

Sentencing

Sentencing laws vary between states and territories (see [Table 1](#) and [2](#) below).

Where an offence is committed in the context of domestic and family violence and the offence breaches an existing protection order, this is usually considered an aggravating feature for sentencing purposes (it is not a mitigating factor) (see [Table 2](#) below).

In all Australian jurisdictions it is possible for judicial officers to recognise [the dynamics of family violence](#) when sentencing offenders who have committed offences in the context of domestic and family violence.

Sentencing provides an important opportunity for judicial officers to clearly denounce domestic and family violence, to emphasise the accountability of the offender and to recognise the harm done to the victim [[ALRC/NSWLRC 2010](#)].

It is important to consider community [safety and protection](#) in sentencing for offences that take place in the context of domestic and family violence. The safety of the victim may be a relevant consideration in the selection of an appropriate penalty.

Rehabilitation of the offender may be an appropriate aim in sentencing some offenders who have committed offences in the context of domestic and family violence. In such cases there may be benefits in utilising sentencing approaches that require the perpetrator to attend a [perpetrator intervention program](#).

Courts have recognised that the need to deter future domestic and family violence is an important aim of sentencing for offences committed in the context of domestic and family violence.

Table 1: Approaches to sentencing where offences committed in the context domestic and family violence.

Australian Capital Territory	See for example: <i>R v Mazaydeh</i> [2014] ACTSC 325
New South Wales	s 21A(2)(d) <i>Crimes (Sentencing Procedure) Act 1999</i> (NSW) Judicial Commission of NSW, Sentencing Bench Book (2018) [NSW Sentencing Bench Book 2018] <i>Diaz v The Queen</i> [2018] NSWCCA 33 (14 March 2018)
Northern Territory	See for example: <i>Emitja v The Queen</i> [2016] NTCCA 4
Queensland	ss 9(10A) and 12A <i>Penalties and Sentences Act 1992</i> (Qld) Magistrates Court of Queensland, <i>Domestic and Family Violence Protection Act 2012 Bench Book</i> (2017) [QLD DFV Bench Book 2017], See for examples: <i>R v Major; ex parte Attorney-General</i> (Qld) [2011] QCA 210 (30 August 2011) <i>R v Fairbrother; ex parte A-G (Qld)</i> [2005] QCA 105
South Australia	s 3 <i>Sentencing Act 2017</i> (SA) See for example: <i>R v Wilkinson</i> [2008] SASC 172
Tasmania	See for example <i>Director of Public Prosecutions v Karklins</i> [2018] TASCCA 6 (20 April 2018) See also: ss 13 and 13A <i>Family Violence Act 2004</i> (Tas)
Victoria	Judicial College of Victoria, <i>Victorian Sentencing Manual</i> (2015) [Vic Sentencing Manual 2015] Judicial College of Victoria, <i>Family Violence Bench Book</i> (2014) especially 4.2 [Vic FV Bench Book 2014]
Western Australia	Department of Attorney General (WA), <i>Equality Before the Law: Bench Book</i> (2009) [WA Equality Before the Law: Bench Book 2009] See for example: <i>Bropho v Hall</i> [2015] WASC 50 (9 February 2015)

Table 2: Where an offence is committed in the context of domestic and family violence and breaches an existing protection order.

Australian Capital Territory	s 34(2) <i>Crimes (Sentencing) Act 2005</i> (ACT) <i>R v Elphick (No 2)</i> [2015] ACTSC 23 (1 April 2015)
New South Wales	s 21A(2)(d) <i>Crimes (Sentencing Procedure) Act 1999</i> (NSW) <i>R v MacAdam-Kellie</i> [2001] NSWCCA 170 (9 May 2001) [37]-[38] <i>R v Evans</i> [2017] NSWCCA 281 (21 November 2017)
Northern Territory	<i>The Queen v Haji-Noor</i> [2007] NTCCA 7 (18 May 2007)
Queensland	s 9(10A) <i>Penalties and Sentences Act 1992</i> (Qld) <i>R v Piper</i> [2015] QCA 129 (17 July 2015) <i>R v Brennan</i> [2013] QCA 316 (25 October 2013)
South Australia	<i>R v Parisi</i> [2003] SASC 249 (14 August 2003) [23] <i>R v Nedza</i> [2013] SASCFC 142 (18 December 2013) [46]
Tasmania	<i>Maingay v Seabourne</i> [2009] TASSC 67 (19 August 2009) [14]-[16]
Victoria	<i>DPP v Lade (a pseudonym)</i> [2017] VSCA 264 (21 September 2017) [43] <i>Filiz v The Queen</i> [2014] VSCA 212 (11 September 2014) [21]
Western Australia	<i>Atherden v The State of Western Australia</i> [2010] WASCA 33 (26 February 2010) [48]

See also 9.3.1 Sentencing Considerations- Breaches of protection Orders:

Table 1: Jurisdictional approaches to sentencing breaches of protection orders.

Table 2: Double Punishment Considerations.