
JUSTICE REFORM INITIATIVE SUBMISSION: REVIEW OF SENTENCING FOR SEXUAL ASSAULT AND RAPE OFFENCES

17 APRIL 2024

The Justice Reform Initiative welcomes the opportunity to provide feedback a written submission in response to the Queensland Sentencing Advisory Council ('Council') public Consultation Paper – [Sentencing of Sexual Assault and Rape: The Ripple Effect – Consultation Paper: Issues and Questions](#). We thank the Council for including the Justice Reform Initiative as part of the consultations relating to the review of sentencing for sexual assault and rape offences. In response to the review and consultation paper, the Justice Reform Initiative submits the following:

1. While many commentators suggest that increased criminalisation and stigmatisation of people who have offended will provide greater recognition and acknowledgment of the trauma experienced by victims of sexual assault, such responses have tended to result in fewer people taking responsibility for their offending, and the majority of sexual assault victims being further disempowered by the criminal justice system.¹ This manifests in low reporting and conviction rates for sexual offences.
2. The experiences of victims in a contested criminal proceeding in which the accused person is pleading not guilty can also be re-traumatising. The victims may be required to give evidence and be subject to robust cross examination by defence counsel. The right for a criminal defendant to cross examine prosecution witnesses is a core aspect of the adversarial criminal justice process and an important right for an accused person. However, it can also be a deeply traumatic experience for someone who has reported that they are the victim of a crime, particularly a violent crime.
3. Mindful of this, it is important to note that more punitive sentencing regimes, systems of mandatory sentencing, and increasing maximum sentencing limits for particular offences increases the likelihood that an accused person will elect to plead not guilty to an offence. There is little value for an accused person to plead guilty in the hope of a reduced sentence where the relevant legislative sentencing provisions have been made more punitive. They will be more likely to robustly defend the charges and defence counsel are likely to cross examine victim witnesses with a view to undermining their credibility. This is likely to subject victims to further trauma. A more punitive sentencing regime is not a trauma-informed framework that will benefit victims of crime.

¹ Naylor, B. (2010), 'Effective Justice for Victims of Sexual Assault: Taking Up the Debate on Alternative Pathways', (2010) 33(3) University of New South Wales Law Journal, 662-684; Daly, K (2014), 'Reconceptualizing Sexual Victimization and Justice, in I Van Fraechem, A Pemberton and F Ndahinda (eds), Justice for Victims: Perspectives on Rights, Transition and Reconciliation, Routledge 2014, 318.

4. The failings of the criminal justice system to engender a confidence among victims of sexual assault to engage, whether by reporting offences or participating as witnesses in the prosecution of those who are charged with offences, indicates a need to move beyond responses that purportedly advocate stricter sentences, or redefinitions of legal defences aimed at making convictions more likely. If the justification of such proposed reforms is to prioritise the needs of the victim, the continuing decline in victim reporting and prosecution rates suggests that alternative and innovative justice mechanisms should now be considered.
5. The JRI strongly recommends that as part of this review the potential to develop appropriate, victim-centred restorative justice processes for sexual offences should be considered.
6. The JRI acknowledges that there has been some debate as to whether restorative justice conferencing is appropriate for sexual offences. In 2010, the NSW Law Reform Commission (NSWLRC) indicated that the dynamics of power in a relationship where sexual offences have been committed suggest that the use of restorative justice processes for sexual offences is inappropriate and carries a risk of secondary victimisation for victims.² However, given the failure of existing criminal justice processes to provide adequate recognition and acknowledgment of the primary trauma for sexual assault victims, the JRI considers that careful consideration should be given to more recent examples of research overviewing sexual offence restorative justice processes in Australia and New Zealand. The evaluations for these programs have indicated positive results in terms of victim satisfaction, reduced offending and a reduction in re-victimisation through the justice process.³
7. JRI also recommends that consideration be given to thoughtful and important work conducted by Transforming Justice Australia. Transforming Justice Australia provides community based restorative responses for sexual abuse and related harm, and also elevates recent literature, research and evaluation that is focused on restorative justice and practices in Australia. Their website summarises and collates up-to-date research and resources.⁴
8. Careful consideration should also be given to the recent (2023) piece of research conducted by KPMG in partnership with the Centre for Innovative Justice on behalf of the Bureau of Crime Statistics and Research exploring the justice system experiences of complainants in sexual offence matters. This research recommended that consideration should be given to the development of a restorative justice service focused on sexual offence matters.⁵
9. Consideration should also be given to the New Zealand experience of restorative justice conferencing in sexual offences, which has been available since 2002. In New Zealand, restorative justice conferencing is provided for any type of sexual offence at a number of stages throughout the criminal justice system (though usually at pre- and post-

² Australian Law Reform Commission and New South Wales Law Reform Commission (2010), 'Family Violence: Improving Legal Frameworks, April 2010, Consultation Paper, 559, online at <<https://www.alrc.gov.au/publication/family-violence-improving-legal-frameworks-cp-1/>>

³ Daly, K, Bouhours, B and Curtis-Fawley, S (2007), 'Sexual Assault Archival Study (SAAS): An Archival Study of Sexual Offence Cases Disposed in Youth Court and by Conference and Formal Caution in South Australia', July 2007, South Australia Juvenile Justice and Criminal Justice Research on Conferencing and Sentencing, Technical Report No. 3, 3rd Edition, 64.

⁴ Transforming Justice Australia (2024) Research [Website] Accessed 17 April, <https://www.transformingjustice.org.au/research>

⁵ KPMG + Centre for Innovative Justice (2023) "This is my story. It's your case, but it's my story. Interview study: Exploring justice system experiences of complainants in sexual offence matters", NSW Department of Communities and Justice, NSW Bureau of Crime Statistics and Research, NSW

sentencing). The key principle underlying the process is that of being victim-centred, with the victim's ongoing safety being of primary importance.⁶

10. The JRI notes that in 2014 the Victorian-based Centre for Innovative Justice, RMIT, undertook a comprehensive exploratory research project to identify innovative justice processes that display the potential to meet the needs of victims of sexual offending, to address public interest concerns, and to prevent reoffending in ways that the conventional justice system has limited capacity to achieve.⁷ The JRI recommends that the Sentencing Advisory Council carefully consider the resulting report in this inquiry (attached).

ABOUT THE JUSTICE REFORM INITIATIVE

The Justice Reform Initiative was established in September 2020 with a goal to reduce Australia's harmful and costly reliance on incarceration. We seek to reduce incarceration in Australia by 50% by 2030 and build a community in which disadvantage is no longer met with a default criminal justice system response.

Our patrons include 120 eminent Australians, including two former Governors-General, former Members of Parliament from all sides of politics, academics, respected Aboriginal and Torres Strait Islander leaders, senior former judges, including High Court judges, and many other community leaders who have added their voices to the movement to end the cycle of incarceration in Australia.

We also have a rapidly growing number of supporter organisations (176 at the time of writing) that have joined the movement to reduce incarceration. These include the Australian Medical Association, The Law Council of Australia, the Federation of Ethnic Community Councils, the Australian Council of Churches, the Australian Catholic Bishops Conference, and multiple First Nations-led organisations and service-delivery organisations that have expertise working with people who have been impacted by the justice system.

The Justice Reform Initiative seeks to work with parliamentarians from all sides of politics, policy makers, people with experience of the justice system, and people of goodwill across the country to embrace evidence-based criminal justice policy in order to reduce crime, reduce recidivism and build safer communities.

We are working to shift the public conversation and public policy away from building more prisons as the primary response of the criminal justice system and move instead to proven alternative evidence-based approaches that break the cycle of incarceration. We are committed to elevating approaches that seek to address the causes and drivers of contact with the criminal justice system. We are also committed to elevating approaches that see Aboriginal and Torres Strait Islander-led organisations being resourced and supported to provide appropriate support to Aboriginal and Torres Strait Islander people who are impacted by the justice system.

⁶ New Zealand Ministry of Justice, 'Restorative Justice Standards for Sexual Offending' (June 2013), 26.

⁷ Centre for Innovative Justice (2014), Innovative Justice responses to sexual offending – pathways to better outcomes for victims, offenders and the community, Centre for Innovative Justice, RMIT University, Melbourne, May 2014.

Queensland patrons of the Justice Reform Initiative include:

- **Sallyanne Atkinson AO**, Co-Chair of the Queensland Interim Body for Treaty and a member of the Queensland University Senate
- **Professor Kerry Carrington**, Adjunct Professor, University of Sunshine Coast
- **Mick Gooda**, former Aboriginal and Torres Strait Islander Social Justice Commissioner and former Royal Commissioner into the Detention of Children in the Northern Territory
- **Keith Hamburger AM**, former Director-General, Queensland Corrective Services Commission
- **Gail Mabo**, from the Meriam language group and clan of Mer (Murray Island) in the Torres Strait. She is an Australian visual artist who has had her work exhibited across Australia and is represented in most major Australian art galleries and internationally. She was formerly a dancer and choreographer. Gail is also deeply engaged with young people in her community as a mentor and is the daughter of land rights campaigner Eddie Mabo and educator and activist Bonita Mabo AO
- **Professor Emeritus Ross Homel AO**, Foundation Professor of Criminology and Criminal Justice, Griffith University
- **Professor Elena Marchetti**, co-Lead Disrupting Violence Beacon and Deputy Head of School (Research) Griffith Law School, Griffith University and Deputy Chair, Queensland Sentencing Advisory Council
- **The Honourable Margaret McMurdo AC**, former President of the Court of Appeal, Supreme Court of Queensland, Commissioner of the Victorian Royal Commission into the Management of Police Informants and Chair of the Women's Safety and Justice Taskforce
- **Dr Mark Rallings**, former Commissioner, Queensland Corrective Services
- **Greg Vickery AO**, Former President Queensland Law Society and former Chair of the Standing Commission of the International Red Cross and Red Crescent Movement
- **The Honourable Dean Wells**, former Attorney-General of Queensland
- **The Honourable Margaret White AO**, former Judge of the Queensland Supreme Court and Queensland Court of Appeal, former Royal Commissioner into the Detention of Children in the Northern Territory, and Adjunct Professor, TC Berne School of Law, The University of Queensland.

The Justice Reform Initiative thanks the Council for your work relating to justice reform and we look forward to continuing to work with you. Please do not hesitate to reach out if you would like to discuss this matter or any other matters in further detail.

Kind regards,

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