

Submission in relation to women and girls' experiences across the criminal justice system as victims-survivors of sexual violence and also as accused persons

We thank you for the opportunity to provide a submission for the Government's consideration into improving the competency, quality, and accountability of the criminal justice system, in hopes that in the future we can better protect the human rights of women and children in Queensland.

Micah Projects, inclusive of the Brisbane Domestic Violence Service (BDVS), and the voices of the women and children we support experiencing domestic and family violence. We support these individuals in varying capacities as they journey through the criminal justice system as victims-survivors of sexual violence and as accused persons and offenders.

Addressing questions outlined in the *Discussion paper 3—Women and girls' experiences across the criminal justice system as victim survivors of sexual violence and as accused persons and offenders*—this response focuses on key themes impacting the women and children supported by Micah Projects and the experiences of practitioners engaged in varying degrees within the domestic and family violence sector.

Key Themes

Overrepresentation of Aboriginal and Torres Strait Islander women and girls in the criminal justice system as both victims and offenders. Cultural Awareness: First Nations peoples and Cultural and Linguistically Diverse

The overrepresentation of Indigenous peoples in Australia's criminal justice system is clearly evident with Indigenous people accounting for more than 27% of the total adult Australian prison population, while only accounting for 2% of the Australian population (ABS, 2017). Fitzgerald, Douglas & Heybroek (2021) state that First Nations women and girls are vastly overrepresented in Domestic Violence Orders (DVO) as both aggrieved victims and as respondents; and as individuals charged and sentenced with breaches of those orders.

Further to this point, research by Jeffries & Bond (2015) found that non-Indigenous offenders were at significantly lower risk of imprisonment for domestic violence offences. These findings were supported by Fitzgerald et al. (2021) within the Queensland court context which states:

“Indigenous defendants found guilty in DVO breach cases are more likely to receive harsher penalties than their non-Indigenous counterparts. Thus, irrespective of gender, age, breach history, and court location, Indigenous defendants had higher chances than their non-Indigenous counterparts of receiving prison or probation sentences than fines but were less likely to receive good behaviour orders than fines”.

In our daily work, we observe stark differences

in how women from First Nations backgrounds will be treated in their engagements with the justice system, particularly by Queensland Police Service, compared to non-Indigenous women.

We are aware from observations in our practice and from participants' feedback, that First Nations women experience:

- » significantly higher levels of discrimination,
- » higher levels of police assessing as “mutual violence” without taking the time to accurately assess “the person most in need of protection”.

In these instances, we have been told by women accessing our services that police are less likely to assess for coercive control or patterns of violence present in the relationship. In these circumstances, we see considerably more First Nations women named as respondents in police-applied Domestic and Family Violence Protection Orders, and as requiring more systemic advocacy to have these orders re-examined.

Similarly, women from culturally and linguistically diverse communities experience frequent barriers to accessing service supports and engaging with the criminal justice system for protection.

There are estimates that 33% of women from migrant and refugee communities in Australia have experienced some form of domestic and family violence (Segrave, Wickes & Keel 2021), however barriers including (but not limited to) inconsistent provision of interpreter supports by agencies, fear of penalization (including fear of deportation) due to unstable visa status, and financial and social dependency on partners

can create significant implications for women accessing protection.

When engaging with police and judicial systems, women have reported additional barriers including lack of education and lack of support provisions to compile required evidence and documents for court proceedings and re-traumatization through extended court processes when interpreters are not utilised appropriately (or in some cases, at all).

- **We recommend all agencies providing services within the criminal justice and judicial systems routinely engage in cultural competency education and training, as well as enhance partnerships with community partners to ensure safety and cultural awareness is prioritised in responses.**

Recognising and responding to trauma

Most women who are involved in the criminal justice system have experienced significant trauma and abuse that impacts on how they navigate their lives, and this must be considered in justice proceedings. Their experience as criminalised women needs to be considered in context and in consideration of their experience as victim-survivors. As a result of their trauma experiences and the way they interact with the world around them, which may include heightened emotional responses, women are often mis-identified as perpetrators in DFV relationships.

It is important for women and girls to have access to high quality, trauma-informed legal advice and representation, who can effectively understand their lived experiences of violence.

For trauma impacts to be recognised and effectively mitigated, training and education on trauma informed practice needs to be provided at all levels across the criminal justice system.

There are significant inconsistencies in the level of training and education delivered and received throughout the criminal justice system, which creates difficulties in minimising levels of re-traumatisation throughout the process, and appropriate placement of advocacy supports. It is a frequent occurrence for women to report re-traumatisation through repeated instances of telling their story, experiences of confusion and distress at receiving conflicting directions at different levels of the system, and regular incidents of victim-blaming.

First responses from agencies connected with the criminal justice system, particularly the Queensland Police Service, are crucial for ensuring trust of victims navigating the criminal justice system. Prior to engaging with these systems, community responses, are the first opportunity for stigma and judgements to influence the narrative of criminal justice system responses to women and children. This is a crucial element that needs to be addressed to ensure women (particularly First Nations women and women from culturally and linguistically diverse backgrounds) feel safe to begin the process of disclosing and self-advocating for safety.

How violence is framed from community responses (including neighbours, communities as well as health and education services) will guide the systemic responses within the criminal justice systems. When these community attitudes are based on discriminatory judgements and assumptions, this has a direct connection to the level of risk being minimised by first responders.

- **We acknowledge that community attitudes are a long-term focus of domestic violence prevention and therefore we recommend more training and education for agencies and individuals working with these initial community responses.**

Opportunities for Change at different levels of the Criminal Justice System

Police & Watchhouse staff

A key concern that is shared by participants in our service is the minimising of women and children's voices by officers suggesting that by following through with a complaint regarding sexual violence such as rape or sexual assault, will lead to the accused person being in their life throughout the criminalisation process. The result of this narrative promotes hesitancy to report crimes of sexual violence and distrust of the criminal justice system.

- **We recommend** the Queensland Government provide more trauma-informed and domestic and family violence informed training to ensure that first responses for women and children who are engaging with the criminal justice system are listened to, heard, and feel safe. The training package that would benefit most would be the *Safe and Together* model training for a quota of officers in each station.

Lawyers

The accessibility of trauma-informed and domestic and family violence aware legal advice and representation is currently heavily dependent on availability of community based and government-funded resources, in which demand often exceeds availability. Where private legal representation is required (either through self-funding or through Legal Aid grants), women frequently identify limited avenues for accountability where unsafe practice occurs, which can include feeling pressured to consent as respondents to Domestic & Family Violence Protection Orders applied for by perpetrators as a form of coercive control, feeling intimidated by solicitors acting for the other party, as well as feeling pressured to participate in mediation processes without appropriate protection

safeguards.

- **We recommend** that accountability protocols are improved, including transparent provisions for complaints to ensure a high standard of practice is maintained and women are not placed further at risk when engaging in the criminal justice system. This would ideally include a requirement for legal practitioners to adhere to best practice standards when providing advice or representation in matters which involve domestic and family violence or sexual violence allegations within proceedings.

Judicial Officers and courts staff

A key concern is the lack of Domestic Violence informed policies and procedures within the courts that promote risk and prevent safe trauma-informed experiences for women and children. In some courts in Queensland women are only able to access the courthouse safe room by completing the safe access form prior to attending court. This creates barriers for marginalised women to accessing the safe room and actively increases risk for women engaging in the criminal justice system.

- **We recommend** a review of all court policies and procedures to ensure that improvements can be made to support women's safety when engaging in the criminal justice system. Further, increased supports for women are recommended to ensure that marginalised groups have the same access to safety measures as others from privileged positions.

Magistrates & Judicial Registrars

Every year in Queensland, there are between 18,000 to 33,000 protection order applications heard within 20 Magistrate's Courts throughout the State (Queensland Courts 2022). Currently, significant disparities exist in the responses

and outcomes delivered by Magistrates and Judicial Officers in responding to domestic and family violence matters before the QLD courts. Despite the significant number of applications heard, women routinely report re-traumatisation through the court process.

The introduction of specialist Domestic and Family Violence Court's has made an improvement to the consistency and trauma-informed responses received, however in Magistrate Courts where this model has not been implemented, consistency still appears to be the primary concern. Through engagement with the courts, and women who utilise this system, we have identified concerns including safety considerations not always being considered when deciding on Temporary Protection Orders, the 'person most in need of protection' routinely being mis-identified, breaches of protection orders being minimised, and participants feeling pressured to proceed for mention prior to receiving legal advice through duty lawyer mechanisms.

While there have been significant advances in education and development opportunities for the judiciary, it is recommended that regular education is provided as a mandatory standard. Without clear education and accountability mechanisms within the Judiciary, there will continue to be gaps in how women are engaged and supported in the criminal justice system, in consideration of the impacts of their trauma experience particularly.

- **We recommend...** that participation in annual training and displayed competency in engaging with the Domestic and Family Violence Bench Book be met as a minimum standard, with accountability and transparency mechanisms improved to allow for a clear pathway to identifying and mitigating inconsistencies.

Barriers to women and girls accessing good quality legal advice, support and services

The experience of economic abuse, which can include the withholding of funds or the inability to access funds in the event of a separation, means that many women who require legal assistance, are prevented from accessing these resources from the private sector. While funding is available through Legal Aid services, we often support women who are ineligible for these services based on the means-testing requirement, due to the presence of joint assets (despite often not being able to access these assets for reasons including economic control enacted by the perpetrator of violence).

Legal Aid service provision is also primarily undertaken through the provision of grants to 'preferred suppliers', which accounts for 80% of Legal Aid's service provision (Dennis 2022). However, since 2005, private firms on Legal Aid Queensland's preferred supplier panel have dropped from 440 to 307 (Dennis 2022), stretching an already overwhelmed legal support system, and increasing barriers for women without adequate financial provisions to access necessary legal support. Similarly, increasing demand for support through the community legal sector can be a significant barrier for access for people we support. In 2021, Women's Legal Services Australia identified a case increase of 70% (Curtis 2021), but without adequate funding increases, the capacity to support people in need is significantly impacted.

Our engagement with women suggests there are a range of disadvantages that will impact on their willingness or ability to engage in the criminal justice system, such as women without safe and/or affordable housing, women working as sex workers, as well as women with children who may fear losing their children if they report or proceed with a legal response.

- The system needs to be able to respectfully recognise and engage with women impacted by these, and other disadvantages, while also advocating for broader systemic responses supporting women and girls who have experienced violence and trauma such as appropriate, safe housing responses.

Holding perpetrators to account

The current justice system relies heavily on the victim-survivor to demonstrate the level of violence and trauma they have experienced. A power imbalance exists within the system, where women are required to present evidence before the male perpetrator and his family, which can be re-traumatising and intimidating. Improving court processes to support women's safety when providing evidence could improve the process and better support perpetrator accountability

- **We recommend** making well resourced, evidence based early intervention men's perpetrator intervention programs available. This is an important strategy to address men's choice to use violence and coercive control and to reduce violence toward women.
- **We also recommend** that men demonstrating lower-level risk behaviours and young men be referred to men's behaviour change programs via court proceedings. This sends a clear message that violence against women and children is not acceptable at any level. This needs to be in addition to other early intervention strategies to address perceptions of the use of violence and coercive control within the broader community.

Resourcing, investment and value for money, and enhancement of integrated responses

To improve the experiences of women and girls accessing the criminal justice system as both victims and also as accused persons more flexible, accessible and longer-term support services are needed within Queensland

■ Improvements and investments recommended include:

- » Longer-term funding agreements with support services with a minimum of 5-year contracts
- » Flexible service agreements with services that enable workers to follow women and children through the criminal justice system journey. Ensuring that women and children are not continuously moving between services and retelling their traumatic stories to new workers.
- » Providing more funding to integrated and preventative service models that have shown to help women and children navigate through their experiences of domestic and family violence, including women's advocate positions during incarceration periods, preventative services including trauma informed recovery programs (children and young person's program) and adolescent to parent violence preventative programs (ReNew).

A Path Forward

Appropriate governance and accountability mechanisms

In alignment with sector networks and colleagues, Micah projects supports and advocates for expanded investment in and support for primary prevention, with an evidence-based, whole of community approach. An increased focus on early intervention, alongside funded specialist services will provide significant long-term savings for government and positive community impacts by preventing violence from occurring in the first place.

It is also recommended that an independent, culturally safe organisation be introduced to provide regular safety audits to all agencies and levels of the criminal justice system. This audit will have a strong focus on reviewing agencies to ensure that a minimum standard of culturally safe, DV-informed, and trauma-informed practice is being carried out by every arm of the criminal justice system. The audit should include QPS, Judicial Officers/courts staff, Magistrates & Judicial Registrars and District & Supreme Court Judges. By holding these elements of the criminal justice system to account through independent body it will promote greater safety for women and children.

Protecting and promoting human rights

Promoting and protecting the human rights of women and children who are victims and potentially accused persons within the criminal justice system is considered crucial at every stage of the criminal justice process and by every person who works within the system. The stories from women and children's negative responses from the criminal justice system due to their cultural background, employment, disability, socioeconomic status, gender and age are symptoms of a wider cultural narrative prevalent throughout systemic responses. The best way to address this cultural systemic issue is through widespread systemic and cultural change. Promoting safety for individuals within this system begins with ensuring that every element of the system has the capacity and the ability through formal and informal mechanisms to listen, hear and respond to women and children. This is a minimum standard for providing a safe environment that promotes the human rights of the individuals within that system. It is important that an independent body regularly reviews and holds the different elements of the criminal justice system to account. Only once this has been achieved is it possible to continue to provide a structure in which workers within that system are mandated to complete the necessary training to ensure safety for women and children. These core training competencies include trauma-informed training, Domestic and family violence training and cultural safety training.

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