

8 April 2022

Hon Margaret McMurdo AC
Taskforce Chair
Women's Safety and Justice Taskforce
GPO Box 149
BRISBANE QLD 4001

Dear Chair

Discussion Paper 3 – Women and girls' experience of the criminal justice system as victims-survivors of sexual violence and also as accused persons and offenders

Thank you for the opportunity to provide feedback on the experience of women and girls in the criminal justice system. Aged and Disability Advocacy Australia (**ADA**) appreciates being consulted on these important issues.

About ADA Australia

ADA is a not for profit, independent, community-based advocacy and education service with nearly 30 years' experience in informing, supporting, representing and advocating in the interests of older people, and persons with disability in Queensland.

ADA also provides legal advocacy through ADA Law, a community legal centre and a division of ADA. ADA Law provides specialized legal advice to older people and people with disability, including those living with cognitive impairments or questioned capacity, on issues associated with human rights, elder abuse, and health and disability law.

ADA advocates and legal practitioners work with identified First Peoples advocates through the Aboriginal and Torres Strait Islander Disability Network Queensland (**ATSIDNQ**), a network established to support mob with disability and provide individual advocacy services for Aboriginal and Torres Strait Islander people with disability.

Review of Discussion Paper 3

Whilst ADA understands, and supports, the importance of collecting the information that is sought through reviews such as this, the re-traumatising impacts for advocates and survivors associated with retelling and re-analysing their experiences are significant and *cannot be underscored strongly enough*.

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The process of revisiting these issues, including in attempting to respond to the questions raised in Discussion Paper 3, is a deeply personal and distressing process for ADA and ATSIDNQ advocates and clients.

For this reason, and following careful thought and discussion, we have elected at this time to respond briefly to Discussion Paper 3, and where appropriate, respectfully refer the Taskforce to the ADA submissions made in response to Discussion Papers 1 and 2. This decision has been made in consideration of the wellbeing of our advocates and the survivors and communities that ADA supports.

We also refer, with strong support, to the comprehensive analysis of many of these issues by Australia's National Research Organisation for Women's Safety Limited (**ANROWS**).¹

Cross-cutting issues

ADA supports the Taskforce's recognition of cross-cutting issues and reference to diversity of experiences in the criminal justice system, including recognition of women with disability. A person's inherent characteristics, including age and disability status, will affect their experience of discrimination and disadvantage. A proper understanding of personal characteristics, including disability and age, and their impact on the experience of discrimination is critical in an examination of barriers to reporting a violent experience for women and girls.

As described in ADA's response to Discussion Paper 2, women with disability and older women regularly experience discrimination. There is a substantially increased risk of violence for older women and women with disability. This risk increases again in circumstances where an older woman or woman with disability is exposed to the criminal justice system.

We reiterate our previous suggestion that comprehensive, consultation should be undertaken directly with older women and their advocates, including women who reside in residential aged care facilities. It is critical that the consultation period be generous and flexible, having regard to the time that it will take to earn the trust of survivors, and in doing so creating a safe environment to share their stories.

Overrepresentation of Aboriginal and Torres Strait Islander women and girls

ADA supports the comments made by Sisters Inside and the Institute for Collaborative Race Research, particularly that *"it is not possible to deliver safety and justice for women in Queensland without addressing racism, colonialism and the violence perpetrated by the carceral state."*²

As identified in Discussion Paper 3, there are significant access to justice barriers for Aboriginal and Torres Strait Islander women, and these are well-understood and extensively reported upon.

We note the barriers described on page 12 of the Discussion Paper, including intergenerational trauma, discrimination, racism, and Aboriginal and Torres Strait Islander women's perspectives and

¹ Noting particularly the ANROWS paper contextualizing the links between imprisonment and domestic and family violence, including factors of being an Aboriginal and Torres Strait Islander woman, or woman with disability: Australia's National Research Organisation for Women's Safety. (2020). Women's imprisonment and domestic, family, and sexual violence: Research synthesis (ANROWS Insights, 03/2020). Sydney, NSW: ANROWS.

² Women's Safety and Justice Taskforce, Discussion Paper 3, in reference to comments made by Sisters Inside and the Institute for Collaborative Race Research in response to Discussion Paper 2.

experiences with the justice system – which has, and continues to be, shaped by dealings with police, child protection, corrections authorities, lawyers and so forth.

A core challenge to gaining the trust of Aboriginal and Torres Strait Islander persons, including women, advocates, and survivors, is the limited consultation period during which they are expected to revisit and recount traumatic interactions of violence and exposure to the criminal justice system. This barrier is prevalent in every aspect of responding to and investigating these issues – for a women who is seeking to report domestic and family violence, in the treatment of physical injury and psychological damage, in education programs seeking to improve understanding and awareness of domestic, family and sexual violence, and in public consultations and reviews.

At every stage and in every aspect of processing, educating, reviewing, or progressing these issues, the time that is provided to affected women, particularly Aboriginal and Torres Strait Islander women, to allow them to process their injuries and retell their stories in a space of safety – is grossly insufficient.

This is a key barrier in achieving the trust that is necessary to facilitate an open dialogue that will support developing reforms that will instigate the policy, societal and legislative changes that are so urgently required.

Mob need the opportunity to sit and yarn, and to be educated on what domestic and sexual violence is – including information about all the ways that violence can present. Aboriginal and Torres Strait Islander women are not given the opportunity to talk about these experiences in community, and do not know how to safely report these types of behaviour. There is significant distrust of police and the legal system, and widespread fear persists that reporting will further destabilise personal safety. Experiences of Aboriginal and Torres Strait Islander women who bravely seek help repeatedly demonstrate that there is a significant risk that women who report will be blamed, rather than being believed.

Communities need time to process trauma, and support to tell their stories.

The barriers to accessing justice clearly compound for a woman who experience intersecting disadvantage. As discussed in ADA's responses to Discussion Paper 2, societal acceptance of discriminatory attitudes towards women, people with disability, older persons, and people with psychosocial disabilities are readily systemically evidenced. Where a person with multiple characteristics is exposed to the criminal justice system, the barriers can be insurmountable.

These hurdles play out with a range of damaging effects. For example, where Aboriginal women in prison suspect that their children are being abused by their temporary caregiver/s, but do not reporting because they are afraid (and in many cases, they have received legal advice) that if they report their concerns, Child Safety will become involved and possibly remove the children – with the likely effect that the incarcerated women will no longer see their children at all.

Amongst these communities there is no confidence that if an incarcerated woman were to report her concerns, that she would receive *any* support from the involved agencies to prioritise her ability to continue to see her children whilst safety concerns for their welfare are investigated.

Vicarious trauma and compassion fatigue

We note question 8 in Discussion Paper 3 regarding the risks of vicarious trauma and compassion fatigue for those working in Queensland's criminal justice system. We respectfully submit that the same risks and impacts associated with vicarious trauma and compassion fatigue are also

experienced by advocates who support persons with one or several characteristics associated with experiencing discrimination and disadvantage.

Although some of these clients have been exposed to the criminal justice system, others have not. Many ADA, ADA Law and ATSIDNQ clients are involved with the guardianship and administration system or are subject to an order that is reviewable by the Mental Health Review Tribunal.

These are complex processes, and are usually taxing and emotional experiences for a person who is experiencing a questioning of their decision-making capacity (and who may regularly experience discriminatory behaviour associated with a negative perception of their cognitive ability). Where a person has multiple characteristics that increases their risk of experiencing discrimination and violence, these processes usually become heightened for the individual.

Over time, it can be very difficult for experienced advocates to maintain the energy and mindset that is required to provide necessary support to a client, whilst protecting their own wellbeing. For persons affected by guardianship, family violence and mental health, and for the advocates that support them, the glacial rate of systemic change, deficient systems response, limited funding, and lack of tangible actions to address causative factors can become additional sources of trauma.

Thank you again for the opportunity to comment. Should you wish to discuss this submission, please do not hesitate to contact [REDACTED]

Yours faithfully



Geoff Rowe
Chief Executive Officer