



ATSILS
Aboriginal and
Torres Strait Islander
Legal Service (Qld) Ltd

Brisbane Office | ABN: 1111 6314 562

Level 5, 183 North Quay, Brisbane Qld 4000
PO Box 13035, George Street, Brisbane Qld 4003
07 3025 3888 | Freecall 24/7: 1800 012 255
07 3025 3800
info@atsils.org.au
www.atsils.org.au



22nd June 2023

Ms April Chrzanowski
Director of the Secretariat
Queensland Sentencing Advisory Council
GPO Box 2360
BRISBANE QLD 4001

By email: submissions@sentencingcouncil.qld.gov.au

Dear Ms Chrzanowski,

Re: Preliminary feedback on QSAC review of sentencing for sexual violence offences and the aggravating factor for domestic and family violence offences

Thank you for the opportunity to provide comments in relation to the Queensland Sentencing Advisory Council (QSAC) review of sentencing for sexual violence offences and the aggravating factor for domestic and family violence offences (Review). This submission is in response to your call for preliminary feedback on the Review to help QSAC identify key issues that it should explore as part of the Review.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 24 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by over five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Preliminary feedback on the Review to help QSAC identify key issues to be explored

With respect to subparagraph (i) of the Scope in the Terms of Reference for the Review (Sentencing practices for sexual assault and rape offences), we offer the following preliminary feedback:

1. Any analysis of penalties imposed on relevant sentences must be qualitative and incorporate consideration of all relevant sentencing considerations given weight during the sentencing process. Should the Review focus quantitatively on overall sentence durations, types, custodial periods, etc., without due regard to features of the offending and matters in mitigation, there is potential for such an analysis to have misleading results.
2. With respect to determining whether penalties currently imposed on sentences 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, we wish to assert that the term “adequately reflect community views” is highly subjective, and a critical feature of any community views being weighed is that they need to be informed. QSAC’s “Judge for Yourself” Project is a useful example of how the public’s perceptions of sentencing can be misguided. Victoria’s Sentencing Advisory Council also recently published research on this issue¹. In our view, general community polls or opinions of members of the public are not a particularly useful metric against which law reform in this area should be measured.
3. With respect to any analysis on the adequacy of the sentencing factors set out in the *Penalties and Sentences Act 1992*, we recommend QSAC answers the question: “is there evidence from past sentencing practices that routinely (and unaddressed by appeals) demonstrates factors relevant to sentences for an offence of a sexual

¹ See the Victoria State Government’s Sentencing Advisory Council publication entitled *Public Opinion about Sentencing – A Research Overview*, available at <https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Public_Opinion_about_Sentencing_Research_Overview.pdf>.

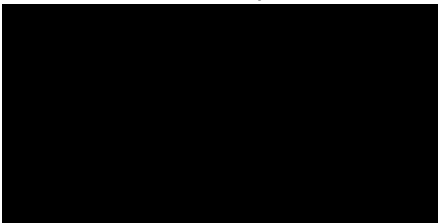
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nature have either been given undue/insufficient weight or have been disregarded or that irrelevant factors have been considered when they should not have been, and that such has led to an unjust sentence being imposed?”.

4. We further recommend consideration of broader sentencing options, such as those tabled during the QSAC Intermediate Sentencing Options and Parole Project, in lieu of a focus on terms of imprisonment.

We thank you for the opportunity to provide feedback on the Consultation.

Yours faithfully,



Shane Duffy
Chief Executive Officer