REVIEW OF CAPE YORK SENTENCES

PJ DAVIS SC
Barrister-at-Law

Assisted by:
CRAIG EBERHARDT
Barrister-at-Law

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SUMMARY

1. The Review reports on 71 cases involving Indigenous offenders sentenced in the District Court either:

   (a) Sitting in Cairns; or

   (b) Sitting on circuit in the Cape York communities.

2. All but a couple of the cases reviewed and reported concern offences committed in Cape York communities. A couple of cases which concerned offences committed outside the Cape York communities were included in the review because they were sexual offences committed by Indigenous offenders and at least one of those cases (Case 43K) raised some concern. Case 43K is one where a young Indigenous boy was given a non-custodial sentence for rape.

3. During the Review, about another 50 cases were looked at beyond that 70 within the Report. These were cases of sexual offences dealt with by the District Court in Cairns not involving Indigenous offenders and not involving offences which occurred in Cape York.

4. Within the Terms of Reference is the controversial Aurukun case involving nine offenders who pleaded guilty to raping a 10 year old girl and whose sentences the Attorney-General is seeking to appeal. The Court of Appeal will hear those matters on 13 February 2008. It is inappropriate for the Review to consider the adequacy of these sentences as the Court of Appeal is yet to determine the matter. However, it is permissible to review the submissions that were made by the Crown prosecutor and analyse the way the case was presented without making comment on the sentences that were imposed. However, even that commentary ought not be publicly released before the Court of Appeal decides the case as the offenders raise in their resistance of the appeals the conduct of the prosecutor. The Review concludes that there were very significant deficiencies in the way in which the Crown case was presented. In particular:

(a) The Crown seemed generally disorganised. The submissions were disjointed, confusing and in some respects, internally contradictory;

(b) No Victim Impact Statement was tendered;

(c) No submissions by the Community Justice Group were made;

(d) There was no attempt to refer the Judge to the relevant legislation;

(e) There was no attempt to refer the Judge to comparative sentences;

(f) There was no attempt to refer the Judge to various statements of principle that have been made by the Court of Appeal relating to the sentencing of offenders (in particular, juvenile offenders) for sexual offences;

(g) There was a failure to properly distinguish between offenders. The offenders were of differing ages, had differing levels of culpability and had differing criminal histories. However, the submissions bulked the offenders together;

(h) There were confusing and internally contradictory submissions in relation to the complainant's apparent "consent" even though the complainant could not, by virtue of the provisions of the *Code*, lawfully consent;

(i) In a statement given to the Director of Public Prosecutions by the prosecutor he outlined the reasons why he made the submission that there ought to be sentences involving no actual custody. One of the matters that he considered relevant was the Aboriginal and Torres Strait Islander Justice Agreement which is either completely irrelevant to the sentencing or is barely relevant when compared with the legislative provisions to which the Court should have, but was not, referred;

(j) The Report concludes that the Judge received virtually no assistance at all from the Crown prosecutor.

5. The other 70 cases reviewed involved sexual offences of a wide spectrum of seriousness including some fairly minor examples of indecent assault and indecent treatment of children through to quite violent examples of rape.

6. The sentencing of Indigenous persons living in remote communities is a difficult task because of the existence of various factors in those communities which may not be present in other communities and which the courts have held impact upon sentence. The cases which have considered these principles are referred to and analysed in the Report.

7. There were various cases reviewed involving either indecent assault, or the indecent treatment of children. Some of these cases resulted in terms of imprisonment, some did not. None of those cases appeared to be outside a sound sentencing range.

8. There were four cases (apart from the *controversial Aurukun case*) where charges of rape resulted in sentences involving no actual custody. However, all four of these cases involved juvenile offenders. The Report concludes that the sentence in one those cases (Case 22S) is manifestly inadequate and ought to have been the subject of an Attorney-General's appeal. The other three, while in some respects being marginal, have features which make it impossible to say with any confidence that the sentences were manifestly inadequate.

9. There were seven cases where charges of unlawful carnal knowledge of a child led to sentences not involving actual custody. Again, some of these cases were marginal but again, there were special features which make it difficult to conclude that the sentences were manifestly inadequate. In one of the cases (Case 3P) the offender was discharged absolutely. The Report concludes that such an order was an error although a sentence involving no actual custody was clearly appropriate. In two other cases (17W and 38G) probation was ordered whereas terms of imprisonment, even though wholly suspended, were warranted.

10. One case of sodomy (Case 15S) resulted in an Intensive Correction Order being ordered, one other case (Case 20E) resulted in a term of actual custody of only 5 weeks and one case (Case 36B) resulted in probation. However, there were special features in these cases which make it very difficult to consider the sentences as manifestly inadequate.

11. The Court imposed significant periods of imprisonment upon offenders guilty of a range of offences including rape, maintaining a sexual relationship with a child, incest, indecent treatment of children, unlawful carnal knowledge and sodomy.

12. The general purpose of the Review was to ascertain whether sentences were being imposed in Cape communities below that required in the proper exercise of judicial discretion. The Report concludes:

(a) There is one case (22S) where no actual detention was ordered for a juvenile where a period of actual detention was, in my opinion, the only appropriate sentence;

(b) There were three cases (17W, 38G and 3P) where sentences were imposed which were not justified, but they were cases where no sentence involving actual custody was necessary in any event;

(c) There are, as already indicated, some cases that are marginal;

(d) There are some cases that ought to have been referred to the Attorney-General for consideration of an appeal;

(e) There is no general pattern of inadequate sentencing in sexual cases coming from Cape York;

(f) Given that it was suggested in the media that there was cause for Judge Bradley to be removed from office, it should be noted that there is no evidence of any judicial misconduct by Judge Bradley or any of the other judges whose sentences were reviewed.

13. I recommend that:

(a) Some effective system should be put in place within the DPP's office to ensure that marginal cases are referred to the Attorney-General for consideration of appeal;

(b) The DPP should investigate and consider the allegations by Mr Carter in his statement that he was overworked and that this explained the inadequacies in his presentation of the *controversial Aurukun case*. This should be done for the benefit of future cases.

INTRODUCTION

1. I have been retained as a reviewer to conduct a review of sentences imposed in relation to sexual offences committed in Cape York communities. My review is limited to those offences which came before the courts in 2006 and 2007. My terms of reference are as follows:

> *"1. The reviewer will consider information collated by the Director of Public Prosecutions ("DPP") in respect of sentencing decisions for proceedings involving sexual offences in the Supreme and District Courts in the 2006 and 2007 calendar years relating to offences that occurred in the Cape York Peninsula region ("the Cape Offences").*
>
> *2. For the Cape Offences, the Office of the Director of Public Prosecutions will deliver to the reviewer:*
>
> *A. The entire DPP files on each case and ensure that included in those files are:*
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> - *details of the sentences handed down,*
> - *the Judges' sentencing remarks;*
> - *defence and prosecution submissions,*
>
> *B. And shall also collate and deliver to the reviewer any other relevant material such as appeals against individual sentences in the Cape Offences.*
>
> *3. The reviewer will consider the sentences in light of comparative cases and will consider whether the sentences appear adequate and in the sentencing range for offences of this kind.*
>
> *4. The considerations of the reviewer should in no way be limited by the examples of comparative cases identified.*
>
> *5. The reviewer will receive relevant documentation from the DPP by the end of the year and will report to the Attorney-General by 11 February 2008.*
>
> *6. The reviewer will make any recommendations appropriate."*

HISTORY OF EVENTS LEADING TO THE REVIEW

2. In 2006, nine Indigenous males, resident in Aurukun, Cape York and who were then aged between 13 and 25 years of age, raped a young girl who was then 10 years old. Six of the offenders, who I will call, "W", "K", "W2", "P", "B" and "K2" all raped the victim successively on the same occasion. "K" and "W2" raped her on a separate occasion, "A" raped her on yet another occasion. "Y" raped her yet on another occasion. On yet another occasion another male, "K3" raped her and then on another occasion, raped her again. I will refer to this case as the "*controversial Aurukun case*". One of the offenders pleaded guilty also to the rape of another girl.

3. Seven of the accused (W, K, K3, P, Y, A and W2) were sentenced on 24 October 2007 and two (B and K2) were sentenced on 6 November 2007. All pleaded "guilty". All of the adult offenders were sentenced to six months imprisonment which sentences were wholly suspended for an operational period of 12 months. All of the juvenile offenders were placed on 12 months probation without convictions recorded.

4. There was, initially, no appeal against the sentences by the Attorney-General. The Attorney-General had received no report from the Director of Public Prosecutions ("the DPP") on the sentences and was therefore unaware of what had occurred. The matter then came to the attention of the Attorney-General via the media. The Attorney-General has filed applications for extensions of time to appeal the sentences.

5. The applications for extensions of time and any appeals are to be heard by the Court of Appeal in Brisbane on 13 February 2008.

6. The *controversial Aurukun case* has attracted enormous media attention and public interest.

APPROACH TO THE TASK

7. As can be seen from the Terms of Reference, my task is to review materials supplied by the DPP. The DPP delivered a large volume of material to me and the following became evident:

   (a) All the cases within the terms of the Review were dealt with in the District Court;

   (b) Some of the offences that were within the terms of the Review were dealt with by the District Court sitting on circuit in Cape York communities including Weipa, Aurukun, Pormpuraaw, Bamaga, Thursday Island and Cooktown;

   (c) Some cases concerning offences which occurred in Cape York communities were dealt with by the District Court sitting in Cairns;

   (d) There were no cases dealt with on circuit in the Cape York communities that did not emanate from those communities.

8. Therefore, the cases which fell within the Review were all those cases involving sexual offences dealt with on the Cape York circuits in 2006 and 2007 and some cases dealt with by the District Court in Cairns, namely those where the offences occurred in the Cape York communities. The DPP delivered to me not only materials relevant to cases involving sexual offences which occurred in Cape York, but also all cases involving sex offences dealt with by the District Court in Cairns in 2006 and 2007. There are a few cases that were dealt with in Cairns and which did not emanate from Cape York communities but where the offender was Indigenous. I have included a couple of those cases in the review.

9. Various legislative provisions[1] dictate that the identity of both victims and offenders must, in some cases, be suppressed. **Appendix 1** is a list of the cases that I have reviewed showing the date of the case, the place where the offence occurred, the court that heard the case, the sentence that was imposed and some other details. Instead of naming the offenders, I have assigned each case numbers and a letter.

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[1] Section 301 *Juvenile Justice Act* and s.6 *Criminal Law (Sexual Offences) Act 1978*

10. A summary of each case reviewed appears as **Appendix 2**. The cases in **Appendix 2** are all identified by reference to the numbers and letters which have been assigned to them and which appear in **Appendix 1**.

11. It is well known that Her Honour Judge Bradley[2] decided the *controversial Aurukun case*. Her Honour and several other judges have decided the other cases under review. Her Honour has been the subject of a good deal of publicity concerning the *controversial Aurukun case*. It is for others to judge whether the extent and nature of that publicity was appropriate. However, there is, in my view, little point in identifying the judges who passed the sentences in the other cases under review. The names of the sentencing judges do not appear in the Report or the Appendices.

12. A former legal officer employed by the DPP, Mr Steven Carter was the prosecutor who presented the DPP's submissions in the *controversial Aurukun case*. Again, Mr Carter has been the subject of intense publicity and again, I leave judgement on the appropriateness of that publicity to others. However, I think it unnecessary to identify by name the prosecutors who appeared in the cases that I have reviewed. Their names do not appear in the Report or the Appendices.

13. I have relied on the DPP to identify the cases which fall within the Terms of Reference. It is physically impossible for me to personally identify all the cases. While I know that the DPP expended a good deal of effort in getting materials to me, I cannot personally certify that I have reviewed every case within the Terms of Reference. I can certify that I have reviewed every case referred to me by the DPP and which is within the Terms of Reference.

14. It is sometimes difficult to identify cases which have gone on appeal. This is because, in order to protect the victims, the names of offenders are deleted from judgment headings and replaced by initials. I am told by the DPP that there were no appeals by the Attorney-General on any case within the Terms of Reference. There was one defence appeal and that was with respect to Case 9W[3] which came from Aurukun and was from a sentence imposed in the District Court in Cairns. The offender's appeal was successful and the head sentence was reduced from 4 years imprisonment to 3 years imprisonment in relation to an offence of maintaining a sexual relationship with a child.

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2 One of the resident District Court judges in Cairns

3 *R v WU* [2007] QCA 308

15. I understand that the Review was instigated by the Attorney-General amid concern (both government and public) that, in general, sentencing for sexual offences occurring in Cape York may be inadequate. I see my primary role as to ascertain whether that is so. The terms of reference also require me to then consider any recommendations I can make. However, I interpret the Terms of Reference as only requiring recommendations in the event that I find that Cape York sentences are routinely inadequate.

16. All prosecutors (and acting prosecutors) who appeared in the cases I have reviewed were instructed by the Cairns Chambers of the DPP's Office.

17. I took the view that it was impossible in the available time to review each DPP file in its entirety. Further, I took the view that such an approach would be futile. Sentencing is an exercise of judicial discretion[4]. There is, therefore, no "right" sentence. There are sentences which fall within the range of a proper exercise of judicial discretion and there are sentences which do not. There are sentences which are affected by error, being errors of law, the taking into account of irrelevant considerations and/or a failure to take into account relevant considerations, and there are those which are determined according to law.

18. There seems to me to be little point in reviewing in detail any sentence which appears within range even if there may have been some legal error committed in the course of the proceedings. There is no point in me forming and expressing a view that a different sentence may have been imposed. It seems to me that the proper, practical issue here is whether the sentences were within or outside the appropriate range of the exercise of judicial discretion; in other words, whether the sentences were "manifestly inadequate"[5].

19. The terms of reference direct me to consider whether the sentences "appear adequate and in the sentencing range". This is really one issue not two. Sentencing ranges are set by reference primarily to Court of Appeal decisions on sentence appeals. A significant consideration is the statutory maximum sentence for the relevant offence[6]. Sentences falling within the range set by the pattern of Court of Appeal sentences are therefore "adequate".

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4 *House v The King* (1936) 55 CLR 499 which is the classic statement of the principles on appellate discretionary review which is, itself, a sentencing case

5 *Dinsdale v The Queen* (2000) 200 CLR 321, there described as "manifestly wrong"

6 *Markarian v The Queen* (2005) 228 CLR 357 at paragraph [31]

20. The first task that was undertaken was to analyse the Crown and defence submissions and the sentencing remarks in relation to each sentence under review. In a couple of instances a transcript of submissions was not available but it was, in those cases, evident what the facts were, and what the respective positions of the Crown and Defence were. In a couple of cases the sentencing remarks were not available although I had details of the sentences imposed. The initial exercise identified:

(a) The offence(s);

(b) The circumstances of the offence(s);

(c) The circumstances of the offender and the victim;

(d) The Crown's submissions;

(e) The defence submissions;

(f) The sentence imposed and the reasons embodied in the sentencing remarks[7].

21. All these details appear in **Appendix 2**. Where the sentence appeared clearly to be in range, I made no further inquiries. Where the sentence appeared to be arguably outside the appropriate range, I called for further documents from the DPP and undertook a detailed analysis of those documents.

22. Of course, all I have been able to review are those documents which were generated in the course of the criminal proceedings which resulted in the sentence. There may well have been steps either party could have taken but did not. For instance, despite Parliament legislating to require a court sentencing an Indigenous person to have regard to any submissions made by the Community Justice Group from the offender's community[8], there were often no such submissions made. This is most unfortunate. Further, victim impact statements are most always tendered in cases concerning sexual offences dealt with in Brisbane. In only 17 of the cases reviewed here (out of a total of 71 including the *controversial Aurukun case*) were victim impact statements provided to prosecutors and then the court. This is despite the fact that Parliament has provided, for

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7 Except where the sentencing remarks were not available

8 Section (9)(2)(p) of the *Penalties and Sentences Act*

instance, that in sentencing an offender for a sexual offence against a child a court must have regard "primarily" to factors including "the effect of the offence on the child"[9].

23. My review is of the cases within the terms of reference. It is not a general inquiry into the social health or otherwise of the communities in Cape York. Having regard to the number of sexual offences committed in these communities and the fact that many of these offences were committed upon children, one can easily draw the inference that these communities are experiencing severe social difficulties. Throughout the material, there is evidence of social dysfunction, a good deal of which seems to be related to alcohol and/or substance abuse. The *controversial Aurukun case* involves a sexually active 10 year old girl who had intercourse not only with the nine offenders, but, it seems, with many other males in the community. Her circumstances are simply appalling.

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9 Section 9(6)(a) of the *Penalties and Sentences Act 1992*

COMPARATIVES

24. It is necessary, in order to properly assess the cases under review, to consider the comparative sentences and statements of principle relevant to the imposition of sentences for the types of offences committed in the cases under review.

25. The cases under review involve a number of different sexual offences. These are:

    (a) Unlawful carnal knowledge of a child under 16 (with and without circumstances of aggravation) (s.215 of the *Code*);

    (b) Indecent dealing/treatment of a child (s.210 of the *Code*);

    (c) Rape (s.349 of the *Code*);

    (d) Indecent assault/sexual assault (s.352 of the *Code*);

    (e) Sodomy (s.208 of the *Code*);

    (f) Maintaining a sexual relationship with a child (s.229B of the *Code*);

    (g) Deprivation of liberty[10] (s.355 of the *Code*);

    (h) Incest (s.222 of the *Code*).

26. The only cases involving offences of maintaining a sexual relationship with a child are those of 9W and 28H. Case 28H involved offences of indecent dealing and incest as well as the composite offence of maintaining. The offender was sentenced to 8 years imprisonment and that sentence is clearly within range[11]. Case 9W was sentenced to 4 years and 6 months imprisonment and that sentence was the subject of the only sentence appeal arising from the cases under review. The sentence was reduced on appeal[12]. There is therefore no need to analyse either 28H or 9W and consequently, no need to analyse in any detail any comparatives concerning the offence of maintaining a sexual relationship with a child.

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10 Which is not strictly a sexual offence but often arises in the context of the commission of a sexual offence

11 *R v BAT* [2005] QCA 82, *R v KN* [2005] QCA 74, *R v BAO* [2004] QCA 445

12 *R v WU* [2007] QCA 308

27. There were two cases where incest was charged. One of these is 28H to which I've already referred. The second is 67P. The offender in 67P received a sentence of 5 years with no recommendation for early release. That sentence is not manifestly inadequate[13]. There is no need to analyse incest comparatives.

28. Charges of indecent assault/sexual assault were laid against a number of persons whose sentences are clearly within range[14] or where such offences were charged with a number of other offences and where the total head sentence was clearly within range[15]. There is therefore no need to consider in detail comparatives concerning indecent assault/sexual assault.

29. Deprivation of liberty was charged in three cases[16]. However, it was charged in conjunction with sexual offences and while, no doubt, the deprivation of liberty charges were taken into account by the sentencing judge, I cannot see any value in studying the comparatives separately.

30. There are four sodomy cases[17]. I discuss those four cases in detail under the heading "Particular Cases Requiring Analysis" and during that analysis I refer to some comparative sentences for sodomy.

31. It is necessary to look at comparatives and/or sentencing principles in relation to three offences namely:

    (a) Unlawful carnal knowledge;

    (b) Rape; and

    (c) Indecent dealing.

Unlawful carnal knowledge

32. Of the cases reviewed:

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13 See *R v B* [2003] QCA 26, *R v Q* [2003] QCA 114
14 Eg, 1M, 19W, 24G, 25A, 37M and 70W
15 23N
16 53P, 57A and 58W
17 15S, 20E, 36B and 50M

(a) Twelve are cases which include convictions for unlawful carnal knowledge[18];

(b) There is one case of attempted procuring of a child for carnal knowledge[19] and one case of attempted carnal knowledge[20];

(c) Six cases where unlawful carnal knowledge is charged resulted in the offenders actually serving periods of imprisonment/detention;

(d) There were six cases of unlawful carnal knowledge where the offenders did not serve a period of imprisonment[21].

33. Unlawful carnal knowledge of a child is made an offence by s.215 of the *Code*. Relevantly the elements of the offence are:

(a) Carnal knowledge[22];

(b) Of a person under 16 years.

34. The maximum penalties are:

(i) 14 years imprisonment; but

(ii) If the child is under 12 years of age: life imprisonment;

(iii) If the child (even if over 12 years of age) is under the care of the offender: life imprisonment;

35. Court of Appeal decisions demonstrate that, notwithstanding the general statements in *R v Phuc Minh Pham*[23] to the effect that persons who commit sexual offences against children can generally expect a term of imprisonment, sentences which either involve no actual custody or only a short period of custody are within range in cases of unlawful carnal knowledge. Of course, custodial sentences have been upheld by the Court of

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18 In some cases there are other offences as well

19 Case 27D

20 Case 38G

21 Case 6S involves three adult offenders

22 Penile penetration to some extent is required; s.6(1) of the *Code* and see *R v Randell* (1991) 53 ACrimR 389; *Holland v R* (1993) 68 ACrimR 176

23 [1996] QCA 3

Appeal in cases of this type and, indeed, imposed and increased upon appeals by the Attorney-General.

36. *R v Waerea; Ex parte A-G (Qld)*[24] is a serious example of the offence. The complainant was 13 years of age and the offender was 51. The complainant was intellectually handicapped. The complainant's mother had died when the complainant was young and she was in the care of her father. When her father worked, he sometimes left the complainant in the care of the offender and the offender's partner. The offence occurred on an occasion when the complainant was in the offender's care. The offender gave the complainant some cannabis in a pipe and also some alcohol. He took advantage of her while she was intoxicated and under the influence of the cannabis. Whilst she was in this state he laid on top of her and inserted his penis into her vagina. He pleaded not guilty and proceeded to trial. He was sentenced to three years imprisonment and the Attorney-General appealed on the basis that the sentence was manifestly inadequate.

37. The Court of Appeal allowed the Attorney-General's appeal and increased the sentence to one of 5 years imprisonment. The Chief Justice, with whose judgment Williams JA and Cullinane J agreed, considered that the serious aspects of the offence which justified an increase in the sentence were:

    (a) The "grotesque disparity in age between [the offender] and the complainant";

    (b) The substantial breach of trust involved;

    (c) Taking advantage of the child after she had consumed alcohol and cannabis; and

    (d) The fact that the child was intellectually impaired, a fact known to the offender[25].

38. *R v HZ*[26] also involved an offender who was in his fifties. The complainant to the unlawful carnal knowledge was 14 years of age. The offender had the child and some of her friends under his care. He provided the girls with alcohol and allowed them to become intoxicated. He took advantage of the child's intoxication to have carnal

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24 [2003] QCA 20
25 See paragraph [15]
26 [2005] QCA 468

knowledge of her while they were swimming in a swimming pool. There was a plea of not guilty and the offender was convicted after a trial. He appealed against sentence. The sentence of 3 years imprisonment was upheld and reliance was placed upon the Court's decision in *R v T; Ex parte Attorney-General (Qld)*[27]. The conduct was described by Keane JA as "predatory"[28]. McPherson JA and Mackenzie J agreed with Keane JA.

39. In *R v T; Ex parte Attorney-General (Qld)*[29], the offender was 43 years of age and the complainant was 12 years of age. The child was not under 12 years of age at the time of the commission of the offence but there was a circumstance of aggravation that the child was under the care of the offender. The offender was charged with three counts; one of indecently dealing with the child and two of unlawful carnal knowledge. The child often stayed overnight at the offender's house. On the first occasion charged the child was offered some beer which she drank. She then went to bed in the offender's daughter's bedroom. She woke during the night and went to the kitchen where the offender kissed her and rubbed his hand on her vagina (the charge of indecent dealing). He then took her into the backyard where he had intercourse with her. On another occasion when she was sleeping the night at the offender's house, the offender came into the room where she was sleeping and had intercourse with her.

40. He pleaded guilty after a full hand-up committal. He was sentenced to two years imprisonment. Philippides J[30] reviewed various comparatives in light of legislative amendments in 1997 increasing the maximum sentence for this offence. Her Honour then said:

> *"The legislature has thus substantially increased the maximum penalty for this offence, which seeks to protect children from being exploited, especially in circumstances involving a breach of a relationship of trust, which arises, as is the case here, where the offender has the care of the complainant."*

41. The Court allowed the Attorney General's appeal and increased the sentence to one of 3 years imprisonment.

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27 [2002] QCA 132
28 See paragraph [34]
29 [2002] QCA 132
30 With whom McPherson JA and Byrne J agreed

42. While the three cases to which I have referred involve the offender serving substantial terms of actual imprisonment[31] there are cases where the Court of Appeal has considered sentences which do not involve actual custody, or involve only short periods of custody. In *R v AS*[32] the offender pleaded guilty to one count of unlawful carnal knowledge, two counts of unlawfully and indecently dealing with a child and two counts of permitting himself to be indecently dealt with by a child. The child was 13 years of age when the first offence occurred and had turned 14 by the time the offending ceased. The offender was aged 39. The offence of unlawful carnal knowledge occurred one night when the complainant came to the offender's house for a party. The complainant and the offender consumed alcohol and then the complainant seems to have initiated some sexual activity by leaning down and placing her head on the offender's thigh area. They then kissed and he asked if she wanted to go to the bedroom. He walked into a spare room and she followed him. Consensual intercourse occurred. They then performed oral intercourse upon each other. About a year later the complainant, the offender and her two friends were in a vehicle. In the vehicle the offender and the complainant fondled each other's genitals. No intercourse occurred during this second episode.

43. The offender was sentenced to 12 months imprisonment and appealed against his sentence. Jerrard JA[33] held that there were unusual circumstances in the case including:

(a) The plainly consensual nature of the offences (including the unlawful carnal knowledge);

(b) The fact that the offender did not pursue the complainant;

(c) The offender's recognition of his wrong-doing; and

(d) The offender's plea of guilty and apparent actual remorse.

44. The Court allowed the appeal to the extent of suspending the sentence after six months.

45. *R v Clifford; Ex parte Attorney-General (Qld)*[34] concerned an offence committed by a 29 year old man upon a 13 year old complainant. It was accepted, however, that the

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31 See also *R v Rae* CA No. 111 of 1999, *R v Douglas* CA No. 416 of 1996, *R v Morgan; Ex parte Attorney-General* CA No. 517 of 1996

32 [2004] QCA 220

33 With whom McPherson JA and Williams JA agreed

34 [2006] QCA 492

offender thought the complainant was 15 years of age. The offender was driving a motor vehicle when the complainant came running down the street. He stopped the car. She was very drunk. She entered the car and eventually the two of them went to the offender's house. The offender went to bed and the complainant followed him into his bedroom. Sexual intercourse occurred. The offender made full admissions and pleaded guilty. He was sentenced to 9 months imprisonment wholly suspended for an operational period of 12 months. The Attorney-General appealed.

46. In the course of dismissing the appeal, Keane JA said:

> *"The circumstances in which this kind of offence may be committed are so various as to make it impossible to sustain a submission that a wholly suspended sentence can never be appropriate in a case of unlawful carnal knowledge. Usually, however, where there is, as here, a marked disparity in age between the victim and the offender, the exploitative character of the offence, and the harm which is caused to the victim, mean that a prison sentence should be imposed. That this is so is illustrated by the decision of this Court in* R v AS. *In that case, a sentence of 12 months imprisonment was imposed at first instance where there were two offences of unlawful carnal knowledge, separated by about a year*[35]*. While the second offending in* R v AS *did not involve intercourse, it was plainly a more serious case than the present. There was an age discrepancy of about 26 years between offender and a degree of exploitation not present in this case. But even in that case, this Court reduced the sentence on appeal by an order suspending the sentence after six months actual imprisonment had been served. In* R v AS, *there was an early plea to a statement of agreed facts, but it does not appear that offender made immediate and full admissions as occurred in this case."* [36]

47. His Honour also referred to the fact that there was no breach of trust or any planning or any predatory conduct. The sentence was held to be within range.

48. In some of the cases that I have reviewed, there are various features which are fairly consistently present[37]. These include:

    (a) The children are sexually active;

    (b) The children are willing participants in the sexual activity;

    (c) The children sometimes instigate the sexual activity;

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35 In fact in *R v AS* [2004] QCA 220 there was only one count of unlawful carnal knowledge. It is assumed that Keane J was referring to two sexual episodes. Note that the judge actually says the second occasion "did not involve intercourse"

36 See paragraph [23]

37 Obviously not all these features are present in all of the cases

(d) There is little evidence of exploitation or predatory conduct in the sense that the sexual activity is not coerced or planned in any significant way, but seems more to be just an accepted activity. The concept of sexual activity with young children not being "exploitative" is somewhat difficult to accept but the cases draw distinctions between conduct that is not coercive and conduct that involves manipulation and more forceful tactics.

(e) The child is not under the care of the offender.

49. The fact that there are sexually active, very young children in these communities is appalling. However, it seems to me that all these factors that I have identified are ones which, consistently with the principles stated in the comparative cases, ought to be taken into account in favour of offenders. Also, for the reasons I have analysed under the heading "Sentencing Indigenous Offenders", there will often be general mitigating circumstances arising from the conditions under which the offenders' are living.

50. In all those circumstances, it is not surprising that non-custodial sentences have been imposed for some of the offences of unlawful carnal knowledge which have occurred in the Cape York communities.

51. However, what the cases reviewed show is that it is quite common in the Cape York communities for there to be very young children who are sexually active. That factor naturally points to deep social problems, an analysis of which is well beyond the scope of the Review.

Rape

52. Sentences for rape extend over a very wide range. In *The Queen v H*[38] Williams JA said:

> *"It is virtually impossible to reconcile the sentences imposed in all rape cases; one is always able to find a sentence to support an argument that a particular sentence should be imposed in the case in question."*[39]

53. It used to be that rape was constituted only by penile penetration of the vagina. Now, however, the offence is defined in much wider terms and, significantly, is also

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38 [2003] QCA 147

39 At para [48]

constituted by digital penetration. The difficulties in reconciling rape comparatives is heightened by the variety of different circumstances that are found in cases for rape. For instance:

(a) Some cases involve vaginal penetration;

(b) Some cases involve penile penetration;

(c) Some cases involve digital penetration;

(d) Some cases involve anal penetration;

(e) Some cases involve horrendous violence;

(f) Some cases involve fraud or deception to obtain consent; and

(g) Some cases involve no actual violence but other coercion, threats etc.

54. In the cases reviewed there were nineteen examples of rape. One of these was the *controversial Aurukun case*. Apart from the *controversial Aurukun case* there were four cases where the offender's sentence did not involve actual custody. Those were the cases 22S, 43K, 44W, and 61W. All of these cases involved juvenile offenders.

55. Elsewhere in this Report, I analyse the four cases reviewed which did not result in sentences involving actual custody for rape[40]. Also elsewhere I have extracted various statements of principle concerning the sentencing of juveniles for rape[41]. As the four cases of rape where there was no actual custody all involve juvenile offenders, there seems little point in generally analysing comparative sentences for rape. It is more appropriate to analyse the comparative sentences were the offenders were juveniles.

56. *R v A; Ex parte Attorney-General (Qld)*[42] was a case in which a 16 year old violently raped his grandmother. The offender and his grandmother were at a family function. The grandmother went to sleep in the loungeroom. During the night she awoke when the offender attacked her by placing a pillow over her face and hitting her through the

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40 Under the subheading "The Rape Cases" under the heading "Particular Cases Requiring Analysis"

41 Under the heading "No Cases Stating General Principles as to the Sentencing of Juvenile Offenders for Serious Offences" under the heading "The Controversial Aurukun Case"

42 [2001] QCA 542

pillow. He penetrated her vagina with his penis. He cooperated with police and pleaded guilty and was sentenced to 12 months detention but such detention was suspended[43]. On the Attorney-General's appeal, the Court increased the sentence to one of detention for four years which was not suspended. The Chief Justice[44] said of the sentence appealed:

> *"The sentence imposed ignored, first, the need to signal the community's strong denunciation of crimes of violence involving in this case the violation of a woman's body, none other than the offender's grandmother; second, the need to impose a penalty appropriately deterring the commission of this sort of crime in whatever community the offender be situated; and third, the primacy of the need to protect the personal security of other people, especially women asleep in the sanctity of their homes."*

57. *R v E; Ex parte Attorney-General (Qld)*[45] involved a 16 year old offender who pleaded guilty to two counts of rape, four counts of attempted rape and one of torture. The complainant was a woman who suffered from cerebral palsy and was confined to a wheelchair. The offence of torture occurred over a period of five days involving the offender pushing the complainant out of her wheelchair, assaulting her, keeping the wheelchair from her and otherwise threatening and assaulting her. The rapes consisted of digital penetration of her vagina and of the offender placing his penis in the complainant's mouth. Each of the four counts of attempted rape involved attempted penile penetration. There was violence during these episodes. The offender was sentenced to two years detention on the rape counts and twelve months detention on the attempted rape counts and the torture counts all to be served concurrently. Naturally, in the circumstances, the Attorney-General appealed. The Court set aside the sentences and ordered the offender to serve four years detention with a fixed release order after serving 50% of the detention.

58. In *R v S*[46] a 14 year old offender pleaded guilty to six counts of rape. On the day he pleaded guilty to those six counts, he also pleaded guilty to charges on two other indictments containing counts of dishonesty. He was sentenced to twelve months detention for the offences of dishonesty and four years detention for the offences of rape to be served cumulatively upon the twelve month sentence. This gave an effective

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43 Sections 176 and 220 of the *Juvenile Justice Act*
44 With whom the President and Williams JA agreed
45 [2002] QCA 417
46 [2003] QCA 107

sentence of five years detention. The offender had a long criminal history (for a 14 year old) and the rape offences occurred while he was on probation and on a conditional bail program. The rape offences were committed over three separate occasions on a 16 year old physically disabled woman who suffered from cerebral palsy. On each occasion there was physical force applied and on each occasion there was penile penetration. He unsuccessfully appealed his sentence, the Court finding:

> *"The Attorney-General appeals against sentence of R v A ex parte Attorney-General [2001] QCA 542; CA No 275 of 2001, 28 November 2001, and R v Edwards ex parte Attorney-General [2002] QCA 417; CA Nos 214 and 217 of 2002, 11 October 2002, demonstrate that the effective sentence of five years' detention was within the applicable range of the shortest appropriate period of detention able to be imposed in this case after weighing all the competing interests, including protection of the community (see Juvenile Justice Act 1992 (Qld), s165). Whilst those cases also demonstrate that youth, difficult background and early pleas of guilty may be factors, especially when in combination, that warrant reducing the period to be served to one-half under s188 Juvenile Justice Act 1992 (Qld), that is not automatically so. Here, the learned primary Judge considered all these matters and determined not to make an order for release after 50 per cent.*
>
> *It cannot be said that his exercise of discretion in this manner miscarried, or that the sentence was in any way manifestly excessive for this multifarious and serious repeat offending without immediately promising prospects of reform."*

59. *R v JAJ*[47] involved a 16 year old offender. The offender pleaded guilty to one count of raping his 3 ½ year old stepbrother. The offender had been left babysitting the complainant child. The complainant apparently needed showering and while the complainant was naked the offender penetrated the complainant's anus with his penis. This caused the complainant child severe pain and discomfort for some days and he apparently suffered nightmares for a period. The offender was sentenced to four years detention. The Court of Appeal by majority[48] allowed the appeal and substituted a sentence of three years detention.

60. *R v MAC*[49] was a case involving a 14 year old offender who pleaded guilty to one offence of raping a 10 year old boy, one offence of attempting to rape a 3 year old girl and an offence of attempting to rape a 6 year old boy. There were also counts of indecent dealing. The offence of rape involved anal penetration which appears not to

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47 [2003] QCA 554
48 The President and Mullins J; Chesterman J dissenting
49 [2004] QCA 317

have been associated with any violence. The count of attempted rape upon the 3 year old involved attempted penile penetration of the child's vagina. Again, no violence was involved. The attempted rape of the 6 year old involved attempted penile penetration of the child's anus. Again, no actual violence was involved. The offender's appeal from an order of four years detention (with an order that he be released from detention after serving 50% of the sentence) was dismissed.

61. *R v PZ; Ex parte Attorney-General (Qld)*[50] involved a 16 year old offender. The circumstances of the offences were described in the judgment of Keane JA[51] in these terms:

> *"[5] The female complainant was a 16 year old student at the time the offences were committed. She and a friend attended a party at a house at Browns Plains on the evening of 14 May 2004. After the complainant arrived, the respondent and the complainant went into the bathroom and began kissing. The respondent asked the complainant to have sexual intercourse with him. She refused. He then asked her to give him a "blow job". She again refused. He then pushed her head against the wall and walked out of the bathroom.*
>
> *[6] An hour later, the respondent walked up to the complainant in the lounge room and held a large black handled knife to her throat. One of his friends then pushed the respondent's hand away and told him to leave.*
>
> *[7] The complainant sought to leave the party. As she walked out the front door, the respondent saw her and asked her where she was going. She said that she was going home. He told her that she was not going home until she smoked cannabis. She refused, and he then slapped her face. She again refused to smoke cannabis, and he again slapped her face.*
>
> *[8] The respondent then placed his hands on the complainant's shoulders and pushed her to the floor. He then picked up a weights dumbbell and struck her head with it causing her pain and a contusion which did not subside for several days.*
>
> *[9] The respondent then grabbed her by the wrist and took her into one of the bedrooms which was occupied by several males who were smoking cannabis. The complainant tried to walk out of the room, but the respondent took hold of her wrist and pulled her towards him saying that she was "not going anywhere".*
>
> *[10] The respondent then told the complainant that she was going to smoke cannabis or else she was going to give everyone in the room "a head job". The complainant, understandably frightened, agreed to smoke cannabis.*
>
> *[11] The complainant was strongly affected by the cannabis. She left the bedroom, walked to the lounge room and fell on the floor. The respondent, who had followed her, sat on top of her. He placed one leg on either side of her so*

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50 [2005] QCA 459

51 With whom the President and Chesterman J agreed

that she could not move. He then began to kiss her. He then put his hand inside her underpants and began stroking her vagina. He then pushed his fingers into her vagina. A short time later he took his fingers out of her vagina and removed her underpants. At this stage, the complainant was crying. She repeatedly asked him to stop. Another male person then took hold of her shoulders, while yet another rubbed her breasts.

[12] The respondent then pushed a finger into her vagina and said: "Don't worry, we're just having a bit of fun. You will enjoy it."

[13] The respondent then picked up a beer bottle and moved it towards her vagina. The complainant again repeatedly asked him to stop. Despite these entreaties, the respondent inserted the bottle into her vagina. She felt severe pain. She believes that she then passed out at this point."

62. The offender pleaded guilty to two counts of rape, one count of indecent assault, four counts of assault, one count of assault occasioning bodily harm while armed, one count of deprivation of liberty and one count of threatening injury with intent to compel a person to smoke a dangerous drug. On one of the counts of rape he was sentenced to three months detention to be suspended immediately and on the other charges he was ordered to be released under a supervision order. The Attorney-General appealed the sentence and the appeal was successful. Keane JA said:

> *"Given the clear trend of the authorities to which I have referred, the sentence imposed on the respondent by the learned sentencing judge was manifestly inadequate as punishment for the persistent, violent and cruel conduct of the respondent towards the complainant. The sentence cannot be allowed to stand. The offences committed by the respondent were so serious as to require, in my view, a head sentence of detention for four years before circumstances of mitigation are taken into account."*[52]

63. After considering the various personal circumstances of the offender, a detention order of three years was made with an order that he be released from detention after serving 50% of the term.

Indecent Dealing/Indecent Treatment of Children

64. Like comparative sentences for rape, comparative sentences for offences of indecently dealing with children are difficult, if not impossible, to completely reconcile. This, as with cases of rape, is no doubt because of the wide spectrum of conduct that can constitute the offences. There seems to be no real value in undertaking a general review of the comparatives. It is, though, necessary to state the important principle of

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52 At [31]

sentencing in this area as identified in *R v Pham*[53] and endorsed and repeated by the Court of Appeal in numerous cases since[54]. The principle stated in *Pham* is:

> *"As has been noted elsewhere, it is impossible to reconcile all the sentences imposed on sexual offenders against children, even those handed down in recent years. Instances can be found of lengthy terms of imprisonment while, at the other end of the spectrum, there are quite serious cases in which imprisonment has not been ordered or has been suspended. As was pointed out in Solway (CA No. 164 of 1995, unreported judgment delivered 22nd August 1995), offenders are often mature citizens who have otherwise led blameless lives whose disgraceful conduct is inexplicable. However, this Court has clearly indicated that, other than in exceptional circumstances, those who indecently assault or otherwise deal with children should be sent to jail."*

65. Of course, that begs the question as to what are "exceptional circumstances" in any given case. That issue was considered in *R v L; Ex parte Attorney-General*[55]. In that case, a 44 year old man had pleaded guilty to two counts of indecent treatment of a girl under the age of 16 years. There were, in fact, two children. The first was a 10 year old who was the niece of the offender. He entered her room when she was asleep and pressed his thumb into her vaginal area outside her shorts. This occurred on three occasions. The complainant made no complaint until another incident some years later involving another complainant. The offender entered the second complainant's bedroom and inserted his finger into her vagina to some extent. The offender was sentenced to a wholly suspended four month term of imprisonment for the first offence and a twelve month intensive correction order in respect of the second. The Attorney-General appealed against sentence.

66. There were various mitigating circumstances. The Chief Justice[56] observed that it was not uncommon for such offenders to have no prior convictions, good work histories and be otherwise respected members of the community. These are the factors referred to in later cases[57] as not being "exceptional". However, the Chief Justice took into account other mitigating circumstances and then observed:

> *"The signal the Court sends as to the unacceptability of this sort of behaviour cannot be dulled by subtle debate as to what does or does not amount to exceptional circumstances. But taking a broad commonsense approach to this*

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53 [1996] QCA 003

54 *R v M; Ex parte Attorney-General* [1999] QCA 442, *R v L; Ex Parte Attorney-General* [2000] QCA 123, *R v Quick; Ex parte Attorney-General (Qld)* [2006] QCA 477

55 [2000] QCA 123

56 With whom Davies and Thomas JJA agreed

57 See, for example *R v Quick; Ex parte Attorney-General (Qld)* [2006] QCA 477

matter, recognising reasonable community expectations and acknowledging the gravity of this particular offending, I do nevertheless consider that the aggregation of mitigating circumstances just listed was here sufficiently exceptional to justify the unusual course followed by the learned judge. It is, I should say, in my view, a marginal or borderline case and that character should increase this Court's circumspection about interfering on an Attorney's appeal."[58]

67. The Attorney-General's appeal was dismissed.

68. Of course it is correct, with respect, to ensure that sentencing does not descend, in this area, or any other, to an artificial categorisation of factors in a case as "exceptional" or "unexceptional". Any offender has to be sentenced in the context of all relevant considerations and as guided by the relevant legislation.

69. Whether in a particular case the mitigating circumstances justify a non-custodial sentence for a sexual offence against a child is a matter upon which minds can, of course, differ[59]. Notwithstanding the principle stated in *R v Pham*[60], sentences involving no actual custody are often imposed in cases of indecent dealing with children.

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58 See also the comments of Holmes JA in dissent in *R v Quick; Ex parte Attorney-General (Qld)* [2006] QCA 477 at [21]

59 *R v Quick; Ex parte Attorney-General (Qld)* [2006] QCA 477, de Jersey CJ and Chesterman J allowing an Attorney-General's appeal with Holmes JA in dissent

60 [1996] QCA 003

SENTENCING INDIGENOUS OFFENDERS

70. Although there are some legislative provisions[61] which require a sentencing judge to take into account particular factors in the sentencing of an Indigenous person, there is, of course, no general principle that Indigenous persons as a group are sentenced differently, or on different general principles to other members of the community. Such an approach, to apply the law differently as between different groups within the community, would be contrary to the law and would be a breach of the judicial oath. However, Indigenous persons in remote communities no doubt have many things in common as between themselves and many of those things are relevant to the question of sentence. It is necessary to identify these sorts of matters and analyse how they are relevant to sentencing.

71. In Queensland there are two separate and quite distinct sentencing regimes prescribed by Parliament, one for adult offenders[62] and one for juveniles[63]. By two pieces of legislation, Parliament has dictated that a court's approach to child offenders must be different to the court's approach to dealing with adults. This distinction is reflected in the sentencing principles prescribed by the *Penalties and Sentences Act 1992* ("the Penalties and Sentences Act), for adult offenders, and the *Juvenile Justice Act 1992* ("Juvenile Justice Act"), for child offenders.

72. Section 9 of the *Penalties and Sentences Act* provides:

> *"9 Sentencing guidelines*
> *(1) The only purposes for which sentences may be imposed on an offender are--*
> *(a) to punish the offender to an extent or in a way that is just in all the circumstances; or*
> *(b) to provide conditions in the court's order that the court considers will help the offender to be rehabilitated; or*
> *(c) to deter the offender or other persons from committing the same or a similar offence; or*
> *(d) to make it clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved; or*
> *(e) to protect the Queensland community from the offender; or*
> *(f) a combination of 2 or more of the purposes mentioned in paragraphs (a) to (e).*
> *(2) In sentencing an offender, a court must have regard to--*
> *(a) principles that--*

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61 See for example s.9(2)(p) of the *Penalties and Sentences Act 1992*
62 *Penalties and Sentences Act 1992*
63 *Juvenile Justice Act 1992*

(i) a sentence of imprisonment should only be imposed as a last resort; and

(ii) a sentence that allows the offender to stay in the community is preferable; and

(b) the maximum and any minimum penalty prescribed for the offence; and

(c) the nature of the offence and how serious the offence was, including any physical or emotional harm done to a victim; and

(d) the extent to which the offender is to blame for the offence; and

(e) any damage, injury or loss caused by the offender; and

(f) the offender's character, age and intellectual capacity; and

(g) the presence of any aggravating or mitigating factor concerning the offender; and

(h) the prevalence of the offence; and

(i) how much assistance the offender gave to law enforcement agencies in the investigation of the offence or other offences; and

(j) time spent in custody by the offender for the offence before being sentenced; and

(k) sentences imposed on, and served by, the offender in another State or a Territory for an offence committed at, or about the same time, as the offence with which the court is dealing; and

(l) sentences already imposed on the offender that have not been served; and

(m) sentences that the offender is liable to serve because of the revocation of orders made under this or another Act for contraventions of conditions by the offender; and

(n) if the offender is the subject of a community based order--the offender's compliance with the order as disclosed in an oral or written report given by an authorised corrective services officer; and

(o) if the offender is on bail and is required under the offender's undertaking to attend a rehabilitation, treatment or other intervention program or course--the offender's successful completion of the program or course; and

(p) if the offender is an Aboriginal or Torres Strait Islander person--any submissions made by a representative of the community justice group in the offender's community that are relevant to sentencing the offender, including, for example--

(i) the offender's relationship to the offender's community; or

(ii) any cultural considerations; or

(iii) any considerations relating to programs and services established for offenders in which the community justice group participates; and

(q) anything else prescribed by this Act to which the court must have regard; and

(r) any other relevant circumstance.

(3) However, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender for any offence--

(a) that involved the use of, or counselling or procuring the use of, or attempting or conspiring to use, violence against another person; or

(b) that resulted in physical harm to another person.

(4) In sentencing an offender to whom subsection (3) applies, the court must have regard primarily to the following--

(a) the risk of physical harm to any members of the community if a custodial sentence were not imposed;

(b) the need to protect any members of the community from that risk;

(c) the personal circumstances of any victim of the offence;

(d) the circumstances of the offence, including the death of or any injury to a member of the public or any loss or damage resulting from the offence;

(e) the nature or extent of the violence used, or intended to be used, in the commission of the offence;

(f) any disregard by the offender for the interests of public safety;

(g) the past record of the offender, including any attempted rehabilitation and the number of previous offences of any type committed;

(h) the antecedents, age and character of the offender;

(i) any remorse or lack of remorse of the offender;

(j) any medical, psychiatric, prison or other relevant report in relation to the offender;

(k) anything else about the safety of members of the community that the sentencing court considers relevant.

(5) Also, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender for any offence of a sexual nature committed in relation to a child under 16 years.

(6) In sentencing an offender to whom subsection (5) applies, the court must have regard primarily to the following--

(a) the effect of the offence on the child;

(b) the age of the child;

(c) the nature of the offence, including, for example, any physical harm or the threat of physical harm to the child or another;

(d) the need to protect the child, or other children, from the risk of the offender reoffending;

(e) the need to deter similar behaviour by other offenders to protect children;

(f) 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;

(g) the offender's antecedents, age and character;

(h) any remorse or lack of remorse of the offender;

(i) any medical, psychiatric, prison or other relevant report relating to the offender;

(j) anything else about the safety of children under 16 the sentencing court considers relevant.

(7) If required by the court for subsection (2)(p), the representative must advise the court whether--

(a) any member of the community justice group that is responsible for the submission is related to the offender or the victim; or

(b) there are any circumstances that give rise to a conflict of interest between any member of the community justice group that is responsible for the submission and the offender or victim.

(8) In this section--

community justice group, for an offender, means--

(a) a community justice group established under the Aboriginal Communities (Justice and Land Matters) Act 1984, part 5, division 1, or

the Community Services (Torres Strait) Act 1984, part 5, division 1, for the offender's community; or
(b) a group of persons within the offender's community, other than a department of government, that is involved in the provision of any of the following--
(i) information to a court about Aboriginal or Torres Strait Islander offenders;
(ii) diversionary, interventionist or rehabilitation activities relating to Aboriginal or Torres Strait Islander offenders;
(iii) other activities relating to local justice issues; or
(c) a group of persons made up of elders or other respected persons of the offender's community.
offender's community means the offender's Aboriginal or Torres Strait Islander community, whether it is--
(a) an urban community; or
(b) a rural community; or
(c) a community on DOGIT land under the Aboriginal Land Act 1991 or the Torres Strait Islander Land Act 1991.

73. Section 9(2)(p) makes reference to Aboriginal and Torres Strait Islander persons and special provision is made for the sentencing judge, when sentencing such persons, to take into account submissions made by a representative of the community justice group in the offender's community[64]. Community justice groups are constituted under the *Aboriginal Communities (Justice and Land Matters) Act 1984* ("the *Aboriginal Communities Act*") and the *Community Services (Torres Strait) Act 1984* ("the *Torres Strait Communities Act*"). Section 87 of the *Aboriginal Communities Act* is as follows[65]:

"87 Functions and powers
(1) The functions of the community justice group for a community area are to--
(a) regulate the possession and consumption of alcohol in the area under part 6, division 2; and
(b) carry out local strategies to address justice issues affecting members of the community in the area; and
(c) make recommendations to the community liquor licence board established under the Indigenous Communities Liquor Licences Act 2002, part 2, division 1, for the area about the operation of the canteen in the area; and
(d) make recommendations to the Minister administering the Liquor Act 1992, part 6A, about declarations under that part; and
(e) carry out other functions given to it under this or another Act.

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64 See the definition of "community justice group" and "offender's community" in s.9(8) of the *Penalties and Sentences Act*

65 Apart from some minor drafting differences, s.85 of the *Community Services (Torres Strait) Act 1984* is in identical terms to s.87 of the *Aboriginal Communities Act*

(2) To remove any doubt, it is declared that the group may not make recommendations about the employment of canteen staff, including, for example, the appointment of the canteen manager.
(3) The group has power to do all things reasonably necessary to be done for performing its functions.
(4) Without limiting subsection (3), the group has the powers conferred on it by this or another Act."

74. Section 9(2)(p) of the *Penalties and Sentences Act* gives a community justice group the "function" of making submissions on sentence. It should be noted that s.9(2)(p) doesn't apply to all Aboriginal and Torres Strait persons but only to those in a community where there is a community justice group.

75. Section 150 of the *Juvenile Justice Act* provides that the "juvenile justice principles" must be taken into account when sentencing a juvenile. Sections 12, 13 and 14 to Schedule 1 of the *Juvenile Justice Act*[66] all dictate that a child's "culture" is relevant to sentencing and s.13 of the Schedule applies specifically to children of Aboriginal or Torres Strait Islander descent. Section 150(1)(g) of the *Juvenile Justice Act* is similar to s.9(2)(p) of the *Penalties and Sentences Act*[67]. Section 150 of the *Juvenile Justice Act*, and Schedule 1 are as follows:

*"**150 Sentencing principles***
(1) In sentencing a child for an offence, a court must have regard to--
(a) subject to this Act, the general principles applying to the sentencing of all persons; and
(b) the juvenile justice principles; and
(c) the special considerations stated in subsection (2); and
(d) the nature and seriousness of the offence; and
(e) the child's previous offending history; and
(f) any information about the child, including a pre-sentence report, provided to assist the court in making a determination; and
(g) if the child is an Aboriginal or Torres Strait Islander person--any submissions made by a representative of the community justice group in the child's community that are relevant to sentencing the child, including, for example--
(i) the child's relationship to the child's community; or
(ii) any cultural considerations; or
(iii) any considerations relating to programs and services established for offenders in which the community justice group participates; and
(h) any impact of the offence on a victim; and
(i) a sentence imposed on the child that has not been completed; and

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66 Schedule 1 contains the juvenile justice principles

67 See also s.150(4) of the *Juvenile Justice Act* and s.9(7) of the *Penalties and Sentences Act* which both deal with conflicts of interest arising within the community justice groups

(j) a sentence that the child is liable to have imposed because of the revocation of any order under this Act for the breach of conditions by the child; and

(k) the fitting proportion between the sentence and the offence.

(2) Special considerations are that--

(a) a child's age is a mitigating factor in determining whether or not to impose a penalty, and the nature of a penalty imposed; and

(b) a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community; and

(c) the rehabilitation of a child found guilty of an offence is greatly assisted by--

(i) the child's family; and

(ii) opportunities to engage in educational programs and employment; and

(d) a child who has no apparent family support, or opportunities to engage in educational programs and employment, should not receive a more severe sentence because of the lack of support or opportunity; and

(e) a detention order should be imposed only as a last resort and for the shortest appropriate period.

(3) In sentencing a child for an offence, a court may receive any information it considers appropriate to enable it to impose the proper sentence or make a proper order in connection with the sentence.

(4) If required by the court for subsection (1)(g), the representative must advise the court whether--

(a) any member of the community justice group that is responsible for the submission is related to the offender or the victim; or

(b) there are any circumstances that give rise to a conflict of interest between any member of the community justice group that is responsible for the submission and the child or victim.

CHARTER OF JUVENILE JUSTICE PRINCIPLES

1 The community should be protected from offences.

2 The youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing.

3 A child being dealt with under this Act should be--

(a) treated with respect and dignity, including while the child is in custody; and

(b) encouraged to treat others with respect and dignity, including courts, persons administering this Act and other children being dealt with under this Act.

4 Because a child tends to be vulnerable in dealings with a person in authority, a child should be given the special protection allowed by this Act during an investigation or proceeding in relation to an offence committed, or allegedly committed, by the child.

5 If a child commits an offence, the child should be treated in a way that diverts the child from the courts' criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started.

6 A child being dealt with under this Act should have procedures and other matters explained to the child in a way the child understands.

7 If a proceeding is started against a child for an offence--

(a) the proceeding should be conducted in a fair, just and timely way; and

(b) the child should be given the opportunity to participate in and understand the proceeding.

8 A child who commits an offence should be--

(a) held accountable and encouraged to accept responsibility for the offending behaviour; and

(b) dealt with in a way that will give the child the opportunity to develop in responsible, beneficial and socially acceptable ways; and

(c) dealt with in a way that strengthens the child's family.

9 A victim of an offence committed by a child should be given the opportunity to participate in the process of dealing with the child for the offence in a way allowed by the law.

10 A parent of a child should be encouraged to fulfil the parent's responsibility for the care and supervision of the child, and supported in the parent's efforts to fulfil this responsibility.

11 A decision affecting a child should, if practicable, be made and implemented within a timeframe appropriate to the child's sense of time.

12 A person making a decision relating to a child under this Act should consider the child's age, maturity and, where appropriate, cultural and religious beliefs and practices.

13 If practicable, a child of Aboriginal or Torres Strait Islander background should be dealt with in a way that involves the child's community.

14 Programs and services established under this Act for children should--

(a) be culturally appropriate; and

(b) promote their health and self respect; and

(c) foster their sense of responsibility; and

(d) encourage attitudes and the development of skills that will help the children to develop their potential as members of society.

15 A child being dealt with under this Act should have access to legal and other support services, including services concerned with advocacy and interpretation.

16 A child should be dealt with under this Act in a way that allows the child to be reintegrated into the community.

17 A child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances.

18 A child detained in custody should only be held in a facility suitable for children.

19 While a child is in detention, contacts should be fostered between the child and the community.

20 A child who is detained in a detention centre under this Act--

(a) should be provided with a safe and stable living environment; and

(b) should be helped to maintain relationships with the child's family and community; and

(c) should be consulted about, and allowed to take part in making, decisions affecting the child's life (having regard to the child's age or ability to understand), particularly decisions about--

(i) the child's participation in programs at the detention centre; and

(ii) contact with the child's family; and

(iii) the child's health; and

(iv) the child's schooling; and

(d) should be given information about decisions and plans about the child's future while in the chief executive's custody (having regard to the

child's age or ability to understand and the security and safety of the child, other persons and property); and
(e) should be given privacy that is appropriate in the circumstances including, for example, privacy in relation to the child's personal information; and
(f) should have access to dental, medical and therapeutic services necessary to meet the child's needs; and
(g) should have access to education appropriate to the child's age and development; and
(h) should receive appropriate help in making the transition from being in detention to independence."

76. It can be seen then that there are legislative provisions which apply specifically to Aboriginal and Torres Strait Islander persons including children. However, most provisions make no cultural or racial distinction. Further, neither the *Penalties and Sentences Act* nor the *Juvenile Justices Act* purports to prescribe an exhaustive list of factors that can be taken into account on sentence. Section 9(2)(r) of the *Penalties and Sentences Act* entitles a court to take into account "any other relevant circumstance". Section 150(1)(a) of the *Juvenile Justice Act* incorporates general sentencing considerations into the sentencing of children as a court must have regard to the "general principles applying to the sentencing of all persons" (of course subject to the *Juvenile Justice Act* itself).

77. Many considerations which are common to persons in remote Indigenous communities will either be "other relevant circumstances"[68] or will come within specific factors mentioned in the legislation. For example, a person in a remote community may be under emotional distress because of his/her circumstances within that community and that may have been a factor leading to the commission of the offence[69]. Such a factor would be relevant on sentence as a mitigating circumstance by force of ss.9(2)(f), (g) and (r).

78. However, the sentencing of any offender is an exercise involving the balancing of mitigating and aggravating circumstances[70]. This is also evident from the sentencing guidelines within the legislation[71]. For instance, damage, injury and loss caused to the victim is relevant[72]. The *Penalties and Sentences Act* operates such that in some classes

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68 Section 9(2)(r) *Penalties and Sentences Act* and s.150(1)(a) *Juvenile Justice Act*
69 See for instance, *Neal v The Queen* (1982) 149 CLR 305
70 *Stanley Edward Fernando* (1992) 76 ACrimR 58
71 In both the *Penalties and Sentences Act* and the *Juvenile Justice Act*
72 Section 9(2)(e) of the *Penalties and Sentences Act*

of cases general mitigating circumstances may carry little, if any, weight. For instance, for adult offenders, the "imprisonment as a last resort" principle[73] does not apply to offences of violence[74], offences which resulted in physical harm[75] or offences of a sexual nature committed in relation to a child under 16 years[76]. Section 9(6) of the *Penalties and Sentences Act* provides certain "primary" considerations for a court when sentencing an adult for a sexual offence committed against a child. Such things include the effect of the offence upon the child and the need to protect the child and other children. The sentencing of an Indigenous offender from a remote community for a sexual offence against a child would have to incorporate consideration of the factors under s.9(6) just as in the sentence of any other member of the community[77]. Where the offence is a serious one, general mitigating circumstances may then have little impact[78].

79. There are numerous examples of cases in which the circumstances faced by Indigenous persons in remote communities have been considered as factors impacting upon sentence.

80. *Neal v The Queen*[79] involved an incident which occurred at Yarrabah, an Aboriginal community in Northern Queensland. A dispute arose between the appellant (Mr Neal) and the manager of the local store, a Mr Collins. Ultimately Mr Collins was assaulted in the course of which Mr Neal spat on him after an argument concerning the running of the community by Mr Collins (who is not Aboriginal). Mr Neal was sentenced to two months imprisonment. The Queensland Court of Criminal Appeal dismissed Mr Neal's appeals and increased the sentence to imprisonment for six months. The High Court allowed the appeal and two judges of the Court[80] considered the effect of racial issues upon sentence. The two judges though approached those issues somewhat differently.

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73 Section 9(2) of the *Penalties and Sentences Act*

74 Section 9(3)(a) of the *Penalties and Sentences Act*

75 Section 9(3)(b) of the *Penalties and Sentences Act*

76 Section 9(5) of the *Penalties and Sentences Act*

77 But not a child offender because the provisions of the *Juvenile Justice Act* are different

78 As to the general approach to sentencing, taking into account factors relevant to Aboriginal offenders from remote communities but balancing those mitigating factors against aggravating factors, see the judgment of Moynihan SJA in *R v Daniel* [1998] 1 QdR 499 at 533, 534

79 (1982) 149 CLR 305

80 Murphy J and Brennan J (as His Honour then was)

81. Murphy J considered that the case was a "race relations case"[81] and that Mr Neal had grievances with the way in which the Yarrabah Aboriginal community was being managed by Europeans such as Mr Collins. Ultimately, His Honour held:

> *"Taking into account the racial relations aspect of this case, the fact that Mr Neal was placed in a position of inferiority to the whites managing the reserve should have been a special mitigating factor in determining sentence.*
>
> *In sentencing the court should consider the offence, the character and record of the defendant and all mitigating and aggravating circumstances."*[82]

82. Brennan J (as His Honour then was) dealt with the racial aspect of the case in this way;

> *"The facts of the case raised two important factors for consideration. The first factor, the gravity of the conduct in which, upon the magistrate's findings, Mr Neal had engaged, was rightly considered by the Court of Criminal Appeal and is central to the opinion which that court formed. Andrews SPJ thought the facts portrayed 'a most frightening situation, as well as being offensive and grossly humiliating', and that view of the facts was open upon the evidence. The second principal factor which required consideration was the reason why Mr Neal engaged in that conduct. Specifically, the question was whether the explanation for Mr Neal's conduct was some emotional stress arising from what he called in his evidence 'the paternalistic system' of life on the reserve. Neither the reasons of the Court of Criminal Appeal nor the reasons of the magistrate refer to the emotional stress affecting Mr Neal though the facts of the case are eloquent to suggest it. Emotional stress which accounts for criminal conduct is always material to the consideration of an appropriate sentence, though its mitigating effect can be outweighed by a countervailing factor (see DA Thomas Principles of Sentencing 2nd Ed (1979), pp.194, 207). The sentencing court takes account of emotional stress in evaluating the moral culpability of the offender just as it is entitled to have regard to the motive for the offence (*R v Bright *[1916] 2 KB 441 at 444 per Darling J)."*[83]

83. It can be seen from both judgments that Mr Neal's "Aboriginality" per se was not relevant upon sentence. Rather, specific aggravating or mitigating factors were identified. In the judgment of Murphy J, it was Mr Neal's position as an agitator and his position of inferiority. In the judgment of Brennan J, it was Mr Neal's emotional stress caused by the conditions at Yarrabah. The mitigating circumstances identified by both judges are circumstances that could be taken into account by force of s.9 of the *Penalties and Sentences Act* if Mr Neal was sentenced today in Queensland. However, given that

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81 At p.316
82 At p.319
83 At pp.323-324

Mr Neal's offence was one of violence, the Court would have to have regard to the impact of s.9(3) upon the operation of s.9(2).

84. *Walden v Hensler*[84], another decision of the High Court of Australia concerned an offence under the *Fauna Conservation Act 1974* committed by Mr Walden when he shot a Plain Turkey, the carcass of which was then used for food for his family. Mr Walden was convicted and fined. Other incidental orders were made against him. Mr Walden's defence was that he was an Aboriginal person who believed that he had a right to take the turkey for food as generations of Aboriginal persons before him had done. He was, of course, unaware of the provisions of the *Fauna Conversation Act 1974.*

85. The case largely turned on the question of whether Mr Walden had a defence under s.22 of the *Code*, the relevant parts of which are as follows:

> ***Ignorance of the law--bona fide claim of right***
> *(1) Ignorance of the law does not afford any excuse for an act or omission which would otherwise constitute an offence, unless knowledge of the law by the offender is expressly declared to be an element of the offence.*
> *(2) But a person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done by the person with respect to any property in the exercise of an honest claim of right and without intention to defraud.*
> ..."

86. The majority (Brennan, Deane and Dawson JJ) held that the defence was not available for reasons that are not relevant for present purposes. However, the majority set aside the sentence and made an order under s.657A of the *Criminal Code* (now repealed)[85]. Section 657A provided for discharge without conviction where the offence was "trivial". The Full Court of the Supreme Court of Queensland[86] held that the offence could not be regarded as one that was "trivial"[87]. The majority of the High Court though considered that the offence could be regarded as "trivial" because, as an Aboriginal person, Mr Walden honestly believed that he was exercising traditional rights that he had[88]. Again, the Aboriginality of the offender was not the mitigating circumstance. The mitigating circumstance was the state of belief that the offender held and that state of belief was contributed to by his Aboriginality.

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84 (1987) 163 CLR 561
85 Act 48 of 1992
86 *Walden v Hensler; Ex parte Walden* [1986] 2 QdR 490
87 See the judgment of Connolly J at p.495
88 See for instance the judgment of Brennan J at p.577-578

87. *R v Sampson & Ors*[89] is a decision of the Full Court of the Federal Court of Australia on appeal from the Supreme Court of the Northern Territory. The case is worth mentioning because it involves legislation[90] which provided for different maximum sentences dependent upon race. Section 5 of the *Criminal Law Consolidation Act (NT)* provided mandatory imprisonment for life for murder. However, s.6(1C) provided:

> *"Where an Aboriginal is convicted of murder, the judge may impose such penalty as, having regard to all the circumstances of the case, appears to him to be just and proper."*

88. The offenders murdered their victim when they were all intoxicated and had decided to rob him. The victim apparently insulted one of the offenders and the violence escalated, culminating in his murder[91]. The offenders were sentenced to 12 years imprisonment and the Crown appealed, submitting on appeal that the sentences were inadequate. The sentencing court was, by force of the legislation, specifically obliged to consider the Aboriginality of the offenders as that gave rise to a discretion to impose a sentence other than life imprisonment. On appeal the Court then considered the personal mitigating circumstances of the offenders including various factors which arose as an incident of them being Aboriginal persons living in compromised circumstances. For instance, the Court took into account:

(a) Their alcoholism;

(b) Their drunkenness at the time of the offence;

(c) Personal circumstances such as the fact that one of the offenders had been the subject of an arranged marriage when she was about 10 or 11 years of age.

89. All the factors considered in *Sampson & Ors*[92] could be considered under s.9 of the *Penalties and Sentences Act.*

90. *The Queen v Jadurin*[93] is another decision of the Full Court of the Federal Court of Australia, again on appeal from the Supreme Court of the Northern Territory. There, an Aboriginal person had beaten his wife, she had died and he was convicted of

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89 (1984) 53 ALR 542
90 *The Criminal Law Consolidation Act (NT)* (now repealed)
91 See p.546
92 (1984) 53 ALR 542
93 [1982] 7 ACrimR 182

manslaughter. He was sentenced[94] and he appealed his sentence. Prior to be being dealt with by a court he had undergone tribal, traditional punishment and further such punishment was threatened. On appeal, it was argued that the sentencing judge had not taken this into account. Ultimately, the appeal was dismissed but the Court considered the relevance of the tribal punishment. The Court referred to the judgment of Brennan J in *Neal v The Queen*[95] where His Honour said:

> *"The same sentencing principles are to be applied, of course, in every case, irrespective of the identity of a particular offender or his membership of an ethnic or other group. But in imposing sentences courts are bound to take into account, in accordance with those principles, all material facts including those facts which exist only by reason of the offender's membership of an ethnic or other group. So much is essential to the even administration of criminal justice."*[96]

91. The Full Federal Court in *Jadurin* then went on to say:

> *"In the context of Aboriginal customary or tribal law questions will arise as to the likelihood of punishment by an offender's own community and the nature and extent of that punishment. It is sometimes said that a court should not be seen to be giving its sanction to forms of punishment, particularly the infliction of physical harm, which it does not recognize itself. But to acknowledge that some form of retribution may be exacted by an offender's own community is not to sanction that retribution; it is to recognize certain facts which exist only by reason of that offender's membership of a particular group. That is not to say that in a particular case questions will not arise as to the extent to which the court should have regard to such facts or as to the evidence that should be presented if it is to be asked to take those facts into account.*
>
> *In our view it is unnecessary in the present case to explore those questions. The learned sentencing judge had a wide discretion in arriving at a sentence to give effect to the various matters urged before him. One of those considerations was the likelihood of further punishment by the community to which the appellant belonged. It was a consideration which clearly was taken into account."*[97]

92. While the mitigating circumstances in *Jadurin* were as a result of the membership by the offender of a particular group, the membership of the group was not itself the mitigating circumstance. The mitigating circumstance was the personal harm and suffering that the offender had experienced and would experience as a result of being a member of the

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94 The actual sentence is irrelevant for present purposes

95 (1982) 149 CLR 305

96 At p.326

97 *The Queen v Jadurin* (1982) 7 ACrimR 182 at 187, the Court also had regard to *The Queen v Mamarika* (1982) 5 ACrimR 354 there were considerations of Aboriginal "pay back".

group and as a result of committing the offence. *The Queen v Jadurin*[98] has been consistently followed[99]. The reasoning supporting these cases seems consistent with the recent decision of the High Court of Australia in *York v The Queen*[100] where special danger to the offender while in custody caused by the offender's cooperation with police was regarded as a "relevant circumstance" within s.9(2)(r) of the *Penalties and Sentences Act*[101].

93. There have been many cases where the courts have taken into account the consumption of alcohol by Indigenous persons as a mitigating circumstance. In *The Queen v Rogers & Murray*[102] the Court of Criminal Appeal in Western Australia said:

> *"It is a notorious fact that the increased use of alcohol by aboriginal persons in relatively recent times has caused grave social problems, including problems of violence, in the communities in which they live. The general circumstances which have lead to problems associated with the consumption of alcohol may themselves provide circumstances of mitigation ..."*[103]

94. Again, it was not the offender's Aboriginality itself which was the mitigating circumstance but the social problems which were manifested by the alcoholism[104].

95. Sometimes particular circumstances of an offender are such that imprisonment has a greater impact upon him or her than upon other members of the community. *York v The Queen*[105] is an example. Another example is *R v Todd*[106] where the Court of Criminal Appeal of Queensland, in allowing an appeal against sentence, took into account the special impact of imprisonment upon a blind man who would obviously thereby encounter special difficulties within the prison system. *Todd* has been followed and approved[107] and there have been numerous cases which have held that sentencing judges may have regard to circumstances which would make imprisonment more arduous for a

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98 (1982) 7 ACrimR 182

99 *Atkinson v Walkely* (1984) 27 NTR 34, *R v Minor* (1992) 79 NTR 1, *R v Datez; R v Wilson* (2003) 139 ACrimR 398 and *Norris v Sanderson* [2007] NTSC1

100 (2005) 225 CLR 466

101 See Cullinan J at page 486

102 (1989) 44 ACrimR 301

103 At page 305

104 See also *The Queen v Juli* (1990) 50 ACrimR 31, *Jabaltjari v Hamersley* (1977) 15 ALR 94, *Jabanunga v Williams* (1980) 6 NTR 19, *The Queen v Friday* (1985) 14 ACrimR 471

105 (2005) 225 CLR 466

106 [1976] QdR 21

107 *R v Martin* (1990) 47 ACrimR 168, *Cohen v State of Western Australia (No 2)* [2007] WASCA 279

particular offender[108]. The special impact of incarceration upon an Indigenous person as a result of the offender's social and cultural background is a relevant factor on sentence[109]. Again, it is the impact upon the offender caused by his Aboriginality not the Aboriginality itself which is relevant.

96. There are many other instances where particular factors, arising out of an Indigenous person's circumstances, have been taken into account on sentence and those circumstances are common to a good number of Indigenous persons living in remote communities. The cases were reviewed in some detail in the judgment of Fitzgerald P in *R v Daniel*[110]. His Honour was in dissent but only to the extent that the majority dismissed the appeal (which was primarily against the head sentence) and His Honour would have made a recommendation for parole but otherwise dismissed the appeal.

97. Consequently, on any sentence of an Indigenous person in a remote or disadvantaged community, the appropriate approach is to:

(a) Identify whether the offender is an adult or juvenile so as to identify the appropriate sentencing legislation;

(b) Where the offender is an adult, ascertain whether the case involves either violence or a sexual offence committed against a child under 16 years of age;

(c) If the offender has committed an act of violence then the principles in s.9(2)(a) must be ignored;

(d) If the offence is one of a sexual nature committed against a child under 16 years, then the principles in s.9(2)(a) have to be ignored and the special provisions of s.9(6) applied;

(e) Otherwise have regard to the sentencing principles in s.9 of the *Penalties and Sentences Act* and s.150 of the *Juvenile Justice Act* (depending on whether the offender is an adult or juvenile);

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108 *Houghton v State of Western Australia* [2006] 32 WAR 260, *R v Vachalec* (1981) 1 NSWLR 351 are examples

109 *The Queen v Juli* (1990) 50 ACrimR 31

110 [1998] 1 QdR 499

(f) Identify all mitigating circumstances including those which arise from the position of the offender as a member of a remote Indigenous community;

(g) Have regard to comparative sentences and ensure parity as between the offender and offenders in past cases, and as between the offender and co-offenders[111], although parity is not a factor as between co-offenders who are juveniles and co-offenders who are adults[112].

98. In various of the cases reviewed, there were factors similar to those which have arisen in the decided cases, for example:

(a) Alcohol and substance abuse;

(b) Retribution by complainants' family members;

(c) Offenders being excluded from their communities as a result of the offending;

(d) Offenders being disadvantaged by incapacities. In a couple of cases intellectual deficiencies were mentioned;

(e) General social problems such as evidenced by sexually active children.

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111 *Lowe v The Queen* (1984) 54 ALR 193

112 *R v Johnson; Ex parte A-G* [2007] QCA 76 and *R v Watts* [2007] QCA

THE CONTROVERSIAL AURUKUN CASE

99. By force of the sentencing legislation there will often be factors relevant to the sentencing which pertain to the offender because of the fact that he is living in a remote community and under difficult circumstances. Those factors may well lead, legitimately, to a sentence that might be recognised as lighter than are imposed upon an affluent city dwelling offender who committed a similar offence. That though is just the result of a proper application of sentencing principles, most of which are these days prescribed by statute.

100. As already observed, the Attorney-General has sought extensions of time to appeal the sentences imposed upon the 9 offenders. The *controversial Aurukun case* is within my terms of reference and, given that it is the case which has led to the Review, it would not be appropriate for me to ignore it. However, given the applications before the Court of Appeal, it would be inappropriate for me to express my view as to "whether the sentences appear adequate and within the sentencing range for [sexual offences]"[113]. I consider that the appropriate course is for me to analyse the way in which the sentence submissions were presented to the Court without making any comment on the sentences actually imposed.

101. As already observed, I have adopted the approach of not naming offenders, judges or counsel involved in the cases reviewed. However, the judge and the prosecutor involved in the *controversial Aurukun case* have been identified in the media both inside Australia and internationally so there is little point in not referring to them by name. The nine offenders were represented by Mr Curtin of the Cairns Bar. In my view, there can be no valid criticism of Mr Curtin's performance in representing his clients and it therefore seems to me to be appropriate to name him and make some observations concerning his submissions, which I do later.

102. As already observed, the prosecutor[114], Mr Carter has been the subject of numerous media reports. Some of those have been scathing of him and the attacks upon him, in some respects, have been quite personal. Mr Carter provided a very detailed statement to the DPP in which he explained why he made the submissions to the Court that he did.

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113 My terms of reference paragraph 3

114 In fact he was a legal officer performing the functions of a prosecutor

In the statement he says that he had an enormous workload and he also criticises the way in which circuits are run in Cape York.

103. Mr Carter, like all of us, is an advocate appearing in courts which, by our system, administer justice in public. The reporting of cases by the media is an extremely important aspect of the open and transparent administration of justice. Consequently, Mr Carter, like all of us, is open to public and media scrutiny and comment. As will appear, I am particularly critical of the way in which the sentencing submissions were presented to the Court by Mr Carter. However, it is not my function to investigate and form a view upon Mr Carter's assertions as to his workload and the other conditions under which he was working. My observations should not therefore be regarded as a rejection of Mr Carter's assertions.

104. There were some proceedings involving these 9 offenders before Judge White in Cairns on 20 August 2007. At that hearing there was arraignment of some of the offenders on some charges. I explain these charges later. However, that hearing need not be otherwise examined. The offenders W, K, W2, P, A, Y and K3 were all sentenced on 24 October 2007 in Aurukun by her Honour Judge Bradley. The offenders B & K2 were sentenced by her Honour on 6 November 2007 in Cairns.

105. Given that there have been media reports where part of the transcript of the proceedings of 24 October 2007 have been produced; it is best to set it out fully. The transcript contains typing errors but it appears as I received it.

106. The proceedings of 24 October 2007 relevantly, appear as follows:

> ***"ASSOCIATE: [P], you are charged that on an unknown date between the 31st day of December 2004 and the 1st day of March 2005 at Aurukun in the State of Queensland you had unlawful carnal knowledge of [T], a child under the age of 16 years. How do you plead, [P], guilty or not guilty to that charge?***
>
> *[Note: This count relates to a second complainant]*
>
> ***[P] CHILD: Guilty.***
>
> ***ASSOCIATE: Guilty. [A], you are charged that on or about the 30th day of May 2006 at Aurukun in the State of Queensland you raped [LK]. How do you plead, [A], guilty or not guilty to that charge?***
>
> ***[A] CHILD: Guilty.***

ASSOCIATE: Guilty. [Y], you are charged that on a date unknown between the 26th day of May 2006 and the 12th day of June 2006 at Aurukun in the State of Queensland you raped [LK]. How do you plead, [Y], guilty or not guilty?

[Y] CHILD: Guilty.

ASSOCIATE: Guilty.

MR CURTIN: If your Honour please, I appear on behalf of the three.

HER HONOUR: Thank you.

ASSOCIATE: [P], you have been convicted on your own plea of guilty to one count of unlawful carnal knowledge of a child under 16 years. Is there anything that you want to say as to why sentence should not be passed on you? Do you want to say anything?

[P] CHILD: No.

HER HONOUR: Just sit down then, thanks.

ASSOCIATE: [A], you have been convicted on your own plea of guilty of one count of rape. Is there anything that you want to say as to why sentence should not be passed on you?

[A] CHILD: No.

ASSOCIATE: No. [Y], you have been convicted on your own plea of guilty to one count of rape. Is there anything that you want to say as to why sentence should not be passed on you?

[Y] CHILD: No.

ASSOCIATE: No.

HER HONOUR: Just sit down. Do we have parents or guardian with any of the juveniles?

MR CURTIN: Yes, your Honour. Do you want me to indicate those now, your Honour?

HER HONOUR: Yes, please.

MR CURTIN: In relation to the defendant [A]-----

HER HONOUR: Yes.

MR CURTIN: His grandmother, ... and his mother ... , are present in Court.

HER HONOUR: Yes.

MR CURTIN: In relation to [Y], his grandmother, ... is present in Court.

HER HONOUR: Yes.
MR CURTIN: In relation to [K3], ... , is present in Court, as is ...

HER HONOUR: And they are?

MR CURTIN: ... [K3's] great grandmother and ... is [K3's] grandmother.

HER HONOUR: Okay.

MR CURTIN: And in relation to [P], there's ... as well, your Honour.

HER HONOUR: Okay. Thank you. All right, well, there's already been a schedule of facts tendered with respect to the multi-count indictment, so did you want to add anything to that, Mr Carter?"

The "multi-count indictment" was presented against six accused (P, B, K2, K, W2 and W) and they were all arraigned before Judge White on 20 August 2007. That charge read:

"... that on a date unknown between the first day of May 2006 and the twelfth day of June 2006 at Aurukun in the State of Queensland [the six] raped [LK]."

Also on that day W2 and K pleaded guilty to an offence:

"... that on a date unknown between the first day of May 2006 and the twelfth day of June 2006 at Aurukun in the State of Queensland [W2 and K] raped LK."

K3 pleaded guilty to two other offences on that day being:

"... that on a date unknown between the twenty-six day of May 2006 and the eighth day of June 2006 at Aurukun in the State of Queensland [K3] raped LK."

And:

"That on or about the tenth of June 2006 at Aurukun in the State of Queensland [K3] raped LK."

On 6 November 2007 B and K3 pleaded guilty to some offences of dishonesty which, for present purposes can be ignored.

The Schedule of Facts referred to in the transcript of the proceedings on 24 October 2007 is:

Complainant: LK DOB 5.8.1995

Count	Date of Offence	Offence	Facts
1	Between 1.5.06 & 12.6.06	Rape	P, B, K2, K, W2, W: These six accused had sex with the complainant at 31 Kor Street, Aurukun. All accused apart from K2 and W made admissions to police. Other accused said they saw K2 and W having sex with the complainant.
2	Between 1.5.06 & 12.6.06	Rape	W2, K: These two accused had sex with the complainant at 127 Wuungkhan Street, Aurukun. Both made admission to the police.
3	On or about 13 May 2006	Rape	A: Admitted to police he had sex with the complainant on the night of [another person's] 21st birthday party at his aunty's house.
4	Between 26.5.06 & 12.6.06	Rape	Y: Admitted to police that he had sex with the complainant in the male toilets behind the church.
5	Between 26.5.06 & 12.6.06	Rape	K3: Admitted to police he had sex with the complainant near the Bendigo Bank building.
6	On or about 10 June 2006	Rape	K3: Admitted to police that he had sex with the complainant after a disco at Aurukun on Saturday 10 June 2006.

Admissions by Accused in record of Interview

Accused	DOB & Age of Accused at time of offending	Summary of Admissions
P (Count 1)	12.10.1991 14 years	Told police he went to a house with [another person] to see the complainant. The complainant asked this accused if she could have sex with him. Initially he said he couldn't because she was just a little kid but she kept asking him so he put a condom on and had sex with her. He told police he didn't want to have sex with the complainant but she kept asking. When he had sex with her K2 was next to him. Told police he only had sex with her once. Said he didn't ejaculate. He then saw K2 have sex with the complainant. Said [another person] told him that he also had sex with the complainant. Said K3 was telling the complainant to have sex.
B (Count 1)	12.6.1992 14 years	Told police he had sex with the complainant at [another person's house]. He put on a condom that [another person] gave him and says the complainant didn't want to have sex but [another person] was forcing him. He had sex with the complainant and said he ejaculated. The complainant was telling him to stop. He said also

		at the house that night was K2, K and P.
K3 (Count 5 & 6)	14.7.1991 14 years	He told police he had sex with the complainant twice. The first time was at [another person's] house the night of the disco. He and the complainant went back to the house. No one else was at home. He put on a condom and had sex with the complainant. He says she wanted to have sex. The second time was at the back of the Bendigo Bank building a few days later. He says she wanted to have sex again on this occasion.
K2 (Count 1)	29.3.1991 15 years	Told police W2 had sex with the complainant at Walpo's house. He was standing outside with K and W. W2 told him he had sex with the complainant. He said W2 tried to force him to have sex with the complainant but he said no and went home. He said he was only aware of W2 having sex with the complainant. Police told him other people had told them he had sex with the complainant. He said he never touched her. He was interviewed in the presence of his grandmother.
Y (Count 4)	29.3.1991 15 years	Told police he had sex with the complainant in the male toilets behind the church. Said he saw the complainant and she asked him to go with her to the toilet to have sex. They went into the male toilet and she took off her clothes and she took off his pants. She lay on the ground and he was on top of her. He did not wear a condom.
K (Count 1 and 2)	2.10.1987 18 years	He told police he thought she was 11 years of age. He is her cousin. Said he had sex with the complainant twice. Once in a green house near the council chambers and another time in a yellow house behind the shop. Green house – Said his brother W2 came to him and forced him to go see the complainant. Said he and his brother W and K2 went to the house. He said the four of them had sex with the complainant. W2 went first, then K2, then W then he had sex with her. Said he was wearing a condom and he ejaculated. He was laying down and the complainant was on top of him doing all the moving. Yellow house – police told him other persons told them he had sex with the complainant in this house. Denied having sex with her in this house, he said it was P. B and W2 were also there. Then P went into the room with the complainant. When he was finished W2 went in the room. Admitted he went in after W2 and had sex with her in the yellow house. Again he wore a condom
W2 (Count 1 and 2)	1.12.1988 17 years	He initially denied having sex with the complainant. Then agrees he had sex with the complainant in the spare house when he was there with K, K2 and W. He said K2 took the complainant to this house and they all had sex with her. Another time he was at the

		yellow house with K and he again had sex with the complainant.
A (Count 3)	29.7.1992 13 years	Told police he had sex with the complainant the night of [another person's] 21st birthday party. They went to her aunty's house on their bikes and had sex there. He did not wear a condom and did not ejaculate. He said he did not have a knife at all when he was with the complainant.
W (Count 1)	1.5.1981 25 years	Declined to be interviewed.

Returning then to the transcript:

"MR CARTER: No, thank you, your Honour.

HER HONOUR: And perhaps the facts then in relation to [P].

MR CARTER: Yes, they are brief. When [P] was 13, he and a group of others took part in consensual sex - well, it was - it was not forced sex, upon the complainant child aged between 11 and 12 during the time period stated in the indictment. She attended the Aurukun Health Clinic with her mother complaining of a suspected boil on her bottom and an examination was noted and lesions were found around her private parts.

As a result of that, further inquires were made. It was - she also had a sexually transmitted infection, in common with test results which were later obtained from - in relation to [P]. He admitted quite readily what had happened and stated that he and other children had engaged in this consensual sex and he was charged.

HER HONOUR: Were any of the others charged?

MR CURTIN: I'm not sure.

MR CARTER: No, I'm not either. It was something that - I'll find out for your Honour. No, they weren't. There were some cautions issued but that's all, your Honour. They were all young children.

HER HONOUR: Okay.

MR CARTER: And he was at the stage, only 13 as well. The reason a caution wasn't issued for [P] is obviously because he's been - had contact with the Justice system prior to this-----

HER HONOUR: Yes.

MR CARTER: -----and it wasn't the appropriate vehicle. As I stated, she - it is possible that she contracted the sexually transmitted disease from this encounter. She had two types of sexually transmitted disease, one of which was from similar - the same as that which was carried by [P] but I wouldn't put too much weight on that, your Honour, in the circumstances, because she wasn't - he wasn't the only one she had sex with that day. It could've come from anyone that day. So, anyway, he admitted to everything that he did and an ex officio request was received in May 2006.

The reason why it wasn't dealt with earlier apart from these proceedings, the other proceedings, was because there was some difficulty - misunderstanding in relation to the certificate of readiness not being filed with the Court, and it's been rather fortuitous, in any event, because it's able to be dealt with now.

My submission in relation to this particular offence is the same that I make in relation to children of that age, of similar or the same age of that age, is to quote - well, they're very naughty for doing what they're doing but it's really - in this case, it was a form of childish experimentation, rather than one child being prevailed upon by another, although - as I said, although she was very young, she knew what was going on and she had agreed to meet the children at this particular place and it was all by arrangement, so - for that purpose.

I'd ask your Honour to take that into account and if this was standing alone, the Crown would not be asking anymore than for some form of supervisory order, form of probation, or some order of that - similar order to that, your Honour.

HER HONOUR: Yes.

MR CARTER: Those are my - there's no victim impact material, your Honour. Those are my submissions as to the single count indictment.

HER HONOUR: Thank you. And with respect to the other matters, I haven't been provided with any criminal histories; do you have those?

MR CARTER: I was told that you had been, your Honour. I'm-----

MR CURTIN: For all of them?

HER HONOUR: Yes. I mean, a lot of them are attached to the pre-sentence reports but I just want to make sure that they accord with what you're alleging.

MR CARTER: Perhaps your Honour might be able to give me some time. I'll need to get those criminal histories. I was under the mistaken belief that everything had been tendered at the arraignment of these people.

HER HONOUR: Well, I'll just make sure-----

MR CARTER: I'm not challenging your Honour, I'm simply saying that's why I don't have them.

HER HONOUR: Well - because I wasn't the Judge who took the pleas but I'm just looking at the transcript of what happened before Judge White. It doesn't appear that anything was tendered and in fact, the matter had to be re-mentioned before me so that we could get the schedule of facts so that the pre-sentence reports could be prepared. No, I can't see anything on the transcript. What about any victim impact material?

MR CARTER: No, I have no victim impact material, your Honour. Yes, I assumed in the same vein that you had - your Honour had a criminal history for [P] as well.

HER HONOUR: No, I don't.

MR CARTER: I have one here that I can tender.

HER HONOUR: Yes, thank you.

MR CARTER: Your Honour will note that there are no prior sexual matters in relation to these particular offences before the Court.

HER HONOUR: All right. That's Exhibit 2.

ADMITTED AND MARKED "EXHIBIT 2"

HER HONOUR: Okay. Well-----

MR CARTER: There's no doubt about it, your Honour needs those criminal histories and that's-----

HER HONOUR: Oh, yes. Well, as I say, I've got some idea from the PSRs but I would imagine the prosecution needs to do its own inquiries.

MR CARTER: Yes. My instructing clerk with the kind assistance of the sergeant, will take my file and he will get the criminal histories for your Honour.

HER HONOUR: Okay. Well, I can hear you with respect to penalty.

MR CARTER: I've been given certain instructions as to the penalties for these, your Honour. None of the penalties that I've been instructed to seek have been - involve custodial penalty - immediate custodial penalty, not even for the adults.

HER HONOUR: What about in the light of the PSRs though?

MR CARTER: Even with those, your Honour, yes. I know that other forms of penalty are difficult but I would submit that if your Honour's seeking to impose any form of custodial penalty on the adults, that they be dealt with by way of a - yes, suspended sentence or a parole-----

HER HONOUR: Immediate parole.

MR CARTER: Yes. But that's the - that's the other course that I've been instructed to take, your Honour. As to the children, I would submit some form of supervised orders for them, something that involves possibly a little bit of education, or counselling in relation to matters such as these. But that's all I'd be seeking, that some form of supervisory order of - in the vicinity of no less than 12 months, if it please your Honour, for each of them, having - taking into account the nature of the offence, their admissions and pleas and also the contents of the histories.

It must be stated, I won't resile from this, that the charges of rape and as I'm instructed, it's - that arises in part, due to the age of the complainant and her ability to actually consent to the acts and I ask your Honour to take that into account too, whereas it is called rape, because of that and because of the absence of a proper consent and while that isn't - doesn't excuse them, it does in some way lessen the fact that there was no actual force in the sense-----

HER HONOUR: But she was only 10 at the time, wasn't she-----

MR CARTER: Yes, that's right, and there's no possible way that she could have consented willing - knowingly, with the full knowledge to these offences, even though - that she'd gone through the motions of having sex with these people and I'd submit that that's something as well. They didn't force themselves on her, threaten her, or in any way engage in any of that sort of behaviour.

So, to the extent I can't say it was consensual in the legal sense but in the other - in the general sense, the non-legal sense, yes, it was. So, I then ask on that basis not to seek any periods of detention, not to seek any periods of custody, immediate custody. Unless there's anything further, your Honour, that's - those are my submissions. I can expect that not all of them will have clean histories.

HER HONOUR: No.

MR CARTER: But I do know for - I have been told that none of them had any prior matters for - any prior sexual matters. It'd be arrogant of me to stand here and start seeking - I don't - children, females, have got to be - deserve the same protection under the law in an Aboriginal or an indigenous community as they do in any other community but sometimes things happen in a small community when children get together and people that are just past their childhood and these sort of things are what we're dealing with today.

HER HONOUR: We've got one 25 year old.

MR CARTER: Yes. Yes. Yes, that's correct. He may be chronologically 25 but I don't - I would not - I'd submit that there wouldn't have been much thought given to the age disparity or the legal niceties of consent or that sort of thing. That's why I'm asking in any event that he be given a - either parole or a sentence that's suspended, operational period for 12 to 18 months. If it please your Honour.

HER HONOUR: Okay. Thank you. I'll just - you've both seen the pre-sentence reports for all of the-----

MR CARTER: Yes. Yes, your Honour.

HER HONOUR: Well, the ones that we've got. I'll make the pre-sentence report for [P], Exhibit 3.

ADMITTED AND MARKED "EXHIBIT 3"

HER HONOUR: The one for [K3], Exhibit 4.

ADMITTED AND MARKED "EXHIBIT 4"

HER HONOUR: The one for [W2], Exhibit 5.

ADMITTED AND MARKED "EXHIBIT 5"

HER HONOUR: And I do have a pre-sentence report for [A] that was prepared on the 20th of March this year for other matters but that's been useful and I'll make that Exhibit 6.

ADMITTED AND MARKED "EXHIBIT 6"

HER HONOUR: The report for [K], Exhibit 7.

ADMITTED AND MARKED "EXHIBIT 7"

HER HONOUR: And the report for [W], Exhibit 8.

ADMITTED AND MARKED "EXHIBIT 8"

HER HONOUR: Now, I should have just asked you this for the record, Mr Curtin, but both the reports for [K] and for [W] do raise concerns about their ability to understand English. Are you satisfied that your clients do not need interpreters?

MR CURTIN: I am, your Honour, particularly in light of the Crown's admissions.

HER HONOUR: Okay. All right, thank you.

MR CARTER: Your Honour, it's been kindly pointed out to me by Ms Dewar that [W] does have a prior - prior convictions in relation to a sexual matter. On 29th of March 2006 he was convicted of a unlawful carnal knowledge of a child under the age of 16. That offence occurred between the 31st of December 2004 and the 18th of March 2005. He received 100 hours community service.

HER HONOUR: Oh, hang on, is that the same [W]?

MR CARTER: ...

HER HONOUR: Wasn't that the [W] we just dealt with before?

MR CURTIN: I thought so, your Honour.

MR CARTER: Hang on, hang on. Hang on.

MR CURTIN: Unless it was both.

HER HONOUR: Sorry?

MR CURTIN: Unless it was both.

HER HONOUR: That was the breach of community service.

MR CURTIN: Yes, ...

MR CARTER: No, that was his brother, your Honour. I'm sorry.

HER HONOUR: ...

MR CARTER: Yes, that's not the same [W], your Honour.

HER HONOUR: No.

MR CARTER: Your Honour, will note the date too. It's not the same conviction.

HER HONOUR: So sorry. Are you saying that-----

MR CURTIN: [W] is listed as on his criminal history as having an offence of carnal knowledge.

HER HONOUR: He does, okay.

MR CURTIN: For which he received 100 hours community service on the 29th of March 2006.

MR CARTER: Last page - doesn't change my submissions, your Honour.

HER HONOUR: Okay.

MR CARTER: Because he has, as I said, rendered himself liable through his age and that - to a position of custodial penalty. If it please your Honour.

HER HONOUR: Okay. Now I don't have any pre-sentence report for [Y]. We were going to see if - did you take that up with Ms Hall?

MR CURTIN: Yes I did. And there's apparently a report that's dated '06.

HER HONOUR: Okay.

MR CURTIN: That - that contains a lot of personal and family information.

HER HONOUR: Okay. I haven't-----

MR CURTIN: Which may be useful and may be able to be updated orally anyway.

HER HONOUR: Yes.

MS HALL: Your Honour, I have two things. I also have a - it's interview notes that were made by our officer at the time, ... , who was asked to conduct a pre-sentence report in relation to these property offences. But inadvertently asked him about this offence which-----

HER HONOUR: I see.

MS HALL: -----it was all happening around the same time. So there's actually this report which was what he faxed down to me, which does give a lot of detail of what was discussed with [Y] about this offence.

HER HONOUR: Okay.

MS HALL: If your Honour would like that.

HER HONOUR: Well have you seen all of this?

MR CURTIN: No I haven't.

HER HONOUR: Oh, okay.

MR CURTIN: If I could just have a brief look at it, your Honour?

HER HONOUR: Yes. Thanks ... Thank you.

MR CURTIN: Thank you, your Honour.

HER HONOUR: Did - have you got copies for the Prosecutor?

MS HALL: I have copies do you want to - shall I-----

MR CURTIN: Yes, you can give it - I'm right I've read it.

MR CARTER: Thank you, your Honour.

MR CURTIN: Thanks ... .

HER HONOUR: Okay. Well I'll make these documents Exhibits 9 and 10.

ADMITTED AND MARKED "EXHIBIT 9"

ADMITTED AND MARKED "EXHIBIT 10"

HER HONOUR: Okay. Well perhaps if I can hear from you, Mr Curtin?

MR CURTIN: Perhaps, your Honour, if I could do some antecedents background on each of the individual-----

HER HONOUR: Yes.

MR CURTIN: -----clients that - is there any order you want me to deal with them, your Honour?

HER HONOUR: Well, in order of the indictment helps, which is [P] first.

MR CURTIN: My client [P] was born on the 12th of October 1991. At the time of the offending behaviour he was aged 14. That's right. He's grown up by his grandmother. He was a premature baby I'm instructed. He's got one brother and cousins as well. He went to year 9 and he now is keen - very keen to get employment and start working. He's on the CDEP waiting list. He's not entitled to any Centrelink benefits and this is you know a community problem that exists currently with regard to that hiatus period between school and being able to obtain work through the CDEP.

He lives with his grandmother. I'm instructed he's keeping out of trouble now. And - and has amended his peer group list somewhat. He's sticking close to his grandmother. He plays rugby league. He goes out fishing with relatives on the weekend. He also goes out night hunting, he's learning how to make spears and he's learning more about his culture.

I don't intend to take matters much further with regard to the schedule of facts that have been provided, your Honour. It really comes down to the fact that my client is a young juvenile offender who has committed these offences and admitted to these - this offending behaviour. I concur with the submissions by my learned friend in relation to the appropriateness of a community based order, which would allow for continuing supervision of my client.

HER HONOUR: Yes. I'll just turn up the pre-sentence report. So he's not - the pre-sentence report says he's currently enrolled in year 10. But he's not attending school then?

MR CURTIN: No, your Honour. But again I don't know how we can address that from a community perspective, that there's clearly a number of young juveniles - young men in some respects, aged between 15 and 19 that aren't able to immediately access employment upon their - their concluding their schooling.

HER HONOUR: Well he's told Ms ... he was going to go back to school and get some more qualifications. But that's not the case?

MR CURTIN: Well, it's not happening at the moment, your Honour. He wants to start work on instructions. So whether that means that there's a opportunity for him to do some ITECH program or something like that with a certificate, you know, the trade - apprenticeship type work.

HER HONOUR: Mmm.

MR CURTIN: It comes to the stage, your Honour, I suppose Ms Hall sees more of this than I do on the continued involvement with juveniles in remote Aboriginal communities. They do reach a point at their education where they - they simply become tired of the books and they want to do things of a more practical and physical nature and that includes, mechanical, operating vehicles and carpentry and woodwork and such matters. And it seems that it's something that needs to be looked at with regard to the government providing an extension - an education extension these area to allow for simply what we regard in the old days as a manual arts program. It seems to be just somewhat lacking at the present time.

HER HONOUR: He's currently on a probation order though.

MR CURTIN: Yes, your Honour, and I understand that's progressing reasonably well.

HER HONOUR: All right. Ms Hall-----

MR CURTIN: Well, good.

HER HONOUR: -----you don't - you don't have people based her in Aurukun?

MS HALL: We do, we've had ongoing difficulties. Right now, today, we do, although he's in Cairns at the moment. That's ... . But he does live here for most of each month. He's - one week of each month he spends in Cairns.

HER HONOUR: Okay.

MS HALL: It does - your Honour, we've had a lot of difficulties maintaining a - a presence through all the troubles that do happen in this community.

HER HONOUR: Okay. All right. So you'd be seeking probation then?

MR CURTIN: Yes, your Honour. Again, it comes down to that argument, your Honour. I suppose I can make this argument know in relation to all of the juveniles. There's an element which says that this might be a situation where a conditional release order might be appropriate. But again you've got a very small time frame, so you've got to get it right - get it right in 12 weeks or it's all over.

At least with a probation order you can extend the operation of the order and there'll be continuing contact after that 12 week period. Again, it would be - and I say this with all respect to Ms Hall. It would be nice if it there was a probation order that you could order, your Honour, that would allow for a CRO with that order to continue after the intense period. To at least have some ongoing monitoring supervision of the children. But at this stage of the game that doesn't exist.

HER HONOUR: I'll just ask Ms Hall, none of the pre-sentence reports refer to the Griffith Youth Forensic Service. Is that something that - that would be engaged with if they were on probation?

MS HALL: If your Honour were to order that, as the normal course, no, it wouldn't happen. We are running now with - with Mr Sam Savage and also Graham Ross who is program development officer, we have started to run our sexual health and life skills programs in Aurukun, which look at all of those issues appropriately with indigenous males - young males.

HER HONOUR: What - well what's your view about the appropriateness of Griffith doing an assessment?

MS HALL: With respect, your Honour, it might be overkill with this particular set of facts.

HER HONOUR: It's just that [P's] here on two charges.

MS HALL: Yes.

HER HONOUR: Two different girls.

MS HALL: Yes. [P] certainly needs a lot of education, but then he's - there are a lot of children in this community who think the same way about sexual matters as [P] does.

HER HONOUR: Mmm.

MS HALL: So, you know, there but for the grace of God goes most of the children in this community. So general sexual health programs and amongst that the appropriateness of who your sexual partner will be. Those programs I think would be more effective for these boys. And it's only very recently that we've done that. We've had about a years gap where we've had not a lot of continuity. Back to about October of last year when the first riots happened. So we lost our worker then, but we have know been stable for a few months with Mr Savage, and there are other officers who also travel in. But those programs are running although it's new, but we've got good programs up.

HER HONOUR: Okay. All right, thank you for that. Well perhaps as we go through them I'll just ask the guardians if they want to say anything. So-----

MR CURTIN: Yes, your Honour.

HER HONOUR: -----Mrs [P] is the person who's here with [P]?

MR CURTIN: Yes, your Honour.

HER HONOUR: Yes.

MR CURTIN: Yes, your Honour.

HER HONOUR: And which is Mrs [P]?

MR CURTIN: There, your Honour.

HER HONOUR: Mrs [P], is there anything you wanted to say about [P]?

MRS [P]: Yes, thanks. He is preparing to on CDEP with Sugarbabes program, going out bush and collecting samples. And he's willing to do that. [Indistinct] go fishing with my brothers [indistinct]. He's always there and he's [indistinct].

HER HONOUR: Okay. Thank you for that. Okay. Do you have those criminal histories now, Mr Carter?

MR CARTER: Yes, thank you, your Honour. I'm fortunate to be assisted to. As stated before, [W] is the only one with a prior history or one offence. The others have - all have histories, but generally involving property offences, your Honour. Some assault occasioning bodily harm. But generally speaking they're property offences.

HER HONOUR: All right. Well thank you. I don't need [B], we don't have him here. I'll return that to you, or [K], I don't believe he's here. But the criminal history of [K3] is Exhibit 11.

ADMITTED AND MARKED "EXHIBIT 11"

HER HONOUR: Of [Y] is Exhibit 12.

ADMITTED AND MARKED "EXHIBIT 12"

HER HONOUR: Of [K] is Exhibit 13.

ADMITTED AND MARKED "EXHIBIT 13"

HER HONOUR: Of [W2], Exhibit 14.

ADMITTED AND MARKED "EXHIBIT 14"

HER HONOUR: [A], Exhibit 15.

ADMITTED AND MARKED "EXHIBIT 15"

HER HONOUR: And [W], Exhibit 16.

ADMITTED AND MARKED "EXHIBIT 16"

HER HONOUR: Yes, thank you, Mr Curtin.

MR CURTIN: I'll proceed with the matter of [A], your Honour.

HER HONOUR: Oh, I'd rather we went through it the same way-----

MR CURTIN: I'm sorry-----

HER HONOUR: -----as on the indictment.

MR CURTIN: -----I thought that that was working off the – [K3] then, your Honour.

HER HONOUR: Yes.

MR CURTIN: [K3] was born on the 14th of July 1991 in Cairns, he grew up in Aurukun. He has four brothers, he is the eldest son. He completed year 11 and is now waiting to start under the CDEP scheme, your Honour.
He wants to support his great grandmother and he has the support of the great grandmother, ... J[K3]. And he's - he's on nil income at the moment, your Honour, and that's where the family help him. He's living with his great grandmother.

He wants to start working. He understands that great-grandmother's getting old, and he wants to take up the responsibility of being there for her, because she grew him up. He plays rugby league. He's slowed since the trouble. He's taken a new direction, and he seems to be staying home more and doing the right thing. I understand that his family will concur with that observation.

He is prepared to undertake a community-based order, such as probation. He's very keen, as I say, to get work, your Honour, and he wants to learn more about his culture, and to undertake traditional pastimes such as fishing and hunting.

HER HONOUR: Okay. Well, he's on probation at the moment.

MR CURTIN: I understand he too, is progressing reasonably well.

MS HALL: Yes. He's got a hundred hours community service. I'm not sure, your Honour. I think the pre-sentence report history that's attached is a little bit inconsistent with what's come to light from me this morning.

HER HONOUR: All right. Hang on.

MS HALL: There's an order that hasn't been recorded. So our - we now know that he has 100 hours of community service from three different orders.

HER HONOUR: Oh, so he's not on probation at the moment?

MS HALL: It's community service. No, probation's finished, I think.

HER HONOUR: Yes. Looks like it. Okay. Yes, the-----

MS HALL: But he's doing well on community service. He's working quite well through this - through those hours.

HER HONOUR: Okay. All right. Anything else you wanted to say about [K3]?

MR CURTIN: No, your Honour. Simply that he - I think he's - I think Ms Hall said that he's - it's not only I'm saying he's doing better; he is doing better, your Honour. He is complying with the orders, and he's trying to make an effort to turn his life around.

HER HONOUR: Okay. Well, I'll just see if [K3's family members] - did you want to say anything about [K3]?

UNIDENTIFIED FEMALE SPEAKER: Yes, your Worship. My grandson [K3] is doing well. He's always home helping his great-grandmother.

HER HONOUR: Thank you. Okay. [Y]?

MR CURTIN: Thank you. Your Honour. My client [Y] was born on the 29th of March 1991 at Cairns. He was 15 at the time. He's now 16. He's grown up in Aurukun. He's been grown up by his grandmother, ... He has two brothers and three sisters. He is one of the older brothers in his family. He finished school at Year 10. He is now working, your Honour, under the CDEP at the library, two days per week. He's earning an income of $160 per week. He wants to keep doing that role, and just get some experience before making his mind up about what career he wants to pursue.

He wishes to continue living with his grandmother, ... He undertakes rugby league and enjoys it very much. He also likes going hunting and fishing. He's now working. He's got something positive in his life for the first time. He's got some direction, your Honour, and he's hoping to continue with that working life and perhaps do something more positive with it.

Again, I'd submit, your Honour, in relation to this client that the appropriate order would be a community-based order in relation to this offending behaviour. Does your Honour wish to hear from [Y's family members]?

HER HONOUR: Well, he was placed on probation and community service only last month. How's that progressing?

MS HALL: Yes. He's reporting, so - he hasn't had much of a chance to do much, but he is reporting and he is engaging with Mr Savage.

HER HONOUR: Okay. All right. Does [the family member] want to say anything about [Y]? If you could just come forward so we can record what you say on the microphone there. Thank you.

MRS [Y3]: I like to say something - words about my grandson. He always be home minding his grandfather, 'cause while he's on dialysis. Him and [W2] cousin brother look after him while I'm working at the guesthouse. That's all I can say.

HER HONOUR: Thank you. Okay. [K]?

MR CURTIN: Thank you, your Honour. My client was born on the 2nd of October 1987 at Cairns. He's now 20 years of age. He's just turned 20 years of age. He was 19 years of age at the time. I mean 18 years of age at the time, your Honour.

HER HONOUR: Yes.

MR CURTIN: He was raised in Aurukun. He has two brothers and two sisters. He's the third-youngest in the family. Completed Year 8 education in Aurukun. He's currently working under the CDEP program doing town cleaning. He's working two days per week and he's earning $190. He's also just started work as a driver at the Justice Centre. He's a single man. He has no dependents. As I indicated, he's in employment. He plays rugby league at Aurukun and enjoys this. His grandmother, ... is present in Court to support him, your Honour, and has continued to support him throughout this particular problem within his life.

He's similarly trying to start a new life. He wants to get sorted out so he can get his life back on track, your Honour. He's certainly remorseful for what happened. He feels ashamed of his actions, and he feels very much ashamed for what he did in the eyes of his family. He knows that it's something he shouldn't have done, no matter what the circumstances were, that he, as a person of 18 years of age, should not have been involved in that sort of behaviour.

Again, your Honour, it's a situation where, though they'd been said, my client is still, or was at the time, a young man, and certainly was unable to exercise the true judgment and control that he should've exercised at that time. There is certainly a disparity between the ages greater than that which the juvenile offenders had, your Honour, but it's not a significant difference in [K's] case, and clearly [K], as your Honour would've appreciated, seeing [K] appear in Court before you isn't what one might call a robust individual, or a mature individual for his years as well, and I think that can be taken into account also.

In relation to the submission, I concur with the submission regarding penalty made by the Crown in relation to [K]. Certainly, your Honour, there is an opportunity whereby under an immediate release order - by - by parole order - I'll rephrase that, your Honour. Under a term of imprisonment if you were so minded to impose, given the serious nature of the offending behaviour, that your Honour would be faced with a recommendation only in relation to that because of the fact that it's a sexual offence.

HER HONOUR: Yes.

MR CURTIN: That makes it somewhat problematic in relation to the adult offenders. What you are able to do, your Honour, though with the adult offenders is to impose a wholly suspended prison term. That is something that won't attract any

complications under the terms of the legislation, but it will act, as certainly a barrier to any further offending because of the fact that given the nature of the offending behaviour and your Honour's order, that's likely to be activated unless special circumstances were to exist.

HER HONOUR: Well, he's not been complying with community service and probation. Is he going to comply with a suspended term of imprisonment?

MR CURTIN: Well, again, your Honour, I see that as a difficulty with [K] regarding his ability to turn up. Not his ability not necessary to re-offend. I'll hear from Ms Dewar in relation to the problems that she considers are the effective problems regarding his compliance with the community-based order. I wasn't under the complete understanding that it was not going disastrously, your Honour. I thought that he had made some effort to comply with the orders. I'll stand corrected, your Honour.

HER HONOUR: I'm just going on the report. Yes. Okay. Did you want to add anything, Ms Dewar?

MS DEWAR: I've nothing really further to add to the report that's - page 3.

HER HONOUR: All right. Are your instructions that - or can you say whether he is - he has stayed out of trouble this year, because on his history he doesn't have any convictions for offences this year.

MR CURTIN: Well, that's my understanding, your Honour. In fact my understanding was that the offences for which he was dealt with this year-----

HER HONOUR: Were a year old.

MR CURTIN: -----were a year old when they were dealt with.

HER HONOUR: Yes. That's what I'm - that's what I'm asking you. There's nothing else-----

MR CURTIN: So, it's not only this year - as I understand it, there's nothing this year and there was nothing last year after those offence dates.

HER HONOUR: Yes. Okay.

MR CURTIN: So, we've got almost a period of two years. In March next year, it'll be two years.

HER HONOUR: All right.

MR CURTIN: So, in my respectful submission, that's a significant period of time. Some of the incidents with compliance I'm sure relates to his inability to read and write, and his difficulties with language. It's one thing to say he's going to have language difficulties in a Court structure, he's also going to have them outside of the Court structure, so - and I do understand the Department, as willing as they may be, are very pressed for time, and it's not always easy to take the next step, or to engage one of the locals who are able to assist with regards to somebody who has those difficulties. It's not a clear-cut situation, your Honour. And [K] does possess those difficulties, as your Honour's already indicated.

That's why I say, your Honour, there's more chance of a compliance with a suspended sentence, in that [K] has shown he can not offend for a significant period of time.

HER HONOUR: Yes. Okay.

MR CURTIN: Otherwise I wouldn't make that submission, because I don't want to set someone like [K] up to fail.

HER HONOUR: Okay. All right. I'll just see if [K's family members] - did you want to say anything about [K]?

MRS [K]: Your Honour, I know that my grandson always be home because he don't walk around at night because I always growl him, so he never give me a cheek and just lived home and stay with his father, that's Mr [K] at Aurukun. He always behaving himself. That's all, your Honour.

HER HONOUR: Thank you. Okay. [W2]?

MR CURTIN: Thank you, your Honour. [W2] was born on the 1st of December 1988 in Cairns, your Honour. Seventeen years of age at the time, and now 18 years, going on to be 19 years in December of this year.

He was raised with his family in Aurukun. He's living with his grandfather and also his aunty, ... His grandfather's on dialysis and I understand my client looks after his grandfather, and also assists him and takes care of him when his Aunty ... is at work.

Completed Year 10 of his education. He's not at school presently. He's working under the CDEP, your Honour, doing the town cleaning program. He's doing two days per week and earns approximately $150. He will keep on the CDEP and try and increase his hours and increase his access to other work within the system.

He has one sister, ... As I say, he is looking after his grandfather along with ... , and he works. He's obviously found that this is a situation like the others have found - and I hope I've said it in relation to all of them. There's a great sense of shame, and that appears in some of the reports, clearly that there's a great sense of shame as to how they behaved, and the shame they've brought to their families in relation to that. [W2] 's no exception.

HER HONOUR: Not all of them say that. [K], unfortunately, didn't feel sorry for the defendant - the complainant.

MR CURTIN: Yes, your Honour. I keep coming back to [K] on the basis of what I regard as his insularity or withdrawn nature. He's not a mature person in relation to his behavioural personality, and he's very reluctant, and that comes with respect, a lot to do with not understanding what's done and said, because he cannot read and he cannot write, and his ability to understand situations, particularly ones where he's already embarrassed by them, is not high, and a great deal of time has to be taken with [K] to assess what he's truly feeling.

HER HONOUR: Well, [W2]'s the same then. I'll just quote from Ms Dewar's report. "[W2] did not appear to show remorse in relation to the offending. He stated that having sex with a girl that's only 10 years is normal."

MR CURTIN: Well, perhaps that reinforces Ms Hall's point about the level of understanding that the young men in this community have in relation to the offending behaviour. Maybe it reinforces the fact that not to say that they don't feel ashamed - I do submit they do feel - but to say their level of understanding as to appropriate sexual conduct isn't good, and maybe it's because their experience in

relation to other people within the community and their sexual conduct isn't good, and has not been good in the past.

There's a number of them - I mean to say, [W2] near the time was 17. Still of high school age, but is an adult under the terms of the law, when this occurred. And without being flippant about it, your Honour, there'd be a number of sexual relationships that occur at Aurukun between teenagers under the age of 16.

HER HONOUR: We're talking about a 10-year-old, Mr Curtin.

MR CURTIN: Well, including - we've been through this, your Honour, where there's children having babies at 14.

HER HONOUR: Yes. It doesn't make it right, Mr Curtin.

MR CURTIN: I'm not saying it makes it right, but it just reinforces the lack of education and resources that are given to this community to assist with what clearly is a significant problem. We're back to where we started, your Honour. There's A and P's without rehabilitation centres. There's a number of sexual offences occurring without constructive sex offender programs. And not even sex offender programs, but sexual training programs throughout the schools, throughout the community. It's not been addressed in the appropriate manner.

I'm sure that the offenders are charged by the police in the appropriate manner. The offenders are sentenced in the appropriate manner. But the rest of the actions prior to that aren't being dealt with in an appropriate manner. Hopefully the programs of Ms Hall won't stop just with juveniles. They'll extend under Ms Dewar's watch to adults, so that young adults are getting this training as well.

HER HONOUR: Well, unfortunately, Mr Curtin, the Department of Corrective Services has a funding of nil for programs at the moment, so don't expect anything to happen there.

But I just want to clarify something with [W2]. Mr Carter has given me a criminal history, but it seems to be a children's Court criminal history only. Do you have his adult criminal history, because that's referred to in the pre-sentence report and I haven't been given that.

MR CARTER: We'll supply the Court one, thank you, your Honour.

HER HONOUR: Thank you. Anyway, according to the pre-sentence report, he's in breach of a community service order with respect to the adult criminal history.

MR CARTER: We'll get - we'll check it for your Honour, but your Honour will see that it goes to August 2007. It may be that there's an overlap there with later offences, but we'll check that and bring your Honour a copy.

HER HONOUR: Sorry, there's what - are you saying there's convictions in 2007?

MR CARTER: You're talking about-----

MR CURTIN: [W2].

HER HONOUR: [W2].

MR CARTER: I'm sorry. I thought you were talking about [K].

MS DEWAR: I can indicate, your Honour and I'm not sure if it will be on the criminal history, but in regards to [W2], the community service order was revoked on the 17th of October and a 12 month probation order was imposed.

HER HONOUR: Okay.

MR CARTER: Yes, I see what your Honour's - yes. We'll get another copy for you.

HER HONOUR: Okay. Thank you. All right. Well, what's your submission on sentence with respect to [W2], Mr Curtin?

MR CURTIN: Again, your Honour, it would be my submission, generally, in relation to the older offenders, that short period of imprisonment be imposed which was wholly suspended. There is still contact with the Department in relation to probation now-----

HER HONOUR: Yes.

MR CURTIN: -----which is - which is useful.

HER HONOUR: Okay. thank you.

MR CURTIN: [A], your Honour.

HER HONOUR: Yes.

MR CURTIN: My client was born on the 4th of June 1992. He was 14 years at the time of the offending behaviour. Yes, just turned 14, your Honour. No?

HER HONOUR: No, he was only 13, I think.

MR CURTIN: Thirteen, your Honour, yes. I'm just trying to do the math in my head, I'm sorry. It's been a long day. He was 13 years at the time of the offending behaviour, your Honour.

HER HONOUR: Yes.

MR CURTIN: He's, obviously as your Honour's aware, he's been grown up by his grandmother, ... who's here with him and also to some extent, his mother. He has one brother and a sister. [A] is the eldest. He completed grade 9 at the Aurukun High School. He's not employed at the moment, but I'm instructed that he's doing unpaid volunteer work at the Arts Centre. He's helping his big Uncle ... .

He's learning about arts and crafts. He wants to become an artist and do work under his culture. His grandmother's obviously happy with this attitude change in him and it seems to be that the more exposure he has to the Arts Centre and his painting and those relatives of his that are, as your Honour's well aware, quite well known artists. It's been an excellent learning curb and an improvement in [A]'s behaviour. One can only hope it'll be sustained because as your Honour's mentioned earlier in these proceedings, [A] has had certainly a significant amount of contact with the criminal justice system for someone so young.

As I understand it, he's, as I said, with his grandmother and - that he is complying with his community orders under the - well, Ms Hall might be able to assist me with that, but there may be some issues with regards to the community service hours that he's required to do. Again, it may be something that he needs to address regarding the formality of what he's doing in relation to it. It may be what he's doing would qualify him, but he hasn't gone through the right channels to make it, but you can hear from Ms Hall about that matter, your Honour.

I take it your Honour's considered the report that's been handed up to your Honour for assistance.

HER HONOUR: Well, I have, but of course, that doesn't bring me up to date and I don't think - just trying to determine whether I've got an up to date history for him. Here we go. Oh, no, that's-----

MR CARTER: I have one from the 24th of October, your Honour.

HER HONOUR: And what's the last entry on that?

MR CARTER: 17th of December 2006.

HER HONOUR: Right. No - yes, I haven't got that one then. If you could hand that up.

MR CARTER: I still think that - yes.

MR CURTIN: I might just have a quick look at that document, yes.

MR CARTER: There was a copy handed up as part of a bundle I-----

HER HONOUR: Well-----

MR CARTER: Is that the-----

HER HONOUR: -----did you say the-----

MR CURTIN: 17th of the 10th '06 is the last entry.

HER HONOUR: Yes, well, I've got that. But I think there's been subsequent entries, haven't there?

MR CARTER: Yes, I think there have.

MR CURTIN: This came off the police - did that take off the police computer-----

MR CARTER: Yes, 24th of October.

MR CURTIN: All right. Well, I might be appropriate for Ms Hall, to perhaps give the Court some indication of the progress [A]'s making in relation to the order. My submission still would-----

HER HONOUR: I don't know what the order is. I do not - have not been informed what order he's on.

MR CARTER: Your Honour will recall that the Crown - we dealt with [A] a couple of weeks ago in Cairns for offences.

HER HONOUR: Did we? No, I dealt with a bail application.

MR CARTER: That might be it.

HER HONOUR: Yes. But I haven't dealt with any - with [A] recently.

MR CARTER: Yes. That's correct, your Honour.

HER HONOUR: Yes.

MR CARTER: That's correct. Quite so.

HER HONOUR: Anyway, Ms Hall, what's he on at the moment?

MS HALL: He has 100 hours of community service at the moment and I have to tell the Court that he's only done eight of those hours because he is not engaging and actively runs away when our officer goes to collect him for community service. He was warned this morning that he'll be brought back to Court and breached if he doesn't start engaging and doing those hours, because he's only got until March of next year to complete them - 92 hours.

HER HONOUR: And what - when was that imposed?

MS HALL: So, there are - there's several. 21st of March-----

MR CURTIN: This year.

MS HALL: -----there were 40 hours.

HER HONOUR: Okay.

MS HALL: And these are all for property offences.

HER HONOUR: Okay.

MS HALL: And there were another 60 hours and there was a detention order in March as well.

HER HONOUR: And he served actual time with that, did he?

MS HALL: Yes. He served 70 per cent of that.

HER HONOUR: Sorry, how long?

MS HALL: Seventy per cent.

HER HONOUR: And how long was the detention order?

MS HALL: Six months.

HER HONOUR: So, he's not on probation at the moment?

MS HALL: No.

MR CURTIN: So, the bail application was made in relation to this - for his release from detention?

HER HONOUR: No, it was because he'd - he was found running amuck in Cairns in parks down there when his bail had a condition that he stays here in Aurukun.

MS HALL: Yes, but it - well, it was not his fault that-----

HER HONOUR: No, no. And I dismiss-----

MR CURTIN: He was released into Cairns.

HER HONOUR: No.

MS HALL: No, taken by Child Safety.

HER HONOUR: His grandma took him to Cairns-----

MR CURTIN: Sorry.

HER HONOUR: -----against the conditions of his bail.

MR CURTIN: Right.

HER HONOUR: And then was not supervising him. But anyway, he's come back to Aurukun now. Well, what's - what are your submissions with respect to penalty for [A], Ms Hall?

MS HALL: Well, your Honour, [A] has a history of doing this. He's very self motivated and when he doesn't want to do something, he simply doesn't and the Department has had trouble all the way through engaging him to get him to actually comply with orders. When he wants to do it, he's great. When he doesn't want to, he just leaves. So, I have no answers for that accept to keep reinforcing to him that he needs to comply with the orders that are made from the Court. So, community service is - he's got 92 hours, your Honour and he's not old enough to have any more than a hundred anyway, so, probation.

HER HONOUR: Have you instructions-----

MR CURTIN: Yes, your Honour.

HER HONOUR: -----that he would comply with probation?

MR CURTIN: I do, your Honour.

HER HONOUR: Okay.

MS HALL: It's not that he's terribly non-compliant. He's just erratic.

HER HONOUR: Yes, okay.

MR CURTIN: I might also undertake to get the Legal Service to make contact with the Department with a view to seeing whether or not the Art Centre can be a project with regard to his community service hours, so that-----

HER HONOUR: Well, that's fine. I mean, I'm not considering community service.

MR CURTIN: Okay.

HER HONOUR: All right. I can only give him eight hours. I think he needs probation. Anyway, [W], the last one.

MR CURTIN: My client was born on the 1st of May 1981 in Cairns. He's lived all of his life in Aurukun. He's been brought up by his mother. Grandmother's present. he went to - sorry, your Honour. I'll start again. He completed grade 8 education at Aurukun. He's had significant health problems as I understand it. He's unemployed at the moment.

HER HONOUR: What are they?

MR CURTIN: Apparently he has an injury or a hole in his ear which becomes infected on a regular basis and it impacts upon his balance and hearing, your Honour. He's not on Centrelink and he's unemployed at the moment. I can't actually understand how that works, your Honour. He resides with his mother, ... He's single. He has no dependants. He's the youngest out of four brothers and two sisters. I'm instructed that after this incident, [W] stayed home a lot more and took more responsibility, taking his nephews and nieces to schools and generally assisting around the house.

I understand the Justice group is significantly supportive of [W] and the efforts he's made recently to change his life. It is accepted, obviously, your Honour, he has a previous charge of unlawful carnal knowledge. Instructed [W] is very sorry for the shame he's caused his mother and his family. He wants to be sentenced so he can start a new life and get on within the community.

In my experience, dealing with [W] on a number of occasions before the Court, your Honour, it's fair to say that [W] can be described as probably slow from an intellectual standpoint. He's not someone who has a high intellect or a robust intellect or personality. He's very withdrawn and he's certainly what may be regarded as someone who is a follower rather than a leader.

I say that significantly because I don't want it to be interpreted because the oldest of the pack is the leader of the pack and that shouldn't be interpreted in any way, shape or form, your Honour, because that's not [W]'s personality in relation to this or any other matter within the community. He's not someone who takes a lead. He's certainly someone who follows more than - more than not, be that with younger children or older children and that's going through his past history of more than 10 years that I've known him, since 1996, I believe, or '94 - '96.

Your Honour, again, I submit that given the serious nature of the fact and the disparity between my client's age and the age of the victim, that your Honour would be minded to impose a custodial term in relation to my client, but I'd be submitting, in the light of parity, that your Honour, too, would suspend that term of imprisonment so my client could remain in the community and assisting his family, particularly his mother. Unless there's anything further, your Honour.

HER HONOUR: Well, just some concern about his pre-sentence report, the outstanding matter of the warrant. Is that still outstanding? Has that not been brought in?

MR CURTIN: Well, I'd be surprised if it would be still outstanding given there was Court last week, your Honour. I thought there was a-----

HER HONOUR: Yes. Well, that's what I'm wondering, if there - I need an update.

MR CURTIN: I'll just try and check, get some instructions. I'm instructed a warrant was executed. He was - received a fine and the warrant was discharged. That's on the 17th, was it, last week.

HER HONOUR: Well, that was for the breach of probation. Was he - he wasn't re-sentenced?

MR CURTIN: Well-----

HER HONOUR: Or maybe he was re-sentenced to a fine, but-----

MR CURTIN: That's [W's family supporter's] best recollection. She was in Court with him.

HER HONOUR: Okay. Do you know, Ms Hall, what - sorry, Ms Dewar.

MS DEWAR: I'm not sure, but I can make inquiries quickly if you like.

HER HONOUR: Well, I guess he's here. Okay. It's okay. All right. I didn't ask [A]'s guardians s if they wanted to say anything. Did [A's family] want to say anything about [A]?

MR CURTIN: Ms [A], want to say something?

MS [A]: Yeah.

MR CURTIN: Just come forward a bit, Ms [A]. Right. There you go.

MS [A]: Your Honour, I know my little grandson. He's always at home watching telly and during the day, my big son, ... they take him to the Arts Centre. He does the paintings and he helps my brother with the carving and when he comes back home, he always at home watching telly, 'cause I'm always at home, your Honour. I does the washing and the mopping but he does his own bedroom. He makes his own bed. He does the [indistinct] but - so I'm very proud of my little grandson for what he's doing to himself.

HER HONOUR: Good.

MS [A]: That's all, your Honour, I can say.

HER HONOUR: Thank you.

MR CURTIN: I should have made the point too, your Honour, in relation to [W] that there was some pre-sentence custody as I understand it, served between the 7th of August and the 22nd of August. That's on page 3 of his pre-sentence report. Is that in relation to this offence or from-----

HER HONOUR: It seems to be, yes.

MR CURTIN: If that also could be taken into account?

HER HONOUR: Okay.

MR CARTER: Your Honour, regarding [W2].

HER HONOUR: Yes.

MR CARTER: Before I make any statements in relation to the record of interview, I just want to confirm his date of birth. My document has got two.

HER HONOUR: Oh, I see.

MR CARTER: One being the 14th of July 1991 and the other being the 1st of December 1988.

HER HONOUR: Okay.

MR CARTER: Which would have made him 17 at the time of this-----

HER HONOUR: Yes. That seems to be the community corrections-----

MR CURTIN: What's your date of birth, the 1st of December 1988?

ACCUSED [W2]: Yep.

MR CARTER: Well his criminal history that your Honour has, the juvenile list it shows his date of birth as the 14th of July 1991, does he agree with that I would - I'd like to - your Honour to enquire whether that's - that's still him - that's his conviction?

HER HONOUR: Well I was really going to ignore that because-----

MR CARTER: Okay.

HER HONOUR: -----there was no conviction recorded on that.

MR CARTER: Yes, fine. All right. As for - both dates have been checked for add on history and nothing has come up on the - nothing as been recorded.

HER HONOUR: Well how come Ms Dewar's got one?

MR CARTER: Well, obviously their - their recording system's far in advance of the police.

HER HONOUR: Well it's a police - police record that criminal history.

MR CARTER: Is it, that's interesting.

MR CURTIN: Different computer-----

MR CARTER: Yes, both were checked, your Honour, and nothing came up. So - we've had this problem before you understand, your Honour. At one stage there they were using three different systems. And I thought that had been repaired.

Unless your Honour wishes, I'd like to go and ask them - double check again.

HER HONOUR: Look, I'll just rely on what Ms Dewar's got in the report then, if you're happy with that?

MR CARTER: Yes, thank you, your Honour.

HER HONOUR: So, Mr Curtin, [W] was the only adult with pre-sentence custody; is that right?

MR CURTIN: I believe so, your Honour. Could I have one moment please?

HER HONOUR: Yes.

MR CURTIN: Yes, your Honour. The only person - other person I wasn't sure about was [W2], and he does not have any pre-sentence custody.

HER HONOUR: And so that's 14 days.

MR CURTIN: Fourteen or 15, your Honour, there are two ways there to count. From the 7th to the 22nd."

107. The sentencing remarks are as follows:

"HER HONOUR: Well I just want to say something to all of you and then I will deal with you each individually. All of you have pleaded guilty to-----

MR CURTIN: Would you like my clients to stand up?

HER HONOUR: Well I was going to deal with them separately.

MR CURTIN: All right.

HER HONOUR: All of you have pleaded guilty to having sex with a 10 year old girl and [P] has pleaded guilty to having sex with another young girl as well.

All of you have to understand that you cannot have sex with a girl under 16. If you do, you are breaking the law, and if you are found out, then you will be brought to Court and you could end up in gaol.

I accept that the girl involved, with respect to all of these matters, was not forced and that she probably agreed to have sex with all of you, but you were taking advantage of a 10 year old girl and she needs to be protected, and young girls generally in this community need to be protected.

This is a very serious matter. It is a very shameful matter and I hope that all of you realise that you must not have sex with young girls. Anyone under 16 is too young.

Some of you are still children yourselves. Others of you are adults, but I am treating you all equally in terms of the behaviour. I am not treating any of you as the ringleader or anything like that.

So I will deal with [P] first, if you could stand up. Now [P], you have pleaded guilty to having sex with two young girls. I hope you do realise that that is wrong now. Taking into account your pleas of guilty and the matters that have been raised in the presentence report, I am prepared to offer you probation. I cannot force you to do probation though. You have to agree to be supervised by the Department of Communities whilst they are up here and do any programs or counselling that they tell you to do, and you would be on probation for 12 months. Will you agree to be on probation?

PRISONER CHILD [P]: Yeah.

HER HONOUR: Well with respect to all of the offences then, I will place you on probation for 12 months. I will not record a conviction against you, and you will have to talk to Ms Hall outside of Court before you leave here to make sure you know what you have got to do next. So just sit down.

I will deal next with [K3], if you could just stand up. [K3], again I am prepared to offer you probation. It would be for 12 months.

It means that you will be supervised by the Department of Communities and you will have to do any programs or counselling that they tell you to do. Will you agree to do all that?

PRISONER CHILD [K3]: Yes.

HER HONOUR: And if you break the rules or break the law again, you can be brought back to Court. In your case, I will place you on probation for 12 months. No conviction is recorded, and again, you have got to see Ms Hall before you leave here. Just sit down.

I will deal now with [Y], stand up. [Y], again in your case I am prepared to offer you 12 months' probation. Will you agree to be on probation and be supervised and do any programs or counselling that you are asked to do?

PRISONER CHILD [Y]: Yeah.

HER HONOUR: And stay out of trouble for the next 12 months. I will put you on probation for 12 months and no conviction is recorded. Again, you have got to see Ms Hall before you leave.

I will deal with [K]. Now [K], I am dealing with you as an adult. You were 18 years of age when this happened and you are 20 years of age now.

You have been in trouble in the past and it does seem that you are trying to sort yourself out now and you are doing some good work in the community, but because you are an adult and because - well in the circumstances it is appropriate that I sentence you to imprisonment, but I am prepared to wholly suspend the term of imprisonment which means you do not go to gaol today. But if you get into any more trouble over the next 12 months, then unless there is a good reason why not, you will have to go to gaol.

So in your case, you are convicted and sentenced to six months' imprisonment, wholly suspended for 12 months. So you must stay out of trouble for the next year. Just sit down.

[W2], just stand up. [W2], you were 17 when this happened but I have to sentence you as an adult, so probation is not an option for you. Imprisonment is appropriate, and what I intend to do is sentence you to imprisonment but wholly suspend it which means you do not go to gaol today, but if you get into any further trouble in the next year, then unless there is a good reason why not, you will have to go to gaol.

So in your case, you are convicted and sentenced to six months' imprisonment, wholly suspended for an operational period of 12 months.

So if you stay out of trouble, that is the end of it. Get into more trouble, you could have to go to gaol. Just sit down.

[A], you are still a child. You have pleaded guilty to one offence of rape. You have been in a lot of trouble in the past though and you still have some community service that you have got to do. You have not been doing that well.

I am prepared to offer you probation but you have got to stick with the rules of probation. You have got to go and see the Department people when they are up here and if they tell you to do any counselling or programs, you have got to do that. If you get into more trouble whilst you are on probation, you can be brought back to Court. Will you agree to do some probation?

PRISONER CHILD [A]: Yes.

HER HONOUR: Well in your case, I will put you on 12 months' probation and no conviction is recorded. So again, you will have to talk to Ms Hall before you leave, so just take a seat.

[W], you are the oldest of the people involved here and you should have known a lot better. You cannot have sex with anyone under 16, however as I said before, I am not treating anyone any differently in terms of being a ringleader, and in your case, again I will impose a sentence of imprisonment but it will be wholly suspended so you do not go to gaol today. But if you get into more trouble in the next year, you could end up in gaol.

So you are convicted and sentenced to six months' imprisonment, wholly suspended for an operational period of 12 months. You have been in presentence custody on this

matter between the 7th and 22nd of August 2006 - 14 days - and I declare that to be imprisonment already served. So you have already done 14 days anyway. So just take a seat.

That is all the matters."

108. The ages of the offenders at the time of the offences were as follows:

(a) P: 14 years of age

(b) K: 18 years of age

(c) K2: 14 years of age

(d) Y: 15 years of age

(e) W: 25 years of age

(f) A: 13 years of age

(g) W2 17 years of age

(h) B: 13-14 years of age

(i) K3: 14 years of age

109. The sentences were (for the rape offences):

(a) The juvenile offenders: P, K2, Y, A, B and K3; 12 months probation: no conviction recorded.

(b) The adult offenders: K, W and W2; 6 months imprisonment wholly suspended for an operational period of 12 months

110. The following observations ought to be made about the proceedings:

The Crown seemed generally disorganised

111. These sentences were never going to be easy for a court to determine. It was, after all, a proceeding involving nine offenders aged between 13 and 25, all of whom raped a 10 year old girl in a remote Aboriginal community. Surely, by any standards, the offences were serious ones which required very careful consideration by a court.

112. However, the sentencing submissions by the prosecutor occupied a total of less than 4 pages of the Court's transcript. The submission amounted to no more, with respect, than an assertion that the sexual activity was, in reality, consensual, and that sentences involving actual custody ought not be imposed. I deal with the matters that ought to have been raised by the prosecutor in some detail and deal with the issue of the complainant "consenting" under the subheading "Consent?". However, the submissions, in my experience, just look like those of a prosecutor who hasn't either had, or taken, the opportunity to properly think through the submissions.

113. The level of unpreparedness can, I think, fairly been seen in the exchanges which occurred concerning the offenders' criminal histories. Her Honour told the prosecutor that the criminal histories were not before her. The prosecutor then told the Court that he had been told that the Court had the criminal histories. This seemed to come as some surprise to Mr Curtin. Her Honour then observed that criminal histories had been attached to the pre-sentence reports but, perhaps unsurprisingly, Her Honour was concerned to ensure that they were accurate. The prosecutor then apparently located a criminal history of P in his brief so he tendered that[115]. The prosecutor's instructing clerk was then sent off to locate the other criminal histories. Then, the prosecutor sought to finalise his submissions, notwithstanding his statement *"I can expect that not all of them [the offenders] will have clean histories"*. In other words, his submissions on sentence in relation to each offender were not going to be different no matter what the criminal histories might contain.

114. The confusion deepens when it appears that the offender W was convicted on 29 March 2006 of unlawful carnal knowledge of a child under the age of 16. There is then an exchange between the prosecutor and the judge where the prosecutor urges the judge to conclude that the conviction does not relate to W. Ultimately, defence counsel, Mr

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115 That became Exhibit 2

Curtin makes the observation that the conviction appears on W's criminal history so it does, in fact, relate to him.

115. The prosecutor then says:

> *"[that] doesn't change my submissions, Your Honour.*
>
> *Your Honour: Okay.*
>
> *Mr Carter: Because he has, as I have said, rendered himself liable through his age and that – to a position of custodial penalty. If it pleases Your Honour."*

116. The reference to "a custodial penalty" seems to be a reference to the earlier submission:

> *"But I would submit that if Your Honour is seeking to impose any form of custodial penalty on the adults, that they be dealt with by way of a – yes suspended sentence or a parole ...*
>
> *Her Honour: Immediate parole.*
>
> *Mr Carter: Yes ..."*

117. Although W may have some intellectual disability, it seems extraordinary that a positive Crown submission of no actual custody would be maintained against a 25 year old who had raped a 10 year old girl and who had a previous conviction for a sexual offence. The prior conviction of W is, in fact, Case No 5W in the Review. Case No 5W, like the *controversial Aurukun case* involves W and a group of other men having sexual intercourse with an under aged girl. The relevance of the prior conviction seems, with respect, fairly obvious.

118. Another indication that the prosecutor was not prepared and was disorganised is the fact that his primary submission involves an error of law. The primary submission was that there ought to be a custodial sentence but that ought to be either wholly suspended or the subject of an immediate parole release date. There is no difficulty in suspending a sentence of imprisonment provided the sentence is less than 5 years[116]. However, the power of a judge to make an immediate parole release date is vested in the Court by

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[116] Section 144 *Penalties and Sentences Act*

s.160B *Penalties and Sentences Act* 1992[117]. Prior to 28 August 2006 a judge had no power to set a parole date. A judge could only make recommendations for parole.

119. However, a judge cannot set a parole release date where the offence, the subject of the sentence, is a sexual offence[118]. These offenders were all charged with rape and, perhaps unsurprisingly, rape is a sexual offence for the purposes of the *Penalties and Sentences Act*, Division 3[119].

No victim impact statement

120. No statement of the victim was provided to the Court. Section 150(1)(h) of the *Juvenile Justice Act* obliges a court, when sentencing a child to have regard to "any impact of the offence on a victim". As already observed, s.9(6) of the *Penalties and Sentences Act* makes special provision for sentencing adults upon conviction for sexual offences committed in relation to a child under 16 years. The subsection directs a court that it must have regard "primarily" to a number of matters, the first of which is "the effect of the offence on the child"[120]. The submissions made by the prosecutor as to the impact on the child were effectively that she is (and was) sexually active and had "consented", although the submission on this aspect appeared confused as is later observed.

121. In the prosecutor's written statement given to the DPP, he stated that he had made attempts to obtain a victim impact statement and those attempts were unsuccessful. The prosecutor ought not be blamed for the fact that there was no victim impact statement obtained. Obtaining a victim impact statement was the task of those instructing the prosecutor. However, one can easily conclude that the failure to obtain a victim impact statement was due either to a lack of effort or lack of resources. The Courier Mail on 14 December 2007 and 12 January 2008 printed detailed articles explaining the impact upon the child of the offences and the subsequent proceedings. The article quite clearly explains "the effect of the offence on the child"[121]. The Courier Mail has pretty clearly achieved that which was apparently beyond the prosecution.

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117 Section 160B *Penalties and Sentences Act* (Part 9, Division 3 was inserted by Act 29 of 2006, s.497, on 28 August 2006)

118 Section 160D *Penalties and Sentences Act*

119 Section 160 *Penalties and Sentences* and Schedules 1 and 4 *Corrective Services Act 2006*

120 Section 9(6)(a) of the *Penalties and Sentences Act*

121 Section 9(6)(a) of the *Penalties and Sentences Act*

Community Justice Group involvement

122. As already observed, Parliament has legislated, directing a court on the sentencing of Indigenous persons to have regard to submissions made by community justice groups[122]. There is a Community Justice Group in Aurukun. No submissions were made by the group.

123. Involvement of the community justice group is obviously an important aspect of sentencing Indigenous persons in remote areas. Submissions from the community justice group to the court have the potential to give the court a real insight into the community, the offenders, their relationship with the community and the impact of the offences.

No attempt to refer to the legislation

124. Parliament has legislated so as to create sentencing regimes for both adult and juvenile offenders. The legislation must be the starting point for any submissions on sentence. Obviously, judges and legal practitioners become familiar with sentencing statutes and it is not necessary to slavishly refer to every relevant section on every sentence. However, in a case like this, there are specific provisions which dictate a court's approach. It seems to me extraordinary that the Crown case would be presented to the Court without reference to s.9(6) of the *Penalties and Sentences Act* which prescribes the primary considerations for a court which is sentencing an offender for a sexual offence committed against a child.

125. Of course, reference to the relevant legislation will also avoid errors such as we have seen in the prosecutor's primary submission that an immediate parole release date could be set.

No Comparative Sentences

126. As already observed, this was a difficult sentence. If a submission was to be made by the Crown that in a case involving the multiple rape of a 10 year old girl there should be no sentences of actual custody then one would have thought that such submission would be made only after careful consideration. That surely would involve consideration of

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122 Section 9(2)( ) of the *Penalties and Sentences Act*

comparative sentences. It is not to the point to say that there is no case like the present. The Court of Appeal has considered many cases involving rape[123] and has made numerous statements concerning the approach to sentencing offenders who have committed sexual offences against children[124]. The major mitigating circumstance here related to the intellect of W and those circumstances which arise from the fact that the offenders were all Indigenous people living in a remote community. There are judicial statements which give guidance to judges in those circumstances[125].

127. Not one decision of any court was cited by the prosecutor in support of his submissions.

No cases stating general principles as to the sentencing of juvenile offenders for serious offences

128. The prosecutor described the juvenile offenders' conduct as:

> *"Well, they are very naughty for doing what they're doing but its really – in this case it was a form of childish experimentation ..."*[126]

129. In fact, and in law, the conduct constituted rape which is an offence which carries life imprisonment, the maximum sentence that any court in the State can impose, although, under the *Juvenile Justice Act* the maximum is effectively limited to 10 years detention[127]. There are a number of statements of principle by the Court of Appeal to which Her Honour could and should have been referred. For example, in *R v E; Ex parte Attorney-General*[128] Williams JA with whom Helman J agreed said:

> *"There are a number of cases where juveniles have received sentences in the range three to five years detention for a single episode of rape without any gratuitous violence being involved. It is sufficient to refer to the recent case of R v A; ex parte A-G (Qld) [2001] QCA 542. There a sixteen year old was initially sentenced for the offence of raping his grandmother to twelve months' detention with an immediate release order requiring participation in a rehabilitative program. No conviction was recorded. This court on appeal*

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123 See for example, *R v JAJ* [2003] QCA 554, *R v P2; Ex parte A-G (Qld)* [2005] QCA 459, *R v S* [2003] QCA 107, *R v E; Ex parte A-G (Qld)* [2002] QCA 417, *R v A; Ex parte A-G (Qld)* [2001] QCA 542, *R v MAC* [2004] QCA 317

124 See for example, *R v Pham* [1996] QCA 3, *R v Quick; Ex parte A-G (Qld)* [2006] QCA 477

125 See discussion under the heading "Sentencing Indigenous Offenders" in this Report

126 Transcript T6:15

127 Section 176

128 [2002] QCA 417

recorded a conviction and ordered the offender to serve four years detention to be released after serving 50% of that term." [129]

130. In *R v PZ; Ex parte Attorney-General (Qld)*[130] Keane JA observed[131]:

> *"...that a range of three to five years detention is appropriate in the case of juvenile offenders who commit rape and plead guilty to the offence."*

131. Other cases dealing with the applicable principles when sentencing juvenile offenders in relation to serious sex offences include *R v JAJ*[132]; *R v C*[133]; *R v MAC*[134] *and R v S*[135].

Failure to properly distinguish between the child offenders as juvenile offenders and the adult offenders

132. A distinction was drawn by the prosecutor between the adult and juvenile offenders and that was said to justify wholly suspended[136] custodial sentences for the adult offenders and community based orders for the child offenders. However, the distinction between adult and juvenile co-offenders is clearly much more fundamental to the sentencing process. In *R v Maygar; Ex parte Attorney-General (Qld); R v WT; Ex parte A-G (Qld)*[137] three offenders committed horrendous offences including murder. One of the offenders, WT, committed one murder but the other offenders, *Maygar* and *W*[138] committed a number of killings in what can only be described as a "spree". *W* was a juvenile at the time of the commission of the offences and was sentenced to life imprisonment. *Maygar* was an adult and the question arose as to whether a non-parole order beyond 20 years ought to be made against him pursuant to s.305(2) of the *Code*.

133. The Court concluded that *Maygar* should be the subject of a 30 year non-parole order on his life sentence. *W*, on the other hand, who was sentenced as a juvenile, could not be the subject of such an order. Keane JA said, in respect of this disparity:

> *"There could be no justifiable sense of grievance on Maygar's part if he were obliged to serve a longer period in custody than [W]. That he must serve a*

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129 At para [19]
130 [2005] QCA 459
131 At para [29]
132 [2003] QCA 554
133 [1996] QCA 014
134 [2004] QCA 317
135 [2003] QCA 107
136 Or with an immediate parole release date
137 [2007] QCA 310
138 Who did not appeal his sentence

longer period of imprisonment is simply the consequence of the application of different sentencing regimes to him and to [W]: Maygar falls to be sentenced under the law relating to adults and [W] falls to be dealt with under the laws relating to children. In the sentencing of child offenders, the considerations of leniency and child protection which inform the regime established by the Juvenile Justice Act must be observed by a sentencing judge. It may be thought that the drawing of a line in this regard between Maygar and [W] by reason of the small difference in their ages is arbitrary; but a line has to be drawn somewhere for these purposes. More importantly, the drawing of this line is not a matter of judicial discretion: the line has been drawn by the legislature whose function it is to determine when a person should be dealt with as an adult by the criminal justice system. Maygar can have no legitimate grievance about that."[139]

134. In the present case, there should have been detailed submissions presented separately in relation to each of the adults and each of the juveniles. Each set of submissions should have referred to the relevant legislative sentencing considerations and, of course, comparatives.

Failure to otherwise distinguish between offenders

135. Other than submitting that the juvenile offenders should be the subject of community based orders and that the adult offenders ought to receive terms of imprisonment and orders avoiding them actually serving the terms, there was no attempt to distinguish between offenders. Obviously, there were differences between the various offenders which could impact upon their respective criminality. For instance:

(a) Three of the offenders, W2, K and K3 fell to be sentenced each for two counts of rape upon the ten year old complainant. All the other offenders were only guilty of one count although P pleaded guilty also to the rape of another girl;

(b) Each of the offenders had a criminal history but the length and seriousness of those criminal histories differed. Some had appeared in courts after the date of the commission of the present offences;

(c) The ages of the child offenders, as at the date of the offences, spanned from 13 years to almost 16 years representing a respective age difference to the victim of between 3 and 6 years.

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[139] At para [57]

136. Both the *Penalties and Sentences Act* and the *Juvenile Justice Act* requires a court to look at the character and antecedents of each offender and obviously the circumstances of each offender's offence. The prosecutor ought to have presented nine separate cases not two. In *R v Woodley, Bogna, Charles & Ors*[140], the Western Australia Court of Appeal stated:

> *"There will be few in the community who are not aware that there are many underprivileged and deprived Aborigines in various parts of the State. There are many who may sympathise with his Honour's general approach, but his function is to deal with each and every offender who is presented before him individually and on his or her own merits according to law and not, as apparently happened here, as a job lot."*

Consent

137. The offenders pleaded guilty to rape. Rape is defined by s.349 of the *Code* as follows:

> *"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 has carnal knowledge with or of 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."*

138. By s.349(3) a child under the age of 12 is incapable of giving consent. Consequently, by that section, Parliament has decreed that carnal knowledge of a child under the age of 12, or the penetration of the vulva, vagina, anus or mouth constitutes an offence giving rise to criminal liability punishable by life imprisonment.

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[140] (1994) 76 ACrimR 302 at 305

139. The Crown's position on the question of "consent" is confusing. It was initially described as "*consensual sex*"[141]. It was then described as "*childish experimentation rather than one child prevailed upon the other*"[142]. The prosecutor said "*although she was very young she knew what was going on ...*". There was then an observation that she couldn't legally consent but there was actual consent[143]. It was then said that "*there is no possible way that she could have consented willing – knowingly with the full knowledge to these offences, even though – that she had gone through the motions of having sex with these people ...*"[144]. Then later "*so, to the extent I can't say it was consensual in the legal sense but in the other – in the general sense, the non-legal sense, yes, it was*"[145].

140. It is clear that the complainant child couldn't legally consent because Parliament has decreed her incapable of so doing[146], but was it the Crown's case that she had physically consented? On the one hand, it seemed that the Crown's case was that she had actually consented and this is the reference to "consensual sex" and the child knowing "what was going on". On the other hand, it seems to have been submitted that she didn't give consent because she didn't have full knowledge of "these offences" but was just going through the motions of having sex.

141. Of course, given s.349(3) of the *Code*, the discussion about lack of consent is all pretty irrelevant. The only submission that could be made, surely, was that there was no physical coercion. That submission was made[147] but it was made against the backdrop of the other confusing and inconsistent submissions that I have identified.

142. There is, though, another disturbing aspect of the submissions. It was said:

> *"It must be stated, I won't resile from this, that the charges of rape and as I am instructed, its – that arises in part, due to the age of the complainant and her ability to actually consent to the acts. I ask Your Honour to take that into account too, whereas it is called rape, because of that and because of the absence of a proper consent and while that isn't – that doesn't excuse them, it*

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141 T5:21
142 T6:15-20
143 T8:15-20
144 T8:30-35
145 T8:35-40
146 Section 349(3) of the *Code*
147 T8:28

does in some way lessen the fact that there was no actual force in the sense ..."[148]

143. What that tends to suggest is that the prosecutor really equated the offence to one of unlawful carnal knowledge[149] and that there is some technicality which resulted in rape being charged. Of course, in reality, the reason the conduct constituted rape is because Parliament has defined the offence of rape to include any carnal knowledge (consensual or otherwise) of a child under the age of 12. This is not a technicality. It is the law.

144. However, what was also overlooked is that it may not have much mattered whether the charge was laid under s.349 of the *Code*[150] or s.215 of the *Code*[151] because carnal knowledge of a child under 12 year carries life imprisonment, like rape.

145. Parliament has created two offences in the *Code*, both of which are committed by the carnal knowledge of a child under the age of 12. With respect to both offences, consent of the child is irrelevant and the maximum sentence for both offences is life imprisonment.

146. In was in this context that the Crown prosecutor, in submissions which were very short and referred to no comparative cases and no legislative provisions, positively advocated for sentences involving no actual custody.

Queensland Aboriginal and Torres Strait Islander Justice Agreement

147. In Mr Carter's written statement to the DPP he outlined his preparations for the sentencing proceedings, and detailed the reasons why he did not seek sentences involving actual custody. One of those considerations is said to be "the Cape York Agreement of 2000". Mr Carter says in his statement:

> *"The Cape York Agreement of 2000, made as a result of the inquiry into Aboriginal deaths in custody, signed by the Queensland Government in which stated as an aim, to reduce the number of Indigenous persons coming into contact with the criminal justice system, for those who are in contact, to reduce the numbers of Indigenous persons that are incarcerated. I previously formed the view that the Agreement was government policy and that it was a factor to*

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148 T8:20
149 Section 215 of the *Code*
150 Rape
151 Carnal knowledge with or of children under 16

be taken into account by those involved in the process of sentencing Indigenous offenders."

148. There appears not to be such a thing as the "Cape York Agreement of 2000". I believe that Mr Carter was referring to the Queensland Aboriginal and Torres Strait Islanders Justice Agreement ("the Justice Agreement") signed on 19 December 2000 which was made as a result of the Royal Commission of Inquiry into Deaths in Custody and does aim to reduce the representation of Indigenous persons in the criminal justice system and in prisons.

149. The Justice Agreement was made between the Queensland Government on the one hand and the Aboriginal and Torres Strait Islander Advisory Board ("ATSIA Board") on the other. It is clearly an important document and was signed by the then Premier, the Honourable Peter Beattie. However, it is not an Act of Parliament. It is an expression of intention by the government and the ATSIA Board to work together to improve the living conditions of Indigenous persons and to take steps to reduce the number of Indigenous persons coming into contact with the criminal justice system and prisons.

150. In Queensland, both the DPP and the Attorney-General may commence prosecutions[152]. The discretion to prosecute is a broad one and it may be that the DPP and/or the Attorney-General may have regard to the Justice Agreement in determining whether or not to prosecute particular individuals. Surely, however, it is non-contentious that nine persons who raped a 10 year old girl ought, in the interests of justice, to be prosecuted. They were, of course, prosecuted. The Court then was obliged to sentence the offenders in accordance with the dictates of Parliament[153] not in accordance with broad policy statements contained in the Justice Agreement. If the contents of the Justice Agreement was a consideration on sentence then, in the context of this case it would only have a very minor impact.

151. If, in the preparation of the sentence submissions, the legislation has been overlooked and strong statements of the Court of Appeal as to sentencing offenders who commit sexual offences against children were ignored in favour of broad policy statements contained within the Justice Agreement, then that is, in my respectful view, an extremely serious error.

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152 Section 20 of the *Director of Public Prosecutions Act 1984*, ss.8 and 9 of the *Attorney-General Act 1999*

153 In accordance with the *Penalties and Sentences Act* and the *Juvenile Justice Act*

The Judge obtained virtually no assistance

152. The DPP has published guidelines for the conduct of prosecutors who appear on her behalf. Guideline 44 relevantly reads:

> *"44. Sentence*
>
> *It is the duty of the prosecutor to make submissions on sentence to:*
>
> *(a) inform the court of all relevant circumstances of the case;*
>
> *(b) provide an appropriate level of assistance on the sentencing range;*
>
> *(c) identify relevant authorities and legislation; and*
>
> *(d) protect the judge from appellable error."*

153. There are also more specific guidelines which need not be canvassed here. Obviously, it is the judge who has the duty of imposing the appropriate sentence[154]. However, the proper exercise of a sentencing judge's discretion is in many practical respects limited by the material put before the Court and the quality of the submissions made.

154. The actual assistance given to the judge in this case was virtually nil. Her Honour was not referred to any comparative cases, nor to the legislation. There was no victim impact statement, and the submissions that were made (especially, for instance, with respect to "consent") were at best, confused and at worst misleading (although I am sure not intentionally so).

Defence Submissions

155. When Mr Curtin was called on to make submissions on behalf of his clients he was in the position that the prosecutor had already submitted to the Court that none of the nine offenders who had pleaded guilty to raping a 10 year old girl ought to be imprisoned. It was not Mr Curtin's function to supplement the inadequate submissions of the prosecutor. In my view, any competent counsel appearing for the nine offenders in this case, and in the circumstances of the prosecutor having submitted that none ought to be imprisoned, would take the following course:

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154 *GAS v The Queen* (2004) 217 CLR 198 and *R v Black; R v Sutton* [2004] QCA 369 at paragraph [29]

(a) Place any relevant antecedents and other mitigating circumstances before the Court;

(b) Attempt as much as possible to avoid controversy and argument;

(c) Make submissions on sentence as short as possible.

156. This is, in my view, exactly what Mr Curtin did. In my opinion, there can be no valid criticism of him.

The Offenders B & K2

157. The child offenders, B & K2 were sentenced by Judge Bradley on 6 November 2007 in Cairns. The other offenders had already been dealt with by this stage for the rape offences so non-custodial sentences for B & K2 were all but inevitable. I don't consider it necessary to analyse the proceedings which resulted in the sentence of B & K2.

PARTICULAR CASES REQUIRING ANALYSIS

158. Most of the cases reviewed seem obviously to be within an appropriate sentencing range. There are a number that require closer scrutiny.

The Rape Cases

159. Of the cases reviewed, four concerned offenders who received sentences for rape which did not involve them serving actual terms of imprisonment. These four cases are 43K, 44W, 42S and 61W. All four of these offenders were juveniles. They therefore had the benefit of s.208 of the *Juvenile Justice Act* namely that detention can only be imposed if that is the only appropriate sentence. In practice, even when detention is the only appropriate sentence, the sentence is often suspended.

Case 43K

160. 43K had a co-offender, 42S. The circumstances of the offence are set out in **Appendix 2**. 42S & 43K were both convicted of two counts of rape. 42S was sentenced to two and half year's detention to be released after serving 50% of the sentence. 43K was sentenced to four months detention suspended forthwith. 42S's sentence seems to me to be within range[155]. The fact that 43K served no detention raises issues as to the appropriateness of his sentence. Of particular concern are the following facts:

(a) Both offenders had intercourse with an unconscious 16 year old girl. Significant custodial sentences have been imposed for rape offences committed upon sleeping complainants[156];

(b) Both offenders were chased away from the complainant after the first acts of intercourse;

(c) Notwithstanding being actively discouraged and chased away, they returned and each then raped the complainant again;

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155 See *R v JAJ* [2003] QCA 554

156 See, for example, Case 10S in Appendix 2 where an adult man was sentenced to six years imprisonment for the penile rape of a sleeping drunken woman. See also *R v Press* CA 489 of 1996, *R v Raymond* [1994] QCA 441, *R v Breckenridge* CA 427 of 1997, *R v Quigley* [2003] QCA 41 and *R v Gogouk* [2006] QCA 320

(d) They were obviously acting in concert;

(e) The complainant, naturally enough, suffered humiliation and shame in having been sexually penetrated by the two offenders;

(f) Since the offences were committed, 43K had verbally abused the complainant;

(g) 43K was on a good behaviour bond at the time of the commission of the offences; and

(h) The judge observed that 43K had showed little or no real remorse.

161. It seems to me that there is some difficulty in justifying a sentence involving no actual detention for 43K given the statements of principle made by the Court of Appeal in cases concerning the sentencing of juvenile offenders for rape[157]. However, the judge was heavily influenced by:

(a) 43K's very young age at the time of the commission of the offence. He was only 13;

(b) Virtually no criminal history and certainly nothing relevant;

(c) The judge's conclusion that 43K acted under the influence of others, especially S;

(d) His plea of guilty; and

(e) 43K's low intellect.

162. In this sentence, the judge was given good assistance by the prosecutor. The judge was referred to relevant comparatives and full and thoughtful submissions were made. The judge's sentencing remarks demonstrated that the judge was properly appraised of all of the issues and, it is respectfully observed, thoughtfully and carefully distinguished the comparable cases which had resulted in actual detention. The case of 43K's co-offender was, in the judge's view, different as 42S was older and had a very bad criminal history. Although the Crown prosecutor submitted that 43K should receive a sentence of

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157 As discussed earlier in this Report

detention of two and half years, no recommendation was made to the Attorney-General to appeal the sentence.

163. In my view, an Attorney-General's appeal against 43K's sentence would have been arguable. However, given 43K's age, his plea of guilty, his low intellect and the judge's finding that he acted under the influence of others, I couldn't confidently say that the sentence was outside the proper sentencing range. It is a very marginal case

Case 44W

164. The circumstances of the offence are set out in **Appendix 2**. 44W was convicted of one count of rape and one count of indecent dealing. On the count of indecent dealing, the offender was placed on three years probation and on the offence of rape, he was sentenced to six months detention, suspended conditional upon undertaking a three month conditional release program.

165. In the course of the sentence proceedings, the judge was referred to *R v JAJ*[158]. The facts of that case are set out under the heading "Comparatives – Rape". There are some factual similarities between 44W and *R v JAJ*. However, there are clearly distinguishing features between 44W and *R v JAJ*. These are:

(a) The offender in *JAJ* was 16 years of age whereas 44W was only 13 (almost 14) (the age of the complainant was about the same, 3 ½ years of age in the case of *JAJ* and 3 in the case of 44W);

(b) *JAJ* involved penile penetration of the complainant's anus whereas 44W placed his penis in the complainant's mouth and made some digital penetration of her vagina with his finger.

166. The Crown prosecutor pressed for a custodial sentence. However, the judge was obviously impressed by various mitigating circumstances. These included;

(a) The offender's very young age (only 13);

(b) The fact that he had no criminal history;

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158 [2003] QCA 554

(c) He cooperated fully with the authorities and made admissions;

(d) He demonstrated insight and remorse;

(e) A psychologist gave a report indicating that he was a low risk of re-offending;

(f) There is a high expectation of rehabilitation;

(g) There was only minor penetration of the vagina;

(h) The complainant was not injured;

(i) There was no violence or threats; and

(j) The offender will undertake an adolescent sex offender program.

167. The judge was referred to the relevant comparatives. The judge considered these and obviously thought that the case was an exceptional one. The judge balanced the interests of the community with the interests of the child[159] and suspended the detention order.

168. No recommendation was made to the Attorney-General to appeal the sentence.

169. Any case where the rape of a 3 year old child does not result in the incarceration of the offender is one which justifiably raises concern. Again, an Attorney-General's appeal against the sentence of 44W would have been arguable. This is, like 43K, a very marginal case but I couldn't confidently say that the sentence is outside the proper range.

Case 22S

170. The circumstances of the offence are set out in **Appendix 2**. The offender was convicted of two counts of rape and one count of attempted rape. He was sentenced to nine months detention but released on a conditional release order. He was 13 years and 6 months old when he committed the offences. The offender did not plead guilty to the offences and there was a trial. I have not seen the transcripts of the trial. However, from documents that I have seen the facts include:

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[159] Statutorily recognised; sending a child to detention is a last resort, s.208 of the *Juvenile Justice Act*

(a) Some degree of force, but not violence;

(b) Full penile penetration of the complainant's vagina in the first count of rape;

(c) Full penile penetration of the complainant's anus in the second count of rape;

(d) Some threats associated with the count of attempted rape;

(e) A quite significant degree of persistence.

171. In addition:

(a) The offender did not have the benefit of a plea of guilty but proceeded to trial;

(b) At the time of sentencing, he still denied the offences;

(c) He demonstrated no remorse;

(d) The judge could not identify any suggestion of insight by the offender into the offending;

(e) The judge was unable to form a view as to the likelihood of further offending.

172. The only mitigating circumstances seem to be:

(a) The offender's age;

(b) The offender had no prior criminal history.

173. Notwithstanding the sentence that was imposed, no recommendation was made to the Attorney-General to appeal the sentence.

174. In the judge's sentencing remarks it was observed that the comparative cases suggest that offenders who commit this sort of offence and are aged 15 or 16 will be the subject of a significant period of actual detention. The judge seems to have placed great weight on the offender's age. There is no doubt that the offender's young age was a significant factor.

175. It was unfortunate, I think, that the judge was not referred to *R v MAC*[160]. That case[161] was one where a 14 year old offender was sentenced to four years detention for offences of raping a 10 year old boy, attempting to rape a 3 year old girl and a count of attempting to rape a 6 year old boy. The offender in *MAC* was only slightly older than 22S.

176. The case of 22S can be distinguished from 43K and 44W on a number of bases. Importantly, both 43K and 44W pleaded guilty, and they both, to differing degrees, showed remorse and insight (although 43K showed limited remorse) into their offending. They were, therefore, given their youth, candidates for rehabilitative motivated orders. 22S is not in that category. He committed serious offences involving both persistence and force and showed no insight whatsoever into his offending behaviour. It was, in my respectful view, a mistake for the judge to consider that the principles enunciated by the Court of Appeal in cases such as *R v PZ; Ex parte Attorney General*[162] and *R v A; Ex parte Attorney-General*[163] could not apply to 13 year old offenders.

177. In my opinion, the Attorney-General ought to have been advised to appeal this sentence. In my view, had an appeal against sentence been instituted it is likely that the appeal would have been successful.

Case 61W

178. The circumstances of the offences are set out in **Appendix 2**. Although the offender was charged with one count of rape, he had in fact digitally penetrated the complainant's vagina twice. She was 4 years of age. However, although there were two instances of penetration, it was the one episode which occurred after a family party. The complainant child started crying and the offender desisted. The offender was 16 years of age at the time of the offence.

179. Unfortunately, the sentencing judge received very little assistance in this case from the prosecutor. The prosecutor did refer the judge to *The Queen v PZ; Ex parte Attorney*

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160 [2004] QCA 317
161 Which is considered earlier in the report under the heading "Comparative – Rape"
162 [2005] QCA 459
163 [2001] QCA 542

General (Qld)[164] and pointed out that in *PZ* the Court of Appeal stated that the range for rape committed by a juvenile is between 3 – 5 years detention. The submission then was that 61W should be detained for a term within that range. The judge though understood and appreciated that *PZ* involved violence and particularly degrading conduct that was certainly not present in 61W's case. The judge (obviously when reading *PZ*) referred the Crown prosecutor to what appears in the transcript of the 61W case as "QVGAJ" which is clearly a reference to *The Queen v JAJ*[165] and invited submissions. No meaningful submissions on that case were forthcoming. The judge pointed out to the prosecutor that this was a case of digital rape and was not an anal rape as occurred in *R v JAJ*. The prosecutor, again, made no meaningful submissions. Then this exchange occurred:

> *"The Judge: So you're saying it – it – it should be a detention period of 3 years?*
>
> *Prosecutor: Yes, Your Honour.*
>
> *The Judge: And what about a conditional release order?*
>
> *Prosecutor: That's certainly open to Your Honour, and has also been recognised, or – or submitted as appropriate according to the pre-sentence report.*
>
> *The Judge: Mmm – hmm*
>
> *Prosecutor: However, the Crown submits that a period of detention is warranted.*
>
> *The Judge: Of actual detention?*
>
> *Prosecutor: Yes, Your Honour.*
>
> *The Judge: So you're arguing against a conditional release order?*

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164 [2005] QCA 459
165 [2003] QCA 554

Prosecutor: *Well, Your Honour, the Crown recognises that it's certainly open to Your Honour. However, given the seriousness of – of the offence itself ..."*

180. As can be seen, the Crown's position was quite confused.

181. The Court was also not referred to *R v SAH*[166]. That case involved a 19 year old offender with a very unenviable criminal history which included offences of violence and was on probation when the offence was committed. He was charged with rape with a circumstance of aggravation that the three year old male complainant was in his care when he inserted his finger into the child's anus on a "couple" of occasions. The child experienced pain but no injury. Notwithstanding that he was an adult with a significant criminal history the Court of Appeal reduced a sentence of five years with a recommendation for release after eighteen months to one of three years with a recommendation for release after twelve months.

182. The sentencing remarks in case 61W were quite brief. However, there were a number of matters that the judge took into account:

(a) There was no victim impact material but it appeared that the offending did not have an "overly devasting effect" on the complainant;

(b) The offender admitted his guilt and cooperated with police and pleaded guilty;

(c) The offender had been undergoing counselling and a report indicated that he understood his offending and was dealing with the issues;

(d) The offender was under the influence of alcohol at the time; and

(e) The offender held an apprenticeship as a mechanic and the judge was impressed with his prospects for the future.

183. The judge then made reference to the appropriate principles and said:

"So in all of those circumstances, whilst I do acknowledge the principle that being a juvenile does not mean that detention should not be ordered if

166 [2004] QCA 329

convicted of rape, but particularly bearing in mind that the offending in this case is at the lower end of the scale, in my view, there are truly exceptional circumstances of this case which support a penalty that allows you to remain in the community."

184. The offender was then offered probation.

185. This was, in my respectful view, like 43K and 44W, a very marginal case. Notwithstanding the mitigating circumstances, the offender could clearly not have complained had he received a sentence requiring him to serve detention. However, he was in a better position than *SAH*, if for no other reason than he was being sentenced as a juvenile. He was in a much better position than case 22S (despite the fact that he was older) because he had pleaded guilty, shown remorse and demonstrated that he had prospects of rehabilitation. His offence involved "only" digital rape. Notwithstanding the Crown submissions on sentence, no recommendation was made to the Attorney-General to appeal the sentence. In all the circumstances, it cannot be said with any confidence that the sentence was manifestly inadequate.

Case 46G

186. In addition to the four juveniles that were not detained for offences of rape, there were fifteen offenders who were given custodial sentences for rape[167]. No adult offenders (except those in the *controversial Aurukun case*) were given non-custodial sentences for rape in any of the sentences reviewed. The only custodial sentence for rape which initially appeared of some concern was 46G. The circumstances of this offence appear in **Appendix 2**. Essentially, the 34 year old offender entered a dwelling house and digitally penetrated the vagina of a sleeping woman. The head sentence of 20 months imprisonment appears to be quite low. However, the offender had in fact been in custody for 507 days (ie, 17 months) prior to sentence. The prosecutor submitted that the appropriate sentence was between 2 ½ and 3 years imprisonment as a head sentence. The sentence actually imposed is illusory because with a head sentence of 20 months an offender would normally only serve 10 months before being eligible for release on parole[168]. The sentence of 20 months imprisonment of which the offender had already served about 17 months, equates to a head sentence of about 3 years imprisonment. Further, there is a rule of thumb that a plea of guilty and demonstration of genuine

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167 10S, 13M, 21H, 23N, 29S, 32M, 33A, 39M, 42S, 45W, 46G, 53P, 54B, 58W and 63M

168 Section 184 of the *Corrective Services Act 2006*

remorse is usually reflected in a recommendation for release at one third of the sentence. Here, that would mean that the sentence was, in practical terms, closer to 4 years. When the sentence is properly understood, there can be no real complaint about it[169].

Unlawful Carnal Knowledge

187. Some of the sentences for unlawful carnal knowledge require close examination.

Case 5W

188. The facts of this case are set out in **Appendix 2**. This offender is one of the offenders in the *controversial Aurukun case*. As the *controversial Aurukun case* is presently before the Court of Appeal, I think it is inappropriate for me to make comment on this particular sentence.

Case 6S

189. The facts of this case are set out in **Appendix 2**. These three brothers aged between 17 and 21 at the time of the commission of the offence had consensual intercourse with a 13 year old girl. The intercourse occurred on separate occasions and the only persons present when each act of intercourse occurred were the two participants. It appears to have been accepted that the complainant had pursued the brothers for sexual intercourse and that there was no coercion by the offenders. They all cooperated with police and pleaded guilty. The Crown submitted:

> *"I would submit that a period of imprisonment, from three to six months would be at the range with this offence, with a perhaps wholly suspended for a lengthy period."*

190. That submission was made in relation to all three offenders. The judge ordered probation for two of the brothers and an intensive correction order for the third[170]. (The third offender had committed a series of other offences.)

191. The imposition of non-custodial sentences for unlawful carnal knowledge offences even where there is some significant age disparity is consistent with the judgment of the Court

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169 See comparatives *R v Keivers; R v Filewood;* [2004] QCA 207

170 Part 6 of the *Penalties and Sentences Act*

of Appeal in *R v Clifford; Ex parte Attorney-General (Qld)*[171] in a case such as this where the complainant was a willing participant in the intercourse, indeed, the instigator of it.

Case 8F

192. The facts of this case are set out in **Appendix 2**. As to the unlawful carnal knowledge charges, they appear unremarkable. The offender committed these whilst a 16 year old upon a 12 year old girl who was very much a willing participant. The non-custodial sentence is within range[172]. Of more concern is the indecent dealing charge. When the offender was 15 years old, he attempted to place his penis into the anus of a 5 year old. He was charged with indecent dealing with a child under 16 with a circumstance of aggravation that the child was under 12. Various mitigating circumstances existed in his favour and in particular, his youth, lack of criminal history, good pre-sentence report and good prospects for the future. The sentence was within range.

Cases 59M and 17W

193. Two other cases reviewed involved charges of unlawful carnal knowledge but these had similar features to that of 6S where the children had been willing participants.

194. Case 59M involved a 16 year old offender and a 13 year old complainant. The facts appear as detailed in **Appendix 2**. The complainant learnt that the offender wished to have sex with her so she went to his house and consented to intercourse. During intercourse she told him to stop and he did. There were good mitigating circumstances and an order placing the offender on 9 months probation was not inadequate.

195. In Case 17W the offender was 31 years of age and the complainant was 13. The facts of the matter appear in **Appendix 2**. This was another case where the child complainant was very much a willing participant in the sexual intercourse. She had sex with some other males and then the complainant offender asked whether she wished to have sex with him. She said that she did and he took her into a room and took off her pants. Here, the problem for the offender was the age disparity although this is not a prohibition to a

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171 [2006] QCA 492

172 *R v Clifford; Ex parte Attorney-General (Qld)* [2006] QCA 492

sentence not involving actual custody[173]. What is perhaps odd is that probation with community service was ordered without a conviction being recorded. While in my view the offender need not necessarily have received a sentence involving actual custody, consistently with the principles of deterrence he ought to have received a term of imprisonment which was suspended.

Case 38G

196. The facts of the matter appear in **Appendix 2**. This is yet another case involving a 13 year old girl who was very sexually active. She had sexual intercourse with two boys before the offender asked if she wanted to have sex with him. She agreed but he could not maintain an erection because of his state of intoxication. He was 23 years old at the time of the commission of the offence. Again, like case 59M, probation was ordered whereas, because of the age disparity, a wholly suspended sentence would have been more appropriate. In the end though, it was within sentencing range to impose a sentence involving no actual custody.

Case 3P

197. The facts of the matter appear in **Appendix 2**. Case 3P involves unlawful carnal knowledge where the offender is female. She was 21 years of age and a blood relative to the complainant who was 15 and indeed is one of the offenders in the *controversial Aurukun case*. I have not been able to obtain the sentencing submissions. There are no sentencing remarks as such, just simply an order discharging her under s.19(1) of the *Penalties and Sentences Act*. It is difficult to comment on this case because there just seems to be a lack of material available. The complainant child clearly participated willingly in intercourse. It is a case where a sentence involving no actual custody was appropriate. However, the offender has a long criminal history and there seems no justification for discharging her absolutely. Quite to the contrary, unlawful carnal knowledge of a child should be seen by the community to be a serious offence.

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173 *R v Clifford; Ex parte Attorney-General (Qld)* [2006] QCA 492; the but age disparity was not present, for instance, in case 59M

Indecent Assault/Indecent Dealing Cases

198. There are a good number of cases involving charges of indecent dealing/treatment or indecent assault. Some of these cases involve other offences such as unlawful carnal knowledge and rape. Where those cases have justified consideration, I have already done so.

199. Turning to the cases where only indecent dealing/treatment – indecent assault are charged, a good number resulted in custodial sentences. I have reviewed those sentences and they appear to be within range. Some resulted in non-custodial sentences[174]. Of the offences which resulted in no actual custody, there were varying mitigatory circumstances which are referred to both in submissions and sentencing remarks. These include:

(a) The act being relatively minor;

(b) Lack of criminal history;

(c) Remorse;

(d) Cooperation with police and investigators;

(e) Apologies;

(f) Involvement of the community in reconciling families;

(g) The effect of alcohol.

200. Often, these types of considerations lead to sentences in indecent dealing cases not involving actual custody. Most of the non-custodial sentences for indecent dealing in this Review are unremarkable. There are, though, some cases that ought to be mentioned.

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[174] IM, 12R, 16K, 19W, 37M, 51J and 64C

Case 64C

201. The facts of Case 64C are set out fully in **Appendix 2**. This offender was a juvenile being 15 years old at the time of the offences. There were two complainants, one aged 8 years and one aged 10 years. The offences were quite serious involving the offender forcing the 8 year old complainant's mouth onto his penis. The Crown submitted that the misconduct was at the lower end of the scale. I am far from convinced that submission was correct. A probation order was made. However, the offender had spent 260 days in detention prior to being sentenced. Therefore, the effective sentence was 8 ½ months in custody followed by 18 months probation. The sentence is within range.

Case 66A

202. The facts are as set out in **Appendix 2**. This offender was about 26 when the offence occurred. The complainant was between 13 and 14 and was the offender's step-daughter. The offender indecently dealt with her by rubbing her vagina. No complaint was made for several years. A wholly suspended term of imprisonment for 6 months can, I think, be justified by the lack of criminal history both before and after the offence combined with the offender's total cooperation with the police.

Case 70W

203. This is a particularly odd case. The facts appear in **Appendix 2.** 70W and a co-offender were both community policemen. They approached the 16 year old complainant whilst in a community police vehicle and told the complainant that her mother wanted to see her and that they were going to take her to her mother. The complainant got into the vehicle and they took her to a place where 70W then assaulted her by touching her on her breasts. The offence was one that, clearly enough, apart from the circumstance that I am about to mention, called for a custodial sentence given the breach of trust and abuse of 70W's position as a community policeman. However, when the trial of the co-offender (who maintained a plea of not guilty) came to be heard, the complainant effectively refused to give evidence against him so he escaped conviction and punishment. Notwithstanding this, 70W maintained his plea of guilty. He was ordered to perform 120 hours community service. It would have been unfortunate if

70W was imprisoned as that would certainly have not sent a message to the community that it was appropriate to co-operate with police and the authorities.

204. Because of that peculiar feature of case 70W, the sentence was within range.

The Sodomy Cases

Case 15S

205. The facts of this case are set out in **Appendix 2**. The offender pleaded guilty to one count of unlawful sodomy and 8 counts of indecent dealing with a child under the age of 12. The complainant was only 5 years of age. While the activity constituting the indecent dealing was not, in the overall scheme of things, particularly serious, the fact that the complainant was only 5 years of age makes the offence very serious. This is even more so when the offence of sodomy is taken into account. It appears that there was very minor penile penetration of the child's anus. The offender was sentenced to a 12 months Intensive Correction Order[175]. Such an order is, technically, a term of imprisonment but, under the provisions of the legislation, is served in the community. Intensive correction orders allow for intensive supervision, treatment and community service as required by the authorised corrective services officer during the order.

206. The Crown submitted that there should be a period of imprisonment followed by probation. It was the defence that submitted that an Intensive Correction Order should be made.

207. The concerns of any right thinking member of the community would be raised in a case such as this where an offender has escaped a sentence involving time in custody for the offence of sodomy against a 5 year old. It was unfortunate, I think, that the Court was not referred to the various statements of principle by the Court of Appeal concerning the sentencing of juvenile offenders for sexual offences. However, this is a case which, in my view, brings into sharp focus the principles involving the exercise of the sentencing discretion and why a conservative approach is taken to the appellate review of the

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[175] Section 112 *Penalties and Sentences Act*

exercise of that discretion[176]. In 15S the sentencing judge took into account a number of features:

(a) The offender was young (only 17);

(b) He had no prior convictions;

(c) There was a favourable pre-sentence report suggesting good prospects of rehabilitation;

(d) Without the offender's extensive cooperation with police, the charges may not have been able to be brought; and

(e) He had been shamed in the community, especially by the complainant's family.

208. In the sentencing submissions, the defence submitted that the offender was intellectually impaired and had suffered sexual abuse himself and was suffering from Post Traumatic Stress Disorder as a result.

209. Weighing all those things up, the judge did impose a custodial sentence[177] but ordered that it be served by way of an Intensive Correction Order. The sentence is, in my respectful opinion, very marginal. However, I could not with confidence say that it was "manifestly wrong"[178].

Case 20E

210. The facts of this case are set out in **Appendix 2**. Case 20E concerned an 18 year old offender who pleaded guilty to one count of sodomy upon his 15 year old cousin. The complainant cooperated with the offender although it does seem that the complainant was reluctant. There were mitigating circumstances such as an early plea and there was no great age disparity. The sentence though looks very odd in that it is 5 weeks imprisonment followed by 3 years probation. A term of imprisonment of 5 weeks is most unusual for any offence dealt with in the District Court let alone on a charge of sodomy.

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176 *Dinsdale v The Queen* [2003] 200 CLR 231

177 Although the description of an ICO as a term of imprisonment has been described by the Court of Appeal as a "statutory fiction": see *R v Skinner; Ex parte Attorney-General* [2001] 1 QdR 322 at 325

178 *Dinsdale v The Queen* (2003) 200 CLR 231

211. However, the sentencing process was complicated by the fact that the offender was in custody serving a sentence in relation to other offences. The sodomy offence occurred well prior to him entering prison to serve the other sentence. The effect of the sentence on the sodomy charge was that his release date for the offences for which he was serving a sentence would not be affected. In other words, a concurrent sentence for the sodomy was imposed which ran up until the offender's date of release on the other offences, after which he was on probation.

212. Although, in some respects an odd sentence, it cannot be said, in my view, to be manifestly inadequate. In *R v Gilles; Ex parte Attorney-General*[179] the Court of Appeal dismissed an Attorney-General's appeal against a sentence of two years imprisonment suspended after serving 3 months. The charges included 4 charges of sodomising a person under the age of 18 years and 3 of permitting a male under 18 years to sodomise him. Here, of course, there was only a single incident.

Case 36B

213. Case 36B is of some concern. Here the 22 year old offender committed one offence of sodomy and two offences of indecent dealing upon a 13 year old. The facts of this case are set out in **Appendix 2**.

214. Offender 36B was placed on 2 years probation and ordered to perform 120 hours community service. Convictions were not recorded. In this case, I do not have the sentencing remarks.

215. However, there were some quite extraordinary circumstances in the case. Firstly, it was accepted by the Crown that the complainant child had pursued the offender for sexual favours. A defence submission was not challenged to the effect that the complainant had consistently requested the offender for sex. Eventually the offender agreed and the two went to a secluded place where the offences occurred.

216. There was significant delay between the time of the commission of the offence and the offender's sentence. The Crown conceded that over the period of the delay the offender

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[179] [2002] 1 QdR 404

had rehabilitated himself[180]. The Crown submitted for a community based order. The offender was otherwise a valued member of the community.

217. *R v Clifford; Ex parte Attorney-General (Qld)*[181] is a case to which I have already referred. There the offender was charged with unlawful carnal knowledge but the complainant initiated the sexual contact. Keane JA, in the passage I have already quoted in the discussion of the unlawful carnal knowledge comparatives, considered that a sentence involving an actual prison term was usually necessary in cases of unlawful carnal knowledge because of "the exploitative character of the offence and the harm which is caused to the victim". In *Clifford* both those two elements were largely absent and a wholly suspended sentence was not interfered with. I think the same principles can be applied here. I do not think this sentence is manifestly inadequate.

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180 This is consistent with authority see *R v Law* [1996] 2 QdR 63

181 [2006] QCA 492

CONCLUSIONS ON REVIEW/RECOMMENDATIONS

218. In this Review, 71 cases (including the *controversial Aurukun case*) have been considered. I have not commented on the result of the *controversial Aurukun case* but confined my observations to the process which delivered the sentence. Of the other 70 cases:

(a) In one case (22S) a sentence involving no actual custody was imposed when, in my view, a sentence involving actual detention of a juvenile offender on a conviction for rape was the only appropriate sentence;

(b) In two cases (17W and 38G) probation orders were made in cases of unlawful carnal knowledge where there were significant age disparities between the complainants and the offenders. It seems to me that in those circumstances the principles of deterrence mandated a custodial sentence although in the circumstances and, consistently with the comparative cases, those sentences could have been wholly suspended;

(c) In one case (3P) an offender was discharged absolutely on a charge of unlawful carnal knowledge. In my view, the absolute discharge appeared unwarranted although a sentence involving no actual custody was appropriate.

(d) There were a number of cases that were quite marginal.

219. I needn't comment further on cases 17W, 38G and 3P which were the cases where sentences not involving custody were warranted but the particular orders made were not.

220. My view on case 22S was that the detention of the child offender was required in a case of rape where the child was convicted after a trial, showed no remorse or insight and therefore demonstrated no real prospects of rehabilitation. However, minds certainly differ on these things. The sentencing judge (which was not her Honour Bradley) is a very experienced judge. The judge was heavily influenced by the offender's young age (only 13). The question of appeal against sentence was considered by the DPP[182] and no recommendation to appeal was made to the Attorney-General.

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[182] By this I mean considered by prosecutors within the DPP's office rather than the Director herself

221. As I have explained, there a number of cases where sentences involving no actual custody were imposed and, in my view, those results were "marginal"[183]. They were cases where sentences involving actual custody could easily have been imposed and it would have been unlikely that an appeal against sentence by the offender would have been successful. However, I think that, although marginal, those sentences could not confidently be said to be manifestly inadequate.

222. I would be very surprised if, on the review of 70 sentencing decisions of any court over any substantial period there weren't cases fairly described as "marginal". While Parliament can, should and has, enacted legislation which prescribes sentencing guidelines in order to ensure some degree of consistency, sentencing can never be reduced to the application of some formula. In every sentence, there is an element of judgement and assessment. For this reason, there will also be scope for disagreement as to the "correctness" of particular sentences.

223. The purpose of this Review was not to determine whether there were individual sentences that could have been more severe. The purpose of the Review was to ascertain whether the sentencing patterns for sexual offences occurring in the Cape York communities were lower than sentencing patterns for sexual offences occurring elsewhere in the State. In my view, the answer to that question is "no".

224. One matter of concern is that none of the marginal cases were referred to the Attorney-General for consideration of an appeal against sentence. Clearly, in some of the cases, the Attorney-General ought to have had the opportunity to consider an appeal[184]. As already observed, the sentences in the *controversial Aurukun case* came to the Attorney-Generals' attention via the media rather than the DPP. As already observed, sentencing ranges are, in practical terms, determined by the Court of Appeal hearing sentencing appeals. It is, therefore, important that the Attorney-General be alerted to marginal cases so that appeals can be instituted and in that way, the body of comparative sentences is enriched.

225. I have been particularly critical of the way in which the Crown case was presented to the Court in the *controversial Aurukun case*. I have, in the course of my inquiries, heard that there are a number of logistical difficulties encountered on the Cape York circuits.

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183 Cases such as 22S, 43K, 44W and 61W

184 Non-custodial rape cases for instance

Full exploration of those issues is beyond the scope of this Review. However, the Crown presentation of its submissions in the *controversial Aurukun case* is not, in my view, illustrative of the DPP's general approach to such cases, certainly in Brisbane. In my experience, prosecutors appearing in cases in Brisbane involving sexual offences against children, for instance:

(a) Refer the court to the appropriate sentencing principles;

(b) Refer the court to the appropriate legislation;

(c) Refer the court to the relevant comparative sentences;

(d) Invariably seek custodial sentences.

226. In several media reports of the *controversial Aurukun case* there were calls for Judge Bradley's removal from office[185]. I have now read dozens of sentence proceedings conducted before her Honour. Some of these were conducted in Cape York on circuit and some in Cairns. Some of these concerned offences committed in Cape York communities, some did not. The transcripts all show the judge attempting to judge the cases in accordance with the evidence before her and the submissions made to her. I saw no evidence to suggest that her Honour was not, at all times, attempting to discharge her oath of office.

227. My conclusions are as follows:

(a) There is one case where no actual detention was ordered for a juvenile offender where a period of actual detention was, in my view, the only appropriate sentence;

(b) There were three other cases where sentences were imposed which were not justified, but they were cases where no sentence involving actual custody was necessary in any event;

(c) There are some cases that are marginal;

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[185] Toowoomba Chronicle 12.12.07, Cairns Post 12.12.07, Townsville Bulletin 13.12.07, Newsmail 14.12.07

(d) There are some cases that ought to have been referred to the Attorney-General for consideration of an appeal;

(e) There is no general pattern of inadequate sentencing in sexual cases coming from Cape York;

(f) Given that it was suggested in the media that there was cause for Judge Bradley to be removed from office, it should be noted that there is no evidence of any judicial misconduct by Judge Bradley or any of the judges whose sentences were reviewed.

228. The Terms of Reference refer to "recommendations". However, I read that to mean that I should make recommendations in the event that I found that the sentencing patterns for sexual offences occurring in the Cape York communities were inappropriately low. I have not found this so the question of recommendations becomes somewhat irrelevant. However:

(a) Some effective system should be put in place within the DPP's office to ensure that marginal cases are referred to the Attorney-General for consideration of appeal;

(b) The DPP should investigate and consider the allegations by Mr Carter in his statement that he was overworked and that this explained the inadequacies in his presentation of the *controversial Aurukun case*. This should be done for the benefit of future cases.

Dated this 11th day of February 2008.

PJ Davis SC

C Eberhardt

APPENDIX 1

LIST OF CASES REVIEWED SHOWING BASIC DETAILS

Date	Case	Adult/ Juvenile	Offence	Place of Offence	Court	Victim Impact Statement Tendered (Yes/No)	Community Justice Group Submissions (Yes/No)	Sentence
27.03.07	1M	Adult	Indecent assault	Napranum	District Court Weipa	No	No	6 months Intensive Corrections Order
22.10.07	2M	Adult	UCK	Weipa	District Court Weipa	No	Uncertain	9 months imprisonment
24.10.07	3P	Adult	UCK	Aurukun	District Court Aurukun	Unclear	Unclear	Discharged absolutely
24.10.07	4D	Adult	UCK (intellectually impaired person), Indecent dealing	Napranum	District Court Aurukun	No	No	12 months imprisonment
29.03.06	5W	Adult	UCK	Aurukun	District Court Aurukun	Unknown	Unclear	100 hours community service. Conviction recorded
29.03.07	6S	Adult	UCK	Pormpuraaw	District Court Pormpuraaw	No	Yes	9 months probation (Anthony and Justin) 6 months ICO (Linton)
29.03.07	7Y	Adult	UCK	Pormpuraaw	District Court Pormpuraaw	No	Yes	3 months imprisonment (served cumulatively upon another 3 months sentence of imprisonment for unrelated offences and an activated suspended sentence of imprisonment)
30.03.06	8F	Juvenile	UCK (2 counts), Indecent dealing	Pormpuraaw	Children's Court Pormpuraaw	No	No	18 months probation. Conviction recorded.
26.07.06	9W	Adult	Maintaining a sexual relationship with a child	Aurukun	District Court Cairns	No (oral submissions made of the impact of the offence)	No	4 years 6 months imprisonment suspended after 428 days. (This was reduced on appeal to 3 years imprisonment suspended after 428 days). R. v. WU [2007] QCA 308
15.06.07	10S	Adult	Rape	Bamaga	District Court Cairns	Yes	No	6 years imprisonment
20.06.06	11Y	Adult	Indecent dealing	Thursday Island	District Court Cairns	Yes	No	6 months imprisonment
22.05.06	12R	Adult	B/E with intent	Badu Island	District Court	Yes	No	2 years probation. 180 hours

Date	Case	Adult/ Juvenile	Offence	Place of Offence	Court	Victim Impact Statement Tendered (Yes/No)	Community Justice Group Submissions (Yes/No)	Sentence
			Indecent assault		Thursday Island			unpaid community service
22.05.06	13M	Adult	Indecent dealing (5 counts) Rape	Thursday Island	District Court Thursday Island	Yes	No	6 years imprisonment
24.05.06	14S	Adult	Indecent dealing (7 counts)	Mapoon	District Court Bamaga	No	No	3 months imprisonment. 18 months probation
22.05.06	15S	Adult	Indecent dealing (8 counts), unlawful sodomy	Badu Island	District Court Thursday Island	No	No	12 months Intensive Correction Order
18.05.06	16K	Juvenile	Indecent dealing	Cairns	Children's Court Cairns	No	No	12 months probation. No conviction recorded
01.11.07	17W	Adult	UCK	Umagico	District Court Bamaga	No	Yes	18 months probation and 80 hours community service. No conviction recorded
11.09.06	18D	Adult	Indecent dealing (intellectually impaired)	Hopevale	District Court Cooktown	No	No	15 months imprisonment suspended after 5 months for 15 months
19.09.06	19W	Adult	B/E with intent, Indecent assault	Moa Island	District Court Thursday Island	No	No	12 months Intensive Correction Order
26.07.06	20E	Adult	Unlawful sodomy	York Island	District Court Cairns	No	No	5 weeks imprisonment followed by 3 years probation
28.08.06	21H	Adult	Rape	Mareeba	District Court Cairns	No	No	7.5 years imprisonment
27.01.06	22S	Juvenile	Rape (2 counts), Attempted rape	Cairns	Children's Court Cairns	No	Yes	9 months detention to be served by way of a conditional release order. 3 years probation with special condition. Convictions recorded
10.07.06	23N	Adult	Rape, UCK (2 counts),	Thursday Island	District Court Cairns	No	Yes	5 years imprisonment

Date	Case	Adult/ Juvenile	Offence	Place of Offence	Court	Victim Impact Statement Tendered (Yes/No)	Community Justice Group Submissions (Yes/No)	Sentence
			Sexual assault					
02.08.06	24G	Adult	Indecent assault	Mossman	District Court Cairns	No	No	12 months imprisonment
07.09.06	25A	Adult	Sexual assault (2 counts)	Lockhart River	District Court Cairns	No	No	10 months imprisonment (cumulatively upon a sentence fo 18 months imprisonment for non-sexual offending)
18.10.06	26S	Adult	Indecent dealing (6 counts)	Thursday Island	District Court Cairns	No	No	4 years imprisonment
31.01.06	27D	Adult	Attempting to procure a child for UCK, B/E dwelling house with intent	Mossman	District Court Cairns	No	No	18 months imprisonment
04.12.06	28H	Adult	Maintaining a sexual relationship with child, Indecent dealing (3 counts), Incest (6 counts)	Mona Mona	District Court Cairns	No	No	8 years imprisonment
26.02.07	29S	Adult	Rape (2 counts), Indecent dealing (4 counts)	Cairns	District Court Cairns	Yes	No	3.5 years imprisonment
02.03.07	30M	Adult	Indecent dealing (2 counts)	Laura	District Court Cairns	No	No	18 months imprisonment
03.09.07	31C	Adult	Indecent assault	Cairns	District Court Cairns	Yes	No	9 months imprisonment suspended after 93 days (no operational period stated)
07.09.07	32M	Adult	Indecent	Murray Island	District Court	No	No	8 years imprisonment

Date	Case	Adult/ Juvenile	Offence	Place of Offence	Court	Victim Impact Statement Tendered (Yes/No)	Community Justice Group Submissions (Yes/No)	Sentence
			dealing (8 counts), Rape (3 counts)		Cairns			
26.09.07	33A	Adult	Rape (2 counts), Indecent dealing (1 count)	Cairns	District Court Cairns	Unclear	No	5 years imprisonment
28.09.07	34C	Adult	Sexual assault	Mossman	District Court Cairns	No	No	393 days imprisonment
14.11.07	35B	Adult	Indecent dealing (2 counts)	Mareeba	District Court Cairns	Yes	No	18 months imprisonment suspended after 291 days for 2 years
30.10.07	36B	Adult	Indecent dealing, Unlawful sodomy	Thursday Island	District Court Thursday Island	No	No	2 years probation. 120 hours community service. No conviction recorded.
30.10.07	37M	Juvenile	Enter a dwelling house with intent Indecent assault	Mabuiagi Island	District Court Thursday Island	No	No	12 months probation. 50 hours community service. No conviction recorded.
3.10.07	38G	Adult	Attempted UCK	Umagico	District Court Thursday Island	No	No	18 months probation. No conviction recorded
02.02.06	39M	Adult	Rape	Coen	District Court Cairns	Yes	No	5 years imprisonment
06.02.06	40Y	Adult	UCK	Pormpuraaw	District Court Cairns	No	No	6 months imprisonment
07.02.06	41M	Adult	Indecent dealing	Yalaton	District Court Cairns	No	No	4 months imprisonment. 2 years probation
17.02.06	42S	Juvenile	Rape (2 counts)	Cairns	District Court Cairns	Yes	No	2.5 years detention. There was an order that the defendant be released after serving 50% of the sentence
23.02.06	43K	Juvenile	Rape	Cairns	District Court	Yes	No	4 months detention suspended. 3

Date	Case	Adult/ Juvenile	Offence	Place of Offence	Court	Victim Impact Statement Tendered (Yes/No)	Community Justice Group Submissions (Yes/No)	Sentence
			(2 counts)		Cairns			month conditional release programme. 3 years probation. No conviction recorded.
24.02.06	44W	Juvenile	Rape, Indecent dealing	Kuranda	District Court Cairns	No	No	3 years probation. Conviction recorded. 6 months detention suspended immediately and 3 month conditional release programme
24.02.06	45W	Adult	Rape (4 counts), Indecent dealing, Sexual assault	Thursday Island	District Court Cairns	No	No	4 years imprisonment
09.03.06	46G	Adult	Rape	Kowanyama	District Court Cairns	Yes	Yes	20 months imprisonment
22.03.06	47S	Adult	Indecent dealing, Indecent assault	Cairns	District Court Cairns	Unclear	Unclear	9 months imprisonment
06.04.06	48N	Adult	Indecent dealing	Pormpuraaw	District Court Cairns	No	Yes	9 months imprisonment followed by 2 years probation
31.05.06	49D	Adult	Indecent assault	Mareeba	District Court Cairns	No	Yes	9 months imprisonment followed by 2 years probation
31.10.06	50M	Adult	Indecent dealing (12 counts), Unlawful sodomy (3 counts)	Badu Island	District Court Cairns	No	Yes	4 years imprisonment
27.10.06	51J	Adult	Indecent dealing	Malanda	District Court Cairns	Yes	No	18 months probation. Conviction recorded
01.11.06	52C	Adult (when sentenced)	UCK (3 counts), Indecent dealing (2 counts)	Lockhart River	District Court Cairns	Yes	No	3 months imprisonment
11.12.06	53P	Adult	Sexual Assault,	Darnley	District Court	No	No	8 years imprisonment

Date	Case	Adult/ Juvenile	Offence	Place of Offence	Court	Victim Impact Statement Tendered (Yes/No)	Community Justice Group Submissions (Yes/No)	Sentence
			Rape (2 counts), Deprivation of liberty	Island	Cairns			
08.01.07	54B	Adult	Rape	Mossman Gorge	District Court Cairns	No	No	4 years imprisonment
13.02.07	55C	Adult	Indecent dealing	Woree	District Court Cairns	No	No	6 months imprisonment
23.04.07	56G	Juvenile	Indecent dealing	Cairns	District Court Cairns	No	No	166 days detention and 12 months probation
24.04.07	57A	Adult	Indecent dealing (4 counts deprivation of liberty)	Cairns	District Court Cairns	No	No	15 months imprisonment
28.05.07	58W	Adult	Rape, Deprivation of liberty	Aurukun	District Court Cairns	Yes	No	8 years imprisonment
29.05.07	59M	Adult (when sentenced)	UCK	Yarrabah	District Court Cairns	No	No	9 months probation
15.06.07	60A	Adult	Indecent dealing	Weipa	District Court Cairns	No	No	15 months imprisonment suspended after 5 months for 3 years
28.08.07	61W	Juvenile	Rape	Cairns	District Court Cairns	No	Yes	3 years probation. No conviction recorded
05.09.07	62P	Adult	Enter a dwelling house with intent, Indecent assault Indecent act in public	Mareeba	District Court Cairns	No	No	6 months imprisonment followed by 2 years probation
10.10.07	63M	Adult	Indecent dealing (4 counts), Rape (6 counts)	Badu Island	District Court Cairns	Yes	No	3.5 years imprisonment

Date	Case	Adult/ Juvenile	Offence	Place of Offence	Court	Victim Impact Statement Tendered (Yes/No)	Community Justice Group Submissions (Yes/No)	Sentence
16.10.07	64C	Juvenile	Indecent dealing (2 counts)	Coen	District Court Cairns	No	No	18 months probation. No conviction recorded
05.11.07	65C	Adult	B/E with intent Indecent Assault	Cairns	District Court Cairns	No	No	4 years imprisonment
26.11.07	66A	Adult	Indecent dealing	Cairns	District Court Cairns	Yes	No	6 months imprisonment wholly suspended for 18 months
30.11.07	67P	Adult	Incest (3 counts), Attempted indecent dealing	Wujal Wujal and Cairns	District Court Cairns	No	No	5 years imprisonment
04.12.07	68K	Adult	Sexual assault B/E with intent Indecent act, Common assault	Thursday Island	District Court Cairns	No	No	3 years 3 months imprisonment
12.12.07	69H	Juvenile	Indecent act	Cairns	District Court Cairns	Yes	No	3 years imprisonment
18.10.06	70W	Adult	Sexual Assault	Aurukun	District Court Aurukun	Yes	No	120 hours community service. Conviction recorded.

APPENDIX 2

SUMMARY OF EACH OF THE CASES REVIEWED

Case	1M
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 03.09.1967: 38
Age of Complainant	19
Date of Offence(s)	5.05.2006
Date of Conviction(s)	27.03.2007
Date of Sentence(s)	27.03.2007
Nature of Offence(s)	Indecent assault.
Prior Criminal History of Offender	A criminal history was tendered to the Court but was not provided for the purpose of the review. However, it is clear from the sentencing remarks that the offender had no history of sexual offending.
Court	District Court, Weipa
Summary of Offence(s)	The complainant was a 19 year old woman who had known the offender all of her life and considered the offender to be her father. On the day of the offence the complainant was at home drinking alcohol and smoking cannabis. She then went to a relative's house and drank with them until she fell asleep. She awoke to find the offender kissing her breasts. The offender then attempted to remove her underpants, however, he failed. Upon waking the complainant began kicking and screaming at the offender who ran from the room. By way of retaliation, the complainant later assaulted the offender by punching him in the face.
Crown Submissions on Sentence	The offender co-operated with police and admitted kissing the complainant on the chest under her clothes. No victim impact statement was tendered. There was no pre-sentence custody to declare. A period of six to twelve months imprisonment is appropriate with a short period of actual custody. The Crown conceded that an intensive correction order may also be within range. No comparables were referred to.
Defence Submissions on Sentence	The offender works as a ranger. The offender pleaded guilty and apologised to the complainant. The offender remains in a convivial relationship with the complainant. The incident was out of character for the offender. There is no prior history of sexual misconduct. The offender had consumed a significant amount of alcohol at the time of the offence and has since significantly reduced his alcohol intake. The offender sought counselling of his own volition from a priest. The offender has already been punished summarily by being assaulted by the complainant. He co-operated with the police and was genuinely remorseful. Reverend De Buey spoke of the

	offender's attempts at rehabilitation and reconciliation with the complainant and her family.
Sentence(s) Imposed	Six months Intensive Correction Order
Summary of Sentencing Remarks	The offender's assault on the complainant involved a breach of trust. She was asleep and was entitled to be left alone by everybody, let alone someone who she respected and trusted. The offender apologised to the complainant and has attempted to reconcile with the family. The offender has no history of sexual offending. Alcohol played a large part in what occurred. The community corrections officer has indicated that the offender is suitable for community based orders and that is appropriate in the circumstances.

Case	2M
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB 13.03.1982: 23
Age of Complainant	12
Date of Offence(s)	24.06.2005
Date of Conviction(s)	22.10.2007
Date of Sentence(s)	22.10.2007
Nature of Offence(s)	Unlawful carnal knowledge.
Prior Criminal History of Offender	The offender had a criminal history however it was not provided for the purpose of this review. It is clear from the submissions that he had no convictions for similar offences.
Court	District Court, Weipa
Summary of Offence(s)	The offender and another person approached the complainant in a motor vehicle and the complainant went with them for a drive into Weipa. The complainant drank rum and coke at the offender's house. The offender then had intercourse with the complainant. She was extremely intoxicated at the time. She was later found walking around Weipa by a member of the public and taken to the Weipa Hospital. She was spoken to by the police that day but said that nothing had happened. Some weeks later while being treated for an unrelated injury she made allegations against the offender. The offender was interviewed in March 2006 and denied having had sexual intercourse with the complainant. The offender was re-interviewed on 27 November 2006 and admitted to having had sexual intercourse with her. He told police that she was small in size and while he was having intercourse with her he realised that she was under age.
Crown Submissions on Sentence	The prosecution referred to the *R. v. Clifford Ex Parte Attorney-General* [2006] QCA 492 in support of a sentence of imprisonment of 9 - 12 months imprisonment. She was heavily intoxicated. The prosecutor submitted that there was no breach of trust involved.
Defence Submissions on Sentence	While the offender thought the girl was under age he did not realise that she was only 12. The complainant willingly got in the car and went with the offender and his friend and participated in drinking alcohol. The complainant was a willing participant in the sexual activity. The offender has a comparatively good work history.
Sentence(s) Imposed	9 months imprisonment with parole eligibility set at 1 March 2008 (approximately 4.5 months).

Summary of Sentencing Remarks	The offender was 24 years of age (actually 23) at the time and the complainant was 12. Although he did not know exactly how old she was he knew that she was under 16. When first interviewed by police he denied having sexual intercourse with the complainant. It was only later that he admitted what he had done and he then pleaded guilty quickly. The offender has prior convictions although none were for sexual offences. The offender gave her alcohol and encouraged her to go upstairs with him to his room. The offender was not aggressive towards the complainant and did not threaten her, however, he did take advantage of a 12 year old girl who was intoxicated which is totally unacceptable. The offender had a good school record and work record. *Clifford* was distinguished on the basis that there were a number of special circumstances that were not present in this case, in particular the fact that *Clifford* was filled with remorse and pleaded guilty at the earliest opportunity.

Note: This was a sentence of actual custody of four and half months which is quite justified. It is though difficult to reconcile a sentence requiring this offender to serve four and half months in prison for unlawful carnal knowledge of a 12 year old girl when two days later nine offenders are given sentences involving no actual custody for the rape of a 10 year old girl.

Case	3P
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB 25.5.1985: 20-21
Age of Complainant	14
Date of Offence(s)	30.4.2006 – 12.06.2006
Date of Conviction(s)	24.10.2007
Date of Sentence(s)	24.10.2007
Nature of Offence(s)	Unlawful carnal knowledge
Prior Criminal History of Offender	The offender (a female) had an extensive criminal history, but did not have any prior convictions for sexual offences.
Court	District Court, Aurukun
Summary of Offence(s)	Details were taken from Queensland Police Service Form 9 Summary of Facts as the sentencing submissions were not available for the purpose of the review. The complainant is a 14 year old male who is a blood relative of the complainant. The complaint is one of the juvenile offenders in the controversial Aurukun case. On a date unknown between 30.4.05 and 12.06.06, the offender had consensual intercourse with the complainant at her aunty's house in Aurukun. The offender co-operated with the police and pleaded guilty. The offender stated to police that she knew it was wrong to have intercourse with the complainant because he was too young.
Crown Submissions on Sentence	Submissions not provided.
Defence Submissions on Sentence	Submissions not provided
Sentence(s) Imposed	Discharged absolutely pursuant to Section 19(1) of the Penalties and Sentences Act.
Summary of Sentencing Remarks	The entire sentencing remarks are: "Well Ms Poonkmelya, I am not going to punish you for having intercourse with [the complainant]. That will not go any further. You are free to go, and I have dismissed the breach of Community Service Order because you have done that. So everything is finished and you can go. So I formally release the offender absolutely pursuant to 19(1) of the Penalties and Sentences Act".

Note: While any appropriate sentence in the case need not incorporate a period of actual custody, the unconditional discharge of an offender who committed a sexual offence against a child is odd.

Case	4D
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 10.07.1987: 19
Age of Complainant	12
Date of Offence(s)	8.09.2006
Date of Conviction(s)	24.10.2007
Date of Sentence(s)	24.10.2007
Nature of Offence(s)	Unlawful carnal knowledge of an intellectually impaired person; Permitting himself to being indecently dealt with by a child under the age of 16 years; Possession of a knife in a public place.
Prior Criminal History of Offender	A criminal history was tendered but not provided for the purpose of this review. It is apparent that the offender had no prior history for sexual offences.
Court	District Court, Aurukun
Summary of Offence(s)	The complainant child was aged 12 and had "mental" problems. The complainant was a distant relative of the offender and knew him all of her life. The complainant's mother warned the offender not to have intercourse with the complainant and warned the complainant not to have intercourse with him. The complainant's mother suspected some sexual relationship between the offender and the complainant and found the offender having intercourse with the complainant. The complainant's mother hit the offender across the back with a piece of wood and told him that he should look for girls his own age to have intercourse with instead of a 12 year old girl. The offender replied "Not only me. There are other boys too". The offender was interviewed by police and admitted that he had intercourse with the child and admitted knowing that she was too young. The offender said that the complainant was touching his penis and that she had rubbed his penis. (This was the only evidence of the indecent dealing count) The matter proceeded by way of a hand up committal. A plea of guilty was entered at an early time.
Crown Submissions on Sentence	The only evidence of the indecent dealing offence came from the offender's admissions. The offender pleaded guilty at an early time and saved the complainant the need to give evidence. There was a significant breach of trust involved particularly as the complainant was intellectually impaired. General deterrence was important. The prosecutor submitted a sentence of imprisonment between 18 months and 2 years with a parole eligibility date after serving one half of the sentence.

	No comparable sentences were tendered.
Defence Submissions on Sentence	The offender was educated to year 9. He was raised in a dysfunctional aboriginal family and community where he was exposed from an early stage to substance abuse and violence. He had limited education and work experience. He may have some cognitive impairment as a result of foetal alcohol syndrome and substance abuse. He seems to be responding well to court ordered parole. His age and his co-operation were significant particularly as the complainant did not participate in a record of interview. The sentence submitted was 12 months imprisonment with parole eligibility set at 4 months. No comparables were referred to.
Sentence(s) Imposed	12 months imprisonment. Parole eligibility set at 18 February 2008 (slightly less than 4 months). 6 days pre-sentence custody declared.
Summary of Sentencing Remarks	The complainant's mother told the offender not to have intercourse with the complainant but he did anyway. The offender cooperated with police and the only evidence in relation to the indecent dealing count came from the offender's confession. The offender's plea of guilty is of great significance because it meant that the complainant has not had to give evidence in court. The offender has a bad criminal history although it does not include convictions for sexual offences. The offender has had a disadvantaged upbringing and has to deal with problems of substance abuse as well as other issues.

Case	SW
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 1.5.1981: 23
Age of Complainant	12
Date of Offence(s)	31.12.2004 – 18.3.2005
Date of Conviction(s)	29.3.2006
Date of Sentence(s)	29.3.2006
Nature of Offence(s)	Unlawful carnal knowledge
Prior Criminal History of Offender	The offender had an extensive criminal history, however, he had no prior convictions for sexual offences.
Court	District Court, Aurukun
Summary of Offence(s)	The sentencing submissions were not provided with the materials, however, it is clear from the Queensland Police Service Court Brief that the offender collected the 12 year old female complainant and brought her to a dwelling where he had intercourse with the complainant first before three male juveniles had intercourse with the complainant. All of the male juveniles had witnessed the offender having intercourse with the complainant.
Crown Submissions on Sentence	These were not made available for the purpose of the review.
Defence Submissions on Sentence	These were not made available for the purpose of the review.
Sentence(s) Imposed	100 hours community service. Conviction recorded.
Summary of Sentencing Remarks	"Raymond you cannot have intercourse with girls who are under 16, that is the bottom line. You understand that you cannot, and you understand that what you did with [the complainant] was wrong. You must not do that again."

Note: This offender is offender W in the controversial Aurukun case. Strangely this sentence was not the subject of any real submissions to the Court during the sentencing in the controversial Aurukun case.

Case	6S
Adult/Juvenile	Adults
Date of Birth of Offender: Age at time of offence	Offender 1- DOB: 09.04.1988: 17 Offender 2 - DOB: 26.01.1984: 21 - 22 Offender 3 - DOB: 22.10.1982: 23
Age of Complainant	13
Date of Offence(s)	31.05.2005-01.01.2006
Date of Conviction(s)	29.03.2007
Date of Sentence(s)	29.03.2007
Nature of Offence(s)	3 offenders. Each 1 count of unlawful carnal knowledge of a child
Prior Criminal History of Offender	The criminal history of the offenders was both relatively minor and irrelevant.
Court	District Court, Pormpuraaw
Summary of Offence(s)	Each offender (they are all brothers) had consensual intercourse with the complainant. There were 3 separate incidents. She did not have intercourse with them together. The complainant was a willing participant and in some respects, the instigator.
Crown Submissions on Sentence	But for offenders' co-operation with the police, the offending would not have been detected. All of the accused were relatively young and, in the case of the youngest offender's case, he was only 17 years of age at the time. The prosecution submitted that 3-6 months' imprisonment wholly suspended would be appropriate. No comparables were referred to.
Defence Submissions on Sentence	The offenders were affected by alcohol. They were all still young and had all been very co-operative. They have no history for similar offending. Each of the offenders are employed under the CDEP. A representative of the Community Justice Group indicated that each of the accused has undergone counselling with the Justice Group about their behaviour and also that they were good workers.
Sentence(s) Imposed	Offenders 2 and 3: 9 months probation with a special condition that they attend the Pormpuraaw Community Healing Centre as directed by their probation and parole officer Offender 1: 6 months imprisonment to be served by way of an intensive corrections order with a special condition that he attend the healing centre and undertake counselling and programs there as directed by his probation and parole officer
Summary of Sentencing Remarks	It is a serious matter to have intercourse with a girl who is under 16 no matter what sort of behaviour she is engaging in. It is to the offenders' great credit that they were totally honest with the police and, but for their admissions, there was at least

	a possibility that they would not have been charged.

Case	7Y
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB:10.05.1980: 25-26
Age of Complainant	14
Date of Offence(s)	28.4.2006 – 29.5.2006 (3 counts)
Date of Conviction(s)	29.3.2006
Date of Sentence(s)	29.3.2006
Nature of Offence(s)	3 counts of unlawful carnal knowledge
Prior Criminal History of Offender	A criminal history was tendered but was not provided for the purpose of the review. It does not appear that the offender had any history of sexual offending.
Court	District Court, Pormpuraaw
Summary of Offence(s)	The complainant was 14 years of age. The offender was aged between 25 and 26 years of age at the time of the offences. The complainant stated that she had invited the offender around to her house and then had invited him into her bedroom where they had engaged in sexual intercourse (count 1). The complainant stated that they had sexual intercourse again the following morning (count 2) and then again the following evening (count 3). The police interviewed the offender who admitted that he had had sexual intercourse with the complainant and that he knew that she was too young to have sexual intercourse. The offender did not wear a condom in relation to the first two offences but did on the third occasion. The offender did not ejaculate on any of the three occasions. The offender's brother had been jailed for having sexual intercourse with the complainant the previous year.
Crown Submissions on Sentence	The offender was under the influence of alcohol. There was no relationship between him and the complainant. The appropriate sentence is 18 months imprisonment. There was a significant age difference involved. No comparable sentences were tendered. No victim impact statement was tendered.
Defence Submissions on Sentence	The complainant initiated the sexual contact with the offender. The offender has no history of sexual offences. But for the other matters which the offender was being sentenced for (non-sexual matters) a non-custodial sentence would be appropriate. The offender has a good job and has been a useful member of the community. The appropriate sentence is a short term of imprisonment followed by a period of probation. No comparables were tendered.
Sentence(s) Imposed	3 months imprisonment, served cumulatively upon another 3 months sentence of imprisonment and an activated suspended sentence of

	imprisonment.
Summary of Sentencing Remarks	"I accept that the complainant initiated the sexual activity however you were a mature adult and should have said 'no'. I take into what Mr [N] (community justice group) said on your behalf about your emotional state at that time. If you had only been before me in relation to that offending then I would not be sending you to jail today but unfortunately you are also here for assaulting [another complainant] and getting involved in a fight that happened subsequently. You have also committed these offences whilst subject to a suspended term of imprisonment. As a result jail is inevitable. I take into account that you have pleaded guilty. You made full admissions to the police about the sexual offending."

Case	8F
Adult/Juvenile	Juvenile
Date of Birth of Offender: Age at time of offence	DOB: 21.11.1988: 15 - 16
Age of Complainant	5 12
Date of Offence(s)	30.6.2004 – 1.8.2004 (indecent dealing) 11.10.2005 – 16.10.2005 (UCK) 16.10.2005 – 20.10.2005 UCK)
Date of Conviction(s)	24.2.2006
Date of Sentence(s)	30.3.2006
Nature of Offence(s)	1 count of indecent dealing with a child under 12 2 counts of unlawful carnal knowledge
Prior Criminal History of Offender	Nil
Court	Children's Court Pompuraaw
Summary of Offence(s)	In relation to count 1, the offender had attempted to put his penis into the 5 year old male complainant. In relation to counts 2 and 3, the offender was 16 years of age at the time of the offence. The complainant was a 12 year old female who lived in the Pompuraaw community with her mother. In October 2005 the complainant was diagnosed with Chlamydia and Gonorrhea. The complainant disclosed to medical staff during treatment that she had had intercourse with two 15-16 year old boys and the police were alerted. The offender was interviewed on 2 November 2005 and readily admitted his involvement in the offence.
Crown Submissions on Sentence	The offender had no prior convictions. The pre-sentence report was very positive and demonstrated that the offender would benefit from community supervision. The pre-sentence report revealed that the offender's risk of reoffending was remote if he received appropriate treatment in the community. The prosecution submitted for a period of probation of 18 months. The prosecution did not seek that a conviction be recorded. A youth justice conference report was obtained and tendered. No comparable sentences were referred to. No victim impact statement was tendered.
Defence Submissions on Sentence	The defence relied upon the pre-sentence report. The offender is working 3 days per week as a plumber's assistant and hopes to commence an apprenticeship. The offender has not reoffended. The offending could best

	be described as sexual experimentation by teenagers. In the circumstances, probation without recording a conviction is appropriate. No comparables were referred to.
Sentence(s) Imposed	18 months probation with special condition that he report to the Community Justice Group as directed by his corrective services officer. Conviction recorded.
Summary of Sentencing Remarks	"What you did to the complainants was wrong. You need to understand that you cannot have intercourse with anyone who is under 16. You have apologised for your behaviour and there has been an agreement reached about you going for counselling. Because this is the first time that you have been to court and because you have pleaded guilty and all of the matters raised in the pre-sentence report and in the community conference I am prepared to let you stay in the community and be on probation."

Case	9W
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 29.05.1985: 19-20
Age of Complainant	13-14
Date of Offence(s)	01.04.2005 – 08.04.2006 (maintaining a sexual relationship); 1.11.2005 – 1.12.2005 (assault occasioning bodily harm whilst armed); 1.11.2005 – 1.12.2005 (assault occasioning bodily harm); 25.12.2005 – 31.1.2006 (assault occasioning bodily harm)
Date of Conviction(s)	20.06.2007
Date of Sentence(s)	20.06.2007
Nature of Offence(s)	1 count of maintaining a sexual relationship with a girl under the age of 16. 1 count of assault occasioning bodily harm whilst armed. 2 counts of assault occasioning bodily harm.
Prior Criminal History of Offender	The criminal history was tendered but was not provided for the purpose of this review. It is apparent from submissions that the criminal history was not of any great relevance.
Court	District Court, Cairns
Summary of Offence(s)	The complainant child was sent to Aurukun from Mornington Island in order to address a petrol sniffing problem. She then met the offender and they started to see each other as boyfriend/girlfriend and eventually moved into together. A sexual relationship developed between them and the offences of violence occurred in the context of that sexual relationship. In August of 2005 the offender was charged with an offence of unlawful carnal knowledge and released on bail subject to a condition that they not have any contact with each other. Quite shortly after those events the relationship resumed. The relationship was characterised by regular sexual intercourse.
Crown Submissions on Sentence	The relationship was characterised by violence. Despite the small age difference there was a significant imbalance of power in the relationship. She feels ashamed about what happened. The plea was entered in a timely way. 5 – 6 years imprisonment with a recommendation for parole after 18 months is appropriate. No victim impact statement tendered. The prosecution referred to *Man, Vionea, Wilson, Douglas, G* [1997] QCA 479, *SAG* [2004] QCA 286 and *Pad* [2006] QCA 398
Defence Submissions on Sentence	The complainant stated that she loved him and wanted to be with him. The sexual activity was consensual. The age difference was not great.

Sentence(s) Imposed	4 years 6 months imprisonment suspended after 428 days (maintaining a sexual relationship). 12 months imprisonment with respect to charges of assault occasioning bodily harm. All sentences served concurrently. Declaration of 428 days of pre-sentence custody.
Summary of Sentencing Remarks	The offender pleaded guilty in a timely way and saved the complainant further embarrassment and trauma. The offender was 19 to 20 years of age at the time of the offences. The complainant was 13 to 14 years of age. The offender had a minor criminal history which is not relevant. Between 1 April 2005 and 8 April 2006 at Aurukun the offender had sexual intercourse with the complainant about once a week. The complainant told police that she loved the offender. In August 2005 the offender was charged with unlawful carnal knowledge but the sexual relationship continued until April 2006 during which time the offender had sexual intercourse with the complainant. During the relationship, on a number of occasions, the offender assaulted the complainant. The complainant had come from Mornington Island because of problems with petrol sniffing. She was fearful, powerless and lonely as a result of what had occurred and was afraid of developing a relationship. The prosecution submitted a head sentence of 5 to 6 years relying on *R. v. Voinea* CA No. 446 of 1998; *R. v. Douglas* CA NO. 416 of 1996; *R. v. MAN* [2005] QCA 413. The violence used was not serious. The offender was educated to grade 10 and since that time has worked on the CDEP.

Note: This sentence was successfully appealed by the offender. A sentence of 3 years imprisonment suspended after 428 days was imposed by the Court of Appeal. *R v WU* [2007] QCA 308

Case	10S
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	40 DOB not stated in material provided
Age of Complainant	20
Date of Offence(s)	3.05.2004
Date of Conviction(s)	15.06.2006
Date of Sentence(s)	15.06.2006
Nature of Offence(s)	Rape
Prior Criminal History of Offender	The offender's criminal history was tendered but was not provided for the purpose of the review. From the sentencing remarks, it is clear that the offender did have a criminal history which included several convictions for assault, although the last of them was over 10 years prior to the sentence.
Court	District Court, Cairns
Summary of Offence(s)	The complainant and others were drinking at the offender's home. The complainant who was 20 years of age was drunk to the extent that she did not know what was occurring. The complainant offered the offender no encouragement at any time. The complainant woke up to find the offender having sexual intercourse with her.
Crown Submissions on Sentence	Not provided
Defence Submissions on Sentence	Not provided
Sentence(s) Imposed	6 years imprisonment
Summary of Sentencing Remarks	The offender was convicted after trial on one count of rape. Prior to the offence being committed, the complainant had blacked out as a result of excessive drinking and woke up to find the offender having sexual intercourse with her. The offender was 40 years of age at the time of the offence. He is a married man with two very young children. The offender has shown no remorse for his involvement in the offence. The complainant was subjected to cross-examination both in the committal hearing and in the course of the trial. The offence has had a significant impact upon the complainant. The rape was not otherwise accompanied by violence and when the complainant awoke the offender desisted.

Case	11Y
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 09.05.1972: 31
Age of Complainant	13
Date of Offence(s)	November 2003
Date of Conviction(s)	20.06.2006
Date of Sentence(s)	20.06.2006
Nature of Offence(s)	Indecent dealing with a child under 16 in care
Prior Criminal History of Offender	A criminal history was tendered but was not provided for the purpose of the review. It is clear from the sentencing remarks that the offender had no history of committing sexual offences.
Court	District Court, Cairns
Summary of Offence(s)	The complainant was the offender's 13 ½ year old niece. The complainant was living on Thursday Island with the offender's wife 's brother's family whilst she was attending school. As a result of the offender's wife's father and the mother of the offender's brother's wife both having to be medically evacuated to Cairns Base Hospital at the same time, the couple who the complainant was living with had to fly to Cairns and in their absence the complainant came to stay with the offender. At the same time the offender's wife had also flown to Cairns to be with her father. On an afternoon after school while the offender's wife was away the offender touched the complainant on the legs, touching her bottom on the outside of her clothing and rubbing her breasts both on the outside and inside of her clothing. At the time of the offence, the offender's two young sons were in the bedroom but their attention was apparently distracted by a TV game.
Crown Submissions on Sentence	Victim impact statements were tendered. The offence constituted a serious breach of trust. The complainant was scared of what was happening and scared of the offender. Although there were no threats or violence used, she was in a very vulnerable position. The offender has displayed no remorse. Principles of specific and general deterrence assume significance. The prosecutor referred to *Pham* CA 130 of 1996, *Moffat* [2003] QCA 95 and *B* [2003] QCA 105. The appropriate sentence is a sentence of between 12 and 18 months imprisonment.
Defence Submissions on Sentence	The offence was isolated, out of character and opportunistic rather than predatory. No violence or force was used to prevent the complainant moving away. The incident took place over 1 to 2 minutes. The victim impact statements need to be viewed in light of the jury's verdict of acquittal on counts 2 and 3. The offender's criminal history is irrelevant to the present matter. The defence referred to the matter of *Di Pino* [2004]

	QCA 39. The offender has a good employment history and has been actively involved in coaching young Thursday Island boys at football for 6 years. The offender is also actively involved in community groups. The offender is well regarded in the community and is a good father to his children. He has been actively involved in community life. He was on a carer's pension relating to his care of his great grandmother at the time of the offence and this was a task he found very difficult. An intensive correction order may be appropriate.
Sentence(s) Imposed	6 months imprisonment.
Summary of Sentencing Remarks	"I take into account that no violence was used on the complainant and no threats were made to her. As her uncle and the person who had temporary responsibility for her care, you were in a position of trust towards her and it is understandable, in those circumstances, that she did not immediately report the matter. You were 34 years of age. You are a married man with three boys. You have several minor irrelevant convictions for dishonesty. I take into account that this was an isolated offence and so far as the conduct involved in the indecent dealing is concerned, it was at the lower end of severity. Nevertheless, it has had some continuing emotional effect on the complainant. It has also led to the complainant's estrangement from family members. You have shown no remorse for your involvement although as I have said this offence was at the lower level of seriousness. You are the complainant's uncle and your conduct constituted a significant breach of trust."

Case	12R
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 13.05.1985: 20
Age of Complainant	Unclear - adults.
Date of Offence(s)	01.07.2005, 15.07.2005
Date of Conviction(s)	22.05.2006
Date of Sentence(s)	22.05.2006
Nature of Offence(s)	Two counts of break and enter a dwelling house with intent to commit an indictable offence in the night time. One count of indecent assault.
Prior Criminal History of Offender	A criminal history was tendered, however, it was not provided for the purpose of the review. It is clear from the submissions, however, that the offender's criminal history consisted only of a minor drug offence. He had no criminal history of sexual misconduct.
Court	District Court, Cairns
Summary of Offence(s)	On two occasions after the offender had been drinking he went to the homes of two different females and broke in with the intention of requesting that they have sexual relations with him. On each occasion the offender was told to leave, which he did. On one occasion he touched one of the complainant's shoulder, leg and bottom and this constituted the indecent assualt.
Crown Submissions on Sentence	The offences were committed while he was heavily intoxicated. The offender made full and frank admissions to police. His conduct would have caused both females to be frightened. A victim impact statement was tendered. The Crown submitted in respect of each count of burglary 2 to 3 years imprisonment and in relation to the sexual assault, 12 to 18 months imprisonment. No comparable sentences were referred to.
Defence Submissions on Sentence	The offender had been drinking heavily. The offender is very sorry for his behaviour and co-operated fully with the administration of justice. The offender desisted immediately upon being told to stop. The offender did not use any violence or threats. The offender is ashamed and embarrassed by what has happened and wants to get some counselling in relation to his substance abuse. Having regard to the offender's young age, lack of relevant history and his co-operation, a community based order would be appropriate. No comparables were provided.
Sentence(s) Imposed	2 years probation. 180 hours community service. Convictions

	recorded.
Summary of Sentencing Remarks	The offender is still a young man who has no relevant criminal history. The offender co-operated fully with the investigating authorities and pleaded guilty. For these reasons, probation and community service order is appropriate.

Case	13M
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of Offence	DOB: 02.08.1948: 51 - 56
Age of Complainant	Counts 1 – 5; 5 - 6 years Count 6; 10 years
Date of Offence(s)	31.12.1999 - 01.01.2001 31.12.1999 - 01.01.2001 31.12.1999 - 01.01.2001 31.12.1999 - 01.01.2001 31.12.1999 - 01.01.2001 30.09.2004 - 01.11.2004 (rape)
Date of Conviction(s)	22.05.2006
Date of Sentence(s)	22.05.2006
Nature of Offence(s)	Indecent treatment of a child under 12 years, and 1 count of rape.
Prior Criminal History of Offender	Nil.
Court	District Court, Thursday Island
Summary of Offence(s)	The indecent dealing offences involved the offender rubbing his penis on the outside of the complainant's vagina to ejaculation (Counts 1 - 5). The rape offence occurred three to four years after the indecent dealing offences. On that occasion, the complainant, who regarded the offender as her grandfather, called upon the offender's residence. The offender took her upstairs and took her clothes off and penetrated her vagina with his penis and ejaculated on the outside of the complainant child's body. The offender co-operated with police and confessed to the rape and also confessed to his earlier misconduct (Counts 1 - 5). Without his confession there would have been no evidence of this.
Crown Submissions on Sentence	A plea of guilty was entered at an early time. There are no prior convictions of any type. But for the offender's admissions and co-operation, the offender would not have been charged with Counts 1 - 5. In relation to Counts 1 - 5 (indecent dealing) the appropriate sentence is a term of imprisonment of 18 months to 2 years. In relation to Count 6 the appropriate sentence is a term of imprisonment of between 5 and 7 years imprisonment. A parole eligibility date should be set at about 3 years to reflect a plea of guilty and the other unusual features of the case. No comparable sentences were tendered.

Defence Submissions on Sentence	The offender has spent most of his adult life caring for his sickly mother. As a result he has led an almost "monastic" existence. The offender is an active member of the Anglican Church and has been involved in fund raising. The offender has no prior convictions. Since being charged with these offences, the offender has sought counselling, but has had difficulty accessing counselling on Thursday Island. The offender has co-operated fully with the administration of justice and is extremely remorseful. A sentence of 4 - 6 years imprisonment is appropriate. No comparable sentences were tendered.
Sentence(s) Imposed	6 years imprisonment. Parole eligibility date set at 3 years.
Summary of Sentencing Remarks	The complainant referred to the offender as grandfather and was entitled to far better treatment from him. But for the offender's full co-operation, Counts 1 - 5 would not have come to light or may not have been so easily established. The offender has no prior convictions, however, that must be viewed in light of the fact that the offences occurred over a period of time. It is necessary to send a clear message to others who might be minded to behave in this way that it cannot be accepted.

Note: It is unclear why the sentencing Judge decided not to set an early parole eligibility date at the one third mark to reflect not only the offender's early plea of guilty but also his full co-operation with the police which led to his conviction on Counts 1 - 5.

Case	14S
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of Offence	DOB: 25.10.1965: 37 – 39
Age of Complainant	12 – 15
Date of Offence(s)	Unclear on material provided: approximately 2003 - 2005.
Date of Conviction(s)	24.05.2006
Date of Sentence(s)	24.05.2006
Nature of Offence(s)	Indecent dealing with a girl under the age of 16 (7 counts)
Prior Criminal History of Offender	A criminal history was tendered, however it was not provided for the purpose of the review. It is clear from submissions however that the offender had no prior convictions for like offences.
Court	District Court, Bamaga
Summary of Offence(s)	The complainant was aged between 12 and 15 years of age. The offender is a cousin of the complainant's mother. In February 2005 the complainant made disclosures of indecent dealing that occurred between 2003 and 2005. On 9 February 2005 the offender was interviewed and made admissions in relation to the offences alleged and to other offences that had not been disclosed by the complainant child. A Schedule of Facts was tendered, however, this was not provided for the purpose of the review. It is clear however from the Judge's sentencing remarks that the offending was at the lower end of the scale, however, the Judge regarded the persistent nature of his conduct as being troubling.
Crown Submissions on Sentence	The offender pleaded guilty at an early time, co-operated with police and made admissions to offending that was not disclosed by the complainant. By his plea of guilty he saved the child the trauma of giving evidence. The offending occurred within the family unit and there was a grave breach of trust involved. In the circumstances a head sentence of between 18 months and 2 years imprisonment is appropriate. No comparables were referred to.

Defence Submissions on Sentence	The offender is a married man with three children. The offender is employed in a responsible job in the Mapoon community. The offender has, prior to sentence, undertaken counselling. The defence referred to the matter of *R. -v- McGallar* a decision of Skoien J in support of a prison / probation order or intensive correction order. The offending was described as being at the lowest end of the scale.
Sentence(s) Imposed	3 months imprisonment followed by 18 months probation. Conviction recorded.
Summary of Sentencing Remarks	The complainant was a member of the offender's extended family. The offending was persistent. The offender pleaded guilty and co-operated extensively. This resulted in the prosecution of two matters about which there had been no complaint. Although the offending was at the lower end of the scale, when looked at in its totality, a term of actual imprisonment is required to make it clear that this sort of behaviour is not acceptable in any community.

Case	15S
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of Offence	DOB: 21.01.1988: 17
Age of Complainant	5
Date of Offence(s)	2005
Date of Conviction(s)	22.05.2007
Date of Sentence(s)	22.05.2007
Nature of Offence(s)	8 counts of indecent dealing with a child under 12. 1 count of unlawful sodomy (the offender was arraigned on another occasion, so the exact charges were not provided with the review material).
Prior Criminal History of Offender	A criminal history was tendered, however, it was not made available for the purpose of the review. It is clear from submissions however that the criminal history was irrelevant and the offender had not committed further offences since being charged.
Court	District Court, Thursday Island
Summary of Offence(s)	The offender was 17 years of age at the time of the offences. The offender was living with the complainant child and her mother, however, there was no familial connection. The complainant child made a general disclosure. Subsequently, the offender participated in an interview with police in which he made a full confession to all of the matters the subject of the charges. The indecent dealing offences involved the complainant child touching the offender's penis and masturbating him, the offender putting his penis between the bottom cheeks of the complainant child, touching the complainant child's vagina and putting his penis on the complainant child's vagina. Count 9 related to the offender putting his penis to a minute extent into the complainant child's anus.
Crown Submissions on Sentence	A plea of guilty was entered at the earliest opportunity. The behavior was escalating in seriousness over time. It was fortunate that the mother noticed that something was wrong. The offences are serious, particularly given that the complainant was only 5 years of age. The offender knew that he was doing the wrong thing. The offender has shown significant remorse, particularly in confessing to activity about which no complaint had been made. The prosecutor referred the Judge to the matter of *Norman Anthony Sailor* and suggested that a prison probation order would be appropriate.

	A pre-sentence report suggested that the offender was a low to a moderate risk of re-offending.
Defence Submissions on Sentence	The offender was only 17 years of age at the time and there is some suggestion that he is intellectually impaired (the defence relied upon pre-sentence reports which were not made available for the purpose of the review). The offender had been the victim of sexual abuse himself and was suffering from post traumatic stress disorder. The offender had been disowned by part of his extended family, which has caused him great shame and anguish. The offender is genuinely remorseful. The defence described the behaviour as "pre-pubescent sex play", rather than predatory. In relation to the sodomy there was only minute penetration which did not cause any trauma. It was submitted that it was important that the offender receive sexual offender treatment and it was suggested that an intensive correction order would be of more utility than a short period of imprisonment, followed by a long period of probation. No comparables were tendered.
Sentence(s) Imposed	12 months ICO.
Summary of Sentencing Remarks	The charges are very serious. The law takes a very serious view of anybody who sexually interferes with children and almost always people who do that go to jail. The offences occurred when the offender was 17. The offender had no prior convictions of any relevance. The pre-sentence report is favourable for the offender. The offender pleaded guilty in a timely way and co-operated extensively with the investigators. If it were not for the offender's extensive co-operation, the charges in all probability could never have been brought, because they are based almost entirely upon the information that the offender volunteered to the police officers. The offender is remorseful for his conduct and ashamed of what he did. The offender has suffered also by being shamed by members of the complainant's family. The offences did not involve a predatory quality that often accompany these sorts of offences. Having regard to the offender's young age an intensive correction order is appropriate.

Case	16K
Adult/Juvenile	Juvenile
Date of Birth of Offender: Age at time of Offence	DOB: 02.06.1991: 14
Age of Complainant	15
Date of Offence(s)	15.11.2005
Date of Conviction(s)	18.05.2006
Date of Sentence(s)	18.05.2006
Nature of Offence(s)	1 count of indecent dealing with a child under the age of 16.
Prior Criminal History of Offender	Nil.
Court	Children's Court, Cairns
Summary of Offence(s)	The complainant was a 15 year old female who knew the offender from school. At 10.00p.m. on the day of the offence she was walking along Francis Street when the offender approached her and asked her for a cigarette. She continued walking along Francis Street when the offender rode his bicycle past her and as he was going past reached out and grabbed her on the bottom with his hand. He then got off his bicycle and approached the complainant. He began pulling at her skirt. He tried to lift up her shirt and he grabbed her shirt by the collar and pulled it out trying to look down the front of her top to see her breasts. At this stage she broke free and started to run away, however, the offender ran after her and caught up with her after a few metres. He then grabbed her from behind and wrapped his arms around her waist from behind and began thrusting his hips forward into the complainant's bottom. The complainant could feel that the offender had an erection. The offender continued to hold onto the complainant and touched her breasts and around her genital area on the outside of her clothing. The complainant was yelling at him to stop and a male person nearby heard the yelling and yelled out to the offender to let the girl go which he did. The child was spoken to by police and made full admissions.
Crown Submissions on Sentence	The offender has not been before the Courts before, but it is serious offending behaviour and of concern that the offender would be behaving in such a manner. In the circumstances a probation order with appropriate conditions is appropriate. No comparables were referred to. No victim impact statement was tendered.

Defence Submissions on Sentence	The offender's mother is present in Court. The offender is attending school in Grade 8. The offender's mother has a heart condition and as a result the offender is living with his grandmother. It is intended that he become a boarder at a local school. He plays sport. Probation is appropriate. It is not appropriate to record a conviction.
Sentence(s) Imposed	12 months probation with a special condition that the offender participate in any programs including the Griffith Adolescent Sexual Offenders Treatment Program or similar programs as may be required. Conviction not recorded.
Summary of Sentencing Remarks	The offender is 14 years of age and still at school. The offender has never been in trouble before. The conduct in question did not involve predatory behaviour and involved an element of childish experimentation.

Case	17W
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of Offence	30.07.1985: 20
Age of Complainant	13
Date of Offence(s)	11.05.2006
Date of Conviction(s)	31.10.2007
Date of Sentence(s)	31.10.2007
Nature of Offence(s)	Unlawful carnal knowledge.
Prior Criminal History of Offender	A criminal history was tendered to the Court. The offender had no prior history of sexual offending.
Court	District Court, Bamaga
Summary of Offence(s)	The complainant was a 13 year old girl. On the night of the offence she and a friend attended a house where people were having a party and drinking. The complainant went into a bedroom with two males and had intercourse with them. One of those persons was the offender. The offender participated in an interview on 28 June 2006 in which he said that he had been drinking for about 48 hours. The offender said that he didn't know the complainant personally but had seen her at all of the parties. The complainant had intercourse with another boy. The offender then went into the room and asked her if she wanted to have intercourse. She indicated that she did and took off her pants. The offender had intercourse with the complainant using a condom. The offender thought that she was aged about 14. The offender didn't know the age of consent.
Crown Submissions on Sentence	The offender pleaded guilty at the committal hearing on 10 January 2007. The appropriate sentence is 18 months probation and community service. It is open not to record a conviction. No comparables were referred to.
Defence Submissions on Sentence	The offender committed the offence after a very lengthy period of drinking. No force was used. Probation and community service was submitted as being appropriate. It was submitted that a conviction should not be recorded because of the consequences which ensue. No comparables were referred to.
Sentence(s) Imposed	18 months probation. 80 hours community service. No conviction recorded.
Summary of	The sentencing remarks were not provided for the purposes of

Sentencing Remarks	review.

Case	18D
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of Offence	DOB: 22.06.1966: 38
Age of Complainant	18
Date of Offence(s)	11.11.2004
Date of Conviction(s)	11.09.2006
Date of Sentence(s)	11.09.2006
Nature of Offence(s)	1 count of indecently dealing with an intellectually impaired person.
Prior Criminal History of Offender	The offender did not have a prior criminal history however he had been convicted of offences after the occurrence of this offence. His criminal history was not provided for the purpose of the review however the sentencing Judge indicated that there were no relevant entries.
Court	District Court, Cooktown
Summary of Offence(s)	The complainant was an 18 year old man who, as a result of foetal alcohol syndrome, had the mental age of an 8 year old. On the date of the offence the complainant was drinking at the house where he lived with the offender and other people. The offender got into the complainant's bed and sucked his penis. Another occupant of the house saw what was happening and told the offender to stop and he did. The complainant did not provide a statement in relation to the incident. The offender participated in a police interview on 23 November 2004 in which he admitted masturbating the complainant and sucking his penis.
Crown Submissions on Sentence	The offender pleaded guilty at an early time and cooperated with police. The offence was particularly serious because it was committed against a person with an intellectual impairment who could not protect himself. A head sentence in the range of 12 to 18 months imprisonment is appropriate. The offender's co-operation and lack of prior criminal history should be reflected in an early parole eligibility date or suspension. No comparables were referred to.
Defence Submissions on Sentence	Offender had been drinking heavily on the evening in question. No threats or force were used and the incident was an isolated one. He cooperated with police and made a full and frank confession and has pleaded guilty at an early stage. A sentence of 12 to 15 months imprisonment suspended after 4 months was appropriate. No comparables were referred to.

Sentence(s) Imposed	15 months imprisonment suspended after 5 months for 15 months.
Summary of Sentencing Remarks	The complainant was aged 18 and suffers mild to moderate intellectual impairment as a result of foetal alcohol syndrome. The offender admitted his conduct to police and pleaded guilty at an early stage. The offence was serious because it was committed on a sleeping drunken man who suffers significant intellectual deficits.

Case	19W
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of Offence	DOB: 29.09.1985: 18
Age of Complainant	61
Date of Offence(s)	13.03.2004
Date of Conviction(s)	19.09.2006
Date of Sentence(s)	19.09.2006
Nature of Offence(s)	Break and enter a dwelling house with intent to commit an indictable offence in the night time, unlawful and indecent assault.
Prior Criminal History of Offender	Nil.
Court	District Court, Thursday Island
Summary of Offence(s)	The complainant was a 61 year old female who lived alone. The complainant was employed as a domestic violence field officer in the community. The offender was well known to the complainant as the complainant was the offender's High School teacher and also a distant relation. On the evening of the offence the complainant went to bed having locked her dwelling. At approximately 6.00a.m. she was lying on her side when she felt something cold touching her buttocks and her anus. She felt as though something was trying to enter her anus. She woke up and saw the offender with his hand up her nightie and screamed. The offender pulled his hand away. The complainant told the offender to "piss off" at which point he ran away. The complainant suffered no ongoing psychological problems.
Crown Submissions on Sentence	A custodial sentence must inevitably be imposed because of the fact that the offender broke and entered an elderly lady's home with intent to have some sexual contact with her and then indecently assaulted her. A custodial sentence is inevitable notwithstanding his lack of prior history, his youth and his plea of guilty. No comparables referred to.
Defence Submissions on Sentence	The offender is ashamed of himself to the extent that he was at one point suicidal. The offender has attempted to seek some treatment, however that was not available on Thursday Island. The offender was only 18 at the time of the offence. The offender pleaded guilty by way of ex officio indictment. There was no committal hearing. The offender had consumed

	a great deal of alcohol at the time, but no longer drinks alcohol. The offender is doing a welding course at TAFE of 15 months duration. References were tendered from senior members of the St. Paul community.
Sentence(s) Imposed	12 months imprisonment to be served as an Intensive Correction Order.
Summary of Sentencing Remarks	The offence was very serious. The complainant was asleep in her own home. The complainant was 61 years of age and had been the offender's high school teacher and was a distant relation. The offence involved a gross invasion of the complainant's house and her person and was a very serious offence, particularly considering her position in the community, the offender's knowledge of her and the complainant's age. The offender was however only 18 years of age at the time and did not have any criminal history either before or after the incident in question. Despite the matter proceeding by way of an ex officio indictment the matter has taken two years to be resolved. The offender was very intoxicated at the time of the offence and is very remorseful for what has occurred. Having regard to all of the circumstances an intensive correction order is appropriate.

Case	20E
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of Offence	DOB: 22.02.1988: 18
Age of Complainant	15
Date of Offence(s)	01.05.2006 – 22.06.2006
Date of Conviction(s)	26.07.2007
Date of Sentence(s)	26.07.2007
Nature of Offence(s)	Unlawful sodomy.
Prior Criminal History of Offender	A criminal history was tendered in the proceedings but was not made available for the purpose of this review. It is clear from the sentencing remarks that the criminal history was not particularly relevant.
Court	District Court Cairns
Summary of Offence(s)	The complainant was the 15 year old cousin of the offender. The offender approached the complainant on the street and told him that he wanted to have intercourse with him and told the complainant to go to a nearby shed. The complainant went there because he was afraid. Inside the shed the offender told the complainant to pull his pants down and bend over which he did. The offender then put his penis into the complainant's anus. This caused the complainant child pain and he tried to push the offender away but the offender continued to sodomise the complainant until the complainant said "No it's painful". At this point a third person came into the shed and the incident ceased. The offender was spoken to by police on 26 June 2006 at which time he denied the offence.
Crown Submissions on Sentence	The complainant child did not have to give evidence. Having regard to his plea of guilty and the fact that there was no great age disparity, a sentence of 6 to 12 months imprisonment is appropriate. No Victim Impact Statement was available. It was submitted that a prison probation order would also be appropriate.
Defence Submissions on Sentence	The offender was 18 years of age at the time. There was no great age disparity between him and the complainant. The early plea resulted in the complainant not having to give evidence.
Sentence(s) Imposed	5 weeks imprisonment followed by 3 years probation.
Summary of	The sodomy was not a forced act, although the complainant

Sentencing Remarks	did experience some pain during it. The plea was entered at a very early time and as a result the complainant did not have to give evidence and the community has been saved the expense of a trial. The offender has been in custody (on other matters) since 18 May 2007 and will remain there until 27 August 2007. In the circumstances the appropriate sentence is an order that does not interfere with the present release date.

Case	21H
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 8.3.1976: 29
Age of Complainant	16
Date of Offence(s)	16.05.2005
Date of Conviction(s)	28.08.2006
Date of Sentence(s)	28.08.2006
Nature of Offence(s)	Rape
Prior Criminal History of Offender	A criminal history was tendered but was not provided for the purpose of the review. It is apparent from the sentencing remarks that the offender had a prior conviction for 4 counts of rape which involved the gang rape of a woman in November 1993 for which the offender was sentenced to 7 years imprisonment in July 1994.
Court	District Court, Cairns
Summary of Offence(s)	The offender was living in a house in Mareeba. The 16 year old complainant regarded the offender as a distant uncle and had known the offender since she was aged 11. The complainant was drunk. The offender was drunk and had also consumed cannabis. The 16 year old complainant went to sleep in a room with another woman. During the night, the offender took her to his room and raped her. The complainant suffered some abrasions and the rape apparently went on for many minutes despite her protests. Apart from the offender continuing the intercourse despite protest, there was no violence or threats of violence used.
Crown Submissions on Sentence	The Offender has a relevant criminal history for sexual offences against women. When interviewed by police he gave a false version, namely that the sexual intercourse had been consensual. The complainant has declined to provide a victim impact statement. The offender has pleaded guilty, although the plea was entered after committal hearing. The offender preyed on the youth and vulnerability of the 16 year old complainant who was intoxicated. The offender's prior criminal history is significant because the prior sentence for rape did not deter him from committing the present offence in similar circumstances. The appropriate starting point is a

	sentence of imprisonment of 7 years. That starting point is aggravated by the complainant's relative youth. The prosecutor referred to *Stirling* CA No. 205 of 1996, *R. v. Williams* [2002] QCA 211. The committal proceeded by way of a hand up committal and a plea was indicated shortly thereafter.
Defence Submissions on Sentence	The offender was educated to Year 10 and has worked as a station hand and in various CEDP jobs off and on since that time. The offender was not employed at the time of the offence. The offender was very drunk and affected by cannabis. The offender is very disappointed in himself for taking advantage of the complainant in the way in which he did. The matter proceeded by way of a hand up committal without cross-examination and a plea of guilty was indicated a month later. No extreme violence was used and no significant injuries were occasioned to the complainant. The appropriate penalty is 7 years imprisonment and an early parole eligibility date should be given to reflect his plea of guilty. The defence referred to *R. v. SAS* [2005] QCA 442, *R. v. M* [2003] QCA 451 and *R. v . Els; Ex Parte: Attorney-General* [2004] QCA 111.
Sentence(s) Imposed	7.5 years imprisonment with no early parole eligibilty date. 387 days of pre-sentence custody declared.
Summary of Sentencing Remarks	The offender pleaded guilty after a full handup committal. The offender committed the crime while affected by alcohol. No extreme force or violence was used but the offender did use his strength to overcome the complainant's resistance and ignored her protests. The offender's criminal history for rape is significant. The complainant did not provide a victim impact statement. The judge referred to *R v Stirling* CA No. 205 of 1996, *R v Williams* [2002] QCA 211, *R v M* [2003] QCA 451, *R v Els; Ex parte Attorney General* (Qld) [2004] QCA 111 and *R v SAS* [2005] QCA 442. There was no violence or threats of violence. The offender took advantage of a very young girl when she was drunk.

Case	22S
Adult/Juvenile	Juvenile
Date of Birth of Offender: Age at time of offence	DOB: 2.7.1990: : 13
Age of Complainant	10
Date of Offence(s)	25.02.2004
Date of Conviction(s)	
Date of Sentence(s)	27.12.2006
Nature of Offence(s)	2 counts of rape and 1 count of attempted rape.
Prior Criminal History of Offender	
Court	Children's Court, Cairns
Summary of Offence(s)	The offender was found guilty of one count of rape involving the penetration of the complainant child's genitals with his penis, one count of rape by penetration of the complainant child's mouth with his penis and one count of attempted rape by the attempted penetration of the complainant child's anus with his penis. At the relevant time, the complainant child was 10 years of age. The offender was only 13 years of age.
Crown Submissions on Sentence	The offence is serious. As the offender is a juvenile there are factors other than those contained in the *Penalties and Sentences Act* that must be taken into account in determining the sentence. Although the youth and lack of prior criminal history will be raised by the defence they must be balanced against the seriousness of the offences as well as the impact that the offence has had on the child complainant. The latter considerations should prevail over the factors in mitigation. The female complainant was only 10 years of age. There was no victim impact statement tendered. Although the offender was youthful and did not have any prior criminal history, the nature of the offending falls into a category for which detention is warranted. Strict penalties must be imposed for offences of this type. The principles of general and specific deterrence assume importance. The offender has been assessed as being of moderate to high risk of committing a further sexual offence. The prosecution submitted that a sentence of 3 years detention is warranted, referring to *R. –v- PZ* [2005] QCA 459 and *R. v. A.* [2001] QCA 542. The offender has been convicted after trial and therefore cannot be given the benefit for any plea of guilty or remorse.

Defence Submissions on Sentence	The principle in *PZ* related to a 16 year old offender, not a 13 year old offender. Similarly, the decision in *A.* dealt with a 16 year old offender and the decision in *JHA* referred to a 16 year old offender. There is a big difference between a 16 year old offender and a 13 year old offender. The offender was only 13 years of age and cannot be expected to approach the matter as maturely as an older child. The circumstances of the rapes in *PZ, A,* and *JHA* were also distinguished from the facts of the present case in that they were all much more serious. The offender has no prior history and no tendency towards delinquency. All of the indications in the material suggested he has good prospects of rehabilitation.
Sentence(s) Imposed	Count 1: 9 months detention to be served by way of a conditional release order. Counts 2 and 3: 3 years probation. Conviction recorded.
Summary of Sentencing Remarks	The offences are serious and in the case of an adult offender imprisonment for a number of years would be the proper penalty. It is also clear from judgments of the Court of Appeal that juvenille offenders aged 15 or 16 would also be subject to a significant period of actual detention. The difficulty which arises in this case is that the offending child was 13 years of age at the time of the commision of the offences. The offender has demonstrated no remorse and continues to deny having committed the offences. This has made it difficult to ascertain with any precision whether he has any feelings of remorse or insight into his offending behaviour. Notwithstanding these aspects of the matter, the offending conduct seems to be out of character and this is a point of distinction between the matter and the Court of Appeal judgements of *A* and *PZ*. Because the child did not express any remorse or display any empathy for the complainant, the judge considered that there was a possibility of further offending and, for this reason, convictions were recorded.

Case	23N
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 04.06.1987:
Age of Complainant	Not clear from material provided
Date of Offence(s)	Not clear from material provided
Date of Conviction(s	06.04.2006
Date of Sentence(s)	10.07.2006
Nature of Offence(s)	Rape, unlawful carnal knowledge (2 counts), sexual assault (1 count)
Prior Criminal History of Offender	A criminal history was tendered, but was not provided for the purpose of review. It is clear from the submissions that the offender had a relevant criminal history for sexual offences as a juvenile.
Court	District Court, Cairns
Summary of Offence(s)	The offender committed sexual offences against his young cousin when she was staying in the house of his parents. The offender was a juvenile on the date of the commission of the first offence but was an adult at the time he committed the offence of rape at the end of 2004. The matter was disclosed and an attempt was made to deal with it within the family. A family meeting was called during which the offender made an admission, apologised and cried about what he had done. A few months later he broke into a family's home on Thursday Island and committed a serious sexual assault upon a female and when her partner came to her aid, the offender seriously assaulted him.
Crown Submissions on Sentence	A pre-sentence report and psychiatric report were tendered. The offender reported "if I want something I have to have it straight away or I get angry". The increase in sexual offending by the offender is of great concern. The authors of the pre-sentence and psychiatric report both opine that the offender has attempted to minimize his offending. The offender has a problem with alcohol and marijuana. According to the authors of the pre-sentence report and psychiatric report, the offender is a high risk of re-offending while he continues to drink alcohol and smoke marijuana. A Community Justice Group supported the findings of the pre-sentence report and the psychiatric report and indicated that they do not wish the offender to return to the community due to the serious nature of his offending. The offender has pleaded guilty and is still a young man. The prosecution

	submitted a total sentence of 5 – 7 years for all of the offences. No victim impact statements were tendered. No comparables were referred to.
Defence Submissions on Sentence	The offender has had trouble adjusting to his adoption and was the subject of some abuse. The offender abuses both alcohol and marijuana. The offender is a young man and has pleaded guilty. The offender has started to accept responsibility for his behaviour. The offender wants to undertake the Sex Offenders Treatment Programme. The offender has not been in prison before and the sentence should be at the bottom of the range suggested by the Crown to reflect his youth and his plea of guilty. No comparables were tendered.
Sentence(s) Imposed	Count 1: 1 month imprisonment. Count 2: 1 month imprisonment. Count 3: 3 months imprisonment. Count 4: 4 months imprisonment. Count 5: 3 months imprisonment. Count 6: 1 month imprisonment. Count 7: 12 months imprisonment. All sentences to be served concurrently. Count 1: 3 months imprisonment. Count 2: 6 months imprisonment. Count 3(rape): 3 years imprisonment. Sentences to be served concurrently with each other and concurrently with the first 7 sentences. Count 1: 2 years imprisonment. Count 2: 2 years imprisonment Count 3: 2 years imprisonment Count 4: 12 months imprisonment Count 5: 1 month imprisonment. All sentences to be served concurrently with each other but cumulative upon the other sentences imposed above. This gave an effective sentence of 5 years imprisonment. 407 days of pre-sentence custody declared.
Summary of Sentencing Remarks	The offences were very serious. The only thing that the offender has going for him is his young age and the fact that he has pleaded guilty to the offences.

Case	24G
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 27.02.1966: 39
Age of Complainant	Unknown
Date of Offence(s)	19.06.2005
Date of Conviction(s)	8.08.2006
Date of Sentence(s)	8.08.2006
Nature of Offence(s)	Indecent assault, wilful damage
Prior Criminal History of Offender	A criminal history was tendered but was not provided for the purpose of the review. It is apparent from submissions that the offender's criminal history includes 3 convictions for assault occassioning bodily harm, 1 conviction for doing grievious bodily harm, 1 conviction for common assault and 6 convictions for breaches of domestic violence orders. The grevious bodily harm conviction resulted in a 2 year sentence of imprisonment.
Court	District Court, Cairns
Summary of Offence(s)	The offender was a 39 year old man at the time of the offence. The offender and the complainant knew each other. The complainant was at the offender's house when an argument developed between them. The offender formed the belief that the complainant had suggested to his girlfriend that she should find another man. The complainant attempted to walk away from the argument and left the room. The offender pursued her and pushed her against the wall and felt her on the vaginal area. The offender told the complainant that he wanted "a quick one" and tried to push her onto a mattress on the floor. Count 2 was a charge of common assault. (The offender was not in fact arraigned on count 2.) The offender punched the complainant causing her to fall to the floor. Count 3 (wilful damage) relates to damage to the door and other items in the premises. Someone intervened and the offender desisted.
Crown Submissions on Sentence	A 2 year sentence of imprisonment is appropriate because of the offender's criminal history and the fact that the attack only ceased when someone else intervened. No comparables were referred to.

Defence Submissions on Sentence	The offender pleaded guilty in a timely way. The sexual assault was designed to demonstrate the offender's contempt for the complainant rather than for the offender's sexual gratification. The offender was drinking heavily at the time. Care needs to be taken not to overemphasise the bad criminal history. No comparables were referred to.
Sentence(s) Imposed	12 months imprisonment, declaration for 175 days of pre-sentence custody.
Summary of Sentencing Remarks	The offender understandably took offence to the complainant speaking in derogatory terms about him to his defacto partner. The indecent assault is not something that can be taken lightly although it is clear that the offender's actions were more designed to demonstrate his contempt for the complainant for what she had said to his defacto partner rather than for the purpose of obtaining sexual gratification. While the offence is not a trivial one, all the circumstances need to be taken into account in framing the sentence. The offender has a lengthy criminal history and cannot be described as a person of good character. That criminal history includes a number of offences of violence but there are no offences of indecency.

Case	25A
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of Offence	DOB: 18.04.1986: 19
Age of Complainant	16
Date of Offence(s)	25.05.2005
Date of Conviction(s)	7.09.2006
Date of Sentence(s)	7.09.2006
Nature of Offence(s)	2 counts of sexual assault
Prior Criminal History of Offender	A criminal history was tendered on sentence but was not provided for the purpose of the review. It is apparent from the sentencing remarks that the offender has a criminal history which includes offences of violence against police officers. However, there is no suggestion that he has prior convictions for sexual offences.
Court	District Court, Cairns
Summary of Offence(s)	The two sexual assaults were committed within a few days of each other on the same young woman. The complainant was the offender's aunt although the offender was older than her. On the first occasion, the offender pushed the complainant onto her back and then got on top of her and started to kiss her on the upper chest and breasts. That incident and the second incident were described by the sentencing judge as being at the lower end of the scale of sexual assaults to come before the courts.
Crown Submissions on Sentence	The prosecutor offered to tender Court of Appeal comparables but the sentencing judge indicated that he didn't need them. No victim impact statement was tendered. The Crown submitted for a sentence of 12 months imprisonment.
Defence Submissions on Sentence	The offender was 19 years of age at the time of the offences. There was not a great age difference between him and the 16 year old female complainant. The offender was attracted to the complainant and was in fact trying to seduce her, but he desisted when she made it clear that she was not interested. A 6 – 12 month sentence of imprisonment is appropriate. The offender pleaded guilty and does not have a history for sexual offences. No comparable sentences were referred to.
Sentence(s) Imposed	10 months imprisonment. Declaration for 494 days of pre-sentence custody.
Summary of	The sexual assaults are not at the more serious end of the scale

Sentencing Remarks	but were not trivial. The fact that the second assault occurred a few days after the first assault is an aggravating feature. The appropriate sentence is 10 months imprisonment on each count to be served concurrently with each other but cumulative upon a sentence of 18 months imprisonment in relation to another indictment alleging serious assaults against police.

Case	26S
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 21.12.1976: 27
Age of Complainant	10
Date of Offence(s)	September and November 2004
Date of Conviction(s)	13.10.2006
Date of Sentence(s)	18.10.2006
Nature of Offence(s)	6 counts of indecent dealing with a child under 12
Prior Criminal History of Offender	A criminal history was tendered but was not provided for the purpose of the review. It is apparent, however, that the offender did have a criminal history for serious sexual offences committed in 1994 involving sexual assaults on women. On 07.07.94, the offender was sentenced to 11 years imprisonment. He was released on 05.07.01. After his release, he was subsequently convicted of a number of indictable offences of dishonesty and violence.
Court	District Court, Cairns
Summary of Offence(s)	On three successive nights during the month of September 2004, the offender fondled the breasts of the 10 year old complainant. On three successive nights in November 2004, the offender again indecently dealt with the complainant. On two occasions, he fondled the genital area of the complainant under her clothing and on the third occasion, fondled her breasts. The complainant was living with the offender as a result of the offender moving into her mother's home as her mother's boyfriend.
Crown Submissions on Sentence	The offender has a bad criminal history for sexual offences. The matter proceeded to trial and, on one occasion, he failed to appear, resulting in a warrant being issued for his arrest. The offences were repetitive. The complainant was a very young girl who was entitled to feel safe in her own home. Although there was no actual violence involved, the offender did put his hand across her mouth which would have been frightening. The offender was in a position of trust within the household. There was a strong need for personal deterrence and the protection of the public from the offender. No remorse was displayed by the offender. A range of 3 to 5 years imprisonment is appropriate referring to *SAQ* [2002] QCA 221 and *Yeo* [2002] QCA 383.

Defence Submissions on Sentence	The prior conviction for rape was in 1994 and he has not reoffended sexually since. A sentence of 2 to 3 years is in range. The touching was at the lower end of the scale and did not escalate to the point of penetration. At all times, the complainant's mother was only a few feet away. No comparables were referred to.
Sentence(s) Imposed	Counts 1, 2 and 3: 2.5 years imprisonment. Counts 4 and 5: 4 years imprisonment. Count 6: 3 years imprisonment. All sentences served concurrently. Declaration for 15 days of pre-sentence custody. No parole eligibility date was set.
Summary of Sentencing Remarks	The offender has not shown any compelling signs of reform since being released from prison after serving a sentence of 11 years. The offender has demonstrated no remorse for his conduct. Although excessive violence was not used, he did, in relation to the first 3 counts, put his hand over the complainant's mouth to prevent her from crying out. It is clear that the lengthy sentence of imprisonment the offender served in relation to the rape offence has provided little or nothing in the way of deterrence to the offender. The weight to be given to a plea of guilty, particularly in the case of molestation of children is significant. There was no plea of guilty in the present case and, as a result, it was appropriate that the offender be sentenced to a term of imprisonment longer than that imposed in *SAQ*.

Case	27D
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 7.1.1971: 35
Age of Complainant	13
Date of Offence(s)	14.01.2006
Date of Conviction(s)	31.10.2006
Date of Sentence(s)	31.10.2006
Nature of Offence(s)	Attempting to procure a child for unlawful carnal knowledge and a break and enter a dwelling house with intent to commit an indictable offence.
Prior Criminal History of Offender	A criminal history was tendered but was not provided for the purpose of the review. It is apparent from the submissions and sentencing remarks that the offender had an unflattering criminal history which contained convictions for sexual offences and a larger number of offences involving unlawful entry to premises. It was observed that most of the offences contained in his criminal history relate to public nuisance type offences.
Court	District Court, Cairns
Summary of Offence(s)	The offender was visiting the home of relatives. Alone in the home was a 13 year old girl. The offender asked her on a number of occasions for sex. The complainant became quite distressed and told the offender to leave the house which he eventually did. A short time later, the offender returned to the house and attempted to gain entry to the premises. Part of his body actually entered the premises, although he did not in fact gain entry to the premises. The offender desisted when confronted by a neighbour who threatened to call the police.
Crown Submissions on Sentence	The offender has a number of concerning prior convictions, including a conviction for a similar sexual offence in 1993. A sentence of imprisonment of 3 – 4 years imprisonment is appropriate referring to *R. v. David Williamson* [1996] QCA 548 and *R. v. Palmer*. No victim impact statement was tendered. The offence was serious in that the offender had already asked twice for sex before leaving and returning and attempting to break and enter the house. Having regard to the offender's history, a deterrent sentence of 3 to 4 years imprisonment is required.

Defence Submissions on Sentence	The offender was educated to Grade 12 and since that time has been on unemployment benefits doing casual work here and there. He has been an alcoholic for 14 years. He was extremely intoxicated and affected by marijuana on the day of the offence. He returned to the house to get some marijuana that he had left behind. The defence submitted a sentence of less than two years imprisonment. No comparable sentences were tendered.
Sentence(s) Imposed	18 months imprisonment. Declaration for 111 days of pre-sentence custody. Parole eligibility date set at 08.04.07
Summary of Sentencing Remarks	The offence of attempting to procure a child for unlawful carnal knowledge can't be looked at as a trivial offence because of the understandable fear and distress suffered by the child. Objectively, however, the offence is at the less serious end of the wide range of circumstances which can give rise to such an offence. The offender is entitled to credit for his co-operation with authorities and his plea of guilty. In the circumstances, the appropriate sentence is 18 months imprisonment.

Case	28H
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 24.08.1951: 49 - 54
Age of Complainant	9 to 14
Date of Offence(s)	01.01.01 - 03.11.05 (maintaining) 01.01.03 - 03.11.05 (3 counts of indecent dealing) 01.01.04 - 03.11.05 incest (2 counts) 01.06.05 - 03.11.05 incest (2 counts) 01.10.05 - 03.11.05 incest 02.11.05 incest
Date of Conviction(s)	4.12.2006
Date of Sentence(s)	4.12.2006
Nature of Offence(s)	1 count of maintaining a sexual relationship with a child, 3 counts of indecent treatment of a child under 16 with circumstances of aggravation and 6 counts of incest.
Prior Criminal History of Offender	A criminal history was tendered but was not provided for the purpose of the review. From submissions it is clear that he has no history for sexual offending.
Court	District Court, Cairns
Summary of Offence(s)	The complainant was the step-granddaughter of the offender. The complainant was aged 9-14 years during the relationship. The complainant lived with the offender from when she was 3 years of age. The sexual relationship was maintained over a period of just under 5 years. The relationship was characterised by the offender touching the complainant and having the complainant perform oral sex upon him. When the complainant turned 12, the offender commenced having sexual intercourse with her and this continued to occur once per fortnight until the time when the offending was discovered. The complainant's grandmother walked in on the offender having sexual intercourse with the complainant. The offender ran away and was eventually located by police and, when interviewed, made full admissions. The offender made admissions of instances that were not complained of by the complainant.
Crown Submissions on Sentence	The relationship went on for almost 5 years during which time the offender groomed and corrupted the complainant. The offender admitted in his interview that he knew that what he was doing was wrong. The offender was in a position of trust throughout the whole period of time that he maintained the relationship with the complainant. The plea of guilty must be looked at in light of the fact that he had been caught red-handed by the complainant's grandmother. The offender should receive full credit for his admissions, particularly in relation to those offences which the complainant did not

	describe and for his early plea of guilty. This needs to be tempered by his claims that the complainant initiated most, if not all, of the sexual activity. No victim impact statement was tendered. The prosecution referred to the decision of *R v BAO* [2004] QCA 445 in support of a sentence of 9 years imprisonment.
Defence Submissions on Sentence	The offender has a good work history. The offender has 3 adult daughters of his own. The offender has significant health problems including asthma, gout, high blood pressure and angina for which he takes medication. He has a minor and irrelevant criminal history. The offender has used his time on remand constructively. The offender was sexually abused by a 16 year old girl between the ages of 9 and 15. When the offender was 14 years of age, he was raped by a gay man and, on another occasion, the gay man had sex with him again. The sexual abuse has resulted in him having problems with his personal and sexual relationships. Prior to these matters, he has never had to confront those problems but is looking forward to doing the Sexual Offenders Treatment Program. The offender is remorseful and his statements that the complainant initiated the contact must be looked at in light of his own skewed perception of sexual boundaries caused by his childhood sexual abuse.
Sentence(s) Imposed	Count 1: 8 years imprisonment Counts 2, 3 and 5: 18 months imprisonment Count 4, 6, 7, 8, 9 and 10: 3 years imprisonment. All sentences served concurrently. No early parole eligibility date set.
Summary of Sentencing Remarks	At all material times, the complainant child was living with the offender and his wife and he had the child under his care. There is no suggestion of violence by the offender but the offender was involved in corrupting the child for his own sexual gratification. The offender's criminal history is of marginal relevance. The offender is entitled to significant credit for his co-operation with the police and authorities and his plea of guilty. A lot of what was charged against him is attributable to his own frank admissions to the police.

Case	29S
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	26.07.1968: 37
Age of Complainant	7
Date of Offence(s)	01.03.2006 – 25.03.2006 (indecent dealing) 02.03.2006 (rape) 02.03.2006 (indecent dealing) 07.03.2006 (rape) 07.03.2006 (indecent dealing) 07.03.2006 (indecent dealing)
Date of Conviction(s)	26.02.2007
Date of Sentence(s)	26.02.2007
Nature of Offence(s)	Indecent dealing with a girl under 12 (4 counts) Rape (2 counts)
Prior Criminal History of Offender	A criminal history was tendered, however, it was not provided for the purpose of the review. It is clear from the sentencing remarks that while the offender did not have a criminal history for sexual offences, he was not otherwise a person of good character.
Court	District Court, Cairns
Summary of Offence(s)	The offender was in a de facto relationship with the complainant's mother. The offender took photographs of himself and the complainant's mother engaging in sexual intercourse and showed at least one of these photographs to the complainant child. On 2 March the offender had the complainant hold his penis and place her mouth over the end of it while he took a photograph. Similar events occurred on 7 March (count 6) and on that occasion he also had the complainant expose her vaginal area with her own fingers so that he could take a photograph.
Crown Submissions on Sentence	A victim impact statement was tendered. The taking of photographs was degrading. The offender suggested that the complainant had initiated the behaviour. The offender made full admissions. A sentence of five years imprisonment is appropriate.
Defence Submissions on Sentence	The offender has a good work history. The photographs were posed. The defence referred to *R. v. N* [2006] QCA 476. Two years imprisonment appropriate.
Sentence(s) Imposed	Counts 2 and 4 (rape) 3½ years; counts 1, 3, 5 and 6 (indecent dealing), 6 months imprisonment. Declaration for 328 days of pre-sentence custody. Parole eligibility date set at 26 November 2007 (one half of the sentence).
Summary of	While it was not alleged that the complainant was in the

Sentencing Remarks	offender's care, it was the relationship which the offender had with the complainant's mother that gave him the opportunity to be alone with the complainant and commit the offences. While the 2 offences of rape were serious, it seems that while there was an element of sexual gratification, the immediate purpose was the posing for the photographs. The offending occurred twice which was an aggravating feature. The offender has a good work history and was entitled to credit for the fact that he made admissions to the police when interviewed and pleaded guilty.

Case	30M
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 15.05.1972: 32
Age of Complainant	12
Date of Offence(s)	9.6.2004, 15.6.2004
Date of Conviction(s)	2.03.2007
Date of Sentence(s)	2.03.2007
Nature of Offence(s)	Indecent dealing with a child under 16. Indecent dealing with a child under 12.
Prior Criminal History of Offender	A criminal history was tendered at sentence but was not provided for the purpose of the review. It is apparent from the submissions that the offender has no history of sexual offences.
Court	District Court, Cairns,
Summary of Offence(s)	The offences involved 2 girls who were related to the offender. In relation to count 1 the complainant child was sleeping at the house where the offender was living. The offender reached over the top of another person and touched her breasts. The complainant child told the offender that she was going to tell her parents. The offender laughed and said "Why don't you go and tell them then". A couple of days later the other complainant child was sleeping at the residence. She awoke to feel the offender's hand down her pants. She felt the offender's fingers on the inside of her underpants touching her on the outside of her vagina. She immediately made a complaint to her mother.
Crown Submissions on Sentence	Both complainant children were very young and vulnerable. They were asleep at a family home. The offences involved a significant breach of trust. The appropriate penalty is a sentence of imprisonment of 18 months to 2½ years. Credit should be given for his plea of guilty which was a timely one and had the result of the children not giving evidence. No comparable sentences were tendered.
Defence Submissions on Sentence	The offender is an insulin dependent diabetic. He was drinking heavily at the time and had not taken his medication. He has no history of similar offending and is ashamed of himself. The appropriate sentence is 18 months imprisonment partially suspended. No comparables were referred to.
Sentence(s) Imposed	Count 1: 12 months imprisonment Count 2: 18 months imprisonment

	Parole eligibility date set at 24 September 2007 68 days of pre-sentence custody declared.
Summary of Sentencing Remarks	The offender was in a family relationship with the complainants and was a senior member of their family. Children are entitled to look to people in his position for protection not molestation. The offender has a lengthy criminal history but there are no offences of similar nature. Although there were two incidents involving two complainants, the second incident occurred 6 days after the first, so all offending behaviour occurred over a short period of time.

Case	31C
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 01.10.1977: 28
Age of Complainant	22
Date of Offence(s)	02.09.2006
Date of Conviction(s)	03.09.2007
Date of Sentence(s)	03.09.2007
Nature of Offence(s)	Indecent assault
Prior Criminal History of Offender	A criminal history was tendered, however, it was not provided for the purpose of the review. It is apparent from submissions, however, that the offender did not have any history of sexual offences.
Court	District Court, Cairns
Summary of Offence(s)	The complainant was living with her de facto husband and children in their residence. Also living in the house was the offender who was the complainant's cousin. On the night of the offence, the complainant had been drinking and became quite drunk. When she woke up in the morning she noticed that her pants had been removed and her genitals felt "funny". At this point, the offender confessed to her that he had "tongued" her.
Crown Submissions on Sentence	There were 93 days of pre-sentence custody to be declared. The complainant was very distressed and provided a Victim Impact Statement which was tendered. The matter proceeded by way of a hand up committal and an early plea of guilty. The offence was opportunistic. It occurred in the context of both parties being severely affected by liquor. But for the offender's confession to the complainant, the offence would probably never had been revealed. In the circumstances, a sentence that reflects the time served is appropriate. No comparables referred to.
Defence Submissions on Sentence	The defence agreed with the Crown. No comparables were referred to.
Sentence(s) Imposed	9 months imprisonment suspended after 93 days. 93 days of pre-sentence custody declared.

Summary of Sentencing Remarks	After a night on which both the complainant and the offender and others had been drinking heavily, the offender committed the sexual assault upon the complainant while she was asleep. The offence was opportunistic. But for the offender's confession to the complainant, the offence would never have come to light. The offender pleaded guilty at committal and was committed for sentence. The appropriate sentence is 9 months imprisonment suspended after 93 days.

Case	32M
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 3.10.1961: 44-45
Age of Complainant	11 – 12
Date of Offence(s)	Counts 1 - 4: September – November 2005 Counts 5 - 8: September/November 2006 Counts 9 – 11
Date of Conviction(s)	7.09.2007
Date of Sentence(s)	7.09.2007
Nature of Offence(s)	Counts 1 - 8 – indecent dealing with a child (under 12 and under 16) Counts 9 -11 - rape.
Prior Criminal History of Offender	A criminal history was tendered but was not provided for the purpose of the review. It is apparent from the sentencing remarks, however, that while the offender did have a criminal history for offences of violence, there were no prior convictions for sexual offences.
Court	District Court, Cairns
Summary of Offence(s)	Counts 1 to 4 occurred during October 2005 at Murray Island when the complainant child was 11 years of age. The complainant child was the daughter of the offender's de facto partner. Counts 1 and 2 involved touching the complainant's breasts. Counts 3 and 4 involved touching her on the vagina while she was changing clothes. The offender moved away to Edmonton in order to get away from the temptation of having the child close by, however, he was followed by the complainant's mother who brought the complainant child with her in January 2006. Sexual dealing with the child did not resume until October of 2006. Counts 5 and 6 involved the offender fondling the complainant's breasts. Counts 7 and 8 involved him touching and fondling her genitals. By this time the child had turned 12. Count 9 involved sexual intercourse which was not accompanied by any significant violence. Count 10 involved the offender inserting his fingers into the complainant's vagina. Count 11 involved the offender picking up the complainant as she slept and taking her into the kitchen where he asked her to undress. She protested. The offender removed her clothing and placed her on the kitchen table, put his hands over her eyes and mouth and had sexual intercourse with her. The child offered little resistance by reason of fear. No gratuitous physical violence was used.

Crown Submissions on Sentence	The prosecutor referred to the cases of *R. v. Abraham; Ex Parte: Attorney-General* C.A. 216 and C.A. 232 of 1992, *R. v. Fogarty* C.A. 418 of 1996, *R. v. F.* [2001] QCA 416 and *R. v. Ryan* [2003] C.A. 71. A head sentence of 8 years imprisonment was submitted. No victim impact statement was tendered.
Defence Submissions on Sentence	The offender admits that he took advantage of a vulnerable child. The defence does not accept that he threatened to kill the complainant, her mother and brother if she told anyone (which had been alleged. That issue was ultimately not pursued by the Crown). The offender was born and raised in Murray Island and trained as a teacher. He worked as a teacher for 14 years. In 1992 he completed a Diploma of Education at the James Cook University, but as a result of a conviction for manslaughter he could not pursue that career path any further. The offender served 9 months imprisonment for manslaughter before being released from prison. He re-trained, doing a TAFE course in welfare in 1999 and returned to Murray Island where he worked mainly in the CEDP Programme. He is in a de facto relationship with a woman who continues to support him. He should be given credit for his plea of guilty and in the circumstances an earlier than usual recommendation for parole at the 2 ½ year point is appropriate.
Sentence(s) Imposed	Effective head sentence of 8 years imprisonment.
Summary of Sentencing Remarks	The offender has a criminal history including offences for violence but no criminal history for sexual offences. In his favour, the offender appreciated that what he was doing was wrong and made an attempt to separate himself from the child after the relatively minor acts of indecency on Murray Island and he resisted the temptation to renew the relationship with the child for a period of time after the child's mother brought the child to Edmonton. The offender is entitled to credit for his plea of guilty and the admissions he made to the police when questioned. These saved the complainant further significant trauma.

Case	33A
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 21.06.1975: 29
Age of Complainant	7
Date of Offence(s)	12.06.05
Date of Conviction(s)	5.02.2007
Date of Sentence(s)	26.09.2007
Nature of Offence(s)	Rape
Prior Criminal History of Offender	The offender has a significant criminal history including an offence of rape in 1995 and an offence of unlawful wounding in 1995 for which he served lengthy custodial sentences.
Court	District Court, Cairns
Summary of Offence(s)	The complainant was the 7 year old daughter of a woman who had been in a de facto relationship with the offender and continued to have contact with him after the relationship ended. On the night in question, the complainant's mother had to accompany a friend to hospital after she injured herself in the course of a drinking session with the complainant's mother. Upon her return from the hospital, a complaint was made by the complainant that the offender had digitally penetrated her and had asked her to kiss his penis. The offender pleaded guilty but subsequently sought to withdraw his plea. His application in this regard was unsuccessful.
Crown Submissions on Sentence	A plea of guilty was entered in a timely way. The offences were brief and opportunistic. The prosecution submitted for a sentence of between 5 and 6 years referring to *Armstrong* [2006] QCA 158; *Libke* [2006] QCA 242. No victim impact statement was tendered.
Defence Submissions on Sentence	The offender's plea of guilty saved the necessity for the complainant to give evidence and saved the community the cost of a trial. There were no threats or significant violence involved. The offender was subjected to sexual abuse as a child. The appropriate starting point is a sentence of 4 years imprisonment. No comparables tendered.
Sentence(s) Imposed	5 years imprisonment, declaration for 233 days of pre-sentence custody.
Summary of Sentencing	The offender went to the home of the complainant during her mother's absence and told the 7 year complainant to get on the

Remarks	bed. He put his hands down the front of her shorts, touched her on the vagina and inserted his finger into her vagina. Shortly thereafter, the offender took the complainant's hand and placed it on his penis and then forced her head onto his penis so that her mouth touched it. The latter conduct although not charged is an aggravating feature of the digital penetration. There was a significant breach of trust involved. The offender's prior convictions are relevant particularly his conviction for sexual offences including rape on 1 March 1996 for which he was sentenced to 8 years imprisonment. The offender was likely to have been on parole at the time that he committed the present offences. Having regard to his prior criminal history he cannot be given any credit for prior good character. The plea of guilty was entered in a timely way and this saved the need for the child to give evidence. The plea of guilty is not indicative of remorse. The head sentence will be discounted by 1 year to reflect his plea of guilty. The offender was a victim of significant sexual abuse himself as a child. While this is tragic, it really is of little relevance in determining the appropriate sentence. No early recommendation for parole was made.

Note: The offender seems to been given significant benefit of his guilty plea despite his attempts to withdraw that plea. On the other hand, the uncharged act of forcing the complainant's head onto his penis should not have been taken into account against him (see *R v Dales* (1995) 80 A CrimR 50).

Case	34C
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 24.9.1984: 21
Age of Complainant	
Date of Offence(s)	17 August 2006 and 20 August 2006
Date of Conviction(s)	28.09.2007
Date of Sentence(s)	28.09.2007
Nature of Offence(s)	1 count of sexual assault. 1 count of assault occasioning bodily harm whilst armed.
Prior Criminal History of Offender	A criminal history was tendered on sentence but was not provided for the purpose of the review. The sentencing remarks reveal that the offender's only relevant prior conviction was a conviction for breaching a domestic violence order on 19 March 2006.
Court	District Court, Cairns
Summary of Offence(s)	On 17 August 2006 following consensual sexual intercourse, the offender became jealous and angry and accused the complainant of being unfaithful to him. While he was angry he punched the complainant twice, once in the abdomen and once on the vagina. On 20 August after the complainant and the offender had been drinking the complainant called the offender a "mother fucker". For cultural reasons, this amounted to significant provocation and he hit his wife a number of times with a broom. A plea of guilty was entered on the count relating to the second incident on the basis that the degree of violence used in retaliation was out of proportion to the provocation.
Crown Submissions on Sentence	No victim impact statement was tendered. The sexual assault was wholly unprovoked and was degrading offending. Ordinarily a sentence of 12 to 15 months would be an appropriate sentence. The offender's history of domestic violence suggests that specific deterrence is important. Having regard to the fact that the offender has served 393 days in pre-sentence custody it would be appropriate to order a term of imprisonment of 393 days. No comparables were tendered.
Defence Submissions on Sentence	The offender is a young man and has pleaded guilty at an early stage. There was significant provocation given to the offender by the complainant, however, his reaction was out of proportion to the provocation offered to him. An employer's

	reference was tendered. He is no longer in a relationship with the complainant.
Sentence(s) Imposed	393 days imprisonment. 393 days of pre-sentence custody declared.
Summary of Sentencing Remarks	The offender was aged 21 at the time of the offences and only has one relevant prior conviction for breaching a domestic violence order. The offender works on the CDEP Scheme where he is highly regarded. The two indictable offences constitute breaches of the domestic violence order. In all of the circumstances, the amount of time spent in pre-sentence custody represents an appropriate penalty.

Case	35B
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 25.2.1958: 48
Age of Complainant	5
Date of Offence(s)	27.01.2007
Date of Conviction(s)	14.11.2007
Date of Sentence(s)	14.11.2007
Nature of Offence(s)	2 counts of indecently dealing with a child under 12.
Prior Criminal History of Offender	A criminal history was tendered in the proceedings, but was not provided for the purpose of the review. It is apparent from the submissions that the offender did not have prior convictions for sexual offences.
Court	District Court, Cairns
Summary of Offence(s)	The complainant and the offender were staying at the residence of a mutual acquaintance. The complainant was a 5 year old child. While the complainant was sleeping, the offender rubbed her vagina. The complainant woke up. The offender then licked her vagina.
Crown Submissions on Sentence	The offender was confronted by the complainant's parents and denied touching the complainant. The police were called and they interviewed the offender. The offender made admissions. The offender was remanded in custody. There was significant pre-sentence custody. A victim impact statement was tendered. The prosecutor referred to *R. v. MAO* [2006] QCA 99. The appropriate head sentence is a sentence of 1 – 2 years imprisonment. The offender co-operated with police and made admissions. The matter proceeded by way of a full hand up committal and he pleaded guilty in a timely way. The offender has limited criminal history. It was however a very predatory attack against an extremely young and defenseless child. Issues of general deterrence loom large. Because of the fact that the offender has served 291 days imprisonment the prosecution conceded that he could be released from prison immediately.

Defence Submissions on Sentence	The offender was educated to Grade 9 and has been in constant employment since leaving school. He has not been in trouble for over 20 years. He co-operated entirely with the authorities and is deeply remorseful. He has no history of sexual offending. As he has already served almost ten months imprisonment. A sentence of imprisonment suspended after 10 months is appropriate.
Sentence(s) Imposed	18 months imprisonment suspended after 291 days for 2 years. Declaration for 291 days of pre-sentence custody.
Summary of Sentencing Remarks	The offender had the opportunity to commit the offence because he was welcomed into the home at which the complainant was visiting. The offender must be given credit for his plea of guilty and his immediate confession to police. The judge relied upon the decision in *R v MAO; Ex Parte Attorney-General* [2006] QCA 99 which was said to be remarkably similar. Having regard to the 291 days of pre-sentence custody served, the appropriate sentence is a sentence of 18 months imprisonment suspended after 291 days.

Case	36B
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 01.01.1983: 21-22
Age of Complainant	13
Date of Offence(s)	17.01.04 - 18.01.05; and 17.01.05
Date of Conviction(s)	30.10.2007
Date of Sentence(s)	30.10.2007
Nature of Offence(s)	Unlawful sodomy and indecent dealing with a child under the age of 16 years.
Prior Criminal History of Offender	The offender has a criminal history which was tendered on sentence. He did not have any history of sexual offences.
Court	District Court, Thursday Island
Summary of Offence(s)	The offender was 22 years of age at the time of the offences. The complainant child was 13 years of age, however, the offender did not know how old the complainant was. For the purpose of the sentence, the Crown accepted that the complainant child initiated the sexual contact with the offender, after unsuccessfully trying to initiate similar activity with another person. The offender went with the 13 year old complainant to a secluded place and permitted the complainant to suck his penis. The offender then sodomised the complainant child and, soon after, the complainant child sucked his penis again. In March 2005, the offender spoke to police and made admissions. The matter proceeded by way of a full hand up committal and a plea of guilty was notified on 24 March 2006. There was no explanation offered as to why the matter then took until 30 October 2007 to be resolved.
Crown Submissions on Sentence	The offender co-operated fully with the police and entered a timely plea. The delay in dealing with the matter had shown that the offender has rehabilitated himself. Although the complainant was the instigator, the complainant was still a child and the law is there to protect complainant children from themselves. The prosecutor submitted for a community based order and community service. No comparables were referred to by the prosecution.

Defence Submissions on Sentence	On behalf of the offender it was submitted that the complainant had consistently importuned the offender for sex before the offender finally gave in. There was no corruption of the complainant who was sexually experienced and the initiator of the conduct. The offender is in a de facto relationship, had three children aged between 8 months and 5 years old. The offender co-operated fully with the police. The offender is active within a church community and does volunteer work. The offender is illiterate. The offender is remorseful. No comparables were referred to.
Sentence(s) Imposed	2 years probation and 120 hours community service. Conviction not recorded.
Summary of Sentencing Remarks	The sentencing remarks were not provided.

Case	37M
Adult/Juvenile	Juvenile
Date of Birth of Offender: Age at time of offence	DOB: 20.11.1990: 16
Age of Complainant	33
Date of Offence(s)	13.04.2007
Date of Conviction(s)	30.10.2007
Date of Sentence(s)	30.10.2007
Nature of Offence(s)	Enter a dwelling house with intent to commit an indictable offence in the night time, indecent assault.
Prior Criminal History of Offender	A criminal history was tendered, however, it was not provided for the purpose of the review. It is clear from submissions however that the offender had a prior conviction for an offence constituted by him asking an 8 year old boy to suck his penis.
Court	District Court, Thursday Island
Summary of Offence(s)	The complainant was a 33 year old female asleep in the bedroom of her residence. The offender entered the residence through an open door and touched her on the lower stomach area. The complainant recalls smelling a strong odor of alcohol. The offender admitted his guilt to police. There were three days of pre-sentence custody.
Crown Submissions on Sentence	The three days spent in custody would have served as a salutary lesson to the offender. The offender has been undertaking a programme of probation and community service and is doing well. A further period of supervision is appropriate. The community corrections officer reported that the offender had finished his community service and indicated that there were appropriate sexual behaviour courses available. No comparable sentences were tendered.
Defence Submissions on Sentence	The offender was very drunk and "stoned" at the time of the incident, but has since apologised to the complainant for his behaviour. Probation is appropriate. No comparables were referred to.
Sentence(s) Imposed	12 months probation. No conviction recorded. 50 hours community service.
Summary of Sentencing Remarks	These were not provided.

Case	38G
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 21.02.1983: 23
Age of Complainant	13
Date of Offence(s)	11.04.2006
Date of Conviction(s)	30.10.2007
Date of Sentence(s)	30.10.2007
Nature of Offence(s)	Attempted unlawful carnal knowledge of a girl under the age of 16 years.
Prior Criminal History of Offender	A criminal history was tendered, but was not provided for the purpose of the review. It is clear from the submissions however that he had no history for sexual offences.
Court	District Court, Thursday Island
Summary of Offence(s)	The complainant was a 13 year old girl. On the night of the offence she and a friend attended a house where a group of boys, including the offender were having a party and drinking. The complainant had sexual intercourse with two other boys. The offender went into the bedroom and asked the complainant if she wanted to have sex and she said that she did. Because of his state of intoxication he was unable to maintain an erection.
Crown Submissions on Sentence	The offender particpated in a record of interview with police in which he admitted being in the bedroom but did not admit to actually having had sexual intercourse with the complainant. When the charge was amended to attempted unlawful carnal knowledge, he immediately pleaded guilty and the complainant child did not have to give evidence. There was no real explanation given for the delay in having the matter dealt with. His criminal history, while not good, relates in the main to property offences. Notwithstanding the age discrepancy of nine years between offender and complainant, the prosecution submitted for a non custodial penalty involving a probation and community service. No comparables were tendered.
Defence Submissions on Sentence	The Offender was very drunk when the incident happened. He did not really know who the complainant was. The complainant requested that the offender have sexual intercourse with her but he could not maintain an erection. He is working in a full time job with the Council and supports two children of a prior relationship.
Sentence(s)	18 months probation. No conviction recorded.

Imposed	
Summary of Sentencing Remarks	The sentencing remarks were not provided.

Case	39M
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 19.01.1982: 22
Age of Complainant	41
Date of Offence(s)	19.04.2004
Date of Conviction(s)	2.02.2006
Date of Sentence(s)	2.02.2006
Nature of Offence(s)	One count of rape and one count of dangerous driving causing death and grievous bodily harm whilst adversely affected by an intoxicating substance. (Note: this review is not concerned with the sentence imposed in relation to the charge of dangerous driving.)
Prior Criminal History of Offender	A criminal history was tendered but this was not provided for the review and so the full extent of his criminal history is not apparent from the material. It is clear however that the offender did have prior convictions for both traffic and criminal matters and had been sentenced to terms of imprisonment prior to the offences in question.
Court	District Court, Cairns
Summary of Offence(s)	The complainant was a 41 year old female of frail build who was blind in one eye and partially blind in the other. On the afternoon of the offence she had been drinking with friends when she went and sat down in a poorly lit area outside commercial premises. While sitting there the offender asked her for sex. When she said "no" the offender grabbed her by the hand and pulled her into the dark narrow alley beside the store. He then forced her onto the ground and had sex with her. While he was doing this, the complainant continued to resist and said "no". She could feel pain in her stomach. The offender then jumped off the complainant and ran away. The complainant immediately made a complaint and was taken to the Coen Hospital and examined. On 21 April 2004 police attended and spoke to the offender who admitted having sex with the complainant but on legal advice he declined to make any further comment.
Crown Submissions on Sentence	The plea of guilty was a late plea, having been indicated the day before his trial was due to start. The complainant was cross-examined at the committal where it was put to her several times that she was lying and that the sex had been consensual. She was vulnerable as she was almost blind and impaired by alcohol at the time of the rape. The Crown

	submitted for a sentence of 5 years imprisonment without any earlier suspension or parole recommendation. Referred to *R v M* CA 240 of 2003; *R v Heal* CA 167 of 2001. Victim impact statement tendered.
Defence Submissions on Sentence	The plea of guilty was entered late because the offender was afraid of the consequences. His plea had saved the complainant giving evidence at the trial and the community the cost of a trial. The offender was a very young man who had been drinking at the time of the offence. Gratuitous violence was not used. A sentence of 5 years imprisonment is the appropriate sentence. The offender had used his time in pre-sentence custody constructively and had matured.
Sentence(s) Imposed	5 years imprisonment.
Summary of Sentencing Remarks	The offender raped an older woman who was drunk and visually impaired. Excessive violence was not used. The complainant's Victim Impact Statement revealed that she had suffered physically and emotionally as a result of the offence. A plea of guilty was entered at a late stage after the complainant had been cross-examined and accused of lying.

Case	40Y
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 19.12.1978: 25 - 26
Age of Complainant	13
Date of Offence(s)	Between 31.10.2004 and 1.2.2005.
Date of Conviction(s)	6.02.2006
Date of Sentence(s)	6.02.2006
Nature of Offence(s)	Unlawful carnal knowledge. (A number offences of dishonesty and motor vehicle offences were also dealt with).
Prior Criminal History of Offender	The offender has a criminal history however this was not provided with the material. It does not appear that he had any relevant criminal history.
Court	District Court, Cairns
Summary of Offence(s)	The complainant child went to the hospital clinic complaining of pains in the abdomen. It was revealed that she had contracted Chlamydia and Gonorrhea. The complainant child disclosed that she had had unprotected sexual intercourse with the offender on three separate occasions while she was living in the same house as the offender. It was apparent that the sexual intercourse was consensual. The offender was interviewed on 22 February 2005 and made full admissions.
Crown Submissions on Sentence	The offender cooperated with police. The matter proceeded by way of hand up committal without cross-examination and the plea was indicated at an early stage. An aggravating feature was the age difference between the complainant and the offender but given his cooperation with police, his involvement in a community justice group meeting and his early plea, it would, but for the other matters that he was being dealt with, be appropriate to deal with the matter by way of probation and community service. Because of the other matters, however, it is inappropriate to deal with the offender in this way and a sentence of up to 6 months imprisonment is appropriate. No comparatives referred to.

Defence Submissions on Sentence	On behalf of the offender it was submitted that he had apologised to the complainant at a community justice meeting. He had confessed to the police. No actual penalty was submitted on behalf of the offender in respect of this offence, however it was suggested that the total sentence be 25 months imprisonment. This related to all the offences. No comparatives referred to.
Sentence(s) Imposed	6 months imprisonment.
Summary of Sentencing Remarks	The offender knowingly had sexual intercourse with a 13 year old girl in circumstances in which he knew that it was wrong and as a result of which the complainant contracted a sexually transmitted disease. The sexual intercourse was consensual. There was no suggestion of any force or threats . The offender was twice the complainant's age. The offender had voluntarily attended the community justice group meeting and apologised to the complainant. Had the unlawful carnal knowledge charge been dealt with in isolation it is likely that a non-custodial sentence would have been imposed. (The overall sentence imposed was a sentence of 25 months imprisonment with a declaration for 329 days pre-sentence custody.)

Case	41M
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 27.02.1975: 29
Age of Complainant	13
Date of Offence(s)	16.01.2005
Date of Conviction(s)	7.02.2006
Date of Sentence(s)	7.02.2006
Nature of Offence(s)	Unlawfully and indecently dealing with a child under the age of 16 years.
Prior Criminal History of Offender	The offender has a criminal history which was tendered. This was not provided with the material. It would appear, however, that the criminal history was limited and irrelevant.
Court	District Court, Cairns
Summary of Offence(s)	The complainant was the 13 year old cousin of the offender. On 16 January 2005 the complainant was at the offender's family property. The complainant was alone with the offender in a shed when he approached her from behind, touched her breasts and kissed her on the neck. The offender then pulled the complainant's shorts down and placed his erect penis against the complainant's vagina for between 1 and 2 minutes after which time the complainant pulled away and said "no, no that's it". The complainant told her father about what had happened the following day which resulted in a confrontation with the offender. On the 18th January 2005 a complaint was made to Police in Innisfail. On 23 March 2005 the offender was interviewed and made admissions.
Crown Submissions on Sentence	There was a significant age gap between the offender and the complainant. The offender was in a position of some trust in relation to the complainant. Once the offender realised that the complainant was not a willing participant he desisted. He pleaded guilty at the committal. While the prosecutor did not suggest any particular sentence, he did refer to the principle in *Pham* [1996] QCA 003 and submitted that there was nothing exceptional about the case that warranted a non-custodial sentence being imposed.
Defence Submissions on Sentence	The offender was remorseful and apologised the following day to the complainant and her family. The offender has been fully cooperative with the authorities by participating in a record of interview in which he confessed, and by entering a plea of guilty at the committal hearing. The offender was intoxicated

	by both alcohol and marijuana at the time of the offence and he was also taking a higher dose of the antidepressant Zoloft than he should have been. The offender is engaged in the family business making didgeridoos. The Offender has been assessed by the Department of Corrective Services for court purposes and is deemed suitable for a community based order. The offender is a very immature and a socially inept person who will find prison life difficult. A sentence of 4 months imprisonment followed by 2 years probation with special conditions is appropriate. No comparatives referred to.
Sentence(s) Imposed	4 months imprisonment followed by 2 years probation with a special condition that the offender undergo medical psychological or psychiatric treatment and/or counselling as directed by his community corrections officer.
Summary of Sentencing Remarks	The offender was 30 years of age (actually 29) at the time of the offence) and the complainant was only 13 years of age. The offender knew how old the complainant was and knew that it was wrong for him to touch her in a sexual way. The offender did not entice the complainant outside of the house with a view to sexually assaulting her. The offence was an opportunistic one. The offender stopped as soon as the complainant pushed him away and said that she did not want to go further. The offender's actions in placing his penis against her vagina put the matter in the middle range of seriousness. There was no relevant criminal history and the offender pleaded guilty at an early stage and cooperated fully with police. The offender had emotional and psychological issues and was intoxicated at the time of the offence.

Case	42S and 43K
Adult/Juvenile	Juveniles
Date of Birth of Offender: Age at time of offence	S: DOB: 26.02.1989: 15 K: DOB: 04.07.1991: 13
Age of Complainant	16
Date of Offence(s)	11.11.2004
Date of Conviction(s)	14.10.2005
Date of Sentence(s)	S: 17.02.06 K: 23.02.06
Nature of Offence(s)	2 counts of rape
Prior Criminal History of Offender	S: A criminal history was tendered but was not provided for the purpose of the review. It is clear from the sentencing remarks that S has a shocking criminal history for offences of dishonesty and violence, although he had no history for sexual offending. K: A criminal history was tendered but was not provided for the purpose of the review. It is apparent from the sentencing remarks that K has only a minor criminal history in relation to possession of tainted property. K was on a good behaviour order at the time the rape offences were committed.
Court	Children's Court, Cairns
Summary of Offence(s)	On 11 November 2004, the offenders had sexual intercourse with the unconscious complainant. The complainant's friends chased the offenders out of the room but they went back in again and had sexual intercourse with her again. Other boys were also involved. On the second occasion, the offender, K, held the door closed while the offender, S, raped the complainant. On behalf of K, it was conceded that K did in fact have sexual intercourse with the complainant on the second occasion as well.
Crown Submissions on Sentence	S: S was 15 years of age at the time of the offence. He was 16 at the time of sentence. S was arrested on Saturday, 13 November. He declined to answer questions. His matter proceeded by way of a full handup committal on 31.05.05 and he was arraigned and pleaded guilty on 14.10.05. S participated in a successful community conference with the complainant. The complainant sustained some minor bruising and injuries. Of significance is the fact that S committed another rape after being chased away by the complainant's friends during the first rape. The prosecutor referred to the matter of *PZ*. S pleaded guilty, did not use violence, was

	remorseful and confessed to having had intercourse with the complainant on the first occasion which provided the only evidence of that rape. The rapes were committed in the presence of the complainant's peer group and that was extremely distressing for the complainant. The Crown noted that S had been the subject of a number of supervised orders and his performance under those orders has been variable. K: K was 13 years of age. S has not accepted repsonsiblity for his offending behaviour. Detention of up to 2 ½ years appropriate having regard to his age and lack of criminal history.
Defence Submissions on Sentence	S: S is in danger of becoming institutionalised. S has been in custody for a variety of reasons from 13.11.04 to 17.02.06 bar a period of approximately 6 weeks. S has a paint sniffing and alcohol abuse problem and paint sniffing played a part in the offences. S is remorseful for his behaviour. Before he went into custody, he apologised to the complainant at an early stage and again in the community conference. The fact that he committed the first rape and then returned after being chased off to commit the second rape is an aggravating feature as is his extensive history. His complete lack of successful participation in supervised orders also complicates the matter. His confession and pleas of guilty have facilitated the prosecution and prevented the complainant from suffering the trauma of giving evidence. The offender was not targeting a child; in fact, the complainant was older than the offenders. K: A probation order is appropriate notwithstanding the decision in *R v PZ*. The circumstances that warrant departure from the range discussed in *PZ* are K's young age at the time he committed the offence and at the time of sentence, his remorse and the fact that the offences were committed when he was intoxicated by alcohol and paint and was in company of two older boys. K was under the influence of S and it was S who formulated the plan to rape the complainant. There is support for the submission that K was under the influence of the older boys in the Community Justice Group report and the report of the psychologist. In addition, K apparently has a low intellectual ability. The defence referred to and distinguished the decisions in *R v S*, *R v PZ* and *R v MAC*. K' remorse is evidenced by his plea of guilty and his frank admission to having sexual intercourse with the complainant on the second occasion when there is no evidence of that. There is an opinion expressed in the pre-sentence report that K "displayed a high level of remorse and shame". K comes from a dysfunctional background and is prepared to engage in a youth justice conference.

Sentence(s) Imposed	S: 2.5 years detention with an order that he be released after serving 50% of the sentence. K: 4 months detention suspended, conditional release program for 3 months, probation for 3 years, no conviction recorded.
Summary of Sentencing Remarks	The offences resulted in gross humiliation and shame for the complainant who has suffered very badly as a result of the rapes. The offender, S, has participated in a Youth Justice conference with the complainant over two days. The conference was successful and it seems that a good agreement has been reached. He was fifteen at the time of committing the offences. He was older than the other boys and was the instigator of the offences. He has a shocking criminal history but it does not include any convictions for sexual offences. He has previously been given the benefit of community based orders including probation, immediate release orders, community service orders and conditional release orders which he has breached. At the time of committing these offences he was the subject of a conditional release order. As a result of committing these offences and breaching previous orders he has been on remand in detention for 343 days. General and specific deterrence are very important. On the other hand he has pleaded guilty in a timely way and he admitted that sexual intercourse occurred on the first occasion in circumstances in which there was no independent evidence of that. This is evidence of remorse. He has been subject to a chronic chroming addiction and the offences were committed after he had been chroming and drinking heavily. He has had a substantially dysfunctional upbringing. As a result of his upbringing he has an inappropriate view of sexual relationships. He has had minimal engagement in the educational system because of his dysfunctional upbringing. His remorse is genuine. He offered the victim an apology before he was arrested and he voluntarily took part in a Youth Justice conference which was successful. He is a moderate risk of offending again in a sexual way which is a cause for serious concern. The judge was concerned that S will become institutionalised by detention. Because of the plea of guilty and remorse shown and the co-operation with the Criminal Justice process the judged ordered that he serve 50% of the sentence imposed. The sentence imposed takes into account the 343 days spent in detention. K: Pleaded guilty to all of the offences and that is in his favour. He has a very minor criminal history relating to 2 minor property matters although when he committed the offences of rape he was subject to a good behaviour order. Since the offences occurred he has verbally abused the complainant and harassed her to some degree. The judge accepted that that took place when K was in the presence of other boys and that perhaps peer group pressure was involved.

	Nevertheless the behaviour demonstrates that K had not shown a lot of remorse and has shown little insight into the effect of his offending behaviour. K has been assessed as being of low intellectual ability and someone who naturally seeks peer acceptance which may provide some explanation for the behaviour during the offending and subsequently. The admission that he had sex with the complainant on the second occasion is in his favour. He has no prior convictions for sex offending or violent offending. He was prepared to participate in a youth justice conference although the complainant did not want to. It is clear that he has had a dysfunctional upbringing. He has not had the chances many children have in terms of a stable and supportive home life. He has been a chronic paint sniffer since the age of 12 and in addition he has indulged in marijuana and alcohol consumption. He was 13 at the time of the rapes and is now 14. He has had minimal engagement in the educational system. He has been on a conditional bail programme for almost 12 months and while there is some concern about his performance on that programme, he is well regarded by St John's Hostel as someone who has been a role model for other boys. The case worker is prepared to say that he believes that K has changed his ways and gained some insight and has been working hard on the conditional bail programme. The report of Mr Ritchie concludes that K presents as a low to moderate risk of reoffending. Mr Ritchie recommends that K attend adolescence sex-offender treatment in order to assist him to accept full responsibility for his behaviour and also to develop an appropriate level of victim empathy. Because of the serious offences of rape detention is called for. However because of K's young age, lack of serious criminal history, early plea of guilty and cooperations and the matters that have been discussed in the pre-sentence reports and the submissions on K's behalf, it is appropriate that the detention be suspended immediately and that a conditional release order be made.

Case	44W
Adult/Juvenile	Juvenile
Date of Birth of Offender: Age at time of offence	DOB: 23.07.1991: 13
Age of Complainant	3
Date of Offence(s)	19.05.2005
Date of Conviction(s)	16.12.2005
Date of Sentence(s)	24.02.2006
Nature of Offence(s)	1 count of rape and 1 count of indecent dealing.
Prior Criminal History of Offender	Nil.
Court	Children's Court, Cairns
Summary of Offence(s)	The offender was 13 years of age at the relevant time. The complainant child was 3 years of age. The complainant child was naked in the bath. The offender put his penis in the complainant child's mouth and penetrated the lips of her vagina with his finger. The penetration was only minor. The child immediately complained. The child was not injured in any way and the offender did not use any violence or threats towards her.
Crown Submissions on Sentence	No Victim Impact Statement was available. The offender has participated in numerous programs in which he is making good progress. His behaviour has improved while he had been living with his new foster carers. The offender has shown a degree of remorse and empathy for the complainant. There is a low likelihood of the offender re-offending. The prosecutor referred to the decisions in *R. v. PZ; Ex parte Attorney-General* [2005] QCA 459; *R. v. MAC* [2004] QCA 317; *R. v. S.* [2003] QCA 107; *R. v. JAJ* [2003] QCA 554. The prosecutor submitted that actual detention is appropriate relying on the observations of Keane J in *R. v. PZ* [2005] QCA 281. The prosecutor submitted that there is nothing truly exceptional about the circumstances of the present case to justify imposing a non-custodial sentence but that in imposing a custodial sentence appropriate credit should be given for his cooperation with authorities and the remorse which he had shown.

Defence Submissions on Sentence	It was submitted that: W was only 13 at the time of the offence; he has no criminal history; he has cooperated fully with the authorities; he made full admissions to the offences in the police interview; he entered an early plea of guilty; he has demonstrated insight and remorse in relation to his offending behaviour; his psychologist assessed that W is a low risk of re-offending; the offence falls into the lower end of seriousness because it did not involve any penile penetration of the vagina and did not involve any physical damage to the complainant; the offending did not occur while the child was in the care of the offender and; the offending was brief in duration, the offender has been doing very well since being placed with his foster parents which bodes well for his future. There is considerable support for the submissions concerning the progress that the offender has made since the offence and his good prognosis. The appropriate order is a probation order without a conviction being recorded.
Sentence(s) Imposed	Count 1 (indecent dealing): 3 years probation Count 2 (rape): 6 months detention suspended, 3 months conditional release program.
Summary of Sentencing Remarks	The sexual offences were particularly serious given the very young age of the complainant child. Notwithstanding that, there are a number of circumstances that mean that it is appropriate that the offender stays in the community. Firstly, the actual behaviour constituting the rape and indecent dealing is not at the higher end of the scale. The incident was of a very short duration. It was opportunistic rather than being planned or premeditated. There was only very minor penetration of the vagina. It is not suggested that the complainant was injured in any way. No violence or threats were used towards her. The offender made full admissions to the police and pleaded guilty at the committal hearing. The offender was only 13 years of age when he committed the offences and had no criminal history whatsoever at the time. A clinical forensic psychologist has assessed the offender as being a low risk of committing further sex offences. The offender has indicated insight into his offending behaviour and remorse for it. The psychologist recommended that the offender undertake an appropriate adolescent sex offender treatment. The offender has had a very unfortunate and deprived upbringing which has included abandonment and physical abuse. The offender has only recently secured a stable and supportive placement and is progressing well in that placement. It would be very unfortunate if that were to be disrupted. The offender has agreed to participate in a youth justice conference however that was unable to proceed. The sentencing judge distinguished the decisions of *R. v. PZ* and *R. v. JAJ* on the basis that those cases involved much older

	children and in each case a significant degree of violence was used. Ultimately the sentencing judge held that a sentence of detention was warranted but that it was appropriate to suspend such detention and that the offender be released on a conditional release program.
Comparable Cases	*R. v. JAJ* [2003] QCA 554; *R. v. PZ; Ex parte Attorney-General (Qld)* [2005] QCA 459; *R. v. S.* [2003] QCA 107; *R. v. E. Ex Parte: Attorney-General* (Qld) [2002] QCA 417; *R. v. A.* [2001] 452; *R. v. MAC* [2004] QCA 317.

Case	45W
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 17.07.1962: 41
Age of Complainant	7 (count 1-5) 18 (count 6)
Date of Offence(s)	Between 31.01.2004 and 23.04.2004
Date of Conviction(s)	24.02.2006
Date of Sentence(s)	24.02.2006
Nature of Offence(s)	4 counts of rape; 1 count of indecent treatment of a child under 12 years and 1 count of sexual assault.
Prior Criminal History of Offender	The offender's criminal history was tendered and marked exhibit "1". This was not provided for the purpose of the review. The prosecutor submitted that he had no prior convictions for sexual offences.
Court	District Court, Cairns
Summary of Offence(s)	The charges of rape and indecent dealing relate to a 7 year girl. The charge of sexual assault relates to an 18 year old woman. A Schedule of Facts was tendered but this was not made available for the purpose of the review. It is apparent from the sentencing remarks that the first 5 counts on the indictment relate to a 7 year girl who was living with the offender and his partner. The 4 counts of rape involved the digital rape of the complainant's vagina. The complainant found this painful. The count of indecent dealing relates to touching her on the outside of her clothing in the genital area. The count of indecent assault related to the offender touching his 18 year old daughter on her upper leg as she was asleep in her bed. It is apparent that there was some force used particularly in relation to count 5.
Crown Submissions on Sentence	The matter proceeded by way of a hand up committal for sentence. The behaviour was premeditated in all cases and there was some force used. There was a breach of trust involved. The behaviour was repetitive and persistent and ultimately extended to the offender sexually assaulting his own daughter. The prosecutor referred the sentencing judge to the case of *R. v. D.* [2003] QCA 88. A sentence of 5 to 7 years imprisonment is appropriate.
Defence Submissions on Sentence	The defence referred to the offender's lack of relevant criminal history, his good employment history and his early plea of guilty. On behalf of the offender, defence counsel expressed the offender's remorse and extended an apology to the

	complainants. A sentence of 4 years imprisonment is appropriate.
Sentence(s) Imposed	Counts 1, 3, 4 and 5; 4 years imprisonment. Count 2 (indecent dealing) - 2 years imprisonment. Count 6 (sexual assault) - 12 months imprisonment. All terms to be served concurrently. Declaration for 171 days pre-sentence custody.
Summary of Sentencing Remarks	Over a four month period between the end of January 2004 and the end of April 2004 the offender was unable to control his sexual urges and allowed those urges to be carried out against a 7 year old child in his care and his 18 year old daughter. The rapes involved the digital penetration of the 7 year old complainant's vagina which she found painful. The indecent dealing count involved touching the 7 year old complainant on the outside of her clothing in the genital area. The indecent assault was committed by the offender on his 18 year old daughter in circumstances in which he touched her on the upper leg when she was asleep in her own bed. The judge took into account the young age of the first complainant and the fact that the behaviour was repetitious and involved some use of force. The offender was 43 years of age with a relatively minor criminal history without prior convictions for sexual offences or offences of violence. The offender had good work history and as a result of the offences his primary personal relationship broke down. The offender pleaded guilty at the committal hearing and as a result the complainants did not have to give evidence. The offender has demonstrated remorse and contrition for his behaviour. The judge noted the significant breach of trust involved and agreed that the appropriate head sentence for the rapes is 4 years imprisonment (without early suspension or recommendation for parole). Concurrent lesser terms were imposed in respect of the other offences.

Case	46G
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 10.02.1970: 34
Age of Complainant	17
Date of Offence(s)	16.10.2004
Date of Conviction(s)	9.03.2006
Date of Sentence(s)	9.03.2006
Nature of Offence(s)	Entering a dwelling house with the intent to commit an indictable offence and rape.
Prior Criminal History of Offender	A criminal history was tendered. This was not provided for the purpose of the review. It is apparent that the offender had an extensive criminal history involving numerous offences of violence and dishonesty. At the time of the offences he was on probation for offences of violence and a breach of a domestic violence order.
Court	District Court, Cairns
Summary of Offence(s)	The complainant was asleep on a mattress in a room. Also sleeping in the room were her parents and another woman. She woke up to discover the offender penetrating her vagina with his finger. She protested, he rolled off and left the room and ran away.
Crown Submissions on Sentence	The complainant was only 17 years old and was asleep when she was raped. A head sentence of 2.5 to 3 years imprisonment is appropriate. As the offender has been in custody for 507 days it is appropriate simply to impose a period of imprisonment equal to the period of time that he has spent in pre-sentence custody.
Defence Submissions on Sentence	The appropriate sentence is one of 2 to 2.5 years imprisonment but having regard to the 507 days pre-sentence custody it is appropriate simply to sentence him to that period of custody. The offender was heavily intoxicated at the time of the offence and had simply become overcome by lust. The offender has a good employment history. The plea of guilty was entered at an early time (after negotiations about the factual basis of the plea were resolved). While he has a history for violence he has no history of sexual offences. He has spent a very lengthy period on remand.
Sentence(s) Imposed	Count 1 - 12 months imprisonment. Count 2 - 20 months imprisonment.

	509 days of pre-sentence custody were declared to be time served under the sentence.
Summary of Sentencing Remarks	The offence was particularly serious because of the fact that the offender had taken advantage of a young girl who was asleep in the company of her parents in circumstances in which she was entitled to feel safe. The offender was very drunk when the offences occurred. When he went back into the house he had no intention of committing a sexual offence. There was little, if any, premeditation involved in the rape. The rape has had a significant effect on the complainant. The plea of guilty was entered in a timely way. The offender has a significant criminal history dating back to 1987 and the offender has repeatedly failed to comply with community based orders. Most of the offender's criminal history relates to relatively minor offences of violence and dishonesty. The offender has no prior convictions for sexual offences. The offender has been in custody on remand for approximately 17 months. Being in custody on remand is more onerous than serving a sentence. Had he been dealt with more promptly the appropriate sentence would have been one of 2.5 years imprisonment.

Case	47S
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 26.07.1968: 37
Age of Complainant	Count 1 – adult Count 2 – 15
Date of Offence(s)	22 February 2005, October 2005
Date of Conviction(s)	21 March 2006
Date of Sentence(s)	22 March 2006
Nature of Offence(s)	1 count of indecent assault 1 count of indecent dealing
Prior Criminal History of Offender	A criminal history was tendered but was not provided for the purpose of the review. It is apparent from the judge's sentencing remarks that the offender does not have a history of committing sexual offences.
Court	District Court, Cairns
Summary of Offence(s)	On 22 February 2005 the offender approached the complainant who was standing at a bus stop and touched her on the breast on the outside of her clothing (count 1). In October 2005 the offender approached the 15 year old complainant who was walking wearing her school uniform. The offender made disgusting suggestions to the complainant and when the complainant tried to walk away the offender grabbed her by the arm. The complainant was able to pull away and run to the school to seek assistance. On both occasions the offender was very drunk. The offender pleaded guilty in a timely way.
Crown Submissions on Sentence	A head sentence of 10 months imprisonment is appropriate. The complete submissions are not available. A victim impact statement was tendered in respect of both complainants.
Defence Submissions on Sentence	The offender has spent 163 days in custody and that is sufficient punishment. The complete defence submissions were not available. It is not clear whether comparables were referred to.
Sentence(s) Imposed	Count 1 – 6 months imprisonment

	Count 2 – 9 months imprisonment Sentences to be served concurrently Declaration made for 163 days of pre-sentence custody
Summary of Sentencing Remarks	He pleaded guilty to two sexual offences. They are both serious offences and both of them would have been extremely concerning if not terrifying for the adult woman and female child involved. The offence involving the child was more serious. He made disgusting suggestions to her which, clearly, would have frightened her greatly. This is confirmed by the victim impact statements. On both occasions the offender was very drunk but that is no excuse for this sort of behaviour. He has an extensive criminal history however there is no history for any sort of sexual offences. The pleas of guilty were entered in a timely way. The judge took into account the offender's background and the fact that he does have a serious head injury from a motor vehicle accident and he is on a disability pension.

Case	48N
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 31.03.1967: 37-38
Age of Complainant	Count 1 – 2: - 12 Count 4: - 14 Count 5: – 13
Date of Offence(s)	31.12.04 - 08.04.05 07.04.05
Date of Conviction(s)	6.04.2006
Date of Sentence(s)	6.04.2006
Nature of Offence(s)	Indecent dealing with a girl under the age of 16; being in a dwelling house with intent to commit an indictable offence in the night time; common assault.
Prior Criminal History of Offender	A criminal history was tendered, but was not provided for the purpose of the review. It was noted that the offender had no criminal history for sexual offences.
Court	District Court, Cairns
Summary of Offence(s)	The offender climbed through a broken window and went to a bedroom in which the complainants in Counts 4 and 5 were sleeping. He was observed by the complainant in Counts 1 and 2, touching the complainants on the breasts and on the vagina. The offender had his other hand on his penis. Neither of the complainant children woke up while this was occurring. The offender desisted when the complainant in Counts 1 and 2 interrupted his activity and told him to get out of the house. The complainant in Counts 1 and 2 complained that on a couple of occasions the offender had touched her on the breasts. The offender admitted this and the other misconduct to the police in an interview on 3 May 2005.
Crown Submissions on Sentence	A plea of guilty was indicated at an early time. No victim impact material was tendered. In relation to the burglary offence, a sentence of imprisonment of 18 months to 2 years is appropriate. In relation to the indecent dealing counts a sentence of 12 - 18 months imprisonment is appropriate. No comparable sentences were tendered.
Defence Submissions on Sentence	The offender is employed. The offender pleaded guilty to the charges and confessed his behaviour to the police. He was very drunk at the time and this may provide some explanation for his behaviour. 7 - 9 months imprisonment, followed by probation is appropriate. No comparables were referred to.
Sentence(s) Imposed	9 months imprisonment followed by 2 years probation.

Summary of Sentencing Remarks	The sexual offences were very serious. The offender has a relatively minor criminal history. He pleaded guilty at an early time and co-operated with police. The Court of Appeal has repeatedly said that adults who sexually abuse children have to expect to go to jail. In all of the circumstances the appropriate penalty is 9 months imprisonment, followed by 2 years probation.

Case	49D
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 14.12.1964: 40
Age of Complainant	30
Date of Offence(s)	30.09.2005
Date of Conviction(s)	31.05.2006
Date of Sentence(s)	31.05.2006
Nature of Offence(s)	Indecent assault.
Prior Criminal History of Offender	A criminal history was tendered but was not provided for the purpose of the review. It is clear from submissions that the offender has an extensive history of street offences, but also a conviction for indecent dealing with a child under the age of 16 years (1990), rape (1995) and indecent dealing with a child under the age of 16 years (2002).
Court	District Court, Cairns
Summary of Offence(s)	The complainant was 30 years of age at the time of the offence. She is distantly related to the offender by marriage. On 29 September 2005 the complainant had been out with friends consuming alcohol. At approximately 1.00a.m. on the morning of 30 September 2005 she arrived at her brother's residence. The complainant and her friends continued drinking. At about 3.00a.m. the complainant went to sleep in the lounge room on a double bed mattress on the floor. She awoke to discover that the offender was beside her on the mattress feeling her breasts. The offender was touching the complainant on the breasts underneath her bra and was rubbing his fingers on the outside of her vagina through her underpants. The complainant immediately woke up and kicked the offender who desisted.
Crown Submissions on Sentence	No Victim Impact Statement was tendered, however the prosecutor advised the Court that the matter had caused problems in her extended family. The matter proceeded by way of a hand up committal. The prosecutor referred to the offender's three prior convictions for serious sexual offences, all of which had resulted in custodial sentences. The prosecutor submitted that a custodial sentence of 18 months to 2 years imprisonment is appropriate. The prosecutor referred to the need for both general, and personal deterrence. No comparables were tendered.

Defence Submissions on Sentence	The offender is a 41 year old man on a disability pension for eyesight difficulties. He was heavily intoxicated at the time that he touched the complainant's breasts and vagina. The offender voluntarily accompanied the police to the police station and made full admissions. The offender is prepared to undertake a sexual offender's course. He has never received the benefit of such a course during his prior sentences. The offender has problems controlling his sexual urges whilst intoxicated. The defence also relied upon the offender's early plea and the fact that the assault was at the lower end of the scale. A sentence in the range of 6 - 9 months imprisonment is appropriate. No comparables were tendered.
Sentence(s) Imposed	9 months imprisonment followed by 2 years probation
Summary of Sentencing Remarks	The offender has a history of committing sexual offences when drunk. The offender has a problem with alcohol and with controlling himself when affected by alcohol. The offence is serious, however, the touching of the complainant on the vagina was through her clothing. The offence was opportunistic and relatively brief. The offender desisted as soon as the complainant woke up. There was no violence. The offender co-operated with police, made admissions and has entered an early plea.

Case	50M
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	02.09.1973: 28-30
Age of Complainant	11 – 14 (Five complainants of various ages between 13 – 14)
Date of Offence(s)	31.05.02 - 01.08.02 31.12.02 - 01.02.03 31.12.02 - 01.01.04
Date of Conviction(s)	31.10.2006
Date of Sentence(s)	31.10.2006
Nature of Offence(s)	7 counts of indecent treatment of a child under 12; 5 counts of indecent treatment of a child under 16; 2 counts of unlawful sodomy of a child under 12 and 1 count of unlawful sodomy.
Prior Criminal History of Offender	Nil.
Court	District Court, Cairns
Summary of Offence(s)	The offences involved fifteen separate offences committed against a total of five boys on three separate occasions. On the first occasion the offender showed four boys a pornographic movie, after which he said to the boys "Let's go and fuck," and "If you suck my cock I'll give you $80.00 and buy you cigarettes." The offender then performed oral sex on three of the boys. After he performed oral sex on the boys he then let the boys sodomise him. The offender then said that he would not give the boys money and/or cigarettes unless they performed oral sex on him, which they did. On a separate occasion the offender invited a boy to sodomise him, however, only simulated anal intercourse occurred. On a separate occasion the offender touched another of the boy's testicles.
Crown Submissions on Sentence	The offender was extremely remorseful and co-operative. He told police that he wanted to have treatment for his paedophilic tendencies. The offender lost his job and had to leave Badu Island as a result of having been arrested. The boys actively sought the offender out and were not naive, young boys but were "street wise". No particular significance was attached by the judge to this submission. The offender has no prior convictions and in the circumstance the appropriate head sentence is 4 to 5 years imprisonment with a parole eligibility date fixed at a relatively early stage. No victim impact material was tendered. No comparable sentences were referred

	to.
Defence Submissions on Sentence	The offender is extremely remorseful and has insight into his problems. The offender had been sexually abused as a child and has issues that needed psychological/ psychiatric intervention. The plea of guilty has been entered in an extremely timely way. The offender has been significantly punished by the public shaming that followed his arrest and has lost his job and was forced to leave the Island. A head sentence of four years is appropriate. No comparable sentences were referred to.
Sentence(s) Imposed	Four years imprisonment with an order that he be released on parole after 18 months. (Note because the sentence is longer than three years and is for a sexual offence, Court ordered parole is not available. A Court can however order a parole eligibility date in these circumstances.)
Summary of Sentencing Remarks	The offences were serious, involving significant acts of sexual offending against young boys. The offender has no prior convictions. The offender is 33 years of age and suffered from sexual abuse which seems to have played a significant role in his offending. The offender co-operated with the police and authorities and entered a timely plea of guilty. The offender's co-operation with police and responses in the police record of interview show that he has insight into his offending behaviour and is genuinely remorseful. Because of the type of offences committed, the fact that there were five separate complainants involved, the fact that the offences occurred over the course of three separate occasions and the age difference between the offender and the complainants, imprisonment is the only appropriate penalty.

Case	51J
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 09.10.1986: 19
Age of Complainant	13
Date of Offence(s)	Between 26 December 2005 and 31 December 2005.
Date of Conviction(s)	27.10.2006
Date of Sentence(s)	27.10.2006
Nature of Offence(s)	Unlawfully and indecently dealing with a child under 16.
Prior Criminal History of Offender	Nil.
Court	District Court, Cairns
Summary of Offence(s)	The complainant was the 13 year old step-sister of the offender. On the night of the offence the complainant was asleep on a double bed with her step-sister. She woke up and found that the offender had pulled her boxer shorts down and was rubbing her vaginal area with his hand. She pushed him away and told him to "fuck off".
Crown Submissions on Sentence	The offence is at the lower end of the scale. The offender is a young person without criminal history who appears to be remorseful. The matter proceeded in a timely way by way of an ex officio plea of guilty. The offence has had a serious and long lasting effect on the complainant and the complainant's family and there was a significant breach of trust involved. The prosecutor referred to *Pham* [1996] QCA 3 and submitted that a prison/probation order is appropriate. No comparables referred to.
Defence Submissions on Sentence	He is a young man who acted impulsively in circumstances in which he was having emotional difficulties. The offender is in full time employment and is prepared to undertake probation and a sexual offender's treatment programme. He readily admitted his guilt to police and pleaded guilty by way of an ex officio indictment. He has no prior criminal history. A sentence of imprisonment would mean that he would lose his employment. No comparables referred to.
Sentence(s) Imposed	Probation for 18 months. Conviction recorded

Summary of Sentencing Remarks	The offence was impulsive and momentary, however it has had devastating effects on the complainant. The offender has pleaded guilty by way of an ex officio indictment after co-operating with the police. The offender has only recently turned 20 and has no previous convictions whatsoever. The offender has a good work history and references tendered on his behalf indicate that he is generally a respectful, decent person. Probation is appropriate.

Case	52C
Adult/Juvenile	Adult (when sentenced)
Date of Birth of Offender: Age at time of offence	DOB: 01.03.1985: 15 - 16
Age of Complainant	10 - 12 years (Five complainants aged between 10 and 12)
Date of Offence(s)	31.08.00 - 01.06.01 31.03.01 - 01.01.03 31.12.01 - 01.01.03 31.12.01 - 01.01.03
Date of Conviction(s)	1.11.2006
Date of Sentence(s)	1.11.2006
Nature of Offence(s)	Unlawful carnal knowledge of a child under 12. 2 counts of unlawful carnal knowledge of a child under 16. 1 count of indecent treatment of a child under 16. 1 count of indecent treatment of a child under 12.
Prior Criminal History of Offender	The offender has a criminal history which was tendered, however this was not provided for the review. It was noted in submissions however that he has no prior convictions for sexual offences.
Court	District Court, Cairns
Summary of Offence(s)	Count 1: unlawful carnal knowledge of a child under the age of 12 years. In June 2005 the complainant told police that she had engaged in sexual intercourse with the offender at her mother's house in Lockhart River. A day later the offender confessed to police that he had sex with her and believed her to be between 11 and 13 at the time. She was 10 years old. Count 2: unlawful carnal knowledge - the complainant in count 2 stated that she had consensual sex on one occasion with the offender at her grandmother's house. The offender confessed to police that this had occurred and that he believed that she was about 12 years of age at the time. She was 12 years old. Count 3: unlawful carnal knowledge - the complainant in count 3 stated that she had a relationship with the offender over an extended period of time, including regular sexual intercourse for a period of about 18 months. The offender admitted to police that he had had intercourse with her. She was 12 years old. Count 4: indecent dealing - the complainant alleged that she was at the offender's grandmother's house and in a bedroom with the offender when he asked her for sex. The offender reached out and grasped either side of her shorts and commenced to pull them down. She pushed him away and said "no" and he left. The offender admitted this. She was 12

	years old. Count 5: indecent dealing - the facts for this offence were similar to the facts in count 4 however a different complainant was involved. There was no complaint from the complainant and this charge was based on the offender's admissions to police. She was 11 years old.
Crown Submissions on Sentence	The offender was aged 15 and 16 at the time of the offences. All of the sexual activity was consensual. The offender had cooperated fully with the police. There was no position of trust breached. He has no prior convictions for sexual offences. The conduct occurred over a couple of years with multiple children. (Unfortunately, it is impossible to determine from the transcript the period of custody that was submitted to be appropriate because of an indistinct portion of the transcript.) No comparables were referred to.
Defence Submissions on Sentence	The offender is completing his second year as an apprentice carpenter. The plea of guilty was timely. He was a young man at the time. The sexual activity was consensual in the context of relationships that he had with the children. The offender is in custody until 17 December 2006 and the sentences for these offences should not involve him spending any longer in custody. No comparables referred to.
Sentence(s) Imposed	Counts 1 to 3 - 3 months imprisonment. Counts 4 and 5; 2 months imprisonment with eligibility for release on parole set at 17 December 2006.
Summary of Sentencing Remarks	The offender cooperated with police and pleaded guilty. The offender was a child himself when the offences occurred. There was no violence involved and the sexual activity was consensual in the context of relationships which he had with the complainant girls. Had the matters been dealt with when the offender was a child, a non-custodial sentence would have been appropriate. As the offender is in jail for a driving matter, it is appropriate to sentence him to a term of imprisonment which leaves the current parole eligibility date undisturbed.

Case	53P
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 24.03.77: 28
Age of Complainant	Unclear.
Date of Offence(s)	21.01.2006
Date of Conviction(s)	11.12.2006
Date of Sentence(s)	11.12.2006
Nature of Offence(s)	1 count of sexual assault with the circumstance of aggravation 2 counts of rape 1 count of deprivation of liberty.
Prior Criminal History of Offender	A criminal history was tendered however it was not provided for the review. It is apparent from the submissions that the offender had no history of committing sexual offences against women however he did have a history of committing offences of violence upon women.
Court	District Court, Cairns
Summary of Offence(s)	For about 3 hours the offender deprived the complainant of her liberty and kept her in fear. The offender forcibly took her to various places on Darnley Island and sexually assaulted her. The sexual assaults included licking her vaginal area and raping her two on occasions. The rapes were attenuated by significant violence. He had her in a head lock, pushed her down a slope to the beach, threatened her with a rock, made threats against her life, dragged her along the beach to a house, forced her to leave the house in a head lock, took her further along the beach and up the road to the water tank, threatened to drown her in the water tank, took her up the road to the pump house area and sexually assaulted her and raped her in the truck and raped her again in the pump house building. She did not suffer serious injury. The offender took the matter to trial and showed no remorse. He had no previous convictions for sex offences, but he did have a prior conviction for an offence of violence committed against his female partner. Alcohol clearly played a part in what happened.
Crown Submissions on Sentence	No Victim Impact Statement was tendered. The matter proceeded by way of committal hearing and trial. The events were prolonged and terrifying. The offender showed her no mercy. There has been no remorse demonstrated. The appropriate sentence is 8 to 10 years with a serious violent offender declaration. The prosecution referred to *Taiters* [2001] QCA 324; *Chinfat* [1995] QCA 508; *M* [2001] QCA

	166; *Basic* [2000] QCA 155; *Daniels* [1997] QCA 139.
Defence Submissions on Sentence	The defence submitted that a sentence of 8 years is appropriate referring to a decision of Judge White (unnamed).
Sentence(s) Imposed	8 years imprisonment (counts 2 and 3); 2 years imprisonment (counts 1 and 5). Sentences to be served concurrently. Eligibility for parole set at four years.
Summary of Sentencing Remarks	The rapes and other offences took place over a three hour period during which the offender had control of the complainant. The offender had the complainant in a head lock and threatened her with a rock, made other threats against her life over a prolonged period and sexually assaulted her. Although she did not suffer any serious injury, she would have been absolutely terrified for the entire period. The offender went to trial and therefore is not entitled to any discount on a sentence for a plea of guilty and has shown no remorse. The offender didn't have any prior convictions for sex offences however he did have a conviction for an offence of violence against a female in 1995. The offender does not appear to be someone who routinely engages in violence and no doubt his alcohol consumption played a role in what occurred on that particular night.

Case	54B
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 26.01.1975: 31
Age of Complainant	30
Date of Offence(s)	28.04.2006
Date of Conviction(s)	8.01.2007
Date of Sentence(s)	8.01.2007
Nature of Offence(s)	1 count of rape.
Prior Criminal History of Offender	A criminal history was tendered on sentence but was not provided for the purpose of the review. It is clear from the submissions that the offender had no criminal history for sexual offences.
Court	District Court, Cairns
Summary of Offence(s)	The complainant was asleep having consumed alcohol and cannabis. The offender, who had also been drinking alcohol, had sexual intercourse with her while she was asleep. The complainant did not wake up during the sexual intercourse. The offender was the complainant's cousin.
Crown Submissions on Sentence	The offender was arrested by police on 3 May 2006 and has been in custody since that time. The offender declined to be interviewed by police. The matter proceeded by way of a hand up committal. A plea of guilty was indicated on 18 September 2006. A sentence of 4 to 6 years imprisonment is appropriate relying on *Stringer* CA 260 of 1998 and *Brackenridge* CA 427 of 1997.
Defence Submissions on Sentence	The offender was heavily intoxicated and does not remember what happened. It is a timely plea. The offender has been working to get away from the alcohol. No comparables referred to.
Sentence(s) Imposed	4 years imprisonment with no early parole eligibility date or suspension. Declaration made in respect of 200 days of pre-sentence custody.
Summary of Sentencing Remarks	It is totally unacceptable for anyone to take advantage of another person who is sleeping. No violence was used. The victim suffered significantly as a result of the offence and is still suffering emotionally because of the rape. Rape is an extremely serious offence and calls for significant periods of imprisonment. The judge took into account the early plea and lack of prior convictions for sexual offences. The offender

	was very intoxicated but that is no excuse.

Case	55C
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 01.10.1977:28
Age of Complainant	13
Date of Offence(s)	11.02.2006
Date of Conviction(s)	13.02.2007
Date of Sentence(s)	13.02.2007
Nature of Offence(s)	Wilfully and unlawfully exposing a child under the age of 16 years to an indecent act.
Prior Criminal History of Offender	The offender did have a criminal history which was tendered on sentence. This was not provided for the purpose of the review. However, it would appear that he had some history of violent offences and perhaps one recorded conviction for a sexual offence committed after this offence. (See Case 31C)
Court	District Court, Cairns
Summary of Offence(s)	The complainant child was asleep in the lounge room of her residence when she woke up to see the offender sitting beside her on the couch masturbating. She screamed and ran out of the house to her parents' house where she made a complaint.
Crown Submissions on Sentence	The offender did not participate in a record of interview. The offence was of short duration because the complainant ran away. A term of imprisonment is appropriate citing *R. v. Harper* [2002] QCA 107 in the range of 9 to 12 months.
Defence Submissions on Sentence	It was an opportunistic act committed in circumstances in which the offender had been drinking and smoking a great deal of cannabis. The offending was of very short duration and the offender did not persist once he was aware that the complainant was awake. A plea of guilty was entered at an early time and the complainant did not have to give evidence. The defence distinguished *Harper* because the complainant in *Harper* was under 12 where as the complainant in the present case was over 12.
Sentence(s) Imposed	6 months imprisonment.
Summary of Sentencing Remarks	The offence would have been a particularly frightening and distressing experience for the complainant. It is no excuse to say the offender had been drinking and smoking cannabis. Obviously the offender needs to do something about the alcohol and cannabis problems that he has. The offender's plea of guilty has meant that no one has had to give evidence.

	Although the offender has a relatively lengthy criminal history, a lot of the convictions are for relatively minor matters. There are no prior convictions for sexual offences against adults or children. Alternatives to imprisonment have not worked in the past and although the offence was only momentary and the offender did not persist in his behaviour and there was no actual touching of her, imprisonment is appropriate.

Case	56G
Adult/Juvenile	Juvenile
Date of Birth of Offender: Age at time of offence	15 DOB not stated in material provided
Age of Complainant	Unknown, however it is apparent from the sentencing remarks the complainant was a very young female child.
Date of Offence(s)	January 2006
Date of Conviction(s)	23.04.2007
Date of Sentence(s)	23.04.2007
Nature of Offence(s)	Indecent dealing with a child under the age of 12.
Prior Criminal History of Offender	The offender has a limited criminal history, however, this was not provided with the materials for the review. It does not appear that the offender had any criminal history for sexual offences.
Court	Children's Court, Cairns
Summary of Offence(s)	The offender broke into a unit and sexually abused a very young child. Prior to touching the child on her genitals he rolled a condom onto his fingers.
Crown Submissions on Sentence	The offender has served 166 days in detention awaiting sentence. The sentence could be 166 days detention followed by probation. A conviction should be recorded, having regard to the deliberate nature of the offending.
Defence Submissions on Sentence	A written apology was tendered to the court. The offender has taken part in a community conference. The offender is remorseful and has recognised that he has problems with drugs and alcohol. It is appropriate to sentence him to the period of detention which he has already served coupled with probation. A conviction should not be recorded.
Sentence(s) Imposed	166 days detention and probation for 12 months. No conviction recorded.
Summary of Sentencing Remarks	But for the 166 days that the offender has spent on remand in detention, a custodial sentence would have been imposed. Since the offender has been released on bail he has behaved very well by staying out of trouble and cooperating with his youth worker. The offender has been prepared to acknowledge his wrongdoing and has apologised for it. In these circumstances probation is appropriate.

Case	57A
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 30.04.1980: 26
Age of Complainant	11
Date of Offence(s)	3.08.2006
Date of Conviction(s)	24.04.2007
Date of Sentence(s)	24.04.2007
Nature of Offence(s)	4 counts of unlawfully and indecently dealing with a child under 12 and 1 count of deprivation of liberty.
Prior Criminal History of Offender	A criminal history was tendered on sentence however it was not made available for this review. It is apparent from the sentencing submissions that the offender had a lengthy criminal history mainly for street offences and breaches of bail. However, there were 3 entries for assault occasioning bodily harm and 1 entry for wilful exposure the facts of which were that he masturbated in front of a 52 year old female shopkeeper.
Court	District Court, Cairns
Summary of Offence(s)	The 11 year old complainant was walking to school when she was approached by the offender who grabbed her by the hand and pulled her inside the front yard of a house. The offender then put his hand up her pants and squeezed her thighs and buttocks. The offender then put his hand underneath the complainant's underwear and touched her buttocks. The offender then tried to pull the complainant's pants down while he was holding her. The offender then rubbed his penis against the complainant child's bottom. While this was happening the offender was holding the complainant tightly around the waist with his arms. The complainant then grabbed his fingers and bent them back in a very hard fashion before running away and making a complaint to the school principal.
Crown Submissions on Sentence	The offending was low level although persistent. The matter proceeded by way of an ex officio indictment. The offender has spent 205 days in pre-sentence custody. The prosecutor referred to *Pham* [1996] QCA 003. No Victim Impact Statement was tendered. The prosecutor referred to the cases of *Yeo* [2002] QCA 383 and *Moffatt* [2003] QCA 95. The circumstances of the offence and questions of personal and general deterrence are very important. A sentence of 12 months imprisonment is appropriate.

Defence Submissions on Sentence	The offender had been drinking heavily for several days and has no recollection of what occurred. The offender is an alcoholic who drinks to excess on a daily basis. The appropriate sentence is one which involves an immediate parole release date.
Sentence(s) Imposed	15 months imprisonment with a parole eligibility date set at 24 April 2007. Declaration made for 205 days of pre-sentence custody.
Summary of Sentencing Remarks	The offences were serious and persistent and only ended when the complainant physically fought back and hurt the offender's fingers. It would have had at least some long term consequences for the complainant. The offender pleaded guilty to an ex officio indictment. Although the offender has an extensive criminal history, they are relatively minor convictions. There have been some convictions for offences of violence in the past. The offender has previously been given the benefit of probation and community based orders and a suspended sentence of imprisonment. The offender has served actual imprisonment in the past.

Case	58W
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 11.06.1977: 29
Age of Complainant	Unspecified
Date of Offence(s)	25.05.2007
Date of Conviction(s)	28.05.2007
Date of Sentence(s)	28.05.2007
Nature of Offence(s)	Rape and deprivation of liberty.
Prior Criminal History of Offender	A criminal history was tendered however it was not provided for the purpose of this review. The submissions reveal that he had an extensive criminal history including offences of violence.
Court	District Court, Cairns
Summary of Offence(s)	By means of physical force and fear the offender had the complainant under his control for some 16 hours during which time he forcefully took her to various locations around Arakuun. At one point he armed himself with a sprinkler leg which he used as a weapon in a threatening way. He told her that he could kill her. He took her to his sister's place where he kept her under his control in a bedroom and raped her.
Crown Submissions on Sentence	The offences were serious because they were accompanied by threats to her and the lives of others. The complainant was subjected to direct physical control and restraint for a long period of time during which time the offender dominated her and controlled her. This would have been very frightening for the complainant. The offender has demonstrated no remorse. The prosecution referred to Daniel [1997] QCA 139 and the single judge decision which is case 53P in the Review. A sentence of 8 years imprisonment is appropriate.
Defence Submissions on Sentence	The sentence should be reduced to reflect the fact that he was only convicted of 1 rape not 3 (as he had been on the first trial after which he was sentenced to 8 years imprisonment). This submission was rejected by the Judge. The offender had grown up in and around Cape York in disadvantaged circumstances.
Sentence(s) Imposed	8 years imprisonment (rape) 2 years imprisonment (deprivation of liberty). Parole eligibility date 20 July 2009. Declaration made for 645 days of pre-sentence custody.
Summary of	It was a serious offence. Violence was threatened. The

Sentencing Remarks	complainant was in his control for an extended period. The complainant was terrified by the ordeal. Complainant had to give evidence at two trials. The offender has no prior convictions for sexual offences although convictions for offences of violence. The offender had an unstable and disadvantaged upbringing. Alcohol may have played a part. 8 years imprisonment appropriate for rapes.

Note: This offender was convicted at two trials and won his appeals from both convictions:

R v [58W] [2006] QCA 539
R v [58W] [2007] QCA 286

Case	59M
Adult/Juvenile	Juvenile
Date of Birth of Offender: Age at time of offence	23.02.1989: 16
Age of Complainant	13
Date of Offence(s)	01.12.2005 - 31.12.2005
Date of Conviction(s)	29.05.2007
Date of Sentence(s)	29.05.2007
Nature of Offence(s)	Unlawful carnal knowledge.
Prior Criminal History of Offender	Nil.
Court	District Court, Cairns
Summary of Offence(s)	The complainant was 13 years of age. She was at a friend's house when she received a message through her friends that the offender wanted to see her at his house for sex. The complainant went to the offender's house. The offender had sexual intercourse with her. This was the first time that she had had sexual intercourse. She did not want to have sexual intercourse, but did not communicate this to the offender until part way through sexual intercourse at which time she told him to stop, and he did.
Crown Submissions on Sentence	The prosecutor accepted that the Crown could not negative a defence of honest and reasonable mistake of fact. The offender participated in an interview with police in which he admitted to having had sex with the complainant, but said that he thought she was 14 years of age. The complainant told the prosecutor that she was angry at her girlfriends for pressuring her into doing something that she did not want to do. The matter proceeded by way of a full hand up committal hearing and a plea of guilty was indicated at an early stage. Probation with a conviction recorded is the appropriate penalty. No comparables were referred to.
Defence Submissions on Sentence	The offender has no criminal history, either before or subsequent to the events in question. He made a full confession to police. He was 16 years old at the time. He stopped as soon as he was aware that the complainant was not a willing participant. A sentence of probation without a conviction being recorded is appropriate. No comparables were referred to.

Sentence(s) Imposed	Nine months probation.
Summary of Sentencing Remarks	The offender did not realise that the complainant was not happy to have sex with him and when he did realise he stopped. He pleaded guilty at an early time. He was only 16 when the offence occurred. He has not been in trouble before or since. In the circumstances it is appropriate to put him on probation for nine months and not to record a conviction.

Case	60A
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of offence	DOB: 24. 05.1961: 43
Age of Complainant	13
Date of Offence(s)	Between 31 July 2004 and 7 September 2004
Date of Conviction(s)	15.06.2007
Date of Sentence(s)	15.06.2007
Nature of Offence(s)	Unlawful and indecent dealing with a child under the age of 16 years.
Prior Criminal History of Offender	A criminal history was tendered on sentence but was not supplied for the purpose of the review. Sentencing submissions reveal that, although the offender has some criminal history for assault on females, he has no prior convictions for sexual offences.
Court	District Court, Cairns
Summary of Offence(s)	The offender lived in the same house as the complainant child. She called him "uncle" although he was not her uncle. The offender took her to an address in Weipa under the pretence of taking her to her mother's house. He took her inside the unit, exposed his penis and rubbed his penis and hands against her vagina on the outside of her underpants. She protested and he desisted and took her back out to the car. There was a suggestion that something similar had happened on two or three other occasions, although these acts don't appear to have been charged.
Crown Submissions on Sentence	The offender spent a total of 16 days in pre-sentence custody. The offender declined to be interviewed. There was no victim impact material. There is a significant age difference between the complainant and the offender and the offender was in a position of trust. The offender's plea of guilty is an important consideration. There had been no cross-examination of the child at the committal hearing and it was conceded that there would have been difficulties if it was necessary to rely upon the complainant's evidence at a trial. 12 to 18 months imprisonment with an early parole release date is appropriate. No comparables were referred to.
Defence Submissions on Sentence	The offender is embarrassed by his behaviour, particularly as he lives in a community where relatives of the complainant live. It is a timely plea. The complainant was not cross-examined at the committal. The offender is employed. The

	offender has five children, two of whom are still at home. The offender is involved in community work in his community and is extremely remorseful. The sentence should be wholly suspended, having regard to his plea, his lack of prior convictions for sexual offences and his true remorse. No comparables were referred to.
Sentence(s) Imposed	15 months imprisonment, suspended after five months for an operational period of three years. Declaration made with respect to 16 days pre-sentence custody.
Summary of Sentencing Remarks	There was a gross breach of trust involved. The nature of the sexual offending was serious and involved the offender rubbing his penis against the complainant's genitals on the outside of her underpants. The complainant was very angry and distressed by this behaviour. The offender has previous convictions for offences of violence. The offender has given up drinking and has joined the church. The plea of guilty was an early one and having regard to the difficulties that the complainant child has, the plea of guilty has saved further trauma and distress associated with her giving evidence. In these circumstances the offender's plea of guilty is of particular benefit to the complainant and to the criminal justice system.

Case	61W
Adult/Juvenile	Juvenile
Date of Birth of Offender: Age at time of Offence	23.10.1990: 16
Age of Complainant	4
Date of Offence(s)	25.03.2007
Date of Conviction(s)	28.08.2007
Date of Sentence(s)	28.08.2007
Nature of Offence(s)	Rape.
Prior Criminal History of Offender	Nil
Court	Children's Court, Cairns
Summary of Offence(s)	The offender digitally raped his 4 year old female cousin. This apparently did not cause any trauma or injury.
Crown Submissions on Sentence	The prosecutor referred to *R. v. PZ; Ex parte A-G (Qld)* [2005] QCA 459 in support of a submission that a sentence of detention of 3 - 5 years is appropriate. The prosecutor emphasised the need for general deterrence. The prosecutor also pointed to the young age of the complainant, the breach of trust involved and the fact that the offender only desisted when the complainant became upset. The prosecutor accepted that the offending was at the lower end of the scale and that a period of detention of 3 years is appropriate. The prosecutor conceded that a conditional release order would be within range.
Defence Submissions on Sentence	The defence distinguished the case of *PZ* and the cases referred to therein on the basis that the conduct involved there was much more severe. The offender has commenced an apprenticeship. The offender has already commenced counselling to address his offending behaviour. He has strong family support and is very remorseful for his behaviour. No comparables were referred to.
Sentence(s) Imposed	3 years probation. No conviction recorded.
Summary of Sentencing Remarks	The offence is very serious. Had the offender committed the offence as an adult he would be going to prison. The offender was only 16 years of age at the time and the offending is very much at the lower end of the scale. There is no victim impact material before the Court, but it would appear that the

	offending has not had an "overly devastating effect" on the complainant. The offender admitted to police what he had done and pleaded guilty to an ex officio indictment. The offender has no prior convictions for anything. Since April 2007 the offender has had weekly sessions with a psychologist. A report from the psychologist indicates that the offender is addressing the matter in a sensible and mature way and is prepared to accept responsibility for what he had done. Alcohol abuse played a part in what had happened and it is important that the offender address this issue. The reports all indicate that the offender has shown appropriate insight into his offending behaviour and is remorseful.

Case	62P
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of Offence	DOB: 11.03.1987: 19
Age of Complainant	21
Date of Offence(s)	31.01.2007
Date of Conviction(s)	5.09.2007
Date of Sentence(s)	5.09.2007
Nature of Offence(s)	Enter a dwelling house with intent to commit an indictable offence in the night time, indecent assault (Counts 1 and 2), wilfully and without lawful excuse doing an indecent act in a public place (Count 3).
Prior Criminal History of Offender	A criminal history was tendered, however, it was not provided for the purpose of review. It would appear that the criminal history contained a number of street offences and Bail Act offences, as well as a number of offences of indecent exposure which relate to the offender exposing his penis to various patrons of Brother's Leagues Club.
Court	District Court, Cairns
Summary of Offence(s)	At about 5.45a.m. on Wednesday 31 January 2007 the complainant in Counts 1 and 2 was asleep in her bed with her three month old son. She felt someone touch her buttocks. She turned and saw the offender crouched beside her bed. The offender had entered the house via an open window. The complainant screamed to her husband who was asleep in another room. The offender attempted to leave when the complainant grabbed hold of his leg. The offender struggled and broke free and escaped. Later on the same day the complainant in Count 3, a 64 year old woman, was at a dwelling in Mareeba when she spoke to the complainant. The offender asked a number of inappropriate and suggestive questions while scratching his pubic region. The offender started to pull down his pants to the point that the complainant could see his pubic hairs. The complainant then ran away.
Crown Submissions on Sentence	A head sentence of two to three years is appropriate on the break and enter with intent charge, two years imprisonment on the indecent assault charge and two years imprisonment in respect of the indecent act charge. There are 102 days of declarable pre-sentence custody. No comparables were referred to.
Defence	The offender was 19 years of age at the time of the offending

Submissions on Sentence	behaviour. He has a significant problem with alcohol. The offender is on the waiting list for the sexual offender's programme, but has not yet been able to do it. A better sentence is a further six months imprisonment followed by twelve to eighteen months probation. No comparables were referred to.
Sentence(s) Imposed	Counts 1 and 2 - six months imprisonment, followed by probation for two years. Count 3 - three months imprisonment.
Summary of Sentencing Remarks	The offender's behaviour would have been terrifying for the women involved. The offender's behaviour is more concerning because the previous year he was sentenced to a suspended term of imprisonment and placed on probation for similar acts committed whilst at the Brother's Leagues Club. The offender was only 19 when he committed the offences and is now only 20. He needs to address his alcohol problem.

Case	63M
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of Offence	DOB: 29.12.1987: 16-18
Age of Complainant	Complainant 1 - 9 years old Complainant 2 - 7 years old
Date of Offence(s)	13.04.04; 30.09.06 - 01.11.06 (3 charges) 24.12.06 (4 charges) 26.12.06 (3 charges)
Date of Conviction(s)	10.10.2007
Date of Sentence(s)	10.10.2007
Nature of Offence(s)	4 counts of indecent treatment of a child under the age of 12 years; 6 counts of rape.
Prior Criminal History of Offender	Nil.
Court	District Court, Cairns
Summary of Offence(s)	A Schedule of Offences was prepared, but has not been provided for the purpose of the review. From the sentencing remarks it would appear that over a three month period in 2006 the offender sexually abused his nine year old female cousin and a seven year old family friend. The rapes did not involve sexual intercourse, but did involve digital penetration of her vagina and anus and a number of other acts involving the indecent treatment of the child and masturbating in front of her. The offender was 16 years of age when he committed the first offence against his nine year old female cousin and 18 years of age when he committed the other offences.
Crown Submissions on Sentence	The offender has no prior criminal history and no subsequent criminal history. The offender was only 16 at the time he committed the first offence. But for the subsequent offending, some form of supervisory order would be appropriate. The offender was 18 at the time of the second set of offences. There are 274 days of pre-sentence custody to declare. The prosecutor referred to *F.* [2001] QCA 416; *Fogarty* C.A. 418 of 1996; *Ryan* CA 62 of 2003 and *Abraham* CA 216 and 232 of 1992. 5 to 6 years imprisonment is appropriate. Appropriate credit should be given for his plea of guilty and remorse as well as his co-operation with police.
Defence Submissions on Sentence	The defence relied on the case of *NH* [2006] QCA 476 and submitted four to five years imprisonment. Summary justice had been inflicted on the offender by the complainant's father and he is now unable to return to his community. The plea of guilty had been made in a timely way. A psychologist report

	speaks of his good prospects for rehabilitation. He is able to do a sexual offender's treatment programme. The defence referred to *RH* [2004] QCA 225. A sentence of three and a half years with an early parole eligibility date is appropriate.
Sentence(s) Imposed	Indecent dealing - six months imprisonment - rape - three and a half years imprisonment; indecent dealing and related offences - eighteen months imprisonment - declaration made for 274 days pre-sentence custody; parole eligibility date set at fourteen months.
Summary of Sentencing Remarks	The offending occurred over a three month period, often in full view of or in the presence of other adults in the house. The offender was only 16 years of age when he committed the first offence and 18 years of age when he committed the balance of the offences. The offender has been in custody since January. A psychologist identified some concerning features of the offender's offending behaviour and believes that the offender may be a paedophile and will continue to be a high risk for further offending without treatment. The fact that the offender has pleaded guilty and acknowledged that he needs help with his offending is a very positive sign. The offender has co-operated with the administration of justice and entered timely pleas of guilty. The offender did not have any prior convictions for any offences. (The judge took into account the beating that the father of the second complainant gave the offender in which he was kicked and punched.) The Judge also took into account the fact that he could not return to Badu Island. Referring to NH [2006] QCA 476, the Judge formed the view that the appropriate head sentence on the rape is 3 1/2 years imprisonment. Having regard to the other matters in the offender's favour the judge set the parole eligibility date at 14 months.

Case	64C
Adult/Juvenile	Juvenile
Date of Birth of Offender: Age at time of Offence	DOB: 30.04.1991: 15
Age of Complainant	8 and 10
Date of Offence(s)	24.06.06 - 10.07.06 and 01.01.07
Date of Conviction(s)	16.10.2007
Date of Sentence(s)	16.10.2007
Nature of Offence(s)	Indecent treatment of a boy under 12, indecent treatment of a girl under 12.
Prior Criminal History of Offender	Nil.
Court	Children's Court, Cairns
Summary of Offence(s)	The offender attempted to have the 8 year old complainant suck his penis. Witnesses observed the offender holding the complainant's head near the offender's penis while the complainant was trying to get away. The complainant was 8 years old. The second complainant was a 10 year old female. The offender kissed the complainant and touched the complainant in the pubic region.
Crown Submissions on Sentence	The misconduct was at the lower end of the scale. As the offender has been in custody for 260 days the appropriate sentence is a period of probation of up to two years. No comparables were referred to.
Defence Submissions on Sentence	The offender has used his time in detention constructively and has completed a number of courses aimed at addressing his behaviour as well as a number of vocational and educational programmes. No comparables were referred to. 12 months probation is appropriate.
Sentence(s) Imposed	18 months probation. (With the special condition that the offender satisfactorily participate in an assessment and subsequent programme with the Griffith Youth Forensic Service). Convictions not recorded.
Summary of Sentencing Remarks	The offender was only 15 years of age at the time of the offences and is 16 now. The offender has no previous convictions for any offending. The offender has had a disruptive and unstable upbringing. The offender has already spent 260 days in detention, during which time he has made good progress. Probation is the most appropriate outcome.

Case	65C
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of Offence	DOB: 13.05.1969: 25
Age of Complainant	80
Date of Offence(s)	29.12.1994
Date of Conviction(s)	25.10.2007
Date of Sentence(s)	5.11.2007
Nature of Offence(s)	Break and enter with intent, indecent assault.
Prior Criminal History of Offender	A criminal history was tendered, however it was not provided for the purpose of the review. It is clear that after these offences were committed the offender went on to commit a lot of subsequent offences, including a similar offence in 1999.
Court	District Court, Cairns
Summary of Offence(s)	The complainant was 80 years of age and lived alone at her home in Cairns. At 3.15a.m. the offender entered the complainant's bedroom by climbing through an open window. The offender removed the sheet covering the complainant and placed his hands on the complainant's vagina. The complainant screamed at the offender "get out". The offender replied "I'm not going to hurt you I just want sex". The complainant then ran out of the bedroom. When she reached the front door the offender approached her from behind and placed his hands over her mouth and again stated "I won't hurt you I just want sex". The offender forcibly held the complainant's mouth closed to prevent her from screaming. The offender let go of the complainant who ran from the house and alerted neighbours. The complainant had no significant injuries but was very distressed. The offender's identity was ascertained by virtue of a fingerprint match on 13 November 2006. The offender was interviewed by police on 13 December 2006 and made admissions to the offence.
Crown Submissions on Sentence	There was no victim impact statement available as the complainant suffers from Alzheimer's disease. The prosecution referred to *R. v. Price* [2004] QCA 10 and *R. v. Sagiba; Ex parte A-G (Qld)* C.A. 281 of 1991. The prosecution submitted a range of 5 - 6 years imprisonment.
Defence Submissions on Sentence	The offender was only 25 when the offence occurred. He desisted of his own accord from further sexual assaults on the complainant. His confession made the prosecution possible because the complainant now suffers from Alzheimer's disease and she had not completed a statement back in 1994. The offender pleaded guilty

	and had written a letter of apology to be passed onto the complainant's family. The offender has utilised his time in custody constructively and had engaged in courses to address his alcoholism.
Sentence(s) Imposed	4 years imprisonment. Parole eligibility date set at 26 August 2008. 313 days of pre-sentence custody declared.
Summary of Sentencing Remarks	The complainant would have been absolutely terrified. The offender's motivation in going into the house was initially to steal things rather than to commit a sexual assault, but that changed when the offender saw the complainant asleep in her bed. The offender co-operated fully with the police and the matter proceeded by way of a full hand up committal and a timely plea of guilty in the District Court. It is of concern that the offender had subsequently committed a similar offence in 1999. The offender has been in custody for the last two years. The offender has used this time constructively completing a couple of TAFE subjects and attending Alcoholics Anonymous. The offender is genuinely sorry for his behaviour and has written a letter of apology.

Case	66A
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of Offence	DOB: 11.08.1977: 25-26
Age of Complainant	13
Date of Offence(s)	01.08.03 - 31.08.03
Date of Conviction(s)	26.11.2007
Date of Sentence(s)	26.11.2007
Nature of Offence(s)	Indecently dealing with a child under the age of 16 while in care.
Prior Criminal History of Offender	A criminal history was tendered, however it was not provided for the purpose of this review. The submissions reveal that the offender had not been previously convicted of similar offences.
Court	District Court, Cairns
Summary of Offence(s)	The complainant child was born on the 27th August 1989 and was aged 13/14 at the time of the offence. The complainant was the step-daughter of the offender. The complainant had a knee problem which required regular massage and the offender would regularly provide these massages. When the offender was massaging the complainant's knee the offender touched the complainant's vagina on the outside of her clothing. The offender then had the complainant lie on her stomach while he massaged her knee and moved his hand up towards her buttocks. The complainant then felt his hand on her vagina. Some years later the offence was disclosed. In a pretext telephone call on 22 October 2005, the offender made admissions and apologised. On 3 January 2006 the offender was interviewed and made admissions.
Crown Submissions on Sentence	The prosecutor referred to *MAO; Ex parte Attorney-General* [2006] QCA 1999. A head sentence in the range of six to nine months with some actual imprisonment is appropriate.
Defence Submissions on Sentence	The offence was opportunistic. The offender was remorseful and apologised when confronted. The offender told police that he started to touch her and then realised what he was doing and stopped. The offender was quite a heavy drinker at the time. The offender is ashamed of himself. He made admissions to police and pleaded guilty. There was a full hand up committal without cross-examination. No comparables referred to.
Sentence(s)	6 months imprisonment, wholly suspended for an operational

Imposed	period of 18 months.
Summary of Sentencing Remarks	Any adult who sexually touches a child who is 13 years of age on the vagina has to expect a jail term. It is a breach of trust. The complainant still has feelings of shame, anger, hurt and betrayal, which is not surprising. The incident however was relatively brief. The offender admitted to the complainant what he had done (in the pretext call), made admissions to the police and entered a timely plea. Although the offender has a criminal history it does not involve any previous convictions for sexual offences or offences of violence. By imposing a suspended sentence it is hoped that the offender will retain his job and retain the capacity to contribute to his own children financially.

Case	67P
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of Offence	DOB:06.10.1973: 33
Age of Complainant	14
Date of Offence(s)	06.10.2006 - 21.11.2006 20.11.2006 - 21.12.2006 20.11.2006 - 21.12.2006 20.11.2006 - 21.12.2006
Date of Conviction(s)	30.11.2007
Date of Sentence(s)	30.11.2007
Nature of Offence(s)	3 counts of incest, 1 count of attempted indecent treatment of a child under 16 (lineal descendant).
Prior Criminal History of Offender	The offender did have a criminal history which was not provided for the purpose of the review. It would appear, however, that he had an extensive and unenviable criminal history but no history for sexual offences.
Court	District Court, Cairns
Summary of Offence(s)	A Schedule of Facts was prepared and tendered, however, it was not provided for the purpose of the review. In the sentencing remarks it is clear that the offender had sexual intercourse with his 14 year old daughter on three separate occasions and also attempted to have her indecently deal with him. The offences were committed when the complainant was under the offender's care. She had been in his care for only a few months prior to the offending starting.
Crown Submissions on Sentence	The prosecutor relied on *R. v Bernard Peter Roche* QCA 1996 and *R. v Edward Alan Kendall* QCA 1 February 1996. The prosecutor referred to the very serious breach of trust involved. Although the offender has an unenviable criminal history he has no history for these type of offences. The sentence range is 4 - 5 years imprisonment.
Defence Submissions on Sentence	The offending took place over a very short period of time. The offender made full admissions to the police and wrote an apology to the complainant. His actions in co-operating with the police and pleading guilty prevented the complainant from having to give evidence against her own father. The judge was urged to give him credit for his plea of guilty by taking time off the head sentence rather than by ordering an early parole eligibility date.
Sentence(s) Imposed	Incest – 5 years imprisonment; Count 4 (attempted indecent treatment); Twelve months imprisonment (declaration for 122 days of pre-sentence custody).
Summary of	The offences were very serious involving sexual intercourse

Sentencing Remarks	with the offender's daughter on three separate occasions and attempting to indecently deal with her as well. The offences were committed when the complainant was under the offender's care and she was only 14 years of age. The offender's behaviour towards the complainant was appalling and involved a gross breach of trust. The offender has a very bad criminal history with a number of previous convictions for serious offences of violence. He was only released from prison a short time before his daughter came into his care. Since these matters came to light the offender has again been convicted of a further offence of violence and served a further term of imprisonment in relation to that. The offender does not have any prior convictions for offences involving sexual misconduct. The offender made full admissions to the police and has demonstrated true remorse, not only to the police and the courts, but also by writing letters of apology to members of his family. The matter proceeded by way of a full hand up committal and a plea of guilty was indicated in a timely way. The offender is entitled to credit for his co-operation and early pleas of guilty, particularly as it has meant that his daughter did not have to give evidence in court.

Case	68K
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of Offence	DOB: 16.03.1988: 18
Age of Complainant	33
Date of Offence(s)	14.02.2007
Date of Conviction(s)	4.12.2007
Date of Sentence(s)	4.12.2007
Nature of Offence(s)	Sexual assault, break and enter a dwelling with intent to commit an indictable offence, indecent act, common assault.
Prior Criminal History of Offender	A criminal history was tendered on sentence but was not made available for the purpose of this review. It would appear that the offender had prior convictions for various offences, including stalking, break and enter and commit an indictable offence, indecent act, common assault and break and enter a dwelling with intent at night. Many of the offences targeted single women in their dwellings.
Court	District Court, Cairns
Summary of Offence(s)	The complainant was a 33 year old woman. At about 6.30a.m. on the day of the offence she left her townhouse to go for a morning walk. While she was walking in bush land she said good morning to the offender, who then came up behind her and grabbed her breast and shoulder. She pushed him away and told him not to grab her and to leave her alone. Upon returning to her townhouse she had a shower. While she was showering she saw the offender standing near the bathroom door. She told him to get out of her house and he ran off. She went outside and she saw the offender at the bottom of the stairs. She yelled at him again to get out of the house. He started to walk up the stairs. She confronted him and pushed him backwards. While she was pushing the offender she saw that his penis was exposed from his shorts and that he was touching his penis. The complainant tried to ring 000 and the offender pushed her backwards. The police attended shortly thereafter and apprehended the offender who denied any involvement.
Crown Submissions on Sentence	Because the offences were committed while the offender was on parole, any sentence must be served cumulatively on pre-existing sentences. The prosecutor referred to a number of single judge decisions in support of a head sentence of 3 - 4 years for the break and enter with intent charge and lesser sentences in relation to the other offences.

Defence Submissions on Sentence	Having regard to the offender's young age and the fact that no significant violence was used during the offence, the appropriate head sentence is 3 years with parole eligibility set at 12 months, which should result in him serving at least 15 months before being released. This would allow him to complete the sexual offender's treatment programme.
Sentence(s) Imposed	Count 1 - sexual assault - 3 months imprisonment Count 2 - break and enter with intent - 3 years imprisonment Counts 3 and 4 - indecent act and common assault - 6 months imprisonment. The sentence of imprisonment on Count 1 is cumulative on the sentences for the other counts.
Summary of Sentencing Remarks	The offender's conduct would have been terrifying for the complainant, although the offender did not use excessive violence. The offender was only 18 years of age at the time of the offences and has pleaded guilty. The criminal history is of great concern, particularly as it involves sinister behaviour towards women. The present offences were committed while on parole for the earlier offences which indicates that the offender has a problem with his sexual urges. This problem is confirmed by the psychologist's report. The psychologist concluded that without treatment the offender is at moderate to high risk of further sex offending. The psychologist concluded that the offender has little empathy with his victims and clearly needs to have counselling and treatment to come to terms with his offending.

Case	69H
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of Offence	DOB: 30.03.1989: 17
Age of Complainant	Unknown - women and children
Date of Offence(s)	5.09.2006
Date of Conviction(s)	12.12.2007
Date of Sentence(s)	12.12.2007
Nature of Offence(s)	Doing an indecent act, break and enter a dwelling with intent to commit an indictable offence using violence while armed, serious assault, assault occasioning bodily harm whilst armed with an offensive weapon.
Prior Criminal History of Offender	Nil.
Court	District Court, Cairns
Summary of Offence(s)	In relation to count 1 (indecent act) the offender was standing in a park when he removed his pants and underpants and masturbated. It appears that he was sniffing petrol at the time. The offender moved towards the complainant's house where children were playing in the front yard and started masturbating. (The other offences were much more serious but did not involve sexual misconduct.)
Crown Submissions on Sentence	The plea of guilty was entered in a timely way. The offender is a young man and a first offender. The offence was not premeditated and it seemed to be the result of the offender's intoxication. The prosecutor referred to *Miles* [1999] QCA 325; *Fitzgerald* [2004] QCA 241; *Wendt* [1994] QCA 613 in support of a head sentence of actual imprisonment. A global head sentence of 3 years with an immediate parole release date to reflect the 1 year 3 months that the offender had served in pre-sentence custody is appropriate.
Defence Submissions on Sentence	The offender was affected by alcohol and solvents at the time. He has no history. He is extremely remorseful and pleaded guilty. No comparatives referred to.
Sentence(s) Imposed	Count 1 (indecent act) - 3 months imprisonment. Count 2 (burglary with a circumstance of aggravation - 3 years imprisonment. Count 3 (serious assault) - 2 years imprisonment. Count 4 (assault bodily harm) - 3 years imprisonment. 463 days pre-sentence custody declared to be time served under the sentence.
Summary of Sentencing Remarks	The behaviour was disturbing and involved masturbating in public and masturbating in front of women and children. The offender then entered the home of complete strangers and grabbed the dress of an elderly lady. The offender then grabbed a knife from the

	kitchen and threatened to kill the elderly lady's son. In a struggle the elderly lady's son was cut on the hand. The offender continued to make threats and struggle even after the police arrived. Prison time was called for but the time already spent in custody was sufficient. The judge also took into account the early plea of guilty and the fact that the offender was only 17 years of age when the offences were committed.

Case	70W
Adult/Juvenile	Adult
Date of Birth of Offender: Age at time of Offence	25.08.1976: 28
Age of Complainant	16
Date of Offence(s)	14 April 2005
Date of Conviction(s)	18.10.06
Date of Sentence(s)	18.10.06
Nature of Offence(s)	Sexual assault
Prior Criminal History of Offender	A criminal history was tendered however it was not provided for the purpose of the review. It would seem that he had no relevant criminal history, however, he was on probation at the time of the offence in relation to traffic matters.
Court	District Court Aurukun
Summary of Offence(s)	The offender and his co-offender were community policemen. The complainant and several others had been sitting under a tree sniffing petrol. The offender and his co-offender stopped the community police vehicle and approached the 16 year old complainant and told her that her mother wanted to see her and told her to get into the vehicle so that they could take there. Instead of taking the complainant to her mother's place, the offender and the co-offender took the complainant 10 kilometres out of Aurukun to a rubbish tip where the offender got into the rear of the vehicle and touched the complainant on the breast. The complainant started to cry as a result of which the offender and the co-offender drove the complainant back to town. The offender was interviewed on 14 April 2005 and admitted the offence.
Crown Submissions on Sentence	A victim impact statement was tendered. The matter proceeded by way of a full hand up committal without cross-examination. A plea of guilty was entered a very early stage. The co-offender took the matter to trial which ultimately resulted in a *nolle prosequi* being entered. Notwithstanding the complainant's reluctance to speak, the offender still pleaded guilty which was to his credit. The offender desisted as soon as the complainant became upset. There was a significant breach of trust involved because he was a community policeman. A term of imprisonment of 6 to 9 months is appropriate. No comparables referred to.
Defence Submissions on Sentence	The offender has a good work history. The offender has otherwise been a valued and conscientious member of the community police. The offender is

	remorseful and ashamed of himself. The offender has continued to cooperate notwithstanding the complainant's reluctance to give evidence against the offender's co-accused. The offender has no history of sexual offences. The offender lost his career as a community policeman as a result of the offence. The offender is going well on his probation order. No comparables were referred to.
Sentence(s) Imposed	120 hours community service. Conviction recorded.
Summary of Sentencing Remarks	What you did was very stupid and would have been terrifying for the complainant. The complainant's victim impact statement shows that she was very upset by it and still is very scared of you. This is the sort of offence that can well result in imprisonment. The prosecution has suggested that the appropriate penalty is 6 to 9 months imprisonment. However, because of your plea of guilty and full cooperation with police and because you have pleaded guilty even though your co-offender was able to escape any consequences of his behaviour because the complainant had trouble giving evidence in court you have continued with your plea of guilty and you should be given substantial credit for that. You are someone who is a good worker in the community, who is respected in the community and has the prospect of a good job in the community. You are progressing well on probation and community service. You do not have any history of sexual offending. For all of the above reasons community service is appropriate.