

CSAS submission to the Taskforce on Women's Experience of the Justice System.

Introduction:

Cairns Sexual Assault Service provides counselling and support to victim-survivors of sexual violence as well as their non-offending loved ones. We welcome clients of all genders. Counselling is provided during business hours and we also provide on-call support workers on a 24hr roster to attend the hospital or Police station when someone presents there after a sexual assault or rape. In line with the widely quoted 'only 10% of sexual assault is reported to Police', (Australian Institute of Health and Welfare 2020) most of our clients have never reported to Police, or if they did, the case did not make it to court and the perpetrator can continue their lives, while our clients struggle to cope with ongoing trauma symptoms and negative impacts on their ability to maintain employment or engage in healthy relationships. The following submission has been prepared by the Manager of the service, Ella Morter, and is responding to Part 1 only of Discussion paper 2.

Discussion Question; *Given rates of victimisation are highest for women and girls with respect to sexual offences, within the time available, do you support the Taskforce focusing inquiries on sexual offending against women? If not, why not and what other offence types should the Taskforce focus on?*

No. 'A focus on sexual offending against women' puts the onus and lens on the victim-survivors, and this view perpetuates the societal reticence to label the actual issue; men's sexual and physical violence against women, children and other men.

Without labelling this issue for what it is, no meaningful change is possible. The paper acknowledges the problem; "During 2019–20, nearly all (96.7%) sexual assault offenders recorded by police were male". We believe that focus on the experience of women and girls will perhaps enable them to feel more supported in court, and perhaps encourage more victim-survivors to report, yet it will do nothing to stop male perpetrators continuing to get away with sexual violence and using the system against their victims. We propose instead that the focus must be on holding perpetrators accountable.

The criminal justice system is failing women because their male rapists believe that they will not be held accountable for their actions. Men must be prevented from using the justice system to further torment their victims and prolong their trauma symptoms. Examples of this are common occurrences for many clients of Cairns Sexual Assault Service, such as when their abusive male partners or ex-partners apply for a DVO against them when they retaliate against being abused or defend themselves. Or for our rare clients who get their case all the way to court and are retraumatised upon hearing that their court date has been pushed back yet again because their rapist or abuser has asked for multiple adjournments.

Discussion question: *Should the taskforce consider the need for cultural and attitudinal change across all sectors of society to improve women and girls' experience of the criminal justice system as victims of sexual offences.*

This section of the paper focuses on stigma against women and what society thinks about women who are sexually assaulted and raped. We need to stop talking about women

and start bringing attention to men who assault and rape women, children and other men. We must start talking about power and gender and how these structural systems cause boys and men to feel disempowered if they do not live up to societal, gendered expectations of masculinity. We know that a small proportion of these boys grow into men who regain a sense of power by assaulting, abusing and raping women, children and other men. We also know that in 2019, 2500 men in Australia died of suicide (Australian Institute of Health and Welfare).

Discussion Question. *Should the taskforce consider the existing mechanisms in Queensland to improve community understanding of these issues, including education about sexual consent in Queensland's schools and what can be done to change a culture amongst young people where sexual violence against women and girls has become normalised.*

No, the task force should instead consider what can be done to change a culture amongst young people where sexual violence perpetrated by men and boys has been normalised.

Discussion question:

Given under-reporting of sexual offences, do you support the Taskforce examining the barriers to reporting sexual offending against women and girls? If not, why?

It would be better if the taskforce focused on the barriers to convicting men who rape and abuse women, children and other men. If these barriers were removed, many more women and children would come forward and report what had happened to them. Currently most victim-survivors that we speak to in our counselling rooms have been too scared to report, because they are aware that a conviction is unlikely and if they did report to Cairns Police they have usually been told that they should not bother pursuing the case as there is not enough evidence, or that the Police will not be investigating because there is no point.

Discussion Question: *Given that police currently act as a gateway to the criminal justice system for sexual offences, do you support the Taskforce examining the initial police response to reports of sexual offending against women and girls? If not, why?*

Yes. Queensland Police are not equipped to receive these reports as they do not have training in trauma informed responses and the Criminal Justice System is not set up to convict men who sexually abuse and rape, unless it is a clear case of stranger rape with evidence. This means that Police time is wasted, and victim-survivors are further traumatised by responses from Police. It is also crucial that the taskforce recognises that the initial point of contact for many victim-survivors is not Police but health and hospital services. Unfortunately, this is often Emergency departments of busy hospitals. In Cairns when a victim-survivor presents to ED the care they receive depends on the night. Victim-survivors are triaged and support workers from Cairns Sexual Assault Service on a 24hr roster are called to attend. There have been times when the victim-survivor is told that there are no medical staff available to provide the forensic test for up to 36hrs. Victim-survivors have had to wait in a busy emergency waiting room without privacy if there is not a spot in the usual rooms. We have had incidents where a panicked triage nurse has called

Police to attend on 000 before asking the patient if that was their choice. We do not believe emergency is the appropriate place for this care to take place, recently a victim-survivor needed to receive antibiotics as a prophylactic against STIs, and a nurse was arranged, but took 45 minutes to come back with the medicine. Police are called to the hospital if the patient chooses, which highlights the nature of the crime for all other patients and people in the hospital which can add to the trauma. Police sometimes take hours to attend, and the response provided by Police varies. Our support workers say that Police seem to take some victim-survivors more seriously than others.

Solution recommended: McMurdo was quoted by the ABC news saying that female led community Police stations could be canvassed as an option (abc.net.au 29/4/2021) and as has been explored in the work of Natarajan and Babu (2020). We suggest that multidisciplinary 'one-stop shops' are needed to support victim-survivors of abuse, assault and rape. A place where medical care and appropriate and time-sensitive forensic testing can take place, where Police can take statements and where counselling staff can provide support and case management. Through a model such as this, society will learn that sexual and domestic violence is taken seriously, and offenders will be investigated thoroughly. Please see the submission of the SAFIR group in Cairns that further talk to this concept. I would also like to add, relating to another discussion question that it would be excellent to have the ODPP engaged in such a 'one-stop hub'. The Sexual Assault Response model running from the Townsville Women's Centre works closely with the DPP and says this works very well.

Discussion Qu: *Is it appropriate for the Taskforce to consider the adequacy of Queensland's current sexual offences including provisions about consent and the operation of the excuse of honest and reasonable mistake of fact in the prosecution of sexual offences? If not, why?*

Yes absolutely. The law is failing victim-survivors, such as the documented example of a rapist in the Gold Coast who broke the arm of his victim and was captured on CCTV leaving her home yet was not convicted because of mistake of fact. (Reported 12/7/2019). We hear from our clients regularly that there is not enough evidence for Police to look further into their case. If a man accused of rape can say they believed the person was consenting and that using force was because they thought the person enjoyed 'rough sex' then this is almost a free pass. We must find other ways to hold men accountable for their actions.

Discussion question:

Do you support the Taskforce examining alternative ways of delivering justice for victims such as through the establishment of specialised courts or through restorative justice? If not, why?

Absolutely, the current system is not working, and victim-survivors are left without any recourse.

Appendix 1:

**SUBMISSION TO THE TASKFORCE ON WOMEN'S SAFETY AND JUSTICE FROM THE CAIRNS SEXUAL
ASSAULT FORENSIC-INTEGRATED RESPONSE NETWORK (SAFIR)**

SAFIR is a diverse group of Cairns residents, including doctors, nurses, midwives, social workers, counsellors, Indigenous health professionals, and people with lived experience, formed following a meeting held in Cairns on 19th June 2021. The members of SAFIR are people interested in the provision of safe and accessible care for victims-survivors of sexual assault in both Cairns and regional Queensland; many of them have worked in this field, both in Far North Queensland (FNQ) and elsewhere in Australia. Since the first meeting, smaller group and individual meetings have been held to try to progress some of the actions suggested on 19th June.

SAFIR members have read through the terms of reference of the Taskforce and the information on the Taskforce website including the two discussion papers. One of SAFIR's members attended the stakeholder consultation in Cairns on 15th July and SAFIR members are familiar with the division of the Taskforce's work into two Parts. We believe that Part 2, Women's and girls' experience across the criminal justice system, is most relevant to SAFIR's aims, and particularly so the three themes in the (sub) part 1 of Part 2 i.e.

- Theme 1- Community understanding of sexual offending and barriers to reporting
- Theme 2- Police response, investigation and charging of sexual offences
- Theme 3-Legal and court process for sexual offences

We provide more detailed information about our concerns for Cairns and regional Queensland generally below, but at this stage wish to state:

We are concerned that there is no mention in the Terms of Reference of the Taskforce of the role of health services in the provision of care, both acute and ongoing, for victims-survivors of sexual assault (or indeed of any form of assault in the context of domestic violence). This is particularly concerning when the Emergency Departments (ED) of public hospitals across Queensland are very frequently the first port-of-call for people presenting with allegations of sexual assault; how people experience their first interaction with personnel in ED (medical and nursing staff, counsellors, Aboriginal and Torres Strait Islander healthworkers and others) will greatly affect whether and how they proceed with their case, and ultimately their physical and mental health and wellbeing.

Information about current sexual assault response services in the Cairns region and how they are expected to function:

- Acute care – people are either brought by police, may be referred by GPs or self-present to the ED of Cairns Hospital (CH).
- Triage nurses in ED should, with the permission of the person alleging the assault, contact Cairns Sexual Assault Service who can provide a support worker 24/7 within about 30 minutes. Support workers provide information regarding the advantages and disadvantages of forensic examination, and options for ongoing care/support, which can, if the victim consents, be provided through Cairns Sexual Assault Service at their premises in Grafton St, Cairns, or elsewhere in Cairns.
- A roster of CH staff (trained nurses & medical officers) should be available 24/7 to conduct a forensic examination if required and agreed to by the victim. A number of CH nurses have undergone the training to become sexual assault nurse examiners (SANEs); medical officers may have varying degrees of training – some but not all may be emergency physicians with further training in forensic medicine, junior doctors may have less training but have access to written guidelines on the protocols to be followed.
- Children under 14 go directly to the paediatrics ward where all care is managed by paediatricians.
- Forensic examinations are performed using a special collection kit and a recorded chain of evidence is ensured. ED has an area set aside for general obstetric and gynaecological examinations of women presenting to ED and this is where the forensic examination takes place. Women should also be offered Emergency Contraception (if indicated) at this stage.
- Ongoing care – referral to social workers, Indigenous health and support workers, and mental health services as needed, information about results of tests for sexually-transmitted infections, pregnancy testing and counselling – is done through the TRUE Relationships and Sexual Health Clinic that is in the same building as the Cairns Sexual Assault Service, at the TRUE premises in Grafton St, Cairns or elsewhere as desired by the victim-survivor, for example their GP, Cairns Sexual Health Service, WuChopperen or other Aboriginal and/or Torres Strait Islander Services.

The actual day-to-day functioning of the services is of concern to SAFIR members for the following main reasons:

- Presentations to Cairns ED with allegations of sexual assault are relatively uncommon- around 50 annually. Triage staff may be unaware of the need to contact Cairns Sexual Assault Service and people may wait unnecessarily long for care. However it is well recognised both in Australia and overseas (with both academic studies and media reports of movements such as that initiated by Sydney student Chanel Contos- *The Guardian* 21/2/21) that a majority of victims do not report the alleged offence to any authorities, and 50 reports probably represents well below 50% of such incidents occurring each year in Cairns.
- The roster for MOs and SANE nurses is a voluntary one – these health professionals are working mostly in other areas of the hospital or in general practice in the community, and may be called away from those duties to attend in order to carry out the necessary forensic examination in ED. In practice there have been many gaps in the roster and victims-survivors have been advised they must wait for very long periods (up to 36 hours) before a forensic examination can be made; they are requested not to shower or change their clothes until the examination is completed.

The variable availability of forensic examiners has meant that many victims-survivors attending ED have eventually walked out, deciding not to continue with their case and relinquishing the opportunity for care which is rightfully theirs. The busy ED, with many people attending with acute physical ailments, is also not the most appropriate environment for the care of victims-survivors of sexual assault. The forensic examination takes place in the same room as examinations of women with gynaecological presentations; frequently victims-survivors need to wait for this room to be free before their case can be proceeded with. Uniformed police are generally present with them in ED, which can be intimidating when so many other people are also present and witnessing their situation.

- Cairns Sexual Assault Service is situated at a considerable distance from ED; other services are also scattered around Cairns, requiring victims-survivors to move from one to another. The need for victims-survivors to move like this is less than ideal for both the correct conduct of forensic examinations and the compassionate provision of counselling and other care. Additionally, a significant burden may be placed on victims-survivors to retell their story multiple times when there is disconnected care.

This in itself is traumatising and exhausting. While the Director of ED has expressed his understanding that the present forensic cover is not perfect, he also has numerous other services to provide and the funding for sexual assault response is minimal.

- Victims-survivors reporting sexual assault in rural and remote regions outside Cairns will rarely encounter a nurse or doctor with sufficient training or experience to conduct the appropriate forensic examination. They will need to be transferred to Cairns for the examination, and often the person themselves has been made responsible for the travel, when either police or health services should be providing/paying for it. This lack of expertise in rural and remote regions means that victims-survivors may wait a very long time until they receive needed care; the knowledge that this is the case may result in people in these regions not proceeding with or dropping their allegations of sexual assault.

It is the considered opinion of SAFIR that the above problems can exacerbate the psychological harm done to a victim-survivor, and that the difficulties of negotiating the process is an active impediment to formalising complaints and encouraging victims to come forward, or seeking resolution through alternative remedial pathways. The impact both on the welfare of victims-survivors and on their ability to achieve positive criminal justice outcomes may prevent the needed sense of closure for the victim. It is important that we build a sense of overall trust in the system for both victims-survivors and those working with them; this will ultimately lead to more people stepping forward to report sexual assault.

Suggested solutions to the above problems

It has been identified that an integrated model of service delivery is best practice in providing effective and efficient responses to complex social and criminal justice issues. Indeed, in Queensland's Not Now, Not Ever: Report into the Prevention of Domestic and Family Violence 2015, a new approach to state-wide integrated service delivery responses was identified as necessary. Similarly, Queensland Professor Kerry Carrington has recently advocated for a 'one-stop shop' for domestic violence and sexual violence based on her three-year study into Argentina's women and family police stations. These police stations include multi-disciplinary teams, childcare, and welcoming physical spaces etc.

Integration can operate in many forms, from simply improving collaboration and coordination between key agencies that are responding to sexual violence to true cross-sector integration. However, experience in Queensland and in other countries that provide women-centered service hubs suggests that co-locating service providers under the same roof provides a significantly improved quality of service delivery and experience for the woman who has experienced trauma.

Benefits that flow from a truly integrated service include:

- Cross agency trust and cooperation increases information exchange and breaks down barriers to professional relationships and processes.
- A common language is used and complementary practices remove silos of response.
- This promotes a 'No wrong door' approach. It does not matter who is the first point of contact for a victim-survivor, the service response is consistent and coordinated.
- This model drives shared understanding across agencies and cross agency accountability where officers from different professional frameworks learn from each other, share information, build trust and hold each other accountable.
- There are also potential cost savings in pooling resources.

Consequently, it is our stance that a freestanding, multi-agency service centre is needed. One where victims-survivors could be seen immediately, in surroundings that are less medicalised, where there are dedicated spaces for history taking, consultations with counsellors and other support people, and where medical examination and follow-up could all take place. This should be staffed by health professionals fully trained in the care of victims-survivors of sexual assault, who can be both nurses or midwives with specific training, and doctors with specific forensic training, sexual assault counsellors and case managers, and police officers. SAFIR recommends that an appropriate setting in Cairns would be the Sexual Health Clinic in Cairns North, although obviously existing infrastructure would need to be added to.

While there would be additional set up costs required it is expected that there would not be a significant increase in operational costs as re-structuring current staffing in agencies through re-allocating roles to staff who already undertake this work. In fact, there would be scope for efficiencies of service delivery to be achieved.

In addition we advocate for:

- More encouragement and incentives for medical officers currently trained as sexual health or emergency physicians to undertake the necessary forensic training to become expert examiners and expert witnesses on SA in court proceedings. In particular we recommend establishment or re-establishment of university courses in forensic medical examination for medical practitioners and registered nurses and/or midwives.

It is important to note that while SANEs and junior doctors have sufficient training to take histories, conduct some general physical examinations and collect samples, they do not have the forensic knowledge and experience to act as expert witnesses in court. Sexual assault services require the oversight of senior doctors with appropriate training and qualifications, who may supervise others either directly or by phone or video (the latter two are particularly appropriate to rural and remote regions of Queensland) and take ultimate responsibility for court reports. Such doctors need to have professional autonomy within the proposed integrated services.

- ***Larger regional towns acting as hubs and providing centres of excellence for the surrounding regions;*** this is what happens with the provision of healthcare in all other areas, with outreach services in medicine, paediatrics, antenatal care etc and transfer of patients as needed to the larger centre. Increasingly (and especially during the pandemic) good use has been made of telemedicine and this is likely to continue.
- *A sexual assault response hub in Cairns that could provide telephone/videolink consultation with smaller centres* when a victim-survivor presents. Such a system is in place in Mt Isa and we recommend that the Taskforce examine the system there. This model could, we believe, be applicable elsewhere in regional Queensland. It would depend on more doctors and nurses becoming expert and qualified in forensic examination for victims-survivors of sexual assault, and on these health professionals being appropriately paid for their work, and not simply volunteers from other healthcare roles.
- ***Involvement of First Nations' health services in all planning and advocacy, which we believe is essential, and a close working relationship with domestic violence services is also recommended.***

Attached below is the submission of Detective Senior Sergeant Edward Kinbacher, which should be read in conjunction with and complementary to the submission of SAFIR.

Appendix 2:

Submission re changes to consent laws;

14/9/2020

Cairns Sexual Assault Service

182 Grafton St Cairns

0740313590

csas@true.org.au

Legal Affairs and Community Safety (LACS) Committee

By email: lasc@parliament.qld.gov.au

Dear LACS Committee,

**Criminal Code (Consent and Mistake of Fact) and Other Legislation
Amendment Bill 2020**

Thank you for the opportunity to provide feedback on this Bill. Our submission responds to the proposed amendments to the Criminal Code regarding the law of consent and the excuse of mistake of fact.

Our service provides counselling and crisis support to victims of sexual violence and believe the Bill misses the opportunity to make victim/survivors safer and to hold perpetrators accountable.

We oppose the Bill for the following reasons:

1. The Bill retains an outdated model of consent. This is an historic opportunity to reframe and modernise Queensland's outdated sexual assault laws. Unfortunately, this Bill only tinkers with existing legislative definitions. We would prefer to see a Bill that introduces an **affirmative consent model**. Such a model would require individuals to enthusiastically and clearly affirm their willingness to have sex through words or actions. An affirmative consent model would provide greater protection for individual sexual autonomy. It would also send a very clear message to the community that the person seeking consent is responsible for taking active and reasonable steps to ensure that consent exists.

2. The Bill fails to uphold the human rights of sexual assault survivors.

The human rights analysis for this Bill is one-sided and solely considers the rights of defendants to a fair trial, and their protection from retrospective criminal laws. The Attorney-General's statement of compatibility is silent on the human rights of sexual assault survivors. Sexual violence is disproportionately a gendered crime. Human rights to equal protection of the law without discrimination (section 15 *Human Rights Act 2019*); the right to life (section 16 *Human Rights Act 2019*); protection from torture and cruel, inhuman or degrading treatment (section 17 *Human Rights Act 2019*); and the right to liberty and security of person (section 29 *Human Rights Act 2019*) all apply to all

survivors of rape and sexual assault, yet these rights have been entirely overlooked.

3. The excuse of mistake of fact will continue to be used to perpetuate rape myths. The Bill retains the mistake of fact excuse which defendants will be able to argue in situations where a person is asleep, heavily intoxicated or unconscious. The proposed changes do not require defendants to show they took positive steps to ascertain consent. This leaves open the possibility that consent can be inferred from a lack of resistance, even though victims 'freezing' (tonic immobility) during an assault is a very common behavioural response and recognised survival tactic.

4. The Bill fails to address the negation of consent for a person with disability. Section 216 of the Criminal Code makes it unlawful for any person to have sex with another person who has an impairment of the mind. This is a discriminatory provision as it assumes that people with disability are not capable of consenting to sex. Pages 11 to 15 of the Queensland Human Rights Commission's submission to the Queensland Law Reform Commission (*Review of consent laws and the excuse of mistake of fact*, available on the QHRC website <www.qhrc.qld.gov.au/resources/submissions> addresses this point at length. This is a missed opportunity to correct a law that unfairly discriminates against people with disability in Queensland.

Reform of consent laws and the excuse of mistake of fact is long overdue in Queensland. We ask that the LACS Committee rejects the Bill in its current form and requires government to make amendments that incorporate the issues we have outlined.

Yours faithfully
Cairns Sexual Assault Service

References:

Australian Institute of Health and Welfare, 'In Focus' paper on Sexual Assault. 2020.

Women police stations: have they fulfilled their promise? Mangai Natarajan & Dhanya Babu, *Police Practice and Research*, 2020

www.abc.net.au/news/2021-04-29/qld-margaret-mcmurdo-womens-safety-coercive-control-dv-taskforce/100104126

<https://www.news.com.au/national/queensland/news/gold-coast-mums-rape-case-dropped-by-police-after-man-uses-mistake-of-fact-defence/news-story/8c4faedcd12e5c91526cfc9b52440275>