

The '80 per cent rule'

Full Stop Australia submission to the Queensland Sentencing Advisory Council review of the serious violent offences scheme in the *Penalties and Sentences Act 1992* (Qld)

20 December 2021



We acknowledge the Traditional Custodians of Country, the Gadigal and Wangal peoples of the Eora Nation, and their continuing connection to land, sea and community. We pay our respects to Elders, past, present and emerging. Always was and always will be Aboriginal land.

Introduction

- 1) We warmly welcome the Council's invitation to provide feedback into the Queensland Sentencing Council's review of the operation and efficacy of the serious violent offences scheme in the *Penalties and Sentences Act 1992* (Qld). We particularly welcome the Council's emphasis on consulting with stakeholders in the sexual, domestic and family violence sector and in particular with stakeholders who speak for survivors of sexual, domestic and family violence.
- 2) In this submission, we do not intend to address in detail all of the discussion questions identified by the Council. Instead, we will focus on the discussion questions which touch on our areas of expertise and as much as possible, advance the views, interests and experiences of survivors of sexual, domestic and family violence. We also note that our submissions and recommendations are made in the context of sexual and violent offending committed in the course of a domestic and family violence relationship. We do not propose to make any recommendations with respect to non-domestic violence related offences such as drug trafficking as these are not within our expertise.
- 3) In preparing this submission, Full Stop Australia consulted with its clinical staff, who are highly qualified counsellors and social workers who specialise in trauma-informed practice. Full Stop Australia does not have a practice of consulting with its own clients in developing its law reform agenda. Instead, it has recently launched the National Survivor Advocate Program on 23 November 2021 to ensure that law, policy and practice is survivor-led across the country. Currently, no national body links and supports survivors of sexual, domestic and family violence in Australia who want to speak out and influence policy, practice and law reform. The central element of the program will be the establishment of a National Advisory Group of diverse people with lived experiences of violence and abuse in a range of settings who are passionate about advocating for systemic reform.
- 4) As the Program has only been officially launched this year and the National Advisory Group is yet to be formed, we have been unable to consult the Group in preparing this submission. However, we intend going forward to consult with the Group in future submissions and also victim-survivors who engage with us outside the Group structure.
- 5) We would be very happy to provide any further feedback to the Council on any aspect of this submission or to assist the Council should it wish to consult with victim-survivors directly.

Background

- 6) Full Stop Australia is an accredited, nationally focused, not for profit organisation which has been working in the field of sexual, domestic and family violence since 1971. We offer expert and confidential telephone, online and face to face counselling to people of all genders who have experienced sexual, domestic or family violence, and specialist help for their supporters and those experiencing vicarious trauma. We also provide best practice training and professional services to support frontline workers, government, the corporate and not for profit sector.
- 7) Our counselling services include the Domestic Violence Impact Line, a counselling service and support for people experiencing domestic and family violence across Australia, the Sexual Assault Counselling Australia line for people accessing the Redress Scheme resulting from the Royal Commission into Institutional Responses to Child Sexual Abuse, the LGBTIQ+ violence counselling service and the NSW Sexual Violence Helpline (formally NSW Rape Crisis) for those impacted by sexual assault (including friends, families and supporters). In the 2020/21 financial year, Full Stop Australia provided 16,195 occasions of service to 3,984 clients nationally. 84% of callers identified as female and 90% identified as someone who had experienced sexual, domestic and/or family violence.
- 8) Our training and professional services draw on our decades working in the sector. Training programs are evidenced based and co-designed with experts, including those with lived experience of violence. In the 2020/2021 financial year, we trained and supported over 2000 people and linked with 150 organisations across Australia. Underpinned by adult learning principles and delivered by highly experienced and qualified trainers, some of our key programs include:
 - a) Wattle Workplace Wellbeing: A tailor made training and support package for workplaces mitigating the risk of compassion fatigue, burnout and vicarious trauma;
 - b) Responding with Compassion: A practical skills development program to guide participants in responding to disclosures of domestic, family, sexual and workplace violence;
 - c) Ethical Bystander: Providing participants with an ethical and safe framework to allow them to intervene and prevent violence in their workplace and communities; and
 - d) Leadership in Action: building the capacity of leaders to understand, prevent and better respond to violence and disclosures of violence in the workplace.
- 9) Finally, Full Stop Australia advocates with governments, the media and the community to prevent and put a full stop to sexual, domestic and family violence.

10) We will now address some of the Council's questions outlined in the issues paper. We will not answer all of the questions, but rather have focused on questions which touch on our areas of expertise.

Council's Review principles

Do the principles adopted by the Council for the purposes of reviewing the operation and efficacy of the SVO scheme provide an appropriate framework for potential reform?

11) Full Stop Australia welcomes and supports the Council adopting a framework for this review and any potential reform.

12) Our comments on the review principles are as follows.

Principle 1

13) We agree that reforms to sentencing should be evidence-based with a view to promoting public confidence. We also recommend that the evidence relied upon should be, as much as possible, trauma-informed and culturally appropriate.

Principle 2

14) We agree that sentencing decisions should accord with the purposes of sentencing as outlined in section 9(1) of the *Penalties and Sentences Act 1992 (Qld)*. However, we also suggest that with serious sexual offending and serious violent offending committed in the context of domestic and family violence, the principles of punishment, deterrence, denunciation and community protection take on particular importance for victim-survivors (for reasons that will be outlined in more detail below).

Principle 3

15) We strongly agree with principle 3, that sentencing outcomes should reflect the seriousness of the offending, including the impact on victim-survivors, while not resulting in unjust outcomes. In this regard, we would like to point out that the large scale emotional, psychological and financial impacts of trauma in the context of sexual and domestic violence is only recently being fully understood and explored. This will be discussed further below. Our position is that sentencing law does not always properly acknowledge or account for the serious and lasting impact this kind of offending has on victim-survivors and the community at large. We suggest that the Council take this into account when preparing their recommendations.

Principle 4

16) We agree that parole serves an important purpose in reintegration and reducing re-offending and that this promotes community safety. However, we suggest that any focus on the benefits of parole should not be used a substitute for, nor should it detract from, the

need for substantial investment in rehabilitation programs while in custody and in particular, Men's Behaviour Change Programs.

Principle 5

17) We agree that sentencing inconsistencies, anomalies and complexities should be minimised. For example, we are concerned that the scheme may have resulted in the reduction of head sentences.

Principle 6

18) We agree with this principle and strongly encourage the Council to consult with survivors of sexual, domestic and family violence in Aboriginal and Torres Strait Islander communities and the Aboriginal Controlled Community Organisations (ACCOs) that support and assist them.

Principle 8

19) We strongly agree that services delivered in response to sentencing orders should be adequately funded and universally available across Queensland. In particular, we strongly recommend that:

- All rehabilitation programs should be rigorously evaluated and where possible adhere to best practice standards, for example the NSW Practice Standards for Men's Domestic Violence Behaviour Change Programs.
- There be an increase in the number and diversity of rehabilitation programs, education and training opportunities inside prison and a greater variety of programs to address the complex needs of women and Aboriginal and Torres Strait Islander offenders.

Principle 9

20) We agree that the Court should have before it the best available evidence relating to the offender's risk of reoffending. We consider that victim-survivors' views could be sought in assessing this, as they are when parole is being decided. Particularly in cases of domestic and family violence, survivors are often well placed to advise the Court of the risk the offender poses as they will have been navigating this risk themselves for many months and years. We also note that if the report is prepared by the defendant's counsel, it is unlikely to contain a detailed history of the defendant's coercive controlling behaviors which, if they exist, can still be an indicator that the perpetrator will commit further, violent offending against their partner but because of their non-physical nature are not always identified by authorities or result in criminal charges being laid.¹

Principle 10

¹ See for example the NSW Domestic Violence Death Review Team's last report which found that in 20% of homicides there was no disclosed history of physical violence prior to the fatal assault, *Report 20172019 XVI* [2017-2019 DVDRT Report.pdf \(nsw.gov.au\)](https://www.nsw.gov.au/2017-2019-DVDRT-Report.pdf),

21) We agree that any reforms should be compatible with the rights protected and promoted under the *Human Rights Act 2019* (Qld). We note that these rights apply equally to survivors as they do accused persons. In particular, the right to equality, liberty and security and protection from cruel, inhuman or degrading treatment.

Objectives and nature of the SVO Scheme

Are the purposes of the SVO scheme clear? Is any additional legislative guidance required?

22) We understand from the Council's issues paper that when the scheme was introduced 'its stated purpose was that it would ensure that sentencing would reflect the true facts and serious nature of the violence and harm in any case and that codign punishment is awarded to those who are genuinely meritorious of it', ie. it was advancing the principles of denunciation and community safety.

23) The scheme was introduced in 1997 and since then, not only have community attitudes changed, but so has our understanding of the impacts of sexual, domestic and family violence. For example, we now know that (among other things):

- Domestic and family violence is a leading cause of homelessness in Australia.²
- Violence against women and sexual assault is associated with both short and long-term mental health consequences that persist long after the violence has stopped.
- Intimate partner violence is a significant contributor to the burden of disease for women aged between 25-44 years.
- Mental health conditions such as depressive and anxiety disorders contribute to 70% of the disease burden for women 18 years and over.³
- There are significant correlations between experiences of sexual violence and poor mental health outcomes for survivors/victims, such as higher risk of depression, anxiety and post-traumatic stress disorders and PTSD.⁴

24) Furthermore, since the establishment of ANROWS (Australia's National Research Organisation for Women's Safety) we have a much stronger empirical base with which to base our policy responses to sexual, domestic and family violence.

² Mission Australia, *Out of the Shadows Domestic and Family Violence a leading cause of homelessness in Australia*, [Position statements | Mission Australia](#)

³ Australian National Research Organisation for Women's Safety, *Volence Against Women and Mental Health*, (ANROWS Insights, 2020), 1 ('ANROWS').

⁴ Jan Breckenridge, Mailin Suchting, Sara Singh, Georgia Lyons and Natasha Dubler, *Evidence Check: Intersections between mental health and sexual assault and abuse* (2019) 23; Laura Tarzia, Sharmala Thuraisingham, Kitty Novy, Jodie Valpied, Rebecca Quake and Kelsey Hegarty, "'Exploring the relationships between sexual violence, mental health and perpetrator identity: a cross-sectional Australian primary care study' (2018) 18(1410) *BMC Public Health*, 2.

- 25) We know from our experience and the empirical evidence (see further on this under the section 'Victim Satisfaction with the scheme and sentencing' below), the principles of punishment, deterrence, community safety and denunciation are still extremely important to victim-survivors. Full Stop Australia believes it is important that the purpose and intent behind a sentencing scheme is principled, evidenced based and supported by victim-survivors and the wider community. As such, we continue to support sentencing schemes for sexual and domestic violence offences which uphold these principles.
- 26) We also know that victim-survivors find the justice system confusing and do not feel equipped with enough with information to properly navigate the system. Therefore, we submit that it is important that the Government and policymakers ensure that sentencing frameworks are explained to victim-survivors in as plain language as possible. Therefore, we suggest that it would assist everyone involved in the justice system (including victim-survivors) to have the objectives of the scheme explicitly laid out in legislation or alternatively, the extrinsic material.

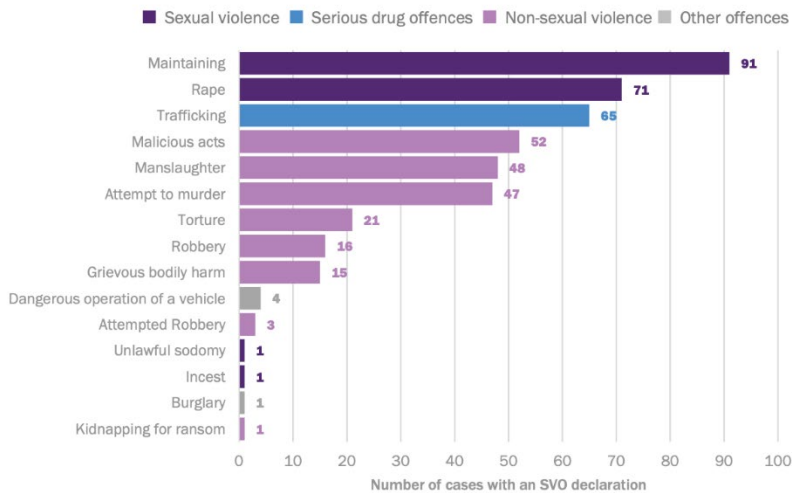
Is the current scheme meeting its intended objectives?

Is the SVO scheme, as it is currently being applied, targeting the right types of offences and offenders?

- 27) We warmly welcomed the Council's detailed statistical analysis of the SVO scheme. We found that this research was extremely useful in conducting our review of the scheme in the context of sexual, domestic and family violence. Following our review of the data, we consider it important to highlight the following (our emphasis):
- a) Of the 20,187 Schedule 1 offences sentenced in the higher courts in the 9-year data period examined by the Council, only **437** resulted in an SVO declaration. In our view, this is a small proportion of the overall number (less than 1 in 40).
 - b) In addition, the data showed (among other things) that:
 - i) The vast majority (72.7%) of SVO declarations were mandatory;
 - ii) The majority of the mandatory declarations were for sexual violence offences (n=146/318);
 - iii) The most common mandatory declarations were for maintaining a sexual relationship with a child, followed by trafficking in dangerous drugs, rape, attempted murder and manslaughter;
 - iv) Of the discretionary declarations, almost all (n=112/119) were made in cases where the offender received a sentence of imprisonment between 5 and 10 years;
 - v) The most common discretionary declarations (for sentences of between 5 and 10 years) were malicious acts, torture, rape and grievous bodily harm;
 - vi) **The proportion of non-sexual violence offences declared to be an SVO was higher for those committed in a domestic and family violence relationship.** For

- example, **almost half** (47.6%) of the attempted murder cases declared to be an SVO were DV offences; and
- vii) 100% of the declarations made for rape were against men but the proportion of male offenders was very high across all offence categories.

Figure 2: Number of cases with an SVO declaration, by offence (MSO)



Data includes cases sentenced with an SVO declaration, MSO, 2011–12 to 2019–20.
Source: QGSO, Queensland Treasury – Courts Database, extracted August 2020.

- 28) All of the above arguably supports the proposition that not only are SVO declarations being commonly used in the context of sexual, domestic and family violence but also that they are primarily being used in the context of grievous offending.
- 29) This proposition is also supported when reviewing the Council’s analysis of court decisions in Background paper 3. By way of example, one of the many extremely violent and horrific offending included in that paper where an SVO declaration was made includes the case of *R v RBD [2020] QCA 136 (RBD) [trigger warning the next paragraph contains graphic descriptions of violence]*

The complainant ended her relationship with the applicant. The following day, the applicant commenced a course of offending against her by choking her while she slept, causing her to lose consciousness, and sexually assaulting her whilst she was unconscious. The applicant was charged with this offending one week later and granted bail on the condition that he not contact the complainant. The applicant stalked the complainant for a month by contacting her by telephone, social media and by breaking into her home on multiple occasions. One month after the choking and sexual assault, the applicant broke into the complainant’s unit and locked the complainant’s friends in a spare room. He brought a knife into the bedroom where the complainant was sleeping and punched her face until she lost consciousness and lost control of her bladder. He removed her clothing and sexually assaulted her whilst unconscious. He

then carried the complainant to his vehicle outside whilst she was semi-conscious and naked and bound her wrists and covered her mouth with duct tape. He drove for several hours before raping her. Approximately 12 hours after the ordeal began, police located the applicant's vehicle and pursued it. The applicant drove off the side of a mountain range and the vehicle rolled down an embankment. The complainant suffered significant injuries including fractures to vertebrae, bruising and swelling to the face and neck.⁵

- 30) There is no doubt, in our view, that this case (and others like it in the background paper) warranted an SVO declaration. In addition, we also reviewed the cases where discretionary SVO declarations were made in the context of offences which carry a sentence of between 5 and 10 years and consider that SVO declarations were, in general, appropriately made in the case of sexual, domestic and family violence and also the cases involving torture.
- 31) We also note that there were some cases mentioned that could, and possibly should, have had SVO declarations made but didn't because, for example, the prosecution did not make a strong case for them (such as QDC 2020/54 where the perpetrator was convicted (among other things) of one count of torture and eight counts of choking in a domestic setting and QDC 2020/01 where the perpetrator was convicted of burglary and rape) or where the Court declined to impose an SVO declaration for other reasons such as the case of QDC 2020/32 where the perpetrator was convicted of 39 historical child sexual offences committed over *three decades on six complainants* aged between 12 and 15 years. In these cases, it is possible to argue that better legislative guidance as to when it is appropriate to make an SVO declaration might have resulted in a different outcome.
- 32) In all of the circumstances, we consider that the Council's analysis shows that the SVO scheme is generally achieving its objective of denunciation of serious and violence offending. It is unclear to us based on our experience whether it is possible to establish conclusively that community safety has been enhanced through the SVO scheme, but certainly it is possible to make the argument (from a victim-survivor's perspective) that survivors can and do feel safer when the offender is in custody for longer periods. In addition, our review of the Council's data suggests to us that the scheme is generally targeting the right kinds of offences and offending. However, we do outline some further offences below which could also be included in a revised scheme.
- 33) We do note with concern the Council's findings in relation to the overrepresentation of Aboriginal and Torres Strait Islander people and agree that this is an issue across the entire justice system that requires detailed consideration. We suggest that the Council consult directly with survivors of sexual, domestic and family violence in Aboriginal and Torres Strait Islander communities and the ACCOs who support them, in relation to this issue. We also

⁵ Queensland Sentencing Advisory Council, *Analysis of key Queensland Court of Appeal decisions and select sentencing remarks* (Background paper 3, 2021) 54.

suggest the Council consider ways that the scheme may be adapted to better serve Aboriginal and Torres Strait Islander accused persons and victim-survivors equally.

How, if at all, should a person’s criminal history and other personal circumstances factor into whether an SVO declaration is made?

34) Full Stop Australia doesn’t oppose a person’s criminal history or other personal circumstances factoring into whether an SVO declaration is made, in certain circumstances. We accept that sometimes these two factors are relevant to sentencing and a court should be allowed to take into account all relevant circumstances of the case when sentencing (in particular, where the victim-survivors have supported or otherwise raised these circumstances themselves as being relevant). However, we do not agree that it should be relied upon in all cases. In our review of the case law in background paper 3, we identified a number of cases where an offender’s lack of criminal history was, in our view, incorrectly considered as a factor contributing to a decision to decline to make an SVO declaration (in particular in circumstances of domestic and family violence where lack of known offending does not necessarily mean that there is no history of domestic violence. We also note that in addition to a lack of criminal history, “good character” type evidence is often relied upon to reduce sentences in the same way. Full Stop Australia strongly opposes “good character” evidence being used to minimize the accountability of perpetrators in sentencing for serious sexual, domestic and family violence offences.

Automatic operation of the scheme and parole eligibility

Are mandatory sentencing schemes appropriate in certain cases – such as for serious violent offences?

35) Full Stop Australia does not support a mandatory sentencing scheme in all cases of serious violent offending given the overall complexity involved in the sentencing process and the need to ensure fair outcomes for marginalised populations (for example, for victim-survivors who commit intimate partner homicides). However, as we are primarily a voice for victim-survivors, we are of the view that mandatory sentencing schemes may be appropriate in certain limited cases of serious sexual offending and violent offending committed in the context of sexual, domestic and family violence.

Should the distinction under the SVO scheme between sentences at or above 10 years and below 10 years be retained?

36) We do not necessarily see why the 10-year distinction needs to be retained as the guidepost for an SVO declaration except to say that we repeat our previous conclusion that mandatory SVOs are, in general, being appropriately made in grievous cases of sexual, domestic and family violence. This doesn’t necessarily mean that if the 10 year distinction is

removed, this will not continue to occur, though we suggest that if it is removed, detailed guidance be provided so that prosecutors are supported in seeking SVO declarations in similar circumstances.

37) We understand how the imposition of the 10 year distinction (without any clarification being provided as to why the 10 year figure was chosen) has lead to criticism that the system is arbitrary. We believe that criticisms like this undermine the system as a whole and undermine community confidence in the sentencing process. As noted above, we would cautiously support the introduction of alternative guideposts such as the inclusion of a list of sexual and/or seriously violent offences that the community considers warrant appropriate punishment for particular reasons (for example when certain types of offending have occurred such as sexual violence against children) but only if this does not result in less SVO declarations being made in cases that warrant them such as the case of RBD.

If retained, should the discretion for the SVO scheme to be applied to a listed offence for sentences of imprisonment of 5 to 10 years be retained, or should this apply to a sentence of any length where a listed offence is dealt with on indictment?

38) As noted at the beginning of our submission, Full Stop Australia don't propose to provide its views on whether the SVO scheme should be discretionary for non-sexual offences and/or offences not committed in the context of domestic and family violence. We would not support a discretion being applied to sexual and/or domestic violence offences with sentences beyond 10 years unless there were very exceptional circumstances (for example, in the case of victim-survivors offending against their primary abusers). We consider that, rather than introducing a discretion to cases over 10 years plus, to ameliorate concerns about the potential adverse impacts of imposing a mandatory non-parole period in cases that are close to the 10 year mark, a range of mandatory non-parole periods could be imposed, as discussed further below.

Is the 80 per cent/20 per cent split between the minimum period in custody and maximum period on parole appropriate for offenders declared convicted of an SVO or should this be changed? If changed, what approach do you support:

(a) A fixed standard percentage non-parole period scheme (e.g. parole eligibility at two-thirds, 70%, 75% or other defined percentage of the head sentence); or

(b) A minimum standard percentage non-parole period scheme (e.g. a minimum of two-thirds, 70%, 75% or other defined percentage of the head sentence); or

(c) A fixed set range (e.g. between 50–80% of the head sentence)?

- 39) Full Stop Australia is of the view that flexibility in setting the non-parole period might be useful in preventing head sentences being reduced in cases where potential sentences sit close to the 10 year mark. It might also prevent unjust outcomes in certain exceptional circumstances, such as in cases of intimate partner violence where the primary victim is the accused person. However, we do not support the reduction of an 80/20 per cent split in the most grievous cases of offending in the context of sexual, domestic and family violence (for example, when there is sexual offending against children). We consider that in all the circumstances, the best option might be to have a fixed set range which applies in a well-defined and specific set of circumstances. We consider that the 80/20 per cent split should remain in very serious cases such as (this is a non-exhaustive list):
- a) Multiple counts of sexual offending against a child/children accompanied by physical violence
 - b) Multiple counts of sexual offending against a child/children over a long period of time
 - c) Serious violence and sexual offending in the context of domestic violence
 - d) Serious violence in the context of domestic violence (including a history of coercive and controlling behaviour)
 - e) Sexual offending accompanied by severe physical violence in other contexts

What factors should be considered in the setting of either a higher or a lower non-parole period, and should these be legislated?

- 40) We don't propose to provide an exhaustive list of all the factors that should be considered but we do recommend that the views of the victim-survivor be considered and that the requirement to consider this factor should be legislated to so that the court is obliged to take this into account in applying a lower or higher non-parole period.

Offences included in the scheme

If the SVO scheme is retained, should a schedule of offences to which the SVO scheme applies form the basis for its application?

- 41) Yes, we support a schedule being imposed for consistency and transparency.

Is the current list of offences to which the scheme can, or must, be applied (depending on the sentence length) as listed in Schedule 1 of the PSA appropriate? (a) Are there any offences not included in Schedule 1 that should be? (b) Should any offences be removed?

- 42) We understand that the following offences aren't included in the scheme, but we suggest that they should be included in the scheme

Section 228B (Making child exploitation material) – 25 years

Section 228C (Distributing child exploitation material) – 25 years

Section 228D (Possessing child exploitation material) - 20 years

Section 315A (Choking, suffocation, and strangulation in a domestic setting) – 7 years

Section 355 (Deprivation of liberty) – 3 years

43) In regards to section 315A, we note the recent review conducted into domestic violence deaths involving fatal and non-fatal strangulation in Queensland⁶ found that prior attempted, non-lethal strangulation is one of the best predictors of the subsequent homicide of victims, with the risk of becoming an attempted homicide victim increasing by **700%**, and the risk of becoming a homicide victim increasing by **800%**.

Should the ability to make a declaration for an offence not listed in the schedule be retained and if so, are the criteria under s 161B(4) appropriate?

44) Yes, the ability to make a declaration for an offence not listed should be retained in keeping with the principle that the court should have flexibility in sentencing.

If retained, should the scheme be renamed to better reflect the types of offences captured by it?

45) We would support the scheme being re-named if the new name resulted in a better understanding of the scheme by victim-survivors and the broader community.

Victim satisfaction with the scheme and sentencing

Does the SVO scheme impact on victims' satisfaction with the sentencing process and if so, in what ways?

How important is the parole eligibility date to victims' overall satisfaction with the sentencing process?

What considerations are important to victims in enhancing their satisfaction with the sentencing process for offences that could attract an SVO declaration?

46) We welcome the Council's willingness to consult stakeholders who represent and support victim-survivors though we do regret that time was not afforded for the Commission to be able to conduct empirical research on survivors' experiences with the scheme. Especially given that this is the first review that has been conducted since the scheme was implemented. We consider that going forward, best practice in legislative and policy

⁶ Leah Sharman, Heather Douglas, and Robin Fitzgerald, 'Review of Domestic Violence Deaths Involving Fatal and Non-Fatal Strangulation in Queensland', (2021) *University of Melbourne, University of Queensland*, 4.

reform in the criminal jurisdiction should (where at all possible) involve direct consultation with victim-survivors and not just their advocates.

- 47) While we do not propose or intend to speak on behalf of all victim-survivors, we would like to bring to the attention of the Council that in our experience, victim-survivors:
- a) Feel silenced and unheard by the criminal law system and consider that the criminal justice system is “offender centric” and geared towards the needs and wants of perpetrators rather than victim-survivors.
 - b) Feel re-traumatised by the investigation of offending and the court process including the giving of evidence and particularly when they are cross-examined.
 - c) Derive therapeutic satisfaction from telling their story and providing their input in a safe and supported way. In particular, in relation to issues of sentencing and parole in their own matters.
 - d) Feel let down by what they see as inadequate sentences.
 - e) Can feel safer while perpetrators are incarcerated and can suffer from increased and heightened anxiety close to a release date.
 - f) Can suffer from increased and heightened anxiety when release dates are unknown or subject to change.
- 48) The Victorian Law Reform Commission (**VLRC**) recently released their report into the Victorian Justice System’s response to Sexual Offences.⁷ While the report pertains to the Victorian jurisdiction, the empirical evidence examined was national and international and is consistent with our experiences. We are strongly of the view that other jurisdictions can learn important lessons from their conclusions.
- 49) The VLRC report found that victims survivors want and need the following from the justice process (our emphasis):
- Information – plain language, easily accessible information about how the justice system works and most importantly for this consultation, information about what the likely outcomes are.⁸
 - Participation – participation means that victim-survivors not only remain informed throughout the whole process but also get to have their interests represented.⁹
 - Having a voice – victim-survivors wanted to be able to tell their story in a ‘significant setting’ (such as a justice process or hearing) where it is publicly and officially acknowledged”.¹⁰

⁷ Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Final Report, September 2021).

⁸ Ibid 30.

⁹ Ibid.

¹⁰ Ibid 31.

- Validation – victim-survivors need to be believed as well as heard. The VLRC noted that the justice system “has a special and respected status in acknowledging harm”¹¹ for example, if a conviction results in consequences for the perpetrator.
- **Denouncing sexual violence and accountability** – the VLRC found that victim-survivors need *vindication* whether it is through punishment of the offender or financial reparations. Victim-survivors also need perpetrators to be held to account.
- Support – victim-survivors need support to experience justice outcomes, whether that be counselling or other support during hearings and throughout the court process from the investigation stage and beyond.

50) The ACT Sexual Assault Prevention and Response Steering Committee (**SAPRSC**) has just released its report ‘Listen. Take action to prevent, believe and heal’¹² to the ACT Government which explores victim-survivor experiences of sexual violence and the justice system. After conducting in-depth consultation with survivors, the Committee concluded (among other things, our emphasis):

- Many survivors had a lack of faith in how the criminal justice system works.
- Survivors **‘stressed the need for the justice system to hold individual offenders to account and to also send a message to the community that sexual violence is not acceptable’**.¹³
- Suspended or partially suspended sentences did not reflect the severity and long-term impacts of sexual offending on victim-survivors.¹⁴
- Victim-survivors supported increasing the maximum penalty for sexual offences in the ACT to better reflect the **severity of sexual violence offences and the harm caused** noting that the report found it had some of the lowest maximum penalties in Australia.
- Some victim-survivors did not report at all because of their knowledge of inadequate sentencing, ‘as the potential outcome was simply not worth the re-traumatisation of engaging with the justice system’.¹⁵
- Victim-survivors supported a structured system of consultation into justice processes acknowledging that the path to ‘healing’ is not linear.

51) While the SAPRSC report makes its findings in relation to the ACT, we would strongly argue, as per the VLRC report, that its findings are consistent with our experience and we can learn important lessons from their conclusions for this consultation. In particular, we submit that this evidence shows that strong sentencing outcomes based on the sentencing

¹¹ Ibid.

¹² ACT Sexual Assault Prevention and Response Steering Committee, *Listen. Take Action to Prevent and Heal*. (Final Report, December 2021).

¹³ Ibid 40.

¹⁴ Ibid.

¹⁵ Ibid 41.

principles of denunciation and punishment are important for victim-survivors and that inadequate sentencing outcomes can deter future victims from reporting.

52) Finally, it is also important to point out, that victim-survivors are almost universally required to navigate the criminal law system without their own independent legal representation. While non-legal supports do exist, they are not always culturally appropriate or universally available in all geographic locations or across the whole lifespan of a criminal proceeding. In our respectful opinion, this puts survivors at a disadvantage when it comes to advocating for their rights in the criminal justice process.

Reform options

What would the benefits and risks be if the SVO scheme was:

- (a) retained in its current form – with no changes to its operation or scope;
- (b) automatically applied to sentences for listed offences of 5 years or more, but less than 10 years;
- (c) presumptive (as to sentences of 10 years or more for listed offences) rather than mandatory;
- (d) presumptive (as to sentences of 5 years or more, but less than 10 years) rather than discretionary;
- (e) entirely discretionary (applying to listed offences dealt with on indictment, in a discretionary way, regardless of sentence length); or
- (f) abolished completely, without replacing it?

53) We accept that given the concerns outlined by the Council in its issues paper, it is likely not advisable to retain the system in its current form with absolutely no changes to its operation or scope. We also accept the concerns raised by stakeholders regarding the over representation of Aboriginal people and also the inclusion of certain offences which may not seem to warrant a mandatory minimum at an 80/20 split (noting that none of these offences fall within our areas of expertise and as such we are not in a position to comment on them).

54) However, the data also does show that the scheme is not widely used and only affects a small cohort of offenders when viewing SVO offences in context against all Schedule 1 offences. Perhaps the scheme might be more widely used if it is more flexible to adapt to particular cases where the offending sits around the 10 year mark, so that head sentences do not need to be reduced. We would support alternative options being proposed such as, introducing a range of minimum non-parole periods, or making the scheme presumptive in certain cases only so as to ameliorate some of the un-intentional, negative side effects of the current scheme.

- 55) However, we would not support any changes to the scheme that would result in SVO declarations being unavailable for serious sexual offending and violent offending conducted in the context of domestic and family violence.
- 56) We also submit that if changes are implemented, there needs to be an independent and evidence-based review of the changes within 5 years to ensure that the scheme is still meeting its intended objectives and any concerns stakeholders have with the scheme have been resolved. The results of that review should be made publicly available.
- 57) Full Stop Australia strongly opposes the scheme being abolished completely. We consider that this would be taking a step backwards in acknowledging the extraordinary amounts of harm that flow from serious sexual and domestic violence offending.

Conclusion

- 58) Sexual, domestic and family violence is widespread and unrelenting. For example, in relation to sexual violence, it is estimated that one in five women in Australia have experienced sexual violence since they were 15 years old, though this figure is likely to be an underestimation. This is an extraordinarily high number for a developed nation. And of those small amount of victim-survivors who do report, the criminal justice system continues to fail them. As Hayley Clark (from the Australian Institute of Family Studies) writes¹⁶

Victim/survivors are placed in a central yet compromised position within the criminal justice system, and two interrelated aspects facilitate this. First, there is the nature of sexual assault - it regularly occurs in private, the victims themselves are often the only witness, there are generally long delays before disclosure, there is rarely any physical evidence and the case often centres on issues of credibility. Secondly, the entrenchment throughout society of misconceptions and stereotypes about victim/survivors (for example, that women and children routinely lie and fantasise about sexual assault, and that women are responsible for their own victimisation) infiltrates the justice system. Together, these aspects pose a unique set of challenges to the traditional processing of cases.

Given victim/survivors' poor experiences with system procedures and the poor likelihood of securing a conviction against a sexual offender, the idea of victim/survivors obtaining a sense of justice from the criminal justice system appears remote, even in the face of significant substantive law and procedural reforms.

- 59) This is why, when convictions do occur, it is so important that sentencing outcomes are an appropriate vindication of all that victim-survivors have sacrificed to ensure that

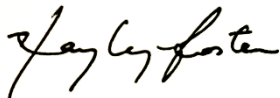
¹⁶ Hayley Clark, "What is the Justice System Willing to Offer?" *Understanding Sexual Assault Victim/Survivors' Criminal Justice Needs* (2010) 5 *Family Matters* 28, 28.

perpetrators are brought to justice. We know that victim-survivors don't only report for themselves, they also report in the interests of preventing future crimes against others and to ensure that a message is sent – that society does not accept this kind of offending.

60) With that in mind, and following our review of the Council's very detailed issues paper and background papers, Full Stop Australia's position is that the SVO scheme is generally working well at targeting serious, violent offending in the context of sexual, domestic and family violence. We accept that there have been shortcomings identified with the scheme by certain stakeholders and that these might be remedied by introducing flexibility to the scheme to reduce unjust outcomes. However, Full Stop Australia would only support changes which do not adversely impact upon mandatory SVO declarations being made in the cases of serious sexual, domestic and family violence.

61) If there are any questions in relation to the above or more information required, please do not hesitate to contact myself or Laura Henschke on (02) 8585 0333 or legal@fullstop.org at your convenience.

Yours faithfully,



Hayley Foster
Chief Executive Officer
Full Stop Australia