

TERMS OF REFERENCE

QUEENSLAND SENTENCING ADVISORY COUNCIL

SENTENCING FOR SEXUAL VIOLENCE OFFENCES AND AGGRAVATING FACTOR FOR DOMESTIC AND FAMILY VIOLENCE OFFENCES

I, Shannon Fentiman, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, having regard to:

- the report of the Special Taskforce on Domestic and Family Violence *Not Now, Not Ever: Putting an end to domestic and family violence in Queensland*;
- amendments made in the *Criminal Law (Domestic Violence) Amendment Act 2015* to the *Domestic and Family Violence Protection Act 2012* to increase the maximum penalties for contravening a domestic violence order and to the *Penalties and Sentences Act 1992* to provide for notations to indicate the domestic and family violence context of criminal offending;
- further amendments made in the *Criminal Law (Domestic Violence) Amendment Act 2016* to the *Penalties and Sentences Act 1992* making domestic and family violence an aggravating factor on sentence;
- the Queensland Sentencing Advisory Council research brief No.1, May 2021, *The impact of domestic violence as an aggravating factor on sentencing outcomes*;
- the report of Women's Safety and Justice Taskforce, *Hear her voice: Report one*, including recommendation 73 of that report;
- the report of Women's Safety and Justice Taskforce, *Hear her voice: Report two*;
- commentary expressing that penalties currently imposed on sentences for sexual assault and rape offences may not always meet the Queensland community's expectations;
- the maximum penalties provided in the Criminal Code for sexual assault and rape offences;
- the general expectation of the Queensland community that penalties imposed on offenders convicted of domestic and family violence offences and sexual assault and rape offences are appropriately reflective of the nature and seriousness of domestic and family violence and sexual violence;
- the need to protect victims from domestic and family violence and sexual violence;
- the need to hold domestic and family violence and sexual violence offenders to account;
- the sentencing principles and purposes of sentencing as outlined in the *Penalties and Sentences Act 1992*
- the need to maintain judicial discretion to impose a just and appropriate sentence in individual cases; and
- the need to promote public confidence in the criminal justice system.

refer to the Queensland Sentencing Advisory Council, pursuant to section 199(1) of the *Penalties and Sentences Act 1992*, a review of sentencing practices for sexual assault and rape offences and the operation and efficacy of section 9(10A) of the *Penalties and Sentences Act 1992*.

Scope

In undertaking this reference, the Queensland Sentencing Advisory Council will:

- review national and international research, reports and publications relevant to sentencing practices for sexual assault and rape offences and in sentencing adult offenders for domestic violence offences;

i. Sentencing practices for sexual assault and rape offences

- examine the penalties currently imposed on sentences under the *Penalties and Sentences Act 1992* for sexual assault and rape offences and review sentencing practices for these offences including the types of sentencing orders, duration and (any) time ordered to be served in custody prior to the offender being released into the community or being eligible for release on parole;
- determine whether penalties currently imposed on sentence under the *Penalties and Sentences Act 1992* for sexual assault and rape offences adequately reflect community views about the seriousness of this form of offending and the sentencing purposes of just punishment, denunciation and community protection;
- identify any trends or anomalies that occur in sentencing for sexual assault and rape offences;
- assess whether the existing sentencing purposes and factors set out in the *Penalties and Sentences Act 1992* are adequate for the purposes of sentencing sexual assault and rape offenders and identify if any additional legislative guidance is required;
- identify and report on any legislative or other changes required to ensure the imposition of appropriate sentences for sexual assault and rape offences;
- advise on options for reform to the current penalty and sentencing framework to ensure it provides an appropriate response to this type of offending;
- examine relevant offence, penalty, and sentencing provisions in other Australian and international jurisdictions to address offending behaviour relating to sexual assault and rape and any evidence of the impact of any reforms on sentencing practices;

ii. Operation and efficacy of section 9(10A) of the Penalties and Sentences Act 1992 and impact of increase in maximum penalties for contravention of a domestic violence order

- review sentencing practices for domestic violence related offences following changes to the *Penalties and Sentences Act 1992* by the *Criminal Law (Domestic Violence) Amendment Act 2016* to make the fact a person is convicted of a domestic violence offence an aggravating factor for the purposes of sentencing, except if it is not reasonable because of the exceptional circumstances of the case;
- advise on the impact of the operation of the aggravating factor in section 9(10A) of the *Penalties and Sentences Act 1992* on sentencing outcomes for all domestic violence related offences including for charges involving non-physical violence and coercive control;
- identify any trends or anomalies that occur in application of the aggravating factor in section 9(10A) of the *Penalties and Sentences Act 1992* or in sentencing for domestic violence-related conduct generally that create inconsistency or constrain the sentencing process;
- examine whether section 9(10A) of the *Penalties and Sentences Act 1992* is impacting victims' satisfaction with the sentencing process and if so, in what way;
- consider how sentencing trends and outcomes for contravention of a domestic violence order may have changed following the 2015 increase in the maximum penalties following amendments by the *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld);

Consultation

- consult with key stakeholders, including but not limited to the judiciary, victims/survivors of domestic and family violence and sexual violence, the legal profession, key First Nations community representatives and organisations, domestic and family violence services, sexual violence advocacy groups, community legal centres and relevant government departments and agencies (e.g. Queensland Police Service and Director of Public Prosecutions);

Impact of recommendations and other matters

- advise on the impact of any recommendation on the disproportionate representation of Aboriginal and Torres Strait Islander people in the criminal justice system;
- advise whether the legislative provisions that the Queensland Sentencing Advisory Council reviews in the *Penalties and Sentences Act 1992*, and any recommendations are compatible with rights protected under the *Human Rights Act 2019*; and
- advise on any other matters relevant to this reference.

The Queensland Sentencing Advisory Council is to provide to the Attorney-General and Minister for Justice, Minister for Women, and Minister for the Prevention of Domestic and Family Violence a report on its examination of:

- (i) sentencing practices for sexual assault and rape offences by **16 September 2024**; and
- (ii) the operation and efficacy of section 9(10A) of the *Penalties and Sentences Act 1992* and impact of increase in maximum penalties for contravention of a domestic violence order by **30 September 2025**

Dated the *17th* day of *May* 2023



SHANNON FENTIMAN MP

Attorney-General and Minister for Justice, Minister for Women, and Minister for the Prevention of Domestic and Family Violence