



Submission in response to women and girls’ experiences of the criminal justice system as victims/survivors of sexual violence

To:

Women’s Safety and Justice Taskforce

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1. INTRODUCTION

The Gold Coast Centre Against Sexual Violence Inc. (GCCASV) welcomes the opportunity to make a submission to the Women's Safety and Justice Taskforce in relation to Women and girls' experiences of the criminal justice system as victims/survivors of sexual violence.

Our submission is based on GCCASV's collective knowledge and experience of supporting and counselling victim/survivors of sexual violence for over 30 years. During this time, we have provided support to complainants through the civil and criminal justice systems from seeking protection, reporting to police and progression through magistrates and district court. We support law reform with positive consequences, that makes Queensland safer for the victims of sexual, domestic, and family violence and holds offenders accountable.

We seek to amplify the voices of victim/survivors and trust that our recommendations will inform the final recommendations of the Taskforce.

1.1 Gold Coast Centre Against Sexual Violence Inc.

GCCASV (formerly Gold Coast Sexual Assault Support Service) was founded on the Gold Coast in 1990. The agency is a feminist community based, not for profit, charitable organisation that has been providing free, confidential, specialist sexual violence intervention and prevention programs for more than 30 years.

Our vision is safe communities free from sexual, domestic, and family violence. GCCASV provides a safe, supportive, woman-centred environment in which sexual, domestic and family violence survivors can begin their healing journey.

The organisation also provides community education and training to the public, schools, and other professionals. Since 2018 GCCASV has also delivered specialist counselling to domestic violence victim/survivors who may not have experienced sexual violence.

GCCASV's professional and qualified counsellors work with women aged 14 years and over and therefore have an eclectic and client-centred approach, which means they acknowledge that there are a variety of interventions and different approaches

that will work for different people. We operate within a holistic, feminist framework, which means we always:

- Focus on the client's needs
- Work with them at their own pace to explore thoughts and feelings
- Provide a safe space to consider issues
- Respect individual coping strategies and help to find strategies not used before
- Provide choices and options when exploring any difficulties being experienced
- Help clients to gain control in their lives
- Acknowledge power imbalances within society
- Acknowledge sexual violence as gender-based violence

1.2 Sexual violence

Sexual violence is perhaps the most committed, least reported and least punished of all crimes. The ABS Personal Safety Survey (2016) found that 1 in 5 women and 1 in 20 men had experienced sexual violence since the age of 15 years.

National and international research consistently demonstrates that incidents of rape, sexual offences and child sexual abuse are significantly under-reported, under-prosecuted and under-convicted. (AIFS, 2017)

Across Australia it is estimated that less than 20 percent of sexual offences are reported to police (AIS, 2007). For those incidents that are reported to police, only a small proportion will be heard and proven in court. Most Australian studies of sexual offence attrition through the justice system find that less than 20% of incidents reported to police result in a conviction in court.

Sexual violence is crime that exists in Queensland and the reports of sexual violence are increasing. On the Gold Coast there has been a 128% increase in the actual number of offences over the past decade (Queensland Treasury Crime report, Queensland, 2020–21).

Whilst holding offenders accountable and working towards the elimination of sexual violence; it is imperative that we develop a system that respects the experiences of victim/survivors rather than compound their distress, and that we ensure that there is no place for secondary victimisation within the systems that we create.

Queensland's current criminal justice system response to sexual crimes is typified by low reporting rates, high attrition rates, experience of secondary trauma and low conviction rates. Despite legislative change over the past two decades, the process and outcomes for victim/survivors have not dramatically improved. The lack of information, lack of control, lack of support and lack of choice encountered throughout the system reinforces the victim/survivor's powerlessness.

In Queensland, sexual offence matters currently sit within the criminal justice framework. There is a strong argument for specialisation within the current court system to exclusively deal with sexual offences in order to minimise secondary victimisation for the complainant and to maximise conviction rates. However, specialised courts alone cannot address all of the current issues in relation to sexual offences. The experiences of other jurisdictions show that specialised courts need to be set within a broader context of training, education and integrated responses to sexual violence by the criminal justice system and support services.

Justice is what victims of sexual crimes are seeking when they report to the police and enter the criminal justice system. However, justice is rarely achieved with many complainants dissatisfied with both the process and outcome. Therefore, changes are needed in the way the system operates. If more women are to report sexual violence to the police and enter the criminal justice system, then the challenge is for the system to listen, believe, understand and respond to the victim/survivor's experience in a timely ethical and trauma informed manner that will prioritise safety and hold offenders accountable. Now is the time for Queensland to rebalance the scales of justice and ensure that secondary victimisation is not inherent in the systems we create.

1. CONTENT AND DISCUSSION

2.1 Resourcing and investment in specialist services

Queensland sexual assault services have not had any substantive increase in core funding for 26 years. There are geographic gaps, some services have waiting periods of up to 12 months to obtain sexual violence counselling and have had to impose time limitations on those who are helped because of funding pressures. This is not a trauma informed way of working with vulnerable women.

There is a lack of resources for marginalized groups in Queensland. Research shows that marginalized groups such as ATSI and CALD women and women with a disability face increased vulnerability to sexual violence but there is only one service funded for each group in Queensland.

Recommendation One

That specialized sexual violence services receive an immediate and urgent increase in long term core funding to ensure that increasing demand is able to be met a timely manner.

Recommendation Two

That additional funding and resources are directed to ATSI, CALD and disability specific sexual violence services in recognising these vulnerable groups have additional specific needs.

Recommendation Three

That an investment and funding review, specifically focused on the long term specialist nature of services provided by the sexual assault sector is undertaken.

Recommendation Four

That the State Governments continue funding and contribute to the expansion of the funding for QSAN the state peak body for sexual violence services to ensure that frontline experience is appropriately informing policy, service delivery and legislative development at a state and federal level.

2.2 Community attitudes and education

Rape myths are pervasive in our community. The most recent National Community Attitudes towards Violence against Women Survey (NCAS) found that community

didn't believe victims and had a range of unrealistic expectations to be met before a woman's allegation were believed, while the accused man's actions to gain or confirm consent were rarely scrutinised.

There are several reasons why the community (including those working in the criminal justice system) doesn't believe reports of sexual violence, all linked to rape mythology. ANROWS identified that understanding and correcting rape myths, is key to encouraging reporting, supporting women through the service system, facilitating access to justice and, ultimately, reducing and preventing this violence.

Community understandings of consent are largely where responsibility is on the woman to say "no" without consideration of how that agreement occurred, whether it remained after a period of time, or whether the person had capacity to agree. Shifting community understandings to the legal definitions of sexual consent is only the first step in a process which must ultimately recognise consent as involving both parties respectfully, continually and mutually agreeing to sexual activity.

Community attitudes impact the experience of victims by making it harder for them to recognise when their boundaries and consent have been violated, which in turn impacts help seeking and reporting; by consistently encountering these attitudes in the form of victim blaming, minimising, and dismissing their experiences; right through to impacting the outcomes of any criminal justice process.

Recommendation Five

That the Start by Believing Campaign is adopted and resourced by the state government to ensure that the community is able to positively respond to sexual violence disclosures.

2.3 Consent education

The Australian Institute of Health and Welfare (AIHW) found that midway through their teenage years, young women enter a five-year danger zone when they are statistically more likely to be sexually assaulted than any other time in their lives. Young men in the same age group, aged 15-19, are more likely to be perpetrators.

The current state of Relationships and Sexuality Education in Queensland is not only out of step with other jurisdictions such as Victoria, but also putting young women and

girls at risk of harm. The increased community conversation about the need for consent education is not driven by experts in the field. Best practice for addressing sexual harm is through comprehensive sexuality education (UNESCO) that prioritises pleasure and human rights as opposed to the 'risk averse' approaches of the last 20th Century.

To be truly effective, education about consent needs to be in collaboration with broader education and curriculum content to build literacy on gender, power, sexual development, sexual communication, pleasure and mutuality. Consent isn't a standalone topic that can be addressed in a couple of hours a week at school. There has also been a focus in Queensland on Respectful Relationships Education, which lacks content specifically on respectful sexual relationships that are relevant to the lives of young people. Ignoring the sexuality component of RSE furthers the invisibility of the issue of sexual violence, increases shame, and creates additional barriers to help seeking and reporting

Recommendation Six

That education not solely focus on the legal definition of consent but take an holistic approach to relationships and sexuality education.

Recommendation Seven

That adequate funding is provided for schools to properly implement relationships and sexuality education, supported by trained specialists in trauma, sexuality, and human rights.

2.4 Pornography and technology

Our Watch provides a breakdown of the four main drivers of gender based violence; rigid gender roles; men's control of decision making and limits on women's independence; condoning of violence against women; and male peer relations that emphasis aggression and disrespect towards women. Whilst free, mainstream, heteronormative pornography promotes outdated gender stereotypes, the notion that men take and women give, the idea that women are either sexually submissive or sexually available, and that sexually violent interactions are often met with neutral or pleasure responses by seemingly willing victims- it does not do this in a vacuum. The ideas in pornography about gender, power, and rights magnify those already in our

communities, and further undermine understandings of consent and sexual activity as a mutually pleasurable experience.

It was estimated by PornHub that in 2019 its website received 115 million visits per day, almost five times the Australian population in one day. However due to the international locations of many of these businesses they are increasingly difficult to regulate. Pornography reinforces rape mythology and is often the loudest educator of our community in the absence of other conversations that promote sexual interactions as mutual, pleasurable, and healthy.

Legislation across the globe struggles to keep up with the ways pornography and technology can be used to harm others. The Queensland Police Service identified a 174% increase in reports of technology facilitated sexual assault in recent years. Both sexting and dating apps exaggerate misconceptions of consent not only for perpetrators and victims, but for police, prosecutors, and juries. Instead of seeing consent as an ongoing conversation, those who view it as a one-off permission are more likely to see sexual discussions or agreements to meet for sex, mediated through technology, as consent to anything else that has occurred including rape and sexual assault.

Recommendation Eight

That all community education, awareness and specialist training on rape mythology and sexual violence take the impacts of pornography and emerging technologies into consideration.

Recommendation Nine

That police training on rape mythology and sexual violence take the impacts of pornography and emerging technologies into consideration.

Recommendation Ten

That all intervention, support and counselling with victim/survivors take the impacts of pornography and emerging technologies into consideration.

2.5 Strangulation

Strangulation is a form of asphyxia characterized by closure of blood vessels and/or air passages of the neck as a result of external pressure on the neck and throat.

Strangulation is a highly dangerous and easily fatal form of violence where unconsciousness can occur within seconds and death within minutes.

Strangulation is a red flag to homicide as victims of strangulation are 750% more likely to become a homicide victim compared to victims who have never been strangled. (Glass, et al, 2008)

Domestic violence services most often see women presenting with strangulation in the context of domestic violence relationships where power and control is paramount and other forms of such as physical violence and threats to kill co-exist.

Sexual violence services most often see women presenting with strangulation in the context of sexual violence not just in intimate partner sexual violence, but in other intimate encounters outside of a domestic relationship such as hook ups, short term relationships, friends with benefits etc

There is significant research and information about strangulation within domestic violence context but very little information about the connection of strangulation and sexual violence outside of this.

Recommendation Eleven

That the Queensland Government review 315A of the Criminal Code *Choking, suffocation or strangulation in a domestic setting* to;

- remove consent
- include a clear definition that states a person commits an offence if the person unlawfully impedes another person's breathing, blood circulation or both, through manual, ligature or mechanical pressure which completely or partially blocks another person's nose, mouth, or both.

Recommendation Twelve

That education for police and front-line workers is developed to recognize that not all strangulation occurs in domestic relationships currently covered in Section 315A.

Recommendation Thirteen

That funded research is conducted on the intersection of strangulation and sexual violence occurring outside of the context of a domestic relationship.

2.6 Reporting to police

Fear of not being believed is the most common reason that victim/survivors of sexual violence do not report to the police. Women have also identified lack of faith in the system and fear of secondary victimization as key reasons for not reporting sexual crimes committed against them (Taskforce on Women & the Criminal Code: 1999).

Many women are afraid of entering a police station to report an intimate crime that is first discussed at the front counter with other people present. Police stations have been described as hostile environment by victim/survivors. This is the reason Project Engage is being trialed on the Gold Coast where a female police officer attends the Gold Coast Centre Against Sexual Violence every Thursday and is available to speak with women attending the centre. The project has been positively received and had positive outcomes. Women who were not comfortable attending a police station have been able to access a police officer in a safe environment and have had their questions answered, gained information about case progression, decided to formally report and make a statement and engage with the criminal justice system.

If women do report to the police the response varies greatly depending on the individual officer and the police station attended. If the woman does not feel believed she will not fully engage in the process and give the best information she can in her statement which may impact charging and conviction of the offender.

Most women do not have a realistic view of the criminal justice system in terms of what constitutes evidence, the amount of time it currently takes to proceed through the criminal justice system and the likely outcome.

After reporting sexual violence it may be weeks before the officer contacts the complainant, where there is no communication it often compounds the trauma and women feel dismissed and may consider withdrawing the complaint. Regular communication is very affirming when entering an unfamiliar environment.

In the USA, it has been noted that sexual offence conviction rates are much higher than average (from 60-80%) within trained specialist units (The White House Council on Women and Girls: 2014).

Recommendation Fourteen

That the principles of Start by Believing are embedded in the practice of all police officers by engaging with victim/survivors in a trauma informed way from the first point of contact.

Recommendation Fifteen

That police officers convey a realistic outline of the criminal justice system in relation to timing and possible outcomes to complainants without being discouraging.

Recommendation Sixteen

That police officers communicate regularly with complainants not only to inform them of developments but just to touch base and let them know that the case is still open.

Recommendation Seventeen

That trauma informed, specialised sexual violence competency based training in engaging with, interviewing and communicating effectively with complainants is embedded in detective training and is ongoing.

Recommendation Eighteen

That specialist units within QPS are considered for adult sexual violence complainants to operate in the way that CPIU works in relation to child victims

2.7 Time delays

From the time of reporting to police until the matter is committed to trial there is a significant delay, sometimes years after the offence was first reported to police. This time delay leaves what many victim/survivors have described as “a cloud hanging over my head” affecting memory, healing and engagement with the criminal justice process. Some victim/survivors want to withdraw and “try and get on with their lives”. These time delays undermine procedural justice.

Recommendation Nineteen

That sexual violence matters are prioritized in the courts and measures to address the lengthy delays in the court process are identified and implemented.

2.8 Attrition rates

One in five sexual assault reports are "unfounded" in Queensland, compared to one in 20 in NSW. Unfounded means police do not believe that a sexual assault occurred.

In addition, nearly one in three sexual assault reports are withdrawn in Queensland, compared to one in 10 in Tasmania. (ABC, 2020)

Daly and Bouhours (2010: p.565) state “victimisation surveys show that 14 percent of sexual violence victims report the offense to the police. Of these, only 30 percent proceed to prosecution, 20 percent are adjudicated in court, 12.5 percent are convicted of any sexual offence, and 6.5 percent are convicted of the original offence charged.”

It would seem that cases fitting rape mythology such as those committed by a stranger and where physical injuries are sustained by the victim/survivor are more likely to proceed and gain conviction. However, there is often a lack of responsiveness by police to vulnerable and marginalized women. Typically women who are marginalized by race, culture, disability, mental illness, and addiction, or those who have been assaulted by an intimate partner, or been drinking prior to the sexual violence, will find that their cases do not proceed.

Stewart (2013) found that overall Queensland experienced a 25% reduction in Adult Sex Offences committed to the District and Supreme Courts comparing 2009/10 to 2012/2013 for "no apparent reason".

The process of attrition is so "overwhelming" (Gans 1997: 28) that one writer has described it as "progressively decriminalis[ing]" sexual offences (Lees 1996: 99).

Recommendation Twenty

That research data providing information about the attrition of sexual violence matters through the criminal justice system from police reporting to court conviction, be published and publicly available annually in Queensland.

Recommendation Twenty One

That analysis of this research data be undertaken to identify timing, reasons and strategies to address attrition.

2.9 Trauma-informed police education and training

The percentage of time police spend responding to sexual and domestic violence needs to be reflected as an equivalent percentage of their training.

That Queensland Police Service needs to move from knowledge based to competency-based training in understanding and responding to sexual violence in all its forms, and this training must include a strong attitudinal component.

Police often rely on the presence of physical violence as a means of informing their decision-making in relation to violence against women (Guthrie, 2018). However, all aspects of sexual violence including the gendered nature, traumatic impact, vulnerable populations, rape mythology and social context must be understood and used to actively inform engagement and investigative skills.

Recommendation Twenty Two

That competency-based training is developed and delivered in collaboration with specialist sexual violence services to prevent the reinforcing of unconscious bias within the QPS, and that training always include the voices of victim/survivors to ensure that this training is authentically trauma informed and victim centric.

2.10 Medical Forensic examination

The choice to store forensic material whilst a victim/survivor makes an informed decision about proceeding through the criminal justice system is not available consistently throughout Queensland despite protocols being in place for many years (Queensland Health: 2001). It often still depends on the location and resourcing.

All Queenslanders have a right to access justice and may need to move beyond immediate crisis to process trauma before they have the capacity to give informed consent.

Recommendation Twenty Three

That all victims-survivors of recent sexual violence in Queensland have access to a full and thorough forensic medical examination irrespective of location or whether they have decided to report to the QPS at the time of presentation.

Recommendation Twenty Four

That the Clinical Forensic Medicine Unit is resourced to recruit and employ additional medical staff (both nurse examiners and doctors) be to undertake forensics training and provide medicolegal services throughout Queensland.

2.11 The court process

For most complainants the court is a foreign environment using a foreign language and unknown rules. The complainant is often reluctant to ask family and friends to accompany her as she doesn't want to put them through it, for them to hear the horrific details and she often feels embarrassed and ashamed (Macleod et al: 2012).

At court there can be physical and emotional safety issues where encounters with the offender and his supporters often occur. These encounters are typically outside the entrance to the building, inside in the lifts or hallways and can be particularly intimidating for victim/survivors. An assigned private room and a support person to accompany them can provide some practical assistance and reduce anxiety.

A support worker can liaise with police and ODPP, prepare a complainant for court and introduce techniques to maximise emotional safety, minimise the chances of being overwhelmed, and provide de-briefing.

A well informed, well supported complaint is less likely to want to withdraw from the system. Both police and prosecutions have expressed concern that victims of sexual offences are not sufficiently supported during the prosecution process and that community support services for adult victims were rare. Some police believed that the unavailability of quality support services may contribute to many complainants not seeing the court process through (CMC: 2008).

Support and advocacy should be available as a right not a privilege before, during and after the first point at which the victim/survivor enters the criminal justice system to the end of the process and beyond.

Recommendation Twenty Five

That dedicated funding is allocated to sexual assault services to employ trained sexual violence counsellor/advocates to support the complainant through the criminal justice system and beyond.

Recommendation Twenty Six

That victim legal advocates are funded to provide legal assistance to victim/survivors during the court room experience and particularly during cross examination.

2.12 Specialist sexual violence courts

Within Queensland's current criminal justice system there are no funded specialist sexual assault workers nor any dedicated courts and GCCASV has continued to advocate for specialist sexual violence courts for many years.

Overseas, there are well documented, successful models in Canada, South Africa and New Zealand. Research has shown that specialisation was seen to increase the quality of the crown case, achieve higher conviction rates and an increase in reporting (Ursel: 2005).

Legal reform in NSW has resulted in dedicated courts with specialist staff, separate entrances for victims and specially trained prosecutors who ideally handle cases from bail to trial. Sexual assault trials are given listing priority over all other cases and are to be listed within four months of the committal date and no later than six months from the date of committal (Wilkins: 2011).

Victoria has taken a case management approach and specialist sex offence list modelled on examples from Canada and South Africa. Since legislative changes came into effect in Victoria in 2006, there has been a significant increase in the number of sexual offences that are both reported and investigated by police and in those that proceed to trial. There has also been less delay with a more timely resolution of matters (Quinn: 2011)

It is time for Queensland to adapt and adopt evidence based best practice from other jurisdictions.

Recommendation Twenty Seven

That compulsory, ongoing specialist training be provided to dedicated prosecutors, court staff, magistrates and judges on the nature and impact of sexual violence.

Recommendation Twenty Eight

That a specialist, trauma informed, sexual violence court model is established and trialled in Queensland, developed by an independent consultant with extensive expertise in working with victim/survivors of sexual violence. That the Queensland model is developed in consultation with QSAN sexual violence services, survivors and other relevant experts and that an independent evaluation of the pilot is funded from the outset.

2.13 Special witness consideration

The majority of victim/survivors are fearful of entering the actual courtroom and seeing the offender. To reduce fear of being in the presence of the offender in some jurisdictions there is a presumption that adult complainants in sexual offence matters will be treated as special witnesses and give their evidence via CCTV unless they choose to enter the courtroom. Where this is available it is important to ensure that the Court has the technological equipment available and that it is fully operational (Quinn: 2011).

In NSW, most victim/survivors give evidence by way of CCTV and in Victoria, there is a presumption that the complainant will give evidence by alternative means such as CCTV unless an application is made by the prosecution for them to give evidence in Court.

In Queensland adult victim/survivors are also classed as special witnesses and therefore special measures that can (but not must) be put in place when they give evidence. These special measures include giving remote evidence, having a support person and/or giving evidence behind a screen in court. Victim/survivors most often choose to give remote evidence. However, in Queensland, there is no guarantee that their choice will be honoured as it must be agreed to by defence. The outcome may not be known until the court date which creates even more anxiety for the victim/survivor and may disadvantage them as a witness.

Recommendation Twenty Nine

That in sexual offense matters safety considerations are routinely given to a separate entrance and a private waiting room for complainants.

Recommendation Thirty

That in line with other jurisdictions, there be a presumption that adult complainants in sexual offense matters give evidence via CCTV unless it is their informed choice to enter the courtroom.

2.14 Low conviction rates

Daly and Bouhours (2010: p.565) state “victimization surveys show that 14 percent of sexual violence victims report the offence to the police. Of these, only 30 percent proceed to prosecution, 20 percent are adjudicated in court, 12.5 percent are

convicted of any sexual offense, and 6.5 percent are convicted of the original offense charged.”

These poor outcomes are likely to have contributed to a lack of community confidence in the criminal justice system. In the community there is a strong belief that the legal system does not treat victims/survivors well and that there are considerable difficulties in reporting, progressing through the criminal justice system, and obtaining a conviction. Much of this information has been gleaned from the negative experience and poor outcomes reported by victim/survivors.

Many victim/survivors enter the legal process focused on the scenario of a guilty verdict and a custodial sentence for the accused. Therefore when a “not guilty” verdict is returned they are shocked, disappointed and feel disbelieved (Macleod et al: 2012).

Recommendation Thirty One

That research is conducted in relation to conviction rates of sexual violence offences in Queensland.

2.15 Affirmative consent and mistake of fact

Tasmania has had an affirmative consent model and limitation on mistaken belief provisions in law since 2004.

Although Queensland began reviewing consent and mistake of fact three years ago, other jurisdictions have moved forward and already adopted an affirmative consent model. NSW has recently legislated affirmative consent, the Victorian Law Reform Commission and an ACT Government Report have recommended such an approach in the ACT and both the Victorian and ACT Government have agreed to the change and WA is also specifically considering the issue. This means at least all the States and Territories in the eastern seaboard of Australian have or will likely adopt affirmative consent.

QSAN strongly endorses an affirmative consent model. Such an approach is more consistent with community attitudes and modern understandings of women and their engagement in sexual relationships. It is the model that is currently used when educating children and youth on consensual sexual activities in schools.

Recommendation Thirty Two

That Queensland adopt a strong model of affirmative consent as a matter of urgency and that the definition of consent includes the word “agreement”

Recommendation Thirty Three

That Queensland adopt the Tasmanian legislative model Section 14A Criminal Code Act 1924 for limiting the use of mistaken belief in sexual violence matters and inclusion of the need for reasonable steps.

2.16 Stealthing

Stealthing is the non-consensual removal of a condom during sex which is reportedly committed against one in three women (ABC, 2021). The Australian Capital Territory is the first Australian jurisdiction to criminalise stealthing and GCCASV supports stealthing becoming a criminal offence in Queensland.

Recommendation Thirty Four

That stealthing be introduced as a standalone criminal offence in Queensland.

2.17 Counselling notes protect

When sexual violence counselling notes are subpoenaed, this is experienced as a gross invasion of privacy which has a negative impact on victims and an impact on the sexual violence services that provide counselling.

Queensland was the last Australian jurisdiction to consider the protection of sexual violence counselling communications. Since 1 December 2017, there have been amendments to the Evidence Act, and Criminal Code which have resulted in a *qualified privilege* in Queensland where no guarantee of protection can be provided to victims at the time of counselling.

The fact that notes can still be accessed in certain circumstances is very unsettling and adds to victim/survivor fear and anxiety about the court process.

Tasmania has an *absolute privilege* that provides complete protection and 'peace of mind' for victims. This is a trauma informed and resource neutral approach as lawyers are not required and is GCCASV's preferred approach.

Recommendation Thirty Five

That the Queensland government reviews legislation on counselling privilege to increase and protect the privacy of victim/survivors and provide absolute privilege as in Tasmania.

2.18 Restricted publication in sexual violence proceedings

Queensland is the only state where there is a restriction on identifying a defendant charged with a prescribed sexual offence before they are committed for trial or sentence upon that charge unless the court orders otherwise.

Recommendation Thirty Six

That the current timing of restrictions on publishing the name of the defendant in sexual violence proceedings is lifted in line with other Australian jurisdictions.

2.19 Coordination and Integration

Currently throughout Queensland there is a lack of formally funded and resourced models to improve collaboration between victim/survivors, support agencies, forensic medical officers, police and ODPP. Improved cohesion and communication between various participants in the criminal justice system can improve service quality, increase victim/survivor satisfaction and improve outcomes.

The SART (Sexual Assault Response Team) in Townsville provides positive example of best practice and integrated care for a victim/survivor from the time of their first report of sexual violence by providing them clear information to assist informed decision making and respecting their ability to make choices. It delivers an evidence base, regarding victim/survivor satisfaction and outcomes as well as improving working relationships between the police, the specialist sexual violence service, the ODPP and to work together in a trauma informed victim-centred way.

Recommendation Thirty Seven

That the SART (sexual assault response team) model is funded across the state for a 24/7 response for specialist sexual violence workers to provide support to victim/survivors from reporting, through the court process to trial and beyond.

2.20 Commissioner for Domestic, Family and Sexual violence

When things are not working well and women seeking help want to complain about inappropriate responses, or lack of response by NGOs, police or health they currently have to raise issues with every individual organisation or agency. There is no central body providing oversight or management of complaints so currently it is up to the traumatised victim/survivors to negotiate with multiple individuals and systems. To streamline issues and complaints we believe a role such as a Domestic, Family and Sexual Violence Commissioner, similar to the UK model, would be invaluable as a central touch point. The Commissioner could be an independent voice for victim/survivors and provide support and early intervention when system responses fail - which could potentially save lives. The Queensland Domestic and Family Violence Death Review and Advisory Board Annual Report (2018) stated that murdered women had on average 28 contacts with numerous agencies prior to the homicides, indicating that these deaths were predictable and preventable.

Recommendation Thirty Eight

That the Queensland government establish a new position of Commissioner for domestic, family and sexual violence as an independent touchpoint for systemic issues and voice for victim/survivors.

2.21 Bail

Watch house bail and uninformed bail decisions made by the court have lead to serious harm and death of victim/survivors.

Thorough assessment of the unacceptable risk that the offender would commit an offence; endanger another person's safety or welfare; or interfere with witnesses or the course of justice is required.

Recommendation Thirty Nine

That the Bail Act be amended to a presumption against Bail for a sexual violence offender. Before bail is granted, a mandatory risk assessment should be conducted and then an informed decision can be made by the court on the evidence provided.

2.22 Lack of safe accommodation for rape victims

There are no specific crisis, transitional and long term housing options for sexual assault victim/survivors needing safe accommodation when they have been assaulted by their boyfriend, other male friend, flat mate, neighbour etc

They may feel very unsafe in their home but do not automatically fit the criteria for women's refuge which is reserved for those escaping domestic violence.

Recommendation Forty

That specific, crisis, transitional and long term housing options are urgently funded and developed for victim/survivors of sexual violence.

2.23 Intimate Partner Sexual Violence (IPSV)

Intimate Partner Sexual Violence is sexual violence occurring in a broad range of intimate relationships including married, unmarried, dating, heterosexual and same sex relationships. It includes any form of unwanted sexual activity with a current or former partner that is without consent or due to force, intimidation or threat (direct or implied) (Winters, 2008).

IPSV is invisibilized through the persistence of rape mythology and society's reluctance to acknowledge the issue. However, IPSV is one of the most common forms of sexual violence, has a long lasting traumatic impact on victim/survivors and is a high risk factor for domestic homicide with a physically abused women also subjected to forced sex being over seven times more likely to be killed (Campbell, 2003)

Recommendation Forty One

That specialist IPSV training is conducted for police, judiciary and all HRT members on how to recognize and respond to IPSV including the impacts of IPSV, implications for risk assessment and safety planning, handling and facilitating disclosures of IPSV.

Recommendation Forty Two

That the topic of IPSV is explored in all Men's Behaviour Change Programs.

Recommendation Forty Three

That Queensland police undertake training to recognize and respond to sexual violence in intimate relationships and furthermore that both civil and criminal action is taken where sexual violence is disclosed.

2.24 Elder sexual abuse

Elder sexual abuse includes the coercing of an older person through force, trickery, threats, or other means into unwanted sexual activity and sexual contact with elders who are unable to give informed consent.

Elder sexual abuse is almost invisible being the least reported and substantiated form of elder abuse. However, reports of this crime are increasing with 1488 assaults reported by aged-care providers in 2011. Serious physical assaults made up 80 per cent of complaints, 19 per cent were sexual assaults and 1 per cent were both (Medew: 2011).

The Royal Commission into Aged Care Quality and Safety (2020) estimated the number of incidents of unlawful sexual contact in Australian Aged Care was an average of 50 per week.

With an ageing population, awareness raising of this dimension of elder abuse is important for community members and it is essential that police and prosecutors undertake training in this emerging area.

In Queensland we must break the silence and name this behaviour to enable older victim/survivors to speak out and resource workers to recognize and respond to this crime.

Recommendation Forty Four

That Queensland conduct a funded and resourced public awareness campaign specifically on elder sexual abuse.

Recommendation Forty Five

That sexual and domestic violence, aged care, health and welfare workers undertake training to understand, recognize and respond to sexual violence in the context of elder abuse.

Recommendation Forty Six

That Queensland police undertake training to understand, recognize and respond to sexual violence in the context of elder abuse.

2.25 Interpreters

Sexual violence services are not routinely able to access free interpreters, creating barriers for CALD women. Entering the criminal justice system, if English is not the complainant's first language, she will need to request an interpreter as access to an interpreter is not an automatic right for a complainant whereas it is for the accused.

Most complainants from culturally and linguistically diverse (CALD) backgrounds are not afforded an interpreter when reporting to the police. Sometimes a sworn police officer with a basic knowledge of the language is used. Sometimes the Telephone Interpreter service is used.

Over the course of time the complainant may have numerous people translate for her. This becomes problematic as the chances of different English words being used by the different interpreters increases and this can be perceived by the court as inconsistencies in the victim's account.

Recommendation Forty Seven

That access to a free qualified interpreter is available when a victim/survivor whose first language is not English accesses support services.

Recommendation Forty Eight

That access to a free qualified interpreter is available when a victim/survivor whose first language is not English is reporting a sexual crime to the police and where possible to retain the same interpreter throughout the criminal justice process.

2.26 Mental Health - in patient mental health wards

It is of grave concern that female patients are sexually assaulted whilst in hospital within a mental health system that is meant to protect and care for them.

The UK has a strict gender segregation police and Victoria is allocating women only safe spaces in their current psychiatric wards. It's time that Queensland looked at increasing the physical and sexual safety of female inpatients by modifying existing units and designing safe, segregated new units.

Recommendation Forty Nine

That gender segregation in in-patient mental health wards is recognised and implemented as safe practice for women.

2.27 Character references in sexual violence cases

In sexual violence matters, where there is a guilty plea, it is distressing for victim/survivors to hear what is taken into consideration in sentencing. In particular, when glowing character references are produced, painting a picture of an upstanding citizen when as a result of their offending they should not be viewed as such. It is even more confronting in situations where the offender's lack of a criminal history and otherwise good deeds in the community actually assisted them to win the trust of the victim/survivor and commit the offence. This evidence should not be relevant to such proceedings.

Recommendation Fifty

That offenders who plead guilty to sexual violence offences should be prohibited from using good character references and court testimony by those who attest to the defendant's otherwise good deeds and character.

If you require any further information do not hesitate to contact GCCASV.

Sincerely,



Di Macleod

For and on behalf of the Management and staff

GCCASV