CRIMINAL LAW (COERCIVE CONTROL AND AFFIRMATIVE CONSENT) AND OTHER LEGISLATION AMENDMENT BILL 2023

Submission No:	4
Submitted by:	Brisbane Rape & Incest Survivors Support Centre
Publication:	Making the submission and your name public
Attachments:	See attachment
Submitter Comments:	

Brisbane Rape & Incest Survivors Support Centre
15 Morrissey Street Woolloongabba Q 4102
Admin Line: (07) 3391 2573 Support Line: (07) 3391 0004
Email: admin@brissc.org.au Website: www.brissc.org.au
ABN: 43 009 935 488

24th of October 2023

Legal Affairs and Safety Committee
Parliament House
Cnr George and Alice Streets Brisbane Qld 4000
Ph: 07 3553 6641

To Whom It May Concern,

RE: INQUIRY INTO CRIMINAL LAW (COERCIVE CONTROL AND AFFIRMATIVE CONSENT) AND OTHER LEGISLATION AMENDMENT BILL 2023

We are writing to you in response to the request for feedback regarding - Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023. Please note, due to time constraints, this letter is a copy of a submission sent in for a previous request to the Women's Safety and Justice Taskforce & DJAG. As such – not all sections may be relevant to your needs. **BRISSC also supports the feedback and recommendations of the Queensland Sexual Assault Network's (QSAN) submission to the committee.**

About Us

The Brisbane Rape & Incest Survivors Support Centre (BRISSC) – We are a feminist service who works with all women (including cisgender and transgender women) aged 15+ who have experienced sexual violence at any time during their lives. Our work includes individual counselling, group work, advocacy & support through reporting & justice processes & community education/training. We are based in Woolloongabba and have outreach/partnership services in Nundah and Inala (Brisbane Southwest Support).

As stated in previous submissions, BRISSC is in support of the implementation of the recommendations of the Womens Safety and Justice Taskforce. Many of these recommendations will bring us in line with victim-survivor focused legislative changes across the nation. Our feedback focuses more on sexual violence, as our scope of practice, than domestic violence.

Our recommendations regarding operational issues primarily centres around education within the legal system and community to accompany legislative roll out. For the criminal justice system and government to be accountable to these changes and have structures in place to sustainably support this. Many of these legislative changes based on WSJT recommendations have the potential to positively impact community understandings of consent, contribute to the extinction of rape culture and increase the success rate of sexual violence investigations.

Amendments to failure to report offence – Recommendation 7, Hear Her Voice 2 (clause 15)

Amendments to this offence will be supportive to foster trust and reengagement with people who have experienced/are experiencing childhood sexual abuse. Across the sector, particularly

Brisbane Rape & Incest Survivors Support Centre
15 Morrissey Street Woolloongabba Q 4102
Admin Line: (07) 3391 2573 Support Line: (07) 3391 0004
Email: admin@brissc.org.au Website: www.brissc.org.au
ABN: 43 009 935 488

the youth sector, there has been disengagement and difficulties in rapport and trust building as a direct response to the amendment. There has been advocacy and data shared across the sector on this issue.

Our understanding is that the current legislation extends to if an adult tells another adult about current or risk of harm to a child. Rather than just direct disclosure from the child. This will be important to clarifying in legislative changes as this is not clear in our reading of the info sheet:

"The additional reasonable excuse will apply in circumstances where the adult gains the information during a confidential professional relationship with the child and the adult reasonably believes there is no real risk of serious harm to the child or any other child in not reporting the information."

We are supportive of QSAN's feedback on this section and have summarised from their submission as follows: We would be supportive of this amendment being more aware and supportive of the agency of young people and their own decision to report or not. Youth workers need to be explicitly included in this amendment as they are one of the most impacted service groups. A 'reasonable excuse' could also be inclusive of a worker referring the person to a relevant service who is required to consider reporting.

Affirmative consent and mistake of fact – Recommendation 43, Hear Her Voice 2 (clauses 16 to 23)

BRISSC is very supportive of legislative changes including a model of affirmative consent. WSJT Recommendation 43 also minimises the scope of the 'mistake of fact' excuse in consideration to voluntary intoxication. Taking on the model of affirmative consent means that the perpetrator must prove that they said/did something to confirm consent. This is a vast improvement from the burden of proof being put on the victim-survivor to prove the absence of consent. This is extremely important because many SV survivors are blaming themselves or blamed by society for "not saying no" verbally. Affirmative consent laws would help re-direct this self- blame – because it changes the responsibility for consent from the survivor to the person who initiated/proposed a sexual experience. It should also be noted that it is not true consent if a 'yes' was gained through abuse of power, intimidation, duress and/or coercion.

Legislative change is only one part of a bigger picture approach. We need more comprehensive education that focuses more on the harm caused by violence and not just criminal justice definitions. A framework that weaves in empathy rather than relying on punishment as a deterrent. Particularly in sexual violence cases, punishment is not an adequate deterrent due to significantly low reporting & prosecution rates and high rates of recidivism. We understand that the government and department of education has done an overhaul of consent education. As this unfolds, it is critical to engage with violence services to inform this process and nuanced understandings of consent that align with affirmative consent.

Brisbane Rape & Incest Survivors Support Centre
15 Morrissey Street Woolloongabba Q 4102
Admin Line: (07) 3391 2573 Support Line: (07) 3391 0004
Email: admin@brissc.org.au Website: www.brissc.org.au
ABN: 43 009 935 488

BRISSC also supports the following sentiment from QSAN's submission: "QSAN has major reservations about the inclusion of 'implied consent' as this usually is interpreted from the perspective of the accused and to the detriment of the complainant." As well as "We would support the strengthening of the definition of consent so that it encompasses the 'dictionary definition' of affirmative consent which is: 'explicit, informed and voluntary agreement to participate in a sexual act, which can be withdrawn at any time'.

The term 'reasonable belief' and 'reasonable time' raises some concern.

"a belief is not reasonable if the person did not, within a reasonable time before or at the time of the act, say or do anything to ascertain whether the other person consented (where the existing law only provides that regard may be had to anything said or done to ascertain consent)"

As noted in the QSAN submission to this topic "our practice knowledge tells us that if a victim-survivor goes home with the accused voluntarily, is flirting or kissing them in a night club or goes somewhere private with them, the police often will not proceed with a charge on the basis that this is evidence of 'consent'." This is not consent to sex. We are also supportive of QSAN's feedback to "recommend that an additional jury direction be included that states if a person voluntarily agrees to accompany the accused to a private location this cannot be determined as consent for any later sexual activity." For example, women may agree to a car ride home – this is not consent to sexual activity. A person may go to second location with someone – this is not consent to sexual activity. A person may agree to sleep in the same bed as someone after a party – this is not consent to sexual activity.

Consent can be revoked at any time, including during a sexual experience. For example, if the intensity of the experience changes, if the victim-survivor agreed to vaginal sex but the perpetrator changes to anal sex (turning this experience to rape), if the victim-survivor has consensual sex, falls asleep and wakes up to the perpetrator raping them. A common excuse used is that the victim-survivor liked 'rough sex'. There is often no basis for this or a definition from the perpetrator about what that means. If people want to engage in sex with rough elements or explore kink this is best discussed and agreed upon before a sexual experience, not during.

Brisbane Rape & Incest Survivors Support Centre
15 Morrissey Street Woolloongabba Q 4102
Admin Line: (07) 3391 2573 Support Line: (07) 3391 0004
Email: admin@brissc.org.au Website: www.brissc.org.au
ABN: 43 009 935 488

(During 2022 we held consultations with women, nonbinary and gender diverse survivors of sexual violence. One of the key messages when victim-survivors reflected about consent was - "**Consent is an everyday practice that extends beyond sex. It is mutually communicated, agreed upon and ongoing." [image above – art by Sunchild Studio].** Many of the people we consulted with talked about how consent education needs to happen earlier.)

Reasonable belief should be considered in the context of power and control. An acknowledgment that saying no is not always accessible if the other person is e.g., stronger, in a more powerful societal position, if they feel trapped, if the perpetrator is their boss. We must also consider normal survival responses – fight, flight, freeze and faun and polyvagal understandings of our nervous system. Many survivors freeze during an experience of sexual violence. This is a normal nervous system response that is one of our body's ways of supporting us to survive further violence and potential death. Fighting back or escaping an experience of violence is not often a safe or accessible action. More education generally and with our legal systems would contribute to a more trauma informed survivor-centred approach.

Stealthing - Recommendation 44, Hear Her Voice 2 (clause 19)

BRISSC is very supportive of legislative changes to include stealthing as a breach of consent/sexual violence. This is just as serious as any other experience of sexual violence/rape. This is a growing area of sexual violence that will require more precedent to support victim-oriented outcomes. As well as education to community and young people about what stealthing is, that it is sexual violence and rights regarding consent and body autonomy.

Bail considerations – Recommendation 110, Hear Her Voice 2 (clauses 4 to 7)

We are supportive of bail considerations attempting to bridge the gender gap in respect to care responsibilities and pregnancy. However, this section could also be misused by perpetrators. The safety of the victim-survivor needs to be prioritised when bail is considered.

Brisbane Rape & Incest Survivors Support Centre
15 Morrissey Street Woolloongabba Q 4102
Admin Line: (07) 3391 2573 Support Line: (07) 3391 0004
Email: admin@brissc.org.au Website: www.brissc.org.au
ABN: 43 009 935 488

Improper questions – Recommendation 56, Hear Her Voice 2 (clause 55)

We are supportive of this inclusion. To have an impact, the jury, judges, and legal workers need to have education and be held accountable to these changes. We note that the changes relate to "any relevant condition or characteristic of the witness of which the court is, or is made, aware, including age, education, ethnic and cultural background, gender, language background and skills, level of maturity and understanding and personality". Social economic status and financial status could also have bearing on this and be named more explicitly. During cross examination victim-survivors can be unfairly painted as engaging in a CJS process primarily for monetary gain with defence questioning about their financial situation. Usually as an attempt to lower their character in the eyes of the jury. We are supportive of QSAN's feedback on improper questions.

Evidence related to sexual offences

We are supportive of 103ZE. We have supported women through many open courts proceeding that impact on the comfort, safety and ability to speak about one of the worst experience/s of their lives. Including a high school class of young men present. We are supportive of "Evidence about a complainant's sexual history – Recommendations 58 & 59, Hear Her Voice 2 (clauses 56 to 57)" and its restrictions on enquiring about a victim-survivors sexual history and/or 'reputation'. We can also see this having an impact on sex workers and providing a clearer separation from a person and their employment for juries.

Again, education and accountability will need to be enforced to ensure this is appropriately implemented.

Section 103ZZG- Direction on behaviour and appearance of complainant

We are very supportive of this addition. We would recommend changing the language to "The judge **will** direct the jury" instead of "may direct the jury." This approach is supportive of dispelling rape myths and biases that are pervasive in society. Many of the changes say that the judge should provide direction if requested to do so as well as when they deem relevant. We would be supportive of a more formalised and structured way for information to be shared with the jury to inform deliberations even if not directly requested. People cannot know to ask if they do not have all the information and have inherent biases from living in a rape culture.

Expert evidence panel for sexual offence proceedings – Recommendation 80, Hear Her Voice 2 (clauses 56 to 57 and 69)

As noted in the QSAN submission while we are supportive of an expert panel and its necessity in roll out – this panel should also be focusing on dispelling rape myths & the concept of a 'perfect victim' as week as engaging with education on trauma responses.

Sentencing considerations – Recommendation 126, Hear Her Voice 2 (clauses 76 to 77)

Brisbane Rape & Incest Survivors Support Centre
15 Morrissey Street Woolloongabba Q 4102
Admin Line: (07) 3391 2573 Support Line: (07) 3391 0004
Email: admin@brissc.org.au Website: www.brissc.org.au
ABN: 43 009 935 488

The following from the draft bill is a very human and compassionate response to the accused. Whilst we understand the reasoning behind that "the draft Bill will require a court to consider the hardship that any sentence imposed would have on the offender, having regard to the offender's characteristics, including age, disability, gender identity, parental status, race, religion, sex, sex characteristics and sexuality." However, for example, we have witnessed cases where sentences have been suspended due to the fact it would lead to deportation. The above will be used by defence to significantly mitigate sentencing in an area that already has low sentencing rates and severity.

Ultimately a perpetrator made a choice to commit sexual violence and were conscious of their characteristics when doing so. With this being the support and consideration, we are giving to the accused - we would like to see this extend to the treatment of and understanding of sentencing impact on victim-survivors.

We do see this drafting as supportive for First Nations peoples and communities and generally acknowledging the impact of systemic disadvantage and intergenerational trauma. We also recognise that this also supports key vulnerable groups like people with disabilities and parents. This is especially important in nonviolent & nonsexual violence offences. In short – it is complicated and case by case. There are ways this legislation will be used to support community and ways that it will be used to minimise the sentences of violent offenders and not meet the justice needs of victim-survivors and community.

Additional Requested Feedback

We are supportive of the inclusion of the following as breaches of affirmative consent - "fraudulent inducement extends to non-payment of a sex worker; and / or Fraudulent inducement extends to representations made about HIV status and / or other serious sexually transmitted infections/diseases. We would suggest related to HIV & STI status that this is clarified to being fraudulent inducement only where there is a risk of transmission of disease. This is in consideration to many people who have HIV but are undetectable (untransmissible). HIV affects people of diverse gender and sexuality, however, when moving forward with legislation related to HIV it important to consider the history of this virus and that public stigma has not adequately shifted alongside with better understanding and treatment.

Summary

Overall, BRISSC is very supportive of necessary changes to consent legislation to be more in line with trauma informed understandings and responses. We acknowledge the complexity of many of these changes and have explored above the potential for them to do further harm to victim-survivors if not used as intended. Education within and external to the criminal justice system is crucial for successful uptake. We recommend further engagement with the sexual violence sector (as well as the separate domestic violence sector) to support implementation and understanding of the impact of sexual violence on victim-survivors.

Brisbane Rape & Incest Survivors Support Centre
15 Morrissey Street Woolloongabba Q 4102
Admin Line: (07) 3391 2573 Support Line: (07) 3391 0004
Email: admin@brissc.org.au Website: www.brissc.org.au
ABN: 43 009 935 488

Yours Sincerely,

[redacted]

[redacted] (on behalf of the BRISSC collective)

Social Worker & Sexual Violence Support Worker

QSAN Secretariat
118 Charles Street
Aitkenvale
Townsville Qld 4814
Telephone: 0482061726
Email: secretariat@qsan.org.au

The Honourable Margaret McMurdo AC
Chair
Women's Safety and Justice Taskforce
GPO Box 149
Brisbane QLD 4001

7th April 2022

Dear Madam,

RE: SUBMISSION IN RESPONSE TO DISCUSSION PAPER 3

We refer to the Women's Safety and Justice Taskforce's *Discussion Paper 3: Women and girl's experiences across the criminal justice system as victims-survivors of sexual violence and also as accused persons and offenders*.

Thank-you for providing the opportunity to provide a submission to the Taskforce on these important issues.

Submission structure

	Section	page
1.	Introduction and setting the scene	p 1 - 4
2.	Significant Reform is required	p 4 - 9
3.	Legal Changes required	p 9 - 18
4.	Process reform	p 18 -21
5.	Other issues	p 21 -24
6.	Aboriginal and Torres Strait Islander Women	p 24 -28
7.	Feedback from QSAN services	p 28 -34
8.	Criminalised Women	p 35
9.	Appendix	p 36

1. Introduction and setting the scene

Who are we?

The Queensland Sexual Assault Network (QSAN) is the peak body for sexual violence prevention and support organisations in Queensland. We have 21 member services, including specialist services for Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, women with intellectual disability, young women, men and children and our membership are located throughout Queensland, including in rural and regional locations.

Our network of non-Government services is funded to provide specialist sexual assault counselling, support, and prevention programs in Queensland. QSAN is committed to working towards ensuring all Queenslander's who experience sexual violence recently or historically, regardless of age, gender, sexual orientation, cultural background receive a high-quality response in line with best practice, client-centred principles. Our work and analysis of sexual violence is from a feminist perspective and addressed within a "trauma-informed framework".

We are committed to engaging with government and other bodies to raise systemic issues of concern and to ensure the voices and experiences of our clients are considered in the formulation of policy and legislation that impacts on sexual violence victims in Queensland.

Funding issues

Although the terms of reference of the Taskforce are to consider policy and legislative responses and not funding issues, the reality is that community discussion about sexual violence, prompted by the work of the Taskforce and similar work, heightens awareness of sexual violence and in turn will promote women and girls and other survivors to come forward to services to seek assistance. This is of course a positive by product of this work and the publicity surrounding it.

However, for QSAN services who have not had any substantive increase in core funding since their inception in 1996 (26 years ago), this is a concerning prospect. There are huge swathes of regional Queensland without a specialist sexual violence response, including Mt Isa and "blackspots" associated with service delivery, in other areas. In certain regions, there are waiting periods of up to 12 months to obtain sexual violence counselling and time limitations on those who are helped because of funding pressures, despite sexual violence responses often requiring long term therapeutic work.

QSAN is more than ready to assist the Taskforce and government in developing best practice responses to sexual violence in Queensland including our ideas on improving systemic issues, but it is within this 'funding context' and facing these 'funding pressures' that we provide this advice.

Recommendation 1

That specialised sexual violence services are provided an immediate and urgent increase in long term core funding to ensure no women, men and children are turned away because of funding constraints.

Recommendation 2

That in the longer term a full analysis is undertaken of sexual violence specialist services to determine current and future need, current gaps, to properly fund prevention work and respond accordingly to the recommendations. That this analysis appropriately considers:

- ***the longer term needs of therapeutic intervention for sexual violence victim-survivors,***
- ***the profound impact on their mental health and welfare over a life-course,***
- ***The different matters and responses required to different clients including adult survivors of child sexual abuse, child sexual abuse (victims and children displaying problematic sexualised behaviours), intimate partner sexual violence, victims of inter-generational abuse within their families, institutional sexual abuse (including in religious contexts), sexual abuse of people with***

disabilities in group homes or by other people, aged care issues and sexual harassment in the workplace.

Recommendation 3

That the State Governments continue funding and contribute to the expansion of the funding for a Queensland state peak body for sexual violence services to ensure that frontline experience is appropriately informing policy, service delivery and legislative development at a state and federal level and to provide support to services.

The statistics

Prevent. Support. Believe. Queensland's Framework to address Sexual Violence[1] references evidence that 87% of women who experienced sexual assault by a male since the age of 15 did not report their most recent incident to police. Of the women who did report, only 27% reported their perpetrator was charged; even fewer reports result in conviction. Sexual violence is a significant issue in our community.

1 in 5 women (18%) has experienced sexual violence since the age of 15.[2]

1 in 3 women (31.1%) has experienced physical and/or sexual violence perpetrated by a man they know.[3]

1 in 4 women (23%) has experienced physical or sexual violence by a current or former intimate partner since age 15.[4]

1 in 2 women (53%) has experienced sexual harassment in their lifetime.[5]

---

[1] Department of Child Safety, Youth and Women, Queensland Government (2019). Prevent. Support. Believe. Queensland's Framework to address Sexual Violence, p.6.

[2]Australian Bureau of Statistics (ABS). 2017. Personal Safety Survey, Australia, 2016 (ABS cat. no. 4906.0). Canberra, ACT: ABS.

[3]Australia's National Research Organisation for Women's Safety (ANROWS). 2018. Violence against women: Accurate use of key statistics (ANROWS Insights 05/2018). Sydney, NSW: ANROWS.

[4] Australian Bureau of Statistics (ABS). 2017. Personal Safety Survey, Australia, 2016 (ABS cat. no. 4906.0). Canberra, ACT: ABS

[5]Australian Bureau of Statistics (ABS). 2017. Personal Safety Survey, Australia, 2016 (ABS cat. no. 4906.0). Canberra, ACT: ABS. See also: Australian Human Rights Commission (AHRC). 2018. Everyone's business: Fourth national survey on sexual harassment in Australian workplaces. Sydney, NSW: AHRC. AHRC (2018) finds more than four in five (85%) of women 15 years and older have been sexually harassed at some point in their lives. These results are significantly higher than those identified in ABS (2017); however, it is important to note that the Personal Safety Survey measures the prevalence of sexual harassment on the basis of seven sexual harassment behaviours compared with the more expansive list of 16 behaviours employed by AHRC.

The most dangerous age for women being subjected to sexual violence is between the ages of 15 and 19 years. [6]

The rates of sexual assault victimisation recorded by Police, report a consistent annual increase per 100,000 of the Australian population over the last decade, where most reported victims have continued to be female (84.2 per cent female in the most recent 2020 data release)[7].
There is currently no requirement (in practice) for the man to take any steps to ascertain consent or to ensure there is consent or adequately considers the common freeze response.
Despite the low conviction rates of perpetrators of sexual abuse, research shows us that women and children rarely make false allegations of rape and sexual assault[8].

2. Significant reform is required

The current Queensland sexual violence laws and more broadly the criminal justice system:

- are clearly not effective in protecting victims of sexual assault or the broader community from perpetrators of sexual violence,
- do not effectively keep perpetrators accountable,
- are out of step with community standards and expectations of consensual sexual understanding and engagement,
- and do not provide a useful educative model that is relied upon in community education activities currently undertaken with the community, including school children and young people.

The current system is not working for victims of sexual violence and the broader community, the status quo is clearly not acceptable, and we implore the Taskforce to adopt an approach that accepts significant reform is required.

The Recent Inquest of Hannah Clarke and her children

The Coronial Inquest into the murder of Hannah Clarke and her children, Aaliyah, Liana and Trey concluded on Thursday 31st March 2022. We are all obviously now waiting upon the coronial findings with interest.

What we know is Hannah told the police, service providers and others she was raped, being forced to have sex nightly otherwise face the wrath and other consequences from Baxter. Coercion is not free and willing and is therefore not consent.

These assaults (as well as the incident of strangulation during sex) were criminal offences and increased her risk and her children's risk, as sexual violence and strangulation are both high risk DFV indicators.

Charging for these criminal offences did not seem to be offered as an option or given much consideration, as a means of increasing safety.

---

[6] Sexual Violence - Victimisation | Australian Bureau of Statistics (abs.gov.au)

[7] The Australian Bureau of Statistics' ('ABS') Recorded Crime – Victims (2020) data, reported in https://www.dss.gov.au/women-publications-articles/reducing-sexual-violence-research-informing-the-development-of-a-national-campaign

[8] Joint report to the Director of Public Prosecutions by Alison Levitt QC, Principal Legal Advisor, and the Crown Prosecution Service Equality and Diversity Unit (2013). Charing Perverting the Course of Justice and Wasting Police Time in Cases Involving Allegedly False Rape and Domestic Violence Allegations.

We understand, as our legal system's response to sexual violence fails many victim-survivors every day and has for decades.

There is little doubt if these matters proceeded, issues of Hannah's consent and the mistake of fact excuse would likely have been 'live issues' in any trial. Baxter would have argued she consented because of her past conduct, she did not fight him off or say "no". As an abuser he may well have had an honest belief that he had consent as he was entitled to consent and/or that she had consented, from his perspective it was reasonable to do so as she had not resisted and this was the 'pattern' of their marriage.

It is uncertain in Queensland whether the evidence of his coercion and long history of domestic violence would have been allowed to be introduced into evidence, to give context to Hannah's decisions. [9] The QLRC report into Consent and Mistake of Fact at paragraph 6.99, agrees that sexual offences involving ongoing domestic violence involving a cumulative effect in a violent relationship (rather than a specific threat or incident), *appear to have a varied treatment in Queensland*.

These issues play on the minds of police, who only want to charge if there is a likely conviction and on service providers who do not want to refer to police, when they know there is little chance of the matter being taken seriously.

In far too many sexual violence cases, the result is that the system is indifferent to issues of sexual violence or paralysed in being able to effectively respond.

QSAN is of the view that we need a circuit breaker to challenge the intransigence. We need a system's overhaul including law changes, such as affirmative consent and reasonable steps to send a strong message of prevention and accountability to the community (including victims and perpetrators), service providers, including the police, lawyers and ODPP.

We need to be better able to introduce contextual evidence and evidence of a domestic violence history in intimate partner sexual violence matters, to increase safety and accountability in high-risk domestic violence matters.

We need a legal system in tune with community sentiment on consent and the role of women in a modern society and that is consistent with academic knowledge on the dynamics of sexual violence offending, including sexual predation.

Change will not be quick and will take time. To achieve safety and justice from sexual violence Queensland women need systemic change and this should be planned and mapped out over a decade. It will require persistence, political will, funding, appropriate implementation, and oversight.

Recommendation 4

That the Taskforce recommend the development and implementation of a sexual violence multiyear implementation plan, developed in consultation with relevant experts including QSAN services, to support the changes recommended by this Taskforce, to increase victim safety, increase reporting, perpetrator accountability and reduce offending over the next decade.

The barriers – includes the criminal justice system itself

The joint report of Australian Institute of Family Studies and the Victorian Police synthesised 40 years of sexual violence research in *'Challenging misconceptions about sexual offending: Creating an evidence-based resource for police and legal practitioners' (2017)*.

[9] See QLRC report paragraph 6.225 that such evidence would be introduced on a case by case basis.

The report states the following:

National and international research consistently demonstrates that incidents of rape, sexual offences and child sexual abuse are significantly under-reported, under-prosecuted and under-convicted.
There are a myriad of barriers to victims' reporting sexual offences: » confusion, guilt or shock about the offence (Long, 2006); » fear of the perpetrator (Cox, 2015); » fear that they will not be believed (Cox, 2015); » rape myth acceptance where victims do not recognise they have experienced sexual offences, or blame themselves for what has occurred (Heath, Lynch, Fritch, & Wong, 2013; Heath, Lynch, Fritch, McArthur, & Smith, 2011); ***and » the criminal justice system, which can be a difficult, stressful, expensive and time-consuming process that requires victims to expose themselves to police and public scrutiny, and potential cross-examination. This can have serious legal and psychological consequences for both the complainant and others involved (Wall & Tarczon, 2013)***[10]

We note the recent QLRC report referred to sexual violence being significantly under-reported but did not address the under prosecution or under-conviction rates and did not address that the criminal justice system itself is specifically a barrier to victims[11] or the attrition rate of sexual violence matters through the system.

Attrition

Research on victimisation rates in sexual violence matters tell us that only approximately 14% of victims ever report their incident of sexual violence to the police[12].

An ABC investigative report into reporting rape in Australia found one in five rapes in Queensland reported to QPS were "unfounded" (meaning no sexual assault occurred, or there was insufficient evidence, and they did not proceed to charge), compared to just over the border where one in twenty were unfounded in New South Wales.[13]

In Queensland, according to statistics contained in the Queensland Law Reform Commission Report into Consent and Mistake of Fact, approximately 6300 charges were laid in 2017/18[14].

This equates to (based on victimisation rates), about 30 000- 40 000 rapes and sexual assaults each year in Queensland. However, this could be higher as we know the many victim-survivor contacts with police in Queensland (one in five) are discounted and do not proceed to charge.

Approximately 2100 rape and sexual assault matters were received to the ODPP in 2018/19.[15]

---

[10] apo-nid107216_1.pdf p. 3

[11] QLRC report paragraph 4.5
[12] (Daly and Bouhours, 2010) 65595_1.pdf (griffith.edu.au)
[13] *"Rough Justice" ABC report, 28th January 2020*
[14] P.48.
[15] https://www.publications.qld.gov.au/dataset/c581f931-288f-4dd9-86f3-df062feba0a6/resource/067eb193-69e7-4b3f-8c73-7a5bbd2b3974/fs_download/odpp-annual-report-2018-19.pdf

Drawing on these numbers we can hypothesise approximately 2/3 attrition rate occurs between being charged to being received by the ODPP.

In 2018, only approximately 550 matters proceeded to trial with approximately 300 court convictions or guilty pleas[16]. This equates to a conviction rate of approximately 5% on charges laid.
Considering victimisation rates the conviction rate is much lower, approximately 1- 1.5% but could be much less.

Once in the District Court, the conviction rate as reported by the QLRC for rape and sexual assault trials in 2018 is 36% according to the QLRC report[17].

This is a sad indictment on our legal system's response to sexual violence.
An additional concern is that this information which is of a high level of public interest is not easily available or published. It should not be left to advocacy groups such as QSAN to piece together the information from available data. In fact, it should have formed part of the QLRC report and their considerations of issues.

We are aware that other states, such as Victoria regularly publish this data and update it for public consumption[18].

Recommendation 5

That research data providing information about the attrition of sexual violence matters through the criminal justice system be published and regularly updated in Queensland.

Research finds falling conviction rates in sexual violence matters

Another systemic concern is that research has also shown that conviction rates for sexual offences have significantly decreased over time.

In Australia, the average conviction rates for sexual offences reduced from 17% in 1970–1989 to 12.5% in 1990–2005[19]. Of interest, the researchers examined whether this reduction may have been a result of increased reporting and therefore perhaps an increased number of cases coming forward that may not have had evidentiary backing or were difficult to prove. However, this theory was not borne out in the research findings.

QSAN is unaware if the conviction rate for sexual violence crimes in Queensland but in a 2017 Report by the University of Queensland, they note a falling rate of prosecutions in Queensland for sexual assault and rape.[20]

[16] QLRC p. 31 (footnote 17).
[17] QLRC report.
[18] Crime Statistics Agency - Attrition of sexual offence incidents through the criminal justice system.pdf
[19] (Daly and Bouhours, 2010) 65595_1.pdf (griffith.edu.au)
[20] Scott R, Professor Heather Douglas, Goss C, (February 2017) Prosecution of Rape and Sexual Assault in Queensland: Report on a Pilot Study, TC Beirne School of Law, University of Queensland at page 4

This report refers to a review of resourcing of the Office of the Director of Public Prosecutions (ODPP)[21] where it was noted between 2010/11 and 2012/13 charges of rape and sexual assault involving adult complainants dropped by 50%. This report at the time recommended an urgent review to understand the reasons behind this. The University of Queensland report says that despite the urgent call for research by the ODPP review, no comprehensive research has been undertaken of female complainants in Queensland.[22]

Anecdotal evidence from our members backs up the research evidence that there has been a reduction in matters proceeding through to court over the decades of their practice.

Recommendation 6

That it is recommended Queensland develop and regularly publish comprehensive data on prosecution and conviction rates in sexual violence matters to establish whether there has been any change, to understand the patterns and to assist determination about whether they are falling over time.

Women are losing trust in the legal system to respond effectively and appropriately

The statistics are clear and paint a picture that many women do not trust the legal system to respond appropriately to their concerns of sexual violence. Clients often ask QSAN counsellors about the experience of other women reporting and whether they should report. QSAN counsellors obviously cannot direct or not someone to report however, they do also have to provide an honest account of other women's experiences of the criminal justice system and reality check on its limitations and the real possibility of re-traumatisation.

Despite this, some women do want to engage with the criminal justice system and do want to report the crimes against them. However, for those that do, they can become disillusioned quite quickly.

A QSAN counsellor advised that just recently she provided counselling to a woman, caucasian, business owner who had experienced a 'one off' incident of sexual violence with no history of other trauma.

In many ways she was the 'perfect victim' and one that was 'most acceptable' to the legal process. However, after hearing and understanding the process from the police and the counsellor, she decided to not proceed with a formal report to the police because of the length of time it would take and the amount of time this would take her away from her work, which she could not afford. She decided in the end to 'get on with her life' and keep moving forward and put the attack behind her.

This, of course, at an individual level is completely understandable. At a community level it means our legal system is not timely or responsive enough to this crime and that the abuser is not held accountable, which means he is free to continue and repeat this behaviour, impacting on other women's lives, into the future.

Of course, we also need a justice system that works in the interests of all people and not just those who may present as 'perfect victims'.

[21] Brian Stewart, "Review of Resourcing of the Office of the Director of Public Prosecutions" June 2013 p.24
[22] Scott R, Professor Heather Douglas, Goss C ibid.

Recommendation 7

That the Taskforce recommend the provision of appropriate resources and training to specialist police, prosecutors, and court processes to expediate sexual violence complaints through the criminal justice system and consider implementing time limitations for sexual violence matters to be investigated and prosecuted.

3. Legal Changes Required

"Wait and See" is not acceptable

Queensland missed an momentous opportunity for essential law reform in 2020-2021 with the Queensland Law Reform Commission Review and the drafting and assent of the *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021* which made technical and inconsequential changes only to existing law, and failed to address the urgent need for more substantive change to current legislation relating to consent and the mistake of fact defence as it relates to sexual offences in Queensland.

The definition of consent in the Queensland Criminal Code Act 1899 and the current operation of mistake of fact have significant negative impacts on the reporting, investigation, charge and prosecution of sexual offences, that has resulted in injustice to many sexual assault victim/survivors.

There was a complete failure by the QLRC in their limited and technical response to the issues to understand victimisation rates, attrition through the criminal justice system and the impact of the current laws, practices and low conviction rate on police practice and approach to sexual violence matters. Sexual violence matters, according to our members seem to have a low priority in policing. However, at the same time why would police put resources into an issue where the conviction rates are so low?

The legislative changes that were made in 2021 do not address the many failings of the law and the criminal justice system that were actively raised in submissions from women's services and in consultation with victim-survivors and advocates to the Queensland Law Reform Commission. The changes will make no change in encouraging women to come forward and engage with the criminal justice system, report the crime, or seek accountability for the perpetrator.

QSAN wholeheartedly and strongly rejects any approach to 'wait and see' how the impact of these inconsequential legislative changes when the need for change is so striking, urgent and obvious.

Our member services are still reporting that silence equates to consent, and this is even after the recent law changes.

Women in these situations are silent because they are terrified for their lives. The physical presence of the perpetrator and his potential to cause them enormous harm including killing them, makes them highly fearful.

Our member services are still reporting that police are not acting if there has been any willingness of the victim-survivor to engage in some level of sexual contact (but not the rape). If there is video of the victim-survivor leaving the night club with the man or kissing and cuddling, laughing with him the police will not proceed and advise service providers, "the jury won't convict" in these circumstances. Negative police

attitudes also impact on these scenarios when police believe (especially young women (18 to 24 years)) engage in consensual sexual acts, are intoxicated and when they wake up the next day have "buyer's remorse" for their actions and then claim rape.

A member advised that police can view "tinder" dates as consent to all sexual activity including to a case of where there was a tinder date that involved sexualalised and flirting communication before the date and then a brutal rape of the woman. The police would not act because of these communications.

Recommendation 8

QSAN strongly rejects any suggestion to adopt a 'wait and see' approach to the legislative amendments made by the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021. These amendments legislated the current law which unfortunately is failing women and will do nothing to improve systemic concerns raised by survivor-advocates, sexual violence prevention workers and women's groups for decades.

A communicative model – means <u>she</u> must communicate in a way <u>he understands</u>

The current consent laws and its interplay with the mistake of fact excuse work in a way that place all the responsibility on women to communicate clearly to the man their willingness or unwillingness for the sexual act. In rape and sexual violence matters this is translated into placing total responsibility on the woman to say "no" in a way the man understands, to fight or fight him off.
This law in practice therefore is consistent with "traditional and out of date views of womanhood". That is, women are submissive, docile and acquiescing to sexual intercourse, unless they resist in an overt way. Such views are out of touch with modern understandings of women being equal partners in sexual relations and having full agency to engage in (or not) and enjoy sexual relations and with our understanding of trauma responses. Eg. freeze.

Affirmative Consent, limits of Mistaken Belief and reasonable steps model

****(When specific provisions in other statutes are endorses, we have attached them in the appendix located at the back of the submission)**

QSAN endorses the approach of the Tasmanian model of the Criminal Code 1924 of consent (2A) and limitation on mistaken belief (14A). These provisions have been in law in Tasmania since 2004. These provisions have been well settled in the law in Tasmania and Tasmania is a Code state.

We note that NSW has recently legislated affirmative consent, the Victorian Law Reform Commission and an ACT Government Report have recommended such an approach in the ACT[23] and both the Victorian and ACT Government have agreed to the change and WA is also specifically considering the issue. This means at least all the States and Territories in the eastern seaboard of Australian have or will likely adopt affirmative consent.

QSAN strongly endorses an affirmative consent model. Such an approach is more consistent with community attitudes and modern understandings of women and their engagement in sexual relationships.

[23] Report outlines 24 recommendations to improve ACT's response to victims of sexual assault - ABC News

It is the model that is currently used when educating children and youth on consensual sexual activities in schools.

Indeed, there is a real risk that unless Queensland moves and modernising its laws in line with other States that it could be left behind, its laws viewed as lax, and it could become a 'drawcard' for sexual violence perpetrators around the country.

We note in New South Wales when the NSW Bar Association strongly disagreed with the proposals for affirmative consent in that State, 23 high profile barristers wrote an 'open letter' supporting the Government's changes as because the proposed laws struck the right balance, victims needed greater protection and distancing themselves from the Bar Association's position.[24]
It is also interesting to read the parliamentary debates with the then Tasmanian Attorney General, the Honourable Judy Jackson, concerning the introduction of affirmative consent in that state in 2004 where the same issues raised by legal groups were raised then and their concerns did not come to pass.

Recommendation 9

That the Taskforce recommend Queensland adopt a strong model of affirmative consent as a matter of urgency.

QSAN favours the use of "agreement" and the use of a non-exhaustive list of factors vitiating consent.

QSAN strongly endorses Section 2A (3) in the Tasmanian legislation where consent is vitiated if the victim-survivor suffered grievous bodily harm. Consideration should be given to a broader definition of harm that vitiates consent rather than just specifically grievous bodily harm.

Recommendation 10

That the Taskforce recommend that any definition of consent include the word "agreement".

Recommendation 11

That the Taskforce endorse the inclusion of a non-exhaustive list of circumstances where consent does not and cannot exist and recommends an approach similar to Section 61 HJ Crimes Legislation Amendment (Sexual Consent Reforms) in New South Wales be adopted.

Recommendation 12

That the Taskforce recommends the adoption of a similar provision to Section 2A (3) in the Tasmanian Criminal Code Act 1924 where consent is vitiated if the victim-survivor suffered grievous bodily harm. Consideration be given to a broader definition of harm being included in the provision.

We are aware that 2A (2) (a) is not specific on the face of legislation in Queensland ("does not say or do anything to communicate consent") and we strongly approve of the inclusion of this provision. We think that there should be a specific provision directed at the issue of grooming and the ongoing threat of

[24] 23 barristers oppose NSW Bar on sexual consent reforms - Lawyers Weekly

domestic and family violence. That is, in DFV relationships there does not have to be a specific threat but an ongoing threat of coercive control or fear.

QSAN notes and endorses the extensive list of factors vitiating consent set out in the recently passed Crimes Legislation Amendment (Sexual Consent Reforms) in New South Wales. They include provisions about coercive control Section 61 HJ(e) which is very good.

We note section 61 HJ(h) tries to incorporate grooming dynamics.

QSAN also strongly endorses the Tasmanian model S 14A limiting the utilisation of the mistaken belief excuse in sexual violence matters. Again, this provision has been in practice in Tasmania since 2004. We question why this provision was not discussed in Discussion Paper 3 or analysed or provided as an option?

One worker in a QSAN service has had the experience of working in Queensland, then working for a decade in Tasmania and then recently returning to Queensland. Her view is that there are cases in Tasmania that proceeded that would not ever have proceeded in Queensland. For example, she advised of a case of in Tasmania where a teenager was preyed upon by a high-level official that worked for an international agency. The case involved drug usage, the young person was homeless, plied with drugs, prosecuted in Tasmania and was successful. This does not occur in Queensland so readily. If any evidence of drug usage or alcohol, QSAN's experience is that police are reticent to become involved.
In Tasmania there was a memo of understanding between police, hospital, counsellors. Counsellors are immediately called out to support a person taken to a specialised sexual violence room at the hospital, not waiting in Emergency as they do in Queensland. The room is set up nicely with tea and coffee and couches and room has a separate and private entrance. The approach in Tasmania was much more trauma informed whilst in Queensland the feedback is there is limited trauma informed approaches.

Recommendation 13

That the Taskforce recommend the adoption of the Tasmanian legislative model Section 14A Criminal Code Act 1924 for limiting the use of mistaken belief in sexual violence matters and inclusion of the need for reasonable steps.

QSAN agrees with the denying the ability of a defendant to rely on self induced intoxication as an "honest" belief as to consent. If the Queensland model above is adopted then this is limited. But for the purposes of absolute clarity we recommend the following.

Recommendation 14

That the ability of a defendant to rely on self-induced intoxication as an "honest" belief in consent be removed.

The Queensland Criminal Code belongs to the people of Queensland and not to the legal community. The law should be clear on its face and not left to case law, which is only accessible to the legal profession and not the community at large. There is an imperative to make the law as clear and accessible as possible, especially in relation to an issue such as consent. We therefore also favour the Section 61 HI in NSW that sets out some "ground rules" about consent generally.

Recommendation 15

That the Taskforce recommend that Queensland adopt a similar provision to Section 61HI NSW Crimes Act 1900 that sets out some ground rules about "consent generally".

Reckless Indifference

QSAN believes the law should be very clear on its face, especially in relation to sexual violence matters and issues of consent and that 'reckless indifference' should be included as vitiating consent, similar to most jurisdictions around Australia.

Recommendation 16

That Queensland include the consent is not provided in circumstances of 'reckless indifference' which is consistent with other jurisdictions around Australia.

QSAN supports stealthing becoming a criminal offence in Queensland.

Recommendation 17

That stealthing be made a standalone criminal offence in Queensland.

Similar fact and propensity evidence

The law needs to better be able to adopt provisions that prevent sexual predators who engage in crimes of a similar nature against children and women. The Royal Commission into Institutional Child Sexual Abuse considered this issue in detail and made a recommendation in its final report in 2017 that has still not been acted upon.

It is of a huge concern to QSAN that now five years since the Royal Commission delivered their report and the Queensland Government adopted all recommendations, that no change has been made to these important provisions.

We understand the importance of these provisions in ensuring a fair trial however our law needs to stay up to date and with the research and literature on sexual violence perpetration that can follow patterns of abuse over time. These current legal provisions can also, unfortunately, protect sexual violence predators who prey on children, girls and women.

Recommendation 18

That similar fact and propensity evidence provisions be urgently amended adopting a victim centred approach that is informed by the literature and academic research on sexual violence offending and covers all sexual violence matters – including children, girls and women.

Bad character evidence

The Taskforce Discussion Paper refers to the approach of similar fact and propensity in England and Wales which is referred to as 'bad character' evidence. There are ideas in these provisions that can be considered by Queensland. For example, QSAN considers the following information of interest.

Evidence is admissible in circumstances, such as:

- the evidence is adduced by the defendant themselves or is given in answer to a question asked by them in cross-examination and intended to elicit it;
- it is important explanatory evidence,
- it is relevant to an important matter in issue between the defendant and the prosecution.
- It is evidence to correct a false impression given by the defendant;
- The defendant has made an attack on the other person's character.

We note the exemption being that the evidence cannot be admitted if it appears the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not admit it. We would interpret "fairness" as being a balancing of the interests of all stakeholders in the criminal trial – being the defendant, victims and community at large.

Recommendation 19

In recommending amendments to similar fact and tendency evidence, any such future legislative review be specifically directed to consider the 'bad character' provisions operating in the UK and to ensure when the court is determining 'fairness' that this balances the interest of the defendant, victim and community at large.

Legislate the Royal Commission's first recommendation in relation to criminal justice system reform

The Royal Commission into Institutional Child Sexual Abuse's first recommendation in relation to reform of the criminal justice system was:

In relation to child sexual abuse, including institutional child sexual abuse, the criminal justice system should be reformed to ensure that the following objectives are met:

a. the criminal justice system operates in the interests of seeking justice for society, including the complainant and the accused
b. criminal justice responses are available for victims and survivors
c. victims and survivors are supported in seeking criminal justice responses

QSAN supports these objectives but that they be broadened to the entire criminal justice system and not be limited to child sexual abuse. This would provide clarity about the objectives of the criminal justice system and have educative value for the public and more specifically provide over-arching guidance to judges in their determinations of "fairness".

Recommendation 20

That Queensland adopt the Royal Commission into Institutional Child Sexual Abuse recommendations on proposed objectives of the criminal justice system and that they be legislated in Queensland for reasons of clarity, educative purposes and to guide interpretation and decision making:

The criminal justice system objectives are:

a. the criminal justice system operates in the interests of seeking justice for society, including the complainant and the accused
b. criminal justice responses are available for victims and survivors
c. victims and survivors are supported in seeking criminal justice responses.

Human Rights Act (HRA) – need for victim's rights to be specifically recognised

An increasingly problematic issue is that the Human Rights Act (HRA) only specifically recognises the rights of a "person charged in a criminal process" in Queensland and does not specifically recognise the human rights of the victim of the offence, including the human rights of children who are victims. The lack of specific reference to victims means for all intent and purposes in Queensland, the rights of the defendant, in practice are elevated above other rights in the criminal process.

We believe the human rights of defendants in criminal trials should be protected; however, they should always be balanced against other rights, including the rights of the victims and the rights of the community at large.

We are aware that the rights of victims in the criminal process *may* be recognised to a limited extent in other provisions of the HRA, however, the lack of specific reference is a problem because:

- It reinforces the historical focus in the criminal justice system on defendant's rights to the exclusion of all other rights.
- The defendant has a lawyer who can focus exclusively on the human rights of the defendant, but victims do not have their own lawyer who is able to provide this sole focus. This means that opportunities and arguments for a victim's human rights protection, may be missed or not pursed by the ODPP.
- Specific clauses tend to be given precedence in interpretation than generalised protections – therefore, a defendants' rights that are 'specifically recognised' can be given precedence over other rights, even if they do exist.
- The specific focus on defendants has a systemic impact, as increasingly discourse around human rights in the criminal justice system in Queensland, equate human rights with defendant's rights. Please see to the recent Sentencing Council Issues Paper on Serious Violence Offenders[25] where the human rights section in the Issues Paper only references concern about the human rights of the offender, rather than the victim.

[25] The '80 per cent rule': The serious violent offences scheme in the Penalties and Sentences Act 1992 (Qld) (sentencingcouncil.qld.gov.au) (p. 48 – Human Rights)

As a result of the combination of all these matters the result is the HRA has entrenched and legislatively legitimised victim disadvantage in the criminal justice system. Our experience over decades working in this area is for victim's rights to be recognised, in any meaningful way in legislation, these rights need to be explicit and clear.

Additionally, the argument by the Department of Justice and Attorney General that the HRA does not recognise specific groups of people's rights, in response to concerns raised during the passage of the legislation in parliament, is obviously wrong, given a defendant's rights are specifically recognised.

Recommendation 21

That the Human Rights Act 2019 QLD be amended to specifically recognise the human rights of people (including children) who are victims of crime in the criminal process to uphold justice, their safety, and their recovery to ensure a more balanced approach to the consideration of human rights in the criminal justice system is taken, both at an individual and systemic level.

Victim's Charter

The current Charter of Victim's Rights in QLD, as outlined in the DP does not give legal rights, is not enforceable and a breach is not a ground to have a government decision reviewed. It is the experience of QSAN that it is commonly breached in Queensland with no real or practical impact or recourse for victims. Please see the examples at the end of the submission from QSAN members that details frequent breaching of the Victims Charter including not advising victims or keeping them updated about the investigation or their criminal cases, not working in a trauma informed way, not being respectful in communication, failing to engage interpreters for police interviews and in court proceedings.

The complaints processes regarding the Victim's Charter are of little consequence and clearly do not act as a deterrent for the numerous breaches that occur. A complaints process exists where complaints can be made to the Director of Victim Assist.

Our members advise that on occasions, where some local victim's interagency groups raise issues and concerns and VAQ is a member of these groups, there may be some consequences or change to the problematic issue. However, this change more likely relates to the interagency environment and the relationships that have developed, rather than the complaints mechanisms itself, that is not formally activated in these circumstances.

A complaint to the VAQ director can only be pursued after the victim has utilised the internal complaints mechanism of the agency/body they have an issue with. This is lengthy, unwieldy, and impractical. Most victim-survivors are too exhausted by the legal process already engaged in and/or traumatised by the criminal act and are not able to make a complaint to the agency and then to VAQ (who in the end have no power over the agency in any case).

However, some members have had experience of a complaint processes. For example, a complaint to the police took 4 years to resolve and was retraumatising for the complainant who also had a disability. The police would call the complainant into many meetings that did not seem meaningful but more for the exercise of ticking boxes.

It is reported to us that the complainant did receive an outcome to the complaint but the way it was delivered to her was "horrifying. A senior constable came to her house, the demeanour of the senior constable was superior and condescending to the complainant and her mother. She asked, "aren't you going to offer me a cup of tea?" The senior constable was overbearing and judgemental. Why would any complainant put themselves through this?

On another occasion a member service helped someone make a complaint to ODPP. The matter had proceeded for 4 years and then at the last minute the ODPP decided to drop the charges as they belatedly became aware the issues was pre-1989 and could not be proceeded with. The service helped the complainant (who had a disability) make a complaint to the ODPP.

The ODPP answered the complaint in an overly complicated, lengthy, and legalistic way. The service itself struggled to understand what was said and they had to go to WLSQ and the lawyer there deciphered and explained the language. Basically, it said the ODPP had done nothing wrong, but it was written in pompous language and not in a way that an ordinary citizen could understand.

By the time any victim-survivor has endured this process there is little energy for victim-survivors to then complain to the Director of Victim's Assist, especially when they have no power and not ability to enforce any of their findings.

It is also difficult to complain without the support to do so and most services are so underfunded that it is difficult to find the resources to support victims through the process.

Recommendation 22

That the Taskforce recommend the establishment of an <u>independent</u> Victim's Commissioner for sexual violence and DFV matters to-:

- ***undertake systemic advocacy in relation to systemic issue of concern raised;***
- ***Research and report writing***
- ***Publish trends and issues papers***
- ***Provide advice and responses to policy and legislation and be involvement in policy/ legislative development.***
- ***Liaise with relevant government and investigatory bodies.***

Guiding Principles and Jury Directions

Section 37B Crimes Act in Victoria sets out some guiding principles for the determination of sexual violence matters. These aid court interpretation, and we recommend similar provisions should be adopted in Queensland. These Victorian guiding principles were introduced some time ago now and would now require updating. However, they provide some guidance to the approach Queensland might adopt.

Guiding principles[26]

It is the intention of Parliament that in interpreting and applying Subdivisions (8A) to (8G), courts are to have regard to the fact that—

(a) there is a high incidence of sexual violence within society; and

(b) sexual offences are significantly under-reported; and

(c) a significant number of sexual offences are committed against women, children and other vulnerable persons including persons with a cognitive impairment or mental illness; and

(d) sexual offenders are commonly known to their victims; and

(e) sexual offences often occur in circumstances where there is unlikely to be any physical signs of an offence having occurred.

Recommendation 23

That the Taskforce recommend the development of guiding principles in sexual violence offences in Queensland based on the Section 37B in the Victorian Crimes Act 1858 but be updated with additional issues for consideration eg. delay in reporting sexual violence is common.

Recommendation 24

That jury directions in sexual violence matters be developed that are based on the guiding principles.

4. Process reform

Restorative Justice

QSAN's experience of restorative justice has mainly been through the youth justice program in Queensland and their feedback from this program is:

- There is little transparency about which cases are chosen as suitable and on what basis.
- Sometimes questionable cases are involved in the process including those with high levels of violence and potential for it to be ongoing (eg. family related).
- In one example, the member service supported a young woman who had experienced a one-off incident of sibling rape. They were now both adults. The woman had made "amends" with her sibling, but he was charged, and the matter went through criminal justice system. The young woman was horrified as she would have preferred a restorative justice option, but this was not offered.
- In other cases, there is ongoing sibling abuse, and the parties were offered restorative justice.
- QSAN members question whether some cases are chosen because the offender is Caucasian, middle class and 'lawyered up' and can argue their way into the process?

[26] CRIMES ACT 1958 - SECT 37B Guiding principles (austlii.edu.au)

- The process, in their experience is very offender centric. Very little attention is given to the impact on the victim or what is best for them.
- One member was a support person for youths when they went through the process, and she said that by the time the youth are 15 – 17 years they are learning the image management tricks and DARVO (Deny, attack, reverse victim and offender) responses.
- That any restorative justice model should be developed at the same time as substantial changes to the criminal justice system itself otherwise the restorative justice model will become the "poor person's" method of justice. Or it will not be under-utilised because the chances of success at trial are so good there is not incentive to plead guilty and utilise the process.

Recommendation 25

That the youth justice restorative justice program be independently evaluated from a victim's perspective and that this evaluation specifically consider sexual violence issues and make recommendations for improvement, including developing publicly available guidelines to improve transparent decision-making in the process.

Recommendation 26

That this evaluation be undertaken before any expansion of restorative justice to the broader criminal justice system take place in Queensland.

Recommendation 27

That once the youth justice program is evaluated and if a broader restorative justice model is recommended, that any model be developed by an independent expert with extensive experience in working with victim-survivors of sexual violence, women, Aboriginal and Torres Strait women, culturally and linguistically diverse, LGBTIQ communities be engaged to develop a restorative justice model for use in sexual violence matters in the criminal justice system in Queensland and that any model developed engage extensively with community experts such as QSAN.

Recommendation 28

That if a restorative justice model is recommended to be developed that this occurs at the same time and in unison with extensive amendments to the criminal justice system itself.

Innovative practice – sexual violence support, SART, specialist courts, legal advocates for victims

Legislative reform is essential, but it is not enough to increase accountability of sexual offending in Queensland or support safe outcomes for victim-survivors. Any legislative reform must be accompanied by innovative changes to justice and legal practice.

Specialist victim support and SART

Our practice knowledge tells us if more victim-survivors are going to report to the police and proceed through formal processes they will need a specialised sexual violence worker with them every step of the way, as the process is so confronting and retraumatising and requires them to give over control to a large complex system that does not necessarily act in their interest. The SART (Sexual Assault Response Team)

in Townsville provides a practical example of integrated care for a victim-survivor from the time of their first report of sexual violence and helps them regain some level of control over their situation, by providing them clear information to assist informed decision making and respecting their ability to make choices. It provides an evidence base, that a victim-survivor is more likely to navigate the criminal justice system in a more supported way, if they choose. It builds an evidence base and provides opportunity to improve working relationships between the police, the specialist sexual violence service, the ODPP and to work together in a more victim-centred way.

Recommendation 29

That the Taskforce recommend the expansion of the SART (sexual assault response team) program across the State 24/7 and support be funded for sexual violence specialist workers to provide support to victim-survivors up to and including trial.

Specialist sexual violence courts, sexual violence experts and victim's legal advocates

QSAN strongly supports the development of specialist sexual violence courts and has done so for decades. We see this as one of the key ways the justice system and the court room experience of victim-survivors can improve. We note New Zealand just ran a successful trial of sexual violence specialist courts with positive outcomes in relation to the victim's experience, time management and increase in guilty pleas among other things[27]. The specialist courts should consider different ways of providing evidence, agreed approaches to cross examination, greater case management and time management. The 2021 Federal Budget provided funding and opportunity to engage with the Federal Government through the National Plan to pilot a specialist sexual violence court and we would advocate for Queensland to seize this opportunity.

Recommendation 30

That the Taskforce recommend the establishment of a specialist sexual violence court trial in Queensland and that an independent consultant with extensive expertise in working with women who have experienced sexual violence be engaged to develop the model in consultation with relevant experts and community members, including QSAN and that the pilot be independently evaluated.

There has been little change in victim's experiences of the criminal justice system for decades and the small number of women who want to engage with the process or disengage once it has commenced speak volumes about women's negative experience. A way to achieve real change and protect women in the court room experience is for women to have their own legal advocates[28]. Other overseas jurisdictions do this, and it would be opportunity to pilot this approach through a specialist court.

Recommendation 31

That the Taskforce recommend the inclusion of victim legal advocates to provide legal assistance to the victim during the court room experience and particularly during cross examination.

[27] Sexual-Violence-Court-Pilot-Evaluation-Report-FINAL-24.7.19.pdf (districtcourts.govt.nz)
[28] Kerstin Braun – The Conversation (is an academic in QLD that researches and writes on this topic in QLD)

Additionally, QSAN strongly support the use of sexual violence experts in sexual violence trials to assist jury understanding of victim-survivor presentation, community myths and academic research on sexual violence matters.

Recommendation 32

That the Taskforce recommend the regular use of sexual violence experts in sexual violence trials.

Interpreters

It is difficult to believe that QSAN once again must make a recommendation about the use of interpreters by the police and the courts. It is not appropriate for police officers or judges to assess for themselves whether someone needs an interpreter and quite frankly the right to an interpreter is a basic human right.

In addition, the denial of a right to a qualified interpreter may also be a breach of the *Human Rights Act 2019* Section 15 (recognition and equality before the law), Section 21 (Freedom of expression) and Section 27 (cultural rights).

As the failure to engage interpreters in sexual violence matters continues to be raised in consultations and has for decades, clearly something further is required to make the police and professionals in the court system use them and be accountable if they do not.

Also, some sexual violence services can no longer access free confidential government funded interpreters for their client work.

Recommendation 33

That the Taskforce recommend adequate interpreting services are accessible by the police and courts, especially in sexual violence matters to ensure whoever needs an interpreter is entitled to an interpreter who has sufficient expertise in their primary language, including sign language, to provide an accurate and impartial translation.

Recommendation 34

That a monitoring and accountability mechanism be introduced for professionals in public entities who fail to appropriately engage an interpreter, especially in highly sensitive matters such as sexual violence.

Recommendation 35

That a recommendation is made to the federal government to reverse any decisions that prohibit sexual violence services from accessing free, government funded interpreter services.

5. Other issues

Family law – child sexual abuse

When the criminal justice system fails to undertake its role well in relation to child sexual abuse there are enormous ramification for children in other systems. If the criminal justice system responds well then, the

family law system has the evidence to make strong protective orders. However, when it does not, there are some very negative consequences for children.

There are many changes required to the family law system's response to child sexual abuse we acknowledge these are outside of your terms of reference however, the point is children need the criminal justice system to respond well to concerns about child sexual abuse to ensure child safety especially in other systems that are set up specifically to deal with these issues.

Sexual assault counselling privilege

QSAN is very supportive of the SACP which provides legal standing to the victim-survivor of sexual violence to engage their own solicitor to act on their instructions in the determination of the privilege and whether certain information will be deemed "protected" by the scheme and therefore unable to be accessed or utilised in the criminal trial or in domestic and family violence protection order proceedings.
The ability of the victim-survivor to provide instructions to a solicitor that acts in their best interests and provides confidential legal advice to them is very important and provides a small level of control for victim-survivors in criminal justice processes, which largely are out of their control.

Just in case kits

Recommendation 36

Following a recent sexual assault, all victims-survivors should be provided with the option to access 'a just in case' forensic kit which should involve a full and thorough forensic medical examination (not a partial collection as it currently undertaken). Just in case kits are an essential option for supporting victim/survivors' choice and determination so that they can later decide whether to report to QPS or not, and this option should be expanded to <u>always</u> include access to full and thorough forensic examinations.

Recommendation 37

Access to forensic medical examinations in Queensland needs to be urgently reviewed and strategies developed to ensure that all victims-survivors have access to this option following a recent sexual assault, irrespective of location or residence, or whether a victim/survivor has decided to report to the QPS at the time of the collection.

Special witness provisions

Recommendation 38

That the special witness provisions in Queensland be amended to ensure that the complainant can choose the method of her protection whilst providing evidence (screen, remote etcetera) and that this not be subject to dispute and legal argument.

Right to Review

Recommendation 39

Similarly, to the UK that Queensland develop a right to review process for victims of crime (including family members) for certain ODPP decisions and that have legally enforceable remedies.

Forensics

Member services are reporting even in Brisbane very long wait times for complainants to wait in the Emergency Department (up to 12 hours) in the clothes they are wearing from the attack and that they are asked not to urinate during this time, as it may impact on the evidence.

Recommendation 40

That medical staff be incentivised to undertake the forensics training to increase access for victim-survivors around the State and the government develop urgent strategies to respond to wait times.

Training and Education

Recommendation 41

That the Taskforce makes recommendations to improve community understanding of sexual violence and resource the community to adequately respond to disclosures.

Mandatory reporting provision

The introduction of mandatory reporting for all adults in Queensland of child sexual abuse matters under Section 229BC has had an enormous negative impact on survivor's engagement with sexual violence counsellors and other service providers, including doctors and other health providers. The impact is particularly (but not exclusively felt) by those who work with teenagers and youth.

We understand the provision was a recommendation of the Royal Commission into Institutional Child Sexual Abuse, but Queensland broadened the provision from application to just institutions, to all adults in Queensland. As the Government was warned by groups during the consultation phase, the impacts have been widespread and concerning and have included:

- Requires some workers and professionals (such as doctors) to engage in 'work arounds and unofficial protocols including with CPIU. Protocols with doctors are particularly important to ensure the health needs of the young person are dealt with but without triggering mandatory reporting.
- It is a barrier to people seeking health assistance. For example, a young woman needed emergency contraception but wouldn't go to the doctor because of the issue of mandatory reporting.
- It interferes in the therapeutic setting, as clients second guess what they can and can't say to trigger the reporting.

Recommendation 42

That Section 229BC be revoked as a matter of urgency.

6. Aboriginal and Torres Strait Islander Women

Aboriginal and Torres Strait Islander Women

It is acknowledged that Aboriginal and Torres Strait Islander women's experience of sexual violence occurs in an historical context of colonisation; dispossession; loss of culture resulting in the breakdown of kinship systems and of traditional law; racism; and government policies of forced removal of children from families.[29]

The *Wiyi Yani U Thangani (Women's Voices) Securing Our Rights, Securing Our Future Report* provides data and contextual backdrop to understanding Aboriginal and Torres Strait Islander women's experiences and some of this is set out below.

Compounding issues of poverty, discrimination and failure to access basic rights impact on safety

"I have heard from our women and girls that they are living within a system that does not recognise their basic rights to things like housing, education, health and financial security. This ingrained systems deficit perpetuates cycles of discrimination, poverty and trauma in our communities and further entrenches disadvantage and inequality. Women and girls tell me how these unsafe environments undermine and deny the full realisation of their rights and prevent them from breaking cycles of harm."[30]

Regional and remote

Comparatively, we make up 25.3% of the total population in remote areas, with some of our most remote communities being almost exclusively Aboriginal and Torres Strait Islander populations. This means that issues affecting remote and very remote communities disproportionately affect Aboriginal and Torres Strait Islander peoples.[31]

Disability

Almost half (45%) of Aboriginal and Torres Strait Islander peoples aged 15 years and over live with one or more disabilities or restrictive long-term health conditions. Disability is more prevalent among our women than our men, 47% compared with 43%.[32]

Young population

The median age of the Aboriginal and Torres Strait Islander population is 23 years old (compared to 37.8 years old for the non-Indigenous population). The Aboriginal and Torres Strait Islander population has a

[29] ourwatch_reporting_on_a-ts_family_violence_aa_v1.pdf (1800respect.org.au)

[30] ahrc_wiyi_yani_u_thangani_report_2020 (1).pdf page 37

[31] Ibid.

[32] Ibid.

relatively larger proportion of young people and a smaller proportion of older people compared to the non-Indigenous population.[33]

Violence against women

Aboriginal and Torres Strait Islander people are between 2 and 5 times more likely than other Australians to experience violence as victims or offenders.

Aboriginal and Torres Strait Islander women are 5 times as likely to experience physical violence, and 3 times as likely to experience sexual violence, than other Australian women[34].

QSAN consulted with its own specialist sexual violence member service, [redacted] and we now provide the following insights:

Barriers to reporting:

- [redacted] works in a way to provide the women a choice about reporting.
- Many of the women will say what's the point in reporting as the process is so lengthy and he may only get a slap on the wrist anyway, if he is found guilty and they will be victim blamed through the process.
- The caseload involves a lot of sexual abuse by partners and the women are worried if they report their children will be taken from them.
- Any if they do report there is no support, and the women worry about confidentiality and where the story will go and who will support them after the process has finalised.
- The way the system is now, many women choose to just do the counselling. They come into the service for the cultural healing.
- Many are also worried about racial discrimination from the police if they report.
- Some women have reported about other issues and because of the lack of support including court support, then the women do not want to report again. They give up and say, "been down the road, been to police, gets nowhere".
- Women report no trust in the system.
- The service can help woman report as they have strong relationship with police liaison, but they just don't want to do it because of the way the system is now.

When women do report – the experience is not good

- A woman reported her own rape to a male detective and they told her to go back home (to the perpetrator) and record a conversation with him admitting he committed the rape on a recording device. The woman interpreted this as the detectives not caring as they wanted her to return to an unsafe situation. They did not offer to help her with the reported rape or the proposed recording of the admission. The matter never proceeded.

[33] Ibid.

[34] ourwatch_reporting_on_a-ts_family_violence_aa_v1.pdf (1800respect.org.au)

- [redacted] report that his approach of the police asking the woman to go back into an unsafe situation and 'get the necessary evidence' is not uncommon.
- A mother reported the rape of her 11 yo child. Her daughter was interviewed, and a statement taken with two male police officers in a room for 3 hours. This was traumatising for the child and unacceptable.
- There is a need for more female trained police officers to be visible in the community to report sexual violence crimes.
- Police communication is sporadic with the women about the investigation and court process.
- Police take too long to act which gives time for the perpetrators to get threaten the complainants before the police act.
- Victims can get scared and may not act against the perpetrator but then blame themselves if others are hurt by the same perpetrator. However, the inaccessibility of the system has really failed them.
- Complex issues and can involve inter-generational perpetrators in the one family with failures to act by a range of authorities.
- Some women have complex trauma histories and have been sexually assaulted by multiple perpetrators with no action has been taken against any of them.
- Police promised support to the woman when she reported but the police never provided any. The woman reached out to [redacted] herself.
- Women and girls are sitting with their trauma for years as the process takes so long. It is not healthy for them.
- A young girl can't access the therapy she needs because counselling notes will be used in the court case against her. She is suffering ptsd, has anger outbursts, blackouts, can't sleep, has to have the lights on, is constantly on edge and can't go to shopping centres as she sees the face of the perpetrator in other men. This child wants justice and wants the perpetrator jailed but has lost faith herself in the justice system. As the case drags on through the system her healing is not being adequately addressed because the court system won't allow this.
- The failure of the justice system means that families may take "justice" into their own hands.
- The workers who have worked at [redacted] between 8 and 11 years have had no experience of clients going through the criminal courts to a trial stage.

Family Court – downstream impacts of a failed response

- When there is a failure in the criminal justice system to respond to child sexual abuse there are downstream impacts in the family law system.
- A case example, [redacted] assisted two children who were young teenagers who had raped their whole life by father. Mother escaped and the father started family court proceedings for overnight contact. He would rape the mother in front of the children. Very violent and had kidnapped the children previously. Younger child was made to go on contact, but the older child refused. When court ordered contact recommenced, the father groomed the child for first few months and then raped her again. This time contact was stopped. The criminal matter is still on foot.
- The family court will ask the families what is going on with the police investigation, but the families often do not know. There is no police communication to the courts.

What improvements are needed?

- [redacted] agrees with the idea of women's police station for reporting sexual violence and domestic violence. Needs to be easily accessible on the train line. Women would come forward for the support. Current police stations can be confronting. The women are worried about reporting at police stations because of the likelihood of a friend or someone coming in for bail and seeing them. The idea of a women's police station soley focussed on women is appealing.
- It was suggested by a survivor that it would need to be a safe house otherwise perpetrators will know and will wait and stalk the women.
- Funding for [redacted] is very limited in what support can be provided – 3 fulltime workers so they can only provide very limited help with women reporting and court processes.
- If women had more confidence in the system, they would use the system to hold the perpetrators accountable.
- Redress scheme has encouraged elders to come forward –The community will come forward when they get the 'wrap around' support.
- Very high demand for [redacted] service– only ATSI specific service for sexual assault in Queensland.
- More female police presence is required. Have more on the front lines and women will feel safer to come forward. Have female detectives come to the services and build trust and rapport with the women.

Recommendation 43

That the Taskforce support the need for additional funding for ATSI specific sexual violence services.

Recommendation 44

That the Taskforce support a trial of a women's specific police station that is embedded in the community, has links with the ATSI community, is close to transport and is in a 'safe location' for the reporting of sexual violence and domestic violence matters.

Recommendation 45

That the Taskforce support the Queensland Police Service actively recruit and develop more female police officers who are trauma informed and culturally sensitive for sexual violence and domestic violence matters.

Recommendation 46

That the Taskforce support the provision of wrap around support for sexual violence victims who are taking their matters through court, particularly for ATSI women.

Recommendation 47

That the Taskforce support amendments and processes where sexual violence matters are prioritised in the courts and measures to address the lengthy delays in the court process.

Recommendation 48

That the Taskforce recommend the Queensland Police Service provide specialised training to officers to improve trauma informed and culturally sensitive communication to complainants, who have reported sexual violence matters.

Recommendation 49

That ATSI communities, including ATSI women elders are appropriately resourced to provide community led responses to issues of sexual violence in their community and to support victim-survivors.

7. Feedback from QSAN services

Lack of trauma informed practice and failure to follow OPMs, interagency guidelines

- Little to no trauma informed approaches in the sexual violence system response in Queensland.
- The experiences of QSAN services in general is that CIB do not provide updates or information, won't say if they dropped case, if services or the woman follows up for an update, they may get a short response that they are not proceeding with the matter and the reason that is provided is "not enough evidence".
- There is little transparency around decision making to not proceed.
- If support worker rings – CIB don't work in an integrated way – "who are you?"
- They do not follow their own OPMs or interagency guidelines or Victim's Charter to keep the victim informed every step of the way and work in a trauma informed way.
- Woman are discouraged at every step of the way – even from reporting. "Don't take a statement", the police officer said to the woman "don't bother, your case isn't that serious"
- A woman had difficulty in understanding the police during the interview, nonverbal, couldn't understand the Auslan interpreter, assumptions were made by the police around disability. An intermediary would have been helpful in this matter.
- A woman with intellectual disability was at court a number of times. She was to give evidence, but it kept getting adjourned. On each occasion she had to watch her video of giving the Section 93A statement several times (which took 4 hours), before she was cross examined and the constant adjournments and reliving the assault had a big impact on her mental health.
- An example of poor trauma informed practice – sexually assaulted and told her psychologist who reported to the police. Police visited the woman at home by two male officers. She had complex ptsd and dissociative amnesia, she was not sure why she was being interviewed, the police got her to sign thing despite her literacy not being good, also got her to sign a domestic violence order and didn't know what it was for. The woman was not given any choice as it wasn't her that reported to the police. Caused further trauma for her.
- Police turning up – woman had gone to hospital and discussed sexual assault and social worker helped with online report. Next thing the police turned up on the doorstep and the woman was very shocked by this.

- Woman went into a Gold Coast station and VPU said she needed to undertake a 93A, she couldn't remember if she had done a statement, she had literacy issues. She couldn't remember doing the statement. The woman was very confused and unsure what had occurred.
- The women may be discouraged from proceeding but at other times the police can want to proceed, and the police can then be very coercive – threatened perjury.
- In another case a young woman was groomed, sexually assaulted, fell pregnant and police said, "if you don't make a statement, we will report you to child safety".
- In another case a young woman reported, and the police turned up at 9pm at night on a Sunday to take a statement unannounced. This was very intimidating, and she had not prepared herself for this.

Why do women withdraw their complaints or not report?

- Pressure from family.
- Taking too long.
- Perpetrator convinces them it is their fault
- Social pressure of not being believed.
- Too hard.
- Threatened to lose accommodation, support – if the family has money.
- Judgement and victim blaming from investigating officer.
- Impact on stress and mental health and how stressful it is.
- Judgement on her mental health and not want to proceed.
- Never report again after being cross examined.
- The police talk women out of reporting – if not so many delays.
- They said its your word against his and not anything you can do.
- Grooming – hold affection for the perpetrator – send them messages – you went on a date afterwards – how are the police going to prosecute?
- Police will say how it will be perceived badly in court with actions the woman has taken or not taken. Eg. Judgement from the police because the victim didn't change her number
- A victim-survivor with an intellectual disability kept meeting with him – misunderstanding– not understanding her to cut off contact.
- Shame, unknown legal and justice system, being judged, unsure of the system. Different country and unsure of the system.
- One of four girls in a CALD family, rape, did not report because it would reflect poorly on family, perceptions that it would harm her chances of marriage in the future.
- Thinks that they won't be believed or don't have enough evidence.

CALD women's experience of DFV and intimate partner sexual violence

- 80 to 85% of IWSS domestic and family violence clients report to the service experiences of intimate partner sexual violence. Very few of them report these experiences.
- For example, a woman has experienced intense DV and IPSV, self-referral to IWSS, some of the incidents witnessed by a young child, very precarious visa situation and if escalated concerns about being deported and not seeing her child. The client obtained a DVO but it did not mention IPSV which is quite common as the women don't want to reveal sexual assault in court documents.

Victim blaming, not believed, assumptions made about 'certain women'.

- Women react to subtle messaging from police and victim blaming "are you sure you want to proceed"
- Another international student – assaulted by friend, did not report to medical practitioner however, her sister was a medical practitioner and she collected evidence. When the woman reported the police said, "Do you want to proceed this would harm your reputation?" – After this response from the police the woman did not proceed.
- Feedback from a service that responds to young women is that the response of police to their clients is poor as the police play into myths and is especially poor if the sexual experience involved intimate partner violence or dating violence.
- Police will ask the worker who is supporting the young woman – "Does she know the difference between rape and just regretting sex?"
- "Buyer's remorse" – There is an immediate reaction from police that she probably got drunk, she probably consented and now she regrets her decision to have sex and is reporting rape.
- Police will ask – "Are they reliable?" and young women after such encounters and attitudes are dissuaded from proceeding.
- Women are left feeling that "their words are not enough".
- They will not proceed generally if women have been criminalised or mental health issues, even more reason not to proceed.
- Very different police response for women who have been attacked in public place, one off incident, physical trauma, and evidence. Very poor response to women with a history of criminalisation, mental health history, drug usage, Aboriginal and Torres Strait Islander or CALD women.
- Very poor prosecutors as well. A young girl alleged rape by two older men in their twenties. The defence were alleging she was into "kinky sex". The prosecutors allowed the line of questioning to continue without any interference in it. Highly distressing to the young girl. There were two separate trials for the two defendants, and he was found not guilty. The other man pleaded guilty.
- Mixed responses from the police mean it is very difficult to give accurate advice to women about their likely experience of reporting.
- Powerful messages are sent to woman by the police when they do not proceed. They say to the woman "there is not enough evidence" but the woman thinks I have failed. "I didn't do enough; it is my fault". The police may lecture women about online safety and give the impression of blaming the victim.
- Police also do not make referrals when they could be of assistance.
- Police can say things like it isn't that serious when she is reporting. In other circumstances they say to women "you aren't willing to mediate or hear him out" – this was workplace sexual harassment.
- A client reported sexual assault in childhood – police were good, but police called the sexual assault worker to ask if she was telling the truth? The police said to the worker "it was very long time without telling someone "And she presented to the police whilst giving the statement as "very agitated". These officers were in the VPU.

- If she made a statement previously but withdrew it the police assume she must have been lying about the assault rather than considering the whole range of circumstances, why she might have withdrawn a statement.
- Also, a woman with an intellectual disability may report to the police, not understand the question at the time and she agrees with the proposition being put to her. Later on, she talks to her support worker and then understands the question better – police can jump to the conclusion she is lying. However, it does not mean she is lying if she changes her answer. She just didn't understand the question at the time.
- Police threatened to charge a client with an intellectual disability with nuisance because of frequent calls to the police.
- The online reporting form currently used by police and which they encourage the use of –has a question that asks what clothes were they wearing?
- A Detective told a woman with disability that she shouldn't be dating because of her mental health issues.
- A woman with a speech impediment reported a sexual assault – police said in front of the client she is not very bright.
- Across the service sector people (police, psychologists, GPs, lawyers) with intellectual disability are not believed, assumed they are prone to fantasy, couldn't be credible in making a complaint.
- Community misunderstanding about grooming is – think a positive relationship rather than being targeted and displaying concerning behaviour.
- There is a community belief that people with intellectual disabilities are unable to have sexual lives.
- High level of inconsistency – one day say come down and then next day say no can't help.

Women not told of the outcome of the investigation by police

- A CALD client reported to the police, the worker followed, waiting time was very stressful for client, followed up again with the police by a new worker but no information, no communication from the police. The service has now decided with the woman to not follow up any further as the client needs to move on with her life. It has been over a year and the woman has heard nothing.
- The women live throughout this time as they are waiting for the outcome with a heightened state of unknown and uncertainty, which is very debilitating.
- A CALD woman reported a sexual assault in 2018 and did not hear back from police. August 2021 – followed up – January 2022 – followed up again and the police said they will check with the local station – the service has closed the file.
- People with intellectual disability are more likely to be criminalised and women with disability at increased risk of sexual violence however their disclosures can be less likely to be taken seriously because they have a criminal history.

Positive police responses

- Several services have reported that CPIU officers seem better trained and the responses in general are better for girls and children under 16 years old. The officers are more trauma informed, work in an integrated way with the support services and family (eg. they may arrange to interview the young woman and ensure the support worker is there), communicate in a more compassionate

way, communicate more regularly, and keep the victim-survivor informed of where cases are up to.

- Many years ago, a young woman with an intellectual disability was sexually assaulted the night before, she reported and rang CPIU, told them and they said come down straight away to do the Section 93A interview, they believed her. This is a different experience from the "usual" experience of the service where they can be on the telephone and advocating for 3 hours. The woman was ready, and the statement was done, she did not have to wait and dwell on the issue for 3 weeks.
- Another time police said come down now and do Section 93A straight away.
- A young woman with an intellectual disability reported some abuse at school to the worker, and said she wanted to speak to the police. The service connected her to the CPIU. They were wonderful in explaining the process in a way she understood but not talking down to her and believed her. Ultimately the case did not proceed but the CPIU explained that because it was historical it was difficult to prove, explained how evidence works, advised the young woman if anything happened in the future she could rely on police. The woman felt validated by the experience. She had an issue about her boyfriend a few months later and rang and spoke to police office and again it was positive as the police officer sat with her and listened to what her concerns were about.
- Last year CPIU and CIB detective (young male) asked the client with an intellectual disability if she was okay with being in the room with a male? Giving the client the choice was very good for her.
- Two years ago, young person reporting a sexual assault to CPIU and family needed a lot of support. The police engaged in lots of long conversations with the family, also to support them with the process of being witnesses, did a tour of the police station with WWILD workers and the complainant to familiarise them with the surroundings. Always offered many options that were available, and this built their confidence over a period and even made sure the young person could have a WWILD worker in the room when they gave evidence. It was a supportive and trauma informed process the police offered.
- A service was working with a young woman who was involved in high levels of sexual violence, torture, trafficking, coercion, pimp the young woman out. Very vulnerable women, homeless and previous child sexual abuse. The Australian Federal Police were involved because it was a trafficking matter. The AFP seemed better resourced, more compassionate and displayed better consideration of the young woman's needs.
- When workers advocate it can go well however it should not take this and not every woman is linked in with a worker.
- SVLOs can be good but they are not 24/7. The other police push all SV onto the SVLOs rather than learning how they do it well and learning and applying this knowledge. This means the SVLOs are highly likely to get burnt out.
- Project Engage on the Gold Coast where female detectives work out of the Gold Coast Centre Against Sexual Violence every Thursday. It is a formal project with a Memorandum of Understanding signed by both parties and has been proving a positive experience both for the clients of the service, the police officers and also in improving relationships and understanding between the service and the police.

Barriers

- The barriers to reporting can be different for historical cases and acute presentations. For historical matters there are the feelings of not being believed, "your word against his" and internalised rape myths.
- For acute cases the system's response can be the barrier. After reporting women can become disillusioned very quickly with the system. They are made to feel their case is not worthy and therefore they are not worthy.
- If a woman has existing mental health issues or develops them from the assault, her mental health issues are used at every stage of the process from reporting to court.
- QSAN can provide court support and does do this, but the services are not funded to do this. There are real capacity issues because of the time, delay, and intense nature of the work. Sometimes can take a woman 3 or more times to give a police statement. Often, they are called off by the police at the last minute. This is extremely frustrating because of all the wrap around support and work that has been undertaken by the service to get the woman to the stage of reporting.
- In court they put women in another room to give evidence. Often this can go against them as not facing the jury. However, why not put the perpetrator in the room and let her give evidence in front of the jury?
- In rural and regional Queensland court support is almost non-existent because of resourcing.
- A woman in a rural location reported an assault to the local police. She had a number of historical issues that she had worked on. Wanted to report the latest assault. She went to counter and advised a senior policeman who was still sitting and did not get up to greet her that she wanted to report an assault. He shouts out from the desk to her – "sexual, physical what? She had to say sexual assault. There were people in the police station behind her. He then went behind the panel and said to the police officers there – "I've got a sexual assault, lady want to report a sexual assault, who will do it?" The woman proceeded with the complaint only because she was linked in with a service who had prepared her that the police response may not be entirely positive, and she was able to speak to and get support from the worker after this experience.

Complex trauma

- Many of our clients (disability sexual violence service) have been sexually assaulted numerous times – 3 times within a year – as far as looking like a reliable witness, the police response to the woman was "you have reported twice before and maybe you are just crying wolf". She couldn't give a clear timeline therefore it was assumed she was not telling the truth.
- Victims of multiple and compound trauma also have this used against them. Very challenging for DPP and police. A lot of advocacyby services to get them to take the matter seriously and proceed with charges. They believe the person is 'crying wolf', not believing her reports, the system thinks she is a 'serial complainer'. No knowledge or expert understanding that these women can be the most vulnerable and can be the most vulnerable to further assaults.

Interpreters

- Detectives have refused to use interpreters when a woman was reporting a sexual assault. She had conversational English but was traumatised and could not communicate well in the formal

approach of a police interview. For example, she did not know what "penetrated" meant and the worker had to explain in another way for her to understand.

- Detectives who are not qualified to makes the assessment of whether an interpreter is required or not routinely makes these assessments.
- Police can say bring a friend. Friends can be judgemental in the interviews and say to the women "don't say that".
- Police sometimes use PLO (police liaison officers) – again, they are not interpreters. They can also be judgemental of women as their job is to be a friend to the community and to have relationships with community leaders who are generally men.
- Court process also don't engage interpreters –the magistrate can also say "just use a friend".
- There has been no change in the uptake of interpreters despite the community constantly raising the issue, it being recommended by countless reports and inquiries and being part of OPMs and good practice guidelines.

Court experience

- At the moment some DPP will allow badgering of the women as they think it might work out well for the client. Clients go through badgering and intimidating cross examination but still end with not guilty.
- Cross examination is akin to character assassination. Her entire history is "fair game" for cross examination, but his history is completely protected by the court process.
- In relation to phone calls and sms messages – in one case he admitted the sexual assault via a sms message to her, but the defence then had access to her phone, photos (drug taking) and when she smsed him back and this was all used against her. He was found not guilty.
- Zig Zag supported two young CALD woman right through the court process – both times the men were found not guilty. Women were ostracised from their community, family, became homeless because of the sexual violence perpetrated against them.
- Workers want women to come forward but don't want to put them in a process that invalidates them and their experience.
- A matter involving child sexual violence matter that had gone to committal hearing in North Queensland. Most don't go to committal so unsure why this was the case. Very aggressive cross examination of a 12 yo child. Luckily the child was robust, in another room, they were discussing an issue that occurred when she was 8yo. Defence was trying to trick her up, called her a liar. She was annoyed and got upset. The judge reprimanded the defence but did not stop the harassing and inappropriate cross examination of such a young child.
- In another case the defence cross examined her about her economic status and that she was doing this for money.
- Timelines are extreme. Timeline averages for trials in 3 to 7 years – standard is 3 to 4 years.
- Sexual violence matters should be considered a priority and get listed as a trial 1.
- Deliberate adjournments by defence – deliberate tactics.
- 3 different prosecutors in a case, on the day one turns up that has never met victim and they clearly do not know the case. What chance do women have in these circumstances?
- DPP can drop the case without explanation to the victim.

- A woman wanted to explore restorative justice, but DPP said no to this. They said it must proceed to trial as we need to make a statement to the community that this was unacceptable – he was found not guilty. Its DPP decisions re restorative justice.
- Very difficult and time consuming for victim-survivors.

8. <u>Criminalised Women</u>

QSAN has been unable in the time given to appropriately consult on this issue with our members. However, the issues of criminalised women and being subject to sexual violence feature in the feedback provided. If a woman has been sexually assaulted and attempts to report this to the police, the response from the police can be quite negative, as they respond to her based on being an 'offender' rather than as a 'victim'. We endorse the comments made by Women's Legal Service QLD in their submission who have addressed these issues more fully and specifically endorse the need for specialisation throughout the system, the need for trauma informed care, early intervention, and investment in the community.

If you require any further information, please do not hesitate to contact the Secretariat.

Kind Regards,

[redacted]

QSAN Secretariat

Appendix

2A. Consent

(1) In the Code, unless the contrary intention appears, "**consent**" means free agreement.

(2) Without limiting the meaning of "free agreement", and without limiting what may constitute "free agreement" or "not free agreement", a person does not freely agree to an act if the person –

(a) does not say or do anything to communicate consent; or

(b) agrees or submits because of force, or a reasonable fear of force, to him or her or to another person; or

(c) agrees or submits because of a threat of any kind against him or her or against another person; or

(d) agrees or submits because he or she or another person is unlawfully detained; or

(e) agrees or submits because he or she is overborne by the nature or position of another person; or

(f) agrees or submits because of the fraud of the accused; or

(g) is reasonably mistaken about the nature or purpose of the act or the identity of the accused; or

(h) is asleep, unconscious or so affected by alcohol or another drug as to be unable to form a rational opinion in respect of the matter for which consent is required; or

(i) is unable to understand the nature of the act.

(3) If a person, against whom a crime is alleged to have been committed under chapters XIV or XX , suffers grievous bodily harm as a result of, or in connection with, such a crime, the grievous bodily harm so suffered is evidence of the lack of consent on the part of that person unless the contrary is shown.

14A. Mistake as to consent in certain sexual offences

(1) In proceedings for an offence against section 124 , 125B , 127 or 185 , a mistaken belief by the accused as to the existence of consent is not honest or reasonable if the accused –

(a) was in a state of self-induced intoxication and the mistake was not one which the accused would have made if not intoxicated; or

(b) was reckless as to whether or not the complainant consented; or

(c) did not take reasonable steps, in the circumstances known to him or her at the time of the offence, to ascertain that the complainant was consenting to the act.

(2) In proceedings for an offence of attempting to commit an offence against section 124 , 125B or 185 , absence of intention to commit the attempted offence is not a defence if it is established that the absence of intent was due to –

(a) self-induced intoxication; or

(b) a failure to take reasonable steps in the circumstances known to the accused at the time of the offence to ascertain that the complainant would have consented to the act constituting the offence against section 124 , 125B or 185 .

61HJ Circumstances in which there is no consent

(1) A person does not consent to a sexual activity if—

(a) the person does not say or do anything to communicate consent, or

(b) the person does not have the capacity to consent to the sexual activity, or

(c) the person is so affected by alcohol or another drug as to be incapable of consenting to the sexual activity, or

(d) the person is unconscious or asleep, or

(e) the person participates in the sexual activity because of force, fear of force or fear of serious harm of any kind to the person, another person, an animal or property, regardless of—

(i) when the force or the conduct giving rise to the fear occurs, or

(ii) whether it occurs as a single instance or as part of an ongoing pattern, or

(f) the person participates in the sexual activity because of coercion, blackmail or intimidation, regardless of—

(i) when the coercion, blackmail or intimidation occurs, or

(ii) whether it occurs as a single instance or as part of an ongoing pattern, or

(g) the person participates in the sexual activity because the person or another person is unlawfully detained, or

(h) the person participates in the sexual activity because the person is overborne by the abuse of a relationship of authority, trust or dependence, or

(i) the person participates in the sexual activity because the person is mistaken about—

(i) the nature of the sexual activity, or

(ii) the purpose of the sexual activity, including about whether the sexual activity is for health, hygienic or cosmetic purposes, or

(j) the person participates in the sexual activity with another person because the person is mistaken—

(i) about the identity of the other person, or

(ii) that the person is married to the other person, or

(k) the person participates in the sexual activity because of a fraudulent inducement.

(2) This section does not limit the grounds on which it may be established that a person does not consent to a sexual activity.

61HI Consent generally

(1) A person ***consents*** to a sexual activity if, at the time of the sexual activity, the person freely and voluntarily agrees to the sexual activity.

(2) A person may, by words or conduct, withdraw consent to a sexual activity at any time.

(3) Sexual activity that occurs after consent has been withdrawn occurs without consent.

(4) A person who does not offer physical or verbal resistance to a sexual activity is not, by reason only of that fact, to be taken to consent to the sexual activity.

(5) A person who consents to a particular sexual activity is not, by reason only of that fact, to be taken to consent to any other sexual activity.

Example— A person who consents to a sexual activity using a condom is not, by reason only of that fact, to be taken to consent to a sexual activity without using a condom.

(6) A person who consents to a sexual activity with a person on one occasion is not, by reason only of that fact, to be taken to consent to a sexual activity with—

(a) that person on another occasion, or

(b) another person on that or another occasion.