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Our Ref: cp

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Qld Sentencing Advisory Council
By Email: QSAC-Policy@sentencingcouncil.qld.gov.au

Dear Chair

Re:Assessing the impacts of Domestic and Family Violence sentence reforms in Qld

First Nations Women's Legal Services Qld ("FNWLSQ") appreciates the invitation to contribute to the assessment of the impacts of the domestic and family violence ("DFV") sentencing reforms introduced in 2015.

Background - FNWLSQ

FNWLSQ is the only specialised community legal service for First Nations women and sistergirls in Queensland. We have offices in Townsville and on Palm Island and in addition to our work at these offices, we conduct face-to-face outreach clinics in Townsville, Charters Towers, at the Townsville Women's Correctional Centre.

FNWLSQ provides legal advice, representation, casework and support to First Nations women across the State, particularly in North Queensland. This includes remote advice and legal representation in regional towns including Mount Isa and North Queensland regional towns such as Mackay, Proserpine, Bowen and Ayr.

FNWLSQ is a civil practice. Our primary areas of legal practice are in domestic and family violence, family law, child protection, victim support, human rights and discrimination. Between 75 to 95 per cent of our clients across all practice areas have reported experiencing domestic violence.

FNWLSQ does not provide a criminal law practice at this time and this submission does not, therefore comment on sentencing trends or practices in relation to domestic and family violence (DFV) offences (including contraventions). We have confined our comments in this contribution to the consideration of known and potential impacts of sentencing practices on Survivor / Victims ("SV's"), their families and communities.

Scope of Consultation

Changes to penalties and sentences introducing domestic violence as an aggravating factor when determining the appropriate sentence for an offender convicted of a domestic violence offence, were

made in 2016[1] in response to the recommendations of the 2015 *Not Now Not Ever Report*[2] ("the Bryce Report"). The purpose of introducing domestic violence as an aggravating factor was to achieve greater accountability by perpetrators for domestic violence offences.

The Bryce Report was extensive and comprehensive in the scope of its recommendations to address domestic and family violence in Queensland. It included strategic recommendations, building community supports, specialist courts, legal and police training in addition to accountability measures.

The scope of the current consultation by the Qld Sentencing Advisory Council is confined to Part 2 of the 2023 Terms of Reference by the then Attorney General[3] in relation to the operation and efficacv of section 9(10A) of the Penalties and Sentences Act 1992 and the impact of increases in maximum penalties for domestic violence offences since 2016.

Purpose of Sentencing

The *Penalties and Sentences Act 1992* provides that the *only* purposes for which sentences may be imposed are to serve 5 functions, namely: punishment, rehabilitation, deterrence, denunciation and the protection of the community.[4] Section 9(10A) aims to achieve harsher punishment to reflect the seriousness of domestic violence offences. Denunciation is also a clear purpose.

As a service for First Nations women, FNWLSQ is supportive of domestic and family violence offences being treated as serious offences which overwhelmingly impact on women and to a greater extent on First Nations women.[5]

Having regard to the disproportionately high criminalisation and incarceration of First Nations people, however, and the lack of evidence that harsher prison sentences have either a deterrent or rehabilitative effect, we are of the view that increases in prison sentences will not reduce domestic violence in Queensland communities. Imprisonment, is a blunt instrument which may be counter-productive or detrimental with respect to the purposes of rehabilitation, protection of the community and deterrence.

Imprisonment and Domestic violence trends

In 2009 the rate of Indigenous imprisonment in Australia was 1,539 in every 100,000. This has steadily increased[6]. In 2019 it had risen to 2,143 in every 100,000 and by 2023 it had risen by 47% on 2009

[1] *Penalties and Sentences Act 1992,* s9(10A)

[2] The Special Taskforce on Domestic and Family Violence in Queensland, chaired by the Honourable Quentin Bryce AD CVO 2015, Not Now Not Ever Report 2015 "Putting an end to domestic violence in Qld, recommendation 118

[3] The Honourable Shannon Fentiman, Attorney-General 17 May 2023, Terms of Reference to the Qld Sentencing Advisory Council

[4] *Penalties and Sentences Act 1992,* s9(1)(a)-(e) respectively

[5] Douglas H and Fitzgerald R (2018) "The DVO System as Entry to the Criminal Justice System for Aboriginal and Torres Strait Islander people. *International Journal for Crime, Justice and Social Democracy* 7(3):41-57. DOI: 10.5204/ijcjsd.v7i3.499 www.crimejusticejournal.com. First Nations women being 34 times mpre likely to be hospitalised than non-indigenous women.

rates, to 2,266 per 100,000 compared with 149 per 100,000 for non-indigenous imprisonment in 2023.[7] The actual numbers for First Nations prisoners in Australia for "acts intended to cause injury" by MSO rose from 4,105 to 6,352.[8]

Qld Court data shows specifically that during the same period of time (2018-19 to 2023-24) the numbers of prisoners convicted of contravening a Domestic Violence Orders rose from 13,700 to 21,801, an increase of 59%.

Even making allowances for the inexact correlation of the data presented, the available information does not support a conclusion that increased imprisonment for domestic violence offences is having a deterrent or rehabilitative effect on First Nations domestic violence offenders in Queensland.

During the same period, it is clear, however that there has been increased criminalisation of First Nations people in Queensland and that Australia-wide First Nations prisoner numbers for acts intended to cause injury have more than doubled.

Our concern about the impact of harsher penalties contributing to the sharp rise in First Nations DV contraventions and prisoner numbers is not to diminish the seriousness of DV offences. FNWLSQ is a legal service for First Nations women in which much of our work consists of representing First Nations women in domestic violence applications, both as aggrieved and respondents. The most frequent view expressed by our clients is that they want the DV to stop. In this respect the efforts to punish DFV offenders more harshly has failed our clients.

Other considerations

Apart from the ongoing danger to women who have experienced domestic violence where there has been no rehabilitation, we have a number of other concerns, including the following.

RCDIAC

The report of the Royal Commission into Aboriginal Deaths in Custody strongly recommended that governments legislate to make imprisonment a sanction of last resort.[9] This is reflected in s.9(2) of the *Penalties and Sentences Act 1992* (Qld).

The consultation paper addresses the potential breach of a fundamental legislative principle by allowing sentencing at the "higher end of the range of appropriate sentences" but notes that this was considered

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[6] https://www.unsw.edu.au/newsroom/news/2024/08/new-closing-gap-data-shows-more-first-nations-australians-prison-why

[7] Ibid

[8] https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release#:~:text=The%20imprisonment%20rate%20increased%20from,Torres%20Strait%20Islander%20adult%20population

[9] Report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC), 1991, recommendation 92

in the Explanatory Notes to the Bill's second reading which justified it for the reason of protecting vulnerable members of the community, providing deterrence and denouncing the offending.[10]

While the breach of the fundamental principle provides a message denouncing the conduct, higher terms of imprisonment that do nothing to reduce or deter offending and hence do not protect vulnerable people, cannot be justified.

Closing the Gap targets

Closing the Gap targets are not so much aspirational as representing a minimum target towards First Nations people achieving parity with the non-indigenous population. Target 10 sets a goal of a 15% reduction in imprisonment of First Nations people by 2031.[11] With current imprisonment rates of First Nations people rising and an increase in DVO contraventions in Qld leading to likely increased imprisonment, a reduction of 15% in the next 6 years may be optimistic unless other interventions are implemented to address the root causes of domestic violence and to provide culturally competent rehabilitation for DFV offenders.

The impacts on the families of prisoners, the individuals imprisoned and their communities are profound and long-lasting and cannot be underestimated. Hence the democratic principle that prison should be a punishment of last resort.[12]

Some of the impacts on our clients and their families when the penalty of imprisonment is imposed include: loss of a family member (who may be a parent or a partner), loss of income, imposition on the remaining parent of raising children unaided by a partner, loss of future income due to reduced prospects of employment by the incarcerated person on release, loss of participation in family and community and the risk of the incarcerated person becoming enmeshed in the criminal legal system.

While many of these hardships are intended as punitive outcomes for the person sentenced, it frequently imposes equal or greater hardships on the family (including children) and support people of the imprisoned person.

Given the socio-economic disadvantage already experienced by many First Nations families, particularly in remote communities, imprisonment of a close family member is an additional hardship. If there is no rehabilitation or deterrent effect on the person imprisoned, it renders futile many of the hardships borne by family, including children, and community.

Economic cost of imprisonment vs funding rehabilitation

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[10] Queensland Sentencing Advisory Council March 2025, "Assessing the Impacts of domestic violence and family violence reforms in Queensland, Consultation Paper p.30, referring to Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill (No. 2) 2015 (Qld) 3

[11] https://www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area10

[12] *Penalties and Sentences Act 1992* s.9(2); Report of the Royal Commission into Aboriginal Deaths in Custody, 1991, recommendation 92

At a cost of $352.58 per day per Queensland prisoner, or $128,692 per year per prisoner,[13] imprisonment comes at a high cost to the people of Queensland. Queensland's recurrent expenditure on prisons was estimated to be $1.295m in 2022-23, an increase of 88% on 2012-13 estimates.[14] This figure represents the direct cost of imprisonment and does not include other costs such as lost productivity, workplace disruption and replacement, welfare support to prisoners' families and prison assaults.[15] They do not take into consideration the increased public cost of police interventions, court hearings and related costs such as post-release community corrections monitoring.

The Consultation Paper raises the issue of managing risks of re-offending through order type, supervision and specialist court options.

Supervision and specialist court options have the disadvantage of being relatively remote from the offender's life. Such options do not in themselves provide deep behavioural change and have limited capacity to intervene in a person's day to day life where domestic violence behaviours and triggers occur. Further, the longstanding criminalisation of First Nations people through factors that arise out of colonisation, targeting by police and authorities and the construction of legal justice through a system which is inherently colonial, (to the extent that the courts display the coat of arms of the British monarch emblazoned with the words "Dieu et mon droit"), makes the court and the formal legal system relatively alien to the lives of many First Nations people. Courts are not equipped, nor designed, to address behavioural change at a personal level.

The Consultation Paper refers to a research paper by Bond and Nash which found that community-based orders combined with treatment may reduce the likelihood of domestic violence.[16] To the extent that courts can make intervention Orders where a person agrees to go to treatment, the courts may play a part in procuring treatment to address behavioural change. The courts are able, for example to order attendance at programs through intervention orders and monitor progress to a degree.

There are a range of non-legal options open to domestic violence offenders to address their behaviour. Prisons run programs that include anger management and in some cases, address more socially oriented issues such as parenting. However effective or otherwise these may be, they are not generally available for remand prisoners and they have limited impact on the day to day lives of prisoners on their release from prison. In Townsville the Domestic Violence resource centre (DVNQ) runs awareness / behavioural change programs specifically for men who are seeking to address domestic violence behaviours.

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[13] https://ipa.org.au/publications-ipa/research-note/the-cost-of-australias-prisons-in-2024

[14] Ibid.

[15] These costs are estimated in a previous research paper relying on 2014-15 costs: "Australian Institute of Criminology, Research Report 05, *How much does prison really cost? Comparing the cost of imprisonment with community corrections.*

[16] Queensland Sentencing Advisory Council March 2025 Consultation Paper, 36 referring to Christine E W Bond and Caitlin Nash, Sentencing Domestic and Family Violence: A Review of the Research Evidence (Literature Review prepared for the Queensland Sentencing Advisory Council by the Griffith Criminology Institute, September 2023) I ('Griffith University Literature Review')

For First Nations people, particularly in discrete communities, efficacy is likely to be determined by the extent to which the program is culturally competent. Ideally, co-design with the community of origin will ensure that language, expectations and programming are tailored to the person attending the program.

Unintended consequences of higher range sentences

Misidentification

The misidentification of women seeking protection, as the person perpetrating domestic violence is well documented. It is a principle of the D*omestic and Family Violence Protection Act 2012* (Qld) that in the event of conflicting versions, the court should identify the person most in need of protection and make only 1 order.[17]

However, the problem of misidentification often occurs when police (QPS) attend a domestic violence call-out. Police are often the first responders and where misidentification occurs, not only is the SV not protected, but they become the target of the QPS response. Some real examples include:

Case 1: After being bashed and choked a First Nations woman managed to escape from her attacker who was her ex-partner. She ran to the kitchen to get a knife to defend herself, locked the door and called the police. When QPS arrived, they observed her standing at the door, deeply distressed, with a knife in her hand. They approached the non-indigenous male perpetrator who made false allegations against the woman. The woman in need of protection, rather than being given assistance and protection was then arrested, handcuffed and transported to the police watchhouse despite being the victim/survivor of the attack.

Case 2 : QPS attended a call out in which there had been a mutual verbal argument between a couple. A police officer approached the male partner and asked if he needed protection. He said he did not, but the police proceeded and found a seriously ill First Nations woman in a bedroom. She was distressed by the argument and suffering due to her health. When police began questioning her she broke a flower pot (her own) in frustration. The police officer then arrested her and served her with a PPN requiring her to leave her home, notwithstanding that she was ill and the male partner did not meet any of the criteria for a person in need of protection. He was not distressed and had expressly told police he was not in fear of the woman.

First Nations women are disproportionately misidentified, in spite of being overwhelmingly the cohort most likely to be survivors / victims (SV) of domestic violence, and being about 34 times more likely than non-indigenous women to be hospitalised due to domestic violence.[18]

While it is the Court's role to determine the person most in need of protection there are multiple situations in which this may not occur. By way of example, we have found that police have told First Nations women that they need not attend court, risking an order being made in the absence of the

[17] *Domestic and Family Violence Protection Act 2012* (Qld) section 4(e)

[18] Douglas H and Fitzgerald R (2018) Op cit.

named respondent. Even where she attends court, in the absence of legal advice, she may consent to the order without understanding the consequences. We have also found a number of cases where the duty lawyer has urged a woman respondent to simply consent. On review, consent was clearly inappriopriate. In some cases, the respondent may consent because she feels unable to cope with conflict, particularly if she is experiencing coercive control from the perpetrator, or if she is ill or injured.

First Nations women are particularly susceptible to police misidentification. This has been explained as First Nations women not fitting the stereotype of the "ideal victim", if for example she has attempted to defend herself (as with Case 1). Research indicates that First Nations women are vulnerable to societal and systemic racism from police and legal systems.[19]

First Nations women are the fastest growing prison population and are 21.1 times more likely to be imprisoned than non-indigenous women.[20] Misidentification of First Nations women, together with the imposition of harsher custodial penalties, is also a driver of the increase in incarceration rates for First Nations women.[21]

Other unintended consequences of harsher custodial penalties

Underreporting of domestic and family violence is incentivised

People experiencing domestic and family violence may be less likely to report to police or seek other support if reporting will lead to a breadwinner/sole provider being imprisoned. (There is also a high level of awareness in the community that reporting domestic violence to police may activate mandatory reporting obligations to the Department of Child Safety, Seniors and Disability Services ("Child Safety") of the presence of children during a domestic violence incident. Fear of child removal in First Nations communities is well-justified in light of the overwhelming disproportionate number of First Nations children removed from their families, with Aboriginal and Torres Strait Islander children being up to 10.8 times more likely to be in out of home care than a non-indigenous child.[22])

Based on the experience of the First Nations women who utilise the services of FNWLSQ, women do not generally want their partner or other family member to receive a custodial sentence.

The consequences of losing a partner may include a range of detrimental impacts on the family including, for example: loss of financial support, potentially being unable to afford housing, forcing a single parent status on the family and the loss of a parent for the children. There is also the potential

[19] Nancarrow, H, Thomas K, Ringland, V and Modini T 2020 "Accurately identifying the "person most in need of protection" in domestic and family violence law, Anrows Research Report, Issue 23, 11

[20] "Statistics about Aboriginal and Torres Strait Islander women and girls", 9/10/2024, Australian Human Rights Commission, https://humanrights.gov.au/education/stats-facts/statistics-about-aboriginal-and-torres-strait-islander-women-and-girls#_edn10

[21] Howard-Wagner D, 06/08/2021 "Increased incarceration of First Nations women is interwoven with the experience of violence and trauma". The Conversation https://theconversation.com/increased-incarceration-of-first-nations-women-is-interwoven-with-the-experience-of-violence-and-trauma-164773

[22] Williams, C 21/11/2024 "Calls for Aboriginal-run child protection programs to receive greater share of funds amid spike in cases" ABC news https://www.abc.net.au/news/2024-11-21/family-matters-report/104623104

for retaliation by the partner's family members in some cases, if the family considers that the penalty suffered by their family member was excessive and/or unjustified.

For First Nations families, there is often a lack of trust in authorities based on, inter alia, generations of trauma, criminalisation, police targeting, child removal and systemic racism. Increasing penalties for domestic violence by imposing higher imprisonment is likely to make women and children less safe, where women feel that they must hide domestic violence in order to protect their families. This is counterproductive to achieving the purpose for which the "aggravating factor" amendments were introduced.

First Nations women have a right to protection from family violence for themselves and their children. In the work undertaken by FNWLSQ, it is clear that the women we serve want this protection as much as non-indigenous women, but there is no supporting evidence to demonstrate that longer periods of imprisonment will deliver this protection.

Increased criminalisation of domestic violence offenders

Prison is not designed as a place of rehabilitation. It separates people from their families and communities and is likely to enmesh them in a culture of criminality. Most people return to prison within 2 years and up to 70% of people entering prison have been in prison before.[23] Considering the detriment and burden to families and children, imprisonment is not justified if it is not a deterrent and is not designed to rehabilitate.

Survivor / Victim Rights and Safety

While the Consultation paper poses the question of victim satisfaction with harsher penalties, harsher penalties and longer terms of imprisonment do not themselves heal people who have been harmed by domestic violence.

A focus on punitive justice necessarily diverts resources away from support services for people experiencing domestic violence, including restitution and restorative justice processes and community-led sentencing and rehabilitation initiatives.

Studies into the potential for a restorative justice approach speak of the advantages for some SVs of being able to confront the perpetrator as a means to restore agency to the SV and to encourage remorse and transition for the person responsible for domestic violence.[24] The purpose of this submission is not to advocate for restorative justice which may be an entirely inappropriate response to domestic violence in many cases, but only to draw a distinction between the banality of punitive approaches and, by contrast, alternatives such as restorative justice.

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[23] "Community attitudes to the Criminal Justice system" RMIT University Centre for Innovative Justice https://cij.org.au/cms/wp-content/uploads/2023/03/community-attitudes-to-crime-resource.pdf

[24] Loff B, Naylor B and Bishop L, "A Community-Based Survivor-Victim Focused Restorative Justice – A Pilot, 2019, Report to the Criminology Research Advisory Council Grant CRG 33/14-15

“Technical breaches”

Another unintended consequence of harsher penalties arises due to inappropriate police applications including conditions that are manifestly unnecessary and/ or punitive. All DVO’s contain mandatory conditions that the respondent is to be of good behaviour and not commit domestic violence. A common error by police is to seek restrictive conditions that may be counterproductive to the purpose for which the DVO is intended. Conditions may include for example, prohibitions on the respondent having contact with the aggrieved or attending the home of the aggrieved. While such conditions may be appropriate in some cases, in cases that require only mandatory conditions it is likely to lead to contraventions of the order.

A common scenario is that we are asked to assist with an application to vary after a DVO has been breached. Frequently the aggrieved is exasperated by the restrictions.

Case 3: A woman sought help to vary after she had asked the respondent to come and mow the lawn. “I asked him to come and mow the lawn and the police were driving by and stopped and arrested him”.

Case 4: “I just wanted him to be there for the kids. The kids miss him. He’s a good father.”

Such scenarios do not require harsher penalties. They require a reconsideration of police training and the availability of community behavioural change programs that do not separate families but aim to address behaviours in cases where this does not pose a risk to the aggrieved.

In summary

The impact of higher prison sentences does not reduce the incidence of domestic violence in the community. We do not support punitive measures at the expense of behavioural change, healing and healthier families and communities.

The increase in both imprisonment of First Nations people and ever-increasing levels of domestic violence and contraventions of DVO’s do not support a finding that harsher penalties will make the community safer.

In the face of evidence that current measures are counter-productive, the way in which public funds are used to address domestic violence must be re-considered. Imprisonment comes a very high cost to the public but fails in its attempt to address domestic violence and community safety.

Review of how domestic violence is addressed should include culturally competent community-based and co-designed behavioural change programs and restorative justice options. While courts may play a significant role in overseeing domestic violence behavioural change, through (for example) intervention orders and monitoring of progress, there seems little utility in the courts ordering harsher penalties if this is ineffective and does not enhance community safety.

Cathy Pereira
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FNWLSQ Inc.