

- (a) the sheriff—the powers may be delegated to an officer employed in the sheriff’s office or Magistrates Court registry; or
- (b) the registrar—the powers may be delegated to an officer employed in the District Court registry or Magistrates Court registry; or
- (c) the clerk of the court—the powers may be delegated to an officer employed in the Magistrates Court registry.

Part 2 Governing principles

9 Sentencing guidelines

- (1) The only purposes for which sentences may be imposed on an offender are—
 - (a) to punish the offender to an extent or in a way that is just in all the circumstances; or
 - (b) to provide conditions in the court’s order that the court considers will help the offender to be rehabilitated; or
 - (c) to deter the offender or other persons from committing the same or a similar offence; or
 - (d) to make it clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved; or
 - (e) to protect the Queensland community from the offender; or
 - (f) a combination of 2 or more of the purposes mentioned in paragraphs (a) to (e).
- (2) In sentencing an offender, a court must have regard to—
 - (a) principles that—
 - (i) a sentence of imprisonment should only be imposed as a last resort; and

- (ii) a sentence that allows the offender to stay in the community is preferable; and
- (b) the maximum and any minimum penalty prescribed for the offence; and
- (c) the nature of the offence and how serious the offence was, including—
 - (i) any physical, mental or emotional harm done to a victim, including harm mentioned in information relating to the victim given to the court under section 179K; and
 - (ii) the effect of the offence on any child under 16 years who may have been directly exposed to, or a witness to, the offence; and
- (d) the extent to which the offender is to blame for the offence; and
- (e) any damage, injury or loss caused by the offender; and
- (f) the offender's character, age and intellectual capacity; and
- (g) the presence of any aggravating or mitigating factor concerning the offender; and
- (ga) without limiting paragraph (g), whether the offender was a participant in a criminal organisation—
 - (i) at the time the offence was committed; or
 - (ii) at any time during the course of the commission of the offence; and
- (h) the prevalence of the offence; and
- (i) how much assistance the offender gave to law enforcement agencies in the investigation of the offence or other offences; and
- (j) time spent in custody by the offender for the offence before being sentenced; and
- (k) sentences imposed on, and served by, the offender in another State or a Territory for an offence committed at,

- or about the same time, as the offence with which the court is dealing; and
- (l) sentences already imposed on the offender that have not been served; and
 - (m) sentences that the offender is liable to serve because of the revocation of orders made under this or another Act for contraventions of conditions by the offender; and
 - (n) if the offender is the subject of a community based order—the offender’s compliance with the order as disclosed in an oral or written report given by an authorised corrective services officer; and
 - (o) if the offender is on bail and is required under the offender’s undertaking to attend a rehabilitation, treatment or other intervention program or course—the offender’s successful completion of the program or course; and
 - (p) if the offender is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the offender’s community that are relevant to sentencing the offender, including, for example—
 - (i) the offender’s relationship to the offender’s community; or
 - (ii) any cultural considerations; or
 - (iii) any considerations relating to programs and services established for offenders in which the community justice group participates; and
 - (pa) the principle that the court should not refuse to make a community based order for the offender merely because of—
 - (i) a physical, intellectual or psychiatric disability of the offender; or
 - (ii) the offender’s sex, educational level or religious beliefs; and

- (q) anything else prescribed by this Act to which the court must have regard; and
 - (r) any other relevant circumstance.
- (2A) However, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender for any offence—
- (a) that involved the use of, or counselling or procuring the use of, or attempting or conspiring to use, violence against another person; or
 - (b) that resulted in physical harm to another person.
- (3) In sentencing an offender to whom subsection (2A) applies, the court must have regard primarily to the following—
- (a) the risk of physical harm to any members of the community if a custodial sentence were not imposed;
 - (b) the need to protect any members of the community from that risk;
 - (c) the personal circumstances of any victim of the offence;
 - (d) the circumstances of the offence, including the death of or any injury to a member of the public or any loss or damage resulting from the offence;
 - (e) the nature or extent of the violence used, or intended to be used, in the commission of the offence;
 - (f) any disregard by the offender for the interests of public safety;
 - (g) the past record of the offender, including any attempted rehabilitation and the number of previous offences of any type committed;
 - (h) the antecedents, age and character of the offender;
 - (i) any remorse or lack of remorse of the offender;
 - (j) any medical, psychiatric, prison or other relevant report in relation to the offender;
 - (k) anything else about the safety of members of the community that the sentencing court considers relevant.

- (4) Also, in sentencing an offender for any offence of a sexual nature committed in relation to a child under 16 years or a child exploitation material offence—
 - (a) the court must have regard to the sentencing practices, principles and guidelines applicable when the sentence is imposed rather than when the offence was committed; and
 - (b) the principles mentioned in subsection (2)(a) do not apply; and
 - (c) the offender must serve an actual term of imprisonment, unless there are exceptional circumstances.
- (5) For subsection (4)(c), in deciding whether there are exceptional circumstances, a court may have regard to the closeness in age between the offender and the child.
- (6) In sentencing an offender to whom subsection (4) applies, the court must have regard primarily to—
 - (a) the effect of the offence on the child; and
 - (b) the age of the child; and
 - (c) the nature of the offence, including, for example, any physical harm or the threat of physical harm to the child or another; and
 - (d) the need to protect the child, or other children, from the risk of the offender reoffending; and
 - (e) any relationship between the offender and the child; and
 - (f) the need to deter similar behaviour by other offenders to protect children; and
 - (g) the prospects of rehabilitation including the availability of any medical or psychiatric treatment to cause the offender to behave in a way acceptable to the community; and
 - (h) the offender's antecedents, age and character; and
 - (i) any remorse or lack of remorse of the offender; and

- (j) any medical, psychiatric, prison or other relevant report relating to the offender; and
 - (k) anything else about the safety of children under 16 the sentencing court considers relevant.
- (6A) However, for subsection (6)(h), the court must not have regard to the offender's good character if it assisted the offender in committing the offence.
- (7) In sentencing an offender for a child exploitation material offence, the court must have regard primarily to—
- (a) for an offence other than an offence against the Criminal Code, section 228I or 228J—the nature of any material describing or depicting a child that the offence involved, including the apparent age of the child and any activity shown; and
 - (aa) for an offence against the Criminal Code, section 228I or 228J—the nature of the doll, robot or other object representing or portraying a child that the offence involved, including the apparent age of the child; and
 - (ab) the offender's conduct or behaviour in relation to the material, doll, robot or other object that the offence involved; and
 - (ac) any relationship between the offender and the child the subject of the material, or represented or portrayed by the doll, robot or other object, that the offence involved; and
 - (b) the need to deter similar behaviour by other offenders to protect children; and
 - (c) the prospects of rehabilitation including the availability of any medical or psychiatric treatment to cause the offender to behave in a way acceptable to the community; and
 - (d) the offender's antecedents, age and character; and
 - (e) any remorse or lack of remorse of the offender; and

- (f) any medical, psychiatric, prison or other relevant report relating to the offender; and
 - (g) anything else about the safety of children under 16 the sentencing court considers relevant.
- (7AA) However, for subsection (7)(d), the court must not have regard to the offender's good character if it assisted the offender in committing the offence.
- (7A) Also, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender under part 9D, division 2.
- (8) If required by the court for subsection (2)(p), the representative must advise the court whether—
- (a) any member of the community justice group that is responsible for the submission is related to the offender or the victim; or
 - (b) there are any circumstances that give rise to a conflict of interest between any member of the community justice group that is responsible for the submission and the offender or victim.
- (9) In sentencing an offender, a court must not have regard to the following—
- (a) the offender levy imposed under section 179C;
 - (b) whether or not the offender—
 - (i) may become, or is, the subject of a dangerous prisoners application; or
 - (ii) may become subject to an order because of a dangerous prisoners application.
- (9A) Voluntary intoxication of an offender by alcohol or drugs is not a mitigating factor for a court to have regard to in sentencing the offender.
- (9B) In determining the appropriate sentence for an offender convicted of the manslaughter of a child under 12 years, the court must treat the child's defencelessness and vulnerability, having regard to the child's age, as an aggravating factor.

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- (10) In determining the appropriate sentence for an offender who has 1 or more previous convictions, the court must treat each previous conviction as an aggravating factor if the court considers that it can reasonably be treated as such having regard to—
- (a) the nature of the previous conviction and its relevance to the current offence; and
 - (b) the time that has elapsed since the conviction.
- (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.

Examples of exceptional circumstances—

- 1 the victim of the offence has previously committed an act of serious domestic violence, or several acts of domestic violence, against the offender
 - 2 the offence is manslaughter under the Criminal Code, section 304B
- (11) Despite subsection (10), the sentence imposed must not be disproportionate to the gravity of the current offence.
- (12) In this section—

actual term of imprisonment means a term of imprisonment served wholly or partly in a corrective services facility.

child exploitation material offence means any of the following offences—

- (a) an offence against the *Classification of Computer Games and Images Act 1995*, section 28 if the objectionable computer game is a child abuse computer game under the Act;
- (b) an offence against any of the following provisions of the *Classification of Films Act 1991*—
 - (i) section 41(3) or 42(3) or (4);
 - (ii) section 43 if the offence involves a child abuse publication under the Act;

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- (c) an offence against the Criminal Code, section 228A, 228B, 228C, 228D, 228DA, 228DB, 228DC, 228I or 228J.

10 Court's reasons to be stated and recorded

- (1) If a court imposes a sentence of imprisonment, including a suspended sentence of imprisonment, it must—
 - (a) state in open court its reasons for the sentence; and
 - (b) cause the reasons to be—
 - (i) recorded in the transcript that is to be kept in the registry with the indictment; or
 - (ii) recorded in writing and kept in the office of the clerk of the court with the charge sheet; and
 - (c) cause a copy of the reasons to be forwarded to the chief executive (corrective services).
- (2) A sentence is not invalid merely because of the failure of the court to state its reasons as required by subsection (1)(a), but its failure to do so may be considered by an appeal court if an appeal against sentence is made.

11 Matters to be considered in determining offender's character

In determining the character of an offender, a court may consider—

- (a) the number, seriousness, date, relevance and nature of any previous convictions of the offender; and
- (b) any significant contributions made to the community by the offender; and
- (c) such other matters as the court considers are relevant.

12 Court to consider whether or not to record conviction

- (1) A court may exercise a discretion to record or not record a conviction as provided by this Act.
- (2) In considering whether or not to record a conviction, a court must have regard to all circumstances of the case, including—
 - (a) the nature of the offence; and
 - (b) the offender's character and age; and
 - (c) the impact that recording a conviction will have on the offender's—
 - (i) economic or social wellbeing; or
 - (ii) chances of finding employment.
- (3) Except as otherwise expressly provided by this or another Act—
 - (a) a conviction without recording the conviction is taken not to be a conviction for any purpose; and
 - (b) the conviction must not be entered in any records except—
 - (i) in the records of the court before which the offender was convicted; and
 - (ii) in the offender's criminal history but only for the purposes of subsection (4)(b).
- (3A) Despite subsection (3)(b), the conviction may be entered in a record kept by a department, a prosecuting authority or the offender's legal representative if it is necessary for the legitimate performance of the functions of the department, prosecuting authority or legal representative.
- (4) A conviction without the recording of a conviction—
 - (a) does not stop a court from making any other order that it may make under this or another Act because of the conviction; and
 - (b) has the same result as if a conviction had been recorded for the purposes of—

- (i) appeals against sentence; and
 - (ii) proceedings for variation or contravention of sentence; and
 - (iii) proceedings against the offender for a subsequent offence; and
 - (iv) subsequent proceedings against the offender for the same offence.
- (5) If the offender is convicted of a subsequent offence, the court sentencing the offender may disregard a conviction that was ordered not to be recorded but which, under subsection (3)(b)(ii), is entered in the offender's criminal history.
- (6) If—
 - (a) a court—
 - (i) convicts an offender of an offence; and
 - (ii) does not record a conviction; and
 - (iii) makes a probation order or community service order for the offender; and
 - (b) the offender is subsequently dealt with by a court for the same offence in any way in which it could deal with the offender if the offender had just been convicted by or before it of the offence;

the conviction for the offence must be recorded by the second court.
- (7) Despite subsection (6), the second court is not required to record the conviction for the offence if—
 - (a) the offender is the subject of a community service order or probation order; and
 - (b) the reason the court is dealing with the offender for the same offence is because the offender has applied for a revocation of the community service order or probation order; and

- (c) the offender has not breached the community service order or probation order.

12A Convictions for offences relating to domestic violence

- (1) Subsections (2) to (4) apply if—
 - (a) a complaint or an indictment for a charge for an offence states the offence is also a domestic violence offence; and
 - (b) the offender is convicted of the offence.
- (2) If a conviction is recorded in relation to the offence, it must also be recorded as a conviction for a domestic violence offence.
- (3) If no conviction is recorded in relation to the offence, the offence must be entered in the offender's criminal history as a domestic violence offence.
- (4) However, a matter must not be recorded or entered under subsection (2) or (3) in relation to the offence if the court makes an order to the effect it is not satisfied the offence is also a domestic violence offence.

Note—

See the *Evidence Act 1977*, section 132C, which provides for the sentencing judge or magistrate in any sentencing procedure in a criminal proceeding to act on allegations of fact.

- (5) If a court convicts an offender of an offence for which a matter must be recorded or entered under subsection (2) or (3) or of an offence against the *Domestic and Family Violence Protection Act 2012*, part 7, the prosecution may apply to the court for an order that an offence, stated in the application, of which the offender has previously been convicted (a ***previous offence***)—
 - (a) for a previous offence for which a conviction was recorded—also be recorded as a conviction for a domestic violence offence; or
 - (b) otherwise—be entered in the offender's criminal history as a domestic violence offence.

- (6) The application—
 - (a) may be made in writing or orally; and
 - (b) must include enough information to allow the court to make a decision about whether it is appropriate to make the order.
- (7) The court may ask the prosecutor for further information for it to decide whether to make an order under subsection (8).
- (8) If, after considering the application, the court is satisfied a previous offence is a domestic violence offence, the court must order that the offence—
 - (a) for a previous offence for which a conviction was recorded—also be recorded as a conviction for a domestic violence offence; or
 - (b) otherwise—be entered in the offender’s criminal history as a domestic violence offence.
- (9) A person against whom the domestic violence offence was committed is not compellable as a witness in proceedings before the court to decide the application.
- (10) If a court is satisfied an error has been made in recording or entering an offence as a domestic violence offence, the court may, on an application or its own initiative, correct the error.
- (11) For this section, proof that an offence is a domestic violence offence lies on the prosecutor.
- (12) To remove any doubt, it is declared that this section does not require a matter to be recorded or entered in an offender’s traffic history under the *Transport Operations (Road Use Management) Act 1995*.

13 Guilty plea to be taken into account

- (1) In imposing a sentence on an offender who has pleaded guilty to an offence, a court—
 - (a) must take the guilty plea into account; and

- (b) may reduce the sentence that it would have imposed had the offender not pleaded guilty.
- (2) A reduction under subsection (1)(b) may be made having regard to the time at which the offender—
 - (a) pleaded guilty; or
 - (b) informed the relevant law enforcement agency of his or her intention to plead guilty.
- (3) When imposing the sentence, the court must state in open court that it took account of the guilty plea in determining the sentence imposed.
- (4) A court that does not, under subsection (2), reduce the sentence imposed on an offender who pleaded guilty must state in open court—
 - (a) that fact; and
 - (b) its reasons for not reducing the sentence.
- (5) A sentence is not invalid merely because of the failure of the court to make the statement mentioned in subsection (4), but its failure to do so may be considered by an appeal court if an appeal against sentence is made.

13A Cooperation with law enforcement authorities to be taken into account—undertaking to cooperate

- (1) This section applies for a sentence that is to be reduced by the sentencing court because the offender has undertaken to cooperate with law enforcement agencies in a proceeding about an offence, including a confiscation proceeding.
- (2) Before the sentencing proceeding starts, a party to the proceeding—
 - (a) must advise the relevant officer—
 - (i) that the offender has undertaken to cooperate with law enforcement agencies; and

- (ii) that written or oral submissions or evidence will be made or brought before the court relevant on that account to the reduction of sentence; and
 - (b) may give to the relevant officer copies of any proposed written submissions mentioned in paragraph (a)(ii).
- (3) After the offender is invited to address the court—
 - (a) the offender's written undertaking to cooperate with law enforcement agencies must be handed up to the court; and
 - (b) any party may hand up to the court written submissions relevant to the reduction of sentence.
- (4) The undertaking must be in an unsealed envelope addressed to the sentencing judge or magistrate.
- (5) If oral submissions are to be made to, or evidence is to be brought before, the court relevant to the reduction of sentence, the court must be closed for that purpose.
- (6) The penalty imposed on the offender must be stated in open court.
- (7) After the imposition of the penalty, the sentencing judge or magistrate must—
 - (a) close the court; and
 - (b) state in closed court—
 - (i) that the sentence is being reduced under this section; and
 - (ii) the sentence it would otherwise have imposed; and
 - (c) cause the following to be sealed and placed on the court file with an order that it may be opened only by an order of the court, including on an application to reopen the sentencing proceedings under section 188(2)—
 - (i) the written undertaking;
 - (ii) a record of evidence or submissions made relevant to the reduction of sentence and the sentencing remarks made under paragraph (b).

- (8) The sentencing judge or magistrate may make an order prohibiting publication of all or part of the proceeding or the name and address of any witness on his or her own initiative or on application.
- (9) In deciding whether to make an order under subsection (8), the judge or magistrate may have regard to—
- (a) the safety of any person; and
 - (b) the extent to which the detection of offences of a similar nature may be affected; and
 - (c) the need to guarantee the confidentiality of information given by an informer.
- (10) A person who contravenes an order made under subsection (8) commits an offence.
- Maximum penalty—
- (a) for an order made by a judge—5 years imprisonment; or
 - (b) for an order made by a magistrate—3 years imprisonment.
- (11) In this section—
- relevant officer* means—
- (a) for a proceeding before the Supreme or District Court—the sentencing judge’s associate; or
 - (b) for a proceeding before a Magistrates Court—the relevant clerk of the court.

13B Cooperation with law enforcement authorities to be taken into account—cooperation given

- (1) This section applies for a sentence if—
- (a) the sentence is to be reduced by the sentencing court because the offender has significantly cooperated with a law enforcement agency in its investigations about an offence or a confiscation proceeding; and
 - (b) section 13A does not apply for the sentence.

- (2) For subsection (1), an offender has not significantly cooperated with a law enforcement agency in its investigations about an offence only because the offender has admitted guilt for the offence.
- (3) Before the sentencing proceeding starts, a party to the proceeding—
 - (a) must advise the relevant officer—
 - (i) that the offender has significantly cooperated with a law enforcement agency; and
 - (ii) that written or oral submissions or evidence will be made or brought before the court relevant on that account to the reduction of sentence; and
 - (b) may give the relevant officer copies of any proposed written submissions mentioned in paragraph (a)(ii).
- (4) After the offender is invited to address the court—
 - (a) an affidavit, provided by a person representing the law enforcement agency, must be handed up to the court; and
 - (b) any party may hand up to the court written submissions relevant to the reduction of sentence.
- (5) The affidavit must—
 - (a) state the nature, extent and usefulness of the cooperation given to the law enforcement agency by the offender; and
 - (b) be in an unsealed envelope addressed to the sentencing judge or magistrate.
- (6) If oral submissions are to be made to, or evidence is to be brought before, the court about the cooperation or the reduction of sentence, the court must be closed for that purpose.
- (7) The penalty imposed on the offender must be stated in open court.

- (8) After the imposition of the penalty, the sentencing judge or magistrate must cause the following to be sealed and placed on the court file with an order that it may be opened only by an order of the court—
- (a) the affidavit;
 - (b) a record of evidence or submissions made relevant to the reduction of sentence;
 - (c) a record of the sentencing remarks relevant to the reduction of sentence, as opposed to the sentence imposed.
- (9) The sentencing judge or magistrate may make an order prohibiting publication of all or part of the proceeding or the name and address of any witness on his or her own initiative or on application.
- (10) In deciding whether to make an order under subsection (9), the judge or magistrate may have regard to—
- (a) the safety of any person; and
 - (b) the extent to which the detection of offences of a similar nature may be affected; and
 - (c) the need to guarantee the confidentiality of information given by an informer.
- (11) A person who contravenes an order made under subsection (9) commits an offence.
- Maximum penalty—
- (a) for an order made by a judge—5 years imprisonment; or
 - (b) for an order made by a magistrate—3 years imprisonment.
- (12) In this section—
- relevant officer* means—
- (a) for a proceeding before the Supreme or District Court—the sentencing judge’s associate; or

- (b) for a proceeding before a Magistrates Court—the relevant clerk of the court.

14 Preference must be given to compensation for victims

If a court considers—

- (a) that it is appropriate—
 - (i) to make an order for compensation (whether under this or another Act); and
 - (ii) to impose a fine or make another order for payment of an amount of money; and
- (b) that the offender can not pay both the compensation and the fine or amount;

the court must give preference to making an order for compensation, but may also impose a sentence other than that of imprisonment.

15 Information or submissions for sentence

- (1) In imposing a sentence on an offender, a court may receive any information, including a report mentioned in the *Corrective Services Act 2006*, section 344, or a sentencing submission made by a party to the proceedings, that it considers appropriate to enable it to impose the proper sentence.
- (1A) Also, without limiting subsection (1), in imposing a sentence on an offender, a court may receive any information, or a sentencing submission made by a party to the proceedings, that the court considers appropriate to enable it to decide—
 - (a) whether it may make a control order for the offender under part 9D, division 3; or
 - (b) the appropriate conditions of a control order it must, or may, make for the offender under part 9D, division 3.
- (2) An authorised corrective services officer must not, in any information or report, recommend that a fine option order or

community based order should not be made for an offender merely because of—

- (a) any physical, intellectual or psychiatric disability of the offender; or
 - (b) the offender's sex, educational level or religious beliefs.
- (3) In this section—

sentencing submission, made by a party, means a submission stating the sentence, or range of sentences, the party considers appropriate for the court to impose.

15A Audiovisual link or audio link may be used to sentence

- (1) The court may allow anything that must or may be done in relation to the sentencing of an offender to be done over an audiovisual link or audio link, if the court considers use of the link is in the interests of justice.
- (2) However, the court may not make an order under subsection (1) if facilities mentioned in subsection (5)(a) are not available at the court or the place where the offender is present.
- (3) For subsection (1), in deciding whether use of an audio link is in the interests of justice, the court must have regard to the desirability of sentencing an offender over an audiovisual link, rather than an audio link, if an audiovisual link is available.
- (4) For sections 10(1) and 13(3) or (4), anything done, for an offender's sentencing, over an audiovisual link or audio link between the offender and the court sitting in open court is taken to be done in open court.
- (5) If an offender is sentenced over an audiovisual link or audio link and the offender's representative in the proceeding is at the place where the court is sitting—
 - (a) the court and the place where the offender is present must make facilities available for private communication between the offender and the offender's representative; and

- (b) a communication between the offender and the offender's representative is as confidential and inadmissible in any proceeding as it would be if it took place between the offender and the offender's representative while in each other's presence.
- (6) Subsection (5)(b) does not limit any other protection applying to the communication.
- (7) The provisions of the *Evidence Act 1977* relating to the use of an audiovisual link or audio link in criminal proceedings apply for, and are not limited by, subsection (1).

Part 2A Guideline judgments

15AA Definitions for pt 2A

In this part—

Attorney-General includes the nominee of the Attorney-General.

chief executive officer of Legal Aid Queensland includes the nominee of the chief executive officer of Legal Aid Queensland.

court means the Court of Appeal.

director of public prosecutions includes the nominee of the director of public prosecutions.

guideline judgment for an offence under a Commonwealth Act means a guideline judgment to the extent it relates to an offence under a Commonwealth Act.

guideline proceeding means—

- (a) that part of a proceeding relating to the giving or review of a guideline judgment under section 15AD; or
- (b) a proceeding, or part of a proceeding, under section 15AE on an application for the giving or review of a guideline judgment under that section.