



Queensland Sentencing Advisory Council
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11.02.2022

Dear Sir/Madam,

Response to Issues Paper - The “80% rule”: The serious violent offences scheme in the Penalties and Sentences Act 1992 (Qld)

The Gold Coast Centre Against Sexual Violence Inc. (GCCASV) welcomes the opportunity to make a submission to the Queensland Sentencing Advisory Council in relation to the *Issues Paper - The “80% rule”: The serious violent offences scheme in the Penalties and Sentences Act 1992 (Qld)*.

Introduction

GCCASV (formerly Gold Coast Sexual Assault Support Service) was founded in 1990 to deliver specialist sexual violence intervention and prevention programs to the Gold Coast community. It is a community based, community controlled charitable organization funded by DJAG. Run by women for women, the agency services the geographic area from Coolangatta to Upper Coomera. The organisation provides a safe, supportive, woman-centred environment in which sexual, domestic and family violence survivors can begin their healing journey.

Our response is based on GCCASV’s collective knowledge and experience of counselling victim/survivors of rape and sexual assault for over 30 years. During this time we have provided support to complainants through the criminal justice system from reporting to police to magistrates and district court and beyond.

We acknowledge that the serious violent offences scheme applies more broadly to offences listed in Schedule 1 of the PSA, however the comments in this submission relate to sexual offences only as that is the specific area in which our knowledge and experience lies in supporting victim/survivors through the criminal justice process.

Sexual Violence

Sexual Violence is an umbrella term that covers a broad range of sexual behaviours, language or activities that are unwanted and happen without consent. These can make a person feel uncomfortable, frightened, threatened or even numb.

Sexual Violence can happen to anyone, with most sexual violence being perpetrated by someone the victim knows and trusts, for example, a partner, friend, work colleague, family member or acquaintance.

Sexual Violence is perhaps the most committed, least reported and least punished of all crimes. General statistics on sexual violence In Australia from the Australian Bureau of Statistics Personal Safety Survey (2017):

- 2.2 million women (23%) and 718,000 men (8.0%) aged 18 years and over have experienced Sexual Violence in their lifetime, including childhood sexual abuse and/or sexual assault since the age of 15
- 1 in 5 women have been sexually assaulted or threatened since the age of 15
- 98% of women who have been sexually assaulted said that the perpetrator was a male

Sexual Violence and the legal reality

International and national studies have consistently shown that there is a significant under reporting of sexual violence, that only a small proportion of offences reported are prosecuted, and an even smaller percentage of those result in a conviction.

Across Australia it is estimated that less than 20 percent of sexual offences reported to police result in criminal proceedings being instigated (AIS: 2007).

In Queensland, reported sexual assault outcomes from 2010-2018 indicate that 72% of investigations resulted in no further legal action or remained unresolved (ABS:2018).

Queensland's current criminal justice system response to sexual crimes is typified by low reporting rates, high attrition rates, experience of secondary trauma and low conviction rates. Despite legislative change over the past two decades, the process and outcomes for victim/survivors have not dramatically improved. The lack of information, lack of control, lack of support and lack of choice encountered throughout the system reinforces the victim/survivor's powerlessness.

The reality is that very few victim/survivors get to the sentencing stage of the criminal justice process, and if they do, they undergo a traumatic journey in the process.

Sexual violence and victim/survivor expectations

Victim/survivor expectations hardly ever match the legal reality which can cause a great deal of distress and further trauma.

The justice many are seeking starts with testimonial justice, that they are seen as credible when first speaking out and reporting to police, procedural justice along the way and a just outcome at the end of the process.

It is very important for victim/survivors to be believed and validated in order to begin their healing journey, but the criminal justice system does not often deliver in the offender focussed quest for **proof** rather than truth.

The majority of victim survivors believe their experience of a sex crime is very serious and therefore would personally define the accused as a serious violent offender.

They largely expect the accused to be found guilty and that the seriousness of this crime will be reflected in sentencing. Throughout the legal process, most are far more concerned about a finding of guilt than the actual sentence.

Victim/survivors are shocked and disappointed by a “not guilty” verdict. They describe feeling betrayed and disbelieved by the system.

If there is a guilty plea or finding, it is distressing for victim survivors to hear what is taken into account on sentencing particularly the focus on the rights of the offender e.g. glowing character references submitted; no conviction recorded because of the severe impact it might have on their life and employment.

A scenario where no conviction recorded, particularly after a guilty plea, is very difficult for the victim/survivor and indeed the general community to understand.

Then on the sentence itself, both victims and the general community expect that offenders will serve their whole sentence, or at least almost all of it, thinking they may get a small amount of remission for good behaviour. Victim/survivors are shocked that offenders may only serve a fraction of their sentence.

Future considerations

Research shows that only a fraction cases in QLD result in a serious violent offender (SVO) declaration. This may be due to the discretionary nature of the declaration which may be more problematic without clear guidance of what specific factors should be taken into account.

Most sexual offences do not result in a term of 10 years. Therefore, in order for the 80% rule to be more realistic, make SVO presumptive with a sentence between 5 years and less than 10 years and the mandatory 80% after 10 years will still apply.

When the crown prosecutor asks for offender to be declared a SVO, the court should have to provide specific reasoning if they decline to make a declaration in order for justice to be more transparent,

When an offender is declared a SVO they will be incarcerated for a lengthy period should be range of easily accessible educational programs aimed at rehabilitation in which they can participate.

There is a need to recognize the rights of the victim when seeking justice in the criminal justice process.

Recommendations

- 1. That the current approach to the scheme to retained for sentences over 10 years**
- 2. That a presumption in favour of the declaration (as to sentences of 5 years or more, but less than 10 years) be introduced rather than a discretionary declaration**
- 3. That guidelines are developed to assist the court and prosecution and to promote consistency of decision making**
- 4. That any review of the scheme as it relates to the Human Rights Act 2019 QLD specifically consider the human rights of victim/survivors in the criminal process**
- 5. That the Human Rights Act 2019 QLD be amended to specifically recognise the human rights of victims of crime in the criminal process at an individual and systemic level**
- 6. That the Queensland Government provide an update in relation to implementation of the recommendations of the Royal Commission into Institutional Child Sexual Abuse, particularly those relating to reform of the criminal justice system.**
- 7. That a range of educational rehabilitation programs are easily accessible to incarcerated offenders**

References

Australian Bureau of Statistics (2017) *Personal Safety Survey*, Canberra: Australian Bureau of Statistics.

Australian Bureau of Statistics (2018) *Recorded Crime*, Canberra: Australian Bureau of Statistics.

Australian Institute of Criminology (2007) Guilty outcomes in reported sexual assault and related offence incidents, *Crime facts information no. 162, Australian Institute of Criminology*, December 2007.

If you require any further information or would like to discuss any of the issues raised in this submission, please do not hesitate to contact me [REDACTED]

Yours sincerely

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Di Macleod
Director