

The '80 per cent Rule': The Serious Violent Offences Scheme in the *Penalties and Sentences Act 1992* (Qld)

© Queensland Sentencing Advisory Council 2022

This Final Report is available for download from the Council's website: www.sentencingcouncil.qld.gov.au.

This Final Report is licensed by Queensland Sentencing Advisory Council under a Creative Commons Attribution (CC BY) 4.0 International licence.

CC BY licence summary statement

In essence, you are free to copy, communicate and adapt this paper, as long as you attribute the work to the Queensland Sentencing Advisory Council.

To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0>.

Content from this paper should be attributed as: Queensland Sentencing Advisory Council, *The '80 per cent Rule': The Serious Violent Offences Scheme in the Penalties and Sentences Act 1992 (Qld): Final Report – Appendices*, May 2022.

ISBN 978-0-6452082-1-4

Review artwork

The artwork in the cover design is a visual representation of words contained in transcripts of subject-matter expert interviews conducted by the Council for this reference. Words that are larger appeared more frequently in those transcripts. This word cloud was automatically generated with design elements added.

Disclaimer

The content of this paper presents the views of the Queensland Sentencing Advisory Council only and does not represent Queensland Government policy. While all reasonable care has been taken in the preparation of this paper, no responsibility or liability is assumed for any errors or omissions or any loss, damage, or injury, financial or otherwise, suffered by any person acting or relying on information contained in or omitted from this publication. This paper follows the Melbourne University Law Review Association Inc, *Australian Guide to Legal Citation* (4th ed., 2018) and reflects the law as at 31 March 2022.

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

Queensland Sentencing Advisory Council

GPO Box 2360, Brisbane Qld 4001

Tel: (07) 3738 9499

Email: info@sentencingcouncil.qld.gov.au

Contents

Table of Figures	4
Table of Tables	4
Appendix 1: Terms of Reference.....	1
Appendix 2: Stakeholder consultation and submissions	3
Appendix 3: Participant information and consent sheet	5
Appendix 4: Summary of Literature Review findings	9
Appendix 5: Data tables	11
Appendix 6: Structured interview guide for subject-matter expert interviews.....	20
Appendix 7: Coding tree for subject-matter expert interviews	26
Appendix 8: Statutory ratios between head sentences and non-parole periods within Australia	27
Appendix 9: List of Queensland correctional facilities and security classification.....	29
Appendix 10: Table of Australian MNPP schemes.....	30
Appendix 11: Count of cases sentenced for Schedule 1 offences, current and proposed	44
Appendix 12: Data cleaning methodologies	48
Appendix 13: Pre-SVO scheme Court of Appeal case review	50
Appendix 14: Analysis of correlation between head sentence length and parole eligibility proportion.....	54
Appendix 15: Human rights analysis.....	56
Appendix 16: Names of MNPP provisions in other jurisdictions	77
Appendix 17: Crime harm indexes.....	78
Appendix 18: Council's consideration of offences for inclusion in new scheme	81

Table of Figures

Figure A1: Over-representation of Aboriginal and Torres Strait Islander people for Schedule 1 offences that receive imprisonment of more than 5 years, current and proposed offences, 2011–12 to 2019–20	13
Figure A2: Over-representation of women for Schedule 1 offences that receive imprisonment of more than 5 years, current and proposed offences, 2011–12 to 2019–20	16
Figure A3: Relationship between head sentence and parole eligibility by offence.....	54

Table of Tables

Table A1: Schedule 1 offences by category and number of cases sentenced between 2011–12 and 2019–20.....	11
Table A2: Over-representation of Aboriginal and Torres Strait Islander people for Schedule 1 offences, current and proposed, 2011–12 to 2019–20.....	14
Table A3: Over-representation of women for Schedule 1 offences, current and proposed, 2011–12 to 2019–20.....	17
Table A4: Concordance of legislative offences to QCS offence categories	19
Table A5: Legislative provisions in Australian jurisdictions in relation to the statutory ratios between non-parole periods and head sentences	27
Table A6: List of Queensland correctional facilities and security classification.....	29
Table A7: Table of Australian MNPP schemes.....	30
Table A8: Count of cases sentenced for Schedule 1 offences, current and proposed.....	44
Table A9: Names of Australian sentencing schemes for serious offences	77
Table A10: WACHI scores in comparison to other severity and harm scores.....	80

Appendix 1: Terms of Reference

TERMS OF REFERENCE

QUEENSLAND SENTENCING ADVISORY COUNCIL

SERIOUS VIOLENT OFFENCES (SVO) SCHEME IN THE PENALTIES AND SENTENCES ACT 1992

I, Shannon Fentiman, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, having regard to:

- advice 3 of the 2018 Queensland Sentencing Advisory Council *Sentencing for Criminal Offences arising from the death of a child: Final report*, suggesting that the Queensland Government consider initiating a review of the serious violent offence (SVO) scheme both in relation to its operation for child manslaughter and more generally;
- the importance of judicial discretion in the sentencing process and providing courts with flexible sentencing options that enable the imposition of sentences that accord with the principles and purposes of sentencing as outlined in the *Penalties and Sentences Act 1992*;
- the importance of sentencing orders of the court being properly administered so that they satisfy the intended purposes of the sentencing order and facilitate a fair and just sentencing regime that protects the community's safety;
- the purpose of parole in allowing an offender to serve an appropriate portion of their period of imprisonment in the community in order to successfully and safely reintegrate a prisoner into the community and minimise the likelihood of an offender reoffending; and
- the significance of supporting and promoting public confidence in the criminal justice system to the overall administration of justice;

refer to the Queensland Sentencing Advisory Council, pursuant to section 199(1) of the *Penalties and Sentences Act 1992*, a review of the operation and efficacy of the SVO scheme in Part 9A of the *Penalties and Sentences Act 1992*.

In undertaking this reference, the Queensland Sentencing Advisory Council will:

- assess how the SVO scheme is being applied (including where the making of an SVO declaration is discretionary) and whether the scheme is meeting its objectives;
- assess how the SVO provisions are impacting on court sentencing practices;
- identify any trends or anomalies that occur in application of the SVO scheme that create inconsistency or constrain the sentencing process;
- examine whether the SVO scheme is impacting victims' satisfaction with the sentencing process and if so, in what way;
- without limiting the scope of any recommendations, advise on any reforms to ensure sentencing outcomes reflect the seriousness of these offences and if retained, the making of an SVO application only in appropriate cases;

- examine the approach to similar sentencing provisions involving minimum non-parole periods for serious criminal offences in other Australian and international jurisdictions;
- have regard to any relevant research, reports or publications regarding the SVO scheme;
- consult with the community and other key (legal and non-legal) stakeholders, including but not limited to the judiciary, legal profession, victims of crime groups, child protection and domestic, family and sexual violence advocacy groups, or any relevant government department and agencies;
- identify, if possible, broadly any potential financial and practical implications associated with any recommendations;
- advise whether the legislative provisions that the Queensland Sentencing Advisory Council reviews, and any recommendations, are compatible with rights protected under the *Human Rights Act 2019*; and
- advise on the impact of any recommendation on the over representation of Aboriginal and Torres Strait Islander people in the criminal justice system.

The Queensland Sentencing Advisory Council is to provide a report on its examination to the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence by 11 April 2022.

Dated the 9th day of April 2021



SHANNON FENTIMAN

Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence

Appendix 2: Stakeholder consultation and submissions

Individuals, agencies and organisations consulted (May 2021 – February 2022)

Date	Agency/Organisation
11 May 2021	Consultative Forum meeting
25 May 2021	Queensland Homicide Victims' Support Group
26 May 2021	Queensland Corrective Service
20 July 2021	Queensland Corrective Service
26 August 2021	Aboriginal and Torres Strait Islander Advisory Panel
9 November 2021	Consultative Forum meeting
15 November 2021	Queensland Corrective Service
16 November 2021	Bar Association of Queensland
16 November 2021	Queensland Law Society Criminal Law Committee
25 January 2022	Queensland Homicide Victims' Support Group – victim and survivor engagement
27 January 2022	Queensland Homicide Victims' Support Group – victim and survivor engagement
3 February 2022	Gold Coast Centre Against Sexual Violence – victim and survivor engagement
8 February 2022	Parole Board Queensland
22 February 2022	Consultative Forum meeting
24 February 2022	Aboriginal and Torres Strait Islander Advisory Panel
7 March 2022	Aboriginal and Torres Strait Islander Advisory Panel
28 April 2022	Aboriginal and Torres Strait Islander Advisory Panel

Subject-Matter Expert ('SME') interviews

A total of 71 interviews were conducted over June to October 2021. For more details about the SME interviews, refer to Chapter 1.

Participant group	Number of interviews
Supreme Court Judges	12
District Court Judges	9
Public Prosecutors	10
Legal Practitioners (private)	6
Legal Practitioners (Legal Aid)	9
Queensland Parole Board (members and staff)	5
Victim and survivor support and advocacy organisations	11
Queensland Corrective Services (staff)	5
Other	4

Note: Some organisations had multiple participants in attendance at their interview.

Preliminary feedback

No.	Agency/Organisation
1	Australian Lawyers Alliance ('ALA')
2	Fighters Against Child Abuse Australia ('FACAA')
3	Commonwealth Director of Public Prosecutions ('CDPP')
4	Sisters Inside
5	Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
6	Queensland Law Society
7	Bravehearts
8	Confidential
9	Confidential
10	Confidential
11	Department of Children, Youth Justice and Multicultural Affairs
12	Public Advocate

Issues Paper submissions

No.	Agency/Organisation
1	Public Advocate
2	Australian Lawyers Alliance ('ALA')
3	Centre Against Sexual Violence
4	Fighters against Child Abuse Australia ('FACAA')
5	Aged and Disability Advocacy Australia
6	DVConnect
7	Full Stop Australia
8	Confidential
9	Queensland Network of Alcohol and Other Drug Agencies ('QNADA')
10	knowmore
11	Sisters Inside
12	Queensland Law Society ('QLS')
13	Legal Aid Queensland ('LAQ')
14	Parole Board Queensland
15	Royal Australian and New Zealand College of Psychiatrists ('RANZCP')
16	Confidential
17	Queensland Sexual Assault Network ('QSAN')
18	Gold Coast Centre against Sexual Violence
19	Queensland Homicide Victims' Support Group ('QHVSG')
20	Aboriginal Torres Strait Islander Legal Service ('ATSILS')

Appendix 3: Participant information and consent sheet

Subject-matter expert interviews for Terms of Reference project on Serious Violent Offences (SVO) scheme

Purpose

The Queensland Sentencing Advisory Council (QSAC) is currently undertaking a review of the Serious Violent Offences (SVO) scheme. You have been invited to participate in an expert interview to inform the Council's work due to your professional affiliation, experience and/or knowledge.

Subject-matter interviews will provide invaluable insights into the review of the Serious Violent Offences (SVO) scheme. Subject-matter interviews will explore the following topics:

- *(insert depending on group of participants)*

This Information sheet provides more information about the review of the Serious Violent Offences (SVO) scheme and explains the process involved in taking part. Please ensure that all your questions are answered prior to agreeing to take part in an expert interview.

Queensland Sentencing Advisory Council

The Queensland Sentencing Advisory Council is an independent statutory body established under the Penalties and Sentences Act 1992 (Qld). The Council provides independent research and advice, seeks public views and promotes community understanding of sentencing matters.

Terms of Reference on Serious Violent Offences (SVO) scheme

The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, the Honourable Shannon Fentiman MP, issued Terms of Reference to the Council on 9 April 2021 asking it to review of the operation and efficacy of the Serious Violent Offences (SVO) scheme.

The SVO scheme is established under the Penalties and Sentences Act 1992 (Qld) (PSA). The serious violent offences (SVO) scheme requires a person declared convicted of certain listed offences to serve 80 per cent of their sentence (or 15 years, whichever is less) in prison before being eligible to apply for parole.

Your participation in an expert interview

Your participation in an expert interview is entirely voluntary. Not participating in this project will not impact on your relationship with the Queensland Sentencing Advisory Council. You can choose not to answer certain questions and you can end the interview at any point. You can request to review the interview transcript (if recorded) or notes and request changes or withdraw from the project at any time by contacting the project team.

If you choose to participate, the research team will arrange a time to conduct an interview based on an interview guide. The interview will likely take approximately 45 to 60 minutes. With your consent, the interview will be audio-recorded and transcribed.

Confidentiality and data protection

Any information obtained in connection with this research project that can identify you will remain confidential. Only members of the research team have access to any personal information and all publications arising from this project will refer to participants in a generic manner, e.g. 'legal stakeholder'. Interviews, transcripts and signed consent forms will be securely stored. If interviews will be provided to a third party for transcription, a deed of confidentiality will be put in place.

Governance

The Council currently consists of 12 independent members, supported by a small Secretariat located within the Department of Justice and Attorney-General. A Terms of Reference Board consisting of four Council members provides oversight, governance and monitoring of the Terms of Reference Project. All members of the project team are bound by the Public Service Code of Conduct. All research projects conducted by QSAC follow the *National Statement on Ethical Conduct in Human Research (2018)*.

Complaints

For complaints and concerns, please contact:

Anne Edwards

Director of Queensland Sentencing Advisory Council

(07) 3738 9897

anne.edwards@sentencingcouncil.qld.gov.au

Contact for further information

Please contact Dr Eva Klambauer, Manager of the Research and Statistics Team to obtain further information.

Dr Eva Klambauer

Manager, Research and Statistics

(07) 37389502

eva.klambauer@sentencingcouncil.qld.gov.au

Consent Form

Subject-matter expert interviews for Terms of Reference project on Serious Violent Offences (SVO) scheme

Declaration by Participant

I have read the Participant Information Sheet. I understand the purpose of this project and process involved in participating.

I have had an opportunity to ask questions and I am satisfied with the answers I have received.

I freely agree to participate in this research project as described and understand that I am free to withdraw at any time during the project.

I understand that I will be given a signed copy of this document to keep.

Name of Participant (please print)			
Signature		Date	

I consent for this interview to be audio-recorded.

Name of Participant (please print)			
Signature		Date	

Form for Withdrawal of Participation

Subject-matter expert interviews for Terms of Reference project on Serious Violent Offences (SVO) scheme

Declaration by Participant

I wish to withdraw from participation in the above research project.

Name of Participant (please print) _____

Signature _____

Date _____

Appendix 4: Summary of Literature Review findings

There are inherent challenges in evaluating the effectiveness of existing sentencing regimes. Reviewing both academic literature, government reports and other grey literature, the authors of the literature review considered the effectiveness of minimum non-parole period schemes for serious non-sexual violent, sexual violent and serious drug offenders and evidence-based approaches to community protection, deterrence and rehabilitation. The review considered three key issues – the concepts of risk, harm, and dangerousness, the impact and effectiveness of minimum non-parole period schemes, and existing evidence on 'what works' to reduce serious violent offending and ensure community safety. A summary of the findings in relation to each of the issues is presented below.

The concepts of risk, dangerousness and harm

- Existing evidence on the concepts of risk, dangerousness and harm demonstrates they have been important drivers of policy and practice in Australia (as part of the overarching aim to enhance community safety), yet the review identified a lack of consensus about how to interpret and apply these terms.
- In relation to risk, the review concluded that scientific risk assessment tools may offer a more transparent assessment compared to professional judgment alone, yet recognised limitations inherent in these tools, such as the potential for cultural bias and the variable quality of their implementation. There is currently insufficient evidence as to the ability of these tools alone to reduce violence or reoffending.
- In relation to dangerousness, the review noted the lack of homogeneity in its use, but that it had been used to refer to 'substantial' or 'high' risk of future offending, which was determined by likelihood of reoffending and/or potential severity of the consequences of future offending.
- In relation to harm, the review discussed that it is often (in addition to severity of punishment) an alternative way of ranking offence seriousness. Level of harm has been measured in terms of costs (both direct and indirect) and by examining public perception.
- As part of the examination around these concepts, the review considered stakeholder perceptions. The review found that research on Australian community attitudes towards sentencing found that public opinion is largely consistent with current sentencing practice and that there is little evidence in support of the notion that the public hold very punitive attitudes. Beyond sentencing outcomes, availability and quality of rehabilitation programs and services and alternative sanctions is an important community concern.
- Australian research into community perceptions of parole found that the public is critical of the concept of parole, identifying the need to increase public confidence in the parole system. The Australian public is generally optimistic about the successful re-integration of people being released from prison, including serious offenders, and support increased funding to provide appropriate rehabilitation programs.
- The review concluded that minimum non-parole periods are not supported by the legal community with the main objection relating to the restriction of judicial discretion.

The effectiveness of minimum non-parole period schemes

- The review found that the existing studies do not support the setting of non-parole periods as a measure to effectively deter or rehabilitate offenders. The review concluded that as minimum non-parole period schemes result in longer periods of actual imprisonment, they can be considered to achieve the purposes of punishment and denunciation and there is some evidence of greater consistency.
- The review addressed concerns regarding the reduction of judicial discretion as a result of minimum non-parole period schemes. Reduced judicial discretion is viewed as leading to poorer decision-making as it restricts the court's capacity to take all relevant factors into account. This may be particularly relevant for defendants with complex needs and disadvantages, such as Aboriginal and Torres Strait Islander defendants.
- A consequence of a minimum non-parole period could be extended incarceration and shorter parole periods. Existing literature discusses the criminogenic effects of imprisonment on offenders. While there is evidence that longer prison sentences increase short-term recidivism, there is no clear evidence available on the medium- to long-term impact. There is no evidence that the threat of a longer prison term acts as a deterrent.
- An Australian study found that offenders released on parole took longer to commit a new offence, were less likely to commit a new indictable offence, and committed fewer offences than those who were released unconditionally into the community. To avoid reoffending, those on parole need quality supervision to make pro-social connections, engage in work and access evidence informed programs.

- There is little evidence about victims' satisfaction with parole (especially in Australia) and no empirical research available on victims' views of minimum non-parole period schemes specifically.

Evidence-based approaches to achieving community protection, deterrence, rehabilitation, punishment and denunciation

- According to the review, '[c]ommunity safety and public protection are often equated with incapacitation and punishment, and a focus on general deterrence (see Warner et al., 2017), but community safety can be promoted in many ways.'¹ The literature review also noted that denunciation and punishment were best achieved through sentencing and the sentencing purpose of deterrence is neither a 'key concern of the public', 'nor an evidence-based strategy to address most forms of serious offending'.² Rather general deterrence should be targeted at the front end through crime prevention and detection strategies.
- The review concluded that a range of measures, programs and policies need to work together to achieve the sentencing purposes of community protection, deterrence, rehabilitation, punishment and denunciation. To achieve most effective outcomes, interventions need to be implemented at all stages of the criminal justice process and individual factors and the nature of the offence considered when designing policies, programs and interventions. 'A one-size-fits all approach is unlikely to prove particularly effective'.³ Specifically in relation to responding and managing serious violent offenders, the review noted the need for a 'systemic approach'.⁴
- The review stated that the period of parole needs to be sufficient to reduce an offender's risk of reoffending, rehabilitate offenders and support re-integration into the community. More, not less, time on parole allows offenders to engage in rehabilitative programs.
- Research evidence on offender rehabilitation programs shows that programs for sexual violence contribute to reducing re-offending. Evidence regarding violence prevention programs is 'less robust, but nonetheless still generally positive for violent offender treatment, with inconsistent findings about the impact of specialised programmes for family and domestic violence'.⁵
- Key features of effective programs include continuity of care, high levels of program/intervention integrity, tailored interventions and support for specific criminogenic needs and adopting therapeutic community approaches.
- Co-ordinated multi-agency collaboration is critical to manage the different needs and risks of high-risk offenders.
- The literature review also outlined the importance of connecting to culture, community and family in the context of providing rehabilitation and healing for Aboriginal and Torres Strait Islander peoples, with a focus on self-determination and trauma-informed practice.

Ultimately, the review recommended against the application of 'dangerousness', 'risk' and 'harm' in sentencing serious offenders. The authors advocated for a clear and consistent method of determining eligibility for any serious offender scheme. The review supported judicial discretion as the method to allow consideration of individual circumstances, reiterating that standardised decision making will unlikely be responsive to some of the contextual and individualised determinants of parole success. The review found only limited available evidence regarding the effectiveness of the SVO scheme in Queensland and other minimum non-parole period schemes. The authors noted that while minimum non-parole periods may improve consistency, they may not promote community safety and, specifically there was no substantive evidence that setting a threshold of 80 per cent of the sentence to be served in prison will contribute to improved community safety. Instead, the review concluded that longer periods of supervision in the community would likely be more effective in this regard. The review concludes that policy-making should be based on a detailed analysis of offenders 'who are currently subject to the SVO scheme to understand their specific risks, needs, and circumstances'⁶ to identify individualised measures to mitigate the risk of further offending.

¹ 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) 17 citing Kate Warner, Julia Davis and Helen Cockburn, 'The Purposes of Punishment: How Do Judges Apply a Legislative Statement of Sentencing Purposes?' (2017) 41 *Criminal Law Journal* 69.

² Ibid 18.

³ Ibid 23.

⁴ Ibid 18.

⁵ Ibid 19.

⁶ Ibid 26.

Appendix 5: Data tables

Table of offences included in the SVO scheme

All Schedule 1 offences were classified into categories of non-sexual violence, sexual violence, serious drug offences and other offences. The table below sets out which offences were classified into each category, and their sentencing status during the 9-year data period.

The table below shows the number of cases sentenced to imprisonment for each schedule 1 offence. Cases of imprisonment of five years or more are also counted to provide a measure for the prevalence of each offence. It is important to note that changes have been made to schedule 1 since its introduction. As such, some offences have been removed from the schedule, and other offences have been added to the schedule over time. The table below only shows offences that were included in schedule 1 from 2011–12 to 2019–20 and includes notes for offences which have been added or removed from the schedule over time.

Table A1: Schedule 1 offences by category and number of cases sentenced between 2011–12 and 2019–20

Category	Section	Offence	Cases with imprisonment		Imprisonment of 5 years or more		SVO Declarations	
			Cases	MSO	Cases	MSO	Cases	MSO
Serious drug offences	8	Producing dangerous drugs*	1410	992	35	22	0	0
Serious drug offences	5	Trafficking in dangerous drugs <i>offence was not in sch 1 from 13/08/2013 to 9/12/2016</i>	2398	2359	816	812	65	65
Serious drug offences	6(2)	Supplying dangerous drugs, if the offence is one of aggravated supply	756	471	7	4	1	0
Sexual violence	210	Indecent treatment of children under 16	1095	474	48	9	11	0
Sexual violence	349	Rape	834	643	598	479	92	71
Sexual violence	352	Sexual assaults	366	164	11	1	4	0
Sexual violence	215	Carnal knowledge with or of children under 16 <i>changed from 'girls' to 'children' from 13/10/2000</i>	106	62	9	5	0	0
Sexual violence	229B	Maintaining a sexual relationship with a child	377	345	296	268	99	90
Sexual violence	219	Taking child for immoral purposes	9	6	6	4	1	0
Sexual violence	216	Abuse of persons with an impairment of the mind	17	9	2	2	1	0
Sexual violence	208	Unlawful sodomy <i>repealed offence, included in sch 1</i>	39	10	21	4	2	1
Sexual violence	350	Attempt to commit rape	86	27	19	9	6	0
Sexual violence	222	Incest	44	14	31	9	3	1
Sexual violence	351	Assault with intent to commit rape	33	14	6	2	1	0
Sexual violence	218	Procuring sexual acts by coercion etc.	7	2	2	1	0	0
Sexual violence	217	Procuring young person etc. for carnal knowledge	3	0	1	0	0	0
Sexual violence	229G(2)	Procuring engagement in prostitution <i>offence added to sch 1 from 15/08/2014</i>	6	3	2	2	0	0
Sexual violence	213	Owner etc. permitting abuse of children on premises	0	0	0	0	0	0
Sexual violence	215	Carnal knowledge of girls under 16 <i>changed from 'girls' to 'children' from 13/10/2000</i>	12	1	1	0	0	0
Sexual violence	221	Conspiracy to defile <i>repealed offence, included in sch 1</i>	0	0	0	0	0	0
Sexual violence	222	Incest by man <i>repealed offence, included in sch 1</i>	1	0	1	0	0	0
Sexual violence	223	Incest by female <i>repealed offence, included in sch 1</i>	0	0	0	0	0	0
Sexual violence	208	Unlawful anal intercourse <i>repealed offence, included in sch 1</i>	1	0	1	0	0	0

* Note: The SVO scheme only applies to the offence of producing dangerous drugs if the circumstances mentioned in paragraph (a) or (b) of the penalty apply. Data was not able to be extracted by penalty paragraph for this offence. The data presented here is likely to be a considerable over-count of the cases covered by the SVO scheme.

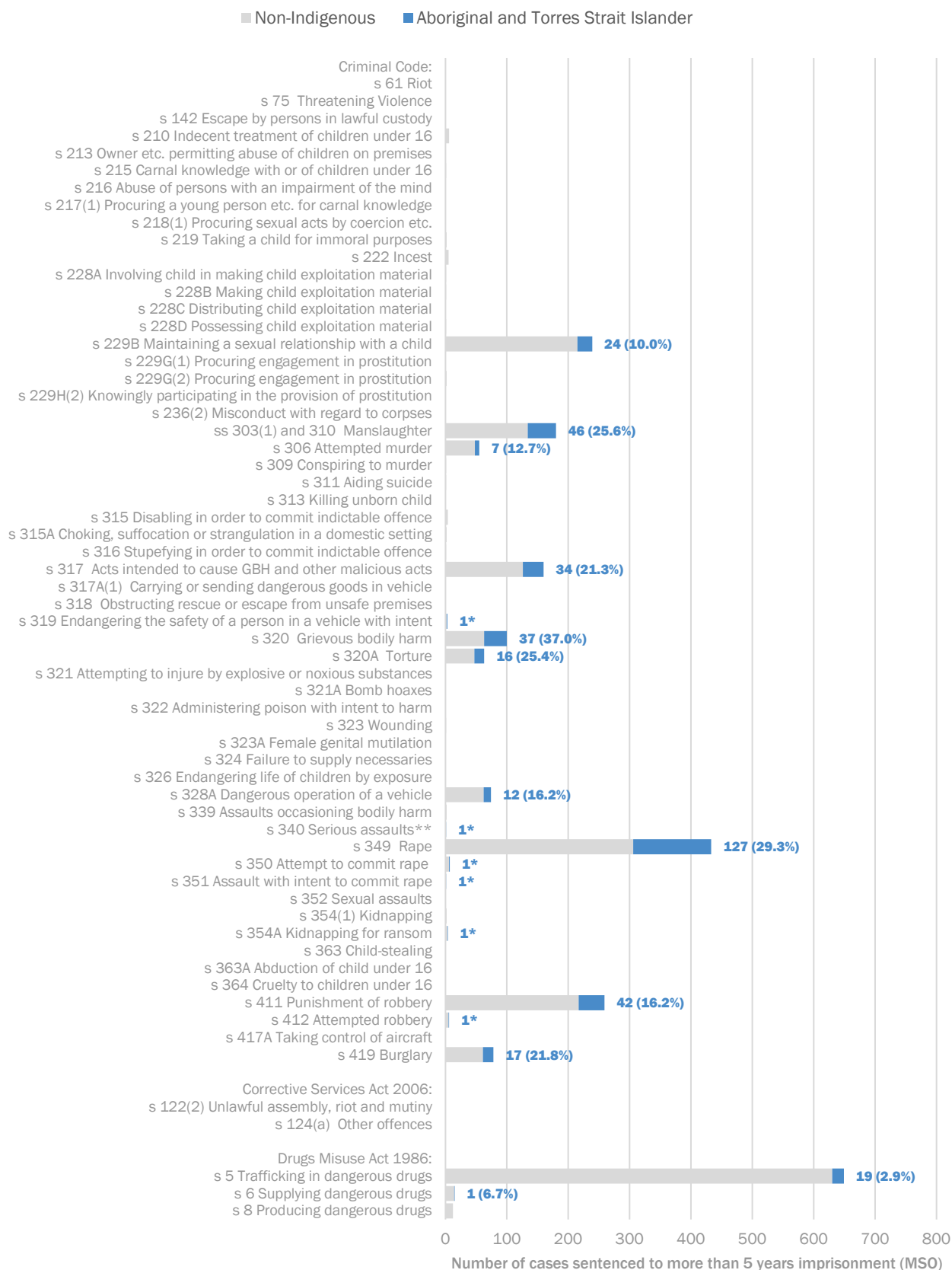
Table continued over page...

Category	Section	Offence	Cases with imprisonment		Imprisonment of 5 years or more		SVO Declarations	
			Cases	MSO	Cases	MSO	Cases	MSO
Non-sexual violence	339	Assaults occasioning bodily harm ('AOBH')	10689	8587	26	7	8	0
Non-sexual violence	421(2)	Entering or being in premises and committing indictable offences <i>offence removed from sch 1 from 16/08/2002</i>	8046	4563	60	28	0	0
Non-sexual violence	340	Serious assaults	4003	2805	7	4	0	0
Non-sexual violence	411	Robbery	2759	2498	439	397	25	15
Non-sexual violence	320	GBH	1087	1022	176	169	16	15
Non-sexual violence	323	Wounding	826	710	10	6	2	0
Non-sexual violence	419(1)	Burglary, if section 419(3)(b)(i) or (ii) applies	963	483	141	39	11	0
Non-sexual violence	412	Attempted Robbery	548	363	45	18	8	3
Non-sexual violence	364	Cruelty to children under 16	40	33	0	0	0	0
Non-sexual violence	317	Acts intended to cause grievous bodily harm and other malicious acts ('malicious acts')	249	224	210	195	58	52
Non-sexual violence	303	Manslaughter	184	184	181	181	48	48
Non-sexual violence	320A	Torture	128	102	94	75	33	21
Non-sexual violence	306	Attempt to murder ('attempted murder')	66	59	62	55	51	47
Non-sexual violence	354	Kidnapping	24	14	3	2	1	0
Non-sexual violence	317A(1)	Carrying or sending dangerous goods in a vehicle	22	4	0	0	0	0
Non-sexual violence	354A	Kidnapping for ransom	9	7	4	4	1	1
Non-sexual violence	321	Attempting to injure by explosive or noxious substances	4	4	0	0	0	0
Non-sexual violence	315	Disabling in order to commit indictable offence	9	5	5	4	0	0
Non-sexual violence	322	Administering poison with intent to harm	0	0	0	0	0	0
Non-sexual violence	316	Stupefying in order to commit indictable offence	16	2	8	1	4	0
Non-sexual violence	309	Conspiring to murder	1	1	1	1	0	0
Non-sexual violence	313	Killing unborn child	3	0	2	0	0	0
Non-sexual violence	417A	Taking control of an aircraft	0	0	0	0	0	0
Other offences	328A	Dangerous operation of a vehicle	4102	2669	94	87	8	4
Other offences	75	Threatening violence	910	312	1	0	0	0
Other offences	142	Escape by persons in lawful custody	258	85	0	0	0	0
Other offences	61	Riot	26	17	0	0	0	0
Other offences	321A	Bomb hoaxes	38	22	1	1	0	0
Other offences	122(2)	Unlawful assembly, riot and mutiny	44	33	0	0	0	0
Other offences	324	Failure to supply necessities <i>added to sch 1 from 7/05/2019</i>	4	1	0	0	0	0
Other offences	326	Endangering life of children by exposure	8	4	0	0	0	0
Other offences	236(2)	Misconduct with regard to corpses <i>sub-section 2 introduced 30/03/2017 and added to sch 1</i>	39	2	0	0	0	0
Other offences	318	Obstructing rescue or escape from unsafe premises	0	0	0	0	0	0
Other offences	319	Endangering the safety of a person in a vehicle within intent	15	11	6	4	0	0
Other offences	124(a)	Other offences (under <i>Corrective Services Act 2006</i>)	0	0	0	0	0	0
Other offences	318	Preventing escape from wreck <i>repealed offence, included in sch 1</i>	0	0	0	0	0	0
Other offences	92(2)	Unlawful assembly, riot and mutiny <i>repealed offence, included in sch 1</i>	0	0	0	0	0	0
Other offences	94(a)	Other offences (under <i>Corrective Services Act 2000</i>) <i>repealed offence, included in sch 1</i>	0	0	0	0	0	0
Non-Schedule offences	419	Burglary					3	1
Non-Schedule offences	355	Deprivation of liberty					1	0

Data includes cases sentenced 2011–12 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

Figure A1: Over-representation of Aboriginal and Torres Strait Islander people for Schedule 1 offences that receive imprisonment of more than 5 years, current and proposed offences, 2011–12 to 2019–20



Data includes cases (MSO) sentenced 2011–12 to 2019–20. Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020. Note: see Table A2 below for a table of numbers.

* percentages not displayed for cases with less than 10 cases sentenced.

** The offence of serious assaults was amended in 2012 and 2014, introducing circumstances of aggravation that increased the maximum penalty from 7 to 14 years.

Table A2: Over-representation of Aboriginal and Torres Strait Islander people for Schedule 1 offences, current and proposed, 2011–12 to 2019–20

* Offence Name	Section	Cases with more than 5 years imprisonment		
		All cases (MSO)	Aboriginal and Torres Strait Islander people (MSO)	(%)
Criminal Code:	–			
– Riot	s 61	0	0	-
– Threatening Violence	s 75	0	0	-
– Escape by persons in lawful custody	s 142	0	0	-
Indecent treatment of children under 16	s 210 (total)	6	0	0.0%
	s 210(2)	2	0	0.0%
	s 210(3)	4	0	0.0%
	s 210(4)	2	0	0.0%
	s 210(4A)	0	0	-
Owner etc. permitting abuse of children on premises	s 213	0	0	-
Carnal knowledge with or of children under 16	s 215	1	0	0.0%
Abuse of persons with an impairment of the mind	s 216	0	0	-
Procuring a young person etc. for carnal knowledge	s 217(1)	0	0	-
Procuring sexual acts by coercion etc.	s 218(1)	0	0	-
Taking a child for immoral purposes	s 219	2	0	0.0%
Incest	s 222	5	0	0.0%
+ Involving child in making child exploitation material	s 228A	1	0	0.0%
+ Making child exploitation material	s 228B	1	0	0.0%
+ Distributing child exploitation material	s 228C	0	0	-
+ Possessing child exploitation material	s 228D	1	0	0.0%
Maintaining a sexual relationship with a child	s 229B	239	24	10.0%
Procuring engagement in prostitution	s 229G(1)	0	0	-
	s 229G(2)	2	0	0.0%
+ Knowingly participating in the provision of prostitution	s 229H(2)	0	0	-
– Misconduct with regard to corpses	s 236(2)	0	0	-
Manslaughter	ss 303(1) and 310	180	46	25.6%
Attempted murder	s 306	55	7	12.7%
				-
Conspiring to murder	s 309	1	0	0.0%
+ Aiding suicide	s 311	1	0	0.0%
Killing unborn child	s 313	0	0	-
Disabling in order to commit indictable offence	s 315	4	0	0.0%
+ Choking, suffocation or strangulation in a domestic setting	s 315A	2	0	0.0%
Note: introduced 5 May 2016				
Stupefying in order to commit indictable offence	s 316	1	0	0.0%
Acts intended to cause GBH and other malicious acts	s 317	160	34	21.3%
– Carrying or sending dangerous goods in vehicle	s 317A(1)	0	0	-
– Obstructing rescue or escape from unsafe premises	s 318	0	0	-
– Endangering the safety of a person in a vehicle with intent	s 319	3	1	33.3%
Grievous bodily harm	s 320	100	37	37.0%
Torture	s 320A	63	16	25.4%
– Attempting to injure by explosive or noxious substances	s 321	0	0	-
– Bomb hoaxes	s 321A	0	0	-
Administering poison with intent to harm	s 322	0	0	-
Wounding	s 323	1	0	0.0%
+ Female genital mutilation	s 323A	0	0	-
– Failure to supply necessities	s 324	0	0	-
– Endangering life of children by exposure	s 326	0	0	-

Table continued over page...

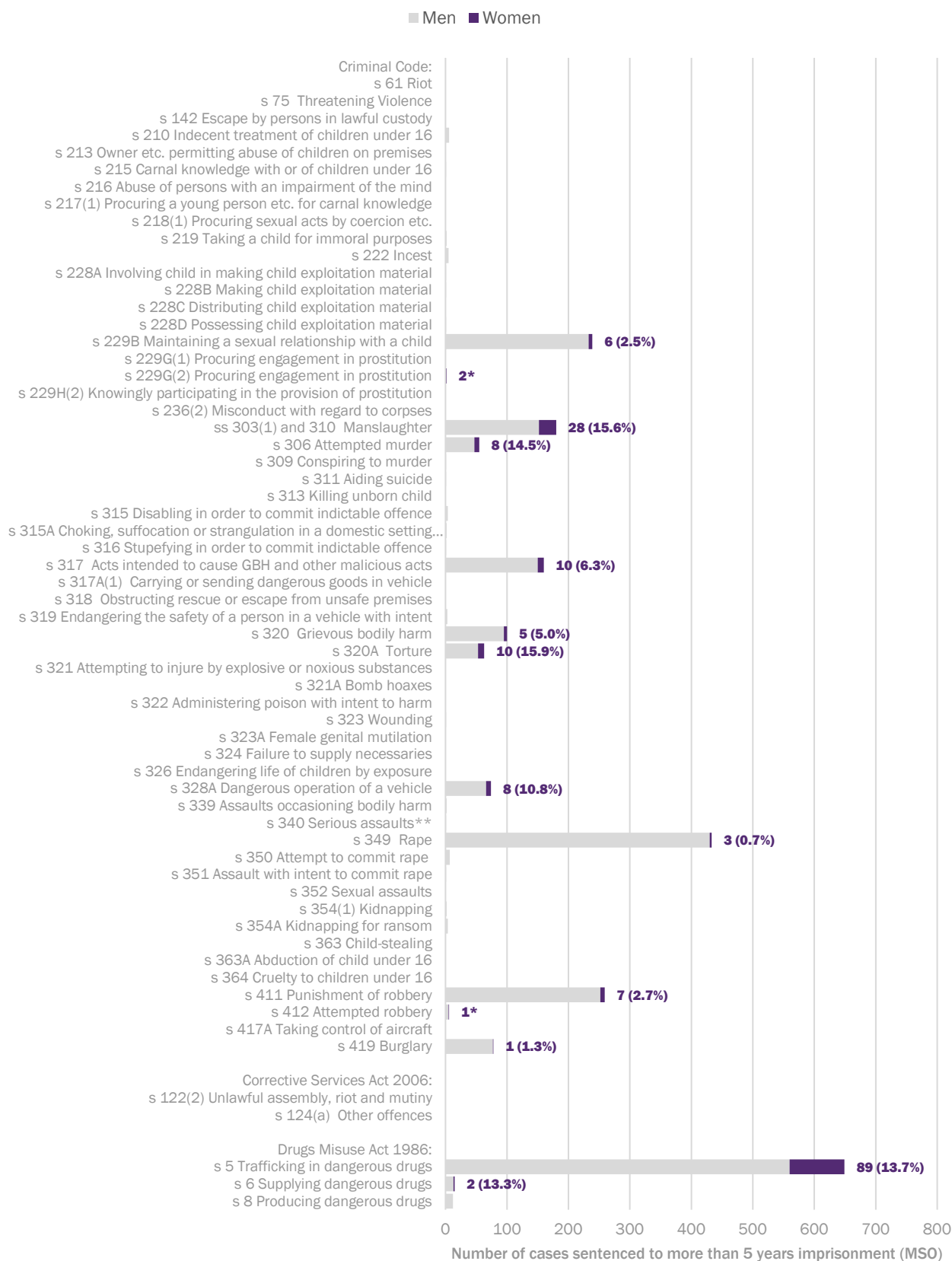
Offence Name	Section	Cases with more than 5 years imprisonment		
		All cases (MSO)	Aboriginal and Torres Strait Islander people (MSO)	(%)
Dangerous operation of a vehicle	s 328A (total)	74	12	16.2%
—	s 328A(2)	0	0	-
—	s 328A(3)	5	1	20.0%
	s 328A(4)(a)	6	2	33.3%
	s 328A(4)(b)-(c)	67	10	14.9%
— Assaults occasioning bodily harm	s 339	2	0	0.0%
— Serious assaults	s 340	1	1	100.0%
Note, this offence was amended in 2012 and 2014, introducing circumstances of aggravation that increased the maximum penalty from 7 to 14 years.				
Rape	s 349	433	127	29.3%
Attempt to commit rape	s 350	3	1	33.3%
	s 349 & 535	4	0	0.0%
Assault with intent to commit rape	s 351	1	1	100.0%
Sexual assaults	s 352 (total)	0	0	-
	s 352(2)	0	0	-
	s 352(3)	0	0	-
Kidnapping	s 354(1)	2	0	0.0%
Kidnapping for ransom	s 354A	4	1	25.0%
+ Child-stealing	s 363	0	0	-
+ Abduction of child under 16	s 363A	0	0	-
— Cruelty to children under 16	s 364	0	0	-
Punishment of robbery	s 411(total)	259	42	16.2%
	s 411(2)	253	40	15.8%
Attempted robbery	s 412 (total)	6	1	16.7%
	s 412(2)	4	1	25.0%
	s 412(3)	3	0	0.0%
	s 411(2) & 535	3	0	0.0%
— Taking control of aircraft	s 417A	0	0	-
Burglary	s 419 (total)	78	17	21.8%
	s 419(2)	32	6	18.8%
	s 419(3)(a)	18	4	22.2%
	s 419(3)(b)(i)	21	4	19.0%
	s 419(3)(b)(ii)	16	3	18.8%
	s 419(3)(b)(iii)	11	1	9.1%
	s 419(3)(b)(iv)	3	0	0.0%
	s 419(4)	29	7	24.1%
Corrective Services Act 2006:				
— Unlawful assembly, riot and mutiny	s 122(2)	0	0	-
— Other offences	s 124(a)	0	0	-
Drugs Misuse Act 1986:				
Trafficking in dangerous drugs	s 5	649	19	2.9%
Supplying dangerous drugs	s 6 (total)	15	1	6.7%
	s 6(2)	4	0	0.0%
Producing dangerous drugs	s 8	12	0	0.0%

Data includes cases sentenced 2011–12 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

* offences proposed to be added to the scheme are marked with a '+' symbol; offences marked with a '—' symbol are proposed to be removed from the scheme.

Figure A2: Proportion of women for Schedule 1 offences that receive imprisonment of more than 5 years, current and proposed offences, 2011–12 to 2019–20



Data includes cases (MSO) sentenced 2011–12 to 2019–20. Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020. Note: see Table A3 below for a table of numbers.

* percentages not displayed for cases with less than 10 cases sentenced.

** The offence of serious assaults was amended in 2012 and 2014, introducing circumstances of aggravation that increased the maximum penalty from 7 to 14 years.

Table A3: Proportion of women for Schedule 1 offences, current and proposed, 2011–12 to 2019–20

		Cases with more than 5 years imprisonment		
* Offence Name	Section	All cases (MSO)	Women (MSO)	(%)
Criminal Code:	-			
— Riot	s 61	0	0	-
— Threatening Violence	s 75	0	0	-
— Escape by persons in lawful custody	s 142	0	0	-
Indecent treatment of children under 16	s 210 (total)	6	0	0.0%
	s 210(2)	2	0	0.0%
	s 210(3)	4	0	0.0%
	s 210(4)	2	0	0.0%
	s 210(4A)	0	0	-
Owner etc. permitting abuse of children on premises	s 213	0	0	-
Carnal knowledge with or of children under 16	s 215	1	0	0.0%
Abuse of persons with an impairment of the mind	s 216	0	0	-
Procuring a young person etc. for carnal knowledge	s 217(1)	0	0	-
Procuring sexual acts by coercion etc.	s 218(1)	0	0	-
Taking a child for immoral purposes	s 219	2	0	0.0%
Incest	s 222	5	0	0.0%
+ Involving child in making child exploitation material	s 228A	1	0	0.0%
+ Making child exploitation material	s 228B	1	0	0.0%
+ Distributing child exploitation material	s 228C	0	0	-
+ Possessing child exploitation material	s 228D	1	0	0.0%
Maintaining a sexual relationship with a child	s 229B	239	6	2.5%
Procuring engagement in prostitution	s 229G(1)	0	0	-
	s 229G(2)	2	2	100.0%
+ Knowingly participating in the provision of prostitution	s 229H(2)	0	0	-
— Misconduct with regard to corpses	s 236(2)	0	0	-
Manslaughter	ss 303(1) and 310	180	28	15.6%
Attempted murder	s 306	55	8	14.5%
			0	-
Conspiring to murder	s 309	1	0	0.0%
+ Aiding suicide	s 311	1	0	0.0%
Killing unborn child	s 313	0	0	-
Disabling in order to commit indictable offence	s 315	4	0	0.0%
+ Choking, suffocation or strangulation in a domestic setting	s 315A	2	0	0.0%
Note: introduced 5 May 2016				
Stupefying in order to commit indictable offence	s 316	1	0	0.0%
Acts intended to cause GBH and other malicious acts	s 317	160	10	6.3%
— Carrying or sending dangerous goods in vehicle	s 317A(1)	0	0	-
— Obstructing rescue or escape from unsafe premises	s 318	0	0	-
— Endangering the safety of a person in a vehicle with intent	s 319	3	0	0.0%
Grievous bodily harm	s 320	100	5	5.0%
Torture	s 320A	63	10	15.9%
— Attempting to injure by explosive or noxious substances	s 321	0	0	-
— Bomb hoaxes	s 321A	0	0	-
Administering poison with intent to harm	s 322	0	0	-
Wounding	s 323	1	0	0.0%
+ Female genital mutilation	s 323A	0	0	-
— Failure to supply necessities	s 324	0	0	-
— Endangering life of children by exposure	s 326	0	0	-

Table continued over page...

		Cases with more than 5 years imprisonment		
* Offence Name	Section	All cases (MSO)	Women (MSO)	(%)
Dangerous operation of a vehicle	s 328A (total)	74	8	10.8%
—	s 328A(2)	0	0	-
—	s 328A(3)	5	0	0.0%
	s 328A(4)(a)	6	1	16.7%
	s 328A(4)(b)-(c)	67	7	10.4%
— Assaults occasioning bodily harm	s 339	2	0	0.0%
— Serious assaults	s 340	1	0	0.0%
Note, this offence was amended in 2012 and 2014, introducing circumstances of aggravation that increased the maximum penalty from 7 to 14 years.				
Rape	s 349	433	3	0.7%
Attempt to commit rape	s 350	3	0	0.0%
	s 349 & 535	4	0	0.0%
Assault with intent to commit rape	s 351	1	0	0.0%
Sexual assaults	s 352 (total)	0	0	-
	s 352(2)	0	0	-
	s 352(3)	0	0	-
Kidnapping	s 354(1)	2	0	0.0%
Kidnapping for ransom	s 354A	4	0	0.0%
+ Child-stealing	s 363	0	0	-
+ Abduction of child under 16	s 363A	0	0	-
— Cruelty to children under 16	s 364	0	0	-
Punishment of robbery	s 411(total)	259	7	2.7%
	s 411(2)	253	7	2.8%
Attempted robbery	s 412 (total)	6	1	16.7%
	s 412(2)	4	1	25.0%
	s 412(3)	3	1	33.3%
	s 411(2) & 535	3	0	0.0%
— Taking control of aircraft	s 417A	0	0	-
Burglary	s 419 (total)	78	1	1.3%
	s 419(2)	32	0	0.0%
	s 419(3)(a)	18	0	0.0%
	s 419(3)(b)(i)	21	0	0.0%
	s 419(3)(b)(ii)	16	0	0.0%
	s 419(3)(b)(iii)	11	0	0.0%
	s 419(3)(b)(iv)	3	0	0.0%
	s 419(4)	29	1	3.4%
Corrective Services Act 2006:				
— Unlawful assembly, riot and mutiny	s 122(2)	0	0	-
— Other offences	s 124(a)	0	0	-
Drugs Misuse Act 1986:				
Trafficking in dangerous drugs	s 5	649	89	13.7%
	s 6 (total)	15	2	13.3%
Supplying dangerous drugs	s 6(2)	4	1	25.0%
Producing dangerous drugs	s 8	12	0	0.0%

Data includes cases sentenced 2011–12 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

* offences proposed to be added to the scheme are marked with a '+' symbol; offences marked with a '—' symbol are proposed to be removed from the scheme.

Table A4: Concordance of legislative offences to QCS offence categories

Legislative Offence	QCS Classification
Trafficking in dangerous drugs	Deal or traffic in illicit drugs - Not Further Defined Deal or traffic in illicit drugs commercial quantity
Torture	Torture
Robbery	Aggravated unarmed robbery Armed robbery
Rape	Rape Attempted rape Indecent treatment of a child Non-assaultive sexual offences against a child Administer harmful substances
Manslaughter	Manslaughter (remainder)
Maintaining a sexual relationship with a child	Maintaining a sexual relationship with a child
Unlawful sodomy	Maintaining a sexual relationship with a child
Kidnapping for ransom	Kidnapping
Grievous bodily harm	Assault occasioning grievous bodily harm
Dangerous operation of a vehicle	Driving causing death Driving causing grievous bodily harm
Burglary	Unlawful Entry with Intent/Burglary Break and Enter
Attempted Robbery	Armed robbery Non-aggravated robbery
Attempt to murder	Assault occasioning grievous bodily harm Attempted murder Wounding
Acts intended to cause grievous bodily harm and other malicious acts	Assault occasioning grievous bodily harm Wounding Assault with intent to commit indictable offence Other acts intended to cause injury, nec (remainder) Resist arrest, incite, hinder, obstruct police

Appendix 6: Structured interview guide for subject-matter expert interviews

Group: Legal stakeholders – Public prosecutors

1. Intro (try to keep to 10 min)

- Can you please tell me about your role at the DPP?
- What is your level of experience or knowledge in working with the SVO scheme?
 - Can you provide examples of the types of matters and the circumstances involved?
- Have you noticed any changes in the way the SVO scheme has been understood and applied during the time you have been in practice?

2. Objectives of SVO scheme

The SVO scheme, when introduced, was justified on the basis of the then Coalition Government's stated concerns about community safety, denunciation and punishment.

- Do you think the SVO scheme is meeting its objectives of community safety, denunciation and punishment?
- In a practical sense, do you feel that the SVO scheme targets serious violent offences, offenders or both? Why?

3. Process of SVO declaration (discretionary)

- Under which circumstances would you provide a submission for a discretionary SVO declaration?
 - In your experience, which factors commonly impact on the outcome of the submission?
 - Do you think this will change following the Court of Appeal's decision in *Free*? What impact, if any, do you think this will have on appeals?
- Does the DPP have any internal policies or processes regarding when to seek an SVO declaration?
- Does the automatic SVO declaration aspect of a head sentence of 10 or more years impact on prosecution submissions regarding an appropriate head sentence?

4. Impact on plea and charge negotiations

- Does the existence of the SVO scheme factor into charge and plea negotiations and the resolution of matters? If so, in what ways?
- If the SVO scheme did not exist, what would be the impact on these types of negotiations and, more generally, on case outcomes?

5. Impact on sentencing practices and appeals

- How do you think the SVO scheme impacts on court sentencing practices?
 - How does the SVO scheme affect how courts approach sentencing?
 - in cases in which the seriousness of the offending warrants a sentence of over 10 years?
 - in cases in which a court is contemplating a sentence at, or around the 10-year mark?
 - in cases involving multiple charges - some of which are for offences not included in Schedule 1?

- Under which circumstances is a decision made to appeal a sentence regarding cases in which the court did not make an SVO declaration?
- Does the SVO scheme, or any aspects of it, create inconsistency or constrain the sentencing process?
- Does the SVO scheme lead to any unintended consequences?
- Does the SVO scheme lead to any delays in progressing the matter?

6. Level of discretion

- Is the SVO scheme appropriate for all the offences included in Schedule 1?
- Are there any offences not included in Schedule 1 that should be?
- What are your views on the level of discretion available to judges under the scheme?
- Is there sufficient statutory guidance and criteria available as to when a discretionary SVO declaration should be made? How important is Court of Appeal case law in this regard?

7. Victim satisfaction

- Do DPP staff members commonly explain the SVO scheme to a victim of a relevant Schedule 1 offence?
 - Would victims be aware of whether a discretionary SVO declaration was made?
 - Would victims be aware if a mandatory SVO declaration was made?
 - Would victims be aware of what an SVO declaration means in practice?
- Do you think that the SVO scheme impacts on victim satisfaction with the sentencing process or outcome? If so, in what way?
 - Have victims expressed their views to you about the application of the SVO scheme?

8. Closing considerations

- If the SVO scheme is retained, how do you think it could be improved?
- If the SVO was to be replaced – what should it be replaced with?
- Is there anything else that is important that we have not yet covered?

Group: Legal stakeholders – Criminal defence lawyers (private and legal aid)

1. Intro (try to keep to 10 min)

- Can you please tell me more about your role at...?
- What is your level of experience or knowledge in working with the SVO scheme?
 - Can you provide examples of the types of matters and the circumstances involved?
- Have you noticed any changes in the way the SVO scheme has been understood and applied during the time you have been in practice?

2. Objectives of SVO scheme

The SVO scheme, when introduced, was justified on the basis of the then Coalition Government's stated concerns about community safety, denunciation and punishment.

- Do you think the SVO scheme is meeting its objectives of community safety, denunciation and punishment?
- In a practical sense, do you feel that the SVO scheme targets serious violent offences, offenders or both? Why?

3. Process of SVO declaration (discretionary)

- Under which circumstances do prosecutors make submissions for a discretionary SVO declaration to be made?
 - In your experience, which factors commonly impact on the outcome of the submission?
 - Do you think this will change following the Court of Appeal's decision in *Free*? What impact, if any, do you think this will have on appeals?
 - Which factors would you refer to when making submissions regarding an SVO declaration?
 - Which considerations do you find courts tend to refer to when making a decision?

4. Impact on plea and charge negotiations and preparation for court

- Does the existence of the SVO scheme factor into charge and plea negotiations and the resolution of matters? If so, in what ways?
- What is the impact of the SVO scheme on your advice to clients and preparation of matters?
 - Which factors lead you to identifying a Schedule 1 offence as one potentially attracting a discretionary SVO declaration? Does this change the advice you provide to those clients?
 - To what extent is the possibility of an SVO declaration a consideration for defendants when considering whether to plead guilty?
- If the SVO scheme did not exist, what impact do you think this might have on your clients and on the outcomes of plea and charge negotiations?

5. Impact on sentencing practices

- How do you think the SVO scheme impacts on court sentencing practices?
- How does the SVO scheme affect how courts approach sentencing?
 - in cases in which the seriousness of the offending warrants a sentence over 10 years?
 - in cases in which a court is contemplating a sentence at, or around the 10-year mark?
 - in cases involving multiple charges - some of which are for offences not included in Schedule 1?

- Under which circumstances is a decision made to appeal a sentence regarding cases in which the court has made an SVO declaration?
- Does the SVO scheme, or any aspects of it, create inconsistency or constrain the sentencing process?
- Does the SVO scheme lead to any unintended consequences?
- Does the SVO scheme lead to any delays in progressing the matter?

6. Level of discretion

- Is the SVO scheme appropriate for all the offences included in Schedule?
- What are your views on the level of discretion available to sentencing judges regarding offences captured in the scheme?
- Is there sufficient statutory guidance and criteria in relation to the application of the SVO scheme? How important is Court of Appeal case law?

7. Concluding considerations

- If the SVO scheme is retained, how do you think it could be improved?
- If the SVO was to be replaced – what should it be replaced with?
- Is there anything else that is important that we have not yet covered?
- Do you know anyone else who might be willing to participate in an interview?

Group: Members of the judiciary

1. Intro (try to keep to 10 min)

- Can you please provide me with an overview of your experience in sentencing offences that were subject to the SVO scheme?
- Have you noticed any changes in the way the SVO scheme has been understood and applied during your career?

2. Application of the SVO scheme

- In your experience, how common is it for an offence listed in Schedule 1 to be the subject of a submission by the DPP for a discretionary SVO declaration?
 - Have you noticed any common features of these cases?
- Under which circumstances have you made an SVO declaration where you had the discretion to do so?
 - What sets apart cases in which you have decided to make a discretionary declaration from those where you have determined this would not be appropriate?

3. Impact on sentencing practices

- What impact does the SVO scheme have on the way you approach sentencing?
 - Does the SVO scheme have an impact on the complexity of the sentencing exercise?
- Does the SVO scheme, or any aspects of it, create inconsistency or constrain the sentencing process?
- In your experience, does the SVO scheme lead to any unintended consequences?

4. Discussion of relevant cases as examples

- Can you discuss recent examples of cases in which you sentenced someone, and you had to consider how the SVO scheme might apply?

If under 10-year mark:

- Did the prosecutor make submissions on whether an SVO declaration should be made, or did you consider this on your own initiative?
- What were the main factors you took into consideration when deciding whether to make the declaration?
- *If close to or over 10-year mark:*
 - Did the likelihood of a mandatory SVO declaration as a result of a sentence over 10 years impact on your approach to the sentencing exercise?
 - Did the mandatory nature of the scheme as it applied in this case lead to any particular challenges to the sentencing exercise?
- Can you please provide further examples of cases?

5. Guidance

- How important has the guidance provided by the Court of Appeal in applying the scheme been?
 - How important is the Court of Appeal's recent judgment in *Free (R v Free; Ex parte Attorney-General (Qld) [2020])*? Do you anticipate that it will change how discretionary SVO matters are decided?

6. Concluding considerations

- Do you have an expectation about the kinds of programs and interventions delivered to the offender while in custody?
- Do you have an expectation about the kinds of programs and interventions delivered to the offender after they are released on parole?
- Is there anything else concerning the SVO scheme that you would like to share with us?

Appendix 7: Coding tree for subject-matter expert interviews

Coding Structure

- Views of the scheme
- Changes to understanding or application of the scheme
- Objectives/purposes of the scheme
- Criteria for discretionary SVOs
- Impact on plea negotiations
- Impact of the scheme on sentencing
- Appeals of declared cases
- Examples of cases
- Relevant case law
- Impact on victim satisfaction with SVO scheme
- Comments on availability of programs
- Submissions made by parties on sentencing
- DPSOA orders
- Parole decision-making
- Recommendations for reform
- Other suggestions
- Any other issues raised relevant to SVO scheme

Appendix 8: Statutory ratios between head sentences and non-parole periods within Australia

The table below sets out the legislative provisions in Australian jurisdictions in relation to the statutory ratios between head sentences and non-parole periods ('NPPs').

Table A5: Legislative provisions in Australian jurisdictions in relation to the statutory ratios between non-parole periods and head sentences

Jurisdiction	Details
ACT	<ul style="list-style-type: none"> For sentences of imprisonment of 12 months or longer (excluding a life sentence) the court must set an NPP, unless the court considers it would be inappropriate to do so.¹ No statutory ratio.²
Commonwealth	<ul style="list-style-type: none"> NPP generally only if head sentence (or aggregate) is greater than 3 years³ (recognizance release order for sentences of 3 years or less).⁴ Generally no fixed ratio or proportion between the head sentence imposed on a federal offender and the period, or minimum period, to be served. 75% minimum NPP for certain national security offences.⁵
NSW	<ul style="list-style-type: none"> For sentences of imprisonment of 6 months or longer, the balance of the sentence must not exceed one-third of the NPP (meaning NPP is effectively 75% or more of the total sentence length) unless there are special circumstances.⁶ For sentences of 3 years or less, a court can make statutory parole orders to release the person,⁷ while for sentences over 3 years the NPP signifies parole eligibility only. Standard non-parole scheme ('SNPP') applies to a range of serious offences. SNPPs are legislated and operate as a 'guidepost' in sentencing. The ratio between the SNPP and the maximum penalty varies by offence.
Northern Territory	<ul style="list-style-type: none"> For sentences of imprisonment of 12 months or longer, NPP of not less than 70% of the head sentence for offences of sexual intercourse without consent, certain other sexual offences and violent offences, and certain offences committed against people under 16 years of age.⁸ NPP of not less than 50% of the head sentence for other offences where a court sentences an offender to be imprisoned for 12 months or longer.⁹ A court can also decline to fix a NPP if the court considers the fixing of a NPP is inappropriate.¹⁰

¹ *Crimes (Sentencing) Act 2005* (ACT) s 65.

² The 'usual [percentage] range of 50-75%' has been noted in a number of Court of Appeal decisions: see *Zdravkovic v The Queen* [2016] ACTCA 53, [74] citing observations made in *Barrett v The Queen* [2016] ACTCA 38, [52]; *Taylor v the Queen* [2014] ACTCA 9, [20] (Murrell CJ, Refshauge and Penfold JJ agreeing generally as to reasons).

³ *Crimes Act 1914* (Cth) ss 19AB, 19AD.

⁴ *Ibid* ss 20(1)(b), 19AC, 19AE.

⁵ *Ibid* s 19AG.

⁶ *Crimes (Sentencing Procedure) Act 1999* (NSW) s 44, unless there are special circumstances for the balance of the sentence to be more. A court can also decline to set a non-parole period: s 45.

⁷ *Crimes (Administration of Sentences) Act 1999* (NSW) s 158(1).

⁸ *Sentencing Act 1995* (NT) ss 55, 55A.

⁹ *Ibid* ss 53, 54, but not less than 8 months. This requirement also applies to life sentences, but does not apply if the sentence is suspended in whole or part.

¹⁰ *Ibid* ss 53(1), 54(3), 55(2), 55A(2).

Jurisdiction	Details
Queensland	<ul style="list-style-type: none"> NPP of 50% of the head sentence, where the head sentence exceeds three years and the court does not set a parole eligibility date (or in other specified circumstances, such as imprisonment arising from the breach of a suspended sentence, cancelled parole or imprisonment for a sexual offence where the head sentence is not more than 3 years).¹¹ NPP is 80% of the head sentence for listed Schedule 1 serious violent offences, or 15 years (whichever is less) — mandatory where the sentence is 10 years or more, discretionary where the sentence is less than 10 but more than 5 years.¹² Can also apply to a sentence of any length, and to a non-schedule 1 offence convicted on indictment of an offence — (i) that involved the use, counselling or procuring the use, or conspiring or attempting to use, serious violence against another person; or (ii) that resulted in serious harm to another person; and (b) sentenced to a term of imprisonment for the offence.¹³
South Australia	<ul style="list-style-type: none"> The court must set an NPP¹⁴ for sentences of imprisonment of 12 months or longer, unless the court considers it would be inappropriate to do so.¹⁵ Minimum NPP of four-fifths (80%) of the head sentence for serious offences against the person,¹⁶ or for a serious offence where the offender is, or has been, declared to be a serious repeat offender¹⁷ unless there are exceptional circumstances.¹⁸
Tasmania	<ul style="list-style-type: none"> NPP of not less than 50% of the head sentence.¹⁹
Victoria	<ul style="list-style-type: none"> No statutory ratio between the NPP and head sentence. The court must set a NPP for sentences of 2 years or more that must be at least 6 months less than the head sentence and may fix a non-parole period for sentences of 1 year or more, but less than 2 years.²⁰ Mandatory minimum NPP for some offences, with no legislative requirement for the head sentence.²¹ For standard sentence offences: <ul style="list-style-type: none"> NPP must be at least 60% of the head sentence when less than 20 years; NPP must be at least 70% of the head sentence when 20 years or more; NPP must be 30 years if life imprisonment imposed; unless the court finds it is in the interests of justice not to do so.²²
Western Australia	<ul style="list-style-type: none"> NPP generally 50% of the head sentence, where the head sentence is 4 years or less, or two years less than the head sentence if the head sentence is greater than 4 years.²³ Minimum NPP of 75% for grievous bodily harm committed in the course of an aggravated home burglary.²⁴

¹¹ *Corrective Services Act 2006* (Qld) s 184.

¹² *Penalties and Sentences Act 1992* (Qld) pt 9A, ss 161A–161C; *Corrective Services Act 2006* (Qld) s 182.

¹³ *Ibid* s 161B(4).

¹⁴ While there is no statutory minimum sentencing ratio, the South Australia Criminal Court of Appeal has noted the non-parole periods have 'tended to range between 50% and 75% of the head sentence': *R v Devries* [2018] SASCFC 101, [19] (Hinton J) citing *R v Palmer* [2016] SASCFC 34, [4] (Kourakis CJ).

¹⁵ *Sentencing Act 2017* (SA) s 47.

¹⁶ *Ibid* s 47(5)(d).

¹⁷ *Ibid* ss 53, 54.

¹⁸ *Ibid* ss 48(2), 54(2). In the case of the serious repeat offender provisions, the person must also satisfy the court it is not appropriate that they be sentenced as a serious repeat offender.

¹⁹ *Sentencing Act 1997* (Tas) s 17(3).

²⁰ *Sentencing Act 1991* (Vic) s 11.

²¹ *Ibid* pt 3, ss 9A–10A

²² *Ibid* s 11A.

²³ *Sentencing Act 1995* (WA) s 93 (for aggregate sentences see s 94).

²⁴ *Criminal Code Act Compilation Act 1913* (WA) sch ('Criminal Code') ss 297(5)(a)(i)–(ii).

Appendix 9: List of Queensland correctional facilities and security classification

Table A6: List of Queensland correctional facilities and security classification

Correctional facility	Security classification
Arthur Gorrie Correctional Centre	High
Borallon Training and Correctional Centre	High
Brisbane Correctional Centre	High
Brisbane Women's Correctional Centre	High
Capricornia Correctional Centre	High and Low
Helana Jones Centre	Low
Lotus Glen Correctional Centre	High and Low
Maryborough Correctional Centre	High
Numinbah Correctional Centre	Low
Palen Creek Correctional Centre	Low
Southern Queensland Correctional Centre	High
Townsville Correctional Centre	High and Low
Wolston Correctional Centre	High
Woodford Correctional Centre	High

Source: The Queensland Government, www.qld.gov.au/law/sentencing-prisons-and-probation/prisons-and-detention-centres/prison-location

Appendix 10: Table of Australian MNPP schemes

This table sets out minimum non-parole schemes that apply across Australia to adult offenders. It does not include mandatory sentencing schemes that apply to the setting of the head sentences, unless these also include a mandatory or presumptive non-parole component. This means that some schemes discussed in this report in the interests of completeness, are not included in this table. Jurisdictions without any form of minimum non-parole period ('NPP') schemes that apply to serious sexual and/or violent offences are the Australian Capital Territory and Tasmania and are excluded from this table.

Table A7: Table of Australian MNPP schemes

Jurisdiction	Name of scheme	Description of the scheme	Types of offences	Minimum non-parole period	Mandatory, presumptive or discretionary?	Exceptions to application?
Queensland¹	Serious violent offences ('SVO') scheme ⁴	Requires a person declared convicted of a serious violent offence to serve a fixed minimum NPP of 80% before being eligible to apply for parole.	Serious violent offences, serious sexual violence offences, and serious drug offences listed in a schedule to the PSA (schedule 1). Includes a broad range of violent offences and sexual violence offences. Also applies to serious drug offences (trafficking in dangerous drugs, aggravated supply of dangerous drugs, and producing dangerous drugs (sch 1) in an amount of or exceeding quantity in sch 3 of <i>Drugs Misuse Regulation 1987</i> (Qld)).	80% of head sentence or 15 years, whichever is less (fixed period)	Mandatory declaration: sentence of 10+ yrs for offences in sch 1 PSA ⁵	Mandatory: nil
					Discretionary: sentence of imprisonment: <ul style="list-style-type: none"> 5 to <10 years for offence listed in schedule 1;⁶ or of any length for an offence dealt with on indictment that: (a) involved the use/attempted use, of serious violence against another person; or (b) that resulted in serious harm to another person.⁷ 	Discretionary: yes. A declaration cannot be made for an offence: dealt with summarily, ⁸ or in relation to an offence for which the offender is sentenced to imprisonment ordered to be suspended in whole or in part, or served by way of an intensive correction order. ⁹

General rules that apply to parole:

If no parole date is set - The statutory parole eligibility date ('PED') is the day after the person has served half of the period of imprisonment to which they have been sentenced.¹

The *Corrective Services Act* states that a court may set an earlier or later PED than the statutory 50% period.²

'It is the common practice of sentencing courts in Queensland to recognise the value of an early plea of guilty and other circumstances in mitigation by ordering that the offender be eligible for parole after serving one-third of the term of imprisonment imposed as the head sentence. This practice does not represent a hard and fast rule'.³

Jurisdiction	Name of scheme	Description of the scheme	Types of offences	Minimum non-parole period	Mandatory, presumptive or discretionary?	Exceptions to application?
	Repeat child sex offence scheme ¹⁰	An offender convicted of a repeat serious child sex offence (where both are committed when the offender was an adult) is subject to a mandatory life sentence or indefinite sentence (with a nominal sentence and finite sentence of life imprisonment). ¹¹	Serious child sex offences committed in relation to a child under 16 yrs in circumstances in which the offence attracts a maximum penalty of life. ¹²	20 years ¹³	Mandatory ¹⁴	No
	Unlawful striking causing death offence ¹⁵	Offenders convicted of this offence and sentenced to imprisonment are subject to a mandatory NPP. ¹⁶	Single punch causing death.	80% of head sentence or 15 years, whichever is less (fixed period) ¹⁷	Mandatory	Yes. Does not apply if the court orders that the sentence be suspended in whole or in part or imposes a life sentence or indefinite sentence. ¹⁸
Commonwealth	'Three-quarters rule' for national security offences ²¹	Requires a court to fix a single minimum NPP whenever a person is convicted of a 'minimum non-parole period offence' or set proportion of the aggregate term if the person is sentenced for two or more of those offences. ²²	Relevant offences include terrorism, ²³ treason, ²⁴ international espionage. ²⁵	At least 75% of the head sentence. ²⁶	Mandatory	Yes. Does not apply if sentenced to a penalty other than imprisonment. ²⁷
<p>General rules that apply to parole: Court to set NPP / impose a recognizance release order ('RRO') date: ...a court must impose a sentence or make an order that is of a severity appropriate in all the circumstances of the offence.¹⁹</p>						

Jurisdiction	Name of scheme	Description of the scheme	Types of offences	Minimum non-parole period	Mandatory, presumptive or discretionary?	Exceptions to application?
There is no 'norm' or fixed ratio between the head sentence and the period to be served in legislation. The head sentence is to be determined first, then the minimum period to be served fixed. ²⁰						
	People smuggling offences ²⁸	A mandatory term of imprisonment, a mandatory minimum duration of that term, and a mandatory minimum NPP for listed people-smuggling offences.	<ul style="list-style-type: none"> Aggravated people smuggling involving cruel, inhuman or degrading treatment, or giving rise to a danger of death or serious harm to the person²⁹ Aggravated people smuggling involving a group of at least 5 unlawful non-citizens³⁰ Offence relating to forged or false, or false or misleading statements or documents, relating to a group of 5 or more non-citizens.³¹ 	Varies – period of at least 5 years (for an 8-year minimum sentence) and at least 3 years (for a 5-year minimum sentence) ³²	Mandatory	No – although does not apply if court is satisfied the offender was aged under 18 years when the offence was committed. ³³
	Child sex offences and child sexual abuse offences ³⁴	Mandatory minimum sentences of imprisonment for high level Commonwealth child sex offences ³⁵	<ul style="list-style-type: none"> Sexual offences against children outside Australia Benefitting from, encouraging or preparing for sexual offences against children outside Australia Aggravated offences committed overseas or within Australia involving child pornography material or child abuse material 	Varies for each offence – terms of imprisonment between 5 years to 7 years.	Mandatory	<p>Yes – does not apply to a person who was aged under 18 years when the offence was committed.³⁶</p> <p>A court may also impose a sentence of imprisonment less than that specified because the court is taking into account a plea of guilty, or cooperation with law enforcement agencies in the investigation of the offence or a Commonwealth child sex offence.³⁷</p>

Jurisdiction	Name of scheme	Description of the scheme	Types of offences	Minimum non-parole period	Mandatory, presumptive or discretionary?	Exceptions to application?
			<ul style="list-style-type: none"> Using a carriage service for sexual activity with a child 			The court may reduce the sentence up to 25% of the listed minimum for a plea of guilty, or for cooperation with law enforcement. The court may reduce the sentence up to 50% of the listed minimum if the court is taking into account both a guilty plea and cooperation. ³⁸

Jurisdiction	Name of scheme	Description of the scheme	Types of offences	Minimum non-parole period	Mandatory, presumptive or discretionary?	Exceptions to application?
		Mandatory minimum sentences of imprisonment for repeat child sex abuse offences ³⁹	<ul style="list-style-type: none"> Offences involving child abuse material Possession of child-like sex dolls Using of postal or similar services for child pornography material or child abuse material 	Varies for each offence – between 1 year imprisonment and 4 years' imprisonment.	Mandatory	<p>Yes – does not apply to a person who was aged under 18 years when the offence was committed.⁴⁰</p> <p>A court may also impose a sentence of imprisonment less than that specified because the court is taking into account a plea of guilty, or cooperation with law enforcement agencies in the investigation of the offence or a Commonwealth child sex offence.⁴¹</p> <p>The court may reduce the sentence up to 25% of the listed minimum for a plea of guilty, or for cooperation with law enforcement. The court may reduce the sentence up to 50% of the listed minimum if the court is taking into account both a guilty plea and cooperation.⁴²</p>

Jurisdiction	Name of scheme	Description of the scheme	Types of offences	Minimum non-parole period	Mandatory, presumptive or discretionary?	Exceptions to application?
<p>New South Wales</p> <p>General rules that apply to parole: Terms of imprisonment of six months or less – offender must spend the whole term in custody and be released unconditionally.⁴³</p> <p>For a term of imprisonment over 6 months, the court must set a non-parole period, where 'the balance of the term of the sentence must not exceed one third of the non-parole period of the sentence'.⁴⁴</p>	Standard non-parole period scheme ⁴⁵	The standard non-parole period ('SNPP') scheme applies to listed indictable offences. An SNPP represents the non-parole period for an offence that, 'taking into account only the objective factors affecting the relative seriousness' of the offence, 'is in the middle of the range of seriousness'. ⁴⁶	Serious violent offences, serious sexual violence offences, serious drug offences, and firearms and weapons offences. ⁴⁷	No standard ratio; SNPP varies by offence and is expressed as a number of years (e.g. the SNPP for attempt to murder is 10 years, and 7 years for sexual assault). ⁴⁸	Discretionary – SNPP and the maximum penalty for the offence both operate as 'legislative guideposts'. ⁴⁹	<p>Yes. Does not apply to offences dealt with summarily.⁵⁰ Does not apply to life or indeterminate sentences or to detention under the <i>Mental Health and Cognitive Impairment Forensic Provisions Act 2020</i> (NSW).⁵¹ Does not apply to an offender under the age of 18.⁵²</p> <p>SNPP does not prevent the court from imposing a non-custodial sentence (although the court must provide reasons for doing so).⁵³</p>

Jurisdiction	Name of scheme	Description of the scheme	Types of offences	Minimum non-parole period	Mandatory, presumptive or discretionary?	Exceptions to application?
Northern Territory General rules that apply to parole: Terms of imprisonment less than 12 months – NPP cannot be set Terms of imprisonment of 12 months or more – court must fix a NPP of not less than 50% of the period of imprisonment (and that must not be less than 8 months), subject to the minimum non-parole period schemes. ⁵⁴	Minimum non-parole periods for certain sexual offences and drug offences ⁵⁵	Requires a court when sentencing an offender for listed offences (referred to as 'specified offences') to 12 months or longer, not suspended in whole or in part, to fix a NPP of not less than 70% of the period of imprisonment the offender is to serve under the sentence. ⁵⁶	Sexual intercourse without consent Serious drug offences and drug offences which involved procuring of child under 14 years to commit the offence	Not less than 70% of the head sentence	Mandatory	Yes. Does not apply to sentences of imprisonment of less than 12 months, or suspended in whole or in part. A court may also decline to fix a NPP if it considers the fixing of a NPP is inappropriate. ⁵⁷
	Fixed non-parole periods for offences against persons under 16 yrs ⁵⁸	Requires a court when sentencing an offender to imprisonment for a listed offence committed as an adult against a child under 16 years, to fix a NPP of not less than 70% of the period of imprisonment the offender is to serve under the sentence. ⁵⁹	13 offences committed by an adult against a child under 16 yrs: <ul style="list-style-type: none"> sexual intercourse or gross indecency involving a child under 16 years incest indecent dealing with a child female genital mutilation common assault endangering the life of child by exposure 	Not less than 70% of the head sentence	Mandatory	Yes. Does not apply to sentences of imprisonment of less than 12 months, or suspended in whole or in part. A court may also decline to fix a NPP if it considers the fixing of a NPP is inappropriate. ⁶⁰

Jurisdiction	Name of scheme	Description of the scheme	Types of offences	Minimum non-parole period	Mandatory, presumptive or discretionary?	Exceptions to application?
<p>South Australia</p> <p>General rules that apply to parole: Court must fix a NPP for a term of imprisonment longer than 12 months,⁶¹ however may decline to fix a NPP if it is of the opinion it is inappropriate.⁶²</p> <p>While there is no mandatory sentencing ratio, the South Australian Court of Criminal Appeal has noted that non-parole periods have 'tended to range between 50% and 75% of the head sentence'.⁶³</p>	Serious repeat offenders scheme ⁶⁴	<p>Allows a court to impose a sentence that goes beyond that which is proportional to the offence when sentencing a 'serious repeat offender'. Any NPP fixed in relation to the offence must be at least four-fifths the length of the sentence.⁶⁵</p> <p>A person is taken to be a serious repeat offender if the person (whether as an adult or as a child) has committed and been convicted of:</p> <ul style="list-style-type: none"> at least 3 'serious offences' committed on separate occasions; or at least 2 'serious sexual offences' committed on separate occasions.⁶⁶ 	<p>A 'serious offence' is an offence for which a sentence of imprisonment (other than a wholly suspended sentence or community-based custodial sentence) is imposed and which carries a maximum penalty of at least 5 years and includes:</p> <ul style="list-style-type: none"> serious firearm offences serious drug offences violent and sexual offences against the person serious and aggravated criminal trespass in residence robbery arson and causing a bushfire. <p>'Serious sexual offences' includes sexual exploitation of a person with a cognitive impairment and sexual offences where the victim was aged under 14 at the time of the offence.⁶⁷</p>	At least 80% of the head sentence. ⁶⁸	Mandatory – with limited ability to depart ⁶⁹	<p>Yes. To be exempt from the operation of the scheme, the offender must satisfy the court that:</p> <ul style="list-style-type: none"> their personal circumstances are so exceptional as to outweigh the paramount consideration of protecting the safety of the community and personal and general deterrence; and it is, in all the circumstances, not appropriate that they be sentenced as a serious repeat offender.⁷⁰ <p>Wholly suspended sentences and community-based custodial offences are excluded.⁷¹</p>

Jurisdiction	Name of scheme	Description of the scheme	Types of offences	Minimum non-parole period	Mandatory, presumptive or discretionary?	Exceptions to application?
	Mandatory minimum non-parole period for serious offences against the person ⁷²	Requires a court when sentencing an offender convicted of a 'serious offence against the person' to set a minimum NPP of four-fifths the length of the head sentence. ⁷³	<p>A 'serious offence against the person' means:</p> <ul style="list-style-type: none"> a major indictable offence (other than murder) that results in the death of the victim or the victim suffering total incapacity; a conspiracy to commit such an offence or aiding, abetting, counselling or procuring the commission of such an offence.⁷⁴ 	At least 80% of the head sentence.	Mandatory – with limited ability to depart	Yes. A court may fix a NPP shorter than the prescribed period in exceptional circumstances, or in any circumstances prescribed by regulation. ⁷⁵
<p>Victoria</p> <p>General rules that apply to parole:</p> <p>For terms of imprisonment of more than 2 years, court must fix a NPP.⁷⁶</p> <p>For a term of imprisonment less than 2 years, but not less than 1 year, the court may fix a NPP, but it must be at least 6 months less than the term of the sentence.⁷⁷</p> <p>Sentencing courts have tended to impose a NPP that is between 60% and 75% of the head sentence – although different standards may apply to both longer and shorter sentences.⁷⁸</p>	Statutory minimum sentences ⁷⁹	Requires a court to impose a statutory minimum sentence or NPP for a specified number of months or years for certain categories of offending when committed by an offender aged 18 years and over at the time of the offence where no special reason exists. ⁸⁰	<ul style="list-style-type: none"> manslaughter offences; gross violence offences; offences against protected officials, including driving offences; and aggravated home invasion or carjacking offences. breaches of supervision orders under the <i>Serious Offenders Act 2018</i> (Vic). 	Varies for each offence and be a defined term e.g. 10 years for manslaughter offences, or 6 months for recklessly causing injury to a prescribed worker. ⁸¹	Presumptive	Yes. Does not apply if a special reason exists (e.g. offender assisted law enforcement). ⁸²

Jurisdiction	Name of scheme	Description of the scheme	Types of offences	Minimum non-parole period	Mandatory, presumptive or discretionary?	Exceptions to application?
	Standard sentencing scheme ⁸³	The 'standard' sentence for 12 serious offences, which represent the midpoint of objective seriousness for the offence. That means the middle of the range of seriousness when just considering the offending and no other factors (such as the offender's circumstances, criminal history or plea). Prescribed NPPs apply under the scheme. ⁸⁴	<ul style="list-style-type: none"> Homicide offences (e.g. murder, homicide by firearm, culpable driving causing death) Sexual offences (e.g. rape, persistent sexual abuse of a child, Drug offences (e.g. trafficking large commercial quantity of drug of dependence). 	<p>NPPs must be at least:</p> <ul style="list-style-type: none"> 30 years, if the relevant term is a term of life imprisonment; 70 per cent if the relevant term is a term of 20 years or more; or 60 per cent if the relevant term is a term of less than 20 years.⁸⁵ 	<p>Discretionary (as to the head sentence): The standard sentence is just another factor a court must consider and is not determinative. It is a 'legislative guidepost', having the same function as the maximum penalty.⁸⁶</p> <p>Presumptive (as to the minimum NPP).</p>	<p>A court is not required to order a standard sentence, but must consider it.</p> <p>When sentencing for a standard sentence offence, a court must fix a NPP of at least the specified length, unless it considers that it is not in the interests of justice.⁸⁷</p>
<p>Western Australia</p> <p>General rules that apply to parole: For terms of imprisonment of 6 months or more, the court may make a parole eligibility order.⁸⁸ If a court does not make a parole eligibility order, the offender cannot be released on parole.</p>	Minimum non-parole period scheme ⁸⁹	This scheme applies to all terms of imprisonment, life imprisonment and prescribed offences where an order of parole eligibility is made. If a parole order is not made the offender cannot be released from parole.	Any offence to which a term of imprisonment with a parole eligibility order is made.	<p>Sentences of 4 years or less: 50% of head sentence.</p> <p>Sentences of greater than 4 years (not life sentence²): Eligible once served all but 2 years of head sentence.⁹⁰</p>	Mandatory (fixed period) defined in legislation	N/A

Jurisdiction	Name of scheme	Description of the scheme	Types of offences	Minimum non-parole period	Mandatory, presumptive or discretionary?	Exceptions to application?
	Mandatory minimum terms of imprisonment ⁹¹	Certain offences are subject to mandatory terms of imprisonment, to which the minimum NPP scheme applies.	<ul style="list-style-type: none"> • Repeat home burglaries • Offences committed in the course of conduct that constitutes aggravated home burglary • Reckless driving to evade police and certain 'escape pursuit' dangerous driving offences • Certain assaults on specific public officers • Certain drug offences committed by adults in relation to children • Certain breaches of restraining orders or police orders by repeat offenders. 	<p>Sentences of 4 years or less: 50% of head sentence.</p> <p>Sentences of greater than 4 years (not life sentence): Eligible once served all but 2 years of head sentence.⁹²</p>	Mandatory	N/A
	Mandatory minimum terms for prescribed offences ⁹³	Some prescribed offences are subject to a mandatory NPP which is the greater of either the minimum term applicable to the offence or the period which they would have been required to serve if the offence was not a prescribed offence.	<ul style="list-style-type: none"> • Grievous bodily harm committed against prescribed workers • Serious assault committed against prescribed workers • Dangerous driving causing death or grievous bodily harm, and dangerous driving causing bodily harm, where the offence is committed in circumstances of 'escape pursuit of police' 	<p>Whichever is greater of: the mandatory minimum sentence applicable to the offence; or the minimum NPP required, had it not been a prescribed offence.⁹⁴</p> <p>For example for serious assault; depending on the circumstances, has a minimum term of imprisonment of either 9 months or 6 months.⁹⁵</p>	Mandatory	N/A

¹ *Corrective Services Act 2006* (Qld) s 184(3)(a) ('CSA').

- 2 Ibid s 184(3)(a).
- 3 *R v Blanch* [2008] QCA 253, [24].
- 4 *Penalties and Sentences Act 1992* (Qld) Part 9A ('PSA').
- 5 Ibid ss 161A(e); 161B(1).
- 6 Ibid s 161B(3).
- 7 Ibid s 161B(4).
- 8 Ibid s 161A: an offender is convicted of a serious violent offence if (a) the offender is (i) convicted on indictment of an offence against a provision mentioned in sch 1; or of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in schedule 1; and (ii) sentenced to 10 or more years imprisonment for the offence, calculated under section 161C; or (b) the offender is convicted on indictment and declared to be convicted of a serious violent offence under section 161B(3) or (4) (emphasis added).
- 9 Ibid s 160A(6).
- 10 Ibid Part 9B.
- 11 Ibid s 161E.
- 12 Ibid s 161D and sch 1A.
- 13 CSA (n 1)s 181A.
- 14 PSA (n 4) s 161E.
- 15 Criminal Code 1899 (Qld) s 314A.
- 16 Ibid s 314A(5).
- 17 Ibid s 314A(5).
- 18 Ibid s 314A(6).
- 19 *Crimes Act 1914* (Cth) s 16A(1).
- 20 See *Hili v The Queen* (2010) 242 CLR 520: 'These are reasons enough to conclude that there neither is, nor should be, a judicially determined norm or starting point (whether expressed as a percentage of the head sentence, or otherwise) for the period of imprisonment that a federal offender should actually serve in prison before release on a recognizance release order. More particularly, these are reasons enough to conclude that it is wrong to say, as the Court of Criminal Appeal did, "that the 'norm' for a period of mandatory imprisonment under the Commonwealth legislation is between 60 and 66%, which figure will be affected by special circumstances applicable to a particular offender" at 534 [45].
- 21 Section 19AG of the *Crimes Act 1914* (Cth) inserted by *Anti-Terrorism Act 2004* (Cth) Schedule 1, item 1C.
- 22 *Crimes Act 1914* (Cth) s 19AG(2).
- 23 As defined in s 3(1) of the *Crimes Act 1914* (Cth).
- 24 Including treason, these are offences against Division 80 of the Criminal Code 1995 (Cth).
- 25 An offence against ss 91.1(1) or 91.2(1) of the Criminal Code 1995 (Cth).
- 26 Ibid s 19AG(3)(a) — For the purposes of calculating the minimum term, a life sentence is taken to be a sentence of imprisonment for 30 years (translating to a minimum non-parole period of 22 years, 6 months for life sentences).
- 27 Section 19AG applies if a person is convicted of one of the listed offences and a court imposes a 'sentence' — defined in s 16 of the Act to mean a sentence of imprisonment.
- 28 *Migration Act 1958* (Cth) s 236B.
- 29 Ibid s 233B.
- 30 Ibid s 233C.
- 31 Ibid s 234A.
- 32 Ibid ss 236B(3)–(4).
- 33 Ibid s 236B(2).
- 34 *Crimes Act 1915* (Cth) s 16AAA, including: sexual offences against children outside Australia, benefitting from, encouraging or preparing for sexual offences against children outside Australia, aggravated offences committed overseas and within Australia involving child pornography material or child abuse material and using a carriage service for sexual activity with a child.
- 35 Ibid.
- 36 Ibid s 16AAC(1).
- 37 Ibid s 16AAC(2).
- 38 Ibid s 16AAC(3).

- 39 Ibid s 16AAB.
- 40 Ibid s 16AAC(1).
- 41 Ibid s 16AAC(2).
- 42 Ibid s 16AAC(3).
- 43 *Crimes (Sentencing Procedure) Act 1999* (NSW) s 46.
- 44 Ibid ss 44(1), 44(2).
- 45 Refer to Queensland Sentencing Advisory Council, Background Paper 2: *Minimum Non-Parole Period Schemes for Serious Violent Offences in Australia and Select International Jurisdictions* ([Background Paper 2](#), August 2021) ('Background Paper 2').
- 46 See *Muldrock v R* (2011) 244 CLR 120; 281 ALR 652; [2011] HCA 39, which resulted in amendments to the *Crimes (Sentencing Procedure) Act 1999* (NSW) s 54A(2).
- 47 *Crimes (Sentencing Procedure) Act 1999* (NSW) Pt 4, div 1A.
- 48 Ibid.
- 49 See *Muldrock v The Queen* (2011) 244 CLR 120, 132 [27].
- 50 *Crimes (Sentencing Procedure) Act 1999* (NSW) s 54D(2).
- 51 Ibid s 54D(1).
- 52 Ibid s 54D(3).
- 53 Ibid s 54C.
- 54 *Sentencing Act 1995* (NT) ss 53(1), 54.
- 55 See Background Paper 2 (n 45) for more information.
- 56 *Sentencing Act 1995* (NT) s 55.
- 57 Ibid s 55(2).
- 58 See Background Paper 2 (n 45).
- 59 *Sentencing Act 1995* (NT) s 55A.
- 60 Ibid s 55A(2).
- 61 *Sentencing Act 2017* (SA) s 47.
- 62 Ibid.
- 63 *R v Devries* [2018] SASCFC 101, [19] (Hinton J) citing *R v Palmer* [2016] SASCFC 34 at [4] (Kourakis CJ).
- 64 See Background Paper 2 (n 45) for more information.
- 65 *Sentencing Act 2017* (SA) s 54.
- 66 Ibid s 53.
- 67 Ibid s 52.
- 68 Ibid s 54(1)(b).
- 69 Ibid s 54(2).
- 70 Ibid.
- 71 Ibid s 51.
- 72 See Background Paper 2 (n 45) for more information.
- 73 *Sentencing Act 2017* (SA) s 47(5)(d).
- 74 Ibid s 47(12)(e).
- 75 Ibid s 47(5)(e).
- 76 *Sentencing Act 1991* (Vic) s 11(1).
- 77 Ibid s 11(2).
- 78 Judicial College of Victoria, *Victorian Sentencing Manual* (4th ed, 2022) 159.
- 79 See Background Paper 2 (n 45) for more information.
- 80 *Sentencing Act 1991* (Vic) ss 9A–10AE.
- 81 Ibid.

- 82 Ibid s 10A.
83 See Background Paper 2 (n 45) for more information.
84 Ibid.
85 Ibid s 11A.
86 *Brown v The Queen* [2019] VSCA 286, [4], [7], [51], [54].
87 *Sentencing Act 1991* (Vic) s 11A(4).
88 *Sentencing Act 1995* (WA) s 89.
89 See Background Paper 2 (n 45) for more information.
90 *Sentencing Act 1995* (WA) s 93.
91 See Background Paper 2 (n 45) for more information.
92 *Sentencing Act 1995* (WA) s 93.
93 See Background Paper 2 (n 45) for more information.
94 See *Criminal Code Act Compilation Act 1913* (WA) for the required minimum mandatory terms of imprisonment for certain offences.
95 Ibid s 318(4).

Appendix 11: Count of cases sentenced for Schedule 1 offences, current and proposed

The table below quantifies the volume of cases that have been sentenced for a Schedule 1 offence during the data period (MSO). This table also includes details of offences that have been proposed to be added to the SVO scheme. The first column flags offences which are proposed to be added to the scheme (marked with a '+' symbol), and offences that have been proposed to be removed from the scheme (marked with a '—' symbol).

The counts include all cases sentenced for adult offenders between 2011–12 and 2019–20 for offences that were committed on or after 1 July 1997 (the date the SVO scheme was introduced). Cases involving attempts, accessories after the fact, or conspiracies have not been counted (except for the specific offences of attempted murder, attempted robbery and attempt to commit rape, which have all been included as separate offences).

The 'total cases sentenced' columns includes all sentenced cases (MSO) that resulted in any type of penalty. 'Cases with imprisonment' includes cases that received an unsuspended sentence of imprisonment (MSO). 'Cases with an SVO declaration' refers to cases that were subject to the SVO scheme by way of either a mandatory or discretionary SVO declaration over the data period – this field is not applicable for new offences that have been proposed to be added to the scheme.

For most offences, data has been provided at the level of the 'section'. For some offences, where it was possible to do so, the data was further broken down and provided at the 'sub-section' level. Note that a single charge may involve conduct that covers multiple sub-sections. As such, some charges will be counted multiple times when broken down into sub-sections. This means the numbers for sub-sections will likely sum to a number greater than the total for the section.

Table A8: Count of cases sentenced for Schedule 1 offences, current and proposed

Indicator*	Offence Name	Section	Magistrates Courts	Higher Courts			Cases with an SVO declaration (MSO)
			Total cases sentenced (MSO)	Total cases sentenced (MSO)	Cases with imprisonment (MSO)	Cases with more than 5 years imprisonment (MSO)	
	Criminal Code:						
—	Riot	s 61	19	24	16	0	0
—	Threatening Violence	s 75	798	166	69	0	0
—	Escape by persons in lawful custody	s 142	110	10	7	0	0
	Indecent treatment of children under 16	s 210 (total)	86	1448	463	6	0
		s 210(2)	86	744	199	2	0
		s 210(3)	0	704	264	4	0
		s 210(4)	0	539	173	2	0
		s 210(4A)	0	5	2	0	0
	Owner etc. permitting abuse of children on premises	s 213	0	2	0	0	0
	Carnal knowledge with or of children under 16	s 215	131	327	49	1	0
	Abuse of persons with an impairment of the mind	s 216	4	32	6	0	0
	Procuring a young person etc. for carnal knowledge	s 217(1)	0	2	0	0	0
	Procuring sexual acts by coercion etc.	s 218(1)	1	8	2	0	0

Indicator*	Offence Name	Section	Magistrates Courts	Higher Courts			Cases with an SVO declaration (MSO)
			Total cases sentenced (MSO)	Total cases sentenced (MSO)	Cases with imprisonment (MSO)	Cases with more than 5 years imprisonment (MSO)	
	Taking a child for immoral purposes	s 219	0	6	6	2	0
	Incest	s 222	0	30	14	5	1
+	Involving child in making child exploitation material	s 228A	3	19	7	1	NA
+	Making child exploitation material	s 228B	4	59	17	1	NA
+	Distributing child exploitation material	s 228C	1	100	23	0	NA
+	Possessing child exploitation material	s 228D	15	1047	117	1	NA
	Maintaining a sexual relationship with a child	s 229B	2	424	345	239	91
	Procuring engagement in prostitution	s 229G(1)	0	0	0	0	0
		s 229G(2)	1	2	2	2	0
+	Knowingly participating in provision of prostitution	s 229H(2)	1	1	0	0	0
—	Misconduct with regard to corpses	s 236(2)	0	7	2	0	0
	Manslaughter	ss 303(1) and 310	0	201	184	180	48
	Attempted murder	s 306	0	60	59	55	47
	Conspiring to murder	s 309	0	3	1	1	0
+	Aiding suicide	s 311	0	2	2	1	NA
	Killing unborn child	s 313	0	0	0	0	0
	Disabling in order to commit indictable offence	s 315	0	5	5	4	0
+	Choking, suffocation or strangulation in a domestic setting <i>Note: introduced 5 May 2016</i>	s 315A	2	752	597	2	NA
	Stupefying in order to commit indictable offence	s 316	0	3	2	1	0
	Acts intended to cause GBH and other malicious acts	s 317	0	211	194	160	52
—	Carrying or sending dangerous goods in vehicle	s 317A(1)	2	11	3	0	0
—	Obstructing rescue or escape from unsafe premises	s 318	0	0	0	0	0
—	Endangering the safety of a person in a vehicle with intent	s 319	2	11	10	3	0
	Grievous bodily harm	s 320	0	1597	1021	100	15
	Torture	s 320A	0	118	102	63	21
—	Attempting to injure by explosive or noxious substances	s 321	0	5	4	0	0
—	Bomb hoaxes	s 321A	3	52	21	0	0
	Administering poison with intent to harm	s 322	1	4	0	0	0
	Wounding	s 323	2	1012	709	1	0

Indicator*	Offence Name	Section	Magistrates Courts	Higher Courts			Cases with an SVO declaration (MSO)
			Total cases sentenced (MSO)	Total cases sentenced (MSO)	Cases with imprisonment (MSO)	Cases with more than 5 years imprisonment (MSO)	
+	Female genital mutilation	s 323A	0	0	0	0	NA
—	Failure to supply necessities	s 324	17	8	1	0	0
—	Endangering life of children by exposure	s 326	4	13	4	0	0
	Dangerous operation of a vehicle	s 328A (total)	6083	930	437	74	4
—		s 328A(2)	1738	186	140	0	0
—		s 328A(3)	150	82	71	5	0
		s 328A(4)(a)	2	331	56	6	0
		s 328A(4)(b)-(c)	1	252	133	67	0
—	Assaults occasioning bodily harm	s 339	20411	3056	1706	2	0
—	Serious assaults <i>Note, this offence was amended in 2012 and 2014, introducing circumstances of aggravation that increased the maximum penalty from 7 to 14 years.</i>	s 340	5979	763	461	1	0
	Rape	s 349	1	890	642	433	71
	Attempt to commit rape	s 350	1	35	27	3	0
		s 349 & 535	0	12	8	4	0
	Assault with intent to commit rape	s 351	2	18	14	1	0
	Sexual assaults	s 352 (total)	472	438	164	0	0
		s 352(2)	0	31	3	0	0
		s 352(3)	0	13	8	0	0
	Kidnapping	s 354(1)	0	22	14	2	0
	Kidnapping for ransom	s 354A	0	8	7	4	1
+	Child stealing	s 363	0	9	3	0	0
+	Abduction of child under 16	s 363A	0	19	10	0	0
—	Cruelty to children under 16	s 364	3	49	33	0	0
	Punishment of robbery	s 411(total)	3	3284	2641	259	16
		s 411(2)	2	3104	2496	253	0
	Attempted robbery	s 412 (total)	5	315	266	6	3
		s 412(2)	0	199	168	4	0
		s 412(3)	0	81	66	3	0
		s 411(2) & 535	1	110	84	3	0
—	Taking control of aircraft	s 417A	0	0	0	0	0
	Burglary	s 419 (total)	8697	1525	1168	78	1

Indicator*	Offence Name	Section	Magistrates Courts	Higher Courts			Cases with an SVO declaration (MSO)
			Total cases sentenced (MSO)	Total cases sentenced (MSO)	Cases with imprisonment (MSO)	Cases with more than 5 years imprisonment (MSO)	
		s 419(2)	940	536	400	32	0
		s 419(3)(a)	456	453	334	18	0
		s 419(3)(b)(i)	18	507	384	21	0
		s 419(3)(b)(ii)	10	411	310	16	0
		s 419(3)(b)(iii)	194	486	355	11	0
		s 419(3)(b)(iv)	60	218	157	3	0
		s 419(4)	7175	570	456	29	0
Corrective Services Act 2006:							
—	Unlawful assembly, riot and mutiny	s 122(2)	1	35	33	0	0
—	Other offences	s 124(a)	0	0	0	0	0
Drugs Misuse Act 1986:							
	Trafficking in dangerous drugs	s 5	0	3557	2359	649	65
	Supplying dangerous drugs	s 6 (total)	4850	3643	1745	15	0
		s 6(2)	22	987	467	4	0
	Producing dangerous drugs	s 8	9075	1711	758	12	0

Data includes cases (MSO) sentenced 2011–12 to 2019–20.

Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

* offences marked with a '+' symbol are proposed to be added to the scheme, offences marked with a '—' symbol are proposed to be removed from the scheme.

Appendix 12: Data cleaning methodologies

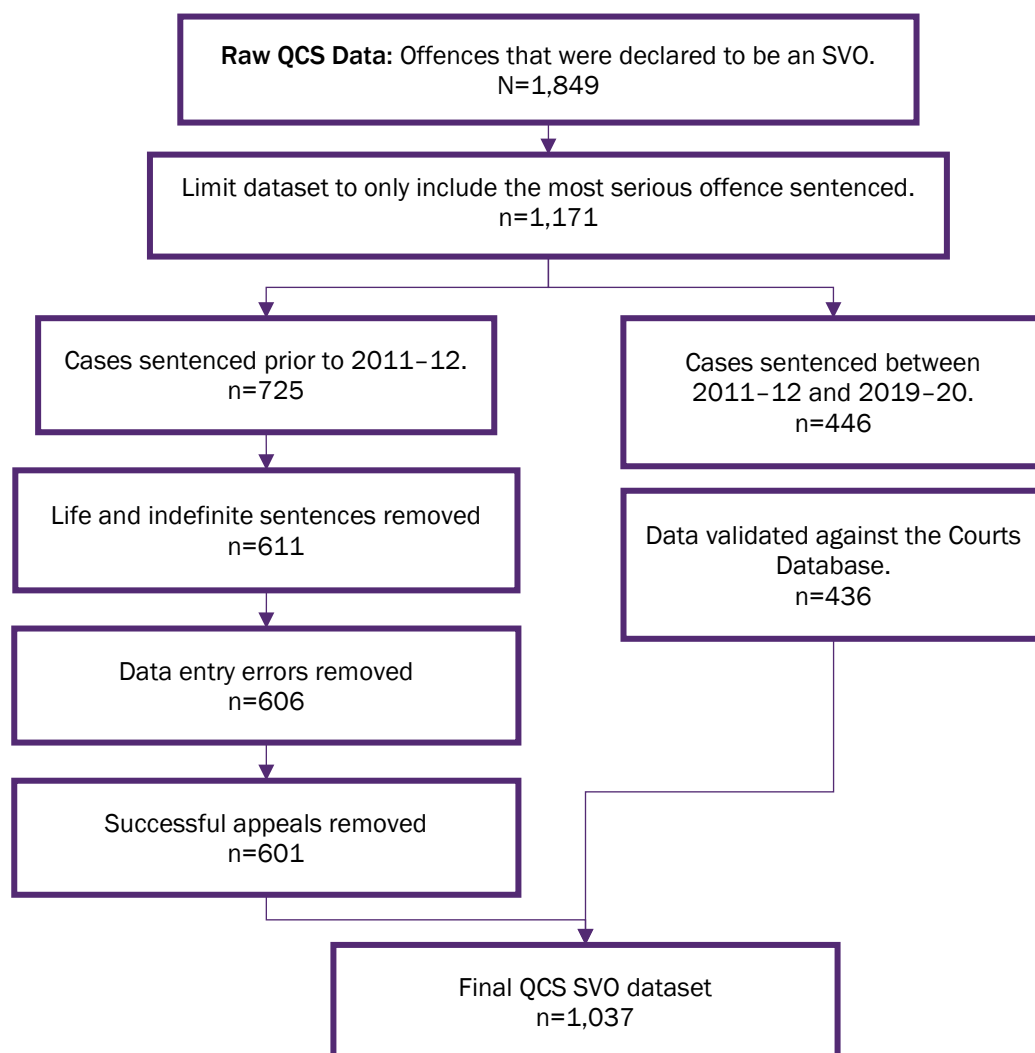
Cleaning of data received from Queensland Corrective Services

The dataset received from QCS included information on 1,849 offences that were a declared SVO. Only the most serious offence sentenced for a prisoner on a particular day was included in this analysis – the application of this counting rule changed the sample size to 1,171 cases.

For cases sentenced between 2011–12 and 2019–20 (446 of the cases), the QCS data was cross-validated against courts data. This resulted in the elimination of a further 10 cases, either because the case was successfully appealed, or because the offender was subject to a life sentence.

For cases sentenced earlier than 2011–12 (the remaining 725 cases), a series of counting rules were applied to validate the dataset. Cases that involved a prisoner serving a life sentence were excluded from the dataset (n=114), and a small number of cases of less than 5 years sentenced in the Magistrates Courts were excluded as they were determined to be out of scope (n=10).

The final sample size for prisoners subject to an SVO declaration from July 1997 to June 2020 was 1,037.

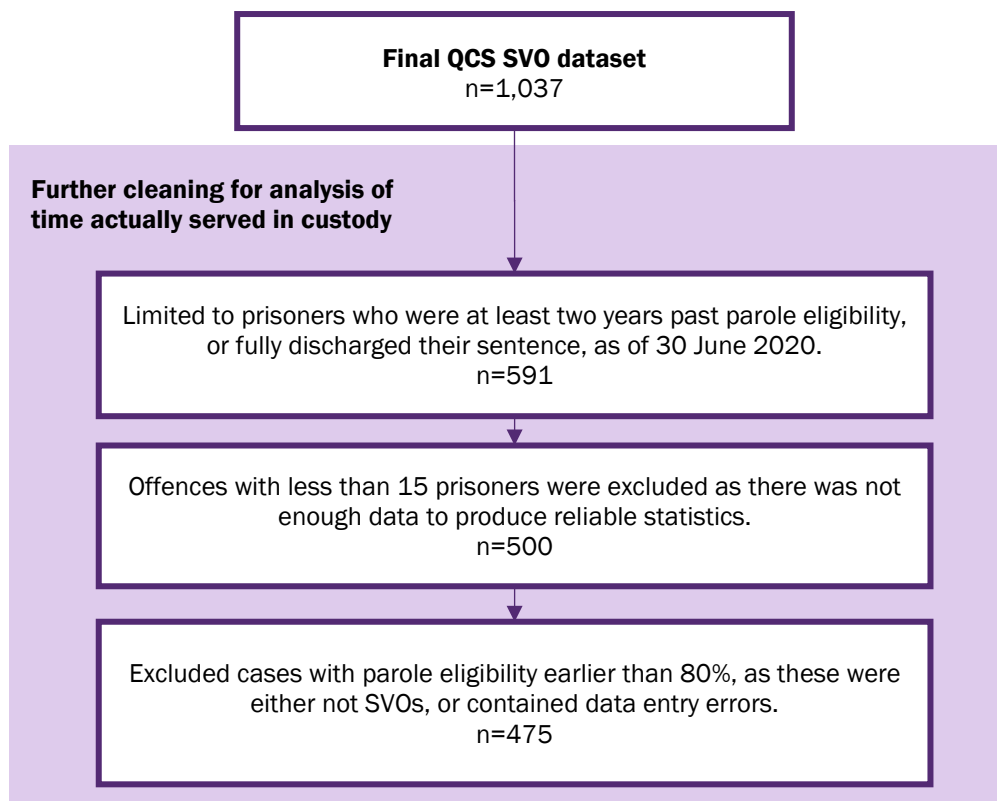


Further data cleaning was undertaken for analysis pertaining to the amount of time prisoners served in custody beyond their parole eligibility date before being released on parole.

Prisoners sentenced for offences declared to be serious violent offences generally serve long periods of time in custody before being released on parole. This means that the vast majority of prisoners sentenced in the past 8 years are still in prison and have not yet reached their parole eligibility date. For this analysis, the dataset was limited to only include prisoners who have fully completed their sentence (that is, have been released to freedom), and those who have been eligible for parole for at least two years. This final dataset contained 592 prisoners.

A small number of cases were excluded (n=20) as the parole eligibility date was set at less than 70 per cent (determined to be out of scope).

Offence categories with fewer than 15 prisoners were excluded from analyses to ensure robust statistical measures.



The figure above shows the difference in distribution of head sentences. The sample of 591 prisoners to be include in the analysis is biased towards offenders with shorter head sentences as these offenders are more likely to have fully discharged their sentence.

The majority of cases in this sample were sentenced between 1999 and 2008. Few prisoners sentenced from 2009 onwards have become eligible for parole, which is important to note as the offences sentenced in recent years differ from the types of offences sentenced earlier in the life of the scheme. The offence of maintaining a sexual relationship with a child is under-represented in this sample – due primarily to the fact that the majority of these offences were sentenced between 2017 and 2019, and these prisoners have not yet approached their parole eligibility date.

A second dataset was received from QCS which included information on any prisoner sentenced between 1 July 1997 and 31 March 2021 for rape, maintaining a sexual relationship with a child, manslaughter, attempted murder, robbery, torture, assault occasioning grievous bodily harm, or deal or traffic in illicit drugs that was not subject to an SVO. The data was cleaned for analysis purposes. Cases that met the following criteria were removed:

- suspended sentences (not eligible for SVO)
- sentences less than 5 years
- cases with successful appeals
- offenders released on probation (rather than parole)
- commonwealth offences (where release is determined by the Commonwealth Attorney-General)
- cases where an aggregate sentence determined the parole eligibility date rather than the specific sentenced offence
- life and indefinite sentences
- any cases with data anomalies.

If a QCS episode involved multiple offences, the offence with the longest sentence was selected to be indicative of the MSO.

Appendix 13: Pre-SVO scheme Court of Appeal case review

The Council did not have access to sentencing remarks prior to the scheme's introduction. However, the Council reviewed Court of Appeal cases from 1992 to 1997 for the offences of attempted murder, manslaughter, maintaining a sexual relationship with a child and trafficking in a dangerous drug to observe sentencing practices prior to the SVO scheme's introduction. The Council recognises the limitations with this approach. That is, only a small number of matters are appealed and therefore the cases reviewed may not be representative of broader sentencing practices. Further, some Court of Appeal matters appealed convictions only, and therefore did not comment on the appropriateness of the sentence imposed. Further, it is well-recognised that sentences are 'historical statements of what has happened in the past'¹ and 'history does not establish that the range is the correct range, or that the upper or lower limits to the range are the correct upper and lower limits'.² Changes, therefore, in sentencing practices cannot be attributed solely to the SVO's scheme's introduction.

Attempted murder

Twenty-one attempted murder sentences in the period were reviewed. Sentences ranged from 6 years imprisonment to an indefinite sentence.

The Court in *R v O'Neill*,³ referring to the case of *R v Hewitt*,⁴ stated that:

The Court considered that the most serious aspect of the case was that the act was not done in the heat of an argument or out of anger, but was rather a '...coldly calculated act which of necessity required the applicant to take steps towards achieving the desired and intended result over a period of some time'. A range of 12 to 18 years was said to be appropriate for an offence of that kind.⁵

In *R v Byers & Attorney-General*,⁶ the complainant was the appellant's husband. At the time of the offence the complainant awoke to a tingling feeling in his arms, leg and back, with blood coming from his forehead. It was alleged that the appellant had shot the complainant before faking her own injuries and claiming that they had been attacked. The appellant, in the months preceding the offence, had taken out four insurance policies of a substantial value on the complainant's life and forged his signature to transfer the policies into her name. At first instance the appellant was sentenced to 12 years' imprisonment and an early parole recommendation after serving 3 years. The Attorney-General appealed. The Court of Appeal stated that 'a recent decision of this Court (*R v Hewitt* CA 405 of 1993, 3.12.93) suggests a range of between twelve and eighteen years' imprisonment for offences of this type and seriousness'.⁷ The Court ultimately allowed the head sentence of 12 years to stand but noted that a higher sentence could have been imposed, stating 'this particular sentence should not be seen as a benchmark for serious cases of attempted murder'.⁸ The Court of Appeal removed the recommendation for early parole, which meant it fell at the half-way mark (6 years).

In *R v McGuren*,⁹ the appellant was sentenced to 6 years' imprisonment. He was a 31-year-old man found guilty after trial. The complainant was his ex-partner, with whom he had two children. On the morning of the offence the appellant knocked on the complainant's bedroom door and asked if he could come in and make her a cup of coffee. She told him to get a taxi and go home. He told her that he had no money. The complainant told the appellant to come to her front door and she would give him some money. After doing so he became enraged and forced open the screen door, pushed her into the lounge, straddled her and squeezed her throat while saying something like 'I'm going to kill you'. The Court commented that 'there is little doubt that the sentence of six years was within the appropriate range',¹⁰ where: the circumstances involved a spontaneous attack without premeditation; the appellant had an alcohol problem; he did not persist in the attack; he lacked remorse; he had an extensive criminal record, and; the offending was a breach of a protection order. The Court of Appeal refused to grant leave to appeal the sentence.

The Court in *R v Macauley* [1995] QCA 137 considered the appellant's sentence of imprisonment of 25 years, with parole after serving 13 years and 2 months, following a trial. At first instance the appellant was 21 years old and a detainee at a halfway house operated by Corrective Services. The appellant and his co-accused were granted leave

¹ *Hili v The Queen* (2010) 242 CLR 520, 537 [54] quoting *DPP (Cth) v De La Rosa* (2010) 79 NSWLR 1, 71 [304].

² *Ibid* 537 [54]. See also *DPP (Vic) v OJA* (2007) 172 A Crim R 181, 196 [31].

³ [1996] 2 Qd R 326.

⁴ [1993] QCA 486.

⁵ *R v O'Neill* [1996] 2 Qd R 326, 441.

⁶ [1995] QCA 44.

⁷ *Ibid* 15.

⁸ *Ibid* 16.

⁹ [1996] QCA 511.

¹⁰ *Ibid* 10.

for the day but did not return to the house. Macauley and his co-accused, armed with pistols, approached two shopping centre security guards who were in possession of a large sum of cash (approximately \$70,000) and forced them to surrender the money and lie down on the floor. The complainant in the attempted murder was an onlooker who pursued the offenders first on foot, and then in his car. The complainant rammed the car containing the offenders. Macauley emerged from the car and discharged his weapon in the onlooker's direction three times. The complainant was struck by some pellets but was not seriously injured. The Court of Appeal concluded that the sentence was not manifestly excessive but varied parole eligibility to 10 years from the date of the sentence. The appeal against conviction was dismissed.

Manslaughter

Thirty-one manslaughter appeal cases were reviewed; sentences were in the range of 5 to 12 years imprisonment. With respect to sentencing ranges for manslaughter, the Court of Appeal in *R v Ross* [1996] QCA 411 noted:

Although in *Walsh* (unreported C.A. No. 85 of 1986, judgment delivered 12 June 1986) the Court of Criminal Appeal proceeded on the basis of being informed that there was a sentencing range of between perhaps 5 and 10 years for manslaughter, it appeared to have reservations as to whether it could accurately be said there was such a range. This court in *Auberson* (unreported CA 248, 249 of 1996) referred to the difficulties in identifying a sentencing pattern for manslaughter because of the variety of circumstances in which that offence is committed.¹¹

The Court in *R v Ross*, having acknowledged the various circumstances in which manslaughter offences arise, refused to interfere with a 6-year sentence with a parole recommendation at 18 months where the appellant was a 21-year-old woman who had suffocated her 8-week-old son after being unable to get him to sleep. At the time of the offence, she was suffering from an adjustment disorder as a result of her son's birth and her current circumstances. Even within child manslaughter cases, the review established that the range of sentences varied considerably. For example, in *Walsh*,¹² the Court refused to interfere with a sentence of 9 years' imprisonment where the appellant had shaken the 16-month-old child of the woman he had been living with by blows; and in *Korin*,¹³ which involved a course of violence over some months, the Court also refused to interfere with a 9-year sentence.

In *Auberson*, referred to by the Court in *R v Ross*, the Court did not disturb a sentence of 9-years' imprisonment with no parole recommendation which was 'at or near the bottom of the range' upon an Attorney-General appeal.¹⁴ Further, the Court acknowledged the difficulty in identifying any sentencing pattern in manslaughter cases.¹⁵ The offender and victim had been married for 8 years and had an 18-month-old son. Approximately two weeks before her death, the victim left the matrimonial home with their son. On the date of the offence, the offender invited the victim over to discuss the resumption of their marriage. She died approximately 7 minutes after arriving at the home. During his police interview the offender described a conversation where the victim had told him she had a boyfriend and was going to 'go after' the offender's super. He then proceeded to strangle her, beat her over the head with bathroom scales at least twice and cut her throat with a Stanley knife. The offender then attempted suicide by driving his car off a cliff but only sustained minor injuries. At trial, he was found guilty of manslaughter with provocation.

In *R v Whiting; ex parte Attorney-General*,¹⁶ the offender was a 30-year-old man who had killed his ex-wife. The Court stated:

In opposing the Attorney's appeal, reliance was placed on the decision in *R. v. Green* [1986] 2 Qd.R. 406, as suggesting an upper sentencing limit of about six years imprisonment in the case of a "domestic" manslaughter, meaning by that a manslaughter "arising out of the frustrations engendered by close relationships". The present case demonstrates that, whatever utility such a classification might possess, in practice the line of demarcation between those and other cases of manslaughter cannot readily be identified by means of that criterion.

...

Although *R. v. Green* may suggest some considerations that may properly be taken into account in sentencing, we do not consider that what was said in that case should continue to be viewed as imposing a definite line of demarcation between cases like this and other forms of manslaughter.¹⁷

The Attorney-General appealed Whiting's 8-year sentence (without a parole recommendation). At appeal, the Court increased the sentence to 11 years (without a parole recommendation).

¹¹ *R v Ross* [1996] QCA 411, 3.

¹² *R v Walsh* (Queensland Court of Appeal, Connolly J, Williams J and Ambrose J, 12 June 1986).

¹³ *Ibid.*

¹⁴ *R v Auberson & A-G (Qld)* [1996] QCA 321, 7 (Fitzgerald P and De Jersey J, Pincus JA agreeing at 8).

¹⁵ *Ibid* 7 (Fitzgerald P and De Jersey J).

¹⁶ [1995] 2 Qd R 199.

¹⁷ *Ibid* 202.

Maintaining a sexual relationship with a child

Seven cases involving an offence of maintaining a sexual relationship with a child were reviewed and sentences ranged from 3 to 10 years' imprisonment. Offending involving actual penetration of the child attracted sentences at the higher end of that range.

R v T & Attorney-General of Queensland [1996] QCA 462 is an example of a sentence at the 'lower end' of the sentence range. The respondent was sentenced to 3 years' imprisonment, suspended after 3 months, with 3 years' probation imposed on indecent dealing offences. The complainant was 5 years old at the time of the offence and the respondent was the child's father. The offending, committed over an 18-month period, did not involve actual penetration but did involve exposing a child under twelve to indecent behaviour and indecent dealing with a child under twelve. The Court of Appeal described the complainant as 'a willing participant'.¹⁸ The Court dismissed the Attorney-General's appeal, stating that 'we would have allowed for a longer period of imprisonment before suspending the sentence ... It is within the permissible range, but at the lowest level within that range'.¹⁹

In *R v Ryan* [1995] QCA 555, the Court of Appeal, commenting on the applicant's and the respondent's submissions, stated:

The applicant's main contention was that the schedule of sentences tendered to the learned trial Judge and the Court indicated that sentences of ten years or more had been imposed only in those cases where the maximum sentence was imprisonment for life; that is where there were specific offences committed during the course of that relationship for which the offender was liable to imprisonment for 14 years or more. That submission appears to be correct...Mr. Byrne Q.C., who appeared for the respondent, conceded that he was not aware of any case in which a sentence of ten years or more had been imposed for the major offence where the lesser offences did not carry a maximum sentence of 14 years or more. Moreover there are many cases in which the individual offences comprising the acts of maintaining the sexual relationship were acts involving intercourse or anal intercourse on numerous occasions (offences for which the offender was liable to imprisonment for 14 years or more) but the sentence imposed was less than ten years.²⁰

Sentencing practices in sexual violence offences

Sentencing practices are subject to change due to a variety of factors, including a change in the moral sense of the community towards certain offence types and a development in understanding of the effects and harms of certain offence types. The High Court in the *Director of Public Prosecutions v Dalglish (a pseudonym)*²¹ highlighted that current sentencing practices cannot be decisive of the range in sexual matters against children. The High Court found that the Victorian Court of Appeal erred in dismissing the Director of Public Prosecution's sentence appeal on the basis that the Director was 'unable to establish that the sentences imposed were outside the range of sentences reasonably open to the sentencing judge based upon existing sentencing standards'.²² The Court of Appeal had commented on the inadequacy of sentencing practices in relation to sexual offences against children and noted that:

current sentencing for incest reveals error in principle. The sentencing practice which has developed is not a proportionate response to the objective gravity of the offence, nor does it sufficiently reflect the moral culpability of the offender. Sentences for incest offences of mid-range seriousness must be adjusted upwards. That is a task for sentencing judges and, on appeal, for this Court. The criminal justice system can be – and should be – self-correcting.²³

The High Court stated in response that 'reasonable consistency in the application of the relevant legal principles does not, however, require adherence to a range of sentences that is demonstrably contrary to principle'.²⁴ The High Court referred to *R v Kilic*²⁵ in which it was stated that 'current sentencing practices with respect to sexual offences may be seen to depart from past practices by reason, inter alia, of changes in understanding of the long-term harm done to the victim'.²⁶ Further, the courts have acknowledged 'an awareness of the violence necessarily involved in the sexual penetration of a child, and of the devastating consequences of this kind of crime for its victims'.²⁷ The High Court allowed the appeal, and remitted the matter to the Court of Appeal for determination of the appeal against sentence.

¹⁸ *R v T & A-G (Qld)* [1996] QCA 462, 2.

¹⁹ *R v T & A-G (Qld)* [1996] QCA 462, 4.

²⁰ *R v Ryan* [1995] QCA 555, 5.

²¹ (2017) 262 CLR 428.

²² *Director of Public Prosecutions v Dalglish (a pseudonym)* [2016] VSCA 148, [5].

²³ *Ibid* [128].

²⁴ *Director of Public Prosecutions v Dalglish (a pseudonym)* (2017) 262 CLR 428, 445 [50].

²⁵ (2016) 259 CLR 256.

²⁶ *Ibid* 267 [21].

²⁷ *DPP v Dalglish (a pseudonym)* (2017) 262 CLR 428, 447 [57] (Kiefel CJ, Bell and Keane JJ).

Trafficking in a dangerous drug

Eighteen cases involving the offence of trafficking in a dangerous drug were reviewed. Sentences ranged between 3 to 20 years' imprisonment. The Court very rarely commented upon the range for sentence in certain types of trafficking. Sentences attracting higher sentences were described as being 'persistent', 'on a very large scale'.

*R v O'Brien and Attorney-General of Queensland*²⁸ confirms the Court's position that sentences of imprisonment should be imposed in trafficking. At first instance, O'Brien was convicted of trafficking in the dangerous drug heroin and sentenced to three years' probation and 240 hours of community service. O'Brien was 21-years-old at the time of the offence and was an addict. Over a 2 month period he supplied 4.355 grams of powder to an undercover police officer. The Court stated that O'Brien 'was prepared to sell to anyone and [that] he had no difficulty in obtaining supplies of heroin when asked to do so'.²⁹ The Attorney-General appealed the sentence for being manifestly inadequate. The Court stated that 'no reported instance has, however, been identified in this Court of an offender, however youthful, escaping a custodial sentence for a trafficking offence of any degree of persistence'.³⁰ The Court, in allowing the appeal and imposing a sentence of 4 years' imprisonment, went on to state:

In the end, I think that, unless we are prepared to depart substantially from existing sentencing patterns, a trafficking offence of this character must ordinarily continue to attract a sentence of imprisonment, although in saying that we do not intend to rule out the possibility that a non-custodial sentence might be appropriate in a proper case.³¹

*R v Onea*³² involved an appeal against conviction and the sentence of 20 years' imprisonment with no parole recommendation. Onea was found guilty of trafficking in heroin after trial, which was 'based on the activities involved in the five offences of possession, and one other matter which could have been, but was not, made the subject of a similar charge',³³ and which occurred over a 4 month period in 1992. The case headnote described the offence as 'large scale trafficking', including the appellant and his co-accused dropping off heroin in public places such as gardens. The appeal's basis was that the sentence was disparate with the co-accused's sentence, which had a parole eligibility recommendation of five years. The Court refused the sentence appeal distinguishing the co-accused's plea of guilty and remorse from the appellant's lack of remorse and conviction after trial.

²⁸ [1997] QCA 120.

²⁹ *R v O'Brien and A-G (Qld)* [1997] QCA 120, 2.

³⁰ *Ibid* 3.

³¹ *Ibid* 5.

³² [1994] QCA 264.

³³ *R v Onea* [1994] QCA 264, 2.

Appendix 14: Analysis of correlation between head sentence length and parole eligibility proportion

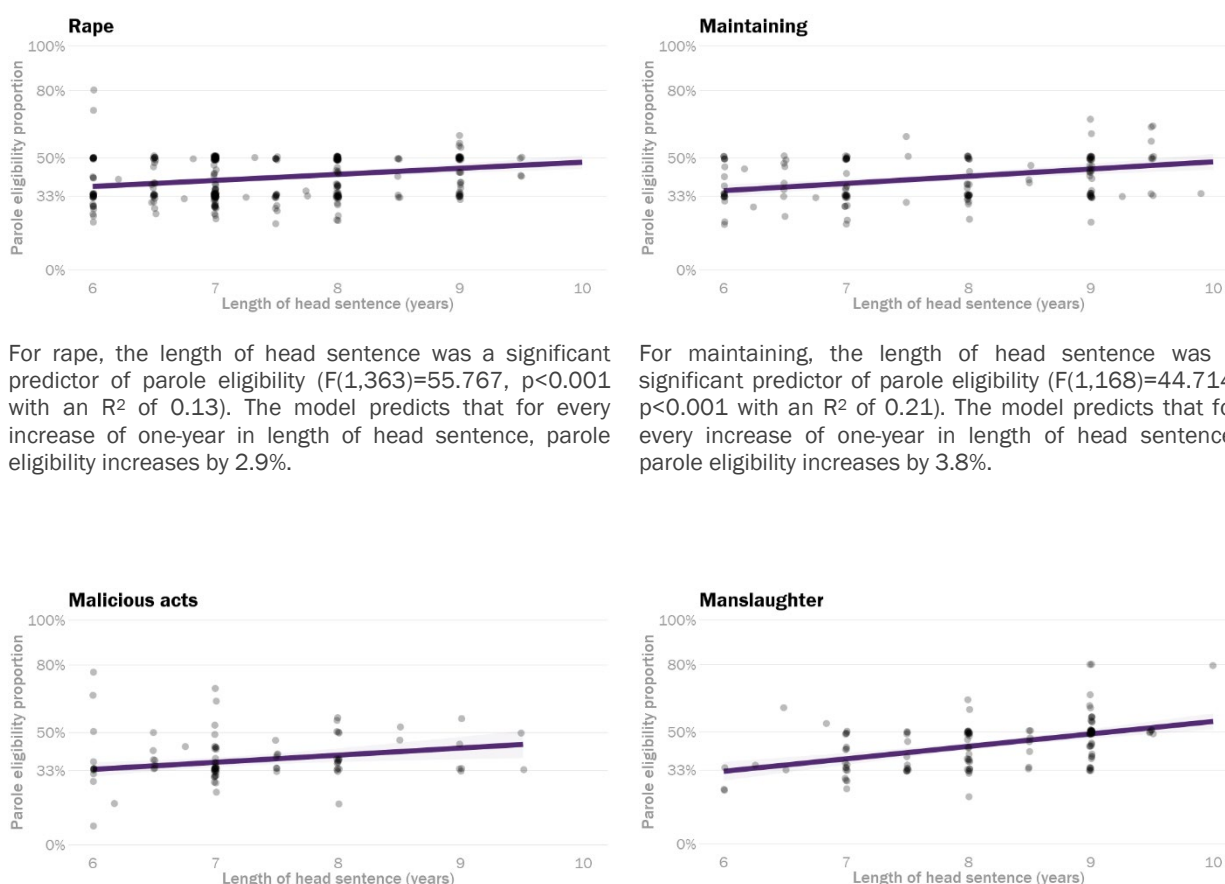
The Council found that cases with longer head sentences tended to have longer non-parole periods (as a percentage of the head sentence).

A series of simple linear regression models were performed to determine whether the length of head sentence predicted the percentage at which the non-parole period was set. For all six offences analysed, it was found that head sentence was a statistically significant predictor of parole eligibility. That is, for each one-year increase in the head sentence, parole eligibility also increased between 2.9% and 5.6% depending on the type of offence.

Of course, the length of head sentence is only one factor amongst many that determine the percentage at which parole eligibility will be set. The analyses below show that between 11% and 24% of the variance in parole eligibility can be explained by increases in the head sentence, depending on the type of offence.

These analyses included cases of adults who were sentenced during the data period, received a sentence of imprisonment of more than 5 years, and were eligible for an SVO declaration but where the court did not make the declaration.

Figure A3: Relationship between head sentence and parole eligibility by offence

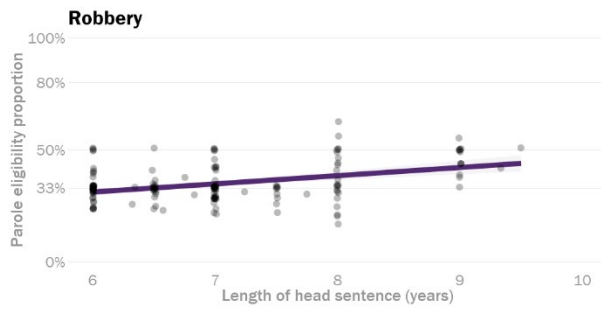


For rape, the length of head sentence was a significant predictor of parole eligibility ($F(1,363)=55.767$, $p<0.001$ with an R^2 of 0.13). The model predicts that for every increase of one-year in length of head sentence, parole eligibility increases by 2.9%.

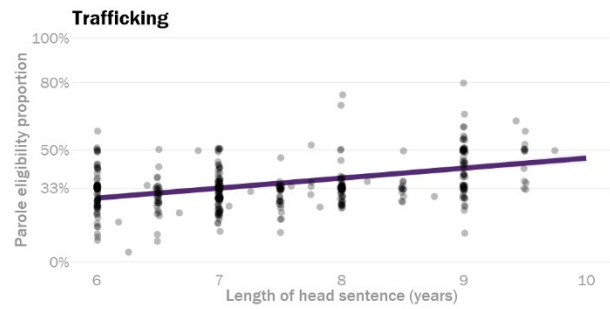
For maintaining, the length of head sentence was a significant predictor of parole eligibility ($F(1,168)=44.714$, $p<0.001$ with an R^2 of 0.21). The model predicts that for every increase of one-year in length of head sentence, parole eligibility increases by 3.8%.

For malicious acts, the length of head sentence was a significant predictor of parole eligibility ($F(1,124)=20.681$, $p<0.001$ with an R^2 of 0.14). The model predicts that for every increase of one-year in length of head sentence, parole eligibility increases by 4.4%.

For manslaughter, the length of head sentence was a significant predictor of parole eligibility ($F(1,131)=42.172$, $p<0.001$ with an R^2 of 0.24). The model predicts that for every increase of one-year in length of head sentence, parole eligibility increases by 5.6%.



For robbery, the length of head sentence was a significant predictor of parole eligibility ($F(1,240)=29.914$, $p<0.001$, $R^2=0.11$). The model predicts that for every increase of one-year in length of head sentence, parole eligibility increases by 3.2%.



For trafficking, the length of head sentence was a significant predictor of parole eligibility ($F(1,573)=180.24$, $p<0.001$, with an R^2 of 0.24). The model predicts that for every increase of one-year in length of head sentence, parole eligibility increases by 4.6%.

Data includes cases sentenced (MSO) between 2011–12 and 2019–20 involving adult offenders who were eligible for an SVO declaration sentenced to imprisonment of more than 5 years, excluding cases in which an SVO declaration was made.

Appendix 15: Human rights analysis

Introduction

Under the Terms of Reference, the Council has been asked to 'advise whether the legislative provisions that the Queensland Sentencing Advisory Council reviews, and any recommendations, are compatible with rights protected under the *Human Rights Act 2019*'.

Throughout this report the Council has highlighted relevant human rights considerations that have influenced its views about what reforms should be made to the current scheme. This has included consideration of how the rights of victims, offenders, and the broader community can be protected.

This appendix considers these human rights issues in more detail.

Overview of current SVO scheme and Council's recommendations

Current Serious Violent Offence Scheme	Council's Recommendations — 'Serious Offence' Scheme
The making of a declaration is mandatory for a conviction for an offence (or offences) listed in Schedule 1 of the PSA resulting in a prison sentence of 10 years or more, and discretionary if the sentence is for 5 years or more, but less than 10 years for a Schedule 1 offence (or of counselling or procuring the commission of, or attempting or conspiring to commit such an offence).	The mandatory aspect of the scheme as it applies to sentences of 10 years or more would be removed. There would no longer be a distinction between sentences of 10 years or more and those falling just below this level. Instead, the scheme would apply presumptively to sentences of greater than 5 years for a single listed offence (limiting this to where a court's only option is to impose an immediate term of imprisonment that is not suspended in whole or in part). However, this would not apply to serious drug offences, to which a 10 year threshold would continue to apply on the basis that commercial trafficking at this level is most likely to result in serious harm to the community.
There are currently 60 offences listed in Schedule 1; which includes sexual violence offences, non-sexual violence offences and serious drug offences. Schedule 1 has a dual purpose and is not solely applied for the SVO scheme. It is also the basis for requiring courts to order a prison sentence imposed for a Schedule 1 offence to be served cumulatively with any other term of imprisonment the person is liable to serve where certain criteria are met: s 156A of <i>Corrective Services Act 2006</i> (Qld) ('CSA').	Changes would be made to the offences to which the scheme is applied. A separate schedule would be created solely for the purposes of the scheme by applying standard criteria with a focus on the use of serious violence and/or offences resulting in serious harm to individuals or the broader community.
Once a declaration is made, an offender must serve 80 per cent of their sentence in custody (or 15 years, whichever is less) before being eligible for release on parole. This 80 per cent non-parole period is fixed by operation of s 182(2) of the CSA.	For declared offences, courts would be able to set parole eligibility within a set range (50–80%) . Consistent with the current scheme, if the parole eligibility date fixed in accordance with the scheme would be greater than 15 years, parole eligibility would be fixed at 15 years.
A court can also choose to make a declaration on imposing a sentence for an offence not listed in Schedule 1, and for a sentence of any length (whether for a Schedule 1 offence or otherwise) if the offence involved the use or attempted use of serious violence or that resulted in serious harm to another person.	The ability of a court to make a declaration for sentences of 5 years or less, and for offences not listed in the schedule would be removed. Courts would, in these circumstances, retain the ability to postpone an offender's parole eligibility date under the general provisions that apply to parole where there is a good reason to do so.

Table continued over page.

Current Serious Violent Offence Scheme	Council's Recommendations — 'Serious Offence' Scheme
<p>Where a declaration must or can be made, a court still has the ability to adjust the head sentence down to take factors such as an offender's plea of guilty and other mitigating circumstances into account provided the sentence is still within the appropriate exercise of the court's sentencing discretion.</p>	<p>A court would retain the ability to take an integrated approach to sentencing in setting both the parole eligibility date and head sentence.</p> <p>A court would be permitted to depart from the scheme where 'in the interests of justice' to do so. Factors would be legislated to guide departure from the scheme and the setting of parole eligibility and include a non-exhaustive list of general considerations including:</p> <ul style="list-style-type: none"> a) the nature and seriousness of the offence, including any harm done to a victim, and circumstances in which the offence was committed, including any aggravating factors; b) the culpability of the offender; c) whether the offender has good prospects of rehabilitation, whether by reason of the offender's age or otherwise; d) the nature and extent of any cooperation with the investigation or prosecution of that or any other offence and the circumstances surrounding, and likely consequences of such cooperation; e) if the offender pleaded guilty to the charge of the offence or offences – that fact and the circumstances of the plea; f) the risk of serious harm to members of the community and the need to protect members of the community from that risk; g) any other relevant circumstance.

Legislative context at the time the scheme was introduced

When the serious violent offences ('SVO') scheme was introduced in 1997, consideration of its compatibility with the *Human Rights Act 2019* (Qld) ('HRA') was not required. However, the *Legislative Standards Act 1992* (Qld), which did apply at that time, would have required the legislation to be drafted in a way that gave sufficient regard to fundamental legislative principles, including to the rights and liberties of individuals.¹

The explanatory notes to the bill introducing these reforms identified that the 'only issue arising in relation to fundamental legislative principles' concerned the potential of the new sentencing scheme to apply retrospectively to those prisoners who, before its commencement, were sentenced for an offence listed in the scheme and sentenced post-commencement to a cumulative term for another scheduled offence (whether committed prior to or following the Act's commencement) where this might trigger the automatic application of the scheme.² The explanatory notes state that the provisions were 'not retrospective in the true sense' as their 'application to prisoners is wholly [dependent] upon subsequent further offending behaviour involving crimes of violence'.³

¹ *Legislative Standards Act 1992* (Qld) s 4.

² Explanatory Notes, *Penalties and Sentences (Serious Violent Offences) Amendment Bill 1997* (Qld) 3.

³ Ibid. The Court of Appeal has interpreted this provision as only applying to pre- and post-1 July 1997 offending sentenced at the same time and as only applying to those offences committed post-commencement of the amendment Act. See *R v Robinson; Ex parte A-G (Qld)* [1999] 1 Qd R 670 and discussion in Queensland Sentencing Advisory Council, *Analysis of Key Queensland Court of Appeal Decisions and Select Sentencing Remarks* ([Background Paper 3](#), 2021) section 6.3.1.

Current requirement for statement of compatibility

A statement of compatibility of human rights must now accompany all bills introduced to the Queensland Legislative Assembly.⁴ A statutory provision is compatible with rights if it does not limit a right; or, if it does, the limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.⁵

What rights are relevant?

During consultation, stakeholders identified the current SVO scheme as potentially impacting a number of rights protected under the HRA, including:

- the right to recognition and equality before the law – section 15;
- the right to protection from torture and cruel, inhuman or degrading treatment – section 17;
- the right to protection of families and children – section 26; and
- the cultural rights of Aboriginal and Torres Strait Islander peoples – section 28;
- the right to liberty and security of person – section 29;
- the right to humane treatment when deprived of liberty – section 30;
- the right to a fair hearing – section 31; and
- the rights specific to criminal proceedings – section 32.

The Council's approach

This analysis refers to rights recognised under the International Covenant on Civil and Political Rights ('ICCPR'),⁶ upon which many of the Queensland HRA rights are based. It reviews both the current SVO scheme and the Council's recommendations for reform to determine whether any rights are limited, and if so, whether such a limitation is reasonable and justifiable. Any potential limit is assessed according to the framework provided for under section 13(2) of the HRA. This requires consideration of:

1. **Rights** – what rights are relevant? What is the scope of those rights? The scope of the rights is what each right covers and protects – its meaning and content.⁷
2. **Proper Purpose** – the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom.⁸
3. **Rational Connection** – the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose.⁹
4. **Necessity** – Is there an alternative which still achieves your purpose but has a lesser impact on human rights? Are there any less restrictive and reasonably available ways to achieve the purpose?¹⁰
5. **Fair Balance** – Rights v Purpose. The balance between: the importance of achieving the purpose; and the importance of preserving the human rights, taking into account the nature and extent of the limitation on the human right.¹¹ This analysis considers both the rights of victim and survivors and the rights of offenders. In submissions to the Council, victim and survivor support and advocacy organisations expressed that:

a problematic limitation of the HRA is that it only specifically recognises the rights of a “person charged in a criminal process” in Queensland and does not specifically recognise the human rights of the victim of the offence, including the human rights of children who are victims. This does not mean victims do not have human rights, however the lack of specific reference in Section 31 (Right to a Fair Hearing) and Section 32 (Rights in criminal proceedings) means for all intent[s] and purposes in Queensland, the rights of the defendant are elevated above other rights in the criminal process.¹²

⁴ Ibid.

⁵ *Human Rights Act 2019* (Qld) ('HRA') s 8.

⁶ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('ICCPR').

⁷ HRA (n 5) s 13(2)(a); see also *McDonald v Legal Services Commissioner (no 2)* [2017] VSC 89.

⁸ Ibid s 13(2)(b).

⁹ Ibid s 13(2)(c).

¹⁰ Ibid s 13(2)(d).

¹¹ Ibid ss 13(2)(e)–(g).

¹² Submission 17 (Queensland Sexual Assault Network) 3.

The Council notes these concerns.¹³ This issue was raised during consultation on the Human Rights Bill. During the Bill's second reading speech, the then Attorney-General stated:

Some submissions were concerned that the bill focuses too much on the rights of defendants to criminal charges and that explicit rights for victims of crime should be articulated. This particular bill, however, is not just the best vehicle for that commitment. This bill does not privilege or elevate the rights of criminal defendants over the rights of victims in the criminal process. Rather, the government explicitly delivered on this commitment with the introduction in 2016 and passage of the Victims of Crime and Other Legislation Amendment Act 2017.

Human rights in the bill are not absolute. The general limitations provision, clause 13, recognises that human rights may be subject to reasonable and demonstrably justifiable limits. Implied legitimate reasons for limiting human rights, as drawn from human rights jurisprudence, include community safety and the protection of the rights of others including, for example, children and victims of domestic violence.

Clause 12 of the bill also clarifies that the human rights in the bill are in addition to other rights and freedoms included in other laws, meaning that victims' rights that are contained in other sources of law will continue to apply. In this regard, the committee noted the victims' rights charter in the Victims of Crime Assistance Act 2009 and the existing complaints mechanism that is available under the victims' rights charter, as I referred to earlier.¹⁴

The Council agrees that the same fundamental human rights protected under the HRA apply equally to victims and survivors, including children, and other members of the Queensland community.

Right to recognition and equality before the law

Section 15 of the HRA recognises, inter alia, that every person is equal before the law and is entitled to the equal protection of the law without discrimination.¹⁵ This right is modelled on Article 16 and Article 26 of the ICCPR.

(a) the nature of the human right

This right is based on the fundamental principle of equality, which encompasses both formal equality (that like cases be treated alike) and substantive equality (which requires the differential treatment of persons whose situations are significantly different).¹⁶ Substantive equality 'protects the interests that all people have, as of right, in being equally protected by the law from discrimination, including protection from laws that are discriminatory in nature. The principle negatively prohibits making discriminatory laws ...'.¹⁷ Substantive equality might require adjustments to standard rules or procedures to overcome past disadvantage and to achieve true equality for certain groups.¹⁸ For example, to protect the right to equal protection of law without discrimination, a court:

is required to make such adjustments and accommodations as may be reasonably necessary and available to ensure the effective participation of the individual despite their disability, subject to the fundamental requirements of judicial independence, impartiality and fairness and respect for the human rights of other participants.¹⁹

The Queensland Human Rights Commission ('QHRC') notes that this right might be relevant to acts or decisions that:

- assist or recognise the interests of Aboriginal and Torres Strait Islander persons or members of other ethnic groups;
- have a disproportionate impact on people who have an attribute or characteristic (for example, sex, race, age, disability, location);
- establish eligibility requirements for access to services or support (such as legal aid).²⁰

¹³ Submission 18 (Gold Coast Centre Against Sexual Violence) 3–4; Submission 17 (Queensland Sexual Assault Network) 3–4; Submission 4 (Fighters Against Child Abuse Australia) 29.

¹⁴ Queensland, *Parliamentary Debates*, Legislative Assembly, 26 February 2019, 377–378 (Yvette D'Ath, Attorney-General and Minister for Justice).

¹⁵ HRA (n 5) s 15(3).

¹⁶ *Thilimmenos v Greece (Judgment)* (European Court of Human Rights, App No 34369/97, 6 April 2000) [44].

¹⁷ *Matsoukatidou v Yarra Ranges Council* (2017) 51 VR 624; [2017] VSC 61, [53] ('*Matsoukatidou*').

¹⁸ *Victoria Police Toll Enforcement v Taha* (2013) 49 VR 1 ('*Taha*').

¹⁹ *Matsoukatidou* (n 17) [61], [108]; see also *ibid* at [249] per Tate JA.

²⁰ 'Your right to recognition and equality before the law', *Queensland Human Rights Commission* (Webpage) <www.qhrc.qld.gov.au/your-rights/human-rights-law/your-right-to-recognition-and-equality-before-the-law>.

Does the current SVO scheme limit this right?

The current SVO scheme could be said to limit this right, specifically the ability of courts to promote substantive equality. In Queensland, Aboriginal and Torres Strait Islander peoples are over-represented in all areas of the criminal justice system. This is a result of a range of complex current and historical factors that continue to impact on the lives of Aboriginal and Torres Strait Islander peoples. Generally, Aboriginal and Torres Strait Islander peoples are more likely to be sentenced for offences involving acts intended to cause injury, unlawful entry, public order, and offences against justice and government.²¹

The SVO scheme disproportionately affects Aboriginal and Torres Strait Islander peoples both due to differences in offending profiles and because a declaration is more likely to be made in circumstances where this is discretionary. The reasons for the higher use of discretionary declarations are uncertain and could relate to factors such as differences in the nature of the offences committed and their seriousness, including the use of a weapon, as well as factors, such as an offender's prior criminal history.

The mandatory operation of the SVO scheme when an offender is convicted of a schedule offence and sentenced to 10 or more years' imprisonment and the inflexible minimum non-parole period that applies on a declaration being made arguably affects the courts' ability to acknowledge that many Aboriginal and Torres Strait Islander peoples are in a situation which is substantially different to the wider Queensland population. In particular, the specific disadvantage experienced by many Aboriginal and Torres Strait Islander offenders that might help explain the context in which offending has occurred and suggest a reason for some mitigation of sentence is difficult to reflect in a sentence subject to the mandatory operation of the SVO scheme. However, it is noted that these factors can be taken into account when setting the head sentence.

Do the reforms recommended by the Council limit this right?

The Council's recommendations protect, rather than further limit, this right. The recommendations remove the operation of mandatory declarations, instead providing for a legislative presumption that a declaration be made, which can be displaced if the court finds this is 'in the interests of justice'. The ability to depart from the presumptive scheme, where it 'is in the interests of justice', taking into consideration a range of factors relevant to the offence and personal to the offender, will enable the court to take a relevant background of disadvantage into account in support of achieving substantive equality between cases. The flexibility provided to a sentencing court by the Council's recommendation to allow the court to set parole eligibility within a range (50–80%) in circumstances where a declaration is made further promotes this right. Under the reformed scheme, the sentencing court will be able to properly recognise any *Bugmy*²² considerations that might apply when sentencing an Aboriginal or Torres Strait Islander person or other offenders who might come from a background of social deprivation.

Right to protection from torture and cruel, inhuman or degrading treatment

Section 17 of the HRA states, among other things, that a person must neither be subjected to torture,²³ nor treated or punished in a cruel, inhuman or degrading way.²⁴ This right is modelled on Article 7 of the ICCPR and at international law, is an absolute right, which means that it cannot be limited for any reason.²⁵

The scope of this section was considered by the Queensland Court of Appeal in the case of *Owen-D'Arcy v Chief Executive, Queensland Corrective Services*,²⁶ where it endorsed the view in *Castles*,²⁷ that, 's 17(b) prohibits bad conduct towards any person (imprisoned or not) while s 30 mandates good conduct towards people who are incarcerated'.²⁸

²¹ Queensland Sentencing Advisory Council, *Connecting the Dots: The Sentencing of Aboriginal and Torres Strait Islander Peoples in Queensland*, (Sentencing Profile 2021) 22–24.

²² *Bugmy v R* (2013) 302 ALR 192.

²³ HRA (n 5) s 17(1).

²⁴ *Ibid* s 17(2).

²⁵ It is noted that all rights protected under the HRA are formally subject to potential limitation under sections 8 and 13 of the HRA.

²⁶ [2021] QSC 273.

²⁷ *Castles v Secretary, Department of Justice* (2010) 28 VR 141; [2010] VSC 310.

²⁸ *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273, [180].

(a) the nature of the human right

This right is aimed at protecting not only the physical integrity of individuals, but also their mental integrity and inherent dignity as human beings.²⁹

The *Convention against Torture* defines what is meant by the term 'torture',³⁰ and the *Victorian Charter of Human Rights Bench Book* outlines the following elements to be met to prove an act of torture:

The act must:

- be intentional;
- inflict severe physical or mental pain or suffering;
- be for a prohibited purpose; and
- be inflicted by or with the consent or acquiescence of a public official or a person acting in an official capacity.³¹

The European case of *Ireland v United Kingdom*,³² determined that:

the distinction between torture and cruel, inhuman or degrading treatment lies in a difference in the intensity of the suffering inflicted, with "torture" reflecting the special stigma attached to deliberate inhuman treatment causing very serious and cruel suffering.³³

Conduct which may have once been considered inhuman or degrading treatment may, at a later date, be considered torture.³⁴ 'The assessment of what constitutes these types of conduct will depend upon all the circumstances of the case, including the duration and manner of the treatment, its physical or mental effects on the victim, and the age, sex and state of health of the victim'.³⁵ The *Victorian Charter of Human Rights Bench Book* notes, 'the vulnerability of the victim, particularly where they are in detention and therefore powerless against the treatment or punishment, is also a factor to be considered'.³⁶

The QHRC similarly describes torture as being 'an act that intentionally inflicts severe physical or mental pain or suffering'.³⁷ The Commission distinguishes this from cruel, inhuman or degrading treatment or punishment which is a broader concept, often referring to conduct which is less severe than torture, but that still involves abuse or humiliation and 'can include acts that cause mental suffering, debases a person, causes fear, anguish or a sense of inferiority'.³⁸ However, to amount to inhuman or degrading punishment, the 'suffering or humiliation involved must ... go beyond that inevitable element of suffering or humiliation connection with a given form of legitimate punishment'.³⁹

While expressed negatively, the right might also give rise to positive obligations, which is important in the context of protecting victims' rights. The Judicial College of Victoria's *Charter of Human Rights Bench Book* states 'public authorities may be obliged to take steps to prevent deliberate acts of torture or other conduct prohibited by s 10'.⁴⁰

²⁹ See Human Rights Committee, *General Comment No 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, adopted on 10 March 1992, [2] and [5]; Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Material and Commentary* (Oxford University Press, 3rd ed, 2013) [9.68]–[9.77]

³⁰ *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) art 1.

³¹ Judicial College of Victoria, *Charter of Human Rights Bench Book*, [6.4.2] (emphasis in original) ('*Charter of Human Rights Bench Book*').

³² (*Judgment*) (European Court of Human Rights, App No 5310/71, 13 December 1977).

³³ Alistair Pound and Kylie Evans, *An Annotated Guide to the Victorian Charter of Rights* (Lawbook, 2nd ed, 2019) 190 citing *Ireland v United Kingdom (Judgment)* (European Court of Human Rights, App No 5310/71, 13 December 1977) [167].

³⁴ *A v Home Secretary* [2006] 2 AC 221; [2005] 2 UKHL 71, [53] per Lord Bingham, quoting the ECHR in *Selmouni v France* (European Court of Human Rights, Application No 25803/94, 28 July 1999) 29.

³⁵ Pound and Evans (n 33) 96.

³⁶ *Charter of Human Rights Bench Book* (n 31) [6.4.2] referring to Report of the Special Rapporteur on the question of Torture to the Commission on Human Rights, UN Doc E/CN.4/2006/6 (23 December 2005) [41].

³⁷ 'Right to protection from torture and cruel, inhuman or degrading treatment', *Queensland Human Rights Commission* (webpage) <<https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-protection-from-torture-and-cruel,-inhuman-or-degrading-treatment>>.

³⁸ *Ibid.*

³⁹ *Soering v The United Kingdom (Judgment)* (European Court of Human Rights, App No 1/1989/161/217, 7 July 1989) [100].

⁴⁰ *Charter of Human Rights Bench Book* (n 31) [6.4.1] citing *Kracke v Mental Health Review Board* (2009) 29 VAR 1; [2009] VCAT 646 [656]; Pound and Evans (n 33) 1130.

Does the current SVO scheme limit this right?

It is the Council's position that the current SVO scheme does not limit this right for offenders. This is because imprisonment does not inflict the severe physical or mental pain required for torture, nor does it meet the level of being cruel, inhuman and degrading treatment. While generally incarcerated for longer periods of time than the general prisoner population as a result of a declaration being made, a person convicted of a declared SVO is not subject to any different conditions while incarcerated.

Further, the SVO scheme protects this right for victims and survivors of crime and the broader community. It does this by requiring that offenders who have committed crimes that have infringed these rights are detained in custody for an extended period of time to prevent reoffending, and through any specific or general deterrent effect this deferred eligibility for parole might provide. The offences targeted under the SVO scheme include some of the most serious offences that can be committed against the person and often result in significant harm to, and long-lasting impacts upon, a victim. These offences include not only the most serious of sexual offences, including offences of a sexual nature involving child victims, but serious offences involving the use of non-sexual violence — some of which either must, or can involve as a necessary element of the offence, the intentional infliction of harm or suffering.⁴¹

Do the reforms recommended by the Council limit this right?

It is the Council's position that the reformed scheme does not limit this right for offenders.

The reformed scheme aims to protect victims from torture and cruel, inhuman or degrading treatment which is an important and legitimate objective.

Right to protection of families and children

Section 26 of the HRA recognises, inter alia, that families are the fundamental group unit of society which are entitled to be protected, and that every child has the right to the protection that is needed by the child, and which is in the child's best interests.⁴² This right is based on Articles 23(1) and 24(1) of the ICCPR. Internationally, Article 23(1) has been interpreted to require countries to adopt legislative, administrative and other measures to protect families.⁴³

(a) the nature of the human right

Section 26(1) is primarily concerned with family unity, which can, on occasion, create tension between it and section 26(2) rights regarding the child. Separation of parents and children is permissible in circumstances of parental imprisonment.⁴⁴ In *Buxton v Parole Board*,⁴⁵ the applicant was recalled to prison by the Parole Board. He sought judicial review of that decision on the basis that the recall infringed his rights under Article 8 of the *European Convention on Human Rights*.⁴⁶ His partner was pregnant and he submitted that she would need his support. He also submitted that recall would place a strain on his relationship with his partner, and therefore interfere with his rehabilitation. The court rejected his submission, stating that:

The restriction upon private and family life complained of flowed necessarily from the fact of the Claimant's imprisonment. In those circumstances, provided that, as here, the detention was lawful and justified under Article 5(1) of the ECHR, and provided that, as here, there is no flaw in the Board's assessment of risk, the Board's decision is unassailable.⁴⁷

Importantly, this right is also engaged for victims, as the QHRC recognises that this section could be relevant to acts or decisions that relate to domestic and family violence.⁴⁸

⁴¹ For example, the offences of attempted murder, malicious acts, and torture.

⁴² HRA (n 5) ss 26(1)–(2).

⁴³ UN Committee on Economic, Social and Cultural Rights, General Comment No 19: The right to social security (Art. 9 of the Covenant), 39th sess, UN Doc E/C.12/GC/19 (4 February 2008) [3].

⁴⁴ *R (Buxton) v Parole Board* [2004] EWHC 1930 (Admin); UN Committee on the Rights of the Child, General Comment No 17: on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), 62nd sess, UN Doc CRC/C/GC/17 (17 April 2013) [6].

⁴⁵ Ibid.

⁴⁶ Note that the scope of article 8 is different to what is protected by HRA (n 5) s 26(1).

⁴⁷ Ibid [50].

⁴⁸ 'Right to protection of families and children', *Queensland Human Rights Commission* (Webpage) <www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-protection-of-families-and-children>.

Does the current SVO scheme limit this right?

The SVO scheme does not limit this right. While delaying parole eligibility potentially separates children from a parent convicted of an offence declared under the scheme for longer periods of time than if the scheme did not exist, the restriction upon private and family life flows as a consequence of the person's imprisonment and is therefore considered to be a permissible separation.

The SVO scheme also protects victims' rights to protection of family and children, especially in instances where the person declared convicted of an SVO is a perpetrator of domestic and family violence. This is linked to the right to security, especially where there may be a requirement for state intervention where 'there is a known threat to the security of an identified person'.⁴⁹

Do the reforms recommended by the Council limit this right?

It is the Council's position that the reformed scheme, like the current SVO scheme, does not limit this right. A restriction upon private and family life which flows from a person's lawful detention or imprisonment is permissible. The Council's recommendations do not place limitations on this right beyond those that arise as a result of an offender's lawful imprisonment.

Further, the Council's recommendations may protect a victim's right to protection of family and children, particularly in circumstances where an offence has occurred in the context of domestic and family violence, by providing for longer periods of incarceration.

The cultural rights of Aboriginal and Torres Strait Islander peoples

Section 28 of the HRA recognises the distinct cultural rights held by Aboriginal and Torres Strait Islander peoples, including the right to maintain their identity and cultural heritage, the use of their language, kinship ties, and their distinctive spiritual, material and economic relationship with the land and waters.⁵⁰ This section is modelled on Article 27 of the ICCPR but also Articles 8,⁵¹ 25,⁵² 29⁵³ and 31⁵⁴ of the *United Nations Declaration on the Rights of Indigenous Peoples* ('UNDRIP').

(a) the nature of the human right

According to the explanatory note to the Queensland Human Rights Bill, 'this right is ... directed towards ensuring the survival and continual development of culture'.⁵⁵ The concept of culture embraces traditional ways of life, as well as the maintenance of ties with a person's community and the practice of their cultural identity.⁵⁶ While the right protects a person's negative right not to be denied their various cultural rights, it is open to interpretation as to whether a positive right is protected. The United Nations Human Rights Committee ('UN HRC') states that:

a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.⁵⁷

⁴⁹ Human Rights Committee, *Delgado Paez v Columbia: Communication No 195/1985*, 39th session, UN Doc CCPR/C/39/D/195/1985 (28 August 1990) [5.5]; see also *Osman v United* (European Court of Human Rights (Grand Chamber) App no 23452/94, 28 October 1998).

⁵⁰ HRA (n 5) ss 28(2)(a)–(2)(e).

⁵¹ The right not to be subjected to forced assimilation or destruction of their culture.

⁵² The right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

⁵³ The right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.

⁵⁴ The right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

⁵⁵ Explanatory Note, Human Rights Bill 2018 (Qld) 23.

⁵⁶ Human Rights Committee, *Lovelace v Canada: Communication No 24/1977*, 7th sess, 14 August 1979.

⁵⁷ Human Rights Committee, *General Comment No 23 : Article 27 (Rights of Minorities)*, 50th sess, UN Doc CCPR/C/21/Rev.1/Add.5 (8 April 1994) [6.1].

The operation of the right might extend to the court in which a person can have their criminal proceedings heard. For example, in *Cemino v Cannan*,⁵⁸ the court said that the exercise of the transfer discretion 'will affect whether an Aboriginal person has access to the Koori Court, which in turn enables an Aboriginal person to enjoy, in the sense of have the benefit of, their identity and culture when they are charged with criminal offences'.⁵⁹ The right might also be engaged in bail applications and child protection proceedings.

Does the current SVO scheme limit this right?

The SVO scheme may previously have limited this right, but no longer limits the right. While generally incarcerated for longer periods of time than the general prisoner population, a person convicted of a declared SVO is not subject to any different conditions while incarcerated. Queensland Corrective Services ('QCS') must take into account a range of factors when determining a person's security classification and some of the statutory requirements are particularly relevant to prisoners convicted of an offence with an SVO declaration.⁶⁰

However, this was not always the case. Until recently, offenders with an SVO declaration were excluded from placement in low security facilities. Mr Sofronoff, in the 2016 *Parole System Review Report* recommended that this policy be reviewed,⁶¹ as did the Anti-Discrimination Commission Queensland ('ADCQ') in a 2019 report. In that report, the ADCQ expressed that 'ideally, prisoners should be held at the lowest level of security appropriate for their circumstances to ensure maximum opportunities for rehabilitation'.⁶²

Since the ADCQ released its report, QCS has revised its policy on the classification and placement of prisoners. The 2021 directive states that 'prisoners who have been convicted of a sexual offence listed in schedule 1 of the CSA [Corrective Services Act 2006 (Qld)], convicted of murder or sentenced to life imprisonment, are not eligible to be accommodated in a low custody facility in accordance with s68A of the CSA'.⁶³ The inability to be accommodated in a low security facility might have affected Aboriginal and Torres Strait Islander peoples' ability to be transferred to a prison which could better accommodate their cultural rights.

Do the reforms recommended by the Council limit this right?

The Council's view is that its recommendations do not limit this right.

Right to liberty and security of person

Section 29 of the HRA recognise that every person has the right to liberty and security.⁶⁴ Specifically, of relevance to this report, it outlines that a person must not be subjected to arbitrary arrest or detention,⁶⁵ and that a person must not be deprived of the person's liberty except on grounds, and in accordance with procedures, established by law.⁶⁶ These provisions are based on Articles 9 and 11 of the ICCPR.

(a) the nature of the human right

The right to liberty and security of a person aims to protect persons from confinement of their body and provide freedom from injury to body or mind.⁶⁷ This right applies to offenders, victims and the broader community.⁶⁸ The QHRC notes that 'the right to security requires the State to take reasonable measures to protect a person's security (both physical and mental)'.⁶⁹ This might 'also require public authorities to take positive measures to protect a

⁵⁸ [2018] VSC 535.

⁵⁹ Ibid [147].

⁶⁰ See Chapter 4 in Part A of this report for more information.

⁶¹ Queensland Parole System Review, *Queensland Parole System Review Final Report* (2016) 184 [916].

⁶² Anti-Discrimination Commission Queensland, *Women in Prison 2019: A Human Rights Consultation Report* (2019) 134.

⁶³ Queensland Corrective Services, *Custodial Operations Practice Directive: Classification and Placement* (June 2021) 10.

⁶⁴ HRA (n 5) s 29(1).

⁶⁵ Ibid s 29(2).

⁶⁶ Ibid s 29(3).

⁶⁷ Human Rights Committee, *General Comment No 35: Article 9 (Liberty and Security of Person)*, UN Doc CCPR/C/GC/35 (16 December 2014) [3].

⁶⁸ Ibid [3], [9].

⁶⁹ 'Right to liberty and security of person' *Queensland Human Rights Commission* (Webpage) <<https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-liberty-and-security-of-person>>.

person's security from interference by third parties, at least where there is a known threat to the security of an identified person'.⁷⁰

The right not to be subjected to arbitrary detention applies to all forms of detention, not just detention arising from criminal justice processes.⁷¹ However, the focus of this discussion is on criminal justice processes related to the SVO scheme.

The concept of 'arbitrary' as this applies to arrest and detention 'includes elements of inappropriateness, injustice, lack of predictability and due process of the law'.⁷² Conversely, arrest and detention that is 'not arbitrary' has been described as that which is 'reasonable (or proportionate) in all the circumstances'.⁷³ In *PJB v Melbourne Health*,⁷⁴ the Victorian Supreme Court adopted the meaning present in international human rights law – that arbitrariness:

extends to interferences which, in the particular circumstances applying to the individual, are capricious, unpredictable or unjust and also to interferences which, in those circumstances, are unreasonable in the sense of not being proportionate to a legitimate aim sought.⁷⁵

Detention which is not initially arbitrary may become arbitrary.⁷⁶ A person may be detained for a specific purpose, however if that purpose no longer applies, there must be appropriate justification to continue detention, otherwise the detention will become arbitrary.⁷⁷ If there is no longer a causal link between the detention and the objectives of the sentence, detention may be arbitrary.

Section 29(3) of the HRA 'means that someone can only be detained or have their liberty denied in accordance with the law'.⁷⁸ Lawfully 'means that relevant statutory criteria must be satisfied as a prerequisite to the exercise of a power to detain'.⁷⁹

There are conflicting views about whether the conditions in which a person is detained can be considered 'arbitrary'. In *DPP v JPH* (No 2),⁸⁰ the Victorian Supreme Court left open the question of whether the conditions of a person's detention can make what would otherwise be lawful detention "arbitrary" for the purposes of s 21(2).⁸¹ In *James, Wells and Lee v United Kingdom*,⁸² the European Court of Human Rights considered the arbitrariness of detention where the prisoners were serving indefinite sentences⁸³ and had no reasonable access to appropriate rehabilitative courses that would enable them to demonstrate they were no longer a danger to the community. The prisoners had relatively short 'tariff sentences' as a component of their indefinite sentences and were detained in prisons without the necessary rehabilitative courses. The court found that following the expiry of the applicants' minimum (tariff) sentences, up until they were provided with appropriate rehabilitative courses, their detention was arbitrary.⁸⁴

Does the current SVO scheme limit this right?

The current SVO scheme could be said to protect, rather than limit, the right to security of persons, particularly victims and the broader community. This is further discussed below.

Conversely, aspects of the current SVO scheme could be said to limit the offender's right to liberty, specifically the right not to be subjected to arbitrary detention. An offender for whom an SVO declaration is made may be detained for a lengthier period. That is, the offender is required to serve 80 per cent of their sentence before they are eligible

⁷⁰ Human Rights Committee, *Delgado Paez v Columbia: Communication No 195/1985*, 39th session, UN Doc CCPR/C/39/D/195/1985 (28 August 1990) at [5.5]; see also *Osman v United Kingdom* (European Court of Human Rights (Grand Chamber) App no 23452/94, 28 October 1998).

⁷¹ Ibid.

⁷² Explanatory Note, Human Rights Bill 2018 (Qld) 24.

⁷³ Pound and Evans (n 33) 190.

⁷⁴ (2011) 39 VR 373.

⁷⁵ *PJB v Melbourne Health* (2011) 39 VR 373; [2011] VSC 327 [82]–[85]. See also *Victoria Police Toll Enforcement v Taha* (2013) 49 VR 1; *WBM v Chief Commissioner of Police* (2010) VR 469 in which this approach was also followed.

⁷⁶ Human Rights Committee, *General Comment No 35: Article 9 (Liberty and Security of Person)*, UN Doc CCPR/C/GC/35 (16 December 2014) [43].

⁷⁷ Human Rights Committee, *Spakmo v Norway: Communication No 631/1995*, 67th session, UN Doc CCPR/C/67/D/631/1995 (5 November 1999) [6.3].

⁷⁸ Right to liberty and security of person' *Queensland Human Rights Commission* (Webpage) <<https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-liberty-and-security-of-person>>.

⁷⁹ Judicial College of Victoria (n 31) [6.15.3] citing *Antunovic v Dawson* (2010) 30 VR 355; [2010] VSC 377, [135].

⁸⁰ (2014) 239 A Crim R 543; [2014] VSC 177, [127].

⁸¹ Pound and Evans (n 73) 191.

⁸² (*Judgment*) (European Court of Human Rights, App Nos 25119/09, 57715/09, 57877/09, 18 September 2012).

⁸³ A type of sentence which does not have a fixed length of time. The court does not set a date when the person will be released. The person will spend a minimum amount of time in prison (the 'tariff' sentence) and thereafter are detained indefinitely for public protection. A Parole Board assesses their suitability for release.

⁸⁴ *James, Wells and Lee v United Kingdom (Judgment)* (European Court of Human Rights, App Nos 25119/09, 57715/09, 57877/09, 18 September 2012).

for parole. This is in contrast to 'usual' sentencing practices in Queensland.⁸⁵ In Queensland if an SVO declaration is not made, it is common practice for parole eligibility to be set at one-third of a person's head sentence if the person has pleaded guilty and there are other mitigating factors, or for no parole eligibility date to be set (meaning the current statutory requirement to serve 50 per cent of the sentence applies) if the person has been found guilty following a trial.

However, to properly determine whether this right is limited, the question becomes whether the detention that an offender faces under the SVO scheme can be described as arbitrary. As discussed above, arbitrary is defined as capricious, unpredictable, unjust or⁸⁶ disproportionate to the legitimate aim sought.⁸⁷

As questions of proportionality also arise when considering justification of limits on human rights under s 13 of the HRA, it is convenient to consider this question by working through the remainder of the steps outlined in section 13(2).

(b) The nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom.

Any limitation of rights under the scheme are applied for the stated purposes of punishment, denunciation and community protection.⁸⁸ While deterrence and rehabilitation were mentioned during debate at the time of the scheme's introduction, these are not primary objectives.⁸⁹

These purposes are expressed through the second reading speech, where the then Attorney-General stated that the government's approach was based on:

a reasonable community expectation that the sentence imposed will reflect the true facts and serious nature of the violence and harm in any given case and that condign punishment is awarded to those who are genuinely meritorious of it.⁹⁰

The scheme aims to protect the community, so 'that Queenslanders feel secure in their homes and on the streets'.⁹¹ This also protects a victim's rights to security and to be protected from torture, and cruel, inhuman or degrading treatment. It does this by incarcerating SVO offenders for a longer minimum period of time (achieving short-term protection). This is important as States have a positive obligation to take measures to protect security of persons,⁹² and to protect persons from torture, cruel, inhuman or degrading treatment 'even where the acts are committed by persons acting in a private capacity'.⁹³

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Requiring an offender to serve 80 per cent of their sentence in custody prior to release on parole arguably ensures that the purposes of punishment, denunciation and community protection are met. However, the scheme achieves these objectives in a way which undermines its ability to deliver on these purposes to their full extent.

Although the mandatory aspects of the current scheme provide for some consistency of application, they may result in punishment which is disproportionate to the severity of the offence committed. In the literature review undertaken by the University of Melbourne for this review, the authors acknowledged the potential negative impacts of

⁸⁵ See Chapter 2 and Chapter 3 of this report for further discussion about the usual sentencing practices in Queensland.

⁸⁶ Explanatory note, Human Rights Bill 2018 (Qld) 22; *PJB v Melbourne Health* [2011] VSC 327; (2011) 39 VR 373, 395 [85].

⁸⁷ Refer to Part B for further information on appeals.

⁸⁸ See Chapter 2 for further discussion about the purposes and objectives of the SVO scheme.

⁸⁹ Queensland, *Parliamentary Debates*, Legislative Assembly, 26 March 1997, 907 (Dean Wells, Shadow Minister for Emergency Services, Public Service Matters and Federal/State Relations); Queensland, *Parliamentary Debates*, Legislative Assembly, 19 March 1997, 647 (Jonathan H. Sullivan, Member for Caboolture); Queensland, *Parliamentary Debates*, Legislative Assembly, 26 March 1997, 905 (Demetrios (Jim) Fouras, Member for Ashgrove). See also Jonathan H. Sullivan, Member for Caboolture at 892 and Queensland, *Parliamentary Debates*, Legislative Assembly, 18 March 1997, 542 (Raymond (Ray) Hollis, Member for Redcliffe).

⁹⁰ Queensland, *Parliamentary Debates*, Legislative Assembly, 19 March 1997, 597 (Denver Beanland, Attorney-General and Minister for Justice).

⁹¹ Queensland, *Parliamentary Debates*, Legislative Assembly, 19 March 1997, 596 (Denver Beanland, Attorney-General and Minister for Justice).

⁹² See discussion above at Right to protection from torture and cruel, inhuman or degrading treatment; Human Rights Committee, *Delgado Paez v Columbia: Communication No 195/1985*, 39th session, UN Doc CCPR/C/39/D/195/1985 (28 August 1990) [5.5]; see also *Osman v United* (European Court of Human Rights (Grand Chamber) App no 23452/94, 28 October 1998).

⁹³ Pound and Evans (n 33) 94, referring to Human Rights Committee, *General Comment No 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, adopted on 10 March 1992 [2], [8], [10]–[11] and [14].

mandatory minimum non-parole period schemes. Reduced judicial discretion, in particular, may lead to poorer decision-making as it restricts the court's capacity to take all relevant factors into account, which may, in some instances, lead to 'disproportionate sentences'. This may be particularly relevant for defendants with complex needs, those who are disadvantaged, and Aboriginal and Torres Strait Islander defendants.⁹⁴ There is also a risk that head sentences may inadequately reflect the severity of the crime and the level of criminality involved, and the denunciatory effect compromised, when reduced to take into account the consequence of the making of a declaration.⁹⁵ The Law Council of Australia notes that:

mandatory sentencing is arbitrary insofar as it requires the imposition of a mandatory policy regardless of whether that policy is reasonable, necessary or proportionate in the individual case.⁹⁶

Further, in *A v Australia*:⁹⁷

the United Nations Human Rights Committee indicated that detention is arbitrary if disproportionate in the prevailing circumstances. Therefore, a sentence must not be totally disproportionate to the severity of the crime committed.⁹⁸

The authors of the literature review concluded that to the extent the setting of minimum non-parole periods (MNPPs) result in incapacitating people in the short term and requiring them to serve longer periods of imprisonment, 'they can be considered to achieve the sentencing purposes of punishment and denunciation'. However, there is only limited evidence available regarding the effectiveness of SVO and similar MNPP schemes to enhance community protection. Drawing on existing evidence, they concluded that the existing literature does not support the use of MNPP schemes as a measure to achieve long-term community protection.⁹⁹ They observed it is likely that those who have been convicted of more serious offences who have served longer periods in custody will require longer periods of supervision in the community rather than shorter periods to reduce their overall risks of reoffending.¹⁰⁰ This brings into question the ability of the scheme to achieve the purpose of community protection, beyond immediate incapacitation.

The scheme may contribute to achieving the purpose of community protection through the protection of a victim's right to security and right to be protected from torture and cruel, inhuman or degrading treatment through incarceration. As noted above, the State has a positive obligation to protect these rights. The SVO scheme could be said to achieve this particularly in the context of domestic and family violence, as the State is taking measures to protect a person's security from third party interference (where there is a known threat) even where the acts are being committed by an offender in a private capacity. However, under the current scheme, the protection offered may be short-term only while the person is in custody given the lack of evidence such schemes achieve long-term community protection.¹⁰¹

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The current SVO scheme could be viewed as arbitrary because of the lack of clarity as to why offences were chosen for inclusion in the scheme, why the thresholds of 5 years (discretionary operation) and 10 years (mandatory operation) were chosen, and why 80 percent was selected as the minimum non-parole period.

During the review, the Council identified a number of examples of inconsistencies, anomalies and complexities with the current operation of the SVO scheme. These inconsistencies, anomalies and complexities impact upon the effective operation of the scheme. These include:

- Problems arising from the setting of 10 years as the cut-off point for a mandatory SVO declaration — which means that the only way a court can take a plea of guilty or other mitigating factors into account, as required by law, is to reduce the head sentence. The Council found the scheme is most likely exerting

⁹⁴ Andrew Day, Stuart Ross and Katherine McLachlan, *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](#), 2021) 8 ('University of Melbourne Literature Review').

⁹⁵ This is discussed further below. Note also comments by the Court of Appeal that head sentences may only be adjusted down to take the operation of the scheme into account where these are set within the applicable range. For example, *R v Eveleigh* [2003] 1 Qd R 398, 430-431 [111] (Fryberg J).

⁹⁶ Law Council of Australia, *Mandatory Sentencing* (Policy Discussion Paper, May 2014) 22.

⁹⁷ Human Rights Committee, *A v Australia: Communication No. 560/93*, 59th sess, UN Doc CCPR/C/59/d/560/1993 (30 April 1997).

⁹⁸ Law Council of Australia, *Mandatory Sentencing* (Policy Discussion Paper, May 2014) 22.

⁹⁹ University of Melbourne Literature Review (n 94).

¹⁰⁰ *Ibid* 13. They further note that the nature of community supervision is also critical, in terms of the intensity of services provided, the types of services offered and the way in which they are delivered.

¹⁰¹ Note also comments made by the Parole Board Queensland that information provided by Queensland Corrective Services to the Board 'very often reveals prisoners continuing to commit domestic violence from prison by, for example, using the prison telephone system to directly or indirectly threaten violence against a victim': Submission 14 (Parole Board Queensland) 3. The protection offered in practice therefore may be limited to physical acts of violence.

downward pressure on head sentences because a sentence that is 'just in all the circumstances' where an SVO declaration is enlivened may require reducing the head sentence to less than 10 years and/or to be set at the lower end of the range. This undermines the denunciatory impact of the sentence.

- The effect of a mandatory 80 per cent MNPP is to provide for a shorter period of supervision on parole — contrary to research evidence which suggests that those who commit serious offences and are sentenced to longer period of imprisonment require longer periods of supervision rather than less in the interest of long-term community protection.
- Limited scope for the application of the principle of parity in circumstances where an SVO declaration is made in one case for an offender, but not made in another involving a co-offender — where this principle would, but for the existence of the SVO scheme, otherwise be more readily applied.¹⁰² This can lead to unjust outcomes where one offender is subject to a declaration, while another is not.
- An unnecessary additional layer of complexity to sentencing, such as when:
 - dealing with multiple offences, particularly when committed over different time periods and/or with different complainants in circumstances where only some of those convictions are serious enough to warrant, or can be subject to, a declaration. This may create confusion about to which offence/s the declaration is intended or must attach;
 - applying section 161C of the PSA to calculate the relevant periods that apply for the purposes of section 161B.¹⁰³ Uncertainty about its application has resulted in the need for a body of case law to settle areas of uncertainty and ambiguity.

The Council has ultimately determined that the current SVO scheme may limit offenders' rights to not be arbitrarily detained and the limitation helps achieve its stated purpose to some extent. However, in the Council's view, the limitation of the right is not reasonable and justifiable as the Council's position is that there are less restrictive ways to achieve the stated purposes of punishment, denunciation and community protection, through the adoption of a reformed scheme.

Do the reforms recommended by the Council limit this right?

The Council's recommendations better protect the right to not be arbitrarily detained than the current scheme for the following reasons.

1. The scheme will no longer apply in a mandatory way to sentences of 10 years or more, without regard to the individual circumstances of the case. Instead, the scheme will apply presumptively to sentences of greater than 5 years for a listed offence — excluding serious drug offences to which a 10-year threshold will apply.
2. Where a declaration is made, a court will be permitted to set parole eligibility within a specified range (50–80%) rather than this being fixed by law at 80 per cent.
3. A court will be permitted to depart from making a declaration and to set an earlier parole eligibility date where it determines this is in the interests of justice.

Like the current SVO scheme, the Council's reform recommendations could be said to protect, rather than limit the right to security of persons, particularly victims and the broader community. It will achieve this in a more effective and sustained way than the current scheme by allowing courts to undertake more individualised assessments of a person's circumstances, including their risks of reoffending. This will allow a more appropriate balance to be achieved between the minimum period that must be served in custody for the purpose of short-term community protection, and the remaining period available to be spent in the community under supervision in the interests of long-term community safety.

The Council's determination as to whether the recommendations limit the offenders right not to be arbitrarily detained are presented following its examination of the steps in 13(2).

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

In its recommendations the Council has expressed that the intention of the reformed scheme is to ensure that the sentence reflects the offence severity, with reference to the purposes of punishment, denunciation, deterrence, and

¹⁰² See Queensland Sentencing Advisory Council, *Minimum Non-Parole Period Schemes for Serious Violent Offences in Australia and Select International Jurisdictions* ([Background Paper 2](#), 2021) section 2.9 ('Background Paper 2'); *R v Crossley* (1999) 106 A Crim R 80.

¹⁰³ As one example where a judge mistakenly thought the requirement to declare the offender convicted of an SVO did not apply, see *R v Dutton* [2005] QCA 17. See Chapter 12 for other examples of complexities in the sentencing process.

community protection.¹⁰⁴ Community protection encompasses the protection of victims' rights to security and not to be subject to torture or to be treated in a cruel, inhuman or degrading way.

These purposes of the reform scheme promote an overarching purpose of the reforms to enhance community and victim confidence in sentencing for serious offences by establishing a clear expectation that for sentences that reach a certain sentencing threshold (greater than 5 years, or 10 years in the case of serious drug offences) a substantial proportion of that sentence will be served in custody. Many victims and their advocates spoke to the Council about the importance of the non-parole period to their level of satisfaction with the sentence. These concerns increase when sentencing is entirely discretionary. Victims and their advocates stressed the importance of offenders suffering some significant consequences for their serious offending behaviour and the harm caused and the sentence appropriately acknowledging offence seriousness. While the offender is in custody, the perception was that the community was protected, resulting in safety for victims, their friends and family members, as well as the broader community. That time in custody also provides victims and survivors with time to focus on their recovery without being worried about the offender's imminent release.

When short non-parole periods are set, even when the head sentence is substantial, it can lead to victims feeling that the serious harm caused to them or their loved ones has not been properly acknowledged. It can also lead to feelings of frustration, anger and fear when their genuine concerns for their own safety and the safety of family members and the broader community are, in their view, not acknowledged or treated seriously. From their perspective, the system appears strongly weighted towards looking after the interests of the offender, while their interests are ignored.

While enhancing victim satisfaction is not a purpose or objective of sentencing it is an objective of the reforms as a failure to take their views and perspectives into account risks eroding victim and public confidence in the criminal justice system. This can have impacts across the criminal justice system, including reducing the willingness of victims and other community members to report crime or to act as witnesses or jurors, potentially placing other community members at greater risk. Victims' concerns demonstrate the importance of ensuring that non-parole periods reflect the seriousness of the offending, and the sentencing purposes of punishment, denunciation, deterrence and community protection.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Requiring an offender to serve 50–80 per cent of their sentence in custody prior to release on parole ensures that the minimum period to be served in custody for offenders convicted of a serious offence reflects the seriousness of these offences while also allowing the judge to consider the sentencing purposes of punishment, denunciation, deterrence and community protection. The presumptive scheme's operation also meets this purpose as communities and victims are provided with greater certainty about when and how the scheme will apply (as opposed to the current discretionary model for sentences over 5 years).

While a presumptive scheme with a threshold of over 5 years means that more people will be subject to the reformed scheme than the current one, the Council's careful consideration of an appropriate threshold (5 years, or 10 years for serious drug offending) and the offences to which the scheme should apply, in conjunction with the ability to depart from the presumption, will ensure that only those who engage in sufficiently serious offending are subject to the scheme. This rectifies the concerns raised above about the disproportionate effect of the previous scheme. A presumptive model which 'declares' offences as a 'serious offence' helps meet the purposes of punishment and denunciation as it sends a message that all offences which receive a sentence over 5 years are serious and will be punished accordingly.

As outlined in Part D, the scheme's presumptive operation means that a judge retains discretion over the sentence to be set, which includes the ability to depart from the scheme where it is 'in the interests of justice' to do so. This increased discretion (compared with the existing SVO scheme) also removes the potential for 'arbitrary' detention or 'disproportionate' sentences as judges can more effectively take into account a range of factors, ensuring that the operation of the scheme is proportionate to its legitimate aim.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

Less restrictive options to the Council's recommendations include the adoption of a wholly discretionary model, or split presumptive/discretionary model, and abolishing the scheme entirely without replacement. The Council considered and rejected these options for the reasons set out in Chapter 17.

¹⁰⁴ See section 18.3 of this report.

A wholly discretionary model is less restrictive than a presumptive model. While such a model is reasonably available, in the Council's view it does not achieve the purpose of ensuring a minimum period to be served in custody to reflect the seriousness of the listed offences in the interests of promoting community confidence.

As discussed in Part D, an entirely discretionary model has the following disadvantages:

- It is uncertain how often declarations would be made, potentially eroding victims' confidence in the justice system. Only a small number (n=119) of discretionary SVO declarations were made over the 9-year data period, indicating the current discretion is rarely exercised.
- Only 18 discretionary SVO declarations were made for sexual violence offences in the data period, potentially indicating that sexual violence is commonly not viewed as warranting a declaration in the absence of accompanying acts of violence.
- There is a lack of consensus amongst legal stakeholders about the circumstances in which an SVO declaration should be made. Expert interviews found different interpretations of what kinds of offences/circumstances would warrant a discretionary application.
- It is difficult to identify and set appropriate statutory criteria (assuming this is part of the reformed model) for the making of a declaration so that such criteria would be applied in a consistent way. It is unlikely this issue can be easily resolved.

A discretionary model would essentially be no different from abolishing the scheme as courts already have the ability to delay parole eligibility beyond the statutory 50 per cent mark with good reason (see *R v Assurson*¹⁰⁵).

Similarly, abolishing the existing scheme entirely, while giving judges more discretion, would not ensure that serious offences which cause significant harm to victims and survivors, are sentenced in accordance with the purposes of the proposed reforms. Namely, that some offending is so serious that it warrants a significant proportion of the sentence to be served in custody in the interests of just punishment, denunciation, deterrence and community protection. While courts currently have the ability to defer parole eligibility, the Council found that this rarely occurs outside the context of the SVO scheme.¹⁰⁶

(g) the balance between: the importance of the purpose of the reform; and the importance of preserving the human right, taking into account the nature and extent of any limitation on the human right.

The mechanisms within the reformed scheme (such as the broad ability to depart from the presumption where it 'is in the interests of justice', and the ability for the court to set parole eligibility within a range of 50–80%) and greater clarity surrounding how offences and the relevant thresholds were selected ensures that detention ordered under the reformed scheme is not arbitrary. Preserving the rights of victims and promoting victim and community confidence in the justice system's ability to respond to serious offending through the imposition of appropriate non-parole periods, in the Council's view, is best able to be achieved through the adoption of this scheme and is an important purpose. While other less restrictive ways of achieving these objectives are available, the Council considered them inappropriate and unlikely to achieve the purposes of the proposed reforms.

In any event, should government reach the conclusion that the right not to be arbitrarily detained is limited, the Council contends that such limitation is reasonable and justifiable in a free and democratic society based on human dignity, equality and freedom. This is on the basis the reforms are directed towards the legitimate legislative purpose of enhancing community and victim confidence that the minimum period to be served in custody will reflect offence seriousness with reference to the sentencing purposes of punishment, denunciation, deterrence and community protection.

Right to humane treatment when deprived of liberty

Section 30 of the HRA states, inter alia, that those persons deprived of their liberty must be treated with respect for the inherent dignity of the human person.¹⁰⁷

(a) the nature of the human right

This right recognises the vulnerability of persons in detention and aims to provide them with sufficient protections.¹⁰⁸ The underlying principle is that a person's rights should only be limited by the confinement itself,

¹⁰⁵ [2007] QCA 273.

¹⁰⁶ See Chapter 9 of the report.

¹⁰⁷ HRA (n 5) s 30(1).

¹⁰⁸ Pound and Evans (n 33) 200.

not additional factors'.¹⁰⁹ The right may encompass both the general conditions of detention as well as specific incidents of 'bad conduct'.¹¹⁰

When interpreting the right, the UN *Standard Minimum Rules for the Treatment of Prisoners* ('*Standard Minimum Rules*') and other relevant UN instruments¹¹¹ can be taken into account.¹¹² The UN *Standard Minimum Rules* outline the standards of accommodation conditions, clothing and bedding, food provisions, exercise, medical services and disciplinary procedures for prisoners.¹¹³

A case considering the equivalent section in the *Charter of Human Rights and Responsibilities Act 2006* (Vic), *Castles v Secretary, Department of Justice*,¹¹⁴ held that:

the starting point for analysing the scope of s 22(1) should be that persons who are detained must not be subjected to hardship or constraint other than that which results from the deprivation of their liberty, accepting that a necessary consequence of the deprivation of liberty is that rights enjoyed by other citizens will be compromised to some extent.¹¹⁵

In the Australian Capital Territory, the equivalent provision under its *Human Rights Act 2004* (ACT) was considered in *Eastman v Chief Executive, Department of Justice and Community Safety*.¹¹⁶ The Supreme Court found that:

there is an arguable case that s 19 of the Human Rights Act does require that a prisoner be given the opportunity of useful work, that there is a requirement for rehabilitative measures to be put in place, and that there is also an obligation to provide access to appropriate and timely medical treatment. These are, however, subject to the reasonable constraints of the nature of deprivation of liberty and the consequences that this brings, including issues of safety, rational use of resources, institutional administration and discipline.¹¹⁷

Public authorities may also be required to take positive measures to ensure that detained persons are treated with dignity and humanity.¹¹⁸

Does the current SVO scheme limit this right?

As discussed above,¹¹⁹ the SVO scheme may previously have limited this right, but no longer does so as a person convicted of a declared SVO is not subject to any different conditions while incarcerated. This may not have always been the case as the previous inability to be accommodated in a low security facility might have affected a convicted SVO person's right to humane treatment when deprived of liberty, in that their work and rehabilitative opportunities may have been limited. This issue has now been rectified.

Do the reforms recommended by the Council limit this right?

While generally incarcerated for longer periods of time than the general prison population, a person convicted of a declared 'serious offence' will not be subject to any different conditions while incarcerated. As such, the Council contends that this right is not limited by the proposed reforms.

¹⁰⁹ 'Right to humane treatment when deprived of liberty' *Queensland Human Rights Commission* (Webpage) <<https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-humane-treatment-when-deprived-of-liberty>>.

¹¹⁰ See *Application for Bail by HL (No 2)* [2017] VSC 1, [117], [124]–[130]; *Certain Children v Minister for Families and Children* (2016) 51 VR 473; [2016] VSC 796, [171]–[178]; *Certain Children v Minister for Families and Children (No 2)* (2017) 52 VR 441; [2017] VSC 1, [251]; *DPP v Tiba* [2013] VCC 1075, [31]; *Dale v DPP* [2009] VSCA 212, [35]–[39]; *R v Kent* [2009] VSC 375, [32]; *A-G (NZ) v Taunua* [2006] 2 NZLR 457.

¹¹¹ Such as: the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment; the Code of Conduct for Law Enforcement Officials; the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment; and the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.

¹¹² *Pound and Evans* (n 33) 201. See also: *Certain Children v Minister for Families and Children* (2016) 51 VR 473; [2016] VSC 796, [154]; *Certain Children v Minister for Families and Children (No 2)* (2017) 52 VR 441; [2017] VSC 251 at [264]–[265]; *De Bruyn v Victorian Institute of Forensic Mental Health* (2016) 48 VR 647; [2016] VSC 111 at [176]–[178].

¹¹³ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN GAOR, UN Doc A/RES/70/175 (adopted 8 January 2016).

¹¹⁴ (2010) 28 VR 141; [2010] VSC 310.

¹¹⁵ *Pound and Evans* (n 33) 200, citing *Castles v Secretary, Department of Justice* [2010] VSC 310, [108].

¹¹⁶ (2010) 172 ACTR 32; [2010] ACTSC 4.

¹¹⁷ *Ibid* [99].

¹¹⁸ See UN Committee on Economic Social and Cultural Rights, *General Comment 21: Right of everyone to take part in cultural life*, UN Doc E/C.12/GC/21 (21 December 2009) at [3]; *Castles v Secretary, Department of Justice* (2010) 28 VR 141; [2010] VSC 310, [100]; *Haigh v Ryan* [2018] VSC 474, [85].

¹¹⁹ See page 67: 'The cultural rights of Aboriginal and Torres Strait Islander peoples'.

Right to a fair hearing and rights specific to criminal proceedings

Section 31 of the HRA provides that 'a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing'.¹²⁰ This section is based on article 14(1) of the ICCPR and is very similar to the common law obligation to ensure a fair hearing.¹²¹

Section 32(1) of the HRA provides that 'a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law'. Section 32(2) further outlines a number of minimum guarantees, including the right to have legal aid provided if the interests of justice require it.¹²² Section 32(4) stipulates that 'a person convicted of a criminal offence has the right to have the conviction and any sentence imposed in relation to it reviewed by a higher court in accordance with law'.¹²³ These sections are based on Articles 14(2), 14(3) and 14(5) of the ICCPR. In *SQH v Scott*,¹²⁴ Williams J recognised the cross over between the right to a fair trial under section 31 of the HRA and the rights specific to criminal proceedings in section 32 of the HRA. Warren CJ in discussing the Victorian provisions also determined that it was unhelpful to separate and individually analyse these rights.¹²⁵ Given this overlap, these rights will be considered together.¹²⁶

(a) the nature of the human rights

The right to a fair trial encompasses procedural fairness, rather than substantive fairness (i.e. it does not apply to the fairness of a decision made in court).¹²⁷ 'A court cannot be required by statute to adopt a procedure that is unfair'.¹²⁸

What will constitute a fair hearing in a case will depend on all the circumstances.¹²⁹ The Victorian Court of Appeal in *Roberts v Harkness*¹³⁰ identified the following factors as relevant to the determination of 'the practical content of fairness in the particular case':

- the nature of the decision to be made;
- the nature and complexity of the issues in dispute;
- the nature and complexity of the submissions which the party wishes to advance;
- the significance to that party of an adverse decision ('what is at stake');
- the competing demands on the time and resources of the court or tribunal; and
- the statutory framework governing the decision-making process.¹³¹

The phrase 'competence, independence and impartiality' reflects a fundamental notion of the rule of law – 'that a hearing should be conducted by an independent and impartial tribunal that is established by law and is jurisdictionally competent'.¹³² In *Smits v Roach*,¹³³ Kirby J said, commenting on Article 14(1) of the ICCPR, that the requirement of independence 'connotes separation from other branches of government but also independence from the litigants, their interests and their representatives' and that the concept of impartiality 'is concerned with the judge's approach to the hearing and the determination of matters in dispute'.¹³⁴

In *South Australia v Totani*,¹³⁵ the relevant legislation required a court to make a control order against a person if the court was satisfied the person was a member of a 'declared' organisation. An organisation was 'declared' by the Attorney General if the organisation was deemed to be involved in serious criminal activity. The only decision to be made by a court was whether or not the person was a part of the organisation. A majority of the High Court held this legislation to be invalid:

This Court should accept the submission by the respondents that the practical operation of s 14(1) of the Act is to enlist a court of a State, within the meaning of s 77(iii) of the Constitution, in the implementation of the

¹²⁰ HRA (n 5) s 31.

¹²¹ *Charter of Human Rights Bench Book* (n 31) [6.18.1].

¹²² HRA (n 5) s 32(1).

¹²³ *Ibid* s 32(4).

¹²⁴ [2022] QSC 16.

¹²⁵ *Re Application under Major Crimes (Investigative Powers) Act 2004* (2009) 24 VR 415; [2009] VSC 381, [40].

¹²⁶ *SQH v Scott* [2022] QSC 16, [325].

¹²⁷ Pound and Evans (n 33) 215.

¹²⁸ *Condon v Pompano* (2013) 252 CLR 38; [2013] HCA 7, [177].

¹²⁹ *Victoria Police Toll Enforcement v Taha* (2013) 49 VR 1, [205].

¹³⁰ [2018] VSCA 215.

¹³¹ Pound and Evans (n 33) 216 citing *ibid* at [50].

¹³² *Ibid* 225.

¹³³ (2006) 227 CLR 423.

¹³⁴ *Ibid* [104].

¹³⁵ (2010) 242 CLR 1.

legislative policy stated in s 4 by an adjudicative process in which the Magistrates Court is called upon effectively to act at the behest of the Attorney-General to an impermissible degree, and thereby to act in a fashion incompatible with the proper discharge of its federal judicial responsibilities and with its institutional integrity. Section 14(1) is invalid.¹³⁶

The presumption of innocence applies to the whole of the criminal process.¹³⁷ It is not an absolute right, and it can be 'justifiably qualified by statute.'¹³⁸ The right can be impacted, but not necessarily undermined, by a reversal of the onus of proof. For example, in *Webster v R*,¹³⁹ the Court held that the *European Convention on Human Rights* did not prohibit factual presumptions nor did it provide an absolute prohibition against the application of a reverse burden of proof.¹⁴⁰ The Court noted the following principles to be considered when making an assessment as to whether a particular provision offended the right to a fair hearing:

- the opportunity for the defendant to rebut the presumption;
- the court's power to assess the evidence;
- the importance of the issues at stake; and
- the prosecution's ability to prove its case in the absence of the presumption.¹⁴¹

In the earlier case of *Attorney General of Hong Kong v Lee Kwong-Kut*,¹⁴² the Court stated that:

Whether they [reverse burdens] are justifiable will in the end depend upon whether it remains primarily the responsibility of the prosecution to prove the guilt of the accused to the required standard and whether the exception is reasonably imposed, notwithstanding the importance of maintaining the principle [of the presumption of innocence].

The right to have legal aid provided where required in the interests of justice is important as:

For the poor and disadvantaged who are most vulnerable to having their human rights infringed, legal aid can be indispensable for obtaining redress against the infringement and vindication of their rights through the legal process.¹⁴³

However, a lack of legal aid, and any subsequent lack of legal representation, does not necessarily limit the right to a fair trial. In *Slaveski v Smith*,¹⁴⁴ the Victorian Court of Appeal considered that the right to a fair hearing might not necessarily be breached by a lack of legal representation. Rather the court must be satisfied that the case will be presented in such a way that the court cannot reach a just decision.¹⁴⁵ That same case confirmed that the eligibility for legal aid under the relevant legal aid legislation qualifies this right.¹⁴⁶

The right to have a conviction or sentence reviewed by a higher court must allow an effective and substantive right of appeal. In *Reid v Jamaica*,¹⁴⁷ 'the UN HRC said that the equivalent ICCPR right imposes an obligation on the higher court to substantially review the conduction and sentence'. This does not necessarily mean the scope of the right extends to a retrial and or to the right to admit further evidence that was available but not admitted at any initial trial.¹⁴⁸ Further, a right to seek leave to appeal may be sufficient.¹⁴⁹

Does the current SVO scheme limit this right?

The Council's view is that the current SVO scheme does not limit the right to a fair trial as it does not limit the courts' independence or impartiality. While the court is limited in its discretion where the making of an SVO declaration is required by law, there is no anterior determination by the executive branch that affects the application of the scheme

¹³⁶ Ibid [149].

¹³⁷ *X7 v Australian Crime Commission* (2013) 248 CLR 92; [2013] HCA 29, [38], [160].

¹³⁸ Pound and Evans (n 33) 229.

¹³⁹ [2010] EWCA Crim 2819.

¹⁴⁰ Ibid [15].

¹⁴¹ Ibid, citing *Salabiaku v France* [1988] 13 EHRR 379.

¹⁴² [1993] AC 951, 969.

¹⁴³ *Bayley v Nixon* [2015] VSC 744, [37].

¹⁴⁴ *Slaveski v Smith* (2012) 34 VR 206; [2012] VSCA 25, [55].

¹⁴⁵ Ibid [52].

¹⁴⁶ Ibid.

¹⁴⁷ Human Rights Committee, *Reid v Jamaica: Communication No 355/1989*, 51st sess, UN Doc CCPR/C/51/D/355/1989 (14 July 1994).

¹⁴⁸ Pound and Evans (n 73) 242.

¹⁴⁹ Human Rights Committee, *Peter Lumley v Jamaica: Communication No 662/1995*, 65th sess, UN Doc CCPR/C/65/D/662/1995 (30 April 1999).

which is an essential element in the court's decision-making.¹⁵⁰ The scheme operates in accordance with laws passed by Parliament that do not rely on the independent exercise of executive power.

The current SVO scheme also does not infringe upon the minimum guarantees to a fair trial. The Law Council of Australia has commented that:

While there may be a right to appeal the conviction for an offence, mandatory sentences prevent substantial review of the penalty. This means that in cases of mandatory minimum penalties Australia may fail to ensure the right of appeal to a higher court for review of a sentence in contravention of Article 14(5) of the ICCPR.¹⁵¹

However, the current SVO scheme does not impose mandatory minimum sentences but rather mandatory minimum non-parole periods which require a set proportion of the sentence to be served in custody. Courts are able to set head sentences in accordance with the range of mitigating and aggravating factors present in any particular case and for the purposes of taking the making of a declaration and its consequences into account. Head sentences are often set towards the lower end of the sentencing range where a declaration is made to take the longer non-parole period into account to ensure the sentence imposed is just in all the circumstances.¹⁵²

Sentences imposed for offences that carry SVO declarations are often appealed,¹⁵³ and are capable of substantial review by the Court of Appeal, which can alter the head sentence, or in cases where a discretionary declaration has been made — remove that declaration, if appropriate.

Do the reforms recommended by the Council limit this right?

If a broad interpretation of these rights is taken, it may be argued that the Council's reforms limit some of the minimum guarantees in relation to criminal proceedings and therefore potentially limit the right to a fair trial.

Under the Council's proposals, the scheme applies presumptively to all cases that receive a term of imprisonment over 5 years for a listed offence. The defence, rather than the prosecution, will bear the onus of establishing that it is 'in the interests of justice' to depart from the scheme. This is in contrast to the current scheme under which the making of declarations on a discretionary basis relies on prosecution submissions. However, there are other instances when the defence has the burden in certain sentencing matters, for example in proving there are exceptional circumstances to avoid an actual term of imprisonment when a person is sentenced for an offence of a sexual nature committed in relation to a child under 16 years or a child exploitation material offence.¹⁵⁴

The reversal of onus may necessitate more complex defence submissions and additional resources to support departure from an otherwise adverse consequence that could result in delayed parole eligibility. While departure from the scheme is envisioned in a range of diverse circumstances, the Council considers factors relevant to an assessment of an offender's culpability to be of central importance in making this determination given its impact on the assessment of offence seriousness. This may increase the need for specialist reports to be presented to the court to provide evidence of certain factors, such as an offender's mental illness or cognitive impairment, relevant to sentencing. Obtaining specialist reports might be more difficult for certain defendants, such as those from lower socio-economic or disadvantaged backgrounds, including Aboriginal and Torres Strait Islander peoples, especially if such reports are not legally aided.

In the Council's view, the adoption of a presumptive scheme does not limit the right to minimum guarantees as it does not impact upon the significant consequence of whether a person is convicted of an offence and where the court finds it is not 'in the interests of justice' to depart, the court's ability to set parole eligibility within a range of 50–80 per cent, ensures that the defendant is not subject to a severe or disproportionate outcome. Further, the defendant has the opportunity to rebut the presumption and the standard for doing so is broad and less onerous than other possible tests.¹⁵⁵ A number of factors relevant to departure would be raised in the course of usual sentencing submissions and it may be unnecessary to obtain specialist reports. The Council has deliberately avoided recommending that certain evidentiary requirements should be met with respect to evidence which can be used to

¹⁵⁰ Ibid. See para [140] which contrasts the legislation in question with the case of *Thomas v Mowbray* 233 CLR 307. In that case, section 104.4 of the Criminal Code (Cth) 'required, among other matters, that the court be satisfied on the balance of probabilities that the making of the interim control order "would substantially assist in preventing a terrorist act" or that the person in question had "provided training to, or received training from, a listed terrorist organisation", these being offences under ss 101.1 and 102.5 of the Criminal Code. There was no anterior determination by the executive branch which was an essential element in the curial decision' at [140].

¹⁵¹ Law Council of Australia, *Mandatory Sentencing* (Policy Discussion Paper, May 2014) 23.

¹⁵² Refer to Part C for further information about the downward pressure on head sentences caused by the SVO scheme.

¹⁵³ See Part B, Chapter 8.

¹⁵⁴ PSA (n 4) s 9(4)(c).

¹⁵⁵ Refer to Part D, section 18.6 for other tests considered by the Council. The 'interests of justice' test is broad and derives substance from its context: *BHP Billiton Ltd v Shultz* [2004] 221 CLR 400, HCA 61. The 'interests of justice' test is currently applied in relation to other aspects of sentencing in Queensland. For example, see PSA s 146(2A). For consideration of the various tests see Part D [4.6.2].

support the identified factors.¹⁵⁶ This is in contrast, for example, to the South Australian legislation, which requires the person to give evidence on oath to demonstrate that departure from the mandatory minimum non-parole period is warranted.¹⁵⁷

The Council has recommended that consultation occur to consider the adequacy of funding in support of defendants' legal representation and the preparation of any required specialist reports.¹⁵⁸ However, the Council notes any lack of legal aid is qualified by the Legal Aid legislation and further does not undermine the right to a fair trial as the court can still reach a just decision. Where the court considers it would be unable to reach a 'just decision' without a specialist report, there exists the power for a court to order a pre-sentence report per section 344 of the *Corrective Services Act 2006* (Qld), though the Council acknowledges this power is rarely exercised. Should the government reach the view that the reversal of onus does limit the right to minimum guarantees, the Council has undertaken a comprehensive analysis of the remaining steps below.

The Council's reforms will not affect the right of an offender to have their sentence reviewed by the Court of Appeal, consistent with the operation of the current scheme. The only mandatory component of the new scheme is that a judge, after deciding that it is not in the interests of justice to depart from the scheme, must impose a parole eligibility date between 50–80 per cent. Any sentencing decision is available to be substantively reviewed by a higher court. The Council's recommendations will therefore not limit this right.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

As stated above, the purpose of the Council's reform scheme is to promote community and victim confidence in sentencing for serious offences. Confidence in sentencing can be achieved with increased consistency and by promoting transparency in the scheme's application. The Council's reform recommendation of a presumptive declaration of the scheme in particular instances, with the onus on defence to demonstrate why departure from the scheme is warranted, aims to improve consistency in application, aligning with the value of equality before the law. Transparency is promoted by the provision of reasons required for departure, or to justify the setting of parole eligibility at a particular point within the specified range.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Any perceived limit on the presumption of innocence effected by the Council reforms of the declaratory presumption and associated reversal of onus to avoid its application helps to ensure that all eligible cases with a sentence above 5 years are recognised consistently as being a 'serious offence', while also allowing a judge to have flexibility to depart where satisfied it 'is in the interests of justice to do so'.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

A mandatory application of the scheme, similar to that which applies in the current scheme for specific offences that attract sentences of imprisonment of 10 years or more, promotes the greatest level of consistency. However, the potential for unjust outcomes that may result from a mandatory scheme would undermine confidence in sentencing and, as discussed above, may limit offenders' rights to not be arbitrarily detained in a way that is not reasonable and justifiable.

A presumptive scheme is a less restrictive way to achieve consistency to promote confidence in sentencing without jeopardising the effectiveness of the scheme's operation and achievement of its objectives.

Recognising the potential concerns inherent in adoption of a presumptive model, there exist a number of safeguards in the Council's reform recommendations to ensure the presumption is applied fairly. Council has recommended the 'interests of justice' be adopted on the basis this is the least restrictive and reasonably available test that still meets the scheme's objectives. Tests considered by the Council for departure, including where 'exceptional circumstances' 'special reasons' or 'special circumstances' can be shown, are more restrictive, while other tests (such as where 'the court orders otherwise') would be too wide and do little to achieve the purpose of consistency.¹⁵⁹

¹⁵⁶ On the general evidentiary standard that applies to fact finding on sentencing, see *Evidence Act 1977* (Qld) s 132C.

¹⁵⁷ *Sentencing Act 2017* (SA) s 54(4). The requirement to give evidence on oath does not require that a defendant personally give evidence — see for example *R v Douglass* [2019] SASCFC 67 where the only evidence given on oath was by a forensic psychologist who had assessed the defendant.

¹⁵⁸ See Part D, Chapter 19.

¹⁵⁹ See Part D [4.6.4].

(g) the balance between: (e) the importance of the purpose of the limitation; and (f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right.

Providing consistency and transparency in the interests of increased victim and community confidence in sentencing for serious offences is important.¹⁶⁰ If it is determined that the Council's reform recommendations provide a limitation on the minimum guarantees in the criminal process it is contended that the limit is not arbitrary or disproportionate. The proposed reform is the least restrictive and reasonably available way to achieve the purpose.

As such, should government conclude that the rights discussed here are limited, it is the Council's view that any limitation there might be is reasonably and justifiably demonstrable having reference to the above analysis.

¹⁶⁰ On the importance of consistency and how this applies to sentencing see, for example: Sarah Krasnostein and Arie Freiberg, 'Pursuing Consistency in an Individualistic Sentencing Framework: If You Know Where You Are Going, How Do You Know When You've Got There?' (2013) 76 *Law and Contemporary Problems* 265; and Australian Law Reform Commission, *Same Crime, Same Time: Sentencing of Federal Offenders* (Report No 103, 2006) 153–154 [5.16]–[5.18] ('*Same Crime, Same Time*'). On the importance of transparency in promoting public confidence as this applies to the giving of reasons for sentencing decisions, see ALRC, *Same Crime, Same Time*, 486 [19.11].

Appendix 16: Names of MNPP provisions in other jurisdictions

Table A9: Names of Australian sentencing schemes for serious offences

Nature of the scheme or the offences	Consequences of the making the declaration
Cth: 'Three-quarters' rule for national security offences	Cth: Mandatory minimum sentences for specified Commonwealth child sex offences or child sexual abuse offences Minimum head sentences and non-parole period for people smuggling offences
NSW: Standard non-parole period scheme	NT: Mandatory imprisonment for certain violent offences Minimum non-parole periods for certain sexual offences, drug offences and offences against children under 16 years
SA: Serious repeat offenders scheme	SA: Mandatory minimum non-parole period for serious offences against the person
VIC: Standard sentences scheme Serious offenders scheme	VIC: Mandatory imprisonment for a Category 1 or Category 2 offence Statutory mandatory minimum sentences and non-parole periods
WA: 'Serious offence' declaration	WA: Mandatory minimum terms of imprisonment Mandatory minimum terms for prescribed offences

Appendix 17: Crime harm indexes

All crimes are not equal when considering seriousness, severity and harm. Australian and international researchers, have examined offences with the aim of ranking them from most to least serious or causing most to least harm.

In 2011 the Victorian Sentencing Advisory Council¹ considered 19 'serious and significant offences' and ranked them in order of seriousness, using two scales of measurement: the percentage of charges that received a sentence of imprisonment, and the median imprisonment sentence. Offences that involved the death of a victim were deemed to be the most serious and, of those, offences where the offender's action was intentional was higher than those with mitigating factors or resulting in an unintentional death. Murder received the highest score followed by defensive homicide (ranked second) and manslaughter was ranked fourth. Similarly for offences where the offender inflicted serious injury upon a victim, those that were intentional were ranked higher than those that were accidental – the offence of intentionally causing serious injury was ranked 11th while recklessly causing serious injury was ranked 18th. Sexual offences were ranked in positions 5, 6, 7, 8, 10, and 16 (out of 19). Ranking scores for sexual offences varied by the age of the victim (offending against a child was more serious), whether the offending was penetrative, and the relationship of the offender to the victim (offending by family members ranked higher). The seriousness of drug trafficking was influenced by the quantity of the drugs, with large commercial quantity being more serious (ranked third) than a commercial quantity (ranked ninth).

The Victorian Sentencing Advisory Council also considered community perceptions of offence serious,² by conducting community panel sessions across Victoria with 244 people. A paired comparisons method was used, where participants were presented with a pair of offences and asked to indicate which they believed to be more serious. Participants also completed a vignette ranking exercise, by ranking each offence vignette on a seriousness scale from 1 (least serious) to 10 (most serious). A qualitative discussion was also undertaken. Broadly, the research found that offences involving intentional infliction of death or injury or sexual offending against young children are most serious.

Fox and Freiberg's earlier Victorian research,³ developed an offence seriousness scale for the purpose of reviewing statutory maxima. Sentencing practices and prevalence of the offence were considered, as well as the degree of harm, culpability and elements of aggravation. Offences were placed in divisions according to seriousness. Murder was ranked as the most serious offence (division 1), followed by manslaughter, aggravated rape, sexual penetration with a child under 10 and kidnapping (division 2). Division 3 included causing serious injury intentionally, rape, and sexual penetration of a child aged between 10 and 16 in aggravated circumstances.

The Australian Bureau of Statistics ('ABS') developed the National Offence Index ('NOI')⁴ as a tool for ranking offences according to their perceived seriousness. The development of the NOI considered multiple factors, including sentencing practices and consultation with the public and experts in the criminal justice field. Homicide offences (including murder, attempted murder, manslaughter and dangerous driving causing death) were ranked the most serious, being the top 6 offences. These are followed by sexual offences (ranked 7 through 15), then serious drug offences (ranked 16 through 24).

The NSW Bureau of Crime Statistics and Research⁵ found similar results in its assessment of both the Median Sentence Ranking ('MSR') and the Median Statutory Maximum Ranking ('MSMR') on measuring offence seriousness. The top 10 offences using the MSR involved the death of a person, sexual offences against a child, and drug-related offences. In the results for the MSMR, murder remained the top offence, however commercial quantity drug offences and importing drugs were the second and third, due to the maximum sentence available for these offences. They were followed by attempted murder and manslaughter.⁶

The Queensland Police Service ('QPS') developed a Queensland crime harm index ('CHI'). QPS commissioned the Griffith Criminology Institute to research the harm caused by crime and to develop a single numeric harm value for an offence.⁷ Perspectives of the Queensland community were collected via a telephone survey with 2000 people. Respondents were asked how much harm they thought each of 33 crimes caused to the victims, their families and

¹ Geoff Fisher, *Sentencing Severity for 'Serious' and 'Significant' Offences: A Statistical Report* (Report, Victorian Sentencing Advisory Council September 2011).

² Sentencing Advisory Council. *Community Attitudes to Offence Seriousness* (Report, May 2012).

³ Richard Fox and Arie Freiberg, 'Ranking Offence Seriousness in Reviewing Statutory Max Penalties' (1990) 23 *Australian and New Zealand Journal of Criminology* 165.

⁴ Australian Bureau of Statistics, *National Offence Index* (Catalogue No 1234.0.55.001, 5 September 2018).

⁵ Ian MacKinnel, Patrizia Poletti and Matthew Holmes, *Measuring Offence Seriousness* (Crime and Justice Bulletin: Contemporary Issues in Crime and Justice No 142, NSW Bureau of Crime Statistics and Research, August 2010).

⁶ Ibid 9.

⁷ Kristina Murphy, 'What Do Communities Care About: Outcomes from the Queensland Crime Harm Survey' (Conference Paper, QPS-Griffith University Future of Policing Symposium, 7 August 2019).

the community. Responses were weighted to create a ranking. The top 10 offences in order of the perception of harm caused according the Queensland public were:

1. child sexual abuse
2. murder
3. rape
4. child physical abuse causing physical injury
5. domestic violence
6. terrorism
7. death caused by driving
8. sexual assault other than rape
9. grievous bodily harm
10. drug trafficking.⁸

A crime harm index was also developed in Western Australia.⁹ The Western Australian Crime Harm Index ('WACHI') considered 88 offence types and included cases sentenced in the Western Australian criminal or traffic courts between January 2010 and June 2017 for first-time offenders who received either imprisonment, detention, community sentences with a monetary penalty, or a fine. The eligible court data was used to derive the median number of prison days for each offence – monetary penalties were converted into prison days based on the number of days it would take to pay the penalty at minimum wage (assuming all of the wage was paid towards the fine).

The top 10 offences from WACHI, in order of highest to lowest harm, were:

1. murder
2. manslaughter
3. aggravated sexual assault
4. sexual penetration
5. acts intended to cause GBH
6. acts/omissions with intent to harm
7. sexual penetration of child under 13 years
8. robbery with aggravation
9. robbery while armed
10. armed robbery in company.¹⁰

Internationally, many jurisdictions (including the United Kingdom, Canada and New Zealand) have undertaken ranking offences by seriousness or harm.

The United Kingdom has developed both a crime harm index and a crime severity score. The Cambridge Crime Harm Index ('CCHI')¹¹ uses sentencing guidelines as a proxy to measure harm. The Crime Severity Score ('UK CSS') uses the average sentence length in days for each offence to weight offences according to seriousness¹² (non-custodial sentences were converted into an equivalent number of prison days for calculation purposes).

The Canadian Crime Severity Index ('CSI') measures the change in the level of severity of crime in Canada from year to year.¹³ It considers both the prevalence and the seriousness of the offence. The average sentence given by Canadian courts for each offence is used to weight the volume of each offence to create a severity score.¹⁴

New Zealand also developed both a seriousness score and crime harm index: the Justice Sector Seriousness Score ('JSSS') and New Zealand crime harm index ('NZ CHI'). The JSSS quantifies the relative seriousness of offences using the average number of prison days (or home detention days, or statistical equivalents to prison days for community

⁸ Kristina Murphy, 'What Do Communities Care About: Outcomes from the Queensland Crime Harm Survey' (Conference Hand-out, QPS-Griffith University Future of Policing Symposium, 7 August 2019).

⁹ Paul D. House and Peter. W Neyroud, 'Developing a Crime Harm Index for Western Australia: the WACHI' (2018) 2(1-2) *Cambridge Journal of Evidence-based Policing* 70.

¹⁰ Ibid 79.

¹¹ Lawrence Sherman, Peter William Neyroud and Eleanor Neyroud, 'The Cambridge Crime Harm Index: Measuring Total Harm from Crime Based on Sentencing Guidelines' (2016) 10(3) *Policing: A Journal of Policy and Practice* 171.

¹² Office for National Statistics, Research Outputs: Developing a Crime Severity Score for England and Wales using Data on Crimes Recorded by the Police (Report, 30 November 2016).

¹³ Statistics Canada, *Crime Severity Index and Weighted Clearance Rates, Canada, Provinces, Territories and Census Metropolitan Areas* (Table 35-10-0026-01, 27 July 2021).

¹⁴ Government of Canada, 'Violent crime severity', *Government of Canada* (Data, 27 January 2021) <<https://open.canada.ca/data/en/dataset/30f090e5-5b9c-43b1-aa53-e3bcab8c9c23>>.

work or fines) for an offence imposed by courts.¹⁵ The NZ CHI estimates the minimum sentence for a first-time offender based on sentencing data for each offence using the average time served in prison.¹⁶

The WACHI project compared its results to that of other crime harm and seriousness/severity indexes using similar methodology. Table A10 shows the median days of imprisonment for the same offence types for the WA maximum sentence values,¹⁷ the WACHI, the UK CCHI, the UK CSS, the NZ CHI, and the NZ JSSS. The results are shown in descending order by the WACHI scores. Consistently murder, manslaughter and sexual assault (rape) are the top 3 offences, however the order varies slightly for the JSSS compared to the other studies.

Table A10: WACHI scores in comparison to other severity and harm scores

Offence	WA Max	WACHI	UK CCHI	UK CSS	NZ CHI	NZ JSSS
Murder	9125	6023	5475	7979	1629	12,045
Manslaughter	7300	2370	3825	7979	1687	1983
Sexual assault (rape)	7300	1140	1825	2895	1172	3627
Armed robbery	5110	760	365	746	742	1738
Robbery	3650	730	365	746	155	475
Grievous bodily harm	3650	545	1460	1965	425	892
Damage (arson)	9125	377	33	185	110	474
Dwelling burglary	7300	39	20	438	63	171
Assault occasioning bodily harm	3650	18	20	184	108	192
Stalking	2920	12	42	51	10	76
Motor vehicle theft	2555	8	5	124	12	177
Common assault	745	8	1	16	13	12
Threatening behaviour	2555	8	10	280	4	14
Graffiti implements	993	6	2	7	5	1
Fraud	2555	5	10	200	48	170
Damage (property)	3650	5	2	7	45	58
Disorderly conduct (public fear)	59	5	5	10	2	2
Harassment	365	5	10	39	10	11
Breach of restraining order	365	3	6	54	9	73
Theft	5110	3	2	86	10	25

Source: Paul D. House and Peter. W Neyroud, 'Developing a Crime Harm Index for Western Australia: the WACHI' (2018) 2(1-2) *Cambridge Journal of Evidence-based Policing* 70, 88.

While there are various approaches to considering and measuring the concepts of crime harm, seriousness and severity, there are similarities among the results. Homicide offences are consistently ranked highly, along with sexual violence offences and other forms of violence.

¹⁵ Charles Sullivan, Ong Su-Wuen and Rory McRae, *Justice Sector Seriousness Score (2016 Update): FAQs* (Working Paper, New Zealand Ministry of Justice, 1 February 2017)

¹⁶ Sophie Curtis-Ham and Darren Walton, 'The New Zealand Crime Harm Index: Quantifying Harm Using Sentencing Data' (2017) 12(4) *Policing: A Journal of Policy and Practice* 455.

¹⁷ This refers to a review conducted by the WA Police Evidence-Based Policing Division. Based on their review, they concluded that maximum legislated penalties were not an appropriate metric to measure crime harm in Western Australia — and for this reason, this project has not been discussed in this report. This review is cited by Paul D. House and Peter. W Neyroud, 'Developing a Crime Harm Index for Western Australia: the WACHI' (2018) 2(1-2) *Cambridge Journal of Evidence-based Policing* 70.

Appendix 18: Council's consideration of offences for inclusion in new scheme

Schedule 1 offences – proposed reforms

This table sets out the current offences in Schedule 1, as well as additional offences recommended by stakeholders and considered by the Council for inclusion or exclusion.

Where the offence particulars do not correspond to a maximum penalty, the maximum penalty is greyed out in the right-hand column.

Criteria recommended by Council:

- The offence has a significant maximum penalty
- The offence is triable only on indictment—or is most commonly dealt with in this way
- The offence involve the use, or threatened use, of serious non-sexual and sexual violence against the person, and/or are offences that can result in, or create conditions in which, serious harm of a sexual or non-sexual nature can be caused to another person
- The offence can involve a circumstance of aggravation (e.g. victim age, use of weapons, injury to victim)
- The offence may involve a vulnerable victim (e.g. a child, a person with a disability, or an elderly person)
- The offence involves special risk of serious consequence to the victim and/or the community

Criminal Code (current and proposed)

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
Riot	s 61(1)	If— (a) 12 or more persons who are present together (<i>assembled persons</i>) use or threaten to use unlawful violence to a person or property for a common purpose; and (b) the conduct of them taken together would cause a person in the vicinity to reasonably fear for the person's personal safety; each of the assembled persons commits the crime of taking part in a riot.		This offence is excluded . It meets some but not all of the criteria. Section 61(1)(a): <ul style="list-style-type: none">• Has a significant maximum penalty• Is triable on indictment only• Involves the use of violence• Involves a circumstance of aggravation
	s 61(1)(a)	If the offender causes grievous bodily harm to a person, causes an explosive substance to explode or destroys or starts to destroy a building, vehicle or machinery	Life imprisonment	While this offence meets many of the criteria, it was excluded on the basis that the subsection is very broad in nature. On the rare occasion that this offence would be charged, the court retains the power to delay parole eligibility where appropriate. Section 61(1)(b): <ul style="list-style-type: none">• Is triable on indictment only• Involves the use of violence• Involves a circumstance of aggravation
	s 61(1)(b)	i. If the offender is armed with a dangerous or offensive weapon, instrument or explosive substance; or ii. If property is damaged, whether by the offender or another of the assembled persons	7 years	
	s 61(1)(c)	Otherwise	3 years	

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
				Section 61(1)(c) does not have a maximum penalty which would meet the recommended penalty threshold,
Threatening violence	s 75(1)	-Any person who— (a) with intent to intimidate or annoy any person, by words or conduct threatens to enter or damage a dwelling or other premises; or (b) with intent to alarm any person, discharges loaded firearms or does any other act that is likely to cause any person in the vicinity to fear bodily harm to any person or damage to property;	2 years	This offence is excluded . It does not have a maximum penalty which would meet the recommended penalty threshold.
	s 75(2)	If the offence is committed in the night the offender is guilty of a crime	5 years	
Escape by persons in lawful custody	s 142	A person who escapes from lawful custody is guilty of a crime.	7 years	This offence is excluded . It does not usually meet any of the criteria.
Indecent treatment of children under 16	s 210(1)	Any person who— (a) unlawfully and indecently deals with a child under the age of 16 years; or (b) unlawfully procures a child under the age of 16 years to commit an indecent act; or (c) unlawfully permits himself or herself to be indecently dealt with by a child under the age of 16 years; or (d) wilfully and unlawfully exposes a child under the age of 16 years to an indecent act by the offender or any other person; or (e) without legitimate reason, wilfully exposes a child under the age of 16 years to any indecent object or any indecent film, videotape, audiotape, picture, photograph or printed or written matter; or (f) without legitimate reason, takes any indecent photograph or records, by means of any device, any indecent visual image of a child under the age of 16 years; is guilty of an indictable offence.		This offence is included . Each subsection meets most, if not all, of the criteria: <ul style="list-style-type: none">• Has a significant maximum penalty• Subsections subject to a 20 year penalty are triable on indictment only¹• Involves sexual violence• Involves circumstances of aggravation (e.g. victim age or relationship)• Involves a vulnerable victim (i.e. a child)• Involves special risk of serious consequences to the victim and/or the community.
	s 210(2)	If the child is of or above the age of 12 years	14 years	
	s 210(3)	If the child is under the age of 12 years	20 years	
	s 210(4)	If the child is, to the knowledge of the offender, his or her lineal descendant or if the offender is the guardian of the child or, for the time being, has the child under his or her care	20 years	

¹ Offences against s 210(2) are defendant's election for summary prosecution if the complainant was 14 years of age or over and the defendant pleads guilty – s 552B(1)(a).

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
	s 210(4A)	If the child is a person with an impairment of the mind	20 years	
Owner etc. permitting abuse of children on premises	s 213(1)	Any person who, being the owner or occupier of any premises, or having, or acting or assisting in, the management or control of any premises, induces or knowingly permits any child under the age of 16 years to be in or upon the premises for the purpose of any person, whether a particular person or not, doing an act in relation to the child (a <i>proscribed act</i>) defined to constitute an offence in section 210 or 215 is guilty of an indictable offence.		<p>This offence is included. Each subsection meets most of the criteria:</p> <ul style="list-style-type: none"> Has a significant maximum penalty Offences under s 213(3) are triable on indictment only Is an offence that can result in or create conditions in which serious harm of a sexual nature can be caused to another person Involves a circumstance of aggravation (e.g. victim age) Involves a vulnerable victim (i.e. a child) Involves special risk of serious consequences to the victim and/or the community
	s 213(2)	If the child is of or above the age of 12 years	10 years	
	s 213(3)(a)	If the child is under the age of 12 years and the prescribed act constituted s 215 (Carnal knowledge)	Life imprisonment	
	s 213(3)(b)	Any other case where the child is under the age of 12 years	14 years	
Carnal knowledge with or of children under 16	s 215(1)	Any person who has or attempts to have unlawful carnal knowledge with or of a child under the age of 16 years is guilty of an indictable offence.		<p>This offence is included. Each subsection meets most, if not all, of the criteria:</p> <ul style="list-style-type: none"> Has a significant maximum penalty Most subsections are triable on indictment only² Involves sexual violence Involves circumstances of aggravation (e.g. victim age or relationship) Involves a vulnerable victim (i.e. a child) Involves special risk of serious consequences to the victim and/or the community
	s 215(2)	If the child is of or above the age of 12 years	14 years	
	s 215(3)	If the child is under the age of 12 years	Life imprisonment	
	s 215(3)	If the child is under the age of 12 years and it was attempted carnal knowledge	14 years	
	s 215(4)	If the child is not the lineal descendant of the offender but the offender is the child's guardian or, for the time being, has the child under the offender's care	Life imprisonment	
	s 215(4)	If the child is not the lineal descendant of the offender but the offender is the child's guardian or, for the time being, has the child under the offender's care and it was attempted carnal knowledge	14 years	
	s 215(4A)	If the child is a person with an impairment of the mind	Life imprisonment	
Abuse of persons with an impairment of the mind	s 216(1)	Any person who has or attempts to have unlawful carnal knowledge with or of a person with an impairment of the mind (excepting s216(3)(a) and (b))	14 years	<p>This offence is included. Each subsection meets most, if not all, of the criteria:</p> <ul style="list-style-type: none"> Has a significant maximum penalty
	s 216(2)	Any person who (excepting s216(3)(a) and (b))— <ul style="list-style-type: none"> unlawfully and indecently deals with a person with an impairment of the mind; or 	10 years	

² Offences against s 215(2) are defendant's election for summary prosecution if the complainant was 14 years of age or over and the defendant pleads guilty – s 552B(1)(a).

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
		<ul style="list-style-type: none"> unlawfully procures a person with an impairment of the mind to commit an indecent act; or unlawfully permits himself or herself to be indecently dealt with by a person with an impairment of the mind; or wilfully and unlawfully exposes a person with an impairment of the mind to an indecent act by the offender or any other person; or without legitimate reason, wilfully exposes a person with an impairment of the mind to any indecent object or any indecent film, videotape, audiotape, picture, photograph or printed or written matter; or without legitimate reason, takes any indecent photograph or records, by means of any device, any indecent visual image of a person with an impairment of the mind; 		<ul style="list-style-type: none"> Most subsections are triable on indictment only Involves sexual violence Involves a circumstance of aggravation (e.g. relationship) Involves a vulnerable victim (i.e. person with an impairment of the mind) Involves special risk of serious consequences to the victim and/or the community
	s 216(3)(a)	If the person with an impairment of the mind is not the lineal descendant of the offender but the offender is the guardian of that person or, for the time being, has that person under the offender's care and it involves unlawful carnal knowledge	Life imprisonment	
	s 216(3)(b)	If the person with an impairment of the mind is not the lineal descendant of the offender but the offender is the guardian of that person or, for the time being, has that person under the offender's care and it involves attempted unlawful carnal knowledge	Life imprisonment	
	s 216(3)(c)	If the person with an impairment of the mind is not the lineal descendant of the offender but the offender is the guardian of that person or, for the time being, has that person under the offender's care and it involves an offence defined in s 216(2)	14 years	
	s 216(3A)	In the case of an offence defined in subsection (2), if the person with an impairment of the mind is, to the knowledge of the offender, the offender's lineal descendant	14 years	
Procuring a young person etc. for carnal knowledge	s 217(1)	A person who procures a person who is not an adult or is a person with an impairment of the mind to engage in carnal knowledge (either in Queensland or elsewhere) commits a crime.	14 years	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> Has a significant maximum penalty Can be tried on indictment – summary disposition only available if victim over 14 years of age, defendant pleads guilty and defendant elects for summary jurisdiction. Involves sexual violence Involves a vulnerable victim (i.e. a child or a person with impairment of the mind) Involves special risk of serious consequences to the victim and/or the community
Procuring sexual acts	s 218(1)	A person who—	14 years	This offence is included . It meets most of the criteria:

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
by coercion etc.		a) by threats or intimidation of any kind, procures a person to engage in a sexual act, either in Queensland or elsewhere; or b) by a false pretence, procures a person to engage in a sexual act, either in Queensland or elsewhere; or c) administers to a person, or causes a person to take, a drug or other thing with intent to stupefy or overpower the person to enable a sexual act to be engaged in with the person;		<ul style="list-style-type: none"> Has a significant maximum penalty Can be tried on indictment – summary disposition only available if victim over 14 years of age, defendant pleads guilty and defendant elects for summary jurisdiction. Involves sexual and non-sexual violence Involves special risk of serious consequences to the victim and/or the community
Taking a child for immoral purposes	s 219(1)	Any person who takes or entices away, or detains a child who is under the age of 16 years and is not the husband or wife of that person for the purpose of any person, whether a particular person or not, doing an act in relation to the child (a <i>proscribed act</i>) defined to constitute an offence in <u>section 210</u> or <u>215</u> is guilty of a crime.		This offence is included . Each subsection meets most, if not all, of the criteria: <ul style="list-style-type: none"> Has a significant maximum penalty Most subsections are triable on indictment only May involve sexual or non-sexual violence Involves a circumstance of aggravation (e.g. victim age) Involves a vulnerable victim (i.e. a child) Involves special risk of serious consequences to the victim and/or the community
	s 219(2)	If the child is of or above the age of 12 years	10 years	
	s 219(3)(a)	If the child is under the age of 12 years and commits carnal knowledge	Life imprisonment	
	s 219(3)(b)	Any other case and the child is under the age of 12 years	14 years	
Incest	s 222(1)	Any person who— a) has carnal knowledge with or of the person's offspring or other lineal descendant, or sibling, parent, grandparent, uncle, aunt, nephew or niece; and b) knows that the other person bears that relationship to him or her, or some relationship of that type to him or her;	Life imprisonment	This offence is included . Each subsection meets most of the criteria: <ul style="list-style-type: none"> Has a significant maximum penalty Most offences are triable on indictment only³ Involves sexual violence Involves a vulnerable victim Involves special risk of serious consequences to the victim and/or the community
	s 222(2)	Any person who attempts to commit the crime of incest	10 years	
Involving child in making child	s 228A(1)	A person who involves a child in the making of child exploitation material commits a crime.		This offence is included . It meets most of the criteria: <ul style="list-style-type: none"> Has a significant maximum penalty Is triable on indictment only
	s 228A(1)(a)	if the offender uses a hidden network or an anonymising service in committing the offence	25 years	

³ If the complainant was 14 years of age or over and the defendant pleads guilty, it is the defendant's election to have the matter dealt with summarily.

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
exploitation material	s 228A(1)(b)	otherwise	20 years	<ul style="list-style-type: none"> Involves circumstances of aggravation May involve sexual violence Involves a vulnerable victim (i.e. a child) Involves special risk of serious consequences to the victim and/or the community
Making child exploitation material	s 228B(1)	A person who makes child exploitation material commits a crime.		This offence is included . It meets most of the criteria: <ul style="list-style-type: none"> Has a significant maximum penalty Is triable on indictment only Involves circumstances of aggravation May involve sexual violence Involves a vulnerable victim (i.e. a child) Involves special risk of serious consequences to the victim and/or the community
	s 228B(1)(a)	if the offender uses a hidden network or an anonymising service in committing the offence	25 years	
	s 228B(1)(b)	otherwise	20 years	
Distributing child exploitation material	s 228C(1)	A person who distributes child exploitation material commits a crime.		This offence is included . It meets most of the criteria: <ul style="list-style-type: none"> Has a significant maximum penalty Is triable on indictment only Involves circumstances of aggravation Involves a vulnerable victim (i.e. a child) Involves special risk of serious consequences to the victim and/or the community
	s 228C(1)(a)	if the offender uses a hidden network or an anonymising service in committing the offence	20 years	
	s 228(1)(b)	otherwise	14 years	
Possessing child exploitation material	s 228D(1)	A person who knowingly possesses child exploitation material commits a crime.		This offence is included . It meets most of the criteria: <ul style="list-style-type: none"> Has a significant maximum penalty Is triable on indictment only Involves circumstances of aggravation Involves a vulnerable victim (i.e. a child) Involves special risk of serious consequences to the victim and/or the community
	S 228D(1)(a)	if the offender uses a hidden network or an anonymising service in committing the offence	20 years	
	S 228D(1)(b)	otherwise	14 years	
Offences under ss 228DA (Administering child exploitation material website), 228DB (Encouraging use of child exploitation material website) and 228DC (Distributing information about avoiding detection) carry penalties of 14 years or 20 years, depending on if a hidden network or an anonymising network is used.				These offences are excluded . While they meet many of the criteria, the Council considered that the more 'serious offences' were of involving a child in the making of child exploitation material, making child exploitation

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
				material, distributing child exploitation material and possessing child exploitation material as it considered these primary offences to involve or depict actual sexual violence of children. The Council was also reluctant to include these offences given they have rarely been prosecuted in Queensland and it is unknown what the scope of these offences may include, given their potential broad application. On the rare occasions that these offences are prosecuted, the court, in any event, retains the power to delay parole eligibility should it be appropriate.
Maintaining a relationship with a child	s 229B	Any adult who maintains an unlawful sexual relationship with a child under the age of 16 years commits a crime. (An unlawful sexual relationship is a relationship that involves more than 1 unlawful sexual act over any period.)	Life imprisonment	This offence is included . It meets most of the criteria: <ul style="list-style-type: none"> • Has a significant maximum penalty • Is triable on indictment only • Involves sexual violence and may involve non-sexual violence • Involves a vulnerable victim (e.g. a child) • Involves special risk of serious consequences to the victim and/or the community
Procuring engagement in prostitution	s 229G(1)	A person who— a) procures another person to engage in prostitution, either in Queensland or elsewhere; or b) procures another person— i. to leave Queensland for the purpose of engaging in prostitution elsewhere; or ii. to come to Queensland for the purpose of engaging in prostitution; or iii. to leave the other person's usual place of residence in Queensland for the purpose of engaging in prostitution, either in Queensland or elsewhere; commits a crime.	7 years	Section 229G(1) is excluded . It usually does not meet any of the criteria: <ul style="list-style-type: none"> • Does not have a significant maximum penalty • Is subject to summary disposition on defendant election • Does not involve sexual or non-sexual violence • Does not involve a circumstance of aggravation • Does not involve a vulnerable victim • Does not pose a special risk of serious consequence to the victim/community
	s 229G(2)	If the procured person is not an adult or is a person with an impairment of the mind.	20 years	Section 229G(2) is included . It meets most of the criteria: <ul style="list-style-type: none"> • Has a significant maximum penalty • Can be tried on indictment – summary disposition available on defendant election

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
				<ul style="list-style-type: none"> Is an offence that can result in, or create conditions in which, serious harm of a sexual or non-sexual nature can be caused to another person Involves a circumstance of aggravation (e.g. victim age) Involves a vulnerable victim (e.g. a child or a person with impairment of the mind)
Knowingly participating in the provision of prostitution	s 229H(1)	A person who knowingly participates, directly or indirectly, in the provision of prostitution by another person commits a crime.	<p>(a) for a first offence—imprisonment for 3 years; or</p> <p>(b) for a second offence—imprisonment for 5 years; or</p> <p>(c) for a third or subsequent offence—imprisonment for 7 years.</p>	Section 229H(1) is excluded . It does not usually meet any of the criteria and, in most instances, does not have a maximum penalty which would meet the recommended penalty threshold.
	s 229H(2)	However, if a person who is not an adult or is a person with an impairment of the mind is, to the offender's knowledge, engaged in the provision of the prostitution, the offender is liable to a maximum penalty of 14 years imprisonment.	14 years imprisonment	<p>Section 229H(2) is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> Has a significant maximum penalty Can be tried on indictment – summary disposition available on defendant election Is an offence that can result in, or create conditions in which, serious harm of a sexual or non-sexual nature can be caused to another person Involves a circumstance of aggravation (e.g. victim age) Involves a vulnerable victim (e.g. a child or a person with impairment of the mind) <p>Including this offence is consistent with retaining the offence of (aggravated) procuring prostitution.</p>
Misconduct with regard to corpses	s 236(2)	A person who, without lawful justification or excuse, the proof of which lies on the person, improperly or indecently interferes with, or offers any indignity to, any dead human body or human remains, whether buried or not, is guilty of a crime.	5 years	This offence is excluded . It does not have a maximum penalty which would meet the recommended penalty threshold.

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
Murder	s 302	<p>(1) Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say—</p> <p>(a) if the offender intends to cause the death of the person killed or that of some other person or if the offender intends to do to the person killed or to some other person some grievous bodily harm;</p> <p>(aa) if death is caused by an act done, or omission made, with reckless indifference to human life;</p> <p>(b) if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;</p> <p>(c) if the offender intends to do grievous bodily harm to some person for the purpose of facilitating the commission of a crime which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such crime;</p> <p>(d) if death is caused by administering any stupefying or overpowering thing for either of the purposes mentioned in paragraph (c) ;</p> <p>(e) if death is caused by wilfully stopping the breath of any person for either of such purposes;</p> <p>is guilty of "murder" .</p>	Mandatory life imprisonment	This offence is excluded . While it meets the criteria, the Council considered it inappropriate to include this in the reformed scheme as it is already subject to mandatory penalties, and mandatory minimum non-parole periods.
Manslaughter	ss 303(1) and 310	A person who unlawfully kills another under such circumstances as not to constitute murder.	Life imprisonment	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> • Has a significant maximum penalty • Is triable on indictment only • Involves non-sexual violence • May involve a circumstance of aggravation⁴ • May involve a vulnerable victim (e.g. a child, elderly person, or adult victim of DFV) • Involves special risk of serious consequences to the victim and/or the community
Attempted murder	s 306	<p>Any person who—</p> <p>a) attempts unlawfully to kill another; or</p>	Life imprisonment	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> • Has a significant maximum penalty • Is triable on indictment only

⁴ A circumstance of aggravation may be alleged under 161Q of the *Penalties and Sentences Act 1992* (Qld).

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
		<p>b) with intent unlawfully to kill another does any act, or omits to do any act which it is the person's duty to do, such act or omission being of such a nature as to be likely to endanger human life;</p> <p>is guilty of a crime.</p>		<ul style="list-style-type: none"> • Involves non-sexual violence • May involve a circumstance of aggravation⁵ • May involve a vulnerable victim (e.g. a child or adult victim of DFV) • Involves special risk of serious consequences to the victim and/or the community
Conspiring to murder	s 309	Any person who conspires with any other person to kill any person, whether such person is in Queensland or elsewhere, is guilty of a crime.	14 years	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> • Has a significant maximum penalty • Is triable on indictment only • Is an offence that can result in, or create conditions in which, serious harm of a non-sexual nature can be caused to another person • May involve a circumstance of aggravation⁶ • May involve a vulnerable victim (e.g. a child or an elderly person) • Involves special risk of serious consequences to the victim and/or the community
Aiding suicide	s 311	<p>Any person who—</p> <p>(a) procures another to kill himself or herself; or</p> <p>(b) counsels another to kill himself or herself and thereby induces the other person to do so; or</p> <p>(c) aids another in killing himself or herself;</p> <p>is guilty of a crime.</p>	Life imprisonment	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> • Has a significant maximum penalty • Is triable on indictment only • Is an offence that can result in, or create conditions in which, serious harm of a non-sexual nature can be caused to another person • Involves a vulnerable victim (e.g. an elderly person or a person with a mental illness) • Involves special risk of serious consequences to the victim and/or the community
Killing unborn child	s 313(1)	Any person who, when a female is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, the person would be deemed to have unlawfully killed the child, is guilty of a crime, and is liable to imprisonment for life.	Life imprisonment	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> • Has a significant maximum penalty

⁵ Ibid.

⁶ Ibid.

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
	s 313(2)	Any person who unlawfully assaults a female pregnant with a child and destroys the life of, or does grievous bodily harm to, or transmits a serious disease to, the child before its birth, commits a crime.	Life imprisonment	<ul style="list-style-type: none"> Is triable on indictment only Involves non-sexual violence Involves a vulnerable victim (i.e. unborn child) Involves special risk of serious consequences to the victim and/or the community
Unlawful striking causing death	s 314A	(1) A person who unlawfully strikes another person to the head or neck and causes the death of the other person is guilty of a crime.	Life imprisonment	This offence is excluded . While it meets most of the criteria, the Council considered it inappropriate given that it is already subject to a mandatory non-parole period.
Disabling in order to commit indictable offence	s 315	Any person who, by any means calculated to choke, suffocate, or strangle, and with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, renders or attempts to render any person incapable of resistance, is guilty of a crime	Life imprisonment	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> Has a significant maximum penalty Is triable on indictment only Is an offence that can result in, or create conditions in which, serious harm of a non-sexual nature can be caused to another person May involve a vulnerable victim (e.g. a child or adult victim of DFV)
Choking, suffocation or strangulation in a domestic setting	s 315A	<p>(1) A person commits a crime if—</p> <p>(a) the person unlawfully chokes, suffocates or strangles another person, without the other person's consent; and</p> <p>(b) either—</p> <p>i) the person is in a domestic relationship with the other person; or</p> <p>ii) the choking, suffocation or strangulation is associated domestic violence under the <i>Domestic and Family Violence Protection Act 2012</i>.</p>	7 years	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> Is triable on indictment only Involves non-sexual violence Involves an element of aggravation (DFV) Involves a vulnerable victim (e.g. a victim of DFV) Involves a special risk of serious consequences to the victim and/or the community
Stupefying in order to commit indictable offence	s 316	Any person who, with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, administers, or attempts to administer, any stupefying or overpowering drug or thing to any person, is guilty of a crime,	Life imprisonment	<p>This offence is included. It meets some of the criteria:</p> <ul style="list-style-type: none"> Has a significant maximum penalty Is triable on indictment only Is an offence that can result in or create conditions in which, serious harm of a non-sexual nature can be caused to another person
Acts intended to cause GBH and other	s 317	<p>Any person who, with intent—</p> <p>a) to maim, disfigure or disable, any person; or</p>	Life imprisonment	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> Has a significant maximum penalty

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
malicious acts		<p>b) to do some grievous bodily harm or transmit a serious disease to any person; or</p> <p>c) to resist or prevent the lawful arrest or detention of any person; or</p> <p>d) to resist or prevent a public officer from acting in accordance with lawful authority—</p> <p>either—</p> <p>e) in any way unlawfully wounds, does grievous bodily harm, or transmits a serious disease to, any person; or</p> <p>f) unlawfully strikes, or attempts in any way to strike, any person with any kind of projectile or anything else capable of achieving the intention; or</p> <p>g) unlawfully causes any explosive substance to explode; or</p> <p>h) sends or delivers any explosive substance or other dangerous or noxious thing to any person; or</p> <p>i) causes any such substance or thing to be taken or received by any person; or</p> <p>j) puts any corrosive fluid or any destructive or explosive substance in any place; or</p> <p>k) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person;</p> <p>is guilty of a crime.</p>		<ul style="list-style-type: none"> Is triable on indictment only Involves non-sexual violence and causes serious harm to a victim May involve a circumstance of aggravation⁷
Carrying or sending dangerous goods in vehicle	s 317A(1)	<p>Any person who—</p> <p>a) carries or places dangerous goods in or on a vehicle; or</p> <p>b) delivers dangerous goods to another person for the purpose of such goods being placed in or on a vehicle; or</p> <p>c) has dangerous goods in his or her possession in or on a vehicle;</p> <p>is guilty of a crime</p>	14 years	<p>This offence is excluded. It meets some but not many of the criteria:</p> <ul style="list-style-type: none"> Has a significant maximum penalty Is triable on indictment only Does not involve sexual or non-sexual violence May involve a circumstance of aggravation⁸ Does not involve a vulnerable victim Does not involve a special risk of serious consequences to the victim and/or the community

⁷ Ibid.

⁸ Ibid.

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
Obstructing rescue or escape from unsafe premises	s 318	Any person who unlawfully obstructs anyone in the other person's efforts to save the life of someone who is in, or escaping from, dangerous, destroyed or other unsafe premises commits a crime.	Life imprisonment	<p>This offence is excluded. It meets some but not many of the criteria:</p> <ul style="list-style-type: none"> • Has a significant maximum penalty • Is triable on indictment only • Does not involve sexual or non-sexual violence • Does not involve a circumstance of aggravation • Does not involve a vulnerable victim • Does not involve a special risk of serious consequences to the victim and/or the community
Endangering the safety of a person in a vehicle with intent	s 319	A person who does anything that endangers, or is likely to endanger, the safe use of a vehicle, with intent to injure or endanger the safety of any person in the vehicle, whether a particular person or not, commits a crime.	Life imprisonment	<p>This offence is excluded. It meets some but not many of the criteria:</p> <ul style="list-style-type: none"> • Has a significant maximum penalty • Is triable on indictment only • Does not involve sexual or non-sexual violence • May result in or create conditions in which serious harm of a non-sexual nature can be caused to another person • Does not involve a circumstance of aggravation • Does not involve a vulnerable victim • Does not involve a special risk of serious consequence to the victim/community

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
Grievous bodily harm	s 320	Any person who unlawfully does grievous bodily harm to another is guilty of a crime	14 years	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> • Has a significant maximum penalty • Is triable on indictment only • Involves non-sexual violence • May involve a circumstance of aggravation⁹ • May involve a vulnerable victim (e.g. a child or adult victim of DFV) • involve special risk of serious consequences to the victim and/or the community
Torture	s 320A	A person who tortures another person commits a crime.	14 years	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> • Has a significant maximum penalty • Is triable on indictment only • Involves non-sexual violence • May involve a circumstance of aggravation¹⁰ • May involve a vulnerable victim (e.g. a child, person with a mental illness, DFV victim) • Involves special risk of serious consequences to the victim and/or the community
Attempting to injure by explosive or noxious substances	s 321	Any person who unlawfully, and with intent to do any bodily harm to another, puts any explosive or noxious substance in any place whatever, is guilty of a crime.	14 years	<p>This offence is excluded. It meets some of the criteria:</p> <ul style="list-style-type: none"> • Has a significant maximum penalty • Is triable on indictment only • Is an offence that can result in or creates conditions in which serious harm of a non-sexual nature can be caused to another person • May involve a circumstance of aggravation¹¹

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
				<ul style="list-style-type: none"> Does not have a vulnerable victim Does not pose a special risk of serious consequence to victim/community <p>The reason for proposing the exclusion of this offence is based primarily on the offence rarely meeting the level of seriousness that will attract a sentence exceeding the 5-year threshold necessary to engage the presumptive scheme. The Council was also reluctant to include this offence given it has rarely been prosecuted in Queensland and the scope of conduct captured under the offence is unknown. On the rare occasions that this offence is prosecuted, the court, in any event, retains the power to delay parole eligibility should it be appropriate.</p>
Bomb hoaxes	s 321A(1)	Any person who— <ul style="list-style-type: none"> places an article or substance in any place; or sends an article or substance in any way; with the intention of inducing in another person a belief that the article or substance is likely to explode, ignite, or discharge a dangerous or noxious substance, commits a crime.	7 years	This offence is excluded . It does not meet any of the criteria apart from being triable on indictment only.
	s 321A(2)	Any person who, in Queensland or elsewhere, makes a statement or conveys information to another person that he or she knows or believes to be false, with the intention of inducing in that person or another person a belief that an explosive or noxious substance, acid or other thing of a dangerous or destructive nature is present in a place in Queensland, commits a crime.	5 years	Section 321A(2) is excluded . It does not have a maximum penalty which would meet the recommended penalty threshold.
Administering poison with intent to harm	s 322	A person who unlawfully, and with intent to injure or annoy another person, causes a poison or another noxious thing to be administered to, or taken by, any person commits a crime.		
	s 322(a)	if the poison or other noxious thing endangers the life of, or does grievous bodily harm to, the person to whom it is administered or by whom it is taken	14 years	Section 322(a) is included . It meets most of the criteria: <ul style="list-style-type: none"> Has a significant maximum penalty Is triable on indictment only Is an offence that can result in, or create conditions in which serious harm of a non-sexual nature can be caused to another person Involves a circumstance of aggravation

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
	s 322(b)	Otherwise	7 years	<ul style="list-style-type: none"> Involves special risk of serious consequences to the victim <p>Section 322(b) is excluded. It does not meet any of the criteria, apart from being triable on indictment only.</p>
Wounding	s 323	A person who unlawfully wounds anyone else commits a misdemeanour.	7 years	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> Is triable on indictment only Involves non-sexual violence May involve a circumstance of aggravation Involves special risk of serious consequence to the victim
Female genital mutilation	s 323A(1)	(1) Any person who performs female genital mutilation on another person is guilty of a crime.	14 years	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> Has a significant maximum penalty Is triable on indictment only Involves sexual violence Involves a vulnerable victim Involves special risk of serious consequences to the victim and/or the community
Failure to supply necessities	s 324	Any person who, being charged with the duty of providing for another the necessities of life, without lawful excuse fails to do so, whereby the life of that other person is or is likely to be endangered or the other person's health is or is likely to be permanently injured, is guilty of a crime.	7 years	<p>This offence is excluded. It meets most of the criteria:</p> <ul style="list-style-type: none"> Does not have a significant maximum penalty Is triable on indictment only Is an offence that can result in or create conditions in which serious harm of a non-sexual nature can be caused to another person Does not involve a circumstance of aggravation Involves a vulnerable victim (e.g. a child or elderly person) Involves special risk of serious consequences to the victim <p>The reason for proposing the exclusion of this offence is based primarily on the offence rarely meeting the level of seriousness that will attract a sentence exceeding the 5-year threshold necessary to engage the presumptive</p>

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
				scheme. The Council was reluctant to include this offence given it has rarely been prosecuted in Queensland. On the rare occasions that this offence is prosecuted, the court, in any event, retains the power to delay parole eligibility should it be appropriate.
Endangering life of children by exposure	s 326	Any person who unlawfully abandons or exposes a child under the age of 7 years, whereby the life of such child is or is likely to be endangered, or the child's health is or is likely to be permanently injured, commits a crime.	7 years	<p>This offence is excluded. It meets some but not many of the criteria:</p> <ul style="list-style-type: none"> • Does not have a significant maximum penalty • Is triable on indictment only • Is an offence that can result in or create conditions in which serious harm of a non-sexual nature can be caused to another person • Does not involve a circumstance of aggravation • Involves a vulnerable victim (a child) • Involves special risk of serious consequences to the victim <p>The reason for proposing the exclusion of this offence is based primarily on the offence rarely meeting the level of seriousness that will attract a sentence exceeding the 5-year threshold necessary to engage the presumptive scheme. The Council was also reluctant to include this offence given it has rarely been prosecuted in Queensland and the scope of conduct captured under the offence is unknown. On the rare occasions that this offence is prosecuted, the court, in any event, retains the power to delay parole eligibility should it be appropriate.</p>
Dangerous operation of a vehicle	s 328A(1)	A person who operates, or in any way interferes with the operation of, a vehicle dangerously in any place commits a misdemeanour.	3 years	Sections 328A(1) and 328A(2) are excluded . They do not have a maximum penalty which would meet the recommended penalty threshold.
	s 328A(2)	<p>If the offender—</p> <ul style="list-style-type: none"> a) at the time of committing the offence is adversely affected by an intoxicating substance; or b) at the time of committing the offence is excessively speeding or taking part in an unlawful race or unlawful speed trial; or c) has been previously convicted either upon indictment or summarily of an offence against this section; <p>the person commits a crime.</p>	5 years	

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
	s 328A(3)	<p>If the offender has been—</p> <p>a) previously convicted either upon indictment or summarily of an offence against this section committed while the offender was adversely affected by an intoxicating substance; or</p> <p>b) twice previously convicted either upon indictment or summarily (or once upon indictment and once summarily) of the same prescribed offence or different prescribed offences;</p> <p>the court or justices shall, upon conviction, impose as the whole or part of the punishment, imprisonment.</p>		
	s 328A(4)(a)	<p>A person who operates, or in any way interferes with the operation of, a vehicle dangerously in any place and causes the death of or grievous bodily harm to another person commits a crime and is liable on conviction on indictment—</p> <p>a) to imprisonment for 10 years, if neither paragraph (b) nor (c) applies; or</p>	10 years	<p>Sections 328A(4) is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> Has a significant maximum penalty Is triable on indictment only
	s 328A(4)(b)-(c)	<p>b) at the time of committing the offence, the offender is—</p> <p>i. adversely affected by an intoxicating substance; or</p> <p>ii. excessively speeding; or</p> <p>iii. taking part in an unlawful race or unlawful speed trial; or</p> <p>c) if the offender knows, or ought reasonably know, the other person has been killed or injured, and the offender leaves the scene of the incident, other than to obtain medical or other help for the other person before a police officer arrives.</p>	14 years	<ul style="list-style-type: none"> Is an offence that can result in or create conditions in which serious harm of a non-sexual nature can be caused to another person Involves a circumstance of aggravation Involves special risk of serious consequences to the victim and/or the community
Assaults occasioning bodily harm	s 339(1)	Any person who unlawfully assaults another and thereby does the other person bodily harm is guilty of a crime.	7 years	<p>This offence is excluded. It meets some but not many of the criteria:</p> <ul style="list-style-type: none"> Does not have a significant maximum penalty Is subject to summary prosecution upon defendant's election Involves the use of non-sexual violence Section 339(2) involves circumstances of aggravation Does not necessarily have a vulnerable victim Does not pose a special risk of serious consequence to victim/community
	s 339(2)	If the offender does bodily harm, and is or pretends to be armed with any dangerous or offensive weapon or instrument or is in company with 1 or more other person or persons	10 years	
	s 340(1)	Any person who—		

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
Serious assaults		<ul style="list-style-type: none"> a) assaults another with intent to commit a crime, or with intent to resist or prevent the lawful arrest or detention of himself or herself or of any other person; or b) assaults, resists, or wilfully obstructs, a police officer while acting in the execution of the officer's duty, or any person acting in aid of a police officer while so acting; or c) unlawfully assaults any person while the person is performing a duty imposed on the person by law; or d) assaults any person because the person has performed a duty imposed on the person by law; or e) assaults any person in pursuance of any unlawful conspiracy respecting any manufacture, trade, business, or occupation, or respecting any person or persons concerned or employed in any manufacture, trade, business, or occupation, or the wages of any such person or persons; or f) unlawfully assaults any person who is 60 years or more; or g) unlawfully assaults any person who relies on a guide, hearing or assistance dog, wheelchair or other remedial device; 		<p>This offence is excluded. This offence is equivalent to offences of common assault and assault occasioning bodily harm, however has "special" victims. It is of a lower offence seriousness than those the Council is targeting in this scheme. This offence is unlikely to receive a sentence which meet the necessary 5 year threshold.</p> <p>Refer also to QSAC's discussion in its final report on 'Assaults on public officers' to renaming this offence and removing the reference to 'serious'.</p>
		is guilty of a crime.		
	s 340(1)(a)	for subsection (1)(b), if the offender assaults a police officer in any of the following circumstances—	14 years	
		<ul style="list-style-type: none"> i. the offender bites or spits on the police officer or throws at, or in any way applies to, the police officer a bodily fluid or faeces; ii. the offender causes bodily harm to the police officer; iii. the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument 		
	s 340(1)(b)	Otherwise [only if charge is under s 340(1)(f) or (g)]	7 years	
	s 340(2)	A prisoner who unlawfully assaults a working corrective services officer commits a crime.		
	s 340(2)(a)	if the prisoner assaults a working corrective services officer in any of the following circumstances—	14 years	
		<ul style="list-style-type: none"> i. the prisoner bites or spits on the corrective services officer or throws at, or in any way applies to, the corrective services officer a bodily fluid or faeces; ii. the prisoner causes bodily harm to the corrective services officer; iii. the prisoner is, or pretends to be, armed with a dangerous or offensive weapon or instrument 		

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
	s 340(2)(b)	Otherwise	7 years	
	s 340(2AA)	<p>A person who—</p> <p>a) unlawfully assaults, or resists or wilfully obstructs, a public officer while the officer is performing a function of the officer's office; or</p> <p>b) assaults a public officer because the officer has performed a function of the officer's office;</p> <p>commits a crime.</p> <p>•</p>		
	s 340(2AA)(a)	<p>if the offender assaults a public officer in any of the following circumstances—</p> <p>i. the offender bites or spits on the public officer or throws at, or in any way applies to, the public officer a bodily fluid or faeces;</p> <p>ii. the offender causes bodily harm to the public officer;</p> <p>iii. the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument</p>	14 years	
	s 340(2AA)(b)	Otherwise	7 years	
Rape	s 349	Any person who rapes another person is guilty of a crime.	Life imprisonment	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> • Has a significant maximum penalty • Is triable on indictment – summary disposition only available if victim over 14 years of age, defendant pleads guilty and defendant elects for summary jurisdiction • Involves sexual violence • May involve a circumstance of aggravation¹² • May involve a vulnerable victim • Involves special risk of serious consequences to the victim and/or the community
Attempt to commit rape	s 350	Any person who attempts to commit the crime of rape is guilty of a crime.	14 years	<p>This offence is included. It meets most of the suggested criteria:</p> <ul style="list-style-type: none"> • Has a significant maximum penalty

¹² Ibid.

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
				<ul style="list-style-type: none"> Is triable on indictment – summary disposition only available if victim over 14 years of age, defendant pleads guilty and defendant elects for summary jurisdiction Involves sexual violence May involve a circumstance of aggravation¹³ May involve a vulnerable victim Involves special risk of serious consequences to the victim and/or the community
Assault with intent to commit rape	s 351	Any person who assaults another with intent to commit rape is guilty of a crime.	14 years	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> Has a significant maximum penalty Is triable on indictment – summary disposition only available if victim over 14 years of age, defendant pleads guilty and defendant elects for summary jurisdiction Involves non-sexual and sexual violence May involve a circumstance of aggravation¹⁴ May involve a vulnerable victim Involves special risk of serious consequences to the victim and/or the community
Sexual assaults	s 352(1)	<p>Any person who—</p> <ul style="list-style-type: none"> a) unlawfully and indecently assaults another person; or b) procures another person, without the person's consent— <ul style="list-style-type: none"> i. to commit an act of gross indecency; or ii. to witness an act of gross indecency by the person or any other person; <p>is guilty of a crime.</p>	10 years	<p>Section 352(1) is excluded. It meets some but not many of the criteria:</p> <ul style="list-style-type: none"> Does not have a significant maximum penalty Is available for summary disposition where defendant pleads guilty and complainant is over 14 years of age, and defendant elects for summary disposition. Involves lowest level of non-sexual violence May involve a circumstance of aggravation¹⁵ May involve a vulnerable victim

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
	s 352(2)	However, for an offence defined in subsection (1)(a) or (1)(b)(i) if the indecent assault or act of gross indecency includes bringing into contact any part of the genitalia or the anus of a person with any part of the mouth of a person.	14 years	<p>Sections 352(2) and 352(3) are included. They meet most of the criteria:</p> <ul style="list-style-type: none"> • They have a significant maximum penalty • Offences under 252(2) and 252(3) are triable on indictment only • Involves sexual violence • Involves circumstances of aggravation • May involve a vulnerable victim • Involves special risk of serious consequences to the victim and/or the community <p>The Council recommended only including the most serious instances of sexual assault within the scheme - those which have a higher maximum penalty and are the 'aggravated' instances of offending.</p>
	s 352(3)	<p>Further if—</p> <p>a) immediately before, during, or immediately after, the offence, the offender is, or pretends to be, armed with a dangerous or offensive weapon, or is in company with any other person; or</p> <ul style="list-style-type: none"> • <p>b) for an offence defined in subsection (1)(a), the indecent assault includes the person who is assaulted penetrating the offender's vagina, vulva or anus to any extent with a thing or a part of the person's body that is not a penis; or</p> <p>c) for an offence defined in subsection (1)(b)(i), the act of gross indecency includes the person who is procured by the offender penetrating the vagina, vulva or anus of the person who is procured or another person to any extent with a thing or a part of the body of the person who is procured that is not a penis.</p>	Life imprisonment	
Kidnapping	s 354(1)	<p>Any person who kidnaps another person is guilty of a crime.</p> <p>[s 354(2)A person kidnaps another person if the person unlawfully and forcibly takes or detains the other person with intent to gain anything from any person or to procure anything to be done or omitted to be done by any person.]</p>	7 years	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> • Is triable only on indictment • May involve non-sexual violence • May involve a circumstance of aggravation¹⁶ • May involve a vulnerable victim • Involves special risk of serious consequences to the victim and/or the community
Kidnapping for ransom	s 354A(1)	<p>Any person who—</p> <p>a) with intent to extort or gain anything from or procure anything to be done or omitted to be done by any person by a demand containing threats of detriment of any kind to be caused to any person, either by the offender or any other person, if the demand is not complied with, takes or entices away, or detains, the person in respect of whom the threats are made; or</p> <p>b) receives or harbours the said person in respect of whom the threats are made, knowing such person to have been so taken or enticed away, or detained;</p> <ul style="list-style-type: none"> • 		<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> • Section 354A(4) has a significant maximum penalty • All subsections are triable on indictment only • Involves non-sexual violence • Involves circumstances of aggravation • May involve a vulnerable victim

¹⁶ Ibid.

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
		is guilty of a crime which is called kidnapping for ransom.		<ul style="list-style-type: none"> Involves special risk of serious consequences to the victim and/or the community
	s 354A(2)	Any person who commits the crime of kidnapping for ransom	14 years	
	s 354A(3)	If the person kidnapped has been unconditionally set at liberty without such person having suffered any grievous bodily harm	10 years	
	s 354A(4)	Any person who attempts to commit the crime of kidnapping for ransom is guilty of a crime	7 years	
Deprivation of liberty	s 355	Any person who unlawfully confines or detains another in any place against the other person's will, or otherwise unlawfully deprives another of the other person's personal liberty, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.	3 years	This offence is excluded . It does not have a maximum penalty which would meet the recommended penalty threshold.
Child stealing	s 363	<p>Any person who, with intent to deprive any parent, guardian, or other person who has the lawful care or charge, of a child under the age of 16 years, of the possession of such child, or with intent to steal any article upon or about the person of any such child—</p> <p>a) forcibly or fraudulently takes or entices away, or detains, the child; or</p> <p>b) receives or harbours the child, knowing it to have been so taken or enticed away or detained;</p> <p>is guilty of a crime, and is liable to imprisonment for 7 years.</p>	7 years	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> Is triable on indictment only May involve non-sexual violence Involves a vulnerable victim Involves special risk of serious consequences to the victim and/or the community
Abduction of a child under 16	s 363A	Any person who unlawfully takes an unmarried child under the age of 16 years out of the custody or protection of the child's father or mother, or other person having the lawful care or charge of the child, and against the will of the father, mother or other person, is guilty of a crime, and is liable to imprisonment for 7 years.	7 years	<p>This offence is included. It meets most of the criteria:</p> <ul style="list-style-type: none"> Is triable on indictment only May involve non-sexual violence Involves a vulnerable victim Involves special risk of serious consequences to the victim and/or the community
Cruelty to children under 16	s 364	A person who, having the lawful care or charge of a child under 16 years, causes harm to the child by any prescribed conduct that the person knew or ought reasonably to have known would be likely to cause harm to the child commits a crime.	7 years	<p>This offence is excluded. It meets some of the criteria:</p> <ul style="list-style-type: none"> Does not have a significant maximum penalty Is triable on indictment only May involve non-sexual violence Involves a vulnerable victim Involves special risk of serious consequences to the victim and/or the community <p>The reason for proposing the exclusion of this offence is based primarily on the offence rarely meeting the level of seriousness that will attract a sentence exceeding the 5-year threshold necessary to engage the presumptive scheme. On the rare occasions that this offence is</p>

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
Fraud	s 408C(1)	<p>A person who dishonestly—</p> <p>(a) applies to his or her own use or to the use of any person—</p> <p>(i) property belonging to another; or</p> <p>(ii) property belonging to the person, or which is in the person's possession, either solely or jointly with another person, subject to a trust, direction or condition or on account of any other person; or</p> <p>(b) obtains property from any person; or</p> <p>(c) induces any person to deliver property to any person; or</p> <p>(d) gains a benefit or advantage, pecuniary or otherwise, for any person; or</p> <p>(e) causes a detriment, pecuniary or otherwise, to any person; or</p> <p>(f) induces any person to do any act which the person is lawfully entitled to abstain from doing; or</p> <p>(g) induces any person to abstain from doing any act which that person is lawfully entitled to do; or</p> <p>(h) makes off, knowing that payment on the spot is required or expected for any property lawfully supplied or returned or for any service lawfully provided, without having paid and with intent to avoid payment;</p> <p>commits the crime of fraud.</p>	5 years imprisonment	<p>prosecuted, the court, in any event, retains the power to delay parole eligibility should it be appropriate.</p> <p>This offence is excluded. It does not have a maximum penalty that would reach the recommended penalty threshold.</p>
	s 408C(2)	<p>The offender is liable to imprisonment for 14 years if, for an offence against subsection (1) —</p> <p>(a) the offender is a director or officer of a corporation, and the victim is the corporation; or</p> <p>(b) the offender is an employee of the victim; or</p> <p>(c) any property in relation to which the offence is committed came into the possession or control of the offender subject to a trust, direction or condition that it should be applied to any purpose or be paid to any person specified in the terms of trust, direction or condition or came into the offender's possession on account of any other person; or</p> <p>(d) the property, or the yield to the offender from the dishonesty, or the detriment caused, is of a value of at least \$30,000 but less than \$100,000; or</p> <p>(e) the offender is or was an employer of the victim.</p>	14 years imprisonment	<p>This offence is excluded. It meets some but not many of the criteria:</p> <ul style="list-style-type: none"> • Has a significant maximum penalty • Is subject to mandatory summary disposition unless certain criteria apply • Does not involve sexual or non-sexual violence • Circumstance of aggravation relate to nature or value of property or because defendant is an employee or Director • Does not involve a vulnerable victim • Does not involves special risk of serious consequences to the victim and/or the community
	s 408C(2A)	<p>The offender is liable to imprisonment for 20 years, if, for an offence against subsection (1) —</p>	20 years imprisonment	<p>This offence is excluded. It meets some but not many of the criteria:</p>

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
		(a) the property, or the yield to the offender from the dishonesty, or the detriment caused, is of a value of at least \$100,000; or (b) the offender carries on the business of committing the offence.		<ul style="list-style-type: none"> Has a significant maximum penalty Is subject to mandatory summary disposition unless certain criteria apply Does not involve sexual or non-sexual violence Circumstance of aggravation relate to value of property or ongoing nature of business Does not involve a vulnerable victim Does not involves special risk of serious consequences to the victim and/or the community
Punishment of robbery	s 411(1)	Any person who commits the crime of robbery	14 years	This offence is included . It meets most of the criteria: <ul style="list-style-type: none"> Has a significant maximum penalty Is triable on indictment only Involves non-sexual violence May involve circumstances of aggravation
	s 411(2)	If the offender is or pretends to be armed with any dangerous or offensive weapon or instrument, or is in company with 1 or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, the offender wounds or uses any other personal violence to any person	Life imprisonment	
Attempted robbery	s 412(1)	Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to its being stolen, is guilty of a crime	7 years	This offence is included . It meets most of the criteria: <ul style="list-style-type: none"> Section 412(2) has a significant maximum penalty Section 412(2) is triable on indictment only Involves non-sexual violence Involves a circumstance of aggravation
	s 412(2)	If the offender is or pretends to be armed with any dangerous or offensive weapon or instrument, or is in company with 1 or more other person or persons,	14 years	
	s 412(3)	If the offender is armed with any dangerous or offensive weapon, instrument or noxious substance, and at or immediately before or immediately after the time of the assault the offender wounds, or uses other personal violence to, any person by the weapon, instrument or noxious substance	Life imprisonment	
Taking control of aircraft	s 417A(1)	Any person who unlawfully either directly or indirectly takes or exercises control of any aircraft is guilty of a crime	7 years	This offence is excluded . It meets some but not many of the criteria: <ul style="list-style-type: none"> Sections 417A(2) and 417A(3) have significant maximum penalties Are triable on indictment only Section 417A(3) involves non-sexual violence Sections 417A(2) and (3) involve circumstances of aggravation Does not involve a vulnerable victim
	s 417A(2)	If another person not being an accomplice of the offender is on board the aircraft	14 years	
	s 417A(3)	If the offender at or immediately before or immediately after the time of taking or exercising such control uses or threatens to use actual violence to any person or property in order to take or exercise control of the aircraft or to prevent or overcome resistance to such control being taken or exercised or is armed with any dangerous or offensive weapon or instrument or is in company with one or more other person or persons or takes or exercises such control by any fraudulent representation trick device or other means	Life imprisonment	

Offence Name	Section	Offence Provisions	Maximum Penalty	Reason to include/exclude
				The Council was reluctant to include this offence given it has not been prosecuted in Queensland and the scope of conduct captured under the offence is unknown. On the rare occasions that this offence is prosecuted, the court, in any event, retains the power to delay parole eligibility should it be appropriate.
Burglary	s 419(1)	Any person who enters or is in the dwelling of another with intent to commit an indictable offence in the dwelling commits a crime.	14 years	This offence is excluded . It does not meet the criteria apart from having a significant maximum penalty. It is not currently part of the SVO scheme.
	s 419(3)(b)(i)	If the offender uses or threatens to use actual violence	Life imprisonment	This offence is included . It meets most of the criteria: <ul style="list-style-type: none"> Has a significant maximum penalty Is triable on indictment only Involves non-sexual violence Involves a circumstance of aggravation Involves special risk of serious consequences to the victim and/or the community
	s 419(3)(b)(ii)	If the offender is or pretends to be armed with a dangerous or offensive weapon, instrument or noxious substance	Life imprisonment	
Arson	s 461	(1) Any person who wilfully and unlawfully sets fire to any of the things following, that is to say— <ul style="list-style-type: none"> (a) a building or structure; (b) a motor vehicle, train, aircraft or vessel; (c) any stack of cultivated vegetable produce, or of mineral or vegetable fuel; (d) a mine, or the workings, fittings, or appliances of a mine; is guilty of a crime, and is liable to imprisonment for life.	Life imprisonment	This offence is excluded . It meets some but not many of the criteria: <ul style="list-style-type: none"> Has a significant maximum penalty Is triable on indictment only Does not involve sexual or non-sexual violence or serious harm to a victim Does not involve a circumstance of aggravation Does not involve a vulnerable victim
Coercive control (does not yet exist)	N/A	N/A. It is recommended that it be an offence to undertake a course of conduct of two or more incidents that constitute domestic violence, as outlined in the amended definition in section 8, within a relevant relationship, as defined in the DFVP Act, when: <ul style="list-style-type: none"> - a reasonable person would consider the course of conduct to be likely to cause one person in the relationship (the first person) to suffer physical or psychological or emotional or financial harm; and - the domestic violence behaviour is directed by the second person towards the first person. 	14 years (proposed)	This offence is excluded . This offence does not yet exist.

Criminal Code (repealed by Criminal Law Amendment Act 1997 and Health and Other Legislation Amendment Act 2016)

Offence name	Section	Details relevant to the maximum penalty	Maximum penalty	Reason to include/exclude
Unlawful anal intercourse	s 208	Any person who – 1) Has carnal knowledge of any person against the order of nature; or 2) Has carnal knowledge of an animal; or 3) Permits a male person to have carnal knowledge of him or her against the order of nature Is guilty of a crime.	14 years imprisonment with hard labour	This offence is excluded . The Council has decided to remove repealed offences on the basis that they are incapable of being committed post-commencement of the scheme.
Unlawful sodomy	s 208(1)	Any person who— a) sodomises a person under 18 years; or b) permits a male person under 18 years to sodomise him or her; or c) sodomises an intellectually impaired person; or d) permits an intellectually impaired person to sodomise him or her; commits a crime.	14 years	This offence is excluded . The Council has decided to remove repealed offences on the basis that they are incapable of being committed post-commencement of the scheme.
	s 208(2)	If the offence is committed in respect of— a) a child under 12 years; or b) a child, or an intellectually impaired person, who is to the knowledge of the offender— i. his or her lineal descendant; or ii. under his or her guardianship or care.	Life imprisonment	
Attempted sodomy¹	s 209(1)	Any person who attempts to sodomise a person	7 years	This offence is excluded . The Council has decided to remove repealed offences on the basis that they are incapable of being committed post-commencement of the scheme.
	s 209(2)	If the offence is committed in respect of— c) a child under 12 years; or d) a child, or an intellectually impaired person, who is to the knowledge of the offender— i. his or her lineal descendant; or ii. under his or her guardianship or care.	14 years	
Conspiracy to defile	s 221	Any person who conspires with another to induce any person, by any false pretence or other fraudulent means, to permit any person to have unlawful carnal knowledge with or of him or her commits a crime.	10 years	This offence is excluded . The Council has decided to remove repealed offences on the basis that they are

¹ This is not listed in the current PSA Schedule 1; however it was listed in Schedule 1 of the *Penalties and Sentences (Serious Violent Offences) Amendment Act 1997*.

Offence name	Section	Details relevant to the maximum penalty	Maximum penalty	Reason to include/exclude
				incapable of being committed post-commencement of the scheme.
Incest by man	s 222(1)	Any person who— a) has carnal knowledge with or of the person's offspring or other lineal descendant, or sibling, parent, grandparent, uncle, aunt, nephew or niece; and b) knows that the other person bears that relationship to him or her, or some relationship of that type to him or her; commits a crime	Life imprisonment	This offence is excluded . The Council has decided to remove repealed offences on the basis that they are incapable of being committed post-commencement of the scheme.
	s 222(2)	Any person who attempts to commit the crime of incest	10 years	
Incest by adult female	s 223(1)	Any woman or girl of or above the age of 18 years who permits her father or other lineal ancestor, or her brother, or her son, to have carnal knowledge of her, knowing him to be her father or other lineal ancestor, or her brother, or her son, as the case may be, is guilty of a misdemeanour	3 years	This offence is excluded . The Council has decided to remove repealed offences on the basis that they are incapable of being committed post-commencement of the scheme.
Preventing escape from wreck	s 318	Any person who unlawfully a) prevents or obstructs any person who is on board of or is escaping from a vessel which is in distress or wrecked or cast ashore, in the person's endeavours to save the person's life; or b) obstructs any person in the person's endeavours to save the life of any person so situated; is guilty of a crime	Life imprisonment	This offence is excluded . The Council has decided to remove repealed offences on the basis that they are incapable of being committed post-commencement of the scheme.

Corrective Services Act 2006 (current)

Offence name	Section	Details relevant to the maximum penalty	Maximum penalty	Reason to include/exclude
Unlawful assembly, riot and mutiny	s 122(2)	A prisoner must not take part in a riot or mutiny.		This offence is excluded . It meets some but not many of the criteria. <ul style="list-style-type: none"> Has a significant maximum penalty Most subsections do not involve sexual or non-sexual violence or serious harm Does not involve a vulnerable victim Does not pose a special risk of serious harm or consequence to victim or community
	s 122(2)(a)	if, during the riot or mutiny, the prisoner wilfully and unlawfully damages or destroys, or attempts to damage or destroy, property that is part of a corrective services facility and the security of the facility is endangered by the act	Life imprisonment	
	s 122(2)(b)	if, during the riot or mutiny, the prisoner demands something be done or not be done with threats of injury or detriment to any person or property	14 years	
	s 122(2)(c)	if, during the riot or mutiny, the prisoner escapes or attempts to escape from lawful custody, or helps another prisoner to escape or attempt to escape from lawful custody	14 years	

	s 122(2)(d)	if, during the riot or mutiny, the prisoner wilfully and unlawfully damages or destroys, or attempts to damage or destroy, any property	10 years	
	s 122(2)(e)	Otherwise	6 years	
Other offences	s 124(a)	A prisoner must not prepare to escape from lawful custody	2 years	This offence is excluded . It does not have a maximum penalty that would meet the recommended penalty threshold.

Corrective Services Act 2000 (Repealed by the Corrective Services Act 2006)

Offence name	Section	Details relevant to the maximum penalty	Maximum penalty	Reason to include/exclude
Unlawful assembly, riot and mutiny	s 92(2)	A prisoner must not take part in a riot or mutiny.		This offence is excluded . The Council has decided to remove repealed offences on the basis that they are incapable of being committed post-commencement of the scheme.
	s 92(2)(a)	if, during the riot or mutiny, the prisoner wilfully and unlawfully damages or destroys, or attempts to damage or destroy, property that is part of a corrective services facility and the security of the facility is endangered by the act	Life imprisonment	
	s 92(2)(b)	if during the riot or mutiny the prisoner demands that anything be done or not done with threats of injury or detriment to any person or property	14 years	
	s 92(2)(c)	if during the riot or mutiny the prisoner escapes or attempts to escape from lawful custody, or helps another prisoner to escape or attempt to escape from lawful custody	14 years	
	s 92(2)(d)	if during the riot or mutiny the prisoner wilfully and unlawfully damages or destroys, or attempts to damage or destroy, any property	10 years	
	s 92(2)(e)	Otherwise	6 years	
Other offences	s 94(a)	A prisoner must not prepare to escape from lawful custody	2 years	This offence is excluded . The Council has decided to remove repealed offences on the basis that they are incapable of being committed post-commencement of the scheme.

Drugs Misuse Act 1986

Offence name	Section	Details relevant to the maximum penalty	Maximum penalty	Reason to include/exclude
Trafficking in dangerous drugs	s 5	A person who carries on the business of unlawfully trafficking in a dangerous drug is guilty of a crime. BUT SVO ONLY if the offender is sentenced for the offence on or after the commencement of the <i>Serious and Organised Crime Legislation Amendment Act 2016, section 164</i> , whether the offence or conviction happened before or after that commencement	25 years	This offence is included . It meets some of the suggested criteria: <ul style="list-style-type: none"> • Has a significant maximum penalty • Is triable on indictment only • Involves special risk of serious consequences to the victim and/or the community
Supplying dangerous drugs	s 6(1)	A person who unlawfully supplies a dangerous drug to another, whether or not such other person is in Queensland, is guilty of a crime. BUT SVO ONLY if the offence is one of aggravated supply as mentioned in that section		This offence is included . It meets most of the criteria: <ul style="list-style-type: none"> • Has a significant maximum penalty • Is triable on indictment only (for all subsections apart from s 6(1)(f)) • Involves circumstances of aggravation • Involves special risk of serious consequences to the victim and/or the community
	s 6(2)	For the purposes of this section, an offence is one of aggravated supply if the offender is an adult and— <ul style="list-style-type: none"> a) the person to whom the thing is supplied is a minor under 16 years; or aa) the person to whom the thing is supplied is a minor who is 16 years or more; or b) the person to whom the thing is supplied is an intellectually impaired person; or c) the person to whom the thing is supplied is within an educational institution; or d) the person to whom the thing is supplied is within a correctional facility; or e) the person to whom the thing is supplied does not know he or she is being supplied with the thing. 		
	s 6(1)(a)	if the dangerous drug is a thing specified in the <i>Drugs Misuse Regulation 1987</i> , schedule 1 and the offence is one of aggravated supply under subsection (2)(a)	Life imprisonment	
	s 6(1)(b)	if the dangerous drug is a thing specified in the <i>Drugs Misuse Regulation 1987, schedule 1</i> and the offence is one of aggravated supply under subsection (2)(aa), (b), (c), (d) or (e)	25 years	
	s 6(1)(d)	if the dangerous drug is a thing specified in the <i>Drugs Misuse Regulation 1987, schedule 2</i> and the offence is one of aggravated supply under subsection (2)(a)	25 years	
	s 6(1)(e)	if the dangerous drug is a thing specified in the <i>Drugs Misuse Regulation 1987, schedule 2</i> and the offence is one of aggravated supply under subsection (2)(aa), (b), (c), (d) or (e)	20 years	

Offence name	Section	Details relevant to the maximum penalty	Maximum penalty	Reason to include/exclude
Producing dangerous drugs	s 8(1)	A person who unlawfully produces a dangerous drug is guilty of a crime.		This offence is included . It meets some of the criteria: <ul style="list-style-type: none"> • Has a significant maximum penalty • Is triable on indictment only (for all subsections part from s 8(1)(e)) • Involves special risk of serious consequences to the victim and/or the community
	s 8(1)(a)	if the dangerous drug is a thing specified in the <u><i>Drugs Misuse Regulation 1987, schedule 1</i></u> and the quantity of the thing is of or exceeds the quantity specified in the <u><i>Drugs Misuse Regulation 1987, schedule 4</i></u> in respect of that thing	25 years	
	s 8(1)(b)(i)	if the dangerous drug is a thing specified in the <u><i>Drugs Misuse Regulation 1987, schedule 1</i></u> and the quantity of the thing is of or exceeds the quantity specified in the <u><i>Drugs Misuse Regulation 1987, schedule 3</i></u> but less than the quantity specified in the <u><i>Drugs Misuse Regulation 1987, schedule 4</i></u> in respect of that thing and the person convicted - <ul style="list-style-type: none"> i. satisfies the judge constituting the court before which the person is convicted that when the person committed the offence the person was a drug dependent person; or 	20 years	
	s 8(1)(b)(ii)	if the dangerous drug is a thing specified in the <u><i>Drugs Misuse Regulation 1987, schedule 1</i></u> and the quantity of the thing is of or exceeds the quantity specified in the <u><i>Drugs Misuse Regulation 1987, schedule 3</i></u> but less than the quantity specified in the <u><i>Drugs Misuse Regulation 1987, schedule 4</i></u> in respect of that thing and the person convicted - <ul style="list-style-type: none"> ii. does not so satisfy the judge constituting the court before which the person is convicted. 	25 years	

