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

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# NAPCAN submission to the *Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Bill* 2025

The National Association for the Prevention of Child Abuse and Neglect (NAPCAN) is a non-government organisation that, since 1987, has advocated on behalf of children and young people in Australia with the goal of eliminating child abuse and neglect in all their forms.

National Youth Speak Out (NYSO) is the youth council associated with NAPCAN. It directly represents the voices and opinions of young people across Australia and influences projects within NAPCAN and beyond.

Both NAPCAN and NYSO welcome the opportunity to jointly submit to the *Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Bill* 2025.

## 1. Expand the sentencing purposes to include recognition of harm caused to the victim of an offence

Current subsections of the sentencing purposes in Section 9(1) of the *Penalties and Sentences Act* 1992 focus on either the offender (a-c) or the general community (d-e), with no mention of victims.

Throughout our advocacy, NAPCAN has continued to stress the importance of recognising children as victims in their own right, rather than as collateral or extensions of their parents in situations of family and domestic violence (FADV). Any definition of victim-survivor as it relates to children must also be interpreted broadly, to recognise not just short-term physical and material harm, but also the long-lasting psychological harm associated with child maltreatment which in many cases continues to impact the young victim's relationships, education, and career later in life.

For these reasons, NAPCAN and NYSO both support the Bill's proposed change to include recognition of harm done to the victim in the sentencing purposes, as an acknowledgement of the impact that child maltreatment-related crimes have on young victim-survivors.
In particular, we welcome the recognition of harm that has occurred prior to the passage of this amendment, even if proceedings occur afterwards. From our work with children and young people across Australia, we know there is no time limit for how long it can take victim-survivors to recognise the harm that has been done to them. Young people are incredibly adaptable and can develop coping mechanisms that serve them for years and decades after a traumatic incident has taken place, but which can delay the processing of trauma and its effects until much later in life.

Additionally, we know that many victim-survivors of childhood maltreatment may not readily identify as victim-survivors. This can have serious ramifications in legal proceedings where disclosures of abuse and maltreatment can often be dismissed if they are presented "too late" after the crime occurs.

For this reason, NAPCAN supports the recognition of harm done prior to this amendment as a sentencing purpose, and strongly encourages the recognition of all harm no matter how long ago it occurred.

## 2. Qualify the court's treatment of good character as a mitigating factor in sentencing persons convicted of offences of a sexual nature

Taking advantage of character references in the sentencing of individuals convicted of such serious crimes creates a dangerous precedent, where the gravity of criminal actions and the harm they cause to victim-survivors is minimised or overshadowed by subjective opinions about their character. This practice not only undermines justice but also further silences and diminishes the voices and experiences of victim-survivors.

For this reason, both NAPCAN and NYSOfully support calls from the #YourReferenceAintRelevant campaign to eliminate the use of good character references in the sentencing of convicted rapists, child sex offenders, and domestic violence perpetrators. By doing so, we prioritise justice for victims and ensure that those who commit crimes of this nature face consequences that align with the severity of their actions.

### 2.1 Recommendation(s):

The Queensland Government should eliminate good character references entirely from sentencing proceedings where the person has been convicted of a sexual offence, including rape, family and domestic violence, and child sexual offences.

## 3. Introduce a statutory aggravating factor for rape and sexual assault against children aged 16 or 17 years

NAPCAN and NYSO recognise the significance of this amendment and support the introduction of a statutory aggravating factor for rape and sexual assault for children aged 16 or 17 years in the proposed Bill. The introduction of a statutory aggravating factor reflects the reality that sexual violence against older teenagers can involve unique forms of coercion and exploitation. The exceptional circumstance — where age gap is taken into account — will further help to ensure justice is applied fairly and proportionately.

**Why is this amendment supported by NAPCAN?**

NAPCAN is directly involved in delivering consent education in consultation with many respected institutions across the country. Although 16 is the age of legal consent, our experience shows that, in reality, young people in this age group are too often coerced, manipulated, or pressured into giving consent, especially by older individuals or those in positions of power. This was further recognised by Women's Safety and Justice Taskforce and their recent push to change the definition of consent, as it was recognised as something that needed to be 'given' (Women's Safety and Justice Taskforce Community Attitudes to Sexual Consent).

Through consultation with NYSO members and throughout NAPCAN's Love Bites (respectful relationship training) sessions, we have heard stories from many young Australians who have said "yes" to avoid conflict, out of fear of consequences, or simply because they did not have the ability to say "no."

In these cases, what appears to be consent is not freely or fully given, which we now as a society better understand can be a form of coercion or sexual abuse. We also know that, far too often, young victims do not come forward because they fear not being believed or because they blame themselves for "agreeing." The statutory guidelines and sentencing structure should reflect the realities of how consent works in unequal, unsafe, or coercive situations, especially for 16- and 17-year-olds.

**Consistency in recognising young people as under 18**

Introducing a statutory aggravating factor for rape and sexual assault against 16- and 17-year-olds is not only a protective measure, it is also a necessary step towards ensuring consistency in how we recognise, respond to, and prevent child sexual abuse and exploitation across Australia.

Across Australia, in national frameworks, children and young people are consistently defined as being under the age of 18. This includes the National Office for Child Safety, which defines child sexual abuse as involving children and young people under the age of 18 (NOCS, 2024).

Additionally, Federal and State-based online safety and child protection resources routinely include protections for individuals up to 18, recognising the developmental and legal status of this age group.

It would be inconsistent with other recognised national frameworks if criminal sentencing frameworks were to treat sexual offences against 16- and 17-year-olds as less serious than those against children under 16. This inconsistency risks creating gaps in protection for young people who are vulnerable or at risk.

Sexual offences against 16- and 17-year-olds often involve grooming, power imbalances, in particular when the offender is older coercion or manipulation. The introduction of a statutory aggravating factor would align the justice system with existing child protection policies, ensuring that all young people under 18 are treated as deserving of equal safety, support and justice.

The proposed amendment further ensures teenagers are not inadvertently excluded from the higher levels of care and seriousness afforded to younger children in similar situations.

**3.1 Recommendation(s):**

1. The Queensland Government should further expand the definition of aggravating circumstances
   1.1 The statutory guidelines should further recognise offenders who are in a position of authority — including but not limited to teachers, managers and sports coaches — to better allow courts to determine whether consent was valid and voluntary.
2. The Queensland Government should establish clear guidelines on exceptional circumstances.
   2.1 The Bill identifies age gap as an example of an exceptional circumstance. Further and clearer guidelines must be outlined in order for courts to determine each exceptional circumstance, to ensure judgement and sentencing are consistent and fair.

## 4. Clarify that no inference may be drawn from the absence of details of harm caused to a victim

In line with the Queensland Sentencing Advisory Council's report, NAPCAN and NYSO support the recommendation to clarify that, in the instance of a victim impact statement or details of the harm caused to a victim by the offence being absent at the time of sentencing, that no inference shall be drawn as to these absences when considering the harm caused to a victim.

As an organisation that advocates for the rights and safety of young people across Australia, we affirm that these amendments to the *Penalties and Sentences Act* 1992 are not only important, but that they represent a welcome shift towards a safer and more socially just institutional paradigm for survivors of sexual violence in Queensland.

At present, this is not happening to anywhere near the extent it needs to. In recognition of the realities faced by victim-survivors, in that the justice system is not suited to advocate for plaintiffs of interpersonal crimes, we reaffirm our support for initiatives that bring the justice system closer to delivering fair and just outcomes for victim-survivors.

Furthermore, in line with literature that points to various reasons for the absence of a victim impact statement at the time of sentencing — for instance, due to lack of trust in the institution (Miller 2013); fear of being disbelieved by prosecutors (Roy 2019); and patriarchal bias within the courts (Epstein & Goodman 2018) — we recognise this as overdue and necessary progress towards a model for our justice system wherein trauma-informed principles are implemented at the legislative level.

## 5. The *Working with Children (Risk Management and Screening) and Other Legislation Amendment Act* 2024 (WWC Amendment Act)

NAPCAN and NYSO welcome the opportunity to provide feedback on the *Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Bill* 2025, specifically the proposed amendments to the *Working with Children (Risk Management and Screening) Act* 2000 (WWC Act). We strongly support efforts to strengthen Queensland's Blue Card system and ensure that all measures to protect children from harm remain robust, as well as responsive to identified gaps.

We recognise that Blue Cards play a critical role in safeguarding children, particularly in environments where adults hold positions of trust. However, as noted in the *Keeping Queensland's children more than safe: Review of the blue card system - Blue Card and Foster Care Systems Review* (2017), the Blue Card system cannot work in isolation. A child-safe Queensland relies on effective screening as well as a whole-of-system approach, including sound organisational cultures, appropriate supervision, clear child protection policies, and active community engagement in child safety.

We support the proposed amendments to section 295 of the WWC Act as outlined in the Bill. These amendments restore the chief executive's authority to suspend a Blue Card where a person is charged with serious or disqualifying offences, ensuring this power, unintentionally removed in a previous amendment, is reinstated and strengthened.

We also welcome the introduction of the "prescribed offence" definition, which clarifies and consolidates the types of offences that can trigger suspension; includes comparable offences committed in other jurisdictions; and encompasses related criminal behaviours such as attempts, conspiracies, and counselling others to commit serious offences. The technical corrections and improved cross-references (e.g., amendments to sections 304B, 304C, and 609) are also supported as they help improve procedural consistency. These updates better reflect the real risks to children's safety and bring Queensland's legislation into alignment with best-practice child protection frameworks.

We recognise the Bill aligns with themes of the Keeping Queensland's children more than safe review, however, we also acknowledge that many of the recommendations from the Review are still in the process of being addressed. We strongly urge the Queensland Government to commit to the full implementation of all recommendations over time, and for organisations who work with children to seek a national police check of employees to ensure there is a check across jurisdictions.

### 5.1 Recommendations:

To embed trauma-informed practices across screening and care systems.

To increase cultural safety and responsiveness in Aboriginal and Torres Strait Islander communities.

To enhance system integration between the Blue Card system and other regulatory, employment, and service systems.

To implement all recommendations made by Queensland Family and Children Commission.

**References**

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