



# Sentencing of domestic and family violence offences in Queensland

## Information Sheet

**Content warning:** This information sheet has information about domestic violence offences and behaviour that some readers may find distressing.

### Background

The Attorney-General has asked us (the Council) to review two different aspects of sentencing:

1. sentencing for sexual assault and rape offences, and
2. the operation of the aggravating factor for domestic and family violence offences.

In this information sheet, we explain the aggravating factor for domestic and family violence offences. We also look at the key concepts and relevant laws relating to our review.

Read our other information sheet about our review of [sentencing for sexual assault and rape offences](#).

### Our review in a snapshot

In May 2016,<sup>1</sup> a new law was passed which included a legal requirement that courts must treat the fact an offence is a 'domestic violence offence' as being an aggravating factor unless exceptional circumstances apply.<sup>2</sup>

This means that if a court decides that an offence is a domestic violence offence, it must treat the offence as being more serious.

The Attorney-General has asked us to review how this change is operating and any impacts of this change on victims' satisfaction.

As part of the review, we will research **how sentencing for domestic violence offences is working, including current sentencing practices.**

### What is domestic violence?

In Queensland, 'domestic violence'<sup>3</sup> means behaviour, or a pattern of behaviour<sup>4</sup> that:

- is physically, sexually, emotionally, psychologically, or economically abusive
- is threatening
- is coercive, or
- causes the other person in a relationship to fear for their, or someone else's, safety, or wellbeing.<sup>5</sup>

Domestic violence can occur between two people who:

- are in, or have been in, an intimate personal relationship
- are in, or have been in, a family relationship, or
- have an informal care relationship.<sup>6</sup>

Domestic violence may occur over time. It can be more than one act or series of acts and is considered in the context of the whole relationship.<sup>7</sup>

For an easy read version, see *What is domestic and family violence: An Easy Read guide* [here](#).

## What is a 'domestic violence offence'?

From 1 December 2015, a judge or magistrate can record any offence as a '**domestic violence offence**'.

This can happen if the behaviour for which the person is convicted is also domestic violence, and/or if the behaviour has breached a domestic violence order.<sup>8</sup>

A person does not need to have a current domestic violence order to be convicted of a 'domestic violence offence'. If there is no domestic violence order in place, a court can make one at sentence.

The offence will appear in a person's criminal history as a 'domestic violence offence'.<sup>9</sup>

At sentence, the prosecution also can apply for an offence that happened before this change was introduced to be recorded as a conviction for a 'domestic violence offence'.<sup>10</sup>

This can help courts to understand if someone has a pattern of domestic violence offending when sentencing them.<sup>11</sup>

## What does domestic violence as an 'aggravating factor' mean?

From May 2016, if an offence is a 'domestic violence offence', the court must treat this as an aggravating factor.<sup>12</sup>

This means the offence must be treated as being more serious because it happened in the context of domestic and family violence.

Because a court must treat this as 'aggravating', the person may receive a harsher sentence.

For example, this might mean they are more likely to receive a prison sentence instead of probation. Or it could mean the person may have to spend a longer period in prison if sentenced to imprisonment.

A court does not have to treat the fact the offence is a 'domestic violence offence' as aggravating if it thinks it is not reasonable. There must be exceptional circumstances<sup>13</sup> - for example, if the victim had committed a serious act or several acts of domestic violence towards the person being sentenced.

We will be asking people involved with the criminal justice system and members of the

public their views about **how this aggravating factor is operating**.

## Does an 'aggravating factor' mean a higher (maximum) penalty?

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

For example, if a person assaults their partner alone, without a weapon, causing them bodily harm, the maximum penalty is 7 years imprisonment.<sup>14</sup> This is the same maximum penalty if the victim was a stranger.

However, because it happened in a domestic and family violence context, this is aggravating and, the person is more likely to receive a harsher sentence. For example, if the court thinks a prison sentence is the right sentence, it may decide the sentence should be longer.

## A person who repeatedly contravenes a domestic violence order will face a higher maximum penalty

A person subject to a domestic violence order must follow mandatory conditions. For example, they must not commit domestic violence against the other person.<sup>15</sup>

A domestic violence order may also include other conditions the person has to follow, like not contacting the person.

If they do not follow these conditions, it is called a 'contravention'. This is a criminal offence.

The maximum penalty for this is 3 years imprisonment (or 120 penalty units).<sup>16</sup>

However, this increases 5 years imprisonment (or 240 penalty units) if the person has committed a 'domestic violence offence' in the 5 years previously.<sup>17</sup>

The Government increased these maximum penalties in 2015.<sup>18</sup> It wanted to deter people from committing domestic violence. It also wanted to reinforce the community's view that domestic violence is not acceptable and will not be tolerated.<sup>19</sup>

As part of our review, we have been asked to look at **how sentencing trends and outcomes might have changed following these increases**.

## Previous research on the impact of the aggravating factor

In 2021, the Council released a [research brief](#) looking at how treating domestic violence as an aggravating factor has affected sentencing for two offences (common assault and assault occasioning bodily harm).<sup>20</sup>

We found that, in general for these offences, courts are treating domestic violence offences more seriously and are giving more – and longer – prison sentences.

However, we do not know if this is because of the new aggravating factor being introduced or reflected court sentencing practices prior to this. This is because before the law was changed there was no easy way to distinguish domestic violence offences from non-domestic violence offences when looking at sentencing data and court outcomes.

## Other things we will consider

As part of our review, we will also:

- look into how other states and territories in Australia sentence these offences, as well as internationally,
- explore any changes that might need to be made to ensure the aggravating factor is operating as it is meant to, and
- publish a final report with our findings and recommendations.

## How you can be involved

Throughout this review, we will invite feedback from individuals and organisations involved in the criminal justice system. We will ask you about the impacts of the new law.

We will also want to hear from victim-survivors of domestic violence, defendants in cases involving charges of domestic and family violence and other members of the community.

To be involved and stay up to date on our review, visit [our website](#) or [subscribe to our upcoming newsletter](#).

### If this paper has raised any issues for you and you need to talk to someone, support is available:

Lifeline Australia (24 Hours): [13 11 14](#)

1800RESPECT (24 Hours): [1800 737 732](#)

DV Connect (Womensline) (24 Hours):  
[1800 811 811](#)

DV Connect (Mensline) (9.00 am–midnight):  
[1800 600 636](#)

Sexual Assault Helpline (7.30 am–11.30 pm):  
[1800 010 120](#)

13YARN Aboriginal & Torres Strait Islander  
Crisis Support (24 Hours): [13 92 76](#)

Kids Helpline: [1800 55 1800](#)

Relationships Australia: [1300 364 277](#)

Victim Assist Queensland:  
[1300 546 587](#) (business hours) or  
email [VictimAssist@justice.qld.gov.au](mailto:VictimAssist@justice.qld.gov.au)

<sup>1</sup> This principle existed only under the common law (also called 'case law') until 2016, when the PSA (n 1) was amended to include this principle in legislation.

<sup>2</sup> *Penalties and Sentences Act 1992* (Qld) ('PSA') s 9(10A).

<sup>3</sup> *Domestic and Family Violence Protection Act 2012* (Qld) s 8 ('DFVPA').

<sup>4</sup> On the coming into force of s 31 of the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* (Qld), which will start on a day to be fixed by proclamation: s 2.

<sup>5</sup> DFVPA (n 3) s 8.

<sup>6</sup> *Ibid* s 13.

<sup>7</sup> *Ibid*.

<sup>8</sup> PSA (n 2) s 12A(5) 'Domestic violence offence' is defined in section 1 of the *Criminal Code Act 1899* (Qld) sch 1 ('*Criminal Code* (Qld)'). However, offences under the DFVPA (n 3) are not for the purposes of this definition 'domestic violence offences' unless the conduct which constitutes the offence is also a contravention of a domestic violence order under s 177(2). This provision came into force on 1 December 2015: *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld) s 1A.

<sup>9</sup> PSA (n 2) s 12A.

<sup>10</sup> *Ibid* s 12A(5).

<sup>11</sup> Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill (No 1) 2015 (Qld) 3.

<sup>12</sup> This principle existed only under the common law (also called 'case law') until 2016, when the PSA (n 2) was amended to include this principle in legislation.

<sup>13</sup> PSA (n 2) s 9(10A).

<sup>14</sup> *Criminal Code* (Qld) (n 8) s 339.

<sup>15</sup> DFVPA (n 3) pt 3 div 5.

<sup>16</sup> *Ibid* s 177(2)(b).

<sup>17</sup> *Ibid* s 177(2)(a).

<sup>18</sup> *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld) s 7. Prior to this, the penalties were 60 penalty units or 2 years' imprisonment, and 120 penalty units or 3 years' imprisonment for a repeat offence.

<sup>19</sup> Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill 2015 (Qld) 6.

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<sup>20</sup> Queensland Sentencing Council, *The Impact of Domestic Violence as an Aggravating Factor on Sentencing Outcomes* (Research Brief No 1, May 2021).