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Sisters Inside Inc. is an independent community organisation which exists to advocate for the human rights of women in the criminal justice system

14 July 2023

Queensland Sentencing Advisory Council
GPO Box 2360
Brisbane QLD 4001

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

To the Council,

Re. Review of sentencing for sexual violence offences and aggravating factor for domestic and family violence offences

We welcome the opportunity to provide preliminary feedback on the Council's review on sentencing for rape and sexual assault offences and the aggravating factor for domestic and family violence offences.

Sisters Inside Inc.

Sisters Inside Inc. is an independent community organisation that exists to advocate for the collective human rights of women and girls in prison and provides unique services to meet the needs of criminalised women, girls and their families. We have more than 30 years' experience supporting criminalised women and girls, and advocating for an end to the racial gendered violence that underpins the carceral system. All our work is directly informed by the wisdom of criminalised women. Aboriginal and Torres Strait Islander women have been central in the formation and drive of Sisters Inside Inc., and their knowledge, experience and input directs all our work. We privilege the voices of criminalised women as the authorities on all matters pertaining to them, and as such Sisters Inside Inc. is uniquely placed to contribute to this consultation.

Victim-survivors' voices in reporting, prosecution and sentencing

Women with criminal histories

Our submission is informed by our explicit knowledge and experience gained supporting and advocating for currently and formerly incarcerated women. The great majority of currently or formerly incarcerated women (various statistics report between 70% - 90%) have been victim to sexual assault and sexual violence, and almost all have experienced some other form of interpersonal violence. We know that the majority of these women have not had their experiences of violence addressed or resolved by the judicial system. At every stage of the judicial process, criminalised women and especially Aboriginal and/or Torres Strait Islander women, other First Nations women, and racially marginalised women, are regarded with disdain because of their criminal histories, and are often misidentified as perpetrators of violence by the police and charged and further criminalised. Criminalised women are not considered to be victim-survivors: they are not believed to be good witnesses; their claims are not believed by police; their matters are not progressed by prosecution; and when their matters are progressed negotiations are made and lesser charges are pled to. This systemic disregard discourages criminalised women from reporting assaults.

While imprisonment is frequently imposed in matters of violence of sexual nature and rape that are prosecuted, we often see that the victim-survivor's - the complainant's - position on the form and severity of sentence is not taken into account. When the victim-survivor is an Aboriginal and/or Torres Strait Islander woman, a criminalised woman, or both, their experiences, voices and wishes are regarded even less. We advocate for the views and wishes of victim-survivors be taken into account and privileged throughout the legal process, including but not limited to sentencing. That is, from first contact with and reporting to police, through to sentencing, the autonomy and wishes of the victim-survivors are valued and dictate how the matters proceed through every stage of the judicial system. We believe that the most important expectations to be met regarding appropriate forms of justice are those of the victim-survivor, and to ensure this occurs, the racial-gendered marginalisation experienced by some victim-survivors must be fundamentally addressed.

Sentencing practices

Sisters Inside opposes the implementation of mandatory sentencing of any kind, as well as of mandatory orders relating to Domestic and Family Violence (DFV). We advocate for each case

to be assessed and addressed based on its own merit, and that judicial discretion must be exercised in each instance to account for nuance, complexity and circumstance.

We do not support the increase of penalties relating to these charges, as it is consistently demonstrated that 'general deterrence' is a myth, and higher penalties do not have any implications in deterring interpersonal violence. Further, we believe that mandatory sentences and increased penalties do nothing to address the foundational underpinnings that encourage and permit racial-gendered violence, and in fact, the judicial system often acts as a blunt tool that causes more harm.

Sisters Inside advocates for more sentencing options, including implementation of Transformative Justice models, and we encourage the Council to look to those communities and leaders that implement alternative justice models, and are advancing towards real justice without reliance on the court systems. We suggest that Transformative Justice models may include strategies such as mediation, healing circles etc. that are undertaken with support to resolve matters that would otherwise be dealt with by the Courts. Considering the mass failure of the current judicial and carceral approach to addressing sexual violence and DFV, we believe that the obtainment of justice does not have to eventuate in criminal charges. Where and when agreeable and appropriate to both parties, transformative justice approaches to instances of DFV can be successful in keeping relationships and families together, especially where children are involved and at risk of intervention by the family police system.

In our experience, the wider community does not understand sentencing practices and penalties in relation to sexual violence and DFV, and do not understand the social underpinnings that perpetuate and uphold the perpetration of sexual violence. The lack of information about the judicial system leads to confusion and the creation of a vacuum, whereby some advocate for harsher penalties for sexual violence, rape and DFV without understanding the harshness with which perpetrators are penalised when they are indeed prosecuted. We encourage the Council to undertake community information sessions in different forms to encourage community understanding of penalties and sentencing, and the mitigating factors when defendants plead to an offence.

We note that we do not support the criminalisation of coercive control and refer the Council to two joint Submissions from Sisters Inside and The Institute for Collaborative Race Research relating to this matter (see attached).

Criminalisation and sentencing of domestic and family violence (DFV) victim-survivors

We hold specific concern about the criminalisation and prosecutions of victim-survivors of DFV in instances of defence or retaliation against their abuser. There is no efficacy in punishing a person whose violent behaviour was born from being subjected to violence in their interpersonal relationship. “Crimes” committed by victim-survivors are specific and relational to the harm to which they were subjected. We refer the Council to Leigh Goodmark’s work that deals extensively on the criminalisation of victim survivors. We see the carceral response to DFV entrenched in ‘traditional’ gender stereotypes, in that the weak, meek and vulnerable *feminine* victim survivors of abuse are to be protected, and victim-survivors who do not fit this image are “imperfect victims”. Aboriginal and Torres Strait Islander women, women of colour, trans and gender diverse people, lesbians and queer women, queer and gay men, sex workers etc. are categorically treated as imperfect victims in instances of DFV, and are often not believed *if* abuse is reported. They are also far more likely to be criminalised themselves when police intervene in their violent relationships.

Victim-survivors that retaliate with violence and become defendants in the criminal legal system lose their position as victim when they are criminalised. The perpetration of a crime categorises a person as “bad” and therefore no longer a victim, and no consideration is given to the complex circumstances that contribute to the criminalised act of retaliatory violence. Retaliatory and defensive behaviour occurs in response to (usually cumulative) acts of violence, and inadequate consideration is given to this history by the criminal legal system.

We observe a number of trends in the criminalisation of victim-survivors that we support through our work, all of whom are women.

1. Women charged with DFV related offences - which may be of any severity - are usually remanded and subsequently not sentenced to terms of imprisonment
2. Victim survivors, especially Aboriginal and Torres Strait Islander victim survivors, are not likely to report experiences of DFV due to mistrust of police and the criminal legal system, and the general experience of society’s victim-blaming and disbelief of those who *do* speak about or report their abuse. This skews the representation of instances of abuse in the Courts.
3. Women, and especially Aboriginal and Torres Strait Islander women, are highly criminalised in cross-order applications, and at risk of criminalisation with the legislation around coercive control. This is a result of systemic racism in police and criminal legal

responses, hyper surveillance of particular communities, attitudes toward criminalised women, conceptions of 'victimhood' etc. The nexus of criminalisation and racial-gendered violence is explicitly and extensively discussed in the submissions attached here.

Thank you for considering our submission, please do not hesitate to contact me on (03) 3844 5066 if you wish to discuss our submission or our programs further.

Yours sincerely,

Sasha Jooste

Policy Officer

Sisters Inside Inc.