

8 April 2022

The Honourable Margaret McMurdo AC  
Women's Safety and Justice Taskforce  
GPO Box 149 Brisbane QLD 4001  
[taskforce@womenstaskforce.qld.gov.au](mailto:taskforce@womenstaskforce.qld.gov.au)

Dear Justice McMurdo

Thank you for the opportunity to provide a submission to *Discussion Paper 3: Women and girls' experiences across the criminal justice system as victims-survivors of sexual violence and also as accused persons and offenders* (2022). The Queensland Network of Alcohol and other Drugs (QNADA) submission is attached.

QNADA represents a dynamic and broad-reaching specialist network within the non-government alcohol and other drug (NGO AOD) sector across Queensland. We have over 50 member organisations, representing the majority of specialist NGO AOD providers. This submission is made following consultation with QNADA members.

QNADA is pleased to provide further information or discuss any aspect of this submission. Please don't hesitate to contact me at [REDACTED].

Yours sincerely



Rebecca Lang

**CEO**



## Submission to the Women's Safety and Justice Taskforce

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*Response to Discussion Paper 3: Women and girls'  
experiences across the criminal justice system*

This submission has been prepared by the Queensland Network of Alcohol and Other Drug Agencies (QNADA). Its' content is informed by consultation with QNADA member organisations providing treatment and harm reduction services across Queensland, as well as a review of relevant research and reports.

This submission focuses on specific questions within the Women's Safety and Justice Taskforce third discussion paper, *Women and girls experiences across the criminal justice system* (2022) and highlights the need:

- for responses that focus on addressing the broader social, cultural, and structural determinants of health, and prioritise alternatives to imprisonment, particularly for low-harm drug offences,
- to be clear that the drivers for increased rates of imprisonment and recidivism for women and girls are associated with increased enforcement activity by police and our current policy approaches, as opposed to any substantive change in community attitudes and behaviour (for illicit drug offences),
- for meaningful and transparent consideration to be given to the decriminalisation of low-harm drugs in Queensland, in partnership with peaks and other relevant non-government organisations, and
- for increased investment in alcohol and other drugs treatment and harm reduction services for women and children in contact with the criminal justice system across Queensland, in accordance with the *International Guidelines on Human Rights and Drug Policy*<sup>1</sup>.

At the outset, we highlight our significant and ongoing concerns with the recent introduction of section 229BC of the Criminal Code (Failure to report sexual offending against a child to police) in Queensland.

While it is unquestionable that there is a critical need to ensure adults are acting to protect children and young people from sexual abuse, the amendments have significant implications for non-government, alcohol and other drug services and the support they provide to people who have experienced child sexual abuse. They are considered to be inherently problematic as:

- a substantial proportion of the people who access our members' services have complex histories of abuse and trauma (including child sexual abuse), prior poor experiences with police and other statutory bodies and have a general distrust in services (particularly for those who use illicit drugs),
- it is essential that victims-survivors have access to services that they can trust and feel safe to disclose to, with this new provision acting to inhibit disclosures for those who do not wish to engage with police.
- this correspondingly impacts treatment outcomes, impedes future service engagement and increases the likelihood of future harm,
- the new provisions fail to adequately consider what is already known about victims-survivors' experiences with the criminal justice system where such offences are reported, and most concerningly appear to be based on the presumption that a referral to police will result in a positive and protective outcome for the victim which simply is not the case,

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<sup>1</sup> <https://www.undp.org/library/international-guidelines-human-rights-and-drug-policy>

- in reality, the likelihood of conviction is low and many victim-survivors do not want to engage in criminal justice processes as they find them confusing, invasive, lengthy and traumatic,
- while the amendments seek to address findings made by the *Royal Commission into Institutional Responses to Child Sexual Abuse*, they are inconsistent with the Royal Commission's findings in relation to the challenges faced by victim-survivors in disclosing such abuse.

While the amendments include a '*reasonable excuse*' provision no legally binding clarification has been provided by the Queensland Government to date as to whether this applies to therapeutic settings, and no clear guidance or advice has been provided about these amendments across the sector to support an understanding of how they may apply to services.

An urgent review of these provisions is required which seeks to repeal the amendments, or to include clear exclusions to ensure that people who have experienced child sexual abuse can access services across Queensland and safely disclose within therapeutic settings to access effective support for the well known physical and psychological impacts of trauma.

Question	Response
<p>Q5. What are the experiences of women and girls with multiple and complex intersecting needs as accused persons and offenders in the criminal justice system? What works? What needs to be improved?</p>	<p>QNADA welcomes the acknowledgement by the Women’s Safety and Justice Taskforce of the impact of adverse childhood experiences, prior victimisation and trauma, poverty and homelessness, mental health issues, poor health or disability, and racism and inequality on imprisonment and recidivism rates.</p> <p><i>QNADA’s Strategic Plan 2021-23</i> sets a vision for a system that values responses which address the social, cultural, and structural determinants of health<sup>2</sup>. The evidence is clear that while we continue to address complex social issues in isolation from each other, we will never achieve the change we want to see.</p> <p>A myriad of inquiries and reports over the last ten years across the criminal justice and youth justice systems have highlighted the need to prioritise alternative responses to imprisonment and recidivism particularly within the context of low harm drug related offences. They have also acknowledged that a longer term approach which addresses the broader social, economic, and cultural determinants of health is required.</p> <p>While we know that treatment works for people experiencing problems with substance use, and harm reduction strategies are essential to supporting safer use for many others, in practice our policy and legislative responses across the broader service system tend to be targeted towards addressing the greater harms experienced by a relatively small, but highly visible, part of the community. This often results in a focus on more punitive, crisis oriented responses, which have limited benefits over the longer-term, fail to achieve the desired, deterrent effect and are not aligned with broader community expectations.</p> <p>It is clear that this current approach continues to bring women and girls with multiple and complex needs unnecessarily into contact with the criminal justice system; with no substantive benefits for themselves or the broader community.</p> <p>As discussed in more detail below in response to other questions posed by the Taskforce, engagement with the criminal justice system (including with law enforcement agencies) only serves to reinforce existing marginalisation and disadvantage faced by women and girls. This is further compounded by the fact that while it has been well</p>

<sup>2</sup> The social determinants of health, and the non-medical factors that influence health outcomes, such as education. Employment, food security, housing, social inclusion and non-discrimination. Research shows that they can be more important than health care or lifestyle choices in influencing health and addressing them is fundamental to reducing health inequity and improving health, World Health Organisation (2022)

	<p>established that women and girls involved in the criminal justice system experience very high rates of physical, emotional, and sexual violence, and that their management in prison is more complex as a result; access to support programs over the longer term is limited across Queensland.</p> <p>Processes also need to be established across the criminal justice system to improve safe lived experience engagement in policy, planning and program implementation to design approaches that actually work for the people they are intended to assist.</p>
<p>Q12. How can women and girls who are involved in the criminal justice system be better supported to reduce recidivism and benefit the community?</p>	<p>Global research indicates that 88-89% of people who use illicit drugs do not experience dependence or require a treatment intervention<sup>3</sup> which means that for many women and girls who use illicit drugs, the risk of harm to both themselves and community productivity is increased primarily as a consequence of involvement in the justice system, not the substance use itself. Experiencing problems with alcohol and other drugs is often predicated by experiences of trauma and influenced by the social, cultural, historical, and structural determinants of health.</p> <p>While our response to this question also relates to Question 73 (Drivers of women and girls’ offending) evidence is clear in demonstrating that health-based responses to illicit drug use and possession avoid the adverse social consequences of contact with the criminal justice system and provide a more efficient and cost-effective opportunity to identify the people most in need of treatment.</p> <p>This position accords strongly with the recent call for action by the Queensland Anti-Discrimination Commission in its’ <i>Women in Prison 2019</i> consultation report who found that there is a <i>‘strong case for sweeping changes to aspects of the criminal justice system. This growing body of evidence and the need for change cannot and should not be ignored. The time for reports is past.’</i></p>
<p>Q73. What are the drivers of women and girls’ offending in Queensland?</p>	<p>As outlined in Discussion Paper 3, illicit drug offences are a key driver for the increase in imprisonment and recidivism for women and girls. This increase is both extraordinary and avoidable, with the Queensland Productivity Commission highlighting that between 2012 and 2018, <b>89%</b> of the increase in reported offences for women was</p>

<sup>3</sup> United Nations Office on Drugs and Crime. World Drug Report 2017. accessed March 1, 2019 [https://www.unodc.org/wdr2017/field/Booklet\\_2\\_HEALTH.pdf](https://www.unodc.org/wdr2017/field/Booklet_2_HEALTH.pdf)

associated with drug offences<sup>4</sup>. Concerningly, the number of women who were primarily imprisoned for drug offences increased by **219%** between this same time period<sup>5</sup>.

To be clear, illicit drug use is *not* a driver in and of itself for offences in Queensland. The driver is instead better conceptualised as the *current policy approach* adopted by successive governments to illicit drug use.

Research and recent inquiries have consistently shown that the criminalisation of some drugs has created significant costs and harms. While the current approach to drug policy has been in place for many decades in Queensland, it has proven largely ineffective at significantly reducing the consumption of illicit drugs and has never achieved a sustained reduction in supply.

In Australia, ecstasy, cocaine, methamphetamines and opioids are significantly more expensive than in other western countries, and this does not appear to have strongly deterred Australian users—illicit drug use in Australia as a proportion of the population is relatively high.

Criminalisation has also helped to create an illegal market worth at least \$1.6 billion (with high levels of violence associated with an unregulated market), made the quality of supply uncertain (resulting in increased morbidity and mortality), and impeded access to treatment for people who use drugs.

The Queensland Productivity Commission made a compelling economic argument for decriminalising low harm drugs within their *Inquiry into Imprisonment and Recidivism Final Report* (2019)<sup>6</sup> finding that:

- illicit drugs policy has failed to reduce supply or harm and was found to be a key contributor to rising imprisonment rates (particularly for women).
- current illicit drugs policy results in significant unintended harms, through supporting a large unregulated market and incentivising the introduction of more harmful drugs.
- evidence suggests that legalising lower harm drugs and decriminalising other drugs is likely to provide net benefits to Queensland of at least \$2.8 billion by 2025 and is unlikely to increase drug use.

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<sup>4</sup> Queensland Productivity Commission (2019) *Inquiry into Imprisonment and Recidivism Final Report*

<sup>5</sup> Queensland Productivity Commission (2019) *Inquiry into Imprisonment and Recidivism Final Report*

<sup>6</sup> Queensland Productivity Commission (2019) *Inquiry into Imprisonment and Recidivism Final Report*

	<ul style="list-style-type: none"> <li>targeted community-level interventions and greater use of diversionary approaches are alternative approaches to the criminal justice system (and are significantly less expensive).</li> </ul> <p>While the Queensland Government noted in their public response to this report that they had no intention of altering any drug laws in Queensland at the time, they provided no explanation for how this decision had been made and there was no engagement with peaks or other non-government providers to inform this response.</p> <p>It is disappointing to note that almost three years since the Queensland Productivity Commission’s Final Report was released, considered community planning and discussion has not occurred in relation to the proposed shift to drug policy, we are yet to see any substantive changes to existing drug diversion programs and yet another Taskforce has been established to address the same areas of concern; despite the business case for a new approach being abundantly clear.</p> <p>Indeed, the Queensland Productivity Commission went so far as to recommend that consideration be given to the legalisation of low harm illicit drugs, accompanied by supporting regulatory and health reforms, to better address the harms associated with unregulated market supply (including those associated with organised crime). This is consistent with community attitudes, with the most recent National Drug Strategy Household Survey showing that Australians are increasingly supportive of (at a minimum) legalising cannabis use<sup>7</sup>.</p>
<p>Q74. Why are women and girls offending at increased rates?</p>	<p>The Queensland Productivity Commission was clear in highlighting that changing legislation, policy shifts and increased enforcement activities by police are associated with the increased rates of offending, as opposed to any substantive shifts in the behaviour of women and girls within Queensland (as it relates to substance use related offences).</p> <p>This is supported by the most recent <i>National Drug Strategy Household Survey 2019</i><sup>8</sup> which shows us that rates of substance use are falling among younger generations and most Australians are giving up or reducing their alcohol intake, driven by health concerns. This survey also identified that while smoking rates increase with socio-economic disadvantage, rates of illicit drug use are highest in the most advantaged areas; which stands in contrast with the</p>

<sup>7</sup> Australian Institute of Health and Welfare 2020. National Drug Strategy Household Survey 2019. Drug Statistics series no. 32. PHE 270. Canberra AIHW.

<sup>8</sup> Australian Institute of Health and Welfare 2020. National Drug Strategy Household Survey 2019. Drug Statistics series no. 32. PHE 270. Canberra AIHW.



	findings of Discussion Paper 3, in relation to the high levels of disadvantage and marginalisation experienced by women and girls in contact with the criminal justice system.
<p>Q77. Are women and girls being diverted from the criminal justice system? If so, what are their experiences? What works and what could be done better? Options to consider:</p> <ul style="list-style-type: none"> <li>- The introduction of court disposals in certain circumstances,</li> <li>- The expansion of restorative justice conferencing,</li> <li>- The introduction of an adult cautioning system,</li> <li>- The introduction of penalty infringement notices for drug possession, and</li> <li>- Other options.</li> </ul> <p>What are the risks and benefits of these options?</p>	<p>As identified in Discussion Paper 3, there are significant benefits to diverting women from the criminal justice system, including that it prevents unnecessary contact with this system, saves costs, supports improved wellbeing and ensures there is no disruption to care giving responsibilities (which correspondingly reduces the likelihood of any intervention by child protection services/future contact with the youth justice system).</p> <p>However, while there has been a long-standing policy position in Queensland to divert people from the criminal justice system for (minor) drug related offending, actual practice lags well behind the stated ideal.</p> <p>Recent analysis of the first twenty years of diversion conducted by the Drug Policy Modelling Program found inter-jurisdictional learning around drug diversion has reduced over time and alarmingly that Queensland provides the lowest rate of diversion per 100 000 people in the nation<sup>9</sup>. The rate is so low that it noticeably shifts the national proportion of people with a principal offence of use/possession given a police drug diversion.</p> <p>Specifically, this report found that <i>‘Queensland accounted for the largest increase in people detected for use/possession in Australia and the highest rates of offenders being sentenced to prison for use/possession alone’</i>. The DPMP went on to note that such a finding reflects the longer term upward trend in Queensland, as evidenced by a recent analysis by the Queensland Sentencing Advisory Council that showed the number of offenders sentenced for possessing dangerous drug as their most serious offence more than doubled between 2005-06 to 2015–16 (Queensland Sentencing Advisory Council, 2017).</p> <p>This is despite the fact that as far back as 2011-12, the Queensland Drug Action Plan noted <i>‘early intervention and diversion programs, which help prevent people apprehended for drug use from getting caught up in the criminal justice cycle and divert them to treatment, have become an established and successful part of Queensland’s response to drug issues’</i>.</p>

<sup>9</sup> Caitlin Hughes et al., "Monograph 27: Criminal Justice Responses Relating to Personal Use and Possession of Illicit Drugs: The Reach of Australian Drug Diversion Programs and Barriers and Facilitators to Expansion," Drug Policy Modelling Program (2019).

	<p>While decriminalisation is the policy position of QNADA, any approach that seeks to meaningfully expand diversion initiatives is supported as a worthy step in the right direction, including the:</p> <ul style="list-style-type: none"> <li>• introduction of cautioning for minor drug offences,</li> <li>• expansion of the Police Drug Diversion Program to all currently illicit substances,</li> <li>• removal of the current requirement to admit to an offence, either in an electronically recorded interview or by pleading guilty in court before being allowed to participate in drug diversion,</li> <li>• removing the limit on the number of times that a person can participate in drug diversion, and</li> <li>• reconsideration of the purpose, delivery and type of health or educational interventions provided to people diverted from the criminal justice system.</li> </ul> <p>As outlined in more detail within QNADA’s <a href="#">Decriminalisation Position Paper</a> the removal of criminal penalties for possession (decriminalisation) is a preferred option to any amendments to diversion programs as it is a prudent, economically beneficial strategy that increases opportunities for people to access treatment when they need it; while correspondingly reducing unnecessary contact with the criminal justice system and the likelihood of future harm.</p>
<p>Q80. How are women and girls who are involved in the criminal justice system supported and their needs met? What works? What could be done better in a cost effective way?</p>	<p>While there is a need for significant investment in approaches that seek to divert women and girls away from the criminal justice system, there is a clear need for greater consideration to be given to their needs at all stages of program planning, development, and implementation.</p> <p>For example, while the establishment of the Queensland Drug and Alcohol Court in Queensland was intended to support people with a severe substance use disorder, it is clear that the design of the program means it is not fit for purpose for women.</p> <p>Women have proportionally very low rates of participation in this program which is likely associated with the length and type of intervention, with a <i>‘one size fits all’</i> approach being adopted despite evidence showing that programs should be tailored to a persons’ individual needs.</p> <p>In addition, participants are required to attend court for a health intervention, which is counterintuitive to the stated aims of this initiative and acts as an additional barrier for women who have caregiving responsibilities. This is</p>

	<p>particularly disappointing given that some studies demonstrate that women show the highest level of motivation to participate in these types of programs<sup>10</sup>.</p> <p>To better support engagement in these types of initiatives, the adequate assessment of gender specific clinical needs of women and girls has also been proposed to ensure that consideration is given to:</p> <ul style="list-style-type: none"> <li>• the identification of barriers to treatment participation (such as care responsibilities),</li> <li>• an appropriate assessment of relapse triggers is undertaken, and</li> <li>• consideration is given to other life circumstances that may impact participation (such as housing stability, co-occurring mental health diagnoses or domestic and family violence)<sup>11</sup>.</li> </ul> <p>In addition, while there is a need for expanded funding for alcohol and other drug treatment and harm reduction services across Queensland (as outlined at Q82) there is also a need to focus on improved services for women and girls in custody, and post-release.</p> <p>For example, while Opioid Substitution Therapy (OST) initiation has been implemented in four correctional centres in Queensland, and implementation of OST initiation in all correctional centres is a headline initiative in the <i>Queensland Corrective Services Drug and Alcohol Action Plan 2020-21</i>, more action is required to eliminate Hepatitis C from Queensland Correctional Centres. This includes by:</p> <ul style="list-style-type: none"> <li>• increasing capacity to treat Hepatitis C which is supported by new technologies (i.e. point of care testing),</li> <li>• implementation of Naloxone to reduce drug-related deaths in custody and upon release, and</li> <li>• real action on the introduction of a Needle and Syringe Program pilot<sup>12</sup>.</li> </ul>
<p>Q82. How can government funded supports and services be better coordinated and delivered to meet the particular needs of women and</p>	<p>It is positive to note recent investment by the Queensland Government to improve access to rehabilitation and treatment services for people who use alcohol and other drugs who are in contact with the criminal justice system.</p>

<sup>10</sup> Freiberg, A., Payne, J., Gelb, K., Morgan, A., & Makkai, T. (2016) Queensland Drug and Specialist Courts Review [https://www.courts.qld.gov.au/\\_data/assets/pdf\\_file/0004/514714/dc-rpt-dscr-final-full-report.pdf](https://www.courts.qld.gov.au/_data/assets/pdf_file/0004/514714/dc-rpt-dscr-final-full-report.pdf)

<sup>11</sup> Freiberg, A., Payne, J., Gelb, K., Morgan, A., & Makkai, T. (2016) Queensland Drug and Specialist Courts Review [https://www.courts.qld.gov.au/\\_data/assets/pdf\\_file/0004/514714/dc-rpt-dscr-final-full-report.pdf](https://www.courts.qld.gov.au/_data/assets/pdf_file/0004/514714/dc-rpt-dscr-final-full-report.pdf)

<sup>12</sup> All of these actions have been supported by the current Government specifically through the [Queensland Hepatitis C Action Plan 2019-2022](#), [QCS Drug and Alcohol Strategy 2020-25](#), [QCS Drug and Alcohol Action Plan 2020-21](#) and the [Response to Queensland Parole System Review recommendations](#) (Sofronoff Review).

<p>girls in the criminal justice system as accused person and offenders? What works? What needs to be improved?</p>	<p>Generally speaking, however, there are known service gaps for alcohol and other drug treatment and harm reduction services across Queensland (both public and non-government).</p> <p>While most people who use alcohol and other drugs never require treatment or support, for those that do need it these services are not always available, accessible, or acceptable in Queensland. This is problematic as ensuring timely access to treatment through increased investment works for both individuals and the broader community. It can help to reduce a persons' experiences of substance related harm, reduce their use and improve a person's capacity to understand and manage their health and wellbeing. In addition, for people who require treatment, research shows that for every dollar invested in alcohol and other drugs treatment and harm reduction services, there is a seven dollar return.<sup>13</sup></p> <p>We expect that a new plan to grow the mental health and alcohol and other drugs treatment service system in Queensland will be released following the completion of the Parliamentary Mental Health Select Committee inquiry into the opportunities to improve mental health outcomes for Queensland (the Committee is due to report by 31 May 2022). A whole of government system reform plan for alcohol and other drugs, led by the Qld Mental Health Commission is also expected this year.</p>
<p>Q95. What are your experiences or observations about women and girls' access to health and wellbeing services and supports while they are in custody or detention? What works well? What needs to be improved?</p>	<p>According to the World Health Organisation, illicit drug use is the most stigmatised health condition globally. The Queensland Mental Health Commission explored issues pertaining to the stigma and discrimination faced by people who use drugs in their report <i>Changing attitudes, Changing lives (2018)</i><sup>14</sup>. This report found that experiences of stigma and discrimination were common among people with a lived experience of problematic substance use and that this created barriers to seeking help, compounded social disadvantage, led to social isolation, and detrimentally affected a persons' mental and physical health.</p> <p>The <i>International Guidelines on Human Rights and Drug Policy</i><sup>15</sup>, recognise that within the context of the criminal justice system:</p>

<sup>13</sup> Alison Ritter et al., "New Horizons: The Review of Alcohol and Other Drug Treatment Services in Australia," in *Final Report* (Sydney: University of New South Wales, 2014).

<sup>14</sup> Queensland Mental Health Commission (2018) *Changing attitudes, Changing lives: options to reduce stigma and discrimination for people experiencing alcohol and other drug use*.

<sup>15</sup> <https://www.undp.org/library/international-guidelines-human-rights-and-drug-policy>

	<ul style="list-style-type: none"><li>• people deprived of their liberty for drug related offending must have access to voluntary and evidence-based health services, including harm reduction and drug treatment services, as well as essential medicines, including HIV and Hepatitis C services, at a standard that is equivalent to that in the community,</li><li>• health care services (including alcohol and other drug treatment) should be organised in close parallel with general public health administration, taking into account the specific nature of an individuals' detention,</li><li>• services should be designed to ensure continuity of harm reduction, drug treatment and access to essential medicines through transitions of entering and exiting a detention facility, as well as transfer between institutions,</li><li>• health care services (including alcohol and other drug treatment) are provided by qualified medical personnel able to make independent, evidence-based decisions for their patients, and</li><li>• training should be delivered to health care professionals and other staff working in prisons and other closed settings and places of detention on drug treatment, harm reduction, and other medical conditions that require the use of controlled substances for medical purposes.</li></ul>
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