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Update Summary

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QUEENSLAND SENTENCING MANUAL

Robertson

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UPDATED COMMENTARY

Matt Jackson has written new commentary on:

Sentencing Federal Offenders

Crimes Act 1914 (Cth) - General sentencing principles

The non-parole period is to be determined having regard to the minimum period that justice requires the applicant serve in custody before he would be eligible for release on parole: *R v Hatahet* (2024) 98 ALJR 863; [2024] HCA 23 at [28]. See **[7.30].**

Crimes Act 1914 (Cth) - Deportation no impediment to fixing a non-parole period

The probability of being granted (or not granted) a release on a parole under s 19ALB of the *Crimes Act 1914* (Cth) is not a relevant consideration under s 16A of the *Crimes Act 1914* (Cth): *R v Hatahet* at **[28].**

Deportation is still relevant to the exercise of the sentencing discretion, notwithstanding *R v Hatahet*, because it is factor which can render a sentence more than otherwise onerous: *R v James* [2024] QCA 142 at **[57].** See **[7.230].**

Crimes Act 1914 (Cth) - Relevance of sentences in other Australian jurisdictions

In *Tak Fat Wong v The Queen* (2001) 207 CLR 584; 76 ALJR 79; [2001] HCA 64, Gleeson CJ stated that the criminal justice system must be fair, and systematic fairness necessitates reasonable consistency in the application of relevant legal principles. See **[7.35].**

Governing principles

Penalties and Sentences Act 1992 – Domestic violence offences

Sections 9(2)(gb) and 9(10B) do not change the "instinctive synthesis" process and can mitigate a sentence if there is sufficient evidence the offender has been the victim of domestic violence or the commission of the offence is wholly or partly attributable to the effect of domestic violence on the offender: *R v BEM* [2024] QCA 175 at [19]-[20]. See **[9.225].**

Contempt of court

General principles

For a recent and useful discussion of penalties concerning the punishment of contempt, see *Wood v The Registrar for the Supreme Court of Queensland* [2024] QCA 196 at [52]-[55]. In this case, the Court considered the two months of actual custody which was made concurrent with a wholly suspended sentence of four months. This potentially rendered the sentence manifestly excessive. See **[17.220].**

Appeals Against Sentence

Appeal to the Court of Appeal - Principles applicable on sentence appeals by a prisoner

In *R v HCI* [2022] QCA 2, it was held, that to establish that a sentence is manifestly excessive it is necessary to identify a specific or identified error or infer an error because the sentence is unreasonable or plainly unjust. See **[18.14].**

Appeal to the Court of Appeal - Is the Attorney-General bound by the prosecutor's submission below?

In *In R v Volkov* [2022] QCA 57; (2022) 10 QR 451, McMurdo JA considered the relevance of a concession made by counsel for a defendant at a sentence hearing as to the appropriate sentence. Justice McMurdo held that any such concession has no bearing upon whether the sentence should be held to have been manifestly excessive. **[18.30].**

Appeal to the Court of Appeal – Appeals against findings of fact where facts were disputed at sentence

In *R v MDU* [2024] QCA 113, a case about the application of s 538 of the Criminal Code (Qld), the joint judgment of Dalton JA and Davis J considered the reversal of a finding of fact made by a sentencing judge. Morrison JA dissented. The key issue was whether the defendant desisted from choking his wife before or after believing she was dead, which would affect sentence reduction under s 538. See **[18.31].**