



The Honourable Justice Ann Lyons  
Chair  
Queensland Sentencing Advisory Council

29 April 2024

Dear Justice Lyons,

Thank you for the opportunity to provide feedback regarding the Queensland Sentencing Advisory Council's (QSAC) Consultation Paper – *Sentencing of Sexual Assault and Rape: The Ripple Effect*.

The Consultation Papers are very comprehensive, identifying a range of issues for consideration in relation to sentencing of rape and sexual assault.

My appointment in September 2023 as the Interim Victims' Commissioner was ahead of the passage of enabling legislation for a permanent Victims' Commissioner. My office was established to:

- raise awareness of the rights of victims of crime and the services available
- identify, develop and provide additional accessible resources for victims of crime to understand their rights, the criminal justice process and how to access support and assistance
- identify the training needs for government agencies to interact with victims in a trauma informed manner
- support the establishment of a permanent Victims' Commissioner in Queensland.

Since the office's establishment, we have heard from victim-survivors of sexual violence, people who support victim-survivors of sexual violence and people who work in the criminal justice system. The Office of the Interim Victim's Commissioner's (OIVC) comments in this submission are informed by this consultation and the OIVC is grateful to those individuals who have shared their experiences with the office.

Due to the scope of my interim office and limited capacity to undertake further research or engagement on the issues raised, our office has responded to those questions which the OIVC has heard from victim-survivors or people who interacted with victim-survivors about most extensively.

Please treat this submission as public.

Yours sincerely,



**Jon Rouse APM**  
**Interim Victims' Commissioner**

(Encl.)



## Office of the Interim Victims' Commissioner Submission to Queensland Sentencing Advisory Council's (QSAC) Consultation Paper – *Sentencing of Sexual Assault and Rape: The Ripple Effect*

### **Chapter 7: Understanding victim harm and justice needs**

17. How well do current processes (including the use of victim impact statements) work in Queensland in making sure the harm to a victim is understood and taken into account in sentencing?

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

QSAC's preliminary findings that 'it is slightly more common for a VIS not to be provided than provided'<sup>1</sup> indicates an opportunity to improve how Victim Impact Statements (VIS) are obtained by the prosecution and provided to, and treated by, the court. Without further analysis as to why statements were not tendered in certain cases, the OIVC recognises that this may accurately reflect victims choosing not to provide a VIS.

However, the OIVC through its engagement has identified several opportunities for consideration by QSAC.

The OIVC also acknowledges the important work of the Victorian Victims of Crime Commissioner who has recently highlighted several key issues relating to the VIS scheme in its systemic inquiry into victim's participation in the criminal justice system, including:

- victims wanting (or in practical terms needing) to prepare a VIS 'early', leaving them vulnerable to their VIS being used by the defence
- insufficient time to prepare a VIS after a plea or finding of guilt, particularly in the Magistrates' Court
- the potential for victims to be cross-examined on the contents of their VIS
- VISs being 'edited'
- lack of assistance preparing a VIS.<sup>2</sup>

The Victorian Victims of Crime Commissioner also made recommendations about the possibility for quarantining victim impact statements which are prepared and provided to the prosecution prior to a guilty plea or verdict to prevent defence using statements in cross-examination. The case of *R v Agnew* [2021] QCA 190 provides a summary of the position in Queensland with respect to disclosure of a victim impact statement received prior to trial. The OIVC is unaware of the extent of the issue of disclosure and cross-examination of victim impact statements in Queensland.

While the OIVC acknowledges there are differences between the jurisdictions, some of the issues identified by the Victorian Commissioner in relation to Victim Impact Statements can be observed in Queensland.

### **Adjournments to provide a Victim Impact Statement**

The OIVC suggests that consideration be given to the ACT and Canadian legislation which enables an adjournment to be granted for a reasonable time to allow a victim to prepare a Victim Impact Statement.<sup>3</sup> Similarly, the Victorian Victims of Crime Commissioner recently made recommendations that the *Sentencing Act 1991* (Vic) 'be amended to require the court, prior to sentencing, to ask the prosecution whether the victim wishes to make a VIS', and enable the court to 'adjourn the proceedings to permit the victim to prepare a VIS or to permit the prosecutor to make further enquiries unless it is not in the interests of justice to do so'.<sup>4</sup>

<sup>1</sup> Queensland Sentencing Advisory Council, *Consultation Paper: Issues and Questions* (2024) 63.

<sup>2</sup> Victims of Crime Commissioner (Victoria), *Silenced and Sidelined: Systemic Inquiry into Victim Participation in the Justice System* (November 2023) 432 (citations omitted).

<sup>3</sup> *Crimes (Sentencing) Act 2005* (ACT) s 51A.

<sup>4</sup> Victims of Crime Commissioner (Victoria), *Silenced and Sidelined: Systemic Inquiry into Victim*

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Such provisions may be particularly relevant in cases which proceed immediately to sentence after trial, and in which a victim-survivor may have little time between giving evidence and being notified of the outcome of a trial. While the OIVC notes that the Director of Public Prosecution's Guidelines (the Director's Guidelines) require victims to be made aware of the right to provide a Victim Impact Statement at the pre-trial conference stage,<sup>5</sup> there may be many reasons as to why a victim-survivor may delay the preparation of a statement while awaiting a verdict. Further, there may be cases, particularly in the Magistrates Court, which progress quickly after a plea, therefore limiting the opportunity and time provided for a victim-survivor to provide a VIS. The OIVC supports the consideration of such legislative amendments which would further signal the importance of victim's voices in sentencing.

### Inadmissible material within Victim Impact Statements

The OIVC notes the Council's observations from engagement with victim-survivors and support agencies with respect to the striking out of non-admissible material from Victim Impact Statements.<sup>6</sup> The Victorian *Sentencing Act 1991* enables the court to 'receive the whole of a VIS, even where it contains inadmissible material'.<sup>7</sup> Such provisions may better reflect the underlying purposes of victim impact statements, including in being a 'communicative or expressive tool, providing a victim survivor with the cathartic opportunity to tell the court, offender and public the harm caused to them'.<sup>8</sup>

Where the striking-out of inadmissible content does occur prior to tendering, consideration should be had to whether it is feasible for this to occur in collaboration with the victim-survivor, ensuring they are made aware of the reasons why the content cannot be considered by the Court. Alternatively, a victim-survivor could be provided with an opportunity to write an amended victim impact statement enabling them to remove the inadmissible content themselves, thereby providing them with choice and control.

### Increasing the options available to victim-survivors to provide a Victim Impact Statement

There may also be opportunities to improve the options available to victim-survivors about how a VIS can be provided to court. While the current legislation provides for a VIS to be read aloud during sentencing by a victim-survivor, it does not contemplate the option of a pre-recorded Victim Impact Statement. The OIVC notes that recorded victim impact statements are utilised in other jurisdictions, including Canada<sup>9</sup> and South Australia.<sup>10</sup> Such an approach would be consistent with trauma-informed principles to provide choice and empowerment to a victim-survivor, enabling victim-survivors to tell the court, offender and the public the harm caused to them in their own way.

### The court record

Sentencing remarks serve an important role in forming the public court record. Where there is only a cursory reference to the presence of a VIS within sentencing remarks, this risks the court record being deficient with respect to the victim's voice and the harm suffered by the victim. Given QSAC's preliminary findings surrounding the different approaches towards referencing Victim Impact Statements within sentencing remarks, there may be opportunities to ensuring a victim-survivor's voice is accurately and wholly reflected within the court record by judicial officers. The OIVC also recognises that it may be appropriate to consult with a victim-survivor about whether they have particular wishes about the extent to which their VIS is read into the record.

### Improving support and information for victim-survivors in preparing a Victim Impact Statement

The OIVC has heard that there is limited support available for victim-survivors to assist them in

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*Participation in the Justice System* (November 2023) 34 (citations omitted).

<sup>5</sup> Office of the Director of Public Prosecutions, *Director's Guidelines (As at 30 June 2016)*, 34.

<sup>6</sup> Queensland Sentencing Advisory Council, *Consultation Paper: Issues and Questions* (2024) 64.

<sup>7</sup> *Sentencing Act 1991* (Vic) s 8L(5)(6).

<sup>8</sup> Queensland Sentencing Advisory Council, *Consultation Paper: Issues and Questions* (2024) 62.

<sup>9</sup> Government of Canada, *Victims' Rights in Canada* (Web page) < [Victim Impact Statement \(justice.gc.ca\)](https://www.justice.gc.ca/justice.gc.ca)>

<sup>10</sup> *Sentencing Act 2017* (SA) s 14(3)(a).

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preparing a Victim Impact Statement. While victim-survivors who have received court support by a support service in the higher courts are more likely to be assisted, victim-survivors who have not been supported by a support service or whose cases are decided in the lower courts may be less likely to receive this support to prepare a Victim Impact Statement.

The OIVC notes that the Director's Guidelines are currently under review. There may be opportunities within the Director's Guidelines to improve the current information provided about victim impact statements, such as ensuring victim-survivors are provided with information about the role of a VIS in sentencing and the purpose of sentencing.

The OIVC is also developing additional accessible resources for victims of crime to understand their rights, the criminal justice process and how to access support and assistance, including information about Victim Impact Statements.

### Post-sentence information

The OIVC also notes that there may be further opportunities to improve the information provided to a victim-survivor post-sentencing, including information about the Victims Register and a copy of sentencing remarks.

*19. For victim survivors who identify as Aboriginal and Torres Strait Islander or from other cultural backgrounds: (a) how well is the harm caused to these victims and any cultural considerations being acknowledged and taken into account in sentencing? (b) what would make the sentencing process better for these victims?*

### Reflecting broader community harm through Community Impact Statements

The OIVC notes the use of Community Impact Statements in jurisdictions such as South Australia,<sup>11</sup> which enables the South Australian Commissioner for Victims' Rights to provide a sentencing court with a neighbourhood impact statement or social impact statement about the effect of the offence in a specific location or community. Where it is identified that an offence has had a specific or significant impact on a certain community, including Aboriginal or Torres Strait Islander communities or culturally and linguistically diverse communities, consideration could be had to amendments which would enable suitably qualified groups (such as Community Justice Groups) to provide the court with information about the harm caused to the victim or community.

#### **Chapter 8: Restorative justice approaches**

*21. If a new legislative restorative justice model for adults is introduced in Queensland, what types of sentencing guidance and options do you support being available? What other considerations might be important?*

In some cases, restorative justice approaches are better able to meet the needs of victim-survivors and can reflect a just and appropriate outcome. Where restorative justice processes are taking place in Aboriginal or Torres Strait Islander communities, or culturally and linguistically diverse communities, consideration should be had to the specific needs of those communities with any legislative model allowing for flexibility in approach to take those needs into account.

### Rights, support and information for victim-survivors participating in restorative justice

The OIVC has heard that there is a need for further clarity around the application of the Charter of Victims' Rights in processes such as restorative justice. Should a new legislative restorative justice model for adults be introduced, consideration should be had to how the Charter of Victims' Rights currently applies to restorative justice and whether there is a need for further rights to ensure the safety of victim-survivors and the promotion of their needs in such processes.

Further, consideration must be had to appropriate models of referral, support and information for victim-survivors to ensure that victim-survivors are adequately informed about their choice to participate in a restorative justice process and appropriately supported throughout.

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<sup>11</sup> *Sentencing Act 2017 (SA)* s 15.

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