

Queensland Sentencing Advisory Council  
GPO Box 2360,  
Brisbane Qld 4001

10<sup>th</sup> February 2022

Email: [info@sentencingcouncil.qld.gov.au](mailto:info@sentencingcouncil.qld.gov.au)

Dear Sir/Madam,

**RE: RESPONSE TO ISSUES PAPER ON THE SERIOUS VIOLENT OFFENCES SCHEME (80% RULE)**

The Queensland Sexual Assault Network (QSAN) is the peak body for sexual violence prevention and support organisations in Queensland. We have 23 member services, including specialist services for Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, women with intellectual disability, young women, men and children and our membership are located throughout Queensland, including in rural and regional locations.

Our network of non-Government services is funded to provide specialist sexual assault counselling, support, and prevention programs in Queensland. QSAN is committed to working collaboratively towards ensuring all Queenslanders who experience sexual violence recently or historically, regardless of age, gender, sexual orientation, cultural background receive a high-quality response in line with best practice, client-centred principles. Our work and analysis of sexual violence is from a feminist perspective and addressed within a “trauma-informed framework”.

We are committed to engaging with government and other bodies to raise systemic issues of concern and to ensure the voices and experiences of our clients are considered in the formulation of policy and legislation that impacts on sexual violence victims in Queensland.

Thank you for providing the opportunity to provide a short response to the above Issues Paper, which is outlined below:

**Preliminary comments - sentencing**

From our experience, victims engaged in the criminal justice matters are principally focussed on the trial and this consumes their energy and focus, rather than the sentencing process. However, this may be because victims believe the offender will as a rule serve, most of their sentence with perhaps some time reduction for good behaviour. They believe that 80 % of any sentence would be served. Many victims are unaware of the large difference between the head sentence and actual time served. We believe that these views are consistent with the broader community’s understanding of sentencing.

Generally, victims also believe that what occurred to them is a “serious violent offence” and are querulous about the need for a special ruling about this.

### Discretion

The closer the relationship between the offender and the victim, the more important it is for certainty about the sentence and release date— so victims can plan for their safety upon the offender’s release.

When there is a discretion and the argument by the prosecution for the declaration is not successful, this can be devastating for victims. Despite counsellors working with victims to lower their expectations that a declaration will be made, for many victims they simply *cannot* believe it is possible for the judge to disagree with the declaration.

QSAN is in favour of retention of the current scheme and a presumption in favour of the declaration for certain scheduled offences be introduced, in relation to sentences in the 5-to-10-year range.

### **Recommendation 1**

***That the current approach to the scheme to be retained and a presumption in favour of the declaration be introduced for certain scheduled violent offences in the 5-to-10-year sentencing period to promote greater certainty.***

We note from the Issues Paper that there is currently minimal guidance for the courts when exercising their discretion and believe if such guidelines were developed this would enhance public awareness and knowledge of the scheme, be useful for victim understanding and promote consistency in decision making.

We further note that the prosecution are key to the scheme being argued when there is a discretion but currently there are no Director of Public Prosecutions Guidelines on the scheme. It would be helpful to have some guidelines to assist in the awareness and use of the scheme by the Director of Public Prosecutions.

### **Recommendation 2**

***That guidelines be developed to assist the exercise of the court’s discretion under the scheme and to promote awareness and consistency of decision making.***

### **Recommendation 3**

***That Director of Prosecution guidelines be developed to assist the knowledge and awareness of the scheme by the DPP.***

### Risk Assessment

QSAN is concerned that the Issues Paper advises that there is often limited information available to a court at the time of sentence about the level of risk an offender poses and the lack of independence of the reports that are typically prepared and submitted by the defence lawyers.

#### **Recommendation 4**

***That amendments be made to the scheme to provide for the provision of independent pre-sentence reports to assist the court to determine risk and whether an SVO declaration should be made.***

#### **Human Rights Act 2019 (Queensland)**

We note that the Sentencing Council has been asked to consider whether the scheme is consistent with the Human Rights Act 2019 (QLD) (“HRA”).

A problematic limitation of the HRA is that it only specifically recognises the rights of a “person charged in a criminal process” in Queensland and does not specifically recognise the human rights of the victim of the offence, including the human rights of children who are victims. This does not mean victims do not have human rights, however the lack of specific reference in Section 31 (Right to a Fair Hearing) and Section 32 (Rights in criminal proceedings) means for all intent and purposes in Queensland, the rights of the defendant are elevated above other rights in the criminal process.

We believe the human rights of defendants in criminal trials should be protected; however, they should always be balanced against other rights, including the rights of the victims. We do not see any commentary in the Issues Paper around the rights of the victim to for example safety and other freedoms.

The rights of victims in the criminal process *may* be recognised to a limited extent in other provisions of the HRA such as for example, Section 15 (Recognition and equality before the law) and Section 26 (Protection of families and children), however the lack of specific reference is problematic as it promotes a lack of focus on victim’s rights. This is clear from the Issues Paper itself that in many ways seems to equate Human Rights to the rights of the defendant.

We note the commentary around the numbers of offenders in prison with mental health, cognitive disabilities and borderline intellectual disabilities and reference to the Convention on the Rights of People with Disabilities. There does not seem to be any commiserate research presented in the Issues Paper on the numbers of victims of sexual violence who also have a disability at the time of the offence or indeed because of the offence, may have developed a disability. We further note that the ABS victimisation statistics found that sexual violence prevalence rates were higher for women who lived with a disability, younger women, women in financial hardship and women experiencing lower levels of life satisfaction<sup>1</sup>. We would ask that the Sentencing Council adopt a balanced approach if any review of the scheme vis a vis human rights takes place.

The general community also has an interest in the criminal justice process and arguably have human rights to safety, rights to life and other freedoms and protections that should also be considered in any Human Rights review.

---

<sup>1</sup> [Sexual Violence - Victimisation | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/australian-bureau-of-statistics-reports-articles/sexual-violence-victimisation)

**Recommendation 5**

***That any review of the scheme as it relates to the Human Rights Act 2019 QLD specifically consider the human rights of victims in the criminal process, including relevant conventions such as Convention of the Elimination of All Forms of Discrimination Against Women, Convention of the Rights of Children, Convention on the Rights of People with Disabilities, and any other relevant Conventions.***

**Recommendation 6**

***That the Human Rights Act 2019 QLD be amended to specifically recognise the human rights of people (including children) who are victims of crime in the criminal process to uphold justice, their safety, and their recovery to ensure a more balanced approach to the consideration of human rights in the criminal justice system is taken both at an individual and systemic level.***

**Royal Commission into Institutional Child Sexual Abuse Recommendations (criminal justice system reform)**

The Royal Commission into Institutional Child Sexual Abuse's first recommendation in relation to reform of the criminal justice system recommended:

*The recommendation provides:*

*In relation to child sexual abuse, including institutional child sexual abuse, the criminal justice system should be reformed to ensure that the following objectives are met:*

- a. the criminal justice system operates in the interests of seeking justice for society, including the complainant and the accused*
- b. criminal justice responses are available for victims and survivors*
- c. victims and survivors are supported in seeking criminal justice responses*

QSAN supports this objective but that it be broadened to the entire criminal justice system not limited to child sexual abuse.

**Recommendation 7**

***The Royal Commission into Institutional Child Sexual Abuse recommendation on proposed objectives of the criminal justice system be legislated in Queensland but that these be broadened to the entire criminal justice system and not limited to cases only involving child sexual abuse:***

***The criminal justice system objectives are:***

- a. the criminal justice system operates in the interests of seeking justice for society, including the complainant and the accused***
- b. criminal justice responses are available for victims and survivors***

***c. victims and survivors are supported in seeking criminal justice responses.***

QSAN is aware that all the recommendations of the Royal Commission have been accepted but not all have been implemented including the tendency and similar fact evidence provisions. It is now five years since the Royal Commission, and it would be helpful for the community if the Queensland Government provided an update and timeline for implementation of the recommendations.

***Recommendation 8***

***That the Queensland Government provide an update in relation to implementation of the recommendations of the Royal Commission into Institutional Child Sexual Abuse, particularly those relating to reform of the criminal justice system, including a timeline for implementation.***

If you require any further information or would like to discuss any of the issues raised, please do not hesitate to contact the QSAN secretariat at [REDACTED]

Kind Regards,

[REDACTED]  
Angela Lynch  
QSAN Secretariat