

24th April 2024

Queensland Sentencing Advisory Council  
GPO Box 2360  
Brisbane Qld 4001

Dear Secretariat,

**RE: SENTENCING FOR RAPE AND SEXUAL ASSAULT**

**About QSAN**

QSAN is the peak body for sexual violence prevention and support organisations in Queensland. We have 23 member services, including specialist services for Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, women with intellectual disability, young women, men and children and our membership are located throughout Queensland, including in rural and regional locations.

Our network of non-Government services is funded to provide specialist sexual assault counselling, support, and prevention programs in Queensland. QSAN is committed to working towards ensuring all Queenslanders who experience sexual violence recently or historically, regardless of age, gender, sexual orientation, cultural background receive a high-quality response in line with best practice, client-centred principles. Our work and analysis of sexual violence is from a feminist perspective and addressed within a trauma-informed framework, but our members are trauma specialists as defined by the Royal Commission into Institutional Child Sexual Abuse Royal Commission, in their daily work with clients.

We are committed to engaging with government and other bodies to raise systemic issues of concern, and to ensure the voices and experiences of victims of sexual violence are considered in the formulation of policy and legislation that impacts on sexual violence victim-survivors in Queensland.

**The landscape**

All indications are that sexual violence prevalence in our community is increasing and indeed the latest statistics from the Personal Safety Survey confirm this.<sup>1</sup>

Anecdotal feedback from QSAN services is that over the last near 15 years, the violence associated with the sexual offences is getting worse and the victims are getting younger.

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<sup>1</sup> [Personal Safety, Australia, 2021-22 financial year | Australian Bureau of Statistics \(abs.gov.au\)](https://abs.gov.au/Personal-Safety-Australia-2021-22-financial-year)

The Personal Safety Survey<sup>2</sup> also confirms that younger women are at most risk of victimisation with key findings being:

- The 2021-22 PSS estimated that 1 in 8 (12%) women aged 18-24 experienced sexual violence in the 2 years before the survey.
- In 2022, younger women were most likely to be victims of sexual assault than older women (56% were under 18 years old and 30% were aged 18 – 34).

The extent of sexual violence in our community is bigger and the impacts more widespread than we previously thought<sup>3</sup>:

According to research commissioned by the Australian National Research Organisation on Women's Safety:

- 51% of women in their twenties
- 34% of women in their forties
- 26% of women in their late sixties and seventies.

And the Royal Commission into Aged Care Quality and Safety found there are 50 sexual assaults per week occur nationally in aged residential care.

The latest figures from the ABS are only 8 % of women report sexual violence to the police. As a community, we have a lot of work to do to appropriately respond and prevent sexual violence. We therefore appreciate the Queensland Sentencing and Advisory Council's (QSAC) focus on this issue.

### **Impacts of the Crime – sexual violence is a more serious crime than people realise.**

The impact of sexual violence is profound and has detrimental impacts across a person's life including their social life, mental health, health in general, relationships, education and financially and alcohol and drug use and wellbeing in general. If the sexual violence occurred in childhood the impacts can impact on the development of a person's whole self and can increase their risk of being susceptible to further sexual violence and domestic and family violence and/or targeted by perpetrators and causing ongoing harm, into adulthood.

*“The main finding is that sexual violence causes persistent suffering for women and girls. In childhood and adolescence, the main consequences include a feeling of unbearable secrecy, threat and humiliation; disconnection of body and soul; great fear and constant insecurity; damaged self-image, self-accusation and guilt; experiencing being compelled to take full responsibility for the crime; as well as various physical and mental health problems, e.g., suicidal thoughts. In adulthood, the consequences are also multifaceted and varied, including vaginal problems, recurrent urinary tract infections, widespread and chronic pain, sleeping problems, chronic back problems, and fibromyalgia, eating disorders, social anxiety, severe depression, and chronic fatigue. In conclusion, sexual violence has these extremely negative and long-term*

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<sup>2</sup> [Young women - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au/reports/young-women)

<sup>3</sup> [https://anrowsdev.wpenginepowered.com/wp-content/uploads/2022/08/ALSWH-Prevalence\\_SV.pdf](https://anrowsdev.wpenginepowered.com/wp-content/uploads/2022/08/ALSWH-Prevalence_SV.pdf)

*consequences because of the interconnectedness of body, mind, and soul. The seriousness of the consequences makes a trauma-informed approach to services essential to support the healing and improved health and well-being of survivors.”*

*“Our body is designed to be healthy and has built-in balance management to maintain the equilibrium of the various systems of the body. When women and girls are sexually violated, everything in the body tries to prevent the immune system from being damaged and, therefore, decreasing the chances of the person suffering from a physical or mental illness. Psychoneuroimmunology is an interdisciplinary field of study in which the emphasis is on understanding the relationship between what happens to us and the resulting consequences for the central nervous system, endocrine system, and the immune system.”*

Please see <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7918207/> for further information about the impact of this stress on all aspects of the health of women and girls who have been sexually violated and the strong links between trauma, and disease and a discussion about why sexual violence is a much more serious crime than people realise.

### **Overall Comments**

Given the extremely low rate of sexual violence reporting, it is not unsurprising that many of our member services do not have extensive experience of the sentencing process. Nonetheless QSAN members do have some experience of supporting victim-survivors through criminal justice sentencing and these perspectives inform our response.

When specialist sexual violence services are supporting victim-survivors through a criminal justice process, the time frames are long, the work is intensive, and it carries on after the trial supporting victim survivors to make sense of what happened.

### **The Criminal Justice System is Offender Centric, Trauma Uninformed and Victim Peripheric**

The criminal justice system, from the perspective of victim survivors is offender centric, ‘trauma uninformed’ and ‘victim peripheric’, where the victim’s needs are unimportant and peripheral.

The sentencing experience is an extension of this overall approach. Despite the crime being inflicted on their body, attacking their sense of self, autonomy, and safety and many believing they were in danger of losing their life and their own body being the “crime scene”, they are a mere witness to the case and their needs and rights can be easily forgotten in a larger system that has its own priorities, requirements, and timelines.

There is little to no focus on the human rights of the victim-survivor and no organisation tasked with prioritising or advocating to protect them in the broader system.

Indeed, the sentencing process itself is arguably even more focussed on the offender than the trial and pretrial processes because victim survivors are even more ancillary to the process. At least in the trial and pre-trial the victim survivor has utility as a witness to the system, whilst this role is concluded by the time of sentencing. Arguably this lack of utility means victim-survivors is even less visible, as sentencing is principally focussed on the offender.

For victim-survivors to engage more fully, the process needs to be much more victim centric, and trauma informed.

### **Victim-survivor expectations are different from legal reality.**

Victim-survivor expectations about what they want from the criminal justice system are very different from the legal reality. Victim-survivors seek to tell their truth, and this will be heard and believed, the legal reality is about finding proof. Specialist sexual violence services spend a lot of time with victim survivors preparing them for the reality.

### **The Criminal Justice System is System Driven**

As was previously stated the criminal justice system has its own priorities, requirements, and timelines. In other words, the criminal justice system is system driven doing things in a way that suits and prioritise the needs of the system, rather than accommodating the needs of the victim survivor or the trauma they endured.

As one sexual violence professional described it, victim-survivors and the legal system are on, “parallel train tracks” with little overlap.

### **Aboriginal and Torres Strait Islander women**

Murrigunyah, the only specialist sexual violence service funded in Queensland for Aboriginal and Torres Strait Islander women has only one experience of a matter proceeding to sentencing in 8 years.

Many Aboriginal and Torres Strait Islander women have no confidence in formal processes and have concerns about the inherent racism and misogyny. Though the focus of the inquiry is on sentencing, the overall lack client experience in this area for Aboriginal and Torres Strait Islander women is further evidence of systemic failure. It’s damning of a system that a system set up to provide justice and accountability for all, is too risky and culturally unsafe for Aboriginal and Torres Strait Islander women to use.

### **Intergenerational trauma and cultural considerations**

QSAN consulted with Murrigunyah and sought their views on these issues:

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*“A huge reform to the current court processes is to better understand the need to consult with community and to engage our Elders as part of the sentencing process. The need for court staff to have mandatory training on working with First Nations people and the history of our people. Understanding incarceration carries significant risk to First Nations people such as suicide risk, deaths in custody and racist treatment in our systems. Lack of culturally appropriate and safe interventions, programs and access to Elder advocates who visit the correctional centres. Lack of connection to culture, family and other significant people in community. Looking at sentencing as being a last resort and exploring other avenues for rehabilitation or court diversion programs.”*

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*“The most important priority in sentencing is the safety of the victim/survivor and accountability of the offender.”*

*“Historical issues and current issues being the deaths in custody cases, and over representation of First Nations people in correctional centres are also important to take into account but are secondary to the human rights of the victim-survivor that must be prioritised. Understanding the history for our First Nations people and the intergenerational trauma associated with family being incarcerated over the years. First Nations people being sentenced (off Country) not where they were born or grew up and not close to any living relatives or connections to their “mob” whilst serving sentences. Lack of access to cultural supports and resources, art or other creative/expressive outlets. Other issues include no access to local Elders to assist with level of advocacy whilst serving sentences. The inability of the offender to access culturally appropriate interventions and culturally safe practices such as traditional ways of healing and little diversion to local Traditional Owner healing groups or Elders who provide Spiritual Healing. Racist treatment from Correctional staff and others who work in the system at times exacerbates stress.”*

### **Why do victim-survivors engage with formal processes?**

In QSAN’s experience, most victim-survivors commence formal action to stop their perpetrator committing an offence again against another person. They are seeking both justice, accountability and safety for themselves as well as safety for other women, children and other members of the community.

### **A new starting point – the rights of the victim-survivor need to be given more weight.**

QSAN seeks a change in the sentencing approach to bring the victim-survivor and their needs much more into view at the time of sentencing.

### **Human Rights of Victim Survivors**

The criminal justice system and the sentencing process is part of the broader offender focussed criminal justice system, where the rights of the offender are prioritised, and the human rights of the victim-survivor are provided little or no weight.

Evidence of this approach is found in Queensland’s Human Rights Act which specifically protects the human rights of the accused in the criminal justice system but not the victim-survivor, including children victim-survivors.

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We are aware that the rights of victims in the criminal process *may* be recognised to a limited extent by other provisions, however, the lack of specific reference in the Human Rights Act QLD for the protection of victim’s rights whilst specifically recognising the rights of the accused is problematic because:

- It reinforces the historical focus in the criminal justice system on the accused’s rights to the exclusion of all other rights.
- The accused has a defence lawyer who can focus exclusively on their human rights, but victims do not have their own lawyer who is able to provide a similar focus. This can mean

that opportunities and arguments for a victim's human rights protection, may be missed or not pursued by the Office of the Director of Public Prosecutions.

- Specific clauses tend to be given precedence in interpretation than generalised protections – therefore, an accused's rights that are specifically recognised will be given precedence over other rights, even if they do exist, for example, such as a right to a 'fair trial'.
- The specific focus on the rights of the accused has a broader impact in the system, for example, in Queensland discussion about human rights in the criminal justice system, can be interpreted as only meaning the protection of the human rights of the defendant. For example, in the QSAC Issues Paper on Serious Violence Offenders<sup>4</sup> the human rights section in the original Issues Paper only referenced concerns about the offender, rather than the victim.
- The Human Rights Act requires courts to interpret legislation, where possible, in a way that is consistent with human rights. Again, this further elevates the accused's rights in the criminal justice system, vis-à-vis the rights of the victim. This is because when there are competing arguments about interpretation, the specific recognition of the human rights of the accused could provide further weight to the defence arguments.
- We note in Queensland's *Women's Safety and Justice Taskforce Report, Hear Her Voice Report*, Volume 2, Recommendation 20 recommended that the recognition of the rights of victims in the criminal justice system be specifically considered and the next statutory review of the Queensland Human Rights Act, which has just recently been announced.

### **Victim-Survivor Rights Must be Explicit in Legislation and Policy.**

Our experience over decades working in this area is for victim-survivor rights to be recognised in any meaningful way, these rights need to be explicit and clear, especially in the criminal justice system which traditionally has focussed on defendant's rights and not on the rights of victim-survivors.

### **Victim-Survivors Experience of Sentencing and the Trial Process**

Victim-survivors experience of the criminal justice process has been described as "horrendous". It is an elongated and long, involving many court applications, mentions and adjournments during a time of high stress for the victim survivor. There can be about an 18-month time period between reporting to police until an outcome and post Covid this is now around 2 ½ years. During this time, specialist counsellors are working with victim survivors to stabilise their emotions, support their confidence through therapeutic intervention and build them up for the court experience.

Unfortunately, victim-survivors stability and confidence, understandably can deteriorate through constant delays and adjournments.

If the offender is out in the community awaiting trial, they can continue to harass and intimidate the victim survivor, defaming them to all their support networks and causing increased social isolation and sabotaging their support networks during a time when support is critical. Some victim survivors must relocate because of the level of harassment and abuse. These issues are exacerbated in small communities and regional towns where everyone knows, despite the anonymity of the

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<sup>4</sup> [The '80 per cent rule': The serious violent offences scheme in the Penalties and Sentences Act 1992 \(Qld\)](https://www.sentencingcouncil.qld.gov.au) (sentencingcouncil.qld.gov.au) (p. 48 – Human Rights)

process, who is involved. Of course, some victim survivors will withdraw from the process because of the intimidation.

Social support is one of the most important aspects of healing after sexual violence and the criminal justice process can, for many victim survivors increase isolation.

If there is disappointment at the sentencing outcome victim survivors can then regress in their healing and intensive time is then spent supporting them after the sentencing outcome.

It is little wonder so many victim-survivors question whether it was worth going through the process at all.

## **Police**

Many QSAN services work hard to create and maintain relationships with police in their districts to improve the experience for victim survivors. Some services have arrangements where the police will come to the service and take a statement to improve the victim survivor's experience and at start the process off in a positive way.

Although some locations have formed strong alliances and working relationships, there is a vital need to replicate these successful models across the State.

## **Support for Victim-Survivors and Current Funding levels for QSAN services.**

QSAN services are critically underfunded and receive less than 13% of the core ongoing funding of their closest equivalent and aligned non-government sector, the domestic and family violence sector. They are not funded to provide consistent system's advocacy and court support, including support through the sentencing process. This has an impact on the ability of victim-survivors to engage and the trauma informed nature of the entire process.

The Queensland Domestic and Family Violence Death Review and Advisory Board commissioned a rapid international review of the evaluation literature in 2018 on what worked in the criminal justice system vis a vis domestic and family violence.

One strong finding was of the efficacy of what they termed, "legal advocacy". What was meant by this was system's advocacy, or having an advocate walk beside the victim-survivor through the legal process. The findings from this review, included systems advocacy in sexual violence cases.

"The legal system can be complex to navigate, and thus advocacy services often assist victims of DFV through court and legal proceedings. Legal advocacy is victim-focused advocacy that aims to improve victim safety, to ensure that the legal system responds appropriately and sensitively to DFV cases, and to provide victims with information and support regarding legal policies and procedures (Macy, Giattina, Sangster, Crosby, & Montijo, 2009). We identified one systematic review by Macy and colleagues (2009), which synthesised the extant literature on DFV and sexual assault services, including a section specifically on legal advocacy services for victims of DFV. The relevant synthesised literature mostly comprises court advocacy, including accompanying victims to criminal or civil proceedings and assisting them through related processes. **Evaluations of the summarised interventions have found positive results: victims who receive legal**

**advocacy experience greater social support, better quality of life, reduced likelihood of further abuse, and greater access to community resources (Macy et al., 2009). This review strongly stresses that legal advocacy service providers must be highly knowledgeable about the legal system in order to provide DFV victims with the correct information to navigate the judicial and legal systems. It also indicates that longterm approaches and long-term follow-up with victims should be incorporated into legal advocacy to ensure that services are most efficacious (Macy et al., 2009)”<sup>5</sup>**

This evidence makes it clear that not just anyone can perform this advocacy, the advocates or justice navigators must be highly knowledgeable about sexual violence and the criminal justice system and be able to provide long term approaches and follow up, which a specialist sexual violence service is able to do.

### **Sentencing needs to better reflect the impact of sexual violence on victim survivors.**

QSAN believes that sentencing needs to better reflect community expectations about the seriousness of these crimes and be more reflective of the actual impact of the crime and the trauma caused to the victim survivor.

### **No conviction recorded.**

Victim-survivors have expressed anger and disbelief when the offender has pleaded guilty or been found guilty and the court decision is to not record a conviction. Particularly when there is a focus on the background of the offender and possible impediments to their future work and life opportunities. Victims-survivors believe that severity of the offence and the impact on them and their future opportunities is not fully taken into consideration. On occasions, the offender’s work provides them with some level of credibility which is questionable after the conviction and may provide them access to vulnerable persons, which is incredulous, but our members report this occurring.

### **Suspended sentences**

Suspended sentences that are increasingly outcomes of sentencing in these matters can feed into a community perception that sexual offences have minimal consequences, even after going through the entire criminal justice process.

We receive feedback from victim-survivors that the suspended sentence does not adequately equate to the level of fear, the financial cost, the trauma experienced, and the years of counselling and trauma work required to recalibrate themselves and be able to fully participate in our community. The impact of the crime will stay with them forever even if they can get themselves back on track. They also have overwhelming fear when the offender is released and a sense of injustice if this occurs immediately after the trial. Victim-survivors, and more broadly the community question the release of offenders for time already served. The time served by an offender on remand is considered in determining their sentence and some may walk free or within a short time after the sentence has been handed down. If a person is on remand because they are a

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<sup>5</sup> [https://www.coronerscourt.qld.gov.au/\\_data/assets/pdf\\_file/0008/723689/systematic-review-of-criminal-justice-responses-to-domestic-and-family-violence.pdf](https://www.coronerscourt.qld.gov.au/_data/assets/pdf_file/0008/723689/systematic-review-of-criminal-justice-responses-to-domestic-and-family-violence.pdf) p.47



risk to the community and/or the victim-survivor and were unable to convince a court of ways to mitigate this risk, it seems at odds that with no further mitigation of risk, they can benefit from a quick/immediate release taking into account time already served.

### **Risk within families and relationships.**

There is a perception that the impact of the crime of child sexual abuse and also domestic violence (involving ongoing harm) is not treated as seriously as they should or as seriously as one-off stranger violence.

*“You can’t get any more intimate than somebody being physically inside you. This is a part of your body that you don’t share with everybody else, it’s a part of your body that you’ve been told is private. Really, it’s an incredibly—it’s the most intimate part of your body that you can possibly imagine . . . to have someone violate that is just beyond anything else that anybody could do to you. Absolutely beyond anything else anyone could do to you.”<sup>6</sup>*

### **Not serving whole sentence**

Both the victim-survivors and the community expect offenders to serve their whole sentence or at least most of it. Victim-survivors are shocked to find out they may only serve a fraction of their sentence. The victim’s perception is the offender is a serious violent offender. However, research has found only a fraction of serious violent offenders are declared.

Transparency in the system fosters greater accountability. So, we are in favour of a system that is as transparent as possible about its decision making.

### **Recognising Victim Harm and Victim Justice**

QSAN supports the approach taken in the Australian Capital Territory, New South Wales, and South Australia. That is, specifically recognising the harm done to any victim and it be listed as a separate purpose of sentencing distinct from just punishment and denunciation.

We fully support the sentiments of the North Queensland WLS, in their preliminary submission where it was noted ‘just in all the circumstances’ must incorporate “justice” for the victim-survivor, not only the defendant.

We also support the notion of the need to protect the victim from future harm and not just the community in general.

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<sup>6</sup> <https://journals.sagepub.com/doi/full/10.1177/1049732320967659> Please refer to this article for further direct quotes about the impacts of intimate partner sexual violence on victim survivors, in their own words.

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## **Why is there are mismatch?**

QSAC's own research provides evidence of a mismatch between perceptions of crime that cause the most trauma and sentencing outcomes for rape and sexual violence, including child sexual abuse. We respectfully suggest that this should be the starting point of any inquiry, asking what is getting in the way of sentences more fully reflecting victim-survivor experience of the crime and sentencing outcomes?

If we know the answer to this, this will go some way to addressing the disconnect.

## **Rehabilitation**

Many victim-survivors may be supportive of the offender being mandated to attend rehabilitation programs to address their offending behaviour. However, there are currently no such courses in the community and limited opportunities whilst in custody. The development and delivery of effective, evidence-based offender treatment programs needs to be further explored to both hold offenders accountable and assist in improving community safety.

As stated, these courses would need to be evidence based and victim centric in their approach. It is possible, that a non-custodial sentence would be more palatable to victim-survivors if the offender was required to undertake a course of rehabilitation, if this was available in the community and they were monitored to attend and there was accountability if they refused to participate.

## **Good Character References and Negative Consequences for the Offender**

QSAN is strongly opposed to the use of good character references in any sexual violence matters.

The good character of the offender is often used in a grooming process and the "good character" can be weaponised to deter the victim survivor reporting and to demean, minimise and dismiss the victim survivor's experience.

For victim survivors to have to listen to testimonials and/or know that good character references are being handed to the judge for consideration in sentencing and in addition, listen to how the offending has impacted on the offender's employment, financial situation, and relationships, is highly distressing. We do not believe these character references and the negative impact of the offending has a place in the sentencing process and are not aligned to justice as understood by victim-survivors. The defence could still have access to the use of other mitigating factors, such as genuine remorse.

## **Restorative Justice**

QSAN supports an examination of the role of restorative justice in certain circumstances but does not want it to replace appropriate accountability and sentencing in sexual violence. It should not become an easy or cheap alternative to the criminal justice system.

There are some victim-survivors of sexual violence in some circumstances who do seek a restorative justice approach. The process must be appropriately resourced and use trained staff who are also trained in sexual violence. It must be genuinely victim centric, and victim led.

After the Royal Commission into Institutional Child Sexual Abuse, a process was established for some institutions to engage with victim-survivors and say “sorry”. Some victim-survivors did enter this process in good faith, but some have provided feedback to QSAN they have regretted their decision and wished they held the offender accountable as “sorry” was not enough.

This is a current process and a good reminder about undertaking this work carefully.

In smaller communities, it must be carefully undertaken as some of the community leaders may also be perpetrators of violence which is extremely problematic.

The Immigrant Women’s Support Service believes the model, for some communities in Australia is more culturally aligned and familiar.

Some QSAN services felt restorative justice may be an alternative for young offenders but were concerned about its use for adults. 18-year-old boys can engage in high level offending, be highly dangerous to the victim survivors and the community.

QSAN have had variable experience of the youth restorative justice process in Queensland and there has been some experience of it being offender centric and we therefore support the recommendation for its independent review by the Women’s Safety and Justice Taskforce.

### **Interpreters**

IWSS raised the issue of the need for quality interpreters to be available across the entire criminal justice system for victim survivors.

The quality of interpreters can be problematic with the interpretation not being accurate as there may be different dialects and misinterpretation of phrases and terminology.

There also needs to be an immediate process in place for when the interpretation is not up to an acceptable standard and for the prosecutor and ultimately the court, to be alerted during the trial process.

We have heard feedback that in the UK the interpreting service is run and certified by the Justice Department and there is more oversight and monitoring for quality. A similar approach would be appreciated in Australia.

### **Sexual Offending Risk Assessment**

These need to be independent and experienced forensic psychologists who are using standardised and measurable approaches and have experience with working with victim survivors and therefore have a victim survivor lens. They should be engaged and appointed by the court and not by the defence. They need to be highly qualified professionals who can see through the manipulation and lies of offenders.

## **Victim Impact Statements**

Victim Impact Statements can be a powerful way in which the court and the community and the offender can hear from the person most deeply affected by the crime. Some victim-survivors do not want to participate as they do not want the perpetrator to know how deeply the crime impacted on their life. On other occasions the process is rushed and pressured as the offender has made a late plea.

Victim-survivors believe this is finally their time to tell their story but soon realise that the process is subject to many constraints and rules around what can be spoken about and not wanting to provide anything that may cause an appeal point. For example, if the offender was initially charged with 18 crimes but 10 were dropped then the victim survivor is unable to allude to the other criminal acts or somehow brings in new evidence.

Victim impact statements must be meticulous in their framing to comply with these rules and regulations, and this takes away from the victim's voice and reinforces the system's offender centric approach.

## **Victim Impact Statements– Process Issues**

There is a further issue in situations where the ODPP ask for the Victim Impact Statement early before going to trial. The victim-survivor can spend many hours on their statement and if a not guilty verdict is returned there is no place for their victim impact statement to be included and their reality to be heard. Victim-survivors are told “*This is your chance to have your say*”, often by other participants in the system rather than sexual violence services, and then when a not guilty verdict is returned the process of writing the victim impact statement has zero therapeutic value. This is not trauma informed and can have a profound impact on the victim-survivor whose reality is never heard in court. It is not uncommon for victim-survivors to be very angry about this.

We do not want to extend or draw out the sentencing process, but the system needs to understand the victim- survivor is buoyed by doing the statement and it gives them hope for a just outcome.

There needs to be thought about how the process can be changed to better accommodate victim-survivor needs and to be more trauma informed.

## **Case uplift**

QSAN supports a consideration of sentencing uplift in sexual violence matters, including child sexual violence matters so that the sentencing better reflects community standards and the objective gravity and the moral culpability of the offending.

We understand that in Victoria, the ODPP appealed an incest case to the Court of Appeal and High Court, and their decisions collectively “meant that sentences for incest in Victoria not only should increase to better acknowledge the seriousness of this type of offending and better accord with community expectations, but also should do so immediately, not incrementally.”<sup>7</sup>

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<sup>7</sup> Paragraph 2.10 [Sentencing Sex Offences in Victoria: An Analysis of Three Sentencing Reforms.pdf \(sentencingcouncil.vic.gov.au\)](#)

Though the case uplift only related to incest, it has been suggested that the implications of the various decisions – particularly the commentary around the seriousness of child sex offences – have indirectly affected sentencing practices for child sex offences other than incest.<sup>8</sup>

### **What needs to change?**

The sentencing process and practice needs to bring the victim-survivor's needs and human rights more into view and there needs to be greater acknowledgement of them in and during the sentencing hearing.

That the victim-survivors human rights in the criminal justice system needs to be specifically referenced in the Human Rights Act QLD.

That process of obtaining Victim Impact Statements become more trauma informed.

The focus in sentencing should be on the safety, accountability, and justice for the victim survivor and that this be acknowledged and separate from general community safety and deterrence.

That the legal reality of the criminal justice system better aligns with victim-survivor expectations of the system.

That justice in the system needs to specifically reference justice for the victim-survivor not just the defendant.

That sentencing practice should be more aligned to community expectations and the gravity and impact of these crimes on victim survivors and a sentencing uplift be considered.

That investment is required into the development of appropriate and evidence-based rehabilitation courses for sexual violence offenders both inside correctional facilities and in the community, including programs that are on country, culturally appropriate and include cultural healing approaches.

That access to interpreters be as of right for victim-survivors and that the quality be standardised and monitored.

That stronger sentencing guidelines be developed specifically in response to the making of suspended sentences and no convictions recorded in sexual violence matters and, in particular the access to access vulnerable people by the offender, be considered and mitigated.

That good character references and impacts of the commission of the crime on the offender be removed from sentencing practice, in all sexual violence matters in Queensland because they are not appropriate or just.

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<sup>8</sup> Paragraph 2.11 *ibid.*

That victim-survivors be provided with expert sexual violence advocates from specialist sexual violence services during the entire criminal justice process and that QSAN services be appropriately funded to undertake this role.

That there be judicial and legal education on sexual violence and the impact of the crime on victim-survivors.

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If you require any further information, please do not hesitate to contact Angela Lynch at the Secretariat.

Kind Regards,



Angela Lynch,  
Executive Officer