Women's Safety and Justice Taskforce

Hear her voice

REPORT **TWO** | VOLUME **ONE**

Women and girls' experiences across the criminal justice system

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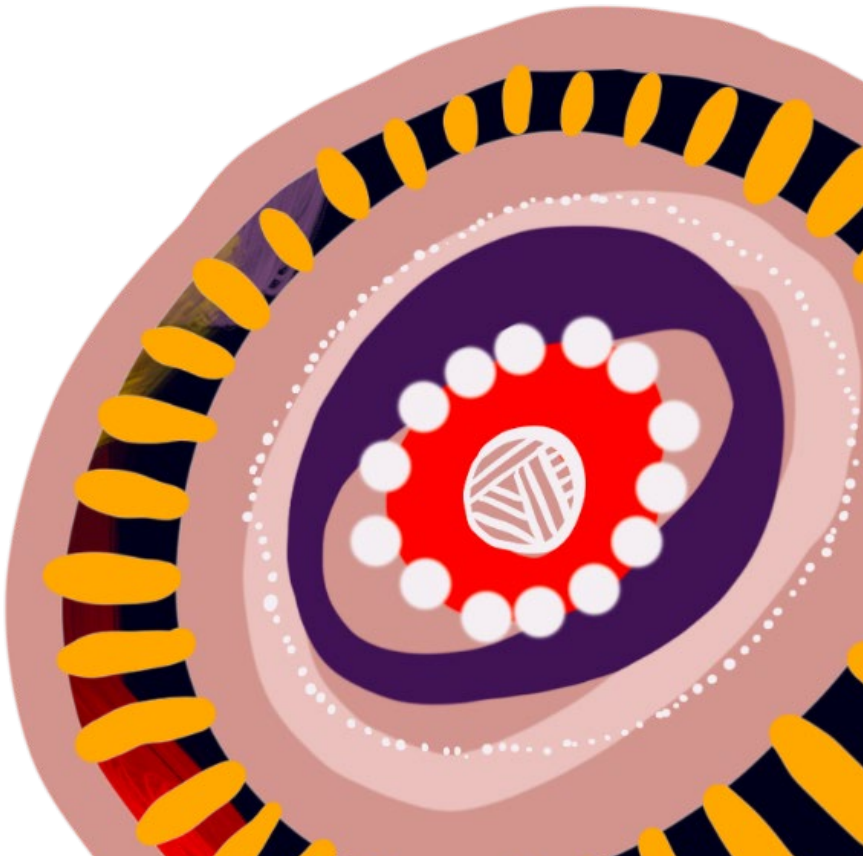
The Women's Safety and Justice Taskforce acknowledges and pays respects to Aboriginal and Torres Strait Islander peoples as the Traditional Custodians of Country throughout Queensland. This respect is extended to Elders past, present and emerging.

The Women's Safety and Justice Taskforce would like to thank and acknowledge the brave women, girls, family members and friends who have taken the time to share their experiences with us.

The circular symbols represent women and girls, their communities and how we must protect them.



Content warning

The Taskforce has been overwhelmed by the generosity of people who have shared their stories with us. Where permission has been granted, accounts of lived experience are included in this report to provide context and understanding. It is an immense privilege to be trusted to tell these stories to the people of Queensland.

These stories are often confronting, describing many forms of violence, including sexual violence and child abuse. Reader discretion is advised before reading parts of this report that explore these stories more closely.

If you, or someone you know, need help, then the following services are available to assist.

- The Queensland Sexual Assault Line offers telephone support and crisis counselling to anyone – adults and young people of any gender identity – who has been sexually assaulted or abused, and for anyone who is concerned or suspects someone they care about might have been assaulted or abused. They can be contacted on 1800 010 120, 7 days per week 7.30am-11.30pm. Visit dvconnect.org/sexual-assault-helpline/

- DV Connect is a 24 hour Crisis Support line for anyone affected by domestic or family violence, and can be contacted on 1800 811 811 or dvconnect.org

- Mensline Australia is a 24 hour counselling service for men, and can be contacted on 1300 78 99 78 or menslineaus.org.au

- Lifeline is a 24 hour telephone counselling and referral service, and can be contacted on 13 11 14 or lifeline.org.au

- Kids Helpline is a 24 hour free counselling service for young people aged between 5 and 25, and can be contacted on 1800 55 1800 or kidshelpline.com.au

- Suicide Call Back Service can be contacted on 1300 659 467 or suicidecallbackservice.org.au

- Beyondblue can be contacted on 1300 22 4636 or beyondblue.org.au

Artwork title: **Journey to Justice**

Artist: **Emma Hollingsworth**

This artwork as a whole represents the journey we must go on as a community to protect and better the lives of women and girls and make the world a fairer place for them.

It represents the mountains we must climb and the perseverance and determination it takes to make this a reality.

Women's Safety and Justice Taskforce members

Chair — The Honourable Margaret McMurdo AC

The Women's Safety and Justice Taskforce is chaired by the former President of the Queensland Court of Appeal, the Honourable Margaret McMurdo AC. Margaret was admitted as a barrister of the Supreme Court of Queensland in 1976 and practised until 1991, when she became the first woman to be appointed a judge of the District Court of Queensland (1991-1998) and later the Childrens Court of Queensland (1993–98).

Justice McMurdo was appointed President of the Court of Appeal, Supreme Court of Queensland in 1998. Her Honour was the first woman appointed as a presiding judge of an appellate court in Australia. In 2001 Justice McMurdo was awarded the Centenary Medal and later appointed a Companion of the Order of Australia (2007) for service to the law and judicial administration in Queensland, particularly in the areas of legal education and women's issues. The Hon Margaret McMurdo AC retired as President of the Court of Appeal in March 2017. She has served as Chair of the Legal Aid Board of Queensland since May 2017. Between December 2018 and November 2020 Margaret was Commissioner of the Royal Commission into the Management of Police Informants in Victoria.

Dr Nora Amath, Islamic Women's Association of Australia

2006 Australian Muslim Woman of the Year Nora Amath is a sociologist and community developer. Nora is the National Manager of Refugee Settlement at the Islamic Women's Association of Australia and the CAMS State-wide Coordinator of the Islamic Women's Association of Australia, roles focused on the prevention of domestic and family violence in culturally and linguistically diverse (CALD) communities. Nora is a co-founder of Sakina Refuge, a short-term accommodation for CALD women and children experiencing DFV.

Deputy Commissioner Tracy Linford APM, Queensland Police Service

Tracy Linford holds executive responsibility for the Crime, Counter-Terrorism and Specialist Operations portfolio and performs key governance roles on Boards and Committees including the QPS Board of Management and the People Committee. Tracy has over 36 years' policing experience.

Di Macleod, Deputy Chair, Queensland Sexual Assault Network

Di Macleod has worked in the area of gender-based violence for over 40 years as a care provider, counsellor, refuge worker, advocate, educator and service manager in New Zealand and Australia. Di is the founder and current Director of the Gold Coast Centre Against Sexual Violence Inc., Vice Chair of the Queensland Sexual Assault Network, Expert Advisory Panel member of Australian Institute for Strangulation Prevention and member of the Queensland Sexual Violence Prevention Roundtable.

Philip McCarthy, QC, Deputy Director of Public Prosecutions

Philip McCarthy is the Deputy Director of Public Prosecutions. Called to the Bar in 1997 and appointed as Queen's Counsel in 2019, Philip has extensive experience in criminal law. His work in the prosecution of complex and sensitive matters includes homicide, sexual crime, and other crimes of violence. Philip is also currently a member of the Queensland Sentencing Advisory Council.

Gillian O'Brien, Manager, WWILD

Gillian O'Brien is the Manager of WWILD Sexual Violence Prevention Association, which supports people with intellectual or learning disabilities who have experienced sexual violence or other forms of crime or exploitation. Gillian's career has focused on supporting survivors of sexual and domestic violence, delivering community education on supporting people with disability who have experienced crime. Gillian is also a member of the Queensland Sexual Assault Network.

Professor Patrick O'Leary, Griffith University

Patrick O'Leary has worked in the area of gendered violence as social worker and now researcher for over 25 years. Currently he is Director of the Violence Research and Prevention Program (VRPP) and member of the Executive Leadership and Research Committee in the Griffith Criminology Institute. Professor O'Leary's work is internationally recognised and he was commissioned as an Expert Academic Advisor to the Royal Commission into Institutional Responses to Child Sexual Abuse.

Alexis Oxley, Solicitor, Legal Aid Queensland

Alexis Oxley was admitted as a solicitor of the Supreme Court of Queensland in 2002 and practised as a solicitor in family law and criminal law for 8 years. As Principal Lawyer, Legal Aid Queensland (Ipswich) since 2010, Alexis manages a team of family, criminal and civil law lawyers and practices in the areas of criminal and domestic and family violence.

Laura Reece, Barrister-at-Law

Laura Reece was called to the Bar in 2006 and worked for almost 10 years as an in-house barrister at Legal Aid Queensland before commencing private practice in 2017. She has appeared for defendants in criminal courts all over Queensland. An experienced trial and appellate advocate, Laura is a member of the Criminal Law and Human Rights committees of the Bar Association, where she has drafted or contributed to submissions on most of the major issues in criminal law reform over the past decade.

Thelma Schwartz, Principal Legal Officer, Queensland Indigenous Family Violence Legal Service

Thelma Schwartz has worked extensively with and for Aboriginal and Torres Strait Islander peoples, providing legal services and representation as a criminal defence solicitor with the Aboriginal and Torres Strait Islander Legal Service for nine years, and currently as Principal Legal Officer for QIFVLS. She identifies as of Torres Strait Islander heritage alongside German/Samoan/Papua New Guinean heritage.

Kelly-ann Tansley

Kelly-ann Tansley has extensive experience delivering domestic violence services in Queensland. As previous Manager of the Brisbane Domestic Violence Service, she advocates for social change and systemic reform in response to domestic and family violence. She is also a Management Committee Member of Ending Violence Against Women Queensland and a member of the Queensland Domestic Violence Service Network.

Foreword

For too long society has regarded sexual violence as a taboo. But it is prevalent in our community with one in five women and one in 20 men experiencing sexual violence. Its taboo nature is one reason why only 13% of sexual assaults are reported to police. Another is that those who do report find their experiences, from police to jury trial and verdict, traumatising, confusing, disempowering and slow. They feel they are on trial. They want the criminal justice system to better respond to their needs.

The criminal justice system also deals with women offenders. Their numbers have grown by over 30% in recent years, almost four times the male offender growth rate. At around $120,000 a year per prisoner, jail is expensive. Proportionally, Queensland has more women in prison than other states. Numbers of First Nations women in Queensland prisons have grown by over 120% and numbers of non-Indigenous women by over 80%. Yet women in prison remain invisible, vulnerable, and largely ignored by the justice and corrections systems and the outside world.

This report, *Hear her voice 2,* follows on the from the Taskforce's initial work, *Hear her voice 1*, which reported on coercive control and domestic violence. *Hear her voice 2* examines the barriers faced by Queensland women and girls accessing the criminal justice system, both as victims and as offenders.

These two themes initially seem distinct, but there was unexpected overlap. I came to realise that because the justice and corrections systems were principally designed, and until comparatively recently, administered, by men and with a male perspective, they do not focus on the needs of women victims or women offenders. This was a confronting reality for a woman who had been a barrister or judge for 40 years.

The Taskforce received 19 submissions from women who are offenders and 250 submissions from victim-survivors of sexual assault. Overwhelmingly, they were from women and girls, but they included three from males, two 'other gender', and one transgender victim. Although our terms of reference required the Taskforce focus to be on women and girls, it is important to remember that men, boys and the non-binary can also be traumatised victims and offenders.

Of those 250 submissions, half were from women and girls who were also victims of domestic and family violence. This demonstrates the significant link between the Taskforce's work for this report and our work for *Hear her voice 1*.

On this part of our work alone, the Taskforce held 79 consultations and engagements with stakeholders including the judiciary, legislators, police, policy makers, academics and service providers.

I sincerely thank all who made submissions or met with us, particularly the victim-survivors who generously shared their intimate, deeply personal and often painful stories. I gratefully acknowledge those wonderful organisations who arranged for us to meet with and hear the voices of their clients – women and girls with lived experience.

Victims of sexual assault told us that rape-myths - commonly held community misperceptions about sexual assault - made them feel blamed and shamed and that this added to their trauma. They want changes to the laws about sexual assault, the way police, prosecutors and defence lawyers treat them, and the way trials are conducted. They want the community to be better educated about sexual assault, its impact, and the law relating to it.

The Taskforce visited women and girls in custody and heard their voices. We spoke to women who had recently left prison. All were victims of domestic, family, sexual or physical violence. Many were victims of multiple forms of violence. We heard how costly it is for prisoners to phone their family and how few rehabilitative, healing and education programs are available. We saw the draconian conditions of the safety and detention units. We heard heart-wrenching stories of women who had miscarried or had

still births in prison without access to proper medical care. We heard of the difficulties for criminalised women returning to the community to rebuild their lives and their broken families. We learned that the housing crisis is so acute that women eligible for parole are not released as they cannot find one basic room anywhere in Queensland to live.

The Taskforce has responded to these disparate and desperate voices with 188 recommendations. Some are about changing the law relating to sexual assault, improving criminal justice responses, and educating the community about these reforms and the fundamental importance of respectful sexual relationships based on mutual agreement to consent.

Others relate to prison and sentencing reform so that fewer women offenders will be unnecessarily incarcerated. The Taskforce recommends that women offenders, whether in prison or in the community, receive focussed, individualised assistance to rehabilitate. Given the sky-rocketing rates of female incarceration, the failure of prison to reduce recidivism, and the astronomical costs of imprisonment, these reforms will be safer and more cost-effective for our community.

This report has been another mammoth undertaking in a short time frame. Over the past 16 months, my talented Taskforce members have generously volunteered their time and enormous wisdom and energy, while working in demanding full-time roles. My small secretariat has again been extraordinary in their diligence, commitment, energy and vision. I owe each of them an enormous debt of gratitude. So does the Queensland community, especially its women and girls.

Emma Hollingsworth, the First Nations artist who created the splendid *Journey to Justice* on the covers of the Hear her voice reports, explained the symbolism of her work, again apposite to those whose voices have shaped this report. It depicts a woman travelling along journey lines, surmounting all hurdles until, in the circle on the top right-hand corner represented by the u-shaped symbol, she is in her circle community, resting in comfort and safety, having completed her journey to justice.

I commend this report to the Queensland Government and our legislators, policy makers, the media, community members, service

providers, corrective services officers, police, prosecutors, lawyers and judicial officers. There are lessons for us all. Together we can ensure that our criminal justice system reflects the needs of all Queensland's women and girls, whether victims or offenders, and especially our First Nations women and girls, if we –

Hear her voice.

The Hon. Margaret McMurdo AC

Chair, Women's Safety and Justice Taskforce

This symbol is a waterhole, representing rest and safety. The woman rests in comfort and safety. The U-shape symbol is the female representation.

Acknowledgments

The work of the Women's Safety and Justice Taskforce has been a mighty collaborative effort.

The Taskforce received hundreds of submissions from women and girls about their experiences in the criminal justice system. We travelled to many Queensland communities, from Cape York to the Gold Coast and many places in between, including women's prisons and a youth detention centre, to speak personally with women and girls about these issues. The Taskforce acknowledges the brave women and girls who have told us their stories. We sincerely thank them for their courage in sharing what have invariably been painful and harrowing experiences.

We held many stakeholder forums across the state where we listened to the voices of those who work with, support and advocate for women and girls. We thank them for their difficult work assisting vulnerable women and girls and for their wisdom and insight. We also thank the government agencies, community leaders and special interest groups for their support and valuable input.

I sincerely thank my talented Taskforce members who have so generously volunteered their time, expertise and wisdom while juggling their own demanding work lives and one of whom had the added pressure of being a self-employed sole practitioner.

I also acknowledge the generosity of the organisations that have allowed, supported and encouraged them to do this important work for the Taskforce and the Queensland community:

- Islamic Women's Association of Australia
- Griffith University
- Legal Aid Queensland
- Office of the Director of Public Prosecutions, Queensland
- Queensland Indigenous Family Violence Legal Service
- Queensland Police Service
- Queensland Sexual Assault Network
- WWILD Sexual Violence Prevention Association
- Queensland Domestic Violence Service Network
- Zahra Foundation Australia

Finally, the Taskforce thanks our exceptionally diligent and committed Taskforce secretariat which has been both the engine room and the oil on the wheels enabling this Taskforce to achieve so much, with so little, in such a short time.

Thank you all. Together with the women and girls whose voices are at the heart and soul of our work, this is your report.

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Appendices and annexures, see volume 2

Part 1: Introduction

Hear Her Voice Report 2 proposes 188 recommendations to improve Queensland's criminal justice system for women and girls who are victim-survivors of sexual violence, or who are accused persons or offenders.

It follows extensive consultation across Queensland by the Women's Safety and Justice Taskforce. We have listened to the voices of brave women and girls across Queensland who have shared often traumatic and painful experiences. They echo the message: it's time for change.

Hear Her Voice Report 2

2022

What have we been asked to do?

The Women's Safety and Justice Taskforce was established by the Queensland Government in March 2021 as an independent, consultative Taskforce. We were tasked with examining and providing reports on our findings and recommendations in relation to:

Stage 1: How best to legislate against coercive control as a form of domestic and family violence and the need for a new offence of 'commit domestic violence'.

Stage 2: Women and girls' experiences across the criminal justice system.

*See Appendix 18 for the full Terms of Reference for the Taskforce.

Our first report, *Hear her voice 1,* was delivered to the Queensland Government in December 2021. It made 89 recommendations on how best to address coercive control and domestic and family violence in Queensland. On 10 May 2022, the Queensland Government supported or supported in principle all 89 recommendations of *Hear her voice 1*.

What is the Taskforce's second report about?

On 24 June 2021, the Taskforce released 'Discussion Paper 2' seeking feedback on the themes we should explore in the second part of our work. The 31 submissions we received in response to that paper informed the Taskforce's choice to focus on women and girls' experience in the criminal justice system as victim-survivors of sexual violence, and accused persons or offenders.

These women and girls do not necessarily belong to two distinctive groups. They are often two sides, cause and consequence, of a larger story. Queensland Corrective Services (QCS) reported in 2019 that 87% of women in custody have been victims of childhood sexual abuse, physical violence or domestic violence. Sixty-six per cent of those women have been victims of all three types of abuse.

While these women and girls have much in common, they walk two different paths through our criminal justice system – each challenging in its own way. This report follows those two journeys and their intersections, identifying along the way what is working well and what needs to be improved. This report makes 188 recommendations to the Queensland Government to improve their respective journeys.

You are reading Part 1 of the report now. Here we will introduce you to the topics the Taskforce has explored in this report, explain the language we use and demonstrate the breadth of our consultation across the state which informs our recommendations. Part 2 of the report explores the journey of women and girls who experience the criminal justice system as victim survivors of sexual violence. Part 3 of the report explores the journey of women and girls who experience the criminal justice system as accused persons and offenders. Part 4 of the report focuses on the recommendations of this report, which the Taskforce considers should be implemented by Government, and key data gaps and resourcing challenges the Taskforce observed during its work.

Women and girls who experience the criminal justice system as victim-survivors of sexual violence

One in five women in Australia have experienced sexual violence. That sexual violence is largely perpetrated against them by men and boys. In Chapter 2.1 we set out the key statistics that demonstrate the impact of sexual violence on women and girls as well as the legislation and responsible government agencies that play a role in in how victim-survivors of sexual violence experience the criminal justice system.

This report contains the views of a wide variety of stakeholders about if and how the law should change. However, this report unapologetically places the voices of women and girls who are victim-survivors of sexual violence at its centre. The law belongs to the people of Queensland. Women and girls are 50.6% of those people. This report is for them. But the changes it recommends will benefit the entire Queensland community.

This report examines why as a community we continue to tolerate high rates of sexual violence against women and girls. The Taskforce makes recommendations about how the Queensland Government and the community must work together to change a culture that authorises the sexual entitlement of men and boys to the bodies of women and girls (Chapter 2.2).

Most women and girls who have experienced sexual violence will not report it to police. This report examines why that is so. The Taskforce found that First Nations women and girl victim-survivors often face threats of further violence against them and their families. The Taskforce makes recommendations about what the Queensland Government should do to make reporting sexual violence safer and easier when that is what a woman or girl wants to do (Chapter 2.3).

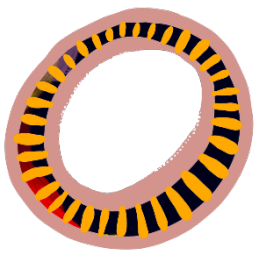
Women and girls who have lived experience of being a victim-survivor of sexual violence in the criminal justice system and those that support them in their journey told the Taskforce that they are angry, tired and seeking change. They believe the law authorises a view that exists in the community that if women and girls do not wish to be sexually assaulted it is up to *them* to protect themselves from that violence. Women and girls are angry with government agencies that failed to help them when they were sexually assaulted. They are angry at the doctors who refused to examine them, the police who refused to believe them or who 'tested' them to see if they were tough enough for the court process before pursuing their complaint.

This report examines the reasons why women and girls withdraw complaints of sexual violence at almost every stage of the criminal justice system. It makes recommendations about how we can provide greater support to these brave women and girls who, by seeking to bring a perpetrator of violence to justice, play an important role in keeping our community safe. Recommendations for improved support are directed towards government agencies delivering law enforcement (Chapter 2.5) health (Chapter 2.6) and justice services (Chapters 2.8 and 2.10) as well as the non-government sexual violence service system (Chapter 2.4).

Victim-survivors told the Taskforce that it felt to them as if the legal system starts from the position that an accusation of sexual violence is a lie and works its way backwards to discover if that accusation is true. That is often a fair observation. Victim-survivors of sexual violence experience the flipside of the presumption of innocence, which will necessarily require some focus on the credibility of a person who makes an accusation of sexual violence against another person. There is no recommendation for the abandonment of the presumption of innocence in this report. The presumption of innocence is the cornerstone of our criminal justice system's legitimacy and it is essential for the retention of public confidence in the justice system. The Taskforce did however hear a plea for legal processes to better respect women and girls' dignity, and for those working in the legal system to start from a point of respecting a victim-survivor's right to bring a complaint if they believe that their bodies have been violated. Women and girls and those who support them told the Taskforce that it should not be necessary for the legal process to humiliate a victim-survivor in order to determine whether they are credible and reliable. Women and girls think courts, defence lawyers and prosecutors could do better. The Taskforce has agreed.

Victim-survivors of sexual violence and those that support them told the Taskforce that the law does not allow the whole truth to be told to jurors -important information is sometimes excluded because of the application of the rules of evidence. The way in which information is presented or cross-examination is conducted in a court can sometimes reinforce attitudes of sexual entitlement and misconceptions about what 'real' victims of sexual violence should look like and behave. The Taskforce makes recommendations about how Queensland can make its criminal trial processes less traumatic for victim-survivors of sexual violence, and about how the law should be changed to keep misconceptions about sexual violence out of the court room (Chapters 2.9, 2.11, 2.12 and 2.13). The Taskforce has also made recommendations about how court proceedings for domestic and family violence and sexual violence offences can be reported responsibly by the media (Chapter 2.14).

The Taskforce heard that some women and girls who are victims of sexual violence would like there to be alternatives to the traditional criminal justice system in the form of a restorative justice process. The Taskforce has made recommendations for the creation of a long term plan to expand restorative justice services so that Queensland can build the capacity required to explore these opportunities in the future (Chapter 2.15)



The message that the Taskforce received from women and girls in Queensland is that they are seeking a shift, not just in the focus of the law but within the entire community. Women and girls no longer wish to be the sole gatekeepers of sexual propriety. Women and girls want it understood that sexual activity requires mutual agreement *before* it occurs and *both parties* to a sexual encounter should take responsibility for ensuring that there are no misunderstandings. Women and girls want the law to reflect that. The Taskforce saw and heard of women and girls in the legal process being asked:

> 'What did *you do* to let him know that you didn't want him to touch you like that?'
>
> 'Did *you* move his hand away?'
>
> 'Did *you* leave the room?'
>
> 'Did *you* run away?'
>
> 'How could *he* have known if *you* didn't push him away?'
>
> 'How could *he* have known if *you* didn't say no?'
>
> 'How could *he* have known when he had so much to drink?'
>
> 'How could *he* have known?'
>
> 'How *could* he have known?'

Women and girls have told us that he could have known if he had asked. A majority of the Taskforce agreed. The Taskforce has recommended that Queensland should move to an affirmative model of consent (Chapter 2.7).

This report asks you to *Hear her voice.*

Women and girls who experience the criminal justice system as accused persons and offenders

Women and girls in Queensland commit far fewer offences then men but the rate at which they are being charged with committing offences is increasing at an alarming rate – three times faster than the rates of offending by men and boys. First Nations women and girls are disproportionately represented in these statistics. In Chapter 3.1 we set out the key statistics about women and girls' contact with the criminal justice system as well as the legislation and responsible government agencies that play a role in in how women and girls experience the criminal justice system as accused persons and offenders.

The Taskforce consulted with and received submissions from a wide variety of stakeholders who work with and advocate for women and girls who have contact with criminal justice system as accused persons and offenders. The Taskforce also met with women inside the Townsville Women's Correctional Centre and the Southern Queensland Correctional Centre and girls in the Cleveland Detention Centre as well as women with lived experience of incarceration who have finished their sentences. It is the voices of these women that the Taskforce has tried to centre in this report. This report is for them. But the recommendations will benefit the entire Queensland community.

This report examines why women and girls are being increasingly driven into contact with the criminal justice system and makes recommendations about what can be done to divert them away from that system and towards a life as a happy, healthy and productive member of our community. The Taskforce considers that the disproportionate impact offences relating to public drunkenness, begging and possession of illegal drugs have on women and girls should cause the Queensland Government to review the nature of their continued operation in Queensland (Chapters 3.2 and 3.3)

When women and girls do have contact with the criminal justice system, they find themselves in a system designed to address the offending patterns and behaviour of men and boys. This report examines ways in which the legal and corrective services system could change to better accommodate women and girls' distinctive offending patterns and health and safety needs. This includes recommendations that acknowledge that many women and girls are often primary care givers to the very young and the very old in our community. The Taskforce found that neither women and girls nor the wider community are served well by the serving short disruptive and unjustifiably expensive periods of imprisonment (Chapters 3.4, 3.5 and 3.6).

These women and girls do not receive the public's sympathy or concern in the way that women and girls who are victims of domestic and family violence or sexual violence but have not offended do. Yet most incarcerated women and girls are victims of both domestic and family violence and sexual violence. Because there are fewer women and girls in prison and detention in Queensland, there are fewer women's prisons and detention centre places for girls. Consequently, the Taskforce saw that women and girls who are sentenced to a term of imprisonment or detention in this large decentralised state are often sent to locations a long way away from family, friends and community. Separated from their support network these often highly traumatised and vulnerable women and girls have been placed into institutions that are designed to punish them rather than rehabilitate them, and their trauma is not considered as a criminogenic need. The Taskforce examines whether women and girls are being treated humanely and in a manner consistent with their rights under *Human Rights Act 2019* in prisons and detention centres. The Taskforce found there is a need for a gender specific approach to be taken to the imprisonment and detention of women and girls and is heartened by the current development of a specific strategy and action plan for women by Queensland Corrective Services. The Taskforce makes several recommendations for improving the treatment of women and girls in prison and in detention, with a focus on healing their trauma and ensuring as far as possible that they are not further traumatised and damaged when serving their sentence. (Chapters 3.7, 3.8 and 3.9)

The Taskforce heard that the journey out of prison or detention and back into the community for women and girls is fraught. Many of the problems that drove women and girls to offend in the first place are unaddressed during their imprisonment. This means those same problems lie in waiting to confront them when they return to the community and often throw them right back into a pattern of offending. The cycle continues on rinse and repeat and serves neither the interests of the women and girls or community safety. Imprisoning women and girls is expensive for the community but it does not reduce recidivism or keep the community safer. The Taskforce was shocked to learn that women who would otherwise be released on parole are not being released because there is no available safe accommodation for them to go to. Their liberty is being withheld from them because of their poverty. The Taskforce makes recommendations about what should be done to prevent this situation from continuing and the practical measures that can be taken to help women and girls reintegrate back into the community at end of their sentences (Chapter 3.10).

There should be consequences for women and girls who break the law. It is not the intention of the Taskforce or the women and girls who shared their stories with us to suggest that trauma or disadvantage is an excuse for unlawful behaviour. What Part 3 of this report hopes to show is that women and girls have health and rehabilitation needs that are different to men and boys - they cannot continue to be shoehorned into a system that was not designed for them. The Taskforce hopes that Part 3 of this report will be a timely reminder to the Queensland Government and the community that the human rights protected under the *Human Rights Act 2019* belong to all Queenslanders, including those who break the law.

Every woman and girl the Taskforce met during consultation on this part of the report is so much more than the crime they had committed. These women and girls are asking that their human rights be respected and they be given some assistance to keep themselves and the community safe. If we treat these very vulnerable women and girls as unworthy of help and healing because of their wrongdoing we will diminish ourselves and rob our community of their potential.

This report asks you to *Hear her voice.*

Implementation, data gaps and resource challenges

Chapter 4.1 makes findings and recommendations about the need for improvements in data collection, extraction and analysis to help government agencies to better measure, monitor and track demand pressures and system performance. The Taskforce found that further investment in the criminal justice system was required to ensure that Queenslanders have equitable access to a high quality and fair justice system. Without additional investment, Queensland risks falling further behind other jurisdictions and effectively providing Queenslanders with a second rate justice system to that provided to Australians living in other states and territories. Robust and accountable evaluation processes must be put in place to ensure activities and initiatives implemented in response to the recommendations made by the Taskforce are not merely progressed for quick wins and partisan political gain.

The Taskforce is mindful of the magnitude and significance of the program of reform it has recommended. However, change is long overdue and the longer that systemic issues remain unaddressed the harder and more expensive they will become to fix in the future. Clear, accountable and bipartisan governance arrangements are required to ensure this vision is delivered and the opportunity for meaningful reform and better outcomes are realised. The Queensland community, and the women and girls whose voices are at the centre of this report, deserve nothing less.

This report asks the Queensland Government, the Opposition and Queensland politicians from across the political spectrum to *Hear her voice*, not just today, not just this year, not just in this term of government, but well into the future.

This report is about the experiences of women and girls

The Queensland Government provided the Taskforce with gendered Terms of Reference and the Taskforce has been faithful to that intent in both our reports

Throughout this report you will see the words and hear the voices of women and girls from all over Queensland. This report is about their stories.

The Taskforce would never suggest that men and boys are not the victims of sexual violence or as offenders not also driven into contact with the criminal justice system by social disadvantage and abuse. However, in many important ways, women and girls' experiences of the criminal justice system are different to those of men and boys.

Women and girls are entitled to have a space where their stories are told. That space is held for them in this report.

Many of the recommendations and findings in this report, if accepted by government, will benefit both genders. The Taskforce has been careful to avoid making findings or recommendations that will have unintended adverse impacts for other groups of people.

The language we use in this report

The Taskforce acknowledges that the language we have chosen to use in this report is important but it also notes that what represents the 'right language', in some circumstances will be contested. The Taskforce acknowledges that there will be readers who will not agree with all the Taskforce's language choices. The Taskforce can only assure all readers of this report that language choices were arrived at only after considerable deliberation.

Gendered language

As for *Hear her voice 1*, this report uses gendered language which reflects the Taskforce's gendered Terms of Reference. For further information on this language choice please refer to the introductory chapter of *Hear her voice one.*

Offender

This report uses the term 'offenders' to describe people who have been convicted or found guilty of committing a criminal offence. The Taskforce acknowledges that this is a contested use of language.

The Taskforce has listened to feedback provided at consultation forums around the state and notes the submission it received from *Sisters Inside* that addressed that organisation's objection to the use of this term. The Taskforce notes the preference of some people for the term 'criminalised women and girls'. The Taskforce actively considered the appropriateness of using the term offender in this report.

Ultimately the Taskforce decided that it would continue to use the term offender in the report. The Taskforce decided that referring to women who had broken the law as 'criminalised women and girls' would neither be well supported nor well understood by the broader Queensland community. The Taskforce also notes 'offender' is the terminology used in its Terms of Reference. The Taskforce stresses that the use of the terms 'offender' or 'offenders' is not intended to diminish the complexity, humanity and individuality of those who offend and every effort has been made to reflect their humanity, complexity and individuality in this report.

Sexual violence

When the term **sexual violence** is used in this report it is intended to describe a range of offending behaviour that violates women and girls' sexual autonomy. Some of that behaviour may encompass offending that does not include acts of physical violence as well as offending that is broader than the sexual offences listed in Chapter 32 of the Queensland Criminal Code, for example, the non-consensual sharing of intimate images.

Victim-survivor

Victim-survivor is the term used in this report to describe women and girls who have experienced sexual violence. This terms is chosen because it acknowledges the harm done by sexual violence and the efforts of victims to protect themselves from the sexual violence and the violence of the criminal justice process.

Consultation for this report

On 22 February 2022, the Taskforce released 'Discussion paper 3' seeking community feedback on those two themes. The Taskforce asked for written submissions in response to Discussion Paper 3 and we also presented at large consultation forums across Queensland asking the same questions we posed in the Discussion Paper. We asked for feedback from women or girls about what helped them, what made things more difficult for them and what they thought needed to be changed. We also sought input from the broader community, including from professionals who work in the criminal justice system as well as experts and academics.

We received more than 180 written submissions in direct response to Discussion Paper 3. Over the course of the Taskforce's work we received approximately 250 submissions from women who had experienced sexual violence. Submissions came from all over Queensland, including from people who identified as First Nations, Culturally and Linguistically diverse, People with Disability and LGBTIQA+.

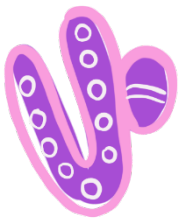
Outside many consultations with stakeholders in Brisbane, the Taskforce travelled to or met with women, girls and those who advocate for and work with them in the criminal justice system on the Gold Coast, Sunshine Coast, Rockhampton, Woorabinda, Cherbourg, Mackay, Townsville, Cairns, the Northern Peninsular Area, and Yarrabah. The Taskforce visited women's prisons and a detention centre for young people and met with women and girls who are or have been in custody.

The Taskforce met with service providers, community leaders, academics and Government departments. Importantly, we met with many women and girls with lived experience of the criminal justice system as victim-survivors of sexual violence and women and girls who had experienced the criminal justice system as accused persons and offenders.

In all, 79 meetings and forums were held across Queensland, both face-to-face and online including meetings. * See Appendix 1 for a list of the people we met with.

Organisations who helped us with consultation

Consultation with women and girls who have lived experience of the criminal justice system both as victim-survivors of sexual violence and as accused persons and offenders was crucial to the successful completion of this report. Without it, the Taskforce could not have gained the depth of understanding they needed to make fully informed recommendations and they could not have centred women and girls' voices in this report in an authentic manner. The Taskforce and Taskforce Secretariat would like to thank the following organisations for organising and facilitating safe and trauma-informed consultations with women and girls: Centre Against Sexual Violence (Logan and Redlands), Darumbal Community Youth Service Inc, Department of Children, Youth Justice and Multicultural Affairs, Immigrant Women's Support Services, Multicultural Australia, Queensland Corrective Services, Queensland Family and Child Commission, Queensland Indigenous Family Violence Legal Services, Respect Inc, Sisters for change (Townville), Sisters Inside Inc (Townsville and Brisbane), WWILD Sexual Violence Prevention Association Inc, The Women's Centre in Townsville, Youth Advisory Council and Yoonthalla Services Woorabinda.



Above: Taskforce Chair Margaret McMurdo AC was keynote speaker at the Small Steps for Hannah International Women's Day event.

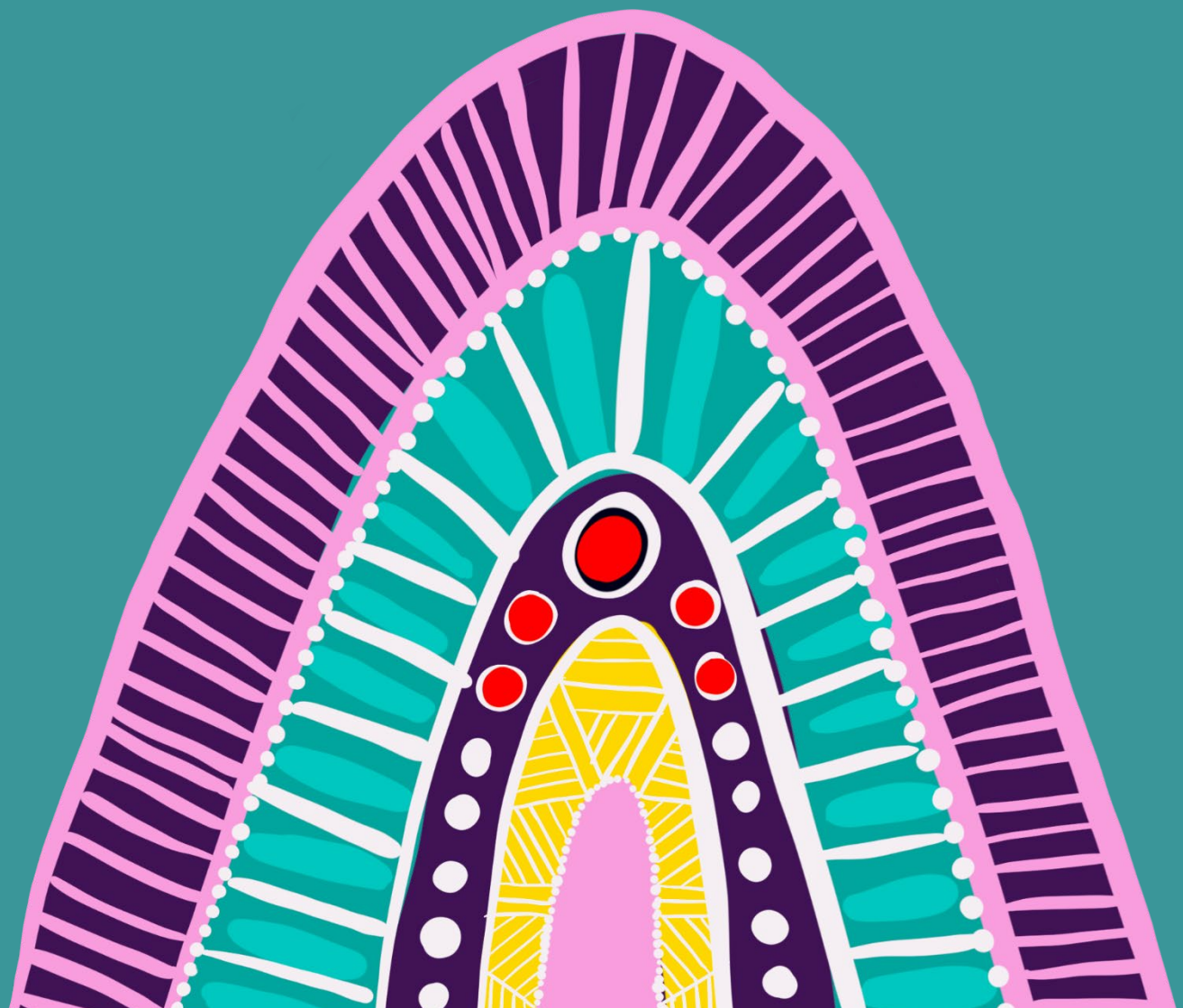
Above: Gold Coast consultation.
Below: Sunshine Coast consultation.

Right: Brisbane consultation.
Below: Rockhampton consultation.

Above: Attendees at the Brisbane consultation.

Above: Meeting with staff from the Qld Indigenous Family Violence Legal Service in Bamaga.
Below: Meeting with Sisters Inside, Townsville.

Recommendations



Recommendations

1. The Queensland Government develop and implement an adequately resourced primary prevention-focused community education campaign to improve awareness and understanding about sexual violence, including consent. The campaign will address societal and cultural barriers that contribute to low rates of reporting sexual violence. The campaign will aim to break down taboos about talking about sex and consent and embed community acceptance of the requirement for consent to be mutually agreed and discussed.

The design of the Queensland campaign should build upon existing primary prevention and community education already underway as part of the *Prevent. Support. Believe: Queensland's framework to address sexual violence* and take into consideration similar campaigns implemented successfully in other jurisdictions. It will include targeted messaging and specific delivery modes for First Nations peoples as well as people from culturally and linguistically diverse backgrounds, people with disability and LGBTIQA+ people.

2. The Queensland Government, as part of its implementation of recommendations 10 and 11 of *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland*, extend respectful relationships education to acknowledge and address children's access to pornography and counter harmful messages that may be learned when children access this material. Respectful relationships education will include information about the impacts and outcomes of non-consensual sharing of intimate images.

3. The Queensland Government develop and implement a strategy to increase the use of the Department of Education Respectful Relationships Education Program across all Queensland schools. This will include initiatives to ensure all children in Queensland access the same respectful relationships education content irrespective of where they go to school. The implementation of respectful relationships education in Queensland schools will be regularly monitored and measured and publicly reported upon to ensure community confidence. This will include, as a minimum, annual reporting in the Department of Education annual report.

4. The Queensland Government partner with community leaders and Elders in First Nations communities to co-design and implement local plans to enable women and girls who have experienced sexual violence to come forward and make a complaint without fear of, or actual, retaliation or retribution to them or their families, friends, or supporters.

5. The Queensland Police Service immediately improve the cultural capability of staff working in its communications centre and staff working in front-counter roles in police stations to ensure they are able to communicate meaningfully with all First Nations peoples who call for help, including in relation to sexual violence cases, and to appropriately assess their needs and allocate responses to first-response officers.

6. The Queensland Police Service review the translation and interpreting services it uses for First Nations peoples to ensure it provides appropriate assistance to enable police officers and civilian staff working in its communications centre and on front counters in police stations to communicate meaningfully with all First Nations peoples, including in relation to sexual violence cases.

7. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence review the reasonable excuses listed in section 229BC(4) of the Criminal Code to consider including an additional reasonable excuse that covers the provision of sexual assault counselling and medical care.

8. The Department of Justice and Attorney-General develop and implement a broad community awareness campaign with targeted messages for youth, sexual assault and health services about the scope and intent of the failure to report offence in section 229BC of the Criminal Code to support its ongoing implementation.

9. The Queensland Government, in consultation with people with lived experience, Aboriginal and Torres Strait Islander peoples and service and legal system stakeholders, develop, fund and implement a statewide model for the delivery of a professional victim advocate service. Victim advocates will provide individualised, culturally safe, trauma-informed support to victims of sexual violence to help them navigate through the service and criminal justice systems and beyond. The role of victim advocates will include:

- providing impartial information to victim-survivors about the criminal justice and service systems and options available to them
- supporting victim-survivors to understand and exercise their rights
- identifying and assisting victim-survivors to address their individual needs including through referrals to services
- liaise across the service and criminal justice systems on behalf of victim-survivors, and be the consistent point of contact for victim survivors throughout their criminal justice system journey

The model of victim advocates will:

- aim to empower those experiencing sexual violence
- enable advocates to provide holistic, individualised and specialised support, including specialised expertise and understanding of working with children and young people
- provide support regardless of whether a person chooses to engage with the criminal justice system
- give priority to people who are under-served and/or who face the most complex interactions between services and systems

10. The Queensland Government develop a five-year whole-of-government strategic investment plan for the services delivered and funded by government agencies to prevent and respond to sexual violence. Similar to recommendation 13 in *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland*, the investment plan will involve a comprehensive gap analysis of current services, supports and demand to guide investment decisions across government. The plan will include the provision of:

- equitable access and statewide coverage of service system supports for victims of sexual violence
- culturally capable services that provide choice to First Nations peoples, including services delivered by community-controlled organisations as a priority
- services to meet the needs of people from culturally and linguistically diverse backgrounds, people with disability and LGBTIQA+ people, children, young people and older people
- prompt and consistent services for people who have experienced recent sexual violence
- timely and available services for people who have experienced historical sexual violence (including child sexual abuse)
- an integrated and coordinated network of responses and investment across the health, service and justice systems
- innovative and contemporary approaches including trialing and testing new service and intervention responses to build an evidence base about what works, where, and for whom
- a redesigned referral pathway to improve access to services enabling victims to be directed to the right service at the right time and to support increasing awareness and expertise of professionals across the broader service system to coordinate service responses through multi-agency hubs and outreach support, to meet the needs of all victims across the state (recommendation 11)
- service system responses to support women and girls to address and heal from their sexual violence and trauma experiences to reduce the risk of them offending or re-offending
- a centrally controlled statewide forensic examination service (recommendation 32)
- adequate funding for services to meet existing demand and anticipated increases in demand that are likely to flow from recommendations in this report.

The strategic investment plan will be reviewed after 5 years to inform the development of a further 5 year plan.

11. The Queensland Government, with people with lived experience, Aboriginal and Torres Strait Islander peoples and service and legal system stakeholders co-design, fund and implement, a victim-centric, trauma-informed service model for responding to sexual violence that includes:

- a sustainable and coordinated model for the efficient and effective delivery of services equitably across Queensland that flexibly responds to demand pressures
- services and agencies working together in an integrated way including in co-located hubs to meet victim-survivors' needs as well as to support agency collaboration, similar to the Sexual Assault Response Team model

- the provision of outreach services from a co-located hub to fill identified service gaps in regional and remote areas
- a response available 24 hours a day, 7 days a week
- clearly defined, trauma-informed safe pathways for victims to access counselling and therapeutic support and the criminal justice system (including the role of victim advocates recommendation 13)
- place-based responses that are tailored to local needs and strengths.

The service model will be replicated throughout the state with a consistent name and branding to support help-seeking and referrals statewide.

12. The Queensland Government work with the Federal Government to improve digital inclusion in Queensland's rural, regional and remote areas, including through improving internet coverage to enable equitable access to essential services.

13. The Queensland Government embed a trauma-informed system of safe pathways for victim-survivors of sexual violence across the sexual assault and criminal justice systems to create a cohesive and consistent response to victim-survivors and greater accountability to reduce attrition rates following reports to police. These pathways will be designed from a victim's point of first contact with the service system and throughout their engagement with the service or criminal justice system. Actions supporting safer systems pathways will involve each agency:

- undertaking an audit of practice to identify areas requiring improvement (informed by experts and people with diverse lived experience).
- revising relevant guidelines, protocols and frameworks to respond to an identified need for improvements, and to promote accountability
- conducting training to ensure changes are implemented

Agencies will be audited on a yearly or bi-annual basis to ensure they are upholding practice principles that underpin safe pathways. Outcomes of the audit will be publicly reported.

14. The Queensland Government develop and implement a collaborative integrated inter-agency response to support victim-survivors of sexual violence through the criminal justice system and beyond. The collaborative response will be supported by:

- a statewide senior level interagency governance group involving relevant government agencies and the Office of the Director of Public Prosecutions to oversee collaboration and integration of services, measure and monitor performance, identify and respond to trends and issues, and facilitate consistent statewide practice
- clear roles and responsibilities for each agency and guidance for collaborative and integrated working relationships
- support implementation of the system of safe pathways for victim-survivors
- a local level governance group in each region or district to develop and support effective working relationships, measure and monitor performance at the local level and identify and respond to local practice issues
- new interagency guidelines and practice guidance to provide clarity about the roles and responsibilities of agencies across Government that need to work together in a coordinated and integrated way to meet the needs of victim-survivors of sexual violence.

Consideration should be had to whether sexual violence services should be incorporated in local governance arrangement. At a minimum, sexual violence services will be consulted on the development of new guidelines.

15. The Queensland Government consider establishing an independent and integrated peak industry body for sexual violence services (sexual violence services, women's health and wellbeing services and youth sexual violence services), as resources become available after expanding service delivery availability and accessibility. The main functions of the peak body will include:

- systemic advocacy, including supporting individual services to continue to participate and provide input into systemic and legislative reform processes
- service system capacity and capability building, including to identify and address common workforce, industrial and workplace health and safety issues
- improving statewide coordination and integration of services including with other government and non-government services

- assisting in the development and implementation of practice standards and quality improvement
- assisting in the development and implementation of mechanisms to collect and report on data to support ongoing performance improvement across the service system
- leveraging and maximising investment across the service system including improving coordination and integration between services.

16. The Queensland Government continue to fund the secretariat role within the Queensland Sexual Assault Network during the implementation of the recommendations in this report to support its member organisations to participate in the implementation process as required until a peak industry body (recommendation 15) is established.

17. The State Coroner as chair of the Domestic and Family Violence Death Review and Advisory Board (the Board) consider the Board undertaking a one off specific topic review of relevant past cases of domestic and family violence related deaths involving sexual violence, to examine and report matters within the Board's purpose and functions related to sexual violence within the context of domestic and family violence.

18. The Queensland Government establish a victims' commission as an independent statutory office to promote and protect the needs of victims of all violent offences. The functions of the commission should include:

- identifying systemic trends and issues including in relation to policy, legislation, practice or procedure and potential responses to address these issues
- assisting victims in their dealings with government agencies across the criminal justice system, including through oversight of how agencies respond to complaints
- monitoring and reviewing the effect of the law, policy and practice that impact victims of crime.

The commissioner will be authorised to exercise the rights of victims, upon their request and with consent, including in relation to their interactions with police, other government agencies and the courts (similar to the model in South Australian).

The commissioner will have a specific and dedicated focus on victims of domestic, family and sexual violence and First Nations victim-survivors, given their particular vulnerability. This focus may be through the establishment of a deputy commissioner role, or similar.

19. The Queensland Government review the *Charter of victims' rights* in the *Victims of Crime Assistance Act 2009* and consider whether additional rights should be recognised or if existing rights should be expanded. Ideally, this review would be undertaken by the victims' commissioner (recommendation 18).

20. The Queensland Government, in the next statutory review of the *Human Rights Act 2019*, include a specific focus on victims' rights and consider whether recognition of victims' rights or the *Charter of victims' rights* in the *Victims of Crime Assistance Act 2009* should be expanded and incorporated into the *Human Rights Act 2019*. The review should involve consultation with victims, First Nations peoples, service providers (including those working with victims of domestic, family and sexual violence victim-survivors) and legal stakeholders.

21. The Queensland Government require all agencies to report the number of complaints received in relation to the Charter of victims' rights, and how they have been dealt with, in their annual reports.

22. The Queensland Government provide a copy of this report to the Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence, established in response to recommendation 2 of *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland*, given paragraphs 3(e),4(a) and 11 of its terms of reference.

23. The Queensland Police Service continue to implement its *Sexual Violence Response Strategy 2021-2023* to promote greater consistency in police practices across the state and to deliver victim-centric and trauma-informed responses to victim-survivors of sexual violence.

24. The Queensland Police Service include in its annual report information about outcomes and impacts for victim-survivors as a result of initiatives and actions included in the *Queensland Police Service Sexual Violence Response Strategy 2021-2023* to ensure community confidence in police responses and attempts by the Queensland Police Service to improve those responses.

This reporting will include plain English explanations about how impacts and outcomes for victim-survivors are measured and what has been achieved, as well as whether initiatives and actions have been modified or adapted when intended impacts and outcomes have not been fully realised.

25. The Queensland Police Service independently evaluate the impacts and outcomes for victim-survivors achieved as a result of the implementation of the *Queensland Police Service Sexual Violence Response Strategy 2021-2023*, including initiatives and actions implemented as part of the Strategy, and report publicly on the results of that evaluation. The evaluation will include input from victim-survivors of sexual violence and people with lived experience.

26. The Queensland Police Service, in consultation with people with lived experience, First Nations peoples, service system and legal stakeholders, develop and implement a 'Safer Systems Pathway' program of practice to reinforce the need to promote victim-centred and trauma-informed approaches. A 'Safer Systems Pathway' approach will focus on implementing and promoting practices that counteract known trauma triggers for victim-survivors across their involvement with police. The 'Safer Systems Pathway' will ensure safer reporting experiences for victim-survivors, reduce attrition and maintain trust and confidence in police more broadly.

27. The Taskforce reaffirms recommendations 31, 32, 33 and 34 in *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland* in relation to developing a transformational plan, building specialist expertise and evidence-based and trauma-informed training and recommends, and subject to the outcomes of the Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence, recommends the implementation of these recommendations be expanded to include sexual violence.

28. The Queensland Police Service continue to implement ongoing competency based sexual violence and trauma-informed training across the organisation, including for frontline police, investigators, communications centre staff and staff working on front counters in police stations. This training should be evidence-based and trauma-informed and supported by professional supervision to ensure learnings are applied by individual officers and staff in practice.

29. The Queensland Police Service clarify the role and responsibilities of police Sexual Violence Liaison Officers within the Queensland Police Service, and for sexual assault service providers, other legal stakeholders and the community to improve understanding about the role and the scope and intent of the program, as well as the intended outcomes for victim-survivors of sexual violence.

30. The Queensland Police Service, in consultation with people with lived experience including , people from culturally and linguistically diverse backgrounds, LGBTIQA+ and people with disability, First Nations peoples, legal and service system stakeholders, review and update operational policies and procedures about the investigation of sexual violence cases. This will include reviewing policies and procedures relating to the use of pretext phone calls and questioning victim-survivors including about their intoxication at the time of the offence and matters that may be relevant to the excuse of mistake of fact. The review will ensure policies and procedures are evidence-based, trauma-informed and fit for purpose.

31. The Queensland Police Service ensure that only specialist trained officers interview victim-survivors in sexual offence cases when a victim agrees to a recording being used as their evidence in chief in a criminal proceeding, and that recordings are made in a controlled environment, such as police station or appropriate interview room, and are of a high audio-visual quality and where possible, conducted in a trauma-informed setting.

32. The Queensland Government establish and fund a statewide forensic examination service to ensure consistent timely and high-quality forensic medical services to all victims of sexual violence across Queensland. These services should be trauma-informed and culturally competent and comprise:

- permanent positions for qualified forensic clinicians supported by administrative and other necessary supports within each Hospital and Health Service throughout the state to perform forensic medical examinations, as well as professional supervision and support to doctors and nurses performing examinations throughout Queensland
- access to timely and high-quality forensic medical examinations 24 hours a day, seven days a week through emergency departments in each hospital by requiring all emergency

department doctors in Queensland to be trained to undertake sexual assault forensic medical examinations
- forensic nurse examiner positions within each Hospital and Health Service and Aboriginal and Torres Strait Islander health services to ensure statewide access to high-quality examinations, including in rural, regional and remote communities
- contemporary and innovative mechanisms to provide statewide professional supervision and support, including through the use of telehealth services to practitioners in remote communities

The funding for the statewide forensic medical service should form part of the strategic investment plan recommended by the Taskforce in recommendation 10.

33. Queensland Health, in partnership with the Department of Justice and Attorney-General, develop and implement ongoing competency based training and professional development for doctors and nurses who may be required to prepare reports and give evidence in criminal proceedings for sexual offences. Training materials will be regularly reviewed to remain up to date and align with changes to the law. This training and professional development will include appearing as an expert witness in criminal trials; for example, by the use of mock trials.

34. Queensland Health develop and implement a communication and education campaign to inform doctors who may be required to perform forensic medical examinations about the critical importance of this work, their role, and the support available to them to perform the role well. The campaign will aim to dispel myths about sexual violence and sexual consent and emphasise the value of timely forensic medical examinations for women and girls who are the victims of sexual violence.

35. Queensland Health and the Queensland Police Service review and revise the model for 'just in case' forensic medical examinations in Queensland and implement a new approach that ensures a full medical examination is undertaken with the same number and quality of samples taken in all forensic medical examinations. A revised model for Queensland should require samples to be stored for 12 months, extended for a further 12 months at the option of the victim-survivor. It will be the role of the Queensland Health statewide clinical forensic service to contact victim-survivors near the end of the first 12 months to seek their views about the retention of samples for a further 12 months.

The revised model will include clear protocols for the appropriate storage of samples to maintain integrity and ensure continuity of evidence.

36. Queensland Health review and update the Sexual Assault Investigation Kits used in Queensland to ensure they are at least of consistent quality as those used in New South Wales and Victoria. As a minimum requirement, kits must be DNA free, and contain DNA decontamination kits and an adequate number of swabs and testing apparatus.

37. Queensland Health immediately stop the practice of charging victims of sexual assault who are ineligible for Medicare for any component of the costs of a forensic medical examination and the medical treatment of any injuries incurred as a result of a sexual assault. This will include consultation with the Federal Government if necessary.

38. The Queensland Auditor-General consider including on the forward work plan for the Queensland Audit Office a review of forensic services in Queensland as a follow-up review to its *Report 21: 2018-19 Delivering forensic services* report and to review the implementation of the recommendations made by the Taskforce in this report.

39. Queensland Health, Queensland Forensic and Scientific Services and the Queensland Police Service develop and implement an interim memorandum of understanding and service level agreement, pending the outcomes of the Commission of Inquiry into Queensland DNA testing as a priority. The memorandum of understanding and service level agreement should include governance and oversight arrangements and outline roles, responsibilities and protocols for the timely and accurate sharing of information.

40. The Department of Justice and Attorney-General, Queensland Police Service and Queensland Health finalise and agree interagency guidelines on responding to people who have experienced sexual assault, as soon as possible. These guidelines will be regularly reviewed, in consultation with specialist sexual assault services, and incorporate outcomes of the Commission of Inquiry into Queensland DNA testing. The guidelines will align with the interim memorandum of understanding and service level agreement recommended by the Taskforce (recommendation 39).

41. Queensland Health, in consultation with the Chief Justice, Chief Judge and Chief Magistrate, Department of Justice and Attorney-General, Queensland Police Service, and legal stakeholders develop a clear, transparent, plain language guide for police, legal practitioners and judicial officers on the use and interpretation of forensic analysis of DNA samples in sexual violence and other cases. The guide, which will be publicly available, will include definitions for key scientific and statistical terms, the use of data and information commonly contained in analysis results and plain English explanations of the forensic analysis process, and will be regularly updated, to assist investigators, legal practitioners and judicial officers to understand and critically analyse forensic evidence.

42. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence review and amend if and where necessary Chapter 22 (Offences against Morality) and Chapter 32 (Rape and sexual assaults) to ensure that the Criminal Code:

- treats the capacity of children aged 12 to 15 years old to consent to sexual activity in a way that is trauma- informed and consistent with community standards
- addresses sexual exploitation of children and young people aged 12 to 17 years old by adults who occupy a position of authority over those children
- provides internal logic across the two chapters so that the applicable maximum penalties reflect a justifiable scale of moral culpability.

43. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence amend sections 348 (Meaning of consent) and 348A (Mistake of fact in relation to consent) to provide that:

a) consent must be freely and voluntarily 'agreed' rather than 'given'

b) the non-exhaustive list of circumstances in which consent cannot be freely and voluntarily agreed at section 348(2) be expanded to reflect the circumstances set out in section 61HJ of the *Crimes Act 1900* (NSW)

c) if the person who alleges the sexual violence has suffered resulting grievous bodily harm, those injuries must be taken to be evidence of a lack of consent unless the accused person can prove otherwise

d) no regard must be had to the voluntary intoxication of an accused person when considering whether they had a mistaken belief about consent to sexual activity

e) an accused person's belief about consent to sexual activity is not reasonable if the accused person did not, within a reasonable time before or at the time of the sexual activity, say or do anything to find out whether the other person consented to the sexual activity

f) the requirement in (e) above does not apply if the accused person can show, on the balance of probabilities, that they have a cognitive impairment, mental impairment or another type of impairment that impacted on the accused person's ability to communicate and that impairment was a substantial cause of the person not doing or saying anything.

g) the amendments in (e) and (f) above will not commence until:

  - the expert panel for sexual offence trials has been established (recommendation 80), and
  - appropriate and equitable funding has been provided to the Office of the Director of Public Prosecutions and Legal Aid Queensland to obtain any necessary expert reports.

The Bill containing these amendments will commence no sooner than six months after debate and passage of the Bill, to allow a comprehensive community education campaign to be undertaken.

44. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence amend sections 348 (Meaning of consent) to:

a) provide that a person who consents to a particular activity is not by reason only of that fact to be taken to consent to any other activity

b) provide a legislative example for the provision in a) that a person who consents to 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.

45. The Office of the Director of Public Prosecutions and Queensland Police Service review, update and publish the memorandum of understanding relating to the investigation and prosecution of sexual violence cases. The revised memorandum of understanding will include a requirement for each agency to annually publish information about the operation of the memorandum and its impacts and outcomes for victim-survivors of sexual violence. In developing these guidelines, regard will be had to the *Protocol between the Police Service and Crown Prosecution Service in the Investigation and Prosecution of Rape* adopted by police forces in England, Wales and Northern Ireland.

46. The Attorney-General and Minister for Justice, Minister for Women and Minister for Prevention of Domestic and Family Violence develop and establish an independent sexual violence case review board that is chaired by the proposed victims commissioner (recommendation 18). The board will consist of representatives from the Office of the Director of Public Prosecution, Queensland Police Service, professionals with sexual violence expertise, people with lived experience of sexual violence and Aboriginal and Torres Strait Islander peoples.

The board's functions and powers will be provided for in legislation and should include the independent review of sexual violence cases that are not progressed, or cases requested to be considered by the victims' commissioner.

The board will:

- independently review reports prepared and provided by the Queensland Police Service and the Office of the Director of Public Prosecutions about the respective agencies' involvement in each case
- identify opportunities and make recommendations to agencies and to the Queensland Government about practice, policy, performance and systemic improvement
- focus on encouraging a culture of continuous improvement and learning
- publish annual reports about the findings and recommendations of the board and the responses of agencies and the Government to the board's recommendations.

47. The Director of Public Prosecutions review the Queensland Director's Guidelines and include additional guidance about the prosecution of sexual violence related cases and the treatment of victim-survivors in these cases. The review will include incorporating legislative and systemic reforms progressed in response to this report.

The ODPP should work with the QPS to implement the revised Director's Guidelines to ensure staff and police are aware and understand how to use them.

This review should consider and incorporate necessary changes that:

- guide prosecutors, people acting on behalf of the Director and police to treat victims of sexual violence in a trauma-informed and culturally capable way that recognises the diverse and complex needs of individual victim-survivors
- review and update information about downloading information from a mobile phone or other device of a victim of sexual violence and the disclosure of relevant information, in accordance with legislative obligations and the process for defence lawyers to obtain additional information they consider to be relevant
- incorporate guidance either in the Director's Guidelines or other supporting guidance documents.

48. The Queensland Police Service work with relevant technology companies to explore the feasibility of establishing a mechanism to enable the partial download of information from the mobile phones and other devices of victim-survivors to enable only relevant information to be obtained and to protect and promote a victim-survivor's right to privacy, irrespective of the brand or type of phone.

49. The Director of Public Prosecutions independently review the role and operation of the Victim Liaison Officer program within the Office of the Director of Public Prosecutions to assess impacts and outcomes achieved including for victim-survivors of sexual violence and ensure the program is able to provide timely and up to date information to victim-survivors across Queensland at critical points in the criminal justice process.

50. The Queensland Police Service and the Office of the Director of Public Prosecutions establish a clear, robust, transparent and easily accessible internal 'right to review' process of police and prosecutorial decisions for victim-survivors of sexual violence. The internal right of review will

include an ability for a victim-survivor to request that a police decision to discontinue charges, and a prosecution decision made on behalf of the Director of Public Prosecution, be reviewed by another more senior officer. The outcome of the review could be for the decision to be changed, affirmed or an alternative decision made.

The outcome of an internal review process including the reasons for the decision will be clearly communicated, using plain English to the victim-survivor.

51. The Director of Public Prosecutions, in partnership with First Nations peoples, develop and implement a cultural capability plan that includes strategies to improve the cultural capability of all staff within the Office of the Director of Prosecutions.

52. The Women's Safety and Justice Taskforce reaffirms recommendation 49 in *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland*. The Department of Justice and Attorney-General, in developing a statewide plan to improve safety for victims of domestic and family violence including coercive control when attending courts, extend the plan to:

- improve the safety of all victim-survivors of sexual violence
- capital upgrades to provide courtroom technology for quality recording of evidence of special witnesses in sexual offence proceedings, to enable the recordings to be used any retrial.

53. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the special witness measures at section 21A of the *Evidence Act 1977* to state that a special witness is entitled (but may choose not) to give evidence in a remote room or by alternative arrangements in similar terms to section 294B of the *Criminal Procedure Act 1986* (NSW).

This recommendation will not commence until recommendation 49 of *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland* is implemented in relation to upgrading the technology in courtrooms throughout Queensland, to facilitate victims giving video link and telephone evidence.

54. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Evidence Act 1977* to provide that evidence of the victim or special witnesses in sexual offence proceedings be video and audio recorded and stored securely for use in any retrial, in similar terms to Chapter 6, Part 5, Divisions 3 and 4 of the *Criminal Procedure Act 1986* (NSW).

This recommendation should not commence until recommendation 49 of *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland* is implemented in relation to upgrading the technology in courtrooms throughout Queensland, to facilitate victims giving video link and telephone evidence.

55. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Evidence Act 1977* to provide that victim-survivors of sexual offences are able to choose whether to give a video-recorded interview with police, which would be able to tendered as all or part of their evidence-in-chief in court proceedings.

56. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to section 21 (Improper questions) of the *Evidence Act 1977*, to include examples of improper questions including those provided at section 41 of the *Evidence Act 1995* (NSW).

57. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Evidence Act 1977* to introduce the use of ground rules hearings for domestic and family violence and sexual offences, in similar terms to sections 389A-389E of the *Criminal Procedure Act 2009* (Vic).

58. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress the following amendments to the *Criminal Law (Sexual Offences) Act 1978*:

- amend section 4 of the *Criminal Law (Sexual Offences) Act 1978* to reflect that 'leave should not be granted unless the court is satisfied that the probative value of any evidence about a

complainant's sexual activities outweighs any distress, humiliation, embarrassment or other prejudice that the complainant may suffer as a result of its admission', and
- amend section 5 of the *Criminal Law (Sexual Offences) Act 1978* to clarify that the court should be closed when a complainant is giving evidence, whether during a pre-recording of evidence in court or remotely; during the playing of the pre-recorded evidence at trial or on appeal; and while the complainant is giving evidence in person in court.

59. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments that remove section 4 and 5 *Criminal Law (Sexual Offences) Act 1978* from the Act to form dedicated parts in both the *Evidence Act 1977* and *Youth Justice Act 1992* that deal with proceedings for sexual offences.

60. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to Part 3A of the *Penalties and Sentences Act 1992* regarding non-contact orders, to extend the duration of a non-contact order to 5 years.

61. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence give consideration to a review of the naming of sexual offences contained in the Criminal Code, in particular in Chapters 22 and 32, any offences referring to 'carnal knowledge', and the offence of maintaining a sexual relationship with a child.

62. The Department of Justice and Attorney-General, after receiving the evaluation of the Queensland Intermediary Scheme pilot program, consider whether the scheme should be expanded to apply to proceedings involving adult victims of sexual violence.

63. To ensure that victim-survivors of sexual violence have access to legal information and advice, the Department of Justice and Attorney-General continue to fund:

- the provision of legal support in relation to protected counselling communication, and
- the provision of information and advice to victims of sexual assault who are witnesses in trials.

64. The Department of Justice and Attorney-General, when evaluating the proposed victim advocate model (recommendation 9), consider whether there is a need for funded legal representation for victim-survivors of sexual violence during criminal justice processes.

65. The Queensland Government, when reviewing the legislative changes implemented in response to this report (recommendation 186), consider whether there is a need to extend the right of victim-survivors to be represented during trial proceedings beyond matters related to protected counselling communications.

66. The Women's Safety and Justice Taskforce reaffirms the following recommendations from *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland* and recommends they be expanded to include sexual violence as appropriate:

Recommendation 38: Legal Students (undergraduate and postgraduate) and new prescribed areas of knowledge

Recommendation 39: Currency of knowledge

Recommendation 40: Continuing professional development in domestic and family violence and trauma-informed practice

Recommendation 41: Domestic and family violence training for the Office of the Director of Public Prosecutions, Police Prosecution Corps , Legal Aid Queensland and community legal services

Recommendation 42: Specialist knowledge of domestic and family violence and referrals

Recommendation 47: Trauma-informed practice framework for practice for legal practitioners in Queensland.

67. The Office of the Director of Public Prosecutions and Police Prosecution Corps, Legal Aid Queensland including preferred suppliers who do legally aided work, and community legal centres, including the Aboriginal and Torres Strait Islander Legal Service, require all legal staff to participate in training on working with victim-survivors of sexual violence, including best-

practice in communicating with First Nations women and girls, and responding to evidence of trauma and abuse histories.

68. The Women's Safety and Justice Taskforce reaffirms the following recommendations from *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland* and recommends they be extended to include sexual violence and issue related to women and girls as accused persons and offenders in the criminal justice system:

Recommendation 3: Independent Judicial Commission

Recommendation 42: Specialist Accreditation Scheme

Recommendation 48: Judicial Officers Training

69. The Chief Judge, in consultation the Chief Justice, President of the Mental Health Court of Queensland, Chief Magistrate, the Queensland Government, people with lived experience, First Nations peoples, and legal and service system stakeholders, consider establishing a specialist list for sexual violence cases in the District Court of Queensland that:

- be overseen by specially trained judicial officers
- aim to set a fixed trial date with early allocation of legal counsel and a focus on resolving pre-trial issues to avoid adjournments of the trial where possible and in the interests of justice
- supported by dedicated registry staff who would work to proactively case manage matters, resolve pre-trial issues, reduce delays and provide greater certainty to parties
- involve training for legal practitioners to support the operation of the list and improve practice (recommendations 66,67)
- is able to service remote or regional areas

The Queensland Government will provide adequate resources and assistance to the Chief Judge to design and implement the specialist court list in a way that continues to acknowledge the independence of the court and its judges.

70. The Queensland Government, consult with the Chief Justice, President of the Mental Health Court of Queensland, Chief Judge and Chief Magistrate to review how courts in Queensland deal with sexual violence cases to identify opportunities to improve the efficiency and timeliness within which matters are finalised in accordance with trauma-informed principles and approaches.

The review will aim to identify issues, impacts and opportunities for improved case management and include consideration of the Office of the Director of Public Prosecutions taking over carriage of all sexual offence proceedings from the pre-committal stage. The review should include consultation with people with lived experience, First Nations peoples, and service system and legal stakeholders.

71. The Chief Judge in consultation with the Chief Justice, President of the Mental Health Court of Queensland, and Chief Magistrate, the Queensland Government, people with lived experience, First Nations peoples, and service system and legal stakeholders consider developing and implementing a plan to improve court case management of sexual violence cases in the District Court of Queensland to operate as part of the specialist court list. The plan should incorporate:

- recommendation 72 of the *Criminal Justice System report* of the *Royal Commission into Institutional Responses to Child Sexual Abuse*;
- recommendation 5 of the Queensland Audit Office *Delivering Forensic Services Report 21: 2018-19*;
- the findings and recommendations of the review undertaken in relation to recommendation 70 about the review of how courts in Queensland deal with sexual violence cases, and
- consideration of relevant elements of the Better Case Management initiative in the United Kingdom, including case conferencing (recommendation 72), a process to facilitate early pleas of guilty, and a handbook that sets out clear milestones and timeframes.

The case management of sexual violence cases should aim to: increase efficiency; reduce the number of court appearances and the number of matters that unnecessarily progress to hearing; and improve effectiveness and quality of responses to victims and witnesses.

The Queensland Government will provide adequate resources and assistance to the Chief Judge to design and implement the court case management plan in a way that continues to acknowledge the independence of the court and its judges.

72. The Chief Judge, in consultation with the Chief Justice, President of the Mental Health Court of Queensland, and Chief Magistrate, the Queensland Government, people with lived experience, Fist Nations peoples, service system and legal stakeholders, consider designing and implementing a pilot of a voluntary case conferencing model in sexual violence cases in the District Court of Queensland. The voluntary case conferencing model should focus on bringing defence and prosecution representatives in individual cases together early in a mediated conference to try to identify and resolve the matters in dispute with the aims of either avoiding a trial or reducing the length and complexity of trials and facilitating the earlier preparation of cases. All involved must be astute to ensure the victim is well supported and able to make free and informed decisions in or arising out of this model.

The Queensland Government will provide adequate resources and assistance to the Chief Judge to design, implement and evaluate the pilot in a way that continues to acknowledge the independence of the court.

The evaluation of the pilot should consider the impacts and outcomes achieved including in relation to efficiency and timeliness in the finalisation of matters and impacts and outcomes for victims of crime.

73. The Chief Justice and Chief Judge consider developing and implementing a sexual assault benchbook for the Supreme and District Courts of Queensland to support judicial officers and lawyers in sexual violence cases. The sexual assault benchbook could include relevant procedural requirements and timeframes, data and statistics, information about community attitudes and rape myths, information about the impacts of trauma on victim-survivors of sexual violence and relevant laws and procedure.

74. The Director of Public Prosecutions, in consultation with the Queensland Government, consider designing and implementing a new operating model for the prosecution of sexual violence cases within the Office of the Director of Public Prosecutions. The model should include governance and leadership arrangements, the development and implementation of ongoing competency based training and professional development for all staff and lawyers, and support for staff and lawyers to avoid vicarious trauma. The model should ensure all staff and lawyers are able to provide trauma-informed responses to victims of sexual violence and recognise the specialist expertise required in the prosecution of sexual violence cases. The model will support the Office of the Director of Public Prosecutions to implement recommendations in this report within the Office and to actively participate in the implementation of recommendations across the broader criminal justice system.

The Queensland Government will provide adequate resources and assistance to the Director of Public Prosecutions to design, implement and evaluate the operating model in a way that continues to acknowledge the independence of the Director's role.

75. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence amend the law relating to similar fact (coincidence) and propensity (tendency) evidence, in relation to all offences of a sexual nature including child sexual offences outlined in Chapters 22 and 32 of the Criminal Code in Queensland, by amending the *Evidence Act 1977* to include provisions in terms of sections 97, 97A, 98 and 101, contained in Part 3.6 of the *Evidence Act 1995* (NSW).

76. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence amend the *Evidence Act 1977* to expand the admission of preliminary complaint evidence in section 4A of the *Criminal Law (Sexual Offences) Act 1978* to all domestic violence offences. In consideration of the expanded use of preliminary complaint evidence, section 4A of the *Criminal Law (Sexual Offences) Act 1978* should be moved in its entirety into the *Evidence Act 1977* as a discrete Division.

77. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Evidence Act 1977* providing for jury directions to be given that address the following misconceptions about sexual violence:

- the circumstances in which non-consensual sexual activity occurs
- responses of a victim to non-consensual sexual activity when it occurs

- lack of physical injury to the victim-survivor, violence or threats made by the accused person
- victim-survivor responses to giving evidence about an alleged sexual offence at trial
- behaviour and appearance of a victim-survivor at the time of an alleged sexual offence
- perceived flirtatious or sexual behaviour (such as holding hands or kissing) implying consent to later sexual activity

Commencement of the Bill containing the amendments should be delayed for a period that is sufficient for the Director of Public Prosecutions' 'Director's Guidelines' (recommendation 47) and the Supreme and District Courts Benchbook (recommendation 73) to be updated to reflect the new provisions and for training of lawyers and judicial officers to take place.

78. The Department of Justice and Attorney-General commission an evaluation of the impact and outcomes of legislative provisions about jury directions on misconceptions about sexual violence, five years after the commencement of the legislation. The evaluation should include research that will inform the Queensland Government to better understand how jury directions, expert evidence, and misconceptions about sexual violence affect a jury member's understanding of the evidence and the task they must perform.

79. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Evidence Act 1977* that:

- allow for the admission of expert evidence about the nature and effects of domestic and family violence and sexual violence, in similar terms to section 388 *Criminal Procedure Act 2009* (Vic).
- adopt sections 76 -80, and section 108C of the Uniform Evidence Law, with any necessary adaptations, for the purpose of criminal proceedings for domestic and family violence offences and sexual offences in Queensland.

These amendments should not commence until the expert panel (recommendation 80) has been established and appropriate and equitable funding has been provided to the Office of the Director of Public Prosecutions and Legal Aid Queensland to obtain expert reports.

80. The Department of Justice and Attorney-General establish an expert evidence panel for sexual offence proceedings that can be used by the prosecution, defence and the court. The independent sexual violence case review board (recommendation 46) should be involved in offering advice on the establishment and maintenance of the panel.

81. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Criminal Law (Sexual Offences) Act 1978* to:

- update and modernise the language of all provisions in the Act generally
- clarify that it is a defence to the prohibition against publication of identifying information about victims of sexual offences that an adult victim-survivor with capacity consented to the publication and that the publication was consistent with any limitations set by the victim-survivor
- ensure that publication continues to be prohibited where publication would identify or lead to the identification of another victim-survivor without their consent or a child (including a child offender)
- include a requirement that the court, when considering making an order allowing the publication of identifying information, must take into account the views and wishes of the victim-survivor
- enable victim-survivors of sexual violence to self-publish identifying information, at any stage of the proceedings, so long as it does not identify another victim-survivor without their consent or a child (including a child offender) and does not put at risk the fairness of future court proceedings
- enable children who are victim-survivors of sexual offences to self-publish, or consent to the publication of, identifying information with safeguards to ensure that the child has the capacity to consent, is making a free and informed decision, and has understood the potential consequences of their decision. The publication must not identify another victim-

survivor (without their consent) or a child (including a child offender) and must not put at risk the fairness of future court proceedings
- enable the Director-General of the Department of Justice and Attorney-General to release transcripts of proceedings for sexual offences for approved research purposes on the basis that anonymity of victim-survivors would be preserved based on the model in section 189B of the *Child Protection Act 1999*.

The recommended amendments will not commence until the Queensland Government has developed and implemented a guide for the media to support responsible reporting of sexual violence (recommendation 84)

82. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Recording of Evidence Regulation 2018* to allow the Director-General to provide transcripts released for approved research under the *Criminal Law (Sexual Offences) Act 1978* free or at a reduced cost.

83. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Criminal Law (Sexual Offences) Act 1978* to:

- remove the restriction on publication of the identity of an adult accused of a sexual offence before a committal hearing where it would not identify or tend to lead to the identification of a victim-survivor
- require a court to take the views of the alleged victim into consideration when deciding whether to order that the identifying details of an accused person should be suppressed.

The recommended amendments will not commence until the Queensland Government has developed a guide for the media to support responsible reporting of sexual violence (recommendation 84).

84. The Queensland Government develop a guide for the media to support responsible reporting of sexual violence that:

- includes content about the nature and impacts of sexual violence
- includes content to counter common misconceptions about sexual violence
- refers to changes in the law
- provides guidance about reporting on the particular vulnerability of and potential adverse impacts on Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds, people with disability, older people and LGBTIQA+ people
- provides a framework for media organisations to incorporate a trauma-informed approach to reporting and interviewing.

The development of the guide will be followed by implementation activities with media across the state to promote the guide and encourage compliance.

85. The Queensland Government advocate for nationally consistent media standards for reporting of sexual violence. The standards should include a trauma-informed approach that mitigates risks associated with reporting on and interviewing victims of sexual violence.

86. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Domestic and Family Violence Protection Act 2012* and *Domestic and Family Violence Protection Regulation 2012* to:

- enable media representatives approved by the Chief Magistrate to make an application to the court for de-identified transcripts of proceedings so as not to lead to the identification of a person involved in proceedings, or of children, while maintaining the confidentiality and protections on publication in the *Domestic and Family Violence Protection Act 2012*
- require the court, when considering an application for a de-identified transcription, to consider whether the provision of such transcript is in the public interest, subject to the principles in the *Domestic Family Violence Protection Act 2012* that the safety and wellbeing of people who fear or experience domestic and family violence is paramount
- clarify that the prohibition on publication does not extend to criminal proceedings under the Act, including proceedings for contravention of a domestic violence order whether or not the publication of those proceedings would identify a party (other than a child) to a domestic violence order.

The recommended amendments will not commence until the Queensland Government has implemented Recommendation 6 of *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland* to review the Domestic and Family Violence Media Guide.

87. The Minister for Children and Youth Justice and Minister for Multicultural Affairs progress amendments to the *Youth Justice Act 1992* to make it clear that victims of sexual violence committed or alleged to have been committed against them by a child offender can disclose information for the purpose of obtaining therapeutic counselling and support.

88. The Minister for Children and Youth Justice and Minister for Multicultural Affairs progress amendments to the *Youth Justice Act 1992* to enable relevant government and non-government agencies to share information, including confidential information for the purposes of coordinating and providing services and supports to victims of sexual violence committed or alleged to have been committed by a child offender, with necessary safeguards and protections.

89. The Minister for Children and Youth Justice and Minister for Multicultural Affairs undertake an independent review of the use of youth justice conferencing in cases involving sexual offences, with a particular focus on the experience and justice outcomes achieved for victim-survivors. The review will identify any opportunities for improvement to better meet the needs of victims and child offenders, including in relation to sexual offences.

90. The Queensland Government, led by the Department of Justice and Attorney-General, develop a sustainable long-term plan for the expansion of adult restorative justice in Queensland and appropriately fund that plan for victim-survivors to access this option throughout the state.

91. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence co-design with people with lived experience, Aboriginal and Torres Strait Islander peoples and service and legal system stakeholders a victim-centric legislative framework for adult restorative justice in Queensland. The framework will:

- articulate overarching principles for the use of restorative justice in adult criminal cases, with particular principles and safeguards for its use in relation to sexual offences and domestic and family violence-related offences
- set out operational processes including a clear framework for referrals and suitability assessment processes
- set out how restorative justice interacts with the criminal justice system
- establish criteria and process to assess the qualifications, expertise and suitability of convenors and provide for their functions and powers
- consider the diverse needs of victim-survivors, including First Nations victims, and how best to structure the framework to meet individual needs
- provide adequate protections and safeguards for participants, underpinned by a gender-sensitive and trauma-informed approach.

Legislation to establish an adult restorative justice program in Queensland will not commence until a sustainable and funded long-term plan for the expansion of adult restorative justice in Queensland has been developed (recommendation 90).

92. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence fund and undertake a pilot restorative justice program for adult sexual and domestic and family violence offences, to be independently evaluated to inform further statewide roll-out.

The commencement of a pilot will be supported by additional investment and the commencement of a legislative framework.

93. The Queensland Government develop and implement a whole-of-government strategy for women and girls in the criminal justice system as accused persons and offenders. The strategy will incorporate a public health approach and aim to prevent women and girls offending, reduce the risk of reoffending and improve the experiences of women and girls who are involved in the criminal justice system as accused persons and offenders.

The strategy will be co-designed with women and girls with lived experience, service system and legal stakeholders and First Nations peoples. It will incorporate the implementation of recommendations made by the Women's Safety and Justice Taskforce in Part 3 of this report.

The strategy should have a particular focus on better meeting the needs of First Nations women and girls to complement the implementation of recommendation 1 from *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland*, and to contribute to Queensland's achievement of the targets in the National Agreement on Closing the Gap.

94. The Queensland Government adopt a systemic justice reinvestment approach to address the underlying causes of women and girls' offending behaviour. The justice reinvestment approach will include a focus on supporting women and girls to address the factors that contribute to their offending behaviour earlier to prevent them from offending and reoffending. The approach will take into consideration the outcomes achieved by the Cherbourg Justice Reinvestment project (recommendation 183).

The justice reinvestment approach will aim to shift investment across the criminal justice system to earlier supports and services over time.

95. The Queensland Police Service, in consultation with women and girls with lived experience, First Nations peoples, women with disability, women from culturally and linguistically diverse backgrounds, LGBTIQA+ people, and service system and legal stakeholders develop and implement a gender-responsive and trauma-informed approach for responding to women and girls in the criminal justice system, including the review of the Queensland Police Service Operational Procedures Manual and other existing policy and procedures and the development and implementation of additional guidance. The reviewed policies and procedures and additional guidance should be trauma-informed and culturally capable and will specifically address responses to meet the needs of First Nations women and girls.

96. The Queensland Police Service develop and implement competency based ongoing training for all police, communications centre and front counter staff in police stations to improve responses to women and girls including First Nations women and girls. This on-going training should implement and enhance existing training about trauma-informed informed responses.

The impacts and outcomes achieved through the ongoing implementation of gender responsive and culturally capable training within the Queensland Police Service, including improved impacts and outcomes for women and girls should be measured and monitored and independently evaluated. Information about impacts and outcomes achieved should be publicly reported, including as a minimum in the Queensland Police Service annual report.

97. The Minister for Police and Corrective Services and Minister for Fire and Emergency Services progress amendments to the *Police Powers and Responsibilities Act 2000* to provide a legislative framework for adult cautioning processes and to require police to consider all available and appropriate diversion options before charging an adult with an offence, other than an indictable offence that cannot be dealt with summarily, to encourage greater use of adult cautions, police drug diversion, and adult restorative justice conferencing where appropriate.

98. The Minister for Police and Corrective Services and Minster for Fire and Emergency Services progress amendments to the *Police Powers and Responsibilities Act 2000* to expand the scope of the Police Drug Diversion Program to include possession of small amounts of illicit drugs in addition to cannabis.

The development of the amendments should take into consideration approaches in other jurisdictions.

99. The Queensland Government fund and establish a legal advice hotline to support the expanded use of adult diversion options so that accused persons have access to independent legal information and advice and understand their rights and the potential risks and benefits of admitting guilt to enable a diversion.

100. The Queensland Government, in consultation with people with lived experience, First Nations peoples, and service system and legal stakeholders continue to explore conditional cautioning and deferred prosecution agreement schemes as viable options for diverting low-level offenders from the criminal justice system. In doing so, the Government will be mindful of the risks of net-widening and the need to ensure conditions do not expose women and other vulnerable populations to additional sanctions. This should include considering whether to pilot a program incorporating protections and safeguards for women and girls based on the deferred prosecution model in recommendation 34 of the Queensland Productivity Commission *Inquiry into imprisonment and recidivism* report.

101. The Minister for Police and Corrective Services and Minister for Fire and Emergency Services progress amendments to the *Summary Offences Act 2005* to repeal the offences at section 8 (Begging in a public place) and section 10 (Being intoxicated in a public place) as soon as possible.

102. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence decriminalise sex work, noting the framework for this to occur is beyond the scope of the terms of reference of the Women's Safety and Justice Taskforce and is currently being considered by the Queensland Law Reform Commission.

103. The Minister for Police and Corrective Services and Minister for Fire and Emergency Services and the Attorney-General and Minister for Justice, Minister for Women and the Minister for the Prevention of Domestic and Family Violence review the operation of offences within the *Summary Offences Act 2005* and the *Regulatory Offences Act 1985* to consider the impact they have on women and girls and whether the social and financial costs of retaining each offence outweigh the benefits. The review should have a specific focus on the impacts of these offences on Aboriginal and Torres Strait Islander women.

The Queensland Government request the Parliament of Queensland Legal Affairs and Safety Committee to undertake the review.

104. The Minister for Health and Ambulance Services and Attorney-General and Minister for Justice, Minister for Women and the Minister for the Prevention of Domestic and Family Violence review the operation of the offences contained at section 9 (Possession dangerous drugs) and section 10 (Possessing things) of the *Drugs Misuse Act 1986* to consider the impact these offences have on women and girls, the efficacy and value for money of maintaining a criminal justice response to these offences and whether there are other more effective ways of responding to illicit drugs, including through a health system response. The review should have a specific focus on the impacts for Aboriginal and Torres Strait Islander women.

The Queensland Government request the Parliament of Queensland Health and Environment Committee to undertake the review.

105. The Minister for Police and Corrective Services and Minister for Fire and Emergency Service and Minister for Children and Youth Justice and Minister for Multicultural Affairs establish an independent review into issues impacting on the time women and girls are held in police watchhouses. The review will consider matters relating to the transportation and capacity issues affecting the transfer of women and girls between watchhouses managed by the Queensland Police Service, prisons managed by Queensland Corrective Services, and detention centres managed by Youth Justice.

The review will identify safe and appropriate ways to minimise the length of time women and girls are held in police watchhouses and ensure compatibility with the *Human Rights Act 2019*. The outcome of the independent review will be made publicly available.

106. The Minister for Police and Corrective Service and Minister for Fire and Emergency Services progress amendments to the *Police Powers and Responsibilities Act 2000*, the *Corrective Service Act 2006* and the Minister for Children and Youth Justice and Minister for Multicultural Affairs progress amendments to the *Youth Justice Act 1992* to:

- provide a statutory limit on the period of time women and girls can be held in a police watchhouse
- clearly provide for minimum standards of the care for women and girls while they are held in a police watchhouse and require compliance with these standards
- clearly identify agency responsibility for the transportation of adults and children between police watchhouses, correctional facilities or youth detention centres.

107. The Minister for Police and Corrective Service and Minister for Fire and Emergency services progress amendments to the *Police Powers and Responsibilities Act 2000* to require a register to be kept and information to be regularly published about:

- the number of adults and children held in police watchhouses, and
- the length of stays
- compliance with the minimum standards of care for people detained in police watchhouses.

This will include recording information in the register and publishing information broken down by the location of the watchhouse and the age, gender, and Indigenous status of detainees.

108. The Queensland Government reduce the number and proportion of women and girls held on remand and reduce the length of time women and girls spend on remand. This should be a priority outcome included in the whole of government strategy for women and girls in the criminal justice system recommended by the Taskforce (recommendation 93) and form part of the whole-of-government and community strategy to address the overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system and to meet Queensland's Closing the Gap targets recommended by the Taskforce in its first report (recommendation 1, *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland*).

This important priority in the whole-of-government strategy will be supported by measurable targets that are monitored regularly and reported publicly.

109. Queensland Corrective Services ensure that:

- Townsville Women's Correctional Centre is provided with the capacity to hold women on remand separately from sentenced women
- all women held on remand in Queensland are separated from sentenced women as far as practicable, and
- all women held on remand in Queensland are treated in a way that is appropriate to their unsentenced status and in accordance with their human rights.

110. The Attorney-General and Minister for Justice Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to section 16(2) of the *Bail Act 1980* to require a police officer or court considering bail to have regard to the probable effect that a refusal of bail would have on the person's family or dependants, and to consider a person's responsibility to family and dependants when making bail conditions.

111. The Department of Justice and Attorney-General independently review the impact on women and girls of amendments made to the *Bail Act 1980* in 2017 to consider whether there have been any unintended consequences in relation to women and girls, including those who may have been misidentified as a primary perpetrator of domestic and family violence. This review should take into consideration the findings and recommendations made throughout the *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland* report about domestic and family violence and coercive control being a pattern of behaviour over time requiring consideration of the relationship as a whole.

112. The Queensland Police Service, in consultation with people with lived experience, First Nations peoples, service system and legal stakeholders and the Department of Justice and Attorney-General and Department of Children Youth Justice and Multicultural Affairs, develop and pilot gender-responsive bail assessment tools to assist police assess whether to grant police bail and to make submissions to court in relation to bail for women and girls. The assessment tool should provide guidance for officers to assess available information against evidence-based and gender-informed risk indicators. It will assist officers to determine whether, if granted bail, there would be an unacceptable risk that a women or girl to would fail to appear or reoffend.

The tools should be culturally competent, and trauma informed and their accuracy and reliability should be independently verified.

The pilot should be independently evaluated to consider the impacts and outcomes for women and girls and the evaluation used to consider whether the use of the tools should be rolled out more broadly.

113. The Queensland Government expand the provision of early bail support programs and early intervention services for women and girls to areas beyond South East Queensland and to women on remand across Queensland to ensure women and girls are supported to apply for bail at the earliest opportunity and to understand and comply with bail conditions.

These services will be provided by non-government organisations funded by government.

114. The Queensland Government and Legal Aid Queensland independently review and amend government priorities and Legal Aid Queensland policies and guidelines to ensure women are not disadvantaged by priorities for grants of aid for legal representation in criminal law matters or the provision of duty lawyer services.

The review will consider whether additional funding or new grants of aid are required to ensure equitable access to grants of aid in criminal law matters by women and girls.

115. The Queensland Government establish and fund the provision of an independent legal assistance program in each women's correctional facility in Queensland to provide legal information and support to women, assist them to apply for legal aid funding where applicable, or to obtain legal advice and representation, if required, in a variety of criminal, family and civil law matters. This program will include legal assistance officers with relevant qualifications and expertise to regularly attend each women's correctional facility to provide a service to women who require it.

The program will include assisting women to prepare an application for bail or parole. The program should be funded and administered by Queensland Corrective Services and delivered by an appropriate non-government organisation or legal service.

116. The Queensland Government fund Legal Aid Queensland, and other community legal services or lawyers to provide legal advice and representation to women, upon referral from the independent legal assistance program in each women's correctional facility. This should include funding for advice and representation for women in custody in relation to a variety of criminal and civil law matters, including family law and child protection matters and applications for bail and parole.

117. Queensland Corrective Services provide women in custody with access to free telephone calls to obtain legal advice and representation in a variety of criminal, civil, family law and child protection matters as well as applications for bail and parole. This will include making calls for the purposes of engaging a lawyer to obtain legal advice and representation.

118. The Women's Safety and Justice Taskforce reaffirms recommendations 39-47 of *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland* in relation to improving how lawyers respond to victims of coercive control and domestic and family violence, and recommends that in implementing these recommendations:

- the Queensland Government, Queensland Law Society and the Bar Association of Queensland expand the scope to include gendered issues for women and girls who are accused persons and offenders, including best practice in communicating with First Nations women and girls, and understanding the nature and impact of trauma and abuse and how this may contribute to women's offending behaviour.
- the Office of the Director of Public Prosecutions and Police Prosecution Corps, Legal Aid Queensland, and community legal centres, including the Aboriginal and Torres Strait Islander Legal Service, require all legal staff to participate in training about gendered issues for women and girls who are accused persons and offenders, including best-practice in communicating with First Nations women and girls, and understanding the nature and impact of trauma and abuse and how this may contribute to women's offending behaviour.

119. The Women's Safety and Justice Taskforce reaffirms recommendations 3 and 48 of *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland*. Judicial officers in Queensland should consider participating in professional development about gendered issues and trauma-informed practice relevant to the experiences of women and girls as accused persons and offenders. This professional development should preferably be coordinated and provided by a Queensland Judicial Commission.

120. The Department of Justice and Attorney-General ensure that each of the existing specialist court models and court-based programs operating in Queensland, including the Murri Court located in the Magistrates and Childrens Courts; the Queensland Drug and Alcohol Court; Court Link integrated court assessment, referral and support program; and Specialist Domestic and Family Violence Courts incorporate a renewed focus on meeting the needs of women and girls who are accused persons and offenders.

This will be supported by public reporting in existing annual reporting processes including participant data broken down by age, gender, Aboriginal and Torres Strait Islander status and court outcomes to provide increased transparency and accountability in relation to outcomes for women and girls.

121. The Department of Justice and Attorney-General, in consultation with Elders, respected persons and Community Justice Groups review how the Murri Court can be further strengthened and improved to better meet the needs of women and girls, including consultation with women and girl participants. The review will build upon the successful outcomes achieved to date and identify opportunities for further gender-responsive and culturally-safe practices across the Murri Court and Queensland Magistrates Courts more generally.

122. The Chief Judge and judges of the District Court of Queensland consider establishing a Murri Court program within the District Court. Consideration should be given as part of the design of a model to meeting the needs of First Nations women. The model should draw upon the successful elements of the model implemented in Victoria, with necessary adaptations. This could include consideration of whether to initially pilot a program.

The Queensland Government will provide adequate resources and assistance to the Chief Judge to design and implement a Murri Court model in the District Court in a way that continues to acknowledge the independence of the court and its judges.

123. The Department of Justice and Attorney-General ensure that the evaluation of the Queensland Drug and Alcohol Court incorporates a gendered analysis to identify how the court is meeting the needs of women and can encourage women to participate in the program. The outcome of the evaluation will inform consideration of ongoing implementation and any future expanded roll out, including how best to meet the needs of women.

124. The Department of Justice and Attorney-General, work with the Chief Magistrate, in a way that does not jeopardise judicial independence, to pilot a women's list within the Court Link program operating within the Magistrates Court. The women's list will aim to identify and address the underlying needs of women in contact with the criminal justice system through risk assessment, connect women to gender-responsive case management, and support women to address their needs while they are on bail.

125. The Queensland Government, consult with women with lived experience as accused persons and offenders, service system and legal stakeholders who support them, and First Nations peoples as part of the implementation of:

- recommendation 90 to develop a sustainable long term plan for the expansion of an adult restorative justice program in Queensland and
- recommendation 91 to design a legislative framework for an adult restorative justice program .

A model for adult restorative justice in Queensland will incorporate safeguards and protections to ensure it is safe and effective for women who are accused persons and offenders.

126. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to section 9(2) of the *Penalties and Sentences Act 1992* to:

- require the court to consider the hardship that any sentence would impose on the offender in consideration of an offender's characteristics, including gender, sex, sexuality, age, race, religion, parental status, and disability
- require the court to consider, if relevant, the offender's history of abuse or victimisation
- require the court to consider probable effect that any sentence or order under consideration would have on any of the person's family or dependants, whether or not the circumstances are 'exceptional'
- expand subsection 9(2)(p) to clarify that cultural considerations include the impact of systemic disadvantage and intergenerational trauma on the offender.

127. The Queensland Government respond to and implement the recommendations of the Queensland Sentencing Advisory Council's *Community-based sentencing orders, imprisonment and parole options* report, noting the need to expand suitable, gender-specific services that support women being sentenced to community-based orders rather than short periods of imprisonment. This will include consideration of Community Correction Order programs that target offenders for whom the current court based diversion options are insufficient but who are also not eligible to utilise the Queensland Drug and Alcohol Court in Brisbane.

128. The Department of Justice and Attorney-General, in partnership with Queensland Health, expand eligibility for and use of the Illicit Drugs Court Diversion Program by:

- expanding the number of previous diversions the person may have received
- trialling the use of the program without admission such as where the offender has not pleaded guilty but has been found guilty.

129. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Penalties and Sentences Act 1992* and the *Corrective Services Act 2006* to require a court to consider ordering

a pre-sentence report when determining whether a community-based order may be suitable for an offender who is otherwise facing a period of imprisonment. These amendments should not commence until Queensland Corrective Services develops and implements a plan for sustainable expansion of court advisory services across Queensland (recommendation 130).

130. Queensland Corrective Services develop and implement a plan for the sustainable expansion of court advisory services across Queensland to support greater use of pre-sentence reports (recommendation 129).

131. The Queensland Government better meet the health and wellbeing needs and disability support needs of women and girls in adult correctional centres and youth detention centres. This will include ensuring there is a gendered response to meet the particular needs of women and girls in custody.

The implementation of this recommendation will include providing health and wellbeing assessment, treatment and ongoing care through timely access to doctors and nurses 24 hours a day, seven days a week.

132. The Queensland Government advocates with the Federal Government to enable eligible women and girls who are in custody to access Medicare and the National Disability Insurance Scheme.

133. Queensland Corrective Services and the Department of Children Youth Justice and Multicultural Affairs work together collaboratively to design and implement culturally appropriate family and parenting support to women and girls in custody who are mothers, to enable them to maintain a connection with their children and help mothers to care safely for their children when they are released from custody.

This could include expanding existing Intensive Family Support and Child and Family Wellbeing Services to enable them to provide services to women in custody within their catchment area.

Access to family support services should form part of a woman's transition from custody plan and continue after release from custody.

134. The Queensland Government take immediate steps to better meet the needs of women and girls in custody who are pregnant, and the needs of children living in custody with their mothers.

These steps will include that:

- ensure that Queensland Health provides health services, medical care and treatment for children living in custody with their mothers, beyond emergency treatment to a standard equivalent of that available to children living freely in the Queensland community
- Queensland Corrective Services provides essential baby items required for the daily care and wellbeing of children in custody with their mothers, free of charge including nappies, wipes, clothing, footwear, cot linen, baby food, medicine, dummies, formula, breast milk pump and bottles
- On entry to custody, women are asked if they might be pregnant and, if so, are monitored and provided with all necessary health, wellbeing and medical antenatal care and treatment throughout the duration of their pregnancy from a suitably trained medical practitioner
- women in custody who experience pregnancy loss are provided health, wellbeing and medical care
- women in custody who are pregnant are provided appropriate medical care in an appropriate location during the birth of their baby
- women in custody receive all necessary health, wellbeing and medical postnatal care from a suitably trained medical practitioner.

135. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Coroners Act 2003* to include the death of a child born to a woman while she is in custody, stillbirths experienced by women in custody, and the death of a child living in custody with their mother as a reportable death in custody for the purposes of the *Coroners Act 2003*.

136. Queensland Corrective Services immediately move to introduce the widespread use of non-invasive screening technology to end the practice of strip searches in all women's correctional facilities. During the implementation of non-invasive screening technology, Queensland Corrective Services will implement policies, procedures and practices for strip searches of women that are trauma-informed and compatible to the greatest extent possible with women's

human rights, in accordance with the advice received from the Queensland Human Rights Commission (recommendation 137).

137. The Queensland Human Rights Commission exercise its functions under section 61(c) of the *Human Rights Act 2019* to review policies, procedures and practices relating to the use of strip searches on women in Queensland correctional facilities in relation to their compatibility with human rights and provide advice to Queensland Corrective Services about how compatibility could be improved.

138. The Minister for Police and Corrective Services and Minister for Fire and Emergency Services review the impact of section 68A of the *Correctives Services Act 2006* on women prisoners and make necessary amendments to ensure that women with low security classifications are held in low security facilities to the greatest extent possible.

139. Queensland Corrective Services develop and implement a framework for practice within all women's correctional services that includes policies, procedures and practices that support staff to have the necessary skills and competencies required to effectively and appropriately manage women in prison. This will include:

- ongoing competency based trauma-informed, gender responsive and culturally capable training for staff at both an intensive and entry-level, and
- practical guidance about managing women in a correctional setting who have experienced child and other sexual violence, physical violence and domestic and family violence
- other initiatives, including professional supervision and support.

140. The Department of Children, Youth Justice and Multicultural Affairs develop and implement a framework for practice within youth justice services including detention centres that includes policies, procedures and practices that support staff to have the necessary skills and competencies required to effectively and appropriately manage girls in the youth justice system including in detention. This will include:

- ongoing competency based trauma-informed, gender responsive and culturally capable training to staff at both an intensive and entry-level and
- practical guidance about managing girls in the youth justice system who have experienced child and other sexual violence, physical violence and domestic and family violence
- other initiatives, including professional supervision and support.

141. The whole-of-government strategy for women and girls in the criminal justice system, recommended by the Taskforce (recommendation 93) include a key focus on:

- meeting the care, wellbeing, medical and disability support needs of women and girls including those who are in custody
- improving access to rehabilitation programs as a priority for women and girls to reduce re-offending and recidivism, including for those in custody
- meeting care and wellbeing needs by improving access to expanded psychological care to include non-acute mental health interventions and trauma support in custody, with continuity upon release
- maintaining contact with children, connection with family, community and culture
- improving access to education as a priority for women and girls to reduce re-offending and recidivism, including for those in custody
- ensuring women's human rights protected under the *Human Rights Act 2019* are not unjustifiably limited.

142. The Minister for Police and Corrective Services and Minister for Fire and Emergency Services amend the *Corrective Services Act 2006* to include a requirement for Queensland Corrective Services to take reasonable steps to ensure that women in a corrective services facility in Queensland are managed in ways that meet the following standards:

- their dignity and rights are respected at all times
- the need for physical care and basic hygiene will be met, including being provided with adequate food, accommodation and clothing
- emotional and psychological needs will be met
- maintaining connection to family, community and culture
- education, training and employment needs will be identified and adequately met
- rehabilitation needs will be adequately identified and met

- dental, medical, disability and other therapeutic needs will be adequately assessed and met
- the right to maintain family relationships is encouraged and supported.

Additionally, the provision will require that the chief executive reports annually on how they have addressed and met these standards.

143. The Minister for Children and Youth Justice and Minister for Multicultural Affairs review section 263 of the *Youth Justice Act 1992* to ensure it requires Youth Justice services to take reasonable steps to ensure that girls in youth detention in Queensland are managed in ways that meet the standards outlined in recommendation 142.

144. Subject to the passage of the Inspector of Detention Services Bill 2021, the Minister with administrative responsibility for the Act include in the terms of reference for the review to be undertaken as soon as practicable five years after its commencement, consideration of whether the Act should be amended to include a function for the inspector to receive and manage complaints and investigate incidents in the first instance.

145. The Minister for Police and Corrective Services and Minister for Fire and Emergency Services progress amendments to Chapter 6 of the *Corrective Services Act 2006* to strengthen the complaints processes for women detained at a correctional centre including by providing the following minimum protections:

- ensuring confidentiality for people making complaints, the fact a complaint has been made and for the nature and content of a complaint
- creating a duty for corrective services officers to report improper conduct toward prisoners by other corrective services officers or staff (for example Queensland Health staff) working in a correctives services facility. There should be disciplinary consequences for failing to report such conduct.
- that a complainant should not be subjected to reprisal, or attempted reprisal by Queensland Corrective Services or any other person for making the complaint
- creating an offence for a person who knowingly participates in the reprisal against a prisoner for making a complaint under the *Corrective Services Act 2006*, either directly or indirectly with consideration to be given to creating a circumstance of aggravation if the offender is a corrective services officer

146. Subject to the passage of the Inspector of Detention Services Bill 2021, the Inspector of Detention Services consider issuing inspection standards in accordance with its functions and powers about the management of women and girls in correctional facilities and detention centres relating to:

- Wellbeing, medical and dental care including pre and post-natal care, and disability support
- Accommodation and physical care including hygiene and sanitation
- Managing and meeting the needs of children in prisons with their mothers
- Emotional and psychological care and trauma support
- Connection to family, community and culture
- Education, training and employment
- Rehabilitation programs and initiatives
- Planning and supporting transition from custody and reintegration into the community.

147. Queensland Corrective Services and the Department of Children, Youth Justice and Multicultural Affairs improve the provision of rehabilitation programs offered to women and girls, including those on remand by:

- ensuring that there is increased delivery of gender specific rehabilitation programs, including drug and alcohol and domestic and family violence programs) for women and girls
- including a focus on continuity of rehabilitation programs upon release from prison and detention
- reviewing all programs and services being delivered to women and girls within the corrections and youth justice systems with a view to developing a service delivery model based on the Victorian Women's Services Review with necessary adaptations.

This will form part of the strategy for women and girls in the criminal justice system recommended by the Taskforce (recommendation 93).

148. The Queensland Government accept and implement:

- recommendations 35 (programs for prisoners) and 44 (post-prison support) of the *Women in Prison 2019* report of the Anti-Discrimination Commission Queensland, and
- recommendations 17 (remand programs), 19 (throughcare) and 21(recidivism research and implementation plan) of the Queensland Productivity Commission *Inquiry into imprisonment and recidivism* report with respect to programs on remand.

149. The Minister for Police and Corrective Services and Minister for Fire and Emergency Services progress amendments to the *Corrective Services Act 2006* and the Minister for Children and Youth Justice and Minister for Multicultural Affairs progress amendments to the *Youth Justice Act 1992* to remove any doubt that participation in a program or engagement in a service while on remand in custody, and anything said or done whilst participating in a program or engaging in a service, cannot be used in evidence in any criminal, civil or administrative proceedings relating to the offence for which the detainee has been charged.

150. The Queensland Government establish and fund a specialist mental health and trauma support program to provide acute and non-acute assessment, treatment and care to women and girls in custody in Queensland, including those on remand. This program will support women and girls while they are in custody, during their transition into the community and beyond to appropriately manage mental health issues and to heal from trauma experiences including in response to domestic and family violence and sexual violence. The program will deliver services that are trauma-informed and gender responsive and will aim to help women and girls to address factors contributing to their offending behaviour and reduce the risk of re-offending.

151. Queensland Corrective Services, as part of its *Women's Strategy 2022-2027* and the associated Action Plan:

- urgently progress the replacement of the Prisoner Telephone System to reduce costs and other accessibility issues
- fund some, or all prisoner phone calls, letters and emails to family, children and Elders
- increase facilitation of calls with family and children and Elders via the internet including regular virtual visits
- cease the practice of withholding family contact opportunities for breaches of discipline
- ensure that calls to Child Safety are included in the Common Auto Dial List in each prison on an ongoing basis.

152. Queensland Corrective Services, as part of its *Women's Strategy 2022-2027* and the associated Action Plan, and the Department of Children Youth Justice and Multicultural Affairs improve access to quality education programs for women and girls in custody, including online programs. This must include offering basic numeracy and literacy programs and financial literacy to all women and girls who require them, whether they are serving sentences in custody or the community.

Women and girls in prison and youth detention will have access to a variety of education and training programs that can continue after their release back into the community and that provide a relevant and meaningful pathway to employment. Queensland Corrective Services and Youth Justice will work with universities and vocational education and training providers to further promote and enable access to a variety of courses and programs in prisons and detention that can continue after release and that provide a pathway to meaningful employment.

153. Queensland Corrective Services and the Department of Children, Youth Justice and Multicultural Affairs have responsibility, as part of a transition plan for women leaving prison and girls leaving detention (recommendations 169 and 170), to actively facilitate ongoing participation in educational programs commenced in prison or detention, when they are released.

154. The Queensland Government review current employment, wages and working conditions for all women in custody, whether on remand or serving a sentence in Queensland, to ensure that allowances, employment and remuneration offered are compatible with human rights and relevant industrial requirements.

155. The Queensland Government accept and implement recommendation 23 (improving reintegration of prisoners) of the Queensland Productivity Commission *Inquiry into imprisonment and recidivism report* and recommendation 39 (investigating merits of work

release) of the Anti-Discrimination Commission Queensland *Women in Prison 2019 report*. This will include:

- investigating the viability of a work release scheme tailored to meet the needs of women in Queensland, such as the 'Sentenced to a Job' program in the Northern Territory, and
- progressing necessary legislative amendments to enable work release to be included as a reason for granting leave from prison.

156. The Queensland Government accept and implement recommendation 21 (rehabilitation outcomes –Work and Development Orders) of the Queensland Productivity Commission *Inquiry into imprisonment and recidivism* report and if there is a cost-effective option available, expand Work and Development Orders to be available to women who are in custody and those subject to community corrections orders.

This work should form part of the Queensland Corrective Services *Women's Strategy and Action Plan 2022-2027*.

157. The Queensland Revenue Office extend the timeframe that enforcement of a State Penalties Enforcement Registry debt is suspended after a person is released from custody beyond the current period of one month and develop a written policy for the consideration of applications for further extension.

The Queensland Corrective Services will ensure the policy is made available to women on reception in all women's prisons and the Queensland Revenue Office will further ensure that the:

- application criteria are clear
- criteria used by the decision maker and the decision making process is clear
- policy and practice are compatible with human rights
- policy is also available on the Queensland Treasury Website (State Penalties Enforcement Registry Page)
- language in the policy is simple and clear and an easy read version and versions in multiple languages are made available.

158. Queensland Corrective Services notify Queensland Revenue Office when a person with a State Penalties Enforcement Registry debt enters custody so that the State Penalties Enforcement Registry can immediately suspend enforcement action. Upon notifying the person that enforcement action has been suspended, the State Penalties Enforcement Registry should notify the incarcerated person about the suspension of enforcement their State Penalties Enforcement Registry debt and the opportunity for them to make application for a Work and Development Order, subject to the implementation of recommendation 156.

159. Queensland Revenue Office collect deidentified demographic data relating to gender, Indigenous status and disability for the purposes of the administration and improvement of the State Penalties Enforcement Registry scheme. Deidentified demographic data about State Penalties Enforcement Registry debt should be published annually.

160. The Queensland Government develop and implement a 'Time Served Scheme' based on the Victorian model enabling incarcerated people to address their unpaid fines by converting them into imprisonment days that can be serviced concurrently.

161. The Department of Communities, Housing and Digital Economy review the operation of the fair absence from your home policy and ensure that the:

- application and assessment criteria are clear
- women in the criminal justice system who are at risk of entering custody or are in custody are aware of the policy and supported to apply
- simple plain English and easy read information about the policy is available and accessible including in multiple languages, including for women entering prison.

162. The Queensland Government design and implement a scheme to enable some personal belongings and documentation of women and girls who require it to be collected and safely stored while they are in custody. The scheme should draw upon the program operated by Corrective Services New South Wales and delivered by Prisoners Aid in that state.

163. The Queensland Government, in consultation with women and girls with lived experience, First Nations peoples, service system and legal stakeholders accept and implement recommendation

10 of the Anti-Discrimination Queensland *Women in Prison 2019* report and design and implement a model to identify women and girls who are at risk of being refused bail and women eligible to apply for parole, to assist them to access appropriate accommodation, services and supports so that they are not held in custody longer than is necessary.

The model will include a collaborative and integrated service system response involving relevant government agencies and non-government services to provide tailored responses to meet women and girls individual needs including in relation to housing and homelessness, health, mental health, drug and alcohol abuse, disability support, youth justice, justice and corrective services. The model will aim to reduce the number of women in custody on remand and those in custody who are eligible to apply for parole and to support them to address factors contributing to their offending behaviour and reduce re-offending.

164. The Department of Communities, Housing and Digital Economy continue to extend and expand the Next Step Home program for women and girls to assist them to find safe and affordable housing to prevent them being detained in custody longer than is necessary. The program should be made available statewide.

165. The Minister for Communities and Housing, Minister for Digital Economy and Minister for the Arts review and amend the *Residential Services (Accreditation) Act 2002* to ensure that providers of boarding houses and transitional accommodation are required to meet reasonable standards and provide safe environments and appropriate supports for women residents. The legislation should provide sufficient regulatory oversight to ensure residents are given appropriate supports and standards of hygiene, maintenance and safety and there are sufficient powers to ensure standards can be enforced.

166. The Queensland Government work with the Federal Government and local councils to highlight the housing and homeless issues for women and girls who are involved in the criminal justice system as victims of domestic, family and sexual violence and as accused persons and offenders in Queensland and commit to addressing these issues as an urgent priority.

The Queensland Government will consider mechanisms for all levels of government to come together with people with lived experience, First Nations peoples, and legal and service system stakeholders to generate options for solution, including at a specially convened summit.

167. Queensland Corrective Services and the Department of Children Youth Justice and Multicultural Affairs develop comprehensive accessible information about the services and supports available to help women and girls transition from custody. This information will be provided to all women and girls when they enter custody. it will include clear easy to understand information about how and when these services and supports can be accessed and the role and responsibility of Queensland Corrective Services and Youth Justice to ensure they have a release plan in place prior to their release from custody (recommendations 169 and 170).

168. The Queensland Government design and implement a process to enable women and girls in custody to apply for relevant identification documents so they have them prior to their release, as far as possible. This should include birth certificates, drivers' licences, immunisation records, Medicare eligibility documentation and other documentation necessary upon their release. The Queensland Government should work with relevant Federal Government agencies to establish processes enable women and girls to access documentation while they are in custody.

169. The Minister for Police Corrective Services and Minister for Fire and Emergency Services progress amendments to the *Corrective Services Act 2006* to make clear that Queensland Corrective Services has an obligation to ensure women in its custody have an appropriate release plan in place prior to their release from custody. The amendments should make clear that the development of the plan should commence when a women enters custody and an appropriate plan should be in place within a reasonable period before a women is released.

The planning approach will encourage women to take responsibility for their own care and wellbeing after release and empower them to seek assistance to reduce their vulnerability, and to ensure they have access to the help and assistance they need to reduce the risk of re-offending. An appropriate plan should include information about how the following needs will be met:

- suitable accommodation and housing
- health, and disability support
- mental health, drug and alcohol, and trauma support
- education, training and employment

- access to adequate income
- connection to family, community and culture
- ongoing rehabilitation support
- other needs required by an individual woman.

The legislative amendments will make clear that Queensland Corrective Services has an obligation to continue to support women to implement their release plan for a reasonable period after their release.

The legislative provisions will enable Queensland Corrective Services to meet its obligations by engaging funded non-government organisations to perform some or all of the functions required to meet these obligations.

170. The Minister for Children and Youth Justice and Minister for Multicultural Affairs progress amendments to the *Youth Justice Act 1992* to make clear that Youth Justice has an obligation to ensure girls in its custody have an appropriate release plan in place prior to their release from custody. The amendments should make clear that the development of the plan should commence when a girl enters detention and an appropriate plan should be in place within a reasonable period before she is released.

The planning approach will appropriately recognise the girl's age and level of maturity and the guardianship, family and other supports the girl has in the community. An appropriate plan should include information about how a girl's needs will be met following her release including:

- suitable accommodation and housing
- health, and disability support
- mental health, drug and alcohol, and trauma support
- education, training and employment
- access to adequate income
- connection to family, community and culture
- ongoing rehabilitation support
- other needs required by an individual girls.

The legislative amendments will make clear that Youth Justice has an obligation to continue to support girls to implement their release plan for a reasonable period after their release including after they reach the age of 18 years' old.

The legislative provisions should enable Youth Justice to meet its obligations by engaging funded non-government organisations to perform some or all of the functions required to meet these obligations.

171. The Queensland Government, in consultation with people with lived experience, First Nations peoples, and service system and legal stakeholders design, fund and implement a consistent statewide model with a single service name to support women and girls to plan for their release from custody and to provide and coordinate supports and services for a reasonable period after their release.

The model will be delivered by funded non-government organisations, which could include different providers in different locations including Aboriginal and Torres Strait Islander community controlled organisations. The model will provide support to women and girls to assist them to reintegrate back into the community irrespective of where they live.

172. Queensland Corrective Services continue to support and work in partnership with the *Transforming Corrections to Transform Lives* project led by the Griffith Criminology Institute including to support implementation of the program and its evaluation. The results of the evaluation of the project will inform ongoing delivery of the model.

173. The Department of Justice and Attorney-General provide information and assistance to eligible women in custody who require a blue card after they are released to make an application to Blue Card Services. This assistance will continue through the application process and take into consideration the additional barriers women in custody face in engaging with the complex assessment process. This assistance will also include Blue Card Services visiting women's correctional facilities across Queensland to provide information and assistance to enable women in custody to make an application before they are released.

174. The Attorney-General and Minister for Justice, Minister for Women and the Minister for the Prevention of Domestic and Family Violence review the operation and implementation of the

Working with Children (Risk Management and Screening) Act 2000 in relation to women and girls who have been involved in the criminal justice system as accused persons or offenders to ensure it is operating in a manner consistent with its objectives. The review will take into consideration the particular impacts of the operation and implementation of the Act for First Nations women.

175. The Queensland Government include women and girls' access to meaningful employment as a key priority in the whole of government strategy for women and girls in the criminal justice system (recommendation 93), recommended by the Taskforce.

176. That the Queensland Government work with private and public sector employers to consider the viability of implementing a pathway to employment scheme and 'buddy system' in Queensland. Such a scheme should provide a pathway for women and girls with a criminal history, including those who have been in custody, to gain the experience they need to find longer term meaningful employment in public and private sector roles.

177. The Department of Justice and Attorney-General develop a plan to replace the Queensland Wide Inter-linked Courts database with a contemporary and innovative database that supports the effective and efficient administration of courts in Queensland and enables information about victim-survivors and accused persons and offenders to be recorded and extracted, in compliance with existing safeguards and protections relating to the collection, storage and use of personal information by government agencies. Data will be able to be extracted from the system to be analysed to demonstrate demand pressures and measure system performance at critical points. The system will have capacity to enable extraction of data for analysis to inform the allocation of funds and demonstrate the need for additional investment, and to ensure policy development, practice and service delivery meet community expectations.

178. The Department of Justice and Attorney-General improve its data analytics capability to enable it to better analyse available data to identify trends and issues across the courts and legal process, measure and monitor performance and model impacts of anticipated demand pressures. This will enable the department to better advise the Queensland Government about the impacts of changes across the system, the impacts of proposed strategies to reduce demand and demonstrate the need for additional investment. Improved data analytics capability within the department will also support it to better exercise strategic leadership across the system and to maintain and ensure the ongoing use of the Demand and Financial Model or other whole of criminal justice system tools.

179. The Queensland Government clarify agency roles and responsibilities and allocate a clear responsibility for whole of criminal justice system oversight and strategic leadership including in relation to advising on evidence-based whole of Government and whole of system solutions to reduce the rate of offending and re-offending, and the rate of imprisonment. This criminal justice system leadership role will include measuring and monitoring demand and the impacts of proposed initiatives across the system including ensuring the maintenance and use of the Demand and Financial Model developed as part of the Criminal Justice System Reform Framework and Action Plan and other relevant models and tools. The leadership role will also include leading a collaborative process to design and oversee the implementation of whole of government and whole of system strategies and initiatives, including the strategy for women and girls who are involved in the criminal justice system recommended by the Taskforce (recommendation 93).

180. The Queensland Government design and implement a mechanism for improved data integration across the criminal justice system so that the information about victim-survivors and accused persons and offenders is able to be recorded, tracked and monitored across the system to better inform the identification of trends and issues and strategic policy, practice and service delivery improvements.

181. The Queensland Government, in establishing a victims' commissioner as recommended by the Taskforce (recommendation 18) include as functions of the commission:

- to develop and coordinate a multidisciplinary research program to inform policies and practices, in consultation with stakeholders and relevant agencies;
- to develop and implement mechanisms to regularly collect and share the views and experiences of victim-survivors including of domestic and family violence and sexual violence.

182. The Queensland Government investigate the viability, benefits and value for money of establishing an independent body in Queensland to provide advice on factors that affect the distribution and frequency of crime, the effectiveness, efficiency or equity of the criminal justice system, and to ensure that information is available and accessible to agencies, stakeholders, and the community. Such a body will assist the Queensland Government and agencies with administrative responsibility across the criminal justice system to identify issues and trends, design and implement strategies that reduce crime, and provide a more efficient, effective and equitable criminal justice system. The investigation should draw upon the benefits and learnings of the New South Wales Bureau of Crime Statistics and Research. The outcome of the investigation should be publicly reported.

183. The Queensland Government recommit to and revitalise the justice reinvestment project in Cherbourg including by providing clarity about scope, intended outcomes and timeframes. This will include strengthening governance arrangements, resources, supervision and support provided to the project and embedding an independent evaluation framework that incorporates clear outcomes and impacts that are regularly measured and monitored. This will draw upon the successes achieved and lessons learned by the Maranguka Justice Reinvestment project in Bourke in New South Wales. The evaluation of the Cherbourg project will take into consideration impacts and outcomes achieved for women and girls and inform the further expansion of justice reinvestment approaches in other locations.

184. The Queensland Government develop and implement a whole of government monitoring and evaluation plan to measure and monitor outcomes achieved across the sexual violence service system including criminal justice system responses to sexual violence. The monitoring and evaluation plan will:

- track progress towards outcomes sought to be achieved through the implementation of the Taskforce's recommendations and across the system
- support the implementation of *Prevent. Support. Believe. Queensland's Framework to address Sexual Violence*
- incorporate qualitative and quantitative measures, including the voices of victim-survivors to measure impacts and outcomes.

185. As part of the whole-of-government strategy for women and girls involved in the criminal justice system as accused persons and offenders (recommendation 93), the Queensland Government develop and implement a monitoring and evaluation plan to measure and monitor outcomes achieved across the criminal justice system. The monitoring and evaluation plan will:

- track progress towards outcomes sought to be achieved through the implementation of the Taskforce's recommendations and across the system
- support the implementation of the whole-of-government strategy
- incorporate qualitative and quantitative measures, including the voices of women and girls who are accused persons and offenders to measure impacts and outcomes.

186. The Queensland Government, include as part of legislative reforms introduced in response to recommendations in this report a statutory requirement for the operation of the relevant amendments to be reviewed five years from when they commence. This will include legislative amendments to the *Bail Act 1980*, Criminal Code, *Criminal Law (Sexual Offences) Act 1978*, *Corrective Services Act 2006*, *Evidence Act 1997*, *Penalties and Sentences Act 1992*, *Police Powers and Responsibilities Act 2000* and the *Youth Justice Act 1992*. The statutory review of the operation of these legislative amendments will include consideration of the impacts and outcomes achieved for women and girls.

187. The Women's Safety and Justice Taskforce reaffirms recommendations 87 and 88 in *Hear her voice: Report One, Addressing domestic and family violence and coercive control in Queensland*, and recommends that the roles of ministerial directors-general level governance mechanisms implemented in response to those recommendations are expanded to include responsibility for implementing the recommendations made in this report.

188. The Women's Safety and Justice Taskforce reaffirms recommendation 89 made in its first report, *Hear her voice: Report One, Addressing domestic and family violence and coercive control in Queensland*, and recommends that the role of an independent implementation supervisor be expanded to include responsibility for overseeing implementation of the recommendations made in this report.

Part 2: Women and girls' experiences of the criminal justice system as victim-survivors of sexual violence

The Taskforce examines the formidable barriers to justice faced by victim-survivors of sexual violence. These include beliefs and attitudes about what she did to contribute to the violence. What clothes was she wearing? How did she act towards the offender? How many drinks had she had? Will the police officer treat her with respect? Or will they too infer she might just have 'buyer's remorse'? Already traumatised, she is shamed and fearful of the accusations, exaggerations and lies she will face in court. Will anyone believe her? What's the point of seeking justice?

Chapter 2.1: Women and girls' experiences as victim-survivors of sexual violence

The Taskforce has heard that Queensland's criminal justice system is not working for victims of sexual assault. We have heard that it mostly retraumatises those brave enough to report their assault. In this chapter we draw upon insights from victim-survivors, and those working alongside them, to identify ways to improve outcomes for women and girls who have experienced sexual violence.

Background

The statistics on prevalence and characteristics of sexual violence against women and girls

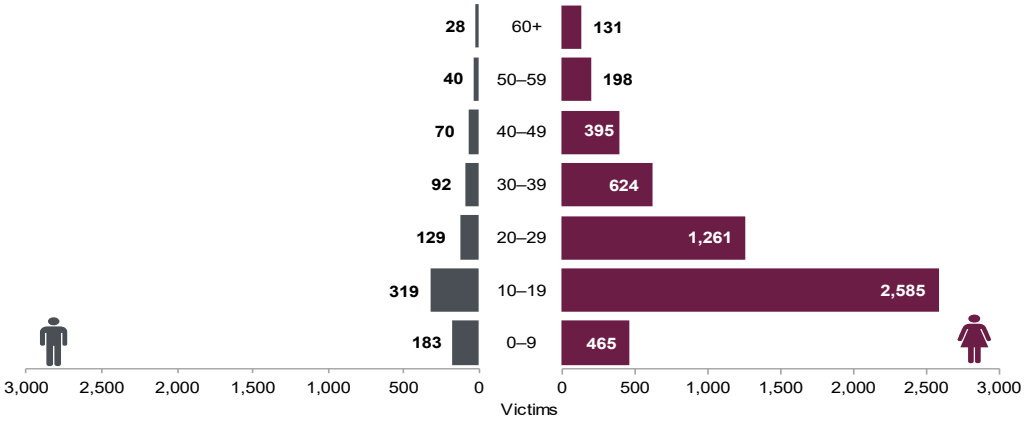
Most victims of sexual violence are women and girls

Most victims of sexual violence are females. The Australian Bureau of Statistics (ABS) 2016 Personal Safety Survey (the 2016 PSS) estimated that 1 in 5 women (18% or 1.7 million) and 1 in 20 men (4.3% or 428,800) have experienced sexual violence since the age of 15.[1] Almost half (47%) of all female victim-survivors who experienced sexual assault were aged under 15 years at the time of the incident.[2] Furthermore, international prevalence study estimates that up to 1 in 4 females and 1 in 6 males experience child sexual abuse.[3]

In the latest Queensland Government Statistician's Office (QGSO) crime report for 2020-21 (the QGSO crime report), there were 7,921 reported victims of sexual violence during the reporting period.[4] Of those reports, 2,691 involved offences of rape and attempted rape. The remainder involved other types of sexual offences (5,230). The majority of those who reported sexual offences in Queensland in 2020-21 and whose gender was recorded were female (86.8% or 5,665), while 13.2% (866) were male.[5] This difference is even greater for those who reported cases involving rape and attempted rape, with 90.63% (2,120) females and 9.2% males (217). [6]

The QGSO crime report showed that across every age group, females outnumbered males as reported victim-survivors of sexual violence.[7] Of all reported sexual offences, females aged 10–19 years were the most frequent victims (39.6%) in 2020-21.[8]

Victims[(a)] of sexual offences, 2020–21



(a) Chart excludes records for 20 reported sexual offences victims whose age and/or sex was unknown or not stated.

Source: Queensland Government Statistician's Office, Queensland Treasury, *Crime report, Queensland, 202-21.*

Most alleged perpetrators of sexual violence are men and boys

The majority of alleged perpetrators of sexual violence are male. The 2016 PSS reported that about 1.7 million adults in Australia have been sexually assaulted by a male perpetrator – this is six times the number of victims who were sexually assaulted by a female perpetrator.[9]

The QGSO crime report shows males are more likely to be accused of sexual violence than females.[10] In 2020-21, males aged between 30 and 39 years were reported to have committed the highest number of sexual violence offences (581) compared with all other age groups.[11]

These statistics demonstrate that sexual violence is a gendered crime.

Women and girls are most likely to be sexually assaulted by someone known to them and in their own home

The 2016 PSS found that the majority (60%) of women who have been sexually assaulted have experienced this type of violence more than once. Women who were sexually assaulted by a male were likely to have known them (87% or 553,7000).[12] The 2016 PSS found sexual assault was most often occurring in the victim-survivor's home (40% or 252,400) or the offender's home (17% or 109,400).[13] This trend is reflected in the figures from the QGSO crime report, which show that sexual assaults in Queensland most frequently occur in a residential dwelling (approx. 74.8%).[14] It is less common for sexual assaults to occur in public.[15]

The highest rates of reported sexual violence against women and girls in Queensland are recorded in rural, regional and remote areas

The QGSO crime report shows the reported victimisation rate of sexual violence (rape and attempted rape) was highest in an area defined as the Queensland outback, which groups rural and remote locations in an area that covers regions including Mt Isa, Longreach, and up to the Cape (102.6 per 100,000 persons).[16]

Other locations with high rates of sexual violence are Townsville (84.3 per 100,000 persons) and Ipswich (75.1 per 100,000 persons).[17]

The Queensland Sexual Assault Network (QSAN) told the Taskforce victim-survivors are waiting for up to 12 months to obtain sexual violence counselling from its member organisations in certain regions.[18] There are gaps in funded sexual violence counselling services in many rural, regional and remote locations. The Taskforce heard from the Department of Justice and Attorney-General (DJAG) that it is reviewing funding models in recognition of the increasing pressures on sexual assault services.[19] The Taskforce also heard from DJAG that a shortage of specialist skills has contributed to gaps in the delivery of sexual assault services.

Sexual violence is underreported but the number of reports made is increasing

Significantly more people experience sexual violence than the number who report it. According to the 2016 PSS, between 2006 and 2016 as few as 13% of female victims of sexual assault in Australia contacted police about the most recent incident.[20]

The latest Personal Safety Survey indicated that between 2006 and 2016, only 13% of female victims of sexual assault in Australia contacted police about the most recent incident.

Despite this, the number of reports of sexual violence made to police is increasing. Accounting for population growth, the sexual assault victimisation rate increased nationally from 69 victims per 100,000 persons in 1993 to 107 victims per 100,000 persons in 2020.[21] Nationally, there were 27,505 victims of sexual assault recorded by police in 2020, which was an increase of 2% from the previous year and the

highest recorded in 28 years.[22] Reports may have been made by a victim, witness, or other person, or they may have been detected by police.

It is noted that while this data may not reflect when the offence occurred, the high number of reports coincided in part with the initial stages of the responses to the COVID-19 pandemic. These increases may not reflect an increase in the prevalence of sexual violence in the community - they could be a result of victims having increased awareness of what constitutes sexual assault and greater confidence to report it. The increase in the rate of reporting of sexual violence could also reflect positive changes within service and justice systems encouraging more victims to report their assaults to police.

In 2020-21, almost a third (32%) of victim-survivors who reported sexual violence to police in Australia did so a year or more after it occurred (8,684 victims).[23]

In Queensland, there were 5,120 victims of sexual assault recorded in 2020, an increase of 5% from the previous year.[24] Queensland mirrored the national position, recording the highest number of reported sexual assault victims in 28 years.[25] The victimisation rate for sexual assault increased in Queensland between 2019 and 2020 from 95 to 99 per 100,000.[26] Most of these reported sexual assaults occurred at a residential location (70%) and did not involve a weapon (92%).[27]

In Queensland, there were more than six times more female than male victims of sexual assault in 2020 (4,413 female and 691 male); just under half (47%) were aged under 15 years at the time of the incident; and over a third (35%) were recorded as family and domestic violence related (1,798 victims).[28]

There has also been an increase in reported incidents of sexual assault. Between 2019-2020 and 2020-2021 there was a 15.4% increase in the rate of reported sexual assaults (rape and attempted rape) from 44.7 per 100,000 persons to 51.6 per 100,000 persons.[29] During the same period, the percentage of other sexual offences (including indecent treatment of a child or incest) reported to police increased overall by 20.9% from 82.9 per 100,000 persons to 100.2 per 100,000 persons.[30]

In 2020, the three states and territories in Australia to report the largest increase from the previous year in the number of recorded victims of sexual violence were Western Australia (10% increase), Queensland (5% increase) and New South Wales (2% increase).[31]

First Nations women experience high rates of sexual violence

While there is limited published data available, evidence shows First Nations women and girls are especially vulnerable to sexual violence.[32]

First Nations peoples are up to 3.4 times as likely to be victim-survivors of sexual assault than non-Indigenous people.[33] First Nations women and non-Indigenous women experience physical assault and sexual assault at higher rates than men.[34]

The *Wiyi Yani U Thangani* Women's Voice's 2020 report records that three in five First Nations women have experienced physical or sexual violence.[35]

In 2015, the rate of non-fatal hospitalisation for family violence-related assault of Aboriginal and Torres Strait Islander females was 31 times the rate of non-Indigenous females.[36]

The QGSO crime report based on victim reports of sexual violence showed that First Nations women (567) were more likely to report sexual violence compared to First Nations men (110).[37]

The Taskforce heard during its consultation and engagement activities and learned from academic literature that there are many complex reasons why First Nations women do not report sexual violence to police (Chapter 2.3).

Women and girls with disability, LGBTIQA+ peoples, women from culturally and linguistically diverse backgrounds and older women

Available data indicates that sexual violence occurs at significant rates amongst women with disability[38], LGBTIQA+ people[39], culturally and linguistically diverse women[40] and older women.[41]

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability reported in 2021 that women with disability are between 4 and 10 times more likely to be victims of sexual violence.[42] It also reported that between 39% and 60% of women with cognitive disability will be sexually assaulted before the age of 18.[43]

An Australian survey in 2018, found that half of the 1,613 trans and gender-diverse participants who took part had experienced sexual violence or coercion at some point.[44] It also found sexual violence and coercion were experienced by LGBTIQA+ people at higher rates than the general Australian population.

There is no substantive Australian research on sexual violence amongst women and girls from culturally and linguistically diverse (CALD) backgrounds.[45] The Queensland Sexual Assault Network (QSAN) stated in their submission to the Taskforce that 80 to 85% of the clients of the Immigrant Women's Support Services (IWSS) who seek support for domestic and family violence also report experiencing intimate-partner sexual violence. Very few of these women report their experiences to police.[46]

The QGSO crime report shows that in Queensland older women (82% or 131) are more likely to report sexual violence compared with older males (18% or 28).[47] Nevertheless, older women's experiences of sexual violence are rarely recognised in the community and remain largely invisible. In the community, older victims of sexual violence are at risk of being abused by spouses or partners.[48] Older women who have been sexually abused by their partners may be less likely to report this violence as it may have been normalised over time. They also may adhere to the mythology that it is their duty and women should submit to their partners. These factors impact both reporting and access to safety and justice.[49]

Sexual violence can co-occur with other forms of violence, whether in domestic or institutional settings. The Royal Commission into Aged Care Quality and Safety reported that between October and December 2021, 500 cases of unlawful sexual conduct or inappropriate sexual contact took place in the residential aged care sector in Australia.[50]

For these women, there are additional barriers to reporting sexual violence and seeking help. Aged and Disability Advocacy Australia (ADA) stated in its submission to the Taskforce that in some cases 'older women and women with disability are dependent upon [their abuser] for care, such as a partner, family member or support person'.[51] According to ADA, these groups are at significantly heightened risk of abuse. However, the barriers to reporting they face may mask the true prevalence of abuse.

Rates of attrition

While the rate of reported sexual assault cases has increased, data on sexual violence cases shows significant attrition during each stage of an investigation and prosecution. As noted above, as few as 13% of sexual violence incidents are reported to police by females.[52] Of those reported cases, very few will result in charges being laid.[53] One study found that in Australia, only 20% of sexual assault cases reported to police will result in charges.[54] Fewer cases again progress to court and result in a conviction.[55] This pattern highlights what is sometimes referred to as a 'justice gap' between the number of incidents of sexual assault that occur in the community, the number reported to police, and the number that result in charges and subsequent court proceedings.[56]

The Queensland Police Service (QPS) told the Taskforce in its second submission in 2021 that between 2016 and 2020, there was a decrease from 46% to 35% in the proportion of sexual assault offences that were recorded as withdrawn or unfounded (for victims who were 16 years or older at the time of the offence).[57] The QPS partially attributed this promising data to improved police and court practices, legislative changes and heightened public awareness.[58]

The QPS provided the Taskforce with additional data to give a clearer picture of how QPS officers are responding to sexual assault offences that end up being withdrawn or 'unfounded' (also known as unsubstantiated). QPS advised the Taskforce that unfounded sexual assault offences are defined as "when an investigation has established that the alleged offence was not in fact committed. This includes a false report, an excuse of mistake in the fact is raised as reported by the informant, or there was no breach of the law involved in the alleged offence. Inability to prove an element of an offence does not make an offence "not substantiated" nor does a decision by a complainant not to proceed after the offence has been reported".

In the QPS Operational Procedures Manual (OPM) victim 'withdrawn' complaints are defined as "when the investigating officer has determined and documented in the occurrence that there is sufficient evidence that an offence has been committed but the victim no longer wishes to continue with the complaint, and the victim has formally withdrawn the complaint".[59]

QPS provided the below table that represents preliminary data on the percentage of sexual assault offences that have been withdrawn or unfounded between 2018-19 and 2020-21 (financial year to date).[60] QPS data shows the percentage of withdrawn sexual assault offences has remained relatively steady at around 17% with an increase in the 2020-21 reporting period. Unfounded sexual assault cases decreased in the 2020-21 reporting period (10.44%) from the previous year (12.71%). Together, unfounded and withdrawn cases for the 2020-21 reporting period account for under a third (or 27.87%) of sexual assault offences reported by victim-survivors.

FY Year	Victim Number	Total Offences	Withdrawn	%	Unfounded	%
18/2019	4484	7001	1214	17.34%	883	12.61%
19/2020	4506	6599	1182	17.91%	800	12.12%
20/2021	5587	7848	1586	20.20%	998	12.71%
21/22 to 15/6/2022	6035	8032	1400	17.43%	839	10.44%

While this is positive, there is evidence to suggest that attrition rates still appear high in Queensland in comparison with other states and territories. In 2020, the Australian Broadcasting Corporation (ABC) published a news article reporting that of all the states and territories, Queensland had the highest rate of withdrawn sexual assault reports (33%) (for the period 2008-17).[61] The ABC also reported that over a 10-year period, 1 in 5 (or 20%) of sexual assault cases were assessed as 'unfounded' by QPS compared with 1 in 20 (or 5%) in New South Wales (for the period 2008-17).[62]

The Taskforce in its discussion paper 3 acknowledged the Queensland Audit Office (QAO) Criminal justice system — reliability and integration of data Report 14: 2016–17 report (the 2016-2017 QAO report) which found evidence of police officers employing methods intended to persuade victims of various offences to withdraw their complaints to increase clearance rates.[63] This included sending victims letters requiring them to respond within seven days or police will 'presume' the victim wants no further action to be taken and adopting a 'three strikes policy' - if police cannot contact victims after three attempts, the complaint is withdrawn.[64] The QPS has purportedly addressed data quality issues and practices in managing the withdrawal of complaints. The Taskforce acknowledges work undertaken to address data quality issues may contribute to shifts in the data on sexual offences, including cases withdrawn.

Clearance rates for sexual offence reports to police in Queensland have dropped

QGSO reported that the percentage of sexual offences 'cleared' by police dropped from 67.6% in 2019-20 to 64% in 2020-21.[65] There are a number of reasons for an offence being cleared.[66] These include that police have either solved the case (in most cases this means the police officer has undertaken an investigation, gathered evidence, and the evidence has been presented before the courts) or the victim-survivor has withdrawn their complaint or wants there to be no further action.[67]

This means that just over a third (36%) of victim-survivor reports of sexual violence to police in 2020-21[68] did not result in subsequent action, for example because the complaint was discounted as not being substantiated for further investigation and did not result in a charge.[69] There are a variety of reasons why this may occur, including police considering there is insufficient evidence for charges to be laid.[70]

Very few sexual violence related cases in Queensland will progress through the justice system and result in a conviction

The court process for sexual offences commences in the Magistrates Court and usually progresses to the District Court if the committal proceedings are successful. In 2020-21, a total of 3,062 sexual violence cases were finalised in courts in Queensland (Magistrates Courts, District Court or Supreme Court). Of these, approximately 41% (1,263) were finalised in the higher courts (District or Supreme Courts).[71]

Of all of the criminal justice matters dealt with in the higher courts in Queensland in 2020-21, (6,145), sexual violence-related matters made up 20.5% or 1 in 5 cases. This made it the third-highest category of

offences dealt with in the District or Supreme Courts, surpassed only by illicit drug offences and acts intended to cause injury.[72]

There is no officially reported data in Queensland on the number of cases charged by police that go on to result in an accused person either pleading or being found guilty. There is a considerable gap between the number of sexual violence matters recorded as cleared by police and the number finalised in higher courts in Queensland.[73]

The New South Wales Bureau of Crime Statistics and Research (BOCSAR) has reported that 10% of sexual violence-cases were withdrawn by prosecutors in that jurisdiction, with cases most likely to be withdrawn in the higher courts.[74]

Key legislation and agencies

Department of Justice and Attorney-General

The Department of Justice and Attorney-General (DJAG) is responsible for resourcing Queensland's courts, including specialist courts, as well as facilitating the administration of Queensland's court system through the head of each court jurisdiction (that is, the Chief Justice, the Chief Judge and the Chief Magistrate).

The Office for Women and Violence Prevention (Office for Women) also sits within DJAG. The Office for Women leads gender-equality reforms and delivers projects that support government and industry to promote and protect women's rights, interests and wellbeing, including for example, the funding of sexual assault services.

DJAG is also responsible for the administration of key legislation including the:

- Criminal Code Act 1899 (the Criminal Code), which contains all of Queensland's most serious criminal offences including sexual offences
- *Criminal Law (Sexual Offences) Act 1978* that provides laws of evidence and procedure that are specific to sexual offences as well as the law on reporting and publishing details of sexual offence proceedings.
- *Dispute Resolution Centres Act 1990* that provides for the establishment and operation of dispute resolution centres to provide mediation services in connection with certain disputes.[75] The Act also underpins Adult Restorative Justice Conferencing.
- *Domestic and Family Violence Protection Act 2012* that establishes a civil protection order scheme to protect people who fear or experience domestic violence and ensure that people who commit domestic violence are held accountable for their actions.
- *Evidence Act 1977* that, along with the common law, provides the laws of evidence that must be used in civil and criminal proceedings in Queensland
- *Human Rights Act 2019* that protects and promotes human rights by requiring public entities to act and make decisions in a way compatible with human rights
- *Penalties and Sentences Act 1992* that sets out the powers of courts when sentencing offenders
- *Victims of Crime Assistance Act 2009* (VOCA Act) that includes a Charter of victims' rights (the Charter) that describes the way a victim should be treated, as far as practicable and appropriate, by both government and non-government entities.

Queensland Police Service

The Queensland Police Service (QPS) is the primary law enforcement agency in Queensland. The QPS has responsibility for investigating all sexual offences. The investigation powers of police officers and their responsibilities while exercising those powers are set out in the *Police Powers and Responsibilities Act 2000* (PPR Act). The Police Prosecution Corps (PPC) have responsibility for handling the prosecution of offences including sexual offences in the Magistrates Courts. The QPS Operational Procedures Manual outlines how QPS will conduct procedures including investigations.

Office of the Director of Public Prosecutions

The Director of Public Prosecutions is an independent statutory officer appointed under the *Director of Public Prosecutions Act 1984* (the DPP Act). The Office of the Director of Public Prosecutions (ODPP) represents the State in criminal cases including those involving sexual offences. ODPP prosecutors mostly

prosecute offences in the 'higher' courts, for example, the District Court of Queensland and the Supreme Court of Queensland Trial Division and Court of Appeal Division.

The Department of Children, Youth Justice and Multicultural Affairs

The Department of Children, Youth Justice and Multicultural Affairs (CYJMA) has primary responsibility for administering the child protection system in Queensland and providing services to young people in the youth justice system.[76] This involves advising young people at court and supervising young people sentenced by the court and facilitating restorative justice conferencing for young offenders.[77] DCYJMA administers the *Youth Justice Act 1992* and the *Child Protection Act 2000.*

Queensland Health

Queensland Health (QH) is the overall public health service in Queensland providing primary, secondary and tertiary health services across Queensland. Queensland Health comprises the Department of Health and 16 Hospital and Health Services (HHS). Each HHS covers a particular geographical region of Queensland, with the exception of the statewide paediatric specialty service, Children's Health Queensland. Queensland Health provides medical care, forensic medical examinations, emergency assessment and treatment, sexual health assistance, crisis counselling and information to victim-survivors of sexual violence. These responses are provided by public hospitals, the Clinical Forensic Medicine Unit (CMFU) and may include specialist sexual assault teams.[78]

The Queensland Health Forensic and Scientific Services (QHFSS) is responsible for DNA analysis in criminal investigations. The Queensland Police Service (QPS) relies on QHFSS to support investigations involving the use of forensic services. For police to undertake DNA sampling, they must first be granted approval of a commissioned officer, or through application to the Childrens Court when involving a child.[79]

Queensland Human Rights Commission

The Queensland Human Rights Commission (QHRC) has legislated functions under the *Anti-Discrimination Act 1991* and *Human Rights Act,* which include dealing with complaints under these Acts, promoting systemic reform and providing community education to improve compliance with its legislation. The QHRC has the ability to intervene in proceedings and appear with leave of the court or join as a party to the proceedings in certain circumstances.

International human rights framework

Sexual violence represents a violation of some of the most important human rights protected under the *Human Rights Act 2019* and international law. The Committee on the Elimination of Discrimination against Women (CEDAW) is the body of independent experts that monitors implementation of the United Nations Convention on the Elimination of All Forms of Discrimination against Women.[80] Adopted by the United Nations in 1979, CEDAW is the most important human rights treaty specifically for women.[81] Australia is a party to the treaty and is obliged to:

- eliminate all forms of discrimination against women in all areas of life
- ensure women's full development and advancement in order that they can exercise and enjoy their human rights and fundamental freedoms in the same way as men
- allow the CEDAW Committee to scrutinize their efforts to implement the treaty by reporting to the body at regular intervals.

Australia must also submit regular reports to the Committee on how the rights of the Convention are being implemented.[82]

Governance documents for key agencies

The Director of Public Prosecutions' Guidelines

These guidelines are issued under section 11 of the DPP Act and are designed to assist the exercise of prosecutorial decisions to achieve consistency and efficiency, effectiveness and transparency in the administration of criminal justice for prosecutors acting on behalf of the DPP.[83] The guidelines identify the fundamental obligation of the prosecution to assist in the timely and efficient administration of justice.[84] These are guidelines not directions. Complaints concerning the Office of the Director of Public Prosecutions (ODPP) are received in the Directorate of the ODPP and managed internally. This process involves an ODPP legal officer consulting with the practice manager and a Deputy Director, before providing a response to

the complainant. In some circumstances, the relevant Crown Prosecutor or the Deputy Director will confer with the person who made the complaint.[85]

QPS Operational Procedures Manual (OPM)

The Operational Procedures Manual (OPM) outlines how QPS will conduct procedures including the investigative process, the prosecution process, and coronial matters. It also includes direction on police responses to 'persons who are vulnerable, disabled or have cultural needs'.[86] Complaints concerning police misconduct may be managed by the Ethical Standards Command within the QPS for investigation, with oversight by the Crime and Corruption Commission (CCC) and may result in legal action or internal police disciplinary action as outlined in the QPS Ethical Standards Command Complaint Resolution Guidelines.[87]

Memorandum of Understanding between the QPS and the Office of the Director of Public Prosecutions (ODPP)

The 2018 MOU between the QPS and the ODPP (2018 MOU) provides a clear understanding of how the ODPP and the QPS should communicate with each other and with other parties involved in the criminal investigation and prosecution of sexual offences.[88] The 2018 MOU complements existing guidelines issued by the Director of Public Prosecutions and the QPS OPM.

Interagency guidelines

The Queensland Government Interagency Guidelines for Responding to People who have Experienced Sexual Assault outline key principles and best practice for responding to victims of sexual assault. They set out how QPS, DJAG, QH and the former Department of Communities, Child Safety and Disability Services should work together in their response and are endorsed by the Commissioner of Police and Directors-General of the respective departments. These guidelines have not been updated since 2014 with the planned review reportedly delayed by the COVID-19 pandemic.

Recent important reviews and reports

A series of Australian royal commissions, law reform commissions, human rights reports and national frameworks have addressed sexual violence including -

- 2020-2023 - Royal Commission into violence, abuse, neglect and exploitation of people with disability (the Royal Commission into people with disability report).[89] The final report is expected to be delivered in 2023.
- 2021 – Royal Commission into Aged Care Quality and Safety.[90]
- 2020 - *Wiyi Yani U Thangani* (Women's Voices) report (the Wiyi Yani U Thangani report).
- 2019 - Closing the Gap report.[91]
- 2017 - Royal Commission into institutional responses to child sexual abuse (the Royal Commission into child sexual abuse report).[92]

In Queensland, over the past 20 years there have been several commissions, inquiries and reviews addressing sexual violence or violence against women, including:

- 2020 - Queensland Law Reform Commission Review of consent laws and the excuse of mistake of fact report (the QLRC report).[93]
- 2015 - Not Now, Not Ever: Putting an end to domestic and family violence in Queensland report by the Special Taskforce on Domestic and Family Violence in Queensland (the Not now, not ever report).[94]
- 2002 - Seeking Justice: An inquiry into how sexual offences are handled by the Queensland Criminal Justice System by the then Crime and Misconduct Commission (the Seeking Justice Report)[95] and the 2008 follow-up review. How the criminal justice system handles allegations of sexual abuse: A review of the implementation of the recommendations of the Seeking Justice report (the Review of the seeking justice report).[96]
- 2000 - Report of the Taskforce on Women and the Criminal Code.[97]
- 1999 - The Aboriginal and Torres Strait Islander Women's Taskforce on Violence Report.[98]

More recently, the following key frameworks and strategies have been implemented to guide Queensland's response to victim-survivors of sexual violence. They include:

- 2022-2027 Queensland Women's Strategy[99]

- 2021-2023 Queensland Police Service (QPS): Sexual violence response strategy (the QPS strategy)[100]
- 2021 Prevent. Support. Believe. Queensland's Framework to address Sexual Violence (the Queensland Framework)[101]
- 2017–2037 - Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families.

Other notable reports that have directly or indirectly contributed to increased awareness or understanding of the experiences of victim-survivors include:

- 2022 - Violence against Indigenous women and girls: Report of the Special Rapporteur on violence against women, its causes and consequences by the United Nations Special Rapporteur on violence against women[102]
- 2021-2023 - Australian Disability Strategy (the Australian disability strategy)
- 2021 - Improving the justice system response to sexual offences by the Victorian Law Reform Commission (VLRC): (the VLRC report)[103]
- 2019 - Delivering forensic services (Report 21: 2018-2019) report by the Queensland Audit Office[104]
- 2018 - Women, disability and violence – barriers to accessing justice: Final report (Women, disability and violence report) by ANROWS[105]
- 2017 – ANROWS, National Community Attitudes Survey[106]
- 2016 – Australian Bureau of Statistics, Personal Safety Survey[107]
- 2015 - Change the story: A shared framework for the primary prevention of violence against women and their children in Australia (Change the story framework) by Our Watch.[108]

Women and girls' experiences

The submissions the Taskforce received and the people with lived experience with whom the Taskforce met revealed common themes and expressed the diverse views and perspectives of women and girls who are victim-survivors of sexual violence. We heard directly from victim-survivors about their experiences and various ideas for reform based on their diverse sexualities and genders, ages, races and ethnicities. Together with what the Taskforce heard from support services and agencies, legal stakeholders, police, government agencies, academics and others, part 2 of this report shares the wisdom and experiences across the criminal justice system of women and girls who are victim-survivors of sexual violence.

Victim-survivors told the Taskforce that they have been traumatised by the offence of sexual violence, and then retraumatised by the justice system.

'All the current justice system does is retraumatise rape victims. Being constantly asked for more details of an event you've tried to forget and bury is brutal. And you go through all these administrative hoops and it takes months and months of your time. All you get at the end of it is nothing. No justice.' [109]

'My experience is evidence that the system fails many victims, regardless how or why the circumstances one might be dragged into this abusive process. I have been left feeling violated and abused again, only this time by the CIB [Criminal Investigation Branch], defence lawyers, the DPP [Office of the Director of Public Prosecutions] and the legal process.' [110]

Another victim-survivor illustrated how they are at the mercy of the system she describes as having 'zero compassion':

'How many times will I have to pick myself up from the depths of fear, anxiety, retraumatisation and get to a point where I feel strong enough to face this committal hearing, only for it to be adjourned again? Victims are left in the dark in this system, we are not given enough information - perhaps they forget most of us have never had to interact with this system before, we don't know how it works. There is also zero

> *compassion, of course I understand this is their day-to-day job and you would become desensitised, but a little bit of compassion means so much to a victim of abuse of any kind.' [111]*

When victims are retraumatised they may avoid the criminal justice system by not making a complaint or withdrawing their complaint early in the investigation or prosecution. One victim told the Taskforce that the criminal justice system is 'an unfair, inefficient and severely broken-down system that no one cares about'.[112]

The 'genuine' or 'ideal' victim of sexual violence

The Taskforce found in its first report that women who do not present as the 'ideal' victim-survivor of violence are less likely to be viewed as credible or believable by the justice system.[113] This experience has been echoed in submissions to the Taskforce from victims-survivors of sexual violence.

> *'The way the current system works favours the offender and puts the onus on the victim. I am the one who gets my credibility questioned, I am the one whose character is up for criticism, I am the one who essentially is called a liar by the defence. I have to worry about what colour I wear, how my clothes will hug my body, will my tattoos show, do I look like a 'good girl', do I cry enough, do I seem cold, am I the perfect victim? And if not, then no one will believe me.' [114]*

Gender stereotypes and rape myths give rise to false assumptions about who is a 'genuine' victim-survivor. For example, women who were drinking at the time of the offence or who were wearing short or tight clothes may be perceived by some as 'provoking' the offender.[115]

Victim-survivors' submissions to the Taskforce confirm the data presented above and findings in academic literature that sexual violence is most often committed against women and girls by someone they know and does not necessarily cause physical injuries.[116]

First Nations and women with disability, women from culturally and linguistically diverse backgrounds, LGBTIQA+ and older women

In *Hear her voice 1*, the Taskforce recognised the concept of intersectionality as valuable in bringing to the forefront women's individual experiences of intersecting disadvantage.[117] Acknowledging the overlapping layers of structural inequality including sexism, racism, ageism, and ableism, enables the diverse experiences of women and girls to be best represented. When different forms of inequality overlap, individual experiences of marginalisation are compounded.[47] The Taskforce found that women experiencing complex and intersecting forms of disadvantage find themselves locked out of a service system that is not always able to address their needs.[118]

This finding is also true for victim-survivors of sexual violence. DV Connect told the Taskforce:

> *Many women, particularly women of population groups with intersectional experiences, such as diverse culture, disability, LGBTIQ+ or socio-economic groups, are unable to use police to keep themselves safe. In fact, police involvement can increase their risk.[119]*

Community understanding of sexual violence and barriers to reporting sexual violence

Sexual violence victims face barriers to reporting at the individual (personal barriers),[120] societal (community attitudes, bystander intervention)[121] and systems (accessibility and availability)[122] levels. These barriers are founded in poor community understanding and awareness of sexual violence and consent, inequitable access to services and negative perceptions of the criminal justice system.[123]

> *Misconceptions about sexual violence are so common. Women are subtly accused of provoking the abuse or being responsible of their own victimisation. Most offenders get away with it. They walk away and do it again. They know the system will be lenient and give them suspended sentences or community services.[124]*

Taskforce submissions reinforced evidence from research literature about the barriers to reporting sexual violence. Common themes identified in the literature, submissions, and consultations included a lack of trust in the criminal justice system,[125] victims not being believed or given a voice,[126] rape myths and stereotypes impeding timely and appropriate responses,[127] and fear of physical harm or further victimisation.[128]

If we are to stop violence towards women, we must ensure that women feel safe in taking their complaints to police and to the courts. Right now the secondary assaults fired at victims of abuse from the very systems that were designed to protect them, encourage violent men, especially those with great wealth and influential connections within the police and justice system, to continue with impunity their assaults on women.[129]

Sexual violence occurs on a continuum, in a similar way to domestic and family violence.[130] There is a need to provide support that can respond to different forms of abuse at differing stages.

'They should teach more when you're younger, they should teach it in primary school as well. If I was told when I was a teenager what was happening was wrong, I would've come forward if I knew my rights, no means no. It took me 40 years [to disclose].' [131]

There is also a need to ensure that people of all ages are aware of what constitutes sexual abuse, in age, language and culturally appropriate ways.[132] The lack of awareness and community understanding of consent, sexual violence and the impacts of pornography pose significant barriers to reporting sexual violence and in the response victims receive when they do report.[133] The Taskforce received submissions, and heard from victim-survivors of adult and child sexual abuse, that explained they did not report the violence because they feared not being believed or being blamed for what happened.

'I did not report this to police or tell another person because at the time it was assumed that I had put myself in a position where I was responsible for the outcome. Rape victims did not have a voice and it has only been in the past decade I have divulged what happened to me.' [134]

'I was [young] when I was sexually assaulted. I knew I could report it, I knew I could tell someone, but I didn't think anyone would believe me.' [135]

'I felt embarrassed that I let it happen to me. I didn't want to go through police and court, and feel as though I'd be judged, even though I absolutely know I did nothing wrong.' [136]

An overwhelming theme in submissions was the need for victims to be believed and treated with respect.

The main thing that needs to be improved is that women need to be believed and not dismissed without support or investigation.[137]

[We are] still seeing women self-blaming due to myths (e.g. 'agreed' to Tinder 'date', were drinking when assaulted etc.) and this is often still supported by others' judgements (friends, community) and buying into myths that don't locate accountability with the offender.

> *We are still finding that some women may not view rape in marriage as assault, or at least the view is blurred by long-term relationships – this is really very often supported by offenders' tactics.*

Some stakeholders found it frustrating that changes to the law have not resulted in cultural change.[138] Legislation that inadvertently criminalises young people who are groomed and manipulated into sending intimate images was also raised as an issue.[139] These factors, alongside 'mandatory' reporting obligations, were perceived to pose significant barriers to reporting for young victims of sexual violence.

Supporting victims of sexual violence through the criminal justice system

The trauma of sexual violence can have profound, long-lasting and cumulative impacts on victim-survivors. Complex trauma, which can arise from repeated interpersonal victimisation (including sexual violence), is commonly associated with psychological, psychosocial, functional, educational, and health challenges.[140] Women who have experienced sexual violence are more likely to experience violence by a partner, resulting in the potential compounding effect of intergenerational trauma.[141] Full Stop Australia told the Taskforce in its submission about the impacts of complex trauma,

> *Complex trauma results from multiple, repeated forms of interpersonal violence (including sexual violence) causing traumatic health problems and psychosocial challenges. Complex trauma is commonly associated with a wide range of psychiatric diagnoses and misdiagnoses, functional impairments, and an array of educational, vocational, relational and other health problems.*[142]

Therapeutic support and advocacy can help reduce or mitigate some of these impacts, including by reducing the risks of re-traumatisation. Access to support while engaging with the criminal justice system can improve justice outcomes, reduce attrition, and improve victims' overall experience.

Despite this, the Taskforce heard many times about victim-survivors not having access to support. One victim-survivor stated:

> *'Victims are left in the dark in this system, we are not given enough information - perhaps they forget most of us have never had to interact with this system before, we don't know how it works.'* [143]

Victims find navigating the system retraumatising

Victims of sexual assault stay silent as no one believes them and navigating a system to fight for their rights is also retraumatising.[144]

Victim-survivors report being judged, feeling shame and feeling responsible for the assault as a result of their interactions with police and staff at police stations. In these cases, rape myths and stereotypes appear to influence police practice and decision making as to whether or not complaints are progressed. As one victim explained:

> *'At the police station, I felt repeatedly judged by statements like, "How much did you have to drink? You do not have any concrete evidence for us to use, this is a dead end."'* [145]

Victim-survivors also report poor treatment from police when attempting to make a complaint:

> *'Police made me feel unwelcome, uncomfortable, unheard and hopeless at the moment of most vulnerability.'*[146]

The Taskforce received submissions from victim-survivors who felt detectives where uninterested in their case and did not communicate with them about its progress.[147] Victims also reported being dissuaded by

investigators to continue with a complaint and made to feel responsible for the sexual violence done to them.[148]

Forensic examinations and use of forensic evidence

Concerns about forensic services in Queensland have been raised in Taskforce consultations, the media and within the Queensland Parliament.[149] These concerns relate to:

- the quality of forensic services, including analysis of forensic evidence by Queensland Health Forensic and Scientific Services (QHFSS)[150]
- accessibility and availability of forensic medical examinations for victims of sexual assault[151]
- lack of 24/7 support services and long-term counselling for those considering forensic medical examinations[152]
- appropriate use of forensic evidence within the criminal justice system.[153]

On 6 June 2022, the Honourable Annastacia Palaszczuk MP, Premier and Minister for the Olympics, announced a full Commission of Inquiry into the QHFSS.[154] The Commission of Inquiry will be led by former President of the Queensland Court of Appeal, the Honourable Walter Sofronoff QC.[155] The Commission of Inquiry final report is due to the Queensland Government by 13 December 2022.

This inquiry resulted from sustained public criticism that the scope and mechanism of the internal review announced in March 2022 was inadequate to expose the extent of the problem, including whether miscarriages of justice may have resulted. [156]

Accessibility and availability of forensic medical examinations for victims of sexual assault, including 'just in case' examinations, impede timely access to both therapeutic support and the criminal justice system.[157] The Taskforce considers there are several reasons for this:

- limited numbers of qualified staff such as social workers, forensically trained nurses and doctors within emergency departments, including in rural, regional and remote locations[158]
- reluctance of medical professionals to perform forensic medical examinations[159]
- lack of consistency in policies and procedures within and across different health and hospital services[160]
- inadequate equipment to support forensic medical examinations.[161]

Victim-survivors and their advocates have told the Taskforce that the lack of available and timely forensic medical examinations is a significant issue. During consultation the Taskforce heard about one woman travelling 1,300km for an examination, only to be turned back due to a miscommunication.[162] Others have had to wait for extended periods in busy emergency departments with no food, water or clean clothing.[163] Even when forensic evidence is finally taken, further issues can arise. One victim-survivor recounted:

> *'[The hospital] proceeded to carry out invasive swab tests to collect the perpetrator's DNA. I remember thinking 'what's the point if [police are] telling me it's my fault?' About a month later I got a phone call to say that the police had accidentally destroyed the rape kit/DNA evidence and that they were "very sorry". This meant the case had no real chance of proceeding.'* [164]

The Taskforce heard from a forensic doctor who was concerned that these examinations are intrusive and can be retraumatising. She explained that they should be undertaken well and carefully managed and tested to ensure the value to the investigation of the case outweighs the negative impacts for the victim.[165] DNA evidence can be critical, whether for proving a case and securing a conviction, or for establishing the innocence of a suspect.[166] When evidence is lost or damaged, or investigators, legal practitioners, judicial officers or jurors do not properly understand the DNA analysis, miscarriages of justice can occur.

Legal definition of consent and the excuse of mistake of fact

Many victim-survivors told the Taskforce that they want the law in Queensland relating to consent and mistake of fact to change. They regard the laws as outdated and not aligning with community expectations.

> *'How can a law from 1899 be valid in this century? It has to be abolished. Abolish defence loopholes. They are only telling victims their voices don't matter. "Mistake of Fact" should not be a reason the attackers can walk free. As in other States Queensland should follow the "Active Consent Model". Silence should not equate to consent and consent could be able to be withdrawn at any time. It's irrelevant whether an alleged perpetrator was intoxicated or not. Witness intimidation should not be allowed.'* [167]

The Taskforce heard in a submission from another victim-survivor that existing laws unfairly support the interests of offenders:

> *'[The offender] can continue his life under protection of the legal system, but we cannot even be told why our committal hearing has been adjourned. The imbalance in this system is astounding. It's very difficult to have hope for change, just as it is difficult to have hope for justice.'*[168]

The *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021* (the 2021 Amendment Act) amended the provisions of the Criminal Code that deal with consent and the excuse of mistake of fact in response to the recommendations made by the Queensland Law Reform Commission in its '*Review of consent laws and the excuse of mistake of fact'* report (the QLRC Report).[169] However, the Taskforce has heard from many victim-survivors and other stakeholders that these reforms did not go far enough and further reform is needed.

Legal and court processes

Victim-survivors told the Taskforce that they found court proceedings confusing, inconsistent and traumatic. As Taskforce members travelled across the state they heard from victim-survivors that they feel they are on the margins and alone during the court and legal process.

> *I went through the court system as a victim of sexual assault and rape.*
>
> *To me, the court system was more traumatising than the assault. No one had told me when the court date was set. I had to keep calling them up to ask. I called up the last time and they said 'did no one tell you? Your court date is next week.'*
>
> *I was yelled at and humiliated in court. The defence lawyer pointed at me and yelled 'you're a liar!'.*
>
> *There was no respect or sensitivity. The police prosecutor presented himself as unfamiliar with my case and did not know what he was doing.*[170]

Victim-survivors told the Taskforce that they did not understand why their role in criminal processes is to be a witness to the sexual assault and not a party to the proceedings or why they don't have some special standing because they are the victim-survivor who has had their bodily integrity violated. Many victim-survivors feel disempowered as they discover the limited rights they have through this process. One victim told us:

> *'As a victim of a serious crime, I had less rights than the offender who was declared not guilty.'* [171]

Victims as a witness in sexual offences

The Taskforce heard that victims frequently felt disempowered in the criminal justice process and that there was nobody tasked with representing their interests. [172] Many victims felt confused and intimidated by criminal justice processes and felt unsupported by police and prosecutors. Many were unable to access ongoing support by specialist sexual violence service providers. These factors culminated in many victim-survivors feeling isolated and distrustful of criminal justice responses.

Section 21A of the *Evidence Act 1977* provides judicial officers with a discretion to order special measures to be put in place when a special witness gives evidence. A 'special witness' is defined to include a person against whom domestic violence[173] or a sexual offence[174] has been or is alleged to have been committed by another person; and who is to give evidence about the commission of an offence by the other person. If the court considers someone is a special witness, the court will then determine what special measures should be put in place at the hearing.

Despite this provision, the reality is that victim-survivors are not always protected when giving evidence as special witnesses. The court may not consider them to be a special witness or may not put in place special measures sought by the victim-survivor as protection. The Taskforce also heard that the manner and behaviour of legal practitioners and judicial officers can re-traumatise victim-survivors:

> *Some cross-examining lawyers and unsympathetic judicial officers do trigger a trauma response in a victim when they reflect the same behaviour as that which they're trying to escape from. Courts should be alert to and vigilant to prevent secondary abuse through the court process.*[175]

Extension of preliminary complaint evidence to offences other than sexual offences

Preliminary complaint evidence relates to any disclosures by a victim about the offending that are made prior to their first formal witness statement to a police officer.[176] It is not proof that the offending occurred, however, it may assist the finder of fact in a trial (usually a jury) when assessing the credibility and reliability of the victim. The Taskforce flagged the need to consider the broader admissibility of preliminary complaint evidence in *Hear her voice 1*.

If preliminary complaint evidence was admissible in trials for domestic violence related offences, victims could give evidence about what they disclosed to individuals and support services prior to making their first formal witness statement to police. It would also enable witnesses to give evidence about those conversations with victims.

WWILD Sexual Violence Prevention Association Inc said that the admission of preliminary complaint evidence in trials for offences like coercive control would have a benefit for vulnerable complainants, such as those with intellectual disability who may find it difficult to articulate or provide concrete evidence of offences such as coercive control.[177]

The Taskforce heard from victim-survivors that they have been told by police that they do not have enough evidence to make a complaint – meaning that victim-survivors are being directed away from the justice process. As illustrated in the story below, victim-survivors are held responsible for their own safety:

> *'[I was] told police may not be able to make a case against me due to current laws around consent, no physical proof; police suggested I do something to improve my security at home; He lies to the police and it is his word against mine. I get nothing and he gains more confidence after being interviewed by the police and now nothing will happen to him because I have no evidence.'* [178]

Jury directions and the use of expert evidence in trials for sexual offences

In Queensland, jury directions addressing misconceptions about sexual consent and sexual assault are not commonly given during sexual assault trials. The QLRC in its report did not recommend the introduction of requirements for such directions as it was not persuaded of the need for such jury guidance.[179]

The admissibility of expert evidence in Queensland is governed by the common law. Expert evidence is an exception to the general rule at common law that evidence of opinion or belief is inadmissible (cannot be considered by the court). In order to be admissible, the evidence of an expert's opinion must satisfy several different rules that may make admissibility difficult or unpredictable.

The Taskforce heard from legal stakeholders concerned about rape myths and their impact on victim-survivors. Prosecutors told the Taskforce that misconceptions about sexual violence concerning consent,

referred to as 'rape myths', are used by defence lawyers against victims at criminal trials and that prosecution efforts to neutralise them don't always work. [180]

Jury directions (statements about the law made by a judge that the jury must follow) addressing misconceptions about sexual offending would help to counter out-dated and prejudicial values and beliefs about sexual assault and consent. Expert evidence addressing these misconceptions would also be effective in sexual offence cases.[181] Expert evidence could 'reduce the risk of jurors using their own biases to reach conclusions that are not supported by the evidence.'[182]

One victim-survivor pointed to gaps in understanding by judicial officers and juries about the impact of sexual violence:

> *'I think that the jury, judge and legal professionals need to be educated on the different responses due to trauma and abuse.' [183]*

Publication of proceedings

In Australia, victims are protected from having their identity disclosed in cases of sexual assault and in domestic and family violence proceedings. These safeguards operate to protect a victim's right to privacy, providing confidence to victims that they will not be identified if they report and seek help and protection. But these restrictions have been criticised for preventing victims from telling their stories in the public domain when they wish to do so, resulting in the silencing and disempowerment of victims.[184]

Some victim-survivors spoke of the importance of being able to tell their story if they choose, and of the inspiration or encouragement they took from others who have disclosed their experiences.

> *'We are afraid or feel like it is hopeless to report or go to the police, because nothing will come of it … I do, however, think that women who advocate for these things are really encouraging and would love to see this all over media more.' [185]*

Victim-survivors also expressed their frustration with limitations on publishing an accused person's identity until after a committal hearing. [186]

Alternative justice models for sexual offences.

The Taskforce heard about the importance to victims of choosing what path they want to, from their perspective, pursue justice. Some victim-survivors expressed a desire to access restorative justice processes either instead of, or in combination with, conventional criminal justice processes. [187] A number described feeling disempowered and silenced by the criminal justice system and wanted more agency in the process:

> *'I keep hearing, "Well, the judge will decide that at the end of the day." So the judge gets to decide all of these things without even talking to me, cause I'm "just a witness".' [188]*

Conclusion

Sexual violence is a gendered crime with men and boys making up the vast majority of perpetrators irrespective of the gender of the victim. Women and girls are significantly overrepresented as victims. The majority of reported sexual violence occurs in a private dwelling, most likely the victim's own home or the offender's home, involving a person known to them.

Sexual violence is a prevalent crime that remains too often unreported. For those that are reported, most complaints do not progress through the criminal justice system to result in a plea of guilty or a finding of guilt after a trial. This part of the report examines women and girls' experiences from the sexual assault through the various stages of the criminal justice system and makes findings and recommendations about what is working well and what needs to be improved.

That journey begins by examining community attitudes to sexual violence. Queensland women and girls live in a society where gender stereotypes and rape myths continue to negatively affect their experiences of sexual violence, including in the service and justice systems. This report takes into consideration

findings from community attitudes research commissioned by the Taskforce, and the voices of victim-survivors and those that support them. The Taskforce considers why some women and girls do report sexual violence and others do not.

For the courageous women who do make a complaint of sexual violence to police and continue it through the courts, the Taskforce has heard their journey is arduous. Too many give up. Many women and girls feel they are not believed and are treated disrespectfully by police, legal practitioners, prosecutors and judicial officers. The Taskforce appreciates the critical importance in our democracy of the right of every accused person to a fair trial. But we consider the investigation, prosecution and legal and court processes can be refined to consistently provide high-quality responses that improve the experience of victims of sexual assaults, all without compromising the accused person's right to a fair trial. In this part of our report, we make findings and recommendations, across a wide range of areas, to better educate the community about respectful sexual relationships and the criminal law, and to improve the experience of victim-survivors of sexual assault who seek assistance from the criminal justice system, so that those found guilty can be held accountable.

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[3] J Barth et al, 'The current prevalence of child sexual abuse worldwide: a systematic review and meta-analysis' (2013) 58(3) *International Journal of Public Health*, 58(3), 469-483.
[4] Queensland Government Statistician's Office, Queensland Treasury 'Crime report, Queensland 2020–21' (Report, 2022),8: "Reported offences are those which have been reported to or detected by police within the reference period, and include those where no offender, or victim in some cases, has been identified. These are presented as both numbers and rates, and a percentage change indicator. Rates are calculated as reported offences per 100,000 persons, using the appropriate estimated resident population (ERP)" (QGSO, 6). "Victim statistics relate to offences against the person only, and they relate only to offences reported to or detected by police. They do not represent a count of unique victims unless otherwise stated. Victim statistics are compiled on the basis of one victim per counted offence type within a single report to police. Statistics are compiled on the basis of the date an offence was reported to/detected by police, regardless of when the offence occurred. In some instances, particularly with homicide and sexual offences, there may be a large time difference between when the offence occurred and the report/detection date" (QGSO, 65).
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Chapter 2.2: Community attitudes to sexual violence and consent

Community members generally understand sexual consent at a conceptual level but they struggle to apply these concepts in real-life scenarios.

The increasing use of technology in relationships and the accessibility and consumption of pornography, including by children, have an impact on expectations in sexual relationships.

There needs to be informed community discussion about relationships and consent, with the focus on respect and mutual and unequivocal agreement. Greater awareness and education are needed to address these issues.

Attitudes to sexual violence, education and consent

In 2020-21 there was a significant rise in reported sexual offences in Queensland (up 20.9%).[1] This rise follows fluctuating rates of reported sexual offences, with an overall increase in the 10-year period from 2011-12 through to 2020-21.[2] The Queensland Department of Education told the Taskforce:

> *It is recognised that community attitudes towards sexual violence and gender equality, in particular stereotypes held about how men and women, boys and girls should behave and relate to each other, underpin disrespect and violence perpetrated against women and girls, including sexual violence.*[3]

Consent is not a standalone topic – it must be addressed alongside gender, power, sexual development, sexual communication, pleasure and mutuality.[4] Sexting and dating applications exaggerate misconceptions of consent as a one-off permission rather than an ongoing conversation.[5] The ideas in pornography about gender, power, and rights magnify those already in our communities, and further undermine community understanding of consent.[6]

In chapter 2.7 of this report the Taskforce has recommended, by majority, that Queensland should move to an affirmative model of consent. In chapter 2.13 the Taskforce has recommended the introduction of jury directions to help counter 'rape myths' that may exist among jurors. These reforms, while sending a strong message about community expectations and social values, are on their own highly unlikely to lead to changes in rates of sexual violence in the community or increased rates of conviction for those who perpetrate sexual violence against women and girls. To make a real difference, legislative reform must be coupled with efforts to raise community awareness and primary intervention to address cultural attitudes, values and beliefs that support and enable sexual violence to flourish. Community education as a primary prevention tool is an essential part of the foundation to address sexual violence in Queensland.

Background

Current position in Queensland

Community attitudes generally

The 2017 *National Community Attitudes towards Violence against Women Survey* (NCAS) found that most Australians support gender equality, have an accurate knowledge of violence against women, and do not endorse it. Promisingly, it also showed that Australians were less likely to hold attitudes supportive of violence against women than in previous years when the survey was undertaken (in 2013 and 2009).[7]

Concerningly, the 2017 NCAS showed that attitudes that condone violence against women remain, in the community and throughout aspects of the criminal justice system:

- 42% believe accusations of sex assault are used to get back at men
- 23% believe women find it flattering to be pursued persistently

- 28% of people believe a man may not realise a woman does not want sex when the man is very sexually aroused
- 6% believe women without physical injuries should not be taken seriously when making sex assault claims.[8]

These attitudes are often fuelled by dominant gendered stereotypes held by some men and boys who associate with 'toxic masculinity',[9] something that can affect both males and females. It is characterised by homophobia, domination and subjugation.[10] Australian research has shown that some young men feel considerable pressure to conform to perceived male roles. This can lead to enforcement or adherence to rigid gender stereotypes, use of aggression and control, and hypersexuality.[11]

To address these attitudes, the Queensland and Australian governments have moved to strengthen understanding of sexual violence and consent.

The Queensland Government's *Prevent. Support. Believe. Queensland's Framework to prevent Sexual Violence* (the Framework) aims to address sexual violence by focusing on three identified priority areas:

- prevention – by increasing knowledge and understanding of sexual violence and its drivers; by challenging attitudes, practices and structures; by strengthening workforce capacity; and by targeted activities to support prevention and early intervention
- support and healing – by believing and supporting all people impacted by sexual violence
- accountability and justice – through a responsive justice system that meets the needs of victims and survivors and holds perpetrators to account.[12]

The Queensland Government has committed to publicly reporting on progress against outcomes under the Framework.[13] The Government has also committed to developing a community awareness campaign about consent, in consultation with the specialist sexual assault services and key stakeholders.[14] This includes drawing upon existing resources and communication pathways.[15] DJAG has advised that the awareness campaign will include consideration of the Taskforce's findings in this report.[16]

To help achieve its aims, the Queensland Government has encouraged expansion of its respectful relationships education program (RREP) and implemented an annual grants program to increase community awareness and knowledge of sexual violence and consent.[17]

The Queensland Government also undertook a review into youth sexual violence and abuse through the Youth Sexual Violence and Abuse Steering Committee established in 2016.[18] Findings in the Committee's final report included the need for community awareness raising.[19] This was supported through a $12 million commitment over four years from 2018-19 to respond to youth sexual violence.[20] The key drivers of youth sexual violence and abuse identified by the Committee included:

- high rates of social dysfunction and economic disadvantage
- the gendered nature of violence
- unequal impact on Aboriginal and Torres Strait Islander young people
- increasing access to digital and communication technologies and its influence on sexualised online activity and 'sexting'
- silence on the issue of youth sexual violence and abuse.[21]

The *Queensland Women's Strategy 2022-27* also addresses gendered violence including sexual violence.[22] The strategy acknowledges the need to address consent, for more sexual education, and to challenge gendered stereotypes that can lead to sexual violence.[23] This includes through:

- working to strengthen young people's understanding and expectations of respectful relationships
- broader community cultural change, including on consent, help-seeking and reporting sexual assault
- working with First Nations peoples to ensure their voices are heard.[24]

Education in schools

Since 2017, Queensland schools have been provided a range of respectful relationships education materials. Optional programs such as the Daniel Morcombe Child Safety Curriculum[25] and externally provided or school-based programs are also used.[26] Information on technology-facilitated sexual violence has been developed for parents, students and staff, with content to be published on an upcoming respectful relationships hub.[27]

Between March and September 2021, the Queensland Department of Education (DoE), in collaboration with the non-government school sector, consulted with more than 180 internal and external stakeholders to review Queensland's respectful relations education program (RREP). That review identified that earlier, more explicit, and age-appropriate consent education was required.[28] This education should incorporate consent, help-seeking and reporting.[29] The RREP should also aim to increase understanding of coercive control, forms of abuse and its impacts, healthy and unhealthy relationships, drivers of violence and human rights.[30] These findings were consistent with the findings of an evaluation of a pilot of the Our Watch Respectful Relationship education program in primary schools in Queensland. In response, the DoE developed a 'Respectful Relationship hub', which is to be launched in 2022.[31] This will include publicly available resources for parents, students and staff[32] on respectful relationships, consent and sexual assault, help-seeking, and reporting strategies.[33]

The Taskforce recommended RREP be mandated across all Queensland schools in *Hear her voice 1* (recommendation 10). To support the effective statewide rollout of respectful relationships education, the Queensland Government and private providers must ensure educators, from early childhood education through to Year 12, receive ongoing professional development that allows them to deliver respectful relationships education as part of a whole-of-school approach (recommendation 11). Despite the significance of these recommendations as an essential component for the primary prevention of domestic and family violence and sexual violence, the Queensland Government supported these recommendations in principle only, noting it will make the strengthened Respectful Relationships Education Program available to all Queensland state and non-state schools, rather than mandating their use. The Government also noted that it will promote resources and training materials to support teachers with implementing the Australian Curriculum.[34]

On 1 April 2022, use of version 9.0 of the Australian Curriculum was agreed to by state and non-state schools. The revised curriculum includes strengthened guidelines related to respectful relationships, sexuality, consent and help-seeking behaviours.[35] The DoE told the Taskforce that, because Queensland is an 'adopter' jurisdiction for the National Curriculum (as opposed to other state and territories who are 'adapters'), this will mean that all students in Queensland will be given the basics included in the Australian curriculum.

The DoE confirmed that the Queensland RREP provides resources that help teachers have deeper conversations and provides information in context on issues that teachers of an older generation may need more assistance with. For example, correct terminology to describe gender and sexuality.[36] DoE told the Taskforce that the Australian Curriculum outlines the content that should be taught and the Queensland RREP provides resources about how to teach the content.

In *Hear her voice 1*, the Taskforce also recommended that the Queensland Government expand the availability of respectful relationships programs for young people who are not engaged in formal education (recommendation 12). Given the vulnerability of young people who are not engaged in formal education to domestic, family and sexual violence, it is important that adapted programs are made available for delivery by services that are accessed by these young people. The Queensland Government also supported this recommendation in principle only.

Non-consensual sharing of intimate images

In Queensland, the non-consensual sharing of intimate images (sometimes referred to as 'revenge porn') is a crime.[37] New laws introduced in 2019 made it a crime to share, or threaten to share, intimate images without the pictured person's consent. This included threatening to share images a person believes exists, even when they do not.[38] Digitally altered images are also included under the legislation, so, for example, it is still illegal to digitally add a person's face to a sexualised image or cover a person's body using emojis or other digital coverings.[39] The maximum penalty for sharing or threatening to share an intimate image without consent in Queensland is three years in prison, along with courts being able to order the destruction, removal and deletion of the images.[40]

The Taskforce heard experiences of young people 'consenting' to sharing intimate images, but for those aged under 16 years, the law stipulates that a person under 16 cannot consent to that image being shared.[41] It also makes clear that even if a person has given consent for the original image to be taken, this does not amount to consent to have that image shared. It also notes that pressure to consent does not equate to actual consent.[42] A social media campaign accompanied the introduction of the new law, along

with information on how to stay safe, what to do if you have shared an image or video that you later regret, and what to do when someone sends you unwanted sexual messages.[43]

The QPS advised the Taskforce that since the introduction of the new laws on 30 June 2021, 738 children aged 10 to 17 years came to police attention for child exploitation material (CEM).[44] Offences included making, distributing and possessing CEM, of which 98% have been dealt with (726). Of these, the majority were diverted. Outcomes included: 79% given a caution (577 children), 4% referred to youth justice conferencing (30 children), and 6% no further action taken (44 children). Other action was taken for 10% (75 children).[45] Only 1.5% were charged as a result of the non-consensual sharing of images (11 children). These were children who also had charges for violent or other types of offences.[46]

How do other jurisdictions address these issues?

Commonwealth

At a national level, *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia* was introduced in 2015. It was designed to bring together current international evidence on drivers of violence and what works for prevention.[47] While positive steps have been taken since the initial launch of *Change the story*, further systematic and coordinated investment and effort is required at the local, state and national levels.[48] This involves primary prevention targeting underlying social conditions that produce, drive, excuse, justify and promote violence against women and girls.[49]

The *Australian Disability Strategy 2021-31*[50] aims to protect against abuse, neglect and exploitation through rights-based approaches and removal of barriers for people with disability. The Strategy priorities include:

- implementing a trauma-informed approach that promotes safety, respects the voices of people with disability and provides tailored responses
- promoting gender equality and awareness of and respect for the rights of people with disability
- ensuring people with disability have equal access to justice through access to information, equipment and participation in the criminal justice process.[51]

Much groundwork has been laid in terms of supporting change at the national level, including the establishment of Our Watch to lead a national prevention approach, and ANROWS, which is responsible for producing and disseminating evidence to address gendered violence.[52] Despite these frameworks and significant work over the past decade to address violence against women, rates of reported violence continue to grow.[53] Submissions have raised concerns that Queensland's existing laws fail to adequately address sexual violence,[54] including rape myths and community attitudes.[55] Submissions have also raised the impact of social narratives of consent and rape myths that are reflective of broader social and cultural issues of gender equality in Australian communities.[56]

Non-consensual sharing of intimate images

A national prevalence study examining non-consensual sharing of intimate images found that one in five people had reported being a victim.[57] Most commonly, these included having nude or sexual images taken of them without consent (1 in 5).[58] Both men and women experienced similar rates of victimisation, but with some differences (see Table 1 below).[59]

Table 1 Australian prevalence rates of non-consensual sharing of intimate images

Australian prevalence rates of non-consensual sharing of intimate images[60]	
Demographic	*Rate*
Aboriginal and Torres Strait Islander peoples	1 in 2
People with disability	1 in 2
LGBTIQ+ people	1 in 3
Young people aged 16-19	1 in 3
People aged 20-29	1 in 4

The study also found that while one in two men and one in three women minimised the harm caused by non-consensual sharing of intimate images, or blamed the victim, four in five Australians believed it

should be a crime.[61] As the authors of the study suggested, these figures highlight the need for broad community education to address problematic and inconsistent attitudes to this issue.[62]

National response to violence against women and girls

Across Australia, the fourth action plan developed to support implementation of the *National Plan to Reduce Violence against Women and their Children 2010-2022* (the National Action Plan) included sexual violence community awareness activities.[63] This includes preventing sexual violence and sexual harassment through national and targeted initiatives that promote informed consent, bodily autonomy and respectful relationships.[64] This was to be supported by strengthening the capacity of all sectors to address sexual harassment in the workplace, education facilities, within the community and online.[65]

The Federal Government is investing $9.354 million between 2019-20 and 2021-22 in programs focused on preventing sexual violence.[66] Prevention activities will build upon the broader prevention approaches under the National Plan with a focus on awareness raising and understanding of gender equality, consent, healthy sexual relationships and victim blaming.[67]

In 2019, the Federal Government committed $29 million for primary prevention to address sexual violence. This included the national *Stop it at the Start* campaign informing the community about consent, sexual violence and respectful relationships.[68] Stop it at the Start will include multiple stages, such as the 'unmute yourself' campaign targeted toward young people on how to be an effective bystander.[69]

The National Action Plan ends in mid-2022. In January 2022, the Federal Government released the Draft *National Plan to End Violence Against Women and Children 2022-2032* for public consultation. Submissions closed on 25 February 2022. The Draft National Plan included a 'towards zero' approach to violence against women and children and included prevention as one of four national pillars for priority actions and measures. The National Plan was not finalised before the federal election on 26 May 2022 and the incoming Federal Government is yet to announce its intentions in relation to the Plan.

Victoria

The Victorian Government has focused on supporting Victorians by equipping them with the knowledge and skills needed to develop and maintain safe, equal and respectful relationships.[70] The *Free from Violence: Victoria's strategy to prevent family violence and all forms of violence against women* aims to change community attitudes so that Victorians reject gender inequality and violence and actively challenge attitudes and behaviours that enable violence[71]. Broader outcomes across the strategy will be measured by:

- increased understanding of what constitutes healthy, supportive and safe relationships
- reduction in exposure of young people to violence
- decreased prevalence of reported sexism, sexual harassment and bullying
- decreased acceptance of bullying or controlling behaviours.[72]

The *Second Action Plan 2022-2025* to implement the strategy builds on broader family violence reforms underway across Victoria, and reforms underway to implement an affirmative consent model, bystander intervention, and workplace sexual harassment.[73] A component of the second action plan is raising community engagement and awareness of gendered violence.[74] This will be achieved through development and delivery of public awareness campaigns, attitudinal and behaviour change, and bystander engagement.[75] The second action plan also aims to:

- further embed respectful relationships and consent education
- promote gender equality and prevention of gender-based violence in the workplace
- address all drivers of violence against women
- increase public knowledge and support attitudinal and behaviour change
- build bystander engagement
- undertake advocacy and information sharing.[76]

New South Wales

The *NSW Sexual Assault Strategy 2018-2021* (NSW Strategy) was a whole-of-government framework to improve prevention and response to sexual assault, with five key priority areas:[77]

- prevention and early intervention
- education
- supporting victims and survivors

- holding perpetrators to account
- reshaping the service system.

Like Queensland and Victoria, New South Wales has reviewed sexual consent provisions, child sexual offences, and non-consensual sharing of intimate images legislation as part of the NSW Strategy. Drawing on the socio-ecological model, the NSW Strategy incorporated individual, relationship, community and societal factors to address sexual violence.[78] The NSW Strategy also included prevention and education through schools, community education campaigns including using social media, prioritised support for victims and delivered integrated medical, forensic and crisis counselling services.[79] The NSW Strategy focused on reviewing existing laws to better hold perpetrators to account, and improving the system to become more effective, accessible, and flexible through an integrated service response.[80]

The NSW Government began the first phase of its 'Make no Doubt' campaign on sexual consent in 2018, with a second phase launched in 2019 and a third launched in May 2022 to support the commencement of new affirmative consent laws.[81] The third part of the campaign was developed over nine months with the help of experts and contained short videos launched on social media platforms, including the Tinder dating platform.[82]

Tasmania

The *Safe Homes, Families, Communities: Tasmania's action plan for family and sexual violence 2019-2022*[83] is a coordinated whole-of-government plan aimed at stopping violence.[84] The plan was supported by a $26 million investment over three years with a focus on:

- primary prevention and early intervention – embedding respectful relationships education in schools, supporting national sexual violence awareness campaigns and supporting locally led programs to support behaviour change[85]
- response and recovery – extend forensic medical examinations, provide legal assistance and counselling, and support families[86]
- strengthening the service system – integrated responses, standardised risk assessment processes, and improved data collection and capability.[87]

Scotland

In October 2021, Police Scotland launched a new campaign urging men to reflect on their behaviour and attitudes towards women and girls, as well as those of friends and family.[88] The *That Guy* campaign[89] targets men aged 18-35 and urges them to take responsibility for their actions and language.[90] The campaign was launched across several online platforms, with the aim of stopping sexual offending before it starts.[91] The campaign focuses on rape myths, consent, attitudes and behaviours surrounding male entitlement and asks men to think about their actions.

That Guy follows an earlier February 2021 campaign, *Get Consent,* which focused on sexual violence within relationships, including the slogan *Being married does not mean sex on tap. Sex without consent is rape*.[92] The key message of the campaign, targeted at potential perpetrators, is 'no-one is entitled to sex. Sex without consent is rape – so make sure you get consent.'[93]

Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls (2018) (Scotland Strategy) aims to eradicate all forms of violence against women and girls by embracing equality and mutual respect.[94] Key priorities of Scotland's Strategy include:

- rejection of all forms of gendered violence
- women and girls thrive as equal citizens in all areas of society, culture, economics and politics
- interventions are early and effective, preventing violence and maximising safety and wellbeing
- men desist from all forms of violence and those who use violence receive a robust and effective response.[95]

England and Wales

In 2019, the United Kingdom Government commenced the *End-to-End Review of the Criminal Justice System Response to Rape.* It looked at the criminal justice system to better understand how cases of adult rape and serious sexual offences were being charged, prosecuted and progressed through the courts in England and Wales. The review found that despite increased reports of sexual violence to police, the number of cases being investigated and prosecuted since 2016-17 has declined.[96]

The review found that rape is a difficult offence to prosecute, often resting on the issue of consent. It is also a crime of control, with the demands of one person overriding the rights of another, and as such is deeply traumatic for victims, who feel violated and experience a deep sense of shame. It is a distinctive type of crime, requiring a specialised approach. The review found that because of multiple and complex issues in the criminal justice system, many victims in the United Kingdom (UK) felt that their recovery was at odds with continuing to pursue their case. Many victims withdraw their complaint before a case progresses through the courts. Some of the key reasons victims gave during the review were feeling disbelieved or judged, the negative impact on their mental health, and a fear of giving evidence in court.

As well as changes across the criminal justice system, the review found that prevention and early intervention were crucial to reduce the number of rape and sexual violence offences. The UK Government acknowledged that it had already introduced the statutory Relationships, Sex and Health Education curriculum, which includes a focus on healthy relationships and how to recognise and report abuse.

The UK has implemented mandatory relationships education in all primary and secondary schools since September 2020.[97] This includes healthy intimate relationships, and laws relating to consent, exploitation, grooming, and harassment.[98] The UK Government has continued to tackle sexual exploitation by working with websites providing adult services to explore voluntary principles to counter exploitation on their sites.[99]

In October 2020, the UK Victims Commissioner published the *Rape Survivors and the Criminal Justice System* report, which considered responses from 491 survivors of rape who provided information about their experience of the criminal justice process during a six-week public consultation. While not specifically addressing issues related to community attitudes, the findings in the report include that:

- 29% of participants had not reported to the police and the most important reason for this was a fear of not being believed
- among those who chose to report and later withdrew from the process, there was a sense of fearing being disbelieved or judged, as well as anticipatory concerns about the low chances of success.[100]

The *Tackling Violence against Women & Girls Strategy* (2021) (UK Strategy) prioritises the safety of women and girls in the UK.[101] The UK Strategy aims to increase support for victim-survivors through:

- appropriate and accessible quality support (through increased funded support services)
- increases to the number of perpetrators brought to justice
- increases to victim engagement with the police and the wider public service response.[102]

As with strategies from other jurisdictions overviewed in this chapter, the UK Strategy prioritises prevention by addressing attitudes and behaviours that underpin violence against women and girls through:

- a national communication campaign focused on raising awareness and creating behaviour change
- a £3 million (AUD$5.255 million) investment to better understand what works to prevent violence against women and girls
- an additional £5 million (AUD$8.758 million) for the Safety of Women at Night Fund and pilot of StreetSafe, an anonymous reporting option to report unsafe areas
- enhanced support for teachers to deliver the Relationships, Sex and Health education curriculum.[103]

In March 2022, the Home Secretary launched the Enough campaign, a multi-year communications campaign that includes television advertisements, billboards, and social media and radio advertising. It highlights different forms of violence against women and girls and the simple acts that anyone can take to challenge perpetrators of abuse.

The campaign focuses on a broad range of violence against women and girls, including street harassment, coercive control, unwanted touching, workplace harassment, revenge porn and cyber flashing. It has been based on the latest findings in behavioural science and includes messages about the role of bystanders, peers and the wider community in influencing people's actions. While not focused on sexual consent, it does provide clear and simple messages addressing issues related to gender equity and harassment. There is also a website that supports the campaign, provides more information on the steps people can take to

safely challenge violence against women and girls, gives guidance for victims of these crimes and provides advice for perpetrators who recognise their behaviour needs to change.

Results of consultation

Victim-survivor

Victim-survivors told the Taskforce that clear definitions 'beyond no means no' and increased community understanding about the impacts of trauma on victim-survivors are needed.[104] Submissions explained that sexual violence cannot be fixed until underlying factors are addressed:[105]

> *'I don't know how you can fix the system without fixing gender equality; from the prime minister to the everyday people, gender-based violence starts with disrespect [to] power imbalance that's seen even in the gendered wage.' [106]*

Submissions noted that education on identifying and reporting abuse was not readily accessible.[107] Victim-survivors felt that education also failed to reach people vulnerable to experiencing sexual violence, such as children, young people, and people with disability.[108] Submissions called for greater investment in primary prevention, including education about sexual violence and consent:[109]

> *A mental health and safety subject in schools to identify what mental and physical abuse is, as a child I thought the behaviour was normal so I never spoke up. Awareness for young children and teens so they are encouraged to speak out and end years of abuse [is needed][110]*

> *Educating our young people more, and reaffirming to all ages, backgrounds, cultures etc. displaying in as many places the information of what you can do to support someone experience abuse, and that there is zero tolerance to abuse of any form[111]*

Young women and girls who are victim-survivors

The Taskforce was told that children and young women were easy prey for offenders, whether strangers or people known to them.[112] People in positions of power are able to groom young people into compliance or threaten harm to the young person or their family.[113] When young people attempted to disclose sexual violence, they were often met with disbelief or a lack of understanding of the severity of what had occurred.[114] Submissions described young people feeling confused after an assault due to a lack of understanding about sexual relationships generally and of sexual consent, explaining:

> *'Part of me was confused, because I thought, well is this what people do? Is this how people just end up having sex?[115]*

> *In my personal experience and common with young people I work with, coercive control is a stepping stone into physical and sexual violence. There is a need for an early intervention approach … people need to be able to identify what this is, and recognise the warning signs before it can escalate.[116]*

> *By the time I realised what had happened, I didn't have evidence and I knew the statistics. Something like 5% of rape allegations actually get prosecuted and even fewer perpetrators actually face criminal charges. I knew it would be a he said, she said scenario and I knew that it couldn't be proven.' [117]*

Submissions to the Taskforce also showed that young women's safety was compromised by lack of understanding[118] of grooming behaviours in the community, as in the following example:[119]

Afterwards, when it was over, he asked me if I thought it was rape, And I didn't know how to respond … I didn't want to get him into trouble with the police and let him go to jail so I just dropped it and let it go. [120]

Men need to be educated on consent, what grooming is, and how being in positions of power over those younger or below them can influence their decision making. I don't believe enough people understand what grooming looks like or how it occurs, especially men who do it, who probably don't even realise they are.[121]

The event would not have happened if I hadn't been groomed into being comfortable to spend time with him in that context – he had of recognised at any point that as the older, more experienced adult, that he was doing the wrong thing – family, friends and other teachers had recognised his behaviour towards me for what it was – if that teacher was aware of his position of power, and held more responsibility for the way he behaved with me, especially if his attraction and special treatment toward me had been occurring when I was under-age.[122]

The following example demonstrates how easily young people can misunderstand or misinterpret relationships. It also shows the importance of bystanders accurately identifying grooming and sexual violence and knowing how to respond appropriately:

'When I was at high school he gave me special treatment … Validation from an older man AND a teacher was hard for me not to have formed a relationship with him.[123]

I told another female teacher during school that this male teacher had sent me a message on [social media] at 2am. This female teacher did nothing and said nothing as they were friends. I told my mum and my friends about his special treatment of me and it was usually laughed about, and because this male teacher was young and attractive they were 'jealous'; no adult or other figure around me even recognised this male teacher's behaviour as a red flag or something of concern.' [124]

Bystanders play an important role in the protection of girls and women from sexual violence. However, they can also play a significant part in the perpetuation of rape myths, stereotypes and victim-blaming, as highlighted in these submissions from young women:

'I had been with my friends at a gathering and got really drunk. Our group were approached by [multiple] men…The first man raped me while the others took photos. [A] second man offered to take me back to my friend's and then he raped me as well. I suffered years of bullying as the rumours of what happened spread around my peers … I didn't know that what happened to me was rape, I thought I was a willing participant and it was my fault. In hindsight I feel my school could have done more. I had teachers stand by in classrooms where boys would yell obscenities at me. I had rumours around the school about how many men I had fucked. [I was a young teen] I knew the teachers would look at me … Not a single one of them spoke to me or intervened in any way.' [125]

> *'When I was in high school, I was sexually assaulted every day by another student at school. I was also hit and strangled by him multiple times. He would also threaten to kill himself, and me, if I so much as looked at another guy, let alone try and leave him. When what was happening got seen by a teacher, I was the only one threatened with punishment whilst he got off without even a warning. At the time, I didn't feel like anyone would care and that I wouldn't get heard.'* [126]

Victim-survivors who are sex workers

There are common misconceptions around rape and consent for people working within the sex industry. There appears to be a commonly held belief in the community and criminal justice system that sex workers cannot be raped because of their vocation.[127]

> *Sex workers are seen as 'commonly available to men' and thus in a 'perpetual state of consent'.* [128]

This belief fails to recognise that sex work involves a series of negotiations regarding the type of services to be provided, that this negotiation sets out clear boundaries, and that consent can be withdrawn at any stage.[129] Misconceptions and stigma surrounding sex workers often mean experiences of sexual violence in the workplace are seen as 'fraud' rather than a sexual assault.[130] Stigma within the criminal justice system can create substantial barriers for sex workers seeking justice:

> *The framing and targeting of sex workers as 'criminals' inevitably makes it difficult for sex workers to be believed as victims of crime. To grant sex workers the same access to justice as others, police should not be regulators of the sex industry, as it is impossible to occupy the dual role of '(alleged) protector and prosecutor'.* [131]

Education was seen as an essential component for changing the attitudes of people across the community, including professionals within policing, and health. A sex worker told the Taskforce:

> *There is not a lot that can be done to change the attitudes of people, except education and humanising sex workers [and that] consent applies. Money in exchange for sexual services does not negate consent. Rape is rape … words matter. People listen to words and how they are said.*[132]

First Nations peoples

The Taskforce visited a number of First Nations communities and met community members and service providers. During these visits the Taskforce heard about community attitudes and other barriers to reporting sexual violence in some communities, including:

- community backlash and concerning impacts for a victim's family, such as tarnishing the family name[133]
- sex and matters related to it are taboo and it is shameful to talk about, especially with people of another gender or certain members of the community[134]
- there is a lack of confidentiality in small communities and victims are vulnerable if they are seen or otherwise known to have come forward to make a complaint[135]
- a lack of services in remote locations[136]
- a lack of knowledge and understanding about the process and about available services to support victim-survivors.[137]

The Taskforce was also told a heartbreaking story of a child as young as 10 sleeping under school buildings because of sexual abuse.[138] Concerns were raised about young people being coerced into sexual activity and not understanding that what was happening to them is sexual abuse:

> *Whether some young girls know it is sexual abuse or being coerced into sex by older men or boys their own age … and some young girls [having] experienced sexual abuse at a young age that is traumatic.*[139]

In other distressing examples, the Taskforce heard:

> *'We had a case last year of a nine-year-old boy in bed with a 13-year-old – there were photos.'* [140]

> *'There was one case of sexual assault of a young girl. They went to the hospital and they were told they do not deal with that (forensic examination). She was then taken to police and her family was told we do not do that here – the police said you have to go to Rockhampton. There was no confidentiality.'* [141]

A lack of education around sexual abuse and consent was discussed as a possible influence on rates of young people who were sexually active.[142] Further elaboration suggested there needed to be more education around what a healthy relationship looks like, what inappropriate behaviours are and what to do when you feel scared or anxious.[143]

The extent of sexual violence in community was staggering. In one community, local service providers described sexual violence in the toilet blocks at a local school as being normalised and requiring a police officer be placed at the school for a time.[144] During consultation, one service recounted:

> *'Sexual violence happens in a relationship – but the victim did not realise it was rape. We saw six girls yesterday at school – four of them the jaws dropped because [they] realised 'Oh yeah, that happens to me with my boyfriend'. One girl … was homeless, we explained to her what sexual assault is and she said she cannot do anything, she said 'I have to live with him'. She is only 16.*[145]

To address some of these issues, the Taskforce heard service providers often provide information sessions about sexual violence as part of 'mums and bubs' or women's wellbeing programs so that women can attend without upsetting their partners or others in the community.[146] Education for men who may use violence is also delivered in community.[147] Culturally informed and led programs that raise awareness of sexual violence and support women and girls to be empowered have shown promise.

The Taskforce met a representative from the Jonathon Thurston Academy's *JT Lead Like a Girl* program, an innovative, philanthropic program being developed to assist girls in remote communities.[148] The Taskforce heard of the desperation of teachers and others in some remote communities at a loss to support young women experiencing sexual violence.[149] In response, the Jonathon Thurston Academy has partnered with the National Broadband Network to enable young women in communities to connect with each other and with supports in regional centres.[150] The program, operating during school hours, supports girls to gain confidence and self-belief, and become comfortable enough to share their stories and seek help.[151] The Girls Future Fund was recently launched as part of a corporate sponsorship program that provides revenue to support girls to fly from their community to workshops in Townsville, Brisbane and the Gold Coast.[152] Overall program goals include education, employment and wellbeing,[153] with sessions designed to address the underlying causes of violence. The program, along with other initiatives led by the

Jonathon Thurston Academy, is funded through philanthropic donations and is an example of inspiring community leadership and goodwill.

Service system stakeholders

The Taskforce heard that education is essential to combat rape myths[154] and to develop the evidence base about what works,[155] as well as cost-effective investment plans[156] for supporting victim-survivors. Education at all levels of schooling, throughout the community and ongoing professional development were seen as critically important.[157]

The Taskforce heard that to help prepare young people for healthy and safe relationships, community messaging should focus on the need for positive and enthusiastic consent, rather than reinforcing that it is up to a woman to say no.[158]

Stakeholders told the Taskforce that it is important to bust myths such as that when a person freezes they are consenting because they did not do anything to say no or to make the other person stop.[159] The Taskforce also heard that providing additional options for victims to make a complaint, and alternative responses when they do, would be of assistance.[160]

The Redlands and Logan Centre against Sexual Violence (Logan CASV) told the Taskforce it conducts regular vigils in public spaces to raise awareness of sexual violence and reduce stigma surrounding this crime.[161] Public vigils can be an effective way to start the conversation across communities and raise awareness of the prevalence of sexual violence and an understanding of where to seek help. Sadly, these vigils sometimes expose the extent of the spread of myths around sexual violence. Victims who have attended vigils told the Taskforce that people have responded 'you deserved that'. Other victims have had their experiences minimised, with others saying, 'that happened to me, I'm fine'.[162]

The Youth Advocacy Council told the Taskforce that education programs for children must be well targeted and evaluated to ensure that children can make good decisions when faced with unwelcome contact.[163] Understanding drivers of sexual violence and the particular vulnerability of some victims, such as alcohol use by younger children, is critical. This is so young people themselves are aware of the risks involved with being intoxicated, as well as to help identify if young people are using alcohol to manage trauma and require therapeutic support.[164]

Youth Advocates from the Queensland Family and Child Commission explained that there is an expectation that 'nice guys' are entitled to love, intimacy and sexual favours, which they described as the 'nice guy syndrome'. For these young men, a woman who fails to provide these favours is blameworthy and open to abuse, social shame and coercion.[165] Youth Advocates also told the Taskforce that young boys will continue to ask young women for sexual favours until they eventually say yes. Education and community awareness programs must address issues such as this 'sense of entitlement' and the 'nice guy syndrome' if we are to address sexual violence.

WWILD Sexual Violence Prevention Association Inc (WWILD) has recommended that accessible education based on successful models for people with intellectual disability be provided.[166] This education should cover the lifespan of the model and relate to relationships, rights, sex and consent.[167] It should also include the promotion of women and girls' rights to sexual and intimate relationships, including through expressions of LGBTQIA+ identity, and how to support them in the community.[168]

QSAN believed a useful educative model is required and should be one that can be relied upon in community education activities, including those for children and young people.[169] QCOSS suggested there should be greater awareness across the community, as well as across government and non-government agencies. This should include the impacts of colonialism, historically discriminatory policies, and current policies that fail to address these impacts.[170]

Queensland Police Service

QPS investigators who participated in a consultation forum with the Taskforce shared the following observations about community attitudes towards consent:

- the use of pornography is prevalent, even for children as young as 12 years and under, and it is normalising violent sexual acts[171]
- there is a reluctance in Queensland schools to discuss or address issues relating to young people's consumption of pornography[172] and this could exacerbate sexual violence
- school teachers were not equipped to deliver education about consent and pornography[173]

- online dating platforms have impacted dating trends and altered perceptions of behaviours normally associated with sex and consent[174]
- the community understanding of consent and sexual violence is particularly poor in regional and remote areas of Queensland[175]
- the community needs greater education about when consent is *not* being given, particularly when alcohol is involved[176]
- the way media reports sexual violence cases can perpetuate stereotypes[177]
- media commentary about cases that are withdrawn can reinforce rape myths, including when there is 'tacit or implied consent'[178] or in high-profile cases, which are often referred to as the 'football player narrative'.[179]

Education stakeholders

Catholic schools

The Queensland Catholic Education Commission (QCEC) told the Taskforce that Catholic schools in Queensland deliver respectful relationships education as part of the endorsed Australian Curriculum.[180] These schools also make reference to the Queensland DoE's RREP, Our Watch's Respectful Relationships Education, Daniel Morcombe Child Safety Curriculum and the Victorian Resilience, Rights and Respectful Relationships programs.[181] These programs, along with the Student Wellbeing Hub, inform delivery of respectful relationships education in Catholic schools and include specific information about pornography and non-consensual sharing of intimate images.[182]

The QCEC explained that a range of materials relevant to teaching children about consent is available for Australian schools. QCEC suggested that:

> *'It is not the lack of available resources that presents the greatest challenge but rather, the willingness and confidence of school staff to engage with resources and have these discussions with students in age-appropriate, respectful, honest, accurate and compassionate manner'.* [183]

Catholic schools can at times feel challenged in terms of knowledge, confidence, and capability to satisfactorily deliver correct information regarding consent. QCEC highlighted the importance of appropriate professional development for teachers so they are well supported to deliver the content.[184] Additional considerations must be made for teachers who have been victims of sexual assault to ensure they are supported.[185] QCEC noted that results from a 'cross-sectoral consultation undertaken during 2021 showed that there is a need to improve general understanding of consent by young people in the context of the broader discussion of these issues throughout the communities in which [their] schools operate'.[186]

To address these issues, QCEC has suggested the need for explicit discussions in school and parent forums, and explicit inclusion in the curriculum delivered in the classrooms as part of the school pastoral care and wellbeing program.[187] Parent engagement is critical to supporting this education.[188] QCEC has also recommended 'consideration be given to a public awareness campaign aimed at informing the broader community regarding consent'.[189] Incorporating the views of specialist sexual health and sexual assault services on ways to improve community understanding on these issues may also be valuable.[190]

Non-consensual sharing of intimate images can have substantial repercussions for young people. QCEC has described instances of young children being groomed by online adult perpetrators, with students feeling ashamed and fearful once the illegal nature of the provision of their photo was explained.[191] Given this is the first generation of children dealing with this issue, QCEC has suggested that broad community awareness about the repercussions of sharing intimate images online is needed.[192]

When asked about the use of pornography, sexting and dating apps, QCEC noted exposure and engagement appeared to contribute to unhealthy and undesirable community views of consent.[193] To address this, QCEC suggested a need for young people to have conversations with and obtain information from adults deemed 'credible', in a multitude of contexts.[194] These adults must also be provided with access to consent education and training.[195]

Government agencies

Department of Education (DoE)

DoE told the Taskforce that in 2021, only 29% of Queensland state schools indicated they were using the RREP.[196] Of those, 6.6% were using the RREP alongside other RREP materials.[197] DoE told the Taskforce that mandating was not seen as the best way to deliver RREP.[198] This is because there is no one-size-fits-all approach to teaching RREP. It must be tailored to the context in which it is taught. As Queensland has adopted the Australian Curriculum, the DoE feels there is no need to mandate RREP, which is already effectively embedded within the curriculum.[199]

The Taskforce heard that three points of review of programs such as RREP generally take place – during the resource development, the consultation phase and post-implementation.[200]

The DoE discussed the challenges of delivering respectful relationships education in rural, regional and remote locations. Normalisation of behaviours was the biggest challenge identified.[201] This posed a significant challenge for young teachers and principals dealing with 'terrible things happening in communities'.[202] The DoE would welcome targeted public, statewide educational campaigns, with tailored messaging to key cohorts, including young people.[203]

Department of Seniors, Disability Services, Aboriginal and Torres Strait Islander Partnerships

The Department told the Taskforce about co-designed programs operating within First Nations communities.[204] These programs are focused on primary prevention and early intervention activities for young people.[205] Activities include promoting respectful relationships, strengthening young people's safety and preventing sexual and family violence.[206] Although these programs have been co-designed and tailored to suit community needs, improvements could be made.[207] These include the need for:

- coordinated, whole-of-government strategies to address social stressors and cycles of trauma
- further investment in co-designed, culturally safe supports for both victims and offenders
- investment in whole-of-community prevention and early intervention programs to promote healing
- education and resources that provide women and girls with the language and skills to recognise and understand sexual violence, consent, and how to seek help
- education and resources for parents, caregivers and other support people
- further understanding of the impacts of pornography on sexual violence and understandings of consent, and how these impacts can be addressed.[208]

The Department told the Taskforce it had not been involved in the development of the RREP program in Queensland and would be supportive of more active efforts to engage school communities, particularly First Nations communities, in conversation about sexual violence education.[209]

Other government agencies

The Office of the Public Guardian noted the need for government to better recognise the value of investment in early interventions that promote children and young people's education, health and wellbeing.[210]

Academic

The Taskforce heard of the need for specialist training and resources for people working at each point of the criminal justice system to better support sexual violence victim-survivors.[211] This includes resources relevant to legal and court processes, and for professionals to receive ongoing cultural training to better support diverse populations.[212]

Legal stakeholders

North Queensland Women's Legal Service supports the recommendations made in *Hear her voice 1*, specifically the need to implement primary prevention that provides education about domestic and family violence and which incorporates education on sexual violence. Queensland Indigenous Family Violence Legal Service (QIFVLS) told the Taskforce:

> *'A void in education around respect for women and consent has led to mistaken beliefs around sexuality, masculinity and consent. This has led to horrific circumstances involving the sexual assault of Aboriginal and Torres Strait Islander girls.'* [213]

In a harrowing example provided by QIFVLS, a mother was unable to seek help for her young daughter who was experiencing sexual, physical, verbal and emotional abuse from an older man.[214] QIFVLS explained the community view was that the 12-year-old girl was 'in a relationship' with the older man, despite her age and inability to consent, and the age disparity. The girl experienced ongoing abuse, but due to inaction by police and Child Safety, she continued to be abused, sexually and physically – even after the 'relationship' ended.[215] In this scenario, the girl was able to eventually seek protection only through a domestic violence order.[216]

QIFVLS described a program it delivers designed to address violence in Aboriginal and Torres Strait Islander communities through community education, legal information, healthy and unhealthy relationships information, and empowerment through gender equality.[217] Acknowledging that intergenerational change needs to focus on young people, the program is focused on pre-teens and teenagers, and where possible is delivered within a school environment.[218] QIFVLS told the Taskforce:

> *'Disrespectful attitudes held by men and boys toward First Nations women and girls need to improve [along with the need to change] First Nations community attitudes and support of toxic male entitlement and female subservience.'* [219]

In relation to the non-consensual sharing of intimate images without consent, the Bar Association of Queensland noted it is 'not aware of any particular difficulties or issues with the current approach' and does not 'consider there to be a need for further investigation or amendment'[220] of existing approaches.

Other stakeholders

The Taskforce received a submission from QMusic,[221] a not-for-profit music industry development association in Queensland. QMusic describes the particular characteristics and vulnerabilities in the music industry that can contribute to sexual harassment and sexual violence and pose risks for music artists, venue staff and patrons. QMusic recognises the role it can play as an industry body in helping drive change so that the industry and the community are safe, supportive, and equitable for all. It also believes venue owners and operators, artists and the music industry can play an important role in making safer spaces and better systems, in increasing awareness and education, and in setting the ground rules of acceptable behaviour.

The submission attaches a report by Dr Jeff Crabtree, which includes the findings of a survey of 145 participants. The survey found that 79% of interviewed participants described power as a factor in their experiences of harassment. Power was used to manipulate, intimidate, humiliate and coerce sex. The study found that power imbalance could be actual or perceived and 'a significant amount of the sexual harassment of women occurs in spaces where the boundaries between work interactions and social interactions are blurred. These include after parties and other industry events where networking is essential and where alcohol is also common. Events such as these offer perpetrators the scope to make an unwanted sexual approach that can be plausibly denied as an unintended miscommunication or as a consequence of intoxication'.[222]

Taskforce-commissioned research into community attitudes

Enhance Research is a market and social research company that specialises in researching sensitive topics such as sexual health and violence.[223] The Taskforce commissioned *Enhance Research* to conduct market research into community attitudes to sexual consent.[224] *Enhance Research* explored community understanding, attitudes and behaviours towards sexual consent in the Queensland community.[225] The research included focus groups with young people (aged 18-21), adults (aged 22-55 and over), Aboriginal and Torres Strait Islander peoples, and people who identify as LGBTIQA+. The voices of people with

disability and culturally and linguistically diverse people were also represented in focus group participants.[226]

Enhance Research findings and submissions to the Taskforce

Findings identified generational differences in confidence levels when speaking about sex and sexual consent.[227] The report (Annexure 1) found that community members were generally confident in their own understanding of consent at the conceptual level, but when asked to apply high-level concepts to real-life scenarios, found it difficult to navigate.[228]

Study participants viewed consent as most relevant in the context of single people,[229] which aligns with prevalent rape myths and stereotypes across the Australian population.[230] Reference to sexual assault was understood as incorporating the entire spectrum of possible non-consensual behaviours, with rape considered the most extreme form.[231] The impacts of sexual assault were understood in terms of reputational damage (regardless of findings of guilt), and prosecution.[232] Participants defaulted to using the legal concept of 'innocent until proven guilty' and focused on assessing whether reasonable doubt existed.[233] This finding is again in line with national studies on attitudes towards sexual violence that perpetuate beliefs around accusations as a form of payback or because of regrets about consensual sex.[234] Several factors were considered influential for determining levels of consent required:

- how well parties were known to each other
- whether the sexual acts were new or considered intense
- how far the sexual activity had progressed.[235]

Communication of consent could be provided in a variety of ways:

- verbally is seen as the clearest form of consent, including refusal or withdrawal of consent and more appropriate for new relationships, casual relationships or when parties do not know each other well
- body language (more appropriate for those in a relationship or between people who are well known to each other).[236]

When consent was withdrawn during sexual activity there was an expectation it would be communicated clearly through explicit body language or verbal communication.[237] Additional factors raised by participants included partial consent – with this being assumed based on prior sexually explicit behaviour (sexting, nude images) until otherwise stated.[238] In contrast, some believed that consent could only be given in the moment and not assumed based on factors such as prior behaviour or the clothing someone wears.[239]

Conceptually, consent was mostly understood as needing to be constantly monitored, and that it can be withdrawn at any time.[240] This changed somewhat when viewed within real-life scenarios, with participants believing it is possible to 'be caught up in the moment' with body language or cues misinterpreted or missed.[241] Although some participants felt there was a 'point of no return', they were not able to articulate when this point was.[242]

Responsibility for consent at the conceptual level was viewed as strongly the role of both parties. Realistically, participants felt that once the initial consent was given, the onus fell to the party wishing to withdraw consent, acknowledging that expressing consent was not equal.[243] For women and people from the LGBTIQA+ community, it was acknowledged that communicating consent required confidence and agency.[244] This was considered to be especially hard for people within domestically violent relationships, for young people, people who lack life experience or sexual knowledge, and people with disability.[245] The role of power imbalance and dynamics was also a consideration for women and people from LGBTIQA+ communities but less so for men, who viewed differential power in terms of physical strength rather than age or social standing.[246]

It was clear that confidence and self-agency was not considered by most men within the focus groups.[247] But parents of teenagers expressed concerns about the pressure young people face in engaging in sexual acts and the difficulty for young people to say no.[248]

Alcohol consumption played a role in consent, but was not seen as an excuse for sexual assault.[249] As the following graph shows, levels of intoxication influenced the conceptual understandings of consent, and a person's capacity to give or refuse it.[250] As with the above examples, when asked to consider alcohol consumption within a real-life scenario, the difficulties of identifying who is responsible for consent blurred.[251]

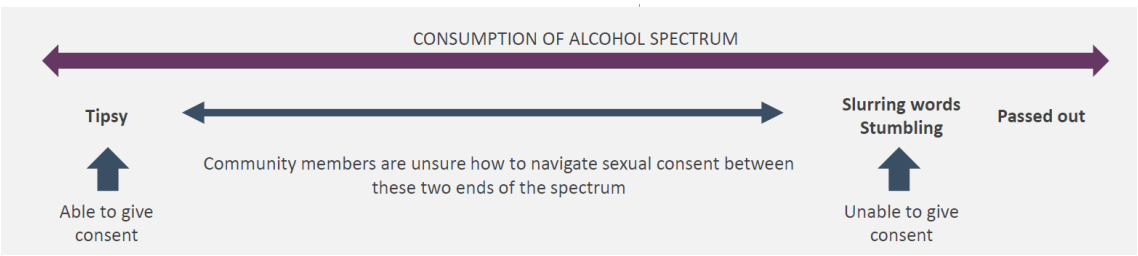

Figure 1 Consent and the consumption of alcohol extracted from Enhance Research[252]

Rape myths were explored throughout the focus groups to better understand beliefs and attitudes within Queensland. Participants in the study recognised that consent within relationships – including within marriage – was still required, although some participants suggested this view is not held across the whole of society.[253] Freezing was not unanimously considered as a refusal or withdrawal of consent.[254] This aligns with stakeholder feedback and the experiences of victim-survivors discussed in more detail throughout this report.

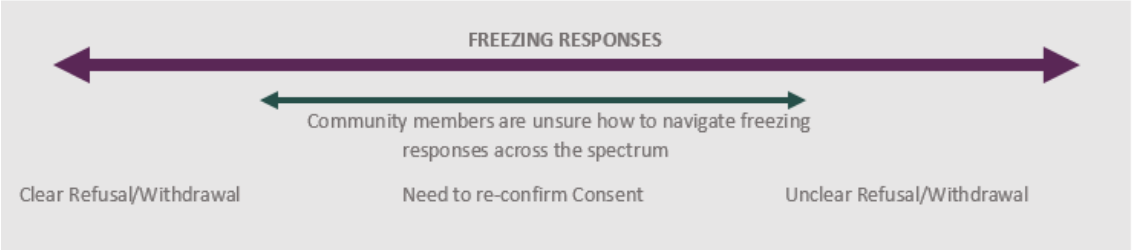

Figure 2 Freezing responses and understanding consent drawn from Enhance Research[255]

A male accused person's status within the community appeared to be a significant factor in the believability of a woman's reports of sexual assault.[256] Both men and women appeared to view sexual assault reports against high-status or high-profile men with suspicion, suggesting it was motivated by fame or financial benefit.[257] Others viewed these types of complaints as arising from regrets after consensual acts, or as a ruse to cover up cheating:[258]

> *'See, I question her credibility as well, because he's wealthy. We assume that he's wealthy and got money, and is she just a gold-digger? Well, what does she want out of it?'* [259]

Delays in reporting sexual assaults were also seen as suspicious, with variations across participant understanding of the impact sexual assault has on victims.[260] At one end of the spectrum, community members understood that the impact of trauma can delay victims coming forward, with some only reporting after others have first shared their allegations.[261] This suggests the media can play a positive role in supporting education around trauma.[262] For others, delayed reporting leads to suspicions around potential ulterior motives such as personal benefit, revenge, or financial benefit – although these suspicions were also noted when a woman reports soon after the alleged assault.[263]

Pornography was considered influential in younger people's understandings of consent, as well as for those who are sexually inexperienced.[264] Participants considered pornography a form of entertainment rather than a reflection of real-life sexual encounters and healthy sexual relationships.[265] Sex scenes within mainstream media were also seen as potentially leading young and inexperienced people to hold an unrealistic or negative understanding of consent.[266] Young participants in the study explained:

> *'A lot of people that I know have had bad experiences with people who literally just watched a lot of porn, thinking that's how sex is and that's how it works. And yeah, I feel like it kind of ... I know it happens for girls and boys, but I feel like it's a lot more for boys and that's just my personal experience, that they kind of develop these really aggressive tendencies and yeah. And they think it's attractive to be pushy.'* [267]

Other relevant issues

Coercion and intoxication are grey areas that can make women and girls vulnerable to exploitation

Taskforce submissions discussed the role of consent within coercively controlling and sexually violent relationships. Others discussed consent in terms of how perpetrators interpret an unwilling victim's actions:

> *'He always talked about consent but the pressure from him was immense to have sex constantly, sometimes almost like mild porn.'* [268]

> *'Silence should not equate to consent and consent [sh]ould be able to be withdrawn at any time.'*[269]

One submission to the Taskforce suggested misconceptions can sometimes extend to women and girls involved in illicit drug use:

> *'Women involved in illegal drugs are often considered sluts willing to fuck anything for drug money, so when they claim they have been assaulted or raped their claims are dismissed.'* [270]

Social events and drinking can be used by some to blur boundaries and exacerbate power imbalances to initiate or intimidate others into unwanted sex. The submissions received by the Taskforce and the results of the Enhance research indicate that while some in the community articulate that the intoxication means there cannot be consent, many find it hard to apply this concept in real-life scenarios.[271]

Pornography and non-consensual sharing of intimate images

Pornography

'*It's time we talked*' is an Australian violence prevention initiative, funded by philanthropic donations, that supports young people, parents, schools, government and the community sector to understand and address the influence of pornography. According to its website, '*pornography is now the most prominent sexuality educator for many young people*'.[272] An Our Watch paper released in 2020 provides some support for this view. Findings from the background paper noted that 48% of young men have seen pornography by the age of 13 years and young women by the age of 15.[273] Despite high prevalence rates for access to pornography, a survey of 2000 young Australians conducted by Our Watch found 47% of young people did not see pornography as an educational tool and 48% thought it was not good for learning about sex.[274]

In contrast, a New Zealand study found that 60% of young men and 41% of young women used pornography to learn about sex and sexual relationships.[275] This suggests that cultural and societal factors may influence the use of pornography and understandings around sexual relationships.

At the same time, young people are aware of the harmful nature of pornography, with 46% of young women and 37% of young men thinking it is somewhat harmful.[276] Studies have identified that young people hold specific concerns regarding:

- predominant representations of women in subservient roles
- portrayals of sex primarily oriented towards male pleasure and the potential for promoting women performing certain behaviours or acts to meet men's expectations
- pornography creating uncertainty and demands around sexual relationships from male peers and partners
- young men who may pressure young girls to perform unwanted, degrading, painful or violating sexual acts that they have seen in pornography.[277]

The alarming rates of young people accessing pornography was raised frequently and consistently during stakeholder consultation forums held by the Taskforce in all locations across Queensland. This is an issue about which the community is deeply concerned. The Taskforce heard 'young people see so much pornography a lot of them think violence they see in porn is normal'.[278] Despite the accessibility of pornography online, stakeholders believed 'social media provides greater awareness of consent'.[279] The use of pornography is often described as contributing to domestic, family and sexual violence victimisation:

> *'My partner had a private addiction to pornography and would demand unrealistic and degrading sexual standards from me, due to the influence of what he was viewing. He had no regard for whether or not this was reasonable, realistic, respectful, pleasurable or even sensual for a woman.'* [280]

Use of child pornography was also evident in sexually violent relationships. The Taskforce has heard that, alarmingly, use of pornography has sometimes been ignored by the criminal justice system:[281]

> *I found images of child pornography on our computer in a hidden file, so I grabbed my children and fled … and reported the matter to local police … and many years later I found out all existence of the child porn, including the computer confiscated, was not on record.'* [282]

Submissions to the Taskforce called for greater action to address negative cultural attitudes and behaviours derived from pornography, with one suggesting:

> *[There is a] need to move away from a culture of porn, which is only becoming more extreme and is encouraging non-sensual, disrespectful, abstract and violent representations of what sex should be.'* [283]

The Taskforce heard that a broad range of pornography is available. During a meeting with members of the Queensland Family and Child Commission Youth Advisory Council, participants suggested to the Taskforce that some forms of empowering pornography could be a useful tool for destigmatising sex[284] but all agreed that the majority of pornography is made by men for men.[285] This results in the perpetuation of misogynistic and unrealistic standards that then influence a young person's expectations of sex.[286] The readily accessible nature of pornography can lead young boys and girls to develop inappropriate understandings of sex.[287]

The Scarlett Alliance told the Taskforce that the role of pornography should not be overemphasised in shaping attitudes about gender and sexuality because:[288]

> *'Targeting pornography fails to address the problem of deeply ingrained sexism, misogyny, misogynoir [bias toward black women where race and gender both play a role],*[289] *whorephobia and transphobia in Australian culture, and shifts the blame to sex workers working in explicit content production.'* [290]

Non-consensual sharing of intimate images

Taskforce submissions highlighted the intersection of sexual violence with other behaviours, including non-consensual sharing of intimate images. The impacts of non-consensual sharing of intimate images can be

similar for a victim of other forms of sexual control. Both require a victim to become involved in the criminal justice system.

> *'All because men think it's OK to rape, share images, do sexual things without consent. All because men think they are superior historically. I am traumatised. Legally these men seem to be OK traumatising, and justice is so far gone down the path they don't see any repercussions for years after, if at all. It's disgusting.'* [291]

The Taskforce heard that domestic and family violence perpetrators can use threats to share intimate images as a mechanism of intimidation and coercive control:

> *'Then there was the revelation that he had filmed us having sex and the constant threat to send images from the video to my sons, family, friends, work. I had never even sent a sext message, and he knew this was something he could really use to control me.'* [292]

These threats were used to maintain control over a victim-survivor. Intimate images in the context of young people were seen as an increasing issue and potential barrier to reporting sexual violence.[293]

Respect Inc explained technology as double-sided, with sexual interactions in a digital format being disseminated more quickly and permanently – while also providing police with further avenues for obtaining evidence.[294]

For First Nations peoples, non-consensual sharing of intimate images leaves women and girls feeling powerless to control their circulation, resulting in shame and adding to the harm caused by gendered violence.[295] Uncertainty around how far the images have been shared can make it difficult for women and girls in small communities.[296] Young girls may share explicit images because they feel it is expected of them or they are coerced or intimidated. This can result in them being charged. The criminal justice system is ill-equipped to respond to women and girls who are coerced and manipulated into sending explicit images:[297]

> *[Girls who are] already feeling coerced into engaging with sexting behaviour … are then vilified for this by police, which adds to their shame and guilt and then perpetuates further crimes.*[298]

Taskforce findings

The Taskforce heard consistently across the state that there is strong support for a broad public education campaign to improve community understanding and awareness and reinforce contemporary social values of sexual consent.

The findings of *Enhance Research* confirm what the Taskforce heard in submissions and consultation forums and meetings – there is a general understanding of sexual consent at a high conceptual level but people struggle to apply it in real-life scenarios. In many communities, sex remains a taboo subject. Consent should be discussed and mutually agreed. How to do this should be talked about and modelled in healthy and respectful ways and in a variety of scenarios and cultural contexts.

Despite improved understanding of violence against women, some in the community still hold concerning and harmful views and attitudes that enable rape myths and harmful beliefs about women and violence to perpetuate.[299] It is important for all members of the community to be aware of and understand the impacts of power imbalance. These issues can diminish the confidence of women and girls to say 'no' and to exercise self-agency.

The Taskforce was alarmed at the lack of understanding in the community about the need for consent in intimate partner relationships. This is a serious risk factor for victim-survivors of domestic and family violence who may not disclose sexual violence when they seek help and protection from other forms of violence. This issue should also be addressed as part of a community education campaign.

It negatively influences and shapes expectations about sexual relationships, views and perspectives about consent, and the submission of women and girls. Education about the harmful impacts of pornography - particularly for young people – is urgently needed to combat its negative and undermining messages.

The Queensland Government response to *Hear her Voice 1,* Recommendation 10, provided in-principle support but has not mandated RREP as recommended. The Department of Education told the Taskforce that mandating RREP is not possible because of the need to tailor content to the community and ensure it is culturally appropriate. In particular, RREP should be tailored to incorporate relevant First Nations language, culture and issues so that it is relevant within the context of each particular community.

The Taskforce agrees that messaging within RREP should be tailored and adapted to meet the needs of individual groups, including First Nations peoples and culturally and linguistically diverse communities. The basic content and delivery of these programs, however, can and should be consistent and non-discretionary. At present, children in Queensland receive inconsistent outcomes from RREP, depending on where they live and what the school they attend chooses to deliver. The Taskforce heard calls for strengthened oversight and accountability for the delivery of RREP in all schools across Queensland.[300]

Information and resources based on RREP should be shared with parents and caregivers so that messages can be reinforced at home. Culturally appropriate resources should be developed with First Nations peoples and culturally and linguistically diverse communities to ensure messages are understood by children and their families. Appropriate resources will also be needed for children and young people with intellectual and cognitive disability.

Community attitudes, values and beliefs about sexual violence and consent influence women and girls' experiences and influence whether they report sexual violence and continue a complaint through the criminal justice system. Community attitudes and understanding should be improved by:

- a broad primary prevention community education campaign (similar to campaigns in New South Wales, Scotland, England and Wales) tackling disrespect, power imbalance, misogyny, overly sexualised and trivialised representations of women and girls, and rape myths at the heart of gendered violence
- a greater focus on respectful relationships education, including consent, the impacts of pornography and implications of sharing intimate images through increased and consistent use of RREP in state, independent and faith-based schools
- providing broad education about sexual consent, sexual violence and help-seeking to parents, teachers, community leaders, and community members
- providing whole-of-community education about changes to the laws relevant to consent and sexual offences, recommended throughout this report

Coupled with changes to the law, raising community awareness and shifting community attitudes provides a valuable opportunity to prevent violence against women, including sexual violence. Changes to the law, without a complementary broad community awareness and education campaign, will not address the underlying factors that contribute to sexual violence and are less likely to be effective in deterring it. Merely providing information to stakeholders and the community about changes to the law would be insufficient. To address sexual violence, the Government will need to invest in primary prevention campaigns (such as those in NSW, Scotland, England and Wales) that directly address those underlying community attitudes enabling sexual entitlement and sexual violence. A change in those underlying values is needed to keep Queensland women and girls safe.

Taskforce recommendations

1. The Queensland Government develop and implement an adequately resourced primary prevention-focused community education campaign to improve awareness and understanding about sexual violence, including consent. The campaign will address societal and cultural barriers that contribute to low rates of reporting sexual violence. The campaign will aim to break down taboos about talking about sex and consent and embed community acceptance of the requirement for consent to be mutually agreed and discussed. The design of the Queensland campaign will build upon existing primary prevention and community education under the Prevent. Support. Believe: A Queensland framework to address sexual violence and take into consideration similar campaigns implemented successfully in other jurisdictions. It will include targeted messaging and specific delivery modes for First Nations peoples as well as people from culturally and linguistically diverse backgrounds, people with disability and LGBTIQA+ people.

2. The Queensland Government, as part of its implementation of recommendations 10 and 11 of *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland*, extend respectful relationships education to acknowledge and address children's access to pornography and counter harmful messages that may be learned when children access this material. Respectful relationships education will include information about the impacts and outcomes of non-consensual sharing of intimate images.

3. The Queensland Government develop and implement a strategy to increase the use of the Department of Education Respectful Relationships Education Program across all Queensland schools. This will include initiatives to ensure all children in Queensland access the same respectful relationships education content irrespective of where they go to school. The implementation of respectful relationships education in Queensland schools will be regularly monitored and measured and publicly reported upon to ensure community confidence. This should include, as a minimum, annual reporting in the Department of Education annual report.

Implementation

Broad and targeted community education campaigns

The Taskforce recognises the work already undertaken at the state and national level in raising awareness of gendered violence. Significant investment has been made at the national level to implement community awareness campaigns to address violence against women and girls – such as the '*stop it at the start*' campaign. Work at the state level includes an evidence-based and trauma-informed domestic and family violence communication and engagement strategy targeting people with disability, bystanders and the broader community. This strategy could be used as the framework from which to build broader community education and awareness campaigns. Examples of good practice have also been identified internationally, including Police Scotland's '*That Guy*' campaign.

The Taskforce's first report, *Hear her voice 1,* outlined foundations for reform, including development of a communication strategy, primary prevention strategy, and a training and education framework. As with domestic and family violence, sexual violence is influenced by underlying drivers that promote, support and influence gendered violence. These drivers include misogynistic views, economic disparity, and biased views, beliefs and attitudes regarding the role of women and girls and sexual relationships. There may be value in combining some elements of these campaigns to provide simple and clear messages to the community.

Respectful relationships education

The Taskforce is aware that there are challenges in requiring all schools in Queensland to deliver the DoE Respectful Relationships Education Program. However, the interests of schools and those who work in them should not override the safety and wellbeing of students or their right to education about respectful relationships, consent and bodily autonomy. There is also a significant public interest in respectful relationships education being consistently delivered throughout Queensland. It will contribute to reducing rates of sexual violence, improve community safety and reduce the burden placed on our strained health, service and criminal justice systems.

Human Rights considerations

Human rights promoted

The recommendations above aim to help students, and the broader community, better understand and respect human rights under the *Human Rights Act 2019*. These include the rights for all children to be protected from all forms of violence. Consistent promotion of respectful relationships will support protection of personal security (section 29), achieved through broad and targeted community awareness raising and strengthened respectful relationships education. The protection of children (section 26) will be promoted by the appropriate use of social and educational measures through broad campaigns designed to raise awareness, and change beliefs, attitudes and behaviours regarding sexual violence. This includes protecting children from the harm caused by pornography and negative gendered attitudes and beliefs held in the wider community.

Developing culturally safe, relevant and community-led education and awareness campaigns will support cultural rights (section 27) and rights of First Nations peoples (section 28). This will also support rights that promote equality (section 15). Broad and targeted campaigns, including those aimed at professionals within the criminal justice system, will support the right to a fair hearing (section 31) by facilitating greater procedural fairness to a victim when reporting to police and traversing court processes. Procedural fairness plays an important role in positive victim-survivor outcomes, and in encouraging future reporting. Debunking rape myths and stereotypes and ending victim-blaming within the criminal justice process will lead to fairer outcomes for victims and better protect the community from sexual offenders.

The right to education (section 36) protects the rights of all children to education without discrimination. This includes that education must be available (trained teachers), accessible (physical, economic, language, culture), acceptable (minimum standards, culturally appropriate, quality) and adaptable (flexible, open to review and tailored to suit individual needs). Strengthening respectful relationships education and providing broad and targeted community education will support protection of this right and ensure children, young people and the broader community receive appropriate, current and relevant education on sexual violence, healthy relationships and consent.

Human rights limited

The recommendations above will not limit any human rights.

Evaluation

The impacts and outcomes achieved as a result of a primary prevention-focused community education campaign to improve awareness and understanding about sexual violence should be measured and monitored and independently evaluated.

Regular monitoring and evaluation at a school, district and state level is required to determine the effectiveness of strengthened respectful relationships education and community awareness-raising activities. Information about the delivery of the campaign should be publicly reported on each year. Monitoring and evaluation should align with the methods outlined in *Hear her voice 1,* including evaluation within five years of the implementation plan.

Conclusion

The Taskforce listened to the voices of the women we engaged with and considered the views of those who participated in the Enhance research. We found that community understanding of consent was high at the conceptual level but difficult to put into practice.[301] Misogynistic views, gendered stereotypes and perpetuation of rape myths influenced women and girls' experiences of sexual violence. Significant investment in primary interventions to address cultural attitudes that support and enable sexual violence is urgently needed.

Community education as a primary prevention tool, expansion of RREP use across all Queensland schools, and increased understanding of consent and sexual offence laws are all required. Cultural norms heavily impact the experiences of women and girls. Sensitivities around sex education must be addressed through co-designed and collaborative programs involving First Nations peoples and people from culturally and linguistically diverse communities. The program must be suitably adapted for those with disability.

An overarching communication strategy that incorporates broad messages targeting primary prevention, along with more focused communication campaigns, is needed. This strategy must include a phased

approach to raise awareness and understanding of sexual violence and consent, support behaviour change, and inform the community about changes to consent laws.

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Chapter 2.3: Barriers to reporting sexual violence

There are significant barriers to women and girls reporting sexual violence in Queensland. Those barriers occur at individual, societal and systems levels.

Many First Nations women and girls are at particular risk of threats of violence and reprisal toward themselves, their families and support workers if they report sexual violence. Urgent action must be taken to ensure all women and girls, including those most vulnerable – First Nations, the culturally and linguistically diverse, those with intellectual disability, LGBTIQA+, the homeless, and older women – can all report sexual violence safely.

Barriers to victims reporting at the individual, societal and systems levels

Sexual violence is highly underreported with as little as 10% of incidents resulting in complaints to police.[1] Underreporting is evident across all populations due to common barriers such as fear, blame, mistrust of government and police, and fear of destroying familial relationships.[2] This chapter examines what women and girls have told the Taskforce about why they don't report sexual violence, and makes findings and recommendations to reduce or remove those barriers and give women and girls the confidence to report what has happened.

Background

Current position in Queensland

Queensland has recently taken significant steps to address the underreported nature of sexual violence and high rates of attrition for those who do report. These include:

- implementation of *Prevent. Support. Believe: Queensland's framework to address sexual violence,*[3] which includes
    - investigating and seeking to address barriers to reporting sexual violence and accessing justice responses, and expanding alternative justice responses
    - working to implement legislative reforms including amendments to the *Criminal Code*, managing reportable offenders, training police, and providing perpetrator interventions
    - creating a Charter of victims' rights[4]
- establishment of initiatives such as police sexual violence liaison officer roles[5] discussed further in chapter 2.5
- the Match Group initiative between QPS and dating sites to educate victims and potential offenders on appropriate behaviours and reporting[6]
- $1.8 million commitment over five years to continue a multi-agency sexual assault response team (SART) in Townsville and $4.15 million to construct a new women's centre which creates a safe place for women to report sexual violence and obtain support.[7]

The Queensland Government has also allocated $540,000 as part of its grants program in 2022 to support initiatives that address unique issues faced by women and girls.[8] Recipients included Aged and Disability Advocacy. The funding was to raise awareness of elder abuse in the community and is based on Australia's *Ready to Listen* project targeting older women and sexual violence.[9]

The process of investigating sexual assaults is set out in section 2.6.3 of the Queensland Police Service (QPS) Operational Procedures Manual (OPM). This includes ensuring victim safety and welfare as outlined in the Charter of victims' rights of the *Victims of Crime Assistance Act* (VOC Act).

The QPS offers alternatives to making a formal complaint to police, with victims given the option of providing details of the assault without the need to proceed to investigation or charge.[10] In response to the former Crime and Misconduct Commission's 2003 *Seeking Justice: An inquiry into how sexual offences are handled by the Queensland criminal justice system* report (the Seeking Justice report),[11] the QPS implemented an alternative reporting option in partnership with sexual assault support services.[12] This was revised in 2009 with the development of an electronic version of the forms used for alternative

reporting.[13] It was further expanded in 2018 to enable online reporting via Policelink.[14] A refreshed version of the alternative reporting option was launched on 25 August 2020, alongside an online sexual assault reporting form.[15] The alternative reporting options form is accessible online and can be completed either in paper or digital form.[16] The form has specific questions and checkbox lists aimed at eliciting offender and offence information, as well as information about the victim. The form also asks about the characteristics of the incident such as the time of the assault and whether the offender took items. It also requests a brief medical history and particulars of the assault.[17] This information can be used as part of any future investigation should the victim wish to proceed with a complaint or used for police intelligence when investigating similar incidents.

How do other jurisdictions address barriers to reporting sexual violence?

Victoria

In November 2021 and in response to the Victorian Law Reform Commission Improving the Response of the Justice System to Sexual Offences report (the VLRC report)[18], the Victorian Government announced an overhaul of sexual offence reporting through a major reform program.[19] Reforms included a move to an affirmative consent model and making stealthing (removal of a condom without a person's knowledge or consent) an explicit offence through proposed amendments to the *Crimes Act 1958* (Vic).[20] Additional funding of $5.2 million was announced alongside proposed legislative changes, with funding going to support specialist sexual assault services. The funding would be used to boost resourcing and increase the number of specialist support sessions offered to victims.[21] Additional strategies such as the Victorian sexual assault strategy, rollout of sexually abusive behaviour treatment services, and additional multi-disciplinary centres have also commenced.

These moves followed the release of findings from the *Royal Commission into Institutional Responses to Child Sexual Abuse* in 2017 and subsequent annual progress reports by the Commonwealth, state, and territory governments on implementation of its recommendations.[22]

Significant work currently underway in Victoria includes:

- the development of the Orange Door Network (a collaborative response to family violence and its intersection with sexual violence)
- reforms to information sharing to also consider sexual violence
- enhancements to the Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM) to consider the interrelated roles and responsibilities of sexual assault services alongside domestic violence specialists.[23]

The Victorian Government has implemented a statewide, confidential after-hours counselling and crisis care coordination service for sexual violence victims.[24] This included the establishment of three Aboriginal sexual assault services delivered by Aboriginal service providers.[25]

As well as improvements to policies and procedures, Victoria has moved to strengthen its response to sexual violence through improved collaboration and alternative models of reporting. To address underreporting and support accessibility, Victoria implemented a digital reporting tool in 2012.[26] This tool enables confidential and informal reporting of sexual assault, stalking and sexual harassment against adults and children, with de-identified information sent to police for intelligence-gathering purposes.[27] The tool also enables victims to formally report sexual violence to police if they wish.[28] Operated by a rape crisis centre, the tool allows victims to engage with support services.[29]

New South Wales

The New South Wales (NSW) *Women's Strategy 2018-2022* aims to advance economic and social equality and reduce barriers to reporting sexual violence.[30] To date, the strategy has seen a review into sexual consent in the *Crimes Act 1900* (NSW). In November 2020, the New South Wales Law Reform Commission *Report 148 Consent in relation to sexual offences* was tabled and released (NSWLRC report).[31] The NSWLRC recommended legislative amendments to expressly recognise the principles that underpin the communicative model of consent but did not go so far as to recommend an affirmative consent model.

In response to the NSWLRC report in May 2021, the NSW Government announced it would support or supported in principle all 44 recommendations of the review.[32] As part of the announcement, the NSW Government said it would go further than recommended by the NSWLRC by clarifying that an accused person's belief in consent will not be reasonable in the circumstances unless they said or did something to

ascertain consent.[33] This would implement an affirmative consent model to address issues that have arisen in sexual offence trials about whether an accused person's belief that consent existed was actually reasonable.

Amendments to the *Crime Legislation Amendment (Victims) Act 2018* NSW also enabled victims of sexual violence to have a support person alongside them in court.[34] These moves were designed to reduce barriers to reporting and accessing justice through the criminal justice system. Coupled with these amendments was a social media campaign designed to increase awareness of consent.[35]

Maari Ma Health Aboriginal Corporation has received funding over two years to develop, pilot and evaluate a sexual assault program.[36] This program is to be delivered within the existing healing program operating in NSW.[37] The program is designed to provide culturally appropriate support services to Aboriginal and Torres Strait Islander peoples experiencing sexual violence in three communities in New South Wales.[38]

Operation Vest, a revamped version of the 2012 Sexual Assault Reporting Option (SARO), which provides sexual violence victims an opportunity to confidentially (and if desired, anonymously) report to police, has been strengthened.[39] SARO is an online form that can be used to report sexual violence without police investigation. The purpose of SARO is to record the events that police can then use as information. SARO is like the QPS alternative reporting option available online. Questions in the form aim to record details of the offence, including time, location, and modus operandi, and provide space for victims to share their experience in their own words.[40]

Results of consultation

Victim-survivors

Community attitudes about women, sexual consent and 'rape myths' frame victims' experiences of violence, their decision about whether to report what happened to them, and their experiences through the criminal justice system. Issues related to community attitudes are discussed in Chapter 2.2.

Lack of trust in the criminal justice system adversely affects victims and their willingness to report sexual violence. It also adversely influences the attitudes of victims, friends, and family. Submissions to the Taskforce revealed deep cynicism about both police and legal responses to sexual violence:

'A man will get away with a sexual assault charge if he has a top lawyer and this itself shouldn't be allowed. This is why women don't come forward.' [41]

Parliament's commitment to encouraging women to report sexual assault in the workplace will be discredited to the extent that it becomes public knowledge that men can lie with impunity when such allegations are made against them.[42]

Victim-survivors also told the Taskforce that past negative experiences dissuaded victims from seeking help through the criminal justice system in the future. During a small-group discussion with sex workers, participants told the Taskforce about being treated disrespectfully and not taken seriously by police.[43] One woman from a culturally and linguistically diverse background told the Taskforce about being physically assaulted and robbed.[44] When she attempted to report the incident to police, she was made to wait for hours outside the station before being seen.[45] The woman had no clothes, money or keys to re-enter her residence. She explained that police offered no medical attention, no clothing, no interpreter and no support person.[46] Police dropped the woman off at her accommodation but she had no key to get in.[47] Although this particular experience happened about 10 years ago, the woman said that when further assaults and robberies occurred, she did not report them to police.[48] Participants told the Taskforce that negative experiences such as these made them reluctant to report sexual violence or other offences to police in the future.[49] As one woman explained, this can have serious consequences:

'I reported my guy – there was half a dozen who were assaulted and one he raped. This happened after I reported him and nothing was done. My assault happened in 2018. We see

assaults that become high-profile cases in the media that involve non-sex workers. These guys target sex workers first and then they move on to non-sex workers.' [50]

Perceptions of the way police investigations are conducted, and cases prosecuted have a negative impact on victim-survivors, even for those who have never engaged with the criminal justice system:

'I have never approached police or any formal justice system when a doctor sexually assaulted me during a health appointment. There is nothing about the way the justice system goes about gathering evidence and requires me to prove myself as a reliable witness that would have genuinely supported the harsh consequences of that offence against me; I have yet to meet a police officer or seen any part of the system that I felt confident enough in to speak about the offence.' [51]

'Speaking on behalf of myself who was sexually assaulted last year and on behalf of friends who have experienced the same thing or similar. We are afraid or feel like it is hopeless to report or go to the police, because nothing will come of it. We'll get told there's nothing that can be done, so not only will we have had to go through the embarrassment of reporting something traumatic [that happened] to us but nothing will come out of it anyway.' [52]

Some victims decide not to report due to threats of further violence by the offender:

Sexual assault occurred when I was [a child]. I did not make a report as the perpetrator threatened to kill my family if I told them, not that they would believe me anyway.[53]

In fact, I then didn't report anything out of fear.[54]*'*

One of the most important factors in supporting victims to report sexual violence was whether victims would be listened to and believed:

'I was raped by a guy I was having a casual relationship with. I didn't report it though because what was the use when we were already sleeping together and I couldn't prove it wasn't consensual? And who would believe me anyway?[55]*'*

Another woman who participated in a small-group discussion with victim-survivors told the Taskforce that fear of not being believed was a barrier for her to report sexual violence. When asked to describe what this was, she explained that it was being treated disrespectfully, being dismissed, and not being taken seriously.[56]

During consultations with victims of gendered violence facilitated by Working Alongside People with Intellectual and Learning Difficulties, Sexual Violence Prevention (WWILD), people with disability described not being believed, listened to, or provided opportunities to tell their story.[57]

Even when victims were listened to, the outcomes still provided little justice:

I didn't want to call the police. [A witness] called the police. There was a female officer and I told her that she wouldn't believe me because they didn't believe me when I was a kid, so why would they believe me now. She said that they would get him because there were

> *[multiple] counts. Then that officer went on leave and another male police officer rang and said that [the offender had died]. I commented that there was no justice. He said that it might have been a good thing because the judge would have believed him anyway.*[58]

The Taskforce heard consistently across all forms of consultation and in most locations across Queensland that those who do report are frequently driven to do so. This is because they want the violence to stop if it is ongoing, to have the wrong and harm they have experienced acknowledged, and to prevent the offender from doing it again. Many described reporting to try to prevent other people from experiencing what happened to them. Victim-survivors also report because they want a justice outcome for themselves, to be heard, and for the offender to be held accountable and punished.

First Nations women and girls

Fear of violent retaliation and retribution in many First Nations communities posed substantial barriers to reporting sexual violence. As the Australian Human Rights Commission *Wiyi Yani U Thangani (Women's Voices): Securing our Rights, Securing our Future Report* noted, First Nations peoples are hindered in accessing justice and medical treatment due to failures to acknowledge their experiences and the perpetuation of ongoing stereotypes.[59]

During Taskforce consultation sessions in various First Nations communities, concerns were raised about violent retribution and revenge when victims came forward to report sexual violence.[60] The discussion included incidents of payback from the offender, and increased risks posed after disclosure.[61] During stakeholder forums in some communities, participants told the Taskforce that women and girls were fearful of violent retaliation and retribution against themselves and their families if they report sexual violence to police. Descriptions of this violence included physical fights and families being intimidated and ostracised.[62] The Taskforce heard an example of a courageous young girl and her family forced to leave their home and community after making such a report. Concerningly, participants in the stakeholder forum told the Taskforce that they wished they could talk about the issues for victims during court processes, but most victims don't make it that far. The Taskforce was told that victims in one community commonly went to the hospital for treatment without proceeding further with a complaint. Stakeholders told the Taskforce that other community members' concern about the loss of income from offenders being incarcerated as a result of the abuse, and lack of female health professionals, were further impediments to reporting in First Nations communities.[63] Victims feared having to face the perpetrator in court and the nature of cross-examination, which was perceived to be putting the victim on trial.[64]

In another remote community, members of the Community Justice Group explained to the Taskforce that victims would like to disclose experiences of sexual violence but were afraid in case it got back to in-laws or family members - victims feared being ostracised.[65] Some also feared retaliation from family members who supported the offender over the victim, with this fear sometimes leading to suicides.[66]

Stakeholder meetings in some communities discussed the need for independent support workers with no ties to the family or community (unless the victim explicitly requested otherwise). This would make it easier for victims to share their experiences.[67]

Harassment and intimidation of victims who reported sexual violence was raised as a significant barrier to reporting during consultations in some First Nations communities the Taskforce visited.[68] In one community, the Taskforce heard that this harassment extended to members of the victim's family and support sector workers.[69] Police were reluctant to lay charges or take action against members of the community who engaged in threatening and abusive behaviours.[70] In these communities[71] the Taskforce heard that police took many hours to respond to calls reporting sexual violence and requesting help.

The Taskforce also heard that, in some remote communities, attempts to contact police for urgent help[72] after hours were routinely unsuccessful. Community members described calling police on a designated telephone outside a local police station late at night to report sexual violence and not receiving a response until the next day. Community members described one victim waiting outside the police station and police did not come out.[73] The perpetrator went up to her at the station and said: 'What are you trying to do?'[74] The victim returned to her car and drove to a safe place.[75] QPS indicated that resourcing and staffing in some communities may mean that if on-call officers are responding to other matters, jobs would need to be prioritised.[76] In some instances, a call from a designated phone may be redirected to police

communications in another area, including as far away as Brisbane.[77] The Taskforce understands that police communications staff may not have sufficient local knowledge to understand local dialect or communication styles, and as a result may not allocate the appropriate urgency in some cases. When calls are diverted to police communication centres in another area, further difficulties may arise due to lack of local knowledge of the area and lack of street signage in some remote communities.

Service system stakeholders

The Gold Coast Centre against Sexual Violence (GCCASV), Full Stop and Queensland Disability Advocacy Network (QDAN) identified several barriers to reporting, including:

- limited understanding of sexual violence by victims and offenders
- accessibility of culturally appropriate services and accessibility more generally raising issues such as language or geography[78]
- fear of becoming ostracised and minimisation or disbelief of sexual violence when it occurs, including within a family setting[79]
- stigma, especially for school-age victims[80]
- mandatory reporting of child sexual abuse, while designed for the protection of children, has created barriers to reporting due to perceived breaches of confidentiality, failure to provide victims with a voice in the desired outcome, and mistrust of authority.[81]

Sexual assault services also told the Taskforce that information sharing, co-location, education, and community-led and tailored approaches were beneficial for strengthening responses to sexual violence.[82] Support services such as Zig Zag and Full Stop Australia identified the following as useful to breaking down barriers to reporting:

- providing victims with more control over the reporting process, such as giving opportunities up front to speak with a male or female officer (based on victim preference)[83]
- providing a safe, comfortable space for victims[84] to provide formal statements, and amenities such as a bathroom, beverages, snacks, with a support person present[85] and the option for the statement to be taken at an alternative location if requested[86]
- allowing victims to write down information that they cannot verbalise[87]
- informing victims of each step of the process clearly, with rights explained in simple language so traumatised people can comprehend what is being said[88]
- giving options and timeframes for contact[89] and a consistent and preferably single point of contact[90]
- providing transport if required.[91]

Ending Violence Against Women Queensland (EVAWQ), noted that rape myths, dismissive attitudes of police[92] and 'interrogation-style questioning of victims by police' continued to pose significant barriers to reporting – with siloed approaches adding to this.[93]

Respect Inc. and Full Stop explained that for sex workers additional barriers to reporting sexual violence included ongoing perceived and actual criminalisation due to their work, failures of police to take their victimisation seriously, fear and mistrust of police, and poor police attitudes that stigmatise sex workers.[94] Sex workers noted that when calling the dedicated QPS Liaison Officer they received an understanding and appropriate response. This was not seen when attempting to report to police outside this specialist role.[95]

QSAN explained that the system response was seen as challenging due to inconsistent information and messaging, location-dependent responses and a lack of service provision in some areas.[96]

EVAWQ and other support services have recommended a variety of measures to reduce violence against women, including:

- equitable access to justice for all victims regardless of ethnicity, disability, or socioeconomic status[97]
- alleviating the burden placed on victims to keep themselves safe[98]
- removing 'mistake of fact' as a defence for sexual violence (discussed in chapter 2.7)[99]
- introducing a set of guiding principles that break down myths around sexual violence and ensure the criminal justice system functions from a human rights foundation[100]
- funding a peak body to improve coordination of services[101]
- providing significant investment in primary prevention of violence.[102]

Awareness is also required to highlight the rights of victim-survivors who have experienced sexual violence, particularly for those with disability who require easy English or accessible information. As one victim-survivor stated during engagement with WWILD:

> *'I didn't know I had rights. I knew I shouldn't be hit and I had the right to use my own money but I didn't know about anything else.'* [103]

Current responses to people with disability, especially those with cognitive or intellectual disability, could be improved significantly. Disability awareness training could assist in breaking down barriers. This could be achieved through greater understanding of disability, the need for accessible services and appropriate communication.[104] Raising awareness of people with disability through the lens of empowerment rather than paternalism or ableism[105] would support a more positive understanding of people with disability when they report victimisation.[106] Communication campaigns that focus on key principles of accessibility and inclusivity, with rights as a central component, and empowerment are required to reduce barriers to reporting.[107] This includes encouraging leadership from people with disability,[108] culturally and linguistically diverse people, LGBTIQA+ or Aboriginal and Torres Strait Islander peoples.

Queensland Police Service

The QPS noted negative community perceptions of criminal justice responses to sexual violence continued to pose barriers to reporting.[109] The QPS also noted:

- concerns over publicly naming offenders or victims (due to potential impact on family members and children and the consequences of naming persons in smaller communities)
- victims not remembering all the circumstances (for example, whether they were drinking or were drugged)
- victims not having sufficient evidence or feeling partly to blame for their victimisation.[110]

Specialist investigators from around Queensland told the Taskforce during a consultation forum that victims felt disbelieved, embarrassed, or shamed by their family or community, feared being blamed for their victimisation (for example, because of their clothing or because they had been drinking) and that reporting would make things worse.[111] Additional barriers included the length of time for court processes and the victims' fear of being 'crucified' in the witness box.[112] Police investigators suggested the following would reduce barriers to reporting:

- increasing general knowledge of the criminal justice process
- improving court and prosecution processes
- reducing the time to finalise matters
- increased resourcing.[113]

QPS has implemented a number of other initiatives with the aim of increasing victims' confidence to report to police. These include the *QPS Sexual Violence Prevention Strategy 2021-2023*, the implementation of ISACURE training for specialist investigators, and work with dating app sites. These initiatives are discussed in more detail in chapter 2.5.

Other Government

The Department of Justice and Attorney-General (DJAG) noted that the Domestic and Family Violence Death Review and Advisory Board's (DFVDRAB) was established in 2016 to undertake systemic reviews of domestic and family violence deaths. While DFVDRAB does not identify systemic trends and issues arising from the experiences of victims of sexual violence specifically, the intersection between domestic and family violence is well-established.

In its Annual Reports, DFVDRAB has highlighted the link between sexual violence and intimate partner homicide and the need for greater understanding and action from service providers and the criminal justice system to pursue charges and support underage victims of sexual assault.[114] DFVDRAB also called for trauma awareness and trauma-informed practice to be embedded across the service system.[115]

The Queensland Family and Child Commission (QFCC) raised individual barriers such as fear of other people's reactions to disclosure, likelihood of success in court, sufficiency of evidence, and challenges for

victims who do not present as an 'ideal victim'.[116] QFCC suggested child-friendly approaches to facilitate reporting, such as the Barnahus model used in Scandinavia – a multi-agency service providing a coordinated response to child victims.[117] QFCC told the Taskforce that any frameworks should also balance offender rehabilitation, victim healing and community needs.[118]

Legal stakeholders

Knowmore legal service indicated significant barriers included fear of not being believed, misconceptions of the criminal justice system and beliefs within criminal justice agencies about 'ideal victims'.[119] Knowmore noted that when victims do want to report, they need to overcome the lack of appropriate and accessible avenues to make a report.[120] This includes the lack of reporting options for people in rural, regional or remote locations, culturally safe options for First Nations peoples, and, for some people, language barriers, literacy issues or other communication difficulties.[121] Knowmore suggested the following actions could reduce barriers to reporting, based on recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse Criminal Justice Report:[122]

- providing all police who respond to child sexual offences with a basic level of training in understanding sexual offending, including the nature of child sexual abuse[123]
- providing specialist understanding of child sexual abuse through updated and ongoing training that is consistent with emerging research for police who interview children and vulnerable witnesses[124]
- providing prosecution staff liaising with victims of child sexual abuse with training on the nature and impact of child sexual abuse[125]
- providing judicial officers and broader legal professionals with basic training on the nature and impact of child sexual abuse[126]
- allowing victims to speak publicly about their abuse as a way of raising awareness and improving community understanding[127]
- changing language used in legislation to properly convey the serious criminality of sexual violence[128]
- alternative reporting options such as via telephone, in writing, online or in person.[129]

The Bar Association of Queensland acknowledged that there are public misconceptions regarding both civil and criminal processes related to sexual violence.[130] The Office of the Director of Public Prosecutions (ODPP) noted that the perpetuation of rape myths during criminal proceedings impacts the likelihood that a victim will make or proceed with a complaint.[131] To address this, the ODPP further indicated support for judicial intervention to dispel common rape myths about evidence and victim behaviours through jury directions or expert evidence.[132]

Other relevant issues

Individual barriers - fear, uncertainty, and perceived lack of justice when reports are made

Some victims are reluctant to report because they view their experience as trivial, or not fitting within normal understandings of rape (for example, because it was an acquaintance rather than a stranger).[133] Shame, embarrassment,[134] and guilt can also pose significant barriers to reporting sexual violence.[135] Additional factors stem from fear that the victim or other family members may be at ongoing risk, and fear of retaliation.[136] These issues can be particularly relevant for women who are victim-survivors of child sex abuse and for those considering disclosing the abuse.[137]

Communication (including shared meanings) is a substantial barrier, especially for people with cognitive or intellectual disability,[138] First Nations peoples,[139] people from culturally and linguistically diverse backgrounds,[140] older women,[141] and LGBTIQA+ peoples.[142] Lack of understanding about the needs of these groups – in terms of communicating the events of the sexual assault and different understanding of terminology used to describe it, can lead to frustration for both victim and responder.[143] This can ultimately lead to withdrawal of the complaint, or an agency decision not to proceed further with the investigation.[144]

Knowledge and understanding of what constitutes sexual violence can also impede access to appropriate support and justice through the criminal justice system.[145]

Concerns about the court process are identified in research literature and reinforced in submissions received by the Taskforce as a barrier to reporting and seeking justice.[146] This includes a lack of trust of

the system, fears about the removal of children, fear of being mocked by authorities and whether it is safe to report.[147] Concerns over sufficiency of evidence have also been raised as a barrier to victims reporting violence to police.[148]

For people with intellectual or other disability, additional barriers to reporting are evident. These include fear that disclosure will lead to further attacks, not being believed, or being blamed for the assault.[149] Barriers in accessing relevant information about a victim's legal rights and being supported to exercise those rights, including for people with disability, also impact victims' ability to report.[150]

The continuation of trauma is a real concern for victims of sexual violence. This includes trauma of reporting and having to relive details of the assault, retelling their story to first-response officers, detectives, medical staff, prosecutors and then courts.[151] These fears can lead victims to remain silent.[152] The threat of homelessness poses an additional barrier for victims who have been sexually abused or assaulted by an intimate partner or family member.[153]

For young people brave enough to share their experience to a teacher or responsible adult, further barriers have been identified. This includes barriers around understanding of 'mandatory' reporting obligations, and requirements for disclosures to be relayed to the victim's parent or guardian.[154] In discussions with members of the Queensland Child and Family Commission Youth Advisory Council (YAC), young people (some of whom identified as victim-survivors) described fear of family members finding out that they were sexually active, or police being told without them actively choosing to report the offence, as some of the barriers for young people. Mandatory reporting and the failure to report an offence (discussed in detail below) were identified as potentially exacerbating these fears.

The community attitudes research commissioned by the Taskforce found women were more aware of potential barriers to reporting than their male counterparts.[155] It was suggested that these barriers are not necessarily top of mind for men, and that education regarding barriers and sexual consent may be beneficial (see chapter 2.2 for further discussion).[156] Barriers identified by female participants in the study included concerns about:

- whether they would be believed by the community
- potential social backlash
- Aboriginal and Torres Strait Islander mob dynamics that can create additional social factors to be navigated by victims
- the variability of police responses
- whether fault could be assigned to the victim, particularly around consent
- shame of being a victim of sexual assault
- not comprehending what has occurred.[157]

Enhance researchers heard during focus groups:

'Just because of the way things were, where police would just be like, "No, that didn't happen".' [158]

You also have all those people that aren't going to believe you. You could be in a group of friends and one of these guys has been the one to assault you and it's like, "If I tell all of his friends, they're going to all shun me". They're going to be like, "Oh, he didn't do that. He wouldn't do that. You're making that up" and it's like, are you doing more harm than good by actually saying anything?'[159]

Societal barriers - misunderstandings of sexual violence paternalistic views that deter reporting

Societal attitudes towards different population groups can be detrimental to seeking justice after a sexual assault. Misconceptions about the credibility of victims, biases and rape myths can severely hamper a victim's attempts to seek help.[160] Stereotypes can be detrimental for victims seeking justice during the initial decision to report and for future reporting.[161] Beliefs about 'real victims' and how they behave during the incident and when reporting add to the reluctance of victims to come forward. This includes perceptions that victims should fight back, or have sustained injury during an incident, or that threats

would involve the use of a weapon. When reporting, there may be a perception that a victim will be vulnerable and subdued or remain intimidated by the offender.[162] For First Nations peoples, there are additional barriers that relate to the ongoing impacts of colonisation and history of interactions with police, including over-policing and paternalistic policies in the name of protection, which reduce the likelihood of a victim reporting sexual violence.[163] These factors, coupled with geographic isolation, language and cultural barriers, play a significant role in preventing help-seeking behaviours and the reporting of sexual violence.[164] The Taskforce observed the ongoing adverse impacts of cultural taboo in some of the communities visited, with local women reluctant to discuss sex and sexual violence in group settings, particularly those incidents involving men or other community members.

Misunderstandings about sexual consent[165] (as discussed above and in chapters 2.2 and 2.5) can compound social barriers to reporting sexual violence. Some victims told us they do not report because of uncertainty about whether a sexual assault has occurred; for example, if the assault occurred within an intimate partner relationship.[166] Limited education at the school, community and professional level hinders how the entire community understands and responds to sexual violence and can support the acceptance of rape myths.[167]

Systems barriers - lack of specialisation across the health and justice system and lack of a safe space for victims to report and seek support

Services and professionals play an important role in victim willingness to report and seek help and support for sexual violence. Failure of professionals to identify a person's vulnerability (such as disability, trauma, and language barriers) can lead to dissatisfaction with the process and disengagement of the victim.[168] Barriers posed by professionals may include:

- inability to recognise that a victim has an intellectual disability
- lack of collaboration between services
- lack of resources and accessibility of services
- service providers' presumptions around a victim's capacity and credibility.[169]

When sexual violence is committed by a person with disability against another person with disability, or within aged-care facilities, further barriers arise – specifically, the desire of the service to deal with any offending internally rather than reporting it to the appropriate authorities.[170] This approach fails to consider the needs of the victim – both in terms of medical needs and also rights under the law[171] and the public interest in matters being dealt with through the criminal justice system. It prioritises the reputation of the facility over the rights of the victim.

Additional barriers to a victim seeking help arise when systems, services and professionals fail to acknowledge the power imbalances faced by vulnerable people. A common example is when professionals act in ways they perceive as being in the 'best interests of the victim' rather than in response to the victim's wishes.[172] Lack of understanding about what works to support sexual violence victims, especially within First Nations communities, can also impact on whether a victim seeks help.[173]

The way police interact with victims can affect the likelihood of future reporting and whether victims continue with a complaint.[174] Police interviewing techniques have been described in the research literature as invasive, traumatising and inappropriate.[175] This may be because police must determine whether an offence has occurred, establish victim credibility, or decide whether sufficient evidence exists to proceed to charge an alleged offender.[176] The Taskforce observed that this can sometimes be a result of police genuinely, although misguidedly, trying to protect a victim from the realities of the criminal justice process. Misperceptions around sexual violence victims can hinder reporting and place unnecessary barriers in the path of people from LGBTIQA+ communities,[177] sex workers[178] and older women.[179]

Clinical and sometimes cold responses to victims of sexual assault that fail to account for individual experiences and trauma can also hinder reporting. The Taskforce heard throughout its work that health, police and judicial responses to victims often fail to account for the trauma victims experience and how long after an incident the impacts of that trauma can affect victims.[180] As highlighted in *Hear her voice 1,* victims of domestic and family violence and coercive control experience high rates of sexual violence.[181] This is supported by data that shows at least one in three sexual assaults is committed by an intimate partner or family member.[182] For victims of sexual violence within a relationship, incidents were often not a one-off, but constituted part of an ongoing pattern of violence and abuse over time.[183] For these victims, additional barriers to reporting include intimidation, threats and ongoing coercive and controlling

behaviour, not wanting to get their loved one in trouble, additional shame and embarrassment resulting from ongoing abuse, stigma, and stereotypes regarding sex in relationships.[184]

The availability of trauma-informed support can help to make reporting safe

The Taskforce visited and met staff and clients of the Sexual Assault Response Team (SART) that operates at The Women's Centre in Townsville. The SART provides victims with support before and during reporting and throughout the different stages of the criminal justice process.[185] This includes support when a victim is giving a police statement, during a forensic medical examination and when victims are involved with prosecutors and court proceedings.[186] It was suggested during the discussions that specialist support from sexual assault workers can create closer working relationships with police, help to destigmatise sexual violence, and develop a safer environment for victims.[187]

Evaluation findings from the original pilot of the SART in Townsville identified positive aspects of the model, including:

- victims conveyed a high level of approval with the SART response [188]
- short-term outcomes included reduced wait times at emergency departments in hospitals
- an increased number of forensic examinations conducted with consent
- increased reporting to police and fewer complaint withdrawals.[189]

The evaluation also noted limitations to the current model, including:

- transferability of the model is dependent on availability of support services
- around-the-clock outreach is unsustainable due to the need for dedicated resourcing
- uniform 'buy-in' is required for the model to be successful
- ability to transfer a trauma-informed, victim-centred, and violence-informed approach is required across implementation locations.[190]

Taskforce findings

The Taskforce found that the experiences of women and girls who are victim-survivors of sexual violence in Queensland confirmed academic research suggesting barriers to women and girls reporting sexual violence persist at multiple levels, including at:

- an individual level – shame, guilt, fear, mistrust of the criminal justice system
- a societal level – community attitudes about women, racism, rape myth acceptance, misunderstandings around consent
- a systems level – failure to recognise vulnerability, talking victims out of proceeding through court, lack of safe spaces for reporting, and the absence of a trauma-informed criminal justice system.

The Taskforce's recommendations throughout Part 2 of this report are intended to work together to improve responses across the system to victim-survivors of sexual violence – by sexual assault services, police, health, prosecutors, lawyers, and judicial officers – to help reduce and remove these many barriers to reporting.

The Taskforce was deeply concerned about the reports of intimidation, violence, and threats of retribution against women and girls who experience sexual violence in some First Nations communities. This is intolerable. It must be urgently addressed. The fear and intimidation that continue in some communities normalise sexual violence and perpetuate and exacerbate the trauma experienced by victims, locking them and their community in social disadvantage. It prevents all members of those communities, including children and young people - the future leaders- from reaching their potential. It diminishes all Queenslanders.

The Queensland Government's Local Thriving Communities reform agenda is significant and envisages government working with communities in a different way. It aims to move decision making closer to Aboriginal and Torres Strait Islander communities to enable self-determination and to set mutual expectations for services to better meet the needs of each community. This approach, coupled with strong and collaborative community leadership, is showing promising outcomes. The Taskforce was particularly impressed by the community leadership, social cohesion, self-determination, hope and pride it witnessed in Woorabinda - a community with a bright and promising future, despite its deeply troubled colonial past.

The success of this important work is grounded in community ownership of, and honesty about, the grave social problems within these communities. The Taskforce urges leaders and all community members to take responsibility and work in partnership with government to address these difficult and confronting issues, so that all can be safe and live in their own community free from violence, to develop and reach their full potential.

Preventing sexual violence and violence against women across the broader Queensland community requires an approach that tackles community attitudes influencing violence against women and children, such as misogyny, disrespect, and power imbalance. [191] These are the same issues the Taskforce grappled with in its first report. The primary prevention community awareness campaign and the strengthened respectful relationships education that the Taskforce recommended in *Hear her voice 1* and discussed in the context of sexual violence in chapter 2.2 of this report play a critical role in providing safe pathways, organisations and communities for women and girls to confidently report sexual violence.

The Taskforce noted there are already a number of indictable offences in Queensland's Criminal Code that are available to police to use in conjunction with their powers under the *Police Powers and Responsibilities Act 2000* in situations where victims, their families and specialist sexual assault services are threatened or intimidated, including: retaliation against or intimidation of judicial officer, juror, witness (section 119B); attempting to pervert justice (section 140); and unlawful stalking (Chapter 33). Police may need to actively consider charging these offences and using associated powers (such as restraining orders for unlawful stalking) in situations where victims of sexual violence, or their families and friends, are abused, harassed, and intimidated. Police, in consultation with First Nations communities and community-based services, should consider whether education about these options and ultimately their use, together with a culturally appropriate and community-led response, will be effective in reducing and removing barriers to reporting, keeping victims of sexual assault safe and holding perpetrators accountable.

Policing, like other forms of service delivery in remote parts of Queensland, can be extremely challenging. But Queensland women and girls have the right to be protected from sexual violence and their complaints responded to appropriately, irrespective of where they live. Sexual violence often occurs late at night and swift responses must be available at these times, wherever it occurs. Language and cultural barriers could be reduced by improving cultural capability for all first responders, including police communications and front-counter staff who take calls, sometimes from a central location far removed from the caller and without local knowledge or language. The improved use of interpreters will also assist. The Taskforce considered that police in rural, regional, and remote areas need to be appropriately tasked through the communications centre to respond in a timely fashion to calls for help. The Taskforce acknowledges that timely policing in these areas can be difficult due to geographical isolation. While calls for service are allocated priority ratings in a consistent way across the state, language differences and cultural capability can impede the ability of communication centre staff to recognise the urgency in some circumstances. This will require improving the cultural capability of staff in the police communication centre and in front-counter roles in police stations, so they can communicate meaningfully with everyone in this culturally diverse state. The QPS should also review its translation and interpreting services for First Nations peoples in Queensland.

Taskforce recommendations

4. The Queensland Government partner with community leaders and Elders in First Nations communities to co-design and implement local plans to enable women and girls who have experienced sexual violence to come forward and make a complaint without fear of, or actual retaliation or retribution to them or their families, friends, or supporters.

5. Queensland Police Service immediately improve the cultural capability of staff working in its communications centre and staff working in front-counter roles in police stations to ensure they are able to communicate meaningfully with all First Nations peoples who call for help, including in relation to sexual violence cases, and to appropriately assess their needs and allocate responses to first-response officers.

6. The Queensland Police Service review the translation and interpreting services it uses for First Nations peoples to ensure it provides appropriate assistance to enable police officers and civilian staff working in its communications centre and on front counters in police stations to communicate meaningfully with all First Nations peoples, including in relation to sexual violence cases.

Implementation

The recommendation for the Queensland Government to work in partnership with community leaders should be implemented as a priority and consistently with the Local Thriving Communities approach.

Local plans should include clear outcomes for victims of sexual violence and agreed actions to achieve those outcomes. Communities should be supported to access research to inform local plans. Consideration should be given to a formative evaluation alongside co-design activities before implementation of any plan. The Local Thriving Communities[192] approach, and relevant community development initiatives that address gender-based violence, should be incorporated as a standard agenda item during any knowledge-sharing or co-design processes.

Outcomes should be measurable, with progress regularly measured and monitored and publicly reported to build confidence and improve rates of reporting. Local plans should include agreed governance arrangements to ensure responsibility and accountability for the achievement of outcomes and impacts under the plan. Local plans should be locally developed and co-designed, and contain explicit strategies to address the following risks:

- educating the community about the law against sexual assault and intimidating witnesses, and the importance of healthy, respectful relationships (discussed further in this report at chapter 2.2)
- maintaining confidentiality to protect victim-survivors in a small community environment
- ensuring the voices of young people in First Nations communities are heard
- providing a culturally safe, supported space for women and girls to openly and frankly discuss issues that may be taboo in their community
- accessing forensic medical examinations and healthcare responses to sexual violence (chapter 2.6)
- alternative reporting options for sexual violence victims (chapter 2.5).

The implementation of local plans will be supported by recommendations made by the Taskforce in chapter 2.2 of this report.

Human rights considerations

Human rights promoted

Victims often describe being victim-blamed, shamed, embarrassed, and treated without dignity and respect when attempting to report victimisation. Implementation of these recommendations to address these issues will promote a victim's right to protection from cruel, inhuman or degrading treatment (section 17). Victims' rights to privacy and reputation (section 30) will be promoted by ensuring responses are culturally appropriate and confidential.

Implementation of the recommendations will also promote the right to liberty and security of the person (section 29) by ensuring bodily and mental integrity through greater access to appropriate services. This includes culturally appropriate services for Aboriginal and Torres Strait Islander peoples (section 28).

Human rights limited

No human rights will be limited by the implementation of these recommendations.

Evaluation

The Queensland Police Service should report publicly on the results of its review of the translation and interpreting services it uses for First Nations communities in Queensland and on improvements in cultural training for communication centre staff.

Local plans should each be subject to ongoing review and timely evaluation, and those evaluations should be collectively reviewed so that communities can learn from each other. This should occur within five years of the delivery of this report. The achievement of improved outcomes for victim-survivors should be regularly measured and monitored by local governance bodies.

Perceived legislative barrier to reporting – criminalisation of failure to report sexual offences against children

Background

On 5 July 2021, a new failure to report a child sexual offence commenced in Queensland. The introduction of the offence was in response to recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA). The recommendation aimed to reform the Australian criminal justice system to address widespread failures within organisations and the community to prioritise the safety of children and prevent child sexual abuse.[193] The Taskforce has heard that there is confusion in relation to the operation of this offence, leading to reports that some are fearful of disclosing sexual violence to service providers or health practitioners.

Current position in Queensland

Section 229BC of the Criminal Code provides that an adult who gains information that causes them to reasonably believe a child sexual offence is being, or has been, committed against the child by another adult must disclose this information to a police officer as soon as reasonably practicable.[194] Failure to disclose to a police officer without a reasonable excuse is a criminal offence punishable by a maximum penalty of three years imprisonment.[195]

Section 229BC (4) contains a non-exhaustive list of circumstances when an adult has reasonable excuse, including:

- if the adult believes on reasonable grounds that the information has already been disclosed to police
- if the child has become an adult and does not wish to report
- if the disclosure would endanger the safety of the adult or another person, or
- that a report has been made under another Act (for example, under the *Child Protection Act 1999*).[196]

While the provision applies to all adults, the consultation draft limited the scope of the offence to apply to adults within organisations and child sexual abuse in institutional settings. During the introduction of the Bill, the then Attorney-General explained that the change resulted from concerns about the complexity of the offence that arose from the detailed definitions necessary to establish the institutional parameters of the offence.[197] The Attorney-General also noted that the broadening of the offence sent a strong message to the entire community 'that child sexual abuse is not something that can be ignored by any adult' and that it was consistent with the approach in New South Wales, Victoria, the Australian Capital Territory and Tasmania. [198]

The broadened scope of the offence was criticised by some stakeholders during the Parliamentary Committee's consideration of the Bill, with a number of organisations raising concerns that: there may be legitimate reasons why an adult may decide not to report (including fear or distrust of police, or a lack of appropriate supports to enable a woman to safely report in a domestic violence context')[199]; that the offence would apply to 18-year-old students[200]; and that the broader application is inconsistent with the RCIRCSA recommendations that were limited to child sexual abuse in institutional contexts.[201]

The Government's response noted that the 'reasonable excuse' provision was included to prevent the offence from being unjustly charged and noted that in exercising prosecutorial discretion, the police and the Director of Public Prosecutions would be mindful of public interest criteria. The Government's response also stated that DJAG would develop '[a]n appropriate communications strategy to support implementation that will also help to mitigate the possible impact by ensuring that the community clearly understands the operation of the new offence'.[202]

The failure to report offence differs from mandatory reporting under the *Education (General Provisions) Act 2006*[203] or the *Child Protection Act 1999.*[204] The mandatory reporting requirement in the Child Protection Act places an obligation on certain individual professionals (for example, doctors and teachers) to report a reasonable suspicion of significant harm to a child (where there may not be a parent able and willing to protect the harm), or of sexual abuse of a child. If the threshold is met, a mandatory reporter is required to make a written report to the Department of Children, Youth Justice and Multicultural Affairs. If

a mandatory reporter fails to report a reasonable suspicion, there is no criminal sanction; however, disciplinary proceedings may apply.

How do other jurisdictions address this issue?

In Victoria, the equivalent provision, which commenced in 2014, specifically excludes situations where the relevant information is given in confidence by the victim to a registered medical practitioner or counsellor.[205]

Amendments to create a similar offence in New South Wales commenced in 2018 and include that the approval of the Director of Public Prosecutions is required before a prosecution of the offence can commence against an adult in the course of practising or following a 'profession, calling or vocation' prescribed by regulation.[206] Prescribed professions include legal practitioners, medical practitioners, psychologists, nurses and social workers, among others.

In addition to allowing for reasonable excuses, the Australian Capital Territory provides an exception only in relation to legal privilege.[207]

In Tasmania, there are no specific exceptions in addition to a reasonable excuse. However, commencement of prosecution for the offence requires the written authority of the Director of Public Prosecutions.[208]

Results of consultation

Service system stakeholders

Submissions to the Taskforce have raised serious concerns about the implementation of the new offence. DVConnect noted that the offence 'has created a complex and challenging situation for women and girls when they reach out for counselling to support their recovery from sexual violence'.[209] DVConnect asserted that it removes a woman or girl's autonomy over their journey through the criminal justice system and jeopardises sexual assault counsellors' safety, given the requirement to report as an individual without the protection of the employer. [210]

Queensland Sexual Assault Network (QSAN) stated that the new offence has had an 'enormous' negative impact on survivors' engagement with sexual violence counsellors and other service providers, including doctors and other health providers. QSAN noted that this is particularly so with those who work with young people.[211] They reported that the offence has created a barrier to people seeking health assistance (noting a young woman who needed emergency contraception but did not want to go to the doctor as she feared the mandatory reporting). QSAN feared the provision is creating complexity for health professionals and counsellors who want to meet the health needs of young people without triggering mandatory reporting against the young person's wishes.

The Youth Advocacy Centre (YAC) stated the offence is a 'serious barrier to girls being able to seek assistance about being a victim of a sexual offence and to decide what they wish to do in terms of reporting the matter.'[212] YAC noted that the timeframe 'as soon as reasonably practicable' prevents even the preparation of the victim for the potential consequences of the report and that it is likely preventing young victims from disclosing their abuse at all, limiting their access to support and ultimately making them more vulnerable. [213] YAC advocated for an urgent review of the offence. [214]

Government agencies

DJAG told the Taskforce that a number of steps were taken to explain the failure to report offence to stakeholders. This included the Director-General and Attorney-General writing to stakeholders, the publication of information including factsheets on the Queensland Government website, and convening a forum for specialist sexual assault service providers.[215] DJAG also told the Taskforce that sexual assault service providers had been requested to monitor the implementation of the offence and provide information to the department about any impacts on their work.[216] DJAG said that it had not been made aware of any particular circumstances where the offence was creating barriers to women and girls seeking assistance.[217] DJAG also told the Taskforce that sending correspondence was the standard way of advising relevant stakeholders about new legislation, though more extensive activities may be undertaken on a case-by-case basis depending on the nature and significance of the amendments. [218]

The Department of Education advised that a factsheet has been developed for students who are over 18 years about the failure to report offence.[219] School employees are subject to mandatory reporting provisions under other legislation and therefore have higher reporting obligations than adult students.[220]

Taskforce findings

Submissions to the Taskforce on this issue indicated that there was confusion about what is considered a reasonable excuse and therefore the obligation that the offence places on service providers. The Taskforce found that the activities undertaken to explain the new offence have not addressed the concerns voiced at the time the offence was introduced and this was impacting negatively on victim-survivors. The Taskforce concluded that more needs to be done to provide confidence to sexual assault service providers, health service providers and victim-survivors that the reasonable excuse provisions do not stop child victims who do not wish to report from receiving counselling, advice, support, and help.

Reviewing the reasonable excuses contained at section 229BC(4) of the Criminal Code will provide an opportunity to consult with the sexual assault service sector to more fully explore the nature and extent of the concerns raised. It will assist to determine whether the current listed reasonable excuses are sufficient, or whether this sub-section should be amended.

The Taskforce considered that, given the Government commitment to '[a]n appropriate communications strategy to support implementation that will also help to mitigate the possible impact by ensuring that the community clearly understands the operation of the new offence',[221] both the service sector and the community expected something more comprehensive than what was ultimately delivered.

The Taskforce found that a broad community education campaign is needed to address any unintended consequences or confusion about the application of the offence. The awareness campaign should help those coming into contact with people (including children) who may have experienced sexual abuse. This will support better understanding of community duties and responsibilities in relation to reporting sexual abuse. It will also assist service organisations to formulate policies and procedures that support staff to comply with the legislation while also supporting clients.

Taskforce recommendations

7. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence review the reasonable excuses listed in section 229BC(4) of the Criminal Code to consider including an additional reasonable excuse that covers the provision of sexual assault counselling and medical care.

8. The Department of Justice and Attorney-General develop and implement a broad community awareness campaign with targeted messages for youth, sexual assault and health services about the scope and intent of the failure to report offence in section 229BC of the Criminal Code to support its ongoing implementation.

Implementation

The review of the subsection will need to be conducted carefully so as not to erode the intentions of the RCIRCSA recommendations.

DJAG will need to ensure that consultation takes place with sexual assault services across Queensland during the review and includes people with lived experience of sexual violence, including young people and First Nations peoples. Any proposed amendments to section 229BC should be the subject of a draft consultation Bill before they are introduced to Parliament.

The community awareness campaign should provide information about the scope of the offence, including operation of the reasonable excuse provisions. To be effective it will need to be developed in consultation with service providers and be funded appropriately by government.

Human rights considerations

Review of the provision will need to carefully balance victims' rights to privacy, and the need to protect children, including their right to protection from torture and cruel, inhuman or degrading treatment.

Human rights promoted

Reviewing this provision and engaging in a broad community awareness campaign will promote child sexual violence victims' freedom of expression (section 21) to tell their story to counsellors and support workers. It will also promote their right to liberty and security (section 29) and their right to health services (section 37) by enabling them to take appropriate steps to protect their mental health and wellbeing when obtaining assistance from the support workers.

Evaluation

DJAG should ensure that it puts appropriate mechanisms in place to monitor the success of the community education campaign.

Conclusion

The Taskforce found that women and girls in Queensland continue to face significant barriers to reporting sexual violence and those barriers are individual, societal, and systemic.

The Taskforce is gravely concerned about barriers to reporting for women and girls in First Nations communities. It is intolerable that women and girls in these communities, as well as their families, friends and support workers, are subject to intimidation and threats of violent reprisal if they report sexual violence. The Taskforce has recommended that the Queensland Government partner with community leaders and Elders to co-design and implement local plans with First Nations communities to urgently address this issue.

The Taskforce is also concerned that the QPS communication centre and front-counter staff urgently improve their cultural capability to enable meaningful communication with First Nations women and girls in communities when they call for help. A review of the translation and interpretation services the QPS uses to communicate with First Nations peoples should also be undertaken.

There is also a need to review the reasonable excuses provision within the failure to report offence for child sexual violence, and to consider whether the provision should be expanded, for example, to explicitly excuse professional sexual assault counselling and medical care. This is to ensure that the offence is operating as intended, and not inadvertently creating an additional barrier for victims, including child victims, to disclose sexual violence. A community awareness campaign will help service providers and members of the community to understand their obligations and be clear on when they are not at risk of prosecution.

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Chapter 2.4: Support for victim-survivors throughout their criminal justice journey

Victim-survivors of sexual violence need support and advice to navigate the criminal justice system. They need therapeutic support throughout their healing process, whether or not they choose to report to police. Reform is needed to provide equitable service delivery that meets the needs of victims across the continuum of support throughout the state.

There is a need for increased advocacy at a systemic level to generate sustained improvement in the way victims are treated. Queensland needs a victims of crime commissioner to promote and protect rights of all victims.

Specialist support and advocacy for victims of sexual violence

The trauma of sexual violence can have profound, long-lasting and cumulative impacts on victim-survivors. Therapeutic support and advocacy can help reduce or mitigate some of these impacts, including by reducing the risk of retraumatisation. Access to support while engaging with the criminal justice system can improve justice outcomes, reduce attrition, and improve victim-survivors' overall experience.

Background

Current position in Queensland

Specialist sexual violence support services

In Queensland, specialist sexual assault and women's health services provide victim-survivors of sexual offences with therapeutic, emotional and practical support before, during and after their engagement with the criminal justice system.[1] Depending on resources, these services also support victim-survivors to navigate the criminal justice system and undertake primary prevention work.[2]

The Queensland Government, through the Department of Justice and Attorney-General (DJAG), provides per annum funding of:

- $12 million to 25 organisations to deliver sexual violence services including counselling, prevention, awareness and capacity building
- $8.6 million to 19 organisations to deliver women's health and wellbeing services to provide counselling, information, referral and support.[3]

DJAG also provided $12 million over four years (2018-19 to 2021-22) for priority youth sexual violence and abuse responses. This included $7.7 million for counselling services in five high-need locations.[4]

Additional Australian Government and Queensland Government funds were provided in 2020 and 2021 to support domestic, family and sexual violence services respond to increased demand as a result of the COVID-19 pandemic. DJAG told the Taskforce that Queensland will receive four lots of funding of $13.255 million over two years from the Federal Government under the new *National Partnership on Family, Domestic and Sexual Violence 2021-23.*[5] Of the first payment, $7.1 million was allocated for sexual violence services and $3.7 million for women's health and wellbeing services over two years.

In 2021, the Queensland Government committed an extra $30 million funding over four years to respond to domestic, family and sexual violence.[6] This top-up funding is being provided over two allocations to help services meet demand including a first amount of $7.5 million for 12 months ending 30 June 2022 and a second allocation of $22.5 million for three years from 1 July 2022 'to provide certainty and continuity of service'.[7]

DJAG advises that, since 2015, the number of funded services has expanded with the addition of 11 sexual violence services, and 12 new women's health and wellbeing services.[8] Services are funded under specific investment specifications[9] and must meet the common requirements and be certified under the Human Services Quality Framework.[10]

The Taskforce has heard there are service system gaps. The Queensland Sexual Assault Network (QSAN) states that there are service 'black spots' across 'huge swathes of regional Queensland'.[11] It has been reported that women living in Mount Isa who have been raped have had to drive 10 hours to Townsville for essential services and support.[12] DJAG acknowledges that 'the sector has a large geographical reach – from South-East Queensland to the Cape and Mount Isa – bringing unique challenges'.[13] DJAG also confirmed that there is no sexual assault service or outreach to the Torres Strait, and that if there was a serious sexual assault, the Queensland Police Service would arrange an evacuation.[14] There are also gaps in service types. For example, Queensland has only one specialist sexual assault service for Aboriginal and Torres Strait Islander women, with reported high demand on that service.[15]

Waiting lists of between six and 18 months have been reported, even in well-serviced locations.[16] This is consistent with reports of increased demand and long waiting lists for sexual assault services across Australia.[17] Service providers have told the Taskforce that limited resources restrict the amount of time they are able to work with a client, preventing them from doing the long-term therapeutic work that is often required.[18] There are likely demand and supply issues impacting on growing waiting lists. The Taskforce heard that victim-survivors of historical sexual assault and child sexual abuse often could not be prioritised by support services because of the high numbers of victim-survivors of recent or current sexual violence requiring a response.[19] Along with additional investment, increasing service system capacity and capability through effective and efficient service system design and professionalisation is required.

While not prevented from providing support throughout the criminal justice process (including court support), service providers state that their limited resources require them to prioritise critical crisis support and counselling rather than supporting their clients at court.[20] The nature of the court process, including frequent last-minute adjournments also restrict the ability of services to provide court support.

Support for victim-survivors in the criminal justice system

The Queensland Government currently funds the following supports for victims of sexual offences:

- Victims Assist Queensland (VAQ) – VAQ provides some direct support to victims during court processes, including victims of sexual offences. This support is provided by a Victim Coordination Officer at Cairns, Rockhampton and Ipswich. Support could include information, court tours, emotional support, assistance to prepare Victim Impact Statements and help to apply for financial assistance. [21]
- Victim Services Funding Program – $3 million per annum is administered through VAQ to support all victims of crime through 24/7 phone support, case management, emotional support, free therapeutic counselling, court support and assistance to complete applications for financial assistance. From 1 July 2022, five non-government organisations are funded to support victims of violent crime (including DVConnect and WWILD Sexual Violence Prevention Assoc. (WWILD)). This funding will also enable Protect All Children Today (PACT) to provide support to adult and child victims of crime interacting with the criminal justice system. [22] It also provides court support to children who give evidence in court. From 1 July 2022, this court support is being extended to adults statewide.[23]
- Sexual Violence Liaison Officers (SVLOs) – From 1 January 2022, Queensland Police Service commenced the statewide rollout of SVLOs. SVLOs aim to provide a 'victim-centric' response to victims through liaising with specialist services and ensuring accurate and consistent communication between victims and police.[24] See Chapter 2.5 for further discussion of SVLOs.
- Victim Liaison Officers (VLO), Office of the Director of Public Prosecutions (ODPP) – VLOs provide the link between victims of crime, their families and the prosecution and assist the ODPP in complying with the Charter of victims' rights.[25] The functions of VLOs are focused on communicating between the ODPP and the victim. VLOs do not provide counselling, practical or emotional support or prepare the victim-survivor for the experience of giving evidence in court. See Chapter 2.8 for further discussion of VLOs.

Support available to victims of sexual violence is generally based on the particular part of the criminal justice process they are engaging with. This puts the burden on the victim-survivor to understand the system and navigate between agencies and available support at different stages of the process. As we have noted in other parts of this report, the attrition rate for sexual offences moving through the criminal justice system to a final outcome is high.[26]

The Sexual Assault Response Team (SART) in Townsville is currently the only funded integrated response for victims of sexual offences in Queensland. As noted in Chapter 2.2, in partnership with the Women's Centre, the SART provides support and guidance throughout a victim's journey of the criminal justice system[27]. SART members include police, health, sexual assault services and the ODPP.[28] The focus of the model is on supporting victims as they navigate criminal justice outcomes – regardless of how long that journey takes.[29]

Service system leadership and coordination

The QSAN describes itself as a peak for sexual assault and women's health services in Queensland.[30] In 2021, QSAN received $150,000 in government funding to enable the engagement of secretariat support to assist QSAN to provide this role for its members.[31] As noted in *Hear her voice 1*, sexual assault services have rejected proposals for the establishment of an integrated peak that combines both sexual assault and domestic and family violence services due to concerns that the domestic and family violence service system often 'overshadows' the sexual assault service system.[32]

The *Queensland Government Interagency Guidelines for Responding to People who have Experienced Sexual Assault* are 'designed to promote whole-of-government interagency cooperation and service coordination with an aim to improve governmental responses to victims of sexual assault'. These guidelines have not been updated since 2014. DJAG told the Taskforce a review of the guidelines is close to finalisation which will result in significantly redrafted guidelines to reflect a range of changed practices and approaches that have been implemented since 2014.[33]

The Domestic and Family Violence Death Review and Advisory Board (DFVDRAB) is responsible for the systemic review of domestic and family violence deaths in Queensland. Prior forced sexual acts and assaults during sex are recognised lethality indicators (a warning sign or predictor of harm) in relationships characterised by domestic and family violence.[34] The DFVDRAB found that in the 92 intimate-partner homicides that occurred in Queensland between 2011 and 2018, more than 15% included evidence of this lethality indicator.[35] The DFVDRAB found that sexual jealousy was evident in 49% of reviewed cases of intimate partner homicides in Queensland, and was among the most prevalent lethality risk indicators.[36] A high level of service contact was found in both intimate partner homicides (76%) and domestic and family violence suicides (89%).[37]

How do other jurisdictions address this issue?

Victim advocates

A number of jurisdictions have successfully implemented a model of 'victim advocates' to provide information, link victim-survivors to services and support them throughout the criminal justice process. For example, victim advocates (called 'independent sexual violence advisors') in England and Wales provide: tailored support before, during and after criminal and civil proceedings; accurate and impartial information; and emotional and practical support.[38] They also ensure the safety of victims and their families and act as a single point of contact for the victim-survivor throughout the criminal justice process.[39] The professional systemic advocates are based within a variety of organisations including non-government support services, but the role is distinct from the role of crisis worker or counsellor or legal advocate. [40] This model has been positively reviewed as being a key cost-effective and efficient reform for victim-survivor support.[41] A pilot of a similar model in Scotland found that clients found the support 'invaluable and life-changing'.[42]

In its 2021 *Improving Justice System Responses to Sex Offences,* the Victorian Law Reform Commission (VLRC) recommended the co-design of a model of advocates to provide continuous support for victims of sexual violence across services and legal systems.[43] The proposal would: provide information about justice options; support victims to understand and exercise their rights, including their rights under the *Victims' Charter Act 2006* (Vic); support their individual needs, including through referrals to services; and liaise with, and advocate for them across the service and legal systems.[44] It recommended the model not depend upon a person's engagement with the criminal justice system; include diverse points of access to the support; and include oversight of the scheme.[45] This recommendation accompanied a range of other recommendations to improve support for victims of sexual violence.

Multi-agency centres

A number of other jurisdictions also operate multi-agency centres that bring together different agencies to provide a coordinated response to a victim-survivor of sexual assault. Typically these responses involve police, health, counselling and advocacy services (see Appendix 4 for an overview of models operating in other jurisdictions).

Service system leadership

In Victoria, Sexual Assault Services Victoria (previously known as CASA Forum) is a newly incorporated and expanded body for sexual assault and harmful sexual behaviour services.[46] The VLRC recommended the funding arrangements of Sexual Assault Services Victoria be reviewed to support its expanded role providing training, professional supervision and undertaking service system reforms.[47]

As noted in *Hear Her Voice 1*, only South Australia has a peak body that represents domestic and family violence services as well as one sexual assault service. Its membership also includes other service types such as homeless and reintegration services.[48]

Results of consultation

Victim-survivors

Victim-survivors told the Taskforce that a lack of information and understanding stopped them from engaging with the criminal justice system[49]. One victim-survivor wrote:

> *'I realise it sounds silly, but many people have no idea how the criminal justice [system] works (we get our information from TV and movies), and when someone reports a violent crime the proceedings for pressing charges should be made clear and given in writing, particularly around things like lawyers and court costs. At the time of my assault, I honestly thought taking it to court would mean I paid for my own lawyer and court costs. If I had known otherwise, I would have pressed charges.' [50]*

Some victim-survivors were satisfied with the responses they received when they disclosed sexual violence.[51] However, many victim-survivors told the Taskforce they received inadequate and inappropriate responses including being victim-blamed, disbelieved, dismissed, and treated with contempt.[52]

Victim-survivors said they struggled to access support services and called for specific places where they can report sexual violence and be supported through the criminal justice process.[53] Some victim-survivors highlighted the importance of being able to speak to someone who understands their experiences.[54] They felt that having someone they could trust to support and believe them, give them a voice, explain processes and provide information was important, but unfortunately lacking.[55] These types of support were identified by victim-survivors as important steps in deciding how best to engage with the criminal justice system whether it be regarding a recent or historical sexual assault.

Victim-survivors suggested there was a need for a safe space where they could report, receive counselling, and access help to navigate the service and criminal justice systems.[56] One victim-survivor wrote:

> *'I don't get why a counsellor or a social worker or someone who is actually trained in a trauma-informed manner is not the first person we can safely speak with to talk about what has happened, and what we need as victims.'[57]*

Some victim-survivors were able to access court support to help them through the process.[58] But for many, failures of the criminal justice system to achieve what they considered to be justice, coupled with poor communication from police or prosecutors, added to their mistrust and lack of confidence in the system.[59] One victim-survivor reflected that:

> *'Victims are left in the dark in this system, we are not given enough information - perhaps they forget most of us have never had to interact with this system before, we don't know how it works.'* [60]

The Taskforce heard from a number of victim-survivors that there was minimal contact between victims and VLOs, that their VLO frequently changed and that there was often little engagement with the prosecution until shortly before the commencement of the trial (sometimes meeting the prosecutor for the first time on the morning of the trial).[61] One victim-survivor wrote:

> *'There were a lot of mentions and hearings in the courts and no one let us know when they were happening or what they meant. Not being able to understand what was happening left me feeling hopeless.'* [62]

Some of these negative experiences were also discussed in a forum with police investigators[63] and in meetings with service providers.[64] Some service providers, however, acknowledged the excellent work done by VLOs.[65] In some cases, there may be a mismatch between victims' expectations of the role of the VLO and the actual functions of VLOs, which focuses on communicating between the ODPP and the victim-survivor (see chapter 2.8).

Collaboration across agencies in the form of a 'hub' was seen as essential for justice.[66] Automatic assignment of a victim advocate was suggested to support victim-survivors to navigate the criminal justice system.[67] One victim-survivor described her experience:

> *'Just yesterday I was bounced between 1800 Respect, Blue Knot Foundation and the QLD Women's Legal Service. None of these organisations were able to help direct me to how I may be able to pursue this case further. I am not criticising these organisations as the scope of their services are limited and they do very important work. I am just stating it to ensure people see this system is fundamentally broken. Victims of sexual assault stay silent as no one believes them and navigating a system to fight for your rights is also retraumatising.'* [68]

Service system stakeholders

Service providers told the Taskforce that there is a critical need to improve the availability of services. Full Stop Australia wrote:

> *'The system is in urgent need of comprehensive, systematic and whole-of-government reform to ensure that … sexual assault services are universally available and properly funded to provide the supports that victim-survivors need not only during a moment of crisis, but also to recover from the complex trauma they experience as a result of sexual violence …'* [69]

Service system stakeholders reiterated victims' experiences of disempowerment during criminal proceedings.[70] They were concerned about their clients' treatment by the ODPP and the court process as a whole, noting that it was often not trauma-informed.[71]

> *'It seems to me that there is no consideration given to these people that when they receive calls [from the ODPP] just out of the blue that they go straight back into those places [of trauma] that they were in when they experienced the violence'.* [72]

Support workers noted their clients' desire for court support and their inability to provide it, given the appointment-based nature of their services and the often-last-minute notification of trials (or their adjournments).[73]

WWILD noted the challenges women with intellectual disability face in having their voices heard and their needs recognised.[74] Aged and disability advocates, ADA Australia, also noted that underlying biases and assumptions about cognitive capacity by police and service providers result in inadequate responses to older women and people with disability who have experienced sexual violence.[75]

Service providers identified a lack of culturally safe practices and advocacy to support women and girls navigate the service and criminal justice systems.[76] Others highlighted the importance of specialist officers and community-based advocacy to provide ongoing support to people, including those with disability, to help navigate the judicial process.[77]

The Gold Coast Centre Against Sexual Violence (GCCASV) and QSAN submitted that there is a need for an increase in long-term core funding; an investment and funding review; and the continued and expanded funding for QSAN as the state peak for the sector.[78] GCCASV also called for additional funding to expand the provision of services for vulnerable groups, such as First Nations women, women from culturally and linguistically diverse (CALD) backgrounds and people with disability.[79] GCCASV noted the link between lack of support and attrition:

> *A well informed, well supported complainant is less likely to want to withdraw from the system.* [80]

Support services suggested victims should be provided access to a specialist sexual assault support worker as a default, rather than asking them or waiting for them to request one.[81] They noted that many victims don't necessarily know what the process will entail and what a support worker is able to provide; others do not want 'to cause trouble'.[82] GCCASV submitted:

> *Support and advocacy should be available as a right not a privilege before, during and after the first point at which the victim/survivor enters the criminal justice system to the end of the process and beyond.* [83]

In regional and remote locations such as Bamaga and Cherbourg, the Taskforce heard that services were limited, and often not available after hours.[84] In Woorabinda, the Taskforce heard about, and observed, the importance of community leadership taking responsibility and supporting community-controlled services to provide culturally safe victim-survivor support.[85]

Support workers gave positive examples of circumstances when government and non-government agencies had worked together to meet the particular needs of a victim-survivor with positive outcomes.[86] Specialist support workers involved in the SART spoke of the importance of providing ongoing support through their client's journey along the criminal justice system and beyond:

> *'We are there from start to finish and we absolutely need to be. It doesn't get any easier throughout the process'.* [87]

Some support workers noted that they do not have adequate knowledge of the criminal justice system or legal system to be in a position to support their clients' engagement.[88] While support workers often told the Taskforce about following up with police on behalf of victims, they also expressed confusion about the details of the criminal justice process. The Taskforce also heard that the expertise of support workers in understanding trauma and providing a trauma-informed response was undervalued, and that some felt that they were not afforded respect as professionals, in their interaction with lawyers and others in the criminal justice system.[89]

Government

Queensland Police Service

During consultation, the Taskforce heard that the SVLO was not a dedicated position but instead an additional role given to officers in each district. Some of these officers noted that they had limited capacity to fulfill the SVLO role adequately given other demands of their position.[90] This was reinforced in consultation with service providers.[91]

Some Queensland Police Service (QPS) investigators and detectives expressed frustration with the lack of support provided to victims by VLOs and the ODPP.[92] Some detectives felt prosecutors left it to them to keep victims updated and to advocate on their behalf during the court process, despite this not being in keeping with their role as independent investigators. Some detectives also described victims' expectations as being beyond the scope of a detective's role. [93] The QPS noted that 'consistency of support from end to end helps victims to feel supported and to navigate the system, [with] this function best performed by sexual assault service workers in collaboration with criminal justice stakeholders'.[94]

The QPS noted that a lack of availability of service system professionals is a barrier to QPS delivering its ISACURE training to officers, as it requires the participation of specialist service providers. This is more problematic in remote and regional areas where there is limited ability to backfill the specialist support workers.[95]

Department of Justice and Attorney-General

DJAG acknowledged that there are service gaps in terms of geographical areas where services are not available and areas where some types of services are not available.[96] DJAG noted that services provide outreach as a way to extend the reach of specialist services.[97] DJAG told the Taskforce that it can be difficult to recruit and retain people with the specialist skills required to deliver sexual assault services, particularly in regional and remote areas.[98] DJAG noted an apparent increase in demand, including an increased number of young people seeking specialist sexual violence support. [99] DJAG advised that an investment review is currently underway to assess demand and supply, and identify funding and service gaps.[100] Findings will inform development of a long-term funding model.[101]

Other government

The Parole Board Queensland told the Taskforce that victims are confronted with many different victim liaison bodies as they navigate the criminal justice system.[102] To reduce the trauma for victims, the Parole Board suggested a 'one-stop' agency to communicate with victims throughout the entire process.[103]

The Department of Children, Youth Justice and Multicultural Affairs suggested that improved collaboration between culturally and linguistically diverse service providers, victim advocates and police could increase victims' confidence in the system, help develop partnerships, and increase familiarity with available supports.[104]

The Australian Human Rights Commission noted that the adversarial system operates counter to trauma-informed practices for victims.[105] It also noted that, in many Aboriginal and Torres Strait Islander communities, local women do much of the work to support victims and to help them navigate the system.

Victorian Government agencies, during a tour of a Multi-Disciplinary Centre (MDC) in Melbourne, explained that co-locating agencies had supported a culture of collaboration, though it was acknowledged that this may also be achieved without co-location. The Taskforce observed, however, that the design of the MDC appeared to primarily meet the needs of participating agencies, rather than the direct needs of victims. For example, the MDC was largely inaccessible for victims and felt more like government offices, in contrast with the victim-focused, informal and welcoming spaces in the Women's Centre in Townsville.

Legal stakeholders

The Queensland Indigenous Family Violence Legal Service (QIFVLS) noted that the criminal justice system is regarded as 'turbulent to navigate' for First Nations peoples and called for a culturally safe, trauma-informed approach to addressing harm.[106]

Knowmore recommended that police work with survivor advocates, support groups and services to facilitate better reporting[107] and work with prosecutors and police to ensure victims understand the legal aspects of the case.[108] This was supported by the Women's Legal Service Queensland (WLSQ), which called for victim liaison officers to be available as soon as a victim-survivor presents to police.[109] WLSQ suggested victims should have a consistent advocate to help them navigate the criminal justice system, and to facilitate communication between different agencies and the victim.[110]

Office of the Director of Public Prosecutions

The ODPP recognised that women and girls may face additional factors that impact how they navigate the system such as child safety, domestic violence and other matters, beyond the role of their Victim Liaison Officers.[111]

Other relevant issues

Relevant cross-cutting issues

The ability of First Nations victim-survivors of sexual violence to access support is impacted by how culturally capable support services are. Community-controlled organisations have been shown to be more effective in delivering services to First Nations peoples. The Taskforce heard that in regional and remote locations, confidentiality is a key consideration when First Nations victim-survivors want to seek help or to report sexual violence. In many of these locations, few or no services are available.

Victim-survivors with intellectual disability or from CALD backgrounds also face challenges in accessing specialist support services that are able to identify and meet their communication and other needs. Specialist services are generally located in the south-east of the state.

Support for victims to improve reporting, reduce attrition and improve victims' experience of the criminal justice system

The Taskforce has heard that difficulty navigating the service and criminal justice systems can leave victims feeling alone, unheard, and unsupported. Victims who struggle to understand the criminal justice process sometimes fail to report abuse because they fear 'wasting police time', believe they have to pay for justice, or fear the criminal justice system itself.

'Despite legislative change over the past two decades, the process and outcomes for victim-survivors have not dramatically improved. The lack of information, lack of control, lack of support and lack of choice encountered throughout the system reinforces the victim/survivor's powerlessness'. [112]

A lack of understanding about available options can deter victim-survivors from reporting, or lead to victim-survivors withdrawing their complaint. Research literature has identified the link between the provision of support and the achievement of justice outcomes and reduced attrition. For example, a review of rape case files in the United Kingdom found that victims who receive specialist support were significantly more likely to have their complaint deemed a crime and result in charges, and twice as likely for those charges to result in a conviction.[113] It found that victims who receive specialist support were 42% less likely to have their case result in police taking 'no further action', and 49% less likely to withdraw than those who did not receive specialist support.[114] Other studies have shown that provision of support leads to lower rates of victims withdrawing a complaint[115] and to reduced re-traumatisation.[116]

Improving the support provided, and joining up that support in a way that is tailored to the unique needs of a victim-survivor, is a key way of improving women and girls' experiences across the criminal justice system following sexual violence. The additional investment required to expand the provision of accessible support may be offset by the reduced costs associated with high rates of attrition and re-traumatisation,

the costs to society from the failure to hold perpetrators of sexual violence accountable for their actions, and from the ongoing impacts of trauma on the lives of victim-survivors.

Help to support victims to navigate the service and criminal justice systems

The Taskforce heard that victim-survivors are frequently required to engage with multiple agencies including government and non-government service providers. As noted above, the support available to victims generally relates to the particular part of the criminal justice system they are engaging with at any one time. Victims may engage with a specialist service during a crisis response; a hospital social worker during a forensic examination; a frontline police officer, detective and SVLO when making a complaint and during an investigation; a VLO and a prosecutor during legal and court services and perhaps a court support worker during a trial; and Victims Assist Queensland if they make an application for assistance. They may also need legal information, advice and representation relating to a variety of legal issues. Traumatised victims are frequently left to navigate these various supports alone, with nobody to explain, from the point of first disclosure, the options and supports available, how to access them, and how they will help.

Some specialist services support victims by following up with other agencies on their behalf, but (with the exception of the SART model) this goes beyond their role to focus on the therapeutic support needs of their clients. This level of support is often not possible in a high-demand environment.

A model of independent, consistent victim-survivor advocacy throughout the victim's contact with the service and criminal justice systems has received broad support across submissions to the Taskforce from service system, academic and government stakeholders.[117] Evaluations of advocate models in other jurisdictions have been positive and provide a framework on which to build. An independent professional system navigator with expertise across multiple systems could help a victim-survivor throughout their interactions across the service and criminal justice system to access available supports and services and to protect and promote their rights. This role should not replace existing supports and services or become a substitute for engagement directly with a victim. Rather, it would empower victim-survivors to access the right service to meet their needs at the right time. Advocates would provide culturally safe, trauma-informed and individually tailored responses.

Statewide service delivery to meet the diverse needs of victim-survivors across a continuum of support

Access to specialist therapeutic support helps people who have experienced sexual violence in their healing journey. It can reduce the risk of, or help mitigate, secondary trauma experienced through the victim-survivor's interaction with the criminal justice system and reduce long-term impacts of sexual violence. The Taskforce visited locations in Queensland where there were no specialist sexual violence support services, despite a high prevalence of sexual violence.[118] Existing services in more urban locations reported insufficient capacity to meet current demand.[119]

Queensland is a geographically large state with a dispersed and diverse population. Services in rural, regional and remote locations face persistent challenges in accessing funding, accommodation and appropriately qualified staff. Innovative and considered design - including through multidisciplinary hubs, technology and outreach - is needed to develop a contemporary, functional and cost-effective service delivery model to equitably meet the needs of all women and girls, wherever they live in Queensland. There are communities in rural, regional and remote Queensland with little or no internet access. This impedes the delivery of essential services. It is well-recognised that services for First Nations people should be led and delivered by community-controlled organisations.

While the majority of victims of sexual violence are women and girls, many such victims are men and boys and LGBTIQA+ people. Services must be able to meet the needs of victims of all ages across the gender continuum in an individually tailored and trauma-informed way. Services are needed for victim-survivors of both recent and historical sexual violence. Services must also meet the particular needs of First Nations peoples who choose a mainstream rather than a First Nations service, and those from culturally and linguistically diverse backgrounds, people with disability and older people.

The 2017 final report of the Royal Commission into Institutional Responses to Child Sexual Abuse recommended that the Australian Government and state and territory governments fund dedicated community support services for victims and survivors in each jurisdiction, to provide an integrated model of advocacy, support and counselling to children and adults who experienced childhood sexual abuse in institutional contexts.[120] Funding and related agreements should require and enable these services to:

- be trauma-informed and have an understanding of institutional child sexual abuse
- be collaborative, available, accessible, acceptable and high quality
- use case management and brokerage to coordinate and meet service needs
- support and supervise peer-led support models.

The Taskforce has heard that service system demand often results in service providers prioritising crisis responses and being unable to provide longer-term support, despite the often-enduring impacts of sexual violence.

In February 2021, the Royal Commission into Aged Care Quality and Safety heard distressing evidence of sexual abuse occurring in the Australian aged care system.[121] This included sexual abuse committed by staff members and the failure to protect residents from abuse by other residents.[122] Recent data shows rates of sexual abuse continuing at concerning levels[123], and there have been calls for better education of service providers and police to improve responses.[124] The Taskforce also heard about the need for multi-disciplinary collaboration to support better responses, including prosecution, to sexual abuse against older people.[125]

The Taskforce learned that, amongst women and girls who are involved in the criminal justice system as accused persons and offenders, there are high rates of victimisation, with most having experienced prior sexual, domestic, family or other physical violence. Many have experienced all these types of abuse. As discussed in Part 2, women and girls told the Taskforce their abuse, trauma history and unresolved healing are significant contributing factors to their offending behaviour. Sexual assault counselling services should be better able to meet the needs of vulnerable and hard-to-reach victims and have the skills to help them address their trauma and abuse history to prevent them from offending or reoffending.

The Taskforce noted that sexual violence was both a cause and a consequence of housing insecurity for women. The impacts of trauma, social isolation and efforts to escape sexual violence can lead women to become homeless. This, in turn, can increase their vulnerability to sexual violence. As noted in *Hear her voice 1,* a lack of safe and sustainable housing options can deter victims of domestic, family and sexual violence from leaving abusive relationships. See chapter 3.10 in Part 3 for further discussion, and Taskforce recommendation, about housing.

One girl yesterday was homeless, we explained to her what sexual assault is and she said she cannot do anything, she said 'I have to live with him'. She is only 16.[126]

The need for trauma-informed and connected responses across agencies

As described throughout Part 2 of this report, the Taskforce heard many examples of victim-survivors not being treated respectfully or with dignity in their interactions with agencies, or being retraumatised by their experiences. The GCCASV suggests the time has come to change this, writing 'Now is the time for Queensland to rebalance the scales of justice and ensure that secondary victimisation is not inherent in the systems we create'. [127]

There is a need for safe pathways to enable victims to receive informed services at each point in the journey, as well as better connection between each part of the system so that victims are supported throughout.

'The support I have received from social workers and psychologists has been astounding, but I do not feel that this compassion can be found within police or health services. This makes interacting with these services confronting, at a time where you already feel so frightened and vulnerable'. [128]

The Mental Health Select Committee's *Inquiry into the opportunities to improve mental health outcomes for Queenslanders* recently noted the importance of trauma-informed service delivery. The Committee noted that 'the way in which services are structured, and the way services and support are delivered, can

impact on a traumatised individual's recovery and wellbeing'.[129] The Committee recommended the development of a whole-of-government trauma strategy to implement best practice for responding to people who have experienced trauma (including sexual trauma), and considers how to embed trauma-informed practice in human services.[130]

Understanding how sexual violence interrelates with domestic and family violence

Just over a third (35%) of victims of sexual assault in Queensland in 2020 were recorded as family and domestic violence related.[131] As noted in *Hear her voice 1,* perpetrators of domestic and family violence frequently use sexual violence to intimidate, control and harm women.[132] It is likely the number of reports received about sexual violence in intimate partner relationships does not reflect the full picture. In a study involving victims of domestic and family violence, nearly half said they had experienced sexual violence during their relationship but most of them did not tell the police about it.[133] This was reflected in Taskforce consultations.[134] Victims themselves often do not appreciate that sexual offences can occur within a relationship.

There is a need to better understand how sexual violence in the context of domestic and family violence is being responded to across the service and criminal justice systems. Given the knowledge and expertise of the DFVDRAB in examining the circumstances of domestic and family violence deaths, there would be value in a focused review of cases involving sexual violence to further develop the evidence base, identify systemic and practice issues, and improve responses.

Sexual assault service system leadership

As well as providing much-needed therapeutic and other support services described in this chapter, sexual violence services play an important role in community awareness and education, primary prevention and the implementation of reform. To perform this important role and grow and mature to meet demand, leadership of sexual violence services will support and strengthen the contribution that specialist services can make. QSAN currently operates as a peak network for its member organisations.[135] QSAN, the GCCASV and WWILD recommended that the funding recently provided to QSAN to engage a secretariat role be continued and expanded to support QSAN members and inform policy, service delivery and legislative development.[136] The Taskforce saw benefit in this role continuing during the implementation of the recommendations in this report.

The Taskforce considered that an independent peak industry body should be established to build capacity and capability across the service system, similar to that recommended for domestic and family violence support services in *Hear her voice 1*. The Taskforce acknowledged, however, that sexual assault services are at a different stage of maturity and level of investment when compared with domestic and family violence support services. The priority must be in investing to fill the many concerning service gaps, including services delivered for and by First Nations peoples.

Taskforce findings

Victim-survivors of sexual violence need support to navigate the criminal justice system, from the moment they disclose the offence through the criminal justice system (if they choose this path) and beyond. They need therapeutic support to help them process their experiences and heal, whether or not they decide to engage with the criminal justice system. Many victims of sexual violence are able to access little, if any, support and assistance. Victim-survivors may not have support available where they live, or waiting lists prevent them from receiving support when they most need it. Services and supports are unable to meet their individual needs. This should change.

The support available to help victim-survivors navigate the criminal justice system is patchy and uncoordinated. Individual police officers, VLOs at the ODPP, and sexual assault services provide support at particular points across the system. But most victim-survivors are left to navigate an unknown process alone and many are left isolated and confused.

Victim advocates, similar to the model recommended by the VLRC, would help victims of sexual violence access available supports and services across their interactions with the service and criminal justice systems. This role should be provided by trained professionals with expertise in sexual violence and an understanding of the criminal justice system and processes. Advocates, distinct from counsellors, should advocate to protect and promote victim-survivor rights in a culturally competent and trauma-informed

way. These services should be delivered across Queensland, including by community-controlled organisations.

It is unacceptable that so many victims of sexual violence are unable to access the professional therapeutic support they need. This contributes to low rates of reporting and high rates of attrition. There is a need for Queensland to develop a clear picture of service gaps and a plan to fill those gaps as resources become available. This is a foundational piece of work that will provide the basis for planned expansion, professionalisation and a carefully designed model to provide equitable service delivery across the state.

Improved collaboration and integration of services and supports will better meet the needs of victim-survivors. The SART model provides an excellent example of how this can be done. Victims and participating agencies have told the Taskforce about the many benefits of the SART model. However, the SART model relies on services being available. In too many locations in Queensland, sexual assault services are simply not available. There is a growing awareness and increasing willingness of victims to disclose and report their experiences and seek help. The expansion of accessible, integrated professional services that meet the diverse needs of victim-survivors across a continuum of support, wherever they live in Queensland, must be a priority.

The Taskforce is of the view that a model that combines the benefits of a co-located hub designed to primarily meet the needs of victim-survivors whilst also enabling collaboration, with outreach support to more remote areas, demands further consideration. This model must prioritise and embed the delivery of locally based culturally capable services, led and delivered by and for First Nations peoples. Tele-health type conferencing could also be better utilised, supported by continued work to increase digital inclusion in regional and remote areas, including First Nations communities.

The capacity for agencies across the criminal justice system to provide trauma-informed responses varies. The referral pathways between services are not always clear or trauma-informed. There needs to be safer pathways to, and between, services as well as improvements to the capacity of all agencies to recognise and respond to trauma. This should be embedded across all agency protocols and guidelines and supported by ongoing training and professional supervision.

The *Queensland Government Interagency Guidelines for Responding to People who have Experienced Sexual Assault* is a key document to support inter-agency collaboration. It should be urgently updated and regularly reviewed to reflect the reforms implemented as a result of this report. Consideration should be given as to whether the guidelines should be extended to include non-government sexual assault service providers. At a minimum, the revision should include consultation with the sexual violence services.

Service system leadership is needed to support the sexual violence services to continue to perform their vital role. In the short term, there should be continued funding for QSAN's secretariat role to support services while service system gaps are addressed. A peak industry body should then be considered to build capacity and capability across the service system. A peak industry body will include supporting service delivery by and for First Nations peoples and will complement existing Aboriginal and Torres Strait Islander peak bodies and leadership roles.

There is a need for a better understanding about sexual violence in relationships involving domestic and family violence and service system responses, particularly where the victim has died. The DFVDRAB, which has considered sexual violence previously in its reviews, is well-placed to contribute to this improved understanding by conducting a specific topic review of a group of relevant past cases to identify trends and issues related to sexual violence in domestic and family violence related deaths.

Taskforce recommendations

9. The Queensland Government, in consultation with people with lived experience, Aboriginal and Torres Strait Islander peoples, service and legal system stakeholders, develop, fund and implement a statewide model for the delivery of a professional victim advocate service. Victim advocates will provide individualised, culturally safe, trauma-informed support to victims of sexual violence to help them navigate through the service and criminal justice systems and beyond. The role of victim advocates will include:

- providing impartial information to victim-survivors about the service and criminal justice systems and options available to them
- supporting victim-survivors to understand and exercise their rights
- identifying and assisting victim-survivors to address their individual needs including through referrals to services
- liaise across the service and criminal justice systems on behalf of victim-survivors, and be the consistent point of contact for victim- survivors throughout their criminal justice system journey.

The model will:

- aim to empower those experiencing sexual violence
- enable advocates to provide holistic, individualised and specialised support, including specialised expertise and understanding of working with children and young people
- provide support regardless of whether a person chooses to engage with the criminal justice system
- give priority to people who are under-served and/or who face the most complex interactions between services and systems

10. The Queensland Government develop a five-year whole-of-government strategic investment plan for the services delivered and funded by government agencies to prevent and respond to sexual violence. Similar to recommendation 13 in *Hear her voice*: *Report One, Addressing coercive control and domestic and family violence in Queensland*, the investment plan will involve a comprehensive gap analysis of current services, supports and demand to guide investment decisions across government. The plan will include the provision of:

- equitable access and statewide coverage of service system supports for victims of sexual violence
- culturally capable services that provide choice to First Nations peoples, including services delivered by community-controlled organisations as a priority
- services to meet the needs of people from culturally and linguistically diverse backgrounds, people with disability and LGBTIQA+ people, children, young people and older people
- prompt and consistent services for people who have experienced recent sexual violence
- timely and available services for people who have experienced historical sexual violence (including child sexual abuse)
- an integrated and coordinated network of responses and investment across the health, service and justice systems
- innovative and contemporary approaches including trialing and testing new service and intervention responses to build an evidence base about what works, where, and for whom
- a redesigned referral pathway to improve access to services enabling victims to be directed to the right service at the right time and to support increasing awareness and expertise of professionals across the broader service system to coordinate service responses through multi-agency hubs and outreach support, to meet the needs of all victims across the state (recommendation 11)
- service system responses to support women and girls to address and heal from their sexual violence and trauma experiences to reduce the risk of them offending or re-offending
- a centrally controlled statewide forensic examination service (recommendation 32)
- adequate funding for services to meet existing demand and anticipated increases in demand that are likely to flow from recommendations in this report.

The strategic investment plan will be reviewed after five years to inform the development of a further five-year plan.

Taskforce recommendations

11. The Queensland Government, with people with lived experience, Aboriginal and Torres Strait Islander peoples and service and legal system stakeholders, co-design, fund and implement a victim-centric, trauma-informed service model that responds to sexual violence through:

- a sustainable and coordinated model for the efficient and effective delivery of services equitably across Queensland that flexibly responds to demand pressure
- services and agencies working together in an integrated way including in co-located hubs to meet victim-survivors' needs as well as support agency collaboration, similar to the Sexual Assault Response Team model
- the provision of outreach services from a co-located hub to fill identified service gaps in regional and remote areas
- a response available 24 hours a day, seven days a week
- clearly defined, trauma-informed safe pathways for victims to access counselling and therapeutic support and the criminal justice system (including the role of victim advocates recommendation 13)
- place-based responses that are tailored to local needs and strengths.

The service model should be replicated throughout the state with a consistent name and branding to support help-seeking and referrals statewide.

12. The Queensland Government work with the Federal Government to improve digital inclusion in Queensland's rural, regional and remote areas, including through improving internet coverage to enable equitable access to essential services.

13. The Queensland Government embed a trauma-informed system of safe pathways for victim-survivors of sexual violence across the sexual assault and criminal justice systems to create a cohesive and consistent response to victim-survivors and to reduce attrition rates following reports to police. These pathways will be designed from a victim's point of first contact with the service system and throughout their engagement with the service or criminal justice system. Actions supporting safer systems pathways will involve each agency:

- undertaking an audit of practice to identify areas requiring improvement (informed by experts and people with diverse lived experience).
- revising relevant guidelines, protocols and frameworks to respond to an identified need for improvements, and to promote accountability
- conducting training to ensure changes are implemented.

Agencies will be reviewed on a yearly or bi-annual basis to ensure they are upholding practice principles that underpin safe pathways. Outcomes of the review will be publicly reported.

14. The Queensland Government develop and implement a collaborative inter-agency response to support victim-survivors of sexual violence through the criminal justice system and beyond. The collaborative response will be supported by:

- a statewide senior level interagency governance group involving relevant government agencies and the Office of the Director of Public Prosecutions to oversee collaboration and integration of services, measure and monitor performance, identify and respond to trends and issues, and facilitate consistent statewide practice
- clear roles and responsibilities for each agency and guidance for collaborative and integrated working relationships
- support implementation of the system of safe pathways for victim-survivors
- a local level governance group in each region or district to develop and support effective working relationships, measure and monitor performance at the local level and identify and respond to local practice issues
- new interagency guidelines and practice guidance to provide clarity about the roles and responsibilities of agencies across government that need to work together in a coordinated and integrated way to meet the needs of victim-survivors of sexual violence.

Consideration should be had as to whether sexual violence services should be incorporated in local governance arrangement. At a minimum, sexual violence services will be consulted on the development of new guidelines.

Taskforce recommendations

15. The Queensland Government consider establishing an independent and integrated peak industry body for sexual violence services (sexual violence services, women's health and wellbeing services and youth sexual violence services) as resources become available after expanding service delivery availability and accessibility. The main functions of the peak body will include:

- systemic advocacy, including supporting individual services to continue to participate and provide input into systemic and legislative reform processes
- service system capacity and capability building, including to identify and address common workforce, industrial and workplace health and safety issues
- improving statewide coordination and integration of services including with other government and non-government services
- assisting in the development and implementation of practice standards and quality improvement
- assisting in the development and implementation of mechanisms to collect and report on data to support ongoing performance improvement across the service system
- leveraging and maximising investment across the service system including improving coordination and integration between services.

16. The Queensland Government continue to fund the secretariat role within the Queensland Sexual Assault Network during the implementation of the recommendations in this report to support its member organisations to participate in the implementation of relevant recommendations in this report until a peak industry body (recommendation 15) is established.

17. The State Coroner as chair of the Domestic and Family Violence Death Review and Advisory Board (the Board) consider the Board undertaking a one-off specific topic review of relevant past cases of domestic and family violence-related deaths involving sexual violence, to examine and report matters within the Board's purpose and functions related to sexual violence within the context of domestic and family violence.

Implementation

A model of victim advocates

The establishment of a model of victim-advocate services requires the development and implementation of a statewide scheme to provide individual advocacy through the creation of a professional role which currently does not exist in Queensland. The role requires considerable knowledge of the criminal justice system and the rights of victims as well as an understanding of the impacts of sexual violence and the ability to provide trauma-informed support more typical in human services roles. Ensuring there are sufficient appropriately experienced people to take on this role may require government to work with relevant higher education institutes to ensure that educational options are available to support this role into the future.

Implementation of this recommendation should involve consideration of the models operating in other jurisdictions (such as the Independent Sexual Violence Advisors in the United Kingdom) and the model recommended by the VLRC. Care should be taken to distinguish the role of victim advocates from counsellors and other service system supports, which should continue to be provided by relevant agencies at critical points.

Strategic investment plan

Building on the work already underway, a detailed gap analysis to identify gaps in service provision (including gaps in service types) across the state should be undertaken as a priority. This work should support the development of ongoing mechanisms to measure and monitor trends to model future needs and demands across the community. This aligns with the recommendation 13 in *Hear her voice 1*.

The strategic whole-of-government investment plan should include investment in government and non-government services and set out a path to equitable service delivery across the state to meet the diverse

needs of victim-survivors across a continuum of support. It should incorporate, funding required to monitor and evaluate the impacts and outcomes achieved through the implementation of recommendations in this report. Development of the strategic investment plan should be informed by consultation with sexual violence stakeholders, First Nations stakeholders, and people with lived experience.

Service model

The service model should include collaboration and integration of service system responses, including through the co-location of agencies and service providers where possible, with a focus on how this benefits victim-survivors to access support. The model should provide a clear understanding of the roles and responsibilities of the different agencies and organisations involved to provide a joined-up and trauma-informed response. The model will ensure victim-survivors of sexual violence can access support 24 hours a day, seven days a week, regardless of where that person lives. This may require the innovative use of technologies combined with outreach services. The development of clear referral pathways, including connecting victim-survivors with victim advocates (recommendation 9) regardless of whether the victim-survivor intends to engage with the criminal justice system.

The design of the model should be flexible so that place-based strengths, including existing collaborative responses, are leveraged and expanded upon.

The design and implementation of the model should involve First Nations stakeholders and incorporate specific elements to address the needs of First Nations peoples. Stakeholders representing people from CALD backgrounds and people with disability (including intellectual and cognitive disability) should also participate in the design of the model.

The consistent branding of the service model is required to increase public and service system awareness and to support referrals, regardless of the location of the victim-survivor seeking support.

Digital inclusion

Given Queensland's geography and dispersed population, there is a need to utilise available technologies to improve opportunities for people in remote and regional locations to access the services they need. Limited or unreliable access to the internet is an obstacle to these innovations. Research suggests that Queensland ranks fifth out of Australia's eight states and territories on key digital inclusion measures with older people, First Nations peoples, and those in regional areas being the most excluded.[137] There is an urgent need to widen digital inclusion to support improved access to services for all Queenslanders. This is consistent with the National Agreement on Closing the Gap (Target 17).

System of safe pathways

Developing a system of safe pathways involves first, an audit to identify what aspects of an agency's practice may need to become more trauma-informed, or where there can be better links with other agencies or parts of the service system to improve a victim-survivor's experience. Second, it involves embedding improved practice in the individual agency's protocols and practices, and undertaking training to ensure compliance and a more trauma-informed workforce. Consultation with experts in trauma-informed service delivery to victim-survivors of sexual violence should inform all parts of this process.

Revision of the Queensland Government Interagency Guidelines for Responding to People who have Experienced Sexual Assault

The updated interagency guidelines should reflect changes to the response to sexual violence implemented as a result of this report. They should provide a platform for interagency collaboration to provide a joined-up service response for victim-survivors across the service system. For this reason, non-government service system stakeholders should be included in the development of the guidelines and, if appropriate, made a party to the guidelines.

Human rights considerations

The provision of services to help victim-survivors navigate the criminal justice system and support them to heal from sexual violence engages the right to equality before the law (section 15); the protection from torture and cruel, inhuman or degrading treatment (section 17); and the protection of families and children (section 26).

Human rights promoted

The expansion and enhancement of services to support victims of sexual violence across the state promotes the right to equality before the law (section 15). The provision of victim-centric trauma-informed support and advocacy across the criminal justice system promotes the protection and the protection from torture and cruel, inhuman or degrading treatment (section 17) and the protection of families and children (section 26).

Human rights limited

The expansion and enhancement of services for victim-survivors of sexual violence does not limit any rights. However, the implementation of the recommendations and subsequent investment decisions has the potential to limit rights. In particular, the right to recognition and equality before the law (section 15) could be limited if there is inadequate distribution of services across the state to meet the needs of specific cohorts of people. The Queensland Government should engage with service providers and users in the development of the strategic investment plan to avoid this outcome.

Evaluation

Independent evaluation should be built into the implementation of these recommendations with baseline measures developed to consider the experience of victims in the criminal justice system including rates of withdrawal, and satisfaction with the support provided.

Evaluation outcomes should inform the review and ongoing implementation of the reforms to the service system model.

The strategic investment plan should incorporate monitoring, evaluation, and review of impacts and outcomes achieved for victim-survivors to inform future investment decisions. The plan should be reviewed after five years and a new strategic investment plan developed.

Measuring and monitoring the implementation of these recommendations and the outcomes achieved will require agencies and services to agree on indicators and measures and have suitable processes to collect and analyse data, including baseline data and data specifically relating to the experiences of victim-survivors. Monitoring and evaluation of impacts and outcomes for victims as a result of the implementation of these recommendations should include feedback from people with lived experience.

Systemic advocacy for victims – Victims' Commissioner

Background

Queensland is one of the few Australian jurisdictions that does not have a victims' commissioner. There is no independent body to oversee systemic responses to victims of crime, to advocate for the rights of all victims at a systems level, or to manage victim complaints in a transparent and accountable manner. The Taskforce has considered the merits of establishing a victims' commissioner to provide ongoing mechanisms for improving responses to victims of crime in Queensland.

Current position in Queensland

Queensland's *Victims of Crime Assistance Act 2009* (VOCA Act) includes a *Charter of victims' rights* (the Charter) that describes the way a victim should be treated, as far as practicable and appropriate, by both government and non-government entities.[138] It lays out general rights for victims, including that they will be treated with courtesy, compassion, respect and dignity, and their individual needs taken into account.[139]

The Charter also provides 'rights' relating to the criminal justice system. These include obligations to provide information to victims about investigations, prosecutorial decisions, and the trial process. The Charter protects victims from unnecessary contact with the accused, allows them to provide a victim impact statement, and provides for the return of their property.[140] For eligible victims, the Charter protects the right to be informed about a convicted offender's sentence and custodial status, and to make submissions to the Parole Board.[141] However, the Charter lacks visibility and consequence. The rights and responsibilities it sets out are not legally enforceable.[142] Non-compliance with the Charter does not provide grounds for review of government decisions.[143] The Charter has been criticised as more closely resembling

a 'statement of standards'.[144] In a system that rightly emphasises an accused person's right to a fair trial, this can result in protections and safeguards for victims being overlooked.

Victims can make a complaint if their rights under the Charter are contravened.[145] Complaints can be made to the responsible person or entity, or to the Victim Services Coordinator (a public service position within Victim Assist Queensland (VAQ), a unit within DJAG) who may refer the complaint or try to facilitate a resolution.[146] The Victim Services Coordinator has no powers to enforce compliance with a resolution process. Agencies are not required to inform VAQ about outcomes of complaints and there is no requirement for agencies to publish information about complaints received directly. This information does not appear to be published in the annual reports of key agencies.[147]

VAQ does undertake some analysis of complaints and told the Taskforce that 109 complaints have been received over the past four financial years. Of these, 49% relate to the QPS, 18% relate to VAQ and 10% relate to the ODPP.[148] The most common complaint was that the victim was not treated with respect, courtesy and dignity.[149] Of the complaints received, 70% came from people in South East Queensland.[150] Chapter 3.8 discusses the ability for victim-survivors to seek a review of prosecutorial decisions.

Victims of crime in Queensland have inherent rights under the *Human Rights Act 2019* (HR Act), although the HR Act does not contain any explicit rights for victims of crime. The right to a fair hearing applies only to defendants. Despite this, international and Australian case law has determined that what is 'fair' in the context of a fair hearing extends beyond the rights of the accused person to include the interests of the community and the protection of witnesses.[151]

Victims in Queensland are eligible for financial assistance to help them recover if they are injured as a result of a crime.[152] The scheme is administered by VAQ and changes to eligibility requirements have seen a nearly 80% increase in applications since 2016-17.[153] In 2019-20, the government provided additional funding of $1 million per annum to assist with increased demand. This funding is now ongoing and funds an additional 10 full-time positions. Despite this, applications take an average of 114 days to be assessed.[154] It has been reported that nearly 400 domestic violence victims are waiting for a decision two years after making an application.[155]

Queensland also has a number of bodies responsible for protecting rights of individuals or providing systemic oversight, including:

- the Queensland Human Rights Commission (QHRC) with legislated functions under the *Anti-Discrimination Act 1991* and HR Act including promoting systemic reform and providing community education to improve compliance.[156] The QHRC has the ability to intervene in proceedings and appear with leave of the court,[157] or join as a party[158] in certain circumstances
- the Office of the Public Guardian (OPG), established to protect the rights of adults with impaired decision-making capacity, and children and young people in the child protection system[159]
- the Queensland Family and Child Commission (QFCC), established to promote the safety, wellbeing and best interests of children and young people and to improve the child protection system.[160] Its focus is on systemic reform.

The Queensland Ombudsman investigates complaints about the actions and decisions of state government departments and agencies, local councils and public universities.[161] It also has a role in improving the quality of decision-making and administrative practice in government agencies.[162] The Crime and Misconduct Commission investigates crime and corruption and has oversight of the public sector including police. It also has responsibility for the state's witness protection program.[163]

How do other jurisdictions address this issue?

With the exception of Queensland, Tasmania and the Northern Territory, all Australian jurisdictions have established victims' commissioners to support and advocate for the needs of victims (see Appendix 5 for information about victims' commissioners in other jurisdictions).

The South Australian Commissioner for Victims' Rights is seen as model for reform given the established history of the office and the progressive work undertaken in that time.[164] The role is likened to that of a crime victim ombudsman in that it can receive a grievance and consult any public official to resolve the dispute and, where appropriate, recommend an official or agency make a written apology.[165] The powers

of the role also go beyond that of a conventional ombudsman.[166] The South Australian Commissioner also has the ability to represent victims and intervene in proceedings with the approval of the victim.[167]

In its 2021 *Improving the Justice System Response to Sex Offences* report, the VLRC recommended the establishment of an independent body such as a 'Commission for Sexual Safety' and strengthening the powers of the Victorian Victims of Crime Commissioner. The new Commission was recommended to act as a 'systems-level governor' to coordinate a whole-of-government response, extending beyond the criminal justice system to prevention and education and to oversee a central gateway to information and support.[168] The role of a new Commission is intended to complement existing functions undertaken by the Victorian Victims of Crime Commissioner and other bodies, including the newly-formed peak body for sexual assault services, the peak body Sexual Assault Services Victoria, and other government agencies.[169]

The Australian Government has recently announced the appointment of Australia's first National Domestic, Family and Sexual Violence Commissioner to oversee the implementation of the next *National Plan to End Violence Against Women and Children* and support inter-jurisdictional cooperation.[170] England and Wales has recently appointed a Domestic Abuse Commissioner to 'encourage good practice' in the prevention and response to domestic and family violence[171] in addition to the existing Victims' Commissioner for England and Wales.[172] Like Victoria, England and Wales had an independent commission for victims before establishing a specific function for domestic, family and sexual violence.

All states and territories now have victims' charters. The charters differ in the rights recognised. South Australia's *Declaration of principles governing treatment of victims* entitles victims of serious offences to be consulted before a decision is made.[173] It also entitles victims to be present in the court (unless the court orders otherwise)[174] and to request the prosecution to consider an appeal[175]. Victoria's *Victims' Charter Act 2006* requires the prosecution to seek the views of a victim before making significant prosecutorial decisions.[176] Victoria's charter also specifically acknowledges the victim as a participant (but not party) in proceedings for criminal offences.[177]. The VLRC recommended extending the rights of victims of sexual offences in the Victorian *Victims' Charter Act 2006,* as well as increasing the powers of the Victims of Crime Commissioner to monitor progress and compliance with the Charter.[178]

Results of consultation

Victim-survivors

As outlined in chapter 2.9, the Taskforce frequently heard that victim-survivors felt disempowered in the criminal justice process and that there was nobody tasked with representing their interests.[179] Many victim-survivors told the Taskforce they found criminal justice processes confusing, intimidating and protracted[180] and some felt unsupported by police and prosecutors.[181] The Taskforce heard about positive interactions with these agencies and of professionals going 'above and beyond' to help them through the process.[182] However too many victim-survivors told the Taskforce about negative experiences that apparently contravened the Charter.[183] As noted above, the Taskforce heard that victim-survivors found it difficult to access the support they required from specialist sexual violence services.

The Taskforce heard that victim-survivors found accessing financial assistance through VAQ difficult, with long wait times for decisions and to speak to someone on the phone. They said the forms were complicated and were rejected if they had been incorrectly completed.[184] An equivalent scheme in New South Wales is reportedly easier to access with shorter wait times.[185]

Service system stakeholders

Service providers told the Taskforce of their concerns about how victims were treated across the criminal justice and service system.[186]

'The poor responses don't just stop at the police station. They continue on and on and on'.[187]

There was much enthusiasm among the support sector for the establishment of an independent victims' commissioner. Micah Projects noted that Queensland victim-survivors were currently only able to safely share their experiences with specific time-limited inquiries, such as when royal commissions were

established, and advocated for an enduring commission with investigatory and oversight powers across all systems.[188] Micah projects submitted:

> *'We do not support a model where a Victims of Crime Commissioner simply has oversight of the Victims of Crime Services. A Victims Commissioner needs to be an independent body that can oversight the quality and the effectiveness of all systems to enhance the effectiveness of the response, or to break down the barriers impacting on a response. The position must have the authorisation of government to make a difference and to investigate the responses of other government departments including police and non-government services'.* [189]

The GCCASV supports the establishment of a domestic, family and sexual violence commissioner, similar to that operating in the United Kingdom:

> *'When things are not working well and women seeking help want to complain about inappropriate responses, or lack of response by NGOs, police or health they currently have to raise issues with every individual organisation or agency. There is no central body providing oversight or management of complaints so currently it is up to the traumatised victim/survivors to negotiate with multiple individuals and systems. To streamline issues and complaints we believe a role such as a Domestic, Family and Sexual Violence Commissioner, similar to the UK model, would be invaluable as a central touch point. The Commissioner could be an independent voice for victim/survivors and provide support and early intervention when system responses fail - which could potentially save lives'.* [190]

The Red Rose Foundation supported the establishment of a domestic and sexual violence commissioner within a legislative framework similar to the role of the Ombudsman.[191] While Respect Inc did not support a commissioner, they stated that, should such a position be established, it would need to be filled by a person who was sympathetic and knowledgeable about cross-cutting issues of concern. The Scarlett Alliance was open to consideration of a victims' commissioner, but not at the cost of frontline services. [192]

Service providers told the Taskforce about supporting victims to access VAQ financial assistance, although they are not paid for this work (despite lawyers being able to claim a fee for the same work). Support workers spoke of how retraumatising it can be for clients who are rejected for financial assistance, including 'acknowledgement payments'.[193]

Government agencies

Queensland Police Service

Some police investigators told the Taskforce that it was beyond their expertise to provide support to victims who often expected more from them than they were able to provide. They described the complexity of showing empathy and compassion and providing information, while maintaining the necessary independence to objectively investigate a complaint.

Department of Justice and Attorney-General

VAQ noted that it is difficult to know how the Charter is being applied. VAQ is not responsible for overseeing how agencies respond to complaints and agencies are not required to report to VAQ about complaints received, or their resolution. VAQ does not have responsibility for, and is not resourced to identify, systemic trends and issues and to advocate for change. The provision of financial assistance is the key function of VAQ. There has been a significant increase in the number of people applying for financial assistance and demands exceed VAQ's capacity to respond, resulting in long wait times for most applicants. VAQ suggested that a review of the legislation is required, given unsustainable current demand. VAQ noted the focus of its role on applications for assistance based on individual, rather than family and community need, and suggested the scheme lacked relevance for some First Nations peoples in

remote areas. In VAQ's view there is an opportunity to reduce the complexity of the scheme so that it can provide more timely and appropriate support.[194]

Other government

Consultation with the Australian Human Rights Commission highlighted how the first response a victim-survivor receives can impact their healing and trauma.[195] The Commission also noted that First Nations girls they consulted feel badly treated when they sought support and 'are made to feel like they are the problem or the cause'. The Commission suggested the need for participatory design of programs and better scrutiny of service delivery. [196]

Legal stakeholders

The QLS and North Queensland Women's Legal Service (NQWLS) noted the significant negative impact First Nations women experience through their interaction with the criminal justice system.[197] NQWLS noted that fairness to victims appears to be secondary to the fairness afforded the accused person and supported the establishment of a statutory officer to advocate for the rights of victims.[198]

'Women and girls encounter a host of agencies and entities as part of their journeys as victims of sexual and other domestic abuse and there may be great benefit in an independent, statutory officer overseeing their rights and ensuring that they are consistently treated with respect and dignity'. [199]

NQWLS expressed concern that some victims are waiting up to 18 months for financial assistance under the VAQ scheme and suggested judicial officers be empowered to release funds.[200]

Legal Aid Queensland (LAQ) submitted that the Taskforce consider expanding the role of existing agencies to include a victims' commissioner.[201]

Academic

Dr Rachel Field advocated for Charter rights to be made enforceable and the HR Act amended to explicitly extend the right to a fair trial to victims as participants in criminal proceedings. [202] She also supported the establishment of a victims' commissioner or similar, and for victims to have the right to request a review of prosecutorial decisions.[203]

Other relevant issues

Relevant cross-cutting issues

Being treated with respect and dignity also involves a level of cultural capability and a recognition of systemic disadvantage and the impacts of discrimination. As noted elsewhere in this report, people who face intersecting forms of disadvantage are also more vulnerable to victimisation, and therefore more likely to come into contact with victim services. Effective systemic advocacy needs to recognise and address these issues in the responses that victims receive.

Systemic advocacy for the protection and promotion of victim-survivors' rights:

The Taskforce has heard that victim-survivors often feel disempowered in the criminal justice process, sometimes resulting in secondary victimisation. The Taskforce heard that police, specialist support workers, friends and family dissuade victims from continuing with a criminal justice complaint because of how the victim-survivor is likely to be treated during the process. This contributes to attrition and deters victims from reporting.

As criminal justice systems evolve, there is increasing recognition of victims as 'integral players in criminal justice, rather than mere bystanders'.[204] Reforms include establishing entitlements and obligations in law and policy concerning victims and the criminal trial process. In Queensland, this has included the enactment of the Charter and the establishment of VAQ, as well as introducing the ability of victims to provide (and read out in court, if desired) victim impact statements[205]; provide written statements for

consideration by the parole board[206]; and measures to support special witnesses (including sexual assault victims) in giving evidence[207].

There is, however, no single independent body responsible for identifying and monitoring systemic issues, or issues of concern. There is no oversight of complaints about compliance with the Charter nor any mechanism to enforce compliance. The effectiveness or otherwise of VAQ in assisting victims and responding to complaints is opaque. It could be said that Queensland lacks an accessible, transparent and accountable complaints mechanism for victims of crime.

VAQ provides information and training to government and non-government agencies, and undertakes promotional activities. But it does not have responsibility for, and is not resourced to undertake, systemic advocacy to support compliance with the Charter or review its implementation.

By contrast, the Victorian Victims of Crime Commissioner is currently undertaking a systemic inquiry about how victims experience new participatory entitlements and whether there are tangible improvements to victims' status in the justice process.[208] Legislation establishing the South Australian Commissioner for Victims' Rights requires agencies, if requested, to consult with the Commissioner regarding the treatment of individual victims and victims generally[209]. The Commissioner may, by notice, recommend the issuing of a public apology, providing some level of accountability and enforcement of outcomes.

Recognising and enforcing victims' rights in criminal justice processes:

As discussed in this and other chapters, a frequently raised issue in Taskforce consultation was that victims did not have sufficient rights in criminal justice processes or that these rights were secondary to those afforded to the accused person. As noted above, the 'rights' set out in the Charter are not enforceable and the HR Act does not include explicit rights for victims.

Concerns about the rights of victims of crime were raised in submissions to the Legal Affairs and Community Safety Committee inquiry into the Human Rights Bill 2018.[210] These pointed to the lack of express rights for victims contained in the Bill,[211] and the distinct differences between the (then proposed), enforceable rights for accused persons and the existing, unenforceable rights of victims. In response to these concerns, the Queensland Government noted that the Bill did not contain specific rights for groups of peoples (with some exceptions[212]), and that the right to recognition and equality before the law permeates all human rights in the Bill, and the accused person's rights are not absolute and are subject to limitation.[213] The HR Act must be independently reviewed as soon as practicable after 1 July 2023. The review must include consideration of whether additional human rights should be included.

Notwithstanding issues of enforcement, the Charter may not go far enough in providing victims with the ability to participate in matters that have a great impact on their lives. For example, the Charter provides victims with the 'right' to be informed about major prosecutorial decisions but there is no requirement for them to be heard in the making of these decisions. The ODPP Guidelines go further, requiring prosecutors to seek and consider the views of victims before any major prosecutorial decisions are made.[214] There may be merit in considering whether the rights in the Charter should be strengthened. As noted above, Victoria recognises victims as participants in criminal proceedings[215] and both Victoria and South Australia require the prosecution to consult the victim-survivor before making major decisions about the case.[216]

Taskforce findings

The Taskforce has concluded that the establishment of a victims' commissioner as an independent statutory officer is necessary to fill a significant gap in the protection and promotion of victims' rights in Queensland. A victims' commissioner will promote and protect the rights of all victims across the criminal justice and service systems. It can monitor compliance with those rights (including by overseeing how agencies manage and respond to complaints), identify systemic trends and issues, and provide an important and ongoing role working towards systemic change (including through influencing policy, practice and systemic reform). It could also have power to intervene and/or represent individual victims where necessary and relevant. Establishment of a victims' commission is needed to provide a mechanism for ongoing improvement across service systems so that the rights of Queensland victims are upheld.

The Taskforce considered the option of a commissioner with a more focused remit – for example, limited to advocating for victims of domestic, family and sexual violence (similar to the role of the Domestic Abuse Commissioner in England and Wales or the proposed Commission for Sexual Safety in Victoria). Although

the Taskforce saw merit in the focus that a more limited role would bring, the Taskforce concluded that this was outweighed by the need for a body to promote and protect the rights of all victims. The Taskforce considered this as foundational to more concentrated efforts for particular victims and would avoid complex assessments of whether the functions of the role applied in a particular case or issue. The Taskforce does, however, support the functions of the commissioner dedicating resources to focus on the specific needs of victims of domestic, family and sexual violence, and First Nations victims, given their particular needs and vulnerabilities.

The Taskforce also considered, but rejected, the option of expanding the role of an existing body to perform the functions of a victims' commissioner. While this option potentially reduces establishment costs and builds on existing expertise, the Taskforce concluded that a victims' commissioner would need to establish an independent public profile to build confidence in its impartiality and that the establishment of a new body would be preferable.

The Taskforce found that is timely and relevant to review the Charter, given the growing evidence base about the prevalence and issues related to violence against women and the impacts of trauma, and noting the Charter's potential for improving the treatment of victims of domestic, family and sexual violence and First Nations victims, increasing rates of reporting and reducing attrition. There has been a great deal of advocacy since the Charter was enacted in 2017 so that there is now a better understanding of victims' needs. The establishment of a victims' commissioner would enable that body to independently conduct this review.

To maintain confidence in the criminal justice and service systems, the Queensland Government must urgently improve the transparency of the process for people to make complaints about non-compliance with the Charter, and relevant agencies should be required to report publicly on complaints received and their resolution in their annual reports.

Consistent with the separation of powers, the victims' commissioner will not deal with complaints about judicial officers. These will continue to be dealt with by the heads of jurisdiction, pending the establishment of the Judicial Commission recommended in *Hear her voice 1.*

Victim-survivors and service providers have told the Taskforce that there is a need to better recognise the 'triangulation of rights' (rights of the accused, the victim and the community) in criminal proceedings and that the enforceable rights of accused persons contained in the HR Act unfairly subordinate those of victims. The Taskforce agrees that, whilst not diminishing the rights of an accused person to a fair trial, there is merit in reviewing the rights contained in the HR Act, with a particular focus on the rights of victims to strike an appropriate balance with the rights of defendants, as is reflected in human rights jurisprudence. This should include consideration of whether the Charter should be incorporated into the HR Act.

Taskforce recommendation

18. The Queensland Government establish a victims' commissioner as an independent statutory officer to promote and protect the needs of victims of all violent offences. The commissioner's functions will include:

- identifying systemic trends and issues including in relation to policy, legislation, practice or procedure and potential responses to address these issues
- assisting victims in their dealings with government agencies across the criminal justice system, including through oversight of how agencies respond to complaints
- monitoring and reviewing the effect of the law, policy and practice that impact victims of crime
- other functions recommended throughout this report.

The commissioner will be authorised to exercise the rights of victims, upon their request and with consent, including in relation to their interactions with police, other government agencies and the courts (similar to the South Australian model).

The commissioner should have a specific and dedicated focus on victims of domestic, family and sexual violence and First Nations victim-survivors given the particular vulnerability. This focus may be through the establishment of a deputy commissioner role, or similar.

Taskforce recommendations

19. The Queensland Government review the Charter of victims' rights in the *Victims of Crime Assistance Act 2009* and consider whether additional rights should be recognised or if existing rights should be expanded. Ideally, this review would be undertaken by the victims' commissioner (recommendation 18).

20. The Queensland Government, in the next statutory review of the *Human Rights Act 2019*, include a specific focus on victims' rights and consider whether the Charter of victims' rights should be expanded and incorporated into the *Human Rights Act 2019* or other recognition included. The review should involve consultation with victims, First Nations peoples, service providers (including those working with victims of domestic, family and sexual violence victim-survivors) and legal stakeholders.

21. The Queensland Government require all agencies to report the number of complaints received in relation to the Charter of victims' rights, and how they have been dealt with, in their annual reports.

Implementation

The establishment of a victims' commissioner in Queensland should be prioritised given the important role it can play in supporting the implementation of other recommendations in this report and *Hear her voice 1*. A victims' commissioner is needed to take an impartial role in relation to complaints about services provided to victims. It would therefore be appropriate that the functions of VAQ related to deciding applications for victims' assistance should remain separate to the victims' commissioner. Individual agencies should continue to receive and assess first instance complaints about non-compliance with the Charter, with a victim able to request the victim's commissioner to review and consider the outcome as appropriate and necessary.

Consistent with the separation of powers, complaints about judicial officers will not be dealt with by the victims' commissioner but by the heads of jurisdiction, pending the establishment of the Queensland Judicial Commission recommended in *Hear her voice 1* (recommendation 3).

The victims' commissioner should lead the review of the Charter and include broad consultation with victim-survivors, service providers and legal stakeholders. This should include statewide consultation with regional, rural and remote communities across Queensland, with regular ongoing engagement.

The requirement for all agencies to report Charter complaints should be implemented immediately and not await the establishment of the victims' commissioner or the review of the Charter or HRA.

Human rights considerations

The treatment of victims engages the right to protection from torture and cruel, inhuman or degrading treatment (section 17) and the protection of families and children (section 26). In addition to the HR Act, various international human rights instruments set out standards for protecting the rights of victims of crime, such as the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. Balancing the rights of victims and accused persons in criminal proceedings also engages the rights of accused persons to a fair hearing (section 31) and rights in criminal proceedings (section 32).

Human rights promoted

The recommendations are likely to lead to the promotion of victims' right to protection from torture and cruel, inhuman or degrading treatment (section 17), the protection of families and children (section 26) and would be compatible with protecting the rights of victims of crime.

Human rights limited

The recommendations in this section do not limit any rights however their implementation will need to carefully protect and balance the rights of victims and accused persons to ensure that any rights limited can be justified in a free and democratic society based on human dignity, equality and freedom.

Evaluation

Legislation to establish a victims' commissioner as an independent statutory office should be reviewed five years after its commencement to consider whether it is achieving its intended purpose and objectives.

The victims' commissioner should play a lead role in establishing standards, indicators and measures for agencies compliance with the Charter. These measures should be established as a priority to support evaluation of the outcomes of reforms undertaken as a result of Taskforce recommendations.

Conclusion

Victim-survivors seeking help or wishing to report their experience of sexual violence are at their most vulnerable. The response they receive can affect their likelihood of long-term psychological impacts as a result of their trauma.

Queensland's service system response to sexual violence needs to be enhanced so that all victim-survivors are able to access quality, trauma-informed advice and support to help them understand the options available to them, to support them through the criminal justice system (if they choose that path), and to access specialist therapeutic support to help them heal and move on with their lives. Victim-survivors should be treated fairly and with respect and dignity, and their rights recognised and protected.

To maintain confidence in the criminal justice and victim support systems, agencies and entities with responsibility for protecting and promoting the rights of victims should be held accountable. There should be an enduring independent mechanism for systemic issues and trends to be identified, addressed, and publicly reported on, beyond the term of the Taskforce. Queensland should have a victims' commissioner.

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[1] Department of Justice and Attorney-General, supplementary information from Office for Women and Violence Prevention received 23 May 2022.
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Chapter 2.5: Police responses to women and girls who experience sexual violence

Women and girls who are victims of sexual violence in Queensland rely on the state's police to respond appropriately and expertly. Victims need a trauma-informed response, to be treated respectfully and with dignity, and for their complaints to be taken seriously.

The Queensland Police Service (QPS) is taking positive steps to strengthen practice and improve responses to sexual offending, but more work is needed.

Building on the recommendations in *Hear her voice 1*, QPS should invest further in building specialist expertise in the investigation of sexual violence and must ensure that all police officers receive evidence-based and competency-focused training about how best to respond to victims of sexual violence in a trauma-informed way.

Background

Chapter 2.1 discusses that a very low percentage of sexual violence reports will result in a charge and, of those that do, even fewer again will result in a conviction. Chapter 2.1 also presented QPS data, which showed that in 2021 there had been a decrease in sexual assault offences being withdrawn or discontinued on the basis they were unfounded (from 46% to 35% and more recently decreased further to 27.87%.[1]) This is a positive shift, however it has been reported that attrition rates in Queensland remain high.[2]

Chapter 2.1 also noted that the *Queensland Audit Office (QAO) Criminal justice system — reliability and integration of data Report 14: 2016–17* (the 2016-2017 QAO report) found evidence of police officers employing methods intended to persuade victims of various offences to withdraw their complaints to increase clearance rates.[3] As reported by the QAO, 'Queensland Police Service has investigated the issues that have come to light during this audit and acknowledge the impact these issues have had on crime statistics. Its state-wide review of unfounded and withdrawn offences found a 9.4 per cent error, ranging from 2.1 per cent in the Moreton district to 21 per cent in the Logan district'.[4] This may provide some explanation for the recent positive shifts in reduced attrition rates. Despite these concerns about the reliability of QPS attrition data, it is important to recognise that Queensland attrition rates remain high,[5] and that this is a widespread problem internationally[6] and nationally[7].

'Attrition' refers to sexual violence reports that are made to police but are later withdrawn from the criminal justice system before charges are progressed to trial or sentence.[8] Attrition is most likely to occur when victims withdraw their report. It also occurs when police make a decision not to progress a complaint, for example, when police consider there is insufficient evidence to warrant charges being progressed. While attrition can occur at any stage of the criminal justice process, it is highest at the police investigation stage.

High attrition rates for sexual offences may be because of underlying problems with how the criminal justice system engages with women and girls who are victims of sexual violence.[9] Because police often receive the first report of sexual violence from a victim, they have a critical role in terms of providing an appropriate first response to victims and determining whether and how reports of sexual assault progress through to the courts. International and national studies demonstrate that it is universally challenging to ensure access to justice for victims of sexual assault.[10] It is important that police investigators maintain impartiality and objectivity. This can be affected if police have attitudes and beliefs about the credibility or believability of sexual violence victims generally.[11] Victim-survivors of sexual violence can be subjected to blaming questions and poor investigation and follow-up from police.

Current position in Queensland

The QPS *Sexual Violence Response Strategy 2021-2023* (QPS sexual violence strategy) sets a vision for QPS to address sexual violence by promoting a victim-centric, trauma-informed sexual violence response that protects the community and strengthens public confidence.[12] QPS is the only jurisdiction in Australia with a police-led sexual violence strategy that guides policing responses to sexual offences involving victims over the age of consent (16 years of age or older).

The broad aims of the QPS sexual violence strategy[13] are to:

- provide more reporting options for victim-survivors
- create greater consistency in the delivery of sexual violence initiatives across the state
- provide officers, including investigative officers, with more specialist sexual violence training
- integrate police-led victim support models across QPS regions
- work collaboratively with government and non-government agencies to address sexual violence.

Reporting options for victim-survivors

A victim-survivor's pathway to reporting sexual violence to police may occur in person or online. A victim can report in person at the front counter of a police station; by calling 000 in emergency situations, or by calling Policelink if the crime is not occurring at that moment, is not life threatening, or the accused person is not in the same area as the victim. Referred to as an alternative reporting option, a victim may instead make a report through an online form (Sexual Assault Report) on the QPS website .[14] Concerned friends and family, community bystanders or support services may also report sexual violence to police through one of the avenues above.

At these initial entry points, reports of sexual violence are triaged by general duties officers (operational sworn officers who provide the first line of response to members of the public) or civilian administrative officers who typically work on front counters of police stations or as call takers in police contact or communications centres.

Consistency in police response to sexual violence across the state

The QPS provides regional services across seven police regions and 15 police districts (districts fall under a larger police region) that are supported by specialist commands including the Crime and Intelligence Command (CIC).[15] The CIC is responsible for delivering enhanced intelligence and investigative capabilities to frontline police. The Command comprises of five specialist crime groups (Child Abuse and Sexual Crime, Drug and Serious Crime, Financial and Cyber Crime, Homicide and Organised Crime Gangs groups) and two intelligence groups (Intelligence Directorate and State Intelligence Group). QPS has focused on reforming investigations of sexual offences by designating the Child Abuse and Sexual Crime Group (CASCG) as the organisation's capability owner for specialist sexual violence advice, training, intelligence and investigations. CASCG supports coordinated and consistent responses to sexual violence offences across the state.[16]

Specialist sexual violence and trauma training

QPS promotes sexual violence awareness and trauma-informed practices in policing, primarily through online and blended training,[17]including the Child Sexual Abuse Fundamentals Education (CSAFE). This online training package addresses institutional child sexual abuse, trauma, survivors from diverse backgrounds, child development and effective communication.[18] It is for all police officers from the rank of Constable to Inspector and station client service officers at front counters in stations and in Policelink. The CSAFE online learning product was released in late 2021 to address[19]:

- understanding institutional child sexual abuse
- understanding trauma
- survivors from diverse backgrounds (Aboriginal and Torres Strait Islander victims, victims from culturally and linguistically diverse backgrounds, and victims with disability)
- child development
- being effective communicators (how to take a disclosure).

A second stage of generalist investigators' training is scheduled for release in 2022 and will address[20]:

- biases and decision-making

- myths and misperceptions of child sexual abuse, sexual violence, and domestic and family violence
- trauma and complex trauma
- vicarious trauma and self-care.

The Investigating Sexual Assault – Corroborating and Understanding Relationship Evidence (ISACURE) course is another training program delivered to QPS officers.[21] The ISACURE course was developed in 2016 in partnership with The University of Queensland. The course features presenters with lived experiences, professionals in the field of trauma and sexual assault services, and practical training in interviewing victims of sexual violence.[22]

The Gold Coast Centre Against Sexual Assault (GCCASV) has been involved in the delivery of ISACURE training at the Queensland Police Service Academy at Oxley and on the Gold Coast. Support services such as GCCASV offer their expertise and time into the development and delivery of training on the basis of goodwill. The motivation of services in undertaking this work is to achieve better outcomes for victim-survivors through improved police responses to sexual violence. However, this is a significant impost on funded non-government service providers that the Taskforce has heard are unable to adequately meet client demand. The ability of busy service providers to give up their precious client time to training police is limited. WWILD Sexual Prevention Association (WWILD) delivers a unit of training at the Academy and has also been involved in the delivery of ICARE training about the needs of people with intellectual impairments. WWILD advised that the training commitment across the year was unsustainable for the organisation.[23] This detrimentally impacts on QPS's ability to deliver the program in partnership with service providers.

QPS told the Taskforce in its second submission in 2021 that an evaluation of the course ISACURE found investigators' responses to victims of sexual assault had significantly changed, leading to improved investigative practices.[24] Trained officers also achieved greater rates of solved sexual offences and lower rates of victims withdrawing complaints.[25] Some consider that the course has improved both police officers' awareness of the impacts of trauma on a victim's memory and mental health, and police interview strategies for both victims and offenders.[26] Other publicly available findings record that, after taking the course, officers had increased trust and faith in the victim, a greater perceived importance of rapport, and more confidence in being able to progress a sexual assault case to court.[27]

QPS advised the Taskforce that a two-week Detective Training (Phase 2) curriculum includes training relating to understanding sex crimes. Members of The University of Queensland team who partnered with QPS to develop trauma-informed training are currently working with QPS to include trauma-informed components to enhance investigative understanding and responsiveness to victims. The training includes a session on 'The Whole Story' framework to build the foundational understanding of trauma before they attend the ISACURE course. The Taskforce is aware that QPS intends to deliver additional trauma-informed training for all QPS employees commencing in July 2022.

Victim support models: the Sexual Violence Liaison Program

QPS conducted a 12-month trial of dedicated Sexual Violence Liaison Officers (SVLOs) in Townsville and Logan to provide increased support to victims of sexual violence in 2020. The model was developed in response to the *Prevent. Support. Believe. Queensland's Framework to address sexual violence*. SVLOs are primarily responsible for responding to reports of adult sexual violence, including victim-survivors who report historical child-related sexual violence. Their responsibilities include:

- assisting frontline officers by taking responsibility for assigning an investigating officer to conduct the sexual violence investigation
- providing a central contact point for victims during police investigations
- providing a victim-centric response to victims of sexual offences, liaising with support services to identify and address issues and ensuring accurate and consistent communication is provided to victims
- monitoring and inquiring into all complaint withdrawals.

Officers in Charge (OIC) of Criminal Investigation Branches (CIB) and Child Protection Investigation Units (CPIU) are responsible for undertaking the role of the SVLO, in addition to their other duties.

The evaluation of the initial SVLO trial identified an increase in reported sexual violence occurrences and a decrease of withdrawn and unfounded occurrences in both trial sites. In October 2021, QPS announced that SVLOs would be established state-wide.

Chapter 2.4 discusses the separate and distinct ways support options are made available to victim-survivors to assist them at certain stages of the criminal justice system. SVLOs are just one type of support option available to victim-survivors. Others include victim liaison officers in the Office of the Director of Public Prosecutions (chapter 2.8). Chapter 2.4 addresses the need for an independent victim advocate to empower victim-survivors to better navigate the criminal justice system.

Collaborative initiatives

QPS officers participate in the Sexual Assault Response Team (SART) model. The functions of the SART model are discussed further in chapter 2.4. The majority of referrals to the SART come from police. Central Queensland University (CQU) evaluated the SART model in Townsville and found that 62 per cent of victim-survivors were referred by police.[28] The SART promotes an integrated approach that enables different agencies such as sexual violence support services, police and health to work together to provide wraparound and holistic responses to victim-survivors.[29] It also provides a streamlined pathway for victim-survivors to report sexual violence and receive treatment and support. The CQU evaluation found police supported the model because it enabled victim-survivors to access timely support, while police were able to focus on the investigation.

In late 2021, QPS launched a joint safety campaign with the Tinder dating app to increase awareness of personal safety, offender behaviour, reporting and support options.[30]

QPS has also partnered with Griffith University to develop and implement a crime harm index. QPS told the Taskforce in its second submission in 2021 that the crime harm index was 'being used in strategic and operational assessments related to sexual offending areas along with other variables to inform decision making and build situational awareness'.[31] QPS advised the Taskforce that, between November 2021 and February 2022, this safety messaging was viewed over one million times. QPS subsequently saw a significant increase through the website links in making a report of concerning behaviour.

How do other jurisdictions address this issue?

Victoria

Victoria Police combines family violence, sexual offences and child abuse initiatives under its *Policing harm, upholding the right: Victoria police strategy for family violence, sexual offences and child abuse 2018-2023*. The strategy highlights the distinct links between family violence, sexual offences, and child abuse.

Victim-survivors of sexual assault can access specialised services through multi-disciplinary centres (MDC) in Victoria. MDCs bring police, child protection, forensic medical, and sexual assault counselling services together in the one centre to provide victim-survivors with a safe place to report violence and access support (chapter 2.4).

The Specialist Development Unit is a multi-disciplinary team within the Sexual Offences and Child-Abuse Investigation Teams (SOCIT) project, established by Victoria Police to improve victim management and case outcomes across the state. The role of the Specialist Development Unit is to oversee the creation of state-wide SOCITs and the training of specialist sexual assault investigators. Victoria has 28 SOCITs throughout the state.[32] [33] SOCIT investigators place the wellbeing of the victim and safety of the community as their first priority.[34] A primary investigator conducts the investigation and is the main point of police contact for the victim-survivor. The role of the primary investigator includes ensuring the victim is linked to ongoing and specialist support services and keeping victim-survivors informed of the progress of the investigation.[35]

Victoria has also developed training to support understanding of sexual offence legislation and to strengthen awareness of the needs of specific demographic groups when police are investigating family violence, sexual offences or child abuse.[36]

Victoria Police has invested in family violence education, from the frontline to specialist and supervisory police roles, and ongoing support for the Whole Story Investigative approach (a framework for the investigation of rape, sexual assault, and sexual child abuse currently practised by SOCITs). Victoria Police is working with First Nations communities to improve responses aligned with cultural safety, and

acknowledge that Aboriginal females are disproportionately affected by these types of crimes.[37] Victoria Police recognises that violence is not part of First Nations culture, but intergenerational grief and trauma has resulted in the over-representation of First Nations peoples as victim-survivors.[38]

New South Wales

In New South Wales (NSW), Joint Investigation Response Teams (JIRTs) are a tri-agency program involving the Department of Family and Community Services, the NSW Police Force and NSW Health. The program aims to provide an integrated service response to children and young people at risk of significant harm as a result of sexual assault, serious physical abuse, and extreme neglect.[39]

In 2022, the Audit Office of NSW released its performance audit report on Police responses to domestic and family violence (the Auditor-General's report). The Auditor-General's report did not address sexual assault outside a domestic and family violence context, however it did find that the NSW Police force had not prioritised resources to address domestic and family violence to the same level as other Australian jurisdictions.[40] The Auditor-General's report noted findings from the NSW Bureau of Crime Statistics and Research from October 2016 to September 2021 that indicated domestic violence related sexual offences increased by at least 10 per cent.

Australian Capital Territory

In the Australian Capital Territory (ACT), police have a number of training programs that support officers to recognise diversity and enhance police interactions with the community. All ACT Policing frontline officers undertake a mandatory three-day Enhanced Mental Health Training program delivered by Canberra Health Services.[41] The aim of the training program is to strengthen operational responses to mental health incidents in the community through a broad awareness of mental health illnesses and disorders. The training increases awareness and understanding of police response to, and management of, people in crisis – including the recognition of trauma.

Results of consultation

Victim-survivors

Some victim-survivors reported feeling judged by QPS officers and made to feel responsible for the sexual violence they had experienced. In some cases, rape myths and stereotypes appeared to influence police decision-making as to whether or not a complaint should be progressed. Submissions to the Taskforce included victims reporting that they had been dismissed and treated with disrespect by QPS members when attempting to report sexual violence. This behaviour appeared to be more common when the victim did not demonstrate the characteristics of an 'ideal victim'. One victim described her experience with a detective:

> *'I was questioned in a cold, accusing manner about the incident, in a way that made me feel I was being questioned as a perpetrator rather than a victim. I was questioned about what I was wearing the night of the incident, how much alcohol I had consumed prior … how often I attended bars (I was underage). At no point was I treated with any respect, dignity, compassion or kindness.'* [42]

Victims told the Taskforce that the impact of myths and misconceptions about rape and sexual assault appeared to shape and influence investigators' views about their credibility and believability. One victim told the Taskforce that she believed that this behaviour:

> *'…speaks to a toxic, victim-blaming, insidiously misogynistic culture that permeates every one of our society's systems.'* [43]

Taskforce submissions illustrated a sense of powerlessness among victims, who felt they were not being treated with empathy when reporting sexual violence to police:

> *'Police made me feel unwelcome, uncomfortable, unheard and hopeless at the moment of most vulnerability.'* [44]

Service system stakeholders

Service system stakeholders highlighted inconsistences in police responses to victim-survivors. GCCASV stated in its submission that:

> *If women do report to the police, the response varies greatly depending on the individual officer and the police station attended*[45]

Concerns raised by service providers about police officers included dissuading victims from reporting. The Logan and Redlands Centre against Sexual Violence (Logan CASV) told the Taskforce about a victim who felt it was left to her to gather evidence herself:

> *She faced police saying 'don't expect a good outcome' – putting negativity into you – … you just have to move forward. [She] felt that it was up to her to do research and find evidence. [It] shouldn't be up to you to do the investigating*[46]

The process of reporting is exhausting for victim-survivors. Zig Zag shared this experience recounted to it by a victim-survivor:

> *The interview went on for 3 hours making it midnight before I got home. At no point was I offered a break, although I was offered a bottle of water and a bag of chips, which I am extremely grateful for. After I finished elaborating on my story, I was told my parents would need to be interviewed though I wasn't given a time frame. The detective told me he would be in touch and to contact him if I needed anything and I left the police station. It was around midnight when I got home*[47]

Service providers told the Taskforce about examples of victim-survivors' accounts of sexual violence being doubted by police. Service providers reported that police responses to victim-survivors were based on personal biases rather than on the evidence. QSAN provided this example:

> *Police will ask the worker who is supporting the young woman – 'Does she know the difference between rape and just regretting sex'?*[48]
>
> *'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.*[49]

The impact of myths and misconceptions about rape and sexual assault shapes and influences some QPS officers' views on the credibility and believability of victims. The submission from WWILD illustrated how stereotypes and misconceptions about certain groups in the community, such as women and girls with disability, added to the misperceptions of the prevalence of sexual offending against victim-survivors with

multiple and diverse needs. WWILD identified the following common overarching issues with police responses to women with disability who were victims of sexual assault:

- requiring the victim to provide evidence of disability before providing a 93A interview, causing further delays in the investigation
- seeing women with intellectual disability as unreliable witnesses and discouraging them from pursuing a complaint
- questioning the credibility of the woman making the complaint
- not providing appropriate intermediary/advocacy support for women with intellectual disability
- taking action against an offender without the victim's consent.

WWILD highlighted in its submission the barriers victim-survivors with intellectual disability experienced when attempting to report to police:

> *Police see women with intellectual disability as unreliable witnesses and so discourage [them] from pursuing the complaint*[50]

Victim-survivors in the sex work industry raised concerns about the possibility of being arrested or charged when reporting sexual violence or other crimes to police. When victim-survivors in the sex work industry become 'known' to police, they risked being placed under increased surveillance. Victim-survivors under police surveillance were treated as criminals rather than victims of crime. Respect Inc explained in its submission to the Taskforce that:

> *When sex workers have attempted to report sexual offences, instead of following up the offence, front-line police tell the worker that they will not be believed, and there is no point making a report. Later, the worker finds out that their QP record was updated during that interaction, with occupation 'sex worker' or 'escort' or 'prostitute'. This has led to discrimination by police.*[51]

In a small group discussion with women who work in the sex industry and Respect Inc, the Taskforce heard victim-survivors were often discriminated against by police. One victim-survivor stated that police often treated their experiences of sexual violence as fraud – 'I reported sexual violence before I was a sex worker. That report was taken seriously, but I was talked out of pressing charges. When I did become a sex worker, I had an incident that involved non-payment. I didn't realise it was going to be charged as fraud – it wasn't worth making myself known to police as a sex worker over losing a $150 payment'.[52] The Scarlet Alliance stated in its submission to the Taskforce that 'Queensland's sex work legislation also allows for police to engage with immunity in entrapment practices against sex workers, further breeding mistrust in police'.[53]

The Women's Centre in Townsville highlighted barriers that First Nations women experienced in their interactions with police:

> *Racism operates in the way women are treated – white middle-class women get a Rolls Royce treatment from police but Aboriginal women or women with drug and alcohol problems are not treated nearly as well*[54]

QSAN added to victim-survivors' experiences of barriers, noting that:

> *[there are] 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*[55]

The sector also highlighted some positive police responses to victim-survivors. QSAN told the Taskforce that women and girls were more likely to receive positive responses from specialist police:

> *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 (e.g. 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.*[56]

Legal stakeholders

The Women's Legal Service Queensland (WLSQ) provided the Taskforce with several examples of the poor treatment by police of victims of sexual violence. These included poor handling or losing of evidence, failing to keep information confidential, discouraging complaints and making offensive jokes to victims about the size of the alleged offender's penis.[57] WLSQ suggested that the Taskforce should recommend that an independent Commission of Inquiry be established into widespread cultural issues within QPS with respect to the investigation of sexual offences.[58]

Office of the Director of Public Prosecutions

The Taskforce heard at a consultation forum with the Office of the Director of Public Prosecutions (ODPP) that victims were often dissuaded by police to continue their complaint. One prosecutor stated:

> *'A victim is sometimes heavily supported by social workers and friends and there is an initial veneer of 'we believe you', but then police come in, especially police, and they will put doubt in the minds of the complainant as it is a 'he said, she said''.* [59]

Queensland Police Service

At a consultation forum with investigators and detectives within QPS, participants spoke of victim-survivors blaming themselves and having doubts about whether their story would be believed by others. Police officers identified this as one of the reasons why victims dropped out of the criminal justice process.[60]

Investigators at the QPS consultation forum and in other stakeholder forums spoke candidly of telling victims the 'reality' of the criminal justice process.[61] One investigator stated 'police have to be very clear about what the potential outcomes are'.[62] Police told the Taskforce they cautioned victims about the criminal justice process out of a desire to prepare victim-survivors for what was to come, including during cross-examination, and as a means to test victims' credibility. Their motive was to protect victim-survivors from the trauma they were likely to experience.[63] One investigator said they:

> *'Explain to the victim at the initial meeting [you] don't want to surprise them, don't want to sugar coat it [about the court process]. It is one way to test the credibility straight away – if you tell them that and they continue then that goes to their credibility'.*[64]

QPS advised the Taskforce that it had made efforts to build a stronger relationship with Respect Inc. by establishing a dedicated contact point between the sex worker industry and the QPS to enable the reporting of complaints and concerns. The QPS liaison officer situated in the Crime and Intelligence Command provides this central point of contact. Respect Inc publishes a newsletter with information for sex workers, encouraging them to contact Respect Inc about any unresolved complaints to police. Respect Inc will then make contact with the QPS liaison officer.

Other relevant issues

Other factors contribute to victims withdrawing reports at the policing stage.

A lack of trauma-informed practice in police investigation of sexual violence

Sexual violence is a deeply traumatic event. Its impacts are wide and varied. Sustained and repeated exposure to violence and abuse increases the risk of complex trauma.

It is common for a victim-survivor to retell their story multiple times to QPS members before they even arrive at the prosecutions stage of the justice process. They will probably also have recounted the incident multiple times to the counsellors and medical officers to whom the victim has been referred. The Logan CASV told the Taskforce that, for victim-survivors:

> *It is impossible to build up a relationship with anyone. Trust is already challenging. When you have been through sexual assault, your trust has been taken. You finally build up the confidence to report, and then have to retell the story over and over. Even if a police officer has taken leave, you have to go over it again with a different officer.*[65]

Victims often begin by trusting in the criminal justice system. Their motivation when reporting sexual violence to police is to seek justice. This trust can be destroyed by the first responder or the investigating police officers' thoughtless treatment and demeanor.

Police dismissing, disbelieving or showing no empathy to victims can damage victims' confidence in and ability to access the criminal justice system. A negative police response can reactivate the trauma response to the original assault, cause victims to withdraw their complaint, and dissuade them and others from seeking help in the future.

The Taskforce received submissions from victim-survivors, and heard about other cases, where victims felt investigators were disrespectful,l[66] uninterested[67] in their case and didn't take it seriously.[68] Others received little communication about the progress of their case.[69] Some police did not understand the dynamics and nuances of sexual violence or the impacts of trauma on victims' behaviour and reactions. As one victim stated:

> *'Police [are] quick to disregard the natural fight/flight response and further traumatise the individual by insulting, belittling, and degrading them.[the] QPS detective didn't even bother to answer emails I sent him looking for support.'* [70]

Inequality compounds and heightens victims' exposure to sexual violence and increases the risk of complex trauma. LGBTIQA+ people, First Nations women and girls, and those with disability or from culturally and linguistically diverse backgrounds are at increased risk of experiencing oppressive and discriminatory behaviours and attitudes (originating from sexism, racism, ableism, homophobia or transphobia).[71] Victims are at risk of repeated and prolonged sexual violence if they are unable to seek help because their

diverse needs in the criminal justice system will not have been met. The Multicultural Communities Council shared a case study highlighting the barriers women from culturally and linguistically diverse backgrounds experience when reporting sexual violence.

> *On the victim-survivor's first attempt to report the incident (included domestic and family violence) at a police station she was denied access to an interpreter. The victim-survivor then attempted to organise an interpreter over the phone through a community leader whilst at the police station. Following these attempts, the officer advised she should come back tomorrow and they would organise an interpreter. The victim-survivor presented the next day and was turned away and advised that no interpreters were available. On a separate occasion the victim-survivor again attempted to report the incident. She was interviewed without an interpreter. During the interview, the officer proceeded to question the client in English. The client answered as much as she could in English and continually asked for an interpreter. She was shaking with nerves and sweating.*[72]

As a crime that often takes place in private, investigation and prosecution of sexual assault offences rely heavily on the account of the victim. Trauma impacts on a victim's memory recall and narrative coherence so that their version of events leading up to and including the sexual violence often appears fragmented, lacking specific detail, not linear, and not told in a sequential way.[73] If police do not recognise the negative impacts of trauma on a victim's account, they may incorrectly perceive the victim as unreliable or even dishonest.[74] Equally, accused persons with trauma histories are disadvantaged by impaired memories and recall of events, which can impact the outcomes of their engagement with the criminal justice system.

Victims process their trauma in different ways and not all victims will present in the same way to police. In *Hear her voice 1*, Taskforce submissions illustrated that complex trauma may present as difficulty regulating mood and impulse controls, or memory or somatic disorders.[75] Outwardly, these symptoms may manifest as self-harm, suicidal behaviour, anger, despair, or lack of self-efficacy, among other things.[76] In sexual violence cases, some victims will respond with 'fight, flight or freeze' responses and some may dissociate or 'switch off'.[77] The investigation process is likely to be stressful. If not conducted in a trauma-informed way, it can impact on the evidence obtained and cause retraumatisation to the victim. Investigators also perceive the broader justice system, including the trial process, as traumatising for victims and dissuade victims from progressing further. QSAN provided a case example in its submission to the Taskforce:

> *A woman had difficulty in understanding the police during the interview, non-verbal, couldn't understand the Auslan interpreter, assumptions were made by the police around disability. An intermediary would have been helpful in this matter.*[78]

Pretext phone calls

As part of an investigation of a sexual offence, police may undertake a range of activities to gather evidence. One way evidence may be gathered is through the use of pretext phone calls. This typically involves a phone call between a victim and an accused person that is recorded by police. The call is intended to elicit evidence that may support or counter a victim's version of events, and takes place before the accused person is aware of the accusations or that they are being recorded. A review of the publicly available QPS Operational Procedures Manual (OPM) provides only minimal information on the use of pretext phone calls.[79] QPS advised the Taskforce that all detectives received training about using pretext phone calls as part of the detective training course.

WLSQ also raised concerns about the conduct of police using a 'pretext phone call' as an investigation method. WLSQ told the Taskforce that 'if police raise the option of the victim-survivor engaging in a pretext call, then proper support should be provided before, during and after, keeping in mind that talking to an abuser can be very distressing'. The WLSQ also stated that women should decide whether or not

they wanted to participate in a 'pretext' call, as many of their clients had reported feeling pressured by police to do so.

North Queensland Combined Women's Service Inc. also raised the issue of pretext phone calls.[80] It stated that comprehensive and trauma-informed considerations were needed in the use of pretext phone calls. The recommended key considerations include: the safety of the woman and the likely escalation of violence and abuse as a result of the pretext call; an understanding among investigators that pretext calls can increase the distress for women and trigger post-traumatic stress; and the need for women to have a specialist sexual assault support worker available if they participated in a pretext phone call.[81] They further stated that:

> *Investigators and sexual assault support workers need to facilitate…conversation [about pretext phone calls] through a lens of safety rather than the potential benefit to the investigator/ion. Women have at times reported to us that they agreed to this option because they felt it was the right thing to do, or they felt pressured to say yes*[82]

The Taskforce met with staff from The Women's Centre in Townsville, who raised concerns about the use of pretext phone calls:

> *It is not good them being done in police stations – sirens in the background alert perpetrators and put victims' safety in danger, also police stations are not therapeutic spaces. We would prefer them to be done at The Women's Centre which is a safe place for victims. No purpose for it to be done at the police [station]. When the calls don't go well, the victims feel responsible. They again feel they are not being believed.*[83]

Although pretext calls are often highly effective, they can be stressful and retraumatising for victims. For example, in 2017 the negative experience of one Queensland woman in cooperating with a pretext phone call received media attention.[84] Further, it may be that as the use of pretext phone calls becomes more well known in the community, their utility diminishes. Defence counsel and police investigators, however, told the Taskforce in consultations that pretext phone calls continued to provide very persuasive prosecution evidence, which could assist in securing early pleas of guilty. There is limited research literature available on the use of pretext phone calls.

Recording victims' statements

The comments from The Women's Centre raised a concern about the recording equipment and environment used when victim-survivors gave statements.[85] This concern was also shared by police officers. The Taskforce heard at the QPS forum about the poor quality of police recording devices and recordings:

> *'Recording equipment is pretty ordinary, needs to be upgraded. We get feedback from DPP that they are losing cases because of the quality. It's not our work, it's the audio quality. We've changed furniture, changed rooms, still not good enough. In our investigations rooms the facilities are fine, but in 93A room they won't allow it.'* [86]

Another QPS officer raised concerns about the impact that interview rooms had on victim-survivor engagement:

> *'We must interview in correct room setting - we have got interview rooms which are sterile for offenders. A more homely room would put victims at ease. Interviews should be taken in*

> *the appropriate facility and not in sterile rooms. We take the offender into an interrogation unit. Some victims have been offenders and have been interrogated before. More homely rooms should be made available across the state.'* [87]

Ongoing professional development and training

At the QPS consultation forum, police spoke positively about training offered by QPS[88] but they expressed concerns that this training was too limited. One investigator frankly stated:

> *'Our organisation is crap at training. We have embarked on investigative interviewing over that last five years. But not enough training.'* [89]

Another QPS officer volunteered that some investigators were better than others:

> *'Younger staff are probably doing a better job generally. You don't allocate investigations to some detectives. [it is] dependent on who the job goes to.'* [90]

During a consultation session with staff from the ODPP, prosecutors and victim liaison officers raised issues about the quality of police briefs of evidence. One attendee stated 'police investigations and statements don't reflect all the detail … [the] police officer hasn't particularised detail because of lack of investigative skills'.[91]

One victim in a submission to the Taskforce complimented the detective involved in their case but contrasted this with the poor attitudes of first response officers:

> *'[the] detective that was amazing and really seemed like he understood and gave me info for a lot of great victims' services. But the initial general duties crew I spoke to were severely under-educated and under-trained on how to deal with DV and sexual assault.'* [92]

As with the Taskforce experience leading to *Hear her voice 1*, we have continued to hear from many victims that they received a poor response when they attended a police station.[93] QPS internal evaluation of the initial SVLO trial found that front counter civilian officers 'do not have the minimum training required to handle taking sexual violence victimisation reports'.[94] The evaluation report recommended that the 'part of the ISACURE course that is relevant for understanding victim-centric approaches be separated as a module for civilian counter staff to complete'.[95]

Inconsistencies in quality of investigations

Investigative interviewing is a skill that takes time and experience to master, rather than being an innate ability. Academic literature has drawn attention to a gap between investigative interviewing training that embraces trauma-informed approaches, and the ability to apply this training in the field.[96] In part, this is a consequence of infrequent or short training programs and a lack of professional supervision focused on monitoring and embedding learnings.

Victim-survivors consistently report not being taken seriously, or having their reports dismissed by police. This causes them to lose confidence in the system. The Taskforce heard from police that recruiting the right people and having oversight was important to improving women and girls' experiences when they came into contact with police.[97] One investigator stated 'it comes down to who you are recruiting and having oversight of staff. Some are just good at investigating and understanding the victim. It comes down to recruiting the right people'.[98]

As at 28 February 2022, there were approximately 1,986 specialist investigators working with the QPS across the state.[99] To put this in context, there are 12,139 sworn officers within the QPS,[100] and specialist investigators account for an estimated 16 per cent of them. In some circumstances, first response officers are required to conduct an investigation until a specialist investigator is available. For example, section 7.3.1 of of the QPS Operational Procedures Manual (OPM) states in relation to investigating child harm, 'where no CPIU [Child Protection Investigation Unit] officer is available locally, the local CIB [Crime Investigation Branch] is to assume responsibility for the investigation. Where there is no CIB officer, first response officers are to commence the investigation with specialist assistance provided remotely until investigators attend'. General duties officers are offered a one-off, five-hour fundamental course on sexual offence investigations.[101] This course is a prerequisite for the CPIU Course, Detective Training Phase and the Child Protection and Youth Justice Specialist Investigators Course,[102] but not all first responders will have done it. This means that at the critical initial stage of the investigation process, there is a significant risk that not only will police who first respond to a victim not provide the same level of quality as specialist investigators, but their response could be harmful.

Inadequate measures and support for victims with special needs

The Taskforce heard in its consultations with stakeholders that victims were not always provided with the support they needed as they traversed the criminal justice system. For example, in a meeting with the Queensland Disability Advocacy Network (QDAN), the Taskforce heard that '93A interviews are there for people with disability – but not all police know this. Often there is a lot of judgement about whether a person has a disability or not'.[103]

In a stakeholder forum, a participant stated '93A statements are being taken with a lot of missing information, particularly when the victim is non-verbal or has English as a second language'.[104]

Delays in investigations in rural, regional and remote parts of Queensland

Despite the ratio of detectives per capita in rural areas being higher than in South-East Queensland, there is limited capacity for police sexual violence responses in rural, regional and remote areas. This is in part because there are fewer sexual assault services in some areas. The result is that some victim-survivors in these areas are at risk of being denied access to the criminal justice system, and perpetrators may not be apprehended. The Taskforce heard that for those regional and remote victim-survivors who did access the criminal justice system, their experiences of trauma were prolonged due to the lack of support services available.[105] QPS reported a significant problem with waiting times at regional hospitals for sexual assault victims to be forensically examined, and concerns around cultural issues. (chapter 2.6).

The availability of specialist police investigators is limited in rural, regional and remote areas. The QPS regions with the least number of investigators are the Far Northern Region (114) and Northern Region (109), areas where sexual assaults remain prevalent. The Brisbane Region has the highest number of investigators (366), although it also has a much higher population.

The Taskforce heard from the Police Commissioner about resourcing constraints within the QPS. The Commissioner stated in relation to demand for a QPS response 'the greatest areas that are under pressure are general duties, CIB, CPIU and front operational duties. They are in demand'. The Commissioner told the Taskforce that unfilled full-time positions that were currently vacant would be distributed across the regions. The priority areas for these positions included frontline, CIB officers, and specialist officers such as those in the domestic and family violence area.[106]

The Sexual Violence Liaison Program is not being delivered as intended or to its full potential

The Taskforce heard from the Logan CASV and from various stakeholders, including service system representatives and police, that SVLOs within QPS were not useful.

The Taskforce heard from one police officer at the QPS consultation forum that 'OICs [Officers In Charge] are SVLOs. They received no additional training … nothing special has come out of it'.[107] Another police officer stated the 'SVLO is just another role. Not doing anything differently. Not getting any additional services'.[108] Logan CASV told the Taskforce that the SVLO was the:

Pick of the busiest police officers and just add the SVLO on to their current role. So while the police say that they have a SVLO, in reality they haven't got someone who is dedicated to

> *the role. Now this model has been rolled out everywhere. Its success is based on the person in the role, this is not how the model is supposed to be.*[109]

Logan CASV also stated the SVLO program had not resulted in any improvement in terms of liaison with the service or victims and that OICs were already busy with other functions. QSAN also told the Taskforce OICs were under a lot of pressure to fulfil the role of SVLO:

> *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.*[110]

The Police Commissioner told the Taskforce that, ideally, SVLOs would be a discreetly funded position fully dedicated to sexual violence offending, but funding constraints meant this was just not possible.[111] The Commissioner told the Taskforce that the decision to give the role to OICs reflected their leadership role and was a deliberate and strategic choice made to ensure that the highest standards and culture expected by the QPS filtered through the OIC to all police working at each station.[112] QPS advised the Taskforce that the evaluation of the trial of SVLO roles in two locations showed increased reporting, a reduction in attrition and a reduced rate of complaints recorded as 'unfounded' by QPS.

The additional risks faced by victim-survivors

Legal Aid Queensland reported in its submission to the Taskforce that 'a higher percentage of First Nations women and girls having vulnerabilities including poverty, homelessness, addiction and mental health issues. Poverty can keep First Nations women and girls locked into situations where they are sexually abused, often violently'.[113]

Academic literature shows women experiencing homelessness are at a high risk of sexual violence.[114] QPS reports that police officers sometimes lose contact with victim-survivors or they are difficult to reach.[115] This might appear as though the victim-survivor does not wish to continue the complaint. However, it may also indicate that external factors such as homelessness impact on their ability to remain engaged in the criminal justice process. These factors contribute to prolonged exposure to sexual violence and warrant further review and consideration by QPS to improve its response to victims of sexual violence.

Taskforce findings

Victims withdraw their complaints of sexual violence during the police investigation stage for various reasons, many of which relate to the behaviour of police.

Submissions to the Taskforce show the criminal justice system, including responses by police, is itself a source of trauma for victims of sexual violence. Some victim-survivors told the Taskforce that their experiences with police were so traumatising that they voluntarily withdrew their complaint. When this occurs, an offender is not held accountable for their behaviour and the victim-survivor has been excluded from the criminal justice system. The public interest in the prosecution of serious sexual violence cases and the protection of the community is also not met.

Police responses to victims of sexual violence are inconsistent, and victims are often treated poorly by police including dismissive, disbelieving and disrespectful responses that lack empathy. While some of this behaviour may be police and investigators attempting to protectively advise victims of the realities of the criminal justice process, this is often perceived by victims as them being disbelieved, not taken seriously, or being persuaded not to make a complaint. It should be handled in a more trauma-informed and nuanced way. Poor police responses result in victims withdrawing their complaints and can mean victims will not seek help from police in the future.

Given the seriousness and consistency of the concerns raised with the Taskforce about police responses in sexual violence cases, the Taskforce has carefully considered whether it should recommend a Commission of Inquiry into QPS responses to sexual offences, as suggested by the WLSQ. We also considered whether we should recommend the expansion of the terms of reference of the existing Commission of Inquiry into Police Responses to Domestic Violence (the Commission of Inquiry) to include police responses to sexual

offences. The Taskforce has heard many troubling accounts of police treating women and girl victims of sexual violence inappropriately and disrespectfully. The Taskforce is satisfied that these concerning practices within QPS must be improved. These are serious issues, given the role of the QPS as the gateway to the criminal justice system and the need to promote and protect the human rights of women and girls. In this part of our work about women and girls as victims of sexual offences, however, the Taskforce has not heard the consistent reports of QPS behaviour that could amount to misconduct or corrupt conduct that we heard during our work involving domestic and family violence. This is a significant point of distinction. Although the Taskforce remains seriously concerned about the need for some police to address their values and beliefs about sexual violence and improve their responses to victims, we did not receive information that would warrant a recommendation for a Commission of Inquiry into these issues. The Taskforce is satisfied that the terms of reference for the existing Commission of Inquiry will enable it to consider issues raised with the Taskforce about police responses to sexual violence outlined in this report.

Given paragraphs 3(e),4(a) and 11 of the terms of reference of the Commission of Inquiry established in response to recommendation 2 of *Hear her voice 1*, the Taskforce recommends that a copy of this report be provided to the Commission of Inquiry.

The Taskforce found that the *QPS Sexual Violence Response Strategy 2021-2023* was an initiative that should continue. The Strategy is subject to internal review, but to maintain public confidence it must be independently evaluated at the end of 2023 to ensure outcomes are achieved for victim-survivors. The Taskforce found that QPS should publicly report on outcomes and impacts for victim-survivors as a result of its recent key initiatives, to ensure transparency, accountability and the maintenance of community confidence in police responses to victims of sexual violence. This reporting should include plain English explanations about how impacts and outcomes for victim-survivors are measured and what has been achieved, as well as whether initiatives and actions have been modified or adapted when intended impacts and outcomes have not been fully realised.

The Taskforce found the *QPS Sexual Violence Response Strategy 2021-2023* should be strengthened by the development of the 'Safer Systems Pathway' program of practice to reinforce the need to promote victim-centred and trauma-informed approaches. The benefits of this type of approach include improved community safety, reduced costs and increased confidence in police responses. A 'Safer Systems Pathway' approach should focus on implementing and promoting practices that counteract known trauma triggers in the system. Examples could include organising an interpreter when required, reducing the number of times a victim-survivor has to retell their story, or properly recognising victim-survivors' trauma when experiencing sexual violence within a domestic and family violence context. Safer reporting experiences for victim-survivors will help restore and maintain public trust and confidence in police.

Encouragingly, QPS has recently developed training on victim-centred and trauma-informed approaches. Given what the Taskforce heard and observed about police responses to sexual violence, this training needs to be implemented across QPS, including to staff within the police communications centre and those working on front counters in police stations. Training must be ongoing and professionally supervised to ensure it is competent and effective. Trauma-informed policing is an emerging area of policing practice. It will require dedication and commitment from QPS staff to better recognise and respond to the impacts of trauma experienced by victims.[116] It is critical that QPS and other government and non-government agencies and services understand the importance of open and transparent engagement with victims to measure and monitor the impacts and outcomes achieved by these improved QPS responses.

The Queensland Government supported in principle *Hear her voice 1,* recommendation 31 (the development of a transformational plan to improve culture within QPS and supported recommendation 32 (building further specialist expertise within QPS to respond to domestic and family violence), recommendation 33 (the implementation of the transformational plan) and recommendation 34 (continuing to develop and deliver ongoing evidence-based and trauma-informed domestic and family violence and coercive-control training and education to all levels of the service). The Government response noted that implementation of these recommendations would be considered after finalisation of the Commission of Inquiry so that findings could be appropriately incorporated.

Victim-survivors of sexual violence shared their concerns with the Taskforce about QPS culture and the values and beliefs of some police about sexual violence, rape myths and victim-survivors from diverse communities. The successful implementation of the recommendations in this report are dependent on remedying the widespread cultural issues outlined in *Hear her voice 1*. For that reason, and subject to the

outcome of the Commission of Inquiry, the Taskforce reaffirms recommendations 31, 32, 33 and 34 of *Hear her voice 1* and recommends they be expanded to encompass sexual violence.

The Taskforce found that the QPS should review its operational procedures and policies and provide competency-based training to ensure a trauma-informed approach is incorporated into its response and investigation of sexual violence cases. This must include how best to respond to victims presenting at police stations or engaging with frontline police; when and how to obtain information from a victim about whether an alleged offender may have mistakenly believed the victim to be consenting; and incorporating operational and procedural changes required as a result of other recommendations in this report. This will enable QPS to build upon and continue work that is already underway, including under the QPS Sexual Violence Strategy, and the review and further implementation of ISACURE training.

The Taskforce found that QPS needs to develop greater clarity about the role of SVLOs to improve understanding of police, sexual assault service providers, other stakeholders and the community about SVLOs role and the scope and intent of the program and what it intends to achieve for victim-survivors.

Taskforce members acknowledged the important role that pretext phone calls can have in the investigation and prosecution of sexual offences. The Taskforce noted that there were benefits for victim-survivors when an accused person made an admission during a pretext call, including the increased likelihood of an early plea of guilty, saving the victim from giving evidence. However, the Taskforce was concerned that pretext calls be undertaken in a trauma-informed way and with the fully informed consent of the victim-survivor. The Taskforce also noted that there was limited research on the use of pretext calls and there was a need for more investigation into their use and impact.

The Taskforce found that the QPS should review and update operational policies and procedures about investigative methods in sexual violence cases, including the use of pretext calls, to ensure they are evidence-based, trauma-informed and fit for purpose. The review should ensure that appropriate protections and safeguards are in place when pretext calls are used.

This review should also improve the guidance to police questioning victim-survivors about their intoxication and matters relevant to the potential excuse of mistake of fact. Questioning must be trauma-informed, sensitive and not make victims feel disbelieved, shamed or otherwise dissuaded from making a complaint.

In chapter 2.9, the Taskforce has recommended the use of police-recorded interviews with victims as evidence in chief in sexual violence cases involving adult victim-survivors. The Taskforce found that it is essential, for both the quality of the evidence and the wellbeing of victim-survivors, that interviews be conducted by specially trained police in controlled environments, using high-quality audio-visual recordings. This process is likely to best ensure the recording is admissible and persuasive so that the number of times victim-survivors have to give evidence is minimised. The Taskforce notes that victim-survivors will probably still need to attend court to be cross-examined, unless the accused person pleads guilty.

Taskforce recommendations

22. The Queensland Government provide a copy of this report to the Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence established in response to recommendation 2 of *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland*, given paragraphs 3(e),4(a) and 11 of its terms of reference.

23. The Queensland Police Service continue to implement its Sexual Violence Response Strategy 2021-2023 to promote greater consistency in police practices across the state and to deliver victim-centric and trauma-informed responses to victim-survivors of sexual violence.

24. The Queensland Police Service include in its annual report information about outcomes and impacts for victim-survivors as a result of initiatives and actions included in the Queensland Police Service *Sexual Violence Response Strategy 2021-2023* to ensure community confidence in police responses and attempts by the Queensland Police Service to improve those responses. This reporting will include plain English explanations about how impacts and outcomes for victim-survivors are measured and what has been achieved, as well as whether initiatives and actions have been modified or adapted when intended impacts and outcomes have not been fully realised.

25. The Queensland Police Service independently evaluate the impacts and outcomes for victim-survivors achieved as a result of the implementation of the Queensland Police Service *Sexual Violence Response Strategy 2021-2023*, including initiatives and actions implemented as part of the Strategy, and report publicly on the results of that evaluation. The evaluation will include input from victim-survivors of sexual violence and people with lived experience.

26. The Queensland Police Service, in consultation with people with lived experience, First Nations peoples, service system and legal stakeholders, develop and implement a 'Safer Systems Pathway' program of practice to reinforce the need to promote victim-centred and trauma-informed approaches. A 'Safer Systems Pathway' approach will focus on implementing and promoting practices that counteract known trauma triggers for victim-survivors across their involvement with police. The 'Safer Systems Pathway' will ensure safer reporting experiences for victim-survivors, reduce attrition and maintain trust and confidence in police more broadly

27. The Taskforce reaffirms recommendations 31, 32, 33 and 34 in the *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland* in relation to developing a transformational plan, building specialist expertise and evidence-based and trauma-informed training and recommends, subject to the outcomes of the Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence, recommends the implementation of these recommendations be expanded to include sexual violence

28. The Queensland Police Service continue to implement ongoing competency-based sexual violence and trauma-informed training across the organisation, including for frontline police, investigators, communications centre staff and staff working on front counters in police stations. This training should be evidence-based and trauma-informed and supported by professional supervision to ensure learnings are applied by individual officers and staff in practice.

29. The Queensland Police Service clarify the role and responsibilities of police Sexual Violence Liaison Officers within the Queensland Police Service, and for sexual assault service providers, other legal stakeholders and the community to improve understanding about the role and the scope and intent of the program, as well as the intended outcomes for victim-survivors of sexual violence.

30. The Queensland Police Service, in consultation with people with lived experience including people from culturally and linguistically diverse backgrounds, LGBTIQA+ people and people with disability, First Nations peoples and legal and service system stakeholders, review and update its operational policies and procedures about the investigation of sexual violence cases. This will include reviewing policies and procedures relating to the use of pretext phone calls and questioning victim-survivors, including about their intoxication at the time of the offence and matters that may be relevant to the excuse of mistake of fact, to ensure policies and procedures are evidence-based, trauma-informed and fit for purpose.

31. The Queensland Police Service ensure that only specialist trained officers interview victim-survivors in sexual offence cases when a victim agrees to a recording being used as their evidence in chief in a criminal proceeding, and that recordings are made in a controlled environment, such as police station or appropriate interview room, and are of a high audio-visual quality and where possible conducted in a trauma-informed setting.

Implementation

The QPS should continue to implement the Sexual Violence Response Strategy 2021-2023. An independent evaluation of the strategy should commence as soon as possible to capture data and information about impacts and outcomes.

The implementation of expanded recommendations 31, 32 and 34 from the Hear her voice 1 report may need to be reviewed, depending on the findings and recommendations of the Commission of Inquiry.

Within two years, the QPS should review and update operational policies and procedures about investigative methods in sexual violence cases in consultation with people with lived experience, legal and service system stakeholders, First Nations peoples, culturally and linguistically diverse peoples, LGBTIQA+ people and those with disability. This will complement the implementation of legislative amendments in response to other recommendations in this report.

The QPS should recruit and train specialist officers to interview victims in sexual offence cases when a victim agrees to a recording being used as evidence in chief in a criminal proceeding. Recordings must be made in a controlled environment such as police station or interview room with a trauma-informed setting and be of high quality. This recommendation should form part of the implementation of recommendation 55 in chapter 2.9.

Human rights considerations

The right to protection from torture and cruel, inhuman or degrading treatment (section 17) is a non-derogable right at international law. The right to recognition and equality before the law is a stand-alone right that permeates all human rights (section 15).[117] It encompasses the right to recognition as a person before the law and the right to enjoy human rights without discrimination. The right to recognition as a person before the law is both an absolute and non-derogable right under international law.

Human rights promoted

By working towards preventing inappropriate withdrawals of victim-survivors' reports of sexual violence to police, the recommendations promote victims' rights. These include the right to be protected from torture and cruel, inhuman and degrading treatment (section 17), the right to recognition and equality before the law (section 15).

Human rights limited

The implementation of these recommendations will not limit any rights.

Evaluation

Attrition rates only provide one part of the picture in terms of the success of victim-survivor engagement with the criminal justice system. There are other outcomes that are as important for measuring the quality of victims' experiences. Victims' perception and level of satisfaction with police responses, which include being taken seriously and supported when making a report of a crime, should be assessed as part of the evaluation. Measurements for assessing the success of the strategy should be developed in consultation with those with lived experience, legal and service system stakeholders, First Nations peoples, culturally and linguistically diverse people, LGBTIQA+ and people with disability, to ensure outcomes accurately reflect experiences of all victims.

Conclusion

This chapter has addressed victim-survivors' experiences of reporting sexual violence to police.

The Taskforce heard from victim-survivors that making a formal complaint to police often required them to overcome negative societal beliefs and misconceptions about sexual violence. Taskforce submissions show that victim-survivors internalise negative beliefs in the community about sexual violence through feelings of shame or self-blame, even though they are clearly entitled to use the criminal justice system to make and pursue a complaint. When the offender is someone they know, victim-survivors are often fearful that reporting sexual violence to police will put their own, or others, safety at risk.

Victim-survivors shared with the Taskforce their feelings of being overwhelmed, distressed, or angry in the aftermath of a sexual assault, and with a diminished sense of safety and trust in others.

Those who reported sexual violence to police told the Taskforce that the trauma of the sexual violence and its impacts did not stop once the sexual violence stopped.

The Taskforce acknowledges the work of QPS in developing and implementing training for some officers and its commitment to improving responses for victim-survivors.

The concerns presented in this chapter highlight victim-survivors' unmet needs and the challenges they experience when reporting sexual violence to police. Their voices have provided a valuable opportunity for QPS to enhance and deliver further improved responses targeted at empowering victim-survivors to report sexual violence to police and reducing both the risk of re-traumatisation and the rate of attrition. In continuing this important work, QPS should focus on creating Safe System Pathways (see Chapter 2.4) for victim-survivors, from the point at which they first come into contact with police and throughout their journey along the criminal justice system.

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Chapter 2.6: Quality, accessibility and use of forensic evidence gathered in legal proceedings

Women and girls in Queensland do not have consistent access to timely forensic medical examinations when they have been sexually assaulted. This compromises the health and safety of women and girls and the quality of the evidence collected. It potentially means that those who have assaulted them will never be held to account. All emergency hospital departments in Queensland must develop the capacity to conduct timely forensic medical examinations regardless of whether the hospital is located in remote, regional or metropolitan Queensland.

A Commission of Inquiry will be held into the quality of Queensland's forensic and scientific services. This should not delay the development of interim agreements between Queensland Health, the Department of Justice and Attorney-General and the Queensland Police Service to work effectively in the interests of victims of sexual violence. Queensland Government agencies need to work together to ensure forensic evidence is used correctly in criminal proceedings.

Accessibility of forensic medical examinations in Queensland

Forensic medical examinations are important for two key reasons – first, to protect sexual assault victims against negative physical and mental health consequences, and second, to support access to justice.[1] Problems have been identified with Queensland's ability to provide women and girls with timely access to high-quality forensic medical care since at least 2009.[2] The Taskforce's consultation has identified that there are still significant barriers to women and girls receiving consistent care around the state.

Background

Current position in Queensland

A forensic medical examination may be the first experience a victim-survivor of sexual assault has with the criminal justice system, and preferably should be conducted as soon as possible after the assault. It is likely to be a distressing time for the victim-survivor. A forensic medical examination for sexual assault victim-survivors typically begins with obtaining information about the nature of the assault to guide the physical examination. The examination includes the interpretation of injuries and the collection of forensic evidence as it relates to the alleged assault.

It is important that the collection of forensic evidence is 'both gender-sensitive and diligent in compliance with protocols'.[3]

Queensland Health (QH) is the overall public health service in Queensland. The Minister for Health and Ambulance Services has overall responsibility for Queensland's health system through the Department of Health and 16 Hospital and Health Boards. Each Hospital and Health Board operates a Hospital and Health Service managed by a Health Service Chief Executive.[4] The Department of Health is responsible for the overall statewide management of the public health system.[5] Health and Hospital Services (HHS) comprise independent statutory bodies responsible for delivery of public sector health services.[6] HHS operate in 15 locations across Queensland, and Children's Health Queensland provides a statewide service.

The *Hospital and Health Boards Act 2011* provides the overarching framework for delivery, management and planning of publicly funded health services in Queensland.[7] Although each HHS body is governed by the Act, the way they operate may differ. This is because there is no centralised control over HHS. This may be part of the reason why differences in forensic services have been noted across Queensland.

In 2018, the Queensland Police Service (QPS) raised ongoing concerns with QH about service availability and delays in coordinating forensic support for sexual assault victims.[8] These issues have been ongoing

since at least 2009.[9] In response, QH acknowledged challenges and advised the QPS to seek redress through individual HHS bodies.[10]

In 2019, the Queensland Audit Office released its *Delivering forensic services Report 21: 2018-19* (the QAO report), including recommendations for QPS, QH and the Department of Justice and Attorney-General (DJAG).[11] This report identified shortfalls in the accessibility and timeliness of forensic medical examinations via hospital services for child and adult victims of sexual violence.[12] Failures such as a lack of clear and consistent policy or processes around victims seeking forensic medical examinations without reporting to police were also raised.[13] The QAO found: some hospital staff refused to conduct forensic medical examinations; a lack of trained clinicians; competing priorities within emergency departments; a lack of clearly defined and enforced service standards; and that inconsistencies contributed to negative responses to victims of sexual violence.[14]

In 2019, the Minister for Health endorsed forensic medical examination reforms, with $1.3 million in additional funding[15] provided to alleviate issues around accessibility and availability identified by the QAO report.[16] QH advised that all HHS, excluding the Children's Health Services, have received additional recurrent funding to provide sexual assault examinations.[17] This includes funding for base staffing, annual training (including travel costs), and on-call staff. Funding for training in rural and remote areas has been provided to four HHS, including travel and accommodation costs.[18] Despite this, the Taskforce heard it can be difficult for positions to be backfilled while doctors undertake training. For each forensic examination conducted, each HHS receives a payment of $409.[19]

How do other jurisdictions address this issue?

Victoria

In 2004 and 2021, the Victorian Law Reform Commission (VLRC) released reports that concluded there were issues with timely access to forensic examinations for victims of sexual violence in the state.[20] Both reports found there were not enough sufficiently qualified staff to conduct forensic medical examinations, especially in rural areas.[21] The VLRC found this lack of resources impedes police investigations and victims' recovery.[22]

In 2017, the Dandenong multidisciplinary centre (MDC) expanded forensic medical examinations to victims of family violence.[23] A remote witness facility supporting victims of sexual or family violence to provide evidence via videolink was also set up.[24] By 2021, Victoria had 20 forensic medical examination sites, including crisis care units and MDCs.[25] MDCs provide a co-location model of service delivery that involves police, sexual assault services, child protection and forensic examination facilities together in multiple locations. On-call clinical forensic practitioners are also available to conduct sexual assault examinations across Victoria.[26] Although there are benefits of co-locating services that provide a sexual violence response and purpose-built MDC facilities include rooms for performing forensic examinations, the Taskforce heard that forensic examinations are undertaken mostly in hospitals. The forensic examination facilities in the MDC the Taskforce visited were rarely used.

Western Australia

The Sexual Assault Resource Centre (SARC) in Perth has been providing free 24-hour medical, forensic and counselling services to sexual assault victims aged 13 years and over for more than 40 years.[27] It also forms part of the Women and Newborn Health Service in Western Australia.[28] As well as providing a one-stop system, the SARC offers professional medical and forensic support to health workers in rural and remote areas of the state who may be required to undertake examinations.[29]

United Kingdom

Sexual Assault Referral Centres (SARC) have provided forensic medical examinations for victims of sexual violence since the mid-1980s.[30] The centres deliver specialist care and forensic evidence collection to support victims. The SARC model brings together crisis workers, forensic physicians and police, who collectively provide 24-hour victim support.[31] Forensic physicians trained in medicolegal evidence collection address immediate medical needs, with specialised and integrated care offered to victims.[32] Specialist follow-up support is also provided by independent sexual violence advisors and counsellors in a one-stop centre.[33]

Ireland

In Ireland, Sexual Assault Treatment Units (SATUs) provide three options for sexual violence victims.[34] These include a forensic medical examination with police involvement, a health check that excludes forensic examination, or a 'just in case examination'.[35] The third option provides victims with a full forensic medical examination, without police involvement.[36] Evidence is then stored at an SATU for one year plus a further year with the patient's consent.[37] The service provides a 24-hour collaborative response involving police, a rape crisis centre and allied agencies. These agencies provide medical, psychological and emotional support, and forensic examinations.[38]

United States

The federal *Violence Against Women Act 2005* (US) requires states to include non-report evidence collection and anonymous reporting options alongside regular reporting for sexual violence.[39] This ensures patients can receive a forensic medical examination, regardless of their intention to report to police.[40] Undergoing a forensic medical examination by a qualified nurse or clinician may increase the likelihood of a victim progressing their complaint through the criminal justice system. This could be because their account of the incident is recorded and documented; because of the quality of the evidence collected; because victims feel supported; or a combination of these things.[41] In the US, sexual assault response teams (SARTs) coordinate the criminal justice, health and advocacy responses to sexual assault victims.[42] A study on the effectiveness of the SART found those with broad, active membership and formal structures were perceived as having higher effectiveness than informal models.[43]

According to the American Bar Association, as at 2015 there were more than 700 sexual assault nurse examiner (SANE) programs, but this number is far lower than what is required.[44] Telehealth models have been implemented to respond to sexual violence in rural and under-served communities.[45]

Results of consultation

Victim-survivors

Victim-survivors described lengthy delays and poor criminal justice responses to sexual assault from QH.[46] Victims of domestic, family and sexual violence living remotely can be denied access to forensic specimen collection and follow-up support on the basis of where they live.[47] This is despite high rates of violence in remote communities.[48] Key challenges identified by submissions to the Taskforce include how professionals maintain the expertise they require and the provision of services in remote communities.[49]

The Taskforce heard about a woman travelling 1,300km for an examination, only to be turned back due to a miscommunication.[50] Undergoing forensic examinations can add significant trauma, with many victim-survivors feeling embarrassed and ashamed while waiting to undergo the procedure. The Taskforce was told that, for these victim-survivors, support is required as soon as possible and throughout the ordeal.[51]

The Taskforce heard that after the forensic examination victim-survivors had been sent home in inappropriate clothing, put in a taxi to find their own way home, or had to remain in plastic suits for extended periods due to lengthy delays in obtaining an examination.[52] Victim-survivors described the forensic medical examination process as stressful and retraumatising.

'The whole reporting process was extremely polarising. It happened very suddenly; I was still in shock. The most difficult part was the forensic examination. I was confused about why the morning after pill and chlamydia medicines were not offered to me during the forensic exams, why swabs etc. were not taken for STI checks while I was being swabbed for forensic evidence. It makes a lot more sense and makes it easier for the victim if they can be taken care of all in the same place. I was advised to take HIV prophylaxis and had to pay $40 to get it from the pharmacy. I felt like I was being penalised for being sexually assaulted. I had to go to the sexual health clinic and get testing done as well as an injection and bloods. This was really overwhelming. And while a hospital social worker was there to talk me through some things, I wish there was someone there to talk me through the processes and explain why certain things were being done.' [53]

One victim-survivor told the Taskforce that forensic evidence was not always collected because it was deemed 'a waste of time' for trained staff to work on weekends.[54] One victim-survivor described issues with accessing forensic medical examinations during the COVID-19 pandemic:

> *'During the pandemic, it was near impossible to see a doctor in person or go to the hospital to get a rape test kit done. I had to request a virtual doctor's appointment and get sent a lab requisition to go and get my blood and urine tested for pregnancy and STDs at a [lab]. I had to go to a pharmacy and get the morning after pill straight away while I was still in a state of shock, numbness, bruised and bleeding. The first thing I wanted to do was to shower and clean everything … though I was reprimanded for not calling the police or going to the hospital straight away so they could scrape his DNA off my body'.* [55]

Government agencies

Queensland Health

QH advised the Taskforce that professional forensic examination education has been delivered to doctors and nurses.[56] Workshops were held between 2019 and 2020 across all HHS, with Central West and Darling Downs HHS comprising the majority of attendees.[57] Resourcing to fund training, travel and backfill staff has been provided.[58] An Assistant Director of Nursing, Sexual Assault Services position has been created to lead and coordinate training, professional networking, and communications across Queensland.[59]

A *Sexual Assault Nurse Examiner – Forensic Nurse Examiner Community of Practice* has been established to provide advice, guidance and support to clinicians, as well as a senior responsible officer to champion change across 15 of the 16 HHSs.[60]

QH advised the Taskforce of the differing methods for providing forensic medical examinations to victims of sexual assault adopted in HHS across Queensland. For example, the Gold Coast model provides a specialist service to sexual violence victims within the emergency department.[61] This is to ensure any medical issues can be dealt with appropriately.[62] The Gold Coast team splits work between patient-facing and report writing.[63] The team also includes a social worker who is available 24 hours a day, seven days a week within the emergency department.[64] This model enables patients to be treated appropriately, and provides clinicians with the time needed to write up forensic reports required for the criminal justice process. The model also allows social workers time to make a referral to specialist sexual assault services for follow-up in the community.

The Metro South HHS response to sexual violence differs to that of the Gold Coast. Metro South HHS works in partnership with the Royal Brisbane and Women's Hospital (RBWH) as the specialist sexual assault response service in central Brisbane.[65] This means forensic medical examinations for victim-survivors attending Princess Alexandra, QEII and Redlands Hospitals will be conducted at the RBWH.[66] This was based on a 'hub and spoke' model for meeting the needs of vulnerable clients within the Metro South area.[67]

QH acknowledged that not all victim-survivors of sexual assault report their victimisation to the police.[68] For those who do report, not all will require a forensic medical examination;[69] for example, an examination may not be required in cases of historical sexual violence. A psychosocial response may be more relevant to some victim-survivors.[70] QH advised of a new principle-based strategic model to better respond to the needs of all victim-survivors.[71] The principles of the model incorporate:

- the need for medical assessment in accordance with local hospital procedures
- integrated clinical pathways, psychosocial counselling and social work support
- support to engage with health and justice systems through locally led and sustainable partnerships – including with Aboriginal and Torres Strait Islander community-controlled health services
- greater accessibility to sexual assault nurse examiners, forensic nurse examiners and forensic medical officers across more hospital-based locations
- multidisciplinary telehealth support for clinicians in rural and remote locations and general practitioners with a special interest and additional training to undertake examinations.[72]

QH discussed the role of 'just in case' forensic medical examinations available for patients who are not yet ready to involve police.[73] These examinations provide an opportunity for victim-survivors to have forensic evidence collected after an assault, 'just in case' they later wish to report the assault to police.[74] Medical professionals are provided with information to support appropriate evidence collection, including:

- chain of custody requirements and protocols for 'just in case' sexual assault investigation kits (including tamper-evident security bags for collection, swabs, pathology requests)
- caring for people disclosing sexual assault
- a chain of custody form for Pathology Queensland[75]
- a flow chart outlining the processes for 'just in case' examinations.[76]

Victim-survivors of sexual violence may be transported for a forensic medical examination or 'just in case' examination. This may be facilitated by the QPS when a report is made, or by the Queensland Ambulance Service if significant injuries are involved. Sometimes, victim-survivors may choose to arrange their own transport.[77]

Department of Children, Youth Justice and Multicultural Affairs

The Department of Children, Youth Justice and Multicultural Affairs (DCYJMA) told the Taskforce that better processes for dealing with young victims are required. This includes better information provision, emotional support, expectation management on the usefulness of forensic evidence and greater education for agencies and services involved in the response.[78] In DCYJMA's view, good practice includes 24-hour-a-day, seven-days-a-week access to forensic medical examinations and specialist sexual assault counselling, with SART identified as the best model for supporting sexual assault victim-survivors.[79]

Queensland Police Service

QPS told the Taskforce that a lack of timely and adequate delivery of forensic medical services within QH had contributed to ongoing challenges in the investigation of sexual assault complaints.[80] These delays potentially contributed to complaint withdrawals.[81] QPS provided the Taskforce with an evaluation of the SART model that is operating in Townsville.[82] The evaluation provides evidence that integrated responses can increase reporting of sexual violence.[83] Factors that supported this increase were due in part to:

- police involvement not having to be part of the requirements for obtaining a forensic medical examination[84]
- shortened wait times at emergency departments
- a response available 24 hours a day, seven days a week through partner agencies operating with streamlined pathways
- greater choice and empowerment for the victim-survivor.[85]

Department of Justice and Attorney-General

DJAG told the Taskforce that a review of the *Interagency guidelines on responding to people who have experienced sexual assault*, used by DJAG, QPS and QH, is expected to be finalised shortly, incorporating amended and strengthened processes.[86] DJAG also noted that there had been a number of related reforms since the review of the guidelines commenced in addition to the strengthening of agency-specific processes. These changes will be reflected in the revised guidelines.[87]

Service system stakeholders

North Queensland Combined Women's Services Inc (NQCWS) told the Taskforce that women in remote locations are often forced to travel long distances to access help.[88] When they do travel, women face reluctant staff who lack the confidence to perform forensic medical examinations.[89] Victims in urban locations can experience long wait times.[90] When victims attend an emergency department, they often have to explain their victimisation in front of packed waiting rooms. Many are required to sit for hours in cold, isolated rooms, with no food, water or clean clothing.[91] Unless an advocate is available to support the woman to provide appropriate administrative paperwork and advocate on her behalf, there is real potential for these victims to be turned away or to give up and leave.[92]

The Redlands and Logan Centre Against Sexual Violence (Logan CASV) told the Taskforce that once victims have undergone an examination, they are left to find their own way home, regardless of the time of night or distance to travel.[93] Adding to these issues is the lack of funded support for hospital social workers and after-hours sexual violence support workers.[94] Many support services operate 9am-5pm business hours,

with little scope or funding to go outside of this. One worker described staying with a client until 7pm, before having to leave.[95] In the hours the worker was there, she was unable to arrange social work support and upon leaving the hospital advised staff that the victim was adamant about making a report.[96] But when the worker followed up with the client the following day, no examination had been done, and the woman was dissuaded from making a police report.[97]

The Cairns Sexual Assault Service told the Taskforce about a 16-year-old rape victim who was told by hospital staff that they were too busy to see her and asked her to return 36 hours later for a forensic medical examination.[98] The young victim was also told not to shower or bathe in the interim 36-hour period.[99] It was only after QPS stepped in and advocated for the victim that the hospital agreed to examine her, eight hours later.[100]

To address these issues, the Cairns Sexual Assault Forensic-Integrated Response Network has suggested an integrated model, suitable education for medical practitioners and involvement of First Nations health services.[101]

Some service providers suggested forensic examinations be undertaken by other relevant professionals within community health.[102] Service providers, along with police, have called for a forensic examination service to be available 24 hours a day, seven days a week, to provide a trauma-informed response.[103]

Other relevant issues

Just in case examinations

'Just in case' examinations are intended to provide some comfort to victim-survivors, knowing that evidence would be available should they decide to make a report at a later date. QPS told the Taskforce that it advocated for the introduction of 'just in case' examinations to provide victims with an opportunity to have forensic evidence collected in case they later wished to proceed with a report.[104] Following the QAO report in 2019, the *Health Service Directive: Caring for People Disclosing Sexual Assault* introduced options for adults victims of sexual violence to have a forensic examination just in case they decided to make a later report to police.[105] At that time, QH committed to strengthen its forensic responses to victims of sexual violence, although QPS has suggested to the Taskforce that there is still a long way to go.[106]

The Taskforce was told that staff in some major hospitals in Queensland were still unaware of the existence of 'just in case' examinations and persist in contacting police before an examination is undertaken, despite the victim requesting them not to do so.[107] The Taskforce also heard concerns about the lower standard of forensic evidence collected in 'just in case' examinations and the shorter length of time that evidence is stored.[108]

The North Queensland Combined Women's Service Inc (NQCWS) told the Taskforce that the introduction of 'just in case' examinations had been disruptive and harmful to the process of the Sexual Assault Response Team (SART) in Townsville.[109] The NQCWS told the Taskforce that victims were less supported and prosecutors had indicated that the 'just in case' examination offered less credible evidence in a trial and that defence barristers were using a victim's decision to choose this option as a way of attacking a victim's credibility.[110] NQCWS told the Taskforce that the language of 'just in case' minimises the trauma involved in decision making for a women in the immediate aftermath of an assault.[111] NQCWS told the Taskforce:

> *'A trauma-informed response would allow survivors to access thorough forensic health care regardless of their clarity in decision making at the time of reporting. Allowing survivors to access comprehensive forensic health care at this time supports quality admissible evidence, as well as time for the survivor to access therapeutic support that will assist in centring their safety and rights in making choices that are appropriate for their unique circumstances'.* [112]

Storage of evidence from 'just in case' examinations is governed by special custody arrangements to store untested samples for up to 12 months.[113] The examinations are the responsibility of individual HHS. The Taskforce heard that this had led to inconsistent processes across Queensland.[114] The Gold Coast Centre

Against Sexual Violence (GCCASV) told the Taskforce that storage of forensic material was dependent upon the location and resourcing available.[115]

The Taskforce heard that 'just in case' examinations provided in some locations were beneficial for victim-survivors who felt overwhelmed in the moment. The ability to collect evidence and have it stored for up to 12 months by Cairns pathology, for example, provided opportunities for victim-survivors to decide whether to report in their own time.

Accessibility and timeliness of forensic medical examinations

QH has told the Taskforce that policies related to disclosures of sexual assault are guided by principles of compassion, courtesy, respect and dignity through responsive and person-centred care.[116] This includes timely (within two hours when possible) and confidential care. The operational policy provides for access to trained clinicians,[117] including social workers, sexual assault workers, nursing staff or relevant local support services.[118] This should be accompanied by information about options related to forensic examinations and police involvement.[119] Mandatory requirements include 24-hour access to forensic examinations for people 14 years and over.[120]

Despite this policy intent, victim experiences recounted to the Taskforce suggest substantial problems with the quality of Queensland hospital health care received by women and girls who are victim-survivors of sexual violence. Social workers are available only two days a week in some locations.[121] Sexual assault services have told the Taskforce their clients may wait up to 12 hours, including in major hospital emergency departments in main centres such as Logan and Brisbane.[122]

The Taskforce observed that the overall benefits to victim-survivors in terms of appropriate levels of care, evidence collection and positive outcomes differed significantly depending on their geographical location.

One victim waiting at a Brisbane hospital was asked to remain in the clothes she wore during the attack, and asked not to urinate in case it impacted evidence.[123] After an advocate explained sitting in the waiting room was inappropriate, one victim was made to wait more than four hours in a dusty room next to the COVID-19 ward before being seen.[124] This victim waited a total of nine hours before being able to leave.[125]

Other victims travelling from remote areas have had uncomfortable and long wait times for forensic examinations. The QPS explained that some victims were required to travel up to 10 hours to undergo a forensic examination, often in the same clothes worn during the assault.[126] They then had to wait hours before being seen by a medical professional.[127] The Taskforce heard in Cairns that some victims have had to wait six hours before being seen by a forensic nurse.[128] One rape victim was told she would have to travel up to 100km to access an examination, and that she would have to make her own way.[129] The Taskforce heard that health services had not participated in integrated responses to sexual violence in the Cairns area, apparently due to ongoing resource issues.[130]

The Taskforce heard that despite funding being allocated to an HHS for forensic medical examination processes as part of its service agreement with the Department of Health, the provision of specialist services and backfill arrangements for a clinician had not been arranged.[131]

In one regional Queensland location,[132] the Taskforce heard that highly trained clinicians, nurses and general practitioners were able and willing to provide forensic medical examinations on a roster.[133] In this location, during a forensic medical examination and subsequent report-writing process, support was provided to clinicians through telehealth.[134] This meant that examinations could be undertaken across a larger geographical area without the need for the victim to travel. The Taskforce has since heard that the model is no longer operational.[135]

The Taskforce also heard that since the publication of submissions made in response to the Taskforce's second discussion paper highlighting issues in Cairns, nine new forensic medical officer positions have been created.[136]

There is some reluctance for forensic services to be provided via an outreach model due to lack of transport.[137] The Taskforce also heard about women being transported long distances from communities into regional centres for a forensic medical examination, but once the examination was completed, they had to find their own way back home.[138]

Sufficient qualified doctors and nurses to undertake forensic examinations

Filling rosters appeared to be a big hurdle that impacts on the accessibility of forensic medical examinations.[139] QH advised the Taskforce of several initiatives implemented to increase the number of available clinical staff trained in forensic medical examinations.[140] Nurses and midwives have been encouraged to participate in training conducted by forensic physicians and were provided with opportunities to maintain these skills.[141]

In regional Far North Queensland communities, women seeking forensic medical services experienced great difficulty. This is partly due to a lack of qualified doctors and nurses to do the work.[142]

The Taskforce heard there is a view held by some emergency department medical staff in some locations that forensic medical examinations are outside the scope of their role and expertise. The Taskforce also heard that some practitioners do not consider victim-survivors of sexual violence to have a clinical need. Victim-survivors are not triaged as requiring urgent care relative to other presenting patients in a busy emergency centre. The Taskforce heard that some of the reluctance of doctors to do examinations is due to the amount of follow-up work required in terms of writing reports and giving evidence - many doctors and nurses are fearful of attending court. This was confirmed in the Taskforce's meeting with senior officials from the Department of Health who indicated that forensic examinations were not popular with emergency doctors who considered they fulfilled no tangible 'clinical need' for the patient.[143]

The Taskforce heard that despite there being trained nurse examiners in some locations, doctors were often reluctant to allow nurses to perform this role.

The role of timely quality forensic services in victims' healing and wellbeing

When quality forensic services are provided in a timely and compassionate way, victims are better able to heal as they are not retraumatised by the process.[144]

One sexual assault service worker explained that, for the past five years, Logan Hospital has provided a social work response after hours, with staff with a clear understanding of how to support people who had experienced sexual assault.[145] The Taskforce was told that social workers at Logan Hospital had a strong understanding of how important it was to support victim-survivors as soon as possible through what is a confusing and difficult process.[146]

Sexual assault services told the Taskforce how important it was for a victim to have someone who could advocate for them to be seen as soon as possible by a Forensic Medical Officer (FMO).[147] The Taskforce heard that, when victim-survivors were seen quickly by an FMO, it produced much better outcomes. The response victims receive from the initial people they talk to has a major impact on their willingness to make a complaint, their healing pathway, and the quality of the evidence obtained.[148] Sexual assault services were saddened that small but important efforts to treat victims with dignity in a hospital setting, such as providing a traumatised victim with food and clothing, were no longer occurring in some Queensland hospitals.[149]

Qualifications and willingness of staff to perform quality forensic medical examinations

Statewide education and training is provided to HHS Child Protection Advisors and Liaison Officers about forensic sexual assault examinations and report writing.[150] Training led by the Clinical Forensic Medical Unit rolled out in the past 12-18 months has had very slow uptake by clinicians.[151] Most HHS bodies reported that there are not enough specially trained clinical staff willing and available to undertake forensic medical examinations across many regions in Queensland.[152] The use of opt-in/opt-out rosters, along with high staff turnover, means there are times when there is no one to fill a position on a roster and forensic medical examinations are not available.[153]

Dr Cathy Lincoln, Deputy Director, Gold Coast Forensic Medical Unit, provided a nuanced explanation for the issues around emergency doctors' reluctance to perform forensic medical examinations.[154] Dr Lincoln felt forensic medicine was a specialty medical unit that needed to be given greater priority in larger emergency hospitals. Dr Lincoln described the different nature and timeline of forensic work when compared with other emergency department work. She explained the need for professional supervision to support professionals working in emergency departments to better undertake this role. She suggested specially trained forensic clinicians could provide the necessary professional supervision and support to emergency doctors in regional areas. This support would include providing a degree of confidence to doctors in regional or remote locations who may not have the same level of specialist training and

expertise about undertaking the examination, report writing and giving evidence to the court. Dr Lincoln said it was important to recognise that the examination of the victim was only one part of the process and the writing of reports for investigators and the court, and giving evidence, were also critical stages of the work and required skill, expertise and professional supervision.

Dr Lincoln explained why it is important to have doctors, rather than nurses, trained to conduct the examinations. She also stressed the importance of the examination occurring in a hospital setting because serious injuries to women are often undetected and difficult to triage. For example, there is a risk that victims may have internal injuries but be unaware of them. A victim of vaginal rape could receive injuries to parts of the vagina that do not have nerve endings. If a blood clot had formed, this could be inadvertently dislodged during an examination, requiring urgent emergency treatment. Although these occurrences may be rare, the potential ramifications for the victim patient were high and high-risk cases were difficult to identify and triage in a verbal interview with a patient. Dr Lincoln confirmed that there are simply not enough trained forensic medical physicians in Queensland at present.

Queensland forensic physicians must have a master's degree in forensic medicine alongside several years of experience in acute settings (such as emergency and intensive care departments).[155] The only master's degree program in forensic medicine in Australia is provided by Monash University in Melbourne.[156]

Forensic medical examinations may also be performed by appropriately qualified forensic nurse examiners, trained sexual assault nurse examiners (SANEs), government medical officers, or other medical officers with training.[157] There are currently 68 trained SANEs and 23 forensic nurse examiners across Queensland.[158] QH advised that as of 22 March 2022, 77 nurses and midwives had undertaken the SANE course.[159] An additional 181 clinicians have received online training.

Nine forensically trained doctors operate across the Gold Coast HHS, with 4.5 full-time equivalent (FTE) positions allocated to the role. Of these trained doctors, four have completed the master of forensic medicine qualification and a further three are currently enrolled.[160] QH acknowledged that standardised forensic training, education and workforce development is required.[161]

Sexual Assault Investigation Kits used in Queensland are inferior to those used in other Australian jurisdictions

The Taskforce heard from senior clinicians that the Sexual Assault Investigation Kits used in Queensland were of significantly inferior quality to those used in other states and territories.[162] In New South Wales, for example, sealed 'DNA-free' kits that contain 'DNA decontamination kits' and a large number of swabs and related apparatus are used. The kit Queensland uses comes in an open bag with only six swabs. The Taskforce heard that this was about half as many swabs as generally required to conduct a full forensic examination.[163]

Victims of sexual violence who do not hold Medicare cards are being charged for emergency forensic medical services

The Taskforce heard that victims from culturally and linguistically diverse backgrounds who are not eligible for Medicare may be charged for the costs of the forensic examination.[164] Unless victims had a support person able to advocate on their behalf, victims in these circumstances were faced with paying for treatment.[165]

Taskforce member Di Macleod advised the Taskforce that in her work on the Gold Coast she had seen several instances of QH adopting a practice of invoicing victims of sexual assault for their treatment and forensic examination if they are ineligible for Medicare. This practice has distressed tourists who visit the Gold Coast as well as international students, migrants and refugees. These women have sometimes been unable to pay the invoice, or the invoice has been sent to a family address overseas, which caused the victim fear and shame and was a gross breach of their privacy. [166]

Taskforce findings

The Taskforce found that victim-survivors of sexual violence in Queensland do not have consistent timely access to high-quality forensic medical examinations across the state. This has an impact on the victim-survivors' wellbeing and healing, and on the quality of the evidence obtained.

Victim-survivors in some locations are required to travel and often have to wait long periods to be examined. Some victim-survivors have not experienced a trauma-informed response. Travelling great distances and waiting long periods before an examination is performed is retraumatising for victim-

survivors and has an impact on the quality of the samples taken. Forensic medical examinations are intrusive processes but they can sometimes provide compelling evidence. If they are to be performed, care should be taken to ensure samples are of a high quality so that they can form a useful part of the investigation and any subsequent prosecution.

Despite efforts made since the QAO report in 2019, more needs to be done to ensure victim-survivors of sexual violence consistently have access to timely high-quality medical examinations throughout Queensland. Victim-survivors of sexual violence should not have to drive great distances or wait long periods before an examination is performed. If their clothes are required for evidence, victim-survivors should be given adequate clothing and, as far as possible, provided with suitable transport home.

If victim-survivors are not aware of the internal injuries they have suffered during a sexual assault, it is difficult to triage the case. A forensic medical examination may exacerbate or reveal internal injuries. To provide adequate medical assessment and treatment to victim-survivors who may have unknowingly suffered internal injuries, the Taskforce agrees that it is prudent for forensic examinations to take place in hospital emergency departments as far as possible.

Victim-survivors of sexual violence should be able to access a forensic medical examination at an emergency department in every hospital in Queensland. Hospitals must understand that forensic medical examinations are part of the essential services required to be offered by emergency departments. Victim-survivors should receive a trauma-informed response when they attend an emergency department for a forensic examination. As far as possible, they should be accommodated separately from others in a suitably appointed room and seen as soon as possible.

The forensic medical examination process involves the examiner conducting an interview with the victim-survivor, examining the victim-survivor, writing a report for investigators and the court, and probably, giving evidence in court – often by telephone or online. Medical professionals performing examinations should be trained and have expertise in each of these processes. Professional support and supervision should be provided to a doctor or nurse forensic examiner during each of these parts of the process.

Forensic medical examinations should be performed by qualified forensic clinicians as far as possible. These clinicians have qualifications and expertise and are able to provide medical supervision to other doctors and nurses across the state who may be required to perform a forensic medical examination. To perform this role, a statewide forensic examination service with permanent positions for qualified forensic clinicians should be established and funded in larger hospitals. The role of these positions should be to provide professional support and supervision to others performing these examinations.

Providing a statewide structure and model for the delivery of forensic examination services will also assist to better recognise and value the expertise of forensic physicians to perform this work and provide a more attractive career path for those practitioners.

It may not always be possible for a qualified forensic clinician to undertake an examination. So that examinations can be performed 24 hours a day, seven days a week, all doctors and emergency nurses should be trained to provide forensic medical examinations and clearly understand that this is a significant part of their role. Qualified forensic clinicians should be available to provide professional support and supervision to those emergency department doctors who require it.

QH must proactively and assertively address the reluctance of emergency doctors to conduct forensic medical examinations. The Taskforce found that the reluctance of some doctors to undertake examinations is due to their lack of understanding and expertise with the process, including about report writing and appearing as a witness in criminal proceedings.

In some circumstances, including in remote communities, forensic nurse examiners may be required to perform a forensic examination. Nurses who may be required to perform this role should receive specialist training and professional support and supervision from forensic medical clinicians. The *Sexual Assault Nurse Examiner – Forensic Nurse Examiner Community of Practice* should be supported to continue to also provide professional support to nurses performing this role. To ensure statewide accessibility, in some rural and remote communities, nurses in Aboriginal and Torres Strait Islander health services should be trained to provide forensic medical examinations and given professional support and supervision, including being part of the community of practice.

The Taskforce was unanimously and strongly of the view that women and girls' access to forensic medical services should not be limited by the personal preferences of medical professionals or those of individual

HHS boards. Access to timely and high-quality forensic medical examinations has a direct impact on access to justice. By recommending that a statewide service is established, the Taskforce is clearly signalling that access to forensic medical services is an essential service delivering public value to the Queensland community. Failure to provide these services is likely to be incompatible with human rights.

The Taskforce notes the advice received from QH about difficulties in recruiting emergency doctors in a tight labour market. The Taskforce also notes the concern that making forensic examination a fixed requirement of emergency doctors' employment may deter doctors from working in Queensland. However, these risks will be mitigated by specialist training and professional supervision and support provided by qualified forensic clinicians as part of a statewide service.

The Taskforce found that all victim-survivors of sexual violence should be offered a complete forensic medical examination regardless of whether the victim-survivor wishes to report to police. For those victim-survivors who do not wish to make a report to police at the time the examination is undertaken, the Taskforce favoured Queensland adopting a model similar to the SATU in Ireland. This model includes samples being stored for 12 months with an option for the victim to extend for a further 12 months. The Taskforce considered that, to ensure a proper chain of evidence is maintained, it was vital to develop protocols about the safe storage of samples (and who has responsibility for following up with a victim about whether they wish to proceed with a formal report).

The Taskforce was deeply concerned to learn that the Sexual Assault Investigation Kits used in Queensland are inferior to those used in other jurisdictions. Not adhering to the highest standards with respect to DNA contamination risks inferior testing results or even miscarriages of justice. Forensic medical examinations are intrusive and retraumatising for victim-survivors, although they can produce vital and convincing evidence. They should be done well so that the benefits outweigh the risks. Queensland should cease using inferior kits and procure best-standard investigation kits in line with those used in NSW and Victoria as a matter of urgency.

The Taskforce considers that QH's policy of invoicing non-citizen victims of sexual assault for forensic medical services and related medical treatment is neither trauma informed nor consistent with community expectations. This service is an essential component of the criminal justice system response to sexual violence and Queensland victim-survivors should not be required to pay for their access to justice. Requiring victim-survivors who are ineligible for Medicare to pay for any component of a forensic medical examination is unacceptable and should immediately cease. The cost of providing forensic medical examinations for victim-survivors of sexual violence should be solely borne by the state.

Taskforce recommendation

32. The Queensland Government establish and fund a statewide forensic examination service to ensure consistent timely and high-quality forensic medical services to all victims of sexual violence across Queensland. These services should be trauma-informed and culturally competent and comprise:

- permanent positions for qualified forensic clinicians supported by administrative and other necessary supports within each Hospital and Health Service throughout the state to perform forensic medical examinations, as well as professional supervision and support to doctors and nurses performing examinations throughout Queensland
- access to timely and high-quality forensic medical examinations 24 hours a day, seven days a week through emergency departments in each hospital by requiring all emergency department doctors in Queensland to be trained to undertake sexual assault forensic medical examinations
- forensic nurse examiner positions within each Hospital and Health Service and Aboriginal and Torres Strait Islander health services to ensure statewide access to high-quality examinations, including in rural, regional and remote communities
- contemporary and innovative mechanisms to provide statewide professional supervision and support, including through the use of telehealth services to provide professional supervision and support to practitioners in remote communities

The funding for the statewide forensic medical service should form part of the strategic investment plan recommended by the Taskforce in recommendation 10.

Taskforce recommendations

33. Queensland Health, in partnership with the Department of Justice and Attorney-General, develop and implement ongoing competency-based training and professional development for doctors and nurses who may be required to prepare reports and give evidence in criminal proceedings for sexual offences. Training materials will be regularly reviewed to remain up to date and align with changes to the law. This training and professional development will include appearing as an expert witness in criminal trials; for example, by the use of mock trials.

34. Queensland Health develop and implement a communication and education campaign to inform doctors who may be required to perform forensic medical examinations about the critical importance of this work, their role, and the support available to them to perform this role well. The campaign will aim to dispel myths about sexual violence and sexual consent and emphasise the value of timely forensic medical examinations for women and girls who are the victims of sexual violence.

35. Queensland Health and the Queensland Police Service review and revise the model for 'just in case' forensic medical examinations in Queensland and implement a new approach that ensures a full medical examination is undertaken with the same number and quality of samples taken in all forensic medical examinations. A revised model for Queensland should require samples to be stored for 12 months, extended for a further 12 months at the option of the victim-survivor. It will be the role of the Queensland Health statewide clinical forensic service to contact victim-survivors near the end of the first 12 months to seek their view about the retention of samples for a further 12 months.
The revised model will include clear protocols for the appropriate storage of samples to maintain integrity and ensure continuity of evidence.

36. Queensland Health review and update the Sexual Assault Investigation Kits used in Queensland to ensure they are at least of consistent quality as those used in New South Wales and Victoria. As a minimum requirement, kits must be DNA free, and contain DNA decontamination kits and an adequate number of swabs and testing apparatus.

37. Queensland Health, immediately stop the practice of charging victims of sexual assault who are ineligible for Medicare for any component of the costs of a forensic medical examination and the medical treatment of any injuries incurred as a result of a sexual assault. This will include consultation with the Federal Government if necessary.

38. The Queensland Auditor-General consider including on the forward work plan for the Queensland Audit Office a review of forensic services in Queensland as a follow-up review to its Report 21: 2018-19 Delivering forensic services report and to review the implementation of the recommendations made by the Taskforce in this report.

Implementation

QH should act immediately and with priority to implement Recommendations (33-37) given the impact of timely and high-quality forensic medical examinations on access to justice for victim-survivors of sexual violence.

QH will need to develop a sustainable long-term plan to support the establishment and ongoing operation of a statewide forensic medical service. The Taskforce acknowledges that this is a significant long-term reform. This work should aim to establish recognised and well-regarded clinical expertise and a clear career path for practitioners to encourage more to take on this important role. QH should work with universities to ensure that the provision of forensic medical services forms part of the undergraduate training of all medical graduates in Queensland. As part of discussions with universities, the viability of the development of a Queensland-based forensic medicine master's program should be considered. Collaboration between medical and law faculties on developing undergraduate and postgraduate training in giving evidence in criminal proceedings as a medical practitioner is needed.

As part of the development of its statewide forensic medicine service, QH should consider forensic nurse examiner positions in non-government and community-controlled organisations, including Aboriginal and

Torres Strait Islander health services, to ensure access to timely and competent trauma-informed examinations for women and girls in regional and remote locations.

These recommendations are designed to complement each other by strengthening policy, procedures and practice. They are also designed to strengthen the workforce, accessibility and quality of forensic services across Queensland. They call for strengthened policies, procedures and practices to assist victim-survivors of sexual violence and other crimes that rely on forensic evidence collection, analysis, and use. These recommendations should align with those in *Hear her voice 1*, specifically Recommendations 13, 15, 16 and 18.[167]

A forensic examination investment and service delivery plan (aligned to Recommendations 13 and 15 from *Hear her voice 1*) are required to ensure that timely forensic examinations are available and accessible to all Queensland women and girls on a needs basis, regardless of where they live. To support implementation of this plan, QH, QPS and the Department of Justice and Attorney-General should form a steering committee to oversee delivery of the plan. The provision of integrated forensic medical services with initiatives such as the Sexual Assault Response Team (SART) should be considered in the plan. This should be reviewed after five years with consideration of the benefits and outcomes achieved and any remaining gaps. The review will then inform development of a further five-year plan.

Human rights considerations

Victim-survivor human rights such as section 37 of the *Queensland Human Rights Act 2019,* which provides a right to health services, are diminished by failures in forensic examination processes. Existing practice also fails to promote section 25 – rights to privacy and reputation, for example, by having traumatised victim-survivors wait long periods in busy emergency department waiting rooms, reporting victimisation in a public space, and having victim-survivors travel long distances in clothing worn during a sexual assault.

Human rights promoted

The Taskforce recommendations will promote the right to health services through providing equal access for all people, regardless of where they live (section 37 *Human Rights Act 2019* (HRA)). These recommendations also align with the *Australian Charter of Healthcare Rights* (Charter) in that they will provide that all sexual assault victim-survivors will have the right to safe and high-quality care and to be treated with dignity, respect and consideration of their circumstances (including those ineligible for Medicare). Victim-survivors will have the right to information regarding treatment options, reporting options and freedom to make their own decisions.

Victim-survivors will be afforded the right to privacy and confidentiality consistent with the right to privacy (section 25 of HRA). Consistent with the Charter, victim-survivors will have cultural rights, identity and beliefs respected when receiving healthcare, and given assistance to understand the information provided.

The Taskforce recommendations will promote universal rights to health outlined by the World Health Organisation – The Right to Health.[168] These include freedom from degrading treatment. They will also promote equality of opportunity for everyone to enjoy the highest attainable level of health, the right to prevention of possible diseases resulting from sexual assault, equal and timely access to basic health, and non-discriminatory treatment based on where they live.

Evaluation

QH should take steps to measure the impact of the implementation of these recommendations on patient care and satisfaction with services. QH should establish a channel for continuous feedback with the QPS and the Director of Public Prosecutions on the impact of these implementations on investigations of sexual violence and the prosecution of sexual offences so that practices can be continually improved.

The Taskforce has recommended that the Queensland Auditor-General consider including a review of forensic medical services in Queensland on its forward work plan as a follow-up to its review undertaken in 2018-19, and to consider the implementation of the recommendations in this chapter.

Concerns about the quality of forensic analysis in Queensland

Concerns over the quality of forensic analysis in Queensland date back to 2003.[169] These concerns led to several reviews of Queensland Health Forensic and Scientific Services (QHFSS). Multiple reviews

continuously found failures in policies and practices in relation to DNA analysis procedures and outcomes.[170] Concerns regarding possible corrupt conduct have been raised during consultations, along with the lack of professional development for QHFSS staff.[171] The extent of alleged QHFSS failures has been reported in recent media articles and podcasts.[172] This includes criticism of QHFSS failures during the investigation of the 2013 murder of Shandee Blackburn,[173] failures to identify DNA directly taken from suspected sex offenders and the inability to identify a victim's own DNA from samples taken directly from the victim's body.[174] The podcast about the case raised issues that led to the establishment of a Commission of Inquiry into ongoing issues within QHFSS.[175]

Background

Current position in Queensland

DNA stands for deoxyribonucleic acid, a chemical that carries genetic information that is unique between individuals and can be used as a means of identification.[176] DNA profiling is routinely used in criminal investigations in Australia and across the world. This includes its use in sexual assault cases: for example, to identify or rule out an alleged perpetrator, or to prove or rule out sexual interaction when an alleged offender has deposited DNA on the victim-survivor's body or clothing. DNA analysis for the criminal investigation in Queensland is the responsibility of the QHFSS. The QPS relies on the QHFSS to support investigations involving the use of forensic services. QPS established a forensics register to track the progress of forensic evidence. QH has advised that despite recommendations from the QAO report in 2019, no service level agreement or protocols establishing roles and responsibilities has yet been developed.[177]

QPS forensic services are responsible for the collection and collation of forensic evidence from scenes of crime and delivery of that evidence to QHFSS for analysis.[178] This includes collecting forensic evidence from pools of blood, swab-testing of items suspected of being part of the crime scene and gathering suspect DNA.[179] QHFSS then completes the analysis of forensic evidence gathered by police.

QH is responsible for the collection of samples from a victim-survivor's body, including in sexual violence cases. In these circumstances, Sexual Assault Investigation Kits (SAIKS) are used to collect samples.

Recent media allegations have been made about systemic failures of forensic services and 'gross negligence' within the QHFSS DNA Analysis Unit.[180] These allegations have raised concerns about the ability of the QHFSS to identify DNA from samples that *should* result in the identification of a DNA profile (for example, penis swabs taken directly from a suspect and pools of blood next to a victim).[181] Professional development and skillsets of staff operating within forensic services have been questioned[182], and there have been ongoing concerns about governance and processes.[183] There have also been allegations of corruption and misconduct within QHFSS.[184]

The Taskforce received submissions from members of the public who are concerned that victim-survivors of sexual violence have been denied justice because of these alleged failures.[185]

A Queensland Government review conducted by the Ministerial Taskforce – Forensic and Scientific Services[186] in 2005 called for a further, independent review due to serious concerns over the quality of forensic services. This included questions regarding the suitability of AusLab – now QHFSS – to undertake forensic and public health science.[187] It concluded that there was a need for substantially enhanced governance arrangements for research and innovation, and a competency-based professional development program.[188] The Taskforce secretariat has not been able to identify a Queensland Government response to the report, and its recommendations do not appear to have been delivered.[189]

A Queensland Audit Office report in 2019 also noted quality and efficiency concerns about the QHFSS.[190] These included extensive delays in processing DNA, manufacturing issues with products used in analysis, decreased numbers of staff, problematic information sharing between courts and police, increased demand in services, and issues with updating the Forensics Register introduced to streamline practices in 2003.[191]

The QFHSS analyses and profiles about 30,000 forensic DNA samples from criminal investigations annually.[192] According to its website, the QFHSS provides its services locally, nationally and internationally.[193] The ramifications of failures within DNA processing may be significant within Queensland as well as having consequences beyond Queensland.

The National Association of Testing Authorities (NATA) accredits all government laboratories against national accreditation standards.[194] Despite ongoing concerns with QHFSS, NATA has continued to provide accreditation to the service each year.

On 6 June 2022, the Honourable Annastacia Palaszczuk, Premier and Minister for the Olympics, announced a full commission of inquiry in response to new information released by the QPS as part of its submission to the Taskforce.[195] This inquiry is to be led by former President of the Court of Appeal, Mr Walter Sofronoff QC, and will report by 13 December 2022.[196] Terms of reference for the inquiry were released on 10 June 2022 and include that the Commission will examine:

- whether the methods, systems and processes used by the Queensland Police Service, and the Forensic and Scientific Services for forensic Deoxyribonucleic Acid (DNA) collection, testing and analysis are, and have been, reliable, conducted in accordance with best international practice, and result in, and have resulted in, accurate reporting of the presence of DNA in samples submitted for testing and accurate matching of DNA samples
- whether, if such methods, systems or processes are not, or have not been, reliable, or conducted in accordance with best international practice, or do not result, or have not resulted, in accurate reporting or accurate matching, the reasons for any such failure.[197]

How do other jurisdictions address this issue?

New South Wales

The New South Wales (NSW) Forensic and Analytical Science Service (FASS) provides independent analysis to the NSW criminal and coronial justice systems.[198] FASS states it provides timely, state-of-the-art analysis to police and other investigators to help solve crime.[199] FASS includes an Evidence Recovery Team that examines crime scene exhibits and locates and identifies biological evidence.[200] FASS also provides specialist services for sexual assault and cold-case investigations. It uses an automated 'spermsearcher' microscope using artificial intelligence that can significantly enhance capability and capacity of the service.[201] As with QHFSS, FASS is NATA accredited to provide support and independent analysis to NSW Police and the NSW Coroner. Forensic Biology Evidence Recovery, DNA and Case Management teams work together to analyse and interpret crime scene evidence. FASS is capable of processing, analysing and interpreting high-volume DNA samples, with one of the largest capacities in the Southern Hemisphere.[202]

FASS uses a fully automated robotic system that enables the team to manage more than 70,000 DNA crime samples per year.[203] FASS is capable of reporting on DNA in under 12 hours from receipt of the crime sample.[204] It abides by the Forensic Pathology – Code of Practice and Performance Standards in NSW when undertaking post-mortem examinations.[205] The Sexual Assault Investigation Kit (SAIK) Results – Summary Reports provides information between the processes agreed between police, health, and FASS.[206] This includes FASS's role in forensic specimen collection, trends, training and development, and collection or storage issues when raised.[207]

Victoria

The Victorian Institute of Forensic Medicine (VIFM) is the largest multidisciplinary centre for forensic medical and scientific services in Australia.[208] The VIFM works with a range of justice agencies to provide critical forensic evidence to courts and tribunals.[209] The VIFM supports Victoria Police through provision of forensic medical and scientific services, including consultancy for current and cold-case investigations. This includes support in homicides and physical and sexual violence cases.[210] VIFM provides specialist medical and scientific staff who can interpret forensic analysis and provide expert opinions for all areas of investigation undertaken at the service.[211]

VIFM produces about 40,000 forensic reports each year.[212] The Forensic Services Division works alongside justice agencies to provide forensic evidence to police, legal practitioners, courts and tribunals.[213] It is also one of only two accredited laboratories capable of conducting mitochondrial DNA (mtDNA) analysis[214]. Given this, VIFM provides DNA analysis services to assist in criminal investigations across Australia.[215] The VIFM is currently conducting data analytics using machine learning to help support criminal investigations, forensic case analysis, prediction and diagnostics.[216]

Results of consultation

Victim-survivors and current and former offenders

Delays in analysing DNA have enabled perpetrators to escape justice, with a four-month delay blamed for one alleged offender fleeing the country before police could charge the suspect.[217] A second victim-survivor explained that after going through the trauma of 'invasive swab tests to collect the perpetrator's DNA' she was advised 'about a month later…that the police had accidentally destroyed the rape kit/DNA evidence and that they were 'very sorry'. This meant the case had no real chance of proceeding.'[218] Another victim-survivor described a:

'… category of errors including losing clothing worn during the attack, taking invasive forensic evidence and not testing it, and charging the wrong perpetrator. Only one was charged … based on DNA evidence despite there being three rapists. Officer who lost the evidence and mishandled the case was fined.' [219]

Government agencies

Queensland Health

QH advised the Taskforce that a signed Memorandum of Understanding (MOU) with partner agencies will define the strategic management processes required, but this is awaiting approval from relevant agencies.[220] At this stage, no formal MOU or service level agreement (as recommended in the QAO report) exists, although a working group for illicit drug management has been established.[221] QHFSS is not aware of any protocols outlining agreed terminology, roles and responsibilities of the Forensic Science Liaison Unit and DNA & Forensic Sample Management Unit (QPS).[222]

Queensland Police Service

QPS advised that contextual factors, such as those linked to investigative, prosecutorial and forensic requirements, can influence police action.[223] Additional resources for support and forensic services are required.[224] QPS explained that in 2018 QHFSS recommended that QPS cease testing of samples containing less than 0.008ng/L of DNA because the overall success rate of identifying a suspect was 10.6%.[225] QH advised that it had reached agreement with QPS regarding quantification thresholds for 'No DNA Detected' and 'DNA insufficient for further processing'.[226] This means that if a sample fails to meet a specific threshold, QHFSS will not progress to further stages of testing. QH advised an extensive validation process was conducted before the implementation of current quantification processes.[227]

QPS agreed with having cases recorded as 'insufficient DNA for further processing' but pursued the continuation of sample testing if deemed important to the case.[228] In 2021, the QPS gathered information to monitor the success rate of obtaining usable profiles. Investigators requested that samples categorised by QHFSS as 'insufficient DNA for further processing' be further tested.[229] The observed rate for these cases was 30% and so QPS requested the threshold for testing be reviewed. For sexual violence cases, successful identification was evident in 66% of cases.[230]

The QPS submission states that reference samples from a sexual violence victim are required to compare DNA from other samples identified during forensic processes.[231] QPS noted QH practitioners no longer take a reference sample, meaning police must obtain a sample at a later time – causing undue trauma to a victim.[232] On 31 March 2022, QPS and QH agreed to changing the word 'should' with 'shall' in the guidelines to reduce potential for this to continue.[233] No further changes were discussed.

QPS advised of ongoing enhancements to the forensics register – a shared case management system between QPS and QH that supports triage of forensic results, including DNA.[234] Ongoing work continues with a shared database developed between QPS, QH and DJAG to support timely sharing of autopsy and post-mortem information.[235] QPS relies on QHFSS to provide findings in an easily accessible manner, with liaison officers employed to ensure ongoing communication at the officer level.[236] To date, there is no single Service Level Agreement between QPS and QH; instead they operate using a Memorandum of Understanding.[237]

Legal stakeholders

The Queensland Law Society and Legal Aid Queensland noted forensic backlogs and other delays can negatively impact victims and offenders – including an increased likelihood of a guilty plea to resolve criminal matters quickly.[238]

Dr Kirsty Wright (Institute of Health and Biomedical Innovation)

Dr Kirsty Wright is a forensic biologist with several years of experience working in major crime, specialising in missing persons and Disaster Victim Identification. Dr Wright has led DNA teams in Australia and overseas, including in the 2002 Bali Bombings operation. She also led the expansion of the National Criminal Identification DNA Database for CrimTrac and has received multiple awards and accolades for her work.[239] Dr Wright is involved with the true-crime podcast *Shandee's Story,*[240] created by Hedley Thomas, a senior journalist working with *The Australian* newspaper. She has been publicly vocal about her concerns around the QHFSS. Dr Wright previously worked within the QHFSS but left more than a decade ago.

The Taskforce met Dr Wright to discuss significant failings of the QHFSS DNA-testing process resulting in inaccurate and incomplete analysis of crime scene evidence.[241] According to Dr Wright, QHFSS introduced new software for forensic services in 2012.[242] The new software was regarded as a good method for testing DNA but Dr Wright raised concerns regarding its implementation[243] in and before 2012-13. This included her concerns about introducing new methods without assessing quality and accuracy before implementation. QHFSS said this was done to keep up with the quantity of cases.[244]

Dr Wright explained that when introducing new software or equipment, the laboratory is required to undertake validation and verification of the new technology. This is to ensure the efficacy of the method used for testing the different kinds of samples expected during that process.[245] This testing enables a manager to troubleshoot any concerns before implementing the new technology. Dr Wright explained that although the new software was fine, the application of the methodology was problematic.[246] Compounding these issues was the allegation that QHFSS failed to purchase the appropriate software manual. During consultation with Dr Wright it emerged that higher-specification computers to run new software were not purchased – adding to the multiple issues raised.[247] Dr Wright alleged that scientists at QHFSS have raised the following concerns with QHFSS management and union representatives:

- scientists were not given an opportunity by management to provide truthful expert testimony in court
- QHFSS had insufficient resourcing
- management took shortcuts
- there were issues relevant to detection and interpretation of DNA results.[248]

Dr Wright believes a thorough and independent inquiry with forensic experts outside QHFSS is required. Cases potentially impacted by the laboratory failures could be identified through the forensic register kept by police.[249] She considers that the impact of doing nothing is a severely compromised criminal justice system.[250]

Crime and Corruption Commission

The Taskforce Chair met the A/Chairperson of the Crime and Corruption Commission (CCC) Mr Bruce Barbour and discussed the terms of reference for the then internal review of QHFSS. Mr Barbour confirmed public statements by Dr Wright and media reports that Dr Wright had made a complaint of corrupt conduct to the CCC relating to the QHFSS and was not able to discuss the complaint further.

Other relevant issues

Public allegations of forensic failure

Shandee Blackburn was a 23-year-old woman who was savagely stabbed to death as she walked home from work in Mackay on 9 February 2013. Shandee's murder is the subject of the *Shandee's Story* podcast series, which has reignited media and public interest in the case.[251]

If speculation in the podcast series is correct, then many victims may have been denied justice, and perpetrators have perhaps been enabled to continue offending.[252]

In addition to the *Shandee' Story* podcast, on 9 February 2022 media reports indicated Coroner David O'Connell had advised Ms Blackburn's family that he had reopened his inquiry into the death of Shandee Blackburn.[253]

Recent reporting on the coronial investigation into the death of 15-year-old Annette Mason regarding evidence provided to the Queensland Coroner's Court notes that DNA samples from the 1989 murder case could not be retested as they were either discarded or disappeared sometime after 2009.[254]

Ramifications of alleged forensic failures

The impact of alleged QHFSS DNA-testing issues, if confirmed, may have broad implications for the investigation and prosecution of sexual violence cases in Queensland. Current media interest in the issue has fuelled community uncertainty about the reliability of past and present Queensland forensic practices. This is undermining confidence in the sexual assault investigative process and in the administration of criminal justice in this state. It is having an adverse impact on past victim-survivors of sexual violence who are being retraumatised and on current victim-survivors of sexual assault who may not report the offending because of a lack of confidence in the system.

Could the retesting of samples assist to improve access to justice for victims of sexual violence?

There is no statute of limitations that prohibits a person from being charged with a criminal offence in Queensland. Therefore, an investigation of an alleged criminal offence could be reopened and result in a person being charged for historical offending as a result of new testing of DNA evidence. There may be legal argument, however, about whether the delay amounts to an abuse of process.[255] This could result in a permanent stay of the proceedings, where the court prevents the matter from being prosecuted, despite the new DNA evidence. Of more concern for victim-survivors of sexual assault, if a perpetrator has already been tried for an offence and not convicted, a further trial in relation to that same offending is generally not able to occur. This is known as the rule against double jeopardy.

In Queensland, rare exceptions to the double jeopardy rule include a retrial for an offence of murder where there is fresh and compelling evidence, and for an offence with a maximum penalty of 25 years imprisonment where there is a tainted acquittal.[256] There is power for the court, on the application of the Director of Public Prosecutions, to order an acquitted person to be retried for an offence of murder if satisfied that '(a) there is fresh and compelling evidence against the acquitted person in relation to the offence; and (b) in all the circumstances it is in the interests of justice for the order to be made'.[257] These statutory requirements establish a high threshold that is not easy to satisfy.

An application was made in Queensland for a retrial of a person who had been acquitted of murder, following the retesting of DNA evidence.[258] In that decision, the Court of Appeal referred to three cases from the United Kingdom, where circumstances justified a second trial, and commented that '[i]n each of these cases the DNA evidence went to the heart of the case by directly implicating the respondent in the commission of the act that constituted the offence'.[259] The Court of Appeal found that the DNA evidence in the Queensland case was not probative of the fact that the respondent did the act that constituted the offence and the application was refused.[260]

The Court of Appeal observed that:

> *The Criminal Code establishes a stringent series of conditions that must be met before a person can be tried again for murder after a jury's acquittal because the presumption is that the jury's verdict was a true verdict. The stringency is there because the legislature has recognised that, while circumstances might arise that justify a second trial, and while advances in techniques of proof will give rise to new forms of proof that satisfy the strict statutory requirements, a retrial of an acquitted person is an extraordinary proceeding.*[261]

Concerns over governance and accountability mechanisms

QHFSS has achieved re-accreditation on an annual basis despite ongoing concerns regarding the service's ability to accurately identify DNA, support criminal justice responses and abide by minimum standard policies and procedures.

In 2001, the QPS and QH developed a memorandum of understanding to outline agency responsibilities for forensic services. This MOU was updated in 2005 but has not been updated since. This is because neither agency can come to agreed service delivery expectations, including turn-around times for analysing volume crimes.[262] Because of these delays, the QAO report recommended the implementation of a

governance structure to effectively coordinate and provide accountability for managing forensic services across agencies. This included a performance framework to measure and report on the effectiveness and efficiency of forensic services.[263] These recommendations are yet to be fulfilled. QH advised the Taskforce that no formal MOU or SLA is currently in place. In November 2021 then Director-General Dr John Wakefield and Police Commissioner Katarina Carroll agreed to improving management of forensic services. To date, no formal agreement is in place, with QH advising the Taskforce an MOU head agreement was forwarded to the QPS for review and consultation.[264]

Taskforce findings

The Taskforce is grateful for the Queensland Government's announcement of a Commission of Inquiry into the delivery of forensic scientific services in Queensland. It is the Taskforce's hope that this inquiry will provide certainty and perhaps bring justice, if not a sense of closure, for victims of domestic and family and sexual violence.

The Taskforce notes, however, that sexual violence and other crimes will not wait while the inquiry does its work. Several recommendations from the 2019 QAO report, which are crucial to the day-to-day management of forensic and scientific services in this state, have not been actioned. Victim-survivors of sexual violence and other crimes cannot afford to wait until the end of the current inquiry for agencies to start working together more effectively. At a minimum, the Taskforce considers that there should be an interim memorandum of understanding and service level agreement between QHFSS and QPS to ensure there is a mutually agreed understanding of roles, responsibilities and protocols – noting that these may change with subsequent recommendations of the Commission of Inquiry. The Taskforce notes advice from both QH and QPS that an MOU and SLA have been in development for some time, which suggests that interim arrangements are achievable.

It would be helpful for QPS if these interim arrangements could provide certainty about turn-around times for forensic analysis to be completed for specific crimes, so that police could better inform victim-survivors of the progress of the case and work towards more timely finalisation of matters. This would support greater access to justice through the criminal justice system.

Taskforce recommendation

39. Queensland Health, Queensland Forensic and Scientific Services and the Queensland Police Service develop and implement an interim memorandum of understanding and service level agreement, pending the outcomes of the Commission of Inquiry into Queensland DNA testing as a priority. The memorandum of understanding and service level agreement will include governance and oversight arrangements and outline roles, responsibilities and protocols for the timely and accurate sharing of information.

Implementation

The Taskforce notes that during this interim period while the Commission of Inquiry completes its work, there should be an ongoing framework for QPS and QH. This framework should facilitate agencies raising and discussing concerns with each other around matters such as processes, testing practice and timeliness. This would strengthen the ability of both the QPS and QHFSS to continue to provide the best quality of service possible to victims of crime. The Taskforce suggests that QPS and QH take appropriate legal advice and work with the Commission of Inquiry to ensure that a framework for interim agreements to facilitate ongoing service delivery needs does not compromise the work of the Commission of Inquiry.

Human rights considerations

Human rights can be heavily impacted by failures in criminal investigations that rely on forensic services. This includes rights in regard to section 29 of the *Queensland Human Rights Act 2019* – right to liberty and security of person. For accused persons, timely and accurate analysis of forensic evidence is required to ensure they are not arbitrarily detained and to ensure they have a fair trial as DNA evidence can absolve as well as implicate. Victims also have a right to protection from danger of harm, including freedom from mental harm.

Human rights promoted

This recommendation will promote human rights to a fair hearing, contained in section 32 of the HRA, by implementing robust practices for the timely sharing of information, analysis and oversight. Accused persons will be afforded procedural fairness in terms of accessing timely hearing of matters. It would also enable competent representation of forensic evidence through the use of established protocols across police and QHFSS. This recommendation also promotes rights in criminal proceedings by providing an accused with timely access to a trial without unreasonable delay. Clearly articulated roles and responsibilities, alongside robust protocols for timely and accurate sharing of information, will also promote the right to privacy and reputation at section 25 of the HRA.

Human rights limited

This recommendation does not limit human rights.

Evaluation

The MOU and SLA should be reviewed in accordance with recommendations of the Commission of Inquiry.

Encouraging better use of forensic evidence by police, lawyers and judges

Background

Current position in Queensland

Under the Queensland *Police Powers and Responsibilities Act 2000,* the Police Commissioner may authorise police officers to perform some forensic procedures such as collection of DNA samples.[265] Forensic procedures include intimate or non-intimate forensic procedures.[266] These can be carried out only by qualified persons outlined in the legislation.[267] A police officer is considered to be a qualified person under this legislation.[268] A qualified person - police officer - must have the necessary experience or expertise to be able to take samples from an accused and have completed a course of training approved by the Police Commissioner for this purpose. DNA samples may be taken at a police station or establishment, a hospital, prison or detention centre, or another place deemed appropriate in the circumstances.[269] DNA samples may include a mouth swab or collection of hair follicles from the suspect.[270] Police must require a relevant person to report to police within seven days of a notice issued regarding the need for provision of a forensic sample.

A forensic procedure may be performed on a person if consent is obtained; the procedure is performed under a forensic procedure order; or the legislation authorises a qualified person to perform the procedure.[271] Requests for DNA samples must satisfy the requirements of being reasonably necessary, having regard to the rights and liberties of the person and the public interest.[272]

Police can obtain a forensic procedure order if they are satisfied that performing a forensic procedure on a 'person suspected of committing an indictable offence may provide evidence of the commission of the offence'.[273] A police officer must make an application for a forensic procedure order to a magistrate.[274]

QPS forensic services are responsible for the collection and collation of forensic evidence from scenes of crime and delivery of that evidence to QHFSS for analysis. This includes, for example, collecting forensic evidence from pools of blood, swab-testing of items suspected to be part of the crime scene and gathering suspect DNA. QHFSS then completes the analysis of forensic evidence gathered by police.

The Police Commissioner may enter into a DNA arrangement with the Department of Health and the chief executive officer of an accredited laboratory that is compliant with the current national standard ISO/IEC 17025:2005 (see discussion below).[275]

To lead DNA evidence in a criminal trial, it must be admitted as expert evidence. In Queensland, the applicable law in relation to the admission of expert evidence is contained in the common law.[276] The evidence is led by calling the witness who obtained the DNA samples. This will usually be a scenes of crime officer from QPS if there is DNA obtained from the offence location, or a forensic medical officer from QH if the DNA swabs were taken from the body of a person as part of a forensic procedure.

Evidence is then led from the scientist who conducted the DNA analysis about the results. In sexual offence trials, DNA evidence is useful where the identity of the accused person must be proven, or to assist in proving the offence, for example by proving sexual intercourse with the accused person.

Use of DNA forensic evidence in criminal proceedings has had mixed results since the first DNA-based conviction in the Australian Capital Territory (ACT) in 1989.[277] Several unsuccessful cases using DNA evidence followed (for example, 2009 *R v Jama*[278]). Failures were due to conflicting expert evidence about interpreting DNA analysis, confusion over prejudicial effects and lack of sufficient probative value.[279] The *Queensland Supreme and District Court Benchbook* (2017) provides some limited advice in a section on DNA evidence, including about jury directions, the responsibilities of the judge, prosecution, and defence,[280] the way in which forensic evidence should be presented – for example, the inclusion of statistical data used to reach a determination, how calculations were conducted, and estimates on the likelihood the DNA evidence came from the accused person.[281]

DNA evidence plays a small role in the initial police investigation and decision to charge a suspect.[282] DNA evidence can be critical, either in establishing the prosecution case or for establishing the innocence of a suspect.[283] It can assist to identify an offender in unresolved cases but may negatively impact a person's rights to privacy and privilege against self-incrimination.[284] The Honourable Michael Kirby AC CMG has identified that there can be flawed and dishonest forensic expert DNA evidence, incompetent conduct of the accused person's defence, failures to comply with proper forensic handling procedures[285] and judicial incompetence in terms of failing to detect and rectify inadequacies in DNA evidence.[286] Key aspects of forensics that must be constantly addressed include avoiding human and fraudulent error, maintaining rigour of analysis, upholding supervisory regulation, and securing transparency.[287]

Methods of forensic examination must show both reliability and accuracy.[288] This is because forensic analysis involves the interpretation of the evidence, requiring that each individual element be broken down to ensure both method and opinion are sound, valid and reliable – especially for use in court.[289] If forensic evidence is not valid and reliable it negates the potential benefits of DNA evidence for criminal cases, especially cases involving sexual violence where DNA evidence can assist to prove that something occurred between the victim and accused person. Additional evidence would then establish that 'something'.

The 2019 QAO report recommended implementation of a governance structure to effectively coordinate and provide accountability for managing forensic services across agencies.[290] This governance structure was recommended to incorporate the following elements:

- identifying current and future demand and required resources for forensic services
- establishing processes to capture the extent and impact of delays from forensic services, including the impact on courts
- implementing a performance framework to measure and report on the effectiveness and efficiency of forensic services including agency performance targets
- ongoing consultation with DJAG about delivery of forensic services and impact on the justice system
- implementing a process to coordinate and manage collecting, transporting, prioritising and destroying illicit drugs.[291]

Additional recommendations included development and delivery of reforms to forensic medical examinations and improving and prioritising the timely sharing of information between agencies.[292]

Governance structures are yet to be developed, with management level meetings held regularly to discuss issues in the interim.[293] QPS has implemented compulsory compliance performance inspection processes to improve quality assurance processes and practice.[294] Prioritising sharing of case information between agencies remains a work in progress, with workarounds for case triage in place.[295] A major impediment to streamlining practice is the use of different IT systems across agencies. QPS developed a Forensics Register in 2003 to keep better track of evidence but was reliant on a single employee to maintain the register. The Taskforce was advised that a new version of the Forensic Register was intended for release by late-April 2022 to support information sharing.[296]

How do other jurisdictions address this issue?

The National Association of Testing Authorities (NATA) accredits all government laboratories using the national accreditation standard ISO/IEC 17025 and a Field Application Document (FAD).[297] The ISO/IEC 17025 does not address standardisation of specific processes and procedures. In Australia, the AS5388 was developed to address this gap. The AS5388 outlines requirements for the end-to-end forensic process, with an expectation that discipline-specific science standards would be developed.[298] These standards are

important for maintaining confidence of investigators, the courts and the community but it is unclear whether present standards in Queensland cover the QHFSS.[299]

Results of consultation

Victim-survivor

Victim-survivors told the Taskforce about the distressing loss of forensic evidence such as clothing; invasive collection of forensic samples that are not tested; and failure to charge perpetrators despite the existence of DNA evidence.[300]

It is important that victim-survivors understand the importance of DNA evidence being collected soon after an incident, but they also need to understand that, if there is no DNA evidence, they can still report the sexual violence and the offence may still be able to be charged and prosecuted. Some victim-survivors who sent submissions to the Taskforce seemed to indicate the importance of DNA evidence to the legal process may be being overstated by police, with one victim-survivor telling the Taskforce 'there is no use in reporting if you didn't go to the police immediately after the event occurred so DNA could be collected. Even then they would probably dismiss you with insufficient evidence".[301]

One victim-survivor described the distress the process of taking this evidence can cause, particularly when coupled with behaviour of medical professionals and police that is not trauma informed:

> *'I was then visited by two police officers, a man and a woman, who treated me very harshly as they took my statement and completed the rape kit … They were shaming me while I was still in shock, while I was in a hospital bed and a complete mess, and then proceeded to carry out invasive swab tests to collect the perpetrator's DNA'.* [302]

Government agencies

Queensland Health

There are currently no protocols in place that outline agreed terminology, roles and responsibilities of QPS and QHFSS.[303] In response to threshold concerns, QH explained that QHFSS conducted extensive validation before determining the threshold.[304]

When asked to update the Taskforce on progress of the revised *Interagency guidelines on responding to people who have experienced sexual assault*, QH advised that DJAG was the lead agency and that QH was waiting for its release.[305]

QH has stated forensic scientists receive extensive and rigorous training regarding expert testimony.[306]

Queensland Police Service

Testing thresholds implemented at QHFSS have impacted success, with as many as 66% of samples under the threshold (that would not normally be tested) yielding a usable profile.[307] The testing threshold determines at which point QHFSS ceases testing for DNA. There are four steps involved in forensic testing, with many samples only tested to step two. It has been suggested that greater success would be achieved if testing thresholds were raised to include steps three and four.[308] While no communication issues have been noted at officer level,[309] it is inferred that systemic issues at a higher level may exist and further review of this is required.

Service system stakeholders

North Queensland Combined Women's Services told the Taskforce that decision making related to gathering forensic evidence should consider the needs and safety of victims, using a framework for safety assessment and planning.[310]

Other relevant issues

Lack of standards and protocols for the use of forensic evidence impedes access to justice

The QAO (2019) recommendation about the review of interagency agreements remains outstanding.[311] The lack of standards is partly due to lengthy delays in updating the *Interagency guidelines on responding to*

people who have experienced sexual assault and developing a Memorandum of Understanding and Service Level Agreement.

The Australia New Zealand Policing Advisory Agency (ANZPAA) implemented a guideline to forensic fundamentals for use across jurisdictions.[312] The guidelines set out the foundations for forensic science use across the criminal justice system. This includes requirements for explaining fact versus expert opinion. The guidelines outline the need for:

- underpinning science considerations such as use of relevant empirical studies (external and internal)
- clear explanations of the methodology used and the way opinions are formed
- statistically significant sample sizes
- level of expertise required to conduct and analyse results of different forensic techniques
- accreditation and certification
- validity – that is, ensuring testing is accurate, reliable (others can produce similar results) and reproducible (can get similar results for similar tests)
- limitations of any forensic technique must be clearly stated, including the potential for error
- how to present opinions as opposed to facts
- inclusion of processes to limit potential influence of human bias when evaluating and reporting results.

The recently announced Commission of Inquiry may address some or all of these issues. In the interim, the finalisation of the guidelines, agreement of an MOU and Service Level Agreement would be of benefit and have been discussed earlier in this chapter.

Police, legal practitioners and judicial officers not understanding complex scientific results

The Taskforce heard during the consultation forum with police investigators from across Queensland that they often find it difficult to accurately interpret complex forensic analysis results. Some scientists at the QHFSS are willing to discuss the results to assist police to confidently interpret the outcome of the analysis.

While speculative at this stage, the Shandee Blackburn case highlights the risks that might arise if lawyers and judicial officers do not understand basic concepts relevant to commonly used scientific information. For example, data being statistically invalid, and complex outcomes relating to the likelihood of DNA profiles being present in the general population, or specific cohorts within the population.

A review of literature has identified little by way of legal guidance on the use of forensic evidence in criminal trials.[313] Misuse, misinterpretation and misrepresentation of forensic evidence in the court process can be detrimental to achieving just outcomes.[314]

Dr Kirsty Wright told the Taskforce that it is the responsibility of forensic scientists to communicate the results of their analysis clearly, using plain English in a way that police, legal practitioners, judicial officers and juries can understand.[315]

Taskforce findings

The DJAG submission noted that the review of the interagency guidelines would be finalised soon. These guidelines will provide agreed standard timeframes within which QHFSS needs to provide analysis outcomes to police.[316] These guidelines and an interim MOU and Service Level Agreement that includes standards for forensic services would assist to resolve some of the issues between QPS and the QHFSS. The Taskforce found that an interim agreement and finalisation of the interagency guidelines pending outcomes of the Commission of Inquiry are important to enable ongoing service provision. The Taskforce acknowledges that this may mean the agreements and guidelines need to be revised again in response to the Commission of Inquiry.

The Taskforce considered recommending that the Queensland Government develop evidence-based standards and protocols such as those outlined by ANZPAA. These protocols cover the collection, analysis, interpretation and reporting of forensic evidence. The protocols would underpin services and responsibilities of the QPS, QH, DJAG, and Queensland Courts. Given the establishment of the Commission of Inquiry, these are matters best left for the consideration as part of that process or with the benefit of its findings and recommendations.

The Taskforce notes that a theme of its consultation in this area has been a fear by medical professionals about the process of giving evidence in criminal proceedings. Conversely, juries can find evidence about

forensic medical examinations, and the DNA analysis of samples taken, challenging and difficult. If investigators, lawyers and judicial officers do not have the skills to understand forensic evidence, they are unable to question and critically analyse results, question witnesses, or provide correct explanations to a jury. This may mean that systemic trends and issues are not identified and addressed. These failures are apt to undermine confidence in the criminal justice system.

The Taskforce considers it essential for the DJAG, the QPS and QH to work effectively and collaboratively in relation to the collection, storage, analysis and provision of evidence in relation to DNA. This is to ensure that technical scientific information is presented in a clear, accurate and appropriate way in criminal proceedings. The Taskforce believes that a plain English guide is required to help ensure improved consistency in the interpretation of forensic evidence. This guide should be regularly reviewed.

The Taskforce noted that the *Queensland Supreme and District Court Benchbook*, legislation, and case law regarding forensic evidence are available for lawyers and judicial officers. However, given the complexity and fluidity of scientific knowledge, including the use of statistical terms and concepts that are likely beyond the scope of general understanding, there is a need for additional guidance and continuing professional development.

Taskforce recommendations

40. The Department of Justice and Attorney-General, Queensland Police Service and Queensland Health finalise and agree interagency guidelines on responding to people who have experienced sexual assault, as soon as possible. These guidelines will be regularly reviewed, in consultation with specialist sexual assault services, and incorporate outcomes of the Commission of Inquiry into Queensland DNA testing. The guidelines will align with the interim memorandum of understanding and service level agreement recommended by the Taskforce (recommendation 39).

41. Queensland Health, in consultation with the Chief Justice, Chief Judge and Chief Magistrate, Department of Justice and Attorney-General, Queensland Police Service, and legal stakeholders develop a clear, transparent, plain language guide for police, legal practitioners and judicial officers on the use and interpretation of forensic analysis of DNA samples in sexual violence and other cases. The guide, which will be publicly available, will include definitions for key scientific and statistical terms, the use of data and information commonly contained in analysis results and plain English explanations of the forensic analysis process, and will be regularly updated, to assist investigators, legal practitioners and judicial officers to understand and critically analyse forensic evidence.

Implementation

Consistent with the implementation of the MOU and SLA above, DJAG should work with QPS and QH to ensure the interim guidelines will not impede the work of the Commission of Inquiry.

QH should establish a working group - consisting of appropriately qualified members of the QPS, legal profession, judicial officers selected by each head of jurisdiction, and specialist sexual assault services - to develop a plan for the delivery of the guidelines. Consideration could be given to involving a Queensland university with appropriate faculty expertise in law, justice and forensic science, both in the development and the ongoing maintenance of the guide.

Human rights considerations

Human rights promoted

Section 32 of the *Queensland Human Rights Act 2019* states that a person has a right in criminal proceedings to be tried without unreasonable delay and to have finality of proceedings. These recommendations aim to reduce current delays to criminal proceedings that limit a person's right under section 29 to liberty and security of person and impede a person's rights under section 31 - accessibility to a fair (and timely) hearing. These rights will be promoted through timely sharing of information, outcomes of analysis, and clear, plain English explanations of forensic reporting. These recommendations are compatible with human rights that aim to promote ethical practice, promote an individual's rights under

section 25 to privacy and reputation, and reduce potential for discrimination through promotion of rights to a fair hearing under section 31 through timely commencement of criminal proceedings.

All recommendations listed above aim to strengthen whole-of-government and service response to all victim-survivors of sexual violence. Several human rights are engaged across these recommendations, such as the right to privacy and reputation (section 25). Both victim-survivors and accused persons have a right to privacy and reputation, including protection of personal information, data collection and correspondence. Strengthening policies, processes and operational practice will support greater confidentiality for people seeking help after a sexual assault. Ensuring access to timely, accessible, culturally appropriate and holistic support is essential for upholding a victim-survivor's rights under section 25 to privacy, section 26 the protection of families and children, and section 37 right to health services.

Evaluation

The interagency guidelines should be reviewed to take into consideration the findings and recommendations of the Commission of Inquiry once received.

The plain English guide should be subject to annual revision to ensure it remains relevant and up to date, including by incorporating any scientific developments or advancement in knowledge.

Conclusion

Significant issues have been raised in this chapter about forensic medical examinations and the collection of forensic samples, as well as the analysis and use of forensic evidence, including in sexual violence cases.

Many victim-survivors of sexual violence face barriers when deciding whether to report sexual violence. The accessibility, availability and reliability of forensic medical examination services are likely to contribute to these barriers.

The Taskforce has also heard concerns about the safe storage and analysis of forensic samples. The loss of samples can be devastating and retraumatising for victim-survivors of sexual violence.

The Taskforce has heard complaints about the QHFSS and is grateful that these are now being properly investigated by a Commission of Inquiry.

Recommendations from past reviews, including the 2018-19 QAO report, have not been implemented. Concerns remain about governance arrangements and effective working relationships between QH and the QPS in relation to the provision of forensic analysis services. Pending the outcome of the Commission of Inquiry, interim arrangements including the finalisation of an outstanding interagency guideline should be put in place.

The Taskforce acknowledges that forensic analysis information and evidence is complex and outside the common understanding of many police, lawyers and judicial officers. Additional guidance should be developed and made publicly available to assist courts to understand and accurately interpret complex scientific and statistical information.

None of these recommendations will undermine the rights of accused persons to a fair trial.

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Chapter 2.7: The legal definition of consent and the excuse of mistake of fact

Queensland should move to an affirmative model of consent to better reflect community expectations of equality and mutual respect in consensual sexual relationships and to drive change in the way sexual offences are prosecuted and defended.

A person who practises 'stealthing' has changed the nature of the sexual act for which consent was given, is acting without consent, and should be prosecuted for the offence of rape.

Consent and Mistake of Fact

The *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021* (the 2021 Amendment Act) amended the provisions of the Criminal Code that deal with consent and the excuse of mistake of fact in response to the recommendations of the Queensland Law Reform Commission's (QLRC) report, '*Review of consent laws and the excuse of mistake of fact'* (the QLRC Report).[1]

During the Parliamentary debate of the 2021 Amendment Act, the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, the Honourable Shannon Fentiman MP, acknowledged that there were 'a range of views on the Bill and its scope, including stakeholders that are concerned the reforms in the Bill do not go far enough in reforming the law of consent and mistake of fact'.[2] The Shadow Attorney-General and Minister for Justice, Mr Tim Nicholls MP, also noted: 'Many groups with substantial and longstanding interest in this area of our criminal law, especially those who tirelessly advocate for survivors and victims of, and work in the areas of sexual and domestic violence have expressed disappointment with this Bill.'[3]

This chapter considers whether further amendments should be made to the definition of consent and the excuse of mistake of fact in Queensland's Criminal Code and what form any amendments should take.

Background

Current position in Queensland

The QLRC Report was delivered to the then Attorney-General on 30 June 2020 and was tabled in the Queensland Parliament on 31 July 2020.

All of the QLRC Report's recommendations were accepted by the Queensland Government and implemented as part of the 2021 Amendment Act, which commenced on 7 April 2021.

Current definition of consent

Section 348 of the Criminal Code defines consent as:

> *(1) Consent means consent freely and voluntarily given by a person with the cognitive capacity to give the consent.*
>
> *(2) Without limiting subsection (1), a person's consent to an act is not freely and voluntarily given if it is obtained —*
>
> *(a) by force; or*
>
> *(b) by threat or intimidation; or*
>
> *(c) by fear of bodily harm; or*
>
> *(d) by exercise of authority; or*
>
> *(e) by false and fraudulent representations about the nature or purpose of the act; or*
>
> *(f) by a mistaken belief induced by the accused person that the accused person was the person's sexual partner.*

> *(3) A person is not to be taken to give consent to an act only because the person does not, before or at the time the act is done, say or do anything to communicate that the person does not consent to the act.*
>
> *(4) If an act is done or continues after consent to the act is withdrawn by words or conduct, then the act is done or continues without consent.*[4]

In 2018, the former President of the Queensland Court of Appeal, Sofronoff P, in *R v Makary,*[5] outlined what currently constitutes 'consent' for the purposes of Queensland's definition in section 348:

> [49] "Consent" was thus defined to require two elements. First, there must in fact be "consent" as a state of mind. This is also because the opening words of the definition define "consent" tautologically to mean, in the first instance, "consent". The victim's state of mind remains elemental. Second, consent must also be "given" in the terms required by the section.
>
> [50] The giving of consent is the making of a representation by some means about one's actual mental state when that mental state consists of a willingness to engage in an act. Although a representation is usually made by words or actions, in some circumstances a representation might also be made by remaining silent and doing nothing. Particularly in the context of sexual relationships, consent might be given in the most subtle ways, or by nuance, evaluated against a pattern of past behaviour.

The QLRC found that the present definition of consent in the *Criminal Code* 'reflects a communicative model [of consent] in that the definition requires consent (as a state of mind) to be "given" (that is, communicated) to the other person'.[6]

An affirmative consent model 'requires a person to "take steps" to find out if there is consent'.[7]

When the term 'affirmative model' is used it is associated with a requirement that there must be a clear and unequivocal positive communication about consent. It has been described as a 'yes means yes' approach, 'where consent is actively and positively expressed by the person giving it'.[8]

Affirmative consent has also been said to require the person initiating the sexual activity to obtain 'enthusiastic consent'.[9]

The QLRC report treated Queensland's communicative model of consent as being a positive or affirmative model but expressly rejected amendments that would require a clear and unequivocal 'yes'.[10]

The QLRC ultimately concluded that the law in Queensland 'strikes an appropriate balance between the degree of social harm incurred by acts of non-consensual sexual activity and matters of fairness to a defendant at trial'.[11] The QLRC recommended minor clarifying amendments to the definition of consent, which reflected the current state of the law in Queensland. Those clarifying amendments are in sub-sections 348(3) and 348(4) of the definition of consent extracted above. In coming to this conclusion, the QLRC not only considered the definition of consent under section 348 of the Criminal Code, it also considered the operation of the excuse of mistake of fact under section 24 of the Criminal Code.

Current legal operation of the excuse of mistake of fact

Under Queensland's codified criminal law, unless a particular state of mind is expressed as an element of the offence itself, the state of mind of the accused is irrelevant. The *Criminal Code* balances the absence of an automatically embedded mental element in each offence by providing for particular circumstances where a person is *excused* from criminal responsibility. One circumstance where a person is excused from criminal responsibility is when they may have done something (or failed to do something) under an honest and reasonable but mistaken belief in the existence of the state of things. If there is some evidence of this, the prosecution has to prove beyond reasonable doubt that the accused person did not have an honest and reasonable but mistaken belief. This is commonly referred to as 'the defence of mistake of fact' and it applies to all criminal offences in Queensland, not just sexual offences, unless clearly excluded.

In the context of sexual offences, if the accused person raises an honest and reasonable mistake of fact about consent, a jury or judge (in a judge-alone trial) could not convict unless satisfied beyond reasonable doubt that the prosecution had disproved that:

- the accused person honestly believed the other person was consenting (that is a *subjective* test), or

- the accused person's honest but mistaken belief about consent was reasonable. In this second part of the test they have to consider whether it was *objectively* reasonable for a person in the accused person's position to hold that belief. That means the judge or jury needs to consider what a reasonable person in the accused person's position should have believed.

The QLRC considered and expressly rejected proposals to:

- reverse the onus of proof for mistake of fact[12]
- make the test for mistake of fact purely objective[13]
- require that steps or reasonable steps must be taken by a defendant to ascertain consent before they can claim a mistake of fact[14].

The QLRC's conclusion that these reforms were unnecessary was based largely on its analysis of Queensland trials for sexual assault in 2018, which showed the conviction rate was in fact *higher* where mistake of fact was left to the jury, and its concern not to compromise an accused person's right to a fair trial.

The QLRC recommended the following amendments to give clear expression to established case law. These amendments were intended to improve understanding and increase consistent application of the existing law:

- an accused person is not required to take any particular steps to ascertain consent, but a jury can take into account anything the accused person said or did (or did not say or do) when considering whether they had an honest and reasonable belief about consent.[15] That recommendation is reflected in the current section 348A(2) of the *Criminal Code*.

- An accused person's voluntary intoxication can be taken into account when determining whether they may have formed an *honest* but mistaken belief about consent but it is irrelevant and must not be taken into account when determining whether any mistaken belief about consent may have been *reasonable*.[16] That recommendation is reflected in the current section 348A(3) of the *Criminal Code*.

How do other jurisdictions address consent and mistake of fact?

All jurisdictions other than Queensland and Western Australia refer to consent being 'agreed' rather than 'given'.[17] In Victoria, Tasmania and the Northern Territory, consent is defined as 'free agreement'.[18] In New South Wales[19] and South Australia[20] 'a person consents to sexual activity if the person freely and voluntarily agrees to the sexual activity'. In the Australian Capital Territory consent must be by 'informed agreement'.[21]

Recent amendments to the New South Wales *Crimes Act 1900* widened the non-exhaustive list of circumstances in which a person cannot consent to explicitly include when a person is so affected by alcohol or another drug as to be incapable of consenting to the sexual activity, when a person is asleep or when a person does not say or do anything to communicate consent.[22] In making these amendments, New South Wales brought itself into closer alignment with provisions in Victoria[23], Tasmania[24] and South Australia.[25]

In New South Wales, Tasmania and Victoria, an accused person's voluntary intoxication simply cannot be taken into account when considering their claimed mistaken belief about consent.[26] Tasmania was the first Australian state to legislate affirmative consent in 2004. In Tasmania, a mistaken belief about consent is not honest and reasonable in a number of circumstances including where the accused person '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'.[27]

The Australian Capital Territory amended its *Crimes Act 1900* on 12 May 2022 to provide that an accused person's belief about consent cannot be taken to be reasonable if they did not say or do anything to ascertain whether the other person consented.[28]

Amendments to the New South Wales *Crimes Act 1900* that commenced on 1 June 2022 provide that an accused person's belief that the other person consented to sexual activity cannot be reasonable if they did not, within a reasonable time before or at the time of the sexual activity, say or do anything to find out whether the other person consented to the sexual activity.[29]

Victoria does not have an excuse of mistaken belief as to consent. Rather, a jury will consider whether the accused person's belief as to consent was reasonable. The Victorian law provides that 'a person must reasonably believe that another person is consenting to an act'.[30] Whether or not a person holds a reasonable belief depends upon the circumstances, which include 'any steps that the person has taken to find out whether the other person consents'.[31] These provisions are based upon similar laws in England and Wales.[32] The Victorian Law Reform Commission (VLRC) report, *Improving the Justice System Response to Sexual Offences*, delivered in September 2021, recommended a 'move to a strong model of affirmative consent'[33] that includes 'a requirement for a person to take steps' to find out if there is consent.[34] On 12 November 2021, the Victorian Attorney-General announced that the Victorian Government would introduce legislation to implement this recommendation.[35]

The Law Reform Commission of Western Australia is currently considering Western Australia's laws on consent and sexual offences.[36] This includes whether the concept of affirmative consent should be incorporated into the legislation and how mistake of fact applies to sexual offences.[37]

Results of consultation

Victim-survivors

Victim submissions expressed ongoing concerns with the consent and mistake of fact laws in Queensland. Some victims suggested moving to an enthusiastic or active[38] consent model incorporating elements of freeze/flight/fight responses as implemented in Canada.[39] Another highlighted the one-sided nature of consent laws given that:

> *…in order to prove an allegation of rape to the criminal standard of beyond a reasonable doubt, the elements of the offence must be proven by the prosecution. By far the most important of these elements is the issue of consent and whether or not consent was given. In Queensland, the burden of proof that consent was given or not rests with the prosecution. Further, the accused has no onus resting upon them to disprove it. That means the accused does not actually need to prove they had the belief[40].*

Legal sector

The Women's Legal Service Queensland (WLSQ) and the Queensland Indigenous Family Violence Legal Service (QIFVLS)[41] supported changes to the law on consent and mistake of fact. The WLSQ submission stated that the current law is a direct contributor to Queensland's high attrition rates because it influences the practices of the Queensland Police Service (QPS).[42]

The Bar Association of Queensland (BAQ),[43] Legal Aid Queensland (LAQ)[44] and the Queensland Law Society (QLS)[45] did not support reviewing the consent and mistake of fact provisions.[46] BAQ, LAQ, and QLS advocated for an assessment of the impact of the 2021 Amendment Act before any further consideration is given to legislative change. LAQ's submission went further, stating there were no viable means to amend Queensland's laws of consent so that the negative impact on victims during the court process could be mitigated:

> *Short of abolishing the trial process and acting on the untested testimony of a complainant there is no possible amendment to consent law which can mitigate this impact. Any further mitigation will undermine an accused person's right to a fair trial, which must include an ability to properly test the evidence against him or her.[47]*

The QLS submission suggested that community support for a change in the law might be based on 'significant misconceptions' within the 'lay community' about the operation of the law.

> *Misconceptions of this type can result in a perception that the current state of the law takes an inadequate approach to the reception of evidence in these proceedings and, thereby, does not properly vindicate the rights of victims when, in fact, the situation in practice is not so.*[48]

Office of the Director of Public Prosecutions

The ODPP noted that purpose of the amendments to the excuse of mistake of fact in the 2021 Amendment Act was to be almost entirely declaratory of the existing law in Queensland and that, while it was too early to assess their impact:

> *…some response of the crown prosecutors to questions concerning the application of the amendments would suggest that the transitional provision is being interpreted to restrict the application of those amendments in trials conducted after their enactment and that may not accord with the intention of parliament when the amendments were introduced.*[49]

Academic

Submissions from academics at Bond University[50] and Rape and Sexual Assault Research and Advocacy (Bond University and Swinburne University of Technology)[51] supported amendments to align the position in Queensland with the recent NSW amendments.

Queensland Police Service

The QPS submission in response to Discussion paper 3 did not address consent or mistake of fact.

However, QPS representatives attended consultation forums that the Taskforce held around the state and the Taskforce conducted a QPS-focused consultation session with officers-in-charge and investigators[52] from across Queensland. At those consultations QPS officers indicated significant support for an affirmative consent model. Although their views could not be described as unanimous, many of the QPS officers considered that legislative change would assist the investigation process. Some felt that it would allow them to shift their focus towards the actions of the accused person:

> *… Affirmative consent gives us an opportunity when interviewing a suspect to challenge them by asking 'What did you do or say to make sure she was consenting?'* [53]

Government

The Queensland Family and Child Commission supported amendments to the definition of consent to improve clarity but with requisite protection to ensure children and young people are not unduly criminalised.

Sexual violence support sector

Ending Violence Against Women, Full Stop Australia, Gold Coast Centre Against Sexual Violence, Centre Against Sexual Violence, North Queensland Combined Women's Services, Queensland Sexual Assault Network (QSAN) and Zig Zag Young Women's Resource Centre strongly supported legislative amendment to reflect an affirmative consent model. These organisations roundly rejected the proposal from legal stakeholders to assess the impact of the 2021 Amendment Act before further changes are made to the law. QSAN's submission stated:

> *…These amendments [the 2021 Amendment Act] 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.*[54]

WWILD Sexual Violence Protection Association Inc (WWILD) noted that for women with an intellectual disability the current legislation is particularly problematic because of the difficulty expressed by many women with disability to explicitly say 'no'. They pointed out that there are many reasons a woman with intellectual disability may be unable to say no, including susceptibility to coercion or grooming practices, suggestibility and unequal power dynamics. A woman with intellectual disability quoted by WWILD in its submissions said:

> *'…It's hard to say no anyway, they might get violent and hurt you. Half the time your body freezes up.'*[55]

First Nations communities

In the communities visited by the Taskforce in this part of our work (Cherbourg, Woorabinda, Bamaga and the Northern Peninsula Area), community members told us that very few sexual violence cases progressed as far as a trial. In Cherbourg, the Taskforce heard about a fear of retaliatory violence and the likely impact on a victim and her family being required to leave the community for her safety as a usual consequence of a complaint of sexual violence. While many issues within communities contribute to this unacceptable outcome, it demonstrates the significant power imbalance of women and girls in communities when deciding whether to report what has happened to them and to communicate that they do not consent to sexual acts. Women in Cherbourg told the Taskforce:

> *The messages we are being asked to deliver in community are excellent, like enthusiastic consent, but it does not match the law. Mistake of fact is here in Queensland……victims are put on trial themselves rather than the offender, that is the barrier.*[56]

Other sectors

The Queensland Council for Social Services (QCOSS) strongly supported a move towards a legislated affirmative consent model.

Community understanding of consent

To support the Taskforce's consideration of issues relating to consent, we commissioned *Enhance Research* to undertake research into community understanding, attitudes and behaviours towards sexual consent in Queensland. The research involved 14 focus groups with a total of 94 male, female and LGBTIQ+ residents, conducted across Queensland in March and April 2022.

The results of the focus groups provide a reflection of how these community members grapple with the issue of sexual consent. A strong message from the research was that community members felt confident in expressing their understanding of consent at a conceptual level, but that they acknowledged that it can be difficult to navigate in practice.[57] For some, it can be difficult to find the right language to speak about the issues.[58]

The research found that, on a conceptual level, there was a strong view that sexual consent:

- involved permission between parties[59]
- was the responsibility of both (or all) parties[60]
- could be communicated in a variety of ways[61]
- needed to be continuously monitored throughout the sexual act[62]
- could be withdrawn at any time[63]

However, when presented with scenarios, these community members noted that complexities arose, particularly when alcohol was involved[64] or when there was an existing relationship.[65] Female and LGBTIQA+ participants raised the existence of underlying power imbalances, the potential for coercion and an individual's confidence to acknowledge and articulate their feelings, but this was not front-of-mind for many male participants.[66] Participants had mixed views on how a person freezing during a sexual act should be considered in terms of consent, with many suggesting it is challenging to interpret.[67]

While most participants acknowledge that both parties are responsible for ensuring there is consent, the discussion tended to centre on the person refusing, or withdrawing, consent and whether their actions were sufficient to communicate that to the other party.[68] There were a number of references to 'no means no'.[69]

Many community members acknowledge that in real life, a convention exists of the initiator 'trying something on' and the onus falling to the receiver of sexual advances to either confirm or refuse consent.[70]

Participants, particularly young people and parents of teenagers or young adults, spoke of the social pressure young people experienced to engage in sexual acts, and that lack of sexual knowledge prevented them from being able to give informed consent.[71]

Community members participating expressed an appetite for educational campaigns to improve understanding about sexual consent. Parents, family role models and schools were considered to have the most responsibility for consent education.[72] It was acknowledged, however, that parents may not be equipped to carry out the role well. The power of the media and social marketing campaigns was also acknowledged. [73]

Other relevant issues

Submissions and consultation feedback received by the Taskforce were polarised by sector

Legal stakeholders, except for the WLSQ and QIFVLS, strongly supported the methodology, findings and recommendations of the QLRC Report and the retention of the status quo, opposing any kind of reform of the law on consent and mistake of fact. The views of these legal stakeholders, shared by some members of the Taskforce, must carry considerable weight because of their professional knowledge and practice of the law. Their strong view that the law should not be changed at all, however, is in stark contrast with almost every other stakeholder group.

Almost all other stakeholder groups, including WLSQ and QIFVLS, supported legislative change that reflects a more affirmative model of consent. Some submissions were highly critical of the QLRC's approach to its review, describing it as 'limited and technical' and without sufficient regard to the human rights of victims.[74.]

It is clear that these different stakeholders viewed this issue from very different perspectives.

Those legal stakeholders who opposed change examined this issue from the perspective of an accused person and protecting an accused person's fundamental human right to a fair hearing in the criminal trial process.

Stakeholders who saw the role that the law also plays in community education, the investigation of sexual offences and the impact of the law on the human rights of the victim, particularly women and children, took a very different view. This is well demonstrated in the video submission to the Taskforce from support workers at the Centre Against Sexual Violence (CASV) in Logan and Redlands, where one support worker said:

'We go and do community education in schools and, morally, we talk about consent but that's not actually the legal definition in Queensland.'[75]

Should children between the ages of 12 and 15 in Queensland be able to be cross-examined about whether they consented to sexual activity?

At the Taskforce's community consultation forum on the Sunshine Coast, participants expressed shock and confusion that a child under the age of 16 years had been examined and cross-examined as to whether she had consented to sexual activity with an adult male. Their confusion stemmed from their belief that the age at which someone can legally consent to sexual activity in Queensland is 16 years.

The submission to the Taskforce from Full Stop Australia correctly identified that the reason why these child victims are cross-examined about consent is 'the hierarchy of offending' that exists between the offence of Carnal knowledge with or of children under 16 under section 215 of the Criminal Code (Unlawful carnal knowledge offence) and the offence of Rape under section 349 of the Criminal Code.[76]

The age of consent to sexual activity in Queensland is not contained in the definition of consent under section 348 of the Criminal Code. The age of consent is effectively created by the Unlawful carnal knowledge offence and the Indecent treatment of children under 16 offence at section 210 of the Criminal Code (Indecent treatment offence).

This 'hierarchy of offending' in the Criminal Code is established in two ways: by the difference between the maximum penalties for the offences of Rape, the Unlawful carnal knowledge offence and the Indecent treatment offence; and by provisions in the Criminal Code that allow for alternative verdicts.

The Unlawful carnal knowledge offence, which effectively prohibits sexual intercourse with a child under 16, is punishable by a maximum penalty of 14 years imprisonment if the offence is committed against a child who is aged 12 years or over, but is punishable by a maximum penalty of life imprisonment if the child who is offended against is under 12 years of age. The offence of Rape is punishable by a maximum penalty of life imprisonment regardless of the age of the person who is offended against, making it the most serious of these offences.

As to the consent of children, the offence of Rape only provides that a child under 12 is incapable of giving consent.[77]

This means that an adolescent child victim aged between 12 and 15 may potentially be questioned about consent at three different junctures in the criminal justice process:

- first, by the police when determining the appropriate initial charge
- second, by the prosecutor when determining the appropriate offence to indict in court
- third, during a trial for the offence of Rape where the adolescent child victim's consent to penetrative sexual acts will be a fact in issue.

Section 578 of the Criminal Code provides that a person who is indicted on a charge of Rape (which carries a maximum penalty of life imprisonment) may be alternatively convicted of committing the Unlawful carnal knowledge offence or the Indecent treatment offence (which both carry a maximum penalty of 14 years imprisonment) if commission of either of those offences can be established by the evidence. This means that if the prosecution fails at the trial to prove beyond reasonable doubt that the adolescent child victim did not consent to the sexual activity, the accused person cannot be convicted of Rape but may alternatively be convicted of the Unlawful carnal knowledge offence or the Indecent treatment offence, both of which carry the lower maximum penalty.

This 'hierarchy of offending' allows a person to be convicted of a less-serious offence with a lower maximum penalty when that person engages in 'consensual' sexual activity with an adolescent child victim. It could be argued that this accommodates the uncomfortable reality that adolescent children between the age of 12 and 15 years do sometimes willingly, but perhaps unwisely, engage in sexual activity with their peers. However, this 'hierarchy of offending' does seem to be inconsistent with the intention of the legislature (communicated by setting the age of consent) to protect children under 16 years of age who may lack the capacity to fully understand the risks, consequences and power-play involved in sexual activity and to make informed decisions in their best interest.

There may well be circumstances where a youthful offender who engages in sexual activity with an adolescent child victim could be justifiably held less criminally culpable, for example, when an adolescent child victim engages willingly in sexual activity with a person who is not significantly older than the adolescent child victim *and* that other person is not in a position of authority over the adolescent child victim.

As the submission from Full Stop Australia correctly identified, the Criminal Code presently contains no nuance as to issues such as position of authority or the difference in age between an adolescent child victim and the offender. It is possible in Queensland for an adult, who is significantly older than an adolescent child victim and in a position of authority over them, to successfully argue that the adolescent child victim consented to the sexual activity and therefore be found not guilty of Rape but guilty of the lesser Unlawful carnal knowledge offence or Indecent treatment offence.

There is no similar lower maximum penalty for someone whose sexual offending involves sexual activity other than sexual intercourse with an adolescent child victim between 12 and 15 years old. The Indecent treatment offence does not require any lack of consent and provides a higher maximum penalty (14 years imprisonment) than the offence of Sexual assault at section 352, which does require a lack of consent (10 years imprisonment).

The submission from Full Stop Australia questioned whether the current position in Queensland is consistent with community standards and noted:

> *The by-product of this (and also the mistake of fact excuse as currently worded) means that complainants under the age of 16 will need to withstand questioning and arguments which go directly to the issue of whether or not they consented… this situation is difficult and traumatic enough for adult complainants, let alone a girl or boy under the age of 16.*[78]

Should consent be required to be 'agreed' rather than 'given'?

Associate Professor James Duffy from the Queensland University of Technology has suggested that the definition of consent for sexual offending in Queensland should be redrafted to state that 'consent means free and voluntary agreement'.[79] This would modify the current definition so that consent must be 'agreed' rather than 'given'. Professor Duffy noted that, 'the giving of something is a unilateral action, whereas agreement is bilateral and mutual' and that the way that consent is currently defined in Queensland is really a description rather than a definition.[80]

The definition of consent as something to be agreed is how it is defined in all states of Australia, except for Queensland and Western Australia (where it is under review).[81] Associate Professor Duffy also identified that consent defined as free and voluntary agreement was a feature of the Model Criminal Code in Australia with the drafters of that Code rejecting 'given' in favour of 'agreed' in order to define consent in terms of 'what it is rather than what it is not'.[82]

The Taskforce noted that the QLRC Report considered this type of proposal and rejected it. The QLRC Report found that the current definition already reflects a communicative model and a term such as 'agreement' should not be introduced as it 'would not substantially change the operation of the law and may create uncertainty' about the meaning of the definition.[83] This argument was rejected by Professor Duffy, who noted that this language has been used in all other Australian jurisdictions apart from Western Australia for years and Queensland would only benefit from judicial consideration of the phrase in other jurisdictions.[84]

LAQ and QLS told the Taskforce that they did not support this type of amendment until there has been 'proper evaluation of the impact of the reforms recommended by the QLRC which have been enacted into legislation'.[85] [86]

QSAN[87] and WWILD supported the change from 'given' to 'agreed', with WWILD stating:

> *A change to consent laws where consent needs to be agreed would equalise power as both parties are part of the negotiation. It will no longer be about one person giving to another.*[88]

Should the non-exhaustive list of circumstances where consent does not and cannot exist in Queensland be broadened?

As noted above, jurisdictions such as New South Wales, Victoria, Tasmania and South Australia provide a more extensive set of circumstances where consent does not and cannot exist, including where a person is too intoxicated to consent; is asleep; or has not done or said anything to communicate consent. The QLRC Report found that section 348(2) of the Criminal Code's short but broad non-exhaustive list of circumstances where consent does not and cannot exist avoids 'the inflexibility (and potential unfairness) of narrowly drafted circumstances addressed to specific issues that may arise from time to time'.[89] The QLRC Report concluded that it was not necessary to add any additional circumstances in which consent does not and cannot exist to section 348(2).[90] LAQ and the QLS both agreed with the findings of the QLRC report.[91]

Some argued that amending the section to align with other Australian jurisdictions in this way would not change the law. However, it would provide greater clarity about when a person does not have the cognitive capacity to consent, for example, when they are asleep or highly intoxicated'.[92] This type of amendment would make it very clear how Parliament intended the law to be applied in what are some of the most frequently occurring scenarios in which sexual violence takes place.

WWILD also advocated for a provision based on section 2A of the Tasmanian Criminal Code, which provides that if an alleged victim of sexual violence suffers grievous bodily harm in connection with the sexual offence then that harm must be taken to be evidence of lack of consent on behalf of the victim unless the accused person can prove otherwise.[93] 'Grievous bodily harm' is a legal term that covers serious injuries such as the loss of body parts, serious disfigurement or injuries which could cause death if they were untreated.[94]

The *Enhance Research* work revealed that community members had difficulties with how to navigate sexual consent particularly when alcohol is involved.[95] By being explicit in its intentions, Parliament could assist those who conduct education about consent in schools and the wider community to explain the circumstances where consent does not and cannot exist as including when a person is highly intoxicated or is asleep. This would likely also be of assistance to jurors.

Should self-induced intoxication be considered when assessing whether an accused person honestly held a reasonable belief about consent?

In Queensland, voluntary intoxication can be taken into account when determining whether the accused person may have formed an *honest* but mistaken belief about consent, although it is irrelevant and must not be taken into account when determining whether any mistaken belief about consent may have been *reasonable*.[96]

The QLRC Report identified that Queensland's current law may be confusing for juries and even some judicial officers. The accused person's voluntary intoxication was a relevant factor in 28 of the 32 trials (88%) from 2018 examined by the QLRC where mistake of fact was left to the jury. In eight of the trials analysed (29%), the jury was not directed at all that evidence of the accused person's voluntary intoxication was irrelevant to the accused person's reasonable belief. Further, in two of the cases resulting in conviction, the Court of Appeal found the trial judge gave the jury inadequate directions about the relevance of voluntary intoxication to the accused person's belief about consent.

Tasmania's Criminal Code (which was based on Queensland's Criminal Code) provides that 'a mistaken belief by the accused as to the existence of consent is not honest or reasonable if the accused was in a state of self-induced intoxication and the mistake was not one which the accused would have made if not intoxicated'.[97] QSAN[98] and WWILD[99] supported an amendment of this nature.

The QLRC disapproved of the Tasmanian approach, which it found 'directs attention and focus to the hypothetical question of what the defendant would have believed if sober'.[100] The QLRC instead recommended a clarification of the case law in order to address the apparent confusion caused by the state of the law in Queensland. The QLS Criminal Law Committee agreed with the QLRC's position. The QLS submission noted that further amendment is unnecessary and would make no substantive change to the law in Queensland.[101]

Should Queensland provide that regard must (rather than may) be had to anything the accused person said or did (or did not say or do) to ascertain consent when considering whether they had an honest and reasonable belief about consent?

The current drafting of section 348A(2) only provides that regard *may* be had to steps taken or not taken to ascertain consent when considering whether an accused person had an honest and reasonable belief about consent. This position is a clarification of the current case law.

In the QLRC Report's review of trials for sexual offences in 2018, no jury direction was given in any trial about having regard to steps taken or not taken by the accused person and the amendments contained in the 2021 Amendment Act do not *require* there to be any change in this practice.[102]

By changing 'may' to 'must' a jury or judge will be required to consider whether the accused person took any steps to ascertain if there was consent. This would help address findings from the study conducted by *Enhance Research* about an apparent convention that exists in the community, 'of the initiator of a sexual act "trying something on" and the onus falling to the receiver of sexual advances to either confirm or refuse consent'.[103]

Although this amendment would fall short of *requiring* an accused person to show they did or said something to ascertain consent, LAQ and the QLS were of the view that because the amendment 'risks importing a pre-requisite that unless steps were taken by the defendant to ascertain consent, mistake is excluded' they could see no benefit in it.[104]

Should Queensland move to an affirmative model of consent similar to Tasmania, New South Wales and the Australian Capital Territory (and shortly, Victoria)?

Moving to an affirmative consent model would require Queensland to amend the Criminal Code to provide that an accused person's belief that another person consented to the sexual activity could not be taken to be a reasonable belief unless the accused person did or said something to ascertain that the other person was consenting.

Implementing this type of reform would mean that the law in Queensland would align with other Australian jurisdictions including New South Wales, Tasmania, the Australian Capital Territory and, shortly, Victoria.[105]

Although there would appear to be a groundswell movement across Australia to adopt this type of reform, the Taskforce has also heard arguments that this would seriously limit the human rights of an accused person to the presumption of innocence and a fair trial.

Senior lecturer at the University of Sydney, Andrew Dyer, argued that the practical effect of this type of amendment is to make the mental attitude of the victim the sole determining factor of whether the accused person is guilty without having any regard to the accused person's state of mind.[106] Mr Dyer regarded the affirmative consent clause used in New South Wales as a 'deeming provision' that transforms rape into a 'strict-liability offence' and noted that it will result in people being convicted of a 'serious, stigmatic offence' when they are 'morally innocent' because they had no intention of committing a non-consensual act.[107] LAQ had similar concerns, telling the Taskforce:

> *The risk in adopting an affirmative consent model lies in the unintended consequence that comes with attempting to overregulate and second guess human behaviour that is familiar to members of a jury – ultimately such overregulation may result in the conviction of innocent people. If an affirmative consent model is adopted, in our view there will be difficulties in mitigating that risk without the introduction of cumbersome and complex provisions.*[108]

However, the vast majority of written submissions to the Taskforce supported the introduction of an affirmative consent model and it was overwhelmingly favoured by people who attended stakeholder forums conducted by the Taskforce across Queensland. Full Stop Australia pointed the Taskforce to important safeguards for vulnerable accused persons that were introduced in New South Wales, which excuse people with cognitive impairments from the requirement to take steps to ascertain consent, further noting:

Sexual autonomy should not be confused with sexual entitlement. We don't consider that there is any moral or legal justification for a person not to take steps to ascertain consent before engaging in sexual activity.[109]

Taskforce findings

The law of consent as it applies to 12-15-year-old child victims needs to be reviewed

The reaction of disgust from attendees at community forums upon hearing that children aged 12 to 15 were sometimes cross-examined as to whether they 'consented' to sexual activity with an adult suggested to the Taskforce that there would be widespread community support for Full Stop Australia's submission to amend section 349(3) of the Criminal Code, which states that a child under 12 is incapable of consenting to sexual intercourse, to children under 16.

Although this was not an issue directly raised in our third discussion paper, the Taskforce considers that the Government should take this opportunity to undertake a broader review of the hierarchy of sexual offending against children in the Criminal Code.

Queensland should create a more nuanced and practical legal response to this offending that clearly distinguishes the culpability of adults who engage in sexual relationships with children, from the culpability of children or young adults not in a position of authority over the victim who have consensual sexual relationships with children aged 12 to 16 - a situation that does and will continue to occur.

The Taskforce notes that the Australian Capital Territory, New South Wales, South Australia, Tasmania, Victoria and Western Australia all have provisions which provide a legal defence when consensual sexual activity occurs between adolescents of a similar age, while still maintaining strong protections against adult sexual exploitation of adolescents.[110]

The Taskforce also notes that the Government is still considering its response to recommendations 27 to 29 of the Royal Commission into Institutional Responses to Child Sexual Abuse's Criminal Justice Report.[111] Implementing those recommendations would require Queensland to create a 'Position of authority' offence, which would criminalise adults who engage in sexual relationships with 16 and 17-year-old victims in circumstances where the adult occupied a position of authority over that child, for example, a relationship between a school teacher and a senior student. Queensland and Tasmania are the only Australian jurisdictions not to have this type of offence. Tasmania has announced its intention to introduce such an offence later this year.[112]

The law in Queensland is currently sending inconsistent and confusing messages about when children have the capacity to consent to sexual activity. The Taskforce considers that Chapter 22 (Offences against morality) and Chapter 32 (Rape and sexual assaults) should be reviewed and amended if and where necessary to ensure that the law:

- treats the capacity of children aged 12-15 to consent to sexual activity in a way that is consistent with community standards
- addresses sexual exploitation of children aged 12 to 17 years by adults who occupy a position of authority over those children
- provides internal logic in terms of maximum penalties to reflect a justifiable scale of moral culpability

Consent should be freely and voluntarily 'agreed' rather than 'given'

The Taskforce could see how the concept of 'giving' consent may be considered by some as being a more empowering term than 'agreed' in some contexts. However, the Taskforce was persuaded by what they heard from so many women all over Queensland: that, in practice, the 'giving' of consent suggests that women and girls are sexual 'gatekeepers'. This makes them liable to be pressured by others to 'give' or perhaps 'give up' their consent. The Taskforce accepted the contentions of these women, and those who work with and support them, that the term 'agreed' was more reflective of modern community standards, which value equality and mutual respect in sexual relationships, and better promotes and upholds those contemporary standards. The Taskforce also concluded that this change to the criminal law would not compromise the right of the accused person to a fair trial.

After careful consideration and debate, the Taskforce ultimately concluded that it was time for Queensland to now move into line with all other Australian jurisdictions (other than Western Australia, where it is under review) and provide that consent must be 'agreed'. The Taskforce did consider it important that this legislative amendment make clear that the agreement, as with all agreements, could be verbal, non-verbal, express or implied.

The Taskforce carefully considered concerns raised by the QLRC Report that this change in the law may cause confusion. The Taskforce agreed with the observation of Professor Duffy (see above) that Queensland practitioners and courts would be assisted in this respect by a wealth of jurisprudence from around Australia where this language has been used for some time and without compromising the accused person's right to a fair trial. Clearly, a public community education program across Queensland will be needed to explain the new law, including for young people and those with intellectual disability. In First Nations and in culturally and linguistically diverse communities, this should be done in a culturally appropriate way and be led by the community.

The list of explicit circumstances where consent does not and cannot exist should be expanded

The Taskforce noted that the current definition of consent in Queensland already provides that a person cannot give consent in circumstances where they do not have cognitive capacity to do so and that includes circumstances where a person is asleep or too intoxicated to give consent.

However, the Taskforce also considered the findings of *Enhance Research,* which indicated people find the concept of consent difficult to apply where intoxication is involved, and the findings of the QLRC Report, which indicated that intoxication is an issue on which juries are sometimes misdirected or given no direction at all. The Taskforce considered that there would be real benefits to community education about consent if Parliament was more explicit as to its intentions by giving common examples. The Taskforce concluded that Queensland should expand the non-exhaustive list of circumstances where consent does not and cannot exist, as in section 61HJ of the New South Wales *Crimes Act 1900*.

The Taskforce heard in consultation forums around Queensland about women and girls being subjected to non-consensual sexual violence from perpetrators who were probably influenced by violent pornography. The Taskforce therefore also considered whether Queensland should introduce a provision modelled on section 2A(3) of the Tasmanian Criminal Code, which provides that, if the person who alleges the sexual violence has suffered resulting grievous bodily harm, those injuries must be taken to be evidence of a lack of consent unless the accused person can prove otherwise.

The voluntary intoxication of an accused person should be irrelevant when considering their mistaken belief as to consent

This decision of the Taskforce was reached by majority. Three Taskforce members, Philip McCarthy QC, Laura Reece and Alexis Oxley, have provided a dissenting statement (see below, end of chapter).

The Taskforce noted that the current law in Queensland already provides that the voluntary intoxication of an accused person is irrelevant to any consideration about whether their belief about consent was reasonable.

Taking into account the results of the *Enhance Research* study and considering the results of the QLRC's analysis of sexual offence trials in 2018, the Taskforce concluded that the law in Queensland would benefit from greater clarity in this area. This conclusion is supported by the QLRC's research, which acknowledged that even some lawyers and judges seem confused about the relevance of intoxication to mistake of fact as to consent.

The Taskforce considered the QLRC's concerns that this would focus the jury upon a hypothetical sober defendant. But on balance the Taskforce decided that it was more important for the community and the courts to be clear that the fact a person's behaviour was influenced by their voluntary intoxication should in no way be relevant in deciding whether their claimed mistake as to consent to sexual activity was a lawful excuse.

Queensland should move to an affirmative model of consent

This decision of the Taskforce was reached by majority. Two Taskforce members, Laura Reece and Alexis Oxley, have provided a dissenting opinion (see below, end of chapter).

The Taskforce discussed this issue at length and carefully weighed the competing views.

The Taskforce considered on the one hand whether the additional limits on the human rights of an accused person could be justified, and on the other the importance of Queensland's laws reflecting community expectations, including those of women, who constitute 50.6%[113] of Queensland's population, and the desirability for consistency with other Australian jurisdictions.

The additional limit on human rights of the accused person can be justified

The Taskforce acknowledge that the practical effect of an affirmative consent model is that an accused person who claims that they mistakenly believed the victim was consenting will have to show that the accused person said or did something to justify that belief. By placing this additional evidential burden on an accused person, their rights will be limited, namely the rights to the presumption of innocence[114] and to a fair hearing[115], which ordinarily require the prosecution to disprove this issue beyond reasonable doubt. Further, although an affirmative consent model will not compel an accused person to testify,[116] it will be difficult for an accused person to claim they had a mistaken belief as to consent without their account being in evidence before the court in some way.

The Taskforce considered the important differences between establishing criminal liability in Criminal Code jurisdictions such as Queensland and common law jurisdictions like New South Wales and Victoria.

The QLS told the Taskforce that it was 'critical' to consider the different legislative frameworks of common law jurisdictions such as New South Wales and Victoria in which 'knowledge' must generally be proved as an element of all criminal offences.[117] The QLS concluded that this means that the task of prosecuting rape and sexual assault in Queensland is already significantly less onerous than in New South Wales and Victoria.

The QLS is correct that there is a common law presumption that the prosecution must always prove 'mens rea' (that is, the mental element or knowledge of the accused person about the wrongfulness of the act or omission) but common law jurisdictions can legislate to expressly alter that presumption or remove it altogether and replace it with, say, a defence of reasonable mistake. New South Wales and Victoria have done this in different ways with respect to consent for sexual offences. New South Wales[118] explicitly provides that a person is taken to have the requisite knowledge if they are 'reckless' as to whether the other person consented or if their belief that the other person consented to the sexual activity is not reasonable. Victoria[119] has legislated the physical and fault elements so that, as in Queensland, the prosecution only has to prove a lack of consent (the physical element) and that the accused did not reasonably believe there was consent (the fault element). It is also notable that Tasmania, the jurisdiction which has had an affirmative consent model for the longest period (18 years), is a Criminal Code state with the same prosecution onus requirements as Queensland. This led the Taskforce to conclude that if Queensland adopted a comparable affirmative model, there need be no significant differences from other states as to what the prosecution would need to prove to establish guilt.

The Taskforce considered whether a requirement to take 'reasonable steps' or 'to say or do something to ascertain consent' was too onerous. The Taskforce discussed whether an affirmative consent model realistically reflected the actual nature of sexual relationships in Queensland, particularly where the relationship was long standing.

The Taskforce did consider whether there were alternative ways of achieving affirmative consent that might place fewer limits on the human rights of an accused person. For example, the Taskforce considered whether the burden of proof could simply be reversed for an accused person seeking to claim that they had an honest and reasonable mistake of fact as to consent, either on its own or in combination with a requirement that regard *must* be had to anything the defendant said or did or did not say or do to ascertain consent.

Reversing the onus of proof for the excuse of mistake of fact on its own would be less likely to achieve the rebalanced focus on the actions of the accused person and the need to promote equality in sexual relationships that so many people have told the Taskforce is needed. A reversal of the onus of proof could still simply see the focus remain on what the victim did or did not say or do to communicate a lack of

consent, rather than what the accused person did or said to ensure there was consent. The Taskforce notes that, in transcripts of proceedings it has obtained, it has found no judicial directions to juries about what the accused person did or did not do to ascertain consent, and that this was consistent with the findings of the QLRC Report.

A reversal of the onus of proof for the excuse of mistake of fact as to consent, coupled with a requirement that regard *must* be had to what a person did or did not do to ascertain consent when deciding whether a person had an honest and reasonable mistake of fact about consent, would likely take Queensland very close to the affirmative consent model operating in Tasmania, New South Wales and the Australian Capital Territory. But it would fall short of *requiring* an accused person to do or say something to ascertain consent in order to ground an honest and reasonable mistake of fact as to consent. This option would leave open the possibility that an accused person could argue that in all the circumstances their mistaken belief as to consent was honest and reasonable, regardless of them not being able to show that they took any type of step to ascertain consent. Whilst this may impose a lesser limitation on the rights of the accused person, it could also be seen as insufficient to reflect the community expectations that consensual sexual relationships will involve frank, open and honest communication between equals. It may not create enough of a shift in focus onto the behaviour of the accused person rather than the behaviour of the victim, to create real change in the way sexual offence matters are investigated, prosecuted and defended during the criminal justice process.

It is important that Queensland is as consistent as possible with other Australian jurisdictions

It is clearly desirable that the laws criminalising sexual assault should be broadly consistent across Australia. The Taskforce was mindful of the pleas of former Australian of the Year, Grace Tame, promoting national consistency in the language used around sexual consent. At the 2021 National Summit on Women's Safety, when speaking about the various definitions of consent across Australian states and territories, Ms Tame said:

> *'Language is key. This is a question that we all have to ask [is] where are the examples of language that we use that softens the reality and therefore enables and emboldens perpetrators?'*[120]

The Taskforce was also conscious that in March 2022 Education Ministers from around the country unanimously agreed that consent should be included in the national curriculum from foundation until Year 10.[121] Consistent language around the definition of consent across the country would benefit the smooth implementation of the curriculum and ensure minimum confusion for Australians moving between states and territories.

The Taskforce concluded that Queensland should move towards an affirmative consent model based on what is in place in Tasmania, New South Wales and the Australian Capital Territory (and shortly, Victoria) because of the desirability of national consistency, the importance of introducing a model of consent capable of driving lasting positive change in the community and in the legal process, and to more accurately reflect current community expectations.

Safeguards are critical if Queensland adopts an affirmative consent model

The Taskforce recognised that people with cognitive impairments, mental health impairments and those with other impairments that impact on their ability to communicate could be unfairly disadvantaged by the introduction of a requirement to show that they took reasonable steps to ascertain consent. The Taskforce considers that it is critical that the introduction of an affirmative consent model in Queensland contains provisions modelled on section 61HK of the New South Wales *Crimes Act 1900*, which provides that the requirement to show that something was done to ascertain consent does not apply to people in these vulnerable categories if their impairment was a substantial cause of the accused person not saying or doing anything. The Taskforce accepts that, in such cases, this will necessarily require expert reports to ascertain the extent of any impairment and its impact on behaviour. It will be essential that both the ODPP and LAQ receive appropriate and equitable funding to obtain such reports. The Taskforce considered that the establishment of the expert evidence panel for sexual offences recommended by the Taskforce

Recommendation 80 will assist in ensuring the expert evidence presented in court is accessible to all and of high quality.

Consistent with the Taskforce's recommendations about the introduction of a new coercive control offence in *Hear her voice 1* and the approach taken by the New South Wales Government in introducing an affirmative consent model, the Taskforce also concluded that the legislation introducing affirmative consent not commence for at least six months after being passed by Parliament. In the intervening period, there should be an intensive community education campaign about the changes to the law, complemented by a primary prevention education campaign across the state. Whilst the campaign should aim to educate the entire community, it must specifically address the needs of young people and those with intellectual disability. In First Nations and culturally and linguistically diverse communities, the campaign must be culturally appropriate and community led. Finally, the Taskforce firmly concluded that it is vital to monitor the impact of this significant law change and to thoroughly review it five years after it commences, to ensure it is achieving its desired outcomes without unintended consequences or injustices.

Taskforce recommendations

42. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence review and amend if and where necessary Chapter 22 (Offences against Morality) and Chapter 32 (Rape and sexual assaults) to ensure that the Criminal Code:

- treats the capacity of children aged 12 to 15 years old to consent to sexual activity in a way that is trauma informed and consistent with community standards
- addresses sexual exploitation of children and young people aged 12 to 17 years old by adults who occupy a position of authority over those children
- provides internal logic across the two chapters so that the applicable maximum penalties reflect a justifiable scale of moral culpability.

43. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence amend sections 348 (Meaning of consent) and 348A (Mistake of fact in relation to consent) to provide that:

a) consent must be freely and voluntarily 'agreed' rather than 'given'
b) the non-exhaustive list of circumstances in which consent cannot be freely and voluntarily agreed at section 348(2) be expanded to reflect the circumstances set out in section 61HJ of the Crimes Act 1900 (NSW)
c) if the person who alleges the sexual violence has suffered resulting grievous bodily harm, those injuries must be taken to be evidence of a lack of consent unless the accused person can prove otherwise
d) no regard must be had to the voluntary intoxication of an accused person when considering whether they had a mistaken belief about consent to sexual activity
e) an accused person's belief about consent to sexual activity is not reasonable if the accused person did not, within a reasonable time before or at the time of the sexual activity, say or do anything to find out whether the other person consented to the sexual activity
f) the requirement in (e) above does not apply if the accused person can show, on the balance of probabilities, that they have a cognitive impairment, mental impairment or another type of impairment that impacted on the accused person's ability to communicate and that impairment was a substantial cause of the person not doing or saying anything.
g) The amendments in (e) and (f) above will not commence until:
    - the expert panel for sexual offence trials has been established (recommendation 80), and
    - appropriate and equitable funding has been provided to the Office of the Director of Public Prosecutions and Legal Aid Queensland to obtain any necessary expert reports.

The Bill containing these amendments will commence no sooner than six months after debate and passage of the Bill, to allow a comprehensive community education campaign to be undertaken.

Implementation

The legislative amendments recommended above should be the subject of a draft consultation Bill before they are introduced into Parliament. Consultation on the draft Bill should include legal, domestic and family violence and sexual violence, disability and Aboriginal and Torres Strait Islander stakeholders as well as people with lived experience.

Consideration should be given to updating the Director of Public Prosecutions' 'Director's Guidelines' (see recommendation 47) and the Supreme and District Court Benchbook in the period between passage and commencement of the legislation.

Lawyers should undergo training in the new laws before their commencement. Judicial officers should consider their professional development training on the new laws, preferably through a judicial commission.

Human Rights considerations

Legislation to more clearly define consent and limit the application of mistake of fact as to consent may reduce rates of sexual offending by promoting healthier, more respectful and more equal sexual relationships in the community. It may help reduce the high attrition rates of sexual assault complaints as police and prosecutors become more confident to pursue more cases. This may result in more convictions. Charges for sexual offences may become more difficult to defend as it is likely that an accused person claiming mistake as to consent will have to refer to evidence in support of their alternative version of events, in order to satisfy a jury or judge (in a judge-alone trial) that the accused person did or said something to ascertain consent. These reforms better reflect contemporary community views about consent in sexual relationships. They should provide greater confidence to sexual assault victims that their reports of sexual assault will be appropriately investigated and dealt with in the criminal justice system.

Human rights promoted

The human rights promoted and protected under the *Human Rights Act 2019* include the right to recognition and equality before the law (section 15), the right to life (section 16), the protection from torture and cruel, inhumane or degrading treatment (section 17), and the right to security of person (section 29).

Human rights limited

Human rights that may be limited include the right to liberty and security of person (section 29); right to a fair hearing (section 31); and rights in criminal proceedings (section 32). The Taskforce carefully considered whether the limitation of these rights was justified. This is discussed above under 'Taskforce Findings".

Limitations on rights are justified

The amendments recommended by the Taskforce have the legitimate purpose of improving the fairness of trials for sexual offences and ensuring that the law recognises the responsibility of parties to sexual activity to ensure that other parties have agreed to the activity. The rights to a fair trial in criminal proceedings extend beyond the right of the accused person and include consideration of the interests of the community and the protection of witnesses.[122] The recommended amendments will ensure that it is not only the account of the person alleging the sexual violence that is scrutinised by the police, lawyers and jury or judge. Importantly, the recommended amendments will in no way limit the accused person's right to cross-examine and put directly to the victim that they consented or that the accused person took particular steps to ascertain consent. As noted above, the Taskforce considered whether there was any less-restrictive way to achieve the intended purpose and concluded there was not. To the extent that there is a limitation of an accused person's human rights, that limitation is justified in a free and democratic society based on human dignity, equality and freedom.

Evaluation

Before the commencement of the legislation, the Department of Justice and Attorney-General should ensure that information will be recorded about the operation of the new laws in a way that allows information to be extractable for the purpose of a review. The impact of the amendments and their implementation should be reviewed as part of recommendation 186 of this report, which provides for a

review of all legislative amendments recommended by this report five years after their commencement, with a focus on any impacts on victim-survivors of sexual violence and persons accused of sexual violence.

Stealthing

Background

Current position in Queensland

Stealthing is a term used to describe non-consensual condom sabotage or removal. Concerningly, it is a practice that is increasing. Academics have observed that '[w]hile stealthing arguably vitiates consent, its classification as rape is dependent on the court's interpretation of the current legislative provision relating to consent'.[123]

In Queensland, rape is defined under section 349 of the *Criminal Code*. The section notes that:

(2) A person rapes another person if -

> *(a) the person has carnal knowledge with or of the other person without the other person's consent; or*
>
> *(b) the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent; or*
>
> *(c) the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent.*[124]

The QLRC Report acknowledged that it received submissions about this issue and found it a 'concerning practice'[125] and that '[t]here may well be merit in considering whether this practice should be specifically dealt with as an offence in its own right'.[126] However, it did not recommend amending the definition of consent in the Criminal Code to include 'specific circumstances where the defendant sabotages or removes a condom without consent'.[127]

How do other jurisdictions address this issue?

The Australian Capital Territory was the first Australian jurisdiction to legislate against the act of stealthing. The *Crimes Act 1900* (ACT) states that consent of a person to sexual intercourse is negated if that consent is caused 'by an intentional misrepresentation by the other person about the use of a condom'.[128]

The New South Wales Government has adopted the NSWLRC recommendation of including sex with a condom as an example of a particular sexual activity to which a person may consent, without consenting to any other sexual activity.[129] The VLRC has recommended a similar approach.[130]

Results of consultation

Legal sector

The QLS and LAQ agreed with the QLRC's recommendation that section 348(2) of the Criminal Code should not be amended to include specific circumstances where the accused person sabotages or removes a condom without consent.[131]

The BAQ did not support a stand-alone offence or an amendment to the definition of consent to provide explicitly for 'stealthing'. The BAQ's view was that an act of stealthing would already be covered and criminalised under the existing law. It was the experience of the association's members that this type of offending is not commonly brought before the court but, in any event, is conduct that would vitiate consent and, therefore, amount to rape.[132]

Sexual assault support sector

North Queensland Combined Women's Services supported stealthing being dealt with under section 218 (Procuring sexual acts by coercion) of the Criminal Code.[133] QSAN and the Gold Coast Centre Against Sexual Violence Inc supported the introduction of a stand-alone offence of stealthing.[134]

Other stakeholders

The Respect Inc submission noted that many police 'consider that situations involving non-payment and stealthing of sex workers are a type of fraud, not rape'.[135] Those attending the Taskforce's community consultations strongly favoured clearer criminalisation of stealthing.

Other relevant issues

Is stealthing already covered by the law in Queensland?

The act of stealthing is, at least arguably, already covered and criminalised under the existing law, under the Rape provision (s349 of the *Criminal Code*), although as noted in the submission from BAQ it is not often prosecuted. The Taskforce has been able to find very few cases where stealthing has been successfully prosecuted.

In March 2021, the District Court at Southport rejected a defence argument that the practice of stealthing could not reasonably support a prosecution for rape.[136] The Court grappled with the lack of available precedent and resorted to extraneous materials to come to its conclusion.

In a workshop the Taskforce held with the ODPP, a prosecutor commented that they had a matter involving stealthing and did not want to proceed with it as an offence of rape. They noted a difference in opinion among ODPP staff about whether the conduct amounted to rape. The prosecutor stated that they did not sign the indictment for rape because 'How do you prove the defendant deliberately took the condom off?'.[137]

Should stealthing be treated as rape?

Some commentators argue that the practice of stealthing is immoral and should be criminalised.[138] Others argue that the moral culpability of an offender who obtains sexual consent by fraud or misrepresentation is different to the moral culpability of an offender who forces another person to participate in sexual activity against their free will and that this is already reflected in Queensland's legislation.[139]

Taskforce findings

The overwhelming feedback that the Taskforce received in consultation forums across Queensland and in submissions was that the practice of stealthing amounts to sex without consent, that is, rape.

Legislation that expressly references stealthing conduct will provide clarity in the law and send a message to the community that the conduct constitutes a crime. This may encourage both victims to make a complaint about this conduct and police to investigate it, resulting in more such charges progressing through the courts.

The Taskforce agreed with the New South Wales Law Reform Commission that sexual activity without a condom falls outside the scope of a consent which is limited to sexual activity with a condom.[140] The latter provides valuable protection from pregnancy and sexually transmitted diseases so that the impact of stealthing can have serious consequences for a victim.

Queensland should explicitly recognise this in the same manner as New South Wales, by providing that 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. A legislative example of unlawful stealthing should be provided.

Taskforce recommendation

44. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence amend sections 348 (Meaning of consent) to:

a) provide that a person who consents to a particular activity is not by reason only of that fact to be taken to consent to any other activity

b) provide a legislative example for the provision in a) that a person who consents to 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.

Implementation, human rights considerations and evaluation

Implementation, human rights considerations and evaluation are the same as for the other recommended amendments to sections 348 and 348A of the Criminal Code (see above).

Non-payment of sex workers as a factor vitiating consent

The issue was considered by the QLRC in its 2020 review of consent laws and the excuse of mistake of fact but the QLRC did not make any recommendations. It noted the issue raised broader policy questions relating to the regulation and protection of sex workers, which was outside the scope of its review. Subsequently, a separate reference has been made to the QLRC to recommend a framework for a decriminalised sex work industry, with a final report due to the Attorney-General and Minster for Justice by 27 November 2022.[141]

Appropriately, this issue is being specifically considered as part of the QLRC's current work to recommend a framework for a decriminalised sex work industry.[142] It is therefore not appropriate for the Taskforce to make findings or recommendations on this issue.

The Taskforce does, however, wish to give voice to the views of sex workers with whom the Taskforce met during a small group discussion facilitated by Respect Inc. They described the usual practice as specifically agreeing the acts and payment in detail with the client, often via text message, before any acts taking place. They argued that acts committed beyond an agreed scope should be considered to have occurred without consent and that sex workers should not be precluded from making a complaint about sexual violence in these circumstances.

The majority of sex workers and advocates consulted by the Taskforce were firmly of the view that non-payment constitutes rape or sexual assault. Other sex workers have expressed publicly that they are somewhat ambivalent about whether non-payment should constitute rape (noting the higher likelihood of violence being involved) or a less-serious charge.[143] These sex workers, however, emphasised that this conduct was more serious than fraud because of the fraudulent invasion of their bodily integrity.

Conclusion

The Taskforce understands that its majority recommendation that Queensland should move to an affirmative model of consent supported by more explicit and direct definitions of what is and is not consent represents a significant change to the legal position in this state.

The legal definition of consent is, however, changing across Australia. Queensland is not alone in grappling with how the law should best reflect modern standards and community expectations of equality and mutual respect in sexual relationships. As we learn more about the long-lasting and often devasting impact of sexual offending against victims, including women and girls, the Taskforce considers that the law must develop to reflect these new understandings.

The law on consent and the excuse of mistake of fact serves many purposes both in and outside a criminal trial. The Queensland criminal law informs the community about the legal and moral obligations of all those within the state and reflects community expectations and standards. The law informs victims of sexual violence about their rights. The law guides those who first respond to a victim reporting sexual violence, whether they be a friend, a relative, a health worker or a police officer. The law guides prosecutors and defence lawyers as they shape their strategies before and during trials of sexual offences. During the criminal trial, the judge will explain the law to the jury, who must reach their verdict within the framework of the law.

The amendments to the law the Taskforce has recommended in this chapter are designed to clearly communicate the strong message that the Taskforce has heard throughout its consultations. Women and girls from across Queensland have clearly told the Taskforce that they want the law to reflect their fundamental human dignity and their reasonable expectation that others will not engage them in sexual activity without their clearly communicated consent.

Some lawyers and commentators can be expected to be hesitant to embrace change, particularly change that may criminalise behaviour not previously criminalised or make existing criminal charges easier to establish. Those responsible for making and reforming the law are righty resistant to amend the law to reflect passing trends. But the law must reflect the changing, considered views of the community it regulates and protects, if it is to have the respect and confidence of the people it serves. Women and girls

constitute 50.6% of the Queensland population.[144] Many women and girls have made submissions or told the Taskforce in our consultations that they want all people to have autonomy, equality and respect in their personal and sexual relationships. Their voices must be listened to and reflected in the law.

The law also recognises that those with intellectual, cognitive or mental health impairments may be less criminally responsible for their offending and should be treated differently. The proposed amendments must reflect that.

Women and girls have also clearly told the Taskforce that when they consent to sexual activity on the basis that a man or a boy will wear a condom, they are in no way consenting to sexual activity without it. Stealthing is rape and puts female victims at risk of unwanted pregnancies or sexually transmitted diseases. The Taskforce has recommended that the law clearly reflect the reality as experienced by victims.

The Taskforce acknowledges that these amendments will necessarily impact on the rights of a person accused of committing a sexual offence. Charges for sexual offences will probably become more difficult to defend as a result of these amendments. The Taskforce is of the view that the proposed amendments will more fairly reflect considered, contemporary community views and more fairly include the voices of women and girls. The Taskforce is mindful that these amendments should not lead to wrongful convictions and for that reason has recommended essential safeguards. Review of these amendments after five years is imperative to ensure that a fair balance between the rights of victims of sexual violence and the rights of the accused person has been achieved without unintended consequences or injustices.

Dissenting statements

Dissenting opinion on intoxication
Taskforce members Alexis Oxley, Laura Reece and Philip McCarthy QC

It is important that there is clarity in the law. The law should properly prevent the inebriated offender relying upon his intoxication as an excuse for his behaviour. The intoxicated condition of the perpetrator of sexual offending must not and should not be considered when assessing whether his mistaken belief was held reasonably. It is both common sense and a community expectation. However, the honesty of his belief (contrasted with whether his belief was reasonably held) is an assessment of his actual belief at the point in time in which it was held. The influence of intoxication may be relevant to and may inform his actual held belief (that is, it was held honestly, and this is separate consideration from the issue of whether it was held reasonably).

Whilst the proposed amendment by the majority is limited in application to sexual offending, the provision has broader application than only that for mistaken belief as to consent in sexual offending, and the provision is applied to other mistaken factual beliefs held by perpetrators of offences. The law, as applied in those other cases of factual mistakes, similarly prevents the inebriated offender relying upon his intoxication as an excuse for his behaviour. In those other cases of factual mistakes, the law would still permit the influence of intoxication to be considered relevant to his actual held belief. It is inappropriate for there to be differing applications of the provision depending upon the character of the mistake made.

The Taskforce has heard from many within our community, from participants in the criminal justice system, and from case studies and analyses that followed, that intoxication is often misused to excuse behaviours in sexual offending. There is a lack of clarity in the law and more particularly the application of the law in such cases. The recommendation we support is slightly different to that of the majority and is that the law should be amended to be explicit in its terms

a) *no regard must be had to the voluntary intoxication of an accused person when considering whether they had a reasonable mistaken belief*

Dissenting opinion on affirmative consent
Taskforce members Laura Reece and Alexis Oxley

The defence of mistake of fact is not a 'loophole', or a technicality. It protects those who have an honest and reasonable belief as to consent from what would otherwise be a conviction for a serious criminal offence. Whether a belief is honest is something personal to the individual, but whether it is a reasonable belief must be judged against the standard of a reasonable person in the position of the accused. This necessarily means that as society changes, so will the standard of reasonableness applied by the jury.

The QLRC has only recently undertaken a review of consent and mistake of fact in sexual assault and rape cases, with their report delivered in June 2020. As part of the nine-month review process, they reviewed the 135 trials involving rape or sexual assault which were heard in Queensland courts in 2018. The amendments introduced to incorporate their recommendations commenced on 7 April 2021. While the changes might fairly be seen as a codification of existing case law relating to mistake of fact, the QLRC recommended them having considered concerns raised in submissions about ambiguity in the application of the law and a consequent need to provide clarity.[1]

It is not yet possible to assess the impact of these amendments on trials, particularly as the transitional provisions provided that they do not apply to persons charged with offences before the commencement but apply to persons charged with an offence after the commencement. The NSW affirmative consent provisions only became law on 2 June this year, and the ACT's in May. Victoria is yet to legislate to implement the recommendations of its Law Reform Commission. The Tasmanian model, while much older, is different to that proposed by the majority. This means that we are yet to see how the Queensland provisions (as amended) work in practice, and equally, how an affirmative consent model such as that supported by the majority works in practice in Australia.

Affirmative model of consent

The proposed change recommended by a majority of the Taskforce is that '*an accused person's belief about consent is not reasonable if the accused person did not, within a reasonable time before or at the time of the sexual activity, say or do anything to find out whether the other person consented to the sexual activity'*.

In the QLRC report, the Commission considered that "*the introduction of a steps, or reasonable steps requirement, to qualify the operation of section 24, before the excuse of mistake of fact can be relied upon* [which is similar to the proposed model supported by a majority of the Taskforce]*, could operate unfairly. Not all situations where a defendant may honestly and reasonably believe that a complainant is giving consent will alert a defendant to the need to take steps to ascertain the fact of consent*"[2]

Human sexual and intimate relationships are by their very nature complex. Any attempt to distil them into transactional interactions rather than ones based on autonomy and mutuality in our view risks criminalising otherwise consensual sexual activity.

[1] Queensland Law Reform Commission, Review of consent laws and the excuse of mistake of fact (Report No 78, June 2020), p.75 para 4.128
[2] Ibid. p.108 para 7.102

Some examples of the types of behaviours which may become inadvertently liable to criminal sanction could include:

- A young person whose inexperience causes him/her to think, reasonably for a person of his/her age, that his/her partner is consenting;
- The accused who, while kissing a person with whom he/she has recently engaged in consensual sexual activity and touches that person sexually, only to be told 'no' (and who then immediately desists);
- The accused who kisses, or attempts to kiss, a person in circumstances where he/she has reasonably but mistakenly developed a belief that the other person will welcome such attentions (and who, upon finding out that he/she was wrong, immediately desists);
- The person who, without warning, squeezes his/her regular sexual partner on the bottom; and
- The person who misinterprets the actions of his/her regular sexual partner as indicating consent, due to cultural or other highly individualised aspects or patterns of their relationship[3]

The proposed amendment imports a pre-requisite that unless something is said or done by an accused to ascertain consent, mistake is excluded. The temporal requirement potentially limits the relevance of any previous sexual or intimate interactions between an accused and a complainant in a jury's assessment of the accused's belief about consent. More concerningly, it may remove entirely the availability of the defence of mistake of fact in cases where there is an established relationship between an accused and a complainant. While this model clearly addresses concerns with cases like that of *R v Lazarus* [2017] NSWCCA 279, its application is deeply problematic in the context of sexual interactions between people in established relationships.

In our view, there is clear potential for this to criminalise individuals who had no intention of committing a non-consensual sexual act, and to seriously limit the potential defence of mistake of fact. As noted by academic Andrew Dyer, *"once the accused does or says something to ensure that the complainant is consenting, it will seldom be the case that s/he* mistakenly *believes that the resulting sexual activity is consensual"*[4]. Or, put another way, "*Mistake of fact can only apply if the accused has made a mistake. But how can a person make a mistake about consent if he or she has asked the other person whether s/he is consenting?"*[5]

We share the concerns raised by LAQ as referenced at page 13 of the chapter and developed further in their submission, and those of BAQ and QLS in theirs.

Alternative model

The majority considered and rejected an alternative model for reform of mistake of fact which is referred to on page 17. That model would see the reversal of the onus of proof on mistake of fact coupled with a requirement that a jury *must* consider anything said or done by the accused person to ascertain consent. The balancing feature of this model is that it does not *require* that something be said or done to ascertain consent in order for an accused person to establish that their belief in consent was reasonable. The reversal of onus is still a major shift in the law and, together with the requirement that regard *must* be had to anything they did or said to ascertain consent, it powerfully re-frames the question for the jury. Whether it was reasonable not to 'do or say something to ascertain consent' will then be a matter for their judgment, based on the evidence and their assessment of it.

[3] Dr Andrew Dyer, 'A Reasonable Balance Disrupted (in New South Wales): the New South Wales and Queensland Law Reform Commissions' Reports about Consent and Culpability in Sex Cases Involving Adults – and The Governments Responses' [2021] USydLRS 2; (2021) 51:1 Australian Bar Review pp46-47

[4] ibid. p41

[5] Dr Andrew Dyer, Sydney Law School, Submission to the QLRC review of consent laws and the excuse of mistake of fact, paragraph 14

In our view, this model would be a robust response to the concerns raised in submissions and consultations conducted by the Taskforce, while stopping short of proscribing what is reasonable and what is not.

Conclusion

We have carefully considered the submissions received, the many conversations we had with people all over Queensland during Taskforce consultations, reports of law reform commissions, case law, the Enhance Research results, recent academic literature and the views of the Chair and our fellow Taskforce members. We remain unpersuaded that the legislative changes proposed as they relate to the affirmative consent model appropriately balance the tensions which exist between the rights of an accused person, and those of a complainant in these very difficult matters.

A change to the law in any one aspect can go only so far in addressing wider systemic issues and is only one of several measures that may be needed to effect change in society[6].

We remain of the view (as recommended throughout this report) that further education about respectful sexual relationships and education to address misconceptions about the operation of the law is critical to better inform members of the community in this area.

The right to a fair trial and the presumption that we are all innocent until proven guilty are fundamental principles that underpin the operation of the criminal justice system and the basic liberties of our civil society. They exist because of the serious consequences which flow to those who are convicted of crimes. They must be balanced carefully with the rights, needs and interests of a complainant and the community. It is a difficult but necessary process, as tipping the scales in either direction can create injustice.

Significant reform of our criminal law should be undertaken with great care to avoid unintended consequences, or criminalising behaviour which is not morally culpable.

[6] Queensland Law Reform Commission, Review of consent laws and the excuse of mistake of fact (Report No 78, June 2020), p.65 para. 4.65

[1] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020).
[2] Queensland Parliament, Record of Proceedings, First Session of the Fifty-Seventh Parliament, Wednesday 24 March 2021, p763.
[3] Queensland Parliament, Record of Proceedings, First Session of the Fifty-Seventh Parliament, Wednesday 24 March 2021, p767.
[4] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020).
[5] *R v Makary* [2018] QCA 258.
[6] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020) 91.
[7] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) xxxvii.
[8] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 294.
[9] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 294.
[10] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020) 87.
[11] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020) 181.
[12] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020), 179-180.
[13] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020), 181-182.
[14] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020), 187-189.
[15] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020).
[16] *R v Hopper* [1993] QCA 561, 10.
[17] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020), 88.
[18] *Crimes Act 1958* (Vic) s 36; *Criminal Code Act 1924* (Tas) 2A, *Criminal Code Act 1983* (NT) s 192(1).
[19] *Crimes Act 1900* (NSW) s 61HE(2).
[20] *Criminal Law Consolidation Act 1935* (SA) s 46.
[21] *Crimes Act 1900* (ACT) s 50B.
[22] *Crimes Act 1900* (NSW) s 61HJ(1).
[23] *Crimes Act 1958* (VIC) s 36(2)(d)-(f).
[24] *Criminal Code* (Tas) s 2A(2)(h).
[25] *Criminal Law Consolidation Act 1935* (SA) s 46(3)(c)-(d).
[26] *Crimes Act 1900* (NSW) s 61HE(2); *Crimes Act 1958* (Vic) s 36E; *Criminal Code Act 1924* (Tas) s 14A.
[27] *Criminal Code* (TAS) s 14A.
[28] *Crimes Act 1900* (ACT), s 67(5).
[29] New South Wales, *Hansard*, Legislative Council, 12 November 2021, (Natalie Ward, Minister for Sport, Multiculturalism, Seniors and Veterans); *Crimes Act 1900* (NSW) s 61HK; The *Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021* will take effect on proclamation, which is expected to be in May 2022: Liz Snell, 'Affirmative consent: What the 'common sense' NSW law reform means' (2022) *LSJ Online*.
[30] *Crimes Act 1958* (Vic) s 36A.
[31] *Crimes Act 1958* (Vic) s 36A.
[32] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 297.
[33] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) xxvi.
[34] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) Recommendation 50.
[35] Caitlin Cassidy, 'What do the affirmative sexual consent law reforms passed in NSW and Victoria mean for each state?' *The Guardian* (Online, 24 November 2021) What do the affirmative sexual consent law reforms passed in NSW and proposed in Victoria mean for each state? | Australia news | The Guardian.
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[39] Submission 690228.
[40] Submission 699715.
[41] Queensland Indigenous Family Violence Legal Service, Discussion Paper 3, 13.
[42] Women's Legal Service submission, Discussion Paper 3, 15-16.
[43] Bar Association of Queensland submission, Discussion Paper 3, 3.
[44] Legal Aid Queensland submission, Discussion Paper 3, 36.
[45] Queensland Law Society submission, Discussion Paper 3, 25.
[46] Bar Association of Queensland submission, Discussion Paper 2, 1.
[47] LAQ submission, Discussion Paper 3, 38.
[48] QLS submission, Discussion Paper 3, 2.
[49] QLS submission, Discussion Paper 3, 2.
[50] Dr Rachel Field submission, Discussion Paper 3, 4.
[51] Rape and Sexual Assault Research and Advocacy submission, Discussion Paper 2.
[52] Women's Safety and Justice Taskforce Consultation, Queensland Police Service - Officers-in-Charge Conference, Brisbane, 2 April 2022.
[53] QPS representative at the Women's Safety and Justice Taskforce Consultation, Cairns, 19 April 2022.
[54] QSAN Submission, Discussion Paper 3, 10.
[55] WWILD Sexual Violence Prevention Association Inc Submission, Discussion Paper 3.
[56] Stakeholder consultation forum, 23 March 2022, Cherbourg.
[57] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 4.
[58] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 17.
[59] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 4.
[60] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 33.
[61] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 5, 22.
[62] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 5, 22.
[63] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 5, 22.
[64] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 40
[65] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 25.
[66] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 37.
[67] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 45.
[68] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 38.
[69] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 24, 44.
[70] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 6.
[71] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 35.
[72] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 50.
[73] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 50.
[74] QSAN Submission, Discussion Paper 3, 11; Full Stop Australia submission, Discussion Paper 3, 18-19.
[75] Enhance Research, Women's Safety and Justice Taskforce Community Attitudes to Consent, Research Report (2022), 6.
[76] Full Stop Australia submission, Discussion Paper 3, 23.
[77] Criminal Code (Qld), s349(3).
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[79] James Duffy, 'Sexual Offending and the Meaning of Consent in the Queensland Criminal Code' (2021) 45 *Criminal Law Journal* 93, 106.
[80] James Duffy, 'Sexual Offending and the Meaning of Consent in the Queensland Criminal Code' (2021) 45 *Criminal Law Journal* 93, 106-108.

[81] James Duffy, 'Sexual Offending and the Meaning of Consent in the Queensland Criminal Code' (2021) 45 *Criminal Law Journal* 93, 106-107.
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[83] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020) 91.
[84] James Duffy, 'Sexual Offending and the Meaning of Consent in the Queensland Criminal Code' (2021) 45 *Criminal Law Journal* 93, 108.
[85] Legal Aid Queensland submission, Discussion Paper 3, 36.
[86] Queensland Law Society submission, Discussion Paper 3, 25.
[87] QSAN submission, Discussion Paper 3, 11.
[88] WWILD Sexual Violence Prevention Association Inc submission, Discussion Paper 3.
[89] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020) 116-117.
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[93] WWILD Sexual Violence Prevention Association Inc submission, Discussion Paper 3.
[94] *Criminal Code* (Qld), s 1.
[95] Enhance Research, *Community Attitudes to Sexual Consent* (Research Report, May 2022) 41.
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[126] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020) 144.
[127] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020) 144.
[128] *Crimes Act 1900* (ACT) s 67(1)(h).
[129] New South Wales Law Reform Commission, *Consent in relation to sexual offences* (Report No 148, September 2020) 71; *Crimes Act 1900* (NSW), s 61HI(5).
[130] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 14.
[131] Legal Aid Queensland submission, Discussion Paper 3, 40; Queensland Law Society submission, Discussion Paper 3, 30.
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[134] Queensland Sexual Assault Network submission, Discussion Paper 3, 13; Gold Coast Centre Against Sexual Violence Inc submission, Discussion Paper 3, 21.
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Chapter 2.8: Prosecution response to victim-survivors of sexual violence

Prosecuting sexual violence is complex and stressful work and requires a high level of skill and specialist training.

Trauma-informed practice is steadily becoming recognised as an effective way to support victim-survivors of sexual violence through the criminal justice system process. Victim-survivors have voiced their concerns about the disclosure of their personal digital material to accused persons and their lawyers as adding to their trauma.

Victim-survivors want greater clarity and transparency in prosecution decision making. Modernising prosecution systems in Queensland will enable prosecutors and investigating authorities to better support victim-survivors through this stage of the criminal justice system.

Background

Queensland's Office of the Director of Public Prosecutions (ODPP) conducts the prosecution of the state's most serious criminal offences (known as indictable offences).[1] Crown Prosecutors (prosecutors) working for the ODPP prepare cases and represent the public's interest on behalf of the state in court. Prosecutors have a powerful role in the criminal justice system[2] and help the court to 'arrive at the truth and seek justice between the community and the accused according to the law and dictates of fairness'.[3]

The exercise of powers to perform the functions of the Director of Public Prosecutions are provided for in the *Director of Public Prosecutions Act 1984*. Decisions made in the prosecution of individual cases are based on the evidence, the law and the Director's Guidelines. The Director's Guidelines are published on the Department of Justice and Attorney-General website. The published version are dated as being current since 2016. The Director's Guidelines assist the exercise of prosecutorial decisions to ensure the administration of justice is: consistent; efficient; effective; and transparent.

The Director's Guidelines apply to all staff of the ODPP, people acting on behalf of the Director of Public Prosecutions and to police prosecutors and investigators. Prosecutors are responsible for deciding whether to indict an accused person and what charges to proceed with. Unlike private legal counsel, prosecutors represent the public's interest rather than the interests of individual clients. While prosecutors must properly seek the views of the victim-survivor[4], ultimately prosecutors must consider two key factors in their decision making on whether to proceed with charges: 'does the evidence offer reasonable prospects of conviction? and if so, is it in the public interest to proceed with a prosecution?'[5]

Prosecutors must operate independently of police investigations.[6] It is the role of police to conduct investigations and prosecutors to prosecute.[7] Most prosecutions for sexual offences conducted by the ODPP are referred by the police.[8] The relationship between investigators and prosecutors is described as a "reciprocal partnership".[9] Police rely on prosecutors to provide pre-trial advice and present evidence from their investigation at trial in the proper way. In turn, prosecutors rely on police to provide relevant information and admissible evidence that enables them to conduct a criminal prosecution[10] and comply with their common law and statutory duties of disclosure[11] to the defence and the court.

Studies suggest communication between prosecutors, victims and police is important to strengthen victim engagement as they enter into the prosecution stage of the criminal justice system.[12]

Current position in Queensland

Memorandum of Understanding between Queensland Police Service and the Office of the Director of Public Prosecutions

In Queensland, the Office of the Director of Public Prosecutions (ODPP) and Queensland Police Service (QPS) have an agreement that they each perform their duties in a manner that enables respectful communication and recognition of the others' responsibilities in sexual offence prosecutions. The agreement is documented in the Memorandum of Understanding (MOU) between the Office of the Director of Public Prosecutions and Queensland Police Service (the ODPP-QPS MOU).

The ODPP-QPS MOU is not legally binding; rather it establishes agencies' understanding about expectations of the other. The objective of the ODPP-QPS MOU is to facilitate cooperation and understanding . It is understood that members from both agencies are familiar with the MOU and conduct themselves in a way that is in line with its objectives.

The 2018 ODPP-QPS MOU is the current MOU in place. It references the QPS and ODPP Seeking Justice Committee (the committee) established following recommendations from the 2003 *Crime and Misconduct Commission's Seeking Justice Report* (The Seeking Justice Report). The role of the committee includes discussing and resolving practice problems and failings and removing barriers. It also includes suggestions for improvement and best practice issues that have come to light during the investigation and prosecution of sexual offence matters.[13]

QPS and ODPP Failed Sexual Offence Prosecutions Working Party

An additional responsibility of the committee is to overview the work of *QPS and ODPP Failed Sexual Offence Prosecutions Working Party* (the Working Party) and to respond to any systemic issues identified by the Working Party. The responsibilities of the Working Party are outlined in the ODPP-QPS MOU and include gathering information about failed sexual offence prosecutions and identifying systemic issues that need to be addressed by either or QPS and the ODPP.

Victim Liaison Officers

Victim Liaison Officers (VLOs) support the prosecutorial system and are based in the ODPP. Their role is administrative; they are not lawyers. VLOs are assigned to a particular case and make initial contact with the victim-survivor, usually in writing.[14] The initial communication from the ODPP with victim-survivors introduces them to their allocated VLO and case lawyer. VLOs provide victim-survivors with information about the progress of their case. VLOs are also responsible for referring the victim-survivor to support services.[15]

Chapter 2.4 discusses the separate and distinct way support options are made available at different stages of the criminal justice system to victim-survivors. VLOs are one of the ways victims are supported during their journey through the criminal justice system. Sexual Violence Liaison Officers (SVLO) within QPS provide another point of support. Chapter 2.4 discusses the various supports available to victims and notes that these are available at particular points in the system and provide different types of support. In Chapter 2.4 the Taskforce recommends the establishment of a state-wide program of sexual violence victim advocates to empower victim-survivors to better navigate the criminal justice system and obtain support they are entitled to along the way.

Disclosure

Police and prosecutors have an ongoing duty to disclose all relevant evidence to the defence, even if it favours the defence and not the prosecution. In practice, this is often falls to the prosecutor. The prosecutor's duty of disclosure is a 'component of the duty to conduct the case fairly and to ensure the accused is aware of the case against him or her'. Disclosure is a fundamental duty imposed on both police and prosecutors that is critical to the administration of justice.[16]

The disclosure obligations of prosecutors in criminal proceedings in Queensland are contained in sections 590AB to 590AX of the Criminal Code. The Criminal Code provides that prosecutors are under an ongoing obligation to give an accused person full and early disclosure of:

- all evidence the prosecution proposes to rely on in the proceedings
- all things in the possession of the prosecution other than things the disclosure of which would be unlawful or contrary to the public interest, that would tend to help the case for the accused person.[17]

Section 590AE (2) of the Criminal Code states information is taken to be 'in the possession of a prosecutor if it is in the possession of the arresting police officer or a person appearing for the prosecution'.[18] That

means any information obtained by police officers as part of an investigation must be disclosed by the prosecutor; unless it is not required to be disclosed by law.

Once disclosure has been made, lawyers for an accused person may request further disclosure from the prosecutor or a witness.[19]

Guideline 29 of the Queensland Director of Public Prosecution *Director's Guidelines* (the Director's Guidelines) states that it is the duty of the Crown to make full and early disclosure of the prosecution case to the defence.[20] The Director's Guidelines provide information to prosecutors and police about how to interpret the disclosure obligations in the Criminal Code under 590AB to 590AX.[21] They include guidelines on information that does not need to be disclosed, including obscene and indecent images that would violate a person's privacy, and what information may not be in the public interest to disclose.[22] The Director's Guidelines contain no specific information on the disclosure of digital material.

Section 3.14 of QPS Operational Procedures Manual (OPM) provides direction to police officers about their duties of disclosure under the Criminal Code.[23] The OPM includes a requirement for arresting officers to liaise with the prosecutor responsible for the matter to keep informed of any disclosure made to the accused person or lawyer acting for them.[24]

Police prosecutors

Police prosecutors may be either sworn police officers or civilians. Australia is one of the few common law countries that enable members of the police service to conduct prosecutions.[25] Police prosecutors are also bound by the Director's Guidelines and in particular, bear the same responsibilities to comply with them in relation to the decision making processes. Police prosecutors are primarily responsible for prosecuting summary offences (less serious charges such as trespassing or public nuisance) and indictable offences that can be heard summarily. Police are also largely responsible for undertaking prosecutions in committal proceedings.[26] In a committal proceeding, a Magistrates Court considers the evidence the prosecution intends to use and decides if there is enough to take the matter to trial in the District Court or Supreme Court.

How do other jurisdictions address this issue?

In all jurisdictions, the Directors of Public Prosecutions[27] (DPP) have prosecution guidelines or policies that provide a general guide to prosecutors that can be modified as new issues or topics arise[28] and that regulate the provision of advice to police. This includes advice on disclosure. It is commonplace for police to request legal advice from the ODPP during the course of an investigation or after charges have been made by police.[29]

The duty of disclosure, Office of the Director of Public Prosecutions Guidelines, New South Wales

The *Office of the Director of Public Prosecutions, New South Wales Guidelines* includes information in *section 13.2*[30] *The duty of disclosure* which states that prosecutors are under a continuing obligation to fully disclose to the accused person all material known to them in a timely manner that on their sensible appraisal:

- is relevant or possibly relevant to an issue in the case
- raises or possibly raises a new issue that is not apparent from the evidence the prosecution proposes to rely on
- holds out a real, as opposed to fanciful prospect of providing a lead to evidence that goes to either of the previous two situations.

Rape and sexual offences and child sexual abuse: United Kingdom Crown Prosecution Service guidelines

The Crown Prosecution Service (CPS) legal guidance on '*Rape and Sexual Offences*'[31] and '*Child Sexual Abuse*'[32] set out the approach for investigators and prosecutors when dealing with these offences. The Director's Guidelines provide guidance rather than direction to prosecutors. This is different to the approach of the United Kingdom (UK) where prosecutors are accountable under its directions.

Reasonable lines of enquiry involving digital communication data : UK Crown Prosecution Service Principles

The CPS UK *Rape and Sexual Offences – Chapter 3: Case Building, Reasonable lines of enquiry involving digital communication data* provides principles for these types of enquiries for police and prosecutors, and are presented in full below[33]:

'Principle One: Digital material should only be reviewed in pursuit of a reasonable line of enquiry and material should only be disclosed if it meets the disclosure test

There is no presumption that a complainant or witness's mobile telephone or other devices should be inspected, retained or downloaded, any more than there is a presumption that investigators will attempt to look through all material held in hard copy. There must be a properly identifiable foundation for the interrogation, not mere conjecture or speculation. Where digital material is obtained, disclosure should only occur when it meets the disclosure test.

Principle Two: A review should be proportionate and should not involve a review of wholly irrelevant material

If there is a reasonable line of enquiry, the investigators should consider whether the digital material can be reviewed without taking possession of the device. If a more extensive enquiry is necessary, the contents of the device should be downloaded with the minimum inconvenience to the complainant and, if possible, returned without any unnecessary delay. When reviewing the digital material, the investigator should also consider whether it is sufficient to view limited categories of data, such as an identified string of messages/emails or a limited period.

Principle Three: The witness/complainant should be kept informed

The witness/complainant should be told that the prosecution will keep them informed as to any decisions that are made as to disclosure, including how long the investigators will keep the device; what is planned to be 'extracted' from it by copying; and what thereafter is to be 'examined', potentially leading to disclosure. They should also be told that in any event, any content within the mobile telephone or other device will only be copied or inspected if there is no other appropriate method of discharging the prosecution's disclosure obligations and material will only be provided to the defence if it meets the strict test for disclosure and is suitably redacted.

Principle Four: The prosecutor and investigator should consider the consequences of refusal

If a witness does not provide the investigator access to their mobile telephone or other device, the investigator should consider the circumstances and furnish the witness with an explanation as to the procedure that will be followed if the device is made available. If they continue to refuse, consideration should also be given to whether it is appropriate to apply for a witness summons for the mobile telephone or other device to be produced.

Where the material is not provided or is deleted, the court may need to consider, if an application is made by the defendant, whether the proceedings should be stayed on the basis that it will be impossible to give the accused a fair trial'.[34]

England and Wales: Protocol between the Police Service and Crown Prosecution Service in the investigation and prosecution of rape

The 'Protocol between the Police Service and Crown Prosecution Service in the Investigation and Prosecution of Rape' sets out how both agencies deal with rape cases (the protocols).[35] The protocols are provided in a publicly available document that comprehensively sets out information on the key stages of investigation and prosecution from the point of initial complaint to the outcomes of a trial.[36] The protocols are comprehensive in that they provide a framework for how police and CPS are to work in partnership to build effective cases for the benefit of victim-survivors. The basis of the protocols is to promote consistency and cooperation between police and CPS. The protocols include first response, investigation and the use of visually recorded victim interviews, forensic medical examination, forensic submissions, rape specialist prosecutors, early investigative advice, charging, out-of-court disposals, disclosure, third party material, and review and case preparation.[37]

While the protocols provide a framework of co-operation between police and the CPS in the UK, in Queensland the ODPP-QPS MOU provides a basic communication framework between QPS and ODPP that can be supplemented by local arrangements (in line with the Director's Guidelines and QPS OPM).[38] In addition, the Director's Guidelines inform prosecutors of their duty when acting on behalf of the DPP and what they should expect from police in their role'. The Director's Guidelines are also organised around the key functions of the prosecutor's role and responsibilities (case review; advice to police; consultation with police; and consultation with victims). QPS OPM similarly sets out the roles and responsibilities of police and provides directions on how police are to conduct this work.[39]

Results of consultation

Victim-survivors

Victims-survivors are not directly privy to the relationship between the ODPP and QPS. However, the Taskforce has heard how constraints in the system filter down and detrimentally impact them. VLOs are a valuable resource in the ODPP. However, submissions from victim-survivors and feedback from the support sector indicate these roles are not providing the level of interaction that victim-survivors need to feel supported through the trial process.

VLOs play an important role communicating with victim-survivors. The transition of matters from QPS to the ODPP is a critical time for this communication given the rapport often established between the victim and the investigating officer and the time for a matter to be transferred to the ODPP and to be presented before a higher court. Victim-survivors are likely to maintain contact with an investigating officer. It is important that investigators have up to date and relevant information from the ODPP to ensure consistent messaging to victims.

One victim-survivor identified what is not working in response to sexual offence cases, stating:

> *'Lack of communication with prosecutors, there is a victim liaison officer, however [they] appeared to be overworked and highly anxious, made the situation worse.'* [40]

Another victim-survivor spoke of a lack of consistency in representation 'a new prosecutor at every step (perpetrator had consistent representation)'.[41]

Victim-survivors also raised concerns about the quality of communication from the ODPP:

> *'Any communication from the ODPP was brief, bland, template emails advising of dates of hearings with the obligatory line about contacting the Victims Support Unit and their phone number…I received paperwork from the ODPP with information regarding support services available to victims of sexual assault, however the covering letter was addressed to a different victim of my abuser, not myself'.* [42]

Government agencies

Queensland Police Service

At a consultation forum with investigators from across Queensland, police officers told the Taskforce that their overarching concerns about their interactions with the ODPP were poor communication and coordination between the agencies.[43] One investigator told the Taskforce that a prosecutor would not take the investigator's phone calls to give an update on the well-being of the victim because, if the prosecutor spoke to the investigator, the prosecutor would have to disclose the information to the defence. If accurate, this showed a complete lack of understanding of disclosure obligations by both prosecutor and investigator.

Other investigators at the consultation told the Taskforce that they were aware of the ODPP-QPS MOU, but it was only haphazardly adhered to and investigators were often not advised of key decisions being taken by prosecutors. One investigator said:

> *You normally get one email and then don't hear from them again until they want you to serve the subpoenas.*[44]

Multiple QPS investigators also stated that they were unaware of the Seeking Justice Committee and the Working Party:

> *Never heard of the failed prosecutions working group before – nobody knew it was an option to feed up concerns to that group.*[45]

The investigators also told the Taskforce that the briefing out process was haphazard – particularly in certain regional areas:

> *Problem on the Sunshine/Fraser Coast is that the ODPP brief out a lot of matters. The barristers only get the brief at the last minute and they have no relationship with the investigator or the victim. There is no communication with them at all.*[46]

QPS investigators spoke of sporadic contact between VLOs and victims:

> *They [the victims] never see the Victim Liaison Officers. The only contact the VLOs have with victims is to call them on a Friday afternoon to tell them to be in court on a Monday.*[47]

Service system stakeholders

Service system stakeholders also identified problems in the system that indicate issues between the ODPP and police that impact on victim-survivors. Full Stop Australia told the Taskforce about one victim-survivor 'being bounced from lawyer to lawyer at the ODPP and although helpful, it would have been better to have support throughout from one lawyer.'[48] Zig Zag Young Women's Resource Centre Inc. identified the need for:

> *Broader integration and improved systems of communication between sexual assault counselling/support services and police responding to and investigating sexual offences, from acute presentations of sexual assault, through to prosecution; and, increased access to victim liaison officers and court support programs for young women victims/survivors aged 18 and over.*[49]

The Queensland Sexual Assault Network (QSAN) told the Taskforce of one case where:

> *there were 3 different prosecutors in a case, on the day one turns up that has never met [the] victim and they clearly do not know the case. What chance do women have in these circumstances?*[50]

Section 25 of the Director's Guidelines requires that the victim-survivor be informed of the circumstances in which charges against the accused person are dropped.[51] But, QSAN stated their clients' experiences were that this requirement is not complied with:

> *ODPP can drop the case without explanation to the victim.*[52]

QSAN also gave insight into how victim-survivor's voices become minimised when there is a focus on progressing cases through the criminal justice system in traditional ways, despite what the victim-survivor may feel or want and a lack of communication for decision making:

> *A woman wanted to explore restorative justice, but ODPP 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 ODPP decisions re restorative justice.*[53]

The Taskforce heard at multiple stakeholder forums concerns about women's social media content being used against them at trial.[54] One support worker stated they 'have seen huge folders of social media snippets of a victim brought into court'.[55]

Legal stakeholders

The Queensland Law Society (QLS) recommended, in relation to oversight of the ODPP that 'clarification should be sought on the protocols and policies in place at the ODPP in relation to complaints handling, monitoring and reporting, for decisions not to prosecute, and further, that guidelines are developed to facilitate increased engagement with victims'.[56]

Office of the Director of Public Prosecutions

The Taskforce held a consultation forum with prosecutors and VLOs from the ODPP and many prosecutors and liaison officers attended Taskforce consultation forums held around the state. It was clear from the discussion that the prosecution of sexual violence cases is complex and requires careful engagement with victims-survivors. Attendees at the ODPP forum were asked about the practice of entire phone records being downloaded by police. One prosecutor stated:

> *Phone records / social media: [the] volume of Cellebrite, [I] need to go through all of them to determine whether they are relevant, police do a Cellebrite download of an entire phone, even if police don't do [an] entire Cellebrite download defence will say 'we'd like the rest of it'*[57]

Another prosecutor also spoke about having to disclose phone and social media material to the defence even if it is not relevant to the matter. They stated 'social media profiles, Cellebrite downloads – when you have that material you have to disclose it' and 'why do police download the entire phone contents?'[58] Other prosecutors spoke of confusion amongst victim-survivors when their phones are downloaded.[59] One prosecutor described Cellebrite downloads as 'weaponised evidence' used by the defence to '[attack] credit of the complainant'.[60]

Another prosecutor identified how material from phones is being used to discredit victim-survivors.[61] This prosecutor also highlighted how victim-survivors are also discredited if they do not provide their phones, and how some relevant information from a victim-survivor's phone is important to demonstrate the dynamic of the relationship with the accused person. This prosecutor stressed that it important when this is used to include relevant information in its entirety, for example to show that it was the defendant that was instigating the contact.[62]

A number of prosecutors stated they had been taken by surprise during cross-examination at trial when the defence questioned victim-survivors about relevant digital material that had not been provided to the prosecutor by the police. These prosecutors described being put at a distinct disadvantage as they had not had any opportunity to discuss that material with the victim-survivor before they gave their evidence.

Some prosecutors described the process of extracting relevant information from Cellebrite downloads of a victim-survivor's phone as being time consuming and complex. They told the Taskforce they felt they needed to disclose all the information they had from a download once they were in possession of it. If they were to disclose only what they considered relevant, they felt there would be a challenge from the defence about relevant material being left out. For example, where the defence held instructions from a client

about the existence of material in the download that may be relevant.[63] Prosecutors and police, however, should always keep in mind that they are only obliged to disclose those parts of these phone records that are or may be relevant.

Other relevant issues

Lack of governance to support ongoing learning and improved practice

A review of minutes from the Working Party and the Working Party's 2011 'Second Annual Report to the QPS and ODPP Seeking Justice Committee'[64] (the Working Party's Second Annual Report) show that it did not identify any systemic issues in the cases it reviewed. This is confirmed in the *QPS Sexual Violence Response Strategy 2021-2023*, 'to date, no systemic issues have been identified. Practice issues have been identified and action taken to address them'.[65]

Despite this, the Working Party's Second Annual Report revealed that over half of matters that failed (52%) were investigated by officers in the far northern region and northern region of Queensland in the 2008-09 period.[66] Data reported from the 2009-10 period shows this figure dropped to 24% (ODPP stage) and 20% (QPS stage) – a total of 44%. However, explanations as to why failure rates were high in this area (despite this decrease) were not examined at the time and there are no records of whether systemic issues specific to the region were explored.

Data reported in the Working Party's Second Annual Report shows 56 out of 84 failed cases were dealt with by way of a 'no true bill' or 'nolle prosequi'. That is, the prosecution did not continue either in the Magistrates Court or once it had been committed to the District Court.[67] In the *Seeking Justice Report* in 2003, the Crime and Misconduct Commission (CMC) raised concerns following an analysis of police and court data in Queensland collected by the then Criminal Justice Commission (CJC) in 1999, which showed that a large number of sexual offences fail to progress either into the court system or through to trial after committal. Concerns were raised by the CMC about this high rate, and that 'decisions made to prosecute deserved more study and that there was a need to know what happened at the next stage before the trial began.'[68]

Minutes from the Working Party indicate that it reviewed six cases involving people with disability. The Working Party queried 'whether there is a culture in some part of QPS which supports the attitude 'if in doubt, just charge', or 'charge now'. Despite this concern, there was no further follow-up or review of investigations involving people with disability.

The Working Party's Second Annual Report stated that at one time the Working Party met on a monthly or bi-monthly basis.[69] In 2018 the ODPP-QPS MOU shows they are only to meet as required. The Working Party reported its reasoning for reducing meeting times as 'in practice, at least half of the cases discussed at Working Party meetings do not raise any issues at all'.[70]

Limited time for ODPP prosecutors and lawyers briefed by the Office of the Director of Public Prosecutions to engage with investigators to prepare the case for trial

The 2003 *Seeking Justice Report* identified major issues with briefing out practices (when the ODPP does not have an internal employed prosecutor to carry out a matter, it may engage private members of the bar, but only for certain matters and on a case by case basis[71]). These issues included inadequate case preparation when matters are briefed out. In some cases, the need to engage a barrister may be due to late issues with the prosecutor who has carriage of the matter.

The late engagement of a prosecutor can have significant negative impacts for a victim including that the victim-survivor may not have been informed, or that there is not time for them to meet until the commencement of the trial. This can be unsettling for victim-survivors who usually find the court process highly stressful. The Taskforce's consultation with QPS officers-in-charge from around Queensland indicated this issue was ongoing from their perspective. One QPS member stated it 'would be an improvement to allocate the prosecutor the brief early'.[72]

The Taskforce heard that there are continuing concerns about the impact of ODPP prosecutors having little time to communicate with investigating officers to properly prepare a case and maintain consistent messaging to victim-survivors. This is exacerbated when a matter is briefed out to private members of the bar or when the prosecutor is changed within the ODPP.[73]

At the stakeholder forum involving ODPP staff, a concern was raised regarding the response of the courts to supporting the consistent briefing of a prosecutor in a case.[74] The courts regularly ignore the availability of the allocated prosecutor when matters are listed but prioritise the availability of the accused person's lawyer. Prosecutors commented upon a recent experience in which a prosecutor became ill with COVID-19 and the court response was to adjourn the case for one day to permit re-briefing.[75] The charge was serious, grievous bodily harm with an intention to cause grievous bodily harm.[76]

Taskforce findings

Governance arrangements for the Office of the Director of Public Prosecutions and Queensland Police Service

Noting what was heard from victim-survivors and the discussion with some QPS and ODPP staff, the Taskforce found that an effective relationship between prosecutors and police is of critical importance to ensuring the fair and effective conduct of criminal proceedings for sexual offences. Sometimes this relationship can be strained and there can be a lack of effective communication, despite the governance arrangements in the ODPP-QPS MOU.

The Taskforce identified opportunities to improve the relationship between the ODPP and QPS to better support the prosecution of sexual offences, and to reduce trauma and uncertainty for victim-survivors. The prosecution of these matters often relies on the testimony of the victim-survivor who has disclosed deeply sensitive personal information to an investigating officer. The transition of the matter from the Magistrates Court to a higher court and from the responsibility of police prosecutors to the ODPP is a time when gaps in communication with the victim-survivor can and do arise. The lengthy period before matters are finalised makes ongoing clear communication with the victim essential. Victims are often retraumatised when proceedings are due to commence - they may need more information or require the same information to be explained more clearly or several times over. Prosecutors often carry a high case load and conducting prosecutions before a judge and jury is stressful, demanding work. Sexual violence cases can be complex and emotionally demanding. Victim-survivors need clear communication that is consistent, delivered in a way that is trauma-informed, culturally capable and evidenced based. The experience of victim-survivors would be improved by a more joined up and collaborative approach to their engagement with police and prosecutors, which respects and acknowledges their distinct roles and responsibilities.

The ODPP-QPS MOU has had only minimal changes in over 13 years. It is time for it to be reviewed and updated. An updated MOU will provide an opportunity for the ODPP and QPS to review and revitalise their arrangements to better support an effective working relationship and communication. An updated MOU would also more clearly set out the respective roles and responsibilities of each agency in communicating with victim-survivors in a trauma-informed way.

The Taskforce considered the protocols in place in England and Wales provide a helpful example of a modern agreement between law enforcement and prosecuting agencies. It is important that prosecutors and police officers are aware of the governance arrangements and communication requirements between their two agencies and are encouraged and supported to meet agreed expectations, knowing they can resolve issues or escalate them if necessary. To improve transparency and accountability, the Taskforce found the DPP should publish information about the operation of the MOU and the impacts and outcomes achieved for victim-survivors in sexual violence cases.

The identification of practice, policy and systemic issues in the prosecution of sexual violence cases

The establishment of a Failed Offence Prosecutions Working Party following the 2003 *Seeking Justice Report* was appropriate for responding to key issues at that time. However, the Taskforce found that process has not adequately identified or responded to systemic issues in the prosecution of sexual offences. A more comprehensive and independent process is required that will endure beyond the tenure of the Women's Safety and Justice Taskforce. This process should identify and resolve practice, police and systemic issues as they arise. An independent board, chaired by the proposed victims' commissioner (recommendation 18) and consisting of representatives from the ODPP and QPS, as well as members from the service system sector, and academia, is required.

The Taskforce noted the Failed Offence Prosecutions Working Party performed a range of primarily technical functions and was not established or resourced to provide the level of systemic insight required to identify and deliver system change. Establishing an independent board with legislative responsibilities

would replace the Failed Offence Prosecutions Working Party (which now only meets on an ad hoc basis) with a more strategic and independent body. Its broader perspective and clearer role will be well placed to identify opportunities for future and ongoing improvement. This would shift the focus from technical issues and the identification of 'failures' to a strengths-based, forward-looking approach. This would involve reflective practice to identify opportunities for improvement and include the views and perspectives of experts and victim-survivors to assist in the analysis of individual cases to address practice, policy and systemic issues. Creating a statutory board with appointed members would also ensure seniority and standing to prevent membership and participation dropping off over time.

The board's role should include meeting to consider reports prepared and provided by each agency about its involvement in individual sexual violence cases that did not progress, to identify practice, policy or systemic issues, and to recommend how they should be addressed. The victims' commissioner should have power to request agencies to prepare a report for consideration by the board in other sexual violence cases that the commissioner considers the board should review. A report about individual cases could be considered separately, or together with other reports where there are consistent issues or themes emerging that could benefit from being considered together. The board should have the power to make recommendations to individual agencies and to the Queensland Government and should report annually on its findings, recommendations and responses implemented by each agency in relation to recommendations made by the board.

The Director's Guidelines

The Director's Guidelines provide broad guidance in the prosecution of sexual offences and include some specific assistance in relation to issues, for example the competency of child witnesses, affected child witnesses and the use of evidence of witnesses who have undertaken hypnosis or regression therapy. More 'practice focused' guidance should be included in specific guidance documents to support the operation of the Guidelines. Any additional guidance documents should be made publicly available to maintain public confidence, transparency and accountability.

Modernising guidance provided to prosecutors and police about disclosure

The Taskforce found that there is a need to review current investigation and disclosure practices to take into account the use of constantly evolving technology.

The way people use mobile phones has rapidly changed in recent years and personal mobile phones now typically hold personal information relating to every aspect of a person's life, over many years. The Taskforce heard that evidence collection practices, including practice and technology used to download information from mobile phones, has not kept pace with this rapid change. The Taskforce has heard that the constraints of Cellebrite software used by QPS to download this information mean that some victim-survivors have had the entire contents of their mobile phones downloaded and handed to the accused person's lawyers. This is a shocking – and usually unnecessary - invasion of the victim-survivor's privacy. The QPS advise that this is not usual practice and that police are expected to abide by the criminal disclosure obligations, including the limitations of disclosure.

The Taskforce understands that a thorough investigation of a sexual offence will sometimes require taking relevant material from the mobile phone of a victim-survivor. The download of an entire phone's contents will necessarily contain a great deal of personal information belonging to a victim-survivor, which may have no relevance at all to the investigation of the offence. It is important that a blunt use of current technology does not result in a disproportionate and unnecessary breach of a victim-survivor's right to privacy. The provision of the entire contents of a victim-survivor's mobile phone to an accused person's lawyer is inconsistent with the legal protections preventing such a disclosure, and should not take place.

The Taskforce found that legislative amendments to the current provisions relating to disclosure in criminal proceedings are not necessary, however, additional guidance for police and prosecutors is required. This guidance could form part of the Director's Guidelines or other guidance documents. Guidance should limit the provision of downloaded material from a victim-survivor's mobile phone to relevant material so as to protect the privacy of the victim-survivor. It should set out the role of police and prosecutors in determining what information is relevant and the process if the defence requests additional information. It should also provide for the phone to be returned to the victim-survivor without unnecessary delay.

The Taskforce found that victim-survivors should be advised and updated about the material that is downloaded from their devices and notified personally or their lawyers notified if personal information about them or another person is disclosed to the accused person or their lawyers.

The recently reviewed guidelines about disclosure of information downloaded from victims phones that are in use in England and Wales provide a useful example of a proportionate approach to disclosure, noting the need to reflect the legislative requirements in Queensland. The NSW Director's Guidelines provide an example of how advice could be set out for prosecutors and police.

The Taskforce further found that there are opportunities for QPS to work with relevant technology companies to explore the feasibility of options to enable the partial download of only relevant information from a mobile phone.

Capacity and capability within the ODPP

The Taskforce heard views and perspectives from victim-survivors across Queensland that they are not provided sufficient information or kept up to date with the progress of proceedings and the making of decisions in relation to the matter in which they are involved. The Taskforce found that this, in part, is a result of capability and capacity issues for prosecutors and VLOs in the ODPP. The reallocation of cases between prosecutors, limited time to meet with victims, and the confined role of VLOs have a direct impact on the experience of women and girls as victim-survivors of sexual violence cases in the criminal justice system.

The Taskforce recommends the establishment of a state-wide model for the delivery of professional victim advocacy services (see Chapter 2.4). The role of victim advocates is intended to help victims to navigate the criminal justices system and to access available supports and services. It is not intended to replace existing victim supports and services. There is an ongoing need for VLOs within the ODPP to provide information to victims about their cases and to keep them informed about prosecutorial decisions. However, the VLO program within the ODPP should be reviewed to ensure it has the necessary state-wide capacity and capability to meet the needs of victim-survivors and to communicate effectively at critical points with them, wherever they live.

Taskforce recommendations

45. The Office of the Director of Public Prosecutions and Queensland Police Service review, update and publish the memorandum of understanding relating to the investigation and prosecution of sexual violence cases. The revised memorandum of understanding will include a requirement for each agency to annually publish information about the operation of the memorandum and its impacts and outcomes for victim-survivors of sexual violence. In developing these guidelines regard will be had to the *Protocol between the Police Service and Crown Prosecution Service in the Investigation and Prosecution of Rape* adopted by police forces in England, Wales and Northern Ireland.

46. The Attorney-General and Minister for Justice, Minister for Women and Minister for Prevention of Domestic and Family Violence develop and establish an independent sexual violence case review board that is chaired by the proposed victims commissioner (recommendation 18). The board will consist of representatives from the Office of the Director of Public Prosecution, Queensland Police Service, professionals with sexual violence expertise, people with lived experience of sexual violence and Aboriginal and Torres Strait Islander peoples.
The board's functions and powers will be provided for in legislation and should include the independent review of sexual violence cases that are not progressed, or cases requested to be considered by the victims' commissioner.

The board will:
- independently review reports prepared and provided by the Queensland Police Service and the Office of the Director of Public Prosecutions about the respective agencies' involvement in each case
- identify opportunities and make recommendations to agencies and to the Queensland Government about practice, policy, performance and systemic improvement
- focus on encouraging a culture of continuous improvement and learning
- publish annual reports about the findings and recommendations of the board and the responses of agencies and the Government to the board's recommendations.

Taskforce recommendations

47. The Director of Public Prosecutions review the Queensland Director's Guidelines and include additional guidance about the prosecution of sexual violence related cases and the treatment of victim-survivors in these cases. The review will include incorporating legislative and systemic reforms progressed in response to this report.
The ODPP should work with the QPS to implement the revised Director's Guidelines to ensure staff and police are aware and understand how to use them.

This review should consider and incorporate necessary changes that:

- guide prosecutors, people acting on behalf of the Director and police to treat victim-survivors of sexual violence in a trauma-informed and culturally capable way that recognises the diverse and complex needs of individual victim-survivors
- review and update information about downloading information from a mobile phone or other device of a victim of sexual violence and the disclosure of potentially relevant information, in accordance with legislative and common law obligations and the process for defence lawyers to obtain additional information they consider may be relevant
- incorporate guidance either in the Director's Guidelines or other supporting guidance documents.

48. The Queensland Police Service work with relevant technology companies to explore the feasibility of establishing a mechanism to enable the partial download of information from the mobile phones and other devices of victim-survivors to enable only potentially relevant information to be obtained and to protect and promote a victim-survivor's right to privacy, irrespective of the brand or type of phone.

49. The Director of Public Prosecutions independently review the role and operation of the Victim Liaison Officer program within the Office of the Director of Public Prosecutions to assess impacts and outcomes achieved including for victim-survivors of sexual violence and ensure the program is able to provide timely and up to date information to victim-survivors across Queensland at critical points in the criminal justice process.

Implementation

MOU

The implementation of a revised MOU between the ODPP and QPS include ensuring staff within each organisation are aware of the MOU ,and the obligations and implications for them within it.

The MOU should clarify the role of the ODPP in providing advice to police investigators including in relation to the admissibility and sufficiency of evidence collected during an investigation. The UK CPS Protocols provide an example of the type of detail that could be included in the revised MOU.

Independent board

The design and implementation of the board should be considered as part of the establishment of the victims' commissioner. The role of the board could be supported by other functions of the commissioner including for example, conducting and collating research including in relation to specific identified issues impacting on sexual violence cases not progressing through the criminal justice system. The board should identify issues or patterns for outcomes involving victim-survivors and accused persons from diverse backgrounds, including First Nations, culturally and linguistically diverse, and LGBTIQA+ people and those with disability.

The board should independently review reports provided to it by QPS and ODPP about each agencies' respective involvement in the case when a sexual violence case does not progress, or as requested by the victims' commissioner. The board should be enabled to make recommendations to relevant agencies and to government about practice, policy, performance and system improvement, excluding the exercise of independent prosecutorial discretion. This option would complement and strengthen the role of the proposed new victims' commissioner, particularly its focus on sexual violence matters.

Guidelines and disclosure and digital downloads

Guidelines on disclosure should focus on developing practice principles only and consider other relevant guidelines about these matters in other jurisdictions.

Guidance to prosecutors and police about their obligations in relation to disclosure should aim to remove confusion what information is required to be disclosed. It should also provide clear guidance about keeping a victim informed when personal or sensitive information about them or about another person is to be disclosed.

The implementation of the reviewed Director's Guidelines and other guidance documents should include information and training being provided to staff in the ODPP and to police.

QPS should work with technology companies to explore options to enable it to download some information from a victim-survivor's mobile phone or other device. Should this be feasible, guidance would be required about what information should be considered relevant and the process for obtaining additional information if required to do so.

Victim Liaison Officers

The review of the victim liaison program within the ODPP should be undertaken independently and should be funded by the Queensland Government. Assistance should be provided by the Department of Justice and Attorney-General as required and appropriate. The review should be informed by consultation with people with lived experience, First Nations people, and service system and legal stakeholders.

Human rights considerations

The right to recognition and equality before the law is a stand-alone right that permeates all human rights (section 15). It encompasses the right to recognition as a person before the law and the right to enjoy human rights without discrimination. The right to recognition as a person before the law is both an absolute and non-derogable right at international law. The right to privacy protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation (section 25 and Article 17 of the International Covenant on Civil and Political Rights (ICCPR)). Right to a fair hearing affirms the right of all individuals to procedural fairness when coming before a court or tribunal (section 31 and Article 14(1) ICCPR). Cultural rights – generally (section 27) are directed towards ensuring the survival and continued development of the cultural, religious and social identity of minorities. It affirms the right of all persons to enjoy their culture, to practice or declare their religion and to use their language. Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28) – explicitly protects the right to live life as an Aboriginal person or Torres Strait Islander who is free to practice their culture. Aboriginal and Torres Strait Islander peoples must not be denied certain rights in relation to traditional knowledge, spiritual practices, language, kinship ties, relationship with land and resources, and protection of the environment. These rights are consistent with Australia's international human rights commitments under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Human rights promoted

Right to be protected from torture and cruel, inhuman and degrading treatment (section 17) and right to recognition and equality before the law (section 15), cultural rights–generally (section 27), Cultural rights–Aboriginal peoples and Torres Strait Islander peoples (section 28). This proposal doesn't limit human rights but arguably promotes the rights identified above.

Human rights limited

The implementation of these recommendations will not limit any rights.

Evaluation

The revised MOU and the Director's Guidelines should be publicly available, along with any supporting guidance developed for prosecutors and police.

The independent board should publish information annually about its findings and recommendations and actions taken by agencies and the Queensland Government to implement recommendations. This could include the identification and analysis of trends and issues that emerge over time.

The independent review of the ODPP VLO program should be provided to Government to inform future funding and investment decisions.

Improving victim-survivors' experiences with investigating and prosecuting authorities

The appropriateness and transparency of prosecutorial decision making in sexual assault cases have been questioned in past reviews and academic research.

Background

Current position in Queensland

The Police Prosecution Corps holds significant prosecutorial power in Queensland. Despite this, the organisation's governance and accountability mechanisms are not easily apparent to those outside the organisation.[77] QPS has advised that the Prosecution Services Division provides the governance structure for the Police Prosecution Corps (PPC) across Queensland, including inspector level oversight at local levels. Approval for withdrawal of charges has to be authorised by an Officer-In-Charge, Commissioned Officer or above.[78] While complaints about the withdrawal of charges are able to be lodged through the Policelink website, the Taskforce noted that navigating the website to locate the QPS 'feedback' form is cumbersome and takes a user at least seven correct clicks to locate the QPS 'feedback' form.[79] It is not clear that this form applies to police prosecutors. Given the confusion that exists within the general community between the roles of police, police prosecutors and the ODPP, there may be benefit in a clearer, more user friendly complaints process. The QPS have advised the Taskforce there are also other ways to make a complaint, including by phoning Policelink, through the Ethical Standards Command, or through the Crime Corruption Commission.

In Queensland, complaints about the ODPP can be made directly to the Director of Public Prosecutions. They can also be made to Members of Parliament; via the Department of Justice and Attorney-General online complaint form; or to Victim Assist Queensland (VAQ).[80]

When a complaint is received by the ODPP, a Legal Officer will obtain the information relevant to the victim-survivor, which may include obtaining the responses of the prosecutor. There is both consultation and review undertaken with the Practice Manager and a Deputy Director of Public Prosecutions, and a written response drafted. This written response is reviewed and approved under the hand of a Deputy Director, or the Director in very serious matters, and provided to the complainant. In some circumstances the Crown Prosecutor involved or the Deputy Director will confer with the complainant to explain matters.[81]

The *Charter of victims' right*' (the Charter)[82] sets out the rights and entitlements of victims of crime in Queensland[83], and outlines to victims what they should expect from government departments and non-government agencies that support crime victims (Chapter 2.4). The Charter applies to QPS and the ODPP, and to non-government agencies funded to provide support to victims.

How do other jurisdictions address this issue?

Australian jurisdictions

In New South Wales (NSW), the Law Enforcement Conduct Commission (LECC) is responsible for maintaining oversight of both the NSW Police Force (NSWPF) and the NSW Crime Commission. The LECC provides simple, strong, fair and impartial oversight by detecting and investigating misconduct and overseeing complaints handled by NSWPF. The LECC also performs an educative function aimed at preventing future misconduct. The main focus of the LECC is on more serious cases of misconduct and maladministration.[84] In the Taskforce's first report *Hear her voice 1* recommended a Commission of Inquiry (COI) into Queensland Police Service to consider whether a law enforcement conduct commission should be established in Queensland.[85] The Government accepted this recommendation and consideration of a law enforcement conduct commission model is within the scope of the terms of reference issues for the COI that has been established.[86]

In Australia, historically there has been no ability to have a judicial review of a decision made by a prosecuting authority.[87] This relates to the separation of administrative power from judicial power.[88] The High Court of Australia has outlined why decisions made during the prosecution process, including not to prosecute, should not be subject to judicial review:

> *It ought now be accepted, in our view, that certain decisions involved in the prosecution process are, of their nature, insusceptible of judicial review. They include decisions whether or not to prosecute, to enter a nolle prosequi, to proceed ex officio, whether or not to present evidence and, which is usually an aspect of one or other of those decisions, decisions as to the particular charge to be laid or prosecuted. The integrity of the judicial process - particularly, its independence and impartiality and the public perception thereof - would be compromised if the courts were to decide or were to be in any way concerned with decisions as to who is to be prosecuted and for what.*[89]

Academics have previously raised concerns about the potential loss of prosecutorial discretion which could flow from reviewing prosecutorial decisions.[90]

Australian jurisdictions adopt different models for their victim assistance frameworks. Queensland is the only jurisdiction that has a Victim Services Coordinator. In the Northern Territory and Tasmania, similar powers are exercisable under a departmental head or director of victim services.[91]

Chapter 2.4 provides a detailed discussion on commissioners in states and jurisdictions in Australia. In short, New South Wales, South Australia, Victoria and the Australian Capital Territory have an independent commissioner for victims of crime. Western Australia has a Commissioner but this position sits within the WA Department of Justice.

In New South Wales, the Office of the Director of Public Prosecutions (NSW ODPP) delivers cultural capability training for its staff and reported in its latest annual report that it had developed the next phase of training, 'Aboriginal Cultural Awareness training, Communicating Effectively with Aboriginal People'. NSW ODPP reports this training 'focuses heavily on communication skills both verbal and non-verbal and explores cultural differences that may impact our ability to connect meaningfully'.[92] NSW ODPP also has Aboriginal Witness Assistance Officers (WAS who are similar to VLOs) to provide culturally appropriate service and support.[93]

England and Wales

Right to review

Since 2015 in England and Wales, 327 victims of crime (including close relatives of a deceased or incapacitated person, parents of a child or businesses) are able to ask for a review where a decision is made not to charge a suspect, not to refer a matter to the Crown Prosecution Service (CPS), not to start a prosecution, or to stop a prosecution. There are two possible outcomes for reviews of CPS matters:

- a new decision is made and the earlier decision is overturned
- the original decision is upheld and the victim notified and provided with an explanation.

Reviews are conducted in two stages. First, locally by a new prosecutor, and second, if the original decision not to prosecute is upheld, at the Appeals and Review Unit of the CPS. Following the CPS review, victims who remain dissatisfied may apply to the High Court for judicial review.

There are six potential outcomes for reviews of police decisions to neither charge nor refer to CPS:

- a new officer reviewing the case agrees with the first decision
- a new officer disagrees with the first decision and the suspect is charged or decision to charge sent to the CPS
- the original decision is overturned and suspect dealt with out of court (low level crimes and anti-social behaviour)
- a new officer disagrees with the decision and the case is sent to CPS for a decision
- police decide that further investigation is needed
- a new officer disagrees with a decision but the statute of limitations prevents further action.

Like the CPS process, victims dissatisfied with police reviews can apply to the High Court for judicial review.

Prosecution Inspectorate

Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) is an independent statutory body that inspects the CPS and the Serious Fraud Office and reports to the Attorney-General.[94] Operating since 2000, the HMCPSI also inspects other prosecution services in the UK and overseas by invitation and special arrangement.

The HMCPSI avoids judgement and enforcement by instead using open and transparent methods of information gathering and reporting to inform prosecution services of strategies of good practice and issues that need to be addressed. The aim is to improve the quality and accountability of prosecution services and to maintain trust in fair, efficient and effective prosecution processes.

Area inspections of CPS offices across England and Wales are conducted every three years as part of the rolling Area Assurance Programme. Reports assess each area on a comparative basis against other CPS areas, detail strengths identified and specific areas that should be addressed, and work to set a baseline for CPS performance and activities. Thematic inspections are also conducted focusing on casework, business, and/or functionality. Relevantly, a recent thematic inspection included an examination of police and the CPS's response to rape.[95]

Results of consultation

Victim-survivors

Victim-survivors reported feeling disempowered during the prosecution process. For example, one victim-survivor stated that the police prosecutor 'presented himself as unfamiliar with my case and did not know what he was doing'.[96] Another victim-survivor also raised the lack of preparation time given to prepare for a trial:

> *'If police prosecutors are representing the aggrieved, please meet them BEFORE the hearing date. It simply is not enough time to meet the police prosecutor representing you for 15 minutes before a hearing just before you get cross examined. I was asked about 4 or 5 questions by my own police prosecutor. Why was I not told to provide questions, like the respondent did? I was not heard properly at my own hearing.'* [97]

Another victim-survivors spoke of having limited rights:

> *'As a victim of a serious crime, I had less rights than the offender who was declared not guilty.'*[98]

However, few victim-survivors appeared to be aware of their right to make a complaint. One victim-survivor described having to fight for her rights:

> *'Victims of sexual assault stay silent as no one believes them and navigating a system to fight for your rights is also re-traumatising.'* [99]

Service system stakeholders

QSAN stated in their submission to the Taskforce that:

> *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, 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).[100]

Chapter 2.4 provides a detailed discussion on VAQ complaint process and victim-survivors experiences.

QSAN recommended, 'similar 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'.[101]

Full Stop Australia stated that 'urgent steps must be taken to immediately strengthen human rights protections for survivors of sexual violence in Queensland'.[102] Full Stop Australia further recommended that QPS review their complaints mechanisms to ensure that people who have had a negative experience when contacting the police for help in the context of sexual violence are able to rely upon an independent, timely and trauma informed process for investigation and resolution of their complaint. Full Stop Australia told the Taskforce that the complaint mechanism at first instance should not be managed by police and should be overseen by a victims advocate with the skills and qualifications to oversee such complaint processes and prosecute cases on behalf of victims where necessary.[103]

Legal stakeholders

Women's Legal Service Qld (WLSQ) stated 'the Queensland 'Charter of Victim's Rights' more closely resembles a statement of standards, with no power to enforce compliance with resolution process and outcomes. Most victim-survivors are not aware of the Charter of Victims' Rights in Queensland'.[104]

The Taskforce met with the Chief Magistrate and Deputy Chief Magistrates and discussed that[105]:

- the quality of police prosecutors across the state is extremely variable
- [Police Prosecutors] are responsible for prosecution of sexual offences that are summarily disposed of without sufficient consulting with victims
- often victim impact statements are not provided to Magistrates Courts for sentencing
- international standards for prosecutors on victim engagement are not being complied with by the Police Prosecution Corps.

WLSQ also stated they supported a right to review, 'since 2015, victims of crime…have had a right to request a review of certain decisions made by the police or CPS, in England and Wales. WLSQ supports the establishment of a similar 'Right to Review' police and CPS decision in Qld for victims of crime, that has legally enforceable remedies'.[106]

Legal Aid Queensland stated, 'while the Director of Public Prosecutions has significant discretionary powers, including the ability to decide whether a criminal case should proceed and how it will be prosecuted, the reality is that victims have no control or ability to challenge prosecutors' decision making. The decisions by prosecutors effect not only how the matter proceeds but how long it takes to proceed'.[107]

The Queensland Law Society (QLS) suggested that oversight mechanisms such as right to review can provide benefits of increased transparency around the prosecution's decision-making processes and increased accountability.[108] However, it noted these benefits can be achieved in other ways, such as, 'ensuring prosecution bodies having clear, transparent and easy to access written policies for decision-making, as well as undertaking meaningful victim consultation and communication'.[109] The QLS recommended that 'clarification be sought on the protocols and policies in place at the DPP in relation to complaints handling, monitoring and reporting, for decisions not to prosecute, and further, that guidelines are developed to facilitate increased engagement with victims'.[110] They also recommended that the 'Police Prosecution Corps develop an easy to access, clear and transparent complaints process in relation to decisions not to prosecute'.[111]

Office of the Director of Public Prosecutions

In a consultation forum with staff from the ODPP, the Taskforce heard that prosecutors feel that victim-survivors are often left without a voice and forgotten. The Taskforce heard from one ODPP staff member that victim-survivors are sometimes 'deprived of the opportunity to have their voice heard'. Prosecutor's views were revealing of how powerless they feel at times despite their central role in the trial process.

Prosecuting sexual violence is complex work and requires a high level of skill and specialisation. Prosecutors interactions with victim-survivors are impacted by workload demands and level of experience and skill in prosecuting sexual violence cases. These issues were highlighted in a 2008 report from the ODPP, '*Review of issues associated with the recruitment and retention of prosecutors in the Queensland ODPP*' (The ODPP 2008 report).[112] One of the key concerns identified in the report was that a high workload was shown to limit the ability of prosecutors and legal officers to allocate adequate time to prepare matters, and the risk of rushed and ill-prepared decision making.[113] The 2019-20 ODPP Annual Report states 'ODPP staff continue to operate under the constant pressure of a continuing increase in the complexity of cases and impending deadlines. Improvements in the investigation of serious criminal offending has seen more complex and sophisticated offending being prosecuted'.

The Taskforce heard during a consultation forum with criminal defence lawyers that relatively junior prosecutors are often allocated sexual violence cases and it can be difficult for them to exercise their role confidently and authoritatively including in their interactions with police. The ODPP 2008 report stated 'junior prosecutors are learning as they go and every trial is new ground. Due to the workload of more senior prosecutors, they are often not available to assist inexperienced prosecutors by providing closer professional supervision'.[114]

Other relevant issues

Transparency of victim-survivor's rights and complaints process

Victim-survivors told the Taskforce that they found the criminal prosecutions stage to be confusing, inconsistent and traumatic. As Taskforce members travelled across the state, they heard that victims often feel they are on the margins and alone during the court and legal process. Victim-survivors do not always understand that their role in criminal processes is as a complainant-witness to the sexual assault and not a party to the proceedings or that they don't have some special standing because they are the victim. Many victim-survivors feel disempowered as they discover the limited rights they have through the process.

Academic literature shows that historically the rights of crime victims have been overlooked in the criminal process as a consequence of their passive role within it.[115] For example, there are very few options available to victim-survivors to complain if they are on the receiving end of improper conduct by a prosecutor or if they are unsatisfied with how their case has been handled (that is if it has been discontinued or lesser charges applied through plea negotiations). The Taskforce heard in consultation with stakeholders about positive and negative accounts of victim-survivors interactions with prosecutors. Stakeholders in Townsville told the Taskforce that 'complainants have mixed experiences with prosecutors. Some prosecutors aren't trauma-informed, some aren't interested in the work. Often they have their own biases or baggage'.[116] The Taskforce heard that support workers frequently advocate for the rights of victim-survivors with both prosecutors and police.

The 2021 Victorian Law Reform Commission (VLRC) inquiry and the 2017 Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) highlighted to the lack of rights afforded to victims.[117] The VLRC found that 'in most cases, not only do victims have no legal right to enforce a Victims' Charter principle, they have no recourse to a review process if they make a complaint and the agency concerned does not resolve it satisfactorily'.[118] This means that if a victim is unhappy with the response they receive from the ODPP, for example, there are no further steps for them to take to resolve their complaint.

The Royal Commission recommended (recommendation 41) that 'each Australian Director of Public Prosecutions should establish a robust and effective formalised complaints mechanism to allow victims to seek internal merits review of key decisions'.[119] In 2018, the Queensland Government responded to recommendation 41 of the Royal Commission inquiry by stating further consideration was needed. It also stated that the 'recommendation does require considerable further analysis to determine impact and resource implications on ODPP and consider the viability of potential alternative models for such review mechanism to be implemented'.[120] Since that time there has been no further update provided on the progress of this recommendation.

Both the Royal Commission and VLRC considered institutional arrangements for the management, regulation and enforcement of the rights of victims. This included substantive consideration of whether there should be a right to judicial review (a review by a court of an action taken by the executive government or the legislature). However, this option received widespread criticism during consultations.

For example, the VLRC heard concerns that a right to judicial review would compromise the DPP's independence, and that 'courts are not best placed to weigh the factors that need to be considered in making a decision to prosecute or discontinue a prosecution'.[121] Also, victims may feel misled by the process, 'where a judicial review application is successful, the matter is referred back to the original decision-maker to reconsider. The court does not substitute the original decision with a decision of its own'.[122]

Prosecutors lack awareness of trauma and sexual violence.

Trauma-informed training and practice is steadily becoming recognised as an effective way to support victims of sexual violence through the criminal process. However, as found by the Taskforce in *Hear her voice 1*, more trauma-informed training for police prosecutors. is required (see Chapter 2.5 of current report and Chapter 3.5 of *Hear her voice 1*[123]). However, training primarily caters to sworn officers and investigators. While the ODPP is continuing to deliver training on sexual violence following recommendations from the *Seeking Justice Report*, the Taskforce has heard concerns about prosecutors' recent responses to victims of sexual offences. Many victim-survivors of sexual violence experience trauma and the Taskforce has heard that criminal processes can be retraumatising for them. Prosecutors with limited understanding of trauma may inadvertently contribute to retraumatisation.

Attitudinal and structural factors also influence prosecutors' decision making and ultimately their interactions with victims. Although there is little contemporary analysis available, one Australian wide study in 2005 found the fact that 'some prosecutors actively look for factors that discredit victims and provide a legal rationale for rejecting cases has raised a particular concern about biased decision-making on the basis of gender stereotypes'.[124]

Increasing education and awareness of prosecutors on circuit to ensure culturally appropriate engagement in Aboriginal and Torres Strait Islander communities

The issue of cultural competency amongst professionals working in the criminal justice system is addressed in other areas of this report. Aboriginal and Torres Strait Islander peoples access the services of the ODPP as victim-survivors of sexual violence. Many prosecutors will also undertake circuit work throughout Queensland in regional, rural and remote locations where there are a higher proportion of Aboriginal and Torres Strait Islander peoples.[125]

The *Wiyi Yani U Thangani* report found Aboriginal and Torres Strait Islander women and girls want culturally appropriate, trauma-informed and strengths-based services.[126] The Taskforce's work supports and reinforces this important finding. The Taskforce heard from Aboriginal and Torres Strait Islander communities it visited, of the importance of culturally appropriate services. There are important cultural considerations for prosecutors on circuit and working with women and girls:

'Anything to do with women or girls or children of sexual violence is taboo, not spoken about, kept quiet, secretive, more importantly is women's business, with men people are reluctant to talk'. [127]

One First Nations Elder also gave insight into how past injustices create distrust in Aboriginal and Torres Strait Islander peoples towards authorities and a deep trauma that reverberates over generations. Prosecutors should be sensitive to this trauma:

'We were classified under the Act as Flora and Fauna and were not labelled people until 1967. People are living with this trauma today and it is passed down through the generations. That's not an excuse this is what people have to endure. Their parents have to endure this'. [128]

A First Nations councillor in a community visited by the Taskforce also raised the importance of recognising the unique needs of Indigenous-controlled communities and the frustration of a one-size fits all response from government:

> *'As a local government there are a lot of social issues we are dealing with – in our local community there are a lot of complexities that we are dealing with compared to other local councils who are not dealing with the same issues we have. There are a lot of frustrations in governing the community within the current legislation and policy frameworks'.* [129]

Connection to culture, healing and acknowledgment of trauma were important messages the Taskforce heard in discussions on addressing sexual violence amongst Aboriginal and Torres Strait Islander women and girls. One First Nations Elder spoke of the importance of programs that are connected to the community and healing.[130]

June Oscar AO, Aboriginal and Torres Strait Islander Social Justice Commissioner and Kate Jenkins, Sex Discrimination Commissioner from the Australian Human Rights Commission also stated professionals who provide services to Aboriginal and Torres Strait Islander women and girls should be:

> *'Healing informed and trauma aware…No one knows better the experiences and lives of first nations women than they do themselves'.* [131]

Taskforce findings

The Taskforce found a right to review process for victim-survivors of sexual violence in relation to prosecutorial decisions would provide a mechanism for them to raise concerns and have a voice in the making of decisions affecting them. The Taskforce agreed that this process should include support for victim-survivors to exercise the right to make a complaint. As the Taskforce heard, many victim-survivors do not feel empowered to initiate this process.

A transparent, accessible and reported right to review process would promote community confidence and provide victim-survivors with greater clarity and understanding of why certain decisions are made, thereby removing what might appear to be 'hidden' decision-making processes. It is also likely to ensure prosecutors inform victim-survivors, seek their views, and take them into consideration when a decision is made.

The Taskforce recognised that most government and administrative decision making authorities, including independent entities, are subject to a review mechanism that at least consists of an internal review approach. This should be considered an essential minimum requirement of good governance and accountability. It provides a valuable mechanism to identify trends and issues and for performance and practice to be managed in a timely way.

The level of accountability under the UK model of the right to review has been questioned as the Crown Prosecution Service conducts the 'independent' review – raising concerns about how victim-survivors may perceive this process if prosecutors are reviewing colleagues. The Taskforce found this may impact on the perceived effectiveness of the right to review process.

The Taskforce accepted that the right to review could inadvertently promote a 'closed culture' and inhibit opportunities for reflective practice. The Taskforce considered whether in response to this concerns a multi-agency panel that includes external members could be established to provide oversight.

The Taskforce also considered the establishment of an independent prosecution inspectorate. An example of this is the HMCPSI model operating in the UK, which is an independent statutory body that inspects the CPS and the Serious Fraud Office and reports to the Attorney-General. The model has been in operation since 2000. The HMCPSI also inspects other prosecution services in the UK and overseas by invitation and special arrangement. After considering the prosecution inspectorate as an option, the Taskforce ultimately did not endorse this approach, given the independent role of the ODPP, the broader implications of this

approach on the ODPP, and the scope of the Taskforce's terms of reference. The Taskforce was satisfied that the establishment of an independent board, chaired by the proposed victims' commissioner would provide the necessary oversight of ODPP involvement in individual cases and a mechanism to identify and address practice, policy, performance and systemic issues.

The Taskforce found that the existing right of review process within the ODPP needs to be transparent and accessible to victims-survivors to address the issues raised with the Taskforce, while, maintaining the necessary independence of the ODPP.

As highlighted in Chapter 2.1, three in five First Nations women and girls experience sexual and physical violence in the course of their lifetimes and they are less likely to report sexual violence (Chapter 2.3). Creating safe pathways for First Nations women and girls to access the criminal justice system means promoting culturally safe support, legal, and prosecution services. This approach would assist Queensland to achieve its targets under the National Agreement for Closing the Gap[132]. The Taskforce considered that the ODPP should take steps to ensure that its prosecutors and VLOs are culturally capable and provide trauma-informed responses and services to First Nations women and girls who are victim-survivors of sexual violence.

Taskforce recommendations

50. The Queensland Police Service and the Office of the Director of Public Prosecutions establish a clear, robust, transparent and easily accessible internal 'right to review' process of police and prosecutorial decisions for victim-survivors of sexual violence . The internal right of review will include an ability for a victim-survivor to request that a police decision to discontinue charges, and a prosecution decision made on behalf of the Director of Public Prosecution, be reviewed by another more senior officer. The outcome of the review could be for the decision to be changed, affirmed or an alternative decision made.
The outcome of an internal review process including the reasons for the decision will be clearly communicated, using plain English to the victim-survivor.

51. The Director of Public Prosecutions, in partnership with First Nations peoples, develop and implement a cultural capability plan that includes strategies to improve the cultural capability of all staff within the Office of the Director of Prosecutions.

Implementation

To facilitate the timely commencement of reforms implementation, the internal 'right to review' process should be established as a priority to maintain public confidence in the prosecution of sexual violence cases.

The development and implementation of a cultural capability plan for the ODPP should form part of the implementation of recommendation 1 in *Hear her voice 1* as this forms a significant response to reduce the overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system.

Additional resources and a strengthen structure for the handling of sexual violence cases by the ODPP will be required to implement the recommendations in this report. This is discussed in Chapter 2.10.

Human rights considerations

The right to recognition and equality before the law is a stand-alone right that permeates all human rights (section 15). It encompasses the right to recognition as a person before the law and the right to enjoy human rights without discrimination. The right to recognition as a person before the law is both an absolute and non-derogable right at international law. Cultural rights–generally (section 27) are directed towards ensuring the survival and continued development of the cultural, religious and social identity of minorities. It affirms the right of all persons to enjoy their culture, to practice or declare their religion and to use their language. Cultural rights–Aboriginal peoples and Torres Strait Islander peoples (section 28) – explicitly protects the right to live life as an Aboriginal person or Torres Strait Islander who is free to practice their culture. Aboriginal and Torres Strait Islander peoples must not be denied certain rights in relation to traditional knowledge, spiritual practices, language, kinship ties, relationship with land and resources, and protection of the environment. These rights are consistent with Australia's international human rights commitments under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Human rights promoted

Providing guidance to improve practice about the collection of evidence including private and personal information about a victim that may not be relevant to the prosecution of an offence will promote victims' rights. These include the right to be protected from torture and cruel, inhuman and degrading treatment (section 17) and right to recognition and equality before the law (section 15), cultural rights - generally (section 27), Cultural rights–Aboriginal peoples and Torres Strait Islander peoples (section 28). This proposal doesn't limit human rights but arguably promotes the rights identified above.

Human rights limited

The implementation of these recommendations will not limit any rights.

Evaluation

It is important that the effectiveness of the an internal right to review is monitored and evaluated over time to ensure it is achieving the desired outcomes of empowering victims to make a complaint, providing greater clarity and transparency of prosecutorial decision making, and enhancing transparency. Measures of success should consider the output of the right to review prosecution, victim satisfaction with the process and outcomes. The scope of reporting should encompass the operation of this process and outcomes achieved.

Conclusion

The Taskforce has heard that some victim-survivors do not feel that they are being treated in a trauma-informed way during the prosecution process. The Taskforce also heard that improved communication and coordination between QPS and ODPP is needed to facilitate the prosecution process, better engage victim-survivors, and lessen the stress victim-survivors experience during this process. Improved governance arrangements between QPS and the ODPP will improve the experience of victim-survivors of sexual violence.

The Taskforce has also made recommendations to improve transparency and modernise guidance provided to prosecutors and investigators in sexual offence matters. The Taskforce intends that guidance and transparency will encourage accountability and a trauma-informed approach towards victim-survivors.

The Taskforce heard from victim survivors that the VLO program at the ODPP could be improved so that victims have the information they need and understand what is happening with the case they are involved in, as it progressed through the criminal justice system.

An independent board will enable systemic overview of the investigation and prosecution of sexual offences and is intended to improve outcomes for victim-survivors. A transparent and accessible internal review process will complement the functions of the board by providing a mechanism for the review of decisions made in individual cases whilst maintaining the independence of the DPP.

[1] Crime and Misconduct Commission, *Seeking Justice: An Inquiry into how sexual offences are handled by the Queensland criminal justice system* (Report, June 2003) 39.
[2] Chris Corns, *Public prosecutions in Australia: Law, Policy and Practice* (Thomson Reuters Professional Australia Limited, 2014) 185.
[3] Crime and Misconduct Commission, *Seeking Justice: An Inquiry into how sexual offences are handled by the Queensland criminal justice system* (Report, June 2003) 39.
[4] Department of Justice and Attorney-General, Queensland Government, Director's Guidelines (June 2016) 27-28.
[5] Department of Justice and Attorney-General, Queensland Government, *Director's Guidelines* (June 2016) 2.
[6] Chris Corns, *Public prosecutions in Australia: Law, Policy and Practice* (Thomson Reuters Professional Australia Limited, 2014) 185.
[7] Chris Corns, *Public prosecutions in Australia: Law, Policy and Practice* (Thomson Reuters Professional Australia Limited, 2014) 185.
[8] Chris Corns, *Public prosecutions in Australia: Law, Policy and Practice* (Thomson Reuters Professional Australia Limited, 2014) 224.
[9] Chris Corns, *Public prosecutions in Australia: Law, Policy and Practice* (Thomson Reuters Professional Australia Limited, 2014) 225.
[10] Chris Corns, *Public prosecutions in Australia: Law, Policy and Practice* (Thomson Reuters Professional Australia Limited, 2014) 225.
[11] Queensland Law Society, Prosecutors duties, Prosecutors duties - Queensland Law Society (qls.com.au): "A prosecutor must disclose to the opponent as soon as practicable all material (including the names of and means of finding prospective witnesses in connection with such material) available to the prosecutor or of which the prosecutor becomes aware which could constitute evidence relevant to the guilt or innocence of the accused other than material subject to statutory immunity, unless the prosecutor believes on reasonable grounds that such disclosure, or full disclosure, would seriously threaten the integrity of the administration of justice in those proceedings or the safety of any person".
[12] Denise Lievore, Department of the Prime Minister and Cabinet, Office of the Status of Women, Commonwealth, *Prosecutorial decisions in adult sexual assault cases: An Australian study* (Research report, 2005) 3
[13] Queensland Office of the Department of Public Prosecutions and Queensland Police Service, Memorandum of Understanding (2018) (unpublished document).
[14] Crime and Misconduct Commission, *Seeking Justice: An Inquiry into how sexual offences are handled by the Queensland criminal justice system* (Report, June 2003) 42.
[15] Crime and Misconduct Commission, *Seeking Justice: An Inquiry into how sexual offences are handled by the Queensland criminal justice system* (Report, June 2003) 42.
[16] Judicial College of Victoria, *7.2 – Counsel for the Prosecution* (Manual, 30 August 2021) https://www.judicialcollege.vic.edu.au
[17] *Criminal Code (Qld)*, s 590AB (2)
[18] *Criminal Code (Qld)* s 590AE (2)
[19] *Criminal Code (Qld)* s 590AJ-590AL, *Criminal Practice Rules 1999* (Qld), Chapter 8
[20] Department of Justice and Attorney-General, Queensland Government, *Director's Guidelines* (Guidelines, June 2016) 39.
[21] Department of Justice and Attorney-General, Queensland Government, *Director's Guidelines* (June 2016) Paragraph 29
[22] Department of Justice and Attorney-General, Queensland Government, Director's Guidelines (June 2016) Paragraph 29 (vi) Sensitive Evidence (vii) Public Interest Exception
[23] Queensland Police Service, *Operational Procedures Manual Chapter 3 – Prosecution Process* (Manual, 3 June 2022) 83.
[24] Queensland Police Service, *Operational Procedures Manual Chapter 3 – Prosecution Process* (Manual, 3 June 2022) 88.
[25] Chris Corns, *Public prosecutions in Australia: Law, Policy and Practice* (Thomson Reuters Professional Australia Limited, 2014).
[26] The ODPP does conduct some committal proceedings in the immediate city of Brisbane (but not including Brisbane suburbs for example Holland Park, Wynnum, Inala and Richlands), Ipswich and proceedings for sexual offences in Southport.
[27] Prosecutorial decisions in adult sexual assault cases: an Australian study (apo.org.au), 2004, p5: The DPP "gives effect to prosecutorial decision-making and employs solicitors and prosecutors who exercise the delegation of the Director".
[28] Chris Corns, *Public prosecutions in Australia: Law, Policy and Practice* (Thomson Reuters Professional Australia Limited) 188.
[29] Chris Corns, *Public prosecutions in Australia: Law, Policy and Practice* (Thomson Reuters Professional Australia Limited) 249.

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Chapter 2.9: Treatment of victim-survivors in trials for sexual offences

There is a need for legislative change to court processes and procedure so that a victim-survivor's dignity is preserved and the trauma of recounting the sexual violence in evidence is minimised, while still ensuring the accused person's trial is fair.

Introduction

In Queensland, (as in all common law jurisdictions) crime is conceptualised as an offence against the state. The criminal justice system is viewed as a system to facilitate a conflict between the accused person and the state.[1] Victim-survivors are not parties to proceedings, and are precluded from actively participating in proceedings, other than as 'passive' witnesses for the prosecution.[2]

The Taskforce heard that for some victim-survivors this shift to being 'just a witness' is disconcerting and disempowering. For many victim-survivors with whom the Taskforce spoke, this feeling was at the root of their negative experiences of giving evidence at trial. One woman shared her experience with the Taskforce:

'But what stood out to me in that letter [from the Office of the Director of Public Prosecutions] was that my name wasn't even in the title of the case; it was "The Crown vs. him". Where was I, I thought? I didn't think much more about it at that time, but now that I've faced a trial I can see, what they really mean when they say "I'm just a witness". Yeah, "just". No longer the author.' [3]

One of the key features of the adversarial criminal trial 'is the giving of oral evidence by witnesses and the testing of that evidence through cross examination'.[4] Testing the evidence often requires defence lawyers to suggest to the witness that they are lying, or to propose alternative versions of events that are consistent with their client's innocence. This is a necessary and important part of the criminal trial but can be distressing for victim-survivors. Over past decades, it has been increasingly recognised that vulnerable witnesses may need protections or 'special measures' to provide their best evidence and reduce retraumatisation and that this is not inconsistent with a fair trial.[5] The Taskforce heard that the measures in place in Queensland may not be sufficient. Many of the victim-survivors from whom the Taskforce heard were treated in a way they found unnecessarily traumatic, and prevented them from giving their best evidence.

Legislative amendments to better support victim-survivors when appearing as witnesses

Background

Current position in Queensland

Special witness measures

Section 21A of the *Evidence Act 1977* outlines special measures that a Queensland court can put in place when a special witness gives evidence. A 'special witness' is defined to include:

- A child under 16 years;
- A person who, in the court's opinion:
    - would, as a result of a mental, intellectual or physical impairment or a relevant matter, be likely to be disadvantaged as a witness; or
    - would be likely to suffer severe emotional trauma; or
    - would be likely to be so intimidated as to be disadvantaged as a witness;

if required to give evidence in accordance with the usual rules and practice of the court; or

- A person who is to give evidence about the commission of a serious criminal offence committed by a criminal organisation or a participant in a criminal organisation
- A person against whom domestic violence or a sexual offence has been or is alleged to have been committed by another person; and who is to give evidence about the commission of an offence by the other person.[6]

A court will then determine what special measures should be put in place at a hearing. This often involves producing affidavit material from the victim-survivor and any support professional who the victim-survivor may be seeing, particularly if the parties are in dispute on these issues. The special measures that may be ordered include:

- the witness giving evidence in the courtroom, with the person charged being excluded from the courtroom, or obscured from the view of the witness with a screen
- the exclusion of the public from the courtroom while the witness is giving evidence
- the witness giving evidence in a remote room by audio-visual link
- the presence of a support person while the witness is giving evidence
- the recording of evidence prior to trial which can then be played in court (known as a pre-recording)
- any other directions that the court considers appropriate for the witness such as rest breaks and that questions be kept simple, limited to a reasonable time, and not be excessively repetitive.[7]

If there is a retrial a witness must give their evidence again

Currently in Queensland, an adult victim-survivor of a sexual offence who has given live evidence in court proceedings is ordinarily required to give their evidence again if there is a subsequent trial (a retrial). The section regarding special witnesses does not require that the evidence be recorded to be used in any retrial.[8] An exception is where the victim-survivor is an affected child witness or special witness who gave pre-recorded evidence.[9]

Retrials can occur because of a successful appeal or if there was a mistrial, which means victim-survivors are usually required to give their evidence in court again.

A person who is convicted of an indictable or summary criminal offence in the District or Supreme Court of Queensland has a right to appeal.[10]

The Court can allow an appeal against conviction if it is satisfied that:

- the verdict of a jury should be set aside on the ground that it is unreasonable or can not be supported by the evidence
- the judgment of the trial court should be set aside on the ground of a wrong decision having been made about a question of law
- any ground where there was a miscarriage of justice.[11]

Mistrials can occur for various reasons, such as where the accused person has been prejudiced by matters like the jury hearing inadmissible evidence or damaging social or mainstream media.[12]

A recent example in Queensland was a case that involved an unauthorised communication between the bailiff and a juror.[13] The trial judge discharged the juror involved and the trial continued with the remaining 11 jurors. The appellant was convicted and on appeal, the convictions were set aside and a retrial ordered, as the judge should not have allowed the trial to proceed with the remaining jurors.

As noted, victim-survivors who are children or special witnesses can have their evidence pre-recorded in Queensland and are able to have their pre-recorded evidence used in any retrial. These provisions, implemented in Queensland in 2004[14], are consistent with recommendation 56 of the Royal Commission into Institutional Reponses to Child Sexual Abuse (Royal Commission):

> State and territory governments should introduce legislation to require the audio-visual recording of evidence given by complainants and other witnesses that the prosecution considers necessary in child sexual abuse prosecutions, whether tried on indictment or summarily, and to allow these recordings to be tendered and relied on as the relevant witness's evidence in any subsequent trial or retrial. The legislation should apply regardless of whether the relevant witness gives evidence live in court, via closed circuit television or in a pre-recorded hearing.[15]

Video-recorded interviews between police and the victim-survivor

In a Queensland criminal trial, the evidence of a witness is presented to a jury during evidence-in-chief, also known as examination-in-chief. In relation to a victim-survivor, the process is that the prosecutor asks them questions, guiding them through their relevant and admissible evidence about the offence. An exception to this procedure is when the victim-survivor is a child or person with an impairment of the mind and the police have recorded an interview with them as to their account of the offence.[16] These interviews are regularly admitted as the victim-survivor's evidence-in-chief at the trial.[17] This process is not available to adult sexual offence victim-survivors who do not have an impairment of the mind.

The admission of video-recorded[18] statements as the evidence-in-chief for victim-survivors in sexual offences would potentially include police body-worn camera footage interviews. At present, these interviews cannot be tendered as the victim-survivor's evidence-in-chief, although they may be evidence of preliminary complaint of sexual assault or constitute real and admissible evidence of other relevant matters. There is currently a pilot program in Queensland, supported by amendments in the *Evidence and other Legislation Amendment Act 2021*, trialling the use of video-recorded victim-survivor statements to police, including from body-worn cameras, as evidence-in-chief in criminal proceedings for domestic violence related offences such as breaches of domestic violence orders.[19]

Cross-examination in relation to an 'improper question'

Following the evidence-in-chief, victim-survivors are usually cross-examined by defence counsel. Cross-examination involves the defence counsel asking the victim-survivor questions to test their evidence. The defence barrister must also put the case of the accused person to the victim-survivor so that the victim-survivor can comment on it and say where their version is different. This process is designed to ensure that an accused person cannot run a case that a witness has not had an opportunity to respond to.

Section 21 of the *Evidence Act 1977* provides that the court *may* disallow a question put to a witness in cross-examination or inform a witness that the question need not be answered if the court considers that it is an improper question.[20] An improper question means a question that a witness is asked which 'uses inappropriate language or is misleading, confusing, annoying, harassing, intimidating, offensive, oppressive or repetitive'.[21] A judge can intervene and disallow a question, or do so after one of the barristers has objected.

The Legal Aid Queensland (LAQ) submission emphasised that barristers must comply with the professional conduct rules and standards outlined in the *Barrister's Conduct Rules 2011.*[22] In relation to cross-examination in sexual offence proceedings, rule 61 states:

> … in proceedings in which an allegation of sexual assault, indecent assault or the commission of an act of indecency is made and in which the alleged victim gives evidence:
>
> a. a barrister must not ask that witness a question or pursue a line of questioning of that witness which is intended:
>
> i. to mislead or confuse the witness; or
>
> ii. to be unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive; and
>
> b. a barrister must take into account any particular vulnerability of the witness in the manner and tone of the questions that the barrister asks.[23]

Criminal Law (Sexual Offences) Act 1978

In Queensland, the *Criminal Law (Sexual Offences) Act 1978* (CLSOA) regulates 'the admission of certain evidence in proceedings relating to sexual offences and the mode of taking evidence in such proceedings, to protect persons concerned in the commission of sexual offences from identification, and for related purposes'.[24] Provisions for other types of evidence in Queensland are contained in the *Evidence Act 1977* or the common law.

Section 4 of the *CLSOA* stops barristers from asking questions about the general reputation of a complainant about their 'chastity', unless in certain circumstances the court grants leave.[25]

Section 5 of the *CLSOA* excludes members of the public from the courtroom while the complainant is giving evidence.[26]

Queensland Intermediary Scheme

The Royal Commission recommended the use of intermediary schemes in Australia.[27] On 5 July 2021, the *Queensland Intermediary Scheme* pilot program commenced and will conclude on 30 June 2023.[28] The pilot is employing 'the use of intermediaries to assist witnesses with communication needs to give their best evidence' both when they are interviewed by police and when they give evidence in court.[29] Whilst the pilot phase is limited to certain prosecution witnesses in child sexual offence matters, the scheme could inform the implementation of supports more broadly.[30] An evaluation of the pilot program is being conducted by the Australian Catholic University, with an interim report due by the end of 2022 and the final report due in October 2023.[31]

Renaming certain criminal offences

In Queensland, the *Criminal Code* was drafted by Sir Samuel Griffith in 1897. Many of the offences contained in chapter 22 of the *Criminal Code* (offences against morality), including names of offences containing the term 'carnal knowledge', may not appropriately reflect contemporary community understanding of sexual offending.

The offence of maintaining a sexual relationship with a child was first introduced in Queensland in 1989.[32] Other Australian jurisdictions have since followed Queensland's lead and introduced similar offences often called 'persistent child sexual abuse' offences. The Royal Commission recommended that all jurisdictions introduce legislation to amend its persistent child sexual abuse offence based on the Queensland offence of maintaining a sexual relationship with a child.[33] However, it did note concerns about the name of Queensland's offence, stating:

> *Apart from the absence of retrospectivity, the only concern we have with the current Queensland offence is its name: 'maintaining an unlawful sexual relationship'. The language of 'relationship' does not sit easily with the exploitation involved in child sexual abuse offending.*[34]

In their submission to the Taskforce, knowmore Legal Service made observations about the following outdated language in Queensland's *Criminal Code*:

- *Chapter 22 Offences against morality:* 'using 'morality' to describe any sexual offence, especially sexual offences against children, does not reflect current community standards and is not appropriate in a modern criminal justice system.'[35]
- *Offences which reference carnal knowledge:* 'The use of such an outdated and euphemistic term to describe the penetrative sexual abuse of a child completely obscures the gravity of the offending dealt with by these sections.'[36]
- *Maintaining a sexual relationship with a child (section 229B):* 'Victims and survivors have expressed strong objections to this offence name in other jurisdictions, noting in particular that it normalises the sexual abuse of children and wrongly suggests that the child was "a willing participant in an equal relationship". Minimising the seriousness of their abuse in this way causes further distress and psychological harm to victims and survivors who seek a criminal justice response.'[37]

Professor Ben Mathews and Doctor of Philosophy Candidate Elizabeth Dallaston, both at the School of Law, Queensland University of Technology, have argued that the term 'sexual relationship' should not be used in the name of the maintaining offence or the content of it.[38] They justify this in reference to theory, 'including recognition that the concept of a "sexual relationship" embeds harmful myths about child sexual abuse into the law.'[39] These arguments are supported in research that advocates for a re-conceptualised model of understanding child sexual abuse given the advances in knowledge on the dynamics of child sexual abuse since the 1970s.[40]

The Queensland Law Reform Commission (QLRC) also commented in their report reviewing consent law and mistake of fact, about the need to modernise the language used in Chapter 32 of the *Criminal Code*, by removing the term 'carnal knowledge'.[41] The report noted:

The Commission considers that the term 'carnal knowledge', which is used in the definition of the offence of rape in section 349, is outdated. Section 349 would be improved by the adoption of more modern language such as that found, for example, in the Criminal Code (WA) (which uses the term 'sexually penetrates'). However, a change to remove the term 'carnal knowledge' may require, or suggest, more than a simple substitution of terms having regard to the drafting of section 349 as a whole. Significantly, the term 'carnal knowledge' is also used in a number of other offences, outside Chapter 32 of the Criminal Code. Any change to remove the term 'carnal knowledge' should be considered in the context of all of those offences.[42]

Non-contact orders

In Queensland, a non-contact order can be made by a court if an offender is convicted on indictment or summarily of a personal offence.[43] A personal offence is defined as personal offence 'an indictable offence committed against the person of someone'.[44] Currently, the duration of a non-contact order is two years.[45] The court can also make a Domestic Violence Order (known as a protection order) to protect people in domestic and family violence situations.[46]

How do other jurisdictions address this issue?

Special witness measures

In contrast to Queensland, a New South Wales (NSW) victim who gives evidence in respect of a prescribed sexual offence, is legally *entitled* to (but may choose not to) give evidence in a remote room by means of closed-circuit television facilities or other technology.[47] The victim may also choose to give evidence by alternative arrangements made to restrict contact between the victim and the accused person or any other persons in the courtroom, such as through screens or planned seating arrangements.[48] The court, on its own initiative or on application by a party to the proceeding, may make orders that such means not be used[49] but only if there are special reasons and the interests of justice require that the victim's evidence not be given that way.[50]

The NSW provisions are contained in the in the *Criminal Procedure Act 1986* (NSW) (see Appendix 6).

Recording the evidence of victim-survivors and special witnesses to be used in any retrial

In NSW, there are provisions in the *Criminal Procedure Act 1986 (NSW)* (see Appendix 6) that enable the recorded evidence of the victim or special witness in sexual offence proceedings to be used in any retrial.[51] In Victoria, the legislation allows for a recording of a special hearing involving witnesses who are children or have a cognitive impairment, to be used in any retrial.[52] In Tasmania, there is also a provision which enables an audio-visual record of evidence given at trial to be admitted in a later criminal proceeding.[53] This means that a victim-survivor does not have to give full evidence in the court proceedings multiple times in the event of appeals.

Video-recorded interviews between police and the victim-survivor

The use of video-recorded interviews and audio-visual recorded evidence in criminal proceedings regarding sexual offences in other Australian jurisdictions is as follows:

- Commonwealth: a video-recording of an interview may be admitted as evidence-in-chief for victims who are a child witness, a vulnerable adult complainant or a special witness[54]
- Australian Capital Territory: a complainant, similar act witness, child, intellectually impaired witness and witness with disability in a family violence offence proceeding, less serious violence offence proceeding, serious violent offence proceeding, sexual offence proceeding, can give an audio-visual recording as their evidence-in-chief[55]
- Northern Territory: a recorded statement may be admitted as evidence-in-chief for vulnerable witnesses in cases of sexual or serious violence offences[56]
- New South Wales: a vulnerable person is entitled to give evidence-in-chief in the form of a recording[57]
- Tasmania: a prior statement of an affected child or prescribed witness recorded by any means can be admitted into evidence[58]

- South Australia: audio-visual recorded evidence may be admitted for vulnerable witnesses and certain witnesses in certain criminal proceedings[59]
- Victoria: a person under the age of 18 years or a person with a cognitive impairment is entitled to give evidence-in-chief in the form of an audio or audio-visual recording about a sexual offence[60]
- Western Australia: a video-recording may be admitted as evidence-in-chief for victims who are children and persons with mental impairment.[61]

Cross-examination in relation to an 'improper question'

In NSW, section 41 of the *Evidence Act 1995* (NSW) states that the 'court *must* disallow improper questions' (see Appendix 6). The section also sets out detailed examples of what is and what is not an improper question.[62] The Commonwealth and the jurisdictions of Victoria, Tasmania, South Australia, and Australian Capital Territory all provide that the court *must* disallow improper questions and include detailed examples.[63] The Northern Territory states that the court may disallow an improper question or questioning but that it must do so when it is put to a vulnerable witness, or inform the witness that it need not be answered and include detailed examples.[64] Similar to Queensland, in Western Australia the section uses the phrase 'the court may disallow a question' and does not provide detailed examples like the other jurisdictions.[65]

Ground rules hearings

Ground rules hearings are used in England and Wales and have also been introduced in Victoria. In Queensland, hearings similar to ground rules hearings are being used in the intermediary scheme pilot program.[66] The purpose of ground rules hearings is to set the 'ground rules' that will apply at trial, including the style and content of questioning of the victim-survivor during cross-examination.[67] Many consider that ground rules hearings 'are important in bringing to the attention of counsel and judicial officers the comprehension capacity and communication needs of the vulnerable witness, which are relevant circumstances to be considered for disallowing improper questioning'.[68]

In Victoria, ground rules hearings are outlined under sections 389A-389E of the *Criminal Procedure Act 2009* (Vic) (see Appendix 7). The VLRC's *Improving the Justice System Response to Sexual Offences* report (the VLRC report) outlined the types of 'ground rules' that can be set at a hearing and will apply in the trial proceedings:

- the style of questioning (for example, they can prevent the use of leading or complex questions, or allow the use of more free-flowing 'narrative' evidence)
- the time taken to question a witness (for example, they can set the timing of breaks, and the start and end times of questioning)
- the questions that may or may not be put to a witness (for example, they can suggest other ways of dealing with inconsistencies, or prevent complex questions about the timing of events)
- if a party must put all evidence contradicting or challenging the witness in cross-examination.[69]

The VLRC heard that ground rules hearings and intermediaries were working well.[70] The process was recognised as one which ensures 'that questioning is fair, appropriate and easier on complainants'.[71] The report also noted that they had received feedback that the 'effectiveness of ground rules hearings depends on the complainant and whether an intermediary is appointed'.[72]

Renaming certain criminal offences

Other Australian jurisdictions have named the offence of maintaining a sexual relationship with a child as follows:

- Tasmania: Persistent sexual abuse of child or young person[73]
- Western Australia: Persistent sexual conduct with child under 16[74]
- New South Wales: Persistent sexual abuse of a child[75]
- Victoria: Persistent sexual abuse of a child under the age of 16[76]
- South Australia: Unlawful sexual relationship with child[77]
- Australian Capital Territory: Sexual relationship with child or young person under special care[78]
- Northern Territory: Sexual relationship with child[79]

The other Australian jurisdictions which have a *Criminal Code*[80], Western Australia and Tasmania, have amended the name of the offence. However, the offence in Tasmania still contains a reference to 'sexual relationship' in the content of it.[81]

In the other *Criminal Code* jurisdictions, the equivalent offence of carnal knowledge with or of children under 16 is called:

- Tasmania: Penetrative sexual abuse of child or young person[82]
- Western Australia: Child under 13, sexual offences against, and Child of or over 13 and under 16, sexual offences against[83]

Results of consultation

Victim-survivors

The Taskforce heard numerous accounts from vulnerable victim-survivors unhappy about the measures put in place to support them. Some felt that they were not provided sufficient information about potential consequences of the special measures as they were required to decide long before the trial.[84] Others found that the measures they were told had been arranged had not in fact been applied for prior to the trial.[85] Others felt the measures were insufficient or not used appropriately:[86]

> *'I had to give evidence for court in a separate room through the camera. I knew why I was there – to answer questions. I could see the bastard. I could see him in the background, the lawyer kept moving so the camera focused on him'.* [87]

The Taskforce heard that for victim-survivors, being cross-examined was extremely stressful, and that some felt that they were not well supported:[88]

> *'The prosecutor didn't do a good job. He got off. He let the other lawyer say all this other stuff about me that wasn't true. [The prosecutor] should have prepped me and my sister better as a witness. When my sister was on the stand he should have objected to the questions... It was awful. The judge let it happen'.* [89]

Victim-survivors frequently told the Taskforce that their fear of a negative court experience deterred them from pursuing charges:[90]

> *'The prejudices against me with my disability (hearing impaired) would have already robbed me of any 'credibility' in any court of law. There is no way I could have coped with being in a courthouse knowing he was somewhere close trying to undermine me or justify his behaviour'.* [91]

Some victim-survivors told the Taskforce that they felt unsafe in the court precinct, that they were unable to access safe waiting areas and that they were forced to confront either the accused person or their supporters.[92] This reinforced the major concerns about access to safety in courts raised by victim-survivors and other stakeholders in *Hear her voice 1.*

Murrigunyah, a service that works with First Nations women, explained that victim-survivors saw the trial as a traumatising process with little gain for them at the end:

> *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.*[93]

Service system stakeholders

Special witness measures

Full Stop Australia suggested that Queensland's 'special measures regime needs to be overhauled to strengthen the protection of complainants and witnesses of all ages in sexual offence matters and bring Queensland in line with other jurisdictions'.[94] It suggested that Queensland lags behind other states in providing a trauma-informed criminal justice system for complainants. [95] Specifically, Full Stop Australia suggests urgent amendment 'to insert a presumption that a complainant in a sexual assault matter (of whatever age) is entitled to all special measures as required … but can decline any measures they wish'.[96]

The Gold Coast Centre Against Sexual Violence Inc (GCCASV) supported amendments so there is a presumption that adult complainants in sexual offence matters 'give evidence via CCTV unless it is their informed choice to enter the courtroom'.[97] GCCASV told the Taskforce that in their experience, there is 'no guarantee that the victim-survivor's choice will be honoured as it must be agreed by defence.[98] The outcome may not be known until the court date which creates even more anxiety for the victim/survivor and may disadvantage them as a witness'.[99]

WWILD Sexual Violence Prevention Association Inc (WWILD) recommended that all victim-survivors of sexual abuse should be able to provide testimony from a remote room as a matter of course, rather than having to apply for approval from the court as an added step.[100]

Support service providers told the Taskforce that, when victim-survivors were able to access it, the option to pre-record evidence was frequently taken up and benefited victim-survivors.[101] The Centre Against Sexual Violence (Logan and Redlands) said that being able to pre-record evidence helped victim-survivors to 'get their part over and done with' and to move on with their lives.[102]

A support worker assisting a young woman who was raped by her boyfriend, told the Taskforce that the special measures promised did not eventuate:

> *She was told that she would not need to be present in the courtroom when the court case was heard. I called the Women's DV Service to confirm and they said that it was up to the police to apply for her to witness from another room. I confirmed this with the police officer before the court date and he confirmed that it had been arranged. When the case was heard in court, she was present in the same room at the same time as her abuser. She was not permitted a support person. She was taken to another room only when she requested it to the judge herself. In the other interview room she could hear her abuser through the speakers, yelling to her things such as "Please don't do this. I love you".*[103]

Recording the evidence of victim-survivors and special witnesses to be used in any retrial

Knowmore Legal Service supported the evidence of complainants and special witnesses being recorded during sexual offence proceedings and being used in any subsequent trial or retrial, as it is in NSW.[104] They note in their submission that this is consistent with the Royal Commission into Institutional Responses to Child Sexual Abuse recommendation 56 and 'is an important measure for helping victims and survivors to avoid the trauma of having to repeatedly give evidence'.[105] Knowmore Legal Service recognised that there are provisions which enable the pre-recorded 'evidence of children and special witnesses to be used in any subsequent rehearing, retrial or appeal (unless the relevant court orders otherwise)'.[106] However, they highlighted that there are significant gaps in the current legislation in Queensland in relation to special witnesses who give evidence in the trial, 'with no requirement for the evidence to be recorded'.[107]

Full Stop Australia recommended that sexual assault complainants be automatically entitled to give evidence remotely and that all evidence in trial for sexual offences be recorded and the evidence be able to be used in any subsequent trial or retrial.[108]

Video-recorded interviews between police and the victim-survivor

In a meeting at The Women's Centre in Townsville, staff supported amendments that enabled video-recorded statements to be used as evidence-in-chief.[109] The North Queensland Combined Women's Services submitted that even if a woman was able to be supported from the time she reported up to and throughout the criminal proceedings, this would not be sufficient on its own to lessen the trauma of a criminal trial:

> *[it] does not acknowledge or address the consistently inadequate outcomes of convictions in court the extraordinarily long wait times, the ongoing and further retraumatising processes of cross-examinations, comments from judges, defence barristers and jury members, appeals, hung juries and acquittals that compound and reinforce the effects of complex post-traumatic stress and perpetuate dominant misogynistic attitudes and misinformation about sexual assault. This process is often more harmful for Aboriginal and Torres Strait Islander women and women from diverse culture*[110]

WWILD identified issues with recorded interviews currently being conducted by police with victim-survivors under section 93A of the *Evidence Act 1977*. These include:

- Poor identification of disability or belief of disability, leading to 93A interviews not being offered or refused on request by the woman or a WWILD staff member[111]
- Police officers demanding evidence of disability before providing a 93A interview, causing further delays to interviews[112]
- Clients experiencing long delays at times between initial complaint and the 93A interview[113]
- Clients have had to re-watch their hours-long 93A video several times over and over due to their pre-recorded evidence being adjourned multiple times[114]
- Some police officers refused a 93A if a person had previously made a written statement without considering if the previous written statement was ideal or appropriate delays to interviews[115]

WWILD recommended that the Queensland Police Service's resourcing and evidence of disability issues be examined and addressed, with a particular focus on regional police stations in Queensland.[116]

Cross-examination in relation to an 'improper question'

Despite the protection intended to be provided by section 21 of the *Evidence Act 1977*, service providers gave many examples of cases where victim-survivors of sexual assault were traumatised by brutal and apparently irrelevant cross-examination.

Queensland Sexual Assault Network (QSAN) members described cross examination in sexual offence matters in Queensland 'as akin to character assassination'.[117] QSAN also stated that the victim-survivor's 'entire history is "fair game" for cross-examination but his history is completely protected by the court process'.[118] QSAN members told the Taskforce that their clients had to endure 'badgering and intimidating cross-examination'. In one example in the QSAN submission, the defence cross examined the complainant about her economic status, suggesting 'that she was doing this for money'.[119]

The Centre Against Sexual Violence (Logan and Redlands) noted that for many of their clients, the trial appeared to be aimed at discrediting the victim-survivor and minimising the behaviour of the perpetrator.[120] The support workers spoke of a defence lawyer using the physical size of the complainant (which was different from what it had been at the time of the alleged offence some years previously) to question the likelihood of the alleged offending.[121]

Full Stop Australia also noted with concern examples provided by WLSQ (see below) where victim-survivors were questioned about sexual abuse that they had previously experienced.[122] They noted that section 21 of the *Evidence Act 1977* about improper questions is 'severely limited in scope and detail and requires

significant strengthening' and recommended the section be modelled on section 41 of the *Evidence Act 2008* (NSW).[123]

Queensland Intermediary Scheme

The WWILD submission commented on the importance of expanding the Queensland Intermediary Scheme, noting that:

> Court is a daunting and stress-inducing place for any victim of sexual violence but for women with intellectual disabilities this is especially so, for all the reasons outlined in this submission. Fear of not being understood and understanding, fear of ridicule, high levels of shame as a result of the assault and having to talk publicly about sexual violence are all intimidating factors.[124]

Ground rules hearings

Full Stop Australia suggested that Queensland consider introducing ground rules hearings as occurs in Victoria.[125] It recommends that Queensland implement recommendation 84 of the VLRC Report which involves to enhance the protections for complainants and ensure they are respected during the trial process (described above).[126]

Full Stop Australia also recommended that victim-survivors should be given notice that evidence of sexual reputation is being introduced, potentially as part of the ground rules hearing process, as per the VLRC Report recommendation.[127]

Service providers told the Taskforce about the importance of victim-survivors being able to access interpreters.[128] The Taskforce also heard an instance where a victim-survivor arrived at court expecting an interpreter had been arranged, only to be told that the interpreter present was for the accused person, resulting in her having to give evidence in English.[129]

Legal stakeholders

Special witness measures

The Office of the Director of Public Prosecutions highlighted that 'not all victims of sexual offences are desirous of giving evidence other than in the usual way and crown prosecutors are guided by the victim's opinion in deciding to make an application for special measures'.[130] Defence lawyers who attended the consultation forum in Brisbane told the Taskforce it was their experience that special witness applications, including the pre-recording of the victim-survivor's evidence,[131]are increasingly proceeding by orders made with the agreement of the parties.

Recording the evidence of victim-survivors and special witnesses to be used in any retrial

Knowmore Legal Service supported a requirement that evidence of all witnesses in criminal proceedings be recorded and, in the case of complainants and special witnesses in sexual offence proceedings, enable these recordings to be used in any subsequent trial or retrial.[132] The submission notes that 'this is consistent with Recommendation 56 from the Royal Commission's Criminal Justice Report and is an important measure for helping victims and survivors to avoid the trauma of having to repeatedly give evidence.'[133] The Queensland Government has implemented provisions allowing the prerecording of evidence of children and other vulnerable witnesses, but noted 'further consideration and consultation is needed to determine the sufficiency of existing legislative provisions and other impacts'.[134]

Video-recorded interviews between police and the victim-survivor

LAQ noted that 'a best practice framework would need to be implemented to govern the process of taking evidence in this way', as well as the allocation of significant resources to deliver appropriate training to police officers conducting the interviews.[135] The Queensland Law Society (QLS) also noted that 'there are complexities inherent in allowing video-recorded interviews to be used as evidence-in-chief that need further consideration'.[136]

While supporting measures to avoid victim-survivors re-telling their stories, Women's Legal Service Queensland (WLSQ) cautioned that introducing video-recorded interviews with police relies 'upon the quality of police interviews, training and supporting resources'. [137]

Criminal Law (Sexual Offences) Act 1978

Knowmore Legal Service suggested strengthening section 4, so that it is consistent with comparable provisions in New South Wales, Tasmania, Victoria and Western Australia and the recommendation made by the Australian Law Reform Commission in 2010.[138]

WLSQ told the Taskforce that it had observed the operation of section 4(3) of the *CLSOA* resulting in what they considered were 'perverse applications'[139]:

- leave granted for defence to cross-examine a 13 year old girl about being raped by her grandfather when she was seven years old
- leave granted in relation to prior 'sexual history' of being abused by her step-father, and counselling notes were obtained about the impact of that trauma on her.[140]

WLSQ submitted that 'if these provisions were designed to protect the complainant from being subjected to degrading and humiliating questions, then they have failed'. [141]

LAQ stated that, in their experience, prosecutors proactively utilise the current legislative mechanisms that protect victim-survivors when giving evidence.[142]

Ground rules hearings

The WLSQ supported the implementation of ground rules hearings in sexual offence proceedings, emphasising that the hearings should be available to a victim-survivor.[143]

Renaming certain criminal offences

In the submission to the Taskforce, knowmore Legal Service highlighted that 'Queensland's Criminal Code continues to use language that does not reflect a contemporary understanding of the nature and impact of sexual violence, especially sexual violence against children'.[144] In particular, the submission made reference to sexual offences contained in 'Chapter 22 Offences against morality'; sexual offences against children named with reference to 'carnal knowledge'; and the offence of maintaining a sexual relationship with a child.[145]

Safety at court

The North Queensland Combined Women's Services reiterated concerns heard by the Taskforce in consultation for *Hear her voice 1* that the lack of safety at court was a deterrent to women engaging with the criminal justice system:

> *Safety concerns are part of the experience of some victims in the criminal justice system. We have heard from women, especially First Nations women, who wish to give evidence in criminal matters being intimidated, harassed and/or threatened by the other party's family members outside of court and when arriving at court. Bail conditions may prohibit the perpetrator from contact with the victim, but do not preclude the perpetrator's family and supporters from victim blaming and shaming, blaming the victim for the involvement of the police and courts, and intimidating the victim and attempting to pressure them to withdrawing complaints.*[146]

Government agencies

Queensland Police Service

The submission from the Queensland Police Service (QPS) highlighted that currently Child Protection Investigation Unit investigators conducted recorded interviews with witnesses who are children and those who have an impairment of the mind, pursuant to section 93A of the *Evidence Act 1977*[147]. However, under section 21A of the *Evidence Act 1977*, adult witnesses deemed to be special witnesses are unable to have their evidence electronically recorded by police.[148] This means that investigating police must obtain a written statement from adult victim-survivors of sexual violence. The QPS submission comments on the problems with only being able to obtain a written, rather than recorded statement:

> *This process is not victim-centric and can cause further trauma to the victim, noting that the time taken to sit with an investigator to type a statement is greater than the time taken to record a free narrative account. A free narrative account is considered best evidence as it allows the victim to describe the event in her own words. The taking of a typed statement can often unwittingly result in the words of the victim being altered by the investigator, recorded inaccurately, or otherwise forgotten in the telling and retelling of the account. This can often lead to questions in court about the credibility or recall of the victim.*[149]

The QPS recommended that consideration be given to more closely aligning the provisions of sections 93A and 21A of the *Evidence Act 1977*, to enable electronically recorded interviews to be taken from all witnesses who would be deemed special witnesses under the legislation.[150] Other arguments in support of this practice include that it has the potential to improve a victim-survivor's experience of the court process as well as the quality of the evidence.[151]

At a consultation forum with investigators and detectives, the Taskforce heard that some police officers had misgivings about the adoption of a 93A type recorded initial complaint beyond the scope of its current use.[152] A key concern for these officers was that statements can be taken over the course of a few days rather than in one sitting.[153] This allows the victim-survivor the opportunity to review other sources of information to assist in relation to dates of alleged incidents they are describing and helps them to provide a more detailed and accurate version of events. The Taskforce heard existing processes would need to be updated, such as taking steps to pre-plan recorded statements so that they are only conducted by trained officers, this is to ensure changes made to this process do not in any way adversely impact on victim-survivors.[154]

Department of Justice and Attorney-General

DJAG told the Taskforce that a key barrier to the recording of evidence as standard procedure in sexual offence matters is a lack of resources.[155]

In consultation for *Hear her voice 1,* the Department of Justice and Attorney-General (DJAG) told the Taskforce that less than half (46%) of Queensland courthouses currently have remote witness capability and only 64% have safe rooms, and those that do still are not able to meet demand for these facilities.[156] DJAG told the Taskforce that it is working to improve service delivery to the victim-survivors of domestic and family violence through Court Services Queensland, but conceded that foundational investment is needed to achieve lasting and transformational change.[157]

In response to recommendation 49 of *Hear her voice 1* (discussed further below), the Queensland Government has committed to completing 'an audit of victim-safety across Queensland Courts, with the outcomes of the audit to inform implementation of a state-wide court domestic and family violence safety plan'.[158]

Office of the Director of Public Prosecutions

As part of the consultation process, the Taskforce met with a prosecutor based in regional Queensland who spoke to the Taskforce in their personal capacity. They told the Taskforce about their experience of the special witness provisions under section 21A of the *Evidence Act 1977*. The prosecutor noted a recurring issue was that, even where victim-survivors were deemed to be special witnesses under the legislation, that did not mean the judge would automatically order special measures for them. To obtain the special measures, prosecutors often have to tender supporting material, including an affidavit from the victim-survivor about how she feels about giving evidence. The prosecutor observed that this process tends to traumatise the victim-survivor and also gives the lawyer representing the accused person further material on which to cross-examine the complainant. The prosecutor referred the Taskforce to the decision of *R v Skey*[159], which highlights these challenges.[160] The Taskforce also heard about this same experience from prosecutors who attended the consultation in Brisbane.[161]

Other relevant issues

Admissibility of evidence about a victim-survivor's sexual activities

In respect of the cross-examination of victim-survivors about sexual reputation or sexual activities, the Australian Law Reform Commission (ALRC) in 2010 recommended that federal, state and territory legislation should include the following:

- Recommendation 27-1: Complainants of sexual assault must not be cross-examined and the court must not admit evidence of the sexual reputation of the complainant
- Recommendation 27-2: The complainant must not be cross-examined and the court must not admit any evidence as to the sexual activities of the complainant, other than those to which the charge relates, without leave of the court
- Recommendation 27-3: The court must not grant leave unless it is satisfied that the evidence has significant probative value and that it is in the interests of justice to allow the cross-examination or to admit the evidence, after taking into account:

  (a) the distress, humiliation and embarrassment that the complainant may experience as a result of the cross-examination or the admission of the evidence, in view of the age of the complainant and the number and nature of the questions that the complainant is likely to be asked;

  (b) the risk that the evidence may arouse discriminatory belief or bias, prejudice, sympathy or hostility;

  (c) the need to respect the complainant's personal privacy;

  (d) the right of the defendant to fully answer and defend the charge; and

  (e) any other relevant matter.[162]

In making these recommendations, the ALRC noted that the formulation intends to 'adequately safeguard complainants against irrelevant and harassing cross-examination, but also uphold the defendant's right to a fair trial'.[163] The ALRC also took into account that evidence of a complainant's prior sexual activity 'is not normally relevant to the issue of consent, and tendency (or propensity) reasoning in this regard suffers from dangers of reliance on resilient myths and misconceptions about sexual assault complainants'.[164] A number of Australian jurisdictions have implemented these recommendations into legislation.[165]

The submission of knowmore Legal Service suggested that the provisions of the CLSOA could be 'strengthened to promote better criminal justice outcomes for victims and survivors' by amending the test for granting leave to cross-examine victims.[166] They suggest amending section 4 so that it is consistent with recommendation 27-3 made by the Australian Law Reform Commission in 2010, and comparable provisions in other Australian jurisdictions.[167]

Section 4 of the *CLSOA* could be amended to state that 'leave should not be granted unless the court is satisfied that the probative value of any evidence about a complainant's sexual activities outweighs any distress, humiliation, embarrassment or other prejudice that the complainant may suffer as a result of its admission'.[168] Knowmore Legal Services noted that 'such a requirement places a greater emphasis on the interests of victims and survivors and reflects a more trauma-informed approach for dealing with sexual offences'.[169]

Consideration could also be given to clarifying section 5 of the *CLSOA*, to ensure that the court is closed when a complainant is 'giving evidence'. 'Giving evidence' should include when a complainant is giving evidence in a pre-recording; the playing of the pre-recorded evidence in the trial proceedings; and a complainant giving evidence in the trial proceedings. This will mean that the court is closed regardless of the different forms in which a complainant gives evidence, which was what was intended by the legislation.

Further, the provisions of this Act could be moved to the existing *Evidence Act 1977*, to ensure that all evidence provisions are considered together. The Taskforce considered that this would focus the minds of all involved in the proceeding, including less experienced legal practitioners, to the relevant provisions. The Taskforce recognised that an increased awareness of the provisions would also minimise the risk of a retrial, which would be apt to cause further distress to a victim-survivor.

Facilities in Queensland courtrooms to record victim-survivor evidence and provide safety

In *Hear her voice 1,* the Taskforce noted that the lack of remote-witness capability in more than half of Queensland courthouses made one of the most important protections available under section 21A of the

Evidence Act 1977 redundant in many Queensland courthouses.[170] The Taskforce found that, more broadly, the lack of safety infrastructure jeopardises the safety of victim-survivors of domestic and family violence, their ability to tell their story and, may cause victim-survivors to withdraw their participation in court proceedings.[171]

The Taskforce has heard that because of the lack of remote-witness capability in most courthouses, this is sometimes undertaken at offsite locations. This may be at an educational institution (for example a university or TAFE), which, some victim-survivors find understandably disconcerting. In a visit to a Multi-Disciplinary Centre in Melbourne, Taskforce members noted the purpose-designed room for giving evidence remotely and for pre-recording evidence.[172] The Taskforce saw merit in exploring options to locate these facilities outside the court precinct, though there is a need to consider the ability for the prosecutor to be able to have a private discussion with the witness, and the need to provide non-legal support. Taskforce members noted that it may not be consistent with a trauma-informed approach to locate such facilities in the same building where victim-survivors access counselling.

It is ineffective to undertake legislative reform to improve safety measures if facilities are not available to give effect to these measures. The Taskforce noted in *Hear her voice 1* that investment in the safety of Queensland's courts is required to meet existing demand and prepare for the anticipated increase in demand as a result of implementation of the Taskforce's recommendations.[173] The Taskforce recommended the implementation of a state-wide plan to improve safety for victim-survivors of domestic and family violence when attending courts. The plan should include (among other things) capital upgrades to court infrastructure, including the incorporation of safe waiting rooms, protected witness rooms and implementing processes that enable victim-survivors to appear and participate via audio-visual or telephone rather than in person. As noted above, the Queensland Government has committed to undertaking an audit to inform implementation of a state-wide court domestic and family violence safety plan.[174]

Infrastructure upgrades require significant and ongoing investment, however this is justifiable given the benefits for improving vulnerable victim-survivors' access to justice.

Risks and benefits of video-recorded interviews as evidence-in-chief

The North Queensland Women's Legal Service (NQWLS) supported the use of video-recorded interviews being used as the evidence-in-chief of victim-survivors of sexual offences in trials. They identified how the current process has a negative impact upon victim-survivors:

> *Currently, victims must endure being in a witness box and recounting the traumatising event yet again, knowing the defence is ready to challenge any inconsistencies with her original police statement. Having video-recorded evidence-in-chief would relieve a victim of this burden and ensure that her evidence is accurately recorded in an environment far less intimidating than the witness box. This measure if it is introduced, would go a long way in protecting victims from harm whilst proving a fair trial for the accused person.*[175]

The QLS supported 'in principle video-recorded statements in sexual offence proceedings, subject to the interests of justice and a fair trial'.[176] They recognise the importance of implementing measures 'aimed at minimising trauma for victims' and note that 'engaging with the criminal justice system alone can be traumatic for victims'.[177]

However, the QLS Criminal Law Committee highlighted the following risks with using video-recorded evidence as evidence-in-chief:

- Some victims feel empowered by giving evidence in person. Relying on video-recorded evidence-in-chief may take away the victim's desired way of relaying their experiences.
- The way a victim's evidence is presented to the court may be impacted depending on the context and timing of when the recorded statement was taken. Pre-recorded evidence can sometimes be less impactful than evidence given personally.

- Quality, volume of detail, particularity and the admissibility of the content provided during the recorded interview is contingent on the way a victim is questioned by the interviewing police officer.
- Where matters of credit and reliability are in issue, it may not always be in the interests of justice to present the complainant's evidence-in-chief as a recorded statement.
- There will be additional cost and resource implications for parties involved in any proceedings. The time required for transcribing and/or viewing statements may add to legal costs. Where these costs become prohibitive, this may result in access to justice issues.[178]

The risks and benefits of renaming certain offences

The naming of sexual offences has recently been under the spotlight, with Grace Tame, 2021 Tasmanian and Australian of the year, a key advocate for nation-wide change. She has persuasively argued that the offence of 'maintaining a sexual relationship with a child' be renamed 'the persistent sexual abuse of a child'. Ms Tame, a victim-survivor of child sexual abuse, is recorded as saying that media reporting around her abuse used the term 'relationship', a term which was misleading and diminished the reality of what had occurred.[179] In her speech at the National Press Club, Ms Tame said:

> *Still today, perpetrators of abuse find safety in outdated, inconsistent legislation which both protects them perpetuates social ignorance. For example, the man who abused me, who I spoke about before, was convicted of maintaining a sexual relationship with a person under the age of 17. In other jurisdictions, this exact same offence was called the persistent sexual abuse of a child. The former charge implies consent while the latter reflects the gravity and the truth of an unlawful criminal act committed against an innocent child victim.*[180]

In 2020, Tasmania renamed a number of offences, including the offence of 'maintaining' to 'the persistent sexual abuse of child [or young person]' , following a review of language used in its *Criminal Code.*[181]

As noted above, the Taskforce has heard from a number of stakeholders that want changes in the language used. The knowmore Legal Service submission to the Taskforce has suggested that a review of language (similar to that conducted in Tasmania) be conducted in Queensland 'with the aim of identifying how the language used in the *Criminal Code* should be updated to ensure that the names of sexual offences properly reflect the nature and impact of sexual violence and contemporary community expectations'.[182]

However, the Taskforce notes that changing the name of an offence is not a matter of simply replacing one name with another. Jurisprudence is built around the interpretation of language used in, and the elements of the offence. While the terminology used in an offence can influence how it is understood by the community, it is also important that well-intentioned changes to language do not have unintended detrimental impacts.

The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, Shannon Fentiman is reportedly considering reform of the *Criminal Code* in relation to the offences of maintaining a relationship and the phrase 'carnal knowledge'. The Attorney-General is reported to have said that this work 'will be done as part of our legislative response to the Women's Safety and Justice Taskforce report one'.[183]

Extending non-contact orders

In Chapter 2.2 the Taskforce recognised that threats of violence and harassment made toward victim-survivors of sexual violence can be a significant barrier to them reporting the violence particularly for First Nations women and girls. The issuing of a non-contact order to offenders convicted of sexual violence is one way a sentencing court can provide women and girls who are victim-survivors of sexual violence with a measure of ongoing protection from threats of violence.

Extending the maximum duration of these orders from 2 years to 5 years would be consistent with recommendation 52 of *Hear her voice 1* regarding the length of a restraining order for an offence of unlawful stalking. That recommendation included that '[a]mendments will also be progressed to section

359F of the *Criminal Code* to state that the default period of a restraining order is 5 years unless the court is satisfied that a shorter period will not compromise the safety of the victim or children'.[184]

This would also be consistent with the duration of a Domestic Violence Order (known as a protection order) that courts are able to make,[185] namely, for any period the court considers is necessary or desirable to protect the victim-survivor from domestic violence.[186] However, the period of the order cannot be less than five years unless the court is satisfied that there are reasons for this.[187]

Taskforce findings

Special witness measures

The Taskforce found that amendments to the special witness measures to give the victim-survivor choice about how they will give their evidence would significantly improve their experience of the court process. This would remove the need for the court to determine what measures should be put in place. Victim-survivors would not need to provide material in support of their preferred witness measures, such as an affidavit about the impact that giving evidence would have on them. This would reduce victim-survivor retraumatisation.

Recording the evidence of victim-survivors and special witnesses to be used in any retrial

Currently in Queensland, when an adult victim-survivor gives live evidence in a sexual offence trial, the legislation does not require that the evidence be recorded and the recording kept securely to be used in any retrial. The Taskforce has suggested legislative change to require audio-visual recording of the evidence of all victim-survivors or special witnesses in sexual offence trials so that it can be used in any retrial, and to minimise the number of times they have to give evidence.

The Taskforce also supported expanding the definition of special witness to include some witnesses who are not victim-survivors such as a witness who gives similar fact and propensity evidence in a sexual offence trial. The Taskforce recommends that these legislative changes should not commence until there are appropriate resources to facilitate the recording of this evidence, as outlined in recommendation 52.

Criminal Law (Sexual Offences) Act 1978

The Taskforce considered that there should be legislative amendments to incorporate all the provisions of the *CLSOA* into the *Evidence Act 1977.* This will ensure that the provisions concerning victim-survivors of sexual assault are considered alongside other provisions in the *Evidence Act 1977*, and that the protective nature of these provisions will be kept front of mind for practitioners and courts during trials. The Taskforce supported amending section 4 of the *CLSOA* as this would improve the experiences of victim-survivors when giving evidence in court. The language in section 4 should be updated to reflect contemporary community attitudes to sexual offences. This would also make the law in Queensland more consistent with legislation in other jurisdictions. Clarification of section 5 of the *CLSOA* is intended to ensure that this report's recommendations do not change the position that the victim-survivor's evidence, regardless of its form, is heard at the trial in closed court.

Video-recorded interviews between police and the victim-survivor

The Taskforce recognised that the use of video-recorded interviews between police and a victim-survivor as the evidence-in-chief in court proceedings already occurs in Queensland when the victim-survivor is an child or person with an impairment of the mind.[188] The Taskforce considered that all victim-survivors of sexual assault and special witnesses should have the choice of a police video-recorded interview about their offence as their evidence-in-chief. This would empower victim-survivors to choose whether they want to give their evidence this way. It would also minimise the retelling of their account. Obtaining the evidence from the victim-survivor or special witness at an early stage is also likely to assist a victim-survivor in being able to recall more details about the offending.

The Taskforce considered it important that these interviews be recorded in a specially designed room suitable for traumatised victim-survivors, with high quality equipment and specially trained police officers. This will best ensure the evidence is captured when the events are fresh in the mind of the witness and in a trauma-informed way that is admissible as evidence. Taking the evidence in this form will limit the number of times the victim-survivor has to re-tell the circumstances of the offending, minimising retraumatisation.

Cross-examination in relation to an 'improper question'

The Taskforce noted that section 21 *Evidence Act 1977* generally disallows the asking of improper questions, but that this does not apparently correlate with what the Taskforce has heard from victim-survivors and those who support them about their experience of cross-examination. We considered it would be helpful if section 21 provided practical, contemporary examples of the sorts of questions that are improper. This may improve the experience of victim-survivors giving evidence in court. It will also help ensure that juries only hear relevant evidence. The Taskforce considered whether we should also recommend that section 21 be amended to use the mandatory 'must' rather than 'may'. After all, it is difficult to envisage a circumstance where an improper question would be allowed. But in the end, the Taskforce felt that it would be beyond its terms of reference to make a recommendation that would impact on trials generally, both civil and criminal, and not just those involving sexual violence.

Ground rules hearings

The Taskforce found that the use of ground rules hearings may assist in ensuring that victim-survivors are only questioned in a manner that is appropriate and about content that is relevant and admissible. We agreed that a ground rules hearing should best be conducted at the time when an application for the pre-recording of a witness's evidence is heard, or at least before the commencement of the trial. We also noted that directions made at a ground rules hearing should be able to be varied but only in limited circumstances. The Taskforce considered that it would be desirable if the judge who conducted the ground rules hearing was the same judge who conducted the trial.

Queensland Intermediary Scheme

The Taskforce supported consideration of this pilot program being expanded to adult victim-survivors of sexual violence subject to the results of the upcoming evaluation report.

Non-contact orders

The extension of the duration of a non-contact order from 2 years to 5 years accords with the Taskforce's recommendations in *Hear her voice 1*. The Taskforce recognised that victim-survivors of sexual violence sometimes need the same protection as victim-survivors of domestic violence and that the *Penalties and Sentences Act 1992* should provide that protection. This consistency in protection order duration sends a message to the community that both forms of offending are treated seriously by the courts and that orders will be made to keep victim-survivors safe.

Renaming certain criminal offences

A review should be conducted of sexual offence terminology to determine whether offences should be renamed. This should include the offence of maintaining a sexual relationship with a child and those contained in Chapters 22 and 32 of the *Criminal Code*, particularly noting references to 'carnal knowledge'.

Taskforce recommendations

52. The Women's Safety and Justice Taskforce reaffirms recommendation 49 in *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland.* The Department of Justice and Attorney-General, in developing a state-wide plan to improve safety for victim-survivors of domestic and family violence including coercive control when attending courts, extend the plan to:

- improve the safety of *all* victim-survivors of sexual violence
- capital upgrades to provide courtroom technology for quality recording of evidence of special witnesses in sexual offence proceedings, to enable the recordings to be used any retrial

53. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the special witness measures at section 21 of the *Evidence Act 1977* to state that a special witness is entitled (but may choose not) to give evidence in a remote room or by alternative arrangements in similar terms to section 294B of the *Criminal Procedure Act 1986* (NSW).

This recommendation will not commence until recommendation 49 of *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland* is implemented in relation to upgrading the technology in courtrooms throughout Queensland, to facilitate victim-survivors giving audio-visual link and telephone evidence.

Taskforce recommendations

54. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Evidence Act 1977* to provide that evidence of the victim-survivor or special witnesses in sexual offence proceedings be video and audio recorded and stored securely for use in any retrial, in similar terms to Chapter 6, Part 5, Divisions 3 and 4 of the *Criminal Procedure Act 1986* (NSW).
This recommendation should not commence until recommendation 49 of *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland* is implemented in relation to upgrading the technology in courtrooms throughout Queensland, to facilitate victim-survivors giving audio-visual link and telephone evidence.

55. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Evidence Act 1977* to provide that victim-survivors of sexual offences are able to choose whether to give a video-recorded interview with police, which would be able to tendered as all or part of their evidence-in-chief in court proceedings.

56. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to section 21 (Improper questions) of the *Evidence Act 1977*, to include examples of improper questions including those provided at section 41 of the *Evidence Act 1995* (NSW).

57. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendment to the *Evidence Act 1977* to introduce the use of ground rules hearings for domestic and family violence and sexual offences, in similar terms to sections 389A-389E of the *Criminal Procedure Act 2009 (Vic).*

58. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress the following amendments to the *Criminal Law (Sexual Offences) Act 1978* :

- amend section 4 of the *Criminal Law (Sexual Offences) Act 1978* to reflect that 'leave should not be granted unless the court is satisfied that the probative value of any evidence about a complainant's sexual activities outweighs any distress, humiliation, embarrassment or other prejudice that the complainant may suffer as a result of its admission', and
- amend section 5 of the *Criminal Law (Sexual Offences) Act 1978* to clarify that the court should be closed when a complainant is giving evidence, whether during a pre-recording of evidence in court or remotely; during the playing of the pre-recorded evidence at trial or on appeal; and while the complainant is giving evidence in person in court.

59. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments that remove section 4 and 5 *Criminal Law (Sexual Offences) Act 1978* from the Act to form dedicated parts in the *Evidence Act 1977* that deals with proceedings for sexual offences.

60. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to Part 3A of the *Penalties and Sentences Act 1992* regarding non-contact orders, to extend the duration of a non-contact order to 5 years.

61. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family give consideration to a review of the naming of sexual offences contained in the Criminal Code, in particular in Chapters 22 and 32, any offences referring to 'carnal knowledge', and the offence of maintaining a sexual relationship with a child.

62. The Department of Justice and Attorney-General, after receiving the evaluation of the Queensland Intermediary Scheme pilot program, consider whether the scheme should be expanded to apply to proceedings involving adult victim-survivors of sexual violence.

Implementation

Reaffirm Recommendation 49 of first report of the Taskforce

In *Hear her voice 1*, the Taskforce noted the need for a strategic and sustainable plan to inform long-term decision-making for improving the safety of courts over time.[189] This plan should be extended to ensure the needs of all victim-survivors of sexual violence (not only victim-survivors of sexual violence in a domestic violence context) are taken into account in the development of that plan. It should also be extended so to address the need for courts to have the technological capability to record evidence of special witnesses for use in any re-trial, and to consider the options for providing appropriate facilities (not necessarily in the court precinct) to pre-record evidence.

Special witness measures; Recording the evidence of victim-survivors and special witnesses to be used in any retrial; Criminal Law (Sexual Offences) Act 1978; Ground rules hearings; Non-contact orders

The legislative amendments recommended in relation to the above issues should be the subject of a draft consultation Bill before they are introduced into Parliament. Consultation on the draft bill should include legal, domestic and family violence and sexual violence, disability and Aboriginal and Torres Strait Islander stakeholders as well as people with lived experience.

Lawyers should undergo training in the new laws before their commencement. Judicial officers should consider their professional development training on the new laws, preferably through a Judicial Commission.

Video-recorded interviews between police and the victim-survivor

In addition to this legislation being included in the draft consultation bill, the Department of Justice and Attorney-General should develop and implement a state-wide plan as per recommendation 49 in the Taskforce first report, *Hear her voice 1*.[190] This plan is important as it includes 'implementing processes that enable victim-survivors to appear and participate via video or telephone rather than in person'.[191] There is a need for these processes to be developed in order to enable the recording of the evidence of victim-survivors and special witnesses for retrials and the increased use of video-recorded evidence in sexual offence proceedings. It is also important that police are appropriately trained and funded to conduct the video-recorded interviews and have appropriate equipment to conduct high quality recordings. Further, the Office of the Director of Public Prosecutions should be funded to enable editing of the video-recorded interviews into an admissible form for the court proceedings.

Cross-examination in relation to an 'improper question'

In addition to this legislation being included in the draft consultation bill, it is noted that while the Taskforce was constrained by the terms of reference, they could not see any circumstances where it would be appropriate for an improper question to be asked in criminal proceedings. Consideration should be given to consulting more widely with the legal profession on amending section 21 of the *Evidence Act 1977* to state that the court must disallow an improper question being put to a witness in all court proceedings.

Renaming certain criminal offences

The review to be undertaken about the language of the offence, maintaining a sexual relationship with a child, and offences outlined in Chapters 22 and 32, particularly those referring to 'carnal knowledge' requires careful consideration of the impacts that the changes will have. It is clear from consultation feedback and the legislative changes made in other Australian jurisdictions, that this review is required. It is recognised that reference to the term 'sexual relationship' in the titles of criminal offences is problematic in that it embeds dangerous myths about sexual abuse and is apt to retraumatise victim-survivors. However, it is important that any changes do not affect the successful prosecution of the offences, particularly the offence of maintaining a sexual relationship with a child in Queensland. Therefore, changes to the wording of the offence should be carefully considered. As part of this, there should be consultation conducted with victim-survivors about the current legislation concerns and with legal stakeholders about the legal impacts that any changes may have in practice.

Queensland Intermediary Scheme

Following the evaluation of the Queensland Intermediary Scheme, the Department of Justice and Attorney-General should consider expending it to adult victim-survivors of sexual violence.

Human rights considerations

The human rights promoted and protected under the *Human Rights Act 2019* include the right to recognition and equality before the law (section 15), the right to life (section 16), the protection from

torture and cruel, inhumane or degrading treatment (section 17), and the right to security of person (section 29).

Human rights that may be limited include right to recognition and equality before the law (section 15); right to liberty and security of person (section 29); right to a fair hearing (section 31); and rights in criminal proceedings (section 32).

Human rights promoted

The human rights of the victim-survivor, under sections 16, 17 and 29 of the *Human Rights Act 2019*, would be promoted by the proposed recommendations. Convicting perpetrators of sexual offences protects the victim-survivor and other potential victims from being exposed to harm that is a form of torture, cruel, inhumane and degrading treatment. It also ensures the security of a victim-survivor and the community.

The increased admission of evidence from the victim-survivor or special witness may limit the accused person's right to a fair hearing. However, when considering the concept of a fair hearing, it is important to have regard to a triangulation of the interests of the victim-survivor, the defendant and the community.[192] As noted by the Hon Kris Faafoi, Minister of Justice, when discussing the Sexual Violence Legislation Bill 2021 in New Zealand, where amendments do not affect the right to a fair trial, it is important to improve court procedures for victim-survivors[193]:

Trial fairness is non-negotiable, and it gives our justice system its legitimacy. It is not in anyone's interests to jeopardise the fairness and robustness of verdicts, but I do not think that justice is a zero sum game. Improving complainants' experiences procedurally does not automatically entail restricting defendants' fundamental rights. The interests of justice and the right to a fair trial are paramount …….. The flip side must be: if a procedure is not contrary to the interests of justice and the circumstances of the case, and if it does not risk the fairness of a trial, how can we deny complainants the better treatment that these changes will provide? Complainants have an integral role in bringing perpetrators to justice, thereby reducing future harm, a societal benefit. They do so despite the harm that they have experienced. We have a positive duty to support them on that unavoidably difficult journey…[194]

These legislative amendments and changes to the court process assist victim-survivors and special witnesses to give their best evidence in court. It will also minimise them being retraumatised by the court process. The amendments that give the victim-survivors or special witnesses choice about how they will give evidence, will improve their experience of the court process. In this way, the changes promote the rights of victim-survivors and the community in a fair trial.

Human rights limited

Section 32 provides that persons charged with criminal offences are entitled to certain minimum guarantees without discrimination. It could be argued that an accused person's right in criminal proceedings may be limited to some extent by the recommendations that impact on procedure in a criminal trial. However, the recommended amendments to the legislation will not limit an accused person's right to cross-examine and put their case directly to the victim-survivors.

The liberty and security of a person are likely to be limited when they are sentenced for their offending. However, there is a need to deter crime and for justice to occur. Moreover, section 29(3) provides that a person 'must not be deprived of the person's liberty except on grounds, and in accordance with procedures, established by law'.

Limitations on rights are justified

The implementation of the recommended legislative amendments and changes to the court process has the legitimate purpose of assisting victim-survivors and special witnesses to give their best evidence in court. It will also minimise them being retraumatised by the court process. Further, the amendments that give the victim-survivors or special witnesses choice about how they will give evidence, will improve their

experience of the court process. By improving a victim-survivor's experience in the proceedings, they are in a position to give their best evidence in a trial which serves some of the highest and most legitimate purposes of a criminal justice system – truth and fairness. The recommendations will not limit an accused person's fair trial rights, as they do not restrict the ability to cross-examine the victim-survivors or special witnesses or otherwise contest the evidence. There is not a less restrictive way to achieve the intended purpose of the recommended amendments and changes. To the extent that there is any limitation of an accused person's human rights, that limitation is justified in a free and democratic society based on human dignity, equality and freedom.

Evaluation

Before the commencement of the legislation the Department of Justice and Attorney-General should ensure that information will be recorded about the operation of the new laws in a way that will allow relevant information to be extractable for the purpose of a review. The impact of the amendments and their implementation should be reviewed as part of recommendation 186 of this report which provides for a review all legislative amendments recommended by this report five years after their commencement, with a focus on any impacts on victim-survivors of sexual violence and persons accused of sexual violence.

Legal advocacy for victim-survivors of sexual violence in criminal justice proceedings

Background

As a witness in criminal proceedings, victim-survivors cannot be represented at trial, except in relation to the admissibility of protected counselling communication. The Taskforce has heard proposals that victim-survivors should have independent legal representation at trial, or legal representation to support them to exercise their legal rights in relation to a wider range of legal matters.

Current position in Queensland

In Queensland (as in other Australian jurisdictions) victim-survivors are not entitled to legal representation during the criminal trial. As noted above, this is because a crime is considered to be an offence against the state, and the state is responsible for prosecuting that crime. Victim-survivors participate as key witnesses, but not as parties to the trial.

An exception to this in Queensland is when a court is considering an application for leave in relation to protected counselling communication. In this circumstance, the counselled person (usually the complainant) and the counsellor, or their representative, have a right to appear.[195] See Chapter 2.11 for further discussion. Since 2017, LAQ has been funded to deliver the state wide sexual assault counselling privilege legal assistance service, in partnership with WLSQ.[196] LAQ also provides legal advice to witnesses in criminal trials. This does not extend to legal representation at trial proceedings. Where the accused person is being represented by LAQ, conflicts of interest are managed by referring witnesses to preferred supplier law firms to obtain free independent legal advice.

How do other jurisdictions address this issue?

No common law jurisdiction enables victim-survivors to join a criminal trial as a party to the proceedings. However, increasingly jurisdictions are enabling limited representation for complainants of sexual offences. For example:

- legislation in the United States provides victims with substantive rights to justice, to address the court, and to seek review of prosecutorial decisions (generally exercisable on judicial review in an administrative process)[197]
- Ireland has introduced legal representation for victims (at pre-hearing and trial) when their sexual history or character is questioned in court[198].
- A recent pilot in Northumbria, England, involved victim-survivors being represented at pre-trial hearings about admission of evidence[199] and lawyers attending the trial as a 'silent party' to ensure sexual history evidence is not introduced unless permitted[200]
- Northern Ireland has recently introduced a pilot scheme of legal advice, including at a cross-examination discussion (ground rules hearing) but excluding representation at the trial[201]
- In India, legal advocates for victim-survivors are permitted to make objections in court, including relating to admissibility of evidence[202].

The Royal Commission and the VLRC (in its 2016 report on the role of victims of crime in the criminal justice process) considered this approach but ultimately did not recommend it because it involved too significant a change to the adversarial legal system[203] and would have significant resource implications.[204]

The 2021 VLRC report recommended the Victorian Government fund legal advice and (where necessary) representation for victim-survivors until the point of trial and in related hearings to ensure victim-survivors can exercise their rights and protect their interests and to implement a pilot scheme for separate legal representation.[205] The evaluation of the pilot should consider the merits of the legal representative participating in the cross-examination of the complainant.[206]

Results of consultation

Victim-survivors

Victim-survivors frequently told the Taskforce that they felt nobody in the criminal justice system was tasked with representing their interests.[207] Being intimidated by, and their lack of understanding of, the trial processes limited their meaningful participation and their satisfaction with the process. One woman told the Taskforce:

> *The prosecutor does not represent me or my interests. I can not be guided. I can not be given advice. It actually goes against the prosecutors oaths/ethics to support victims this way - which is a fatal flaw. So instead I get up on a stand, for the most important part of my life, going in completely blind.*[208]

Some victim-survivors felt that they had less rights than the accused person and that this was evident in victim-survivors' lack of representation:

> *As a victim of a serious crime, I had less rights than the offender who was declared not guilty. He could confide in his barrister while everything I told the prosecutor had to be [passed onto] the offender's barrister.*[209]

Their disempowerment appeared to be exacerbated when there was unreliable and inconsistent communication and support provided by prosecutors, victim liaison officers and police.[210]

Service system stakeholders

A number of support services submitted that victim-survivors should be allowed independent legal representation during the trial. The GCCASV suggested legal advocates 'be funded to provide legal assistance to victim/survivors during the courtroom experience, particularly during cross examination'.[211] QSAN recommended that victim legal advocates be introduced to provide legal assistance to the victim-survivor during the courtroom experience and particularly during cross-examination. They submitted that:

> *'A way to achieve real change and protect women in the courtroom experience is for women to have their own legal advocates'.*[212]

Full Stop Australia suggested legal representation would support victim-survivors to have their voice heard, consistent with rights acknowledged in the Charter of victims' rights.[213] Full Stop Australia noted that many of their clients 'often remain frustrated by their inability to access truly independent support and have their individual interests represented in proceedings'.[214]

In relation to the admission of evidence of sexual reputation/experience being introduced (discussed above), Full Stop Australia recommended that victim-survivors be given legislative standing to participate

in any decisions made about this evidence, and also be provided with access to legal representation, as per the VLRC Report recommendation.[215]

Legal stakeholders

Legal stakeholders were mixed on their views on legal representation for victim-survivors at trial. WLSQ recommended a pilot scheme for the legal representation of victim-survivors of sexual assault including during a criminal trial similar to that recommended by the VLRC.[216] WLSQ suggested that the legal representation in the pilot would be able to explain, assist women to exercise their rights and protect their interests in relation to:

- their rights and legal options in relation to applications for their counselling records;
- special witness arrangements and applications
- applications for ground rule hearings
- representation in relation to applications for sexual history information
- representation when they are providing evidence and being cross-examined (especially being able to object to improper questions)
- their options in relation to compensation, both civil and criminal, including through Victims Assist
- restorative justice options, and implications of those
- the drafting of their victim impact statement.[217]

Knowmore Legal Service strongly supported complainants in child sexual offence proceedings having access to independent legal assistance and representation throughout the court process. Knowmore Legal Service also advocated for expanding legal support available to victim-survivors in relation to protected counselling communication to a broader range of issues.[218]

On the other hand, the Bar Association of Queensland (BAQ) did not support the introduction of separate legal representation for victim-survivors, noting the significant upheaval within the adversarial process it would entail.[219]

While LAQ was supportive of exploring victim-survivor or witness representation, it was cautious about introducing an advocate with legal standing in criminal proceedings as it would complicate proceedings and may lead to miscarriages of justice and retrials.[220] LAQ supported further research for appropriate victim-survivor or witness representation, to better inform and provide support through the judicial process.[221]

LAQ was however cautious about the introduction of a victim advocate with legal standing in criminal proceedings. The extent of such a role, LAQ suggested, would be difficult to define and strict conditions would need to apply to preserve the integrity of a witness's version. Breaches could lead to miscarriages of justice, appeals and potential retrials, causing further trauma to a victim-survivor witness.[222]

Other relevant issues

Relevant cross-cutting issues

People who face marginalisation or discrimination in broader society are more likely to find it difficult to have their voices heard or to exercise their legal rights as victim-survivors in sexual offence proceedings. For these people in particular, access to quality legal information and advice, and where necessary, legal representation is even more important.

Arguments for and against legal advocacy for victim-survivors of sexual violence in criminal justice proceedings

Unlike inquisitorial legal systems in civil jurisdictions, the well-established conventions of the adversarial criminal justice system have, for the most part, not enabled independent representation for victim-survivors in criminal trials.[223]

The Taskforce has heard that victim-survivors often feel that they are 'on trial' with no one responsible for protecting their interests during the proceedings. The Taskforce heard that while there have been improvements in how victim-survivors are treated as witnesses, there are still instances of bad practices, with cross-examination being a particularly distressing experience for many victim-survivors.[224]

The prosecution represents the state and has regard to the overall public interest, rather than the particular concerns or interests of an individual complainant. While prosecutors have certain obligations

towards complainants, including to consult with them in relation to prosecutorial decisions, the prosecution is not able to provide legal advice to a complainant. They can (and do) refer complainants for legal advice. The prosecution may also object to inappropriate questioning of the victim-survivor during cross-examination, however their primary focus is the proper prosecution of an offence, rather than protecting the rights and interests of a victim-survivor. It may, for instance, be to the tactical advantage of the prosecution to refrain from objecting to inappropriate questions because objecting may make the jury suspicious that the prosecution is hiding something. Conversely, it may lead the jury to sympathise with a complainant who becomes distressed (or capably responds to such questioning) making a conviction more likely.[225] But this questioning, even where helpful to the prosecution, may not be in a vulnerable victim-survivors' best interests These tactical considerations were reflected in Taskforce consultation with prosecutors.[226] Objecting to an improper question can involve split-second decisions about complex rules of evidence, and may be daunting for inexperienced prosecutors.

Judicial officers may not always be relied on to intervene. A recent transcript analysis of rape trials in the County Court of Victoria found that judges did intervene when cross-examination was inappropriate, confusing, repetitive or irrelevant. But equally, it found instances where judges failed to intervene when they should have. It also noted the deliberate use of cross-examination to confuse or 'shake' the victim-survivor's account.[227]

There are therefore limited mechanisms to protect the interests of victim-survivors during criminal proceedings, although the process may impinge on their rights and ultimately has a considerable impact – often detrimental – on their life.

Victim-survivors' fear of mistreatment by the criminal justice system is a factor that contributes to under-reporting and a lack of willingness to testify. There is evidence that providing legal representation to complainants can reduce secondary trauma, reduce attrition, and thus improve low conviction rates.[228] It may also reduce court-related stress, improving the quality of testimony and reduce the time taken to give evidence. [229]

On the other hand, the fact that a victim-survivor is not a party to a proceeding can be viewed as protective. The victim-survivor is not responsible for prosecuting their own matters. The responsibility for this rests with the prosecution.

Integrating the benefits of victim-survivor representation while protecting the integrity of the adversarial process is difficult and complex. As noted above, recommendations of previous reviews have limited legal representation to pre-trial applications. The VLRC concluded that legal representation for victim-survivors should focus on the substantive legal entitlements of complainants (primarily before the trial – or after the trial in relation to compensation) and stop short of allowing the lawyer to object during cross-examination.[230] However the pilot scheme recommended by the VLRC is to specifically consider the merits of the legal representative participating in the cross-examination of the complainant.[231]

Taskforce findings

The Taskforce heard the voices of victim-survivors and acknowledges that trial proceedings are often difficult and traumatic experiences for victim-survivors. We have heard that victim-survivors often feel unsupported and that nobody is representing their interests. The Taskforce also heard and appreciated the arguments presented for victim-survivors in favour of them having independent legal representation at trial.

The Taskforce noted, however, that to introduce legal representation for victim-survivors throughout criminal proceedings would be a fundamental change to the adversarial system, and one that has not been implemented to this degree in any common law jurisdiction. The role of the victim-survivor's legal representative would be complex to define without undermining the integrity of the trial processes. It may risk miscarriages of justice and lead to unnecessary appeals and retrials, causing further trauma to victim-survivors.

The Taskforce considered the option of expanding the range of matters for which victim-survivors can be legally represented in court beyond protected counselling communications. While the Taskforce saw merit in this option, it would require legislative reform. Defining the scope of this reform would be difficult before other recommendations contained in this report (particularly those outlined in this chapter) are implemented, and their impacts on the experiences of victim-survivors and the criminal justice system understood. For example, it may be appropriate to enable legal representation for victim-survivors in

relation to arguments about the introduction of evidence about sexual reputation or experience that may form part of the proposed ground rules hearings (recommendation 57).

In Chapter 2.4 the Taskforce has recommended significant enhancements to the support service system. A major recommendation is the development and implementation of a model of non-legal victim advocate to provide impartial information and support to victim-survivors as they navigate the criminal justice system. If accepted, this model will improve the experience of victim-survivors both in the lead-up to trial, and during the trial process. They will have better information about their options, be linked in with services, including lawyers, to support them as necessary. Victim advocates will also liaise with other parts of the criminal justice system on behalf of the victim-survivor to help them get the support they need. While this advocacy will not extend to legal advocacy in the trial, it should go a long way towards improving the court experience for victim-survivors.

The Taskforce has concluded that once the impact of this, and other reforms recommended in this report, are implemented, the question of what (if any) further legal representation should be provided to victim-survivors during court proceedings should be revisited.

The Taskforce supports the continuation of existing legal support to victim-survivors for matters involving protected counselling communication, and for victim-survivors who are witnesses in trials. There may be merit in increasing the visibility of the latter to ensure victim-survivors and service providers are aware of this available support through LAQ.

The Taskforce was satisfied that all these changes could be implemented without compromising the right of accused persons to a fair trial.

Taskforce recommendations

63. To ensure that victim-survivors of sexual violence have access to legal information and advice, the Department of Justice and Attorney-General continue to fund:

- the provision of legal support in relation to protected counselling communication, and
- the provision of information and advice to victim-survivors of sexual assault who are witnesses in trials.

64. The Department of Justice and Attorney-General, when evaluating the proposed victim advocate model (recommendation 9), consider whether there is a need for funded legal representation for victim-survivors of sexual violence during criminal justice processes.

65. The Queensland Government, when reviewing the legislative changes implemented in response to this report (recommendation 186), consider whether there is a need to extend the right of victim-survivors to be represented during trial proceedings beyond matters related to protected counselling communications.

Implementation

Adequate funds should be provided to meet demand for the provision of legal support for victim-survivors of sexual offences. The provision of support services should continue to be focused on legal information and advice (and where necessary legal representation). These services should continue in their existing scope which complements, but does not duplicate, the proposed development of a model of (non-legal) professional victim advocate services (recommendation 9). The proposed victim advocate service is focused on providing victim-survivors with: impartial information about the criminal justice system and options available to them, supporting victim-survivors to understand and exercise their rights; identifying and addressing the individual needs of victim-survivors including through referrals to services; liaising across the service and criminal justice systems on behalf of victim-survivors, and being a consistent point of contact for victim-survivors throughout their criminal justice system journey.

Consideration should be had to whether there is sufficient awareness of these services among key stakeholders, and publicly available information to enable victim-survivors to access these services. The implementation of the proposed victim advocate service will support increased awareness of, and appropriate referrals to these services.

When considering the need for funding legal representation for victim-survivors during criminal justice processes and the views of service system stakeholders, legal stakeholders, people with lived experience, First Nations stakeholders, heads of jurisdictions and the proposed victims' commissioner (recommendation 18) should be taken into account. Any outcomes from implementation of the VLRC's proposal to fund legal advice and (where necessary) representation for victim-survivors until the point of trial and in related hearings provide proposed by the VLRC[232] should be considered. A particular focus should be on impacts on victim-survivors' experience of the criminal justice system.

When considering if there is a need to extend the right of victim-survivors to be represented during trial proceedings beyond matters related to protected counselling communications, consideration should be had to the impact of implementation of the recommendations in this chapter. For instance, there will be a need to consider whether victim-survivors should be represented during ground rules hearings. It will be important to consider the experience in other jurisdictions, including Victoria, should the VLRC's recommendations relating to legal representation be implemented. Outcomes of initiatives in other common law jurisdictions such as Ireland and the UK and Wales, should be carefully examined. Again, particular attention should be paid to the outcomes for victim-survivors and their experience of the criminal justice system.

Human Rights considerations

The issue of what legal representation victim-survivors can have during criminal proceedings engages the accused person's rights to a fair hearing (section 31) and rights in criminal proceedings (section 32). Protecting victim-survivors from humiliating and unnecessary questioning or admission of irrelevant evidence engages victim-survivors' right to protection. Issues relating to the admissibility of sensitive victim information engages their right to privacy and reputation (section 25). In addition to the *Human Rights Act 2019*, various international human rights instruments set out standards for protecting the rights of victims of crime such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

Human rights promoted

Continuing to provide legal information and advice to victim-survivors in trial proceedings contributes to their protection from torture and cruel, inhuman or degrading treatment (section 17). The rights of defendants to a fair trial (section 31) and rights in criminal proceedings (section 32) continue to be promoted by these recommendations.

Human rights limited

These recommendations do not limit any human rights, however in reviewing the reforms recommended in this report and considering if there is a need for extending victim-survivors' rights to legal representation during the trial process, it is necessary to consider whether rights to a fair hearing are being upheld, including whether there is an appropriate balancing of the interests of the defendant, complainant and community.

Evaluation

If not already in place, mechanisms should be established to measure and monitor demand for legal support services by victim-survivors of sexual violence, and to measure outcomes for users of these services. This information should be factored into the development and evaluation of the proposed model of victim advocate services to assess whether these services are well-aligned and whether, in combination, the legal and non-legal needs of victims-survivors of sexual violence are being met.

Similarly, adequate data-capturing mechanisms should be established in relation to the implementation of other recommendations in this chapter to enable consideration of the need to expand the circumstances where a victim-survivor can be represented in trial proceedings. For example, it will be relevant to consider the extent to which ground rules hearings include arguments about admission of evidence, and the nature of that evidence.

Improving responses of judicial officers and legal practitioners to victim-survivors of sexual violence

Background

Current position in Queensland

Judicial Officers

The Taskforce raised a number of issues related to the professional development, training and education of judicial officers in *Hear her voice* 1. This includes the belief that judicial officers gained extensive experience practising law before their appointment, mitigating the need for ongoing training. It is now widely accepted that judicial officers benefit from ongoing learning. The Taskforce found in its consultations with stakeholders for *Hear her voice 1* that judicial officers would benefit from training that provided them with an improved understanding of the complexity and dynamics of coercive control and domestic and family violence and trauma informed approaches. The Taskforce found that the risk of not understanding the dynamics of coercive control impacted on the safety of victim-survivors and the accountability of perpetrators.[233]

The Taskforce also recommended the establishment of a Queensland Judicial Commission to support delivery of training for judicial officers by coordinating professional development (recommendation 3, 42 and 48) and to 'to act as an independent mechanism to assess complaints against judicial officers operate in other Australian jurisdictions'. The NSW model was identified as an exemplar model to inform the establishment of a Queensland Judicial Commission. The Taskforce stated in its first report that this was an important reform that ought to be prioritised in this term of government, consistent with commitments made by the Labor party during its 2020 State Election campaign.

Legal practitioners

The Taskforce found isolated specialist knowledge in one part of the court system does not have the impact needed to support and protect victim-survivors of coercive control. The Taskforce found that lawyers should also undertake training in addition to judicial officers. The Taskforce recommended that the QLS "ensure that accreditation in criminal and family law includes a requirement for lawyers to have a specialist understanding of the law, nature, and impact of domestic and family violence and the local support services available to victim-survivors and perpetrators, including referral processes".[234]

The Government's response to these recommendations was released on 10 May 2022. The Government supported the Taskforce's recommendation (42) for the QLS to ensure that the specialist accreditation schemes for criminal law and family law include a requirement for lawyers to have specialist understanding of the nature and impact of domestic and family violence, the relevant law, the local support services available for both victim-survivors and perpetrators, and how to refer clients to services and supports.[235]

The Government supported in principle the Taskforce's recommendation (3) for the government to consult with Queensland Courts, the BAQ, and the QLS with a view to introduce legislation to establish an independent Queensland Judicial Commission. The Government also supported in principle the Taskforce's recommendation (48) to progress amendments to the *Magistrates Court Act 1921*, *District Court of Queensland Act 1967*, and *Supreme Court of Queensland Act 1991* to require the annual report of each court to record information about judicial officers completing the minimum five days of training recommended by the National Judicial College of Australia and all other judicial education or professional development undertaken during the reporting period that was publicly funded.

Office of Director of Public Prosecutions

The Office of the Director of Public Prosecutions (ODPP) provides mandatory training to all staff on sexual violence as part of its 'Understanding Sexual Offences' (USOT) mandatory training program. The program was refreshed in 2021 with the introduction of a new 10 lesson USOT session delivered through an internal online training platform. Additional training modules are made available through the internal online training platform and include topics such as:

- the victim experience of the prosecution process (opportunities to limit further trauma)
- a survivor's perspective
- Victims: A quiet reflection

- Special Witness Applications

The ODPP use internal and external presenters to conduct training sessions for staff.[236]

How do other jurisdictions address this issue?

The National Judicial College of Australia

The National Judicial College of Australia (NJCA) was established in 2003 as an independent, not-for-profit organisation funded by Commonwealth, state, and territory governments and governed by a Council made up mostly of judicial officers.[237] Its establishment followed findings in an Australian Law Reform Commission report, *Managing Justice: A Review of the Federal Civil Justice System*.[238] The report called for the creation of a body whose purpose was to provide judicial education for the whole Australian judiciary. The role of the NJCA is to[239]:

- provide national leadership in judicial education
- support the rule of law
- strengthen judicial capacity and independence

The Queensland judiciary often undertakes judicial education through the National Judicial College

Results of consultation

Victim-survivor

Victim-survivors described their experiences in criminal trials as traumatic. In WWILD's submission to the Taskforce, which presented the views of women with intellectual, cognitive and learning disabilities, one victim-survivor stated:

> *defence barristers take advantage of the victim's cognitive difficulties during cross-examination and seek to deliberately confuse or lead, to discredit her as a witness*[240]

In this submission one victim-survivor provided an example:

> *The defence barrister kept asking negative or double negative questions. The woman was so confused. She [the barrister] kept smirking at her, speaking really nastily, it was so upsetting and intimidating to her she had trouble answering the questions. Eventually the judge intervened and at least asked the barrister to ask the questions in a 'nicer' way*[241]

Victim-survivors told the Taskforce of feeling responsible for the violence perpetrated against them as a result of their interactions with courts and lawyers. One victim-survivor stated:

> *during the court process I was treated like I had done something wrong.*[242]

Others spoke of being failed by the entire system including judicial officers.[243] Another victim-survivor spoke of the importance of judicial officers being trauma-informed

> *police, lawyers, and judicial officers should be trained in trauma response. They should appreciate that each victim responds in different ways to trauma".*[244] *The importance of this was further illustrated by this victim-survivor "…unsympathetic judicial officers do trigger a trauma response in a victim when they reflect the same*

> *behaviour as that that they're trying to escape from. Courts should be alert to and vigilant to prevent secondary abuse through the court process*[245]

Service system stakeholders

Service system stakeholders raised concerns about how victim-survivors are treated by defence counsel. ZONTA stated "being cross examined at committal and/or giving evidence at trial all have the potential to retraumatise victim-survivors".[246]

QSAN gave an example of a young victim-survivor being cross-examined:

> *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.*[247]

Zig Zag Young Women's Resource Centre Inc.[248], Respect Inc[249], and The GCCASV supported training for judicial officers.[250] GCCASV recommended:

> *compulsory, ongoing specialist training be provided to dedicated prosecutors, court staff, magistrates and judges on the nature and impact of sexual violence*[251]

Legal stakeholders

During stakeholder forums and a session with defence lawyers, legal practitioners described the conduct of defence lawyers asking harassing or intimidating questions as no longer common practice and something most judges would be likely to intervene and stop.

The Taskforce has heard legal practitioners describe this conduct as potentially dangerous for their client's case as it may not be considered favourably by a jury.[252]

The NQWLS[253] and LAQ[254] support specialist training for judicial officers. The Women Lawyers Association of Queensland stated:

> *Judicial officers should be trained on biases and pre-conceived notions (for example, how the 'ideal victim' behaves). Such training, and indeed education, could be expected to enhance diverse and culturally sensitive views towards courtroom etiquette and cultural norms, as well as inform expectations and biases.*[255]

LAQ stated highlighted the need for cultural competency training:

> *Cultural reasons may make First Nations women hesitate to talk to their defence lawyer (or anyone) about past sexual abuse. Cultural competency training for lawyers is vital.*[256]

Office of the Director of Public Prosecutions

The Taskforce also heard concerns in its consultation with the ODPP about inconsistency in the level of trauma-informed awareness amongst judicial officers and lack of recognition of victim-survivors' vulnerability:

> *I've had special witness measures limited, even in the presence of intermediaries – judges will say 'let's see how we go – we will start with the witness in the room and then move them to the remote room' if needed*[257]

ODPP staff were concerned about victim-survivors treatment by some defence counsel and the use of rape myths to discredit them:

> *Still seeing circumstances where rape myths/misconceptions are used by defence and rape myths are perpetuated. For example, in a case involving a trans prostitute, the submission was made by the defence that: 'you might think this is a lady that was raped, but they're actually a man'* [258]

ODPP staff found the tactics used by some defence counsel deeply concerning:

> *Victims feel like there is victim blaming, character assassination, feel like it is one sided, feel like they are on trial, they know the accused doesn't need to say anything. It's a traumatic experience for them. When complainants become angry and unreasonable, it changes their dynamic [in the courtroom]. Rape victims' power and control is stripped at time of offence, at committal and at trial it happens again, they are deprived of opportunity of having their voice heard, [they become] agitated and angry. The Judge will say need to just answer question and prosecutor will object if relevant, it affects the case in terms of evidence and presentation, if under cross-examination I can't talk to them*[259]

Other relevant issues

Investing in and supporting culturally safe and appropriate legal services and responses

QIFVLS raised the issue of specialised and culturally safe frontline legal services as being underfunded and overworked. The Taskforce heard from QIFVLS:

> *Greater investment into our services, particularly in regional, rural and remote communities would be welcomed and would allow for our lawyers and case management officers to provide holistic legal services*[260]

QIFVLS also identified the need for greater cross-cultural training for judicial officers, this was discussed in relation to women and girls as offenders and accused people but applies also to promoting culturally safe engagement with Aboriginal and Torres Strait Islander victim-survivors of sexual violence.

> *The Wiyi Yani U Thangani Report noted the benefits of judicial officers engaging in cross-cultural training, including that judicial officers would develop a greater level of cultural awareness and understanding of social and historical influences on Aboriginal and Torres Strait Islander disadvantage*[261]

The NQWLS also demonstrated the need for greater training amongst judicial officers and legal practitioners on engaging with Aboriginal and Torres Strait Islander women and girls:

> *to enhance the experiences for First Nations women and girls in the criminal justice system, there needs to be continued, culturally appropriate training of judicial officers, registry staff, legal representatives, and organisations and service providers to ensure they are equipped to deal with First Nation women and girls in respectful and understanding ways. This training should include an understanding of complex trauma and the coping mechanisms that many of these women may use and how this is portrayed in their actions and demeanour*[262]

Importantly, NQWLS also recognised that 'First Nations women and girls need to see their peers in these roles and themselves be supported and encouraged to take up employment within the system'.[263]

> *Trauma and the impacts of trauma are not understood at all well within the justice system…A lot can be done to improve the interactions that traumatised women and girls experience at all levels of the justice system. The starting position is to ensure that police, legal representatives, court staff and judicial officers are educated in and employ trauma-informed approaches at each level of interaction*[264]

Recognising and considering potential triggers in the court process that may retraumatise victim-survivors is important to enable fair and safe experiences for victim-survivors of sexual violence.[265] A failure to address or mitigate adverse consequences of court process that negatively impact on victim-survivors of sexual violence increases risk of trauma and lack of confidence in the criminal justice system. This supports the implementation of other positions already endorsed by the Taskforce including changes to laws relating to measures for special witnesses and victim-survivors giving evidence in sexual violence cases and the introduction of ground rules hearings.

Government's 'in-principle' support for these recommendations

The Queensland Government has provided in-principle support only for recommendations 3 and 48. The Taskforce laid out a clear and sound rationale for these recommendations in its first report.[266] The Taskforce also acknowledged in its first report that at the 2020 general state election, the Labor Party made a commitment that, if returned to government, it would explore the establishment of a judicial commission.[267] The Taskforce noted that judges of the Supreme Court of Queensland have favoured the establishment of a judicial commission since 2010.[268]

Taskforce findings

The Taskforce has heard from victim-survivors, support service providers and police that fear about how a victim-survivor will be treated as a witness in a criminal proceeding is a significant barrier to reporting sexual violence and a key factor in the high attrition rate of matters after a complaint has been made. Victim-survivors experience significant anxiety and retraumatisation in the lead up to a criminal trial. Feelings of being powerless and submissive to the legal process and the behaviour of some defence lawyers can mimic the experiences of a victim-survivor during the sexual assault. It may be too late to save a victim-survivor from retraumatisation if and when a judge intervenes to stop improper questions or behaviour. Judicial officers who do not have an adequate understanding of trauma are at risk of retraumatising victim-survivors.

Victim-survivors of sexual violence have told the Taskforce of a lack of trauma-informed responses from some judicial officers. The Taskforce recognises that a risk of not reaffirming trauma-informed training is that the issues raised in *Hear her voice 1* are seen to apply only in context to certain types of violence against women and girls (coercive control). This diminishes the experience of victim-survivors of sexual violence. There is also the potential risk of judicial officers not applying their training on domestic and family violence cases (assuming they have completed it) to sexual offence cases. This risk is increased if the Government does not fully endorse recommendation 3 and 48 as the mechanisms needed to support delivery of training and professional development.

The Taskforce agreed that judicial officers and lawyers who are trauma-informed and aware of the dynamics and impacts of sexual violence are more likely to put in place courtroom measures that address or mitigate court processes that may retraumatise victim-survivors. A trauma-informed practitioner is more likely to[269]:

- provide clear explanations about what will happen to the person in the courtroom
- explain why particular orders are made
- provide information about the scheduling of matters to the greatest extent possible -what will be expected and when
- explain why a conversation with legal representatives, is happening
- use language that is not threatening.

The Taskforce affirmed its past findings that the implementation of a Judicial Commission may provide 'a higher level of judicial accountability and greater transparency'.[270]

Given the 'in-principle' support only for recommendation 3 and 48, the Taskforce's reaffirming of those recommendations will ensure that the Government is clear on the importance we place on this long overdue reform. Among its many benefits, it will improve the experience of all women and girls who are victims of violence. If our recommendation for a victims' commissioner is taken up, dissatisfied victim-survivors will have a complaints avenue in respect of most agencies. But given the separation of powers, the victims' commissioner will not have jurisdiction to investigate complaints about judicial officers. This should be the role of the Queensland Judicial Commission. Victims have no real voice if they wish to make a complaint about a judicial officer. It is another critical reason why this recommendation should be acted on.

The Taskforce acknowledged that the role of defence counsel is to test the evidence of victim-survivors and to put the defence case to them. Victim-survivors are key witnesses in criminal proceedings against accused persons whose reputations are at stake and who are at risk of losing their liberty for many years. However, the Taskforce also recognised that some defence counsel continue to ask improper questions as a tactic to undermine a victim-survivor's credibility. This increases a victim-survivors' trauma and contributes to victim-survivors' and the broader community's lack of confidence in the justice system. Improper defence questioning of the victim-survivor is not part of an accused person's right to a fair trial.

The Taskforce agreed that specific training for lawyers in criminal law matters should be more responsive to the needs and experiences of victim-survivors of sexual violence. Such training could inform practice decisions by prosecutors and defence lawyers in relation to the conduct of sexual violence related cases. It would also improve the experience of women and girls within the criminal justice system.

Similarly, for LAQ and community legal centres, this recommendation could improve the way legal advice and information is framed and provided to victim-survivors of sexual offences in a variety of other legal matters.

The Taskforce also considered recommendation 38 from *Hear her voice 1,* which addressed new Prescribed Areas of Knowledge for undergraduate students who want to progress to admission to practice law. We recommended that 'The Attorney-General Minister for the Prevention of and Minister for Justice, Minister for Women and Domestic and Family Violence to advocate for the new Prescribed Areas of Knowledge requirement to include that students study the impact of laws on Aboriginal and Torres Strait Islander peoples since colonial times, Indigenous perspectives and cultural competency, and the substantive law relating to domestic and family violence, including coercive control and its nature and impact on victim-survivors, the community, and the study and practice of law'.[271] The Taskforce also recognised the importance of expanding this training to encompass students undertaking postgraduate studies and intending to work in the legal field.

Taskforce recommendations

66. The Taskforce reaffirms the following recommendations from the *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland* and recommends they be expanded to include sexual violence as appropriate:

- Recommendation 38: Legal Students (undergraduate and postgraduate) and new prescribed areas of knowledge
- Recommendation 39: Currency of knowledge
- Recommendation 40: Continuing professional development in domestic and family violence and trauma-informed practice
- Recommendation 41:Domestic and family violence training for the Office of the Director of Public Prosecutions, Police Prosecution Corps , Legal Aid Queensland and community legal services
- Recommendation 42: Specialist knowledge of domestic and family violence and referrals
- Recommendation 47: Trauma-informed practice framework for practice for legal practitioners in Queensland

67. The Office of the Director of Public Prosecutions and Police Prosecution Corps, Legal Aid Queensland including preferred suppliers who do legally aided work, and community legal centres, including the Aboriginal and Torres Strait Islander Legal Service, require all legal staff to participate in training on working with victim-survivors of sexual violence, including best-practice in communicating with First Nations women and girls, and responding to evidence of trauma and abuse histories.

68. The Women's Safety and Justice Taskforce reaffirms the following recommendations from *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland* and recommends they be extended to include sexual violence and issues related to women and girls as accused persons and offenders in the criminal justice system:

- Recommendation 3: independent Judicial Commission
- Recommendation 42: Specialist Accreditation Scheme
- Recommendation 48: Judicial Officers Training

Implementation

The plan for evaluation should remain within the timeframes stated in *Hear her voice 1* and are reaffirmed here.

There should be victim-focused, trauma-informed, and accessible processes to enable people to make a complaint when they consider judicial behaviour falls short of appropriate standards. It is also important that those who work in Queensland's courts have a safe workplace and that all Queensland court users are treated appropriately. Victims-survivors should have their proceedings considered by a judicial officer who has an up-to-date understanding of the nature and impact of sexual violence, domestic and family violence, including coercive control and the relevant law. Proceedings should be conducted in a manner that is least likely to add to a victim's trauma. The Taskforce, therefore, considers that establishing a Queensland Judicial Commission, to provide education and training to judicial officers and to deal with complaints, is an important reform that should be prioritised and progressed in this term of Government.[272]

With respect to recommendations 39, 40, 41, 42, 47 of *Hear her voice 1* relating to training for legal practitioners the Taskforce suggests that the Queensland Government establish a working group with senior leaders in the BAQ, QLS, LAQ, ODPP, and the Police Prosecution Corps (PPC) to ensure that these recommendations are implemented per the timeframes for introduction, passage, and commencement of legislative amendments recommended in *Hear her voice 1*.

New CPD (continuing professional development) and trauma-informed training programs should be commencing well before the commencement of the proposed new offence of coercive control in Queensland in 2024 and should include training relevant to sexual violence beyond sexual violence that occurs in domestic and family violence contexts.

The QLS and the BAQ should monitor the requirement that all lawyers undertake CPD training in sexual violence, domestic and family violence and trauma-informed practice. There should then be regular training offered to lawyers in the form of CPD seminars. These bodies should also establish Domestic and Family Violence CPD streams.

As soon as possible, the QLS Specialist Accreditation Scheme should incorporate training in sexual violence, domestic and family violence and trauma-informed practice within the criminal law and family law areas of specialty. It is essential that training content is up-to-date and that knowledge cascades to programs and is available to all lawyers.

The Taskforce suggests that a centralised hub or clearinghouse for knowledge, including current research and any significant changes, would be a valuable resource. For lawyers working in government organisations or LAQ, training may be monitored by the organisation — but all organisations, including the ODPP and PPC, should report publicly and transparently about compliance with improved training practices.

The Qld Government stated in response to recommendation 48 from *Hear her voice 1* concerning training for judicial officers' and amendments to *Magistrates Court Act 1921*, *District, Court of Queensland Act 1967*, and *Supreme Court of Queensland Act 1991* (see chapter 3.8 of *Hear her voice 1*):

'*The Queensland Government supports the intent of this recommendation, and will consult with the Chief Magistrate, Chief Judge and Chief Justice to seek publication of relevant judicial training information in annual reports. Further consideration regarding additional publication of all other judicial training and professional development will be undertaken following consultation on a proposed Queensland Judicial Commission (Recommendation 3), including any appropriate legislative amendments*'.[273]

Consistent with the latest guidance provided by the Queensland Department of the Premier and Cabinet about the purpose of annual reports under the *Financial Accountability Act 2009* information on the cost and content of judicial training should be included in each court's (that is, Supreme Court, District Court and Magistrate's Court) annual report.

Human Rights considerations

Human rights consideration for the implementation of these recommendations are the same as those set out under Recommendation 3[274], Recommendation 38[275], Recommendation 39-47[276] of *Hear her voice 1*.

Evaluation

Evaluation should occur consistently with the Taskforce's guidance on evaluation for Recommendation 3[277] at, Recommendation 38[278] and Recommendation 39-47[279] set out in *Hear her voice 1.*

Conclusion

The Taskforce has heard in our consultations and through our submissions that the special measures in place to protect vulnerable witnesses who are victim-survivors of sexual offending when giving evidence in court are inadequate for purpose. Victim-survivors and victim advocates have raised concerns about the treatment of sexual assault complainants during criminal trials. Legislative reform, a Queensland Judicial Commission, ongoing training for judicial officers and lawyers, and new court practices and procedures are all needed to improve the court experience of victim-survivors and to reduce the risk of causing them further harm. This can all be done without putting at risk the right of accused persons to a fair trial.

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[1] Jonathan Doak, *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the role of third parties* (Hart Publishing, 2008) 35.
[2] Tyrone Kirchengast, 'Victim Lawyers, Victim Advocates, and the Adversarial Criminal Trial' (2013) 16(4) *New Criminal Law Review* 568, 569.
[3] Taskforce submission 'Anonymous a' submission, 20.

[4] Anne Cossins *Closing the Justice Gap for Adult and Child Sexual Assault* (2020), Palgrave Macmillan, 339.
[5] Anne Cossins *Closing the Justice Gap for Adult and Child Sexual Assault* (2020), Palgrave Macmillan, 339.
[6] *Evidence Act 1977* (Qld) s 21A.
[7] *Evidence Act 1977* (Qld) s 21A(2)(a)-(f).
[8] *Evidence Act 1977* s 21A(2).
[9] *Evidence Act 1977* div. 4 and s21A(2).
[10] *Criminal Code* s 668D.
[11] *Criminal Code* s 668E(1).
[12] Queensland Courts, Supreme and District Courts Benchbook, 'Instructions from the Trial Judge to the Jury' (Web Page) Supreme and Dictrict Court Benchbook - Jury Handout - No Outside Indluence or Information (courts.qld.gov.au).
[13] *R v Pearce* [2022] QCA 43.
[14] *Evidence (Protection of Children) Amendment Act* 2003.
[15] Royal Commission into Institutional Reponses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I - II* (Report, 2017) 81.
[16] *Evidence Act 1977* (Qld) s 93A.
[17] *Evidence Act 1977* (Qld) s 93A.
[18] 'Video-recorded' refers to an audio-visual recording.
[19] *Evidence Act 1977* (Qld) pt 6A, the provisions are to commence on a day to be fixed by proclamation; Paula Doneman, 'Queensland moves to allow use of police body worn footage in prosecution of domestic violence perpetrators', *ABC News* (Web Page, 16 November 2021) <https://www.abc.net.au/news/2021-11-16/qld-body-worn-cameras-police-domestic-violence-cases-court/100624080>; Tony Keim, 'New law to allow the use of video evidence in DFV cases' (Web Page, May 2022) <https://www.qlsproctor.com.au/2022/05/new-law-to-allow-use-of-video-evidence-in-dfv-cases/>.
[20] *Evidence Act 1977* (Qld) s 21.
[21] *Evidence Act 1977* (Qld) s 21.
[22] Legal Aid Queensland submission, Discussion Paper 3, 17.
[23] *Barrister's Conduct Rules 2011* rule 61.
[24] *Criminal Law (Sexual Offences) Act 1978* s 3.
[25] *Criminal Law (Sexual Offences) Act 1978* s 4.
[26] *Criminal Law (Sexual Offences) Act 1978* s 5.
[27] Royal Commission into Institutional Reponses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I - II* (Report, 2017) 83.
[28] Presentation to the Women's Safety and Justice Taskforce, Queensland Intermediary Scheme (QIS) Pilot Program, Karen Gibbons QIS Pilot Program Manager, 13 April 2022.
[29] Queensland Courts, 'QIS pilot program' (Web Page) <https://www.courts.qld.gov.au/services/queensland-intermediary-scheme/qis-pilot-program>.
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[32] Royal Commission into Institutional Reponses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I - II* (Report, 2017) 18.
[33] Royal Commission into Institutional Reponses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I - II* (Report, 2017) 71-74.
[34] Royal Commission into Institutional Reponses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I - II* (Report, 2017) 71.
[35] Knowmore Legal Service submission, Discussion Paper 3, 14-15.
[36] Knowmore Legal Service submission, Discussion Paper 3, 14-15.
[37] Knowmore Legal Service submission, Discussion Paper 3, 14-15.
[38] Elizabeth Dallaston and Ben Mathews, 'Reforming Australian Criminal Laws against Persistent Child Sexual Abuse' (2022) 44(1) *Sydney Law Review* 77.
[39] Elizabeth Dallaston and Ben Mathews, 'Reforming Australian Criminal Laws against Persistent Child Sexual Abuse' (2022) 44(1) *Sydney Law Review* 77, 88.
[40] Ben Mathews and Delphine Collin-Vézina, 'Child Sexual Abuse: Toward a Conceptual Model and Definition', (2019) 20(2) *Trauma, Violence, & Abuse*, 131, 148.
[41] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020) 7.
[42] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020) 7.

[43] *Penalties and Sentences Act 1992* (Qld) Part 3A s 43B(1).
[44] *Penalties and Sentences Act 1992* (Qld) s 43B(4).
[45] *Penalties and Sentences Act 1992* (Qld) s 43C(2).
[46] *Domestic and Family Violence Protection Act 2012* s 26.
[47] *Criminal Procedure Act 1986* (NSW) s 294B(3)(a).
[48] *Criminal Procedure Act 1986* (NSW) s 294B(3)(b).
[49] *Criminal Procedure Act 1986* (NSW) s 294B(5).
[50] *Criminal Procedure Act 1986* (NSW) s 294B(6).
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[56] *Evidence Act 1939* (NT) 21B.
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[76] *Crimes Act 1958* (Vic) s 49J.
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[113] WWILD Sexual Prevention Association submission, Discussion Paper 3, 15.
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[120] Centre Against Sexual Violence (Logan and Redlands) submission, Discussion Paper 3, audio submission.
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[123] Full Stop Australia submission, Discussion Paper 3, 29-30.
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[125] Full Stop Australia submission, Discussion Paper 3, 27.
[126] Full Stop Australia submission, Discussion Paper 3, 30-31.
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Chapter 2.10: Improving court management of sexual offence cases

Delays in court proceedings for sexual violence increase anxiety and distress for both victim-survivors and accused persons. Sexual offence cases warrant a specialist approach by the courts given the heightened risk of causing further harm to victim-survivors.

There is a need for courts to improve the management of sexual offence cases to reduce delays, and improve the court experience for victim-survivors.

Background

Proceedings for sexual offences, like all criminal matters, generally commence in the Magistrates Court with a committal proceeding to determine whether there is enough evidence for a jury to convict the accused.[1] For some types of offences, an accused person may enter a plea of guilty and be sentenced in the Magistrates Court.

Defended matters (when an accused person pleads not guilty or reserves their plea) proceed to trial.[2] Indictable matters (more serious offences), such as rape cases, have an indictment (charge), which is typically presented at an initial mention in the higher courts. Preliminary hearings (mentions) then resolve any minor pre-trial issues and a date for more complex pre-trial issues or the trial itself are set.[3]

There are multiple ways in which a criminal matter may be finalised:

- the accused person pleads guilty
- a matter is not committed for trial after a preliminary hearing in the Magistrates Court
- the prosecution is discontinued
- the case proceeds to trial[4]

Overall, very few sexual offence cases progress all the way to the trial stage and result in conviction.[5] Trials are time-consuming and resource intensive.[6] If the jury is not able to reach a verdict, if the trial for some reason miscarries, or if there is a successful appeal, there is usually a retrial.

An objective of the court is to ensure matters are processed in a high-quality and timely manner.[7] Delays are most apt to occur between initial mention and trial, and between trial and appeal.[8] Trials can be adjourned (to be resumed at a later time) and this can happen multiple times before they go ahead. Retrials also add to delays and delay hearings of other cases.[9]

Sexual offences tend to take much longer than other cases to resolve.[10] Chapter 2.1 reported sexual assault related matters are the third highest category of offences dealt with in the District or Supreme Courts.[11] Court delays diminish victim-survivors' confidence in the court process and its legitimacy.[12] Lengthy court delays leave victim-survivors feeling they have been denied access to justice and lead to heightened feelings of stress, anxiety and trauma. Court delays also impact on accused persons' rights in criminal proceedings. Section 32(c) of Queensland's *Human Rights Act 2019* notes that a person charged with a criminal offence is entitled to be tried without unreasonable delay.

Current position in Queensland

Case management and conferencing

Queensland's three criminal court levels each have distinct but similar structure.

The Chief Magistrate is the head of jurisdiction in the Magistrates Court, the senior judicial officer responsible for the orderly and expeditious exercise of the jurisdiction and powers of the Magistrates Courts in Queensland.[13]

The Chief Judge of the District Court is responsible for the administration of the District Court and for ensuring the orderly and expeditious exercise of the jurisdiction. The Chief Judge has powers of the District Court to do all things necessary or convenient to be done to perform this responsibility. Subject to the responsibilities and powers of the Chief Judge, the Judge Administrator is responsible for the

administration of the District Court. They are also responsible for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the District Court in Queensland.[14]

The Chief Justice is responsible for the administration of the Supreme Court of Queensland and its divisions and the orderly and expeditious exercise of the court's jurisdiction and power. The Chief Justice has power to do all things necessary or convenient to perform that responsibility. The Senior Judge Administrator is responsible to the Chief Justice for the administration of the Supreme Court Trial Division. They are responsible for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the court in the Trial Division.[15] The Court of Appeal Division is responsible for the hearing of appeals. The President of the Court of Appeal is responsible to the Chief Justice for the administration of the Court of Appeal.

Judicial officers are usually responsible for organising court lists, assisted by administrative court staff. It is accepted practice in Queensland to list multiple criminal trials to begin in the same sittings, which are often listed to commence in blocks of two to three weeks, even though not all will be able to go ahead. This is sometimes referred to as a 'running list' system.

There are a number of reasons why a trial may not proceed. Examples include a late plea of guilty, a key witness suddenly becoming extremely ill, or where late disclosure of material to the defence makes it unfair to proceed at that time. Trials not listed as the first or second trial in a particular sitting are often unlikely to proceed, but the parties need to be fully prepared in case they do. In Queensland, Magistrates Court's practice directions encourage prosecution and defence lawyers to enter into a case conference in both summary and committal call overs.[16] This case conference between prosecutors and defence lawyers does not involve mediators.[17]

Management of sexual offence trials

Sexual offences are dealt with in the mix of other criminal matters. While there is no specific requirement for prioritisation of sexual offences (unless they involve child witnesses[18]) the Taskforce has heard that, in practice, the nature of the offence and the impact of trauma on the victim is often taken into account in current listing processes.[19]

Judicial officers hearing sexual offence matters are not required to have received specialist training. Given that sexual offence matters constitute a considerable proportion of the workload of the District Court, most judges in that jurisdiction become experienced in sexual offence trials soon after their appointment, if they were not beforehand. As discussed in Chapter 2.9, however, the Taskforce considers that judicial officers would benefit from up to date specialist training to better understand and deal with the dynamics of sexual offending, the common myths associated with it, and the impact of the trial process on victim-survivors, while not compromising the rights of accused persons to a fair trial.

As noted in Chapter 2.4, victim-survivors report being confused and intimidated by the court process. Some fear for their safety. Specialist court support is not always available to assist them to feel safe within the court precinct, to accompany them as they wait to give evidence, or to provide a comforting presence in the court room. Court staff generally do not receive specialist training in relation to sexual offending and may not be equipped with the skills to support victim-survivors to feel safe. As noted in *Hear her voice 1,* many court houses are not equipped to provide safe waiting spaces for victim-survivors or to enable them to give evidence remotely.[20]

There is currently no specific benchbook for judicial officers hearing sexual offence trials. There are, however, a number of benchbooks in Queensland that may assist courts in sexual assault cases. For example, the *Supreme Court Equal Treatment Benchbook* assists judicial awareness of racial and cultural diversity and of 'particular problems affecting some groups' who enter the justice system. The intent of the Equal Treatment Benchbook is to reduce the risk of unequal treatment of those who appear in court.[21] The *Supreme and District Court Criminal Directions Benchbook* includes a section about sexual offence matters,[22] and the *Domestic and Family Violence Protection Act 2012* Benchbook assists the Magistrates Courts in domestic and family violence proceedings.[23]

Reviews of court procedure

In July 2008, the Honourable Martin Moynihan AO QC was appointed to examine and report on Queensland Courts in the civil and criminal jurisdictions. Mr Moynihan's report, *Review of the civil and criminal justice system in Queensland* (the Moynihan report), was primarily focused on the criminal justice system.

The Moynihan report found delays may lead to 'evidence being lost or its reliability eroded, especially where witnesses are required to remember events which occurred years before a trial'.[24]

The report resulted in changes to Queensland's criminal justice procedures including:

- the expansion of the jurisdiction of Magistrates Court to deal summarily with indictable offences under the *Criminal Code Act 1899* and the *Drugs Misuse Act 1986*
- an increase to general criminal jurisdiction of the District Court to enable it to deal with all indictable offences with a maximum penalty of 20 years imprisonment or less
- giving increased powers to courts to deal with non-compliance with disclosure obligations, and a more streamlined committal process
- an increase in the monetary limit for civil claims in the District Court, Magistrates Court and the Small Claims Tribunal.[25]

There has not been an in-depth review into the efficiency of the criminal justice system since the Moynihan report 14 years ago.

On the 26 March 2022, the Queensland Government announced a review of the *Justices Act 1886* led by former District Court Judge and President of the Childrens Court of Queensland, Mr Michael Shanahan AM (the Criminal Procedure Review). Recommendations from the Criminal Procedure Review will inform the creation of 'a new legislative framework for contemporary and effective summary criminal procedure laws' in the Queensland Magistrates Court.[26] The Criminal Procedure Review will consider methods for reducing operational costs and procedural delays in criminal matters and use of technology and electronic processes for summary criminal procedure, including electronic lodgement, filing and service documents. While the Criminal Procedure Review is limited to the Magistrates Court, some of the findings may be applicable for other court jurisdictions.

Office of the Director of Public Prosecutions

Efficient criminal courts also depend on a functional, effective and efficient prosecution agency. The Office of the Director of Public Prosecutions (ODPP) is required to present an indictment within six months of committal if the ODPP intends to prosecute a matter.[27] In addition to this statutory timeframe, the ODPP has an efficiency measure which requires that 60% of indictments in the Supreme Court, District Court or the Children's Court of Queensland are signed and prepared for presentation within four months of a committal.[28]

The early allocation of defence lawyers and prosecutors and the ability of the defence and prosecution to get across their briefs and have early discussions about their cases are also seen as important to improve efficiency. The Director of Public Prosecution's Guidelines in Queensland (see Chapter 2.8 for discussion on the role of prosecutors) provide that agreements between lawyers as to the charges to be brought, which could expedite the matter in especially complex, sensitive, or notorious cases,[29] must not be accepted by a prosecutor without consultation with the Director or Deputy Director of Public Prosecutions.[30] This is in addition to the required prosecutor's consultation with victims-survivor and police 'in any case where a substantial reduction or discontinuance of a charge is being considered'.[31]

How do other jurisdictions address this issue?

While there are no specialist sexual violence courts operating in Australia, the Federal Government announced in 2021 that it will 'lead a national discussion with states and territories to investigate the merits of specialist sexual offence courts'.[32]

Internationally, permanent specialist sexual offences courts operate in New Zealand, New York State and South Africa. The model operating in New Zealand is particularly relevant to the Taskforce's consideration.

Specialist sexual offence courts: New Zealand

In 2016, New Zealand piloted a specialist sexual violence court in Auckland and Whāngārei with the goal of reducing pre-trial delays and improving the experience for victim-survivors.[33] Following the pilot, the government established an ongoing specialist sexual violence court. Given that the New Zealand 'court' is part of its District Court (which hears all types of matters), it has been described as operating as a court list.[34] The New Zealand specialist court involves:

- specialist training for judges and lawyers on the dynamics of sexual violence and vulnerable witnesses

- only judges who have received specialist training being designated to hear pilot cases
- dedicated case managers who proactively manage files to enable early identification of issues that could potentially cause delays
- earlier allocation of cases and earlier trial scheduling
- prioritising courtrooms for pilot cases
- increased communication between stakeholder organisations involved in pilot cases

There were also a number of key procedural changes involved in the pilot including:

- comprehensive case review hearings to identify pre-trial issues (including support needs for the accused and witnesses)
- firm dates allocated for pre-trial applications and the trial
- the allocated judge hearing all pre-trial matters (where at all possible, and including the use of online hearings to make this more achievable)
- a trial callover (dealt with by the allocated judge) to identify and address all matters that could delay a trial and to set ground rules for the trial
- pre-trial hearings to resolve an issues identified
- a Sexual Violence Victim Advisor assigned to all complainant witnesses

These procedural changes were complemented by the use of separate court entrances and secure waiting spaces, communication assistance, court education visits and other supports for victim-survivors.

An evaluation of the pilot found the risk of secondary victimisation of victim-survivors was reduced and timeliness and practices in case and trial management were improved.[35] The evaluation also found significant reductions in the time to reach trial (from an average of 12 months to an average of 8 months in Auckland, and from an average of 17 months to 10 months in Whāngārei). [36] Allocation of firm dates for pre-trial applications and the trial were believed to be the single most important and influential change to the standard trial process.[37] An unexpected outcome of the pilot was a higher rate of pre-trial resolution by guilty plea.[38] It was suggested this was because the procedural changes meant that accused persons know earlier in the process exactly what evidence they are going to face.[39] Communication assistance provided to accused persons that helped them to better understand the charges and evidence is also considered a contributing factor.[40]

Specialists lists: Victoria and New South Wales

Victoria and New South Wales operate specialist sexual violence lists.

In Victoria, the list is within the County Court Criminal Division[41] and involves specialist judicial officers[42] who undertake pre-trial case management of all matters committed from the Magistrates Court through to trial.[43] In reviews undertaken in both 2004 and in 2021, the Victorian Law Reform Commission preferred the specialist list to the establishment of a specialist court,[44] but recommended strengthening specialisation through education and training.[45]

In New South Wales, specialist sexual assault lists operate in each registry of the District Court with a focus on close management of cases to ensure their expeditious resolution.[46] According to the Practice Note creating the specialist lists, cases are called over separately and listed between 4 to 6 months from committal.[47] Cases on the list are prioritised, with particular care taken not to schedule too many on country circuits, to avoid cases not being reached. The impact on the complainant is a primary consideration, and 'every effort should be made to identify when a complainant will be required to give evidence in order to avoid unnecessary anxiety in the complainant'.[48] The list is supported by a Sexual Assault Trials Handbook produced by the Judicial Commission of New South Wales.[49]

Case management: England and Wales

The Better Case Management (BCM) initiative in England and Wales is a judicially led initiative that forms part of the implementation of the *Review of Efficiency in Criminal Proceedings* report delivered in January 2015 by the Rt. Hon Sir Brian Leveson, President of the Queen's Bench Division.[50] It is based on the overarching themes of that review:

- getting it right first time
- case ownership
- the duty of direct engagement and
- consistent judicial case management.

The project has four overarching aims[51] :

- robust case management
- reduced number of hearings
- maximum participation and engagement from every participant within the system, and
- efficient compliance with the Criminal Procedure Rules and Court Directions.

These are underpinned by 10 principles. The outcomes for BCM, and ultimately the measure of its success, should be increased efficiency, a reduction in the number of hearings and the resources expended, improved effectiveness and improved quality of service to victims and witnesses. The initiative is designed to deliver speedier justice through two key case management changes[52]:

- a uniform Early Guilty Plea (EGP) scheme
- Plea and Trial Preparation Hearings (PTP)

The rollout of the initiative began in eight early adopter courts in October 2015. Implementation required a change in culture and work practices. It was underpinned by a handbook for judicial officers and practitioners.[53] The handbook includes expected milestones and timeframes within the management of a case. A key element of the initiative was the level of judicial involvement ensuring ownership of the design of the model, its implementation, and ongoing oversight. The fact that it is a consistent approach across the jurisdiction also seems to be relevant.

There are other initiatives that support BCM including the Digital Case System (DCS), a court-led initiative that enables all parties to access the same electronic case file. DCS is intrinsic to the working of BCM. It replaces the paper file, with the case papers available online so all parties can work from the same full set of papers, providing clarity over what has and has not been served.[54] There is also a Standard Operating Practice (SOP) for Crown Court casework. The SOP is a single process applicable to all areas to ensure consistency across the prosecution services and links into the BCM principle of a 'single national process'.[55]

The BCM is supported by robust governance mechanisms, including a national governance group and local governance arrangements, as well as ongoing assurance through the monitoring of performance data.

An initial implementation review of the BCM initiative within the first twelve months of its commencement, although too early to identify trends and measure outcomes, showed promising results in terms of some increase in the number of early guilty pleas and reduced court appearances. It also found that general engagement by all parties in the model was good. Some initial challenges included the ability to undertake the necessary case analysis and strategy planning, with fewer than 50% of cases in the file sample considered by the review having addressed this properly.[56] This was compounded by the prosecution service not drawing the investigative failings to the attention of the police in the individual files concerned. There was also very little direct engagement with the defence prior to the first hearing. There were challenges for defence lawyers in getting instructions before the first court hearing, which made it difficult for the court to record the issues in the case, a critical component of the model.[57]

Some jurisdictions in Australia have implemented initiatives consistent with elements of the England and Wales model. New South Wales has implemented case conferencing (part of a broader Early Appropriate Guilty Pleas reform).[58] A Sexual Assault Trials Handbook in NSW provides judges with information on conducting sexual offence trials.[59]

Western Australia and Victoria also have case conferencing models. Case conferencing encourages early direct engagement between prosecution and defence, with the intention of promoting early settlement of criminal matters or to narrow issues in the case as soon as possible, to minimise lengthy trials. The WA and Victorian models have a judge or mediator to facilitate or oversee the case conferencing process and both incorporate elements of case management. Case management tools include imposition of time limits on counsel's submissions and enforcing strict timetables for procedures.[60] Case conferencing assists in the effective management of court proceedings and the timely resolution of issues.[61] Conferencing also facilitates early resolution of criminal matters and the narrowing of issues before trial so that the length of the trial is predictable.[62]

A key difference between the two states is that the WA model is offered in the Supreme Court[63] and the Victorian model in the District Court.[64] The Victorian model is currently being trialled,[65] while the WA model, first introduced as a pilot in 2006, is now embedded into court procedures on a voluntary basis.[66]

Specialist Prosecutors: Australian Capital Territory (ACT)

In the ACT, the Sexual Offences Unit (SOU) was established within the Office of the Director of Public Prosecutions in 2010 as part of broader reforms.[67] The SOU is a unit made up of a specialist team of prosecutors who are 'experienced in the review, management and preparation of sexual offences matters as they make their way through the criminal justice system'.[68] The SOU reviews each new sexual offence matter to identify any potential issues at the earliest opportunity and to enable consistency in the way matters are prosecuted.[69] The Unit has carriage over all sexual offence prosecutions until a trial date is set. Once prosecutors are allocated to a matter, the SOU step back and provide a supportive role and central point of expertise until the case is finalised.[70]

The SOU prosecutors carefully review cases to identify special measures for victim-survivors requiring additional support. This process ensures timely applications are made to the court to put in place special provisions.[71] The SOU also meet regularly with specialist sexual violence investigators from the Australian Federal Police to discuss case progression and general issues.[72] The SOU works closely with the DPP Witness Assistance Service (WAS). The WAS operates similarly to Victim Liaison Officers (VLOs) in Queensland (Chapter 2.8) by providing information to victim-witnesses of the prosecution process. WAS prioritise cases involving vulnerable victim-survivors (includes victim-survivors of sexual violence) and provide an added layer of support including by preparing victim-survivors for court and explaining court outcomes.[73] The WAS do not provide counselling or therapeutic supports.[74]

Evaluation findings have shown specialist prosecutors are beneficial in building expertise in sexual offence matter and contribute to positive relationships between the ODPP and other agencies that may ultimately benefit victim-survivors.[75]

Specialist Prosecutors: Victoria

Victoria introduced a Specialist Sex Offences Unit (SSOU) in its Office of the Director of Public Prosecutions in 2007 to prosecute serious sex offences. The SSOU brought together prosecutors and solicitors with expertise in sex offence cases to 'conduct the most serious sex offence prosecutions.'[76] The SSOU was also described as providing 'support and quality assurance on the management of sex offence prosecutions undertaken by the trial divisions'.[77] In 2022 the role of the SSOU was being reconsidered following vicarious trauma impacts on prosecutors.[78]

A key difference between the models in the ACT and Victoria is the scope of work performed by specialist prosecutors. ACT prosecutors in the SOU are tasked primarily with overseeing the conduct of sexual offence matters. In Victoria, prosecutors in the SSOU conducted serious sex offence prosecutions and also provided support and quality assurance functions. A recent High Court case found that prosecutors working in the SSOU were exposed to significant vicarious trauma and not provided with a 'safe system of work' by Victorian ODPP.[79] A recent news article on the Victorian ODPP reported the ODPP is considering 'spilling' its specialist sex offence lawyers into a general pool of solicitors.[80]

Results of consultation

Victim-survivors

A victim-survivor's first and only appearance in court may be to give evidence at trial as a witness for the prosecution. Some may first give evidence at a committal hearing but this is increasingly infrequent. The Taskforce heard that the prospect of giving evidence was a time of high anxiety for victim-survivors who are required to appear at court. The anxiety that comes with the anticipation of giving evidence is made worse by delays.

Victim-survivors of sexual assault who had been through the court process told the Taskforce of their frustration and, at times despair, at the length of time their matter took to be finalised.

One woman spoke of her complaint taking 8 years to be finalised after the first trial resulted in a hung jury. This required her to go through the ordeal of giving evidence and being cross-examined twice.[81] Ultimately, the case resulted in an acquittal.[82]

Another victim-survivor stated:

> *'This matter has been dragging along for years with NO end in sight. If the trial starts this year, it will be a miracle.'* [83]

Victim-survivors told the Taskforce that delays, including repeated adjournments, had a considerable impact on their wellbeing:

> *'The court process itself has taken years, with time and time again the trial being delayed. Each time becoming increasing more debilitating.'* [84]

Another victim-survivor provided insight into how court delays add to the anxiety and trauma victims experience, in what is an already stressful situation of going through court proceedings:

> *'How many times will I have to pick myself up from the depths of fear, anxiety, retraumatisation and get to a point where I feel strong enough to face this committal hearing, only for it to be adjourned again?'* [85]

The Taskforce also heard that victim-survivors felt that accused persons misuse court proceedings as a tactic to delay matters before the court, as one victim-survivor described, they delayed proceedings over an unreasonable period of time, only to plead guilty in the end:

> *'The perpetrator admitted guilt the morning of, after dragging things out for 7 years.'* [86]

Victim-survivors experienced other types of trauma such as feeling unsafe attending court, particularly where there was no way to avoid contact with the accused:

> *'I turned up to court and almost ran away as he turned up at same time I did and there was nothing to stop him coming up to me.'* [87]

This experience echoes those of domestic and family violence victims shared in *Hear her voice 1*.[88] Women *In Hear her voice 1* told the Taskforce of being intimidated and harassed by the perpetrator due to the poor layout of the courthouse precinct.[89]

Taskforce submissions show that the combination of court delays and other negative court experiences, such as having to face the accused person, are especially harmful to victim-survivors' wellbeing (see below for further discussion on the impacts of court delays on victim-survivors with multiple and complex needs).

Service system stakeholders

Service system stakeholders raised the issue of delay as one of the most problematic aspects for the clients that go to trial. The Taskforce heard from a support worker in a Brisbane consultation forum that 'delays increase chances of people withdrawing their complaints'.[90]

Zig Zag Young Women's Resource Centre Inc. stated in its submission to the Taskforce that, in that organisation's experience, delays have been used as a deliberate defence tactic:

> *It is common for matters relating to sexual offences to take 1-4 years to proceed through the criminal justice system, and there are often lengthy delays and adjournments of court proceedings. At times this can be observed as deliberate defence tactics aimed at delaying trial proceedings.*[91]

Court delays come at a cost to victim-survivors' access to justice. Queensland Sexual Assault Network (QSAN) reported delays to be extensive: 'timelines are extreme. Timeline averages for trials is 3 to 7 years – standard is 3 to 4 years'.[92] QSAN also shared their observations of the impact delays and adjournments have on victim-survivors:

> *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.*[93]

Specialist sexual violence support workers told the Taskforce that court delays had significant impacts on the wellbeing of the victim-survivors they supported. The Taskforce heard in a meeting with the Women's Centre in Townsville that 'every adjournment is difficult for a victim psychologically' and victims will wait years until their matter reaches court.[94]

The Gold Coast Centre Against Sexual Violence stated:

> *From the time of reporting to police until the matter is committed to trial there is a significant delay, sometimes years after the offence was first reported to police. This time delay leaves what many victim/survivors have described as 'a cloud hanging over my head' affecting memory, healing and engagement with the criminal justice process. Some victim/survivors want to withdraw and 'try and get on with their lives'. These time delays undermine procedural justice.*[95]

Support services suggest current court processes need to become more trauma-informed and survivor focused.[96] Support services also raised the challenges involved in providing court support when there are frequent late adjournments.[97]

There is strong service sector support for the introduction of a specialist sexual offence court in Queensland.[98] The Queensland Sexual Assault Network strongly supported the development of specialist sexual violence courts and advocates for the establishment of a trial court with the model to be developed by an independent consultant.[99]

Government

Queensland Police Service

The Taskforce heard in a consultation forum with Queensland Police Service (QPS) members that they considered court delays to be excessive. One QPS member stated:

> *'[The] length of time from complaint to finalisation – from QPS to Court [is a] 4 year process and it can put people off from reporting.'* [100]

Another QPS member stated:

'Delay in getting matters before the courts is ridiculous – at least 2 years.' [101]

Department of Justice and Attorney-General

The Department of Justice and Attorney-General (DJAG) told the Taskforce:

> 'Court case management must consider and balance a number of factors and resolve in the interests of justice. Prioritisation for trial listings is determined by the presiding judicial officer in each court location, however typically matters are assessed by:
>
> - the length of time after proceedings commenced and number of prior trial listings;
> - the custody status of the defendant (where the defendant is on remand or serving a sentence of imprisonment) and
> - time spent in custody to date;
> - priority matters as directed by the judicial officer, such as serious violent or sexual offences, offences involving children or involving a child witness, and special witnesses;
> - other considerations including estimated trial length and availability of interpreters if required; and
> - remaining matters by length of time after proceedings commenced, oldest to newest.' [102]

DJAG also provided the following explanation in its 2020-21 Annual Report:

> 'There are many factors that are outside the court's control which can influence the progression of matters through to finalisation, including the availability of witnesses and/or legal representatives, the readiness of parties to proceed, and the complexity of matters.'[103]

And,

> 'Factors outside the court's control (such as the appearance (or not) of defendants and witnesses and the readiness of parties to proceed) can delay the progression of matters through the court during the 12-month period from lodgement. There has also been an increasing volume of more serious cases being lodged which take longer to finalise.'[104]

Legal stakeholders

The Taskforce met with the Chief Magistrate and Deputy Chief Magistrates and discussed the following concerns:

- the slowness of ODPP responses to move matters forward to committal - magistrates were of the view matters were languishing too long in the Magistrates Court before being committed to the higher courts
- the quality of members of the Police Prosecutions Corps, noting the quality across the state was extremely variable
- that police prosecutors are not consulting enough with victims, and
- victim impact statements not being provided to the Magistrates Court for sentencing.[105]

Legal Aid Queensland (LAQ) suggested: 'the court case management systems and court processes could be adapted to accommodate the specific interests of victims of sexual offences as compared to other offences, through the court listings and review processes, by adopting more formal measures to ensure:

- proceedings are expedited as much as they can be, recognising the increased trauma that ongoing delays can cause to a victim of a sexual offence, but balancing this against the need to ensure that defendants are provided sufficient time to engage representation and prepare their defence;
- early allocation of trial prosecutors;
- trials involving a sexual offence are allocated a priority trial listing within a given sittings;
- prosecutors have complied with their victim-liaison obligations particularly in relation to information provided as to the progress of a matter;

– prosecutors have the capacity and resources to consider and facilitate appropriate referrals to victims over the course of a matter.' [106]

LAQ also supported consideration of a modified case management and listings process for sexual offences:

> *A more structured court process may help to ensure that these measures are appropriately planned and applied for well in advance of the trial date and that victims are provided with timely updates on court events and processes, and the matters expedited.* [107]

LAQ noted that the inadequacy of technology in non-centralised courts contribute to the delay in finalising matters and may prevent people appearing remotely.[108] In *Hear her voice 1,* the Taskforce noted technological constraints hampering efficient court administration - unlike other Australian jurisdictions, Queensland's courts are paper-based. For example, Queensland's Magistrates Court does not have a suitable portal to allow an online form to be filed electronically on the Queensland Court database. The Taskforce understands that the courts, DJAG and other court users are presently developing an online portal for this purpose.

LAQ also noted the limited engagement between prosecutors and victim-survivors, preventing them from building rapport and trust.[109]

The Queensland Law Society (QLS) was opposed to the establishment of a specialist court, noting a range of risks associated with court specialisation (discussed below).[110] QLS suggested any benefits of such a court are able to be achieved in other ways such as case management and training.[111]

The Bar Association of Queensland was also opposed to a specialist court, noting that the District Court is 'already specialised to some extent' given the frequency of these matters in that jurisdiction.[112]

The Taskforce heard in a consultation forum with defence lawyers that delays occurred when 'police are lazy – and only provide information at last minute' or there is an 'issue with a junior prosecutor – police ignore the young prosecutor. They don't stand up to the police' and 'prosecutors are powerless to compel police to provide information'.[113]

The Women's Legal Service Queensland (WLSQ) noted current inadequate support and advice being provided to victim-survivors by VLOs. WLSQ advocates for specialist training for judicial officers (Chapter 2.8). As acknowledged above, these issues combined with court delays heighten the stress and trauma on victim-survivors.

Office of the Director of Public Prosecutions

The Taskforce heard in a forum with the ODPP that court delays weaken a case. One legal member from the ODPP stated:

> *'The longer the delay the more you have to plug holes…the lack of detail and precision coupled with delay creates weakness.'* [114]

During a stakeholder forum in Cairns in 2021, a representative from the ODPP described the detrimental impacts on victims of having to prepare for trial repeatedly when matters are not reached in the list during a sittings period.[115]

Other relevant issues

Is a different approach warranted for sexual offences?

It is increasingly recognised that the complex nature and dynamics of sexual violence requires specialist knowledge, including to support interactions with people impacted by the trauma related to this type of personal violation, so as to avoid further harm.[116] Research has identified a range of ways in which conventional legal processes do not adequately recognise or address the impact of trauma and disadvantage, or cause further harm to victims of sexual offences.[117] The unique and vulnerable position of

victims of sexual violence offences (particularly children) has been recognised in Australia and internationally, leading to a range of measures aimed at addressing the disadvantages they face and reducing the risk of retraumatisation, including through specialist courts and specialist lists.[118] On the other hand, some legal stakeholders argue that trauma is regularly experienced in relation to other offending, and that it is therefore not justified to concentrate resources on responses to sexual offences alone.[119]

Arguments for and against specialisation

Some argue that there is a danger in establishing specialist courts as the focus on skills required for a particular issue may be at the expense of the correct application of general and fundamental legal principles,[120] and thus at risk of developing 'distorted positions'. [121] Others recognise that specialisation leads to greater efficiency in the administration of justice, specialised knowledge on the bench and in the legal profession, effective processing of cases, consistency in decision making and specialist support.[122] Jurisdictions with established specialist courts or lists report a range of benefits, particularly in relation to reducing delays, as well as better support, particularly for victims. These jurisdictions also report judicial officers having better knowledge and understanding about the nature of sexual offending behaviours and dealing with trauma.

The risks associated with the implementation of specialist courts, however, cannot be dismissed. The Victorian Law Reform Commission in its 2021 *Improving Justice System Responses to Sex Offences* report identified the risk of 'postcode injustice' or displacement of those from rural or regional areas; the risk of judicial burnout and challenges in recruiting and retraining specialist officers given the challenging nature of this work; the cost of establishing and running a specialist court in a resource-scarce environment; and the potential need to sever non-sexual offence charges to the disadvantage of the accused person.[123] Given this state's decentralised population, the first of those risks is amplified in Queensland. A further risk of specialised courts is that, over time, practitioners and judicial officers can become insular and inward focussed, taking short cuts and missing out on a broader cross section of ideas, to the detriment of best practice.[124]

The number of matters before the courts

Courts overburdened with criminal cases will add to the delays experienced by sexual violence victim-survivors.

In 2019-20 to 2020-21, DJAG reported an overall 5.9% backlog of criminal cases pending for more than 24 months in the District Court and a 19.2% backlog of criminal cases pending for more than 12 months in the Magistrates Court.[125] DJAG set a target for a backlog of 5% in criminal cases in the higher courts and 10.5% in the Magistrates Court.[126] However, COVID-19 pandemic responses likely contributed significantly to these backlogs.

Of the finalised sexual violence matters before higher courts in Queensland in 2020-21, the majority (73%) required adjudication.[127] That means a judgement or decision by the court was made about whether or not the accused person was guilty of the charge/s against them. Of the finalised sexual violence matters before higher courts, 26% were withdrawn by the prosecution and finalised as non-adjudicated matters, even though the court did not give a judgement or reach a final decision in the case.[128] The decision to withdraw a matter from prosecution may occur following consultation with a victim-survivor who no longer wishes to proceed with their complaint, or based on an assessment that there is insufficient evidence to secure a conviction, or following negotiations between prosecution and defence.[129] This provides an important protection for the rights of the accused person.

The cause of systemic delays in courts is the result of a number of factors including,

- the number of matters initiated in the courts (including new matters, sentencing and appeal registrations) with matters in an overcrowded court system taking longer to progress
- increases in the average length of criminal trials
- increases in the number of court appearances needed to resolve a matter.[130]

Within the context of this high demand, a significant proportion of cases relate to sexual offences and these matters can require adjudication. This suggests they fall in the complex category.

The high number of trials that do not proceed

One study found the main reason for delays was the large number of trials that fail to proceed as scheduled.[131] These trials consume a significant amount of court time and resources.

Underlying factors contributing to the number of trials that do not proceed include:

- insufficient experienced practitioners willing to take on legally aided matters at an early stage, so that experienced counsel are not briefed until shortly before the trial, with resulting late negotiations as to charges and identification of issues in dispute
- prosecution case and charge uncertainty, related to the above issue, further impacts on the ability of defence lawyers to assess their client's position and to enter into early charge negotiations
- limited communication between parties (failure of both the prosecution and defence to communicate about the facts and evidence surrounding the case)
- failure by parties to narrow issues in dispute as early as possible (failure to identify points of contention)
- trial uncertainty (high likelihood that a trial will not proceed on listed date acts as a disincentive for preparation of a case).[132]

The Royal Commission into Institutional Responses to Child Sexual Abuse (The Royal Commission) found that 'delays might increase if court processes and case management do not become more efficient or if resources are not increased for the courts, prosecution and defence or both'.[133] The Royal Commission found that efforts to address delays should focus on:

- reducing late charge negotiations by adopting measures to encourage earlier charge negotiations
- reducing the reluctance of accused persons to enter a plea earlier in proceedings
- reducing the late withdrawal of prosecutions by ensuring any weakness in the evidence or the reluctance of victims to participate are identified early
- reducing the late identification of issues in cases, particularly those that must be resolved in pre-trial hearings, by adopting measures to encourage early identification of the issues
- reducing inefficiencies in the courts' listing practices.[134]

The Royal Commission recommended (recommendation 72) that court delays should be addressed and that each state and territory government should work with its courts, prosecution, legal aid and policing agencies to ensure that delays are reduced and kept to a minimum in prosecutions for child sexual abuse offences, including through measures to encourage:

- the early allocation of prosecutors and defence counsel
- the prosecution – prosecutors should ordinarily be bound by early prosecution decisions
- appropriate early guilty pleas
- case management and the determination of preliminary issues before trial.[135]

The Queensland Government stated in response to recommendation 72 of the Royal Commission that further consideration was needed: 'The Queensland Government will continue to work with all relevant agencies to reduce delays in criminal prosecutions. Further consideration and consultation with stakeholders is required.'[136]

Role of the ODPP and complexity of prosecuting sexual violence cases

The ODPP is frequently overwhelmed by high caseloads.[137] This reduces the opportunity for senior prosecutors to provide the level of guidance needed for more junior prosecutors. Chapter 2.9 illustrated that prosecutors who are just starting out require time and practice to hone their skills and develop their knowledge.

Despite this, prosecutors must still balance their high-intensity and high-pressure work while building rapport with the victim-survivor, so that they feel safe to tell their story. This requires a level of professional expertise and insight into the dynamics of sexual violence and its impacts. This takes time to develop.[138] The Taskforce heard in its consultation with the ODPP how the added pressure of a lack of resources and time constraints add to these challenges, including the ODPPs junior members. One prosecutor told the Taskforce:

> *'The real challenge is the way we are framing questions can convey the sense that we are blaming, a lot of questions are perceived to be blaming, always a challenge for the prosecutors as some of the questions have to be asked, we need to remind complainants when asking that we are not putting any blame on them, one of the challenging aspects is reinforcing stereotypes that being blamed about what happened. It is all about how we frame our conversation, the process is confronting, and we don't have time or resources to build rapport.'* [139]

Sexual violence cases are complex and building a leadership stream in the ODPP would provide the level of support and mentorship needed to strengthen competency and enhance learning and understanding of prosecuting sexual offence cases. This will benefit prosecutors by strengthening decision making early in court proceedings and facilitate early charge negotiations, including with junior prosecutors. Defence counsel also benefit from well-constructed and early identification of issues as it affords them the best chance of providing comprehensive advice to their client and avoiding unnecessary adjournments.[140]

Prosecuting sexual violence is complex work and requires a high level of skill and specialisation (Chapter 2.8). Prosecutors' interactions with victim-survivors are impacted by workload demands and levels of experience and skill in prosecuting sexual violence cases. These issues were highlighted in a 2008 report from the ODPP, *Review of issues associated with the recruitment and retention of prosecutors in the Queensland ODPP*[141] (The ODPP 2008 review). One of the key concerns identified in that report was that the high workload of prosecutors and legal officers impacted on their ability to allocate adequate time to prepare matters.[142] This increased the risk of rushed and ill-prepared decision making.[143] The ODPP 2008 review found, at that time, that 'due to the workload of more senior prosecutors, they are not always available to assist inexperienced prosecutors by providing closer professional supervision'.[144] The Crime and Corruption Commission highlighted in its 2008 report *How the criminal justice system handles allegations of sexual abuse: A review of the implementation of the recommendations of the seeking justice report,* concerns about the ODPP being under-resourced and the impact of this on victim-survivors of sexual violence.[145]

Over ten years later, high workload demands still appear to be a concern, as reflected in the number of rape cases received by the ODPP (1805 in 2019-20[146]). The 2019-20 ODPP Annual Report states 'ODPP staff continue to operate under the constant pressure of a continuing increase in the complexity of cases and impending deadlines. Improvements in the investigation of serious criminal offending has seen more complex and sophisticated offending being prosecuted.'[147]

Delay and the Mental Health Court

Criminal cases can be referred to the Mental Health Court (MHC) in Queensland to determine whether an alleged offender was of unsound mind when they committed an offence and whether they are fit for trial.[148] Referrals to the MHC can be made by the ODPP, the alleged offender or their legal representative, the Director of Mental Health, the Director of Forensic Disability or through the Magistrates Court, District Court or Supreme Court.[149] When a referral to the MHC is made, criminal proceedings are suspended.[150] The Taskforce acknowledges that the MHC has an important role in taking accused persons who meet its criteria out of the criminal justice system and connecting them with appropriate treatment and support resources, with a focus on community protection within the mental health system.[151]

But delay in having these issues determined in the MHC can severely detrimentally impact on the mental well-being of victim-survivors of sexual assault. Queensland Health has raised concerns about how people with mental health issues are impacted by court delays and referrals to MHC:

> *Experience has shown that once victim/survivors disclose to police and charges occur, initially there can be relief, which can then be replaced by significant frustration due to court delays over years as matters wait and are referred to the MHC. In relation to MHC, the perception for victim/survivors is that the referral to MHC is a tactic to avoid responsibility for the sexual offences. This is compounded by the significant delays that can occur where psychiatric and other medical assessments are made in preparation for the MHC hearing.*[152]

One support worker told the Taskforce about a victim-survivor they supported:

> *'Defence repeatedly used delay tactics until case moved to mental health court, where case was closed years after the assault.'* [153]

Forensic evidence and court delays

The timely provision of forensic evidence also impacts on court efficiency and can cause delay in sexual assault cases. The Queensland Audit Office 2019 *Delivering forensic services* report considered the importance of the interface between forensic analysis and court proceedings (Chapter 2.6).[154] It found, amongst other things that:

> *Aspects of forensic service delivery are inefficient and at times ineffective, most notably the management of illicit drugs and delivery of forensic medical examinations….Our analysis indicates this is an area where resourcing for these services is insufficient for addressing the existing backlog of analysis or meeting any notable future increase in demand.*[155]

The impact of delays on victim-survivors with multiple and complex needs

The Moynihan report and the Royal Commission did not investigate how court delays impact differently on victim-survivors with diverse and complex needs. For instance, a failure to identify a person's disability may lead to further delays. An additional consideration is how reforms intended to expedite court processes may inadvertently limit the rights of persons with complex needs by insufficiently taking these needs into account. The Taskforce reviewed transcripts from cases involving victim-survivors with disability. In some cases the delays were extensive, for example in the matter of *R v Stolberg* the court recorded the victim-survivor was a person with intellectual disability who required some assistance. The accused person was aged 38 at the time of offending with a history of property and dishonesty offending, drug offending and breaches of court orders. The timeline was:

- 2016 – the offence took place in November and was reported immediately
- 2018 – the indictment was [first] presented in December
- 2019 - the complainant pre-recorded in February and the matter was listed for trial in April
- 2019 – the trial was de-listed to refer to the Mental Health Court in March
- 2020 – the Mental Health Court de-listed the reference in July
- 2020 – the defendant went missing in July
- 2020 - a warrant was issued for the defendant's arrest in August
- 2020 – the defendant was arrested in November
- 2021 – the matter was listed for trial in March
- 2021 – the defendant pleaded guilty to three counts of rape in September[156]

Taskforce findings

Specialisation in court procedures

The Taskforce recognised that long delays in trial proceedings and multiple adjournments are a major factor in increasing the trauma of the trial process for victim-survivors.

The Taskforce has found that there is a need for special measures in the way that courts handles sexual offence matters.

In some jurisdictions, this is achieved through a dedicated specialist sexual offences court which only hears sexual offence cases. The Taskforce considered, but rejected this option. Queensland's geographically dispersed population would make it difficult to implement a specialist court state-wide. The Taskforce was concerned that limiting a specialist court to only a few locations could result in inequity in terms of access to justice. The Taskforce also acknowledged the danger of specialised courts becoming too insular over time, with judges and legal practitioners operating in an environment which may not always be best

practice to serve the interests of both victims and accused persons. The Taskforce was also concerned about the risks of vicarious trauma and the provision of a safe system of work for lawyers and judicial officers working for extended periods solely in this demanding and emotionally charged area of the law.

Instead, the Taskforce has concluded that the establishment of specialist lists in Queensland's District Court registries would provide the benefits of specialisation without the disadvantages or the significant implementation costs associated with a specialist court. A specialist list would enable the development and implementation of particular procedural and other changes to improve how sexual offence cases are dealt with state-wide. It would enable courts to effectively manage the scheduling and prioritisation of sexual offence cases to reduce delays and ensure that the judicial officers hearing these cases had received specialist training and were trauma informed. It would give more certainty to support services so they would be better able to help victim-survivors at court. Rotation of judges and practitioners through other areas of practice would avoid the burnout and vicarious trauma often associated with specialist courts of this kind. This work would be complemented by the proposed enhancements to the support provided to victims throughout their criminal justice journey (Chapter 2.4).

Case management system

The Taskforce considered that a review of court processes could consider how these processes could be managed more efficiently, without compromising the rights of sexual assault victim-survivors with diverse and complex needs or the right of each accused person to a fair trial.

The Taskforce found the development and implementation of a case management plan system, to address problems adversely impacting on the timely finalisation of all criminal matters in the courts, including cases involving sexual violence, would be a beneficial improvement. The development of such a plan would provide an opportunity to address issues that have already been identified in other reviews as well as in this chapter. The Taskforce acknowledges the recent work from the Royal Commission, in particular its recommendations for early allocation of prosecutors and defence counsel, appropriate early guilty pleas case management, and the determination of preliminary issues before trial.

The Taskforce concluded that a plan of this kind would enhance understanding of how case management can be improved in the courts, and how public resources for court administration can be most efficiently managed. The Taskforce agreed that optimally court administrators should consult with service sectors to support victim-survivors with diverse and complex needs to ensure measures intended to reduce delays do not unintentionally negatively impact victims from diverse communities. The implementation of a new case management model for sexual violence related cases could enable, lead and support a change in culture and practice more broadly across the criminal justice system.

Case conferencing

The Taskforce observes that other jurisdictions have introduced case conferencing models into higher courts and that this has produced promising results in creating efficiency in court processes involving sexual offence matters. The Taskforce found that unnecessary delays in sexual assault trials occur for various reasons including missed opportunities to resolve matters early or to narrow issues, or when uncertainty about the conduct of the prosecution case or the charges leads to last minute adjournments or guilty pleas. The Taskforce considered that a case conferencing scheme similar to the Western Australian model or the Victorian model currently being trialled could reduce the number of discontinued higher court sexual assault matters in Queensland. A case conferencing model could reduce overall costs across the system if, as anticipated, it results in increased early pleas of guilty, shorter sexual violence related trials and less traumatised victims, all without compromising accused persons' rights to a fair trial.

Resources for sexual violence trials

The Taskforce recognised that benchbooks are useful tools for judicial officers, lawyers, law students and as a reference point for interested members of the community.

The Taskforce considered that ongoing improved practice could be supported by developing and implementing a specific benchbook to support the courts to handle sexual violence related cases, as in other jurisdictions. The benchbook could include relevant procedural requirements and timeframes, data and statistics, information about community attitudes and rape myths, information about the impacts of trauma on victims of sexual violence and relevant laws.

Specialist sexual violence leadership training program for prosecutors

The Taskforce acknowledged the integral role of the ODPP and the sustained pressure its prosecutors are under to manage high caseloads.

The Taskforce found that high caseloads reduce the opportunity for senior prosecutors to provide the level of guidance needed for more junior prosecutors. The Taskforce considered the ACT model of specialist prosecutors appeared promising. The model has operated successfully for 22 years and during that time has adapted to emerging issues and trends in sexual violence cases referred for prosecution.[157] [158] The Taskforce favoured this approach because it places a greater emphasis on promoting leadership and support for less experienced prosecutors and streamlining decision making early in the prosecution process. The Taskforce also considered that this model provided an added layer of oversight and support for prosecutors. It was also promising in its potential to strengthen working relationships by connecting less experienced prosecutors with experienced prosecutors. The Taskforce favoured this model because it gives junior prosecutors the opportunity to model their own professional practice knowledge and expertise on that of senior staff.

The Taskforce was deeply concerned by the risk of vicarious trauma, noting with concern what has occurred in the Victorian DPP. However, the Taskforce felt that these risks could be mitigated with proper management and rotation of staff and lawyers, noting that agencies such as the QPS have put in place safeguards to counter the risk of vicarious trauma amongst their frontline staff.

Taskforce recommendations

69. The Chief Judge, in consultation the Chief Justice, President of the Mental Health Court of Queensland, Chief Magistrate, the Queensland Government, people with lived experience, First Nations peoples, and legal and service system stakeholders, consider establishing a specialist list for sexual violence cases in the District Court of Queensland that:

- be overseen by specially trained judicial officers
- aim to set a fixed trial date with early allocation of legal counsel and a focus on resolving pre-trial issues to avoid adjournments of the trial where possible and in the interests of justice
- supported by dedicated registry staff who would work to proactively case manage matters, resolve pre-trial issues, reduce delays and provide greater certainty to parties
- involve training for legal practitioners to support the operation of the list and improve practice (recommendations 66, 67)
- is able to service remote or regional areas

The Queensland Government will provide adequate resources and assistance to the Chief Judge to design and implement the specialist court list in a way that continues to acknowledge the independence of the court and its judges.

70. The Queensland Government, consult with the Chief Justice, President of the Mental Health Court of Queensland, Chief Judge and Chief Magistrate to review how courts in Queensland deal with sexual violence cases to identify opportunities to improve the efficiency and timeliness within which matters are finalised in accordance with trauma-informed principles and approaches. The review will aim to identify issues, impacts and opportunities for improved case management and include consideration of the Office of the Director of Public Prosecutions taking over carriage of all sexual offence proceedings from the pre-committal stage. The review should include consultation with people with lived experience, First Nations peoples, and service system and legal stakeholders

Taskforce recommendations

71. The Chief Judge in consultation with the Chief Justice, President of the Mental Health Court of Queensland, and Chief Magistrate, the Queensland Government, people with lived experience, First Nations peoples, and service system and legal stakeholders consider developing and implementing a plan to improve court case management of sexual violence cases in the District Court of Queensland to operate as part of the specialist court list. The plan should incorporate:

- recommendation 72 of the Criminal Justice System report of the Royal Commission into Institutional Responses to Child Sexual Abuse;
- recommendation 5 of the Queensland Audit Office Delivering Forensic Services Report 21: 2018-19;
- the findings and recommendations of the review undertaken in relation to recommendation 70 about the review of how courts in Queensland deal with sexual violence cases, and
- consideration of relevant elements of the Better Case Management initiative in the United Kingdom, including case conferencing (recommendation 72), a process to facilitate early pleas of guilty, and a handbook that sets up clear milestones and timeframes.

The case management of sexual violence cases should aim to: increase efficiency; reduce the number of court appearances and the number of matters that unnecessarily progress to hearing; and improve effectiveness and quality of responses to victims and witnesses.
The Queensland Government will provide adequate resources and assistance to the Chief Judge to design and implement the court case management plan in a way that continues to acknowledge the independence of the court and its judges.

72. The Chief Judge, in consultation with the Chief Justice, President of the Mental Health Court of Queensland, and Chief Magistrate, the Queensland Government, people with lived experience, Fist Nations peoples, service system and legal stakeholders, consider designing and implementing a pilot of a voluntary case conferencing model in sexual violence cases in the District Court of Queensland. The voluntary case conferencing model should focus on bringing defence and prosecution representatives in individual cases together early in a mediated conference to try to identify and resolve the matters in dispute with the aims of either avoiding a trial or reducing the length and complexity of trials and facilitating the earlier preparation of cases. All involved must be astute to ensure the victim is well supported and able to make free and informed decisions in or arising out of this model.
The Queensland Government will provide adequate resources and assistance to the Chief Judge to design, implement and evaluate the pilot in a way that continues to acknowledge the independence of the court.
The evaluation of the pilot should consider the impacts and outcomes achieved including in relation to efficiency and timeliness in the finalisation of matters and impacts and outcomes for victims of crime.

73. The Chief Justice and Chief Judge consider developing and implementing a sexual assault benchbook for the Supreme and District Courts of Queensland to support judicial officers and lawyers in sexual violence cases. The sexual assault benchbook could include relevant procedural requirements and timeframes, data and statistics, information about community attitudes and rape myths, information about the impacts of trauma on victim-survivors of sexual violence and relevant laws and procedure.

74. The Director of Public Prosecutions, in consultation with the Queensland Government, consider designing and implementing a new operating model for the prosecution of sexual violence cases within the Office of the Director of Public Prosecutions. The model should include governance and leadership arrangements, the development and implementation of ongoing competency based training and professional development for all staff and lawyers, and support for staff and lawyers to avoid vicarious trauma. The model should ensure all staff and lawyers are able to provide trauma-informed responses to victim-survivors of sexual violence and recognise the specialist expertise required in the prosecution of sexual violence cases. The model will support the Office of the Director of Public Prosecutions to implement recommendations in this report within the Office and to actively participate in the implementation of recommendations across the broader criminal justice system.
The Queensland Government will provide adequate resources and assistance to the Director of Public Prosecutions to design, implement and evaluate the operating model in a way that continues to acknowledge the independence of the Director's role.

Specialist lists

The development of the specialist lists should involve establishing clear expectations around timeframes for commencing trials and should implement the proposed plan for improving case management of sexual offence cases (recommendation 71). The development of the specialist list should draw on the experience of models operating in Victoria and New South Wales as well as aspects of the New Zealand specialist court model.

The model should be adaptable for implementation in remote or regional areas by multiple judges, without being dependent on a single judge sitting in a specialist court. A specialist list will assist to monitor and track the time taken to finalise sexual offence cases and to develop expertise. A special list should provide benefits for both accused persons and victim-survivors through improved scheduling and prioritisation of this cases.

In line with the recommendations in *Hear her voice 1*, the operation of specialist lists should involve consideration of the physical safety of victim-survivors, for example through access to safe waiting rooms and assistance in moving around the court precinct without coming into contact with the accused person.

Additional resources would be required to establish and maintain the operation of a specialist list. While some changes in practice may be achieved in relation to handling of cases and treatment of victim-survivors and accused persons, it may not resolve issues that require infrastructure improvements (for example upgrades to technology and safe court spaces). There may be initial issues in establishing a specialist list state-wide, requiring a phased implementation period. Busy courts may find it burdensome and complex to manage a general criminal law list as well as a list for sexual offences. The Taskforce, however, considered that the benefits will likely outweigh the risks.

Case management and conferencing

The review should identify opportunities for timely and expeditious management of sexual offence related matters in the court system. It should also address the potential expansion of the ODPP having state-wide carriage of sexual offence cases from the pre-committal stage, as is currently the case in Brisbane and Ipswich. The review should enhance the application of trauma-informed principles. The work should complement Mr Shanahan's review and focus on refining measures in the District Court. This work should support the development of ongoing mechanisms to measure and monitor trends to model future needs and demands of those accessing courts.

The plan should include measures that support efficiency in court processes to expedite cases, reduce trauma, and improve quality of victim-survivors experiences in court. It should incorporate funding required to monitor and evaluate the impacts and outcomes achieved through the implementation of recommendations in this report. Development of the plan should be informed by consultation with sexual violence stakeholders, Aboriginal and Torres Strait Islander stakeholders, and people with lived experience.

The case conferencing pilot could be developed by The Chief Judge and in consultation with DJAG's court administrators. The pilot could operate for a minimum of 6 months. Criteria could guide which cases are selected, with priority given to complex cases.

Benchbook

The Supreme and District Courts could lead the development and delivery of a Sexual Violence Benchbook, preferably through the recommended Queensland Judicial Commission.

Leadership model and specialised training of prosecutors

The design of the model should safeguard and mitigate the risk of vicarious trauma and the benefits, over time, of all prosecution staff working in the prosecution of sexual violence related cases. The model operating in the ACT could be taken into consideration in the development of the model for Queensland, with all necessary adaptions, noting the very different operational requirements in a state as large as Queensland with a dispersed population.

The model could incorporate, as its key objectives, improving the experience of victim-survivors of sexual violence by reducing the risk of trauma/retraumatisation of their involvement in the criminal justice system and improved efficiency and effectiveness through the prosecution of sexual violence cases.

A specialist prosecution model designed to promote expert knowledge and skills in leadership and reflective practice, early identification of and use of special measures, cultural safety and competency,

communication and engagement with witnesses, and understanding of sufficiency of evidence and appropriateness of charges would be optimal. The model could be designed in a way that enhances the work of the ODPP to deliver better outcomes for victim-survivors, in consultation with sexual violence stakeholders, Aboriginal and Torres Strait Islander stakeholders, and people with lived experience. The ODPP should include safeguards to minimise vicarious trauma.

Human rights considerations

The rights engaged by these recommendations include the right to be protected from torture and cruel, inhuman and degrading treatment (section 17), the right to recognition and equality before the law (section 15), and rights in criminal proceedings (section 32) which includes the right for a person to tried without unreasonable delay.

Consideration of a specialist sexual offences list engage the right to protection from torture and cruel, inhuman or degrading treatment (section 17); the right to a fair hearing (section 31); the right to recognition and equality before the law (section 15); rights in criminal proceedings (section 32); and the right to privacy and reputation (section 25). Also engaged are rights of victims of crime as recognised in other international human rights instruments.[159]

Human rights promoted

By working towards ensuring court matters progress in a high quality, expeditious and timely manner, the recommendations promote the rights of victim-survivors. These include the right to recognition and equality before the law (section 15); rights in criminal proceedings (section 32); cultural rights - generally (section 27) and Cultural rights—Aboriginal peoples and Torres Strait Islander peoples (section 28); right to recognition and equality before the law (section 15) and the right to be protected from torture and cruel, inhuman and degrading treatment (section 17).

Human rights limited

The implementation of these recommendations will not limit any rights.

Evaluation

The specialist list could be accompanied by a robust evaluation of impacts and outcomes achieved to inform ongoing roll out. Judicial officers may wish to lead the drafting of the terms of reference for any review and plan, and in the development of the new benchbook.

A monitoring and evaluation framework could be developed for the case conferencing pilot. The pilot could be evaluated at different time intervals to measure outcomes and impacts. The pilot could be monitored to ensure the model is being delivered in the way it is intended.

The ODPP could evaluate the specialist prosecution model after a 6 month period and refine and amend the model based on evaluation outcomes.

Conclusion

The voices of women and girls strongly emphasised to the Taskforce the detrimental impact of court delays on victim-survivors of sexual assault. Some have been so traumatised that they withdrew their complaints. Many, having heard the past experiences of others, did not even report their sexual assault to police. The prospect of access to justice is lost if victim-survivors do not engage with the criminal justice system because they are so traumatised and distrustful of it.

The Taskforce has considered various approaches adopted elsewhere to best promote high-quality, expeditious and trauma-informed court outcomes. There is no simple solution to improving the experiences of victim-survivors of sexual assault in a court system that must also ensure the accused persons trials are fair.

The Taskforce considers, however, that the recommended specialist lists, court based case management practices and processes, trauma informed practices, and a dedicated benchbook will reduce delays and improve the court experience for victim-survivors without diminishing the rights of accused persons.

These recommendations are consistent with changes occurring in other jurisdictions, nationally and internationally, to successfully deal with court delays in sexual assault cases. It is time for Queensland to step up.

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[6] Productivity Commission, *Report on Government Services 2022, part c, section 7 courts,* (Report, 2022) 10.
[7] Productivity Commission, *Report on Government Services 2022, part c, section 7 courts,* (Report, 2022) 10.
[8] Jason Payne, Australian Institute of Criminology, *Criminal trial delays in Australia: trial listing outcomes,* (Report No 74, 2007) 8.
[9] Criminal Law Review, Review of sexual offences, consultation paper, 2013, 15.
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[12] Michael Forde, 'What model of court governance would optimise the expeditious delivery of justice, judicial independence and the accountability of Queensland's court system?' (Paper presented at Governance and Justice conference, Griffith University Brisbane, 9-11 July 2001), 27
[13] Queensland Courts, *Magistrates Courts of Queensland Annual report 2014-2015* (Annual Report, 11 September 2015).
[14] District Court of Queensland Act 1967
[15] Supreme Court of Queensland Act 1991
[16] Criminal Procedure Review Team, Queensland Government, 'Criminal procedure review magistrates courts consultation paper April 2022' (Consultation Paper, April 2022) 41: 'Case conferencing and case management relate broadly to requirements that parties attempt to resolve criminal matters before a hearing or committal is required. Requirements can range from informal discussions between parties outside of court, through to formal court appearances where parties must discuss issues and narrow the matters in dispute'.
[17] Legal Aid Queensland, *Criminal cases in the Magistrates Court* (Web Page, 23 February 2022) <https://www.legalaid.qld.gov.au/Find-legal-information/Criminal-justice/Criminal-court-process/Criminal-cases-in-the-Magistrates-Court>.
[18] Magistrates Court Practice Direction No 2 of 2004 which provides guidelines for fast tracking committal hearings in matters involving affected child witnesses and intellectually impaired complainants; and District Court Practice Direction No 8 of 2019 which provides guidelines to expedite the giving of evidence by affected child witnesses.
[19] Letter from David Mackie, Director-General, Department of Justice and Attorney-General, 31 March 2022; Legal Aid Queensland submission, Discussion Paper 3, 59.
[20] Women's Safety and Justice Taskforce, Queensland Government, 'Queensland Government response to the Queensland Women's Safety and Justice Taskforce, Hear her Voice – Report One addressing coercive control and domestic and family violence in Queensland', (Report, May 10 2022) 217.
[21] Supreme Court of Queensland, *Equal treatment benchbook* (Benchbook, 2016), 1-2.
[22] Queensland Courts, *Supreme and District Court Criminal Directions Benchbook* (Web Page) <https://www.courts.qld.gov.au/court-users/practitioners/benchbooks/supreme-and-district-courts-benchbook>: 67 Distressed Condition; 68 Preliminary Complaint; 69 Delay in prosecution and significant forensic disadvantage; 70 Evidence of other sexual (or violent acts) or other discreditable conduct.70 Evidence of other sexual (or violent acts) or other discreditable conduct.
[23] Magistrates Court of Queensland, *Domestic and Family Violence Protection Act Benchbook* (Benchbook, September 2018).
[24] Queensland Government, Hon Martin Moynihan AO QC, 2008, Review of the civil and criminal justice system in Queensland 33.

[25] Queensland Government, Hon Martin Moynihan AO QC, 2008, Review of the civil and criminal justice system in Queensland.
[26] Criminal Procedure Review Team, Queensland Government, 'Criminal procedure review magistrates courts consultation paper April 2022' (Consultation Paper, April 2022).
[27] *Criminal Code 1899*, 590(1)
[28] Office of the Director of Public Prosecutions, Queensland Government, *Annual Report 2019-20* (Report, 2019-2020) iii.
[29] Department of Justice and Attorney-General, Queensland Government Director's Guidelines (Guidelines, 30 June 2016), 17(v): (a)In cases of homicide, attempted murder or special sensitivity, notoriety or complexity an offer should not be accepted without consultation with the Director or Deputy Director. The matter need not be referred unless the Legal Practice Manager or allocated prosecutor sees merit in the offer. (b) In less serious cases the decision to accept an offer may be made after consultation with a senior crown prosecutor or above. If the matter has not been allocated to a crown prosecutor, the decision should fall to the Legal Practice Manager
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[31] Department of Justice and Attorney-General, Queensland Government Director's Guidelines (Guidelines, 30 June 2016), 25
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[34] Victorian Law Reform Commission, Sexual Offences (Report No 5, July 2004), 390
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The County Court hears matters in Melbourne and sits at 12 circuit locations situated in major regional centres.
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Chapter 2.11: Admissibility of certain evidence in sexual offences

Queensland has the most restrictive approach to the admission of similar fact and propensity evidence in Australia.

Queensland's approach should be changed so that it aligns with the Australian uniform evidence law and the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

Similar fact and propensity evidence

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) described what similar fact and propensity evidence is and why it is an important issue to consider in sexual offence proceedings:

How the criminal justice system deals with allegations against an individual accused of sexual offending against more than one child is one of the most significant issues we have identified in our criminal justice work.

Where the only evidence of the abuse is the complainant's evidence, it can be difficult for the jury to be satisfied beyond reasonable doubt that the alleged offence occurred. There may be evidence that confirms some of the surrounding circumstances, or evidence of first complaint, but the jury is effectively considering the account of one person against the account of another.

We have heard of many cases where a single offender has offended against multiple victims. In these cases, there may be evidence available from other complainants or witnesses who allege that the accused also sexually abused them. The question is whether that 'other evidence' can be admitted in the trial.[1]

This chapter considers whether legislation should be introduced in Queensland to amend the current threshold for the admission of similar fact and propensity evidence in sexual offence cases and what form those amendments should take.

Background

Current position in Queensland

In Queensland, the law concerning the admissibility of similar fact (or coincidence) and propensity (or tendency) evidence is contained in the common law. In *Pfennig v The Queen*[2], the majority of the High Court stated that before admitting similar fact evidence:

… the trial judge must apply the same test as a jury must apply in dealing with circumstantial evidence and ask whether there is a rational view of the evidence that is consistent with the innocence of the accused … Only if there is no such view can [the judge] safely conclude that the probative force of the evidence outweighs its prejudicial effect.[3]

In the Queensland Court of Appeal case of *R v McNeish*[4] (*McNeish*), Sofronoff P and Henry J discussed the concept of probative force, stating:

> *Probative force is another way to refer to the weight of evidence. Evidence is relevant if it makes a fact in issue either more or less probable. Weight of evidence, or probative value, is the degree of probability generated by the evidence. Evidence will have a prejudicial effect if there is a risk that the jury might use the evidence against the accused in a logically irrational manner. In Pfennig, McHugh J remarked that probative value and prejudicial effect are incommensurables. That is to say, they have no common standard of comparison. McHugh J observed that the real question that is posed is not whether probative value "outweighs" prejudicial effect but whether the interests of justice require the evidence to be admitted despite the risk of its misuse. Whether it is called a weighing of probative value against the risk of prejudice to the accused or whether it is called a consideration of the interests of justice, the task remains the same.*[5]

Sofronoff P and Henry J also observed that similar fact and propensity evidence may be led for different purposes, including:

> *To remove the implausibility that might otherwise be attributed to the complainant's account of the offence if the offending were thought to be an isolated incident; (sometimes called "relationship evidence").*
>
> *To demonstrate the sexual attraction felt by the accused so as to show a motive to commit the offence; ("motivation evidence" and sometimes also called "relationship evidence").*
>
> *To demonstrate that the accused not only had a motive to commit the offence but that he was a person who was prepared to act on his motivation to commit the charged offence because he had committed similar offences against the complainant or others previously (sometimes called "tendency" or "propensity" evidence)*
>
> *To identify the offender, as in Pfennig itself.*[6]

However, the key criterion for the admissibility of similar fact and propensity evidence in Queensland depends on the probative force of the evidence.

Section 132A of the *Evidence Act 1977* (Qld) also deals with similar fact evidence and provides that in a criminal proceeding, if the probative value of similar fact evidence outweighs its potentially prejudicial effect, it must not be ruled inadmissible on the ground that it may be the result of collusion or suggestion, and the weight of that evidence is a question for the jury, if any.[7] The purpose of section 132A is to modify the common law position so that the issue of collusion or suggestion is a matter that the jury should consider.

The Royal Commission found that Queensland has the most restrictive approach to the admission of similar fact and propensity evidence of any Australian jurisdiction. The Royal Commission recommended that legislative reform was required throughout Australia, in order 'to facilitate greater admissibility and cross-admissibility of tendency and coincidence evidence and joint trials'.[8]

The Queensland Government withdrew an attempt to implement the Royal Commission's recommendations after adverse feedback from legal stakeholders on a consultation draft Bill in 2019.[9] The Government nevertheless acknowledged that reform of this area of law in Queensland is necessary and should occur.[10]

How do other jurisdictions address this issue?

Andrew Hemming, a Senior Lecturer in Law at the School of Law and Justice, University of Southern Queensland, has summarised the position concerning similar fact and propensity evidence and recent developments throughout various jurisdictions of Australia as follows:

Queensland has the most stringent 'bar' in the form of the Pfennig v The Queen test at common law as set down by the High Court of Australia (excluding evidence of domestic violence). This is followed by South Australia with its permissible use test under s 34P of the Evidence Act 1929 (SA). Next are the tendency and coincidence rules set out in ss 97, 98 and 101 of the Uniform Evidence Legislation. Then comes Western Australia in the form of its public interest test under s 31A of the Evidence Act 1906 (WA).[11]

The Royal Commission proposed an even lower threshold for the admission of similar fact or tendency evidence (but only for child sexual offence proceedings). It simply recommended that evidence should be admissible where it was relevant to an important evidential issue in the proceeding.[12]

The Royal Commission made eight recommendations in relation to tendency or coincidence evidence in respect of child sexual offence proceedings (see Appendix 8).[13] Recommendation 50 stated that Australian governments should introduce legislation to make the recommended reforms.[14] Recommendation 51 outlined that both Uniform Evidence Act and non-Uniform Evidence Act jurisdictions in Australia should adopt the draft provisions contained in the Royal Commission report.[15]

Uniform evidence law jurisdictions

The Uniform Evidence Law (UEL) jurisdictions (the Commonwealth, New South Wales, Tasmania, Victoria, Australian Capital Territory and Northern Territory) have an apparently straightforward two-step test for the admission of tendency and coincidence evidence for all offences that is:

1. The evidence by itself or having regard to other evidence, must have significant probative value.[16]
2. It cannot be used against the defendant unless the probative value of the evidence outweighs the danger of unfair prejudice to the defendant.[17]

In November 2019, the Uniform Evidence Law (UEL) jurisdictions agreed to make reforms recommended by the Royal Commission[18] concerning tendency and coincidence evidence in respect of child sexual offence proceedings.

New South Wales and the Australian Capital Territory have both passed legislation that incorporates the draft provisions into their respective legislation.[19] New South Wales has enacted a variation of the Royal Commission's threshold through the *Evidence Amendment (Tendency and Coincidence) Act 2020* (NSW), which introduced a new section 97A (Admissibility of tendency evidence in proceedings involving child sexual offences) and amended section 101(2) (Credibility Evidence). Other UEL jurisdictions are expected to pass identical legislation with[20] Victoria making a public commitment to do so in September 2021.[21] The relevant sections relating to tendency and coincidence evidence in the New South Wales legislation are set out at Appendix 9.

The amendments that address the Royal Commission recommendations in respect of child sexual offence proceedings are contained at section 97A(2) of the *Evidence Act 1995* (NSW). Those amendments create a presumption that tendency evidence about the accused person will have significant probative value for the purposes of the two-step test when it is tendency evidence about the accused person's sexual interest in children.[22] This rebuttable presumption means that when there is tendency evidence of that nature in child sexual offence proceedings, the evidence only has to outweigh the danger of unfair prejudice to the accused person in order to be admissible.[23]

Under the New South Wales legislation, the court is able to find that the tendency evidence does not have significant probative value 'if it is satisfied that there are sufficient grounds to do so'.[24]

Western Australia

In Western Australia (which, like Queensland, is a Code jurisdiction), there is a public interest test when determining the admissibility of propensity or relationship evidence. Section 31A of the *Evidence Act 1906* (WA) states:

> *(1) In this section -*
>
> ***propensity evidence*** *means -*

(a) similar fact evidence or other evidence of the conduct of the accused person; or

(b) evidence of the character or reputation of the accused person or of a tendency that the accused person has or had.

***relationship evidence** means evidence of the attitude or conduct of the accused person towards another person, or a class of persons, over a period of time.*

(2) Propensity evidence or relationship evidence is admissible in proceedings for an offence if the court considers -

(a) that the evidence would, either by itself or having regard to other evidence adduced or to be adduced, have significant probative value

(b) that the probative value of the evidence compared to the degree of risk of an unfair trial, is such that fair-minded people would think that the public interest in adducing all relevant evidence of guilt must have priority over the risk of an unfair trial.

(3) In considering the probative value of evidence for the purposes of subsection (2) it is not open to the court to have regard to the possibility that the evidence may be the result of collusion, concoction or suggestion.[25]

This test in Western Australia does not require the court to be satisfied that there is no rational view of the evidence that is consistent with innocence of the accused, in order to conclude that the probative force outweighs the prejudicial effect. This makes the test a less onerous threshold to meet than the Queensland test. The Law Reform Commission of Western Australia is currently considering the admissibility of propensity and relationship evidence in Western Australia.[26]

England and Wales

In England and Wales, similar fact and propensity evidence is considered under the sections of the *Criminal Justice Act 2003* (UK) about bad character evidence. The provisions of this Act presume that evidence of bad character is admissible if any of the below circumstances apply:

(a) all parties to the proceedings agree to the evidence being admissible

(b) the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it

(c) it is important explanatory evidence

(d) it is relevant to an important matter in issue between the defendant and the prosecution

(e) it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant

(f) it is evidence to correct a false impression given by the defendant

(g) the defendant has made an attack on another person's character.[27]

However, the court must not admit bad character evidence under subsections (d) or (g), if on application by the defendant, it appears that 'the admission of the evidence would have such an adverse effect on the fairness of the proceedings, that the court ought not to admit it'.[28] Further on application to exclude evidence, 'the court must have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject of the offence charged'.[29]

The Royal Commission received expert evidence from Professor John Spencer, Professor Emeritus of Law at the University of Cambridge, about the approach in England and Wales. The evidence was that the approach in England and Wales 'now allows considerably more evidence of the accused's bad character to be admitted than would be allowed in Australian jurisdictions'.[30]

Results of consultation

Legal stakeholders

Women's Legal Service Queensland (WLSQ) and Knowmore legal service (Knowmore) both strongly supported reforms in Queensland to facilitate increased admissibility of similar fact and propensity

evidence by implementing the recommendations of the Royal Commission, which have been accepted in the UEL jurisdictions'.[31]

The Knowmore submission drew the Taskforce's attention to the failed and discontinued Queensland prosecution against Graham Noyes, a case that was also highlighted by the Royal Commission.[32] Mr Noyes was a volunteer at the Enoggera Boys Home in the 1960s and was charged with 53 historical child sexual abuse offences against 10 different victims. Applying Queensland's laws on propensity and similar fact evidence, 10 separate trials had to be held. The first three trials resulted in verdicts of not guilty. In the fourth trial, the prosecution was able to call two witnesses to give similar fact evidence and Mr Noyes was convicted of three counts of indecent dealing with a child under 14 and three counts of sodomy. After that conviction the prosecution discontinued the remaining six prosecutions. Knowmore recounted the devastation of the remaining victims, who never had the opportunity to tell their story and told the Taskforce:

> *Clearly, these types of outcomes are not only deeply disappointing and distressing for victims and survivors, but also result in perpetrators continuing to pose a threat to the safety of children. As the Royal Commission concluded, the laws relating to the admissibility of propensity and similar fact evidence have become 'unfairly protective of the accused', to the detriment of complainants and the community.[33]*

The Queensland Indigenous Family Violence Legal Service (QIFVLS) expressed broad support for the reform of the law on similar fact and propensity evidence.[34] QIFVLS told the Taskforce that there is a need to review technical rules that contribute to a non-supportive, non-trauma-informed and non-safe space for victims.

The Queensland Law Society (QLS) and Legal Aid Queensland (LAQ) submitted that there is no evidence to support a case for reform of the law in Queensland. LAQ contended that any proposed reform should be referred to the Queensland Law Reform Commission (QLRC) for detailed consideration.[35] LAQ told the Taskforce that concerns about similar fact and propensity evidence in Queensland reflect a dated misunderstanding of the law and that:

> *The common law developed to strike a balance between the proper admission of evidence and protecting an accused against the prejudice of improper propensity reasoning. There is no cogent evidence that the concerns for the fairness of the trial process that underpin the development of the common law are either misapprehended or exaggerated.[36]*

Both QLS and LAQ expressed concern that any changes to the law will compromise the right to the fair trial of an accused person. The QLS submission identified a potential threefold prejudice when receiving propensity evidence:

- a strong tendency to believe that the accused person is guilty of the charge merely because he is a likely person to do such acts
- a tendency to condemn, not because the accused person is believed guilty of the present charge, but because he has escaped punishment for other offences
- confusion and/or distraction caused to the jury by propensity evidence, as it erroneously concentrates on resolving whether the accused person actually committed the similar acts.[37]

The Bar Association of Queensland submission did not specifically state whether or not it supported amending the current law concerning similar fact and propensity evidence. The submission noted that the experience of members of the Association is that 'similar fact and propensity evidence is frequently admitted into evidence'.[38]

During a consultation forum with criminal defence lawyers, some lawyers told the Taskforce that in their view the law was settled by *McNeish* and that this type of evidence is now routinely admitted in sexual offence cases, much as it is in the other Australian jurisdictions discussed above.[39] At the same forum, other defence lawyers discussed recent Queensland cases where similar fact evidence was excluded and the potential for a further High Court test case to challenge whether the position of the majority of the Court of Appeal in *McNeish*[40] was consistent with the High Court's view in *Pfennig*.[41]

Queensland Police Service

Officers-in-charge from across Queensland told the Taskforce at a consultation forum that there were difficulties admitting similar fact evidence and the threshold from their point of view is unattainable. They noted that it is beneficial to have this type of evidence admitted.[42]

Sexual violence support sector

Full Stop Australia supported reforms to implement the Royal Commission recommendations accepted in the UEL jurisdictions and noted that the Royal Commission found that the current laws fail children who have been sexually abused and result in unnecessary acquittals. Full Stop recommended that the Queensland Government adopt the UEL model used in New South Wales, telling the taskforce:

> *While we appreciate that there are those in Queensland who strongly oppose these kinds of reforms, we consider any arguments that oppose the reforms must be outweighed by the strong and compelling arguments for their introduction. The Royal Commission considered the operation of these rules in detail over a five-year enquiry. The Commission found, and what led to the development of the Model Law, was a recognition that the law of tendency and coincidence was failing children who had been sexually abused and was resulting in unnecessary acquittals.*[43]

Queensland Sexual Assault Network supported reform of the law adopting the 'bad character' approach in England and Wales set out above.[44]

WWILD Sexual Violence Prevention told the Taskforce that the current law operates so that offending cannot be contextualised resulting in not-guilty verdicts, and that this presents particular risks in the disability services community, where many offenders seek employment to access vulnerable victims.[45]

Victim-survivors

Victim-survivors have described perpetrators committing extensive domestic, family, and sexual violence on multiple victims, generally previous, current, or new partners.[46] Similar experiences have been described by victims assaulted by people known to them.[47] The submissions demonstrated a frustration with the legal system, with one victim explaining that the offender 'can continue his life under protection of the legal system, but we cannot even be told why our committal hearing has been adjourned. The imbalance in this system is astounding. It's very difficult to have hope for change, just as it is difficult to have hope for justice'.[48] Victims were also concerned that 'in criminal trials the defendant is not allowed to have any of their history produced before the court as it can be considered prejudicial'.[49]

A submission from a sexual assault counsellor included a case study of common experiences of her clients during the court process, including being prevented from giving evidence victims consider is an important part of their account:

> *DPP [Office of the Director of Public Prosecutions]*
>
> *When I sat down I was told,*
>
> *"This is your time to tell your story."*
>
> *But… "You can't mention this, this and this."*
>
> *Well, it's not my story then, is it?*

It was clear from the start that this was not even my case.

I was "just a witness" in "The Crown vs. Him".

I was hardly told anything.

Because, "we can't coach the witness".

One hour before taking the stand,

"his girlfriend's text messages are out".

"Don't talk about past violent events."

"Don't mention his drinking and drug abuse."

"Luckily we got his previous violent convictions in".[50]

Other relevant issues

Conviction rates in relation to sexual offence proceedings in Queensland

The District Court of Queensland is where most sexual offence proceedings in Queensland are dealt with by way of trial and sentence. In Queensland, during 2019-2020, 49.3% of finalised charges for adult accused persons in sexual assault and related offences in the District Court of Queensland resulted in a conviction.[51] In that same year, there was a 17.3% decrease in total proven charges of sexual assault and related offences against adults in the District Court of Queensland.[52]

The Royal Commission made reference to low conviction rates in relation to child sexual offence proceedings throughout Australia. The report noted that the data 'shows that the overall conviction rate for child sexual abuse offences of 60 per cent, while higher than for adult sexual assault (50 per cent), this was substantially lower than the average conviction rate for all offences of 89 per cent'.[53]

Queensland's laws are out of step with other Australian jurisdictions and international common law jurisdictions

Australia's federal system of government allows for differences in the criminal law and laws of evidence in the six states and two territories. Significant differences that result in the vastly different delivery of criminal justice around the country depending on where an offence is committed are, however, clearly undesirable in a federation.

The Queensland Government has recognised the importance of implementing the recommendations of the Royal Commission and has stated in Parliament that 'the journey is not over and there is more to be done'.[54]

Whilst the recent Court of Appeal majority decision of *McNeish,* despite the High Court's decision in *Pfennig,* construes the legal position in Queensland as very close to that in the UEL jurisdictions, *McNeish* may be tested in a future case in the High Court of Australia and does not necessarily provide certainty for victim-survivors in Queensland.

Taskforce findings

Many submissions to the Taskforce noted the importance of the Royal Commission's recommendations, given it was a significant and wide-ranging review over five years. The Royal Commission identified a link between the laws relating to the admissibility of similar fact and propensity and unjustified acquittals of child sex offenders. The Taskforce considered this was a compelling argument for urgent change, despite arguments from some legal stakeholders to the contrary.

Although the Royal Commission was concerned only with sexual offences involving children, many of its observations as to this aspect of the law have relevance to sexual offences generally. So much is recognised in the legislation operating in the UEL jurisdictions. Most of those who made written submissions to the Taskforce, as well as those we heard from in our community consultations, wanted this aspect of the law relating to all sexual offences to be simpler, less restrictive and more certain.

The Taskforce discussed LAQ's submission that '[t]he relatively recent decision of *R v McNeish* provides a comprehensive statement of the law in Queensland'[55] and considered a suggestion that, to provide future

certainty all that was needed was to effectively 'codify' the law as outlined in that decision. However, the Taskforce considered that to 'codify' McNeish would not be straightforward and, in any case, would not answer the concerns the majority of stakeholders expressed in their written submissions and in our community consultations. Further, this approach would neither address the problem of inconsistency between this aspect of the law in Queensland and that in all other Australian jurisdictions, nor meet the recommendations of the Royal Commission.

The Taskforce noted, however, that the decision of *McNeish* has, for the time being, moved Queensland closer to the position under the UEL; to now adopt this aspect of the UEL provisions no longer represents such a significant change for Queensland legal practitioners.

The Taskforce considered the observations of some academics that, if the test concerning child sexual offence proceedings alone were implemented (sections 97A and 101(2)), there may be difficulty introducing it in isolation from other relevant sections of the UEL, such as Tendency and Coincidence (Part 3.6), Credibility (Part 3.7), and Character (Part 3.8).[56]

After careful consideration, the Taskforce supported the implementation of the Royal Commission recommendations in respect of propensity and similar fact evidence for child sexual offence proceedings. The Taskforce concluded that Queensland should adopt sections 97, 98 and 101, contained in Part 3.6 of the *Evidence Act 1995* (NSW) in respect of all sexual offences in Queensland and section 97A in respect of child sex offences. The Taskforce considered that this was the best way to provide increased clarity and certainty about the law while ensuring that relevant evidence is more often led in trials of sexual offences. Queensland courts and legal practitioners will benefit from the existing jurisprudence in UEL jurisdictions when applying these provisions. Introducing these UEL provisions in Queensland will better facilitate the admissibility of similar fact and propensity evidence, allowing more trials with multiple victims of the one accused person to be joined. The Taskforce anticipates that this will shorten finalisation times for the benefit of both the victim-survivor and the accused person.

The Taskforce concluded, given its gendered terms of reference and the confined focus of its discussion papers and consultations, that the recommended amendments concerning similar fact and propensity evidence should be limited to sexual offences. However, the Taskforce noted that this may be an appropriate opportunity for the Government to consider the general application in Queensland of the provisions contained in Parts 3.6, 3.7 and 3.8 of the *Evidence Act 1995* (NSW) to all criminal offences in Queensland, as in the UEL jurisdictions.

Taskforce recommendation

75. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence amend the law relating to similar fact (coincidence) and propensity (tendency) evidence, in relation to all offences of a sexual nature including child sexual offences outlined in Chapters 22 and 32 of the Criminal Code in Queensland, by amending the *Evidence Act 1977* to include provisions in terms of sections 97, 97A, 98 and 101, contained in Part 3.6 of the Evidence Act 1995 (NSW).

Implementation

Legislation should be introduced in Queensland concerning the admissibility of propensity and similar fact evidence in respect of sexual offences. The legislation should require consideration of the following two-limb test:

1. the evidence has significant probative value
2. the probative value of the evidence outweighs the danger of unfair prejudice to the accused person.

In respect of child sexual offence proceedings, there should be an additional rebuttable presumption. This means that where there is tendency evidence about the sexual interest the accused person has or had in children, or about the accused person acting on a sexual interest in children, it will ordinarily be admitted.

These provisions should be based upon sections 97, 97A, 98 and 101, contained in Part 3.6 of the *Evidence Act 1995* (NSW) (see Appendix 9).

The existing section 132A of the *Evidence Act 1977* (Qld), which modifies the common law position so that the issue of collusion or suggestion is a matter that the jury should consider in cases involving propensity and similar fact evidence, should remain. This provision accords with the Royal Commission's Recommendation 47 (see Appendix 8).[57]

Although the Taskforce, constrained by its terms of reference, has only recommended these provisions be adopted with respect to sexual offences, consideration might be given to extending the application of the UEL provisions relating to tendency and coincidence to trials for all criminal offences in Queensland. This would result in consistency in the law regarding propensity and similar fact evidence across all offences in Queensland and provide greater consistency with the UEL jurisdictions. Consideration might also be given to adopting the UEL provision on Credibility (Part 3.7), and Character (Part 3.8) as part of this reform package.[58]

Human rights considerations

The proposed reforms aim to allow for greater admissibility of similar fact and propensity evidence and for more joint trials in sexual offence matters, which may increase conviction rates and reduce delay in finalising matters with multiple complainants. The human rights promoted and protected under the *Human Rights Act 2019* include the right to recognition and equality before the law (section 15), the right to life (section 16), the protection from torture and cruel, inhumane or degrading treatment (section 17), the right to security of person (section 29), and right to a fair hearing (section 31). Human rights that may be limited include right to liberty and security of person (section 29); right to a fair hearing (section 31); and rights in criminal proceedings (section 32).

Human rights promoted

The human rights of the victim, under sections 16, 17 and 29 of the *Human Rights Act 2019*, would be promoted by the proposed legislation. Convicting perpetrators of sexual offences protects the victim and other potential victims from being exposed to harm that is a form of torture, cruel, inhumane and degrading treatment. Admission of the evidence is likely to assist in ensuring the security of a victim and the community.

The increased admission of similar fact and propensity evidence may limit the accused person's right to a fair hearing. However, when considering the concept of a fair hearing, it is important to have regard to a triangulation of the interests of the victim, the accused person and the community.[59] The increased admission of this type of evidence will enable victims to give evidence about the full context of the offending, with fewer restrictions about what they can say. In this way, the legislation promotes the rights of victims and the community in a fair trial.

Human rights limited

Section 32 provides that persons charged with criminal offences are entitled to certain minimum guarantees without discrimination. It could be argued that an accused person's rights in criminal proceedings could be limited to some extent by enabling this evidence to be more easily admitted. However, the recommended legislation will not limit an accused person's right to cross-examine, to put their case directly to the victims, to call evidence or to address the court.

The liberty and security of an accused person are likely to be limited when they are found guilty and sentenced for their offending. However, there is a need to deter crime and for justice to occur according to law. Moreover, section 29(3) provides that a person 'must not be deprived of the person's liberty except on grounds, and in accordance with procedures, established by law'.

Limitations on rights are justified

The implementation of legislation concerning similar fact and propensity evidence has the legitimate purpose of enabling courts to more readily receive evidence, which will assist juries in determining whether an accused person is guilty. Victims will be able to better give evidence about their account. The amendments will encourage more joint trials in cases where multiple victims give evidence about offences committed by the same accused person and these matters will be resolved more efficiently, providing earlier closure for all involved. The recommended legislative amendments will not limit an accused person's right to cross-examine the victims or otherwise contest the probative weight of the evidence against possible prejudice to their fair trial rights. Legislation containing the rebuttable presumption for child sex offences was introduced on 29 July 2020 in the Australian Capital Territory,[60] which is notably,

like Queensland, a jurisdiction with a Human Rights Act.[61] The Taskforce is unaware of any arising human rights issues. There is no less restrictive way to achieve the intended purpose of the recommended amendments. To the extent that they may limit an accused person's human rights, that limitation is justified in a free and democratic society based on human dignity, equality and freedom.

Evaluation

Before the commencement of the legislation, the Department of Justice and Attorney-General should ensure that information will be recorded about the operation of the new laws in a way that will allow relevant information to be extracted for the purpose of a review. The impact of the amendments and their implementation should be reviewed as part of recommendation 186 of this report, which provides for a review of all legislative amendments recommended by this report five years after their commencement, with a focus on any impacts on victim-survivors of sexual violence and persons accused of sexual violence.

Protected counselling communications

Division 2A of the *Evidence Act 1977* (Qld) contains provisions relating to sexual assault counselling privilege. This legislation came into effect on 1 December 2017, having been introduced as a result of the *Victims of Crime Assistance and Other Legislation Amendment Act 2017* (Qld). The policy objectives of the Bill in respect of sexual assault counselling privilege were outlined in the Explanatory Notes, which acknowledged that harm inflicted on a person as a result of a sexual assault can have long-term impacts.[62] Further, the Explanatory Notes stated that '[s]ince the late 1990s, all other Australian jurisdictions have introduced some form of statutory evidential privilege which limits the disclosure and use of sexual assault counselling communications during legal proceedings'.[63] The legislation was introduced to limit the disclosure of sexual assault counselling communications in Queensland.[64]

The Women's Legal Service Qld noted that most Counselling Notes Protect clients are 'distressed by the knowledge that the defence can make an application for their counselling records at all'.[65] They are often disappointed that the legislation allows for the records to be obtained and possibly used in the legal proceedings.[66] The submission stated that many support service providers are also disappointed that a court may allow subpoenas to be issued, clients' records to be produced in court, and parts of the records to be accessed and used.[67]

The submission also stated that about 10% of the Counselling Notes Protect clients are Aboriginal and Torres Strait Islander women, who are victim-survivors of sexual offences in existing proceedings.[68] Some of the overwhelming issues for the First Nations clients, 'aside from the legacy of colonisation and distrust of the legal system, is the lack of culturally sensitive and relevant information and support regarding the legal process, her rights within that system as a complainant, and being supported to exercise her agency'.[69]

Legal Aid Queensland identified recent decisions in the District Court of Queensland which 'demonstrate that the counselling communications process is being considered very seriously by the courts', subject to 'rigorous scrutiny', and the 'requirement that the communications will have substantial probative value is being held to a high standard'.[70] Legal Aid Queensland also supported a review of how the legislation is being applied and the impact of the practice directions. Consideration about whether there is scope to improve the experience of women and girls throughout this process was also supported.[71]

Knowmore legal service acknowledged the importance of the existing service delivered by Legal Aid Queensland and the Women's Legal Service in relation to protected counselling communications.[72] However, it says that it would 'ultimately like to see victims and survivors of child sexual abuse given access to free, specialist, trauma-informed assistance in relation to a broader range of issues throughout the prosecution process'.[73] The Taskforce has considered the need for victims to access specialist support during their journey through the criminal justice system in Chapter 2.4.

The Taskforce is aware that the Department of Justice and Attorney-General is currently conducting a review of the operation of the sexual assault counselling provisions following the decision of *TRKJ v Director of Public Prosecutions (Qld) & Ors*[74], which raised issues about the practical operation of the scheme. For that reason, the Taskforce has only examined the scheme from the perspective of the victim's experience. Based upon the submissions received, the Taskforce is of the overwhelming view that victim representation in respect of protected counselling communications is an important process and should continue.

Conclusion

The Royal Commission identified that the application of the rules of evidence on similar fact and propensity evidence have led to the unjustified acquittal of some perpetrators of child sexual abuse. That is why the Royal Commission recommended that all Australian jurisdictions implement law reform to facilitate the increased admissibility of this evidence. It is notable that the Royal Commission singled Queensland out as having the strictest rules for the admission of similar fact and propensity evidence. The Taskforce, having heard the views of those who made submissions and met with us in consultations, considers these findings of the Royal Commission have application to sexual offences generally. The need for law reform in Queensland has been recognised by the Queensland Government, despite strong resistance from some legal stakeholders. For all those reasons, the Taskforce has recommended Queensland amend the *Evidence Act 1977* to bring it into line with New South Wales and other UEL jurisdictions on the law on similar fact and propensity evidence.

Queensland's adoption of these provisions will mean that Queensland juries will be better appraised of the nature and context of the sexual offences they are considering. It will also mean that this aspect of Queensland's laws will be consistent with those in most other Australian jurisdictions.

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[1] Royal Commission into Institutional Reponses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I - II* (Report, 2017) 65.
[2] (1995) 182 CLR 461.
[3] *Pfennig v The Queen* (1995) 182 CLR 461 at 482–3 per Mason CJ, Deane and Dawson JJ.
[4] [2019] QCA 191.
[5] *R v McNeish* [2019] QCA 191 [56].
[6] *R v McNeish* [2019] QCA 191 [30].
[7] *Evidence Act 1977* (Qld) s 132A.
[8] Royal Commission into Institutional Reponses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I - II* (Report, 2017) 71.
[9] Queensland, *Hansard*, Queensland Legislative Assembly, 27 November 2019, 3876, (Yvette D'Ath, Attorney-General and Minister for Justice).
[10] Queensland, *Hansard*, Queensland Legislative Assembly, 27 November 2019, 3876, (Yvette D'Ath, Attorney-General and Minister for Justice).
[11] Andrew Hemming, 'Is There Any Prospect of a Model Provision for Similar Fact/Propensity Evidence or the Coincidence/Tendency Rules in Australia?' (2022) 44 *Criminal Law Journal* 207, 211-212.
[12] Royal Commission into Institutional Reponses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I - II* (Report, 2017) 72.
[13] Royal Commission into Institutional Reponses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I - II* (Report, 2017) 71-74.
[14] Royal Commission into Institutional Reponses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I - II* (Report, 2017) 74.
[15] Royal Commission into Institutional Reponses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I - II* (Report, 2017) 74.
[16] *Evidence Act 1995* (NSW) ss 97(1)(b) and 98(1)(b).
[17] *Evidence Act 1995* (NSW) s 101(2).
[18] David Hamer, 'Myths, Misconceptions and Mixed Messages: New Tendency and Coincidence Evidence Provisions' (2021) 45 *Criminal Law Journal* 232, 232.
[19] David Hamer, 'Myths, Misconceptions and Mixed Messages: New Tendency and Coincidence Evidence Provisions' (2021) 45 *Criminal Law Journal* 232, 232-233.
[20] David Hamer, 'Myths, Misconceptions and Mixed Messages: New Tendency and Coincidence Evidence Provisions' (2021) 45 *Criminal Law Journal* 232, 233; Andrew Hemming, 'Is There Any Prospect of a Model Provision for Similar Fact/Propensity Evidence or the Coincidence/Tendency Rules in Australia?' (2022) 44 *Criminal Law Journal* 207, 211-212.
[21] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 423.
[22] *Evidence Act 1995* (NSW) s 97A(2).
[23] Andrew Hemming, 'Is There Any Prospect of a Model Provision for Similar Fact/Propensity Evidence or the Coincidence/Tendency Rules in Australia?' (2022) 44 *Criminal Law Journal* 207, 227.
[24] *Evidence Act 1995* (NSW) s 97A(4).
[25] *Evidence Act 1906* (WA) s 31A.
[26] Law Reform Commission of Western Australia, *Admissibility of propensity and relationship evidence in WA* (Project 112, Issues Paper, December 2021).
[27] *Criminal Justice Act 2003* (UK) ss 101(1).

[28] *Criminal Justice Act 2003* (UK) ss 101(3).
[29] *Criminal Justice Act 2003* (UK) ss 101(4).
[30] Royal Commission into Institutional Reponses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I - II* (Report, 2017) 68.
[31] Knowmore legal service submission, Discussion Paper 3, 20; Women's Legal Service Queensland submission, Discussion Paper 3, 19.
[32] Knowmore legal service submission, Discussion Paper 3, 19-20
[33] Knowmore legal service submission, Discussion Paper 3, 20
[34] Queensland Indigenous Family Violence Legal Service, Discussion Paper 3, 13.
[35] Legal Aid Queensland submission, Discussion Paper 3, 41.
[36] Legal Aid Queensland submission, Discussion Paper 3, 43
[37] Queensland Law Society submission, Discussion Paper 3, 32-33.
[38] Bar Association of Queensland submission, Discussion Paper 3, 4.
[39] Criminal Defence Lawyers Consultation Forum, 6 May 2022.
[40] Criminal Defence Lawyers Consultation Forum, 6 May 2022.
[41] Criminal Defence Lawyers Consultation Forum, 6 May 2022.
[42] Stakeholder consultation forum with Queensland Police Service, 30 March 2022.
[43] Full Stop Australia submission, Discussion Paper 3, 29.
[44] Queensland Sexual Assault Network submission, Discussion Paper 3, 14.
[45] WWILD Sexual Violence Protection Inc submission, Discussion Paper 3.
[46] Submissions 700645, 702880.
[47] Submission 708461.
[48] Submission 708461.
[49] Submission 709327.
[50] Taskforce submission, Anonymous a, Discussion Paper 3, 27-28.
[51] Queensland Government Statistician's Office, *Justice Report*, Queensland, 2019–20 (Report, 2021) 20.
[52] Queensland Government Statistician's Office, *Justice Report*, Queensland, 2019–20 (Report, 2021) 22.
[53] Royal Commission into Institutional Reponses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I - II* (Report, 2017) 69.
[54] Queensland, *Hansard*, Queensland Legislative Assembly, 27 November 2019, 3876, (Yvette D'Ath, Attorney-General and Minister for Justice).
[55] Legal Aid Queensland submission, Discussion Paper 3, 43.
[56] Andrew Hemming, 'Is There Any Prospect of a Model Provision for Similar Fact/Propensity Evidence or the Coincidence/Tendency Rules in Australia?' (2022) 44 *Criminal Law Journal* 207, 227.
[57] Royal Commission into Institutional Reponses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I - II* (Report, 2017) 72-74.
[58] Andrew Hemming, 'Is There Any Prospect of a Model Provision for Similar Fact/Propensity Evidence or the Coincidence/Tendency Rules in Australia?' (2022) 44 *Criminal Law Journal* 207, 227.
[59] *R v A (No 2)* [2002] 1 AC 45.
[60] David Hamer, 'Myths, Misconceptions and Mixed Messages: New Tendency and Coincidence Evidence Provisions' (2021) 45 *Criminal Law Journal* 232, 233.
[61] *Human Rights Act 2004* (ACT).
[62] Victims of Crime Assistance and Other Legislation Amendment Bill 2016, Explanatory Notes, 2.
[63] Victims of Crime Assistance and Other Legislation Amendment Bill 2016, Explanatory Notes, 2.
[64] Victims of Crime Assistance and Other Legislation Amendment Bill 2016, Explanatory Notes, 2.
[65] Women's Legal Service Qld submission, Discussion Paper 3, 20.
[66] Women's Legal Service Qld submission, Discussion Paper 3, 20.
[67] Women's Legal Service Qld submission, Discussion Paper 3, 20.
[68] Women's Legal Service Qld submission, Discussion Paper 3, 4.
[69] Women's Legal Service Qld submission, Discussion Paper 3, 4.
[70] Legal Aid Queensland submission, Discussion Paper 3, 22.
[71] Legal Aid Queensland submission, Discussion Paper 3, 22.
[72] Knowmore legal service submission, Discussion Paper 3, 18.
[73] Knowmore legal service submission, Discussion Paper 3, 18.
[74] *TRKJ v Director of Public Prosecutions (Qld) & Ors; KAY v Director of Public Prosecutions (Qld) & Ors* [2021] QSC 297.

Chapter 2.12: The use of preliminary complaint evidence for domestic and family violence-related offences

Preliminary complaint evidence is able to be used in sexual offence trials in Queensland. It should also be able to be used in trials involving domestic and family violence-related offences.

Introduction

In *Hear her voice 1*, the Taskforce recommended that an offence of coercive control should be introduced in Queensland.[1] The Taskforce acknowledged 'that the potential use of evidence of preliminary complaint in matters involving coercive control should be explored further'. The Taskforce committed to considering whether the use of preliminary complaint evidence should be expanded as part of its work exploring the experience of women across the criminal justice system.

Background

Current position in Queensland

In criminal proceedings, hearsay is generally not admissible. The 'hearsay' rule of evidence is that a statement made out of court by a person cannot be given in evidence and used to prove that the statement is true.[2] There are various rationales for the hearsay rule, including that direct evidence is thought to be more reliable, more frequently available for cross-examination and more amenable to the sanctions of an oath.[3] However, there are exceptions to the hearsay rule, one of which is preliminary complaint evidence.

In Queensland, section 4A of the *Criminal Law (Sexual Offences) Act 1978* allows preliminary complaint evidence to be admitted only in trials involving sexual offences. The section is as follows:

> *4A Evidence of complaint generally admissible*
>
> *(1) This section applies in relation to an examination of witnesses, or a trial, in relation to a sexual offence.*
>
> *(2) Evidence of how and when any preliminary complaint was made by the complainant about the alleged commission of the offence by the defendant is admissible in evidence, regardless of when the preliminary complaint was made.*
>
> *(3) Nothing in subsection (2) derogates from the power of the court in a criminal proceeding to exclude evidence if the court is satisfied it would be unfair to the defendant to admit the evidence.*
>
> *(4) If a defendant is tried by a jury, the judge must not warn or suggest in any way to the jury that the law regards the complainant's evidence to be more reliable or less reliable only because of the length of time before the complainant made a preliminary or other complaint.*
>
> *(5) Subject to subsection (4), the judge may make any comment to a jury on the complainant's evidence that it is appropriate to make in the interests of justice.*
>
> *Note—*
>
> *See also the Criminal Code, section 632 and the Evidence Act 1977, section 132BA.*
>
> *(6) In this section—*
>
> *complaint includes a disclosure.*
>
> *preliminary complaint means any complaint other than—*
>
> *(a) the complainant's first formal witness statement to a police officer given in, or in anticipation of, a criminal proceeding in relation to the alleged offence; or*
>
> *(b) a complaint made after the complaint mentioned in paragraph (a).*

Example—

Soon after the alleged commission of a sexual offence, the complainant discloses the alleged commission of the offence to a parent (complaint 1). Many years later, the complainant makes a complaint to a secondary school teacher and a school guidance officer (complaints 2 and 3). The complainant visits the local police station and makes a complaint to the police officer at the front desk (complaint 4). The complainant subsequently attends an appointment with a police officer and gives a formal witness statement to the police officer in anticipation of a criminal proceeding in relation to the alleged offence (complaint 5). After a criminal proceeding is begun, the complainant gives a further formal witness statement (complaint 6). Each of complaints 1 to 4 is a preliminary complaint. Complaints 5 and 6 are not preliminary complaints.[4]

Preliminary complaint evidence relates to any disclosures by a victim about the offending that are made before their first formal witness statement to a police officer.[5] It is not proof that the offending occurred. It may, however, assist the finder of fact in a trial (usually a jury) when assessing the credibility and reliability of the victim.

The direction given by a judge to a jury regarding preliminary complaint evidence usually states:

> That evidence may only be used as it relates to the complainant's credibility. Consistency between the account of [insert name of person to whom preliminary complaint made] of the complainant's complaint and the complainant's evidence before you is something you may take into account as possibly enhancing the likelihood that her/his testimony is true.
>
> However, you cannot regard the things said in those out-of-court statements by the complainant as proof of what actually happened. In other words, evidence of what was said on that occasion may, depending on the view you take of it, bolster the complainant's credit because of consistency, but it does not independently prove anything.
>
> Likewise any inconsistencies between the account of [insert name] of the complainant's complaint and the complainant's evidence may cause you to have doubts about the complainant's credibility or reliability.
>
> Whether consistencies or inconsistencies impact on the credibility or reliability of the complainant is a matter for you.
>
> Inconsistencies in describing events are relevant to whether or not evidence about them is truthful and reliable, and the inconsistencies are a matter for you to consider in the course of your deliberations. But the mere existence of inconsistencies does not mean that of necessity you must reject [the complainant's] evidence. Some inconsistency is to be expected, because it is natural enough for people who are asked on a number of different occasions to repeat what happened at an earlier time, to tell a slightly different version each time.[6]

A victim can give evidence of preliminary complaint, even when the person they disclosed to does not give evidence. In *R v Van Der Zyden* [2012] 2 Qd R 568, the Court of Appeal said, 'That evidence by the complainant of a preliminary complaint, if unsupported by the evidence of a complainee, may serve to buttress the credit of the complainant if the complainant is believed, even though it suffers from a want of corroboration.'[7]

The Taskforce considered whether the law should be amended to allow preliminary complaint evidence to be admitted in criminal proceedings for domestic violence-related offences including the proposed new offence of coercive control or the existing offence of unlawful stalking.

If preliminary complaint evidence were admissible in trials for domestic violence-related offences, victims could give evidence about what they disclosed to individuals and support services before making their first formal witness statement to police. It would also enable witnesses to give evidence about those conversations with victims or for the records of those conversations to be tendered. The types of preliminary complaint evidence the Taskforce envisaged being able to be admitted if the law were changed includes:

- Disclosures by victims in conversations with relatives, friends, colleagues or neighbours, including via electronic means such as text messages, emails and social media platforms

- Disclosures by victims when engaging with support services including medical professionals, counsellors or hairdressers, in the form of conversations and in records of those conversations
- Initial disclosures by victims to police about the offender's conduct, including audio recordings and body-worn camera footage when they attend a residence to respond to a complaint.

How do other jurisdictions address this issue?

In the Uniform Evidence Law (UEL) jurisdictions in Australia (that is, the Commonwealth, New South Wales, Victoria, Tasmania, the Australian Capital Territory and the Northern Territory) complaint evidence is admitted under the following provision:

> *Evidence Act 1995 – Sect 66*
>
> *Exception: criminal proceedings if maker available*
>
> *(1) This section applies in a criminal proceeding if a person who made a previous representation is available to give evidence about an asserted fact.*
>
> *(2) If that person has been or is to be called to give evidence, the hearsay rule does not apply to evidence of the representation that is given by:*
>
> > *(a) that person; or*
> >
> > *(b) a person who saw, heard or otherwise perceived the representation being made; if, when the representation was made, the occurrence of the asserted fact was fresh in the memory of the person who made the representation.*
>
> *(2A) In determining whether the occurrence of the asserted fact was fresh in the memory of a person, the court may take into account all matters that it considers are relevant to the question, including:*
>
> > *(a) the nature of the event concerned; and*
> >
> > *(b) the age and health of the person; and*
> >
> > *(c) the period of time between the occurrence of the asserted fact and the making of the representation.*
>
> *Note: Subsection (2A) was inserted as a response to the decision of the High Court of Australia in Graham v The Queen (1998) 195 CLR 606.*
>
> *(3) If a representation was made for the purpose of indicating the evidence that the person who made it would be able to give in an Australian or overseas proceeding, subsection (2) does not apply to evidence adduced by the prosecutor of the representation unless the representation concerns the identity of a person, place or thing.*
>
> *(4) A document containing a representation to which subsection (2) applies must not be tendered before the conclusion of the examination in chief of the person who made the representation, unless the court gives leave.*
>
> *Note: Clause 4 of Part 2 of the Dictionary is about the availability of persons.*[8]

The requirement that the representation made by the victim was 'fresh in the memory' of the victim who made it, has been problematic. The UEL does not define the term 'fresh'. Section 66 was later amended in order to broaden the criteria for determining what can be fresh in the memory.[9] Academics have since noted that:

> [W]e have seen a divergence in how the New South Wales and Victorian appellate courts have interpreted the phrase, 'fresh in the memory', with Victorian courts applying a stricter interpretation despite the clear objectives of the reform and without any guidance from the scientific literature on the factors that affect memory retention.[10]

In 2010, the Australian Law Reform Commission acknowledged the different approaches in various states and territories to the use of preliminary complaint evidence in child sexual offence trials. The report recommended that in order to ensure the 'maintenance of harmonisation over time and the general

effectiveness of the uniform Evidence Acts, Australian governments should consider initiating a joint review of the uniform Evidence Acts within 10 years from the tabling of the Report.'[11] To date, this has not occurred.

Academics have identified that 'Queensland is the only jurisdiction that has enacted a specific provision that applies to the admission of out-of-court statements in sexual assault trials, generally so that evidence of a complainant's preliminary complaint is admissible regardless of whether it is recent or delayed.'[12] In Queensland, the timing of the preliminary complaint evidence does not restrict the evidence from being admitted and its use is restricted in that it can be used only to assess the credibility of the victim. This contrasts with the UEL jurisdictions where in some circumstances it is able to be used as evidence of the facts in issue[13] and nor is it limited to sexual offences.

The case of *IMM v R*[14] involved two counts of indecent dealing with a child and one count of sexual intercourse with a child under the age of 16 years. In that case, the High Court of Australia rejected the appellant's argument that a delayed complaint 'made nine years after the first alleged act of abuse and two years after the last' is only relevant to the complainant's credibility under the UEL.[15] On this point, a plurality of judges of the High Court, French CJ and Kiefel, Bell and Keane JJ, in a joint judgement, said:

> [71] The appellant submitted that an assessment of the probative value of the evidence should have been restricted to its effect upon the complainant's credibility, which is to say by treating it as relevant to context, rather than as evidence that the offences took place. The appellant's submission is reminiscent of the view of the common law that, because of the hearsay rule, evidence of recent complaint could only be used for a purpose relating to the credibility of the complainant. It was pointed out in *Papakosmas* that the Evidence Act has changed that.
>
> [72] The Australian Law Reform Commission recommended that complaint evidence be received as evidence of the facts in issue in certain circumstances. The concern of the common law with respect to hearsay evidence of this kind was its potential to be unreliable. Section 65 addresses this by requiring a judge to consider the reliability of evidence, when the maker is not called. When the maker is called, as in this case, s 66 requires that the act complained of be fresh in the memory of the maker of the statement.
>
> [73] The complaint evidence was tendered for the purpose of proving the acts charged. Given the content of the evidence, the evident distress of the complainant in making the complaint and the timing of the earlier complaint, it cannot be said that its probative value was low. It was potentially significant.[16]

This raises an issue for consideration in Queensland about whether preliminary complaint evidence should be able to be led to assess both the credibility of the victim and as evidence of the facts in issue in trials of all offences when the maker of the statement gives evidence, as in the UEL.

Results of consultation

Legal stakeholders

The Bar Association of Queensland (BAQ) and Legal Aid Queensland (LAQ) did not support the extension of the use of preliminary complaint evidence for non-sexual offending.[17] The BAQ commented that preliminary complaint evidence was 'originally fashioned when there was an expectation that, if the sexual assault was genuine, an individual would complain' and that it is 'now infrequently used'.[18] They were of the view that extending the use of preliminary complaint evidence to offences beyond sexual offences serves no purpose.[19]

LAQ commented that preliminary complaint evidence is:

> … an exception to the longstanding rule that hearsay evidence is not admissible. This rule has been developed over time based on sound reasoning. It should not be eroded further without due cause. The Discussion Paper does not identify any need which an expansion would address. Admitting evidence of preliminary complaint will increase the length of the trial, thereby increasing the costs and court time required. It also increases the risk juries will misuse this evidence as proof of what occurred, despite the judicial directions.[20]

LAQ also noted that the use of body-worn camera evidence footage taken by police with a victim would potentially be preliminary complaint evidence. This evidence 'can be highly prejudicial not only to the

defendant, but also the complainant. It's unstructured and often includes portions of inadmissible, irrelevant statements.'[21]

The Queensland Law Society Criminal Law Committee did not support statutory amendment permitting preliminary complaint evidence to be led for offences other than sexual offences.[22] The Queensland Law Society Domestic and Family Violence Law Committee 'considers that more research and consultation is required as to whether preliminary complaint evidence should be extended to those offences beyond sexual offences'.[23]

Support sector

WWILD Sexual Violence Prevention Association Inc said that the admission of preliminary complaint evidence in trials for offences like coercive control would have a benefit for vulnerable complainants such as those with intellectual disability who may find it difficult to articulate or provide concrete evidence of offences such as coercive control.[24]

Other relevant issues

Disclosures made by the victim to others can be compared to the victim's evidence given in court for the purpose of enabling the fact finder to assess the credibility and reliability of the victim. The effect of this is that consistency between the account given by the victim to a person when compared to the victim's evidence can be taken into account as possibly enhancing the likelihood that the victim's evidence is true.[25] Conversely, inconsistency between the account of the person and victim may cause a fact finder to have doubts about the credibility or reliability of the victim.[26]

This type of evidence can be relevant to domestic and family violence-related offences. Domestic and family violence-related offences are similar to sexual offences in so far as both types of offending involve contact of an intimate nature between two people and most frequently occur in private. This makes both types of offending difficult to prove. Legislating to enable preliminary complaint evidence to be admitted in trials for domestic and family violence-related offences may better contextualise the complainant's evidence. This is particularly important where the case involves coercive controlling behaviour, which requires a consideration of the whole relationship over time.

Preliminary complaint evidence is currently able to be given in trials for the sexual offence of maintaining a sexual relationship with a child, a course of conduct offence like coercive control and unlawful stalking.

A prosecutor must particularise the act, matter, behaviour or thing that is alleged as the foundation of the criminal offence that a defendant has been charged with.[27] An example of a particular of the proposed offence of coercive control could be that the perpetrator restricts the contact that the victim can have with family. There may be evidence from friends and family that the victim told them 'he (the perpetrator) only lets me speak to Mum on Thursday nights when he is home and can hear the conversation'. Allowing this evidence to be admitted will ensure that the jury can consider this statement, when assessing the evidence that the victim has given about the offending, in determining the victim's credibility and reliability. Victims of coercive control may be more likely to disclose the abuse they have experienced in a safe and trusted environment to a friend, confidant or family member before reporting it to authorities. This disclosure about the offending would then be able to form part of the evidence relevant to the victim's credibility.

It is likely that in many matters involving charges of coercive control and unlawful stalking involving domestic and family violence, there may also be charges of a sexual nature, which means that presently preliminary complaint evidence would be able to be led in relation to the sexual offences only. Legislating to allow for preliminary complaint evidence in respect of both sexual offences and domestic and family violence-related offences will enable the proper context of any relevant disclosures made by the victim about the totality of their abuse to be considered by the jury in assessing the victim's credibility.

Taskforce findings

The Taskforce supports the extension of section 4A of the *Criminal Law (Sexual Offences) Act 1978* to apply to all domestic and family violence-related offences.

The Taskforce considered that the ability to lead preliminary complaint evidence about disclosures concerning domestic and family violence-related offences would emphasise that the law and the community do not regard this type of behaviour as a private matter of little consequence. Further, it

would send a message to the community that disclosures made to others about the actions of perpetrators of domestic and family violence are important to recognise and respond to.

In the submissions to the Taskforce for *Hear her voice 1*, women made it clear that 'coercive control was cumulative rather than incident-specific. Perpetrators relied on a variety of coercive and controlling tactics, including overt or implied threats, acts of violence, surveillance, degradation, and humiliation, to force their victim to submit to their commands'.[28]

Currently the prosecution is unable to lead evidence of what the victim told others about this earlier behaviour as it is hearsay. The only exception is if the defence were to suggest to the victim that they had recently invented their account of the offence. This would then enable the prosecution to apply to the judge to lead rebuttal evidence to prove that the victim had earlier told others about it. The judge then may or may not allow this evidence to be led by the prosecution.[29]

Expanding the ability to lead preliminary complaint evidence in proceedings for domestic and family violence offences could assist in supporting the credibility of the victim's evidence about the offending, including coercive control, which takes place over a period of time. It would enable witnesses to give evidence about their conversations with the victim before the victim formally provided a statement to police in which the victim described words or actions of the perpetrator that could constitute domestic and family violence.

The Taskforce could see no reason why preliminary complaint evidence should be able to be admitted in relation to sexual offences but not domestic and family violence-related offences. Both types of offences are personal in nature and largely take place in private. The Taskforce also noted that preliminary complaint evidence is relevant and admissible in trials of discrete sexual offences, not just the course of conduct offence of maintaining a sexual relationship with a child. The Taskforce therefore considered that preliminary complaint evidence should be able to be admitted in all domestic and family violence-related offences, not just course of conduct offences such as the proposed offence of coercive control and unlawful stalking where it is a domestic violence offence.

The Taskforce considered whether there was a risk that, because preliminary complaint evidence is sometimes used to highlight inconsistencies in the evidence of a victim, this would unfairly adversely disadvantage the prosecution of domestic and family violence-related offences. The Taskforce concluded that any such risk supported the need to ensure a fair trial for the accused person and was outweighed by the desirability of the fact finder understanding the complete history of the victim's account of the perpetrator's behaviour in assessing the victim's credibility.

Taskforce recommendation

76. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence amend the *Evidence Act 1977* to expand the admission of preliminary complaint evidence in section 4A of the *Criminal Law (Sexual Offences) Act 1978* to all domestic violence offences. In consideration of the expanded use of preliminary complaint evidence, section 4A of the *Criminal Law (Sexual Offences) Act 1978* should be moved in its entirety into the *Evidence Act 1977* as a discrete Division.

Implementation

The Taskforce's intention is that preliminary complaint evidence will be admissible in proceedings for any criminal offence that is also a domestic violence offence within the meaning of the definition of 'domestic violence offence' in section 1 of the Criminal Code, as evidence relevant to the complainant's credibility.

In implementing this recommendation, the Government may wish to consider whether preliminary complaint evidence should also be admissible as evidence of the facts in issue in trials for all offences, as in the UEL. This would move this exception to the hearsay rule in Queensland more into line with how similar exceptions to the hearsay rule are treated in the UEL jurisdictions.[30]

There should be consultation on a draft Bill containing these amendments with legal stakeholders, the domestic and family violence sector and people with lived experience of domestic and family violence and sexual violence before the Bill is introduced into parliament.

The *Domestic and Family Violence Prevention Act 2012* Benchbook and the *Domestic and Family Violence Best Practice Framework* should be updated to reflect this amendment upon its commencement. Lawyers practising in domestic and family violence and criminal law should undergo training with respect to this amendment. Judicial officers should also receive appropriate training through the judicial commission.

Human Rights considerations

The proposed amendments to preliminary complaint evidence are intended to contribute to holding perpetrators accountable and reducing domestic and family violence. The admission of preliminary complaint evidence about domestic and family violence offences may assist a jury in being satisfied of the complainant's credibility and reliability. This may increase conviction rates for domestic and family violence-related offending.

The human rights promoted and protected under the *Human Rights Act 2019* include the right to life (section 16), the protection from torture and cruel, inhumane or degrading treatment (section 17), and the right to security of person (section 29).

The admission of preliminary complaint evidence in domestic and family violence offence trials may support the prosecution case and result in an increase in perpetrators being convicted. In this way, human rights that may be limited include the right to liberty and security of person (section 29) and rights in criminal proceedings (section 32).

Human rights promoted

The human rights of the victim under sections 16, 17 and 29 of the *Human Rights Act 2019* would be promoted by the proposed amendment to the *Evidence Act 1977*. Convicting perpetrators of domestic and family violence offences protects the victim and other potential victims from being exposed to harm that is a form of torture or cruel, inhumane and degrading treatment. The evidence assists in ensuring the security of a victim and the community.

Human rights limited

Section 32 provides that persons charged with criminal offences are entitled to certain minimum guarantees without discrimination. Section 32(g) of the *Human Rights Act 2019* provides that an accused person should have the right to examine or have examined a witness against the person. Section 32(h) of the *Human Rights Act 2019* provides that an accused person must be able to obtain the attendance and examination of witnesses on the person's behalf under the same conditions as witnesses for the prosecution.

It could be argued that an accused person's rights in criminal proceedings could be limited to some extent by extending this exception to the hearsay rule. However, nothing in the amendment recommended by the Taskforce would prevent the accused person's lawyer from cross-examining the victim, and the witness to whom the victim spoke, about the conversation - as is often done now in trials of sexual offences. Inconsistency between what was said in earlier conversations and the victim's evidence in court can adversely affect the credibility and reliability of the victim. Therefore, the use of preliminary complaint evidence may in some circumstances benefit a defendant.

The liberty and security of a person are likely to be limited when they are sentenced for their offending but section 29(3) provides that a person 'must not be deprived of the person's liberty except on grounds, and in accordance with procedures, established by law'.

Limitations on rights are justified

The purpose of the recommended amendment to the *Evidence Act 1977* is to allow a jury or judge to properly assess the credibility and reliability of a victim witness in proceedings for domestic and family violence offences. This is a legitimate purpose. There is no less restrictive and reasonably available way to achieve this purpose. Unless the evidence is able to be admitted as preliminary complaint evidence, which is an exception to the hearsay rule, it is not admissible. This type of evidence is already admissible in this way in trials involving sexual offences. The jury directions regarding what use can be made of preliminary complaint evidence ensure a fair hearing for the accused person. To the extent that the recommended amendment limits the rights of a person charged with a criminal offence, that limitation is reasonable and can be justified in a free and democratic society based on human dignity, equality and freedom.[31]

Evaluation

There should be a review of the effect of the amendment five years from its commencement to ensure it is operating as intended (see recommendation 186).

The Department of Justice and Attorney-General and the Office of the Director of Public Prosecutions should ensure data and information are collected in an extractable form before the commencement of the amendment to inform this review.

Conclusion

Domestic and family violence offences, like sexual offences, occur in private and often turn on starkly contradictory accounts. This can make both types of offending difficult to prove to the necessarily high criminal standard. Sexual violence can be a type of domestic and family violence and co-occur with other types of violence in abusive relationships. Sexual violence is often a common feature of the coercive and controlling behaviour that will be prosecuted under the proposed coercive control offence. Changing the law so that preliminary complaint evidence can be admitted in trials for domestic and family violence-related offences, as it is now in trials for sexual offences, will ensure that disclosures made by the victim about the offending, before providing their formal statement to police, can be used as evidence. The fact finder will have the full account of the victim's complaints about the perpetrator's behaviour. This will mean that the jury can best assess the credibility and reliability of the victim.

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[1] Women's Safety and Justice Taskforce, *Hear her voice* (Report No 1, vol 1, 2021) lxxvi-lxxvii.
[2] *Subramaniam v Public Prosecutor* [1956] 1 WLR 965.
[3] Professor Mirko Bagaric, Westlaw AU, *The Laws of Australia* (online at 26 May 2022) [16.4.1330]
[4] *Criminal Law (Sexual Offences) Act 1978* (Qld) s 4A.
[5] *Criminal Law (Sexual Offences) Act 1978* (Qld) s 4A.
[6] Queensland Courts, Supreme and District Courts Benchbook, Preliminary Complaint, Available at: https://www.courts.qld.gov.au/__data/assets/pdf_file/0005/86072/sd-bb-68-preliminary-complaint.pdf Accessed 3 May 2022.
[7] *R v Van Der Zyden* [2012] 2 Qd R 568 [68].
[8] Evidence Act 1995 (Cth) s 66.
[9] Annie Cossins and Jane Goodman-Delahunty, 'The application of the uniform evidence law to delay in child sexual assault trials' in Andrew Roberts and Jeremy Gans (eds), *Critical perspectives on the uniform evidence law* (Federation Press, 2017) 104, 124.
[10] Annie Cossins and Jane Goodman-Delahunty, 'The application of the uniform evidence law to delay in child sexual assault trials' in Andrew Roberts and Jeremy Gans (eds), *Critical perspectives on the uniform evidence law* (Federation Press, 2017) 104, 124.
[11] Australian Law Reform Commission, *Family Violence – A National Legal Response* (Report No 114, October 2010), 1307.
[12] Annie Cossins and Jane Goodman-Delahunty, 'The application of the uniform evidence law to delay in child sexual assault trials' in Andrew Roberts and Jeremy Gans (eds), *Critical perspectives on the uniform evidence law* (Federation Press, 2017) 104, 120.
[13] Annie Cossins and Jane Goodman-Delahunty, 'The application of the uniform evidence law to delay in child sexual assault trials' in Andrew Roberts and Jeremy Gans (eds), *Critical perspectives on the uniform evidence law* (Federation Press, 2017) 104.
[14] *IMM v R* (2016) 330 ALR 382
[15] Annie Cossins and Jane Goodman-Delahunty, 'The application of the uniform evidence law to delay in child sexual assault trials' in Andrew Roberts and Jeremy Gans (eds), *Critical perspectives on the uniform evidence law* (Federation Press, 2017) 104, 113.
[16] *IMM v R* (2016) 330 ALR 382 [71]-[73].
[17] Bar Association of Queensland submission, Discussion Paper 3, 4; Legal Aid Queensland submission, Discussion Paper 3, 51.
[18] Bar Association of Queensland submission, Discussion Paper 3, 4.
[19] Bar Association of Queensland submission, Discussion Paper 3, 4.
[20] Legal Aid Queensland submission, Discussion Paper 3, 51.
[21] Legal Aid Queensland submission, Discussion Paper 3, 51.
[22] Queensland Law Society submission, Discussion Paper 3, 41.
[23] Queensland Law Society submission, Discussion Paper 3, 42.
[24] WWILD Sexual Violence Prevention Association Inc submission, Discussion Paper 3, 31.

[25] Queensland Courts, Supreme and District Courts Benchbook, Preliminary Complaint, Available at: https://www.courts.qld.gov.au/__data/assets/pdf_file/0005/86072/sd-bb-68-preliminary-complaint.pdf Accessed 3 May 2022.
[26] Queensland Courts, Supreme and District Courts Benchbook, Preliminary Complaint, Available at: https://www.courts.qld.gov.au/__data/assets/pdf_file/0005/86072/sd-bb-68-preliminary-complaint.pdf Accessed 3 May 2022.
[27] Dr Michael Fitzgerald, Westlaw AU, *The Laws of Australia* (online at 26 May 2022) [11.4.350].
[28] Women's Safety and Justice Taskforce, *Hear her voice* (Report No 1, vol 2, 2021) 12.
[29] *R v Koani* [2016] QCA 289
[30] Unlike in Queensland, however, the UEL does require recency
[31] *Human Rights Act 2019* (Qld) s13

Chapter 2.13: Jury directions and the use of expert evidence in trials for sexual offences

Juries can be influenced by the misconceptions about sexual violence that exist in the broader community. It is important that juries do not rely on these misconceptions in their decision making.

The use of jury directions and expert evidence will assist in addressing these misconceptions in trials for sexual offences in Queensland.

Jury directions

Jury directions are statements about the law made by the judge which the jury must follow.

Judges are required as part of their duty, to give directions to the jury. They have been described as instructions delivered by a judge to the jury 'as part of the judge's 'charge' to explain the relevant law and to link the facts adduced during the trial to the relevant legal tests'.[1]

Most jury directions are aimed at ensuring that a fair trial occurs. Directions are given about offences, defences, witnesses, evidence and trial procedures. The majority of jury directions are given as part of the judge's summing up at the conclusion of the evidence after closing addresses by the Crown Prosecutor and defence counsel.

This Taskforce has considered whether Queensland needs to introduce specific jury directions to address misconceptions about sexual offending.

Background

Current position in Queensland

Queensland's current jury directions are contained in both legislation and the common law. The *Criminal Code* and *Evidence Act 1977* contain jury directions mandated by the legislature.

Some jury directions are mandated by decisions of appellate courts and in Queensland many of these are contained in the model directions contained in the Queensland Supreme and District Courts Criminal Directions Benchbook.[2] The Benchbook is not intended to create a mandatory or inflexible regime but it provides judges with invaluable assistance in directing juries on the law.

In 2009, the Queensland Law Reform Commission (QLRC) conducted a review of jury directions in Queensland. The QLRC concluded that 'problems surrounding the content and delivery of jury directions and warnings are significant enough to warrant active steps to reform', but that codification was not required.[3] The Bar Association of Queensland (BAQ), the Queensland Law Society (QLS) and Legal Aid Queensland (LAQ) all made submissions to the QLRC that supported this position.[4]

The Royal Commission into Institutional Reponses to Child Sexual Abuse (Royal Commission) made recommendations about abolishing or reforming particular judicial directions (see Appendix 10). These recommendations relate to the codification of judicial directions; as well as issues of delay and credibility; delay and forensic advantage; uncorroborated evidence; children's evidence; and the timing of giving judicial directions.[5]

The Queensland Government's third annual progress report about the Royal Commission recommendations stated that some of recommendations about judicial directions were implemented by the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020,* which modified 'common law judicial directions and warnings to a jury in relation to delay and forensic disadvantage'.[6] These amendments about forensic disadvantage and delay commenced in the *Evidence Act 1977* on the 15th September 2020.[7]

How do other jurisdictions address this issue?

New South Wales

The New South Wales Government recently adopted the recommendation of the New South Wales Law Reform Commission (NSWLRC) report, *Consent in relation to sexual offences*, delivered on September 2020, that new jury directions should be introduced into the *Criminal Procedure Act 1986* (NSW).[8]

The NSWLRC found that 'New South Wales should introduce new directions to address common misconceptions about consensual and non-consensual sexual activity'.'[9] There were recommendations made about directions to address possible misconceptions about the following:

- the circumstances in which non-consensual sexual activity occurs[10]
- responses of a victim-survivor to non-consensual sexual activity[11]
- lack of physical injury to the victim-survivor, violence or threats made by the accused person[12]
- victim-survivor responses to giving evidence about an alleged sexual offence at trial[13]
- behaviour and appearance of a victim-survivor at the time of an alleged sexual offence.[14]

The NSWLRC stated that the directions are intended to:

- correct possible misconceptions or assumptions that jurors may hold about consensual and non-consensual sexual activity
- deter jurors from falling back on these misconceptions when making decisions in a trial.[15]

The topics for the new jury directions were selected by the NSWLRC after considering the following:

- suggestions made in submissions and consultations
- the directions used in some other Australian states and territories and other countries
- research into common myths and misconceptions about sexual assault.[16]

The NSWLRC's recommendations were implemented by the *Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021 (NSW)* (see Appendix 11).[17]

Victoria

In contrast to the QLRC's recommendations on jury directions, the Victorian Law Reform Commission in 2009 recommended the codification of jury directions in that state.[18] The *Jury Directions Act 2015* (Vic) codifies the law on the obligation of parties to request directions, the content of directions on matters including post-offence conduct, other misconduct evidence, unreliable evidence, identification evidence, delay and forensic disadvantage, failure to give or call witness, delay and credibility in family violence, the judge's obligations when summing up, and the meaning of proof beyond reasonable doubt.

Victoria has sought 'to change the direction of rape narratives playing out in rape trials, in order to deliver better, more just, outcomes for the victim-survivors of sexual offences while maintaining the rights of the accused to a fair trial'.[19] It has done this through the introduction of jury directions to address 'persistent and harmful myths that continue to dominate societal understandings of sexual offending generally, and about women rape complainants specifically, within the context of the rape trial'.[20] These jury directions are now in the *Jury Directions Act 2015* (Vic) (see Appendix 11).[21] They deal with 'consent; why people might not report or 'delay' in reporting; and the effects of trauma and memory on the evidence given by people who have experienced sexual offending'.[22]

The Victorian Law Reform Commission (VLRC) *Improving the Justice System Response to Sexual Offences* report (the VLRC report) was published in November 2021. This report recommended new directions to address misconceptions about sexual violence.[23] The VLRC noted that while there has been significant reform made, the 'directions available do not cover all the misconceptions that play out in sexual offence trials'.[24] Further, a transcript analysis revealed that complainants were being asked questions which ''inferred' consent to later sexual activity from things such as flirting and the complainant's clothing'.[25]

Therefore, the VLRC endorsed and recommended the NSWLRC recommendations to use jury directions to counter misconceptions in relation to:

- the presence or absence of emotion or distress when a person reports or gives evidence
- the relevance of a person's appearance (including their clothing), their use of drugs and alcohol, and their presence at a location (for example, a nightclub).[26]

Additionally, the VLRC recommended a new direction 'to address the misconception that perceived flirtatious or sexual behaviour (such as holding hands or kissing) implies consent to later sexual activity'.[27]

These topics were based upon what was heard in the VLRC inquiry; the NSWLRC recommendations; and overseas practice. The VLRC recommended that directions on these topics be introduced into the *Jury Directions Act 2015* (Vic).[28]

The VLRC found that whilst further research is required about the impact of jury directions on jurors, there is evidence that directions 'have some effect on the use of misconceptions'.[29] The timing of jury directions is also an issue to consider. The report highlights that 'it can help to give jury directions earlier in the trial and repeat them during the trial'.[30]

New Zealand

In their report, the VLRC made reference to the *Sexual Violence Legislation Bill 2019* (NZ) in New Zealand. This Bill proposed amendments to judicial directions about misconceptions arising in sexual offence cases.[31] These amendments were inserted into the *Sexual Violence Legislation Act 2021* (NZ) and received Royal Assent on 20 December 2021. The section addresses misconceptions, including about how a complainant dresses and behaves, stating:

> *126A Judicial directions about misconceptions arising in sexual cases*
>
> *(1) In a sexual case tried before a jury, the Judge must give the jury any direction the Judge considers necessary or desirable to address any relevant misconception relating to sexual cases.*
>
> *(2) Misconceptions relating to sexual cases (all or any of which the Judge may consider relevant in the case) include, but are not limited to, misconceptions—*
>
> > *(a) about the prevalence or features of false complaints in sexual cases:*
> >
> > *(b) that a victim or an offender in a sexual case has, or does not have, particular stereotypical characteristics:*
> >
> > *(c) that sexual offending is committed only by strangers, or is less serious when committed by a family member (including, but not limited to, a spouse, civil union partner, or de facto partner) or by an acquaintance:*
> >
> > *(d) that sexual offending always involves force or the infliction of physical injuries:*
> >
> > *(e) that, in a sexual case, a complainant is less credible or more likely to have consented, or a defendant's belief in consent is reasonable, based solely on the complainant—*
> >
> > > *(i) dressing provocatively, acting flirtatiously, or drinking alcohol or taking drugs:*
> > >
> > > *(ii) being in a relationship with a defendant, including a sexual relationship:*
> > >
> > > *(iii) maintaining contact with a defendant, or showing a lack of visible distress, after the alleged offending.*
>
> *(3) This section does not limit or affect—*
>
> > *(a) section 127 (delayed complaints or failure to complain in sexual cases):*
> >
> > *(b) any regulations made under section 201(m) (warning or informing jury about very young children's evidence).*

Results of consultation

Victim-survivors

The Taskforce heard that victim-survivors' experience in the criminal justice system was influenced by common misconceptions about sexual violence ('rape myths'). Full Stop Australia reported that a victim-survivor said that rape myths impacted their experience of the criminal justice system process through '…opinions about being drunk, [what] clothes I wore etc'.[32]

Concerns were raised about the lack of understanding that those working in the criminal justice system and jurors may have about victim-survivors responses to sexual offending:

> *'Police, Lawyers/Counsel, Jurors and Judges are not TRAUMA-INFORMED and the FREEZE response or psychologically known as TONIC IMMOBILITY will not hold up in court if the above authority figures are not educated and trauma-informed to how a victim would react in such a confrontational, shocking and life-threatening situation and how a survivor is affected and re-traumatized after they endure and survive such sexual violence against their will'.* [33]

A victim-survivor also spoke about the trauma associated with going through the criminal court process:

> *'In criminal trials the defendant is not allowed to have any of their history produced before the court as it can be considered prejudicial. While this is fair to the defendant, it is not the same for the victim or witness. Both can have countless amounts of personal history disclosed to develop 'a reasonable doubt' within the jury's mind. This leads to trauma of the victim, unnecessary doubting of their own experience and an inability to defend themselves. They can often feel like they were on trial as a victim of an offence'.* [34]

Another victim-survivor highlighted the difficulties with proving sexual offences, which are often primarily based upon the evidence given by the victim-survivors:

> *'While the criminal justice system is showing slight improvements, it is still reflecting this notion the burden of proof is entirely on us'.* [35]

Service system stakeholders

Service providers told the Taskforce they were concerned about the continuing influence of rape myths on community understanding and attitudes, the responses to victim-survivors, and their prospects for progressing through the criminal justice system, or resulting in a conviction. The Gold Coast Centre Against Sexual Violence wrote 'it would seem that cases fitting rape mythology such as those committed by a stranger and where physical injuries are sustained by the victim/survivor are more likely to proceed and gain conviction'.[36]

Full Stop Australia wrote 'the most prominent and pervasive examples of rape myths (which we see commonly occurring in criminal trials) reflect community beliefs that if women do certain things (such as wear certain clothing or answer a certain question) they are asking to be raped, ultimately resulting in societal and cognitive notions that 'rape fantasies are common in women' and that 'she asked for/wanted it'.[37]

The submission of Full Stop Australia supports the introduction of jury directions in Queensland, to counter rape myths about sexual assault including:

- circumstances in which non-consensual sexual activity occurs
- responses to non-consensual sexual activity
- lack of physical injury, violence or threats
- behaviour and appearance of complainant
- sexual assault in the context of coercive control and domestic and family violence.[38]

The Queensland Sexual Assault Network (QSAN) have recommended having jury directions in sexual violence matters that are based upon the guiding principles outlined in section 37B of the *Victorian Crimes Act 1858*.[39] A further matter for consideration is a direction about how delay in reporting sexual violence is common.[40]

Legal stakeholders

LAQ and the QLS opposed the introduction of jury directions.[41]

LAQ stated that in their experience, 'juries in Queensland are currently carefully directed during trial with every effort to avoid reference to outdated stereotypes and irrelevant circumstances leading to sexual offending'.[42] The LAQ submission highlighted that there are many specific directions in the Queensland Supreme and District Courts Criminal Directions Benchbook which are given in trials.[43] Further, recent legislative amendments which have promoted the interests of victim-survivor witnesses in sexual offence trials have been included in the Benchbook.[44] LAQ also observed the recent reforms to the legislation designed to protect victim-survivors has added complexity to criminal trials for sexual offences. They warned that 'further complexity may increase court time required for trials' which would also increase costs.[45]

The QLS submission made reference to the findings of the QLRC. It noted that the Criminal Law Committee agrees with those findings and 'considers current jury directions appropriately impress upon jurors the need for impartiality in such proceedings'.[46] It was suggested that further empirical research be conducted with real jurors about any preconceptions or misconceptions that they may or may not have about sexual offending in Queensland.[47]

In respect of jury directions in Victoria and New South Wales, the QLS commented that the VLRC report 'deals with the state of law in Victoria, which suffers from long and complex directions'.[48] In Queensland, the submissions note that judges have a discretion 'to make comments to the jury where they feel it is necessary to do so'.[49] The view of the QLS Criminal Law Committee is that there is not a sufficient basis to introduce legislation for jury directions based upon the jurisdictions of Victoria or New South Wales.[50] They suggest that if this was to occur 'such directions will only likely add unnecessary length and complexity to sexual offence trials.'[51]

The BAQ did not provide a submission on this issue.

Knowmore Legal Service supported 'the introduction of jury directions to help improve the attitudes and knowledge of jurors'.[52] The submission discusses the importance of implementing the Royal Commission recommendations regarding jury directions, as well as the recommendation of the VLRC for additional jury directions to address other misconceptions about sexual violence.[53]

In knowmore's experience, myths and misconceptions about the nature of child sexual abuse and the behaviour of victims persist. Common misconceptions include that:

False allegations of child sexual abuse are common.

'Real' victims will disclose their abuse straight away.

'Real' victims will avoid their abuser.

Victims will have clear memories of their abuse.[54]

Office of the Director of Public Prosecutions (ODPP)

The ODPP submission highlighted that 'Crown prosecutors reported that misconceptions about sexual violence concerning consent, referred to as 'rape myths' by the paper, are used against victim-survivors at criminal trials and that approaches taken by them to neutralise and dispel those assumptions are not always working'.[55]

Other relevant issues

The Queensland Law Reform Commission (QLRC) consideration of jury directions

The QLRC in their 2020 *Review of consent laws and mistake of fact* report (the QLRC report) did not recommend the introduction of jury directions about consent and sexual assault as it was not persuaded of the need for such jury guidance.[56] The research relied upon by the QLRC in support of this conclusion was a study undertaken by Professor Cheryl Thomas QC (Thomas) which involved a survey of jurors who had sat on juries in criminal trials (not necessarily for sexual offences) throughout England, Wales and Northern Ireland.[57] The research was significant as it was the first time researchers had been given access to actual jury members in England and Wales. The findings were reported as revealing that 'claims of widespread 'juror bias' in sexual offence cases are not valid'[58], casting doubt on the validity of previous research using mock juries. [59] The QLRC noted the survey 'does not strongly support the concern that jurors commonly harbour false preconceptions or 'rape myths', or that any such preconceptions affect jury deliberation or verdicts.'[60]

The findings of the research undertaken by Thomas have since been challenged by other academics who suggest there were methodological flaws in Thomas' study and that the interpretation of the results failed to consider the high levels of 'myth-ambivalence' and the impact of this ambivalence.[61] Some have suggested that the reporting of Thomas' findings has been misleading and, in particular, that the data does not support the conclusion that juries are not influenced by false preconceptions as concluded by QLRC.[62] Others have identified that, even if a minority of jurors accept rape myths, this can still have a powerful effect on jury deliberations, with strongly held minority views able to influence 'the tone and trajectory of discussion'.[63]

Enhance Research Findings

Research commissioned by the Taskforce found some evidence of rape myths influencing participating community members' understanding and attitudes to sexual consent.[64] The research found that, on a conceptual level, most participants were able to articulate an understanding of sexual consent that was generally inconsistent with rape-myths. However, when it came to testing this understanding through scenarios, the influence of rape myths was more evident. For example, some appeared to be influenced by the myth that women's reports of sexual offences are often motivated by money or fame, or because they were regretful about a sexual encounter.[65] The complexity of underlying power imbalances on a person's ability to consent, or withdraw consent, was not well understood by all participants[66], and the impact of intoxication challenged participants' application of their conceptual understanding of consent. [67] There were also varied responses to how a person 'freezing' should be interpreted.[68]

Jury directions in Victoria are working to reduce appeals and create certainty

The Taskforce's consultation with the VLRC in late April 2022 revealed that the jury directions in Victoria had won the support of the legal profession and judicial officers since their introduction because they had increased certainty and reduced the number of appeals resulting from jury misdirection. The VLRC report noted, 'people working in the criminal justice system reported that jury reforms to date have been successful. For example, they have made jury directions simpler to understand, improved juror attitudes and reduced appeals based on misdirection'.[69]

Further, the Australian Institute of Judicial Administration has undertaken a survey of a small sample of judges in Victoria which has revealed that the *Jury Directions Act 2015* (Vic) has been 'well received, and is generally making a positive contribution to the work of trial judges'.[70] The research also revealed that bench books have generally benefitted judges, with comments received by Judges being generally positive.[71] The survey findings did identify that bench books could be improved by simplifying the language of them.[72]

Outstanding Queensland Government response to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission)

Knowmore Legal Service identified that the Royal Commission made recommendations seeking to abolish or reform certain jury directions.[73] The submission noted that the Queensland Government proposed legislative amendments but removed them, as a result of feedback and the approaches in other jurisdictions.[74] Since then, New South Wales and Victoria have both implemented legislative provisions that reflect the findings of the Royal Commission.[75]

The Queensland Government has implemented a significant number of the Royal Commission recommendations. It is noted that the legislation and directions given in Queensland largely comply with Royal Commission recommendation 65, particularly since the introduction of section 132BA of the *Evidence*

Act 1977. However, aspects of recommendation 65[76] and Royal Commission recommendation 66, which relates to the abolition of *Markuleski*[77] direction, remain unimplemented in Queensland. *Markuleski* directions are made in sexual offence proceedings when a jury will be directed that:

> If you have a reasonable doubt concerning the truthfulness or reliability of the complainant's evidence in relation to one or more counts, whether by reference to her demeanour or for any other reasons, that must be taken into account in assessing the truthfulness or reliability of her evidence generally.[78]

Taskforce findings

Introduce jury directions on misconceptions about sexual violence

The Taskforce supported introducing jury directions on misconceptions about sexual violence, in similar terms to the directions contained in *Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021* (NSW) *and* recommendation 78 of the VLRC report, *Improving the Justice System Response to Sexual Offences*. The Taskforce supported directions about the following:

- the circumstances in which non-consensual sexual activity occurs
- responses of a victim-survivor to non-consensual sexual activity
- lack of physical injury to the victim-survivor, violence or threats made by the accused person
- victim-survivor responses to giving evidence about an alleged sexual offence at trial
- behaviour and appearance of a victim-survivor at the time of an alleged sexual offence
- perceived flirtatious or sexual behaviour (such as holding hands or kissing) implying consent to later sexual activity.

As noted in Chapter 2.2, the Taskforce has found that despite improved understanding of violence against women, some in the community still hold concerning and harmful views and attitudes that enable rape myths and harmful beliefs about women and violence to perpetuate. Research commissioned by the Taskforce found that community members struggled to apply the correct principles about sexual consent to real-life scenarios, and that there was evidence of common myths influencing their understanding. These are the jurors that interpret evidence and decide sexual offence matters on a daily basis.

The Taskforce has heard that myths about sexual violence are continuing to influence criminal justice processes, including trials. The Taskforce has heard from victim-survivors, support services, and even a prosecutor, that social media messages on dating apps and the appearance of victim-survivors are being used to invoke common misconceptions in the minds of jurors and cast doubt on the testimony of the complainant.

The Taskforce has concluded that jurors need to be better directed in complex criminal trials, and in relation to common misconceptions about sexual violence, to neutralise the extent to which this influences their deliberations and decisions. The Taskforce supports introducing jury directions on misconceptions about sexual violence, in similar terms to recommendation 78 of the VLRC report.

Timing in which jury directions can be given and repeated

The Taskforce were evenly divided in their views about including a section in the legislation that outlines the timing in which a judge can give and repeat jury directions during the trial proceedings. This type of legislation would require that a judge give relevant directions to the jury at the earliest opportunity, ideally before the evidence is adduced. Further, the legislation would enable a judge to repeat the direction at any time during the trial.

A recommendation was made to this effect by the VLRC.[79] The Royal Commission also made the following recommendation (71) about the timing of giving jury directions:

> In advance of any more general codification of judicial directions, each state and territory government should work with the judiciary to identify whether any legislation is required to permit trial judges to assist juries by giving relevant directions earlier in the trial or to otherwise assist juries by providing them with more information about the issues in the trial. If legislation is required, state and territory governments should introduce the necessary legislation.[80]

The Taskforce acknowledged the benefit of giving directions to a jury about evidence at the time that it is being presented in court, so that they can consider the evidence in the proper context.

This type of section would operate in a similar way to the current section 21AW of the *Evidence Act 1977*, which outlines mandatory directions for instructions to be given to the jury regarding the pre-recording of an affected child's evidence. There are authorities that discuss the importance of the judge giving these instructions to the jury at the time that the pre-recorded evidence is taken and played.[81]

However, some members of the Taskforce questioned whether a section in the legislation was really required, and suggested it would represent too much change too quickly for Queensland. These Taskforce members considered that this issue could be considered in the review of legislation that the Taskforce has recommended to take place five years after its commencement (see below) when the impact of the directions would be able to be ascertained.

Evaluation of the impact of the jury directions

The Taskforce was in support of an evaluation of the jury directions five years after their commencement. Further, if the government decides not to include a provision about the timing in which jury directions should be given and repeated, this issue should be considered as part of the evaluation.

As suggested by the VLRC, there should also be ongoing research in order to better understand:

- how jurors approach their task and understand all the evidence
- how they are affected by misconceptions about sexual violence
- how effective jury directions and expert evidence are, and when to use one or the other.
- how to improve juror understanding of 'beyond reasonable doubt'
- the effectiveness of integrated jury directions. [82]

Taskforce recommendations

77. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Evidence Act 1977* providing for jury directions to be given that address the following misconceptions about sexual violence:

- the circumstances in which non-consensual sexual activity occurs
- responses of a victim-survivor to non-consensual sexual activity when it occurs
- lack of physical injury to the victim-survivor, violence or threats made by the accused person
- victim-survivor responses to giving evidence about an alleged sexual offence at trial
- behaviour and appearance of a victim-survivor at the time of an alleged sexual offence
- perceived flirtatious or sexual behaviour (such as holding hands or kissing) implying consent to later sexual activity

Commencement of the Bill containing the amendments should be delayed for a period that is sufficient for the Director of Public Prosecutions' 'Directors Guidelines' (recommendation 47) and the Supreme and District Courts Benchbook (recommendation 73) to be updated to reflect the new provisions and for training of lawyers and judicial officers to take place.

78. The Department of Justice and Attorney-General commission an evaluation of the impact and outcomes of legislative provisions about jury directions on misconceptions about sexual violence, five years after the commencement of the legislation. The evaluation should include research that will inform the Queensland Government to better understand how jury directions, expert evidence, and misconceptions about sexual violence affect a jury member's understanding of the evidence and the task they must perform.

Implementation

The legislative amendments recommended above should be the subject of a draft consultation Bill before they are introduced into Parliament. Consultation on the draft bill should include legal, domestic and family violence and sexual violence, disability, cultural and linguistically diverse and Aboriginal and Torres Strait Islander stakeholders, as well as people with lived experience. The content of jury directions should closely follow those contained in the *Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021* (NSW) to provide for as much consistency as possible with other Australian jurisdictions.

Consideration could be given to using this legislation as an opportunity to finalise Queensland's response to outstanding Royal Commission recommendations regarding jury directions.

Noting that the Taskforce was deadlocked on the issue of timing for jury directions, this issue should be considered further during drafting of the legislation. If the Queensland Government ultimately decides not to proceed with a specific provision on timing, this issue should be considered by the evaluation that occurs five years after commencement of the legislation.

Consideration should be given to updating the Director of Public Prosecutions' 'Directors Guidelines' (recommendation 47) and the Supreme and District Courts Benchbook in the period between passage and commencement of the legislation.

Lawyers should undergo training in the new laws before their commencement. Judicial officers should consider their professional development training on the new laws, preferably through the Judicial Commission recommended by the Taskforce in *Hear her voice 1*.

Human Rights considerations

The proposed introduction of jury directions to address misconceptions about sexual offending may increase conviction rates. On that basis, the human rights promoted and protected under the *Human Rights Act 2019* include the right to recognition and equality before the law (section 15), the right to life (section 16), the protection from torture and cruel, inhumane or degrading treatment (section 17), and the right to security of person (section 29).

Human rights that may be limited include right to recognition and equality before the law (section 15); right to liberty and security of person (section 29); right to a fair hearing (section 31); and rights in criminal proceedings (section 32).

Human rights promoted

The human rights of the victim-survivor, under sections 16, 17 and 29 of the *Human Rights Act 2019*, would be promoted by the proposed legislation. Convicting perpetrators of sexual offences protects the victim-survivor and other potential victims from being exposed to harm that is a form of torture, cruel, inhumane and degrading. The evidence assists in ensuring the security of a victim-survivor and the community.

Human rights limited

Section 32 provides that persons charged with criminal offences are entitled to certain minimum guarantees without discrimination. The implementation of jury directions will assist the jury in understanding the evidence presented in trials correctly. The recommended legislation will not limit an accused person's right to cross-examine and put their case directly to the victim-survivors.

Limitations on rights are justified

The implementation of legislation about jury directions will enable courts to give more tailored directions about misconceptions. These amendments are designed to ensure that juries are deliberating about the real issues. The rights to a fair trial in criminal proceedings extend beyond the right of the accused and includes consideration of the interests of the community and the protection of witnesses.[83] The recommended legislation will not limit an accused person's right to cross-examine the victim-survivors. There is not a less restrictive way to achieve the intended purpose. To the extent that there is a limitation of an accused person's human rights, that limitation is justified in a free and democratic society based on human dignity, equality and freedom.

Evaluation

Before the commencement of the legislation, the Department of Justice and Attorney-General should ensure that information will be recorded about the operation of the new laws in a way that allow information to be extractable for the purpose of a review. The impact of the amendments and their implementation should be reviewed as part of recommendation 186 of this report which provides for a review all legislative amendments recommended by this report five years after their commencement, with a focus on any impacts on victim-survivors of sexual violence and persons accused of sexual violence.

Expert evidence

The Taskforce has considered whether expert evidence should be admitted in Queensland about the nature and effects of sexual assault. This would, for example, make clear that expert evidence about the impact of

sexual violence on the behaviour of a particular victim-survivor could be given. The greater use of expert evidence was recommended by the Royal Commission.[84]

Background

Current position in Queensland

The admissibility of expert evidence in Queensland is governed by the common law. Expert evidence is an exception to the general rule at common law that evidence of opinion or belief is inadmissible (cannot be considered by the court). It is generally recognised that in order for expert evidence to be admissible, certain pre-conditions must be established:

- There is an organised branch of special skill or knowledge related to that area
- The witness must be a sufficiently qualified in that area
- The opinion must not be in respect to a matter of common knowledge
- The opinion must not be in respect of the "ultimate issue"
- The facts upon which the opinion is based must be capable of proof by admissible evidence.[85]

How do other jurisdictions address this issue?

The common law 'ultimate issue' and 'common knowledge' rules were abolished in Australia's uniform evidence law (UEL) jurisdictions of the Commonwealth, New South Wales (NSW), Victoria, the Australian Capital Territory, Tasmania and the Northern Territory in 1995. The Australian Law Reform Commission described the application of the original rules as 'uncertain, arbitrary in its implementation and conceptually problematic'.[86] The rules for reception of expert evidence in the UEL are clear and codified.

In Victoria, there are legislative provisions that enable expert evidence to be given in sexual offence trials (see Appendix 12).[87] Some provisions are focused on expert evidence being given about 'the impact of child sexual abuse on the development and behaviour of children' and have also been incorporated in legislation in NSW and Tasmania.[88] The VLRC report noted that the Royal Commission recommended this use of expert evidence.[89]

The VLRC report identified research that suggests that expert evidence addressing misconceptions about consent and sexual assault can be an effective alternative to jury directions in sexual offence cases.[90] It noted that expert evidence could 'reduce the risk of jurors using their own biases to reach conclusions that are not supported by the evidence'.[91]

Additionally, the VLRC found that expert evidence 'may address the same topics as jury directions, as well as how memory works (including when and how people repress or recover memories); behaviours that may seem counterintuitive, such as a victim survivor maintaining a relationship with the accused; and the power dynamics and characteristics of family violence'.[92] It noted that expert evidence about sexual offending is 'commonly used in New Zealand, and is given by medical practitioners, clinical psychologists, academics and scientists'.[93]

Results of consultation

Legal stakeholders

Women's Legal Service Qld and knowmore Legal Service support the introduction of expert evidence in sexual offence trials to assist understanding of how trauma impacts behaviour.[94]

WLSQ supports the introduction of 'Expert Evidence' in sexual offence trials, such as medical practitioners, clinical psychologists, academics and scientists. WLSQ submits that the same information as potential "jury directions" could be lead from the an expert, however, in a manner that is a better fit for the circumstances of each particular case.[95]

BAQ, the QLS and LAQ did not support legislating to enable expert evidence to be admitted. BAQ said that where expert evidence is relevant and admissible in a trial, it is already routinely admitted in Queensland.[96]

The QLS submission considered section 388 of the *Criminal Procedure Act 2009* (Vic). It noted that 'expert evidence of this type may have the effect of elongating sexual offence proceedings, including by adding an additional layer of expense, complexity/technicality and likely pre-trial litigation. The duration and subject matter for the jury of trials will also be extended.'[97] The QLS Criminal Law Committee were of the view that there is a real risk that a provision in these terms will 'create a trial within a trial regarding conflicting expert opinion' which is likely to distract the jury for its primary task.[98] The QLS also made reference to the QLRC report, which recommended against receiving expert evidence that is not admissible under the common law and indicated that it agrees with the view.[99] The QLS Criminal Law Committee concluded that:

> The risks that attend legislative amendment enabling expert evidence to be admitted about sexual offending, along with the substantial time and cost implications associated with doing so, outweigh any potential benefits and will result in further barriers to access to justice for an accused.[100]

LAQ endorsed the findings of the QLRC report, that evidence law in Queensland should not be amended to allow a particular type of evidence, being 'counterintuitive evidence' to be admitted in trials for sexual offences.[101] They argued that admitting this special category of expert evidence 'is liable to create additional delay and conflict in the trial process to the detriment of both complainants and defendants as well as additional cost to the community'.[102] LAQ highlighted a number of potential issues with enabling expert evidence to be admitted in trials:

- The availability of suitably qualified experts and consequential delays in listing trials to accommodate availability.
- More pre-trial applications to determine the admissibility or scope of the expert evidence again creating delay.
- Longer trials as a result of the need for experts to give evidence and be cross-examined, and the potential for competing expert evidence to be adduced in a defence case.
- The risk of trials aborting, or convictions being set aside on appeal as a result of issues with expert evidence. The process of adducing oral evidence at trial can be unpredictable. Inappropriate questions or answers can, and do, give rise to points of appeal.[103]

Office of the Director of Public Prosecutions

The ODPP submission highlighted that there is support for judicial intervention about sexual offence misconceptions 'by way of direction as a means of addressing this issue or the calling of expert evidence on the subject'.[104] This formal position was largely echoed by prosecutors who attended the Taskforce's consultation forums across Queensland.

Sexual violence support sector

QSAN supports the use of sexual violence experts in trials 'to assist jury understanding of victim-survivor presentation and academic research on sexual violence matters'.[105]

Other relevant issues

QLRC considered and rejected expansion of expert evidence for sexual offences in June 2020

The QLRC report addressed the use of expert evidence about the nature and effects of sexual assault.[106] The QLRC recognised that some jurisdictions admit expert evidence in two areas, 'counter-intuitive expert evidence (otherwise known as myth dispelling or educative evidence) and complainant specific expert evidence'.[107]

The QLRC found that, whilst counter-intuitive evidence may have an educative purpose, 'it is general in nature and does not answer the questions that a jury may have to consider in a particular case. A jury may derive little additional benefit in terms of enhancement of their understanding and weighing of the specific evidence before them'.[108] The QLRC also noted that ordinarily directions will be given to a jury by the judge that they are not to act on any preconceptions about factors affecting a complainant's behaviour.[109]

Further, the QLRC report did not recommend the introduction of a provision that authorised the receipt of expert evidence in terms that do not meet the common law requirements for admissibility.[110] It referred

to section 388 of the *Criminal Procedure Act 2009* (Vic) as enabling the admissibility of evidence which is 'unlikely to be admissible under current laws in Queensland in a rape or sexual assault trial'.[111] This issue identified by the QLRC could be addressed by Queensland adopting the UEL provisions, which abolish the common law rules of 'ultimate issue' and 'common knowledge'.

The QLRC report also based its conclusion on research about juries, that led to the QLRC determining that juries were not influenced in their decision-making by false preconceptions about rape or sexual assault.[112] As noted above, the research to which the QLRC referred and its effect has since been questioned by some academics who assert it does not support this conclusion.[113]

The UEL provisions on expert evidence

In Victoria, expert evidence is able to be admitted because there is a provision which specifically allows for the court to receive evidence of a person's opinion based on the person's specialised knowledge of:

- The nature of sexual offences; and
- The social, psychological and cultural factors that may affect the behaviour of a victim of a sexual offence, including reasons that may contribute to a delay in the victim reporting the offence.[114]

Victoria is a UEL jurisdiction. The UEL jurisdictions have allowed for expert evidence of this nature to be led by abolishing the ultimate issue and common knowledge rules that still operate in Queensland[115] (see Appendix 12). The adoption of the UEL provisions on expert evidence in Queensland would be required in order for expert evidence to be led in relation to the nature and effects of sexual assault.

Expert panel

In Victoria, the VLRC recommended 'an independent expert panel for sexual offence trials to be used by the prosecution, defence and the court'.[116] The recommendation included the establishment of a Commission for Sexual Safety which would set up and maintain the panel.[117] The panel will be comprised of a pool of approved experts, with the experts being reviewed to ensure that high quality evidence is being given.[118] The expert panel is to be available for sexual offence cases in the Magistrates' Court of Victoria and the County Court of Victoria (equivalent the District Court of Queensland). The VLRC endorsed the recommendation of the County Court of Victoria, supporting that the prosecution, defence and judge should have the ability to call upon the expert panel. It was noted that that the ability for the Judge to be able to call an expert in a case may be of use where a party 'has not called expert evidence but it would assist jurors and ensure a fair trial'.[119] This is a similar approach to an existing model in the Federal Court of Australia, which allows for an expert to be called as an independent advisor to the court.[120]

Taskforce findings

Introduce legislation allowing for the admission of expert evidence

The consultation feedback received by the Taskforce supports the view that rape myths sometimes operate within the criminal justice system to the detriment of victim-survivors. Impacts of trauma on victim-survivors during and after the assault, and while being interviewed, medically examined and giving evidence, are sometimes not well understood by police, the legal profession or judicial officers. Further, the research commissioned by the Taskforce revealed some evidence of rape myths influencing participating community members' understanding and attitudes to sexual consent.[121] The admission of expert evidence is likely to help address this lack of understanding of sexual offending. Having noted this feedback, the Taskforce supported introducing legislation allowing for the admission of expert evidence about the nature and effects of sexual assault. This should be framed in similar terms to section 388 of the *Criminal Procedure Act 2009* (Vic).

The Taskforce acknowledged that, to allow this type of expert evidence to be admitted in Queensland, the common law rules relating to expert evidence as to common knowledge and the ultimate issue rule would need to be abolished, as has been done in the UEL jurisdictions. Noting that the Taskforce is constrained by its terms of reference, the Taskforce considered that the UEL provisions at sections 76 -80 and section 108C could be adopted for domestic and family violence and sexual violence proceedings only. If the government wished to adopt the uniform evidence rules beyond these types of proceedings, broader consultation with legal stakeholders would be appropriate.

The Taskforce considered that enabling the admission of expert evidence will support jury decision making in trials involving domestic and family violence and sexual offences.

Establishment of an expert evidence panel

The Taskforce also supported the establishment of an expert evidence panel for sexual offence proceedings. Noting the VLRC's recommendation about an expert panel, the Taskforce felt that a similar expert evidence panel in Queensland would be necessary not only to ensure the evidence was of the highest quality but also to ensure the expert evidence presented in court is accessible to both the prosecution and defence on an equal footing.

Taskforce recommendations

79. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Evidence Act 1977* that:

- allow for the admission of expert evidence about the nature and effects of domestic and family violence and sexual violence, in similar terms to section 388 *Criminal Procedure Act 2009* (Vic).
- adopt sections 76 -80, and section 108C of the Uniform Evidence Law, with any necessary adaptations, for the purpose of criminal proceedings for domestic and family violence offences and sexual offences in Queensland.

These amendments should not commence until the expert panel (recommendation 80) has been established and appropriate and equitable funding has been provided to the Office of the Director of Public Prosecutions and Legal Aid Queensland to obtain expert reports.

80. The Department of Justice and Attorney-General establish an expert evidence panel for sexual offence proceedings that can be used by the prosecution, defence and the court. The independent sexual violence case review board (recommendation 46) will be involved in offering advice on the establishment and maintenance of the panel.

Implementation

Introduce legislation allowing for the admission of expert evidence

The legislative amendments recommended above should be the subject of a draft consultation Bill before they are introduced into Parliament. Consultation on the draft bill should include legal, domestic and family violence and sexual violence, disability, and Aboriginal and Torres Strait Islander stakeholders, as well as people with lived experience.

As noted above, the Government may wish to take this opportunity to consult with legal stakeholders and the community about whether Queensland should adopt the UEL provisions as to expert evidence for all proceedings in Queensland.

Consideration should be given to updating the Director of Public Prosecutions' 'Directors Guidelines' (recommendation 47), the Supreme and District Courts Benchbook and the recommended specialist sexual assault benchbook (recommendation 73) in the period between passage and commencement of the legislation.

Lawyers should undergo training in the new laws before their commencement. Judicial Officers should consider their professional development training on the new laws, preferably through the Judicial Commission recommended in *Hear her Voice 1*.[122]

Establishment of an expert evidence panel

There should be an evaluation of the expert panel. This evaluation should consider whether the expert panel is working effectively and whether it should be expanded to include domestic and family violence proceedings.

Human Rights considerations

The proposed admission of expert evidence about the nature and effects of sexual assault in trials may increase conviction rates of guilty people who would otherwise be wrongly acquitted. On that basis, the human rights promoted and protected under the *Human Rights Act 2019* include the right to recognition and equality before the law (section 15), the right to life (section 16), the protection from torture and cruel, inhumane or degrading treatment (section 17), and the right to security of person (section 29).

Human rights that may be limited include right to recognition and equality before the law (section 15); right to liberty and security of person (section 29); right to a fair hearing (section 31); and rights in criminal proceedings (section 32).

Human rights promoted

The human rights of the victim-survivor, under sections 16, 17 and 29 of the *Human Rights Act 2019*, would be promoted by the proposed legislation. Convicting perpetrators of sexual offences protects the victim-survivor and other potential victim-survivors from being exposed to harm that is a form of torture, cruel, inhumane and degrading. The evidence assists in ensuring the security of a victim-survivor and the community.

Human rights limited

Section 32 provides that persons charged with criminal offences are entitled to certain minimum guarantees without discrimination. It could be argued that an accused person's right in criminal proceedings could be limited to some extent by enabling expert evidence to be more easily admitted. However, the recommended legislation will not limit an accused person's right to cross-examine and put their case directly to the victim-survivors.

Limitations on rights are justified

The implementation of legislation about expert evidence will assist juries in determining whether an accused person is guilty or not guilty. It may enable jurors to better understand the offending and the victim-survivor's evidence in its proper context. It may also benefit the accused person in some cases. The rights to a fair trial in criminal proceedings extend beyond the right of the accused person and include consideration of the interests of the community and the protection of witnesses.[123] The recommended legislation will not limit an accused person's right to cross-examine the victim-survivors. There is no less restrictive way to achieve the intended purpose. To the extent that there is a limitation of an accused person's human rights, that limitation is justified in a free and democratic society based on human dignity, equality and freedom.

Evaluation

Before the commencement of the legislation the Department of Justice and Attorney-General should ensure that information will be recorded about the operation of the new laws in a way that allow information to be extractable for the purpose of a review. The impact of the amendments and their implementation should be reviewed as part of recommendation 186 of this report which provides for a review all legislative amendments recommended by this report five years after their commencement, with a focus on any impacts on victim-survivors of sexual violence and persons accused of sexual violence.

Guiding principles

In Victoria, section 37B of the *Crimes Act 1958* (Vic) contains guiding principles when interpreting and applying the subdivisions (8A) to (8G) of the Act. These subdivisions contain sexual offences.

The guiding principles are as follows:

> *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.*[124]

The QSAN submission notes that the guiding principles in Victoria 'aid court interpretation, and we recommend similar provisions should be adopted in Queensland'.[125] The submission recommends that the

guiding principles be based upon the section in Victoria, but with additional issues including that 'delay in reporting sexual violence is common'.[126] Full Stop Australia also supports the use of guiding principles in the legislation.[127] The Taskforce notes that was not a reform we specifically asked for feedback on in our third discussion paper.

Unlike Victoria, Queensland's criminal law is codified and the adoption of 'principles' into some chapters the Criminal Code and not others would be inconsistent with the design intent of Queensland's codified criminal law. It could lead to confusion in statutory interpretation. Consideration could be given to including some of the information in Victoria's guiding principles in the sexual assault benchbook the Taskforce recommended in Chapter 2.10 (recommendation 73), and as part of the training for lawyers and Judicial Officers which the Taskforce has recommended (recommendation 68).

Conclusion

The Taskforce has heard the voices of women victim-survivors and those who support them about rape myths affecting the community's and the justice system's response to sexual assault and those affected by it.

The Royal Commission identified the importance of judicial directions in child sexual offence proceedings and made recommendations aimed at countering these myths. Since then, some Australian jurisdictions have implemented legislation about judicial directions in child sexual offending proceedings. In particular, Victoria has introduced legislation addressing misconceptions about sexual offending and enabling expert evidence to be led about the nature and effects of sexual assault. In Queensland, too, there is a need for legislative reform to provide for judicial directions to neutralise common community misconceptions and to expand the admissibility of expert evidence in sexual offence proceedings. The implementation of these legislative provisions will mean that Queensland juries can more fairly consider the evidence before them to ensure a fair trial.

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[1] Emma Henderson and Kirsty Duncanson, 'A Little Judicial Direction: Can the Use of Jury Directions Challenge Traditional Consent Narratives in Rape Trials' (2016) 39(2) *UNSW Law Journal* 750, 750.
[2] Queensland Courts, Supreme and District Courts Benchbook, Available at: https://www.courts.qld.gov.au/__data/assets/pdf_file/0005/86072/sd-bb-68-preliminary-complaint.pdf Accessed 18 June 2022.
[3] Queensland Law Reform Commission, *A Review of Jury Directions* (Report No 66, December 2009) 145.
[4] Queensland Law Reform Commission, *A Review of Jury Directions* (Report No 66, December 2009).
[5] Royal Commission into Institutional Reponses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I - II* (Report, 2017) 87-93.
[6] Queensland Government, *Queensland Government third annual progress report Royal Commission into Institutional Responses to Child Sexual Abuse* (Report, December 2020) 18.
[7] *Evidence Act 1977* s 132BA.
[8] New South Wales Law Reform Commission, *Consent in relation to sexual offences* (Report No 148, September 2020) 158.
[9] New South Wales Law Reform Commission, *Consent in relation to sexual offences* (Report No 148, September 2020) xvi, Recommendation 8.1.
[10] New South Wales Law Reform Commission, *Consent in relation to sexual offences* (Report No 148, September 2020) xvi, Recommendation 8.3.
[11] New South Wales Law Reform Commission, *Consent in relation to sexual offences* (Report No 148, September 2020) xvi, Recommendation 8.4.
[12] New South Wales Law Reform Commission, *Consent in relation to sexual offences* (Report No 148, September 2020) xvi, Recommendation 8.5.
[13] New South Wales Law Reform Commission, *Consent in relation to sexual offences* (Report No 148, September 2020) xvi, Recommendation 8.6.
[14] New South Wales Law Reform Commission, *Consent in relation to sexual offences* (Report No 148, September 2020) xvi, Recommendation 8.7.
[15] New South Wales Law Reform Commission, *Consent in relation to sexual offences* (Report No 148, September 2020) 168.
[16] New South Wales Law Reform Commission, *Consent in relation to sexual offences* (Report No 148, September 2020) 167-168.

[17] The *Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021* will take effect on proclamation which is expected to be in May 2022: Liz Snell, 'Affirmative consent: What the 'common sense' NSW law reform means' (2022) *LSJ Online*.
[18] Victorian Law Reform Commission, *Jury Directions: Final Report 17* (May 2009)
[19] Emma Henderson and Kirsty Duncanson, 'A Little Judicial Direction: Can the Use of Jury Directions Challenge Traditional Consent Narratives in Rape Trials' (2016) 39(2) *UNSW Law Journal* 750, 777.
[20] Emma Henderson and Kirsty Duncanson, 'A Little Judicial Direction: Can the Use of Jury Directions Challenge Traditional Consent Narratives in Rape Trials' (2016) 39(2) *UNSW Law Journal* 750, 777.
[21] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 433.
[22] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 433.
[23] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 441.
[24] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 436.
[25] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 436-439.
[26] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 437.
[27] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 437.
[28] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 436.
[29] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 434-435.
[30] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 435.
[31] *Sexual Violence Legislation Bill 2019* (NZ) cl 16.
[32] Full Stop Australia submission, Discussion Paper 3, 11.
[33] Taskforce submission 690228.
[34] Taskforce submission 709327.
[35] Taskforce submission 714703.
[36] Gold Coast Centre Against Sexual Violence submission, Discussion Paper 3, 15.
[37] Full Stop Australia submission, Discussion Paper 3, 10-11.
[38] Full Stop Australia submission, Discussion Paper 3, 27.
[39] Queensland Sexual Assault Network submission, Discussion Paper 3, 18.
[40] Queensland Sexual Assault Network submission, Discussion Paper 3, 18.
[41] Legal Aid Queensland submission, Discussion Paper 3, 46-48; Queensland Law Society submission, Discussion Paper 3, 36-39.
[42] Legal Aid Queensland submission, Discussion Paper 3, 12.
[43] Legal Aid Queensland submission, Discussion Paper 3, 12.
[44] Legal Aid Queensland submission, Discussion Paper 3, 12.
[45] Legal Aid Queensland submission, Discussion Paper 3, 12.
[46] Queensland Law Society submission, Discussion Paper 3, 37-38.
[47] Queensland Law Society submission, Discussion Paper 3, 37-38.
[48] Queensland Law Society submission, Discussion Paper 3, 39.
[49] Queensland Law Society submission, Discussion Paper 3, 39.
[50] Queensland Law Society submission, Discussion Paper 3, 39.
[51] Queensland Law Society submission, Discussion Paper 3, 39.
[52] Knowmore Legal Service submission, Discussion Paper 3, 7.
[53] Knowmore Legal Service submission, Discussion Paper 3, 23-26.
[54] Knowmore Legal Service submission, Discussion Paper 3, 6.
[55] Office of the Director of Public Prosecutions submission, Discussion Paper 3, 3.
[56] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020) xii.
[57] Cheryl Thomas, 'The 21st Century Jury: Contempt, Bias and the Impact of Jury Service' (2020) 11 *Criminal Law Review* 987.
[58] Cheryl Thomas, 'The 21st Century Jury: Contempt, Bias and the Impact of Jury Service' (2020) *Criminal Law Review* 11, 987-1011, 1004.
[59] Cheryl Thomas, 'The 21st Century Jury: Contempt, Bias and the Impact of Jury Service' (2020) *Criminal Law Review* 11, 987-1011, 1004.
[60] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020) xi.

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[62] Ellen Daly et al. 'Myths about myths? A commentary on Thomas (2020) and the question of jury rape myth acceptance' (2021) *Loughborough University. Journal contribution.* https://hdl.handle.net/2134/16559307.v1, 6.
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[64] Enhance Research, *Community Attitudes to Sexual Consent* (Women's Safety and Justice Taskforce, 2022) 7, 47
[65] Enhance Research, *Community Attitudes to Sexual Consent* (Women's Safety and Justice Taskforce, 2022) 7, 47
[66] Enhance Research, *Community Attitudes to Sexual Consent* (Women's Safety and Justice Taskforce, 2022) 7, 47
[67] Enhance Research, *Community Attitudes to Sexual Consent* (Women's Safety and Justice Taskforce, 2022) 7, 41
[68] Enhance Research, *Community Attitudes to Sexual Consent* (Women's Safety and Justice Taskforce, 2022) 7
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[71] Australian Institute of Judicial Administration, *The Jury Project 10 Years On – Practices of Australian and New Zealand Judges* (Report, 2019) 60.
[72] Australian Institute of Judicial Administration, *The Jury Project 10 Years On – Practices of Australian and New Zealand Judges* (Report, 2019) 60.
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[74] Knowmore Legal Service submission, Discussion Paper 3, 23.
[75] Knowmore Legal Service submission, Discussion Paper 3, 23.
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[77] *R v Markuleski* (2001) 52 NSWLR 82.
[78] Queensland Courts, Supreme and District Courts Benchbook, 'Separate Consideration of Charges – Single Defence' Available at: https://www.courts.qld.gov.au/__data/assets/pdf_file/0003/86034/sd-bb-34-separate-consideration-of-charges-~-single-defendant.pdf Accessed 26 June 2022.
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[80] Royal Commission into Institutional Reponses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I - II* (Report, 2017) 93.
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[86] Australian Law Reform Commission, *Uniform Evidence Law* (Report 102, December 2005) 307.
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[89] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 442.
[90] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 443.
[91] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 443.
[92] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 443.
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[96] Bar Association of Queensland submission, Discussion Paper 3, 4.
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[98] Queensland Law Society submission, Discussion Paper 3, 39.
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[104] Office of the Director of Public Prosecutions submission, Discussion Paper 3, 4.
[105] Queensland Sexual Assault Network submission, Discussion Paper 3, 21.
[106] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020) xii.
[107] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020) 212.
[108] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020) 222.
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[110] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020) xii.
[111] Queensland Law Reform Commission, *Review of consent laws and the excuse of mistake of fact* (Report No 78, June 2020) xii.
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[113] Ellen Daly et al. 'Myths about myths? A commentary on Thomas (2020) and the question of jury rape myth acceptance' (2021) *Loughborough University. Journal contribution.* https://hdl.handle.net/2134/16559307.v1; Chalmers, Fiona Leverick and Vanessa Munro, 'Why the jury is, and should still be, out on rape deliberation'. (2021) *Criminal Law Review* 9, 753-771.
[114] *Criminal Procedure Act 2009* (Vic) s 388.
[115] *Evidence Act 2008* (Vic) ss 76-80, 108C.
[116] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 445, Recommendation 80.
[117] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 445, Recommendation 80.
[118] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 445.
[119] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 445.
[120] Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 445.
[121] Enhance Research, *Community Attitudes to Sexual Consent* (Women's Safety and Justice Taskforce, 2022) 7, 47
[122] Women's Safety and Justice Taskforce, *Hear her voice* (Report 1, 2021) vol. 1, xlvi, Recommendation 3.
[123] *Attorney General's Reference (No 3 of 1999)* [2001] 2 AC 91, 118.
[124] *Crimes Act 1958* (Vic) s 37B.
[125] Queensland Sexual Assault Network submission, Discussion Paper 3, 17.
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[127] Full Stop Australia submission, Discussion Paper 3, 20-21.

Chapter 2.14: Limitations on publishing the identity of victims and accused people

Queensland's laws limiting the publication of information about victims and accused perpetrators of sexual violence and domestic violence need to strike the right balance between protecting victims' identities, enabling them to tell their story, respecting the rights of accused persons and promoting the principle of 'open justice'.

Introduction

On 20 August 2021, the Taskforce received a letter from the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence (the Attorney-General), requesting that the Taskforce consider the legislative restrictions on publishing domestic violence and sexual violence proceedings. The Attorney-General had already sought preliminary views of stakeholders on the operation of the laws, and those responses were shared with the Taskforce.

Queensland legislation limits public access to, and reporting of, sexual offences and domestic and family violence matters. These limitations are contained in the *Criminal Law (Sexual Offences) Act 1978* and the *Domestic and Family Violence Protection Act 2012*. We also examined the relevant provisions of the *Youth Justice Act 1992,* which restricts publication of the identity of young people accused or convicted of an offence.

The principle of open justice

Open justice is a fundamental principle of our judicial system.[1] The principle of open justice recognises that justice should not only be done but should be seen to be done.[2] Achieving open justice involves open courts, fair and accurate reporting of court proceedings (usually by the media), and access to court records.[3] Open justice helps to provide the public with confidence in the justice system, including by informing them about what is happening in court. It also provides a level of scrutiny of court proceedings, contributing to accountability.

The principle of open justice often needs to be balanced against considerations such as the protection of confidential information, a person's right to privacy and a person's right to physical and emotional safety. It is important that open justice does not become a barrier to vulnerable people seeking justice or protection.

High-quality media coverage can encourage awareness and greater reporting of sexual offences and domestic and family violence

When done well, media reporting can play an important role in primary prevention of domestic, family and sexual violence.[4] Research shows that media coverage can encourage more people to come forward to report. High-profile allegations of sexual violence, and the publication of victims' experiences of sexual offending and domestic and family violence, are often associated with a spike in reports and help-seeking.[5] On the other hand, sensationalist media reporting can perpetuate harmful stereotypes, produce copy-cat behaviours and trigger trauma for victim-survivors. This chapter explores how relaxing restrictions may create opportunities for better-quality media reporting.

Limitations on publishing the identity of victims of sexual violence

Background

In Queensland, as in other parts of Australia, victim-survivors of sexual offences are protected from having their identity revealed publicly. These safeguards are intended to protect a victim-survivor's right to privacy, providing confidence to victims that they will not be identified if they report. However, these restrictions have sometimes been criticised because they prevent victims from publicly telling their stories when they wish to do so, resulting in the silencing and disempowerment of victims.[6] Advocates for legislative change also argue that reporting about individuals' experiences of sexual assault could potentially challenge unhelpful stereotypes, reduce stigma and encourage increased reporting and help-seeking.[7]

Current position in Queensland

Queensland's legislation provides special protections to prevent the publication of the identity of victim-survivors of sexual violence.

The *Criminal Law (Sexual Offences) Act 1978* (CLSO Act) creates a criminal offence prohibiting publication of the identity of a victim-survivor in any report (defined broadly to encompass all forms of media broadcast or distribution[8]) where that report concerns 'an examination of witnesses or a trial', but allows a court to make an order to the contrary.[9] The

offence carries a maximum penalty of two years imprisonment for an individual. Executive officers of corporations (for example a media company) that publish identifying details may be found personally liable for the offence.[10] The CLSO Act provides that it is a defence if the victim-survivor authorised the publication in writing.[11]

The CLSO Act was drafted in 1978. Its language is antiquated and it has not been updated to take into account more recent legislative drafting style and language. The result is that the CLSO Act lacks clarity. The lack of clarity in the CLSO Act has caused some confusion about when and what a victim can consent to being published. Section 10 has led some stakeholders to understand that victims only need to consent to the publication of their identity in forms other than media broadcast or distribution, and not in a report concerning an examination of witnesses or a trial.[12]

The CLSO Act provides that consent to publication must be in writing, from a victim who is over 18, with capacity to consent[13]. This means that victims who are under 18 at the time the offence was committed cannot consent to being identified until they are an adult. This is reinforced by the prohibition against publishing information likely to lead to the identification of a child victim in the *Child Protection Act 1999* (the Child Protection Act).[14] What is unclear is whether the CLSO Act enables a victim to self-publish identifying information about a sexual offence, or if so, whether this extends to children. The Child Protection Act enables a child victim of an offence to publish identifying information about themselves[15]. It is not clear, however, how this provision operates alongside the CLSO Act in relation to sexual offences.

The Department of Justice and Attorney-General advised that from 2012-13 to 20 April 2022 there have been no prosecutions for non-publication or non-disclosure provisions under the CLSO Act.[16]

How do other jurisdictions address this issue?

The legislation protecting the identity of victims of sexual offences differs slightly across jurisdictions.[17] But all Australian jurisdictions enable publication of an adult victim's identity with their consent.

Legislation in the Northern Territory and Tasmania only enables the publication (with consent) if all proceedings in relation to the sexual offence have been finalised.[18] No other jurisdiction has an equivalent limitation on when the publication can occur.

In addition to requiring the consent of the victim-survivor, Victoria's legislation specifies that the publication must be in accordance with any limits set by the victim. Examples of limitations are provided, such as the type of identifying particulars and where and by whom the information is to be published or republished.[19] Any publication must be in accordance with these limitations.

A number of jurisdictions also enable children to consent to their identity being published. The Australian Capital Territory has no age restriction.[20] New South Wales enables a victim over the age of 14 to consent to publication.[21] Victoria enables a child to consent if accompanied by a supporting statement from a medical doctor, psychologist or prescribed person.[22]

The NSW Law Reform Commission is currently consulting on proposals to enable victims aged 16-18 to consent to publication on the advice of a legal practitioner about the implications of giving consent[23]. It has proposed that younger victims must obtain the court's leave before their identity can be published.

Amendments in Victoria in 2020 enable a victim (child or adult) to publish information that identifies themselves at any stage of the proceeding, unless it identifies another victim without their permission.[24] No other jurisdiction appears to specifically cover self-publication. An inter-jurisdictional table of restrictions across Australia is at Appendix 13.

Results of consultation

Victim-survivors

Victim-survivors were clear that they should hold the power to decide whether or not identifying information is published.[25] The protection of their identities was considered critical to giving people the confidence to report and participate in criminal justice processes. Some victim-survivors, particularly those in small regional or remote communities, noted that maintaining anonymity (including of children and family members) was important to them and can be difficult, especially with social media.[26]

Full Stop Australia quoted a victim-survivor advocate who explained that before reporting the sexual offence to police they considered:

> *'… if I would have to face the perpetrator in court. If I reported, would my information become public information? What is the process involved [and] would my counselling records be subpoenaed?'* [27]

The Taskforce also heard that victims who want to share their experiences should be empowered to make this choice. As noted by the #LetHerSpeak campaign, this can help victim-survivors heal and recover, assist with raising awareness about the prevalence of sexual violence, educate the public about its impacts, challenge stigma and silence, break down social isolation experienced by other victim-survivors, and encourage others to seek help.[28] We have seen a recent example of this in the work and advocacy of Grace Tame as 2021 Australian of the Year. In this role Ms Tame showcased the difficult journeys for victim-survivors of sexual abuse and the enduring impacts of the trauma they experience.

Some victim-survivors were cautious, however, acknowledging that once consent had been given it was difficult for victims to control how the disclosure would play out in the media, and as such victim-survivors may lose 'control the narrative'.[29] Some victim-survivors reflected that 'trial by social media' was already a reality for many women.[30]

Service system stakeholders

There was a strong view among service providers that confidentiality for victims was paramount, and that a victim should have a say as to the publication of their identity, or information likely to lead to them being identified. [31] Service providers also acknowledged potential benefits of victims being able to speak out:

> *'We recognise and acknowledge the empowerment that comes from victim-survivors telling their stories. We know from our experience that speaking out about sexual violence can be important to individual recovery. We also know that the ability to speak out can address barriers to justice and foster community understanding about the nature and extent of sexual violence.' [32]*

During face-to-face stakeholder forums, participants including support workers expressed a serious lack of trust and confidence in the media's ability to appropriately report on sexual violence cases.[33] While participants acknowledged that there had been some improvements in media reporting, they were concerned that there were too many recent articles that blamed victims or perpetuated harmful stereotypes and myths. Some noted that sex workers were often badly portrayed and sometimes even inadvertently identified.[34] They were also concerned about media reports that gave inappropriate levels of detail, which risked copy-cat offending or identifying the victim without their consent.[35]

> *We had one case where the online media story reported very graphic detail of a sexual assault – and there was only one person listed for court that day – so it was very easy to see who it was and then identify the victim.[36]*

Sexual assault service providers voiced concerns that media organisations did not act according to ethical considerations when using information, with some seeking to 'profit from trauma'.[37] The efforts of government agencies and service providers to give advice, through media guides, to support improved reporting was noted,[38] together with a need for further education and accountability for media organisations.[39]

Full Stop Australia noted the importance of consent being *informed,* given that 'speaking out can come at great personal cost', and advocated the need for victim-survivors to be able to access legal advice to support their decision-making. [40] North Queensland Combined Women's Service noted the need for reporting to be survivor-centred and include safety and risk assessment in relation to potential violence from the accused person.[41]

Some considered that the current law should be made clearer so that victims and members of the community clearly understood what can and cannot be made public.[42]

Queensland Police Service

The Queensland Police Service (QPS) noted many social media sites already name victims and offenders with few controls to manage this. Police also cautioned that victims have limited options if they consent to publication but later change their mind.[43] The QPS proposed a conservative approach, observing that most offending occurs within an intra-familial context, and it is important to avoid negative impacts on children and other family members of offenders. [44]

Legal stakeholders

In general, legal stakeholders submitted that the current provisions strike an appropriate balance between ensuring that a complainant's identity is protected while allowing the complainant the opportunity to have their voice heard.[45] Some felt that there was room for refining the current provisions.

Limitations on publishing the identity of victims and accused people

Legal Aid Queensland (LAQ) and the Criminal Law Committee of the Queensland Law Society (QLS) were concerned about risks that publication of identifying information may pose where there are ongoing criminal proceedings.[46] These concerns included jurors accessing details of the case outside the trial[47]; the public victim account differing from evidence admitted, creating grounds for appeal[48]; witnesses (or potential witnesses) receiving information about the incident through social media before police interviews, creating an impediment to the investigation[49]; and tainting the jury pool for future cases by victim accounts, increasing public sympathy or support[50].

LAQ was also concerned that publication may put victims at risk of defamation action, expose them to pressure from the media and potentially expose accused persons to acts of vigilantism.[51] LAQ suggested that the legislation require victims to specify what information can be disclosed and ensure that they have an opportunity to seek legal advice.[52]

LAQ supported the approach taken in the Northern Territory that allows adult victims to consent to their identity being published only once all legal proceedings are finalised. It opposed the broader approach taken in Victoria.[53]

LAQ also noted the need to carefully consider the ability of young victims to provide informed, free and voluntary consent, including their ability to grasp the concept and ramifications, their developmental or cognitive capacity, and the potential for external pressure.[54]

Knowmore, an independent service funded by the Federal Government to give free legal advice and support to survivors of child abuse, including information about justice and redress options, supported the protection of a complainant's identity as a starting point, while also enabling them to consent to publication, noting that this can be an important part of a person's healing process.[55] Knowmore submitted that it is essential for victims and survivors to have the right to be identified and tell their stories publicly if they choose. Knowmore noted the positive experience of some victim-survivors whose evidence at hearings of the Royal Commission into Institutional Responses to Child Sexual Abuse inspired other survivors to continue to share their stories 'not only to heal themselves, but also to raise awareness, influence reform and prevent the future abuse of children'. [56]

These survivors [who have been permitted to tell their story after participating in the criminal justice process] have expressed that being able to exercise their right to be named was transformative to their recovery, especially after the gruelling experience of criminal proceedings. Conversely, some survivors who have not been able to publicly discuss their abuse because of suppression orders have described that experience as re-traumatising. Having been silenced as children, which often led to them being silent about their abuse for decades out of shame, embarrassment, and the fear of not being believed, they feel they have again been silenced by the criminal justice system. [57]

Some legal stakeholders noted the lack of clarity in the current law, with some suggesting that the law would benefit from clarification.[58]

Media

Australia's Right to Know (ARTK), a coalition of media organisations, advocates for legislative changes to reduce the restrictions on reporting on sexual violence. In relation to identifying victim-survivors of sexual offending, ARTK suggested amendments to simplify existing provisions and enable adult complainants in sexual offence cases who want to be identified to consent to this. [59] ARTK accepted that 'it is appropriate that such consent should be limited to adults with capacity and should be given in writing so both the complainant and the publisher or broadcaster can be assured of the consent that is being given'.[60]

ARTK also advocated for legislative change so that accredited media are not automatically excluded from the courtroom when sexual offence complainants give evidence, 'leaving the discretionary power of the Evidence Act to do its work on a case-by-case basis'.[61]

Other relevant issues

Relevant cross-cutting issues

The implementation of laws enabling victim-survivors to consent to publication of information provides an opportunity to increase the diversity of publicly available accounts to include the experiences of women who face intersecting structural disadvantage. The media and other parties involved will need to exercise cautious judgment to ensure that those who are already disadvantaged and vulnerable are not exploited, and that the victim-survivor's informed choices remain at the centre of this reporting.

Shifting towards empowerment of victim-survivors

Movements such as #MeToo and #LetHerSpeak, along with the work of advocates such as Grace Tame and Nina Funnell, have highlighted that while legislation must continue to protect those victim-survivors who seek anonymity, it is important that those who want to speak out and share their stories are empowered to do so.[62]

The positive impact of increased, balanced media coverage of sexual offending, and particularly the publication of victim-survivor experiences, was acknowledged by the Royal Commission into Institutional Responses to Child Sexual Abuse as a factor contributing to people deciding to report:

> *Many people told us they were motivated, compelled or encouraged to come and speak with us after they saw the courage and dignity of other survivors speaking about their experiences of child sexual abuse.*[63]

Recent legislative amendments in some jurisdictions have reflected this shift towards empowering victims.[64] Providing choice to victim-survivors is consistent with a trauma-informed approach and contributes to lifting the silence around victim-survivor experiences of sexual offending. It also brings home to the public that apparently 'nice' or 'normal' people can commit sexual offences.

Timing of publication and risks to criminal proceedings

The Taskforce noted and considered the risks that the publication of information may pose to the investigation and criminal proceedings, including the risk of prejudicing a trial. There is no indication in the current provisions that publication is only permitted after criminal proceedings are finalised. Introducing this limitation would mean that the ability for victim-survivors to consent to publication would be narrowed.

The court has inherent powers to close the court or prevent public disclosure of information, where this is required for a fair trial or to prevent abuse of the court's processes.[65] Apart from the court making an order preventing publication, there is nothing to limit an adult victim of other offences, such as common assault or grievous bodily harm, from publicly disclosing their experience, or the media reporting the matter and the identity of those involved. There is a risk, however, that if the publication has prejudiced potential jurors, or could do so, the trial process may be delayed by defence applications for an adjournment, a change of venue, or even a permanent stay.

Child victim-survivors

International human rights law provides that any child who is capable of forming their own views has the right to express those views freely in all matters affecting them, and the right to impart information and ideas of all kinds. [66] This suggests it may not be appropriate to automatically prevent children from being able to consent to identifying information about them being published.

On the other hand, there is a need to consider the vulnerability of children, both in terms of understanding the consequences of their decision, and the risk of their exploitation by the media or by parents or others (who may be incentivised by the media or by other gain). Safeguards are required to reduce these risks.

No provision for release of transcripts for research purposes

A significant impediment to evidence-informed reform of the criminal justice system's response to sexual offending is a lack of high-quality research into what occurs during criminal trials. The CLSO Act does not contain a provision similar to section 189B of the *Child Protection Act 1999,* which allows the chief executive to provide access to information that is reasonably necessary for 'prescribed research'. This type of provision could allow the Director-General of the Department of Justice and Attorney-General to release information transcripts to researchers, on the basis that no identifying information about victim-survivors will be published and that the research is consistent with the aim of achieving just and fair outcomes in proceedings for criminal offences.

Taskforce findings

The Taskforce acknowledges that empowering victim-survivors to share their story publicly can be an important part of their healing process.[67] It may be a way for them to be a part of positive social change to address and prevent sexual violence. It also acknowledges that the media can and should play an important role in primary prevention.

Ordinarily, victim-survivors should be empowered to tell their story and consent to the publication of their identity, or information that may lead to them being identified, if they so choose.

Victim-survivors should be empowered to determine what is published and how that information is published. Their choices should be respected.

In Queensland, the application of the CLSO Act provisions in relation to a victim consenting to identifying details being published is hampered by some lack of clarity arising out of the antiquated drafting of the provisions. Additionally, the CLSO Act is unclear in relation to its application to children. The CLSO Act was enacted before the widespread use of social media, which has led to victims often self-publishing identifying information and sharing their own stories of sexual assault. The CLSO Act may need clarification in these respects.

Noting concerns raised by some legal stakeholders, the Taskforce considered whether it would be appropriate to only allow victim-survivors the ability to publish, or consent to publication of, identifying information after proceedings had been finalised (as in the Northern Territory and Tasmania). We ultimately rejected this option as it would impose a time restriction that does not currently exist and would further disempower victim-survivors by curtailing their current ability to speak about their experiences. The Taskforce is satisfied that the courts' inherent powers enable the making of all necessary orders to restrict publication where this is required in the interests of justice.

The Taskforce was firmly of the view that any publication must not identify other victims without their consent. There should be no change to the current limitations on identifying victims of sexual offences without their consent.

Taskforce recommendations

81. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Criminal Law (Sexual Offences) Act 1978* to:

- update and modernise the language of all provisions in the Act generally
- clarify that it is a defence to the prohibition against publication of identifying information about victims of sexual offences that an adult victim-survivor with capacity consented to the publication and that the publication was consistent with any limitations set by the victim-survivor
- ensure that publication continues to be prohibited where publication would identify or lead to the identification of another victim-survivor without their consent or a child (including a child offender)
- include a requirement that the court, when considering making an order allowing the publication of identifying information, must take into account the views and wishes of the victim-survivor
- enable victim-survivors of sexual violence to self-publish identifying information, at any stage of the proceedings, so long as it does not identify another victim-survivor without their consent or a child (including a child offender) and does not put at risk the fairness of future court proceedings
- enable children who are victim-survivors of sexual offences to self-publish, or consent to the publication of, identifying information with safeguards to ensure that the child has the capacity to consent, is making a free and informed decision, and has understood the potential consequences of their decision. The publication must not identify another victim-survivor (without their consent) or a child (including a child offender) and must not put at risk the fairness of future court proceedings
- enable the Director-General of the Department of Justice and Attorney-General to release transcripts of proceedings for sexual offences for approved research purposes on the basis that anonymity of victim-survivors would be preserved based on the model in section 189B of the *Child Protection Act 1999*

The recommended amendments will not commence until the Queensland Government has developed and implemented a guide for the media to support responsible reporting of sexual violence (recommendation 84)

82. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the Recording of Evidence Regulation 2018 to allow the Director-General to provide transcripts released for approved research under the *Criminal Law (Sexual Offences) Act 1978* free or at a reduced cost.

The Taskforce considered that children who are victim-survivors of sexual offences should also be empowered to consent to information being published and to self-publish identifying information if they choose. However, special protections are required to ensure that a child understands the consequences of consenting to publication and is not exploited. The implementation of the Victorian model of requiring a supporting expert statement should be considered in formulating those necessary safeguards. Effective research that can evaluate the impacts of the Taskforce's recommendations (if accepted and implemented by the Government) on criminal trials into the future is essential. The ability to commission effective research would also be a useful tool for the independent victims' commissioner that the Taskforce has

recommended be established (recommendation 18). The Taskforce noted that section 189B of the *Child Protection Act 1999* provides a sound model for releasing sensitive information for approved research purposes by a chief executive. The Taskforce also noted the costs of obtaining court transcripts in Queensland are extremely high. To ensure cost does not become a barrier for approved researchers, consideration should be given to amending the Recording of Evidence Regulation 2018 to allow these transcripts to be provided at no cost or at a reduced charge to researchers who are approved by the chief executive.

Implementation

Implementation of this recommendation should involve consulation on a draft of the amendments with sexual assault and women's health support services, legal stakeholders and media organisations to ensure the provisions are workable and appropriately balance the rights of an accused person and victim-survivors. The amendments should commence only after the development and implementation of a media guide to promote responsible reporting of sexual violence (discussed further below).

The Department of Justice and Attorney-General will need to facilitate training support to professionals who work with victim-survivors, including sexual assault counselling services and lawyers, to assist victim-survivors make fully informed decisions about whether and how to tell their story.

Consideration should be given to how the amended provisions are intended to operate with the relevant provisions in the *Child Protection Act 1999*. The Taskforce was concerned that the strict confidentiality provisions in the *Youth Justice Act 1992* may prevent a victim of sexual violence obtaining counselling and therapeutic support, which is discussed in further detail below.

The Department of Justice and Attorney-General will need to support the heads of jurisdiction in each court to implement the amendments in relation to transcripts.

The Chief Justice, the Chief Judge and the Chief Magistrate should consider how best to provide judicial training on the amendments, optimally through the independent Judicial Commission recommended by the Taskforce.[68] Reference to the amended provisions should be included in the proposed benchbook to support courts in sexual offence cases (recommendation 73).

Human rights considerations

The ability of adult victim-survivors to consent to the publication of their identifying information requires consideration of the right to freedom of expression (section 21) and the right to privacy and reputation (section 25). Considering whether there are risks to fair trials engages the accused person's right to fair hearing (section 31) and rights in criminal proceedings (section 32). Determining whether children should also be so empowered engages the protection of families and children (section 26) and the rights of children, including those contained in the *Convention on the Rights of the Child*.[69]

Human rights promoted

Clarifying the ability of adult victim-survivors to consent to the publication of their identifying information promotes a victim's right to freedom of expression (section 21). By maintaining the prohibition on identifying victim-survivors *without* their consent, the right to privacy and reputation (section 25) is promoted. This in turn promotes the right for victim-survivors to be protected from degrading treatment. By also enabling children to consent to publication of their identifying information, the protection of families and children (section 26) is promoted. Including safeguards for children is consistent with the need to ensure legislation is formulated with the best interests of the child as a primary consideration.[70]

Human rights limited

The publication of identifying information about victim-survivors could, in some instances, risk limiting an accused person's right to a fair hearing (section 31) and rights in criminal proceedings (section 32).

Limitations on rights are justified

The right to a fair hearing affirms the right to procedural fairness when coming before a court. The rights in criminal proceedings include the fundamental right to be presumed innocent until proved guilty according to law. The Taskforce's recommendation clarifies and affirms the ability of victim-survivors to choose whether information identifying them as victims of sexual offences can be published. This aligns with the principle of open justice and reflects community expectations in relation to empowering victims and is in line with trauma-informed approaches that support giving victim-survivors options. The amendments also ensure there is clarity about this aspect of the law. During consultation, some stakeholders were concerned that enabling the publication of identifying information about the victim could prejudice an accused person by causing jury bias or interfering with the police investigation. The Taskforce has

considered, but rejected, the potentially less-restrictive option of confining the publication until after proceedings have been finalised. That option would not give full effect to the intended outcome, which was the empowerment of victims. The media should already be well aware of its important obligation to report matters still before the courts in a way that will not jeopardise the fairness of pending trials. Potential limits of the accused person's right to a fair hearing and rights in criminal proceedings can be managed using the inherent powers of the court, as is done for all other offence types at present. There should be no greater impact on future trials of sexual offending following the publication of accounts of a victim-survivor's experience than for other offences. On balance, the important purpose of the recommended amendments outweighs any limitation on rights that may occur as a result of the amendments and can be justified in a free and democratic society based on human dignity, equality and freedom.

Evaluation

Before the commencement of the legislation, the Department of Justice and Attorney-General should ensure that the making of orders and prosecutions pursued under the CLSO Act are recorded in a way that will allow relevant data about the operation of the provisions to be extractable for the purpose of a review. The impact of the amendments and their implementation should be reviewed as part of recommendation 186 that the legislative amendments recommended in this report be reviewed five years after their commencement, with a particular focus on any impacts on victim-survivors of sexual violence.

Limitations on publishing the identity of adults accused of sexual offending

Background

People accused of sexual offences in Queensland have their identities protected until a committal hearing has taken place. This is a protection that is not available for people accused of other types of offences, even the most serious offence of murder.

Queensland is one of the few Australian jurisdictions that afford this protection to people accused of sexual offending.

Current position in Queensland

The CLSO Act prohibits publication of information that identifies an accused person in relation to a prescribed sexual offence before a committal order is made,[71] unless an order is made by the court.[72]

The prohibition applies only to the 'prescribed sexual offences' of rape; attempt to commit rape; assault with intent to commit rape; and sexual assaults.[73] It does not apply to other sexual offences such as sexual offences against children.

The offence of publishing the identifying information carries a maximum penalty of two years imprisonment.[74] If a corporation (such as a media organisation) commits the offence, an executive officer of the corporation may be taken to also have committed the offence.[75]

Since 2010, reforms to streamline the committal process mean that in many cases, the committal is an administrative process completed by the registrar or clerk of the court, rather than a hearing of the parties before a magistrate.[76]

As noted above, the Taskforce was advised that there have been no prosecutions for non-publication or non-disclosure provisions under the CLSO Act from 2012-13 to 20 April 2022.[77]

How do other jurisdictions address this issue?

Most Australian jurisdictions do not prohibit the publication of the identity of a person accused of sexual offending. Similarly, the United Kingdom and New Zealand do not offer automatic protection to sexual offenders before committal.[78] Along with Queensland, only the Northern Territory and South Australia prohibit the publication of the identity of an accused person before they are committed for trial or sentenced for a sexual offence charge (Annexure 13).

Legislation in other jurisdictions only restricts the publication of information that may identify a person accused of sexual offending where it may lead to the identification of the victim-survivor. Courts are empowered to prevent the disclosure of the identity of the accused person in certain circumstances. In New South Wales, the court has statutory powers to make suppression or non-publication orders on a number of grounds, including that it is necessary to avoid causing distress or embarrassment to a party or witness in criminal proceedings involving an offence of a sexual nature.[79] The New South Wales Law Reform Commission (NSWLRC) has recently consulted on a proposal to exclude the application of this provision to the accused person. The NSWLRC did not consider 'that protecting defendants in such cases, solely on the basis of distress or embarrassment, is a sufficient ground to justify a departure from the principle of open justice'.[80]

In its 2003 *Seeking Justice* report, the then Crime and Misconduct Commission considered the appropriateness of Queensland's provisions.[81] It acknowledged the 'widely different and strongly held opinions concerning the prohibition'[82] but supported the view that the particular stigma associated with sexual offending warranted a different approach to

other offences for accused persons as well as complainants. [83] It recommended that the prohibition be expanded to all types of sexual offending[84] and apply to accused persons being investigated for sexual offences.[85] It considered whether the prohibition should continue beyond the committal but ultimately did not make this recommendation. The Queensland Government did not accept the recommendations to expand the prohibition.[86]

Results of consultation

Victim-survivors

Victim-survivors told the Taskforce that they felt the reputational risks for the accused person were given undue consideration. This was particularly painful for victim-survivors when there were long delays between reporting and the committal.

One victim-survivor who was still awaiting a committal hearing more than three and a half years after her complaint felt strongly that protecting the identity of the accused person contributed to the imbalance in how she and the accused person were treated.

'My abuser is afforded protection and privacy, as his name cannot be printed alongside the serious offences he has been charged with, which means unsuspecting young women can still be a guest at his [business], they can still apply for a job in his [business], without having any idea that he is an opportunistic predator who doesn't respect the employer-employee boundary… He can continue his life under protection of the legal system, but we cannot even be told why our committal hearing has been adjourned. The imbalance in this system is astounding.' [87]

Some victims thought there could be increased accountability for perpetrators if their identity could be published earlier. However, the likelihood of victims being inadvertently identified was a concern, particularly in small communities.[88]

Service system stakeholders

Some sexual assault support service providers felt that identifying accused persons in media reports may help the community understand the complexity of these offences and increase reporting.[89] Some felt that increased media reports contribute to further destigmatising sexual violence.[90] However, there was some concern that identifying the accused person may increase the reluctance of victims to report, particularly when the accused person was a relative or part of their community.[91]

Many service provider representatives felt that there was an inappropriate focus on reputational damage to accused persons. [92]

It is strange that there is state-sanctioned protection for [the reputation of] sex offenders.[93]

The consequences of publication on rehabilitation prospects of offenders were also raised.[94] Service providers were concerned about the risks of identifying victims inadvertently, with the accountability of the accused person needing to be carefully weighed against potential consequences for an identified victim.

Government

The QPS noted the potential negative consequences of publication for offenders (and victims), including the 'labelling of a person' as an offender and undermining protective factors.[95] During consultation some police officers noted that further victims may be prompted to come forward if there was early identification of an accused person and this could help in evidence gathering and in building the case for prosecution.

In consultation forums, a Community Corrections representative noted that there was considerable stigma for people convicted of sexual offences, creating barriers to reintegration into the community.[96]

Legal stakeholders

The QLS reiterated its 'longstanding' position that 'the defendant's identity should be protected until verdict for certain types of offences'.[97] The Bar Association of Queensland (BAQ) was also not supportive of any amendments to the restrictions.[98] The QLS noted the discrepancy between complainants and accused persons as to which offences attract the protection.

As noted above, LAQ raised various risks of increased publication, including prejudicing a trial, vigilantism and identifying victims who wish to remain anonymous. [99] LAQ also acknowledged that legislating 'to allow the publication, in certain circumstances, of the names of sexual, and domestic and family violence offenders would bring consistency of laws within Australia'.[100]

Legal stakeholders in consultation forums highlighted that the consequences for the reputation of the accused person were significant, and that digital publication made the published information available into the future (unlike print and radio).[101]

While not specifically commenting on this issue, the North Queensland Women's Legal Service (NQWLS) noted the multitude of barriers faced by women who experience sexual violence in reporting sexual offences, including fear of retaliation by the accused person. NQWLS also noted that as a result of communication difficulties and lack of understanding of the criminal justice system, First Nations women were sometimes misidentified as perpetrators of sexual violence.[102]

Office of the Director of Public Prosecutions

While not expressing a view on whether the protection should be removed or altered, the Office of the Director of Public Prosecutions (ODPP) noted that the rationale for the committal hearing as the demarcation for allowing publication is 'dated' and 'does not reflect the progressive changes in process to the use of registry committals which involves no judicial endorsement'.[103]

Media

ARTK advocated for the removal of the automatic restriction on publication of an accused person's identity in sexual offence cases. It noted that people accused of other serious offences are not afforded the same protection.[104]

Queenslanders have a right to know what is happening in their communities. Defendants charged with sex offences in Queensland should not enjoy special treatment and enjoy automatic anonymity any longer. [105]

Other relevant issues

Relevant cross-cutting issues

The Taskforce has heard that the stigma associated with sexual violence has a profound impact on First Nations women, acting as a powerful barrier to reporting. First Nations women may face increased pressure not to report if the accused person's identity is disclosed. Courts may need to consider this factor when considering whether to restrict reporting to prevent distress or embarrassment to a victim. On the other hand, First Nations women in some remote communities where violence is prevalent may benefit from increased and better reporting of sexual violence against women and girls to improve awareness, increase government resources, reduce stigma and find lasting community-based solutions.

Should the identity of a person accused of sexual offences continue to be protected before committal?

Queensland's prohibition on the premature publication of an accused person's details has been criticised as outdated and giving special treatment to those charged with prescribed sexual offences.[106] The media in other jurisdictions often report sexual assault and domestic and family violence allegations against people with high public profiles. However, if these events occur in Queensland, the media cannot report on the cases before committal. Many question why those charged with sexual offences should be treated differently from those charged with other offences and argue that this gives credence to the rape myth that women and girls often make false complaints of sexual assault.

The prohibition on publication of an accused person's identity before committal recognises that the stigma associated with sexual offending means it may be difficult to overcome the effect of public identification in relation to these types of offences, even if the charge does not ultimately proceed or continue to trial. On the other hand, other types of offences are not protected in this way, even sexual offences not covered by the current provisions.

If handled sensitively, accurate public reporting may contribute to positive community discussions about gender-based violence, challenge stereotypes and reduce the level of secrecy and stigma involved – a major cause of under-reporting. It may well result in increased reporting by victim-survivors. The Royal Commission into Institutional Responses to Child Sexual Abuse noted that among the conditions that encourage adults to disclose historical experiences of child sexual abuse was learning about child sexual abuse and media coverage and publicity about child sexual abuse.[107] The Royal Commission pointed out that a number of people came forward to report their experiences of child sexual abuse only after media reporting on the topic.

'One male survivor, who disclosed for the first time to the Royal Commission, said he saw 'priest after priest after priest' in the media being charged with child sexual abuse, but no mention of doctors or nurses. He came forward to set the record straight.'[108]

Removing the prohibition would align the position in Queensland with the majority of other Australian jurisdictions and with the United Kingdom and New Zealand. It would facilitate media reporting about people who are charged with sexual offences, which may encourage victims and other witnesses to come forward. It could help prevent further offending by the same perpetrator. Increased publication as a result of this option may contribute to constructive community discussion about sexual violence by removing protections that are not in place in most other jurisdictions. It is noteworthy that there do not seem to have been significant negative consequences in those many jurisdictions where publication of the accused person's identity has been permitted at an early stage.

On the other hand, there are risks that need to be considered. Removing the prohibition will likely lead to public identification of accused persons who may not ultimately be committed for trial or convicted of a sexual offence. The media is not always as enthusiastic about publishing that someone has been cleared of a charge as it is about publishing the accusation. Publication also increases the chances of inadvertent identification of victims or other child witnesses and may lead to inappropriate media reporting that perpetuates harmful stereotypes about sexual violence. It may result in retribution in some communities. It may increase the risk of 'trial by media' and discourage even more people from disclosing sexual offences. It could cause further fractures within troubled families, increasing victim-survivors' vulnerabilities. It could be particularly problematic for those in small communities, such as in rural and remote areas, including for First Nations communities.

Taskforce findings

While stigma against those accused of sexual offences remains, the Taskforce concluded that any potential reputational damage caused by reporting the identity of persons accused of sexual offending before committal is outweighed by the desirability for open justice, including the importance of media reporting on this often hidden but prevalent issue. On balance the Taskforce did not consider there was an ongoing justification for treating charges for certain sexual offences differently to all other criminal offences.

The Taskforce also noted that increased media coverage about charges against an alleged perpetrator of sexual violence may encourage other people who were assaulted, particularly by that alleged perpetrator, to come forward and report. The Taskforce acknowledges that in small communities, including some First Nations communities, there is a risk that victims may be deterred from reporting due to a fear of an accused person being identified. The Taskforce considered barriers to victims reporting in these communities and has made a number of recommendations to support safe and supported options for reporting (see chapter X). The Taskforce does not anticipate that allowing publication of the accused person's identity before committal alone will increase the barriers to reporting in these communities.

There is a need for continued improvement in the way the media reports sexual violence to ensure that it positively contributes to primary prevention through increasing community understanding and dispelling harmful misconceptions. The Queensland Government should develop and implement updated guidance for media organisations before any recommended amendments to the CLSO Act commence.

Taskforce recommendations

83. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Criminal Law (Sexual Offences) Act 1978* to:

- remove the restriction on publication of the identity of an adult accused of a sexual offence before a committal hearing where it would not identify or tend to lead to the identification of a victim-survivor
- require a court to take the views of the alleged victim into consideration when deciding whether to order that the identifying details of an accused person should be suppressed.

The recommended amendments will not commence until the Queensland Government has developed a guide for the media to support responsible reporting of sexual violence (recommendation 84).

84. The Queensland Government develop a guide for the media to support responsible reporting of sexual violence that:

- includes content about the nature and impacts of sexual violence
- includes content to counter common misconceptions about sexual violence refers to changes in the law
- provides guidance about reporting on the particular vulnerability of and potential adverse impacts on Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds, people with disability, older people and LGBTIQA+ people
- provides a framework for media organisations to incorporate a trauma-informed approach to reporting and interviewing.

The development of the guide should be followed by implementation activities with media across the state to promote the guide and encourage compliance.

85. The Queensland Government advocate for nationally consistent media standards for reporting of sexual violence. The standards should include a trauma-informed approach that mitigates risks associated with reporting on and interviewing victims of sexual violence.

Implementation

Implementation of this recommendation should involve consulation on a draft of the amendments with sexual assault and women's health support service providers, legal stakeholders and media organisations to ensure the provisions are workable and appropriately balance the rights of an accused person and victim-survivors. The Chief Justice, the Chief Judge and the Chief Magistrate should consider how best to provide judicial training on the amendments, optimally through the independent Judicial Commission recommended by the Taskforce.[109] Reference to the amended provisions should be included in the proposed benchbook to support courts in sexual offence cases (recommendation 73).

The media guide should align with (and could potentially be combined with) the *Domestic and Family Violence Media Guide,* which is to be revised in line with recommendations in *Hear her voice 1*.[110] The national standards should be informed by, and align with, the national guidelines for reporting on violence against women and their children developed by Our Watch[111], and any standards developed for reporting on domestic and family violence.

The implementation activities should be developed in consultation with people with lived experience as victim-survivors of sexual violence, people who have been accused and/or convicted of perpetrating sexual violence, legal stakeholders and representatives of sexual violence support service providers so that the impact of reporting on all these groups is properly understood.

The national standards should be informed by, and align with, any standards developed for reporting on domestic and family violence.[112]

Human rights considerations

The prohibition on the identification of people accused of sexual offences engages the right to freedom of expression (section 21), the right to privacy and reputation (section 25), the protection of families and children (section 26), the right to a fair hearing (section 31) and rights in criminal proceedings (section 32).

Human rights promoted

Removing the prohibition would promote a victim's right to freedom of expression (section 21) and freedom of expression more generally. Ensuring that the removal of the prohibition does not result in the identification of victim-

survivors without their consent promotes their right to privacy and reputation (section 25). The development of a media guide also promotes these rights.

Human rights limited

Removing the current protections arguably limits an accused person's right to privacy and reputation (section 25). By publicly naming the accused person, they may remain associated with the offence even if the charge is later withdrawn or the accused person is found not guilty. While this is the position with other offences in Queensland, it could be argued that this limits the right of the accused person to be presumed innocent until proven guilty (section 32). Widespread media attention could result in jury members having prior knowledge of the accusations, potentially limiting the accused person's right to a fair hearing (section 31).

Limitations on rights are justified

The right to a fair hearing affirms the right to procedural fairness when coming before a court. The rights in criminal proceedings include the fundamental right to be presumed innocent until proved guilty according to law. The Taskforce recommendation removes the prohibition on publishing the identity of a person accused of a sexual offence before a committal hearing. This recommendation promotes the principle of open justice and removes the differential treatment of people accused of some sexual offences.

The potential limitations on the accused person's right to a fair hearing and right to procedural fairness arise from them being identified as a person accused of a sexual offence, and this and other information prejudicing jurors against the accused person. In all criminal proceedings, however, the court is able to make orders limiting the publication of the identity of accused persons and to give directions to jurors where required in the interests of justice.

The right to privacy and reputation protects the individual from all arbitrary and unlawful interferences and attacks upon their privacy, family, home, correspondence and reputation. The notion of arbitrary interference extends to those interferences that may be otherwise lawful, but are unreasonable, unnecessary and disproportionate. This recommendation arguably makes lawful the potential damage to an accused person's reputation even if they are ultimately found not guilty. It could be contended that the recommendation limits an accused person's right to privacy and reputation, and that the impact is more detrimental for those accused of sexual offences than those accused of other offences. Any limitation is a necessary consequence of the recommendation, which promotes open justice and the benefits to the community of transparency around allegations of sexual offending. The accused person has the ability to publicly clear their name should they be acquitted, or the charges withdrawn.

On balance, the importance of the purpose of the recommended amendments outweighs any potential limitation on rights that may occur as a result of the amendments.

Evaluation

Before the commencement of the legislation, the Department of Justice and Attorney-General should ensure that orders made and prosecutions pursued under the CLSO Act are recorded in a way that will allow relevant data about their operation to be extracted for the purpose of review. The impact of the amendments and their implementation should be reviewed as part of recommendation 186 of this report, which provides for a review of all legislative amendments recommended by this report five years after their commencement five years after their commencement, with a particular focus on any impacts on victim-survivors of sexual violence and accused persons charged with sexual offences.

Limitations on publishing information about domestic and family violence proceedings

Background

In Queensland, the proceedings and the identity of parties to civil proceedings on an application for a domestic and family violence order are confidential and cannot be reported publicly.

Queensland arguably has the most restrictive requirements in Australia when it comes to publication of domestic and family violence proceedings. Queensland is the only jurisdiction that:

- requires these proceedings to be held in closed court
- requires the consent of both victim and respondent to publish identifying information
- restricts the publication of any information given in evidence in civil domestic and family violence proceedings.

These restrictions limit the public and journalists from observing court proceedings or reporting on civil proceedings for a domestic and family violence order. Criminal proceedings for a domestic violence criminal offence are intended to be treated differently.

Current position in Queensland

The *Domestic and Family Violence Protection Act 2012* (DFVP Act) contains provisions that protect the identity of those involved in an application for a domestic violence order.

Key provisions include:

- the requirement for proceedings to be held in a closed court (unless one of the exceptions is enlivened)[113]
- the prohibition on publication of information given in evidence or information that identifies or is likely to identify a party to the proceeding, a witness in the proceeding or a child concerned (unless one of the exceptions apply)[114]
- the prohibition on obtaining copies of documents tendered or the record of a proceeding (limited to parties to the proceeding, a person named in a domestic violence order, a police officer or the DPP unless expressly authorised by the court).[115]

The Department of Justice and Attorney-General advised that from 2012-13 to 20 April 2022, 12 people have been prosecuted for publishing information in contravention of section 159 of the DFVP Act in all Queensland Courts.[116]

A court in Queensland can authorise publication of identifying information and the Domestic and Family Violence Protection Regulation 2012 enables publication of otherwise protected information if the respondent to a domestic and family violence order is subsequently convicted of an offence under another Act that is factually related to the order[117] or death is an outcome of violence within the relevant domestic relationship.[118] Given that the offence must be under another Act, the effect of the provision is that identifying information about other contraventions of domestic violence orders cannot be published, despite them being criminal offences. This does not appear to be reflected in practice and may be an unintended consequence resulting from the way in which the Regulation is drafted.

The chief executive of the magistrates court may authorise a qualified person to use documents relating to domestic violence proceedings for approved research.[119] The documents must not be used in a way that is likely to lead to the identification of an individual involved. [120]

Proceedings on an application for a domestic violence order are civil and protective in nature. A court is not bound by the rules of evidence and may inform itself in any way it considers appropriate. The DFVP Act requires adherence to the principle that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount.

A lower threshold of proof is required for domestic and family violence protection orders than for criminal matters. A domestic violence order can be made when a court *on the balance of probabilities* is satisfied that a relevant relationship exists between the aggrieved and the respondent, the respondent has committed domestic violence against the aggrieved, and the protection order is necessary and desirable to protect the aggrieved from domestic violence.

How do other jurisdictions address this issue?

No jurisdiction other than Queensland requires courts hearing domestic and family violence matters to be closed to the public. However, all jurisdictions except Tasmania specifically enable a court to order that the court be closed in certain circumstances, such as to prevent a witness from being caused undue distress or embarrassment,[121] or if it is in the interests of safety and justice to do so.[122] Some jurisdictions also require courts to be closed for certain parts of the proceeding, for example, while a vulnerable witness (including a victim) is giving evidence or being cross-examined[123] or where children are involved.[124]

The NSWLRC has recently consulted on a proposal to require a court to exclude all people *except journalists* (and those whose presence is required) from civil (as well as criminal) domestic violence proceedings while the applicant/complainant is giving evidence.[125]

All other jurisdictions allow the publication of information given in evidence, though Victoria, South Australia and the Australian Capital Territory restrict the publication of information that may identify a person. In South Australia the restriction only protects the identity of the victim.[126] In Victoria, a court can authorise publication of certain identifying information if it is in the public interest and otherwise just, taking into consideration the circumstances of the case.[127]

A number of jurisdictions enable an adult victim of domestic and family violence to consent to their identity being published. No jurisdiction other than Queensland requires the consent of both parties for identifying information to be published. See interjurisdictional analysis at Appendix 14.

Results of consultation

The Attorney-General provided the Taskforce with the results of preliminary stakeholder consultation conducted by the Department of Justice and Attorney-General on the issue. These responses are included in the summary of the results of consultation below.

Victim-survivors

In consultation for Hear her voice 1, the Taskforce heard arguments for relaxing the restrictions on publishing domestic and family violence proceedings including:

- empowering victims to tell their story
- increasing perpetrator accountability by public identification[128]
- increasing the diversity of media coverage (currently skewed towards only the most violent cases)[129].

The Taskforce also heard of inappropriate behaviour by judicial officers, lawyers and police prosecutors in closed hearings, which may be less likely if subject to media and public scrutiny.

Victim-survivors raised as concerns the likelihood of victims being inadvertently identified, and the potential for systems abuse by perpetrators, particularly in cases of misidentification.[130]

Service system stakeholders

Many service providers expressed concerns about continuing problematic media reporting resulting in a lack of trust and confidence in the media and a reluctance to support changes that would give them greater access to sensitive information.[131] Service providers noted that when the media reported the details of offending behaviour they observed perpetrators (for example, in perpetrator programs) engaging in copy-cat behaviour or making threats to carry out the acts reported.[132] As noted above, there was considerable desire to see media reporting improve and for more education, guidelines and accountability for media outlets.[133]

Concerns were raised about misidentification and the possibility of any relaxation of the limitations being misused by perpetrators or influencing outcomes of proceedings. There was some support for release of de-identified judgements.

During stakeholder forums, support services told the Taskforce that the risk of being identified publicly may be a deterrent to some victims coming forward to seek protection.[134] Others highlighted that media attention also contributed to increased reporting by victims:

> *'I think it is important to have it in media – look at the Hannah Clarke case – we had a woman report after years and years of abuse.'*[135]

Queensland Police Service

The QPS acknowledged potential negative consequences for both victim-survivors and offenders and their family members arising from public disclosure.[136]

Other government

The Office of the Public Guardian (OPG) raised concerns about perpetrators posting information on social media about domestic and family violence matters involving people with impaired capacity, and the effort required to remove the material with no ability to prevent re-publication.[137] The OPG also raised concerns about details of domestic and family violence matters being disclosed as part of Queensland Civil and Administrative Tribunal guardianship hearings (which are not held in closed court and have a high threshold for limiting access).[138]

Legal stakeholders

Generally, legal stakeholders opposed relaxing restrictions while proceedings are on foot, noting the low evidentiary threshold for obtaining a domestic and family violence protection order[139]; the risk of a respondent becoming aware of the order by means other than the court or police[140]; the potential for increasing contested applications for protection orders[141] or deterring victims from applying for an order[142]. QLS considered that:

> *[T]he current laws appropriately preserve the privacy of domestic violence proceedings to limit the various unintended consequences which may flow from open access and/or publication of these matters.* [143]

The BAQ noted the risk that relaxing restrictions would have in making parties 'fodder for the tabloid media' and increasing the risk of malicious or frivolous applications intended to cause reputational harm. The BAQ would be open to considering amendments to allow an aggrieved person to voluntarily disclose their identity at the conclusion of a proceeding.[144]

Office of the Director of Public Prosecutions

The ODPP noted that while requiring both parties to consent to publication may result in the disempowerment of victim-survivors, enabling one party alone to permit publication 'may permit the perpetrator to further publicly victimise the true victim-survivor' in cases of misidentification.[145]

Media

ARTK advocated for legislative change to allow evidence in domestic violence order applications to be published. It also advocated to allow one party to proceedings to consent to be identified, rather than requiring authorisation from all parties. [146] ARTK suggested that removing these restrictions would enable domestic and family violence to be fully reported, helping to educate the public and other victims about assistance available and to reduce the 'silencing' of victims.[147]

Other relevant issues

Relevant cross-cutting issues

As noted in *Hear her voice 1*, First Nations women are disproportionately represented as victims of domestic and family violence and are more vulnerable to being misidentified as a perpetrator of domestic and family violence. In considering how limitations on publication operate in practice, particular attention needs to be given to First Nations peoples.

A focus on safety and protection

The safety and protection of victims of domestic and family violence are central to any consideration of reducing restrictions on publication. Current restrictions on reporting reflect the protective nature of domestic and family violence proceedings with a primary focus on safety and accountability.[148] The purpose of these types of restrictions is to empower people affected by domestic and family violence to seek protection through a simple process and without fear of traumatisation by being publicly identified.[149] The restrictions recognise that there is stigma associated with being a victim, and that the proceedings involve disclosing hurtful private events. While past efforts have already gone some way to increase public awareness of domestic and family violence, it is likely that a level of stigma remains for many victims, warranting a continuation of the restrictions.[150] Advocates also told the Taskforce that closed hearings were more conducive to vulnerable and traumatised victims giving their best evidence. Without them, many victims would not come forward to seek help through the protection of an order.

The public interest case for increased access to proceedings

As noted in Hear her voice 1, current reporting of domestic and family violence is often skewed towards the most extreme and violent cases, contributing to common misconceptions.

The media is recognised as a significant contributor to primary prevention because of its potential influence on public understanding of violence against women.[151] Reporting, however, is often skewed towards the most violent cases and has an 'episodic' framing[152]. The Queensland Government has published the Domestic and Family Violence Media Guide to support journalists in reporting on domestic and family violence. The Taskforce made recommendations in Hear her voice 1 about media coverage of domestic and family violence and noted that 'the fact that domestic violence civil proceedings are held in closed court without public reporting warrants further consideration'.[153]

As media stakeholders argued, increasing access to information in civil proceedings for applications for a domestic violence order, and increasing the ability of victims to tell their story publicly, may go some way to improving the quality of reporting. Conversely, poor reporting of domestic and family violence continues so that it could be argued that any increased public information will only provide more fodder for inappropriate and harmful reporting on this sensitive topic. It is too late for a victim once information is published. Beyond an individual case, this may prevent other victims from coming forward. It has also been suggested, in favour of public reporting, that the closed nature of domestic and family violence proceedings limits the accountability of legal practitioners and magistrates and that increased access would improve the level of scrutiny and accountability to potentially contribute to improved practices within the court.

Taskforce findings

The principle of open justice is important to maintain the integrity of, and public confidence in, the criminal justice system. However, it is appropriate that the safety, protection and wellbeing of victim-survivors remain paramount. This extends to reducing barriers to reporting domestic and family violence wherever possible.

The Taskforce carefully considered whether to remove the requirement that the court be closed but ultimately rejected this option. Open court may deter victims from reporting domestic and family violence for fear that their private and sensitive information could become known to others. We were also concerned that open court hearings may prevent many vulnerable traumatised victims from giving their best evidence.

The Taskforce then considered whether the proceedings could be closed to the public but open to accredited journalists. We were finally persuaded that the concerns noted above would remain, even if access were limited to journalists.

The Taskforce also considered the option of removing the requirement that both parties must authorise publication of identifying information. This was rejected due to a concern that the provision may be misused by a perpetrator of domestic and family violence to continue to intimidate, shame and humiliate a victim in situations where the victim had been misidentified as a perpetrator. The Taskforce concluded that the judicial complaints process, optimally to a Judicial Commission as recommended in *Hear her voice 1,* and the appeals process are the most appropriate mechanisms to provide transparency and accountability in these proceedings, given the strength of the arguments against allowing publication.

The Taskforce therefore supports the continued restrictions on publication of domestic and family violence proceedings, and restricted access to records of proceedings and documents tendered.

There is, however, benefit in the media being able to access and publicly report from court transcripts that do not identify (and could not lead to the identification of) victim-survivors or children, provided the publication is not likely to identify the parties or children. This goes some way to acknowledging the value of the media and principle of open justice in our society and allows some public scrutiny of court proceedings through the media, without posing risks to victim-survivors. Combined with media education and guidelines (Recommendation 6 in *Hear her voice 1*), access to de-identified transcripts can support improved reporting about all types of domestic and family violence, not just those that result in serious criminal charges. De-identification should prevent the release of information likely to lead to the identification of a person involved in the proceedings, or of children.

Media access to de-identified transcripts should be limited to reputable media outlets and to cases where media access is in the public interest, taking into consideration the principles in the DFVP Act.

Taskforce recommendation

86. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence progress amendments to the *Domestic and Family Violence Protection Act 2012* and Domestic and Family Violence Protection Regulation 2012 to:

- enable media representatives approved by the Chief Magistrate to make an application to the court for de-identified transcripts of proceedings so as not to lead to the identification of a person involved in proceedings, or of children, while maintaining the confidentiality and protections on publication in the *Domestic and Family Violence Protection Act 2012*
- require the court, when considering an application for a de-identified transcriptions, to consider whether the provision of such transcripts is in the public interest, subject to the principles in the *Domestic Family Violence Protection Act 2012* that the safety and wellbeing of people who fear or experience domestic and family violence is paramount
- clarify that the prohibition on publication does not extend to criminal proceedings under the Act, including proceedings for contravention of a domestic violence order whether or not the publication of those proceedings would identify a party (other than a child) to a domestic violence order.
- (including a child) to a domestic violence order.

The recommended amendments will not commence until the Government has implemented recommendation 6 of *Hear her voice: Report One, Addressing coercive control and domestic and family violence in Queensland* to review the *Domestic and Family Violence Media Guide*.

Implementation

The amendments to enable the media to apply for access to transcripts of domestic and family violence proceedings in limited circumstances should commence after the review of the Domestic and Family Violence Media Guide (Recommendation 6 of *Hear her voice 1*).

Human rights considerations

Increasing public and media access to domestic and family violence proceedings engages the rights of victims and perpetrators to privacy and reputation (section 25); the right to protection from torture and cruel, inhuman or degrading treatment (section 17); and the protection of families and children (section 26). Making information available to support increased media reporting engages the right to freedom of expression (section 21). Consideration of safety risks for victims engages the right to life (section 16).

Human rights promoted

This option promotes the right to freedom of expression (section 21) and reduces potential safety risks associated with other options consistent with the promotion of the right to life (section 16) and the right to protection from torture and cruel, inhuman or degrading treatment (section 17) and the protection of families and children (section 26). By limiting access to de-identified information, the rights of victims and perpetrators to privacy and reputation (section 25) are promoted, as is the right to the protection of families and children.

Human rights limited

By increasing the ability for the public and media to access information that is currently confidential, this recommendation potentially limits the rights of victims and perpetrators to privacy and reputation (section 25). This seems unlikely, however, given that the transcripts must be de-identified.

Limitations on rights are justified

The right to privacy and reputation protects the individual from all arbitrary and unlawful interferences and attacks upon their privacy, family, home, correspondence and reputation. The notion of arbitrary interference extends to those interferences that may be lawful, but are unreasonable, unnecessary and disproportionate. The recommendation expands the amount of information available to people who are not parties to domestic and family violence proceedings. This arguably limits the privacy rights of both parties. However, access is provided only to de-identified information and the court provides a safeguard where an aggrieved person raises concerns. Options that are less restrictive (for instance, the status quo) do not achieve the purpose of the recommendation, that is, to promote open justice, including improved accountability and media coverage.

On balance, the importance of the purpose of the recommended amendments outweighs any limitation on rights that may occur as a result of the amendments and can be justified in a free and democratic society based on human dignity, equality and freedom.

Evaluation

The impact of the amendments and their implementation should be reviewed as part of recommendation 186 of this report which provides for a review of all legislative amendments recommended by this report five years after their commencement, with a particular focus on any impacts on victim-survivors of sexual violence.

Limitations on publishing information about accused young people

The Charter of youth justice principles in the *Youth Justice Act 1992* (YJ Act) aims to give a child the opportunity to develop in responsible, beneficial and socially acceptable ways, while recognising their need for guidance and assistance.[154]

That is why the identities of children and young people engaged with the youth justice system are protected in Queensland and around Australia. These protections recognise that a majority of young people who are involved in the youth justice system do not reoffend. They also reflect the harmful stigmatising effects of a child being labelled as a criminal, including the detrimental impacts of this on their rehabilitation.

These provisions are consistent with Australia's obligations under the United Nations *Convention on the Rights of the Child* to protect the child's right to privacy and to promote their reintegration.[155] These obligations are reflected in the Charter of youth justice principles.[156]

Background

Current position in Queensland

The YJ Act prohibits the publication of identifying information about a child who has been, or is being, dealt with under the Act, unless an order is made by a court.[157] Identifying information includes information that may lead to the child's

identification, including details of their name, address, school or a photo or video of them or someone else.[158] This prohibition continues after the child becomes an adult.

A court can make an order allowing publication where a child has been convicted of a particularly heinous offence with a maximum sentence of life imprisonment (such as murder, attempted murder, rape, armed robbery or arson) and which involved the commission of violence, and when the court considers it would be in the interests of justice to allow publication.[159] Regard must be given to community protection needs and the impact on the child's rehabilitation [160].

A person is prohibited from intentionally disclosing to anyone confidential information about a child gained through their involvement in the administration of the YJ Act, except as allowed under the YJ Act. Confidential information about a child includes a report about the child made for the court and a record or transcription of court proceedings about the child. Involvement in the administration of the YJ Act includes 'performing a function under or for a purpose of [the YJ] Act'. [161]

There is some lack of clarity as to whether the restrictions limit the ability of a victim of offending by someone under 18 to tell others about their experience, or the outcome of the proceeding, perhaps even for the purpose of obtaining counselling or medical assessment or treatment. A recent media report referred to a prosecutor informing the court that a victim of rape committed by a 15-year-old was unable to tell anyone about the offender pleading guilty without breaching the YJ Act.[162]

The YJ Act enables the sharing of information to coordinate the provision of services to meet the needs of children charged with offences.[163] This information must be shared under arrangements established by the chief executive of a department involved in the provision of health, housing, education and disability services, among others.[164] These provisions are focused on the interests of children accused or convicted of offences. They do not provide for information sharing to support the wellbeing of a victim, including a child victim.

How do other jurisdictions address this issue?

Queensland aligns with other Australian jurisdictions in relation to protecting the identity of children accused or convicted of offending, but there are differences.

In Victoria, the Australian Capital Territory and New South Wales, the accused child or offender (or their guardian) is able to consent to the publication of identifying information, which Queensland does not currently allow.

As in Queensland, legislation in other jurisdictions lacks clarity. It is unclear whether in other jurisdictions a victim is prohibited from disclosing information to another individual, although this may be permissible in New South Wales, Victoria and South Australia.

Results of consultation

Victim-survivors

As noted above, victim-survivors spoke of the importance of being able to tell their story if they choose[165] and their frustration with limitations on publishing the identity of an accused person.[166] None of these, however, were victims of child offenders or children accused of sexual offending.

The Taskforce heard from a mother of victim-survivors of sexual offending committed by a young person dealt with under the YJ Act. She felt the youth justice processes were focused on outcomes for the offender, with little consideration for how these processes impact victim-survivors.[167] This was particularly the case when participating in youth justice conferencing. (Discussed in chapter 2.15)

Young people

When the Taskforce met with members of the Queensland Family and Child Commission's Youth Advisory Council (YAC), young people spoke about the importance of diverse young women contributing their voices to influence system reform. One woman told the Taskforce that she was open with students about her experience as a victim-survivor, noting the need to avoid people thinking it was an 'abstract issue'. The YAC members spoke at length about the need for quality education about consent and healthy relationships, beginning at an early age. They noted the fear of getting the accused person in trouble as a barrier for many people reporting sexual violence. [168]

The YAC members reflected on the impact of complex social pressures around sex and consent and the impact of persistent rape myths on young people's understanding of sexual violence. One young woman spoke of feeling socially isolated after disclosing her sexual assault by a peer. The YAC members spoke of the challenge in seeking 'justice' and the need for connected services to support victims to recover, regardless of whether they choose to make a formal complaint. Another young woman noted the difficulties accessing support services in small towns. The YAC members reflected on the importance of media guidelines to promote good practice when reporting on sexual violence. [169]

Service system stakeholders

Few service system stakeholders specifically addressed the issue of identifying children involved in the criminal justice system as accused persons. Services provided mixed feedback about their clients' experiences of youth justice conferencing. Some reported positive outcomes for both victim-survivor and accused persons.[170] Others noted negative experiences, suggesting that it can be very victim-centric and that 'little attention is given to the impact on the victim and what is best for them'.[171]

Government

Queensland Police Service

The QPS supported the existing limitations on publication of the names of child offenders, noting the principles of rehabilitation.[172] As noted above, the QPS submission acknowledged that many social media sites already name victims and offenders with limited controls to manage this type of publication. [173] The QPS also noted the potential negative consequences for offenders (and victims) of publication, including the 'labelling of a person' as an offender and undermining protective factors. [174]

Other government

The Queensland Family and Child Commission (QFCC) noted the need to strike a balance between the rehabilitation of the youth offender, the healing of the victim-survivor, and the needs of the community.[175] The QFCC supported processes that encourage rehabilitation of children to prevent recidivism. [176] It noted, however, that young women often feel 'stuck' being unable to tell others about their experiences if they are not yet ready to commit to criminal proceedings. [177]

The Department of Children, Youth Justice and Multicultural Affairs (DCYJMA) noted that current provisions are in line with child offenders being more likely than adults to 'age out' of offending, and the need to promote their reintegration.[178] DCYJMA advised that the department does not usually, as a matter of policy, prosecute people for breaching these provisions. Instead, the department usually writes to journalists to draw their attention to the YJ Act.

Legal stakeholders

The QLS opposed any relaxing of the prohibition against publishing the identity of children convicted of an offence as it would infringe the child's human rights and have adverse impacts on their prospects of reintegration.[179] The BAQ did not support any amendments in relation to publication.[180] LAQ emphasised the importance of protection for children as victims, witnesses or parties to the proceedings and did not support any reform that would dilute these protections.[181]

Media

ARTK's submission did not recommend amendments to the YJ Act, but did recommend that journalists be permitted to attend Children's Court proceedings, noting that the media rarely apply to be present in the Children's Court so that 'the majority of matters go unreported and any benefit that can be obtained from publicising the consequences by youth crimes is lost'.[182]

Other relevant issues

Relevant cross-cutting issues

While most young Aboriginal and Torres Strait Islander people never come into contact with the criminal justice system, those who do are likely to have experienced multiple forms of disadvantage.[183] This needs to be taken into consideration in relation to the rehabilitation of young offenders, supported by protection of the young offender's identity.

Balancing the need for some victims to tell their story to heal, and the need to protect the identity of child offenders

Children involved in the criminal justice system must be treated in a way that is appropriate for the child's age and considers the desirability of promoting their rehabilitation.[184] Protecting the disclosure of their identities has been recognised as essential to achieving this, as reflected in a range of human rights instruments. [185] This is particularly important now when published details of offending as a child on the internet will be able to be searched and republished long afterwards, even if the child has become a reformed and responsible adult.

As noted above, there is increasing recognition that a trauma-informed approach extends to empowering victims to choose whether to share information about their experience, including with other victims, and that sharing their story can be an important element in a victim's healing process.[186]

Victims of sexual offending by young offenders are often themselves children. Where the sharing of the victim story will lead to the identification of a child offender, there is a tension between these two objectives. Taskforce Recommendation

81 will, if accepted, enable young victims to consent to publication of identifying information, or self-publish identifying information, provided it does not identify a child offender.

Taskforce findings

Where possible, victim-survivors should be empowered to share their experience as this can be an important part of their healing process. However, this should not extend to the identity of a child offender being publicly disclosed, directly or indirectly.

The Taskforce has considered the option of allowing victims of sexual violence to self-publish or consent to the publication of identifying information, even when it identifies a young offender. We rejected this option on the basis that it could undermine the youth offender's rehabilitation prospects, which, if successful, will prevent recidivism and benefit the community. The Taskforce has concluded that, ordinarily, and consistent with the Charter of youth justice principles and the United Nations Convention on the Rights of the Child, the need to maximise a young person's chances of rehabilitation and prevent reoffending should prevail over the benefit to victims in publishing the identity of child offenders. Importantly, this does not prevent victims of child offenders sharing their experiences, including with like victims, but they cannot, directly or indirectly, publish the identity of those offenders unless, for certain heinous offences, the court permits this.

There is a need, however, to ensure that service systems have the ability to share information where it assists in providing support for the victims of child offenders. At the very least, government departments working to assist the child offender or victim should be free to share information where this is in the interests of the victim, in addition to the interests of the child offender. Current information-sharing provisions are focused on the wellbeing of youth offenders. The YJ Act should allow information sharing where this is in the interests of a child, whether victim or offender.

Taskforce recommendations

87. The Minister for Children and Youth Justice and Minister for Multicultural Affairs progress amendments to the *Youth Justice Act 1992* to make it clear that victims of sexual violence committed, or alleged to have been committed against them by a child offender can disclose information for the purpose of obtaining therapeutic counselling and support.

88. The Minister for Children and Youth Justice and Minister for Multicultural Affairs progress amendments to the *Youth Justice Act 1992* to enable relevant government and non-government agencies to share information, including confidential information for the purposes of coordinating and providing services and supports to victims of sexual violence committed or alleged to have been committed by a child offender, with necessary safeguards and protections.

Implementation

Implementation of these recommendations should involve consulation on a draft of the amendments, before they are introduced, with sexual assault, women's health and youth support service providers, as well as legal stakeholders and Aboriginal and Torres Strait Islander peoples, to ensure the provisions are workable and appropriately balance the rights of victims and child offenders. Guidance and training on the amendments should be provided by the Department of Children, Youth Justice and Multicultural Affairs to key service system stakeholders who may utilise the provisions.

Human rights considerations

Protecting the identity of children accused of crime engages the right to privacy in the *Human Rights Act 2019* (section 25), the United Nations *Convention on the Rights of the Child*, and the United Nations *Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules)[187]. The child's right to a fair hearing (section 31) and rights in criminal proceedings (section 32) are also engaged. The United Nations *Convention on the Rights of a Child* includes a right for any child who is capable of forming their own views to express those views freely in all matters affecting them, and the right to impart information and ideas of all kinds.[188] The issue also engages victims' rights to freedom of expression (section 21); protection from torture and cruel, inhuman or degrading treatment (section 17) and privacy and reputation (s25).

Human rights promoted

The recommendations promote victims' rights to freedom of expression (section 21) and by improving service provision to support their wellbeing may also promote their right to protection from degrading treatment (section 17) and their right to life.

Human rights limited

The recommendations do not limit any rights. Careful drafting and implementation of the recommendation will be needed to ensure that the privacy rights of child offenders are not limited.

Evaluation

The impact of the amendments and their implementation should be reviewed as part of recommendation 186 of this report, which provides for a review of all legislative amendments recommended by this report five years after their commencement, with a particular focus on any impacts on victim-survivors of sexual violence.

Conclusion

Preventing the publication of victims' identities (directly or indirectly) is, and should continue to be, a cornerstone of the response to domestic, family and sexual violence in Queensland. However, the community has come to better understand the importance of empowering victims who wish to publicly share their stories for their own healing, to connect with and help other victims, or to drive positive social change. The Taskforce recommendations will help to clarify how this can best occur while balancing the competing interests of victim and child offender. The recommendations will also clarify that non-publication provisions to aid in the rehabilitation of youth offenders do not prevent victims from discussing the offences committed against them, even by youth offenders, with medical practitioners, counsellors or the like.

The time for providing special treatment to Queensland adults accused of certain sexual offences has now passed. The Taskforce recommendations will bring the state into line with other major Australian jurisdictions in relation to adults, while continuing to prohibit the publication of the identities of young offenders in most cases.

The development of a media guide that includes a clear explanation of these often confusing provisions will support continued improvements in media reporting on sexual violence, so that the media can continue its vital role in leading positive social change.

[1] Scott v Scott [1913] AC 417.
[2] R v Sussex Justices; ex parte McCarthy [1924]KB 256, 259 (Lord Hewart CJ).
[3] John Fairfax Group Pty Ltd v. Local Court of New South Wales (1991) 26 NSWLR 131, p. 140 (Kirby J)
[4] Georgina Sutherland, Margaret Simons and Annie Blatchford, 'News Media and the Primary Prevention of Violence against Women and Their Children: Emerging Evidence, Insights and Lessons' (Evidence Paper, Our Watch, June 2017).
[5] Royal Commission into Institutional Responses to Child Sexual Abuse (Final Report), Vol 2, 167-8
[6] Jessica C Oldfield and Dave McDonald, 'I Am That Girl': Media reportage, anonymous victims and symbolic annihilation in the aftermath of sexual assault (2021) 00(0) Crime Media Culture, 12-13.
[7] #LetHerSpeak website, *Why we advocate, https://www.letusspeak.com.au/why-we-advocate/*
[8] *Criminal Law (Sexual Offences) Act 1978,* s 3.
[9] *Criminal Law (Sexual Offences) Act 1978,* s 6.
[10] *Criminal Law (Sexual Offences) Act 1978,* s 12.
[11] *Criminal Law (Sexual Offences) Act 1978,* s 10(2).
[12] Office of the Director of Public Prosecutions letter to the Attorney-General and Minister for Justice, 27 October 2021.
[13] *Criminal Law (Sexual Offences) Act 1978,* s 10(2).
[14] *Child Protection Act 1999*, s 194.
[15] *Child Protection Act 1999,* s 194.
[16] Letter from the Department of Justice and Attorney-General received 25 May 2022.
[17] Jessica C Oldfield and Dave McDonald, 'I Am That Girl': Media reportage, anonymous victims and symbolic annihilation in the aftermath of sexual assault (2021) 00(0) Crime Media Culture, 2.
[18] *Sexual Offences (Evidence and Procedure) Act 1983* (NT), s6(2)(a); *Judicial Proceedings Reports Act 1958* (TAS), 194K(3)(5).
[19] *Judicial Proceedings Reports Act 1958* (VIC), s 1BB(b).
[20] *Evidence (Miscellaneous Provisions) Act 1991* (ACT), s 74(2).
[21] Crimes Act 1900 (NSW), s 578A(4).
[22] Judicial Proceedings Reports Act 1958, s 4(1BC).
[23] New South Wales Law Reform Commission, *Open Justice: Court and tribunal information – access, disclosure and publication* June 2021, 53 (Proposal 5.12).
[24] Judicial Proceedings Reports Act 1958, s 4(1BA).
[25] Meeting with the Women's Centre, 9 March 2022, Townsville.
[26] Stakeholder consultation forum, 23 March 2022, Cherbourg; Stakeholder consultation forum, 10 March, 2022, Brisbane; Meeting with the Women's Centre, 9 March 2022, Townsville.
[27] Full Stop Australia Taskforce submission, Discussion Paper 3, 13.
[28]#LetHerSpeak website, *Why we advocate, https://www.letusspeak.com.au/why-we-advocate/*
[29] Stakeholder consultation forum, 10 March 2022, Brisbane.
[30] Stakeholder consultation forum, 10 March 2022, Brisbane.
[31] Stakeholder consultation forum, 1 April 2022, Gold Coast; Stakeholder consultation forum, 10 March 2022, Brisbane; Stakeholder consultation forum, 3 March 2022, Mackay; Full Stop Australia submission, 14
[32] Full Stop Australia submission, Discussion Paper 3, 15.
[33] Stakeholder consultation forum, 10 March 2022, Brisbane.
[34] Stakeholder consultation forum, 1 April 2022, Gold Coast.
[35] Stakeholder consultation forum, 1 April 2022, Gold Coast.
[36] Stakeholder consultation forum, 23 March 2022, Cherbourg.
[37] Stakeholder consultation forum, 10 March 2022, Brisbane.
[38] Stakeholder consultation forum, 3 March 2022, Mackay.
[39] Stakeholder consultation forum, 10 March 2022, Brisbane; Stakeholder consultation forum, 1 April 2022, Gold Coast.
[40] Full Stop Australia, Discussion Paper 3, submission, 15.
[41] North Queensland Combined Womens Service Inc submission, Discussion Paper 3, 4.
[42] Stakeholder consultation forum, 1 April 2022, Gold Coast.
[43] Queensland Police Service submission, Discussion Paper 3, 18.
[44] Queensland Police Service submission, Discussion Paper 3, 19.
[45] Bar Association Queensland submission, Discussion Paper 3, 3; Legal Aid Queensland submission to the Attorney-General and Minister for Justice, *Public access to, and reporting of, sexual offences and domestic and family violence matters;* Office of the Director of Public Prosecutions letter to the Attorney-General and Minister for Justice, 27 October 2021.
[46] Legal Aid Queensland submission, 31; Queensland Law Society submission, 22.
[47] Queensland Law Society submission, Discussion Paper 3, 22.
[48] Legal Aid Queensland submission, Discussion Paper 3, 31.
[49] Legal Aid Queensland submission, Discussion Paper 3, 31.
[50] Legal Aid Queensland submission, Discussion Paper 3, 31.
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[56] Knowmore submission, Discussion Paper 3, 12.
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[66] UN General Assembly, *Convention on the Rights of the Child,* United Nations, Treaty Series, vol 1577 opened for signature on 20 November 1989, Articles 12 and 13 .
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[72] *Criminal Law (Sexual Offences) Act 1978,* s 7.
[73] *Criminal Law (Sexual Offences) Act 1978,* s 3.
[74] *Criminal Law (Sexual Offences) Act 1978,* s 7(4).
[75] *Criminal Law (Sexual Offences) Act 1978,* s 12.
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[84] Crime and Misconduct Commission, *Seeking Justice: an Inquiry into how sexual offences are handled by the Queensland criminal justice system* (2003), Recommendation 20.
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[89] Stakeholder consultation forum, 10 March, 2022, Brisbane.
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[91] Stakeholder consultation forum, 10 March, 2022, Brisbane.
[92] Stakeholder consultation forum, 10 March, 2022, Brisbane.
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[95] Queensland Police Service submission, Discussion Paper 3, 18.
[96] Stakeholder consultation forum, 1 April 2022, Gold Coast.
[97] Queensland Law Society letter to the Attorney-General and Minister for Justice, 4 November 2021.
[98] Bar Association Queensland submission, Discussion Paper 3, 2.
[99] Legal Aid Queensland submission to the Attorney-General *Public access to, and reporting of, sexual offences and domestic and family violence matters,* 1 November 2021, 13.

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[102] North Queensland Women's Legal Service submission, 8
[103] Office of the Director of Public Prosecutions letter to the Attorney-General and Minister for Justice, 27 October 2021.
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Chapter 2.15: Restorative justice for victims of sexual violence

For many victims, justice is about being heard, having the harm they have suffered acknowledged, and the perpetrator taking responsibility for their actions. Restorative justice has the potential to provide a flexible victim-centric process that can supplement conventional criminal justice system processes.

Queensland needs to establish a clear framework upon which to build the necessary capability and capacity for restorative justice to be a meaningful option for victims and perpetrators of all offences. Particular expertise needs to be developed and tested to safely expand its application to victims and perpetrators of sexual offences.

Background

Restorative justice is a process in which all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.[1] These processes recognise that a criminal offence is more than an act of breaking the law – it also causes harm to the victim, family relationships and the community.[2]

Restorative justice processes are flexible and can take many forms (for example, an exchange of letters or some engagement between the victim and a representative of an institution) but most commonly they involve conferences between victims and perpetrators. A restorative conference is a specific process, with defined protocols, that brings together those who have caused harm through their wrongdoing with those they have directly or indirectly harmed.[3] Restorative justice processes may be an alternative to or complement conventional criminal court proceedings. They can also take place at different points in the criminal justice process, for example before charge, trial or sentencing or after sentencing.

While restorative justice processes share theoretical bases and techniques with other forms of alternative dispute resolution, restorative justice differs in that it does not set out to resolve or mediate a dispute about contested facts in a particular case, but rather to address harm done.[4] It is therefore generally contingent on the accused person admitting to their actions and being willing to take responsibility for them.[5]

Some academics have noted that restorative justice processes dealing with gendered violence can lack a gender and trauma-sensitive lens and require particular attention to women and girls' experience of stigmatisation and shame.[6] This is an important consideration in the development of restorative justice processes dealing with sexual violence in Queensland.

Current position in Queensland

Queensland operates different restorative justice processes depending on whether the offence was committed by a child (under 18 years old) or an adult.

Restorative justice for offences committed by children

Restorative justice conferencing is available in relation to offences of all types (including sexual offences) committed by children and young people. The aims of restorative justice conferencing are 'to achieve reparation of harm for the victim by allowing the person who has been harmed the opportunity to have a say about how they were affected by the offence and how the child may make an amends'.[7] Restorative justice also operates to divert young people away from the formal court system and reduce recidivism.[8]

The *Youth Justice Act 1992* (YJ Act) provides the legislative framework for the operation of restorative justice processes for offences committed by children. Referrals can be made by police (where a child admits the offence)[9] or by a court[10]. In certain circumstances, a court *must* consider referring the offence for a restorative justice process as a court diversion referral (if a child enters a plea of guilty) or a pre-sentence referral (if a child is found guilty).[11] A court can also make an order that a child perform their obligations under a restorative justice agreement reached as part of a pre-sentence referral, or that a child attend a restorative justice process as part of the sentence.[12] Where restorative justice referrals don't

proceed to conference or don't result in completion of the agreement, the matter is returned to the referring authority. Subsequent decisions about the offences are made by the referring authority (for example, police or the court).[13]

Restorative justice conferencing is run by accredited restorative justice convenors in the Department of Children, Youth Justice and Multicultural Affairs (DCYJMA). Nineteen restorative justice teams serve the whole of Queensland. DCYJMA told the Taskforce that the accreditation process involves 'the most comprehensive training provided for restorative justice convenors in Australia'. [14] DCYJMA also advised that sex offence conferences are facilitated by two experienced convenors who have undertaken additional training in conferencing offences of a sexual nature.[15]

DCYJMA advises that Youth Justice Restorative Justice Convenors work with victims of sexual offences to first link them to counselling and support services, with the aim of preparing them for conference, or to try to repair harm if they choose not to participate in the conference process.[16] Young offenders can be required to engage in specific offence-focused counselling or other interventions, such as sex offending, fire fascination, or driver awareness, before attending the restorative justice process.[17]

According to DCYJMA, from 1 July 2020 to 31 December 2020, 1,349 young people were referred to restorative justice conferencing by police or the court. Of these young people, 1,290 were diverted from the youth justice system.[18] DCYJMA told the Taskforce that there has been a 23% increase in restorative justice conferences (for all offences) held in the 12 months ending 31 March 2021, compared with the 12 months ending 31 March 2020.[19]

A 2018 evaluation of restorative justice conferencing for young offenders in Queensland found that 77% of young people who completed a conference either did not reoffend or showed a decrease in the magnitude of their reoffending.[20] Both young people and victims reported high levels of satisfaction with the conference process.[21]Referrals for sexual offences have been available since the introduction of (youth) restorative justice conferencing in 1997. [22] However, numbers for conferences involving sexual offences are low – only 3% to 5% of conferences between 2016-17 and 2020-21 related to at least one sexual offence.[23]

Restorative justice for offences committed by adults

Adult restorative justice conferencing (ARJC) (previously called 'justice mediation') in Queensland does not have a clear legislative framework with established underlying principles or operating guidelines. Nor is there any clear understanding of the interaction between ARJC and the criminal justice system. Instead, ARJC relies on the *Dispute Resolution Centres Act 1990* (DRC Act), which is framed around mediation for dispute resolution. The lack of governance and accountability surrounding the model operating in Queensland has been criticised as being unsafe.[24]

The DRC Act uses the language of 'dispute' throughout and refers to a 'mediation session' as the primary activity of the mediators appointed under the Act. ARJC relies on the provisions of the DRC Act, including to ensure that ARJC is voluntary[25], confidential[26] and privileged[27]. The DRB Act describes a 'referring order' as being the courts' powers to refer civil matters.[28]

In addition, there are provisions in other legislation that relate to the operation of ARJC. For example, the *Justices Act 1886* provides that where a summons or notice to appear has been issued, the clerk of the court or magistrate may order the matter go to 'mediation' under the DRC Act if they consider the matter would be better resolved by 'mediation' and the complainant consents.[29] If such an order is made, the summons may not be served unless the mediation does not go ahead or is terminated.[30] A court's ability to use ARJC before an accused person is sentenced stems from its power to adjourn matters.[31]

ARJC is provided by the Dispute Resolution Branch (DRB) in the Department of Justice and Attorney-General. The DRB has nine staff to service criminal cases in greater Brisbane, Ipswich, Gold Coast, Townsville and Cairns.[32] Despite the professionalism, dedication and expertise of the members of the DRB, this low level of resourcing appears to impact the level of visibility and accessibility of ARJC. Even with this limited resourcing, the DRB told the Taskforce that it receives about 350 referrals per year, resulting in around 200 conferences, with referrals steadily increasing.

Although there is no clear framework to guide interaction with the criminal justice system, the DRB advises that referrals for adult restorative justice conferencing can be made at any stage of the criminal justice process, including:

- before a charge being laid (a referral may be made by police)

- before a court hearing (a referral may be made by police prosecutors, the Office of the Director of Public Prosecutions (ODPP) if the matter has been committed to a higher court, or by a judicial officer by order of the court)
- before or as part of sentencing (a referral by a judicial officer)
- post-sentence (a referral by Queensland Corrective Services)
- at any stage of the process, or where no complaint has been made, by a victim of crime.[33.]

The DRB advises that most referrals (77%) come from police prosecutors for matters where a charge has been laid but before the matter has been finalised in the court.[34.]

The *Police Powers and Responsibilities Act 2000* provides that a police officer must release an adult arrested for an offence at the earliest opportunity if they reasonably consider it more appropriate for the arrested person to be dealt with by some other means (including alternative dispute resolution), instead of charging the person with an offence.[35]

The Queensland Police Service (QPS) Operational Procedures Manual (OPM) enables police to refer a wide range of matters to ARJC (with the support of the victim), and excludes offences involving a domestic violence order (unless approved by the officer in charge of police prosecution).[36] If the ARJC results in an agreement that is complied with, the investigation ceases (unless there are exceptional circumstances).[37]

The ODPP can refer matters before the District and Supreme Courts to ARJC. The Director's Guidelines include 'the availability and efficacy of any alternatives to prosecution' among the factors that can be taken into consideration when determining whether it is in the public interest that a matter should, or should not, proceed.[38] The ODPP also applies criteria for considering whether to refer a matter.[39] The DRB advises that referrals are usually made at the request of victims who do not wish to proceed with criminal proceedings, including where the matter has been assessed as unlikely to achieve a successful conviction.[40] Successful ARJC outcomes usually result in the prosecution filing a 'nolle prosequi' or 'no bill', which informs the court that the prosecution will not proceed further with the matter.[41]

As noted above, matters can also be referred or even ordered by magistrates courts, but the DRB told the Taskforce that ARJC is mostly viewed as a matter between defence lawyers and prosecutors.[42] Victim-initiated matters are rare, possibly due to the lack of visibility of the service.[43] The DRB states that it has a satisfaction rate of 93%, consistent across both victims and offenders.[44]

A small but increasing number of gender-based violence (domestic violence and sexual offences) cases are being referred to ARJC, with an even smaller number proceeding to conference (due to an intensive suitability assessment process). Within existing resources, the DRB is working to align approaches to these matters to best practice by providing training and building relationships with specialist services.[45] The DRB acknowledges that further work is required to achieve a best-practice approach to matters involving domestic, family and sexual violence.[46]

In January 2020, in response to a recommendation by the Queensland Productivity Commission in its *Inquiry into Imprisonment and Recidivism* report (the QPC Report),[47] the Queensland Government committed to develop an updated ARJC model, as well as considering how restorative justice conferencing in Queensland can be expanded.[48] An external review has been undertaken to 'critically assess and update' the ARJC model.[49] However, it appears that an updated model is yet to be approved.

In 2021, the Australian Productivity Commission also found that restorative justice was a cost-effective and suitable alternative to traditional criminal justice responses.[50]

How do other jurisdictions address this issue?

In Australia, restorative justice is used for adult sexual offending in the Australian Capital Territory (ACT), and, to a more limited extent, in New South Wales and Victoria.

In the ACT, restorative justice conferencing is run by the Department of Justice and Community Safety. Legislation establishes victim-centred underlying principles and objects[51] and a framework for operation.[52] The ACT model is often recognised as best practice, along with *Project Restore – NZ* (see below). To be eligible for restorative justice, most sexual offending in the ACT requires the offender to be charged and to have pleaded or been found guilty.[53] The legislation states that the referral is not to impact other action or proposed action[54] but that it can be considered before other action[55]. It appears that police may discontinue some matters following a successful restorative justice process.[56]

In New South Wales, restorative justice may be available if the person responsible is serving a sentence (in custody or on parole) for the offence and all legal matters have been finalised.[57] Victims and offenders self-refer in New South Wales.[58]

In Victoria, restorative justice is available for victims of domestic and family violence, with an overarching policy document guiding practice.[59] This was established as a response to the Victorian Royal Commission into Family Violence.[60] While restorative justice for sexual offences is not broadly available, one sexual assault service (the first established in Victoria) has offered restorative justice to clients and others who have been referred to the service for more than 20 years.[61] A 2019 evaluation was positive, noting the restorative justice process offered something to victim-survivors that traditional justice was unable to provide and was capable of meeting victims' justice interests.[62] It found that the process was effective in restoring a sense of control (rather than fear and powerlessness) for victim-survivors.[63] It noted that '[l]egislation and funding will be necessary to enable restorative processes to realise their full potential and to establish their accessibility and relative weight when taking place alongside more traditional criminal justice processes'.[64]

The Victorian Law Reform Commission's (VLRC) 2021 *Improving the Justice System Responses to Sexual Offences* report recommended that restorative justice options in Victoria be expanded and strengthened, including for use in cases involving sexual offences.[65] It stressed that restorative justice 'should supplement but not replace other criminal or civil justice options' and stipulated that the scheme should be set out in legislation.[66]

In New Zealand, since 2014, all District Court cases (including sexual offences) must be referred to a restorative justice suitability assessment after a guilty plea and before sentencing (if consistent with the victim's wishes).[67] Cases can also be referred after a finding of guilt, but before sentencing. Outcomes of any restorative justice process must be considered in sentencing.[68] Restorative justice services in New Zealand are run by approved community-based groups and accredited facilitators contracted by the Ministry of Justice.[69] A guide for best practice published by the Ministry of Justice provides a framework for all referral types,[70] and specific standards have been developed for sexual offending cases to which approved providers must adhere.[71] *Project Restore – NZ* is the only provider for cases of sexual violence.[72] This service also accepts referrals from police, the community and self-referrals.[73] When conducting restorative justice, *Project Restore – NZ* uses people with expertise in both restorative justice and sexual violence (a survivor specialist and an offender specialist) as well as a clinical psychologist.[74]

The VLRC has compiled information about restorative justice for adult sexual offences in Australian jurisdictions and New Zealand and notes its availability in Belgium, Denmark, Norway, England and Wales, Ireland and Canada.[75]

Results of consultation

Victim-survivors

The Taskforce repeatedly heard from victim-survivors that they felt disempowered and silenced by the conventional criminal justice system. This victim-survivor statement, contained in a submission, captures some of the frustration frequently conveyed to the Taskforce:

'[Prior to the court process] I sensed a reciprocal kind of outrage for what had happened to me and that we were working together towards accountability. But since it's moved to court, it's like none of us get a say. Like, if things weren't going smoothly with the police or at the hospital, you could talk to them and we had some influence. But now, I keep hearing, "Well, the judge will decide that at the end of the day." So the judge gets to decide all of these things without even talking to me, cause I'm "just a witness". Then even when I do get to "have my day in court" I'm told, "you can say this", "you can't say that", "don't mention his drug taking, or any of the violence from before". And the defence barrister doesn't seem to have any of these rules! No wonder the jury couldn't come to a decision, they haven't even heard the whole story. There's so much more to the story![76]'

Some victim-survivors reflected on their negative experience of the criminal justice system and suggested that they 'would have preferred a restorative justice approach'.[77] Many other victims told the Taskforce that they felt disempowered and voiceless in criminal justice processes, particularly with no one representing their interests. One victim-survivor explained that, when the prosecution decided not to proceed, she felt she 'was also denied restorative justice'.[78] Another victim-survivor wrote about why she did not report the sexual abuse she experienced and how the options available to her did not meet her needs.

'I didn't care about whether he got jail time, or the legal punishment - I don't even know if he could have had his [medical] licence stripped or anything like that. I needed someone to say that what had happened was real, I didn't deserve it and I needed help to recover. The punitive response would not help my mental health out, or help me sleep at night, though I can see why some other victims might need that. I wanted closure.[79]'

The Taskforce heard from a mother of two daughters who were victim-survivors of sexual violence committed by a young person. She was very dissatisfied with the experience of youth justice conferencing, which she found offender-centric and lacking meaningful accountability for the offender. She criticised elements of the process, which she felt did not give due consideration to the harm her daughters had suffered and privileged the requests of the offender. She told the Taskforce that the experience had detrimental consequences for her daughters' wellbeing and caused them to distrust the criminal justice system.[80]

Service system stakeholders

In consultation forums, service providers were generally supportive of exploring survivor-supported restorative justice as one option available to victims of sexual violence, but cautioned that it should not be at the expense of significant improvements in conventional criminal justice processes.[81]

The Queensland Sexual Assault Network (QSAN) advocated to prioritise improving criminal justice responses so that restorative justice does not become the 'poor person's' method of justice and so that the high likelihood of acquittal does not deter offenders from participating in restorative justice where this is the preferred option for victim-survivors.[82]

QSAN noted its clients' negative experiences of youth justice conferencing. QSAN expressed concerns that youth justice conferencing is offender-centric and noted instances in which case assessment had resulted in sexual offence cases being (in QSAN's view) inappropriately excluded from, or selected for, youth justice conferencing.[83]

North Queensland Combined Women's Services conveyed the negative experience of families it had supported to engage with youth justice conferencing. They noted that families felt there was a lack of real consequences for harm caused, and were doubtful that the process would lead to the accused person fully taking responsibility for their actions and the harm caused. They stated:

Whilst 'on paper' the process of [youth] restorative justice appears trauma-informed and survivor-centred when translated to practice, the further responsibility and onus placed on women and their families compounded the trauma they had already experienced.[84]

Given these negative experiences of youth justice conferencing, North Queensland Combined Women's Services held reservations about the increased use of restorative justice for adult sexual offences. The organisation raised particular concerns about meaningful accountability for offenders.[85] Instead it supported prioritising reforms to improve the existing criminal justice system. It noted that if the current justice system were significantly improved through trauma-informed and survivor-centred practices, alternative justice-seeking models including restorative justice would be unnecessary.[86] North Queensland Combined Women's Services did, however, suggest that there may be benefits in restorative justice to supplement the criminal justice system and highlighted the importance of a victim-centred approach.[87]

There are possible benefits for the interface of some restorative justice practices with the court system, however, the safety of women and the accountability for the person who causes harm must remain at the centre of this transformation.[88]

The strong message from the service sector was that even survivor-supported restorative justice must not be expanded at the expense of addressing the present failings in the criminal justice system for victim-survivors of sexual offences. Some working in the sector firmly stated that restorative justice was simply not appropriate for any victim-survivors of sexual offences as they are entitled to nothing other than the full protection of the criminal justice system.[89]

On the other hand, the Taskforce heard of positive examples of youth justice conferencing in sexual offending between young peers. When discussing cases where they believed their clients had achieved 'justice', counsellors at the Centre Against Sexual Violence (Logan and Redlands) referred to at least two cases where their clients had participated in youth justice conferencing. They observed that the process was well handled and victim-centric. The counsellors considered that it had supported their clients' recovery. In both cases they felt that the process had set the offender on a different trajectory, and that they were unlikely to reoffend. In one case mentioned, the offender had received 12 months of counselling as part of the process of taking responsibility for his actions.[90]

DVConnect suggested there was merit in continued exploration of restorative justice, provided it includes consideration of the risk of subtle forms of abuse being continued through the restorative justice process and includes adequate information, procedures and support for victim-survivors.[91]

Ending Violence Against Women Queensland (EVAWQ) noted the power imbalance that operates against the complainant in court proceedings, and the lack of physical and emotional safety that can be intimidating, frightening and re-traumatising.[92]

Attendees at the Taskforce consultation forum in Cherbourg expressed serious reservations about the risks of restorative justice for adult sexual offending in that community. These concerns were raised in the context of hostility towards and retaliation against victim-survivors reporting sexual offending. These issues were also described as preventing victims from reporting sexual violence and from continuing matters through the court system. Attendees were concerned about the physical and emotional safety of victims, during a restorative justice process, and beyond. They also noted that highly skilled, well-prepared, community-based convenors would be required.[93]

Government agencies

Queensland Police Service

The QPS acknowledged that 'justice' has different meanings for individual victims. The QPS supported a variety of options to provide victims with a sense of control over how they participate in the system.[94] It noted that restorative justice for young offenders is currently limited to conferences and suggested there should be no impediment to utilising alternative responses with a young person who has committed a sexual offence.[95]

Department of Justice and Attorney-General

The DRB acknowledged that there are particular risks in conducting ARJC in matters involving sexual offending and that these need to be carefully managed. The DRB noted that because QPS and ODPP currently only use ARJC in a 'diversionary manner', ARJC is presented as an alternative to the court process rather than something that a victim can participate in *as well as* the court process.[96] Victims are also not usually provided with information about ARJC by the QPS or ODPP, unless a decision has been made not to proceed with the matter through the court process, if at all.[97.] The DRB noted that there are challenges in actualising the restorative potential of ARJC, given the diversion 'transaction' between the victim and offender that puts pressure on the offender to still 'pay the price'.[98.] This can have the effect of focusing on the particulars of the agreement rather than the restorative aspects of the process itself. DRB also noted that time pressures imposed by criminal justice proceedings do not always align with the additional time needed for the ARJC process. The DRB further noted that the under-resourcing of partner organisations (for example, specialist sexual assault support services) results in a lack of capacity to appropriately support parties or participate in conferences, and that more training is required.[99.]

Department of Children, Youth Justice and Multicultural Affairs (DCYJMA)

The DCYJMA noted that complex and lengthy court proceedings do not serve young people, their families or the community well. The Director-General noted that restorative justice initiatives that involve families were likely to lead to better outcomes.[100]

Other Government

Victorian Law Reform Commission

During a meeting with the VLRC review team in Melbourne, it was noted that Victoria had a strong general model for restorative justice, including in relation to sexual offending.[101] This was evidenced by the longstanding program based at Victoria's South Eastern Centre Against Sexual Assault and Family Violence.[102] This program provided the basis for building the necessary expertise in the state to support the VLRC's recommendations for the expansion of restorative justice. The review team told the Taskforce the VLRC had found that, without restorative justice, even a criminal justice system improved to better handle sexual offence matters would not meet all of the justice needs of victims of these types of offences.[103]

Legal stakeholders

Women's Legal Service Queensland (WLSQ) supported having multiple options available for victims pursuing justice and accountability, including those outside formal processes. WLSQ acknowledged it is a challenging area and must be led by victims and experts in sexual violence.[104] WLSQ also noted that some alternative processes may be particularly attractive to First Nations women and should be inclusive of their voices and community driven. The WLSQ told the Taskforce,

> *The criminalisation of rape and sexual violence offences and getting the law and court processes right should not be at the expense of considering myriad options that may be available to victims in pursuing justice and perpetrator accountability that may be outside formal processes.* [105]

Defence lawyers in a consultation forum were in favour of increasing the use of restorative justice for young offenders. They noted that a victim's unwillingness to participate was a barrier to more young offenders being diverted to this option. They were supportive of exploring models where a community member was used as a substitute for the victim if the victim was unwilling to participate.[106] Defence lawyers noted the binary nature of criminal law – 'you win or lose' – and that this lack of nuance is unsatisfactory for many.[107] One experienced defence lawyer spoke about their involvement in a sexual offence case in which ARJC was successfully used to the satisfaction of both victim and offender and resulted in a withdrawal of the prosecution.[108] The defence lawyer told the Taskforce that from their observation of the victim:

> *'It was a far more important process for her than a trial.'* [109]

The Queensland Indigenous Family Violence Legal Service supported the Taskforce examining the use of alternative ways of delivering justice for victim-survivors of sexual violence and advocated for alternative solutions to be community-led, developed by Aboriginal and Torres Strait Islander communities and community-controlled organisations.[110]

Legal Aid Queensland (LAQ) noted that restorative justice conferencing is available in relation to sexual offending by children, and was positive about these processes.[111]

> *Much could be learnt from the youth justice system in how they prepare and scaffold attendees to avoid retraumatising victims and overcoming reservations of defendants.* [112]

In relation to restorative justice for adult offending generally, LAQ noted the lack of legislative framework and its unavailability outside greater Brisbane, Ipswich, Townsville, Gold Coast and Cairns.[113] LAQ noted that in practice the courts will not refer a matter for restorative justice unless the prosecution supports the referral (regardless of the victim's opinion). LAQ observed that offences of violence beyond minor assaults are rarely referred to ARJC, with only low-level summary offending considered appropriate. [114] LAQ supported general improvement in restorative justice conferences through a legislative framework and improved resourcing to increase its uptake and availability across the state.[115] LAQ proposed that a draft model of restorative justice for adult sexual offending be developed for consultation.[116]

Office of the Director of Public Prosecutions (ODPP)

The ODPP told the Taskforce that ARJC is not frequently engaged by its prosecutors. The ODPP said that was partly because the criteria for referral of matters to ARJC 'prohibit the referral of many offences that the office is responsible for prosecuting'.[117] The ODPP noted that when deciding whether to refer a matter to ARJC, the ODPP is required to consider the public interest in prosecuting sexual offences before the court and this often leads to a conclusion that a referral would be inappropriate.[118] The ODPP also noted the unavailability of ARJC services in regional areas.[119] Prosecutors would support an approach that incorporates ARJC and any outcomes as a factor to be considered in sentencing, or as a partial substitute for sentencing, and accept that this would broaden the availability of ARJC.[120]

Academic and other

An academic submission from a person who is also a support worker noted the negative impacts of the conventional criminal justice system on victim-survivors.

> *'The very long-established and powerful ritual of our "criminal justice system" takes over the process and it seems that the work we have all done together to externalise and politicise the problem is suspended during this time; and we all, especially survivors, have to "just get through it". There is a blatant injustice to the way in which survivors are treated in this space, further perpetuating the effects of violence and abuse.' [121]*

The RMIT Centre for Innovative Justice (CIJ) expressed caution about the use of restorative justice for sexual offending, notwithstanding its recommendations in support of restorative justice in its 2014 report.[122] The RMIT CIJ told Taskforce members that the significant power imbalances often present between the victim and the offender mean that restorative justice initiatives must be approached cautiously. The RMIT CIJ emphasised the importance of distinguishing restorative justice from mediation and noted the likely challenges for Queensland in this regard, given the program's history and its administration by the DRB.[123]

Members of the Zonta Club of Brisbane Inc (Zonta) noted a range of benefits of restorative justice for both victims and offenders. Zonta noted that requests [by the offender] for ARJC are often rejected by prosecutors because they consider the matter too serious, seemingly without consultation with the victim.[124] This discourages further requests. Zonta suggested that victims who initially reject an offer of restorative justice should be provided an opportunity to reconsider at later stages in the process as their views may have changed.[125]

Other relevant issues

Relevant cross-cutting issues

To some extent, ARJC and youth justice conferencing rely on victims (and offenders) being able to articulate their experiences, to have the confidence to raise concerns about the process and to identify and assert their desired outcomes. While working well for empowered and educated participants, these processes may disadvantage some victims and offenders who find it difficult to communicate, or who struggle to understand the concepts involved. Models of restorative justice need to provide appropriate support and preparation for participants. They must also address the impact of trauma and complex needs to ensure no one is disadvantaged in accessing and participating in the process and achieving just outcomes.

As noted above, there are particular risks and community dynamics that need to be taken into consideration when assessing the appropriateness of ARJC for matters involving First Nations peoples and communities. There is evidence of support among First Nations women for restorative justice approaches, including because of the potential to incorporate elements of self-determination.[126] However, there is a need to carefully consider what model can provide cultural, physical and psychological safety at every stage of the process. A successful model would need to be led by First Nations peoples; fully support the victim-survivor and ensure they are making informed, free choices; and potentially be delivered by community-controlled organisations.

Are restorative justice approaches suitable for sexual offences, or do they create an 'inferior' alternative?

Researchers suggested that the needs of victims are diametrically opposed to the requirements of the conventional criminal justice system. Some have said that victims need:

- social acknowledgment and support, but the court requires them to endure a public challenge to their credibility
- to establish a sense of power and control over their lives, but the court requires them to submit to rules and procedures that they may not understand
- an opportunity to tell their stories in their own way, in a setting of their choice, but the court requires them to respond to a set of yes–no questions that does not reflect a coherent and meaningful narrative
- often to control or limit their exposure to specific reminders of the trauma, but the court requires them to relive the experience
- often to avoid direct confrontation with their perpetrators, and court processes frequently require a face-to-face confrontation.[127]

As outlined in preceding chapters, the Taskforce has heard about the serious obstacles victim-survivors face in meeting their justice needs in the conventional criminal justice system. The Taskforce recommendations in this report are aimed at improving the response of police, lawyers and courts to increase the ability of the conventional criminal justice system to meet the needs of victim-survivors. However, no matter how extensive the reforms, it may be impossible for a criminal justice system to best meet the diverse needs of victim-survivors. Restorative justice holds potential to increase the options a victim-survivor has available to better meet their needs.

Whether restorative justice is appropriate for sexual offending remains contested.[128] Common concerns about the application of restorative justice processes to sexual offences relate to:

- the risk of victims being re-victimised as a result of underlying power imbalances
- that it may suggest sexual offences are of less importance and a private concern, rather than being condemned in the public sphere[129]
- that it creates an 'inferior' response to sexual offending outside the court processes due to an inability to adequately address problems with the present criminal response, perpetuating the current failings of the criminal justice system.

Risk of causing further harm

If underlying power dynamics involved in the sexual offending (including those that arise from intrenched social norms) are not adequately recognised and addressed, restorative justice risks causing further harm to victims. This is particularly relevant where there are power imbalances between victim and perpetrator, something common in sexual offending and in relationships involving coercive control.[130] Some suggest that the stakes are higher for restorative justice processes, given they potentially give an offender the power to withhold something that would support a victim's recovery (meaningful acknowledgment of responsibility), replicating power inequalities of the offending.[131]

On the other hand, advocates for the use of restorative justice for sexual offending argue that the 'informal and flexible processes are better positioned than conventional justice to validate, empower, and heal victims'.[132] Some suggest that restorative justice may be more effective than court in holding offenders to account for denials or minimisations of harm.[133] Others point out that meaningful perpetrator accountability can be challenging and highlight the importance of adequate training.[134]

Re-privatisation of sexual violence

Hard-won battles have resulted in sexual violence gradually being brought out of the private sphere so that victims can be publicly supported and offenders publicly condemned and punished. There is concern, reflected by some stakeholders, that increased use of restorative justice for sexual offending may set back these gains, by returning the responses to the private sphere with pressure on victim-survivors to 'make amends' with the offender.[135]

On the other hand, high rates of under-reporting, attrition and low rates of conviction mean that many victims and offenders are not currently receiving the benefit of the desired public accountability and condemnation. Expanding the availability and use of restorative justice processes, as an option that supplements improved processes in the criminal justice system, may support some victims to pursue this form of justice where they otherwise would be left with no option. It may also support victims who participate in conventional criminal justice processes to meet additional justice needs that are unavailable in the court process – for example, the ability to engage directly with the offender to explain the harm caused.

An 'inferior' alternative or a useful addition?

There is understandable concern that calls for restorative justice responses arise out of the failings of conventional criminal justice processes, and that restorative justice risks being a poor substitute for what should be fundamental improvements in how the conventional justice system handles sexual offences. On the other hand, even with the desired criminal justice reform, some victims may still prefer the offender to take responsibility and repair harm outside the criminal law. Restorative justice processes provide the possibility for more victim-oriented outcomes that achieve accountability for the offender. Studies about restorative justice in cases of intimate partner violence demonstrate positive feedback from victims, perpetrators, and victim advocates in Australia.[136]

In practice, ARJC is approached as an *alternative* to criminal justice proceedings.[137] This may be influenced by the absence of clear protocols about how ARJC is to interact with the criminal justice system. For example, there is no clear articulation of how restorative justice for adults operates in conjunction with criminal justice processes such as sentencing. This is problematic for sexual offending in the context of concerns (outlined above) about approaches that minimise or privatise these offences and fears about the creation of a poor substitute for flawed criminal justice processes. Other restorative justice models for sexual offending (such as the ACT model and the model proposed by the VLRC) specify that restorative justice is to be *supplementary* to criminal justice processes, not a substitute. [138] These models make it clear that restorative justice should not impact decisions relating to criminal justice processes.

While it may be a benefit of restorative justice that it diverts offenders from, and reduces demand pressures on, the criminal justice system (as noted in Chapter 3.5 in relation to female offenders), it is unwise for this to be a driving objective for the use of restorative justice for sexual offences. Furthermore, when done well, restorative justice can be costly to implement. An argument for restorative justice for sexual offences therefore cannot be based on significant savings through reduced demand on the criminal justice system or that it is a stand-alone best-practice model.

Instead, restorative justice offers a victim-centred option to assist with closure and healing where that may be less likely to be available through the criminal justice system alone. Restorative justice would expand the suite of options available for victims of sexual offending. An effective restorative justice scheme may also provide value for money for government by assisting victims to heal better and faster, reducing the impact of the trauma and supporting them to return to their full and meaningful lives.

Taskforce findings

The Taskforce considered that restorative justice offers the potential of a victim-centric process that can flexibly meet the diverse victim-survivor needs that cannot be met by the criminal justice system. The Taskforce concluded that restorative justice should supplement conventional criminal justice processes to expand the range of options available to victim-survivors.

Restorative justice conferencing for young offenders is well established in Queensland with a legislative framework to guide practice. However, the Taskforce noted the concerns expressed by some service providers and victim-survivors about its application to sexual offending and found there should be a review of the use of this conferencing to increase its potential to be a positive and healing experience for victim-survivors as well as young offenders.

The Taskforce found that the absence of a clear framework for adult restorative justice processes in Queensland has resulted in a lack of clarity about:

- the policy objectives and desired outcomes
- the operational model
- its intent and purpose
- how restorative justice interacts with the conventional criminal justice system.

The Taskforce considered that the reliance on the powers contained in the DRC Act may be contributing to a perception that the model is about mediation and that it can only be used as an alternative to the criminal justice system. It is likely that this is contributing to a lack of certainty for victims and accused persons about the legal implications of their participation in a restorative justice process.

To strengthen the foundation of adult restorative justice in Queensland, a legislative framework needs to be developed for the use of restorative justice in all criminal matters. In Part 3 of this report, the Taskforce has considered, and supports, the increased use of restorative justice as an alternative pathway through the criminal justice system for women and girls accused of offending (see chapter 3.5). The Taskforce has found that there is a need for a sustainable long-term plan for the expansion of ARJC in Queensland.

The Taskforce noted the impressive work being undertaken by the DRB with limited resources. A remarkable number of cases are proceeding to conference despite extraordinarily low staff numbers. The DRB is also exploring ways to improve accessibility and practice within existing resources. This is not sustainable. An expansion of restorative justice in Queensland will require clear policy and legislative framework supporting the operation of a carefully designed model underpinned by a commitment of additional resources. The Taskforce acknowledged that this expansion cannot occur quickly and requires long-term planning to ensure the availability of trained staff and development of regional management capacity within the DRB.

The Taskforce noted the particular risks associated with restorative justice for sexual offending and domestic and family violence. These need to be considered specifically in the development of the legislative framework, and a model tested through a dedicated pilot, to enable the safe use of restorative justice in sexual offence cases. Evaluated outcomes of the project are essential to provide an evidentiary basis for any further development or expansion. This model, if successfully evaluated, would then support the development of the necessary skills and processes required for expanding statewide.

Taskforce recommendations

89. The Minister for Children and Youth Justice and Minister for Multicultural Affairs undertake an independent review of the use of youth justice conferencing in cases involving sexual offences, with a particular focus on the experience and justice outcomes achieved for victim-survivors. The review will identify any opportunities for improvement to better meet the needs of victims and child offenders, including in relation to sexual offences.

90. The Queensland Government, led by the Department of Justice and Attorney-General, develop a sustainable long-term plan for the expansion of adult restorative justice in Queensland and appropriately fund that plan for victim-survivors to access this option throughout the state.

91. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence co-design (with people with lived experience, Aboriginal and Torres Strait Islander peoples and service and legal system stakeholders) a victim-centric legislative framework for adult restorative justice in Queensland. The framework will:

- articulate overarching principles for the use of restorative justice in adult criminal cases, with particular principles and safeguards for its use in relation to sexual offences and domestic and family violence-related offences
- set out operational processes including a clear framework for referrals and suitability assessment processes
- set out how restorative justice interacts with the criminal justice system
- establish criteria and process to assess the qualifications, expertise and suitability of convenors and provide for their functions and powers
- consider the diverse needs of victim-survivors, including First Nations victims, and how best to structure the framework to meet individual needs
- provide adequate protections and safeguards for participants, underpinned by a gender-sensitive and trauma-informed approach.

Legislation to establish an adult restorative justice program in Queensland will not commence until a sustainable and funded long-term plan for the expansion of adult restorative justice in Queensland has been developed (recommendation 90).

92. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence fund and undertake a pilot restorative justice program for adult sexual and domestic and family violence offences, to be independently evaluated to inform further statewide roll-out.

The commencement of a pilot will be supported by additional investment and the commencement of a legislative framework.

Implementation

The review of youth justice conferencing should incorporate consultation with victim-survivors and their families and First Nations, service system, and legal stakeholders to provide an accurate assessment of how the model is operating in practice from the perspective of victims.

Achieving statewide ARJC coverage will require investment and planning to establish effective processes and to recruit accredited convenors to facilitate conferences. The Department of Justice and Attorney-General should develop the sustainable long-term plan for the expansion of adult restorative justice processes generally across the state, in consultation with QPS, ODPP and Queensland Treasury, victim-survivors and their families, and First Nations, service system, and legal stakeholders. Long-term funding for the plan should be secured before commencement of the legislative framework.

The legislative framework should be developed in consultation with victim-survivors and their families, and First Nations, service system, and legal stakeholders. The framework should include specific, gender-sensitive requirements and safeguards for matters involving sexual violence and domestic and family violence, noting heightened risk of harm associated with these offence types. The development of the framework should consider whether adult restorative justice conferencing in Queensland should continue

to be delivered directly by government (as in the Australian Capital Territory) or by accredited non-government service providers (as in New Zealand and the proposed scheme in Victoria). Either option will require appropriate investment and oversight to ensure the safety and quality of the program. In Chapter 3.5, the Taskforce also recommends that the plan and the legislative framework respond to the needs and safety-requirements of women as accused persons and offenders.

Best-practice models and implementation lessons learned in other jurisdictions should inform the development of the framework and the design and implementation of a pilot. The pilot should also be developed in consultation with the stakeholders listed above, including domestic and family violence service system stakeholders.

Implementation of the framework will require the QPS and ODPP to review and amend their respective operational guidelines to align with the framework and provide the necessary direction and clarity about how to inform victim-survivors about ARJC, and when to make referrals. The proposed benchbook (recommendation 73) should also provide information and guidance (preferably through the judicial commission recommended in *Hear her voice 1*) to judicial officers about ARJC in sexual offence matters.

Human rights considerations

Consideration of restorative justice for sexual offences engages victims' rights to protection from torture and cruel, inhuman or degrading treatment (section 17), defendants' rights to a fair hearing (section 31) and rights in criminal proceedings (section 32). Differential access to restorative justice around the state engages the right to equality before the law (section 15). Restorative justice involving child offenders engages rights under the United Nations *Convention on the Rights of the Child*[139], and the United Nations *Standard Minimum Rules for the Administration of Juvenile Justice* ("The Beijing Rules")[140] relating to the treatment of young offenders.

Human rights promoted

By working towards the provision of additional options for victim-survivors to respond to their experience of sexual violence, the recommendations promote victims' right to protection from degrading treatment. The establishment of a legislative framework provides clarity to victims and accused persons in relation to the legal implications of participating in restorative justice. This promotes the right to a fair hearing and rights in criminal proceedings. By providing the foundation for increasing the availability of restorative justice across the state, the recommendations promote the right to equality before the law. The recommendations do not have any impact on the treatment of child offenders.

Human rights limited

The recommendations do not limit any rights.

Evaluation

The legislative framework should incorporate a statutory review five years after coming into effect, and every five years after to prompt regular evaluation of its operation.

The plan for the expansion of ARJC should include benchmarks set for increased conferencing numbers and in-built requirements for regular evaluation to support the sustainable and evidence-based use of ARJC in Queensland.

The pilot restorative justice program for adult sexual and domestic and family violence offences should involve established baseline measures, a process evaluation and an evaluation of how the model performs in relation to victim and offender experiences of the process and any outcomes. Consistent with a victim-centric model, the evaluation should give specific attention to whether restorative justice meets the justice needs of victims.

Conclusion

Restorative justice has the potential to be an important option to supplement conventional criminal justice processes. The success achieved by adult restorative justice processes in Queensland has been limited by a lack of adequate resourcing and the absence of a clear foundational legislative framework to guide its operation and to provide clarity to participants and to other parts of the criminal justice system. Designing a model underpinned by a robust, contemporary and clear legislative framework is required to increase the availability and accessibility of appropriate adult restorative conferencing across the state.

Particular safeguards are required to address the heightened risks associated with restorative justice for sexual violence offences. A pilot project to develop the necessary expertise is important to create safe systems and practice as a basis for the continuation of this work across Queensland. There may be a need to further refine the youth restorative justice approach to sexual offences, and a review focused on victim experiences will help to identify what (if any) improvements are required.

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[3] Ted Wachtel, *Defining Restorative* (2016) International Institute for Restorative Practices.
[4] European Forum for Victim-Offender Mediation and Restorative Justice (2005) - Meeting the Challenges of Introducing Victim-Offender Mediation in Central And Eastern Europe.
[5] European Forum for Victim-Offender Mediation and Restorative Justice (2005) - Meeting The Challenges of Introducing Victim-Offender Mediation in Central and Eastern Europe.
[6] Nicole C McKenna and Kristy Holtfreter, 'Trauma-Informed Courts: A Review and Integration of Justice Perspectives and Gender Responsiveness', *Journal of Aggression, Maltreatment & Trauma*, 30(4), 450-470; Jodie Hodgson, 'Offending Girls and Restorative Justice: A Critical Analysis' (2020) *Youth Justice* doi:10.1177/1473225420967751, 145-168.
[7] Email from the Department of Children, Youth Justice and Multicultural Affairs, 16 February 2022.
[8] Letter from Director-General, Department of Children, Youth Justice and Multicultural Affairs, 4 April 2022 (Attachment 1).
[9] *Youth Justice Act 1992,* ss 11 and 12.
[10] *Youth Justice Act 1992,* ss 163, 164 and 175.
[11] *Youth Justice Act 1992,* s 162.
[12] *Youth Justice Act 1992,* s 192A.
[13] Information provided by Department of Children, Youth Justice and Multicultural Affairs submission 15 October 2021.
[14] Email from Department of Children, Youth Justice and Multicultural Affairs, 16 February 2022.
[15] Email from Department of Children, Youth Justice and Multicultural Affairs, 16 February 2022.
[16] Department of Children, Youth Justice and Multicultural Affairs submission, Discussion Paper 3, 15.
[17] Information provided by Department of Children, Youth Justice and Multicultural Affairs submission 15 October 2021.
[18] Department of Children, Youth Justice and Multicultural Affairs correspondence, March 15 2022.
[19] Department of Children, Youth Justice and Multicultural Affairs, correspondence, 15 October 2021.
[20] Queensland Government, Twelve-month program evaluation: Restorative Justice Project (2018, Department of Child Safety, Youth and Women) 8.
[21] Queensland Government, Twelve-month program evaluation: Restorative Justice Project (2018, Department of Child Safety, Youth and Women) 8.
[22] Email from Department of Children, Youth Justice and Multicultural Affairs, 16 February 2022.
[23] Letter from Director-General, Department of Children, Youth Justice and Multicultural Affairs, 4 April 2022 (Attachment 1).
[24] Tristan Russell, William R Wood and Samantha Jeffries, 'Adult Restorative Justice and Gendered Violence: Practitioner and Service Provider Viewpoints from Queensland, Australia' (2021) 10(13) Laws, 16; Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021), 206.
[25] *Dispute Resolution Centres Act 1990*, s 31.
[26] *Dispute Resolution Centres Act 1990*, s 37.
[27] *Dispute Resolution Centres Act 1990,* s 36.
[28] *Dispute Resolution Centres Act 1990,* s 2 (interpretation of 'referring order').
[29] *Justices Act 1886*, s 53A.
[30] *Justices Act 1886*, s 53B.
[31] See, for instance, Justices Act 1886 (Qld) s 88(1B): 'The power to adjourn a hearing conferred upon justices or a justice by subsection (1) includes power to adjourn a hearing to enable the matter of a charge of a simple offence or breach of duty to be the subject of a mediation session under the *Dispute Resolution Centres Act 1990*.'
[32] Correspondence with the Dispute Resolution Branch received 11 May 2022; Taskforce meeting with Dispute Resolution Branch staff, 11 February 2022, Brisbane.
[33] Taskforce meeting with Dispute Resolution Branch staff, 11 February 2022, Brisbane.
[34] Taskforce meeting with Dispute Resolution Branch staff, 11 February 2022, Brisbane.
[35] *Police Powers and Responsibilities Act 2000,* s 377(4).
[36] Queensland Police Service Operational Procedures Manual, 3.3.1.
[37] Queensland Police Service Operational Procedures Manual, 3.3.6.

[38] Office of the Director of Public Prosecutions, Director's Guidelines (2016, Department of Justice and Attorney-General), guideline 4(2)(h).
[39] Office of the Director of Public Prosecutions submission, Discussion Paper 3, 2.
[40] Taskforce meeting with Dispute Resolution Branch staff, 11 February 2022, Brisbane.
[41] Taskforce meeting with Dispute Resolution Branch staff, 11 February 2022, Brisbane.
[42] Taskforce meeting with Dispute Resolution Branch staff, 11 February 2022, Brisbane.
[43] Taskforce meeting with Dispute Resolution Branch staff, 11 February 2022, Brisbane.
[44] Taskforce meeting with Dispute Resolution Branch staff, 11 February 2022, Brisbane; Dispute Resolution Branch submission to the Queensland Sentencing Advisory Council's review of sentencing for child homicide offences, 14 August 2018, https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0011/580871/Submission-37-Dispute-Resolution-Branch.pdf
[45] Taskforce meeting with Dispute Resolution Branch staff, 11 February 2022, Brisbane.
[46] Taskforce meeting with Dispute Resolution Branch staff, 11 February 2022, Brisbane.
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[52] *Crimes (Restorative Justice) Act 2004* (ACT), s 6.
[53] *Crimes (Restorative Justice) Act 2004* (ACT), s 16.
[54] *Crimes (Restorative Justice) Act 2004* (ACT), s 7(2).
[55] *Crimes (Restorative Justice) Act 2004* (ACT), s 7(1).
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