



Forensicare

Personality Disorder and Sentencing in Practice: Lessons for Clinicians from Court Decisions

Dr Daniel Simsion, Dr Melisa Wood, Dr Joseph Sakdalan

Thursday 4th December 2025

Acknowledgement of Country



ACKNOWLEDGEMENT OF COUNTRY

We acknowledge the palawa and pakana people as the traditional, original and continuing custodians of lutruwita (Tasmania) and the continuing connection that Tasmanian Aboriginal people have to the land, sea, sky and waterways. We pay our respects to Elders past and present.

Background: Verdins Principles

R v Verdins & Ors [2007] VSCA 102, at [32]:

The Court of Appeal held that impaired mental functioning may be relevant to sentencing in at least six ways:

1. It may reduce the offender's moral culpability for the offending conduct.
2. It may affect the type of sentence that is imposed and the conditions in which the sentence is to be served.
3. It may reduce the weight given to general deterrence.
4. It may reduce the weight given to specific deterrence.
5. It may render the offender an inappropriate vehicle for imprisonment because a given sentence will weigh more heavily on the offender than it would on a person in normal health.
6. It may mean that imprisonment will have a more severe impact on the offender than it would on a person in normal health.

R v Verdins [2007] VSCA 102

[26] Impaired mental functioning at the time of the offending may reduce the offender's moral culpability if it had the effect of –

- (a) impairing the offender's ability to exercise appropriate judgment;
- (b) impairing the offender's ability to make calm and rational choices, or to think clearly;
- (c) making the offender disinhibited;
- (d) impairing the offender's ability to appreciate the wrongfulness of the conduct;
- (e) obscuring the intent to commit the offence; or
- (f) contributing (causally) to the commission of the offence.

...this is not to be taken as an exhaustive list.

Practice Note SC CR 7: Role of Expert Witness in Sentencing

Whether the 6 Sentencing Principles set out by Verdins are relevant to the given case is a matter for the Court to determine.

To assist the Court in this endeavour, the expert report should state the expert's opinion as to:

- the nature, extent and effect of the condition experienced by the subject at the time of the offending and/or at the time of sentence;
- how the condition affected, or is likely to have affected, the mental functioning of the subject at the time of the offending or in the lead up to it;
- how the condition is likely to affect the subject in the future and whether this has implications for the type of sentence which the judge should consider;
- whether the condition would be likely:
 - i. to affect adversely the ability of the subject to cope with imprisonment; and/or
 - ii. to deteriorate as a result of the subject being imprisoned.

Personality Disorder

A personality disorder is characterised by an enduring pattern of inner experience and behaviour that deviates markedly from cultural expectations, is pervasive and inflexible, begins in adolescence or early adulthood, is stable over time, and leads to distress or impairment. The pattern typically involves disturbances in cognition, affectivity, interpersonal functioning, or impulse control.

DSM-V-TR

Personality Disorder and Verdins

R v Verdins [2007] VSCA 102:

[8] The sentencing court should not have to concern itself with how a particular condition is to be classified. Difficulties of definition and classification in this field are notorious. There may be differences of expert opinion and diagnosis in relation to the offender. It may be that no specific condition can be identified. *What matters is what the evidence shows about the nature, extent and effect of the mental impairment experienced by the offender at the relevant time.*

So technically, personality disorders should be included?

R v O'Neill [2015] VSCA 325

[71] ...It is important to keep in mind that...the Court has consistently stated that the principles in *Verdins* relate to offenders who suffered from 'mental impairment' or 'impaired mental functioning', whether at the time of the offending or at the time of sentence. While the Court in *Verdins* regarded the particular diagnostic label as not being determinative, the principles expressed have always been confined to cases in which the offender suffered an impairment of his or her mental functioning. *They do not apply to personality disorders such as those from which the respondent suffered.*

Apparently not.

Personality Disorder and Verdins

***Brown v The Queen* [2020] VSCA 212**

“[6] After hearing argument, we concluded that ... [an] offender diagnosed with a personality disorder should be treated as in no different position from any other offender who seeks to rely on an impairment of mental functioning as mitigating sentence in one or other of the ways identified in *Verdins*. Statements to the contrary in *O’Neill* should no longer be followed. Whether and to what extent the offender’s mental functioning is (or was) relevantly impaired should be determined on the basis of expert evidence rigorously scrutinised by the sentencing court.”

O’Neill Reversed

But...

Brown v The Queen [2020]

- ***Must be evidence based:***

“[61] What the sentencing judge needs is not a diagnostic label but a clear, well-founded expert opinion as to the *nature and extent* of the offender’s impairment ...and ...of its *likely impact on the offender* at the time of the offending and/or in the foreseeable future.”

- ***Must be a rigorous evaluation of the evidence:***

“[65] We take this opportunity to draw attention, once again, to Practice Note C CR 7, dealing with ‘Expert Reports on Mental Functioning of Offenders’.

- ***[Maybe] should be severe:***

“[68] Looking ahead, it would seem from the expert evidence that a personality disorder is likely to engage the *Verdins* principles only in a case of some severity. But, plainly enough, it is not for this Court to suggest any threshold level ...”

- ***Must be balanced against the need for community protection:***

“[72] Precisely because of the enduring character of a personality disorder, the issue of community protection is likely to arise frequently. The risk of reoffending will fall to be considered whenever the expert evidence establishes to the court’s satisfaction that the offender’s mental functioning was impaired at the time of the offending and that the offending was attributable to the impairment.”

Current Research Questions

- **How have Victorian courts addressed the issue of personality disorder in sentencing post the Brown [2020] Decision?**
- **How do courts view mental health expert witness evidence regarding personality disorder?**

Methodology

- **Austlii search: All cases citing Brown [2020]**
 - All County and Supreme Court (including COA) cases publicly listed prior to 1/07/2025 ($N = 145$), including 4 duplicates (original decision and appeal).
- **We excluded 72 cases:**
 - Not involving Victorian Courts ($n = 14$) or sentencing matters ($n = 2$)
 - No diagnosis (or significant traits) of Personality Disorder ($n = 46$)
 - Verdins Principles not raised/discussed re: Personality Disorder ($n = 6$)
 - Insufficient diagnostic information ($n = 2$), or the case predated Brown ($n = 2$)
- **Total of 69 cases included in the final analysis**
 - 55 cases in County Court (79.7%); 14 cases in Supreme Court (20.3%)
 - 10 identified Cases included Appeals (14.5%). These were combined with original sentence and treated as a single case, with efforts made to obtain original judgments if missing.

Methodology: Variables

➤ **Descriptive:**

- Demographic, Court Level, Offence Type

➤ **Experts and Expert Evidence:**

- Professional discipline, assessment method, diagnostic classification system, use of collateral and psychometric tests.

➤ **Clinical Characteristics:**

- type and severity of personality disorder, additional /alternative diagnoses, explanation of nexus to offending, comments relevant to Verdins limbs.
- identification of other sentencing-relevant matters (e.g., disadvantaged background, risk assessment, prospects and recommendations for rehabilitation or treatment).

➤ **Sentencing Characteristics:**

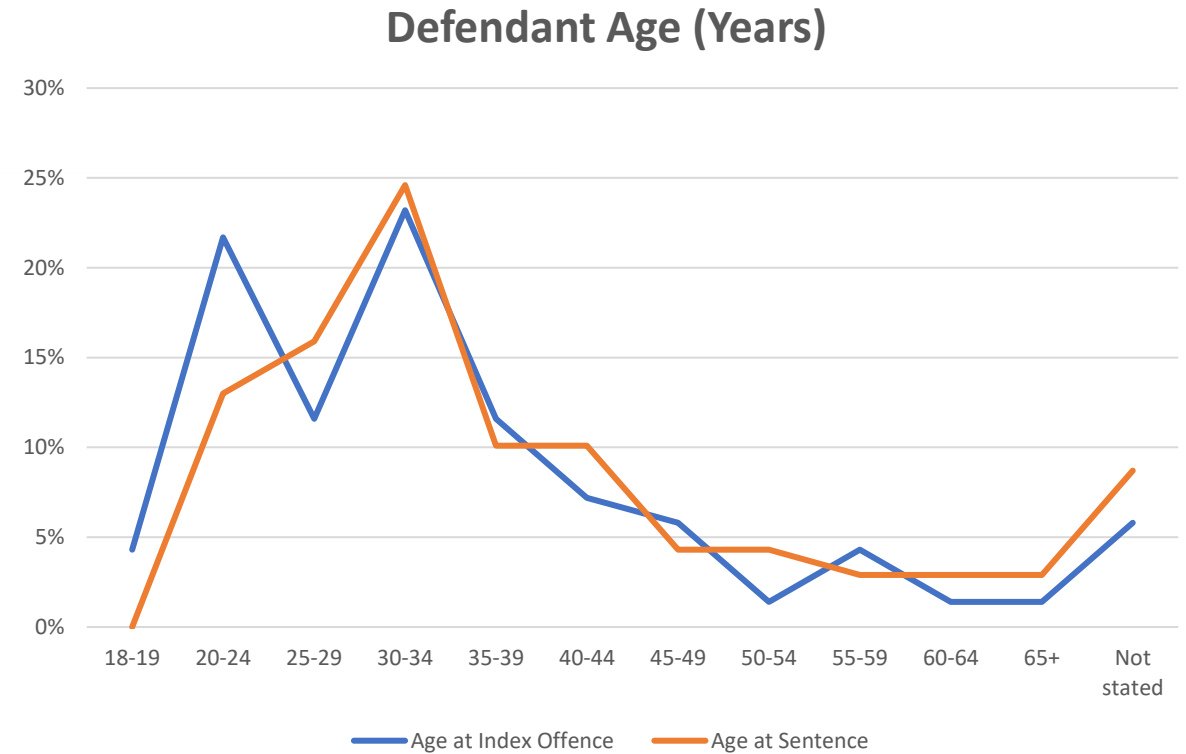
- Views of the experts and their evidence
- Whether Verdins applied, and reasons
- Whether Bugmy applied, and reasons
- Link between personality disorder and other relevant matters (risk, rehabilitation)

Acknowledgement of Key Methodological Limitations

- **There is a Cost to Quantification of such Rich Data**
 - We will occasionally dip into qualitative themes to interpret the findings
- **This study relies on Judges' Comments to Examine Clinician Work**
 - Experience doing this study highlights that Judges and clinicians can differ in their focus
 - E.g., very few decisions actively considered personality assessment tools (only 2 named these, with another 4 highlighting that this had been done).

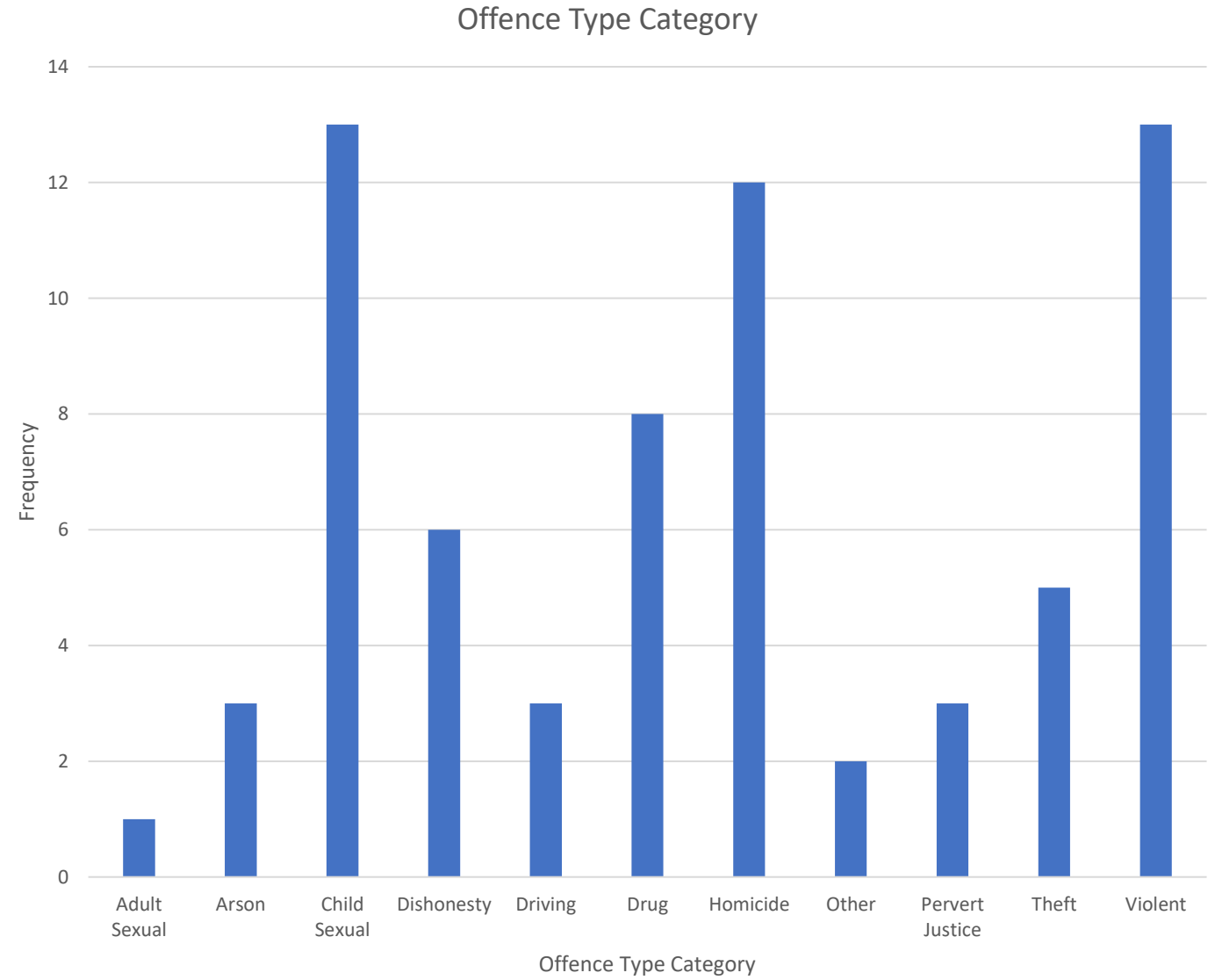
Basic Facts: Offenders

Demographic	N	%
Gender		
Male	58	84.1
Female	11	15.9
Country at Birth		
Australia	41	59.4
Asia Pacific	5	7.2
Other	5	7.2
Not Stated	18	26.1
Ethnicity		
Australian First Nations	7	10.1
Other (Specified)	12	17.4
Not Stated	50	72.5



Age (Years)	Range	Mean	SD	Missing
Age at Index Offence	18-69	31.81	12.32	4
Age at Sentence	20-72	36.41	12.31	5

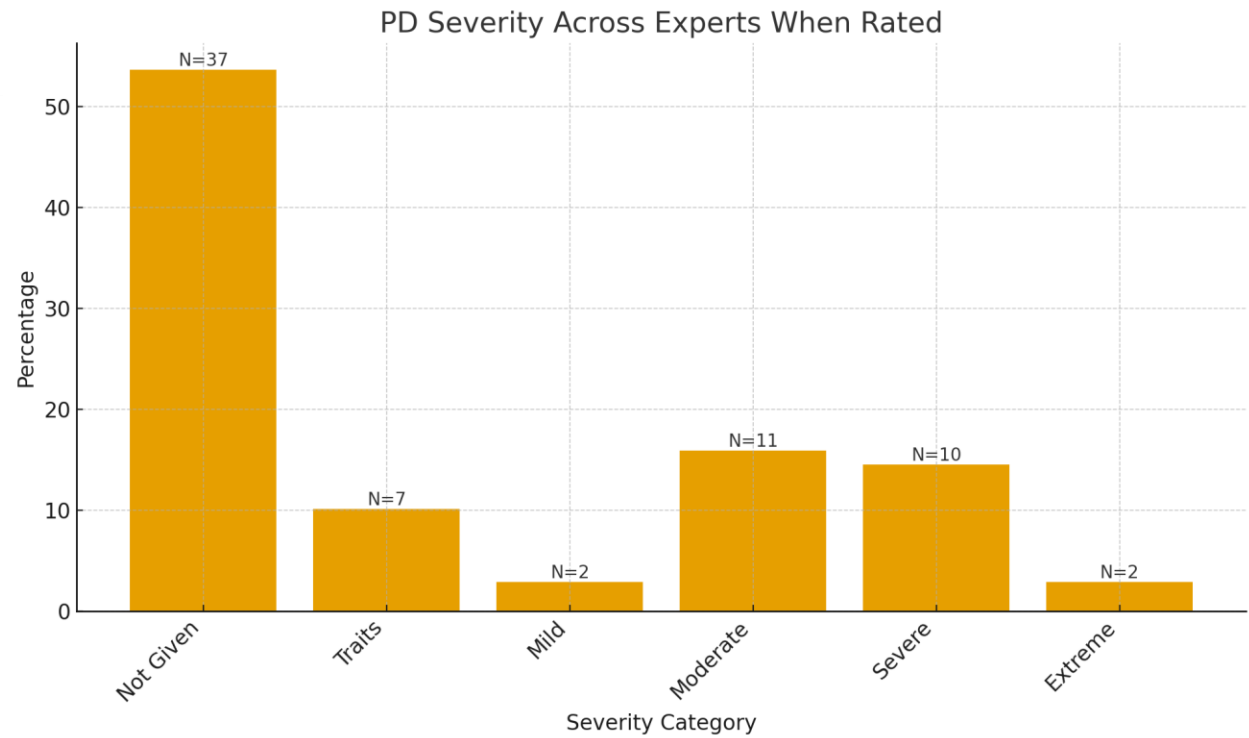
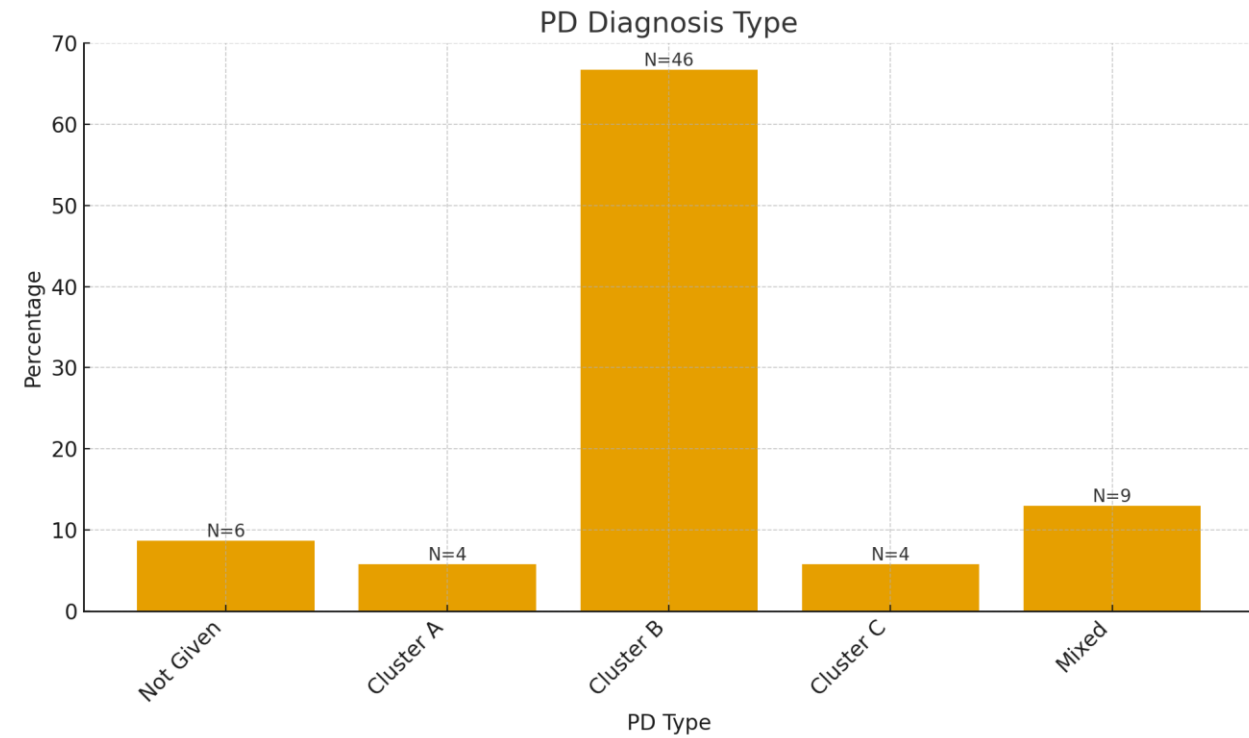
Basic Facts: Base Offences



Who are the Experts?

- **96 experts were included in the analyses.**
 - 47 cases had one expert, 17 had two experts and 5 had three experts
 - 50 Psychologists, 12 neuropsychologists, 33 psychiatrists, 1 other.
 - 77 retained by the defence, 5 Court, 3 other, 11 unclear
- **Judges' Perspective:**
 - 65 neutral
 - 20 positive
 - 10 negative (+ 1 possibly negative)

What PDs are being Diagnosed?



A note about coding expert diagnoses

- **There was substantial variance in how experts made diagnoses of personality disorders:**
 - Use of different systems (e.g., ICD vs DSM)
 - Different application of severity ratings
 - “moderate, with severe impact on daily functioning”
 - Use of different language
 - “prominent traits of cluster B personality disorders, maladaptive traits in the narcissistic and antisocial domains of personality”
 - “mild personality disorder”
 - “borderline personality disorder”
 - “moderate personality disorder - predominant detachment, dissocial and disinhibition pattern”
 - “personality disturbances (overlay of antisocial)”
 - “dependent personality disorder aspects”

PDs Diagnosis occurs in a broader diagnostic framework

- Experts often made a range of other psychiatric diagnoses in addition to PD diagnoses:
 - 24% one non-personality diagnosis
 - 24% two non-personality diagnoses
 - 9% three non-personality diagnoses
 - 3% four non-personality diagnoses

Does the specific PD Diagnosis Matter?

There was no significant association between judges applying Limb 1 and PD diagnosis type, $\chi^2(4, N = 69) = 1.64, p = .80$.

There was no significant association between judges applying Limb 1 and PD severity, $\chi^2(5, N = 69) = 6.36, p = .27$, indicating that Limb 1 was applied at similar rates across cases rated as traits, mild, moderate, severe, or extreme.

Which Verdins Limbs are Enlivened?

Limb	Defence raised?			Judge Applied?		
	Yes	No	Unclear	Yes	No	Unclear
1	55	10	4	38	31	0
2	22	43	2	12	54	3
3	41	20	8	33	36	0
4	40	21	8	29	39	1
5	51	16	2	46	23	0
6	35	29	4	24	42	3
Bugmy	21	44	4	19	48	3

*Only considers applications for PDs , not other mental disorders

What are experts saying about PDs and Offending?

Possible Role of PD	Yes	No
Causal Contribution of PD	31 (44.9%)	38 (55.1%)
Linked PD to Impaired Judgement	24 (34.8%)	45 (65.2%)
Linked PD to Calm / Rational Decision-Making	25 (36.2%)	44 (63.8%)
Linked PD to Disinhibition	15 (21.7%)	54 (78.3%)
Linked PD to Wrongfulness	9 (13.0%)	60 (87.0%)
Linked PD to Obscuring of Intent	1 (1.4%)	68 (98.6%)

What expert behaviour is linked to enlivening Verdins?

- **There was a significant association between judges applying Limb 1 and experts linking a PD to impaired judgement, $\chi^2(1, N = 69) = 6.79, p = .009$.**
- **No relationship between limb 1 being enlivened and experts linking a PD to:**
 - Disinhibition
 - Calm/ rational decision making
 - Impact on ability to see wrongfulness
 - Obscuring intent
 - Causal connection

Nexus and Severity

- **In decisions, Judges often highlight that the main reason for not enlivening Verdins (1-4) is a lack of clear nexus between the offending and the personality disorder.**
- **The data suggests that Judges are not simply following expert statements around this.**
- **While severity was not always directly highlighted as an issue, it was often incorporated into decision making about nexus.**
- **The data suggests this was not the deciding factor.**

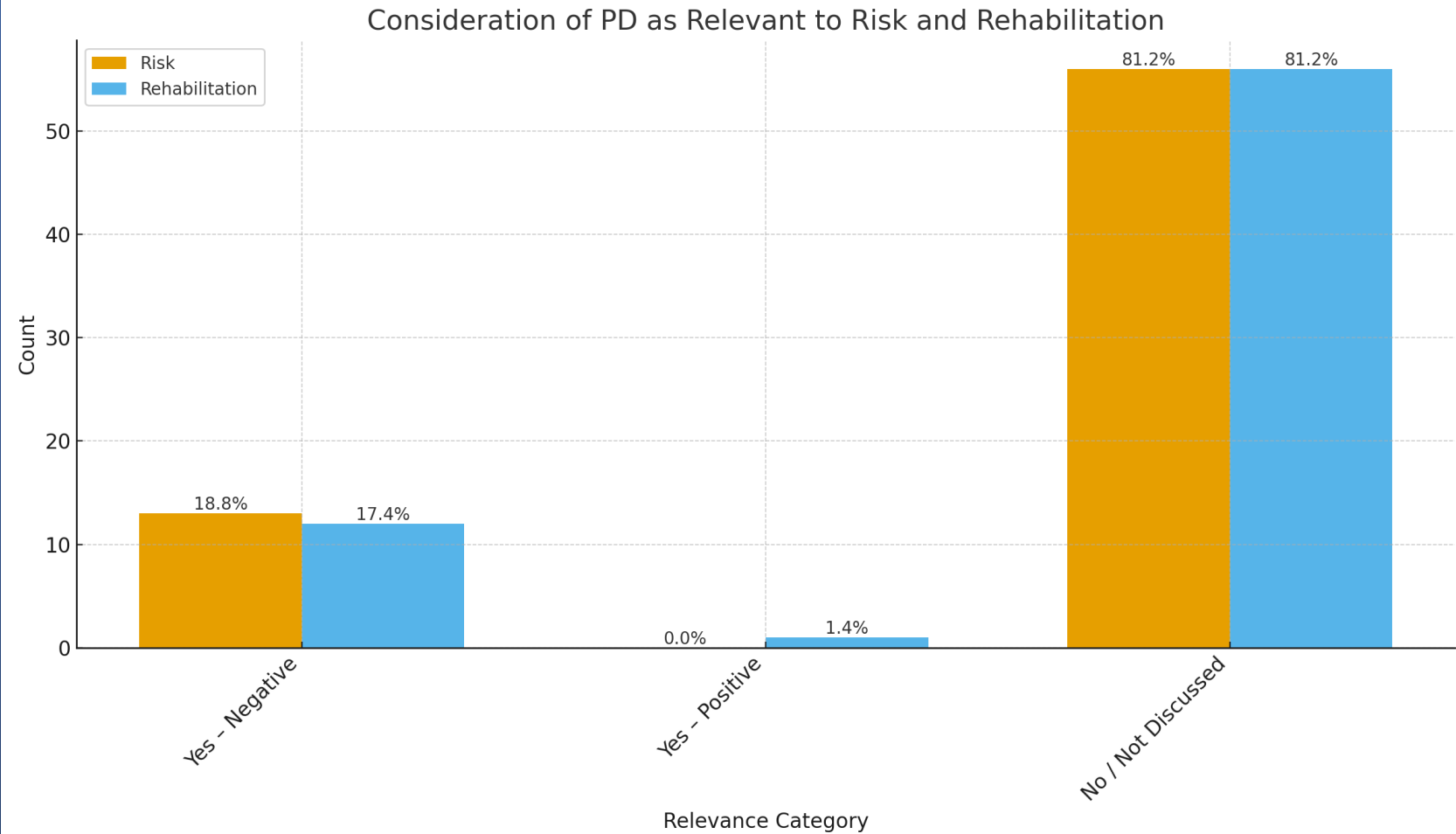
Nexus and Severity: The Exceptions

- **As noted, there were a range of instances in which nexus or severity were not directly relevant to a decision to apply Verdins.**
- **Reasons included:**
 - A decision to apply Verdins was incorporated into a broader mental health picture
 - The presentation was so severe that nuanced discussion of nexus was irrelevant
 - The nexus was insufficiently stated
 - The extent of the nexus was insufficient

Appeals

- **This data set included cases with 10 appeals**
- **The most common appeal ground (relating to Verdins/ Bugmy) was that the judge erred in failing to apply verdins through incorrectly establishing a lack of casual nexus (7 cases):**
 - 5 Dismissed
 - 2 Upheld
- **Two instance of the prosecution appealing the reverse:**
 - Both dismissed.
- **Final case involved Bugmy**

The Other Side of the Coin: Risk and Rehabilitation



Acceptance of Reports

- **In most cases (67.7%), experts were largely accepted and incorporated into the Judge's decision making:**
 - As might be expected (and desired), experts' evidence was generally taken at face-value.
 - Often judges would incorporate this decision-making into the broader facts of the case, treating it in line with other evidence.

Positive Views of Expert Reports

- **20 explicitly positive reviews of experts. Can be broken into three groups.**
- **Comprehensive Reports (including thoroughness and use of collateral):**
 - *“Their comprehensive reports were of considerable assistance to the court.”*
 - *“I have found it diligent. For example, Mr x also consulted with both of your parents. The picture of your developing years is fundamentally consistent.”*
- **Qualified Expert**
 - *“I note in relation to Mr X's qualifications that he is a registered psychologist with the Australian Health Practitioner Regulation Agency. He has over 20 years' experience working with individuals presenting with complex psychiatric disorders. He has assessed and treated several thousand cases, suffering a complex spectrum of problems, including personality disorders, psychiatric illness and drug and alcohol disorders. He has accumulated close to 20,000 hours of face-to-face experience in the assessment of psychiatric personality disturbance and drug and alcohol addiction.”*
- **Plausible**
 - *“There is a plausible psychological explanation of the circumstances of offending, particularly, for example, in the prolongation of that offending.”*

Negative Views of Expert Reports

- There were 10 (or 11) overtly negative views expressed about experts in the decisions.
- Most common reason: Lack of clear description of a relationship between diagnosed disorder and offending AND asserting a link at the same time.
 - *Similarly, Mx X does not provide an evidentiary foundation for finding that, at the time of the commission of the offence of commercial quantity trafficking, you had impaired mental functioning that was linked to the trafficking, which substantially and materially reduced your culpability.*

Negative Views of Expert Reports

- **Other issues included:**

- Lack of time given to diagnosis:

- *“Questions were raised by myself and by the prosecutor about the opinions expressed in that report, whether the assessor had spent sufficient time in arriving at [their] diagnosis, and the possible the roles for each of the sentencing purposes if its contents were relied upon” – Report ultimately disregarded.*
- *In that regard it is noteworthy that in relation to personality disorders the American Psychiatric Association guide to diagnosis DSM–5 as quoted by the court states: 'Although a single interview with the individual is sometimes sufficient for making the diagnosis, it is often necessary to conduct more than one interview and to space these over time.'*[7]

Negative Views of Expert Reports

- **Other issues included:**

- Failure to assess relevant factors:

- *[Expert Witness] said that she had not herself conducted a formal assessment for a personality disorder or consulted collateral information such as school reports from when you were young. [Expert Witness] readily conceded she could go no further than postulating a possibility of a personality disorder at the time of the offending.*
- *I also note that [Expert 1] was somewhat critical of [Expert 2]'s methodology and conclusions. He was 'somewhat surprised' that [Expert 2] did not 'investigate [your] emotional trauma, addictive behaviours and psychiatric issues in more detail' and that 'the conclusions in [Expert 2's] report were basically a repetition of the information contained in the history and assessment.'*

Disagreements amongst Experts

- **True disagreements amongst experts were rare.**
- **When disagreement occurred, judges often considered:**
 - Consistency amongst experts (e.g., for diagnosis)
 - Clearer explanations of nexus
 - Plausibility
 - Involvement of a third expert (in some cases, a particularly well-regarded expert)
 - Overall report and assessment quality
 - More cogent arguments

Conclusions

Personality disorder has been well-incorporated into Verdins considerations.

Expert evidence is generally accepted by the Courts in this context.

Expert practice around personality disorder diagnosis for the Courts does appear to vary substantially.

Expert consideration of nexus is essential to inform judges decision-making – diagnosis is not enough.

Judges did not say a report was not thorough or comprehensive enough.

The impact of personality disorder on risk and rehabilitation appears to have been less considered.

Severity of PD appears to be less relevant than initially projected when Brown was decided.

A young woman with long brown hair, wearing a yellow t-shirt, is sitting in a lecture hall and raising her right hand. She is smiling and looking towards the front of the room. She has a laptop on her lap. Other people are seated in the background, some looking towards the front and others looking away. The room has rows of grey seats and a wooden wall in the background.

**Questions/ Comments/
General Thoughts?**