

# Dr Marisa Paterson MLA

MEMBER FOR MURRUMBIDGEE

## MEDIA RELEASE

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### **Proposal to allow 'sentencing submissions' in ACT criminal proceedings**

Dr Marisa Paterson, MLA is seeking community input on a proposal to amend the *ACT's Crimes (Sentencing) Act 2005* to allow for recommendations on sentencing to be made by both the prosecution and defence in ACT criminal proceedings.

There has been much public discussion about sentencing in the ACT, we need to be continually looking at ways to improve our criminal justice system. One aspect that has not been explored in the ACT is 'sentencing submissions'.

Dr Paterson states "Sentencing submissions provide the opportunity for the prosecution or defence to provide a recommendation to the judge of the sentence that they feel would be appropriate. Currently, due to a 2014 High Court decision, this is not an option. The provision of a 'sentencing submission' is not complicated, and provides an opportunity not currently afforded, that law reform experts and victim advocates suggest may go some way to alleviating the often disempowering criminal justice process – particularly through appeal processes'.

The proposed change comes after concerns raised by victims of crime, their families, and the Director of Public Prosecutions (DPP) which expressed a need for sentences in the ACT to reflect community standards and expectations and minimise the number of appeals.

'Sentencing submissions' were a recommendation 2021 Sexual Assault Prevention and Response Reform Program Steering Committee report in respect to sexual assault cases. The law reform committee suggested that the current limiting of such submissions potentially leads to an unnecessary increase in appeals based on either inadequate or excessive sentences. The report stated that 'protracted appeals may continue to traumatise victim survivors and do not provide closure'.

The DPP's Annual report 21/22 (p.30) highlights their increased focus and success rate in sentencing appeals – particularly appeals 'to address sentences for murder and child sexual offending that we considered fell clearly short of community standards for offending of this type'. The report suggests a 'record number of High Court appeals' for the 2021-22 period.

Dr Paterson states: 'The recent inquiry into dangerous driving also saw much debate around community expectations of sentencing for dangerous driving offences. Pulling all the evidence together over the past couple of years, I see a great opportunity and a need to try something new. The sentence as a decision is still entirely at the judges' discretion – however, this is an opportunity for the prosecution and defence to provide more information if they see fit, contributing to greater transparency and more robust representation.'

Dr Paterson says, “I feel that this legislation would go some way providing a voice to victims on the aspect of sentencing through their legal representation. The legislation may also provide judges in the ACT with some context of differing opinions on sentencing and require more robust reasoning for the sentences that they deliver.”

The proposed legislative change would override the High Court decision *Barbaro v The Queen* [2014] which limited the ability of both parties in a court case to make submissions regarding the appropriate sentencing range.

Legislative changes to overturn the High Court decision have been made in Queensland, and [Victoria](#) has also developed a practice which allows for the Crown and defence to give information to the court about “*the type of sentence the offender deserves (for example, imprisonment or a community correction order)*” and “*examples of sentences in similar cases*”.

Dr Paterson is seeking public comment on a discussion paper regarding potential legislative change to allow sentencing submissions in the ACT.

A discussion paper is available for public comment until COB 12 May 2023.

A discussion paper can be found on Dr Paterson’s website [www.marisapaterson.com.au](http://www.marisapaterson.com.au)

Submissions are to be sent to: [paterson@parliament.act.gov.au](mailto:paterson@parliament.act.gov.au)

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