

SENTENCING SPOTLIGHT ON...

murder



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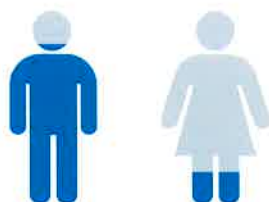
Sentencing Spotlight on...murder

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

Source: Administrative data from Queensland Government Statisticians Office, Queensland Treasury - Courts Database, extracted 2017; Sentencing Remarks from Queensland Sentencing Information Service (QSIS).

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

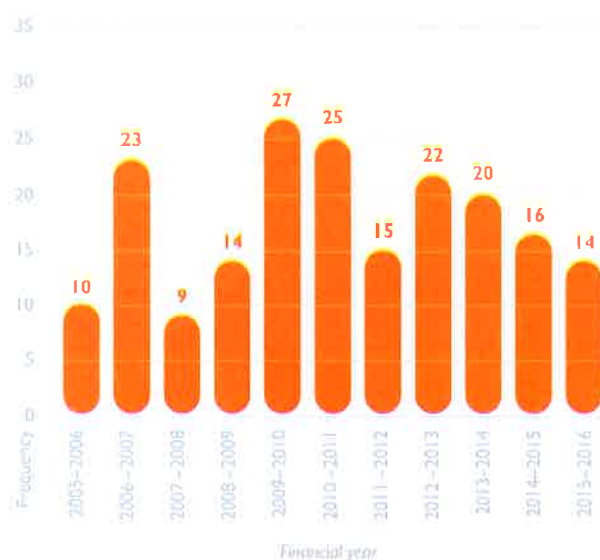
If at the time of the offence, the offender was aged 10 to 16 years, they may be dealt with as a child under the *Youth Justice Act 1992* (Qld)⁷ and dealt with in the Children's Supreme Court. The mandatory sentence requirements of life imprisonment or an indefinite sentence do not apply to young offenders.

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 of murder 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

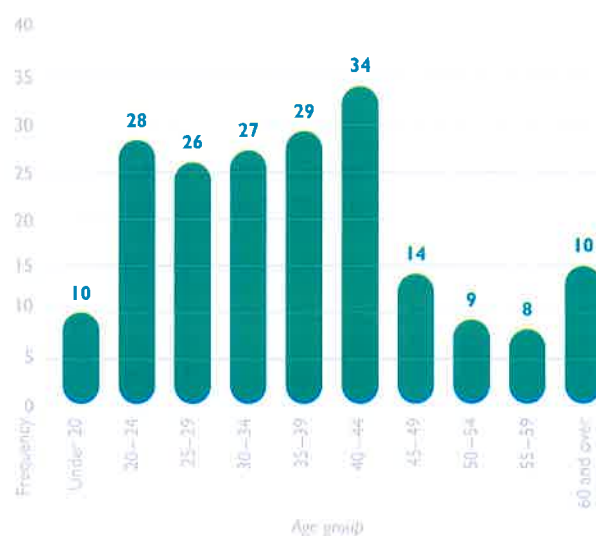
Of the 195 offenders sentenced for murder, the overwhelming majority (189 or 96.9%) were sentenced as adults in the Supreme Court, including four offenders who were aged under 17 at the time of their offence but who were dealt with as an adult.¹¹ All offenders dealt with as an adult received a life sentence.

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.

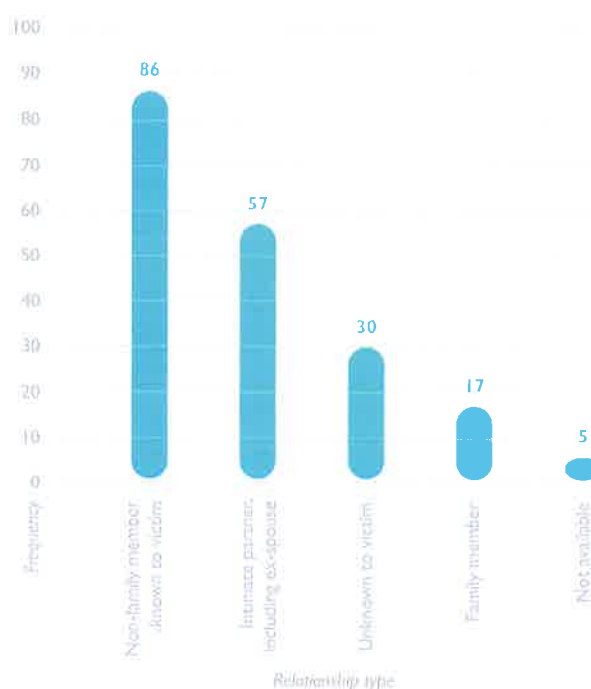
Relationship between offender and victim

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%	30.2%	15.4%	7.7%	2.7%
Aboriginal and Torres Strait Islander	36	50.0%	33.3%	8.3%	2.8%	5.6%
Non-Aboriginal and Torres Strait Islander	159	42.8%	28.3%	17.0%	10.1%	1.9%
Total	195	44.1%	29.2%	15.4%	8.7%	2.6%

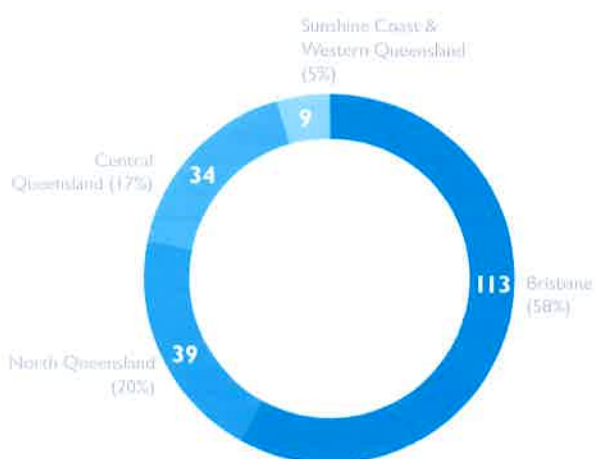
Source: Analysis of sentencing remarks available from the Queensland Sentencing Information Service (QSIS).

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.

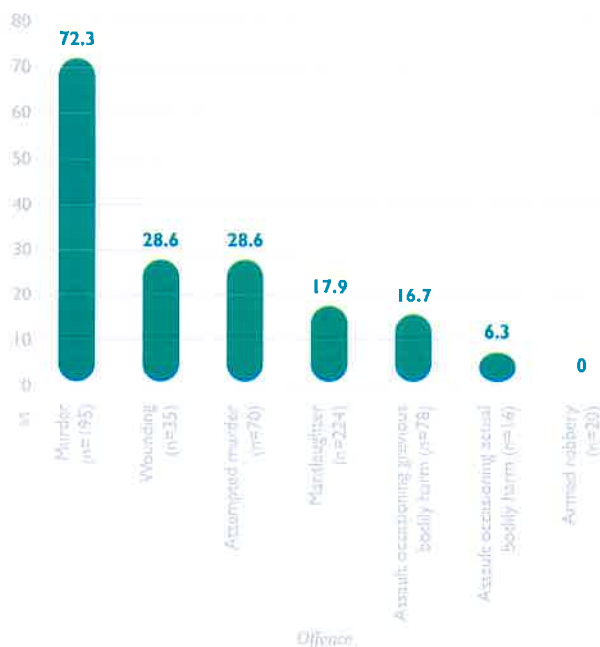
Type of plea

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.

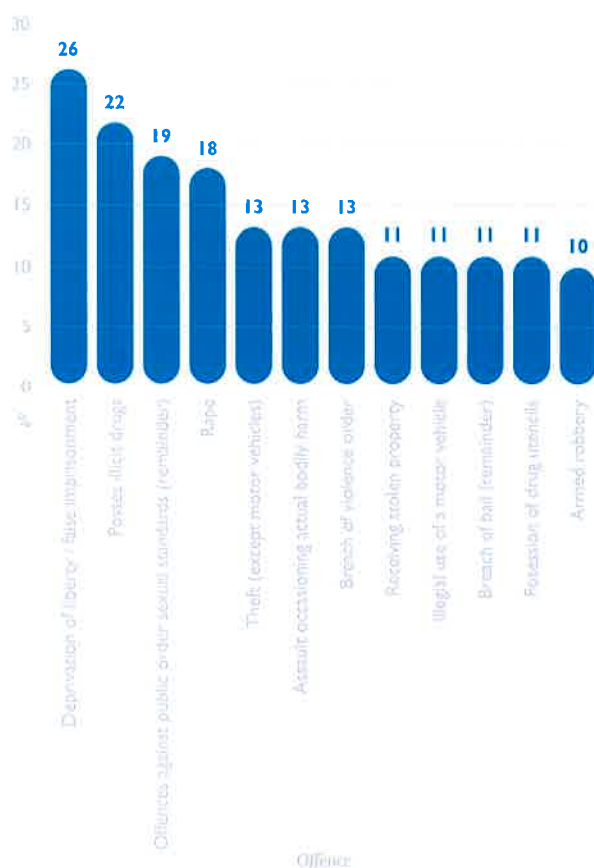
Multiple murders and associated offences

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/atstl-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.

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