

# **COMPASSION IN SENTENCING:**

*A thematic analysis of the sentencing of sexual assault and rape offences in Queensland*

**April Chrzanowski and Helen Punter**



**Queensland Sentencing  
Advisory Council**

*Inform. Engage. Advise.*

# **ACKNOWLEDGEMENT OF COUNTRY**

**We acknowledge the traditional owners of the land on which we are meeting and pay our respects to the Elders past and present.**

**We welcome any Aboriginal and Torres Strait Islander people here today.**

# About the Queensland Sentencing Advisory Council



**Provide advice** to the Attorney-General about sentencing matters, if asked



**Give information to the community** to enhance knowledge of sentencing



**Publish information** about sentencing



**Research sentencing matters** and publish the outcomes



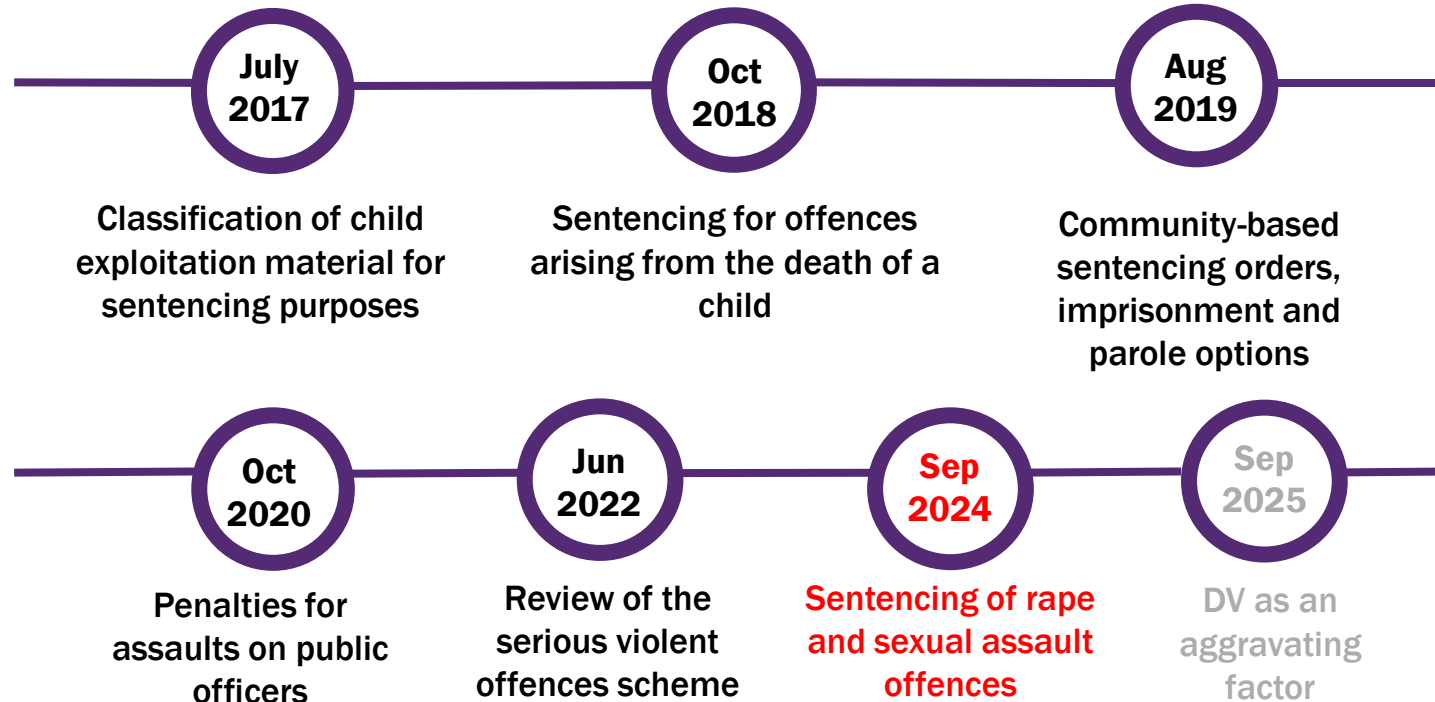
Obtain the **community's views** on sentencing



Provide its views to the Court of Appeal on the giving or reviewing of a **guideline judgment**, if asked

# Advice to the Attorney-General

## Terms of Reference



# THE IMPORTANCE OF LANGUAGE AND COMPASSION IN SENTENCING

- the offender
- the victim survivor
- the community
- the criminal justice system



*“Compassion has the capacity to change how we think and feel about people who offend, enabling us to understand individual and systemic causes of criminality and whether, and in what circumstances, desistance is possible.”*  
Hopkins et al (2023)



# THE QUEENSLAND CONTEXT

## *EX TEMPORE JUDGMENTS*



# THE QUEENSLAND CONTEXT

## THE OFFENCES OF SEXUAL ASSAULT AND RAPE



### Sexual Assaults: s352 Criminal Code 1899 (Qld)

#### 352 Sexual assaults

- (1) Any person who—
  - (a) unlawfully and indecently assaults another person; or
  - (b) procures another person, without the person's consent—
    - (i) to commit an act of gross indecency; or
    - (ii) to witness an act of gross indecency by the person or any other person;is guilty of a crime.  
Maximum penalty—10 years imprisonment.
- (2) However, the offender is liable to a maximum penalty of 14 years imprisonment for an offence defined in subsection (1)(a) or (1)(b)(i) if the indecent assault or act of gross indecency includes bringing into contact any part of the genitalia or the anus of a person with any part of the mouth of a person.
- (3) Further, the offender is liable to a maximum penalty of life imprisonment if—
  - (a) immediately before, during, or immediately after, the offence, the offender is, or pretends to be, armed with a dangerous or offensive weapon, or is in company with any other person; or
  - (b) for an offence defined in subsection (1)(a), the indecent assault includes the person who is assaulted penetrating the offender's vagina, vulva or anus to any extent with a thing or a part of the person's body that is not a penis; or
  - (c) for an offence defined in subsection (1)(b)(i), the act of gross indecency includes the person who is procured by the offender penetrating the vagina, vulva or anus of the person who is procured or another person to any extent with a thing or a part of the body of the person who is procured that is not a penis.

### Rape: s349 Criminal Code 1899 (Qld)

#### 349 Rape

- (1) Any person who rapes another person is guilty of a crime.  
Maximum penalty—life imprisonment.
- (2) A person rapes another person if—
  - (a) the person engages in penile intercourse with the other person without the other person's consent; or
  - (b) the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent; or
  - (c) the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.
- (3) For this section, a child under the age of 12 years is incapable of giving consent.
- (4) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.
- (5) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

# THE BROADER STUDY

## Methodology:

Qualitative analysis of sentencing remarks for both **rape** and **sexual assault** cases sentenced during the 3 years from July 2020 to June 2023.

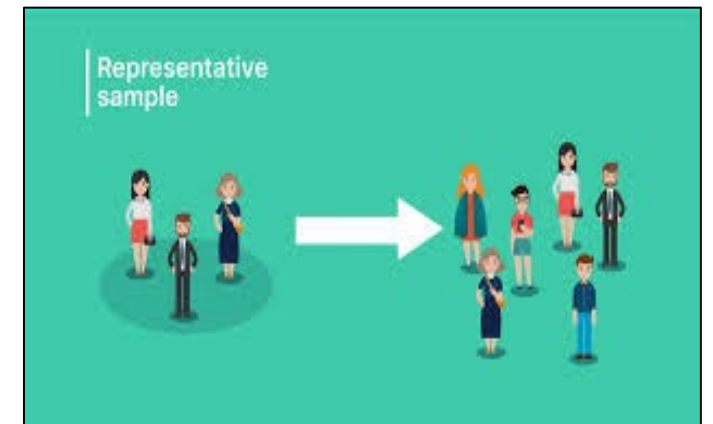
## Sample:

A randomised stratified sample of 150 sentencing remarks

- 75 Rape cases (all in District Court)
  - representing approx. 18% of all cases sentenced in the period
- 75 Sexual Assault (32= District Court; 43=Magistrates Court)
  - representing approx. 15% of all cases sentenced in the period


Stratified by: *Sentencing Outcome, Court Location and Jurisdiction (for Sexual Assault) – and Year*

Undertaking both a **descriptive content analysis** and a **thematic analysis (~75%)**.





# FINDINGS IN RELATION TO COMPASSION

- The sentencing process as articulated in sentencing remarks, is **primarily about the offender**, their action, their future, and the harm they have caused.
  - Compassion in sentencing remarks is evident for **both** the offender and the victim survivor.
- 

# COMPASSION FOR THE VICTIM SURVIVOR

- Talking to the victim survivor, through the offender
- Reinforcing the victim survivors lack of fault
- Acknowledging courage and bravery
- Understanding harm:
  - in the lower courts
  - via psychologist reports
  - in the absence of a VIS
  - from experience
- Emphasising the reasonableness of the VIS
- Encouraging healing through the process




# TALKING TO VICTIM THROUGH THE OFFENDER

*"[The victim] displayed extraordinary bravery in reading her victim impact statement in this court. She was brutally honest about the effect of your offending on her. She says that despite everything, she hopes to reach a point in her life where she can forgive you for what you've done.*

*My experience tells me that it's never possible to work out what will happen to any particular victim of sexual offending. Some are blessed with resilience and lead happy and productive lives. Some who are the victims of far less serious offending than your offending against [the victim], live sad, troubled and miserable lives.*

*I hope and I trust that [the victim's] courage and faith and family support lead her to a happier and productive life, but I have no way of knowing whether that will happen or not. Clearly her faith, her family support and her insights into her own struggles will be positive factors in her recovery." **MCM5 R13***




# REINFORCING THE VICTIMS LACK OF FAULT

*"It is well known that childhood sexual abuse can have profound effects upon the lives of victims, and can pervade almost every aspect of their life through childhood and into adulthood.*

*What you did was a gross breach of her trust and her mother's. You offended against her on multiple separate occasions, including having unprotected sexual intercourse with her, exposing her to the risks of pregnancy and indeed disease.*

*Your comments to her were in the nature of victim blaming, something ultimately I hope she comes to understand was not in any way her fault.*

*You did minimise your offending to both her and her mother, and to the police. You have, however, now expressed regret, and you have acknowledge the impact of what you have done to her." **MCM5 R5***




# ACKNOWLEDGING COURAGE AND BRAVERY

*"Your offending on her has had obvious consequences. I have before me a victim impact statement which speaks of the sorts of impacts which offending of this kind can have on vulnerable young women.*

*It speaks of the emotional impact upon the complainant and upon her family. It speaks of the effect it has had on how she sees herself, as well as others. It details self-loathing that the offending has triggered and the self-harming that she has taken to.*

*It is to her credit that she had the courage to report the offences and to go through the legal process to give evidence, notwithstanding the effects upon her, such effects being evident in her emotionally fragile state whilst she gave evidence, and again today as she read parts of her victim impact statement." **MCL5R6***

*"The impact of what you did to her has been profound. Three years later her suffering is still raw. She has bravely spoken in Court about the terror that she felt at the time and the terror she has suffered since. She is determined to overcome the trauma you inflicted upon her, but there can be no question that it will be a hard-fought battle." **RM5 R4***



# VIS USE IN THE LOWER COURT

*"It's been difficult to write this victim impact statement as it is difficult for her to get back and think about the events and how they have impacted who she is. In the days after the event she missed a lot of work and she's a casual employee so that resulted in her losing money. She felt sad and anxious about the situation as a backpacker so far away from her family and friends and living with strangers in a communal hostel and working in a hospitality job where she met new people every day. This was once where she felt so safe and exciting and now felt threatening." **LCMC SA3.***

*"The final paragraph reads: I still feel sad that this has happened to me. And although I know I am strong enough to be okay again after this, I will never be able to forget how this event and one person's actions have been able to do - have been so negative on her life."*

*"I never thought something like this would ever happen to me in my life. At first I tried to ignore it. It is so difficult to say the words I was sexually assaulted. No matter how hard I try to move forward I am still struggling. Since November 2019" **LCMC SA7***

# UNDERSTANDING HARM WITHOUT A VIS

*“Though there’s no victim impact statement before me, it would be something that would distress any woman and it would be something that would have, I would expect, a significant effect on any person”. **LCMNC SA4***

*“Whilst no victim impact statement has been provided, the reality of sexual assault is that it can have unique and longstanding adverse consequences for victims. His distress at what you did immediately after your offending against him is apparent from the statement of facts.” **HCMC SA8***


*“The complainant did not wish to provide a victim impact statement. That is not uncommon in cases of this kind. I have no doubt it would have been a terrifying event for her. She was clearly distressed immediately after the event. She has provided instructions that she wishes to extend the domestic violence protection order for as long as possible and does not wish to vary any of the conditions in it. I have no doubt that the complainant suffered significant emotional harm during the incident.” **RM5 R9***

# UNDERSTANDING HARM FROM EXPERIENCE

*"Before becoming a judge [...], I was a criminal defence lawyer for 20 years. In that time I acted for many offenders just like you. In different matters, I acted for many victims of crime, just like [the victim]. For the first five or six years of my time as a judge, I not only, of course, sentenced many offenders, but had to decide compensation for their victims.*

*I have read and, on occasion, listened, to perhaps thousands of victim impact statements. All of that experience tells me that there are still things that I do not know and will not know about what's going to happen to [the victim]."* **MCM5 R13**


*"The Courts are only too well aware that the impact of childhood sexual abuse can have long-lasting effects that can pervade every aspect of a victim's life through adulthood. Protection of the community looms large in the exercise of my discretion."* **RL5 R13**






# EMPHASISING THE REASONABLENESS OF THE VIS

*"The [victim impact] statement provided was fair, measured, and reasonable and I accept all of what the complainant's mother said has been the impact not only on the complainant, but on the family, and on the broader family, and the relationships. This is a broader part of the sentencing process and I have taken into account the impact on the complainant and the family in determining the sentence that I am going to impose today." **MCM5 R9***



# ENCOURAGING HEALING THROUGH THE PROCESS

*"Perhaps if anything positive comes out of these sorry events, it is that the recent trial and the recounting of these events has led to her recovering some confidence: her feeling no longer afraid of the perpetrators and now she says she is able to commence taking control of her life, she says she "no longer needs to remain silent". Not that there was any need for her to remain silent in the first place. But plainly these events have been cathartic for her as well as they have been for you." **MCL5 R15***



# WHAT DOES IT MEAN / WHAT NEXT?

How sentences are delivered, and the **language used** in delivering a sentence, **serves a powerful communicative function.**

- Judicial officers use various forms of compassion in sentencing for rape and sexual assault.
- Compassion in sentencing remarks is evident for **both** the offender and the victim survivor.

There are a number of current national and state judicial and legal practitioner **education commitments** aimed at improving the experiences of victim survivors of sexual violence in the criminal justice system.

The Queensland Sentencing Advisory Council will provide advice to the Queensland Attorney-General about sentencing for sexual assault and rape – by **16 September 2024**

# ACKNOWLEDGEMENTS

Professor Elena Marchetti, Deputy Chair of the Council and Project Sponsor

Other members of the secretariat who contributed significantly to this work:

Alison Robinson, Lauren Banning, Claire McClean, and Christine Carney



# FIND OUT MORE

 [sentencingcouncil.qld.gov.au](http://sentencingcouncil.qld.gov.au)

 [facebook.com/qldsac](https://facebook.com/qldsac)

 @qldsac

 [info@sentencingcouncil.qld.gov.au](mailto:info@sentencingcouncil.qld.gov.au)

 (07) 3738 9499