

**From:** [Clare O'Connor](#)  
**To:** [Geraldine Moisevich](#)  
**Cc:** [Paul J O'Driscoll \(ODG\)](#); [Sara Turner](#)  
**Subject:** FW: Review of sentencing for sexual violence offences and aggravating factor for domestic and family violence offences  
**Date:** Thursday, 1 June 2023 11:21:00 AM  
**Attachments:** [image001.png](#)  
[Initial letter to Clare OConnor - Treaty ATSI Partnerships Community and Arts.pdf](#)  
[image002.png](#)  
[image003.png](#)  
[image006.png](#)

Dear Gerri  
Please register and allocate to Kathy Parton for analysis and advice to me.  
Thanks  
Clare

**Clare O'Connor PSM**  
Director-General  
Department of Treaty,  
Aboriginal and Torres Strait Islander Partnerships,  
Communities and the Arts

**P** 07 3017 5803 **M** mobile number  
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Level 33, 1 William Street, Brisbane QLD 4000

**From:** Geraldine Moisevich <[Geraldine.Moisevich@chde.qld.gov.au](mailto:Geraldine.Moisevich@chde.qld.gov.au)>  
**Sent:** Thursday, 1 June 2023 11:16 AM  
**To:** Clare O'Connor <[Clare.OConnor@chde.qld.gov.au](mailto:Clare.OConnor@chde.qld.gov.au)>, Paul J O'Driscoll (ODG) <[Paul.J.ODriscoll@chde.qld.gov.au](mailto:Paul.J.ODriscoll@chde.qld.gov.au)>  
**Subject:** Review of sentencing for sexual violence offences and aggravating factor for domestic and family violence offences

Dear Clare

The attached letter has been received today regarding the TOR issued to Qld Sentencing Advisory Council. The Council are inviting us to contribute to the review.. Please let me know if you would like this registered and to whom I should have this allocated to.

Kind regards

Gerri

**Gerri Moisevich** | A/Principal Executive Officer  
Office of the Director-General  
Department of Treaty,  
Aboriginal and Torres Strait Islander Partnerships,  
Communities and the Arts

Level 33, 1 William Street Brisbane QLD 4001  
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**From:** DSDSATSIP Enquiries <[enquiries@dstdsatsip.qld.gov.au](mailto:enquiries@dstdsatsip.qld.gov.au)>  
**Sent:** Thursday, 1 June 2023 11:12 AM  
**To:** Geraldine Moisevich <[Geraldine.Moisevich@chde.qld.gov.au](mailto:Geraldine.Moisevich@chde.qld.gov.au)>  
**Cc:** DSDSATSIP Enquiries <[enquiries@dstdsatsip.qld.gov.au](mailto:enquiries@dstdsatsip.qld.gov.au)>  
**Subject:** FW: Review of sentencing for sexual violence offences and aggravating factor for domestic and family violence offences

Hi Gerri,

Please see attached a letter for the DG from the Queensland Sentencing Advisory Council.

Thank you.

Regards,

**Attila Bolla**

Cabinet and Parliamentary Services

Office of the Director-General

Department of Seniors and Disability Services and

Aboriginal and Torres Strait Islander Partnerships

Level 32, 1 William Street, Brisbane QLD 4001

**T:** 07 3003 6408 | **E:** [CLLO@dldsatsip.qld.gov.au](mailto:CLLO@dldsatsip.qld.gov.au)

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The term 'Cabinet' refers to Cabinet and Cabinet committees such as the Cabinet Budget Review Committee.

**From:** QSAC Info <[info@sentencingcouncil.qld.gov.au](mailto:info@sentencingcouncil.qld.gov.au)>

**Sent:** Monday, 29 May 2023 9:01 AM

**To:** DSDSATSIP Enquiries <[enquiries@dldsatsip.qld.gov.au](mailto:enquiries@dldsatsip.qld.gov.au)>

**Cc:** April Chrzanowski <[April.Chrzanowski@sentencingcouncil.qld.gov.au](mailto:April.Chrzanowski@sentencingcouncil.qld.gov.au)>

**Subject:** Review of sentencing for sexual violence offences and aggravating factor for domestic and family violence offences

Good morning

Please find attached a letter from Mr John Robertson, Chair, Queensland Sentencing Advisory Council.

Kind regards,

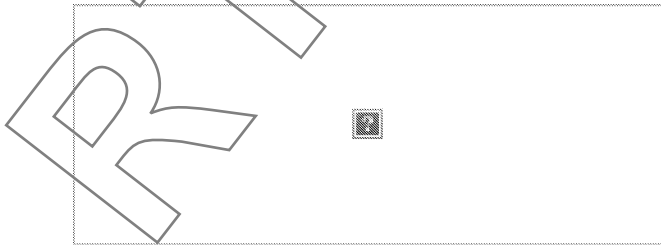
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\*\*\*\*\*

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RTI RELEASABLE

In reply please quote: 6671685; 608591/1

29 May 2023

Ms Clare O'Connor  
Director-General  
Department of Treaty, Aboriginal and Torres Strait Islander Partnerships,  
Communities and the Arts  
Po Box 15397  
CITY EAST QLD 4002

**By e-mail:** enquiries@dndsatsip.qld.gov.au

Dear Ms O'Connor

**Re: Review of sentencing for sexual violence offences and aggravating factor for domestic and family violence offences**

I am writing to advise you of Terms of Reference issued to the Queensland Sentencing Advisory Council (the Council) by the former Attorney-General and Minister for Justice, Minister for Women, and Minister for the Prevention of Domestic and Family Violence, the Honourable Shannon Fentiman MP on 17 May 2023.

The Council would like to invite your department to contribute to this important review.

**About the Terms of Reference**

The Terms of Reference ask the Council to investigate and report on two aspects of sentencing under the *Penalties and Sentences Act 1992* (Qld) (PSA):

1. sentencing for rape and sexual assault offences ('**sentencing for sexual violence offences**'); and
2. the operation and efficacy of the aggravating factor for domestic violence offences under section 9(10A) of the PSA ('**domestic violence as an aggravating factor**').

The Council must report back to the Attorney-General on the first part of the reference on sentencing for sexual violence offences by 16 September 2024, and the second aspect of the reference on domestic violence as an aggravating factor by 30 September 2025.

The Terms of Reference are **enclosed**. More information is available on our [website](https://www.sentencingcouncil.qld.gov.au).

## 1. Sentencing for sexual violence offences

The Terms of Reference ask the Council to examine and report on:

- the penalties imposed for sexual assault and rape offences and whether these adequately reflect community views about the seriousness of this form of offending and relevant sentencing purposes, with a focus on the purposes of just punishment, denunciation and community protection;
- whether the existing sentencing purposes and factors set out in the PSA are adequate for the purposes of sentencing sexual assault and rape offenders and whether any additional legislative guidance is required; and
- options for reform to the current, penalty and sentencing framework to ensure it provides an appropriate response to this type of offending.

## 2. Domestic violence as an aggravating factor

With respect to the operation and efficacy of the aggravating factor, the Council has been asked to:

- review sentencing practices for domestic violence related offences following changes to the PSA that now require a court to treat the fact that a person is convicted of a domestic violence offence as an aggravating factor for the purposes of sentencing, except if this is not reasonable because of the exceptional circumstances of the case (PSA, s 9(10A));
- advise on the impact of the operation of the aggravating factor on sentencing outcomes for all domestic violence related offences including for charges involving non-physical violence and coercive control;
- identify any trends or anomalies that occur in the application of the aggravating factor or in sentencing for domestic violence-related conduct generally that create inconsistency or constrain the sentencing process; and
- examine whether the introduction of the aggravating factor for domestic violence offences is impacting victims' satisfaction with the sentencing process and if so, in what way.

This aspect of the review has been referred to the Council in response to recommendation 73 of the Women's Safety and Justice Taskforce's *Hear her Voice – Report One – Addressing Coercive Control and Domestic and Family Violence in Queensland*.

The Council is also to consider how sentencing trends and outcomes for contravention of a domestic violence order may have changed following the 2015 increase in the maximum penalties following amendments by the *Criminal Law (Domestic Violence) Amendment Act 2015*.

### The Council's approach

In responding to the reference, the Council has been directed to:

- have regard to any relevant research, reports or publications regarding sentencing practices for sexual assault and rape offences and in sentencing for domestic violent offences;

(3)

- advise on the impact of any recommendation on the disproportionate representation of Aboriginal and Torres Strait Islander people in the criminal justice system;
- advise whether the legislative provisions that the Queensland Sentencing Advisory Council reviews in the PSA, and any recommendations are compatible with rights protected under the *Human Rights Act 2019*; and
- consult with key stakeholders, including but not limited to the judiciary, victims/survivors of domestic and family violence and sexual violence, the legal profession, key First Nations community representatives and organisations, domestic and family violence services, sexual violence advocacy groups, community legal centres and relevant government departments and agencies (e.g., Queensland Police Service and Director of Public Prosecutions).

### **How we will engage with stakeholders**

There are several ways in which the Council hopes to engage with stakeholders during this review.

#### **Preliminary feedback**

We would welcome written preliminary feedback to assist in identifying key issues the Council should explore in responding to the reference. You can email your feedback to [submissions@sentencingcouncil.qld.gov.au](mailto:submissions@sentencingcouncil.qld.gov.au) by **Monday, 26 June 2023**.

Unless you mark your preliminary feedback 'confidential', information you provide may be referenced by the Council in future publications and may also be published on our website. To find out how information provided to the Council is used, read our Privacy Policy and related information on our [website](#).

#### **Meet with the Council**

Should you prefer to schedule a time to meet to provide your comments in person or by phone, please contact the Secretariat Policy team at [OSAC-Policy@sentencingcouncil.qld.gov.au](mailto:OSAC-Policy@sentencingcouncil.qld.gov.au) who will contact you to make the necessary arrangements.

Any preliminary feedback you provide will assist us in preparing two Issues Papers, the first of which we will release later this year, at which point we will also call for formal submissions.

#### **Nominate a contact person**

To facilitate future contact, the Council would appreciate you nominating a suitable representative to act as the key point of contact for the purposes of the review. Please email the contact details of your nominee to [OSAC-Policy@sentencingcouncil.qld.gov.au](mailto:OSAC-Policy@sentencingcouncil.qld.gov.au) at your earliest convenience. Once confirmed, we will add your contact person to our distribution list for any communications about the reference, including our regular newsletter.

(4)

Should you require any more information about the reference or wish to discuss how your organisation might contribute, please contact April Chrzanowski, Director, Council Secretariat, on (07) 3738 9897 or at [april.chrzanowski@sentencingcouncil.qld.gov.au](mailto:april.chrzanowski@sentencingcouncil.qld.gov.au) who will be pleased to assist.

Yours sincerely



John Robertson  
**Chair**

Enc.

RTI RELEASES

# TERMS OF REFERENCE

## QUEENSLAND SENTENCING ADVISORY COUNCIL

### **SENTENCING FOR SEXUAL VIOLENCE OFFENCES AND AGGRAVATING FACTOR FOR DOMESTIC AND FAMILY VIOLENCE OFFENCES**

I, Shannon Fentiman, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, having regard to:

- the report of the Special Taskforce on Domestic and Family Violence *Not Now, Not Ever: Putting an end to domestic and family violence in Queensland*;
- amendments made in the *Criminal Law (Domestic Violence) Amendment Act 2015* to the *Domestic and Family Violence Protection Act 2012* to increase the maximum penalties for contravening a domestic violence order and to the *Penalties and Sentences Act 1992* to provide for notations to indicate the domestic and family violence context of criminal offending;
- further amendments made in the *Criminal Law (Domestic Violence) Amendment Act 2016* to the *Penalties and Sentences Act 1992* making domestic and family violence an aggravating factor on sentence;
- the Queensland Sentencing Advisory Council research brief No.1, May 2021, *The impact of domestic violence as an aggravating factor on sentencing outcomes*;
- the report of Women's Safety and Justice Taskforce, *Hear her voice: Report one*, including recommendation 73 of that report;
- the report of Women's Safety and Justice Taskforce, *Hear her voice: Report two*;
- commentary expressing that penalties currently imposed on sentences for sexual assault and rape offences may not always meet the Queensland community's expectations;
- the maximum penalties provided in the Criminal Code for sexual assault and rape offences;
- the general expectation of the Queensland community that penalties imposed on offenders convicted of domestic and family violence offences and sexual assault and rape offences are appropriately reflective of the nature and seriousness of domestic and family violence and sexual violence;
- the need to protect victims from domestic and family violence and sexual violence;
- the need to hold domestic and family violence and sexual violence offenders to account;
- the sentencing principles and purposes of sentencing as outlined in the *Penalties and Sentences Act 1992*
- the need to maintain judicial discretion to impose a just and appropriate sentence in individual cases; and
- the need to promote public confidence in the criminal justice system.

refer to the Queensland Sentencing Advisory Council, pursuant to section 199(1) of the *Penalties and Sentences Act 1992*, a review of sentencing practices for sexual assault and rape offences and the operation and efficacy of section 9(10A) of the *Penalties and Sentences Act 1992*.



## Scope

In undertaking this reference, the Queensland Sentencing Advisory Council will:

- review national and international research, reports and publications relevant to sentencing practices for sexual assault and rape offences and in sentencing adult offenders for domestic violence offences;

### i. Sentencing practices for sexual assault and rape offences

- examine the penalties currently imposed on sentences under the *Penalties and Sentences Act 1992* for sexual assault and rape offences and review sentencing practices for these offences including the types of sentencing orders, duration and (any) time ordered to be served in custody prior to the offender being released into the community or being eligible for release on parole;
- determine whether penalties currently imposed on sentence under the *Penalties and Sentences Act 1992* for sexual assault and rape offences adequately reflect community views about the seriousness of this form of offending and the sentencing purposes of just punishment, denunciation and community protection;
- identify any trends or anomalies that occur in sentencing for sexual assault and rape offences;
- assess whether the existing sentencing purposes and factors set out in the *Penalties and Sentences Act 1992* are adequate for the purposes of sentencing sexual assault and rape offenders and identify if any additional legislative guidance is required;
- identify and report on any legislative or other changes required to ensure the imposition of appropriate sentences for sexual assault and rape offences;
- advise on options for reform to the current penalty and sentencing framework to ensure it provides an appropriate response to this type of offending;
- examine relevant offence, penalty, and sentencing provisions in other Australian and international jurisdictions to address offending behaviour relating to sexual assault and rape and any evidence of the impact of any reforms on sentencing practices;

### ii. Operation and efficacy of section 9(10A) of the Penalties and Sentences Act 1992 and impact of increase in maximum penalties for contravention of a domestic violence order

- review sentencing practices for domestic violence related offences following changes to the *Penalties and Sentences Act 1992* by the *Criminal Law (Domestic Violence) Amendment Act 2016* to make the fact a person is convicted of a domestic violence offence an aggravating factor for the purposes of sentencing, except if it is not reasonable because of the exceptional circumstances of the case;
- advise on the impact of the operation of the aggravating factor in section 9(10A) of the *Penalties and Sentences Act 1992* on sentencing outcomes for all domestic violence related offences including for charges involving non-physical violence and coercive control;
- identify any trends or anomalies that occur in application of the aggravating factor in section 9(10A) of the *Penalties and Sentences Act 1992* or in sentencing for domestic violence-related conduct generally that create inconsistency or constrain the sentencing process;
- examine whether section 9(10A) of the *Penalties and Sentences Act 1992* is impacting victims' satisfaction with the sentencing process and if so, in what way;
- consider how sentencing trends and outcomes for contravention of a domestic violence order may have changed following the 2015 increase in the maximum penalties following amendments by the *Criminal Law (Domestic Violence) Amendment Act 2015* (Qld);

### Consultation

- consult with key stakeholders, including but not limited to the judiciary, victims/survivors of domestic and family violence and sexual violence, the legal profession, key First Nations community representatives and organisations, domestic and family violence services, sexual violence advocacy groups, community legal centres and relevant government departments and agencies (e.g. Queensland Police Service and Director of Public Prosecutions);

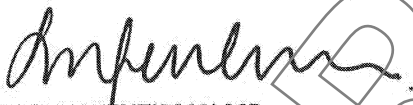
### Impact of recommendations and other matters

- advise on the impact of any recommendation on the disproportionate representation of Aboriginal and Torres Strait Islander people in the criminal justice system;
- advise whether the legislative provisions that the Queensland Sentencing Advisory Council reviews in the *Penalties and Sentences Act 1992*, and any recommendations are compatible with rights protected under the *Human Rights Act 2019*; and
- advise on any other matters relevant to this reference.

The Queensland Sentencing Advisory Council is to provide to the Attorney-General and Minister for Justice, Minister for Women, and Minister for the Prevention of Domestic and Family Violence a report on its examination of:

- (i) sentencing practices for sexual assault and rape offences by **16 September 2024**; and
- (ii) the operation and efficacy of section 9(10A) of the *Penalties and Sentences Act 1992* and impact of increase in maximum penalties for contravention of a domestic violence order by **30 September 2025**

Dated the 17<sup>th</sup> day of May 2023



SHANNON FENTIMAN MP

Attorney-General and Minister for Justice, Minister for Women, and Minister for the Prevention of Domestic and Family Violence

## Lyndel Zobel

**From:** Kathy Parton  
**Sent:** Wednesday, 26 July 2023 2:36 PM  
**To:** Clare O'Connor  
**Cc:** Paul O'Driscoll (CHDE); Jason Kidd  
**Subject:** Australian Early Development Census (AEDC) data for Queensland

Hi Clare

Further to your request yesterday, below is information on the 5 domains under the AEDC and data for Queensland First Nations children.

- The Productivity Commission's Annual Data Compilation Report, released in July 2023 and the PC Data Dashboard, for Target 4: Aboriginal and Torres Strait Islander children thrive in their early years, shows 33.8 per cent of Queensland Aboriginal and Torres Strait Islander children commencing school were assessed as being developmentally on track in all five Australian Early Development Census (AEDC) domains, compared with 21.5 per cent in 2009.
- The table below demonstrates a decrease over the period 2009 to 2021 in the proportion of First Nations children who are vulnerable on one or more and two or more domains from 50.5 per cent to 42.1 per cent and from 31.3 per cent to 26.9 per cent respectively.

**Table 8: Percentage of Aboriginal and Torres Strait Islander children developmentally vulnerable in QLD (2021)**

Domain	2009	2012	2015	2018	2021
Physical health and wellbeing	19.8	19.1	21.8	21.2	21.3 ■
Social competence	20.2	19.1	21.8	20.5	18.8 ▼
Emotional maturity	17.3	14.8	17.2	16.9	16.3 ■
Language and cognitive skills (school-based)	35.6	21.8	19.6	20.8	21.6 ▲
Communication skills and general knowledge	21.5	20.8	21.6	20.6	19.1 ▼
Developmentally vulnerable on one or more domain(s)	50.5	43.0	43.9	42.5	42.1 ■
Developmentally vulnerable on two or more domains	31.3	25.8	27.5	27.0	26.9 ■

The Australian Early Development Census 2021 Queensland data report **23**

- The above table indicates that while there has been an overall decrease in the percentage of children who are developmentally vulnerable, this is largely driven by reductions in the domains of language and cognitive skills, emotional maturity and communication skills & general knowledge.
- The percentage of First Nations children developmentally vulnerable in the domain of physical health and wellbeing has increased between 2009 and 2021.
- The physical health and wellbeing domain measures three aspects of children's development – fine and gross motor skills, independence in self-care tasks and readiness for the school day.
- Questions in the collection instrument ([2021 Early Development Instrument questions \(aedc.gov.au\)](https://www.aedc.gov.au/2021-Early-Development-Instrument-questions)) for the physical health and wellbeing domain include questions about days absent from school, whether children are tired or hungry at school, toileting habits, coordination and proficiency in motor skills, physical development and personal hygiene.

The full national AEDC report is available at

<https://www.aedc.gov.au/Websilk/Handlers/ResourceDocument.aspx?id=75ac2964-db9a-6d2b-9fad-ff0000a141dd>

Queensland specific outcomes are outlined at Table 10 page 55

*About AEDC data*

- AEDC data is collected using the Australian version of the Early Development Instrument (AvEDI), adapted from Canada<sup>1</sup>. Based on their knowledge and observations of children in their class, teachers respond to approximately 100 questions across the five domains. Children are allocated a score against the five AEDC domains. Using benchmark scores calculated in 2009, children are determined to be either 'developmentally on track', 'developmentally at risk' or developmentally vulnerable' on each domain.
- Data is collected on all children as they start their first year of full-time school. The collection has occurred every three years since 2009 with the most recent collection in 2021.

Kind regards  
Kathy

**Kathy Parton**

Deputy Director-General, Strategic Policy, Legislation and Program Reform  
Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts  
Level 13, 111 George Street, Brisbane

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RTI RELEASE

**From:** [Kathy Parton](#)  
**To:** [Clare O'Connor](#)  
**Cc:** [Paul O'Driscoll \(CHDE\)](#)  
**Subject:** Additional information for YJCC - Closing the Gap  
**Date:** Monday, 4 September 2023 12:22:00 PM  
**Attachments:** [HTB\\_ADCR\\_2023\\_release.docx](#)

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Hi Clare

As requested, below are the detailed justice targets under Closing the Gap and summary of progress, and attached is the full Issues Brief, with the references to justice targets highlighted.

### **Closing the Gap – Justice targets**

**Target 10: By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent** – Worsening and target not on track to be met.

In Queensland, at 30 June 2022, the age-standardised rate of Aboriginal and Torres Strait Islander prisoners was 2046.9 per 100,000 adult population. The 2022 rate is below the 2021 rate (2144.2 per 100,000 adult population) but is an increase from 1814.5 per 100,000 adult population in 2019 (baseline year).

**Target 11: By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10 to 17 years) in detention by at least 30 per cent** – No change and target not on track to be met.

In Queensland, in 2021–22, the rate of Aboriginal and Torres Strait Islander young people aged 10 to 17 years in detention on an average day was 40.9 per 10,000 young people. The rate is above the previous year (33.7 per 10,000 young people in 2020–21) but it is a decrease from 41.2 per 10,000 young people in 2018–19 (baseline year). Queensland has the third highest rate of youth detention in 2021–22 behind Western Australia (44.6 per cent) and Northern Territory (44.1 per cent).

Kind regards  
Kathy

### **Kathy Parton**

Deputy Director-General, Strategic Policy, Legislation and Program Reform  
Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts

Level 13, 111 George Street, Brisbane

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