

Assessing the impacts of domestic and family violence sentencing reforms in Queensland

Consultation Paper



Warning to readers

This paper contains subject matter that readers may find distressing. Material describing domestic violence offences, including case examples, is included in this paper. It also includes descriptions of the impact domestic and family violence can have on adult and child victims. If you need to talk to someone, support is available:

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Call for submissions

You are invited to make a submission based on the questions in this Consultation Paper, or any issues arising from the Terms of Reference.

Submission deadline: 10.00 am, **Friday, 9 May 2025**.

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Contents

Preliminaries

Call for submissions	iii
Glossary	vi

1. Background 1

1.1 Introduction	1
1.2 What we have been asked to do.....	1
1.3 Our approach	2

2. About domestic and family violence offending..... 3

2.1 What is 'domestic violence'?	3
2.2 Understanding different types of DFV-related offences.....	3
2.3 Recorded offences and profile of victim survivors and perpetrators.....	4
2.4 Sentenced DFV-related cases and offences	6

3. Aggravating factor for DV offences10

3.1 What the legislation says.....	10
3.2 The introduction of the aggravating factor	10
3.3 What we know already.....	11
3.4 The WSJ Taskforce recommendation and need for a review	11
3.5 What the courts have said.....	12
3.6 What other jurisdictions do	13
3.7 Previous reviews and inquiries.....	13
3.8 Sentencing data on offences, penalty outcomes and trends regarding the aggravating factor.....	14
3.9 Stakeholder views.....	17
3.10 Issues and questions	17

4. Contravention of a domestic violence order19

4.1 What we have been asked to look at.....	19
4.2 How Queensland maximum penalties compare to other states and territories.....	21
4.3 Previous research and the WSJ Taskforce findings	21
4.4 What courts have said	22
4.5 Sentencing data on penalty outcomes and trends.....	24
4.6 Stakeholder submissions	28
4.7 Issues and questions.....	29

5. Human rights and systemic disadvantage considerations.....30

5.1 Human right considerations	30
5.2 Systemic disadvantage, cultural considerations and other impacts on marginalised and disadvantaged groups.....	32

6. Other issues.....35

6.1 Anomalies and complexities.....	35
6.2 Other relevant considerations.....	36

Appendix 1: Council members and contributors40

Appendix 2: About orders and relevant relationships under the DFVPA41

Appendix 3: Approach to the sentencing of domestic violence offences in other jurisdictions.....43

1. Aggravating factors and circumstances of aggravation	43
2. Maximum penalties for contravention of a domestic violence order	45

Publication information	47
Endnotes	48

List of Figures

Figure 1: Timeframes for assessing the impacts of domestic and family violence sentencing reforms in Queensland review	2
Figure 2: Types of DFV-related offences in Queensland, including offences under review.....	4
Figure 3: Relationship of offender to victim, by Indigenous status and sex of victim, selected offences, 2022–23 [reproduced from <i>Crime Report, Queensland, 2022–23</i> , Figure 36]	5
Figure 4: Recorded female and male victimisation rates, of DFV-related offences against the person 2022–23 [reproduced from <i>Crime Report, Queensland, 2022–23</i> , Figure 37].....	6
Figure 5: Volume and type of offences sentenced in all Queensland Courts, 2021–22 to 2023–24	7
Figure 6: DV 9(10A) offences as a proportion of all sentenced offences, by court level.....	14
Figure 7: Top 10 offences (by proportion) sentenced (as MSO) in the Magistrates Courts, where s 9(10A) applied.....	15
Figure 8: Top 10 offences (by proportion) sentenced (as MSO) in the higher courts, where s 9(10A) applied	16
Figure 9: Key reviews and changes to the law in Queensland impacting sentencing and maximum penalties for contravention of a domestic violence order, 2009 to present.....	19
Figure 10: Number cases involving at least one offence of contravention of a DVO (MSO and non-MSO) adults and children, sentenced in Queensland, 2005–06 to 2023–24.....	25
Figure 11: Number of contravention of a domestic violence order (MSO) cases, 2005–06 to 2023–24.....	25
Figure 12: Contravention of a domestic violence order (MSO) cases by proportion that are custodial, 2012–13 to 2023–24 (combined lower and higher courts).....	27
Figure 13: Contravention of a domestic violence order (MSO) cases by proportion that receive a monetary penalty, 2012– 13 to 2023–24 (combined lower and higher courts).....	28

List of Tables

Table 1: Penalty imposed for top 10 offences (by number) sentenced (as MSO) in the Magistrates Courts, where s 9(10A) applied	15
Table 2: Penalty imposed for top 10 offences (by number) sentenced (as MSO) in the higher courts, where s 9(10A) applied	16

Glossary

Term	Definition
Aggravating factor	A factor that courts must treat as making the offence more serious at sentence meaning that a stronger penalty may be ordered. This is different to a 'circumstance of aggravation' which increases the maximum penalty for an offence.
Associated domestic violence	Behaviour defined as 'associated domestic violence' in the <i>Domestic and Family Violence Protection Act 2012</i> (Qld) ('DFVPA'). See section 2.1 for more information.
Contravention of a DVO	A type of offence committed when a person does not follow the conditions of a DVO (also called a 'breach').
<i>Domestic and Family Violence Protection Act 2012</i> (Qld) or 'DFVPA'	Legislation that allows a court to make a domestic violence order to provide protection against further domestic violence, gives police particular powers to respond to domestic violence, and establishes contravention offences, including the maximum penalties that apply. See section 4.1 for more information.
Domestic violence	Behaviour defined as 'domestic violence' in the DFVPA. See section 2.1 for more information.
Domestic violence offence	An offence as defined in section 1 of the <i>Criminal Code</i> (Qld), being an offence committed by a person involving behaviour that is also domestic violence or associated domestic violence, and/or contravenes a DVO. It does not include offences under the DFVPA, such as the offence of contravention of a DVO.
Domestic violence order ('DVO')	An order made by a court to protect the person who has had domestic violence committed against them (known as 'the aggrieved') and others from domestic violence. It includes conditions that require the person who has committed violence (called 'the respondent') to be of good behaviour and not commit domestic violence against the other person. A DVO may also be referred to as a protection order.
<i>Penalties and Sentences Act 1992</i> (Qld) or 'PSA'	Legislation that guides courts sentencing an adult person convicted of a Queensland offence.
Person sentenced, defendant, perpetrator	Persons who are charged with or found guilty of a domestic violence offence are referred to differently depending on the context - including person sentenced, person charged with an offence, defendant or perpetrator.
Victim or victim survivor	Persons who are the victims of a domestic violence offence. People who have experienced domestic violence might prefer a different term, like 'survivor', because experiencing a crime does not define who a person is.

1. Background

1.1 Introduction

This paper addresses Part 2 of the [Terms of Reference](#) issued on 17 May 2023, by the Attorney-General and Minister for Justice to the Queensland Sentencing Advisory Council ('Council'). We have been asked to review and report on the operation of the aggravating factor in section 9(10A) of the *Penalties and Sentences Act 1992* (Qld) ('PSA') and the impact of increase in maximum penalties for contravention of a domestic violence order ('DVO').

The Council must report by **30 December 2025**. In this paper, we ask **6 questions** about how sentencing for domestic violence is working and how to assess if the aims of these reforms are being met.

For each of the questions asked, we have set out general considerations you might want to think about in responding, as well as legal and other technical considerations.

1.2 What we have been asked to do

We have been asked to consider whether certain changes to the law about how these offences are sentenced have affected sentencing practices and let the Attorney-General know our views about whether any further changes are needed to make sure they are working as intended.

The Terms of Reference set out in detail what we have been asked to do.¹

In particular, we have been asked to:

- review sentencing practices for domestic violence related offences following changes to the PSA;
- advise on the impact of this aggravating factor on sentencing outcomes across all domestic violence-related offences;
- identify any trends or anomalies in the application of the aggravating factor, or in sentencing for domestic violence-related conduct generally, that lead to inconsistencies or hinder the sentencing process;
- examine whether the aggravating factor is impacting victim satisfaction with the sentencing process; and
- consider how sentencing trends and outcomes for contravention of a DVO may have changed following the 2015 increase in the maximum penalties.²

We have also been asked to:

- review relevant national and international research;
- consult with key stakeholders;
- advise on the potential impact of any recommendations on the disproportionate representation of Aboriginal and Torres Strait Islander people within the criminal justice system; and
- consider compatibility with rights protected under the *Human Rights Act 2019*.³

The Terms of Reference also ask us to look at earlier reports.⁴

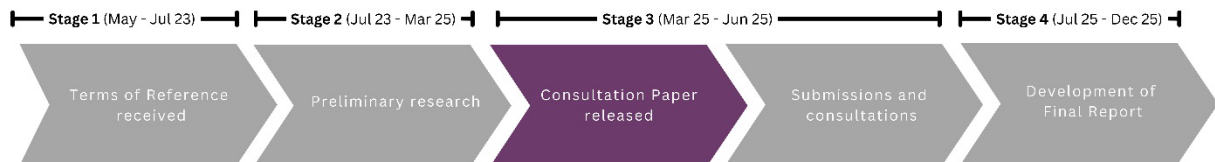
Some matters are outside the scope of this review including:

- penalties imposed on children sentenced under the *Youth Justice Act 1992* (Qld);
- sentencing for Commonwealth offences, although we will address potential anomalies arising from sentencing laws for these offences; and
- how people charged with domestic violence offences are dealt with under the *Mental Health Act 2000* (Qld).

1.3 Our approach

We are conducting this review in 4 stages.

Figure 1: Timeframes for assessing the impacts of domestic and family violence sentencing reforms in Queensland review



In addition to this consultation paper, we will release several research papers reporting on different aspects of sentencing, including:

- A *Sentencing Spotlight* about the offence of contravention of a DVO. This will look at data on sentencing outcomes and will be accompanied by separate papers focusing on:
 - Short sentences of imprisonment for this offence; and
 - Sentencing outcomes for sentenced cases for this offence where this is not the most serious offence sentenced.
- A Research Brief looking at changes in sentencing trends for the offence of contravention of a DVO.
- Research Briefs exploring different aspects of domestic violence as an aggravating factor on sentencing outcomes. These briefs will include:
 - A comparison of sentencing outcomes for domestic violence offences versus non-domestic violence offences; and
 - A pre- and post-introduction analysis of sentencing levels for the offence of manslaughter, based on type of manslaughter (e.g., violent or unlawful act, provocation, criminal negligence, diminished responsibility, killing for preservation in an abusive domestic relationship) and whether it was a domestic violence offence or not.

More information about the timing of the release of these papers will be made available on [our website](#).

A team from the Monash University Gender and Family Violence Prevention Centre ('MGFVPC'), in partnership with an academic at Griffith University, is undertaking separate research for us exploring whether the aggravating factor for domestic violence offences is affecting victim satisfaction with the sentencing process and, if so, in what way.

The findings will be reported on by the Council in its final report.

2. About domestic and family violence offending

In this paper, we focus on sentencing after a guilty plea or conviction for specific domestic or family violence ('DFV') related offences. However, many offences are never reported to police, meaning no formal legal action is taken.

The latest Personal Safety Survey that considers the nature and extent of Australians' experiences of violence reports that, since the age of 15:

- 1 in 4 women experienced violence by an intimate partner or family member (27%); and
- 1 in 8 men experienced violence by an intimate partner or family member (12%).⁵

Other offences may be reported to police and recorded, but not result in the perpetrator being charged, or if charged, being convicted and sentenced.

2.1 What is 'domestic violence'?

In Queensland, 'domestic violence'⁶ means behaviour, or a pattern of behaviour,⁷ that:

- is physically, sexually, emotionally, psychologically, or economically abusive
- is threatening
- is coercive, or
- in any other way controls or dominates the other person in a relationship and causes them to fear for their own safety or wellbeing or the safety and wellbeing of someone else.⁸

More information is available on the Queensland Government [website](#).

Domestic violence can occur between two people who:

- are in, or have been in, an intimate personal relationship
- are in, or have been in, a family relationship, or
- have an informal care relationship.⁹

The meaning of these different types of relationships is explained in **Appendix 2**, Table A-2.

Domestic violence may occur over time.¹⁰ It can be a single act or more than one act or a series of acts that when considered cumulatively is abusive, threatening, coercive or causes fear.¹¹ The person's behaviour or pattern of behaviour is considered in the context of the whole relationship.¹²

'Associated domestic violence' means domestic violence behaviour by a respondent towards a child of the aggrieved, a child who usually lives with the aggrieved, a relative of an aggrieved or an associate of an aggrieved.¹³

2.2 Understanding different types of DFV-related offences

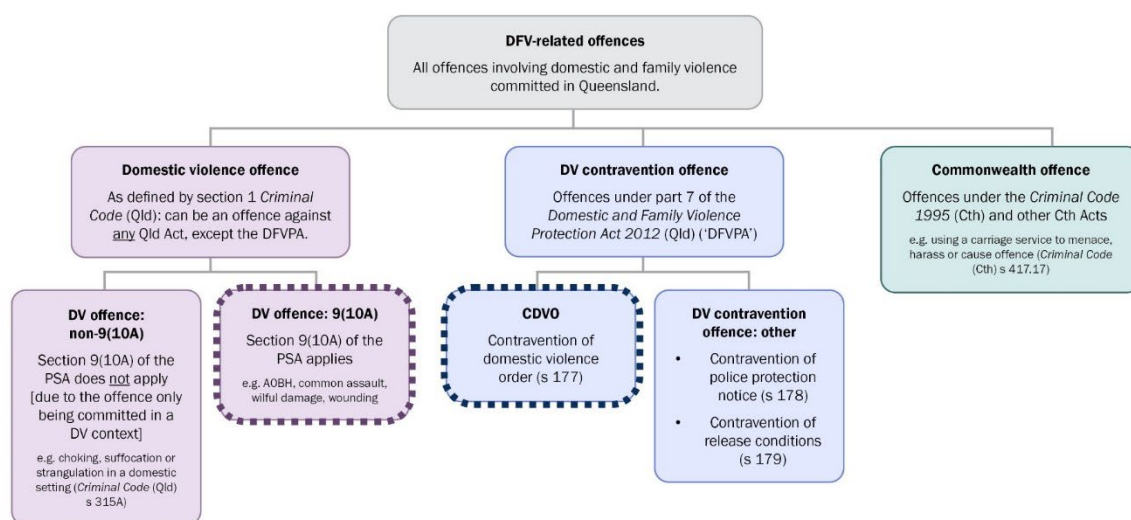
There are 3 broad categories of DFV-related offences, namely:

1. **Domestic violence offence** as defined in section 1 of the *Criminal Code* (Qld). There are two sub-categories of domestic violence offences we refer to in this paper:
 - **DV offence: 9(10A):** If an offence is a 'domestic violence offence' this means the aggravating factor under section 9(10A) of the PSA applies. See further 3.1.
 - **DV offence: non-9(10A):** Some offences can only be committed in the context of domestic violence, including: choking, suffocation or strangulation in a domestic setting;¹⁴ and unlawful stalking, intimidation, harassment or abuse if a domestic relationship exists.¹⁵ The Court of Appeal has said the aggravating factor should not be applied because 'all sentences ... will be in respect of domestic violence offences'.¹⁶

2. **DV contravention offences** established under Part 7 of the *Domestic and Family Violence Protection Act 2012* (Qld) ('DFVPA'). These are further categorised as:
 - **Contravention of domestic violence order ('CDVO'):** An offence under section 177 of the DFVPA of failing to comply with the conditions of a DVO.¹⁷ If there are circumstances of aggravation, a higher maximum penalty applies. See further 4.1.
 - **Other DV contravention offence:** Other offences under the DFVPA are contravention of police protection notice (s 178) and contravention of release conditions (s 179). See further Appendix 2, Table A-1.
3. **Commonwealth offences** may also be committed in the context of domestic and family violence however, unlike Queensland offences, these are not separately identified or 'flagged' as domestic violence offences. Examples include using a carriage service to menace or harass or cause offence,¹⁸ using a carriage service to make a threat to kill¹⁹ and production of child pornography for use through a carriage service.²⁰

Our review asks us to focus on section 9(10A) of the PSA and contravention of a DVO, as highlighted in Figure 2.

Figure 2: Types of DFV-related offences in Queensland, including offences under review



2.3 Recorded offences and profile of victim survivors and perpetrators

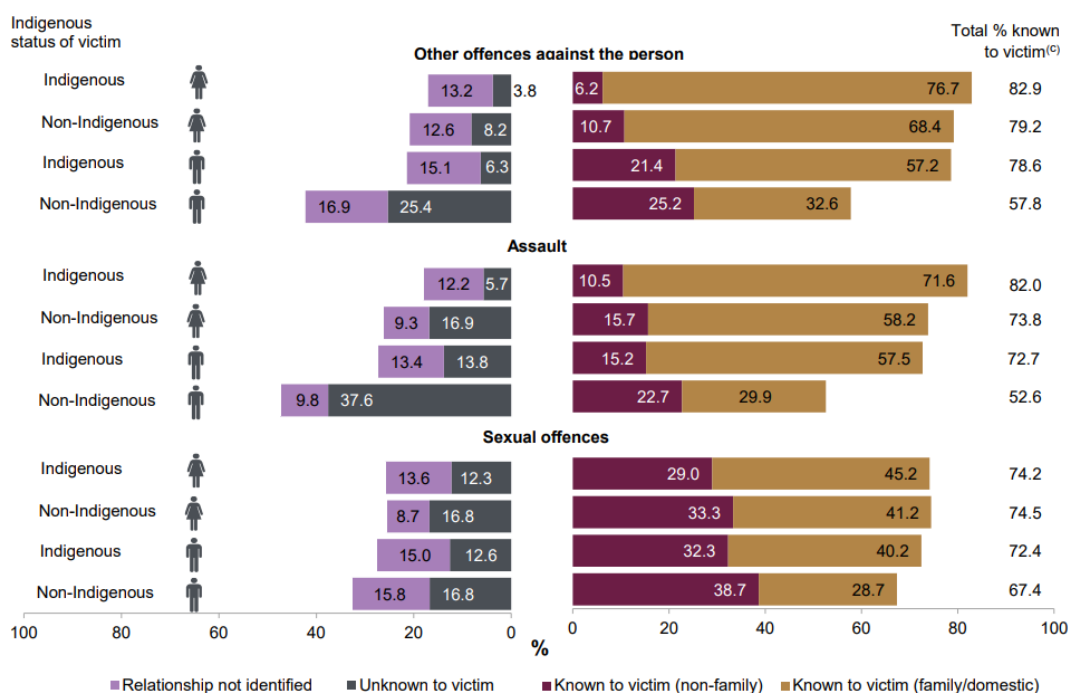
According to the most recent statistics covering the period July 2022 to June 2023, published by the *Queensland Government Statistician's Office*,²¹ we know that:

- there were 59,483 breach of domestic violence protection order offences recorded in Queensland – an increase of 12,734 offences (27.2%) from the previous year;²² and
- just over half of all offences of contravention of DVO were 'cleared' in the same financial year they were reported in (55.9%, n=33,268);²³

- of those charged with contravention of a domestic violence protection order;
 - 83.2 per cent were male; and
 - they were most commonly aged 25 to 49 years, with 1 in 5 offenders being 27 years or older;²⁴
- across all offences against the person where the offender–victim relationship was recorded, half of the victims (49.7%) were in a domestic or family relationship with the offender/s,²⁵ meaning the offence/s committed against them likely met the definition of a 'domestic violence offence';²⁶ and
- the proportion of victims who were in a domestic or family violence relationship with their offender/s was even higher for female victims and Aboriginal and Torres Strait Islander victims.²⁷

More information is shown in Figure 3.

Figure 3: Relationship of offender to victim,^(a) by Indigenous status^(b) and sex of victim, selected offences, 2022–23 [reproduced from *Crime Report, Queensland, 2022–23*, Figure 36]



Notes:

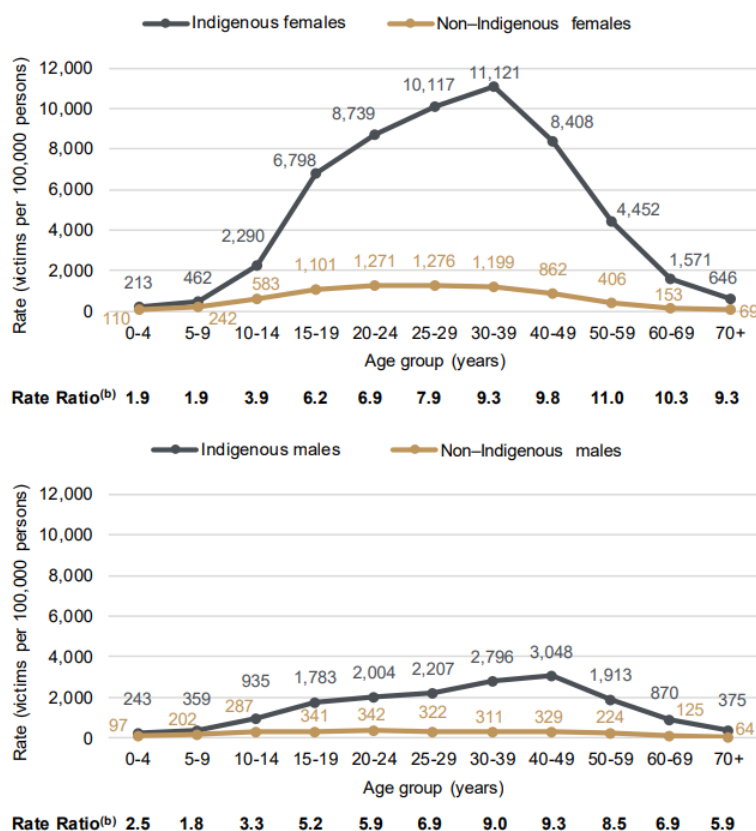
(a) Records where offender–victim relationship was not stated have been excluded from calculations.

(b) Includes only recorded victims whose Indigenous status and sex were identified.

(c) Total percentage known to victim has been calculated on unrounded figures.

As shown in Figure 4, Indigenous females had the highest victimisation rate for DFV-related offences against the person, followed by Indigenous males and non-Indigenous females. Non-Indigenous males had the lowest reported victimisation rates.²⁸

Figure 4: Recorded female and male victimisation rates,^(a) of DFV-related offences against the person 2022–23 [reproduced from *Crime Report, Queensland, 2022–23*, Figure 37]



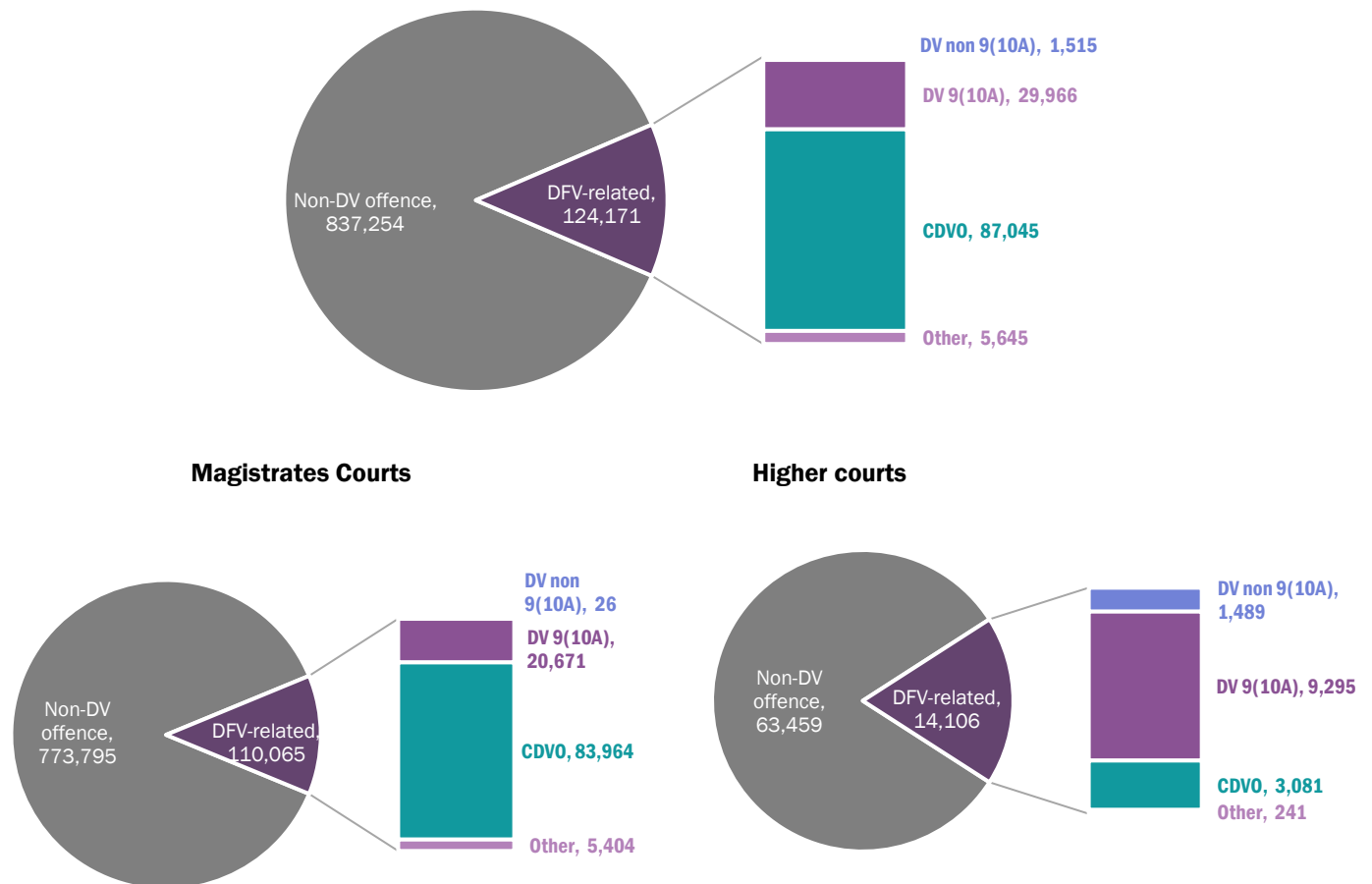
Notes: (a) Includes only victims whose Indigenous status and sex were identified; (b) Rate ratio is the victimisation rate for the Aboriginal and Torres Strait Islander population subgroup divided by the victimisation rate for the equivalent non-Indigenous population subgroup. Rate ratios have been calculated on unrounded rates.

2.4 Sentenced DFV-related cases and offences

Over the 3-year period from July 2021 to June 2024, there were 330,253 cases sentenced in Queensland involving 961,425 DFV-related offences committed by adults. The vast majority of these were sentenced in the Magistrates Courts (95.4% of cases and 91.9% of offences).

As shown in Figure 5, across all court levels, DFV-related offences represented 12.9 per cent of all offences sentenced ($n=124,171/961,425$), and the vast majority of DFV-related offences involved a contravention of a DVO offence (70.1%, $n=87,045/124,171$). DFV offences subject to s 9(10A) represented 24.1 per cent of all DFV-related offences sentenced ($n=29,966/124,171$).

Figure 5: Volume and type of offences sentenced in all Queensland Courts, 2021–22 to 2023–24



Data includes adult offenders, offences sentenced between 1 July 2021 and 30 June 2024. Commonwealth DFV offences are not able to be identified.

Source: QGSO, Queensland Treasury — Courts Database, extracted September 2024.

While the majority of all DFV-related offences are sentenced in the Magistrates Courts, the distribution of the types of DFV-related offences differs considerably as to whether they are dealt with in the Magistrates Courts or the higher courts.

In the Magistrates Courts, DFV-related offences made up 12.5 per cent of all offences sentenced ($n=110,065$). The majority of DFV-related offences sentenced in the Magistrates Courts were contravention of a DVO (76.3%, $n=83,964$), while 18.8 per cent were DV offences subject to s 9(10A).

In the higher courts, DFV-related offences made up 18.2 per cent of sentenced offences ($n=14,106/77,565$). DV offences subject to s 9(10A) were the highest volume, making up two-thirds of DFV-related offences sentenced (65.9%, $n=9,295$). Less than one-quarter of DFV-related offences sentenced in the higher courts were contravention of a DVO (21.8%, $n=3,081$).

Data on DV offences to which the aggravating factor applied (s 9(10A) offences) is presented in section 3.8. The sentencing outcomes for contravention of a DVO are explored in section 4.5.

3. Aggravating factor for DV offences

3.1 What the legislation says

From 5 May 2016, if an offence is a 'domestic violence offence', in most cases, the court must treat this as an aggravating factor.²⁹ As a result, the person may receive a harsher sentence.

A court does not have to treat the fact that the offence is a 'domestic violence offence' as an aggravating factor if it thinks it is not reasonable because of the exceptional circumstances of the case.³⁰ For example if the victim had committed a serious act or several acts of domestic violence towards the person being sentenced.³¹

Treating domestic violence as an aggravating factor does not change the maximum penalty.

This is different from a 'circumstance of aggravation' that is charged as part of the offence. In those cases, if proven, the maximum applicable penalty increases.³² For example:

- If a person contravenes a DVO and has a criminal history of domestic violence offences within the past 5 years, the maximum penalty is 5 years' imprisonment (or 240 penalty units) instead of 3 years' imprisonment (or 120 penalty units).³³ There is a similar circumstance of aggravation for breaching a restraining order.³⁴
- If a person unlawfully stalks, intimidates, harasses, or abuses another person, the maximum penalty is usually 5 years. This increases to 7 years if there is a domestic relationship between the person and the stalked person.³⁵

On 26 May 2025, two new aggravating factors under section 9 of the PSA are due to come into effect, applying in some cases to domestic violence offences. These new aggravating factors will apply to:

- domestic violence offences committed against a child when the offender was an adult (new section 9(10C)); and
- domestic violence offences where:
 - during the commission of the offence a child was exposed to domestic violence; or
 - the offence committed was also a contravention of a DVO (or a similar order made in Queensland, another part of Australia or New Zealand) (new section 9(10D)).³⁶

3.2 The introduction of the aggravating factor

In 2015, the Bryce Taskforce recommended that the Queensland Government introduce a circumstance of aggravation of domestic and family violence to be applied to all criminal offences.³⁷

The Queensland Government chose to implement the Taskforce's recommendation through the introduction of an aggravating factor rather than a circumstance of aggravation.³⁸

It was explained in the Explanatory Notes to the Bill which introduced the new aggravating factor:

An aggravating factor increases the culpability of an offender which means that the offender should receive a higher sentence within the existing sentencing range up to the maximum penalty for the offence. The amendment reflects community attitudes about the seriousness of criminal offences that occur in a domestic and family context and makes these offenders more accountable.³⁹

Although there was potential for higher sentences following its introduction, this was 'considered justified to protect vulnerable members of our community, denounce this type of offending and provide adequate deterrence to perpetrators of this type of offending'.⁴⁰

Community protection, deterrence, and denunciation are all purposes of sentencing under the PSA alongside punishment and rehabilitation.⁴¹

3.3 What we know already

The Council published a *Research Brief* in May 2021 that considered the impact of the aggravating factor in a limited way. We compared differences in sentencing outcomes for cases of common assault and assaults occasioning bodily harm ('AOBH') (simpliciter and aggravated) that were domestic violence offences—thereby triggering the application of the section 9(10A) PSA aggravating factor—to cases that were not.⁴²

Sentencing practices suggested courts were treating domestic violence offences as more serious offending, warranting the greater use of custodial (prison) penalties and longer custodial sentences.

We concluded that the sentencing reforms introduced in 2016 may be having their intended impact on sentencing outcomes, although we emphasised the need for further research.⁴³ One reason for this was that we could not determine how sentencing levels for offences committed within a domestic violence context compared to sentencing practices for domestic violence offences prior to the change. This was because the domestic violence 'flag', which allows the identification of domestic violence offences in the courts data, was only introduced on 1 December 2015.⁴⁴

3.4 The WSJ Taskforce recommendation and need for a review

In March 2021, the Queensland Government established the Women's Safety and Justice Taskforce ('WSJ Taskforce') to examine the experiences of women across the criminal justice system. In its first report, the Taskforce made 89 recommendations, including recommendation 73 which called on the then Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence to ask us to review the impact of the operation of the aggravating factor in section 9(10A) of the PSA.⁴⁵

The Taskforce recommended this advice 'include consideration of the impact of the aggravating factor on sentencing outcomes for charges involving all forms of DFV, including non-physical violence and coercive control',⁴⁶ noting feedback from victims and specialist DFV stakeholders about the lack of seriousness placed on non-physical forms of abuse.⁴⁷

The Taskforce described coercive control as a pattern of controlling and abusive behaviours perpetrated against a person by another person that are designed 'to create a climate of fear, isolation, intimidation, and humiliation'.⁴⁸ It can involve a range of abusive behaviours that, over time, restrict a person's freedom and deprive them of their autonomy.⁴⁹ The new offence of coercive control will be established under the *Criminal Code* (Qld) on 26 May 2025.⁵⁰ This means that the Council must focus on existing offences capturing those forms of non-physical violence that the Taskforce is concerned about.

The Taskforce also recommended several other amendments to the PSA, including:

- requiring the respondent's domestic violence history to be provided to the court when the perpetrator is being sentenced for breach of a DVO or other domestic violence-related offence (recommendation 59);
- requiring a court, when sentencing an offender, to consider whether the impact of being a victim of domestic and family violence, including coercive control, on their offending behaviour is a mitigating factor (recommendation 66);
- requiring a court to treat as aggravating: (i) that during the commission of a domestic violence offence a child was exposed to domestic and family violence; (ii) that the domestic violence offence committed was also a breach of a DVO or other court order or injunction (recommendation 79); and
- ensuring that if a domestic violence offence has exposed a child to domestic violence, this is reflected in the sentenced person's criminal history (recommendation 79).

The adoption of a serial family violence offender declaration scheme, similar to those existing in Tasmania and Western Australia, was not recommended.⁵¹

3.5 What the courts have said

Prior to the amendment in 2016

Prior to the amendment, which came into effect on 5 May 2016, the relationship between the person being sentenced and the victim was a relevant sentencing factor that could be taken into account.⁵² However, there was no legislative requirement to treat this factor as aggravating and there was some inconsistency with offences which happened in a domestic violence context.⁵³

For example, in the 2005 case of *R v Fairbrother; Ex parte Attorney-General (Qld)*,⁵⁴ it was acknowledged that domestic violence 'is a crime against the State warranting salutary punishment' and has significant impacts supporting the need for denunciation and deterrence.⁵⁵

When does the aggravating factor apply?

The aggravating factor applies to all offences sentenced from 5 May 2016, regardless of when the offence was committed.⁵⁶

There is no statutory definition of what might amount to 'exceptional circumstances', although the PSA includes 2 examples:

- 1 the victim of the offence has previously committed an act of serious domestic violence, or several acts of domestic violence, against the offender
- 2 the offence is manslaughter under the Criminal Code, section 304B [Killing for preservation in an abusive domestic relationship].⁵⁷

'Exceptional circumstances' were found in *R v Solomon*,⁵⁸ and *R v Blockey*,⁵⁹ which means the aggravating factor was not applied at sentence.

Cases such as *R v O'Sullivan; Ex parte Attorney-General (Qld)*⁶⁰ ('O'Sullivan') and *R v Castel*⁶¹ show that even if exceptional circumstances are not established, the court must decide the appropriate weight to give to the aggravating factor.⁶²

What impact should an aggravating factor have on sentencing outcomes?

The Court of Appeal has stated that section 9(10A) of the PSA "may" result in a more punitive sentence'; however, all the circumstances of the case must be considered.⁶³

The Court of Appeal has previously noted that the amendments to the PSA 'inform the exercise of the sentencing discretion' but they do not mean there must be punishment 'to any greater extent than was authorised by the former law'.⁶⁴ However, changes to the law may increase penalties because:⁶⁵

In such a process, some of the principles prescribed by s 9 of the PSA may have great weight and others little weight, depending on the circumstances of each offence and each offender. In some cases, some of these principles will have little or no effect upon the outcome of the process because, in the particular circumstances, other principles have an almost overwhelming claim on the sentencing discretion.⁶⁶

In *R v Hutchinson*,⁶⁷ the Court of Appeal commented that in respect of section 9(10A) of the PSA, it:

is likely to have an effect over time on the sentencing for offenders convicted of offences that are also domestic violence offences, but the effect in any particular case will depend on the balancing of all the relevant factors related to that offending and offender.⁶⁸

In *R v HCH*,⁶⁹ Davis J remarked '[s]ection 9(10A) effectively mandates that considerations such as denunciation and deterrence should have greater weight than they might otherwise.'⁷⁰

Does it mean past sentences are no longer useful?

There have been different views over time in the Court of Appeal regarding the use of earlier decisions and their relevance.

In 2019, in *O'Sullivan*,⁷¹ the Court of Appeal referred to the introduction of the aggravating factor as signifying a legislative intention that offences committed in the context of domestic violence are more serious than previously decided cases.⁷² The Court further observed that 'The range for appropriate sentences that was established by

[previous] cases ... can no longer be regarded as useful for purposes of comparison because in none of them' were the current legislative provisions taken into account.⁷³

The position in *O'Sullivan* has been followed in subsequent decisions.⁷⁴ However, in 2020 in *R v Castel*,⁷⁵ it was held that:

It does not necessarily follow that little or no guidance will be obtained from those sentences for similar offending ... provided that any absence of treating the commission of the offence as a domestic violence offence as an aggravating factor is taken into consideration.⁷⁶

Most recently in 2024, in *R v RBO*,⁷⁷ it was held that while section 9(10A) of the PSA creates consistency in sentencing principles, and

the commencement of s 9(10A) did not make all past sentences in this area irrelevant. Those past cases which took the aggravating context of violent offending in a domestic setting into account as a relevant circumstance, may retain some potentially comparable relevance.⁷⁸

The Court of Appeal has also considered that section 9(10A), on its own, has not had a significant impact for offences where domestic violence was already considered aggravating, such as repeated sexual conduct with a child.⁷⁹

Experiencing domestic violence and committing a domestic violence offence

There are cases where a victim of domestic violence committed a domestic violence offence against a child where the aggravating factor was still applied but their history as a victim of domestic violence reduced their moral culpability.

For example, in *O'Sullivan*, the death of a toddler was caused by the mother's abusive partner. The mother of the toddler was charged with manslaughter (domestic violence offence) on the basis of criminal neglect. The Court of Appeal considered that while a severe head sentence in this case was called for, her personal circumstances as a victim of domestic violence heavily mitigated her moral culpability, and together with her early plea of guilty and remorse, these factors justified an early parole eligibility date.⁸⁰

If a person being sentenced was a victim or exposed to domestic violence as a child, if there is a link between the upbringing and the development of a mental disorder which contributed to the offending, this can also be mitigating.⁸¹

The PSA was amended in 2023 to require a court to treat the effect of experiencing domestic violence as a mitigating factor and to consider the extent to which the offence was attributable to this.⁸²

3.6 What other jurisdictions do

Many other jurisdictions either treat the fact an offence is a domestic violence offence or occurred in the context of domestic violence as aggravating (by operation of law or guidelines) or have legislated the relationship context in which the offence has occurred as a circumstance of aggravation.

These approaches differ in the way the higher seriousness of domestic violence offending has been expressed and legislated for.

See **Appendix 3** for more information about different models.

3.7 Previous reviews and inquiries

Tasmanian and New South Wales Sentencing Council reviews

Although neither Tasmania or New South Wales ('NSW') have introduced a general aggravating factor that an offence is also a family violence offence, the Tasmanian Sentencing Advisory Council ('TSAC') and the NSW Sentencing Council have compared sentences imposed (and, in NSW, served) for offences with a DFV component.⁸³

TSAC was only able to undertake a limited comparison.⁸⁴

The NSW Sentencing Council referred to a Bureau of Crime Statistics and Research ('BOCSAR') study that compared prison penalties for serious domestic and non-domestic assault. BOCSAR was able to make this comparison with its reoffending dataset that identified DFV offences following amendments made to NSW legislation.⁸⁵

The NSW Sentencing Council conducted its own analysis of BOCSAR and Corrective Services NSW data for specific DV and non-DV offences. It considered differences between DV and non-DV offences for common assault, AOBH, destroy/damage property less than \$2,000 ('property damage'), contravene an apprehended violence order, and stalk or intimidate sentencing outcomes.

The Council reported a small difference in the use of imprisonment and bonds (with or without supervision) with DV offenders more likely to receive these types of sentences than non-DV offenders,⁸⁶ but no significant differences in imprisonment length when comparing outcomes for DV and non-DV offenders.⁸⁷ Instead, variables found to have a significant relationship with sentence length included assault severity, age, gender, Indigenous status, plea, concurrent offences, prior serious assault court appearances, prior imprisonment, and breach of prior orders.⁸⁸

Review of the Overarching guideline for sentencing offences committed in a domestic violence context (England and Wales)

A recent independent review in England and Wales recommended some changes relating to the guideline for sentencing offences committed within a context of domestic abuse, including that the fact the offence occurred in a 'domestic abuse context' be added as an aggravating factor to more offence-specific sentencing guidelines.⁸⁹ These changes were accepted by the Sentencing Council for England and Wales.⁹⁰

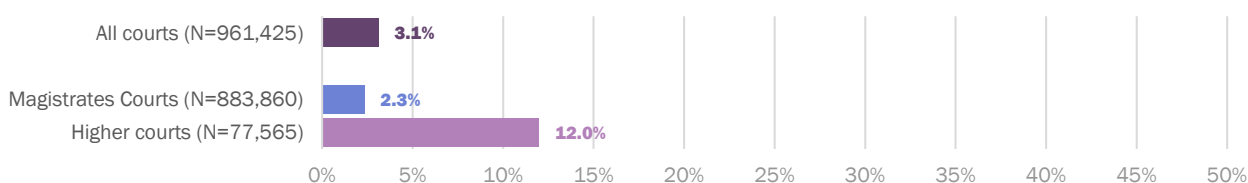
The review examined the impact of the guidelines on sentencing practices. It found that, for certain categories of offending, such as harassment and breach of protective orders, the domestic violence context led to an increase in the proportion of sentences attracting a more severe penalty after the guideline's introduction. This increase manifested in several ways, including courts imposing greater rehabilitation conditions on orders or more severe sentence types (e.g., custody in place of a community order), or more severe sentences of the same type (e.g., a longer custodial sentence).⁹¹

There were, however, a comparatively high percentage of cases where the domestic context made little or no difference to the sentence for post-guideline offences of criminal damage (63%) and breach of protective order (45%) offences.⁹²

3.8 Sentencing data on offences, penalty outcomes and trends regarding the aggravating factor

As shown in Figure 6, across all court levels, over the 3-year period from July 2021 to June 2024, DV offences subject to s 9(10A) made up 3.1 per cent of all sentenced offences. These offences comprised 24.1 per cent of all DFV-related offences sentenced (n=29,966/124,171).

Figure 6: DV 9(10A) offences as a proportion of all sentenced offences, by court level



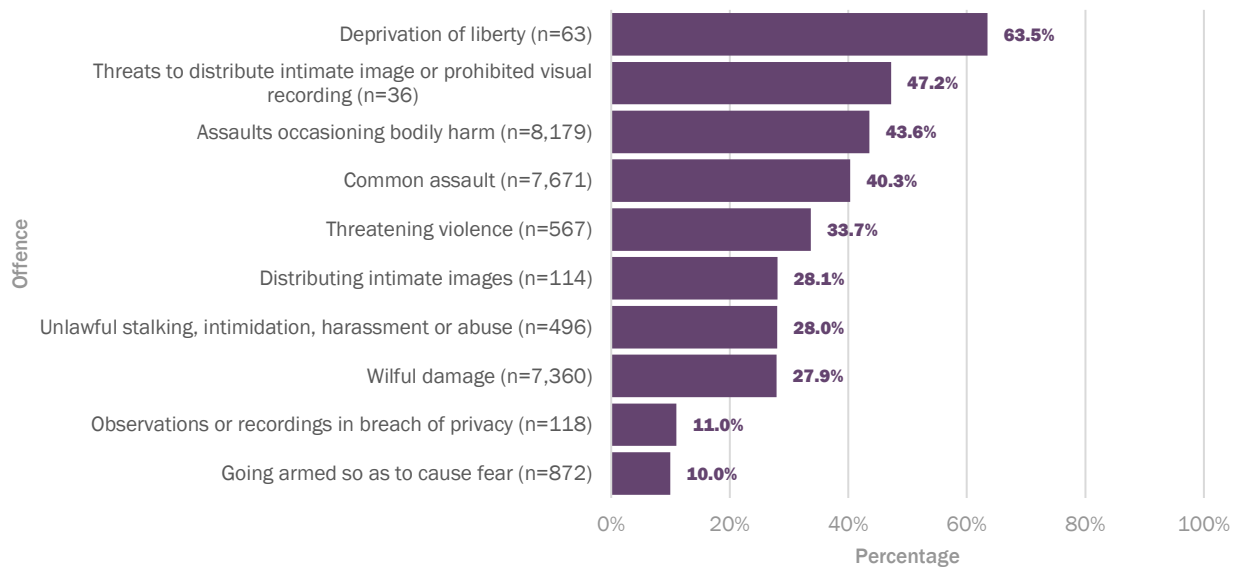
Data include adult offenders, Magistrates Courts and higher courts cases sentenced between 1 July 2021 and 30 June 2024. Source: QGSO, Queensland Treasury – Courts Database, extracted September 2024.

In the Magistrates Courts, DV offences subject to s 9(10A) made up 2.3 per cent of all sentenced offences. Wilful damage was the most common DV offence subject to s 9(10A) sentenced in the Magistrates Courts, making up 0.6 per cent of all offences sentenced (n=5,443 sentenced offences).

Two-thirds of the DV offences sentenced in the higher courts (67.0%, n=9,295) were subject to s 9(10A).

DV offences subject to s 9(10A) made up 12.0 per cent of all offences sentenced in the higher courts (n=9,295), where the most frequent offence was common assault (2.7% of sentenced offences), assaults occasioning bodily harm (2.7% of sentenced offences), and indecent treatment of a child under 16 (1.7% of sentenced offences).

Focusing on cases sentenced in the Magistrates Courts where the most serious offence (MSO) sentenced could be subject to s 9(10A), the offence with the highest proportion of DV offences was deprivation of liberty, where 63.5 per cent of sentences for this offence were subject to s 9(10A).

Figure 7: Top 10 offences (by proportion) sentenced (as MSO) in the Magistrates Courts, where s 9(10A) applied

Data include adult offenders, MSO, Magistrates Courts cases sentenced between 1 July 2021 and 30 June 2024. Offences with a sample size less than 30 were excluded from the top 10.

Source: QGSO, Queensland Treasury – Courts Database, extracted September 2024.

The offence (MSO) with the highest number of DV offences subjected to s 9(10A) sentenced in the Magistrates Courts was assaults occasioning bodily harm (n=3,564), closely followed by common assault (n=3,093). Both offences had imprisonment orders as the most common penalty type imposed. Imprisonment was the most common penalty for 7 of the top 10 (by number) DV offences subjected to s 9(10A) sentenced in the Magistrates Courts. The exceptions were wilful damage, breach bail condition and public nuisance, for which a monetary order was most common.

Table 1: Penalty imposed for top 10 offences (by number) sentenced (as MSO) in the Magistrates Courts, where s 9(10A) applied

Offence	N	Imprisonment (%)	Partially suspended (%)	Wholly suspended (%)	Community service (%)	Probation (%)	Good behaviour, recognisance (%)	Monetary (%)	Convicted, not further punished (%)
Assaults occasioning bodily harm	3,564	59.2	2.8	12.0	1.6	17.3	0.8	5.7	0.2
Common assault	3,093	30.7	1.5	12.3	2.8	25.4	4.5	21.2	1.5
Wilful damage	2,053	14.2	0.7	8.6	2.7	23.0	5.5	42.4	2.8
Breach bail condition	407	6.9	0.0	7.1	1.5	20.6	5.4	43.5	15.0
Serious assaults	251	49.0	2.4	15.5	0.8	24.3	0.4	7.6	0.0
Burglary	198	57.6	3.0	9.1	1.0	19.7	1.0	7.1	1.5
Threatening violence	191	45.0	2.6	10.5	1.6	24.6	2.6	10.5	2.6
Public nuisance	189	4.2	0.0	5.3	4.8	8.5	12.7	61.9	2.6
Dangerous operation of a vehicle	153	46.4	2.6	19.6	0.7	21.6	0.0	7.8	0.0
Unlawful stalking, intimidation, harassment, or abuse*	139	35.3	4.3	17.3	0.7	30.9	1.4	8.6	0.7

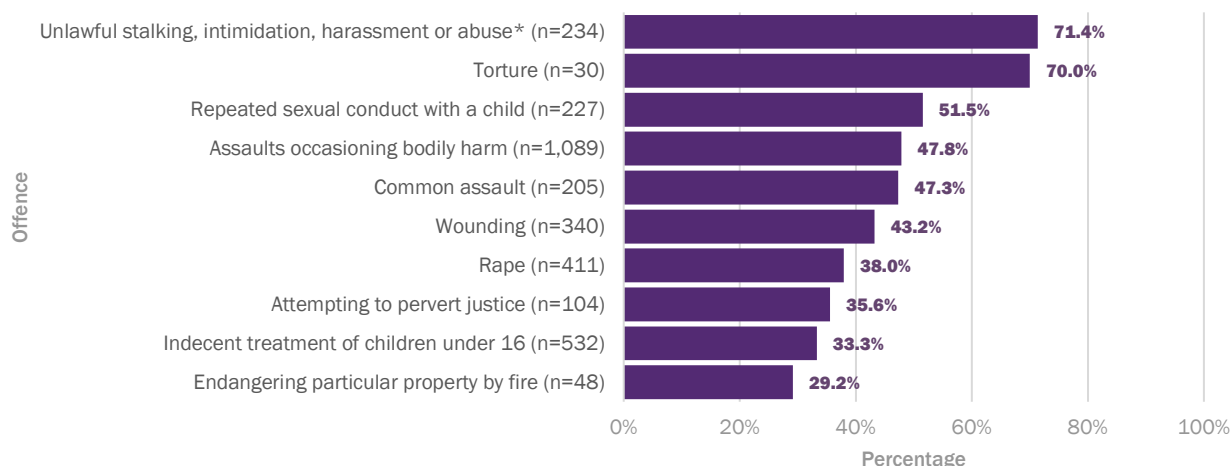
Data include adult offenders, MSO, Magistrates Courts cases sentenced between 1 July 2021 and 30 June 2024. Intensive correction orders, rising of the court, and disqualification of driver's licence were included in the calculations but not presented.

* offences committed before 1 August 2023.

Source: QGSO, Queensland Treasury – Courts Database, extracted September 2024.

In the higher courts, the offence (MSO) with the highest proportion of DV offences subject to s 9(10A) was unlawful stalking, intimidation, harassment, or abuse (71.4%),⁹³ closely followed by torture (70.0%).

Figure 8: Top 10 offences (by proportion) sentenced (as MSO) in the higher courts, where s 9(10A) applied



Data include adult offenders, MSO, higher courts cases sentenced between 1 July 2021 and 30 June 2024. Offences with a sample size less than 30 were excluded.

* offences committed before 1 August 2023.

Source: QGSO, Queensland Treasury – Courts Database, extracted September 2024.

The offence (MSO) with the highest number of DV offences subject to s 9(10A) sentenced in the higher courts was AOBH (n=521). An imprisonment order was the most common penalty for each of the top 10 DV offences subject to s 9(10A) (MSO) sentenced in the higher courts, except for indecent treatment of a child under 16, for which a partially suspended sentence was most common.

Table 2: Penalty imposed for top 10 offences (by number) sentenced (as MSO) in the higher courts, where s 9(10A) applied

Offence	N	Imprisonment (%)	Partially suspended (%)	Wholly suspended (%)	Community service (%)	Probation (%)	Good behaviour, recognisance (%)	Monetary (%)	Convicted, not further punished (%)
Assaults occasioning bodily harm	521	62.6	9.8	10.7	1.3	8.3	4.0	1.2	1.0
Indecent treatment of children under 16	177	22.0	42.4	20.9	0.0	10.7	0.6	0.6	1.7
Unlawful stalking, intimidation, harassment or abuse*	167	73.1	7.2	11.4	0.0	6.0	1.2	0.6	0.0
Rape	156	65.4	29.5	2.6	0.0	2.6	0.0	0.0	0.0
Wounding	147	70.1	12.2	12.2	1.4	3.4	0.0	0.7	0.0
Grievous bodily harm	140	82.9	12.9	3.6	0.7	0.0	0.0	0.0	0.0
Repeated sexual conduct with a child	117	82.9	15.4	1.7	0.0	0.0	0.0	0.0	0.0
Common assault	97	29.9	4.1	8.2	3.1	15.5	9.3	11.3	17.5
Burglary	72	76.4	11.1	8.3	0.0	2.8	0.0	0.0	0.0
Arson	42	76.2	16.7	7.1	0.0	0.0	0.0	0.0	0.0

Data include adult offenders, MSO, higher courts cases sentenced between 1 July 2021 and 30 June 2024. Intensive correction orders were included in the calculations but not presented

* offences committed before 1 August 2023.

Source: QGSO, Queensland Treasury – Courts Database, extracted September 2024.

While it is not possible to draw any conclusions from this table about the impact the aggravating factor is having on sentencing outcomes, the Council will be exploring these outcomes, compared to non-DV offence outcomes, during the next stages of the review.

3.9 Stakeholder views

During preliminary consultation, Legal Aid Queensland told us 'the aggravating factor is a foremost factor in a sentencing court's consideration of appropriate penalties, which is reflected in the ultimate penalties imposed'.⁹⁴

The North Queensland Women's Legal Service told us:

We hear from victims that do attend sentencing, that whatever words are used by judicial officers to denounce a domestic violence offence or to enunciate the fact that the offending is aggravated by being domestic violence, there is meaning to victim-survivors by way of validation of their experiences of domestic violence.⁹⁵

However, it was concerned the impact of the aggravating factor to increase sentence length or actual prison time might be negated by 'pleas of guilty, payment of criminal compensation, and other considerations under the guidelines'.⁹⁶

No to Violence, the Queensland Indigenous Family Violence Legal Service, the Salvation Army Australia, Sisters Inside Inc and Relationships Australia Queensland suggested the review consider potential unintended consequences of section 9(10A) of the PSA, including the misidentification of the primary victim of domestic violence, especially women and marginalised women experiencing intersecting disadvantages, such as Aboriginal and Torres Strait Islander women.⁹⁷

The Office of the Public Advocate told us that sentencing domestic violence offences is a complex issue, particularly when the victim has impaired decision-making ability and a high reliance on the perpetrator: 'the outcome of the sentencing for domestic violence in such situations could have significant implications for the victim in terms of their day-to-day life and care'.⁹⁸

3.10 Issues and questions

In reviewing the aggravating factor, we have been asked to focus on the operation of the aggravating factor on sentencing outcomes, as well as how it has affected victims' satisfaction within the sentencing process. While this includes examining whether sentences have changed or increased as a result, we have not been asked to assess whether the broader aims of introducing this reform have been met. Namely, whether sentences:

- better reflect community attitudes about the seriousness of offences occurring in a domestic and family context;
- protect vulnerable members of the community;
- make perpetrators more accountable for their actions; and
- deter perpetrators from offending.

The authors of our commissioned [Literature Review](#) have highlighted that assessing effectiveness of sentencing responses or sanctions to domestic and family violence might be particularly challenging.⁹⁹ In this context, they note a lack of strong evidence on whether DFV-related offences are being sentenced more severely than violent offences committed in other contexts, except for Aboriginal and Torres Strait Islander defendants.

The findings of the Council's current review will contribute to available evidence about whether current sentencing laws are in fact resulting in DV offences being sentenced more severely than non-DV offences.

Another aspect of the aggravating factor's operation is the 'exceptional circumstances' provision. This was intended to ensure that the aggravating factor was not applied where it should not be, and will form part of our investigation.

We invite feedback about the aggravating factor, what outcomes or measures might be important in deciding what impact this reform has had on sentencing practices, and what other issues might be affecting its operation.

Question 1 – Aggravating factor for domestic violence offences

- | | |
|---|--|
| 1 | <p>(a) What has been the impact of current sentencing laws, which require a court in sentencing a person for a domestic violence offence to treat the fact that it is a domestic violence offence as aggravating, on court sentencing practices?</p> <p>(i) If you think the aggravating factor has changed court sentencing practices, in what specific ways have they changed?</p> |
|---|--|

(ii) If you think it has not changed court sentencing practices, what are the potential reasons for this?

- (b) What measures are important to assess the impact of this reform?**
- (c) What factors could be impacting the operation of this reform?**
- (d) Are there any other important considerations or research we should be aware of?**

General considerations:

You might think about what information could show that the reforms are having an impact. For example, showing:

- that courts are taking the domestic violence context of the offending into account at sentence unless there are good reasons not to do this ('exceptional circumstances');
- whether courts are expressly referring to domestic violence in all cases where this factor is present;
- there has been a change in the penalty types given to more severe types of penalties (e.g., prison instead of a community-based order, or community service or probation instead of a fine); and
- that the severity of sentences has increased, but without necessarily changing the type (e.g., longer prison sentence, or more hours of community service, longer probation period).

Legal and other considerations:

You might think about whether:

- courts are taking a consistent approach in applying the aggravating factor and the role of sentencing submissions in informing this;
- sentencing practices have changed since the introduction of the aggravating factor and if so, in what way;
- there are any differences in the perceived relevance of the aggravating factor in the context of specific offence types, or defendant-related factors;
- 'exceptional circumstances' are understood and applied;
- there are challenges in balancing the aggravating factor under s 9(10A) with other legislated factors (for example, s 9(10B) where the offender is also a victim of domestic violence); and
- the impacts of other legislative reforms, or the nature of the sentencing task, make assessing the impact of the aggravating factor challenging to assess.

4. Contravention of a domestic violence order

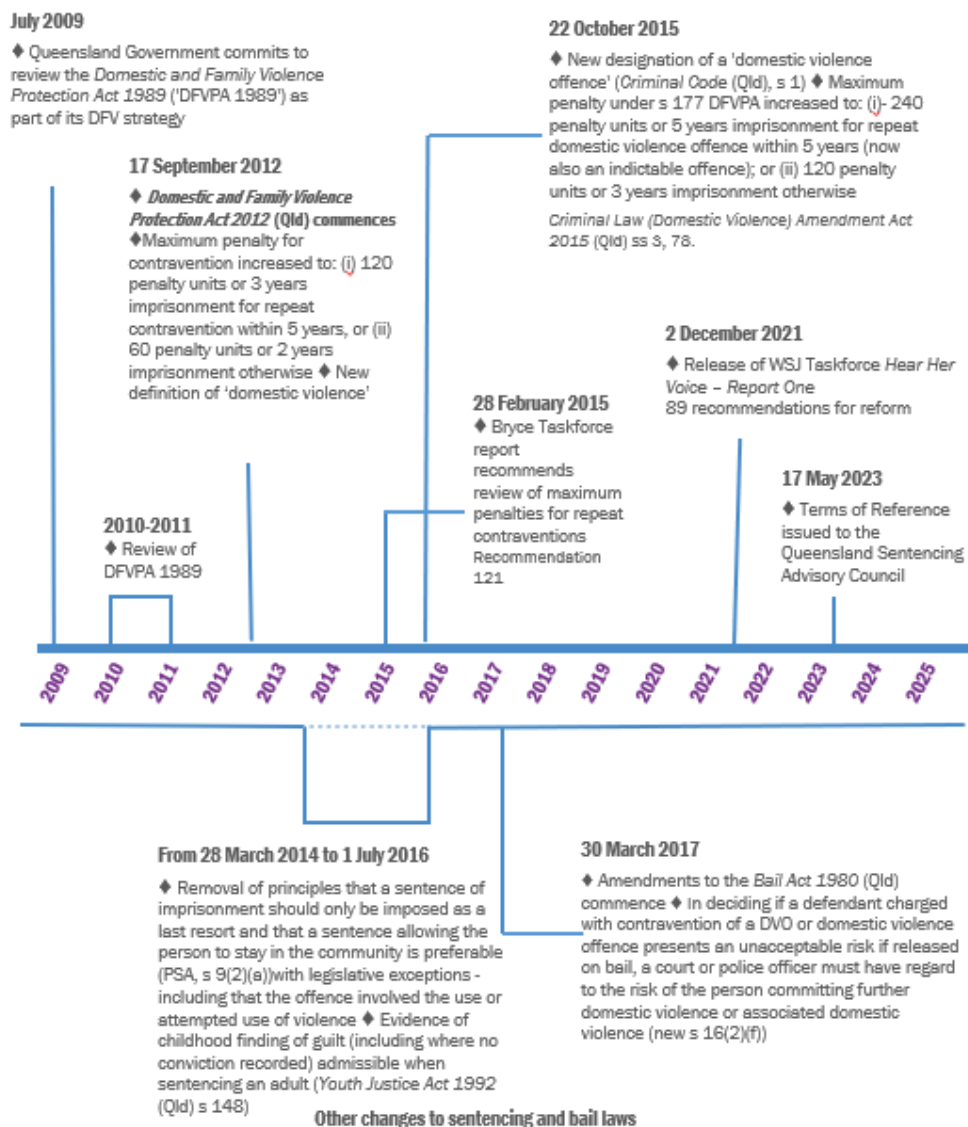
4.1 What we have been asked to look at

Changes to maximum penalties

We have been asked to 'consider how sentencing trends and outcomes for contravention of a DVO may have changed following the 2015 increase in the maximum penalties.'¹⁰⁰

As shown in Figure 9, there have been changes to the offence of contravention of a DVO and increases to maximum penalties over time,¹⁰¹ but the most recent change in 2015 is the focus of our review.

Figure 9: Key reviews and changes to the law in Queensland impacting sentencing and maximum penalties for contravention of a domestic violence order, 2009 to present



The Domestic Violence (Family Protection) Act 1989 (Qld) was reviewed in 2010.¹⁰² Following this review, it was replaced by the Domestic and Family Violence Protection Act 2012 (Qld) ('the 2012 Act').

The purpose of the 2012 Act was to 'prevent or reduce domestic violence, maximise the safety and protection of victims and minimise the disruption to their lives, and to ensure that perpetrators are held accountable for their actions.'¹⁰³

It amended the definition of 'domestic violence' and renamed the offence for breaching an order 'Contravention of domestic violence order'.¹⁰⁴ The maximum penalty was increased to:

- (a) if, within 5 years before the commission of an offence under this subsection, the respondent has been previously convicted of an offence under this part—120 penalty units or 3 years imprisonment; or
- (b) otherwise—60 penalty units or 2 years imprisonment.¹⁰⁵

The contravention offences that triggered the higher maximum penalty where there was a previous conviction were:

- contravention of a DVO (including an offence under the earlier 1989 Act);
- contravention of a police protection order (a temporary order made by police until a domestic violence order is made); and
- contravention of release conditions (similar to those that can be made under a police protection order').

For more information about the different types of protection orders in Queensland, see **Appendix 2**.

The justification for increasing the penalty to the limit of the Magistrates Court jurisdiction was to:

provide additional scope for courts to sentence offenders in relation to the more serious forms of behaviour that can constitute a breach of a domestic violence order. It may also provide an opportunity for increased distinction of penalties applied between first offenders and those who have previous convictions.¹⁰⁶

In 2015, the penalties were further increased for contravention of a DVO to their current levels (5 years' imprisonment or 240 penalty units (aggravated offence) or 3 years' imprisonment or 120 penalty units (not aggravated offence)).¹⁰⁷

Changes made to the law also meant the aggravated form of offence became an indictable offence,¹⁰⁸ meaning it may be sentenced in the higher courts. However, the DFVPA says that contraventions of protection orders should be heard summarily (in the Magistrates Courts), regardless of whether the offence is indictable.¹⁰⁹ The implications of this are discussed below.

Another important change made to the law was to expand the circumstances in which the enhanced penalty for previous offending applied by referring to a previous conviction of a 'domestic violence offence'.¹¹⁰ For the purpose of a contravention of a DVO, a 'domestic violence offence' also includes a contravention offence.¹¹¹ Prior to this, the enhanced penalty applied only if there had been a previous conviction for a contravention offence.¹¹²

As discussed in section 3.5, any offence can be a 'domestic violence offence' if the behaviour for which the person is convicted is also domestic violence and/or the behaviour has contravened a DVO.¹¹³ A person does not need to have a current DVO to be convicted of a 'domestic violence offence'.

The maximum penalties for the offences of contravening these orders is summarised below.

What does it mean for an offence to be 'indictable'?

The jurisdictional limit of Magistrates Courts is ordinarily 3 years' imprisonment.¹¹⁴ This means a Magistrates Court can only give a sentence of up to 3 years' imprisonment for any form of contravention, even if aggravated (which has a maximum penalty of 5 years' imprisonment). However, the Court must take the higher maximum penalty into account. If the court is satisfied that the nature or seriousness of the offence would not be adequately punished on summary conviction (in the Magistrates Court), or if the defence successfully argues that the charge should not be heard summarily due to exceptional circumstances, the Court must not proceed. Instead, the Court must refer the charge to a higher court, typically the District Court.

In other cases, a charge of contravention of DVO may also be dealt with and sentenced by a higher court, even if the charge is a summary one. For example, when an accused person has other related charges being dealt with by that court.¹¹⁵

Case example:

A person pleads guilty to choking their partner (an offence that must be dealt with and sentenced in a higher court), as well as two counts of contravening a DVO. A higher court may sentence the person for both the choking offence and two contravention offences.

Why the changes were made

The increase to maximum penalties for contravention was a result of a recommendation made in the 2015 Bryce Taskforce report.¹¹⁶

The Taskforce found that despite the higher maximum penalty that applied for repeated contraventions, the majority (80.6%) of all custodial sentences were less than 12 months.¹¹⁷ It was 'concerned that current legislation may not effectively recognise the pattern of behaviour which underpins domestic and family violence and apply appropriate sanctions'.¹¹⁸

In increasing the maximum penalties, the Government cited the need to align the penalty more closely with those of other Australian jurisdictions and to reflect 'the seriousness of the offences, particularly where there is a pattern of domestic violence behaviour involved'.¹¹⁹ The increased penalties were intended 'to provide greater deterrence for perpetrators of domestic violence and to reinforce the community's view that domestic violence is not acceptable and will not be tolerated'.¹²⁰

Why we were asked to look at this

At the time the Bill to introduce the new aggravating factor was introduced, the then Attorney-General committed to its impact being evaluated by the Council, 'as part of a reference to consider the impact that maximum penalties have on the commission of domestic violence offences', and to 'enable the government to have a clear evidence base on what works in sentencing perpetrators of domestic and family violence so as to guide future law reforms'.¹²¹

4.2 How Queensland maximum penalties compare to other states and territories

All Australian states and territories have DVOs or an equivalent order. Unlike other Australian jurisdictions, Queensland legislation does not include provisions increasing the maximum penalty based on the nature of the breach, or the presence of children. However, these remain factors which a sentencing judge or magistrate must take into account in sentencing.¹²²

See **Appendix 3** for a summary of these approaches.

4.3 Previous research and the WSJ Taskforce findings

The NSW Sentencing Council, TSAC and the Victorian Sentencing Advisory Council ('VSAC') have looked at sentencing outcomes and maximum penalties for breach offences.¹²³

The NSW Sentencing Council examined the maximum penalties and sentencing outcomes for contravention of DV-related orders across jurisdictions in Australia and New Zealand. In the report, which discussed Queensland data prior to the increase in maximum penalties for contravention offences, Queensland was found to be one of three jurisdictions with the highest proportion of sentences of imprisonment imposed for contravention of an order, at just over 30 per cent.¹²⁴ The jurisdiction with the highest proportion of imprisonment sentences was the Northern Territory, followed by New Zealand.¹²⁵ The Council noted, however, the data related to different time periods and court levels, and some jurisdictions, including Queensland, reported by the principal sentence received by all defendants convicted of contravening a DVO, including where the contravention was not the defendant's principal offence.¹²⁶

The NSW Sentencing Council thought it was worth examining the impact of escalated penalty structures, such as that available in Queensland.¹²⁷

Experimental data published by the Australian Bureau of Statistics¹²⁸ ('ABS') shows that in 2022–23, the most common principal offence across all family and domestic violence ('FDV') defendants in Queensland (including those charged with DV flagged offences and contraventions of a DVO), was a contravention of a DVO (74%).¹²⁹ For those who had a guilty outcome for an offence of contravention, nearly one-fifth (19.0%) were sentenced to custody in a correction institution (includes imprisonment and partially suspended prison sentences), about 40 per cent (39.2%) received a fine, and nearly one-fifth (17%) received a 'moderate penalty in the community' (such as probation).¹³⁰

The ABS expressly cautions against making state and territory comparisons of FDV breaches data due to variations in policing and court practices.¹³¹

In its report, TSAC concluded '[t]he data does not provide a basis for claiming that harsher penalties would reduce recidivism rates'.¹³² Unlike the BOCSAR study, however, this did not factor in other considerations relevant to risk of reoffending, such as prior criminal history.

VSAC has completed several reports about breaching family violence orders.¹³³ In its first report, it outlined the relevant considerations to setting an appropriate maximum penalty in legislation, including to serve as a general deterrent.¹³⁴

It also referred to the ACT Law Reform Commission which found that 'research does not establish that higher penalties would act as a specific deterrent for breach of a protection order or for criminal offences generally'.¹³⁵ For this reason, VSAC thought it inappropriate to attempt to assess whether the maximum penalty served as a general deterrent.

While previous research in Queensland has investigated how breaches of domestic violence matters are dealt with in the Magistrates Courts, this research examined only a small sample of cases.¹³⁶

The WSJ Taskforce reported in *Hear Her Voice–Report One*, that despite the intent of the 2015 amendments in increasing the maximum penalties, there were problems with how they had been applied.¹³⁷ It also found victim dissatisfaction with the penalties imposed for contravention.¹³⁸

4.4 What courts have said

As early as 1994, the Court of Appeal highlighted the importance of deterrence, as well as denunciation, in sentencing for contravention of DVO offences as '[u]nless breaches of such orders are, and are well known to be, visited with appropriate severity, they will quickly lose their value in the minds both of those who obtain them and of those who are subject to them'.¹³⁹

This statement was referred to with approval by the Court of Appeal as recently as 2024.¹⁴⁰

The Court of Appeal has also made statements of general principle that for serious instances of domestic violence, significant sentences of actual imprisonment are appropriate to not only deter individual offenders but also the wider community.¹⁴¹

As most contravene DVOs are sentenced in the Magistrates Courts,¹⁴² most of the comparable case authority comes from District Court appeals.¹⁴³

Impact of increasing a maximum penalty

The maximum penalty for an offence must be given careful attention when sentencing.¹⁴⁴

This District Court has acknowledged the increase in penalties for contravention of a DVO as 'indicative of the legislature's intention that this type of offending be viewed more seriously and that accordingly, more severe penalties be imposed for it'.¹⁴⁵

The Court of Appeal has noted that generally, increases to a maximum penalty can be expected to increase the severity of sentences, however, it does not mean that all offences committed after the increase should attract a higher penalty¹⁴⁶ or that sentences should be proportionally increased.¹⁴⁷ For example, doubling the maximum penalty will not 'necessarily result in a doubling of sentences at all levels'.¹⁴⁸

Where the maximum penalty has increased and there are no comparable sentencing decisions, it may be 'necessary to refer to the earlier cases, if only to shed light upon the circumstances in which the increased maximum was enacted'.¹⁴⁹

When does the 'circumstance of aggravation' apply?

With a contravention of DVO offence, it is a 'circumstance of aggravation' if the person has committed a 'domestic violence offence' in the 5 years previously.¹⁵⁰

At common law, a court cannot consider uncharged circumstances if they would warrant a conviction for a different or more serious offence.¹⁵¹

For this type of 'circumstance of aggravation' to apply to a contravention of a DVO sentenced in the Magistrates Court, the prosecution must give the person 'a notice specifying any alleged previous conviction' if that would make the person liable to a greater penalty.¹⁵²

There have been cases where no notice was given.¹⁵³ For a brief period, this meant the court could not take previous convictions for prior contravention offences into account at all.¹⁵⁴ The law changed in 2014, enabling courts to consider previous convictions when assessing penalties, even if notice had not been given, but in this case the higher maximum penalty could not be applied.¹⁵⁵

A person's criminal history can be both a 'circumstance of aggravation' and an aggravating factor,¹⁵⁶ but it cannot overwhelm other sentencing considerations and the sentence 'must not be disproportionate to the gravity of the current offence'.¹⁵⁷

Is 'domestic violence' an offence of 'violence'?

When sentencing a person for an offence that 'involved the use of, or counselling or procuring the use of, or attempting or conspiring to use, violence against another person' or that resulted in 'physical harm to another person',¹⁵⁸ there are special sentencing considerations. Courts must apply section 9(2A) (the principle of imprisonment as a last resort does not apply) and give primary consideration to the factors in section 9(3) of the PSA.¹⁵⁹

Whether the provision applies will depend upon the facts and circumstances of the case. The term 'violence' is not defined in the PSA, and the Court of Appeal has said that it should not have a broad meaning because a person will be subject to a 'harsher sentencing regime that can affect the level of punishment'.¹⁶⁰

It has been held that if the offending conduct falls within the definition of 'domestic violence' under section 8 of the DFVPA, this can have a broader meaning than 'violence' for the purpose of section 9(2A) of the PSA.¹⁶¹ If the offending did not result in 'physical harm', section 9(2A) of the PSA will not apply.¹⁶²

Sentencing acts of physical violence in a contravention of a DVO

*LJS v Sweeney*¹⁶³ was the first District Court appeal since the increase in the maximum penalty. The appellant was sentenced to 3 years' imprisonment for two contraventions of a DVO (aggravated offence), with lesser concurrent terms for property and fraud offences. The protection order had an added condition of no contact. The contravention offences included the appellant being in the victim's house at 1:45am and waking her, physically assaulting her, and taking her cash and mobile phone and on another occasion, physically assaulting her again, as well as calling and texting her.¹⁶⁴

He had 15 previous convictions for contravening a DVO and been sentenced to imprisonment.¹⁶⁵ A tendered psychological report noted that as a child he had experienced physical and sexual abuse, suffered a head injury, and witnessed traumatic events. He had behaviour problems at school and was diagnosed with psychological conditions.

On appeal, Smith DCJ, although noting '[t]here is an absence of comparable sentencing decisions since the increase in the maximum penalty',¹⁶⁶ found:

At first blush I would have considered a 3 year head sentence high [noting this is the jurisdictional limit], but within the sentencing range, but having considered the comparable decisions and noting the crown's concession, it would appear that a head sentence of 3 years imprisonment was excessive despite the applicant's previous convictions. It seems to me that the parties' concessions that 2 to 2 [and] a half year's imprisonment is within the sentencing range in this matter is accurate.¹⁶⁷

It was ultimately held that the appropriate penalty was 2 years' imprisonment to serve 8 months.¹⁶⁸

LJS v Sweeney has been used regularly to support sentences of between 12 months and 2 years for contraventions of a DVO involving actual physical violence.¹⁶⁹

Sentencing acts of non-physical violence in a contravention of a DVO

If an offence does not involve 'violence against another person' or resulted in 'physical harm to another person',¹⁷⁰ the court must consider imprisonment as a sentence of last resort.¹⁷¹

The District Court has recognised that non-physical violence can have a number of serious impacts, including emotional or psychological abuse. These often form part of a pattern of behaviour so as to exert 'dominance, control or coercion over the victim; degrade the victim's emotional or cognitive abilities or sense of self-worth; or induce feelings of fear and intimidation in the victim'.¹⁷²

Since the increase, the District Court has held, in the case of 'a single instance of verbal abuse in response to some provocation', an 'appropriate sentencing range for this offence encompassed a short period of probation or a fine'.¹⁷³

For example, in *MG v Commissioner of Police*, a \$500 fine with a conviction recorded was imposed for contravening a no-contact condition by telephoning the victim, telling her that he missed her, and asking her not to 'dob' on him to the police.¹⁷⁴

Prior to the increase in the maximum penalty, a fine or probation order imposed for repeated contraventions had been upheld on appeal.¹⁷⁵ However, where there are repeated acts, the District Court has since found that a fine is not appropriate. For example, in *Queensland Police Service v KBH*,¹⁷⁶ a \$300 fine imposed for 2 contraventions of a DVO, and a \$200 for an additional 2 contraventions of a DVO, committed while on a suspended prison sentence, were found to be unreasonable and inadequate.¹⁷⁷ Coker DCJ found that the Magistrate had a 'total misunderstanding of the nature of domestic violence and the nature of control and dominion being exercised'.¹⁷⁸

It was also held that continuously contravening a non-contact condition, even without physical violence was 'not a situation where the offending is minor or trivial, lacking in real impact' but it 'is a situation where it is a crime against the State warranting salutary punishment'.¹⁷⁹

Coker DCJ also commented on the need for penalties to escalate in cases where there have been repeated contraventions, particularly if a fine was given for a first contravention.¹⁸⁰

Where there has been repeated contraventions of a DVO and no physical violence, sentences have ranged from 6 months' imprisonment for repeated non-aggravated contraventions,¹⁸¹ to 9 months' imprisonment,¹⁸² to 15 months imprisonment.¹⁸³

Avoiding double punishment when contravene is not the only offence charged

Under the *Criminal Code* (Qld), a person cannot be punished twice for the same act or omission.¹⁸⁴ In respect of a contravention of a DVO, the DFVPA does not prevent criminal proceedings continuing for both a contravention offence and non-contravention offence, but the penalty imposed must not offend the principle against double punishment.¹⁸⁵

A review of case law illustrates the complexity this has created in sentencing.

In *R v MKW*,¹⁸⁶ the defendant was before the District Court, charged on indictment with an offence of unlawfully doing grievous bodily harm to his de facto partner. He had already pleaded guilty and been punished for a contravention of a DVO in the Magistrates Court based on the same facts. While it was found proceedings could continue, '[a]t the very least, I would consider that ordinary and well-established sentencing principles would require that regard be had to the penalty imposed in the Magistrates Court for the breaching offence'.¹⁸⁷

In *QPS v DLA*,¹⁸⁸ DLA pleaded guilty to using a carriage service to menace or harass or cause offence (a Commonwealth offence under section 474.17(1) of the *Criminal Code* 1995 (Cth)) and contravention of a DVO. The facts for each charge were the same. The Magistrate found that to convict DLA of both offences would be contrary to the provisions of section 16 of the *Criminal Code* and ordered a permanent stay of the offence of contravention of the DVO. His Honour considered that to simply convict and not further punish the defendant results in a double punishment for the same act because a consequence of a conviction for the contravention of protection order was that the defendant would be liable for an increased penalty if he committed a subsequent breach.

In *DAY v Commissioner of Police*,¹⁸⁹ the applicant was sentenced to imprisonment for 9 contraventions, including contravening a DVO or a temporary protection order, and 9 breach of bail offences based on the same facts. It was held that it was an error to punish the applicant twice. The imprisonment for the breach of bail offences was substituted with a sentence to convict and not further punish. A similar approach was followed in *JWD v The Commissioner of Police*.¹⁹⁰

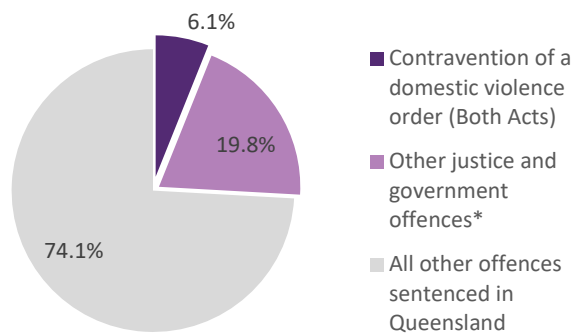
The approach to sentencing where a person has been charged with contravention of a DVO and another offence founded on the same facts is not always consistent and in other cases, a person has been sentenced for both the contravention offence and the non-contravention offence.¹⁹¹

4.5 Sentencing data on penalty outcomes and trends

The Council will be releasing separate research papers exploring different aspects of sentencing for contravention.

Over the 19-year data period (July 2005–June 2024), there were 2,814,365 cases sentenced in Queensland's criminal courts. The offence of contravention of a DVO was sentenced in 170,841 cases, representing 23.5 per cent of all cases involving justice and government offences (which account for 25.9% of all cases sentenced) and 6.1 per cent of all cases sentenced, as shown in Figure 10.¹⁹²

Figure 10: Number cases involving at least one offence of contravention of a DVO (MSO and non-MSO) adults and children, sentenced in Queensland, 2005–06 to 2023–24

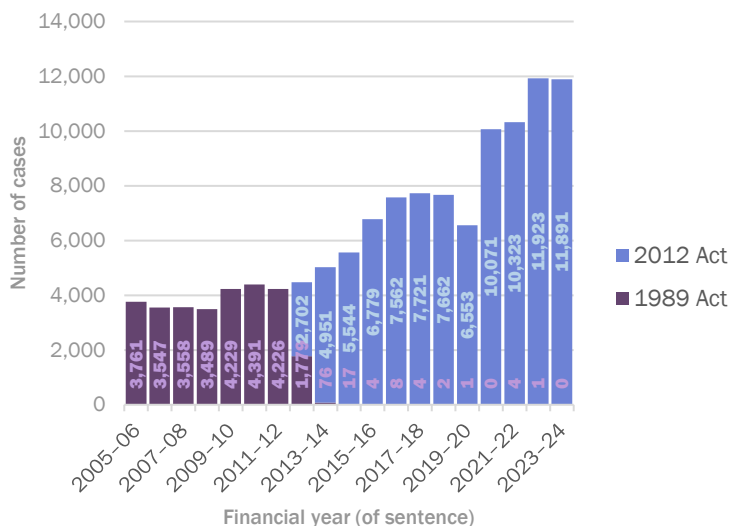


Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted August 2024.

*Includes all offences under the ANZOC category of '15 Justice and government' excluding those involving contravention of a DVO

Figure 11 shows the number of contravention of a DVO cases sentenced (MSO) during the 19-year data period. With the exception of 2019–20, there has been a general increase in the number of cases sentenced where a contravention of a DVO was the MSO, since the DFVPA was introduced.

Figure 11: Number of contravention of a domestic violence order (MSO) cases, 2005–06 to 2023–24



Source: Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted August 2024.

From the DFVPA's introduction in 2012 to 2015, the administrative courts dataset did not record whether a contravention of a DVO was sentenced with a circumstance of aggravation. This data started to be recorded as of 2015 only, which makes it difficult to adequately compare data from prior to the reforms (2012 to 2015) with data subsequent to the reforms (which occurred in 2015). The Council is currently exploring ways to determine which offences were aggravated and which were non-aggravated between 2012 and 2015.

We have looked at sentencing outcomes from 2016–17 to 2023–24, for adult defendants across all court levels sentenced for contravention of a DVO (aggravated) and contravention of a DVO (non-aggravated) where this was the most serious offence ('MSO'). This data only shows outcomes for charges where the contravention of a DVO offence was the MSO rather than all contravention charges sentenced.

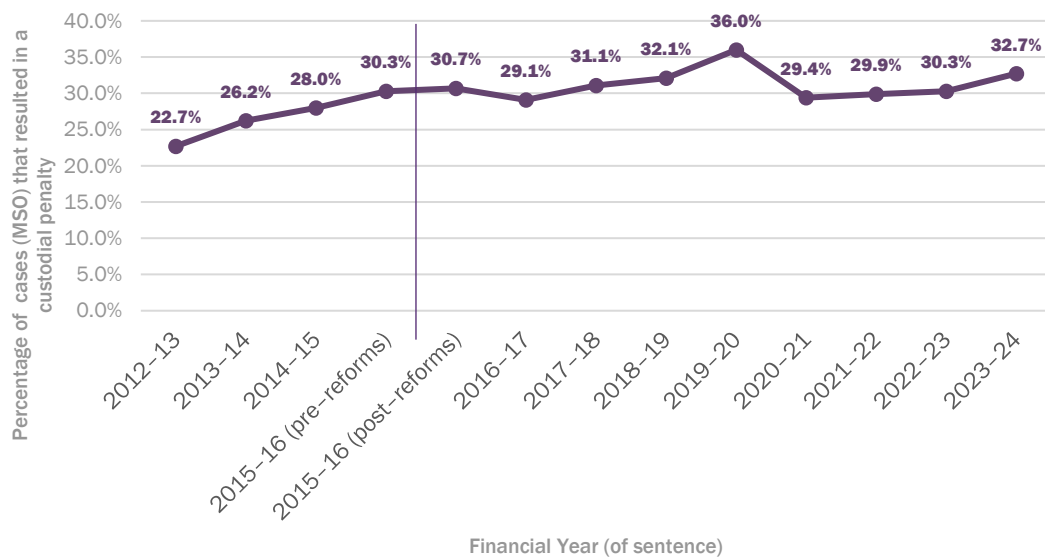
Key sentencing trends 2016–17 to 2023–24	
1	<p>Imprisonment was the most common penalty for contravention of a DVO (aggravated) offence.</p> <p>There was an almost even split between the proportion of custodial and non-custodial penalties for contravention of a DVO (aggravated, MSO) offences (49.7% v 50.3%).</p> <p>The most common penalty for a contravention of a DVO (aggravated, MSO) was imprisonment (30.9%) followed by monetary (27.4%) and wholly suspended prison sentence (16.8%).</p>
2	<p>Imprisonment was significantly more likely for a contravention of a DVO (aggravated) offence than a contravention of a DVO (non-aggravated) offence but there was no difference in imprisonment length.</p> <p>Contravention of a DVO (aggravated, MSO) was significantly more likely to receive imprisonment than a contravention of a DVO (non-aggravated, MSO) (30.9% v 6.1%).</p> <p>However, there was no statistical difference between imprisonment sentence lengths, with the average (6.7 months) and median length of imprisonment (6.0 months) being the same for a contravention of a DVO (aggravated, MSO) and contravention of a DVO (non-aggravated, MSO).</p>
3	<p>A monetary penalty was the most common penalty for a contravention of a DVO (non-aggravated) offence.</p> <p>It is more common to receive a non-custodial penalty than a custodial penalty for contravention of a DVO (non-aggravated, MSO) compared to contravention of a DVO (aggravated, MSO) (88.8% v 11.2%).</p> <p>The most common penalty for a contravention of a DVO (non-aggravated, MSO) was a monetary penalty (52.9%) followed by a recognisance (15.0%) and probation (14.8%).</p>
4	<p>A monetary penalty was more likely for a contravention of a DVO (non-aggravated) offence than a contravention of a DVO (aggravated) offence, but there was no difference in the amount.</p> <p>It was significantly more likely to receive a monetary penalty for a contravention of a DVO (non-aggravated, MSO) than a contravention of a DVO (aggravated, MSO) (52.9% v 27.4%).¹⁹³</p> <p>However, the median amount was the same (\$500, although the average amount was \$601.3 and \$533.6).</p>
5	<p>Contravention of a DVO (aggravated) was more commonly sentenced as an MSO than contravention of a DVO (non-aggravated).</p> <p>Since 2016, there have been 73,706 cases of contravention of a DVO (MSO). Of these, 38,408 (52.1%) were the aggravated form of the offence.</p>

This data post-dates the increase to the maximum penalties for contravention of a DVO and currently, no comparisons can be made between outcomes prior to and following these changes. The Council is exploring how best to compare pre- and post-reform outcomes.

As an initial measure of potential changes in sentencing practices, we have examined the proportion of sentences that are custodial (prison) sentences and monetary penalties.

Figure 12 shows that the proportion of custodial (prison) sentences was trending up even before the maximum penalties were increased (from 22.7% in 2012–13 to 30.3% just prior to the introduction of the reforms). It has fluctuated over the years since maximum penalties were increased from between 29.1 per cent in 2016–17 to a high of 36.0 per cent in 2019–20. In the most recent financial year examined (2023–24), custodial sentences represented just under one-third (32.7%) of all penalty outcomes.

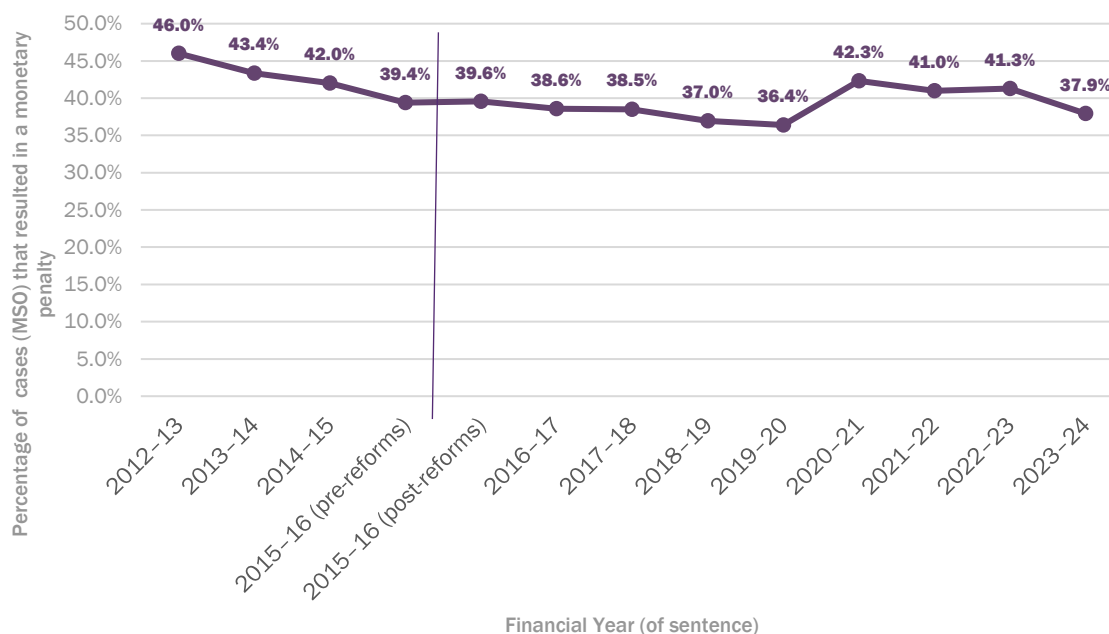
Figure 12: Contravention of a domestic violence order (MSO) cases by proportion that are custodial, 2012–13 to 2023–24 (combined lower and higher courts)



Notes: Includes contravention of a domestic violence order under DFVPA, s 177 as the most serious offence (MSO) sentenced, including both aggravated and non-aggravated charges. Excludes breaches of orders under the now repealed *Domestic Violence (Family Protection) Act 1989* (Qld). 'Custodial' includes all forms of custodial orders including imprisonment, suspended prison sentences, intensive correction orders and prison-probation orders. This approach uses the date of offence to separate 2015–16 into pre/post reforms, rather than the date of sentence. The Domestic and Family Prevention Act 2012 commenced on 17 September 2012, as such the 2012–13 financial year is a partial year of data with offences committed prior to the Act excluded.

Figure 13 shows that the proportion of monetary penalties was trending down even before the maximum penalties were increased (from 46.0% in 2012–13 to 39.4% just prior to the introduction of the reforms). It has fluctuated over the years since maximum penalties were increased from between 36.4 per cent in 2019–20 to a high of 42.3 per cent in 2020–21. In the most recent financial year examined (2023–24), monetary penalties represented 37.9 per cent of all penalty outcomes. The reduction in the use of monetary penalties may not be unique to contravention of a DVO because there has been a general reduction in the use of monetary penalties for all offences in the Magistrates Courts (excluding traffic and vehicle offences).¹⁹⁴

Figure 13: Contravention of a domestic violence order (MSO) cases by proportion that receive a monetary penalty, 2012–13 to 2023–24 (combined lower and higher courts)



Notes: Includes contravention of a domestic violence order under DFVPA, s 177 as the most serious offence (MSO) sentenced, including both aggravated and non-aggravated charges. Excludes breaches of orders under the now repealed *Domestic Violence (Family Protection) Act 1989* (Qld). 'Custodial' includes all forms of custodial orders including imprisonment, suspended prison sentences, intensive correction orders and prison-probation orders. This approach uses the date of offence to separate 2015–16 into pre/post reforms, rather than the date of sentence. The Domestic and Family Prevention Act 2012 commenced on 17 September 2012, as such the 2012–13 financial year is a partial year of data with offences committed prior to the Act excluded.

This data should be interpreted with caution because it only shows outcomes for charges where the contravention of a DVO was the MSO rather than all contravention charges sentenced.

Changes in charging practices, and the willingness of complainants to cooperate with the investigation and prosecution of an offence, can have a significant impact on the overall profile of cases of contravention of a DVO that represent the MSO.

While the gravamen of the offence usually involves non-compliance with a DVO, charging practices can result in a single offence encompassing a wide range of conduct or a series of behaviours.¹⁹⁵ It is also unknown which sentencing principles were applied and whether imprisonment was used as a last resort.¹⁹⁶ In addition, legislative amendments, beyond changes to maximum penalties, may have affected sentencing practices.

4.6 Stakeholder submissions

During preliminary consultation, Fighters Against Child Abuse Australia told us 'DVO's are not enforced despite them having the literal purpose of saving lives',¹⁹⁷ and therefore, an 'immediate custodial imprisonment response' should be standard to ensure deterrence:

This will be a significant deterrent to anyone considering breaching a DVO as they would be fully aware that anything they did as a result of that breach would most certainly see them land behind bars where now the reality is they can repeatedly breach the DVO and get told to "calm down and go home".¹⁹⁸

The Parole Board Queensland considered current penalties for contravention of a DVO committed while in custody are 'demonstrably inadequate' and 'do little to protect victims from domestic and family violence; do not hold domestic and family violence offenders to account; and erode public confidence in the criminal justice system'.¹⁹⁹

Sisters Inside Inc told us they did not support the increase to the maximum penalty because 'it is consistently demonstrated that 'general deterrence' is a myth, and higher penalties do not have any implications in deterring interpersonal violence'.²⁰⁰

4.7 Issues and questions

We invite feedback on the impact of increased maximum penalties for contravention of a DVO on court sentencing practices, suggestions for assessing whether the reforms' aims are being met, and any relevant issues.

The WSJ Taskforce expressed concern about the treatment of what are sometimes called 'technical breaches', specifically non-physical violence involving contact being made with the victim, compared to physical violence, and whether they are treated seriously enough.²⁰¹

The type of conduct a person has engaged in when sentenced for contravention of a DVO is not captured in administrative courts data. This means over the next stage of the review, the Council will explore how different types of breach conduct is treated in other ways, including through interviews with stakeholders and the exploration of alternative research methods.

Question 2 – Increased penalties for contravention of a DVO

- 2
- (a) **What has been the impact of increased maximum penalties for contravention of a DVO on court sentencing practices?**
- (i) **If you think the increase to maximum penalties has changed court sentencing practices, in what specific ways have they changed?**
- (ii) **If you think the increase in maximum penalties has not changed court sentencing practices, what are the potential reasons for this?**
- (b) **What measures are important to assess the impact of this reform?**
- (c) **What factors could be impacting the operation of this reform?**
- (d) **Are there any other important considerations or research we should be aware of?**

General considerations:

You might think about what information could show that the reforms are working. For example, showing:

- there has been a change in the penalty types given to more severe types of penalties (e.g., prison instead of a community-based order, or community service or probation instead of a fine); and
- that the severity of sentences has increased, but without necessarily changing the type (e.g., longer prison sentence, or more hours of community service, longer probation period).

Legal and other considerations:

You might think about:

- any changes in sentencing practice for contravention of DVO following the increase and other related reforms;
- any policing, prosecution and policy changes that have affected the type of contravention offences being dealt with by the courts and sentencing levels;
- whether contact offending involving non-physical violence is being sentenced differently, and if so, why this is the case;
- how periods of pre-sentence custody are being taken into account (if not formally declared);
- behaviour change program length and availability; and
- aspects of the way current sentences are structured or administered, and whether these are working or if they could be improved including to promote the safety of victim survivors.

5. Human rights and systemic disadvantage considerations

5.1 Human right considerations

A statutory provision is compatible with rights if it does not limit a right; or, if it does, that the limitation ‘is reasonable and demonstrably justifiable’.²⁰² The limitation must be reasonable and justified ‘in a free and democratic society based on human dignity, equality and freedom’.²⁰³ The HRA includes what should be considered if a human right is limited.²⁰⁴

The HRA came into full effect on 1 January 2020.²⁰⁵ Legislation and amending provisions introduced prior to the HRA would have had regard to the ‘fundamental legislative principles’ set out in the *Legislative Standards Act 1992* (Qld).

When the aggravating factor was introduced, it was noted that it potentially breached a fundamental legislative principle with respect to the rights and liberties of individuals as it would allow courts to impose a penalty at the higher end of the range of appropriate sentences. However, this limitation was justified ‘to protect vulnerable members of our community, denounce this type of offending and provide adequate deterrence to perpetrators of this type of offending’.²⁰⁶

Similar issues were raised regarding a potential breach of the fundamental legislative principle with respect to the rights and liberties of individuals when the maximum penalties for contravention of a DVO were increased in 2015. The limitation in this case was justified ‘due to the seriousness of the offences’ and to better align the maximum penalty with other jurisdictions.²⁰⁷ Although not discussed, this change to the law also has a partly retrospective application if the person has a previous domestic violence offence which occurred before the increased maximum penalty came into effect.

Some rights which are particularly relevant to sentencing domestic and family violence offences are discussed below.

- **Rights in criminal proceedings:** A person charged with a criminal offence is presumed to be innocent until proven guilty and is entitled to minimum guarantees.²⁰⁸
- **Right to liberty and right not to be subject to arbitrary detention:** Legislation which has a mandatory element in respect of sentencing can be viewed as limiting human rights.²⁰⁹
- **Right to humane treatment when deprived of their liberty:** A person has a right to humane treatment when deprived of their liberty²¹⁰ (for example, if held in a watch house or prison). The UN Convention on the Rights of People with Disabilities also includes relevant principles, such as accessibility and respect for difference, and acceptance of persons with disabilities as part of human diversity and humanity.²¹¹
- **Right not to be tried and punished more than once:** This right is also known as the rule against ‘double jeopardy’.²¹² There are some exceptions to this.²¹³ It is reflected in the *Criminal Code* (Qld) which also protects a person from being punished twice for the same offence.²¹⁴ The same principle applies if a person is convicted of contravention of a DVO and another offence based on the same act or omission. Also, for contravention of a DVO, if the person’s criminal history included ‘domestic violence offence’ convictions, while they are relevant to sentencing and can increase the maximum penalty, the person cannot be punished again for those acts.
- **Right to protection against retrospective laws:** The *Criminal Code* (Qld) protects a person from being punished for an offence unless it was an offence at the time it was committed or cannot be punished to any greater than the older law allowed (or that the newer law allows).²¹⁵ This right may be limited when a new offence or a sentencing consideration operates retrospectively. For example, the circumstance of aggravation for a contravention of a DVO can be partly retrospective if the person has a previous domestic violence offence which occurred before the increased maximum penalty came into effect.

Rights of victim survivors

Domestic and family violence is one of the most prevalent and serious breaches of human rights in Australia.²¹⁶ The rights of victims in Queensland are recognised in the Charter of Victims' Rights in Schedule 1 of the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld). These rights, while recognised as not legally enforceable, are relevant to considering the operation of the aggravating factor under the PSA and the increase in the maximum penalty for contravene DVO.

Relevant rights set out in the HRA when considering the impact of domestic and family violence on victim survivors include:

- right to enjoy human rights without discrimination (section 15(2));
- protection from torture and cruel, inhuman, or degrading treatment (section 17);
- privacy and reputation (section 25);
- protection of families and children (section 26); and
- right to liberty and security of person (section 29).

The Queensland Victims' Commissioner is currently reviewing the Charter of Victims' Rights to assess how well it meets the diverse needs of victims of crime. More information is available [here](#).

Stakeholder views

Sisters Inside Inc told us it opposes any mandatory sentencing for domestic violence.²¹⁷ This is because they 'do nothing to address the foundational underpinnings that encourage and permit racial-gendered violence, and in fact, the judicial system often acts as a blunt tool that causes more harm'.²¹⁸

DVConnect was concerned that, while all people should be accountable for their actions, a person in prison 'with an intellectual or cognitive impairment will have a different outcome to a person without disability' which can impact their 'opportunity to change behaviours upon release'.²¹⁹

Issues and questions

We invite feedback about whether the aggravating factor under the PSA is compatible with human rights and views about whether any existing limitations are reasonably and demonstrably justifiable.

We also invite views about what reforms could be made to improve compatibility with the HRA and other human rights instruments.

Question 3 – Aggravating factor and compatibility with human rights

3. **Is the current aggravating factor – that says a court, when sentencing a person for a domestic violence offence, must treat the fact it is a domestic violence offence as aggravating (unless there are exceptional circumstances) – compatible with rights protected under the *Human Rights Act 2019* (Qld) ('HRA') and relevant human rights instruments, such as the UN Convention on the Rights of Persons with Disabilities?**

Specifically, is this requirement and other sentencing provisions in the PSA as these apply to the sentencing of domestic violence offences compatible with these rights?

If any part of how the aggravating factor works, or other sections of the PSA, is not compatible with human rights, what changes would improve compatibility?

5.2 Systemic disadvantage, cultural considerations, and other impacts on marginalised and disadvantaged groups

Aboriginal and Torres Strait Islander persons or other people experiencing forms of disadvantage

Violence, and in particular, violence against women and children, is not part of traditional Aboriginal and Torres Strait Islander culture.²²⁰ However, structural and institutional discrimination, compounded by the ongoing impact of colonisation and complex intergenerational factors,²²¹ results in the disproportionate representation of Aboriginal and Torres Strait Islander peoples in all areas of the criminal justice system.²²²

Violence against Aboriginal and Torres Strait Islander peoples, including domestic and family violence, is perpetrated by people of all cultural backgrounds, in many different contexts and settings.²²³

An Aboriginal and Torres Strait Islander person may have experienced trauma which is unique to their Indigeneity (for example, as a result of being a member of the Stolen Generation and displacement).²²⁴ Aboriginal and Torres Strait Islander peoples may also experience intersecting forms of disadvantage, such as having a disability, living in poverty, having a low socio-economic status, experiencing a lack of employment and having a limited education.²²⁵

The High Court of Australia has recognised that Aboriginal and Torres Strait Islander peoples ‘as a group are subject to social and economic disadvantage’.²²⁶ In *R v Fernando*,²²⁷ the High Court of Australia expressed 8 principles from a review of earlier cases (known as the *Fernando* principles).²²⁸ The High Court has also recognised that exposure to, and the experience of, disadvantage is relevant to sentencing²²⁹ and the impacts of experiencing a deprived background does not diminish over time.²³⁰ For this to mitigate the sentence being imposed, the person must provide some evidence of that background.²³¹

These principles apply for all offenders, not just Aboriginal and Torres Strait Islander peoples.²³²

If a person identifies as an Aboriginal or Torres Strait Islander person, and there is a submission from a community justice group (CJG) representative on ‘cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the offender’,²³³ a court must take this into account.²³⁴ The Court of Appeal has acknowledged that submissions from a CJG representative should be given great weight.²³⁵

Changes to the PSA, made as a result of the WSJ Taskforce report, now make clear that if a court is sentencing an Aboriginal or Torres Strait Islander person, any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the offender, must be taken into account, even if no submissions are made by a CJG representative.²³⁶ The implication is that such considerations may be mitigating, although this is not expressly stated.

While submissions and information about ‘cultural considerations’ may help a court understand the background of the person in the context of the offending, courts have acknowledged this does not excuse the offending. A sentencing court must balance the mitigating factors with all the circumstances of the offence:

Aboriginal women and children who live in deprived communities or circumstances should not also be deprived of the law’s protection. ... they are entitled to equality of treatment in the law’s responses to offences against them, not to some lesser response because of their race and living conditions.²³⁷

Case law supports the position that where a person being sentenced has experienced disadvantage or comes from a deprived background, this *may* have mitigating effect on a sentence. However, other considerations, such as the seriousness of the offence and community protection, may reduce or eliminate the mitigating effect.²³⁸ The High Court explained that while a disadvantaged background might suggest the person has a lower level of culpability, it equally may elevate the importance of community protection.²³⁹

Women and girls

Domestic violence is a gendered crime; most victims of intimate partner violence are women, and perpetrators are more likely to be male.²⁴⁰ However, domestic violence can be experienced by people of all genders and ages, in various relationship types, and from all cultures, socioeconomic backgrounds, and demographic groups.²⁴¹

Although most women who experience domestic violence do not commit offences, research has found that coercive control by a male partner is a significant factor contributing to imprisoned women’s contact with the criminal justice system.²⁴²

Queensland Corrective Services has reported that 87 per cent of women in custody have experienced victimisation from child sexual abuse, physical violence, or domestic violence, with 66 per cent experiencing all three.²⁴³ This is consistent with other research findings that women in prison have often experienced a lifetime of victimisation,

including domestic violence, physical and sexual abuse, mental health disorders, drug and alcohol dependency and childhood trauma.²⁴⁴

The WSJ Taskforce also identified misidentification of the person most in need of protection as being an issue, particularly for Aboriginal and Torres Strait Islander women. It referred to ANROWS research, which highlighted ‘criminal charges stemming from misidentification have significant flow-on consequences for women, including criminal records, increased likelihood of future charges, and employment, housing, family law and immigration impacts’.²⁴⁵

Issues impacting people with cognitive disability or mental illness

In the case of people with cognitive disability or a mental illness convicted of an offence, a court must balance several factors. The PSA requires a court to take into account the offender’s intellectually capacity, ‘the extent to which the offender is to blame for the offence’, as well as other aggravating and mitigating factors.²⁴⁶

The Court of Appeal has considered mental impairment may:

- Reduce a person’s moral culpability (but not legal responsibility), which may mean the purposes of punishment and denunciation carry less weight.
- Influence the type of sentence imposed and its conditions, which may be harder for a person with a mental impairment than a person with normal health.
- Mean the sentencing purposes of general and specific deterrence may carry less weight based on the nature and severity of the mental impairment.
- Mitigate the punishment, if there is a risk that prison would have a significant negative impact on the person’s mental health.²⁴⁷

A person’s impaired intellectual or mental capacity is also relevant to whether the person is a danger to the community.²⁴⁸ This is why the effect of mental disorders on sentencing has been described as a ‘double-edged sword’.²⁴⁹

Stakeholder views

In its preliminary submission, DVConnect noted ‘systemic bias results in over and under policing and dramatic levels of incarceration’.²⁵⁰ It also noted ‘victim/survivors do not seek justice as they do not want to be part of the cycle of incarceration’.²⁵¹

Relationships Australia Queensland thought unless efforts were made to address the ‘structural issues’ that contribute to (domestic violence) offending there is a ‘[r]isk of exacerbating over-criminalisation and over-incarceration of marginalised groups, including First Nations people’.²⁵² They highlighted that where women are misidentified as primary aggressors, their situation could potentially worsen.²⁵³ The submission went on to suggest it was vital to ‘address the complex intersection of intergenerational trauma and dispossession’.²⁵⁴

QIFVLS (Queensland Indigenous Family Violence Legal Service) told the Council that Aboriginal and Torres Strait Islander women are less likely to report family violence or seek support.²⁵⁵ Reasons for this include ‘judgment, discrimination, shame or fear’ and for people who live in regional and remote areas, this can be made worse as there are limited support services and police presence to assist them to escape violence.²⁵⁶

They were also concerned about the disproportionate representation of Aboriginal and Torres Strait Islander offenders, particularly because they are more likely than non-Indigenous offenders to have prior convictions and to have been sentenced to imprisonment, which may influence the sentencing decision.²⁵⁷

Issues and questions

The Council acknowledges that sentencing outcomes for similar offences may differ based on many different factors and considerations, including those personal to the individual being sentenced.

In reviewing the impacts of domestic violence sentencing reforms, we will explore whether there are any differences in sentencing patterns and trends based on the sentenced person's gender and/or Aboriginal and Torres Strait Islander status. However, due to data capture issues, we cannot reliably report outcomes for people from other cultural, vulnerable, or marginalised backgrounds, including those with cognitive disability or mental illness.

We further recognise that Aboriginal and Torres Strait Islander peoples, and other people who experience disadvantage or are from marginalised and vulnerable backgrounds, experience domestic and family violence at a higher rate than other community members. While we will not be able to report on sentencing outcomes based on the profile of victim survivors, Monash University is undertaking separate research on our behalf which will explore the impacts of the domestic violence sentencing reforms on victim survivors, with a focus on victim satisfaction. This will provide an avenue to explore the impacts of domestic violence sentencing reforms on victim survivors who are Aboriginal and Torres Strait Islander or from other disadvantaged, marginalised and vulnerable groups.

Noting these considerations, we invite feedback on any issues we should be aware of when reviewing sentencing outcomes impacting on Aboriginal and Torres Strait Islander peoples, people from other cultural backgrounds or from other disadvantaged and vulnerable groups. You may wish to comment on, for example, factors that may be contributing to any changes in sentencing patterns or trends, or unintended impacts of the reforms you have observed on victim survivors, or those being sentenced for domestic violence offences, including contraventions of a DVO.

Question 4 – systemic disadvantage and cultural considerations

4. **What key issues should the Council consider when reviewing changes in sentencing practices resulting from Queensland domestic violence sentencing reforms, particularly regarding their impact on:**
- (a) Aboriginal and Torres Strait Islander peoples;**
 - (b) women and girls;**
 - (c) people from other cultural backgrounds;**
 - (d) people with disability or a mental illness**
 - (e) LGBTQIA+ people; and**
 - (f) people from other marginalised and vulnerable groups or communities?**

6. Other issues

6.1 Anomalies and complexities

Changes to the law over time can make the law difficult to understand and apply and may result in some similar types of conduct being treated differently at sentence because of how the law is framed.

For example, during preliminary consultation, it was noted that domestic violence as an aggravating factor does not apply in sentencing a person for a Commonwealth offence, such as if 'using a carriage service to menace, harass or cause offence',²⁵⁸ an aggravated form of this offence involving private sexual material'²⁵⁹ or 'using a carriage service to make a threat'.²⁶⁰ Use of a 'carriage service' can include using the internet, social media or phone for one of these purposes.²⁶¹

This means that whether the conduct is required by legislation to be treated as more serious because it was committed in a domestic violence context may depend on what offence is charged and whether this a Queensland offence or a Commonwealth offence.²⁶²

Unlike Queensland offences,²⁶³ there is no easy way for courts to know if a previous Commonwealth offence which appears on their criminal history would meet the definition of being a domestic violence offence. This means that:

- if a person contravenes a DVO and has been convicted previously of a Commonwealth offence that would otherwise meet the definition of being a 'domestic violence offence' (assuming in this case they have no prior convictions for a state-based domestic violence offence), the lower maximum penalty of 3 years would apply because it would not meet the legal test in section 177 of the DFVPA to be treated as an aggravated form of the offence; and
- the court, when sentencing, may not recognise that prior offences within a person's criminal history occurred within a domestic violence context and form part of a pattern of behaviour, which may affect how seriously the current offence is viewed.

There are other factors which may also mean that it is difficult to accurately represent sentencing levels, such as time spent in pre-sentence custody that is not formally declared as time served under the sentence. This means it may look like the person received a lesser sentence because the court took this into account.

There may be other anomalies and complexities that could impact sentencing practices for domestic violence-related offending. We invite feedback on this issue.

Question 5 – Anomalies and complexities

5. **Are there any anomalies or complexities that affect the sentencing of domestic violence offences? If yes, what are some potential solutions?**

General considerations:

You might think about:

- if there are any barriers to the laws acting as they should; and
- whether the laws are clear and can be understood by everyone.

Legal and other considerations:

You might think about:

- if the current limitations relating to Commonwealth offences are a problem in supporting consistent sentencing practices;
- if any problems have arisen in practice with either the aggravating factor or in dealing with contraventions of domestic violence orders;
- if there are any common sentencing outcomes that might give the wrong impression about how courts are sentencing these types of offences (e.g., time in pre-sentence custody taken into account but not declared as time served).

6.2 Other relevant considerations

There are several other considerations that may impact the operation of the reforms we have been asked to review. These may include, for example:

- the purpose or purposes a court is intending to meet when sentencing a person for a domestic violence offence or contravention of a DVO, such as punishment, denunciation, deterrence, rehabilitation, and community protection; and
- what sentences are viewed as most effective in meeting those purposes, including the opportunity for behaviour change.

In the following sections, we discuss key findings of the [Literature Review](#) and previous literature reviews undertaken for the Council, as well as the outcomes of reviews by other sentencing advisory councils, as illustrative of these issues.

We invite any feedback in relation to these aspects, or you may also have views about general issues, or problems, that are related to the operation of the reforms.

Managing risks of reoffending through order type, supervision, and specialist court approaches

Penalty type and risk of re-offending

Empirical evidence on the impact of sentencing orders and re-offending for domestic violence offenders is limited.²⁶⁴ When considering the studies undertaken on the impact of sanctions and re-offending, Bond and Nash noted that while measuring re-offending is challenging, the 'studies do not suggest that, on average, sanctions reduce further offending by perpetrators convicted of domestic and family violence, regardless of sentence type'.²⁶⁵

Even though most research has focused on the effect of prison sentences, 'no sanction was more effective in reducing domestic violence-related re-offending'.²⁶⁶ However, one study found that 'where community-based sentences are combined with treatment options, there may be a reduction in the likelihood of another domestic violence offence' within 5 years when compared to fines.²⁶⁷

Responses to manage risks of re-offending

Some evidence in the literature suggests that 'supervision can reduce general re-offending' but this can also be linked to the nature of the supervision and the skill a supervising officer has to motivate the person.²⁶⁸ Bond and Nash note:

Although to date the research suggests that community-based orders may not reduce domestic and family violence offending, we have noted that this might be related to treatment options and other supports that are available, as has been shown in research on offender supervision programs generally.²⁶⁹

An earlier literature review, conducted for the Council by Day, Ross and McLachlan, which reviewed evidence on the effectiveness of minimum non-parole periods for serious violent offences, highlighted research suggesting that 'those who have been convicted of more serious offences and who have served longer sentences will require longer periods of supervision in the community' rather than less, also emphasising the importance of the quality of that supervision to reoffending outcomes.²⁷⁰

Day, Ross and McLachlan further identified:

An important approach to managing the risks associated with serious and violent reoffending involves coordinated, multi-agency strategies that combine assessment, case planning, and the implementation of a range of risk management measures (monitoring and supervision, treatment, and victim safety planning)²⁷¹

These models evolved to manage high-risk domestic violence cases, with examples of these including: MARACS (Multi-Agency Risk Assessment Conferences), MASH (Multi-Agency Safeguarding Hubs) and MARAM (Multi-Agency Risk Assessment and Management) models targeting high-risk domestic violence cases in the UK and Victoria respectively, and, in Queensland, the High Risk Teams model.²⁷² 'A particular strength' of these models was identified as being that 'they require the use of common risk assessment tools, such that every agency is operating on the same understanding of what constitutes "high risk"'.²⁷³ However, some of these schemes are not conviction based and have not been developed specifically as a post-conviction management approach – in addition to relying on the delivery of programs.²⁷⁴

At the time of this review, Day, Ross and McLachlan reported 'research literature on their actual effectiveness remains scant ... and whilst they do appear to lead to improvement in information sharing and service coordination, the effectiveness of these models in reducing the incidence or severity of harm is yet to be clearly established'.²⁷⁵

Another approach considered as part of a response to manage risks of reoffending is the use of judicial supervision. Bond and Nash found limited evidence on the effectiveness of judicial supervision for domestic violence offenders (only 4 studies were found from the United States),²⁷⁶ suggesting that it may not be appropriate for preventing DV perpetrators from re-offending. The studies showed a link with promoting offender accountability and rehabilitation for offenders in drug courts.²⁷⁷ However, there was no evidence of an impact on reducing perpetrators' domestic violence-related re-offending (re-arrest, victim reports), although this may reflect increased ability to detect recidivism and violation due to the increased monitoring.²⁷⁸ There were also no significant differences in domestic violence-related re-offending (re-arrest, victim reports) by type of judicial monitoring (monthly vs graduated).²⁷⁹ However, Bond and Nash concluded this approach 'may be more effective when embedded in a broader response', with reference to further studies which included judicial monitoring as part of an integrated response.²⁸⁰

Broader research has indicated that the type of supervision provided might contribute to how successful it is as an intervention. Offender supervision programs in the US tend to focus largely on control over support and have not shown to be effective in reducing reoffending. Others approaches, such as the offender management schemes in the UK,²⁸¹ combine support with sanctions, and have been shown to be more successful.

BOCSAR findings

In 2022, the NSW Bureau of Crime Statistics and Research evaluated the impact of sentencing reforms in NSW which aimed to increase the number of DV offender under supervision.²⁸²

While an earlier 2020 study found the reforms 'had the intended effect of increasing supervision orders among DV offenders',²⁸³ the 2022 study found this had not translated into lower rates of reoffending: 'There were no significant reductions in re-offending among DV-related offenders and offenders sentenced to short-term prison or a custodial alternative following the reforms'.²⁸⁴ This included time to reoffend.²⁸⁵

The researchers identified several potential reasons for its findings, noting earlier studies 'which showed significantly lower rates of recidivism among offenders supervised by probation and parole authorities'.²⁸⁶ Possible explanations included the limited follow up time of 12 months (free time), the fact it did not test outcomes in the higher courts, the inability to determine the actual rate at which offenders were supervised in the community (with the suggestion that only 4 out of 10 additional offenders sentenced would have been subject to active supervision), and the potential for more supervision increasing the likelihood of lower risk offender being detected for committing minor offences.²⁸⁷

The authors conclude:

The abundance of evidence to support the effectiveness of community supervision in reducing recidivism suggests that further research into the extent and quality of supervision following the sentencing reforms may be worth pursuing. We know from the extant literature that supervision is most effective when it is active, high-quality and has a rehabilitative rather than a surveillance focus. It is possible that with a greater volume of offenders under community supervision after the new sentencing regime took effect (26.2% vs. 18.2%), the quality of services that were delivered were compromised. Assessing not only the frequency and type of contacts with community corrections officers but also the level of access that offenders had to behavioural change, education and employment programs during the post-reform period would be beneficial.²⁸⁸

They note the announcement of more funding by the NSW Government to increase supervision of offenders in the community and support greater access to rehabilitation programs and suggest this should be the subject of further evaluation.²⁸⁹

Specialist courts and risk of re-offending

Studies which have considered the impact of re-offending from a specialist domestic violence court compared to a mainstream court have had mixed results. Bond and Nash reported that some studies found there was a reduction in reoffending, while others found no reduction or an increase in re-offending.²⁹⁰

Similarly, there have been very limited empirical studies on Indigenous sentencing courts and their impact on domestic violence reoffending. Of the few studies, evidence on the impact of recidivism has been mixed. However, one study adopted a desistance framework (which focuses on the process of change being gradual with may include setbacks) and found just over half of the participants were classified as desisters or partial desisters.²⁹¹

The effectiveness of behaviour change programs

The effectiveness of behaviour change programs in reducing the risks of domestic and family violence is often questioned.²⁹² Several factors are believed to contribute to the current uncertainty about the reliability of these programs, which relate to how they are implemented. For example, Bond and Nash identify the failure to appropriately structure the sequencing of program delivery, alongside others which are likely to compliment engagement. This might include drug and alcohol treatment programs,²⁹³ or other interventions designed to address the perpetrators' cognitive ability or any impairments,²⁹⁴ to ensure their readiness and ability to engage meaningfully with the programs.

From their literature review of the evidence, Bond and Nash noted:

as perpetrator programs *alone* have limited impact on repeat offending, researchers have argued that perpetrator intervention programs should be implemented as part of a more integrated response—a response in which courts and probation play a strong supervisory and monitoring role²⁹⁵

A recent literature review prepared for ANROWS focused on the role of men's behaviour change programs ('MBCPs') and concluded that these programs 'are only one piece of the response to domestic, family and sexual violence' and that they need to be:

- operationalised as part of a fully integrated 'system' which is yet to occur;
- better funded to provide tailored, holistic, and timely services that can support meaningful behaviour 'change'; and
- 'embedded collaboratively within the broader domestic, family and sexual violence ecosystem so they can work together with other services towards improved outcomes for victims and survivors including children, as well as improved outcomes for meaningful behaviour change, accountability, increased visibility and risk management'.²⁹⁶

Suggestions have been made about how the effectiveness of behaviour change programs might be improved. One idea that has been put forward is implementing elements of restorative justice/transformational justice into program frameworks.²⁹⁷ Despite some structural and organisational barriers identified, the researchers believe that community involvement in offender treatment aligns strongly with principles of RJ/TJ. Further IPV survivors report satisfaction with restorative practices, which reduce the reliance on punitive criminal and civil responses which disproportionately affects marginalised groups and can lead to a reluctance to seek legal assistance for domestic violence matters.

Bond and Nash concur that there are several benefits to victim-survivors of utilising a restorative process for domestic violence matters, including having a positive experience, feeling safe, and the feeling that their experiences are vindicated.²⁹⁸ However, they did find '[s]mall sample sizes, a lack of control groups and different types of practices make it difficult to draw strong conclusions about the effectiveness of restorative justice approaches' in reducing DV-related recidivism when compared to conventional intervention programs.²⁹⁹

Findings of other sentencing councils and previous Council recommendations

Other sentencing councils have looked at or recommended research into approaches to sentencing DFV. This includes the NSW Sentencing Council which found in its review that '[t]here is a need for further investigation with a view to developing appropriate responses or sentences that will deal with the causes of offending behaviour and the criminogenic needs of offenders'.³⁰⁰ TSAC similarly found that '[t]he imposition of sanctions alone is not bringing about a change in offender behaviour. It may be that a greater investment in rehabilitative interventions and the adoption of a more therapeutic approach to sentencing should be considered'.³⁰¹

Although the evidence on the effectiveness of rehabilitative programs for DFV offenders is mixed,³⁰² 'there is some evidence that integrated treatment programs with court monitoring of compliance and prompt response to cases of non-compliance may secure better outcomes in terms of long-term reductions in violent behaviour'.³⁰³ Consistent with this, there have been calls for 'Magistrates and local courts across Australia [to] investigate opportunities for better follow-up of all protection orders once they are imposed by a court'.³⁰⁴

VSAC was tasked with investigating swift and certain approaches to sentencing family violence offenders.³⁰⁵ Ultimately it determined such an approach would not be effective or appropriate in Victoria. However, it did recommend increased use of judicial monitoring (as a condition of community corrections orders).³⁰⁶

QSAC has previously investigated and recognised the value of community correction orders,³⁰⁷ and in its final report on Part 1 of this review recommended that a commitment be made by government to the implementation of its previous recommendations regarding their introduction in Queensland.³⁰⁸

Question 6 – Other issues

6. Are there any other issues relevant to this review you would like to raise with us?

Appendix 1: Council members and contributors

Queensland Sentencing Advisory Council

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Statement on conflicts of interest: Any conflicts arising during Council reviews are managed in accordance with the Council's Conflicts of Interest Policy. More information is available on the Council's website

Appendix 2: About orders and relevant relationships under the DFVPA

As shown in Table A-1, 3 types of orders made under the *Domestic and Family Violence Protection Act 2012* (Qld).

Table A-1: Types of protection orders in Queensland

Type of order	Description
Police protection notice ('PPN')	<p>A temporary order until a domestic violence order is made.</p> <p>If police reasonably believe the respondent has committed domestic violence, that a PPN is necessary or desirable to protect the aggrieved, there is no current PPN or domestic violence order between the respondent and the aggrieved, and the respondent should not be taken into custody, they can issue a PPN to the respondent.³⁰⁹ Sometimes police must issue a PPN.³¹⁰</p> <p>The notice requires the respondent to be of good behaviour towards the aggrieved or any named individual and to not commit any further domestic violence.³¹¹ It can include further conditions deemed necessary by police.³¹²</p>
Release with conditions	<p>If it is not reasonably practicable for a police officer to bring the respondent to court for the hearing of a protection order, and the police officer has not obtained a temporary protection order, and the respondent must be released from custody, the police officer can release the respondent with release conditions.³¹³ Conditions are similar to those in a police protection order.</p>
Domestic violence order	<p>A court order is either temporary or final that requires an individual to be of good behaviour and not commit domestic violence against the aggrieved or any named person and comply with any other conditions imposed by the court for a set period of time.³¹⁴</p>

Table A-2: Relevant Relationships within the DFVPA

Intimate personal relationship	Family relationship	Informal care relationship
<p>Spousal relationship A spouse includes a de facto partner, a former spouse of the person; and a parent, or former parent,³¹⁵ of a child of the person.</p> <p>Engagement relationship An engagement relationship exists between 2 persons if the persons are or were engaged to be married to each other, including a betrothal under cultural or religious tradition.</p> <p>Couple relationship A couple relationship exists between 2 persons if the persons have or had a relationship as a couple.</p>	<p>A family relationship exists between 2 persons if 1 of them is or was the relative of the other. A relative is a person connected either by blood or marriage. Examples include:</p> <ul style="list-style-type: none"> • an individual's spouse • child (including a child 18 years or more) • stepchild • parent • step-parent • sibling • grandparent • aunt • nephew • cousin • half-brother • mother-in-law • aunt-in-law • A relative also includes a person whom the person regards or regarded as a relative, especially where the concept of a relative may be wider for some people than others. 	<p>An informal care relationship exists between 2 persons if 1 of them is or was dependent on the other person (the carer) for help in daily living.</p> <p>For example:</p> <ul style="list-style-type: none"> • dressing or other personal grooming • meal preparation or eating • shopping for a person's groceries • telephoning a specialist to make a medical appointment for a person <p>An informal care relationship does not exist between a child and a parent of a child.</p> <p>An informal care relationship does not exist if a person helps the other in an activity of daily living under a commercial arrangement (for example a nurse who attends each day to help with bathing).</p> <p>A commercial arrangement may exist even if a person does not pay a fee (for example – help from a voluntary organisation).</p> <p>An arrangement is not a commercial arrangement if 1 person receives a pension or allowance, or reimbursement for the purchase price of goods, for the help provided under the arrangement.</p> <p>An arrangement is not a commercial arrangement if 1 person pays a fee for the help provided under the arrangement because of domestic violence committed by the other person.</p>

Appendix 3: Approach to the sentencing of domestic violence offences in other jurisdictions

Other Australian states and territories and common law jurisdictions, such as Canada, England and Wales and New Zealand have adopted different approaches to the sentencing of domestic and family violence offences. The maximum penalties that apply to contravention of a DVO also vary.

1. Aggravating factors and circumstances of aggravation

Domestic violence context of offence as aggravating

Similar to Queensland, in the Northern Territory, it is an express aggravating factor at sentence if the person and victim were in a domestic relationship and the offence involved domestic violence in the nature of conduct that was physically or sexually abusive, coercive control of the victim, or exposed a child to domestic violence.³¹⁶ In addition, a purpose of sentencing a person for any offence can be for the 'protection of any person who is in a family relationship or a domestic relationship with the offender'.³¹⁷

In New Zealand, the sentencing legislation requires a court to treat as aggravating that the offence was a family violence offence committed—(i) while the person was subject to a protection order; and (ii) against a person who, in relation to the protection order, was a protected person (as so defined).³¹⁸ This is similar to the aggravating factor which will come into effect in Queensland on 26 May 2025 (see section 3.1). In contrast to Queensland, however, domestic violence offences are aggravated by operation of legislation only where there is a protection order in place. However, other general aggravating factors apply that are relevant to domestic violence offending including if the person is found to have been abusing a position of trust in relation to the victim, where the offence involved actual or threatened use of violence or a weapon, if the offence involved particular cruelty, or the victim was particularly vulnerable because of any factor known to the offender.³¹⁹

In Canada, evidence that the person being sentenced, in committing the offence, abused that person's intimate partner or a member of the victim or the offender's family is a relevant aggravating factor.³²⁰ This factor is listed alongside other factors that can also be aggravating in the context of domestic violence offending, such as that the person abused a position of trust in relation to the victim, or that the offence had a significant impact on the victim considering their age and personal circumstances.³²¹

In England and Wales, which has formal sentencing guidelines developed by the Sentencing Council that courts must follow,³²² there is a general guideline that applies to domestic violence offences – *Overarching principles: domestic abuse guideline*.³²³ The guideline states that: 'The domestic context of the offending behaviour makes the offending more serious because it represents a violation of the trust and security that normally exists between people in an intimate or family relationship'.³²⁴ It further notes: 'there may be a continuing threat to the victim's safety, and in the worst cases a threat to their life or the lives of others around them'.³²⁵ The guideline not only recognises the offending is more serious, but also lists aggravating and mitigating factors 'of particular relevance to offences committed in a domestic context'.³²⁶ The fact an offence occurred in a domestic context also is listed in several offence-specific guidelines as an aggravating factor.³²⁷

Other aggravating factors, including repeated domestic violence offending

In Tasmania, there is no aggravating factor that applies generally to all offences on the basis the offence was also a family violence offence. However, when determining sentence for a family violence offence,³²⁸ a court or a judge must consider as aggravating the fact that the person being sentenced: knew, or was reckless as to whether, a child was present or on the premises at the time of the offence; knew, or was reckless as to whether, the affected person was pregnant; or is a serial family violence perpetrator.³²⁹

A 'serial family violence perpetrator' declaration is made by a court and recorded on the person's criminal history.³³⁰ The court must make a declaration if the person is 18 years or older in certain circumstances, including if the person has been convicted (counting the current offence) of at least 2 indictable family violence offences with at least 2

being committed on different days, or at least 3 family violence offences, whether indictable or summary, with at least 3 of those offences committed on different days, provided the court is of the view the making of the declaration is warranted.³³¹ This also applies if the person has been convicted of the offence of persistent family violence.³³²

This new serial perpetrator designation was introduced by the Tasmanian Government in 2022 'to identify perpetrators who repeatedly commit family violence offences' and 'aims to provide for a heightened justice response ... through the imposition of certain restrictions, facilitating rehabilitation or providing for enhanced supervision'.³³³ In addition to this being an aggravating factor at sentence, it is also relevant to decision-making relating to parole applications.³³⁴

Other legislative guidance for domestic violence offences regarding aggravation or mitigation

In the Australian Capital Territory ('ACT'), in deciding how an offender should be sentenced for a family violence offence, a court must consider the nature of family violence and the context of the offending, including:

- the matters listed in the preamble to the *Family Violence Act 2016* (ACT);³³⁵
- whether the offending occurred at the home of the victim, offender or another person;
- whether the offending occurred when a child was present; and
- if the offence is a serious family violence offence (defined as a family violence offence punishable by imprisonment for 5 years or more)³³⁶ – whether the offender has 1 or more other convictions for serious family violence offences.³³⁷

This same section provides that a court must not reduce the severity of a sentence it would otherwise have imposed because the offence is a family violence offence or a family violence order is in force against the offender in relation to the family violence offence.³³⁸ This requirement was originally enacted in response to a recommendation made by the Australian and NSW Law Reform Commissions.³³⁹

General aggravating factors - not specific to domestic violence offences

In NSW, while the fact an offence is a domestic violence offence is not expressly aggravating, statutory aggravating factors include several factors that could apply to such offences including that:

- the offence: involved the actual or threatened use of violence; was committed in the home of a victim or any other person, involved gratuitous cruelty or a grave risk of death to another person or persons;
- the injury, emotional harm, loss or damage caused by the offence was substantial; and
- the person abused a position of trust or authority in relation to the victim, and the victim was vulnerable.³⁴⁰

Relationship between the person being sentenced and victim as a circumstance of aggravation

Both South Australia and Western Australia have introduced circumstances of aggravation which can apply in domestic violence contexts and increase the maximum penalty for those offences to which they apply.

In South Australia, aggravating circumstances include where the person 'committed the offence knowing that the victim of the offence was a person with whom the offender was, or was formerly, in a relationship', as well as 'if the offender was, at the time of the offence, acting in contravention of' a court order by engaging in conduct the order was designed to prevent.³⁴¹ The offences to which these aggravating circumstances apply include a wide range of offences including unlawful threats to kill/endanger life or cause harm³⁴², assault and assault occasioning bodily harm;³⁴³ causing serious harm intentionally or recklessly;³⁴⁴ or causing harm intentionally or recklessly;³⁴⁵ endangering the life of another;³⁴⁶ do an act/make an omission likely to cause serious harm with intent, or recklessly;³⁴⁷ do an act/make an omission likely to cause harm;³⁴⁸ theft;³⁴⁹ serious criminal trespass - place of residence;³⁵⁰ and criminal trespass – place of residence.³⁵¹ They also apply to several sexual offences increasing the maximum penalty, including compelled sexual manipulation, indecent assault and procuring a child to commit an indecent act.³⁵²

In Western Australia, circumstances of aggravation apply to offences against the person, including that the offender is in a family relationship with the victim of the offence, a child was present when the offence was committed, or the conduct of the person constituted a breach of an order (excluding one made or registered under Part 1C of the *Restraining Orders Act 1997*).³⁵³ The first two circumstances of aggravation do not apply if the offender was a child at the time of committing the offence.³⁵⁴ The circumstances of aggravation apply to a wide range of offences involving physical violence including grievous bodily harm;³⁵⁵ suffocation and strangulation;³⁵⁶ wounding;³⁵⁷ common assault;³⁵⁸ assault occasioning bodily harm;³⁵⁹ and assault with intent.³⁶⁰

Guidance on penalty types and preconditions

Some jurisdictions provide further guidance on the types of penalties that are appropriate for a domestic violence offence. For example, in NSW when a court finds a person guilty of a domestic violence offence, there is a presumption that a court must impose:

- a sentence of full-time detention, or
- a supervised order (being an intensive correction order (ICO), community correction order (CCO) or conditional release order (CRO) that includes a supervision condition).

unless satisfied a different sentence is more appropriate in the circumstances and gives reasons for reaching that view.³⁶¹

Additionally:

- an intensive correction order ('ICO') cannot be ordered unless the court is satisfied the victim of the domestic violence offence, and any other person with whom the offender is likely to live, will be adequately protected by the conditions of the order or for some other reason;³⁶²
- a home detention condition cannot be ordered if the court reasonably believes the offender will live with the victim of the domestic violence offence;³⁶³
- before making either a community correction order ('CCO') or conditional release order ('CRO') for a domestic violence offence, the court must consider the victim's safety.³⁶⁴

In Western Australia, the sentencing legislation requires a court to impose an electronic monitoring requirement if a court makes a community-based order, an intensive supervision order or a conditional suspended imprisonment order and an offence to which that order may apply is a family violence offence meeting certain additional criteria,³⁶⁵ unless the court is satisfied there are exceptional circumstances.

In the Northern Territory, when sentencing an offence that involves domestic violence, a court must consider 'whether there is an unacceptable risk that the offender may commit domestic violence' and whether the court could make an order with a condition (for example, in a community correction order or intensive community correction order) to mitigate any risk and must ensure that the sentence is consistent with the conditions of a DVO.³⁶⁶

Non-legislative guidance

In addition to legislative forms of guidance, case law in many jurisdictions supports the treatment of offences occurring in a domestic-violence context as being more serious. In some jurisdictions, case law is the primary form of sentencing guidance.

For example, sentencing legislation in Victoria does not specify particular aggravating or mitigating factors. This means that there is no specific guidance as to how domestic violence cases should be treated, other than general statements made by higher courts.³⁶⁷

The *Victorian Sentencing Manual*³⁶⁸ sets out some common law principles which underpin sentencing in Victoria, including in relation to domestic violence (referred to as family violence in the manual).³⁶⁹ It highlights that:

- breaching a domestic violence order will increase the seriousness of the offending;³⁷⁰ and
- the gravity of the offending 'is not to be measured solely by the physical consequences' and the whole context must be considered.³⁷¹

The Victorian Sentencing Advisory Council also has published 'Guiding Principles for Sentencing Contraventions of Family Violence Intervention Orders' which sets out a number of factors which may increase the penalty imposed in those circumstances, such as the presence of children, offending taking place in the victim's home, and offending which occurs by a person the victim has ongoing emotional, legal and/or financial ties to (such as the joint care of children).³⁷² In contrast to the guidelines in England and Wales,³⁷³ these have no formal legal status and courts are not required to follow them or take them into account.

2. Maximum penalties for contravention of a domestic violence order

As shown in Table A-3, maximum penalties for contravention of a domestic violence order (and equivalent orders) vary as do circumstances of aggravation for jurisdictions in Australia and New Zealand.

Table A-3: Maximum penalties for contravention of a domestic violence order (or equivalent) in Australia and New Zealand

State/Territory	Offence	1st instance	2nd instance	3rd instance	4th instance
QLD – Domestic and Family Violence Protection Act 2012 (Qld) s 177(2) ACT – Family Violence Act 2016 (ACT) s 43(2)	Contravention of domestic violence order	120 penalty units (\$19,356) or 3 years' imprisonment	(If within 5 years has committed a domestic violence offence) 240 penalty units (\$38,712) or 5 years' imprisonment		
	Offence-contravention of family violence order	500 penalty units (\$80,000) and/or 5 years' imprisonment			
NSW – Crimes (Domestic and Personal Violence) Act 2007 (NSW) s 14(1)	Contravention of apprehended violence order	50 penalty units (\$5,500) and/or 2 years' imprisonment. Presumption of imprisonment if an act of violence			
NT – Domestic and Family Violence Act 2007 (NT) s 121	Contravention of DVO [domestic violence order]	400 penalty units (\$74,000) or 2 years' imprisonment 5 years imprisonment if involved harm or threat of harm	3 years' imprisonment	(If 3 in 28 days dealt with together) 400 penalty units (\$74,000) or 3 years imprisonment.	
SA – Intervention Orders (Prevention of Abuse) Act 2009 (SA) s 31	Contravention of intervention order Basic: non-aggravated Aggravated: where offence occurs in presence of child. Violent: physical violence or threat of physical violence	'Intervention programs' breach: \$2,000 or 2 years imprisonment. Basic: 3 years imprisonment Aggravated: 5 years' imprisonment Violent: 7 years' imprisonment Aggravated & violent: 10 years' imprisonment	(If contravention committed within 5 years) Basic: 7 years' imprisonment Aggravated: 10 years' imprisonment		
Tas – Family Violence Act 2004 (Tas) s 35	Contravention of FVO [family violence order] or PFVO [police family violence order]	20 penalty units (\$4,040) or 12 months imprisonment	(If there has been any previous contravention) 30 penalty units (\$6,060) or 18 months imprisonment	(If there has been 2 of any previous contravention) 40 penalty units (\$8,080) or 2 years' imprisonment	(If there has been 3 of any previous contravention) 5 years' imprisonment
Vic – Family Violence Protection Act 2008 (Vic) ss 37(2), 123(2), 125A(1)	Contravention of family violence intervention order	240 penalty units (\$47,421.60) and/or 2 years' imprisonment			
	Contravention of order intending to cause harm or fear for safety	5 years' imprisonment and/or 600 penalty units (\$118,544).			
	Persistent contravention of notices and orders			5 years' imprisonment and/or 600 penalty units (\$118,544).	
WA – Restraining Orders Act 1997 (WA) ss 61, 61A	Breach of restraining order	\$10,000 and/or 2 years' imprisonment			
	Penalty for repeated breach of restraining order [at least 2 previous relevant offences within 2 years]			Must impose imprisonment, unless 'unjust' and no safety concerns.	
NZ – Family Violence Act 2018 (NZ) s 112	Offence to breach protection order (or related property order)	3 years' imprisonment			

Magistrates Courts' and Local Courts' usual jurisdictional limits: ACT: 2 yrs NSW: 2 yrs (single offence) or 5 yrs (multiple offences) NT: 5 yrs (single offence); Qld: 3 years; SA: 5 years (single offence) or 10 years (multiple offences); Tas: 12 months (first offence) or 5 years second or subsequent offence); Vic: 2 yrs (single offence) or 5 yrs (multiple offences); WA: Penalties set out in offence provisions

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The Queensland Sentencing Advisory Council

The Queensland Sentencing Advisory Council is established by section 198 of the *Penalties and Sentences Act 1992* (Qld). The Council provides independent research and advice, seeks public views and promotes community understanding of sentencing matters. The Council's functions, detailed in section 199 of the Act, include to:

- inform the community about sentencing through research and education;
- engage with Queenslanders to understand their views on sentencing; and
- advise the Attorney-General on matters relating to sentencing, at the Attorney-General's request.

Further information

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Endnotes

- 1 Terms of Reference, Queensland Sentencing Advisory Council: 'Sentencing for Sexual Violence Offences and Aggravating Factor for Domestic and Family Violence Offences' issued by the Attorney-General and Minister for Justice on 17 May 2023
<https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0004/765958/Terms-of-Reference-sentencing-sexual-and-domestic-violence.pdf>.
- 2 Ibid 2.
- 3 Ibid 2–3.
- 4 Special Taskforce on Domestic and Family Violence, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (Report, February 2015) ('Bryce Taskforce Report'). Laura Hilderley, Samuel Jeffs and Lauren Banning, *The Impact of Domestic Violence as an Aggravating Factor on Sentencing Outcomes* (Queensland Sentencing Advisory Council, Research Brief 1, May 2021); Women's Safety and Justice Taskforce, *Hear her Voice – Report One: Addressing Coercive Control and Domestic and Family Violence in Queensland* (2021) ('Hear her Voice–Report One'); Women's Safety and Justice Taskforce, *Hear her Voice – Report Two: Women and Girls' Experiences Across the Criminal Justice System* (2022) ('Hear her Voice–Report Two').
- 5 Australian Bureau of Statistics, Personal Safety, Australia, 2021–22 (Data report, 15 March 2023) <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>>.
- 6 *Domestic and Family Violence Protection Act 2012* (Qld) s 8 ('DFVPA').
- 7 Ibid s 8(3).
- 8 Ibid s 8.
- 9 Ibid s 13.
- 10 Ibid s 8(2)(a).
- 11 Ibid s 8(2)(b).
- 12 Ibid s 8(2)(c).
- 13 Ibid s 9. An 'associate' is further defined in s 24(3) and can include a person who is the current spouse or partner of the aggrieved, who works or live at the same place as the aggrieved, or who provides support to the aggrieved, such as a friend or neighbour.
- 14 *Criminal Code Act 1899* (Qld) sch 1 ('*Criminal Code* (Qld)') s 315A.
- 15 Ibid s 359E(4).
- 16 See *R v MCW* [2019] 2 Qd R 344, 352–3 [35] (Mullins J, Philippides JA and Boddice J agreeing).
- 17 A 'domestic violence order' is defined under the Act as a protection order or a temporary protection order: DFVPA (n 6) s 23(2).
- 18 *Criminal Code 1995* (Cth) s 474.17(1).
- 19 Ibid s 474.15.
- 20 Ibid s 474.20.
- 21 Queensland Treasury, Queensland Government Statistician's Office, *Crime Report, Queensland, 2022–23: Recorded Crime Statistics* (Report, 2024).
- 22 Ibid 10, '4.1.3 Other offences' and Table 5. An individual may be counted multiple times in a reference years: ibid 43.
- 23 Ibid 13, '4.2 Cleared offences', Table 8. For the definition of 'cleared' offences, see ibid, glossary.
- 24 Ibid 62, '6.2 Offenders by age and offence type', this figure took into account all offences (including traffic and related offences).
- 25 Ibid 82.
- 26 'Domestic violence offence' is defined in section 1 of the *Criminal Code* (Qld) (n 14).
- 27 Ibid.
- 28 Ibid.
- 29 *Penalties and Sentences Act 1992* (Qld) ('PSA') s 9(10A); *Criminal Law (Domestic Violence) Amendment Act 2016* (Qld) commenced on date of assent 5 May 2016.
- 30 Ibid.
- 31 Ibid - example provided under the provision.
- 32 As defined in the *Criminal Code* (Qld) (n 14) s 1 which states: 'circumstance of aggravation means any circumstance by reason whereof an offender is liable to a greater punishment than that to which the offender would be liable if the offence were committed without the existence of that circumstance'.
- 33 DFVPA (n 6) s 177(2).

Criminal Code (Qld) (n 14) s 359F(11).

Ibid s 359E(4). There are also other circumstances of aggravation that increase the maximum penalty that applies, including if the person uses or intentionally threatens to use violence against anyone or anyone's property, possesses a weapon, or contravenes or threatens to contravene an injunction or order imposed or made by a court or tribunal, in which case the maximum penalty is also 7 years.

Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024 (Qld) s 86; SL 2024 No 146.

Bryce Taskforce Report (n 4) rec 118.

Queensland Department of Justice & Attorney-General, *Discussion Paper: Circumstance of Aggravation and Strangulation* (October 2015) 5.

See Explanatory Notes, *Criminal Law (Domestic Violence) Amendment Bill* (No 2) 2015 (Qld) 2.

Ibid.

PSA (n 29) s 9(1).

Hidderley, Jeffs and Banning (n 4).

Ibid 1.

This is due to the operation of section 12A of the PSA (n 29) that allows for a charge for an offence of which the offender is convicted to be recorded as being a conviction for a DV offence, or if no conviction is recorded, entered in the offender's criminal history as a DV offence. This provision was inserted into the PSA by the *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld), s 18 and came into operation on 1 December 2015 (see s 1A).

Hear her Voice—Report One (n 4), vol 1, lxxiii–lxxiv rec 73.

Ibid.

Ibid vol 1, xxii–xxiii.

Ibid vol 2, 6.

Ibid.

See *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (Qld) pt 3, div 5 and SL 2024 No 146.

Hear her Voice—Report One (n 4) vol 1, xxvi.

See *Munda v State of Western Australia* (2013) 249 CLR 600, 601 (French CJ, Hayne, Crennan, Kiefel, Gageler and Keane JJ) ('*Munda*'): 'Indulging in drunken bouts of domestic violence is an example of moral culpability to a very serious degree.' And 'A just sentence must accord due recognition to the human dignity of the victim of domestic violence and the legitimate interest of the general community in the denunciation and punishment of a brutal, alcohol-fuelled destruction of a woman by her partner': 620–1 [55]–[56]; *R v RAP* [2014] QCA 228 [57] (Alan Wilson J, Margaret McMurdo P and Fraser JA agreeing) in respect of assaults committed in a domestic setting; *R v Pickup* [2008] QCA 350 [30] (Fraser JA, McMurdo P and McMeekin J agreeing) where the relationship was relevant to the victim harm experienced because the offences 'were calculated to degrade and to demonstrate the applicant's physical and emotional domination of the complainant.' Cf *R v McCauley* [2000] QCA 265, 5–6 (Thomas JA, Davies and McPherson JJA agreeing) which discussed whether an earlier consensual sexual relationship was mitigating.

See *R v Stephens; Ex parte A-G (Qld)* [1994] QCA 507, 3–4 where the court held it was an error by the sentencing judge to consider a rape in an existing de facto relationship to be a mitigating factor; *R v Postchild* [2013] QCA 227, even though she was described as his 'girlfriend' and they were living together, other comparable cases were considered more serious as 'there was no long-standing relationship between the offender and victim' [15] and the rape where she was tied and gagged 'did not occur in a context of fear or intimidation' [34]–[36].

[2005] QCA 105 ('*Fairbrother*').

Ibid [23] (McMurdo P, Jerrard JA and Cullinane J agreeing). Similar comments were made in *R v Major; Ex parte A-G (Qld)* [2012] 1 Qd R 465 [53] (Margaret McMurdo P) ('*Major*').

As there is no transitional provision in the *Criminal Law (Domestic Violence) Amendment Act 2016* (Qld); *Acts Interpretation Act 1954* (Qld) s 15A. See: *R v Hutchinson* [2018] 3 Qd R 505 [43] (Mullins J, Fraser and Morrison JJA agreeing); *R v O'Malley* [2019] QCA 130 [94]; *R v BNQ* [2016] QDC 113 (Moynihan QC DCJ).

PSA (n 29) s 9(10A). For a discussion on 'exceptional circumstances' generally, see *R v Tootell; Ex parte A-G (Qld)* [2012] QCA 273 [18]–[25].

[2022] QCA 100.

[2021] QCA 77.

[2019] 3 QR 196.

[2020] QCA 91 ('*Castel*').

Ibid [3] (Sofronoff P) referring to [14], [16], [18] (Mullins JA) cf [49] (Boddice J (in dissent)); *R v O'Sullivan; Ex parte A-G (Qld)* (2019) 3 QR 196, [177]–[178] (Sofronoff P and Gotterson JA and Lyons SJA) ('O'Sullivan').

R v RBO [2024] QCA 214 [119] (Henry J, Mullins P and Brown JA agreeing) referring to earlier statements made by Keane JA in *R v Pham* (2009) 197 A Crim R 246 [5]–[7] ('Pham').

Pham (n 63) [5] (Keane JA) referring to the effect of changes in the law under *Criminal Code* (Qld) (n 14) s 11(2).

Pham (n 63) [6] (Keane JA).

Ibid [7] (Keane JA).

[2018] 3 Qd R 505.

R v Hutchinson [2018] 3 Qd R 505, 515 [40] (Mullins J, Fraser and Morrison JJA agreeing) citing *Pham* (n 63) [5]–[7] (Kent J).

[2021] QCA 218.

R v HCH [2021] QCA 218, 7 (Davis J, Sofronoff P and Williams J agreeing) referring to *O'Sullivan* (n 62).

O'Sullivan (n 62).

See Ibid [93], [110] (Sofronoff P and Gotterson JA and Lyons SJA); *R v Hutchinson* [2018] 3 Qd R 505 [40], [52]–[53] (Mullins J, Fraser and Morrison JJA agreeing); *R v McConnell* [2018] QCA 107 ('McConnell') [17], [22] (Fraser JA, Sofronoff P and Philippides JA agreeing).

O'Sullivan (n 62) [110] (Sofronoff P and Gotterson JA and Lyons SJA).

See, for example, *R v SDM* [2021] QCA 135 [37] (Mullins JA, Fraser JA and Henry J agreeing).

[2020] QCA 91. See also *R v O'Malley* [2019] QCA 130 [94].

Castel (n 61) [35] (Mullins JA). Boddice J considered section 9(10A) does 'impact upon the use of some decisions as comparable': see [49].

[2024] QCA 214.

R v RBO [2024] QCA 214 [111] (Henry J, Mullins P and Brown JA agreeing).

Criminal Code (Qld) (n 14) s 229B. Previously called 'Maintaining a sexual relationship with a child'. *R v BDQ* (2022) 298 A Crim R 120 [54] (Brown J, Morrison and McMurdo JJA agreeing).

O'Sullivan (n 62) [177]–[178] (Sofronoff P and Gotterson JA and Lyons SJA).

R v Fisher [2022] QSC 189 [36] (Burns J).

PSA (n 29) s 9(10B) introduced by *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2022* (Qld) s 80 which commenced 1 August 2023.

Tasmanian Sentencing Advisory Council, *Sentencing for Adult Family Violence Offenders* (Final Report No 5, October 2015); NSW Sentencing Council, *Sentencing for Domestic Violence Offences* (Report, February 2016).

This was for the offences of common assault and assault on a pregnant woman (due to lack of sufficient data for meaningful comparison for other offences): Tasmanian Sentencing Advisory Council (n 83) 32. The other offences included: assault, including sexual assault; threats, coercion, intimidation or verbal abuse; abduction; stalking; economic abuse; emotional abuse or intimidation; and contravening an external family violence order: at 5. Note that these offences are identified in the relevant databases as DFV offences.

Neil Donnelly and Suzanne Poynton, *Prison Penalties for Serious Domestic and Non-Domestic Assault* (Issue Paper No 110, October 2015) 2–3.

NSW Sentencing Council (n 83) 44, [4.17].

Ibid 45 [4.20].

Ibid 45 [4.21].

James Thornton et al, *Research review of the Overarching principles: domestic abuse sentencing guideline* (December 2024) <<https://www.sentencingcouncil.org.uk/html-publication/item/research-review-of-the-overarching-principles-domestic-abuse-sentencing-guideline/>> ('Independent review of domestic abuse guidelines').

Sentencing Council (England and Wales), 'Response to the review of the Overarching principles: domestic abuse guideline (December 2024)' <<https://www.sentencingcouncil.org.uk/wp-content/uploads/Response-to-the-review-of-the-Domestic-Abuse-Overarching-Principles-guideline.pdf>>.

Independent review of domestic abuse guidelines (n 89) 4.3 and Table 7.

Ibid.

Only includes offences that occurred prior to 1 August 2023 as after this date DV was an element of the offence and s 9(10A) no longer applies.

Preliminary submission 16 (Legal Aid Queensland) 2.

Preliminary submission 20 (North Queensland Women's Legal Service) 4.

Ibid 5.

97 Preliminary submission 8 (No to Violence) 1; Preliminary submission 10 (QIFVLS) 5–6; Preliminary
 submission 14 (The Salvation Army Australia) 9 [1.13]–[1.15]; Preliminary submission 28 (Sisters Inside
 Inc); Preliminary submission 22 (Relationships Australia Queensland).
 98 Preliminary submission 3 (Office of the Public Advocate) 1–2.
 99 Christine E W Bond and Caitlin Nash, *Sentencing Domestic and Family Violence: A Review of the Research
 Evidence* (Literature Review prepared for the Queensland Sentencing Advisory Council by the Griffith
 Criminology Institute, September 2023) I ('Griffith University Literature Review').
 100 Terms of Reference, Queensland Sentencing Advisory Council: 'Sentencing for Sexual Violence Offences
 and Aggravating Factor for Domestic and Family Violence Offences' issued by the Attorney-General and
 Minister for Justice on 17 May 2023
 <[https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0004/765958/Terms-of-Reference-
 sentencing-sexual-and-domestic-violence.pdf](https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0004/765958/Terms-of-Reference-sentencing-sexual-and-domestic-violence.pdf)>.
 101 In 1989, an offence of 'breach of order or conditions' under section 37 of the *Domestic Violence (Family
 Protection) Act 1989* (Qld) carried a maximum penalty of 40 penalty units or 12 months imprisonment
 or both. There was no increased maximum penalty where there had been previous convictions. In 1993 the
 Act was amended and the offence renumbered to section 80 and included a contravention of 'a registered
 interstate order' but the maximum penalty stayed the same: *Domestic Violence (Family Protection) Act
 1989* (Qld) s 80(1)(b) (as at 28 May 1993). In 2003, the provision was amended to provide an increased
 penalty if there had been at least 2 previous convictions on different occasions within 3 years. In those
 circumstances, a maximum penalty of 2 years imprisonment would apply: *Domestic and Family Violence
 Protection Act 1989* (Qld) 80(1)(a) (as at 10 March 2003).
 102 For a summary and background of the findings of this review, see Explanatory Notes, Domestic and Family
 Violence Protection Bill 2011 (Qld) 1, 27–9. Legislative changes were also initiated taking into account
 recommendations made by the Australian Law Reform Commission and NSW Law Reform Commission in
 their report, *Family Violence – a National Legal Response* (November 2010).
 103 Explanatory Notes, Domestic and Family Violence Protection Bill 2011 (Qld), 4.
 104 DFVPA (n 6) s 177.
 105 Ibid 177(2)(b).
 106 Explanatory Notes, Domestic and Family Violence Protection Bill 2011 (Qld) 9.
 107 *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld) s 7 amended s 177 of the DFVPA (n 6) 6.
 This came into effect on 22 October 2015.
 108 *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld) s 8 amended s 181 of the DFVPA (n 6).
 109 DFVPA (n 6) s 181.
 110 Ibid s 177(2)(a) as amended by *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld) s 7.
 111 Ibid s 5, sch (definition of 'domestic violence offence').
 112 That is, an offence committed under Part 7 of the DFVPA (n 6) being: contravention of a domestic violence
 order (s 177), contravention of a police protection notice (s 178) or contravention for release conditions
 imposed on people released from custody prior to a protection order or a temporary protection order being
 made (s 179). It may also be a previous offence under *Domestic and Family Violence Protection Act 1989*
 (Qld) 80: DFVPA (n 6) s 196(7).
 113 PSA (n 29) s 12A.
 114 Ibid s 161ZT.
 115 As to the power of the higher courts to deal with summary offences, see *Criminal Code* (Qld) (n 14) s 651.
 116 Bryce Taskforce Report 2015 (n 4) rec 121.
 117 Ibid 305. This was between July 2013 – June 2014.
 118 Ibid.
 119 Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill 2015 (Qld) 3–4.
 120 Ibid 6.
 121 Queensland, *Parliamentary Debates*, Legislative Assembly, 2 December 2015, 3082 (Yvette D'Ath,
 Attorney-General and Minister for Justice and Minister for Training and Skills). This commitment was also
 made in the Explanatory Notes to the Bill: Explanatory Notes, Criminal Law (Domestic Violence) Amendment
 Bill (No. 2) 2015 (Qld) 2.
 122 PSA (n 29) s 9(2)(c)(ii). From 26 May 2025, domestic violence committed in front of a child will be a
 statutory aggravating factor: s 9(10D).
 123 NSW Sentencing Council (n 83); Tasmanian Sentencing Advisory Council (n 83); Victorian Sentencing
 Advisory Council, *Breaching Intervention Orders Report* (Report, June 2008); Victorian Sentencing Advisory
 Council, *Sentencing Practices for Breach of Family Violence Intervention Orders: Final Report* (Report, June
 2009); Victorian Sentencing Advisory Council, *Family Violence Intervention Orders and Safety Notices:
 Sentencing for Contravention* (Report September 2013); Victorian Sentencing Advisory Council,

Contravention of Family Violence Intervention Orders and Safety Notices: Prior Offences and Reoffending (Final Report, 2016).

NSW Sentencing Council (n 83) 100–1, [7.10], Figure 7.1.

Ibid.

Ibid 99 [7.8].

Ibid xiii [0.13].

For information on the methodology used for this analysis, see Australian Bureau of Statistics, *Family and domestic violence statistics* (Methodology guide, 15 March 2024) <<https://www.abs.gov.au/methodologies/criminal-courts-australia-methodology/2022-23>>.

Australian Bureau of Statistics, *Criminal Courts, Australia 2022–23* (Data Report, 15 March 2024).

Ibid. For information on sentence type classifications, see Australian Bureau of Statistics, *Criminal Courts, Australia methodology* (Reference period 2022–23 financial year) (Methodology guide, 15 March 2024) <<https://www.abs.gov.au/methodologies/criminal-courts-australia-methodology/2022-23#sentence-type-classification>>.

Australian Bureau of Statistics (n 128).

Tasmanian Sentencing Advisory Council (n 83) 30.

See n 123.

Victorian Sentencing Advisory Council, *Breaching Intervention Orders* (Report, June 2008) 22.

Ibid 23 citing Community Law Reform Committee [ACT], *Domestic Violence, Chapter 6: Other Issues Relating to the Criminal Justice Response* (May 2008).

Heather Douglas, 'Not a Crime like any other: Sentencing Breaches of Domestic Violence Protection Orders' (2007) 31 *Criminal Law Journal* 220.

Hear her Voice—Report One (n 4) vol 1, xxii.

Ibid vol 1, xxii–xxiii.

R v Wood [1994] QCA 297 (McPherson JA and Ambrose J, Pincus JA agreeing) cited in *CDL v Commissioner of Police* [2024] QCA 245, [18] (Bowskill CJ, Boddice JA agreeing).

CDL v Commissioner of Police [2024] QCA 245, [24] (Bowskill CJ, Boddice JA agreeing). Brown JA also endorsed this statement (at [66]). See also *CBC v Queensland Police Service* [2019] QDC 3, [43] (Morzone QC DCJ).

Fairbrother (n 54) [23] (McMurdo P, Jerrard JA and Cullinane J agreeing); *Major* (n 55) cited in *BH v Commissioner of Police* [2021] QDC 175, [50] (Fantin DCJ).

From 2016–17 to 2023–24, 99.9% of contravene DVO (MSO) sentenced cases were heard in the Magistrates Courts (Magistrates Courts n=73,608; District Courts n=98).

Justices Act 1886 (Qld) s 222.

PSA (n 29) s 9(2)(b); *Markarian v The Queen* (2005) 228 CLR 357, 372 [31] (Gleeson CJ, Gummow, Hayne and Callinan JJ).

BH v Commissioner of Police [2021] QDC 175, [49] (Fantin DCJ).

R v Murray (2014) 245 A Crim R 37, 42 [16] (Fraser JA, Gotterson and Morrison JJA agreeing), citing *R v Samad* [2012] QCA 63, [30] (Wilson AJA).

R v Murray (2014) 245 A Crim R 37, 42 [16] (Fraser JA, Gotterson and Morrison JJA agreeing), citing *R v Benson* [2014] QCA 188, [36] (Morrison JA) and *R v CBI* [2013] QCA 186, [19] (Fraser JA, Gotterson JA and Mullins J agreeing) (which was a case about increases in maximums for sexual offences).

Ibid citing *R v SAH* [2004] QCA 329, [12]–[13]. See similar comments in *O'Sullivan* (n 62) [93], fn 43 citing *Carter's Criminal Code*.

Ibid [17]. See also *LJS v Sweeney* [2017] QDC 18, [19]–[25] where Smith DCJA considered cases prior to the increase of maximum penalty for contravention of a domestic violence order as there were no comparable decisions.

DFVPA (n 6) s 177(2)(a).

R v De Simoni (1981) 147 CLR 383, 389 (Gibbs CJ, Mason and Murphy JJ agreeing).

Justices Act 1886 (Qld) ss 47(7)–(8).

See e.g. *JMM v Commissioner of Police* [2018] QDC 130, [18]; *HFC v Commissioner of Police (Queensland)* [2022] QDC 139, [44] (Farr SC DCJ); *Miers v Blewett* [2014] 1 Qd R 318, 328 (Fraser JA, Holmes JA and Atkinson J agreeing); *Singh v Queensland Police Service* [2013] QDC 37, [44] (Robertson DCJ).

Miers v Blewett [2014] 1 Qd R 318, 327–8 (Fraser JA, Holmes JA and Atkinson J agreeing); *Singh v Queensland Police Service* [2013] QDC 37, [44] (Robertson DCJ); decided prior to the *Criminal Law Amendment Act 2014* (Qld) s 58 which amended the *Justices Act 1886* (Qld) s 47.

Justices Act 1886 (Qld) s 47. See *HFC v Commissioner of Police (Queensland)* [2022] QDC 139, [44] (Farr SC DCJ); *JMM v Commissioner of Police* [2018] QDC 130, [31].

PSA (n 29) s 9(10).

Ibid s 9(11). See also *Veen v The Queen (No 2)* (1988) 164 CLR 465, 472 (Mason CJ, Brennan, Dawson and Toohey JJ).

PSA (n 29) s 9(2A).

This does not mean that general factors in section 9(2) are wholly irrelevant: *R v HYQ* [2024] QCA 151 [78] (Bowskill CJ, Dalton JA and Wilson J agreeing) citing *R v McGrath* [2006] 2 Qd R 58 [37] (Mackenzie J).

R v Breeze (1999) 106 A Crim R 441, 445–6 [16]–[18] (Pincus, Davies JJA, Demack J). See also *R v Oliver* [2019] 3 Qd R 221, 227–8 [31]–[32], 229 [42] (Sofronoff P, Fraser and Philippides JJA agreeing).

Queensland Police Service v JSB [2018] QDC 120, [48] (Fantin DCJ).

Ibid [49].

[2017] QDC 18.

LJS v Sweeney [2017] QDC 18, [7].

Ibid [6].

Ibid [19].

Ibid [26].

Ibid [28].

BH v Commissioner of Police [2021] QDC 175, [54] (Fantin DCJ) – 2 years’ imprisonment cumulative on a previous sentence; *RJD v Queensland Police Service* [2018] QDC 147, [17], [40]–[41] (Morzone QC DCJ) – 18 months cumulative on a previous sentence; *BHN v Queensland Police Service* [2019] QDC 129, [11], [33] (Morzone QC DCJ) – 2 years’ imprisonment; *OWL v Queensland Police Service* [2021] QDC 5, [21]–[22] – while a sentence of 2 to 2.5 years imprisonment was open, 12 months’ imprisonment was imposed which was cumulative on a previous sentence: [22], [29].

PSA (n 29) s 9(2A).

Ibid s 9(2)(a).

YSD v Commissioner of Police [2022] QDC 92, [49] (Fantin DCJ).

JMM v Commissioner of Police [2018] QDC 130, [65], [67] (Fantin DCJ).

MG v Commissioner of Police [2024] QDC 72, [2], [5] (Smith DCJA).

See *RAS v Commissioner of Police (No 1)* [2011] QDC 366; *RAS v Commissioner of Police (No. 2)* [2012] QDC 239; *MH v Queensland Police Service* [2015] QDC 124; *Commissioner of Police v RTC* [2009] QDC 376.

[2023] QDC 26.

Ibid [31] (Coker DCJ).

Ibid [25]. See also [26]–[30].

Ibid [34] citing *Fairbrother* (n 54).

Ibid [39].

TJM v Commissioner of Queensland Police Service [2024] QDC 75; *DAY v Commissioner of Police* [2018] QDC 3.

NVZ v Queensland Police Service [2018] QDC 216; *YSD v Commissioner of Police* [2022] QDC 92.

DYN v Queensland Police Service [2020] QDC 47. This offending involved persistent telephone calls in breach of a no contact condition, verbal abuse, bashing on the victim's window at night, and making a threatening telephone call. He had 23 previous convictions for contravention of a DVO. The 18 month imprisonment sentence was reduced to 15 months’ imprisonment, cumulative on a previous sentence.

Criminal Code (Qld) (n 14) s 16. The only exception is where the act or omission causing the death of another person. For a discussion of the reason for this law see *Pearce v The Queen* [1998] HCA 57, [40]; *R v Dibble; Ex parte A-G (Qld)* (2014) 238 A Crim R 511.

DFVPA (n 6) s 138. For a discussion of how this section has been interpreted by the courts to operate consistently with s 16 of the *Criminal Code* (Qld), see Magistrates Court of Queensland, *Domestic and Family Violence Protection Act 2012 Benchbook* (13th ed, September 2024) '21.9 - Dealing with a breach of DVO and another criminal offence - s16 Code.'

[2014] QDC 300.

Ibid [17] (O'Brien DCJA).

[2015] QMC 6.

[2018] QDC 3.

[2019] QDC 29.

See e.g. *HJA v Commissioner of Police* [2022] QDC 285, [1], [10]–[12], [14]–[15].

All cases sentenced between 2005–06 and 2023–24, including those sentenced as adults and children and cases where contravention of a domestic violence order was not the MSO.

Pearson’s chi-square test: $\chi^2(1) = 4962.032, p < .0001$.

Queensland Sentencing Advisory Council, *Sentencing of Sexual Assault and Rape - The Ripple Effect: Final Report* (Report, December 2024) 408.

See e.g. *CDL v Commissioner of Police* [2024] QCA 245, [4](i) notes one contravention was 'Between 26 December 2023 and 3 January 2024 ("again breach of no contact, alleged 216 calls made"); *DAY v Commissioner of Police* [2018] QDC 3 [16] there was a no contact condition and one charge 'related to the appellant sending a total of 154 text messages to his ex-wife between 27 April 2017 and 9 May 2017'; *RMR v Sinclair* [2012] QDC 204, [4]: one contravention involved ripping the victim's shirt which bruised her, punching a wall, throwing her mobile and breaking it, leaving and returning to rip her shirt again, grabbing her around the neck, threatening to kill and punching her on the back of the head.

See e.g.: between 28 March 2014 – 1 July 2016 the principle of imprisonment as a last resort was removed: *Youth Justice and Other Legislation Amendment Act 2014* (Qld) s 34, reinstated by *Youth Justice and Other Legislation Amendment Act (No. 1) 2016* (Qld) s 61; Before 12 February 2018, a 'child' for the purposes of the *Youth Justice Act 1992* (Qld), was a person who had not turned 17 years. Until that date, young people who were 17 were treated as adults for the purposes of sentencing; From 28 March 2014 to 1 July 2016, when sentencing an adult, a court could have regard to offences committed as a child, whether or not a conviction was recorded: *Youth Justice and Other Legislation Amendment Act 2014* (Qld) s 8 repealed by *Youth Justice and Other Legislation Amendment Act (No. 1) 2016* (Qld) s 15.

Preliminary submission 17 (FACAA) 16.

Ibid 12–13.

Preliminary submission 9 (Parole Board Queensland) 1–2.

Preliminary submission 28 (Sisters Inside Inc).

Hear her Voice—Report One (n 4) vol 1, xxii–xxiii.

Human Rights Act 2019 (Qld) s 8 ('HRA').

Ibid s 13(1).

Ibid s 13(2).

Proclamation No 2.—Human Rights Act 2019 (commencing remaining provisions) 2019 (Qld) SL 2019/224. Some provisions commenced on assent (7 March 2019) others on proclamation (1 July 2019) and remaining provisions (1 January 2020).

Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill (No. 2) 2015 (Qld) 3

Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill 2015 (Qld) 2–3.

HRA (n 202) s 32.

Ibid s 29.

Ibid s 30. This right was considered in *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273 in respect of prolonged solitary confinement for a prisoner. *Castles v Secretary to the Department of Justice* (2010) 28 VR 141, [113] discussed IVF treatment for a woman in a Victorian prison.

Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, A/RES/61/106 (entered into force 3 May 2008).

HRA (n 202) s 34. This human right protects a person from being repeatedly prosecuted and provides finality of criminal proceedings. This right is based on Article 14 of the ICCPR.

The United Nations Human Rights Committee has stated 'it does not prohibit the resumption of a criminal trial justified by exceptional circumstances, such as the discovery of evidence which was not available or known at the time of the acquittal.': United National Human Rights Committee, *General Comment No 32: Article 14: Right to equality before courts and tribunals and to a fair trial*, 19th sess, UN Doc CCPR/C/GC/32 (23 August 2007) 16 [56]. See also *Criminal Code* (Qld) (n 14) ch 68.

Criminal Code (Qld) (n 14) ss 16–17.

Ibid s 11. HRA (n 202) s 35.

'Human Rights and Domestic Violence Fact Sheets', *Human Rights Law Centre* (web page, 30 September 2013) <<https://www.hrlc.org.au/reports-news-commentary/human-rights-and-domestic-violence-fact-sheets>>

Preliminary submission 28 (Sisters Inside Inc) 2–3.

Ibid 3.

Preliminary submission 11 (DVConnect) 6.

Productivity Commission, *Overcoming Indigenous Disadvantage key indicators 2020* (Report 2020), 4.130 citing 'Challenging Misconceptions About Violence Against Aboriginal and Torres Strait Islander Women', *Our Watch* (web page, 2024) <<https://action.ourwatch.org.au/resource/challenging-misconceptions-about-violence-against-aboriginal-and-torres-strait-islander-women/>>; *Hear her Voice—Report Two* (n 4) vol 2, 151 citing Victoria Police, *Policing harm, upholding the right: Victoria police strategy for family violence, sexual offences and child abuse, 2018–2023*, 15.

See Dr Harry Blagg, Dr Vickie Hovane and Dorinda Cox, Submission No 121 to Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (Discussion Paper No 84, 2017) 1; Commission of Inquiry into Queensland Police Services Responses to Domestic and Family Violence, *A Call for Change* (Final Report, 2022) 18.

222 Australian Law Reform Commission, *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander People* (Report No 133, December 2017). See especially: in prison, 93 [3.13]; convicted of an offence, 100 [3.30]; on remand, 102 [3.36]; and women as being over-represented, 105 [3.41].
 223 ‘Challenging Misconceptions About Violence Against Aboriginal and Torres Strait Islander Women’, *Our Watch* (web page, 2024) <<https://action.ourwatch.org.au/resource/challenging-misconceptions-about-violence-against-aboriginal-and-torres-strait-islander-women/>>.
 224 Australian Law Reform Commission (n 222) 185–6 [6.2].
 225 See Klaire Somoray, Samuel Jeffs and Anne Edwards, *Connecting the dots: the Sentencing of Aboriginal and Torres Strait Islander Peoples in Queensland* (Queensland Sentencing Advisory Council, Sentencing Profile, 2021), 4–10.
 226 *R v Bugmy* (2013) 249 CLR 571, 594 [41] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ) ('Bugmy').
 227 (1992) 76 A Crim R 58.
 228 *R v Fernando* (1992) 76 A Crim R 58, 62–3.
 229 *Bugmy* (n 226) 594–5 [43].
 230 *Ibid* 595 [44].
 231 *Ibid* 594 [41].
 232 *R v Neal* (1982) 149 CLR 305, 326 cited in *Bugmy* (n 226) 593 [39].
 233 PSA (n 29) s 9(2)(p).
 234 *Ibid* s 9(2)(p)(ii).
 235 *R v SCU* [2017] QCA 198, 11–12 [56], 23 [113] (Sofronoff P).
 236 PSA (n 29) s 9(2)(oa). See *Hear her Voice, Report Two* (n 4) rec 126.
 237 *R v Daniel* [1998] 1 Qd R 499, 531 (Fitzgerald P).
 238 See *Bugmy* (n 226). See also *Munda* (n 52).
 239 *Bugmy* (n 226) 595 [44] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ).
 240 Australian Government, Australian Institute of Health and Welfare, 'Family, domestic and sexual violence' (Web page, 9 November 2022) <<https://www.aihw.gov.au/reports/domestic-violence/family-domestic-and-sexual-violence#common>>; Women's Safety and Justice Taskforce (2021) (n #) vol 1, xlix.
 241 Janet Phillips and Penny Vandenbroek, *Domestic, Family and Sexual Violence in Australia: an overview of the issues*, (Research Paper, 2014) 1.
 242 See Prison Trust Reform, "There's a reason we're in trouble" Domestic abuse as a driver to women's offending (Report, 2017), 7–12; Jean Corston, *The Corston Report* (Final Report, March 2006) 19 [2.12].
 243 Queensland Corrective Services, *Improving outcomes for incarcerated women* (web page, 6 March 2019, <<https://corrections.qld.gov.au/improving-outcomes-for-incarcerated-women/>>).
 244 Australian Institute of Health and Welfare, *The Health and Welfare of Women in Australia's Prisons* (Report, 2020), 4, 7; Anti-Discrimination Commission Queensland, *Women in Prison 2019: A Human Rights Consultation Report* (Report, 2019) 61. Also see World Health Organization, *Women's Health in Prison: Correcting Gender Inequity in Prison Health* (Report, 2009), 2-3; Royal Commission into Family Violence 'Summary and Recommendations' (March 2016) 37.
 245 *Hear her Voice—Report Two* (n 4) vol 2, 455.
 246 PSA (n 29) ss 9(2)(d), (f), (g).
 247 This is a summary. The list of the full principles are in *R v Verdins* (2007) 16 VR 269, 276 [32] (Maxwell P, Buchanan and Vincent JJA) restating the principles in *R v Tsiaras* [1996] 1 VR 398 cited in *R v Yarwood* [2011] QCA 367 [24] (White JA, Fraser JA and North J agreeing). This approach has also been adopted in *R v JAD* [2021] QCA 184 [50]; *R v Goodger* [2009] QCA 377 [19]; *R v Collard* [2019] QCA 105 [3], [48].
 248 *Veen v The Queen [No 2]* (1988) 164 CLR 465, 476 (Mason CJ, Brennan, Dawson and Toohey JJ).
 249 *R v Hanson* [2018] QCA 153 [45], (Mullins J, Fraser JA and Bond J agreeing).
 250 Preliminary submission 11 (DVConnect) 6.
 251 *Ibid*.
 252 Preliminary submission 22 (Relationships Australia Queensland) 1.
 253 *Ibid*.
 254 *Ibid*.
 255 Preliminary submission 10 (QIFVLS) 3.
 256 *Ibid*.
 257 *Ibid* 5, referring to Australian Law Reform Commission (n 222) 14.
 258 *Criminal Code Act 1995* (Cth) sch, s 474.17 ('Criminal Code (Cth)').
 259 *Ibid* s 474.17A.
 260 *Ibid* s 474.15.

261 See *ibid*, s 4 and dictionary which provides that a 'carriage service' has the same meaning as in the
 262 *Telecommunications Act 1997* (Cth).
 263 In respect of sentencing principles, Part 1B of the *Crimes Act 1914* (Cth) accommodates the application
 of common law sentencing principles but not local statutory sentencing principles: see Commonwealth
 Director of Public Prosecutions, *Sentencing of Federal Offenders in Australia: a guide for practitioners*
 (7th ed, July 2024) 44 [200].
 264 A Queensland offence now can be charged as being a domestic violence offence and recorded on that
 person's criminal history as being a domestic violence offence, even if the offence happened prior to
 these changes coming into effect. See *Criminal Code* (Qld) ss 564(3A), 572(1A); *Justice Act 1886* (Qld)
 s 47(9); and PSA (n 29) s 12A.
 265 *Griffith University Literature Review* (n 99) 13.
 266 *Ibid* 14.
 267 *Ibid* 15.
 268 *Ibid* 15, 17 citing Thomas George, *Domestic Violence Sentencing Conditions and Recidivism* (Washington
 State Center for Court Research, 2012).
 269 *Ibid* 36 citing Ministry of Justice (United Kingdom) *Transforming Rehabilitation: a summary of evidence on*
reducing reoffending (2013); Maria Sapouna et al, 'What Works to Reduce Reoffending: A Summary of the
 Evidence' (Scottish Government Social Research, 2015).
 270 *Ibid* 36.
 271 Andrew Day, Katherine McLachlan and Stuart Ross, *The Effectiveness of Minimum Non-Parole Period*
Schemes for Serious Violent, Sexual and Drug Offenders and Evidence-Based Approaches to Community
Protection, Deterrence and Rehabilitation (Summary Report, University of Melbourne, August 2021) 13–
 14 ('University of Melbourne Literature Review').
 272 *Ibid* 21.
 273 *Ibid*.
 274 *Ibid*.
 275 *Ibid*.
 276 *Griffith University Literature Review* (n 99) 17.
 277 *Ibid* 40 citing A Cissner, M Labriola, and M Rempel, 'Domestic violence courts: A multisite test of whether
 and how they change offender outcomes' (2015) 21(9) *Violence Against Women* 1102; KPMG, *Evaluation*
of the Drug Court of Victoria: Final Report (Report, 2014).
 278 *Ibid* 17.
 279 *Ibid*. One study on the effects of levels of supervision on attendance at court mandated treatment, however,
 suggested increased supervision may increase perpetrators' likelihood of successfully completing the
 program.
 280 *Ibid* 17.
 281 Maria Sapouna et al, 'What Works to Reduce Reoffending: A Summary of the Evidence' (Scottish
 Government Social Research, 2015).
 282 Neil Donnelly et al, 'Have the 2018 NSW sentencing reforms reduced the risk of re-offending? (Crime and
 Justice Bulletin, No 246, March 2022). The 3 stated objectives were: 1. To increase the proportion of adult
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 risk offenders; 2. To reduce the proportion of adult offenders serving short prison sentences; and 3. To
 reduce re-offending by extending supervision and therapeutic interventions to more high-risk adult
 offenders and managing these offenders more effectively in the community': *ibid* 3 citing NSW Government,
 'Stronger sentencing: Tough and smart justice for safer communities' (Fact Sheet, 2018)
 <<https://www.justice.nsw.gov.au/Documents/publications-research/ministerial-sentencing-fact-sheet.pdf>>.
 283 *Ibid* 3.
 284 *Ibid* 1.
 285 *Ibid* 15.
 286 *Ibid* 19 citing C Ringland and D Weatherburn, 'The impact of Intensive Correction Orders on re-offending'
 (Crime and Justice Bulletin No. 176, 2013); W-Y Wan, S Poynton and D Weatherburn, 'Does parole
 supervision reduce the risk of re-offending?' (2015) 33 *Australian and New Zealand Journal of Criminology*
 300; J J Wang and S Poynton, 'Intensive correction orders versus short prison sentence: A comparison of
 re-offending' (Crime and Justice Bulletin No. 207, 2017).
 287 *Ibid* 19–20.
 288 *Ibid* 20 (references omitted).
 289 *Ibid*.

Griffith University Literature Review (n 99) 21 citing studies which found reduced reoffending: J Cording, P Wheatley and H Kaiwai, *Evaluation of Family Violence Courts: Final Report* (Ministry of Justice, New Zealand, 2021); A Gover, J MacDonald and G Alpert, G, 'Combating domestic violence: Findings from an evaluation of a local domestic violence court' (2003) 3(1) *Criminology & Public Policy* 109; A Gover et al, *The Lexington County Domestic Violence Court: A partnership and evaluation* (University of South Carolina, 2003); N Quann, *Offender Profile and Recidivism among Domestic Violence Offenders in Ontario* (Department of Justice, Canada, 2006); M Williams, *Evaluating the Murray City Municipal Justice Courts Domestic Violence Court* (Institute for Court Management, 2010); see also D Crocker and R Crocker, 'The Nova Scotia Domestic Violence Court pilot project' in T. Augusta-Scott, K. Scott and L. Tutty (eds), *Innovations in Interventions to Address Intimate Partner Violence* (Routledge 2017). Studies which did not: L Newmark et al, *Specialized Felony Domestic Violence Courts: Lessons on implementation and impact from the Kings County experience* (The Urban Institute, 2001); Department of the Attorney General (Western Australia), *Evaluation of the Metropolitan Violence Court and Evaluation of the Barndimalgu Court: Evaluation report* (Report, 2014); see also S Katz and M Rempel, *The Impact of Integrated Domestic Violence Courts on Case Outcomes: Results for nine New York State courts*. (Center for Court Innovation, 2011).

Ibid 25 citing Elena Marchetti and Kathleen Daly, 'Indigenous partner violence, Indigenous sentencing courts, and pathways to desistance' (2017) 23(12) *Violence against Women* 1513.

Ibid 26–7.

Ibid citing Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing perpetrators of family violence into view* (RMIT University 2015).

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Griffith University Literature Review (n 99) citing D Chung et al, *Improved Accountability: The role of perpetrator intervention systems* (ANROWS, 2020); P Bowen, A Qasim and L Tetenbaum, *Better Courts: A snapshot of domestic violence courts in 2013* (2014); Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing perpetrators of family violence into view* (RMIT University, 2015) 40.

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Campbell et al, 'Program providers perceptions of restorative and transformative justice in the context of domestic violence offender treatment in North Carolina' (2024) 19(6) *Victims & Offenders* 963.

Griffith University Literature Review (n 99) 23–4.

Ibid 24.

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Tasmanian Sentencing Advisory Council (n 83) 39, citing Jeffrey Edison, *Promising Practices with Men who Batter: Report to King County Domestic Violence Council* (2008).

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Ibid xii-xiii.

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Queensland Sentencing Advisory Council, *Sentencing of Sexual Assault and Rape: The Ripple Effect – Final Report* (Report, December 2024) rec 8.

DFVPA (n 6) s 101.

Ibid s 101A.

Ibid s 106.

Ibid s 106A.

Ibid ss 125(1)–(2).

Ibid ss 23, 28, 37, 42.

A parent, of a child, means the child's mother or father; and anyone else, other than the chief executive (child protection), having or exercising parental responsibility for the child: ibid s 16.

Sentencing Act 1995 (NT) s 6A(1)(fa).

317 Ibid s 5(1), note for s 5(1)(e).
 318 *Sentencing Act 2002* (NZ) s 9(1)(ca).
 319 Ibid ss 9(1)(a), (e), (f), (g).
 320 *Criminal Code* (RSC 1985 c C-46) s 718.2(a)(ii).
 321 Ibid ss 718.2(a)(iii), (iii.1).
 322 See *Sentencing Act 2020* (UK) pts 2–13, pt 4, s 59 ('*Sentencing Code* (UK)').
 323 Sentencing Council (England and Wales), *Overarching Principles–Domestic Abuse: Definitive Guideline* (effective from 24 May 2018) <<https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/domestic-abuse/>>.
 324 Ibid [9].
 325 Ibid.
 326 Ibid 'Aggravating and mitigating factors'.
 327 See, for example, the guidelines for the offences of: Arson (effective from 1 October 2019), Assault occasioning actually bodily harm (effective from 1 July 2021), Causing grievous bodily harm with intent to do grievous bodily harm / Wounding with intent to do GBH (effective from 1 July 2021), Harassment (fear of violence)/Stalking (fear of violence) (effective from 1 October 2018), Attempted murder (effective from 1 July 2021) Unlawful act manslaughter (effective from 1 November 2018).
 328 Defined to mean 'any offence the commission of which constitutes family violence'
 329 *Family Violence Act 2004* (Tas) s 13.
 330 Ibid s 13A.
 331 Ibid s 29A(2).
 332 Ibid s 29A(2)(b)(iii). The offence of persistent family violence is established under s 170A of the *Criminal Code* (Tas).
 333 Department of Justice (Tasmania), 'Family Violence Reforms Bill 2021' (Fact sheet, no date) <[https://www.justice.tas.gov.au/__data/assets/pdf_file/0010/627067/Fact-sheet-Family-Violence-Reforms-Bill-2021.pdf#:~:text=The%20Serial%20Family%20Violence%20Perpetrator%20%28SFVP%29%20declaration%20established,a%20single%20partner%20or%20multiple%20and%20successive%20partners](https://www.justice.tas.gov.au/__data/assets/pdf_file/0010/627067/Fact-sheet-Family-Violence-Reforms-Bill-2021.pdf#:~:text=The%20Serial%20Family%20Violence%20Perpetrator%20%28SFVP%29%20declaration%20established,a%20single%20partner%20or%20multiple%20and%20successive%20partners>https://www.justice.tas.gov.au/__data/assets/pdf_file/0010/627067/Fact-sheet-Family-Violence-Reforms-Bill-2021.pdf#:~:text=The%20Serial%20Family%20Violence%20Perpetrator%20%28SFVP%29%20declaration%20established,a%20single%20partner%20or%20multiple%20and%20successive%20partners)>.
 334 Ibid.
 335 The preamble to the *Family Violence Act 2016* (ACT) includes a broad range of factors including that: family violence is unacceptable in any form; freedom from family violence is a human right; the justice system should respect and protect all human rights; anyone can be a victim of family violence: it occurs in all areas of society; family violence is predominantly committed by men against women and children; family violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years; and children exposed to family violence are particularly vulnerable.
 336 *Crimes (Sentencing) Act 2005* (ACT) s 34B(3).
 337 Ibid s 34B(1). 'Family violence offence' is defined in the dictionary of the *Family Violence Act 2016* (ACT).
 338 Ibid s 34B(2).
 339 Explanatory Statement, *Family Violence Bill 2016* (ACT) 40 referencing Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence–A National Legal Response* (Final Report, 2010) vol 1, rec 13–3. This provision was formerly located in section 34(2) of the *Crimes (Sentencing) Act 2005* (ACT).
 340 *Crimes (Sentencing Procedure) Act 1999* (NSW) ss 21A(2)(b), (eb), (f), (g), (ib), (k), (l).
 341 *Criminal Law Consolidation Act 1935* (SA) ss 5AA(1)(g), (l).
 342 Ibid s 19.
 343 Ibid ss 20(3)–(4). This increases to 4 years (common assault) and 5 years (AOBH) if the persons uses, or threatens to use, an offensive weapon: ibid ss 20(3)(c) and 20(4)(c).
 344 Ibid ss 23(1), (3).
 345 Ibid ss 24(1)–(2).
 346 Ibid s 29(1).
 347 Ibid s 29(2);
 348 Ibid s 29(3).
 349 Ibid s 134.
 350 Ibid s 170(1)(b).
 351 Ibid s 170A(1)(b).
 352 Ibid ss 48A, 56, 63B.
 353 *Criminal Code Act Compilation Act 1913* (WA), appendix B, sch ('*Criminal Code* (WA)') ss 221(1)(a)–(c).
 354 Ibid ss 221(1)(a)–(b), (1A).
 355 Ibid s 297(3).
 356 Ibid s 298.

357 Ibid s 301.
 358 Ibid s 313(1)(a).
 359 Ibid s 317(1)(a).
 360 Ibid s 317A(d).
 361 *Crimes (Sentencing Procedure) Act 1999* (NSW) s 4A.
 362 Ibid s 4B(1).
 363 Ibid s 4B(2).
 364 Ibid s 4B(3).
 365 There are either that: (a) an offence in respect of which a community-based order ('CBO') intensive supervision order ('ISO') or order of conditional suspended imprisonment ('CSI') may apply is a family violence offence (category A) and —(i) the offender is bound by a family violence restraining order; and (ii) the person against whom the family violence offence (category A) was committed is protected by the family violence restraining order; or (b) an offence in respect of which a CBO or ISO may apply is a family violence offence (category B) and the offender is a 'serial family violence offender' (a declaration which can be made at the time the person is sentenced, or which can have been made earlier by another court): *Sentencing Act 1995* (WA) ss 67A, 76A, 84CA. See s 124E regarding the making of a serial family violence offender declaration.

366 *Sentencing Act 1995* (NT) ss 5(5)–(6), 34, 48. These considerations also apply in breach of a community correction order proceedings if the offender breached a condition because they committed domestic violence: s 39B(4).

367 Sentencing Advisory Council (Vic), *Sentencing Practices for Breach of Family Violence Intervention Orders: Final Report* (Final Report, 2009) 35 [3.5].

368 Judicial College of Victoria, *Victorian Sentencing Manual* (Manual, 4th ed, 2022).

369 Ibid 5.2.8.3 'Family violence'.

370 Ibid citing *Filiz v The Queen* [2014] VSCA 212, [21]; *Marrah v The Queen* [2014] VSCA 119, [20], [25]; *Baker v The Queen* [2021] VSCA 158, [32]; *Skeates (a pseudonym) v The King* [2023] VSCA 226, [60].

371 Ibid citing *Skeates (a pseudonym) v The King* [2023] VSCA 226, [77].

372 Sentencing Advisory Council (Vic), *Guiding Principles for Sentencing Contraventions of Family Violence Intervention Orders* (Report, 2009) 4.

373 See *Sentencing Code* (UK) s 59. The court must follow any relevant sentencing guidelines, 'unless the court is satisfied that it would be contrary to the interests of justice to do so'.



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