

15 June 2023

Queensland Sentencing Advisory Council
GPO Box 2360
Brisbane QLD 4001

Via email: info@sentencingcouncil@qld.gov.au

Re: Review of sentencing for sexual violence offences and aggravating factor for domestic and family violence offences

Thank you for the opportunity to contribute to the review of two important aspects of sentencing under the *Penalties and Sentences Act 1992*.

As you would be aware, as the Public Advocate for Queensland, I undertake systemic advocacy to promote and protect the rights and interests of Queensland adults with impaired decision-making ability.¹ There are several conditions that may affect a person's decision-making ability, including intellectual disability, acquired brain injury, mental illness, neurological disorders (such as dementia) or alcohol and drug misuse.

I note that the terms of reference ask the Queensland Sentencing Advisory Council to investigate and report on:

- sentencing for sexual violence offences; and
- the operation and efficacy of the aggravating factor for domestic violence offences under section 9(10A) of the *Penalties and Sentences Act*.

I further note that at this stage, the Council is seeking preliminary feedback in identifying key issues the Council should explore in addressing the above issues.

People with impaired decision-making ability may have interactions with the criminal justice system that are often not shared by other members of the general public. Such issues can include specific offences that affect people with impaired decision-making ability (such as section 216 of the *Criminal Code*²) as well as the application of other laws that may affect people with impaired decision-making ability differently.

This can be so in the case of offences of domestic violence. Domestic violence can occur in various situations such as in family and informal care relationships³ that could affect a person with impaired decision-making ability differently, especially if the person has a high reliance on the perpetrator of the domestic violence for their care.

For example, if the perpetrator of the domestic violence is the person's substitute decision-maker,⁴ and/or the perpetrator is responsible for the care and/or provision of disability related supports for the victim, the outcome of the sentencing for domestic violence in such situations could have significant implications for the victim in terms of their day-to-day life and care.

¹ *Guardianship and Administration Act 2000* (Qld) s 209.

² Subject of the paper, Public Advocate, *A discussion of section 216 of the Queensland Criminal Code* (January 2022).

³ *Domestic and Family Violence Protection Act 2012* (Qld) s 13.

⁴ Such as a guardian or administrator under the *Guardianship and Administration Act 2000* or an attorney under an enduring power of attorney under the *Powers of Attorney Act 1998*.

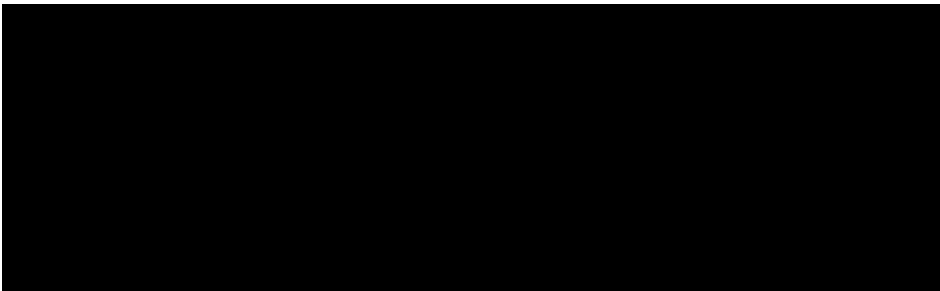
Such situations may not be what comes to mind for the general public when thinking about domestic violence situations, however they do present unique issues that are not generally considered when dealing with such offences.

Therefore, in terms of identifying particular issues related to the terms of reference as above, I would ask the Council to explore issues regarding sentencing related to domestic violence offences where the victim has impaired decision-making ability, and the particular issues that may arise in these circumstances.

This review is an important step in improving outcomes for victims of sexual and domestic violence offences, and it is hoped that particular issues pertaining to people with impaired decision-making ability are thoroughly explored.

Should you wish to discuss any of the matters I have raised in this submission further, please do not hesitate to contact my office via email public.advocate@justice.qld.gov.au or phone 07 3738 9513.

Yours sincerely



John Chesterman (Dr)
Public Advocate