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# Update Summary

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**UPDATE 60**

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## **QUEENSLAND SENTENCING MANUAL**

**Robertson**

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## UPDATED COMMENTARY

**Matt Jackson** has written new commentary on:

### Governing principles

#### Penalties and Sentences Act 1992 – Totality where cumulative sentences imposed

The proper approach to totality considerations where a young offender commits serious trafficking and violent offending, by reference to *Azzopardi v The Queen* [2011] VSCA 372; (2011) 35 VR 43; 219 A Crim R 369; *R v Liu* [2024] QCA 58 at [21], [24], [35] and [39]. See [9.160].

### Factors personal to the offender

#### Youthful offenders

In a recent decision, Crowley J referred to the oft-cited passage from *Lahey v Sanderson* [1959] Tas SR 17, to explain the “compelling rationales for the leniency that is to be extended to youthful, first-time offenders”: *R v ZC* [2024] QCA 89 at [47]-[48]. See [10.130].

#### Impaired mental/intellectual capacity

The decision of *R v Yarwood* [2011] QCA 367; (2011) 220 A Crim R 497 has been consistently applied: see most recently *R v Carey* [2024] QCA 69 at [26] per Cooper J, with whom Mullins P and Dalton JA agreed. For a consideration of the interplay with voluntary intoxication see: *R v Adam* [2022] QCA 41; (2011) 10 QR 343; 297 A Crim R 156. See [10.160].

#### Hardship to family of offender

*Totaan v The Queen* [2022] NSWCCA 75; (2022) 108 NSWLR 17; (2022) 297 A Crim R 224 has now been followed by the Victorian Court of Appeal in *Mohamed v The Queen* [2022] VSCA 136; (2022) 300 A Crim R 181; 367 FLR 482 at [88]-[93]. For now, a sentencing judge in Queensland is bound to apply *R v Huston* [2011] QCA 350; (2011) 219 A Crim R 209; 86 ATR 415. See [10.320].

#### Relevance of being held in protective/solitary confinement on remand and COVID-19

*R v Free* [2020] QCA 58; (2020) 4 QR 80; 282 A Crim R 94 focused in part on the relevance of a prisoner being held in protective custody because of the nature of his offending. *R v Atasoy* [2023] QCA 121 applied the observations in *R v Free*. See [10.385].

## Sentencing options

### Imprisonment (adults) – Cumulative sentences – Effect of imprisonment on parole

Sentencing for offending considering any “contingent liability” under sections 209 and 211 of the *Corrective Services Act 2006* (Qld): *R v Brutton* [2024] QSC 24 at [27]-[31] per Bowskill CJ. See [15.550].

## Plea of guilty

### Unaccepted plea of guilty

Relevance to the exercise of the sentencing discretion of an offer to plead guilty to which an offender is convicted by a jury: *R v Gordon* [2024] QCA 16 at [27]. See [12.60].

## Particular offences

### Manslaughter by juveniles

In *R v Samuel* [2024] QSC 11, a juvenile was sentenced to 3 years detention for manslaughter due to dangerous driving. Even though there was no argument that the offending was “particularly heinous”, Davis J ruled that there was no modification to the principles under s 150 of the *Youth Justice Act 1992* (Qld) despite the fatality involved. See [16.500].

## Queensland Sentencing Information Service

### QSIIS introduction and how to access

The author updated the QSIIS section of the service. QSIIS is a free online resource that provides sentencing remark transcripts to aid in the administration of the criminal justice system, with its platform recently revamped in February 2023. The service aims to promote consistency in criminal sentencing by offering information and statistics to legal professionals. See [5.20].

