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Our ref: Legal Policy - MC

Women's Safety and Justice Taskforce  
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Dear Taskforce

### **Discussion Paper 2 - Women and girls' experience of the criminal justice system**

Thank you for the opportunity to provide feedback on Discussion Paper 2 – Women and girls' experience of the criminal justice system. The Queensland Law Society (QLS) appreciates the opportunity to contribute to this consultation

This response has been compiled with input from the QLS Criminal Law, the Children's Law and the Domestic and Family Violence Committees, whose members have substantial expertise in this area.

We note that the Women's Safety and Justice Taskforce has identified the following possible focus areas for the second aspect of its inquiry:

- *Women as victim-survivors of sexual offences, including obstacles to reporting and the woman's path through the criminal justice system; and*
- *Why women come into contact with the criminal justice system as offenders and their journey through it, including sentencing options and prison experiences.*

As a preliminary point, we note that there are some difficulties associated with categorising the experiences of young women into focus areas defined by the experiences of 'victim-survivors' and 'offenders'. In undertaking its inquiry, we consider that the Taskforce should have regard to the significant correlation between young women who have been victims of offences and who find themselves before the court as accused persons.

We note that the purpose of this Discussion paper is to seek feedback on the themes the Taskforce should focus on when examining women and girls' experiences of the criminal justice system in Queensland.

QLS generally supports consideration of the themes and questions proposed by the Taskforce.

In providing our response, we have considered each of the proposed themes and subtopics and provided suggestions as to other topics and issues which might be considered as part of the second part of the Taskforce's inquiry. Given the limited timeframe within which the Taskforce provide its recommendations, we have also provided suggestions as to areas upon which the inquiry might be best directed.

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Our feedback in response to each of the proposed themes and subtopics is set out below:

### **Part 1: Women and girls' experience of the criminal justice system as victim-survivors**

#### **Cross-cutting issues**

QLS supports the Taskforce examining cross-cutting issues and how intersectional disadvantage affects women and girls' interactions with the justice system.

In addition to the issues identified in the Discussion Paper, we recommend the Taskforce consider:

- how young women's experiences in the child safety system contribute to their involvement in the justice system.
- as noted above, the relationship between young women's experiences as victim-survivors of crime and as perpetrators.

#### ***Theme 1: Community understanding of sexual offending and barriers to reporting***

##### **Focus on sexual offending**

QLS considers that the Taskforce should not limit its' inquiry to sexual violence; rather, the Taskforce should consider the experiences of women and girls who have been victims of violence in general. This would enable the Taskforce to more comprehensively examine how sexual offences and violent offences interact with and reflect dynamics of power and control.

##### **Community attitudes to sexual violence against women and girls**

QLS supports the Taskforce examining community attitudes to sexual offending against women and girls. In particular, QLS recommends that the Taskforce consider:

- existing mechanisms in Queensland which aim to improve community understanding of these issues, including sex education, education on consent in schools and ways to challenge the culture amongst young people whereby sexual violence against women and girls is normalised. For example, the Taskforce could consider emerging societal factors such as pornography, social media and dating applications that may be contributing to community attitudes and the prevalence of sexual violence against women and girls.
- the need for attitudinal change within the community to improve women's experience in the criminal justice system.
- how community attitudes are reflected in agencies such as the police and the courts, who deal with young women as victim-survivors and offenders.
- the allocation and structure of legal aid funding including consideration of whether this results in any disadvantage<sup>1</sup> for women.

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<sup>1</sup> Australia's National Legal Aid Statistics shows that in 2020-21, in Queensland, 20,781 legal aid grants were approved to men, compared to 9,327 grants to women.

Consideration should be given to how this affects DFV (which may fall into civil space for e.g. DVOs, and where it is criminally prosecuted, priority may be afforded to funding the defence of the male perpetrator over the victim).

See: *National Legal Aid Statistics*,

<https://nla.legalaid.nsw.gov.au/nlareports/reportviewer.aspx?reportname=Gender>

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- forensic barriers, including difficulties for sexual assault victims in accessing forensic medical examinations, particularly in regional areas.<sup>2</sup>

### Actual or perceived barriers to reporting sexual offences against women and girls

QLS supports consideration of the barriers to reporting sexual offending, in particular:

- alternative options for reporting sexual offences.
- particular barriers which disproportionately affect specific groups, for example, culturally and linguistically diverse women.
- entrenched attitudes which contribute to the fear of not being believed and the perceived and actual negative repercussions of reporting.<sup>3</sup>
- how the introduction of the mandatory reporting requirement for child sexual offences in section 229BC of the *Criminal Code Act 1899* (Qld) might impact the willingness of young people to disclose sexual offending.
- other barriers to reporting include but are not limited to:
  - trauma associated with process of reporting;
  - perceived negative consequences of reporting;
  - fear of retaliation by the perpetrator;
  - financial dependence upon the perpetrator;
  - perpetrators obstructing access to help;
  - not wanting family member or friend to be prosecuted;
  - uncertainty around prospects of successful prosecution;
  - lack of resources for getting help;
  - distrust of the criminal justice system;
  - cultural or language barriers.<sup>4</sup>

### Theme 2: Police response, investigation and charging of sexual offences

QLS recommends the Taskforce consider, in particular, how the police response to particular groups, including Aboriginal and Torres Strait Islander women; culturally and linguistically diverse women and rural and regional women can be improved.

#### Police response to initial reports of a sexual offence

QLS supports the proposed examination of the initial police response to reports of sexual offending and considers this examination should also extend to domestic and family violence matters.

QLS considers there would also be benefit in considering how police respond to reports of sexual offences and violence when dealing with people with disability victim-survivors and/or perpetrators.

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<sup>2</sup> [https://www.qao.qld.gov.au/sites/default/files/reports/delivering\\_forensic\\_services\\_report\\_21-2018-19\\_0.pdf](https://www.qao.qld.gov.au/sites/default/files/reports/delivering_forensic_services_report_21-2018-19_0.pdf).

<sup>3</sup> National Community Attitudes towards Violence against Women Survey.

<sup>4</sup> <https://www.alrc.gov.au/publication/family-violence-a-national-legal-response-alrc-report-114/26-reporting-prosecution-and-pre-trial-processes-2/recognising-and-reporting-sexual-assault/>.

### ***Theme 3: Legal and court process for sexual offences***

QLS considers that a systems review inquiry may be too broad considering the timing constraints of the Taskforce.

#### **Adequacy of current sexual offences in Queensland**

Consent and mistake of fact have recently been the subject of review by the Queensland Law Reform Commission (QLRC).<sup>5</sup> The QLRC's report 'Review of consent laws and the excuse of mistake of fact' provided an extensive and thorough analysis of the current state of the law in Queensland and subsequently made 5 recommendations relating to consent and the excise of mistake of fact, which have since been implemented.<sup>6</sup>

Given this and the limited timeframe available to the Taskforce to complete its inquiry, we consider the Taskforce should prioritise other areas for consideration.

#### **The role of the Office of the Director of Public Prosecutions and its engagement with victims**

QLS supports consideration of the role of ODPP and their engagement with victims. QLS supports ongoing trauma-informed education for ODPP staff. In a domestic and family violence context, QLS supports ODPP staff undertaking 'Safe and Together' training.

In considering the role of the ODPP, the Taskforce should have regard to the timeliness of ODPP engagement with victims as well as the need for continuity.

QLS recommends that consideration of sexual assault here should extend to sexual assault in a domestic and family violence context.

#### **The trial process and special measures for victims during the court process**

QLS supports consideration of:

- how the experience of trauma can be minimised for victims throughout the criminal process.
- the physical infrastructure of courts. In particular, QLS considers that the Taskforce should have regard to the accessibility of court buildings for:
  - women and children with disability, including those with mobility or other accessibility requirements; and
  - women with children, particularly those with young children or those with additional support needs. Our members report that in some court buildings, women, babies and young children can spend hours in waiting areas without adequate access to facilities such as parent's/carer's rooms, play areas for children, and access to food and drinks.

The Taskforce should also consider the involvement of children in the court process and whether this is appropriate. Steps should be taken to minimise traumatic impacts on children engaging with court processes (whether as an alleged offender, as a victim/survivor or witness).

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<sup>5</sup> QLRC, *Review of consent laws and the excuse of mistake of fact*.

<sup>6</sup> See *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021* (Qld).

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The Taskforce should also have regard to the preliminary impacts of the Queensland Intermediary scheme, which is currently being trialled in Brisbane and Cairns, although we acknowledge that the pilot has only commenced this month.<sup>7</sup>

### **Support for victims and ensuring their rights are protected**

#### **The nature and culture of the court process and alternative justice models**

We agree that it is appropriate and necessary for the Taskforce to consider ways in which the criminal justice system and its broader service system could adopt a more trauma-informed approach.

We note there are concerns about the use of restorative justice in the context of sexual offences. However, QLS supports consideration of the role of restorative justice including mediation and conferencing as an additional response to offending in appropriate circumstances.

QLS recommends the Taskforce also consider victims assistance schemes in other jurisdictions to determine whether any refinement of the Queensland scheme is needed to improve avenues for victims in seeking justice.<sup>8</sup> To be effective, any scheme would need to be supported by additional funding to the legal assistance sector, to ensure victims have access to appropriate advice throughout the process.

## **Part 2: Women and girls' experience of the criminal justice system as accused persons**

### ***Theme 4: Why women and girls come into contact with the criminal justice system and their engagement with police and the legal system***

QLS recommends the Taskforce consider:

- the evidence supporting raising the age of criminal responsibility
- employment, education and housing barriers which can increase the risk of offending.
- the prevalence and use of diversionary programs and referrals, and whether they are appropriately directed towards young women. In this regard, the Taskforce may also wish to consider the unique barriers to engaging in diversion for women.
- incarceration of women and the impacts of incarceration on children, as well as subsequent contact with the child protection and criminal justice systems.
- the experience of women with disability, including those which are not immediately apparent or are undiagnosed.

### **Underlying causes for women and girls coming into contact with the criminal justice system**

QLS recommends the Taskforce consider:

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<sup>7</sup> Queensland Courts, *Queensland Intermediary Scheme*, <https://www.courts.qld.gov.au/services/queensland-intermediary-scheme>.

<sup>8</sup> In Victoria, for example, the Victims of Crime Assistance Tribunal can make compensation orders if satisfied, on the balance of probabilities, that the harm is the result of the crime. See <https://www.lawreform.vic.gov.au/publication/issues-paper-h-sexual-offences-civil-law-and-other-non-criminal-responses/#footnote-27>.

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- the complex underlying factors which contribute to women and girls coming into contact with the criminal justice system, both as victim survivors and/or offenders. For example, in matters involving domestic and family violence, the impact of violence on women's offending, including the use of retaliatory violence or violent resistance, may not be adequately understood by prosecutors and/or the DPP.<sup>9</sup>
- the judicial approach to women's offending as well as judicial capacity to identify and understand patterns of coercive control and experiences of domestic and family violence.
- the unique factors that impact on particular population groups, including mental illness, behavioural or other disorders (both diagnosed and undiagnosed), addiction and socio-economic barriers).

### Women and girls' experience of the legal system as accused persons

#### *Theme 5: Women and girls' experience of imprisonment and release into the community*

QLS recommends the Taskforce give additional consideration to:

- parole delays.
- the impact of current legislative and policy approaches, including recent statutory changes to bail.
- evidence around improving recidivism rates.<sup>10</sup>
- support services and wider sentencing options – including community-led criminal justice responses, for example, The Maranguka Justice Reinvestment project.
- the availability and adequacy of low security facilities across the State to ensure that women who have low security classification are held in low security facilities.<sup>11</sup>

### Women and girls' experience of incarceration and release

QLS supports the Taskforce considering the recommendations of Women in Prison 2019. The Taskforce should assess the government's response to the report's recommendations and what measures may be put in place to ensure the recommendations are progressed as soon as possible.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [policy@qls.com.au](mailto:policy@qls.com.au) or by phone on (07) 3842 5930.

Yours faithfully



Elizabeth Shearer  
**President**

<sup>9</sup> <https://www.aic.gov.au/publications/tandi/tandi584>.

<sup>10</sup> <https://www.aihw.gov.au/reports/prisoners/health-and-welfare-of-women-in-prison/summary>.

<sup>11</sup> See Recommendation 31 of

[https://www.qhrc.qld.gov.au/\\_\\_data/assets/pdf\\_file/0003/17139/2019.03.05-Women-In-Prison-2019-final-report-small.pdf](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0003/17139/2019.03.05-Women-In-Prison-2019-final-report-small.pdf).