

30 July 2021

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

Dear Chair

Discussion Paper 2 – Women and girls' experience of the criminal justice system

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.

Review of Discussion Paper 2

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.

Women with disability and older women regularly experience discrimination. We note that whilst the discussion paper acknowledges older women as a unique cohort, there is limited

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ADA Australia acknowledges the Traditional Custodians of this land and pays respect to Elders, past and present.

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reference to the experiences of older women as a standalone group. ADA suggests that further consultation should be undertaken directly with older women and their advocates, including women who reside in residential aged care facilities. The Older Persons Advocacy Network (**OPAN**), of which ADA is a member, is working with Dr Catherine Barrett to deliver learning packages to build understanding and awareness about sexual assault in aged care. The workshop covers evidence and resources which may be useful for the Taskforce, particularly in relation to prevalence of sexual assault in aged care, victim and perpetrator characteristics, signs of sexual assault, barriers to reporting, and changes to the Serious Incident Response Scheme.

The Royal Commission into Aged Care Quality and Safety reported significantly low reporting levels of neglect, abuse and violence in aged care.¹ The Commission reported an estimated 50 incidents of unlawful sexual conduct per week in residential aged care facilities across Australia. Minimal reporting pathways coupled with ageist discrimination serve as additional barriers to older women reporting incidents of violence and seeking recourse.

Part 1 – Women and girls’ experience of the criminal justice system as victim-survivors

Support for focusing inquiry on sexual offending against women

ADA supports the Taskforce’s proposal to include investigation of sexual violence against women as a key focus area of the inquiry. We reiterate the importance of capturing intersecting issues, including how these factors impact upon the likelihood that a women will experience sexual violence and how they affect a women’s experience when reporting such incidents.

Theme 1 – Exploring community attitudes

ADA strongly supports an investigation into community understanding of sexual violence, including prevalence and barriers for women seeking recourse.

Addressing of ‘rape myths’ must include a detailed investigation into how individual and systemic discrimination has developed over time, why these attitudes persist, and their impacts and outcomes for women.

ADA recommends that this investigation include a focus on attitudes which are based on assumptions about a women’s decision-making capacity or ability to accurately recall and report an incident of purported sexual violence. Women with disability and older women are at a heightened risk as a result of entrenched individual, community and systemic discrimination based on long-standing assumptions that they are less capable of making sound decisions and reliable reports. This discrimination significantly impacts on whether a woman with disability or older woman who reports sexual violence will be believed. The fear of not being believed is also a well-recognised barrier to reporting violence.²

Trauma experienced by an older woman as a result of sexual abuse will be exacerbated by ageism which is present before the abuse starts (i.e. why the perpetrator selected an older victim) and after, through fear of reporting or discrimination experienced when making a

¹ Royal Commission into Aged Care Quality and Safety, <https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-executive-summary.pdf>.

² Our Watch, <https://media-cdn.ourwatch.org.au/wp-content/uploads/sites/2/2020/11/03023955/Tracking-progress-in-prevention-full-report.pdf>, page 93.

complaint. Ageist societal attitudes assume that older women are not seen as sexual beings, therefore allegations of sexual assault cannot possibly be believed. The silencing affect of ageism was highlighted by Margarita Solis, who was sexually abused in aged care at the age of 95 and chose to challenge this discrimination by sharing her story publicly.³

For women who experience sexual assault in residential aged care facilities or by a person who delivers in-home aged care services, there are added barriers. In addition to not being believed, women may be anxious about progressing a complaint against a person on whom they are reliant to provide care, fearing reprisal by the perpetrator.

Similar barriers pertain to women in prison. Research confirms that people with disabilities, particularly a cognitive or psychosocial disability, comprise about 50% of persons entering prison.⁴ Discrimination experienced by women with disability or older women will undoubtedly be intensified if the women is incarcerated.

ADA supports the proposal in the discussion paper that the Taskforce consider:

- What support is available to the victims of sexual offences and their supporters, including those victims who are in institutions including disability accommodation services, residential aged care facilities, hospitals and respite services, and in prisons;
- How mainstream service providers including health practitioners, social workers, teachers, lawyers and advocates can provide support to victims; and
- Exploring trauma informed approaches to reporting, to ensure that reporting avenues are accessible for victims.

Police response, investigation and charging of sexual offences

ADA strongly supports an examination of the initial police response and ongoing response to reports of sexual offending against women and girls. This examination should include police actions and attitudes when receiving a report, investigation, and other actions associated with progressing a complaint.

A review must consider underlying bias with respect to complaints received from women with disability and older women, including those with questioned capacity, and in the context of persons residing in the community or in institutions (including mental health facilities, aged care facilities, hospitals and prisons).

ADA strongly supports the introduction of resources to assist police and prosecutions when responding to the issues raised here. Resources developed in the United Kingdom to guide police investigation and prosecution may be a helpful reference in the creation of similar resources for Queensland. A manual by Scotland's Prosecution Service contains specialised guidance for police and prosecution to assist in dealing with crimes against older people, including sexual abuse and violence. The guide recognises the adverse effects of unconscious bias on investigation and prosecution, and imposes a positive obligation on police and prosecution to address this via procedures intended to challenge negative and discriminatory attitudes towards older people:

³ OPAL Institute, *Margarita's Story*, <<https://www.opalinstitute.org/margarita.html>>.

⁴ Human Rights Watch Report, 'I needed help, instead I was punished – Abuse and Neglect of Prisoners with Disability in Australia', 6 February 2018, <https://www.hrw.org/report/2018/02/06/i-needed-help-instead-i-was-punished/abuse-and-neglect-prisoners-disabilities>.

“28. When there is sufficient evidence and the crime was perpetrated because of the perceived or actual vulnerability of the victim based on their age or perceived age there is a strong presumption in favour of prosecution.”⁵

Another useful resource is the ‘Prosecution Guide to Effective Collaboration on Elder Abuse’, developed in by the National Center for State Courts (USA). Whilst the guide is intended to assist in prosecution of elder abuses committed against all genders, several sections will be beneficial if modified to the context. For example, the guide recommends institutions and agencies engage in ‘multidisciplinary collaboration’ to more effectively identify, prosecute and prevent neglect, exploitation, and abuse of older people.

This approach clarifies processes and responsibilities specific to a prosecutorial role, police, and other services, as well as promoting collaboration between agencies of the justice system with community partners. The guide concludes that a reduction in systemic inadequacies and an increase in cooperation and accountability between agencies results in a better-protected older adult population, and a stronger and safer community.

In cases of sexual assault against an older person, the guide recommends that prosecutors form collaborative relationships with local Sexual Assault Nurse Examiners (a registered nurse who has completed specialised education and clinical preparation in the medical forensic care of the patient who has experienced sexual assault or abuse).

In Queensland, establishment of similar collaborative pathways will improve the ability of police and prosecution to recognise abuse, and in supporting victims through the justice process. A partnership integrating specialised sexual violence advisors, counsellors and healthcare practitioners with local policing services should be considered.

Legal and court process

ADA supports the Taskforce’s proposal that the inquiry consider the adequacy of Queensland’s current sexual offences, including with respect to consent, in the prosecution of sexual offences. We note that legislative changes may be recommended to transition to a model of ‘affirmative consent’.

ADA considers that a further review of consent is required and should consider additional legislative reform. An aspect of this review should consider the balancing of rights for persons in residential aged care facilities and disability accommodation. This relates to the right to engage in consensual sexual activity, as well as the need for appropriate measures to ensure that a person who does not wish to engage in sexual activity enjoys the right to be safe.

With respect to the role of the Office of the Director of Public Prosecutions (**ODPP**) and the courts more generally, there is little in place to ensure accessibility of the prosecution or court process for persons with disability and older people. ADA supports examination of how the ODPP and the courts engage with a victim, particularly older woman and those with disability, with a view to reducing participation barriers for these women.

A range of practical measures may be implemented to assist older people and people with a disability feel more comfortable in legal settings, including in courts and tribunals, and

⁵ Crown Office & Procurator Fiscal Service, ‘COPFS Victims and Witnesses Manual’, (Scotland), chapter 3, page 6 <COP/images/Documents/Prosecution_Policy_Guidance/Guidelines_and_Policy/Older%20Persons%20Policy%20Oct%202013.pdf>.

including guidance for when the older person or person with disability is a victim of sexual assault, witness, or support person.⁶

Part 2 – Women and girls’ experience of the criminal justice system as accused persons

Why women and girls come into contact with the criminal justice system, engagement with police and the legal system

ADA supports a review of this issue including causation factors, intersecting issues, and availability of support and advocacy services.

We repeat our earlier comments with respect to the proportion of persons with disability in the prison system. Women in prison are at significant risk of experiencing sexual assault. Human Rights Watch reports that risk increases when a person in prison has a disability, is from a culturally or linguistically diverse background, or is Aboriginal or Torres Strait Islander. In gathering data for the report, Human Rights Watch interviewed persons between the ages of 17 and 78. Whilst the report does not discuss older persons with disability in prison as a standalone risk category, it is likely that entrenched attitudes of older persons being feeble and cognitively unreliable will be factors which increase risk of sexual assault for older persons in prison.

We also support the Taskforce’s suggestion that a focus point should include the role of police in relation to women and girls accused of offences. This should consider attitudes of police towards women and girls of various population groups, as well as other facets which should be considered by police – such as whether coercive control or other manipulation of the accused woman by a family member, carer or partner may also be a factor.

Thank you again for the opportunity to comment. ADA would be pleased to further assist the Taskforce with its inquiry and would welcome the opportunity to participate in further consultation. Should you wish to discuss this submission, please do not hesitate to contact Vanessa Krulin, Solicitor and Senior Policy and Research Advisor on 07 3637 6036, or via email at vanessa.krulin@adaaustralia.com.au.

Yours faithfully



Geoff Rowe
Chief Executive Officer

⁶ See for example recommendations developed following review of experiences of older people and the justice system in the USA: Anita N Blowers (2015), *Elders and the criminal justice system*, Journal of Crime and Justice, 38:1, 1-8 <<https://www.tandfonline.com/doi/full/10.1080/0735648X.2014.931509>>.