Women's Safety and Justice Taskforce: Discussion Paper 2

Women and girls' experience of the criminal justice system

Submission by Legal Aid Queensland

Legal Aid QUEENSLAND

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Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to provide a submission to the Women's Safety and Justice Task Force's second discussion paper reviewing themes and issues for consideration relevant to women and girls' experiences of the criminal justice system.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997,* LAQ is established for the purpose of "giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way" and is required to give this "legal assistance at a reasonable cost to the community and on an equitable basis throughout the State". Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ's lawyers in the day to day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

In considering women and girl's experiences within the criminal justice system, LAQ acknowledges that First Nations women and girls suffer violence at significantly higher rates than non-Indigenous women[1], and that non-disclosure rates are higher in Indigenous communities.

We further acknowledge that First Nations women and girls have been victims and survivors of sexual offences since colonisation of Australia. Wurundjeri woman Sue-Anne Hunter spoke about how Indigenous people have for 233 years suffered gendered violence at the hands of colonisers stating:

> *"Aboriginal women have fought against gendered violence perpetrated by white men since day one. The allegations, cover-ups and silence on gendered violence in federal parliament*

[1] Bryant & Willis 2008; Gordon, Hallahan & Henry 2002; Memmott et al 2001; Mouzos 2001; Wundersitz 2010

is part of the same system of abuse and the same lack of legal and political consequences."[2]

Munanjahli-Yugambeh-South Sea Islander scholar Chelsea Watego draws attention to the multitude of examples where authorities have failed Indigenous women or further subjected them to violence[3]. Indigenous women and girls are not seen as victims or survivors. Rather they are not seen at all and the mindset is one of being responsible for the assault or that this is just something that happens to First Nations women so get over it. Why should mainstream media and Australia care what happens to you? Instead of focusing on the perpetrators, Indigenous women are portrayed as somehow deserving of such violence.

Any review of our systems that may see improvement in this situation has our support.

The discussion paper seeks feedback on several suggested themes for the taskforce to focus on when examining the second aspect of its terms of reference. We have addressed each discussion question from the paper below.

Should we explore any other cross-cutting issues?

LAQ supports the exploration of the cross-cutting issues identified by the taskforce, and how they affect women and girls' experience in the criminal justice system.

There is merit in focusing particularly on the intersectional disadvantages suffered by women as both victims and perpetrators of sexual violence.

However, further cross-cutting issues that should be examined include:

- Child protection and youth justice

  We know that a significant proportion of youth offenders are subject to child safety reports before they commit offences and come into contact with the Youth Justice system[4]. Approximately a third of children who come into contact with the Youth Justice system have a parent that has been held in adult custody[5].

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[2] https://womensagenda.com.au/latest/aboriginal-women-have-fought-against-gendered-violence-perpetrated-by-white-men-since-day-one/

[3] https://theconversation.com/no-public-outrage-no-vigils-australias-silence-at-violence-against-indigenous-women-158875

[4] see, for example 'Crossover Kids': Vulnerable Children in the Youth Justice System Report 2: Children at the Intersection of Child Protection and Youth Justice across Victoria (sentencingcouncil.vic.gov.au)

[5] Youth Justice Strategy 2019-2023, page 6 - https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/reform/strategy.pdf

We also know that girls involved in the youth justice system are more likely to have been involved in the child protection system, which reveals this to be a particularly gendered issue[6].

Further, women who experience abuse during childhood were more likely to experience violence in adulthood.

We consider there should be particular focus on whether there is any correlation between the engagement of a woman or girl, either throughout their childhood or as a parent, with the child protection system, and their experiences with domestic violence and their criminal justice journey.

- Education, employment and training

  We recommend that there be some investigation into whether a woman or girl's education attainment, employment, and training, affects her experience in the criminal justice system. Does it affect her access to support services, the likelihood of reporting victimisation, and her access to resources? This may be particularly focused on how her education contributes to her appearance as an 'ideal victim', whether it increases her likelihood of being a defendant, being incarcerated, and how that is reflected in her criminal justice experience.

  We also know that 52 percent of children engaged with the youth justice system are totally disengaged from education, employment and training[7].

  Further investigation should also be made as to whether there is a correlation between disengagement in education and training, and girls entering the criminal justice system, including through youth justice supervision.

- Mental health and disability

  Women who experience violence also report higher levels of severity of mental disorders, increased rates of physical disorders, greater mental health related dysfunction, general disability and impaired quality of life. We also know that 58 percent of children engaged with the youth justice system have a mental health or behavioural disorder diagnosed or suspected, and 17 percent have a disability diagnosed or suspected[8].

  When examining the impact of mental health, we consider it is also necessary to examine the experiences of those that suffer from cognitive impairments, and the wider

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[6] "Girls in juvenile detention: Deprioritised and re-traumatised" (2018) 147 Precedent 14

[7] Youth Justice Strategy, *loc.cit*.
[8] Youth Justice Strategy, *loc. cit*.

issue of access to health services. How does a cognitive impairment affect the way in which a woman or girl may be exposed to sexual violence, respond to trauma, and whether existing services and procedures provide adequate assistance for those with cognitive impairments to navigate the criminal justice system as either a victim or accused.

- Economics

  We consider there should also be focus on economic disadvantage and lack of economic independence. Economic marginalisation can impact on intergenerational trauma. Victims of violence will also need economic resources to provide for themselves and their families, achieve acceptable living standards, and maintain control over their lives. Poor economic standing is a compounding factor that will often contribute to homelessness but can also have an effect on accessing support, and potentially the quality of support, they can receive.

  Additionally, over a third of young people under youth justice supervision are from the lowest socio-economic areas[9].

  Particular focus should be given to how economic status affects women and girls' capacity to access support services and report victimisation, and whether this has any impact on their experience in the criminal justice system. There should be particular focus on rural and regional experiences and to what extent community-based services are adequately targeted and delivered in these areas.

- Cross-cultural issues and language barriers

  Lack of interpreters and paternalistic attitudes and the impact this has on women, particularly from cultures which are paternalistic in nature, should be a focus.

  Paternalistic attitudes are reflected in cultures where:

  - the male is seen as the head of the household and controls all of the household activity
  - teenage female children are expected to comply with their father's wishes with respect to marriage making it difficult, if not impossible, to make complaints of sexual assault against their husband or proposed husband and
  - when cultural norms are that sexual activity should occur when it is requested by the male and that the female is sinful if she does not comply.

  Lack of interpreters provided for cultural and linguistically diverse people attempting to make complaints of sexual violence poses challenges that are important to explore.

[9] Youth Justice in Australia 2019-20 report, page 14, Australian Institute of Health and Welfare

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 no, why not and what other offence types should the Taskforce focus on?

LAQ supports the taskforce focusing inquiries on sexual offending against women. This is particularly important in regard to First Nations women and girls who, as outlined above, have been victims and survivors of sexual offences since colonisation of Australia and are far more likely to experience violent victimisation and suffer more serious violence than non-Indigenous women.

In our experience there are few categories of offences where one gender is so disproportionately represented as victims as women and sexual offences.

We would also like to raise a similar disproportion in relation to the offence of Choking, suffocation or strangulation in a domestic setting found under s. 315A *Criminal Code*[10]. LAQ Criminal Law Services have observed since its introduction in a majority of cases women are predominantly the complainants, and men the defendants. We were unable to identify any other examples of such disproportion on a gender basis. Sentencing outcomes related to this offence were examined by the Queensland Sentencing Advisory Council in 2019[11], however, it may be another offence worthy of inclusion in this focused examination.

Given the relevance to offending behaviours as well as reporting, do you support the taskforce examining community attitudes to sexual offending against women and girls? If not, why?

LAQ supports the taskforce examining community attitudes to sexual offending against women and girls. Included in this could be a focus on the way in which attitudes are represented depending on the age, economic status and race of the woman or girl who has been offended against.

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?

LAQ supports the taskforce examining the barriers to reporting sexual offending against women and girls.

A focus on barriers for First Nations women and girls under this theme is important. The main reasons for non-disclosure by Indigenous women may be influenced by historical, social, cultural and pragmatic factors. The possibility of negative repercussions is a major barrier especially in small, interconnected, and isolated communities where anonymity cannot be maintained.

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[10] Introduced in 2016 following a recommendation made by the Special Taskforce on Domestic and Family Violence in Queensland

[11] Sentencing Spotlight on Choking, suffocation or strangulation in a domestic setting, May 2019

Indigenous victims fear stigmatisation and being ostracised from family and community and shame is seen as a major reason for not speaking up and reporting. In a report prepared by Robertson in 2000, it was said that "*Women are so fearful of the consequences of reporting an assault, have no alternative accommodation or must stay to protect their children, that choice is simply not an issue*."[12]

Indigenous women have knowledge and experience of the way in which police have interacted with them and their communities and family members. There is fear, distrust, anxiety and a belief that nothing will be done about their complaints or reports.

An examination of how to improve education strategies and curriculum to break down barriers would be of assistance, including:

- what primary through to secondary school curriculum programs are available or need to be developed by Queensland Education, Queensland Health, Legal and Queensland Police Service (QPS) advisors
- whether such strategies are included in mandatory aspects of the curriculum in state schools and what is required of private schools
- who is responsible for delivering such programs and whether there is specialist training provided to teachers responsible for delivering the curriculum
- issues in relation to:
    - consent
    - normal behaviour versus abnormal behaviour – for example in a case where a sexual assault was committed by an older step-brother, the victim said "I did not know what was normal behaviour and what was not normal behaviour although I felt uneasy about it"
    - cultural expectations – for example a victim said "I thought I was committing a sin if I refused to comply with his request for sex and I thought it was his right to demand anal sex"
    - protective behaviours
    - how to make a complaint and who to complain to
    - assertive behaviour
    - safety planning.
- an examination of education programs provided to police in relation to initial complaints – possible recording of interviews with all victim complainants, or at least those with culturally and linguistically diverse backgrounds, and clients with disabilities.

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[12] Robertson B 2000. *The Aboriginal and Torres Strait Islander Women's Task Force on Violence report.* Queensland: Department of Aboriginal and Torres Strait Islander Policy and Development

Given that the 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?

LAQ supports the taskforce examining the initial police response to reports of sexual offending against women and girls. Engagement with the criminal justice system begins with the victim making a formal complaint to police. This first step presents significant challenges which can often be difficult to overcome and may prevent many victims from seeking justice.

Having a gateway/s that people are aware of and that are accessible is extremely important. If the gateway is not used or creates additional problems, then examination of alternative possibilities must be undertaken.

The Operational Procedures Manual (Issue 82) (OPM) provides guidance and instruction for operational policing. Specifically, s 2.6.3 lists additional responsibilities of first response officers and investigating officers when dealing with sexual offences. In addition, officers are to refer to the Response to Sexual Assault Guidelines when dealing with victims, as well as to ensure that information is provided to them about local support agencies.

Similarly, the Office of the Director of Public Prosecutions (ODPP) has issued guidelines to assist the exercise of prosecutorial decisions to achieve consistency and efficiency, effectiveness and transparency in the administration of criminal justice. Guideline 25 provides guidance for dealing with victims of crime and the ODPP's obligations.

LAQ recommends a review of the Operation Procedures Manual and the ODPP's guidelines to ensure there are not any inconsistencies or deficiencies. Given one major area of concern is police attitudes towards women and girls who are victims of sexual offences, there should be a review into whether the procedural manual and guidelines are being put into practice and whether/ how they are being regulated. Furthermore, there should be an investigation into whether first responders/investigating officers receive adequate training prior to engaging with victims, particularly in terms of their interviewing techniques which can have a significant impact on whether victims even proceed with a complaint. To that end, it may be worth examining complaints received pursuant to Schedule 1AA of the *Victims of Crime Assistance Act* 2009 (VOCAA) along with how they are dealt with and responded to.

The taskforce could also explore whether special measures are put into place for particularly vulnerable groups, including Aboriginal or Torres Strait Islander women, women from culturally and linguistically diverse backgrounds, as well as victims with a disability. For example:

- Liaison officers to explain the process to people making complaints, with an allocation to all females making complaints. For example, a young female victim said: "I reported it to police and they said because it was my word against his word there was not enough evidence for him to be charged. I did not know I could ask for the interview to be recorded or how to get a second opinion about this".

- A requirement to provide an interpreter where English language skills are limited – for example a victim said: “the police made an assessment that my English was ok and that they did not need to get an interpreter. I did not understand what they were asking and they did not understand what I was saying so I just gave up”.

- A requirement for appropriate cultural support to people from First Nations or cultural and linguistically diverse backgrounds – for example a First Nations woman was incarcerated in prison for domestic violence offences that occurred against her partner explaining that he had broken her jaw, her cheekbone, one of her arms and raped her. Her offences occurred when she defended herself against him. No-one asked her about his offence of raping her or the extent of the injuries she had suffered.

Given the role police play in investigating and charging sexual offences, do you support the Taskforce examining the police attitudes towards and decision to charge in relation to sexual offending against women and girls? If not, why?

LAQ supports the taskforce examining police attitudes towards and decisions to charge in relation to sexual offending against women and girls.

Police responses to complainants vary widely based on the attitudes of the individual officer investigating the matter. Negative police attitudes towards a victim have been seen as a significant factor in cases not being investigated or charges being brought[13].

Further research into police culture and investigatory procedures may show just how much rape myths and stereotypes affect police decisions to properly investigate the complaint at the earliest stages. This could include further examination into police decisions not to charge an alleged offender or where charges have been withdrawn at an early stage. This may assist with the development of a specialist sexual assault training program which will help in initiating service wide cultural change.

Please refer to the response to the immediately preceding discussion question for more detail.

[13] Rebecca Scott & Heather Douglas, & Caitlin Goss (2017) Prosecution of Rape and Sexual Assault in Queensland’ Report on a Pilot Study

Given the role that specialist and mainstream services play, or could potentially play, in supporting victims and survivors of sexual violence offences, do you support the Taskforce examining the role and potential role of sexual violence and mainstream services? If not, why?

LAQ supports such an examination. Attention must be given to how culturally safe specialist and mainstream services are for Indigenous women and girls. It is the case that Indigenous women will use mainstream services if they feel that their privacy and confidentiality could be compromised by Aboriginal and/or Torres Strait Islander services. However, this should not be at the risk of enhancing their trauma because the service is not culturally safe, competent or sensitive. The taskforce should consider the range of Indigenous sexual violence and support services that exist in the community.

Sexual violence and mainstream services can play a role in providing legal advice and education about making complaints of sexual violence offences to both complainants and defendants. An example is the Domestic and Family Violence Specialist Court duty lawyer model where support is provided to both aggrieved and respondents. Provision of adequate resourcing for sexual violence and mainstream services is essential and could be directed towards early intervention programs for offenders and victims.

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?

LAQ supports the taskforce considering the effectiveness of Queensland's current sexual offences in the context of determining the merit of further legislative reform on aspects of the law that have not been the subject of recent reviews.

The Queensland Law Reform Commission's (QLRC) Review of consent laws and the excuse of mistake of fact conducted for more than six months in 2019/2020 culminated in its detailed report published in June 2020. Their terms of reference required the QLRC to conduct a review of the operation and practical application of the definition of consent and operation of the excuse of mistake of fact as it applies to the offence of rape and sexual assaults. This process included detailed qualitative and quantitative evidence-based analysis of how these laws operate within the Queensland criminal law framework, having regard to contemporary standards regarding sexual autonomy. In its commitment to evidence-based analysis, the QLRC examined a large number of rape and sexual assault trials and appeals, in particular:

- the transcripts of 135 criminal trials of rape or sexual assault offences completed in 2018
- the transcripts of a further 76 criminal trials identified by either judiciary, ODPP, LAQ or the Bar Association of Queensland in which consent or mistake of fact was raised
- analysis of relevant Court of Appeal decisions involving rape and/or sexual assault offences between 2000–2019
- detailed comparison of related laws in other Australian jurisdictions as well as international jurisdictions.

The QLRC received formal responses (a total of 87 submission) from a cross-section of legal stakeholders, academics, organisations representing the interests of victims, community legal centres and members of the public representing a wide range of views. As noted in the taskforce's Discussion Paper 2, varying views were shared regarding the need or desire for legislative reform and what those reforms should look like. LAQ recognises the enormous efforts of the QLRC to ensure issues relevant to their terms of reference were properly and carefully considered having regard to how the laws actually operate in Queensland. This was only possible due to the extensive review of the trial transcripts outlined above and the availability of the resources within the QLRC secretariat and oversight of its appointed members.

We are confident that the issues relevant to those terms of reference were adequately explored and are mindful of the limited time and human resources the taskforce has access to in its own very extensive terms of reference. In our view, there are substantial issues that have not recently been considered in a Queensland context that warrant closer and more detailed review.

Further, the legislation[14] giving effect to the recommendations from the QLRC review only took effect on 7 April 2021. It has not been given adequate time to demonstrate its value in bringing about reform. It is also in our view only one aspect of the picture which includes broad education and community awareness campaigns on the issue of consent. LAQ supports a closer examination of how such campaigns are being delivered in educational and community institutions and government agencies to ensure long term attitudinal change.

Given the role that the ODPP plays in the prosecution of sexual violence offences, do you support the Taskforce examining the role of the ODPP and their engagement with victims during the process? If not, why?

LAQ supports the examination of the role of the ODPP. Please refer to the response to the Taskforce examining the initial police response to reports of sexual offending against women and girls for more detail.

[14] The *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021*

Do you support the Task force examining the trial process with a focus on the particular needs of victims while ensuring the accused person has a fair trial? If not, why?

LAQ supports the examination of the trial process to focus on victim/witness needs while maintaining the integrity of the trial process for the accused. We do however consider that the trial process already contains a number of protections and procedures in place to support victims of sexual offences. Many of the legislative amendments referred to, which are designed to support vulnerable witnesses at trial, are regularly invoked in the trial process.

Specific considerations

- ***Whether the provisions of the Bail Act 1980* (Qld) *sufficiently protect the safety of victims of sexual offences***

  LAQ would encourage that any consideration of this issue has regard to the various current provisions of the *Bail Act 1980* (Bail Act) which exist to protect the victims' safety. These include provisions:

  - that require assessment of risk of reoffending, risk of endangering the safety or welfare of a person who is claimed to be a victim, or anyone else's safety or welfare; risk of interference with witnesses and obstruction of justice and failing to appear to answer the charge/s (s.16(1)(ii))
  - that require an assessment of the seriousness of offences (s.16(2)(a))
  - the breadth of bail conditions available to a court, including non-contact conditions, imposition of electronic monitoring (s.11)
  - the effects of the show cause provisions, in particular s.16(3)(g) which places an accused in a show cause position if charged with a relevant offence, which includes an offence punishable by a maximum penalty of at least seven years imprisonment if the offence is also a domestic violence offence under s.16(7)(b).

  As part of this examination it may be helpful to review the adequacy of the resources in place to police bail conditions and provide adequate information to a court determining the issue of bail.

- ***Jury directions to combat 'rape myths' and achieve greater consistency in the conduct of sexual violence prosecutions***

  LAQ supports a consideration of current jury directions to examine whether barriers exist to a fair trial, to combat rape myths, and to avoid re-traumatisation of victims.

  However, in our experience, juries in Queensland are currently carefully directed during trial with every effort to avoid reference to outdated stereotypes and irrelevant circumstances leading to sexual offending. Directions are also formulated to guard against miscarriage of justice for an accused and a balance must necessarily be struck. The relevant Criminal Benchbook directions include those regarding evidence of distressed condition (see *R v Williams [2010] 1 Qd R 276*), preliminary complaint, the "Robinson" and "Longman" directions, those relating to evidence of other sexual or

discreditable conduct of the defendant, and mistake of fact. Any such considerations should therefore include an examination of the Benchbook and other available guidance provided to judicial officers in the conduct of trials.

LAQ notes that any variations proposed to standard directions should be carefully scrutinised to avoid risk of unfair prejudice to an accused and potential miscarriages of justice.

- ***Modernising the rules of evidence for admission of similar fact and propensity evidence in Queensland***

  LAQ supports an analysis of the rules of evidence for admission of similar fact and propensity evidence subject to the below comments.

  In Queensland the current evidentiary rules allow for the admission of probative, relevant evidence and limit material that would unfairly prejudice the right to a fair trial. The prima facie position on admissibility and application of the common law test in *Pfennig v The Queen*[15], and *R v Bauer*[16], are by no means impossible hurdles to overcome. In our experience similar fact and propensity evidence is regularly admitted into criminal trials.

  As outlined in our response to the taskforce's first discussion paper, LAQ does not support extending the rules of evidence and rendering admissible evidence of the conduct of the defendant beyond the scope of the relationship with the complainant, to demonstrate a tendency on the part of the defendant to engage in certain behaviours. Such evidence must always be subject to the basic requirement of relevance and assessment of fairness. Because it is so prejudicial, it should also always be subject to discretionary exclusion by the trial judge where its probative value is outweighed by its prejudicial effect, and where its admission is not in the interest of a fair trial.

  Legislation that would abolish the common law principles governing admissibility of "propensity" evidence has significant implications for the administration of criminal justice beyond sexual offences and potentially beyond the terms of reference of the taskforce. Any consideration by the taskforce of proposed legislative amendments effecting changes to the rules of evidence should be referred for broader consideration and further consultation as part of a separate referral to the Queensland Law Reform Commission where the broader implications of the legislative amendments can be considered.

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[15] (1995) 182 CLR 461 at 483

[16] (2018) 92 ALJR 846, at 861-862

The system is adversarial and underpinned by the presumption of innocence. People accused of serious offences deserve the guarantee of a fair trial. It is now a recognised human right in Queensland.

- ***The appropriate use of police body-worn camera footage as evidence in criminal proceedings***

  Police body worn camera footage is often used as evidence in criminal proceedings, particularly with respect to offences of violence, as first responders arrive on a scene. It can form valuable parts of the objective evidence for all parties.

  LAQ considers if it is contemplated to use the footage to capture a victim's version at first instance, it be viewed as one part of that evidence and not necessarily a complete record. Any omission by the victim due to shock, embarrassment, fear of reprisal, or shame, could lead to a version that is subject to future criticism for inconsistency and affect the credibility of the complainant witness. This is compounded when the woman has particular vulnerabilities such as mental illness or cognitive impairments, or language or other communication barriers exist.

  If it is contemplated it be used to capture an adult victim's version to be utilised as evidence-in-chief at trial, that is more concerning. Removing the victim's right to have agency or control over their narrative and when and how they choose to give their version, is problematic.

  LAQ considers that if this evidence is to be admissible as a victim's version, to support evidence in chief, that safeguards be implemented to govern how body worn camera footage is edited, accessed and stored. This will ensure transparency of the process and fairness to the accused, who should be entitled to full disclosure of unedited versions. Similar to other recordings used in criminal trials, its content should still be subject to the general rules of evidence.

- ***Opportunities to learn from the family law system***

  <u>Restrictions on self-represented litigants cross-examining the victim in a matter involving allegations of violence and abuse</u>

  LAQ supports further consideration of the current restrictions, compared with the restrictions contained in *s. 102NA* and *s. 102NB* of the *Family Law Act 1975* (Cth) (FLA). It is further noted that a review into the operation of the FLA provisions is currently under way with a report to be provided to the Federal Attorney-General's Department by the end of August 2021.

  LAQ notes that there are current restrictions on self-represented parties cross-examining victims in higher court criminal matters pursuant to the *Evidence Act Division 6*, and similarly in *s. 151 Domestic and Family Violence Protection Act 2012* (Qld) (DFVPA) in relation to proceedings under that Act.

Evidence Act s. 21O prevents self-represented charged persons cross-examining 'protected witnesses'. In those circumstances, an order under *s. 21O(4)* for legal assistance is to be provided by LAQ.

A protected witness may be (pursuant to *Evidence Act s. 21M*):

- a witness under 16
- a witness with an impairment of the mind
- an alleged victim of a prescribed special offence or
- an alleged victim of a prescribed offence who would likely be disadvantaged as a witness, or to suffer severe emotional trauma.

A prescribed offence, or a prescribed special offence, includes *Criminal Code* offences that may be relevant to this taskforce of:

- threatening violence (*s. 75*)
- threats to murder in a document (*s. 308*)
- wounding (*s. 323*), common assault (*s. 335*)
- assault occasioning bodily harm (*s. 339*)
- serious assault (*s. 340*)
- kidnapping (*s. 354*)
- deprivation of liberty (*s. 355*)
- threats (*s. 359*)
- extortion (*s. 415*)
- a number of offences in *Chapter 22* (Offences against morality)
- grievous bodily harm (*s. 320*)
- torture (*s. 320A*)
- all offences in *Chapter 32* (Rape and sexual assaults).

LAQ considers there is some scope for assessment and possible improvement in relation to the provisions under the DFVPA, and whether provisions similar to that contained in *Evidence Act s. 21O* should be implemented and resourced in relation to charges proceeding summarily.

Initiatives and best practice principles

The Federal Circuit and Family Court of Australia (FCFCA) operates a number of initiatives to deal with matters which involve vulnerable litigants, for example:

- The Lighthouse Project plays a central role in the courts' response to cases which may involve family violence, by shaping the allocation of resources and urgency given to such cases. It is designed to improve the safety of litigants who may have experienced family violence and children who may have experienced associated risks such as child abuse.

- The Evatt List[17] is being trialed in Adelaide, Brisbane and Parramatta and has been created to ensure that families who are the most vulnerable are provided with appropriate resources and support which aims to strengthen safety and wellbeing. It is a case management system that responds to the particular needs of the family as efficiently and effectively as possible to minimise the risk of further trauma and harm to the family and it applies to applications for parenting orders only. The aim of the Evatt List is to have a case finalised within nine to 12 months of initial filing.

- The Magellan List involves case management for matters where allegations of serious physical abuse and sexual abuse are made in relation to a child. The overarching principles associated with Magellan include:

    - taking an inter-organisational approach (including Child Safety)
    - having a child-centred focus
    - placing priority on early intervention
    - using a judge-led, tightly managed and time-limited approach
    - using court-ordered expert investigations and assessments (from Child Safety and court-appointed counsellors)
    - using a multidisciplinary team (including judicial officers, an independent children's lawyer (ICL), court counsellors, and Child Safety).

  Magellan relies on collaborative and highly coordinated processes and procedures. A crucial aspect is strong interagency coordination, in particular with state and territory child protection agencies. This ensures that problems are dealt with efficiently and that high-quality information is shared. An ICL is appointed in every Magellan case. Child Safety's Magellan officer is located within Court Services.

- Family Violence Best Practice Principles which were designed to provide practical guidance to courts, legal practitioners, service providers, litigants and other interested persons in cases where issues of family violence or child abuse arise.

Similar initiatives could be considered for implementation in the Queensland state courts for dealing with matters involving sexual violence.

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[17] See Guide for practitioners in the Federal Circuit Court Evatt List and Guide for parties in the Federal Circuit Court Evatt List

- ***The treatment of victims appearing as complainant witnesses by lawyers appearing for the accused perpetrator of sexual violence, judicial officers and prosecuting lawyers***

  LAQ considers there are a number of procedures which interact with legislative reform to ensure the fair treatment of complainant witnesses at trial. It is LAQ's experience that the defence counsel engaged are regularly observant of their professional obligations and very conscious of the sensitivities of sexual offence trials. This framework should be considered as part of any broad review of the treatment of victims in the current system.

  The rules and standards of professional conduct are set out in the *Barristers' Conduct Rules 2011* as amended, to promote and ensure the administration of justice. *Rule 61* governs proceedings for sexual assault, indecent assault or the commission of an act of indecency in which the alleged victim gives evidence:

  (a) a barrister must not ask that witness a question or pursue a line of questioning of that witness which is intended:

      (i) to mislead or confuse the witness; or
      (ii) to be unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive; and

  (b) a barrister must take into account any particular vulnerability of the witness the manner and tone of the questions that the barrister asks.

  Defence counsel must also seek to confine cross-examination to identified issues which are genuinely in dispute and are not permitted to ask improper questions in cross-examination. The *Evidence Act s. 21* invests a discretion in the court to disallow an improper question, defined as a question that "*uses inappropriate language or is misleading, confusing, annoying, harassing, intimidating, offensive, oppressive or repetitive*."

  Further, defence counsel must not act as their client's mere mouthpiece.

  There are also protections that operate to disallow questioning of a complainant as to their sexual history (*s. 4 Criminal Law (Sexual Offences Act) 1978)* except if leave is granted in particular circumstances.

  The court can also place limitations on questioning in relation to special witnesses with respect to time and the number of questions on a particular issue.

  LAQ's experience is that prosecutors are proactive in utilising the existing legislative mechanisms available to protect victims when giving evidence.

  LAQ acknowledges that complainants report being re-traumatised by the trial process which is, by its nature, adversarial. Many reforms have been introduced to assist how complainants are treated by police and by the courts and to minimise the impact of the

system on these witnesses. These include:

- pre-recorded police statements of children and those of impaired mind (*Evidence Act s. 93A*)
- pre-recorded evidence for special witnesses (*Evidence Act s. 21A*), and affected child witnesses (*Evidence Act Division 4A*)
- special considerations of how witnesses categorised as special witnesses give evidence, including remotely,
- exclusion of people from a court room when a complainant in proceedings for a sexual offence is giving evidence[18];
- prohibition of the publication of identifying particulars of a complainant[19]; and
- as outlined above, prevention of the cross-examination of certain witnesses by self-represented defendants (*Evidence Act s. 21O*).

There are also significant limitations in place with respect to cross-examination of witnesses at committal hearing. The *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010* provided for amendments to the *Justices Act 1886*. Cross-examination as a matter of right in committal hearings was removed and is only permitted upon application and if it can be demonstrated that substantial reasons exist in the interests of justice[20].

Alternative processes such as restorative justice in appropriate cases, could be a step towards addressing this issue.

- ***Legal assistance and representation of victims appearing as complainant witnesses in prosecutions of sexual violence offences***

  LAQ supports further research into the merits of appropriate complainant witness representation, to better inform and provide support through the judicial process.

  With respect to the giving of evidence, LAQ recognises the value in a support person (already a feature in sexual offence trials) being present with appropriate directions existing to safeguard against prejudice. LAQ is however cautious about the extent of any legal representative role in this process and whether this solution is workable within our adversarial system.

  Support systems do exist, including through Victims Assist Qld. Victim Liaison Officers are also available through the ODPP to assist victims to navigate the trial process.

  The Queensland Intermediary Scheme (QIS)[21] was also recently introduced to run as a two-year pilot program in Brisbane and Cairns. The QIS currently applies to

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[18] s. 5 *Criminal Law (Sexual Offences) Act* 1978
[19] Ibid, s.6.
[20] *DC v Queensland Police Service* [2018] QMC 3
[21] Division 4C *Evidence Act 1977*

prosecution witnesses in child sexual offences who are under 16, or have an impairment of the mind, or have difficulty communicating. Intermediaries are not legal practitioners but have a therapeutic background. LAQ supports consideration as to whether the use of intermediaries ought to be expanded to assist all vulnerable witnesses, following evaluation of the pilot.

The question of independent legal representation is more vexed. It could provide greater confidence and assurance for a complainant witness who would benefit from an advocate with specialised legal training. It could lead to empowerment and a sense of more control in the process. The presence of a legal representative may serve to promote a more respectful treatment of the victim.

Of main concern is the imbalance it would create in an adversarial criminal justice system if an independent legal representative were a party to trial proceedings. An accused person would essentially be required to defend themselves against not only the prosecution, but the complainant victim's representative. Such a role does not align itself easily to our criminal trial jurisdiction.

A narrowing of the role of representative to pre-trial applications for example, could have merit. For example, since 2001 in Ireland, complainants in rape and aggravated sexual offence trials have been entitled to separate legal representation for applications that are made with respect to questioning on sexual history. Further research on jurisdictions that have successfully engaged such representation in an adversarial system such as ours, is worth conducting.

LAQ considers that clearly defined parameters are needed in order to maintain the integrity of the complainant witness version in relation to all representatives engaged in the trial process. There would also need to be contemplation of measures to overcome any prejudice against the accused in providing broad standing in a criminal trial to a legal representative for the complainant.

It is contemplated that questions of legal privilege would also arise and would necessarily attach to communications between legal representatives and the complainant witness. Whereas conference notes between prosecutor and complainant are disclosable to an accused prior to trial, communications between a legal practitioner and complainant client would not be, unless waived.

Given the QIS is in its infancy, in our view it would be preferable for the pilots to run their course to see if such reforms improve the treatment and experiences of complainants in the course of a trial before embarking on such significant systemic change as representation for victims within a trial. There are also cost implications potentially to LAQ as to how such representation is facilitated and would therefore require additional funding to support any such program.

- ***Whether the legislative provisions should be amended to prescribe that victims who are special witnesses are entitled to give evidence in a remote room, unless the victim herself chooses to give evidence in the courtroom***

  The *Evidence Act* recognises the vulnerability of particular witnesses in giving evidence in sexual offence matters and provides for special measures to assist them in that process.

  A witness can be declared a special witness upon application by a party to the proceedings or by the court of its own initiative [4].

  A special witness is[5]:

  (a) a child under 16 years; or

  (b) a person who, in the court's opinion—

  (i) would, as a result of a mental, intellectual or physical impairment or a relevant matter, be likely to be disadvantaged as a witness; or

  (ii) would be likely to suffer severe emotional trauma; or

  (iii) would be likely to be so intimidated as to be disadvantaged as a witness;

  if required to give evidence in accordance with the usual rules and practice of the court; or

  (c) a person who is to give evidence about the commission of a serious criminal offence committed by a criminal organisation or a participant in a criminal organisation; or

  (d) a person—

  (i) against whom domestic violence has been or is alleged to have been committed by another person; and

  (ii) who is to give evidence about the commission of an offence by the other person; or

  (e) a person—

  (i) against whom a sexual offence has been, or is alleged to have been, committed by another person; and

  (ii) who is to give evidence about the commission of an offence by the other person.

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[4] *Evidence Act* s. 21A
[5] *Evidence Act* s. 21A(1)

A complainant in a sexual offence is automatically captured within these provisions.

Once a witness falls within the category of special witness, then orders can be made for various measures to assist them in the giving of their evidence. These include[6]:

- for a screen between the witness and accused if giving evidence in the same room;
- for a support person to be present during evidence;
- for their evidence before the trial to be given by audio visual link from a remote room;
- that the court be closed to the public during the giving of evidence (*Evidence Act s. 21A(2)*);
- a direction about rest breaks for the special witness;
- a direction that questions for the special witness be kept simple;
- a direction that questions for the special witness be limited by time; and
- a direction that the number of questions for a special witness on a particular issue be limited.

The experience of LAQ Criminal Law Services is that an application for the giving of remote evidence is often made utilising these provisions on a reasonable basis and as such is rarely contested by defence. It is our experience that Crown prosecutors are proactive in making such applications and appropriate orders for the remote giving of evidence are routinely made.

LAQ considers the current provisions of the *Evidence Act* are drafted in a way that sufficiently address this issue. There is no need to make this section prescriptive in nature or in making this the default position. There is a preference for courts to retain discretion to decide on applications based upon the particular features that are present in the individual case.

It is widely recognised that a victim has the right to be protected at court from unnecessary contact with the accused, their family and friends, in accordance with the Victims' Charter of Rights.

- ***Whether the current legislation sufficiently addresses issues concerning privileged counselling communications where there is or has been an allegation of a sexual offence made by the victim***

  The provisions of the *Evidence Act s. 14H* are sufficient to cover the range of considerations the court must have regard to in deciding an application for leave to access such communications. The court is further entitled to take into account "any other matter it considers relevant in the exercise of the discretion".

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[6] *Evidence Act s.* 21A(2)

A raft of recent decisions primarily from the District Court, demonstrates that the counselling communications process is being considered very seriously by the courts, that the provision of protected counselling communications is subject to rigorous scrutiny, and the requirement that the communications will have substantial probative value is being held to a high standard:

- *R v JML* [2019] QDCPR 23 – application for the production of protected counselling communication refused
- *R v DO* [2019] QDCPR 49 – application for the production of protected counselling communication refused in part and otherwise allowed with conditions
- *R v CDJ* [2020] QDCPR 115 – application for the production of protected counselling communication refused
- *R v Kay* [2021] QDCPR 10 – application for the production of protected counselling communications refused

Recent practice directions have been issued to streamline the application process and resolve procedural issues that have arisen during the implementation of the legislation since it was enacted:

- Supreme Court Practice Direction 15 of 2021
- District Court Practice Direction 5 of 2021.

Given the recency of the reforms, LAQ supports a review of how the legislation is being applied and the impact of the recent practice directions on the process. We also support a consideration as to whether there is any scope to improve the experience of women and girls throughout this process.

It is acknowledged that appellate guidance in relation to the interpretation of the provisions would assist in achieving consistency, although in practice there is little scope for this. LAQ acknowledges the considerable disruptions to processes and court lists that interlocutory appeals would cause. However, as part of the Taskforce's examinations LAQ recommends that consideration be given to reviewing some aspects of the legislation that have resulted in a lack of clarity due to a difference in interpretation in single judge decisions; in particular:

- the application of the *Division 2A Evidence Act* provisions to complainants who are victims or alleged victims of a sexual assault offence, as defined in *s.14B Evidence Act* but where the proceedings themselves are not technically sexual assault offences. The question should be asked if a complainant is not empowered to make an allegation of sexual assault due to vulnerabilities, but the allegation is made out in the evidence, then should sexual assault counselling privilege apply?

  For example, in one case involving LAQ Counselling Notes Protect the complainant was a victim of sustained physical violence over 48 hours by the

accused. The acts engaged in by the accused included coercive, controlling behaviours. The acts also included the complainant being made to take off her clothes and pose in certain positions and the accused pointed at her breasts and genitals with a knife. The accused was charged with torture, common assault, grievous bodily harm and deprivation of liberty, but there were no charges of sexual assault. The complainant also did not want to make any allegations of sexual assault against the accused as she was concerned about their family's reactions and how this would affect her children. She also had difficulty understanding that what was done to her was a sexual assault. The complainant wanted her counselling records protected. The court made a ruling that the sexual assault counselling legislation did apply following submissions from the parties, with the reasoning that an allegation of sexual assault was made out on the complainant's statement. Different judicial officers have indicated their disagreement with this decision and that their view is that the privilege would only apply if the complainant actively made the allegation.

It is the view of LAQ Counselling Notes Protect that the privilege over counselling records should apply where there is evidence of an allegation regardless of whether or not it is actively alleged by the complainant. To ensure that this position also is covered in the event that a separate offence of coercive control is created, it is the position of LAQ Counselling Notes Protect that an amendment of Division 2A *Evidence Act* should also be considered to include the new offence.

- do the considerations under *Evidence Act* s.14H(2) apply at the stage of giving leave for subpoenas to issue or not? This issue was raised in a case where the accused was charged with sexual assault and applied to access the complainant's counselling records. When determining the issue of whether leave should be granted to issue subpoenas for the production of records, the judicial officer found that the court is not required to consider the harm that may be caused to the counselled person by the production of records, as the records were not being admitted into evidence at this stage. It is the view of LAQ Counselling Notes Protect that this does not appear to be in accordance with Parliament's intention in enacting the sexual assault counselling privilege legislative scheme. Other judicial officers have found that the court is required to consider whether or not production of the records would cause harm to the counselled person.

- consideration of the merits of legislative change to allow the counselled person and their legal representatives to be able to access protected counselling communications after court proceedings have commenced so that legal advice with respect to these records can be provided to the counselled person.

- the standing of the counselled person with respect to an application for leave to access protected counselling communications. In some instances the sexual assault counselling privilege legislation has been interpreted in a way that means the counselled person only has standing with respect to whether or not a record is a protected counselling communication. In these cases the court has refused

to allow the counselled person to make submissions as to whether or not the test for leave pursuant to the *Evidence Act s. 14H(1)* applies.

- ***Whether recorded interviews with trained police officers should be admissible evidence for all victims of sexual assault***

  The *Evidence Act s. 21A* provides for application for the pre-recorded evidence of a special witness to be viewed and heard at trial in lieu of direct oral testimony. *Evidence Act s. 21AK* governs the pre-recording of the evidence of an affected child witness.

  Similar provisions exist under the *Evidence Act* s. 93A in relation to children or those with an impairment of the mind. These generally take the form of a police interview that is often relied on as the evidence in chief of the witness at trial.

  Expanding these provisions to permit the admissibility of complainant witness versions in police interviews to all victims of sexual assault bears further consideration of the advantages and disadvantages.

  An advantage could be that it provides an opportunity for greater transparency in the process of the taking of the evidence. An interview allows for scrutiny as to how the information from the complainant was elicited, as opposed to a statement in a brief that does not deliver that context. It can uncover leading questions and other poor interview practices.

  Another obvious benefit is the interview process would generally be less stressful than giving evidence-in-chief at court. The less formal environment could be more conducive to obtaining an accurate and comprehensive version.

  Pre-recorded evidence in this way may also reduce opportunity for any witness intimidation by an accused as the version has already been captured well in advance of trial.

  A best practice framework would need to be implemented to govern the process of taking evidence in this way. There is concern that an interview may result in the inclusion of irrelevant matters to the issues, or inadmissible evidence that is prejudicial and not probative, or that the interviewer could contain sympathetic responses which could indicate bias.

  Further, evidence which could be elicited by a skilled prosecutor in evidence in chief, may be overlooked by a police officer. The role of an officer as impartial investigator at an interview stage necessarily differs from the role of a prosecutor who is charged with proving the matter in court.

  There is also some concern that live testimony has greater force and impact than a recorded version. The latter concern is perhaps less prevalent than it was, as the use of video recorded evidence and technology in general becomes more commonplace and less of a novelty to jurors.

  Significant resourcing would be required to deliver appropriate training to officers conducting such interviews, to avoid potential legal arguments (causing further trial delay) regarding editing and admissibility, to ensure the integrity of the complainant

witnesses' version and to avoid any overall potential miscarriage of justice to the accused.

Do you support the Taskforce examining the needs of victims following the prosecution of a sexual offence and whether the establishment of a Victims of Crime Commissioner is appropriate for Queensland? If not, why?

LAQ supports further examination of these issues, including consideration of the expansion of the role of existing services/agencies to support victims and provide a greater coordinated oversight of available support networks applicable to the criminal justice system.

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?

Yes. Solutions to violence developed by Indigenous people are likely to focus on community responses. Effective approaches for Indigenous communities are more likely to focus on healing and enable victims to deal with their pain and suffering. Responses need to recognise and respect female victims cultural and family obligations rather than aiming to separate women from families and communities.[22]

Indigenous approaches can involve customary law and principles of restorative justice and healing and only involving the criminal justice system in the most serious of cases.

LAQ supports the taskforce examining alternative ways of delivering justice for victims.

There is merit in a focus on:

- expanding diversionary alternatives for adults such as restorative justice conferencing, with opportunities for referral to be provided at all stages of the criminal justice system (as is provided for juvenile offenders under the *Youth Justice Act 1992*)
- examining the availability of funded, accessible, and culturally appropriate community-based offender treatment and rehabilitation programs to complement the restorative justice approach
- examining models of restorative justice conferencing established in other jurisdictions such as New Zealand.

[22] https://www.aic.gov.au/publications/tandi/tandi405

Do you support the Taskforce focusing on the underlying factors that are contributing to the increasing levels of women and girls coming into contact with the criminal justice system with a particular focus on Aboriginal and Torres Strait Islander women and girls? If not, why?

Yes.

- Estimates suggest that up to 90 percent of incidents of violence perpetrated against Indigenous women go undisclosed.
- Indigenous women living in regional and remote communities face additional challenges when dealing with their experience of violence, compared to those in metropolitan areas.
- Addressing the perpetration of violence by Indigenous men is made complex by their disproportionate contact with the legal system. This can affect women's willingness to report violence in the first place. It can also create difficulties facilitating accountability and change, if the key mechanism for doing so (the criminal justice system) is also a source of harm[23].
- Where the perpetrator is non-Indigenous and the victim is Indigenous, there is a power imbalance and belief that the predominantly white systems will listen to the white perpetrator before the Indigenous victim.

Do you support the Taskforce focusing on the role of the police in relation to women and girls accused of offences? If not, why?

LAQ supports the taskforce focusing on the role of the police in relation to women and girls accused of offences.

LAQ acknowledges that many women and girls accused of offences come from complex trauma backgrounds and their interactions with police are complicated by cross-cutting issues such as disability, mental health issues and linguistically diverse backgrounds. LAQ acknowledges that Aboriginal and Torres Strait Islander women and girls are over-represented in this cohort.

LAQ supports the taskforce considering co-response models and the role that police may have in referring accused women and girls to expanded diversionary alternatives as outlined above. A

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[23] *Improving family violence legal and support services for Aboriginal & Torres Strait Islander peoples:* Key findings and future directions. Regional and cross border experiences in Albury-Wodonga and Mildura ANROWS December 2020: https://www.anrows.org.au/publication/improving-family-violence-legal-and-support-services-for-aboriginal-and-torres-strait-islander-peoples-key-findings-and-future-directions/

review of the QPS Operational Procedures Manual, and how they are being put into practice, may assist.

Do you support the Taskforce focusing on women and girls' experiences in the legal system when they have been accused of committing offences? If not, why?

In our experience, the cross-cutting issues outlined in the discussion paper[24] and above in our response to that aspect, impact significantly on whether or not a woman or girl has contact with the criminal justice system and what their experience is once they have contact with the system.

LAQ therefore supports the taskforce focusing on the experience of accused women and girls.

In addition to the issues raised in the discussion paper, we would ask that consideration be given to the effects of unintended consequences of recent legislative reforms focused on being "tough on crime" but potentially contributing to the increased incarceration of women and girls. Those reforms would include:

- amendments to the show cause provisions of the *Bail Act*[25]
- amendments to sentencing guidelines of the *Penalties and Sentences Act 1992*[26]
- amendments to the *Youth Justice Act 1992*[27].

Do you support the Taskforce focusing on women and girls' experience of incarceration and release and in particular the progress towards implementing the recommendations of Women in Prison 2019? If not, why?

LAQ supports the focus on women and girls' experience of incarceration and release, as proposed.

A broad range of recommendations are contained in the *Women in Prison Consultation Report 2019* (qhrc.qld.gov.au). LAQ supports an examination of the progress made since its publication, with a particular focus on diversionary measures and justice reinvestment, as identified in the report.

Female incarceration has increased over the last decade, with the majority imprisoned for short periods of time but with broader reaching adverse social impacts from the disruption caused. LAQ

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[24] Pages 8 and 9
[25] For example brought about by *Bail (Domestic Violence) and Another Act Amendment Act 2017* and *Community Services Industry (Portable Long Service Leave) Act 2020.*
[26] For example, *Criminal Law Amendment Act 2014*, *Criminal Law (Domestic Violence) Amendment Act* (2015 and 2016), *Criminal Law Amendment Act 2017, Criminal Code and Other Legislation Amendment Act 2019, Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020.*
[27] For example brought about by the *Youth Justice and Other Legislation Amendment Act* (2019 and 2021).

supports an examination of the progress made to improve long term outcomes for women and girls who are or have been incarcerated.

LAQ acknowledges an over-representation of First Nations women and girls in custody and a disproportionate cohort with mental illness and disability. Backgrounds of trauma feature strongly. LAQ supports trauma-informed approaches to the support of women and girls within the custodial system and continuing upon transition to the community. The custodial system is traditionally male-oriented. An examination of how responsive that environment is to females who enter that system with backgrounds of trauma, is key to implementing better outcomes. The response needs to be culturally informed and appropriate.

There is merit in a focus on:

- the development of further innovative sentencing approaches or diversionary alternatives to those that exist, that maintain mother/child relationships, stable housing, employment and connection to communities as a preference to custodial sentences; LAQ notes the housing models in Victoria and the United States of America referenced in the report as representative of solutions to avoid the disruption of mother/child relationships without jeopardising community safety
- progress towards further resourcing in substance abuse programs, not only in south east Queensland but in regional areas and far north Queensland, in custody and post-release
- progress in the resourcing of appropriate, timely and adequate support for women and girls with mental illness, neuro cognitive impairments, intellectual impairments and disabilities to enable equitable access to prison programs and to have their health and treatment needs met
- progress in removing traditional barriers (including economic barriers) to gaining educational qualifications, and further investment in vocational training to assist women in gaining economic independence on release to support themselves and their families
- progress in transitional and post-prison support initiatives for women particularly with respect to housing and substance abuse and for those returning to identified vulnerable communities
- issues which arise in applying for parole, including delay, which result in poorer outcomes for women who may be released at full time without any parole program support in place
- the experience of women who are mothers in custody, the supports in place for care of their children in that environment and for contact with children, who are separated from their incarcerated mothers, including greater use of technology .

The *Human Rights Act 2019* (HRA) provides for the humane treatment of all persons deprived of liberty and specifically addresses the rights of those on remand. *HRA s. 30* provides that an

accused person who is detained must be treated in a way that is appropriate for a person who has not been convicted.

LAQ supports the examination of this distinction in the treatment of women and girls in the three correctional centres and the youth detention centres, where remandees are incarcerated with those who have been sentenced. This is in distinction to the Arthur Gorrie Correctional Centre at Wacol which serves as a remand and reception centre for men in south east Queensland, who are generally transferred upon conviction to another centre to serve their sentence.

LAQ is of the view that an examination of the relevant issues referred to above will necessarily involve scrutiny of any unintended consequences of legislative reform to the criminal law as a response to domestic violence including to the *Bail Act*. LAQ would welcome further consultation on this aspect in particular, as a potential driver leading to an increase in female incarceration.