

SENTENCING FOR DOMESTIC VIOLENCE IN THE LOCAL COURT

Executive summary

Since 2016, legislative and policy initiatives continue to adapt and expand the measures available for the protection of victims of domestic violence and to deter domestic violence offending. This *Sentencing Trends & Issues* considers those changes impacting on offences, on sentencing for these offences and on the rehabilitation of offenders.

The offences considered in this study account for the overwhelming majority of domestic violence offences dealt with in the Local Court so that although only limited conclusions can be drawn from the analysis of the sentences imposed, the insights provided are interesting.

For the study period from 24 September 2018 to 23 September 2020, the statistical analysis shows:

- domestic violence (DV) offenders are overwhelmingly male (80.3%)
- over a quarter of DV offenders identified as being of Aboriginal or Torres Strait Islander (or First Nations) descent (27.5%)
- almost three-quarters of all DV offenders had a prior record (73.7%)
- almost half of all DV offenders had a prior record of DV offending (44.4%)
- DV offences attracted more severe penalties than did non-DV offences with higher rates of full-time imprisonment, intensive correction orders (ICOs), community correction orders (CCOs) and conditional release orders (CROs) with conviction, reflecting in part the importance of general deterrence
- higher rates of supervised orders were imposed for DV offenders compared with non-DV offenders
- over half of DV offenders (52.2%) were sentenced to full-time imprisonment (12.2%) or a supervised order (40.2%)
- where an ICO was imposed, few DV offenders had a home detention condition
- additional conditions, including conditions requiring that an offender participate in a rehabilitation program, receive treatment, abstain from alcohol or drugs (or both) were not uncommon for DV offenders whose primary penalty was an ICO, CCO or CRO
- the offence of intentionally choking, suffocating or strangling another person without their consent in s 37(1A), which was only added to the *Crimes Act 1900* with effect from 1 December 2018, had one of the highest proportions of DV offenders

- the small proportion of successful severity appeals suggests that sentences accord with the intent of the most recent legislation and have little effect on the distribution of penalties imposed at first instance

The analysis suggests that in the Local Court, the sentences imposed, featuring as they do high levels of sentences of full-time imprisonment and supervised orders, reflect the new requirement in s 4A of the *Crimes (Sentencing Procedure) Act 1986*, that sentences of full-time imprisonment or supervised orders be imposed on a domestic violence offender unless the court is satisfied a different sentencing option is more appropriate in the circumstances of the particular case. The application of relevant sentencing principles, especially those concerning the need for deterrent sentences, are reflected in the analysis as well.

The figures above associated with a domestic violence offender's history of offending, including for repeated domestic violence offending, demonstrate the need for programs and processes which actively promote an offender's prospects of rehabilitation. The conditions such as requiring an offender to participate in a rehabilitation program, receive treatment and abstain from alcohol and/or drugs provide a means through which sentences may positively address causes of re-offending in the longer term.

In terms of reducing the rate of offending by First Nations people in this area, the availability of evidence as to the significance of culture for First Nations people in the promotion of healing and rehabilitation through use of the 2021 Report, *Significance of Culture to Wellbeing, Healing and Rehabilitation* is an important and positive step.

Notwithstanding the scale of reform in this area and the efforts directed to reducing the incidence of domestic violence, such offending remains prevalent.

The Local Court will continue to impose sentences which are guided by the relevant legislative scheme and sentencing principles, appropriately balancing the competing purposes of sentencing.