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Women's Safety and Justice Taskforce  
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Submission by website: [Make a submission | Women's Safety and Justice Taskforce \(womenstaskforce.qld.gov.au\)](https://www.womenstaskforce.qld.gov.au)

Dear Women's Safety and Justice Taskforce

**Response to Discussion Paper 3- Women and girls' experiences across the criminal justice system as victims-survivors of sexual violence and also as accused persons and offenders (the Discussion Paper)**

Thank you for the opportunity to make a submission in response to the Discussion Paper.

The Queensland Council of Social Service (QCOSS) is the peak body for the social service sector in Queensland. Our vision is for equality, opportunity, and wellbeing for every person in every community. We work collaboratively with our members to identify challenges and solutions that contribute to gender equality.

We have had limited capacity to consult with all our members to respond to the Discussion Paper. Therefore, our submission draws from targeted member consultations and our submissions to the Women's Safety and Justice Taskforce (the Taskforce) previous discussion papers, noting the degree of overlap in the issues discussed. We acknowledge and refer to the findings in the Hear her Voice report published by the Taskforce, which covers many of the issues we raise with respect to experiences of women who are victim-survivors of domestic and family violence (DFV) and their experiences in the criminal justice system.

We endorse the submission made by our member Women's Legal Service Queensland (WLSQ).

Our response is limited to the following questions in the Discussion Paper:

**1. How can the diversity of First Nations women and girls' experiences be better reflected and supported in their experiences as victims and accused persons and offenders in the criminal justice system in Queensland?**

As per QCOSS' response to the Taskforce Discussion Paper 1,<sup>1</sup> we reiterate the violent relationship First Nations women experience with the criminal justice system. First Nations women are more likely to be misidentified by police as perpetrators of DFV.

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<sup>1</sup> QCOSS. Submission: Response to the Coercive Control Taskforce inquiry. <https://www.qcoss.org.au/publication/submission-response-to-the-coercive-control-taskforce-inquiry/>.



We further highlight the following findings from the Hear her Voice report that should inform the Taskforce's recommendations to the Government:<sup>2</sup>

- Aboriginal and Torres Strait Islander Peoples continue to experience structural barriers that entrench communities in violence, marginalisation, and overrepresentation as both victims and perpetrators of domestic and family violence.
- Criminal law responses are more likely to impact negatively on Aboriginal and Torres Strait Islander Peoples as they are more likely to be arrested, more likely to be charged, more likely to be convicted and more likely to receive harsher penalties when sentenced for family violence offences. Criminal law responses to family violence are having the effect of entrenching Aboriginal and Torres Strait Islander younger people — and especially girls — in the criminal justice system.
- The reluctance of Aboriginal and Torres Strait Islander Peoples in Queensland to seek police assistance is influenced by the effects of colonialism and historically discriminatory policies, along with more recent policies that reinforce past injustices.
- Police lack sufficient levels of cultural capability to respond to domestic and family violence involving Aboriginal and Torres Strait Islander Peoples. This includes a failure to understand the cultural and historical barriers they face in reporting and cooperating with police.

We support the position of the Taskforce that successful implementation of any criminal justice reform should be dependent on a clear commitment to acknowledge wrongs of the past, work differently in partnership with Aboriginal and Torres Strait Islander Peoples and put in place a long-term plan to address over-representation of First Nations Peoples in the criminal justice system. We support Recommendation One in the Hear her Voice report that calls for the Queensland Government to work in partnership with Aboriginal and Torres Strait Islander Peoples to co-design a specific whole-of-government and community strategy to address the overrepresentation of Aboriginal and Torres Strait Islander Peoples in Queensland's criminal justice system and meet Queensland's Closing the Gap justice targets. This strategy should be operative before legislation to criminalise coercive control is introduced.

We also support recommendations in the report that call for development and delivery of evidence-based and trauma-informed domestic and family violence and coercive-control training and education to all levels of service.

## **2. What are the experiences of women and girls with multiple and complex intersecting needs as victim-survivors of sexual violence in the criminal justice system? What works? What needs to be improved?**

We further reiterate findings from our submission to the Taskforce Discussion paper 1 that are relevant in the context of women and girls' intersecting needs as victim-survivors of sexual violence. QCOSS hosted a webinar in 2021 examining the proposed coercive control laws from

<sup>2</sup> Women's Safety and Justice Taskforce. Hear her voice. Vol. 2. 2021. Accessed 06/04/2022. [https://www.womenstaskforce.qld.gov.au/\\_\\_data/assets/pdf\\_file/0014/700601/volume-2-the-mountains-we-must-climb.pdf](https://www.womenstaskforce.qld.gov.au/__data/assets/pdf_file/0014/700601/volume-2-the-mountains-we-must-climb.pdf)



a human rights perspective. Service providers working with culturally and linguistically diverse communities noted that a majority of their service users did not understand what constituted a domestic and family violence offence. They further noted that their communities did not want all culturally and linguistically diverse men to be profiled because of differing cultural beliefs and practices and called for more investment into preventative programs and implementing nuanced and appropriately designed interventions.

We refer to the submission made by Multicultural Australia in response to the Taskforce Discussion paper 1.<sup>3</sup> The issues raised in this submission further highlights issues and experiences from migrant and refugee communities that will impact women and girls' relationship with the criminal justice system as victim-survivors of sexual violence. These may include a lack of understanding of the Australian legal system, lack of knowledge about assistance services or barriers accessing support services due to social isolation as well as social, economic and cultural expectations and beliefs. The Taskforce in its recommendations should acknowledge that the vulnerabilities faced by migrant and refugee women are shaped by an intersection of gender with other identifiers including race, ethnicity, immigration status, cultural and religious beliefs, and expectations. The recommendations should further be focused on implementing solutions focusing on education, training for cultural competency and adequately resourcing for specialist services.

We support recommendations in the Hear her Voice report to improve accessibility and responsiveness for people with diverse lived experiences. This includes developing a whole of government strategic investment plan that ensures services are tailored to meet demands of people with diverse needs, developing an evidence-based and trauma-informed framework to support training, education and change-management across the criminal justice system and appropriately funding community-based and specialist organisations.

### **3. What are your experiences or observations about how the rights of women and girls who are involved in the criminal justice system as either victims-survivors of sexual violence or accused persons or offenders are protected and promoted? What works? What could be improved?**

The Queensland Government missed a critical opportunity for reform last year by passing the *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021* without addressing key issues highlighted by the community services sector and leading academics.

Our concerns with the current legislation are<sup>4</sup>:

- *Excludes the affirmative consent model.* Exclusion of affirmative consent was identified as the number one concern for QCOSS members and supporters. Currently, legislation

<sup>3</sup> Multicultural Australia. Accessed 06/04/2022, [https://d3n8a8pro7vhm.cloudfront.net/mda/pages/387/attachments/original/1629422339/2021\\_Submission\\_to\\_the\\_Women%27s\\_Safety\\_and\\_Justice\\_Taskforce\\_-\\_Options\\_for\\_Legislating\\_Against\\_Coercive\\_Control\\_and\\_the\\_Creation\\_of\\_a\\_Standalone\\_Domestic\\_Violence\\_Offence.pdf?1629422339](https://d3n8a8pro7vhm.cloudfront.net/mda/pages/387/attachments/original/1629422339/2021_Submission_to_the_Women%27s_Safety_and_Justice_Taskforce_-_Options_for_Legislating_Against_Coercive_Control_and_the_Creation_of_a_Standalone_Domestic_Violence_Offence.pdf?1629422339)

<sup>4</sup> QCOSS. Submission: Women and girls' experience of the criminal justice system. Accessed 01/04/2022, <https://www.qcoSS.org.au/publication/submission-women-and-girls-experience-of-the-criminal-justice-system/>.



provides a basis for the mistake of fact excuse to be used to absolve the accused from criminal responsibility when successfully pleaded. Introducing an affirmative model of consent would prevent passivity from being accepted as a reasonable belief for consent and encourage more victim-survivors of sexual violence to engage with the criminal justice system.

- *Uses a biased human rights analysis.* Legislation solely considers the rights of defendants to a fair trial, and their protection from retrospective criminal laws while failing to consider the human rights of sexual assault complainants. Of respondents at the online QCOSS event, 94 per cent did not believe that human rights of sexual assault survivors were adequately protected by proposed changes to the law.
- *Discriminates against people with disability.* Queensland’s current consent laws limit the ability of people with intellectual impairment to pursue a safe, satisfying sexual life and to decide matters regarding their choice of partner and their bodily integrity. The current definition of a ‘person with an impairment of the mind’ is also very broad and captures people whose ability to consent to sexual contact is unaffected by their impairment.
- *Missed an opportunity to include guiding principles in the Queensland Criminal Code.* Guiding principles should be incorporated within the Queensland Criminal Code, as has been recommended by the Women’s Legal Service and the Queensland Sexual Assault Network. This mechanism is important because it provides a framework for stakeholders within the justice system to understand sexual violence. Criminal law reform can help to promote cultural change as it has both a regulatory and an educative function.
- *Continues to apply the mistake of fact excuse.* The continued application of the mistake of fact excuse in Queensland law enshrines deeply sexist rape myths. Rape myths jeopardise complainants’ access to justice by causing police, jurors, and other community members to undermine their credibility from the reporting stage to trial. Yet, several rape myths are reflected in Queensland law. Most significantly, the excuse of mistake of fact in section 24, allowing that the lack of verbal or physical resistance to be a reasonable basis to assume consent.

We support the Queensland Sexual Assault Network (QSAN) and Women’s Legal Service (WLS) position that the current operation of mistake of fact significantly impacts on the reporting, investigation, charge, and prosecution of sexual offences.

We recommend that Queensland adopt a strong model of affirmative consent.

#### **4. How can women and girls who are involved in the criminal justice system be better supported to reduce recidivism and benefit the community?**

Queensland is experiencing a housing crisis. There are more than 50,000 people on Queensland’s social housing register,<sup>5</sup> regional towns and cities have rental vacancy rates

<sup>5</sup> Queensland Government Open Data Portal. 2021. “Social Housing Register at 30 June 2021” <https://www.data.qld.gov.au/dataset/social-housing-register>.



below 1 per cent,<sup>6</sup> and metropolitan suburbs have seen average weekly rent increases of more than \$100 over the past year.<sup>7</sup>

We direct the Taskforce to the Women in Prison 2019 report,<sup>8</sup> which highlights the lack of available, appropriate, and affordable housing for women exiting prison. The report found that both short-term transitional housing and longer-term accommodation were in short supply, impacting heavily on women trying to reintegrate into society. The report further noted that the critical shortage of housing resulted in women being refused bail or parole.

The Queensland government should address housing issues affecting women who transition from the prison system. We further support the recommendation made by the Anti-Discrimination Commission Queensland (now the Queensland Human Rights Commission) that the Queensland Government should seek alternative solutions to imprisoning women on remand who would otherwise be eligible for bail, but for the fact that they do not have a suitable home address.

**5. How can service delivery be better integrated and coordinated to meet the needs of women and girls who are victims-survivors of sexual violence during their involvement in the criminal justice system? What works? What needs to be improved?**

The focus of this question is too narrow. Service integration measures should be centred around the victim-survivor, with the criminal justice system being just one system that a victim-survivor may or may not interact with.

We refer the Taskforce to the submission made by Ending Violence Against Women Queensland (EVAWQ) and support their focus on primary prevention and investment in addressing the drivers of inequality so that violence does not occur in the first place.

We also note the submission made by QSAN that highlights the lack of specialist sexual violence response services in large parts of regional Queensland and support their recommendation to increase long term core funding to ensure no women, men and children are turned away because of funding constraints.

Thank you again for the opportunity to provide our submission to the Taskforce.

Yours faithfully,



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Chief Executive Officer

<sup>6</sup> Real Estate Institute of Queensland. 2021. "Record low vacancy rates continue to impact Queensland" <https://www.reiq.com/articles/record-low-vacancy-rates-continue-to-impact-queensland/>.

<sup>7</sup> Webb, Sarah. 2021. "Gold Coast, Sunshine Coast rents surge to record heights: Domain report". Domain <https://www.domain.com.au/news/gold-coast-sunshine-coast-rents-surge-to-new-records-domain-rent-report1071343/>.

<sup>8</sup> Anti-Discrimination Commission Queensland. Women in Prison 2019. 2019. Accessed 01/04/2022. [.https://www.qhrc.qld.gov.au/\\_data/assets/pdf\\_file/0003/17139/2019.03.05-Women-In-Prison-2019-final-report-small.pdf](https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0003/17139/2019.03.05-Women-In-Prison-2019-final-report-small.pdf).

