

Dispute Resolution Branch

Submission to the consultation on
“Sentencing of Sexual Assault and Rape; The Ripple Effect”

Questions 20 and 21

Public submission provided by the Dispute Resolution Branch, DJAG

Adult Restorative Justice Conferencing

The Dispute Resolution Branch (DRB) works within the Women’s Safety, and Victims and Community Support division, Department of Justice and Attorney-General. Adult Restorative Justice Conferencing (ARJC) is part of the work undertaken by the DRB to contribute to justice outcomes in Queensland. ARJC seeks to contribute to just outcomes for Queenslanders by facilitating interactions between victims and offenders - or alleged offenders - to address the harm.¹

DRB thanks QSAC for inviting comment on the role of ARJC in relation to sentencing in matters of sexual assault and rape.

Sector support

The [Women’s Safety and Justice Taskforce](#) (WSJT) spoke highly of the work done by ARJC and made it clear the taskforce saw the important role ARJC can play in promoting justice. Furthermore, WSJT made note of how ARJC should be accessible to victims of sexual assault. This view has been echoed by numerous agencies and organisations that we have spoken to in the last 12 months. It could be argued that the tenor of the discussion has changed. Many stakeholders are no longer asking - ‘Should ARJC be used in sexual assault matters?’ but instead asking - ‘How can ARJC be safely and effectively used in sexual assault matters?’ The use of ARJC is increasing being considered across the justice sector and the DRB acknowledges the forward thinking of QSAC in raising this topic in relation to sentencing.

The Queensland Government has responded to several key recommendations about ARJC made by WSJT. In broad terms, these recommendations relate to three key areas –

- Identifying options for expansion of ARJC (Recommendation 90)ⁱ
- Co-designing a victim-centric legislative framework (Recommendation 91)ⁱⁱ and

¹ For clarity, in this submission around sentencing, we will refer to the person who has been harmed as the victim, and we will refer to the person responsible for the harm as the offender.



- Undertaking a pilot restorative justice program for adult sexual and domestic and family violence offences (Recommendation 92)ⁱⁱⁱ

The work to develop a sustainable long-term plan for the expansion of Adult Restorative Justice (Rec. 90) is currently underway and due for completion in June 2024. The findings from this recommendation may bring greater insight into issues around the intersection of ARJC and sentencing. Accordingly, it may be somewhat premature to offer a definitive view on the questions raised in the consultation paper. However, there are several comments DRB would like to make, based on our current knowledge and experience.

Any proposed use of ARJC outcomes in sentencing should be trauma-informed and not cause further harm to the victim.

There is an increasing understanding both in the community and those that support victims that victims should not be further traumatised by processes that occur to address crime. This directly aligns with ARJC's core principle - to protect people from more harm, and to restore the harm. The ARJC process takes particular care to minimise re-traumatisation. While DRB can see benefit in the use of ARJC in sentencing, the importance of maintaining a trauma informed lens over how this is done is critical.

Any proposed use of ARJC as an outcome in sentencing must consider the potential negative impacts on the victim and should proactively work to avoid further harm.

The protection of the victim's rights and needs, including confidentiality, must be considered.

The victim's privacy is maintained in the ARJC process. Currently, sharing the outcomes of ARJC with the court requires the agreement of the victim and the offender. This usually happens in relation to post charge before the matter is fully heard by the court.

The sharing of ARJC outcomes for the purpose of sentencing raises several questions around privacy and confidentiality.

Would the victim be able to decide if the outcomes will be shared with the court?

If the victim does not agree for outcomes to be heard by the court and/or be considered in sentencing, would this prevent the victim from participating in ARJC?

Would the victim need to agree to the court hearing the outcomes before they participated in ARJC?

Could the outcomes be provided confidentially only to the Judge for sentencing purposes? If so, would this require the permission of the victim?

The time to complete ARJC outcomes may not meet the court's needs.

It is important to note there are two factors that may impact the time required to be able to report to the Court about the outcomes of ARJC. Firstly, the victim's readiness to participate and the preparation required to ensure a safe and productive conference may take some time. This time can

be increased in sexual violence matters. Secondly, currently ARJC allows 6 months for the agreed outcomes to be carried out and this is monitored by DRB. For example, an agreed outcome to attend six counselling sessions will take several months to organise and complete.

With proper protection of victims' right, justice could be promoted through the consideration of ARJC outcomes in sentencing.

With proper consideration and legislated protection of a victims' rights, reporting of ARJC outcomes could promote justice. Three options are discussed below.

Firstly, a statement provided by ARJC could divulge a general outcome such as 'a conference has successfully taken place'. This may provide the court with an indication of the offender's willingness to take responsibility for their actions. It may also indicate that the victim believes the harm has now been addressed.

Secondly, reporting on the outcome of the conference could be more specific, divulging what the offender has agreed to do to address the harm². Understanding the specific nature of the agreed outcomes will enable the court to take this into account in their sentencing decision and avoid duplicating anything that may have been agreed in the conference.

Additionally, understanding what the offender has already done in complying with the agreed ARJC outcomes may assist the court to identify if any further sentence is appropriate.

A third option might be to allow a Victim Impact Statement (or variation thereof) to provide an avenue for a victim to not only alert the court to the impacts of the crime, but also to comment on whether the offender took responsibility and took action to address the harm. This could work instead of, or in conjunction with, reporting of general or specific outcomes. This may provide the court with increased insight into the outcome of ARJC, while maintaining a victim-centric approach.

Sentences or community-based orders that include participation in a future ARJC are problematic.

As noted above, ARJC carefully considers referrals to ensure proceeding to conference is safe and productive for both the victim and offender. While there may be significant benefits for both victims and offenders, caveats would need to be in place to cover the possibility that the matter is assessed as unsuitable. Simply put, a sentence or community-based order could include a referral to ARJC, but an assessment would then need to be made as to suitability for conference.

² Currently ARJC outcomes are agreed by the victim and offender. Outcomes need to be realistic and just. Common outcomes include payments to cover cost of physical or psychological injuries, payments to acknowledge suffering, attendance at counselling or courses, apologies, or donations to charity.

A sentence should not be increased if an offender did not choose to take part in ARJC.

Voluntary participation of both parties and the offender taking responsibility for their actions are fundamental requirements of ARJC. The knowledge that sentences might be increased due to non-attendance may lead to participation under duress and/or a limited willingness to be accountable. This is likely to pose a threat to the victim and undermine the work and reputation of the service.

A sentence should not be increased because a referral does not progress to conference.

ARJC undertakes a thorough intake to assess suitability for the process. This aims to maximise the probability that the conference will be safe and productive for all participants. Prerequisites for a matter proceeding to conference include voluntary participation, the offender taking responsibility for their actions, and an agreement of the basic facts of the matter and how harm will be addressed.

A significant number of referrals do not progress to conference. As discontinuance can occur for a variety of reasons, the offender should not be penalised if a conference does not occur.

ⁱ Recommendation 90 The Queensland Government, led by the Department of Justice and Attorney-General, develop a sustainable long-term plan for the expansion of adult restorative justice in Queensland and appropriately fund that plan for victim-survivors to access this option throughout the state.

ⁱⁱ Recommendation 91. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence co-design with people with lived experience, Aboriginal and Torres Strait Islander peoples and service and legal system stakeholders, a victim-centric legislative framework for adult restorative justice in Queensland. The framework will articulate principles for the use of restorative justice and establish operational and evaluation processes that consider the diverse needs of victim-survivors.

ⁱⁱⁱ Recommendation 92 The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence fund and undertake a pilot restorative justice program for adult sexual and domestic and family violence offences, to be independently evaluated to inform further statewide roll-out. The commencement of a pilot will be supported by additional investment and the commencement of a legislative framework.

ⁱⁱⁱ WSJT also recommended that legislative amendments should be made to encourage the use of diversion options including Adult Restorative justice (Recommendation 97). The Taskforce also recommended consultation with women with lived experience as accused persons and offenders, service system and legal stakeholders who support them, and First Nations peoples in the consideration of recommendations 90 and 91. (Recommendation 125)