



SUBMISSION

Sentencing of Sexual Assault and Rape
Queensland Sentencing Advisory Council
Consultation Paper due 22 April 2024



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Chief Executive Officer
DVConnect
PO Box 10575 Adelaide Street
Brisbane QLD 4000

Email: ceo@dvconnect.org
Phone: 07 3156 2323
Website: www.dvconnect.org

DVConnect receives funding from the Queensland Government

DVConnect respectfully acknowledges and celebrates the Traditional Owners/Custodians throughout Australia and pays its respects to Elders, children and young people of past, current and future generations. We are committed to helping anyone experiencing domestic, family and/or sexual violence. This includes the LGBTIQ+ community, people of all ethnicities, religions, ages, abilities and pets.

For information about this Submission, please contact:
Michelle Royes, Director Clinical Governance. [REDACTED]



About DVConnect

DVConnect provides several national and state responses to people who have experienced violence and offer support and pathways to safety and healing.

Queensland wide:

Domestic, family and sexual violence response services:

- DVConnect Womensline
- DVConnect Mensline
- Sexual Assault Helpline
- Forensic Support Line
- Pets in Crisis
- Bella's Sanctuary

Victims of crime service:

- Victim Connect
- Victims of Crime Community Response Pilot

Nationally:

- National Sexual Assault, Domestic & Family Violence Counselling Service, 1800RESPECT.

DVConnect's driving ethos is respect and safety, the right of people to live without violence, in the home or in the community. We are a not-for-profit organisation, with primary funding streams from Department of Justice and Attorney General, Office for Women and Violence Prevention (Queensland); Department of Justice and Attorney General, Victim Assist Queensland (Queensland) and Department of Social Services (Australia).

DVConnect was established in 1980 and is Queensland's state-wide crisis response service for domestic, family and sexual violence. DVConnect helps Queenslanders find pathways to safety 24 hours a day, 7 days per week. Annually, DVConnect takes in excess of 100,000 calls across all lines and provides crisis intervention across a number of key services. Womensline receives one call for help every five minutes (across a 24 hour period). Crisis support is provided in the form of emergency telephone support, emergency crisis accommodation placement and transport for families affected by abusive relationship, counselling for men, women and victims of sexual assault, education and support for men, community education, and care for pets of families experiencing domestic and family violence. DVConnect also operates Bella's Sanctuary a 5-unit medium-term accommodation residence that exists to provide women and children with a safe housing option after leaving a shelter/refuge.

DVConnect provides Australia's national sexual assault, domestic and family violence support service, 1800RESPECT. This service provides information, referral and counselling 24 hours a day, 7 days per week. DVConnect are subcontracted by Telstra Health to provide specialist counselling across the country.



Victim Connect is the state-wide response for victims of crime that fall under the *Victim Of Crime Assistance Act 2019* (Queensland). VictimConnect provides a state-wide 24/7 helpline and multi-session counselling and case management support service. Delivering this service expands DVConnect's experience with those who experience domestic, family and sexual violence (DFSV) to now include those who experience violent and personal crime across Queensland.

DVConnect operates from an intersectional feminist framework, acknowledging that DFSV is gender-based violence. This gendered analysis is supported by research, evidence and data, and indicates that DFSV is most often perpetrated by men against women, and that perpetrators of this violence are fully responsible for their actions. This framework acknowledges and responds to the intersectional experience of DFSV.

While the experience of those impacted by violent and personal crime is more broad reaching than DFSV, we build upon our intersectional, trauma-informed expertise to offer recovery-based counselling and case management.

The clinical services provided by DVConnect are inclusive and trauma-informed. We are guided by the diverse voices of survivors and recognise our clients as the expert in their own lives. The abilities, strengths, goals and needs of people living with disability are respected, as are individuals from culturally and linguistically diverse backgrounds. DVConnect acknowledge that Aboriginal and Torres Strait Islander people know best what their communities need and want. Importantly, the intersectional approach of DVConnect considers and responds to how overlapping forms of discrimination may impact a client's experience of DFSV and other violent and personal crime.

Through operating multiple state-wide services DVConnect has unique insight into the experience of both violence and relevant services systems across Queensland. This combines with our national program which furthers our appreciation and practice-based evidence about geographic diversity and its impact on how DFSV and ability to access safer and supports.



Opening Statement

Thank you for this opportunity to respond to these deliberations by the Queensland Sentencing Advisory Council (QSAC).

DVConnect's perspective is primarily from a victim/survivor's lens, as most of our services work with people who are impacted by violence, particularly domestic, family and sexual violence **DFSV**. In one of our programs, we do work with people who use violence to support them to change that use of violence.

This is to say, most of our submission is guided by that of victim/survivors' voices, but we are not ignorant to the challenges that people who use violence experience in their lives, the systemic barriers, and the contributors to their ultimate choice to use violence. We are aware of how the complexity of trauma, poverty, and the patriarchal and colonist society that we live in can impact how people who use violence end up at that choice. We recognise the human rights of people, including those that choose to use violence.

Despite the above, we know that two things remain true.

1. It is **always a choice to use violence**.
2. The **rights of victim/survivors are repeatedly and substantially undermined** by both the person who offended against them and the criminal justice system.

DVConnect's overarching position for this consultation piece is based on our extensive experience with victim/survivors and people who use violence is:

Sentencing is not long enough with enough safeguards.

There is not enough consideration of the unique experience of each incident of sexual violence and the impact on the victim/survivor.

There are four key overarching points to this:

Victim/survivors repeatedly feel that **sentencing is not commensurate to the crime** and fails to meet the intent of punishment. Victim/survivors repeatedly talk about the long term, wide reaching, detrimental impact of sexual violence. The intimacy of this crime and the societal norms that surround it, make this crime greater than its physical impacts. Often there are elements of coercion in sexual violence, and it often occurs in spaces where people should feel safe (70% of sexual violence occurs in residential settings¹) which erodes a human's trust.

¹ Australian Institute of Health and Welfare 2020. Sexual assault in Australia. Cat. no. FDV 5. Canberra: AIHW



Further, many victim/survivors report that the process of successful prosecution is longer and more detrimental to the victim/survivor than the sentencing handed down to the person who chose to use sexual violence. Therefore victim/survivors are seeking sentencing that recognises the impact of both the crime and the criminal justice process. The period of sentencing must consider this impact and be proportionate with it.

We also suggest that **sentencing acts fails to serve as a deterrent to offending, whilst also acting as a deterrent to victim/survivors coming forward**. In the first instance we are aware of many cases of repeat offending, demonstrating the first issue with current sentencing. The second issue is far more subtle, but just as damaging in the inappropriateness of the sentencing deters victim/survivors from engaging in the criminal justice system. We argue that better sentencing can help remediate both sides of this deterrence issue.

Thirdly, victim/survivors do not feel that **sentences adequately denounce the crime**. The risk and impact of victim/survivors of being opened up to interrogation, not being believed and being subject to personal and public ridicule is still greater than the ultimate sentence a perpetrator often receives. That is, there is more negative impact from being a victim/survivor than being a perpetrator. Sentencing is a key tool to address this.

Finally, there is the human rights element. Sentencing and the criminal justice process must consider the human rights of the person who used sexual violence. It is important that these are held up and people who choose to use violence are given opportunity to address those choices and have recognised the complex backgrounds that often sit behind the choice to use violence. However, we know **too little consideration is given to the human rights of the victim/survivors**.

This alone is exemplified by the Human Rights Act 2019 in which *s29 Right to liberty and security of person*. s29 (1) relates to general liberty and safety, however there are a further fifteen points in this section that outline how detention should be managed. Similarly, *s32 Rights in criminal proceedings* is one of the longest sections in this part of the *Act* that steps out our collective human rights. Overall, in Part 2, Division 2 and 3, where rights are mapped out, **more words are spent outlining the protection of rights of a person who is being charged and detained as an accused and/or a defendant than any other right. Victim/survivors feel this in real life**.

Victim/survivors in the act of the crime experience a human right impingement on their liberty and security. They are subject to cruel, inhumane, and degrading treatment, which they are supposed to be protected from. Then through the criminal justice process, victim/survivors often have other rights impinged upon. Such as the right to privacy and reputation. The criminal justice system requires a victim/survivor to tell their story, and which results in their story being subject to scrutiny. This often, unfairly, negatively impacts on these rights. And yet, as these are eaten away bit by bit, and overtime, and not at the hands of one person or one system, the larger system can turn away from this enduring violation. The larger system can, instead, focus on the one off, clearer impingement of detention of the person that used sexual



violence at the point of sentencing. **This is unbalanced, unfair and improper management of Queenslanders' human rights.** It is here that more consideration must be given to s13 (2) and the balance between the limitation and the purpose. The act of sexual violence has significant negative impact on the human rights of the victim/survivors and addressing this as a purpose must be given greater consideration and emphasis.

Question Responses

While respecting that the QSAC is seeking responses to more nuanced questions, we must put forward the overarching narrative that we hear from the individuals we work with on the long journey to justice for sexual violence. For those very few cases that are able to reach full exploration in the courts and a guilty verdict being passed down an overwhelmingly number of those cases see sentences that are not commensurate with the crime or the impact on the human rights of the victim/survivors.

In response to QSAC specific questions, we have the following responses.

Firstly, we thank you for such specific and clear questions with relevant helpful information available for reflection.

Second, we have taken advantage of the workshop opportunities to provide detailed input to these specific questions and stand alongside others who also added to these rich conversations. DVConnect was able to attend the consultation workshops that were hosted by the QSAC in March 2024.

Thirdly, we, as a sector need more time and coordination to be able to give full and formal answers to the many reform agendas that are progressing currently. While this is not the full responsibility of the QSAC, the current environment of consultation and time demands means we are unable to give more specific, considered written responses. We see this as a significant risk to any reform agenda and encourage acknowledgement of this risk and consideration of how this may be addressed moving forward.



Conclusion

Sexual violence is a crime that is both experienced and perpetrated in a way that other crimes are not. It is personal and highly vulnerable in nature. It is gendered and can often have enduring physical impacts as well as detrimental emotional and psychological outcomes. It is often perpetrated by people in positions of power or trust and in spaces that should be safe. It has persistent community and social rhetoric that normalises sexual violence and minimising the harm.

Sentencing, as has been identified here, must be reflective of this unique and heinous nature. We thank the QSAC for the deliberation of these issues and stress the importance of sentencing that recognises the broader and significant impacts of this crime, beyond the incident, in its sentencing structure.