

ZIG ZAG YOUNG WOMEN'S RESOURCE CENTRE INC–

An Organisational Response to Discussion Paper 2 *Women and Girls experiences of the Justice System, Women's Safety and Justice Taskforce.*

Introduction

Zig Zag Young Women's Resource Centre Inc (hereafter referred to as 'Zig Zag') welcomes the opportunity to provide a written submission to the **Queensland Women's Safety and Justice Taskforce – 'Discussion Paper 2: Women and girls' experience of the criminal justice system proposed focus areas'**. We respectfully submit feedback relating to the proposed focus areas based on our extensive knowledge and experience in providing specialist sexual assault support and prevention services to young women aged 12-25 years who have been victims of violent crime, specifically sexual offences, in Queensland.

Zig Zag was established in 1988 to respond to the 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 funding from the Department of Justice and Attorney General (DJAG) to provide three specialist sexual assault support and prevention programs to young women in the Wider Brisbane, Brisbane North, and Brisbane Southwest regions; and funding from the Department of Communities, Housing and Digital Economy (DCHDE) to provide a specialist homelessness program to young women in the Wider Brisbane region.

It is important to firstly acknowledge that sexual violence continues to have the lowest rates of reporting, investigation, prosecution, and conviction of any violent crime in Australia, making it difficult to statistically measure the prevalence of sexual violence in the community. Data indicates that sexual violence is endemic with *one in three young women experiencing some form of sexual violence before the age of 18 years* (Astbury, J. [2006]. *Services for victims/survivors of sexual assault – Identifying needs, interventions and provision of services in Australia*. Issues Paper no. 6, Australian Centre for the Study of Sexual Assault, Canberra. Australian Bureau of Statistics. [200], *Personal Safety Survey, Australia 2005*, ABS, Canberra). Sexual violence is a largely hidden crime that often occurs within the family and other private contexts. Sexual violence is primarily perpetrated by males who are known to the victim such as family members, partners, friends, colleagues, neighbours, and acquaintances. Evidence suggests that *most victims/survivors of sexual violence do not report the crime to the police*, and many do not access specialist support services available until weeks and/or years after the offences took place.

Sexual violence against women in Australia also frequently occurs within intimate partner relationships as observed in the following statistical snapshot: -

- More than a quarter of a million women (272,300, or 24%) reported having been sexually assaulted by a previous partner since the age of 15 (Australian Bureau of Statistics. [2006], *Personal Safety Survey, Australia 2005*, ABS, Canberra);
- In a study on young people and domestic violence, 14% of surveyed women aged 12–20 had been sexually assaulted by a boyfriend (National Crime Prevention. [2001], *Young people and domestic violence: National Research on Young People's Attitudes and Experiences of Domestic Violence*, Fact sheet, Australian Government, Canberra);
- Specialist domestic violence prevention services report that 90% of women who have experienced domestic violence, namely physical, emotional, financial, and social abuse are also experiencing intimate partner sexual abuse (Heenan, M. [2004], *Just 'Keeping the Peace': a Reluctance to Respond to Male Partner Sexual Violence*, ACSSA Issues Paper, No 1, Australian Institute of Family Studies, Melbourne).

There are significant barriers for victims/survivors in disclosing and reporting experiences of sexual violence and rates of disclosure are even lower for intimate partner sexual violence. Whilst there exist a range of factors that deter victims from disclosing intimate partner sexual offences, it is important to note within the context of this Taskforce, that a lack of trust in police and/or judicial responses (Lievore, D. [2003], *Non-Reporting and Hidden Recording of Sexual Assault: An International Literature Review*, Australian Institute of Criminology, Canberra: 8), is cited as one significant factor.

Zig Zag also acknowledges that a disproportionately high incidence of sexual violence is perpetrated against young women. The Queensland Police Service and the Australian Bureau of Statistics cited that *72% of all recorded sexual assault crimes from 2014-2018 involved female victims under the age of 25 years*. Children and young people face additional barriers in disclosing and reporting experiences of sexual assault and accessing appropriate, free, and confidential support services due to a range of factors including their age, level of knowledge of support services available, ability to travel, difficulties obtaining parental consent, safety concerns, mistrust of the Police or Child Safety, and poor perceptions of the criminal justice system being observed as the primary deterrents for child and adolescent victims of sexual offences (Australian Bureau of Statistics [2018] Recorded Crime 2018).

As sexual offences are largely unreported, 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. *In Queensland, reported sexual assault outcomes from 2010-2018 indicate that 72% of investigations resulted in no further legal action or remained unresolved*^d. Of the 28% of investigations that proceeded with legal action we continued to observe high rates of attrition within the criminal justice system. For example, the Queensland Office for the Director of Public Prosecutions (ODPP) reported a 23.2% decrease in adult sexual offences committed for trial, and a 44.3% reduction in child sexual offences being committed for trial in Queensland in 2012-2013 (Stewart, B. [2011] *Review of the Resourcing of the Office of the Director of Public Prosecutions*, Stewart Consulting Services: 22-24).

Zig Zag supports the Queensland Government's Women's Safety and Justice Taskforce in its broad-based review into women and girls' experience of the criminal justice system and believes there is urgent need for wide-ranging reform within this system. In response to the Queensland Government's Women's Safety and Justice Taskforce 'Discussion Paper 2: Women and girls' experience of the

criminal justice system proposed focus areas' Zig Zag supports many of the focus areas chosen by the taskforce and would suggest the inclusion of further issues as outlined in this document.

SECTION 1: *The criminal justice journey for women and girls and Cross-cutting Issues.*

1.1 Diversity

The Discussion Paper identifies a range of issues which may impact on women and girls' experience of the criminal justice system including membership of the Aboriginal and Torres Strait Islander, disability, LGBTIQ+, culturally and linguistically diverse communities as well as rural, regional and urban residence.

Zig Zag supports recognition of these communities as outlined in the discussion paper as priority cross-cutting issues.

Recommendation: Zig Zag also suggests adding the cross-cutting issue of age for consideration. Specifically, we recommend a focus on the experiences of young women aged 0 – 25 who have experienced sexual violence. Research shows that young women aged 0 – 25 are a group more likely to experience sexual violence than the general population, and female children aged 0 – 14 experience sexual violence at a rate of more than twice that of people aged 15 and over (Australian Institute of Health and Welfare, 2020, p. 1). Young women also face unique barriers to reporting, accessing support services, attaining safety, can receive limited support within the justice system (particularly young women aged 18 – 25 who do not qualify for specialist court support/victim advocacy services). Zig Zag workers hear frequent reports from young women aged 12 – 25 that their experience in the criminal justice system is confusing, disempowering and re-traumatizing.

1.2 Recognising and responding to trauma.

The Discussion Paper identifies examination of trauma-informed care and practice principles and ways to reform the criminal justice and broader service system towards a trauma-informed model.

Zig Zag supports expanding trauma-informed care and practice principles in the criminal justice and broader service system as outlined in the discussion paper, **as an urgent priority issue**. In particular, we encourage the taskforce to examine the current lack of a trauma informed approach in the handling/treatment of sexual assault survivors within the legal system. Zig Zag workers hear frequent reports from young women aged 12 – 25 that their experiences within the criminal justice system are negative and re-traumatizing including:-

- Reports that suggest police are not consistently informing young women of their rights and options in relation to engagement with criminal justice processes, including informing them of their right to not report or be a witness within a prosecution, or clear information and options pertaining to their right to have a forensic medical examination immediately;
- intrusive/victim-blaming cross-examination practices by defence and insensitive comments by some members of the judiciary;
- discouragement from police when deciding to report sexual violence;

- lack of female police officers;
- investigations being discontinued for unclear reasons;
- a consistent and significant lack of communication from police (it is not uncommon for young women to report they have not been contacted by police for 6 months during an active investigation);
- lack of clear information about police processes/expected timeframes/planning for regular updates or consistent notifications that an investigating officer is leaving the position or going on leave and information about who will take over the case;
- extreme delays in between reporting and trial in sexual assault cases (some young women working with Zig Zag report 5 years from reporting to trial).

All of these issues have significant negative impacts for young women's mental health, wellbeing and recovery from sexual violence. Many young women experience secondary trauma due to their involvement in the criminal justice processes.

1.3 Overrepresentation of Aboriginal and Torres Strait Islander women and girls as victims of crime and as accused persons.

Zig Zag supports an examination of the over-representation of Aboriginal and Torres Strait Islander women and girls as victims of crime and accused/criminalised persons as outlined in the discussion paper. Zig Zag recognises that the criminalisation of Aboriginal and Torres Strait Islander women is linked to racist attitudes and practices within the police force and criminal justice system as well as ongoing colonisation, dispossession and oppressive colonial state practices and over-policing of Aboriginal and Torres Strait Islander people.

We support the examination of this issue as an **urgent priority need**.

1.4 The nature and culture of the criminal justice system and alternative justice models

Zig Zag supports an examination of the nature and culture of the criminal justice system and exploration and expansion of alternative justice models including restorative justice practices **as an urgent priority issue**.

Zig Zag supports an exploration and expansion of alternatives to the adversarial model for sexual assault and recognises that present adversarial models lead to significant rates of re-traumatisation of victims/survivors of sexual violence. Zig Zag recognises that some victims/survivors of sexual violence share that their experiences of reporting sexual violence and progressing through the criminal justice system were more traumatic than the sexual violence they experienced which is an indictment on the inhumane and inadequate nature of our current system. Zig Zag supports an exploration of alternative justice/accountability models including restorative justice and community conferencing models.

Recommendation: Zig Zag has received feedback from young women and Zig Zag sexual assault counsellors and support workers, that at present there are some problems with restorative justice practices including:-

- inexperienced and insufficiently skilled facilitators;

- the prioritisation of perpetrators needs (namely the need to keep perpetrators out of the criminal justice system), over victim/survivors rights to recovery and justice. Furthermore,
- restorative justice facilitators speaking to and seeking input in decision-making and planning primarily from young women's parents, counsellors and schools, rather than the young women themselves.
- young women feeling uncomfortable to attend the process and be in close proximity to the perpetrator.

We note that for a restorative justice process to be meaningful, the victim/survivor must be positioned at its centre, consulted with and the process developed in collaboration with them in ways that prioritise their needs, levels of comfort and recovery above all else. Furthermore, appropriate and rigorous screening must have occurred, including assessment of the perpetrator's suitability for the process in that they have demonstrated: remorse for their actions, an understanding of the impacts of their actions on the victim/survivor, a commitment to honesty and accountability in the process and an understanding that they are there to primarily assist with the victim/survivors recovery from the harm they have caused to them.

1.5 Protecting and promoting human rights and the need to achieve just outcomes by balancing the interests of victims and accused persons.

Zig Zag supports the commitment outlined in Discussion Paper 2, to upholding the Human Rights of victims/survivors within the criminal justice system. Including victim's/survivors rights: not to be treated in a cruel, inhuman or degrading way, the right to liberty and security and the right to life (reference: <https://www.legislation.qld.gov.au/view/html/asmade/act-2019-005>).

Zig Zag supports reform to the criminal justice system which enshrines and protects the human rights of female victims'/survivors. We recognise that an overwhelming majority of female victims'/survivors of sexual and gendered violence experience repeated violations of the above listed human rights within Queensland's current criminal justice system.

Recommendation: Zig Zag encourages the Women's Safety and Justice Taskforce to include an examination of how victims'/survivors rights are currently repeatedly violated within the justice system. This includes acknowledgement of high rates of re-traumatisation and poor justice outcomes for women, harmful and unethical cross-examination practices, burdensome standard of proof requirements for historical sexual abuse cases and unacceptably low rates of conviction for perpetrators of sexual violence.

Zig Zag workers frequently hear feedback from young women aged 18 – 25 who are reporting a historical experience of sexual violence, that they are informed by police the likelihood of a criminal justice process leading to a successful conviction is extremely low and that many young women's cases are closed by police due to 'lack of evidence'. We acknowledge that currently standards of proof relating to reports of historical abuse have resulted in low rates of community safety, low rates of perpetrator accountability and low rates of justice for those reporting crimes committed against them when they were a child. This is an indictment on the current legal system and evidence of the need for significant and urgent reform to the way in which historical sexual assault reports are treated.

SECTION 2 : Response to Part 1 - Themes 1, 2 and 3.

2.1 Women and girls' experience of the criminal justice system as victim-survivors - a focus on sexual offending against women.

In part 1 of the Discussion Paper statistics are provided relating to the rates and prevalence of sexual violence against women and girls' (p. 10).

Recommendation: We recommend consideration and inclusion of rates of sexual violence against female children aged 18 and under which are not currently mentioned in the Discussion Paper. In 2018 in Australia the national rate of police-recorded sexual assaults against children aged 0 – 14 (167.6 per 100, 000) was nearly twice that of people aged 15 and over (90.2 per 100, 000). (AIHW, <https://www.aihw.gov.au/getmedia/0375553f-0395-46cc-9574-d54c74fa601a/aihw-fdv-5.pdf.aspx?inline=true>). Female children aged 14 and under, experience sexual violence at a rate higher than the general community and face unique barriers to reporting, accessing support services and being able to remove themselves from the environment in which the offending has/is taken/taking place.

Female children aged 14 and under are often victims of sexual offending by a family member (father, step-father, uncle, grandfather, brother, cousin), or a person known to their family (family friend, teacher, coach). This means they are also more likely to experience ongoing abuse rather than a single incident, due to a lack of power, resources and ability to remove themselves from the reach of the perpetrator. Due to the unique circumstances of female children aged 14 and under who have experienced sexual violence, we recommend particular focus and inclusion of their experiences within scope of Women's Safety and Justice Taskforce review into women and girl's experiences in the criminal justice system.

Discussion question: Given the 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?

Zig Zag supports the Women's Safety and Justice Taskforce focus on sexual offending against women and girls. As a service who supports young women aged 12 – 25 who have experienced sexual violence we are acutely aware of present limitations of the criminal justice system in responding to women and girl victim/survivors. We welcome and support the focus of the Women's Safety Taskforce in this area. We believe that reforms to this system, which prioritise women's rights to safety, community rights to safety, accountability of perpetrators of sexual violence, will have far reaching positive impacts in our community and in the lives of women and children impacted by sexual violence.

2.2 Theme 1 - Community understanding of sexual offending and barriers to reporting.

2.2.1 Community attitudes to sexual violence against women and girls and the adequacy of education and public information about consent and appropriate sexual behaviour.

Zig Zag strongly supports the taskforce's consideration of the need for cultural and attitudinal change across all sectors of society to improve women and girls' experience of the criminal justice system as victims of sexual offences. Zig Zag recognises the clear link between community attitudes and sexual assault offending. Zig Zag supports the current proposal that the taskforce consider the existing mechanisms in Queensland to improve community understanding of these issues, including education about sexual consent in Queensland's schools and what can be done to change a culture amongst young people where sexual violence against women and girls has become normalised.

We note that the QLD government has previously considered the teaching of consent in schools. In the past the QLD government planned to teach 'Respectful Relationship' content as part of the school curriculum however this was not rolled out across all/most schools. At present the way that consent is taught in schools tends to be on an ad-hoc basis and different from school to school. Zig Zag supports the taskforce in looking to improve the teaching of consent in school including the creation of a central agency/approach, integration of consent education into the state-wide curriculum for primary and high schools, seeking to collaborate with sexual violence support and other specialised services to develop these programs.

Zig Zag workers frequently hear feedback from young women aged 12 – 18 that they experience sexist attitudes from male peers/students in their school environment, in schools across Brisbane. Young women report comments such as "make me a sandwich" directed at them from male students/peers which are intended to degrade and belittle the young woman. In addition, Zig Zag works with many young women aged 12 – 18 who report sexual violence occurring within their school environment and at school events, such as indecent and sexual assault on school premises, during school hours in classrooms and toilets.

Many young women report negative experiences with school responses to sexual violence including:-

- the school referring the matter to police and taking no further action to protect the victim/survivor (even in cases where the male student is known to have assaulted multiple female students);
- having to attend the same classes as male perpetrators;
- minimal school-led accountability processes for the perpetrator i.e. in one instance the perpetrator was supported by the school to access counselling while the school provided no such support to the female victim/survivor.

These experiences place the burden of protection on the victim/survivor and several young women reported making the decision to leave their school at significant disruption to their education as they felt there was no other way to feel safe and avoid daily fear/trauma-triggers due to repeated forced proximity to the male student who assaulted them.

Based on the above feedback from young women Zig Zag would suggest a review and creation of an action plan for all QLD schools to improve their prevention and responses to sexual violence, though evidence-based best practice education and prevention, perpetrator accountability and victim/survivor safety and support.

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

Zig Zag supports the taskforce's examination into the array of barriers which prevent women and girls from reporting sexual offences to police and what can be changed to improve rates of reporting.

Zig Zag hears reports from young women about multiple serious barriers to reporting including:-

- fears of not being believed;
- having friends or family who have attempted to report and/or had poor/traumatic police and justice responses;
- young women hearing within their community and via media/popular culture/their own research about low rates of convictions for perpetrators of sexual violence.

2.2.3 Discussion question: 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?

Zig Zag supports this area of inquiry, however also notes that many barriers to reporting are the direct result of a criminal justice system which does not appropriately respond to sexual violence. Whilst the justice system responses remain overwhelmingly poor and inadequate there is very limited benefit in increasing reporting rates as the current system does not deliver justice for survivors of sexual violence or accountability for perpetrators.

2.3 Theme 2 - Police response, investigation and charging of sexual offences.

2.3.1 Police response to initial reports of a sexual offence.

Zig Zag strongly supports the taskforce's aim to examine the initial response to reports of sexual offences made to police, the ongoing police response and what processes are put in place to support victims at this important stage of the process.

A number of young women have reported to Zig Zag that they were actively discouraged from reporting by Queensland police. One young woman reported to Zig Zag that she was raped whilst working at an adult entertainment establishment in Queensland. Whilst at the hospital, after undertaking a forensic examination, she was visited by police who repeatedly asked her "are you sure you didn't consent to the sex?". Having received this response by police, during the immediate aftermath of the traumatic rape, this young woman perceived she was not believed and felt there was no point in continuing with reporting. She felt compelled to drop her complaint.

Stereotypes held about survivors, a lack of awareness of trauma responses and victim blaming attitudes held by police, act as significant deterrents to young women to engage in reporting sexual crimes and are a source of secondary trauma for young women. Numerous young women have reported to Zig Zag, experiences of being blamed for sexual violence because police have interpreted their actions as indicating a level of consent or complicity with the sexual activity/violence i.e. "Well

you did go to his house". Another young woman was told that the rape was implausible because she had learnt martial arts and could have fought the alleged perpetrator off. Zig Zag has had a number of young women report that police have questioned their motivations around reporting, suggesting they are doing so because they experienced an unsatisfying or negative sexual encounter rather than an act of sexual violence i.e. "There is a difference between a crappy sexual experience and sexual assault you know". In these cases, our professional experience would suggest that the young woman does know and has attempted to report a legitimate experience of sexual violence, which has not been dealt with by the police adequately or appropriately. Criminalised, young women commonly report having poor responses from police in relation to reporting and investigating sexual crimes.

2.3.2 Discussion question: Given that 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?

Zig Zag strongly supports this area of focus as a priority for the taskforce and the following proposed initiatives proposed by the Taskforce:-

- development of specialised sexual crimes units across Brisbane for adult victim/survivors, staffed by a multi-disciplinary team including officers and social workers trained to effectively engage with diverse groups of survivors i.e. women, culturally and linguistically diverse women, people with disabilities, Aboriginal and Torres Strait Islander communities;
- trauma informed and youth friendly practices and approaches around communication and information sharing (concerning victim rights, reporting and forensic options and police investigation processes), to be developed and used at the point of reporting and during investigation i.e. investigating officers implement check-in processes with victim/survivors so that young women are not left for months with no information as to the progress of their case; factsheets/information to be made available on website regarding processes around investigation and prosecution;
- broader integration and improved systems of communication between sexual assault counselling/support services and police responding to and investigating sexual offences, from acute presentations of sexual assault, through to prosecution;
- Increased access to victim liaison officers and court support programs for young women Victims/survivors aged 18 and over;
- The development of specialist sexual assault training within QPS, which is compulsory and comprehensive and that includes a gendered analysis of sexual violence.

Zig Zag believes that cultural change within QPS is necessary, in terms of addressing attitudes and beliefs held by members of the force, which act to perpetuate victim-blaming, damaging and erroneous stereotypes of victims/survivors and which inevitably impede the course of justice embarked upon by survivors of sexual violence.

2.3.3 Police investigation and decision whether to lay charge for a sexual offense

Zig Zag strongly supports the taskforce's proposal to examine police actions and attitudes when receiving a report, taking a statement, investigating and deciding what action is appropriate following the report of a sexual offence.

2.3.4 Discussion question: 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?

Zig Zag supports this area of focus as a priority for the taskforce. Stereotypes held about survivors, a lack of awareness of trauma responses and victim blaming attitudes held by police also potentially impact significantly on police commitment to pursuing investigations. Young women have reported situations where it appears that police have drawn questionable conclusions about a case, which lead to the closure of investigations with no recourse for the victim/survivor. For example, after interviewing an alleged perpetrator, police dropped one young woman's case partially because they concluded that the perpetrator couldn't have held her down and raped her because he was overweight (despite the fact it was known he was employed in a role that required physical exertion). The young woman had past dealings with juvenile justice and she felt that this coloured the police's perception of her as a witness and resulted in all avenues of investigation not being pursued as they might have been for a young woman who was not criminalised.

2.3.5 Support provided to victims during the police investigation process.

Zig Zag strongly supports the taskforce in its aim to consider the role of the sexual violence support service system, the level of coordination and collaboration that occurs across the specialist service system and criminal justice system and if there are any opportunities for improvement.

2.3.6 Discussion question: 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?

Zig Zag supports this area of focus as a priority for the taskforce. Other jurisdictions across the country have a more integrated response between police and specialist sexual assault services in relation to a victim/survivor's engagement with the criminal justice process. It appears that in Queensland the integrated response is limited, except for the Townsville Sart which functions as a model that serves victims'/survivors' well in terms of the provision of support from acute presentation to longer term support as a survivor traverses criminal justice processes. In other states, community sexual assault services have agreements, protocols and structures set up with the police service (i.e. Tasmania's SASS and Tas Police) which enable a victim/survivor to engage with a specialist counsellor or advocate to assist her to understand her rights, options and whether she would like to make a formal complaint and engage in a forensic examination. Police value the role that these counsellors/advocates play and

actively engage their services and work collaboratively with them to ensure the victims/survivors are well informed and supported and that their wishes are respected.

Young women 18 and over accessing Zig Zag, regularly report a lack of information and options for support in relation to court. Sexual assault services are often not able to provide court support to every client requiring such support due to a lack of resources. Zig Zag would like to see an increase in availability and accessibility of specialist sexual assault focussed court support for young women, as sexual offence matters are often very slow to reach resolution within court. Zig Zag supports the Taskforce's focus on the issues of coordination and collaboration between sexual violence services and the criminal justice system in terms of support for survivors.

2.4 Theme 3 - Legal and court process for sexual offences.

2.4.1 Adequacy of current sexual offences in Queensland.

Zig Zag strongly supports the taskforce in its intention to examine the adequacy of sexual offences in Queensland, the role of the Office of the Director of Public Prosecutions and its engagement with victims, the trial process and laws of evidence including special measures for victims during the court process, avenues for victims to raise concerns with the process and support for victims, the nature and culture of the court process and alternative justice models and the need for additional legislative reform concerning consent and mistake of fact.

2.4.2 Discussion question: 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?

Zig Zag supports this area of focus as a priority for the taskforce. We believe there is a critical need to change the current laws on consent and mistake of fact as it relates to sexual offences in Queensland. The amendments made as a result of the recent Review of consent laws and the excuse of mistake of fact by the Queensland Law Reform Commission fall far short of the recommendations that Zig Zag submitted to the Review and which are listed below:-

Zig Zag respectfully submits the following recommendations for changes to the Criminal Code Act 1899 (Qld), in addition to broader actions by the Queensland Government to ensure more appropriate judicial and community responses to sexual offences in Queensland:

- 1. Section 348 of the Criminal Code Act 1899 (Qld) should be amended to introduce the affirmative consent model into Queensland legislation that includes the concept of a 'voluntary agreement' between two parties.*
- 2. Section 348 of the Criminal Code Act 1899 (Qld) should be amended to establish a comprehensive definition of 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.*
 - 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.*
3. *A new and discrete mistake of fact defence should be included in Chapter 32 of the Criminal Code Act 1899 (Qld) that requires a defendant to prove that the defendant took reasonable steps to ascertain 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.*
 4. *That a history of domestic, family, and/or intimate partner violence be expressly required to be considered in sexual violence offences, where it is relevant.*
 5. *Additional amendments to make jury directions clear and understandable and not overly legalistic, confusing, and/or technical.*
 6. *The introduction of a 'statement of objectives' or 'guiding principles' within the Criminal Code Act 1899 (Qld) which the court should have to regard in interpreting sexual violence offences and that attempts to counter known 'rape myths' and/or violence supportive attitudes.*
 7. *Amendments to the Evidence Act 1977 (Qld) to specifically allow for the admission into evidence of expert evidence in criminal proceedings that relates (wholly or partly) to a charge for a sexual offence.*
 8. *The development of a comprehensive Sexual Assault Education Framework and campaign supporting the changes to legislation that specifically includes professionals in the criminal justice system including police officers, magistrates, judges, and tribunal members on issues relating to sexual offences that enhances their understanding of sexual violence and trauma, and improves judicial responses to sexual offences.*
 9. *The introduction of a broader community awareness campaign that informs the community about the legal changes, counters rape myths and victim blaming, and promotes affirmative consent within sexual relationships.*

10. *The training and compliance of police officers with interagency guidelines, protocols, and operational procedures in responding to sexual offences requires further attention and monitoring.*
11. *Specialised training packages on investigating sexual offences have been developed and should be a requisite for all new police officers, and compulsory for officers employed in the Sexual Crimes Investigation Unit (SCIU), Child Protection Investigation Units (CPIU), and Criminal Investigations Bureaus (CIB). Engaging specialist sexual assault services to deliver aspects of this training package is highly recommended as it has been demonstrably successful in promoting positive attitudinal and behavioural change in responding to victims/survivors of sexual violence.*
12. *Improved transparency and accountability of decision making within the Queensland Police Service (QPS) and Office of the Director of Public Prosecutions (ODPP) in relation to all matters that do not proceed to prosecution. An independent review of decisions should be considered.*
13. *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.*
14. *The introduction of specialist courts for sexual offences to be trialled in Queensland.*
15. *Implementing time restrictions and other processes in order to expedite court proceedings for sexual offences.*

2.4.3 The role of the Office of the Director of Public Prosecutions and its engagement with victims.

Zig Zag supports this area of focus as a priority for the Taskforce.

2.4.4 Discussion question: 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?

When working with young women who are engaged with the DPP, we have observed issues with communication by the ODPP in terms of the frequency and clarity of information and instructions shared relating to trial processes. Often ODPP communications are met with anxiety and confusion and Zig Zag suggests this is an area ripe for review and improvement.

2.4.5 The trial process and special measures for victims during the court process.

Zig Zag supports this area of focus as a priority for the Taskforce.

2.4.6 Discussion question: Do you support the Taskforce 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?

Many young women going through trial as a witness in sexual offence matters, experience aspects of this to be unfair and emotionally scarring. For example, whilst information regarding a defendant's criminal history, including sexual offences, is not admissible in court, information regarding the complainants background is admissible and is frequently used by defence lawyers as a way to call her reliability as a witness into question, in addition to breaking her down emotionally and psychologically during the court process. Questions by defence are often intentionally confusing or double-barrelled, and appear to be posed to manipulate a certain outcome in favour of the defendant rather than eliciting more clarity around a young woman's testimony. Zig Zag has been aware of situations where Prosecution has seemingly shied away from actively challenging unfair and inappropriate lines of questioning by defence. Zig Zag supports the Taskforce to focus on this area as a priority.

2.4.5 Support for victims and ensuring their rights are protected.

Zig Zag supports this area of focus as a priority for the Taskforce.

2.4.6 Discussion question: 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?

Zig Zag supports this area of focus as a priority for the taskforce.

2.4.7 The nature and culture of the court process and alternative justice models.

Zig Zag supports this area of focus as a priority for the taskforce.

2.4.8 Discussion Question: 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?

The sexual assault support sector has for many years promoted the idea of a specialist sexual violence court (e.g. similar to Murri court, Mental Health Court), as currently the court system does not adequately respond to sexual violence. For survivors, even presenting to main court houses within Brisbane, can be a traumatising experience. Sexual assault survivors have to go through a process of applying for protections in court such as video link testimony. A trauma informed court process would have these protections more easily and automatically available.

Zig Zag believes that options for victims/survivors regarding restorative justice models should be made available but that such processes should be victim-centred, justice-focused and trauma informed.

Zig Zag supports this are as a priority for the Taskforce.

SECTION 3: Response to Part 2 - Themes 4 and 5

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

3.1.1 Underlying causes for women and girls coming into contact with the criminal justice system.

Zig Zag supports this area of focus as a priority for the taskforce.

3.1.2 Prevalence and characteristics of offending in Queensland.

Zig Zag supports this area of focus as a priority for the taskforce.

3.1.3 Discussion question: 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?

Zig Zag supports this area of focus as a priority for the taskforce.

3.1.4 The role of police in relation to women and girls accused of offences.

Zig Zag supports this area of focus as a priority for the taskforce.

3.1.5 Women and girls' experience of the legal system.

Zig Zag supports this area of focus as a priority for the taskforce.

3.1.6 Discussion question: 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?

Zig Zag supports this area of focus as a priority for the taskforce.

3.2 Theme 5: Women and girls' experience of imprisonment and release into the community.

3.2.1 Women and girls experience of incarceration and release.

3.2.2 Women and girls' experience of being in prison (including on remand).

3.2.3 Women and girls' reintegration into the community upon release from prison.

Zig Zag supports focus areas as a priority for the Taskforce.

3.2.4 Discussion Question: 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?

Zig Zag supports this area of focus as a priority for the taskforce – we encourage research/interest in this area and the components mentioned in the discussion paper.

Zig Zag understands from its work with criminalised young women that their offending is often related to experiences of adversity and violence, including intergenerational disadvantage, sexual and domestic violence, cultural and racial oppression and historical contact and interventions by Child Safety Systems. Zig Zag welcomes a focus placed by the Taskforce on all areas concerning women's experience with the criminal justice system as offenders.

Zig Zag welcomes the consideration of all themes/focus areas proposed for consideration 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 these will lead to improved outcomes for women and particularly young women, in terms of their future experiences with the criminal justice system. We wish to acknowledge the young women survivors of sexual violence who have over many years, bravely shared their stories and experiences with Zig Zag.
