

27 April 2024

Queensland Sentencing Advisory Council
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Brisbane Qld 4001

Submitted: submissions@sentencingcouncil.qld.gov.au

Dear Committee Members

Re: 'Review of sentencing for sexual assault and rape offences'

Please accept this submission based on the questions in the Consultation Paper, in support of the Sentencing of Sexual Assault and Rape: - *The Ripple Effect*.

Recommendation: Chapter 3: Sentencing purposes, principles and factors

Q1 - What are the most important purposes in sentencing a person for sexual assault and rape, and why? *Imposing the penalty at the highest level that deters the perpetrators behaviour.*

Q2 - Should any changes be made to the general or specific purposes a court must consider when sentencing a person for rape or sexual assault? *The maximum sentence or 80% of the head sentence should be carried out for all sex offenses.*

Q3 - Sentencing principles and factors

How well does section 9 of the *Penalties and Sentences Act 1992 (Qld)* capture the principles and factors that are important in sentencing for sexual assault and/or rape offences? Can this section be improved in any way? *s9(e) of the Act - Recommendations to release all judgments onto the Parole Board's website or create a public register in support of community safety.*

Q4 - Other sentencing guidance

Are current forms of sentencing guidance adequate to guide sentencing for rape and sexual assault? Are there any problems or limitations? *The current sentencing options; Wholly suspended sentences, Intensive Correction Order (ICO), Breaches of Bail conditions and Fines do not deter the perpetrator of such offenses and should not be handed out as first resort.*

Q5 - Relevance of victim age and vulnerability

Is the current approach to sentencing for sexual assault and rape offences committed against children under 16 years appropriate? *No, all too often we hear perpetrators get off lightly on rape offenses of children.*

What about for other people who are vulnerable for other reasons (e.g., due to advanced age, disability, cultural background)? Should any changes be made? *Review of the services that are in place that support vulnerable children when completing victim statements should be implemented due to the process being triggering and emotional distressing. Children should have support services for this exact reason.*

Q6 - Good character

Should any changes be made to how good character can be considered by courts as this applies to sexual assault and rape? *'Your Reference Ain't Relevant' Campaign in ACT and victim-survivors of child sexual abuse state that sentences for perpetrators of child sexual abuse should not be mitigated on the basis of good character references. Currently, the legislation prohibits certain types of perpetrators to utilize good character references, for example: teachers, religious leaders, scout masters, doctors, people with obvious good standing in the community; but perpetrators who didn't use their obvious good standing to gain access to their victims - step parents, siblings or other relatives for example - are well within their right to use these references. The campaign implores the Assembly to create a uniform rule so all perpetrators of this heinous crime can be held accountable; the very nature of the crime is predatory, manipulative and involves grooming; A perpetrators "good" character cannot be separated from the evil they commit upon the most vulnerable victims of all: children. This same campaign should apply in QLD for all sex offenses that are perpetrated against adults and children.*

<https://www.parliament.nsw.gov.au/lc/petitions/Pages/tabled-paper-details.aspx?pk=186308>

Q7 - Systemic disadvantage and cultural considerations

What cultural issues impact on Aboriginal and Torres Strait Islander persons that are particularly important in sentencing for rape and/or sexual assault? *Unable to comment as I am not familiar with the cultural issues.*

Q8 - What cultural considerations apply to people from other culturally and linguistically diverse backgrounds relevant to sentencing for these types of offenses? *Unable to comment as I am not familiar with the cultural issues.*

Q9 - History of victimisation

To what extent should being a victim survivor of sexual violence and other forms of abuse be taken into account when sentencing a person for sexual assault and rape? *The level of abuse and the trauma the victim has sustained should be considered.*

Q10 - 'Exceptional circumstances' under s 9(4)(c) of the *Penalties and Sentences Act 1992 (Qld)* How well are 'exceptional circumstances' (s 9(4)(c) of the PSA) working as this applies to sexual assault and rape offences? Should any changes be made? *Applications for parole Order s176 and s193 should not be offered (as the prisoner has co operated) when there has been any type of child sexual abuse that has occurred.*

Q11 - Sentencing standards for historical sexual offenses
Should any changes be made to the requirement in *section 9(4)(a) of the Penalties and Sentences Act 1992 (Qld)* for courts to have regard to current sentencing practices, principles and guidelines when sentencing a person for a sexual offense against a child under 16 years regardless of when the offense was committed? *Same as above.*

Recommendation: Chapter 4: Current approaches to sentencing and sentencing practices

Q12 - Does sentencing for sexual assault and rape adequately reflect the purposes of sentencing and the seriousness of these offences? Should any changes be made? *The current sentencing is appalling. Let's throw out good character references for a start as you can't be a good person and sexually abuse or rape another. The current sentencing and penalties are not being applied at the head sentence and from what is seen discounts are being given with biased attitudes for the perpetrator safety and welfare placed in prison.*

Recommendation: Chapter 5: Penalty and parole options

Q13 - How well are current penalty options working in meeting the purposes of sentencing for sexual assault and rape? Should any changes be made? *As above.*

Q14 - Is the current guidance for courts in deciding what type of sentencing order to make appropriate? Should any changes be made? *Case SC No 2454 of 2010 John Alexander Doyle. Serial sex offender listed under Dangerous Prisoners (Sexual Offenders) Act 2003 - orders were made as a consequence of alleged contravention of that order, the respondent had a number breaches and assessed as re offending as high. Where there was no programs or courses the respondent would undertake while*

in custody. The offender discharged the onus of satisfying the court that despite the contravention, the protection of the community could be ensured by his return to community subject to a supervision order. This tells me there are not enough resources in place and you put more faith in the offender to do the right thing then increase the penalty for not only breaching the order once, but three times. These offenses for this offender are extremely heinous and traumatizing for the young children involved.

I also add that the assessment required by normally two psychiatrists to assess the level of risk of the offender when releasing them into the community needs to be reviewed also. You could have one offender assessed over say 5 years and each time there would be a list of 4 - high risk and two low. The last assessment record is normally the one they base that assessment on. Offenders can quite easily manipulate the system and go under the radar in order to get their way. Downgrading the prisoner's risk level from high to low is extremely dangerous and irresponsible when making these decisions to release into the community.

Recommendation: Chapter 6: Information available to courts to inform decision-making

Q15 - Pre-sentence reports

What type of information is important in sentencing sexual assault and rape offences to ensure courts are supported in imposing an appropriate sentence? *The New Zealand Parole Board publishes all judgments of parole orders on their website. Unfortunately, the current standard the Queensland Parole Board has in place lacks the basic information to allow public access to such orders with only the AustLII Databases listing all Judgments is quite time consuming it could be perceived it minimises the perpetrators accountability. Recommendations to release all judgments onto the Parole Board's website or create a public register in support of community safety and provide a victims section to register and be notified of any updates.*

How well is the current approach working and how could it be improved?

Q16 - Cultural reports for Aboriginal and Torres Strait Islander peoples and people from other cultural backgrounds

How well does section 9(2)(p) of the Penalties and Sentences Act 1992 (Qld) currently allow for courts to take community and cultural considerations into account in sentencing people who identify as being Aboriginal and Torres Strait Islander through submissions made by local community justice groups? *Can't comment*

Could any improvements be made to better inform courts in sentencing people who are Aboriginal and Torres Strait Islander or from another cultural background about relevant considerations? *Always room for improvements have staff or resources that acknowledges their cultural needs.*

Recommendation: Chapter 7: Understanding victim harm and justice needs

Q17 - How well do current processes (including the use of victim impact statements) work in Queensland in making sure the harm to a victim is understood and taken into account in sentencing? *There needs to be a separate support service such as a social worker or of a similar service to support the victim with making such statements. A majority would have never been through the court system let alone doing a victim impact statement is overwhelming and stressful. Children should have support from social workers in order to prevent any conflicts of interest or any bias attitudes.*

Q18 - What would make the current sentencing process better for people who have been sexually harmed? *Apply maximum penalties for sex offenders and name and shame them on the parole board's website or public register.*

~~Q19 - For victim survivors who identify as Aboriginal and Torres Strait Islander or from other cultural backgrounds:~~

~~(a) how well is the harm caused to these victims and any cultural considerations being acknowledged and taken into account in sentencing?~~

~~(b) what would make the sentencing process better for these victims?~~

Recommendation: Chapter 8: Restorative justice approaches

~~Q20 - How (if at all) should the outcomes of any restorative justice processes taking place prior to sentence be taken into account at sentence for rape and sexual assault?~~

~~Q21 - If a new legislative restorative justice model for adults is introduced in Queensland, what types of sentencing guidance and options do you support being available? What other considerations might be important?~~

Recommendation: Chapter 9: Human Rights considerations

~~Q22 – Is current statutory guidance to courts in the sentencing of rape and sexual assault compatible with rights protected under the *Human Rights Act 2019 (Qld)* and other human rights instruments (e.g., UN Convention on the Rights of Persons with Disabilities)? If any aspects are not compatible, are any existing limitations reasonably and demonstrably justifiable (*Human Rights Act 2019 (Qld)*, s 13)?~~

~~Q23 – What reforms could be made to improve compatibility with the *Human Rights Act 2019 (Qld)* and/or to meet the test of being 'reasonably and demonstrably justifiable'?~~

Recommendation: Chapter 10: Other issues

~~Q24 – Anomalies and complexities~~

~~How do the anomalies and complexities identified impact sentencing for rape and sexual assault? How might these be overcome?~~

~~Q25 – 5. Other issues~~

~~Is there any other issue about sentencing for sexual assault and rape offences that you would like to raise with the Council?~~

This submission is submitted as an **anonymous public submission**.

Yours sincerely,

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