

Sentencing of Sexual Assault and Rape



Queensland Mental Health Commission submission

Introduction

The Queensland Mental Health Commission (the Commission) welcomes the opportunity to make a submission to the Queensland Sentencing Advisory Council's Consultation Paper - Sentencing of Sexual Assault and Rape: The Ripple Effect – Consultation Paper – Issues and Questions.

The Commission

The Commission is an independent statutory agency established under the *Queensland Mental Health Commission Act 2013* (the Act) to drive ongoing reform towards a more integrated, evidence-based, and recovery-orientated mental health, alcohol and other drugs (AOD) and suicide prevention system in Queensland.

One of the Commission's primary functions is to develop a whole-of-government strategic plan to improve the mental health and wellbeing of Queenslanders, particularly people living with mental illness, problematic AOD use, and those affected by suicide. The current strategic plan is *Shifting minds: The Queensland Mental Health, Alcohol and Other Drugs, and Suicide Prevention Strategic Plan 2023-2028* (*Shifting minds*). *Shifting minds* is complemented by 2 sub-plans:

- *Achieving balance: The Queensland Alcohol and Other Drugs Plan 2022-2017* (*Achieving balance*)
- *Every life: The Queensland Suicide Prevention Plan 2019-2029* (*Every life*).

Additionally, the Commission is responsible for facilitating the development of a whole-of-government, whole-of-system and whole-of-community trauma strategy for Queensland. The development of this strategy is a direct response to Recommendation 6 of the *Inquiry into the opportunities to improve mental health outcomes for Queenslanders*. The strategy is a proactive commitment from government to help prevent, support, and heal from trauma, recognising the complex and varying experiences of Queenslanders.

Creating a trauma informed court and sentencing system

Creating an effective trauma-informed court and sentencing system in relation to sexual violence and rape offences is essential to preventing further harm for Queenslanders who have experienced sexual violence and rape, and to support effective rehabilitation of perpetrators.

While understanding of the psychological, social, emotional, and physical manifestations of trauma continues to improve among practitioners in a range of settings, it is often systems, policies, processes, and environments that create the conditions for support or further harm. Trauma can significantly affect a victim survivor's behaviour, memory, and ability to participate in legal proceedings. Current system processes often impede victim survivors from seeking justice, and for those that do, the journey through the system can at multiple points feel like invalidation their experience.

A trauma-informed system places the potential needs and wellbeing of victim survivors at its core. This approach involves providing choice, control, and respect throughout the legal process. Operational policies, procedures, and processes that facilitate clear and effective communication, ethical handling of cases, fully informed consent, and consideration of the person's comfort and safety are ways to reduce the potential for re-traumatisation as a because of court processes.

Ongoing training focused on understanding trauma is required for all professionals involved in court proceedings and operations including judges, legal representatives, and court personnel. Training should be identified and tailored to the needs of the audience. For example, specialist training may be required for judges; however, all staff should be required to have a minimum level of 'trauma awareness'.

Considerations for system reform

1. Enhanced victim survivor advocacy and support services

The availability of advocacy and support services have the potential to provide victim survivors with a range of supports, including psychosocial, information about the legal process, and assistance in accessing resources other services such as medical care. These services should be accessible from point of contact through to the conclusion of the legal process with options provided for referral and ongoing support.

2. Restorative justice options

Restorative justice options should be considered as punitive options may not always serve the best interests of victim survivors or lead to effective rehabilitation of perpetrators. Restorative justice offers an alternative approach, focusing on the needs of victim survivors, perpetrator accountability, and community safety. This approach facilitates dialogue between willing victim survivors and perpetrators aiming to repair harm and foster healing.

3. Flexible sentencing practices

Sentencing in a trauma-informed system should be flexible, taking into account the victim survivor's needs and wishes, and be proportionate to the crime. Sentences might include therapeutic interventions, education on sexual violence, and community service, in addition to or instead of incarceration, tailored to encourage rehabilitation and reduce recidivism.

4. Privacy and confidentiality

Protecting victim survivors' privacy and confidentiality is paramount in a trauma-informed system. This includes safeguarding personal information and being mindful of how case details are presented in court and reported by the media. Measures to protect privacy help reduce the fear of exposure and stigma that can deter survivors from coming forward. There are particular privacy considerations required for young people who may be both victim survivors and perpetrators of sexual violence and rape. The privacy and confidentiality of all young people should be protected.

5. Continuous improvement and evaluation

A trauma-informed court and sentencing system should have mechanisms in place for regular evaluation and feedback from victim survivors, advocates, and professionals. This feedback loop ensures that the system remains responsive to the needs of victim survivors.

An effective court and sentencing system that responds to sexual violence and rape offenses requires a shift from traditional methods to those that prioritise healing, respect, and justice for victim survivors. Such a system not only aids in the recovery of victim survivors but also contributes to increased likelihood of perpetrator rehabilitation.

Contact

Amelia Callaghan, Executive Director

Email: [REDACTED]