

Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Bill 2025

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GOLD COAST CENTRE
against sexual violence inc.

Committee Secretary
Justice Equity and Community Safety
Committee
Parliament House
Brisbane Qld 4000

Via email: jicsc@parliament.qld.gov.au

30th May 2025

Re: Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Bill 2025

GCCASV welcomes the opportunity to provide a submission to the *Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Bill 2025*.

This submission will relate to recommendations of the Queensland Sentencing Advisory Council ('QSAC') made following their investigation into and report on improving sentencing sexual violence and rape offences in Queensland, *Sentencing of Sexual Assault and Rape: The Ripple Effect – Final Report, 2024* ('QSAC Report').

1. Introduction

About Gold Coast Centre Against Sexual Violence ('GCCASV')

GCCASV (formerly Gold Coast Sexual Assault Support Service) was founded on the Gold Coast in 1990. The agency is a feminist community based, not for profit, charitable organisation that has been providing free, confidential, specialist sexual violence intervention and prevention programs for the past 35 years. Our vision is safe communities free from sexual, domestic, and family violence. GCCASV provides a safe, supportive, woman-centred environment in which sexual, domestic and family violence survivors can begin their healing journey become aware of their own strengths and gain confidence and control of their lives.

The organisation also provides community education and training to the public, schools, and other professionals. Since 2018, GCCASV has also delivered specialist counselling to domestic violence victim/survivors through our Women's Health and Wellbeing Program.

GCCASV has provided court support to hundreds of sexual offence complainants through the criminal justice system from reporting to the police through to trial, sentencing and beyond. This submission is based on their experiences and staff observations in bearing witness to the impact of the crime/s and the criminal justice system on these victim/survivors.

GCCASV is committed to systems advocacy, policy and legislative reform that will enhance the safety of victim/survivors of sexual violence in Queensland.

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2. Commentary

Good Character Evidence

GCCASV has long held concerns about good character evidence introduced in the sentencing of sexual offence cases. These concerns relate to the frequency of presentation, the content and also the weight such personal opinion may be given.

The QSAC Report presents facts aligning with our concerns, finding that of 131 District Court rape cases sentenced between July 2022 and June 2023, almost 92 per cent had relied on a good character reference. Furthermore, the report also found that 'good character' appeared to be given 'a lot of weight' in more than a quarter of cases (Final Report, xxiv).

GCCASV acknowledges that the Bill introduces some qualifications on the current unrestricted use of good character evidence in the sentencing of sexual violence matters. However, we believe that this does not go far enough in addressing GCCASV concerns and those expressed by victim/survivors.

GCCASV maintains it is timely for legislators to take this opportunity to reverse the impact of decisions such as *Ryan v The Queen* ((2001) 206 CLR 267) that require good character to be taken into account. In surveying the circumstances of that case (14 offences, 12 boys over 20 years; plus a further 39 offences involving 16 others), the majority decision is questionable. We note the decision was not unanimous. Indeed, the sentencing judge's comments appear entirely appropriate:

How can a man, who showed a kind and friendly face to adults, but who sexually abused so many young boys in so many ways over such a long period of time, be considered to be a good man? I accept that to some people there is good in everyone, but *I cannot see any good in the prisoner* (QSAC Report, 275).

GCCASV maintains (along with many submissions to the QSAC Report) that community sentiment now strongly indicates there is no place for good character evidence in the sentencing of sexual offenders:

- A person of genuinely good character would not commit a sexual offence; therefore, by virtue of their offending, they should no longer be regarded as such. GCCASV notes the QSAC Report's statement that good character evidence may be relevant to 'suggest that the offence may have been "an isolated lapse representing human frailty"' (QSAC Report, 275). Essentially, such justifications rely on the rape myth that men are vulnerable to their irresistible and 'out of character' biological urges. Rape is a choice, not an irresistible urge. Such justifications highlight the very real need for a fundamental reconceptualisation of rape as an egregious human rights violation with potentially lifelong adverse impacts for the victim, not a 'lapse'.
- Further, there is the complex interaction between rape and the very notion of good character itself. This is where the purported usefulness of good character evidence to assess an offender's 'whole person and not solely under the shadow of their crimes' is problematic (QSAC Report, 275). Good character – the offender's lack of a criminal history, calculated image management, involvement in the community – can be a highly effective weapon in assisting offenders to win the trust of the victim/survivor and commit the offence.

While some submissions to the QSAC Report considered it sufficient that Queensland already has measures in place to protect children (Final Report, xxiv), GCCASV maintains there is no

reason to deny extension of such measures to victim/survivors above the age of consent. Indeed, this would promote legislative consistency. One of the drivers of Queensland's recent landmark amendments to sexual consent laws was to reduce the legislative focus on the victim-survivor in rape cases (sections 348AA(1)(a), 348A(3) *Criminal Code Act 1899* (Qld)); this driver should be consistent throughout the criminal justice process, including sentencing. The focus should be on the offender's deliberate, and successful, manipulation of trust – not victim/survivor age.

- As the QSAC Report recognises, it is highly distressing for victim/survivors to hear what is taken into consideration in sentencing. In particular, when glowing character references are produced, it paints a picture of an upstanding citizen. This is recognised in the QSAC Final report as 'jarring', 'deeply distressing' and 'retraumatising' for victim/survivors given the 'nature and seriousness of this offending' (QSAC Final Report, xxv, 305, Key Finding 8).
- Victim/survivors are required to meet the highest standard of evidence to prove their case, making it all the more distressing to witness a convicted sex offender submit unsubstantiated, subjective opinions of family and friends as part of the sentencing process. This type of character evidence was recognised by the QSAC Report as 'problematic' (QSAC Report, xxiv, 304).
- Assessing the prospects of rehabilitation and the risk of reoffending requires specialist expert knowledge; therefore, no inferences should be drawn from any good character evidence from laypersons as it has no relevance. As discussed, the QSAC Report notes that good character evidence containing 'subjective and *non-professional opinions*' is 'problematic' (xxiv) and 'should not be used as a 'substitute for professional assessments' although these may not be available in all cases (QSAC Report, 309).
- Information about the offender—such as their employment history and its relevance to recidivism or rehabilitation—are factual matters that can be presented to the court by defence counsel, and do not need to be included in good character references.
- The amendments proposed in the Bill may not in fact restrict the use of good character evidence; that is, such evidence will change in form but not substance or effect. GCCASV believes that in all likelihood good character references will simply be framed in terms of a low risk of reoffending and good prospects for rehabilitation – to meet the constraints of the proposed legislation and what may be judicially considered – yet this is how it is *already used by judges in sentencing*. The QSAC Report itself states:

The Council's review of sentencing remarks suggests that evidence of 'good character' is commonly referred to and, where it is mitigating, *appears to be used by the court to determine the person's prospects of rehabilitation and risk of reoffending* (xxv, emphasis added).

Thus the legislative aim of the Bill as set out in the Explanatory Memorandum ('EM') appears to have no value. It states: the 'good character' that has been 'established' by a reference (community standing, contributions) must only be a mitigating factor 'if the good character is relevant to the offender's prospects of rehabilitation or risk of reoffending' (EM, 3). Effectively, it changes nothing. What is needed is a robust recognition that good character evidence is no substitute for accurate and reliable professional assessment of risks of recidivism and prospects of rehabilitation.

Recognition of Harm

GCCASV supports the amendment section 9(1) of the *Penalties and Sentences Act 1992* (Qld) ('PS Act') to expand the purposes of sentencing to include recognition of the harm done by the offender to a victim. The harm inflicted by an offender on a victim extends well beyond the commission of the crime itself. These harms can be multifaceted, encompassing physical, emotional, psychological, and financial impacts that can affect victim/survivors for the remainder of their lives.

Absence of details of harm

GCCASV supports the Bill amending section 179K(5) of the PS Act to clarify that the absence at sentencing of a victim impact statement or other details of harm caused to a victim, does not give rise to any inference that the offence caused little or no harm to the victim.

The reality is every victim/survivor is impacted by a sexual offence. Sometimes victim/survivors may be fearful or too traumatized to write a victim impact statement, others do not want the offender to know the extent of the traumatic impact. It is very dangerous to assume that no victim impact statement = no impact.

Statutory aggravating factor

GCCASV supports the Bill amending section 9 of the PS Act to introduce a new statutory aggravating factor whereby the court will be required to treat an offence of rape or sexual assault committed against a child under 18 years as aggravating.

GCCASV believes our proposed changes outlined above will both improve victim/survivor safety and satisfaction with the sentencing process as well as hold sexual offenders accountable for their actions.

Thank you again for the opportunity to provide a submission to the Inquiry.

Yours sincerely,



Di Macleod

Director