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You only have words as evidence. This is not enough...

Young Women Survivors of Sexual Violence share their experiences of the Queensland Criminal Justice System

[A joint submission prepared for the Women's Safety and Justice Taskforce by young women survivors of sexual violence and Zig Zag Young Women's Resource Centre Inc.]

INTRODUCTION

Zig Zag Young Women's Resource Centre Inc. and young women survivors of sexual violence welcome the opportunity to provide a joint written submission to the Women's Safety and Justice Taskforce 2022. We respectfully share in this submission, young women survivors' stories of their experiences with the criminal justice system, and further observations made by Zig Zag Workers who have supported young women survivors within their roles as sexual assault counsellors and homelessness support practitioners. We also submit recommendations based upon the feedback provided by the young women who have contributed to this submission.

Organisational Details

Zig Zag Young Women's Resource Centre Inc. (hereafter referred to as 'Zig Zag') was established in 1988 to respond to specific identified needs of young women, namely sexual violence, accommodation, and the provision of a safe and confidential place for young women to obtain information, advice, and support. Zig Zag is an incorporated, community managed organisation that currently receives recurrent funding from the Department of Justice and Attorney General to provide three Sexual Assault Support and Prevention Programs including specialist sexual assault counselling for young women aged 12 – 25 years in the Wider Brisbane, Brisbane North, and Brisbane Southwest regions. Additionally, Zig Zag receives recurrent funding from the Department of Communities, Housing and Digital Economy to provide a Housing and Homelessness Program including supported accommodation, intensive



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housing support and outreach for young women aged 16 – 25 year in the wider Brisbane region.

Submission Details

A group of young women were supported by Zig Zag, to act as ‘a chorus of voices’ through a joint submission about their experiences of engaging with criminal justice processes as survivors of sexual violence. These young women hold a collective belief that the Women’s Justice and Safety Taskforce presents an invaluable opportunity for women’s experiences to be shared, in the hope that their stories will be the impetus for long-awaited, necessary change to criminal justice processes that continue to re-traumatise and re-victimise survivors of sexual violence. This submission includes a collection of auto-biographic case studies written by the young women that have been fully retained in their own words. The young women (and Zig Zag) felt that it was important for these stories to be conveyed through their own words. The experiences shared by these young women are worryingly common amongst young women survivors’ of sexual violence navigating criminal justice processes in Queensland.

Zig Zag has significant experience in providing direct therapeutic support services to young women who have been victims of violent crime, namely sexual offences against children, young women, and young adults under the age of 25 years. Zig Zag is honoured to have supported these young women to contribute to this submission. Zig Zag also wishes to acknowledge the courage demonstrated by these young women as they engaged in this difficult process.



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PART 1 – “A chorus of voices” - Young Women’s Stories of accessing the criminal justice system

1. [REDACTED]

[REDACTED] entered the Justice System in March 2020, to take legal action against an older relative responsible for seven years of sexual assault and accounts of rape. A Police Officer assured [REDACTED] into a room and introduced a Detective Constable from the Childs’ Protection Services. The Detective introduced herself and listened to a summary of [REDACTED] childhood trauma, before providing a short explanation of the “statement process”. [REDACTED] wrote a short summary of how she felt during and after this experience:

“I was stunned into silence by the Detectives unenthusiastic and negative outlook on my cases future. I will never forget the Detectives quote ‘Historic allegations don’t typically generate successful outcome for the victim. As the first assault was at six years old, you only have words as evidence. This isn’t enough to detain someone.’ I felt emotionally deflated and defeated after hearing this. Words are very powerful for women who experience childhood sexual abuse. These words are a horrific story of truth, and the lived experiences of unspeakable sexual abuse. When my words were immediately shut down by the Police, so was my confidence and all the courage I built up to walk into that police station in the first place.”

The documentation and recording of [REDACTED]. statement commenced early March 2020 and finished March 2021. It took twelve months to record and write the statement. During this time [REDACTED] experienced long periods without contact by the Detective, and numerous emails and phone calls were left unanswered. On several occasions, an unfamiliar Police Officer would contact [REDACTED] [REDACTED] to cancel her upcoming appointments. [REDACTED] recalls:

“An unfamiliar Officer would call on an unknown number and reschedule the appointment I had reserved. On most occasions it was less than 12 hours’ notice. I was told the Detective was attending more urgent matters and would contact me to reschedule. On one occasion, I entered the station to attend an appointment, only to



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find out the Detective was on holidays. It was a humiliating afternoon that made feel as if I was a burden, begging to be listened too. It deeply impacted the progress of my recovery, as it amplified an internal belief, that my experience of sexual assault is not worthy of anyone's time, and it burdens those who listen. This went ongoing for twelve months, as the Detective would avoid contact and I felt responsible to reorganise the appointments. It's now March 2022, and I still believe I am a burden to everyone for experiencing this childhood sexual assault and attempting to accuse the paedophile responsible.

The investigation into [REDACTED] perpetrator included eight interviews of immediate family members and relatives. Of this eight interviewed, four persons have signed and received an official statement photocopy. The remaining family members have attempted to gain access to their statements and have been unsuccessful. [REDACTED] recalls:

"The Police station has disregarded my mother since the beginning. My mother's statement was important, as it set a timeline a jury could follow to identify the period of the sexual assaults. My mother never saw or signed a statement, and for the past year has attempted to contact the Detective to receive a copy. Countless emails and phone calls have gone unanswered and unreturned. We both doubt it exists. My Grandmother, who passed recently, experienced a similar treatment and it is unknown if her testimony was finalised. Again, this unorganised and unresponsive Police Investigation Unit failed to complete interview procedures that provided me with the only evidence I have...words. The little care and severe neglect for my investigation has me feeling helpless and angry. I am helpless because there is no one else to turn too, and angry because a sexual predator is known to a police force, who show little interest in bringing him to justice.

[REDACTED] suspects her mother and Grandmother's testimonials were not finalised because the statements alerted the Detective of Police misconduct that occurred eighteen years prior. When [REDACTED] was six years old, her grandmother complained to the Police and accused [REDACTED] sexual predator of child sexual assault. In 2002, the Police conducted one interview with the accused and ruled no foul play. There is no document of this investigation recorded in the Criminal Justice System. In addition to this pathetic investigation, [REDACTED]. parents were never contacted by police regarding the accusation or concern for safety.



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█ had this to say:

“It’s hard talking about this situation. I become emotionally and physically upset contemplating, that little six-year-old me was not protected by the Criminal Justice System. If the Police had properly investigated my grandmothers’ concerns, I would not have suffered seven years of sexual assault. For reasons unknown, my grandmother kept the accusation and investigation secret from my parents. So, for years my parents placed me in the care of my perpetrator not knowing the accusations had occurred. As an adult, I watched my mother breakdown from immense emotions of guilt and regret, blaming herself for not protecting her baby girl. I find it ironic that the two statements who recounted these historic events of police misconduct... went unfinalized, unsigned and never received.

The purpose of this recount isn’t to blame the Police for my suffering of sexual assault. The only person responsible is my perpetrator. My situation is an unfortunate example of how a failed investigation can impact the lives of many. The Criminal Justice System needs to recognise the importance of listening to sexual assault accusations and taking investigations seriously. If Australia’s Justice System and Investigation Units cannot protect the innocence of children and the women who survive sexual assault. What’s the purpose of having it there at all?



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2. Young Woman Survivor S's Story

Abuse 2003-2011. Reported in July 2021

I'm a survivor of sexual violence.

My interaction with the justice system was voluntary with the hope of prosecuting the perpetrators of what I experienced as an organisational child sex trafficking and child pornography group. My abuse occurred from 2003 to 2011 and I reported it in 2021 after over 10 years of intense psychiatric care and counselling.

When I arrived at the station I was greeted by a very tall, beefy, middle aged bald man who informed me he would take my statement, in part, pre written with the support of a social worker. I was not informed that I was allowed, indeed, supposed to have a female officer present as the intimidating detective and I sat in a small, windowless room for the next three hours.

I explained my belief that the crimes I survived were ongoing as from my experience, as I was escaping the group, my replacement was already being groomed. The detective told me that one of the perpetrators I'd mentioned by name had other similar accusations made about him. I left that meeting exhausted, triggered but hopeful with the plan to return a week later after the detective had time to read through my written statement. I would have greatly preferred to return sooner to finish this re-traumatising experience but understand that he was very busy. That was extremely difficult. I was suicidal and catatonically depressed. My partner had to remind me to eat and shower, all my energy was spent relieving my trauma or trying to do grounding exercises.

My appointment to finish my statement was 2pm on a Wednesday. I received a call at 11am that day from my detective informing me that something had come up and to reschedule for the following day at 8pm. As someone who is neuro-divergent, the short notice change to plans made waiting all the more difficult. When I returned to the police station, I was informed that my statement was good. I just needed to give more details about specifics. I informed the detective that due to the nature of the crimes, my age at the time (5-13yo) and the fact that my perpetrators often had me drugged to make me more compliant and less able to identify people and places, it would be near impossible to give exact times and dates. The



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detective told me that unless I had specific details of individual crimes they would not be able to press charges.

My support workers and legal counsel had prepared me for the fact that since I was unable to prepare the necessary details, the best possible outcome was that the police had my statement to corroborate if another survivor came forward. I still get hopeful that because one of my perpetrator's had prior allegations, that search warrant could be executed on the child porn producer and distributor. The detective's demeanour was blunt, uncaring and very triggering. I felt as though I was being interrogated, as if I was in trouble. In one instance, I was describing one assault that happened when I was 8. The detective did not let me use any language but scientific terms for my body parts. This was extremely traumatic being forced to re-live my abuse in such detail, especially since these events occurred when I was so young. I feel it needed to be dealt with much more sensitively. Perhaps if I was allowed to write the body parts on paper and point to them when I needed to, instead of having to say it.

The interview went on for 3 hours making it midnight before I got home. At no point was I offered a break, although I was offered a bottle of water and a bag of chips, which I am extremely grateful for. After I finished elaborating on my story, I was told my parents would need to be interviewed though I wasn't given a time frame. The detective told me he would be in touch and to contact him if I needed anything and I left the police station. It was around midnight when I got home.

Sunday, 3 days after I had been re-traumatized my parents, who, for the most part, were unaware of the extent of my abuse, texted me to say they were on their way to the police station to give their statements. I would have preferred that the detective at least let me know that was going to happen that day/so soon, if not ask if I was OK with that happening.

About 3 weeks had passed and I'd not heard anything so I called the police station looking for an update. I was informed that the detective was out of the office and a message would be left for him to call me back. I felt so intimidated that I did not want to bother him. I heard nothing for 6 months despite calling twice more and emailing the detective directly.

In early January 2022, I received a phone call that lasted less than 4 minutes from the detective who informed me that there was not enough evidence and there would be no further investigation. He also implied heavily that I was an unreliable source due to my mental illness (caused by the trauma) and memory problems (caused by being drugged at a young



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age). His words echoed those of my abusers that even if I did go to the police, they wouldn't believe me and wouldn't do anything. The thought that after all these years and all the bravery it took to report to got to the police, my abusers won. I was devastated and with no support being offered by the police following his brief phone call. My immediate thoughts were of suicide – that was it, my abusers won, the police didn't believe me.

If the officer had offered some aftercare for such devastating news, or just given me a phone number to call for lifeline, kids helpline etc. – I wouldn't have felt so bitterly alone in the hours following the call. To an extent my catatonia saved my life as I spent the next 2 hours frozen in place, dissociated completely. The detective offered not kind words, he didn't ask if I was OK or going to be OK following the news. He didn't offer any condolences that there was nothing the police could do. He left me questioning my sanity.

It was 2 hours before I could move to use the phone that was still in my hand. I sat frozen in my computer chair, the You Tube video still paused where I left it to take the call. Luckily I have a great support network and I know for a fact that if I didn't have someone to talk to that night, someone who already knew what I was going through with the police, I would have taken my life that night.

The whole police process replicated the power dynamic of the sexual violence I experienced. Once again I was uninformed, afraid and powerless. At no point was I told what was or would happen. I felt helpless. I often wonder if it was worth it, going to the police. I'm glad to have made my statement (which I never got offered a copy), in case another survivors of my perpetrators (who still works with kids to this day after 2 people came forward about their abuse) is brave enough to come forward. I have been made to feel as though my statement was entirely disregarded and thrown away.

If someone came to me looking for advice on reporting sexual violence to police I would say save yourself the extra trauma unless there are big changes made. Besides obviously offering me a female officer to at least be present in the room if not to take my statement, I would recommend weekly or monthly updates by email or phone call, even to say, "We're still working on it, it will be a while longer, are you OK?"

Victims should be informed of every step of the process clearly, rights should be explained verbally in simple language so that neuro-divergent and/or traumatised people understand they have choice in the situation. These rights should include the option to write down



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anything they are not able to verbalise, and take breaks whenever needed. Their rights should be more accessible for neuro-divergent people, not so dependent on jargon/scientific terms and verbal communication. Sitting in a chair for 3 hours straight recounting graphic detail of my abuse was very difficult. I would not recommend someone in a similar situation make a report to police unless changes are made to the justice system for officers and detectives to be more trauma informed.

3. Young Woman Survivor Z's Story

My experience with the Justice System started when I sought out filing a Domestic Violence Protection Order against my abuser, a family member who had sexually abused me when I was a child. I had known from counsellors and other survivors who approached the Justice System about criminal cases, that they were often distraught and re-traumatised by officers and how long the process took, & that played a role in me deciding the best I could do for justice was having a Protection Order.

The police shared brief knowledge with me in regard to my rights and confidentiality. I was already distraught just coming forward to speak about my experience

When my case finally went to court, it was just the beginning of the worst to come. I had to sit in the waiting room from 9am till 3pm waiting to hear my name called. I wasn't offered a specific time to come in & wasn't able to leave in case I had missed my name. I had to sit through this process once a month for 10 months, because of the police.

The police took 8 months to locate my abuser even though I had given them as much information as I could - car make, license plate, phone number, etc. The only reason my DVO was served is because I personally managed to track his location down and ordered the police to go serve him before it was too late.

The most support I received was from support workers offered. They were respectful and gave me more knowledge about what would happen and my own personal safety and experience (both in and out of court), than my duty lawyer or any of the police officers.



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Part 2 Recommendations: Toward an 'ideal' police response to young women survivors of sexual violence.

In his seminal piece written in 1986 (pp 17 – 30), Norwegian sociologist Nils Christie introduced the figure of the 'ideal victim'. The ideal victim represents an individual or category of individuals when impacted by crime, are more readily given the complete and legitimate status of being a victim. Jan Jordan's research article, "Perfect Victims, Perfect policing?" (2008) states that:-

"Criminological accounts of victimization have long recognized the evidence of what Nils Christie (1986) termed the 'ideal victim'. By this he was referring to the attributes perceived as determining whether persons would be regarded as legitimate victims, including such aspects as the victim's weakness and lack of culpability, combined with offender's 'badness' and stranger status. Similarly, attention has been extended to the ways in which judgements are made regarding 'deserving' and 'undeserving' victims and, particularly in the context of how victims are perceived in rape trials, to 'the importance of being perfect' (Jordan 2008, p 701).

The status of the ideal victim within Australian criminal justice contexts, is more readily afforded to women whose backgrounds and personal attributes include being educated, employed, of European decent, unaffected by poor mental health or drug and alcohol use, and who are victims' of stranger perpetrated sexual violence. It must be stressed that even ideal victims within the Queensland criminal justice system are not guaranteed an ideal response or afforded justice. Young women victims of sexual crimes, are most unlikely to be regarded and responded to as the ideal victim. This is because of their inherent youth, diversity of ethnicity, sexuality, gender, First Nation's status, emerging or tenuous economic status, frequent poor mental health (due to violence and trauma), high rates of homeless and in some cases, criminalisation. Moreover, the form of sexual crime most commonly experienced by young women is relational sexual violence – perpetrated by people young women know, including family members, coaches, teachers, friends, intimate partners and work colleagues.

Both Zig Zag and the young women who have shared their stories in this submission call for Queensland criminal justice agencies to acknowledge the existence of ideal victim bias within



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their approaches to sexual violence. We ask that all victim/survivors of sexual violence be responded to as legitimate victims and afforded an ideal response by Queensland Police, the Courts and the Office of the Director of Public Prosecutions. We ask that the response to young women incorporate a more nuanced, trauma-informed analysis of their vulnerability and specific needs. We respectfully offer the Taskforce a series of recommendations, drawn from the experiences of the young women who have contributed to this paper, and from observations drawn from Zig Zag workers who have many years' experience supporting young women survivors' of sexual violence.

1. Recommendations for victim-centred reporting and investigation processes by the Queensland Police Service: -

- In recognition that victim/survivors of sexual crimes have limited control and influence over the course of investigation, prosecution and sentencing of these crimes, we recommend that all police officers receiving and investigating complaints of sexual violence provide clear and comprehensive information about victims' rights immediately upon contact with a victim of sexual violence. This may include informing the young woman she has a right to not report the crime (as external pressures to do so exist); that she has a right to engage with forensic and medical services but not report at that stage; and that she has a right to report her crime and expect it to be followed up with diligence, in accordance with Operational Procedures Manual (OPM) which specifically outlines the manner in which sexual offences should be investigated; and that she has a right to access support and counselling services (Zig Zag is aware of a number of reports from young women, that QPS officers have ordered them not to access counselling services and have not made requisite referrals to sexual assault services);
- We recommend that all Queensland Police stations where formal statements are made, be resourced with an appropriate, private space to ensure that victims are comfortable, safe and have their basic needs met. This space should be comfortably furnished; have some visual access, or even physical access to an outside area; should be of a size which allows for support people to also be present; should be stocked with water, tea and coffee and basic snacks; and should be close to bathroom amenities. It should also be disability accessible;



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- We recommend that young women be given choices about where they provide their statement. Some young women may be capable of travelling to a police station to provide a statement. Others may prefer another location, which police could attend at a pre-arranged time suitable for the young woman. This could be her home, or a sexual assault support agency for example;
- We recommend that the scheduling of appointments for young women to make statements, should be co-ordinated in a way that prioritises young women's needs, over police officer's rosters. For example, some young women prefer to get the provision of their statement out of the way as quickly as possible, whilst others require a more measured and extended approach. Young women should be able to choose times, dates and lengths of sessions. Young women prefer to have consistent contact with a familiar police officer. In the case studies we saw an example of young women having to attend the station late at night to provide statements and examples of the provision of statements taking many months. Young women reported having their appointments cancelled at short notice and postponed due to officers being on leave. It is important that structures and schedules around the reporting process are victim-centred;
- We recommend that young women be offered as much practical and emotional support to reduce barriers to reporting and mitigate the stress associated with this process. Young women may require safe and appropriate transport options to attend the station. This could include being transported by police. Public transport is not usually an appropriate option. Young women will benefit from being offered the opportunity to provide a statement to a female police officer, if this option is available. Young women should be offered and encouraged to attend to their self-care needs whilst reporting. For example, being offered drinks and snacks, encouraged to take breaks during sessions and to have a support person present may help reduce the stress of reporting. As an initial step within the reporting process, police officers need to spend some time encouraging young women to explore and identify their support needs, as many young women will not feel empowered enough to ask for their needs to be met when presenting to report.
- We recommend that careful assessment be made of the vulnerability of and potential impacts for a survivor, when it is considered useful for the investigation to have a victim visit the crime scene or make pre-text phone calls to the alleged perpetrator.



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Visiting the site of a sexual crime can be highly psychologically stressful for victim/survivors and Zig Zag wonders if technology (cameras etc.) could be used to assist investigation to avoid young women survivors being required to visit the site.

2. Recommendations for trauma-informed communication between young women survivors' and criminal justice agencies including Queensland Police Service and Office of the Director of Public Prosecutions: -

- Navigating the criminal justice system (which is centred on an adversarial court system) as a survivor of a sexual crime, usually involves challenges to the victim's own sense of credibility and conviction, which in turn, can undermine a survivor's understanding of the sexual crime she has experienced. Victim's need to feel believed and have their thoughts and emotions validated – particularly fear and anxiety – by the agencies they engage with in their criminal justice system journey. Victims, also need to be encouraged and have their courage to engage with these processes recognized and affirmed by these agencies, no matter whether or not their case is perceived to be strong enough to prevail in court;
- We understand that the criminal justice system is limited in its capacity to deliver justice to victims' of historical sexual crimes. We also recognise that police officers, through the course of a young woman reporting sexual violence, may attempt to inform them that pursuing a criminal justice process concerning historical sexual crimes may be incredibly taxing with limited potential for justice to be served to victim/ survivors. However, we recommend that great care is taken by police officers when informing young women of these potential outcomes, as young women frequently report that these conversations leave them feeling dis-believed, hopeless and that the crimes they have experienced are not perceived as important enough for the criminal justice system to take seriously;
- We recommend that the Queensland Police Service encourage and facilitate a culture that prioritises consistent, frequent and sensitive communication between investigating officers and victim/survivors, in order to provide them with timely updates as to the progress of their case and to provide opportunities for victim/survivors to ask questions and acquire information around both police and prosecution processes. Zig Zag workers have observed evidence of this culture within the Child Protection Investigation Units, where officers have taken the time to contact



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young women, their families and support workers, for the purpose of providing updates regarding investigation and court processes, and offering important information around these processes. These officers have been open to young women and support workers initiating contact with them and have followed up with contact attempts in a timely manner.

- We recommend that officers who facilitate the reporting of sexual crimes and those engaged in investigation, have some training around the neurological and mental health impacts of trauma and violence, on survivors of sexual violence. It is common knowledge that traumatic experiences, including sexual violence, impact upon memory recall and may contribute to the development of other mental health issues that may complicate the reporting process for young women. Young women should not be made to feel deficient or unreliable as a witness because they can't recall the details of experiences of sexual violence, particularly in historical cases of prolonged familial sexual abuse or intimate partner sexual violence. Where there may not be enough evidence to proceed further with investigation, it is helpful for officers to feedback to young women the deficiencies of investigative and prosecution processes in delivering justice to survivors of sexual violence, rather than attributing criminal justice system failures to a survivor's compromised mental health.

3. Recommendations for change in court proceedings

The stories shared by young women in this submission represent experiences where criminal investigations into acts of sexual violence did not progress past the investigative stage. However, Zig Zag workers have observed and learnt of young women's experiences within the prosecution of their cases. We frequently hear of experiences where young women are re-victimised through court processes. We very much support the human rights of victims of crime, and recommend particular attention be paid to by ODPP the following:-

- Recognition of the vulnerability of young women complainants, particularly young women from First Nations and CALD backgrounds within the court system as victims of sexual violence;
- Recognition of the need for physical and psychological safety needs of young women complainants and strategies to ensure these are acted upon. This includes offering young women the right to give evidence by audio-visual link and allowing a support



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person in court. Zig Zag is aware of cases where highly vulnerable young women are not clearly informed of their right to provide witness testimony in an alternative location to the court room and a propensity for some Prosecutors to be quite directive and even pushy in relation to young women providing testimony in the court room, paying little regard to the immense psychological stress this causes leading up to, during and after the court appearance;

- Improved transparency and accountability of decision making within the Queensland Police Service and Office of the Director of Public Prosecutions in relation to all matters that do not proceed to prosecution. An independent review of decisions should be considered including review of the progression and outcomes of prosecutions within the criminal justice system. It is of significant concern to Zig Zag that the majority of reported crimes of sexual violence are not advancing through the criminal justice system and the attrition rate remains high for these types of offences. Victims/survivors often report a lack of understanding as to why their complaint has not progressed. This lack of transparency in decision making unfortunately reinforces a common belief held by young women victims/survivors of sexual violence that “no-one believes them” [in relation to the offences] and/or “it is not worth reporting as nothing happens to the offender anyway” [no justice or perpetrator accountability and continuing sense of perpetrator impunity].
- Implementing time restrictions and other processes in order to expedite court proceedings for sexual offences. It is common for matters relating to sexual offences to take 1-4 years to proceed through the criminal justice system, and there are often lengthy delays and adjournments of court proceedings. At times this can be observed as deliberate defense tactics aimed at delaying trial proceedings. In some jurisdictions there has been success in implementing time restrictions and other processes in order to expedite court proceedings to address some of the needs of victims whilst balancing the due process rights of the accused. Zig Zag supports the implementation of time restrictions and other processes in order to expedite proceedings for sexual offences to reduce the traumatic impact of lengthy proceedings on victims of violent crime.
- The introduction of a separate legal representative and advocate for victims of crime during criminal justice proceedings in Queensland to improve justice responses to victims of sexual offences. Victims/survivors often report to Zig Zag that they do not know what is happening with their complaint at each stage, as it advances through



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Court, nor have they felt appropriately prepared by the ODPP in their role as a 'witness' in the proceedings. Zig Zag has also observed that many victims of crime have not been appropriately advised of essential support services available including: specialist sexual assault support services, financial assistance/Victims Assist Queensland, court support services, and the Victims Register. As a 'witness' in proceedings, victims of crime often report that they have limited control, choice, or active participation in criminal justice proceedings. This often negatively reiterates the dynamics of violence where victims/survivors have experienced a profound loss of control and power. Victims of crime do not currently have separate legal support and representation during criminal justice proceedings. In order to effectively minimise re-traumatisation and improve justice responses to victims of sexual offences, a separate legal representative and advocate is recommended; this has been successfully introduced in Canada and Ireland. It is important that this role is independent of the ODPP.

- The introduction of specialist courts for sexual offences to be trialled in Queensland. Zig Zag recognises that there may be limited knowledge, understanding, and recognition of the impact of trauma as experienced by young women victims/survivors of sexual violence within criminal justice proceedings. Trauma informed practice is essential to ensure appropriate support is made available for victims of crime throughout criminal justice proceedings. There is substantial evidence relating to the experience of secondary victimisation and additional harm caused to victims of crime as a direct result of inappropriate service/system responses and practices. Such re-victimisation is likely to exacerbate existing psychological distress and delay recovery from the initial trauma. It is important to note that not all victims/survivors have had a negative experience of the criminal justice system and there continues to be significant developments in different jurisdictions aimed at improving responses to victims of crime, recognising their justice needs, and ensuring best practice in identifying and responding to trauma. The use of specialised prosecution units and Courts to respond to sexual offences has been successfully introduced and have operated in Victoria since 2007. An evaluation of this model has shown improved responses and outcomes for victims/survivors before and during court proceedings. Zig Zag strongly recommends the introduction of specialist courts for sexual offences in Queensland be trialled.



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4. Recommendations for urgent legislative reform

Queensland missed a momentous opportunity to for essential law reform in 2020-2021 with the Queensland Law Reform Commission Review and the drafting and assent of the *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021* which made technical and inconsequential changes only to existing law, and failed to address the urgent need for more substantive change to current legislation relating to consent and the mistake of fact defence as it relates to sexual offences in Queensland.

The definition of consent in the Queensland Criminal Code Act 1899 and the current operation of mistake of fact have significant negative impacts on the reporting, investigation, charge and prosecution of sexual offences, that has resulted in injustice to many sexual assault victim/survivors.

Queensland sexual assault laws are outdated and among the worst in Australia for sexual assault victim/survivors. NSW has recently passed affirmative consent law reform. Queensland women and children deserve better!

- Zig Zag recommends that Section 348 of the Criminal Code Act 1899 (Qld) should be urgently amended to introduce an affirmative consent model into Queensland legislation that includes the concept of a 'voluntary agreement' between two parties.
- Section 348 of the Criminal Code Act 1899 (Qld) should be amended to establish a comprehensive definition of 'affirmative consent' that includes:
 - A non-exhaustive list of examples of scenarios where consent is not to be considered a voluntary agreement, to assist with understanding by professionals in the system, including police and the community at large.
 - These examples be extended to include the following scenarios where consent is not freely or voluntarily given:
 - a. Where the person is asleep or unconscious when any part of the sexual act occurs; where the person is so affected by alcohol or another drug as to be incapable of consenting to the sexual act; and where the person fails to use a condom as agreed or sabotages the condom, where the person agrees.
 - b. Where the person (victim) agrees to a sexual act under a mistaken belief (induced by the other person) that the other person does not suffer from an infectious and/or sexually transmitted disease.



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- c. Where the person consents to a sexual act under a mistake belief (induced by the other person) that there will be a monetary exchange in relation to the sexual act as previously negotiated in sex work.
- d. Where the nature of the sexual act changes and consent is not continuing for example: when sexual acts become violent e.g. strangulation or a physical assault which may render the victim unable to use their voice.
- A new and discrete mistake of fact defence should be included in Chapter 32 of the Criminal Code Act 1899 (Qld), including the reverse onus of proof, and requirements for the defendant to show they took 'positive and reasonable steps' to ascertain consent, were not reckless when ascertaining consent, that the defendant's mistaken belief was not due to self-induced intoxication, and that they were not reckless as to whether or not the complainant consented, before being able to rely on the defence.

Conclusion

Zig Zag and the young women who courageously shared their stories in this joint submission, welcomes the consideration of these experiences and recommendation by the Women's Safety and Justice Taskforce. We are excited to see the findings and recommendations produced by the Taskforce and we remain hopeful that this will lead to improved outcomes for young women survivors of sexual violence, in terms of their future experiences with the criminal justice system. We wish to acknowledge all young women survivors of sexual violence who have over many years, bravely shared their stories and experiences with Zig Zag Young Women's Resource Centre Inc.

References

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