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BY ONLINE SUBMISSION

Women's Safety and Justice Taskforce
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Women Lawyers Association of Queensland – Submission on Discussion Paper 2

On behalf of the Women Lawyers Association of Queensland Inc. (**WLAQ**), thank you for the opportunity to provide submissions in respect of 'Discussion Paper 2', which has been published by the Women's Safety and Justice Taskforce (**the Taskforce**).

Introduction

Discussion Paper 2: Women and girl's experience of the criminal justice system

'Discussion Paper 2' (**paper**) is the second discussion paper published by the Taskforce. It is divided into two parts which explore five overarching themes. Within each theme are a series of 'proposed' themes and discussion questions.

The Taskforce has invited submissions on this paper, seeking feedback on the proposed themes for focus in respect of the Taskforce's examination of the experience of women across the criminal justice system.

Scope of this submission

WLAQ is one of the main bodies advancing the interests of female lawyers within the state of Queensland.

In recent years, WLAQ has had a considerable increase in the number of criminal lawyers who are either members or representatives on its management committee. In 2019, WLAQ established a Criminal Lawyers Sub-Committee so as to focus on, and advocate for, female practitioners in the criminal law profession.

With this in mind, this submission will address those themes and discussion questions directly relevant to the interests of Queensland female criminal lawyers, and which fall within the ambit of WLAQ's overall objectives.

Those themes and discussion questions are as follows:

Theme 1: Community understanding of sexual offending and barriers to reporting

- Q: Given relevance to offending behaviours as well as reporting, do you support the Taskforce examining community attitudes to sexual offending against women and girls? If not, why?
- Q: Given under-reporting of sexual offences, do you support the Taskforce examining the barriers to reporting sexual offending against women and girls? If not, why not?

Theme 3: Legal and court processes for sexual offences

- Q: 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? If not, why?
- Q: Do you support Taskforce examining alternative ways of delivering justice for victims such as through the establishment of specialised courts or through restorative justice? If not, why?

Theme 4: Why women and girls come into contact with the criminal justice system and their engagement with police and the legal system

- Q: 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 not?

Data Collection

In preparation for this submission, WLAQ has sought (and had regard to) feedback from its members. In that regard, the WLAQ published a survey (**the survey**) on behalf of the WLAQ Criminal Lawyers Sub-Committee.

The survey sought responses from women who worked in the Queensland criminal justice system, and it canvassed topics including:

- Acting for/assisting female complainants;
- The training and education available to lawyers who work within the criminal justice system;
- The representation of women and culturally diverse women in the criminal law profession; and

- The experiences of women who work in the criminal justice system and who have also been victims of domestic violence and sexually based offending.

The majority of survey respondents were aged between 25 to 34 years of age. Of the 84 respondents, 59.5% were solicitors (including legal officers) and 29.8% were barristers. 56% of respondents worked in public practice, with the remaining 44% working in the private sector. More than half of the respondents were from the Office of the Director of Public Prosecutions (**ODPP**).

This submission draws on the data produced by the survey, and the WLAQ hopes that this data will assist the Taskforce in identifying pressing matters for its attention during the course of its important work.

Submission

Theme 1: Community understanding of sexual offending and barriers to reporting

Question - Given relevance to offending behaviours as well as reporting, do you support the Taskforce examining community attitudes to sexual offending against women and girls? If not, why?

WLAQ supports the Taskforce examining community attitudes to sexual offending against women and girls, and in particular, the 'makeup' of the legal profession and how that impacts upon the culture of legal professionals who act for and assist victims of sexual and domestic violence-based offences.

From WLAQ's perspective, two key issues for consideration arise in this respect:

1. The retention rates of, and lack of senior positions held by, female lawyers, and the impact those factors may have on the legal representation available to victims in the criminal justice system; and
2. The underrepresentation of culturally diverse lawyers and the impact of that underrepresentation on culturally diverse women exposed to the criminal justice system.

The issue of female lawyer retention rates is not a novel one. Whilst it is cause for celebration that there is a significant (and indeed increasing) percentage of female lawyers practising in Australia, and that in Queensland the ratio of female to male lawyers is 52:48,¹

¹ Ubris 2020 National Profile of Solicitors, Law Society of NSW, published on 1 July 2021, at figure 4, page 9.

this should not detract from the fact that overall retention rates within the profession are poor, and low numbers of women occupy senior roles in the law.²

The 2020 National Profile of Solicitors published by the New South Wales Law Society on 1 July 2021, provided the following relevant statistics:

- Male solicitors comprise the majority of the age bracket of 45 to 75 years old, and overall, female solicitors are younger on average; and
- In Queensland, more male solicitors than female work in private practice firms.

For victims of sexual and domestic violence offending, there are two consequences. First, access to senior and experienced female lawyers is limited. Secondly, junior female lawyers in private practice are hampered in their capacity to access critical mentoring and training in the domestic violence and criminal jurisdictions, by senior female lawyers who are well-versed in those jurisdictions (and who have significant experience acting for victims to whom those jurisdictions apply).³

In light of these concerns, the survey explored respondents' experiences with female victims in the criminal justice system. The data revealed as follows:

- 73.8% of respondents act for or assist female victims⁴ in their roles;⁵ and
- 66.7% of respondents expressed the view that female victims prefer to receive assistance from females, for reasons including that females are more likely to better understand their experiences and that perpetrators are often male (making it 'less triggering' to speak to females).

Drawing on the professional experiences of lawyers, one respondent commented on how she had witnessed the presence of a male prosecutor affecting the evidence given by a female complainant at trial. Another respondent's experience was that female domestic

² The Pitcher Partners' '2019 Legal Firm Survey' found that 64% of graduates in law firms surveyed around Australia were female; yet at equity partnership level, women made up 16% of equity partners, and 33% of non-equity partners and the 2017 Law Society of NSW's report on the National Profile of the Profession found that 13% of female lawyers were principal solicitors in a law practice, and the average age of female solicitors is lower compared to the profession as a whole.

³ These concerns are exacerbated in regional areas, as research suggests that female solicitors are less likely to practice in regional, rural and remote areas at the same rate as male solicitors: 'Place Matters: Women's lived and Imagined Experience of Legal Practice in Regional, Rural and Remote Communities in Queensland', Patricia Mundy, PhD Doctorate thesis, published 2013.

⁴ Including aggrieved persons and complainants in criminal matters.

⁵ Including as prosecutors and defence lawyers.

violence victims were more candid and forthcoming with her as opposed to her male 'principal'.

The data also highlighted that junior female lawyers are often confronted with client/victim-management type issues which they have found difficult to resolve. For example:

- Clients blurring lawyer/client boundaries by expecting their lawyer to provide more than legal advice (and mistaking their lawyer for their social worker or psychologist or friend);
- Clients/victims crossing boundaries by 'showing up' to places frequented by his/her lawyer in a private capacity or by giving gifts or showing affection (such as hugging); and
- Victims misunderstanding that prosecutors and legal officers appear on behalf of the State (as opposed to being the victim's personal advocate).

This data demonstrates the importance of junior lawyers being able to seek guidance from senior female lawyers who have encountered (and successfully managed) similar issues.

As for the issue of cultural diversity within the criminal law profession, a holistic view of the survey data shows that this issue remains paramount. To that end, 70.2% of the survey respondents opined that there was an underrepresentation of culturally diverse females working within the criminal justice system.

Whilst respondents did not, for the most part, consider that a culturally diverse lawyer is necessarily more equipped to work with culturally diverse female complainants or clients, the lack of culturally diverse women in the profession nonetheless presents problems.

For instance, the survey results showed that 66.7% of female victims or clients preferred to receive assistance from other females. A potential compounding factor to that statistic is the challenges experienced by minority groups and lack of accessibility of minority groups to female lawyers who come from similar backgrounds (and who are more likely to understand their situations).

Survey data identified concern as to a perceived lack of diverse judicial representation within the criminal justice system. In this context, some respondents suggested that judicial officers should be trained on biases and pre-conceived notions (for example, how the 'ideal victim' behaves). Such training, and indeed education, could be expected to enhance diverse and culturally sensitive views towards court room etiquette and cultural norms, as well as inform expectations and biases.

Research shows that improvement in this area is necessary in order to see any possible impact upon the betterment of the lives of women who fall within minority groups.⁶

There is much to be said, therefore, for the view that a lot is to be gained *‘from the legal community as a whole being proactive in developing practices and procedures to address the barriers which restrict effective engagement with the legal system for many within our culturally diverse society.’*⁷

It is hoped that the reported experiences of female practitioners might at least provoke some appetite for further necessary cultural change, focusing not only on effective access to justice for users, but for the betterment of those who are assisting the users.

Question - Given under-reporting of sexual offences, do you support the Taskforce examining the barriers to reporting sexual offending against women and girls? If not, why not?

Practising in criminal law and being familiar with the inner workings (and challenges) of the criminal justice system best equips criminal lawyers to support, advise and represent victims. However, to satisfactorily fulfill these critical roles, lawyers need to be properly trained with skills tailored towards effectively (and appropriately) acting for victims.

This theme was explored in the survey. To that end, 56% of survey respondents indicated that they do not feel adequately trained to act for and assist victims. 82.7% of respondents do not consider that the legal profession offers sufficient training, including vicarious trauma training and support.

Criticisms of the profession’s current training for lawyers who act for victims included:

- Training being too general;
- The existence of gaps in the training that is offered, including how to assist victims on an emotional level, how to properly understand the impacts of offending on victims, and how best to obtain instructions; and
- Insufficient support systems for victims.

Suggestions offered by respondents included:

- Training focussed on domestic violence jurisdiction procedures;
- Witness conference training;
- Training led by social workers, counsellors and psychologists;
- Cultural awareness training;

⁶ McGorry P, McMahon M. (2019) Prosecuting controlling or coercive behaviour in England and Wales: Media reports of a novel offence. *Criminology & Criminal Justice*.

⁷ Perry, M. (2019). The Law, Equality and Inclusiveness in a culturally and linguistically diverse society. *Adelaide Law Review*, 274, 277-278.

- Emotional intelligence and empathy training; and
- Domestic violence training.

Importantly, a recurring theme amongst survey responses was the issue of vicarious trauma and the impacts on those who work in the criminal justice system.

Vicarious trauma is a cumulative process through which a person's inner experience is negatively transformed through empathic engagement with another's trauma (also known as compassion fatigue and secondary traumatic stress).⁸ The symptoms parallel those of Post-Traumatic Stress Disorder, and include re-experiencing, avoidance, numbing and persistent arousal.⁹

Remarkably, studies have found that lawyers experience higher levels of vicarious trauma in comparison to mental health professionals. However, and in contrast to lawyers, mental health professionals are provided with structured support (in the form of peer support, supervision, and formal training).¹⁰

In terms of vicarious trauma, survey respondents predominantly seek:

- Compulsory vicarious trauma training;
- Better mentoring programs for lawyers; and
- Increased access to mental health professionals.

These developmental opportunities should not be elective in nature but rather, be part of the requisite educational and mandatory components undertaken by practitioners entering criminal law.¹¹ It is submitted that there must be a stronger focus on professional learning for lawyers specific to this jurisdiction.¹² The effects of this will be two-fold: the much-needed upskilling of lawyers who act for victims and in turn, a reduction in the vicarious trauma experienced by lawyers who act for victims.

With these matters in mind, the WLAQ supports the Taskforce's examination into the role played by lawyers in supporting and acting for victims of sexual offending and domestic violence.

⁸ Bowskill J – acknowledging and dealing with the cumulative trauma and stress of your role as prosecutors.

⁹ Figley, C. R. (1995). Compassion fatigue as secondary traumatic stress disorder: An overview. Brunner/Mazel psychological stress series, No. 23. Compassion fatigue: Coping with secondary traumatic stress disorder in those who treat the traumatized, 1-20.

¹⁰ Maguire and Byrne, *The Law Is Not as Blind as It Seems: Relative Rates of Vicarious Trauma among Lawyers and Mental Health Professionals*, Psychiatry, Psychology and Law, 2017, Vol 24, No. 2, 233-243.

¹¹ The mandatory nature of the suggested training featured prominently in the survey responses.

¹² Women's Legal Service Victoria (WLSV) (2020) Policy Brief: Justice system response to coercive control. Available at: https://womenslegal.org.au/files/file/CoerciveControl_policy_brief_FINAL.pdf

Theme 3: Legal and court processes for sexual offences

Question - 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? If not, why?

The survey results clearly report that the ODPP has a significant role to play in respect of victims of criminal offending. The WLAQ supports the Taskforce's closer examination of the ODPP's ability to take on a leading role in the way that the criminal justice system deals with victims. However, consideration must be given to the constraints of resourcing of the ODPP.

As at 2019, the ODPP reported that 67% of its staff were female.¹³ Such an environment creates significant opportunities for the Taskforce to encourage enhanced training and education within the organisation insofar as dealing with victims, cultural diversity, and vicarious trauma.

With enhanced and targeted training and education, significant lessons could be learned from the ODPP environment and the way it addresses and manages the needs of victims and also vulnerable witnesses. This may create scope for intra-agency engagement across the legal profession.

Question - Do you support Taskforce examining alternative ways of delivering justice for victims such as though the establishment of specialised courts or through restorative justice? If not, why?

Alternative dispute resolution options¹⁴ would enable the diversion of sexual (and even domestic violence) complaints away from the court system, and an examination into such options would be welcomed by the WLAQ.

In the survey, 18 respondents answered 'yes' to being asked whether they have been a victim of domestic violence or sexually-based offending. Of those 18 respondents, it is a matter of considerable concern that 16 did not report the offending to police. The reported motivations behind not reporting the offending included:

- Not wanting to be a 'victim' in the criminal justice system knowing what is involved after making a police complaint;
- Re-victimisation;
- Damage to career;
- Avoiding cross-examination; and

¹³ ODPP Annual Report 2018-2019

¹⁴ Such as restorative justice mechanisms.

- Not wanting to be publicly critiqued.

In fact, two respondents commented that unless they were the victims of very serious offending perpetrated by a stranger,¹⁵ they would never willingly be a complainant in the criminal justice system. Others indicated they would not recommend that a friend or family member proceed with a complaint either.

50% of respondents who were victims of offending said that their experience as a criminal lawyer was a contributing factor to their decision not to make a complaint to police. 96.3% of respondents to the survey who said they had not been victims of domestic violence or sexually-based offending said that their experiences as a criminal lawyer *would* contribute to their decision about making a complaint to police.

As evidenced by the survey data, the adversarial nature of criminal and domestic violence proceedings, and a criminal lawyer's experiences in that context (both personally and professionally) are matters which have influenced victim's decisions whether to report offending.

Were victims able to report offending and try to pursue justice outside of the court system (by, for example, restorative justice processes), not only are reporting rates likely to increase, but there is a chance that more criminal and domestic violence matters will be successfully diverted away from the courts, thereby alleviating an already over-burdened justice system.

Theme 4: Why women and girls come into contact with the criminal justice system and their engagement with police and the legal system

Question - 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 not?

The WLAQ supports this proposed focus, and for the reasons articulated earlier in this submission,¹⁶ encourages the consideration of equal access to high quality legal advice and representation provided by female lawyers and lawyers from culturally diverse backgrounds. Specific considerations include:

- The impacts of low retention rates of female lawyers in the criminal law profession on equal access to high quality legal advice and representation;

¹⁵ For example, the victim of a violent rape with life-threatening consequences.

¹⁶ At pages 3 to 5.

- The impacts of low appointment rates of female lawyers to senior management positions in the criminal law profession on equal access to high quality legal advice and representation;
- The absence of culturally diverse lawyers in the criminal law profession and the impacts of this on equal access to high quality legal advice and representation;
- The need for a more cultural and diverse judiciary to promote the understanding and awareness of attitudes and views which might not always align with mainstream perceptions; and
- The cultural capabilities of criminal law and criminal justice system agencies generally.

These issues apply equally to all women who are exposed to the criminal justice system – whether it be as a witness, complainant, defendant, aggrieved, or respondent.

Conclusion

The importance of the issues being addressed by the Taskforce is immeasurable, and the WLAQ is grateful for the opportunity to contribute to the Taskforce’s considerations.

As is clear from the survey data and available research, female criminal lawyers are a key stakeholder in the criminal justice environment. Accordingly, the ability for female lawyers to provide valuable input and change into the criminal justice system should be encouraged.

We hope that the issues raised in this submission contribute to the Taskforce’s work, and more broadly, towards the bettering of women’s experiences in the criminal justice system.

We wish the Taskforce well in its ongoing work, and invite the Taskforce to contact the WLAQ should it wish to discuss any matters.

Yours Faithfully

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