

13 May 2024

Queensland Sentencing Advisory Council
GPO Box 2360
Brisbane Qld 4001

Via email to: submissions@sentencingcouncil.qld.gov.au

To the Queensland Sentencing Advisory Council

Re: Sentencing of Sexual Assault and Rape – The Ripple Effect

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) Queensland Branch welcomes the opportunity to provide comment on the Consultation Paper on Sentencing of Sexual Assault and Rape – The Ripple Effect.

Thank you for the extension of time to submit to this consultation.

The Queensland Branch will limit its response to this consultation by focusing on the complex intersection between mental health and intellectual disability and the criminal justice system:

- how medical reports, including psychiatric reports, are currently used, what information is included in these reports and any barriers to their use
- the importance of addressing the mental health and wellbeing of perpetrators of sexual assault and rape living with mental disorder/s and/or intellectual and developmental disability to prevent future sexual offending
- adequate resourcing of related mental health and community services in Queensland.

How medical reports, including psychiatric reports, are currently used, what information is included in these reports and any barriers to their use

The Queensland Branch recognises that psychiatric reports can be very useful in court proceedings by assisting the court with information about the presence or absence of mental disorder/s or mental health problems, the relationship between mental disorder/s and criminal responsibility and issues related to fitness for trial.

The Queensland Branch recognises that it may be beneficial for a court to have access to:

- psychiatric reports for victims to supplement and support information contained in victim impact statements
- psychiatric reports for people charged with an offence or sentenced to help a court understand the relevance of mental disorder/s to offending, fitness for trial and treatment needs.

As recommended in the RANZCP Professional Practice Guideline 11: Developing reports and conducting independent medical examinations in medico-legal settings (2020), reports should be provided by an independent medical expert. Treating doctors can provide letters of fact rather than opinion.

Patient–psychiatrist confidentiality: the issue of subpoenas

RANZCP psychiatrist members are however increasingly concerned about patient-psychiatrist confidentiality being undermined by the use of subpoenas to gain access to clinical records, even when the disclosure of these records appears to serve little evidentiary purpose and is likely to have severe effects on former, current and potential patients.

The RANZCP *Position Statement No. 89 Patient-psychiatrist confidentiality: the issue of subpoenas (2016)*, explains that confidentiality is necessary to encourage victims to both seek counselling and report a crime. Furthermore, the purpose of counselling is therapeutic, not investigative and consequently, the notes taken will often be unfit for the purpose of settling facts in issue during court proceedings and may instead be used to cast unwarranted doubts upon the credibility and character of victims.

Except in the case of Queensland, all states and territories restrict access to communications between health professionals and victims of sexual assault.

In Victoria, for example, the party seeking to disclose those communications in a civil or criminal proceeding must:

- obtain leave from the court before issuing a subpoena
- prove that the evidence will have substantial probative value to a fact in issue
- prove that the public interest in preserving the confidentiality of confidential communications and protecting a protected confider from harm is substantially outweighed by the public interest in admitting the evidence.

The RANZCP Queensland Branch advocates that victims of sexual assault and rape in Queensland should benefit from the same restrictions in access to communications between health professionals and victims of sexual assault and rape.

The importance of addressing the mental health and wellbeing of perpetrators of sexual assault and rape living with mental disorder/s and/or intellectual and developmental disability to prevent future sexual offending

The Queensland Branch advocates that, for patients within the criminal justice system, it is very important to facilitate early access to mental health care in a manner that is equivalent to the community, and this may include access to existing health care organisations (e.g. NDIS support) to prevent deterioration in their mental health.

Under the *Mental Health Act 2016 (Queensland)*, people with mental disorder/s who need inpatient care can be diverted from custody and receive treatment and care in an authorised mental health service. Treatment in an authorised mental health service should be supported, however the Queensland Branch emphasises that there are inadequate inpatient facilities to support these individuals.

Queensland is fortunate to have access to the Mental Health Court that can consider matters of criminal responsibility and fitness for trial and, where appropriate, can make Forensic Orders to support a person's treatment, care and risk management. This should be supported to continue and be adequately funded. In addition, Queensland Health provides mental health services in the courts, watch houses and correctional centres to support the treatment and care of individuals in the criminal justice system. Queensland has arguably the most comprehensive specialist mental health services for people in the criminal justice system in Australia. These services can provide treatment and care for individuals with mental disorder/s and those living with intellectual and developmental disability.

The Queensland Branch continues to advocate for enhanced mental health services in custody, and importantly recognises the significant short fall in adequate care for people with substance use disorders and those living with intellectual and developmental disability and emphasises the urgent need to ensure these comorbid health concerns are addressed as a serious public health concern.

Queensland has one High Security Inpatient Service, “The Park” at Wacol, for persons on forensic orders, or classified persons who have committed serious offences. However, this service can only take a proportion of high-risk, classified persons. The remainder of this patient cohort are transferred to a general adult mental health ward.

The RANZCP Queensland Branch advocates that high-risk persons requiring inpatient care, including those from custody, would benefit from specialist treatment in a purpose-built facility at “The Park”, which should have a 25-bed inpatient unit for highly complex and high-risk persons.

To be eligible for this specialist treatment, persons would be assessed as beyond the capacity of general adult authorised mental health services, who are not at the offending level for the High Security Inpatient Service, and who are not suitable for rehabilitation in a Secure Mental Health Rehabilitation Unit.

Adequate resourcing of related mental health and community services in Queensland

Another key concern for the Queensland Branch is that, despite having a well-developed mental health system for people in custody, the growth of the custodial population has well outstripped the capacity of these services to meet the needs of people with complex mental health problems transitioning into the community. In the absence of appropriate mental health and social care, these individuals are at a higher risk of re-offending or having a relapse of their mental health or substance use problems.

The Queensland Branch advocates that facilitating optimal mental healthcare for people in custody with complex needs is predicated on appropriate and adequate resourcing of an array of related services in Queensland. This includes effective resourcing and integration of mental health services, effective funding of drug and alcohol services, care co-ordination and addressing social determinants of health like homelessness.

To discuss the contents of this submission please contact me via Ms Nada Martinovic, Policy and Advocacy Advisor, at nada.martinovic@ranzcp.org, or on (07) 3426 2200.

Yours sincerely



Professor Brett Emmerson AM
Chair, RANZCP Queensland Branch Committee