



## Mandatory sentencing in Queensland

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When sentencing an offender for a [criminal offence in Queensland](#), judges and magistrates usually have a level of discretion as to the sentence they impose. That is not always the case, however. A mandatory sentence is one that the judge or magistrate **must** impose upon someone who has committed a certain offence.

Queensland has different types of mandatory sentences, for example:

- mandatory imprisonment (e.g. life imprisonment for [murder](#) or a repeat [serious child sex offence](#));
- mandatory driver license disqualification periods (e.g. for certain [traffic offences](#)); and
- mandatory minimum sentences of imprisonment (e.g. a specified minimum sentence or penalty which must be imposed for a particular criminal offence).

## Who sets mandatory sentences?

Mandatory sentences are set by parliament. Such laws are seen as a means of addressing community concerns that sentences handed down by the courts are sometimes too lenient.

Mandatory sentencing laws are often controversial and attract strong views both for and against them. Those in favour of mandatory sentencing laws suggest they:

- promote consistency in sentencing (to counteract dissatisfaction with the traditional sentencing system where courts have a broad discretion to deal with offenders);

- deter individuals from offending;
- ensure appropriate punishment; and
- protect the community.

However, others argue that minimum mandatory sentences are ineffective in that they:

- do not work as an effective deterrent to future offending;
- create unfairness by improperly constraining the exercise of judicial discretion (by imposing a 'one size fits all' remedy); and
- reduce the incentive for defendants to enter a plea of guilty, thereby resulting in increased work (and therefore delays) in the courts.

## High Court decision considers application of mandatory sentencing

Given the controversial nature of mandatory minimum sentences and their profound effect on individual offenders, the 2024 High Court decision of [Hurt v R; Delzotto v R \[2024\] HCA 8](#) is important in terms of its practical application in sentencing and may impact how governments use mandatory minimum sentences in future legislation.

## The cases: Delzotto v The King and Hurt v The King

The High Court considered the appropriate approach to mandatory minimum sentencing in these two cases. In both cases, the defendants were convicted and sentenced for the offence of possessing child abuse material. Each defendant contended that their sentence was subject to error.

Both defendants were sentenced on the basis that they had previously been convicted of a 'Commonwealth child sexual abuse offence', which meant that the court had to impose, for the current offences, a minimum mandatory sentence of imprisonment of at least four years.

The way in which the mandatory minimum sentence was applied had a vast impact on the sentence imposed in each case.

### Delzotto v The King

In [Delzotto](#), the Crown argued that the four-year minimum period should be used as a yardstick and reserved for the least serious types of offending. However, the sentencing judge adopted an alternative approach in first applying all relevant sentencing principles and, if the sentence arrived at falls below the minimum penalty, only then having regard to it by increasing the sentence imposed to the minimum penalty prescribed by the statute.

### Hurt v The King

In [Hurt](#), the sentencing judge applied the approach that the mandatory minimum sentence applies as a pre-determined baseline for cases involving the least serious offending.

## 2024 decision of the High Court related to mandatory sentencing

The key issue the High Court had to consider on appeal was the correct approach to sentencing in circumstances where there is a mandatory minimum sentencing provision.

The High Court dismissed both matters on appeal.

Despite arguments advanced to the contrary, the court concluded that there was a “*clear and unequivocal legislative intention that the prescribed minimum sentences serve as a yardstick*”.

This means the minimum sentence provides a yardstick representing the least serious case warranting imprisonment. Because the yardstick imposes an increased starting point for the appropriate term of imprisonment for the offence, the minimum term operates to increase the appropriate term of imprisonment generally for that offence.

The practical effect is that sentencing judges should have regard to the minimum penalty from the outset when deciding the bottom of the range of appropriate sentences. This is similar to the manner in which the maximum penalty is considered to be the upper limit of the range of appropriate sentences.

This means that where there is a legislated mandatory minimum sentence, it must be used as a standard for comparison when applying the relevant sentencing principles. The court said that this approach best aligns with the intention of parliament and the fundamental criminal law principle of equal justice.

## Get help from a criminal lawyer

Sentencing laws in Queensland can be complex, and are always evolving. Mandatory minimum sentences, amongst other [sentencing principles](#), can have far-reaching consequences on the outcome of your matter if applied incorrectly.

We recommend that, if you haven't already, you contact our office to obtain advice and representation if you are facing criminal charges which impose a mandatory minimum sentence.

Having successfully appeared on sentence hearings for countless clients, we are well-equipped to assist you with this process to ensure the best results.

## Contacting Gilshenan &Luton Criminal Defence Lawyers

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