

# Queensland Sentencing Guide

March 2023



## Queensland Sentencing Guide

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### Cover artwork

The artwork in the cover design depicts the sentencing process and represents that sentencing is not black and white; it can involve shades of grey. There is no single 'correct' sentence. The lines symbolise the many different purposes, principles and factors that intersect and overlap – sometimes pulling in different directions. In sentencing, courts engage in a complex task of synthesising all these relevant considerations to arrive at a sentence that is just and appropriate. The High Court's explanation of this process, called 'instinctive synthesis', is discussed in **Deciding what sentence to give**, [page 30](#) of this guide.

### Disclaimer:

The content of this guide is for information only. If you have a legal problem, you should seek legal advice from a lawyer. The guide should not be relied upon as legal advice and if you have a specific legal problem, you should seek legal advice about your own particular circumstances. While all reasonable care has been taken in the preparation of this guide, no 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 guide reflects the law as at 31 December 2022.

### Queensland Sentencing Advisory Council

The Queensland Sentencing Advisory Council is established by section 198 of the *Penalties and Sentences Act 1992* (Qld). Its functions are detailed in section 199 of the *Penalties and Sentences Act 1992* (Qld).

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# About the Queensland Sentencing Guide

The *Queensland Sentencing Guide* explains how Queensland courts sentence adults. While some of what is described applies generally in other Australian states and territories, this guide only discusses the laws that apply in Queensland (as each state and territory has its own laws).

This guide does not explore how courts sentence children.

Children are sentenced under different legislation, namely the *Youth Justice Act 1992* (Qld). The Council released a separate guide on the sentencing of children that can be downloaded on our website: [www.sentencingcouncil.qld.gov.au](http://www.sentencingcouncil.qld.gov.au).

## **Acknowledgement of Traditional Owners**

The Queensland Sentencing Advisory Council acknowledge and pay respect to the Traditional Owners and Caretakers of this land, where they have performed age-old ceremonies of storytelling, healing, music, dance and celebration. We would also like to acknowledge and pay respect to Elders, past and present, for they hold the memories, traditions and knowledge of Aboriginal and Torres Strait Islander culture.

The Queensland Sentencing Advisory Council recognises and prioritises the needs of Aboriginal and Torres Strait Islander peoples to address their disproportionate representation in Queensland's criminal justice system. Our Aboriginal and Torres Strait Islander corporate artwork 'Overcoming Obstacles' by Casey Coolwell was commissioned to embody our commitment to understanding the drivers of over-representation in the Queensland criminal justice system. To view the artwork please visit our website at [www.sentencingcouncil.qld.gov.au](http://www.sentencingcouncil.qld.gov.au).

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1. ■

What is sentencing and who is responsible?

# Chapter 1 highlights

A sentence is an order made by a court after taking into account a range of factors (see **Deciding what sentence to give** on page 30 for more information about how a court decides what sentence to pass).

**Parliament makes written laws (called **statute law**) that explain:**

- what type of behaviour is an offence
- what sentences courts can impose
- the minimum and maximum penalties a court can give
- what judges and magistrates must think about when deciding a sentence, including the purposes for which the sentence can be given.

**Case law** is the law made by **courts** through the decisions they make. This includes decisions about sentencing and how to interpret statute law.

**Government** agencies (like Queensland Corrective Services) manage sentences, including supervising people in prison or on community-based orders.

## What is sentencing?

Sentencing is the process of determining and applying the appropriate penalty or punishment for a person who pleads guilty or is found guilty of an offence (see **Sentencing hearing** on [page 20](#)).

### Is it a 'sentence' or a 'penalty'?

Under Australian law, there is no common definition for a 'sentence' or a 'penalty'. These terms can mean different things depending on the situation. Often, the terms are used to mean the punishment imposed for offending.

Under the *Penalties and Sentences Act 1992* (Qld) s 4 a 'penalty' is 'any fine, compensation, restitution or other amount of money but does not include the offender levy'. A 'sentence' is 'a penalty, imprisonment ... or another order made by a court after a person is convicted, whether or not a conviction is recorded ...'

Therefore a 'sentence' is broad, and a 'penalty' is restricted to an amount of money. However, when an offence is committed, there is often a 'maximum penalty' that includes imprisonment, not just an amount of money. Because of this, sometimes we use the word 'penalty' in this guide in its broader sense to mean a punishment.

## Who is responsible for sentencing?

In Australia, states and territories have their own criminal laws and sentencing laws. Responsibility for sentencing is shared between the Parliament, the courts and government (the executive). Each branch has its own separate and distinct functions. This structure divides and distributes power so that there can be checks and balances for the protection of the community.

Therefore, judicial officers (judges and magistrates) are independent from the Parliament and government (the executive). Judicial officers are also independent from each other. This allows a judge or magistrate to hear and decide a sentence in a way that is impartial, fair and in accordance with the law.

Find out more by reading

[Judge for yourself: A Guide to Sentencing in Australia, 'The judiciary' \(2007\)](#)



## Parliament

Parliament makes written laws (called statute law) that explain:

- what is an offence
- who can be charged
- the maximum penalty and any minimum penalty for an offence
- the types of sentences a court can impose
- what a court must consider when deciding the sentence.

The Queensland Parliament makes most of this legislation for Queensland. For example, the *Criminal Code (Qld)*<sup>1</sup> establishes a number of offences and sets out the **Maximum penalty** ([page 36](#)) that applies. In some cases, there is a minimum penalty or **Mandatory sentence** ([page 41](#)).

If a person commits an offence against the *Criminal Code (Qld)*, the *Penalties and Sentences Act 1992 (Qld)* provides the court with guidance about the sentencing considerations and options available.

Specific Commonwealth sentencing legislation (made by the Commonwealth Parliament) applies to **Commonwealth offences** ([page 77](#)).

Learn more about the [Queensland Parliament](#) and [how laws are made](#)



## Courts

Courts (the judiciary) interpret laws made by Parliament and decide the sentence to impose on a person found guilty of an offence in an individual case. For example, a judge or magistrate will interpret and apply the *Penalties and Sentences Act 1992 (Qld)* to decide what sentence to give a person who pleads guilty or is found guilty of an offence.

The decisions made by the courts form part of the law (**case law** or **common law**). In sentencing, case law from a higher court can guide the lower court about the appropriate sentence for a certain type of offending.

Sometimes cases set out legal principles that courts must apply when sentencing. For example, the Queensland Court of Appeal has accepted that a mental disorder short

of insanity may lessen a person's moral culpability and reduce the relevance of the sentencing purpose of deterrence when sentencing.<sup>2</sup> This guides all Queensland courts when considering what sentence may be appropriate for a person with a mental illness or impairment. Case law can be overruled by later decisions of courts of the same or higher authority, or by Parliament passing legislation.

For further information about the different courts and what types of cases they hear see **Courts and jurisdiction** ([page 6](#)).

## Government

Government departments and agencies (or the executive government) administer or give effect to laws made by the Parliament and sentences given by courts. For example, Queensland Corrective Services manages sentenced adults both in prison and in the community. The Parole Board Queensland makes decisions about parole after the person has been sentenced.

2.

Courts and jurisdiction

# Chapter 2 highlights

There are three main levels of sentencing courts in Queensland – **Magistrates Courts** (which sentence the least serious offences), **District Court** (for more serious offences) and **Supreme Court** (for the most serious offences).

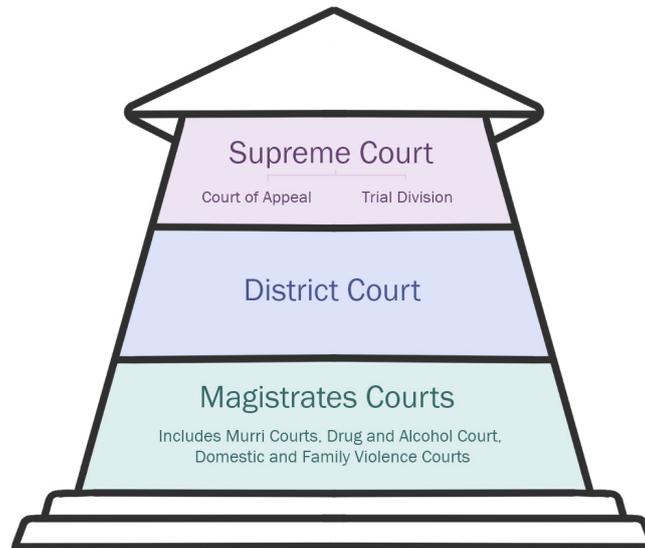
Offences are either regulatory offences or criminal offences. The category of offence can determine which court can deal with the case and the available sentencing options.

Queensland also has specialist courts and programs (some are only available in certain court locations):

- Childrens Court
- Murri Courts
- Specialist Domestic and Family Violence Courts
- Drug and Alcohol Court
- Mental Health Court
- Court Link.

**Commonwealth courts** hear non-criminal cases involving family law, commercial and financial, employment, migration and human rights issues. The **High Court of Australia** hears appeals across the whole range of Australian law.

## Queensland courts



Judges or magistrates determine the sentence for people who have pleaded guilty or been found guilty of an offence.

Queensland has three tiers of courts for sentencing adults:

- Magistrates Courts
- District Court
- Supreme Court

These courts hear both criminal and civil cases; however, this guide is focused on criminal cases only.

Learn more about the [courts and their locations](#)

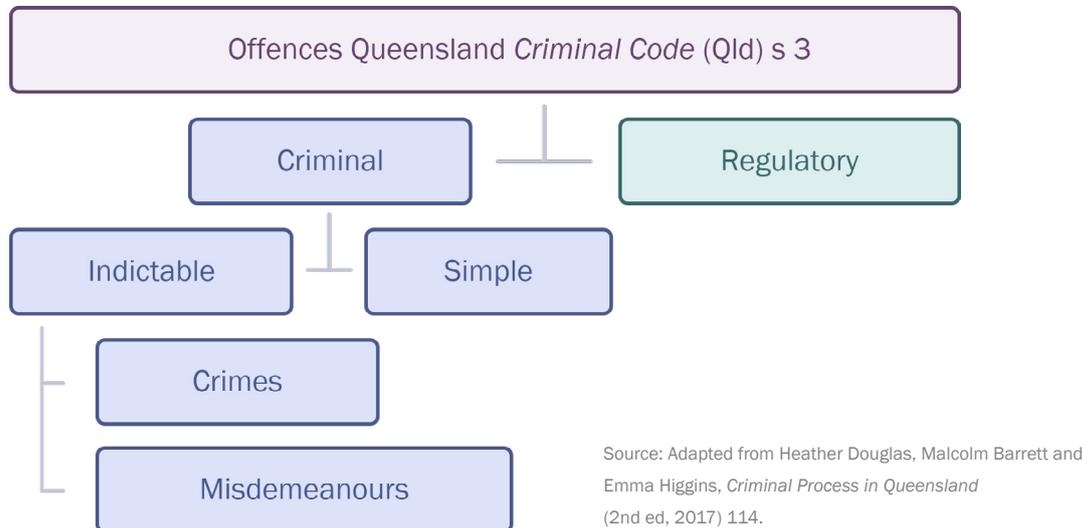


## Categories of offences

The type of court that can sentence a person and the sentencing options available depend on the category of the offence the person is charged with (and in some cases, whether the person chooses to have a trial or has pleaded guilty).

Generally, the more serious the offence the higher the court that will hear it. For example, murder and manslaughter cases can only be heard in the Supreme Court.

In Queensland, there are two categories of offences — **regulatory offences** and **criminal offences**.<sup>3</sup>



- Regulatory offences are less serious forms of offences — for example, unauthorised dealing with shop goods (known as shoplifting), leaving a hotel or other venue without paying, and damage to property where the value of the damage or loss caused is less than \$250).<sup>4</sup>
  - For these offences, police have an alternative to charging a person with a criminal offence.
  - The maximum penalty that can be imposed is a fine, probation or a community service order.
  - Imprisonment is not an option.
- These offences are generally only dealt with in Magistrates Courts.
- Criminal offences include summary offences (also known as simple offences), misdemeanours and crimes.<sup>5</sup>
  - Summary offences are generally minor offences that must be prosecuted within 12 months of the matter arising.<sup>6</sup> They are usually heard in a Magistrates Court.
    - Examples include driving offences, public nuisance offences, trespassing and minor drug offences.<sup>7</sup>
    - Sometimes a higher court judge may hear a simple offence.
  - Misdemeanours and crimes are **indictable offences**.<sup>8</sup> An indictable offence may be dealt with in the Supreme Court or District Court.
    - Generally, crimes are more serious than misdemeanours.
    - Some indictable offences can or must be dealt with summarily, which means they are dealt with by a Magistrates Court rather than by a higher court.

## Magistrates Courts

Magistrates Courts are the first level of the Queensland court system and sentence most people who plead guilty or are found guilty of an offence in Queensland (approximately 94 per cent of court cases are finalised in the Magistrates Courts).<sup>9</sup>

Magistrates Courts hear cases in about 130 locations.<sup>10</sup>

A person charged with any type of offence must first go to a Magistrates Court after being charged. Most cases in a Magistrates Court are heard and decided by a magistrate.<sup>11</sup>

A magistrate can make decisions about:

- whether a person is to be released on bail or remanded in custody (see **Remand** on [page 41](#))
- if the offence is one that must be finalised in a Magistrates Court or that is proceeding summarily
- whether the person is guilty (if the person has a trial) and
- the penalty for the offence.

Unlike trials in the Supreme and District Courts, trials in the Magistrates Courts are heard by a magistrate without a jury. This means a magistrate decides whether the person is guilty or not guilty. In most cases, those charged with an offence plead guilty so there is no need for a trial.

The Magistrates Courts deal with regulatory offences, simple offences and some indictable offences that can or must proceed summarily (such as some forms of burglary, unlawful use of a motor vehicle, fraud and assault occasioning bodily harm).

Generally, indictable offences that must be heard summarily are those that carry a maximum penalty of 3 years or less. A Magistrates Court can also hear other listed offences with a higher maximum penalty in certain circumstances, for example, if the prosecution decides to proceed this way, or if the person decides not to ask for a jury trial.<sup>12</sup>

The maximum sentence that a magistrate can give is 3 years' imprisonment (although a sentence of up to 4 years' imprisonment can be given by a Magistrates Court sitting as the **Drug and Alcohol Court** ([page 15](#))).

A magistrate must not deal with an indictable offence if they think that if convicted the person may not be adequately punished if sentenced in a Magistrates Court because of the nature or seriousness of the offence, or any other relevant consideration.<sup>13</sup> For more serious indictable offences (such as rape, armed robbery and murder) a Magistrates Court determines if there is enough evidence to refer the case for trial in the District Court or Supreme Court. This is called a committal hearing. If a person enters a plea of guilty at the committal hearing, a Magistrates Court will refer the case to the District Court or Supreme Court for sentence.

Where there is a concern about the mental state of a person charged with an offence, a Magistrates Court has certain powers depending on whether the offence is a simple offence or an indictable offence.

If the offence is a simple offence, the magistrate may dismiss the matter if they are satisfied the person was of unsound mind or is unfit for trial.<sup>14</sup> If the magistrate is satisfied that the person is currently unfit for trial but likely to become fit for trial within 6 months, the matter can be adjourned.<sup>15</sup> If the magistrate dismisses or adjourns the matter due to the person being of unsound mind or unfit for trial, the magistrate may refer the person to an agency or health department for appropriate care and treatment.<sup>16</sup> For an indictable offence, the magistrate may refer the matter to the **Mental Health Court** ([page 16](#)).<sup>17</sup>

## District Court

The District Court is the second highest court and deals with serious criminal offences (such as rape and most other sexual offences, armed robbery and grievous bodily harm offences).

The District Court also hears appeals against sentences from Magistrates Courts.

The District Court sits in 32 locations across Queensland, with some judges travelling to regional and remote locations.<sup>18</sup>

In the District Court, cases are overseen by a judge. Criminal trials are usually heard with a jury, although in rare circumstances a judge can hear a trial without a jury.<sup>19</sup>

If a person is convicted or pleads guilty, the judge can impose a sentence up to (and including) the **Maximum penalty** ([page 36](#)) for the offence.

## What is a jury trial?

When a jury trial is held, 12 people selected from the general community will determine whether the defendant is guilty or not guilty based on the facts of the case presented at trial.

The judge does not determine guilt but ensures the trial is conducted fairly and makes all other decisions, including passing sentence if the person is convicted.

If a criminal trial is held without a jury, the judge decides whether the defendant is guilty or not guilty.



## Supreme Court

The Supreme Court is the third and highest court. It includes a trial division and the Court of Appeal.<sup>20</sup>

The Supreme Court trial division sits in 11 regional courthouses and, as with the District Court, judges travel to hear cases in regional and remote areas.<sup>21</sup>

The process for a criminal trial (with or without a jury) is the same as for the District Court.

The difference between the Supreme Court and District Court is the type of offences that can be heard and decided.

The Supreme Court deals with the most serious criminal cases (including murder, manslaughter and the most serious drug offences).

If a person is convicted or pleads guilty, a Supreme Court judge can impose a sentence up to (and including) the **Maximum penalty** ([page 36](#)) for the offence.

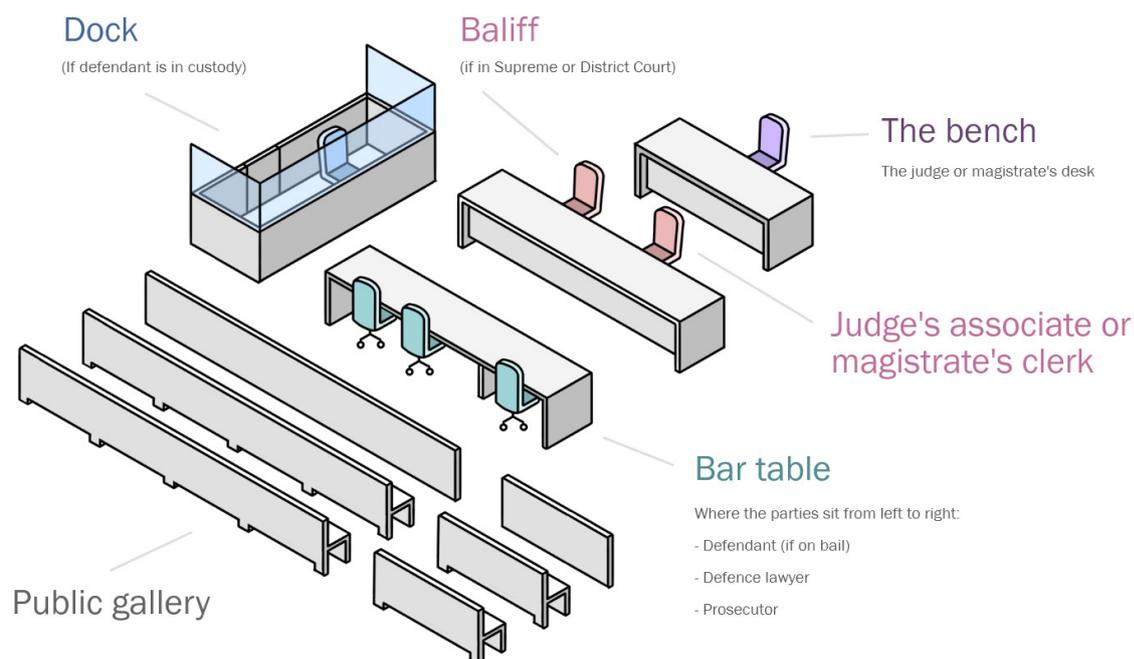
The Court of Appeal hears and decides appeals against some sentences.

The Court of Appeal's role is discussed in **Sentence appeals** on [page 80](#).

## The courtroom

*This diagram depicts a typical Magistrates Court courtroom.*

*In the District and Supreme Court, docks are generally located behind the bar table and all defendants (whether on bail or remand) sit in the dock.*



## Other Queensland courts and specialist programs

Queensland has a number of courts that hear specific types of cases. Some of these courts deal with people charged with criminal offences. Queensland has also established specialist programs in some courts.

### Childrens Court

Where a child (a person aged 10-17 years) is alleged to have committed an offence, cases can be dealt with by:

- the Childrens Court, a special court at the Magistrates Courts level<sup>22</sup>
- the Childrens Court of Queensland, a special court at the District Court level<sup>23</sup>
- the Supreme Court, dealing with offences categorised as ‘supreme court offences’ under the *Youth Justice Act 1992 (Qld)*.<sup>24</sup>

Learn more about how children are sentenced in our [Guide to the sentencing of children in Queensland](#)



#### Childrens Court (Magistrates Courts)

All offences start in the Childrens Court. This court can only finalise summary offences and less serious offences by way of trial or sentence.<sup>25</sup>

Childrens Court proceedings are closed to the public.<sup>26</sup> This means only people directly involved in the case can generally be present<sup>27</sup> and no information identifying a child defendant can be published.<sup>28</sup>

The Childrens Court can also hear child protection applications and adoption cases.

#### Childrens Court of Queensland (District Court)

The Childrens Court of Queensland deals with all children charged with serious criminal offences, apart from those that must go to the Supreme Court.<sup>29</sup>

Cases relating to charges being heard and determined on indictment in the Childrens Court of Queensland are usually heard in an open court, meaning they are open to the

public.<sup>30</sup> Unless the court orders otherwise, no information identifying an accused child may be published.<sup>31</sup>

The Childrens Court of Queensland also hears sentence reviews (similar to an appeal) from sentences imposed in the Childrens Court.

### Supreme Court

The Supreme Court hears cases for children charged with the most serious offences, such as murder and the most serious forms of drug trafficking.<sup>32</sup>

The rules regarding open court and whether identifying information can be published are like those in the Childrens Court of Queensland.<sup>33</sup>

### Murri Courts

Murri Courts are specialist Magistrates Courts. They aim to deliver a culturally appropriate court process that respects and acknowledges Aboriginal and Torres Strait Islander cultures. They also link participants to support services, such as counselling, education and training, support for alcohol and drug misuse, and help finding somewhere to live.<sup>34</sup>

Elders and Respected Persons from the community are present in the courtroom. Their role is to support and encourage people appearing before the Murri Court and to suggest how they or other services might help them to make changes and stop offending.<sup>35</sup> They also help magistrates understand more about participants' personal and cultural circumstances.<sup>36</sup>

Murri Courts are located in the Magistrates Courts and Childrens Courts in 15 locations. In some locations, Australian South Sea Islander defendants can participate in Murri Court.

Learn more about [Murri Court](#)



## Specialist Domestic and Family Violence Courts

Specialist Domestic and Family Violence Courts generally deal with all civil and criminal domestic and family violence cases at the Magistrates Courts level in Southport, Beenleigh, Townsville, Mount Isa and Palm Island.<sup>37</sup>

Specialist Domestic and Family Violence Courts offer:

- a dedicated magistrate with expertise in domestic and family violence issues
- a court coordinator to oversee court operations, including stakeholder engagement
- a specialist registry with court staff to offer support and information
- dedicated prosecutors
- duty lawyers to provide legal advice and representation for both parties
- court support workers for the aggrieved (or, in criminal cases, the complainant)
- support/liaison workers for respondents (or, in criminal cases, defendants)
- access to domestic and family violence perpetrator programs for respondents.<sup>38</sup>

Even in locations where a Specialist Domestic and Family Violence Court operates, more serious domestic violence offences are still dealt with by the higher courts (depending on the type of charge). For example, if a person is charged with attempted murder, the Supreme Court will hear the case and decide the sentence if they plead guilty or are found guilty.

## Drug and Alcohol Court

The Queensland Drug and Alcohol Court is a specialist court operating in Brisbane. It provides an intensive and targeted response to adults with a severe substance use disorder that is directly associated with their offending.<sup>39</sup>

The Court aims to improve community safety by rehabilitating people convicted of drug offences through supervision, treatment and program intervention during their sentence. This approach addresses the person's drug and alcohol dependency, so that they can reintegrate into the community.

The Drug and Alcohol Court uses a special sentencing order, called a drug and alcohol treatment order. This order is a prison sentence (for up to 4 years) that is suspended and allows the person to stay in the community and be strictly supervised for 2 years while they participate in intensive rehabilitation programs.<sup>40</sup> (For more information about the conditions of a **Drug and alcohol treatment order** see [page 52](#).)

While on the treatment order, the person is supported and managed by a team of specialists led by the Drug and Alcohol Court magistrate. This includes:

- court staff
- health clinicians
- Corrective Services officers
- police prosecutors
- Legal Aid Queensland lawyers
- an Aboriginal and Torres Strait Islander court liaison officer.<sup>41</sup>

Visit our website to take an interactive journey through the [Drug and Alcohol Court](#)



## Mental Health Court

The Mental Health Court is a specialist court that decides the state of mind of people charged with offences. It is not a sentencing court but can make findings that affect how a person charged with a criminal offence is dealt with.

A criminal case can be referred to the Mental Health Court if it's believed that the person is or was of unsound mind and to determine whether they are fit for trial. In assessing whether the person was of unsound mind, the Court will consider if the person was deprived of the capacity to understand what they were doing, or to control their actions or to know that they should not do the act or make the omission.<sup>42</sup>

The Court mainly hears cases involving charges for serious offences that would ordinarily be dealt with in the Supreme Court or District Court. However, magistrates can also refer cases to the Court if they involve more serious (indictable) offences and it appears that the person may have been of unsound mind when the offence was allegedly committed or is unfit for trial.<sup>43</sup> This can happen if the magistrate thinks there are exceptional circumstances related to the protection of the community and a forensic order or treatment support order may be needed.<sup>44</sup>

The Mental Health Court decides whether the person:

- was of unsound mind at the time of the offence (in which case the person is not criminally responsible for their behaviour)

- is currently fit for trial (meaning they have the ability to understand the court proceedings so as to make a proper defence) and, if they are unfit, whether this is permanent or temporary, or
- if charged with murder, will instead stand charged with manslaughter by reason of diminished responsibility.<sup>45</sup>

The Court is formed by a Supreme Court judge and is advised by two assisting clinicians who examine material and provide expert advice about clinical evidence and issues relating to the person's treatment, care and detention.<sup>46</sup>

The Court investigates the connection between a person's mental illness and the alleged offences.

It considers a wide range of material, including reports by police and experts, advice from the assisting clinicians, and submissions from the Office of the Director of Public Prosecutions, the Chief Psychiatrist and the person's legal representatives.<sup>47</sup>

The Court can order the person be examined by a court-nominated psychiatrist or health practitioner.<sup>48</sup>

If the Court decides the person is not of unsound mind and fit for trial, the criminal proceedings continue.<sup>49</sup>

If the Court decides the person was of unsound mind or permanently unfit for trial, the criminal proceedings are discontinued<sup>50</sup> and the Court may make a forensic order, treatment support order or no order.<sup>51</sup> If the Court decides the person was of unsound mind, the person may still elect to be tried in a criminal court, despite the decision of the Mental Health Court.<sup>52</sup> If the person is charged with murder and the Court decides the person was of diminished responsibility, the person cannot be tried for murder but the person can still be charged with another offence (for example, manslaughter).<sup>53</sup>

When deciding whether to make a forensic order, treatment support order or no order, the Court must consider the person's circumstances, the nature of the offence and any victim impact statement.<sup>54</sup>

Forensic orders for certain very serious offences (called prescribed offences) can be made for up to 10 years, which cannot be revoked.<sup>55</sup> This applies to the offences of murder, attempted murder, manslaughter, acts intended to cause grievous bodily harm and other malicious acts, grievous bodily harm, rape, attempt to commit rape and assault with intent to commit rape.<sup>56</sup>

There are different types of forensic orders that can be made, depending on whether the person's unsoundness of mind or unfitness for trial is due to:

- a mental condition other than an intellectual disability
- the person's mental illness as well as an intellectual disability, or
- an intellectual disability.<sup>57</sup>

The Court decides if the person needs to be treated as an inpatient of a mental health service or if they can live in the community.<sup>58</sup> The person can only be treated in the community if the Court determines they do not pose an unacceptable risk to community safety.<sup>59</sup> Patients on forensic orders are subject to strict supervision. Forensic orders are regularly reviewed by the Mental Health Review Tribunal.<sup>60</sup>

The Court can make a treatment support order where a forensic order is not needed.<sup>61</sup> A treatment support order may also be made by the Mental Health Review Tribunal when a forensic order is reviewed, as a ‘step down’ order.<sup>62</sup>

If the Court decides the person is temporarily unfit for trial, the Court must make a forensic order or treatment support order,<sup>63</sup> which is then reviewed by the Mental Health Review Tribunal over time.

The Mental Health Court also hears appeals from the Mental Health Review Tribunal and inquiries into the lawfulness of a patient’s detention in authorised mental health facilities.<sup>64</sup>

For more information, including what hearings are open to the public, visit the [Mental Health Court’s website](#)



## Court Link

Court Link is a bail-based program that works with participants for approximately 12 weeks to address problems that may place them at higher risk of offending.<sup>65</sup>

This voluntary program connects participants with treatment and support services, which can assist with their housing, employment, drug and alcohol, health and other needs.<sup>66</sup>

The court may consider a participant’s positive engagement with the program when deciding their sentence.<sup>67</sup>

Court Link is currently available in Brisbane, Cairns, Ipswich, Southport, Caboolture, Redcliffe, Maroochydore and Mount Isa.<sup>68</sup>

Learn more about [Court Link](#)



## Commonwealth courts

There are Commonwealth courts that hear non-criminal cases, such as those involving family law, commercial and financial, employment, migration and human rights issues.

These courts are the:

- Federal Court of Australia<sup>69</sup>
- Federal Circuit and Family Court of Australia, comprised of:
  - Family Court of Australia
  - Federal Circuit Court of Australia.<sup>70</sup>

We do not focus on these courts in this guide as this guide is about sentencing for criminal offences.

## High Court of Australia

The High Court of Australia is the highest court in Australia. All other Australian courts must follow High Court decisions. The High Court:

- interprets and applies Australian laws
- decides cases of special federal significance, such as challenges to the constitutional validity of laws
- hears and decides applications for special leave and appeals, from federal, state, and territory courts.<sup>71</sup>

The High Court can hear the whole range of Australian law, such as constitutional, contract, company, criminal and criminal procedure, insurance, tax, property, and family law.

The High Court can also hear and decide an appeal against sentence from the Queensland Court of Appeal. This process is discussed in **Sentence appeals** on [page 80](#).

The High Court is based in Canberra and is usually made up of seven justices.

Learn more about the [High Court of Australia](#)



3

■

| Sentencing hearing

# Chapter 3 highlights

When a person pleads guilty or has been found guilty of an offence, the court holds a sentencing hearing. Most courts are open, which means the media and members of the public can attend and watch what happens.

Different people have different roles in the sentencing hearing:

- ✓ The **judge** or **magistrate** considers what is said, applies the law and decides the sentence.
- ✓ The **prosecutor** tells the court about the offence, the person's criminal history, how the offence affected the victim and any other facts that might help the judge or magistrate decide the sentence.
- ✓ The **defence lawyer** tells the court about the person who committed the offence and the circumstances in which it was committed, as well as other facts or legal issues relevant to sentence.
- ✓ **Corrective Services officers** can provide advice to the court, including in the form of a pre-sentence report, about the person's suitability for a community-based order and other issues.
- ✓ The **Public Guardian** can assist a person with impaired decision-making capacity.
- ✓ **Community Justice Group representatives** can tell the court, if the person being sentenced is an Aboriginal or Torres Strait Islander person, about that person's background, culture, and programs and services available to them in their community.
- ✓ The **media** can report what happens in court to the public.
- ✓ The **victim** can give details to the prosecutor of the harm caused (which can be in the form of a victim impact statement) to let the court know how the offence has affected them.

## What happens at a sentencing hearing?

A sentence can only be given when a person has been found guilty of an offence.

An accused person can be found guilty of an offence in one of two ways:

- they plead guilty to the offence charged, or
- they are found guilty following a trial.

To be found guilty at trial, the magistrate, judge (for judge-alone trials) or jury must be satisfied beyond reasonable doubt that the person is guilty of the offence as charged.

### What does ‘guilty’ and ‘not guilty’ mean?

A plea of ‘guilty’ means the person agrees that they committed the offence they are charged with (in the way they have been said to break the law).

A plea of ‘not guilty’ means the person does not agree that they did what they are charged with, or that they have a defence, justification or excuse in law – they will usually have to have a trial. At a trial, a magistrate, judge or jury will decide if the person is guilty or not guilty.



When a person pleads guilty or has been found guilty of an offence, the court holds a sentencing hearing. The hearing usually follows straight after the person has pleaded guilty or been found guilty, but it can also happen at a later date.

At the hearing, the State (represented by the prosecutor) and the person found guilty of the offence (who can be represented by their defence lawyer) each present important information (make submissions) to help the judge or magistrate determine the appropriate sentence.

In most cases, the judge or magistrate will give reasons for the sentence. If a court imposes a sentence of imprisonment, the court must state its reasons for the sentence.<sup>72</sup> The victim can attend and participate in the sentencing hearing but does not have to.

Sentencing hearings for adults are usually held in open court, which means that anyone can attend (including the media or another member of the public), unless the judge or magistrate orders the court to be closed.

There are some circumstances where the court must be closed. These include cases where a person has agreed to provide assistance to law enforcement authorities (see **Cooperation with law enforcement** on [page 40](#)).<sup>73</sup>

If a person pleads guilty to an offence, but the defence and prosecution disagree about what the person did, then the court has to decide what happened (the factual basis of the sentence) before sentencing the person. For example, a person might plead guilty to the manslaughter (unlawful killing) of a child, but say that they failed to seek medical attention rather than that they caused the injuries that led to the child's death. If the prosecution does not agree, the court will decide the facts. This is called a contested sentence.

## Roles of people in the court

### The judge or magistrate

In deciding what sentence to pass, a judge or magistrate considers the submissions of the prosecution and defence. The judge or magistrate can ask questions to seek information and clarify issues.

The judge or magistrate applies the current law (legislation — including the maximum penalty for the offence — and case law). The types of sentences a court can order are set out in the *Penalties and Sentences Act 1992* (Qld). See **Types of penalties and sentences** on [page 44](#) for more information.

How judges and magistrates decide what sentence to impose is a complex process and requires them to consider a range of issues and factors. This is discussed in detail in **Deciding what sentence to give** on [page 30](#).

When a judge or magistrate makes an order involving conditions as part of the sentence — for example, an order of probation — the judge or magistrate must ensure the person understands the conditions and agrees to the order being made.

However, a court can order imprisonment (including suspended imprisonment) without the person being sentenced agreeing to this.

The magistrate's or judge's reasons for their sentencing decision are called **sentencing remarks**.

These reasons are often delivered *ex tempore* — which means the magistrate or judge delivers them verbally at the end of the sentencing hearing, rather than preparing written reasons delivered later.

Some [sentencing remarks transcripts](#) are published by the Supreme Court Library Queensland



## The prosecutor

During a sentencing hearing the prosecutor provides the judge or magistrate with:

- all the facts and circumstances of the offence/s, in particular any aggravating factors (things that may make the offending more serious – see **Mitigating and aggravating factors** on [page 38](#))
- the criminal history of the person who committed the offence, highlighting relevant prior offending
- submissions about any damage or harm caused or the impact of the offending on any victim/s, such as detailed in a victim impact statement
- submissions about relevant case law and legislation, including associated sentencing principles
- submissions on the appropriate sentence or range of sentences.

## The defence lawyer

During a sentencing hearing, the defence lawyer provides the judge or magistrate with:

- information about the person’s personal circumstances (known as ‘antecedents’)
- character references (letters from people who know the person well, such as family members or friends, and who can provide an opinion of the person relevant to the offence/s)
- background or any contextual information about the offence/s, in particular any mitigating factors (see **Mitigating and aggravating factors** on [page 38](#))
- submissions about any steps the person has taken towards rehabilitation and any future plans
- submissions about relevant case law and legislation, including associated sentencing principles
- submissions on the appropriate sentence or range of sentences.

## Corrective Services officer

Corrective Services officers are sometimes in court when an adult is sentenced. Queensland Corrective Services is a government agency that manages and supervises people who are in prison, on parole or on community-based orders.

A Corrective Services officer can provide advice to the court (either verbally or sometimes in the form of a presentence report) about the person’s suitability for a community-based order and other issues.

If a person is in custody at the time of their sentence, a Corrective Services officer will bring the person to court. If a person is sentenced to imprisonment, a Corrective Services officer will take the person into custody.

If a person is sentenced to a community-based order, they will have to report to a Corrective Services office, usually within a few days of being sentenced.

A Corrective Services officer can prosecute a person for failing to comply with a community-based order. They may also attend a sentencing hearing and tell the court (verbally or in writing) how a person has performed on a previous community-based order.

## Public Guardian

If the Queensland Civil and Administrative Tribunal determine that a person has impaired decision-making capacity, the Public Guardian can be appointed as a formal decision maker. This is a last resort. The Office of the Public Guardian is independent and protects the rights, interests and wellbeing of adults with impaired decision-making capacity.<sup>74</sup>

The Public Guardian supports the person by making decisions in a supported decision-making framework, for example, applying for legal representation for the person charged with an offence and supporting them to give instructions to their lawyer. The Public Guardian also gives information and assistance to the person's lawyer so the court can understand the issues that may be impacting the person (living or accommodation arrangements, admission to a health service and any relevant medical or psychiatric diagnoses). On some occasions the Public Guardian may support the person to attend their sentence hearing.

Find out more information about the  
[Public Guardian](#)



## Community Justice Group representative

When sentencing an Aboriginal or Torres Strait Islander person, a court must have regard to submissions made by a representative from a Community Justice Group in the person's community.<sup>75</sup>

A representative of a Community Justice Group can provide the court with information about the person's relationship to the community, any cultural considerations and information about programs and services available to the person in their community.<sup>76</sup>

Learn more about [Community Justice Groups](#)



## The media

Journalists play a key role in helping the community understand sentencing. Journalists can attend sentencing proceedings and report to the public what happened. However, if the court is closed, journalists, as well as other members of the public, are not allowed in the court room.

Journalists can only film sentencing remarks if given permission. They cannot take photos of court proceedings.

More information about the role of the media, and what journalists can and can't report on, can be found in our [Court reporting guide for journalists](#)



## The victim

When a court is sentencing a person for committing an offence, the judge must think about the harm it caused a victim.

A victim will generally be able to be present at the sentencing of the person who committed the offence against them.

The victim can also be called by the prosecutor as a witness to tell the court about the offence and how it has affected them.

When determining an appropriate sentence, the court must consider any physical, mental or emotional harm done to a victim because of the offence.<sup>77</sup> The court must also consider the effect of the crime on any child under 16 years who may have been directly exposed to or witnessed the offence.<sup>78</sup>

### Victim impact statements

A victim, and/or their family, can write a victim impact statement to tell the court how the offence has affected their life. It may include:

- information about how the victim's life has changed since the offence was committed
- details of physical or emotional injuries and how these affect the victim
- specifics of financial loss and how this affects the victim
- details about the loved one's life (if the case is about the death of a loved one).

The statement may include attachments, such as medical reports, photographs and drawings.

The victim impact statement is meant to focus on the impacts of the offence, not the details of the offence itself. It must be accurate and relevant only to the offence for which the person is being sentenced.

The victim (or their family) does not have to write a victim impact statement; it is their choice. If a victim or victim's family chooses not to provide a victim impact statement, this does not mean the court will assume the offence caused little or no harm to the victim or their family.

The victim impact statement can be provided to either the arresting police officer or the victim liaison officer from the Office of the Director of Public Prosecutions.

The court may offer a victim the opportunity to read their statement aloud in court. The prosecutor can also read the victim's statement aloud in court on their behalf. If a victim is going to read their statement, the court may make special arrangements to help the victim (for example, making sure the victim cannot see the person who committed the offence).

Find out more information on [how to make a victim impact statement](#)



If the person who committed the offence has been referred to the Mental Health Court, victims can still submit a victim impact statement telling the Court how the offence affected them. Victims also can request that the Court include special conditions on the order for their safety and wellbeing.

Find out more information for victims of crime when the person has been assessed as [having a mental illness or intellectual disability](#)



## Victims' rights

A victim has certain rights in criminal justice proceedings, outlined in the *Victims of Crime Assistance Act 2009* (Qld).

Learn more about [victims' rights](#)



## Support for victims

Victim Assist Queensland helps victims of violent crime, including all forms of domestic and family violence, to recover from the effects of the crime and get their lives back on track.

Financial assistance is available through Victim Assist to help victims recover from acts of violence that happen in Queensland.

Victim Assist, through the Victim Coordination Program, can also support victims during the court process by:

- providing information about the court process
- referring victims to specialist agencies that can provide practical court support
- helping victims to write a victim impact statement.

Find out more about [Victim Assist Queensland](#)



### Victims' right to information after a person is sentenced

Victims are also entitled to apply for information about the sentence of the person who committed the offence.

This can include:

- details of the prison where the person is held
- the person's security classification
- when the person can apply for parole and their date of release
- when they have applied for parole – in which case the victim can make a written submission
- the outcome of any parole applications.

You must be on a victims' register to get this information.

There are different registers and different types of information that can be given out depending on whether the person who committed the offence is an adult or a child or has a mental illness or intellectual disability.

Learn more about [victims' registers](#)



4



Deciding what  
sentence to give

# Chapter 4 highlights

A judge or magistrate can choose what sentence to give someone (unless it is a mandatory sentence). This is called **judicial discretion**.

Sentencing is very complex. Judges and magistrates consider many things when deciding a sentence, including:

- ✓ the reason/s to sentence a person, which are called **sentencing purposes**. These are **punishment** (to punish the person in a way that is fair), **rehabilitation** (to help a person change), **deterrence** (to discourage that person, and others, from committing offences like this in the future), **denunciation** (to express disapproval for this behaviour) and **community protection** (to keep the community safe)
- ✓ what statute law says must be considered. For example, the maximum penalty, how much the person was to blame for the offending (culpability), mitigating and aggravating factors, remand (time spent in custody) any plea of guilty and other factors
- ✓ sentencing principles from case law. These include **proportionality, parity, totality** and the **De Simoni principle**
- ✓ how similar cases have been sentenced.

## How do judges and magistrates decide?



The judge or magistrate usually has a choice (discretion) about what sentence to order. To make that choice, they are guided by the permitted reasons for sentencing (sentencing purposes) and other factors required by law. In determining the sentence, the court will also balance various sentencing principles.

This process of determining a sentence in an individual case by balancing the relevant considerations is known as ‘instinctive synthesis’.

The High Court has explained that there are a number of reasons why the exercise of sentencing discretion by a judge or magistrate is not purely subjective (based on personal beliefs), or arbitrary (a random personal choice without reason) and involves much more than selecting a number out of thin air:

- A sentencing judge or magistrate is likely to have seen many other cases involving people who have committed the same type of offence. Because of this, judges and magistrates develop, through their experience and knowledge, a sense of how serious a particular case is compared to other similar cases, and how the circumstances of the person to be sentenced compare to other people who have been sentenced. This affects how much weight is given to different factors. Sentencing judges and magistrates also consider what sentences have been imposed in other cases for that same type of offence.
- Judges and magistrates factor in changes to legislation – including increases in the maximum penalty for the offence. This guides their approach to determining the appropriate sentence. For example, an increase to the maximum penalty may indicate that the offence now is viewed more seriously and that sentences for the offence should be higher.
- Sentencing judges and magistrates are always aware that the sentences they impose may be reviewed on appeal (by an appeal court). Therefore, they pay close attention to the guidance provided by appellate courts about factors that are relevant to sentencing in a particular case and those that are not.
- The sentences judges and magistrates impose, and their reasons, are open to scrutiny through the publication of their sentencing remarks or through media reporting. Knowing this, judges and magistrates aim to impose sentences that are consistent with community expectations.
- Sentencing judges and magistrates are bound to ensure that any sentence they impose is proportionate to the seriousness of the offence committed. A court may not impose a sentence that is more severe than is justified by the crime committed – even if this is for the purpose of public protection. Proportionality, together with consistency, operates as a ‘final check’ against a sentence being imposed that is unjust.<sup>79</sup>

## Did you know?

Australian research compared judges’ sentence orders with the views of jury members (who are also members of the public) about what sentence they would have given. That research found that, in general, the sentences judges gave here similar to or even harsher than what the members of the public considered to be an appropriate sentence.

Find out [more information](#).



## Sentencing purposes

Under the *Penalties and Sentences Act 1992* (Qld), there are five purposes for which a sentence may be given in Queensland. Sentences can be given for any one or a combination of these purposes:

- **punishment** – to punish the person to an extent or in a way that is just (fair)
- **rehabilitation** – to create conditions that help the person change their behaviour to stop offending
- **deterrence** – to discourage the person being sentenced (known as personal or specific deterrence) or other people (known as general deterrence) from committing the same or a similar offence by showing them what might happen if they do
- **denunciation** – to express in a formal public way that the person’s behaviour is unacceptable to the community
- **community protection** – to protect the community from the person sentenced.<sup>80</sup>

No one purpose is the main or dominant purpose for sentencing in all cases. In each case the judge or magistrate will consider the features of the offending and the person being sentenced and decide which purpose or combination of purposes apply and how much weight they should be given.

## Legislative sentencing factors and principles

### The *Penalties and Sentences Act 1992* (Qld)

According to the *Penalties and Sentences Act 1992* (Qld), the court must consider a number of factors and principles when sentencing an adult. These are:

- the principle that imprisonment should only be ordered as a last resort and a sentence that allows the person to stay in the community is preferable (however there are exceptions, such as offences that involve violence or result in physical harm to a person and sexual offences against children under 16 years)
- the maximum and any minimum penalty for the offence (see **Maximum penalty** on [page 36](#) and **Mandatory sentences** on [page 41](#))
- the nature and seriousness of the offence, including any physical, mental or emotional harm to a victim and the effect on a child under 16 years who may have been directly exposed to, or a witness to, the offence
- how much the person being sentenced is to blame for the offence (see **Culpability** on [page 37](#))
- any damage, injury or loss caused

- the person’s age, intellectual capacity and character (including the number, seriousness, date, relevance and nature of any previous convictions (generally an aggravating factor) and any significant contributions they have made to the community)
- any aggravating or mitigating factors relating to the person (see **Mitigating and aggravating factors** on [page 38](#))
- whether the person was a participant in a criminal organisation (see **Serious organised crime** on [page 77](#))
- how common (prevalent) the offence is
- how much help the person gave to law enforcement agencies, such as police, in investigating the offence or other offences (see **Cooperation with law enforcement** on [page 40](#))
- time the person has already spent in custody while waiting to be sentenced (see **Remand** on [page 41](#))
- sentences given to or served by the person in another state or territory for an offence committed at, or about, the same time as the offence the person is being sentenced for in Queensland; sentences already given to the person that have not been served; and sentences that the person is liable to serve because an order has been or will be revoked
- if the person is already on a community-based sentencing order, whether they have followed the conditions of the order and have done what they agreed to do
- if the person is on bail, the successful completion of a program or course ordered as a condition of bail
- if the person is an Aboriginal or a Torres Strait Islander person, any submissions by a representative of a Community Justice Group in the person’s community (see **Community Justice Group representative** on [page 25](#))
- the principle that the court should not refuse to make a community-based order for the person sentenced merely because of a disability, their sex, educational level or religious beliefs
- if sentencing a person convicted of the manslaughter of a child under 12 years, the court must treat the child’s defencelessness and vulnerability, having regard to the child’s age, as an aggravating factor (see **Mitigating and aggravating factors** on [page 38](#))
- if sentencing a person convicted of a domestic violence offence, the court must treat this as an aggravating factor, unless the court thinks this is not reasonable because there are exceptional circumstances (see **Mitigating and aggravating factors** on [page 38](#) and **Domestic and family violence offences** on [page 73](#))
- whether – and how early – the person pleaded guilty or indicated they would plead guilty (see **Guilty plea** on [page 39](#))
- any other relevant circumstance.<sup>81</sup>

By law, some factors cannot be taken into account to reduce the sentence, such as if the person was voluntarily intoxicated by alcohol or drugs when they committed the offence.

## Maximum penalty

A maximum penalty is the most severe punishment a court can give to someone who pleads guilty or is found guilty of an offence. It is only given for ‘cases falling within the worst category of cases’<sup>82</sup> for which the maximum penalty has been set.

A judge or magistrate decides the sentence unless a mandatory sentence applies (such as a life sentence for murder). They can choose to impose a sentence up to the maximum penalty, based on what happened in the particular case, which is called **discretion**. A court cannot impose a punishment higher than the maximum penalty set for an offence.

Maximum penalties are set by Parliament in legislation. This is how politicians (and the community who elects them) make clear their views about the seriousness of the offence. For example, the maximum penalty for common assault is 3 years imprisonment, while for the much more serious offence of grievous bodily harm it is 14 years imprisonment.

In Queensland, the highest maximum penalty available is a life sentence – for offences such as murder, attempted murder, manslaughter, unlawful striking causing death (also known as the ‘one-punch’ law), rape, armed robbery and arson.

### Did you know?

Maximum penalties serve a number of important purposes in sentencing. They:

- set a clear legal limit on the court’s sentencing power
- set out the most severe possible consequence if a person is convicted of a particular offence
- indicate the views of Parliament (and the community) and guide courts about the seriousness of an offence compared to other offences
- establish an upper limit of punishment that is fair for the offence – reserving the maximum penalty for the worst or most serious category of cases.



While legislation creates offences and sets maximum penalties for those offences, there is also procedural legislation which can mean that the actual maximum penalty available to a court is lower than the legislated maximum penalty for the offence. For example, when a person is sentenced in the Magistrates Courts, a 3-year limit generally applies. This means that even if a Magistrate is sentencing a person for an offence of assault occasioning bodily harm, which has a maximum penalty of 7 years imprisonment, the most a Magistrate can order is 3 years’ imprisonment.

If the Magistrate thinks that a lengthier period of imprisonment may be appropriate, they have to send the matter to a higher court for sentence.

The *Criminal Code* (Qld) creates all of Queensland's most serious offences, except for drug offences, which are contained in the *Drugs Misuse Act 1986* (Qld). Examples of other Queensland Acts that contain specific offence types include the *Weapons Act 1990* (Qld) (weapon offences) and the *Transport Operations (Road Use Management) Act 1995* (Qld) (traffic offences).

The *Criminal Code* (Qld) generally sets maximum penalties at 1, 3, 5, 7, 10 and 14 years imprisonment, and life imprisonment for the most serious offences. There are some examples of (mostly sexual) offences that have 20-year and 25-year maximum penalties.

Many offences have several different maximum penalties, depending on whether or not 'circumstances of aggravation' apply. This is an additional fact that makes the offence more serious.

For example, the offence of assault occasioning bodily harm has a maximum penalty of 7 years imprisonment, which increases to 10 years imprisonment if there is a circumstance of aggravation, such as if the person is, or pretends to be, armed with any dangerous or offensive weapon or instrument or is 'in company' with someone.

For examples of maximum penalties see **Appendix: Examples of maximum penalties** on [page 92](#).

## Culpability

Culpability is the extent to which a person is responsible (to blame) for an offence and for the harm they caused. Generally, the more culpable a person is, the more serious the offence will be assessed to be and the more severe the sentence.

To determine the culpability of the person being sentenced, judges and magistrates consider the person's intention, awareness and motivation for committing the offence. The court will consider factors such as whether the offence was:

- committed by a person in complete control of their own actions (or, for example, whether the person was mentally disordered or intellectually disabled)
- committed by a person with a deprived and dysfunctional upbringing, which impacted their ability to make rational decisions
- deliberate (committed with the person's knowledge of its consequences or likely consequences), reckless, or in careless (negligent) disregard of the consequences
- provoked (triggered by an event) or unprovoked
- planned in advance or committed on the spur of the moment
- committed while in possession of a weapon.

While differences in culpability are relevant to sentencing, they are also reflected in the offences that people may be charged with or convicted of.

### Murder and manslaughter example:

- if a person killed the victim with the intention to kill or to cause grievous bodily harm, this is murder
- if the person was suffering from a major mental disorder (short of insanity) when they killed the victim, they may instead be convicted of manslaughter on the basis of diminished responsibility.

## Mitigating and aggravating factors

The court must consider mitigating and aggravating factors when determining an appropriate sentence.

**Mitigating factors** are details about the person being sentenced and the offence that tend to reduce the severity of the sentence.

**Aggravating factors** are details about the offence, the victim and/or the person being sentenced that tend to increase the person's culpability and the sentence that is passed.

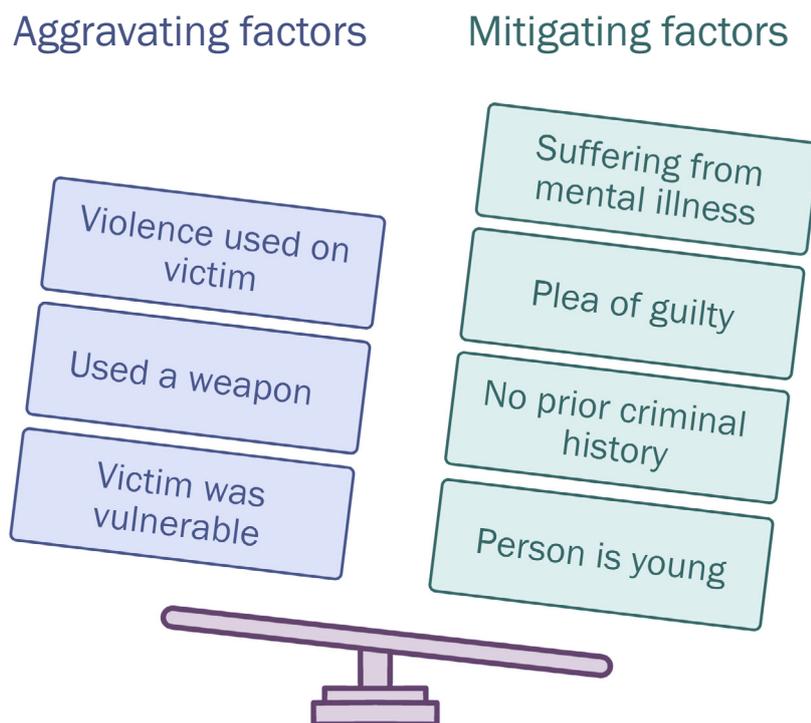
The following are examples of factors that can mitigate a sentence:

- the person suffers from a cognitive impairment or mental illness
- the previous good character of the person (but for some offences this cannot be considered where it assisted the person to commit the offence)
- the person is young and immature
- the person has demonstrated remorse (they feel guilty about and sorry for what they have done) and/or there is evidence of rehabilitation
- the background of the person (for example, the person may have had an abusive, neglectful and traumatic childhood)
- whether the person pleaded guilty or had an intention to plead guilty and the stage in the proceedings that this occurred (see **Guilty plea** on [page 39](#)).

The following are examples of factors that can aggravate a sentence:

- abuse of a position of trust (for example, where a parent, teacher or other caregiver commits an offence against a child)
- the vulnerability of the victim (for example, a young child or a person with a disability)

- planning the crime (called ‘premeditation’)
- using a weapon, including a pretend weapon
- committing the offence as part of a group (‘in company’)
- the degree of any violence and harm caused, or threat of violence
- the offence was committed while on bail or while the person was subject to a court order
- the person was part of a criminal organisation
- the person has one or more previous convictions (if relevant)
- the offence is a domestic violence offence (unless there are exceptional circumstances) (see **The impact of being recorded as a ‘domestic violence offence’** on [page 75](#)).
- If the person is convicted of the manslaughter of a child under 12 years, the child’s defencelessness and vulnerability having regard to their age.



## Guilty plea

The court must take a person’s guilty plea into account and may reduce the sentence it would have given had the person not pleaded guilty.<sup>83</sup>

The reduction given will vary depending on the circumstances of the case. One important factor is the timing of the plea. For example, if a person pleads guilty or indicates they intend to plead guilty immediately after being arrested, it will likely result in a greater reduction than if this happens just before or during the trial.

There are three reasons why a guilty plea is accepted as justifying a lower sentence:

1. it may demonstrate the person is genuinely sorry about what they have done
2. its practical value by helping the criminal justice system operate more efficiently (for example, saving the community costs by not going to trial)
3. it means victims are spared having to give evidence at trial.<sup>84</sup>

This is particularly relevant to victims of sexual offences or other serious violent offences and crimes involving children or elderly victims.<sup>85</sup>

There is no mathematical formula for determining the reduction given for a guilty plea. While there is a general practice of recognising a guilty plea by setting the parole release or eligibility date after serving one-third of the term of imprisonment, this is not a hard and fast rule.<sup>86</sup> Sometimes a court will recognise the guilty plea by reducing the head sentence instead.

Generally, the more serious the offence the less significance a guilty plea will have on the sentence. Sometimes the offending is so serious it calls for the maximum penalty, despite the person pleading guilty.<sup>87</sup>

A court cannot increase a sentence because the person pleaded not guilty. It is a fundamental principle of the Australian criminal justice system that a person charged with a criminal offence is presumed innocent, entitled to plead not guilty, defend themselves and to have the case proved against them.<sup>88</sup>

## Cooperation with law enforcement

When sentencing a person, the court must consider the level of assistance given to law enforcement agencies in the investigation of the offence or other offences.<sup>89</sup>

There are procedural requirements that apply if a sentence is to be reduced because the person has agreed to cooperate with law enforcement agencies, such as police, in an investigation or where significant cooperation has already been provided.

These requirements aim to protect the safety of persons who have cooperated, or agreed to cooperate, with law enforcement authorities and to encourage this cooperation.

Where cooperation is promised or given, parts of the sentencing hearing must be heard in closed court.<sup>90</sup> This includes submissions about the person's cooperation, comments by the judge or magistrate about the reduction of the sentence and what sentence would have been given had the person not cooperated.<sup>91</sup>

Records relating to the reduced sentence and assistance are also 'sealed',<sup>92</sup> meaning they can only be accessed with the court's approval.

The actual penalty imposed is stated in open court.<sup>93</sup>

## Did you know?

Only certain people can remain in court after it is closed – relevant court staff, the lawyers and the person being sentenced.



## Remand

When a person is charged with an offence, if they are denied bail (or do not apply for it) they will be held in prison while waiting for their trial or sentence. They are then ‘remanded in custody’.

Depending on the charge and complexity of the matter, sometimes a person can be remanded in custody for many months or even years.

If the person is sentenced to imprisonment, the time they have spent in custody (also known as **pre-sentence custody**) will often be taken into account as time already served.<sup>94</sup>

This is a common reason why a person found guilty of an offence may be released from custody on, or shortly after, the day of their sentence.

## Presumptive penalties

Presumptive penalties are set by Parliament in legislation. They provide guidance to courts about what type of penalty should ordinarily be imposed when sentencing a person for a particular kind of offence (for more information see **Sentencing certain offences** on [page 69](#)).

## Mandatory sentences

A mandatory sentence is a fixed punishment set by Parliament.

Usually, when sentencing a person, a judge or magistrate can decide what sentence to impose based on what happened in that case and the person’s individual circumstances. They do not have to order a particular type of sentence. This is called discretionary sentencing. However, a mandatory sentence requires the judge or magistrate to give a particular sentence.

There are different forms of mandatory sentences. Examples include:

- Where both the sentence type and length are mandatory:
  - Mandatory life imprisonment for murder unless an indefinite sentence is ordered (see **Life imprisonment** on [page 60](#)).
  - Mandatory licence disqualification periods for certain offences under the *Transport Operations (Road Use Management) Act 1995* (Qld).

- Where the penalty type is mandatory, but not the amount. For example, if a person commits some offences in a public place while drunk or on drugs, a court must make a community service order.<sup>95</sup> This is in addition to any other penalty the court can impose (e.g. imprisonment, probation or a fine). The court can still decide how many hours of community work the person must perform when making the order. The mandatory sentence does not apply if the court is satisfied the person being sentenced cannot comply with the order because of a physical, intellectual or psychiatric disability.<sup>96</sup>
- Where the period a person must serve in prison before they can be released on parole (the non-parole period) is mandatory. For example, a person who is convicted of a serious violent offence (SVO) or of unlawful striking causing death and sentenced to imprisonment must serve 80 per cent of the sentence imposed (or 15 years, whichever is less) before being eligible for parole.<sup>97</sup> The *Weapons Act 1990* (Qld) also provides mandatory minimum penalties which must be served wholly in a corrective services facility for certain weapon offences.<sup>98</sup>
- Sometimes, it is also mandatory for a court to order that prison sentences be served one after the other (cumulatively), and not at the same time (concurrently) (see **Cumulative and concurrent sentences** on [page 60](#)).<sup>99</sup>

## Sentencing principles from case law

In addition to the purposes, factors and principles set out in legislation, courts must consider sentencing principles that have been developed over time under the common law.

**Proportionality** means that the sentence must be proportionate to the circumstances of the offence and seriousness of the offending.<sup>100</sup> This principle is also incorporated within the sentencing purpose of punishment that is just (fair) in all the circumstances (see **Sentencing purposes** on [page 34](#)).

Courts may consider sentences given in similar cases to make sure the sentence is appropriate for the offence. Even where the court wants to protect the community, such as from a person who repeatedly commits offences or is at risk of committing more serious offences, it must not increase a sentence beyond what is appropriate for the offence before the court.<sup>101</sup>

**Parity** means that people who are jointly involved in the same criminal conduct or activity should receive a similar penalty if the offence and circumstances (for example, **aggravating factors**) are similar.<sup>102</sup> However, differences in age, personal and criminal history, and culpability (**mitigating factors**) may justify a different sentence.<sup>103</sup>

Parity is an aspect of ‘equal justice’ (that is, courts should treat the same or similar offending alike and different offending, differently).<sup>104</sup>

**Totality** means that when there is more than one sentence, the total sentence should reflect the overall criminality of the offending.<sup>105</sup>

Totality may apply when there are a number of offences committed or where a person is already serving a sentence and the offences were committed before or after that sentence was imposed.

The sentencing court may order a sentence to be served concurrently (at the same time) or reduce a cumulative sentence (sentences served one after the other) to avoid imposing a ‘crushing’ sentence (a sentence so severe that it crushes any hope that the person will lead a useful life after release from custody).<sup>106</sup>

The **De Simoni principle** means a person should only be sentenced for an offence that a person has been found guilty of and not punished for other criminal conduct.

This means a judge or magistrate cannot consider circumstances that have not been charged but would have warranted a conviction for a different or more serious offence.<sup>107</sup> A judge or magistrate may only consider the person’s actions or omissions, before or after an offence, that may have been criminal but were not charged, as contextual when sentencing (reasons for not charging may include difficulty framing charges or lack of forensic evidence).

For example, under the *Criminal Code* (Qld) there are offences of common assault (eg pushing someone) and assault occasioning bodily harm (e.g. pushing someone causing bruising). If a person has been charged with and pleaded guilty to the offence of common assault but the victim suffered a bruise, the court cannot take that injury into account when sentencing the person. This is because the person is not charged with assault occasioning bodily harm, which has a higher maximum penalty.

## Comparable cases

Cases where courts have sentenced others for like offences can be a useful guide for a sentencing court. These are past sentencing decisions and are often based on appeal decisions handed down by a higher court, such as the Court of Appeal. In an appeal the court will usually discuss the facts of a case and sentencing considerations and explain whether the sentence was appropriate. A comparable case can help provide courts with a sentencing range.

### Did you know?

The decisions made by courts form part of the law (case law or common law). Case law can be overruled by later decisions of courts of the same or higher authority, or by Parliament passing legislation.



# 5



Types of penalties  
and sentences

# Chapter 5 highlights

Sentences mostly fall within two categories: **non-custodial sentences** and **custodial sentences**.

Non-custodial sentences include fines and community-based orders, such as probation and community service, which are supervised by Queensland Corrective Services. Non-custodial sentences are:

- Absolute discharge
- Recognisance (good behaviour bond)
- Fine
- Probation order
- Community service order
- Graffiti removal order
- Driver licence disqualification.

Custodial sentences are sentences of imprisonment. Not all custodial sentences require a person to spend time in prison. Custodial sentences are:

- Rising of the court
- Prison with probation order
- Intensive correction order
- Suspended sentence of imprisonment
- Drug and alcohol treatment order
- Imprisonment (often with a parole release date or parole eligibility date).

When sentencing a person, the court may need to decide whether to record a conviction. For some types of sentences, including imprisonment, a conviction must be recorded.

There are different types of sentences a court can give a person convicted of an offence. Those options are mostly contained in the *Penalties and Sentences Act 1992* (Qld).

The types of sentences a court can impose can broadly be divided into two categories: non-custodial sentences and custodial sentences.

## Non-custodial sentences

Non-custodial sentences are not sentences of imprisonment and are not served in custody. Non-custodial sentences can involve no supervision (e.g. fines) or supervision by Queensland Corrective Services (e.g. community service orders and probation).

### Absolute discharge

An absolute discharge is when a person is released without a conviction being recorded and without any further penalty.<sup>108</sup>

### Recognisance (good behaviour bond)

A recognisance (also called a 'good behaviour bond') is a promise made to the court.

For example, a person may promise to appear before the court if called on to do so, to pay an amount of money and/or not break the law (known as to 'be of good behaviour') for a set period.

There are different types of good behaviour bonds. They are:

- section 19 bonds:<sup>109</sup>

A person is released by the court on the condition they agree to 'be of good behaviour' (to not break the law) for a set period (up to 3 years) and appear before the court for conviction and sentence if called on to do so during the period. Other conditions may be ordered, including participating in a drug and alcohol diversion program.<sup>110</sup> No conviction is recorded.<sup>111</sup>

- bonds for property-related offences:

If a person pleads guilty or is found guilty of an offence relating to property, a court can adjourn the sentencing of the person for up to 6 months and release the person if they enter into a bond.<sup>112</sup> This is on the condition they appear before the court to be sentenced at the time and place ordered by the court or if called on before this time.<sup>113</sup> The court can also set conditions that the person return or restore property or pay compensation for any damage they have caused.<sup>114</sup> If the person is called on to appear before the court and be sentenced, the court may take into account what the person has done.<sup>115</sup> No conviction is recorded.<sup>116</sup>

- bond on summary conviction:<sup>117</sup>

The person is released on the condition that they keep the peace and be of good behaviour for a period of up to one year. The court can make this order with or without a conviction being recorded.<sup>118</sup>

- bond following conviction on indictment (by the District Court or Supreme Court):<sup>119</sup>

This is the same as a bond on summary conviction but in this case the order can be made in addition to, or instead of, any other sentence. The period of the order is decided by the court and is not limited to one year. The person may be imprisoned until they enter into the bond. The court can make this order with or without a conviction being recorded.<sup>120</sup>

- general bond:<sup>121</sup>

The person must agree to appear before the court to be sentenced at a future sitting of the court or if called on within the period set by the court and must keep the peace and be of good behaviour. The court may also impose any additional conditions it considers appropriate. The court can make this order with or without a conviction being recorded.<sup>122</sup>

These orders can be made ‘with or without sureties’. A surety is a person who agrees to guarantee the person’s compliance with the order. The person and anyone acting as a ‘surety’ has to pay an amount of money if the recognisance is forfeited (this can happen if the person breaks the law or does not comply with other conditions of the order).<sup>123</sup>

## Fine

A fine is an order to pay an amount of money, which goes to the Queensland Government, within a certain period.

The maximum fine depends on the type of offence and the court hearing the matter. Maximum fines imposed for an offence are usually described as a number of ‘penalty units’.

### Did you know?

If a person does not pay the fine within the set period, the court may order the person go to prison or that the fine be transferred to the State Penalties Enforcement Registry (SPER).<sup>124</sup> SPER is a government agency responsible for the collection of unpaid fines.



The amount of a penalty unit is adjusted each financial year in line with inflation. For the financial year 1 July 2022 to 30 June 2023, one penalty unit is \$143.75.<sup>125</sup>

A fine can be ordered in addition to, or instead of, any other sentence, with or without a conviction being recorded.<sup>126</sup>

A person who is experiencing hardship and is unable to pay their fine or SPER debt may be eligible to pay this off through a fine option order<sup>127</sup> or a work and development order.<sup>128</sup> A fine option order requires a person to be supervised and perform community service, with the hours performed being credited to the fine (and thereby reducing the amount to be paid).<sup>129</sup> A work and development order can include undertaking treatment or counselling activities, attending educational, vocational or life skills courses or completing unpaid work for, or on behalf of, an approved sponsor.<sup>130</sup>

## Probation order

A probation order requires a person not to break the law for a period of time and to meet other conditions set out in the order.<sup>131</sup>

The order can be for a period of between 6 months and 3 years and is served in the community with monitoring and supervision by a Corrective Services officer (also known as a Community Corrections case manager).<sup>132</sup>

Probation can only be ordered if the person agrees to the order being made and agrees to comply with the requirements of the order.<sup>133</sup>

If the person does not agree to an order that requires their consent, the judge or magistrate will generally either:

- briefly adjourn the matter ('stand it down') to allow the defence lawyer time to talk with their client, or
- make another sentencing order.

When making a probation order the court must set mandatory conditions<sup>134</sup> and may order additional conditions.<sup>135</sup>

Mandatory conditions that the person must agree to are:

- to not break the law during the period of the order
- to participate in programs or counselling
- to report to and receive visits from a Corrective Services officer as directed
- to tell a Corrective Services officer about any changes of address or employment within 2 business days
- to not leave or stay out of Queensland without permission
- to comply with every reasonable direction of a Corrective Services officer.<sup>136</sup>

The probation order may also include other conditions specific to the person, such as drug testing or counselling.<sup>137</sup>

The court can make a probation order with or without a conviction being recorded.<sup>138</sup>

## Community service order

A community service order requires a person to do unpaid community service for between 40 and 240 hours.<sup>139</sup>

The community service must be completed within 12 months or another period allowed by the court.<sup>140</sup>

During the period of the order, the person must comply with reporting and other conditions including:

- to not break the law
- to regularly report to and receive visits from a Corrective Services officer as directed
- to perform community service in a satisfactory way as directed
- to tell a Corrective Services officer about any change of address or employment within 2 business days
- to not leave or stay out of Queensland without permission
- to comply with every reasonable direction of a Corrective Services officer.<sup>141</sup>

The person must agree to the order being made.<sup>142</sup> There are some offences for which community service is mandatory, unless the court is satisfied that the person is not able to comply with the order because of a physical, intellectual or psychiatric disability (see **Mandatory sentences** on [page 41](#)).<sup>143</sup>

The court can make a community service order with or without a conviction being recorded.<sup>144</sup>

## Graffiti removal order

A graffiti removal order requires a person to complete unpaid work removing graffiti for up to 40 hours, usually within 12 months.<sup>145</sup>

The same types of conditions that apply to community service orders also apply to people who are subject to a graffiti removal order.<sup>146</sup>

This order is mandatory where the person is convicted of a graffiti offence, unless the court is satisfied that the person is not able to comply with the order because of a physical, intellectual or psychiatric disability.<sup>147</sup>

The court can make a graffiti removal order with or without a conviction being recorded.<sup>148</sup>

## Driver licence disqualification

A driver licence disqualification can be made for an offence connected in any way to the operation of a motor vehicle by the offender.<sup>149</sup>

A person may be disqualified from holding or obtaining a Queensland driver licence

absolutely or for a specified period and the court must be sure that a disqualification is in the interests of justice.<sup>150</sup>

The court can make a licence disqualification (as a sentencing order) with or without a conviction being recorded.<sup>151</sup> There are also licence disqualification orders that can be made in addition to a sentence (see **Additional orders** on [page 66](#)).

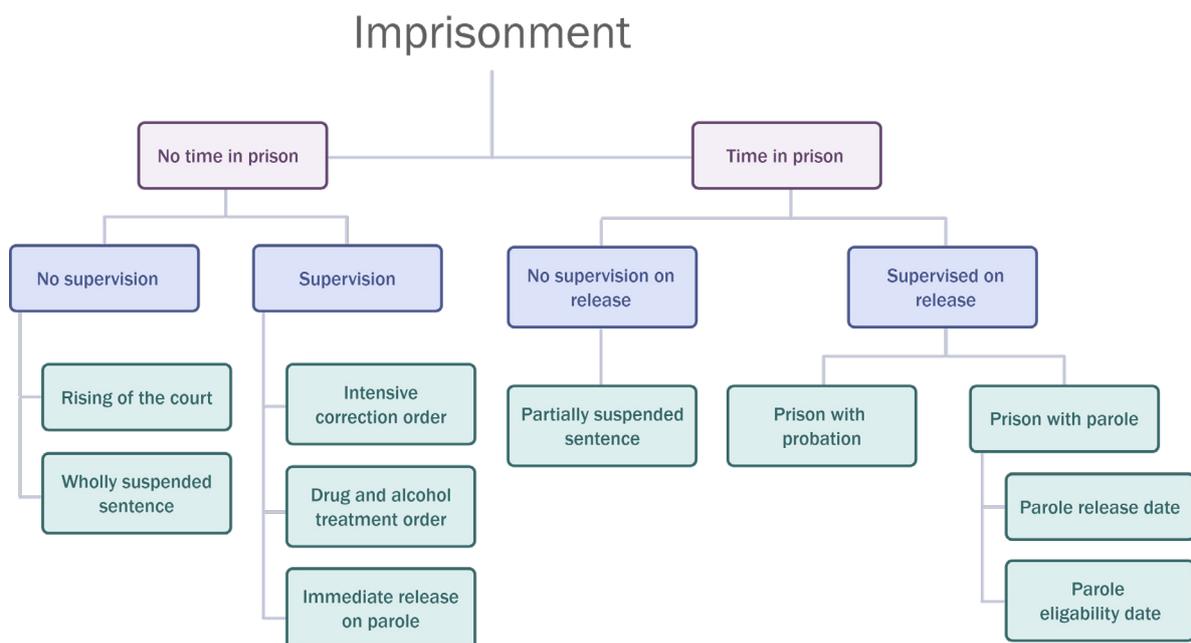
## Custodial sentences

Custodial sentences are sentences of imprisonment. For most offences, imprisonment is a sentence of last resort,<sup>152</sup> meaning it should only be imposed if no other type of sentence is appropriate.

This principle does not apply when a court is sentencing a person for an offence involving violence, attempted violence or resulting in physical harm to another person, to sexual offences committed against children, or to child exploitation material (pornography) offences<sup>153</sup> (see **Sentencing certain offences** on [page 69](#)).

Not all custodial sentences require a person to spend time in prison. Some custodial sentences are served wholly in the community without supervision (such as if a sentence of imprisonment is wholly suspended) or with supervision (usually on parole).

If a person is sentenced to imprisonment and the order that the court makes means they must spend time in prison, they will often be released at some point before the end of their sentence to serve out the rest of their sentence in the community.



On their release from prison, the person will either be supervised on parole (or probation for a prison with probation order) or be subject to the operational period of a partially suspended sentence.

## Rising of the court

The rising of the court is a common law sentencing option and is not in the *Penalties and Sentences Act 1992 (Qld)*.<sup>154</sup> It is a technical and temporary form of imprisonment, for which a conviction is not recorded, and requires that the person being sentenced remain in the courtroom until the court is adjourned.<sup>155</sup> It is not appropriate for serious offences.<sup>156</sup>

## Combined prison and probation order

A combined prison and probation order is a sentence of imprisonment of one year or less, immediately followed by a period of probation in the community for a minimum of 9 months and up to 3 years.<sup>157</sup>

The same type of conditions that apply to probation (see **Probation order** on [page 48](#)) also apply here, although the requirements do not start until the person is released from prison.<sup>158</sup>

The court must record a conviction.<sup>159</sup>

## Intensive correction order

An intensive correction order is a sentence of imprisonment of one year or less that is ordered to be served in the community under supervision.<sup>160</sup>

During the period of the order, the person must comply with reporting and other conditions including:

- to not break the law
- to regularly report to and receive visits from a Corrective Services officer at least twice a week
- to take part in counselling and attend other programs as directed by the Corrective Services officer
- to perform community service in a satisfactory way as directed
- to live at community residential facilities if directed by a Corrective Services officer
- to tell a Corrective Services officer about any change of address or employment within 2 business days
- to not leave or stay out of Queensland without permission
- to comply with every reasonable direction of a Corrective Services officer.<sup>161</sup>

The person may be directed to attend programs or perform community service for up to 12 hours in any week.<sup>162</sup>

The person must agree to the order being made and to comply with the conditions of the order.<sup>163</sup>

If the person does not comply with the conditions of the intensive correction order, a court may revoke it and order the person to serve the remaining period of the sentence in prison.<sup>164</sup>

The court must record a conviction.<sup>165</sup>

## Suspended sentence of imprisonment

If a person is given a prison sentence of 5 years or less, a court can suspend the entire sentence (wholly suspended) or suspend the remainder of the sentence after the person has spent some time in prison (partially suspended).<sup>166</sup> A wholly or partially suspended sentence is suspended for a period (called the operational period) of up to 5 years.<sup>167</sup>

If the person commits a further offence or offences punishable by imprisonment during the operational period of the suspended sentence, the court must order the person to serve the whole of the suspended imprisonment unless it believes it would be unjust to do so.<sup>168</sup> In this case it may extend the operational period or order the person to serve part of the suspended imprisonment.<sup>169</sup> This is in addition to any punishment they might receive for the new offence.

The court must record a conviction.<sup>170</sup>

## Drug and alcohol treatment order

A drug and alcohol treatment order contains a custodial part and a rehabilitation part. The custodial part is a prison sentence of 4 years or less that is suspended for at least 2 years but not more than 5 years,<sup>171</sup> which allows the person to stay in the community. The rehabilitation part has a supervision component (core conditions) and a treatment program, which is for 2 years.<sup>172</sup>

This order can only be made by the **Drug and Alcohol Court** (see [page 15](#)). Not every person is eligible to receive a drug and alcohol treatment order; there are certain requirements and circumstances which a court has to consider.<sup>173</sup> The order cannot be made if a person is in prison, on parole or charged with a sexual offence.<sup>174</sup> If the offence involved violence against a person, the court must consider certain factors.<sup>175</sup> The purpose of a drug and alcohol treatment order is to:

- facilitate rehabilitation which is supervised by the court
- reduce a person's substance use disorder
- reduce criminal activity and health risks that are associated with a person's severe substance use disorder, and
- assist the person to reintegrate into the community.<sup>176</sup>

The core conditions of the order include:

- to not break the law
- to report for treatment
- to receive visits from a Corrective Services officer or a review team member
- to tell a Corrective Services officer of any change of address or employment within 2 days
- to not leave or stay outside Queensland without permission
- to attend court on the day and time the court requires
- to comply with any reasonable direction of an authorised Corrective Services officer or review team member for the treatment order.<sup>177</sup>

The treatment program conditions may include:

- to submit to medical, psychiatric or psychological treatment relevant to the person's rehabilitation
- to detox at a facility
- to participate in counselling or programs relevant to the person's rehabilitation
- to attend meetings with a review team member
- to participate in vocational, educational or employment programs
- to submit to alcohol or other drug testing
- to wear a device that detects alcohol or other drugs used by the person
- to install a device or equipment at the person's residence and reside at a stated place for a stated amount of time
- any other condition or requirement the court considers necessary to achieve the purpose of the treatment order.<sup>178</sup>

The court must record a conviction.<sup>179</sup>

## Imprisonment

A person sentenced to imprisonment must serve the custodial part of the sentence in a correctional centre (a prison). The court must record a conviction.<sup>180</sup>

Some people might serve some or all of their sentence in the community, supervised on parole. The parole period is still treated as part of the person's prison sentence. If the person fails to comply with all the conditions of their parole order, poses a serious risk of harm to someone else or there is an unacceptable risk of them reoffending, they can be returned to custody immediately and have their parole order suspended or cancelled (meaning they may serve out their full sentence in custody).<sup>181</sup>

## Parole

The aim of parole supervision is to reintegrate a person into the community before the end of a prison sentence and reduce the chance that the person will reoffend, thereby keeping the community safe.<sup>182</sup>

### What is parole?

Most people given a sentence of imprisonment will be released on parole at some point before they have served out their full sentence. The aim of parole is to keep the community safe by supervising the person for a period of time in the community until the end of their sentence.

A person on parole must follow strict conditions and is given opportunities to rehabilitate in the community. Being on parole can help the person get used to living back in the community, which can reduce their chances of reoffending.

The Parole Board Queensland can order a person on parole to go back to prison at any time if they reoffend, do not follow their parole conditions or are considered to be a risk to the safety of the community.



### Determining a parole date

When a person can be released (or is eligible for release) on parole depends on the order made by the judge or magistrate (or sometimes it is determined by legislation).

The court will consider the circumstances of the offending, personal circumstances, any time the person has already served in prison and other sentencing factors (see **Legislative sentencing factors and principles** on [page 34](#)), including whether the person pleaded guilty, to determine the parole release or parole eligibility date.

The court can often choose any day of the sentence to be the parole date. If the court sets a parole release date, a person's parole date can be the day the person is sentenced (meaning that the person is released from court directly to parole) or it can be the last day of their sentence (meaning the person spends their whole sentence in prison and is released when their sentence ends, without supervision).<sup>183</sup>

In many cases, the court may order the person to serve one-third or half of their sentence before release (or eligibility for release) on parole.<sup>184</sup> However, in some cases, legislation sets the minimum time a person must serve before a person can be released on or be eligible for parole.<sup>185</sup> Where a minimum non-parole period is set by legislation, a court may order a parole date later than the minimum period, but it cannot be earlier.

## Types of parole

There are two types of parole dates:

1. a **parole release date** (a person is given court-ordered parole) and
2. a **parole eligibility date** (a person must apply for board-ordered parole).

On occasion, a person may also be released on **exceptional circumstances parole**.

The type of parole order depends on the length of the sentence, the type of offence the person is being sentenced for and whether the person has had a parole order cancelled.

### Imprisonment with a parole release date (court-ordered parole)

If the sentence of imprisonment is for 3 years or less and is not for a sexual or serious violent offence, the court must set the date when the person will be released from prison on parole.<sup>186</sup> This is called **court-ordered parole** or a parole release date.

There are some exceptions to this requirement, including if the person has had court-ordered parole cancelled during their period of imprisonment (in which case the court must set a parole eligibility date) or if the person has at any time been convicted of a terrorism offence (in which case the court can decide whether to set a parole release date or a parole eligibility date).<sup>187</sup>

A person will be released on their parole release date to serve the rest of their prison sentence in the community under supervision unless there is an additional reason why the person is in custody.<sup>188</sup>

### Parole release date example:

Tabitha has been sentenced to 3 years' imprisonment for an assault occasioning bodily harm. The magistrate orders a parole release date after 1 year.

Tabitha must spend one year in prison and then will be released into the community and will spend 2 years on parole (under supervision with parole conditions that she must follow).



### Imprisonment with a parole eligibility date (board-ordered parole)

A **parole eligibility date** can either be a date the court has set or a date determined by legislation.<sup>189</sup> It is the earliest date on which a person may be granted release on parole by the Parole Board (the Board), but release is not automatic.

A parole eligibility date can be ordered in cases where the court cannot set a parole release date (for example, because the person is being sentenced to imprisonment for more than 3 years or for a sexual or serious violent offence).<sup>190</sup>

In most cases, a court can choose any date for the parole eligibility date or does not have to choose a date at all. If the court does not set a parole eligibility date, legislation will determine the date – in most cases, the person will be eligible for parole after having served half of their sentence.<sup>191</sup> However, there are different parole eligibility dates for a person sentenced to **Life imprisonment** ([page 60](#)) or declared convicted of a **Serious violent offence** ([page 76](#)).

A person with a parole eligibility date must apply to the Board, which decides whether the person is suitable to be released on parole.<sup>192</sup>

#### Parole eligibility example:

Sebastian has been sentenced to 6 years' imprisonment for trafficking dangerous drugs. The judge orders a parole eligibility date after 3 years.

Sebastian must spend 3 years in prison. Sebastian can make an application for parole up to 180 days before his parole eligibility date. The Board will consider Sebastian's application and other material. If the Board considers he is suitable for parole, he will be released from prison on his parole eligibility date. He will remain on parole under supervision and must follow parole conditions until the end of his sentence.

If Sebastian does not apply for parole, he will not be released on parole and will spend the whole of his 6-year sentence in prison.



The Board's highest priority is the safety of the community. It will consider whether the person is an unacceptable risk to the safety of the community and will also consider that risk in the context of that person remaining in prison and being released at the end of their sentence without any supervision.<sup>193</sup>

The Board will consider a range of factors, including a person's criminal history, comments made by the judge during sentencing, the person's behaviour in prison (and any rehabilitation programs completed), the type of offence the person was convicted of, whether they have a suitable place to live on their release, and access to supports and services in the community.<sup>194</sup>

The Board will also consider submissions from an eligible person (which can include the victim).<sup>195</sup>

### Exceptional circumstances parole

The Board may release a person, following their application, at any time (including prior to their parole eligibility date or parole release date) in exceptional circumstances.<sup>196</sup> For example, exceptional circumstances parole may be granted if a person is terminally ill.

Some people in prison have special classifications such as 'restricted prisoners' who are subject to a 'restricted prisoner declaration'. In those circumstances, there is a special test that applies before that person can be granted this type of parole.<sup>197</sup> Exceptional circumstances parole is not available to 'no-body, no-parole prisoners' who have failed to cooperate in identifying a homicide victim's location.<sup>198</sup>

The Parole Board Queensland is independent and makes parole decisions based on evidence. Community safety is always its highest priority.

Learn more about the [Board](#), including how it makes its decisions, and read some decisions it has made.

More information about the [Board and parole](#) is also available online.



## Parole conditions

When a person is released on parole (whether court-ordered or board-ordered), they are released into the community under the supervision of a Corrective Services officer.

The person must follow the conditions set by legislation and the Board and the instructions of Corrective Services officers.

Standard conditions of parole include:

- to not break the law
- to report to and receive visits from a Corrective Services officer and follow the officer's lawful directions
- to tell a Corrective Services officer within 48 hours if the person's address or employment changes
- to be tested for drug and alcohol use if required to do so
- to not otherwise breach parole by not complying with other conditions included in the parole order.<sup>199</sup>

In addition to these, a parole order granted by the Board can include other conditions the Board thinks are necessary to stop the person from committing an offence while on parole and to ensure they are of good behaviour.<sup>200</sup> This might include, for example, a condition requiring the person to participate in a particular type of course or program or to wear an electronic monitoring device, or a curfew condition.

## Breach of parole

If the person on parole (whether court-ordered or board-ordered) fails to comply with the conditions of the parole order, poses a serious risk of harm to someone else, poses an unacceptable risk of committing an offence or is preparing to leave Queensland without approval, the Board can amend, suspend or cancel the parole order and order the person's return to prison.<sup>201</sup>

## When a person cannot apply for parole

In some cases, a person in prison cannot apply to the Board for parole even though they have reached their parole eligibility date. This can happen if:

- the person has lodged an appeal against the conviction or sentence and it has not yet been decided
- a restricted prisoner declaration has been made
- a no cooperation declaration has been made (for a 'no body-no parole prisoner' who has failed to cooperate in identifying a homicide victim's location)
- a previous parole application has been refused (in those instances the Board will decide a period before the person can apply again).<sup>202</sup>

## Cumulative and concurrent sentences

When a court sentences a person to imprisonment for more than one offence, the court will say whether some or all of it is to be served concurrently (at the same time) or cumulatively (one after the other).

Usually, sentences of imprisonment will be served concurrently unless a mandatory cumulative sentence applies or the court orders otherwise.<sup>203</sup>

In deciding what order to make, the court must consider the principle of **totality** to ensure the total sentence reflects the overall criminality and is not crushing (see **Sentencing principles from case law** on [page 42](#)).

When sentences are to be served concurrently, the longest sentence is called the head sentence and the shorter sentence (or sentences) are served at the same time.

In some cases, the court has no discretion (choice) and must order the sentences to be served cumulatively. For example, a cumulative sentence must be imposed where the person has been convicted of certain offences listed in Schedule 1 of the *Penalties and Sentences Act 1992* (Qld) and the person committed the offence while:

- in prison serving a term of imprisonment
- on parole or other post-prison community-based release
- on a leave of absence from prison
- unlawfully at large after escaping from lawful custody under a sentence of imprisonment.<sup>204</sup>

### Concurrent sentence example:

Brittany has been given a 2-year prison sentence for wounding and a 6-month prison sentence for common assault.

The judge decides that she will serve these sentences concurrently (at the same time), so Brittany is sentenced to prison for 2 years.

### Cumulative sentence example:

Tyrell has been given a 2-year prison sentence for grievous bodily harm, which he committed while on parole for a previous sentence of 12 months' imprisonment for robbery.

Tyrell had 3 months left on his sentence when he committed the offence of grievous bodily harm. As grievous bodily harm is a listed Schedule 1 offence, the judge must order his sentence to be served cumulatively to the prior sentence, which means Tyrell must serve 2 years on top of the remaining 3 months left on his sentence at the time of committing the new offence.

## Life imprisonment

Being sentenced to life imprisonment is the most severe sentence that can be ordered by a court.

Some offences have a mandatory penalty of life imprisonment. This means the judge must give this sentence for the offence.

For example, the judge must sentence an adult convicted of murder or a repeat serious child sex offence to life imprisonment unless an indefinite sentence is ordered instead (see **Indefinite sentence** on [page 61](#)).<sup>205</sup>

Where life imprisonment is the maximum penalty but is not mandatory, the judge decides the most appropriate sentence based on the individual circumstances of the case and relevant **sentencing purposes** and **sentencing factors** and **principles**.

When a person is sentenced to life imprisonment, the minimum time they must spend in prison before being eligible for release into the community to serve the remainder of their sentence on parole is set by legislation.<sup>206</sup> This is called the mandatory minimum non-parole period and can't be reduced by the court. This period depends on the kind of offence, such as:

- 30 years for murder of more than one person or by a person with a previous murder conviction
- 25 years for murder of a police officer
- 20 years for murder other than listed above or a repeat serious child sex offence
- 15 years for any other life sentence imposed for another offence, for example, rape.<sup>207</sup>

A judge cannot reduce the non-parole period, but they can increase it by setting a later parole eligibility date.

A prisoner is not eligible to be released on parole until they have served the mandatory non-parole period or a longer period set by the court.

Being eligible does not mean release on parole is guaranteed – the prisoner must apply for parole to the Board, who makes the decision about whether to grant the application for parole or if this should be refused.

A person who has received a life sentence will remain in custody or on parole (if granted parole by the Board) for the rest of their life.

If released on parole, the person must comply with parole conditions for the rest of their life and can be returned to prison at any time if parole is suspended or cancelled by the Board (see **Imprisonment with a parole eligibility date (board-ordered parole)** on [page 56](#)).<sup>208</sup>

## Indefinite sentence

An indefinite sentence is a prison sentence that has no fixed date for when the sentence will end.<sup>209</sup>

The person cannot apply for parole while the indefinite sentence is in place.<sup>210</sup>

A court can only impose an indefinite sentence, instead of a sentence for a fixed term, for a ‘qualifying offence’ prescribed in legislation.<sup>211</sup> Qualifying offences are serious *Criminal Code* (Qld) offences, mostly relating to sexual offences, homicide offences and violent offences.<sup>212</sup>

The court must conclude that the person is a serious danger to the community.<sup>213</sup>

In deciding if the person is a serious danger to the community, the court must consider:

- whether the nature of the offence is exceptional
- a person’s background, age and character (including previous offending)
- any relevant medical, psychiatric, prison or other reports about the person
- the risk of serious harm to members of the community if the person is not given an indefinite sentence
- the need to protect members of the community from that risk.<sup>214</sup>

A judge imposing an indefinite sentence must specify the sentence they would have given had they not imposed an indefinite sentence (referred to as the ‘nominal sentence’).<sup>215</sup>

The court must carry out reviews at regular intervals once the person has served the relevant non-parole period they would have otherwise been required to serve, which varies depending on the type of offence and sentence.<sup>216</sup>

If the court is satisfied that the person is still a serious danger to the community, the indefinite sentence continues.<sup>217</sup> If not, the court must impose a fixed sentence, which cannot be less than the nominal sentence.<sup>218</sup>

## Combining sentencing orders

The *Penalties and Sentences Act 1992* (Qld) allows for a number of sentencing orders to be combined. However, options for combining sentencing orders are more limited when a court is sentencing a person for a single offence.

The most flexible sentencing option is a fine, which a court can order in addition to any other sentence imposed.<sup>219</sup>

Other combined sentencing orders include a combined imprisonment and probation

order (provided the term of imprisonment is not more than 12 months and is not suspended in whole or in part)<sup>220</sup> and probation with a community service order.<sup>221</sup>

Certain combinations are not allowed under legislation when sentencing a person for a single offence:

- an intensive correction order with a probation order of any length<sup>222</sup>
- an order of suspended imprisonment with probation, a community service order or an intensive correction order
- imprisonment of longer than 12 months with probation.<sup>223</sup>

The courts have more flexibility when sentencing a person for two or more offences.

When sentencing a person for multiple offences, the courts can combine orders which are compatible or, at the very least, are not inconsistent with each other.

For example, a court can order a wholly suspended sentence at the same time as probation for other offences.

## Recording a conviction

When sentencing a person, the court may need to decide whether to record a conviction.<sup>224</sup> This is a separate decision from deciding what sentence to give.

A court must record a conviction when imposing certain types of sentences or in situations, such as:

- imprisonment (including a suspended sentence of imprisonment)
- intensive correction order
- resentencing a person after revoking a recognisance, community service or probation order.<sup>225</sup>

The court has a choice whether or not to record a conviction when imposing other types of sentences, such as:

- certain types of recognisance (good behaviour bond)
- a fine
- a probation order
- a community service order
- a graffiti removal order.<sup>226</sup>

The court cannot record a conviction for some orders:

- absolute discharge
- other types of conditional discharge (release on a recognisance/good behaviour bond).<sup>227</sup>

When deciding whether to record a conviction, the court must look at all the circumstances of the case, including:

- the person's character and age
- the nature of the offence
- whether recording a conviction will have any impact on the person's
  - economic or social wellbeing, or
  - chances of finding employment.<sup>228</sup>

A conviction forms part of a person's criminal record.

A criminal record can have negative effects on a person's future prospects, even after they have completed their sentence. A conviction can be:

- considered by police when investigating other crimes
- relied on in any future case against the person
- included in police record checks, limiting a person's eligibility for
  - international travel
  - certain jobs (for example, as a teacher) or volunteer roles
  - insurance policies.

# 6



Other orders and  
the offender levy

# Chapter 6 highlights

In addition to sentencing orders, courts can make other orders at the time of sentence:

- Restitution or compensation order
- Driver licence disqualification
- Non-contact order
- Banning order
- Control order
- Passport order

All sentenced adults must also pay an administrative fee to the court registry (called the offender levy).

## Additional orders

There are other orders a court can make in addition to a **sentence**. Generally, a court can make these orders whether or not it records a conviction.<sup>229</sup>

### Restitution or compensation order

A restitution or compensation order is an order to pay for property taken or damaged, or to compensate for loss or damage to property or for any personal injury suffered by a person.<sup>230</sup> The order can be made in addition to any other sentence given.<sup>231</sup>

### Driver licence disqualification

A driver licence disqualification order stops a person from holding or obtaining a Queensland driver licence absolutely or for a specified period.

Some traffic-related **offences** carry a **mandatory** minimum disqualification period that the court must order.<sup>232</sup>

This order is different from the driver licence disqualification order as a sentencing order (see **Non-custodial sentences** on [page 46](#)).

### Non-contact order

A non-contact order is an order that stops a person from:

- contacting the **victim** or another person who was with the victim when the offence was committed, and/or
- going to a particular place or within a particular distance of that place.<sup>233</sup>

This order can only be made for an **indictable offence** committed against a person.<sup>234</sup> The court may make the order if satisfied that unless the order is made there is an unacceptable risk that the person will injure, threaten or harass the victim or other person who was with the victim or damage their property.<sup>235</sup>

This order can be made whether or not a conviction is recorded.<sup>236</sup>

### Did you know?

A non-contact order is separate from a protection order under the *Domestic and Family Violence Protection Act 2012* (Qld) – a non-contact order cannot be made if a protection order may be made under that Act.<sup>237</sup>



## Banning order

A banning order is an order that stops a person from entering or remaining in or at:

- licensed premises
- an area that is close to licensed premises (for example, a stated distance from licensed premises, a street near a licensed premises or a safe night precinct)
- an event at which alcohol will be sold.<sup>238</sup>

A court may make a banning order if the offence involved violence or threats of violence to a person or property, or for an offence of drug trafficking or supply of a dangerous drug.<sup>239</sup>

The court must be satisfied the offence was committed in a licensed premises or in a public place near licensed premises.<sup>240</sup>

It must also consider that unless the order is made the person would pose an unacceptable risk to the good order of licensed premises and areas near these or to the safety and welfare of people at or near licensed premises.<sup>241</sup>

## Control order

A control order can be made if a court is satisfied that a person is a member or participant of a criminal organisation.<sup>242</sup> The control order places conditions on the person, for up to 5 years, with the aim of stopping them from being involved in serious crime.<sup>243</sup>

Conditions may include requiring the person to report to police and inform police of a change of address, or prohibiting the person from associating with a stated person or class of person or from entering or being near a stated place.<sup>244</sup>

## Passport order

A passport order can be made when a person is convicted of an offence and the court records a conviction.<sup>245</sup>

When making this order the court may order that the person:

- must remain in Australia or Queensland
- must not apply for or obtain an Australian passport, or
- must give up their passport.<sup>246</sup>

The order is in force for the duration of the sentence.<sup>247</sup>

## Offender levy

All adults sentenced in the Supreme, District or Magistrates Courts must pay an offender levy.<sup>248</sup> It is an administrative fee paid to the court registry that contributes to law enforcement and administration costs.

The levy is imposed for each sentencing event, whether or not a conviction is recorded — it does not matter how many **charges** are dealt with at the sentence.<sup>249</sup>

It applies to any offence except breach of bail or failing to appear in court as required by a bail **undertaking**.

The levy is not a sentence or punishment.<sup>250</sup> A court must ignore the offender levy when deciding the sentence to impose.<sup>251</sup>

The levy applies automatically through **legislation**, so it must be paid even if the sentencing court makes no mention of it.

Because it is not an order of the court, the person cannot **appeal** the levy or apply to convert it into community service.

The levy amount is higher for the District and Supreme Courts than the Magistrates Courts.

As of 21 July 2022, the amounts were:

- **Supreme Court** or **District Court** — \$400.30
- **Magistrates Courts** — \$133.60.<sup>252</sup>

Failure to pay the levy by the due date may result in the State Penalties Enforcement Registry (known as 'SPER') taking enforcement action.<sup>253</sup>

Find out what the [current offender levy](#) is



# 7.



Sentencing  
certain offences

# Chapter 7 highlights

Different laws and sentencing considerations apply to sentencing certain offences in Queensland. These are:

- ✓ drug offences
- ✓ sexual offences against children under 16 years
- ✓ child exploitation material offences
- ✓ violent offences
- ✓ offences involving domestic and family violence
- ✓ serious violent offences
- ✓ serious organised crime offences
- ✓ Commonwealth offences.

## Drug offences

The maximum penalties for drug **offences** are contained in the *Drugs Misuse Act 1986* (Qld), which also establishes these offences.

For some drug offences, such as possessing a dangerous drug, a lower maximum penalty applies if the person was a drug dependent person.<sup>254</sup> A ‘drug dependent person’ is a person who uses drugs often, which causes them to lack control over their drug use,<sup>255</sup> who is likely to suffer from mental or physical distress if they stop using drugs.<sup>256</sup> For examples of different **maximum penalties** see **Appendix: Examples of maximum penalties** on [page 92](#).

A person who is drug dependent may also be eligible for a special kind of sentencing order, called a **Drug and alcohol treatment order** ([page 52](#)), if their drug dependency is linked to their offending. This order can only be made by the **Drug and Alcohol Court** ([page 15](#)), which operates in Brisbane. The types of offences that are eligible for a treatment order are not limited to drug offences but include most offences that can, or must, be sentenced by a **Magistrates Court**.<sup>257</sup> Special considerations apply if the person has been **convicted** of an offence involving violence against another person.<sup>258</sup>

Diversionary options are available in some cases for minor drug offending (see **Recognisance (good behaviour bond)** on [page 46](#)).

Serious drug offences, such as drug trafficking, can be subject to the serious violent offences scheme, which delays a person’s eligibility for **parole** if they are given a prison sentence and declared convicted of a serious violent offence (see **Serious violent offences (SVO) scheme** on [page 76](#)).

## Sexual offences against children under 16 years and child exploitation material offences

People convicted of a:

- sexual offence relating to a child under 16 years, or
- child exploitation material (pornography) offence

must serve some part of their sentence in prison unless there are special reasons (called ‘exceptional circumstances’).<sup>259</sup>

Whether there are exceptional circumstances will depend on the facts of the individual case and the circumstances of the person who committed the offence. A court may consider the closeness in age between the person found guilty of the offence and the **victim** when deciding whether there are exceptional circumstances.<sup>260</sup>

When deciding the **sentence** a court must consider a range of factors, including:

- the child’s age and any relationship between the person who committed the offence and the child
- the nature of the offending and its effect on the child
- the need to protect the child, or other children, from the risk of the person reoffending
- the need to deter this type of behaviour to protect children.<sup>261</sup>

The court cannot consider the convicted person’s good character (for example, if the person has made significant contributions to the community as a teacher, coach or religious leader) if it assisted them to commit the offence.<sup>262</sup>

If a person is convicted of a sexual offence (which includes sexual offences committed against children) and is sentenced to **imprisonment** which is not **suspended**, the court is only allowed to set a date the person is eligible for parole rather than a **parole release date**.<sup>263</sup> This means the person has to apply for parole to the **Parole Board Queensland** which then decides if they should be released (see **Imprisonment with parole eligibility date (board-ordered parole)** on [page 56](#)).

If a person is convicted of a serious child sex offence as an adult and has previously been convicted of a serious child sex offence as an adult, they must be sentenced to **life imprisonment** or an **indefinite sentence**.<sup>264</sup> This is a mandatory penalty, meaning the court cannot impose a different type of sentence (see **Mandatory sentences** on [page 41](#)).

Sexual offences committed against children sentenced in the **higher courts** also can be subject to the serious violent offences scheme, which delays a person’s eligibility for parole if they are given a prison sentence. For more detail see **Serious violent offences (SVO) scheme** on [page 76](#).

## Violent offences

When sentencing a person for a violent offence or an offence that caused physical harm to another person, the following **sentencing principles** do not apply:

- giving a person a sentence that lets them stay in the community is preferable; and
- imprisonment should only be used as a last resort.<sup>265</sup>

The *Penalties and Sentences Act 1992* (Qld) outlines what the court must consider. This includes:

- the risk of physical harm to members of the community if the person is not given a custodial sentence
- the need to protect the community from that risk
- the victim’s personal circumstances
- the nature or extent of the violence used
- anything else about the safety of members of the community that the court considers relevant.<sup>266</sup>

At times, the law outlines specific considerations for particular offence/victim types — for example, for offences of violence that include domestic violence (see **Domestic violence offences** on [page 74](#)). Also, for the offence of manslaughter of a child under 12 years of age, the court must treat the child’s defencelessness and vulnerability, having regard to their age, as a factor that makes the offence more serious.<sup>267</sup> This was introduced on the Council’s recommendation following its review of sentencing for child homicide.

Violent offences sentenced in the higher courts also can be subject to the serious violent offences scheme, which delays a person’s eligibility for parole if they are given a prison sentence and declared convicted of a serious violent offence. For more detail see **Serious violent offences (SVO) scheme** on [page 76](#).

The court must impose imprisonment for life or an indefinite sentence on a person convicted of murder.<sup>268</sup> This is mandatory, so the court cannot impose a different sentence. Where a person is sentenced to life imprisonment, **minimum non-parole periods** apply, ranging from 20 years (if the person has killed one victim) to 30 years (if the person has murdered more than one victim or has a previous conviction for murder).<sup>269</sup>

## Domestic and family violence offences

### What is domestic and family violence?

The *Domestic and Family Violence Protection Act 2012* (Qld) defines ‘domestic violence’ as behaviour that:

- is physically or sexually abusive
- is emotionally or psychologically abusive
- is economically abusive
- is threatening

- is coercive, or
- in any other way exercises control or domination that causes the other person in the relationship to fear for their, or someone else's, safety or wellbeing.

Domestic violence includes behaviours such as assaulting another person or damaging their property or threatening to do either, monitoring the other person (such as by reading their SMS messages, accessing their social media accounts or tracking their movements) and stalking.<sup>270</sup>

Domestic violence can occur between two people who are, or were, married or engaged, or a couple, or family members or where a person is dependent on another for help to live (an informal care relationship).<sup>271</sup>

## Domestic Violence Order (DVO)

A Domestic Violence Order (DVO) can be made under the *Domestic and Family Violence Protection Act 2012 (Qld)*.<sup>272</sup> These orders have conditions, such as not to commit domestic violence against another person (the 'aggrieved' or another named person) and may include other conditions that the person subject to the order (the 'respondent') has to follow.<sup>273</sup>

A DVO is a civil court order that is different to a sentencing order made because a person has been convicted of an offence. The making of a DVO will not appear on a person's criminal history unless a person contravenes the order. If the 'respondent' on the DVO does not follow the conditions of the order, this is called a 'contravention', which is an offence.<sup>274</sup> The maximum penalty for contravening a DVO is 120 **penalty units** or 3 years imprisonment.<sup>275</sup> However, the maximum penalty increases to 240 penalty units or 5 years imprisonment if the person has committed a domestic violence offence in the 5 years before the contravention.<sup>276</sup>

## Domestic violence offences

A 'domestic violence offence' is one where the act or omission that forms the offence is also domestic violence, associated domestic violence or a contravention of a DVO.<sup>277</sup> For example, an assault occasioning bodily harm can be **charged** as 'assault occasioning bodily harm (domestic violence offence)' if the offence occurs in the context of domestic violence.

A conviction for an offence committed in the context of domestic violence can be recorded as a 'domestic violence offence' (or if no conviction is recorded, entered into the criminal history as a 'domestic violence offence') where a court is satisfied that the offending is a 'domestic violence offence'.<sup>278</sup> The **prosecution** may also apply for a previous offence to be recorded as a conviction for a 'domestic violence offence'.<sup>279</sup>

To be charged with the specific offence of choking, suffocation or strangulation in a domestic setting in Queensland, the act must occur in the context of domestic violence.<sup>280</sup> The maximum penalty for that offence is 7 years imprisonment and it must be dealt with by the **District Court** (on **indictment**).

## The impact of being recorded as a ‘domestic violence offence’ on sentence

A court must treat the fact the offence occurred in the context of domestic and family violence as an **aggravating factor** (see **Mitigating and aggravating factors** on [page 38](#)) when sentencing a person convicted of a ‘domestic violence offence’, unless the court thinks it is not reasonable because there are exceptional circumstances.<sup>281</sup>

This means that, when deciding the appropriate sentence, the court must treat the offence as being more serious than if it was not committed in a domestic violence context. Because of this the person may receive a harsher sentence – for example, a prison sentence rather than a **probation** order or community service, or a longer period of time in **custody** or on probation. Having an offence recorded as a ‘domestic violence offence’ can also help courts to better identify if the person has a pattern of domestic violence offending when deciding the appropriate sentence.

If a person has contravened a DVO and has been convicted of a ‘domestic violence offence’ in the previous 5 years, this increases the maximum penalty.<sup>282</sup>

We considered the impact of domestic violence as an aggravating factor on sentencing outcomes in a [Research Brief](#)



## Other orders a court can make

Just because a person is convicted of a ‘domestic violence offence’ does not mean there is a current DVO in place. A court which convicts a person of a ‘domestic violence offence’ can make a DVO.<sup>283</sup>

Also, a ‘domestic violence offence’ sentenced in the higher courts can be subject to the serious violent offences scheme, which delays a person’s eligibility for parole if they are given a prison sentence and declared convicted of a serious violent offence.

## Specialist Domestic and Family Violence Courts

Offences involving domestic and family violence may be dealt with at various court levels depending on the seriousness of the offence. In some areas there are **Specialist Domestic and Family Violence Courts** (see [page 15](#)).

## Serious violent offences (SVO) scheme

Some offences cause more harm to victims and the community than others. These offences (if they are listed in schedule 1) may be subject to the serious violent offences ('SVO') scheme.

The SVO scheme applies to certain offences listed in the *Penalties and Sentences Act 1992* (Qld) schedule 1. The offences include:

- violent offences (such as manslaughter, grievous bodily harm, torture, robbery, dangerous operation of a vehicle, serious assault and assault occasioning bodily harm)
- offences of a sexual nature (such as rape, incest and indecent treatment of children under 16)
- drug offences (such as trafficking and serious charges of supplying or producing a dangerous drug).<sup>284</sup>

Being convicted of one of these offences does not always mean the SVO scheme applies. There are two ways the SVO scheme can be applied:

- **Mandatory:** A person sentenced to 10 years or more for a schedule 1 offence is automatically convicted of a serious violent offence. The **legislation** makes it mandatory for **judges** to declare the person to be convicted of a serious violent offence. The person must serve 80 per cent of the sentence (or 15 years, whichever is less) in prison before being eligible for release on parole.<sup>285</sup>
- **Discretionary:** Judges have the **discretion** to make a SVO declaration when the sentence of imprisonment is either:
  - 5 years or more but less than 10 years for a schedule 1 offence, or
  - of any length and for any offence, provided that the offence is dealt with on indictment and involved the use or attempted use of serious violence against another person or resulted in serious harm to another person.<sup>286</sup>

We recently reviewed the SVO scheme and made 26 recommendations to improve the scheme.

View the [final report](#)



## Serious organised crime

The prosecution can charge a person with a **circumstance of aggravation** called a 'serious organised crime circumstance of aggravation'.

It can only be charged for a **prescribed offence**,<sup>287</sup> if the person was a participant in a criminal organisation and the offence was committed at the request of a criminal organisation, or in association with a person who was in a criminal organisation, or for the benefit of a criminal organisation.<sup>288</sup> A criminal organisation is a group of three or more persons that engages in serious criminal activity and who, by their association, represent an unacceptable risk to the safety, welfare or order of the community.<sup>289</sup>

When sentencing a person for an offence with a serious organised crime circumstance of aggravation, the court must impose an additional mandatory period of imprisonment (7 years or the maximum penalty for the offence, whichever is less).<sup>290</sup> The mandatory period must be served entirely in prison in addition to the sentence imposed as the base component for the offence.<sup>291</sup> The court must also make a **control order** unless the person has cooperated with or agreed to cooperate with law enforcement authorities (see **Cooperation with law enforcement** on [page 40](#)).

## Commonwealth offences

Queensland courts also hear cases and sentence people for Commonwealth offences, such as Centrelink fraud, telecommunications offences, offences that occur at an airport or on an aircraft, terrorism offences, people smuggling offences, drug importation offences and internet or child pornography material offences.

The sentencing factors and penalty types are different when sentencing a person for a Commonwealth offence because Commonwealth laws apply, such as the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth).

For example, a person sentenced for a Commonwealth offence can be sentenced to community service but cannot be sentenced to a **suspended sentence**.

The sentencing factors a Queensland court must consider for a Commonwealth offence are slightly different from the sentencing factors for a state offence.

The sentencing factors include:

- the nature and circumstances of the offence
- other offences (if any) that are required or permitted to be taken into account
- the course of conduct (where the offence is part of a series of criminal acts)
- the victim's circumstances, any victim impact statement made if they suffered harm, and any injury, loss or damage caused by the offence
- any remorse shown by the sentenced person, if the person has entered a **plea** of

guilty and/or cooperated with law enforcement agencies

- personal and general **deterrence**
- the need to adequately punish the person
- the sentenced person's character, age, previous convictions, means and physical or mental condition
- the person's prospects of **rehabilitation**
- any effect that a sentence may have on the person's family or dependants
- that imprisonment should not be imposed unless the court is satisfied that no other sentence is appropriate.<sup>292</sup>

A Queensland court sentencing a person for a Commonwealth offence may:

- dismiss the charge (no conviction recorded)
- impose a bond without a conviction recorded — a person must give security with or without sureties that he or she will be of good behaviour for up to 3 years. This is similar to a Queensland **good behaviour bond**. However, a court may also include other conditions, such as supervision by a probation officer not exceeding 2 years
- impose conditional release with a conviction recorded (similar to a bond without a conviction. However, a conviction must be recorded, and the good behaviour period can be up to 5 years)
- impose a **fine**, a **community service order** or an **intensive correction order** — for all of these a court must record a conviction
- sentence the person to imprisonment:
  - For imprisonment of 3 years or less:
    - A court can impose a release on a 'recognizance release order' (similar to a suspended sentence) with immediate release or release after part of the sentence is served. Upon release the person must give security with or without sureties that they will be of good behaviour for up to 3 years. It may also be subject to conditions such as supervision by a probation officer for no more than 2 years.
    - Alternatively a court can instead order that the person serve the full period in **custody** (for sentences of 6 months or less, the court is not required to make a recognizance release order; for sentences of over 6 months up to and including 3 years, a court may decline to make a recognizance release order on the basis that such an order is not appropriate in the circumstances).
  - For imprisonment over 3 years:
    - A court can fix a non-parole period, which is the minimum time to be served before the Commonwealth Attorney-General decides whether to make or refuse to make a parole order.
    - A court can also decline to fix a non-parole period, which means the person must serve the full term in custody, if such an order is not appropriate.<sup>293</sup>

A person sent to prison for a Commonwealth offence is held in a state prison and must follow the same rules as other people in those prisons. However, there are different rules when on parole and the Attorney-General is responsible for making decisions granting or amending parole, not the Parole Board Queensland.

Before the end of the person's non-parole period the Attorney-General will decide whether or not to release a person onto parole.<sup>294</sup> If the Attorney-General refuses to make a parole order, the matter is considered again within 12 months of the refusal.<sup>295</sup> A person may be released before their non-parole period or recognizance release order date by making a written application for their release on licence explaining the exceptional circumstances they are relying on to support their release (this is similar to **Exceptional circumstances parole** on [page 57](#)).<sup>296</sup>

Find out more information about [parole conditions for people convicted of Commonwealth offences](#)



8



Sentence appeals

# Chapter 8 highlights

A sentence given by a court can sometimes be changed through a process known as an appeal.

An appeal is a review of a person's conviction and/or the sentence a court has imposed on the grounds an error has been made.

There are rules about:

- who can appeal
- the time limit within which an appeal must be made
- which court can hear an appeal
- what information a court will consider
- what legal test needs to be met on appeal
- what orders can be made on appeal.

## About appeals

A **sentence** imposed by a court can sometimes be changed through a process known as an appeal.

An appeal is a review of a person's **conviction** and/or the sentence a court has imposed on the grounds an error has been made.

## Magistrates Court sentence

The person sentenced or the **prosecution** can appeal against a **Magistrates Court** sentence to a District Court **judge**.<sup>297</sup> The Attorney-General can also appeal against a Magistrates Court sentence.<sup>298</sup>

The person appealing the decision is known as the appellant.

A Notice of Appeal must be filed within one month of the sentence being imposed, unless the appeal court allows an extension of time.<sup>299</sup>

Following an appeal to a District Court judge, the decision may be further appealed to the **Court of Appeal**.<sup>300</sup>

## District Court or Supreme Court sentence

Where the person was sentenced in the **District Court** or **Supreme Court**, the sentenced person or the Attorney-General can appeal against the sentence to the Court of Appeal.<sup>301</sup>

Queensland is the only Australian jurisdiction in which an appeal against the leniency of a sentence is initiated by the Attorney-General and not the **Director of Public Prosecutions**.

A person convicted of an offence must first seek the Court of Appeal's permission ('leave') to appeal against their sentence,<sup>302</sup> so they are called 'the applicant'.

A Notice of Appeal must be filed with the court within one month of the sentence being imposed, unless the appeal court allows an extension of time.<sup>303</sup>

Usually, three judges sit on the Court of Appeal. Individual judges can make their own decisions and reasons for the decision or agree with those of another judge, or they can write a judgment together (called a joint judgment).

A judge who disagrees with the majority is said to 'dissent'.

## Test on appeal

The appellant/applicant must set out the grounds of appeal (why they think the sentencing court made the wrong decision).

Depending on which party is appealing, the appeal court may be asked to decide whether the sentence imposed was either manifestly excessive (if the appeal is by the sentenced person) or manifestly inadequate (if the appeal is by the prosecution or Attorney-General).

An appeal court will not simply change a sentence because it would have given a different one if it had been the sentencing court; there must be an error.<sup>304</sup>

An appeal court may allow an appeal and re-sentence the person if it appears that a legal error has affected the sentencing judge's **discretion** (such as failing to take a **mitigating factor** into account or acting on wrong legal principle) or if the sentencing judge has mistaken material facts.<sup>305</sup>

An appeal court may also find that a sentence is either manifestly excessive or inadequate because the sentence is unreasonable or plainly unjust.<sup>306</sup>

The appeal court can:

- dismiss the appeal (which means the sentence being appealed stands), or
- allow the appeal and vary the sentence, or
- if there was an error in the exercise of the sentencing discretion, allow the appeal but leave the sentence unchanged if the court concludes that no different sentence should be passed.<sup>307</sup>

A person may also seek to appeal a conviction.<sup>308</sup> This is almost always after a trial in circumstances where the person did not **plead** guilty. However, in exceptional circumstances the person may be able to appeal a conviction even if they entered a guilty plea.<sup>309</sup>

Find out more information about [appealing a court decision](#)



## Appeals to the High Court of Australia

The final appeal option allows a party to make an application for special leave to appeal the Court of Appeal decision to the High Court of Australia, Australia's highest court.

Special leave involves a two-stage process where two **justices** of the High Court consider:

- whether the appeal involves a question of law that:
  - has public importance, or
  - there is a difference of opinion in the Court of Appeal on the state of the law, and
- whether the interests of justice require the High Court to consider the matter.<sup>310</sup>

If special leave is granted, the parties must prepare and file further documents and appear at an appeal hearing.

The High Court (usually comprising seven justices) will then consider whether to dismiss or allow the appeal.<sup>311</sup>

## Pardon

A sentenced person may petition the Governor to exercise the Governor's power to pardon their sentence. This only occurs in exceptional circumstances.<sup>312</sup>

# 9



*Human Rights Act 2019 (Qld)*

# Chapter 9 highlights

The *Human Rights Act 2019* (Qld) contains laws that protect a person's human rights when they deal with public entities (such as state departments, the police and courts).

For people involved in the criminal justice system, some relevant rights are:

- cultural rights (including if the person is an Aboriginal or Torres Strait Islander person)
- the right to humane treatment when deprived of liberty
- the right to a fair hearing
- minimum guarantees in relation to criminal proceedings
- the right not to be tried or punished more than once
- protection against punishment for things that were not crimes when they were done.

Below is a short summary of some of the rights outlined in the *Human Rights Act 2019* (Qld) and what they can mean for people involved in the criminal justice system. In addition to the rights below, people involved in the criminal justice system have the right to equal protection of the law without discrimination<sup>313</sup> and not to be punished in a cruel, inhuman or degrading way.<sup>314</sup> There are also specific rights for children in the criminal justice system.<sup>315</sup>

## Cultural rights

All people have cultural rights and 'Aboriginal and Torres Strait Islander peoples hold distinct cultural rights'.<sup>316</sup> The rights of Aboriginal and Torres Strait Islander peoples include the right 'not to be subjected to forced assimilation or destruction of their culture'.<sup>317</sup>

Cultural **submissions** in sentencing are important and can help a court understand the background of the person being sentenced in the context of the offending, as well as local programs and services which could best help the person rehabilitate. If a person is an Aboriginal or Torres Strait Islander person, the *Penalties and Sentences Act 1992* (Qld) requires a court to consider any submissions, made by a representative of the **Community Justice Group** in the person's community, relevant to sentencing.<sup>318</sup> This includes the person's relationship to the community, cultural considerations or considerations relating to programs and services for people in which the Community Justice Group participates.<sup>319</sup>

## Right to humane treatment when deprived of liberty

A person who is deprived of liberty (for example, if held in a watchhouse or prison), must be treated with humanity and respect.<sup>320</sup> A person who has not been **convicted** of an **offence** must be separated from persons who have been convicted, unless it is reasonably necessary (for example, where separate facilities are not available).<sup>321</sup>

## Right to a fair hearing

A person **charged** with a **criminal offence** has the right to a fair hearing.<sup>322</sup> This means that a charge should be decided by a competent, independent and unbiased court.<sup>323</sup> The hearing and decisions of the court should be available to the public unless it is not in the public interest or in the interests of justice – in which case members of the media, other people and members of the general public may be excluded.<sup>324</sup>

## Rights in criminal proceedings

A person charged with a criminal offence is presumed to be innocent until proven guilty and there are minimum guarantees to which they are entitled.<sup>325</sup> These include the right to:

- be told what law it is **alleged** they have broken and why, in a language the person understands
- have the free assistance of an interpreter or specialised communication tools (if needed)
- have time and facilities to prepare their case or talk to their lawyer
- have their matter heard without too much delay
- defend themselves personally or with legal assistance (if eligible, through Legal Aid)
- examine witnesses against them
- not have to testify against themselves or say they are guilty unless they choose to do so
- if convicted, the right to have any conviction or **sentence** reviewed by a **higher court**.<sup>326</sup>

## Right not to be tried and punished more than once

If a person has been charged, had a trial and been acquitted (found not guilty), or has been convicted and sentenced for an offence, they must not be tried and punished again.<sup>327</sup>

This is also known as the rule against ‘double jeopardy’.

This right is reflected in the *Criminal Code* (Qld), which also protects a person from being punished twice for the same offence.<sup>328</sup>

There are some exceptions to this.<sup>329</sup>

## Right to protection against retrospective criminal laws

This right is about changes in the law. A person has the right:

- not to be punished for things that were not a criminal offence at the time they were committed
- not to be given a penalty that is greater than that which applied to the offence when it was committed, and
- if a penalty is reduced after the person committed the offence but before a person is sentenced, to get the benefit of the reduced penalty.<sup>330</sup>

The *Criminal Code* (Qld) also protects a person from being punished for an offence unless it was an offence at the time when it was committed<sup>331</sup> or to be punished to any greater degree than the older law allowed (or that the newer law allows).<sup>332</sup>

Find out more information on the [Queensland Human Rights Commission Factsheet](#)

Also, a [plain language guide](#) to the *Human Rights Act 2019* is available in English, simplified Chinese, Vietnamese and Torres Strait Creole.



## **Appendices and endnotes**

# Appendices and endnotes

- Examples of maximum penalties
- Definitions
- Further information
- Endnotes

## Examples of maximum penalties

Explore some examples of Queensland offences and the maximum penalties that apply under the:

- *Criminal Code* (Qld)
- *Drugs Misuse Act 1986* (Qld)
- *Transport Operations (Road Use Management) Act 1995* (Qld).

There are many other Acts that establish offences and the maximum penalties that apply.

### *Criminal Code* (Qld)

#### **Maximum penalty for an offence ‘simpliciter’ and ‘circumstance of aggravation’ explained**

An offence ‘simpliciter’ means the basic version of an offence with no circumstance of aggravation. A ‘circumstance of aggravation’ is a fact that is part of an offence and makes the person liable to a greater punishment than the penalty which applies to the basic (simpliciter) offence.

For example, pushing a person and causing bruising would be an offence under section 339(1) of the *Criminal Code* (Qld) – assaults occasioning bodily harm. The person is liable to a maximum penalty of 7 years imprisonment. However, if the person is or pretends to be armed with any dangerous or offensive weapon (such as a knife) or is in company with one or more people, this is a circumstance of aggravation and the person is liable to 10 years imprisonment.

Different offences have different facts which can create a circumstance of aggravation and there can be more than one circumstance of aggravation.

Maximum Penalty	Offences
1 year imprisonment	Affray (taking part in a fight in public) (simpliciter)
2 years imprisonment	Going armed so as to cause fear • Threatening violence (simpliciter) • Indecent acts • Negligent acts causing harm
3 years imprisonment	Riot (simpliciter) • False declarations • Observations or recordings in breach of privacy • Distributing intimate image or prohibited visual recordings, or threatening to do so • Dangerous operation of a vehicle (simpliciter) • Common assault • Deprivation of liberty • Leaving a child under 12 unattended • Possession of things used in connection with unlawful entry (simpliciter) • Forgery and uttering (simpliciter)
5 years imprisonment	Unlawful drink spiking • Grooming child under 16 years or parent or carer of child under 16 years (simpliciter) • Unlawful stalking (simpliciter) • Stealing (simpliciter) • Fraud (simpliciter) • Wilful damage (simpliciter)
7 years imprisonment	Riot (with a circumstance of aggravation) • Official corruption (simpliciter) • Attempting to pervert justice (simpliciter) • Procuring engagement in prostitution (simpliciter) • Carrying on business of providing unlawful prostitution (simpliciter) • Serious animal cruelty • Choking, suffocation or strangulation in a domestic setting • Wounding (simpliciter) • Assaults occasioning bodily harm (simpliciter) • Serious assaults (simpliciter) • Kidnapping (simpliciter) • Abduction of child under 16 • Cruelty to children under 16 • Unlawful use or possession of motor vehicles, aircraft or vessels (simpliciter) • Receiving tainted property (simpliciter) • Unlawful stalking (with a circumstance of aggravation)
10 years imprisonment	Using internet etc to procure children under 16 (simpliciter) • Assaults occasioning bodily harm (with a circumstance of aggravation) • Sexual assaults (simpliciter) • Unlawful entry of vehicle for committing indictable offence (simpliciter) • Unlawful use or possession of motor vehicles, aircraft or vessels (with a circumstance of aggravation of use or intends to use for the purpose of facilitating the commission of an indictable offence)

12 years imprisonment	Unlawful use or possession of motor vehicles, aircraft or vessels (with a circumstance of aggravation that the offender intends to or wilfully destroys, damages, removes or otherwise interferes with the mechanism or other part of or equipment attached)
14 years imprisonment	Perjury (simpliciter) • Indecent treatment of children under 16 (but aged 12 or older) • Procuring sexual acts by coercion etc (simpliciter) • Distributing child exploitation material (simpliciter) • Possessing child exploitation material (simpliciter) • Administering child exploitation material website (simpliciter) • Permitting young person etc to be at place used for prostitution (simpliciter) • Female genital mutilation • Grievous bodily harm (simpliciter) • Torture (simpliciter) • Dangerous operation of a vehicle (with a circumstance of aggravation) • Serious assaults (with a circumstance of aggravation) • Stealing (with a circumstance of aggravation) • Fraud (with a circumstance of aggravation) • Robbery (simpliciter) • Extortion (simpliciter) • Burglary (simpliciter) • Receiving tainted property (with a circumstance of aggravation)
20 years imprisonment	Indecent treatment of children under 16 (if the child is under the age of 12 years, or of child under 16 years who is lineal descendant or under person's care or has an impairment of the mind) • Involving child in making child exploitation material (simpliciter) • Fraud (with a circumstance of aggravation)
25 years imprisonment	Involving child in making child exploitation material (with a circumstance of aggravation) • Sabotage and threatening sabotage (with a circumstance of aggravation)
Life imprisonment	Incest • Murder (mandatory sentence of life imprisonment) • Attempted murder • Accessory after the fact to murder • Manslaughter • Aiding suicide • Unlawful striking causing death • Disabling in order to commit indictable offence • Stupefying in order to commit indictable offence • Acts intended to cause grievous bodily harm and other malicious acts • Robbery (with a circumstance of aggravation) • Burglary (with a circumstance of aggravation) • Arson • Rape • Wilful damage (destroying or damaging premises by explosion) • Extortion (with a circumstance of aggravation)

## *Drugs Misuse Act 1986 (Qld)*

Different dangerous drug types and amounts listed in the *Drugs Misuse Regulation 1987 (Qld)* can determine the maximum penalty. A dangerous drug can be either schedule 1 or 2 and the specified quantities of the dangerous drugs are listed in schedule 3 and 4. Schedule 1 dangerous drugs include amphetamines, cocaine and heroin. Schedule 2 dangerous drugs include cannabis, diazepam (also known as valium) and morphine. Schedules 3 and 4 provide the specified quantities of certain dangerous drugs that are relevant for sentencing. For example, a schedule 3 amount of cocaine is 2 grams and a schedule 4 amount is 200 grams.

For example, if a person is found in possession of cocaine (a schedule 1 dangerous drug) and the amount is 1 gram (which is less than the schedule 3 amount of 2 grams), the person is liable to a maximum penalty of 15 years imprisonment.

For some offences, whether the person convicted of the offence was a 'drug dependent person' changes the maximum penalty.

For example, if a person is found in possession of cocaine (a schedule 1 dangerous drug) and the amount is 3 grams (which is more than the schedule 3 amount of 2 grams and less than the schedule 4 amount of 200 grams), it is then relevant whether the person is drug dependent. If the person satisfies a court that they are a drug dependent person, they are liable to a maximum penalty of 20 years imprisonment. If the person does not satisfy a court that they are a drug dependent person, they are liable to a maximum penalty of 25 years imprisonment.

### **Maximum Penalty**

### **Offences**

**2 years  
imprisonment**

Possessing things (other than a hypodermic syringe or needle for use in connection with the administration, consumption or smoking of a dangerous drug or that the person has used in connection with such a purpose) • Possessing things (hypodermic syringes or needle where the person fails to use all reasonable care and take all reasonable precautions in respect of such thing so as to avoid danger to the life, safety or health of another)

<p><b>2 years imprisonment continued</b></p>	<ul style="list-style-type: none"> <li>• Possessing things (hypodermic syringes or needles that have been used in connection with the administration of a dangerous drug where the person fails to dispose of such hypodermic syringe or needle in accordance with the procedures prescribed by regulation)</li> <li>• Possessing suspected property (other than a dangerous drug, hypodermic syringe or needle)</li> </ul>
<p><b>15 years imprisonment</b></p>	<p>Supplying dangerous drugs (schedule 2 drug) • Producing dangerous drugs (schedule 2 drug) • Possessing dangerous drugs (schedule 1 or 2 and the amount does not exceed schedule 3 or 4) • Possessing relevant substances or things • Supplying relevant substances or things • Producing relevant substances or things • Possessing things • Permitting use of place</p>
<p><b>20 years imprisonment</b></p>	<p>Supplying dangerous drugs (schedule 1 drug) • Supplying dangerous drugs (aggravated supply of a schedule 2 drug) (an 'aggravated supply' means supplying a dangerous drug to a minor or to a person who is intellectually impaired, or to a person in an educational institution or correctional facility, or who does not know he or she is being supplied) • Receiving or possessing property obtained from trafficking or supplying • Producing dangerous drugs (schedule 1 drug of or exceeding schedule 3 amount but less than schedule 4 amount and person was drug dependent) • Producing dangerous drugs (schedule 1 drug) • Producing dangerous drugs (schedule 2 drug of or exceeding schedule 3 amount) • Publishing or possessing instructions for producing dangerous drugs (schedule 2 drug) • Possessing dangerous drugs (schedule 1 drug of or exceeding schedule 3 but less than schedule 4 amount and the person was a drug dependent person) • Possessing dangerous drugs (schedule 2 drug of or exceeding schedule 3 amount) • Trafficking in relevant substances or things (simpliciter)</p>
<p><b>25 years imprisonment</b></p>	<p>Trafficking in dangerous drugs (simpliciter) • Supplying dangerous drugs (aggravated supply of a schedule 1 drug) • Supplying dangerous drugs (aggravated supply of a schedule 2 drug)</p>

<p><b>25 years imprisonment continued</b></p>	<p>Producing dangerous drugs (schedule 1 drug of or exceeding schedule 4 amount) • Producing dangerous drugs (schedule 1 drug of or exceeding schedule 3 amount but less than schedule 4 amount and the person was not a drug dependent person) • Publishing or possessing instructions for producing dangerous drugs (schedule 1 drug) • Possessing dangerous drugs (schedule 1 drug of or exceeding schedule 4 amount) • Possessing dangerous drugs (schedule 1 drug of or exceeding schedule 3 amount but less than schedule 4 amount and the person was not a drug dependent person) • Possession of a prohibited combination of items (e.g. certain chemicals)</p>
<p><b>Life imprisonment</b></p>	<p>Supplying a dangerous drug (aggravated supply of a schedule 1 drug (supply to a minor under 16 years))</p>

## *Transport Operations (Road Use Management) Act 1995 (Qld)*

There are often higher maximum penalties for a person who has been convicted of other traffic offences within the preceding 5 years.

The general alcohol limit is 0.050g or more of alcohol in 210L of breath. The middle limit is 0.100g or more and the high limit is 0.150g or more.

<b>Maximum Penalty</b>	<b>Offences</b>
14 penalty units (\$2,012.50) or 3 months imprisonment	Vehicle offences involving liquor or other drugs (Offence of driving etc while over the general alcohol limit but not over the middle alcohol limit) • Vehicle offences involving liquor or other drugs (Offence of driving etc while relevant drug is present in blood or saliva)
20 penalty units (\$2,875) or 6 months imprisonment	Vehicle offences involving liquor or other drugs (Offence of driving etc while over middle alcohol limit but not over high alcohol limit)
40 penalty units (\$5,750) or 6 months imprisonment	Breath and saliva tests, and analysis and laboratory tests (Offence of failing to provide specimen as required) • Careless driving of motor vehicles (simpliciter) • Racing and speed trials on roads
28 penalty units (\$4,025) or 9 months imprisonment	Vehicle offences involving liquor or other drugs (Offence of driving etc while under the influence)

<p><b>40 penalty units (\$5,750) or 12 months imprisonment</b></p>	<p>Driving of motor vehicle without a driver licence prohibited (simpliciter)</p>
<p><b>80 penalty units (\$11,500) or 12 months imprisonment</b></p>	<p>Careless driving of motor vehicles (causes the death of or grievous bodily harm to another person)</p>
<p><b>60 penalty units (\$8,625) or 18 months imprisonment</b></p>	<p>Driving of motor vehicle without a driver licence prohibited (disqualified by any court order from holding or obtaining a driver licence)</p>
<p><b>160 penalty units (\$23,000) or 2 years imprisonment</b></p>	<p>Careless driving of motor vehicles (causes the death of or grievous bodily harm to another person and the person was an unlicensed driver)</p>
<p><b>120 penalty units (\$17,250) or 3 years imprisonment</b></p>	<p>Duties and liabilities of drivers involved in road accidents (driver involved in an incident resulting in grievous bodily harm or death and did not immediately stop, remain at/near the scene, and give what assistance they could and do what they could to obtain medical/other aid; or if a person is/appears to be dead, did not show proper respect for the body and do what they could to move it to an appropriate place)</p>

## Definitions

<b>Absolute discharge</b>	Release without a conviction being recorded and without any further penalty.
<b>Accused</b>	A person who has been charged with an offence but who has not yet been found guilty or not guilty. Also referred to as a <b>defendant</b> .
<b>Acquittal/Acquitted</b>	A finding that a person is not guilty of a criminal charge.
<b>Adjourn/ Adjournment (court proceedings)</b>	To suspend court proceedings to start again at a future date or in a different place or indefinitely.
<b>Aggravating factor</b>	A fact or detail about the offence, the victim or the sentenced person that may increase the sentence a court gives.
<b>Allege/Alleged</b>	To accuse someone of having done something illegal. The <b>prosecution</b> does this and must prove its case <b>beyond a reasonable doubt</b> if the person does not plead guilty.
<b>Antecedents</b>	Background details about the person like their age, relationship status, employment history and criminal history (this usually includes details of past convictions and sentences).
<b>Appeal</b>	When a party to a court case challenges a decision and a higher court reviews it.  Parties are people or entities involved in court proceedings. For example, for appeals against sentence, the person sentenced and the prosecution. The Attorney-General can also appeal.

Appellant	The party appealing a court’s decision. This can be the <b>defendant</b> or the <b>prosecution</b> . The other party in the appeal is called the <b>respondent</b> . However, the term ' <b>applicant</b> ' is used instead of 'appellant' in three specific types of appeal (see below).
Applicant	<p>A person who wants to appeal to the Court of Appeal against their sentence or against their conviction if it involves a question of fact. This term is also used to describe anyone who wants to appeal to the <b>High Court</b>.</p> <p>The person wishing to appeal is called an applicant because in these cases they do not have an immediate legal right to appeal.</p> <p>The appeal cannot be heard unless the court first allows it ('grants leave' to appeal).</p>
Bail	A promise ( <b>undertaking</b> ) to come back to court for trial or sentencing. Bail may have extra conditions, like reporting to the police, living at a certain place or a surety (money put up by someone else to guarantee the person will come back to court).
Banning order	An order, made in addition to sentence, banning a person from entering a certain licensed premises (e.g. nightclub or bar) or entering a particular area near a licensed premises during certain hours or attending a particular public event at which alcohol will be sold.
Beyond reasonable doubt	This is the "standard of proof" that the prosecution must meet before a person accused of a crime can be found guilty.
Breach	To break a court order (also called a <b>contravention</b> ).

Case law	<p>Law developed through decisions made by courts in previous cases. This includes decisions about sentencing and how to interpret legislation.</p> <p>This is also known as <b>common law</b>.</p>
Charge	<p>A formal allegation made on arrest, or in court, that a person has committed an offence.</p>
Childrens Court	<p>Special courts at the Magistrates Courts level dealing with criminal offences committed by children.</p>
Childrens Court of Queensland	<p>A special court at the District Court level dealing with more serious criminal offences committed by children and appeals from the Childrens Court.</p>
Circumstance of aggravation	<p>A fact that is part of an offence that makes the person liable to a greater punishment than the penalty that applies to the basic (<b>simpliciter</b>) version of that offence.</p> <p>An example is being armed with a weapon when committing robbery. A circumstance of aggravation must be specifically made part of the charge if it is to apply.</p>
Common law	<p>Law developed through decisions made by courts in previous cases. This includes decisions about sentencing and how to interpret legislation.</p> <p>This is also known as <b>case law</b> and <b>precedent</b>.</p>
Commonwealth offence	<p>An offence committed against Commonwealth legislation, such as Centrelink fraud, telecommunications offences, offences at an airport or on an aircraft, terrorism offences, people smuggling offences, drug importation offences and some internet and child pornography material offences.</p>
Committal hearing	<p>A process in a Magistrates Court/Childrens Court to send (commit) <b>indictable offences</b> to either the Childrens Court of Queensland, District Court or Supreme Court.</p>

<p><b>Community Justice Group</b></p>	<p>Community Justice Groups are run by members of the local Aboriginal and Torres Strait Islander community.</p> <p>They provide <b>submissions</b> to courts on bail and sentencing. Community Justice Groups provide a community-based response to local issues, working with defendants and cooperatively with magistrates, police, corrective services personnel and staff from government agencies.</p>
<p><b>Community protection</b></p>	<p>One of the five purposes of sentencing in Queensland.</p> <p>To protect the Queensland community from the person sentenced.</p>
<p><b>Community service order</b></p>	<p>An order to do unpaid community service, usually within 12 months of conviction, and to comply with reporting and other conditions.</p>
<p><b>Compensation order</b></p>	<p>An order, made in addition to any other sentence, to pay for property taken, destroyed, damaged or interfered with, or for any personal injury caused by an offence.</p>
<p><b>Complainant</b></p>	<p>The person who makes the complaint to the State against the defendant. The complainant is the person who is alleged to have suffered harm directly because of a criminal offence.</p> <p>If the defendant pleads or is found guilty, the complainant may be called the <b>victim</b>.</p>
<p><b>Concurrent sentences</b></p>	<p>Individual sentences of imprisonment for different offences, ordered to be served at the same time.</p> <p>This means any shorter sentence is included in the longest (or 'head') sentence.</p> <p>For example, a sentence of 5 years and a sentence of 2 years served concurrently means that a person must serve a total of 5 years' imprisonment (the <b>head sentence</b>).</p>
<p><b>Contravention</b></p>	<p>When a court order is not followed (also called a <b>breach</b>).</p>

<b>Control order</b>	<p>An order, made in addition to a sentence, in circumstances relating to serious organised crime or criminal organisations.</p> <p>A control order imposes conditions to protect the public by preventing, restricting or disrupting the person’s involvement in serious criminal activity.</p>
<b>Conviction/been convicted</b>	<p>A finding that a person is guilty of an offence, including because the person pleads guilty.</p>
<b>Court of Appeal</b>	<p>A division of the Supreme Court. The final court for all appeals in Queensland. It usually hears appeals from the Childrens Court of Queensland, District Court and trial division of the Supreme Court. Only the High Court of Australia is superior.</p>
<b>Court order (criminal proceedings)</b>	<p>A direction by a court. This might include telling a person to do something (like come to court again) or not to do something and what sentence the court has imposed.</p>
<b>Court-ordered parole</b>	<p>A parole order where the parole release date is fixed by the court. A person will be released on their parole release date to serve the rest of their prison sentence in the community under supervision, unless there is an additional reason why the person is in <b>custody</b> or the Parole Board Queensland decides the person should not be released.</p> <p>The court must fix a date if the person is sentenced to 3 years imprisonment or less – but not if the sentence is for a sexual or serious violent offence, or an existing parole order was legally cancelled by the new sentence.</p>
<b>Crimes</b>	<p>The most serious type of <b>indictable offences</b>.</p>
<b>Criminal offences</b>	<p>These are split up into three types: <b>crimes, misdemeanours</b> and <b>simple offences</b>.</p> <p>The first two types are also classed as <b>indictable offences</b>.</p>

Criminal history	A document showing a person’s previous criminal convictions and the sentence imposed.
Culpability	<p>Blameworthiness – i.e. how morally responsible the person is for the offence and for the harm they caused.</p> <p>For example, someone who plans to commit an offence in advance will generally be treated as more culpable than someone who commits it on the spur of the moment.</p>
Cumulative sentences	<p>Individual sentences of imprisonment, given for each offence, which are ordered to be served one after the other rather than at the same time (<b>concurrent sentences</b>).</p> <p>For example, a sentence of 5 years and a sentence of 2 years served cumulatively would make a <b>head sentence</b> of 7 years imprisonment.</p>
Custodial sentence	A sentence that involves a term of imprisonment being imposed on the person.
Custody	<p>Detention of an adult in a prison or watchhouse.</p> <p>This may be while they are serving a sentence of imprisonment or because they have been denied bail and are on <b>remand</b> (also known as <b>pre-sentence custody</b> if the person is convicted of the offence or offences charged) waiting to have the charge finalised.</p>
Defence	<p>‘The defence’ describes the defendant and their legal advisors.</p> <p>A defence, in law, is a legal reason why a person is not guilty of an offence (e.g. self-defence).</p> <p>Partial defences also exist that can result in a person being found guilty of a less serious offence (e.g. manslaughter rather than murder).</p>
Defendant	The person who has been charged with an offence but who has not yet been found guilty or not guilty. The term can be used interchangeably with <b>accused</b> .

<b>Denunciation</b>	<p>One of the five purposes of sentencing in Queensland.</p> <p>To express in a formal way that the person’s behaviour is unacceptable to the community.</p>
<b>De Simoni principle</b>	<p>The principle that a person should only be sentenced for an offence for which they have been found guilty (named after the High Court case that established the principle).</p>
<b>Deterrence</b>	<p>One of the five purposes of sentencing in Queensland.</p> <p>Discouraging the person and other members of the community from committing a crime by the threat of a punishment or by someone experiencing a punishment.</p> <p>Where the aim is to discourage the person from committing further offences, this is known as personal or specific deterrence. When aimed at the general community, it is called general deterrence.</p>
<b>Diminished responsibility</b>	<p>A partial defence to the charge of murder.</p> <p>An accused must show they had an abnormal state of mind (‘abnormality of mind’) that substantially impaired their capacity to understand what they were doing, or control their actions, or know that they ought not do the act that made up the offence. The abnormal state of mind may be caused by a developmental condition or induced by disease, injury or inherent causes.</p> <p>If the accused establishes the defence of diminished responsibility, the charge is reduced from murder to manslaughter.</p>
<b>Discretion</b>	<p>Discretion means choice. For most offences heard in Queensland courts sentencing outcomes are not automatic. This allows the court to choose the sentence that is most appropriate in each case by weighing up all the different things the court must or may consider.</p>

<b>District Court</b>	<p>The second level of the Queensland court system, above the Magistrates Courts and below the Supreme Court.</p> <p>It deals with serious criminal offences such as rape, child sexual offending, armed robbery and many serious drug offences.</p> <p>The District Court can also hear an appeal against a sentence imposed in the Magistrates Courts.</p>
<b>Driver licence disqualification</b>	<p>An order made as part of, or in addition to, any sentence that disqualifies a person from holding or obtaining a Queensland driver licence for a specified period.</p>
<b>Drug and Alcohol Court</b>	<p>A special type of Magistrates Court that provides an intensive and targeted response to adults with a severe substance use disorder directly associated with their offending. It connects the person to support, treatment and services.</p>
<b>Drug and alcohol treatment order</b>	<p>A special sentencing order of the Drug and Alcohol Court. The treatment order is a prison sentence that is suspended while the person participates in intensive rehabilitation programs under supervision in the community.</p>
<b>Evidence</b>	<p>Proof of an alleged fact. This can include what a witness says happened, documents (including recordings, text messages, drawings and photographs), things (e.g. a knife) and facts that a court accepts as evidence of facts in the case.</p>
<b><i>Ex tempore</i> sentencing remarks</b>	<p>Sentencing remarks delivered orally at the end of the sentence hearing. This is the most common sentencing approach used by Queensland courts.</p>
<b>Fine</b>	<p>A penalty requiring a person to pay an amount of money within a certain period of time.</p>

Good behaviour bond	A <b>non-custodial order</b> in the form of a document that the sentenced person signs, promising not to break the law for a set period. It can also set an amount of money that must be paid if they break this promise. Also known as a <b>recognisance</b> .
Graffiti removal order	An order to remove graffiti, usually within 12 months of conviction.
Grounds of appeal	The reason/s why the party appealing a decision says the decision made by a magistrate, judge or jury was wrong.
Head sentence — imprisonment	The total period of imprisonment imposed taking into account, if more than one prison sentence is imposed, whether they are ordered to be served <b>concurrently</b> or <b>cumulatively</b> .
High Court of Australia	The highest court in the Australian judicial system. The High Court only deals with legal cases of wider public importance and is not a sentencing court.
Higher courts	<p>In Queensland, these are the Childrens Court of Queensland, District Court and Supreme Court.</p> <p>For appeals, a higher court can be the District Court, Childrens Court of Queensland, Court of Appeal or High Court of Australia.</p>
Imprisonment	<p>Serving a sentence in prison or, if a special type of court order is made (<b>intensive correction order</b>), by way of intensive correction in the community.</p> <p>A sentence of imprisonment is also served in the community if the court orders it to be <b>suspended</b> for a period of time.</p>
Indefinite sentence	A sentence of imprisonment with no fixed end date. It can only be ordered for some offences and only when a court is satisfied that the person is a serious danger to the community. It must be reviewed periodically.

Indictment	A written document with the charge/s (each one being called a count) bringing a person to trial in a higher court.
Indictable offences	<p>The most serious types of criminal offences.</p> <p>They are generally sentenced by the Supreme Court or District Court. However, many indictable offences can now be sentenced <b>summarily</b>.</p>
Instinctive synthesis	<p>The way Australian courts sentence, unless <b>mandatory sentencing</b> applies.</p> <p>The judge or magistrate considers all of the relevant factors, principles and purposes to decide what sentence to give in an individual case. These can often conflict with each other. Then, a single sentence is imposed that balances these considerations.</p>
Intensive correction order	A sentence of imprisonment of one year or less ordered to be served in the community and including intensive supervision, community service and treatment programs.
Judge	<p>A judge is the person in charge of cases heard in the higher courts.</p> <p>In the Supreme Court, judges are called <b>justices</b>. They hear the case, instruct any <b>jury</b> (if there is a trial) and decide the sentence.</p>
Jury	<p>A group of (usually) 12 people selected at random from the general community for a trial in a higher court if an accused person pleads not guilty to an alleged offence.</p> <p>The jury decides whether the accused person is guilty or not guilty of the alleged offence but does not sentence the person. A <b>judge</b> decides the sentence.</p>
Justice	<p>Justices are the people in charge of cases heard in the Supreme Court, the Court of Appeal and High Court.</p> <p>They are judges who are formally called justices.</p>

Leave to appeal	<p>Permission needed from the Court of Appeal for a sentenced person to appeal against a sentence (or a conviction if it involves a factual issue).</p> <p>An appeal to the High Court requires ‘special leave’ (permission) to appeal no matter who brings the appeal.</p>
Legislation	<p>Also called <b>statute law</b>. Legislation is comprised of written laws either made or authorised by Parliament.</p>
Life imprisonment	<p>The most severe fixed-term penalty possible. The minimum amount of time actually served in prison by a person sentenced to life imprisonment is set out in legislation and depends on the offence they are convicted of. Their release on parole is then determined by the Parole Board Queensland. If released on parole, they will be on parole for the rest of their life.</p>
Magistrate	<p>The person in a Magistrates Court/Childrens Court who hears the case and makes decisions about whether a person is guilty or not and what penalty (sentence) they get.</p>
Magistrates Courts	<p>The first level of the Queensland court system.</p> <p>Most criminal cases (against adults) are heard in these courts, and they impose sentences for the majority of offences (about 95 per cent).</p>
Mandatory sentence	<p>A minimum or fixed penalty or penalty type set by Parliament in <b>legislation</b>.</p> <p>The court has no <b>discretion</b> (no choice) to give a lesser or different type of sentence.</p>
Maximum penalty	<p>The highest penalty that can be given to a person convicted of a particular offence.</p>

Mental Health Court	<p>A division of the Supreme Court that decides the state of mind of people charged with criminal offences.</p> <p>The court can decide whether a defendant was of unsound mind when they committed the offence and whether they are fit for trial.</p>
Misdemeanours	<p>Less serious forms of criminal offences that are <b>indictable offences</b>.</p>
Mitigating factor	<p>A fact or detail about the person or the offence that may reduce the severity of the sentence.</p>
Murri Court	<p>A special Magistrates Court that connects Aboriginal and Torres Strait Islander defendants to cultural and support services. This can help them make changes in their lives and deal with the reasons for their offending.</p>
Non-contact order	<p>An order, in addition to another sentence, banning contact with the victim or another person or going to or near a particular place for a set period.</p>
Non-custodial sentence	<p>A sentencing order that is not served in custody and is not a sentence of imprisonment.</p>
Non-parole period	<p>The period of time set by a court that a person must serve in prison before being released on <b>parole</b> or becoming eligible for release on parole.</p>
Offence	<p>An act or omission that makes the person doing it liable to punishment.</p> <p>There are 2 kinds of offences — <b>criminal offences</b> and <b>regulatory offences</b>.</p>

Offender	A person who has been found guilty of an offence or who has pleaded guilty to an offence.
Offender levy	<p>An administrative fee imposed by Parliament to help pay for law enforcement and administration costs. The levy is paid to the court registry or the State Penalties Enforcement Registry.</p> <p>The amount varies depending on whether the person is sentenced in a Magistrates Court or in the District Court or Supreme Court.</p> <p>One levy is payable for each sentencing event.</p>
Office of the Director of Public Prosecutions	<p>The Office of the Director of Public Prosecutions represents the State of Queensland in criminal cases; also referred to as the <b>prosecution</b> or the Crown.</p> <p>There is a different Commonwealth version that prosecutes <b>Commonwealth crimes</b>.</p>
Parity (principle of parity)	Consistency of punishment for co-offenders in a case. This supports the principle of equality before the law.
Parole	<p>Supervised conditional release of a person from prison before the end of their prison sentence.</p> <p>A person released on parole is still serving their sentence. They have to follow the conditions of the parole order. These conditions are designed to help with their rehabilitation and reintegration into the community and to reduce the chances the person will reoffend.</p>
Parole Board Queensland	<p>An independent statutory authority that decides applications for parole orders under the <i>Corrective Services Act 2006</i> (Qld), other than parole release dates ordered by courts (<b>court-ordered parole</b>).</p> <p>The Parole Board Queensland can also amend, suspend or cancel a parole order of a person released on parole.</p>

Parole eligibility date	The earliest date on which a person may be released on parole if they apply. The decision as to whether the person is released on parole is made by the Parole Board Queensland.
Parole release date	<p>The date set by the court on which a person must be released on parole (unless in custody for another reason, or the Parole Board Queensland decides they should not be released).</p> <p>A parole release date can only be set if certain criteria are met, such as a prison sentence of 3 years or less and not for a <b>serious violent offence</b> or a sexual offence.</p>
Penalty unit	<p>Maximum fines are expressed as set numbers of penalty units. Each penalty unit is worth a set number of dollars and cents.</p> <p>This can be adjusted annually to keep pace with inflation. It allows all Queensland fines to change at the same time, in step with each other.</p>
Plea	The response by the accused to a criminal charge – ‘guilty’ or ‘not guilty’.
Prescribed offences	Offences listed in legislation that require or are eligible for particular action by a court.
Pre-sentence custody	<p>The time spent by an accused person in custody before their charges are dealt with. This happens if the person is not given <b>bail</b>.</p> <p>Also referred to as <b>remand</b>.</p> <p>If a period of imprisonment is later imposed, time spent in pre-sentence custody is generally counted as part of the sentence, unless the court makes a different order.</p>
Prisoner	A person in prison serving a custodial sentence or a person held on remand who is waiting for trial or sentence.

<b>Probation</b>	An order served in the community with monitoring and supervision.
<b>Proportionality (principle of proportionality)</b>	The principle that a sentence must be appropriate or proportionate to the seriousness of the crime.
<b>Prosecutor/ Prosecution</b>	The police officer or lawyer who presents the case against an accused person for the State of Queensland or Commonwealth.  Also referred to as the Crown.
<b>Punishment</b>	One of the five purposes of sentencing in Queensland.  To punish the person in a way that is just (fair) in all the circumstances.
<b>Recognisance</b>	A non-custodial order in the form of a document that the sentenced person signs, promising not to break the law for a set period. It can also set an amount of money that must be paid if they break the promise.  Also known as a <b>good behaviour bond</b> .
<b>Rehabilitation</b>	One of the five purposes of sentencing in Queensland.  The process by which a person addresses their offending behaviour to live a productive and law-abiding life in the future. This involves working on the causes of their offending, such as getting help with an addiction to alcohol or other drugs, dealing with behavioural or health issues, improving family relationships and healing from past trauma.
<b>Remand</b>	The time spent by an accused person in custody before their charges are dealt with. This happens if the person is not given bail.  See <b>pre-sentence custody</b> .

Regulatory offences	Less serious forms of offences that police can charge a person with instead of charging them with a criminal offence. For example, unauthorised dealing with shop goods (known as shoplifting) can be charged instead of stealing.
Respondent	The person responding to a court application.
Restitution	An order to restore stolen or damaged property to its owner when an offence is committed.
Rising of the court	A very low-level sentence, not mentioned in legislation and technically classed as a form of imprisonment, which requires a person to remain in the court room until the judge or magistrate adjourns the case.
Sentence	The penalty the court gives a person who has been found guilty of an offence.
Sentencing factors	The factors the court must take into account when sentencing.
Sentencing principles	Principles developed under the common law and in legislation that help judges and magistrates to reach a decision on the sentence to impose.  They include <b>parity, proportionality, totality</b> and the <b>De Simoni principle</b> .
Sentencing purposes	The legal reasons why a sentence may be given. There are five sentencing purposes for sentencing adults: <b>punishment, deterrence, rehabilitation, denunciation</b> , and <b>community protection</b> .

Sentencing remarks	The reasons given by the judge or magistrate for the sentence. These are generally delivered orally by the judge or magistrate (see <b>ex tempore sentencing remarks</b> ) but can be transcribed (reproduced in writing). The sentencing judge may also prepare written remarks.
Serious violent offence	An offence declared (stated) to be a serious violent offence by the Supreme Court or District Court. A declaration can be made for certain listed offences (schedule 1 offences) or any offence if other legislative criteria are met and requires the person convicted to serve 80 per cent of the sentence (or 15 years, whichever is less) in prison before they can be released on parole.
Simpliciter	Refers to the basic version of an offence, with no <b>circumstance of aggravation</b> .
Specialist Domestic and Family Violence Court	A specialist Magistrates Court dealing with domestic and family violence matters.
Statute law	Laws (legislation) made by Parliament, such as the <i>Penalties and Sentences Act 1992</i> (Qld).
Submissions	<p>Verbal comments made and written documents provided to the court by the prosecutor and the defence to support their case.</p> <p>If the person is an Aboriginal or Torres Strait Islander person, a representative of the Community Justice Group in that person's community can make a submission.</p>
Summarily	Instances where a matter is dealt with by a Magistrates Court or Childrens Court rather than by a higher court.

Summary offences	<p>Minor offences that generally must be prosecuted within 12 months of the offence taking place. They are heard in Magistrates Courts or Childrens Court.</p> <p>Also known as <b>simple offences</b>.</p>
Supreme Court	<p>The Supreme Court is the highest court in Queensland. It consists of the trial division and the Court of Appeal. The Supreme Court hears the most serious criminal cases, including murder, manslaughter and serious drug offences.</p>
Surety	<p>A person acts as a surety for an accused person if they agree to a bail condition that they will give up an amount of money if the accused person fails to appear in accordance with their bail undertaking.</p> <p>A person can also act as a surety for a person sentenced to a <b>good behaviour bond</b> or recognisance by agreeing to pay a sum of money if the person breaches that order.</p>
Suspended sentence	<p>A prison sentence of 5 years or less suspended in full (called a ‘wholly suspended sentence’) or in part (called a ‘partially suspended sentence’) for a set period (called an ‘operational period’) of up to 5 years.</p> <p>If the sentenced person commits another offence punishable by imprisonment during the operational period of the order, they must serve the whole of the prison sentence that was suspended, unless the court considers this would be unjust.</p> <p>For example, a 12-month prison sentence suspended for 2 years means that the person must not commit another offence during the 2-year period. If they do, the court may order that they serve 12 months in prison (subject to any parole).</p>
Totality (principle of totality)	<p>The principle that when a person is convicted of more than one offence, the total sentence should reflect the overall criminality of the offending.</p>

<b>Undertaking</b>	A promise to the court to do or not do certain things. This will be in the form of a court order that the person signs. A common example is a bail undertaking.
<b>Victim</b>	A person who has suffered harm directly because of a criminal offence, or a family member or dependant of a person who has died or suffered harm because of a criminal offence.
<b>Victim impact statement</b>	A written statement made by a victim that states the harm the offence has caused them. It may include attachments such as medical reports, photographs and drawings. A victim of crime may be invited to read the statement aloud in court or have the statement read aloud for them by the prosecutor.

## Further information

### Queensland Sentencing Advisory Council

Visit the Council's website to find out about sentencing in Queensland, reviews the Council is conducting at the Attorney-General's request, sentencing trends, education resources, Sentencing Spotlights on certain offences, details of sentencing events and much more.

[www.sentencingcouncil.qld.gov.au](http://www.sentencingcouncil.qld.gov.au)

### Queensland Courts

Visit the Queensland Courts website for the daily court lists, courthouse contacts and information about going to court.

[www.courts.qld.gov.au](http://www.courts.qld.gov.au)

### Legal Aid Queensland

Visit Legal Aid Queensland's website to help you understand your legal rights and options, what to do if you have been charged with an offence and how to get legal help.

[www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)

### Supreme Court Library Queensland

Visit the Supreme Court Library's website for decisions from Queensland Courts and Tribunals, judicial papers and profiles, and legal events.

[www.sclqld.org.au](http://www.sclqld.org.au)

# Endnotes

## Chapter 1: What is sentencing and who is responsible?

1. *Criminal Code Act 1899* (Qld) sch 1 ('*Criminal Code* (Qld)').
2. *R v Goodger* [2009] QCA 377 [21] (Keane JA, Fraser JA and Atkinson J agreeing), citing *R v Dunn* [1994] QCA 147; *R v Neumann*; *ex parte A-G* (Qld) [2007] 1 Qd R 53. See also *R v Yarwood* (2011) 220 A Crim R 497, 506–7 [22]–[26] (White JA, Fraser JA and North J agreeing), quoting *R v Tsiaras* [1996] 1 VR 398; 400, *R v Verdins* (2007) 16 VR 269 [5], [32]; *R v Goodger* [2009] QCA 377 [21].

## Chapter 2: Courts and jurisdiction

3. *Criminal Code* (Qld) (n 1) s 3(1). See also Heather Douglas, Malcolm Barrett and Emma Higgins, *Criminal Process in Queensland* (Lawbook Co, 2<sup>nd</sup> ed, 2017) 112–20.
4. *Regulatory Offences Act 1985* (Qld) ss 5–7.
5. *Criminal Code* (Qld) (n 1) s 3(2).
6. *Justices Act 1886* (Qld) s 52; while 12 months is the general rule, exceptions to this timeframe apply.
7. Queensland Courts, 'What Happens at the Magistrates Court' (Web page, 8 July 2019) <<https://www.courts.qld.gov.au/courts/magistrates-court/what-happens-at-magistrates-court>>.
8. *Criminal Code* (Qld) (n 1) s 3(3).
9. Queensland Courts, 'About the Magistrates Court' (Web page, 21 June 2022) <<https://www.courts.qld.gov.au/courts/magistrates-court/about-the-magistrates-court>>.
10. *Ibid*.
11. An exception to this is that in some circumstances a Justice of the Peace (JP) can hear matters. For example, the Remote Justices of the Peace (Magistrates Court) Program allows a JP to constitute a Magistrates Court in the absence of a magistrate in discrete Queensland communities. Remote JPs can hear and determine charges for simple or regulatory offences, or indictable offences that can be dealt with summarily, where a defendant enters a guilty plea. See Queensland Courts, 'Remote Justices of the Peace (Magistrates Court) Program' (Web page, 5 October 2021) <[www.courts.qld.gov.au/services/court-programs/remote-justices-of-the-peace-program](http://www.courts.qld.gov.au/services/court-programs/remote-justices-of-the-peace-program)>. See also *Criminal Code* (Qld) (n 1) ss 552C(1)(b), (2).
12. *Criminal Code* (Qld) (n 1) ss 552A–552B. Relevant offences must also be dealt with summarily: s 552BA.
13. *Ibid* s 552D.
14. *Mental Health Act 2016* (Qld) s 172.
15. *Ibid* s 173.
16. *Ibid* s 174.
17. *Ibid* s 175.

18. Queensland Courts, 'About the District Court' (Web page, 27 January 2017) <[www.courts.qld.gov.au/courts/district-court/about-the-district-court](http://www.courts.qld.gov.au/courts/district-court/about-the-district-court)>.
19. *Criminal Code* (Qld) (n 1) ss 614–15.
20. *Supreme Court of Queensland Act 1991* (Qld) s 5(1)(b).
21. Queensland Courts, 'About the Supreme Court' (Web page, 19 January 2017) <<https://www.courts.qld.gov.au/courts/supreme-court/about-the-supreme-court>>.
22. See *Childrens Court Act 1992* (Qld) s 5(3). The Childrens Court as constituted by a magistrate or two justices of the peace (rather than by a judge), is referred to in this guide as the 'Childrens Court'.
23. *Ibid* s 5(2). The Childrens Court of Queensland as constituted by a judge is referred to in this guide as the 'Childrens Court of Queensland'.
24. *Youth Justice Act 1992* (Qld) sch 4. A Childrens Court of Queensland judge cannot hear and decide a 'supreme court offence': s 99(1).
25. *Ibid* ss 65, 93. For an explanation see Queensland Courts, *Youth Justice Benchbook* (2020) ch 9.
26. The only people allowed in the court room are set out in the *Childrens Court Act 1992* (Qld) s 20.
27. Unless the court considers that a person's presence would be prejudicial to the interests of the child: *ibid* s 20(2).
28. *Youth Justice Act 1992* (Qld) s 301.
29. *Ibid* ss 62, 99.
30. *Childrens Court Act 1992* (Qld) s 20(5)(b).
31. *Youth Justice Act 1992* (Qld) ss 234, 301.
32. *Ibid* sch 4, defines a 'supreme court offence' as 'an offence for which the District Court does not have jurisdiction to try an adult because of the *District Court of Queensland Act 1967*, section 61'.
33. As these are not Childrens Court proceedings, section 20 of the *Childrens Court Act 1992* (Qld) does not apply: Queensland Courts (n 25) 17.
34. Queensland Courts, 'About Murri Court' (Web page, 29 September 2020) <[www.courts.qld.gov.au/courts/murri-court/about-murri-court](http://www.courts.qld.gov.au/courts/murri-court/about-murri-court)>.
35. Queensland Courts, 'Going to Murri Court' (Web page, 6 October 2021) <<https://www.courts.qld.gov.au/courts/murri-court/going-to-murri-court>>.
36. Queensland Courts (n 34).
37. Queensland Government, *Third Action Plan of the Domestic and Family Violence Prevention Strategy 2019-20 to 2021-22* (2019) 14.
38. Queensland Courts, 'Specialist Domestic and Family Violence Court' (Web page, 9 January 2023) <<https://www.courts.qld.gov.au/courts/domestic-and-family-violence-court>>.
39. Queensland Courts 'Queensland Drug and Alcohol Court' (Web page, 14 November 2022) <[www.courts.qld.gov.au/courts/drug-court](http://www.courts.qld.gov.au/courts/drug-court)>.
40. *Penalties and Sentences Act 1992* (Qld) ss 151N, 151Q–151S.

41. Queensland Courts (n 39).
42. The legal test to be met is set out under s 27 of the *Criminal Code* (Qld) (n 1).
43. *Mental Health Act 2016* (Qld) s 175.
44. *Ibid* s 175(1)(b).
45. *Ibid* ss 21, 116, 118. However, the Mental Health Court may not decide if a person was of unsound mind or of diminished responsibility when the offence was allegedly committed if there is a substantial dispute about whether the person committed the offence or about a material fact to an opinion stated in an expert report received in evidence: ss 117, 117A.
46. *Ibid* s 651.
47. Queensland Courts, 'What happens in a hearing' (Web page, 31 January 2017) <<https://www.courts.qld.gov.au/courts/mental-health-court/hearings-in-the-court/what-happens-in-a-hearing>>; *ibid* s 114 (Parties to proceeding).
48. *Mental Health Court Act 2016* (Qld) s 668.
49. *Ibid* ss 118, 123.
50. *Ibid* ss 119, 122.
51. *Ibid* s 131.
52. *Ibid* s 119(2).
53. *Ibid* s 120.
54. *Ibid* s 133.
55. *Ibid* s 137.
56. *Ibid* sch 3.
57. *Ibid* s 134.
58. *Ibid* ss 138–40.
59. *Ibid* s 138(2).
60. *Ibid* s 433.
61. *Ibid* s 143.
62. *Ibid* s 45; State of Queensland (Queensland Health), *A Guide to the Mental Health Act 2016* (July 2022) 9.
63. *Ibid* s 132.
64. Queensland Courts, 'Mental Health Court' (Web page, 6 April 2022); *Mental Health Act 2016* (Qld) ch 13, pt 3 (Appeals to Mental Health Court) and ch 16, pt 1, div 9 (Reviews of detention in authorised mental health service or forensic disability service).
65. Queensland Courts 'Court Link' (Web page, 6 April 2021) <<https://www.courts.qld.gov.au/courts/mental-health-court>>

- 66. Ibid.
- 67. Ibid. See also *Penalties and Sentences Act 1992* (Qld) s 9(2)(o).
- 68. Queensland Courts (n 65)
- 69. For more information, see Federal Court of Australia, 'The Court's Jurisdiction' (Web page) <[www.fedcourt.gov.au/about/jurisdiction](http://www.fedcourt.gov.au/about/jurisdiction)>.
- 70. See Federal Circuit and Family Court of Australia, 'About the Court' (Web page, 2022) <<https://www.fcfoa.gov.au/about>>.
- 71. High Court of Australia, 'Role of the High Court' (Web page, 2020) <[www.hcourt.gov.au/about/role-of-the-high-court](http://www.hcourt.gov.au/about/role-of-the-high-court)>.

### Chapter 3: Sentencing hearing

- 72. *Penalties and Sentences Act 1992* (Qld) s 10.
- 73. Ibid ss 13A–13B.
- 74. The *Public Guardian Act 2014* (Qld) and *Guardianship and Administration Act 2000* (Qld) set out the Office of the Public Guardian's legislative functions, obligations and powers.
- 75. *Penalties and Sentences Act 1992* (Qld) s 9(2)(p).
- 76. Ibid.
- 77. *Penalties and Sentences Act 1992* (Qld) s 9(2)(c)(i).
- 78. Ibid s 9(2)(c)(ii).

### Chapter 4: Deciding what sentence to give

- 79. *Markarian v The Queen* (2005) 228 CLR 357, 388–90 [76]–[83] (McHugh J).
- 80. *Penalties and Sentences Act 1992* (Qld) s 9(1).
- 81. Ibid ss 9(2), (9B), (10), (10A), 13–13B.
- 82. *Veen v The Queen* [No 2] (1988) 164 CLR 465, 468 (Mason CJ, Brennan, Dawson and Toohey JJ), referring to *Ibbs v The Queen* (1987) 163 CLR 447, 451–2.
- 83. *Penalties and Sentences Act 1992* (Qld) s 13.
- 84. *Siganto v The Queen* (1998) 194 CLR 656, 663–4 [22] (Gleeson CJ, Gummow, Hayne and Callinan JJ).
- 85. *R v Bates; R v Baker* [2002] QCA 174 [76] (Atkinson J) citing *R v Thomson; R v Houlton* (2000) 49 NSWLR 383, 386 [3] (Spigelman CJ).
- 86. *R v Blanch* [2008] QCA 253 [24] (Keane J, Mackenzie AJA and Douglas J agreeing) citing *R v Hoad* [2005] QCA 92 [31] (Jerrard JA, McMurdo P and Holmes J agreeing).
- 87. *R v Mahony & Shenfield* [2012] QCA 366 [37], [52]–[57] (Gotterson JA, Muir JA and Applegarth J agreeing).

88. *Siganto v The Queen* (1998) 194 CLR 656, 663-4 [22], 666 [30] (Gleeson CJ, Gummow, Hayne and Callinan JJ) quoting Thomas, *Principles of Sentencing* (Heinemann, 2<sup>nd</sup> ed, 1979) 50.
89. *Penalties and Sentences Act 1992* (Qld) s 9(2)(i).
90. *Ibid* ss 13A(5), (7), 13B(6).
91. *Ibid*.
92. *Ibid* ss 13A(7)(c), 13B(8).
93. *Ibid* ss 13A(6), 13B(7).
94. *Ibid* s 159A.
95. *Ibid* s 108B(1), (2). A similar mandatory provision applies for graffiti offences: s 110A. The court must make a graffiti removal order.
96. *Ibid* s 108B(2A).
97. *Corrective Services Act 2006* (Qld) ss 182–182A.
98. *Weapons Act 1990* (Qld) ss 50(1)(d)–(e), 50B(1)(d)–(e), 65(1)(c)–(d).
99. *Penalties and Sentences Act 1992* (Qld) s 156A.
100. *Veen v The Queen* [No 2] (1988) 164 CLR 465, 472 (Mason CJ, Brennan, Dawson and Toohey JJ).
101. *Ibid*.
102. *Postiglione v The Queen* (1997) 189 CLR 295, 295–6 (Dawson, Gaudron and Kirby JJ).
103. *Lowe v The Queen* (1984) 154 CLR 606, 609 (Gibbs CJ).
104. *Ibid*, 610–11 (Mason J); *Green v The Queen* (2011) 244 CLR 462, 472–3 [28] (French CJ, Crennan and Kiefel JJ).
105. *Mill v The Queen* (1998) 166 CLR 59, 62-3 (Wilson, Deane, Dawson, Toohey and Gaudron JJ) quoting Thomas, *Principles of Sentencing* (Heinemann, 2<sup>nd</sup> ed, 1979) 56-7; *R v LAE* (2013) 232 A Crim R 96, 104-5, [32]–[37] (Martin J, Muir and Fraser JJA agreeing).
106. *R v Schmidt* [2013] 1 Qd R 572, 583 [34] (Fryberg J, Wilson AJA agreeing) quoting *Roffey v Western Australia* [2007] WASCA 246 [24]–[25] (McLure JA). See also *R v Symss* (2020) 3 QR 336, 345–7 [30]–[34], [40] (Sofronoff P, Morrison, McMurdo JJA agreeing).
107. *R v De Simoni* (1981) 147 CLR 383, 389 (Gibbs CJ, Mason and Murphy JJ agreeing).

## Chapter 5: Penalties and sentences

108. *Penalties and Sentences Act 1992* (Qld) s 19(1)(a).
109. *Ibid* s 19(1)(b).
110. *Ibid* ss 19(2), (2A), (2B).
111. *Ibid* s 16.
112. *Ibid* ss 23–4.

- 113.** Ibid s 24(1)(b).
- 114.** Ibid s 25.
- 115.** Ibid 26(2).
- 116.** Ibid s 22.
- 117.** Ibid s 31.
- 118.** Ibid s 29.
- 119.** Ibid s 30.
- 120.** Ibid s 29.
- 121.** Ibid s 32.
- 122.** Ibid s 29.
- 123.** Ibid s 33B.
- 124.** Ibid ss 50–1, 182A.
- 125.** *Penalties and Sentences Regulation 2015* (Qld) s 3. This section prescribes the value of a penalty unit for the purposes of ss 5(1)(a)(i), (c)(i) and (e)(i) of the *Penalties and Sentences Act 1992* (Qld).
- 126.** *Penalties and Sentences Act 1992* (Qld) ss 44–5(2).
- 127.** Ibid pt 4, div 2.
- 128.** *State Penalties Enforcement Act 1999* (Qld) s 32G.
- 129.** *Penalties and Sentences Act 1992* (Qld) ss 66, 72.
- 130.** *State Penalties Enforcement Act 1999* (Qld) s 32G. An ‘approved sponsor’ is a person or entity approved by the registrar for that type of work and development order. For a list of agencies approved for this purpose, see Queensland Government, ‘Find a hardship partner’ (Web page) <https://www.qld.gov.au/law/fines-and-penalties/find-a-hardship-partner>>.
- 131.** *Penalties and Sentences Act 1992* (Qld) s 93.
- 132.** Ibid s 92(2)(a).
- 133.** Ibid s 96.
- 134.** Ibid s 93.
- 135.** Ibid s 94.
- 136.** Ibid s 93.
- 137.** Ibid s 94.
- 138.** Ibid s 90.
- 139.** Ibid s 103(2).
- 140.** Ibid s 103(2)(b).

141. Ibid s 103.
142. Ibid s 106.
143. Ibid s 108B.
144. Ibid s 100.
145. Ibid s 110C(2).
146. Ibid s 110C(1).
147. Ibid s 110A(1), (3). A 'graffiti offence' is causing wilful damage to property that is in a public place or visible from a public place by graffitiing it, or being in possession of an instrument that has been, is being, or is reasonably suspected of being about to be used for graffiti (for example, a spray can): see ibid s 4; *Criminal Code* (Qld) (n 1) s 469; *Summary Offences Act 2005* (Qld) s 17(1).
148. Ibid s 110A(2).
149. Ibid s 187(1).
150. Ibid.
151. Ibid s 187(2).
152. Ibid s 9(2)(a).
153. Ibid ss 9(2A), 9(4)(b).
154. *A-G (Qld) v Perkins* [2020] 4 QR 279, 293-4 [38] (Davis J) quoting *Ledson v Taylor* (2010) 239 FLR 184 [56]-[60] (Refshauge J).
155. Ibid.
156. Ibid.
157. *Penalties and Sentences Act 1992* (Qld) s 92(1).
158. Ibid ss 92(4), 93.
159. Ibid s 91(b).
160. Ibid ss 112-13(1).
161. Ibid s 114(1).
162. Ibid s 114(2).
163. Ibid s 117.
164. Ibid s 127.
165. Ibid s 111.
166. Ibid ss 144(1), (3).
167. Ibid ss 144(5)-(6).
168. Ibid s 147(2).

169. Ibid ss 147(1)(a), (c).
170. Ibid s 143.
171. Ibid ss 151N(1), (3).
172. Ibid s 151Q.
173. Ibid s 151E.
174. Ibid s 151F.
175. Ibid s 151G.
176. Ibid s 151C(2).
177. Ibid s 151R(2).
178. Ibid s 151S.
179. Ibid s 151D.
180. Ibid s 152.
181. *Corrective Services Act 2006* (Qld) s 205(2).
182. Queensland Parole System Review, *Queensland Parole System Review Final Report* (2016), 1 [3].
183. *Penalties and Sentences Act 1992* (Qld) s 160G.
184. Requiring a person to serve one-third is a practice of Queensland Courts and not a rule: see *R v Blanch* [2008] QCA 253 [24] (Keane J, Mackenzie AJA and Douglas J agreeing) citing *R v Hoad* [2005] QCA 92 [31] (Jerrard JA, McMurdo P and Holmes J agreeing).
185. See eg, *Corrective Services Act 2006* (Qld) ss 182–182A; *Weapons Act 1990* (Qld) ss 50(1)(d)–(e), 50B(1)(d)–(e), 65(1)(c)–(d).
186. *Penalties and Sentences Act 1992* (Qld) s 160B.
187. Ibid.
188. *Corrective Services Act 2006* (Qld) s 199(2). Also, the Parole Board Queensland may amend, suspend or cancel a parole order at any time if the Board believes the prisoner has failed to comply with the order, is a serious risk of harm to someone else or is an unacceptable risk of committing an offence or is preparing to leave Queensland without permission: *Corrective Services Act 2006* (Qld) s 205(2).
189. Ibid ss 182–182A, 184.
190. *Penalties and Sentences Act 1992* (Qld) ss 160C–160D. This also includes if the person has had a court ordered parole order cancelled during their period of imprisonment: s 160B(2) and other special circumstances in which a court may, or must, set a parole eligibility date under s 160B.
191. *Corrective Services Act 2006* (Qld) s 184.
192. Ibid ss 180, 193.
193. Parole Board Queensland (Web page) <<https://www.pbq.qld.gov.au>>.
194. Parole Board Queensland, ‘Parole decision making’ (Web page, 19 October 2022) <<https://www.pbq.qld.gov.au/parole-in-queensland/decision-making>>.

- 195.** Ibid. *Corrective Services Act 2006* (Qld) ss 188, 320.
- 196.** *Corrective Services Act 2006* (Qld) ss 176, 194.
- 197.** Ibid s 176A.
- 198.** Ibid s 176B.
- 199.** Ibid s 200.
- 200.** Ibid s 200(3).
- 201.** Ibid ss 205(2), 206.
- 202.** Ibid ss 180(2), 193(5)(b). If a person's previous parole application has been refused, an application can be made prior to this period if the Parole Board consents: ibid s 180(2)(a)(ii).
- 203.** *Penalties and Sentences Act 1992* (Qld) s 155.
- 204.** Ibid s 156A.
- 205.** Ibid s 161E; *Criminal Code* (Qld) (n 1) s 305.
- 206.** *Corrective Services Act 2006* (Qld) ss 181–181A.
- 207.** Ibid.
- 208.** Ibid s 205(2).
- 209.** *Penalties and Sentences Act 1992* (Qld) s 162.
- 210.** *Corrective Services Act 2006* (Qld) s 179(2)(a)(iii).
- 211.** *Penalties and Sentences Act 1992* (Qld) ss 162, 163(1).
- 212.** Ibid s 162.
- 213.** Ibid s 163(3). The Court must also be satisfied that the provisions under ch 5, pt 3 of the *Mental Health Act 2016* (Qld) do not apply.
- 214.** Ibid s 163(4).
- 215.** Ibid s 163(2).
- 216.** Ibid s 171.
- 217.** Ibid s 173(2).
- 218.** Ibid ss 173(1), (3)(c).
- 219.** Ibid s 45(2).
- 220.** Ibid ss 92(1)(b), (5).
- 221.** Ibid s 109.
- 222.** This combination is not even permitted if the intensive correction order and probation order would be imposed for separate offences – see *R v M; Ex parte A-G* [2000] 2 Qd R 543.
- 223.** *R v Saebbar* [2011] QCA 142.

224. *Penalties and Sentences Act 1992* (Qld) s 12.

225. *Ibid* ss 12(6), 20(2)(a), 111, 143, 152. The only exception is if a person has applied to revoke a probation or community service order and has not breached it: s 12(7).

226. *Ibid* ss 29, 90, 100, 110A(2).

227. *Ibid* ss 16, 22.

228. *Ibid* s 12(2).

## Chapter 6: Other orders and the offender levy

229. *Penalties and Sentences Act 1992* (Qld) ss 34, 43A, 43H.

230. *Ibid* s 35(1).

231. *Ibid* s 35(2).

232. See eg, *Transport Operations (Road Use Management) Act 1995* (Qld) ss 78(3), 83(2), 85(6), 86; *Police Powers and Responsibilities Act 2000* (Qld) s 754(3).

233. *Penalties and Sentences Act 1992* (Qld) s 43C(1).

234. *Ibid* s 43B(1).

235. *Ibid* s 43C(3).

236. *Ibid* s 43A.

237. *Ibid* s 43B(3).

238. *Ibid* s 43I.

239. *Ibid* s 43J(1)(a).

240. *Ibid* s 43J(1)(b).

241. *Ibid* s 43J(1)(c).

242. *Ibid* ss 161V–161Y. In some cases the making of an order is mandatory: see *ibid* s 161V(1).

243. *Ibid* ss 161U(1), 161ZB(3).

244. *Ibid* s 161U(2).

245. *Ibid* s 195(1).

246. *Ibid* s 195(2).

247. *Ibid* s 195(4).

248. *Ibid* s 179C(1).

249. *Ibid* ss 179C(2)–(3).

250. *Ibid* s 179C(4).

251. *Ibid* s 9(9)(a).

252. Queensland Courts, 'Offender levy' (Web page, 21 July 2022) <<https://www.courts.qld.gov.au/about/offender-levy>>; *Penalties and Sentences Regulation 2015* (Qld) s 10. The current value of a fee unit for the purposes of the *Penalties and Sentences Act 1992* (Qld) is \$1.025: *Acts Interpretation Act 1954* (Qld) s 48B; *Acts Interpretation (Fee Unit) Regulation 2022* (Qld) s 2.

253. *State Penalties Enforcement Act 1999* (Qld) s 38.

## Chapter 7: Sentencing certain offences

254. *Drugs Misuse Act 1986* (Qld) ss 8(1)(b)(i) (Producing dangerous drugs), 9(1)(b)(i) (Possessing dangerous drugs).

255. *Ibid* s 4.

256. *Ibid*.

257. *Penalties and Sentences Act 1992* (Qld) ss 151B (definition of 'eligible offence'), 151E.

258. *Ibid* s 151G.

259. *Ibid* s 9(4)(c).

260. *Ibid* s 9(5).

261. *Ibid* s 9(6).

262. *Ibid* s 9(6A).

263. *Ibid* s 160D.

264. *Ibid* ss 161D, 161E.

265. *Ibid* s 9(2A).

266. *Ibid* s 9(3).

267. *Ibid* s 9(9B).

268. *Criminal Code* (Qld) (n 1) s 305.

269. *Corrective Services Act 2006* (Qld) s 181.

270. *Domestic and Family Violence Protection Act 2012* (Qld) s 8.

271. *Ibid* s 13.

272. *Ibid* s 23.

273. *Ibid* s 28, pt 3 div 5.

274. *Ibid* s 177.

275. *Ibid* s 177(2)(b).

276. *Ibid* s 177(2)(a).

277. *Criminal Code* (Qld) (n 1) s 1.

278. *Penalties and Sentences Act 1992* (Qld) s 12A.

279. *Ibid* s 12A(5).
280. *Criminal Code* (Qld) (n 1) s 315A.
281. *Penalties and Sentences Act 1992* (Qld) s 9(10A).
282. *Domestic and Family Violence Protection Act 2012* (Qld) s 177(2).
283. *Ibid* s 26(b).
284. *Penalties and Sentences Act 1992* (Qld) sch 1.
285. *Ibid* s 161A(a); *Corrective Services Act 2006* (Qld) s 182(2).
286. *Ibid* ss 161B(3)–(4).
287. *Ibid* sch 1C.
288. *Ibid* s 161Q(1).
289. *Ibid* s 161O.
290. *Ibid* s 161R.
291. *Ibid* s 161R(3)(b).
292. *Crimes Act 1914* (Cth) ss 16A(2), 17A.
293. See *Ibid* ss 4B, 4D, 19AB, 19AC, 19B(1)(c)–(d), 20, 20AB. See also the Commonwealth Director of Public Prosecutions, *Sentencing of Federal Offenders in Australia: A Guide for Practitioners* (5<sup>th</sup> ed, 2022) 110–13 [5.2].
294. *Crimes Act 1914* (Cth) s 19AL(1).
295. *Ibid* s 19AL(2).
296. *Ibid* s 19AP.

## Chapter 8: Sentence appeals

297. *Justices Act 1886* (Qld) s 222.
298. *Ibid* s 222(2A).
299. *Ibid* ss 222(1), 224(1)(a).
300. *District Court of Queensland Act 1967* (Qld) s 118.
301. *Criminal Code* (Qld) (n 1) s 668D for a sentenced person, s 669A for the Attorney-General.
302. *Ibid* ss 668D(1)(c), (2).
303. *Ibid* s 671.
304. *House v The King* (1936) 55 CLR 499, 504–5 (Dixon, Evatt and McTiernann JJ).
305. *Ibid* 505 (Dixon, Evatt and McTiernann JJ).
306. *Ibid*.

307. Different appeal courts have different powers on appeal. See *Justices Act 1886* (Qld) s 225; *Criminal Code* (Qld) (n 1) ss 668E–669A.
308. *Criminal Code* (Qld) (n 1) s 668D; *Justices Act 1886* (Qld) s 222.
309. *Meissner v The Queen* (1995) 184 CLR 132, 157 (Dawson J).
310. *Judiciary Act 1903* (Cth) s 35A.
311. *Ibid* s 37.
312. *Criminal Code* (Qld) (n 1) s 672A.

## Chapter 9: *Human Rights Act 2019* (Qld)

313. *Human Rights Act 2019* (Qld) s 15(3).
314. *Ibid* s 17(b).
315. *Ibid* ss 32(3), 33.
316. *Ibid* ss 27, 28(1).
317. *Ibid* s 28(3).
318. *Penalties and Sentences Act 1992* (Qld) s 9(2)(p).
319. *Ibid*.
320. *Human Rights Act 2019* (Qld) s 30(1).
321. *Ibid* s 30(2).
322. *Ibid* s 31(1).
323. *Ibid*.
324. *Ibid* s 31(2).
325. *Ibid* s 32.
326. *Ibid* ss 32(2), (4).
327. *Ibid* s 34.
328. *Criminal Code* (Qld) (n 1) ss 16, 17.
329. *Ibid* ss 678B, 678C. The Court of Appeal may order a retrial for murder if there is fresh and compelling evidence, or a retrial for a 25 year offence if a person was acquitted but it was a tainted acquittal. In both cases it must also be in the interests of justice for the order to be made.
330. *Human Rights Act 2019* (Qld) s 35.
331. *Criminal Code* (Qld) (n 1) s 11(1).
332. *Ibid* s 11(2).



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