

Review of sentencing for sexual assault and rape offences

General community summary



General community summary

Content warning: This Community Summary has information about sexual violence offences that readers may find distressing. If this raises any issues for you and you need to talk to someone, help is available:

Lifeline Australia (24 Hours): 13 11 14

1800RESPECT (24 Hours): 1800 737 732

DV Connect (Womensline) (24 Hours): 1800 811 811

DV Connect (Mensline) (9.00am–midnight): 1800 600 636

Sexual Assault Helpline (7.30 am–11.30 pm): 1800 010 120

13YARN Aboriginal & Torres Strait Islander Crisis Support (24 Hours): 13 92 76

Kids Helpline: 1800 55 1800

Relationships Australia: 1300 364 277

Victim Assist Queensland: 1300 546 587 (business hours) or email VictimAssist@justice.qld.gov.au

About the Council

The Queensland Sentencing Advisory Council gives the Queensland Government, through the Attorney-General, advice about sentencing in Queensland. We also undertake research and give the community information about sentencing.

The Council has up to 12 members who come from a range of backgrounds with experience working in the criminal justice system. To see who is on the Council, visit our [website](#).

Review of sentencing for sexual assault and rape offences

The Attorney-General has asked us to look at the sentences that courts give people who are convicted of rape and sexual assault and tell them if any changes to the law are needed. They have asked us to do this by giving us Terms of Reference.

The Terms of Reference tell us what things we have to think about, who we have to consult and what information and advice the Attorney-General wants us to provide.

We are only looking at the sentencing of adults. This is because we have not been asked to look at the sentencing of children as different laws apply.

About this general community summary

The Council has produced two publications looking at the issues and research on sentencing practices for sexual assault and rape offences. These consultation papers — **Consultation Paper: Background** and **Consultation Paper: Issues and Questions** — are detailed and technical.

This Summary gives a shortened and easier-to-follow overview of the issues that the Council is exploring and asks questions that the Council is interested in hearing from the community about. There are other questions in the **Consultation Paper: Issues and Questions**.

Who do we want to hear from?

To help us decide if we should recommend any changes, we would like to hear from you to let us know what you think. We want to hear from:

- People with lived experience of sexual violence and who have engaged, or who have considered engaging with, the sentencing process
- Friends and family members of people with lived experience of sexual violence or committed acts of sexual violence
- People who work with people who have experienced or committed acts of sexual violence including support and advocacy services, re-entry services, legal professionals, police officers, corrective services officers and other professionals and organisations
- Academics, experts and researchers
- Members of the public.

How can I tell the Council what I think?

The best way to tell us your views is to make a submission. We have prepared an online form to assist you. But there is no set format you need to follow when telling us what you think.

In your submission, you can decide to answer some or all of the questions in this summary. Or you may prefer to tell us about your thoughts and experiences without directly answering any questions.

Submission deadline: 10.00 am, Monday, 22 April 2024

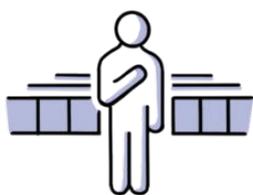
For information about how to make a submission and how we will use it, please visit our [website](#).

What we know

Before we ask our questions, it is helpful to understand what we know about sexual violence. We then explain what the offences of sexual assault and rape are, what sentencing is and how a judge decides what sentence to give.

We know that:

- 1 in 5 women in Australia have experienced sexual violence since the age of 15 and 1 in 10 women have experienced sexual abuse as a child (before the age of 15).
- 1 in 16 men have experienced sexual violence since the age of 15 and 1 in 27 men have experienced sexual abuse as a child (before the age of 15).
- Most sexual violence offences are committed by males.

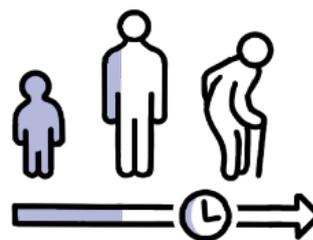


98.6%

- Sexual violence is experienced in a range of different relationships and locations. It may happen once or many times and can occur with other forms of violence.
- Strangers commit sexual violence, but it is much more likely for the perpetrator to be someone the victim-survivor knows and trusts, like a parent, relative, partner, co-worker, friend or acquaintance.
- Some communities experience more sexual violence than others, such as

Aboriginal and Torres Strait Islander peoples, children and young people, culturally and linguistically diverse people and people with disability.

- Sexual violence causes long-term harm to those who experience it and their family and also has significant impacts for the broader community.



The number of sentences does not show what is really happening

Sexual violence is a highly unreported crime. This means the number of cases sentenced does not reflect how often this offending is happening. It also means not every person who engages in this type of behaviour is sentenced for it.

Even if an offence is reported, this may not result in a person being sentenced. For example, there may not be enough information for the person to be charged, or if the person is charged, they may be found not guilty.

The Council's review is focused only on those cases of rape or sexual assault that result in a conviction and sentence.

What are the offences of sexual assault and rape?

The Council's review is of sentencing practices for sexual assault and rape. These are criminal offences in the *Criminal Code Act 1899* (Qld). There are many other sexual offences and these are just two.

Sexual assault is any unwanted sexual behaviour, done without the person's consent (agreement to the behaviour).

Sexual assault includes a wide range of unwanted conduct including:

- sexual touching (e.g. kissing, touching someone's bottom, breasts, or genitals over or under clothing)
- a person rubbing their penis on another person to simulate sex
- a person exposing their genitals to a person who does not want to see them
- acts involving a person's mouth touching another person's genitals, and
- a person being made to penetrate another person's or their own vagina, vulva or anus with something other than a penis.

The maximum penalty ranges from 10 years' imprisonment to 14 years and life imprisonment depending on how the offence happened. Offences with the higher maximum penalty of 14 years or life are called '**aggravated sexual assault**'.

A person commits **rape** if, without consent they:

- penetrate the vagina, vulva, or anus of another person with their penis, or
- penetrate the vulva, vagina, or anus of another person with a thing or part of the body that is not a penis, or
- penetrate the mouth of another person with their penis.

The maximum penalty for rape is life imprisonment. For more information, see [Sentencing Sexual Assault and Rape in Queensland: Information Sheet](#).

How a judge or magistrate decides the sentence

A judge or magistrate will usually decide which type of sentence to give.

Some things a judge and magistrate must consider are in **legislation** (written laws made by Parliament). Other things are included in **case law** (law made by courts through the decisions they make). Case law includes decisions about prior sentencing and how to understand and apply legislation.

In **Queensland sentencing legislation** (the *Penalties and Sentences Act 1992*), there is a long list of things a judge or magistrate must consider in sentencing.

The job of the judge or magistrate is to consider everything carefully and decide on a sentence that is fair. This is called judges' discretion (choice) and it is an important part of how our legal system works. The Attorney-General has asked the Council to consider the need to maintain judicial discretion when providing our advice.

In some circumstances, a court has no choice when deciding the sentence. For example, if a person is convicted of a repeat serious child sex offence (including rape or an aggravated sexual assault (life) offence) the law says a court must impose a life sentence or an indefinite sentence.

For more information about sentencing in Queensland, see the [Queensland Sentencing Guide on our website](#).

Questions

Now that we have given you some background information on what we know about sexual violence, explained what the offences of sexual assault and rape are, explained what sentencing is and how a judge decides what sentence to give, you can now consider some questions to help inform your submission to us.

Sentencing purposes

What are the most important sentencing purposes (reasons why the sentence is being given) when sentencing sexual assault and rape? Are there any purposes missing?

You might think about:

- *Why the reasons are important.*
- *If different reasons apply in different situations, for example:*
 - *If the person has not offended before*
 - *if the person has offended before*
 - *if the person is young*
 - *if the victim survivor is a child*

There are 5 reasons to give a sentence

When a judge decides what sentence to give, they consider some, or all, of the 5 reasons (purposes) of sentencing. The judge will consider how the sentence will:

- **Punish:** the person in a way that is fair.
- **Rehabilitate:** the person by helping them change their behaviour so they do not commit a crime again.
- **Deter:** (discourage) that person and other people from committing the same type of offence.
- **Denounce:** the person's offending by sending a strong message that what the person did is unacceptable.
- **Protect the community:** from the person to keep the community safe.

A judge or magistrate can decide one or more of these purposes are important when they sentence a person for sexual assault and rape.

Under Queensland sentencing legislation, courts must consider special factors above others when sentencing a person for a sexual offence against a child under 16 or an offence that involved violence or resulted in physical harm. These factors place special emphasis on the purposes of community protection, deterrence and rehabilitation.

In some other jurisdictions, additional sentencing purposes are included in legislation, such as to recognise the harm done to any victim survivor and to the community and to hold the person accountable for their actions.

General sentencing guidance

How well is sentencing for sexual assault and rape offences working in Queensland? Do sentences reflect the seriousness of these offences and sentencing purposes?

You might think about:

- *How courts currently sentence people for these offences, including what the legislation says, previous cases, and if there are ways it could be improved*
- *The different ways sexual assault and rape can happen and type of behaviour involved in each*
- *How important it is for a judge or magistrate to have a choice (discretion) in the sentence they give*

Judges and magistrates must consider lots of other things when deciding the sentence. Some of these things are legislated while others are from **case law** (law made by courts through the decisions they make). While every case is unique, courts also will consider the sentencing outcomes in other cases to ensure that like cases are treated alike and different cases are treated differently.

Special sentencing guidance

Victim survivor vulnerability

Are any changes needed to the way courts consider victim survivor vulnerability when deciding a sentence?

You might think about:

- *How important victim survivor vulnerability is when deciding how serious the offence is*
- *How courts consider other related factors such as breach of trust*
- *If more factors about other vulnerable groups should be listed in legislation or if it is better to leave this to courts to decide (e.g., because it is too difficult to identify all the different things that might make a person vulnerable)*
- *There are already a lot of factors for a judge or magistrate to consider*

In sentencing, the judge or magistrate will consider how the offence happened and who the victim survivor was.

A person's vulnerability can increase the seriousness of the sexual assault or rape in two ways. First, it may increase the harm caused to a victim survivor from the offending. Secondly, it may increase the perpetrator's culpability (blameworthiness) because they targeted a vulnerable person.

Queensland sentencing legislation recognises some factors make a person more vulnerable. For example, a court must consider the victim survivor's age when sentencing a person for sexual offences against children under 16.

Legislation also says courts must treat the fact an offence happened in a domestic violence context (called a 'domestic violence offence') as aggravating (meaning they must treat it as more serious) unless this is not reasonable due to exceptional circumstances in the case.

Just because a factor is not listed in legislation does not mean a court does not consider it. For example, there is a lot of case law about how things like the fact the person was in a position of trust or authority makes an offence more serious.

Consideration of the person's character

Should any changes be made to how 'good character' can be considered when sentencing sexual assault and rape?

You might think about:

- *If things like no prior criminal history, contributions to the community or a good work history should be relevant in sentencing for sexual violence offences, why and in what circumstances (e.g., does it help the court assess a person's rehabilitation prospects)*
- *The importance of judges and magistrates having lots of information about the person being sentenced*
- *Judges and magistrates having a choice about whether information is useful and makes a difference to the sentence*

When sentencing, a judge or magistrate might talk about the person being sentenced as having 'good character'.

Good character can be:

- not having a prior criminal history,
- contributions made to the community or
- they might have a good work history.

When determining a person's character, the judge or magistrate must also consider their history of domestic violence orders.

A judge or magistrate might consider evidence of good character when deciding whether a sentenced person can or will change their behaviour and not offend again. It can be helpful for a judge to get a full picture of the person they are sentencing. This might include character references. A character reference is where another person will write a letter to the court making a comment about the person's character.

Our sentencing legislation says that if the victim survivor was a child under 16, a court cannot consider good character if it assisted the person to commit the offence. But this does not apply if the victim survivor is 16 years or older.

Sentencing of Aboriginal and Torres Strait islander peoples

What issues are important when sentencing an Aboriginal and Torres Strait Islander person for rape and sexual assault?

Could the current approach to sentencing be improved?

You might think about:

- *How well judges understand and consider issues impacting Aboriginal and Torres Strait Islander people when sentencing*
- *How past events still negatively impact a person today (known as intergenerational trauma)*
- *If there are any barriers to obtaining or giving information to a sentencing court*
- *What cultural considerations or issues of cultural safety impact the victim survivor?*

In Australia, Aboriginal and Torres Strait Islander people are disproportionately represented in the criminal justice system. There are complex reasons for this. Aboriginal and Torres Strait Islander people continue to be negatively affected by past events and experience disadvantage.

The Council found that 1 in 5 people sentenced for sexual assault and rape identified as being Aboriginal or Torres Strait Islander. This was higher than across all offence types.

Legislation says a court can consider how a person's disadvantaged upbringing can explain why a crime happened. But this is not an excuse.

Sentencing legislation also says a judge must consider cultural issues when sentencing an Aboriginal and Torres Strait Islander person if they are told about it by a community justice group representative or elder.

Proposed changes to legislation will expand the meaning of cultural issues to include the effect of systemic disadvantage and intergenerational trauma.

Sentencing considerations for other cultural groups

What issues are important when sentencing a person from other cultural groups or non-English speaking backgrounds for rape and sexual assault?

Could the current approach to sentencing be improved?

You might think about:

- *How well do judges understand and consider the person's background when sentencing?*
- *How past events still negatively impact a person today (e.g., experiencing war or being a refugee)*
- *Are there any barriers to obtaining or giving information to a sentencing court?*

Many people living in Australia come from another country and for some people English is not their first or main language. They may have experienced war or conflict, been a refugee or immigrated to Australia without their family and may not have good family supports.

These types of factors are not expressly referred to in legislation but a court may still consider them.



Penalty and parole options

Are current penalty options working in meeting the purposes of sentencing (punishment, denunciation, deterrence, rehabilitation and community protection)?

Are any penalty options not appropriate in sentencing for rape and/or sexual assault? Why?

You might think about:

- *The importance of judges and magistrates having a choice to give the sentence that is most appropriate in each and every case*
- *What might be important to a victim survivor e.g., to make the person who harmed them accountable and address concerns about their safety*
- *The different types of penalty options that might be appropriate in different cases depending on factors like what the person did and how serious it was*

Deciding how effective different penalty options are depends on what sentencing purposes are most important

In our **Consultation Paper: Issues and Questions**, we discuss research about different penalty options and what we know about their impacts.

For example, research suggests imprisonment may support the sentencing purposes of punishment and denunciation but is of limited effectiveness in changing a person's behaviour longer-term. We also know that supervision (such as is available under probation and parole orders), when used in combination with rehabilitation programs and services, is effective in reducing reoffending, with the type and quality of supervision also being important.

Penalty options

There are two types of penalty options in Queensland:

1. non-custodial penalties: served in the community
2. custodial penalties: sentences of imprisonment.

Custodial penalties for rape and sexual assault are the most common outcome.

For rape, most people receive:

- **imprisonment:** for up to (and including) the maximum penalty for the offence (life). Most people are released on **parole** (supervised release in the community) at some point during their sentence after reaching their **parole eligibility date**, or
- **a partially suspended sentence of imprisonment:** a prison sentence of up to 5 years suspended after the person spends some time in prison, for a set period of time (called the '**operational period**') of up to 5 years. The person cannot commit another offence punishable by imprisonment during the order. If they do, they may have to serve the suspended part.

For sexual assault, the most common custodial penalties are:

- **a wholly suspended sentence of imprisonment:** like a partially suspended sentence, but the whole of the prison sentence is suspended
- **imprisonment**
- **a partially suspended sentence of imprisonment.**

Non-custodial penalties, such as probation and fines, sometimes are given to people convicted of non-aggravated sexual assault (especially if sentenced in the Magistrates Courts which usually deal with less serious offences). They are very rarely used in sentencing for rape (usually where the person was a child at the time of the offence).

A court can also make combined orders. An example is a combined prison and probation order: a person spends time in prison (12 months or less), and once released is on probation in the community (between 9 months to 3 years).

If a person is sentenced for more than one offence, a judge or magistrate has more flexibility and can give a person more than one penalty. A common example for sexual assault is a wholly suspended sentence and probation. But a court can't order a suspended sentence and probation if it is sentencing the person for only one offence.

Fines are the most flexible type of order as a fine can be ordered in addition to or instead of any other sentence even if the court is only sentencing the person for one offence.

Understanding victim harm and justice needs

How well is the harm to victim survivors understood and considered by courts when sentencing?

What would make the current sentencing process better for people who have been sexually harmed?

You might think about:

- *How victim survivors are supported in the sentencing hearing*
- *What information a victim survivor gets (e.g., help to write a victim impact statement)*
- *How judges and magistrates talk about the impact of the offence on the victim survivor when sentencing*

Understanding the harm caused to a victim survivor is an important consideration for judges and magistrates in deciding the sentence. One way this is communicated to a court is through the making of a **victim impact statement**.

A victim impact statement allows the victim survivor or their family tell the court about the offence and how it has affected them. A victim survivor can ask the prosecutor to get the court's permission to either read the statement aloud in the court themselves or for the prosecutor to do so during the sentencing hearing.

The victim survivor (or their family) does not

have to write a victim impact statement; it is their choice. If there is no victim impact statement, the judge or magistrate cannot infer (presume) the offence did not cause any harm to the victim survivor or their family.

Research shows victim survivors' satisfaction with the criminal justice process is affected by how they are treated throughout their journey and not just the outcome of the sentencing. Victim survivors have reported increased satisfaction with their experience when a judge or magistrate acknowledges them, the harm they have suffered and the content of their victim impact statements during sentencing.

Restorative justice approaches

If a person takes part in a restorative justice process, how should this be considered at sentence?

You might think about:

- *How the outcomes from restorative justice process might be relevant to the court in deciding the sentence e.g., if the person is genuinely sorry for what they did*
- *If participation in a restorative justice process should be an option available prior to sentencing (and can be considered when the person is later sentenced) or as a type of penalty or condition of another type of order (e.g., probation).*

A restorative justice process commonly involves the person attending a conference (meeting) with a convener and a victim survivor or a victim survivor representative and police representative. They will talk about the offending and the harm caused.

Everyone will get a chance to be heard and understood. The person must admit the offence and take responsibility for what they have done.

The person and victim survivor (or representative) will try to come to an agreement about how the person can make up for the harm caused. After the conference, the person must perform what is required under the agreement.

Adult Restorative Justice Conferencing is available in Queensland. The Queensland Government is looking to expand this process, including for sexual violence offences.

Many victim survivors who have taken part in a restorative justice conference have said they would recommend the process to other victim survivors. But there are also important things to consider, like making sure the victim survivor is safe and is not further harmed by participating in a restorative justice process.

Anomalies, complexities and other issues

Is there anything else about sentencing sexual assault and rape offences that you would like to tell the Council?

The Council has heard there are other issues which impact sentencing sexual assault and rape:

- **Plea negotiations:** when the type of offence or facts at sentence change
- **Plea of guilty:** how a plea of guilty is taken into account
- **Multiple victims:** how a court takes into account that there was more than one victim survivor.

These issues can impact all cases – not just those involving sexual assault and rape.

Next steps

All submissions will help the Council respond to this review.

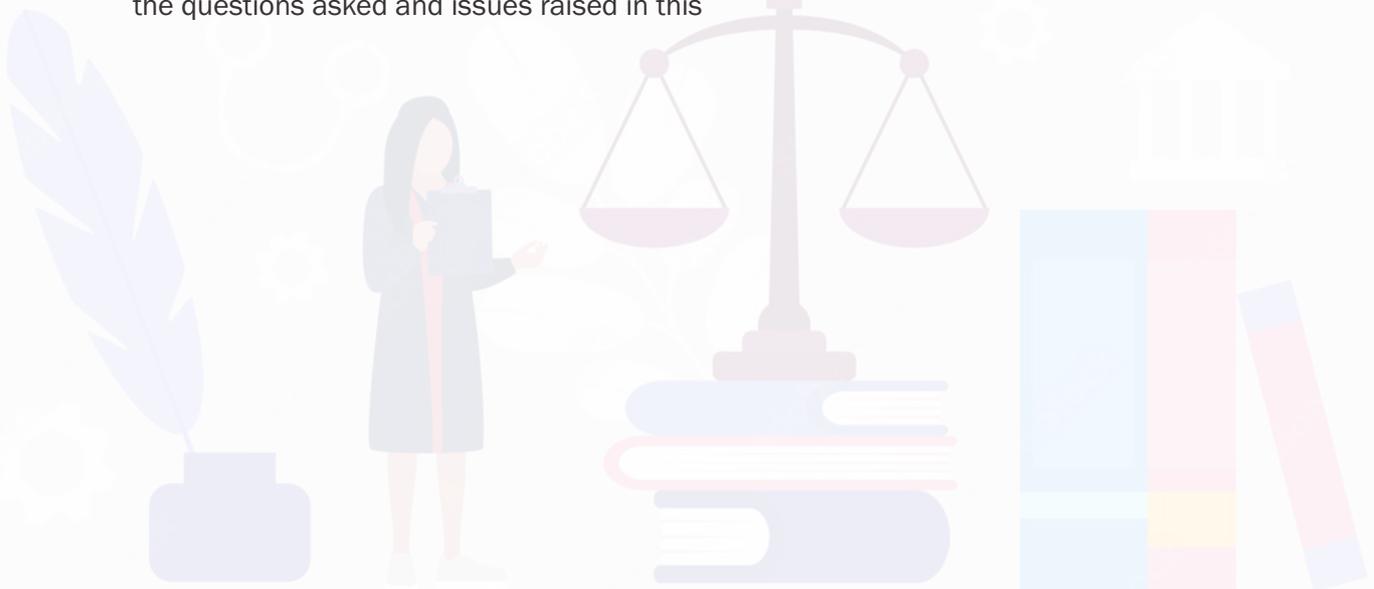
A final report with recommendations will be provided to the Attorney-General by 16 September 2024 and released publicly via the Council's [website](#).

We would like you to make a submission to the Council. You can answer all, some or none of the questions asked and issues raised in this

Community Summary. For more information about how to make a submission, visit our [website](#).

You may want to tell us about other issues that you know about. We will carefully consider all submissions.

You can stay up to date by subscribing to our newsletter or looking at our [website](#).



More information

To find more information about the review, visit the [Council's website](#).

To keep up with the latest developments of this review please [subscribe to our newsletter](#).



Queensland Sentencing
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