

In reply please quote: 3923676; 578565/1

30 August 2017

His Honour Judge Matthew Myers AM
Commissioner
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

Dear Judge Myers

Thank you for the opportunity to contribute to the Australian Law Reform Commission's (the Commission) Incarceration Rates of Aboriginal and Torres Strait Islander Peoples Inquiry. The Queensland Sentencing Advisory Council (the Council) would like to thank you for making time to meet with Council members on 9 March 2017 and to consult with the Council about the important issues raised by this inquiry.

The Council was re-established by the Queensland Government in 2016 and is an independent statutory body established under Part 12 of the *Penalties and Sentences Act 1992 (Qld)* (PSA). The Council's functions include: to provide information to the Attorney-General about matters relating to sentencing; to give information to the community to enhance knowledge and understanding of matters relating to sentencing; to conduct research; and to obtain the community's views on sentencing (PSA, s 9).

The overrepresentation of Aboriginal and Torres Strait Islander peoples in Queensland's criminal justice system was identified by the Council early in its establishment as a principal area of focus for the Council's future work program. The Council welcomes the Commission's work in this area as making a valuable contribution to current understandings of the issues contributing to overrepresentation at a national level and potential reforms to address these issues, and looks forward to the Commission delivering its final report and recommendations.

Although Aboriginal and Torres Strait Islander people represent only around four per cent of the Queensland population aged 10 years and over (2016 Census findings), based on 2015–16 courts data, over one in five offenders sentenced in Queensland courts identifies as being Aboriginal and/or Torres Strait Islander (22% or 21,516).¹ Of the 21,516 Aboriginal and Torres Strait Islander offenders sentenced in Queensland Courts in 2015–16:

- 20.8% received a custodial order (compared with 13.7% of non-Indigenous offenders):
 - 15.1% were sentenced to imprisonment (compared with 8.9% of non-Indigenous offenders)
 - 5.5% received a wholly suspended sentence (compared with 4.5% of non-Indigenous offenders)
 - 0.2% were sentenced to custody in the community (the same percentage as for non-Indigenous offenders at 0.2%)
- 79.2% received a non-custodial order (compared with 86.3% of non-Indigenous offenders):

¹ Australian Bureau of Statistics, Criminal Courts, Australia 2015-16

- 17.2% received some form of community supervision/work orders (compared with 12.3% of non-Indigenous)
- 48.5% received a monetary penalty (compared with 56.2% of non-Indigenous offenders)
- 13.5% were sentenced to some other form of non-custodial order (compared with 17.7% of non-Indigenous offenders).

The Council recognises there are a number of complex reasons why Aboriginal and Torres Strait Islander peoples are overrepresented in our criminal justice system and among sentenced prisoners, and intends to explore these issues further as part of its current work program. Early progress made by the Council has included the establishment of an Aboriginal and Torres Strait Islander sub-committee to better understand the impact of sentencing on Aboriginal and Torres Strait Islander communities, and work to implement the Council's Aboriginal and Torres Strait Islander engagement strategy to enhance future engagement and consultation processes. The Council visited Aurukun, Weipa and Thursday Island in June and July this year to discuss sentencing issues with community members, with further engagement with other Aboriginal and Torres Strait Islander communities across Queensland planned for late 2017.

The Council has made a conscious decision that its research publications should include an analysis of sentencing outcomes by Aboriginal and/or Torres Strait Islander status to identify any differences in sentencing patterns and outcomes for specific offences. The Council's *Sentencing Spotlight* series, which provides statistical summaries of the sentencing outcomes for offenders finalised in Queensland Courts for selected offences, includes an analysis of the demographic characteristics of offenders, including Aboriginal and Torres Strait Islander status, gender and age, and relevant sentencing outcomes. To date, the Council has released *Sentencing Spotlights* on murder, manslaughter and child exploitation material offences. The release of new *Sentencing Spotlights* is planned for later this year.

The *Sentencing Spotlights* highlight that overrepresentation issues are not universal and vary significantly by offence type. Among offenders sentenced for homicide, Aboriginal and Torres Strait Islander people were overrepresented, accounting for 18.5 per cent of all offenders sentenced for murder and 21.4 per cent of those sentenced for manslaughter between 1 July 2005 and 30 June 2016. Both Aboriginal and Torres Strait Islander men and women were overrepresented among offenders sentenced for these offences. In comparison, Aboriginal and Torres Strait Islander offenders comprised only 3.6 per cent of offenders sentenced for child exploitation material offences between 1 July 2006 and 30 June 2016, which is in line with Aboriginal and Torres Strait Islander peoples' representation in the Queensland community more generally.

Copies of our *Sentencing Spotlight* on murder, manslaughter and child exploitation material offences, and a technical information paper for the *Sentencing Spotlight* series, are **enclosed** for your consideration. The next *Sentencing Spotlight* to be produced by the Council will focus on sentencing outcomes for the offence of possessing dangerous drugs under section 9 of the *Drugs Misuse Act 1986* (Qld). The Council will provide a copy of this paper once finalised.

The Council welcomes the opportunity to provide further comment or be consulted further on any issues that might be of specific assistance to the Commission. Should you wish to discuss any of the matters raised further, please contact the Council's Policy Manager, Victoria Moore on (07) 3006 4562 or Victoria.moore@sentencingcouncil.qld.gov.au who will be pleased to assist.

Thank you once again for the opportunity to contribute to the inquiry.

Yours sincerely



Professor Elena Marchetti
Acting Chair

SENTENCING SPOTLIGHT ON...

murder



Queensland Sentencing
Advisory Council
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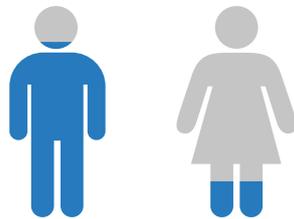
Sentencing Spotlight on...murder

Murder is generally referred to as the unlawful killing of a person with intent. This *Sentencing Spotlight* looks at sentencing outcomes for the offence of murder finalised in the Queensland Courts between 1 July 2005 and 30 June 2016.

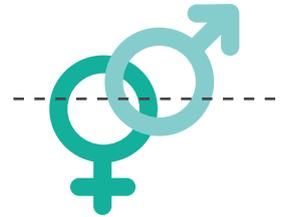
Summary of offences 2005–06 to 2015–16



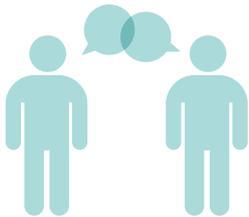
195 offenders
185 17 years and over
10 offenders under 17 years



83.3% male
16.7% female



Average age **37** years
Male average age
36.6 years
Female average age
42.8 years



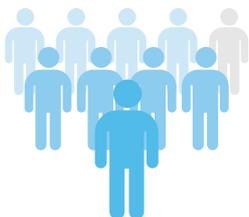
82.1%
of cases the offender
known to victim



27.7%
plead guilty



18.5% offenders
Aboriginal or Torres
Strait Islander people
(3.8% population)



10%
offenders charged
with multiple
murders



Most common
additional offence
**deprivation of liberty
or false imprisonment**



All adult offenders
received **life in
prison**; young
offenders
ranged between
8 years and life

The offence of murder

The *Criminal Code Act 1899 (Qld)*¹ (the Criminal Code) defines that a person is guilty of murder if they unlawfully kill another under any of the following circumstances:

- a) if the offender intends to cause the death of the person killed or that of some other person, or if the offender intends to do to the person killed or to some other person some grievous bodily harm; it is immaterial that the offender did not intend to hurt the particular person killed
- b) if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life; It is immaterial that the offender did not intend to hurt any person
- c) if the offender intends to do grievous bodily harm to some person for the purpose of facilitating the commission of a crime which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such crime
- d) if death is caused by administering any stupefying or overpowering thing for either of the purposes mentioned in paragraph (c)
- e) if death is caused by wilfully stopping the breath of any person for either or such purposes.

For (c)–(e), it is immaterial that the offender did not intend to cause the death, or did not know that death was likely to result.

This *Sentencing Spotlight* focuses on the offence of murder. Other offences relating to the death of a person more broadly, such as manslaughter, dangerous driving causing death, unlawful striking causing death or associated crimes such as attempted murder or conspiracy to commit murder, are excluded from the analysis.

The penalty for murder

In Queensland, the penalty for the offence of murder is either imprisonment for life, or an indefinite sentence under Part 10 of the *Penalties and Sentences Act 1992 (Qld)* (PSA).²

The penalty of life imprisonment cannot be varied or mitigated, and an offender receiving a life sentence will be under the supervision of the Department of Corrective Services for the remainder of their life, both during their time in prison, or if they have been granted parole.

However, in certain circumstances under Part 10 of the PSA the court may, on its own initiative or by application made by counsel for the prosecution, impose an indefinite sentence.³

In this instance, the court must be satisfied that the offender is a serious danger to the community. Determining whether an offender is a serious danger to the community requires the court to consider all of the following:

- whether the nature of the offence is exceptional
- an offender's characteristics, including previous offending
- any relevant medical, psychiatric, prison or other report about the offender
- any risk of serious harm to members of the community if the offender is not given an indefinite sentence
- the need to protect the community from the offender.⁴

If an offender is sentenced to an indefinite sentence, the court maintains a responsibility to review the sentence at legislated intervals. The indefinite sentence will remain in force until the court discharges it and replaces it with a finite sentence. An offender serving an indefinite sentence is not eligible to apply for parole.

Parole

If an offender is sentenced to life imprisonment, they are eligible to apply for release on parole after serving the required minimum portion of their sentence. For the offence of murder, the current minimum period of time required to be served is 20 years, though this may be set higher depending on the circumstances of the offence, and as specified by the court.⁵ Once an offender is eligible to apply for parole, the date of release is determined by the parole authority. An offender may only be released sooner under exceptional circumstances.⁶

Young offenders

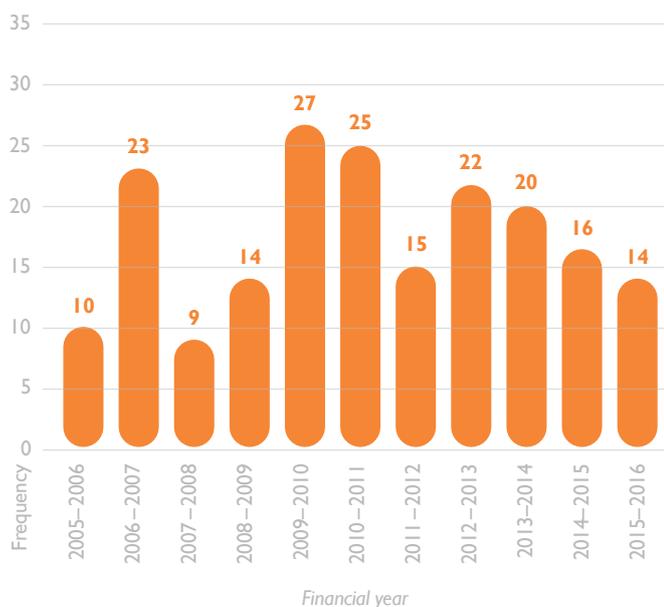
If at the time of the offence, the offender was aged 10 to 16 years, they may be dealt with as a child under the *Youth Justice Act 1992 (Qld)*⁷ and dealt with in the Children's Supreme Court. The mandatory sentence requirements of life imprisonment or an indefinite sentence do not apply to young offenders.

If the young person is found guilty of murder, the court may order that they are detained for a period of no more than 10 years, or up to the maximum for life if the court considers the offence to be a 'particularly heinous offence', such as being excessively violent or brutal.⁸ In exceptional circumstances, it is also possible for a young person to be dealt with as an adult in the Supreme Court, including where there is an adult co-offender.⁹

Offenders sentenced for murder

During 2005–06 to 2015–16, 195 offenders were sentenced for the offence of murder. Figure 1 shows the number of offenders sentenced for murder during the period, by financial year.

Figure 1: Number of offenders sentenced for murder, 2005–06 to 2015–16



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

During 2015–2016, 14 individuals were sentenced for murder. By comparison, based on Queensland Police Service reported data, 59 people were charged with murder during the same period.¹¹ Caution is needed when comparing these figures as, typically, the period of time between charge and sentence is considerable. In addition, not all offenders initially charged with murder are sentenced for murder. For instance, if the elements of the offence appear to be satisfied, but the circumstances surrounding the offence involved provocation, then the charge may be reduced to manslaughter. In addition, an offender may be dealt with by the Mental Health Court, or be found not guilty after a trial.

Characteristics of offenders sentenced for murder

This section compares the age, gender and Aboriginal and Torres Strait Islander status of all offenders sentenced for the offence of murder over the period 2005–06 to 2015–16. The relationship between the offender and the victim is also explored.

Age

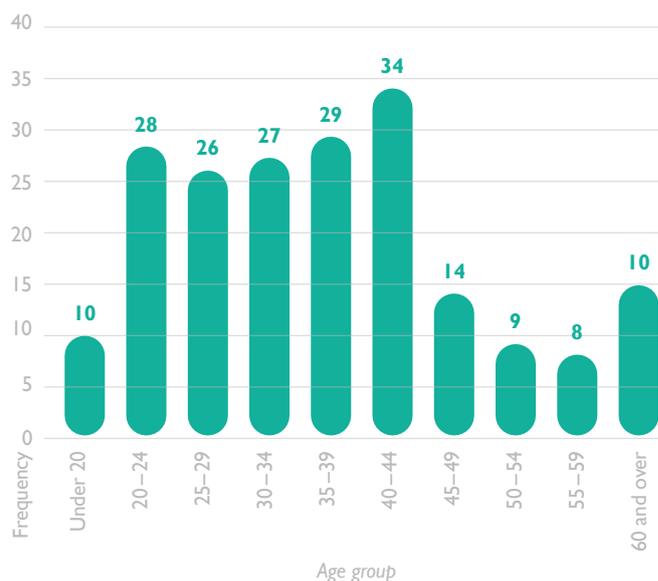
Of the 195 offenders sentenced for murder, the overwhelming majority (189 or 96.9%) were sentenced as adults in the Supreme Court, including four offenders who were aged under 17 at the time of their offence but who were dealt with as an adult.¹¹ All offenders dealt with as an adult received a life sentence.

The remaining six offenders were aged under 17 years at the time of their offence and were sentenced as children in the Children's Supreme Court. Of these, two received a life sentence, and the remaining four received sentences of 8, 10, 12 and 14 years imprisonment.¹²

Depending on the circumstances of each individual case, considerable time may pass between the age at which a person commits an offence, and the age at which they are sentenced. At the time of sentencing, the average age of all offenders sentenced for murder during the period was 37 years.¹³ Figure 2 shows the number of people sentenced for murder by age category at sentence over the 11 year period.

For all Queensland offenders sentenced for murder, there were 10 (5.1%) aged under 20 years at the time of sentencing, while there were 10 offenders (5.1%) aged 60 years and over at the time of sentencing.

Figure 2: Number of people sentenced for murder, by age at sentence, 2005–06 to 2015–16



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

Gender

The vast majority of offenders sentenced for murder in Queensland between 2005–06 and 2015–16 were male (93.3%), with only 13 female offenders sentenced for murder during the period. All 10 young offenders were male.

Overall, female offenders on average (42.8 years) were older than male offenders (36.6 years).¹⁴

Aboriginal and Torres Strait Islander people

Although people who identify as Aboriginal or Torres Strait Islander represent approximately 3.8 per cent of Queensland's population aged 10 years and over,¹⁵ they accounted for 18.5 per cent of all offenders sentenced for murder during the period.¹⁶ In total, there were 36 offenders who identified as being Aboriginal and Torres Strait Islanders. This finding is consistent with previous research that shows Aboriginal and Torres Strait Islander peoples are over-represented in relation to the offence of 'homicide' across Australia.¹⁷ The Aboriginal and Torres Strait Islander status of victims was not able to be determined from the data, however previous research reveals that Aboriginal and Torres Strait Islander people are also over-represented as victims of 'homicide'.¹⁸

When considering over-representation further, of the 182 male offenders sentenced for murder, Aboriginal and Torres Strait Islander males accounted for 18.1 per cent (n=33). By comparison, of the 13 female offenders, Aboriginal and Torres Strait Islander females accounted for 23.1 per cent (n=3) of female offenders.

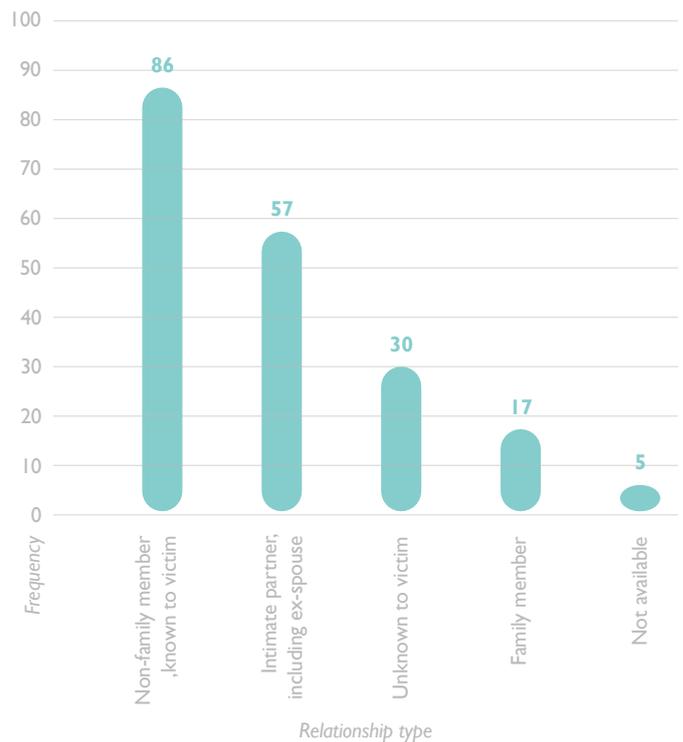
Relationship between offender and victim

In the vast majority of cases the victim was known to the offender (82.1%).

Of the 195 sentenced murder cases during the 11-year period, 86 (44.1%) offenders were sentenced for the murder of a non-family member where they were known to the victim such as a friend, neighbour or work colleague. A further 57 (29.2%) offenders murdered their current or former intimate partner, while 17 (8.7%) offenders were sentenced for the murder of a parent or other family member including children, siblings, grandparents, aunts, uncles and other extended family members.

Only 15.4 per cent of offenders sentenced for murder involved a situation where the offender was unknown to the victim prior to the offence (see also Table 1).¹⁹

Figure 3: Relationship between offender and victim for all offenders sentenced for murder, 2005–06 to 2015–16



Source: Analysis of sentencing remarks available from the Queensland Sentencing Information Service (QSIS).

When examining the offender-victim relationship by gender, it was found that an intimate partner was more likely to be the victim of a male offender as compared to a female offender (30.2% vs 15.4%), while a family member (other than an intimate partner) was more likely to be the victim of a female offender (23.1% vs 7.7%). However, for both males and females, the most common victim is a known non-family member, a finding consistent with previous research.²⁰ Aboriginal and Torres Strait Islander offenders were more likely to offend against a known, non-family member (50.0% vs 42.8%) and less likely to have had no prior relationship with the victim (8.3% vs 17.0%).

Table 1: Offender gender and Aboriginal and Torres Strait Islander status by offender-victim relationship

Offender	N	Victim type				
		Known, non-family (%)	Intimate Partner (%)	Unknown to victim (%)	Family member (%)	Not available (%)
Female	13	46.2%	15.4%	15.4%	23.1%	0.0%
Male	182	44.0%	15.4%	30.2%	7.7%	2.7%
Aboriginal and Torres Strait Islander	36	50.0%	8.3%	33.3%	2.8%	5.6%
Non-Aboriginal and Torres Strait Islander	159	42.8%	17.0%	28.3%	10.1%	1.9%
Total	195	44.1%	15.4%	29.2%	8.7%	2.6%

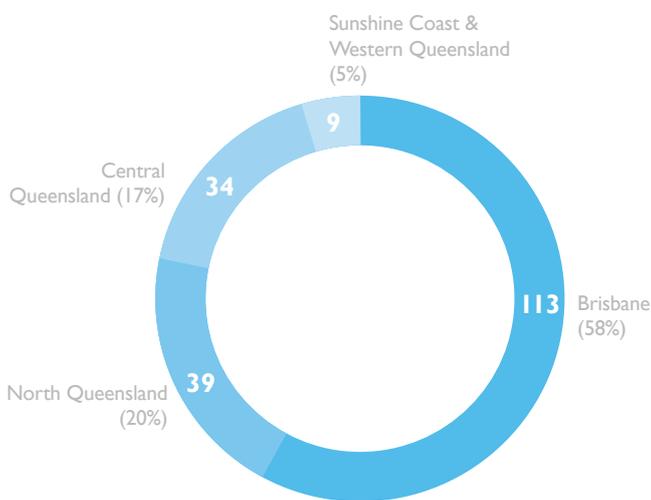
Source: Analysis of sentencing remarks available from the Queensland Sentencing Information Service (QSIS).

Court location at sentence and type of plea

Location at sentencing

Of the 195 offenders sentenced for murder during the period, nine different court locations heard the matters, ranging from Cairns in the far north, Mount Isa and Toowoomba in the west, and Brisbane in the south. While the majority (57.9%) were sentenced in the Brisbane Supreme Court,²¹ matters were dispersed across the state. Figure 4 shows the distribution of offenders sentenced across Queensland based on sentencing court region.

Figure 4: Distribution of offenders based on sentencing court region, 2005–06 to 2015–16



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

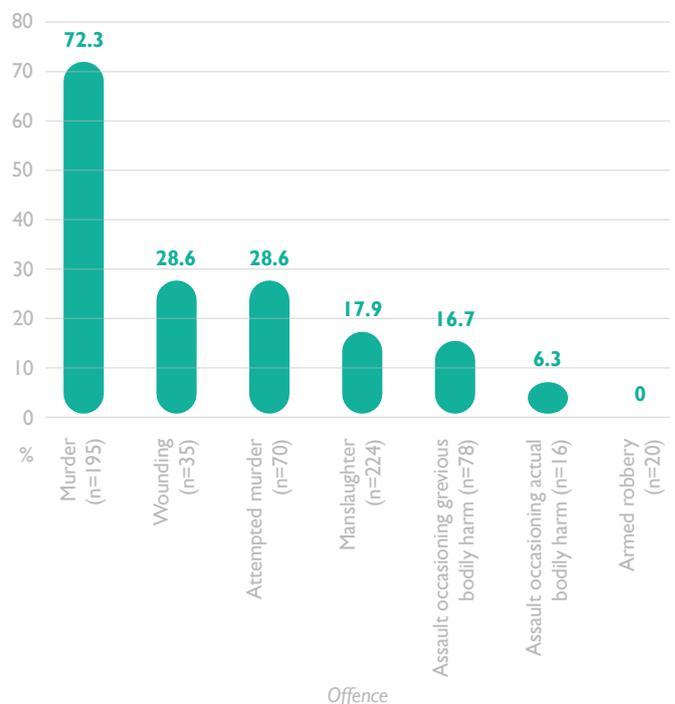
Type of plea

The majority of offenders sentenced for murder in Queensland during the period pleaded not guilty (72.3%) with only 26.2% of offenders pleading guilty, either initially or at a subsequent date.²²

Figure 5 outlines the proportion of offenders sentenced for murder and for other selected offences who pleaded not guilty during the period, based on their most serious offence (MSO). These other selected offences also involved the death of a person or violence as a fundamental characteristic of the offence. Offenders charged with murder as their MSO were more likely than other offenders to plead not guilty. This is most likely as a result of murder carrying a mandatory life sentence for adult offenders. There were also differences in formal plea when analysed by gender, indigenous Australian status and age.

Of the 13 females sentenced for murder, all but one pleaded not guilty. By comparison, 70.9 per cent of males pleaded not guilty. Of the 36 Aboriginal and Torres Strait Islander offenders sentenced for murder, 83.3 per cent pleaded not guilty, compared to 67.9 per cent of non-Aboriginal and Torres Strait Islander offenders who pleaded not guilty. Of the six offenders sentenced as a child, only one (16.7%) chose to plead not guilty.

Figure 5: Proportion of offenders who pleaded not guilty to selected offences of violence, Queensland, 2005–06 to 2015–16



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

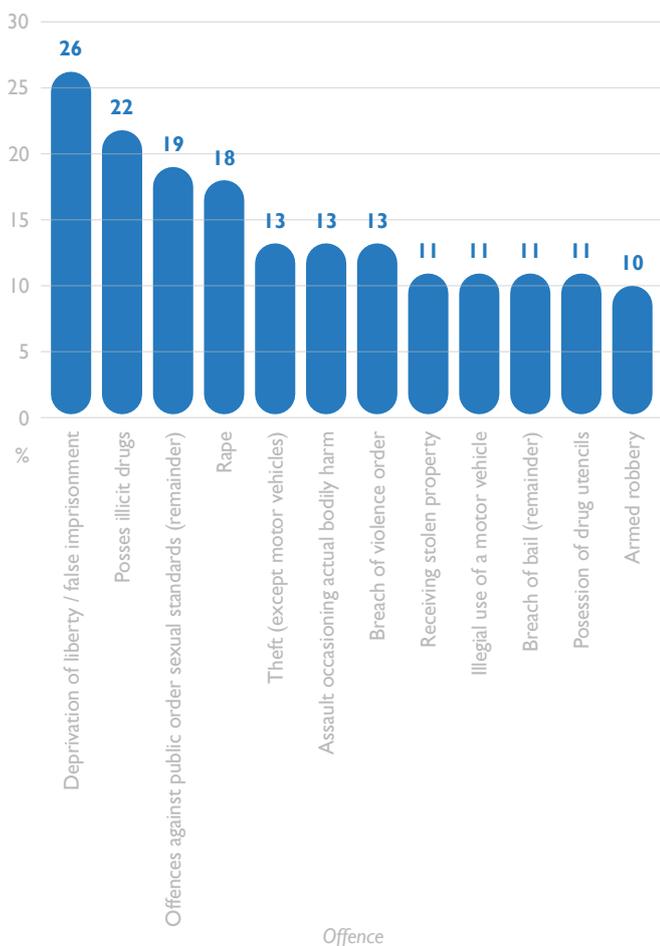
Multiple murders and associated offences

Of the 195 offenders sentenced for murder during the period, 18 (9.2%) were sentenced for multiple murder offences at the same time, 16 of whom were sentenced for a double murder, and the remaining two sentenced for triple murders.

While the offence of murder was the MSO for which each offender was sentenced, a number of offenders were also sentenced in relation to other additional offences. In total, the 195 offenders were responsible for 529 offences, including 215 murder offences and 314 other offences.²³

Figure 6 depicts the other offences most prevalent within the same court matter for offenders charged with murder. The most frequent offence charged in addition to a murder offence is the offence of deprivation of liberty / false imprisonment.

Figure 6: Additional offences most prevalent with murder offences, 2005–06 to 2015–16



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

Murder case studies

The following case studies provide an indication of the significant diversity of the circumstances associated with an offender pleading guilty or being found guilty and sentenced for murder; the limited scope that a judge has in relation to sentencing an offender; and the establishment of minimum non-parole periods.

Adult offender —life imprisonment

The offender was convicted of the murder of her de facto partner following a trial.

There was a known history of domestic violence. Multiple witnesses described conversations leading up to the offence, where the offender discussed murdering her de facto partner. There was also evidence presented that the victim had previously been drugged by the offender.

The offender's recent internet search history also showed searches of topics such as 'premeditated murder conviction' and 'Queensland murder penalties'.

Three days prior to the offence the offender and the victim separated. On the night of the offence, the victim was unaware of the offender's presence at his residence, and the offender added a sleep inducing drug to the victim's food. The victim ate the food and fell asleep. The offender then tied the victim's arms and legs to the chair and put a rope around his neck. The victim suffocated as a result of the rope around his neck.

While the sentence of life imprisonment was mandatory, the sentencing judge ordered the offender serve a minimum period of 15 years before being eligible to apply for parole.

This offence occurred prior to 2013, however under current legislation, the minimum non-parole period in this circumstance would be 20 years or longer (s181 Corrective Services Act 2006 and s305 Criminal Code Act 1899).

Adult offender —life imprisonment

The offender was convicted of the murder of his de facto partner following a trial.

On the night of the offence, both the offender and the victim had consumed alcohol and marijuana. Witnesses overheard the couple arguing. The offender inflicted multiple stab wounds to the victim which resulted in significant blood loss causing death.

The offender was 43-years-old at time of sentence and had a history of domestic violence. The offender also had a previous conviction for murder and committed this offence only five months after having been released on parole.

While the sentence of life imprisonment was mandatory, the aggravating circumstance of the offender's previous conviction of murder meant the sentencing judge was required to order the offender serve a minimum period of 20 years before being eligible to apply for parole.

As this offence occurred prior to 2013, current legislation requiring a minimum non-parole period of 30 years or longer for such circumstances did not apply (s181 Corrective Services Act 2006 and s305(2) Criminal Code Act 1899).

Young offender, dealt with as a child—12 years imprisonment

The offender was aged 16 years at the time of the offence, and pleaded guilty to the murder of his father. He had no prior criminal history and was co-accused with another person.

The offender and co-accused were staying with the victim at the time of the offence and had planned to murder the victim. The offender took a rifle out of the victim's wardrobe and shot him in the forehead while he slept. The offender and co-accused then burnt their clothes, dismantled and discarded the rifle.

The offender was assessed as very depressed, and an extremely vulnerable young person who had been counselled by the co-accused to commit the murder.

The judge emphasised the murder was considered to be a particularly heinous offence as it was a premeditated, cold-blooded murder in the way it was carried out and in the methodical way the offending was concealed. The judge did, however, take into account his early plea of guilty and that the offender agreed to testify against his co-accused.

The offender was sentenced under the *Juvenile Justice Act 1992* (Qld) to 12 years imprisonment with a minimum of eight years to be served before being eligible to apply for parole.

Adult offender —life imprisonment

The offender was convicted of the murder of an acquaintance who ran a bee-keeping business following a trial.

The offender was in financial trouble and murdered the victim to steal the victim's honey to generate an income.

The offender travelled to the victim's property and shot the victim with a rifle while he was asleep on the couch. The offender then stole drums of honey to the value of \$40,000.

While the sentence of life imprisonment was mandatory, the sentencing judge ordered the offender serve a minimum period of 15 years before being eligible to apply for parole.

This offence occurred prior to 2013, however under current legislation, the minimum non-parole period in this circumstance would be 20 years or longer (s181 Corrective Services Act 2006 and s305 Criminal Code Act 1899).

Young offender, dealt with as an adult—life imprisonment

The offender was aged 16 years at the time of the offence—with no prior criminal history—and pleaded guilty to murder, interfering with a corpse, unlawful use of a motor vehicle and stealing. The victim was the older sibling of the offender.

The offender removed a gun from a locked safe and shot the victim. He then walked over to the victim and shot him again. The offender gave no explanation for the murder.

The judge noted the offender showed a lack of remorse and a disconnectedness from what had occurred, with the offence being a cold-blooded, premeditated murder without provocation. The murder was considered to be a particularly heinous offence, and while the offender's youth is usually an important mitigating factor, this was not the result of a spur-of-the-moment error of judgment explained by immaturity.

Expert reports stated the offender displayed behavioural traits indicative of a narcissistic personality disorder in combination with quite elevated psychopathic characteristics, concluding that the future risk of violent re-offence was moderate.

The offender was sentenced under the *Juvenile Justice Act 1992* (Qld), to life imprisonment with a minimum non-parole period of 15 years required to be served before being eligible to apply for parole.

Footnotes

- ¹ Criminal Code (Qld) s 302 and s 305.
- ² Criminal Code (Qld) s 305(1).
- ³ *Penalties and Sentences Act 1992* (Qld) s 163(1).
- ⁴ *Penalties and Sentences Act 1992* (Qld) s 163(4)(a)–(e).
- ⁵ Criminal Code (Qld) s 305(2) s 305(4) and *Corrective Services Act 2006* (Qld) s 181.
- ⁶ Criminal Code (Qld) s 305(2) and *Corrective Services Act 2006* (Qld) s 176.
- ⁷ *Youth Justice Act 1992* (Qld) schedule 4. While legislative change is currently underway that will change the Queensland definition of a child for the purposes of criminal law, to cover those aged 10–17 years, for all those sentenced within the period considered here, the maximum age was 16 years.
- ⁸ *Youth Justice Act 1992* (Qld) s 176.
- ⁹ For example, *Youth Justice Act 1992* (Qld) s 111, ss 140–144.
- ¹⁰ Queensland Police Service, 2015–2016 Annual Statistical Review, <<https://www.police.qld.gov.au/corporatedocs/reportsPublications/statisticalReview/2015–2016.htm>>, p106 & 107.
- ¹¹ Under s 176 of the *Youth Justice Act 1992* (Qld).
- ¹² One of these offenders was released immediately due to time served.
- ¹³ Median age was 37.1 years.
- ¹⁴ Median age for female was 42.7 years, median age for males was 36.0 years. This difference was not found to be statistically significant.
- ¹⁵ As at 30 June 2015, Queensland Government Statisticians Office (GovStats), Population estimates by Indigenous Status, LGAs, 2001 to 2015. <<http://www.qgso.qld.gov.au/subjects/demography/atsi-people/tables/pop-est-indigenous-status/index.php>>
- ¹⁶ Note: There were 19 offenders for whom there was no information in relation to their Aboriginal and Torres Strait Islander status.
- ¹⁷ Cussen, T. & Bryant, W. (2015) Indigenous and non-Indigenous homicide in Australia. Research in Practice. No. 37. Australian Institute of Criminology, Canberra.
- ¹⁸ Cussen, T. & Bryant, W. (2015) Indigenous and non-Indigenous homicide in Australia. Research in Practice. No. 37. Australian Institute of Criminology, Canberra.
- ¹⁹ There were five (2.6%) offenders where the relationship to the victim was not stated and could not be determined.
- ²⁰ Bryant, W. & Cussen, T. (2015) Homicide in Australia: 2010–11 to 2011–12: National Homicide Monitoring Program Report. Monitoring Report no 23. Canberra: Australian Institute of Criminology.
- ²¹ Including the Children's Supreme Court.
- ²² Note: There were three additional offenders who did not enter a formal plea.
- ²³ Note: While there were 215 murder offences finalised and sentenced in the courts, this does not equate to 215 victims, as some cases involved multiple persons being charged for a single murder.

Disclaimer

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Queensland Sentencing
Advisory Council

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Sentencing Spotlight on...murder

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Email: info@sentencingcouncil.qld.gov.au

Telephone: (07) 3224 7375

Website: www.sentencingcouncil.qld.gov.au

SENTENCING
SPOTLIGHT ON...

manslaughter

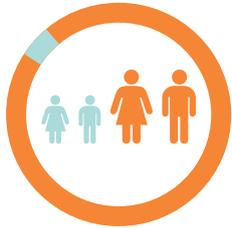


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Sentencing Spotlight on...manslaughter

Manslaughter is generally referred to as the unlawful killing of a person without intent. This *Sentencing Spotlight* looks at sentencing outcomes for the offence of manslaughter finalised in the Queensland Courts between 1 July 2005 and 30 June 2016.

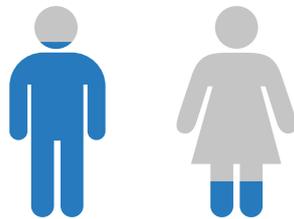
Summary of offences 2005–06 to 2015–16



224 offenders

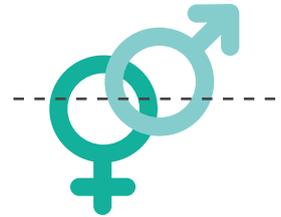
8 offenders under 17 years

216 17 years and over



83.5% male

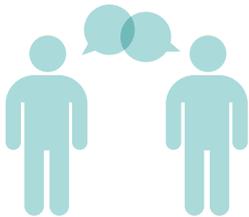
16.5% female



Average age at sentencing 34.5 years

Male average age 33.9 years

Female average age 36.7 years



70.5%

of cases the offender known to victim



75.5%

plead guilty



21.4% offenders Aboriginal or Torres Strait Islander people (3.8% population)



92% immediate prison sentence

6.2% partially suspended sentence

1.8% wholly suspended sentence



95.7% males imprisoned

4.3% males partially or wholly suspended sentence

73.0% females imprisoned

27% females partially or wholly suspended sentence



most common period of imprisonment imposed

Source: Department of Justice and Attorney-General's Queensland Wide Inter-linked Courts (QWIC) database, as maintained by the Queensland Government Statistician (GovStats). Additional details about cases were sourced from sentencing remarks direct from the courts.

The offence of manslaughter

Section 303 of the *Criminal Code Act 1899* (Qld) (the Criminal Code) provides that a person is guilty of manslaughter when that person unlawfully kills another person in a way that does not constitute murder.¹

In more general terms, manslaughter is the unlawful killing of a person without intent to kill, usually as a result of a careless, reckless or negligent act, and includes the intentional killing of a person under extreme provocation or when a person's state of mind has impaired their capacity to understand or to control their actions. If the elements of the offence appear to meet the criteria for murder, but the circumstances of the offence involved provocation, diminished responsibility, or the offence occurred in the context of an abusive domestic relationship where the victim was the perpetrator of such abuse, then the charge may be reduced to manslaughter.²

This *Sentencing Spotlight* focuses on the offence of manslaughter as defined under section 303 of the Criminal Code. Other offences relating to the death of a person such as murder, dangerous driving causing death, unlawful striking causing death, aiding suicide, and killing an unborn child, are excluded from the analysis.

The penalty for manslaughter

In Queensland, the maximum penalty for manslaughter is imprisonment for life.³ Unlike murder, this penalty is not mandatory, so the judge has discretion in what sentence to impose in the particular circumstances of each case.

Generally in sentencing an offender under section 9(2)(a) of the *Penalties and Sentences Act 1992* (Qld) (PSA), a court must have regard to the principles that a sentence of imprisonment should only be imposed as a last resort, and a sentence that allows the offender to stay in the community is preferable. However, these principles do not apply to the sentencing of an offender for any offence that resulted in physical harm to another person or involved violence against another person. In such cases, a court must have primary regard to factors such as the risk of further harm to the community, and the personal circumstances of any victim of the offence.⁴

While there is generally no minimum mandatory term of imprisonment for offenders sentenced for manslaughter, there may be specific aggravating circumstances that need be considered, such as being involved in serious organised crime, in which case the court may be required to impose a mandatory minimum term of imprisonment.⁵

Parole

As with the offence of murder, if an offender is sentenced to life imprisonment, they are eligible to apply for release on parole after serving the required portion of their sentence. For the offence of manslaughter, the current minimum period of time required to be served is 15 years.

Where a person is sentenced to a period of actual imprisonment that is not a life sentence or other mandatory term, they will generally be required to serve half the term prior to becoming eligible to apply for parole, unless otherwise fixed by the judge taking into account factors such as an early guilty plea.⁶ In some circumstances, a court must also make a serious violent offence declaration, under Part 9A of the PSA. In such instances, an offender will be required to serve either 15 years imprisonment or 80 per cent of their prison sentence, whichever is less, before becoming eligible to apply for parole.⁷

Once an offender is eligible to apply for parole, the date of release is determined by the parole authority. An offender may only be released sooner under exceptional circumstances.⁸

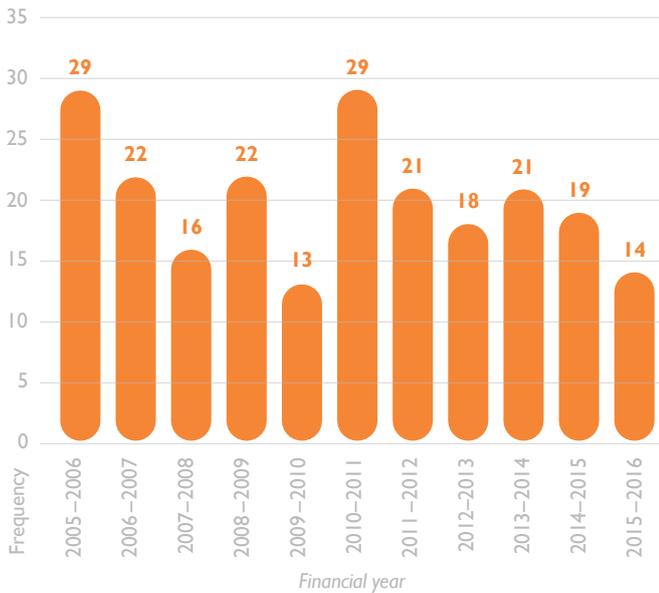
Young offenders

If at the time of the offence, the offender was aged 10 to 16 years, the offender may be dealt with as a child under section 176 of the *Youth Justice Act 1992* (Qld)⁹ and dealt with in the Children's Supreme Court. If the young person is found guilty of the offence of manslaughter, the court may order that the young person be detained for a period of no more than 10 years, or up to the maximum of life if the offence involves the commission of violence against a person and the court considers the offence to be a 'particular heinous offence', such as being excessively violent or brutal.¹⁰ In exceptional circumstances, it is also possible for a young person to be dealt with as an adult in the Supreme Court, including where there is an adult co-offender.¹¹

Offenders sentenced for manslaughter

During 2005–06 to 2015–16, there were 224 offenders sentenced for which manslaughter was their most serious offence (MSO). Figure 1 shows the number of offenders sentenced for manslaughter as their MSO during the period, by financial year.¹²

Figure 1: Number of offenders sentenced for manslaughter as their most serious offence, 2005–06 to 2015–16



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

During 2015–16 there were 14 individuals sentenced for manslaughter. By comparison, based on Queensland Police Service reported data, there were only three people charged with manslaughter during the same period.¹³ Caution is needed comparing these figures, as there is generally a considerable period of time between charge and sentence. In addition, not all offenders are initially charged with manslaughter; rather they may be charged initially with murder which may subsequently be reduced to manslaughter, particularly if there are circumstances of provocation or diminished responsibility.

Characteristics of offenders sentenced for manslaughter

This section compares the age, gender and Aboriginal and Torres Strait Islander status of all offenders sentenced for the offence of manslaughter as their MSO over the period 2005–06 to 2015–16. The relationship between the offender and victim is also explored.

Age

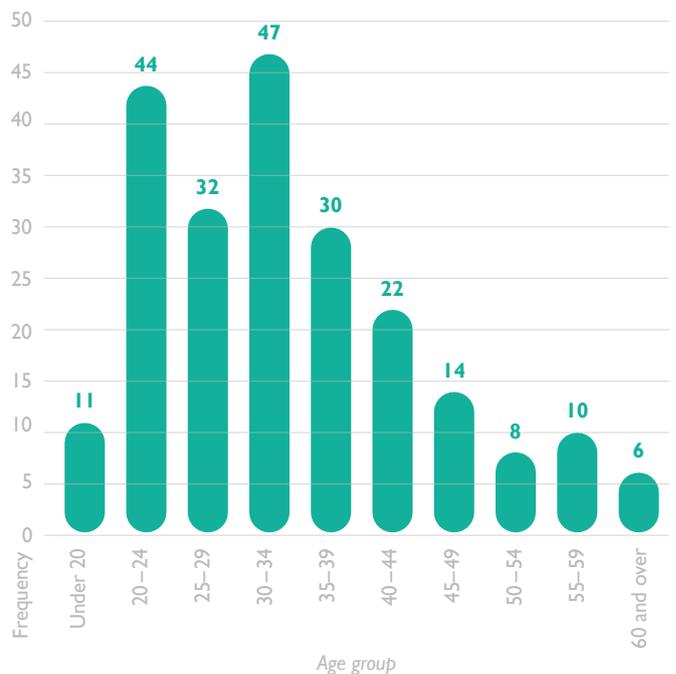
Of the 224 offenders sentenced for manslaughter as their MSO, 218 (97.3%) were sentenced as adults in the Supreme Court, including two offenders who were aged under 17 at the time of their offence, but who were dealt with as an adult. The remaining six offenders were sentenced as children in the Children’s Supreme Court.

At the time of sentencing, the average age of all offenders sentenced for manslaughter as their MSO was 34.3 years.¹⁴ By comparison, the average age of all offenders sentenced for murder during the same period was 37.0 years.¹⁵

Figure 2 shows the number of people sentenced for manslaughter as their MSO by age at sentence.

For all Queensland offenders sentenced for manslaughter as their MSO, most were aged between 20 and 40 at the time of sentencing.

Figure 2: Number of people sentenced for manslaughter by age at sentence, 2005–06 to 2015–16



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

Gender

The majority of offenders sentenced for manslaughter in Queensland were male (83.5%), with only 37 female offenders sentenced for manslaughter during the period. Of the eight children sentenced for manslaughter, all but one were male.

Overall, on average, female manslaughter offenders were older than male offenders. The average age at time of sentencing was 36.7 years for female offenders, compared to 33.9 years for male offenders.¹⁶

Aboriginal and Torres Strait Islander people

Although people of Aboriginal and Torres Strait Islander status represent approximately 3.8 per cent of Queensland's population aged 10 years and over,¹⁷ they accounted for 21.4 per cent of all offenders sentenced for manslaughter during the period. In total, there were 48 offenders who identified as being Aboriginal and/or Torres Strait Islanders.

When considering over-representation further by gender, of the 187 male offenders sentenced for manslaughter, Aboriginal and Torres Strait Islander males accounted for 23.0 per cent (n=43). By comparison, of the 37 female offenders, Aboriginal and Torres Strait Islander females accounted for 13.5 per cent (n=5).

Offender relationship with victim

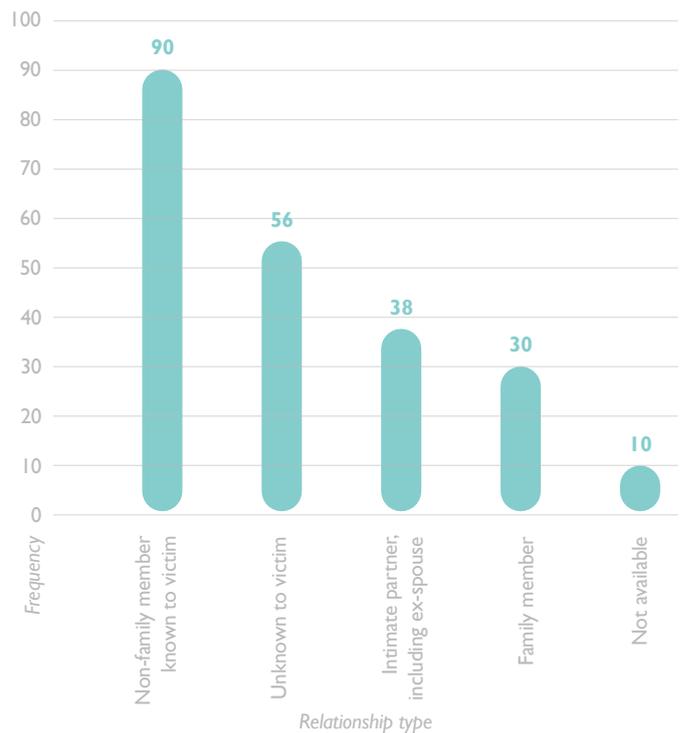
As shown in figure 3, in the majority of cases the victim was known to the offender in some way (70.5%).

Of the 224 sentenced manslaughter cases during the 11-year period, 40.2 per cent (n=90) were sentenced for the manslaughter of a known, non-family member such as a friend, neighbour or work colleague.

Thirty-eight (17.0%) involved the manslaughter of an intimate partner, including ex-partner,¹⁸ and a further 30 (13.4%) offenders were sentenced for the manslaughter of a parent or other family member including children, siblings, grandparents, aunts, uncles and other extended family members.

Only a quarter of offenders sentenced for manslaughter involved a situation where the offender was unknown to the victim prior to the offence (see also Table 1).¹⁹

Figure 3: Relationship between offender and victim of all offenders sentenced for manslaughter, 2005–06 to 2015–16



Source: Analysis of sentencing remarks available from the Queensland Sentencing Information Service (QSIS).

When examining the offender-victim relationship by gender, for males the most likely victim was a known, non-family member (43.9%), followed by someone who was unknown to the victim (29.4%). For females the most likely victim of manslaughter was an intimate partner (43.2%), followed then by other family members (27.0%).

For offenders identifying as Aboriginal and Torres Strait Islander, the most common victim was a known, non-family member (37.5%), followed by an intimate partner (27.1%). By comparison, for non-Aboriginal and Torres Strait Islanders, the most common victim was a known, non-family member (40.9%), followed by 26.1 per cent where they were unknown to their victim.

Table 1: Offender gender and Aboriginal and Torres Strait Islander status by offender-victim relationship

Offender	N	Victim type				
		Known, non-family (%)	Unknown to victim (%)	Intimate Partner (%)	Family member (%)	Not available (%)
Female	37	21.6	2.7	43.2	27.0	5.4
Male	187	43.9	29.4	11.8	10.7	4.3
Aboriginal and Torres Strait Islander	48	37.5	20.8	27.1	14.6	0.0
Non-Aboriginal and Torres Strait Islander	176	40.9	26.1	14.2	13.1	5.7
Aboriginal and Torres Strait Islander female	5	0.0	0.0	80.0	20.0	0.0
Non-Aboriginal and Torres Strait Islander female	32	25.0	3.1	37.5	28.1	6.3
Aboriginal and Torres Strait Islander male	43	41.9	23.3	20.9	14.0	0.0
Non-Aboriginal and Torres Strait Islander male	144	44.4	31.3	9.0	9.7	5.6
Total	224	40.2	25.0	17.0	13.4	4.5

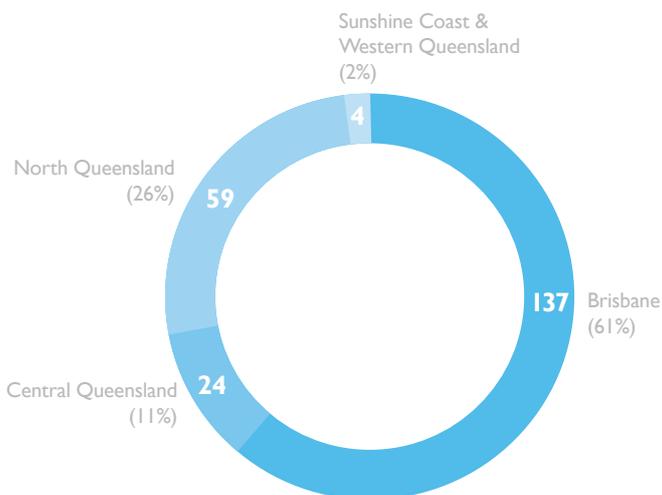
Source: Analysis of sentencing remarks available from the Queensland Sentencing Information Service (QSIS).

Court location at sentence and type of plea

Court location at sentencing

Of the 224 offenders sentenced for manslaughter as the MSO during the period, nine different court locations heard the matters, ranging from Cairns in the far north, Mount Isa and Toowoomba in the west, and Brisbane in the south. While the majority (61.2%) were sentenced in the Brisbane Court, matters were dispersed across the state. Figure 4 shows the distribution of manslaughter offenders sentenced across Queensland based on sentencing court region.

Figure 4: Distribution of manslaughter offenders based on sentencing court region, 2005–06 to 2015–06



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

Type of plea

The majority of offenders sentenced for manslaughter during the period pleaded guilty (75.5%), either initially or at a subsequent date, with only 17.9 per cent of offenders sentenced for manslaughter pleading not guilty.²⁰ This is quite different for the offence of murder, where the majority of offenders pleaded not guilty (72.3%). This is most likely to relate to the fact that murder carries a mandatory life sentence if an offender is convicted of the offence, while manslaughter does not carry any mandatory sentence.

Figure 5 outlines the proportion of offenders sentenced for manslaughter and for other selected offences who pleaded not guilty during the period, based on their most serious offence (MSO). These other selected offences also involved the death of a person or violence as a fundamental characteristic of the offence.

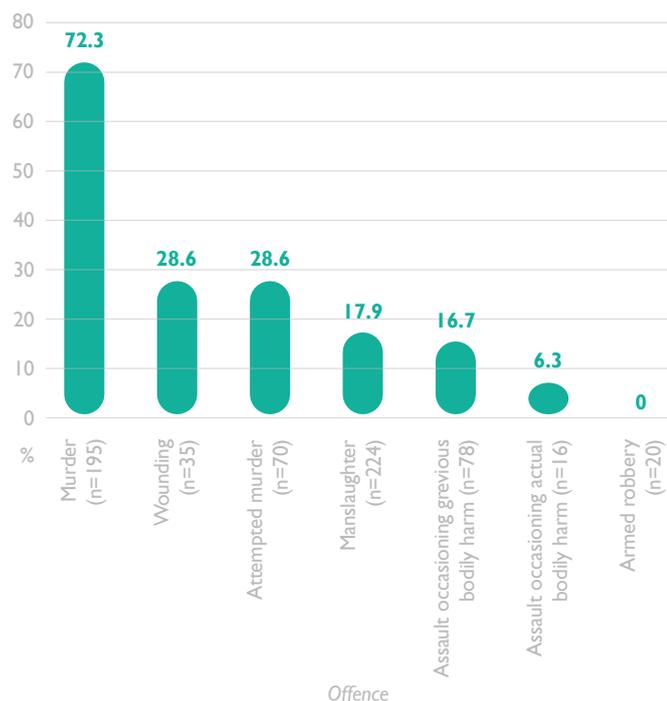
Offenders charged with manslaughter as their MSO were far less likely than those charged with murder to plead not guilty. There were also differences in formal plea when analysed by gender, indigenous Australian status and age.

Of the 37 females sentenced for manslaughter, 94.6 per cent entered a plea of guilty rather than contesting the charges. By comparison, 70.6 per cent of males pleaded guilty.

Aboriginal and Torres Strait Islander offenders sentenced for manslaughter were more likely to have pleaded guilty than non-Aboriginal and Torres Strait Islander offenders—85.4 per cent compared to 72.7 per cent.

Of the eight children sentenced for manslaughter, five pleaded guilty (62.5%).

Figure 5: Proportion of offenders who pleaded not guilty to selected offences of violence, Queensland, 2005–06 to 2015–16



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

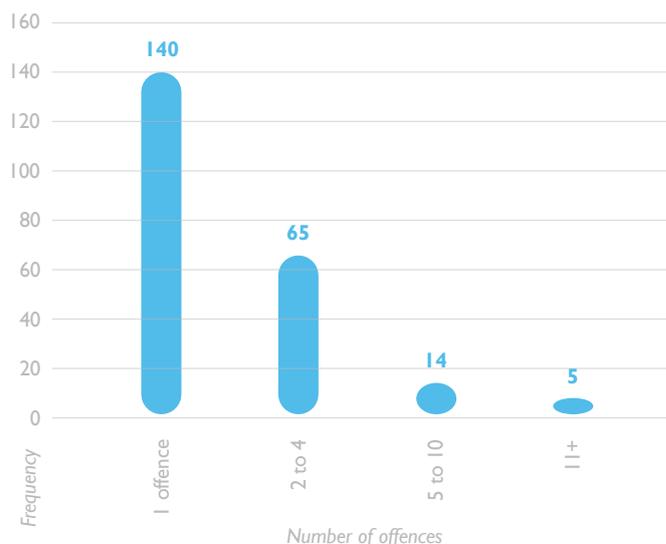
Associated offences

Offenders prosecuted for manslaughter may have other offences finalised at the same court hearing. While there were 224 offenders sentenced for manslaughter as their MSO, there were an additional three offenders sentenced to both murder and manslaughter at the same time, and murder was considered their MSO.

For the 224 offenders sentenced where an offence of manslaughter was their MSO, most (62.5%) had only a single offence of manslaughter finalised. In total, the 224 offenders sentenced for manslaughter as their MSO during the period were responsible for 244 additional offences.

Figure 6 shows the number of people by the total number

Figure 6: Number of finalised offences per person per hearing for offenders sentenced for manslaughter as their MSO, 2005–06 to 2015–16



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

of offences finalised per person. The number of finalised offences per offender ranged from 1 to 23. The average number of offences per offender sentenced for manslaughter was 2.13 (median=1).

There was some difference regarding number of finalised offences by gender and Aboriginal and Torres Strait Islander status (see Table 2).

Males were more likely than females to have multiple offences finalised in one hearing (39.0% vs 29.7%), and non-Aboriginal and Torres Strait Islander offenders were slightly more likely to have multiple offences finalised than Aboriginal and Torres Strait Islander offenders (39.2% vs 31.3%).

When gender and Aboriginal and Torres Strait Islander status is considered together, non-Aboriginal or Torres Strait Islander males are the most likely to have multiple offences finalised.

Table 2: Total number of finalised offences per event, by gender and Aboriginal and Torres Strait Islander status, 2005–06 to 2015–16

	N	Single offence %	2 to 4 offence %	5 to 10 %	11+ %
Female	37	70.3	27.0	2.7	0.0
Male	187	61.0	29.4	6.9	2.7
Aboriginal and Torres Strait Islander	48	68.8	22.9	6.3	2.1
Non-Aboriginal and Torres Strait Islander	176	60.8	30.7	6.3	2.3
Aboriginal and Torres Strait Islander female	5	80.0	20.0	0.0	0.0
Non-Aboriginal and Torres Strait Islander female	32	68.8	28.1	3.0	0.0
Aboriginal and Torres Strait Islander male	43	67.4	23.2	7.0	2.3
Non-Aboriginal and Torres Strait Islander male	144	59.0	31.2	6.9	2.8
Total	224	62.5	29.0	6.3	2.2

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

Table 3 shows the eight most common additional offences finalised when an offender is sentenced for manslaughter. The most frequent additional offence was assault occasioning actual bodily harm (12.7%), possession of illicit drugs (7.8%) and possession of drug utensils (5.7%). There were also six offenders sentenced for multiple manslaughter offences at the same time.

Table 3: Additional offences most prevalent with a manslaughter offence, 2005–06 to 2015–16

Offence	Frequency
Assault occasioning actual bodily harm	31
Possess illicit drugs	19
Possession of drug utensils	14
Offences against public order sexual standards	13
Enter dwelling with intent, without violence or threats	10
Illegal use of a motor vehicle	10
Break and enter other building	8
Deprivation of liberty / false imprisonment	7

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

Sentence outcomes

Penalty type

From 2005–06 to 2015–16, all 224 offenders received a custodial penalty. The vast majority (92%) were sentenced to immediate imprisonment, however six per cent (n=14) received a partially suspended sentence and the remaining four offenders (1.8%) received a wholly suspended sentence.²¹

Penalty type, gender and Aboriginal and Torres Strait Islander status

Male offenders were most likely to be sentenced to imprisonment (95.7%), with only a small proportion sentenced to either a partially or wholly suspended sentence (2.7% and 1.6% respectively). While imprisonment was also the most common sentence for female offenders (73.0%), nearly a quarter of female offenders (24.3%) received a partially suspended sentence and one offender received a wholly suspended sentence (see also Table 4).

Aboriginal and Torres Strait Islander offenders were slightly more likely to be sentenced to imprisonment than non-Aboriginal and Torres Strait Islander offenders – 96 per cent of Aboriginal and Torres Strait Islander offenders were sentenced to imprisonment compared to 91 per cent of non-Aboriginal and Torres Strait Islander offenders. Non-Aboriginal and Torres Strait Islander offenders were more likely to receive suspended sentences (partially and wholly suspended). These findings regarding Aboriginal and Torres Strait Islander status are consistent across gender (see also Table 4).

Penalty and offender-victim relationship

When the offender was not known to the victim, the offender was more likely to receive a prison sentence. Suspended sentences (either partially or wholly suspended) were more likely when the victim was a family member (see Table 5).

Table 4: Penalty types by gender and Aboriginal and Torres Strait Islander status, 2005–06 to 2015–16

	N	Imprisonment (%)	Partially suspended (%)	Wholly suspended (%)
Female	37	73.0	24.3	2.7
Male	187	95.7	2.7	1.6
Aboriginal and Torres Strait Islander	48	95.8	4.2	0.0
Non-Aboriginal and Torres Strait Islander	176	90.9	6.8	2.3
Aboriginal and Torres Strait Islander female	5	80.0	20.0	0.0
Non-Aboriginal and Torres Strait Islander female	32	71.9	25.0	3.1
Aboriginal and Torres Strait Islander male	43	97.7	2.3	0.0
Non-Aboriginal and Torres Strait Islander male	144	95.1	2.8	2.1
Total	224	92.0	6.2	1.8

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

Table 5: Penalty types by relationship to victims, 2005–06 to 2015–16

Relationship to victim	N	Imprisonment (%)	Partially suspended (%)	Wholly suspended (%)
Family member	30	83.3	13.3	3.3
Intimate partner, including ex-spouse	38	89.5	10.5	0.0
Unknown to victim	56	98.2	1.8	0.0
Non-family member, known to victim	90	93.3	4.4	2.2
Not available	10	80.0	10.0	10.0
Total	224	92.0	6.2	1.8

Source: Analysis of sentencing remarks available from the Queensland Sentencing Information Service (QSIS).

Length of prison sentences

For all 224 offenders sentenced for manslaughter as their MSO, figure 7 shows the number of offenders receiving different lengths of custodial penalties (in years). While a life sentence is the maximum penalty under the Criminal Code for the offence of manslaughter, no one received the maximum penalty during the period.

Across all offenders, the length of custodial sentence ranged from 1.5 years to 15.0 years, which is consistent with the sentencing outcomes for manslaughter in other jurisdictions and is indicative of the wide range of circumstances where manslaughter occurs.²²

Figure 7: Number of offenders sentenced for manslaughter by sentence length (years), 2005–06 to 2015–16

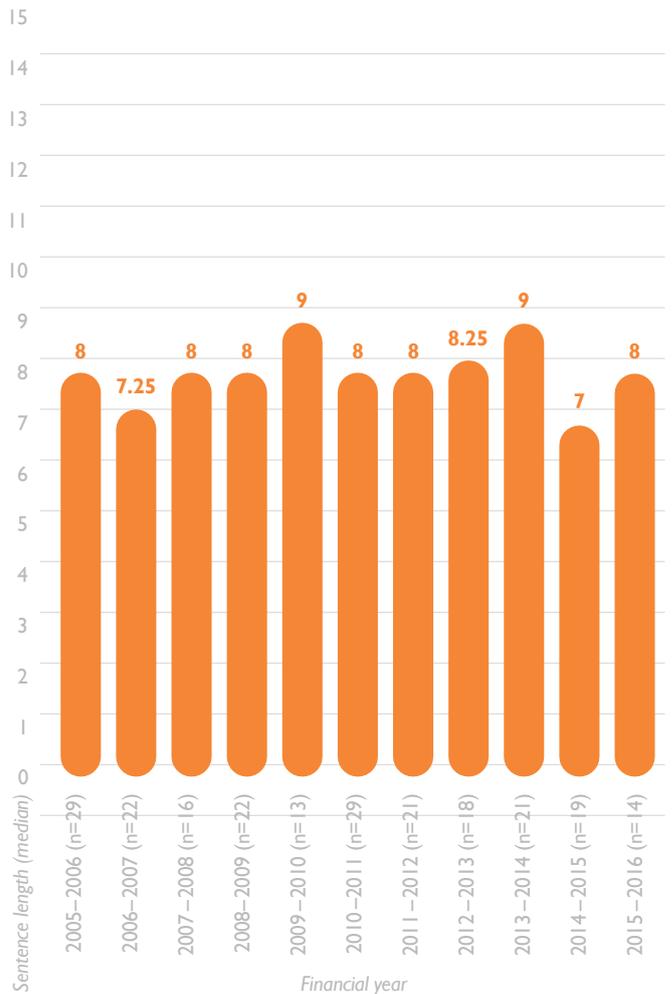


Source: Analysis of sentencing remarks available from the Queensland Sentencing Information Service (QSIS), for those matters identified as dealing with manslaughter within Queensland Treasury - Courts Database, as maintained by Queensland Government Statistician's Office, extracted January 2017

The median custodial sentence length for manslaughter during the period was eight years, and this was also the most common sentence length imposed.²³

The median sentence length for the offence of manslaughter in Queensland has remained relatively constant over the period as shown in figure 8. The median sentence length for manslaughter was lowest in 2014–15 at seven years, and highest in both 2009–10 and 2013–14 at nine years.

Figure 8: Median sentence length of offenders sentenced for manslaughter by year of sentence, 2005–06 to 2015–16



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

Table 6: Sentence length by gender and Aboriginal and Torres Strait Islander status—median, minimum and maximum sentence lengths, 2005–06 to 2015–16

	N	Median (years)	Minimum sentence given (years)	Maximum sentence given (years)
Female	37	7.0	1.5	10.0
Male	187	8.0	1.5	15.0
Aboriginal and Torres Strait Islander	48	8.0	3.0	12.0
Non-Aboriginal and Torres Strait Islander	176	8.0	1.5	15.0
Aboriginal and Torres Strait Islander female	5	7.0	5.0	8.0
Non-Aboriginal and Torres Strait Islander female	32	7.0	1.5	15.0
Aboriginal and Torres Strait Islander male	43	8.0	3.0	12.0
Non-Aboriginal and Torres Strait Islander male	144	8.0	1.5	15.0
Total	224	8.0	1.5	15.0

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

Sentence length by gender and Aboriginal and Torres Strait Islander status

Table 6 shows median sentence lengths in Queensland are similar when gender and Aboriginal and Torres Strait Islander status is considered. The median sentence length for males is eight years, compared to seven years for females. The median sentence length for both Aboriginal and Torres Strait Islander offenders and non-Aboriginal and Torres Strait Islander offenders is eight years.

Few differences were seen in sentence range when considering gender and Aboriginal and Torres Strait Islander status. Table 6 shows females had a slightly lower maximum in the range of sentence lengths given, with a maximum of 10 years compared to 15 years for males. Aboriginal and Torres Strait Islander offenders also had a slightly lower maximum length of 12 years compared to 15 years for non-Aboriginal and Torres Strait Islander offenders.

Sentence length by offender-victim relationship

When the victim is not known to the offender, the median sentence length was slightly higher, and the circumstances involving the lowest sentences (of 1.5 years) involved situations where the victim was a family member of the offender (see Table 7).

Table 7: Penalty types by relationship to victims

Relationship to victim	N	Median (years)	Minimum sentence given (years)	Maximum sentence given (years)
Family member	30	8.0	1.5	15.0
Intimate partner, including ex-spouse	38	8.0	3.0	12.0
Unknown to victim	56	8.2	3.0	14.0
Non-family member, known to victim	90	8.0	3.3	14.0
Not available	10	5.0	4.0	8.0
Total	224	8.0	1.5	15.0

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

Manslaughter case studies

The variation in sentence lengths imposed for manslaughter reflects the high level of case variability for this offence.

The following three case studies provide an indication of the significant diversity of the circumstances associated with an offender pleading guilty or being found guilty and sentenced for manslaughter; the scope that a judge has in relation to sentencing an offender; and the establishment of minimum non-parole periods.

Adult offender: 12 years imprisonment

The offender was convicted of manslaughter for the unlawful killing of a drug user known to the offender, following a trial. The jury found the offender not guilty of murder.

Witnesses gave evidence during the trial that the victim was violent, with a volatile temper. On the night of the offence the victim, who was carrying a shotgun, had threatened to shoot the offender. There was a verbal altercation and, at some point, the offender shot the victim with the shotgun at close range.

The offender was 27-years-old at the time of the offence. When determining the sentence, the judge took into account that although the offender had a significant criminal history, there was no history of violence. He also took into account that the offender came from a good family background and had a good work history. The judge noted the offender was substantially adversely affected by methylamphetamine at the time of the killing, and recognised that although there was no intention to kill or to cause grievous bodily harm, there was a deliberate pulling of the trigger.

The judge sentenced the offender to 12 years imprisonment with a recorded conviction of a serious violent offence. A serious violent offence conviction means the offender will be only eligible for parole after serving 80 per cent of the 12-year sentence.

Adult offender: seven years imprisonment

The offender was convicted of manslaughter for the unlawful killing of a 70-year-old man, known to the offender, following a trial. The jury found the offender not guilty of murder.

The offender told her psychologist that prior to the offence the victim had made inappropriate comments about her six-year-old daughter. On the day of the offence, the victim visited the offender's home and commented on the child's underwear. The offender alleged this caused her to 'snap' and throw the scalding water on the victim's head and chest, causing burns to his face and upper airways. The offender called an ambulance and the victim was hospitalised and treated. However, in the course of the medical treatment he received, the victim was immobilised and he contracted sepsis. Death was caused by deep venous thrombosis (DVT) in the lower legs, which led to a fatal pulmonary embolism. The victim died three weeks after the offence. The burns were a substantial cause of death.

The offender was aged 27 at the time of offence. When determining the sentence, the judge acknowledged the devastating impact of the offence on the victim's family and that the criminality involved warranted a significant sentence. The judge accepted the offender was genuinely remorseful and that personal deterrence was not a significant consideration because the offender had no prior criminal history and her conduct was out of character. Further, the offender's low level of intelligence and low intellectual functioning were significant factors taken into account.

The judge sentenced the offender to seven years imprisonment with a minimum of three years to be served before being eligible to apply for parole.

Young offender, dealt with as a child: four years imprisonment

The offender, along with two co-accused, was convicted of manslaughter and assault occasioning bodily harm following a trial. One of the co-accused was the offender's older brother.

The offender took part in a fight between two groups. Both the offender and one of his co-accused punched the victim in the head. The blow from the co-accused resulted in the victim falling and hitting his head. Death was caused by injuries sustained from the fall.

The offender was aged 16 at the time of offence with his two co-accused aged 17 years and 18 years. The offender had no previous criminal history. The victim was a young man walking home with his fiancé and a few friends after having a night out. The victim came to the aid of his friends who were being attacked by the offender and his co-accused.

The judge stated it was incumbent upon him as the community's representative to denounce this sort of conduct and pass a sentence designed to deter other people.

The judge noted the importance of deterrence and denunciation, and acknowledged the significance that the offender was a child at the time of the offences. He also accepted the offender had demonstrated remorse.

The offender was sentenced to four years imprisonment for the manslaughter, and three months imprisonment in relation to the assault occasioning bodily harm, to be served concurrently. He would be eligible to apply for parole after serving half.

Endnotes

- ¹ Criminal Code (Qld) ss 303, 310.
- ² Criminal Code (Qld) ss 304, 304A and 304B.
- ³ Criminal Code (Qld) s 310.
- ⁴ *Penalties and Sentences Act 1992* (Qld), s 9(2A), and (3).
- ⁵ *Penalties and Sentences Act 1992* (Qld), s 161Q and s 161R.
- ⁶ *Corrective Services Act 2006* (Qld), s 184(2). See *R v Crouch; R v Carlisle* [2016] QCA 81, [29] per McMurdo P.
- ⁷ *Penalties and Sentences Act 1992* (Qld), Part 9A and *Corrective Services Act 2006* (Qld), s 182(2).
- ⁸ *Corrective Services Act 2006* (Qld), s 176.
- ⁹ *Youth Justice Act 1992* (Qld) schedule 4. While legislative change is currently underway that will change the Queensland definition of a child for the purposes of criminal law, to cover those aged 10–17 years, for all those sentenced within the period considered here, the maximum age was 16 years.
- ¹⁰ *Youth Justice Act 1992* (Qld), s 176.
- ¹¹ For example, *Youth Justice Act 1992* (Qld), s 111 and ss 140 to 145.
- ¹² Note: an additional three offenders were sentenced for manslaughter, however they also were sentenced at the same time for a murder offence. As manslaughter was not their most serious offence they are therefore not counted in these statistics.
- ¹³ Queensland Police Service, 2015–2016 Annual Statistical Review, <<https://www.police.qld.gov.au/corporatedocs/reportsPublications/statisticalReview/2015-2016.htm>>, p106 & 107.
- ¹⁴ Median age=32.3 years.
- ¹⁵ See QSAC Sentencing Spotlight on Murder 2005–06 to 2015–16 for further information.
- ¹⁶ Median age for female offenders was 35.3 years, median age for males was 31.9 years. This difference was not found to be statistically significant.
- ¹⁷ As at 30 June 2015, Queensland Government Statisticians Office (GovStats), Population estimates by Indigenous Status, LGAs, 2001 to 2015. <<http://www.qgso.qld.gov.au/subjects/demography/atsi-people/tables/pop-est-indigenous-status/index.php>>
- ¹⁸ Intimate partner includes the offender's spouse, husband, wife, boyfriend, girlfriend, ex-spouse, ex-husband, ex-wife, ex-boyfriend or ex-girlfriend.
- ¹⁹ There were 10 (4.5%) matters where the relationship to the victim could not be determined.
- ²⁰ Note: There were 15 additional offenders who did not enter a formal plea.
- ²¹ The court can impose a suspended sentence if an offender is sentenced to imprisonment for five years or less. The imprisonment sentence may be partially or wholly suspended. Offenders receiving partially suspended sentences will serve a proportion of their sentence in custody, while offenders receiving wholly suspended sentences will serve their entire imprisonment sentence in the community, provided they do not breach any conditions of their suspended sentence.
- ²² For example, in Victoria the sentencing range for manslaughter for cases sentenced in 2009–10 to 2013–14 was three years to 14 years (Victorian Sentencing Advisory Council 2015).
- ²³ The median sentence length imposed is for the most serious offence (i.e. manslaughter only).

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Queensland Sentencing
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Sentencing Spotlight on...manslaughter

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For more information:

Email: info@sentencingcouncil.qld.gov.au

Telephone: (07) 3224 7375

Website: www.sentencingcouncil.qld.gov.au

SENTENCING
SPOTLIGHT ON...

child exploitation material offences



Queensland Sentencing
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Sentencing Spotlight on...

child exploitation material offences

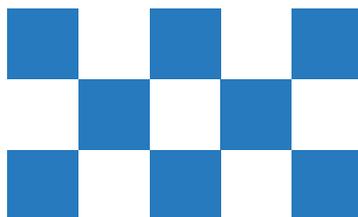
There are a range of offences under both Queensland and Commonwealth legislation relating to the access, possession, distribution and making of child exploitation material. This *Sentencing Spotlight* looks at sentencing outcomes for child exploitation material offences finalised in the Queensland Courts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

Summary of offences 2006–07 to 2015–16

COURT and DIVERSION



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

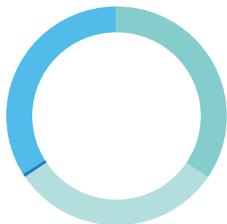


1470 offenders
under 17 years
diverted by police



1565 offenders
sentenced in court;
28 under 17 years

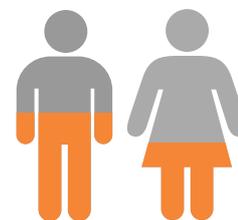
DIVERSION



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



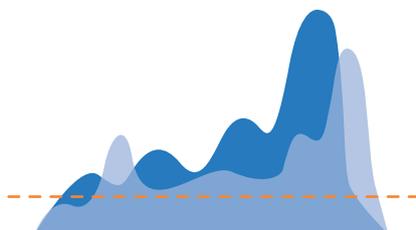
Majority sexting
offences



54.8% male
45.2% female



10.8%
Aboriginal and
Torres Strait Islanders



Average age
14.8 years

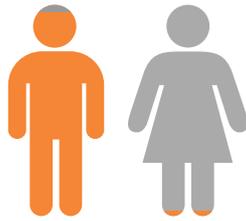


92.9%
formal caution,
7.1%
youth justice
conference

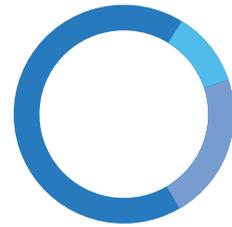
COURT



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



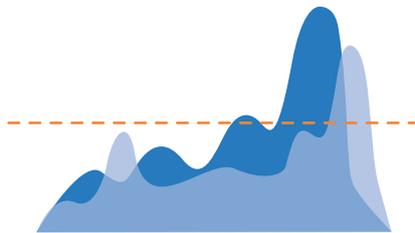
98.5% male
1.5% female



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



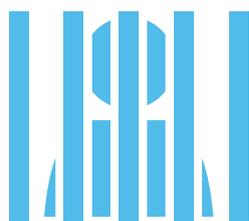
3.6%
Aboriginal and
Torres Strait Islanders



Average age
39.9 years



97.5%
pleaded
guilty



78.1%
custodial penalty;
of which
72.6%
suspended sentence



Median custodial
duration for CEM
most serious offence
11.8 months

Offences relating to Child Exploitation Material (CEM)

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

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

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

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

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

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

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

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

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

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

Penalties for CEM-related offences

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

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

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

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

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

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

Young offenders

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

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

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

Offenders dealt with for CEM offences

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

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

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

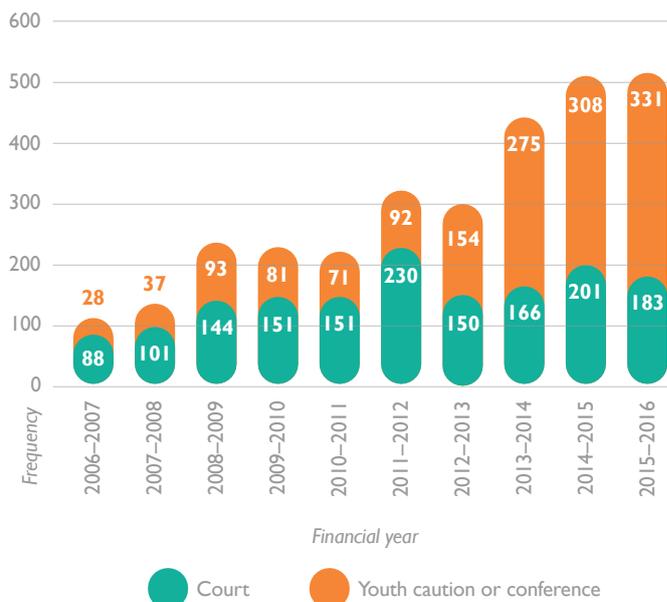
The total number of young people diverted from court via formal caution or conference (1470) was comparable to the number of offenders finalised through Queensland courts (1565). However Figure 1 demonstrates while the overall total number of CEM offenders dealt with by the criminal justice system has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

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

Type of CEM offence

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

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

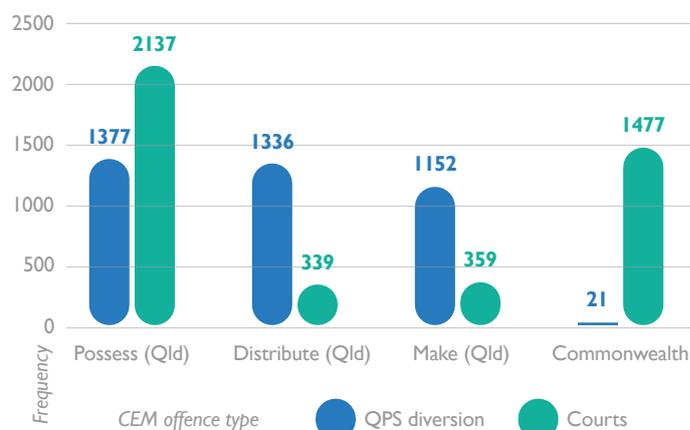


Source: QPS - QPrime database; Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

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

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

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



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

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

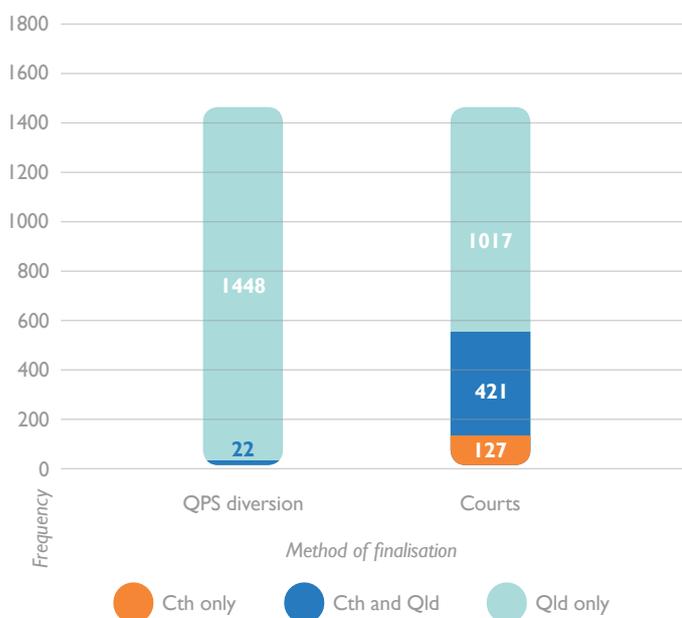
The QPS advised the majority of CEM offences for which young offenders were diverted from court relate to sexting.²⁰ Regardless of the age of the offender, sending sexualised images of children is a CEM offence. However the behaviour conducted by young people in this context often involves different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

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

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

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

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



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

CEM and associated offending

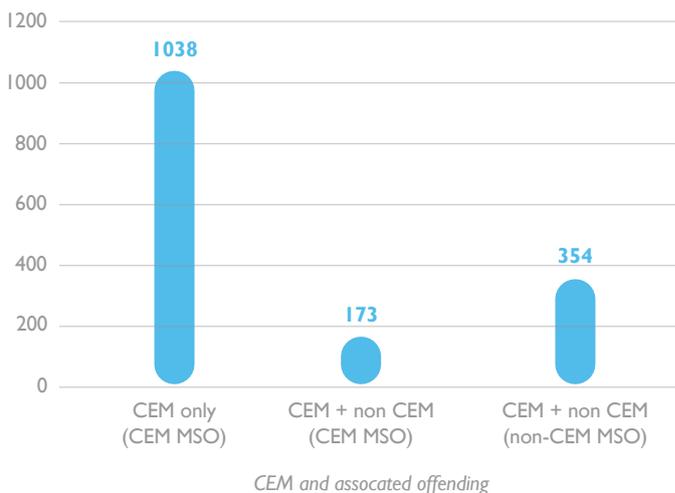
Offenders can be charged with CEM and non-CEM offences at the same time.

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

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

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

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



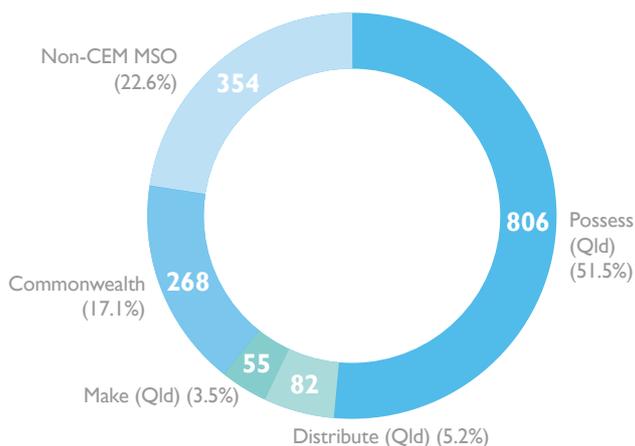
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

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

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

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

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



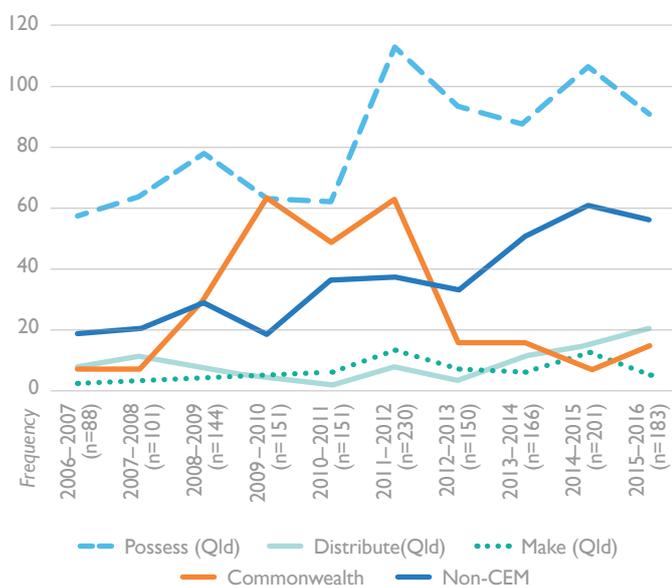
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

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

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

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

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



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

Characteristics of offenders dealt with for CEM offences

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

Age

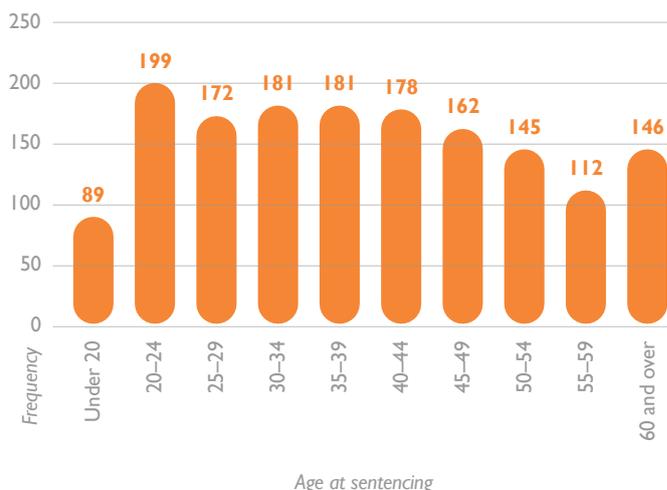
Over the 10-year period, the age of offenders either dealt with via QPS diversion or otherwise sentenced for CEM offences ranged from 10 to 88 years.

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

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

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

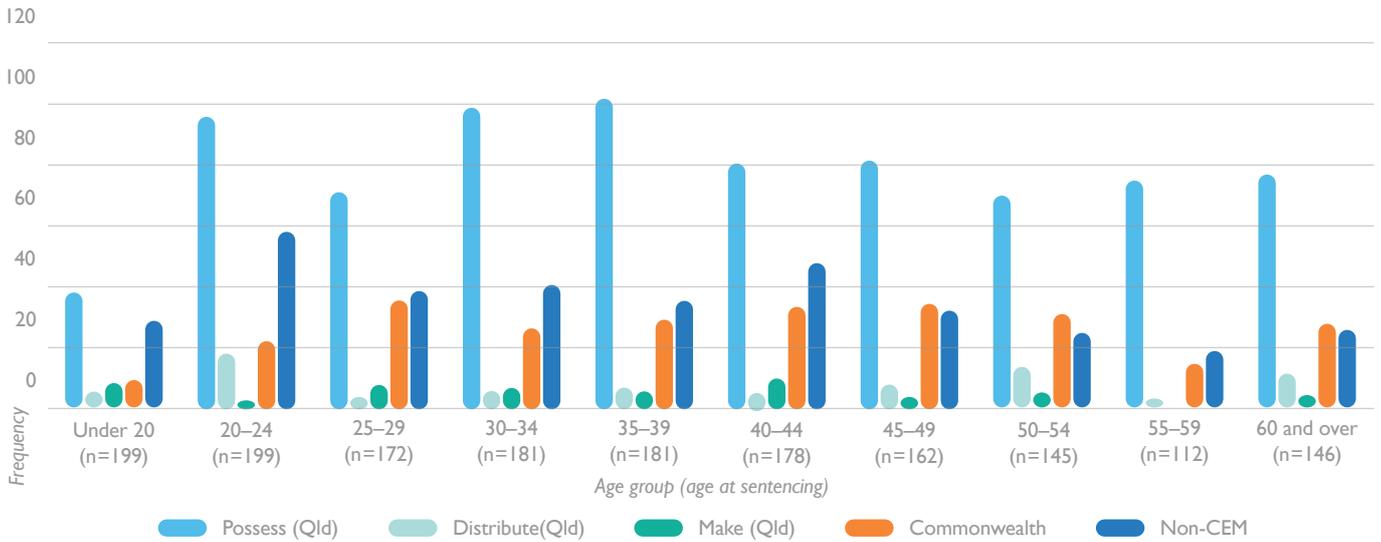
Figure 7: Number of offenders sentenced, by age at sentence, 2006–07 to 2015–16



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

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

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



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

Gender

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

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

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

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

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

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

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



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

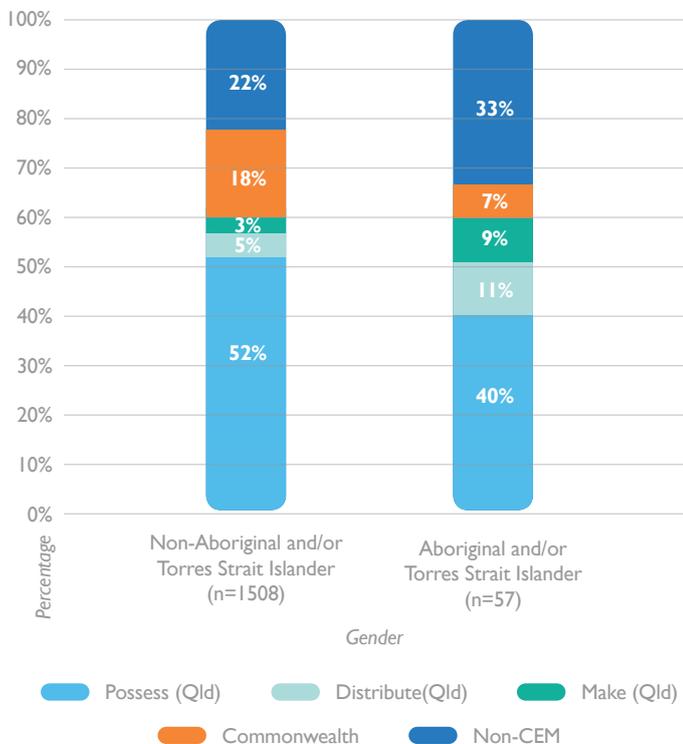
Aboriginal and Torres Strait Islander offenders

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

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

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

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



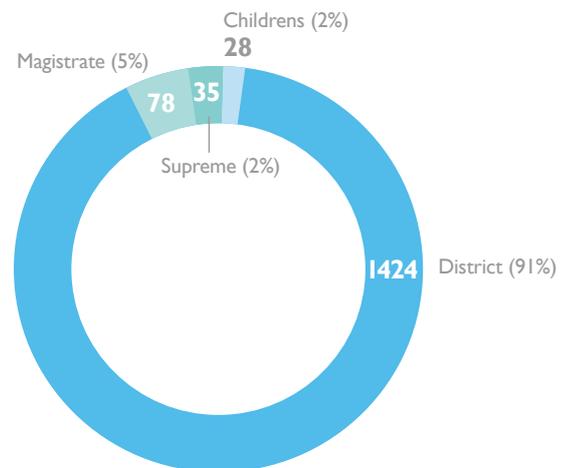
Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted January 2017

Court level, location and plea

Level of court finalisations

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

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



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

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

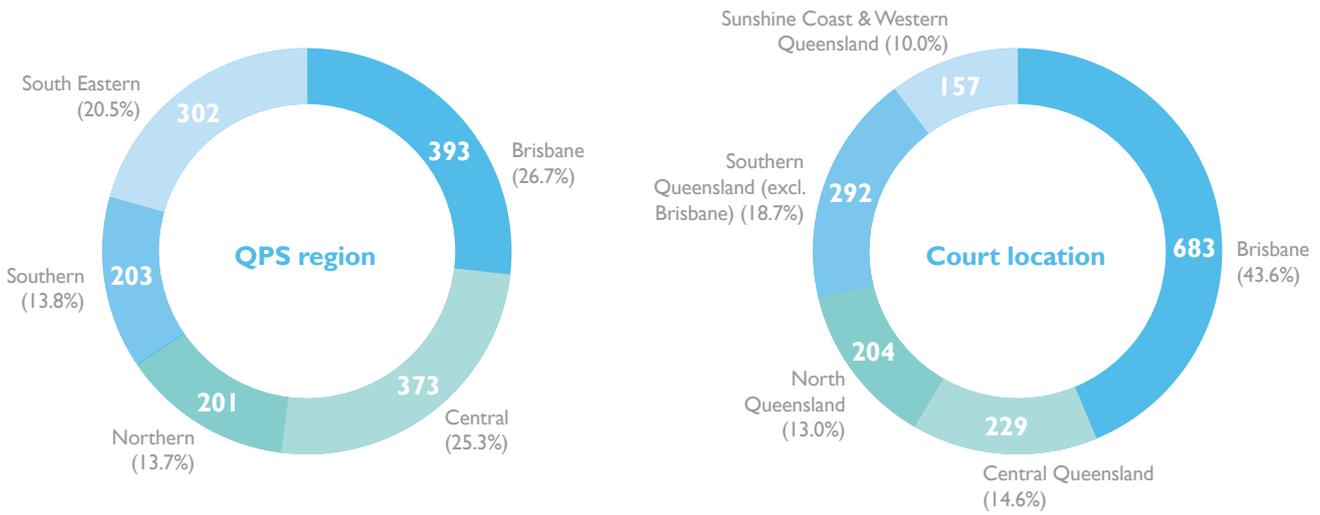
Location at finalisation

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

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

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

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



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

Type of plea

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

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

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

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

Penalties and sentencing

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

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

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

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

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

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

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

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

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

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

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

Custodial penalties

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

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

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

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

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

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

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

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

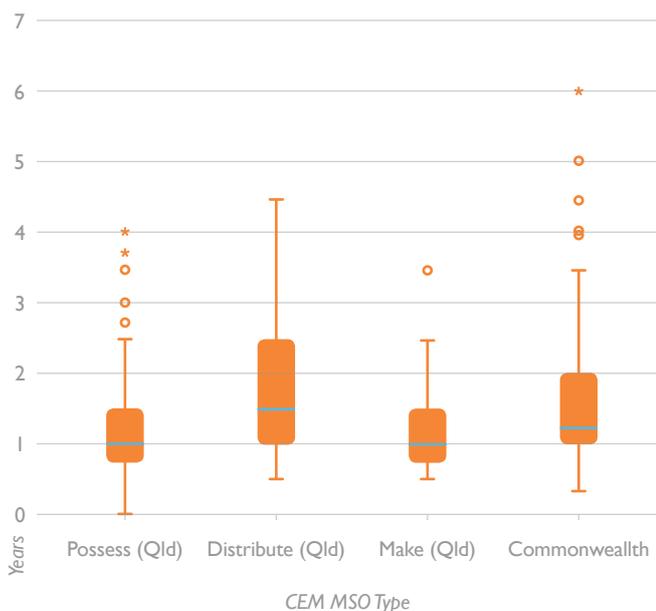
MSO	N	All custodial (median length in months)	Imprisonment (median length in months)	Intensive correction order (median length in months)	Partially suspended (median length in months)	Wholly suspended (median length in months)
CEM MSO (total)	908	11.8	12.0	11.8	17.7	11.8
Possess (Qld)	590	11.8	10.0	11.8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

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

[^] caution: small sample sizes

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

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



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

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

Non-custodial penalties

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

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

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

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

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

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

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

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

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

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

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

[^] Caution: small sample sizes

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

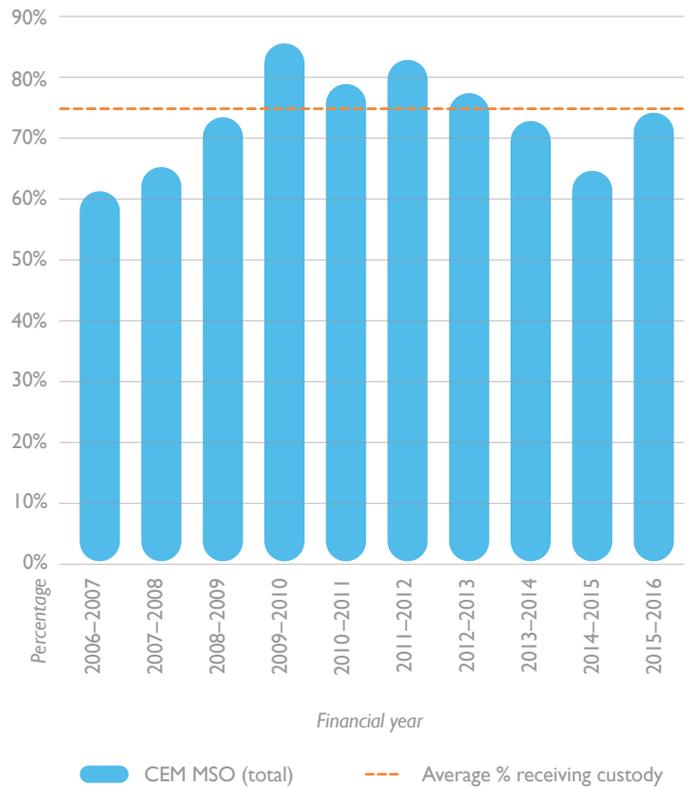
Sentencing trends over time

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

Figure 14 shows the proportion of offenders with a CEM MSO who received a custodial penalty during the 10-year period. Offenders with a CEM MSO were likely to receive a custodial sentence, however offenders sentenced between 2009–10 and 2013–13 were more likely to receive a custodial sentence as compared to other periods of time.

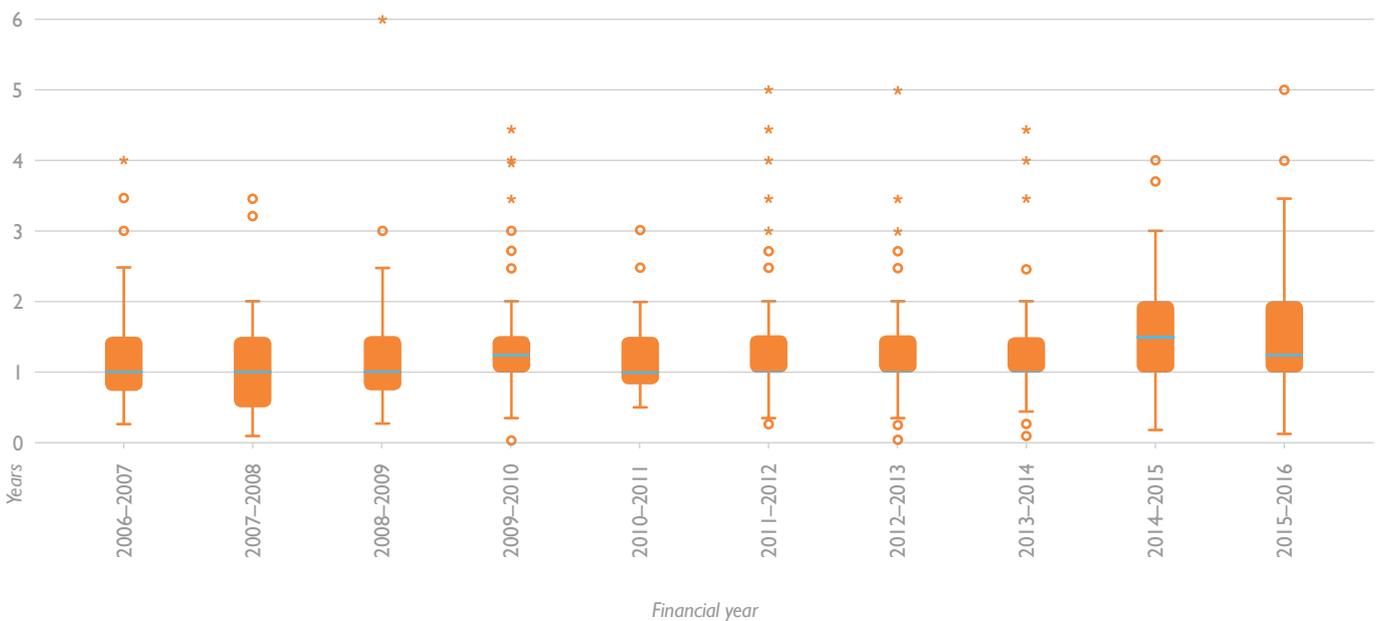
For offenders given a custodial penalty, these findings indicate that, in more recent years, the duration of custodial sentences (based on their MSO) has increased, though only slightly. In particular, Figure 15 shows there was a slight increase in sentence length in 2014–15 and 2015–16 for those receiving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

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



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

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



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

Case studies

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

CEM possession, 12 months probation (unreported)

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

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

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

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

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

CEM possession, 18 months imprisonment, partially suspended

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

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

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

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

CEM possession, 12 months imprisonment

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

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

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

CEM possession and distribution, 3 years imprisonment

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

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

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

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

CEM possession and distribution, 3.5 years imprisonment, partially suspended

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

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

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

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

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

CEM possession and making, 3 years imprisonment, partially suspended

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

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

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

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

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

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

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

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

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

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

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

Endnotes

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

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

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

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

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

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

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Appendix I: CEM offences, by CEM type

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

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

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

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

Qld Making related offences

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

Commonwealth offences

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

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



Queensland Sentencing
Advisory Council

Inform. Engage. Advise.

Sentencing Spotlight on... child exploitation material offences

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For more information:

Email: info@sentencingcouncil.qld.gov.au

Telephone: (07) 3224 7375

Website: www.sentencingcouncil.qld.gov.au



Sentencing Spotlight technical information

The *Sentencing Spotlight* series is produced by the Queensland Sentencing Advisory Council, and summarises the sentencing outcomes of defendants finalised in the Queensland Courts for selected offences. The summary includes an analysis of the demographic characteristics of offenders and the sentencing outcomes.

Data sources

This series uses data from the administrative information collected by the Department of Justice and Attorney-General (DJAG) and provided to the Queensland Government Statistician's Office, Queensland Treasury as part of the Courts database. Additional information is also sourced about cases from the sentencing remarks obtained from the Queensland Sentencing Information Service (QSiS).

Limitations and counting rules

The data presented is a simplified representation of Queensland's complex criminal justice system and subject to a range of limitations. Caution should therefore be used when interpreting the data, particularly due to the following:

- Data is derived from an administrative system that is designed for operational, rather than research purposes. The accuracy of information presented in this paper reflects how administrative information is structured, entered, maintained and extracted from the administrative system.
- The GovStats courts database is continually updated as more information is entered into the DJAG administrative database. Data presented in each *Sentencing Spotlight* paper will be clearly marked in terms of the valid timeframe from which the data has been derived.
- Sentencing outcome information is included for the court imposing the sentence, and not the court of original lodgement, as this is how this information is administratively recorded.
- Information on offender disability status is not reported as this information is not collected by DJAG.
- Sentencing details are provided in relation to the original, or 'first instance' judgements relating to the offences dealt with. Information relating to any appeals and their outcomes are not included in the data maintained by GovStats.
- An offender may be sentenced for multiple offences at the same time. The sentencing outcomes presented throughout the *Sentencing Spotlight* series generally relate to the most serious offence for which the offender is sentenced, though additional details of other offences and sentencing outcomes are also presented where relevant.

Definitions

Case (or finalisation)	For the purposes of the analyses presented in this series, a 'case' (also referred to as a 'finalisation') is the collection of offences for a single offender that are finalised on the same day at the same court level and court location. Where there are multiple offenders dealt with jointly, they are considered to be separate cases, or finalisations.
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Court level	Offenders who are transferred to a higher court for sentencing or adjudication are only included in the sentencing court's counts.
Defendants finalised	A case may involve multiple defendants, and a defendant may appear in multiple cases (or finalisations). Where there are multiple defendants in an individual case, these defendants are counted separately. Where a defendant appears across multiple cases (or finalisations), each finalisation is counted separately.
Joint penalty	In some instances, a single penalty may be applied jointly to multiple offences. This series reports on the outcome in relation to the most serious offence noted.
Mean (or average)	<p>The mean (or average) describes a set of data by identifying the central position within that set of data.</p> <p>Mean (or average) values are calculated by adding the total values in the data set and dividing this by the number of values.</p> <p>When the sample size is large and does not include extreme (or outlier) values, the mean usually provides the preferred measure of central tendency.</p>
Median	<p>The median describes a set of data by identifying the central position within that set of data.</p> <p>Median values summarise the middle number, or mid-point of values—half of the values in the data set lie above the median, and half of the values lie below the median.</p> <p>The median is less susceptible to extreme (or outlier) values and is used through the <i>Sentencing Spotlight</i> series where the value set indicates the mean is not be the most appropriate measure to use.</p>
Missing information	<p>Cases with missing demographic information, such as gender or age are removed from the relevant analysis.</p> <p>Where a record indicates that an offender is Aboriginal or Torres Strait Islander, this is noted accordingly. All other offenders are recorded as non-Aboriginal or Torres Strait Islander peoples.</p>
Most serious offence	<p>The complexity of offending and the courts administrative system means that the data presented in this series focusses on the most serious offence for which an offender is sentenced for each case.</p> <p>The most serious offence is defined as the offence receiving the most serious sentence, as ranked by the classification scheme used by the ABS.</p>
Multiple penalty	In some instances it is possible for a single offence to receive multiple penalties. For example, an offender may receive both a probation order and a community service order. Where multiple penalties are received for a single offence, the most serious of the multiple penalties are used for this series.
Offence classification	Offences are classified into offence categories according to the 2008 Australian Bureau of Statistics' (ABS) Australian Standard Offence Classification (ASOC) scheme. The offence categories reflect ASOC's four-digit offence classification. Cases lacking a valid ASOC code have been excluded from the analyses.
Offender	For the purpose of analyses presented in this paper, an 'offender' is a person charged with one or more criminal offences, and where the offender has either pleaded or been found guilty.

Young offender	The <i>Sentencing Spotlight</i> series examines cases concerning both adult and young offenders. Currently in Queensland a person who offends under the age of 17 years is considered a child (and referred to as a young offender). ¹ Any child under the age of 10 years at the time of the offence is not considered to be legally responsible for any offending behaviour.
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Interpreting a boxplot

The boxplot is also known as a box or whisker plot.

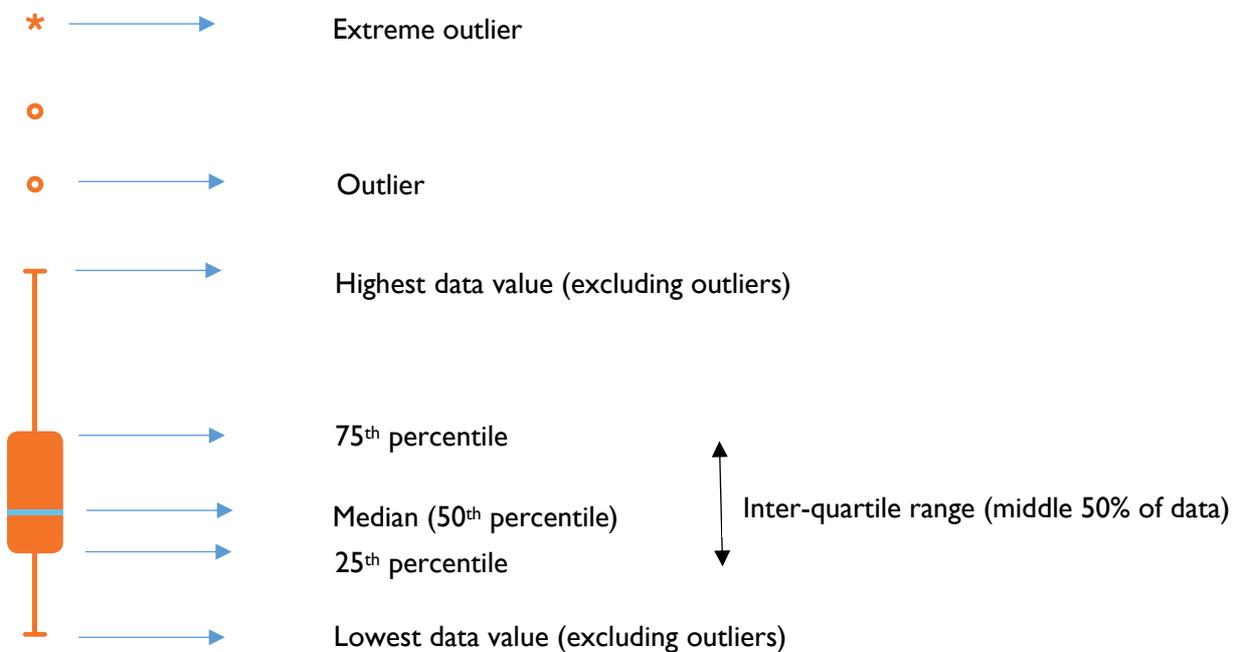
Dots and stars outside of the box and whiskers are considered outliers.

The highest and lowest values are shown at the ends of each whisker.

The middle 50 per cent of all of the data points lie within the box.

A quarter of the data falls below the box, and 25 per cent of the data falls above the box.

The median is the line inside the middle of the box.



¹ Note: Legislative change is currently underway that will change the Queensland definition of a child for the purposes of criminal law, to cover young people aged up to and including 17 years.