

Submission to the Women's Safety and Justice Taskforce
by
The North Queensland Women's Legal Service

The North Queensland Women's Legal Service (NQWLS) acknowledges the Queensland Government's initiative in establishing the Women's Safety and Justice Taskforce and welcomes the opportunity to share feedback from our position on the frontline - helping thousands of vulnerable and disadvantaged women each year, who are experiencing domestic violence.

Who we are:

NQWLS is a community legal centre with offices in both Cairns and Townsville. We assist women from Mackay to the tip of Cape York and out to the Northern Territory border, primarily in the areas of family law, child protection and domestic violence. Additionally, we are members of the Women's Legal Services Australia committee and are involved in law reform work, along with delivering community education programs and supervising legal students as volunteers and placement students.

We provide an array of face to face and telephone legal services as well as duty lawyer services in Domestic and Family Violence Courts and Federal Circuit Courts. In the 2019/2020 year we assisted around 2,200 women with 13,000 services.

Whilst we do not practice in the criminal jurisdiction, we have significant experience in the civil Domestic and Family Violence Court and have contact with women who experience the justice system in one way or another.

Our feedback:

Our submissions focus on the experiences of our clients (women and girls), garnered largely through our assistance with their legal issues and from their stories and comments about how they perceive the justice system, why they do not wish to engage in the justice system and what has happened when they have engaged in the justice system. Please find following answers to some of the discussion questions:

Discussion Questions:

Should the taskforce explore any other cross-cutting issues?

We believe another major issue that cuts across many of the themes presented in the paper is the prevalence of women and girls as victims of domestic abuse and in particular coercive control. A woman or a girl's experience of sexual offending is often intimately linked to the level of domestic abuse/coercive control being used against them. Coercive control intersects with and underpins the many reasons women do not report sexual offences; withdraw complaints or become adverse witnesses; have reduced capacity to withstand the prosecutorial process; and reduced capacity to provide cogent evidence.

Further, we hear anecdotal evidence from our clients that suggest the prevalence of women and girls as victims of domestic abuse and in particular coercive control also

intersects with and underpins reasons why they become in to contact with the criminal justice system as offenders.

Given rates of victimisation are highest for women and girls with respect to sexual offences, within the time available, do you support the Taskforce focusing inquires on sexual offending against women?

We support the Taskforce focusing on women and girls' experience as victims of sexual offences. We believe that many of the issues considered by the Taskforce in the three themes put forward in the paper, are also issues experienced by women and girls as victims of other forms of offending, such as other domestic abuse/coercive control.

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| Theme 1: Community understanding of sexual offending and barriers to reporting. |
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Given the relevance to offending behaviours as well as reporting, do you support the Taskforce examining community attitudes to sexual offending against women and girls?

We support the Taskforce examining community attitudes to sexual offending. We hear many stories from our clients about attitudes encountered in their communities (including within the justice system) that indicate a tendency by the community to condone, justify, trivialise or downplay sexual violence against women and girls. It is apparent that victim-blaming attitudes persist. We hear stories of people asking 'but why did she go with them?', 'what was she wearing?' and comments like 'she was so pissed, what did she expect,' and 'we will never know what really happened.'

We also hear stories from women who are not aware that they are being sexually exploited. It is still the case that some men and women believe that because they are in a relationship the woman must comply with whatever is requested of her, including participating in daily sex even though she may not want to, and/or practices she finds degrading, painful and humiliating.

Client story: Megan had been in a long-term relationship with Phil. The police had applied for a DVO against Phil as he had slapped Megan and smashed some property around the home. We assisted her through our duty lawyer service. During the interview with us Megan disclosed Phil demanded sex daily and for her to engage in sexual acts he saw in pornographic videos that she found degrading and painful. Megan had told Phil she did not like some of the sex acts. He continued to expect she participate in these acts, even seeming to get increased pleasure from her pain. Megan did not identify what she was experiencing as sexual assault. In fact, Megan seemed to accept that because she was in a relationship with Phil, he could demand whatever he wanted. The sexual assaults were barely mentioned in the domestic violence application and no criminal investigation was initiated.

We agree that pornography and dating apps may be contributing to community attitudes and the prevalence of sexual violence. Some of our clients have been coerced into engaging in acts that they are uncomfortable with and in some cases cause injury (see

above client story.) These acts often come sharply into mind when the victim recalls the overall trauma of being in a domestically violent relationship.

Client story - we assisted a client at DFV court recently who was subjected to humiliating sexual acts that left her with deep bruises and knife cuts all over her body and injuries from anal sex. This offending had been perpetrated on the woman under the guise of a BDSM relationship and had been inspired by pornography. They were not the acts relied upon by police to seek a DV order against the perpetrator (the police relied on an incident where the perpetrator had tried to push her out of a moving car.) The reality was the relationship was not a consensual BDSM arrangement but a traumatising coercive-controlling relationship in which the woman's self esteem was so shattered by body shaming and other controlling techniques that she contemplated suicide. Ironically in a cross application, the perpetrator used text messages from the victim showing her declining mental health (because of his treatment toward her) as acts of DV against him. He was granted a TPO.

Given under-reporting of sexual offences, do you support the Taskforce examining the barriers to reporting sexual offending against women and girls?

We support the Taskforce examining barriers to reporting sexual offences. We hear stories of shame, fear of the process, fear of consequences from perpetrators/ their families (coercive control), mistrust of police, fear of not being believed, cultural issues, language barrier issues and a general fear of the unknown as all reasons why our clients do not make formal complaints about sexual violence.

As part of this enquiry, we suggest the Taskforce examine the sensitivity and training of police to approach situations and determine what action is in line with the victim's needs and wishes and what potential barriers may arise. For instance, there are situations where the onus is put on victims to make a complaint about sexual or other offending, and where victims are asked if they want to press charges. For women who have been placating an abuser, this then makes them feel like they will be blamed and put in a dangerous position. Often clients believe that police will automatically charge the perpetrator and second guess themselves when this does not occur. They question whether what happened was 'serious enough' or if police believed them.

Other women (many women) are not informed that they can make a formal criminal complaint, or believe they have by telling the police officer what has occurred. They expect the police to charge the perpetrator on the basis of what they have told the officer or by their notebook statement. When this does not happen, they think that the police have decided not to proceed and that is the end of the matter. When we ask the question about reporting sexual and other abuse to the police, we often hear 'I told them, but they didn't do anything.'

Conversely, there are situations where victims need to call police for protection but do not want to risk police proceeding with criminal charges against their wishes. From the myriad stories we hear, this reluctance to report is usually because of potential negative

consequences for the victim and her children and is often underpinned by one or multiple cross-cutting issues highlighted in the discussion paper.

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

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?

We support the Taskforce examining initial police responses to reports of sexual violence. We hear stories from our clients of women and girls being turned away or not being taken seriously. Sexual offences often seem too difficult for many police officers to deal with.

Client story - we assisted a young woman who had been sexually assaulted by her boyfriend. She reported the matter to the police and the police asked her what sort of underwear she was wearing. The victim informed the police she was wearing a g-string. The police informed her that because she was wearing a g-string they would 'pick at that' and she would 'lose her case.' The police then applied for a domestic violence order on behalf of the victim to protect her from her boyfriend. They evidently felt the matter was serious enough to warrant a police application for a domestic violence order but not enough to pursue criminal charges. The client was very young, and this was her first experience of any interaction with police. Unfortunately, this initial response by the police at a time when she had come to them for help may make her disinclined to report other offences in future.

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?

We support the Taskforce examining police attitudes to charging. Women often tell us that police have investigated and decided not to charge a sexual offence. We understand that the police must satisfy a court to an extremely high standard of proof, however it is the case that many times the only evidence will be the woman's testimony.

Client story: Police attended at a DV matter and arrived at the home. Our client reported sexual assault as part of the DV offending to the attending officer. The officer responded by saying "It's your word against his, there's nothing we can do." This was done before making any preliminary investigations and not a decision police could reasonably make at this stage.

Client story: 15 year old Jessica and her father made three complaints to the police about Jessica's 17 year old boyfriend, Luke. Included in the complaints was a report of a very distressing sexual assault on Jessica. The police refused to take any action about the sexual assault, or the campaign of harassment that Luke embarked upon when Jessica broke up from him. The police told Jessica and her father that they would talk to Luke but would not charge him, as he was a minor. Luke continued to message Jessica and her friends on social media and by texts

and called Jessica from private numbers to abuse her. In some of the contact, Luke threatened suicide if Jessica did not get back with him. Jessica desperately wanted the contact to stop, and her father and Luke's parents all asked Luke to stop contacting Jessica. The contact did not stop until Jessica made an application for a protection order.

Not only did the police refuse to investigate Luke for the sexual assault, they refused to apply for a protection order against him to protect Jessica. They informed Jessica and her father that even if Jessica applied privately for an order, that until he reached his majority, the police would only caution Luke if he breached it. Jessica was left feeling unsupported by the police and that Luke's position as a minor was more important to the police than her position as a victim. Jessica's mental health suffered as did her schoolwork. In the end, Jessica accepted an undertaking from Luke and withdrew her application for a protection order to avoid having to endure a hearing.

Jessica expressed strongly to us that Luke has 'gotten away' with all the bad behaviour (including sexually assaulting her) and there have been no consequences for him. She feels the police let her down and she has lost trust in them to protect her in the future.

It is the unfortunate reality that we hear variations of the above two stories from our clients on a regular basis. This feedback illustrates the systemic beliefs held by many police officers relating to evidence. A cynical view would be that it shows a disregard of the need to protect vulnerable community members. When applying a human rights lens, these responses lead to limitations on a victim's human rights. A failure to protect victims from gendered violence is both a failure to show victims as equal under the law and a failure to protect them from torture, inhuman, cruel treatment.

We support mandatory regular training in the dynamics and causes of gendered violence as well as trauma informed practice training for all police officers who deal with victims of sexual violence. We support the Taskforce exploring options such as women only police stations, such as those in Argentina, which bring together lawyers, social workers and psychologists and provide an integrated and supportive response to victims of sexual violence.

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?

We support the Taskforce examining the role and potential role of sexual violence and mainstream services, particularly the role of medical professionals, counselling services and other mainstream services.

As part of this enquiry, we suggest that the Taskforce examine whether women are more likely to disclose sexual offending to an organisation or service that is run by women for women.

Theme 3: Legal and court process for sexual offences

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?

We support the Taskforce examining the adequacy of the current QLD sexual offences. Clarifying the issue of consent will make it easier for community members - including victims, perpetrators, police, legal professionals, jury members, and judicial officers - to understand, identify and take action against non-consensual sexual behaviour. We also believe that clarifying the reasonable mistake of fact defence is a crucial reform that will lead to more just outcomes.

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?

We support the Taskforce examining the role of the ODPP and their engagement with victims. We hear positive and negative stories from our clients about how they are treated by members of the ODPP, including prosecutors and victim liaison officers, and about the ODPP processes relating to victims.

Client story - we assisted a victim from a remote indigenous community who came to us at the end of her tether. She had made a statement against the father of her four children for a string of serious offending that had occurred over a protracted period, and which included sexual offending. The perpetrator was on remand for the offences and the matter had been committed to the ODPP. The victim wanted desperately to withdraw her statement and for the charges to be dropped. She was struggling with feelings of shame and finding it difficult to support the children on her own without the father's help. Additionally, she was experiencing pressure from his family to the point her mental health had deteriorated, and she was contemplating suicide. The thought of the matter proceeding to hearing was simply too much for her. Until we advocated on her behalf, the prosecutor at the ODPP was refusing to even hear from the victim. It took us two meetings with the ODPP and the victim for them to eventually listen to her and agree to discontinue the charges.

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?

We support the Taskforce examining the trial process, in particular the needs of victims. We have had women come to us with apprehension about what will happen at trial, or stories about how traumatising the trial process was. Sometimes it is the case that the victims feel like they are the ones on trial.

An accuser being subject to rigorous cross examination in order to test their evidence, is the cornerstone of our criminal system and our traditional understanding of a 'fair trial.' We are careful to take into consideration the power imbalance of the State against a single individual, the accused. This practice traditionally ignores the power imbalance between

accused and accuser, and ignores the pressures and trauma experienced by victims during the proceedings.

Client story: Some years ago, Jenny was horrifically sexually assaulted by a group of men. The men were arrested and criminally prosecuted. Jenny testified at their trials. Jenny now suffers from PTSD as a result of her experience with the justice system, including her experience testifying in the trials. The defence barristers barraged Jenny with questions about the sexual assaults. Consequently, Jenny is now unable to deal with being asked more than one or two questions at a time. The asking of any more questions triggers a trauma reaction. Jenny's mother now has power of attorney for Jenny as Jenny can no longer manage interactions with Centrelink, doctors, financial institutions or other situations where she may be required to respond to multiple questions.

We believe that a fair trial must be fair for both the accused and the accuser, and that careful measures ought to be taken to better protect victims. Fairness to victims seems to presently garner little consideration in the process or is second to the fairness afforded to the accused person. The trial process is part of the justice process and the needs of victims during that process must be elevated for the whole process to deliver a just (and not re-traumatising) outcome for victims.

We support mandatory regular training in the dynamics and causes of gendered violence as well as trauma informed practice training for all judicial officers, prosecutors and defence lawyers/barristers who appear in rape and sexual assault cases.

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?

We support the Taskforce examining the needs of victims following the prosecution of a sexual offence and considering a Victims of Crime Commissioner. Women and girls encounter a host of agencies and entities as part of their journeys as victims of sexual and other domestic abuse and there may be great benefit in an independent, statutory officer overseeing their rights and ensuring that they are consistently treated with respect and dignity.

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?

We support the Taskforce examining alternative pathways of justice for victims, such as specialised courts or restorative justice. Many women and girls simply do not want or cannot bear to be involved in the criminal justice system. However, many women and girls ultimately want their stories told, their experiences validated, and the perpetrators of sexual and other domestic abuse held accountable. The more alternative pathways for this to occur the more a victim can find a way that she is most comfortable with.

We support the entire legal system becoming trauma informed and specialist courts staffed only by specially trained judicial officers, prosecutors and defence lawyers could go some way to achieving this.

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| Theme 4: Why women and girls come into contact with the criminal justice system and their engagement with police and the legal system. |
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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 not.

We support the Taskforce focusing on the underlying factors that contribute to the increasing levels of women and girls entering the criminal justice system, especially the high levels of First Nations women. The cross-cutting issues identified by the Taskforce in the discussion paper all need close examination in the context of this enquiry to truly understand the reasons for female offending. The over policing of First Nations women and girls which results from systemic racism needs to be acknowledged and addressed.

We know that women and girls are overrepresented in low level offences, and we support a review of the criminal code to identify those offences and look at alternatives to criminalisation. Decriminalising these acts that often relate to women's safety and survival such as homelessness, public nuisance, public drunkenness and poverty related offences will see a reduction in women's and girl's engagement with the legal system as offenders.

Do you support the Taskforce focusing on the role of the police in relation to women and girls accused of offences? If not, why?

We support the Taskforce focusing on the role of police in relation to women and girls accused of offences. For instance, we hear overwhelming anecdotal evidence that misidentification of the person most in need of protection by police is still occurring at alarming rates. In our view, this is a major issue that needs close examination because it results in women unfairly having protection orders placed against them. This then springboards the women into the criminal justice system. This is especially the case for First Nations women.

As we have stated above, the over policing of First Nations women and girls which results from systemic racism needs to be acknowledged and addressed.

We support all police officers being required to undertake regular training in trauma informed practice, cultural safety and awareness, the dynamics and causes of gendered violence against women and properly recognising and responding to domestic and family violence, including the adoption of the Primary Aggressor framework.

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?

We support the Taskforce focusing on women and girls' experiences in the legal system when they have been accused of committing offences. Essentially, we can all do better. It is our view, as expressed in our first submission to the Taskforce, that all legal professionals and judiciary in Queensland should receive regular, specialist, mandatory training in the area of domestic violence, including and especially coercive control. Trauma informed practices should also be encouraged when dealing with women and girls accused of committing offences as we know the vast majority have experienced or are still experiencing domestic violence, homelessness, mental health issues and trauma. We must also respect their roles as mothers and carers in the community.

Women and girls accused of committing offences must have access to high quality legal advice and representation. Lawyers who work with women should be trauma informed and culturally aware and understand the complex intersectional factors that lead to women's and girl's offending.

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

We support the Taskforce focusing on women and girls' experience of incarceration and release into the community. We would like to see the Taskforce closely consider the role of women (and sometimes girls) as mothers and carers in the community and the effect that incarceration has on those imprisoned and their dependents. We support Programs to support women whilst incarcerated and when being released back into the community safely and with dignity should be considered.

We agree that the implementation of the recommendations of the Women in Prison 2019 report should be prioritised. Additionally, we believe that the recommendations relating to women and girls of the Aboriginal Deaths in Custody Royal Commission, be implemented as they focus on decreasing their engagement with the criminal legal system.

We support alternatives to incarceration for women. Criminalisation of women is usually the outcome of repeated and intergenerational experiences of violence, poverty, homelessness, child removal and unemployment, resulting in complex health issues and substance use and that First Nations women and girls are massively over-represented in prison due to over policing caused by systemic racism. Resources should be diverted from locking up women and girls to alternative justice models including justice reinvestment.