



Review of particular criminal defences

Mandatory penalty for murder: Key research insights

Research report 2

June 2025

THE
CRIMINAL CODE
OF QUEENSLAND,
AND THE

S. H. Piggott

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Content warning

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Acknowledgements

We thank Queensland Corrective Services and the Queensland Courts Performance and Reporting Unit for providing access to data that forms the basis for this research.

We also thank the Queensland Sentencing Advisory Council for updating their Sentencing Spotlight on Murder, which we have drawn on in our analysis.

Summary of key findings

Key finding 1

Sentences for murder do not reflect the offending context, including the degree of culpability or surrounding circumstances.

Key finding 2

The judicial discretion to extend the minimum non-parole period is rarely exercised.

Key finding 3

As the minimum non-parole period increases, the gap between the non-parole period and the release date reduces.

Key finding 4

Persons found guilty of murder and sentenced to life imprisonment rarely reoffend following release on parole and almost never reoffend by committing another murder.

Introduction

1. This report presents the findings of our research on the mandatory penalty of life imprisonment for murder conducted for our review of particular defences in the Criminal Code.
2. In Queensland the current sentence for murder includes two mandatory components:
 - a head sentence of life imprisonment or an indefinite sentence
 - a minimum non-parole period of 20, 25 or 30 years, depending on the circumstances, that can be increased at the judge's discretion.
3. The purpose of this research was to enhance our understanding of how the mandatory sentence of life imprisonment for murder is considered and applied as part of the sentencing process in Queensland and its implications. We also wanted to gain insight into sentencing frameworks and practices in other comparable jurisdictions with different sentencing regimes.
4. The information in this report will assist us to develop recommendations for reform of the current sentencing regime for murder. As noted below, this research is one part of our work to develop recommendations for reform about this aspect of our review. We will continue to progress our research and to seek feedback in relation to appropriate reforms.

Our review

5. On 15 November 2023, the Queensland Government asked us to review and make recommendations about particular defences in the Criminal Code. We were also asked to consider the mandatory penalty of life imprisonment for murder and its impact on the operation of relevant defences and excuses and recommend whether it should be removed.
6. Our [terms of reference](#) require us to have particular regard to homicides occurring within the context of domestic and family violence. Relevantly, they also require us to consider:
 - existing legal principles of criminal responsibility
 - the need for Queensland's criminal law to reflect contemporary community standards
 - recent developments, legislative reform and research in other Australian and international jurisdictions.
7. In our [consultation paper](#), we explored potential options for reform of mandatory sentencing and invited input.
8. To date, we have used a wide range of approaches to review the mandatory penalty for murder and hear views about our proposals, including:
 - consulting with key stakeholders in meetings, forums, events and roundtables, including:
 - individuals with lived experience of the criminal justice system
 - community and advocacy organisations
 - domestic and family violence support services
 - Aboriginal peoples and Torres Strait Islander peoples and their communities
 - legal practitioners and judicial officers
 - academics

- Government agencies
- independent statutory bodies
- inviting public submissions in a wide range of formats
- researching and analysing legislation and case law
- analysing relevant laws in comparative jurisdictions
- commissioning an independent study about community attitudes to defences and sentencing in cases of homicide and assault in Queensland¹
- analysing relevant international and Queensland human rights laws
- reviewing government and academic publications and research reports.

Guiding principles

9. We identified five guiding principles to help us to develop recommendations for reform. We discuss these guiding principles in detail in [background paper 2](#). They are:
 - **justice:** the defences and penalty for murder should promote just outcomes and protect fundamental human rights, including rights in criminal proceedings
 - **fitness for purpose:** the defences in the review and the penalty for murder should reflect contemporary community standards and be fit for purpose
 - **clarity:** the defences should be clear and easy to understand
 - **domestic and family violence:** the defences should better reflect circumstances involving domestic and family violence, including coercive control
 - **evidence-informed:** the defences and recommended reforms should be informed by evidence, including expert knowledge and lived experience.
10. The research discussed in this report supports our final principle by providing evidence to inform our review.

Method

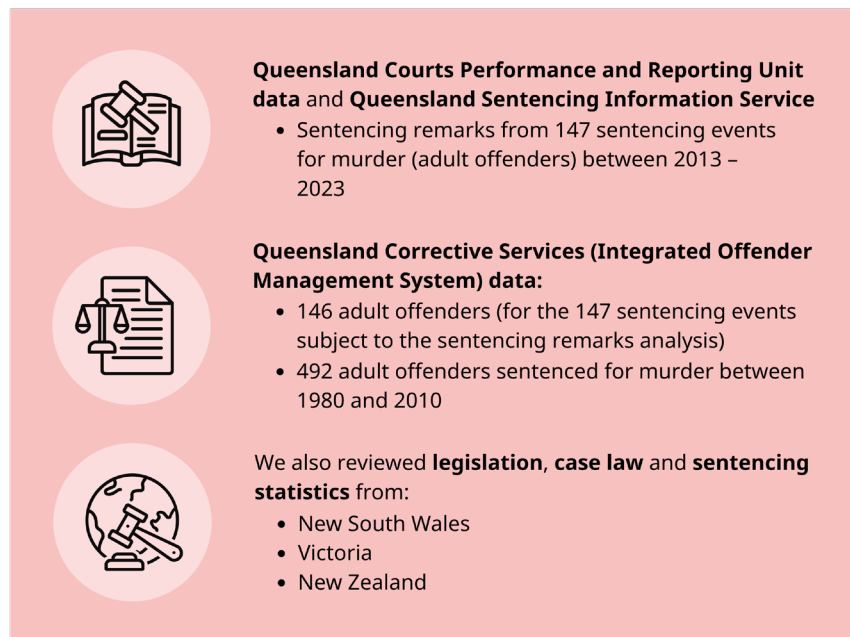
Research aims and methods

11. The aim of this research was to understand how the mandatory sentence for murder is applied and its implications. This includes:
 - how the mandatory sentence for murder is considered as part of the sentencing process
 - sentencing in practice, including time served in custody, eligibility for parole and post-release offending.
12. We used two primary research methods:
 - analysing sentencing remarks for 147 sentencing events for murder by 146 adult offenders between the period of 2013 and 2023
 - analysing Queensland Corrective Services data for:
 - 146 adult offenders (for the 147 sentencing events subject to the sentencing remarks analysis)

- 492 adult offenders sentenced for murder between 1980 and 2010.

13. To understand how Queensland's laws compare to other comparable jurisdictions and whether discretionary sentencing impacts the length of time sentenced or served, we also undertook a comparative analysis of select Australian (New South Wales and Victoria) and international (New Zealand) jurisdictions.
14. Further information about our methodology is in Appendix 1. Details of the information requested from Queensland Corrective Services is set out in Appendix 2.

Figure 1: Our research data



Limitations

15. The limitations of our research include:
 - The current 20-year minimum non-parole period was introduced in 2012, less than 20 years ago. This limits our ability to understand longitudinal trends.
 - Data collected by Queensland Corrective Services does not identify the nature of breaches of parole by convicted murderers. This restricts our ability to understand the impact of mandatory sentencing and minimum non-parole periods on recidivism.
 - The existence of the mandatory penalty for murder has resulted in more limited consideration of sentencing factors in cases of murder as compared with other offences. While this is partly ameliorated by the requirement to give reasons in the Penalties and Sentences Act 1992 and the fact that sentencing remarks form part of the evidence subsequently considered by the Queensland Parole Board ('Parole Board'), this still limits the judicial consideration available for analysis.
16. Despite these limitations, this research provides useful information that will inform our review.

Mandatory sentencing for murder

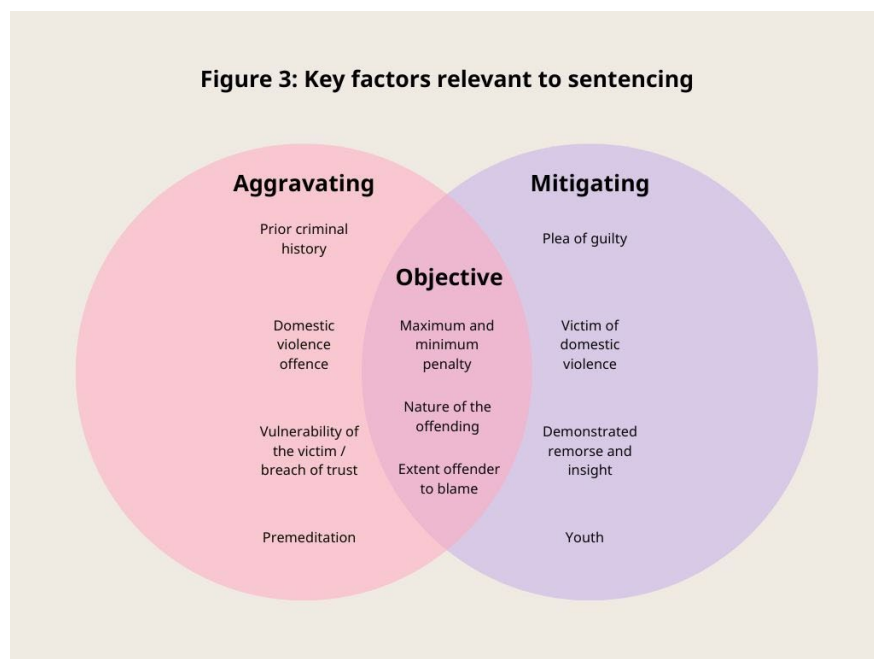
The purpose of sentencing

17. Sentencing is the process whereby a court decides and orders a penalty or punishment for a person who is convicted of a criminal offence after a plea of guilty or finding of guilt. A 'sentence' is defined in section 4 of the Penalties and Sentences Act 1992 as 'a penalty or imprisonment... or another order made by a court after an offender is convicted, whether or not a conviction is recorded...'.
18. Each Australian jurisdiction has its own criminal and sentencing laws, but it is accepted across all Australian jurisdictions that judicial officers (judges and magistrates) hear and decide sentences for criminal convictions.² Parliament sets the maximum penalties for offences, to reflect the clear limit of the court's sentencing power and the consequence for the most severe example of the offence. The overall seriousness of a particular offence, compared to other offences, is also recognised in the maximum penalty.³
19. Sentencing is a complex process where a judge must balance purposes, principles and other considerations to decide an appropriate sentence. A sentence may comprise one or more penalties, including imprisonment, probation, community service orders and fines.
20. Most sentencing principles are derived from the common law, though some are recognised in legislation. In Queensland, the Penalties and Sentences Act 1992 provides the framework for sentencing adult offenders. It sets out:
 - guidelines and principles for sentencing
 - factors the courts must consider in sentencing
 - sentencing options available to the courts, such as fines, community service, probation, and imprisonment
 - special provisions for offences involving domestic violence or cooperation with law enforcement
 - processes for reviewing and appealing sentences.
21. In Queensland, courts may only sentence people for one or more of the following purposes:⁴
 - **Just punishment** – to punish the person to an extent or in a way that is just in all the circumstances.
 - **Rehabilitation** – to help the person improve their behaviour and stop committing criminal offences.
 - **Deterrence** – to discourage the person or others in the community from committing the same or similar offence.
 - **Denunciation** – to make clear that the community, acting through the court, finds the offending behaviour unacceptable.
 - **Community protection** – to protect the community from the person.

Figure 2: Sentencing purposes



22. In addition to these purposes, various sentencing principles – found in legislation and/or case law – must be considered when sentencing. These include:
- **Imprisonment should only be imposed as a last resort** – a sentence that allows the person to stay in the community is preferable.⁵ Notable exceptions are for offences that involve violence, offences resulting in bodily harm, and sexual offences against children under 16 years.⁶
 - **Proportionality** – the sentence must properly correspond to the circumstances and seriousness of the offending (part of the just punishment purpose).⁷
 - **Parity** – people who are involved in the same criminal conduct or activity should receive a similar sentence, unless there are factors personal to them that justify a different sentence.⁸
 - **Totality** – where a person is sentenced for more than one offence, or is already subject to a sentence, the total sentence should reflect their overall criminality and not have a ‘crushing’ effect.⁹
 - **De Simoni principle** – a person must not be punished for conduct other than the convicted offence (the court cannot consider uncharged acts that would have warranted a more serious or different offence).¹⁰
23. There are also factors the court must consider when sentencing a person. They can broadly be grouped into three categories, although there are overlapping concepts and these categories are not used in the Penalties and Sentences Act 1992. Some factors are identified in Figure 3, below.



24. The Penalties and Sentences Act 1992 sets out various types of sentences. They range from non-custodial sentences like fines, probation and community service, to custodial sentences involving time in prison or time in prison if specific conditions are breached.
25. Where a custodial sentence is imposed for an offence, the courts can, depending on the circumstances:
- Set a date at which the sentence is suspended, which means the person will be released from prison to serve the balance of the sentence in the community. This can only happen if the sentence is five years or less. There are no conditions or supervision

associated with a suspended sentence, other than the requirement that the person not commit another criminal offence.¹¹

- Set a parole release date, which means the person will be released from prison to parole on the date set by the court, which means they serve the balance of their sentence in the community, subject to set conditions and supervision.¹²
- Set a parole eligibility date, which is the date on which the person may apply for parole to the Parole Board.¹³ The Parole Board will consider a range of factors, principally community safety, in deciding whether and when to grant parole.¹⁴

Sentencing for murder

Definition of murder

26. Murder is considered the most serious criminal offence.
27. The Criminal Code defines murder as unlawfully causing the death of another:¹⁵
 - with intent to kill or do grievous bodily harm
 - with reckless indifference to human life
 - by an act likely to endanger human life in the prosecution of an unlawful purpose
 - with intent to do grievous bodily harm to facilitate the commission of certain crimes or to facilitate the flight of an offender after committing or attempting to commit certain crimes
 - by administering a stupefying or overpowering thing to facilitate the commission of certain crimes or to facilitate the flight of an offender after committing or attempting to commit certain crimes or
 - by willfully stopping breath.
28. The introduction of the second category, reckless indifference to human life, in 2019 responded to the Queensland Sentencing Advisory Council's report on sentencing for child homicide, broadening liability for murder to reflect the culpability of this conduct.¹⁶
29. There are a range of circumstances that may constitute murder. In addition to the acts listed above, liability for murder extends to those who:
 - enable, aid, counsel or procure another person to commit murder¹⁷
 - agree to undertake an unlawful purpose, during which murder is committed and was a probable consequence.¹⁸

Current sentencing framework

30. In Queensland, the punishment for murder is mandatory life imprisonment or an indefinite sentence.¹⁹ This cannot be mitigated or varied under the Criminal Code or any other law.²⁰ Unlike other offences, there is no discretion for the sentencing court to order otherwise.

31. An indefinite sentence is one in which the offender is never eligible to apply for parole. Instead, the court periodically reviews the sentence. To date, we could locate only one instance of the court imposing an indefinite sentence for murder.²¹ For this reason, we have limited our analysis and discussion to life imprisonment as the mandatory penalty for murder in Queensland.

32. Where the court sentences an adult to mandatory life imprisonment for murder, they become eligible for parole after serving a mandatory minimum non-parole period. The periods are:

- **30 years** for an offender who commits multiple murders or has a previous conviction for murder
- **25 years** for the murder of a police officer
- **20 years** for any other murder.²²

33. The sentencing court cannot reduce the minimum non-parole period.²³ It can extend it if there are aggravating circumstances that warrant postponement of parole eligibility beyond the minimum.²⁴

34. Parole will ordinarily not be granted where the deceased's body is not found.²⁵

35. Our [information sheet on the mandatory penalty for murder](#) gives context relevant to this paper.

Life imprisonment and parole

When a person is sentenced to life imprisonment, they must stay in prison for the minimum time set by legislation (the **non-parole period**).

After completing the non-parole period, a person may apply for parole. **Parole** is serving part of a term of imprisonment in the community, subject to set conditions and supervision. Conditions on parole may include restrictions on where the person can live, their employment, a requirement to participate in programs, curfews and drug and alcohol testing. If they do not comply with those conditions, they may be returned to prison.

If a person sentenced to life imprisonment is granted parole, they remain on parole for the rest of their life (unless they are returned to prison).

Evolution of the penalty

36. Since colonisation, the mandatory sentence for murder was the death penalty. However, this was not enforced in many circumstances. The sentencing court could record but not pronounce the death penalty for some types of murder, effectively circumventing the punishment. In all circumstances, the state had power to change a death penalty to life imprisonment. This was common practice and, despite the law requiring the death penalty, the Government adopted a policy in 1916 to convert all death penalties to life imprisonment.

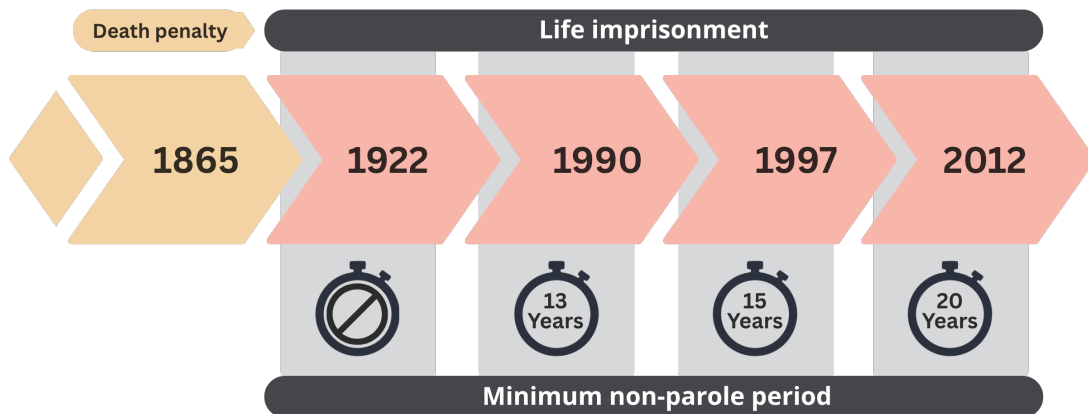
37. In 1922, Queensland became the first Australian state to formally abolish the death penalty. Mandatory life imprisonment replaced the death penalty for murder.

38. Initially, an offender sentenced to life imprisonment for murder could apply for parole at any time. The first minimum non-parole period of 13 years' imprisonment was introduced in 1990.²⁶ An offender sentenced after this amendment was required to spend a minimum of 13 years in prison before being eligible to apply to the Parole Board for parole.

39. The option of an indefinite sentence, as an alternative to life imprisonment was introduced in 1992.

40. Two changes to the minimum non-parole period commenced in 1997:
- the standard period of 13 years' imprisonment increased to 15 years' imprisonment
 - a longer non-parole period of 20 years' imprisonment applied to offenders who committed multiple murders.
41. The last substantive changes to the minimum non-parole period occurred in 2012. Those amendments formed the current mandatory regime of life imprisonment with set non-parole periods.

Figure 4: Evolution of the penalty for murder in Queensland



Key research findings

Key findings

1. Sentences for murder do not reflect the offending context, including the degree of culpability or surrounding circumstances.
2. The judicial discretion to extend the minimum non-parole period is rarely exercised.
3. As the minimum non-parole period increases, the gap between the non-parole period and the release date reduces.
4. Persons found guilty of murder and sentenced to life imprisonment rarely reoffend following release on parole and almost never reoffend by committing another murder.

Sentences do not reflect offending context

Key finding 1

Sentences for murder do not reflect the offending context, including the degree of culpability or surrounding circumstances.

- 42. In a discretionary sentencing regime, the court typically considers a range of sentencing principles and factors, including mitigating and aggravating features, in determining the appropriate sentence. Mandatory sentencing limits the court's ability to do so by constraining discretion and flexibility.
- 43. Below, we discuss the implications of this, having regard to key contextual elements that sentencing judges would otherwise consider when imposing a sentence.

Domestic and family violence

- 44. Our [terms of reference](#) ask us to have particular regard to homicides occurring within the context of domestic and family violence. This context has relevance in sentencing both a perpetrator and a victim of domestic and family violence.
- 45. Since May 2016, if an offence is classified as a 'domestic violence offence', the court must treat this as an aggravating factor when determining the sentence for an offender who is the perpetrator of domestic and family violence. This amendment reflects the community's denunciation of domestic and family violence.²⁷
- 46. This context is relevant both where the offender is a perpetrator of domestic and family violence and where the offender has experienced domestic and family violence perpetrated by the victim. Many of the murders analysed in our research were committed in the context of domestic and family violence.²⁸ Of these, almost all involved a male offender killing a female intimate partner. For offences of domestic violence, denunciation and deterrence are important sentencing principles. As one sentencing judge explained:

[The victim] was the fatal victim of your domestic violence. She lost her life, at your hands, in a traumatic and brutal way ... The purpose for which I am sentencing you, today, is to punish you to an extent, or in a way, that is just in all the circumstances. Importantly, for the serious offences to which you've pleaded guilty, that arise out of domestic violence, it is, also, to make clear that the community, acting through the Court, denounces the sort of conduct in which you were involved. It is important, not just to protect the Queensland community from you, but to deter you and other persons from committing the same, or a similar, offence.²⁹
- 47. All other matters being equal, a domestic violence offence would typically attract a greater sentence. Where the offence is murder, the court cannot reflect this in the head sentence (while they can stipulate an indefinite sentence, the court has not yet ordered this). The only way the court can reflect this aggravating factor is by extending the non-parole period.
- 48. There are occasions where an offender has been the victim of past domestic and family violence. Recognising this, Parliament amended the law in February 2023 to clarify that the effect of domestic and family violence against an offender is a mitigating feature, unless it is unreasonable to consider it so.³⁰ While this applies to offences, it does not have the effect of mitigating a sentence for murder due to the mandatory penalty.
- 49. In our sentencing remarks analysis, the courts did not consider a history of domestic violence perpetrated against the offender in any case. This may be because the legislative amendment is recent or because Queensland has partial defences that can reduce murder to manslaughter

in such circumstances. The scope and limitations of this research does not establish reasons for this.

Pleas of guilty

50. The courts recognise a plea of guilty as a significant mitigating factor. They consider it shows remorse, acceptance of responsibility and a willingness to facilitate the course of justice. It also saves the expense of trial, reduces delay in the criminal justice system and spares witnesses from attending court and giving evidence. For these reasons, an early plea of guilty will usually attract a greater sentence discount compared to a late plea, as it has more pragmatic value.

51. The most common approach in Queensland is to order that release on parole or eligibility for parole is fixed at one-third of the head sentence, rather than the typical one-half. Yet case law and legislation do not mandate a reduction in sentence and there is no fixed or mathematical method to reflect a guilty plea in a sentence. It may warrant changing the type of penalty imposed, reducing the head sentence or bringing forward a parole release or parole eligibility date.

52. Given the court's inability to reflect a plea of guilty in a sentence reduction for murder, depriving the offender of the usual benefits associated with a plea of guilty, we would expect a lower rate of guilty pleas. Commentary from the case law supports this assumption. In one decision, the sentencing judge commented:

That you have pleaded guilty to the charge of murder is at least to your credit. It is not often that someone charged with murder, because of the inevitable life imprisonment penalty that follows, pleads guilty to it.³¹

53. The data reveals a plea rate of 25% of total convictions for murder during the sample period.³² Many sentencing remarks still observe the qualities of a guilty plea, including that it sometimes indicates remorse, acknowledges responsibility, exhibits a willingness to facilitate the course of justice and has inherent utilitarian value for society.

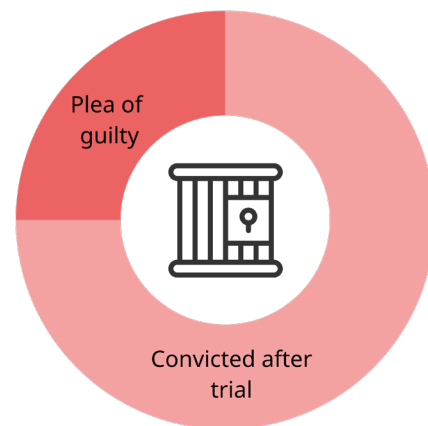
54. The sentencing remarks do demonstrate that courts take into account a guilty plea, in a limited way, during sentencing for murder. It is a powerful factor weighing against an extension of the minimum non-parole period. For example, in one case the sentencing judge said:

But for your pleas of guilty, the conduct engaged in by you over such an extended period was so callous and so deliberate that it would be deserving of an order that your parole eligibility date be delayed by a period of two years. However, your pleas of guilty must be taken into account. They have shown significant cooperation with the administration of justice. The only way to take that cooperation into account is to not make an order delaying the parole eligibility date that is allowed for by the legislation.

55. This creates a perverse situation where a guilty plea is effectively taken into account as a mitigating factor for more serious murders but not otherwise.

56. While it is common for the minimum non-parole period to not be extended in cases where a guilty plea is entered, it is not determinative. If there are sufficient aggravating circumstances, parole eligibility may be postponed despite a guilty plea.

Figure 5: Proportion of guilty pleas to murder of total convictions



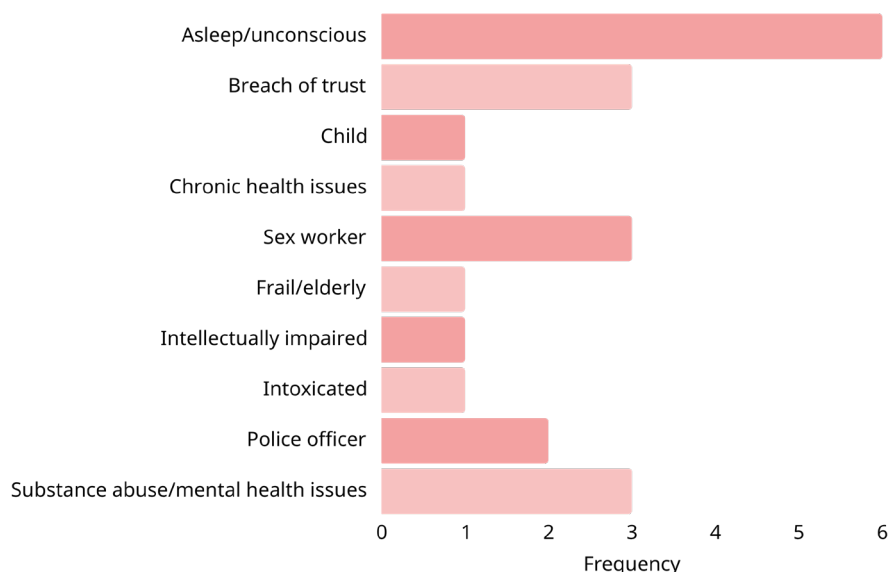
Parity between co-offenders

57. The common law principle of parity is designed to ensure equality before the law. It directs that like cases are treated alike and differential treatment occurs only where there are relevant differences.³³
58. The mandatory penalty for murder and the principle of parity can, at times, be difficult to reconcile. While co-offenders may have differing characteristics and roles in the commission of a crime, they are given equal punishment.
59. One way in which the differing circumstances of the offence are reflected is by the prosecutor accepting a plea of manslaughter, in appropriate cases, from one or more co-accused.
60. In one case, five co-offenders planned a joint assault on the victim in retaliation for stealing cannabis. Reflecting the differing levels of culpability, one offender pleaded guilty to murder, while the prosecutor accepted pleas of manslaughter from the others. This effectively allowed for a discretionary sentencing regime to apply to those who were less blameworthy, avoiding the mandatory sentence of life imprisonment.³⁴
61. Yet all offenders may receive the mandatory penalty for murder even when they have different circumstances. For example, in a case involving three co-offenders who conducted a home invasion, all received the mandatory sentence following conviction for murder. This was despite one offender being the person who killed the victim at close-range with a rifle. Neither of the other co-offenders directly participated in the killing, though one was armed with a machete.³⁵

Vulnerability of victim

62. The Penalties and Sentences Act 1992 recognises that victim vulnerability is a key aggravating feature.³⁶ A victim may be in a vulnerable position for a variety of reasons, including:
- age
 - occupation
 - disability
 - relationship to the offender.

Figure 6: Categories of victim vulnerability identified from sentencing remarks analysis



63. Although it may be an aggravating feature that could increase the penalty for an offence, there are limited options for the court to reflect victim vulnerability in sentencing for murder and where it is mentioned as a factor, it does not affect the sentencing outcome.
64. In one case, an offender murdered a 12-year old child in his care to conceal that his 18-year old son had had sexual intercourse with the victim. During sentencing, the judge remarked:
- The reasons for that murder and your conduct subsequently can only be described as cold, calculating and callous. You murdered this defenceless child who relied upon you for her protection, protection she could not receive from her own mother, and you did so in order to save one of your own children from the consequences of his actions.³⁷
65. Notwithstanding this acknowledgement, the court applied the minimum non-parole period. That was so even though offences against children, particularly offences of a sexual or violent nature, are ordinarily considered a grave aggravating feature.
66. Another case that highlights victim vulnerability, and its lack of impact on the sentence, involved abuse by a paid carer.³⁸ The victim was described as frail and unsteady on his feet. In imposing the mandatory penalty without extension of the non-parole period, the sentencing judge said:
- That you were his carer, and that you were the person that killed him, aggravates the circumstances of this offence. It is a betrayal of an enormous kind.

Age of offender

67. Another factor usually considered relevant to sentencing is the offender's age.³⁹ Youthfulness may attract leniency, particularly when coupled with positive prospects for rehabilitation.⁴⁰
68. The court considered the prospects for rehabilitation of young offenders in one case where the offender was 18 years old at the time of the offence. During sentence, the judge commented:
- It will be a very long time before you are released from prison. During the time that you are in prison, and when you eventually come out of it, you have to do all that you can to give back to the community. You have to get the education that you have not had so far in your life ... you have a lot of your life ahead of you. A large part of your adult life is now going to be spent in a jail. You will have a long time to decide whether, when you get out of jail, you will turn your back on violence, get a job, and contribute to society.⁴¹
69. Like other contextual factors, the court cannot reflect age in a murder sentence in Queensland due to the mandatory penalty.

Judicial discretion is rarely exercised

Key finding 2

The judicial discretion to extend the minimum non-parole period is rarely exercised.

70. The minimum non-parole period is set by legislation and cannot be mitigated at sentence by the judge. As noted above, there are currently three minimum non-parole periods, depending on the circumstances of the murder:
- **30 years:** an offender who commits multiple murders or has a previous conviction for murder
 - **25 years:** murder of a police officer
 - **20 years:** any other murder.

71. A person who serves a minimum non-parole period is not automatically granted parole. Once eligible, they must make an application to the Parole Board, which assesses their application and determines if they should be released. If released, the person will spend the remainder of their life on parole. Any breach of their parole conditions or reoffending will result in reimprisonment.

72. While the court cannot reduce minimum non-parole periods, they may extend them in appropriate circumstances. In exercising this discretion, judges must have regard to many factors. The court consistently considers community protection in the context of murder. The Court of Appeal has recognised other salient factors to include:

- adequacy of punishment
- denunciation on behalf of the community and vindication of the victims and their families
- offender's criminal history, lack of remorse and prospects of rehabilitation.⁴²

73. In the context of the current minimum non-parole period of 20 years, the court rarely considers extension warranted. The Court of Appeal has noted that:

- denunciation is often served by the mandatory imposition of the minimum non-parole period
- it would be a rare case where a court could predict no process of rehabilitation would render an offender suitable for consideration for parole after a longer period
- a longer period of imprisonment would not sensibly serve the purpose of deterrence that 20 years imprisonment does not.⁴³

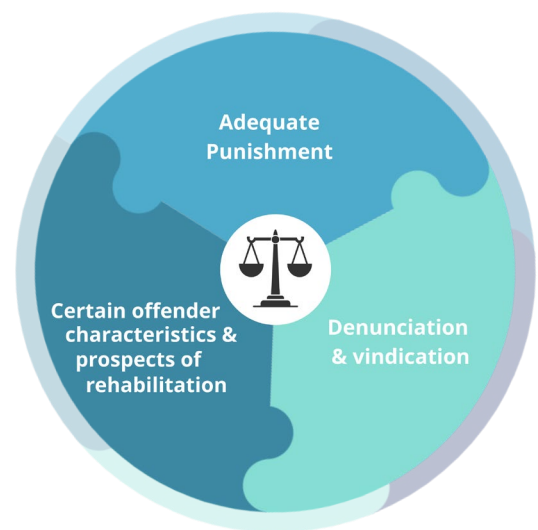
74. Our sentencing remarks analysis aligns with the primary considerations identified by the Court of Appeal.

75. Our sentencing remarks analysis found that in most cases (95%, n=139) judges do not exercise their discretion to extend the minimum non-parole period. As one sentencing judge noted, there must be 'significantly good reason' to extend.⁴⁴

76. The court only exercised the discretion to extend in eight cases. Of those, two were sentenced under the former 15-year minimum non-parole period, while the remaining six were sentenced under the current regime.

77. All eight cases involved a murder committed in conjunction with other significant offending that would itself typically warrant a substantial sentence. While the other offending was not the sole reason for extending the minimum non-parole period, its presence in all cases demonstrates that it is a prominent reason to exercise the discretion to do so. It may be that the sentencing purposes of just punishment and denunciation could not be adequately fulfilled in these cases without postponing the parole eligibility date beyond the minimum. The other offences included:

Figure 7: Primary factors relevant to exercise of discretion to extend non-parole period



Key

n= means the number of cases

- armed robbery⁴⁵
- indecent treatment of a child and interfering with a corpse⁴⁶
- deprivation of liberty and interfering with a corpse⁴⁷
- attempted murder⁴⁸
- burglary, malicious acts with intent and assault occasioning bodily harm⁴⁹
- rape⁵⁰
- assault occasioning bodily harm and retaliation against a witness.⁵¹

78. Our sentencing remarks analysis also showed that murders considered more serious may also enliven the discretion to extend the minimum non-parole period. For example, the:

- deliberate killing of a young police officer during an armed robbery (prior to the introduction of the increased minimum non-parole period in cases involving the murder of a police officer)⁵²
- opportunistic abduction, attempted sexual abuse and murder of a child⁵³
- killing of a step-daughter and preventing the victim's mother from assisting her⁵⁴
- sadistic and prolonged torture of the victim and forcing friends to clean up the crime.⁵⁵

79. Another common element was the offender's violent criminal history, with offenders with a criminal history receiving a substantially longer postponement of their parole eligibility date. In two cases, criminal history was cited as a factor contributing to the extension of the person's minimum non-parole period.⁵⁶

80. Criminal history was a point of distinction for one judge sentencing co-offenders, where they jointly participated in a brutal torture of the victim, before killing her and forcing her friends to clean up. While both had violent criminal histories, one offender's previous conviction for manslaughter was significant and he received a seven-year extension to the minimum non-parole period, in contrast to his co-offender's three-year extension. The sentencing judge made the following comment about the difference in parole eligibility postponements:

I think that the main difference between you and [other offender] in that regard [eligibility for parole] is your criminal history.

81. The existence of a violent criminal history preceding a murder conviction may demonstrate the low rehabilitative prospects of the offender. That inference may be amplified, as it was in many of these cases, where there is no remorse exhibited.

82. In three of the eight cases (37%), the offender pleaded guilty. As discussed above, this demonstrates that a guilty plea, typically a significant mitigatory factor, will not always avoid an extension to the minimum non-parole period.

83. There was only one case where the minimum non-parole period was extended that involved domestic and family violence. While the context was noted, it was not a significant contributing factor to the extension of the non-parole period.

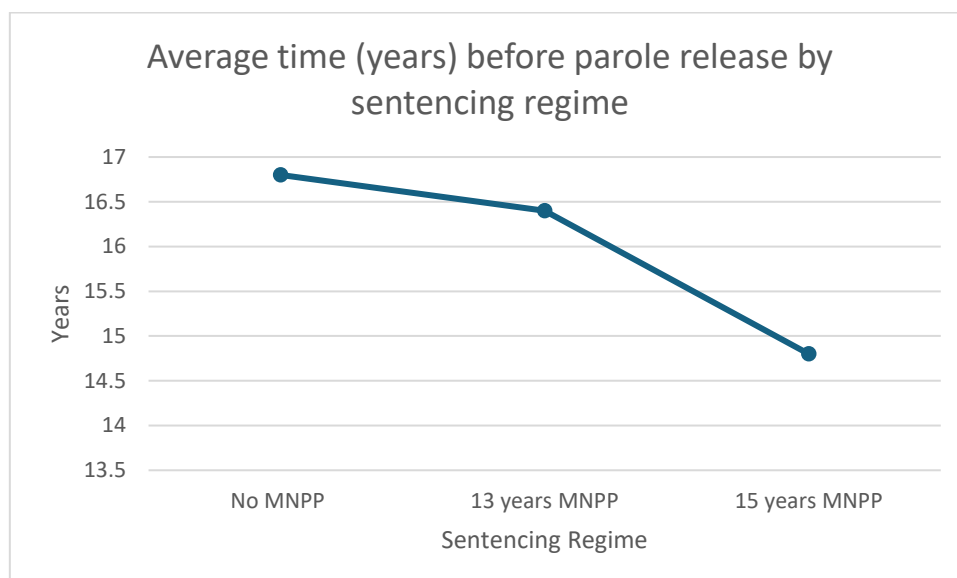
Non-parole period and time spent in custody

Key finding 3

As the minimum non-parole period increases, the gap between the non-parole period and the release date reduces.

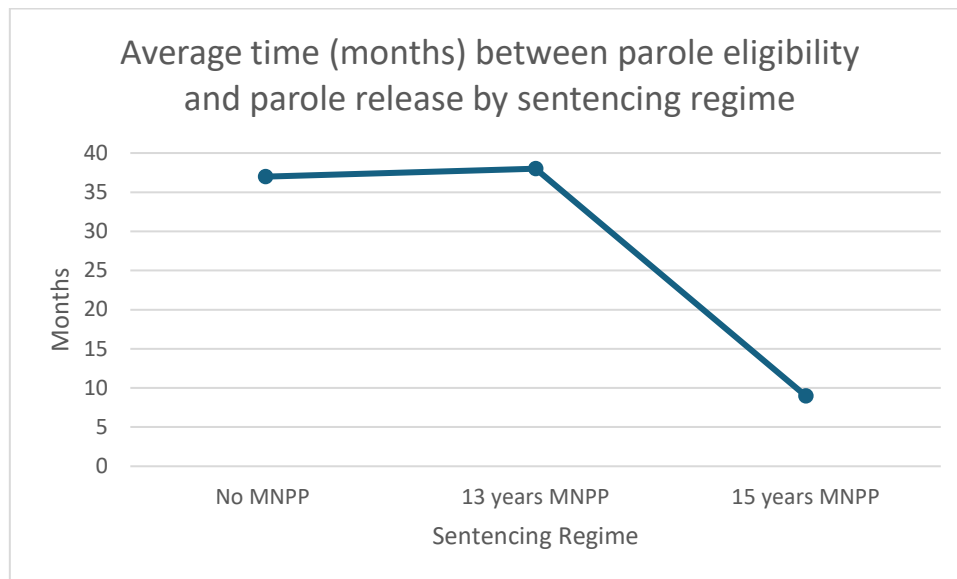
84. The minimum non-parole period for murder in Queensland has changed over time (see Figure 4, above). Since its introduction in 1990 (13-year period), it was increased in 1997 (to 15 years) and again in 2012 to its current 20 year minimum.
85. A limitation of the data is that, before 2019, pre-sentence custody was not always declared by the court during the sentencing process. To accommodate this, if a prisoner's pre-sentence custody was not taken into account in fixing the parole eligibility date, Queensland Corrective Services would respect the prisoner's actual time served, rather than documented. This may have the effect of skewing this data as it relates to the entire custodial sentence.
86. Queensland Corrective Services data for the 492 adult offenders sentenced for murder between 1980 and 2010 provides the following overall parole outcomes for this sample:
 - 350 offenders have been released on parole
 - 76 left the custody of Queensland Corrective Services for some other reason
 - 66 offenders have never been released on parole.
87. We can draw the following findings from the data analysis:
 - For offenders sentenced prior to the introduction of a minimum non-parole period (n=137), 112 were subsequently released on parole. Of those, the average time served before release was approximately 16 years and 8 months.
 - For offenders sentenced under the 13-year minimum non-parole period (n=133), 99 were subsequently released on parole. Of those, the average time served before release was approximately 16 years and 4 months.
 - For offenders sentenced under the 15-year minimum non-parole period (n=200), 137 were subsequently released on parole. Of those, the average time served before release was approximately 14 years and 8 months.
88. The data received did not include time spent in pre-sentence custody for many offenders. Based on anecdotal accounts from legal practitioners, many offenders charged with murder spend time in pre-sentence custody. One of the limitations of this research (as discussed in Appendix 1) is that the QCS data was incomplete. We do not have the pre-sentence custody for all offenders. It is likely that this accounts for the average time served being less than the minimum non-parole period for the 15-year minimum non-parole period cohort.
89. Definitive findings are not possible for the 20-year minimum non-parole period as it is less than 20 years since its introduction in 2012.

Figure 8: Average time before parole release by sentencing regime



90. Figure 8 shows the average time an offender spends in custody before release on parole, which has decreased with the introduction of minimum non-parole periods.
91. In addition to our analysis of the average, shortest and longest times within each minimum non-parole period sentencing regime for an offender to be released on parole, the data also allowed us to examine how long after an offender passed their parole eligibility date it was before they were released into the community on parole.
92. We observed that, of the offenders sentenced without a minimum non-parole period, the average release on parole did not occur until 37 months post the parole eligibility date which was set by the court. Under the 13 years minimum non-parole period, this increased slightly to 38 months.
93. However, a significant drop was observed for offenders sentenced with a 15-year minimum non-parole period, as the average length of time between the parole eligibility date and their release on parole dropped to 9 months (see Figure 9, below).

Figure 9: Average time between parole eligibility and parole release by sentencing regime



94. From this data analysis, we can observe that the successive increases in the minimum non-parole period do not correlate to increases in time spent in prison following the parole eligibility date for persons sentenced for murder. While noting this trend, we do not have access to data from the Parole Board to explain it.

Re-offending is rare

Key finding 4

Persons found guilty of murder and sentenced to life imprisonment rarely reoffend following release on parole and almost never reoffend by committing another murder.

95. The data supports the findings that persons found guilty of murder and sentenced to a term of life imprisonment:
- rarely reoffend following release on parole
 - almost never reoffend by committing another murder.
96. As one of the significant policy imperatives underpinning minimum non-parole periods is protecting the community from convicted murderers upon their release, we wanted to understand rates of reoffending by individuals released on parole following a murder conviction.
97. The available data is limited in that it does not quantify the number of offences committed in this category, whether the offenders were charged and, if so, whether those charges resulted in a conviction.
98. The data shows that 211 (60%) offenders released on parole have never been returned to custody following parole, while 139 of the 350 offenders (40%) were returned to prison on one or more occasions after their release. While the reason for the return to prison may be the commission of a further offence, other reasons for return include breach of a parole order, such as failure to notify a change of address or compliance with a set curfew or participation in a required program.⁵⁷ We do not have sufficient data to reach any conclusions about the reasons for return to custody.

99. Of the 139 offenders returned to custody, only 27 of those offenders were recorded in the data as having been returned due to reoffending. This is approximately 8% of the total cohort released on parole (n=350).
100. The offence types ranged from violent offences, such as rape and armed robbery, to miscellaneous offences, such as resisting arrest and breach of bail.
101. There is insufficient information available to us to ascertain or even infer whether life on parole, or rehabilitation during imprisonment, is a driver for low rates of reoffending.

Other jurisdictions

102. Our [terms of reference](#) ask us to have regard to recent developments, legislative reform and research in other Australian and international jurisdictions to inform our review. We recognise the value of comparative research to understand strengths and challenges of other frameworks and opportunities for reform. There are also valuable insights from jurisdictions with established review and reporting functions for the relevant frameworks.
103. The below discussion represents our findings from our comparative evaluation of New South Wales, Victoria and New Zealand, having regard to:
 - the legislative scheme
 - the practical impact of the legislative scheme, as reflected in sentencing statistics
 - statistics of pleas of guilty to murder, if any
 - how aggravating and mitigating circumstances are reflected in sentencing.
104. Sentencing for murder does not exist in a vacuum. Sentencing laws are part of a broader legislative framework that includes partial defences (if any) and parole options. The nexus between partial defences and the mandatory penalty for murder has been noted by many law reform commissions.⁵⁸
105. Overall, our comparative analysis of sentencing trends reveals that the average and median sentences for murder remain largely consistent across jurisdictions despite varying levels of judicial discretion in sentencing. This is the case even when comparing non-parole periods and varying sentencing regimes. Our research suggests that the seriousness of the crime of murder significantly informs the exercise of sentencing discretion in these jurisdictions.
106. Although New South Wales and Victoria have differing levels of legislative guidance for mitigating and aggravating factors relevant to sentencing, in both jurisdictions these factors must be considered in sentencing, including for murder. This is reflected in the range of sentences imposed for murder and the use of judicial discretion in cases attracting higher and lower sentences. In New Zealand, although the head sentence of life imprisonment is rarely displaced, judges exercise discretion within the legislative parameters in deciding the non-parole period and consider aggravating and mitigating circumstances.

Table 1: Overview of sentencing regimes in Queensland and select comparative jurisdictions

	Qld	NSW	VIC	NZ
	Code	Statute and common law		
Mandatory life	✓	✓ ⁵⁹		
Presumptive life				✓
Maximum life		✓	✓	
Legislated MNPP	✓ 20 – 30 years ⁶⁰		✓ 30 years if life sentence or 60-70% of sentence ⁶¹	✓ 10-17 years ⁶²
Exceptions to MNPP*			✓	✓
Requirement to serve whole of life without parole if sentenced to life imprisonment		✓		

* Minimum non-parole period does not apply in 'exceptional circumstances' or where 'manifestly unjust'.

New South Wales

107. Sentencing for murder in New South Wales progressed from the death penalty to mandatory life imprisonment, to a presumptive life penalty. The current law, enacted in 1990, specifies a maximum penalty of life imprisonment for murder.⁶³
108. However, life imprisonment for murder is mandatory in two circumstances:
 - for the murder of a police officer if specific intention and knowledge elements are met⁶⁴
 - if the Court is satisfied that the level of culpability was so extreme that sentencing principles can only be met by life imprisonment.⁶⁵
109. If life imprisonment is imposed, the defendant must be incarcerated for the remainder of their natural life. They have no prospect of release into the community on parole.⁶⁶ New South Wales is the only Australian jurisdiction with this scheme.⁶⁷ The New South Wales Law Reform Commission and New South Wales Sentencing Council have recommended its abolition.⁶⁸
110. There are no mandatory non-parole periods, although standard non-parole periods must be taken into account by the sentencing judge.⁶⁹ The Crimes (Sentencing Procedure) Act 1999 (NSW) sets out the standard non-parole periods for murder as follows:⁷⁰
 - **25 years:** murder of a public official, such as a police officer or health worker, exercising public or community functions where the murder was due to their work
 - **25 years:** murder of a child under 18 years of age
 - **20 years:** murder in all other cases ('non-aggravated murder').
111. These standard non-parole periods are said to represent the 'middle of the range of seriousness' for an offence, taking into account only the objective factors affecting the relative seriousness of that offence.⁷¹ They are based on the seriousness of the offence, maximum

penalty, sentencing trends for the offence and community expectations regarding the appropriate penalty.⁷² The legislation gives guidance for the recommended proportion between the non-parole period and the head sentence.⁷³

Head sentences and non-parole period statistics

112. The New South Wales Sentencing Council ('the Sentencing Council') conducted statistical analysis of murder sentences in New South Wales between April 2015 and March 2018 and observed:⁷⁴
 - 96 adults were convicted of, or pleaded guilty to, murder
 - 85 of those adults were in the non-aggravated murder category, of which:
 - 5 received life sentences (and therefore were not eligible for parole at any stage)
 - for the remaining 80:
 - head sentences ranged from 13 – 45 years, with a median head sentence of 24 years and average of 25.6 years
 - non-parole periods ranged from 8.5 to 33.7 years, with a median of 18 years and average of 18.9 years
 - since 2003, average head sentences and non-parole periods have steadily increased (both by about one-third of the previous average)
 - the average head sentence in New South Wales is longer than in any other jurisdictions with a maximum (rather than mandatory) penalty of life imprisonment for murder (Northern Territory, Tasmania, Victoria and Australian Capital Territory).
113. The Sentencing Council reported that, for the murder of children under 18 years old, the average non-parole period is just under 24 years. This is similar to the standard non-parole period (25 years) for offending of this nature. This is higher than the averages for non-aggravated murder.
114. In both categories, the average non-parole period is approximately two-thirds of the average head sentence. This meets the legislative guidance for the appropriate proportion between head sentences and non-parole periods.
115. The higher average head sentence in New South Wales, when compared with Victoria, may be explained by:
 - the unavailability of parole when life imprisonment is ordered, which may result in a longer head sentence being imposed (or sought) to avoid a life sentence.
 - the existence of numerous partial defences in New South Wales (compared to none in Victoria), which may assist defendants to negotiate a plea of guilty to manslaughter or a jury verdict of manslaughter instead of murder. If cases dealt with as murder are accordingly limited to the most serious cases, the average head sentence for murder is understandably higher.

Consideration of aggravating and mitigating circumstances

116. The structure of discretionary head sentences and standard non-parole periods provides guidance for judges regarding legislative intent while still allowing the sentence to be tailored for the circumstances. This is expressly recognised in section 21A of the Crimes (Sentencing Procedure) Act 1999 (NSW) which requires a court to take into account any relevant aggravating and mitigating circumstances, including listed factors.

117. A range of aggravating factors are identified in the legislation, broadly relating to factors specific to the offence, the victim of the offence and circumstances specific to the defendant. Aggravating factors include:⁷⁵
- the involvement of actual or threatened use of violence or a weapon
 - the offence arising as part of a planned or organised criminal activity
 - the involvement of gratuitous cruelty or motivation of hatred or prejudice against a group of people
 - the victim exercises public or community functions
 - victim vulnerability, for example, due to their age or disability
 - the defendant's record of prior convictions
 - the defendant's abuse of their position of authority or trust in relation to the victim.
118. Domestic violence as a feature of the murder is not separately recognised as an aggravating factor, but can be raised when considering other aggravating circumstances specified in the legislation.⁷⁶ The Sentencing Council reported that there was 'little or no difference' between the average head sentence and non-parole periods for domestic violence and non-domestic violence murders.⁷⁷ However, the Judicial Commission of New South Wales Handbook states that '[s]ignificant weight should be given to general deterrence, denunciation and community protection when sentencing an offender who takes their partner's or former partner's life'.⁷⁸
119. The legislation identifies a range of mitigating factors, mainly relating to factors specific to the defendant, including that the defendant:⁷⁹
- was provoked by the victim or acting under duress
 - was a person of good character
 - is unlikely to reoffend and/or has good prospects of rehabilitation
 - pleaded guilty to the offence and/or assisted law enforcement authorities.⁸⁰
120. The legislation does not recognise as a mitigating factor the circumstance where a defendant is the victim of domestic violence and their offending is at least partly attributable to the effect of this domestic violence.⁸¹ Arguably, this experience of domestic violence can be raised when considering other mitigating circumstances specified in the legislation.
121. The Sentencing Council did not analyse or provide statistics regarding the rate of guilty pleas to murder nor cross-reference the penalty to the existence of specific aggravating or mitigating factors in their legislation.

Victoria

122. In 2017, Victoria introduced legislation that removed the mandatory life sentence for murder, replacing it with a maximum penalty of life imprisonment.⁸²
123. The standard sentence for murder is 25 years' imprisonment. If the prosecution can prove beyond reasonable doubt that the person murdered was a custodial officer or emergency worker on duty and the defendant knew or was reckless to this, then the standard sentence is 30 years' imprisonment.⁸³
124. Where a standard sentence is prescribed, this is to be considered the middle of the range of seriousness for the offence, considering only the objective factors affecting the relative seriousness of that offence.⁸⁴ Therefore, it acts as a guidepost for judges setting a head sentence, in a similar manner to the standard non-parole periods in New South Wales.

125. Although there is broad discretion, if an adult is convicted of murder, the court is required to impose a custodial sentence.⁸⁵
126. Non-parole periods are fixed on a scale under the Sentencing Act 1991 (Vic). Unless the court considers it is in the interests of justice not to do so, the court must fix a non-parole period of at least:⁸⁶
 - 30 years, if the head sentence is life imprisonment
 - 70% of the head sentence, if the head sentence is 20 years or more
 - 60% of the head sentence, if the head sentence is less than 20 years.
127. The court must set a non-parole period unless 'it considers that the nature of the offence or the past history of the offender make the fixing of such a period inappropriate'.⁸⁷ This effectively permits the court to require a person to spend the rest of their life in custody.

Head sentences and non-parole period statistics

128. The Victorian Sentencing Advisory Council released a report considering 20 years of data in their sentencing snapshots to identify changes in sentencing practices for offences including murder. Their data shows an upward trend in both the average prison sentences and non-parole periods imposed for murder, despite the repeal of mandatory sentencing in 2017:
 - prison sentence: 19.25 years (2001-02) → 24.167 (2019-2020)
 - non-parole period: 15.167 years (2001-02) → 18.5 years (2019-20).⁸⁸
129. The Victorian Sentencing Advisory Council's sentencing snapshot found that between 2017-18 and 2021-22:⁸⁹
 - not all people sentenced for murder in Victoria received a sentence of imprisonment:
 - 92% received a principal sentence of imprisonment
 - the remainder received a custodial or non-custodial supervision order⁹⁰
 - total effective head sentences⁹¹ ranged from 14 years to life imprisonment. Excluding life imprisonment:
 - the median total effective head sentence was 23 years
 - the average was 22 years
 - non-parole periods ranged from 9-46 years, with a median of 18 years
 - one person received a life sentence without parole.⁹²
130. The percentage of guilty pleas was not reported (and are not otherwise published).
131. We can draw the following conclusions from these statistics:
 - Judicial discretion aligns with or exceeds legislative intent:
 - the median total effective head sentence of 23 years and the median non-parole period of 18 years exceeds the minimum non-parole period requirement of 70% of the head sentence (which would equate to 16.1 years)
 - the range in head sentences and non-parole periods demonstrates due consideration of mitigating and aggravating circumstances.

Consideration of aggravating and mitigating circumstances

132. Unlike New South Wales, the Victorian legislation does not prescribe mitigating and aggravating factors. The following circumstances must be considered by the sentencing court:⁹³
- the maximum penalty and any prescribed standard sentence for the offence
 - the nature and gravity of the offence, the defendant's culpability and degree of responsibility for the offence and whether it was motivated by hatred or prejudice against a group of people with whom the victim associated
 - the impact of the offence on any victim, and any injury, loss or damage resulting directly from the offence
 - the personal circumstances of any victim
 - whether the defendant pleaded guilty to the offence
 - the defendant's previous character
 - any aggravating or mitigating factors concerning the defendant
 - any other relevant circumstances.
133. The Victorian Sentencing Manual also identifies some common law principles that provide some guidance relevant to sentencing in Victoria, including:
- a person who offends intentionally should receive a higher sentence than a person who acts recklessly, and a person who acts recklessly with the knowledge of possible risk and scale of risk should receive a higher sentence than a person who does not⁹⁴
 - the objective seriousness of a person's offending is aggravated by their abuse or misuse of their status or position, especially a breach of trust⁹⁵
 - provocation by the victim of the offending conduct may lessen the defendant's culpability, but will not lessen the significance of any harm suffered by the victim (this is important because provocation is not available as a defence in Victoria to any offence)⁹⁶
 - where the victim is a vulnerable person or a public servant/law enforcement officer, the offending is considered more serious⁹⁷
 - offending in breach of a family violence intervention order increases the seriousness of the offending
 - offending in a domestic context 'can never be mitigating and may be aggravating, particularly in cases of family violence, rape, or other sexual offending'. The conduct of a victim may have a bearing on the sentence but is not considered mitigating, evidence of complicity or otherwise.⁹⁸

New Zealand

134. The Sentencing Act 2002 (NZ) introduced a presumptive sentence of life imprisonment for murder in New Zealand.⁹⁹ Before this, life imprisonment was the mandatory sentence for murder. The presumption in favour of life imprisonment can be displaced if the court considers that such a sentence would be 'manifestly unjust'.¹⁰⁰
135. Where a life sentence is imposed, the minimum non-parole period of 10 years applies ('standard non-parole period'). However, the court has discretion to not set a minimum non-parole period if satisfied that the prescribed sentencing purposes would not be sufficiently

satisfied by any non-parole period.¹⁰¹ This effectively allows the court to indefinitely imprison a person.

Minimum non-parole period statistics

136. The First Year Report noted that, of the 26 people convicted of murder in the first year of the presumptive sentencing scheme, 50% were sentenced to life imprisonment with a non-parole period of more than 10 years. This contrasts to the previous year, where it had only been 35%.¹⁰²
137. Research considering all sentencing decisions where the aggravated minimum non-parole period was applied or could have been applied made statistical observations including:
 - the aggravated minimum non-parole period was applied or could have been applied to 155 defendants¹⁰³
 - 95 defendants have been sentenced to serve at least 17 years in prison (the aggravated minimum non-parole period)¹⁰⁴
 - sentences are mostly consistent regardless of which prescribed aggravating circumstances apply. The only factor that reliably led to longer minimum periods of imprisonment was where the defendant had been convicted for two or more murders.¹⁰⁵ There is no direct correlation between which aggravating factors apply and the ultimate minimum period of imprisonment
 - the most common non-parole period imposed across all murder cases was 17 years, which is arguably at odds with the expectations of the select committee that considered the majority of offenders who receive a life sentence for murder would only receive a 10-year minimum period of imprisonment. This may indicate that aggravating factors were considered for a wider range of offenders than anticipated¹⁰⁶
 - where a guilty plea is the only applicable mitigating feature, and where a minimum period of imprisonment of 17 years would otherwise apply, courts have sentenced the defendant to a non-parole period of 15–16 years.¹⁰⁷

Consideration of aggravating and mitigating circumstances

138. If one of the prescribed circumstances apply, the minimum non-parole period is increased to 17 years unless it would be manifestly unjust to do so ('aggravated minimum non-parole period').¹⁰⁸ The prescribed circumstances are set out in s 104 and include:¹⁰⁹
 - murder committed to subvert the course of justice (for example, to avoid detection, prosecution or conviction of any person for an offence)
 - murder involving calculated or lengthy planning, including contract killing
 - murder involving a home invasion or some other serious offence
 - murder committed with a 'high level of brutality, cruelty, depravity or callousness' or as part of a terrorist act
 - when the deceased was a police or prison officer acting in the course of their duty
 - when the deceased was particularly vulnerable because of factors like their age or health
 - where the defendant has been convicted of two or more counts of murder
 - other exceptional circumstances.
139. This can be displaced if the defendant can show that 17 years would be manifestly unjust.¹¹⁰

140. In addition to the specific provisions relevant to sentencing for murder, the Sentencing Act 2002 (NZ) prescribes a non-exhaustive list of aggravating and mitigating factors to consider in any exercise of the sentencing discretion.¹¹¹ Other than a plea of guilty, these general mitigating factors rarely displace the statutory presumption under s 104.¹¹²
141. As New Zealand does not have a sentencing advisory body, we were unable to obtain data on sentencing trends other than through secondary sources like caselaw and commentary.¹¹³
142. The Ministry of Justice commissioned a report assessing the operation of the new sentencing regime for murder in its first year of implementation ('the First Year Report'), which noted:¹¹⁴
- The new regime for murder appears to be working well. The law has been able to address the individual circumstances of the offences and offenders in the sentencing process. The longest ever minimum periods of imprisonment for a life sentence for murder have been imposed this year in recognition of the very serious aggravating factors in those cases, and the high culpability of the offenders. We have also seen the first determinate sentence for murder imposed, with 18 months imprisonment imposed on a 77 year old man convicted of murdering his ill wife.
143. In 2023, the New Zealand Court of Appeal was only able to be referred to 12 cases since the commencement of the new sentencing regime for murder where offenders did not receive life imprisonment for murder (a further three cases have since been determined).¹¹⁵
144. Given New Zealand's structured approach to sentencing for murder, the sentencing court's ability to consider all aggravating and mitigating factors in determining the appropriate sentence is more restricted than in Victoria and New South Wales.

Manifest unjustness and displacing statutory minimums

145. The requirement of 'manifest unjustness' to displace the presumption of life imprisonment is not defined in legislation and has been interpreted narrowly by the courts.
146. The onus is on the defendant to displace the legislative presumption of life imprisonment and the bar to displacing the presumption is usually very high. The full register of sentencing purposes, principles and factors must be considered.¹¹⁶
147. The New Zealand Court of Appeal has hold that the discretion to not impose life imprisonment for murder due to manifest unjustness 'is likely to be reached in exceptional cases only,¹¹⁷ and is limited to offending 'at the lowest end of the range of culpability for murder'¹¹⁸ or having regard to 'strong mitigating circumstances'.¹¹⁹
148. A guilty plea alone would rarely displace the presumption of life imprisonment.¹²⁰
149. Provocation and excessive self-defence have been recognised as factors relevant to considering whether life imprisonment is manifestly unjust.¹²¹ This is particularly important given New Zealand does not have any partial defences to murder.
150. Some examples of cases where the statutory presumption has been displaced have involved 'mercy' killings,¹²² a response to family violence,¹²³ remoteness from the offending,¹²⁴ age¹²⁵ or severe mental health issues having a causative effect on the offending.¹²⁶ This was noted most recently by the New Zealand Court of Appeal in *Dickey v R*.¹²⁷
151. The New Zealand Court of Appeal in *R v Williams* provided a two-stage test in deciding cases where one or more prescribed aggravating circumstance arises:¹²⁸
- The sentencing court must consider what minimum period of imprisonment would be appropriate in the absence of relevant aggravating factors. In doing so, the sentencing court must take into account all aggravating and mitigating factors in both ss 9 and 104. If the court at this stage considers that a minimum period of 17 years is appropriate, it must impose this and the second step does not arise.

- If the sentencing court decides that the appropriate minimum period of imprisonment is less than 17 years, the court must consider whether a 17-year minimum period of imprisonment would be unjust in the circumstances.
152. Since R v Williams, courts have concluded that a 17-year minimum period of imprisonment would be manifestly unjust in 60 cases, many of which involve guilty pleas or remorse.¹²⁹

Next steps

153. The [terms of reference](#) for our review ask us to consider the mandatory penalty of life imprisonment for murder and its impact on the operation of relevant defences and excuses and recommend whether it should be removed. We will consider our research findings in developing any recommendations to reform the law, or relevant practices and procedures.
154. We are continuing to work with Queensland Corrective Services to obtain further data to inform the development of our recommendations. This includes data to help us understand the types of reoffending by convicted murderers following release on parole. In developing our recommendations, we will consider any further data, further information obtained through consultations and submissions and information derived from other relevant sources.

Appendix 1

The data

Sentencing remarks analysis

155. To understand how mandatory sentencing is applied in practice in Queensland, we obtained a spreadsheet of sentencing events for murder following a conviction or plea of guilty (adult offenders only) for the 10-year period from 2013 to 2023 from Queensland Courts Performance and Reporting Unit. We accessed the sentencing remarks for 147 listed sentencing events (involving 146 adult offenders) for this period from the Queensland Sentencing Information Service.¹³⁰
156. As aggravating and mitigating factors can only be considered when determining whether it is appropriate to extend the non-parole period beyond the statutory minimum of 20 years when sentencing for murder in Queensland, we confined our analysis to factors that contribute to the extension of minimum non-parole periods.
157. This analysis was supported by a dataset provided by Queensland Corrective Services (Integrated Offender Management System), which provided descriptive characteristics of the 146 adult offenders.

Queensland Corrective Services data

158. To understand how the mandatory penalty for murder impacts time served in custody, eligibility for parole and post-release offending, we obtained a second dataset from Queensland Corrective Services (sourced from the Integrated Offender Management System).
159. We sought to understand how successive increases in the minimum non-parole period during that period impacted the custodial time served by offenders and the rate and types of reoffending, particularly reoffending involving violence or murder.
160. This dataset included all offenders sentenced for murder during the 30-year period from 1980 to 2010 (a total of 492 adult offenders) and tracked their trajectory to 2024.

Comparative analysis

161. As legislative schemes for sentencing are set by the respective states and territories, there are varying schemes across Australia and New Zealand.
162. To understand how Queensland's laws compare to other comparable jurisdictions and whether discretionary sentencing impacts the length of time sentenced or served, we analysed the sentencing schemes in New South Wales, Victoria, Western Australia, Northern Territory and New Zealand.
163. We chose these jurisdictions for their distinct legal frameworks, including their notable differences or similarities to Queensland's mandatory life sentence for murder. For each jurisdiction, we considered:
 - the legislative scheme
 - the practical impact of the legislative schemes as revealed by sentencing statistics
 - statistics of pleas of guilty to murder
 - how aggravating and mitigating circumstances are reflected in sentencing.

164. In presenting and discussing our research findings, we narrowed our focus to New South Wales, Victoria and New Zealand. The Northern Territory's legislative framework is too similar to Queensland to offer substantive comparative insights. There is insufficient primary data, statistics or case law for Western Australia to support a meaningful comparison.

Our process for analysing data

165. We used NVivo 14 software to code and undertake a qualitative content analysis of the sentencing remarks dataset to generate key findings and insights.
166. We used NVivo's case classification facility to review the sentencing remarks. We developed a set of codes to support content analysis of the data. The codes allowed the following data points to be recorded (to the extent that they were available) in the data:
- circumstances of the offence
 - demographic information
 - offender background
 - victim background
 - mitigating and aggravating factors
 - sentence and penalty
 - purposes of sentencing
 - principles of sentencing.
167. In addition, we qualitatively coded any interesting quotes from the data and some additional information, including:
- sentencing remarks specific to the life penalty for murder and discretion
 - sentencing remarks specific to reasons for extending or not extending mandatory minimum non-parole periods
 - sentencing remarks regarding impact of the offending.

Appendix 2

Information requested from QCS

Field	Description
Name	Full name of offender
Date of birth	Date of birth of offender
Aboriginal and Torres Strait Islander status	Status identified by the offender and recorded in Queensland Corrective Services Integrated Offender Management System
Sex	Gender of offender
Justice ID	Single person identifier
Date of conviction and sentence	Date when the offender was convicted and sentenced
Pre-sentence custody	Time spent in custody before sentencing
Parole eligibility date	Date when the offender is eligible to apply for parole
Movements data	Information on parole, parole suspension, remand, deportation, death, interstate transfer until 2024
Reoffending data	Details of reoffending including offence date, offence type, and sentence date.

References

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- ¹ The findings of this research are published in Research Report 1: QLRC, Community attitudes to defences and sentences in cases of homicide in Queensland (Research Report 1, November 2024).
- ² Judiciary Act 1903 (Cth).
- ³ Queensland Sentencing Advisory Council, Queensland Sentencing Guide (March 2023) 36–37 <https://www.sentencingcouncil.qld.gov.au/_data/assets/pdf_file/0004/572161/QLD-Sentencing-Guide.pdf>.
- ⁴ Penalties and Sentences Act 1992 (Qld) s 9(1). A Bill proposing amendments including introduction of a sixth sentencing principle, ‘to recognise the harm done by the offender to a victim of the offence’ was introduced into Parliament on 20 May 2025: Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Bill 2025 (Qld) s 12. At the time of publication, this Bill was before the Justice, Integrity and Community Safety Committee for consideration.
- ⁵ Penalties and Sentences Act 1992 (Qld) s 9(2)(a).
- ⁶ For all of the exceptions to this principle, see: Penalties and Sentences Act 1992 (Qld) ss 9(2A), (4), (7A).
- ⁷ Veen v R [No 2] (1988) 164 CLR 465, 472–4; R v Aston [No 2] [1991] 1 Qd R 375, 380–1
- ⁸ Lowe v R (1984) 153 CLR 606, 609–10, 623–4; Postiglione v R (1997) 189 CLR 295, 303, 325; R v Smith (2022) 10 QR 725, 739–41[66]–[75].
- ⁹ Mill v R (1998) 166 CLR 59, 62–3; R v Symss (2020) 3 QR 336, 345–7 [30]–[40].
- ¹⁰ R v De Simoni (1981) 147 CLR 383, 389; Nguyen v R (2016) 256 CLR 656, 667 [29], 676 [60]; R v D [1996] 1 Qd R 363, 403.
- ¹¹ Penalties and Sentences Act 1992 (Qld) s 144.
- ¹² Penalties and Sentences Act 1992 (Qld) s 160B. In limited circumstances, ‘exceptional circumstances parole’ may be granted prior to the parole eligibility date. Common exceptional circumstances include serious medical conditions requiring treatment not available in custody, humanitarian grounds (for example, to care for a terminally ill relative) and other extraordinary factors which make continued imprisonment unjust or inappropriate. Community safety remains a primary consideration for the Parole Board when deciding an application for exceptional circumstances parole.
- ¹³ Penalties and Sentences Act 1992 (Qld) ss 160C–160D.
- ¹⁴ A prisoner may apply for parole under: Corrective Services Act 2006 (Qld) s 180. The Parole Board will follow the procedure outlined in ch 5 pt 1 div 2. The Parole Board also operates pursuant to Ministerial Guidelines.
- ¹⁵ Criminal Code Act 1899 (Qld) s 302(1).
- ¹⁶ Criminal Code and Other Legislation Amendment Act 2019 (Qld) s 3; Explanatory Notes, Criminal Code and Other Legislation Amendment Bill 2019 (Qld) 2–3; Queensland Sentencing Advisory Council, Sentencing for Criminal Offences Arising from the Death of a Child (Final Report, October 2018), 28–29, 96, 108.
- ¹⁷ Criminal Code Act 1899 (Qld) s 7(1).
- ¹⁸ Criminal Code Act 1899 (Qld) s 8.
- ¹⁹ Criminal Code Act 1899 (Qld) s 305(1).
- ²⁰ Criminal Code Act 1899 (Qld) s 305(1).
- ²¹ The only decision that we could locate, that was not later set aside, is R v Fraser [2001] QCA 187. In that decision, the Court of Appeal unanimously dismissed an appeal against sentence, at [47]–[71] (White J, McMurdo P agreeing at [12], Dutney J agreeing at [72]).
- ²² Criminal Code Act 1899 (Qld) s 305(2)–(4); Corrective Services Act 2006 (Qld) ss 181(1), (2)(a)–(c).
- ²³ Criminal Code Act 1899 (Qld) s 305(1).
- ²⁴ Criminal Code Act 1899 (Qld) ss 305(2), (4); Penalties and Sentences Act 1992 (Qld) ss 160C(5), 160D(3); R v Appleton [2017] QCA 290, [7].

In Queensland, a no-body, no-parole scheme operates. For the provisions, see: Corrective Services Act 2006 (Qld) ch 5 pt 1AB. The scheme will not operate to deny parole in every instance where the deceased's body cannot be located (for example, where the defendant has given sufficient cooperation but the body has nevertheless not been found).

Corrective Services Act Amendment Act 1990 (Qld) s 24(a).

Where the offender is a perpetrator of domestic violence, this must be treated by the court as an aggravating factor, unless the court considers it not reasonable because of exceptional circumstances: Penalties and Sentences Act 1992 (Qld) s 9(10A). This subsection was inserted by section 5 of the Criminal Law (Domestic Violence) Amendment Act 2016 (Qld).

Note that we have classified them in this way on the basis of the information available to us, irrespective of whether they have been tagged accordingly by the Court. We have done this because this amendment was only made in 2016.

R v Patea.

Penalties and Sentences Act 1992 (Qld) ss 9(2)(gb), 9(10B). These subsections were inserted by s 80 of the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023 (Qld).

R v Ricky Cowan.

Sentencing remarks data.

Green v R (2011) 244 CLR 462, 472–473 [28]; R v Illin (2014) 246 A Crim R 176, [24].

R v Crawford; Patea; Patea; Stockman; Bliss.

R v Dyhberg; Caulfield; Saurine.

Penalties and Sentences Act 1992 (Qld) s 9(3)(c).

R v Thorburn.

R v Barallon

Penalties and Sentences Act 1992 (Qld) ss 9(2)(f), 9(3)(h).

R v Wano; ex parte Attorney-General [2018] QCA 117, [48]–[51] (Henry J, Fraser JA agreeing at [1], North J agreeing at [2]).

R v Ngakyunkwokka.

R v Cowan; ex parte Attorney-General at [2016] 1 Qd R 433, 492 [129]–[130] (Margaret McMuro P, Fraser JA agreeing at [137]–[138]).

R v Appleton [2017] QCA 290, [38]–[43] (Sofronoff P, McMurdo JA agreeing at [54], Brown J agreeing at [55]).

R v Craig.

R v Abell.

R v Cowan.

R v Harris; R v Appleton.

R v Taylor.

R v Ruatara.

R v Sinfield.

R v Mead.

R v Abell.

R v Cowan.

R v Mead.

R v Harris; R v Appleton.

R v Abell; R v Cowan.

Corrective Services Act 2006 (Qld) s 200.

See Law Commission of England and Wales, Murder, Manslaughter and Infanticide (Report 304, November 2006) 48–49; See also Law Reform Commission of Ireland, Defences in Criminal Law (LRC 95, December 2009) 112; New South Wales Select Committee on the Partial Defence of Provocation, The partial defence of provocation (Report, April 2013) 7–22; Tasmania Law Reform Institute, Review of the Law Relating to Self-

defence (Final Report No 20, 2015) 53, 71; Queensland Law Reform Commission, A review of the excuse of accident and the defence of provocation (Report No 64, September 2008) 500; Victorian Law Reform Commission, Defences to Homicide (Final Report, 2004) 11, 241; Victoria Department of Justice, Defensive Homicide: Proposals for Legislative Reform (Consultation Paper, September 2013) 17; Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report, Project 97, 2007) 5–6.

59 For murder of police officer, except where offender is cognitively impaired: Crimes Act 1900 (NSW) s 19B; Can be mandatory life in certain other circumstances: Crimes (Sentencing Procedure) Act 1999 (NSW) s 61.
60 30 years if previously convicted of another murder, or convicted of more than one murder, 25 years if victim is police officer, otherwise 20 years: Criminal Code Act 1899 (Qld) s 305; Corrective Services Act 2006 (Qld) s 181(2)(a)–(c).

61 Minimum non-parole period of 30 years if court imposed life sentence (unless in interests of justice), if term of imprisonment ordered is less than 20 years – minimum non-parole period at 60%, if term of imprisonment ordered is 20 years or more – minimum non-parole period is 70%: Sentencing Act 1991 (Vic) s 11A(4).

62 A sentence of life imprisonment must have a non-parole period that must be served of at least 10 years, or 17 years in certain circumstances (such as where it was committed with a high level of brutality, involved calculated planning, or the victim was particularly vulnerable): Sentencing Act 2002 (NZ) ss 103–104.

63 Crimes Act 1900 (NSW) s 19A(1); New South Wales Sentencing Council, Homicide (Consultation paper, October 2019) 14; Crimes (Amendment) Act 1955 (NSW) s 5(b); Crimes (Homicide) Amendment Act 1982 (NSW) sch 1 cl 1.

64 Crimes Act 1900 (NSW) s 19B.

65 Crimes (Sentencing Procedure) Act 1999 (NSW) s 61.

66 Crimes Act 1900 (NSW) s 19A; Crimes (Life Sentences) Amendment Act 1989 (NSW) sch 1 cl 3–4.

67 New South Wales Sentencing Council, Homicide (Consultation Paper, October 2019) 92.

68 New South Wales Law Reform Commission, Sentencing (Report 139, July 2013) 193; New South Wales Sentencing Council, High-Risk Violent Offenders: Sentencing and Post-Custody Management Options (Report, May 2012) vii, 154.

69 Crimes (Sentencing Procedure) Act 1999 (NSW) s 54B(2).

70 Crimes (Sentencing Procedure) Act 1999 (NSW) s 54A(1), Table items 1, 1A, 1B.

71 Crimes (Sentencing Procedure) Act 1999 (NSW) s 54A(2).

72 New South Wales Sentencing Council, Homicide (Report, May 2021) 48.

73 The legislation states that ‘The balance of the term of the sentence must not exceed one-third of the non-parole period for the sentence, unless the court decides that there are special circumstances for it being more (in which case the court must make a record of its reasons for that decision)’: Crimes (Sentencing Procedure) Act 1999 (NSW) s 44(2).

74 New South Wales Sentencing Council, Homicide (Report, May 2021) ix, 7–8.

75 Crimes (Sentencing Procedure) Act 1999 (NSW) s 21A(2).

76 New South Wales Sentencing Council, Homicide (Report, May 2021) 23; compare with Penalties and Sentences Act 1992 (Qld) s 9(10A).

77 New South Wales Sentencing Council, Homicide (Report, May 2021) 8.

78 Judicial Commission of New South Wales, Sentencing Bench Book, [30-047] Murders committed in a domestic violence context [30-047]

<<https://www.judcom.nsw.gov.au/publications/benchbks/sentencing/murder.html#p30-040>>.

79 Crimes (Sentencing Procedure) Act 1999 (NSW) s 21A(3).

80 See also the guideline judgment of Thomson and Houlton [2000] NSWCCA 309; R v Thomson (2000) 49 NSWLR 383 regarding guilty pleas.

81 Compare with Penalties and Sentences Act 1992 (Qld) s 9(2)(gb).

82 Sentencing Amendment (Sentencing Standards) Act 2017 (Vic) ss 13, 25.

83 Crimes Act 1958 (Vic) s 3(2).

84 Sentencing Act 1991 (Vic) ss 5A(1)(b), 5B.

85 Sentencing Act 1991 (Vic) s 5(2G).
 86 Sentencing Act 1991 (Vic) s 11A(4).
 87 Sentencing Act 1991 (Vic) s 11(1).
 88 Victorian Sentencing Advisory Council, Long-Term Sentencing Trends in Victoria (2022) 6-7.
 89 Victorian Sentencing Advisory Council, Sentencing Snapshot: Murder (June 2023).
 90 Victorian Sentencing Advisory Council, Sentencing Snapshot: Murder (June 2023) 7.
 91 This takes into consideration if there are cumulative periods of imprisonment for multiple murder convictions.
 92 Victorian Sentencing Advisory Council, Sentencing Snapshot: Murder (Report, June 2023) 5.
 93 Sentencing Act 1991 (Vic) s 5(2).
 94 Judicial College of Victoria, Victorian Sentencing Manual (Manual, 8 May 2025) 108 [5.2.2].
 95 Judicial College of Victoria, Victorian Sentencing Manual (Manual, 8 May 2025) 110 [5.2.3].
 96 Judicial College of Victoria, Victorian Sentencing Manual (Manual, 8 May 2025) 110-111 [5.2.4].
 97 Judicial College of Victoria, Victorian Sentencing Manual (Manual, 8 May 2025) 112-113 [5.2.6].
 98 Judicial College of Victoria, Victorian Sentencing Manual (Manual, 8 May 2025) 113-114 [5.2.6]. See also Queensland Sentencing Advisory Council, Assessing the Impacts of Domestic and Family Violence Sentencing Reforms in Queensland (Consultation Paper, March 2025)..
 99 Sentencing Act 2002 (NZ) s 102. The Act commenced on 30 June 2002: Sentencing Act Commencement Order 2002 (NZ) s 2.
 100 Sentencing Act 2002 (NZ), section 102(1).
 101 Sentencing Act 2002 (NZ) s 103.
 102 Rajesh Chhana et al, The Sentencing Act 2002: Monitoring the First Year (Ministry of Justice, March 2004) 13.
 103 Tim Conder, 'Murder Most Foul: An Analysis of the Courts' Approach to s 104 of the Sentencing Act 2002' [2015] 3 New Zealand Law Review 355, 355.
 104 Tim Conder, 'Murder Most Foul: An Analysis of the Courts' Approach to s 104 of the Sentencing Act 2002' [2015] 3 New Zealand Law Review 355, 355.
 105 Tim Conder, 'Murder Most Foul: An Analysis of the Courts' Approach to s 104 of the Sentencing Act 2002' [2015] 3 New Zealand Law Review 355, 381-2.
 106 Tim Conder, 'Murder Most Foul: An Analysis of the Courts' Approach to s 104 of the Sentencing Act 2002' [2015] 3 New Zealand Law Review 355, 384.
 107 Tim Conder, 'Murder Most Foul: An Analysis of the Courts' Approach to s 104 of the Sentencing Act 2002' [2015] 3 New Zealand Law Review 355, 389. See, for example, R v Wilson [2023] NZHC 2376, [30]-[34].
 108 Sentencing Act 2002 (NZ) s 104.
 109 Sentencing Act 2002 (NZ) s 104(1).
 110 Sentencing Act 2002 (NZ) s 104(1).
 111 Sentencing Act 2002 (NZ) s 9.
 112 R v Wilson [2023] NZHC 2376, [30]-[31].
 113 Statistics from the New Zealand Ministry of Justice simply identify the number of people convicted and imprisoned for murder: Ministry of Justice (NZ), 'Data Tables', Justice Statistics (Web Page, 18 March 2025) <<https://www.justice.govt.nz/justice-sector-policy/research-data/justice-statistics/data-tables/#offence>>.
 114 Rajesh Chhana et al, The Sentencing Act 2002: Monitoring the First Year (Report, March 2004) 4.
 115 Dickey v The King [2023] 2 NZLR 405, 438 [152]. However, it is noted that since Dickey v The King, there have been several further cases where the High Court, in sentencing at first instance, has departed from the presumption of life imprisonment. Three such cases (R v Huntley [2024] NZHC 182; R v Salter [2024] NZHC 381 and R v Dickason [2024] NZHC 1704) are outlined in our Consultation Paper at [264].
 116 Dickey v R [2023] 2 NZLR 405, 441 [167].
 117 R v Rapira [2003] 3 NZLR 794, 828 [121].
 118 R v Williams [2005] 2 NZLR 506, 514-15 [34].
 119 Van Hemert v R [2023] 1 NZLR 412, 439-40 [78].

120 Hessel v R [2010] 2 NZLR 298, 310 [63].
121 Sentencing Act 2002 (NZ) s 9(2)(c). For provocation, see: Hamidzadeh v R [2013] 1 NZLR 369, 380–5 [51]–
[68]. For excessive self-defence, see: Daken v R [2010] NZCA 212, [68].
122 R v Smail [2007] 1 NZLR 411 at [18]–[19], [24]–[25]; R v Law (2002) 19 CRNZ 500.
123 R v Wihongi [2012] 1 NZLR 775, 790 [72]–[73], 791–2 [83]–[88].
124 R v Cunnard [2014] NZCA 138, [10].
125 R v Nelson [2012] NZHC 3570 [30]–[38].
126 R v Wihongi [2012] NZLR 775, 791 [81]–[82]; Van Hemert v R [2023] 1 NZLR 412, 422–425 [11]–[22], 444 [97].
127 Dickey v R [2023] 2 NZLR 405, 438–9 [152]–[154].
128 R v Williams [2005] 2 NZLR 506, 516–18 [45]–[54], discussed in Tim Conder, 'Murder Most Foul: An Analysis
of the Courts' Approach to s 104 of the Sentencing Act 2002' [2015] 3 New Zealand Law Review 355, 385.
129 Tim Conder, 'Murder Most Foul: An Analysis of the Courts' Approach to s 104 of the Sentencing Act 2002'
[2015] 3 New Zealand Law Review 355, 387.
130 The Queensland Courts Performance and Reporting Unit spreadsheet provided to us listed 158 cases. Of
the listed cases, three sentencing remarks transcripts were unavailable as subject to on-publication or
suppression orders and one transcript was unavailable due to a retrial of that case. Additionally, four were
sentenced under the Youth Justice Act (meaning they did not receive head sentences of life imprisonment,
nor the minimum non-parole periods that apply to adults).

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