1	0.3	5
Time to serve before release	43	0.5	0.4	0.1	1.2	120	0.5	0.3	0	1.6
Wholly suspended	31	0.7	0.5	0.3	2	280	0.8	0.8	0.1	2.5
Prison/probation	8^	-	-	-	-	15	0.5	0.5	0.1	0.9
Intensive correction order	7^	-	-	-	-	32	0.8	0.9	0.3	1
All custodial orders	1489	1.3	1	0	5	521	1.1	1	0.1	7
Sexual assault (Aggravated) – Higher courts										
Imprisonment	2	-	-	-	-	5	-	-	-	-
Partially suspended										
Sentence length	5	-	-	-	-	25	1.7	1.5	0.8	3
Time to serve before release	5	-	-	-	-	25	0.5	0.3	0	1.5
Wholly suspended	2	-	-	-	-	14	1.3	1.1	0.7	2
Prison/probation	0	-	-	-	-					
Intensive correction order	0	-	-	-	-	5	-	-	-	-
All custodial orders	9	-	-	-	-	49	1.6	1.5	0.5	3.8

Penalty type	Aboriginal and Torres Strait Islander peoples					Non-Indigenous people				
	N	Average (years)	Median (years)	Min (years)	Max (years)	N	Average (years)	Median (years)	Min (years)	Max (years)
Sexual assault (Aggravated life) – Higher courts										
Imprisonment	9	-	-	-	-	9	-	-	-	-
Partially suspended										
Sentence length	5	-	-	-	-	5	-	-	-	-
Time to serve before release	5	-	-	-	-	5	-	-	-	-
Wholly suspended	1	-	-	-	-	1	-	-	-	-
Prison/probation	1	-	-	-	-	1	-	-	-	-
Intensive correction order	1	-	-	-	-	1	-	-	-	-
All custodial orders	9	-	-	-	-	17	2.6	3	0.1	6

Data notes: MSO, adults, Magistrates Courts and higher courts, 2005–06 to 2022–23. Rising of the court (n=1) was included in the 'all custodial orders' calculations but not presented separately in the table.

^ Summary statistics for sample sizes less than 10 have not been presented.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted September 2023

Appendix 6: Thematic analysis of sentencing remarks

6.1 Understanding sentencing practices: A thematic analysis of sentencing remarks

The Council undertook a thematic analysis of a sample of sentencing remarks for sexual assault and rape (see **Chapter 4**).

Each of the sentencing remarks in the sample was assigned an identifier to maintain the confidentiality of the transcript. The numerical order of the transcripts was generated randomly during the sampling process.

An overview of the findings is discussed below, and where relevant, parts of the analysis have been discussed within relevant chapters of this report.

6.2 Sentencing practices for sexual assault and rape offences

The qualitative findings presented in this Appendix are the result of a thematic analysis of sentencing remarks for sexual assault and rape between 1 July 2020 and 30 June 2023. For more information about the methodology used to obtain this data, refer to section 4.3.2 in **Chapter 4**.

How judicial officers explain their sentencing decisions to the people they are sentencing can provide a rich source of information about current sentencing practices. This qualitative work can offer context into the factors that judicial officers take into account when sentencing and how they apply the relevant sentencing purposes and principles.

The Council acknowledges the limitations of this approach, which are detailed in **Chapter 4**.

6.2.1 Purposes of sentencing

Section 9(1) of the PSA outlines the only purposes for which sentences may be imposed:

- (a) to punish the offender to an extent or in a way that is just in all the circumstances; or
- (b) to provide conditions in the court's order that the court considers will help the offender to be rehabilitated; or
- (c) to deter the offender or other persons from committing the same or a similar offence; or
- (d) to make it clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved; or
- (e) to protect the Queensland community from the offender; or
- (f) a combination of 2 or more of the purposes mentioned in paragraphs (a) to (e).

In the majority of sentencing remarks reviewed, magistrates and judges explicitly referred to some or all the sentencing purposes set out in section 9(1) of the PSA. The way these purposes were discussed varied across the sentencing remarks.

In some cases, the judge or magistrate would begin their sentencing remarks with an explanation that they must consider the purposes detailed in section 9(1) of the PSA:

The provision in the Penalties and Sentences Act, section 9, directs me what to consider in imposing sentence upon you. The sentence must help you rehabilitate and punish you in a way that is just in all of the circumstances, be proportionate to the nature of your offending, deter you and others from committing this type of offending, make it clear that the community, acting through the Courts, denounces this sort of conduct, and to protect the community, or to achieve a combination of two or more of those purposes. (Rape, regional/remote, imprisonment > 5 years, #13)

Through this discussion of the sentencing purposes, judicial officers generally tailored their remarks to the defendant they were addressing. In the following example, the judge explains that all purposes are relevant:

In sentencing you, I have regard to the principles of sentencing mentioned in section 9(1) of the Penalties and Sentences Act. The purposes for which I am imposing this sentence are: to punish you in an extent and in a way that is just in all the circumstances; to provide any conditions which I consider will help you to be rehabilitated; to deter you and others from committing this or a similar offence; to make it clear that the community acting through the Court denounces the sort of conduct in which you were involved; and to protect the Queensland community from you. (Sexual assault, major city, higher courts, custodial, #6)

While it was not uncommon to see a magistrate or judge mention all 5 purposes, it was more common to see up to 3 purposes mentioned:

In sentencing you today, I take into account ... that sentences must be imposed to deter you from committing the same or a similar offence. And to make it clear, the community acting through this court denounces this sort of conduct you're involved in. (Sexual assault, major city, lower courts, custodial, #3)

All cases of sexual assault are serious and considerations of general deterrence feature prominently in the sentencing process. In my view, it [is] the paramount consideration here. (Sexual assault, regional/remote, higher courts, custodial, #4)

I have also referred to the sentencing purposes that are in play, which include deterrence and denunciation, but also just punishment and the provision for rehabilitation. (Rape, major city, imprisonment < 5 years, #22)

Personal and general deterrence are sentencing factors that are particularly important in relation to these matters, as is denunciation. (Rape, major city, imprisonment < 5 years, #19)

It was not unusual for judicial officers to mention a purpose they felt they did not need to consider – for example, specific deterrence may be unnecessary for a person considered to be at low risk of reoffending:

I am prepared to accept that you present as a low risk of reoffending. That has the consequence, it seems to be in this case, that personal deterrence is not a high priority in the exercise of the sentencing discretion, and I conclude there is no need in your circumstance for ongoing supervision. (Sexual assault, regional/remote, higher courts, non-custodial, #2)

Fourth is the question of specific deterrence and, of course, it may be much more difficult to achieve and thus is not often worth pursuing as such. In this case in particular I think specific deterrence is a factor which really has little bearing in assessing a sentence for you not only because of your demonstrated rehabilitation evidenced by your good behaviour over the last 10 years since this offending occurred but also because, and perhaps related to it, the historic nature of the offending in question. (Rape, major city, imprisonment < 5 years, #15)

In some instances, the judicial officer provided a general statement about the purpose of sentencing, providing no clear statement of which specific purpose was the aim of the sentence they had handed down:

In sentencing you I have regard to the principles of sentencing mentioned in section 9 subsection (1) of the *Penalties and Sentences Act*. (Rape, regional/remote, imprisonment < 5 years, #1)

In other cases, the explanation of purposes was more extensive:

In determining the appropriate sentence, I must have primary regard to the impact of your offending, and the protection of the community.... General and personal deterrence are important considerations in the exercise of my discretion. The sentence I impose must deter others who consider sexually abusing children. It must deter you from doing so again, and it must denounce your conduct on behalf of the community (Rape, major city, imprisonment > 5 years, #5)

Our community finds it abhorrent that men like you, with no previous criminal convictions take the decision to sexually abuse a child. And the sentence I impose must condemn your conduct on behalf of the community, and it must punish you. It must also, of course, balance those features against your prospects of rehabilitation ... (Rape, major city, imprisonment > 5 years, #5)

Mentions of each of the sentencing purposes in the remarks

A content analysis was carried out to record how often each of the sentencing purposes were mentioned in the 150 remarks that were coded in that analysis. For a description of the methodology used, refer to section 4.3.2 in **Chapter 4**.

It was only possible to determine which purpose was the most important when it was expressly specified by the sentencing judicial officer. Judicial officers did not always state which sentencing purpose they considered to be the most important – nor are they required to.¹⁰⁴ As such, the following analysis includes a count of the total number of cases in which each sentencing purpose was explicitly mentioned as being relevant.

Based on this analysis, the most commonly mentioned sentencing purpose for rape (Table A30) was general deterrence followed by specific deterrence and denunciation. The most commonly mentioned sentencing purpose for sexual assault (Table A30) was also general deterrence, followed by denunciation, specific deterrence and rehabilitation. Interestingly in both sets of remarks, community protection and punishment were the sentencing purposes mentioned least for both rape and sexual assault.

For sexual assault cases, the reference to each specific purpose of sentencing followed a consistent pattern for both higher and lower courts, though lower court sentencing remarks were less likely to refer to all purposes of sentencing, except in relation to rehabilitation.

¹⁰⁴ *Penalties and Sentences Act 1992* (Qld) s 9(1).

Table A30: Total mentions of each sentencing purpose in the rape and sexual assault sentencing remarks

Purpose of sentencing	Rape remarks (n=75)		Sexual assault remarks (n=75)		Sexual assault remarks in higher courts (n=32)		Sexual assault remarks in lower courts (n=43)	
	n	%	n	%	n	%	n	%
General deterrence	49	65.3	40	53.3	21	65.6	19	44.2
Specific deterrence	42	56.0	29	38.7	13	40.6	16	37.2
Denunciation	41	54.7	32	42.7	15	46.9	17	39.5
Rehabilitation	32	42.7	28	37.3	12	37.5	16	37.2
Punishment	29	38.7	10	13.3	5	15.6	5	11.6
Protection	27	36.0	16	21.3	10	31.3	6	14.0

Deterrence

Deterrence was one of the most commonly stated purposes of sentencing. Judicial officers often highlighted the difference between the need to deter the sentenced person from committing further offences (specific deterrence) and the need to deter others in the community from committing similar offences (general deterrence). In some remarks the two forms of deterrence were considered in tandem, but in others the judicial officer deemed one more important than the other.

... not only as punishment but to deter others from committing such brazen offences. So the sentence that I have to impose today must stop you and others from committing this or a similar offence. (Rape, major city, imprisonment < 5 years, #20)

A penalty must be imposed, therefore, to deter you, but also other people from taking advantage of women or men in this way ... (Rape, major city, imprisonment < 5 years, #11)

General and personal deterrence are important to the exercise of my discretion. The sentence I impose must send a message to you, but, more significantly, to other likeminded individuals in the community that if you commit an offence of this nature, then you will be punished. (Sexual assault, major city, higher courts, custodial, #8)

Nevertheless, you have continued to offend. In your case, there is what we lawyers call specific or personal deterrence. I have to impose a heavy penalty to impress on your mind, 'Don't do it again.' And you may or may not have followed the discussion with your barrister. But you, in the future, should not form any relationship with any woman who has a child and you should stay away from children from now on, okay. (Rape, major city, imprisonment > 5 years, #15)

There is also the very real and significant need to provide, what is called, general deterrence, to ensure that everyone within our community knows that this behaviour by you is wholly unacceptable in our community and our society and that, should others be minded to behave in such a way, they also are aware of the very real penalties that are imposed and of the real consequences that flow in relation to such offending. (Rape, major city, imprisonment < 5 years, #21)

I have taken into account the principle of general deterrence, that is, the courts must impose heavy penalties to send a message to men – it is mainly men that commit these offences; occasionally, women do – that you will get caught and you will get punished severely for it. You have to be living under a rock not to realise the community's grave concerns about the sexual abuse of children. We had a Royal Commission into it that went for some years in respect

of sexual abuse within institutions. We have had former Australian of the Year who is an advocate for victims of sexual abuse. So it is a matter of high social concern. (Rape, major city, imprisonment > 5 years, #15)

Punishment

Punishment featured more prominently in rape cases than it did for cases of sexual assault. This may reflect community perceptions on the seriousness of rape offences.

Punishment was not used in isolation in the remarks in the way that other purposes of sentencing were. Most often when judicial officers discussed punishment, they made it clear that this was not the only purpose for imposing their sentence, but rather, that the punishment was also to fulfil the sentencing purposes of denouncing the behaviour and deterring similar behaviour.

You can accept that they deserve full protection from the law; and people who commit, on the other hand, these sorts of offences against vulnerable children deserve contempt by the community and must face the full impact, not only as punishment. (Rape, major city, imprisonment < 5 years, #20)

Ultimately, the purposes for which I am sentencing you today are to punish you to an extent or in a way that is just in all the circumstances, to provide conditions which I consider may help you be rehabilitated. (Rape, major city, imprisonment > 5 years, #1)

What must be done by the Court in dealing with you is seeking a balance between the need to denounce and punish you for your conduct, particularly in order to finally send the message to you, although I think you understand that by now, of the seriousness of what you did, but also to send that message more generally into the community ... (Sexual assault, major city, higher courts, custodial, #15)

Punishment was also rarely mentioned without being described as “just punishment”, reflecting the wording in section 9(1)(a) of the PSA.¹⁰⁵

The purpose for which I impose a sentence upon you today is to punish you to an extent and in a way which is just in all of the circumstances. (Sexual assault, regional/remote, lower courts, custodial, #7)

The sentence must help you rehabilitate and punish you in a way that is just in all the circumstances. (Rape, major city, imprisonment < 5 years, #4)

Community protection

Community protection was most often considered in cases where the sentenced person was at high risk of reoffending:

You are making efforts at the moment, but you persisted in committing criminal offences over a long period of time, for all of your adult life. So the need to protect the community is another factor that I do need to take into consideration. (Sexual assault, major city, lower courts, custodial, #1)

As illustrated in the following quote, protection was a particular consideration in cases of domestic violence where protecting both the victim survivor and any future victim survivors was seen as being of paramount importance.

It suggests that you are a very dangerous person when it comes to the potential of violence towards female domestic partners and that does raise considerations of personal deterrence and protection of the community to the forefront of any sentencing. (Rape, major city, imprisonment > 5 years, #17)

In cases where the sentenced person was deemed to be a low risk of reoffending, some judicial officers would highlight that they did not feel that community protection needed to be a large consideration in

¹⁰⁵ *Penalties and Sentences Act 1992* (Qld) s 9(1)(a) states: ‘to punish the offender to an extent or in a way that is *just* in all the circumstances;’ (*emphasis added*).

determining their sentence, but rather the sentence should deter others from committing similar offences.

I accept that protection of the community plays little role in determining the appropriate sentence, but general deterrence is of particular importance, particularly in light of the serious nature of the offending against a particularly vulnerable man. (Sexual assault, major city, higher courts, custodial, #8)

Rehabilitation

Rehabilitation was also commonly discussed in conjunction with other purposes of sentencing. It was most often mentioned in conjunction with punishment in the context of how the sentence imposed would aid the sentenced person's rehabilitation.

Ultimately, the purposes for which I am sentencing you today are to punish you to an extent or in a way that is just in all the circumstances, to provide conditions which I consider may help you be rehabilitated. (Rape, major city, imprisonment > 5 years, #1)

There is a need to punish you, protect society and this sentence ought not be too crushing taking into account your rehabilitation. (Sexual assault, regional/remote, lower courts, non-custodial, #5)

Denunciation

In their discourse around denunciation, judicial officers often voiced the opinion that it was the community, acting through the court, that was condemning the person's actions.

... also of particular relevance in terms of these kinds of offences, to make it clear that the community acting through the Court, denounces the sort of conduct in which you were involved. (Rape, major city, imprisonment > 5 years, #1)

General deterrence is an important consideration with this nature of offending. It is important that it is made clear that the community, acting through the Court, denounces this sort of conduct in which you were involved. (Rape, regional/remote, imprisonment < 5 years, #10)

6.2.2 Judicial discretion and consideration of factors

Mitigating factors

Judicial officers consider a number of mitigating factors when sentencing a person, which may reduce the overall sentence they are likely to receive.

Guilty plea

Pleading guilty is usually treated by judicial officers as a mitigating factor in most cases, as it saves the state time and resources in preparing for a trial. In cases involving rape and sexual assault offences, it also has an important and significant benefit of sparing the victim survivor from having to give evidence and to recount their experience under cross-examination. Judicial officers often highlighted the traumatic effect of giving evidence for a victim survivor when considering a person's decision to plead guilty or not guilty at sentencing.

The most significant effect of your plea of guilty is that the complainant did not have to come to court and did not have to give evidence and did not have to relive the trauma of what you did to him, and I take that into account in your favour. (Sexual assault, major city, higher courts, custodial, #8)

You have shown no remorse. The matter went to trial and, consequently, the complainant was cross-examined and, indeed, cross-examined at some length. (Rape, major city, imprisonment < 5 years, #6)

In our sample, a guilty plea was often treated as evidence of the person's remorse.

Your plea of guilty demonstrates, from very early, a willingness to accept responsibility and a degree of remorse for your actions. (Rape, major city, imprisonment > 5 years, #18)

I am prepared to accept that your plea of guilty is a product of your genuine remorse, even though it is in the face of an inability to remember what you did, I am told. (Sexual assault, regional/remote, higher courts, custodial, #8)

However, in some cases - such as where there was a late plea of guilty - the sentencing judicial officer did not accept this feature to be a demonstration of remorse.

Turning to features in mitigation, as I have said, your guilty plea comes in the context of having put these three complainants through cross examination and I do not accept that you are remorseful. (Rape, major city, imprisonment > 5 years, #4)

It is the right of a defendant to enter a plea of not guilty and take a matter to trial. As such, judicial officers are not able to penalise a defendant for pleading not guilty. However, judicial officers often connected a plea of not guilty with a lack of remorse and a failure of that person to take responsibility for their actions.

You are not to be punished for electing to plead not guilty because that is your right, but a number of matters flow from this. You are not entitled to any discount for pleading guilty to any of these offences. There is no evidence of your remorse or contrition for me to act upon to reduce your sentence. (Rape, regional/remote, imprisonment > 5 years, #8)

While judicial officers are required to take a plea of guilty into account when sentencing, some hinted in their choice of language that they did not consider the guilty plea to be an indication of remorse; rather, they often referred to it in terms of the strength of the prosecution case.

It is necessary to take into account your plea of guilty, although it has to be said that given the evidence produced in the court, there was little option available to you in relation to that. (Rape, major city, imprisonment < 5 years, #7)

When a person pleads guilty and the sentencing judicial officer takes this into consideration by way of discounting the sentence, it is common for judicial officers to specifically highlight this sentence discount to the sentenced person.

I take into account the pleas of guilty and reduce the penalties I would otherwise have imposed by reason of the pleas. (Rape, major city, imprisonment < 5 years, #16)

As I say, your plea of guilty, though, is of significance, and in my view deserving of considerable reduction in penalty. There must surely be some encouragement to people accepting responsibility for this style of offending, in my view. (Rape, regional/remote, imprisonment > 5 years, #2)

I accept your guilty plea, it's timely. By this you have saved the State time, resources and the expense of preparing for trial and you have saved the complainant from having to give evidence. I take it into account in determining the sentence to be imposed upon you today. (Sexual assault, major city, higher courts, custodial, #11).

The timing of the guilty plea was also often taken as a sign of the person taking responsibility for their actions and an early guilty plea was often looked upon more favourably by judicial officers than a later plea of guilty.

You have proceeded in this matter by early pleas of guilty which is consistent with what the material before me says of your remorse. (Rape, major city, imprisonment < 5 years, #22)

Your plea is a late plea. Your plea was entered on the morning that a pre ordering of the complainant's evidence was listed to proceed in this court. Your matter had been indicated to the court on a number of occasions as being a trial. So therefore I treat your plea as a late plea. (Rape, regional/remote, imprisonment < 5 years, #4)

The majority of the judicial officers treated an early guilty plea as a mitigating feature consistently - choosing to reduce the sentence. They explained their reasons for treating this as a mitigating factor.

I am prepared to accept that your plea of guilty is a product of your genuine remorse, even though it is in the face of an inability to remember what you did, I am told. I substantially reduce the penalty because of your very early acknowledgement of wrongdoing. (Sexual assault, regional/remote, higher courts, custodial, #8)

Okay. [XXXX], you've pleaded guilty to these offences. I take that into account, reduce the penalty I would have otherwise imposed. I particularly take into account you didn't even realise that this was going to be a criminal issue right from the word go, from the 17th of May, even though there had been some complaints and some information to the police. It wasn't until quite late in the proceedings did you realise you'd have the long arm of the law coming in and being charged with these offences. So you have pleaded guilty, I think, in the face of, you know, what was quite dated offences and you've accepted your responsibility for them, which is – you know, in terms of a man trying to now build trust and do what he can to make up for the wrongs of the past, you're doing everything that you should be doing. (Sexual assault, major city, lower courts, custodial, #12)

Whilst not immediately able to be acknowledged as a particularly early instance of your entering or indicating these guilty pleas, nevertheless, it is appropriate to take them into account in your favour, and in a way that allows for some significant reduction of the impact of the sentences to be imposed upon you. (Sexual assault, major city, higher courts, custodial, #15)

Significant here is the very real concern that arises with regard to there not having been a plea of guilty in relation to this matter, having subsequently been found guilty in relation to at least some of the charges. (Rape, major city, imprisonment < 5 years, #21)

The Crown submits that because of your late plea I would make you eligible for parole at a date past the one third, but there is a great benefit to your guilty plea today and I want to recognise that in making you eligible for parole at the date that I have determined that is appropriate. (Rape, major city, imprisonment < 5 years, #23)

Remorse

Remorse is an important mitigating factor as it indicates that the person accepts responsibility for their actions and can be taken as a sign that they have a higher probability of rehabilitation. Remorse was most often inferred from a guilty plea, in particular an early guilty plea. Writing a letter to the victim or court and an offering to pay compensation (in sexual assault cases only) was also taken as an indication of remorse by the sentenced person.

You have expressed remorse and I have read your letter of apology showing remorse and insight into your problems. (Rape, major city, imprisonment < 5 years, #3)

As part of your cooperation with dealing with these matters and more particularly, your expressions of remorse, you have offered through your counsel to pay an amount of compensation in the sum of \$5000 to each complainant. And how I deal with this matter, in terms of factoring it into the sentence, that it supports your sense of remorse for what you have done and may be included as part of a sentencing order to provide some recompense, in the sense of money at least, for the harm that has been occasioned to each of the complainants. (Sexual assault, major city, higher courts, custodial, #15)

Cooperation with law enforcement

Early cooperation with the police was treated as a mitigating factor as it demonstrated that the person took responsibility for the offending and judicial officers also often linked these statements to an early guilty plea when considering the length of the sentence given.

In addition to that you have fully co-operated with police. You participated in a record of interview. You made full and frank admissions to police and indeed to your mother and these factors all reduce the severity of the penalty that I might otherwise have imposed in relation to this offending. (Sexual assault, major city, lower courts, custodial, #7)

You also expressed that remorse the next day in a text that have been mentioned and in your co-operation with police, so you have clearly demonstrated your remorse and not at any stage in my view tried to – there is no evidence offered to me that you have put the blame on the victim in any way and taken responsibility for that. (Sexual assault, regional/remote, lower courts, non-custodial, #5)

Judicial officers also particularly highlighted cases where the sentenced person had not co-operated with the police in their considerations.

More importantly, you do not have any benefit of any cooperation, otherwise, with the administration of justice and certainly not in the police investigation, for the reasons submitted by the prosecutor, in terms of what must be regarded as the attempt you made, then, to lie and minimise your behaviour to the police. (Rape, major city, imprisonment < 5 years, #7)

You declined to participate in an interview with police, which is your perfect legal right to remain silent. I only mention that because the Penalties and Sentences Act does require that I have any regard to assistance given to investigating police in their investigation, and, of course, your decision, which is within your rights, to decline an interview meant that there is no relevant assistance to the investigating authorities. (Rape, major city, imprisonment < 5 years, #8)

Good character

The 'good character' of the sentenced person both prior and subsequent to the offending was considered a mitigating factor at sentence by some judicial officers. The judicial officer often relied on character reference letters provided by family, friends and employers of the person. The language in which 'good character' evidence was referenced by judicial officers was often jarring when considered within the context of the sexual offending.

The material to which I will refer a little later puts your behaviour as an aberration for a man otherwise of good character. It may be noted, however, that the offending which I have just described was not the only occasion upon which you preyed on your own daughter. (Rape, major city, imprisonment < 5 years, #22)

The letters from those that know you are ones that paint the picture of you as being someone who is well supported and loved and held in high regard. It is clear that the writers or the authors of the letters know the nature of the offence that you are confronting and that they have....that that does not detract from what they have to say about you. (Sexual assault, major city, lower courts, custodial, #7)

Some judicial officers highlighted that perceived 'good character' and standing in the community have often been used by those who commit sexual violence as a method of accessing victims and deterring those victims from reporting the offending.

As a part of that, I must also consider your age, antecedents and character but I must not have regard to your good character if it assisted you in committing the offences. (Rape, regional/remote, imprisonment > 5 years, #13)

This does appear to be significantly out of character for you given your long-standing contributions to the community. Having said that – and I certainly don't want to import this against you in any way – we are just finding too many people in positions of responsibility nowadays being exposed for being sexual predators. So sometimes the background of service to the community simply masks these issues rather than stands to their credit. In these circumstances I consider this to be your credit. I'm certainly not trying to imply that there was anything more sinister going on than what you've admitted to. But the courts do need to exercise some caution nowadays in that regard. (Sexual assault, major city, lower courts, non-custodial, #11).

There was an inconsistency in the way judicial officers discussed character reference letters. Some judicial officers used language that indicated that they seemed to accept this 'good' character evidence as truthful statements.

I think you are generally a good man. (Sexual assault, regional/remote, lower courts, non-custodial, #2)

I accept based on the references tendered that your offending was out of character and that you come before the court with no relevant criminal history and, in fact, with only one entry on your criminal history, which is very dated and not a relevant offence. (Rape, regional/remote, imprisonment < 5 years, #14)

... and your otherwise good education and work ethic seem to suggest that these matters and the way you conduct yourself criminally here is out of character. (Rape, regional/remote, imprisonment > 5 years, #15)

In other cases, the judicial officer indicated that, due to the nature of the offending, they had placed little weight on character reference letters, and indeed any submissions of that person's 'good' character.

By way of reply of the Crown, submits limited weight can be attached to the reference, and it is difficult to mount any submission of 'good character', bearing in mind the nature of this offending. (Rape, major city, imprisonment > 5 years, #19). For a further discussion about the issue of the use of "good" character evidence in sentencing for these offences, see **Chapter 9**.

Good employment history

If the person had a good employment history, this was often used to demonstrate their 'good character' and contributions to society.

You have a good work history, and you have people who support and speak well of you. (Rape, regional/remote, imprisonment > 5 years, #4)

You have been employed with the Council for over 20 years. Very diligent in his work ethic, good of character and trustworthy. (Rape, regional/remote, imprisonment < 5 years, #12)

A good employment history was also often also used to suggest good prospects of rehabilitation, particularly if an employer indicated that they would rehire the person after the completion of their sentence.

It has been explained that nevertheless you have had some significant work history and that you expect that there are employment opportunities available for you upon your release from prison. (Sexual assault, regional/remote, higher courts, custodial, #3)

Overall, your employment history is very good, and it suggests to me your prospects of rehabilitation remain good. (Rape, regional/remote, imprisonment < 5 years, #6)

You had the benefit of a Grade 12 education and you have had secure employment for the past eight years with [XXXX] where you are obviously regarded well and now hold a management position. Hopefully for you that might be available when you are released from custody. Certainly returning to employment will only foster any further rehabilitation. (Rape, major city, imprisonment < 5 years, #10)

Age of people who commit these offences

Sentencing judicial officers often regarded youth as a mitigating factor and, in particular, highlighted that young people still had their whole lives in front of them, providing increased opportunities for their rehabilitation.

Despite your offending to date your youth means that there are still prospects of rehabilitation. (Sexual assault, major city, lower courts, custodial, #11)

There is also a need and a hope for, particularly in one still as young as you, for there to be opportunities for rehabilitation. (Rape, major city, imprisonment < 5 years, #21)

The sentencing judicial officers also appeared to consider the effect that their sentence would have on the future of the sentenced person when they were very young.

I consider that you are a young person that's not going to be before the courts again. The recording of a conviction for an offence of this nature in my view would affect you socially and economically because it would in my view be a matter that future employers may take into account and you are someone at the start of your working life. (Sexual assault, regional/remote, lower courts, non-custodial, #5)

At times, judicial officers made it clear that, for mature offenders, they were not allowing age to act as a mitigating force in their sentencing decision.

The defendant is a mature man. He does not have the benefit of extreme youth. (Sexual assault, major city, higher courts, custodial, #16)

However, you are not someone who enjoys the benefit of youth on sentence ... (Rape, regional/remote, imprisonment > 5 years, #2)

Advanced age has sometimes also been treated as something that may allow for leniency in sentencing, but there were no clear examples of this evident in the remarks analysed for this project. While the health of the sentenced person was sometimes taken into account (see following section), and reaching an advanced age without prior convictions was sometimes noted, there was no evidence in the case sample that judicial officers considered a sentenced person's advanced age when considering their sentence.

Health of people who commit these offences

Judicial officers often noted extensive health conditions of those sentenced in their remarks, often to highlight prior adversity overcome by the sentenced person. On only a few occasions did they indicate that these general health conditions impacted their consideration of the sentence they would impose. This was in cases where the health of the person may make their time in custody more difficult.

You seem to have a diagnosed cardiac impairment and, as a result, you are not able to vigorously exercise and perhaps that, in itself, also contributes to another health problem, which is your difficulties with sleeping. It has not been possible for you to have a CPAP machine in custody and that may just be a function of the logistical difficulties of coming to those arrangements in prison. (Rape, major city, imprisonment < 5 years, #2)

You have now had a considerable amount of counselling sessions. That alone would not convince me that you should not go to jail today, but I am concerned about your health issues. The potential to suffer adverse consequences as a result of a disease that is not your doing – it is just the way things have worked out for you – in a jail setting are – in my view, would make life in jail very difficult for you. (Sexual assault, major city, higher courts, custodial, #3).

While health issues were considered at sentence for some people with serious/terminal health conditions, due to the serious nature of the offending in most sexual violence cases, judicial officers often noted that they did not consider these circumstances to be sufficiently mitigating to avoid imposing a custodial sentence.

In other words, the fact of the terminal illness, while a relevant consideration, cannot operate to reduce a sentence or impose a non-parole period that is so distorted as to bear no relationship with your particular offending. (Rape, major city, imprisonment > 5 years, #8)

The mental health of the sentenced person, both at the time of the offending and since, was also often detailed by the sentencing judicial officer. Mental health issues appeared, at least in the remarks analysed for this sample, to play a larger role in judicial officers' consideration of the sentence they would impose.

In addition to those matters is your psychiatric condition. That factor also plays heavily into the sentences that will be formulated today. (Rape, major city, imprisonment < 5 years, #15)

Although the sentencing judicial officer acknowledged mental health conditions, it was sometimes made clear that the judicial officer did not consider these conditions to override the purposes of sentencing such as deterrence and community protection.

A pervasive feature that I must have regard to, amongst many other things, is this developmental delay. In my view, it is quite relevant to the nature and structure of the sentence to be imposed. But, in my view, it does not rise to the level of making the well-known issues of general and personal deterrence, and the requirement that the sentences reflect community denunciation lessen to such an extent that you cannot serve any further period of imprisonment. (Rape, major city, imprisonment < 5 years, #5)

Risk of reoffending

The sentenced person's risk of reoffending can be treated as either a mitigating or aggravating feature, depending on the individual circumstances of the person. When the risk of reoffending was deemed to be low, judicial officers appeared to consider this when structuring their sentence. In the case below, the judicial officer considered the person to be a low risk of reoffending in imposing a wholly suspended sentence. In doing so, the sentencing judicial officer directly linked this low risk of reoffending to a decision not to impose a probation order.

Well rehabilitation is always important but having regard to his history there seems to be, at least in my view, little prospect of him reoffending. I'm sure this has been a most salient experience for him and so I'm not sure that much is to be achieved by putting him on probation ... He is a family man and there is really very little risk of this happening again ... Having regard to my assessment of your prospects of reoffending as being relatively low, I'm not satisfied that probation is necessary in this instance. (Sexual assault, major city, higher courts, custodial, #16)

A low risk of reoffending was treated as especially mitigating in the case of historic offences where the defendant had not committed any other offences since the commission of the initial offence.

I think specific deterrence is a factor which really has little bearing in assessing a sentence for you not only because of your demonstrated rehabilitation evidenced by your good behaviour over the last 10 years since this offending occurred but also because, and perhaps related to it, the historic nature of the offending in question. (Rape, major city, imprisonment < 5 years, #15)

It is relevant that judicial officers appeared to consider a low risk of reoffending to be relevant even when the nature of the offence was very serious.

It is also noteworthy that the report indicates that the offending was, as I have said, is incredibly serious, there is not a real concern in relation to the risk of reoffending by you, it being, whilst somewhat repetitive, also opportunistic, arising in circumstances where you were alone with your sister and that situation does not now arise. (Rape, major city, imprisonment < 5 years, #21).

Judicial officers also highlighted in their remarks when they deemed the offending person to be a high risk of reoffending.

You have shown absolutely no remorse. You are a recidivist paedophile who is a menace to young children. You repeatedly breach trust and opportunistically commit serious sexual offences which are extremely damaging to young girls. (Rape, major city, imprisonment > 5 years, #2)

However, again, that raises an issue for me which is that a real concern that you are at risk of continuing to offend in this fashion ... (Sexual assault, major city, lower courts, custodial, #2)

Criminal history

The analysis of the sentencing remarks revealed that a lack of previous convictions was generally discussed favourably by judicial officers.

In your favour is the fact that you have reached the age of 30 without any criminal history and have, apart from these offences, made a positive contribution to society. (Rape, major city, imprisonment < 5, #6)

All of this conduct does seem to have been entirely out of character both in terms of your absence of any criminal history in the past, nothing subsequent... (Rape, major city, imprisonment < 5 years, #10)

However, in some cases judicial officers were cautious to significantly mitigate a sentence where the person being sentenced had no relevant prior convictions, as it was noted that a lack of prior criminal history is not unusual for this type of offending. This is illustrated below in the context of an offence committed against a young child by a mature adult who was in a position of trust.

I have taken into account that you have taken steps towards your rehabilitation and that you appear without criminal history. Although, as the Court of Appeal has also recognised, that it is not unusual that for this type of offending, offenders appear before the Court with no criminal history and as mature adults. (Rape, major city, imprisonment > 5 years, #9)

Judicial officers often differentiated between a history of prior, general criminal offences and a prior, relevant sexual violence offending. Prior sexual violence offending had the most influence on the sentencing deliberations.

You appear before me with a criminal history that is irrelevant and dated. (Rape, major city, imprisonment < 5 years, #12)

As I have mentioned, you have an extensive criminal history, but there are no previous convictions for sexual offences. (Sexual assault, regional/remote, higher courts, custodial, #2)

You do not have an unblemished record, but you have no relevant criminal history. Your criminal history has been given no weight by me in determining the appropriate sentence. (Rape, regional/remote, imprisonment < 5 years, #10)

A number of factors are relevant in the sentencing process. Mr [XXXX], personal deterrence is important because you have a lengthy criminal history; you have a previous conviction for sexual assault. (Sexual assault, major city, lower courts, custodial, #1)

Aggravating factors

Judicial officers considered a number of aggravating factors when deciding the sentence outcome, which may increase the overall sentence the person would be likely to receive.

Vulnerability of the victim

A victim may be considered vulnerable for a number of reasons, including because of their age (child) or capacity (disability, cognitive impairment), intoxication, unconsciousness/asleep, relationship (employee/employer). Children are also particularly vulnerable to sexually violence victimisation:

The offending is serious offending and indeed, since it was sexual offending committed in relation to a child under 16, I must impose a sentence requiring an actual term of imprisonment unless there are exceptional circumstances. (Sexual assault, major city, higher courts, custodial, #4)

The community sees any indecent or sexual offending against children as abhorrent and vile. These offences occurred and were simply motivated by your own selfish desires. Children are vulnerable. You can accept that they deserve full protection from the law; and people who commit, on the other hand, these sorts of offences against vulnerable children deserve contempt by the community and must face the full impact, not only as punishment but to deter others from committing such brazen offences. (Rape, major city, imprisonment < 5 years, #20)

The following quote highlights that in some cases a victim survivor is vulnerable in a number of ways, and these vulnerabilities are exploited by the offending person.

And his vulnerability was underlined by a number of factors: firstly, the great age difference between you; secondly, the relationship between you, which was of employer-employee; thirdly, your habit of either concurring with or arranging the circumstances that you were both drinking alcohol to excess together; and, finally, having the sleeping man in the same room as where you were to sleep at night ...I do accept the characterisation by the Prosecutor that you targeted vulnerable males in the circumstances I have outlined and that you have not demonstrated any remorse. (Sexual assault, major city, higher courts, custodial, #2)

Often victim survivor vulnerability is implicit in the offending behaviour:

It has always been viewed extremely seriously, any sort of sexual assault, but particularly despicable when it is a woman who is asleep or unconscious. (Sexual assault, major city, higher courts, custodial, #13)

Victim vulnerability when the victim survivor is a child under 16 is discussed in more detail in section 6.2.7.

Breach of trust

When the sentenced person was in a position of trust, judicial officers often highlighted it as something that made the offending more serious.

In the rape sentencing remarks, a common example of a breach of trust was when the victim survivor child had been under the care of the defendant. This most often occurred within a family or blended family context. Judicial officers sought to denounce the behaviour in the remarks and to highlight that this breach of trust had violated the rights of the children to feel safe and protected by the adults around them.

This is extremely serious and concerning criminal offending. You brazenly abused your position as guardian of your 11- or 12-year-old stepdaughter, someone who is entitled to feel safe and protected in your presence. (Rape, major city, imprisonment < 5 years, #23).

Use of violence other than the offence and use of threats

While rape is an inherently violent offence, in their remarks judicial officers did highlight cases in which additional violence (beyond the act itself) was used to indicate an offence should be treated as more serious at sentencing.

She confronted you as to why you were there. You were obviously angry. She turned her back on you to walk away and you grabbed her from behind and put her in a lock position where she could not move her arms and then spun her around so that her back struck a wall. (Rape, major city, imprisonment > 5 years, #14)

Physical force without actual violence was also treated as an aggravating factor.

You then grabbed her, took her into a storage room, you pushed her onto her knees and took out your erect penis. The complainant tried to resist, but you forced her mouth onto your penis. (Rape, major city, imprisonment < 5 years, #11)

Threats against the victim was most common when the victim survivor was a child, as often the sentenced person used manipulation to attempt to ensure they did not report the offence.

You told her, during the period of offending, not to tell anybody, not to tell the mother as it would destroy her, that is, the mother. (Rape, major city, imprisonment > 5 years, #18)

You knew that he did not want to do any of those acts, but you told him that if he did not, you would both go to prison. (Rape, major city, imprisonment < 5 years, #9)

You were also convicted of common assault a few days after the rape, and you took the opportunity to reinforce the seriousness of your threats to [the victim survivor]. (Rape, major city, imprisonment > 5 years, #13)

However, threats of violence were also commonly used to ensure the compliance of adult victim survivors.

Your response to that was to place a jumper over her mouth, telling her in no uncertain terms, 'Don't scream or I will kill you.' That threat and the circumstances generally, no doubt, induced compliance in her. (Rape, major city, imprisonment < 5 years, #8).

Unprotected sex

Some judicial officers highlighted the potential damage due to failure by the sentenced person to use protection as an aggravating feature of the offence because of the potential for this to cause further and lasting harm to the victim survivor.

There is no evidence that any protection was used. Although pregnancy may have been unlikely given [the victim survivor's] age, the transmission of a sexually transmitted disease was a clear and possible consequence. (rape, major city, imprisonment > 5 years, #13)

There was some pain. She felt you ejaculate inside her. You were not wearing a condom. (Rape, regional/remote, imprisonment > 5 years, #8)

Neutral factors

Drug and alcohol addiction

While judicial officers were clear that alcohol and drug intoxication did not excuse sexual offending and could not be considered as mitigating any responsibility for the offending, it was often noted as an explanation for the offending.

Although intoxication is not an excuse for this behaviour, it does at least provide some explanation. You are not a person who has an alcohol drinking problem; indeed you are not a regular drinker. (Sexual assault, major city, higher courts, custodial, #16)

I hope it is correct that you do not drink anymore. Certainly, if that is a significant contributor, you should never pick up another drink in your life. (Sexual assault, major city, higher courts, custodial, #2)

I am told that you have got an issue with drugs and that all of your offending is largely drug related. Well, that is unsurprising. That is the problem for many people who come before a Court. However, it is not a mitigating feature. In fact, the *Penalties and Sentences Act* excludes voluntary intoxication from being a mitigating feature. What it does though is it explains your offending. (Sexual assault, regional/remote, lower courts, custodial, #3)

Judicial officers also noted attempts by the sentenced person to address substance abuse issues, particularly when their intoxication or addiction had contributed to their offending behaviour.

He's since reflected quite heavily upon his behaviour since being charged and to his credit has identified that he has a particular issue with his alcohol consumption and has decided to seek help in relation to that issue. Since the offence he has abstained from alcohol and has participated actively in counselling which has been an enormous benefit to him and his family and on my instructions he'll continue to seek that assistance beyond today. (Sexual assault, major city, lower courts, non-custodial, #10)

You have identified, very clearly, that there are issues in respect of your mental health, in respect of your drug and alcohol addiction, in respect of your sexual offending, and you have taken those steps that you have been able to take to do something about those things. (Rape, major city, imprisonment > 5 years, #3)

People who commit these offences may also have been a victim themselves

Prior victimisation of the sentenced person was considered by the sentencing judicial officers. However, rather than mitigating any sentence, judicial officers discussed this in the sense of trying to understand the sentenced person's actions and deciding what treatment options should be integrated into their orders to minimise their risk of reoffending.

I have read a report from Professor [XXXX], who has interviewed you and spent some time discussing these matters with you, and he informs me that you were yourself sexually abused when you were a young boy by older cousins, effectively being required to perform oral sex on them, similarly to what you required these two young boys to do to you. Professor [XXXX] says that the behaviour conducted on you desensitised you to such behaviour and appeared to normalise it. He expresses the view that your offending was primarily as a result of that sort of behaviour being normalised by what had happened to you, and in part due to sexual experimentation. (Rape, major city, imprisonment < 5 years, #9)

In the following example, the judge explains that they have given little weight to the person's prior victimisation as an explanation or mitigation for their offending.

Now, I have had regard to the report of the Professor [XXXX]. You have said to him that you were subjected yourself to some instances of sexual abuse when you were young. This does not seem though to provide any explanation for your offending. Doctor [XXXX] does say in his report at paragraph 12.2 that these events: May have initially distorted your ideations/beliefs about sexual boundaries and the control of sexual impulses during early adulthood. But even if that is correct, it cannot explain your violent rapes of your niece when you were a man in your thirties. (Rape, major city, imprisonment > 5 years, #14)

6.2.3 Application of the SVO scheme

A person who receives a sentence of 10 years or more for rape or sexual assault is declared to be a serious violent offender, meaning they must serve 80 per cent of their sentence before being eligible for release on parole. Because of this, some judicial officers accounted for mitigating factors, such as a plea of guilty, by reducing the head sentence, as they are unable to set an earlier parole eligibility date.

I agree that the appropriate range for the overall gravity of the offending is 8 to 10 years' imprisonment. Having regard to all the factors 10 years is too high and that would also involve an order made a declaration of a serious violent offence, particularly for the rapes which would mean you would have to serve 8 years in jail and as [defence counsel] said that would not give you any real recognition of your early plea of guilty and your – some cooperation with police. (Rape, major city, imprisonment > 5 years, #15)

For sentences under 10 years, a court has a discretion (choice). In the sample, judicial officers were not persuaded that a serious violent offender declaration ought to be made.

I am not, however, persuaded here that the circumstances of your offending and the principles which are to be applied when determining whether to make a serious violent offence declaration warrant doing so in respect of any of the offending. (Rape, regional/remote, imprisonment > 5 years, #10)

Although I may not completely agree with your barrister's submissions, I certainly agree that a substantial period of time on parole will be a very important part of your rehabilitation; that cannot be achieved with a serious violent offender order, and, as I say, I do not think there is anything about the circumstances – as despicable as rape is – of the current offence for which I am sentencing you that would persuade me, in an overall context, that a serious violent offender order is appropriate. (Rape, major city, imprisonment > 5 years, #3)

The factors which weigh in favour of making a serious violent offence declaration are the particular brutality of your offending, your lack of remorse, your concerning propensity towards domestic violence as evidenced by your criminal history, and your apparent unwillingness to engage with appropriate rehabilitative treatment. The question is whether such circumstances lead me to conclude that protection of the public or adequate punishment requires that you serve 80 per cent of a head sentence before being able to apply for parole. I have concluded that adequate protection of the public and considerations of your rehabilitation mean that it would be better that your eligibility for parole be assessed by the Parole Board from a time halfway through your head sentence as statutorily provided in the absence of any serious violent offence declaration or other order as to eligibility for parole. That would provide an incentive for you to undertake appropriate treatment towards your underlying offending behaviour, so as to be able to satisfy the Parole Board that you are suitable for release upon parole with appropriate conditions directed towards protection of the public, in particular, any future intimate partner. Were you to say satisfy the Parole Board at a time close to such an eligibility point, protection of the public and your rehabilitation would be assisted by your lengthy supervision upon parole. For those reasons, I decline to make the declaration or declarations of conviction of serious violent offences sought by the Prosecution. (Rape, major city, imprisonment > 5 years, #17)

In all the cases where this was discussed in the sentencing remarks sample, there was only one case where the judicial officer imposed the order.

Your offending was the most vile conduct and profound disrespect of women, here two women, going about their usual business and leisure. You are aware that if a sentence is imposed of greater than 10 years, then you will be automatically treated as a serious violent offender, such that you must serve 80 per cent of your sentence of imprisonment in actual custody, and even if it were less than 10 years, it seems to me that, on my assessment, all your offending is serious violent offending such that it would warrant, for the protection of the public and for adequate

punishment, that you would require a longer period in custody before being eligible for parole in any event. (Rape, regional/remote, imprisonment > 5 years, #12, a case where a serious violent offender declaration is made)

6.2.4 Language around seriousness of rape and sexual assault offences

In the sentencing remarks analysed, it was common for the judicial officer to discuss the seriousness of the offence itself. Of particular importance was the need to make sure that the person being sentenced understands their offending was serious and that there will be consequences.

This is serious offending. It is important that you understand that. (Sexual assault, major city, higher courts, custodial, #1)

This isn't a game. This is serious offending that requires you to go to prison. Do you understand? (Sexual assault, regional/remote, higher courts, custodial, #1)

Given that for the last several months you have been worried about going to jail I am sure that you now understand the seriousness of this offence. (Sexual assault, major city, lower courts, custodial, #11)

Offence seriousness was often noted by the judicial officers in considering whether to impose a sentence of imprisonment.

The offences that you have committed are each serious ones. They involve, to some extent or another, violence and the violation of another person's body. The offences of sexual assault are, in my view, the more serious of the offences that I am dealing with. They are offences for which the principle that imprisonment is to be considered a sentence of last resort does not apply. (Sexual assault, major city, higher courts, custodial, #12)

Certainly, the offence of itself is of so serious a nature that there is no alternative other than that there should be a period of imprisonment. (Rape, regional/remote, imprisonment < 5 years, #5)

Discussions surrounding offence seriousness often focused on the impact of the offending on the victim survivor, particularly if there were circumstances that made the victim survivor especially vulnerable. For example, sentencing remarks often included the following discussions:

It has always been viewed extremely seriously, any sort of sexual assault, but particularly despicable when it is a woman who is asleep or unconscious. (Sexual assault, major city, higher courts, custodial, #13)

I think you know by now that your behaviour was very serious. This was a terrible breach of trust when you were in a position of power over that young girl. You subjected her to vile, degrading sexual assault and oral rape, and caused her significant ongoing distress. (Rape, major city, imprisonment < 5 years, #11)

I'm of a view that it is still quite a serious matter taking into account the nature of the work of the victim and that they were in the performance of their duties and also the facility in which the offence has been committed. (Sexual assault, regional/remote, lower courts, custodial, #8)

This is a serious offence. Its seriousness is reflected by the fact that Parliament has set the maximum penalty as 14 years' imprisonment. The complainant was in a vulnerable position. He had previously been sexually abused, which you knew, and he had a significant intellectual impairment, which you were well aware of. (Sexual assault, major city, higher courts, custodial, #8)

This is extremely serious and concerning criminal offending. You brazenly abused your position as guardian of your 11- or 12-year-old stepdaughter, someone who is entitled to feel safe and protected in your presence. These are heinous acts that have had a devastating consequence, unsurprisingly, on this young woman, who, despite telling someone at the time, was not believed. Unsurprisingly, too, this offending has torn apart the family. (Rape, major city, imprisonment < 5 years, #23)

This is a serious offence. There is a real problem in our community at the moment about sexual assaults, particularly upon young women, and it is a major concern. (Sexual assault, major city, higher courts, custodial, #5)

This is a very serious charge, infringing of the personal space and – of a young girl. I have got to balance that against what is an adequate punishment, to serve as a deterrence not only to you personally, but to other members of the community who are minded to do such like things. (Sexual assault, regional/remote, lower courts, non-custodial, #3)

In some cases, the discussion surrounding the seriousness of the offence was very limited. In these cases, the judicial officer often only referred to the offence as being serious by nature and stated that all cases of rape and sexual assault should be treated as being serious.

The matter is obviously serious. Any case of rape is serious. (Rape, major city, imprisonment < 5 years, #19)

All cases of sexual assault are serious and considerations of general deterrence feature prominently in the sentencing process. In my view, it [is] the paramount consideration here. (Sexual assault, regional/remote, higher courts, custodial, #4)

But be under no misapprehension [offender]. Your offending was serious. It has caused no doubt irreparable harm to each of the complainants. (Sexual assault, regional/remote, higher courts, custodial, #5)

In some cases, the discussion of the seriousness of the offences against a vulnerable child victim survivor are almost undermined by the judicial officer's characterisation of the person's actions as 'foolish'.

These are very serious offences because the rape, as you have heard, attracts a maximum penalty of life imprisonment. The indecent treatment offences, because they are circumstances of aggravation-involved, they attract a maximum penalty of 20 years' imprisonment. So that should demonstrate to you the seriousness of your foolish actions. (Rape, major city, imprisonment < 5 years, #20)

In the example below, the judicial officer discussed how any mitigating features need to be weighed against the seriousness of the offence. In the following example, the judicial officer suggests that the seriousness of an offence of rape means that little weight could be given to evidence of 'good' character.

By way of reply of the Crown, submits limited weight can be attached to the reference, and it is difficult to mount any submission of good character, bearing in mind the nature of this offending. It is serious indeed. (Rape, major city, imprisonment > 5 years, #19)

In some sentencing remarks, judicial officers discussed offence seriousness in relation to the maximum penalty for the offence.

Your offending is particularly serious. The offences of rape that you committed each carry a maximum penalty of life imprisonment. That should indicate to you how very seriously our Parliament considers this sort of offending. (Rape, major city, imprisonment > 5 years, #5)

That is exacerbated by the fact that your offending against [the victim survivor] was repetitive and continuous over a number of years and, further, that it escalated to the offence of oral sex, which was count 2 on the indictment. It is more seriously regarded by Parliament, having a maximum penalty of 14 years imprisonment, and should be regarded more seriously in the sentencing process. (Sexual assault, major city, higher courts, custodial, #2)

6.2.5 Acknowledgement of harm and impact on the victim survivor

Based on direct references to victim impact statements, it was slightly less common than not for a victim impact statement to be provided. Across rape and sexual assault offences (n=150), victim impact statements were identified as having been provided in 44.0 per cent (n=66/150) of the cases. Of these, it was more common to see victim impact statements provided for rape offences (60.0%, n=45/75) than for sexual assault offences (8.0%, n=21/75,).

Table A31 includes the number of cases involving an MSO charge of rape in which a victim impact statement was mentioned. In 13.3 per cent (n=10) of the sentencing remarks analysed, it was expressed that no victim impact statement was provided, while victim impact statements were not mentioned at all

by judicial officers in 26.7 per cent (n=20). However, where there was no mention of an impact statement being provided, it remains unknown whether one was provided and/or considered, but just not referred to in the remarks.

Table A31: Victim impact statements for rape

VIS provided	VIS not provided	Not stated	Total
45	10	20	75
60.0%	13.3%	26.7%	100.0%

Not stated is used where there was no mention of the victim impact statement in the sentencing remarks. In these cases, it is unknown if one was submitted or not.

Table A32 includes a count of the number of cases involving an MSO charge of sexual assault in which a victim impact statement was mentioned. Victim impact statements were more likely to be provided (or at least noted in sentencing remarks) where the sexual assault offence/s was sentenced in the District Court than in the Magistrates Courts: almost three-quarters of the Magistrates Courts sentencing remarks did not state whether a victim impact statement had been provided (n=31, 72.1% of those sentenced in the Magistrates Courts), as opposed to the District Court, where there was no mention of an impact statement being provided in only 13.3 per cent of the cases (n=10).

Table A32: Victim impact statements for sexual assault

VIS provided	VIS not provided	Not stated	Total
Higher court (District)			
17	5	10	32
22.7%	6.7%	13.3%	42.7%
Lower court (Magistrates)			
4	8	31	43
5.3%	10.7%	41.3%	57.3%
Total			
21	13	41	75
28.0%	17.3%	54.7%	100.0%

Not stated is used where there was no mention of the victim impact statement in the sentencing remarks. In these cases, it is unknown if one was submitted or not.

When a victim impact statement was provided, the degree to which victim impact statements were referred to within sentencing remarks varied. In some instances, the magistrate or judge limited their remarks to a simple recognition that a VIS was present, for example, merely stating: 'I have read the victim impact statement which is exhibit 3' (HCMNC_SA1). However, such remarks provided little insight into the harm caused to the victim survivor and how this was considered in determining the sentence.

Overall, there was no uniform use of victim impact statements evident in the sentencing remarks analysed. Often their contents were summarised by the court, with the length and depth of these summaries varying greatly from short, general remarks:

She sets out in her victim impact statement, which is exhibit 9, the consequences of your offending upon her. These include self-harming, suffering significant anxiety, suffering from nightmares, and having difficulties trusting other people. (Rape, major city, imprisonment > 5 years, #2)

The complainant has provided two victim impact statements. She has suffered immeasurably from your callous, cowardly, and degrading acts. She was sickened and terrified during the ordeal. Sadly, she continues to suffer devastating emotional adverse impact. (Rape, major city, imprisonment < 5 years, #11)

More commonly, remarks contained greater depth and detail about the harm caused, as indicated by the victim survivor in their victim impact statement:

There is a victim impact statement before me, which shows that the offending had a significant impact upon the complainant. She was reluctant or scared to disclose the conduct, and kept it to herself, and it has then, after the complaint was made, caused some further problems for the complainant within the family relationship. And so there has been, it would seem to me, a significant psychological impact upon the complainant, as a result of your offending. (Sexual assault, regional/remote, higher courts, non-custodial, #2)

The offending has had a profound effect upon the complainant. She wrote a victim impact statement, which is exhibit 3. She read out her statement here in Court and described the terrible impact that your conduct has had upon her life. She has endured pain. She has been traumatised mentally. She feels anxious and fearful. Her symptoms of [XXX] have been exacerbated by constant distress. She feels unsafe and insecure. She has become withdrawn, moody and aggressive. Therefore, your rape of the complainant has had a devastating impact upon her. (Rape, major city, imprisonment < 5 years, #1)

Your offending on her has had obvious consequences. I have before me a victim impact statement which speaks of the sorts of impacts which offending of this kind can have on vulnerable young women. It speaks of the emotional impact upon the complainant and upon her family. It speaks of the effect it has had on how she sees herself, as well as others. It details self-loathing that the offending has triggered and the self-harming that she has taken to. It is to her credit that she had the courage to report the offences and to go through the legal process to give evidence, notwithstanding the effects upon her, such effects being evident in her emotionally fragile state whilst she gave evidence, and again today as she read parts of her victim impact statement. (Rape, major city, imprisonment < 5 years, #6)

Across the sentencing remarks analysed, there were also examples where judicial officers discussed the harm caused to the victim survivor at length, sometimes using the victim survivor's own words as drawn from their victim impact statement. However, this approach of incorporating a fulsome acknowledgement of the victim-survivor's harm within the sentencing remarks was not common practice.

In the absence of a victim impact statement, sentencing judges and magistrates often acknowledged the harm caused by sexually violent offences and the potential for significant long-term consequences:

Though there's no victim impact statement before me, it would be something that would distress any woman and it would be something that would have, I would expect, a significant effect on any person. (Sexual assault, major city, lower courts, non-custodial, #4)

Whilst no victim impact statement has been provided, the reality of sexual assault is that it can have unique and longstanding adverse consequences for victims. His distress at what you did immediately after your offending against him is apparent from the statement of facts. (Sexual assault, major city, higher courts, custodial, #8)

The complainant did not wish to provide a victim impact statement. That is not uncommon in cases of this kind. I have no doubt it would have been a terrifying event for her. She was clearly distressed immediately after the event. She has provided instructions that she wishes to extend the domestic violence protection order for as long as possible and does not wish to vary any of the conditions in it. I have no doubt that the complainant suffered significant emotional harm during the incident. (Rape, regional/remote, imprisonment > 5 years, #9)

In some instances, the judicial officer noted that they are required under section 179K(5) of the PSA to not infer that the lack of a victim impact statement indicates there was no harm caused to the victim survivor.

Although I have been provided with no information about the mental or emotional harm done to the victim, I must not assume that there has been no impact, according to section 179K(5) of the Act. (Rape, regional/remote, imprisonment < 5 years, #8)

Harm of the offending on the victim survivor

The physical pain caused to a victim survivor by sexual violence offending was noted by judicial officers – particularly in cases where the victim was a child. In some cases, the judicial officer acknowledged that the offending caused long-term physical damage to the victim survivor, due to their young age at the time.

She felt pain. It hurt her stomach. You threatened her and she felt pain when defecating for some days afterwards ... and that was excruciatingly painful in light of her young age at the time. (Rape, major city, imprisonment < 5 years, #16)

I accept her evidence that it hurt when you penetrated her vagina with your finger. (Rape, regional/remote, imprisonment > 5 years, #13)

The long-term psychological and social implications of the offending were treated seriously by judicial officers and often discussed in detail in the remarks.

The offending had caused her significant distress. She has noted to have lost confidence in herself, developed negative thoughts. It has impacted her education. The loss of confidence in particular has impacted her capacity to study and take on employment in the field of acting, which was an area of interest for her. She suffered from episodes of depression and anxiety and then experienced difficulties in her relationships with other males. Additionally, other situations triggered the stress, occasioning flashbacks. She observed, understandably, that she felt disgusting and somewhat devalued. She felt self-loathing. (Rape, major city, imprisonment < 5 years, #15)

Your conduct has gone on to have a devastating impact upon the complainant. The child herself has gone from feeling carefree and a happy young child to being someone who is withdrawn from her friends. She has become emotional, suffered from flashbacks and emotional outbursts. She has become sad and angry at what you did to her. She has been fearful of the same thing happening again. She has had that sense of security destroyed in that she is worried that other kids at school have an inkling about what has happened to her. She has lost her friendship with your daughter, who she had considered to be her best friend. (Sexual assault, regional/remote, higher courts, custodial, #8)

Acknowledgement of the victim survivor in court

Judicial officers did not directly speak to the victim survivor when delivering their remarks, but did usually acknowledge where the victim survivor had read their victim impact statement aloud in court.

The impact of what you did to her has been profound. Three years later her suffering is still raw. She has bravely spoken in Court about the terror that she felt at the time and the terror she has suffered since. She is determined to overcome the trauma you inflicted upon her, but there can be no question that it will be a hard-fought battle. (Rape, regional/remote, imprisonment > 5 years, #4)

There is a victim impact statement from the complainant which she read aloud in Court in your presence. That would have taken a great deal of courage. (Rape, regional/remote, imprisonment > 5 years, #8)

My view in that regard is fortified by the complainant's victim impact statement which she read out in open court. It is clear that the complainant has suffered considerably as a consequence of your sexual abuse upon her. (Rape, regional/remote, imprisonment < 5 years, #4)

Even if the victim survivor did not read their victim impact statement, the judicial officer would often summarise the contents of the impact statement to ensure the sentenced person heard the effect of their offending on the victim survivor.

[The victim survivor] talks of the fact that you stole his innocence before he even had a chance to even understand what sex was and how wrong the things were that you did to him. You abused your position as his employer and his mentor. You manipulated him, with your mental control and threats about harming him and his family, to groom him into having sex with you. He suffers from mental health issues now. He finds it hard to see the positives and he feels that he has missed out on so many opportunities because of his self-doubt and low self-esteem, that he contributes to you. (Rape, major city, imprisonment > 5 years, #8)

I note that the complainant is present in Court here today and it is obvious from his victim impact statement that your offending upon him has had long-standing and grave consequences for him. Indeed, he falls into that category of complainant who has been sexually abused by his father in circumstances where he was entitled to look up to you as someone who protected him, not someone who sexually abused him. (Rape, regional/remote, imprisonment > 5 years, #10)

There is also the need to consider the effects upon the complainant in this matter. [The victim survivor] read the victim impact statement into the record. And I do not intend to do that again. But to simply note that one of the comments that the complainant made was as follows: 'You were supposed to protect me. It was your job to guide me through my teenage years and into adulthood. But instead, you took away my childhood and forced me to grow up before my time. Your actions rippled negative affects through my life while you sat back and called me a liar.'

The complainant has been hurt as a result of this. (Rape, regional/remote, imprisonment < 5 years, #5)

Delay in reporting by the victim survivor

In some of the cases from the sentencing remarks sample, a long period of time had passed between the commission of the offence and the matter being reported to the police. When this occurred, judicial officers were often clear about the reasons for delay. In some cases, the judicial officer referred to the fact that the victim survivor was not believed at the time they reported the offending, or felt that they would not have been believed.¹⁰⁶

These are heinous acts that have had a devastating consequence, unsurprisingly, on this young woman, who, despite telling someone at the time, was not believed. (Rape, major city, imprisonment < 5 years, #23)

In 2014 he made a complaint to the police. He withdrew his complaint because his mental health was not up to pursuing this complaint against you, but he reinstituted it on the 15th of November 2018. (Rape, major city, imprisonment > 5 years, #8)

After many years of fearing she would not be believed, the complainant made a report to police in 2020. (Rape, major city, imprisonment < 5 years, #18)

6.2.6 Sentencing orders and fines

Pre-sentence reports and psychological reports

A pre-sentence report was only mentioned in 6.7 per cent (n=5/75) of the rape cases and was not discussed in any of the sexual assault remarks reviewed.

A psychological report was discussed in 33.3 per cent (n=25/75) of rape cases and 18.7% (n=14/75) of sexual assault cases reviewed. A psychological report was discussed in 14.0 per cent (n=6/43) of the

¹⁰⁶ This is consistent with other research. See section 2.3.1 (Chapter 2).

sexual assault cases heard in the lower courts and in 25.0 per cent (n=8/32) of the sexual assault cases heard in the higher court.

Partially suspended sentences

There were cases in the sentencing remarks where the judicial officer used their discretion to impose a partially suspended sentence rather than setting a parole eligibility date. For example, in the case below, the judicial officer clearly stated the reasons for their decision as being that they did not believe that the sentenced person required supervision in the community.

I consider that the submission made on your behalf by your barrister, that yours is a circumstance in which the supervision of parole is perhaps unnecessary, is well-founded, and so I am prepared to give you the benefit of a certainty of release by giving you a partial suspension at the halfway mark, rather than setting parole eligibility at that point. (Rape, major city, imprisonment < 5 years, #6)

Judicial officers also used partially suspended sentences to ensure certainty of release.

The question then is whether there should be a parole order or whether it ought to be suspended. While you might benefit to some extent from parole, I would not be able to fix a parole release date. It would have to be an eligibility date and that means there is no certainty as to when you might actually be released from jail, the parole authorities having 120 or perhaps 180 days to decide any application. (Sexual assault, major city, higher courts, custodial, #12)

Partially suspended sentences were also used by judicial officers when they felt the offence was serious enough to justify a sentence of actual custody, but found that the person had circumstances which would make custody more difficult than for the average person.

Balancing up all of the features of the matter that I must and taking into account your mental health and its fragility, I consider that a just sentence requires you to serve some period of time in actual custody. But I will reduce that period, which I consider appropriate, to take into account the fact that you have mental health problems which will make it more onerous for you in a prison environment.

In all of the circumstances, you are sentenced to 18 months' imprisonment. I order that that term of imprisonment be suspended after you have served four months, for a period of two years. You must not commit another offence punishable by imprisonment for a period of two years if you are to avoid being dealt with for the suspended term of imprisonment. (Sexual assault, major city, higher courts, custodial, #8)

Wholly suspended sentences

Wholly suspended sentences were most commonly seen in the sentencing remarks for sexual assault. Often it was not clear which factors the judicial officers had chosen to consider when deciding to suspend the whole sentence.

So in relation to these charges, I accept that a sentence of about 18 months' imprisonment is appropriate. But I am going to wholly suspend that term of imprisonment. (Sexual assault, major city, higher courts, custodial, #3)

However, in some cases the judicial officer made it clear that the decision to impose a wholly suspended sentence was due to mitigating features present. For example, in the following case, those features included an early plea of guilty, accepting responsibility by agreeing to pay compensation to the victims and their positive character reference letters.

I am persuaded that, in the circumstances here, it falls well within the exercise of my sentencing discretion to wholly suspend the sentence ... But at the end of the day, having regard to the circumstances of your offending, the aggravating featured balanced against the many mitigating features in your favour, I intend to structure the sentence in a way which will result in you not going to jail today. (Sexual assault, regional/remote, higher courts, custodial, #5)

Compensation

Of the sentencing remarks analysed, compensation orders were only made for the sentencing of sexual assault offences (n=9/75, 12.0%) and not for rape offences. Findings suggest that when compensation orders were made for sexual assault offences, they were more likely to be imposed in the District Court (n=6/32, 18.8%) than they were in the Magistrates Courts (n=3/43, 7.0%). The amount of monetary compensation ranged from \$500 to \$50,000. In two instances, the offending person was ordered to pay compensation in the amount of \$1,000. In other cases, the orders were preceded by the person being sentenced offering to pay compensation to the victim survivor as a sign that they accepted responsibility for their actions and acknowledged the harm their offending had caused.

As part of your cooperation with dealing with these matters and more particularly, your expressions of remorse, you have offered through your counsel to pay an amount of compensation in the sum of \$5,000 to each complainant. (Sexual assault, major city, higher courts, custodial, #15)

However, some judicial officers made it clear that this did not mean the person was 'buying' their way out of a custodial sentence; rather, it was merely a mitigating feature that demonstrated the person's remorse.

Lower sentences are not to be bought by those who can afford them. What is relevant is the degree to which the defendant has shown contrition for the offence by taking the action to make reparation. Thus a mere promise to make restitution will carry little weight, but actual restitution could well be powerful evidence of contrition, which could become an important consideration in the sentencing. It can be a decisive factor in the exercise of discretion to suspend a custodial sentence. (Sexual assault, regional/remote, higher courts, custodial, #5)

No compensation orders were made in addition to sentences for rape offences. There was one instance in the sentencing remarks of compensation being offered in a rape case; however, as the victim had refused to accept it, the judicial officer would not order that it be paid.

You have also indicated a wish to offer monetary compensation to the complainant in the sum of \$4,000. That offer was made prior to the receipt of the victim impact statement. The prosecutor has told the court that the complainant does not wish to receive the compensation and, in those circumstances, I do not consider it appropriate to order the payment of the compensation. (Rape, regional/remote, imprisonment < 5 years, #14)

Fines

Fines were a rarely imposed penalty for sexual violence offences. There were no instances in the sentencing remarks of a fine being imposed for rape, but there were cases where a fine was imposed for sexual assault. These occurred where the judicial officer determined at sentence that such an order was appropriate, having regard to all the circumstances of the offending:

I have no doubt that this behaviour won't be repeated by you and for those reasons I accept that a fine is appropriate. (Sexual assault, major city, lower courts, non-custodial, #12, a case where a 74-year-old man with no prior offending had kissed an acquaintance on the lips)

I am satisfied, taking account of the circumstances of the offending, as well as your circumstances and those matters in your favour, including your early plea, your remorse and your lack of history, that a sentence of imprisonment is not necessary in the present circumstances, even one which is wholly suspended. I am satisfied that the necessary sentencing imperatives can be met by the imposition of a fine. (Sexual assault, regional/remote, higher courts, non-custodial, #2, a case where a 45-year-old man had massaged the bottom of a 16-year-old, he stopped the behaviour of his own accord and confessed as soon as confronted)

Non-contact orders

Findings from the sentencing remark analyses indicate that non-contact orders, as outlined under section 43B of the PSA, are not often made during sexual assault and rape sentence hearings. However, these orders were sometimes applied for and granted at sentence for sexual assault offences. For example, these factors and the conditions of the order were clearly outlined by the magistrate when they made a non-contact order for a sexual assault offender:

I have to say, there is an unacceptable risk...that without the order, the victim may be concerned about this contact involved. So I am going to make a non-contact order for two years ... and noting, by consent, that he is not to contact, ask someone else to contact [the victim] by any means whatsoever, including telephone, text or internet, not to intentionally follow, loiter near, watch or approach [the victim] or intentionally follow, loiter near, watch or enter where [the victim] lives or works or visits. If you do not comply with that order, then that can itself be a criminal offence, and you can be charged. (Sexual assault, major city, lower courts, non-custodial, #5)

Section 43B(2) states explicitly that 'the court must not make a non-contact order if an order may be made under the *Domestic and Family Violence Protection Act 2012*, section 42'. This requirement might help to explain why non-contact orders were not found in the sample of cases analysed. The study sample also indicated that rape offences were more likely to occur within a family and/or domestic context, whereas sexual assaults were more likely to be committed by strangers or within work environments. When considering specific sentencing orders for rape offences, preliminary analyses revealed three instances where protection orders were mentioned. In three cases, the court either made or varied existing orders against offenders, while in a fourth case the judicial officer determined that it was not necessary (Rape, regional/remote, imprisonment < 5 years, #1). In most instances, protection orders were extended at the request of the victim:

There is a domestic violence protection order in place made by the Magistrates Court ... It contains the mandatory conditions. It names the children as persons protected by the order, as well. There are special conditions which include prohibiting you from going to where your former partner lives or works, prohibiting you from contacting or attempting to contact her or having someone else contact her, and prohibiting you from contacting or attempting to contact, or asking someone else to contact the children ... The complainant instructed the prosecution to seek to vary the order by extending its expiry date from five years from today and to make no changes to those conditions. I am satisfied it is necessary and desirable to extend the order for five years from today. I vary the order ... I make no changes to the conditions. (Rape, regional/remote, imprisonment > 5 years, #9)

6.2.7 Specific factors when the victim survivor was under the age of 16

The language used by judicial officers and the factors they considered when a victim survivor was under the age of 16 were not specifically coded for in the data. The following results were generated by reviewing the other factors considered by judicial officers at sentencing and extracting relevant quotes. In all cases, the source sentencing remarks were reviewed to verify that the victim survivor was under 16 at the time of the offending.

When the victim survivor was under 16, judicial officers tended to highlight their vulnerability. This was particularly true in some cases where the sentenced person was a family member and the victim survivor was under their care.

To offend in a sexual way against your own daughter who was so young within the sanctity of her own home when she was so vulnerable, by reason not only of her age but by reason of you being the only other person in the house and being her father, is reprehensible and calls for a sentence which reflects the public's denunciation of such behaviour. (Rape, major city, imprisonment < 5 years, #22)

The offending behaviour is behaviour committed in a gross violation of trust against your daughter who was very young at the time. It featured a number of counts committed at different times and it is as distressing as it is despicable. (Rape, major city, imprisonment < 5 years, #22, the victim survivor was aged between 3 and 6 at the time of the offending)

The reason why he engaged in these sexual activities was because he was so vulnerable in that he was young and you made him scared. You told him you were connected to organised crime, you threatened his and his mother's life; and he moved out of your house in 2006 or 2007. (Rape, major city, imprisonment > 5 years, #8, victim was 15)

For cases where the victim survivor was under 16, the sentenced person was often in a in a position of trust.

The prosecution highlight[s] the obvious factors of the very young age of the children who were in a vulnerable position, the breach of the protective care relationship that you bore to them, the impact that your offending has had on these three families and the period of time over which you offended against a number of children. (Rape, regional/remote, imprisonment > 5 years, #13, victim was 9–10 years old)

The offences occurred in the context of a breach of trust because you were [the victim survivor's] older sister's husband. You were, as part of the family, able to stay over in [the victim survivor's] family home with her family and yours, of course. (Rape, major city, imprisonment > 5 years, #13, the victim survivor was 11 years old)

This offending is an appalling breach of trust. It was deliberate, persistent, and vile. It occurred over a year period. It is concerning that there was such diversity to your offending, and it was predatory. The impact has been devastating for many. (Rape, major city, imprisonment > 5 years, #9, victim was 5 years old)

You were in, really, a position of trust to the extent that you are this much older man. The complainant was only 16. (Sexual assault, major city, higher courts, custodial, #5)

The impacts she described are unsurprising given the nature of your offending. Her mother speaks of the enormous betrayal of trust, not just her trust but the trust that the complainant had in you. She speaks of the horror of having to listen to you blame her in saying that you raped her daughter because of the nature of your sex life with her. She has had significant psychological impacts as a consequence of the offending herself, and indeed she describes the impacts that she has seen in her daughter, and describes her becoming a depressed, traumatised, abusive, and noncaring child who has lost her love for life and for living. She now self-harms, does not want to live any more, and had been hospitalised from time to time because of her now mental health issues. (Rape, major city, imprisonment > 5 years, #5, the defendant raped his 14-year-old stepdaughter)

The mental and emotional harm caused to the victim survivor was also highlighted within the remarks, particularly where the victim survivor was under the age of 16.

... but I can accept that – and I am sure you would accept that – it would have been a traumatic experience for each of the children and perhaps those effects are ongoing. (Rape, major city, imprisonment < 5 years, #20, victim was 10 years old)

I have been provided with a victim impact statement from the complainant, which was read out in Court by the Prosecutor, which describes the devastating effect these offences have had upon her, and I take that into account. She says that you stole her identity and robbed her of her life. Her schoolwork suffered, and she has no trust in people. Over the years, she has lost many relationships because of the damage caused to her by this offending. (Rape, major city, imprisonment < 5 years, #18, the victim was between 13 and 16 years old)

Offending of this type towards young and vulnerable children, we know more and more, does link to serious mental and health issues. (Rape, regional/remote, imprisonment > 5 years, #11, victim was between 6 and 7 years old)

Offending of this type towards young and vulnerable children, we know more and more, does link to serious mental and health issues. She struggles with all of that which occurred, recognising the breach of trust, feeling disgusting, carrying shame and guilt, feeling never to be clean again, never to be seen as such by her own father. (Rape, regional/remote, imprisonment > 5 years, #11, victim was between 6 and 7 years old)

The mother of the sisters also wrote a poignant letter. She says her daughters' trusting innocence was stolen, as was their happy childhood. She confirms the fourth and fifth complainant self-harm by cutting their arms and thighs. Her

daughters have seen a psychologist. She has seen them struggle with showing affection and they do not like to be touched; it makes them feel gross. (Rape, regional/remote, imprisonment > 5 years, #13, victim was between 9 and 10 years old)

In Rape, major city, imprisonment < 5 years, #3, the victim survivor had provided a letter detailing the long-term mental health effects of being raped as a 9-year-old child. She was no longer a child when the person was sentenced.

... it is a very poignant letter talking about the terrible adverse impact upon her as a result of what happened to her as a child. She has had to deal with significant and severe depression and anxiety and has been diagnosed with post-traumatic stress disorder. (Rape, major city, imprisonment < 5 years, #3, victim was between 9 and 13 years old)

Pleading guilty early enough that the victim survivor did not have to face cross-examination was always treated as mitigating by judicial officers. However, this seemed to be particularly true in cases where the victim survivor was a child.

I accept you are remorseful now, that you do take responsibility for your actions, and part of that is reflected in the fact that you did not make the children have to give evidence in Court by contesting the charges. (Rape, major city, imprisonment < 5 years, #3, victim was between 9 and 13 years old)

To give you credit for your plea of guilty, the courts have said for many years now discounts have to be given to offenders who plead guilty for a variety of reasons. The most important of which is it shows a willingness to cooperate with the justice system and it saves a lot of tax-payers money in not having a trial and of course it saves the young girl here having to go through the trauma of being questioned in court by strangers about these events. (Rape, major city, imprisonment > 5 years, #15, victim was an 11-year-old child).

I also take into account that you have pleaded guilty in a timely way and facilitated in the administration of justice. In particular, you saved a number of young children from the anxiety and trauma of being examined or cross-examined in a trial. (Rape, major city, imprisonment < 5 years, #4, victim was 9 years old)

Taking all of those matters into account, I consider that the just sentence which balances all those features up together is one of nine years imprisonment, and I will order that you be considered eligible for parole after you have served four years of that term, to take into account in particular your pleas of guilty, which have saved this very traumatised young woman from having to give evidence. (Rape, major city, imprisonment > 5 years, #5, victim was between 13 and 14 years old)

In cases where the victim survivor did have to undergo cross-examination, the judicial officer highlighted how particularly difficult this process was for young children who did not understand the legal system and could not understand why they were being challenged by lawyers.

She was cross-examined twice. As with a number of witnesses, you provided instructions the allegations were fabrications and there was some ulterior motive for her to lie about what you had done. As with all of the child witnesses, there appeared to be a genuine sadness and confusion and disbelief that they were being challenged whether they were being truthful about what you had done to each of them. (Rape, regional/remote, imprisonment > 5 years, #13, victim was between 9 and 10 years old)

In another case, the victim survivor did not have to give evidence but did have to prepare for cross examination, which forced the child to relive the trauma of the offending.

You have cooperated. To the extent you have, you have at least saved the child from having to give evidence, but she did go through a process, and quite an arduous process, as she had to prepare herself for reliving the trauma of those events. (Rape, regional/remote, imprisonment > 5 years, #11, victim was between 6 and 7 years old)

Judicial officers also occasionally highlighted that the age of the victim survivor had contributed to their assessment on the seriousness of the offending and their sentencing considerations.

The offending is serious offending and indeed, since it was sexual offending committed in relation to a child under 16, I must impose a sentence requiring an actual term of imprisonment unless there are exceptional circumstances. (Sexual assault, major city, higher courts, custodial, #4).

Appendix 7: Sentencing submissions analysis

7.1 Appeal decisions relied upon at sentence at first instance by the prosecution service

R v AAD [2008] QCA 4 [x2]

R v AAR [2014] QCA 20

R v AS [2004] QCA 220

R v BCG [2012] QCA 167

R v Bull [2012] QCA 74 [x2]

R v CAQ [1999] QCA 197

R v CCY [2023] QCA 49

R v Conway [2012] QCA 142

R v DAU; ex parte Attorney General [2009] QCA 244

R v De Silva [2018] QCA 274

R v GAR [2014] QCA 30

R v GAP [2012] QCA 193 [x2]; *R v GAP* [2013] 1 Qd R 427 [x4]

R v Fahey [2021] QCA 232

R v Free [2020] QCA 58

R v Hennessy [2002] QCA 523 [x2]

R v IB [2008] QCA 256 [x2]

R v KAJ; Ex parte AG [2013] QCA 118

R v Keevers; R v Filewood [2004] QCA 207 [x2]

R v Kelly [2021] QCA 134 [x6]

R v Lee [2012] QCA 313 [x3]

R v MBF [2008] QCA 61

R v NH [2006] QCA 476 [x3]

R v OQ [2011] QCA 348

R v Quinlan [2012] QCA 132

R v Ruiz; ex parte AG [2020] QCA 72 [x2]

R v RUJ [2021] QCA 114

R v Smith [2020] QCA 23 [x6]

R v SQA [2022] QCA 106

R v SRB [2010] QCA 94

R v Tori [2022] QCA 276

7.2 Appeal decisions relied upon at sentence at first instance by defence practitioners

R v Abdi [2016] QCA 298

R v Bull [2012] QCA 74 [x2]

R v CCW [2022] QCA 183

R v De Silva [2018] QCA 274

R v GAP [20132] QCA 193

R v Green; ex parte Attorney-General of Queensland [2021] QCA 153

R v HAN [2008] QCA 106

R v Keevers; R v Filewood [2004] QCA 207

R v Kelly [2021] QCA 134 [x2]

R v Lee [2012] QCA 313

R v M [2003] QCA 443 [x2]

R v MCB [2014] QCA 151

R v NH [2006] QCA 476 [x5]

R v Norris; ex parte Attorney-General [2018] QCA 27

R v PAA [2006] QCA 56

R v Pickup [2008] QCA 350

R v Ruiz; ex parte AG [2020] QCA 72 [x2]

R v S [2002] QCA 106

R v Smith [2020] QCA 23

R v SAH [2004] QCA 329

R v SEB [2023] QCA 69

Appendix 8: Structured interview guides for interviews

Interview guide for legal professionals

Interview Guide

Ref: #6860839

Sentencing practices for the offences of rape and sexual assault

Version 4

Preliminary Comments

Thank you so much for agreeing to take part in these interviews.

During this initial stage of our review, we consider it critical that we hear directly from those involved in the sentencing of rape and sexual assault offences to better understand current sentencing processes and practices to inform the Council's work on the review.

There will be a series of questions, covering 5 broad areas.

- Preliminary questions – about your experience (2)
- Questions about how the court assesses the seriousness of these offences (8)
- Questions about the purposes of sentencing for these offences (2)
- Questions about sentencing options for these offences (6)
- Finally, questions about other challenges or opportunities for reform (3)

Reminder: You can choose not to answer any questions, and you can end the interview at any point.

Before we commence:

You noted on your consent form that you were happy with us recording the interview - do you still consent to this being recorded and transcribed?

[x.05] **INTRODUCTION (max 10 min)**

These first couple of questions are for us to understand your experience in relation to the sentencing of sexual assault and rape offences, and for context around the sentencing of these offences more broadly.

-
- 1.1 Can you please provide me with an overview of your professional background and experience in the sentencing process (judge/prosecution/defence) of rape and/or sexual assault offences?
-

-
- 1.2 Have you noticed any changes in the way either sexual assault or rape offences have been sentenced over your career? These may be in relation to changes in the law, or changes in society views. Or anything else.
-
- 1.3 *From some of the preliminary submissions we have received, there seems to be a proposition, particularly from the community, that sentencing outcomes for these offences are too low.*
This isn't unique to Queensland, and most other jurisdictions have all undertaken reviews in this area.
Our preliminary findings on sentencing outcomes for sexual assault found that around 65 per cent of all adult defendants receive a custodial penalty, including a suspended sentence – with the most likely custodial penalty being a wholly suspended sentence; and only 18% receive an imprisonment order, with the average imprisonment length being 1.3 years (median 10 months) (and maximum 7 years).
Comparatively, for rape offences, we have previously found that around 99 per cent of offenders receive a custodial penalty, and the average imprisonment length was 6.6 years (and maximum life).
 Acknowledging the wide variety in sentencing ranges, would that accord with your experience?
-
- [x.15] **ASSESSING SERIOUSNESS (Max 15 min)**
This next series of questions are for us to understand how the seriousness of these offences is assessed in practice.
-
- 2.1 Focusing on the offence of sexual assault, what factors particular to the offence generally make a case more serious?
 What factors would make sexual assault less serious?
-
- 2.2 Focussing on the offence of rape, what factors particular to the offence, generally make a case more serious?
 What factors would make rape less serious?
-
- 2.3 If the offence is committed against a child, do the factors that make it more or less serious change?
-
- 2.4 **FOR JUDICIARY**
 Do you find that the information you typically receive from counsel in determining sentence is sufficient?
FOR PROSECUTION/DEFENCE
 What sort of information do you provide a court to assist judicial officers in sentencing for these offences?
-
- 2.5a Are there any particular challenges in obtaining information where the person being sentenced is Aboriginal or a Torres Strait Islander – for example, relating to the sufficiency of the information, or how the information is provided?
 What is the frequency of the provision of community justice reports presented under section 9(2)(p) of the PSA?
-

	<p>What is the utility of receiving such reports under section 9(2)(p) of the PSA for offences or rape and sexual assault?</p> <p>How could community justice reports be improved to better inform the court about assisting it in determining community-based culturally appropriate sentencing options?</p>
2.5b	<p>Are there any particular challenges in obtaining information where the person being sentenced is from another identified 'cohort' of defendants – that is, culturally and linguistically diverse?</p>
2.6	<p><i>We've heard that pre-sentence reports can be difficult to obtain (especially in cases which are dealt with quickly in the Magistrates Court, or on circuit).</i></p> <p>What is your experience of how the court seeks to understand factors such as the risk of the offender reoffending, if this type of information isn't readily available?</p>
2.7	<p><i>Similarly, we've heard that victim impact statements can be difficult to obtain.</i></p> <p>What is your experience of how the court seeks to understand the harm of the offences to the victim survivor if a VIS isn't readily available?</p>
2.8a	<p><i>The treatment of good character in the case of sexual offending – particularly child sex offending – is something we know many victim survivors find difficult.</i></p> <p>In your experience, first in relation to instances where the victim is an adult, how do different aspects of good character by the offender (such as lack of relevant priors and contributions made to the community), factor into sentencing for these offences?</p> <p>Specifically then in relation to where the victim is a child, under (section 9(6A) of the PSA, courts are not to take good character into account at all if it assisted the person in committing the offence – how is this managed in practice?</p>
2.8b	<p><i>Looking at the specific issue of character references, in particular, we are interested in how these are taken into account.</i></p>

FOR JUDICIARY

In your experience, how do you take these references into account or assess the value of those references in light of the offending that is before you – particularly where the offending is against an adult?

Is this different when it is offending against a child, particularly where it is protracted offending vs a one-off incident?

FOR PROSECUTION/DEFENCE

In your experience, how are good-character references for these types of offences taken into account by the court – particularly where the offending is against an adult?

Are there variations in the approach – particularly where the offending is against a child, or where it is protracted offending vs a one-off incident?

[x.30] **SENTENCING PURPOSES (Max 5 min)**

Now we focus on a couple of questions relating to the purposes of sentencing.

3.1a In your experience, are the sentencing purposes set out in the PSA adequate for the sentencing of sexual assault and rape offenders?

3.1b In your experience, are the factors set out in the PSA adequate for the sentencing of sexual assault and rape offenders?
Are there gaps in guidance either legislative or from the Court of Appeal?
Or is there too much guidance?

3.2 *The Terms of Reference ask the Council to determine whether penalties currently being imposed for sexual assault and rape adequately reflect community views about the seriousness of this form of offending and the specific sentencing purposes of just punishment, denunciation and community protection.*

Drawing on your experience, how is the seriousness of this type of offending (as compared to other types of offending) reflected in sentencing?

[x.35] **SENTENCING OPTIONS (Max 15 min)**

We now move on to a series of questions regarding the options available for sentencing of these offences, and when different options may be seen as more appropriate

4.1 In thinking about sexual assault offences only, what are the sorts of cases/factors likely to be submitted that would suggest actual custody to be a necessary component of the sentence?

What are the sorts of cases/factors likely to be submitted to make actual custody not a necessary component of a sentence?

4.2 In thinking about rape and sexual assault where a custodial sentence of 5 years or under is in contemplation, what are the sort of factors likely to be submitted that would result in the consideration of a suspended sentence over a parole eligibility date?

4.3 *In the context of offences of rape against children, we understand that some 'maintaining' conduct will include multiple instances of rape, but this may not be particularised on the indictment, but sometimes instances of rape are particularised on the indictment.*

While we are not reviewing the sentencing of maintaining offences within the Terms of Reference, due to the overlap, we are keen to understand whether there are complexities when dealing with a maintaining offence that involves multiple counts of rape when they are particularised.

4.4 In your experience, is there any aspect of the way the law currently operates when sentencing sexual assault and/or rape that constrains or creates challenges?

4.5 Queensland has a high circuit workload with many regional courts and we are aware of the additional capacity constraints that circuit or regional magistrates/judges are faced with.
Does this create any complexities when sentencing rape or sexual assault offences?

4.6 Do you think the current sentencing options available to the court are sufficient to meet the intended purposes of sentencing? And if not, would there be anything that you would like to see be made available?

[x.50] **OTHER QUESTIONS and CONCLUDING CONSIDERATIONS (Max 10 min)**
The final couple of questions focus on issues around sentencing remarks and other challenges, as well as opportunities for improvements

5.1 *In our preliminary analysis, for sexual assault we have found that around 94 per cent of defendants plead guilty, while for rape offences, around 72 per cent plead guilty.*
Given the higher penalty outcomes for each, this difference is not so surprising. However, we also find that across both of these offence, Aboriginal and Torres Strait Islander defendants were significantly more likely to plead guilty.
Given the impact that a guilty plea has on sentencing, is there anything about this finding that you would like to comment on?

5.2 *We have heard that sometimes, for victims, it is difficult to understand why a guilty plea can be considered as evidence of remorse*
We have also heard that often a guilty plea may not be entered until very late in the matter, though this still able to be taken into account in sentencing.
Do you have any thoughts on how guilty pleas are considered as part of the sentencing process?

5.3 *We understand that self-represented litigants are more frequent in Queensland courts over recent years.*
What is your experience of sentencing matters where the defendant is self-represented?
What additional protections/considerations are required in these matters?

5.4 *Sentencing remarks can serve a number of purposes – both during and after the sentencing event – particularly for QCS or victims themselves.*

FOR JUDICIARY ONLY

What approach do you generally take to delivering sentencing remarks?
How do you balance reflecting the victim's circumstances and the harm caused to the victim with identifying the offender's background or circumstances?

FOR PROSECUTION/DEFENCE

Do you think the delivery of sentencing remarks in these matters generally provides a balance in reflecting the victim’s circumstances and the harm caused to them with the offender’s background or circumstances?

5.5 Are there any ways you think the sentencing of sexual assault or rape offences could be improved?

5.6 Is there anything else that concerns the sentencing of sexual assault or rape that you would like to share with us?

Interview guide for victim survivor advocacy and support organisations

Interview Guide

Ref: #6938348

Sentencing practices for the offences of rape and sexual assault

Version 4

Preliminary Comments

On behalf of the Council, thank you all for agreeing to take part in these interviews.

We consider it critical to hear directly from organisations providing advocacy and support to victim survivors to better understand the current sentencing processes and practices to inform the Council's work on the review.

The input of advocacy and support services has been extremely important and influential in helping to shape our thinking and recommendations for previous reviews – including most recently our review of sentencing for serious violent offences and, prior to this, our review of sentencing for child homicide.

Through this consultation progress, we are hoping to understand what aspects of the sentencing process might have impacted how your clients felt about their sentences. We are also interested in your views about the sentencing of sexual violence offences like rape and sexual assault, and any ways it might be improved.

Overview

We are proposing to ask questions covering 5 broad areas.

1. Preliminary questions – about your **experience of working with victim-survivors** who are going through or who have been through the sentencing process;
2. Questions about what you think about the **purposes of/factors considered in sentencing** for these offences;
3. Questions about your thoughts on **sentencing options and outcomes** for these offences;
4. Questions about how you think the process could be **improved**; and
5. Finally, any **other issues** you would like to raise with the Council.

1	INTRODUCTION – YOUR EXPERIENCE
1.1	We will go around the room. Can you please tell me more about your role?
1.2	For clients going through the court process, can anyone share what sort of support you provide?

1.3 Has anyone helped clients write victim impact statements before?

If yes:

Is your service funded to provide this service?

Does anyone have any views about how these statements are used and referred to by sentencing courts – either based on your experiences in supporting victims or from comments made to you by clients?

Prompts:

We've have been conducting interviews with legal practitioners on a range of issues relating to sexual assault and rape offences. We have asked questions about VIS and issues identified have included:

Differing views about the function of a VIS to inform the court about the impact of the offence on the victim vs the therapeutic benefit to victim survivors in preparing one and having this referred to at sentence;

Concerns that victim survivors are not supported in deciding what to include in a VIS to help the judge understand how the offence has impacted them, or not given sufficient time to write one;

Where a victim survivor chooses not to make a victim impact statement, understanding their reasons for this decision and whether the prosecutor can do anything to ensure that information about harm is presented to the court;

Concerns that VIS may include information that cannot be presented to the court and difficulties in proving the impact of an offence where a victim survivor has experienced previous trauma and/or has other existing personal factors such as a mental illness, which cannot be attributed to the offence;

Challenges getting information from victim survivors from Aboriginal and Torres Strait Islander and culturally and linguistically diverse backgrounds.

2 PURPOSES OF/FACTORS CONSIDERED IN SENTENCING

-
- 2.1 *We are interested in hearing your thoughts/views about the purposes of sentencing.*
- In Queensland, there are 5 purposes/reasons behind sentencing listed in legislation in the Penalties and Sentences Act 1992. They are:*
- Punishment: to punish the offender in a way that is just – fair – in all the circumstances;*
- Rehabilitation: to help a person change their behaviour so they don't commit a crime again;*
- Deterrence: to discourage that person and other people from committing the same type of offence;*
- Denunciation: to send a strong message to the person and community that what the person did won't be tolerated;*
- Community protection: to keep the community safe.*
- A court can use one or combination of these purposes.*

Based on your experience, what do you think are the most important reasons, or purposes to sentence for sexual assault/rape and why?

Does anyone think there are any important reasons missing?

Prompts:

Some jurisdictions recognise additional sentencing purposes in legislation (these apply generally – not just to sexual violence offences), such as:

In the ACT, NSW and SA, to recognise the harm done to any victim and to the community and, in NZ, to provide for the interests of the victim of the offence; a purpose in these same jurisdictions about holding the offender accountable for harm done to the victim and the community by the offending and ‘to promote in the offender a sense of responsibility for, and an acknowledgment of, that harm’;

In NZ, Canada and England and Wales, a purpose of providing reparation/s for harm done.

Legislation in some places also says courts must give special attention to specific sentencing purposes. This includes in Queensland when sentencing a person for a sexual offence against child under 16 – in which case the court must give primary regard to factors including deterrence and the need for community protection, as well as the person’s prospects of rehabilitation.

-
- 2.2 In your experience, what are victims hoping for out of the sentencing process?
Are any particular purposes more important than others to your clients?

Prompts

For example:

Validation of their experience and formal recognition that the person's behaviour was unacceptable (denunciation);

The person facing consequences/being held accountable for their behaviour (punished);

Protecting other people from this happening to them (community protection) and making sure the person doesn't offend again (rehabilitation);

Deterring them from doing it again.

-
- 2.3 *In sentencing, a plea of guilty is required to be taken into account by the court.*
Do you have any thoughts/comments about whether/how a guilty plea is taken into account and the impact on victim survivors?

-
- 2.4 *There are a number of different forms of plea negotiations that may take place between the prosecutor and the defence that can impact on sentencing outcomes. This may include:*
Withdrawing or substituting charges; or
Confirming agreement on details as part of the summary of facts
How do you feel the plea negotiation process impacts the victim survivor's experience of the process?
-

2.5 *In sentencing a court might talk about the offender as having 'good character' and character references might be used as part of establishing this (such as from community members, friends or employers).*

Do a lot of your clients say this was raised in their case?

Do you think there should be changes made to how this is considered? — either based on your experiences in supporting victims or comments made to you by clients?

Prompts:

Good character can be:

not having a prior criminal history,

the offender has made a contribution to the community or

they might have a good work history.

It might also include 'character references' (i.e., where another person will write a letter to the court saying they are aware of the offences and making a comment about the person's character).

The Council has heard from some people that there are concerns about offenders using 'good character' to get a lighter sentence.

The Council also has heard that character might be relevant to whether an offender has prospects of rehabilitation. But if things like character references are submitted, often they are not given a lot of weight – meaning these do not significantly change the sentence given.

Our law says that if the victim was a child under 16, a court cannot take good character into account if it assisted the person to commit the offence.

3 SENTENCING OPTIONS AND OUTCOMES

-
- 3.1 *For rape offences, almost all offenders will spend some time in custody, with most being released on parole at some time, and are supervised in the community for the remainder of their sentence.*
Some offenders receive a partially suspended sentence and are released at some point without supervision in the community.
Additional information:
We found that hardly any rape offences resulted in a non-custodial penalty (1.2 per cent of all cases) and only a very small number resulted in the court giving the person a wholly suspended sentence (45 cases over the 18-year period).
For sexual assault offences, the most common penalty was a wholly suspended prison sentence (52 per cent of penalty outcomes in the Magistrates Courts and 47 per cent in the higher courts). This form of sentence means the person doesn't actually have to spend time in custody unless they break the law during a set period of time (called the 'operational period'). A suspended sentence does not involve any supervision in the community – unless the court also sentences the person to another order, like probation, for another offence.
Additional information:
Other common types of sentences for non-aggravated sexual assault include:
Partially suspended prison sentences;
Imprisonment;
Probation (an order served in the community with a requirement to regularly report to Corrective Services and to be under their supervision as well as participate in programs as directed); and
Fines (to pay an amount of money).
 Do you think current sentencing options for sentencing sexual assault or rape are appropriate?
 Are there any options you think are more appropriate or not at all appropriate?
 Why?
-
- 3.2 Do you think sentences (including length) for rape and sexual assault are generally appropriate/adequate?
 If not, why do you think they aren't adequate?
-
- 3.3 For prison sentences, we are interested to know your views on the length of time the offender spends in prison versus the length of time the offender might spend on parole or in the community.
 Have your clients ever commented on this?
-
- 3.4 Have clients talked about how they feel about the person sentenced receiving a prison sentence versus a suspended sentence of imprisonment?
 Do you think it is important for people who commit sexual offences to be supervised in the community somehow before they finish their sentence – that is, on probation or parole?
-
- 3.5 Have clients talked about whether restitution or compensation (a type of order the court may make in addition to the sentence) would be helpful?
-

- 3.6 *A restorative justice conference (formerly called justice mediation) is where the offender attends a meeting and will meet with a convener and a victim or a victim representative and police representative. They will talk about the offending and the harm caused. The offender and victim or victim representative will try to come an agreement about how the offender can make up for the harm caused. After the meeting, the offender will do what is agreed.*
- This is available in Queensland and the Queensland Government is currently looking into expanding this process to make it more widely available. It can be available at a number of stages and can be used instead of, or in addition to, sentence.*
- In your experience are clients often invited to participate in a restorative justice conference/justice mediation?
- If yes, have you supported a client through this process?
- If yes, what was the experience like?
- If no, have any clients said they would like to do something like this?
- Does anyone have a view on whether restorative justice conferencing should be an option and at what stage in the process it would be most useful?
- Prompt:**
- For example, should conferencing/mediation be available:*
- before the sentence (meaning a court could may be able to take this into account at sentence)*
- as a sentencing option (to happen after the person is sentenced), or*
- both?*
- From your perspective, what sort of protections need to be in place before you would support a victim-survivor to participate?

4 IMPROVEMENTS TO THE SYSTEM

- 4.1 Is there anything that could be improved about the treatment of victim survivors of sexual assault and rape in sentencing or the criminal justice system more generally?
- For example:*
- *The information and support available prior to sentence;*
 - *How the judge or magistrate might interact with/acknowledge the victim in the courtroom;*
 - *What the judge or magistrate might say in delivering the sentence about the offence and the harm caused to the victim.*

5 OTHER ISSUES

- | | |
|-----|---|
| 5.1 | <p><i>The Victims Register is maintained by Qld Corrective Services who inform eligible people about important events in the sentences of those adult offenders they have registered against. You have to apply to be on the register.</i></p> <p>Is the victim information register important to your clients?</p> |
| 5.2 | <p><i>In Queensland, where the person being sentenced has committed acts of sexual violence against multiple victims, there is a presumption in favour of concurrent sentencing – that is, the sentences may be ordered to be served concurrently, or at the same time.</i></p> <p>Do you have any thoughts or comments in relation to concurrent sentencing?</p> |
| 5.3 | <p>Has anyone had experience in working with a victim-survivor where the matter has been appealed?</p> <p><i>An appeal could be against a conviction, or against a sentence.</i></p> <p><i>If appealed on sentence, it could be because it was manifestly excessive, or manifestly inadequate.</i></p> |
| 5.4 | <p>Is there anything that could be improved about the treatment of victims survivors of sexual assault and rape in the criminal justice system more broadly?</p> |
| 5.5 | <p>Is there anything that anyone would like to add that we haven't covered?</p> |

Interview guide for victim survivor consultation

Interview Guide

Ref: #7163105

Sentencing practices for the offences of rape and sexual assault

Note:

Consent form and preliminary information sheet provided prior to interview.

Consent form asks for consent to record interview or otherwise to take high level, non-identifiable notes.

[Collect/Confirm if consent and details previously sent through. Confirm consent was given]

Preliminary Comments

On behalf of the Council, thank you for agreeing to take part in these interviews.

During this stage of our review, we consider it critical that we hear directly from victim survivors and others who have also been impacted to better understand the current sentencing processes and practices and inform the Council's work on the review.

The input of victim survivors has been extremely important and influential in helping to shape our thinking and recommendations for previous reviews – including most recently our review of sentencing for serious violent offences and prior to this, our review of sentencing for child homicide.

Through this consultation progress, we are hoping to understand what aspects of your experiences of the sentencing process might have impacted how you felt about the sentence in your case.

We are also interested in your views about the sentencing processes and outcomes of sexual violence offences like rape and sexual assault, and any ways it might be improved.

We understand that, in talking about the sentencing process and outcomes, it might raise issues that you find difficult and upsetting to talk about. We will be guided by you about what you are happy to discuss with us and what you would prefer not to.

While there are quite a few questions:

You can choose not to answer any of the questions.

If you need to take a break at any point, just let us know.

You can end the interview at any point.

You also have the option of providing us with written feedback if you'd prefer to do this – and we can give you a card with our details if you decide you'd like to do this.

We are proposing to ask questions covering 5 broad areas.

Before we start:

You noted on your consent form that you were happy with us to record the interview and/or take notes. Do you still consent to this being recorded and transcribed/for us to take notes?

[If consent is given, start the recording.]

1 INTRODUCTION

- 1.1 *Our review is about sentencing for both rape and sexual assault.*
We understand that:
the perpetrator in your case was sentenced for <RAPE|SEXUAL ASSAULT>
the matter was heard in the <MAGISTRATES|DISTRICT|SUPREME> court.
Is that correct?

2 YOUR EXPERIENCE OF THE SENTENCING PROCESS

- 2.1 *We are interested in your experience of the sentencing process.*
Did you have an **understanding of what would happen** at the sentence hearing?
Did you feel you had **enough information** before the sentence hearing about what would happen?
Did you **attend** the sentence hearing?
Did you have a **support person** with you at the sentence hearing?
Did you **feel supported** in the sentencing process?
Did the prosecutor and/or sentencing judge or magistrate **acknowledge or interact with you** in a way that made you feel comfortable, respected and heard?
- 2.2 Did you make a victim impact statement?
If not, why?
If yes:
What guidance did you get in putting the statement together?
Were any changes needed to be made to your statement before presented in court?
How was your victim impact statement presented in court?
Did you read it in court?
Did you have the prosecutor read it out in court?
Was it just given to the court?
Did the process of providing a victim impact statement help you in any way?
- 2.3 In your experience, how well do you feel the court **understood the harm done to you**?
How well do you feel the court **took the harm** done to you **into account** at the sentence?
What about the **harm done to others** around you that were also impacted by the crime – such as family, partners, etc.?
- 2.4 Were you given a copy of the **sentencing remarks** (the judge or magistrate's reasons for imposing the sentence they did) or transcript of the hearing after the sentence?
If so, how did you feel upon reading these?

3 PURPOSES OF/FACTORS CONSIDERED IN SENTENCING

-
- 3.1 In sentencing a court might talk about the offender as having 'good character' and this might include character references being provided.
Was the perpetrator's 'good character' discussed in your case?
If character references were read out aloud during the sentencing, how did this impact you hearing these?
Do you think there should be changes made to how this is considered?
Prompts/background Information:
Good character can be:
not having a prior criminal history,
the offender has made a contribution to the community or
they might have a good work history.
It might also include 'character references' – that is, where another person will write a letter to the court saying they are aware of the offences and making a comment about the person's character.
The Council has heard from some people that there are concerns about offenders using 'good character' to get a lighter sentence.
The Council has also heard that character might be relevant to whether an offender has prospects of rehabilitation. But if things like character references are submitted, often they are not given a lot of weight – meaning these do not significantly change the sentence given.
Our law says that if the victim was a child under 16, a court cannot take good character into account if it assisted the person to commit the offence.
-
- 3.2 *In Queensland, there are 5 purposes/reasons behind sentencing. They are:*
Punishment: to punish the offender in a way that is just – fair – in all the circumstances.
Rehabilitation: to help a person change their behaviour so they don't commit a crime again
Deterrence: to discourage that person and other people from committing the same type of offence
Denunciation: to send a strong message to the person and community that what the person did won't be tolerated
Community protection: to keep the community safe
A court can use one or combination of these purposes.
From your experience, what do you think are the most important **reasons, or purposes**, to sentence for sexual assault/rape and why?
Are any reasons missing?
-
- 3.3 *In sentencing, a plea of guilty is required to be taken into account by the court.*
In your case, we understand that the perpetrator went to trial. Is that correct?
While it did not occur in your case, do you have any thoughts/comments about whether/how a guilty plea is taken into account in sentencing?
-

-
- 3.4 *There are a number of different forms of plea negotiations that may take place between the prosecutor and the defence that can impact on sentencing outcomes. This may include:*
withdrawing or substituting charges; or
confirming agreement on details as part of the summary of facts
 Was there any 'plea negotiation' that occurred in your matter?
 If so, how did this impact your experience of the process?
-

4 SENTENCING OPTIONS

- 4.1 *For sexual assault offences, over half will receive a custodial order, with the most common outcome being a wholly suspended sentence – which means the person doesn't actually have to spend time in custody unless they break the law during a set period of time. Under these orders they are not supervised in the community at all.*
 We understand that in your case, the perpetrator received a **wholly suspended sentence**.
 Were you satisfied with the sentencing outcome? Why?
-
- 4.2 [If a **suspended sentence** was imposed]
 How did you feel about the fact that they would not be supervised in the community?
-
- 4.3 Do you think it is important for people who commit sexual offences to be **supervised in the community** somehow before they finish their sentence – that is, on probation or parole?
-
- 4.4 *In Queensland, where the person being sentenced has committed acts of sexual violence against multiple victims, there is a presumption in favour of concurrent sentencing - that is, the sentences may be ordered to be served concurrently, or at the same time.*
 Did this occur in your matter?
 If so, were you aware of that possibility prior to the sentencing hearing?
-

-
- 4.5 Do you think **current sentencing options** for sentencing sexual assault or rape matters are appropriate?
Are there any options you think are more appropriate? or not at all appropriate?
And why?
Prompts:
For rape, common examples of sentencing orders are:
Imprisonment; and
Partially suspended prison sentences (which involve the person spending some time in prison and the remainder of their sentence in the community, but without the person being actively supervised as part of their sentence. The person doesn't have to serve this suspended time in prison unless they break the law).
For sexual assault, common types of sentences include:
Wholly suspended prison sentences (a prison sentence is imposed but the person does not have to serve it unless they break the law during what is called the 'operational period' of the order);
Partially suspended prison sentences (explained above);
Probation (an order served in the community with a requirement to regularly report to Corrective Services and to be under their supervision as well as participate in programs as directed),
Imprisonment; and
Fines (to pay an amount of money).
-
- 4.6 We have received some preliminary feedback from some stakeholders that the types of orders made might not be suitable.
Do you feel that the **type of sentencing orders** for these offences are generally **adequate**?
If not, why do you think they aren't adequate?
-
- 4.7 We have also received some preliminary feedback from some stakeholders that the duration of orders made may be too low.
Do you feel that the **duration of orders** for these offences are generally **adequate**?
If not, why do you think they aren't adequate?
-

4.8 *A restorative justice process (or justice mediation) is where the offender attends a meeting and will meet with a convener and a victim or a victim representative and police representative. They will talk about the offending and the harm caused. The offender and victim or victim representative will try to reach an agreement about how the offender can make up for the harm caused. After the meeting, the offender will do what is agreed.*

This is available in Queensland and the Queensland Government is currently looking into expanding this process to make it more available.

In your experience – were you asked about whether you wanted to participate in **justice mediation**?

If justice mediation **was offered** to you:

did you participate? Why or why not?

If you **did** participate, what was the experience like?

If you **did not** participate, would you have liked to?

Do you have a view on whether this should be an option?

If you think it **should be** an option, should it be:

before the sentence?

as a sentencing option?

both?

5 OTHER ISSUES

5.1 Was the sentence in your case appealed?

If the sentence **was appealed**, who appealed the sentence?

What was your experience of the appeal process?

5.2 How could the **sentencing process** have been **improved**, particularly for victim survivors?

For example:

the information and support available prior to sentence;

how the judge or magistrate might interact with/acknowledge the victim in the courtroom;

what the judge or magistrate might say in delivering the sentence about the offence and the harm caused to the victim.

5.3 Is there anything that could be improved about the treatment of victim survivors of sexual assault and rape in the **criminal justice system** more broadly?

5.4 Is there anything you would like to add that we haven't covered?

Appendix 9: Cross-jurisdictional analysis of sentencing outcomes

Limited information is available from data published at a national level in Australia about the different types of sentencing orders made. This is based on standardised offence classifications that are broad in scope, rather than for specific offences, such as rape and sexual assault. There are also differences in the types of penalties available in specific jurisdictions and how these are mapped to the standard ABS sentence type classification.

Data is presented below for the 4 jurisdictions with the highest number of matters sentenced (NSW, Qld, Victoria and WA). This data shows variation across jurisdictions regarding the types of sentencing orders commonly used, although as noted above, a direct comparison by offence type is not possible.

As shown in Table A33 for the broad category of 'Sexual assault and related offences' based on higher courts data in comparison to New South Wales, Victoria and Western Australia Queensland had:

- the lowest proportion of sentences involving custody in a correctional institution (67%) (the definition of which includes partially suspended prison sentences) compared to just under three-quarters of penalties in Victoria (73%) and Western Australia (74%), and 81 per cent in New South Wales;
- the second highest proportion of fully suspended prison sentences (17%) behind Western Australia (19%) (where, in contrast to Queensland, conditions can be ordered) while NSW had none following the abolition of these orders;
- the highest proportion of 'moderate penalty in the community' orders (11%), with NSW having the equivalent percentage of 'intensive penalty in the community' orders;
- the equal lowest, with Western Australia, use of community service/work orders, representing just 1 per cent of penalties, compared to Victoria for which 10 per cent of orders involved community work.

Table A33 Summary outcomes by selected principal offence (03 Sexual assault & related offences), Higher Courts, 2022–23, select Australian jurisdictions

Jurisdiction	Principal sentence	No.	%
NSW	Custody in a correctional institution	523	81%
	Intensive penalty in the community	70	11%
	Fully suspended sentence of imprisonment	0	0%
	Community service / work	17	3%
	Moderate penalty in the community	16	2%
	Monetary penalties/fines	0	0%
	Good behaviour (incl. bonds)	14	2%
	Nominal and other penalties	3	0%
Qld	Custody in a correctional institution	467	67%
	Intensive penalty in the community	4	1%
	Fully suspended sentence of imprisonment	120	17%

	Community service / work	5	1%
	Moderate penalty in the community	73	11%
	Monetary penalties / fines	15	2%
	Good behaviour (incl. bonds)	7	1%
	Nominal and other penalties	3	0%
Victoria	Custody in a correctional institution	259	73%
	Intensive penalty in the community	3	1%
	Fully suspended sentence of imprisonment	43	12%
	Community service / work	37	10%
	Moderate penalty in the community	9	3%
	Monetary penalties / fines	0	0%
	Good behaviour (incl. bonds)	4	1%
	Nominal and other penalties	0	0%
WA	Custody in a correctional institution	249	74%
	Intensive penalty in the community	13	4%
	Fully suspended sentence of imprisonment	64	19%
	Community service / work	3	1%
	Moderate penalty in the community	0	0%
	Monetary penalties / fines	9	3%
	Good behaviour (incl. bonds)	0	0%
	Nominal and other penalties	0	0%

Source: Australian Bureau of Statistics, Criminal Courts, Australia, 2022–23, Table 18 (NSW), Table 23 (Vic) Table 28 (Qld), Table 38 (WA).

Table A34 shows the same data for Magistrates Court outcomes showing Queensland, in comparison to New South Wales, Victoria and Western Australia had:

- the second highest proportion of sentences involving custody in a correctional institution (including imprisonment and partially suspended prison sentences) (26%), second only to NSW (29%);
- the highest proportion of fully suspended prison sentences (18%) followed by Western Australia (12%) (noting NSW and Victoria have removed this as a sentencing option for state offences);
- the second highest use of ‘moderate penalties in the community’ (e.g. in Queensland, orders such as probation) (22%), although NSW in particular had a far greater proportion overall of community-based penalties (described as ‘intensive penalty in the community’, ‘community service/work and ‘moderate penalty in the community’) (49% of penalties in NSW compared to 27% in Queensland);
- the second highest use of fines (25%) behind Western Australia, which made extensive use of monetary penalties/fines (52% of penalties). A relatively small percentage of orders in NSW (6%) involved monetary orders while 18 per cent of penalties in Victoria were monetary penalties;
- the lowest use of good behaviour orders/bonds (4% of penalties) behind Western Australia which reported none. In comparison, good behaviour orders were much more commonly used in Victoria (19% of penalties) and NSW (15% of penalties).

Victoria also had a significant proportion of ‘nominal and other penalties’ (14%).

Table A34: Summary outcomes by selected principal offence (03 Sexual assault & related offences), Magistrates Courts, 2022–23, select Australian jurisdictions

Jurisdiction	Principal sentence	No.	%
NSW	Custody in a correctional institution	257	29%
	Intensive penalty in the community	105	12%
	Fully suspended sentence of imprisonment	0	0%
	Community service / work	82	9%
	Moderate penalty in the community	248	28%
	Monetary penalties/fines	56	6%
	Good behaviour (incl. bonds)	131	15%
	Nominal and other penalties	3	0%
Qld	Custody in a correctional institution	56	26%
	Intensive penalty in the community	0	0%
	Fully suspended sentence of imprisonment	39	18%
	Community service / work	11	5%
	Moderate penalty in the community	47	22%
	Monetary penalties / fines	57	26%
	Good behaviour (incl. bonds)	8	4%
	Nominal and other penalties	0	0%
Victoria	Custody in a correctional institution	133	19%
	Intensive penalty in the community	9	1%
	Fully suspended sentence of imprisonment	11	2%
	Community service / work	117	17%
	Moderate penalty in the community	76	11%
	Monetary penalties / fines	123	18%
	Good behaviour (incl. bonds)	136	19%
	Nominal and other penalties	95	14%
WA	Custody in a correctional institution	20	17%
	Intensive penalty in the community	4	3%
	Fully suspended sentence of imprisonment	14	12%
	Community service / work	0	0%
	Moderate penalty in the community	17	15%
	Monetary penalties / fines	60	52%
	Good behaviour (incl. bonds)	0	0%
	Nominal and other penalties	0	0%

Source: Australian Bureau of Statistics, Criminal Courts, Australia, 2022–23 (2024) Table 19 (NSW), Table 24 (Vic), Table 29 (Qld), Table 39 (WA).

Appendix 10: Developments in Victoria: A case study

10.1 About this appendix

This appendix is supplementary to **Chapter 7**. It explores developments impacting on the sentencing of rape and equivalent offences in Victoria as illustrative of reforms in other jurisdictions.

Each jurisdiction is unique, including as to:

- the way offences are framed under state and territory criminal laws, and the scope of conduct captured within these offences;
- the sentencing and parole laws and practices that apply;
- the political and legal culture and context in which these laws and practices have evolved and are applied.

See **Consultation Paper: Background**, Chapter 10 for more information about some of these differences,

10.2 Developments in Victoria: A case study

In Victoria, changes to sentencing for rape and other sexual offences have occurred in response to statements made by the High Court of Australia and the Victorian Court of Appeal regarding the adequacy of current sentencing practices, reviews undertaken by the Victorian Sentencing Advisory Council ('VSAC'), and concerns about sentencing practices not being reflective of community views.

The following focuses on developments specifically impacting sentencing for rape as illustrative of these changes and relevant drivers.

10.2.1 Victorian Court of Appeal statements suggest sentences for some categories of rape are inadequate

The Victorian Court of Appeal has made a several statements regarding the adequacy of current sentencing levels.

In a 2006 appeal decision, Vincent JA called sentences in relation to multiple counts of rape in a domestic setting 'grossly inadequate', further commenting:¹⁰⁷

The courts, when dealing with [rape] cases, must have regard to the vindication of the community's social values, pre-eminent among which are the protection of the personal integrity and physical safety of its citizens. They must punish, justly, those whose criminal conduct causes harm to others, and, through the sentencing process, endeavour to deter potential offenders from acting in this fashion... When they cannot be seen to be reflected in the responses of the courts, not only... does the individual victim

¹⁰⁷ *DPP v Short* [2006] VSCA 120 [32].

justifiably feel betrayed and devalued, but the criminal justice system itself fails to achieve its objectives.¹⁰⁸

In 2008, Maxwell P (with whom Buchanan and Redlich JJA agreed) referred to an earlier 1994 decision highlighting changes in community attitudes as evidencing the 'greater need' for 'salutary sentences':

In his submissions, the Director rightly emphasised the fact that Parliament has fixed a maximum penalty of 25 years' imprisonment for rape. This is the highest maximum provided for by the Crimes Act. The fixing of such a high maximum reflects the community's abhorrence of this crime. As noted earlier, the Full Court in 1994 expressed the view that, in the 14 years which had passed since an earlier decision in *R v Vaitos*, community concern about "the prevalence and seriousness of rape and like crimes" had undoubtedly hardened, and there was a greater need for salutary sentences to punish those who committed such crimes. Difficult though it is to generalise about community attitudes, I have little doubt that community concern about rape and like crimes, and the need for salutary sentences to punish and to deter, are stronger than ever.¹⁰⁹

In a 2009 appeal decision of *DPP v Maynard* ('Maynard'), the Victorian Director of Public Prosecutions ('VDPP') initially contended that sentence practices for rape were inadequate and that 'current sentencing practices in respect of the offence of rape committed by an offender on a victim unknown to him are inadequate'.¹¹⁰ In that case, the VDPP argued on appeal that it was a particularly serious example of the offence and that 'the 'starting point' in considering the appropriate sentence for that offence is 50% of the maximum penalty'.¹¹¹ Following oral arguments, the VDPP abandoned this ground of appeal.

In *Maynard*, the Court of Appeal found that the 4-year sentence of imprisonment for the rape offence 'was only 16% of the available maximum' of 25 years and 'does not accord with current sentencing practices for such a serious example of the offence'.¹¹² The respondent was resentenced to 6 years and 6 months' imprisonment for rape, with a total effective sentence of 9 years' imprisonment taking into account sentences imposed for other offences,¹¹³ with a non-parole period of 6 years.

In a later 2009 decision of *DPP v Moses*, the Court of Appeal allowed a VDPP appeal against sentence for one count of false imprisonment and 5 counts of rape finding:

some of the offences plainly warranted greater individual sentences. Moreover, the total effective sentence of six years and eight months, for all of the rapes and for the false imprisonment, was only just above 25 per cent of the maximum fixed by Parliament for a single rape [25 years]. So viewed, the sentence is, in our view, so disproportionate to the seriousness of the crime as to shock the public conscience.¹¹⁴

In 2010, the Court of Appeal reviewed a number of cases as part of its analysis of current sentencing practices for rape, particularly where the victim was asleep when the perpetrator assaulted them. The Court concluded that:

¹⁰⁸ *DPP v Short* [2006] VSCA 120 [42].

¹⁰⁹ *DPP v Avci* [2008] VSCA [26]-[27]/

¹¹⁰ *DPP v Maynard* [2009] VSCA 129; 73 ASCR 427 [19].

¹¹¹ *Ibid* [20].

¹¹² *Ibid* [41].

¹¹³ Allowing for double jeopardy, the respondent was resentenced to 6 years and 6 months imprisonment for rape and 4 years and 6 months for aggravated burglary. Two years and 6 months of the aggravated burglary sentence was cumulated on the rape sentence.

¹¹⁴ [2009] VSCA 274

but for the constraints of current sentencing practices and the requirement of consistency, we would have dismissed the appeal. This brief survey of recent sentencing decisions underlines, in our view, the need for a review of current sentencing practices for rape.¹¹⁵

The Court noted the VDPP was seeking review of sentences in a future appeal.¹¹⁶

These decisions pre-dated by several years the 2017 High Court decision of *DPP v Dalgliesh (a pseudonym) ('Dalgliesh')*.¹¹⁷ In *Dalgliesh*, the High Court made clear that sentencing judges and intermediate appellate courts should not consider themselves constrained by current sentencing practice to impose a sentence they consider to be inadequate in the particular circumstances. *Dalgliesh* concerned incest offences.

The VDPP had appealed the original sentence and asked the Victorian Court of Appeal to make a finding that current sentencing practices for that category of offences were inadequate and should be uplifted. The Court of Appeal agreed but determined it was constrained by the requirement under section 5(2)(b) of the *Sentencing Act 1991* (Vic) for a court to have regard to 'current sentencing practices'.¹¹⁸

The VDPP appealed to the High Court which found that current sentencing practices was 'one factor and not the controlling factor in the fixing of a just sentence'.¹¹⁹

The Court of Appeal in the later decision of *Carter (A Pseudonym) v The Queen*¹²⁰ noted the implications of the High Court's reasoning in *Dalgliesh* is that sentences for incest in Victoria should increase immediately, not incrementally.

Post-Dalgliesh, the Court of Appeal has found occasion to suggest that sentences for other sexual offences should increase. Most significantly, in *Shrestha v The Queen ('Shrestha')*,¹²¹ in dismissing an appeal against sentence, the Court found that 'there must be an upward adjustment in sentences for digital rape offences in this category of seriousness, that is, offences whose objective gravity is broadly comparable to that of the present case'.¹²²

The appellant in *Shrestha* had been convicted following a trial of one count of rape (by digital penetration). He was sentenced to 6 years' imprisonment, with a non-parole period of 4 years. The appellant had followed a woman from a nightclub, grabbed her from behind, and held her down, inserting two fingers in the victim's vagina and moving them in and out – the victim estimated, five times – before the victim managed to force the appellant off her.

The VDPP used the appeal as an opportunity to expressly ask the Court of Appeal to 'state that current sentencing for digital rape was inadequate and that sentences should increase hereafter'.¹²³

The Court of Appeal agreed, making reference to the High Court's decision in *Dalgliesh* which it noted had 'made it clear that sentencing judges and intermediate appellate courts should not consider themselves constrained by current sentencing practice to impose a sentence they consider to be inadequate in the

¹¹⁵ *Hasan v The Queen* [2010] VSCA 352; 31 VR 28 [60].

¹¹⁶ *Ibid.*

¹¹⁷ *DPP v Dalgliesh (a pseudonym)* [2017] HCA 41; 262 CLR 428 [68] (*'Dalgliesh'*).

¹¹⁸ *DPP v Dalgliesh (a pseudonym)* [2016] VSCA 148 (29 June 2016) [PARA?].

¹¹⁹ *Dalgliesh* (n 117) [68].

¹²⁰ *Carter (A Pseudonym) v The Queen* [2018] VSCA 88; 272 A Crim R 170, [80]–[81].

¹²¹ [2017] VSCA 364.

¹²² *Ibid* [30].

¹²³ *Ibid* [3].

particular circumstances'.¹²⁴ In reviewing decisions identified by the VDPP, it concluded: 'It is clear that the general run of sentences for digital rape is well below what is necessary to reflect the objective gravity of that offence, and the moral culpability of the offender.'¹²⁵

10.2.2 The Victorian Sentencing Advisory Council reviews

VSAC has undertaken several reviews relevant to sentencing for rape and sexual assault.

In August 2004, the then Victorian Attorney-General, the Honourable Rob Hulls MP, wrote to the Victorian Sentencing Advisory Council requesting the Council's advice on the use of suspended sentences, including whether reported community concerns were indicative of a need for reform.¹²⁶

The request for a review followed a number of high profile cases, including the case of a person sentenced for aggravated burglary and two counts of rape (lingual-vaginal and digital-vaginal penetration) and one count of indecent assault sentenced to 2 years' 9 months' imprisonment wholly suspended with an operational period of 3 years. The two rape sentences each attracted a sentence of 18 months. On appeal, the Victorian Court of Appeal determined the sentence was not manifestly inadequate.¹²⁷

In 2006, the Victorian Sentencing Advisory Council issued its first report on the outcomes of its review of suspended sentences recommending additional statutory guidance be introduced regarding their use, prior to their eventual phasing out.¹²⁸ Prior to these reforms, there were no restrictions on their use for specific offences, although the court could not suspend the sentencing unless the period of imprisonment imposed did not exceed 3 years (if the person was sentenced in the higher courts) or 2 years if sentenced by the Magistrates' Court.¹²⁹

Following the stage 1 reforms in Victoria, the use of suspended sentences for serious offences, such as rape, was limited to circumstances in which exceptional circumstances could be shown and where the court determined the suspension was in the interests of justice.¹³⁰

The phasing out of suspended sentences, initially in the higher courts in 2013, and all courts in September 2014, occurred alongside other significant reforms made to the suite of sentencing orders available, including the introduction of a new form of community-based sentencing order – the community correction order.

In 2012, VSAC also undertook a review of offence seriousness and, among other findings, reported that the community was 'united' in their view that rape and child sex offences, especially those involving younger children, were two of the most serious offences. This followed the release in 2009 of several reports on sentencing for sexual penetration of a child under 16 years which resulted in a recommendation that use be made of the guideline judgment provisions of the *Victorian Sentencing Act 1991* (Vic).

¹²⁴ Ibid [30] referring to *DPP v Dalglish* (a pseudonym) (2017) [2017] HCA 41; 262 CLR 428.

¹²⁵ Ibid.

¹²⁶ Terms of Reference referred to in Sentencing Advisory Council (Victoria), *Suspended Sentences: Final Report Part 1* (2006) 1 [1.1].

¹²⁷ *Director of Public Prosecutions v Sims* [2004] VSCA 129.

¹²⁸ In Victoria, suspended sentences were abolished for use in the higher courts in 2013 and in all courts effective from 1 September 2014: *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic). CHECK *Sentencing Act 1991* (Vic) s 27 (repealed).

¹³⁰ *Sentencing Act 1991* (Vic) s 27(2B) (repealed), as inserted by *Sentencing (Suspended Sentences) Act 2006* (Vic) s 4, as recommended in Sentencing Advisory Council (Victoria), *Suspended Sentences: Final Report Part 1* (2006) xxv, 71–72.

A subsequent review of sentencing for sexual penetration with a child aged under 12 years (which in Queensland, likely would be prosecuted as rape¹³¹) in **2016** concluded that sentencing practices for this offence were too constrained and would benefit from formal guidance, particularly through a guideline judgment about sex offences against children.¹³²

In 2016, the Council also released its report on sentencing guidance in Victoria which followed a request from the Attorney-General to provide advice on the most effective legislative mechanism to provide sentencing guidance in Victoria to promote consistency of approach and promote public confidence in the criminal justice system.¹³³ This referral was made as a result of the baseline sentencing scheme provisions (discussed below) being found to be unworkable.

While preferring increased use of guideline judgments, it also presented advice about the form of standard sentence scheme that should be adopted should such a scheme be introduced.¹³⁴

Introduction of the Baseline sentencing scheme in 2014, and its repeal

In **2014**, the Victorian Government introduced the Baseline sentencing scheme which came into effect on 2 November 2014.¹³⁵ The baseline sentence represented the sentence that Parliament intended as the median sentence for the offence.

When sentencing for any of the six baseline offences committed on or after 2 November, Victorian courts were required to sentence in accordance with these baselines. While rape was not included in the offences to which it applied, both persistent sexual abuse of a child under 16 and sexual penetration of a child under 16 were included, with a baseline median sentence set of 10 years.

The Court of Appeal in 2015 found that the baseline provisions were 'incapable of being given any practical operation'¹³⁶ and they were subsequently repealed.¹³⁷

The Jury Projects find the community considers sentences for sexual offences, particularly those committed against younger children, are too lenient

Over the same period as the developments discussed above, commencing in 2007, work was undertaken on the Jury Projects in Tasmania and Victoria, discussed in **Chapter 5**.¹³⁸

¹³¹ For the purposes of s 349 of the *Criminal Code* (Qld) which establishes the offence of rape, a child under the age of 12 years is incapable of giving consent. Engaging in penile intercourse with a child under 16 years (s 215) is available as an alternative verdict on a charge of rape (see s 578). If the child is under 12 years for the purposes of this offence, there is no defence of mistake of fact as to the child's age: see ss 215(5) and 229.

¹³² Sentencing Advisory Council (Victoria), *Sentencing of Offenders: Sexual Penetration with a Child Under 12* (2016). This report notes that some offences against child victims also may be prosecuted as rape: *ibid* 61–62.

¹³³ Sentencing Advisory Council (Victoria), *Sentencing Guidance in Victoria: Report* (2012).

¹³⁴ *Ibid*.

¹³⁵ *Sentencing Amendment (Baseline Sentencing) Act 2014* (Vic).

¹³⁶ *DPP v Walters (a pseudonym)* [2015] VSCA 303.

¹³⁷ Repealed by *Sentencing Amendment (Sentencing Standards) Act 2017* (Vic).

¹³⁸ For a summary of this research, see also Sentencing Advisory Council (Victoria), *Public Opinion About Sentencing: A Research Overview* (2018); Sentencing Advisory Council (Victoria), *Is Sentencing in Victoria Lenient? Key Findings of the Victorian Jury Sentencing Study* (2018).

The Tasmanian and Victorian-based projects found the offence type for which the community was most likely to impose a more severe sentence than the judge was sex offences (45%),¹³⁹ and this was particularly the case where such offences are committed against a child under 12 (63%).¹⁴⁰

Following publication of the findings of the Victorian Jury Study findings, the researchers acknowledged these findings had 'significant policy implications' pointing to the VSAC 2016 reports which drew on the Tasmanian and Victorian studies 'to support their conclusions that there was a lack of public confidence in sentencing practices for sexual offences, in particular those against young victims'.¹⁴¹ They concluded:

The fact that jurors in Victoria were dissatisfied with the sentences in cases of children under 12 provided evidence that there is a punitiveness gap between judges and the public with respect to this offence that cannot be dismissed as a methodological artefact or a product of a lack of information.¹⁴²

From March 2017 certain serious offences are defined as 'Category 1' and 'Category 2' offences restricting judicial discretion

In March 2017, legislative changes came into effect defining certain offences as 'Category 1' or 'Category 2' offences if committed post 20 March 2017.¹⁴³ Further offences were added to the scheme in October 2018.¹⁴⁴

The implications of an offence being a 'Category 1' offence is that mandatory imprisonment (which must not be imposed in addition to making a community correction order) must be imposed.¹⁴⁵ This classification applies to 23 offences, including rape, rape by compelling sexual penetration, and sexual penetration of a child under 12,¹⁴⁶ providing it was committed by a person aged 18 years or more at the time the offence was committed.¹⁴⁷ It does not apply to the offence of sexual assault.

Introduction of the standard sentence scheme in 2018

Based on recommendations made by VSAC in its 2016 report, *Sentencing Guidance in Victoria*, the Victorian Government introduced the standard sentences scheme.¹⁴⁸

An offender aged 18 or older who commits a prescribed offence on or after 1 February 2018 for an offence dealt with on indictment is subject to the standard sentencing scheme.¹⁴⁹ The court must consider the standard sentence when sentencing a person for 12 serious offences, including rape, sexual penetration of a child under the age of 16, sexual penetration of a child under the age of 12 and other sexual offences against children.¹⁵⁰ The standard sentence for rape is 10 years' imprisonment.¹⁵¹

¹³⁹ Sentencing Advisory Council (Victoria), *Sentencing Sex Offences in Victoria: An Analysis of Three Sentencing Reforms* (June 2021) 16 [1.9] citing Kate Warner et al., Public Judgement on Sentencing: Final Results from the Tasmanian Jury Sentencing Study, *Trends & Issues in Crime and Criminal Justice* no. 407 (2011) 4; Kate Warner et al., *Jury Sentencing Survey, Report to the Criminology Research Council* (2010) 49.

¹⁴⁰ VSAC (n 139139)16 [1.9] citing Kate Warner et al., 'Measuring Jurors' Views on Sentencing: Results from the Second Australian Jury Sentencing Study' (2017) 19(2) *Punishment & Society* 180, 194.

¹⁴¹ Warner et al (n 140) 195.

¹⁴² Ibid.

¹⁴³ *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic).

¹⁴⁴

¹⁴⁵ *Sentencing Act 1991* (Vic) s 5(2G). There are some limited exceptions to this: see ss 5(2GA), 10A.

¹⁴⁶ Ibid s 3(1) (definition of 'Category 1 offence').

¹⁴⁷ Ibid.

¹⁴⁸

¹⁴⁹ *Sentencing Act 1991* (Vic) ss 5A, 5B.

¹⁵⁰ Ibid 5B(2).

¹⁵¹ *Crimes Act 1958* (Vic) s 38(3).

A sentencing court is directed to 'only have regard to sentences previously imposed for the offence as a standard sentence offence in relation to the sentencing' of an offence to which this scheme applies.¹⁵²

A court when sentencing a person for a standard sentence offence must fix an NPP of at least: (a) 60 per cent if the relevant term is a term of less than 20 years; (b) 70 per cent if the relevant term is a term of 20 years or more; and (c) 30 years, if the relevant term is a term of life imprisonment; unless the court considers that it is in the interests of justice not to do so.¹⁵³

The Government's expectation at the time of its introduction was that sentences would increase for standard sentence offences, 'bringing sentencing for the most serious offences in line with community expectations',¹⁵⁴ and send 'a strong message to perpetrators that they can expect longer terms of imprisonment if they commit serious offences'.¹⁵⁵

The impact of reforms

In 2021, VSAC reported on the impact of three reforms on sentencing for sexual offences:

1. the Category 1 classification of certain offences committed and sentenced on or after 20 March 2017;
2. the standard sentence scheme for relevant offences committed and sentenced on or after 1 February 2018, and
3. call to uplift sentencing practices for incest offences in the *Dalgliesh* decisions by the High Court and the Victorian Court of Appeal.¹⁵⁶

As rape already attracted very few non-custodial sentences prior to the introduction of Category 1 offences, the Council concluded 'the reform did not have any discernible influence on sentencing outcomes', although in all 27 cases of rape sentenced after the Category 1 classification was introduced, a sentence of imprisonment was imposed.¹⁵⁷ It suggested that a review of available sentencing remarks for 33 rape cases sentenced prior to these reforms involving a non-custodial sentence being imposed, were either as a direct result of the Court of Appeal's guideline judgment in *Boulton v The Queen*¹⁵⁸ or involved a finding there were exceptional circumstances justifying this outcome.¹⁵⁹

With respect to *Dalgliesh*, VSAC has observed these decisions may have indirectly had an impact on sentencing levels for other forms of sexual offending against children:

The various *Dalgliesh* decisions have subsequently been subjected to considerable analysis. Perhaps most importantly, the Court of Appeal has held that the call to uplift sentencing practices was limited to incest offences (of a child, stepchild or lineal descendant) and did not extend to other child sex offences, such as persistent sexual abuse of a child aged under 16 (even if such offending occurred in incestuous circumstances), nor to other sex offences such as rape (note, though, that there has been a specific and separate call to uplift sentencing practices for digital rape). Therefore, while the Court of Appeal has

¹⁵² *Sentencing Act 1991* (Vic) s 5B(2)(b).

¹⁵³ *Ibid* s 11A. The 'relevant term' is defined for the purposes of this calculation as the sentence imposed for the standard sentence offence, or the total effective sentence imposed in respect of 2 or more sentences, at least one of which is for a standard sentence offence: s 11A(5).

¹⁵⁴ *Ibid* 1509.

¹⁵⁵ *Ibid*.

¹⁵⁶ Victorian Sentencing Advisory Council, *Sentencing Sex Offences in Victoria: An Analysis of Three Sentencing Reforms* (June 2021).

¹⁵⁷ *Ibid* 18 [3.6].

¹⁵⁸ (2014) 46 VR 308. Guideline judgments are discussed in section x-ref.

¹⁵⁹ Victorian Sentencing Advisory Council (n 156) 19–20 [3.8]–[3.9].

opined on a number of occasions that sentencing practices for other sex offences against children may be inadequate, there has not yet been a case in which the Director of Public Prosecutions has sought, and the Court of Appeal has issued, a formal call to uplift those sentences. It has, though, been suggested that the implications of the various *Dalgleish* decisions – particularly the commentary around the seriousness of child sex offences – have indirectly affected sentencing practices for child sex offences other than incest.¹⁶⁰

VSAC reported that the standard sentencing scheme appeared to 'have had a tangible effect on the length of prison sentences imposed, as intended'.¹⁶¹ Its analysis of sex offences found that in 2019 'the average prison sentences were uniformly longer for standard sentence offences of the relevant sex offences than for non-standard sentence versions of the same offences'.¹⁶² VSAC thought this difference could be due to the "anchoring effect" arising from the numerical guidance provided by the standard sentence set for each offence or it could be due to courts being prohibited from considering sentencing practices in cases in which the offence was a non-standard sentence offence - or a combination of the two.¹⁶³

For example, the average prison sentence imposed for rape in the higher courts in 2019, which carries a 10-year standard sentence, was 6 years and 8 months for standard sentence offences, and 5 years and 8 months for nonstandard sentence offences (that is, offences committed prior to the commencement of the standard sentence provisions).¹⁶⁴

VSAC found that of the offences examined, incest offences experienced the greatest shift in sentence lengths, resulting in longer prison sentences, with it being acknowledged that this offence was also subject to the most reform over the period examined (being classified as a standard sentence offence, directly impacted by the *Dalgleish* decisions, and the ability to charge incest as a course of conduct offence).¹⁶⁵

VSAC also reported an increase in average prison sentences for some child sex offences that were non-standard sentence offences. It viewed this as being: 'likely, at least in part, due to the requirement that when sentencing nonstandard sentence offences, courts consider all current sentencing practices ... including sentences imposed for standard sentence offences'.¹⁶⁶

While it found that each of the reforms appeared to have influenced sentencing practices for sexual offences, and particularly against children, this might be a consequence of 'changing community expectations about, and judicial understanding of, the effect of sex offending on victims', not simply law reform.¹⁶⁷

¹⁶⁰ Victorian Sentencing Advisory Council, *Sentencing Sex Offences in Victoria: An Analysis of Three Sentencing Reforms* (June 2021)

¹⁶¹ *Ibid* xii.

¹⁶² *Ibid*.

¹⁶³ *Ibid* 78 [9.6].

¹⁶⁴ *Ibid* 22.

¹⁶⁵ *Ibid* xi.

¹⁶⁶ *Ibid* 78 [9.7].

¹⁶⁷ *Ibid* xii.

Appendix 11: Section 9 *Penalties and Sentences Act 1992 (Qld)* [extract as at 19 September 2024]

Penalties and Sentences Act 1992
Part 2 Governing principles

[s 9]

- (a) the sheriff—the powers may be delegated to an officer employed in the sheriff’s office or Magistrates Court registry; or
- (b) the registrar—the powers may be delegated to an officer employed in the District Court registry or Magistrates Court registry; or
- (c) the clerk of the court—the powers may be delegated to an officer employed in the Magistrates Court registry.

Part 2 Governing principles

9 Sentencing guidelines

- (1) The only purposes for which sentences may be imposed on an offender are—
 - (a) to punish the offender to an extent or in a way that is just in all the circumstances; or
 - (b) to provide conditions in the court’s order that the court considers will help the offender to be rehabilitated; or
 - (c) to deter the offender or other persons from committing the same or a similar offence; or
 - (d) to make it clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved; or
 - (e) to protect the Queensland community from the offender; or
 - (f) a combination of 2 or more of the purposes mentioned in paragraphs (a) to (e).
- (2) In sentencing an offender, a court must have regard to—
 - (a) principles that—
 - (i) a sentence of imprisonment should only be imposed as a last resort; and

-
- (ii) a sentence that allows the offender to stay in the community is preferable; and
 - (b) the maximum and any minimum penalty prescribed for the offence; and
 - (c) the nature of the offence and how serious the offence was, including—
 - (i) any physical, mental or emotional harm done to a victim, including harm mentioned in information relating to the victim given to the court under section 179K; and
 - (ii) the effect of the offence on any child under 16 years who may have been directly exposed to, or a witness to, the offence; and
 - (d) the extent to which the offender is to blame for the offence; and
 - (e) any damage, injury or loss caused by the offender; and
 - (f) the offender's character, age and intellectual capacity; and
 - (fa) the hardship that any sentence imposed would have on the offender, having regard to the offender's characteristics, including age, disability, gender identity, parental status, race, religion, sex, sex characteristics and sexuality; and
 - (fb) regardless of whether there are exceptional circumstances, the probable effect that any sentence imposed would have on—
 - (i) a person with whom the offender is in a family relationship and for whom the offender is the primary caregiver; and
 - (ii) a person with whom the offender is in an informal care relationship; and
 - (iii) if the offender is pregnant—the child of the pregnancy; and

Penalties and Sentences Act 1992
Part 2 Governing principles

[s 9]

- (g) the presence of any aggravating or mitigating factor concerning the offender; and
- (ga) without limiting paragraph (g), whether the offender was a participant in a criminal organisation—
 - (i) at the time the offence was committed; or
 - (ii) at any time during the course of the commission of the offence; and
- (gb) without limiting paragraph (g), the following—
 - (i) whether the offender is a victim of domestic violence;
 - (ii) whether the commission of the offence is wholly or partly attributable to the effect of the domestic violence on the offender;
 - (iii) the offender's history of being abused or victimised; and
- (h) the prevalence of the offence; and
- (i) how much assistance the offender gave to law enforcement agencies in the investigation of the offence or other offences; and
- (j) time spent in custody by the offender for the offence before being sentenced; and
- (k) sentences imposed on, and served by, the offender in another State or a Territory for an offence committed at, or about the same time, as the offence with which the court is dealing; and
- (l) sentences already imposed on the offender that have not been served; and
- (m) sentences that the offender is liable to serve because of the revocation of orders made under this or another Act for contraventions of conditions by the offender; and
- (n) if the offender is the subject of a community based order—the offender's compliance with the order as

disclosed in an oral or written report given by an authorised corrective services officer; and

- (o) if the offender is on bail and is required under the offender's undertaking to attend a rehabilitation, treatment or other intervention program or course—the offender's successful completion of the program or course; and
- (oa) if the offender is an Aboriginal or Torres Strait Islander person—any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the offender; and
- (p) if the offender is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the offender's community that are relevant to sentencing the offender, including, for example—
 - (i) the offender's relationship to the offender's community; or
 - (ii) any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the offender; or
 - (iii) any considerations relating to programs and services established for offenders in which the community justice group participates; and
- (pa) the principle that the court should not refuse to make a community based order for the offender merely because of—
 - (i) a physical, intellectual or psychiatric disability of the offender; or
 - (ii) the offender's sex, educational level or religious beliefs; and
- (q) anything else prescribed by this Act to which the court must have regard; and
- (r) any other relevant circumstance.

disclosed in an oral or written report given by an authorised corrective services officer; and

- (o) if the offender is on bail and is required under the offender's undertaking to attend a rehabilitation, treatment or other intervention program or course—the offender's successful completion of the program or course; and
- (oa) if the offender is an Aboriginal or Torres Strait Islander person—any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the offender; and
- (p) if the offender is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the offender's community that are relevant to sentencing the offender, including, for example—
 - (i) the offender's relationship to the offender's community; or
 - (ii) any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the offender; or
 - (iii) any considerations relating to programs and services established for offenders in which the community justice group participates; and
- (pa) the principle that the court should not refuse to make a community based order for the offender merely because of—
 - (i) a physical, intellectual or psychiatric disability of the offender; or
 - (ii) the offender's sex, educational level or religious beliefs; and
- (q) anything else prescribed by this Act to which the court must have regard; and
- (r) any other relevant circumstance.

Penalties and Sentences Act 1992
Part 2 Governing principles

[s 9]

- (2A) However, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender for any offence—
 - (a) that involved the use of, or counselling or procuring the use of, or attempting or conspiring to use, violence against another person; or
 - (b) that resulted in physical harm to another person.
- (3) In sentencing an offender to whom subsection (2A) applies, the court must have regard primarily to the following—
 - (a) the risk of physical harm to any members of the community if a custodial sentence were not imposed;
 - (b) the need to protect any members of the community from that risk;
 - (c) the personal circumstances of any victim of the offence;
 - (d) the circumstances of the offence, including the death of or any injury to a member of the public or any loss or damage resulting from the offence;
 - (e) the nature or extent of the violence used, or intended to be used, in the commission of the offence;
 - (f) any disregard by the offender for the interests of public safety;
 - (g) the past record of the offender, including any attempted rehabilitation and the number of previous offences of any type committed;
 - (h) the antecedents, age and character of the offender;
 - (i) any remorse or lack of remorse of the offender;
 - (j) any medical, psychiatric, prison or other relevant report in relation to the offender;
 - (k) anything else about the safety of members of the community that the sentencing court considers relevant.
- (4) Also, in sentencing an offender for any offence of a sexual nature committed in relation to a child under 16 years or a child exploitation material offence—

-
- (a) the court must have regard to the sentencing practices, principles and guidelines applicable when the sentence is imposed rather than when the offence was committed; and
 - (b) the principles mentioned in subsection (2)(a) do not apply; and
 - (c) the offender must serve an actual term of imprisonment, unless there are exceptional circumstances.
- (5) For subsection (4)(c), in deciding whether there are exceptional circumstances, a court may have regard to the closeness in age between the offender and the child.
- (6) In sentencing an offender to whom subsection (4) applies, the court must have regard primarily to—
- (a) the effect of the offence on the child; and
 - (b) the age of the child; and
 - (c) the nature of the offence, including, for example, any physical harm or the threat of physical harm to the child or another; and
 - (d) the need to protect the child, or other children, from the risk of the offender reoffending; and
 - (e) any relationship between the offender and the child; and
 - (f) the need to deter similar behaviour by other offenders to protect children; and
 - (g) the prospects of rehabilitation including the availability of any medical or psychiatric treatment to cause the offender to behave in a way acceptable to the community; and
 - (h) the offender's antecedents, age and character; and
 - (i) any remorse or lack of remorse of the offender; and
 - (j) any medical, psychiatric, prison or other relevant report relating to the offender; and
 - (k) anything else about the safety of children under 16 the sentencing court considers relevant.

Penalties and Sentences Act 1992
Part 2 Governing principles

[s 9]

- (6A) However, for subsection (6)(h), the court must not have regard to the offender's good character if it assisted the offender in committing the offence.
- (7) In sentencing an offender for a child exploitation material offence, the court must have regard primarily to—
- (a) for an offence other than an offence against the Criminal Code, section 228I or 228J—the nature of any material describing or depicting a child that the offence involved, including the apparent age of the child and any activity shown; and
 - (aa) for an offence against the Criminal Code, section 228I or 228J—the nature of the doll, robot or other object representing or portraying a child that the offence involved, including the apparent age of the child; and
 - (ab) the offender's conduct or behaviour in relation to the material, doll, robot or other object that the offence involved; and
 - (ac) any relationship between the offender and the child the subject of the material, or represented or portrayed by the doll, robot or other object, that the offence involved; and
 - (b) the need to deter similar behaviour by other offenders to protect children; and
 - (c) the prospects of rehabilitation including the availability of any medical or psychiatric treatment to cause the offender to behave in a way acceptable to the community; and
 - (d) the offender's antecedents, age and character; and
 - (e) any remorse or lack of remorse of the offender; and
 - (f) any medical, psychiatric, prison or other relevant report relating to the offender; and
 - (g) anything else about the safety of children under 16 the sentencing court considers relevant.

-
- (7AA) However, for subsection (7)(d), the court must not have regard to the offender's good character if it assisted the offender in committing the offence.
- (7A) Also, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender under part 9D, division 2.
- (8) If required by the court for subsection (2)(p), the representative must advise the court whether—
- (a) any member of the community justice group that is responsible for the submission is related to the offender or the victim; or
 - (b) there are any circumstances that give rise to a conflict of interest between any member of the community justice group that is responsible for the submission and the offender or victim.
- (9) In sentencing an offender, a court must not have regard to the following—
- (a) the offender levy imposed under section 179C;
 - (b) whether or not the offender—
 - (i) may become, or is, the subject of a dangerous prisoners application; or
 - (ii) may become subject to an order because of a dangerous prisoners application.
- (9A) 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.
- (9B) In determining the appropriate sentence for an offender convicted of the manslaughter of a child under 12 years, the court must treat the child's defencelessness and vulnerability, having regard to the child's age, as an aggravating factor.
- (9C) In determining the appropriate sentence for an offender convicted of a relevant serious offence committed in relation to a pregnant person that resulted in destroying the life of the person's unborn child, the court must treat the destruction of

Penalties and Sentences Act 1992
Part 2 Governing principles

[s 9]

the unborn child's life as an aggravating factor, unless the court considers it is not reasonable because of the exceptional circumstances of the case.

- (10) In determining the appropriate sentence for an offender who has 1 or more previous convictions, the court must treat each previous conviction as an aggravating factor if the court considers that it can reasonably be treated as such having regard to—
- (a) the nature of the previous conviction and its relevance to the current offence; and
 - (b) the time that has elapsed since the conviction.
- (10A) In determining the appropriate sentence for an offender convicted of a domestic violence offence, the court must treat the fact that it is a domestic violence offence as an aggravating factor, unless the court considers it is not reasonable because of the exceptional circumstances of the case.
- Examples of exceptional circumstances—*
- 1 the victim of the offence has previously committed an act of serious domestic violence, or several acts of domestic violence, against the offender
 - 2 the offence is manslaughter under the Criminal Code, section 304B
- (10B) In determining the appropriate sentence for an offender who is a victim of domestic violence, the court must treat as a mitigating factor—
- (a) the effect of the domestic violence on the offender, unless the court considers it is not reasonable to do so because of the exceptional circumstances of the case; and
 - (b) if the commission of the offence is wholly or partly attributable to the effect of the domestic violence on the offender—the extent to which the commission of the offence is attributable to the effect of the violence.
- (10E) Subsection (10F) applies if—
- (a) the court is sentencing an offender to whom subsection (2A) applies; and

-
- (b) the offender committed the offence while the other person mentioned in subsection (2A) was performing, or because the person had performed, the functions of the person's office or employment.
- (10F) In determining the appropriate sentence for the offender, the court must treat the fact that the offender committed the offence while the other person was performing, or because the person had performed, the functions of the person's office or employment as an aggravating factor, unless the court considers it is not reasonable to do so because of the exceptional circumstances of the case.
- (10G) A reference in subsection (10E) or (10F) to a person performing the functions of the person's office or employment includes a reference to a person performing work—
- (a) in a relationship of employment; or
 - (b) under a contract for services; or
 - (c) under an appointment; or
 - (d) on a voluntary or unpaid basis.
- (11) Despite subsection (10), the sentence imposed must not be disproportionate to the gravity of the current offence.
- (12) In this section—
- actual term of imprisonment*** means a term of imprisonment served wholly or partly in a corrective services facility.
- child exploitation material offence*** means any of the following offences—
- (a) an offence against the *Classification of Computer Games and Images Act 1995*, section 28 if the objectionable computer game is a child abuse computer game under the Act;
 - (b) an offence against any of the following provisions of the *Classification of Films Act 1991*—
 - (i) section 41(3) or 42(3) or (4);

Penalties and Sentences Act 1992
Part 2 Governing principles

[s 10]

- (ii) section 43 if the offence involves a child abuse publication under the Act;
- (c) an offence against the Criminal Code, section 228A, 228B, 228C, 228D, 228DA, 228DB, 228DC, 228I or 228J.

domestic violence see the *Domestic and Family Violence Protection Act 2012*, section 8.

family relationship has the meaning given by the *Domestic and Family Violence Protection Act 2012*, section 19.

informal care relationship has the meaning given by the *Domestic and Family Violence Protection Act 2012*, section 20.

relevant serious offence means an offence against—

- (a) the following provisions of the Criminal Code—
 - (i) sections 302 and 305;
 - (ii) sections 303 and 310;
 - (iii) section 320;
 - (iv) section 323;
 - (v) section 328A;
 - (vi) section 339; and
- (b) the *Transport Operations (Road Use Management) Act 1995*, section 83.

10 Court's reasons to be stated and recorded

- (1) If a court imposes a sentence of imprisonment, including a suspended sentence of imprisonment, it must—
 - (a) state in open court its reasons for the sentence; and
 - (b) cause the reasons to be—
 - (i) recorded in the transcript that is to be kept in the registry with the indictment; or

Appendix 12: Section 9 *Penalties and Sentences Act 1992 (Qld)* [historical as at 24 November 1992]

16

Penalties and Sentences

No. 48, 1992

- (a) if the order was made by the Supreme Court—any sittings of the Supreme Court in its criminal jurisdiction at any place in Queensland; or
- (b) if the order was made by a District Court—any sittings of a District Court in its criminal jurisdiction at any place in Queensland; or
- (c) if the order was made by a Magistrates Court—any Magistrates Court sitting at any place in Queensland.

(2) Subsection (1) applies even though the judge, magistrate or justices constituting the court did not make the order in the first place.

PART 2—GOVERNING PRINCIPLES

Sentencing guidelines

9.(1) The only purposes for which sentences may be imposed on an offender are—

- (a) to punish the offender to an extent or in a way that is just in all the circumstances; or
- (b) to provide conditions in the court's order that the court considers will help the offender to be rehabilitated; or
- (c) to discourage the offender or other persons from committing the same or a similar offence; or
- (d) to make it clear that the community, acting through the court, does not approve of the sort of conduct in which the offender was involved; or
- (e) to protect the Queensland community from the offender; or
- (f) a combination of 2 or more of the purposes mentioned in paragraphs (a) to (e).

(2) In sentencing an offender, a court must have regard to—

- (a) principles that—

- (i) a sentence of imprisonment should only be imposed as a last resort; and
 - (ii) a sentence that allows the offender to stay in the community is preferable; and
- (b) the maximum and any minimum penalty prescribed for the offence; and
- (c) the nature of the offence and how serious the offence was, including any physical or emotional harm done to a victim; and
- (d) the extent to which the offender is to blame for the offence; and
- (e) any damage, injury or loss caused by the offender; and
- (f) the offender's character, age and intellectual capacity; and
- (g) the presence of any aggravating or mitigating factor concerning the offender; and
- (h) the prevalence of the offence; and
- (i) how much assistance the offender gave to law enforcement agencies in the investigation of the offence or other offences; and
- (j) time spent in custody by the offender for the offence before being sentenced; and
- (k) sentences imposed on, and served by, the offender in another State or a Territory for an offence committed at, or about the same time, as the offence with which the court is dealing; and
- (l) sentences already imposed on the offender that have not been served; and
- (m) sentences that the offender is liable to serve because of the revocation of orders made under this or another Act for contraventions of conditions by the offender; and
- (n) if the offender is the subject of a community based order—the offender's compliance with the order as disclosed in a report given by an authorised Commission officer; and
- (o) anything else prescribed by this Act to which the court must have regard; and
- (p) any other relevant circumstance.

(3) A court may impose a sentence only if the court, after having considered all available sentence options, is satisfied that the sentence—

- (a) is appropriate in all circumstances of the case; and
- (b) is no more severe than is necessary to achieve the purposes for which the sentence is imposed.

(4) A court may impose a sentence of imprisonment on an offender who is under the age of 25 years and has not previously been convicted only if the court, having—

- (a) considered all other available sentences; and
- (b) taken into account the desirability of not imprisoning a first offender;

is satisfied that no other sentence is appropriate in all circumstances of the case.

Court's reasons to be stated and recorded

10.(1) If a court imposes a sentence of imprisonment, including a suspended sentence of imprisonment, it must—

- (a) state in open court its reasons for the sentence; and
- (b) cause the reasons to be—
 - (i) recorded in the transcript that is to be kept in the registry with the indictment; or
 - (ii) recorded in writing and kept in the office of the clerk of the court with the charge sheet; and
- (c) cause a copy of the reasons to be forwarded to the Commission.

(2) A sentence is not invalid merely because of the failure of the court to state its reasons as required by subsection (1)(a), but its failure to do so may be considered by an appeal court if an appeal against sentence is made.

Matters to be considered in determining offender's character

11. In determining the character of an offender, a court may consider—

Appendix 13: Criminal Code (Qld)

[extract]

Schedule 1 The Criminal Code
Part 5 Offences against the person and relating to marriage and parental rights and duties
Chapter 32 Rape and sexual assaults

[s 349]

- (c) the disturbance impairs the emotional wellbeing, judgment or behaviour of the person so as to affect functioning in daily life to a material extent.
- (2) A mental health impairment may arise from any of the following disorders but may also arise for other reasons—
 - (a) an anxiety disorder;
 - (b) an affective disorder;
 - (c) a psychotic disorder;
 - (d) a substance induced mental disorder.
- (3) A person does not have a mental health impairment for the purposes of section 348A(4)(a)(ii) if the person's impairment is caused solely by the temporary effect of ingesting a substance.

349 Rape

- (1) Any person who rapes another person is guilty of a crime.
Maximum penalty—life imprisonment.
- (2) A person rapes another person if—
 - (a) the person engages in penile intercourse with the other person without the other person's consent; or
 - (b) the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent; or
 - (c) the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.
- (3) For this section, a child under the age of 12 years is incapable of giving consent.
- (4) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

Current as at 23 September 2024

Page 249

Authorised by the Parliamentary Counsel

Schedule 1 The Criminal Code

Part 5 Offences against the person and relating to marriage and parental rights and duties

Chapter 32 Rape and sexual assaults

[s 350]

- (5) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

350 Attempt to commit rape

- (1) Any person who attempts to commit the crime of rape is guilty of a crime, and is liable to imprisonment for 14 years.
- (2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.
- (3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

351 Assault with intent to commit rape

- (1) Any person who assaults another with intent to commit rape is guilty of a crime, and is liable to imprisonment for 14 years.
- (2) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.
- (3) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

352 Sexual assaults

- (1) Any person who—
 - (a) unlawfully and indecently assaults another person; or
 - (b) procures another person, without the person's consent—
 - (i) to commit an act of gross indecency; or

- (ii) to witness an act of gross indecency by the person or any other person;

is guilty of a crime.

Maximum penalty—10 years imprisonment.

- (2) However, the offender is liable to a maximum penalty of 14 years imprisonment for an offence defined in subsection (1)(a) or (1)(b)(i) if the indecent assault or act of gross indecency includes bringing into contact any part of the genitalia or the anus of a person with any part of the mouth of a person.
- (3) Further, the offender is liable to a maximum penalty of life imprisonment if—
 - (a) immediately before, during, or immediately after, the offence, the offender is, or pretends to be, armed with a dangerous or offensive weapon, or is in company with any other person; or
 - (b) for an offence defined in subsection (1)(a), the indecent assault includes the person who is assaulted penetrating the offender's vagina, vulva or anus to any extent with a thing or a part of the person's body that is not a penis; or
 - (c) for an offence defined in subsection (1)(b)(i), the act of gross indecency includes the person who is procured by the offender penetrating the vagina, vulva or anus of the person who is procured or another person to any extent with a thing or a part of the body of the person who is procured that is not a penis.
- (4) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.
- (5) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

Appendix 14: Cross-jurisdictional comparison of the legislative purposes of sentencing

Table A35: Cross-Jurisdictional comparison of purposes of sentencing: Victim harm and perpetrator accountability

	Qld	ACT	NSW	SA	Canada	New Zealand
Purposes of sentencing	<p>(9) Sentencing guidelines</p> <p>The only purposes for which sentences may be imposed on an offender are—</p> <p>to punish the offender to an extent or in a way that is just in all the circumstances; or</p> <p>to provide conditions in the court's order that the court considers will help the offender to be rehabilitated; or</p> <p>to deter the offender or other persons from committing the same or a similar offence; or</p> <p>to make it clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved; or</p> <p>to protect the Queensland community from the offender; or</p>	<p>7 Sentencing purposes</p> <p>(1) A court may impose a sentence on an offender for 1 or more of the following purposes:</p> <p>to ensure that the offender is adequately punished for the offence in a way that is just and appropriate;</p> <p>to prevent crime by deterring the offender and other people from committing the same or similar offences;</p> <p>to protect the community from the offender;</p> <p>to promote the rehabilitation of the offender;</p> <p>to make the offender accountable for his or her actions;</p> <p>to denounce the conduct of the offender;</p>	<p>3A Purposes of sentencing</p> <p>The purposes for which a court may impose a sentence on an offender are as follows—</p> <p>to ensure that the offender is adequately punished for the offence,</p> <p>to prevent crime by deterring the offender and other persons from committing similar offences,</p> <p>to protect the community from the offender,</p> <p>to promote the rehabilitation of the offender,</p> <p>to make the offender accountable for his or her actions,</p> <p>to denounce the conduct of the offender,</p> <p>to recognise the harm done to the victim of the crime and the community.</p>	<p>3 Primary sentencing purpose</p> <p>The primary purpose for sentencing a defendant for an offence is to protect the safety of the community (whether as individuals or in general).</p> <p>4 Secondary sentencing purposes</p> <p>The secondary purposes for sentencing a defendant for an offence are as follows:</p> <p>to ensure that the defendant—</p> <p>is punished for the offending behaviour; and</p> <p>is held accountable to the community for the offending behaviour</p> <p>to publicly denounce the offending behaviour;</p> <p>to publicly recognise the harm done to the</p>	<p>Purpose</p> <p>718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:</p> <p>to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;</p> <p>to deter the offender and other persons from committing offences;</p> <p>to separate offenders from society, where necessary;</p> <p>to assist in rehabilitating offenders;</p> <p>to provide reparations for harm done to victims or to the community; and</p>	<p>7 Purposes of sentencing or otherwise dealing with offenders</p> <p>The purposes for which a court may sentence or otherwise deal with an offender are—</p> <p>to hold the offender accountable for harm done to the victim and the community by the offending;</p> <p>or</p> <p>to promote in the offender a sense of responsibility for, and an acknowledgment of, that harm; or</p> <p>to provide for the interests of the victim of the offence; or</p> <p>to provide reparation for harm done by the offending;</p> <p>or</p> <p>to denounce the conduct in which the offender was involved; or</p> <p>to deter the offender or other persons from committing the same or a similar offence; or</p>

	Qld	ACT	NSW	SA	Canada	New Zealand
	a combination of 2 or more of the purposes mentioned in paragraphs (a) to (e).	to recognise the harm done to the victim of the crime and the community. (2) To remove any doubt, nothing about the order in which the purposes appear in subsection (1) implies that any purpose must be given greater weight than any other purpose.		community and to any victim of the offending behaviour; to deter the defendant and others in the community from committing offences; (da) to deter the defendant and others in the community from harming or assaulting prescribed emergency workers (within the meaning of section 20AA of the Criminal Law Consolidation Act 1935) acting in the course of official duties; to promote the rehabilitation of the defendant.	to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.	to protect the community from the offender; or to assist in the offender's rehabilitation and reintegration; or a combination of 2 or more of the purposes in paragraphs (a) to (h).
Purposes of Act	3 Purposes The purposes of this Act include— collecting into a single Act general powers of courts to sentence offenders; and providing for a sufficient range of sentences for the appropriate punishment and rehabilitation of offenders, and, in appropriate circumstances, ensuring that protection of the Queensland community	6 Objects of Act The objects of this Act include the following: to promote respect for the law and the maintenance of a just and safe society; to provide a range of sentencing options; to maximise the opportunity for imposing sentences that are constructively adapted to individual offenders; to promote flexibility in sentencing;	N/A	N/A	N/A	3 Purposes The purposes of this Act are— to set out the purposes for which offenders may be sentenced or otherwise dealt with; and to promote those purposes, and aid in the public's understanding of sentencing practices, by providing principles and guidelines to be applied by courts in sentencing or otherwise dealing with offenders; and

Qld	ACT	NSW	SA	Canada	New Zealand
<p>is a paramount consideration; and encouraging particular offenders to cooperate with law enforcement agencies in proceedings or investigations about major criminal offences; and promoting consistency of approach in the sentencing of offenders; and providing fair procedures—for imposing sentences; and</p> <p>for dealing with offenders who contravene the conditions of their sentence; and providing sentencing principles that are to be applied by courts; and making provision so that offenders are not imprisoned for non-payment of fines without the opportunity of obtaining a fine option order; and promoting public understanding of sentencing practices and procedures; and generally reforming the sentencing laws of Queensland; and providing for the imposition of an offender levy.</p>	<p>to consolidate legislation relating to the imposition of sentences.</p>				<p>to provide a sufficient range of sentences and other means of dealing with offenders; and to provide for the interests of victims of crime.</p>

	Qld	ACT	NSW	SA	Canada	New Zealand
Further recognition of harm	<p>(9) Sentencing guidelines In sentencing an offender, a court must have regard to—</p> <p>(c) the nature of the offence and how serious the offence was, including— any physical, mental or emotional harm done to a victim, including harm mentioned in information relating to the victim given to the court under section 179K.</p>	<p>33 Sentencing — relevant considerations In deciding how an offender should be sentenced (if at all) for an offence, a court must consider whichever of the following matters are relevant and known to the court: any injury, loss or damage resulting from the offence; the effect of the offence on the victims of the offence, the victims' families and anyone else who may make a victim impact statement; Note 1 For who may make a victim impact statement, see s 49. Note 2 The court must not draw any inference about the harm suffered by a victim from the fact that a victim impact statement is not given to the court in relation to the offence (see s 53 (1) (b)). if a victim of the offence was a pregnant woman—whether the offender knew, or ought reasonably to have known, that the woman was pregnant; and whether the offender intended to cause, or was reckless about causing,</p>	<p>21A Aggravating, mitigating and other factors in sentencing Aggravating factors The aggravating factors to be taken into account in determining the appropriate sentence for an offence are as follows— the injury, emotional harm, loss or damage caused by the offence was substantial, Mitigating factors The mitigating factors to be taken into account in determining the appropriate sentence for an offence are as follows— the injury, emotional harm, loss or damage caused by the offence was not substantial, Mitigating factors The mitigating factors to be taken into account in determining the appropriate sentence for an offence are as follows— (a) the injury, emotional harm, loss or damage caused by the offence was not substantial,</p>	<p>11 Individual sentencing factors In determining a sentence for an offence, a court must take into account such of the factors as are known to the court that relate to the following matters as may be relevant: the extent of any injury, emotional harm, loss or damage resulting from the offence or any significant risk or danger created by the offence, including any risk to national security</p>	<p>Other sentencing principles 718.2 A court that imposes a sentence shall also take into consideration the following principles: a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing, (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation shall be deemed to be aggravating circumstances</p>	<p>9 Aggravating and mitigating factors In sentencing or otherwise dealing with an offender the court must take into account the following aggravating factors to the extent that they are applicable in the case: the extent of any loss, damage, or harm resulting from the offence</p>

Qld	ACT	NSW	SA	Canada	New Zealand
	<p>loss of or harm to the pregnancy; and the loss of or harm to the pregnancy; and whether the offender intended to cause, or was reckless about causing, the death of or harm to a child born alive as a result of the pregnancy; and the death of or harm to a child born alive as a result of the pregnancy; if the victim of the offence was a vulnerable person— whether the offender knew, or ought reasonably to have known— (a) that the victim was a vulnerable person; or (b) that the victim was a vulnerable person and the extent of the person's vulnerability; and the loss or harm to the vulnerable person; (h) any action the offender may have taken to make reparation for any injury, loss or damage resulting from the offence;</p>				

Appendix 15: Cross jurisdictional comparison of rape and sexual assault offence and penalties

This appendix compares Queensland's offence and penalty frameworks for rape and sexual assault with the equivalent offences in Australia and select international jurisdictions. This analysis is focused on offences committed against adults and does not include details of specific offences against children. Code jurisdictions are shared grey.

15.1 Australian jurisdictions

Table A36: Queensland compared to other Australian jurisdictions: comparison of rape and sexual assault offence and penalties

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
Legislation	<i>Criminal Code Act 1899</i> (Qld) sch 1 (' <i>Criminal Code</i> (Qld)')	<i>Crimes Act 1900</i> (NSW)	<i>Crimes Act 1958</i> (Vic)	<i>Crimes Act 1900</i> (SA)	<i>Crimes Act 1900</i> (ACT)	<i>Criminal Code Act Compilation Act 1913</i> (WA) sch (' <i>The Criminal Code</i> (WA)') ¹⁶⁸	<i>Criminal Code Act 1983</i> (NT) sch 1 (' <i>Criminal Code</i> (NT)')	<i>Criminal Code Act 1924</i> (Tas) sch 1 (' <i>Criminal Code</i> (Tas)')
Sexual intercourse without consent (rape)	Rape - Life imprisonment (s 349)	<ul style="list-style-type: none"> Sexual assault - 14 years (s 61I) Aggravated sexual assault - 20 years imprisonment (s 61J) Aggravated sexual assault, 	Rape - 25 years imprisonment (s 38)	Rape - Life imprisonment (s 48)	<ul style="list-style-type: none"> Sexual intercourse without consent - 12 years imprisonment (s 54) Sexual intercourse without consent in company - 14 years imprisonment (s 54(3)) 	<ul style="list-style-type: none"> Sexual penetration without consent - 14 years imprisonment (s 325) Aggravated sexual penetration without consent - 20 years imprisonment (s 326) 	Sexual intercourse without consent - Life imprisonment (s 208H)	Rape - 21 years imprisonment ¹⁶⁹ (s 185)

¹⁶⁸ The Western Australian Law Reform Commission recently completed its review, *Project 113: Sexual Offences*, and recommended changes to several sexual offences, including maximum penalties and definitions.

¹⁶⁹ *Criminal Code* (Tas) s 389(3).

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
		in company – Life imprisonment (s 61JA)			<ul style="list-style-type: none"> Aggravated sexual intercourse without consent (involving family violence) – 15 years imprisonment (s 54(2)) Aggravated sexual intercourse without consent (involving family violence) committed in company – 18 years imprisonment (s 54(4)) 			
Definition of the offence	<p>(1) Any person who rapes another person is guilty of a crime.</p> <p>(2) A person rapes another person if—</p> <p>(a) the person who engages in penile intercourse with the other person without the other person's consent; or</p> <p>(b) the person penetrates the vulva, vagina or anus of the other person to any extent with a</p>	Any person who has sexual intercourse with another person without the consent of the other person and who knows that the other person does not consent to the sexual intercourse.	<p>(1) A person (A) commits an offence if –</p> <p>a) A intentionally sexually penetrates another person (B); and</p> <p>b) B does not consent to the penetration; and</p> <p>c) A does not reasonably believe that B consents to the penetration.</p>	<p>(1) A person (the offender) is guilty of the offence of rape if he or she engages, or continues to engage, in sexual intercourse with another person who—</p> <p>(a) does not consent to engaging in the sexual intercourse; or</p> <p>(b) has withdrawn consent to the sexual intercourse, and the offender knows, or is recklessly indifferent to, the fact that the other person does not so consent or</p>	<p>(1) A person who engages in sexual intercourse with another person without the consent of that other person and who is reckless as to whether that other person consents to the sexual intercourse is guilty of an offence punishable, on conviction</p> <p>(5) For this section, proof of knowledge or recklessness is sufficient to establish the element of recklessness.</p>	<p>(1) A person who sexually penetrates another person without the consent of that person is guilty of a crime.</p>	<p>(1) A person commits an offence if:</p> <p>(a) the person intentionally engages in sexual intercourse with another person; and</p> <p>(b) the other person does not consent to the sexual intercourse and the person is reckless in relation to the other person's lack of consent.</p>	(1): Any person who has sexual intercourse with another person without that person's consent is guilty of a crime.

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
	<p>thing or a part of the person's body that is not a penis without the other person's consent; or</p> <p>(c) the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.</p> <p>(3)For this section, a child under the age of 12 years is incapable of giving consent.</p>			has so withdrawn consent (as the case may be).				
Definition of sexual penetration	<p>Engage in penile intercourse –</p> <p>(1) Penile intercourse is the penetration, to any extent, of the vagina, vulva or anus of a person by the penis of another person.</p> <p>(2) A person engages in penile intercourse with another person if—</p>	<p>Sexual intercourse means—</p> <p>(a) the penetration to any extent of the genitalia or anus of a person by—</p> <p>(i) any part of the body of another person, or</p> <p>(ii) any object manipulated by another person, or</p> <p>(b) the introduction of any part of the genitalia of a person</p>	<p>Sexual penetration is defined as:</p> <p>(1) A person (A) sexually penetrates another person (B) if—</p> <p>(a) A introduces (to any extent) a part of A's body or an object into B's vagina; or</p> <p>(b) A introduces (to any extent) a part of A's</p>	<p>sexual intercourse includes any activity (whether of a heterosexual or homosexual nature) consisting of or involving—</p> <p>(a) penetration of a person's vagina, labia majora or anus by any part of the body of another person or by any object; or</p> <p>(b) fellatio; or</p> <p>(c) cunnilingus, and</p>	<p>Sexual intercourse means any of the following:</p> <p>(a) the penetration, to any extent, of the genitalia or anus of a person by any part of the body of another person, except if that penetration is</p>	<p>'to sexually penetrate' means:</p> <p>(a) to penetrate the vagina (which term includes the labia majora), the anus, or the urethra of any person with —</p> <p>(i) any part of the body of another person; or</p> <p>(ii) an object manipulated by another person, except where the penetration is carried</p>	<p>Sexual intercourse means any of the following -</p> <p>(a) the penetration (to any extent) of the genitals or anus of a person with any part of the body of a person or with anything controlled by a person; (b) the penetration (to any extent) of the mouth of a person with the penis of a person; (c) cunnilingus;</p>	<p>Sexual intercourse means –</p> <p>(a) the penetration, to the least degree, of a person's vagina, genitalia, anus or mouth by a penis; or</p> <p>(b) the penetration, to the least degree, of a person's vagina, genitalia or anus by a body part of a person other than a penis; or</p>

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
	(a)the person penetrates, to any extent, the vagina, vulva or anus of another person with the person's penis; or (b)the person's vagina, vulva or anus is penetrated, to any extent, by the penis of another person.	into the mouth of another person, or (c) the application of the mouth or tongue to the female genitalia, or (d) the continuation of sexual intercourse as defined in paragraph (a), (b) or (c).	body or an object into B's anus; or (c) A introduces (to any extent) their penis into B's mouth; or (d) A, having introduced a part of A's body or an object into B's vagina, continues to keep it there; or (e) A, having introduced a part of A's body or an object into B's anus, continues to keep it there; or (f) A, having introduced their penis into B's mouth, continues to keep it there.	includes a continuation of such activity;	carried out for a proper medical purpose or is otherwise authorised by law; or (b) the penetration, to any extent, of the genitalia or anus of a person by an object, being penetration carried out by another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorised by law; (c) the introduction of any part of the penis of a person into the mouth of another person; or (d) fellatio; or	out for proper medical purposes; or (b) to manipulate any part of the body of another person so as to cause penetration of the vagina (which term includes the labia majora), the anus, or the urethra of the offender by part of the other person's body; or (c) to introduce any part of the penis of a person into the mouth of another person; or (d) to engage in cunnilingus or fellatio; or (e) to continue sexual penetration as defined in paragraph (a), (b), (c) or (d) Note: the offences of sexual coercion (s 327) and aggravated sexual coercion (s 328) involve compelling a victim to engage in sexual behaviour, which includes sexual penetration (s 319).	(d) fellatio; (e) the continuation of an act mentioned in paragraphs (a) to (d).	(c) the penetration, to the least degree, of a person's vagina, genitalia or anus by an object held or manipulated by, or attached to, another person; or (d) the continuation of an act of penetration referred to in paragraph (a), (b) or (c) of this definition.

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
					(e) cunnilingus or (f) the continuation of an act mentioned in paragraphs (a) to (d). (Crimes Act, s 208G)			
Circumstances of aggravation	N/A	For sexual assault, circumstances of aggravation are— (a) at the time of, or immediately before or after, the commission of the offence, the accused person intentionally or recklessly inflicts actual bodily harm on the complainant or any other person who is present or nearby, or (b) at the time of, or immediately before or after, the commission of the offence, the accused person threatens to inflict actual bodily harm on the complainant or any other person who is present or nearby by	N/A	Section 5AA—Aggravated offences Examples include: (a) the offender committed the offence in the course of deliberately and systematically inflicting severe pain on the victim; (b) the offender used, or threatened to use, an offensive weapon to commit, or when committing, the offence;	Section 72AA(2) The offence is an aggravated offence if the offence involves family violence.	Circumstances of aggravation (s 319): • Armed with a weapon or pretends to be • In company with another person/s • Does bodily harm to any persons • Act is 'likely to seriously and substantially to degrade or humiliate the victim' • Threatens to kill the victim • Victim is aged 13 to under 16 years (And circumstances of aggravation listed in s 221 – (a) the offender is in a family relationship with the victim of the offence, other than where subsection (1A) applies; or	N/A	N/A

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
		<p>means of an offensive weapon or instrument, or</p> <p>(b1) at the time of, or immediately before or after, the commission of the offence, the accused person threatens to inflict grievous bodily harm or wounding on the complainant or any other person who is present or nearby, or</p> <p>(c) the accused person is in the company of another person or persons, or</p> <p>(d) the complainant is under the age of 16 years, or</p> <p>(e) the complainant is (whether generally or at the time of the commission of the offence) under the authority of the accused person, or</p> <p>(f) the complainant has a serious physical disability, or</p>				<p>(b) a child was present when the offence was committed, other than where subsection (1A) applies; or</p> <p>(c) the conduct of the offender in committing the offence constituted a breach of an order, other than an order under Part 1C, made or registered under the Restraining Orders Act 1997 or to which that Act applies; or</p> <p>(d) the victim is of or over the age of 60 years.</p> <p>(1A) This subsection applies if –</p> <p>(a) the offender was a child at the time of the commission of the relevant offence; and</p> <p>(b) the only circumstance of aggravation is the offender was in a family relationship with the victim at the time of the commission of the offence, or a child was present at the</p>		

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
		<p>(g) the complainant has a cognitive impairment, or</p> <p>(h) the accused person breaks and enters into any dwelling-house or other building with the intention of committing the offence or any other serious indictable offence, or</p> <p>(i) the accused person deprives the complainant of his or her liberty for a period before or after the commission of the offence.</p> <p>Aggravated in company</p> <p>(1) A person—</p> <p>(a) who has sexual intercourse with another person without the consent of the other person and who knows that the other person does not consent to the sexual intercourse, and</p> <p>(b) who is in the company of another</p>				time of the commission of the offence, or both.		

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
		<p>person or persons, and</p> <p>(c) who—</p> <p>(i) at the time of, or immediately before or after, the commission of the offence, intentionally or recklessly inflicts actual bodily harm on the complainant or any other person who is present or nearby, or</p> <p>(ii) at the time of, or immediately before or after, the commission of the offence, threatens to inflict actual bodily harm on the complainant or any other person who is present or nearby by means of an offensive weapon or instrument, or</p> <p>(iii) deprives the complainant of his or her liberty for a period before or after the commission of the offence,</p>						
Separate rape (or equivalent) offence for children?	No	Yes - sexual intercourse with a child under 10 (s 66A) and sexual intercourse with a	Yes - Sexual penetration of a child under the age of 12 (s 49A), sexual penetration	Yes, Unlawful sexual intercourse (s 49)	Yes - Sexual intercourse with young person (s 55)	Yes – Child under 13, sexual offences against (s 320) and Child of or over 13 and under 16, sexual	Yes – Sexual intercourse – child under 16 years (s 208J)	Yes - Penetrative sexual abuse of child or young person (in defined circumstances)

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
		child between 10 and 16 (s 66C)	of a child under the age of 16 (s 49B)			offences against (s 321)		(s 124)
Indecent assault & gross indecency (non-penetrative)	<ul style="list-style-type: none"> Sexual assault (procures to commit or witness gross indecency) – 10 years imprisonment (s 352(1)) Sexual assault (indecent assault) – 10 years imprisonment (s 352(1)) 	<ul style="list-style-type: none"> Sexual act (simpliciter) – 18 months imprisonment (s 61KE) Sexual act (aggravated) – 3 years imprisonment (s 61KF) Sexual touching (simpliciter) – 5 years imprisonment (s 61KC) Sexual touching (aggravated) – 7 years imprisonment (s 61KD) 	<ul style="list-style-type: none"> Sexual assault (non-consensual sexual touching) – 10 years imprisonment (s 40) Sexual assault by compelling sexual touching – 10 years imprisonment (s 41) 	<ul style="list-style-type: none"> Indecent assault – 8 years imprisonment (s 56(1)(a)) Aggravated indecent assault (other than the offences involving child under 17 or 14 years) – 10 years imprisonment (s 56(1)(b)) Indecent assault under 17 years – 10 years imprisonment (s 56(1)(c)) Indecent assault under 14 years – 15 years imprisonment (s 56(1)(d)) Acts of gross indecency – 15 years imprisonment (s 58) 	<ul style="list-style-type: none"> Act of indecency without consent – 7 years imprisonment (s 60(1)) Aggravated act of indecency without consent (offence involves family violence) – 9 years imprisonment (s 60(2)) Act of indecency without consent in company – 9 years imprisonment (s 60(3)) Aggravated Act of indecency without consent in company (involves family violence) – 11 years imprisonment (s 60(4)) 	<ul style="list-style-type: none"> Summary indecent assault – 2 years imprisonment & a fine of \$24,000 (s 323) Indecent assault – 5 years imprisonment (s 323) Summary aggravated indecent assault – 3 years imprisonment and a fine of \$36,000 (s 324) Aggravated indecent assault – 7 years imprisonment (s 324) 	<ul style="list-style-type: none"> Indecent touching or act – without consent – 5 years imprisonment (s 208HC) Aggravated indecent touching or act – without consent – 7 years imprisonment (s 208HC) Compelling indecent touching or act – without consent – 5 years imprisonment (s 208HD) Aggravated Compelling indecent touching or act – without consent – 7 years imprisonment (s 208HD) Gross indecency – without consent – 14 years imprisonment (s 208HB) Aggravated gross indecency – without 	Indecent assault – 21 years imprisonment ¹⁷⁰ (s 127)

¹⁷⁰ Criminal Code (Tas) s 389(3).

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
							consent – 17 years imprisonment (s 208HB)	
Definition	<p>(1) Any person who—</p> <p>(a) unlawfully and indecently assaults another person; or</p> <p>(b) procures another person, without the person's consent—</p> <p>(i) to commit an act of gross indecency; or</p> <p>(ii) to witness an act of gross indecency by the person or any other person.</p>	<p>Sexual act –</p> <p>Any person (the accused person) who without the consent of another person (the complainant) and knowing that the complainant does not consent intentionally—</p> <p>(a) carries out a sexual act with or towards the complainant, or</p> <p>(b) incites the complainant to carry out a sexual act with or towards the accused person, or</p> <p>(c) incites a third person to carry out a sexual act with or towards the complainant, or</p> <p>(d) incites the complainant to carry out a sexual act with or towards a third person, is guilty of an offence.</p> <p>Meaning of sexual act:</p>	<p>Sexual assault -</p> <p>(1) A person (A) commits an offence if—</p> <p>(a) A intentionally touches another person (B); and</p> <p>(b) the touching is sexual; and</p> <p>(c) B does not consent to the touching; and</p> <p>(d) A does not reasonably believe that B consents to the touching</p> <p>Sexual assault by compelling sexual touching –</p> <p>(1) A person (A) commits an offence if—</p> <p>(a) A intentionally causes another person (B)—</p> <p>(i) to touch A; or</p> <p>(ii) to touch themselves; or</p> <p>(iii) to touch another person (C) or an</p>	<p>Indecent assault</p> <p>(1) A person who indecently assaults another is guilty of an offence.</p> <p>Acts of gross indecency</p> <p>(1) Any person who, in public or in private—</p> <p>(a) commits any act of gross indecency with, or in the presence of, any person under the age of sixteen years;</p> <p>(b) incites or procures the commission by any such person of any act of gross indecency with the accused, or in the presence of the accused, or with any other person in the presence of the accused;</p> <p>(c) is otherwise a party to the commission of any act of gross indecency by or</p>	<p>(1) A person who commits an act of indecency on, or in the presence of, another person without the consent of that person and who is reckless as to whether that other person consents to the committing of the act of indecency is guilty of an offence.</p>	<p>Indecent assault</p> <p>A person who unlawfully and indecently assaults another person is guilty of a crime</p> <p>Indecent act means an indecent act which is —</p> <p>(a) committed in the presence of or viewed by any person; or</p> <p>(b) photographed, videotaped, or recorded in any manner;</p>	<p>Indecent touching or act – without consent</p> <p>(1) A person commits an offence if:</p> <p>(a) the person intentionally:</p> <p>(i) touches another person; or</p> <p>(ii) engages in an act directed at another person; and</p> <p>(b) the touching or act is indecent; and</p> <p>(c) the other person does not consent to the touching or act and the person is reckless in relation to the other person's lack of consent.</p> <p>(2) A person commits an offence if:</p> <p>(a) the person intentionally engages in conduct; and</p> <p>(b) the conduct results in the person being touched by another person and the person intends that result; and</p> <p>(c) the touching is indecent; and</p> <p>(d) the other person does not consent to the touching and the</p>	<p>(1) Any person who unlawfully and indecently assaults another person is guilty of a crime.</p>

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
		<p>(1) For the purposes of this Division, sexual act means an act (other than sexual touching) carried out in circumstances where a reasonable person would consider the act to be sexual.</p> <p>(1A) The continuation of a sexual act as defined in subsection (1) is also a sexual act for the purposes of this Division.</p> <p>(2) The matters to be taken into account in deciding whether a reasonable person would consider an act to be sexual include—</p> <p>(a) whether the area of the body involved in the act is a person's genital area, anal area or breasts—</p> <p>(i) whether or not the breasts are sexually developed, and</p>	<p>animal; or</p> <p>(iv) to be touched by C or by an animal; and</p> <p>(b) the touching is sexual; and</p> <p>(c) B does not consent to the touching; and</p> <p>(d) A does not reasonably believe that B consents to the touching.</p>	<p>with, or in the presence of, any such person, or by or with any other person in the presence of any such person, or by any such person with any other person in the presence of the accused,</p> <p>shall be guilty of an offence.</p>			<p>person is reckless in relation to the other person's lack of consent.</p> <p>Gross indecency – without consent</p> <p>(1) A person commits an offence if:</p> <p>(a) the person intentionally performs an act on another person; and</p> <p>(b) the act is grossly indecent; and</p> <p>(c) the other person does not consent to the act being performed and the person is reckless in relation to the other person's lack of consent.</p> <p>Compelling indecent touching or act – without consent</p> <p>(1) A person commits an offence if:</p> <p>(a) the person intentionally compels, by force or otherwise, another person:</p> <p>(i) to touch any part of the other person's own body; or</p> <p>(ii) to touch, or to be touched by, someone else or an animal; or</p>	

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
		<p>(ii) regardless of the person's gender or sex, or</p> <p>(b) whether the person carrying out the act does so for the purpose of obtaining sexual arousal or sexual gratification, or</p> <p>(c) whether any other aspect of the act (including the circumstances in which it is carried out) makes it sexual.</p> <p>(3) An act carried out solely for proper medical or hygienic purposes is not a sexual act for the purposes of this Division.</p> <p>Sexual touching – Any person (the accused person) who without the consent of another person (the complainant) and knowing that the complainant does not consent intentionally—</p> <p>(a) sexually touches the complainant, or</p>					<p>(iii) to engage in an act; and</p> <p>(b) the touching or act is indecent; and</p> <p>(c) the other person does not consent to the touching or act and the person is reckless in relation to the other person's lack of consent.</p>	

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
		<p>(b) incites the complainant to sexually touch the accused person, or</p> <p>(c) incites a third person to sexually touch the complainant, or</p> <p>(d) incites the complainant to sexually touch a third person, is guilty of an offence.</p> <p>Meaning of sexual touching -</p> <p>(1) For the purposes of this Division, sexual touching means a person touching another person—</p> <p>(a) with any part of the body or with anything else, or</p> <p>(b) through anything, including anything worn by the person doing the touching or by the person being touched, in circumstances where a reasonable person would consider the touching to be sexual.</p>						

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
		<p>(1A) The continuation of sexual touching as defined in subsection (1) is also sexual touching for the purposes of this Division.</p> <p>(2) The matters to be taken into account in deciding whether a reasonable person would consider touching to be sexual include—</p> <p>(a) whether the area of the body touched or doing the touching is the person's genital area, anal area or breasts—</p> <p>(i) whether or not the breasts are sexually developed, and</p> <p>(ii) regardless of the person's gender or sex, or</p> <p>(b) whether the person doing the touching does so for the purpose of obtaining sexual arousal or sexual gratification, or</p> <p>(c) whether any other aspect of the</p>						

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
		touching (including the circumstances in which it is done) makes it sexual. (3) Touching carried out solely for proper medical or hygienic purposes is not sexual touching for the purposes of this Division.						
Circumstances of aggravation	N/A	circumstances of aggravation for both offences are— (a) the accused person is in the company of another person or persons, or (b) the complainant is (whether generally or at the time of the commission of the offence) under the authority of the accused person, or (c) the complainant has a serious physical disability, or (d) the complainant has a cognitive impairment.	N/A	Section 5AA—Aggravated offences Examples include: (a) the offender committed the offence in the course of deliberately and systematically inflicting severe pain on the victim; (b) the offender used, or threatened to use, an offensive weapon to commit, or when committing, the offence;	Section 72AA(2) The offence is an aggravated offence if the offence involves family violence	Circumstances of aggravation (s 319): • Armed with a weapon or pretends to be • In company with another person/s • Does bodily harm to any persons • Act is 'likely to seriously and substantially to degrade or humiliate the victim' • Threatens to kill the victim • Victim is aged 13 to under 16 years	N/A	N/A
Separate sexual assault (or equivalent) offence for children?	Yes - Indecent treatment of a child under 16 (s 210)	Yes • Sexual touching child under 10 (s 66DA) and child 10-16 (s 66DB)	Yes – Sexual assault of a child under the age of 16 (s 49D) and Sexual assault of a child aged 16 or	No, general offence applies to adults and children. However, for the offence of indecent assault and compelled sexual	Yes. Acts of indecency with young people (s 61) and Acts of indecency with young person under special care (s 61A)	Yes – Child under 13, sexual offences against (s 320) and Child of or over 13 and under 16, sexual	Yes – Gross indecency – child under 16 years (s 208JB), Indecent touching or act – child under 16 years (s 208JC), Causing	Yes - Indecent act with child or young person (s 125B)

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
		<ul style="list-style-type: none"> Sexual act offences child under 10 and 10-16 (ss 66DC, 66DD), aggravated sexual act child 10-16 (s 66DE) 	17 under care, supervision or authority (s 49E)	manipulation, the maximum penalty is higher where victim is a child.		offences against (s 321)	indecent touching or act – child under 16 years (s 208JD) and Exposure to indecent thing or act – child under 16 years (s 208JE)	
Mouth-genital contact (penetrative and non-penetrative)	Aggravated indecent assault (bringing mouth into contact with genitalia or anus) – 14 years imprisonment (s 352(2))	<ul style="list-style-type: none"> Sexual assault – 14 years (s 61I) Aggravated sexual assault – 20 years imprisonment (s 61J) Aggravated sexual assault, in company – Life imprisonment (s 61JA) 	<ul style="list-style-type: none"> Sexual assault (non-consensual sexual touching) – 10 years imprisonment (s 40) Sexual assault by compelling sexual touching – 10 years imprisonment (s 41) In cases involving a male victim of non-consenting oral sex - Rape by compelling sexual penetration – 25 years imprisonment 	Rape - Life imprisonment (s 48)	<ul style="list-style-type: none"> Sexual intercourse without consent – 12 years imprisonment (s 54) Sexual intercourse without consent in company – 14 years imprisonment (s 54(3)) Aggravated sexual intercourse without consent (involving family violence) – 15 years imprisonment (s 54(2)) Aggravated sexual intercourse without consent (involving family violence) committed in company – 18 years imprisonment (s 54(4)) 	<ul style="list-style-type: none"> Sexual penetration without consent – 14 years imprisonment (s 325) Aggravated sexual penetration without consent – 20 years imprisonment (s 326) 	Sexual intercourse without consent – Life imprisonment (s 208H)	Indecent assault – 21 years imprisonment ¹⁷¹ (s 127)

¹⁷¹ Criminal Code (Tas) s 389(3).

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
Definition	(2) ...an offence defined in subsection (1)(a) or (1)(b)(i) if the indecent assault or act of gross indecency includes bringing into contact any part of the genitalia or the anus of a person with any part of the mouth of a person e.g., offender does not penetrate a victim's vulva or vagina with tongue or fingers or offender puts a victim's penis in their mouth.	Sexual intercourse includes: (b) the introduction of any part of the genitalia of a person into the mouth of another person, or (c) the application of the mouth or tongue to the female genitalia, or	(1) A person (A) commits an offence if— (a) A intentionally causes another person (B)— (i) to sexually penetrate A; or	Sexual intercourse includes: (b) fellatio; or (c) cunnilingus,	Sexual intercourse includes: (a) the introduction of any part of the penis of a person into the mouth of another person; or (b) fellatio; or (c) cunnilingus or	Sexual penetration includes: (c) to introduce any part of the penis of a person into the mouth of another person; or (d) to engage in cunnilingus or fellatio; or	Sexual intercourse includes: (b) the penetration (to any extent) of the mouth of a person with the penis of a person; (c) cunnilingus; (d) fellatio;	(1) Any person who unlawfully and indecently assaults another person is guilty of a crime
Circumstances of aggravation	N/A	See provisions above	N/A	N/A	Section 72AA(2) The offence is an aggravated offence if the offence involves family violence	Circumstances of aggravation (s 319): • Armed with a weapon or pretends to be • In company with another person/s • Does bodily harm to any persons • Act is 'likely to seriously and substantially to	Aggravated offence means an offence in which a circumstance of aggravation is mentioned in section 208P applies. 208P Increased penalty for aggravated offence	N/A

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
						<p>degrade or humiliate the victim'</p> <ul style="list-style-type: none"> •Threatens to kill the victim •Victim is aged 13 to under 16 years 	<p>(1) The following are circumstances of aggravation for an offence committed against this Part, and a maximum penalty</p> <p>(b) the offence was committed by the use or threatened use of an offensive weapon;</p> <p>(c)the offence was committed by a person in the company of another person;</p> <p>(d) the offence was committed in circumstances that involved the victim being caused serious harm or being threatened with serious harm or death;</p> <p>(e) the offence was committed against a child under 16 years of age, except in the case of an offence against Division 3;</p> <p>(f) the offence was committed against a person in abuse of a position of trust, except in the case of an offence against Division 4 or 5;</p> <p>(g)the offence was committed against a</p>	

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
							person in abuse of a position of authority, except in the case of an offence against Division 4. (2) For subsection (1)(a), the offence was committed during torture if the person who committed it deliberately and systematically, over a period, inflicted severe pain on the person against whom it was committed.	
Victim compelled to self-penetrate or penetrate another person	Aggravated sexual assault (i.e. armed, in company, or person assaulted penetrates offender's vagina, vulva, anus with thing or body part (not a penis) – Life imprisonment (s 352(3))	<ul style="list-style-type: none"> Sexual assault by forced self-manipulation – 14 years imprisonment (s 80A(2)) Aggravated sexual assault by forced self-manipulation – 20 years imprisonment (s 80A(2A)) 	Rape by compelling sexual penetration – 25 years imprisonment (s 39)	<ul style="list-style-type: none"> Rape – life imprisonment Compelled sexual manipulation – 10 years imprisonment Aggravated compelled sexual manipulation – 15 years imprisonment 	Act of indecency offence (see above)	<ul style="list-style-type: none"> Sexual coercion – 14 years imprisonment (s 327) Aggravated sexual coercion – 20 years imprisonment (s 326) 	Compelling sexual intercourse or penetration – without consent – life imprisonment (s 208HA)	Indecent assault – 21 years imprisonment ¹⁷² (s 127)
Definition	(3) (a) immediately before, during, or	S 80A (2) Any person who compels another person to	S 39 (1) A person (A) commits an offence if—	Rape includes - S 48 (2) A person (the offender) is	(1) A person who commits an act of	Sexual coercion - A person who compels another person to	A person commits an offence if:	(1) Any person who unlawfully and indecently assaults

¹⁷² Criminal Code (Tas) s 389(3).

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
	<p>immediately after, the offence, the offender is, or pretends to be, armed with a dangerous or offensive weapon, or is in company with any other person; or</p> <p>(b) for an offence defined in subsection (1)(a), the indecent assault includes the person who is assaulted penetrating the offender's vagina, vulva or anus to any extent with a thing or a part of the person's body that is not a penis; or</p> <p>(c) for an offence defined in subsection (1)(b)(i), the act of gross indecency includes the person who is procured by the offender penetrating the vagina, vulva or anus of the person who is</p>	<p>engage in self-manipulation, by means of a threat that the other person could not reasonably be expected to resist,</p> <p>(3) A person does not commit an offence under this section unless the person knows that the other person engages in the self-manipulation as a result of the threat.</p> <p>self-manipulation means the penetration of the vagina or anus of any person by an object manipulated by the person, except where the penetration is carried out for proper medical or other proper purposes.</p> <p>threat means—</p> <p>(a) a threat of physical force, or</p> <p>(b) intimidatory or coercive conduct, or other threat, which does not involve a</p>	<p>(a) A intentionally causes another person (B)—</p> <p>(i) to sexually penetrate A; or</p> <p>(ii) to sexually penetrate themselves; or</p> <p>(iii) to sexually penetrate another person (C) or an animal; or</p> <p>(iv) to be sexually penetrated by C or by an animal; and</p> <p>(b) B does not consent to the sexual penetration; and</p> <p>(c) A does not reasonably believe that B consents to the sexual penetration.</p>	<p>guilty of the offence of rape if he or she compels a person to engage, or to continue to engage, in—</p> <p>(a) sexual intercourse with a person other than the offender; or</p> <p>(b) an act of sexual self-penetration; or</p> <p>(c) an act of bestiality, when the person so compelled does not consent to engaging in the sexual intercourse or act, or has withdrawn consent to the sexual intercourse or act, and the offender knows, or is recklessly indifferent to, the fact that the person does not so consent or has so withdrawn consent (as the case may be).</p> <p>sexual self-penetration means the penetration by a person of the person's vagina, labia majora or anus by any part of the</p>	<p>indecent on, or in the presence of, another person without the consent of that person and who is reckless as to whether that other person consents to the committing of the act of indecency is guilty of an offence.</p>	<p>engage in sexual behaviour is guilty of a crime.</p> <p>A person is said to engage in sexual behaviour if the person –</p> <p>(a) sexually penetrates any person; or</p> <p>(b) has carnal knowledge of an animal; or</p> <p>(c) penetrates the person's own vagina (which term includes the labia majora), anus, or urethra with any object or any part of the person's body for other than proper medical purposes.</p> <p>Note: The WA LRC noted in its report in relation to sexual coercion that 'this offence is limited to cases where the complainant is compelled to penetrate another person, an animal or themselves. It does not extend to cases where the accused compels the complainant to be sexually penetrated by</p>	<p>(a) the person intentionally compels, by force or otherwise, another person:</p> <p>(i) to engage in sexual intercourse with someone else; or</p> <p>(ii) to be sexually involved with an animal; or</p> <p>(iii) to penetrate (to any extent) the other person's own genitals or anus; and</p> <p>(b) the other person does not consent to engaging in the conduct and the person is reckless in relation to the other person's lack of consent.</p>	<p>another person is guilty of a crime</p>

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
	procured or another person to any extent with a thing or a part of the body of the person who is procured that is not a penis.	threat of physical force.		<p>body of the person or by any object.</p> <p>Compelled sexual manipulation – S 48A (1) A person (the offender) is guilty of an offence if he or she, for a prurient purpose, compels a person to engage, or to continue to engage, in— (a) an act of sexual manipulation of the offender; or (b) an act of sexual manipulation of a person other than the offender; or (c) an act of sexual self-manipulation, when the person so compelled does not consent to engaging in the act, or has withdrawn consent to the act, and the offender knows, or is recklessly indifferent to, the fact that the person does not so consent or has so withdrawn consent (as the case may be).</p>		a third party or an animal. ¹⁷³		

¹⁷³ The Law Reform Commission of Western Australia, *Project 113 Sexual Offences - Final Report* (October 2023) 117.

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
				<p>sexual manipulation means the manipulation by a person of another person's genitals or anus (whether or not including sexual intercourse);</p> <p>sexual self-manipulation means the manipulation by a person of his or her genitals or anus (whether or not including sexual self-penetration, within the meaning of section 48).</p>				
Circumstances of aggravation	N/A	<p>Circumstances of aggravation means circumstances in which—</p> <p>(a) at the time of, or immediately before or after, the commission of the offence, the accused person intentionally or recklessly inflicts actual bodily harm on the complainant or any other person who is present or nearby, or</p> <p>(b) at the time of, or immediately before or after, the commission of the</p>	N/A	<p>Section 5AA—Aggravated offences</p> <p>Examples include:</p> <p>(a) the offender committed the offence in the course of deliberately and systematically inflicting severe pain on the victim;</p> <p>(b) the offender used, or threatened to use, an offensive weapon to commit, or when committing, the offence;</p>	S 72AA(2) - The offence is an aggravated offence if the offence involves family violence.	<p>Circumstances of aggravation (s 319):</p> <ul style="list-style-type: none"> • Armed with a weapon or pretends to be • In company with another person/s • Does bodily harm to any persons • Act is 'likely to seriously and substantially to degrade or humiliate the victim' • Threatens to kill the victim • Victim is aged 13 to under 16 years 	N/A	N/A

Offence type	Qld	NSW	Vic	SA	ACT	WA	NT	Tas
		<p>offence, the accused person threatens to inflict actual bodily harm on the complainant or any other person who is present or nearby by means of an offensive weapon or instrument, or</p> <p>(c) the accused person is in the company of another person or persons, or</p> <p>(d) the complainant is under the age of 16 years, or</p> <p>(e) the complainant is (whether generally or at the time of the commission of the offence) under the authority of the accused person, or</p> <p>(f) the complainant has a serious physical disability, or</p> <p>(g) the complainant has a cognitive impairment.</p>						

15.2 International jurisdictions

Queensland - *Criminal Code Act 1899* (Qld)

Canada - Criminal Code RSC 1985 c C-46

England and Wales – *Sexual Offences Act 2003* (UK)

New Zealand - *Crimes Act 1961* (NZ)

Scotland – Sexual Offences (Scotland) Act 2009

Table A37: Queensland compared to select international jurisdictions: comparison of rape and sexual assault offence and penalties

Offence type	Qld	NZ	Canada ¹⁷⁴	England & Wales	Scotland
Legislation	<i>Criminal Code Act 1899</i> (Qld)	<i>Crimes Act 1961</i> (NZ)	Criminal Code RSC 1985 c C-46	<i>Sexual Offences Act 2003</i> (UK)	<i>Sexual Offences (Scotland) Act 2009</i>
Sexual intercourse without consent (rape)	Rape - Life imprisonment (s 349)	<ul style="list-style-type: none"> Sexual violation - 20 years imprisonment (s 129B) Sexual conduct with consent induced by certain threats – 14 years imprisonment (s 129A)¹⁷⁵ 	<ul style="list-style-type: none"> Aggravated sexual assault and sexual assault with a weapon, threats to a third party or causing bodily harm where complainant is under 16 years – Life imprisonment (ss 272 and 273) Sexual assault with a weapon, threats to a third party or causing bodily harm and sexual assault when complainant is under 16 years – 14 years imprisonment (s 271(a)) Sexual assault where circumstances mentioned above do not apply and the offence is dealt 	<ul style="list-style-type: none"> Rape – Life imprisonment and a fine (s 1) Assault by penetration - Life imprisonment (s 2) 	<ul style="list-style-type: none"> Rape – Life imprisonment and a fine (s 1) Sexual assault by penetration - Life imprisonment and a fine (s 2)

¹⁷⁴ Canada does not distinguish between penetrative and non-penetrative acts

¹⁷⁵ New Zealand requires proof of threat, in contrast Queensland only requires the complainant to be 'procured'. See *R v F; Ex parte A-G* [2004] 1 Qd 162 [33] and [34] (Williams J) and *R v Hawke* [2016] QCA 144, [59] (Philippides JA).

Offence type	Qld	NZ	Canada ¹⁷⁴	England & Wales	Scotland
			<p>with on Indictment – 10 years imprisonment (s 271(a))</p> <ul style="list-style-type: none"> Sexual assault where dealt with summarily – 18 months (s 271(b)) Sexual assault where dealt with summarily and complainant is under 16 years - 2 years imprisonment (s 271(b)) 		
Definition of offence	<p>(1) Any person who rapes another person is guilty of a crime.</p> <p>(2) A person rapes another person if—</p> <p>(a) the person who engages in penile intercourse with the other person without the other person's consent; or</p> <p>(b) the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent; or</p> <p>(c) the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.</p> <p>(3) For this section, a child under the age of 12 years is incapable of giving consent.</p>	<p>Sexual violation is the act of a person who—</p> <p>(a) rapes another person; or</p> <p>(b) has unlawful sexual connection with another person.</p> <p>(2) Person A rapes person B if person A has sexual connection with person B, effected by the penetration of person B's genitalia by person A's penis,—</p> <p>(a) without person B's consent to the connection; and</p> <p>(b) without believing on reasonable grounds that person B consents to the connection.</p> <p>(3) Person A has unlawful sexual connection with person B if person A has sexual connection with person B—</p> <p>(a) without person B's consent to the connection; and</p> <p>(b) without believing on reasonable grounds that person B consents to the connection.</p> <p>(4) One person may be convicted of the sexual violation of another person at a time when they were married to each other.</p> <p>(Guideline judgment, <i>R v AM</i> illustrates that rape is penile</p>	<p>Sexual assault with a weapon, threats to a third party or causing bodily harm (s 272)</p> <p>(1) Every person commits an offence who, in committing a sexual assault,</p> <p>(a) carries, uses or threatens to use a weapon or an imitation of a weapon;</p> <p>(b) threatens to cause bodily harm to a person other than the complainant;</p> <p>(c) causes bodily harm to the complainant;</p> <p>(c.1) chokes, suffocates or strangles the complainant; or</p> <p>(d) is a party to the offence with any other person.</p> <p>Aggravated sexual assault (s 273)</p> <p>273 (1) Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.</p>	<p>Rape</p> <p>(1) A person (A) commits an offence if—</p> <p>(a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,</p> <p>(b) B does not consent to the penetration, and</p> <p>(c) A does not reasonably believe that B consents.</p> <p>(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.</p> <p>Assault by penetration</p> <p>(1) A person (A) commits an offence if—</p> <p>(a) he intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else,</p> <p>(b) the penetration is sexual,</p> <p>(c) B does not consent to the penetration, and</p> <p>(d) A does not reasonably believe that B consents.</p>	<p>Rape</p> <p>(1) If a person ("A"), with A's penis—</p> <p>(a) without another person ("B") consenting, and</p> <p>(b) without any reasonable belief that B consents, penetrates to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B then A commits an offence, to be known as the offence of rape.</p> <p>(2) For the purposes of this section, penetration is a continuing act from entry until withdrawal of the penis; but this subsection is subject to subsection (3).</p> <p>(3) In a case where penetration is initially consented to but at some point of time the consent is withdrawn, subsection (2) is to be construed as if the reference in it to a continuing act from entry were a reference to a continuing act from that point of time.</p> <p>Sexual assault by penetration</p> <p>(1) If a person ("A"), with any part of A's body or anything else—</p> <p>(a) without another person ("B") consenting, and</p>

Offence type	Qld	NZ	Canada ¹⁷⁴	England & Wales	Scotland
		<p>penetration of the vagina. Sexual violation comprises rape, penile penetration of the mouth or anus or violation involving objects. Sexual connection involves penetration by fingers or tongue (forms of oral sex that are not penile penetration of the mouth))</p> <p>Definition of consent involves threat of the application of force (see s 128A(2))</p> <p>Sexual conduct with consent induced by certain threats:</p> <p>1) Every one who has sexual connection with another person knowing that the other person has been induced to consent to the connection by threat is liable to imprisonment.</p> <p>(3) For the purposes of subsection (1), a person who has sexual connection with another person knows that the other person has been induced to consent to the sexual connection by threat if (and only if) he or she knows that the other person has been induced to consent to the sexual connection by an express or implied threat of a kind described in subsection (5).</p> <p>(5) The kinds of threat referred to in subsections (3) and (4)(a) are—</p> <p>(a) a threat that the person making the threat or some other person will commit an offence that—</p> <p>(i) is punishable by imprisonment; but</p>			<p>(b) without any reasonable belief that B consents, penetrates sexually to any extent, either intending to do so or reckless as to whether there is penetration, the vagina or anus of B then A commits an offence, to be known as the offence of sexual assault by penetration.</p> <p>(4) Without prejudice to the generality of subsection (1), the reference in that subsection to penetration with any part of A's body is to be construed as including a reference to penetration with A's penis.</p>

Offence type	Qld	NZ	Canada ¹⁷⁴	England & Wales	Scotland
		<p>(ii) does not involve the actual or threatened application of force to any person; and</p> <p>(b) a threat that the person making the threat or some other person will make an accusation or disclosure (whether true or false) about misconduct by any person (whether living or dead) that is likely to damage seriously the reputation of the person against or about whom the accusation or disclosure is made; and</p> <p>(c) a threat that the person making the threat will make improper use, to the detriment of the person consenting, of a power or authority arising out of—</p> <p>(i) an occupational or vocational position held by the person making the threat; or</p> <p>(ii) a commercial relationship existing between the person making the threat and the person consenting.</p>			
Definition of sexual penetration	<p>Engage in penile intercourse –</p> <p>(1) Penile intercourse is the penetration, to any extent, of the vagina, vulva or anus of a person by the penis of another person.</p> <p>(2) A person engages in penile intercourse with another person if—</p> <p>(a) the person penetrates, to any extent, the vagina, vulva or anus of another person with the person's penis; or</p> <p>(b) the person's vagina, vulva or anus is penetrated, to any extent, by the penis of another person.</p>	<p>Sexual violation is the act of a person who—</p> <p>(a) rapes another person; or</p> <p>(b) has unlawful sexual connection with another person.</p> <p>(2) Person A rapes person B if person A has sexual connection with person B, effected by the penetration of person B's genitalia by person A's penis,—</p> <p>(a) without person B's consent to the connection; and</p> <p>(b) without believing on reasonable grounds that person B consents to the connection.</p>	Sexual assault is not defined. It includes both penetrative and non-penetrative acts.		<p>Applies in both offences</p> <p>(2) For the purposes of this section, penetration is a continuing act from entry to withdrawal of whatever is intruded; but this subsection is subject to subsection (3).</p> <p>(3) In a case where penetration is initially consented to but at some point of time the consent is withdrawn, subsection (2) is to be construed as if the reference in it to a continuing act from entry were a reference to a continuing act from that point of time.</p>

Offence type	Qld	NZ	Canada ¹⁷⁴	England & Wales	Scotland
		<p>(3) Person A has unlawful sexual connection with person B if person A has sexual connection with person B—</p> <p>(a) without person B's consent to the connection; and</p> <p>(b) without believing on reasonable grounds that person B consents to the connection.</p> <p>Sexual connection means—</p> <p>(a) connection effected by the introduction into the genitalia or anus of one person, otherwise than for genuine medical purposes, of—</p> <p>(i) a part of the body of another person; or</p> <p>(ii) an object held or manipulated by another person; or</p> <p>(b) connection between the mouth or tongue of one person and a part of another person's genitalia or anus; or</p> <p>(c) the continuation of connection of a kind described in paragraph (a) or paragraph (b)</p>			
Separate rape (or equivalent) offence for children?	No	No - There is no presumption of law that a person is incapable of sexual connection because of his or her age (CA, s 127)	No, but if the victim is under the age of 16 years, the maximum penalty for indictable sexual assault is 14 years (s 271(a)) and 2 years for a summary offence of sexual assault (s 271(b))	Yes - Rape of a child under 13 (s 5) and Assault of a child under 13 by penetration (s 6)	Yes - Rape of a young child (s 18) and Sexual assault on a young child by penetration (s 19)
Indecent assault & gross indecency (non-penetrative)	<ul style="list-style-type: none"> Sexual assault (procures to commit or witness gross indecency) – 10 years imprisonment (s 352(1)) Sexual assault (indecent assault) – 10 years imprisonment (s 352(1)) 	<ul style="list-style-type: none"> Indecent assault – 7 years imprisonment Sexual conduct with consent induced by certain threats – 5 years imprisonment 	See above	<ul style="list-style-type: none"> Summary sexual assault – 6 months imprisonment or a fine not exceeding the statutory maximum or both Sexual assault on indictment – 10 years imprisonment Summary causing a person to engage in sexual activity 	<ul style="list-style-type: none"> Summary sexual assault – 12 months or a fine not exceeding statutory maximum (or both) (s 3) Sexual assault on indictment – Life imprisonment or a fine (or both) (s 3)

Offence type	Qld	NZ	Canada ¹⁷⁴	England & Wales	Scotland
				<p>without consent – 6 months imprisonment or a fine (not exceeding the statutory maximum)</p> <ul style="list-style-type: none"> Causing a person to engage in sexual activity without consent on indictment (only section 1)– 10 years imprisonment 	<p>7.</p> <ul style="list-style-type: none"> Summary sexual coercion – 12 months or a fine not exceeding statutory maximum (or both) (s 4) <p>8.</p> <ul style="list-style-type: none"> Sexual coercion on indictment - Life imprisonment or a fine (or both) (s 4)
Definition	<p>S 352 (1)Any person who—</p> <p>(a)unlawfully and indecently assaults another person; or</p> <p>(b)procures another person, without the person’s consent—</p> <p>(i)to commit an act of gross indecency; or</p> <p>(ii)to witness an act of gross indecency by the person or any other person.</p>	<p>Indecent assault</p> <p>Every one is liable to imprisonment for a term not exceeding 7 years who indecently assaults another person.</p> <p>Sexual conduct with consent induced by certain threats</p> <p>Every one who does an indecent act on another person knowing that the other person has been induced to consent to the act by threat is liable to imprisonment</p>	See above	<p>Sexual assault</p> <p>(1)A person (A) commits an offence if—</p> <p>(a)he intentionally touches another person (B),</p> <p>(b)the touching is sexual,</p> <p>(c)B does not consent to the touching, and</p> <p>(d)A does not reasonably believe that B consents.</p> <p>(2)Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.</p> <p>Causing a person to engage in sexual activity without consent</p> <p>(1)A person (A) commits an offence if—</p> <p>(a)he intentionally causes another person (B) to engage in an activity,</p> <p>(b)the activity is sexual,</p> <p>(c)B does not consent to engaging in the activity, and</p>	<p>Sexual assault</p> <p>(1)If a person (“A”)—</p> <p>(a)without another person (“B”) consenting, and</p> <p>(b)without any reasonable belief that B consents,</p> <p>does any of the things mentioned in subsection (2), then A commits an offence, to be known as the offence of sexual assault.</p> <p>(2)Those things are, that A—</p> <p>(a)penetrates sexually, by any means and to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B,</p> <p>(b)intentionally or recklessly touches B sexually,</p> <p>(c)engages in any other form of sexual activity in which A, intentionally or recklessly, has physical contact (whether bodily contact or contact by means of an implement and whether or not through clothing) with B,</p>

Offence type	Qld	NZ	Canada ¹⁷⁴	England & Wales	Scotland
				(d)A does not reasonably believe that B consents.	(d)intentionally or recklessly ejaculates semen onto B, (e)intentionally or recklessly emits urine or saliva onto B sexually. Sexual coercion If a person ("A")— (a)without another person ("B") consenting to participate in a sexual activity, and (b)without any reasonable belief that B consents to participating in that activity,intentionally causes B to participate in that activity, then A commits an offence, to be known as the offence of sexual coercion.
Separate sexual assault (or equivalent) offence for children?	Yes - Indecent treatment of a child under 16 (s 210)	Yes - Sexual conduct with a child under 12 (CA, s 132) and Sexual conduct with a young person under 16 (CA, s 134)	Yes – sexual interference (s 151), invitation to sexual touching (s 152) and sexual assault (ss 271, 272 and 273)	Yes - Sexual assault of a child under 13 (s 7), Causing or inciting a child under 13 to engage in sexual activity (s 8), Sexual activity with a child (s 9), Causing or inciting a child to engage in sexual activity (s 10) and Causing a child to watch a sexual act (s 12)	Yes - Sexual assault on a young child (s 20), Causing a young child to participate in a sexual activity (s 21) and Causing a young child to be present during a sexual activity (s 22)
Mouth-genital contact (penetrative and non-penetrative)	Aggravated indecent assault (bringing mouth into contact with genitalia or anus) – 14 years imprisonment (s 352(2))	Sexual violation – 20 years imprisonment Sexual conduct with consent induced by threats – 14 years imprisonment	<ul style="list-style-type: none"> Aggravated sexual assault and sexual assault with a weapon, threats to a third party or causing bodily harm where complainant is under 16 years – Life imprisonment (ss 272 and 273) Sexual assault with a weapon, threats to a third party or causing bodily harm and sexual assault when complainant is under 16 years – 14 years imprisonment (s 271(a)) Sexual assault where circumstances mentioned above do 	Causing a person to engage in sexual activity without consent (s 4 applies) – life imprisonment	<ul style="list-style-type: none"> Summary sexual assault – 12 months or a fine not exceeding statutory maximum (or both) (s 3) Sexual assault on indictment – Life imprisonment or a fine (or both) (s 3) Summary sexual coercion – 12 months or a fine not exceeding statutory maximum (or both) (s 4)

Offence type	Qld	NZ	Canada ¹⁷⁴	England & Wales	Scotland
			<p>not apply and the offence is dealt with on Indictment – 10 years imprisonment (s 271(a))</p> <ul style="list-style-type: none"> Sexual assault where dealt with summarily – 18 months (s 271(b)) Sexual assault where dealt with summarily and complainant is under 16 years – 2 years imprisonment (s 271(b)) 		<ul style="list-style-type: none"> Sexual coercion on indictment – Life imprisonment or a fine (or both) (s 4)
Definition	<p>S 352 (2) ...an offence defined in subsection (1)(a) or (1)(b)(i) if the indecent assault or act of gross indecency includes bringing into contact any part of the genitalia or the anus of a person with any part of the mouth of a person.</p>	<p>Sexual violation is the act of a person who—</p> <p>(b) has unlawful sexual connection with another person.</p> <p>(3) Person A has unlawful sexual connection with person B if person A has sexual connection with person B—</p> <p>(a) without person B's consent to the connection; and</p> <p>(b) without believing on reasonable grounds that person B consents to the connection.</p> <p>Sexual connection means—</p> <p>(a) connection effected by the introduction into the genitalia or anus of one person, otherwise than for genuine medical purposes, of—</p> <p>(i) a part of the body of another person; or</p> <p>(ii) an object held or manipulated by another person; or</p> <p>(b) connection between the mouth or tongue of one person and a part of another person's genitalia or anus; or</p> <p>(c) the continuation of connection of a kind described in paragraph (a) or paragraph (b)</p>	See above	<p>(1) A person (A) commits an offence if—</p> <p>(a) he intentionally causes another person (B) to engage in an activity,</p> <p>(b) the activity is sexual,</p> <p>(c) B does not consent to engaging in the activity, and</p> <p>(d) A does not reasonably believe that B consents.</p> <p>(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.</p> <p>(4) A person guilty of an offence under this section, if the activity caused involved—</p> <p>(d) penetration of a person's mouth with B's penis.</p>	<p>Sexual assault</p> <p>(1) If a person ("A")—</p> <p>(a) without another person ("B") consenting, and</p> <p>(b) without any reasonable belief that B consents,</p> <p>does any of the things mentioned in subsection (2), then A commits an offence, to be known as the offence of sexual assault.</p> <p>(2) Those things are, that A—</p> <p>(b) intentionally or recklessly touches B sexually,</p> <p>(c) engages in any other form of sexual activity in which A, intentionally or recklessly, has physical contact (whether bodily contact or contact by means of an implement and whether or not through clothing) with B,</p> <p>Sexual coercion</p> <p>If a person ("A")—</p> <p>(a) without another person ("B") consenting to participate in a sexual activity, and</p> <p>(b) without any reasonable belief that B consents to participating in that activity, intentionally causes B to</p>

Offence type	Qld	NZ	Canada ¹⁷⁴	England & Wales	Scotland
		Sexual conduct with consent induced by threats Every one who has sexual connection with another person knowing that the other person has been induced to consent to the connection by threat is liable to imprisonment			participate in that activity, then A commits an offence, to be known as the offence of sexual coercion.
Circumstances of aggravation	N/A	N/A	Aggravated sexual assault Section 273 (1) Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.	N/A	N/A
Victim compelled to self-penetrate or penetrate another person	Aggravated sexual assault (i.e. armed, in company, or person assaulted penetrates offender's vagina, vulva, anus with thing or body part (not a penis) – Life imprisonment (s 352(3))	Sexual conduct with consent induced by threats – 14 years imprisonment	<ul style="list-style-type: none"> Aggravated sexual assault and sexual assault with a weapon, threats to a third party or causing bodily harm where complainant is under 16 years – Life imprisonment (ss 272 and 273) Sexual assault with a weapon, threats to a third party or causing bodily harm and sexual assault when complainant is under 16 years – 14 years imprisonment (s 271(a)) Sexual assault where circumstances mentioned above do not apply and the offence is dealt with on Indictment – 10 years imprisonment (s 271(a)) Sexual assault where dealt with summarily – 18 months (s 271(b)) Sexual assault where dealt with summarily and complainant is 	Causing a person to engage in sexual activity without consent on indictment (s 4 applies) – life imprisonment	<ul style="list-style-type: none"> Summary sexual coercion – 12 months or a fine not exceeding statutory maximum (or both) (s 4) 13. Sexual coercion on indictment - Life imprisonment or a fine (or both) (s 4)

Offence type	Qld	NZ	Canada ¹⁷⁴	England & Wales	Scotland
			under 16 years - 2 years imprisonment (s 271(b))		
Definition	<p>(a)immediately before, during, or immediately after, the offence, the offender is, or pretends to be, armed with a dangerous or offensive weapon, or is in company with any other person; or</p> <p>(b) for an offence defined in subsection (1)(a), the indecent assault includes the person who is assaulted penetrating the offender's vagina, vulva or anus to any extent with a thing or a part of the person's body that is not a penis; or</p> <p>(c) for an offence defined in subsection (1)(b)(i), the act of gross indecency includes the person who is procured by the offender penetrating the vagina, vulva or anus of the person who is procured or another person to any extent with a thing or a part of the body of the person who is procured that is not a penis.</p>	<p>Sexual conduct with consent induced by threats</p> <p>Every one who has sexual connection/indecent act with another person knowing that the other person has been induced to consent to the connection by threat is liable to imprisonment.</p> <p>(3) For the purposes of subsection (1), a person who has sexual connection with another person knows that the other person has been induced to consent to the sexual connection by threat if (and only if) he or she knows that the other person has been induced to consent to the sexual connection by an express or implied threat of a kind described in subsection (5).</p> <p>(4) For the purposes of subsection (2),—</p> <p>(a) a person who does an indecent act on another person knows that the other person has been induced to consent to the act by threat if (and only if) he or she knows that the other person has been induced to consent to the act by an express or implied threat of a kind described in subsection (5); and</p> <p>(b) a person is induced to consent to an indecent act whether—</p> <p>(i) he or she is induced to consent to the doing of an indecent act with or on him or her; or</p>	See above	<p>(1) A person (A) commits an offence if—</p> <p>(a)he intentionally causes another person (B) to engage in an activity,</p> <p>(b)the activity is sexual,</p> <p>(c) B does not consent to engaging in the activity, and</p> <p>(d) A does not reasonably believe that B consents.</p> <p>(1) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.</p> <p>(4) A person guilty of an offence under this section, if the activity caused involved—</p> <p>(a) penetration of B's anus or vagina,</p> <p>(c)penetration of a person's anus or vagina with a part of B's body or by B with anything else, or</p> <p>(d)penetration of a person's mouth with B's penis,</p>	<p>Sexual coercion</p> <p>If a person ("A")—</p> <p>(a)without another person ("B") consenting to participate in a sexual activity, and</p> <p>(b)without any reasonable belief that B consents to participating in that activity, intentionally causes B to participate in that activity, then A commits an offence, to be known as the offence of sexual coercion.</p>

Offence type	Qld	NZ	Canada ¹⁷⁴	England & Wales	Scotland
		(ii) he or she is induced to consent to do an indecent act himself or herself.			

Appendix 16: Cross-jurisdictional comparison of good character

Table A38: Cross-jurisdictional comparison of good character

	Qld	ACT	NSW	NT	SA	TAS	VIC	WA	CTH
General Provision	In sentencing an offender, a court must have regard to ... the offender's character, age and intellectual capacity ¹⁷⁶	In deciding how an offender should be sentenced (if at all) for an offence, a court must consider whichever of the following matters are relevant and known to the court: ... the cultural background, character, antecedents, age and physical or	The mitigating factors to be taken into account in determining the appropriate sentence for an offence are as follows ... the offender was a person of good character ¹⁷⁸	In sentencing an offender, a court must have regard to: ... the offender's character, age and intellectual capacity ¹⁷⁹	In determining a sentence for an offence, a court must take into account such of the factors as are known to the court that relate to the following matters as may be relevant: ... the defendant's character, general background and offending history ¹⁸⁰	None	In sentencing an offender a court must have regard to— ... the offender's previous character ¹⁸¹	None ¹⁸²	In addition to any other matters, the court must take into account such of the following matters as are relevant and known to the court: ... the character, antecedents, age, means and physical or mental condition of the person ¹⁸³

¹⁷⁶ *Penalties and Sentences Act 1992* (Qld) s 9(2)(f).

¹⁷⁸ *Crimes (Sentencing Procedure) Act 1990* (NSW) s 21A(3)(f).

¹⁷⁹ *Sentencing Act 1995* (NT) s 5(2)(e).

¹⁸⁰ *Sentencing Act 2017* (SA) s 11(1)(d).

¹⁸¹ *Sentencing Act 1991* (Vic) s 5(2)(f).

¹⁸² A person's character is expressed as a relevant consideration only to certain orders – see release without sentence (s 46) and ordering indefinite imprisonment (s 98(2)(c)).

¹⁸³ *Crimes Act 1914* (Cth) s 16A(2)(m).

	Qld	ACT	NSW	NT	SA	TAS	VIC	WA	CTH
		mental condition of the offender ¹⁷⁷							
Legislated factors a court may consider in determining 'character'	In determining the character of an offender, a court may consider— (a) the number, seriousness, date, relevance and nature of any previous convictions of the offender; and (b) the history of domestic violence orders made or issued against the offender, other than orders made or issued when the offender was a child; and	None	None	In determining the character of an offender, a court may consider, among other things: (a) the number, seriousness, date, relevance and nature of any previous findings of guilt or convictions of the offender; and (b) the general reputation of the offender; and (c) any significant contributions made by the offender to the community. ¹⁸⁵	None	None	In determining the character of an offender a court may consider (among other things)— (a) the number, seriousness, date, relevance and nature of any previous findings of guilt or convictions of the offender; and (b) the general reputation of the offender; and (c) any significant contributions made by the offender to the community. ¹⁸⁶	None	None

¹⁷⁷ *Crimes (Sentencing) Act 2005* (ACT) s 33(1)(m).

¹⁸⁵ *Sentencing Act 1995* (NT) s 6.

¹⁸⁶ *Sentencing Act 1991* (Vic) s 6.

	Qld	ACT	NSW	NT	SA	TAS	VIC	WA	CTH
	<p>(c) any significant contributions made to the community by the offender; and</p> <p>(d) such other matters as the court considers are relevant.</p> <p>(2) If oral submissions are to be made to, or evidence is to be brought before, the court about the history of domestic violence orders made or issued against the offender, the sentencing judge or magistrate may close the court for that purpose.¹⁸⁴</p>								

¹⁸⁴ *Penalties and Sentences Act 1992* (Qld) s 11.

	Qld	ACT	NSW	NT	SA	TAS	VIC	WA	CTH
Limitation on use	When sentencing a person for a sexual offence against a child under 16 years a court 'must not have regard to the offender's good character if it assisted in committing the offence' ¹⁸⁷	For a sexual offence against a child, a court— ... must not reduce the severity of a sentence it would otherwise have imposed on an offender because the offender has good character, to the extent that the offender's good character enabled the offender to commit the offence.' Examples—par (b) 1 The offender's good character was one reason the offender was selected to supervise children on a camp. The offender began to	In determining the appropriate sentence for a child sexual offence, the good character or lack of previous convictions of an offender is not to be taken into account as a mitigating factor if the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offence. ¹⁸⁹	Despite subsection (2)(e), in sentencing an offender for an offence against Part V, Division 2 or Part VIA of the Criminal Code, a court must disregard the good character of the offender if: (a) the person against whom the offence was committed was, at the time the offence was committed, under 18 years of age; and (b) the court is satisfied that the offender's alleged good character was of assistance to the offender in	A court must determine the sentence for an offence without regard to— ... the good character or lack of previous convictions of the defendant if— (i) the offence is a class 1 or class 2 offence within the meaning of the Child Sex Offenders Registration Act 2006 ; and (ii) the court is satisfied that the defendant's alleged good character or lack of previous convictions was of assistance to the defendant in the	In determining the appropriate sentence for an offender convicted of a sexual offence – ... (b) the court is not to take into account the offender's good character or lack of previous convictions if the court is satisfied that the offender's alleged good character or lack of previous convictions was of assistance to the offender in the commission of the sexual offence. ¹⁹²	Despite section 5(2), in sentencing an offender for a child sexual offence, a court must not have regard to the offender's previous good character or lack of previous findings of guilt or convictions if the court is satisfied the offender's previous good character or lack of previous findings of guilt or convictions was of assistance to the offender in the commission of the offence. ... does not apply to an offender who is under the age of 18 years at the time of	None ¹⁹⁴	None (but standing in the community can be aggravating): if the person's standing in the community was used by the person to aid in the commission of the offence—that fact as a reason for aggravating the seriousness of the criminal behaviour to which the offence relates ¹⁹⁵

¹⁸⁷ *Penalties and Sentences Act 1992* (Qld) s 9(6A).

¹⁸⁹ *Crimes (Sentencing Procedure) Act 1990* (NSW) s 21A(5A).

¹⁹² *Sentencing Act 1997* (Tas) s 11A(2)(b).

¹⁹⁴ Case law provides for the diminished relevance of good character for sexual offending against children: *MAS v The State of Western Australia* [2012] WASCA 36 [86] (Pullin and Mazza JJA agreeing).

¹⁹⁵ *Crimes Act (1914)* (Cth) s 16A(2)(ma). This provision was introduced in 2020 with an intention to 'capture scenarios where a person's professional or community standing is used as an opportunity for the offender to sexually abuse children.' Explanatory Memorandum, Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019 (Cth) (2020) [254].

Qld	ACT	NSW	NT	SA	TAS	VIC	WA	CTH
	<p>establish a relationship with children at the camp to obtain their compliance in acts of a sexual nature.</p> <p>2 A child's parents trusted the offender to care for the child because of the offender's authority in their community. The offender held authority in the community in part because of the offender's good character. The offender sexually abused the child including while the child was in the offender's care.¹⁸⁸</p>		<p>the commission of the offence.</p> <p>Examples for subsection (3A)(b)</p> <p>1 The offender's good character was one reason the offender was selected to supervise children at a camp. The offender began to establish a relationship with children at the camp to obtain their compliance in sexual activities.</p> <p>2 A child's parent trusted the offender to care for the child because of the offender's authority in their community. The offender held authority in the</p>	<p>commission of the offence.¹⁹¹</p>		<p>the commission of the offence.¹⁹³</p>		

¹⁸⁸ *Crimes (Sentencing) Act 2005* (ACT) s 34A(b).

¹⁹¹ *Sentencing Act 2017* (SA) s 11(4)(c).

¹⁹³ *Sentencing Act 1991* (Vic) s 5AA. Good character is also not a relevant consideration in determining whether there are substantial and compelling circumstances in respect of special reasons relevant to imposing minimum non-parole periods: '[a] court must also not have regard to 'the offender's previous good character (other than an absence of previous convictions or findings of guilt': s 10A(2B)(c).

	Qld	ACT	NSW	NT	SA	TAS	VIC	WA	CTH
				community in part due to the offender's good character. The offender sexually abused the child including while the child was in the offender's care. ¹⁹⁰					

¹⁹⁰ *Sentencing Act 1995* (NT) s 5(3A).

Appendix 17: Cross-jurisdictional analysis of guiding information on how to prepare victim impact statements

Table A39: Cross-jurisdictional analysis guiding the preparation of victim impact statements

Jurisdiction	Template provided?	Headings / prompts used	Not to be included
<p><u>Australian Capital Territory</u></p> <p>Provides general information through the <u>ODPP (ACT) website</u>, including a '<u>Easy Read/Plain English version</u>' and a <u>VIS Guide and Template</u>.</p> <ul style="list-style-type: none"> - Notifies victims that they can discuss their statement with the ACT DPP Witness Liaison Officers (tel number provided), an ACT Policing Victim Liaison Officer, or one of the victim support services: Victims Support ACT; Domestic Violence Crisis Service; and/or Canberra Rape Crisis Centre. - Notes that there is no set length and no set template. - Notes that the VIS should ideally be completed the week before the sentence. - Notes that: Someone from the DPP will tell them if there is anything that needs to be taken out of the statement. 	No	<p>The <u>Guide</u> includes a cover sheet with:</p> <ul style="list-style-type: none"> - A "check box" option to indicate whether the VIS is to be read aloud and, if so, by whom. <p>A Guide is provided which and notes that the following harm can be included:</p> <ul style="list-style-type: none"> - Physical injury; - Mental injury or emotional suffering (including grief); - Pregnancy; - Economic loss; - Substantial impairment of rights accorded by law. - Can include the impact on their personal relationships, social life, family, employment and studies, where they live and how safe they feel 	<ul style="list-style-type: none"> - Their version of events / a detailed description of the offence. - Opinions regarding the type of sentence. - Any abuse or rude language. - Details about other incidents/charges
<p><u>New South Wales</u></p> <p>A "<u>Victim impact statements Guide</u>" is provided through the New South Wales Government Victim Services (Justice) website and includes information using plain language to help victims when writing their VIS. The Guide provides information in relation to preparing a VIS, including:</p> <ul style="list-style-type: none"> - When the VIS should be written & the process of submission. - How the VIS will be considered by the court. 	Yes	<p>The cover letter for the template includes:</p> <ul style="list-style-type: none"> - A "check box" option to indicate whether the VIS is to be read aloud and, if so, by whom. <p>Headings include:</p> <ul style="list-style-type: none"> - Opening comments - Emotional suffering or psychological harm - Physical harm - Economic (financial loss) - Social harm - General comments 	<ul style="list-style-type: none"> - Anything offensive, threatening, intimidating or harassing - Suggestions or views about the sentence - Detailed descriptions of the crime - Descriptions of the offender's personality or other crimes committed by the offender

Jurisdiction	Template provided?	Headings / prompts used	Not to be included
<ul style="list-style-type: none"> - The consequences of submitting a VIS (i.e. that it can be accessed by the media). - Information and contact details regarding who can write/assist victims to write their VIS. - The maximum VIS length (20 pages). - That the prosecutor will tell the victim if their statement needs to be edited and will “work with you to make changes so your victim impact statement follows the legislation. The prosecutor cannot provide the final victim impact statement to the court without your permission.” 		<p>The Guide includes a “Checklist” for how to prepare a VIS.</p>	
<p><u>Northern Territory</u></p> <p>Information available on the 'NT.GOV.AU' website.</p>	Yes	<p>No check box for whether the victim would like to read statement aloud.</p> <p>Headings include:</p> <ul style="list-style-type: none"> - Physical Harm - Emotional suffering - Financial loss - Restitution / Compensation for damage or loss - Other relevant information - Sentence (statement of the victim's wishes with respect to sentence) 	
<p><u>South Australia</u></p> <p>Information available on the Victims of Crime South Australia page.</p>	Yes	<p>Guide with form – 'In your words: Preparing a Victim Impact Statement'</p> <p>The template/form includes:</p> <ul style="list-style-type: none"> - A “check box” option to indicate whether the VIS is to be read aloud and, if so, by whom - An indication of whether the victim want to ask the court to consider ordering restitution or compensation and if so, how much <p>No sub-headings provided [blank space after the introductory statement “I [name] would like to tell the court how the crime has affected me//my family”.</p>	<ul style="list-style-type: none"> - > any detailed description of the crime - > anything offensive, threatening, - intimidating or harassing - > abuse of the offender - > comments on the police, courts or justice system.

Jurisdiction	Template provided?	Headings / prompts used	Not to be included
<p><u>Tasmania</u></p> <p>Information is provided on the <u>Department of Justice's website</u>. The website advises victims they can write or type their own, or use the <u>Victim Impact Statement form</u>.</p>	Yes	<p>The '<u>Having your say: Victim Impact Statement Form</u>'</p> <p>The form includes:</p> <ul style="list-style-type: none"> - A "check box" option to indicate whether the VIS is to be read aloud and, if so, by whom <p>The form asks victims to:</p> <ul style="list-style-type: none"> - 'Describe any physical injuries suffered as a result of the crime' - 'Describe any emotional or psychological issues you may have suffered as a result of the crime' - Provide 'Any other relevant information you feel it is important for the Magistrate or Judge to know. such as what impact the crime continues to have on your life, any financial loss including details of the loss and how the loss has impacted on your life and lifestyle.' 	<ul style="list-style-type: none"> - any detailed description of the crime (the prosecutor will provide this information to the court) - any abuse or vilification of the convicted person - offensive language - comments on the police, court or justice systems - an opinion on the sentence that the courts should give
<p><u>Victoria</u></p> <p>A template is provided through the Victorian Government <u>Victims of Crime website</u> and includes information using plain language to guide victims when writing their VIS, including:</p> <ul style="list-style-type: none"> - Contact information for Victims of Crime who can organise a victim support worker to help with writing the VIS. <p>The template is in the form of a <u>statutory declaration</u>.</p>	Yes	<p>The <u>template/form</u> includes:</p> <ul style="list-style-type: none"> - A "check box" option to indicate whether the VIS is to be read aloud and, if so, by whom. <p>Headings include:</p> <ul style="list-style-type: none"> - Emotional impact of the crime - Physical impact of the crime - Financial impact of the crime - Social impact of the crime 	<p>Uses clear "don't statements" – including, don't...:</p> <ul style="list-style-type: none"> - ... Describe the crime more than necessary - ... Suggestions or views about the sentence - ... Mention other crimes - ... Give an opinion about the chance of reoffending / their ability to change / their personality or character - ... Mention harm to others - ... Mention documents not attached to VIS/part of court case - ... Use inappropriate/offensive language
<p><u>Western Australia</u></p>	No	<p>A brochure is provided and notes that the following headings could be used:</p>	<p>No template is provided. However, prompts are given for the victim to consider:</p>

Jurisdiction	Template provided?	Headings / prompts used	Not to be included
<p>Provides general information through the <u>“Victim Support Service” page on the WA.gov.au website, including:</u></p> <ul style="list-style-type: none"> - Notifying victims that the Victim Support and Child Witness Service can assist them with writing a VIS. - Judge or magistrate “may” refer to the VIS when sentencing. - Notes that there is “no set style for writing a VIS”. 		<ul style="list-style-type: none"> - Physical - Emotional - Financial <p>Insufficient space is provided to type a response.</p>	<ul style="list-style-type: none"> - Any physical injuries - Emotional impacts - What has changed - Financial impacts - Compensation requests - Any other important information - <p>Should <u>not</u> include:</p> <ul style="list-style-type: none"> - Anything abusive / offensive - Details of the crime - How they would like the offender to be sentenced - Anything factually incorrect

Appendix 18: Cross-jurisdictional comparison of victim impact statement regimes

Table A40: Cross-jurisdictional Comparison Table – Legislative Requirements Surrounding the Provision of a Victim Impact Statement

	Qld	Vic	NSW	WA	NT	ACT	SA	Tas
Legislation	<i>Penalties and Sentences Act</i> (Qld) s 179I-179N; s 9(2)(c)	<i>Sentencing Act</i> 1991 (Vic) s 8K-8S	<i>Crimes (Sentencing Procedure) Act</i> 1999 (NSW) ss 26-30G	<i>Sentencing Act</i> 1995 (WA) ss 23A-26	<i>Sentencing Act</i> 1995 (NT) s 106A-106B, note s 78DB	<i>Crimes (Sentencing) Act</i> 2005 (ACT) s 47-53	<i>Sentencing Act</i> 2017 (SA) ss 13-16	<i>Sentencing Act</i> 1997 (TAS) ss 80-81A
Purpose	<p>s 179K Giving details of impact of crime on victim during sentencing</p> <p>(1) A victim of the offence is to be permitted to give the prosecutor for the offence details of the harm caused to the victim by the offence, for the purpose of the prosecutor informing the sentencing court.</p> <p>...</p> <p>(3) Note – In sentencing the offender, the sentencing court must have regard to the harm done to, or impact of the offence on, the victim under—</p> <p>(a) <i>section 9(2)(c)(i)</i>; or</p>	<p>s 8K(1) If a court finds a person guilty of an offence, a victim of the offence may make a statement to the court for the purpose of assisting the court in determining sentence.</p> <p>Note: VIS may be made in writing by statutory declaration (s 8K(2)).</p> <p>s 8L(4) It is the intention of Parliament that in interpreting and applying this section, courts have regard to the following—</p> <p>(a) the victim impact statement allows the victim to tell the</p>	<p>s 30B Receipt of VIS by the court</p> <p>(1) A court must accept a victim impact statement tendered by a prosecutor if the statement complies with the requirements of this Division and the regulations.</p> <p>(2) A court to which a victim impact statement is tendered must acknowledge receipt of the statement.</p> <p>s 30E How court uses victim impact statements</p> <p>(1) A court to which a victim impact statement has been tendered in relation to an offence—</p>	<p>s 24 VIS, who may give</p> <p>(1) A victim, or a person who may do so under subsection (2), may give a victim impact statement to a court to assist the court in determining the proper sentence for the offender.</p> <p>(2) If because of age, disability or any other reason a victim is personally incapable of giving a victim impact statement,</p>	<p>s 5 Sentencing guidelines</p> <p>(2) In sentencing an offender, a court must have regard to:</p> <p>(b) the nature of the offence and how serious the offence was, including any physical, psychological or emotional harm done to a victim; and</p> <p>(ba) if the offence is a sexual offence:</p> <p>(i) whether the victim contracted a sexually transmissible medical condition as a result of the offence; and</p>	<p>s 53 VIS—effect</p> <p>(1) In deciding how the offender should be sentenced (if at all) for the offence, the court—</p> <p>(a) must consider any victim impact statement given to the court in relation to the offence; and</p> <p>(b) must not draw any inference about the harm suffered by a victim from the fact that a victim impact statement is not given to the court in</p>	<p>s 4 Secondary sentencing purposes</p> <p>(1) The secondary purposes for sentencing a defendant for an offence are as follows: ...</p> <p>(c) to publicly recognise the harm done to the community and to any victim of the offending behaviour;...</p> <p>s 11 Individual sentencing factors</p> <p>(1) In determining a sentence for an offence, a court must take into account such of the factors as are known to the court that relate to the following matters as may be relevant: ...</p>	<p>s 81. Court may receive information before sentencing</p> <p>(1) Before a court passes sentence on an offender found guilty of an offence, it may receive such information, in oral or documentary form, as it thinks fit and in so doing it is not bound by the rules of evidence.</p> <p>...</p> <p>s 81A. Court may receive victim impact statement</p> <p>(2) If a court finds a person guilty of an indictable offence, or a summary offence that has</p>

Qld	Vic	NSW	WA	NT	ACT	SA	Tas
<p>(b) if the offender is a child—the <i>Youth Justice Act 1992</i>, section 150 (1) (j).</p> <p>s 9(2)(c)(i) In sentencing an offender, a court must have regard to the nature of the offence and how serious the offence was, including—</p> <p>(i) any physical, mental or emotional harm done to a victim, including harm mentioned in information relating to the victim given to the court under section 179K ; and</p> <p>(ii) the effect of the offence on any child under 16 years who may have been directly exposed to, or a witness to, the offence</p> <p>s 179K (7) Subject to section 179M , the sentencing court is to decide if, and how, details of the harm are to be given to the court in accordance with the rules of evidence and the practices and</p>	<p>court about the impact of the offence on the victim;</p> <p>(b) the victim impact statement is not inadmissible merely because it contains subjective or emotive material.</p> <p><i>Victim:</i> a person who, or body that, has suffered injury, loss or damage (including grief, distress, trauma or other significant adverse effect) as a direct result of the offence, whether or not that injury, loss or damage was reasonably foreseeable by the offender;</p> <p>Note also included in s 5, the sentencing guidelines: s 5(2) In sentencing an offender a court must have regard to –</p> <p>(daa) the impact of the offence on any victim of the offence;</p>	<p>(a) must consider the statement at any time after it convicts, but before it sentences, an offender for the offence, and</p> <p>(b) may make any comment on the statement that the court considers appropriate.</p> <p>(2) A victim impact statement may also be considered by the Supreme Court when it determines an application under Schedule 1 for the determination of a term and a non-parole period for an existing life sentence referred to in that Schedule.</p> <p>(3) A victim impact statement of a family victim may also be taken into account by a court in connection with the determination of</p>	<p>another person may give it on the victim's behalf if the court is satisfied that it is appropriate for that other person to do so.</p> <p>s 112 Facts relevant to making reparation order</p> <p>(2) In deciding whether to make and if so the terms of a reparation order in relation to an offence, a court may take into account – ...</p> <p>(b) any victim impact statement given to the court...</p>	<p>(ii) whether the offender was aware at the time of the offence that he or she had a medical condition that could be sexually transmitted; ...</p> <p>78DB Exceptional circumstances exemption</p> <p>(1) If a court is required to impose a minimum sentence of a specified period of actual imprisonment for an offence and the court is satisfied that the circumstances of the case are exceptional: ...</p> <p>(2) In deciding whether it is satisfied that circumstances of a case are exceptional, the court may have regard to:</p> <p>(a) any victim impact statement or victim report presented to the court under section 106B; and</p>	<p>relation to the offence.</p> <p>s 7 Purposes of sentencing</p> <p>(1) A court may impose a sentence on an offender for 1 or more of the following purposes:</p> <p>(g) to recognise the harm done to the victim of the crime and the community.</p> <p>s 33 Sentencing—relevant considerations</p> <p>(1) In deciding how an offender should be sentenced (if at all) for an offence, a court must consider whichever of the following matters are relevant and known to the court:</p> <p>(f) the effect of the offence on the victims of the offence, the victims' families and anyone else who may make a</p>	<p>(c) the extent of any injury, emotional harm, loss or damage resulting from the offence or any significant risk or danger created by the offence, including any risk to national security; ...</p> <p>s 13 Prosecutor to provide particulars of victim's injury etc</p> <p>(1) Subject to subsection (2), the prosecutor must, for the purpose of assisting a court to determine sentence for an offence, provide the court with particulars (that are reasonably ascertainable and not already before the court in evidence or a pre-sentence report) of—</p> <p>(a) injury, loss or damage resulting from the offence;...</p>	<p>resulted in the death or serious injury of a person, or a family violence offence, a victim of that offence may furnish to the court a written statement that –</p> <p>(a) gives particulars of any injury, loss or damage suffered by the victim as a direct consequence of the offence; and</p> <p>(b) describes the effects on the victim of the commission of the offence.</p>

Qld	Vic	NSW	WA	NT	ACT	SA	Tas
<p>procedures applying to the court.</p> <p>Example of how details of harm may be given to sentencing court—production of a victim impact statement to the sentencing court</p> <p>cf: s 179M(4) To remove any doubt, it is declared that—</p> <p>(a) the purpose of the reading aloud of the victim impact statement before the court is to provide a therapeutic benefit to the victim;</p>	<p>(da) the personal circumstances of any victim of the offence; and</p> <p>(db) any injury, loss or damage resulting directly from the offence; and</p>	<p>the punishment for the offence on the basis that the harmful impact of a primary victim's death on family victims is an aspect of harm done to the community, but only if—</p> <p>(a) the prosecutor applies for this to occur, and</p> <p>(b) the court considers it to be appropriate.</p> <p>s 30F Restrictions on consideration of a VIS</p> <p>(1) A court must not consider or take into account a victim impact statement unless it has been prepared by the victim to whom it relates and tendered by the prosecutor.</p> <p>(2) A court must not consider or take into account any material that is not specifically authorised by this Division to be included in a victim impact statement.</p>			<p>victim impact statement;</p> <p>- Note 1 For who may make a victim impact statement, see s 49.</p> <p>- Note 2 The court must not draw any inference about the harm suffered by a victim from the fact that a victim impact statement is not given to the court in relation to the offence (see s 53 (1) (b)).</p>		

	Qld	Vic	NSW	WA	NT	ACT	SA	Tas
			A VIS given by either a victim or by a designated/principal carer can be considered if a special verdict is given in a MHC case e.g. a special verdict of act proven but not criminally responsible (s 30L, 30M), as well as in mental health matters (s 30N)					
Contents	<p>s 179I "victim impact statement" means a written statement that –</p> <p>(a) is signed and dated; and</p> <p>(b) states the particulars of the harm caused to a victim by an offence; and</p> <p>(c) may have attached to it –</p> <p>(i) documents supporting the particulars, including for example, medical reports; or</p> <p>(ii) photographs, drawings or other images.</p> <p>s 179K (3) If details of the harm are given to the prosecutor, the prosecutor must—</p>	<p>s 8L – [may include]</p> <p>(1) ... particulars of the impact of the offence on the victim and of any injury, loss or damage suffered by the victim as a direct result of the offence</p> <p>(2) ... photographs, drawings or poems and other material that relates to the impact of the offence on the victim or to any injury, loss or damage suffered by the victim as a direct result of the offence.</p>	<p>s 28 Contents of VIS</p> <p>(1) – primary victim [can include] particulars of the following suffered by [them/their family] as a direct result of that offence:</p> <p>(a) any personal harm,</p> <p>(b) any emotional suffering or distress,</p> <p>(c) any harm to relationships with other persons,</p> <p>(d) any economic loss or harm that arises from any matter referred to in paragraphs (a)-(c).</p> <p>s 26 "personal harm" means actual physical bodily harm or psychological or psychiatric harm.</p>	<p>S 23A victim impact statement means a statement containing particulars of –</p> <p>(a) in the case of a primary victim, any personal harm suffered by the victim as a direct result of the offence; or ...</p> <p>personal harm means bodily harm or psychological or psychiatric harm;</p> <p>s 25 VIS, content of</p> <p>(2) A victim impact statement is not to address the way in which or the extent to which the</p>	<p>s 106A Definitions: harm includes:</p> <p>(a) physical injury; and</p> <p>(b) psychological or emotional suffering, including grief; and</p> <p>(ba) contraction or fear of contraction of a sexually transmissible medical condition; and</p> <p>(c) pregnancy; and</p> <p>(d) economic loss.</p> <p>s 107B(5A) A victim impact statement or victim report may contain a statement as to the victim's wishes in respect of the order that the court may make in relation to the offence referred to in the statement or the report.</p> <p>victim impact statement means an oral or written statement prepared for section 106B(1) containing details of the harm suffered by a</p>	<p>s 47 Definitions</p> <p>harm includes—</p> <p>(a) physical injury; and</p> <p>(b) mental injury or emotional suffering (including grief); and</p> <p>(c) pregnancy; and</p> <p>(d) economic loss; and</p> <p>(e) substantial impairment of rights accorded by law.</p> <p>victim impact statement, for an offence, means a statement made by or for a victim of the offence that contains details of any harm suffered by the victim because of the offence</p>	<p>s 14 Victim impact statements</p> <p>(1) A person who has suffered injury, loss or damage resulting from an indictable offence or a prescribed summary offence committed by another may provide the sentencing court with a written personal statement (a victim impact statement) about the impact of that injury, loss or damage on the person and the person's family.</p> <p>s 16 Statements to be provided in accordance with rules</p> <p>(2) Nothing prevents a statement to be provided to a court under section 14 or 15</p>	<p>s 81A. Court may receive victim impact statement</p> <p>(2) ... a written statement that –</p> <p>(a) gives particulars of any injury, loss or damage suffered by the victim as a direct consequence of the offence; and</p> <p>(b) describes the effects on the victim of the commission of the offence.</p>

	Qld	Vic	NSW	WA	NT	ACT	SA	Tas
	<p>(a) decide what, if any, details are appropriate to be given to the sentencing court...</p> <p>(4) In deciding what details are appropriate, the prosecutor may have regard to the victim's wishes.</p>		<p>Formal requirements for a VIS include that it must be in writing + comply with other req's prescribed by regulations (s 29(1)(a),(b)) and can include photographs, drawings or other images (s 29(2)).</p>	<p>offender ought to be sentenced.</p> <p>(3) A victim impact statement may be accompanied by a report by any person who has treated the victim in connection with the effects on the victim of the commission of the offence.</p>	<p>victim of an offence arising from the offence.</p> <p>victim report means an oral or written statement, prepared by the prosecutor for section 106B(2), containing details of the harm suffered by a victim of an offence arising from the offence</p>	<p>s 51 VIS – form and contents</p> <p>(6) The statement may contain photographs, drawings or other images.</p>	<p>from containing recommendations relating to the sentence to be determined by the court.</p>	
<p>Prior amendment to a VIS by a Prosecutor</p> <p>/</p> <p>Inadmissible evidence in VIS</p>	<p>s 179K(3)... prosecutor must –</p> <p>(a) decide what, if any, details are appropriate to be given to the sentencing court; and</p> <p>(b) give the appropriate details to the sentencing court, whether or not in the form of a victim impact statement under section 179L.</p> <p>s 179K(4) deciding what details are appropriate, the prosecutor may have regard to the victim's wishes</p>	<p>s 8L(3) The court may rule as inadmissible the whole or any part of a victim impact statement, including the whole or any part of a medical report attached to it.</p> <p>s 8L(4) It is the intention of Parliament that in interpreting and applying this section, courts have regard to ...—</p> <p>(b) the victim impact statement is not inadmissible merely because it contains subjective or</p>	<p>s 30F Restrictions on consideration of VIS</p> <p>(1) A court must not consider or take into account a victim impact statement unless it has been prepared by the victim to whom it relates and tendered by the prosecutor.</p> <p>(2) A court must not consider or take into account any material that is not specifically authorised by this Division to be included in a victim impact statement.</p>	<p>s 26 Court's functions in relation to victim impact statement</p> <p>(1) A court may make a written victim impact statement available to the prosecutor and to the offender, on such conditions as it thinks fit.</p> <p>(2) A court may rule as inadmissible the whole or any part of a victim impact statement.</p>	<p>No prior amendment required, but a prosecutor can prepare a victim report:</p> <p>s 106B(2) The prosecutor must present to the court, before it sentences an offender... a victim report in relation to each victim of the offence where:</p> <p>(a) the victim has not consented to the presentation to the court of a VIS ... but has been informed of the contents of a victim report and does not object to its presentation; or</p> <p>(aa) ... incapable of giving consent</p> <p>(b) victim cannot, after reasonable</p>	<p>s 51 VIS – form and contents</p> <p>(7) The statement must not contain anything that is offensive, threatening, intimidating or harassing.</p>	N/A	N/A

Qld	Vic	NSW	WA	NT	ACT	SA	Tas
<p>s 179K(7) Subject to <i>section 179M</i>, the sentencing court is to decide if, and how, details of the harm are to be given to the court in accordance with the rules of evidence and the practices and procedures applying to the court.</p> <p><i>Example of how details of harm may be given to sentencing court—production of a victim impact statement to the sentencing court</i></p>	<p>emotive material.</p> <p>(5) The court may receive the whole of a victim impact statement despite—</p> <p>(a) an objection being taken to the statement or part of the statement; or</p> <p>(b) the statement containing inadmissible material.</p> <p>(6) If the court receives a victim impact statement that contains inadmissible material, the court, in sentencing the offender—</p> <p>(a) is not to rely on the material that the court considers to be inadmissible; and</p> <p>(b) need not specify which of the material is not being relied on.</p> <p>Note – Section 8Q provides that only the admissible parts of a victim impact statement may be read aloud in open court.</p>	<p>s 30C Victim may object to tendering of victim impact statement</p>	<p>s 25 VIS, content of</p> <p>(2) A victim impact statement is not to address the way in which or the extent to which the offender ought to be sentenced.</p>	<p>attempts have been made by the prosecutor, be located;</p> <p>And there are readily ascertainable details of the harm suffered by the victim arising from the offence that are not already before the court as evidence...</p>			

	Qld	Vic	NSW	WA	NT	ACT	SA	Tas
When a VIS should be provided & to whom	N/A	<p>s 8N Distribution of written statement</p> <p>(1) ... the victim must, a reasonable time before sentencing is to take place, provide a copy to the prosecutor, and the copy must include a copy of any medical report attached to the victim impact statement.</p> <p>(2) ... the prosecutor, as soon as practicable after receiving it, must—</p> <p>(a) file a copy of the victim impact statement and any attached medical report with the court; and</p> <p>(b) provide a copy of the victim impact statement and any attached medical report to the offender or the legal practitioner</p>	<p>s 30A Tendering of VIS</p> <p>(1) After it is prepared, a victim impact statement is to be provided to the prosecutor in the relevant proceedings.</p> <p>Access to a VIS is limited for offenders / legal practitioners (s 30G):</p> <p>(1) The prosecution may provide a copy of a victim impact statement to the offender's Australian legal practitioner (in the case of a represented offender).</p> <p>(2) An Australian legal practitioner may copy, disseminate or transmit images of a victim impact statement only to the extent that it is reasonably necessary to do so for the purposes of providing the victim impact statement to another Australian legal practitioner for legitimate purposes related</p>	<p>s 24 VIS, who may give</p> <p>(1) A victim, or a person who may do so under subsection (2), may give a victim impact statement to a court to assist the court in determining the proper sentence for the offender.</p> <p>(2) If because of age, disability or any other reason a victim is personally incapable of giving a victim impact statement, another person may give it on the victim's behalf if the court is satisfied that it is appropriate for that other person to do so.</p>	<p>106B Victim impact statements and victim reports (1) The prosecutor must present to the court, before it sentences an offender in relation to an offence, a victim impact statement ...</p>	<p>s 52(2) The statement may be given when the court considers appropriate—</p> <p>(a) <u>after</u> any of the following:</p> <p>(i) the offender has pleaded guilty to the offence;</p> <p>(ii) the court has found the offence proved;</p> <p>(iii) the offender has been found guilty or convicted of the offence; and</p> <p>(b) before the offender is sentenced</p> <p>^therefore, not before trial.</p> <p>s 53(2) A victim impact statement must not be given in writing to the court unless—</p> <p>(a) the statement is made in accordance with section 51 (Victim impact statements—</p>	<p>16—Statements to be provided in accordance with rules</p> <p>(3) A copy of a statement to be provided to a court under section 14 or 15 must be made available for inspection by the defendant or the defendant's counsel in accordance with rules of court and the defendant is entitled to make submissions to the court in relation to the statement.</p>	N/A

Qld	Vic	NSW	WA	NT	ACT	SA	Tas
		representin g the offender. (3) The Australian legal practitioner must destroy any copies or images at the conclusion of the sentencing proceedings. (4) The court may provide supervised access to a victim impact statement to an offender who is not represented by an Australian legal practitioner, if resources to facilitate the access are reasonably available. (5) An offender must not retain , copy, disseminate or transmit images of the victim impact statement.			form and contents); and (b) a copy of the statement has been given to the defence		
Ability to XXN victim on VIS	N/A	s 80 Examination of victim (1) The court may , at the request of the offender or the prosecutor, call a victim who has made a victim impact statement, or a person who has made a victim impact statement on behalf of a	N/A Note: Information published <u>online</u> states that: Before preparing a victim impact statement, it is important to know that when it is accepted by the court it becomes part of the court case. This means that the victim or author of the statement could be	N/A	s 106B(9) A victim must not be cross-examined on the content of the victim's victim impact statement. s 96 Victim impact statements—cross- examination in principal proceeding (1) The court must not allow the defence to cross-examine the maker of a	s 16—Statements to be provided in accordance with rules (3) A copy of a statement to be provided to a court under section 14 or 15 must be made available for inspection by the defendant or the defendant's counsel in	s 81 (1) Before a court passes sentence on an offender found guilty of an offence, it may receive such information , in oral or documentary form, as it thinks fit and in so doing it is not bound by the

Qld	Vic	NSW	WA	NT	ACT	SA	Tas
	<p>victim, or a medical expert who made a medical report attached to a victim impact statement, to give evidence.</p> <p>(2) A victim or other person who gives evidence under subsection (1) may be cross-examined and re-examined.</p> <p>s 8P Witnesses</p> <p>(1) A victim, or a person who has made a victim impact statement on behalf of a victim, may call a witness to give evidence in support of any matter contained in the victim impact statement or in a medical report attached to it.</p> <p>...</p> <p>(3) Any party to the proceeding may lead evidence on any matter contained in a victim impact statement or in a medical report attached to it.</p>	<p>subjected to possible cross-examination, the offender can read the statement (but not keep a copy), the statement becomes a public document (except in relation to children) and the media may gain access to the statement and report on the contents of the statement that are read out or referred to in court.</p>			<p>victim impact statement about the contents of the statement before a finding of guilt has been made in the principal proceeding, unless the court is satisfied that the statement has substantial probative value to justify allowing the cross-examination.</p> <p>(2) The court must not allow the defence to cross-examine the maker about the contents of the statement after a finding of guilt has been made in the principal proceeding unless—</p> <p>(a) a lawyer representing the offender applies for leave to conduct the cross-examination, or if the offender is not legally</p>	<p>accordance with rules of court and the defendant is entitled to make submissions to the court in relation to the statement.</p>	<p>rules of evidence.</p> <p>(2) The court must ensure that the offender has knowledge of, and the opportunity to challenge, the information received by the court under subsection (1).</p> <p>(3) Subsection (2) does not apply to information furnished by a medical practitioner that the court considers should not, in the interests of the offender, be disclosed to the offender.</p> <p>(4) If the offender challenges the truth of any information received by the court under subsection (1), the court may require that information to be proved in like manner as if it were to be received at a trial.</p>

Qld	Vic	NSW	WA	NT	ACT	SA	Tas
		Special measures for victims being XXN'd are at s 8R (e.g. AVL – upon application)				<p>represented the offender indicates to the court the nature of the proposed cross-examination; and</p> <p>(b) the court is satisfied that the cross-examination would materially affect the likely sentence to be imposed on an offender; and</p> <p>(c) the court gives the defence leave to cross-examine the maker.</p>	
No adverse impact if no VIS provided	<p>s 179K</p> <p>(5) The fact that details of the harm caused to a victim by the offence are absent at the sentencing does not, of itself, give rise to an inference that the offence caused</p>	N/A	<p>s 30E</p> <p>(5) The absence of a victim impact statement does not give rise to any inference that an offence had little or no impact on a victim.</p> <p>(6) The absence of a victim impact</p>	N/A	<p>s 106B(6) A court must not draw an inference in favour of an offender or against a victim because a victim impact statement or victim report is not presented to the court.</p>	<p>s 53 Victim impact statements—effect</p> <p>(1) In deciding how the offender should be sentenced (if at all) for the offence, the court—</p> <p>(a) must consider any victim</p>	N/A

	Qld	Vic	NSW	WA	NT	ACT	SA	Tas
	<p>little or no harm to the victim.</p> <p>(6) To remove any doubt, it is declared that it is not mandatory for a victim to give the prosecutor details of the harm caused to the victim by the offence.</p>		<p>statement given by a family victim does not give rise to any inference that an offence had little or no impact on the members of the primary victim's immediate family.</p> <p>s 29(4) The preparation of a victim impact statement is not mandatory.</p>			<p>impact statement given to the court in relation to the offence; and</p> <p>(b) must not draw any inference about the harm suffered by a victim from the fact that a victim impact statement is not given to the court in relation to the offence.</p>		
Court may adjourn sentence to obtain VIS	N/A	N/A		<p>s 16(1) A court may adjourn the sentencing of an offender, –</p> <p>(a) to obtain information about the offence, the offender or a victim; or</p> <p>(c) to enable a victim impact statement to be given to</p>	N/A	<p>51A</p> <p>(1) If the prosecution in a sentencing proceeding for a serious offence requests an adjournment for the preparation of a victim impact statement, the court must grant the adjournment for a reasonable period to allow</p>	N/A	N/A

	Qld	Vic	NSW	WA	NT	ACT	SA	Tas
				the court under Division 4		the statement's preparation (2) However, the court must not adjourn the proceeding if satisfied that special circumstances justify refusing the adjournment. (3) In this section: <i>serious offence</i> means an offence punishable by imprisonment for longer than 5 years.		
When to continue w/o a VIS	s 179K (2) The prosecutor may continue with the sentencing proceeding without having permitted the victim to give details of the harm if it is reasonable to do so in the circumstances, having regard to the following matters – (a) the interests of justice; (b) ... would unreasonably delay the sentencing of the offender; (c) anything else that may adversely affect the reasonableness	N/A	N/A	N/A	If no VIS – victim report to be prepared as per the below: s 106B VIS and victim reports (2) The prosecutor must present to the court, before it sentences an offender in relation to an offence, a victim report in relation to each victim of the offence where: (a) the victim has not consented to the presentation to the court of a victim impact statement in relation to him or her but has been informed	s 51A VIS – adjournment of proceedings to allow preparation (2) However, the court must not adjourn the proceeding if satisfied that special circumstances justify refusing the adjournment.	s 13 Prosecutor to provide particulars of victim's injury etc (2) The prosecutor may refrain from providing the court with particulars of injury, loss or damage suffered by a person if the person has expressed a wish to that effect to the prosecutor. (3) If the offence is not an offence in relation to which a victim impact statement may be provided in accordance with section 14, the court must still allow particulars provided under	N/A

Qld	Vic	NSW	WA	NT	ACT	SA	Tas
	s or practicality of permitting details of the harm to be given.			<p>of the contents of the victim report and does not object to its presentation; or</p> <p>(aa) in the case of a victim who, because of age or physical or mental disability, is incapable of giving consent – a person who, in the opinion of the court, has a sufficiently close relationship with the victim has been informed of the contents of the victim report and does not object to its presentation; or</p> <p>(b) the victim cannot, after reasonable attempts have been made by the prosecutor, be located; and there are readily ascertainable details of the harm suffered by the victim arising from the offence that are not already before the court as evidence or as part of a pre-sentence report prepared under section 105</p>		<p>this section to include a victim impact statement unless the court determines that it would not be appropriate in the circumstances of the case (and the other provisions of this Division relating to victim impact statements apply to such a statement as if it were provided under section 14).</p>	

	Qld	Vic	NSW	WA	NT	ACT	SA	Tas
					in relation to the offender.			
<p>Form of a VIS – where oral statements permitted</p> <p>+ other special arrangements e.g. support person permitted to be present</p>	<p>s 179M-N s 179M(3) – permitted, unless the court considers that, having regard to all relevant circumstances, it is inappropriate to do so</p> <p>s 179M(4) To remove any doubt, it is declared that— (a) the purpose of the reading aloud of the victim impact statement before the court is to provide a therapeutic benefit to the victim; and (b) it is not necessary for a person, reading aloud the victim impact statement before the court under this section, to read the statement under oath or affirmation.</p> <p>Special arrangements can be arranged: s 179N e.g. offender to be obscured / can close court while read / support person can be present / AV link permitted</p>	<p>Yes – ss 8K(2)(b), 8Q, 8R.</p> <p>Note: if a request is made to read a VIS under s 8Q, it states that “the court must ensure that any admissible parts of the victim impact statement that are – (a) identified in the request; and (b) appropriate and relevant to sentencing – Are read aloud or displayed by the person or persons specified in the request in open court in the course of the sentencing hearing.</p> <p>Special arrangements can be arranged on application: s 8R & 8S e.g. AVL/CCTV / screens / support person / closing court / requiring legal practitioners not to robe.</p>	<p>Victims permitted to read out the whole or part of a VIS if it has been tendered in court, after conviction and prior to sentence (s 30D)</p> <p>s 30I (1) If the proceedings are for a prescribed sexual offence, the part of the proceedings in which the victim impact statement is read out is to be held in closed court unless— (a) the court directs (subject to section 30K), at the request of a party to the proceedings, that the proceedings are to be held in open court, and (b) the court is satisfied that— (i) special reasons in the interests of justice require the</p>	N/A		<p>S 52(1) A victim impact statement may be— (a) tendered to the court; or (b) made orally in court; or (c) read out in court by the person who made the statement or someone else (whether or not the statement is tendered to the court).</p> <p>(3) The court must allow the statement to be read out in court if the maker of the statement wishes the statement to be given to the court in that way</p> <p>Special arrangements can be made pursuant to s 52(4)-(5) e.g. AVL/special requirements/ closed court etc).</p>	<p>s 14 (2) Before determining sentence for the offence, the court may, if the person so requested when providing the statement— (a) allow the person an opportunity to read the statement aloud to the court; or (b) cause the statement to be read aloud to the court; or (c) give consideration to the statement without the statement being read aloud to the court.</p> <p>Special arrangements can be made pursuant to s 14(3) e.g. AVL / audio record of the person reading the statement to be played in court / any other powers that it has with regard to a vulnerable witness.</p>	<p>s 81A(4) If the court finds a person guilty of an offence, the court must allow the victim, or the person who has furnished a statement under subsection (2A) the “other person”, or another person nominated by the victim or the other person, to read his or her statement to the court if the victim or the other person has so requested at the time of furnishing the statement to the court.</p>

Qld	Vic	NSW	WA	NT	ACT	SA	Tas
		<p>part of the proceedings to be held in open court, or</p> <p>(ii) the victim to whom the statement relates consents to the statement being read out in open court.</p> <p>(2) The principle that proceedings for an offence should generally be open or public in nature, or that justice should be seen to be done, does not of itself constitute special reasons in the interests of justice requiring the part of the proceedings to be held in open court.</p> <p>s 30J ... victim is also entitled to read out the victim's victim impact statement in accordance with those closed-circuit television arrangements.</p> <p>30K (1) Any victim may request that the</p>				<p>If the victim wants it, defendant must be present when the statement is read aloud to the court (s 14(4)) unless the court is satisfied that special reasons exist which make it inappropriate or if their presence may cause a disturbance / threat to public order and safety.</p>	

Qld	Vic	NSW	WA	NT	ACT	SA	Tas
		<p>court give leave to the victim to read out the victim's victim impact statement in closed court or by means of closed-circuit television arrangements.</p> <p>(2) In determining whether to grant leave ...the court is to consider--</p> <p>(a) whether it is reasonably practicable to exclude the public, and</p> <p>(b) whether special reasons in the interests of justice require the statement to be read in open court, and</p> <p>(c) any other matter that the court considers relevant.</p> <p>(3) The principle that proceedings for an offence should generally be open or public in nature, or that justice should be seen to be done, does not of itself constitute special reasons in the</p>					

	Qld	Vic	NSW	WA	NT	ACT	SA	Tas
			<p>interests of justice requiring the statement to be read in open court.</p> <p>(4) In determining whether to grant leave to the victim to read out the victim's victim impact statement by means of closed-circuit television arrangements, the court is to consider--</p> <p>(a) whether the facilities necessary to do so are available or could reasonably be made available, and</p> <p>(b) any other matter that the court considers relevant.</p> <p>(5) This section does not apply to a victim to whom section 30I or 30J relates.</p> <p>Permitted to be supported by a support person in court (s 30H)</p>					
Court order for VIS to be provided to Review	N/A	N/A	N/A	s 26(3) A court may make a written victim impact statement	N/A	N/A	N/A	N/A

	Qld	Vic	NSW	WA	NT	ACT	SA	Tas
Board / QCS equivalent				available to the prosecutor and to the offender, on such conditions as it thinks fit.				
Community impact statements	N/A	N/A	N/A	N/A	N/A	N/A	<p>s 15 Community impact statements</p> <p>(1) Any person may make a submission to the Commissioner for Victims' Rights for the purpose of assisting the Commissioner to compile information which may be included in a statement under this section.</p> <p>(2) In proceedings to determine sentence for an offence, the prosecutor or the Commissioner for Victims' Rights may, if they think fit, provide the sentencing court with—</p> <p>(a) a written statement about the effect of the offence, or of offences of the same kind, on people living or working in the location in which the offence was committed (a</p>	

Qld	Vic	NSW	WA	NT	ACT	SA	Tas
						<p><i>neighbourhood impact statement</i>); or</p> <p>(b) a written statement about the effect of the offence, or of offences of the same kind, on the community generally or on any particular sections of the community (a <i>social impact statement</i>).</p> <p>(3) Before determining sentence for the offence, the court will cause the statement to be read aloud to the court by the prosecutor, or such other person as the court thinks fit, unless the court determines that it is inappropriate or would be unduly time consuming for the statement to be so read.</p>	

*Note: The information has been paraphrased in places. Emphasis has also been added.

