



26 April 2024

Queensland Sentencing Advisory Council
submissions@sentencingcouncil.qld.gov.au

RE: Sentencing of Sexual Assault and Rape: The Ripple Effect – Consultation Paper

Thank you for the opportunity to submit to the review of Sentencing of Rape and Sexual Assault in Queensland. We note that this Bill implements legislative changes recommended by the Women's Safety and Justice Taskforce, Hear Her Voice – Report One – Addressing coercive control and domestic and family violence in Queensland, and Report Two – Women and girls' experiences across the criminal justice system, a process that sex workers and sex worker organisations contributed to.

Respect Inc is the state-wide sex worker organisation in Queensland, run by and for sex workers. Our organisation provides a comprehensive health promotion, peer education and community engagement program with offices and sex worker drop-in spaces at the Gold Coast, in Brisbane and Cairns, as well as regional outreach to other locations.

Scarlet Alliance, Australian Sex Workers Association is the national peak body for sex workers and sex worker organisations in Australia. Through our objectives, policies and programs, we aim to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry. Our membership includes state and territory-based and national sex worker organisations and individual sex workers across unceded Australia. Through our work and that of our member organisations and projects, we have the highest level of contact with sex workers and access to sex industry workplaces throughout Australia of any agency. Scarlet Alliance represents sex workers on a number of government and non-government committees and advisory mechanisms.

Should you require further information on these matters we would be pleased to respond to questions.

Yours sincerely,

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Reporting of sexual assault and rape is low generally, and the rate of reporting by sex workers is extremely low. Cases reported by sex workers are also often ignored or not seen to be 'winnable' and not progressed by police. Criminalisation and stigma contribute to this outcome. Recent changes to the Police Powers and Responsibilities Act and proposed changes to sex work laws will, over time, reduce some barriers to reporting, but there remain many which will require continued work and cultural change. Sentencing approaches contribute to these barriers, and our comments in this submission focus on key areas only.

Comments responding to consultation paper questions

6. Good character

Q: Should any changes be made to how good character can be considered by courts as this applies to sexual assault and rape?

The sex worker community has observed bias in the criminal justice system in favour of defendants accused of assault by sex workers. Good character references contribute to reinforcing inequity between sex workers, members of a highly stigmatised community, and other members of the community. Class, race, and cultural divides are reinforced by good character references whereby defendants that are members of a socially privileged group are judged more favourably.

Sex worker victims also describe experiencing further harm from good character references that frame the defendant's achievements, family, children and/or employment as more valuable, and as though that somehow outweighs the harm they have caused to the individual sex worker, who is seen of less value.

These examples may or may not have been directly related to 'good character' consideration or other sentencing issues relevant to other questions.

Respect Inc staff present were supporting the sex worker survivor and observed:

- The accused was charged with a range of offences (assault, rape and deprivation of liberty). The case had been put off for many months and on the day of the hearing, the accused plead guilty to lesser charge of fraud. The prosecution dropped the sexual assault and rape charges without any consultation with the sex worker survivor. The sex worker survivor was offered no counselling or support, had already been extremely traumatised by the experience, and felt insulted and shocked by the dropping of the charges. The perpetrator is accused of committing assault, rape and deprivation of liberty **against at least a dozen other sex workers prior to and since this example**. They are so well known among police in Queensland for assaulting sex workers that their name is recognised in many police stations from Cairns to Gold Coast.
- The accused was charged with rape after removing a condom without consent during a booking in a brothel. The sex worker relied on Respect Inc for support to access rape support, have the necessary forensics collected, obtain fresh clothes and time off work. Translators and counsellors were organised by police and Respect Inc for the survivor, and

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statements were taken ethically and in ways that prioritised the survivor. The case dates were organised and then delayed on the basis that the accused was too unwell to attend court. This appeared to be a tactic to ensure the case was not heard until the sex workers survivor's visa had expired and she had to leave the country. There was no consultation with the survivor about the impact the delay had on her mental health and recovery.

In these and similar cases, sex workers share information about court delays, changes to charges, and facts about accused persons remaining at large in the community. The broader impact is that the sex worker community feels treated as if we have lesser value, suspicions that our word is not thought of as reliable are confirmed, sex workers believe the courts are biased in favour of other members of the general community, particularly people with money, and are less likely to report assault and rape for fear of having a case dumped, delayed or pled away. The notion of a rapist having 'good character' implies that the seriousness of the crime is based on the persons' background, which feels unfair.

12. Current approach to sentencing, 13. Penalty and Parole options & 18. Understanding victim harm and justice needs

Q: Does sentencing for sexual assault and rape adequately reflect the purposes of sentencing and the seriousness of these offences? Should any changes be made?

Q: How well are current penalty options working in meeting the purposes of sentencing for sexual assault and rape? Should any changes be made?

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

Non-contact orders

Perpetrators who have committed repeat offences against sex workers should be considered for non-contact orders that prevent their contact with sex workers as part of the sentencing. This may require a change to the Penalties and Sentences Act 1992, s43C which at the moment only prohibits contact with the victim, someone who was with the victim or a place rather than a group of people. We understand there is a precedent for this where bail conditions have included a prohibition on contact with sex workers.

43C Requirements of non-contact order

(1) A non-contact order is an order that contains either or both of the following—

(a) a requirement that the offender not contact the victim against whom the offence was committed, or someone who was with the victim when the offence was committed (an associate), for a stated time;

(b) a requirement that the offender not go to a stated place, or within a stated distance of a stated place, for a stated time.

In Queensland, sex workers have experienced cases where a repeat offender re-offends against sex workers each time the person leaves prison. This is known by the Queensland Police Service. Even though many of the offences have been reported, relatively unusual in a criminalised sex work legal

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environment, as far as we have been able to ascertain the perpetrators have not had a non-contact order put in place.

Sentencing

Sex worker survivors report not having been informed that the case was to be heard (particularly in the Magistrates Court), locking them out of the process. Survivors should be informed and be consulted on sentencing.

Plea deals

Survivors should be consulted about plea deals.

Survivor liaison

Survivor liaison must include third parties who are doing support work, such as Respect Inc, if requested by the survivor.

Temporary visa holders

Survivors in Australia on a temporary visa should have their needs considered if/when delays to the case are occurring. It is not fair for a witness to have to choose between justice or going home.

Protection of sex workers' identities

For sex workers' whose legal names are not known to the accused, they should be able to maintain anonymity via a pseudonym if preferred. This would make it safer for sex workers to come forward and participate in criminal justice processes.

Victim impact statement

Sex work survivors discuss the victim impact statement as important to ensuring the impact of sexual assault or rape on sex workers is understood. There has been a lot of misinformation about sex work and rape, including misconceptions about the impact. It is described as an opportunity to have your voice heard and for that to be considered as part of sentencing.

Mandatory sentencing approach

We note that mandatory sentencing removes the ability to recognise intergenerational trauma experienced by Aboriginal & Torres Strait Islander people and would result in longer sentences for an already over-incarcerated population.

Retaliation toward sex workers

Sex workers who have reported clients who had come to their home describe significant concerns about future retaliation, particularly when the perpetrator only receives a very short sentence (e.g. two months jail time in one sex work sexual assault case). Relocation costs when relocation is necessary or desired by the victim for their safety, should be considered as part of the sentencing process.

21. Restorative justice approaches

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

Respect Inc and Scarlet Alliance support the idea of restorative justice models being introduced where the survivor agrees to the process, noting that if mediation was a *required* step it might pose safety and privacy risks for some sex workers. Some survivors will be re-traumatised by having to face or otherwise engage in mediation with the perpetrator.

When prosecutors, perpetrator and survivor jointly agreed to restorative justice processes, this could be taken into consideration for sentencing.