

29 July 2021

Women's Safety and Justice Taskforce
GPO Box 149
Brisbane Qld 4001

Level 13, 257 Collins Street
Melbourne VIC 3000
PO Box 38
Flinders Lane VIC 8009
T: (03) 8662 3300
F: (03) 9663 6177
psychology.org.au

Submitted online via <https://www.womenstaskforce.qld.gov.au/consultation/make-a-submission>

To whom it may concern,

Australian Psychological Society response to Discussion Paper 2: Women and girls' experience of the criminal justice system

The Australian Psychological Society (APS) is the peak professional body for psychologists in Australia, representing over 27,000 members nationally and over 5,000 in Queensland. Many of our psychologists work with women* who interact with the criminal justice system in Queensland, either as victims or perpetrators of crimes, or support persons.

The APS welcomes the opportunity to respond to the Women's Safety and Justice Taskforce's second discussion paper and again commends the aims and objectives to be achieved. The APS membership has diversity in training, skills and experience which would be valuable to the implementation of a broad variety of outcomes and initiatives of The Taskforce. The APS would be pleased to assist in the co-designing of evidence-based approaches to be tailored for the Queensland context.

An additional cross-cutting theme which is touched on in *Discussion Paper 2* is an examination of the broad social determinants that contribute to crime and troubling behaviour. There are basic social inequalities, which when combined with challenging personal histories, create an environment conducive to crime. A holistic approach is advantageous rather than simply focussing on the outcomes of crime for female victims and perpetrators. The British Psychological Society has funded the development of a new approach - *The Power Threat Meaning Framework*¹ which may prove useful in examining the social determinants of crime.

In responding to *Discussion Paper 2*, the APS has identified four main areas in which evidence-based approaches can be used to minimise the psychologically damaging effects of sexual offences against women or negative experiences of women's experience in the Criminal Justice System. It is important, however, to acknowledge that this is not a comprehensive account and further information can be provided upon request or in response to future, more detailed discussion papers.

Recommendation 1: The APS supports the issues and themes identified by the Taskforce, but also recommends that it undertakes an in-depth consideration of the broad social determinants of crime.

Sexual Offending Against Women

While the APS supports the Taskforce's focus on sexual offences against women, as it constitutes a significant proportion of unreported and highly psychologically damaging crimes², we acknowledge the effect of other crimes committed against women such as psychological or physical abuse, discrimination, *inter alia*. It is also highly likely that sexual and other types of violence against women have significantly intensified during the past 12 months due to COVID-19 restrictions³.

*Throughout this paper, the APS refers to women as also including 'girls' under the age of 18.

Given this, and the pragmatic reality that the Taskforce must focus its efforts, the APS supports the Taskforce's emphasis on sexual offending against women and barriers to reporting.

There are a range of reasons why women who have been subject to sexual offences struggle to report the offences and/or struggle through the criminal justice system. Some are outlined below:

- **Feelings of shame, guilt and embarrassment** – These are very common and women often feel that they will be judged adversely by family/friends, police, or the community at large. Given most perpetrators are known to victims, there is often embarrassment about why they did “not see the signs” or allowed themselves to be alone with the perpetrator. There is also the case of repeated sexual assaults by the same perpetrator, whereby victims experience a greater sense of shame and embarrassment and worry that they will be blamed.
- **Fear of retaliation by the perpetrator** – threats are often made by perpetrators, particularly if they have a relationship with the victim, or there are children involved, and this can work towards silencing the victim.
- **Financial dependence upon the perpetrator** – in situations where the victim is in a relationship with the perpetrator who controls their finances, there may be fear that they will be left with minimal financial resources; potentially leading to homelessness.
- **Disbelief in getting a successful prosecution** – victims have at times attempted to seek assistance and have felt that the attempts have not been helpful or resulted in action from police (e.g., a PPN) or there are concerns that they will not be believed by police or other members of the justice system.
- **Cultural or language barriers** – Those who come from culturally and linguistically diverse backgrounds often report not knowing who or how to report assaults, and in some cases, are unaware that the assaults are illegal in Australia (e.g., spousal rape).

A particular group who experience high incidences of sexual offences and is often overlooked by statistics and research in family and sexual offences are people from the LGBTIQ+ community, particularly transgender women. It has recently been reported that over two-fifths of LGBTIQ+ survey responders felt they were abused in some way by their intimate partner and almost half reported having been coerced or forced into unwanted sexual acts⁴. It has also been found that LGBTIQ+ people who seek support if they are abused, or wish to change their behaviour toward their intimate partner, may find it particularly difficult to access appropriate services⁵. As described in *Discussion Paper 2*, there are also disturbingly high rates of sexual offences against Aboriginal and Torres Strait Islander women and ability-diverse backgrounds.

Recommendation 2: The APS supports the focus on sexual offending against women and barriers to reporting. The APS urges the taskforce to explicitly consider the experiences of Aboriginal and Torres Strait Islander women, other Queenslanders with ability, cultural or linguistically diverse backgrounds, and members of the LGBTIQ+ community, particularly transgender women.

Attitudes towards women and female victims

Insights gained from The National Community Attitudes Survey on Violence Against Women included an investigation of the current knowledge about, and attitudes towards, the various forms of sexual assault in Australia⁶. The results suggest that many Australians still think victims of sexual offences are at least partially to blame. Similar beliefs have also previously been reported in the police-force⁷. In particular, the following was found in Australians aged 16 and over:

- 1 in 5 (19%) were unaware that non-consensual sex in marriage is against the law,
- 1 in 10 (11%) believed that women were ‘probably lying’ about sexual assault if they did not report it straight away,
- 2 in 5 (42%) agreed that ‘it was common for sexual assault accusations to be used as a way of ‘getting back at men’,
- 1 in 3 (33%) believed that ‘rape resulted from men not being able to control their need for sex’,
- 1 in 8 (13%) agreed that a man is justified in having non-consensual sex if the woman initiated intimacy in a scenario where a couple had just met, and
- 1 in 7 (15%) agreed this was justified in a scenario where the couple were married and the woman initiated intimacy.⁶

These attitudes are all thought to impact on the rate of disclosures and reports being made by victims.

There will need to be widespread social change to reverse this culture in Australia. Given this, the APS supports the Taskforce's suggestion to examine community attitudes to sexual offending against women.

Psychologists are equipped to **support attitudinal change** and overcome biases in perception and information processing using evidence-based approaches^{8,9}. Attitudinal change programs should be targeted to the current community readiness level¹⁰. The APS would be pleased to assist in the co-design and implementation of initiatives to increase the knowledge and understanding of sexual offences against women with the aim to change the current damaging widespread attitudes.

The APS also commends the decision to consider reformation of the laws around sexual consent. Currently in Queensland a defendant is not required to actively seek consent to have an honest and reasonable belief that consent was given. The absence of affirmative (or active) consent leaves room for misinterpretation and increases difficulty in convicting offenders¹¹. Furthermore, the fact that consent laws differ according to each State and Territory¹² is confusing and complicates efforts to raise public awareness of the issues and to deliver education programs. A consistent message delivered to Australians will help community understanding of the importance of **affirmative consent** and what constitutes acceptable sexual behaviour and what constitutes a sexual offence.

Recommendation 3: Community and police-force attitudes and understanding of sexual offences against women should be carefully examined by The Taskforce. The APS would be pleased to assist with the co-design and implementation of evidence-based approaches to supporting attitudinal change and understanding of the importance of affirmative consent.

Practices that increase empowerment and respect

For victims

As mentioned in the submission in response to the first *Discussion Paper*, the APS commends current policing practices that **empower victims** to decide, in consultation with attending police, what action they prefer to occur. In the case of domestic violence or coercive control, this may be moving the victim (and possibly children) to a safe location, unknown to the perpetrator, or removing the perpetrator from the family house. Collaborative decision making enables victims to be informed of the impact of their choices and be empowered to have agency over their situation¹³. Empowerment is central to the core principles of **trauma-informed practice** to support the recovery of victims¹⁴.

Another example of a practice that could be more acceptable to victims while ensuring valuable information is not lost is **pre-recording complainant evidence** as a means to avoid further questioning in open Court¹⁵. This has the following advantages:

- With an effective and trauma-informed interview, the complainant's statement can be taken in full and presented as Evidence in Chief,
- The complainant is in a more relaxed environment to provide increased information,
- By producing a video recorded interview, investigators have access to the linguistic, psychological and factual evidence produced. Much of this evidence is removed in a transcript, or summarised statement,
- By using a trained and experienced psychologist to conduct interviews, any evidence will be tested as to its admissibility during the interview, and this can inform police investigations, reducing attrition rates upon trial,
- Legal professionals can also have confidence in the interviewing process.

At present, there are no **centralised support services** that are able to assist a person who has been sexually offended against. The Barnahus model in Europe shows significant promise where medical professionals, law enforcement and support services are co-located to provide individuals with access to specifically trained persons to assist with evidence collection and therapeutic interventions²¹. It is important to acknowledge an example which was raised by an APS member - the Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM) in Victoria. As mentioned in our submission in response to *Discussion Paper 1* the MARAM Framework outlines the **common approach across services** to identify, assess and manage family violence risk²². This approach facilitates information sharing across services to co-develop a management plan.

For offenders

Unlike European counterparts with much lower levels of recidivism, Australian prisoners often reoffend¹⁶. In part, this could be due to their **experience in prison lacking opportunities** to learn new skills, approaches, or strategies to cope with, often very challenging life in the community. Importantly, a very high proportion (over 90%) of women in prison have histories of trauma which is a predictor of both offending and reoffending¹⁷. At the very least, this indicates a need for **psychological support** for women in prison. For this reason, it is important to create an **environment of support**, rather than one that is intimidating and sterile¹⁷.

This may also include revising security procedures such as 'open' strip searches and pat downs by (for example) male officers to not retraumatise women¹⁷.

The UK reformed its approach to the incarceration of women, only **reserving prison sentences for offenders who pose a threat to the public**^{18,19}. As an alternative, the UK expanded community women's centres to provide centralised access to address "social, health and welfare needs"¹⁸. It is important to acknowledge the particular loss of connection to country and kinship which Aboriginal and Torres Strait Islander women may experience while in prison²⁰. The APS would encourage the taskforce to co-design particular approaches with community representatives to support Aboriginal and Torres Strait Islander women to avoid incarceration, or during and after time in prison.

In addition, better understanding and research into 'women who use force' has begun to find that these women have different motivations and reflections on their crime. It is important, therefore to have tailored and evidence-based programs for women in prison²³ or undergoing release²⁴. There is also relatively new work being done in Australia (e.g. positive SHIFT²⁵) which support women who use force to explore alternatives in their intimate relationships. It is important that these approaches are appropriately evaluated so that evidence-based approaches to providing support can be utilised.

Recommendation 4: The utilisation of trauma-informed, evidence-based practices which encourage respect and empowerment should be used to support women who are victims and women who are offenders and come in contact with the criminal justice system.

Need for Best Practice Interview Approaches

The APS strongly endorses **interviewing techniques** that are validated by **research and best practice**. We acknowledge that there has been some movement in the last 12 months in both Northern Territory and Gold Coast jurisdictions to improve interviewing of complainants of sexual violence^{26,27}. While this is promising and suggests there is some change, we question whether this will be enough to encourage women and children to come forward if the best practice in interviewing is not being utilised. Interviews conducted by the appropriately trained and experienced psychologists are uniquely placed to avoid retraumatizing complainants and produce increased levels of probative evidence to continue legal actions. Important considerations include:

- Evidence indicates that 41% more detail is elicited using a **cognitive interview** than standard investigative interviews alone²⁸. A newer study using an **enhanced interview technique** elicited four-and-a-half times more information than the cognitive interview²⁸.
- A significant challenge to these interviews is the time taken (two to three hours), which is longer than many Police officers have amongst their other duties.
- An interview with significant contribution from a psychologist can clarify the information that police are often reluctant to engage with including the difference between consensual sex and rape, will test the veracity of the information, and can also address 'rape myths' in the evidence elicited, potentially removing the requirement for cross examination.

Skills such as rapport building, question selection, and wording for successful interviewing are skills maintained by psychologists. In contrast, police abilities may be more limited in this domain and appear to require ongoing training updates²⁹.

In the United States, the Start by Believing philosophy began to take shape in April 2011, which **includes trauma-informed approaches** to interviewing, policies, practices, training and collaboration of responding professionals³⁰. Again, specialist interviewers are used with complainants of sexual assault, recognising the impact of trauma on an individual attempting to provide information. This philosophy draws from a neurobiological basis of trauma and seeks additional cues of trauma in the interview, such as narrowed attention, dissociation, impaired reasoning etc. By recognising these cues within the complainant's narrative and being able to elicit this information, more thorough evidence-based investigations can be supported by the interview.

Recommendation 5: The APS recommends the use of best practice, evidence-based and trauma-informed interview approaches, ideally undertaken by psychologists or other highly trained personnel.

Thank you again for the opportunity for the APS to respond to the Women's Safety and Justice Taskforce's second discussion paper. If the Taskforce requires any further input from the APS, I would be happy to be contacted through my office on (03) 8662 3300 or by email at z.burgess@psychology.org.au.

Kind regards,

A handwritten signature in black ink, appearing to read 'Zena Burgess', with a stylized flourish at the end.

Dr Zena Burgess, FAPS FAICD
Chief Executive Officer

The APS would like to acknowledge and sincerely thank the members who so kindly contributed their time, knowledge, experience and evidence-based research to this submission. Their psychological expertise related to women's experience with the criminal justice system was highly informative and greatly appreciated.

References

1. Johnstone, L., Boyle, M., Cromby, J., Dillon, J., Harper, D., Kinderman, P., Longden, E., Pilgrim, D., & Read, J. (2018). *The Power Threat Meaning Framework—Towards the identification of patterns in emotional distress, unusual experiences and troubled or troubling behaviour, as an alternative to functional psychiatric diagnosis*. British Psychological Society. https://www.bps.org.uk/sites/www.bps.org.uk/files/Policy/Policy%20-%20Files/PTM%20Framework%20%28January%202018%29_0.pdf
2. Australian Centre for the Study of Sexual Assault. (2011). *The impacts of sexual assault on women* [Text]. Australian Institute of Family Studies. <https://aifs.gov.au/publications/impacts-sexual-assault-women>
3. United Nations. (2021). *COVID-19 and Ending Violence Against Women and Girls*. <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006>
4. Hill, A., Bourne, A., McNair, R., Carman, M., & Lyons, A. (2020). *Private Lives 3 -The health and wellbeing of LGBTIQ people in Australia*. La Trobe University.
5. Australia's National Research Organisation for Women's Safety. (2020). *Developing LGBTQ programs for perpetrators and victims/survivors of domestic and family violence: Key findings and future directions*. <https://www.anrows.org.au/publication/developing-lgbtq-programs-for-perpetrators-and-victims-survivors-of-domestic-and-family-violence-key-findings-and-future-directions/>
6. Webster, K., Diemer, K., Honey, N., Mannix, S., Mickle, J., Morgan, J., Parkes, A., Politoff, V., Powell, A., Stubbs, J., & Ward, A. (2018). *Australians' attitudes to violence against women and gender equality* (Australia; Issue ANROWS Research report 03/2018) [Report]. Australia's National Research Organisation for Women's Safety. <https://apo.org.au/node/207046>
7. Maher, J., McCulloch, J., Fitz-Gibbon, K., & Walklate, S. (2017). *Finally, police are taking family violence as seriously as terrorism*. The Conversation. <http://theconversation.com/finally-police-are-taking-family-violence-as-seriously-as-terrorism-88939>
8. Puccetti, M., Greville, H., Robinson, M., White, D., Papertalk, L., & Thompson, S. C. (2019). Exploring Readiness for Change: Knowledge and Attitudes towards Family Violence among Community Members and Service Providers Engaged in Primary Prevention in Regional Australia. *International Journal of Environmental Research and Public Health*, 16(21), 4215. <https://doi.org/10.3390/ijerph16214215>
9. Powell, A., & Webster, K. (2018). Cultures of gendered violence: An integrative review of measures of attitudinal support for violence against women. *Australian & New Zealand Journal of Criminology*, 51(1), 40–57. <https://doi.org/10.1177/0004865816675669>
10. Oetting, E. R., Donnermeyer, J. F., Plested, B. A., Edwards, R. W., Kelly, K., & Beauvais, F. (1995). Assessing community readiness for prevention. *The International Journal of the Addictions*, 30(6), 659–683. <https://doi.org/10.3109/10826089509048752>
11. Burgin, R. (2019). *Australian law doesn't go far enough to legislate affirmative consent. NSW now has a chance to get it right*. The Conversation. <http://theconversation.com/australian-law-doesnt-go-far-enough-to-legislate-affirmative-consent-nsw-now-has-a-chance-to-get-it-right-125719>
12. Goldsworthy, T. (2018). *Yes means yes: Moving to a different model of consent for sexual interactions*. The Conversation. <http://theconversation.com/yes-means-yes-moving-to-a-different-model-of-consent-for-sexual-interactions-90630>
13. blue knot foundation. (2021). *Trauma-informed information and resources*. Blue Knot Foundation. <https://www.blueknot.org.au/Resources/Information/Trauma-Informed-Care-and-Practice>

14. Hopper, E. K., Bassuk, E. L., & Olivet, J. (2010). Shelter from the Storm: Trauma-Informed Care in Homelessness Services Settings. *The Open Health Services and Policy Journal*, 3(2), 80–100. <https://doi.org/10.2174/1874924001003020080>
15. Kebbell, M., & Westera, N. (2011). Promoting pre-recorded complainant evidence in rape trials: Psychological and practice perspectives. *Criminal Law Journal*, 35(6), 376–385.
16. Yukhnenko, D., Sridhar, S., & Fazel, S. (2020). A systematic review of criminal recidivism rates worldwide: 3-year update. *Wellcome Open Research*, 4, 28. <https://doi.org/10.12688/wellcomeopenres.14970.3>
17. Meyer, S. (2016). *Women in prison: Histories of trauma and abuse highlight the need for specialised care*. The Conversation. <http://theconversation.com/women-in-prison-histories-of-trauma-and-abuse-highlight-the-need-for-specialised-care-68668>
18. McCausland, R. (2016). *Australia is locking up too many women but the UK offers a blueprint for a radical new approach*. The Conversation. <http://theconversation.com/australia-is-locking-up-too-many-women-but-the-uk-offers-a-blueprint-for-a-radical-new-approach-65043>
19. Campbell, E., & Hulls, R. (2016). *Should we be locking people up in prisons at all?* The Conversation. <http://theconversation.com/should-we-be-locking-people-up-in-prisons-at-all-63207>
20. PwC's Indigenous Consulting. (2017). *Indigenous incarceration: Unlock the facts*. 96.
21. Johansson, S., Stefansen, K., Bakkteig, E., & Kaldal, A. (2018). *Collaborating Against Child Abuse—Exploring the Nordic Barnahus Model*. Palgrave Macmillan. <https://www.palgrave.com/gp/book/9783319583877>
22. Victorian Government. (2021). *MARAM practice guides and resources*. Family Violence Multi-Agency Risk Assessment and Management Framework. <http://www.vic.gov.au/maram-practice-guides-and-resources>
23. Jones, J., Wilson, M., Simpson, P., & Butler, T. (2017). *Women who commit violent crimes need programs to help them while in prison*. The Conversation. <http://theconversation.com/women-who-commit-violent-crimes-need-programs-to-help-them-while-in-prison-72279>
24. Palombo, L. (2015). *Post-release mentoring succeeds in everything but winning funding*. The Conversation. <http://theconversation.com/post-release-mentoring-succeeds-in-everything-but-winning-funding-40077>
25. Berry Street. (2021). *Family Violence Support Services—Positive Shift*. Berry Street. <https://www.berrystreet.org.au/what-we-do/family-violence-services/positive-shift>
26. Read, C., & Precel, N. (2021). Police training to improve 'Russian roulette' sexual assault response. *Brisbane Times*. <https://www.brisbanetimes.com.au/national/queensland/police-training-to-improve-russian-roulette-sexual-assault-response-20210527-p57voc.html>
27. Laetitia, L. (2021). In the NT Police sex crimes unit, Detective Engels is trying to stop survivors having to 'cop-shop'. *ABC Online*. <https://www.abc.net.au/news/2021-05-30/nt-police-course-training-officers-interview-victims/100170704>
28. Paulo, R. M., Albuquerque, P. B., & Bull, R. (2016). Improving the enhanced cognitive interview with a new interview strategy: Category clustering recall. *Applied Cognitive Psychology*, 30(5), 775–784. <https://doi.org/10.1002/acp.3253>
29. Akca, D., Larivière, C. D., & Eastwood, J. (2021). Assessing the efficacy of investigative interviewing training courses: A systematic review. *International Journal of Police Science & Management*, 23(1), 73–84. <https://doi.org/10.1177/14613557211008470>
30. Canaff, R., Lonsway, K. A., & Archambault, J. (2020). *Trauma-Informed Interviewing and the Criminal Sexual Assault Case: Where Investigative Technique Meets Evidentiary Value*. End Violence Against Women International (EVAWI). https://evawintl.org/wp-content/uploads/2020-02_TB-Trauma-Informed-Interviewing-and-the-Criminal-SA-Case-Technique-Meets-Evidentiary-Value.pdf