

Review of the aggravating factor for domestic and family violence offences

About the Terms of Reference - Part 2



Content warning:

This document has information about sexual violence offences that some readers may find distressing.

This background paper has been produced by the Queensland Sentencing Advisory Council as part of its current review of sentencing for sexual assault and rape offences and the aggravating factor for domestic violence offences. The Council's review has been initiated in response to Terms of Reference issued by the former Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, the Honourable Shannon Fentiman MP, in May 2023.

This background paper has been prepared to provide those who may wish to contribute to the review with more detailed information on the Terms of Reference and the Council's approach.

The Council intends to release a public Consultation Paper on the first part of this reference on sentencing practices for sexual assault and rape offences in early 2024 and a second Consultation Paper on the second part of the reference on the aggravating factor for domestic and family violence offences in early 2025. On the release of these papers, we will invite formal submissions in response to the issues raised.

Should you wish to provide feedback in advance of the release of these papers, please contact the Council by email to info@sentencingcouncil.qld.gov.au

Cover artwork

Shoes are a seemingly harmless, personal everyday item. However, to a victim-survivor of domestic violence, they can represent a pathway to a memory of the traumatic event.

This concept is referenced in the novel *Time Shelter* by Georgi Gospodinov, which talks of normal, everyday things being 'potentially charged with hidden violence' for those who have experienced a traumatic event.

Shoes can be used in many different ways in domestic violence offending – as a weapon to attack a victim, to prevent escape or worn when assaulting a victim. Victims may be forced to leave the scene of a domestic violence offence without their socks, shoes and other items of clothing – making them feel exposed and stripped of their dignity.

For this design, we captured these everyday items in photographs with a distorted reflection to symbolise that domestic violence offending has ripple effects for the victim-survivor, their friends, family and the broader community. Ripples are also thought to play an essential role in supporting memory consolidation.

Background Paper 2, Review of the aggravating factor for domestic and family violence offences: About the Terms of Reference – Part 2

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The Queensland Sentencing Advisory Council

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

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

Further information

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Introduction

On 17 May 2023, the former Attorney-General and Minister for Justice, the Honourable Shannon Fentiman MP, issued Terms of Reference to the Queensland Sentencing Advisory Council ('Council') asking us to review and report on two separate aspects of sentencing:

1. sentencing practices for sexual assault and rape offences; and
2. the operation of the aggravating factor in section 9(10A) of the *Penalties and Sentences Act 1992 (Qld)* ('PSA') and the impact of the increase in maximum penalties for contravention of a domestic violence order.

This paper discusses Part 2 of the Terms of Reference on the operation of the aggravating factor for domestic violence offences and changes in sentencing practices following the increase to maximum penalties for contravention of a domestic violence order. It considers the background to these issues being referred and our approach to this aspect of the review.

A second background paper exploring issues relevant to Part 1 of the reference and our approach to this aspect of the review is available on [our website](#).

For more information about the aggravating factor and sentencing for domestic violence offences, visit [our website](#).

What we have been asked to do

The Attorney-General has asked the Council to review sentencing for domestic and family violence offences.

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

The [Terms of Reference](#) set out in detail what we have been asked to do.

During our review, we have been asked to keep in mind ‘the need to maintain judicial discretion to impose a just and appropriate sentence in individual cases’, as well as ‘the need to promote public confidence in the criminal justice system’.¹

Key issues the Council must consider

The Attorney-General has asked us to consider:

- ‘the general expectation of the Queensland community that penalties imposed on offenders convicted of domestic and family violence offences ... are appropriately reflective of the nature and seriousness of domestic and family violence’; and
- the need to protect victims and to hold domestic and family violence offenders to account.²

In particular, we have been asked to:

- review sentencing practices for domestic violence related offences following changes to the PSA to make the fact a person is convicted of a domestic violence offence an aggravating factor for the purposes of sentencing (section 9(10A) of the PSA), except if it is not reasonable because of the exceptional circumstances of the case;
- advise on the impact of the operation of the aggravating factor on sentencing outcomes for all domestic violence related offences including for charges involving non-physical violence and coercive control;
- identify any trends or anomalies that occur in application of the aggravating factor or in sentencing for domestic violence-related conduct generally that create inconsistency or constrain the sentencing process;
- examine whether the aggravating factor is impacting victims’ satisfaction with the sentencing process and if so, in what way; and
- consider how sentencing trends and outcomes for contravention of a domestic violence order may have changed following the 2015 increase in the maximum penalties.³

The Council must report on this part of the reference by 30 September 2025.

1. [Terms of Reference – Sentencing for sexual violence offences and aggravating factor for domestic and family violence offences](#) (issued 17 May 2023) 1.

2. Ibid.

3. Ibid 2.

Other issues the Council must consider

We have also been asked to:

- review national and international research, reports and publications relevant to sentencing adult offenders for domestic violence offences;
- consult with key stakeholders, including but not limited to the judiciary, victim-survivors of domestic and family violence and sexual violence, the legal profession, key First Nations community representatives and organisations, domestic and family violence services, sexual violence advocacy groups, community legal centres and relevant government departments and agencies (e.g., Queensland Police Service and Director of Public Prosecutions);
- advise on the impact of any recommendation on the disproportionate representation of Aboriginal and Torres Straits Islander people in the criminal justice system; and
- advise whether the legislative provisions being reviewed and any recommendations are compatible with rights protected under the *Human Rights Act 2019* (Qld).⁴

Issues the Council may consider

The Terms of Reference also allow us to ‘advise on other matters relevant to this reference’.⁵ This means we may consider some aspects of sentencing that are not expressly referred to in the Terms of Reference.

4. Ibid 2–3.

5. Ibid 3.

What is out of scope for our review

There are some aspects of the justice system's response to domestic violence offending we will not review, including:

- penalties imposed on sentence for children sentenced under the *Youth Justice Act 1992* (Qld);
- the sentencing of Commonwealth offences under the *Crimes Act 1914* (Cth);
- how people charged with domestic violence offences are dealt with under the *Mental Health Act 2016* (Qld).

Why this issue was referred to the Council

The Terms of Reference refer to several previous reports and changes to the law considered by the Attorney-General when asking the Council to undertake this review, specifically:

- the report of the Special Taskforce on Domestic and Family Violence, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland*;⁶
- changes to the law in 2015 to increase the maximum penalties that apply to contravention of a domestic violence order under the *Domestic and Family Violence Protection Act 2012* (Qld) ('DFVPA') and to the PSA to enable the domestic and family violence context of criminal offending to be identified through notations made on an offender's criminal history;⁷
- further changes made to section 9 of the PSA in 2016 to require courts to treat domestic and family violence an aggravating factor on sentence;⁸
- the Council's Research Brief that explored the impact of domestic violence as an aggravating factor on sentencing outcomes;⁹
- *Hear Her Voice, Report One: Addressing Coercive Control and Domestic and Family Violence in Queensland* ('Report One') of the Women's Safety and Justice Taskforce¹⁰ and, in particular, recommendation 73;
- *Hear Her Voice, Report Two: Women and Girls' Experiences Across the Criminal Justice System* ('Report Two') of the Women's Safety and Justice Taskforce.¹¹

The Special Taskforce report and Queensland Government response

The Special Taskforce on Domestic and Family Violence in Queensland

The Special Taskforce on Domestic and Family Violence in Queensland ('Special Taskforce') was established in 2014. It was chaired by the Honourable Quentin Bryce AD CVO, former Governor-General of Australia. Its purpose was to make recommendations to the Premier about how Queensland's domestic and family violence support systems could be improved, and future domestic and family violence incidents be prevented.¹²

The Special Taskforce delivered its final report – *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* – in February 2015, making 140

6. Special Taskforce on Domestic and Family Violence, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (Report, February 2015).

7. *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld). The maximum penalty provisions came into effect on 22 October 2015 with the other relevant provisions as to domestic violence notations commencing on 1 December 2015: *ibid* s 1A.

8. Section 9(10A) of the *Penalties and Sentences Act 1992* (Qld) inserted by s 5 of the *Criminal Law (Domestic Violence) Amendment Act 2016* (Qld). The Act commenced on the date of assent on 5 May 2016.

9. Laura Hilderley, Samuel Jeffs and Lauren Banning, *The Impact of Domestic Violence as an Aggravating Factor on Sentencing Outcomes* (Queensland Sentencing Advisory Council, Research Brief 1, May 2021).

10. Women's Safety and Justice Taskforce, *Hear Her Voice – Report One: Addressing Coercive Control and Domestic and Family Violence in Queensland* (2021).

11. Women's Safety and Justice Taskforce, *Hear Her Voice – Report Two: Women and Girls' Experiences Across the Criminal Justice System* (2022).

12. For more information, see the [Special Taskforce's Terms of Reference](#).

recommendations for reform.

Recommendation 118 of this report called on the Queensland Government to introduce ‘a circumstance of aggravation of domestic and family violence to be applied to all criminal offences’.¹³

The Special Taskforce further recommended ‘a review of penalties for offenders who contravene [domestic violence] orders, with a view to strengthening and increasing existing penalties’ to consider, in particular, ‘the sufficiency of penalties to hold perpetrators to account for repeat contraventions of domestic violence orders’.¹⁴

The Taskforce had observed that despite the higher maximum penalty of 3 years or 120 penalty units that applied to the commission of further breach offences committed within 5 years, the majority (80.6%) of all custodial sentences were less than 12 months.¹⁵ The Special Taskforce was ‘concerned that current legislation may not effectively recognise the pattern of behaviour which underpins domestic and family violence and apply appropriate sanctions’.¹⁶

The Queensland Government response and legislative reforms

The Queensland Government accepted all 140 of the Special Taskforce’s recommendations, including the introduction of a circumstances of aggravation for domestic and family violence and review of maximum penalties for contraventions.¹⁷

Increased maximum penalty for contravention of a domestic violence order

Following its review of maximum penalties in 2015, the Government introduced the Criminal Law (Domestic Violence) Amendment Bill 2015 (Qld) to increase maximum penalties for breaches of domestic violence orders, thereby giving effect to the Special Taskforce’s recommendation.¹⁸ The offence also became an indictable offence.¹⁹

With the passage of this legislation, the maximum penalty for contravening a domestic violence order was increased to:

- if, within 5 years before the commission of a ‘new’ offence, the respondent has been previously convicted of a ‘domestic violence offence’—240 penalty units or 5 years imprisonment; or
- otherwise—120 penalty units or 3 years imprisonment.²⁰

The justification for increasing the maximum penalty was to bring the penalty closer in line with other Australian jurisdictions and to reflect ‘the seriousness of the offences,

13. Special Taskforce (n 6) rec 118.

14. Ibid 305, rec 121.

15. Ibid. This was between July 2013 – June 2014.

16. Ibid.

17. Queensland Government, *Queensland Government Response to the Report of the Special Taskforce on Domestic and Family Violence – Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (2015) 34–5 (response to recs 118 and 121) <<https://www.publications.qld.gov.au/dataset/16330158-3152-436f-8d58-baef2dd87ad/resource/7bfef45e-9ddb-4e81-9d3e-b6d9297dce50/download/appendix-1-taskforce-terms-of-reference.docx>>.

18. Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill 2015 (Qld) 1.

19. *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld) s 8 amending s 181 of the *Domestic and Family Violence Protection Act 2012* (Qld).

20. *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld) s 7.

particularly where there is a pattern of domestic violence behaviour involved'.²¹ It was intended 'to provide greater deterrence for perpetrators of domestic violence and to reinforce the community's view that domestic violence is not acceptable and will not be tolerated'.²²

In addition to increasing the maximum penalty, the Act expanded the circumstances in which the enhanced penalty for previous offending applied by referring to a previous conviction of a 'domestic violence offence'.²³ Prior to this, the enhanced penalty applied only if there had been a previous conviction for an offence committed under Part 7 of the DFVPA (that is, contravention of a domestic violence order, contravention of a police protection notice or contravention for release conditions imposed on people released from custody prior to a protection order or a temporary protection order being made).

Aggravating factor for a domestic violence offence

The Queensland Government chose to implement recommendation 118 through the introduction of an aggravating factor rather than a circumstance of aggravation. This was done to overcome some difficulties identified, including that a circumstance of aggravation might capture conduct not intended to be captured and that it could apply equally to all those convicted of an offence, including an abused partner.²⁴

In 2016, the aggravating factor was inserted into section 9 of the PSA by the *Criminal Law (Domestic Violence) Amendment Act 2016* (Qld).²⁵ It provides:

(10A) In determining the appropriate sentence for an offender convicted of a domestic violence offence, the court must treat the fact that it is a domestic violence offence as an aggravating factor, unless the court considers it is not reasonable because of the exceptional circumstances of the case.²⁶

For a court to apply the aggravating factor, the offence must be a 'domestic violence offence'. That is, one where the act or omission that forms the offence is also domestic violence or associated domestic violence, or a contravention of the DFVPA s 177(2).²⁷ It can be an offence against any Queensland Act, with the exception of one under the DFVPA.²⁸

Commitments made to ask the Council to review the impact of these reforms

Referral of the Criminal Law (Domestic Violence) Amendment Bill 2015 (Qld) to the Communities, Disability Services and Domestic and Family Violence Prevention Committee resulted in a recommendation being made that:

21. Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill 2015 (Qld) 3-4.

22. Ibid 6.

23. Ibid 5.

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

25. Section 9(10A) of the *Penalties and Sentences Act 1992* (Qld) inserted by the *Criminal Law (Domestic Violence) Amendment Act 2016* (Qld) s 5, which came into operation on 5 May 2016.

26. *Penalties and Sentences Act 1992* (Qld) s 9(10A).

27. The *Penalties and Sentences Act 1992* (Qld) s 4 definition of 'domestic violence offence' refers back to the *Criminal Code Act 1899* (Qld) sch 1 ('Criminal Code') s 1. That definition of a 'domestic violence offence' took effect from 22 October 2015. It was inserted into the Code by the *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld) s 3.

28. *Criminal Code* (Qld) s 1.

if the Bill passes, the Department of Justice and Attorney-General monitors the use of the new maximum penalties for breaches of domestic violence orders and commission research into their effectiveness as a deterrent to offenders committing domestic violence offences.²⁹

In its response to this recommendation the Queensland Government noted that it would ‘issue a reference to the Council to consider the impact that the maximum penalties have on the commission of domestic violence offences’.³⁰

At the time the Bill to introduce the new aggravating factor was introduced, the Attorney-General committed to its impact being evaluated by the Council, ‘as part of a reference to consider the impact that maximum penalties have on the commission of domestic violence offences’, to ‘enable the government to have a clear evidence base on what works in sentencing perpetrators of domestic and family violence so as to guide future law reforms’.³¹

The Council’s Research Brief

The Council previously published a Research Brief considering the impact of the aggravating factor in a limited way. We compared differences in sentencing outcomes for cases of common assault and AOBH (simpliciter and aggravated) that were domestic violence offences—thereby triggering the application of the section 9(10A) PSA aggravating factor—to cases that were not.³²

Sentencing practices indicated courts were treating domestic violence offences as more serious offending, warranting the greater use of custodial penalties and longer custodial sentences. We concluded the sentencing reforms introduced in 2016 may be having their desired impact on sentencing outcomes, although we cautioned further research into this was needed.³³

The Women’s Safety and Justice Taskforce

In March 2021, the Queensland Government established the Women’s Safety and Justice Taskforce (‘WSJ Taskforce’) to examine the experiences of women across the criminal justice system. The WSJ Taskforce was chaired by the Honourable Margaret McMurdo AC. Under its Terms of Reference, the Taskforce was asked to examine:

1. how best to legislate against coercive control as a form of domestic and family violence and the need for a specific offence of ‘commit domestic violence’; and
2. the experiences of women with the criminal justice system.³⁴

²⁹. Communities, Disability Services and Domestic and Family Violence Prevention Committee, Parliament of Queensland, *Criminal Law (Domestic Violence) Amendment Bill 2015* (Report No 6, October 2015) 25.

³⁰. Queensland Government, *Queensland Government Response to the Communities, Disability Services and Domestic and Family Violence Prevention Committee Report No 6, 55th Parliament on the Criminal Law (Domestic Violence) Amendment Bill 2015* (Tabled Paper, October 2015).

³¹. Queensland, *Parliamentary Debates*, Legislative Assembly, 2 December 2015, 3082 (Yvette D’Ath, Attorney-General and Minister for Justice and Minister for Training and Skills). This commitment was also made in the Explanatory Notes to the Bill: Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill (No. 2) 2015 (Qld) 2.

³². Hidderly, Jeffs and Banning (n 9).

³³. Ibid 1.

³⁴. ‘About the Women’s Safety and Justice Taskforce’ <<https://www.womenstaskforce.qld.gov.au/about-us>>.

The WSJ Taskforce undertook its work in two phases. It delivered its first report to the Attorney-General on the first aspect of its work in December 2021.³⁵ Report Two on the experiences of women and girls with the criminal justice system was released in July 2022.³⁶

WSJ Taskforce Report One recommendations

Report One contained 89 recommendations, including recommendation 73 that called on the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence to:

ask the Queensland Sentencing Advisory Council to give advice on the impact of the operation of the aggravating factor in section 9(10A) of the *Penalties and Sentences Act 1992* on sentencing outcomes for domestic violence related offences beyond outcomes for cases involving charges of assault and assault occasioning bodily harm.

The WSJ Taskforce noted this would build on the earlier work undertaken by the Council, as reported in the Council's Research Brief, and recommended it:

include consideration of the impact of the aggravating factor on sentencing outcomes for charges involving all forms of domestic and family violence including non-physical violence and coercive control.³⁷

The WSJ Taskforce's reason for making this recommendation was its view that: '[m]ore research ... is required on sentencing outcomes across a wider range of offences' given that victims and specialist domestic and family violence stakeholders had: 'consistently raised concerns over the lack of seriousness placed on nonphysical forms of abuse across the criminal justice system' over the course of the inquiry.³⁸

The new offence of coercive control is yet to be established in legislation. This means that, for the purposes of the Council's work on the reference, the focus must be on existing offences capturing those forms of non-physical violence of particular concern to the WSJ Taskforce. The WSJ Taskforce provided the following advice on the implementation of recommendation 73:

Non-physical forms of violence and abuse includes emotional and psychological harm; financial and economic abuse; acts of deprivation and degradation; and stalking, monitoring and surveillance. Therefore it is recommended that research be conducted into the impact of the aggravating factor of domestic violence on sentencing outcomes for offences involving all forms of domestic violence, in particular conduct which constitutes coercive control. If QSAC finds there are no differences found in the application of the aggravating factor for offences involving non-physical violence, QSAC should provide advice to the government about how that should be addressed and corrected.³⁹

In addition to making several recommendations in support of the introduction of a new criminal offence of coercive control and intended to improve system responses, the Taskforce recommended the PSA be amended to:

- require the respondent's domestic violence history to be provided to the court where the perpetrator is being sentenced for the breach of a Domestic Violence Order or

³⁵. Women's Safety and Justice Taskforce (n 10).

³⁶. Women's Safety and Justice Taskforce (n 11).

³⁷. Women's Safety and Justice Taskforce (n 10) rec 73.

³⁸. Ibid 319.

³⁹. Ibid.

other domestic violence related offence (recommendation 59);

- require a court, when sentencing an offender to consider whether the impact of being a victim of domestic and family violence, including coercive control, on their offending behaviour is a mitigating factor (recommendation 66); and
- establish a new post-conviction civil supervision and rehabilitation order for serious domestic and family violence offenders (recommendation 80).

WSJ Taskforce Report One findings regarding penalties for contravention

With regard to penalties for contravention, the Taskforce found that despite the intent of the 2015 amendments in increasing the maximum penalties, there were problems with how they had been applied. It concluded:

Contraventions of orders need to be prosecuted with more consistency. Police and courts need to treat contact, or so-called technical breaches for non-physical forms of violence, seriously as this behaviour can indicate coercive control. Such individual incidents, when viewed in isolation, may seem small and insignificant; but when they form part of an ongoing pattern of behaviour in blatant disregard of a court order prohibiting this type of conduct, they become more serious. Again, this reaffirms the need for police, lawyers, and the courts to better understand domestic and family violence as a pattern of behaviour in the context of a relationship as a whole.⁴⁰

It also identified victim dissatisfaction with the penalties imposed on breach:

Many victims feel that breaches of domestic violence orders do not result in penalties that sufficiently reflect the gravity of the perpetrator's coercive control, particularly if the breach relates solely to non-physical acts of violence. Victims are deterred from reporting further breaches or seeking additional police or court protection because their experience is not taken seriously and the fear and intimidation they experience is not validated.⁴¹

Queensland Government response to WSJ Taskforce Report One

The Queensland Government published its response to Report One and the WSJ Taskforce's recommendations in May 2022.⁴²

In response to recommendation 73, it committed to seek the advice of the Council: 'on the impact of the operation of the aggravating factor in section 9(10A) of the [PSA] on sentencing outcomes for all domestic violence related offences including for charges involving non-physical violence and coercive control'.⁴³

The issuing of the current Terms of Reference to the Council gives effect to the Queensland Government's commitment to refer this work to the Council.

Other recommended amendments to the PSA regarding the provision of an offender's domestic violence history to a court when being sentenced and to consider whether the impact of domestic violence on a person's behaviour is a mitigating factor, have come

40. Ibid vol 1, xxii.

41. Ibid vol 1, xxii-xxiii.

42. Queensland Government, *Queensland Government Response to the Report of the Queensland Women's Safety and Justice Taskforce: Hear Her Voice – Report One: Addressing Coercive Control and Domestic and Family Violence in Queensland* (10 May 2022) <<https://www.publications.qld.gov.au/dataset/3212af28-07f4-47cf-a349-d59bb737f06e/resource/84bb739b-4922-4098-8d70-a5a483d2f019/download/qg-response-wsjtaskforce-report1.pdf>>.

43. Ibid 25.

into effect.⁴⁴

The intent behind recommending the establishment of a post-conviction order was supported by the Queensland Government, with the Government to consider how best to implement this recommendation.⁴⁵

WSJ Taskforce Report Two recommendations

The WSJ Taskforce's second report focused on the barriers faced by Queensland women and girls accessing the criminal justice system, both as victims and as offenders. This report had a strong focus on issues of sexual violence.

This report made 188 recommendations, including several relevant to sentencing. These recommendations included:

- in reviewing and amending (if necessary) Chapter 22 (Offences against Morality) and Chapter 32 (Rape and sexual assaults) of the Criminal Code with respect to the capacity of children aged 12 to 15 years old to consent to sexual activity and to address the sexual exploitation of children aged 12 to 17 by adults who are in a position of authority over those children, to ensure there is 'an internal logic across the two chapters so that the applicable maximum penalties reflect a justifiable scale of moral culpability' (recommendation 42);
- section 9(2) of the PSA be amended to:
 - require the court to consider the hardship that any sentence would impose on the offender in consideration of an offender's characteristics, including gender, sex, sexuality, age, race, religion, parental status, and disability;
 - require the court to consider, if relevant, the offender's history of abuse or victimisation;
 - require the court to consider probable effect that any sentence or order under consideration would have on any of the person's family or dependants, whether or not the circumstances are 'exceptional';
 - expand subsection 9(2)(p) to clarify that cultural considerations include the impact of systemic disadvantage and intergenerational trauma on the offender (recommendation 126);
- the Queensland Government respond to and implement the recommendations of the Council's *Community-based sentencing orders, imprisonment and parole options report*, noting the need to expand suitable, gender-specific services that support women being sentenced to community-based orders rather than short periods of imprisonment (recommendation 127); and
- the PSA and *Corrective Services Act 2006* (Qld) be amended to require a court to consider ordering a pre-sentence report when determining whether a community-based order may be suitable for an offender who is otherwise facing a period of imprisonment (recommendation 129) – with these amendments not to commence

44. *Penalties and Sentences Act 1992* (Qld) ss 9(2)(ga), 11 as amended by *Domestic and Family Violence (Combating Coercive Control) and Other Legislation Amendment Act 2023* (Qld) ss 26, 81. These changes commenced on 1 August 2023.

45. Queensland Government (n 42) 26 (response to rec 80).

until Queensland Corrective Services develops and implements a plan for sustainable expansion of court advisory services across Queensland (recommendation 130).

Queensland Government response to WSJ Taskforce Report Two

The Government released its response to Report Two in November 2022.⁴⁶ The response supported 103 recommendations in full and 71 recommendations in principle, with the remaining 14 recommendations noted.⁴⁷

The reforms the Government has committed to include moving to an affirmative model of consent which requires consent to be ‘agreed’ rather than ‘given’, the recognition of ‘stealthing’ (the non-consensual removal of a condom) as rape, as well as reforms to the laws of evidence and procedure as they apply to sexual offences.

Other reforms are aimed at better meeting the needs of women and girls as accused persons and offenders.

⁴⁶ Queensland Government, *Queensland Government Response to Hear Her Voice - Report Two - Women and Girls' Experiences Across the Criminal Justice System* (2022) <<https://www.publications.qld.gov.au/dataset/3212af28-07f4-47cf-a349-d59bb737f06e/resource/a0705c73-62bd-4263-ab2c-694e5735d058/download/qg-response-wsitaskforce-report2.pdf>>.

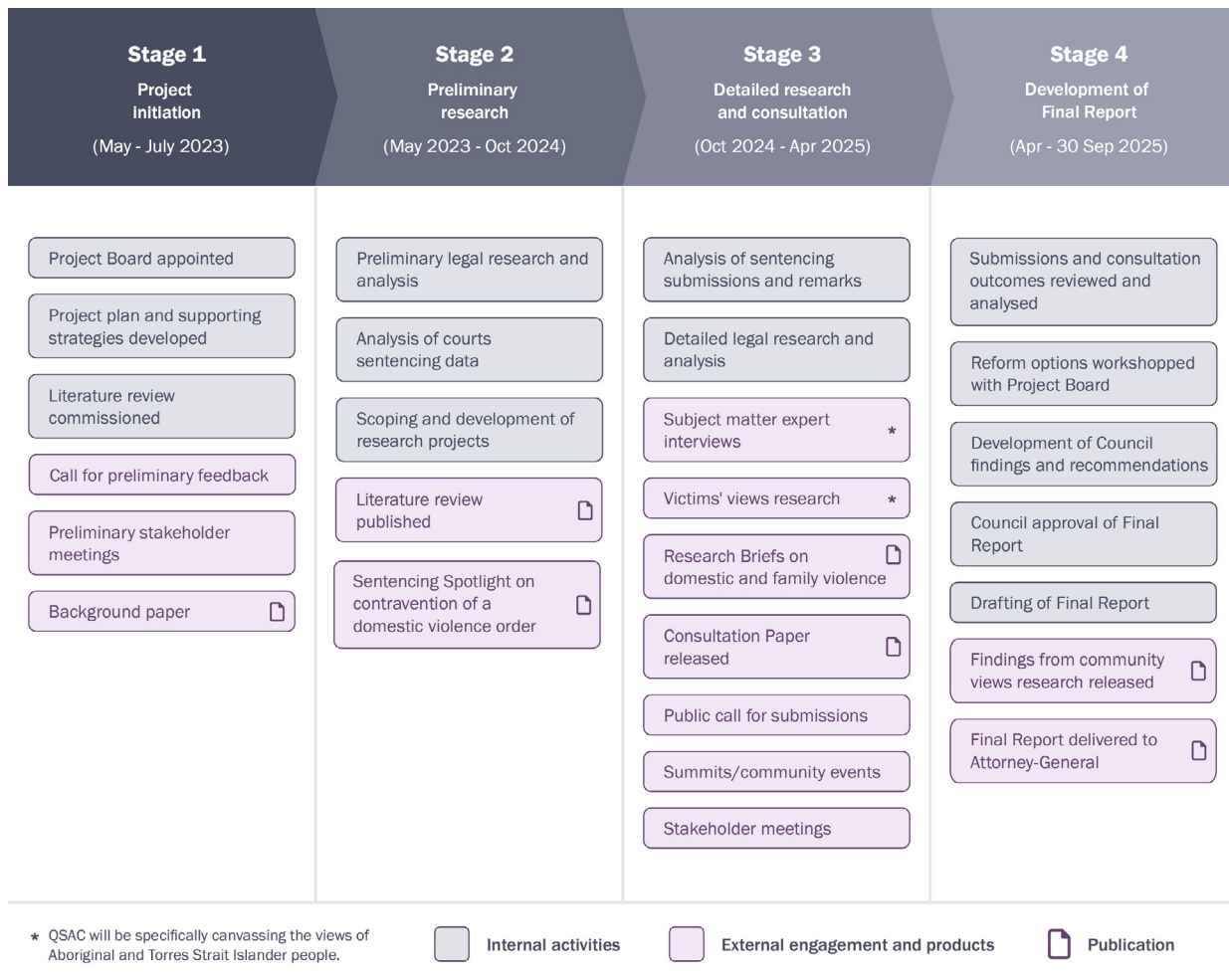
⁴⁷ Ibid.

Our approach to the review

Key dates and milestones

We will carry out our review of the aggravating factor for domestic violence offences and the impact of the increase in maximum penalties for contravention of a domestic violence order in 4 stages. We will report to the Attorney-General with our findings and recommendations by 30 September 2025.

Figure 1: Timeframes for review of aggravating factor for domestic and family violence offences



Stage 1: Project initiation: The Council’s project initiation phase, which has now concluded, involved establishing a Project Board, meetings with interested stakeholders and a call for preliminary feedback. The Council has commissioned researchers from Griffith University to prepare a literature review focusing on the sentencing of domestic violence offences that we will publish in stage 2.

Stage 2: Preliminary research and issues identification: In stage 2, we will carry out detailed legal research and analysis. This will include a review of relevant appeal decisions, and the approach to the sentencing of domestic violence offences taken in other Australian states, territories and select overseas jurisdictions. We will analyse

administrative courts data to review: i) sentencing patterns following the introduction of the aggravating factor; and ii) the increase in the maximum penalties for contravention of a domestic violence order. We will also prepare a *Sentencing Spotlight* on contravention of a domestic violence order. This publication will contain information about the number of people sentenced for breach offences, the profile of those sentenced (including their age and gender) the types of penalties imposed, and the prior offending history of those sentenced – as well as whether they were sentenced for subsequent offences.

During stage 2, we will also start significant planning for research projects to be completed during stage 3. These will include:

- commissioning research to explore victim views about the aggravating factor and sentencing for domestic violence offences;
- a review of a sample of sentencing submissions and sentencing remarks to better understand current sentencing practices; and
- subject matter expert interviews with professionals involved in the sentencing process, including prosecutors, defence practitioners, victim support organisations and judicial officers.

Stage 3: Detailed research and consultation: In stage 3, we will carry out the research planned in stage 2 and use preliminary research and feedback to develop a detailed Consultation Paper and research reports.

We will publicly release this Consultation Paper and invite submissions to respond to a number of questions.

Once the Consultation Paper has been released, we will consult widely to invite feedback on the issues raised, including meetings with key stakeholders and community events.

We will also publish Research Papers exploring different aspects of sentencing for domestic violence offences in more detail.

Stage 4: Development of a final report: During the final stage of the review, we will review submissions and consultation outcomes and consider the findings of our research to develop recommendations. The Council will present its findings and recommendations in the form of a final report, which is due to be delivered to the Attorney-General by 30 September 2025. The report will be released publicly following its delivery to the Attorney-General.

More information

To find more information about the review, visit the [Council's website](#).

Our website includes a link to [subscribe to our newsletter](#).



Queensland Sentencing
Advisory Council