



Community Attitudes to Offence Seriousness

Sentencing Advisory Council
May 2012



Published by the Sentencing Advisory Council
Melbourne, Victoria, Australia

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ISBN 978-1-921100-92-5 (Print)
978-1-921100-93-2 (Online)

Authorised by the Sentencing Advisory Council,
Level 4, 436 Lonsdale Street, Melbourne VIC 3000

Printed by BigPrint, 50 Lonsdale Street, Melbourne

Legal citation in this report follows the Melbourne University Law Review
Association Inc *Australian Guide to Legal Citation* (3rd ed., 2010).

Printed on recycled paper
ISO 14001 environmental management system in place

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Preface

Offence seriousness is a complex concept. It forms a key part of the sentencing framework in Victoria and underpins the setting of statutory maximum penalties as well as other factors and principles relevant to the imposition of sentence.

Reviews of maximum penalties for offences in Victoria over the past two decades have generated debate about offence seriousness, generally dominated by the courts and parliament.

In 2010 the then Victorian Government requested that the Sentencing Advisory Council ('the Council') review the maximum penalties for over 250 offences in Victorian legislation. A previous review of this nature by an ad hoc task force occurred over 20 years ago but was limited by its inability to gauge public views about maximum penalties.

One of the Council's functions is to gauge public opinion on sentencing matters. The review of statutory maximum penalties by the Council presents an opportunity to rectify the previous lack of community input into debates about offence seriousness. Over the past few years the Council has developed a large body of work on public opinion about crime and justice issues specific to the Victorian context, with a particular focus on perceptions of sentencing.

The collective measurement of individual attitudes to offence seriousness is a difficult task. A number of methods can be used, including surveys to collect quantitative data from large numbers of people and forums or discussion groups with a smaller number of people that provide qualitative data. No single method is perfect and for this reason a combination of methods is commonly used.

The Council's research, published in this report, involved 244 members of the Victorian community who participated in community panel sessions throughout regional and metropolitan Victoria. The panels combined a series of exercises to quantitatively measure participants' judgments of offence seriousness and also facilitated discussion around factors that make an offence more or less serious. This allowed for an intensive and deliberative process and produced quantitative and qualitative data.

This report goes some way to filling the gap in information available on how community members form their views on offence seriousness, and will inform the continued debate on how offending behaviour should be characterised when offenders come before the courts for sentencing. The findings in this report are not necessarily representative of the whole Victorian community. However, they provide a better understanding of the collective views of a group of Victorian community members who participated in the Council's research.

The report finds there was a wide diversity of opinion among participants as to the seriousness of a broad range of offences. Despite this, some clear patterns emerged in attitudes of participants. There were areas where participants disagreed, such as the seriousness of drug trafficking offences. However, participants were united in their views in a number of key areas, in particular that offences involving intentional death and serious injury, rape and child sexual offences are among the most serious offences.

The deliberative nature of the process made the panels an intensive and challenging exercise. Each participant contributed considerable time and brought careful thought to the complex task of judging the seriousness of offences. The Council is pleased to publish this report on community attitudes to offence seriousness and acknowledges the contribution of individuals who participated in the community panels.

Arie Freiberg
Chair
Sentencing Advisory Council

Contributors

Author

Nina Hudson

Data analyst

Geoff Fisher

Sentencing Advisory Council

Chair

Arie Freiberg

Deputy-Chair

Thérèse McCarthy

Council Members

Carmel Arthur

Graham Ashton[†]

Hugh de Kretser

Peter Dikschei^{*}

David Grace QC

John Griffin[†]

Ken Lay[‡]

Jenny Morgan

Barbara Rozenes

Gavin Silbert SC

Lisa Ward

Kornelia Zimmer^{*}

^{*} Commenced 1 January 2012. Did not participate in any deliberations regarding this report.

[†] Commenced 21 February 2012. Did not participate in any deliberations regarding this report.

[‡] Resigned from the Council 21 November 2011.

Chief Executive Officer

Stephen Farrow

Acknowledgements

The Council thanks those individuals who participated in the Council's community panels and contributed their valuable views on offence seriousness.

Introduction

This report presents the findings of research conducted by the Sentencing Advisory Council ('the Council') using an original methodology to gauge community attitudes towards relative offence seriousness.

The findings indicate that community members have divergent views about the relative seriousness of offences. The judgment of offence seriousness is subjective and can be influenced by a range of factors. Judgments of offence seriousness by individual members of the community can vary according to each person's experiences, perceptions and views. If the views of this group of respondents are representative of community thinking, it appears the community does not share a single set of common attitudes towards relative offence seriousness. However, despite the variation in attitudes to offence seriousness for some offences, there was consensus among participants that offences involving direct harms to people are considered the most serious. In particular, there was a high level of agreement among participants that offences involving the deliberate infliction of harm, sexually violent offences and sexual offences against children are among the most serious offences.

Background

In March 2010, the Council was asked by the then Attorney-General, Mr Rob Hulls, MP, to review the maximum penalties for approximately 250 of the most serious criminal offences in Victoria to be included in a new Crimes Bill. As part of this review, the Council was asked to consider the appropriateness of the maximum penalties for the offences to be included in the new Crimes Bill and ensure that each offence was positioned appropriately in the hierarchy of maximum penalties.

In making its recommendations, the Council was asked to take into account a number of matters, including community attitudes towards offence seriousness. To this end, the Council conducted a number of community panels across metropolitan and regional Victoria to gather the views of individuals in the Victorian community on the relative seriousness of offences. The Council also conducted an online forum ('Talksentencing') on community views on offence seriousness and maximum penalties as part of the project.

The data presented in this report on community attitudes towards relative offence seriousness were collected by the Council as part of this reference.¹

¹ This report is limited to the findings from the community panels on offence seriousness.

Following the election of the Liberal National Coalition Government in November 2010, the Council received a letter from the Attorney-General, Mr Robert Clark, MP, in April 2011 indicating that the Maximum Penalties for Crimes Bill Offences project was to continue. The letter also requested advice on two new projects as part of major sentencing reforms being undertaken by the government.² Due to this new work and a delay with preparation of the Crimes Bill, the Council's work on the Maximum Penalties for Crimes Bill Offences project has been placed on hold. However, the Council's research on community perceptions of relative offence seriousness remains relevant. It has informed the Council's advice on its reference on Baseline Sentencing (Sentencing Advisory Council, 2012) and will inform any advice the Council may give on the Maximum Penalties for Crimes Bill Offences project as well as having broad application to consideration of the concept of offence seriousness as a relevant factor in sentencing.

Research into community attitudes towards offence seriousness

Informed public opinion has an important part to play in the consideration of crime and justice issues. The emergence of sentencing as a key aspect of debates on 'law and order' policies has resulted in an increasing emphasis by governments on the views of the public on sentencing (Sentencing Advisory Council, 2006, p. 3). The establishment of the Sentencing Advisory Council is but one example of the increasing importance placed on community views on these issues in Victoria.³ The Sentencing Advisory Council includes representation from members with broad experience in community issues affecting courts,⁴ and one of its statutory functions is to gauge public opinion on sentencing matters.⁵

Under this function, the Council has developed a body of work on public opinion on crime and justice issues, with a particular focus on public opinion on sentencing (Sentencing Advisory Council, 2006; Sentencing Advisory Council, 2008a; Sentencing Advisory Council, 2008b; Sentencing Advisory Council, 2011a; Sentencing Advisory Council, 2011b; Sentencing Advisory Council, 2011c; Sentencing Advisory Council, 2011d). A significant amount of research has also been conducted on public opinion on sentencing and on public confidence in the courts in other Australian states and internationally (see for example, Jacobson et al., 2011; Warner et al., 2011; Mitchell and Roberts, 2010; Roberts et al., 2009; Hough et al., 2009; Hough et al., 2008; Indermaur, 1990; Doob, 2000; Douglas and Ogloff, 1997; for a review of this literature, see Sentencing Advisory Council, 2006; Sentencing Advisory Council, 2008b).

There is now considerable information available on community views on a range of issues related to sentencing, much of this specific to the Victorian context, which shows that when properly informed, the public is less punitive than typically portrayed (Sentencing Advisory Council, 2011b, p. 4). When asked abstract questions about sentencing, members of the Victorian community are moderately punitive (Sentencing Advisory Council, 2011b). However, when presented with contextual information and asked to provide more considered responses to survey questions or presented with case studies, people tend to hold less punitive views. For example, they are open to the use of alternatives to prison (Sentencing Advisory Council, 2011a) or hold complex and nuanced views on the purposes of sentencing (Sentencing Advisory Council, 2011c). Members of the Victorian public are moderately confident in their courts and in the ability of judges to impose appropriate sentences. People who are less punitive, who are more accepting of information presented by the media and who do not perceive crime to be increasing have the highest levels of confidence. Younger respondents and those people with a higher income also have higher levels of

² These projects are Statutory Minimum Sentences for Gross Violence Offences and Baseline Sentencing.

³ Similar bodies also exist in other Australian states, for example, the New South Wales Sentencing Council, Sentencing Advisory Council (Tasmania) and Sentencing Advisory Council (Queensland) and elsewhere, for example, the Sentencing Council for England and Wales.

⁴ *Sentencing Act 1991* (Vic) s 108F(1)(a).

⁵ *Sentencing Act 1991* (Vic) s 108C(d).

confidence in the courts and sentencing (Sentencing Advisory Council, 2011d; see also Jones et al., 2008, for similar findings in the New South Wales context).

In contrast, despite offence seriousness being a key factor in sentencing, there is little published Victorian data on how the community views the seriousness of different offences, as distinct from its views on sentencing for particular offences. There is little available evidence on which offences the community views as serious relative to other offences and the factors important to individuals in their judgment of offence seriousness.

The measurement of community attitudes to offence seriousness is a complex task (Fox and Freiberg, 1990, p. 177). A number of methods can be used to measure how individuals judge offence seriousness. No single method is perfect. For this reason, the Council's research comprised multiple methods to collect and compare quantitative and qualitative data and allowed members of the community to have their say on offence seriousness in two different ways: via community panel sessions and the Talksentencing online forum.

The community panel component comprised 14 panel sessions with Victorian community members. The panels were conducted by the Council using an original methodology that focused on the views of participants and their judgment of relative offence seriousness. The methodology was developed by the Council with reference to previous research on the measurement and analysis of individual judgments of relative offence seriousness.

Research conducted to measure community judgment of offence seriousness can employ surveys that collect quantitative data from large numbers of people or they may involve forums or discussion groups with a small number of people that enable deliberation and discussion. The Council's panel sessions had a sample size of 244 participants that allowed for an intensive and deliberative process. The use of panels that combined quantitative measures and facilitated discussion allowed participants the opportunity to talk about the issues raised and produced quantitative and qualitative data. The online forum allowed members of the community who did not participate in the panels to also have their say on their views of relative offence seriousness.

Pursuant to the Council's statutory function to gauge public opinion on sentencing matters, this report sets out key findings on community attitudes to offence seriousness drawn from data collected from the community panels. It fills an important gap by publishing previously unavailable data. Due to the particular methodology, the findings in this report are not necessarily representative of the whole Victorian community (see 'Data collection' (pages 17–19) for the selection process used and demographics of participants). However, the findings provide an increased understanding of how a group of individual community members views the seriousness of offences.

Gaining an understanding of how the community views the seriousness of offences and comparing different sources of information on offence seriousness are important. Such a comparison of different sources of information on offence seriousness was last conducted in Victoria by the Victorian Sentencing Task Force as part of a review of statutory maximum penalties over 20 years ago (Sentencing Task Force, 1989; Fox and Freiberg, 1990). The review was commissioned in 1989 by the then Attorney-General after a landmark report on sentencing by the Victorian Sentencing Committee (Victorian Sentencing Committee, 1988). The Victorian Sentencing Committee 'called for a comprehensive review of the maximum penalties fixed by statutes in Victoria ... and drafted revised maxima for the Crimes Act 1958' (Fox and Freiberg, 1990, p. 165). It was not possible for the Sentencing Committee's work on sentencing or the Sentencing Task Force's review of maximum penalties to include a poll of public opinion on offence seriousness, although 'the Committee received public submissions and took account of views expressed in the media [and] specifically noted the distortions found in media presentation of sentencing matters' (Fox and Freiberg, 1990, p. 177). The Victorian Sentencing Committee's report was criticised for what was described as 'the discrepancy between its concern with public beliefs and its failure to take adequate measures to find out what actually was the attitude of the public' (Fox and Freiberg, 1990, p. 177; referring to Douglas, 1988, p. 331).

In the review of maximum penalties commenced by the Council in 2010, it has been possible to include consideration of the opinions of a sample of the Victorian community as a source of information on offence seriousness. If there are significant disparities between the legislature's views of offence seriousness, the views of the courts and informed public opinion, this may result in a loss of confidence in one or more of the arms of government.

Offence seriousness

Harm and culpability framework

Offence seriousness is a complex concept and a term that 'conveys different subjective meanings' (Fox and Freiberg, 1990, p. 166). Individuals will differ in their personal opinion about which offences are more serious than other offences, depending on a number of matters, including their value systems, personal beliefs, life experiences and knowledge of the subject matter. Despite this:

The seriousness of criminal acts represents a conceptual dimension of criminality indispensable in common everyday discourse, in legal theory and practice, and in sociological work (Rossi et al., 1974, p. 224).

In legal terms, offence seriousness has been regarded as comprising two major components: harm and culpability (von Hirsch, 1983, p. 214; Fox and Freiberg, 1990, p. 168).

Harm has been defined as 'the degree of injury done or risked by the act' (von Hirsch, 1983, p. 214). The harm inflicted by an offence may affect individual interests and/or interests of the state (Fox and Freiberg, 1990, p. 168). The most serious harm is generally considered to affect a victim's physical integrity, such as death, serious injury and interference with personal sexual integrity. Harms that are referable solely to economic wellbeing, such as the loss or destruction of property, are generally considered to be less serious, although the type and also the degree of harm can be relevant to an assessment of the seriousness of an offence. For example, an act resulting in the death of another person may be considered more serious than an act resulting in significant economic loss, which in turn may be considered to be more serious than an act resulting in minor injury. As a general rule, offence seriousness is considered to increase with the level of harm caused. Offences that risk harming others, but that do not actually result in harm, are problematic because they require an assessment of the level of harm that was risked as well as the degree of risk.

Culpability refers to 'the factors of intent, motive, and circumstance that bear on the actor's blameworthiness' (von Hirsch, 1983, p. 214) and reflects the extent to which offenders should be held accountable for their actions (Fox and Freiberg, 1990, p. 169). Offence seriousness tends to increase with the increasing culpability of an offender. An action performed with knowledge of its consequences is considered more serious than one performed with a criminally negligent disregard of its consequences. For example, despite the consequence of murder and manslaughter being the same (the death of the victim), the culpability for murder is higher because the outcome was intended (or foreseen as probable) by the offender.

The scale of culpability used for offences in Victoria includes five levels of seriousness (in ascending order): strict liability (where there is no requirement of intent), dangerousness (which falls between accident and criminal negligence), criminal negligence, recklessness and intention. For example, the offences relating to serious injury (and their maximum penalties) are defined in the *Crimes Act 1958* (Vic) according to the differing levels of culpability:

- dangerous driving causing serious injury (5 years' imprisonment);⁶
- negligently cause serious injury (10 years' imprisonment);⁷
- recklessly cause serious injury (15 years' imprisonment);⁸ and
- intentionally cause serious injury (20 years' imprisonment).⁹

This harm and culpability framework can be used as a way of viewing the seriousness of offences. Not all offences, however, can be viewed according to an escalating scale of culpability. Some offences incorporate different levels of culpability within the one offence. For example, rape involves sexually penetrating or compelling the sexual penetration of a person without the person's consent, with varying levels of culpability with respect to the offender's awareness of, or thought given to, whether the person is not consenting or might not be consenting. Other offences involve more complicated forms of culpability that are based on a combination of knowledge and intent, for example, committing an act with the intention or knowledge that it will lead to certain other consequences.

Cognitive impairment is another component of culpability, the presence of which may reduce an offender's culpability.

The harm and culpability framework can be difficult to apply in practice. There is a wide variety of harms that are often difficult to quantify and compare. Harms can be inflicted upon persons, property or society at large, or some combination of these interests. Some offences (such as attempted robbery) and preparatory offences (such as going equipped to steal) involve an element of risk rather than direct harm. For many offences, determining the culpability of an offender involves examining motivations and conduct that may be outside the elements of the offence. Unlike the level of harm, the level of culpability viewed across different types of offences may not provide a consistent guide to relative offence seriousness. In terms of culpability, criminal negligence is relatively rare and the majority of offences involve recklessness or intent without discriminating between them.

Relevance of offence seriousness to sentencing

Offence seriousness is a key factor in sentencing in Victoria. Sentencing in Victoria is governed by a combination of statute and common law. The *Sentencing Act 1991* (Vic) provides a statutory framework for sentencing adult offenders.¹⁰ It sets out the hierarchy of sentencing options available, the purposes of sentencing, factors relevant to the determination of sentence and a scale of maximum penalties.

The legislative provisions operate alongside, and are reflective of, a number of fundamental common law sentencing principles that guide and limit the type or severity of sentence. Offence seriousness plays a central role in this sentencing framework.

⁶ *Crimes Act 1958* (Vic) s 319(1A).

⁷ *Crimes Act 1958* (Vic) s 24.

⁸ *Crimes Act 1958* (Vic) s 17.

⁹ *Crimes Act 1958* (Vic) s 18.

¹⁰ *Children, Youth and Families Act 2005* (Vic) pt 5.3 governs the sentencing of children and young offenders.

Statutory sentencing factors

Section 5(1) of the *Sentencing Act 1991* (Vic) states that:

The only purposes for which sentences may be imposed are:

- (a) to punish the offender to an extent and in a manner which is just in all of the circumstances [just punishment]; or
- (b) to deter the offender [specific deterrence] or other persons [general deterrence] from committing offences of the same or a similar character; or
- (c) to establish conditions within which it is considered by the court that the rehabilitation of the offender may be facilitated [rehabilitation]; or
- (d) to manifest the denunciation by the court of the type of conduct in which the offender engaged [denunciation]; or
- (e) to protect the community from the offender [incapacitation]; or
- (f) a combination of two or more of those purposes.

The *Sentencing Act 1991* (Vic) also sets out the factors to which a court may or must have regard and the factors to which a court must not have regard in sentencing an offender. It also sets out the type of sentences that may be imposed and a penalty scale.¹¹ Section 5(2) of the *Sentencing Act 1991* (Vic) requires that a court *must* have regard to the following factors in sentencing an offender:

- the maximum penalty for the offence;
- current sentencing practices;
- the nature and gravity of the offence;
- the offender's culpability and degree of responsibility for the offence;
- whether the offence was motivated by hatred or prejudice;
- the personal circumstances of, and impact of the offence on, any victim of the offence;
- any injury, loss or damage resulting directly from the offence;
- whether the offender pleaded guilty to the offence, and if so, when the offender pleaded guilty or indicated an intention to do so;
- the previous character of the offender; and
- any aggravating or mitigating factor concerning the offender or of any other relevant circumstances.

Many of these statutory factors and principles are linked to the concept of offence seriousness.

The maximum penalty for an offence has a direct link to offence seriousness. Set by parliament, statutory maximum penalties are expressed in legislation for each offence as a period of imprisonment and/or a fine. They serve several purposes, but a key purpose is to reflect parliament's view of the seriousness of each offence.

In addition to the maximum penalty, there are other factors in section 5(2) of the *Sentencing Act 1991* (Vic) with a direct link to the concept of offence seriousness. These include the nature and gravity (severity) of the offence and the offender's culpability and responsibility for the offence. Other factors that reflect offence seriousness are referable to the victim of the offence, such as any loss, injury or damage resulting directly from the offence and the impact of the offence on any victim (as well as the victim's personal circumstances); in other words, the harm caused by the offence. Many of these factors can be relevant to the seriousness of the offence as well as to factors separate from the evaluation of the seriousness of the offence itself, such as those related to the victim of the offence¹² or mitigating or aggravating factors concerning the offender¹³ in the particular case.

¹¹ See generally *Sentencing Act 1991* (Vic) pts 2, 3 and 10.

¹² *Sentencing Act 1991* (Vic) ss 5(2)(daa)–(db).

¹³ *Sentencing Act 1991* (Vic) s 5(2)(g).

These considerations must be balanced with other factors in the statutory framework that determine the final disposition for an offence but do not have a direct link to offence seriousness. While an offender's plea of guilty may expedite a case and represent an expression of remorse, it is not an indicator of the seriousness of the offence committed. Similarly, the previous character of the offender can be a relevant factor as part of an assessment of the seriousness of the offence or as a separate factor in aggravation or mitigation. Regard must also be had to 'current sentencing practices'.¹⁴ This requires the court to refer to sentences previously imposed for the offence in similar cases.

Common law principles

A number of common law sentencing principles operate alongside these statutory provisions to guide and limit the severity of sentences.

Two of these principles – totality and proportionality – have a direct link to the concept of offence seriousness. Totality and proportionality are separate but related principles, which share the common purpose of ensuring the punishment imposed on offenders is just, fair and proportionate to the seriousness of the offending behaviour.

The principle of proportionality, also known as 'just deserts' or 'commensurate deserts', operates as a limit on punishment. It requires that the punishment must fit the gravity of the crime in light of its objective circumstances. The principle operates as a restraint on excessive punishment as well as a prohibition against punishment that is too lenient (Fox and Freiberg, 1999, pp. 219–221).¹⁵ Thus, 'defendants whose criminal conduct is equally blameworthy should be punished with equal severity' (von Hirsch, 1983, p. 212).

The sentencing purpose of 'just punishment' also reflects the proportionality principle. The imposition of a sentence 'to punish the offender to an extent and in a manner which is just in all the circumstances'¹⁶ allows a court to impose a sentence with the aim of punishing the offender, but that this punishment must be 'just', that is, proportionate to the seriousness of the offence.

The proportionality principle is also reflected in the totality principle, which aims to ensure proportionality between multiple sentences and the overall offending behaviour (Fox and Freiberg, 1999, p. 725).¹⁷ Totality requires that where multiple sentences are imposed, the totality of the sentences imposed, and any other sentences the offender is currently serving, must be proportionate to the overall offending behaviour. The principle applies to all offenders subject to more than one sentence and acts as a limitation on excessive punishment beyond that which is equal to the seriousness of the whole of the offending behaviour.¹⁸

The common law principles of parsimony,¹⁹ parity²⁰ and the prohibitions on double punishment²¹ and 'crushing' sentences²² also apply to the sentencing of offenders.

¹⁴ *Sentencing Act 1991* (Vic) s 5(2)(b).

¹⁵ See *Veen v The Queen (No 1)* (1979) 143 CLR 458; *Veen v The Queen (No 2)* (1988) 164 CLR 465; *Markarian v The Queen* (2005) 228 CLR 357.

¹⁶ *Sentencing Act 1991* (Vic) s 5(1)(a).

¹⁷ See *Postiglione v The Queen* (1997) 189 CLR 295.

¹⁸ *R v Patison* (2003) 143 A Crim R 118, 133. Mercy may also enliven the application of the totality principle and permit a court to intervene if the aggregate effect of the sentence will be 'crushing' for the offender: *Postiglione v The Queen* (1997) 189 CLR 295, 304.

¹⁹ The parsimony principle requires the court to select the least severe sentencing option available to achieve the purpose or purposes of sentencing for which the sentence is imposed in the particular case before the court. The principle is well-established in common law and legislation. See *Sentencing Act 1991* (Vic) ss 5(3)–(7).

²⁰ The parity principle requires that where there are co-offenders, sentences are imposed that reflect the differences in culpability and circumstances of the offender and avoid differences between sentences for co-offenders that cannot be justified: *Lowe v The Queen* (1984) 154 CLR 606. It is also recognised in legislation in one of the defined purposes of sentencing as being 'to punish the offender to an extent and in a manner which is just in all of the circumstances': *Sentencing Act 1991* (Vic) s 1(a).

Sources of information on offence seriousness

There are a number of sources of information on offence seriousness. The link between offence seriousness and sentencing provides two sources of information on offence seriousness: maximum penalties and sentencing practices. These sources of information are a hybrid of 'subjective' and 'objective' measures of offence seriousness. Ultimately, they are the product of the subjective judgment of offence seriousness of particular individuals, namely members of parliament and judicial officers respectively. However, they can be measured through 'objective' means, through analysis of maximum penalties and sentencing practices. A third source of information on offence seriousness is community attitudes to offence seriousness, produced by the subjective judgments of other individual members of the community. While members of the community may not collectively share the same views on offence seriousness, community attitudes can be objectively measured and function as a source of information on offence seriousness.

Statutory maximum penalties

Parliament expresses offence seriousness by defining an offence and setting its maximum penalty in legislation.²³ Maximum penalties serve several purposes (Sentencing Advisory Council, 2010, p. vii). One purpose is to place 'a known and legally defined limit on judicial discretion in imposing punishment for [an] offence' (Sentencing Task Force, 1989, p. 22; see also Fox, 1987, pp. 230–235).

A key function of a maximum penalty is to indicate the views of parliament, and therefore the community, on the seriousness of offences and the degree to which society condemns such behaviour. Related to this is the important purpose of maximum penalties serving as a guide from the legislature to sentencing courts as to the relative seriousness of each offence, that is, how serious offences are compared with other offences (Sentencing Task Force, 1989, pp. 23–25).

The link between maximum penalties and offence seriousness allows maximum penalties to be used as a source of information on offence seriousness. The maximum penalties for many offences, including all offences in the *Crimes Act 1958* (Vic), conform to a penalty scale set out in section 109 of the *Sentencing Act 1991* (Vic) (for a discussion of the development of the current penalty scale, see Sentencing Task Force, 1989; Fox, 1991).

The position of offences on the nine levels on the penalty scale for imprisonment terms used in Victoria provides a scale of seriousness from Level 9 (six months' imprisonment) to Level 1 (life imprisonment) and functions as a guide to sentencers as to the relative seriousness of each of those offences. The intermediate levels represent the following maximum terms of imprisonment: one year, two years, five years, 10 years, 15 years, 20 years and 25 years.

The position of offences on the maximum penalties scale represents parliament's assessment of the seriousness of the offence according to the harm and culpability framework. For some offences, seriousness is determined with reference to the offender's intentions or culpability. For example, intentionally cause serious injury is ranked higher than recklessly cause serious injury, based on the higher levels of culpability. For other offences, seriousness is determined with reference to the level of harm caused by the offence.

²¹ This prohibition against double punishment acts to ensure an offender is not sentenced twice for the same conduct, where the same conduct could give rise to two offences being charged: *Pearce v The Queen* (1998) 194 CLR 610.

²² The prohibition against 'crushing' sentences is the requirement to avoid sentences that destroy 'any reasonable expectation of useful life after release' unless such a sentence is just and appropriate in all the circumstances: see *R v Yates* [1985] VR 41, 48. See also *R v Gregory* [2000] VSCA 212 (10 November 2000). Unlike the principle of totality, which only operates in cases where there are multiple sentences, this principle also applies in cases where only one sentence is imposed.

²³ Offences and their maximum penalty levels are defined in the *Crimes Act 1958* (Vic), and the scale for maximum penalties is set out in the *Sentencing Act 1991* (Vic) s 109.

For example, murder (where an offender intentionally kills a person) is ranked higher than intentionally cause serious injury (where an offender intentionally causes a serious injury to a person).

There are many other ways in which seriousness can be determined within the harm and culpability framework other than based on the actual harm or culpability of an offence. For example, the maximum penalties of the different forms of drug trafficking vary depending upon the quantity of the drug. Larger quantities are ranked as more serious than smaller quantities, on the premise that the greater the quantity of the drug trafficked the greater the harm or potential harm to society.

Offences that involve a high level of threat are ranked as more serious than other related offences. For example, aggravated burglary is more serious than burglary due to the aggravating circumstances of the offence, such as the use of a weapon or the presence of a person in the home being burgled.

In relation to sexual penetration offences, the level of seriousness varies according to the age of the victim and/or the relationship between the offender and the victim. Where the victim is aged under 12, the offence has a higher maximum penalty than where the victim is aged 12–16, on the premise that younger victims are more vulnerable and the level of harm caused by the offence is higher.

Sentencing practices

In contrast to maximum penalties, which are designed to represent parliament's views on the relative seriousness of the *worst* example of an offence, sentencing outcomes represent the synthesis of a range of principles and factors required by statute and common law.

Courts express offence seriousness through the actual sentences imposed for offences in cases that come before them every day. Sentencing practices can be seen as representing the cumulative experience of individual judges in assessing the seriousness of many individual cases.

Although sentencing outcomes are decisions by individual judges, these decisions are made within a common law and statutory framework. Many factors and principles within this framework are linked to offence seriousness. However, other factors must be considered that do not have a direct link to offence seriousness. For example, factors such as the plea type and prior offending may not be relevant to offence seriousness but may affect the sentence imposed. The range of purposes and factors that must be considered by a court and influence sentencing means that ultimately, sentencing is a reflection of more than just the cumulative assessment by judges of the seriousness of offences. Judges must balance the assessment of offence seriousness with factors relevant to sentence, such as plea of guilty, prior convictions, remorse and factors relevant to both the victim and the offender. Sentencing practices are therefore not a perfect guide to offence seriousness.

The imposition of a sentence will also communicate or reflect properly informed community values and expectations by publicly denouncing the offending conduct and recognising the nature and significance of the wrong that has been committed against a person or society.²⁴ In this way, the sentence represents:

a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law.²⁵

Although sentencing practices are an imperfect representation of offence seriousness, they provide the best available measure of the views of the courts as to offence seriousness. In *Sentencing Severity for 'Serious' and 'Significant' Offences: A Statistical Report*, the Council analysed the severity of current sentencing practices for offences defined in section 3 of the *Sentencing Act 1991* (Vic) as 'serious' and 'significant' (Sentencing Advisory Council, 2011). This involved ranking offences using a scale of seriousness according to the median sentence lengths and comparing them with maximum penalties.

²⁴ *WCB v The Queen* [2010] VSCA 230 (10 September 2010) [34]–[38].

²⁵ *Ryan v The Queen* (2001) 206 CLR 267, 302 (Kirby J), citing *R v M (CA)* [1996] 1 SCR 500, 558 (Lamer CJ).

Community attitudes

While maximum penalties and sentencing practices provide important 'objective' measures of offence seriousness, the views of individuals in the community are also important. While '[i]mplicit judgments about the severity of crime are embedded in our social institutions ... [the] seriousness of a crime is by no means clear-cut' (Wolfgang et al., 1985, p. v). The subjective element of offence seriousness comes into play in the weighing of the two components of harm and culpability. Therefore, a third key source of information on offence seriousness connected to parliament and the courts is community attitudes towards offence seriousness.

Individuals may have different personal opinions about which offences are more serious than other offences, depending on a number of matters, including their value systems, personal beliefs, life experiences and knowledge and experience of crime. These matters may all influence how individuals weigh up the harm and culpability components of an offence when assessing its seriousness.

Over the last 100 years, a body of research has developed around measuring, considering and defining the seriousness of offences, as distinct from the sentencing for offences. This has included the measurement of public opinion or judgment by individuals on the relative seriousness of offences.

Much of this research was conducted internationally in the mid to late 1900s. A substantial part of the research has primarily focused on how individuals rank offences according to their seriousness, that is, which offences are perceived to be more serious than others, and the extent to which individuals agree on the seriousness of offences (see for example, Thurstone, 1927; Coombs, 1967; Sellin et al., 1978; Pease, 1988; Miethe, 1984). Other research in this area has expanded on this by examining *why* individuals perceive certain offences as more serious than other offences. This research has sought to understand what 'offence seriousness' means to individuals when asked to judge the severity of offences and whether particular 'rules' are applied in this judgment process (see for example, Rossi et al., 1974; Sebba, 1980; Warr, 1989; Wolfgang et al., 1985; O'Connell and Whelan, 1996; Parton et al., 1991; Green and Kugler, 2009). In the last 10 years, research in this field has declined.

Collectively, this research has demonstrated how the judgment of crime seriousness is a highly complex and subjective concept influenced by the harm and culpability components that make up offences as well as personal attributes and experiences of individuals and the social context (Kwan et al., 2000, p. 237; see Black, 1979; Hembroff, 1987; Newman, 1976; Sebba, 1980; Rossi et al., 1974; O'Connell and Whelan, 1996; Parton et al., 1991). It has also been suggested that individuals tend to be predominantly influenced by one factor – either harm or culpability – in the judgment of offence seriousness. That is, rather than judging the seriousness of an offence according to the combined 'weight' of the harm *and* culpability of the offence, individuals tend to focus on either the harm *or* the culpability of the offence (Warr, 1989, pp. 808–810; O'Connell and Whelan, 1996, pp. 306–310).

The act of judging the seriousness of an offence has been described as 'a normative evaluation, an overall judgment which allows comparison among criminal acts, cultural values in different societies and cultures, and individual value differences' (Rossi et al., 1974, p. 224).

In Australia, there has been little research focusing solely on community attitudes to offence seriousness. Only a handful of studies have sought to measure public opinion on offence seriousness (Wilson et al., 1986; Collins, 1987; Indermaur, 1990; see also Andersson, 2003). The majority of this work has formed part of broader studies of public opinion on sentencing. One such study was conducted in Victoria in 1997 by the Victorian Community Council Against Violence (VCCA, 1997). This study primarily focused on community knowledge, views and perceptions in relation to sentencing, but included the ranking of offences by Victorian community members according to their seriousness (VCCA, 1997, pp. 71–74).

Methodology

The research conducted by the Council to specifically examine why and how members of the community make judgments about offence seriousness is the first of its kind in Victoria. The methodology was developed after an extensive review of the literature and incorporated multiple measures used in previous research on individual judgments of offence seriousness.

Previous research

Methods used to measure judgment of offence seriousness

The methodology for the panel sessions employed two quantitative methods drawn from previous research on community judgment of offence seriousness:

- 'paired comparisons' – asking participants to compare pairs of offences and nominate the offence that they think is the more serious in each pair; and
- 'category' or 'coded' rating or ranking ('coded ranking') – asking participants to indicate how serious they think offences are by rating or ranking them using a scale or categories of seriousness.

Paired comparisons method

The paired comparisons method is also known as 'pairwise comparison' or the 'law of comparative judgment'. It refers to any process of comparing items in pairs and judging which item in each pair is preferred or is greater in some amount or quality. This method was first used in 1927 in one of the first studies to quantitatively measure subjective judgments of offence seriousness (Thurstone, 1927).

The method involves asking participants to consider pairs of offences and to indicate which offence in each pair they think is more serious. It has been described as an 'indirect' scaling method (Ekman, 1962, p. 3) as it does not involve all offences being directly compared together at once. In the paired comparisons methodology, pairs of offences are compared one pair at a time, so only two offences are directly compared each time. It has shown itself to be a reliable measure of the judgment of offence seriousness, it has been replicated on many occasions and it is widely accepted as a simple method with easy-to-follow instructions and is easy to replicate (Thurstone, 1927; Gorsuch, 1938–1939; Ekman, 1962; Coombs, 1967; Krus et al., 1977; Kwan et al., 2000).

Coded ranking method

The coded ranking method is known as a 'direct' scaling method and involves many offences being directly compared at one time. It requires participants to quantitatively estimate how serious each offence is compared with all other offences (Ekman, 1962, p. 3). The coded ranking method involves the ranking or rating of offences using a scale of offence seriousness with particular levels (for example, 1 to 10) or categories (for example, 'very serious' to 'not very serious').

The first use of this method was as part of a methodology pioneered in 1964 by Sellin and Wolfgang (Sellin et al., 1978) to measure the judgment of offence seriousness as part of the first serious attempts to conduct a wide-scale evaluation of crime severity as part of the Uniform Crime Reports of the Federal Bureau of Investigation in the United States of America. It was later used as part of the National Crime Survey that provided information on national crime rates in the United States of America (Wolfgang et al., 1985). The methodology included, among other measures, the ranking of offences using a coded scale of seriousness from I to II, with I being the least serious and II being the most serious. The coded ranking method was combined with a third key quantitative method called the 'magnitude estimation' method.²⁶

This coded ranking method has been described as the 'origin of modern surveys' (Ashworth, 2005, p. 104) for assessing judgments of offence seriousness and 'the most sophisticated measure of an extraordinarily elusive social variable: the relative seriousness of criminal events' (Sellin et al., 1978, p. v). Sellin and Wolfgang's methodology has been extensively reviewed, replicated and improved in the literature on the measurement of judgments of offence seriousness (see for example, Wolfgang et al., 1985; Normandeau, 1966; Akman et al., 1967; Rossi et al., 1974; Sparks et al., 1977; Pease, 1988; Lynch and Danner, 1993; Davis and Kemp, 1994; O'Connell and Whelan, 1996; Pease et al., 1977). While the magnitude estimation component of the methodology has been criticised (see for example, Rose, 1966; Collins, 1988; Parton et al., 1991), the coded seriousness scale developed by Sellin and Wolfgang has been widely replicated and used as a method for measuring judgments of offence seriousness (see Indermaur, 1989).

²⁶ This involves asking participants to indicate how serious they think offences are by estimating how many times more serious selected offences are compared with a standard offence. The Council did not use the magnitude estimation method, due to its complexity and the difficulties that subjects have been shown to have in understanding the task of magnitude estimation (see Parton et al., 1991, pp. 76–77; Davis and Kemp, 1994, p. 252).

Definition of offences

Research has demonstrated that overall, the 'form' and 'context' in which offences are presented to participants do not have a significant effect on their judgment of crime seriousness. The form refers to how offences are presented to participants; for example, they may be presented all at once on a single page or one at a time. The context refers to the spread of offences presented to participants and the order in which offences are presented to participants (Sheley, 1980).

It is clear from previous research, however, that how offences are described and the level of information included in offence descriptions do influence judgments of offence seriousness. Studies conducted to measure judgments of offence seriousness have generally used two different approaches for describing offences to participants: offence scenarios (known as 'vignettes') or offence names (known as 'typologies'). When vignettes are used to present information to people, the way offences are described has been found to affect how individuals evaluate the seriousness of crimes. This includes both elements included in the vignettes, for example, harm and/or culpability or information about the offender or victim, and the level of detail that is given in relation to each factor (Kwan et al., 2000, p. 238).

Some studies have only included information on the offender's actions and the consequences of those actions, as distinct from whether the offender intended those consequences to be caused. The consequences of the behaviour have included different levels of victim harm, such as the number of victims injured, the nature of injuries or the value of property stolen (see for example, Wolfgang et al., 1985, pp. vi–x). These studies have been criticised for failing to use offence descriptions that take into account the different factors that can affect judgments of offence seriousness (Lynch and Danner, 1993, pp. 310–312; Parton et al., 1991, pp. 73–76). For example, it has been said that:

There is a strong argument for saying that ... differences in culpability exert a powerful effect both on sentencing practice and on people's judgments of crimes. Surveys which leave out this dimension are not only omitting a crucial element in the judgments but are also leaving that factor roaming 'loose', so it might enter into the assessments of different subjects in different ways (Ashworth, 2005, p. 104).

A number of studies have sought to address this by introducing culpability dimensions into the information presented for judgments of offence seriousness through more detailed vignettes. These studies have found that people's views of seriousness differ according to the level of intentionality, culpability, offender status and victim harm (Sebba, 1980; Forgas, 1980; Hansel, 1987; Rossi et al., 1985; Parton et al., 1991; O'Connell and Whelan, 1996).

The Council used two different methods to present information to participants on offences. In the paired comparisons exercise, offences were presented using typologies together with a basic description of the offence, in terms of the offender's intention, actions and its consequences. In the coded ranking method, offences were presented using vignettes that were drafted to test in detail the influence of harm and culpability factors on judgments of seriousness.

Scales of offence seriousness

Both the paired comparisons and the coded ranking of offences have been shown to be reliable methods of assessing the subjective process of the judgment of offence seriousness to produce a statistical or quantitative measure known as a 'scale of offence seriousness'. Although this can be a complex task, it has been shown that subjective 'judgments of a rather intangible sort, loaded usually with personal opinion, bias, and even strong feeling' can be quantitatively analysed (Thurstone, 1927, p. 398).

In a scale of offence seriousness, offences are arranged in a hierarchy of offence seriousness from least serious to most serious. The position each offence occupies on the hierarchy relative to the other offences also indicates how serious it is compared with all other offences in the scale.

Scales of offence seriousness have been used for a variety of purposes, often combined with other data. For example, they have been used to assess the criminal records of offenders (Gorsuch, 1938–1939), enhance the analysis of crime statistics (Kwan et al., 2000) or develop classification systems for investigating and prosecuting criminal offences (Sellin et al., 1978).

Offence seriousness scales have also been developed using 'objective' sources of information, such as sentencing data or other types of data (see for example, Cohen, 1988, who used data such as victim injury rates and estimates of the monetary costs of crime to victims to rank the severity of crime). These scales have been developed to assess the seriousness of offences according to the severity of sentences that have been imposed (Francis et al., 2001; MacKinnell et al., 2010; Wallace et al., 2009). Most recently, the Sentencing Advisory Council has used sentencing data to develop an offence seriousness scale based on current sentencing practices for a range of offences defined in section 3 of the *Sentencing Act 1991* (Vic) as 'serious' and 'significant' (Sentencing Advisory Council, 2011).

A key purpose of scales of offence seriousness that has been identified is to inform the regulation of 'punishment more or less in accordance with the seriousness of the [offence]' (Thurstone, 1927, pp. 384–385). The subjective judgment of offence seriousness by community members can thus be translated into a quantitative measure and compared with scales of offence seriousness generated from sentencing practices and maximum penalty levels. For example, an American study compared community perceptions of the seriousness of theft offences with modern theft law and used the disparities between the two as a basis for challenging current conceptualisations of harm and culpability in this area of the law (Green and Kugler, 2009). Much of the research measuring community judgment of offence seriousness has thus been conducted with the aim of achieving consistency between various sources of information on offence seriousness. Rossi et al. (1974) have argued:

It is a moot question whether seriousness is defined by the actions of criminal justice systems or vice versa; but societal consensus and the operations of criminal justice systems should correspond to some degree (Rossi et al., 1974, p. 224).

The synthesis of three such sources of information of offence seriousness (community attitudes, sentencing practices and maximum penalties) can thus be used to assist in formulations of offence seriousness. In turn, this is a key factor that informs sentencing judges in determining the punishment to be imposed on offenders in accordance with the principle of proportionality, a fundamental common law principle of sentencing explicitly expressed in Victorian law.²⁷

²⁷ *Sentencing Act 1991* (Vic) ss 1(a), 5(2)(c).

Data collection

The data collection involved 14 community panel sessions conducted in Victoria in metropolitan and regional locations (see Appendix I for a list of panels and locations). Due to the nature of the research and recruitment methods, the sample used was not random. A combination of methods was used to engage participants.

Advertisements were placed in print media and via a postcard campaign throughout Victoria,²⁸ notifying members of the public of the Council's project on maximum penalties and inviting individuals to register their interest in having their say on the seriousness of offences. In response to these advertisements, 318 individuals expressed interest in being involved. Further information was posted to these individuals about how they could be involved by participating in the community panels on offence seriousness. Individuals were asked to confirm if they were interested in participating. A list of session times was provided to the pool of interested individuals with a request to nominate the session they could attend. Using this method, a total of 124 individuals confirmed their initial expression of interest and registered to attend a panel session.

After consideration of the demographics of these individuals, recruitment company Cooper Symons was engaged to recruit a further 120 participants. This was to ensure a sample that was evenly distributed on the demographic characteristics of gender and age. The recruitment company screened individuals for gender, age and their previous experience in market research. If a person had participated in more than four market research groups or sessions or had participated in any market research activity in the last six months, they were excluded.

A total of 244 people participated in the panel sessions. Approximately half (124) were self-selected through the Council's advertising campaign and half (120) were recruited to balance out the demographic characteristics of the sample. The majority of the 14 panel sessions had equal or close to equal proportions of participants by recruitment method. Table I (page 18) shows the characteristics of the 244 people in the sample.

Despite not being a random sample of the Victorian population, the survey sample is representative of the Victorian population on many demographic variables, including age, gender and residential location.

The panel sample was very close in age to the adult Victorian population. The median age of the adult Victorian population aged 18 years and older at the 2006 census was 44 years (Australian Bureau of Statistics, 2007), while the median age of the sample was 43 years. Participants ranged in age from 18 to 89 years and the mean age of participants was 45.3 years. Four in 10 participants (39.8%, 97 people) were aged 25–44 years, followed by 28.7% aged 45–64 years (70 people). A further 18.4% were aged 65 years and over (45 people), while 13.1% were aged under 25 years.

Consistent with the Victorian population, the sample of 244 participants comprised an equal proportion of males and females. The mean age for female participants was 44.1 years, while the mean for male participants was 46.5 years. Almost equal proportions of the panel sample (68.9%) and the Victorian population (72.9%) lived in Melbourne.

One difference of note between the Victorian population and the panel sample was found in relation to education status. The panel sample was more highly educated than the Victorian population as a whole: 38.9% of Victorians aged 15 years and older at the 2006 census had completed a tertiary qualification (Australian Bureau of Statistics, 2007). This compares with 70.1% of the panel sample having completed some form of tertiary education.²⁹

²⁸ Postcards were distributed to public venues, such as cafes and municipal libraries and posted to stakeholders for distribution among their networks.

²⁹ This included a university degree, graduate diploma or other post graduate study, certificate or diploma/associate diploma, trade/apprenticeship qualification or other TAFE qualification.

Table 1: Sample characteristics for community panels on offence seriousness

Characteristic	Sample
Gender	
% female	50.0
% male	50.0
Age (years)	
Mean	45.3
Median	43
Range	18–89
Education	
% tertiary educated	70.1
Employment status	
% employed/home duties	59.0
% student	12.7
% retired	20.1
% unemployed/unable to work/other	8.2
Residential location	
% Melbourne	68.9
% non-Melbourne	31.1
Country of birth	
% Australia	82.0
% outside Australia	18.0
Personal experience with the criminal justice system	
% yes	68.0
% no	32.0
Selection method	
% self-selection	50.8
% recruitment company	49.2

Looking at education level in more detail, four in 10 participants reported their highest level of education was a university degree (42.2%, 103 people). One-quarter of participants had a technical qualification as their highest education level (27.9%, 68 people). One in three participants reported secondary education as their highest education level (29.1%), most commonly completing Year 12 (39 people) or Year 11 (34 people). Eighteen participants reported their highest level of education as Year 10 or below. Primary school was the highest level of education attained for two participants.

The differences in demographics between the panel sample and the Victorian population are relevant to consideration of the level of agreement or 'consensus' within the panel sample on the seriousness of offences. Previous research has shown an overall high degree of consensus on the seriousness of offences. While some methodological difficulties have been identified in the measurement of consensus, overall the literature suggests that demographic factors such as age, gender and education level contribute only moderately to overall rankings of crime seriousness (Miethe, 1982; Miethe, 1984; Cullen et al., 1985; Sellin et al., 1978; Wolfgang et al., 1985; Wiles and Cavadino, 1994; see also Roberts, 1992, pp. 62–72). Other studies have reported little difference among the offence seriousness rankings by different groups, such as offenders and non-offenders, victims and non-victims and members of the police and the public (see for example, Levi and Jones, 1985; Figlio, 1975). However, other studies have found that factors such as education level and age are linked to general levels of agreement as to crime seriousness (Rossi et al., 1974; O'Connell and Whelan, 1996).

The differences in age and education profile may also influence the findings of the research on the punitiveness levels of individuals in the sample. Previous research has shown a positive correlation between punitiveness and older age, meaning that older people tend to be more punitive (see for example, Walker et al., 1987, p. 5). However, more recent studies have shown that when age is included with other demographic variables in the analysis, age is not a significant predictor of punitiveness (see for example, Roberts and Indermaur, 2007; Sentencing Advisory Council, 2011b). Some research has also shown that lower levels of education are associated with higher levels of punitiveness (Walker et al., 1987, p. 4; Roberts and Indermaur, 2007; Sentencing Advisory Council, 2011b). Overall, the most recent literature on the predictors of punitiveness clearly indicates that the most influential factors in punitive attitudes and punitiveness are people's perceptions of crime, education, commercial or tabloid media use and fear of crime (Sentencing Advisory Council, 2011b; Roberts and Indermaur, 2007; Spiranovic et al., 2011).

The other characteristics of the sample cannot be directly compared to broader population data due to differences in question wording or response grouping. The majority of participants were born in Australia (82.0%, 200 people), while 44 people (18.0%) were born in a country other than Australia. One participant identified as Aboriginal or Torres Strait Islander. The majority of participants reported to be engaged in employment (by an employer or self-employed) or home duties (59.0%). A further 12.7% were students. Forty-nine participants were retired (20.1%) and a small proportion of participants were unemployed or unable to work or listed their employment status as 'other' (8.2%, 20 people). A high percentage of participants indicated they had personal experience with the criminal justice system (68.0%), which may also influence the findings. This may be a result of the sample being self-selected as those with experience with criminal justice may be interested in being involved in such research. However, research shows that experience with the criminal justice system, including experience as a victim, typically plays no role in attitudes towards crime and sentencing, such as punitiveness levels (Sentencing Advisory Council, 2011b, pp. 13, 19–20).

Measures

Each panel session was conducted in the same manner and ran for three hours at various times of the day. Each participant was provided the same information and materials to undertake the exercises in each panel session.³⁰ Sessions were facilitated by the community engagement manager and a senior legal policy officer of the Sentencing Advisory Council.

The Council used multiple methods in the community panels to collect quantitative and qualitative data on the community judgment of offence seriousness by indirect and direct scaling exercises and discussion sessions.

Judgment of offence seriousness by paired comparisons

The Council followed the paired comparisons method as first developed (Thurstone, 1927) and replicated on numerous occasions (Gorsuch, 1938–1939; Ekman, 1962; Coombs, 1967; Krus et al., 1977; Kwan et al., 2000). A number of small modifications were made to the original method. These included the number and type of offences selected and how the offence pairs were presented to participants.

Offences

Ten of the 250 Crimes Bill offences were selected for inclusion in the paired comparisons measure. The number of offences was limited to 10 to keep the exercise manageable and within time constraints; thus offences were selected to ensure a broad spread of offence types. The offences, in alphabetical order, were:

- aggravated burglary;
- armed robbery;
- arson;
- blackmail;
- intentionally cause serious injury;
- drug trafficking (large commercial quantity);
- kidnapping;
- murder;
- rape; and
- theft.

Presentation of offences – typologies

Each offence was described by a simple offence typology, for example, 'murder'. Participants were given a sheet of offence descriptions for each offence to ensure a common understanding of the meaning of the offences they were being asked to compare (see Appendix 2). Participants were asked to confine their thinking to only the behaviour described in each offence, to think of the most serious example of that offence and to keep that same example in mind each time they saw that offence in a pair. To minimise the influence that information about the offender or victim could have on the judgment of seriousness, this information was not included in the offence description, and participants were asked to think of the offender and victim as people they did not know.

³⁰ This included name tag, participant questionnaire, participant information form, participant consent form, participant contact form, list of offence descriptions for the paired comparisons exercise, an envelope with five sets of cards (containing offence vignettes) for the offence vignette ranking exercise, community panel questionnaire and participant payment form. Each participant was given a sum of \$90 at the end of the session as reimbursement for expenses in attending the session.

Process

The offences were combined into every possible pair of offences. This resulted in 45 offence pairs. To avoid bias caused by the position of offences in each pair and the order of the offence pairs, the position of the offences in each pair was randomised and the order of the 45 pairs was randomised. The pairs of offences were then presented to participants on a screen in the same order for each session. Each pair of offences was presented one at a time on the screen. As each pair appeared on the screen, it was also read out by one of the facilitators.

Participants were required to indicate which offence they thought was the more serious in each pair of offences presented. Responses were entered by each individual participant using an electronic audience response system. Each participant had a handset (similar to a mobile phone) they used to enter their responses anonymously. In each pair presented to participants, one offence was labelled 'a' and one offence was labelled 'b'. Participants were asked to select the offence they thought was more serious in each pair by selecting the appropriate letter on the handset and pressing 'send' to record their answer in the system. This automatically entered each participant's answer into a database that could later be linked to the handset number that each participant used.

To avoid participants being influenced by others, it was emphasised that there were no right or wrong answers and that participants were to choose according to their own personal opinion but not to talk during the exercise and not to reveal their selections to the group.

Judgment of offence seriousness by offence vignette ranking

The Council used the coded ranking method as the basis for developing the offence vignette ranking exercise where participants were asked to rank 40 offence vignettes on a coded seriousness scale from 1 to 10, with 1 being the least serious and 10 being the most serious.

Offences

Forty offences were selected from the 250 Crimes Bill offences. The offences were selected to ensure a range of seriousness, offence types and maximum penalty levels. Offences were also selected on the basis of 'problem' areas that were identified as part of the maximum penalties project. These included attempted or incomplete offences, preparatory offences, offences that were similar but with markedly disparate maximum penalties, offences where a disparity between sentencing practices and the maximum penalty had been identified and offences that posed a challenge to the harm and culpability analysis of offence seriousness, such as endangerment and risk of harm offences. The offences selected included fatal offences, serious injury offences against the person, sexual offences, property offences, drug offences, fraud, blackmail and incitement and attempted offences.

Presentation of offences – vignettes

Each offence was described by way of a vignette that provided information on the legal elements of the offence. Each offence vignette was drafted based on real cases sentenced in the higher courts to ensure each only provided information on the elements of the offence based on three dimensions of seriousness according to the harm and culpability framework of offence seriousness. These were:

- culpability of the offender – mental state³¹ and conduct;³²
- circumstances of the offence – involving the victim,³³ the offender³⁴ or the nature of the offence;³⁵ and
- consequences of the offence – the nature of the harm,³⁶ the type and level of harm³⁷ caused and whether the offender made a gain from the offence.

Appendix 3 shows the 40 offences used for the vignette ranking exercise arranged according to five offence categories. It also shows the harm and culpability factors (seriousness dimensions) captured by the elements of the offence and the wording of each vignette scenario drafted to represent the offence, as presented to participants.

These three dimensions of seriousness and the factors captured under each dimension operated as a framework to ensure that overall the offences selected represented a broad cross-section of harm and culpability factors at varying levels across offence types. This was to ensure the measure tested the influence of different types and levels of harm and culpability in participants' judgments of offence seriousness. As far as possible, the facts of the vignettes were kept similar, so only the elements relevant to culpability, circumstances or consequences varied to reflect the particular offence. For example, to test the influence of different levels of intention, three serious injury offences were included,³⁸ where the level of serious injury was kept constant (permanent vegetative state) while varying the level of intention.

To minimise the influence of factors other than those identified as seriousness factors, the vignettes were restricted to information on the elements of the offence and, unless necessary to describe the circumstances of the offence, did not include offender or victim characteristics. As far as possible, these characteristics were kept constant. In all vignettes, the offender was a male aged 35 years old. The one exception to this was the offence of sexual penetration with a child aged under 16, where the offender was aged 20 years.³⁹ The vignettes included male and female victims. For all vignettes except the sexual offences, where the victim's age was an element of the offence, the age of the victim was also 35 years old. Participants were asked to think of the offender and victim as people they did not know. Participants were required to confine themselves to the information about the behaviour described in the offence vignette.

³¹ Intention, knowledge, recklessness, negligence, dangerousness or strict liability.

³² For example, the intention to commit another offence, course of conduct, deceptive or fraudulent conduct, coercion or lack of consent or use of threats, force or a weapon.

³³ For example, the age of the victim or the victim's relationship to the offender.

³⁴ For example, the relationship of the offender to the victim or whether the offender was in a position of care, supervision or authority.

³⁵ For example, the quantity and type of drug or the nature of sexual activity.

³⁶ For example, whether there was actual, risked or threatened harm and whether the harm was caused, risked or threatened to a person, property or the state or general community.

³⁷ Examples of the type of harm included physical, psychological or economic. Examples of the level of harm included injury, serious injury and death.

³⁸ These were intentionally cause serious injury, recklessly cause serious injury and negligently cause serious injury.

³⁹ This was deliberately drafted in this way to test the judgment of the seriousness of a particular set of circumstances in this offence, involving consensual sexual penetration between two people close in age and in a relationship.

For almost all offences, one vignette was drafted for each offence.⁴⁰ It was not possible for each vignette to cover all levels of seriousness within an offence and all the possible circumstances in which an offence could be committed. The vignette drafted for each offence therefore represented just one set of circumstances referable to the harm and culpability elements of the offence, rather than representing a 'definitive' version of each offence.

As the research was conducted to test judgments of offence seriousness as they related to maximum penalties, which represent the 'worst' case of an offence, the majority of vignettes were drafted to reflect the high end of seriousness of the offence. For example, the serious injury offences included one of the highest levels of injury, a permanent vegetative state. In relation to offences that cover a broad range of offending behaviour of varying degrees of seriousness, this meant the vignette drafted only represented one particular level of offence seriousness: the higher end. In some cases, this appeared to have an effect on the judgment of seriousness. For example, the aggravated burglary vignette was drafted to represent the highest end of offence seriousness for that offence: a sexually motivated aggravated burglary where the intention was to commit rape, which influenced the ranking of this offence. As the number of offences included in the exercise was limited to 40, it was not possible to include a less serious form of the aggravated burglary offence.

One exception to the general rule that the scenarios be drafted to represent the high end of seriousness was the vignette drafted for the offence of sexual penetration with a child aged 12–16, which was drafted to test the influence of specific factors: sexual penetration within a 'consensual' sexual relationship with partners of similar ages. This was done following issues raised by stakeholders in previous research conducted by the Council on the maximum penalties for sexual penetration offences involving children (see Sentencing Advisory Council, 2009, pp. 56–60).⁴¹

Process

The vignettes were grouped into five categories according to the type of offence or behaviour described. The offences were presented to participants using the category names A to E. Each offence vignette was randomly ordered within each category, given a number and presented on a small laminated card with its assigned number. These categories (as shown in Appendix 3) were:

- A – 'Offences causing or risking death' (eight offences labelled A1 to A8);
- B – 'Offences causing or risking injury' (nine offences labelled B1 to B9);
- C – 'Sexual offences' (eight offences labelled C1 to C8);
- D – 'Offences involving loss of or damage to property' (nine offences labelled D1 to D9); and
- E – 'Drug and other offences' (six offences labelled E1 to E6).

Each participant was given a set of the offence vignette cards in bundled piles for each category, labelled A to E. Participants were also given a tray which was divided into five sections, labelled A to E. Each section in the tray had 10 'levels' labelled 1 to 10. This scale of 1 to 10 comprised the coded seriousness scale participants used in ranking each offence vignette card (1 being the least serious and 10 being the most serious). Participants were asked to look at each card one at a time in the order they appeared in the pile in each category and rank them by placing them at a level in the tray according to the level of seriousness on the scale of 1 to 10.

⁴⁰ The one exception to this rule was the offence of murder where two vignettes were drafted to cover both the intentional form and the reckless form of the offence.

⁴¹ During consultations as part of this project, stakeholders referred to the issues related to the offence of sexual penetration with a child aged 12–16 when it is committed in these circumstances.

As participants read each vignette card, a facilitator also read it aloud. The same order of offence vignettes in each category was followed for each panel session. In half of the 14 panel sessions the categories of cards were presented in the order of A to E, and in the other half of the panel sessions the categories were presented in the order of E to A. This was done to remediate the effects that presenting particular offence types before others may have had on rankings.

Participants were asked to rank each offence according to their own personal opinion of how serious it was relative to the other offences they were ranking. Participants were asked to rank each offence according to its 'ordinal' proportionality, that is, the order and position on the scale of 1 to 10 that reflected the seriousness of each offence compared with all the other offences in the exercise. Thus, this was an exercise in relative offence seriousness. Participants were not asked to rank offences in terms of absolute seriousness, that is, they were not asked to give offences a number in terms of years that would denote a particular maximum penalty. Nor were participants asked to rank offences according to how offences were currently sentenced or how participants thought offences ought to be sentenced.⁴²

Participants were able to rank cards equally at the same level. Participants were also permitted to move their rankings around as the exercise continued: they were therefore able to change the position at which they had placed each vignette card if they changed their mind when reading subsequent vignette cards. At the end of each section, participants were given time to review their rankings. Participants were required to review their rankings within each category as they continued to rank offence vignettes in subsequent categories. This was to ensure the same seriousness scale of 1 to 10 was used within each category and across all categories. Thus, as the ranking exercise continued, participants could look back to where they had ranked cards in earlier categories as a guide in ranking further cards or to move any cards as the exercise progressed. At the end of the last section, participants were given time to review all their rankings in each section and change rankings if necessary. Participants were asked not to talk out loud about their rankings until the discussion session at the end of each offence category. At the end of each panel session, the ranking of each offence vignette card in each tray per participant was recorded and entered into a database for analysis.

Qualitative discussion

As part of the offence ranking exercise, there were also facilitated discussion sessions. These sessions allowed participants to deliberate on their rankings and talk about why they had ranked offences in a particular way and the factors that influenced their ranking of offence vignettes. The discussion was limited to participants' views on offence seriousness based on the information in the vignettes and did not include sharing of personal experiences with crimes or offences or views on sentencing. Participants were reminded there were no right or wrong answers to the issues being discussed and that each person's opinion was important and equally valid. Participants were also asked to direct their comments to the facilitators and not to other participants in the session.

The discussion sessions were audio recorded. Notes were also taken during each discussion component of the panels. These notes and transcripts were used to type up session notes and record quotations for each panel. Participants were identified only by their identification numbers and all names were removed. This provided qualitative data on participants' judgments of offence seriousness.

⁴² This differs from the process followed by the Council in setting baseline levels as part of the Baseline Sentencing project, which required both ordinal ordering (ordering according to a rank or position, such as first, second and third) and cardinal ordering (ordering according to a quantity, such as number of years).

Punitiveness questionnaire

Individual perceptions of the seriousness of crimes may be influenced by a number of external factors. These can include levels of punitiveness, views on the purposes of sentencing, information given about offences, the sentencing process, penalties or general attitudes towards offenders convicted of particular offences (see for example, Yaworsky, 1981, who examined the impact of penalty information on the judgment of the seriousness of offences; see also Broadhurst and Indermaur, 1982, who examined the impact of information accuracy on attitudes to offence seriousness).

Various methods have been used to measure the influence that views or perceptions of sentencing and offenders can have on attitudes to offence seriousness or sentencing (see for example, Broadhurst and Indermaur, 1982; Indermaur, 1990; Davis and Kemp, 1994; Hough et al., 2009; Collins, 1987; Walker et al., 1987; O'Connell and Whelan, 1996). Most recently, a reliable measure of punitiveness has been used as part of a national survey of community views on crime, sentencing and courts, of which the Council is a part. The first phase of this research included a seven-item scale to measure respondents' levels of punitiveness. The punitiveness scale used had a Cronbach's alpha⁴³ of 0.84, meaning the scale had very good reliability (Sentencing Advisory Council, 2011b, p. 9).

Due to the availability of a recently used and reliable punitiveness measure, the Council selected punitiveness as a variable to examine the extent to which participants' rankings were influenced by external factors. A report published by the Council analysing the socio-demographic and attitudinal predictors of punitiveness also provided useful comparison data (Sentencing Advisory Council, 2011b). This measure was also chosen, as it comprised a short questionnaire that could be completed within the time constraints of the panel sessions. Panel participants were asked to complete a questionnaire at the end of the panel session, which aimed to gather general views about crime and law in society. This questionnaire was used to measure participants' levels of punitiveness.

Six of the seven items used in the national survey scale were used in the questionnaire (the first six statements listed below). The seventh item used was taken from a punitiveness measure in the 2003 Australian Survey of Social Attitudes. This has been combined in other research with two of the items listed below to form a single punitiveness scale (Roberts and Indermaur, 2007).⁴⁴ The individual items that were combined to form the scale for the panels were as follows:

- The death penalty should be the punishment for murder.
- People who break the law should be given stiffer sentences.
- Courts are too soft on offenders.
- The tougher the sentence, the less likely an offender is to commit more crime.
- High crime rates are mainly an indication that punishments are not harsh enough.
- The most effective response to criminality is to have harsher sentences.
- Judges should reflect public opinion about crimes when sentencing criminals.

Participants were asked to indicate their responses to the statements by ticking only one of the boxes below each statement. The available responses were: 'Strongly disagree', 'Disagree', 'Neither agree nor disagree', 'Agree', or 'Strongly agree'. All items were measured on a five-point Likert scale, ranging from 1 = 'Strongly disagree' to 5 = 'Strongly agree'. The individual item responses were added to compute a scale score for each respondent, with a possible score ranging from 7 to 35. Higher scores on the scale indicate a higher level of punitiveness or a greater desire for the punishment of offenders.

⁴³ Cronbach's alpha is a commonly used measure of the internal consistency or reliability of a psychometric test that assesses how well the items in scale are all measuring a single, underlying construct.

⁴⁴ In that analysis punitiveness was measured by combining responses to the following three statements to form a single punitiveness scale: 'The death penalty should be the punishment for murder'; 'People who break the law should be given stiffer sentences'; and 'Judges should reflect public opinion about crimes when sentencing criminals'.

Results

Scales of offence seriousness

Paired comparisons

Of the total sample of 244 participants, there were usable paired comparisons data for 243 participants.⁴⁵ Thurstone's (1927) paired comparisons statistical procedure was applied to these data. This involved initially producing a matrix showing the proportion of participants who rated each offence as more serious than every other offence (Appendix 4). Proportions in this matrix were converted to differences from 0.5, and these differences were converted to z-scores⁴⁶ using standard probability tables. For each offence, the average z-score was then calculated and the averages adjusted so that the offence with the lowest average received a score of zero.

Seriousness scores using this method are difficult to interpret partly because the range of possible scores is unclear. Where the seriousness scores are readily interpretable is in the relative ranking of offences and the magnitude of differences in scores between offences. These aspects of seriousness scores are presented in Figure 1 (page 28) while the actual seriousness scores are presented in Appendix 4.

Figure 1 shows the offences arranged along the scale of offence seriousness from least serious to most serious according to the differences in their scale values. At the lowest end of the scale is theft while murder is at the highest end.

As a broad framework, this scale of offence seriousness shows that offences against the person that involved physical and/or psychological harms were judged to be more serious by participants than property offences. The scale also shows a reasonable level of consistency between the order of seriousness of offences and their maximum penalties, with the exception of intentionally cause serious injury being ranked higher than aggravated burglary and trafficking in a large commercial quantity of drugs, which have higher maximum penalties.

⁴⁵ One participant's data were removed due to remarks made by the participant and observations of the facilitators during the exercise that indicated that the individual did not understand the exercise and thus had not undertaken it correctly.

⁴⁶ A z-score is a standardised score that indicates the number of standard deviations a raw score is in relation to the mean score. For example, a z-score of 1.5 means its corresponding raw score is 1.5 standard deviations above the mean score.

The most serious offence was judged to be murder. It has the highest maximum penalty available in Victoria (life imprisonment) and involves high levels of harm and culpability. After murder, the most serious offences were judged to be rape, kidnapping and intentionally cause serious injury. Rape and kidnapping have maximum penalties of 25 years, while intentionally cause serious injury has a maximum penalty of 20 years' imprisonment.

There was no overlap on the scale between offences against the person and property offences. None of the property offences was judged to be as serious as, or more serious than, any of the offences against the person. Property offences were ranked in the second half of the scale, although those property offences that involved a threat of harm to a person were judged to be the most serious of the property offences. These offences were aggravated burglary (ranked fifth) and armed robbery (ranked seventh), both of which have maximum penalties of 25 years' imprisonment.

Drug trafficking in a large commercial quantity was the only drug offence included in the exercise. It has a current maximum penalty of life imprisonment but was ranked sixth, between aggravated burglary and armed robbery in the middle of the scale.

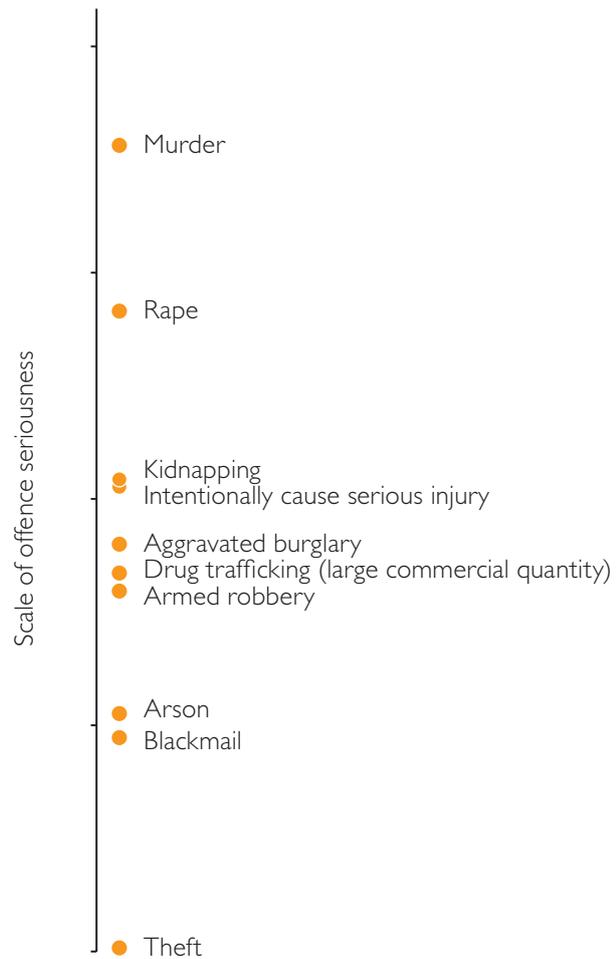
The least serious offences were the property offences with lower maximum penalties. These were arson and blackmail, both of which have maximum penalties of 15 years' imprisonment, and theft, which has a maximum penalty of 10 years' imprisonment.

An important feature of seriousness scores resulting from paired comparisons analysis is that they indicate the magnitude of differences between offences, in terms of seriousness. The differences between the three highest ranked offences (murder, rape and kidnapping) are relatively large, suggesting consistency in participants' rankings of these offences against all other offences. In contrast, the differences found between offences ranked fifth (drug trafficking) and sixth (armed robbery) are relatively small, suggesting a mixture of participants' views about the positioning of these offences. This variation in differences between seriousness scores indicates a degree of disagreement among participants in views of offence seriousness.

Offence vignette ranking

Of the total 244 participants, there were usable data for 242 participants.⁴⁷ Vignette scores were checked for extreme numbers of high and low scores for a given participant. The number of cards at level 1 and

Figure 1: Standardised seriousness scores from paired comparisons analysis



⁴⁷ The data for two participants were removed due to remarks made by the participants and observations made by facilitators during the exercise that indicated these individuals did not understand the exercise and thus had not undertaken it correctly. In addition, some participants had failed to rank one or more offence vignette cards. For example, four participants had failed to rank offence card B4 (conduct endangering life). This was mainly due to the card being accidentally picked up with another or the participant misplacing the card.

level 10 in the ranking trays was examined. The distribution of rankings indicated that participants tended to have fewer cards at the extreme ends of the seriousness scale, suggesting the majority of cards were ranked across the rest of the coded scale.

The usable ranking data for the 242 participants were analysed to determine the mean,⁴⁸ standard deviation⁴⁹ and mode⁵⁰ for each vignette. Appendix 5 shows these data for the 40 offences presented in order of their mean rankings.

The ranking data were also analysed to determine the range of rankings from the minimum to the maximum score given for each offence vignette and the distribution of rankings within that range as follows:

- 25th percentile – the rank under which one-quarter of participants ranked the offence;
- median (50th percentile) – the rank under which half of participants ranked the offence; and
- 75th percentile – the rank under which three-quarters of participants ranked the offence.

These range and distribution data are displayed graphically in simplified 'box-and-whiskers-plots' in Figure 2 (page 32). It shows the range of offence rankings and the distribution of the inter-quartile range for each of the 40 offence vignettes. The range presents the lowest and highest rank for an offence in that category, while the inter-quartile range is the middle 50% of rankings.

In a box-and-whiskers-plot, the horizontal lines at the bottom and top for each offence represent the extreme rankings given for any offence vignette, that is, the lowest and highest rank. The difference between these two points is the range of rankings. The coloured rectangle represents the middle 50% of rankings, or the inter-quartile range. The line at the bottom of the rectangle is the 25th percentile, which is the rank that 25% of participants' rankings fell below. The line at the top of the rectangle is the 75th percentile, which is the ranking that 75% of participants' rankings fell below. The bar in the middle of the rectangle is the median, which is the ranking that 50% of participants' rankings fell below.

These raw data were used to construct a 'horizontal and vertical' scale of offence seriousness. The mean rankings for each offence vignette were used to arrange the offences in a matrix to show how each offence was ranked on the coded scale of 1 to 10 across offence types (horizontally) and within offence types (vertically).

Table 2 (page 30) shows the offences in the matrix of horizontal and vertical ranks arranged on the coded scale from 1 to 10 according to the rounding of the mean rankings. This scale shows the offences in an order or hierarchy of seriousness from least to most serious. The position of offences on each level also shows how serious each offence was judged to be relative to each other offence. This indicates whether, and to what extent, the rankings demonstrate a hierarchy of relative offence seriousness based on different levels of harm and culpability. Figure 2 also shows the level of each offence on the scale of offence seriousness according to the rounded mean rank (shown in Table 2).

Table 2 also shows the mean and median ranks and the standard deviation from the mean (level of variation of rankings). The darker shading indicates the offences with high levels of agreement on their seriousness, and the lighter shading indicates the offences with low levels of agreement where participants had differing views on their severity. It also shows how the positioning of each offence compares with its current maximum penalty.

⁴⁸ The mean is the average of all participants' scores.

⁴⁹ The standard deviation is a measure of dispersion around a mean score. It shows the variation of rankings within the sample for each offence vignette and was used to assess the level of agreement across the sample on the ranking of each offence vignette. Thus, if there was a big difference among the individual scores given for a vignette, the standard deviation would be higher.

⁵⁰ The mode is the value that occurs most frequently in a set of data.

Table 2: Horizontal and vertical offence seriousness matrix from offence vignette rankings

Vertical rank within offence categories	Horizontal rank between offence categories				
	A – Offences causing or risking death	B – Offences causing or risking injury	C – Sexual offences	D – Offences involving loss of or damage to property	E – Drug and other offences
10	A1–Murder (intentional) Mean: 9.9 (SD 0.3) Median: 10 Life		C5–Sexual penetration with a child aged under 12 Mean: 9.5 (SD 0.8) Median: 10 25 years		
9	A5–Murder (reckless) Mean: 9.2 (SD 0.9) Median: 9 Life	B2–Intentionally cause serious injury (ICSI) Mean: 9.3 (SD 1.0) Median: 9 20 years	C3–Rape Mean: 9.3 (SD 0.8) Median: 9 25 years		
8	A3–Manslaughter (unlawful and dangerous act) Mean: 8.3 (SD 1.4) Median: 9 20 years	B3–Kidnapping Mean: 8.2 (SD 1.3) Median: 8 25 years	C8–Attempted rape Mean: 8.4 (SD 1.3) Median: 9 20 years	D3–Aggravated burglary Mean: 8.4 (SD 1.2) Median: 9 25 years	E4–Drug trafficking (large commercial quantity) Mean: 7.9 (SD 1.9) Median: 8 Life
		B1–False imprisonment Mean: 7.9 (SD 1.6) Median: 8 25 years	C7–Produce child pornography Mean: 8.1 (SD 1.7) Median: 8 10 years		
	A7–Culpable driving causing death Mean: 7.9 (SD 1.6) Median: 8 20 years	B8–Assault with intent to rape Mean: 7.8 (SD 1.5) Median: 8 10 years	C4–Indecent act with a child aged under 16 Mean: 8.0 (SD 1.5) Median: 8 10 years		
		B9–Negligently cause serious injury (NCSI) Mean: 7.7 (SD 1.8) Median: 8 10 years			
7	A6–Arson causing death Mean: 7.1 (SD 2.0) Median: 7 25 years	B5–Recklessly cause serious injury (RCSI) Mean: 7.3 (SD 2.1) Median: 8 15 years	C2–Sexual penetration with a child aged 12–16 and under the care, supervision or authority of the offender (CSA) Mean: 7.1 (SD 2.0) Median: 7 15 years	D5–Armed robbery Mean: 7.3 (SD 1.5) Median: 7 25 years	E5–Drug trafficking (commercial quantity) Mean: 7.0 (SD 2.1) Median: 7 25 years
	A2–Make threat to kill Mean: 6.6 (SD 1.8) Median: 7 10 years			D4–Attempted armed robbery Mean: 7.0 (SD 1.6) Median: 7 20 years	

Vertical rank within offence categories	Horizontal rank between offence categories				
	A – Offences causing or risking death	B – Offences causing or risking injury	C – Sexual offences	D – Offences involving loss of or damage to property	E – Drug and other offences
6	A8–Dangerous driving causing death Mean: 6.3 (SD 2.2) Median: 7 10 years	B7–Stalking Mean: 6.2 (SD 1.7) Median: 6 10 years		D2–Robbery Mean: 5.8 (SD 1.6) Median: 6 15 years	E2–Attempted drug trafficking (large commercial quantity) Mean: 6.2 (SD 2.4) Median: 6 Life
	A4–Conduct endangering life Mean: 5.6 (SD 2.1) Median: 6 10 years			D7–Arson Mean: 5.5 (SD 2.0) Median: 6 15 years	
5				D1–Incitement to commit armed robbery Mean: 4.9 (SD 2.1) Median: 5 25 years	E3–Cultivation for the purposes of trafficking Mean: 4.9 (SD 2.3) Median: 4 15 years
				D6–Blackmail Mean: 4.6 (SD 1.9) Median: 5 15 years	
4		B4–Intentionally cause injury Mean: 3.6 (SD 1.8) Median: 3 10 years	C1–Indecent assault Mean: 4.1 (SD 1.8) Median: 4 10 years	D9–Theft Mean: 4.2 (SD 1.7) Median: 4 10 years	E1–Knowingly dealing with the proceeds of crime Mean: 3.9 (SD 1.9) Median: 4 15 years
				D8–Make, use or supply identity information Mean: 3.7 (SD 1.8) Median: 3 3 years	
3			C6–Sexual penetration with a child aged 12–16 Mean: 3.4 (SD 2.1) Median: 3 10 years		
2		B6–Assault (common law) Mean: 2.4 (SD 1.5) Median: 2 5 years			E6–Possession of a drug (less than traffickable quantity) Mean: 2.2 (SD 1.5) Median: 2 5 years

Note:

- Denotes where there was a low standard deviation around the mean rankings for offences and indicates the offences where there were high levels of agreement among participants on their seriousness.
- Denotes where there was a high standard deviation around the mean rankings for offences and indicates the offences where there were low levels of agreement among participants on their seriousness.

Figure 2: Box-and-whiskers-plots showing range and distribution of offence vignette rankings in mean rank order



Sliding scale of harm and culpability – fatal offences

The vignettes for offences causing or risking death were drafted to explore specific relativities between different levels of intention. The ranking of offences shows that in judging the seriousness of offences that involved intentional or unintentional death being caused or risked, participants tended to make differentiations in seriousness based on distinct levels of harm and culpability that produced a sliding scale based on these different levels.

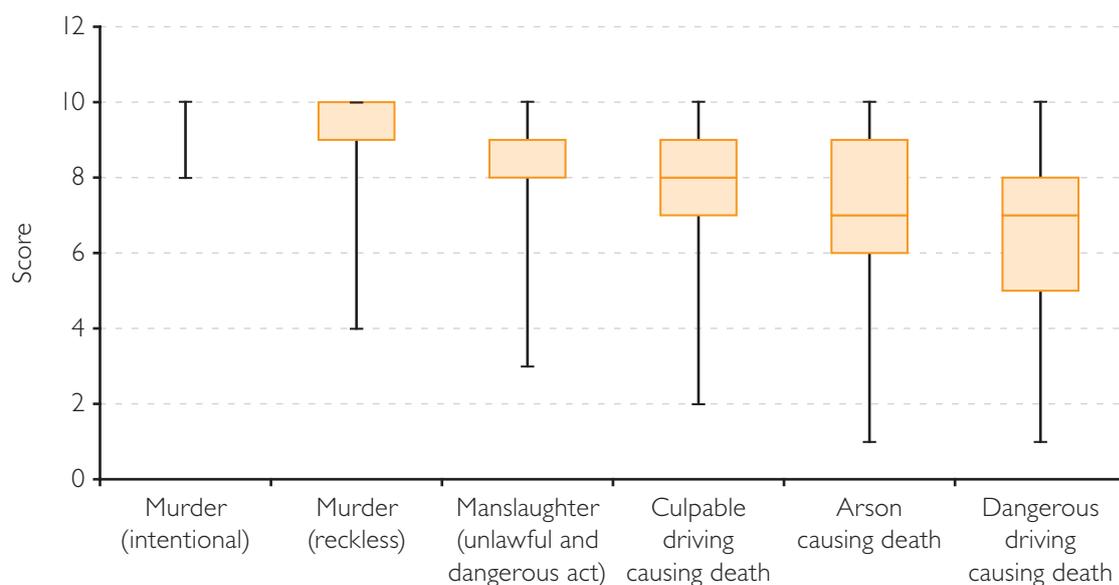
Offences that comprised a death that was intentionally caused by the offender or was the result of highly reckless behaviour by the offender (where the offender knew that death was probable) were judged to be more serious than those offences where the offender had a lower level of intention or where no death was caused. The ranking of offences where a death was caused demonstrated a sliding scale of culpability as follows:

- intention (intentional murder);
- recklessness combined with knowledge (reckless murder);
- recklessness and culpable behaviour (manslaughter, culpable driving causing death);
- negligence (arson causing death); and
- dangerousness (dangerous driving causing death).

These distinctions in seriousness based on culpability for offences that resulted in death are displayed in Figure 3, which shows the box-and-whiskers-plots of vignette scores for those offences resulting in death by descending mean score.

Figure 3 indicates a broad gradation in the ranking of fatal offences based on a descending level of culpability from intention and recklessness to negligence and dangerousness. However, it also shows that inter-quartile ranges and thus disagreement on the seriousness of offences increased with the reducing level of culpability, as participants were influenced in different ways when the harm remained the same (death), but the levels of culpability reduced. In particular, there were low levels of agreement among the sample on the seriousness of the least serious fatal offences: arson causing death and dangerous driving causing death.

Figure 3: Box-and-whiskers-plots of vignette scores for offences resulting in death, sorted by descending mean score



Note: For murder (intentional), the 25th percentile, median and 75th percentile were all 10; for murder (reckless), the 25th percentile and median were both 9 and the 75th percentile was 10; and for manslaughter (unlawful and dangerous act), the median and 75th percentile were both 9.

The level of harm was also influential in the judgment of the seriousness of these offences. Offences in this category that did not result in death were overall ranked lower than offences that resulted in the death of a person, despite the fact there was a high level of culpability (make threat to kill and conduct endangering life). However, there was no consensus on this.

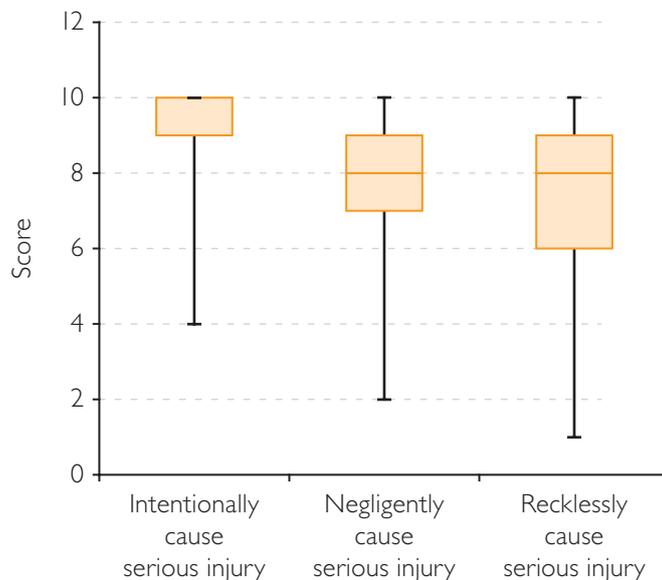
Sliding scale of harm and culpability – serious injury offences

The relative positioning of the serious injury offences also indicates a gradation in seriousness based on different levels of culpability, although this differed slightly from that observed for fatal offences. The rankings of intentionally cause serious injury, negligently cause serious injury and recklessly cause serious injury show a scale of culpability commencing with intention, followed by negligence and recklessness.

Intentionally cause serious injury is positioned at level 9 in the scale of seriousness in Table 2. Negligently cause serious injury is one level lower at level 8, followed by recklessly cause serious injury at level 7. These distinctions in seriousness based on levels of intention are displayed in Figure 4, which shows the box-and-whiskers-plots of vignette scores for those offences resulting in serious injury, by descending mean score. Similar to fatal offences, for serious injury offences there was an increase in the inter-quartile range of scores and thus disagreement on the seriousness of serious injury offences as the culpability of the offender reduced from the high level of the intentional infliction of serious injury. Consistent with the unintentional fatal offences, the offence with the lowest level of agreement among the sample was recklessly cause serious injury, which was overall positioned as the least severe serious injury offence.

As was observed for fatal offences, a serious injury that was caused intentionally was seen as substantially more serious than one caused by negligent or reckless behaviour. However, unlike fatal offences, where recklessness was overall seen as more serious than negligence, for serious injury offences (Figure 4), after intention, negligence was positioned higher in the scale of culpability than recklessness.

Figure 4: Box-and-whiskers-plots of vignette scores for offences resulting in serious injury, sorted by descending mean score



Note: For intentionally cause serious injury, the 25th percentile and median were both 9 and the 75th percentile was 10.

This result is inconsistent with the traditional positioning in criminal law of recklessness as higher in the culpability hierarchy than negligence. A number of factors could have played a role in the overall positioning of negligence as higher than recklessness in the ranking of offences causing or risking injury.

One factor is the impact of the vignette used for negligently cause serious injury on judgments of seriousness. The vignette was drafted to be identical to the culpable driving causing death vignette with a serious injury (permanent vegetative state), rather than death. The strong influence of the level of injury in these vignettes on judgments of seriousness is evident from the substantially lower ranking of intentionally cause injury, where the injury was a bruise compared with a permanent vegetative state. The positioning of the negligently cause serious injury vignette also reflects the seriousness with which participants viewed the culpability and harm in negligently cause serious injury, which involved the same factual circumstances of culpable driving causing death (an offender driving while drunk and doing burnouts) and resulted in a permanent vegetative state.

Another relevant factor is that the vignette drafted for the offence of recklessly cause serious injury did not represent all levels of offending behaviour covered by recklessly cause serious injury. The vignette did not specifically state the offender did not intend to cause a serious injury to the victim but that he was reckless to the high probability the offence would cause a serious injury. The vignette was drafted to represent a 'king-hit' or 'one-punch' example of that offending, where the offender punched the victim once in the head and the victim fell backwards, hit his head on the gutter and sustained a serious injury (a fractured skull, which rendered him in a permanent vegetative state). Thus, a vignette that was drafted to reflect a more serious version of the offence may have resulted in an overall higher positioning of the offence of recklessly cause serious injury.

Clustering of harm and culpability factors – sexual offences

The ranking of sexual offences shows that different types of distinctions were made in the seriousness of sexual offences, compared with offences that risked or caused other physical harm. Rather than a sliding scale that differentiated different levels of culpability and harm, offences were clustered in the upper half of the scale around factors that represented both harm and culpability. For example, child sexual offences involving eight year old victims were ranked 8 or higher and did not show a large differentiation based on the type of physical contact, due to the breach of trust, the abuse of a vulnerable victim and the long-lasting psychological harms of sexual invasion or abuse of children. The influence of the age of the victim in participants' judgments of harm and culpability is also evident in the lower ranking of the two sexual penetration offences involving 15 year old children (sexual penetration with a child aged 12–16 and under the care, supervision and authority of the offender (CSA) and sexual penetration with a child aged 12–16). However, there was not a high level of consensus on the mean rankings of these offences. The low ranking of sexual penetration with a child aged 12–16 was largely a product of the close age and the boyfriend–girlfriend relationship between the offender and the child.

The close ranking of rape and attempted rape shows the offender's intention to rape was highly influential in participants' rankings as both a harm and a culpability factor. Many participants saw the culpability and the harms flowing from both offences to be the same, despite that in the attempted rape, sexual penetration did not occur. The substantially lower ranking of indecent assault, where there was no intention to rape, shows these factors had a strong combined effect on the judgment of seriousness.

Harms against the person featured over culpability – property offences

Although property offences were not considered as serious as offences against the person, harms against the person did feature strongly in rankings. The ranking of property offences shows a sliding scale of seriousness that was primarily based on the harm that participants saw as being intended, caused or risked to people. This was considered a significantly more important seriousness factor than harm or risks of harm to property. Offences that involved an intention to rape, a threat of harm and use of a weapon were ranked higher than those that lacked these features. Aggravated burglary (intention to rape) was the highest ranked offence, followed by armed robbery and attempted armed robbery (threat of harm with a weapon), robbery (threat of harm without a weapon) and then theft (taking money with no threat of harm).

Offences that involved property damage or a risk of loss of property with lower levels of personal harm were considered less serious, although there was a lack of consensus on the mean rankings of these offences. For example, incitement to commit armed robbery, where there was an intention to commit an armed robbery that did not result in any harm to a person, was overall ranked substantially lower than attempted armed robbery. Arson and blackmail were also ranked lower than other property offences.

Indirect harms, drug amount and type – drug offences

While the mean rankings for drug offences tended to be lower overall than for offences that involved direct harms being caused or risked to a person, there was a high level of disagreement on the mean rankings of almost all offences in this category, suggesting differences in opinion on their seriousness. The ranking of drug offences suggested that key factors affecting judgments of seriousness were drug amount and drug type. For example, the rankings show a sliding scale of seriousness from a large commercial quantity of heroin to a commercial quantity of heroin to a commercial quantity of cannabis to possession of a small amount of drugs for personal use. These factors were relevant to some participants' judgments of the higher levels of harm to society and drug users that could be caused by larger amounts of a drug and heroin over cannabis. However, for some participants, these factors were irrelevant and the intention to deal in drugs was a key factor influencing seriousness. Others placed less importance on the broader societal harms in ranking these offences, so these factors were not as relevant, compared with the severity of harm actually caused to people in other offences.

The larger separation on the scale between the completed trafficking offence in a large commercial quantity of heroin and the attempted version of the offence shows that the influence of intention was significantly reduced in the judgment of offence seriousness for this offence where no harm was caused in the attempt, compared with other offences. This supports the finding that the presence of harm in an attempted offence was an influencing factor in participants' judgments of offence seriousness.

Punitiveness levels

Distribution of punitiveness

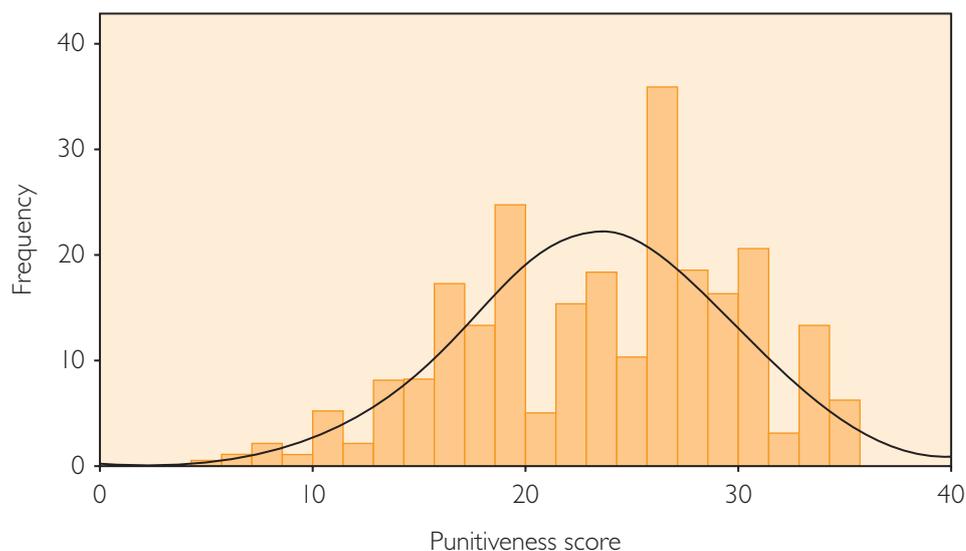
Of the total 244 participants, there were usable punitiveness data for 240 participants.⁵¹ Of these, 10 did not complete up to three of the seven questions. The missing scores for these participants were imputed using the mean score for a given item across all participants. The distribution of punitiveness scores indicates the 240 panel participants could be classified as 'moderately' punitive. Responses on the punitiveness scale ranged from a low of 7 to a maximum of 35, with a mean of 23.61 (SD = 6.31).⁵² The percentile scores on the scale were as follows:

- 25th percentile = 19 (one-quarter of participants fell below this score);
- 50th percentile = 25 (the median, or the score below which half of all responses were located); and
- 75th percentile = 28 (three-quarters of participants fell below this score).

Figure 5 illustrates the distribution of responses on the punitiveness scale. It shows the distribution was somewhat skewed towards the higher or more punitive end. That is, the distribution indicates that participants were somewhat more punitive than would be expected were responses normally distributed.

These findings are consistent with previous research, which shows that, in response to abstract questions about sentencing, members of the Victorian public are 'moderately' punitive. The distribution of responses on the punitiveness scale for the sample is consistent with data collected as part of a national survey on public attitudes to sentencing recently published by the Council (Sentencing Advisory Council, 2011b). This study classified the sample of 1,200 randomly selected Victorians as 'moderately punitive' with responses ranging from 8 to 35 and a mean punitiveness score of 23.97. The distribution of responses on the punitiveness scale was also somewhat skewed to the higher, more punitive end of the scale (Sentencing Advisory Council, 2011b, p. 11). These results are also consistent with data on public punitiveness in each state and territory across Australia using a sample of 6,005 randomly selected respondents. The mean punitiveness score for Victorians in that Australia-wide study was 23.50 (Roberts et al., 2011, p. 378).

Figure 5: Distribution of responses on the punitiveness scale



⁵¹ Four participants did not fill in the questionnaire, resulting in missing data.

⁵² The most commonly occurring score on the scale (the mode) was 26.

These findings, however, can be contrasted with other reports published by the Council arising out of the same national survey on public attitudes to sentencing. Broadly, these reports show that people hold less punitive views when given more contextual information about specific types of offenders or offences, and tend to be more punitive when asked abstract questions about sentencing (as was done in this research). The Council's report on community views on alternatives to imprisonment demonstrates that, when presented with contextual information and asked to provide considered responses to survey questions, people are willing to support alternatives to imprisonment (Sentencing Advisory Council, 2011a). A subsequent report shows that people's views on the purposes of sentencing are nuanced and more complex when they are presented with case studies of specific offenders and offences (Sentencing Advisory Council, 2011c). This and other research literature suggest that when people are asked abstract questions about sentencing, they tend to think of violent and repeat offenders and thus tend to be more punitive, but when people are provided with specific scenarios or examples, they become less punitive. This research is also consistent with research conducted in the United Kingdom on how attitudes to crime and punishment are shaped and maintained. The research found when participants were presented with factual information and given the opportunity to discuss and deliberate about their views, there were significant shifts towards less punitive attitudes about crime and punishment (Park and Hough, 2002).

In the research conducted by the Council, participants were given scenarios and able to provide considered responses in judging the seriousness of offences. However, the measure used to assess punitiveness levels employed abstract questions. This affects the finding that panel participants were moderately punitive, and explains the differences between this finding and other findings in the Council's reports on community attitudes towards sentencing and the courts.

Socio-demographic predictors of punitiveness

To better understand the concept of punitiveness, an examination of factors that influence punitiveness was conducted. To identify if any socio-demographic factors were significant predictors of punitiveness, a multiple regression analysis was run using the SPSS statistical software package. The model used included variables of gender, education, age, previous employment in the criminal justice system, personal experience with the criminal justice system and recruitment method.

Table A6 in Appendix 7 shows the results of the multiple regression analysis undertaken to predict responses to the punitiveness scale. The model of socio-demographic factors predicted only 11% of the variance in the punitiveness scale (adjusted $R^2 = 0.107$, $F(6) = 5.793$, $p < 0.001$). Thus, this model including only demographic factors was only moderately successful in predicting punitiveness.

The only two socio-demographic factors that were statistically significant predictors of punitiveness in this model were education level and age. The strongest of the predictors in this model was education level (Beta = -0.262 , $t = -4.213$, $p < 0.001$). Having a university degree was a statistically significant predictor of a lower punitiveness score; participants with lower levels of education were thus likely to be more punitive. The sample of panel participants had higher education levels than the general adult Victorian population. This suggests that participants in this study are likely to have been less punitive than the general adult population in Victoria. The other statistically significant predictor was age (Beta = 0.219 , $t = 3.312$, $p < 0.001$). Older participants were likely to be more punitive than younger participants in the sample. The other factors – gender, previous employment in the criminal justice system, personal contact with the criminal justice system and recruitment method – were not significant predictors of punitiveness.

Other recent research, involving more sophisticated models, has shown the strongest predictors of punitiveness are attitudes to courts and sentencing and perceptions of increased crime (Sentencing Advisory Council, 2011a). As suggested by the regression analysis presented here, this research suggests that punitiveness is more successfully predicted by variables not able to be measured in this study on offence seriousness, in addition to demographic factors of age and education level.

Consensus on the ranking of offence vignettes

A key factor in considering community judgment of relative offence seriousness is the degree of 'consensus' or agreement within the sample on the seriousness of each offence. The degree of consensus on the judgment of offence seriousness is important as it has a bearing on the usefulness of the scales of offence seriousness produced by the judgments of individuals. The extent to which individuals agree on the relative seriousness of offences influences whether the scales of relative offence seriousness can be generalised to the broader population and relied on as a valid measure to compare with other sources on offence seriousness (Rossi et al., 1974).

A number of methods have been used to measure consensus on the judgment of offence seriousness (see for example, Sankey and Huon, 1999; O'Connell and Whelan, 1996; Davis and Kemp, 1994; Cullen et al., 1985; Pease, 1988; Miethe, 1984; Figlio, 1975; Rossi et al., 1974; Sellin et al., 1978; Coombs, 1967). These have primarily involved the use of statistical measures to determine the level of agreement. One such method is to calculate the correlations⁵³ between the seriousness rankings of offences for different 'groups' or individuals within the sample. Multiple regressions⁵⁴ can also be used to determine if particular demographic factors are predictors of agreement. Another way of measuring agreement is to calculate the extent to which rankings of offences by different groups or individuals within the sample differ from average rankings for the sample as a whole. A combination of these methods was used to analyse the level of agreement in the scale of offence seriousness developed from the offence vignette ranking, shown in Table 2 (page 30).

Consensus on all offence rankings

Overall, the general level of agreement on the ranking of offence vignettes was high. The rankings of all 40 vignettes by each of the 242 individuals in the sample for whom there were valid data were compared with the whole sample average for all 40 vignettes. This was done by calculating the average correlation⁵⁵ between each individual's rankings and the average rankings for the panel. Overall, the average correlation was 0.814, which indicates a high level of general agreement on the ranking of offences within the sample (Miethe, 1984, p. 465).

The data were further analysed to explore whether there were particular demographic factors that explained the high levels of agreement. A multiple regression was run to determine which factors predicted agreement of individuals with the overall sample. The model included the following factors: university degree, gender (female), age (65 years and over) and employment status (employed). The model of socio-demographic factors explained only 12% of the variation in agreement with the sample average (adjusted $R^2 = 0.123$, $F(6) = 9.4450$, $p < 0.001$). Age was the only factor that significantly predicted agreement (Beta = -0.346 , $t = -5.053$, $p < 0.001$). The younger participants were the more likely they were to agree with the rest of the sample, and the older participants were the less likely they were to agree with the rest of the sample. As the sample was representative of the adult Victorian population in terms of age, this did not affect the results.

⁵³ Correlations are used to determine the level of agreement between scores for different groups and measure the extent to which knowing the scores given by one group enables the scores given by another group to be predicted with a level of certainty.

⁵⁴ Multiple regression is a statistical technique that measures the independent and combined influence of multiple factors (for example, age and education) on a single outcome variable (for example, punitiveness or agreement).

⁵⁵ The average correlation shows the extent of agreement of individual rankings with the average ranking by the whole sample.

Consensus on ranking of offence categories

The level of agreement on the rankings of offences within the five offence categories was examined by comparing the rankings of vignettes in each offence category for each of the 242 individuals in the sample with the average rankings in each offence category for the whole sample. The average correlations (the extent of agreement of individual rankings with the sample average) were:

- A – 'Offences causing or risking death' – 0.76;
- B – 'Offences causing or risking injury' – 0.88;
- C – 'Sexual offences' – 0.89;
- D – 'Offences involving loss of or damage to property' – 0.78; and
- E – 'Drug and other offences' – 0.85.

The average correlations show that overall there was also a high level of agreement on the ranking of offences within each category. They ranged from 0.76 for offences causing or risking death to 0.89 for sexual offences. Therefore, individuals agreed most with the rankings given by the rest of the sample in the sexual offences category, while they agreed the least with the rankings given by the rest of the sample in fatal offences.

Consensus on individual offence vignettes

Thirdly, the level of agreement on the seriousness of individual offence vignettes was examined. A commonly used measure of spread or dispersion of values within a set of data is the standard deviation. The standard deviation was used in the current study, but its use is subject to an important limitation. A standard deviation is not particularly informative for data that are highly skewed and particularly for data in which the maximum possible value occurs frequently. While most vignette rankings are not highly skewed, a small number are, including those for murder, sexual penetration with a child aged under 12, rape, intentionally cause serious injury and murder (reckless). The standard deviations for these offences were therefore not given the same importance as standard deviations for the rest of the offences.

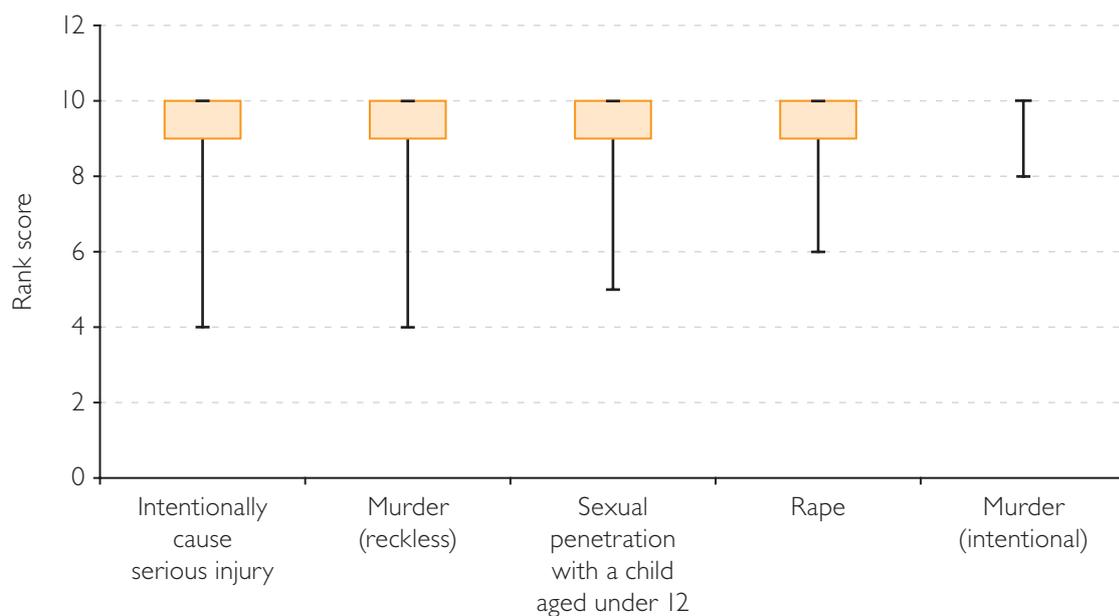
Generally speaking, a high standard deviation for an offence indicates a wide range of deviation by individuals from the mean ranking for that offence and suggests a low level of agreement on the seriousness of that offence. A low standard deviation from the mean ranking for an offence indicates a high level of agreement on the ranking of that offence. The scale of seriousness from the offence vignette rankings indicates the offences where there were high and low levels of agreement among participants on seriousness levels.

Offences with high levels of agreement

Figure 6 shows the five offences where the standard deviation of rankings from the mean was less than 1.2, indicating that agreement on the seriousness of these offences was high. It should be noted that the standard deviation for these offences is restricted because of the relatively high mean rankings in relation to the maximum possible ranking (10). The graph shows the minimum, maximum and median rankings for each offence. It also shows the inter-quartile (middle 50%) of rankings. For each offence, the middle 50% of rankings were from 9 to 10 on the scale of seriousness, except murder where the middle 50% of rankings were level 10 on the scale. Intentional murder had the highest level of agreement among participants with a standard deviation of 0.3.

This indicates high levels of agreement on the seriousness of the five top-ranked offences: intentional murder, sexual penetration with a child aged under 12, rape, reckless murder and intentionally cause serious injury. These offences were positioned in the top two levels of the horizontal and vertical offence seriousness scale (highlighted in Table 2) at levels 9 and 10. Thus, participants agreed that offences against the person involving a high level of harm (death or serious injury) and culpability (intention or knowledge) and sexual offences involving coerced sexual penetration and child victims are the most serious offences.

Figure 6: Box-and-whiskers-plots for offences with relatively high agreement (standard deviation less than 1.2)



Note: For intentionally cause serious injury, the 25th percentile and median were 9 and the 75th percentile was 10; for murder (reckless), the 25th percentile and median were 9 and the 75th percentile was 10; for sexual penetration with a child aged under 12, the median and 75th percentile were both 10; for rape, the 75th percentile was 10; and for murder (intentional), the 25th percentile, median and 75th percentile were all 10.

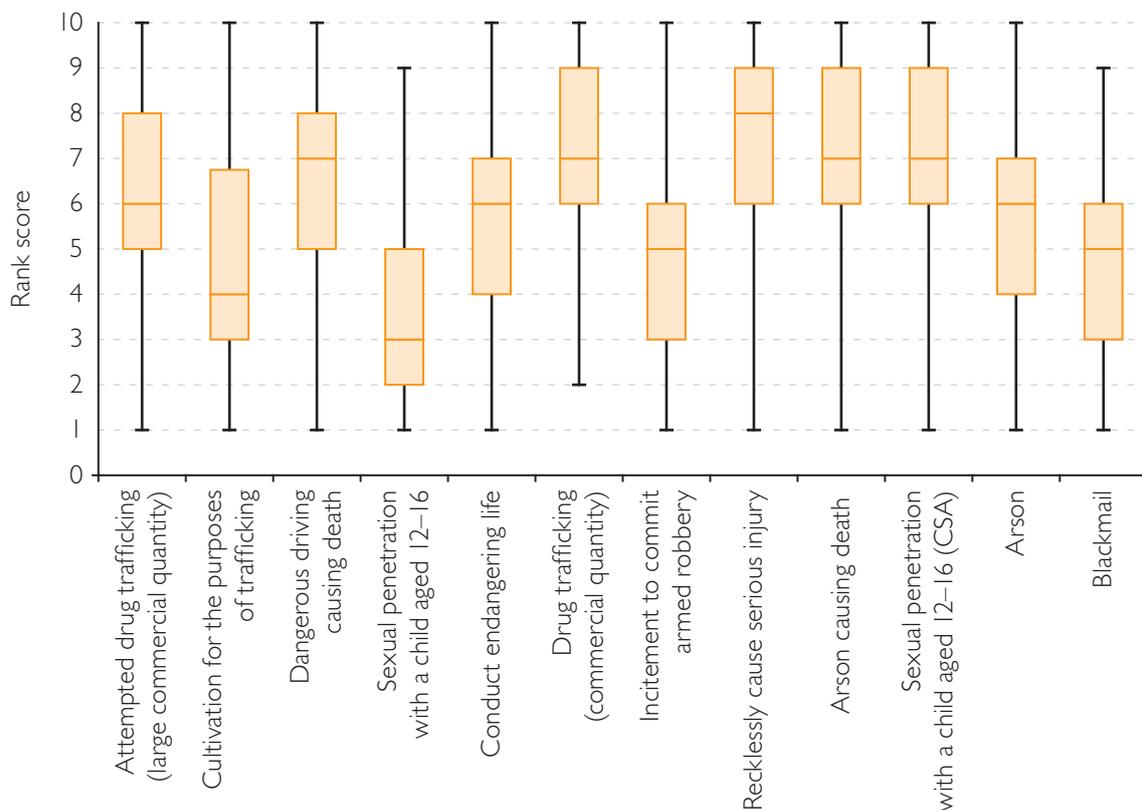
Offences with low levels of agreement

Offences with high levels of agreement can be contrasted with the offences shown in Figure 7, which had standard deviations of 1.9 or more, indicating a low level of agreement among participants as to their seriousness. It shows the minimum, maximum and median rankings for each offence. It also shows the inter-quartile (middle 50%) of rankings. Figure 7 shows that for each of the offences with a high standard deviation, there were large inter-quartile ranges in the rankings given by participants. The inter-quartile range of rankings was 3 for all offences, except cultivation of drugs for the purposes of trafficking, which had an inter-quartile range of 4 levels in the scale of 1 to 10. Therefore, the rankings given by participants tended to vary widely for these offences.

The wide range of rankings that participants gave for these offences shows they held different views about the seriousness of these offences. A number of themes emerge from these offences about the areas in which participants tended to differ in their perception of the seriousness of offences. The offences can be grouped to illustrate these themes as follows:

- 'incomplete' offences (where the intended offence is not carried out) – attempted trafficking in a large commercial quantity of drugs and incitement to commit armed robbery;
- unintentional fatal and serious injury offences – recklessly cause serious injury, arson causing death and dangerous driving causing death;
- offences risking or threatening harm – conduct endangering life, arson and blackmail;
- drug trafficking offences – trafficking in a large commercial quantity of drugs and cultivation of drugs for the purposes of trafficking; and
- sexual offences where the victim is 15 years old – sexual penetration with a child aged 12–16 (CSA) and sexual penetration with a child aged 12–16.

Figure 7: Box-and-whiskers-plots for offences with relatively low agreement (standard deviation equal to or greater than 1.9)



Factors influencing the ranking of offence vignettes

The data on agreement on the rankings of offences show while there was an overall high level of agreement, there were particular offences where panel participants did not agree on seriousness. As the judgment of offence seriousness is a subjective process, individuals may be influenced by their experiences, values and knowledge. It is not possible to meaningfully measure all the differences in individual experiences or attributes and unravel how all these factors may influence the judgment of offence seriousness. However, it is important to gain an understanding of which factors may have influenced the judgment of offence seriousness and underlie such differences in agreement.

A conclusion consistently drawn from past studies on judgments of offence seriousness is that there is widespread agreement within and between social and cultural groups with differing demographic characteristics (Miethe, 1982, pp. 515–517; Miethe, 1984, pp. 459–460; Cullen et al., 1985, p. 99; Roberts, 1992, pp. 62–72; O’Connell and Whelan, 1996, pp. 301–302; Sellin et al., 1978; Wolfgang et al., 1985; Wiles and Cavadino, 1994). Factors such as age and education level have been found to be significant predictors of agreement on offence seriousness (Rossi et al., 1974; O’Connell and Whelan, 1996). However, the research suggests that socio-demographic characteristics contribute only moderately to the overall rankings of offence seriousness and are less influential than the actual ‘characteristics’ or ‘dimensions’ of the offences being rated (Rossi et al., 1974, pp. 231–233; O’Connell and Whelan, 1996, pp. 313–314). Therefore:

members of all [social or demographic groups] may agree on the high seriousness of the act of murder, but they may be less unanimous on how the characteristics of the offender, the victim, and their interactions should affect the final evaluation of the gravity of this [offence] (Cullen et al., 1985, p. 112).

The level of agreement on the judgment of offence seriousness can also depend on the measure used by participants to rank offences, how agreement is measured and the offences being ranked (Cullen et al., 1985, p. 112.). For example, in one study, the influence of gender, age and education level on the judgment of offences increased as the seriousness of the offence decreased (O’Connell and Whelan, 1996, pp. 313–314).

Understanding the factors that influenced participants’ judgments of offence severity is particularly important if the group of individuals judging the seriousness of offences is not directly representative of the broader population from which the group was selected. The panel sample was close to the Victorian population on a number of demographic factors, such as age and gender. The main difference of note between the sample and the Victorian population was on education level, with the panel sample more highly educated than the broader Victorian population. Therefore, differences in offence rankings related to education level may influence the findings of this research.

Influence of socio-demographic factors

Data on the demographics and punitiveness levels of panel participants were analysed to examine the influence of such factors on offence vignette rankings. The full results are contained in Appendix 8. Overall, they indicate that socio-demographic characteristics had only a moderate influence on the judgment of offence seriousness. While punitiveness and age were the most influential factors, they do not fully explain the areas of disagreement among participants relating to the seriousness of particular offences.

Analysis of the ability of various factors to predict vignette scores was undertaken using the multiple regression statistical technique. Multiple regression enables measurement of the independent and combined influence of multiple independent variables (such as age and gender) on an outcome variable (such as vignette rank). A standard set of independent variables was chosen for a series of regression models. The set of factors included age, gender, education level (university degree versus other), previous employment in the criminal justice system, personal experience in the criminal justice system and punitiveness score. Using this set of factors, 46 separate regression models were run: one for overall combined vignette ranking (reduced to an average), five for vignettes grouped into offence categories and 40 for each of the vignettes.

Rankings of overall combined vignettes

The six-factor model was moderately successful at explaining the variance in average vignette score, accounting for 14% (see Table A7, Appendix 8). Punitiveness was the only statistically significant predictor of average rankings (Beta = 0.351, $t = 5.449$, $p < 0.001$), with an increase in punitiveness score (which ranged from 1 to 35) of 20 producing a predicted increase of one unit in average ranking (for example, from level 6 to level 7). Previous employment in the criminal justice system was a near significant predictor of average ranking (Beta = 0.113, $t = 1.838$, $p = 0.067$), with participants who had worked in the criminal justice system having a predicted average rank 0.4 higher than those with no previous work experience in the criminal justice system. Some evidence of associations between gender and average vignette rank and age and average vignette rank was found but these associations were far from statistically significant. There was no evidence of a link between average vignette rank and education level or personal experience with the criminal justice system.

Rankings of vignettes in offence categories

The regression model was also only moderately successful in predicting the variance in rankings of offences in three of the five offence categories (see Table A8, Appendix 8). The model predicted only 8% of the variance in rankings of offences causing or risking death and 10% of the variance in the rankings of property offences. Punitiveness score was the only statistically significant factor to predict rankings in these offence categories. The model was slightly more successful in predicting the variance in rankings for drug and other offences, predicting 16% of the variance in average scores in this category. Punitiveness score and age were statistically significant predictors of offences in the drug and other category. Older people tended to have higher rankings for offence vignettes in the drug and other category than younger people.

Rankings of 40 individual vignettes

Regression analyses conducted on individual vignette rankings revealed that, consistent with previous analyses, punitiveness tended to be the most influential factor (see Table A9, Appendix 8). In fact in 26 out of 40 vignettes (65%), punitiveness was a statistically significant predictor. Some examples include rape, aggravated burglary and theft. For each of these 26 vignettes, higher punitiveness scores were associated with higher vignette rankings.

Age was the next most common statistically significant predictor, being significant in 14 vignettes. However, the nature of the influence of age varied: older people tended to have higher rankings for some offences (for example, armed robbery and recklessly cause serious injury) but lower rankings for other offences (for example, kidnapping and false imprisonment).

Gender was statistically significant in predicting rankings of five offences, including intentionally cause serious injury, produce child pornography and make threat to kill. For each of these offences, females tended to rank them higher than males. Education level was only statistically significant for intentionally cause injury (where university education was associated with higher rankings) and drug cultivation for the purposes of trafficking (where university education was associated with lower rankings).

The sample was not representative of the Victorian population on education level. However, this was only a significant predictor of offence rankings for cultivation of drugs for the purposes of trafficking and intentionally cause injury. A high percentage of the sample reported personal experience with the criminal justice system (68.0%). However, this was only found to be a significant predictor of offence vignette rankings for a small number of offences, namely manslaughter (unlawful and dangerous act), produce child pornography and sexual penetration with a child aged under 12. Therefore, overall these factors did not greatly affect the results.

Each of the 40 vignettes, except incitement to commit armed robbery, had at least one factor that was a significant predictor or came close to being a significant predictor of higher ranking of that vignette on the scale of 1 to 10. This included those offences for which there were high levels of agreement. However,

there were no discernible differences in the factors that influenced the rankings of offences with low levels of agreement and the factors that influenced the rankings of offences where there was high agreement. This suggests that socio-demographic factors are not the sole factors influencing the judgment of offence seriousness and there were other factors referable to the harm and culpability elements of offences influencing participants' judgments of seriousness.

Influence of harm and culpability factors

Participants were asked to rank offences according to their personal opinion of offence seriousness and were asked to limit their judgment to the behaviour described in each offence vignette. No explanations or definitions of offence seriousness were provided in the panel sessions. Some researchers have argued the concept of offence seriousness can acquire a variety of meanings that can lead to confused findings (Parton et al., 1991). However, a high level of agreement among individuals on the seriousness of offences can suggest that 'respondents [impart] some meaning to the term, a meaning shared sufficiently by others' (Rossi et al., 1974, p. 231). Early studies on community judgment of offence seriousness focused primarily on the influence of harm on the judgment of offence seriousness. For example, Wolfgang et al. (1985) concluded that the consequences (or harm) detailed in the offence vignettes strongly affected ratings of crime severity. The age, sex and relationship of the offender and victim also had an impact on the seriousness ratings of offences. Later studies that included additional factors in offence vignettes, including offender characteristics such as culpability and intention, and victim characteristics such as age and/or gender, showed these factors can also influence the judgment of offence seriousness (see for example, Sebba, 1980; Lynch and Danner, 1993; O'Connell and Whelan, 1996; Warr, 1989; Rossi et al., 1974).

To examine the influence of the harm and culpability factors included in the offence vignettes, the scale of seriousness for the offence vignette rankings was analysed using a 'principal components analysis' (O'Connell and Whelan, 1996, pp. 307–310). The purpose of conducting the principal components analysis was to identify the number and nature of factors underlying the participants' rankings of the 40 offence vignettes. Using the SPSS statistical software package, variables representing each of the 40 vignettes were entered into a principal components model, which identified eight underlying factors and produced a factor matrix showing correlations between each vignette and each factor. This factor matrix was then rotated (using the varimax method), which 'maximize[s] high correlations between factors and variables and minimizes low ones' (Tabachnick and Fidell, 2007, p. 620).

Table A10 in Appendix 9 shows the rotated factor matrix containing the 40 offences arranged according to eight 'dimensions' found to underpin the rankings in the statistical analysis. The number in each column shows the correlation of each offence vignette with each of the eight dimensions. The higher the value in relation to each dimension, the stronger the correlation the ranking of that vignette has with that dimension.

The offences arranged under each of the eight dimensions underpinning participants' judgments of offence seriousness were examined to identify common themes in the harm and culpability elements for each offence. Each dimension was labelled according to the identified harm and culpability themes. Table 3 shows the eight dimensions, the particular offences grouped under each dimension and the level of agreement. All these factors were considered at the same time to assess how the harm and culpability elements identified as common themes under each dimension could have influenced the judgment of offence seriousness. Overall, as is discussed below under 'Key findings on attitudes to offence seriousness' (page 49), these data suggest that harm and culpability elements had a substantial influence on judgments of offence seriousness, particularly for those offences where participants did not agree on the levels of seriousness.

Table 3: Offence vignettes grouped according to the eight seriousness dimensions identified in the principal components analysis of offence vignette rankings

Seriousness dimensions	Offences	Position on scale of seriousness	Level of agreement (SD)
Intentional fatal and serious injury <ul style="list-style-type: none"> • high culpability • high physical harm 	Murder (intentional)	10	High (1.0)
	Murder (reckless)	9	High (0.9)
	Intentionally cause serious injury (ICSI)	9	High (0.3)
Child sexual offences <ul style="list-style-type: none"> • age of victim under 12 (harm and culpability) • abuse of trust and power • wide-reaching and long-lasting harms 	Sexual penetration with a child aged under 12	10	High (0.8)
	Indecent act with a child aged under 16	8	Medium (1.5)
	Produce child pornography	8	Medium (1.7)
Sexual motivation and personal invasion <ul style="list-style-type: none"> • sexually motivated • invasion of personal integrity • risk/threats of physical harm • control of liberty • psychological harm 	Rape	9	High (0.8)
	False imprisonment	8	Medium (1.6)
	Assault with intent to rape	8	Medium (1.5)
	Attempted rape	8	Medium (1.3)
	Kidnapping	8	Medium (1.3)
	Aggravated burglary	8	Medium (1.2)
	Make threat to kill	7	Medium (1.8)
	Stalking	6	Medium (1.3)
	Conduct endangering life	6	Low (2.1)
Unintentional fatal and serious injury <ul style="list-style-type: none"> • medium to low culpability • high physical harm 	Culpable driving causing death	8	Medium (1.6)
	Negligently cause serious injury (NCSI)	8	Medium (1.8)
	Manslaughter (unlawful and dangerous act)	8	Medium (1.4)
	Arson causing death	7	Low (2.1)
	Dangerous driving causing death	7	Low (2.2)
	Recklessly cause serious injury (RCSI)	7	Low (2.1)
Psychological harm <ul style="list-style-type: none"> • high culpability • psychological harm 	Armed robbery	7	Medium (1.5)
	Attempted armed robbery	7	Medium (1.6)
	Sexual penetration with a child aged 12–16 (CSA)	7	Low (2.0)
	Robbery	6	Medium (1.6)

Seriousness dimensions	Offences	Position on scale of seriousness	Level of agreement (SD)
Drugs and drug-related <ul style="list-style-type: none"> indirect societal harms no direct victims 	Drug trafficking (large commercial quantity)	8	Low (1.9)
	Drug trafficking (commercial quantity)	7	Low (2.1)
	Attempted drug trafficking (large commercial quantity)	6	Low (2.4)
	Cultivation for the purposes of trafficking	5	Low (2.3)
	Knowingly dealing with the proceeds of crime	4	Low (1.9)
	Possession of a drug (less than traffickable quantity)	2	Medium (1.5)
Property-related <ul style="list-style-type: none"> high culpability harm primarily to property little or no harms to people 	Arson	6	Low (2.0)
	Blackmail	5	Low (1.9)
	Incitement to commit armed robbery	5	Low (2.1)
	Make, use or supply identity information	4	Medium (1.8)
	Theft	4	Medium (1.7)
Less serious injury and sexual offences <ul style="list-style-type: none"> lower culpability lower levels of harm 	Intentionally cause injury (ICI)	4	Medium (1.8)
	Indecent assault	4	Medium (1.8)
	Sexual penetration with a child aged 12–16	3	Low (2.1)
	Assault (common law)	2	Medium (1.5)

Key findings on attitudes to offence seriousness

The community panels on offence seriousness produced quantitative results on how a group of individuals in the Victorian community judges the seriousness of offences, the extent of consensus among these individuals on the seriousness of offences and factors that may influence their judgments. These results have comprised the following:

- two scales of relative offence seriousness derived from the paired comparisons exercise and the coded offence vignette ranking exercise;
- levels and demographic predictors of the punitiveness of individuals in the sample;
- consensus among participants on the ranking of offence vignettes; and
- the influence of socio-demographic and harm and culpability factors on the ranking of offence vignettes.

These quantitative results were considered together with qualitative data from participants' discussions of their judgments of offence seriousness to identify five key findings relating to the attitudes of members of the Victorian community to offence seriousness. These are:

1. Direct threats or harm to people are overall more serious than harms to property or indirect harms – offences involving direct threats or harm to people were viewed by participants as overall more serious than offences only involving property or indirect harms.
2. Offences involving the intentional infliction of death and serious injury are among the most serious – there was a general consensus among participants that offences involving the intentional infliction of death and serious injury were among the most serious offences.
3. Sexual offences against young children are among the most serious – there was a general consensus among participants that sexual offences against young children were among the most serious offences.
4. Sexual motivation and personal invasion are influential factors in attitudes to offence seriousness – these factors were consistently influential in participants' attitudes to offence seriousness.
5. Lack of consensus on the seriousness of offences involving unintentional death and serious injury – there was a greater variation in participants' views about the seriousness of offences involving the unintentional infliction of death and serious injury based on different approaches taken in balancing the harm and culpability of these offences.

This section discusses these five key findings and the harm and culpability factors that underpinned each finding, as illustrated by qualitative comments made by participants during the offence vignette ranking exercise.

The process of comparing the quantitative and qualitative results from the panels also illustrated the effect the different measures used (particularly the level of information and deliberation in each measure) can have on the judgment of offence seriousness.

1. Direct threats or harm to people are overall more serious than harms to property or indirect harms

A key finding that can be drawn from results was that participants agreed offences involving actual or threatened harm to a person were more serious than offences that only involved harm to property or more indirect harms, such as property and drug offences.

There was a high level of agreement among participants that offences that caused or risked any type of personal harm were the most serious. Participants also agreed there were particular property offences that also involved risks or threats of harm to people that were more serious than those involving only harm to property. Armed robbery, attempted armed robbery and robbery were clustered together (with sexual penetration with a child aged under 12 (CSA)) under the seriousness dimension labelled 'psychological harm'. While all three offences are property-related, the potential for significant psychological harm was a key factor that influenced how participants ranked these offences, compared with other property offences.

In contrast, offences that did not involve threatened or actual harm to people were seen as less serious, although participants tended to disagree on this. The majority of these offences were clustered together under the seriousness dimension labelled 'property offending', where the level of culpability is high but the harm caused is primarily to property rather than people. There were low levels of agreement on the seriousness of arson, incitement to commit armed robbery and blackmail. All offences in the drug and other category, except possession of a less than traffickable quantity of drugs, were the subject of disagreement among participants. This included trafficking in a large commercial quantity of drugs, attempted trafficking in a large commercial quantity of drugs, trafficking in a commercial quantity of drugs, cultivation of drugs for the purposes of trafficking and knowingly deal with the proceeds of crime.

Three key factors that underpin this finding are that in judging the seriousness of offences, participants emphasised:

- the importance placed on human life over property;
- the direct nature of the harm in offences against the person; and
- differences in the nature of the behaviour in offences against the person compared with property or drug offences.

Importance placed on human life over property

Qualitative data collected from participants' discussions of their rankings suggested this view was primarily due to the importance they placed on human life over property. This rendered physical and psychological harms directly caused to people as more serious than harm to, or loss of, property. Many participants made comments to this effect:

You can't put a value on a person. You can put a value on property (M1-04).

You can't take your rape back, but you can always get money again. And if you're murdered you can't bring that person back. So murder and rape to me are the worst (F1-01).

The importance that participants placed on harm to people was also evident in how they discussed their rankings of property offences involving threats of physical harm or with potential to psychologically damage a person. For example, in comparing armed robbery and attempted armed robbery, participants said:

[T]he money's kind of trivial next to someone's life ... even if he gets away with no money [in the attempted armed robbery], I don't think that impacts the seriousness of those two (M2-06).

We talked about it as being property but ... having a gun pulled on you at a service station is more than property. That's playing with your mind, and that would affect you for a long time ... And I think it could be quite serious and devastating to the person on the other end (M1-14).

Other participants made similar comments in comparing the seriousness of theft, which involved the stealing of \$5,000 from a service station while the attendant was away from the counter, and the seriousness of armed robbery, which involved the stealing of \$5,000 by threatening the attendant with shots fired from a loaded gun. For example, one participant said:

I've got [theft] as the lowest, because he just ... saw an opportunity and ... he grabbed it ... he didn't harm anyone really apart from ... the owner [having] to pay a bit more insurance. [In the armed robbery] he threatened harm [making it] a personal conflict [with] a direct victim (F1-02).

Direct nature of the harm

Another factor influential in the view that offences against the person were more serious was the direct nature of the harm caused. Physical or psychological harm that directly flowed from the offender's actions, intentional or unintentional, appeared to have greater weight in participants' evaluations of the seriousness of an offence. This was also evident in the overall lower ranking of drug-related offending, which did not involve direct infliction of harm to people, but rather behaviour that could indirectly result in a range of broader harms. For example, one participant said:

[I]f other things flow from drug trafficking, that's a separate issue to ... the drug trafficking itself ... maybe the result of the heroin trafficking is prostitution, all sorts of horrible things, but we don't know that ... I haven't been making my decisions based on what might flow as a result of the offences (M3-06).

In contrast, the direct nature of the harms caused by fatal, serious injury and sexual offences tended to be particularly influential in the ranking of these offences at level 6 or higher in the horizontal and vertical offence seriousness scale. This included harms such as death, permanent physical injury and long-term or severe psychological damage. Many participants found it hard to distinguish between these types of harms in judging the seriousness of these offences, resulting in their clustering high in the rankings. This is reflected in the positioning of intentionally cause serious injury at level 9 in the horizontal and vertical scale of offence seriousness, only one level below intentional murder and on the same level as reckless murder. Many participants considered being rendered in a vegetative state to be 'just as bad as' or worse than murder and made comments to this effect:

The quality of life is taken away if you've got [a] permanent vegetative state, as well as if you're dead. So, you know the outcomes [are] really the same (P2-14).

If you are in a permanent vegetative state, you are basically dead anyway, and you are still a burden on society by having to support you in a vegetative state until you actually do die (SK2-15).

Many participants also equated the seriousness of sexual offences or offences involving a threat of harm (such as stalking, kidnapping and false imprisonment) with serious injury offences, considering the psychological harm to be equal to, or worse than, a physical harm. For example, one participant talked about the psychological harms in the kidnapping and false imprisonment vignettes as follows:

[T]o me the whole idea [is] that you are afraid and you are anxious ... [w]hile you haven't been raped, you still have that lasting outcome that you will be anxious every time you go home, or that will be with you. It's not a physical outcome but it's a psychological outcome that will take many years or various amounts of time to overcome. It's not like something you can just get over, it's not like a scar that heals (SK2-06).

Not all participants, however, saw indirect harms as less serious than direct harms, which is likely a factor that contributed to the low level of agreement on the seriousness of drug offences. It was evident some participants considered drug offences as very serious because of the broader impacts and potential for significant and long-term harms to individuals and society. For example, one participant said:

I don't agree [that sexual offences are more serious than drug offences], because I think with drug trafficking, it seems [that there are] a whole lot of other things, including abuse of perhaps drug addicted females, [that are] connected with ... drug trafficking that's on a par with rape. There's prostitution, and there's use of young people. So I think that drug trafficking flows into a whole lot of other things (M3-09).

Differences in the nature of the behaviour

A third factor that influenced the distinctions made between offences against the person and property and drug offences was differences in the behaviour of the offender involved in the offence types. Participants tended to view offences directed towards people and involving physical or sexual violence to be in a different category to offences directed towards property or drugs. For example, one participant said:

[T]o me, robbery with or without gun, selling drugs, cannabis whatever, are completely different crimes than crimes of [a] sexual nature (G1-13).

In contrast, participants did not make these distinctions about the behaviour of an offender when it involved harming a person. Rather, they tended to see the behaviour in all these offences as similar and therefore equivalent in seriousness. For example, participants found it difficult to distinguish between the seriousness of offences that resulted in a person's death and sexual offences that involved violence or child victims:

[C]omparing some of these crimes is comparing apples and oranges ... is it worse to murder the guy than it is to rape an eight year old? ... How do you compare them? (BALL-17).

[Comparing] [t]he rape of a woman versus the rape of a girl ... I put them in the same spot, but I'm uncomfortable doing that as well ... because both of them, they're ruining someone's life, but it's the different life stages. And I wasn't sure whether or not one was worse than the other (P2-04).

The tendency to view offences directed against people in a different and higher category of seriousness was also evident in comments made by many participants to the effect they would have liked more levels on the scale for ranking the most serious fatal and sexual offences. This is likely a factor that contributed to sexual offences such as rape and sexual penetration with a child aged under 12 being ranked at the same levels as the two different forms of murder. For example, one participant commented they would have liked to have more levels on the scale so they could rank some offences higher, in particular:

[the offences] that are physically damaging, the full on rapes, and the crimes against children (G1-06).

Other participants talked about the difficulties they had in ranking and comparing serious injury offences and fatal offences. One participant said the following about separating the fatal and serious injury offences:

I don't know how you can separate a lot of those ... I've got half a dozen cards all up in number [10] position. They're just all the same degree. I mean the only one I've [ranked] worse is where David punches Victor and puts him in a vegetative state [intentionally cause serious injury] ... well [Victor is] never going to recover from it ... [David has] intentionally done it ... It's one degree less than murder the way I see it (BE1-03).

2. Offences involving the intentional infliction of death and serious injury are among the most serious

Three offences of concern to participants were offences that involved the intentional infliction of death and serious injury, such as a permanent vegetative state. Thus, a second key finding was that participants agreed that intentional and reckless forms of murder and intentionally cause serious injury were among the most serious offences.

The intentional form of murder involves an offender killing a person by doing an act (or failing to do an act) with the intention to kill or seriously injure that person. Reckless murder involves an offender killing a person by doing an act (or failing to do an act) with the knowledge that the very serious injury or death will more than likely result but being reckless to (or not caring about) this probability. Intentionally cause serious injury involves an offender intentionally causing a serious injury to another person. Participants agreed the levels of harm as well as culpability in these three offences were at the highest level. Three key factors that underpinned the high level of seriousness with which participants viewed these offences were:

- the combined effect of harm and culpability factors;
- the intentional infliction of harm; and
- the high level of harm caused.

Combined influence of harm and culpability

The clustering of these three offences in the factor analysis underpinning the offence vignette rankings (Table 3, page 46) suggests the combined effect of high levels of culpability (intention to kill or cause serious injury or knowledge that actions will cause serious injury) and harm (death or permanent vegetative state) had a consistently strong influence on the judgment of offence seriousness. This is supported by qualitative data from participants' discussions of the rankings of these offences. One participant said:

I've got [intentionally cause serious injury] high [because] it ticks both boxes. There's intent and a serious effect ... The intention was to cause physical harm, and that intention was [carried out] by [the victim] being in a permanent vegetative state. So there was intention and harm (M2-08).

Discussion by participants of their rankings of these offences revealed many participants saw the culpability and harm in these offences as the same. For example, one participant had ranked reckless murder and intentionally cause serious injury at the same level, saying:

One's dead and one's not dead, but I have put them in the same spot. That's the line I draw. If you kick someone in the head until they are vegetated or they die. I don't see the difference ... both are just as bad (G1-15).

Another participant had ranked intentionally cause serious injury as very close in seriousness to intentional murder. The following comment by this participant shows this was due to a combination of reasons: the intention to commit such a serious harm displayed a high level of culpability, the risk of very serious harm such as serious injury or death was so great and the actual harm of the offender's actions (a permanent vegetative state) was so serious:

I had the repeated punches and kicks [intentionally cause serious injury] up there. He attempted murder. He intended to hurt the bloke really seriously ... [if] you hit someone in the head it's attempted murder. So I've got it right up there, just a touch under David stabbing Victor deliberately in the chest [murder]. And you can't determine whether that's going to be very serious [injury] or death ... when you do that. So if you're intending very serious [injury] ... in my mind, that's as bad an outcome as death. It's nearly death in my opinion ... when do you stop kicking someone in the head? (M1-14).

Intentional infliction of harm

The culpability of the offender in these offences was a clear factor influencing the views of participants that these were among the most serious. Death or a serious injury was considered one of the highest levels of harm and the presence of the intention by an offender to commit such a harm was a key factor influencing many participants' rankings.

This was evident in the overall distinctions made between these offences and fatal and serious injury offences where the outcome was not intended or known but resulted from the reckless, negligent or dangerous behaviour of the offender. Such offences, including manslaughter, culpable driving causing death, arson causing death, dangerous driving causing death, recklessly cause serious injury and negligently cause serious injury were overall positioned lower on the horizontal and vertical scale of offence seriousness (Figure 2, page 32).

Where there was an intentional infliction of harm, participants agreed this elevated the seriousness of the offence. In contrast, participants also tended to agree less on the seriousness of offences that did not involve the intentional infliction of serious harm. For example, one participant said they had not ranked culpable driving causing death and dangerous driving causing death as high as murder, reckless murder and manslaughter as the latter offences were:

deliberate acts [intended] to actually hurt someone. They were deliberate. The intention was there to hurt someone and probably to kill them ... [whereas culpable driving causing death and dangerous driving causing death] were stupid acts, but [they didn't include] the same intention. They were stupid acts [but the offender] didn't intend for anyone to die (MI-14).

Similar comments were made in distinguishing the level of intention in intentionally cause serious injury and other serious injury offences where the same level of injury was caused by the negligent or reckless conduct of the offender. For example:

When you continuously hit somebody and go on punching them, you know that there's going to be a seriously damaged body. And it will kill them, more than likely ... [it's a] [f]renzy. [The offender is] just straight beating the s**t out of [the victim]. [The victim] is not going to get up and walk away. He can't defend himself (MTNI-08).

High level of harm caused

A third key factor underpinning agreement that these offences were among the most serious was the level of harm actually caused to the victim in each offence: death or a permanent vegetative state.

The positioning of intentional murder at level 10 indicates the majority of participants rated death as the most serious harm. However, the relatively close positioning of intentionally cause serious injury at level 9 also shows many participants made little or no distinction between death and a permanent vegetative state, in terms of the long-term impact on the victim and his or her family and the broader impact on the state. Some participants expressed the view that a permanent vegetative state could be a more serious outcome than death in terms of the impact on the victim, their families and the broader community. For example, one participant said:

The outcome of some of these [events] is obviously death. The outcome of some of them is [a] vegetative state ... Now death is finite. Bang it's gone, and people grieve when they go. Whereas if someone's in a vegetative state, it's there forever. And I've got to say, I find that a more serious crime when someone's left in a state where they are going to be a, I'll use the word, burden, but it's not the right word, not only on the people that are left there to look after them, but on the state as well. So I see that as more of a serious thing than death (BALI-01).

Other participants found it difficult to identify which outcome was the more serious out of death and a permanent vegetative state, in terms of the harm caused. For example:

[I]n some cases it would be worse not to be dead ... it's a bit hard to compare apples and oranges, you know being dead ... or in a vegetative state (MTNI-13).

3. Sexual offences against young children are among the most serious

A second group of offences that emerged of utmost concern to participants were sexual offences involving young and vulnerable children. Thus, a key finding from results was the seriousness with which participants viewed sexual offences involving young children. There were high levels of agreement that the offence vignettes involving victims aged eight years old were among the most serious. These offences were:

- sexual penetration with a child aged under 12;
- indecent act with a child aged under 16; and
- produce child pornography.

All three offences were clustered together in the analysis of the seriousness dimensions underpinning the offence rankings, labelled 'child sexual offences' (see Table 3, page 46).

A key factor underpinning the severity of these sexual offences was the age of the victim. This was influential in participants' judgments that the level of culpability was high due to the abuse of trust and power and the harms being long-lasting and severe. Other harm and culpability factors underpinning the seriousness of these offences were:

- the physical aspects of the offending; and
- the broader harms of child sexual offences.

The extreme severity with which participants viewed sexual offences was evident from comments many made in response to the ranking of these offences. It was common for these offences to produce strong emotive responses from participants. Many participants expressed strong feelings, such as revulsion and disgust for such behaviour or made comments to the effect that they viewed these offences as significantly more severe compared with other offences. For example, one participant said:

You need to have a scale higher than 10 for anything sexual against children (R1–15).

Relevance of age

The age of victims was the primary factor, combined with the sexual nature of the behaviour, that influenced participants' judgments of these offences as being of utmost seriousness. A number of themes emerged about the relevance of the victim's age to the seriousness of these three offences. The age factor was connected to participants' assessments of the offender's culpability as well as the harms these offences caused. Both the harm and culpability factors were considered to be at the highest level and comparable to offences involving the intentional infliction of death and serious injury.

Culpability – abuse of trust and power

The age of the victim was relevant to many participants' assessments of the high level of offender culpability in these sexual offences. For some participants, this was because the behaviour constituted a breach of trust and an abuse of a position of authority by reason of the age of the young victim:

[T]hese guys are in a position of authority, and that authority and trust [have] been breached. And that's the seriousness that comes ... for all those underage ones ... anyone who's over the age of 18 is classified as an adult, and therefore by default has a position of authority (BALI–01).

[T]hat eight year old obviously trusted David, looks up to David sort of thing. And when he took advantage of her, it sort of blew her away psychologically ... in her mind ... [h]e was a figurehead type thing. But once he took advantage of [her], it's like all trust, all faith, everything [she] had in him, it all blew away (BALI–19).

Other participants saw the age of the victim as relevant to the offender's culpability in terms of the offender taking advantage of a situation and preying on the vulnerability of a young and innocent victim who, because of her age, was unable to consent to or defend herself against such activity. Participants said the following:

I think it's more aggravating when it's an eight year old girl ... Because I think she'd be a lot less able to defend herself ... She's more vulnerable (MI-12).

I think she's more vulnerable as an eight year old. An eight year old is more vulnerable than a 35 year old (RI-19).

There's an element of ... David ... doing it when nobody's watching and getting away with it ... particularly with children, if the crime's done in a way where it's done because you can access the child [because] nobody else is around, then that's more serious ... Children of course have got to live the rest of their lives as well and deal with what's happened to them (BEI-17).

Factors such as breach of trust and abuse of position were also consistently raised by participants in their discussion of the offence of sexual penetration with a child aged under 16 (CSA), which involved a 35 year old teacher having sexual intercourse with his 15 year old student. However, this factor was primarily raised in the context of the teacher–student relationship between the offender and the victim. While participants saw the age of the victim as contributing to the seriousness of the offence, the abuse of trust and power arising from the teacher–student relationship was more influential on judgments of seriousness. For example, participants said they ranked sexual penetration with a child aged 12–16 (CSA) higher than sexual penetration with a child aged 12–16 because:

[H]e's in authority, he's her teacher, the influence of authority I think is important because she might not [be giving] her consent because she loves him ... [but] she might be giving it because she is under pressure by him (SKI-08).

[There is a] [b]reach of trust. He's in a position of power and a position of trust and he's breached both of those (BALI-01).

This differed from the influence this factor had on the seriousness of sexual offences involving eight year old victims, where the majority of participants agreed the abuse of trust was solely referable to the implicit trust that such a young child would have in an adult offender. There were low levels of agreement on the seriousness of the offence of sexual penetration with a child aged 12–16 (CSA), as well as the offence of sexual penetration with a child aged 12–16 (15 year old victim and 20 year old offender in a boyfriend–girlfriend relationship).

Discussion by participants of their rankings for these offences suggested the disagreement primarily stemmed from the different influence the age of the victim and the relationship between the offender and the victim had on their views of seriousness. For example, some participants thought it was less serious because the close age gap minimised the power imbalance between the offender and the victim. However, other participants thought that while the act was consensual and they were close in age, there could still be a power imbalance. For example, one participant said they ranked the offence the lowest of the sexual offences based on the following reasoning:

[F]emales at 15 are quite mature and some males at 20 can be quite immature, but ... it's still a power [imbalance], there's still too many years [between them]. It still is, I suppose, consensual ... [but] influence is possible (DI-07).

Harm – long-lasting and severe

The age of the victim in these offences was also a relevant factor underpinning participants' assessments of the harm of these offences, which was considered by almost all participants to have potential to be significant and long-lasting. Many participants, in talking about the harms inherent in these sexual offences, equated them to the harms in offences involving the intentional infliction of death or serious injury. Thus, many saw the impact of a sexual invasion on a person of such a young age as akin to a sort of 'death'. This was spoken about in terms of the harm and damage it could do to multiple aspects of the child's mental and emotional wellbeing as well as their future relationships:

The emotional scarring ... how can you [quantify] that? I mean an eight year old [child], you're about as innocent as you can be in life at those ages and [the offender takes] that [innocence] away from that child (F1-11).

[I] ranked [produce child pornography] at the very top ... [b]ecause as the child grows up and has to come to terms with the fact that her image, her body, has been used in a way which is for viewing. And unravelling what that means over a period of time is quite debilitating ... [it is] the effects on that eight year old as she's growing up, realising what has happened to her at that age, depending on how emotionally vulnerable or strong they are, [it] could jeopardise relationships, employment situations [and her] general lifestyle (BALI-16).

Physical aspects of the offending

Another key factor underpinning the ranking of these offences was that the nature of the physical behaviour involved was less influential than the young age of the victim on participants' views of seriousness. Overall, the positioning of the offences on the scale of offence seriousness indicates a differentiation in seriousness between sexual penetration (at level 10) and sexual behaviour other than penetration, such as touching and taking photographs (level 8). Thus, some participants did make distinctions in seriousness based on the differences of physical contact or activity in the offences. For example, one participant distinguished the offences of indecent act with a child aged under 16 and produce child pornography from the offence of sexual penetration with a child aged under 12 due to:

[T]he lack of actual sexual penetration, I think is a factor that lowers [those offences]. Just by one – only by one; but I think it definitely is a difference [in the harm caused] (M1-01).

Other participants, however, considered all three offences as equally serious, irrespective of the differences in the nature of the physical behaviour involved because the primary nature of the harm involved was psychological, stemming from the sexual abuse and invasion of the child's integrity. For example, one participant said the following in relation to harms of sexual penetration with a child aged under 12:

[S]he'll still remember that when she's 40 ... physically ... I'm assuming that she would heal [but] mentally, that is something that she would never forget (MTNI-07).

Another participant also talked about the offence of producing child pornography as having the same psychological harms as rape:

But isn't it one-sided ... rape? I know it sounds strange, but sexual gratification by one person against another is still rape, as far as I'm concerned (P2-10).

Broader harms of child sexual offences

Another theme that emerged from the discussion was the wide-reaching harm that could be caused by sexual offences involving young children, in addition to the long-lasting harms to individual victims. These additional and broader societal harms were particularly discussed in relation to the offence of producing child pornography. For example, some participants referred to the long-lasting and wide-spread harms caused by the permanent nature of the photographs if they were circulated to others, particularly via the internet, in terms of the potential for re-victimisation of the victim as well as the circulation to others. For example, participants said:

[I]t's a form of rape but a continual sort of form of rape ... As in perpetual and not just one off, but it's a humiliation [and] it's something that other people participate in (BE1-20).

I've got [produce child pornography ranked] at 9 ... I think it's really just preying on them ... [and] it's not just the one off thing, with the one single impact ... [the offender is] taking it home ... looking at it again ... enjoying it ... spreading it around to other people ... It's almost a continual abuse, even though the victim might not realise that ... It's pretty much continual abuse the whole way through [and has the potential for] more widespread [harm] (SK2-02).

I think it would have a profound impact on a person who knows that there's images of her at that stage in her life on the internet. It'll be on the internet in perpetuity [and she will be] thinking that any day she could come across it again and be exposed. I think that would [cause] immense psychological harm to an individual (M2-08).

Others referred to the broader societal harms of the offence of producing child pornography in supporting the market for child pornography and encouraging others to gain access to the material. Many participants also spoke of this in terms of the possibility that the behaviour could lead to the commission of further sexual offences with the victim or other children:

The other side of the images thing [is] it can help create a community or a market for those images and I think that gives it an extra level of seriousness. There's a definite harm to the person ... who's involved in that, but there's also a wider harm, like I said, creating ... or fostering a community or a market for those images (M1-18).

I think there are future victims, too ... if this person can share those images on the internet and others are enjoying them too ... it just perpetuates the whole thing (MTN1-03).

4. Sexual motivation and personal invasion are influential factors in attitudes to offence seriousness

A fourth key finding relates to the seriousness with which offences that involved sexual motivation and personal invasion were viewed by participants. Table 3 (page 46) shows there were nine offences that clustered under one seriousness dimension. These were rape, attempted rape, aggravated burglary, kidnapping, false imprisonment, assault with intent to rape, make threat to kill, stalking and conduct endangering life.

These offences have a number of common elements that appeared to influence participants in their judgments of seriousness: a deprivation or invasion of a person's liberty or personal integrity through an act or intention to rape, or a threat or risk to a person's safety through physical harm. The psychological harm inherent in these offences was also influential. Discussion of this finding is focused on the harm and culpability factors that were of particular concern for these offences. These were:

- culpability – sexual motivation and the intention to rape; and
- psychological harms – flowing from the physical violation and the personal invasion.

These were captured by six offences that involved a personal invasion and were motivated by sexual violence. These were rape, attempted rape, assault with intent to rape, aggravated burglary, kidnapping and false imprisonment.

Culpability – sexual motivation and intention to rape

The importance of sexual motivation to judgments of offence seriousness was evident from participants' comments relating to their close rankings of rape compared with attempted rape and assault with intent to rape, which were positioned one level down from rape in the scale of seriousness. Many participants saw little difference in the seriousness of these three offences, as in all three cases the offender had the same sexual motivation and intention to inflict harm, making them equal in seriousness:

If you look at the [offender] ... in one instance ... [he] didn't rape, and in the other ... [he] did rape ... if that person didn't walk past, he would have still raped ... I'm not looking at the trauma point of view; I'm looking at his intent ... And if that person didn't walk past ... he still would have raped, regardless ... the intent is the same (RI-15).

The influence that sexual motivation had on participants' assessments of the offender's culpability was also evident in their comments about other offences involving a sexual motivation. Kidnapping and false imprisonment involve different conduct by the offender, but in each vignette the conduct was done by the offender with the intention to rape and had the effect of depriving the victim of her liberty. Both were positioned at level 8 in the horizontal and vertical scale of seriousness. Many participants placed an emphasis on the common intention to rape in their ranking of false imprisonment and kidnapping as equal in seriousness. For example, participants said:

[F]or me, the focus is on what his goal is ... the manner in which he takes Valerie, the circumstances in which he finds her, aren't as important as what he's intending to do. And so I put [false imprisonment] and [kidnapping] very much on the same level (MI-18).

I had [them ranked] the same, because the intention was the same. It's sort of like when kids get molested, whether it's by a stranger or by someone in the family, they still got molested. The intention was the same ... [s]o I've got them in the same spot (SK2-15).

The influence of sexual motivation was particularly evident in participants' rankings of aggravated burglary, which was ranked as the most serious property offence at level 8. Aggravated burglary comprises an offender entering a building without permission to commit a serious offence while armed with a weapon or knowing (or not caring) that a person is there. The vignette was drafted so the offence the burglar intended to commit was rape. The inclusion of this particular intention, rather than an intention to steal, had a consistent and substantial influence on how participants viewed the seriousness of aggravated burglary.

Some participants discussed this in terms of the higher level of culpability they attributed to the offender where there was an intention to cause harm through rape:

I think the sexual assault does make the difference. Obviously, he didn't do it in this case, but to me, that is that different level of intent (RI-12).

[T]he way I've rated things is basically if there has been an intention to harm a person, that goes a lot higher than if there's an intention to get some money (BEI-17).

[R]ape is normally accompanied by violence. And entering a house just for the purposes of theft is not violent. So essentially, it's a matter of violence (PI-15).

Other participants were influenced by the intention to rape because it reflected the commonly expressed view that people were more important than property and they placed a higher value on human life over items of property. Participants thus tended to express the view that an aggravated burglary committed with an intention to rape was more serious than one committed with an intention to steal, as illustrated by the following comments:

I think both of them are pretty scary, but I think having to live with the thought of someone coming into your house to get you, versus coming into your house to take a material possession I think is really different (SK2-02).

[There is a] [b]ig difference. Because it is not a threat or a harm to the physical person. It's a television that can be replaced (GI-12).

[I]f [the offender] went there with the intent to cause personal harm, it's far worse than the five grand. I mean, five grand is nothing [compared with if] someone's going to come and scar you physically or mentally, emotionally for life ... you can't bring that back (BEI-03).

Psychological harms

Overall, the scales of offence seriousness and analysis of the seriousness dimensions illustrate that psychological harms had a powerful influence on participants' judgments of offence seriousness. This was a key factor, together with physical harms caused by offences that influenced the overall finding that offences involving threats of harm or risks to people were the most serious.

The impact of psychological harm was most evident in participants' views that rape, attempted rape, assault with intent to rape, aggravated burglary, kidnapping and false imprisonment were among the most serious offences. Thus, a second key factor that influenced participants was the psychological harms they saw as flowing from these offences. This was particularly attributed to the physical violation inherent in coerced sexual penetration and the personal invasion inherent in the entry of the offender into the victim's physical space through a physical assault, entry into a house or deprivation of liberty.

Physical violation

Although many participants ranked attempted rape and assault with intent to rape as equal to or close in seriousness to rape, overall rape was ranked as the most serious of the three offences. There were high levels of agreement on the ranking of rape as the most serious sexual offence after sexual penetration with a child aged under 12. The key factor elevating the seriousness of rape for many participants was that the offence comprised a more significant physical violation through the act of coerced sexual penetration. For many participants, this was relevant to their assessments of the high levels of physical and psychological harm that could be caused to victims of this offence:

I think the fact that he did rape her ... It seems to me to be an extreme violation and physical as well as anything else ... I think it's a ... more serious violation (PI-08).

There's still trauma in [the attempted rape scenario] ... I think there's still trauma in both, but there's going to be an extra level of trauma if he actually goes through with it ... there's a level of trauma ... the same amount of trauma [in both scenarios] up to [a] point ... but then [in the rape scenario] it keeps going. So when David actually goes through with the rape, that's another level of trauma (RI-06).

I think that ... a woman's ability to recover from [an offence] might be easier not actually having ... the rape carried out. I think [the attempted rape is] very, very harmful but perhaps not as much [as rape]. I mean [in the attempted rape] she's been threatened, she's been put in great fear, but not actually physically violated in that way. Perhaps it's not quite as bad (M2-05).

Other participants expressed the view that rape was more serious due to the additional physical harms that could be caused by the physical violation of coerced sexual penetration:

I put [rape] as number 10 and I put the attempted rape as [number] 8... he didn't actually do as much damage in [the attempted rape] so it's not as serious ... they are both mental [harms] ... but the [rape is also] physical (G1-08).

Some participants also saw rape as more serious, as the act of sexual penetration and physical violation included additional risks of harm to the victim. For example, participants said:

I think that [in the offence of rape, the victim is] exposed to more risk, to pregnancy, sexually transmitted diseases (BE1-11).

I think [rape is] worse, because he did rape her and he could leave her with a sexual disease that is permanent. [In attempted rape] [w]here he doesn't have the opportunity to rape her ... it's just slightly lower, the outcome is a little less ... there is certainly ongoing harm, but if you are left with AIDS, as opposed to seeing a psychologist, it's a little bit more permanent (SK2-06).

Personal invasion

The second common factor with a powerful influence on participants' rankings of these offences was the personal invasion comprised by each offence. While personal invasion was carried out by the offender in different ways in each offence, this was a key theme that underpinned participants' assessments of the high levels of psychological harm of these offences.

In ranking the offence of aggravated burglary, participants frequently talked about the psychological harms caused to the victim and broader harms to society by an invasion of a person's personal space, represented by the victim's home:

The harm's in the violation of what is assumed to be a safe space for the person to sleep in. It's like that's a harm to the community that relies on its homes and its lock and its windows to keep out offenders. And so a harm is done to the general community, the fabric of society, if you will, by these offences (M2-19).

[I]t's violating her rights as a human being ... I put [aggravated burglary] higher because ... he wanted to violate her on a personal level ... with rape [it's] ... the potential of what you're going to do to a fellow human being, and someone who's potentially helpless (F1-04).

In making this point, many participants distinguished this offence from armed robbery. While this offence was viewed to comprise a similar level of threat and intent to commit a serious offence (theft), many participants distinguished the harms of this offence as less serious than those of aggravated burglary. A key reason was that the aggravated burglary comprised an invasion of a person's home, rather than a public place or place of work. For example, participants made the following comments about this factor:

I think your home is your haven. And she felt safe in her home, and she would never feel safe in her home again. And the psychological impact of that would remain with her for a long time (M3-02).

It's a personal invasion, whereas the guy who goes into [a] 7-Eleven's after money ... not you. You can hand the money over and hopefully you're safe (R1-19).

People have the right to feel safe in their own home and that's been violated (BE1-18).

I think the vulnerability factor is in this as well, because, at a commercial place like a service station, there are things in place to protect say an employee. However, in your home, you're completely vulnerable because, you know, you're asleep in your nightie ... you're vulnerable and you assume safety. And you're asleep and you're off guard and that, I feel that is a greater offence than to someone who's at a job, already had a debrief of like 'You may get threatened, this may come up, these are the measures we've put in place' (BE1-20).

Similar comments were made about the personal invasion that underpinned the offences of false imprisonment and kidnapping. Despite the behaviour in the two offences being slightly different, the physical control exerted over the victim's movements and the deprivation of liberty were seen as equivalent in seriousness and discussed as akin to a personal invasion:

I put [kidnapping and false imprisonment] together, not so much because of the potential of rape, but more about David ... he's quite wilful [in] that he restricts them ... but it's more about he's controlling them and they don't have free will ... in both cases, whether David knows them or not ... it's his wilful behaviour that [is] depriving them of liberty ... that's the crime (SK1-15).

I put [false imprisonment] and [kidnapping] on the same level because ... the essential point is, he took control of her (MI-05).

This theme also arose in participants' discussions of their ranking of stalking and make threat to kill. While both offences were overall positioned lower on the scale than kidnapping and false imprisonment, many participants viewed these offences as similar in seriousness. For example, participants said in relation to stalking:

She had her freedom stolen from her ... she knew she was being watched and followed and that's a theft of liberty ... physical assault is equally as bad as mental assault and that was a mental assault [which carries] the same loss of liberty (FI-07).

5. Lack of consensus on the seriousness of offences involving unintentional death and serious injury

A fifth and final key finding is that participants took different approaches to assessing the harm and culpability and thus the seriousness of offences that involved the unintentional infliction of death or serious injury. These comprised the following six offences that Table 3 (page 46) shows were clustered under a seriousness dimension labelled 'unintentional fatal and serious injury': culpable driving causing death, arson causing death, dangerous driving causing death, negligently cause serious injury, manslaughter (unlawful and dangerous act) and recklessly cause serious injury.

In contrast to many other offences, participants did not share the same views on the seriousness of these offences. The levels of agreement on the seriousness of these offences ranged from medium to low. Differences of opinion among participants primarily stemmed from the different approaches taken by participants to:

- the assessment of the culpability of the offender; and
- the balancing of lower levels of culpability with the levels of serious harm of death or serious injury (permanent vegetative state).

Many of these offences were in the category of offences causing or risking death, which was the category of offences with the lowest level of agreement for individual vignette scores with the sample average.

Assessment of culpability

In judging the seriousness of these offences, participants were divided in how they assessed and viewed the different levels of culpability as it reduced from the very high level of 'intention'. Discussion by participants of their rankings for these offences revealed a range of views as to how different levels of culpability should be assessed as part of the judgment of offence seriousness. Many different approaches were used by participants as part of this process. While some participants focused solely on the offender's culpability, other participants incorporated assessments of the level of risk involved in the behaviour or the likelihood of the ultimate outcome occurring. Other participants also factored in considerations such as the level of control the offender had over the outcome or the extent to which there was a direct link between the offender's behaviour and the harm caused.

While not all participants agreed, the rankings indicate three broad distinctions made in assessing the level of culpability of the offender for fatal and serious injury offences:

- if there was an intention to cause very serious harm;
- if there was no intention to cause very serious harm but a high level of culpability due to the high level of risk or recklessness involved in the behaviour; and
- if there was no intention to cause very serious harm and a lower level of culpability due to dangerous or negligent behaviour with an unforeseen outcome.

General distinction based on lack of intention to cause harm

A general distinction was made by participants in the seriousness of offences based on whether there was an intention to kill or commit very serious harm. For the majority of participants, the lack of this intention in the unintentional fatal and serious injury offences reduced their seriousness, although the magnitude of this reduction varied among participants.

For example, one participant distinguished between murder (intentional) and manslaughter (unlawful and dangerous act) on the basis of whether there was intent to kill:

There was no intent to kill [in manslaughter] ... it's got to do with straight murder and manslaughter ... Murder is killing with intent to kill; manslaughter [is] killing without the intent to kill ... the outcome is certainly the same, but the intent in law has always got to be the major factor (M3–15).

Other participants were influenced by the lack of the intention to cause harm in ranking culpable driving causing death or negligently cause serious injury as less serious than intentional fatal and serious injury offences:

I rank drink driving as very, very high in any case, but [in] all the others ... there was a knife [or] intent to hurt or kill, punching repeatedly (MTNI–06).

[Negligently cause serious injury is] not a premeditated crime ... drink driving is illegal and I disagree with it completely, but he hasn't premeditated to go and seriously injure someone (P2–04).

Another participant used the same reasoning to distinguish dangerous driving causing death from intentional offences, such as murder:

[T]here's no intention to kill [in dangerous driving causing death]. That is just something that you and I could do. The impulse to pick up a ringing phone regardless of what you know is right and wrong ... [and for] that seemingly innocent act to result in death is highly possible, highly likely. So I've [ranked dangerous driving causing death] down at 7. I still think it's awful, but it's not, it's certainly not with [intentional murder] (BEI–08).

Similar distinctions were made between the levels of culpability in intentionally cause serious injury and unintentionally cause serious injury offences. For example, one participant commented that in negligently cause serious injury:

He loses control of the car ... there's no intent. He didn't aim the car the way he aimed his fist [in intentionally cause serious injury] (P2–17).

High culpability based on the high level of risk and recklessness

A second key distinction evident from participants' rankings and discussions was the identification of a level of culpability that, while not as high as the intentional infliction of harm, was seen as elevated due to the high level of risk or 'extra' level of recklessness involved in the behaviour.

The offences captured within this level of culpability were manslaughter (unlawful and dangerous act), culpable driving causing death and negligently cause serious injury. While participants tended to distinguish the level of culpability in these offences from the very high level of intention to cause serious harm in murder (intentional) and intentionally cause serious injury, it was still considered to occupy a high position on the culpability hierarchy. This assessment of culpability formed the basis for many participants for distinguishing

between these offences and 'lower' culpability offences such as arson causing death and dangerous driving causing death. For example, some participants talked about the behaviour as being so reckless that they had 'implied' a level of intent into their assessment of culpability:

I combined a lot of the manslaughter ones and I divided them into two, those that were ... with some intent or stupidity, and those that were ... just loosely 'accidents', like dropping the phone (M1-01).

[Y]ou can't have a momentary lapse of concentration and just automatically reach over and get drunk ... you can't really convince me that you didn't know you were drunk. I can't kind of believe that. So anyone who knows that they're drunk knows that they shouldn't be in control of a vehicle. So they've taken responsibility for their actions (F1-07).

Participants made similar comments about the high level of culpability in the offence of negligently cause serious injury, because of the intent they attributed from the recklessness of the behaviour and the predictability that serious harm would be caused by it:

[I]f you get into a car and do burnouts, then you intend to hurt someone (G1-19).

[The] [s]ame argument could be [made in relation to negligently cause serious injury] where he's gone out, he's drunk a lot of alcohol, he's then got in his car, he's then doing burnouts. Any one of those points, he could stop. I've got repeatedly punching in the head and then drink driving in the same spot, because it's not necessarily intent, it's the predictability of what's going to happen. If you go out and drink drive ... it's reasonable to predict you're going to hurt or kill somebody. If you punch them in the face repeatedly, it's reasonable to predict as a result of your actions someone gets seriously hurt ... It's reasonably predictable that if I'm shooting an assault rifle in a crowded area that I might hit somebody ... It's not the intent so much as the predictability of what you're doing (P2-05).

Other participants assessed the level of culpability as being high due to the inherently high risks that the behaviour would result in such serious harms. Many participants also talked about how the offender would have or should have known of these high risks, and that behaving in a way that was reckless to these risks amounted to a high level of culpability. For example, one participant discussed manslaughter (unlawful and dangerous act) in this way:

[H]e's done something absolutely stupid by throwing a knife at somebody. You know something's going to happen doing that, [there is] more potential (F1-03).

Many participants discussed culpable driving causing death in the same way. For example:

[P]icking up something you've dropped is a sort of reflex that we have our whole lives. We drop anything, we tend to want to go and pick it up. And it seems to me a little excessive to put that in the same category of behaviours as deciding to go out and drink, getting a skinful. Plenty of people do drink [and] they don't do burnouts and kill people as a consequence. So there's a kind of level of culpability there that is indexed to the time period and the degree of risk taking behaviour (M2-19).

[In culpable driving causing death], I ... judged ... the guy doing the burnouts [as] being a lot more stupid than the guy reaching for the telephone. So I think that's more culpable ... [because] somebody who gets boozed, speeds, [does] burnouts, endangers a whole lot of other people. And you've got to know that before you have the first drink (R1-13).

Other participants also talked about the 'extra' level of recklessness involved in the behaviour, particularly in relation to the two elements of culpability in the offence of culpable driving causing death: drunkenness and reckless driving:

I think there's more than one level of recklessness. With [culpable driving causing death] he's drunk a lot, then gets in a car, which is reckless in itself and then he does burnouts, which is another level of recklessness, whereas I tend to be more compassionate if someone drops a phone in a car (M2-08).

[In culpable driving causing death] he was actually recklessly driving as well. So there was the alcohol, there was the reckless driving. So he was doing something which more than likely [was] going to [result] in some sort of consequence (F1-03).

Lower culpability based on unforeseen outcomes of dangerous or negligent conduct

In contrast to this, participants tended to assess the level of culpability as being lower where the offence did not involve the degree of risk or where the consequences were not as easily foreseeable by the offender. Participants tended to see these offences more akin to the 'accidental' causation of harm, rather than intentional, and as such there was a lower level of responsibility or culpability for the offence. This underpinned the view held by many participants that the offences of arson causing death and dangerous driving causing death were less serious compared with other unintentional fatal and serious injury offences. However, the low levels of agreement on the seriousness of both these offences indicate that not all participants made this distinction between levels of culpability. In comparing dangerous driving causing death to culpable driving causing death, participants said:

They're the same scenarios [but it's] not an accident when you're dumb enough to get into a car drunk and do burnouts ... one is doing something you know is dangerous, that you know is illegal [and] the other is falling into the trap of dropping something and picking something up ... you know, given half a second longer [the offender] might say, 'I'll leave it there' (M3-09).

For me, the alcohol is a big factor, because that's negligence to get into a car [after consuming] alcohol, whereas dropping a phone is an accident. So for me, there's more responsibility with the alcohol, therefore it's higher up for me (M1-03).

Participants also made similar observations about the offence of arson causing death and the similarities in the levels of culpability in dangerous driving causing death:

Well I've got [arson causing death] and [dangerous driving causing death] together ... I think they're both still really serious, but they're my two bottoms compared to the others ... it's foolish behaviour, but he didn't intend harm ... He didn't know the person was in the house. He didn't mean to burn down the house. He was just foolishly stupid (BALI-07).

I've got [arson causing death] at the same level as [dangerous driving causing death]. They were both stupid but were accidents (SK2-12).

For many participants, the degree of risk or extent to which the outcome could have been foreseen was also relevant in their assessment that the offender's culpability in the offence of recklessly cause serious injury was at a lower level. For example, one participant considered intentionally cause serious injury as more serious than recklessly cause serious injury due to the higher level of control the offender had over the outcome in the intentionally cause serious injury scenario:

[In recklessly cause serious injury David] had control of the punch but when Victor falls back he had no control, compared with [intentionally cause serious injury] where [he] had control all the way (G1-01).

[O]n the one hand the consequences are a lot graver of having a permanent vegetative state ... as far as the victim is concerned ... there is that problem that with both of the scenarios, it really does come down to the chance of somebody falling back and killing themselves – hitting their head and dying and somebody not. But then again of course if the first person had not hit the second person in the first place that would never have happened (SK2-11).

Balancing lower culpability with serious harm

Separate from the assessment of culpability for these offences were different approaches participants took to balancing what was recognised, to varying degrees, as differing levels of culpability with the very serious harms caused by these offences: death and permanent vegetative state. The approaches can be categorised as:

- predominantly influenced by either harm or culpability; or
- balancing a number of factors, including harm, culpability and the level of risk involved in the behaviour.

Predominantly influenced by either harm or culpability

While some participants were predominantly influenced by one factor over the other – either harm or culpability – they were divided over which factor was most important in their assessments of the seriousness of offences.

Those participants influenced by harm talked about it in the following way:

I tried to look at the ramifications of the actions ... because I think that the outcomes are pretty important (SK2–13).

I have everything that ends in a death at 10 ... It doesn't make a difference to the parents of the dead person how they were killed or what the person meant to do (BE1–11).

I've come to think that ... intention is a red herring ... it seems to me if a person actually does something that's irresponsible or illegal, then they have to take responsibility for what happens (M1–05).

Other participants placed more emphasis on culpability rather than harm:

I agree ... about intent being very significant. And it's the intent at the time of the crime ... you can't treat a dreadful accident the same as someone deliberately deciding to put someone into a comatose state (P2–15).

[Y]ou can intend to do something, but once you start saying that you're judging everything on intent, then it's just where you draw the line of ... where you're going to say, 'All right, this guy intends to do something, we're going to punish him for doing something when he didn't do it.' You can't say that ... you can't punish anyone for something that hasn't gone through ... there's a distinction that shouldn't be there if you're drawing something just on intention rather than what they actually do ... there's harm being caused but not as much harm (R1–06).

Balancing harm, culpability and the level of risk

Another approach some participants used was to balance more than one factor and make an assessment of the seriousness of the offence using a hierarchy that incorporated the harm and culpability of the offence as well as the level of risk inherent in the behaviour or the actions taken by the offender. For example:

Well for me there's actually three things, it's not just two. There's intent, what actions they carried out, and what was the consequence ... they all have a [bearing] for me, the consequences really weighs quite heavily, I'd say 50% and then the actions are ... 30%, and the intent seems to be smaller for me (M2–05).

I guess for me, the outcome is less of a consideration, because if you are talking about the seriousness of the behaviour ... the outcome is influenced by external factors so it's not really about the person's behaviour ... I think the problem [of] just looking at outcome is that it does just come down to chance ... I tried to look at it as a likelihood [of the outcome happening] (SK2–07).

Seriousness is a function of the outcome and [the level of] recklessness. [I used it] as a sliding scale (M3–08).

The differences in approach in balancing harm and culpability were evident in the assessment of seriousness of all offence types, with the approach of participants often changing depending on the type of offence. For example, intention, particularly the intention to rape, had a strong influence when participants ranked the offences of attempted rape, assault with intent to rape, kidnapping, false imprisonment and aggravated burglary.

When participants came to rank armed robbery, attempted armed robbery and incitement to commit armed robbery, however, the harm of the offence appeared to be the dominant factor. Participants' views that armed robbery and attempted armed robbery would result in similar psychological harms and risk of physical harms to the victim were a factor that commonly underpinned the view that they were equally serious. The lower emphasis placed on intention was evident from the significantly lower ranking of incitement to commit armed robbery with the same level of intention, but that resulted in no direct harm being caused to a victim.

The harm of an offence also appeared to be a dominant factor in participants' views that an attempt to traffick a large commercial quantity of drugs was less serious than a completed offence. While in both vignettes the offender intended to traffick a large commercial quantity of heroin, the lack of potential harm in the attempted offence commonly underpinned its lower ranking by participants.

Effect of different measures on the judgment of offence seriousness

A comparison of the two offence seriousness scales shows broad consistency in how the seriousness of offences was judged. However, some slight differences in the two scales are important to note when interpreting the results. The offence of kidnapping was ranked higher in the paired comparisons exercise, compared with the offence ranking vignette exercise. There was also a difference between the two scales in the relative offence seriousness of rape and intentionally cause serious injury. In the scale derived from the vignette exercise, rape and intentionally cause serious injury were very close on the scale, while in the scale derived from the paired comparisons exercise, there was a greater distance in their values on the scale. An explanation for this could be the impact of more detailed descriptions of consequences of offences or intentions of the offender on judgments of seriousness.

Providing information about offences through the use of vignettes can have a greater impact on individuals being asked to judge the seriousness of offences compared with merely reading a basic offence description. While vignettes were limited to the elements of the offence, descriptions of injuries or particular behaviour can be more confronting for the reader (for example, in sexual offences). This may result in the ranking of offences more or less seriously than they might otherwise have been. Other information, such as the sex or age of the offender or the victim and the relationship between the offender and the victim could also have unconscious or conscious effects on the judgment of seriousness.

These differences in the offence seriousness scales and the nature of the qualitative discussions suggest that different methodologies can have some effect on how offences are ranked. They support the use of multiple methodologies in measuring complex judgments of offence seriousness. The exercises asked participants to perform very different tasks. Each exercise tested different decision-making processes that ranged in the level of deliberation and difficulty. In the paired comparisons exercise they were only required to compare two offences at a time in a pair, thus all the offences were not compared against each other at the same time. In the vignette ranking exercise, participants were asked to perform a more complex task of directly comparing different offences across different levels of severity and offence types at the same time (albeit in separate stages). While the paired comparisons exercise was a simpler task, participants did not have the benefit of being able to rank offences equally if they thought they were of equal seriousness. The vignette ranking exercise was a more challenging task but participants were able to rank offences equally and could review their rankings as the exercise progressed, which was thus a more iterative and considered process.

The deliberative process of the panel sessions was highlighted in comments made by a number of participants reflecting on the process:

You could spend hours ... trying to get this right ... and I still don't think that I have got it right ... I honestly think I could sit here for the next five hours and still think, well maybe that one. It is so complicated (SK2-01).

I walked in here with set values and set thought processes; and then when you hear the process of deliberation, you sway where you think there's a possibility that you haven't considered ... So maybe reconsider with what you might have walked in the door with (P1-I4).

Summary and conclusions

This report has presented results from the Sentencing Advisory Council's research on community attitudes towards offence seriousness. These data, collected through a series of community panels conducted with 244 members of the Victorian community, have identified five key findings that provide insights into the seriousness of offences relative to other offences and the factors that influence judgments of offence seriousness.

The community panels involved multiple measures to collect quantitative data on the ranking of offences and offences vignettes, and qualitative data from participants' discussions of the ranking process. The sample was not a large random sample and was not designed to capture views that were representative of the Victorian community. The research was designed to enable a facilitated and deliberative consideration by a group of individuals of offence seriousness. As such, the findings do not represent the views of all Victorians, but provide just one insight into the views of a group of Victorian community members. The findings in this report have helped the Council better understand community attitudes to offence seriousness.

The five key findings on community attitudes towards offence seriousness identified from the quantitative results and qualitative data are:

1. Direct threats or harm to people are overall more serious than harms to property or indirect harms – offences involving direct threats or harm to people were viewed by participants as overall more serious than offences only involving property or indirect harms.
2. Offences involving the intentional infliction of death and serious injury are among the most serious – there was a general consensus among participants that offences involving the intentional infliction of death and serious injury were among the most serious offences.
3. Sexual offences against young children are among the most serious – there was a general consensus among participants that sexual offences against young children were among the most serious offences.
4. Sexual motivation and personal invasion are influential factors in attitudes to offence seriousness – these factors were consistently influential in participants' attitudes to offence seriousness.
5. Lack of consensus on the seriousness of offences involving unintentional death and serious injury – there was a greater variation in participants' views about the seriousness of offences involving the unintentional infliction of death and serious injury based on different approaches taken in balancing the harm and culpability of these offences.

The process of comparing the quantitative and qualitative results from the panels also illustrated the effect that different measures, particularly the level of information and deliberation in each measure, can have on the judgment of offence seriousness.

Although the sample was not representative of the Victorian population in terms of education level, this and other demographic factors did not have a significant effect on the differences of opinion expressed by participants. Overall, high levels of punitiveness, held by older and less educated participants, were significant predictors of the higher ranking of offence vignettes. However, these factors explained only a small proportion of the variation in rankings.

Consistent with previous research, the harm and culpability characteristics of offending behaviour had the most significant influence on the judgment of offence seriousness by participants. Consistent with previous work in this field, 'it is clear that intent as well as harm done are central features when people are allowed to categorize the crimes along the dimensions they see as relevant' (Roberts, 1992, p. 62). Thus, the harm and culpability framework reflected in other sources of information on offence seriousness (statutory maximum penalties and sentencing practices) remains a useful and relevant framework through which to view the concept of offence seriousness. Offence seriousness was not defined or explained to participants during the research. In judging the seriousness of offences, participants intuitively used a framework that, to varying degrees, incorporated the offender's level of intention, the level of risk and the harm caused by the behaviour. Individuals did differ, however, in the weight given to the harm or culpability of an offence. Neither particular factor emerged as more influential on judgments of offence seriousness.

The scales of offence seriousness generated from participants' rankings of offences demonstrate a broad consistency with the scale of harm and culpability evident in statutory maximum penalties and sentencing practices, whereby the seriousness of an offence increases according to an escalating scale of the harm caused by the behaviour and the offender's blameworthiness for the behaviour. Overall, the rankings of offences that involved the infliction of death and serious injury were broadly consistent with the current culpability scale of five levels of seriousness: intention, recklessness, criminal negligence, dangerousness and strict liability (no requirement of intent). This scale is evident in the statutory maximum penalties for fatal and serious injury offences. Property offences that involved the risk or infliction of harm to another person, such as aggravated burglary and armed robbery, were also viewed as high on the harm and culpability scale, consistent with current maximum penalties. Not all offences, however, can be viewed according to this escalating scale and there was some evidence that participants found this problematic when applied to some offences, such as those involving a risk of harm or attempted offences.

These data are just one source of information on offence seriousness collected from the subjective judgment of members of the Victorian community. They can be synthesised with other sources of information on offence seriousness (such as maximum penalties and sentencing practices) to inform a more complete understanding of the concept of offence seriousness as it relates to sentencing in Victoria. The findings assist with examining the current conceptualisation of the seriousness of offences, particularly violent sexual offences, sexual offences involving young children and offences involving the intentional infliction of serious harms against people.

Comparing these findings with the current conceptualisations of harm and culpability of offences in statutory maximum penalties and current sentencing practices suggests some areas of disparity. The finding that sexual offences against young children were viewed as among the most serious offences reflects the widely held view among participants that these offences comprised very high levels of culpability and harm, irrespective of the nature of the behaviour. Thus, the majority of participants did not make the distinctions that are currently made in different statutory maximum penalties in the harm and culpability of these offences. Further, the level of seriousness with which participants viewed these offences positioned these offences at a level that equated them in seriousness with offences involving death, serious injury and other acts of physical and sexual violence.

The overall lower ranking of drug offences, compared with current maximum penalties, reflects the view many participants held that the indirect harms to society were less serious than direct harm or direct threats of harm to people. However, the lack of agreement on the seriousness of these offences limits the applicability of this finding.

The findings also demonstrate that while people in the community share some common views on the judgment of offence seriousness, the balancing of harm and culpability factors in judging offence seriousness is a difficult task and one where opinions may differ. The community panels provided an important opportunity for a group of Victorian community members to have their views heard about offence seriousness – a key factor in sentencing.

Appendices

Appendix 1: List and locations of community panel sessions

Panel 1	Melbourne (M1)	Tuesday 27 July, 12.30pm to 3.30pm
Panel 2	St Kilda (SK1)	Wednesday 28 July, 6.00pm to 9.00pm
Panel 3	Ringwood (R1)	Monday 2 August, 6.00pm to 9.00pm
Panel 4	Preston (P1)	Wednesday 4 August, 12.30pm to 3.30pm
Panel 5	Ballarat (BAL1)	Thursday 5 August, 6.00pm to 9.00pm
Panel 6	Melbourne (M2)	Monday 9 August, 6.00pm to 9.00pm
Panel 7	St Kilda (SK2)	Tuesday 10 August, 6.00pm to 9.00pm
Panel 8	Geelong (G1)	Thursday 12 August, 6:00pm to 9:00pm
Panel 9	Preston (P2)	Monday 16 August, 6.00pm to 9.00pm
Panel 10	Melton (MTN1)	Wednesday 18 August, 6.00pm to 9.00pm
Panel 11	Bendigo (BE1)	Thursday 19 August, 6.00pm to 9.00pm
Panel 12	Dandenong (D1)	Monday 23 August, 6.00pm to 9.00pm
Panel 13	Melbourne (M3)	Wednesday 25th August, 10.00am to 1.00pm
Panel 14	Frankston (F1)	Tuesday 21 August, 6.00pm to 9.00pm

Appendix 2: Offence descriptions for paired comparisons (as presented to participants)

Aggravated Burglary – going into a building without permission, while armed with a weapon or while knowing that another person is there, in order to steal something or commit a serious offence, like sexual or physical assault.

Armed Robbery – taking something that belongs to another person while being armed with a weapon and threatening or using force against that person, and not intending to give it back.

Arson – deliberately setting property on fire in order to damage or destroy it and causing only property to be damaged or destroyed.

Blackmail – demanding that a person do something, like pay money, and threatening to do something unwanted if the demand is not met, in order to make a gain or cause loss to any person.

Cause Serious Injury – badly injuring a person by a physical attack that is intended to cause serious injury.

Commercial Drug Trafficking – preparing, making, selling, exchanging or agreeing to sell a large quantity of an illegal drug as part of a commercial operation or attempting to do any of these things.

Kidnapping – taking or leading or luring a person away or holding them captive against their will with the aim of demanding something, such as a ransom, for their return or release.

Murder – killing a person by an act that is intended to kill or really seriously injure that person.

Rape – sexually penetrating a person without their consent.

Theft – taking something that belongs to another person without threatening or using force and not intending to give it back.

Appendix 3: Offence scenarios for coded offence vignette ranking

Offence	Harm and culpability factors	Vignette presented to participants	No.
A. Offences causing or risking death			
Murder (intentional)	Intention to cause serious injury or death + weapon + death caused	David stabs Victor in the chest with a knife intending to kill him. Victor dies.	A1
Make threat to kill	Intention or knowledge that victim will fear threat will eventuate + single threat to kill + psychological harm caused	Valerie is inside David's house. David says to Valerie, 'I am going to kill you', intending to make her scared for her life. To show he is serious, David tells Valerie that he has a gun in his car and leaves the house to go and get it. Valerie is terrified that David is going to kill her and escapes while David is out of the house.	A2
Manslaughter (unlawful and dangerous act)	Unlawful and dangerous act + appreciable risk of serious injury + death caused	David throws a knife at Victor, but only wants to scare him. The knife hits Victor in the chest. Victor dies.	A3
Conduct endangering life	Intentional conduct + reckless to danger of death posed + act may have placed victim in danger of death	David throws a large rock off a freeway overpass into moving traffic. The rock narrowly misses the windscreen of a car and bounces to the side of the road. No one is physically injured.	A4
Murder (reckless)	Knowledge that very serious injury or death will more than likely be caused + reckless to this probability of + death caused	David punches and kicks Victor repeatedly in the head. David does not intend to kill Victor, but knows he will probably cause very serious injuries to Victor. Victor's skull is fractured and he dies.	A5
Arson causing death	Intention to damage property + negligence as to risk of death + death caused	David sets some photographs on fire on the carpet inside a house using kerosene and a lighter. David only wants to burn the photographs. He does not intend to hurt or kill anyone and mistakenly believes that no one is in the house. David leaves while the photographs are still burning. The fire causes \$500,000 worth of damage to the house. Victor, who is asleep in a bedroom, dies.	A6
Culpable driving causing death	Culpable conduct by drunkenness (and/or negligence such as failing to properly control vehicle or recklessness) + death caused	David drinks a lot of alcohol at a party and then does burnouts in his car on the wet street outside. David loses control of the car and hits a pedestrian, Victor, who is walking down the street. Victor dies.	A7
Dangerous driving causing death	Dangerous conduct by speed or driving in a manner dangerous (e.g.: momentary inattention) + death caused	David is driving a car with Victor as a passenger. David's mobile phone rings and when David tries to answer his phone, he accidentally drops it on the floor of the car. David leans down to pick up his phone and loses control of the car and crashes into a tree. Victor, the passenger, dies.	A8

Offence	Harm and culpability factors	Vignette presented to participants	No.
B. Offences causing or risking serious injury			
False imprisonment	Detained victim against will + imprisonment + intention to commit another offence (rape)	Valerie is staying in a room in David's house. David does not allow Valerie to leave the room, intending to rape her. David ties Valerie to a chair and leaves her in the room for several hours. When David comes back to untie her, Valerie manages to escape without being raped or physically injured.	B1
Intentionally cause serious injury (ICSI)	Intention to cause serious injury + serious injury caused	David repeatedly punches and kicks Victor in the head, intending to seriously injure him. Victor's skull is fractured and he ends up in a permanent vegetative state.	B2
Kidnapping	Taken/carried away + coercion of consent by force + intention to commit another offence (rape)	Valerie is sitting in her parked car in a parking lot. David gets in her car. He forces her into the front passenger seat and ties her up. He tells her to keep her head down. David drives Valerie to the countryside, intending to rape her. He leaves her in the car for several hours. When David comes back to untie her, Valerie manages to escape without being raped or physically injured.	B3
Intentionally cause injury (ICI)	Intention to cause injury + injury caused	David punches Victor once in the face, intending to injure him. Victor's face is bruised.	B4
Recklessly cause serious injury (RCSI)	Recklessness to probability of act causing serious injury + serious injury caused	David punches Victor once in the head. Victor falls backwards and hits his head on the gutter. Victor's skull is fractured and he ends up in a permanent vegetative state.	B5
Assault (common law)	Intention for victim to apprehend application of physical force	David grabs Victor by the collar and makes his hand into a fist and threatens to punch him in the face. Victor is terrified and runs away.	B6
Stalking	Course of conduct + intention/knowledge that conduct would cause fear etc.	David follows Valerie home from work and waits outside her house while Valerie is inside. David watches Valerie's movements and takes photographs of Valerie and her house. He also leaves threatening letters in her letterbox. David does these things over a period of two months, intending to make Valerie scared for her safety. As a result, Valerie becomes very anxious and afraid.	B7
Assault with intent to rape	Intention to apply force + application of actual force + intention to commit offence (rape)	David approaches Valerie on the street, punches her in the face and tries to pull her into a nearby alleyway intending to rape her. Valerie manages to free herself from David and escapes without being raped.	B8
Negligently cause serious injury (NCSI)	Negligence to high risk of act causing serious injury + serious injury caused	David drinks a lot of alcohol at a party and then does burnouts in his car on the wet street outside. David loses control of the car and hits a pedestrian, Victor, who is walking down the street. Victor's skull is fractured and he ends up in a permanent vegetative state.	B9

Offence	Harm and culpability factors	Vignette presented to participants	No.
C. Sexual offences			
Indecent assault	Intention to apply force + no consent + indecent circumstances + psychological harm	David approaches Valerie on a crowded street and stands behind her. Fully clothed, he deliberately rubs his genitals against her bottom. Valerie pushes David and he runs away.	C1
Sexual penetration with a child aged 12–16 (CSA)	Knowledge of no consent by age + child under the care, supervision and authority (CSA relationship) of the offender at the time of the offence + child victim + psychological	David, a 35 year old teacher, asks his 15 year old female student to have sex with him after dropping her home from school. She says yes and they have sexual intercourse in David's car.	C2
Rape	Knowledge/awareness/reckless of no consent + adult victim + coercion of consent by force + weapon + penetrative sex + psychological harm	David approaches Valerie on the street and armed with a knife, forces her into a nearby alleyway and rapes her.	C3
Indecent act with a child aged under 16	Knowledge of age of victim + act in indecent circumstances + child victim + psychological harm	David, aged 35 years, exposes his genitals to an eight year old girl in her house, while her parents are in another room. He asks her to hold his penis, which she does for a few seconds and then runs out the room.	C4
Sexual penetration with a child aged under 12	No consent by age (strict liability) + child victim + penetrative sex + psychological harm	David, aged 35 years, has sexual intercourse with an eight year old girl in her house, while her parents are in another room.	C5
Sexual penetration with a child aged 12–16	Knowledge of no consent by age + boyfriend–girlfriend relationship + child victim + penetrative sex + psychological harm	David, aged 20 years, is going out with Valerie, aged 15 years. David and Valerie have consensual sexual intercourse.	C6
Produce child pornography	Intention to produce pornographic material + victim under 18 + psychological harm + societal harm	David, aged 35 years, takes sexually explicit photographs of an eight year old girl in her house, while her parents are in another room. He keeps the photographs on his camera and saves them onto his computer at home intending to look at them and share them with other people on the internet.	C7
Attempted rape	Knowledge/awareness/reckless of no consent + adult victim + intention to coerce consent by force + weapon + no penetrative sex + psychological harm	David approaches Valerie on the street and armed with a knife, forces her into a nearby alleyway. He pulls down her pants, intending to rape her. Another person walks past the alleyway and David runs away.	C8

Offence	Harm and culpability factors	Vignette presented to participants	No.
D. Offences involving loss of or damage to property			
Incitement to commit armed robbery	Incites another to enter into an agreement + intention to commit armed robbery (use or threaten force with weapon to permanently deprive) + no actual harm caused	David plans to rob a service station using a gun. David telephones his friend and asks him to help him with his plan. His friend agrees to help him and they decide that they will split the money they make. The police have tapped David's phone and David is arrested before the plan is carried out.	D1
Robbery	Threaten force + no weapon + intention to permanently deprive + economic harm + psychological harm	David enters a service station. David walks up to Victor who works at the service station and says 'Give me money or I will beat you up'. Victor gives David \$5,000 from the cash register and David leaves with the money.	D2
Aggravated burglary	Intention to rape + knowledge of presence + offensive weapon + psychological harm	David breaks into a house through a side window, armed with a gun while a person, Valerie, is asleep in one of the bedrooms. David knows that Valerie is in the house and he breaks in intending to rape her. Valerie wakes up and manages to escape without being raped.	D3
Attempted armed robbery	Threaten force + use weapon + intention to permanently deprive + no economic harm + psychological harm	David enters a service station carrying a gun. David points the gun at Victor who works at the service station and says 'Give me money or I will shoot you'. When Victor hesitates, David fires three shots in the air. Victor locks himself in the console area. David panics and leaves without any money.	D4
Armed robbery	Threaten force + use weapon + intention to permanently deprive + economic harm + psychological harm	David enters a service station carrying a gun. David points the gun at Victor who works at the service station and says 'Give me money or I will shoot you'. When Victor hesitates, David fires three shots in the air. Victor gives David \$5,000 from the cash register and David leaves with the money.	D5
Blackmail	Make a demand + with menaces (threaten harm or something unwanted) + intention to gain or cause loss	David rings Victor and demands that he gives him \$2,000. David says 'If you don't give the money to me, I will send those embarrassing photographs of you to your family and boss'. Victor agrees to give David the money to stop him from sending the photographs.	D6
Arson	Intention to damage property + economic harm	David lights a fire on the carpet inside a house using kerosene and a lighter, intending to burn the house down. David doesn't intend to hurt or kill anyone and waits until the house is unoccupied before he lights the fire. David stays at the house to make sure the fire keeps burning. The fire causes \$500,000 worth of damage to the house. No one is physically injured.	D7

Offence	Harm and culpability factors	Vignette presented to participants	No.
Make, use or supply identity information	Dishonest use of information + intention to commit theft + no economic loss + psychological harm + societal harm	David copies Victor's credit card when Victor is paying for a meal at a restaurant by putting it through a skimming machine. David uses the information to make a replica credit card, intending to use it to withdraw money from Victor's bank account. David is arrested before he can use the replica credit card and Victor does not lose any money.	D8
Theft	Dishonest appropriation + intention to permanently deprive + economic harm	David enters a service station while Victor, who works at the service station, is outside helping a customer. David walks up to the counter and jumps over the console and steals \$5,000 from the cash register. David leaves with the money.	D9
E. Drug and other offences			
Knowingly dealing with the proceeds of crime	Dishonest dealing + no intention to permanently deprive + no economic harm	David agrees to look after \$1.2 million for his friend. David knows that his friend made the money through criminal activity. David stores the money in his house for a month and then deposits it into several bank accounts belonging to his friend. David does not get to keep any of the money.	E1
Attempted drug trafficking (large commercial quantity)	Intention to traffick (buy) + large commercial quantity + no heroin bought + societal harm	David arranges to meet a drug importer to buy 4 kg of pure heroin. The heroin has a street value of \$1.2 million. David intends to sell the heroin to other people. However the deal falls through because the importer does not arrive at the meeting point.	E2
Cultivation for the purposes of trafficking	Intention to cultivate for purpose of selling + commercial quantity of cannabis cultivated + societal harm	David grows 90 cannabis plants hydroponically in his shed. The crop produces over 2 kg of cannabis with a street value of \$20,000. David intends to sell the cannabis to other people.	E3
Drug trafficking (large commercial quantity)	Intention to traffick (buy) + large commercial quantity of heroin bought + societal harm	David buys 4 kg of pure heroin from a drug importer. The heroin has a street value of \$1.2 million. David intends to sell the heroin to other people.	E4
Drug trafficking (commercial quantity)	Intention to traffick (buy) + commercial quantity of heroin bought + societal harm	David buys 300 g of pure heroin from a drug dealer. The heroin has a street value of \$90,000. David intends to sell the heroin to other people.	E5
Possession of a drug (less than traffickable quantity)	Intention/knowledge to possess + non-traffickable quantity of heroin	David has in his pocket one 'hit' of heroin, which he intends to use himself.	E6

Appendix 4: Paired comparisons data

Table A1: Percentage of participants who ranked offence description in column as more serious than offence description in row and seriousness score

Offence	Aggravated Burglary	Armed Robbery	Arson	Blackmail	Cause Serious Injury	Commercial Drug Trafficking	Kidnapping	Murder	Rape	Theft
Aggravated Burglary	0.0	32.9	18.1	15.6	66.3	46.9	73.7	97.1	85.6	2.9
Armed Robbery	67.1	0.0	23.0	20.6	73.7	40.3	66.3	99.6	92.6	1.2
Arson	81.9	77.0	0.0	51.4	85.2	66.7	88.5	99.6	92.2	10.7
Blackmail	84.4	79.4	48.6	0.0	85.6	69.1	96.3	97.9	97.1	15.2
Cause Serious Injury	33.7	26.3	14.8	14.4	0.0	37.4	34.6	97.9	76.1	1.6
Commercial Drug Trafficking	53.1	59.7	33.3	30.9	62.6	0.0	67.1	90.5	81.1	9.9
Kidnapping	26.3	33.7	11.5	3.7	65.4	32.9	0.0	97.1	85.2	1.6
Murder	2.9	0.4	0.4	2.1	2.1	9.5	2.9	0.0	9.9	1.2
Rape	14.4	7.4	7.8	2.9	23.9	18.9	14.8	90.1	0.0	0.0
Theft	97.1	98.8	89.3	84.8	98.4	90.1	98.4	98.8	100.0	0.0
Seriousness score	1.809	1.621	1.054	0.971	2.105	1.670	2.107	3.591	2.844	0.000

Appendix 5: Raw coded offence vignette ranking data

Table A2: Mean, standard deviation, range and mode of rankings for 40 offence vignettes in mean rank order

No.	Offence name	Category	Max pen	Mean	SD	Min	25th	Med	75th	Max	Mode	Rank
A1	Murder (intentional)	Fatal	Life	9.9	0.3	8	10	10	10	10	10	1
C5	Sexual penetration with a child aged under 12	Sexual	25	9.5	0.8	5	9	10	10	10	10	2
C3	Rape	Sexual	25	9.3	0.8	6	9	9	10	10	10	3
B2	Intentionally cause serious injury (ICSI)	Injury	20	9.3	1	4	9	9	10	10	10	4
A5	Murder (reckless)	Fatal	Life	9.2	0.9	4	9	9	10	10	9	5
D3	Aggravated burglary	Property	25	8.4	1.2	3	8	9	9	10	9	6
C8	Attempted rape	Sexual	20	8.4	1.3	3	8	9	9	10	9	7
A3	Manslaughter (unlawful and dangerous act)	Fatal	20	8.3	1.4	3	8	9	9	10	9	8
B3	Kidnapping	Injury	25	8.2	1.3	4	7	8	9	10	9	9
C7	Produce child pornography	Sexual	10	8.1	1.7	2	7	8	9	10	9	10
C4	Indecent act with a child aged under 16	Sexual	10	8	1.5	4	7	8	9	10	9	11
B1	False imprisonment	Injury	10	7.9	1.6	1	7	8	9	10	9	12
A7	Culpable driving causing death	Fatal	20	7.9	1.6	2	7	8	9	10	9	13
E4	Drug trafficking (large commercial quantity)	Drug/ other	Life	7.8	1.9	2	7	8	9	10	9	14
B8	Assault with intent to rape	Injury	10	7.8	1.5	3	7	8	9	10	8	15
B9	Negligently cause serious injury (NCSI)	Injury	10	7.7	1.8	2	7	8	9	10	9	16

No.	Offence name	Category	Max pen	Mean	SD	Min	25th	Med	75th	Max	Mode	Rank
D5	Armed robbery	Property	25	7.3	1.5	2	6	7	8	10	7	17
B5	Recklessly cause serious injury (RCSI)	Injury	15	7.3	2.1	1	6	8	9	10	9	18
A6	Arson causing death	Fatal	25	7.1	2	1	6	7	9	10	9	19
C2	Sexual penetration with a child aged 12–16 (CSA)	Sexual	15	7.1	2	1	6	7	9	10	7	20
D4	Attempted armed robbery	Robbery	20	7	1.6	2	6	7	8	10	7	21
E5	Drug trafficking (commercial quantity)	Drug/other	25	7	2.1	2	6	7	9	10	7	22
A2	Make threat to kill	Fatal	10	6.6	1.8	1	5	7	8	10	7	23
A8	Dangerous driving causing death	Fatal	10	6.3	2.2	1	5	7	8	10	7	24
E2	Attempted drug trafficking (large commercial quantity)	Drug/other	Life	6.2	2.4	1	5	6	8	10	9	25
B7	Stalking	Injury	10	6.2	1.7	1	5	6	7	10	7	26
D2	Robbery	Property	15	5.8	1.6	2	5	6	7	10	6	27
A4	Conduct endangering life	Fatal	10	5.6	2.1	1	4	6	7	10	6	28
D7	Arson	Property	15	5.5	2	1	4	6	7	10	6	29
E3	Cultivation for the purposes of trafficking	Drug/other	15	4.9	2.3	1	3	4	6.8	10	4	30
D1	Incitement to commit armed robbery	Property	25	4.9	2.1	1	3	5	6	10	5	31
D6	Blackmail	Property	15	4.6	1.9	1	3	5	6	9	5	32

No.	Offence name	Category	Max pen	Mean	SD	Min	25th	Med	75th	Max	Mode	Rank
D9	Theft	Property	10	4.2	1.7	1	3	4	5	10	4	33
C1	Indecent assault	Sexual	10	4.1	1.8	1	3	4	5	10	3	34
E1	Knowingly dealing with the proceeds of crime	Drug/ other	15	3.9	1.9	1	2	4	5	10	3	35
D8	Make, use or supply identity information	Property	3	3.7	1.8	1	2	3	5	9	3	36
B4	Intentionally cause injury (ICI)	Injury	10	3.6	1.8	1	2	3	5	9	2	37
C6	Sexual penetration with a child aged 12–16	Sexual	10	3.4	2.1	1	2	3	5	9	1	38
B6	Assault (common law)	Injury	5	2.4	1.5	1	1	2	3	8	1	39
E6	Possession of a drug (less than traffickable quantity)	Drug/ other	5	2.2	1.5	1	1	2	3	8	1	40

Note:

- Denotes where there was a low standard deviation around the mean rankings for offences and indicates the offences where there were high levels of agreement among participants on their seriousness.
- Denotes where there was a high standard deviation around the mean rankings for offences and indicates the offences where there were low levels of agreement among participants on their seriousness.

Appendix 6: Data on differences in vignette scores

Table A3: Level of local consensus of individuals with sample on rankings for offence categories

	Offences causing or risking death	Offences causing or risking injury	Sexual offences	Offences involving loss of or damage to property	Drug and other offences
Valid	242	242	242	242	242
Mean correlation	0.763	0.878	0.888	0.778	0.851
Median correlation	0.785	0.911	0.922	0.826	0.901
Standard deviation	0.148	0.106	0.112	0.175	0.147
Minimum correlation	0.272	0.042	0.367	-0.313	0.031
Maximum correlation	0.979	0.992	0.997	0.984	0.998

Table A4: Correlations of overall average vignette scores of males with females

		Male	Female
Male	Pearson Correlation	1.000	.994**
	Sig. (2-tailed)		.000
	N	40	40
Female	Pearson Correlation	.994**	1.000
	Sig. (2-tailed)	.000	
	N	40	40

**Correlation is significant at the 0.01 level (2-tailed).

Table A5: Multiple regression predicting level of agreement on rankings of individual participants with the overall sample

Predictor	Unstandardised coefficients		Standardised coefficients	t	Significance
	B	Standard error	Beta		
Gender (female)	-0.017	0.011	-0.096	1.565	0.119
Employment (employed)	0.006	0.012	0.035	0.504	0.615
Age (65 and over)	-0.080	0.016	-0.347	-5.053	0.000**
Education level (university degree)	0.010	0.011	0.055	0.901	0.369

**Relationship is statistically significant at the $p < 0.01$ level.

Appendix 7: Data on socio-demographic predictors of punitiveness

Table A6: Multiple regression predicting punitiveness scale

Predictor	Unstandardised coefficients		Standardised coefficients	t	Significance
	B	Standard error	Beta		
Gender (female)	0.239	0.795	0.019	0.300	0.764
Education level (university degree)	-3.343	0.794	-0.262	-4.213	0.000**
Age	0.079	0.024	0.219	3.312	0.001**
Previously employed in criminal justice system	-2.078	1.519	-0.087	-1.368	0.173
Personal experience with criminal justice system	-1.026	0.887	-0.075	-1.157	0.249
Recruitment method (agency)	0.773	0.897	0.061	0.862	0.390

**Relationship is statistically significant at the $p < 0.01$ level.

Appendix 8: Data on socio-demographic predictors of offence vignette rankings

Data on the demographics and punitiveness levels for the sample were used as part of the analysis of the level of agreement on offence rankings to determine if particular factors influenced participants' rankings and thus may explain why individuals agreed or disagreed on the ranking of particular offences. These were age, gender, education level, employment status, previous employment in the criminal justice system, personal experience with the criminal justice system and punitiveness levels.

Multiple regressions conducted to test the influence of socio-demographic predictors on the ranking of offence vignettes showed that punitiveness had the strongest influence on the judgment of offence seriousness.

Predictors of overall offence rankings

A multiple regression was run using a model that included the following socio-demographic predictors: gender, education, age, previous employment in the criminal justice system, personal experience with the criminal justice system and the punitiveness score. The model of socio-demographic factors predicted 14% of the variance in total vignette average scores (adjusted $R^2 = 0.137$, $F(6) = 7.297$, $p < 0.001$). Overall, the only factor that was statistically significant in predicting the total average score for all vignettes was the punitiveness score (Beta = 0.351, $t = 5.449$, $p < 0.001$). Therefore, participants who scored higher on the punitiveness scale were more likely to rank their vignettes higher on the coded scale of 1 to 10.

Table A7: Multiple regression predicting average ranking for all vignettes

Predictor	Unstandardised coefficients		Standardised coefficients	t	Significance
	B	Standard error	Beta		
Gender (female)	0.144	0.103	0.086	1.405	0.161
Education level (university degree)	0.032	0.107	0.019	0.303	0.762
Punitiveness score (continuous)	0.047	0.009	0.351	5.449	0.000**
Age (continuous)	0.004	0.003	0.093	1.453	0.148
Previously employed in criminal justice system	0.362	0.197	0.113	1.838	0.067
Personal experience with criminal justice system	-0.125	0.112	-0.069	-1.110	0.268

**Relationship is statistically significant at the $p < 0.01$ level.

Predictors of offence rankings by offence category

Multiple regressions with the same model of socio-demographic factors were used to examine which socio-demographic factors were statistically significant predictors of the ranking of offences in each category. The results in Table A7 are summarised below.

Offences causing or risking death

The model of socio-demographic factors only predicted 8% of the variance in the average vignette scores for fatal offences (offences causing or risking death) (adjusted $R^2 = 0.078$, $F(6) = 4.369$, $p < 0.001$). The only significant predictor of average scores for vignettes in this category was the punitiveness score. Participants who were more punitive were more likely to give higher rankings to vignettes in the fatal offence category.

Offences causing or risking injury

The model of socio-demographic factors only predicted 6% of the variance in average vignette scores (adjusted $R^2 = 0.061$, $F(6) = 3.569$, $p = 0.002$). As with fatal offences, punitiveness was also a significant predictor of higher average scores for vignettes in the non-fatal violence offence category (offences causing or risking injury) (Beta = 0.298, $t = 4.478$, $p < 0.001$). Gender came close to being a significant predictor of average rankings in this category (Beta = 0.122, $t = 1.921$, $p = 0.056$). There was a small difference in the average ranking of these offences by females (7.3) compared with males (7.1).

Sexual offences

The model only predicted 5% of the variance in the vignette scores for vignettes in the sexual offence category (adjusted $R^2 = 0.050$, $F(6) = 3.089$, $p = 0.006$). Again, punitiveness was a significant predictor of higher average scores for vignettes in the sexual offence category (Beta = 0.221, $t = 3.281$, $p = 0.001$). Therefore, participants who scored high on the punitiveness scale were more likely to rank sexual offences higher on the scale of 1 to 10.

Offences involving loss of or damage to property

The socio-demographic model predicted 10% of the variance in average vignette scores for offences in the robbery/property category (adjusted $R^2 = 0.101$, $F(6) = 5.497$, $p < 0.001$). Punitiveness was again a significant predictor of higher average vignette scores (Beta = 0.277, $t = 4.215$, $p < 0.001$).

Drug and other offences

The model of socio-demographic factors predicted 16% of the variance in average vignette scores for drug and other offences (adjusted $R^2 = 0.155$, $F(6) = 8.334$, $p < 0.001$). There were socio-demographic factors that were predictors of higher vignette scores for drug and other offences: age (Beta = 0.268, $t = 4.260$, $p < 0.001$) and punitiveness (Beta = 0.253, $t = 3.970$, $p < 0.001$). Participants who were more punitive were more likely to have higher average scores for these vignettes, as were older participants.

Table A8: Multiple regression predicting average rankings for vignettes in offence categories with at least one significant or close to significant factor

Average vignette score for offences causing or risking death					
Predictor	Unstandardised coefficients		Standardised coefficients	t	Significance
	B	Standard error	Beta		
Gender (female)	0.190	0.125	0.095	1.516	0.131
Education level (university degree)	0.164	0.130	0.082	1.258	0.210
Punitiveness score (continuous)	0.047	0.010	0.298	4.478	0.000**
Age (continuous)	-0.003	0.004	-0.054	-0.817	0.415
Previously employed in criminal justice system	0.390	0.240	0.103	1.621	0.106
Personal experience with criminal justice system	-0.139	0.137	-0.065	-1.015	0.311
Average vignette score for offences causing or risking injury					
Predictor	Unstandardised coefficients		Standardised coefficients	t	Significance
	B	Standard error	Beta		
Gender (female)	0.236	0.123	0.122	1.921	0.056
Education level (university degree)	0.168	0.128	0.086	1.312	0.191
Punitiveness score (continuous)	0.041	0.010	0.269	4.013	0.000**
Age (continuous)	0.003	0.004	0.049	0.736	0.463
Previously employed in criminal justice system	0.216	0.236	0.059	0.916	0.361
Personal experience with criminal justice system	0.076	0.135	0.037	0.567	0.571
Average vignette score for sexual offences					
Predictor	Unstandardised coefficients		Standardised coefficients	t	Significance
	B	Standard error	Beta		
Gender (female)	0.155	0.128	0.078	1.212	0.227
Education level (university degree)	-0.116	0.134	-0.057	-0.872	0.384
Punitiveness score (continuous)	0.035	0.011	0.221	3.281	0.001**
Age (continuous)	0.000	0.004	-0.008	-0.115	0.909
Previously employed in criminal justice system	0.293	0.246	0.077	1.191	0.235
Personal experience with criminal justice system	-0.162	0.141	-0.075	-1.155	0.249

Average vignette score for offences involving loss of or damage to property					
Predictor	Unstandardised coefficients		Standardised coefficients	t	Significance
	B	Standard error	Beta		
Gender (female)	-0.030	0.148	-0.013	-0.203	0.839
Education level (university degree)	0.037	0.154	0.015	0.241	0.810
Punitiveness score (continuous)	0.052	0.012	0.277	4.215	0.000**
Age (continuous)	0.010	0.004	0.143	2.194	0.029
Previously employed in criminal justice system	0.532	0.284	0.118	1.876	0.062
Personal experience with criminal justice system	-0.197	0.162	-0.077	-1.215	0.226

Average vignette score for drug and other offences					
Predictor	Unstandardised coefficients		Standardised coefficients	t	Significance
	B	Standard error	Beta		
Gender (female)	0.191	0.188	0.061	1.020	0.309
Education level (university degree)	-0.155	0.196	-0.049	-0.794	0.428
Punitiveness score (continuous)	0.062	0.016	0.253	3.970	0.000**
Age (continuous)	0.024	0.006	0.268	4.260	0.000**
Previously employed in criminal justice system	0.381	0.360	0.064	1.057	0.292
Personal experience with criminal justice system	-0.021	0.206	-0.006	-0.100	0.921

**Relationship is statistically significant at the $p < 0.01$ level.

Predictors of individual offence rankings

The same selection of variables used in multiple regression analyses for individual vignettes was used for total vignettes and vignettes by offence category. The model included demographic variables of gender, education, age, previous employment in the criminal justice system, personal experience with the criminal justice system and punitiveness score. Employment was excluded because of the strong correlation with other demographic predictors (age and education). Country of birth and recruitment method were examined but ultimately excluded from the regression model.

A number of socio-demographic factors were found to be significant predictors of individual vignette scores. Table A9 shows the demographic predictors for the rankings of each individual vignette. All 40 vignettes, except incitement to commit armed robbery, had at least one socio-demographic factor that was a significant or came close to being a significant predictor of vignette scores. The most common factors found to be statistically significant predictors of higher vignette scores were punitiveness and age.

Punitiveness, either alone or together with other factors, was a statistically significant factor predicting the rankings of 70.0% of all vignettes (28). Both age and punitiveness together were statistically significant factors or near statistically significant factors in predicting higher scores for 40.0% of the vignettes (16). Punitiveness alone was a statistically significant predictor of six further vignette scores, and age alone was a statistically significant predictor of three further vignette scores.

The 13 offences where there was a low level of agreement on their rankings (where the standard deviation was 1.9 or more) are highlighted. Of the offences where there was a wide variation in rankings, punitiveness was a statistically significant predictor of higher scores for arson causing death, arson, dangerous driving causing death and sexual penetration with a child aged 12–16 (CSA). Therefore, participants who scored higher on the punitiveness scale were more likely to rank these offences higher than participants who were less punitive. Punitiveness and age were statistically significant predictors of higher scores for trafficking a large commercial quantity of drugs, attempted trafficking of a large commercial quantity of drugs and cultivation of drugs for the purposes of trafficking (university degree and age were also significant predictors of scores for this offence). Therefore, older participants and those who were more punitive were more likely to rank these offences higher on the scale of 1 to 10.

Table A9: Summary of socio-demographic factors that were significant predictors or close significant predictors of individual vignette scores by order and standard deviation of mean vignette ranks

No.	Offence name	Scale level	Category	Mean	SD	Significant predictors (p < 0.05)	Rank
A1	Murder (intentional)	10	Fatal	9.9	0.3	None	1
C5	Sexual penetration with a child aged under 12	10	Sexual	9.5	0.8	Personal experience in CJS	2
C3	Rape	9	Sexual	9.3	0.8	Punitiveness	3
B2	Intentionally cause serious injury (ICSI)	9	Injury	9.3	1	Female	4
A5	Murder (reckless)	9	Fatal	9.2	0.9	Punitiveness	5
D3	Aggravated burglary	8	Property	8.4	1.2	Punitiveness	6
C8	Attempted rape	8	Sexual	8.4	1.3	Punitiveness	7
A3	Manslaughter (unlawful and dangerous act)	8	Fatal	8.3	1.4	Punitiveness	8
B3	Kidnapping	8	Injury	8.2	1.3	Age*	9
C7	Produce child pornography	8	Sexual	8.1	1.7	Female, Personal experience in CJS*	10
C4	Indecent act with a child aged under 16	8	Sexual	8	1.5	None	11
B1	False imprisonment	8	Injury	7.9	1.6	Age*	12
A7	Culpable driving causing death	8	Fatal	7.9	1.6	Punitiveness	13
E4	Drug trafficking (large commercial quantity)	8	Drug/other	7.8	1.9	Punitiveness, Age	14
B8	Assault with intent to rape	8	Injury	7.8	1.5	Age	15
B9	Negligently cause serious injury (NCSI)	8	Injury	7.7	1.8	Punitiveness	16
D5	Armed robbery	7	Property	7.3	1.5	Punitiveness, Age	17
B5	Recklessly cause serious injury (RCSI)	7	Injury	7.3	2.1	Punitiveness, Age	18
A6	Arson causing death	7	Fatal	7.1	2	Punitiveness	19
C2	Sexual penetration with a child aged 12–16 (CSA)	7	Sexual	7.1	2	None	20
D4	Attempted armed robbery	7	Robbery	7	1.6	Punitiveness	21
E5	Drug trafficking (commercial quantity)	7	Drug/other	7	2.1	Punitiveness, Age	22
A2	Make threat to kill	7	Fatal	6.6	1.8	Female	23

No.	Offence name	Scale level	Category	Mean	SD	Significant predictors (p < 0.05)	Rank
A8	Dangerous driving causing death	6	Fatal	6.3	2.2	Punitiveness	24
E2	Attempted drug trafficking (large commercial quantity)	6	Drug/other	6.2	2.4	Punitiveness, Age	25
B7	Stalking	6	Injury	6.2	1.7	None	26
D2	Robbery	6	Property	5.8	1.6	Punitiveness, Age	27
A4	Conduct endangering life	6	Fatal	5.6	2.1	Personal experience in CJS	28
D7	Arson	6	Property	5.5	2	Punitiveness	29
E3	Cultivation for the purposes of trafficking	5	Drug/other	4.9	2.3	Punitiveness, Female, University degree*, Age	30
D1	Incitement to commit armed robbery	5	Property	4.9	2.1	None	31
D6	Blackmail	5	Property	4.6	1.9	Age	32
D9	Theft	4	Property	4.2	1.7	Punitiveness	33
C1	Indecent assault	4	Sexual	4.1	1.8	Punitiveness, Age	34
E1	Knowingly dealing with the proceeds of crime	4	Drug/other	3.9	1.9	Punitiveness, Age	35
D8	Make, sue or supply identity information	4	Property	3.7	1.8	Punitiveness, Personal experience in CJS*	36
B4	Intentionally cause injury (ICI)	4	Injury	3.6	1.8	Punitiveness, University degree	37
C6	Sexual penetration with a child aged 12–16	3	Sexual	3.4	2.1	Punitiveness, Age	38
B6	Assault (common law)	2	Injury	2.4	1.5	Punitiveness, Previously employed in CJS, Female	39
E6	Possession of a drug (less than traffickable quantity)	2	Drug/other	2.2	1.5	Punitiveness, Age	40

*Indicates that a variable's influence on vignette rank was negative. For example, having a university degree predicted lower vignette ranks for drug cultivation than not having a university degree. Otherwise it can be assumed that a variable's influence was positive.

Note:

- Denotes where there was a low standard deviation around the mean rankings for offences and indicates the offences where there were high levels of agreement among participants on their seriousness.
- Denotes where there was a high standard deviation around the mean rankings for offences and indicates the offences where there were low levels of agreement among participants on their seriousness.

Appendix 9: Data on dimensions of seriousness underpinning offence rankings

Table A10: Principal components analysis of dimensions underlying 40 offence vignettes: correlations between vignettes and factors in rotated factor matrix

Vignette	Factor							
	1	2	3	4	5	6	7	8
Kidnapping	0.853	-0.092	0.01	0.094	0.124	0.085	0.014	0.128
False imprisonment	0.848	-0.045	0.008	0.069	0.073	0.066	0.069	0.138
Assault with intent to rape	0.816	-0.067	0.008	0.193	0.037	0.034	0.084	0.095
Attempted rape	0.731	0.024	0.009	0.271	0.247	-0.03	0.08	0.055
Stalking	0.61	0.067	0.132	0.11	-0.047	0.312	0.319	-0.062
Aggravated burglary	0.58	-0.031	0.1	0.326	0.351	0.068	-0.02	0.097
Make threat to kill	0.528	0.263	0.166	-0.101	-0.076	0.225	0.213	-0.059
Rape	0.49	0.09	0.034	0.474	0.472	-0.131	-0.041	0.047
Conduct endangering life	0.449	0.203	0.131	-0.002	-0.161	0.447	0.126	0.142
Culpable driving causing death	-0.037	0.86	0.041	0.11	0.074	0.118	-0.013	0.113
Arson causing death	0.019	0.814	-0.023	0.047	0.08	0.123	0.096	0.078
Dangerous driving causing death	-0.078	0.781	0.05	0.067	0.055	-0.009	0.247	-0.003
Negligently cause serious injury (NCSI)	-0.081	0.77	0.177	0.304	0.071	0.116	0.091	0.084
Manslaughter (unlawful and dangerous act)	0.175	0.639	0.034	-0.041	0.104	-0.019	0.055	0.207
Recklessly cause serious injury (RCSI)	-0.119	0.493	0.174	0.282	0.074	-0.145	0.457	0.16
Drug trafficking (commercial quantity)	0.064	0.078	0.824	0.229	0.211	0.207	-0.004	0.095
Drug trafficking (large commercial quantity)	-0.034	0.064	0.82	0.164	0.196	0.181	-0.086	0.091
Cultivation for the purposes of trafficking)	0.09	0.148	0.78	0.083	0.153	0.051	0.116	-0.104
Attempted drug trafficking (large commercial quantity)	0.092	-0.091	0.724	0.019	0.051	0.256	0.005	0.122
Possession of a drug (less than traffickable quantity)	0.085	0.17	0.633	-0.058	0.121	-0.027	0.228	-0.312
Knowingly dealing with the proceeds of crime	-0.021	0.044	0.4	0.002	0.235	0.368	0.219	0.078

Vignette	Factor							
	1	2	3	4	5	6	7	8
Sexual penetration with a child aged under 12	0.155	0.101	0.068	0.792	0.121	-0.029	-0.002	0.116
Indecent act with a child aged under 16	0.252	0.146	0.122	0.771	0.006	0.05	0.114	-0.113
Produce child pornography	0.206	0.163	0.136	0.77	-0.049	0.191	0.087	0.006
Armed robbery	0.125	0.168	0.304	0.003	0.817	0.183	0.022	0.053
Attempted armed robbery	0.192	0.133	0.263	0.045	0.771	0.156	0.019	0.119
Robbery	0.063	0.122	0.223	0.073	0.612	0.439	0.208	0.078
Sexual penetration with a child aged 12–16 (CSA)	0.216	0.12	0.097	0.33	0.401	0.135	0.342	-0.243
Make, use or supply identity information	0.162	0.137	0.153	0.088	0.124	0.787	0.119	-0.037
Blackmail	0.091	-0.097	0.227	0.128	0.24	0.618	0.224	0.138
Theft	-0.04	0.182	0.193	0.068	0.431	0.508	0.19	-0.103
Incitement to commit armed robbery	0.278	0.004	0.19	-0.173	0.389	0.486	0.092	0.019
Arson	0.132	0.391	0.258	0.132	0.14	0.408	-0.066	-0.096
Intentionally cause injury (ICI)	0.189	0.121	0.025	0.013	0.088	0.153	0.834	0.125
Assault (common law)	0.156	0.151	0.047	-0.033	0.05	0.219	0.805	0.095
Indecent assault	0.273	0.114	0.06	0.331	0.031	0.19	0.554	-0.235
Intentionally cause serious injury (ICSI)	0.056	0.22	0.149	0.359	0.103	0.035	0.225	0.609
Murder (reckless)	0.275	0.339	-0.076	0.105	0.056	0.119	0.03	0.606
Murder (intentional)	0.175	0.194	0.03	-0.147	0.07	-0.011	0.005	0.603
Sexual penetration with a child aged 12–16	-0.042	0.265	0.148	0.191	0.312	0.081	0.377	-0.38

Note: ■ Denotes the grouping of the correlations of each offence vignette within the eight dimensions found to be underpinning the rankings in the statistical analysis.

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