

Executive Summary

Introduction

This report presents the Queensland Sentencing Advisory Council's (the Council) findings, observations, and recommendations on its review of:

- the operation and efficacy of section 9(10A) of the *Penalties and Sentences Act 1992* (PSA); and
- the impact of the increase in maximum penalties for contravention of a domestic violence order (CDVO).

The review of these reforms was referred to the Council in May 2023 by the then Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence.

In asking the Council to undertake this review, the Attorney-General referred to the need to:

- protect victims from domestic and family violence and sexual violence;
- hold domestic and family violence and sexual violence offenders to account;
- maintain judicial discretion to impose a just and appropriate sentence in individual cases; and
- promote public confidence in the criminal justice system.

A brief history of DV reforms in Queensland

Domestic and family violence is not a new problem. Queensland courts had been responding to domestic violence long before there was a dedicated Act to address it.

The first legislation to respond to domestic and family violence in Queensland was the *Domestic Violence (Family Protection) Act 1989*.¹ This Act aimed to 'provide protection to a person against violence committed or threatened by his or her spouse and for prevention of behaviour disruptive to family life'.²

In 2005, the then President of the Queensland Court of Appeal recognised domestic violence as being 'an insidious, prevalent and serious problem' constituting 'a crime against the State warranting salutary punishment'.³

Significant reforms were made subsequently across the justice system to address domestic and family violence, including the introduction of the new *Domestic and Family Violence Protection Act 2012* (Qld).

In August 2014, the Queensland Government established the Special Taskforce on Domestic and Family Violence in Queensland (Special Taskforce), which made 140 recommendations.⁴ The government accepted all of these recommendations⁵ and two were the basis of this review:

1. a review of penalties for repeat contraventions of domestic violence orders; and
2. the introduction of a domestic violence circumstance of aggravation to apply to all criminal offences.⁶

The intention of the Special Taskforce was to increase perpetrator accountability and ensure sentences reflected the seriousness of this behaviour.

¹ The name of this act changed to *Domestic and Violence Family Protection Act 1989* (Qld) ('DFVPA 1989'); see *Domestic Violence Legislation Amendment Act 2002* (Qld) s 1; Explanatory Notes, Domestic Violence Legislation Amendment Bill 2001 (Qld) 2.

² DFVPA 1989 (n 1) Preamble.

³ *R v Fairbrother; Ex parte A-G (Qld)* [2005] QCA 105, [25] (McMurdo P) ('Fairbrother').

⁴ Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (February 2015) ('Special Taskforce Report').

⁵ Queensland Government, *Queensland Government Response to the Report of the Special Taskforce on Domestic and Family Violence* August 2015.

⁶ *Special Taskforce Report* (n 4) recs 118, 121.

The period following the Special Taskforce's report was one of substantial reform. Much of the focus was on reconfiguring system responses to put victim survivors at the centre of integrated responses and efforts to enhance perpetrator accountability.

In March 2021, the Women's Safety and Justice Taskforce was established. The Taskforce's *Hear Her Voice* reports led to the implementation of further significant reforms, including the move to an affirmative consent model for rape and sexual assault, and the establishment of a new coercive control offence. It also resulted in the establishment of the Independent Commission of Inquiry into Queensland Police Service (QPS) Responses to Domestic and Family Violence, which was the impetus for organisational reform within the QPS, the development and delivery of specialist training and other enhancements to policing responses to domestic violence.

The DV sentencing reforms

Following the Special Taskforce's *Not Now, Not Ever* report, in October 2015 parliament increased the maximum penalties for the offence of CDVO:

- for non-aggravated CDVO, from 2 years imprisonment or 60 penalty units to 3 years imprisonment or 120 penalty units; and
- for aggravated CDVO, from 3 years imprisonment or 120 penalty units to 5 years imprisonment or 240 penalty units.

It also passed legislation in May 2016 to introduce a statutory aggravating factor for domestic violence offences in the PSA.

The intention in introducing these changes was to strengthen sentencing responses, reinforce that the Queensland community does not accept domestic violence, increase protection for victim survivors and make perpetrators more accountable.⁷

At the time, the then government committed to ask the Council to evaluate the impact of these reforms, 'as part of a reference to consider the impact that maximum penalties have on the commission of domestic violence offences'.⁸

The Council's approach to this review

The Council conducted extensive research and consulted widely with legal and non-legal stakeholders including victim survivors and support and advocacy organisations.

We undertook the review over four key stages. **Stage 1** included publication of background information about the review and a call for preliminary submissions. We received 28 submissions from individuals and organisations in response.

From the preliminary research undertaken in **Stage 2**, we identified key areas relating to the sentencing of domestic and family violence (DFV) offences where existing research was lacking. The Council then commenced research in relation to the sentencing of CDVO and the operation of the DV aggravating factor and commissioned external bodies to address identified gaps to inform our review.

During **Stage 3** in March 2025, we released a consultation paper. This paper asked 6 key questions focusing on specific aspects of each reform. We received **19 submissions** in response from organisations and individuals. After releasing this paper, we conducted the following outreach:

- **52 consultation sessions and meetings** across Queensland, in locations including Cairns, Mount Isa, the Torres Strait Islands, Townsville, Roma, the Wide Bay region, South East Queensland, and online.

⁷ Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill 2015 (Qld) 1; Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill (No. 2) 2015 (Qld) 1–2.

⁸ 'Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill (No. 2)' (n 7) 2.

- **17 interviews with subject matter experts**, including judicial officers, police prosecutors, and defence practitioners.

The **final stage** involved the development of our final report for the Attorney-General and Minister for Justice. It culminated with the delivery of this report – *The Tangled Web: Examining domestic and family violence sentencing reforms* – which presents our findings, observations, and recommendations.

Findings on the impact of increasing maximum penalties for CDVO

Pre-post analysis

The Council compared sentencing outcomes for CDVO prior to the increase in maximum penalties to the period immediately following this change, where CDVO was the most serious offence (MSO) sentenced.

We found CDVO penalty outcomes changed immediately following the increase to maximum penalties. There was greater use of custodial and supervised orders, suggesting CDVO offences were being treated as more serious forms of offending than prior to this reform. The increased use of supervised orders could further signal a greater awareness by prosecutors and courts of the importance of supervision, particularly for those with a prior history of DV offending.

In the post-period, we also saw an increase in the proportion of cases with time spent in custody declared. There were fewer cases of immediate release on parole in the period following the change with no time declared. Accordingly, more people spent actual time in custody for CDVO than prior to the change.

Although monetary penalties remained the most common penalty type for non-aggravated CDVO in the post-period, representing just under half (49.0%) of all penalties imposed, their use decreased significantly.

While the observed changes correlate with the increase in maximum penalties for CDVO, we cannot say with certainty that the increase caused these changes. The observed shifts may have been influenced by other legislative or non-legislative changes or by the changing nature of CDVO offences sentenced.

We also found that although the use of custodial sentences increased, there was no statistically significant change in the custodial or imprisonment sentence lengths. Again, the impact of other system changes may have contributed to this and understanding this fully would require improvements in data capture and further research.

Trends over time

As part of this review, the Council also examined broader sentencing trends for CDVO offences. We found that CDVO trends have been influenced by a combination of external factors in the 10-year data period since the increase to CDVO maximum penalties including:

- the impacts of the COVID-19 pandemic;
- legislative reforms, including changes in the presumption of bail for some types of CDVO offences; and
- other reforms impacting policy and practice.

For **aggravated CDVO**, the variation in the use of imprisonment indicates the influence of external factors and the potential changing profile of cases coming before the courts. Imprisonment was the most common penalty type for aggravated CDVO from 2013–14 and its use increased over the data period, including after the maximum penalty was increased. Its use peaked at 37.7 per cent of all penalty types in 2019–20. The COVID-19 pandemic then led to a sharp decline in the use of imprisonment for many offences, including aggravated CDVO (28.8%). In 2023–24, imprisonment once again became the most common penalty type for aggravated CDVO offences. In 2024–25, the most recent financial year, imprisonment represented just under one-third (32.2%) of all penalty outcomes for aggravated CDVO. The use of wholly suspended imprisonment sentences also has increased, while the use of monetary orders has decreased.

When considering sentencing outcomes for **non-aggravated CDVO**, monetary orders are by far the most common penalty type. Although the use of fines decreased immediately following the increase to the maximum penalty, their use increased steadily from 2017–18. This coincided with the changes to bail laws. The use of monetary penalties continued to generally increase throughout the COVID-19 pandemic period as imprisonment and probation decreased. In 2024–25 monetary penalties accounted for more than half of all penalty outcomes for non-aggravated CDVO (56.5%).

The continued high use of monetary penalties for non-aggravated CDVO could suggest that non-aggravated CDVO are not being treated as seriously as they should be given the increase in the maximum penalty. However, the less serious treatment of this form of offending does not reflect the experience of most legal support services and stakeholders; nor does it account for key considerations.

Importantly, we are unable to account for the changing nature of conduct prosecuted as a CDVO over time. Stakeholders told us police are increasingly charging CDVO in circumstances where a person’s conduct may have been previously considered to be a ‘technical’ or ‘minor’ breach and not charged.⁹

We also found, over time, more CDVO offences were being charged with a more serious offence. This may mean that in more recent times a larger proportion of cases where CDVO was the most serious offence sentenced, involve different forms of conduct compared with earlier years. The expanded circumstances for aggravated CDVO since the increase to maximum penalties also means those sentenced for non-aggravated CDVO are less likely to have any recent DV-related offending history than may previously have been the case.

Shifts in sentencing patterns for CDVO have occurred in the context of increasing numbers of CDVO cases coming before the courts, including where CDVO has been sentenced with another more serious offence. There was a more than 250 per cent increase in CDVO cases over the 13-year data period – largely reflecting the growth in active orders.

As we found with the pre-post analysis, the breadth of reform, systemic changes, and significant external events mean it is not possible to identify what is driving sentencing trends and the extent to which specific reforms have contributed.

Our sentencing trends analysis illustrates CDVO outcomes continue to evolve and change, including in response to the changing profile of offending and appellate court guidance.

Recent appellate court guidance

Repeated non-compliance with DVOs raises particular challenges for the criminal justice system to respond in a way that is most likely to protect the victim and to prevent this type of behaviour.

The 2024 Court of Appeal decision of *CDL v Commissioner of Police*,¹⁰ provides clear direction that a ‘continuing attitude of disobedience and disregard for domestic violence orders’ through repeated contraventions increases the seriousness of the offending and demonstrates a need for appropriate (condign) punishment in support of personal and general deterrence.¹¹ A lengthy sentence of imprisonment may be warranted even where a breach does not involve actual physical violence. We expect *CDL* will have an impact over time in increasing the use of custodial sentences and longer custodial penalties in cases that involve a repeated pattern of non-physical violence.

Findings on the impact of the DV aggravating factor

Consistent with the findings of our earlier Research Brief, we found evidence across most categories of offending that offences committed in a DV context, in general, are treated as a more serious form of offending than those occurring in a non-DV context. This is evidenced by the greater use of custodial sentences, longer median custodial sentences, and/or differences in penalty type distributions across most categories of offending.

⁹ Practitioner Consultative Forum meeting, 14 October 2025; Email from Consultative Forum member to Director, Queensland Sentencing Advisory Council, 23 October 2025.

¹⁰ *CDL v Commissioner of Police* [2024] QCA 214 ('*CDL*').

¹¹ *Ibid* [16] (Bowskill CJ, Boddice JA agreeing), see also [65] (Brown JA) for similar comments.

Differences were found not just for offences involving the use of physical violence, such as common assault and assaults occasioning bodily harm, but also for offences that often involve elements of coercion and control, such as wilful damage, unlawful stalking, threatening violence, and attempting to pervert justice.

The observed trends reflect changes in sentencing practice following the introduction of the aggravating factor. There is now more consistent treatment of the DV context as being aggravating. There is also an increased focus on the context of the offending in sentencing submissions, supporting courts' attention being drawn to this as an important aspect of the offending.

There were 2 offences that did not follow the general trend in circumstances where this finding was statistically significant:

- acts intended to cause grievous bodily harm and other malicious acts;¹² and
- burglary and commit an indictable offence.¹³

Our research suggests this was due to important case differences between those offences sentenced as DV offences and those that were not.

Although overall our findings provide evidence of change in response to the introduction of the DV aggravating factor, we cannot definitively conclude this. This is because the separate identification and recording of offences as domestic violence offences for reporting purposes was not possible for all but 5 months of the period prior to this change.¹⁴

The degree to which these reforms have impacted sentencing outcomes at an individual case level is also difficult to quantify. This is because while the reform signals the increased seriousness with which offences occurring in a DV context should be viewed in support of higher sentences, the effect in any given case will depend on the balancing of all the relevant factors related to that offending and offender.¹⁵ The recommendations made in this report regarding better data capture and linkage may assist in allowing shifts in outcomes to be better tracked and measured, noting the importance of being able to control for key factors that may be operating at an individual case level.

Findings on victim survivor satisfaction

Our commissioned victim survivor research on satisfaction with the DV aggravating factor in sentencing found victim survivors have low awareness of section 9(10A) and its role in sentencing. This is not surprising given the technical nature of the provision. Monash Gender and Family Violence Prevention Centre's research found victim survivor satisfaction was linked to judicial recognition of the DV and the harm it caused, perceived fairness in the court process, feeling respected by legal practitioners and judicial officers, and their involvement in the sentencing proceeding.

Addressing systemic issues such as court delays, secondary victimisation and the lack of culturally appropriate practices and safe places, particularly in regional and remote areas, should increase victim survivor satisfaction. Alternative sentencing approaches that prioritise perpetrator accountability and protect victims but also give autonomy by taking into account their preferences should be considered. We are grateful to victim survivors who took the time to share their personal experience of the sentencing process.

Human rights compatibility

We were asked to review the compatibility of the DV aggravating factor with the *Human Rights Act 2019* (Qld) (HRA). The HRA came into full effect on 1 January 2020, after the introduction of the DV aggravating factor.

The HRA includes the right to liberty, the right to equality, protection of a person from arbitrary arrest or detention, and to be deprived of liberty only on grounds, and in accordance with procedures, established by

¹² *Criminal Code Act 1899* (Qld) sch 1, s 317 ('*Criminal Code* (Qld)').

¹³ *Ibid* s 419(5).

¹⁴ This period is from 1 December 2015 to 4 May 2016 immediately prior to the DV aggravating factor's commencement. See Appendix 6 for more information on these and other key legislative and non-legislative reforms.

¹⁵ *R v Hutchinson* (2018) 3 Qd R 505, [40] (Mullins J, Fraser and Morrison JJA agreeing) ('*Hutchinson*').

law. We found that while the DV aggravating factor may limit a person's right to liberty and the right to equality, the limitation is reasonable and justifiable. This is consistent with the conclusions on compatibility of other similar aggravating factors. It recognises that DV offending is a prevalent and serious form of offending that can cause significant harm to victim survivors, constituting a serious breach of their human rights. It is therefore appropriate for governments to take reasonable measures to address it. The purposes of the reform of protecting vulnerable members of the community, denouncing this form of offending and providing adequate deterrence outweigh any limits placed on rights.

Understanding impacts on marginalised and disadvantaged groups

Domestic and family violence disproportionately impacts marginalised and disadvantaged groups including women, Aboriginal and Torres Strait Islander peoples, people from other cultural backgrounds, people with disability and LGBTQIA+ people.¹⁶ We sought to examine the impact of DFV sentencing on these groups but were limited by available administrative data.

Each person's experience of DFV is different. Certain communities face additional challenges and are at greater risk of violence because of systemic inequalities that marginalise their cultural or social identity or their personal circumstances.¹⁷

We found clear differences in the proportion of all offending that was DFV-related based on Indigenous status and gender. Aboriginal and Torres Strait Islander men had the highest proportion of DFV-related offences, and non-Indigenous women the lowest. For CDVO, both Aboriginal and Torres Strait Islander men and women were far more likely than non-Indigenous men and women to have a CDVO sentenced in conjunction with another more serious offence. For those cases in which CDVO was the most serious offence sentenced, Aboriginal and Torres Strait Islander men and women were more likely to be sentenced for an aggravated charge.

The examined reforms have had a disproportionate impact on Aboriginal and Torres Strait Islander people because they are disproportionately represented among people sentenced for CDVO and offences to which the DV aggravating factor applies.

Future directions for responding to domestic and family violence

Enhancing sentencing options

Our commissioned review of research evidence on sentencing responses to domestic and family violence offences identified several opportunities to enhance sentencing to better respond to domestic violence offending.¹⁸ They include:

- positioning courts and sentencing responses as 'part of a coordinated and integrated response';
- reducing the use of fines, considering the increased use of community-based sanctions and providing more flexible sentencing options, including those that may allow for judicial monitoring; and

¹⁶ *Domestic and Family Violence Protection Act 2012* (Qld) s 4(2)(d) ('DFVPA') identifies groups of people who may be vulnerable to domestic violence due to certain characteristics. They include: women, children, Aboriginal peoples and Torres Strait Islanders people, people from a culturally or linguistically diverse background, people with disability, people who are lesbian, gay, bisexual, transgender or intersex and elderly people.

¹⁷ See details about an intersectional approach in 'Fact Sheet 1 - Overview of the Common Risk and Safety Framework' 7.

¹⁸ Christine Bond and Caitlin Nash, *Sentencing Domestic and Family Violence: A Review of Research Evidence* (Literature Review prepared for the Queensland Sentencing Advisory Council, 2023, Griffith Criminology Institute, Griffith University, September 2023) ('Griffith University Literature Review').

- factoring in the need for broader support services and treatment programs, including culturally appropriate options.¹⁹

A challenge in sentencing domestic violence offending is the variability in the nature and seriousness of these offences and circumstances in which they are committed. Domestic violence offending can involve offences:

- committed by first time offenders, repeat offenders and retaliatory violence by primary victims of domestic violence;
- committed against a person with whom they are in a current or former intimate relationship, is a family member or relative, including children, or with whom they are in an informal care relationship, or a person who is an associate of the person who has experienced violence;²⁰
- involving physical, sexual, emotional, psychological, or economic abuse, and/or threatening, coercive conduct that causes the other person in a relationship to fear for their, or someone else's, safety, or wellbeing,²¹ and acts that are brief or isolated, or committed over an extended period;²²
- resulting in a wide range of harm, including the death of the victim or permanent serious physical and/or psychological injury, through to those involving circumstances where contact initiated by the victim genuinely and not under coercion, breaches a 'no contact' condition of a DVO.

This high level of variability supports the need for flexibility in penalty options and sentencing responses. While imprisonment will retain an important role, particularly for serious and persistent offending, other options are needed to ensure those who commit these offences can access the types of services and interventions that will bring about meaningful long-term change in the interests of victim and community safety.

In our 2019 report on community-based sentencing orders, imprisonment and parole options, we made several recommendations that, if implemented, have potential to expand the penalty options for domestic violence offending.²³ This included the introduction of a new type of community-based order – the community correction order (CCO) – to which courts can attach a range of conditions to meet the purposes of sentence and to respond to individual factors associated with the person's offending, including reporting and supervision conditions, rehabilitation and treatment conditions, drug and alcohol abstinence conditions, curfew conditions, community work, judicial monitoring, and electronic monitoring. CCOs have been introduced in various forms in NSW, the Northern Territory, Tasmania and Victoria. We also recommended that courts be given the power to combine a suspended prison sentence with a community-based order when sentencing a person for a single offence to allow supervision and other conditions to be ordered where needed.

In addition to these types of reforms, there are opportunities for the government to explore alternative justice approaches to better respond to domestic violence offending.

Reframing measures of 'success'

The two reforms we were asked to review signal to courts the increased seriousness of which DFV offences are to be viewed. Broadly, courts appear to have responded by making greater use of custodial sentences and, in some instances, ordering longer custodial sentences.

While this might be viewed as an important measure of 'success', the justice system must do more than just denounce and punish. It must protect and 'make things better' for those who have been subjected to this form of violence. Some victims may want the relationship to end and to have no further contact, but others may just want the person to change their behaviour and the violence to stop. Ensuring the long-term safety of victim survivors must be a priority.

¹⁹ Ibid.

²⁰ DFVPA (n 16) s 13 (meaning of relevant relationship).

²¹ Ibid s 8(1).

²² Ibid s 8(2).

²³ See Queensland Sentencing Advisory Council, *Community-Based Sentencing Orders, Imprisonment and Parole Options* (Final Report, July 2019).

Success for DFV criminal justice interventions typically has been measured in terms of a reduction in reported reoffending. There are significant limitations with this approach given it relies on the abuse to be reported and assumes the person has stopped engaging in abusive and controlling behaviour. Measures of success need to include more nuanced measures of desistance that take victim needs and experiences into account. Victims' perspectives and experiences are an important means by which government can assess if current responses are 'working', who they are working for and in what ways they are working. This includes taking into account the experiences of Aboriginal and Torres Straits Islander peoples and people from other marginalised and disadvantaged backgrounds who may be disproportionately affected by these reforms.

The need to improve the evidence base

A robust evidence base is essential for the Queensland Government to assess the impact and effectiveness of reforms, determine whether they are achieving their intended objectives, and identify any unintended consequences to guide future decision making.

The two recommendations we have made in this report reflect the critical need to improve the quality of data available to the Council and other research and advisory bodies. More comprehensive data is required to be captured in administrative data systems and linked at a charge level to enable the impacts of reforms to be better understood.

The more routine capturing of information, such as pre-sentence custody, is important to promote greater transparency and to enhance community understanding.

Recommendations, findings and observations

PART B: Contravention of a domestic violence order

Chapter 4 – Impact of increase to maximum penalties for CDVO

Finding 1: Sentencing outcomes have changes since the increase to contravention of domestic violence order maximum penalties

The Council's pre-post analysis of sentencing outcomes for contravention of a domestic violence order shows changes following the increase in maximum penalties across both non-aggravated and aggravated offences, including:

- an increase in the use of custodial orders;
- an increase in the use of supervised orders;
- an increase in the use of imprisonment; and
- a decrease in the use of monetary penalties.

However, the pre-post analysis found there was no statistically significant change in the custodial or imprisonment sentence length. Understanding the reasons behind this would be highly beneficial, and further research, along with improvements in data collection, could provide greater insights.

Observation 1: Limitations in administrative data capture and linkage across and within the criminal justice system constrains the ability to fully understand the impact of sentencing reforms

Due to limitations in administrative data, it has not been possible for the Council to conclusively attribute the changes identified in sentencing outcomes to the increase in maximum penalties. This is because the administrative data does not enable the Council to account for other important case and offender-specific factors that may have impacted the type of sentence imposed, and in the case of custodial sentences, their length.

Chapter 5 – Sentencing trends for CDVO

Finding 2: Sentencing trends for contravention of a domestic violence order have changed and the reasons for this are complex

The Council's examination of contravention of a domestic violence order (CDVO) sentencing trends over time shows changing sentencing patterns due to a complex range of factors.

CDVO trends have been influenced by a combination of external factors in the 10-year data period since the increase to CDVO maximum penalties including:

- the impacts of the COVID-19 pandemic;
- legislative reforms, including changes in the presumption of bail for some types of CDVO offences; and
- significant reviews and other reforms impacting policy and practice.

Finding 3: Recent appeal court guidance is likely to change future sentencing trends

In December 2024, the Court of Appeal issued its first guidance on sentencing for contravention of a domestic violence order in *CDL v Commissioner of Police* [2024] QCA 245. This guidance has potential to uplift sentences in circumstances where there is a repeated pattern of non-physical violence. Over time, we

expect sentences for these types of repeated acts of non-physical domestic violence to increase, including through the increased use of custodial orders and longer custodial penalties.

Chapter 6 – Anomalies and other issues

Finding 4: Commonwealth offences and offences committed in some other jurisdictions are not consistently recorded as ‘domestic violence offences’ which could impact sentencing practices

The inability to record or note whether a Commonwealth offence occurred in a domestic violence context may impact sentencing practices by:

- any future contravention of a domestic violence order is not being aggravated (assuming the person has no other domestic violence offences on their criminal history); and
- the court, when sentencing, potentially not recognising that prior offences occurred in a domestic violence context and form part of a pattern of behaviour, which may affect how seriously the current offence is viewed.

These same issues apply to domestic and family violence related offences committed in other jurisdictions, where such offences are not clearly identified on a person's criminal history.

Observation 2: There is some complexity in sentencing contravention of a domestic violence order and substantive offences involving the same conduct

The current wording of the new aggravating factor in section 9(10D)(b)(i) of the *Penalties and Sentences Act 1992* (Qld) (i.e. considerations where the offence committed was also a contravention of a domestic violence order) may create additional complexity in sentencing and the wording may require reconsideration.

In circumstances where a contravention is not charged, it is unclear if this aggravating factor will apply. If it is charged based on the same act or omission, the courts must consider section 16 of the *Criminal Code* (Qld) (i.e. that a person is not to be twice punished for the same offence).

PART C: Section 9(10A) of the *Penalties and Sentences Act 1992* (Qld)

Chapter 8 – The impact of section 9(10A) on sentencing practices

Finding 5: The aggravating factor appears to have impacted sentencing practices

Sentencing practices for domestic violence offences have changed following the introduction of section 9(10A) of the *Penalties and Sentences Act 1992* (Qld) supporting the treatment of these offences as more serious forms of offending.

Finding 6: The finding of exceptional circumstances to section 9(10A) is uncommon

The Council's review of sentencing remarks found that it is uncommon for courts to find exceptional circumstances that justify not treating the fact that an offence was a domestic violence offence as an aggravating factor under section 9(10A) of the *Penalties and Sentences Act 1992* (Qld). This was consistent with legal practitioner observations.

Finding 7: Where exceptional circumstances to section 9(10A) are found, they are generally aligned with the legislative examples provided

For intimate personal relationship cases, the circumstances in which exceptional circumstances were successfully argued typically aligned with one of the two legislative examples provided in the *Penalties and Sentences Act 1992* (Qld). For family relationship cases, the circumstances supporting a finding of exceptional circumstances were more varied.

Observation 3: Further legislative clarification of ‘exceptional circumstances’ under section 9(10A) is not required

The two legislative examples in 9(10A) of the *Penalties and Sentences Act 1992* (Qld) provide useful guidance when determining whether exceptional circumstances exist, particularly for intimate personal relationship cases.

Further legislative clarification is not required regarding what circumstances might support a finding of exceptional circumstances in section 9(10A).

Chapter 9 – Sentencing outcomes for DV offences

Finding 8: The aggravating factor appears to have impacted sentencing outcomes supporting the treatment of domestic violence offences as more serious forms of offending

The Council’s analysis of sentencing outcomes shows that domestic violence (DV) offences are being treated as more serious forms of offending than non-DV offences in the Magistrates Courts and higher courts across most offence types compared with non-DV offences, including offences involving non-physical violence.

Exceptions to this pattern were found for burglary and commit an indictable offence (*Criminal Code* (Qld) section 419(5)) and acts intended to cause grievous bodily harm and other malicious acts (*Criminal Code* (Qld) section 317).

Observation 4: Some non-domestic violence offences attracted stronger penalty outcomes and this is likely due to case-specific factors

Case-specific factors likely account for the small number of offences for which stronger penalties were imposed on non-domestic violence (DV) offences than those committed in a DV context.

Chapter 10 – The DV aggravating factor and victim satisfaction

Finding 9: There is limited awareness of section 9(10A) among victim survivors

Victim survivors have low awareness of section 9(10A) of the *Penalties and Sentences Act 1992* (Qld) and its role in sentencing; however, this is unsurprising given the technical nature of the provision.

Finding 10: Victim satisfaction with sentencing is impacted by factors other than s 9(10A) of the Penalties and Sentences Act 1992 (Qld)

Victim survivors are more satisfied with a sentencing outcome when:

- there is judicial recognition of the domestic violence and the harm caused by the offending;
- they consider the court process is fair;
- they feel respected; and
- they are able to participate in the sentence proceeding.

PART D: Marginalisation, human rights and future directions in enhancing sentencing for domestic violence

Chapter 11 – Impacts on marginalised and disadvantaged groups

Observation 5: Aboriginal and Torres Strait Islander peoples are disproportionately impacted by the increase to maximum penalties for contravention of a domestic violence order

Aboriginal and Torres Strait Islander people are disproportionately represented among people sentenced for contravention of a domestic violence order. This disproportionate representation pre-dated the increase to the maximum penalties and is particularly evident for aggravated charges.

Observation 6: Aboriginal and Torres Strait Islander people are disproportionately impacted by the operation of section 9(10A) of the *Penalties and Sentences Act 1992 (Qld)*

Aboriginal and Torres Strait Islander people are disproportionately impacted by domestic and family violence and disproportionately impacted by the operation of the section 9(10A) aggravating factor.

Chapter 12 – Compatibility with the *Human Rights Act 2019 (Qld)*

Finding 11: Section 9(10A) of the *Penalties and Sentences Act 1992 (Qld)* is compatible with the *Human Rights Act 1992 (Qld)*

While section 9(10A) of the *Penalties and Sentences Act 1992 (Qld)* may limit a person's right to liberty and right to equality, the limitation is reasonable and demonstrably justifiable, consistent with the conclusions on compatibility of other similar aggravating factors.

Chapter 13 – Policy implications and future directions

Observation 7: The sentencing options available to courts are limited and could be enhanced to provide more flexibility

There is a lack of flexibility in the mix and range of sentencing and parole options that impacts the ability of sentences for domestic and family violence, to meet the objectives of sentencing.

Finding 12: Non-declared pre-sentence custody is not captured in administrative data

It is not possible to accurately report on time spent in custody prior to sentence using administrative data because any pre-sentence custody that has been taken into account but not declared is not routinely recorded.

Recommendation 1: Pre-sentence custody not declared but taken into account should be routinely recorded to support monitoring and evaluation efforts

In support of improving the evidence base for sentencing reform, the effective administration of justice and promoting community understanding of sentencing, the Queensland Government should appropriately fund and prioritise work led by the Department of Justice to ensure Queensland Courts capture undeclared pre-sentence custody in a form that can be linked to sentencing outcomes.

Recommendation 2: Standardised linked data sets should be developed for the purpose of supporting research and evaluation

The Queensland Government should support the development of standardised linked criminal justice data sets for the purpose of research and evaluation and establish processes for making the linked data available for such purposes. This work should include the establishment of a reoffending database.