PART E: Other considerations and enhancing the evidence base

Contents

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Chapter 17 – Issues impacting human rights and people who experience disadvantage and discrimination

17.1 Introduction

The Council has been asked to 'advise whether the legislative provisions that the Queensland Sentencing Advisory Council reviews in the *Penalties and Sentences Act 1992* (Qld) [('PSA')], and any recommendation are compatible with rights protected under the *Human Rights Act 2019* (Qld) [('HRA')]'.[1]

Where the Council has made a recommendation in this report, its compatibility with HRA and the impact of the recommendation on the disproportionate representation of Aboriginal and Torres Strait Islander people is discussed in the relevant 'Council views' section.

The purpose of this section is to discuss whether there are any issues with provisions under the PSA or other aspects of sentencing being compatible with the HRA or disproportionately impacting Aboriginal and Torres Strait Islander persons, which is not part of a Council recommendation.

17.1.1 The current position

The HRA protects and promotes 23 identified human rights.[2] One way it achieves this is by 'stating the human rights Parliament specifically seeks to protect and promote'[3] and 'requiring statements of compatibility with human rights to be tabled in the Legislative Assembly for all Bills introduced in the Assembly'.[4] The HRA also provides, in exceptional circumstances, for Parliament to override the application of the HRA to a statutory provision.[5]

A statutory provision is compatible with rights if it does not limit a right; or, if it does, the limitation 'is reasonable and demonstrably justifiable'.[6] The limitation must be reasonable and 'demonstrably justified in a free and democratic society based on human dignity, equality and freedom'.[7] This includes a consideration of:

> a)the nature of the human right;
>
> b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom;
>
> c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;
>
> d) whether there are any less restrictive and reasonably available ways to achieve the purpose;

1 Appendix 1, Terms of Reference, 3.
2 *Human Rights Act 2019* (Qld) s 3(a) ('HRA').
3 Ibid s 4(a).
4 Ibid s 4(c).
5 Ibid ss 4(e), 43, 45. See, for example, *Youth Justice Act 1992* (Qld) s 150A. This provision will automatically expire (meaning that it no longer applies) after 5 years unless Parliament chooses to re-enact the override declaration.
6 Ibid s 8.
7 Ibid s 13(1).

> e) the importance of the purpose of the limitation;
>
> f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;
>
> g) the balance between the matters mentioned in paragraphs (e) and (f).[8]

The HRA came into full effect on 1 January 2020.[9] Legislation and amending provisions introduced prior to the HRA would have had regard to the 'fundamental legislative principles' set out in the *Legislative Standards Act 1992* (Qld).

17.2 Rights of victim survivors

Rape and sexual assault offences involve a serious breach of human rights:

> Rape is a violation of a range of human rights, including the right to bodily integrity, the rights to autonomy and to sexual autonomy, the right to privacy, the right to the highest attainable standard of physical and mental health, women's right to equality before the law and the rights to be free from violence, discrimination, torture and other cruel or inhuman treatment.[10]

The High Court has recognised that an important role of sentencing is to denounce the person's wrongful conduct and to deliver punishment, thereby recognising the breach of a victim's human rights:

> A fundamental purpose of the criminal law, and of the sentencing of convicted offenders, is to denounce publicly the unlawful conduct of an offender. This objective requires that a sentence should also communicate society's condemnation of the particular offender's conduct. The sentence represents 'a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law'. In the case of offences against children, which involve derogations from the fundamental human rights of immature, dependent and vulnerable persons, punishment also has an obvious purpose of reinforcing the standards which society expects of its members.[11]

Several rights set out in the HRA are relevant when considering the impact of rape and sexual assault on victim survivors. These include:

- the right to enjoy human rights without discrimination;[12]
- the right to protection from torture and cruel, inhuman or degrading treatment;[13]
- the right to privacy and reputation;[14]
- the protection of families and children;[15]
- cultural rights, including cultural rights of Aboriginal peoples and Torres Strait Islander peoples;[16] and
- the right to liberty and security of person.[17]

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8 Ibid s 13(2).
9 *Proclamation No 2 – Human Rights Act 2019 (commencing remaining provisions) 2019* (Qld) (SL 2019 No 224). Some provisions commenced on assent (7 March 2019) others on proclamation (1 July 2019) and remaining provisions (1 January 2020).
10 Dubravka Simonovic, Special Rapporteur on Violence Against Women and Girls, its Causes and Consequences, *Rape as a Grave, Systematic and Widespread Human Rights Violation, a Crime and a Manifestation of Gender-Based Violence Against Women and Girls*, UN Doc A/HRC/47/26 (19 April 2021), 5 [20] ('UN Rape as Systematic Human Rights Violation').
11 *Ryan v The Queen* (2001) 206 CLR 267 [118] (Kirby J) (footnotes omitted).
12 HRA (n 2) s 15(2).
13 Ibid s 17.
14 Ibid s 25.
15 Ibid s 26.
16 Ibid ss 27–8.
17 Ibid s 29.

While the rights in the HRA do not apply specifically to victim survivors, the rights of victims in Queensland are recognised in the Charter of Victims' Rights.[18] These rights, while not legally enforceable,[19] have been considered in the assessment of the appropriateness and adequacy of sentencing practices as part of the Council's review.

The Legal Affairs and Safety Committee inquiry into support provided to victims of crime recommended that the Queensland Government consider whether the Charter of Victims' Rights should be incorporated into the HRA.[20] This change was supported by stakeholders, including the Women's Legal Service Queensland and knowmore, which submitted that victims' rights should be recognised in the HRA and should be legally enforceable.[21]

The Council received submissions advocating for the sentencing process to recognise the human rights of the victim survivor.[22]

Similar concerns were expressed at the time the Human Rights Bill was developed. The then Attorney-General, in her second reading speech introducing the Bill, stated:

> Some submissions were concerned that the bill focuses too much on the rights of defendants to criminal charges and that explicit rights for victims of crime should be articulated. This particular bill, however, is not just the best vehicle for that commitment. This bill does not privilege or elevate the rights of criminal defendants over the rights of victims in the criminal process. Rather, the government explicitly delivered on this commitment with the introduction in 2016 and passage of the Victims of Crime and Other Legislation Amendment Act 2017.
>
> Human rights in the bill are not absolute. The general limitations provision, clause 13, recognises that human rights may be subject to reasonable and demonstrably justifiable limits. Implied legitimate reasons for limiting human rights, as drawn from human rights jurisprudence, include community safety and the protection of the rights of others including, for example, children and victims of domestic violence.
>
> Clause 12 of the bill also clarifies that the human rights in the bill are in addition to other rights and freedoms included in other laws, meaning that victims' rights that are contained in other sources of law will continue to apply. In this regard, the committee noted the victims' rights charter in the Victims of Crime Assistance Act 2009 and the existing complaints mechanism that is available under the victims' rights charter, as I referred to earlier.[23]

The Council agrees that the same fundamental human rights protected under the HRA apply equally to victims and survivors, including children, and other members of the Queensland community.

An independent review of the HRA was initiated in February 2024 to assess the effectiveness of the current provisions in the Act, including any issues that have arisen regarding its operation. As recommended by the Women's Safety and Justice Taskforce and the Legal Affairs and Safety Committee, the review was asked to consider whether recognition of victims' rights under the Charter of Victims'

18 *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) sch 1.
19 Ibid s 43. If a person feels their rights under the Charter of Victims' Rights has not been upheld, they can make a complaint: ch 3, pt 3.
20 Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Support provided to Victims of Crime* (Report No 48, 57th Parliament, May 2023) rec 3.
21 Ibid 4. In its submission to the inquiry, the Women's Legal Service Queensland ('WLSQ') supported victims charter principles being enforceable legal rights in addition to amendments being made to the HRA: WLSQ, Submission No 32 to Legal Affairs and Safety Committee, Queensland Parliament, Inquiry into Support provided to Victims of Crime (12 April 2023).
22 Submission 20 (DV Connect); Submission 24 (QSAN); Submission 22, Chapter 1 (TASC (Legal and Social Justice Services)).
23 Queensland, Parliamentary Debates, Legislative Assembly, 31 October 2018, 26 February 2019, 377–8 (Yvette D'Ath, Attorney-General and Minister for Justice).

Rights should be incorporated into the Act.[24] The review report has been finalised and will be tabled in Parliament.[25]

In **Chapter 13**, we noted that the Women's Safety and Justice Taskforce also recommended a review be undertaken of the Charter of Victims' Rights to 'consider whether additional rights should be recognised or if existing rights should be expanded' and that '[i]deally, this review would be undertaken by the victims' commissioner' once established.[26] We support this recommendation. The Office of the Victims' Commissioner has advised that the Victims' Commissioner has now commenced work to review the Charter.[27]

Important rights are also protected under the UN *Convention on the Rights of People with Disabilities* and the UN *Convention on the Rights of the Child*. We note that relevant principles recognised in those international instruments include accessibility and respect for difference and acceptance of persons with disabilities as part of human diversity and humanity,[28] and the protection of the child from physical and mental violence, sexual exploitation and sexual abuse.[29]

Relevant to our review, the rights of victim survivors of sexual violence may provide a justification for limiting the rights of people who commit sexual offences where there is evidence that supports the need for reforms in support of meeting the proposed reforms' intended objectives. However, as recognised under the HRA, such limitations on rights are must also be assessed with reference to whether there is a less restrictive and reasonably available way to achieve their purposes, while also taking into account the importance of the objectives sought to be achieved.[30]

There are few rights that are more important to protect than the rights of people not to be subjected to sexual violence. As discussed in **Chapter 11**, ensuring the current sentencing system is best structured to achieve long-term community protection, alongside the other purposes of sentencing, has been a key concern of our review.

17.3 Rights of people charged and convicted of criminal offences

Rights in the HRA are relevant to sentencing laws, policies, acts and decisions relating to an accused or person sentenced for sexual assault and rape. These include:

- the right to recognition and equality before the law;[31]
- the right to protection from torture and cruel, inhuman or degrading treatment;[32]
- cultural rights;[33]

24 See Terms of Reference <https://www.humanrightsreview.qld.gov.au/>.
25 The report was delivered in September 2024. Pursuant to section 95(5) of the HRA (n 2), the report must be tabled within 14 sitting days following its receipt.
26 Women's Safety and Justice Taskforce, *Hear Her Voice – Report Two: Women and Girls' Experiences Across the Criminal Justice System* ('*Hear Her Voice*, *Report Two*'), vol 1, 139–40 rec 19.
27 Correspondence from Office of the Victims' Commissioner to Queensland Sentencing Advisory Council, 28 November 2024.
28 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, A/RES/61/106, (entered into force 3 May 2008).
29 *Convention on the Rights of the Child*, GA/RES/44/25 (20 November 1989) Art 19, 34.
30 HRA (n 2) 13(2)(d)–(f).
31 Ibid s 15.
32 Ibid s 17.
33 Ibid ss 27–8.

- the right to liberty and right not to be subjected to arbitrary detention;[34]
- the right to a fair hearing;[35]
- the right not to be tried and punished more than once;[36] and
- the right to protection against retrospective criminal laws.[37]

No provisions of the PSA are currently subject to an 'override declaration'.[38]

17.3.1 Right to liberty and right not to be subjected to arbitrary detention

Every person has the right to liberty and security,[39] and must not be subjected to arbitrary arrest or detention.[40] Depriving a person of liberty should only be in accordance with the law's established procedures.[41]

The PSA states that '[s]ociety may limit the liberty of members of society only to prevent harm to itself or other members of society'.[42] Its purposes include 'promoting consistency of approach in sentencing of offenders' and 'providing fair procedures' when imposing a sentence.[43]

Sentencing principles under the PSA which may limit this right include provisions that displace the principle that imprisonment is a sentence of last resort,[44] and the presumptive provisions for actual imprisonment when sentencing a person for an offence of a sexual nature against a child under 16 years, unless there are exceptional circumstances.[45]

We have previously noted that the Serious Violent Offences scheme may limit this right, including the ability of courts to promote substantive equality as Aboriginal and Torres Strait Islander peoples are disproportionately represented in the criminal justice system and among those convicted of offences that are subject to the scheme.[46] The mandatory operation of the SVO scheme when an offender is convicted of rape and sentenced to 10 or more years' imprisonment and the inflexible minimum non-parole period that applies on a declaration being made arguably affect the courts' ability to acknowledge the circumstances of the offender. However, it is noted that these factors can be taken into account when setting the head sentence.

Another provision that has a mandatory element is the requirement for a judge to impose life imprisonment or an indefinite sentence for a 'repeat serious child sex offence', which infringes the right to liberty and the right to not be subjected to arbitrary detention.[47] At the time the mandatory penalty was introduced in 2012 (prior to the HRA), the Explanatory Notes acknowledged that this impacted 'traditional rights', but it was necessary given the importance of community protection:

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34 Ibid s 29.
35 Ibid s 31.
36 Ibid s 34.
37 Ibid s 35.
38 As to the nature and effect of an 'override declaration', see ibid ss 43–7.
39 Ibid s 29(1).
40 Ibid s 29(2).
41 Ibid s 29(3). The provisions in s 29 are based on the *International Covenant on Civil and Political Rights*, art 9.
42 *Penalties and Sentences Act 1992* (Qld) preamble ('PSA').
43 Ibid ss 3(d)–(e).
44 Ibid ss 9(2A), (4)(b) and (7A).
45 Ibid s 9(4)(c).
46 See Queensland Sentencing Advisory Council, *The '80 per cent Rule': The Serious Violent Offences Scheme in the Penalties and Sentences Act 1992 (Qld) (*Report, 2022) (*'The "80 per cent Rule"'*) Appendix 15.
47 HRA (n 2) s 29.

> A mandatory sentence that cannot be mitigated represents a significant abridgment of traditional rights. However, the effect on the individual must be balanced against the need for community protection. Child sex offenders victimise one of the most vulnerable groups in the community. It is incumbent on the community to provide adequate protection from harm to this group, as they are inherently unequipped to protect themselves from such predation.
>
> The new mandatory sentencing regime is necessary to: denounce repeat child sex offenders; provide adequate deterrence for this cohort of offenders; protect one of the most vulnerable groups of the community; and to enhance community confidence in the criminal justice system.[48]

Legal Aid Queensland told the Council:

> Mandatory sentencing is not consistent with the right to liberty, specifically not to be subject to arbitrary detention. Legislation with a mandatory element in respect of sentencing can be viewed as limiting this right. Examples of this in Queensland include mandatory life imprisonment for 'repeat serious child sex offence', and serious violent offence declarations. To a lesser extent, the provision that an offender sentenced for an offence of a sexual nature in relation to a child under 16 years or a child exploitation material offence must serve an actual term of imprisonment unless there are exceptional circumstances significantly fetters judicial discretion for sentencing in these matters.[49]

The QHRC has made previous submissions to this Council that comment on mandatory penalties, drawing attention to the need for significant evidence 'to demonstrate that mandatory minimum sentences are the least restrictive manner of achieving the purposes' of sentencing.[50]

A review of the repeat serious child sex offence scheme was outside the scope of this review given that this scheme applies to offences other than rape and sexual assault. Only a small number of people sentenced for rape over our data period were sentenced under this scheme.[51]

As discussed in the Council's fundamental principles (see principle 7), the Council has previously raised concerns about the potential for mandatory sentences to constrain available sentencing options, lead to anomalies and unintended consequences in sentencing, and cause inconsistency in sentencing.[52] When developing its recommendations, the Council has sought to preserve judicial discretion to ensure sentences are just in all circumstances.[53] At the same time, the Council has been concerned to ensure a person convicted of rape and sexual assault is properly held accountable and the impact on victim survivors is given appropriate recognition, thereby promoting community confidence. We have also drawn on relevant research evidence about the effectiveness of different penalty types in meeting their objectives.

17.3.2 Right to protection against retrospective laws

The right to protection against retrospective laws[54] is reflected in the *Criminal Code* (Qld),[55] which protects a person from being punished for an offence unless it was an offence at the time it was committed or to be punished any more than the older law allowed (or the newer law allows).[56]

48 Explanatory Notes, Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012 (Qld) 2–3.
49 Submission 23 (Legal Aid Queensland) 35.
50 Queensland Human Rights Commission, Preliminary submission 3 to Queensland Sentencing Advisory Council, *Penalties for Assaults on Public Officers review* (9 January 2020) 9 [31].
51 See further, Appendix 4, section 4.7.1. Four life sentences were imposed under this regime over the 18-year data period.
52 See, for example Queensland Sentencing Advisory Council, *The '80 per cent Rule'* (n 46).
53 The Court of Appeal has recognised that this purpose is 'the paramount objective of sentencing': *R v Randall* [2019] QCA 25 [37].
54 HRA (n 2) s 35.
55 *Criminal Code Act 1899* (Qld) sch 1 ('*Criminal Code* (Qld)').
56 Ibid s 11.

This right may be limited when new sentencing considerations and schemes are introduced if they apply retrospectively. For example, the mandatory life sentence for a 'repeat child sex offence' is partially retrospective.[57] Amendments to section 9 of the PSA are generally considered to be procedural, meaning they can apply to a person when sentenced and not when the offence was committed.[58] However, the amendment requiring a sentence of actual imprisonment be served for a sexual offence when the victim is a child under 16 [now s 9(4)(c)] is not procedural and not retrospective. This means it only applies to offences committed after its introduction on 26 November 2010.[59]

The Council's recommendations in respect of an aggravating factor (**Recommendation 1**) and good character (**Recommendation 5**) would most likely be considered procedural and apply when a person is sentenced, not when the offence was committed. This is because they retain judicial discretion to determine the appropriate sentence and do not require a specific sentencing outcome.[60]

17.3.3 Right not to be tried and punished more than once

If a person has been charged, had a trial and been acquitted, or been convicted and sentenced, they must not be tried for the offence again.[61] This is also known as rule against 'double jeopardy'. This human right protects a person from being repeatedly prosecuted and provides finality of criminal proceedings.[62] It does not apply if it is 'justified by exceptional circumstances', such as the discovery of new evidence.[63]

This right is reflected in the *Criminal Code* (Qld), which also protects a person from being punished twice for the same offence[64] unless there is fresh and compelling evidence and it is a 'prescribed offence'.[65] Relevant to this review, the offence of rape and sexual assault (in aggravated circumstances where the person is liable to life imprisonment) was recently included in the exception to double jeopardy.[66] In the Statement of Compatibility, it was stated that the limitation is 'tightly constrained, [being] restricted to circumstances in which fresh and compelling evidence later emerges and to serious offences punishable by life imprisonment and that directly interfere with another person's life or sexual bodily integrity'.[67]

This right might also be relevant to sentencing laws, policies, acts or decisions that allow a person to be detained after their sentence has finished.[68] In some instances, people who have committed offences such as rape or sexual assault may be subject to additional post-sentence detention supervision or monitoring schemes, including those under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld)

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57 The scheme allows for an offence which happened before commencement (19 July 2012) to be the 'first child sex offence'. The mandatory provision will apply if a subsequent 'serious child sex offence' happens after the scheme has commenced. This means the scheme has a partial retrospective operation: PSA (n 42) s 223.

58 See *R v Truong* [2000] 1 Qd R 663; *R v Hutchinson* [2018] QCA 29.

59 *R v Koster* [2012] QCA 302 [38] Holmes JA (McMurdo P and Applegarth J agreeing on this issue). Introduced by *Penalties and Sentences (Sentencing Advisory Council) Amendment Act 2010* (Qld).

60 See, for example, *R v Hutchinson* [2018] QCA 29, [39] (Mullins J, Fraser and Morrison JJA agreeing) in which the Court of Appeal concluded based on its analysis of relevant case authorities that section 9(10A) of the PSA is a procedural provision.

61 HRA (n 2) s 34.

62 This right is based on Article 14 of the *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966 (entered into force 23 March 1976).

63 United National Human Rights Committee, *General Comment No 32: Article 14: Right to equality before courts and tribunals and to a fair trial*, 19th sess, UN Doc CCPR/C/GC/32 (23 August 2007) 16 [56].

64 *Criminal Code* (Qld), ss 16–7.

65 Ibid ch 68. Prescribed offences are defined in s 678. As to the meaning of 'fresh and compelling evidence', see s 678D.

66 *Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Act 2024* (Qld), commencing 1 September 2024 (SL 2024 No 177).

67 Statement of Compatibility, Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Bill 2023 (Qld) 8. There are also procedural safeguards.

68 For a full list see Queensland Human Rights Commission, 'Fact Sheet: Right Not To Be Tried Or Punished More Than Once' (July 2019) 1.

('DPSOA') and the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (Qld) ('CPOROPO Act'). Under the DPSOA scheme, a person in custody serving a term of imprisonment for a 'serious sexual offence' (involving violence or against a child) may be subject to continued detention or supervision after their sentence has finished.[69] The Supreme Court must be satisfied the person is a 'serious danger to the community' without an order.[70] A detailed review of the operation of the DPSOA was excluded from this review, as it operates as a civil post-sentence scheme and is not a sentencing consideration.[71] When the DPSOA scheme was introduced, it was acknowledged that this breached fundamental legislative principles, but was 'justified in order to protect the community from released prisoners who pose an ongoing serious risk of reoffending and are in need of ongoing rehabilitation'.[72]

Several stakeholders referred to the intersections between the DPSOA scheme and sentencing for sexual violence offending during the review, as well as the need for adequate and high-quality post-release supervision.

The Council considered how often DPSOA orders were made for offenders also subject to an SVO declaration as part of its earlier review of the SVO scheme and found the frequency varied by offence. For offenders sentenced for rape who were also declared convicted of a serious violent offence, orders were made over the relevant data period in 35 cases (33.9 per cent).[73]

The WSJ Taskforce recommended consideration be given to reviewing the operation of the DPSOA scheme and that this review could examine the scheme's effectiveness and whether it should be expanded to dangerous violent offenders.[74] While outside the scope of our review, we support this recommendation.

17.4 Impact of recommendations on people who experience disadvantage and discrimination

Offences of sexual assault and rape can disproportionately impact people who experience disadvantage and discrimination. For victim survivors, this includes women, children, people who experience cultural and racial marginalisation, people with disability, Aboriginal and Torres Strait Islander people, people with a mental illness or cognitive impairment, elderly people and those who identify as part of the LGBTQIA+ community. The same issues of disadvantage may also be experienced by those who commit these offences.

In developing its recommendations, the Council has been mindful of the need to safeguard the rights of victim survivors while ensuring that the rights of those convicted of these offences are also considered.

Most people who commit sexual offences are 'similar to the general offender population in terms of demographic, psychosocial and criminal history variables':[75]

69 *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) ss 5, 13(5), sch 1 (definition of 'serious sexual offence').
70 Ibid s 13(1).
71 PSA (n 42) s 9(9)(b).
72 Explanatory Notes, Dangerous Prisoners (Sexual Offenders) Bill 2003 (Qld) 3.
73 Queensland Sentencing Advisory Council, *The '80 per cent Rule'* (n 46) 93, Figure 11.
74 Women's Safety and Justice Taskforce, *Hear Her Voice - Report One: Addressing Coercive Control and Domestic Violence in Queensland* (2021) vol 3, 717–18, rec 72.
75 Denise Lievore, 'Thoughts on Recidivism and Rehabilitation of Rapists' (2005) 28(1) *UNSW Law Journal* 293, 294.

> Most are young, single, white males, although men from Indigenous and ethnic minority groups are over-represented among visible sex offenders. Rapists come from all socio-economic backgrounds but are often socially, economically, educationally and occupationally disadvantaged.[76]

Reforms to the sentencing process, which introduce an aggravating factor and limit some types of evidence of a person's personal circumstances unless it is relevant to rehabilitation or risk of reoffending, or the nature and seriousness of the offence, mean it is inappropriate for such circumstances to be given weight. This may result in a change in sentencing practices, including longer sentences that may disproportionately impact defendants who are marginalised or experiencing other forms of disadvantage and discrimination.

Following our previous review of the SVO scheme, we recommended that, as part of any implementation strategy developed by the Department of Justice, should the recommendations in our report be adopted, further consultation should be undertaken with legal stakeholders, including those providing direct representation for Aboriginal and Torres Strait Islander defendants and other defendants who are marginalised or experiencing disadvantage. This is to identify any additional legal funding or support required to minimise unintended impacts of the recommendations.[77] This consultation process, we recommended, should include consideration of the adequacy of existing funding, both in support of defendants' legal representation and to fund the preparation of any required specialist reports.

This review raises similar issues to our earlier review. We therefore suggest that a similar consultation process be initiated in support the implementation of our current recommendations.

17.4.1 Aboriginal and Torres Strait Islander peoples are disproportionately represented in sentences for rape and sexual assault

The Terms of Reference ask us to 'advise on the impact of any recommendation on the disproportionate representation of Aboriginal and Torres Strait Islander people in the criminal justice system'.[78] Where this is relevant to a recommendation, this is discussed throughout the report.

Sentencing outcomes are discussed in detail in **Appendix 4**. Any statistics on the disproportionate representation of Aboriginal and Torres Strait Islander peoples need to be interpreted in the context of the chronic social, economic and cultural disadvantage and marginalisation experienced by Aboriginal and Torres Strait Islander peoples.[79]

Violence, and particularly violence against women and children, is not part of traditional Aboriginal and Torres Strait Islander culture.[80] However, due to a range of complex current and historical intergenerational factors, including the ongoing impact of colonisation, and structural and institutional

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76 Ibid.
77 Queensland Sentencing Advisory Council, *The '80 per cent Rule'* (n 46) rec 25.
78 Appendix 1, Terms of Reference, 3.
79 For more information on the historical and ongoing target context see Productivity Commission, Closing the Gap - Information Repository, 'Socio-economic outcome area 10: Aboriginal and Torres Strait Islander adults are not overrepresented in the criminal justice system', <https://www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area10>.
80 Productivity Commission, *Overcoming Indigenous Disadvantage Key Indicators 2020* (Report 2020), 4.130 citing Our Watch, 'Challenging Misconceptions About Violence Against Aboriginal and Torres Strait Islander Women' (2024) <https://action.ourwatch.org.au/resource/challenging-misconceptions-about-violence-against-aboriginal-and-torres-strait-islander-women>; Women's Safety and Justice Taskforce, *Hear Her Voice, Report Two* (n 26) vol 1, 151 citing Victoria Police, *Policing Harm, Upholding the Right: Victoria Police Strategy for Family Violence, Sexual Offences and Child Abuse 2018-2023*, 15.

discrimination,[81] Aboriginal and Torres Strait Islander peoples are disproportionately represented in all areas of the criminal justice system.[82] An Aboriginal and Torres Strait Islander person may have experienced trauma that is unique to their Indigeneity (for example, as a result of being a member of the Stolen Generations and displacement).[83] Aboriginal and Torres Strait Islander peoples may also experience intersecting forms of disadvantage, such as having a disability, living in poverty, having low socio-economic status, experiencing a lack of employment and having a limited education.[84] Other factors that may be relevant to the sentencing outcomes include the different nature and seriousness of these offences, the personal circumstances of those being sentenced (including any relevant prior criminal history) and whether the person committed the offence while under another sentence or order (e.g. while on parole). These factors, among others, contribute to disproportionate representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system.

Access to legal representation and advice (communicated in a way the person can understand), can also have a significant impact on the outcome. For example, it may prevent an inappropriate guilty plea if there is an available defence or impact the sentence by offering pleas in mitigation.[85] While a court can take into account 'cultural considerations, including the effect of systemic disadvantage and intergenerational trauma'[86] to help understand the background of the person in the context of the offending, it does not excuse the offending. A sentencing court must balance the mitigating factors with all the circumstances of the offence:

> Aboriginal women and children who live in deprived communities or circumstances should not also be deprived of the law's protection … they are entitled to equality of treatment in the law's responses to offences against them, not to some lesser response because of their race and living conditions.[87]

Violence against Aboriginal and Torres Strait Islander peoples, including sexual violence, is perpetrated by people of all cultural backgrounds, in many different contexts and settings.[88]

Bearing this context in mind, the Council considered administrative data on how Aboriginal and Torres Strait Islander people are disproportionately represented.

Aboriginal and Torres Strait Islander peoples represent approximately 4 per cent of Queensland's population (aged 18 years and over).[89] Aboriginal and Torres Strait Islander adults were sentenced for 16.8 per cent of all offences (not just sexual offences) sentenced in Queensland between July 2005 and June 2023. For sexual assault and rape, their disproportionate representation is greater.[90]

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81 See Dr Harry Blagg, Dr Vickie Hovane and Dorinda Cox, Submission No 121 to *Australian Law Reform Commission Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, 1; *Commission of Inquiry into Queensland Police Services Responses to Domestic and Family Violence, A Call for Change* (Final Report, 2022) 18.

82 Australian Law Reform Commission, *Pathways to Justice— An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, December 2017) ('*Pathways to Justice report*'). See especially: in prison, 93 [3.13]; charged with an offence, 100 [3.30]; and on remand, 102 [3.36]. including women 105 [3.41].

83 Ibid 185–6 [6.2].

84 See Dr Klaire Somoray, Samuel Jeffs and Anne Edwards, *Connecting the Dots: the Sentencing of Aboriginal and Torres Strait Islander Peoples in Queensland* (Queensland Sentencing Advisory Council, Sentencing Profile Series, 2021), 4–10.

85 Australian Law Reform Commission, *Pathways to Justice report* (n 82) 31, 320, [10.3].

86 PSA (n 42) ss 9(2)(oa)–(p).

87 *R v Daniel* [1998] 1 Qd R 499, 531 (Fitzgerald P).

88 Our Watch, 'Challenging Misconceptions About Violence Against Aboriginal and Torres Strait Islander Women' (2024) <https://action.ourwatch.org.au/resource/challenging-misconceptions-about-violence-against-aboriginal-and-torres-strait-islander-women>.

89 As at 30 June 2021. See Australian Bureau of Statistics, 'Estimates of Aboriginal and Torres Strait Islander Australians', Table 7.3, available at < https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/latest-release> accessed 8 October 2024.

90 See Appendix 4, section 4.3.

From a review of administrative courts data for sexual assault, the Council observed:

- One in 5 sentenced sexual assault cases involved an offence committed by an Aboriginal and Torres Strait Islander person (20.5 per cent) and the overwhelming majority were non-aggravated sexual assault offences (95.4 per cent).[91]
- Over the 18-year data period, the proportion of Aboriginal and Torres Strait Islander peoples sentenced for sexual assault (MSO) has increased slightly, from 11.9 per cent in 2005–06 to 19.1 per cent in 2022–23.[92]
- Aboriginal and Torres Strait Islander peoples were more likely to receive a custodial penalty than non-Indigenous people.
- The majority of Aboriginal and Torres Strait Islander peoples sentenced received a custodial penalty (81.8 per cent) compared with under two-thirds of non-Indigenous people sentenced (60.2 per cent).
- There was little difference in the average or median sentence for any custodial penalty type received in the Magistrates Court when Aboriginal and Torres Strait Islander status was considered.

From a review of administrative courts data for rape, the Council observed:

- Almost one-quarter of sentenced rape (MSO) cases involved an offence committed by an Aboriginal and Torres Strait Islander person (23.3 per cent).
- Over the 18-year data period, the proportion of Aboriginal and Torres Strait Islander people sentenced for rape (MSO) decreased, from 21.5 per cent in 2005–06 to 16.8 per cent in 2022–23.[93]
- Aboriginal and Torres Strait Islander people were no more or less likely than non-Indigenous people to receive a custodial penalty.
- Aboriginal and Torres Strait Islander people were more likely to receive a sentence of imprisonment (80.0 per cent vs 65.0 per cent), and less likely to receive a partially suspended prison sentence (16.2 per cent vs 31.1 per cent) than non-Indigenous people. These findings are statistically significant.
- There was no significant difference in the average sentence length by Aboriginal and Torres Strait Islander status across any custodial penalty type presented.
- All life sentences were imposed on non-Indigenous men (n=7).

The Aboriginal and Torres Strait Islander Legal Service ('ATSILS') referred us to target 10 of the National Agreement on Closing the Gap (NACTG): 'By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15%.'[94] They noted that Productivity Commission's report on the

91 See Appendix 4, section 4.8.
92 See Appendix 4, section 4.8.6, Figure A50.
93 See Appendix 4, section 4.7.4, Figure A25.
94 National Agreement on Closing the Gap (July 2020) cited in Submission 28 (ATSILS).

assessment of progress from 2019 to 2023 shows for Queensland, the progress towards this target is worsening (which is reported with 'high confidence' meaning it is considered reliable).[95]

ATSILS suggested that the Council consider whether any proposed amendments to the existing sentencing regime might 'inadvertently worsen progress towards targets to reduce incarceration rates and that, where possible and appropriate, opportunities are taken to improve the current regime to promote alternatives to incarceration'.[96]

They told us the cultural issues impacting Aboriginal and Torres Strait Islander people that are most relevant to sentencing rape and sexual assault are:

- the protective factors of the individual's connection to community, kin and culture including spiritual wellbeing;
- the protective factors of the individual participating in relevant programs run by local community-controlled organisations to address root causes for offending behaviour including, for example, programs that address underlying trauma via healing programs;
- the:
    - impacts of intergenerational trauma, child removal, dispossession from lands and systemic racism and the role of such in contributing marginalisation of at-risk individuals; and
    - social and economic disadvantage including in relation to housing, employment and education;
    - impacts of trauma that the individual has experienced in their life, for example, if they were the victim of sexual assault or rape prior to the offending including as a child;
    - impacts of physical health and mental health issues that might have been brought on or exacerbated by the aforementioned factors;
    - impacts of substance abuse/misuse that might have been brought on or exacerbated by the aforementioned factors, to identify underlying drivers of the individual's offending;
- the protective factors of diverting the individual into a community-led programs/initiatives as an alternative to incarceration; and
- the long-standing overincarceration of Aboriginal and Torres Strait Islander individual, including the high numbers of individuals on remand, and the commitments under the NACTG to drive down incarceration levels.[97]

They recommended we consider whether to legislate the principle in *Bugmy v The Queen*,[98] in which the High Court observed 'the effects of profound childhood deprivation do not diminish with the passage of time and repeated offending' and that background is to be given full weight – noting this may point in different directions (e.g. reducing an offender's moral culpability, while at the same time increasing the importance of community protection).[99]

As our Terms of Reference were limited to two offences of sexual assault and rape, we consider this would require further investigation. In **Chapter 8**, we recommended a review of section 9 of the PSA (**Recommendation 3**).

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95 Productivity Commission (Cth), Closing the Gap Information Repository (2023) available at <https://www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area10>.
96 Submission 28 (ATSILS) 2.
97 Ibid 5.
98 *Bugmy v The Queen* (2013) 249 CLR 571.
99 Ibid 595 [44]–[45] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ). See Submission 28 (ATSILS) 5–6.

Other aspects of our recommendations also support information being put before the sentencing court about the person's individual circumstances, including cultural submissions and advice. This is explored in **Chapter 12**.

In **Chapter 11**, we also recommend reforms that would expand the penalty and parole options available to a court and provide a court with more sentencing options – including non-custodial orders that may provide courts with better alternatives to short terms of imprisonment when sentencing for sexual assault in support of long-term community safety.

Our earlier observations regarding the legal needs of defendants who are marginalised or experiencing disadvantage to identify any additional legal funding or support required to minimise impacts are of particular relevance in avoiding unintended impacts.

We also strongly support the continued implementation of the WSJ Taskforce recommendations to increase the cultural competency of all people working within the criminal justice system.[100] Supporting an improved understanding of the issues impacting Aboriginal and Torres Strait Islander defendants and victim survivors will only improve outcomes and result in the better tailoring of orders to individual circumstances should our reforms be introduced.

100 Women's Safety and Justice Taskforce, *Hear Her Voice*, *Report Two* (n 26) recs 5, 51, 66, 67, 68.

Chapter 18 – Improving the evidence base for sentencing reform in Queensland

18.1 Introduction

The Council was directed to examine the penalties currently imposed on sentences under the *Penalties and Sentences Act 1992* (Qld) for sexual assault and rape offences, to review sentencing practices for these offences and to identify any trends or anomalies that occur in the sentencing these offences, and to advise on any other matters relevant to this reference.[1]

As outlined in **Chapter 4**, in conducting this review the Council gathered information from a wide range of sources to understand current sentencing practices for these offences, and to build an evidence base from which to reach conclusions about the way sentencing for rape and sexual assault is operating in Queensland, and to inform the Council's consideration of any recommended areas for reform.

This chapter discusses some of the current gaps in the existing evidence base and the limitations that have impacted the Council's ability to fully understand current sentencing practices with respect to the offences of rape and sexual assault, and identifies a number of opportunities for reforms to improve the availability and quality of Queensland's criminal justice sentencing information to support ongoing monitoring, research and future reform efforts.

18.2 The position in Queensland

18.2.1 Limitations with the availability of sentencing information in Queensland

The ability to access high-quality data and information about sentencing enables legal practitioners and judicial officers to understand current practices in an applied context, and to ensure consistency in sentencing. Additionally, though, access to such information for government agencies and researchers, also enables the identification of trends and issues, supporting ongoing monitoring and evaluation of system responses and opportunities for reform.

While strict safeguards around the collection, storage and use of such data are essential from both a privacy and human rights perspective, as acknowledged by the Women's Safety Justice Taskforce: 'accurate and timely data and reliable analysis is essential for building capacity and capability across the system and to inform policy, practice and investment decisions',[2] and also supports transparency, accountability and community confidence.

1 See Appendix 1, Terms of Reference.
2 Women's Safety and Justice Taskforce, *Hear Her Voice – Report Two: Women and Girls' Experiences Across the Criminal Justice System* (2022) vol 2, 717 ('*Hear Her Voice, Report Two*').

In undertaking our review, there were two main sources of sentencing information of particular interest: administrative data and sentencing transcripts. In accessing and analysing these, we identified a number of challenges.

Limitations with administrative data

As discussed in **Chapter 4**, criminal justice administrative data with respect to offences, offenders and court outcomes is held by different departments and agencies. Each department and agency use different case management systems, and while there is some integration between systems in relation to the transfer of select details under the 'Integrated Criminal Justice' (ICJ) model, this is limited to specific information for specific administrative and operational purposes, and occurs at a particular point in time.

The nature of the information captured by administrative systems is necessarily for operational, rather than research, purposes, and the accuracy of the information available reflects how administrative information is structured, entered, maintained and extracted. It is therefore not surprising that not all information that might be considered relevant for research purposes is captured in the administrative data systems. As a result, this leads to difficulty for researchers and other stakeholders aiming to understand:

- case progression and attrition
- offender and offence characteristics
- victim survivor characteristics
- reasons for decisions.

Understanding case progression and attrition

Understanding and reporting on the 'attrition' of cases through the criminal justice system, particularly for those involving sexual violence matters, is challenging. As discussed in **Chapter 2**, matters that ultimately result in a sentenced outcome in the court system represent only a very small proportion of all sexual violence matters that are brought to the attention of Police.

For the Council, given our focus specifically on matters ultimately sentenced in relation to these offences, it was particularly important for us to understand how these sentenced matters had progressed through the various parts of the system, but even this task was challenging.

One factor that contributed to this challenge was that administrative case management systems like the Queensland Police Records Information Management (QPRIME) within Police, the Queensland Wide Inter-linked Courts (QWIC) system within courts, and the Integrated Offender Management System (IOMS) maintained by QCS, have been developed independently with different purposes, structures and data–capture requirements.

Importantly, based on the initial case management process within QPS, each matter that ultimately progresses through to the courts for sentencing in relation to a sexual violence offence initially commences within the QPRIME system, and each individual offender is assigned a unique 'Single Person Identifier' (SPI) by QPS. Other relevant administrative details are also captured (at a particular point in time), including information regarding the specific offence(s) charged, the associated QPS event reference number (QP number) and information regarding the offender and the victim.

Once a matter is progressed to the court system, an electronic lodgement is made by Police to Courts, and information is 'transferred' from QPRIME to the QWIC system maintained by Courts. Importantly, this electronic lodgement provides for the transfer of the relevant offence and case details, including the SPI, as captured by QPS at that point in time.

Within the QWIC system, as a matter progresses through the court system, it is important to note that any changes by police to the original information captured (i.e. updates to the SPI or additional victim information) are not then updated in the court system, and there is no mechanism for this detail to be updated.

Specifically in relation to the progression of cases within the court system, there may be many reasons why changes may be made to the original offences charged and proceeded against. For example, as discussed in **Chapter 15** regarding plea negotiations, matters that were initially charged as one offence category (e.g. rape) may ultimately be amended to reflect the provable conduct, or through a jury verdict of guilty to an alternative, lesser charge (e.g. sexual assault). This mismatch in the final sentenced charge and the originating charge as recorded by QPS can make linking records between agencies very difficult, if not impossible, to undertake. This is exacerbated in instances where a matter is committed to the higher courts, as much of the administrative data from the originating file is not 'carried over' to the higher court electronic administrative record, and if changes are made by way of 'replacement indictments', these administrative records are not necessarily 'linked' to each other as one matter ceases and another matter commences. While the court paper file records all the nuance, this is not necessarily recorded electronically to support data linking.

Understanding offender and offence characteristics

As the administrative data systems used in the criminal justice system are generally concerned with capturing information to fulfil operational objectives, information often sought for the purpose of research and evaluation, particularly regarding offender characteristics and the circumstances surrounding the offence, is generally not captured in an extensive way, or in a way that can easily be analysed.

For example, as we experienced in our undertaking our review and outlined in **Chapter 4**, there was no structured data available surrounding the specific type of conduct that constituted a sexual assault offence, such as where the victim survivor was sexually touched (or whether the victim survivor was forced to touch the offender), or how this occurred (including whether it was sexual touching over or over clothes and what type of body part was touched).

To gather this information, the Council undertook a content analysis of a sample of sentencing remark transcripts to extract this information where it was mentioned by a sentencing judge. However, this information could not always be extracted from the remarks - particularly where the Crown and the sentencing court relied on the Statement of Facts to describe the offending. Unfortunately, if the Statement of Facts was not verbally read into the record, this was not available to the Council via the sentencing transcript.

Importantly, as discussed in **Chapter 12**, the presence or absence of specific types of information available to the court for the purpose of sentencing (i.e. pre-sentence reports or cultural reports) was also difficult to identify; again, to gather this information the Council undertook a review of sentencing remark transcripts for reference to these documents, as this information is not captured in the administrative data systems in a structured way.

Other contextual information regarding the offender and the offence was also difficult to obtain, including information about mental health status, intellectual or cognitive impairment and whether the offender was from a culturally and racially marginalised background.

While a greater use of pre-sentence reports could help criminal justice agencies capture more of this information, as recommended in recommendation 129 by the Women's Safety and Justice Taskforce, *Hear Her Voice – Report Two*, it is also acknowledged that it is unlikely that the content within such reports would be captured in a structured way to support quantitative analysis; however, it would be useful for the presence of these reports to be captured in such a way to support research and evaluation efforts.

Understanding victim survivor characteristics

As noted previously, limited information about victim survivors is recorded in the court's administrative data system as this content is generally provided by the QPS with the original court lodgement. In undertaking our review, we noted that while some information about victim age and gender is recorded, this information was not populated for most rape and sexual assault cases.

In order to supplement this information, the Council initially undertook a data-matching exercise with QPS to link court records to crime records in an attempt to better identify the characteristics of victims, as well as to obtain information about the victim–offender relationship.

Unfortunately, this process was unable to yield robust results for various reasons, including:

- While offenders are generally able to be manually linked between QPS and Courts through the use of the SPI and the QP Number, it is more challenging to link specific charges, especially where an offender has been charged with multiple offences arising from the same occurrence (i.e. multiple rape or sexual assault offences) recorded under the same QP Number. This is further complicated, as a single offender may offend against multiple victims within such a circumstance and the identifiers at this level of granularity do not generally transfer from QPS to Courts.
- Similar to the Courts dataset, the QPS administrative system was missing demographic information for many victims of these offences.

As the data-matching exercise would not yield robust results, the Council undertook a content analysis of a sample of sentencing remarks to extract the relevant details regarding victim survivors. This process was labour intensive, as each sentencing remark was required to be reviewed individually to extract and record the relevant information. This was particularly challenging because sentencing remarks do not often contain comprehensive details about the demographics of the victim survivor – as they may more commonly be discussed during submissions (or not at all, if reports or statements are not read into the court record). The process of manually reviewing and coding these data elements therefore required significant effort and produced limited results in some circumstances.

Understanding reasons for decisions

As outlined in **Chapter 11** regarding the use of suspended sentences of imprisonment, in undertaking our review we experienced challenges in determining whether a breach of a suspended prison sentence by reoffending resulted in a formal breach action being initiated and, if formal action was taken, what action the court took upon finding the breach proven (for example, whether the sentence was activated in full or in part, the operational period of the order extended, or whether the offender was convicted and

not punished further). Where there was a breach noted due to reoffending, we were also unable to clearly determine the nature of that offence.

This is because the court event for the breach is created as a new proceeding and is not linked administratively with the original proceedings where the suspended sentence of imprisonment was initially ordered. This means it is very difficult to track whether offenders are breaching their suspended prison sentences in order to determine whether they are effective as a tool to divert offenders from prison in Queensland.

To address this issue, the Council obtained data on the operational period of suspended sentences of imprisonment and conducted a recidivism-type analysis to determine whether any subsequent offence punishable by imprisonment was sentenced during the operational period of the suspended prison sentence. This provided some insight into the effectiveness of suspended sentences of imprisonment, though had limitations.

This issue of the limitations of administrative data regarding suspended sentences of imprisonment and their associated breaches was previously recognised by the Council in an earlier review into community-based sentencing orders.[3]

Additionally, while the court administrative data system QWIC is designed to capture order outcomes, it does not capture details regarding the reasons for making such decisions. This information is only available via manual reviews of court files, or otherwise by sentencing remark transcripts.

Limitations with sentencing transcripts

Queensland sentencing remark transcripts provide a rich source of information regarding the details of a matter, particularly focusing on the sentencing outcome and the associated reasons provided for a given sentence. They are also a rich source of additional contextual information that is considered by the court when sentencing, although it does require the detail to be explicitly discussed as part of the sentencing process.

As with its previous work, the Council acknowledges the limitations associated with analysing sentencing remarks, most notably that sentencing remarks do not contain a comprehensive list of factors considered by a sentencing judge, as details are only recorded where the judicial officer specifically comments on them as part of the sentencing proceedings.

As discussed above, this presented challenges for the Council where documents such as the Statement of Facts were relied upon without articulating them for the court record, or where a Victim Impact Statement was tendered but not read out as part of the proceeding.

The depth of information in the remarks also varies by judge and often by court level, making them an inconsistent source of data. Nevertheless, as part of a mixed-methods research design, sentencing remarks supplement purely data-driven analyses, providing a rich source of additional information on the context of rape and sexual assault offences.

3 Queensland Sentencing Advisory Council, *Community-based Sentencing Orders, Imprisonment and Parole Options: Final Report* (Report, 2019), 256–7, rec 36 ('*Community-based Sentencing Orders report*').

Access to transcripts

As discussed in **Chapter 13**, we recommend that victim survivors of rape (and possibly sexual assault) be provided with a copy of the transcript of sentence proceedings as a matter of course, rather than on request, to enhance their understanding of the sentence outcome, as well as the reasons for this decision (**Recommendation 15**).

Criminal defence lawyers, prosecutors and judges also require access to sources of case comparators – that is, a way to find and locate previous cases that are similar with respect to a matter presently before a court. Their ability to locate previous comparable sentences helps to ensure consistency in sentencing.

As discussed in **Chapter 10**, there is an apparent lack of information-sharing across agencies and potential duplication of effort as individual agencies keep and maintain separate internal databases and registers of comparable cases. Further consideration should be given to whether agency-specific resources could be made more accessible (see **Recommendation 6.2**).

In March 2007, the Queensland Sentencing Information Service (QSIS) was developed as a comprehensive collection of higher court sentencing remark transcripts available to legal officers and practitioners, via subscription (free of charge). This service was intended to enable legal practitioners to search for transcripts of sentencing remarks based on the offence type, date of sentence or unique case identifiers (such as the offenders name) and display sentencing trends.

As a government entity concerned with the administration of the criminal justice system, the Council is also provided with access to QSIS, and this has been the primary source of sentencing transcript information we have used for our review.

In undertaking our review, however, the Council identified that there was a significant volume of higher court transcripts relevant to our review that did not appear in the QSIS database. Upon inquiring with the QSIS team, it was identified that this was due primarily to processing issues and delays within the system.

Furthermore, as a result of changes to the QSIS system that were implemented in February 2023, while the functionality of the service was enhanced in some respects, there was regression in others, and it is no longer as easy to navigate and find comparable cases.

As noted below in stakeholder feedback, these shortcomings of the current QSIS system have hindered the ability for practitioners and judicial officers to identify comparative cases and contributed to further reliance on in-house databases. The identified gaps in the QSIS collection and the changes to the overall functionality of QSIS also posed a significant barrier to the Council's review.

Furthermore, for the purpose of our review, given that many sexual assault cases are sentenced in the Magistrates Court, unfortunately these were not available in the QSIS system, as transcripts are only available via QSIS in relation to matters sentenced in the higher courts. Additionally, transcripts in the QSIS system only relate to sentencing decisions; however, the proceedings immediately prior to the sentencing decision, such as the sentencing submissions, are not available in QSIS. For our review, the Council therefore required transcripts of sentencing submissions, both in the lower and higher courts. For transcripts not available in QSIS, the Council was required to request and obtain these (at cost) via the QTranscripts system.

Despite these limitations, the Council's access to sentencing transcripts via QSIS has been essential to our ability to undertake the research that we have been able to complete, and the Council is mindful that

this sentencing information is not necessarily available to researchers more broadly who are concerned with understanding, researching or evaluating sentencing practices.

In particular, access to the higher court sentencing transcripts within QSIS is only granted to individuals and agencies eligible under section 19 of the *Supreme Court Library Act 1968* (Qld), which includes judicial officers and legal practitioners, as well as government entities concerned with the administration of the criminal justice system. While the Council is provided access under this provision, notably access is not provided to researchers more generally.

For researchers unable to satisfy the eligibility requirements of section 19, access to Queensland transcripts is limited to those made publicly available on the Supreme Court Library website as part of the CaseLaw collection. These remarks are based on a much smaller subset of sentencing remarks from both the Supreme and District Courts, which have been anonymised in a way that protects the privacy of victims and witnesses and facilitates rehabilitation.

18.3 What happens in other jurisdictions?

The availability of sentencing information, including both criminal justice administrative data and sentence hearing transcripts for sentencing related research and evaluation purposes varies across both Australian and international jurisdictions.

18.3.1 Availability of administrative data for research purposes

Universal limitations persist across all jurisdictions in attempting to understand attrition relating to sexual violence due to low rates of reporting, largely driven in the first instance by the concealed nature of sexual violence offending and some victim survivors not recognising or acknowledging conduct as a criminal offence. If offending is not reported, they may also not access and respond to surveys.[4]

Regardless of jurisdiction, due to the length of time between a victim survivor first making a complaint and the finalisation of the matter in court, it is also universally difficult to calculate true rates of attrition, particularly where changes to the initial police charges between this time occur, which can make it difficult to assess attrition and prevalence rates.[5]

All jurisdictions suffer from some limitations that arise as a result of the nature of criminal justice and administrative data in general, and the access to administrative data for the purpose of research and evaluation is necessarily bound by strict privacy and ethics considerations.

To support research and evaluation efforts, jurisdictions such as NSW and New Zealand have developed a number of detailed, standardised, quantitative administrative datasets that are made available for research purposes.

For NSW in particular, the Bureau of Crime Statistics and Research (BOCSAR) makes available the Reoffending Database (ROD), which contains information regarding finalised charges, finalised court appearances and proven court appearances. These variables include person and case identifiers,

4 Tasmanian Sentencing Advisory Council, *Sex Offence Sentencing* (Final Report, August 2015) 4.
5 Victorian Sentencing Advisory Council, *Sentencing Sex Offences in Victoria: An Analysis of Three Sentencing Reforms* (June 2021) 84, App 2, 'Methodology', 'Recorded Offence Data'.

demographic variables, court details, principal offence at contact and the most serious offence finalised at the contact. There are also detailed custody data variables.[6]

Similarly, New Zealand also provides access to a large array of justice agency administrative data, as well as data from victim surveys. Data is derived from the Ministry of Justice, National Intelligence Application, New Zealand Police, Department of Corrections and New Zealand Crime and Victim Surveys.[7]

In both jurisdictions, the availability of standardised administrative data for appropriate research and evaluation purposes has helped to build the evidence base and understanding of systems and processes in those jurisdictions. Regardless of access and standardisation within a jurisdiction, the nature of administrative data is such that all jurisdictions suffer to some extent from challenges in relation to the actual information available.

Similar to Queensland, Victoria has issues with linking data between its higher and lower courts due to how data is captured in each jurisdiction. Sentencing information available in Tasmania is recorded as a global sentence, and therefore adds complexity where there are multiple offences dealt with in a single case. Scotland shares this limitation of single and multi-conviction cases being unable to be distinguished but the data in that jurisdiction is further limited by an inability to separate charges, for example, of rape and attempted rape.

18.3.2 Availability of sentencing transcripts for research purposes

All jurisdictions in Australia publish selected sentencing decisions and judgments on their respective court websites and to some degree on AustLii. These decisions are primarily of the Court of Appeal, rather than decisions at the first instance. However, Victoria and NSW also regularly publish first-instance remarks of their higher court jurisdictions.

Victoria and NSW have established processes to make transcripts of sentence hearings more accessible to the broader public through regular releases on their online databases. For example, the Victorian Supreme Court publishes full judgments on AustLii, and members of the public can watch or listen to judgments and sentences via their 'Multimedia on demand' database. NSW also produces written judgements to its 'NSW Caselaw' database within 24 hours of delivery unless there is a delay because a decision has been read onto the record.

No jurisdiction appears to make sentencing transcripts of the lower courts, or transcripts of sentencing submissions, publicly available. Across all jurisdictions, processes are employed for the publicly available transcripts to ensure they are anonymised to protect the privacy of victim survivors and witnesses, which is particularly important for matters involving sexual offending. This anonymisation can sometimes limit the analysis that can be undertaken.

6 NSW Bureau of Crime Statistics and Research, 'Guidelines for access to and use of unit record file ROD data for researchers' 17–29 < https://bocsar.nsw.gov.au/content/dam/dcj/bocsar/documents/how-we-work/guidelines-and-form-to-access-unitrecord-reoffending-data.doc>.

7 Ministry of Justice (NZ), 'Data tables', *Research & Data* (web page, 19 March 2024) <http://www.justice.govt.nz/justice-sector-policy/research-data/justice-statistics/data-tables/#services.>.

18.4 Strategies and reforms

There has been a strong commitment at both the national and state levels to strengthen criminal justice data collection and capability across the system, particularly in understanding responses to sexual violence offending. The relevant strategies and reforms currently underway are outlined below.

18.4.1 National strategies and initiatives

The Meeting of Attorneys-General Work Plan to Strengthen Criminal Justice Responses to Sexual Assault (MAG Work Plan) 2022–27 outlines three priority areas to strengthen legal frameworks, build justice sector capability and support research and greater collaboration nationally:

- strengthening national datasets;
- sharing research and learnings; and
- commissioning academic research to build the evidence base.[8]

The First Action Plan of the National Plan to End Violence Against Women and Children 2022–2032 (National Plan) also includes action to improve the national evidence base by working towards consistent terminology, monitoring and evaluation frameworks, and by strengthening the collection and sharing of data and evidence.[9] The National Plan seeks to support jurisdictions, including Queensland, to develop and agree to the inclusion of more measurable targets, including those for children, young people, prevalence, women, Aboriginal and Torres Strait Islander peoples, people living with disability, people from culturally and linguistically diverse backgrounds and people identifying as part of the LGBTIQA+ community.[10]

The National Plan Outcomes Framework also recognises that there is no appropriate data source currently available to measure indicators relevant to Aboriginal and Torres Strait Islander people's experiences, including of sexual violence.[11] Data availability for other cohorts is also limited. The accompanying Performance Measurement Plan to the National Plan Outcomes Framework outlines desired measures and potential data sources, including ABS Criminal Justice Data and qualitative data sources that are relevant to our review but no baseline is developed – for example, quantitative data on the proportion of matters discontinued through different stages of the justice process, rates of recidivism and proportions found guilty, and qualitative data such as increased positive outcomes and experiences of the criminal justice system.[12]

18.4.2 Queensland strategies and initiatives

The Queensland Government Domestic, Family and Sexual Violence (DFSV) System Monitoring and Evaluation Framework aligns Queensland with the national approach towards enhanced data collection

8 Australian Government Attorney-General's Department, 'The Meeting of Attorneys-General Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022-2027' (Work Plan, August 2022) <https://www.ag.gov.au/system/files/2022-08/MAG-work-plan-strengthen-criminal-justice-responses-to-sexual-assault-2022-2027.pdf>.

9 Department of Social Services, The *National Plan to End Violence against Women and Children 2022-2027 – First Action Plan Action 2* (2023) <https://www.dss.gov.au/ending-violence>.

10 Ibid.

11 Department of Social Services, *National Plan Outcomes Framework 2023–2032* (2023) 21 (see notes) <https://www.dss.gov.au/sites/default/files/documents/08_2023/np-outcomes-framework.pdf>.

12 Department of Social Services, *National Plan Outcomes Framework: Performance Measurement Plan* (2024) 1–44 <https://www.dss.gov.au/sites/default/files/documents/08_2023/np-outcomes-framework.pdf>.

and capability. The Framework seeks to ensure that Queensland can obtain data to understand the number and proportion of victim-survivors of sexual violence experiencing improved service or justice system outcomes, unique offenders and victims of sexual violence, and the number and proportion of unique offenders who commit further sexual violence following a previous offence, including those on community-based orders.[13]

The Women's Safety and Justice Taskforce's *Hear Her Voice – Report Two* notes limitations in data collected on the nature and extent of women with cognitive or intellectual disability experiencing victimisation, along with data on age, gender identity, race, socio-economic status and family dynamics, as well as information on Aboriginal and Torres Strait Islander peoples as victims and offenders. Additional limitations included QCS IOMS data on disability, type of program or intervention offered/recorded in an easily extractable format, and whether female prisoners have been victims of sexual abuse. The taskforce also noted that it was not possible to extract reliable data on the number of indictments for sexual offences lodged prior to 2019.

Key recommendations were made in relation to improving data quality and accessibility of criminal justice system information (see Recommendations 177–182).[14] These recommendations included recommending the replacement of the courts' QWIC database with a new, contemporary system; improved data integration across the criminal justice system to enable better recording, tracking and monitoring across the system. The taskforce also recommended that changes be made to support the provision of court transcripts for the purposes of research, either for free or at a reduced cost (see Recommendation 82). All these recommendations were supported by the government.[15]

The Queensland Government's sexual violence strategy is also into its second action plan: Prevent. Support. Believe. Second Action Plan 2023–24 to 2027–28. The plan aims to develop and implement a data quality strategy and embed agreed data collection standards across all agencies for domestic, family and sexual violence, including as it relates to target population groups.[16]

18.5 Stakeholder views

Stakeholder views on the availability or quality of sentencing information and data were limited, and focused primarily on the needs of the individual stakeholder and transparency of decision-making:

- One submission called for all Queensland Parole Board decisions to be released on the Parole Board website.[17] In contrast to Queensland, they noted the New Zealand Parole Board releases more of its decisions.[18]
- Another submission discussed the public benefit of clear, transparent and accessible sentencing remarks and judgments.[19]

13 Queensland Government, *Domestic, Family and Sexual Violence System Monitoring and Evaluation Framework* (2023) 1–27 <https://www.publications.qld.gov.au>.
14 *Hear Her Voice*, *Report Two* (n 2) vol 2, 717–31.
15 Queensland Government, *Queensland Government Response to the Report of the Queensland Women's Safety and Justice Taskforce, Hear Her Voice – Report Two*.
16 Queensland Government, *Prevent. Support. Believe. Queensland's Framework to Address Sexual Violence Second Action Plan 2023-24 to 2027-28* (2021) < https://www.publications.qld.gov.au/dataset/sexual-violence-prevention/resource/a22ad633-8529-4ab7-99d6-549fec75e709 >.
17 Submission 27 (Name Withheld) 1, 4.
18 Ibid 4..
19 Submission 4 (Rita Lok) 2..

- Some SME participants commented on the limited ability of courts to measure recidivism and complainant satisfaction with sentencing outcomes.[20]
- Other SME participants identified that limitations in administrative data collection reduce understanding of court user needs (e.g. interpreters).[21]

As discussed further in **Chapter 10**, legal stakeholders also commented on the importance of accessing sentencing transcripts for the purpose of supporting consistency in sentencing decision-making, and that recent changes to the QSIS platform have made it somewhat more challenging for a practitioner to find relevant cases to rely upon at sentence.[22]

18.6 The Council's view

Key Finding	
20.	**Sentencing data and information in Queensland is limited and can be enhanced.** Sentencing information in Queensland is limited by both the quality of data available and a lack of integration between relevant justice administrative data systems. It is critical that Queensland takes a cohesive, whole-of-government approach to improving the quality of information being captured and shared by all relevant agencies. It is important to build the evidence base upon which reform decisions are made, which includes designing and implementing evaluation and monitoring frameworks alongside any reforms to enable agencies to monitor the impact and evaluate the success of the reforms, and whether further adjustments are required. See **Recommendations 27 and 28.**

Based on the evidence gathered and research undertaken by the Council for this review, the availability and quality of data and information relevant to sentencing of sexual violence offences has limitations, and there are a number of opportunities to improve this to support ongoing research, monitoring and evaluation of sentencing related reforms.

In making this finding, we acknowledge that there are a number of current government commitments at both the national and state levels to strengthen criminal justice data collection and capability across the system, particularly in understanding responses to sexual violence offending. The recommendations proposed seek to reinforce these and provide further clarity in relation to specific and discrete opportunities to enhance data and information that are of specific relevance to sentencing reform.

20 SME Interview 1.
21 SME Interview 3 and 11.
22 SME Interview 7.

18.6.1 Applying the Council's fundamental principles

As discussed in **Chapter 3**, the Council adopted 11 fundamental principles to help guide the review, and it is the first principle of the review that is particularly relevant to the recommendations proposed.[23]

Principle 1: Reforms to sentencing laws should be evidence-based with a view to promoting public confidence. In order to ensure that our suggested reforms are evidence-based, the Council approached the task using a rigorous methodology, and sought to rely on many different information sources, taking a mixed-methods approach.

The Council strongly supports reviews that consider the appropriateness and adequacy of sentencing practices and outcomes in Queensland (not limited to sexual violence offences) as a means of evaluating whether current sentencing practices are fit for purpose; however, any review or reform must necessarily be based on the best evidence available.

In undertaking our review, the Council has identified that there are significant limitations associated with the quality and quantity of criminal justice sentencing information in Queensland. There is also a lack of integration between relevant justice administrative data systems, which limits the ability to undertake assessments without significant time and resources being invested. These challenges were particularly noted in relation to both administrative data and sentencing transcripts.

By recommending that enhancements be made to both the collection of and accessibility of sentencing information, we aim to ensure opportunities for the ongoing monitoring and evaluation of the proposed reforms.

Our position is not new. We previously recognised[24] the lack of reliable, comprehensive data in criminal justice databases.[25] In a review of the Civil and Criminal Justice System in Queensland, it was also noted that:

> Reliable, up to date, accurate and accessible data is the life blood of an effective criminal justice system. It allows decision makers at all levels to make evidence-based decisions; it challenges entrenched beliefs and perceptions, and it provides a foundation to secure funding. Such a system is dependent on effective information technology support.[26]

We have identified that there are opportunities for research to inform practice, and for practice to inform research. This requires an ongoing commitment by professionals, researchers, criminal justice agencies and other agencies tasked with the prosecution of rape and sexual assault offences to collect and report high-quality information at both the individual and system levels. This supports an informed and responsive policy of decision-making and system responses.

In its previous review into community-based sentencing orders, the Council recognised data limitations in Queensland surrounding the analysis of suspended sentences of imprisonment and court ordered parole.[27] Throughout that review, the Council found that it was not possible to evaluate whether the net-widening effects of suspended prison sentences identified in some other jurisdictions are also a problem for Queensland using the existing data set. The Council subsequently recommended that the

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23 For a full list of the fundamental principles, see Chapter 3.
24 Queensland Sentencing Advisory Council, *Community-based Sentencing Orders report* (n 3) 446.
25 Martin Moynihan, *Review of the Civil and Criminal Justice System in Queensland* (Queensland Government, 2009) 20, expanded on in section 10.6.
26 Ibid 20, 105.
27 *Community-based Sentencing Orders report* (n 3) recs 36 and 49.

administrative data captured by Court Services Queensland for orders made under Part 8 of the PSA should be reviewed to ensure:

- information about the number of suspended sentences breached through reoffending by commission of a new offence punishable by imprisonment is available;
- orders made on breach are accurately captured; and
- breach data can be extracted in a format that can be analysed without resort to extensive manual coding.[28]

Within that review, the Council concluded that without these datasets it will remain difficult for the Council to evaluate the effectiveness of suspended sentences of imprisonment, to understand the degree to which the use of these orders is diverting offenders from prison and to identify which offender groups are most likely to succeed on these orders. In addition to that recommendation, the Council identified that there was also a strong need for an evaluation to be conducted into the effectiveness of court ordered parole and Board-ordered parole in Queensland, including an assessment of statistics in relation to recidivism and completion rates.[29]

The Council retains its position regarding both these prior recommendations (**Recommendation 27**).

Recommendation

27 **Improved administrative data surrounding suspended imprisonment sentences, and the evaluation of the effectiveness of parole**

The Queensland Government consider and implement the following recommendations made by the Council with respect to data and research in the Council's 2019 *Community-based Sentencing Orders, Imprisonment and Parole Options: Final Report*:

- Recommendation 36: Improved administrative data capture relating to suspended imprisonment orders sentence to support reporting on breaches of orders and orders made on breach;
- Recommendation 49: An evaluation of the effectiveness of court ordered parole and Board ordered parole in Queensland, including an assessment of recidivism and completion rates.

Enhancements to support understanding of case progression and attrition

Of particular relevance to this review, due to the high volume of sexual violence matters where the specific offences charged may be changed or adjusted as a matter progresses through the court system, are the limitations of the administrative data systems that make tracing charges through the system challenging where changes are made, particularly for those ultimately finalised in the higher courts.

There are various reasons why a charge may change, and this process can occur at multiple stages. For example:

28 Ibid 256–7, rec 36.
29 Ibid 306–8, rec 49.

- A police prosecutor may determine that there is insufficient evidence to proceed with a charge prior to committal or sentence and may subsequently offer no evidence with respect to that charge. Where appropriate, the police prosecutor may present a new bench charge sheet in substitution or addition to the initial charges.
- The magistrate may determine that there is insufficient evidence to substantiate a charge such that a jury could reasonably convict the person of that offence, and dismiss the charge prior to, or during, a committal proceeding.
- The legal officer or Crown Prosecutor who drafts the indictment for the Department of Public Prosecutions (DPP) may decide to amend the initial police charges where appropriate, such as where they determine that there is insufficient evidence to proceed with a particular charge, or where there are other, more appropriate charges. This process is informed by their consideration of all of the evidence (which may include evidence that was not available earlier on in the proceeding).
- The DPP may further amend the charges prior to trial/sentence, where additional evidence becomes available that calls the Crown's prospects of success at trial into question, or where the charged person offers to plead to alternative charges.

As a consequence, there may be occasions where none of the initial police charges are reflected in the offences for which a person is ultimately sentenced.

To enable enhanced understanding of the progression of a charge from inception to completion, and to better understand sentencing practices and trends, we recommend that the administrative systems used by Queensland courts be updated to fully capture these changes and enhance the 'traceability' of charges (**Recommendation 28.1**). This should include consideration of a way to 'link' offences which are charged in the lower courts to the counts which proceed on indictment, and are then finalised at sentence. This may be achieved through the digitisation of the transmission sheets (which document the charges committed to a higher court, as well as any changes to the charges that then proceed on indictment).

While we are conscious that data are maintained by individual agencies to support their own functions and administrative requirements, system-level priorities are also important. To a certain extent, we believe that some problems encountered during this review (and through other, previous reviews) could be addressed by a stronger, system-wide commitment to the integrity of the Single Person Identifier (SPI) – a unique number allocated by the QPS to individuals, which in practice should flow through all interactions a person has with the criminal justice system.

Therefore, to further enhance our understanding of the progression of cases through the criminal justice system, as the primary source of data linking across criminal justice agencies, we recommend that any changes made to the QPS initiating record specifically regarding the SPI be made available to downstream agencies to allow for more accurate tracking of individuals through the criminal justice process (**Recommendation 28.2**).

Enhancements to support understanding of characteristics of cases and participants

In conducting this review, we identified that enhanced information is required to support better understanding of offences which are being committed, as well as the people who are impacted by them.

This information is critical to our assessment of the adequacy and appropriateness of sentencing outcomes for any offence.

We identified challenges with obtaining victim survivor demographic data from administrative datasets limits the ability of researchers to explore trends in sentencing according to victim demographics and to see whether these align with community expectations. This information is important, as the demographics of a victim survivor may be relevant to the sentence outcome, such as where the victim survivor is inherently vulnerable – for example, where they are a child.

Similarly, we became aware that sentence outcomes may be impacted by any reports that are tendered by the prosecution or defence at sentence, including cultural or psychological reports. The relevance of these reports is further discussed in **Chapter 12**. However, because the presence of these reports is not recorded within current administrative data systems in a way that supports analysis, we were unable to consider the impact of these reports from a qualitative perspective.

Furthermore, various administrative processes impact sentence outcomes, such as whether the person being sentenced has spent any time on remand (prior to sentence) in relation to the offences for which they are being sentenced, or in relation to prior convictions. Such a consideration has a bearing on a sentence outcome, as a judicial officer may be minded to consider time spent on remand, but not take it into account, thereby reducing the head sentence that would otherwise have been imposed. Without appropriate data to document these processes, it is challenging for us to consider whether sentence outcomes are adequate or appropriate.

To inform the consideration of future reviews (for any offence), we subsequently recommend that data collection processes of criminal justice agencies be improved to capture enhanced information with respect to (**Recommendation 28.3**):

- victim survivor information captured in police and court data sets, where possible and appropriate. This could include information about the victim survivor's date of birth, gender, sex, ethnicity, Aboriginal and Torres Strait Islander status, and the nature of the relationship between the victim survivor and their offender (noting that there may be none, which is relevant in and of itself). Consideration of a 'data not captured' (or similar) field could also be beneficial to help identify any data that has not been captured;
- the nature of specific reports tendered by prosecution or defence, including cultural or psychological reports; and
- administrative processes and outcomes, including conditions of orders, reasons for breaches and time spent in pre-sentence custody, to better understand effectiveness of sentencing and sentencing types.

Improving access to sentencing transcripts

The Council has found that sentencing remarks are currently the only available source of many important data variables. They also serve as an important tool in the education of the broader community of appropriate justice outcomes. However, we found that access to sentencing remarks for both legal practitioners and the broader public is currently limited by the inconsistent publication of sentencing remarks on publicly available sentencing databases. This is of concern as, for the general public and

researchers, sentencing remarks provide an important mechanism to understand the full context of decisions made about sentencing.

Sentencing remarks are also very difficult to obtain for those who do not meet the eligibility requirements to access the QSIS service,[30] which is limited to legal professionals, government employees and other prescribed entities.[31] Relevantly, academic researchers with an interest in sentencing often do not meet the criteria to access QSIS and the cost of obtaining transcripts is often prohibitive for researchers with limited funds to complete a project.

To promote public confidence and enhance the ability of researchers to understand sentencing practices and outcomes in Queensland, we recommend that:

- access to sentencing remarks for the general public and researchers continues to be enhanced, including through the publication of District Court remarks for rape and sexual assault (**Recommendation 28.4**); and
- access to the transcripts of lower court proceedings, as well as sentencing submissions, be increased for researchers specifically, to support enhanced research capabilities (**Recommendation 28.5**).

In making these recommendations, we acknowledge that these transcript requests may be required to be facilitated via the QTranscripts system, so consideration should be given to enable and support 'bulk' requests for the purposes of research. This acknowledges that the current QTranscript system has been developed to support individual requests for individual transcripts, and our experience in requesting multiple transcripts for the purposes of our review means this process of manually requesting individual transcripts is exceptionally time-consuming and could be improved to support bulk requests for the purposes of research.

As discussed in **Chapter 10**, we acknowledge that it is essential for legal professionals to be able to find comparable decisions, though it is equally important for centralised, government resources such as QSIS to be maintained to ensure their currency and functionality.

The current limitations of the QSIS platform have restricted the ability of the Council to conduct sentencing research for this review. We therefore recommend that the functionality of the QSIS be enhanced to ensure that it is regularly updated and has improved search functionality, including the ability to (**Recommendation 28.6)**:

- search for cases and case comparators, and to enable search results to be downloaded to CSV or Excel formats to support the review and collation of materials;
- search for specific offence provision combinations, as the current iteration of the QSIS platform has fragmented offences into multiple sub-categories, making it unfeasible to conduct basic searches and find relevant sentencing transcripts;
- see search result information with the details of all cases that are known to have been sentenced, even where a transcript may not yet be available, to support ongoing awareness of the currency of the collection; and

30 *Supreme Court Library Act 1968* (Qld) pt 3.
31 Ibid s 19.

- separate sentencing transcripts for child and adult offenders, particularly where this information is presented in statistical charts and graphs – noting the different sentencing principles required to be applied for youth compared with adults.

We are strongly of the view that improving the functionality of the QSIS will make it easier for legal professionals to search for cases and case comparators, thus improving their submissions, and for the judiciary to understand prevalence rates for various offences, average sentence lengths and other statistical information to inform the exercise of their sentencing discretion, thereby enhancing sentence outcomes.

Recommendation

28 **Improving the evidence base for sentencing reform**

In support of improving the evidence base for sentencing reform, the effective administration of justice and promoting community understanding of sentencing, the Queensland Government appropriately fund and prioritise work to ensure:

- **28.1**: The administrative systems used by Queensland Courts are updated to ensure each charge indicted in the higher courts is linked to the originating charge(s) (if any) that were committed in the lower courts. Consideration should be given to the digitisation of the transmission sheets that are attached to indictments as a mechanism for implementing this change.
- **28.2**: Work is led by the Queensland Police Service in conjunction with other criminal justice agencies, to ensure that any changes made to a Single Person Identifier (SPI) through merges, splits or other modifications is made available to downstream agencies – for example, via a concordance mapping – to allow for more accurate tracking of individuals through the criminal justice system.
- **28.3**: Data collection processes of criminal justice agencies are improved to capture enhanced information about the demographics of and nature of any relationship between the parties, the types of information being relied upon at sentence, and information to enable better understanding of the effectiveness of sentencing and sentence types.
- **28.4**: Access to sentencing remarks for the general public is enhanced, including through the publication of District Court remarks for rape and sexual assault, and access is facilitated for the purpose of research.
- **28.5**: Access to lower court transcripts and sentencing submission transcripts (for both the higher and lower courts), is improved for the purpose of research.
- **28.6**: The functionality of the current Queensland Sentencing Information System (QSIS) is updated and enhanced, including through enhanced search and display functions (with consideration of earlier versions).