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Update Summary

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QUEENSLAND SENTENCING MANUAL

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UPDATED COMMENTARY

Matt Jackson has written new commentary on:

Appeals Against Sentence

Appeals to the District Court

The correct construction of s 222(2)(c) of the *Justices Act 1886* (Qld) permits appellate intervention where an error in the exercise of the discretion of the kind recognised by *House v The King* (1936) 55 CLR 499; [1936] HCA 40 (therefore permitting an appeal for specific error) is established, and the error has resulted in a sentence which is excessive or inadequate: *Chakka v Queensland Police Service* [2024] QCA 213 at [87]. See [18.220] and [13.70].

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

A finding of fact by a sentencing judge can be set aside if the error was material; that is, it had the capacity to infect the exercise of the sentencing discretion: *R v CDF* [2024] QCA 207 at [33]. See [18.31].

Sentencing Options - General

Imprisonment (adults) – Court ordered parole and parole – Deportation and parole

The general principle from *R v Hatahet* (2024) 308 A Crim R 135; 98 ALJR 863; [2024] HCA 23 that the prospect of securing release on parole is not relevant to the judicial task of sentencing applies to Queensland and forecloses the option of taking into account the irrelevant consideration of the applicant's parole prospects: *R v Ponsonby* [2024] QCA 229 at [34]. See [15.495].

Where s 159A does not apply to pre-sentence custody

R v OAD [2024] QCA 189 is a case where the Court of Appeal considered the relevance of a long period of time on remand that was not strictly declarable as pre-sentence custody under s 159A of the *Penalties and Sentences Act 1992* (Qld). See [15.750].

Particular Offences

Domestic violence order – Contravention of domestic violence order

The objective seriousness of contravening a domestic violence order is not diminished because the conduct does not involve actual violence. Breaches must denounce the conduct and encourage compliance with such orders: *CDL v Commissioner of Police (Qld)* [2024] QCA 245 at [21]-[24]. See [16.777].

Sentencing Federal Offenders

Crimes Act 1914 (Cth) - Discounts for Commonwealth offenders for plea of guilty

The High Court considered the operation of s 16AAB of the *Crimes Act 1914* (Cth) generally and how it interrelates with s 17A(1) in *Hurt v The King* (2024) 304 A Crim R 555; 98 ALJR 485; [2024] HCA 8. Chief Justice Gageler and Jagot J rejected the argument that there was a difference in approach between statutory maximums and minimums. See [7.31].

Governing Principles

Penalties and Sentences Act 1992 - Domestic violence offences

In *R v RBO* [2024] QCA 214, the Court of Appeal considered some important aspects of sentencing following a trial. The sentencing judge had to consider a mix of verdicts from seven charges of offences of domestic violence upon his wife. See [9.225], [14.310] and [11.290].

Recording a Conviction

Not recording a conviction for federal offences

In *R v Al Majedia* [2024] QCA 27, Dalton JA confirms that normally a case must be rare, singular or an exception to be discharged under s 19B of the *Crimes Act 1914* (Cth); Dalton JA provides a practical illustration of the two stages of analysis and highlights the importance of a sentencing court's ability, in the appropriate case, to impose a period of probation of up to three years under s 19B(1). See [13.15].

The Sentencing Hearing

Section 132C of the Evidence Act 1977

In *R v CDF* [2024] QCA 207, the Queensland Court of Appeal clarified the nature of "allegations of fact" in sentencing hearings, emphasizing their accusatorial character. The court held that for s 132C of the *Evidence Act 1977* (Qld) to apply, the Crown must explicitly advance a factual suggestion or include it in information provided to the judge. See [14.230].

Plea of Guilty

The failure to state in open court that the plea of guilty is taken into account

R v Lee [2024] QCA 36 reaffirms that a failure to comply with s 13(3) of the *Penalties and Sentences Act 1992* (Qld) does not of itself justify interference if it is evident that the guilty plea was in fact taken into account. See [12.80].

Withdrawal of or setting aside a plea of guilty

Justice Davis, in the important decision of *R v McNicol* [2022] QSC 67; (2022) 10 QR 546, outlined at [35] the procedure to be followed in order to carefully and appropriately address difficult questions of legal professional privilege for legal representatives who have formerly acted for a client in criminal proceedings and where an application is made to withdraw a plea of guilty. See [12.100].