

## **Preliminary feedback to QSAC to identify key issues in Term of Reference**

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We thank you for the opportunity to provide feedback to the Queensland Sentencing Advisory Council on their response to the terms of reference for the review of sentencing for sexual violence offences and the aggravating factor for domestic and family violence offences.

### **Who we are:**

We are the North Queensland Women's Legal Service - a community legal centre with offices in both Cairns and Townsville. We offer legal and non-legal support and assist women from Mackay to Cape York and out to the Northern Territory boarder, primarily in the areas of family law, child protection, migration, and domestic violence.

We provide an array of face to face and telephone/video services to deliver legal and non-legal advice and assistance. We deliver duty lawyer services in the specialist domestic violence courts in Cairns and Townsville and deliver the FASS duty lawyer services into the Federal Circuit and Family Courts in both areas. In the 2020/21 year we assisted around 2500 women with 14,907 services.

Aside from direct client work, we are involved in law reform work: both as members of the Women's Legal Service Australia committee and as an individual organisation. We are also responsible for the delivery of community education programs, and supervise legal students as volunteers and placement students.

We do not practice in the criminal jurisdiction; however, we have significant experience in the civil domestic violence courts and have regular contact with women who experience the criminal law system in one way or another - usually as victims of domestic violence/sexual violence.

### **Our feedback:**

Our submissions focus on the experiences of our clients, garnered largely through our assistance with their legal and non-legal issues and from their stories and comments about how they perceive sentencing processes and outcomes for sexual assault offences and other domestic violence offences.

## Sentencing practice for rape and sexual assault offences

- Examine the penalties currently imposed on sentences under the Penalties and Sentences Act 1992 for sexual assault and rape offences and review sentencing practices for these offences including the types of sentencing orders, duration and (any) time ordered to be served in custody prior to the offender being released into the community or being eligible for release on parole;

*We believe the Council should explore this issue in depth from a victim-survivor perspective. In particular, the Council should explore how or if victim-survivors are consulted and their views considered as part of the process of sentencing, including whether there are any consequences for victims resulting from different types of sentencing orders, duration of sentences and any time to be served in custody, and a perpetrator's eligibility for release on parole. We believe the concept of a sentence that is 'just' in all the circumstances must clearly be shown to be 'just' to the victim-survivor, not only the defendant.*

*As part of the enquiry about sentencing practices, the Council should review practices in matters where a relevant relationship exists, for making or varying protection orders pursuant to s42 of the Domestic and Family Violence Protection Act (Qld) ('the DFVPA').*

*A sentencing court must ensure domestic violence orders are practical and provide appropriate safeguards for victim-survivors, including considerations of safety and fear/ anxiety experienced by a victim-survivor when a perpetrator is to be released into the community. The feedback we receive is that the making or varying of protection orders at sentencing as part of the sentencing process is very meaningful to victim-survivors. There is provision in the DFVPA to make a domestic violence order for any length of time that a court considers necessary or desirable to protect an aggrieved or named person - however, there seems to be a misconception that an order can only be made for a maximum of five years and that this is the 'standard' duration.*

*For example, one client told of her experience where her ex-partner was sentenced to serve six years in custody of a nine-year sentence (for multiple rape and other domestic violence convictions) and the sentencing judge made a protection order for the 'standard' period of five years. The order had expired by the time the offender was released on parole. The victim had been unsuccessful in obtaining an extension of the duration of the order in the civil domestic violence courts because of the lack of offending in the previous five years. This victim-survivor experienced a serious deterioration in her mental health knowing the perpetrator was to be released and to be at large in the community and she was not protected under an order.*

- Determine whether penalties currently imposed on sentence 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 and the sentencing purposes of just punishment, denunciation and community protection;

*The feedback we receive from victim-survivors of this form of offending varies, with most telling us that the lasting impacts on their lives was not reflected in the sentencing process or outcome. All feedback, however, indicates that this type of offending is different to other assaults and results in a unique type of harm being experienced by victims.*

*We believe the Council should explore this issue in depth and garner feedback about harm experienced by victim-survivors and their views about penalties given to their abusers. The Council should also hear from the broader community regarding their views on whether current penalties reflect the unique harm suffered by victims and offer adequate deterrence and proper denunciation of the offending to the community.*

*One rape survivor told us that she believed the substantial penalty given to her abuser had an identifiable effect on his cohort of friends and acquaintances who treated their partners in similar ways to how she had been treated. She heard from the wives and girlfriends of these men about changes to their behaviour as result of her abuser being sentenced to a lengthy period in custody.*

- Assess whether the existing sentencing purposes and factors set out in the Penalties and Sentences Act 1992 are adequate for the purposes of sentencing sexual assault and rape offenders and identify if any additional legislative guidance is required;

*We believe the Council should assess the adequacy of the existing sentencing purposes, given they exclude a purpose that specifically recognises the unique experiences of victim-survivors of sexual assault and rape offences.*

- Identify and report on any legislative or other changes required to ensure the imposition of appropriate sentences for sexual assault and rape offences;

*We believe the Council should explore changes to the PSA to ensure appropriate sentences for sexual assault and rape offences are imposed.*

*Given the unique harm this type of offending causes victim-survivors, we believe consideration should be given to the inclusion of a provision similar to s 9(10A) in the sentencing guidelines, which mandates the Court to treat the fact the offence is a sexual assault or rape offence as an aggravating factor.*

*We also believe the Council should consider the legislative framework around serious sexual assaults and rape offences that do not involve the use or attempted use of 'violence' against a victim-survivor, or do not result in 'physical harm' referred to in s 9(2A), and whether such offences should be covered by s 9(2)(A) -thus suspending operation of the principles of s 9(2a) and attracting s 9(3) considerations.*

- Advise on options for reform to the current penalty and sentencing framework to ensure it provides an appropriate response to this type of offending;

*We believe the Council should review the PSA framework from a sexual assault/rape victim-survivor lens and explore ways to adapt the framework to place recognition of the unique harm suffered by victims of sexual assault and rape offences as integral to the sentencing process.*

Operation and efficacy of section 9(10A) of the *Penalties and Sentences Act 1992* and impact of increase in maximum penalties for contravention of a domestic violence order

- Review sentencing practices for domestic violence related offences following changes to the Penalties and Sentences Act 1992 by the Criminal Law (Domestic Violence) Amendment Act 2016 to make the fact a person is convicted of a domestic violence offence an aggravating factor for the purposes of sentencing, except if it is not reasonable because of the exceptional circumstances of the case;

*We believe it is sensible for the Council to review sentencing practices for domestic violence offences and explore any changes after the introduction of the aggravating factor at s 9(10A) of the PSA.*

*Regular feedback we hear from victim-survivors is that they are often not at the sentencing hearing. This is especially so in the Magistrates Court and usually because they have not been informed of the court date. These victims are essentially locked out of sentencing processes and are not aware that domestic violence is an aggravating factor in the offending they have experienced.*

*Those victims who do attend sentencing have limited or no knowledge of what is happening and how judicial officers craft sentences. We infer from the stories of the victims that do attend, that sentencing purposes related to denunciation of domestic violence and community protection from domestic violence are enunciated - rather than a specific reference to domestic violence as an aggravating factor. We hear from victims that do attend sentencing, that whatever words are used by judicial officers to denounce a domestic violence offence or to enunciate the fact that the offending is aggravated by being domestic violence, there is meaning to victim-survivors by way of validation of their experiences of domestic violence.*

*Although we know that primary victims are still misidentified as perpetrators of violence and can face criminal charges, we have not yet heard of a court enunciating that exceptional circumstances have resulted in a domestic violence offence not being aggravated under s 9(10A). This is an issue worthy of the Council's close attention.*

- Advise on the impact of the operation of the aggravating factor in section 9(10A) of the Penalties and Sentences Act 1992 on sentencing outcomes for all domestic violence related offences including for charges involving non-physical violence and coercive control;

*We believe the Council should focus on the operation and efficacy of the aggravating factor in s9(10A) on outcomes for all domestic violence related offences, especially for charges involving non-physical violence and coercive control. With stalking and other non-physically violent domestic violence offences being strengthened and the introduction of coercive control as a stand-alone offence, consideration must be given to the use of and efficacy of the aggravating factor in effecting appropriate outcomes in these types of offences.*

*We believe the Council should explore whether pleas of guilty, payment of criminal compensation, and other considerations under the guidelines negate any actual change to the type of sentence, duration of sentence or the actual time served in custody, which would otherwise be expected as a result of the application of s9 (10A). We hear that despite judicial officers enunciating that a sentence is aggravated as a domestic violence offence (or even if domestic violence is otherwise considered under the guidelines,) there is no real effect on the outcome of the sentence.*

*As mentioned in the previous response, we have heard no feedback from victim-survivors who are themselves sentenced for domestic violence offences that would indicate there has been an application of the exceptional circumstances provision of s 9(10A).*

*In short, the Council should explore if there are any real consequences that flow from the inclusion of the aggravating factor.*

- Examine whether section 9(10A) of the Penalties and Sentences Act 1992 is impacting victims' satisfaction with the sentencing process and if so, in what way;

*We believe the Council should examine victim-survivor satisfaction with sentencing processes after the imposition of the aggravating factor. The feedback we receive is that explicit recognition of domestic violence in prominent ways in sentencing, calling out perpetrators for choosing to use domestic violence, and the making or varying of protection orders are very meaningful to victim-survivors and have substantial impacts on their satisfaction with the sentencing process. The actual impact on victim satisfaction from specifically finding the offence is aggravated for being a domestic violence offence is an issue worthy of consideration.*

- Consider how sentencing trends and outcomes for contravention of a domestic violence order may have changed following the 2015 increase in the maximum penalties following amendments by the Criminal Law (Domestic Violence) Amendment Act 2015 (Qld);

*We provide no feedback on this term although we do believe it is important for the Council to examine sentencing trends and outcomes for multiple contraventions and whether any real consequences have flowed from this amendment.*