

Submission to the Queensland Sentencing Advisory Council's Review of sentencing for sexual assault and rape offences

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Introduction

Thank you for the opportunity to make a submission to the Queensland Sentencing Advisory Council's *Review of sentencing for sexual assault and rape offences*.

In this submission, we outline some key findings from our recent research that may be relevant to the Council's work. While our research focused on victim/survivors' views of post-custodial interventions for perpetrators of sexual violence (as described further below), some of the data collected are broadly relevant to sentencing also. In particular, our findings may inform responses to the following questions posed by the Council:

- What are the most important sentencing purposes when sentencing sexual assault and rape? and
- What might be important to a victim survivor in terms of sentencing options?

Background to the research

The study canvassed in this submission was undertaken by researchers at the Queensland University of Technology in partnership with Bravehearts Foundation, and was partly funded via a Criminology Research Grant. The project was guided by a Steering Committee of relevant organisations (eg service provision organisations working with victim/survivors of sexual violence).

The research addressed the following broad questions:

1. What are the needs of victim/survivors of sexual violence during the release and reintegration of perpetrators following prison?

2. What do victim/survivors of sexual violence consider to be the needs of perpetrators during their release and reintegration?

3. What is the level of victim/survivor support for a wide range of perpetrator post-custodial measures (electronic monitoring, offender registers, community notification, parole supervision, psychological interventions, and Circles of Support and Accountability)?

The study forms part of a broader program of research examining victim/survivors' views of post-custodial interventions for perpetrators of sexual violence (Richards, Death, & McCartan, 2020; Richards, Death, McCartan, et al., 2020; Richards et al., 2021, 2023), which may also be broadly informative to the Council's work. Publications from the study are currently under review.

Methodology

To address these questions, we undertook an online survey of self-identified victim/survivors of sexual violence (aged 15 years and above) residing in Australia (n = 193) and semi-structured qualitative interviews with self-identified victim/survivors of sexual violence (aged 15 years and above) residing in Australia (n = 26).

Most victim/survivors who responded to the online survey were female (67%). Participants ranged in age from 15 to 83 years old, with a mean age of 47 years. Most (64%) reported experiencing sexual violence before the age of 18 years. Respondents had been sexually harmed by a range of perpetrators, including parents, other family members, friends/peers, and (less commonly) strangers. Only a small proportion (11%) reported that their perpetrator(s) had been incarcerated for the offending (in accordance with the fact that most perpetrators of sexual violence are not reported, charged or prosecuted (Australian Institute of Health and Welfare, 2020; Bouhours & Daly, 2008)).

A total of 26 victim/survivors (7 women and 19 men (including 1 trans* man)) took part in an interview. Almost all had experienced child sexual abuse; only 1 interviewee had not experienced child sexual abuse but had been raped as an adult, and a further three interviewees had experienced sexual violence as both children and adults. Participants' ages

ranged from 29 to 73 years, with a mean age of 51 years. Two interviewees reported female perpetrators; all other perpetrators were male (most commonly, fathers or father figures, men in positions of authority (eg teachers, church leaders) and other family members or family friends). Again, only a small number (n = 7; 27%) reported that their perpetrator(s) had been imprisoned (and in 4 of these cases, the perpetrator had been imprisoned in relation to sexual offences against other victim/survivors rather than the interviewee).

Conceptual background

In designing the study, and making sense of the data collected, we applied three relevant conceptual frameworks:

- First, we were interested in theoretical orientations derived from penal philosophy (Orth, 2003) toward *motivations to punish*. Individuals' motivations to punish are thought to fall into two categories: utilitarian and non-utilitarian. Utilitarian motivations concern *what might be achieved* by punishing a perpetrator (eg deterring others, rehabilitating the perpetrator) (Duff, 2003; von Hirsch, 2017). Non-utilitarian motivations are mainly retributive and stem from the belief that perpetrators simply *deserve* punishment (Orth, 2003).
- Second, *equity theory* contends that when a person experiences criminal victimisation they are placed in a disadvantaged position relative to the perpetrator. The person's sense of inequity can be rectified by enhancing their outcome (eg through receiving restitution) and/or decreasing the perpetrator's outcome (eg through adequate punishment) (Kilpatrick & Otto, 1987; Tontodonato & Erez, 1994). Those who perceive the perpetrator as receiving better treatment than they received, or as facing insufficient consequences will feel most distressed; conversely, those who perceive the perpetrator to have received a sentence of sufficient severity can feel that justice has been served (Kilpatrick & Otto, 1987; Tontodonato & Erez, 1994).
- Third, the *belief in redeemability* perspective contends that individuals' levels of punitiveness are premised on their beliefs about the ability of perpetrators to change; while some people believe criminality to be largely fixed, others view criminality as more changeable and open to intervention (Maruna & King, 2009). Empirical research

shows that belief in redeemability is a better predictor of punitiveness than other factors such as demographics (eg age, gender) and personal victimisation experience (Doroc, 2013).

Key findings

While recognising the diversity of victim/survivors and their views, a number of themes emerged from our work that may be relevant to the Council's Review.

Our study suggests that victim/survivors of sexual violence are *primarily concerned with perpetrators getting help to address their offending behaviour so they do not harm others*. In line with Miller's (2014: 804) research, many victim/survivors in our study adopted a position of "relational caring" toward other (potential) victim/survivors. For example, they were overwhelmingly in favour of perpetrators receiving interventions such as parole supervision and psychological support to address their offending behaviour and reduce their risk of recidivism.

Victim/survivors thus mostly (but not exclusively) *adhered to a utilitarian orientation* toward post-custodial interventions and were supportive of measures such as electronic monitoring and parole supervision largely because they viewed such measures as assisting perpetrators to avoid recidivism.

Importantly, however, victim/survivors commonly only expressed support for perpetrators receiving post-custodial assistance *if they had already served an appropriate custodial sentence*. In line with Richards et al. (2023: 428), we found that victim/survivors' support for utilitarian interventions is often contingent on non-utilitarian (ie retributive) purposes having already been served. This may also reflect an equity theory position – ie victim/survivors are amenable to perpetrators receiving assistance once the perpetrator's outcome has been diminished.

In addition, victim/survivors in our study made a clear distinction between those perpetrators who acknowledged their offending and expressed remorse, and those who did not. Overwhelmingly, they *saw only remorseful perpetrators as capable of change* (in line with the

belief in redeemability lens). As such, they typically supported post-custodial interventions only for remorseful perpetrators.

Conclusion

We hope that these findings are of assistance to the Council in undertaking their current Review, and would welcome further discussion should this be useful. The lead researcher, Professor Kelly Richards, can be contacted at [REDACTED]

References

- Australian Institute of Health and Welfare. (2020). *Sexual assault in Australia*. Australian Institute of Health and Welfare. <https://www.aihw.gov.au/getmedia/0375553f-0395-46cc-9574-d54c74fa601a/aihw-fdv-5.pdf?v=20230605172455&inline=true>
- Bouhours, B., & Daly, K. (2008). *Rape and attrition in the legal process: A comparative analysis of five countries*. Griffith University School of Criminology and Criminal Justice. https://www.jstor.org/stable/10.1086/653101?seq=1#metadata_info_tab_contents
- Doroc, M. (2013). *Reintegration: The contribution of offence, offender and respondent factors* [Deakin University].
- Duff, A. (2003). *Punishment, communication, and community*. Oxford University Press.
- Kilpatrick, D., & Otto, R. (1987). Constitutionally guaranteed participation in criminal proceedings for victims: Potential effects on psychological functioning *Wayne Law Journal*, 34(1), 7-28.

- Maruna, S., & King, A. (2009). Once a criminal, always a criminal? 'Redeemability' and the psychology of punitive public attitudes. *European Journal on Criminal Policy and Research*, 15(1-2), 7-24. <https://doi.org/DOI> 10.1007/s10610-008-9088-1
- Miller, K.-L. (2014). Relational caring: The use of the Victim Impact Statement by sexually assaulted women. *Violence and Victims*, 29(5), 797-813.
- Orth, U. (2003). Punishment goals of crime victims. *Law and Human Behavior*, 27(2), 173-186.
- Richards, K., Death, J., & McCartan, K. (2020). *Community-based approaches to sexual offender reintegration*. Australia's National Research Organisation for Women's Safety. <https://www.anrows.org.au/project/community-based-approaches-to-sexual-offender-reintegration/>
- Richards, K., Death, J., McCartan, K., & Australia's National Research Organisation for Women's Safety. (2020). *Research to policy and practice issue 07: Community-based approaches to sexual offender reintegration: Key findings and future directions*. Australia's National Research Organisation for Women's Safety. <https://www.anrows.org.au/project/community-based-approaches-to-sexual-offender-reintegration/>
- Richards, K., Death, J., & Ronken, C. (2021). What do victim/survivors of sexual violence think about Circles of Support and Accountability? *Victims & Offenders*, 16(6), 893-911. <https://doi.org/https://www.tandfonline.com/doi/abs/10.1080/15564886.2020.1850578>

Richards, K., Death, J., & Ronken, C. (2023). The views of victim/survivors of sexual violence about perpetrator post-release measures. *Criminal Justice Studies* 36(4), 418-437.
<https://doi.org/https://doi.org/10.1080/1478601X.2023.2218531>

Tontodonato, P., & Erez, E. (1994). Crime, punishment, and victim distress. *International Review of Victimology*, 3(1-2), 33-55.
<https://doi.org/https://doi.org/10.1177/026975809400300203>

von Hirsch, A. (2017). *Deserved criminal sentences: An overview*. Hart Publishing