

7 July 2023

Queensland Sentencing Advisory Council
GPO Box 2360
BRISBANE QLD 4001

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

Dear Council

Preliminary submission: Review of sentencing for sexual violence offences and the aggravating factor for domestic violence offences.

Thank you for giving Full Stop Australia the opportunity to make a preliminary submission to the Queensland Sentencing Advisory Council (**Council**)'s review on sentencing for sexual violence offences and the aggravating factor for domestic and family violence offences.

We note the urgency of this review, given recent findings by the Australian Bureau of Statistics that Queensland had one of the highest increases in victim numbers for sexual assault from 2021 to 2022 – with 540 additional sexual assault victims in the year, amounting to an 8% increase in rates of sexual assault in the state.¹ Given the evidence of increased prevalence of sexual violence, a review of sentencing for these crimes is timely and important.

About Full Stop Australia

Full Stop Australia (**FSA**) is an accredited, nationally focused, not-for-profit organisation which has been working in the field of sexual, domestic, and family violence since 1971. We perform the following functions:

- Provide expert and confidential telephone, online and face-to-face counselling to people of all genders who have experienced sexual, domestic, or family violence, and specialist help for their supporters and those experiencing vicarious trauma;
- Conduct best practice training and professional services to support frontline workers, government, the corporate and not-for-profit sector; and

¹ Australian Bureau of Statistics. (2022). *Recorded Crime - Victims*. ABS.
<https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/latest-release>.

www.fullstop.org.au

P 02 8585 0333 F 02 9555 5911
PO Box 555 Drummoyne NSW 2047

ABN 58 023 656 939

We acknowledge the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to elders both past and present.

- Advocate with governments, the media, and the community to put a full stop to sexual, domestic and family violence.

FSA, as a national service, draws upon the experiences of our trauma-specialist counsellors in supporting people impacted by sexual, domestic and family violence across jurisdictions. Our advocacy is informed by the lived expertise of survivor-advocates in our [National Survivor Advocate Program](#). This program gives victim-survivors of gender-based violence a platform to tell their stories and advocate for change, including by providing input to FSA's advocacy, and accessing opportunities to speak to media and government about their experiences.

About this submission

This submission does not address each of the terms of reference to the Council's review, noting that there will be further opportunities to make more detailed submissions (as set out below).

Instead, this submission seeks to draw the Council's attention to some key issues, which we hope will guide the Commission as it progresses its review. Our preliminary feedback is focused on sentencing in sexual violence matters, including child sexual offences, as this is an area of focus and expertise for FSA.

We ask that the Council considers the following matters as it progresses its review.

Low sentencing impacts justice to victim-survivors, reporting rates and deterrence

Sentencing in sexual violence and child sexual abuse cases can be low and inconsistent.

There are several negative consequences to this:

- The giving of non-custodial sentences, or low custodial sentences, in sexual violence and child sexual abuse matters can be retraumatising to the victim-survivors of those crimes. It can have significant and lasting impacts on their recovery, by signalling to them that the harm they experienced was not considered serious.
- It can also impact reporting rates for sexual offences and child sexual offences. Data shows that reporting and conviction rates for sexual violence are lower than for other types of crimes. The latest data from the Australian Bureau of Statistics shows that 22% of Australian women have experienced sexual violence since the age of 15.² However, according to the 2016 Personal Safety Survey, of the 639,000 women who experienced sexual assault by a male perpetrator in the ten years prior to survey, only 13% (86,000) contacted the police about the most recent incident.³ In addition, conviction rates for sexual offences are significantly lower than for other offences.⁴ Reporting on low, or non-custodial, sentences

² Australian Bureau of Statistics. (2021-22). *Personal Safety, Australia*. ABS.

<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>.

³ Australian Bureau of Statistics. (2021, August 24). *Sexual Violence - Victimization*. ABS. <https://www.abs.gov.au/articles/sexual-violence-victimisation>.

⁴ There was an average conviction rate of 11.5% between 1990 and 2005, which is lower than other criminal offences, according to Sarah Bright et al, *Attrition of Sexual Offence Through the Victorian Criminal Justice System: 2021 Updates* (Crime Statistics Agency Report, 2021) 7, 17.

can send the message to survivors that reporting the crime they experienced, and going through the criminal justice process, isn't worth it.

- Low, or non-custodial, sentencing also negatively impacts both general and specific deterrence for sexual offences and child sexual offences. In relation to general deterrence, research shows that offending and reoffending are more likely when offenders are given reason to lower their inhibitions around an offence. When the media reports weak sanctions to sexual violence or child sexual abuse, that can unconsciously or consciously enable offenders.
- More generally, low, or non-custodial, sentencing for sexual violence and child sexual abuse sends a message to the community that these are not important issues. This impacts primary prevention efforts aimed at ending sexual violence and abuse.

In light of these issues, the Council should consider an overall uplift of sentences for sexual violence and child sexual abuse.

We also refer the Council to widespread misconceptions about sexual offences and enduring negative attitudes towards victims – for example:

- “Real rape” myths, whereby many in the community persist in understanding sexual violence as a crime perpetrated by a stranger, in an isolated place, accompanied by physical violence. This myth does not accord with sexual violence perpetrated in intimate partner relationships or by a person known to the survivor, despite how common these forms of violence are – with the latest ABS Personal Safety Survey finding that, since the age of 15, 1 in 4 women (27%) have experienced violence by an intimate partner or family member.⁵ Research shows that individual complainants whose experience departs from the archetype of “real rape” (where the perpetrator is a stranger, physical violence is used and the victim fights back) are less likely to be accepted by jurors as genuine, and therefore less likely to receive good justice outcomes;⁶
- The persistence of victim blaming – for example, blaming victims who engaged in “risky” or “promiscuous” behaviour, rather than rightly placing the blame for offending on offenders; and
- Lack of sympathy for victims who don't match “perfect victim” archetypes – for example, victims who experienced sexual violence after consuming drugs or alcohol at a party.

We urge the Council to consider how these myths impact sentencing as part of its review – for example, by comparing sentence lengths for sexual violence perpetrated by strangers, versus sexual violence perpetrated by persons known to the complainant, including intimate partners.

The Council should consider limiting the use of ‘character’ evidence as a sentencing consideration for sexual violence

The Council should consider limiting the use of evidence of an offender's character in sentencing for sexual violence offences.

⁵ Australian Bureau of Statistics, above n 2.

⁶ H. Gerger, H. Kley, G. Bohner, F. Siebler, ‘The Acceptance of Modern Myths About Sexual Aggression Scale: Development and Validation in German and English’ (2007) 33(5) *Aggressive Behavior* 422, 423.

The offender's character is currently a sentencing factor, for sexual violence as well as other crimes, under ss 9(2)(f) and 9(3)(h) of the *Penalties and Sentences Act 1992* (Qld).

The following recent cases show that character references can impact sentencing for sex offences and child sex offences, enabling offenders to avoid custodial sentences:

- Thomas Earle, a convicted rapist, was sentenced by the ACT Supreme Court to 300 hours of community service and avoided a custodial sentence, with the judge commenting on his 'good character' based on several character references.⁷
- Jeffrey Corfe, convicted of sexual penetration of a child under 16, was sentenced by the Victorian County Court to a 12-month wholly suspended prison term (meaning he won't have to spend any time in prison, subject to good behaviour), based partly on good character references. One of Corfe's character references later said he hadn't known what the reference would be used for, and if he had, he wouldn't have given it.⁸

This shows that character references can deny justice to victim-survivors. The ability of character references to deliver poor justice outcomes could be addressed by:

- Altogether removing the ability of character references to be used as a mitigating factor in sentencing for sexual violence offences. Arguably, the unique nature of these offences – whereby perpetrators rely on an outwardly good reputation to perpetrate crimes behind closed doors; and a person's public reputation has very little to do with their propensity to offend – justifies a legislative amendment altogether removing the ability of character references to be considered in their sentencing.
- In the alternative, placing tighter controls on the use of character evidence. For example, character referees could be required to come to Court and be cross-examined on their evidence – rather than have it be accepted without question.

Limiting, or altogether precluding, the use of character references in sentencing for sexual offences would give survivors more faith that the justice system recognises the harm caused by sexual violence. It would also remove a retraumatising element of the Court process for survivors of these crimes, many of whom report they find it incredibly painful and retraumatising to hear reviews of their offender's 'good character' during sentencing.

Next steps

Thank you in advance for considering the issues raised in this preliminary submission.

⁷ See Roberts, Georgia, 'Canberra rapist Thomas Earle avoids jail time, sentenced to 300 hours of community service,' *ABC*, 29 April 2023, available at: <https://www.abc.net.au/news/2023-04-29/rapist-thomas-earle-sentenced-to-three-years-ico/102278630>.

⁸ See Hosier, Phoebe and Kinsella, Elise, 'Questions arise over character references used to help sex offender Jeffrey 'Joffa' Corfe escape jail time,' *ABC*, 8 March 2023, available at: <https://www.abc.net.au/news/2023-03-08/court-jeffrey-joffa-corfe-sentence-character-reference-alex-case/102070088>.

We note that the Council's website states that there will be further opportunities to provide feedback on Consultation Papers on sexual violence sentencing, and domestic violence as an aggravating factor in sentencing, which will be released in early 2024 and early 2025 respectively.

FSA plans to make further submissions on the Consultation Papers, and would be grateful to be notified of their release.

[REDACTED]

Yours faithfully

[REDACTED]

Tara Hunter
A/Chief Executive Officer
Full Stop Australia