

7 July 2023

Mr John Robertson

Chair, Queensland Sentencing Advisory Council

By email: submissions@sentencingcouncil.qld.gov.au

Dear Mr Robertson,

Preliminary feedback – Review of sentencing for sexual violence offences and aggravated factor for domestic and family violence offences

Women's Legal Service Queensland (WLSQ) is a community legal centre providing state-wide specialist, free legal information, advice, representation and integrated supports to women. We provide legal assistance with matters involving domestic and family violence, sexual assault counselling privilege, family law, child protection, and financial abuse.

Our work is informed by feminist values, and we advocate for law reform and changes to the justice system to improve access to justice, safety and equality for women and children.

Sentencing for sexual violence offences

We provide the following preliminary feedback on the Terms of Reference in relation to sentencing practices for sexual violence offences.

The criminal justice system in Queensland has not been effective at protecting victim-survivors of sexual violence or the broader community, does not hold perpetrators accountable, and does not meet community standards. The overarching concern for WLSQ is not the seriousness of penalties or the purpose of penalties, but the lack of penalties imposed – particularly given the large rates of sexual violence occurring every day.

In 2022, there were 9,506 recorded victims of sexual violence offences according to the Queensland Crime Statistics. We know that only a small proportion of sexual violence offences will be sentenced by the courts, and most will not make it to court at all. Sexual violence is rarely reported to police, charges are often withdrawn by police, sexual violence offences are rarely prosecuted, and sexual violence proceedings rarely result in a conviction. This is despite evidence that women and children rarely make false allegations of rape and sexual assault.

To report on whether the current sentencing regime is adequate, the Queensland Sentencing Advisory Council (QSAC) should consider the impact of various aspects of the sentencing regime on other aspects of the criminal justice process, including the decision-making of police and prosecution to progress with criminal charges, and the decision-making at all other stages through the criminal justice process including pre-trial and during trial and how these impact sentencing. The criminal justice system must be viewed in its entirety, particularly given the systemic issues and multiple barriers to achieving just outcomes.

The penalties imposed for sexual assault and rape offences, the sentencing purposes and factors set out in the *Penalties and Sentences Act 1992* (Qld), and other aspects of the sentencing regime, impact on every other stage of the criminal justice process, as well as the people who work within this system, and must be considered in this context. The review of sentencing for sexual violence offences should

not consider sentencing in isolation but must also take into consideration the significantly large number of sexual violence offences that do not make it to that stage and the reasons for this.

On this basis, data from police and prosecutions should be available to both the Sentencing Advisory Council and the key stakeholders contributing to the review on:

- The number of sexual violence offences that are reported to police and the number of people that are charged with sexual violence offences
- The number of charges that are withdrawn for sexual violence offences, at what stage in the criminal justice process, and the reasons for withdrawal of charges (particularly regarding penalties or sentencing purposes and factors)
- The number of indictments that are presented for sexual violence offences
- The number of indictments that are withdrawn for sexual violence offences, and the reasons for withdrawal of an indictment (particularly regarding penalties or sentencing purposes and factors)
- The number of convictions and acquittals for sexual violence offences

This information ought to be generally available to the public, particularly given the public interest in improving responses to sexual violence.

We note that the Queensland Sentencing Advisory Council (QSAC) has been directed to advise on whether the legislative provisions in the PSA, and any recommendations, are compatible with rights protected under the Human Rights Act 2019. Unfortunately, the rights of victim-survivors are not specifically recognised in the Act, and therefore we recommend that QSAC also consider and advise on the extent to which the provisions or recommendations are compatible with the rights of victim-survivors to respect, justice, safety and recovery.

Domestic violence as an aggravating factor

The observations made above in relation to sexual violence apply in a similar way to the aggravating factor of domestic violence. In summary, the review of sentencing must also take into consideration the significantly large number of offences which were either not prosecuted or where domestic violence was not considered an aggravating factor in sentencing and the reasons for this.

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Thank you for this opportunity to provide feedback.

Yours sincerely,

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Nadia Bromley

CEO

Women's Legal Service Queensland