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Sisters Inside Inc. is an independent community organisation which exists to advocate for the human rights of women in the criminal justice system

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Queensland Sentencing Advisory Council (QSAC)
GPO Box 2360
Brisbane QLD 4001

To the Council,

Review of sentencing practices for sexual violence offences

We welcome the opportunity to make a submission to your review of sentencing practices for sexual assault and rape offences. We urge QSAC to consider and recommend models for responding to sexual violence that sit outside of the criminal punishment system, which centre the needs of victim-survivors, support those responsible for sexual violence to take accountability for their actions, and engage the wider community in changing the conditions that made such violence possible.

About Sisters Inside

Established in 1992, Sisters Inside is an independent community organisation based in Queensland, which advocates for the collective human rights of women and girls in prison, and their families, and provides services to address their individual needs. Sisters Inside believes that no one is better than anyone else. People are neither 'good' nor 'bad' but, rather, one's environment and life circumstances play a major role in behaviour. Given complex factors lead to women and girls entering and returning to prison, Sisters Inside believes that improved opportunities can lead to a major transformation in criminalised women's lives. Criminalisation is usually the outcome of repeated and intergenerational experiences of violence, poverty, homelessness, child removal and unemployment, resulting in complex health issues and substance use. First Nations women and girls are massively over-represented in prison due to the racism at the foundation of systems of social control.

What's wrong with current sentencing practices for sexual assault and rape offences?

The current responses by the criminal punishment system to sexual violence are shaped by the assumptions that sexual violence is committed by a few 'bad' individuals who will behave better after they have been punished, and that this punishment will deter other people from committing the same violence. These assumptions are used to justify policies, laws and practices that focus on individual punishment, surveillance and isolation.¹

But as US law professor Leigh Goodmark has stated about the overlapping issue of gender-based violence, there is no evidence that the criminal punishment system is creating safety, preventing violence or holding people accountable. Instead, Goodmark argues, 'What the criminal system does efficiently and effectively is deploy violence to exert control – criminalization is "violence work"'.² We submit that the criminal punishment system in Australia is not 'broken' or 'failing'; it is working exactly as intended to violently contain, control and criminalise those in marginalised communities, particularly First Nations people.³

Rather than supporting accountability, treatment and healing for people who cause sexual harm, the criminal punishment system responds with further violence – including the sexual violence of strip-searching and the normalisation of rape within prisons.⁴ Further, Indigenous women who are victim survivors of violence have told the Institute for Collaborative Race Research they do not necessarily want men who have been violent towards them to be incarcerated for a short period of time, because they know these men are more violent when they return to communities because of their experience of the violence of incarceration.⁵

¹ generationFIVE, [Ending child sexual abuse: a transformative justice handbook](#), June 2017, p. ii; Ejeris Dixon & Leah Lakshmi Piepzna-Samarasinha (eds), *Beyond survival: strategies and stories from the transformative justice movement*, 2020, p. 115.

² Leigh Goodmark, *Imperfect victims: criminalized survivors and the promise of abolition feminism*, 2023, p. 184.

³ National Network of Incarcerated and Formerly Incarcerated Women and Girls, 'It's time to step off the treadmill of reform', [media release](#), 30 November 2023; Mariame Kaba & Andrea J Ritchie, *No More Police: A Case for Abolition*, 2022, 'Introduction'.

⁴ Chloë Taylor, 'Anti-carceral feminism and sexual assault – a defense', *Social Philosophy Today*, 27 June 2018.

⁵ Institute for Collaborative Race Research, [Expert report commissioned by the Independent Commission of Inquiry into Queensland Police Service responses to family and domestic violence](#), 25 August 2022, p. 19.

Using punishment and social isolation as the primary responses to sexual violence means that most people who cause harm will deny their behaviour, which makes the process of seeking redress more traumatic for victim-survivors.⁶

Given that only about 13 per cent of sexual offences are even reported to police, with an even smaller proportion prosecuted,⁷ there is an urgent need to accept that the use of the criminal punishment system to sexual violence is:

- failing to meet the needs of most victim-survivors
- not supporting those responsible for sexual violence to take accountability for their actions and reduce their likelihood of repeating the behaviour
- doing nothing to change the cultural norms of patriarchal white supremacy that encourage sexual violence.

It's time to boldly reimagine how responses to sexual violence could look.

Transformative justice responses to sexual violence

Creating more effective responses to sexual violence will require more of us all as community members. Mariame Kaba and Andrea J Ritchie argue that we have been conditioned to passively delegate 'responsibility for producing safety to police, prosecutors, and prisons, and accepting the violence they perpetrate as the inevitable price of safety'. To achieve this aim, they argue, 'the state stokes our fear of one another, discouraging and interfering with our ability to care for each other'.⁸

An alternative model for responding to sexual violence can be found in the set of community accountability practices known as transformative justice. Mariame Kaba explains that transformative justice 'is a community process developed by antiviolenace activists of color, in particular, who wanted to created responses to violence that do what the criminal punishment systems fail to do: build support and more safety for the person harmed, figure out how the

⁶ Centre for Innovative Justice, [Innovative justice responses to sexual offending – pathways to better outcomes for victims, offenders and the community](#), May 2014, p. 17; *Beyond survival*, p. 115.

⁷ Australian Law Reform Commission, *Justice responses to sexual violence*, issues paper, April 2024, p. 4.

⁸ *No More Police*, 'How Do We Get There? Toward a Police-Free Future'.

broader context was set up for this harm to happen, and how that context can be changed so that this harm is less likely to happen again.⁹ Mia Mingus notes that ‘no one is born knowing how to rape or torture – these are learned behaviours; violence is collectively enabled, has a collective impact and requires a collective response’.¹⁰

While transformative justice can use many similar processes to the restorative justice processes referred to in QSAC’s March 2024 consultation paper, transformative justice differs from restorative justice in two critical ways:

- It remains completely separate from the criminal punishment system to ensure it is not co-opted by the state as another coercive tool.¹¹
- It seeks not only to address the specific harm caused but to transform the wider community culture and treat the root causes of violence.¹²

At its heart, transformative justice seeks to answer three main questions:¹³

1. *How do we support healing for survivors of violence and those in their communities without causing further harm?*

Many survivors of sexual and other violence are not seeking that those responsible for harm be jailed or otherwise punished, but may instead be looking for their story to be validated, their voice and agency respected, for the person who harmed them to take accountability for their behaviour, and for what occurred to not happen again.¹⁴

Transformative justice practices are centred around supporting and honouring a victim survivor’s wishes and feelings without perpetrating further harm.¹⁵ Those supporting victim survivors through this process will usually work to create a list of ‘demands’ or what taking accountability would look like to them. Examples may include a letter of apology, public

⁹ Mariame Kaba, *We do this ‘til we free us: abolitionist organizing and transforming justice*, 2021, p. 59.

¹⁰ Mia Mingus, [‘Transformative justice: a brief description’](#), 11 January 2019.

¹¹ ‘Anti-carceral feminism’.

¹² National Sexual Assault Coalition Resource Sharing Project, [‘Transformative justice resource compilation’](#).

¹³ [‘Transformative justice resource compilation’](#).

¹⁴ ‘Anti-carceral feminism’; [Expert report commissioned by the Independent Commission of Inquiry into Queensland Police Service responses to family and domestic violence](#), p. 19.

¹⁵ ‘Anti-carceral feminism’.

disclosure of the harm at the person's workplace or organisation, or a year of feminist therapy.¹⁶

2. *How do we hold contradictory truths – that people are often survivors and perpetrators of violence at the same time – while seeking accountability and an end to the violence?*

As the Creative Interventions transformative justice toolkit notes,¹⁷ accountability is the ability to recognise, end and take responsibility for violence. It does not require victim survivors to forgive the person who did harm, nor does it mean that an apology given will make everything fine or that relationships or families must stay together as a result. But as generationFIVE, an organisation that seeks to end child sexual abuse, states in its transformative justice handbook, 'By standing for everyone's need for healing, we challenge the dehumanizing logic that is central to systems of oppression, domination, and abuse'.¹⁸

The Creative Interventions toolkit provides a useful 'staircase to accountability' with six steps: stop the immediate violence; recognise the violence; recognise the consequences of violence without excuses, even if unintended; make repairs for the harm; change harmful attitudes and behaviours so that violence is not repeated; and become a healthy member of your community.¹⁹

Because transformative justice is not backed by incarceration, it is prepared for the fact that those responsible for sexual violence may refuse to acknowledge it, and that they may even retaliate or escalate. This is another point of difference from the restorative justice practices that have been previously proposed for the Queensland context, which rely on the participation of the person who has caused harm.²⁰

¹⁶ Mia Mingus, '[What would it take to actually end intimate violence?](#)' 12 December 2018.

¹⁷ [Creative Interventions toolkit: a practical guide to stop interpersonal violence](#), August 2020, Section 1, pp. 32–33.

¹⁸ [Ending child sexual abuse](#), p. 56.

¹⁹ [Creative Interventions toolkit](#), Section 1, p. 33.

²⁰ [Innovative justice responses to sexual offending – pathways to better outcomes for victims, offenders and the community](#), p. 23.

We submit that even where transformative justice process do not achieve the cooperation of the person who has caused the harm, their outcomes remain significantly better for all parties than those of the criminal punishment system.²¹

3. *How do we create cultures of support and accountability that address the root causes of violence?*

The community accountability aspect of transformative justice acknowledges that ‘when someone is sexually assaulted, everyone in the community is harmed; everyone needs to heal; and everyone has a responsibility to support a survivor and hold a perpetrator accountable’.²² As Philly Stands Up, a community group practising transformative justice in the punk music scene, realised after their approach evolved from more restorative justice practices: ‘Our work no longer aims to restore our community to the way it was. Instead, we seize opportunities to use community organizing to push back at the injustices inflicted by capitalism and the state, including intimate partner violence, child sexual abuse, rape, sexualised violence within incarcerated populations, and the broad spectrum of behaviours that can be understood as sexual assault.’²³

This community-level work can range from challenging cultural norms that enable and excuse sexual violence, such as racism and misogyny, to providing people with stable housing, employment, food and education as pathways to strengthening individuals and their communities.²⁴

²¹ ‘Anti-carceral feminism’.

²² Esteban Lance Kelly, ‘[Philly Stands Up: inside the politics and poetics of transformative justice and community accountability in sexual assault situations](#)’, *Social Justice*, 2011/2012, 37, 4, p. 50.

²³ ‘[Philly Stands Up](#)’, p. 50.

²⁴ [Ending child sexual abuse](#), pp. 30 and 42.

How might a transformative justice approach look?

Unlike the criminal punishment system, transformative justice approaches can never be a one-size-fits-all model that are easy to scale up. They must be grounded in the specific communities where the harm occurs and will therefore look different in each case. It may be that a victim survivor attends a local community organisation or hub to disclose the sexual violence and receive support and information about their options, whether to proceed with a police complaint or consider a transformative justice pathway. If they choose the latter, local community facilitators may then work with the victim survivor to build a support team of three to four people from the victim survivor's family, friends or members of a community group that they are part of. The same work would then be attempted with the person responsible for the harm, with meetings between the teams occurring to decide on next steps. The process may take months or even years before it is brought to a close.

Two examples from the organisation Communities Against Rape and Abuse (CARA), based in Seattle show the kinds of processes and outcomes that can be involved.²⁵ In the first example, a young activist was sexually assaulted by a man who held a position of power in the organisation where she worked. After speaking with organisers at CARA and making a plan, the activist asked around and discovered three women with similar complaints against the same man. These women were able to meet with the other women in the organisation and build a collective to demand that the man be removed from his leadership position, pursue counselling (supported by his friends) and that the organisation conduct intensive educational work on sexual violence. Both the organisation's leadership and the man who had caused harm agreed to these demands, showing the power of an approach that supports both the victim survivors and the person responsible for harm while engaging the wider community around them.

In a different example, a leader of a Black youth organisation had repeatedly sexually harassed and assaulted young women. CARA encountered initial resistance from both the organisation and the man's friends, but over time they were able to address the specific harm and the wider misogyny that had enabled the man's behaviour. While the man refused to accept responsibility for his actions, he was removed from his position of authority in the youth organisation and the

²⁵ CARA, 'Taking risks: implementing grassroots community accountability strategies', summarised in 'Anti-carceral feminism'.

wider community gained a greater awareness of the issues of sexism and misogyny that had enabled the behaviour.

This case illustrates the fact that even where a person refuses to cooperate with the transformative justice process, they are made aware of their victims' perspectives and face community consequences, with the victim feeling heard, acknowledged and respected, all of which makes it a far more successful outcome than using the criminal punishment system.

Since transformative justice approaches focus on preventing sexual violence from happening again, they also include proactive campaigns such as those run by Collective Action for Safe Spaces (CASS) in Washington DC, which trains local bar and restaurant staff to intervene in harassment or assault taking place in those spaces. CASS also runs a Rethink Masculinity program where men can come together to 'unpack toxic masculinity and rape culture and talk about building accountable communities'.²⁶

We agree with the words of Leigh Goodmark: 'Transformative justice is hard work. It requires much more from the community than deferring to the carceral state to punish. But the returns on that investment of time, effort, and other resources can be huge: prevention of violence through transforming the conditions that create violence, meaningful active accountability rather than passive punishment, people engaged in communities instead of caged in prisons.'²⁷

Kind regards,



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²⁶ Nicole Froio, '[Community organizers address sexual violence without the criminal justice system](#)', 5 September 2020.

²⁷ *Imperfect victims*, p. 194.