Women's Safety and Justice Taskforce

Hear her voice

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

Women and girls' experiences across the criminal justice system

Published in Brisbane, Queensland by the Women's Safety and Justice Taskforce

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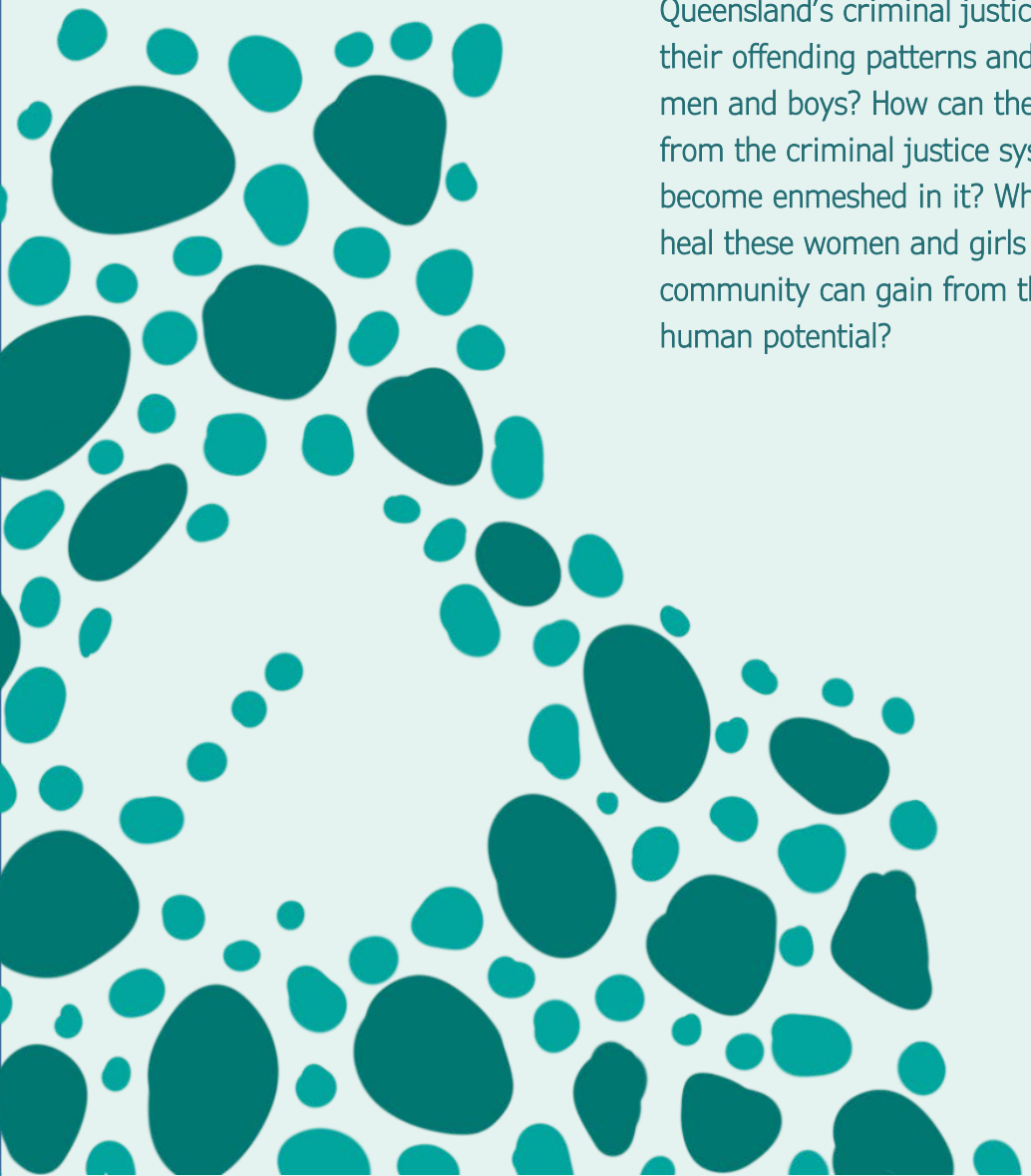
The Women's Safety and Justice Taskforce acknowledges and pays respects to Aboriginal and Torres Strait Islander peoples as the Traditional Custodians of Country throughout Queensland. This respect is extended to Elders past, present and emerging.

Hear her voice

Report two | Volume two

Part 3: Women and girls as accused persons and offenders

The Taskforce examines what should be done to address the alarming increase in the number of women and girls coming into contact with Queensland's criminal justice system. How do their offending patterns and needs differ from men and boys? How can they be diverted away from the criminal justice system before they become enmeshed in it? What can be done to heal these women and girls so that the community can gain from the realisation of their human potential?



Blue skies and sunshine, representing hope.

'Women who are criminalised have often been victimised or experienced serious trauma, and they need support and hope, not an endless cycle of punishment.'

—Taskforce submission 5928396, 2022.

The mountain represents resilience, strength and perseverance (climbing life's mountains).

Contents

Part 3: Women and girls as accused persons and offenders 402

Chapter 3.1: Women and girls' experiences in the criminal justice system as accused persons and offenders 405

Chapter 3.2: Understanding the experiences of women and girls who come into contact with the criminal justice system 418

Chapter 3.3: Women and girls' experiences of contact with police and being charged 451

Chapter 3.4: Women and girls' experiences in watchhouses, on remand, and when applying for bail 486

Chapter 3.5: Women and girls' experiences of the legal and court system 515

Chapter 3.6: Sentencing women and girls 553

Chapter 3.7: Health, wellbeing, prenatal and postnatal care and birth experiences in prison and detention 588

Chapter 3.8: Treatment in custody, complaints mechanisms and oversight 618

Chapter 3.9: Rehabilitating women in prison and girls in detention 635

Chapter 3.10: Reintegrating women and girls into the community 679

Part 4, Chapter 4.1: Data, investment, evaluation and implementation 717

Appendix 1 - List of stakeholders the Taskforce met with 747

Appendix 2 - Glossary of Terms 750

Appendix 3 - The Taskforce Secretariat 757

Appendix 4 - Multi-agency responses to victims of sexual offences 759

Appendix 5 - Victims' commissioners in other jurisdictions 760

Appendix 6 - Criminal Procedure Act 1986 (NSW) and Evidence Act 1995 (NSW) 764

Appendix 7 - Criminal Procedure Act 2009 (Vic) 767

Appendix 8 - Royal Commission into Institutional Reponses to Child Sexual Abuse recommendations about tendency and coincidence evidence 769

Appendix 9 - *Evidence Act 1995* (NSW) Part 3.6 770

Appendix 10 - Royal Commission into Institutional Responses to Child Sexual Abuse recommendations about jury directions 773

Appendix 11 - Jury Directions in New South Wales and Victoria 774

Appendix 12 - Expert Evidence in Victoria and Uniform Evidence Law jurisdictions 778

Appendix 13 - Interjurisdictional comparison – Restrictions on publication of identifying information in sexual offence proceeding 781

Appendix 14 - Interjurisdictional Comparison: Publication of evidence and identifying parties in domestic violence proceedings 783

Appendix 15 – Custodial Inspectors and Standards: Australia and New Zealand 786

Appendix 16 - Rehabilitation of women in prison and girls in detention 792

Appendix 17 - Reintegration of women and girls 796

Appendix 18 - Terms of Reference 799

Annexure 1. Enhance research – exploring Qld community attitudes toward sexual consent 805

Chapter 3.1: Women and girls' experiences in the criminal justice system as accused persons and offenders

The number of women committing criminal offences in Queensland is increasing at more than three times the rate of men.

Most women and girls are serving sentences of less than six months and many are being held in prison or detention without being convicted or sentenced.

Opportunities to rehabilitate women and girls within prison and detention are being lost and some of their basic human rights are not being met. A gendered approach is required to better address the often gendered factors contributing to women and girls' offending behaviour and prevent them from reoffending.

Background

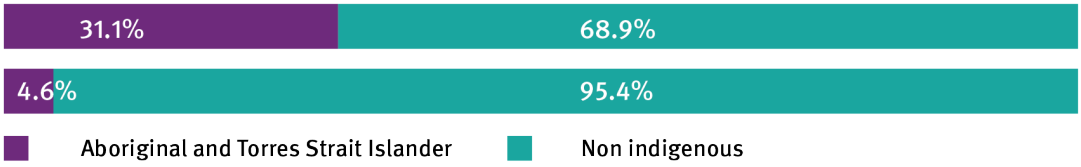
Women and girls offend less often than men but the rate at which they are offending and being sent to prison and detention is alarmingly increasing

Women commit fewer recorded criminal offences in Queensland than men.[1] In 2020-2021, one-quarter of offenders in Queensland were women (25.1%).[2]

Women are being charged with offences at a rapidly increasing rate. Between 2011-12 and 2020-21 the number of recorded female offenders in Queensland increased by 30.7%, while the number of recorded male offenders in the same period rose by only 8.0%.[3]

First Nations women are significantly over-represented in the female offender population. Aboriginal and Torres Strait Islander women and girls make up four per cent of the Queensland female population aged 10 and above.[4] Nearly one third of females sentenced in Queensland between 2005–06 and 2018–19 identified as Aboriginal and Torres Strait Islander peoples (31.1%).[5]

Gender and Aboriginal and Torres Strait Island status of sentenced offenders



Between 2005–6 and 2018–19 Aboriginal and Torres Strait Islander women made up 31.1% of female offenders in Qld.

The Aboriginal and Torres Strait Islander population in Queensland is 4.6% of the total state population.

Source: Queensland Sentencing Advisory Council
Baseline Report: *The sentencing of people in Queensland* (Sentencing profile, May 2021)

Women usually commit low-level, non-violent offences. The most common offences women and girls were sentenced for between 2005-06 and 2018-19 in Queensland were traffic and vehicle offences (38%), justice and government offences (22%), theft (16.2%) and drug offences (13.9%).[6] Theft accounted for almost half of all sentences for girls (48.4%) while nearly half of all sentences for Aboriginal and Torres Strait Islander women involved public order offences (43.7%).[7]

Adult women form the majority of sentenced females in Queensland (95.6%), with girls accounting for less than 5 per cent (4.5%).[8] Most women and girls who progress through Queensland's criminal justice system go on to receive non-custodial sentences for their most serious offence. For women sentenced between 2005-06 and 2018-19 in all courts (Magistrates, District and Supreme):

- 74.9% received monetary penalties
- 7.6% received community-based orders
- 7.3% received good behaviour/recognisance
- 6.7% received custodial penalties
- 3.2% were convicted, not further punished
- 0.3% had their driver's licence disqualified.[9]

For girls sentenced between 2005-06 and 2018-2019 in all courts:

- 40% received community-based orders
- 33.9% were reprimanded
- 16.7% received good behaviour/recognisance
- 3.7% were convicted, not further punished
- 3.6% received custodial penalties
- 2.1% received monetary penalties.[10]

Most women and girls in the criminal justice system do not reoffend, but reoffending rates are higher for girls. A Queensland Sentencing Advisory Council analysis found that 37.3% of women and girls sentenced between 2005-06 and 2018-19 were 'repeat offenders', meaning they were sentenced multiple times over that period.[11] Recidivism, defined in this analysis as where an offender reoffends within two years of their expected release from custody, was 35.4% for women, and much higher for girls at 62.1%.[12]

Custodial periods and status

The proportion of incarcerated women in Queensland is noticeably greater than the national average. In 2021, women made up 9.3% of Queensland's total prison population, compared with 7.7% Australia wide.[13]

While the number of women in prison is increasing overall, the number of First Nations women in prison is increasing faster than for non-Indigenous women. According to Queensland Treasury's *Justice Report, Queensland, 2020-2021*, between 2012 and 2021, the number of prisoners has increased at a greater rate for both Aboriginal and Torres Strait Islander and other females (120.5% and 80.3% respectively) than for Aboriginal and Torres Strait Islander and other males (107.8% and 63.5% respectively).[14]

The median length of time for which women are being sentenced to imprisonment is increasing. The median sentence length for sentenced adults (men and women) overall has increased substantially between 2017 and 2021. For Aboriginal and Torres Strait Islander women, the median sentence length has increased from 20 to 27 months (35.0%) during that time. [15] In comparison, the median sentence length for other women in the same period has increased from 24 to 36 months (50.0%).[16]

Of women sentenced to imprisonment between 2005-06 and 2018-19, 40.9% received a sentence of less than six months, while more than one quarter (26.7%) received a sentence between six months and a year.[17]

Increase in number of women receiving short sentences under six months

Between 2005–6 and 2018–19 there was a 141% increase in Aboriginal and Torres Strait Islander women receiving sentences under six months and a 241% increase in non-Indigenous female offenders receiving sentences under six months.

Source: Queensland Sentencing Advisory Council, *Community-based sentencing orders, imprisonment and parole options* (Final report, 2019) 314.

The number of women serving short sentences is increasing significantly. Queensland Sentencing Advisory Council data shows that between 2005-06 and 2018-19, there was a 241% increase in the number of non-Indigenous female offenders receiving short sentences under six months, and a 141% increase in the number of Aboriginal and Torres Strait Islander women receiving short sentences under six months.[18]

Women and girls' experiences in the criminal justice system as accused persons and offenders

The proportion of women in custody on remand is also increasing. Since 2016, the proportion of female prisoners who were unsentenced has continued to increase each year, except in 2020. As at June 2021, 38.8% of female prisoners were unsentenced compared with 31.2% in 2016.[19]

Increase in proportion of unsentenced women who are in prison

Since 2016, the proportion of women in prison who are unsentenced has continued to increase (except in 2020).

Source: Queensland Treasury, *Justice Report*, Queensland, 2020–21, Criminal Justice Statistics (2021) 114.

In 2020–21, the average length of stay of all sentenced young people in youth detention was 61 nights, slightly shorter than in 2019–20 and 30.4% shorter than the time-series high of 88 nights in 2011–12. Of those on remand in 2020–21, the average length of stay was the same as in the previous year - 42 nights.[20]

Women and girls' experiences

Adverse childhood events, victimisation, poverty and homelessness, mental health issues, poor health or disability, racism, and inequality are common experiences of women and girls in the criminal justice system. Although many women offenders share common experiences, women and girls who offend are not a homogenous group – each has a unique and varied life story. The Taskforce acknowledges the importance of recognising the individual dignity and humanity of women and girls who come into contact with the criminal justice system.

Abuse and trauma is a common experience for many women and girls. 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.[21]

'Women who are criminalised have often been victimised or experienced serious trauma, and they need support and hope, not an endless cycle of punishment.' [22]

Queensland's *Youth Justice Strategy 2019-23* states that the children who come into the youth justice system 'generally come from tough and often traumatic family backgrounds, and many have issues and problems that affect their behaviours, lifestyles and decisions.'[23]

Of the children and young people who come into contact with the youth justice system, 58% have a mental health or behavioural disorder diagnosed or suspected.[24] Girls and young women involved in the youth justice system are also more likely to have been involved in the child protection system.[25]

'Girls in particular are lost and don't have a sense of the future or what they will do with their life … all they can think of is having babies. They actually haven't been parented so they don't know how to parent.' [26]

Substance misuse and dependency also has a marked impact on women and girls' contact with the criminal justice system. The Queensland Productivity Commission found that, between 2012 and 2018, reported drug offences contributed to 89% of the increase in reported female offenders.[27]

Women told the Taskforce that drug use was often a way of coping with or masking their trauma:

> *'We all smoked a lot of pot together. I think I did it because it was socially the norm, but also because it blocked out some of the trauma of my childhood.'* [28]

> *'The trauma experienced in juvenile and adult incarceration facilities fuels the cycles of reoffending, especially when the victims are prone to turning to illegal substances to dull their pain.'* [29]

Experiences with police and watchhouses

The Taskforce heard about women and girls' experiences of being targeted by police or overpoliced if they had a criminal history, and not being recognised as a victim once they had offended:

> *'At one stage in your life you are a victim. But once you're an offender you can never be seen as a victim again.'* [30]

First Nations girls in Townsville told the Taskforce that they do not trust police because 'they are racist' and target them. These girls when said they see police, they 'just run away.'[31] Some women with domestic violence histories described police attitudes and behaviours (their language and physicality) as being triggering and distressing.[32]

Many women and girls described their experiences in watchhouses as demoralising and degrading – experiencing overcrowding, long stays and denial of basic hygiene items (including menstrual products) and appropriate clothing and bedding. The Taskforce also heard of medication and medical treatment being withheld.

> *'I was only able to shower once in my time in the watchhouse. I was given men's prison clothing to wear, no underwear, and I was not able to change the whole time I was there. The food is disgusting, things like cold fish and chips. They had problems with the thermostat and the temperature got so high I had to beg to be removed from my cell because I felt like I could not breathe and I thought I was going to die. I had to sit in the exercise yard until the cell cooled back down. I was not treated as a human at the watchhouse.'* [33]

Experiences of the legal system

Some women felt that they received inappropriate responses to their circumstances and offending,[34] and were not being sufficiently diverted from the criminal justice system:

> *'Not enough is being done to keep women out of jail… Cautioning, conferencing, more diversionary options to treatment programs and counselling are needed.'* [35]

Women reported feeling confused and unsupported in the legal system,[36] and experienced difficulties in obtaining legal assistance:[37]

> *'When a woman is charged they often have no idea what's going on. I used to do peer inductions [in prison], and I would say 'Do you know your charges? Have you got a lawyer?' And they would say 'No, I don't know'. That is a part of the system that makes women feel lost.'* [38]

Many had not applied for bail, or did not have adequate support or suitable housing to successfully seek bail.[39] Those who were granted bail spoke about the lack of support available to comply with bail conditions.[40]

On sentencing, women reported feeling that their victimisation history had not been adequately presented by lawyers or taken into account by judges.[41] Some also felt that the fact they had dependent children was used against them at sentencing to characterise them as 'bad mothers'.[42]

Experiences of prison and detention

Many women spoke of their experiences in prison as being excessively punitive and retraumatising. Women were accepting of prison as a form of punishment, but did not expect to feel additionally punished through prison conditions and their treatment by some correctional staff members.

> *'When I was released … it took a long time to really love myself again. It was supposed to be a place of transition back into society and it was not at all. I was already down when I arrived there; the prison system does that to you. But being there is like constantly being kicked and shown your place. I was shrunken down to nothing.'* [43]

Women gave examples of unnecessary and excessive physical force being used by predominantly male guards. It was common for women to experience correctional staff belittling, taunting or intimidating them:

> *'I felt like some of the guards in prison hated me and enjoyed having power over me. I felt some didn't treat me like I was even human. I felt scared when male guards would check on me at night, seeing their bodies towering over me.'* [44]

The complaints processes for prisoners were considered to be ineffective and carried significant risk of repercussions:

> *'You never spoke to the Official Visitor or Ombudsman because the officers would see you speaking to them, and would know when the report was made who had spoken to them. They would then find a way to punish you. There was nowhere to speak quietly, or privately. You always knew the people who had made complaints because they were given the worst chores, and their rooms were checked more. You could never ask for help. It was a permanent state of walking on eggshells.'* [45]

Many women recounted experiences of having 'privileges' such as phone calls or visits to family being cancelled (or threatened to be cancelled) due to perceived breaches of discipline. The practice of strip searching in particular was consistently described as violating and triggering.

'On my first day at prison I was strip searched, and this happened numerous times within my imprisonment. The process of strip searching and urine testing is traumatic, I felt violated. I did not want people to see my body, but I was made to do it. It felt like I was being sexually assaulted – take your clothes off, do it now or else. I felt sick every time I was searched. How much lower can you be made to feel?' [46]

Women spoke of prison food as being of poor quality (undercooked or old/rotten), with food allergies and other dietary and religious requirements not taken seriously or ignored. Food options on the buy-up lists for purchase were limited in availability and variety.[47]

Many women described prison as being detrimental to their rehabilitation - while their lives in the community were disrupted. Prison represented a period where no additional skills were acquired or gains made. Experiences of inadequate access to medical care, education and rehabilitation programs were commonly described. Employment within prison was described by women as being difficult to obtain and poorly paid.

Of particular concern was the lack of psychological and mental health support offered in prisons, which many women described as being integral to their general wellbeing and rehabilitation prospects. Limited access to psychologists or counsellors within corrective services would most often occur in 'shopfront' kiosk settings (without privacy) and resources were focused on acute need and suicide prevention.[48]

Women told the Taskforce that disclosures of mental health issues to correctional staff would often result in transfer to an austere secure unit where their feelings of despair and hopelessness grew exponentially. Some women found much-needed assistance through peer-to-peer support workers, chaplains and limited counselling (sexual assault and domestic violence) offered by external service providers.[49]

'When I went into prison for the three times, I wasn't provided any support – no counselling, nothing. I didn't deal with any of the issues I had that led me to prison. I had the same miserable life, and I wasn't able to deal with my trauma.' [50]

'There is limited support available. Women in jail have no choice but to rely on their peers for the majority of their mental health, welfare, and children's concerns and needs. The services within the centre exist to offer support but they are overstretched and unable to meet the demands.' [51]

The Taskforce heard that short periods of detention for girls did not enable real opportunity to change their lives. Some even feel safer in detention.[52]

Experiences as mothers

Many women spoke about inadequate care during pregnancy, birth and post-partum.[53] The Taskforce heard of occurrences of pregnancy loss and stillbirth in Townsville.[54] Some women did not receive any follow-up care after giving birth or miscarrying.

The Taskforce was told that women approved to have their children live with them are required to cover the cost of basic items for their babies and children. Some women said that their children were treated as prisoners. Conditions within prison are not child friendly and women described their parenting being scrutinised and criticised by correctional staff.

'I was regularly told I should be ashamed as a mother for small parenting decisions. We were treated like this so much that it just became normal. We were given no space to parent, we were watched constantly and criticised.' [55]

The effects of separating mothers from their children, even for short periods of time, can be devastating for the individuals involved.[56] Many women spoke of the emotional toll of being separated from their children, compounded by barriers to contact including the cost of phone calls and travel distances to prisons.[57]

Experiences of rehabilitation and release

Women told the Taskforce that they did not feel adequately supported when released from prison. Many described leaving prison with no possessions, money or secure housing. While women expressed gratitude for receiving basic transition support through transition programs, outsourced by QCS, there was no long-term practical and emotional support within the community. We heard housing repeatedly identified as a significant barrier to achieving stability. We heard that rehabilitation services were expensive and frequently over capacity. And we heard how criminal histories severely restricted employment prospects.

'When I got out of prison the first three times, I had no home, no money, no phone, no ID, no shower, and no clothes other than those I got pinched in. I didn't even have undies for the next day. I couldn't get my first Centrelink payment until another two weeks after I got out, so I felt I had to make money quickly. All I had coming out of prison was better connections to drug dealers, which meant that for the first two times I got out I'd just restart exactly where I left off – using and selling drugs.' [58]

Key systems and reports for Part 3

Relevant legislation, agencies and centres

The Department of Justice and Attorney-General (DJAG) is responsible for supporting the court system within Queensland to deliver its services, including specialist courts, and for the administration of key legislation including the Criminal Code Act 1899 (the Criminal Code), the *Penalties and Sentences Act 1992* (PS Act), the *Bail Act 1980* and the *Working with Children (Risk Management and Screening) Act 2000.*[59]

The Queensland Police Service (QPS) is the primary law enforcement agency in the state. Police powers and responsibilities are set out in the *Police Powers and Responsibilities Act 2000* (PPR Act). QPS is also responsible for the administration of the *Summary Offences Act 2005* (the SO Act).[60]

Queensland Corrective Services (QCS) is a criminal justice agency that administers correctional services in Queensland prisons and in the community (supervision). The powers and responsibilities of QCS are predominantly contained in the *Corrective Services Act 2006* (CS Act).[61]

Youth justice, including the operation of detention centres, is the responsibility of the Department of Children, Youth Justice and Multicultural Affairs (Youth Justice). Youth Justice's powers and responsibilities are predominantly found in the *Youth Justice Act 1992* (YJ Act).[62]

Queensland Treasury's Revenue Office is largely responsible for the administration of the *State Penalties Enforcement Act 1999* (SPER Act).[63]

There are a number of women's prisons and work camps in Queensland:

- Brisbane Women's Correctional Centre (BWCC) – high security
- Townsville Women's Correctional Centre (TWCC) – high security
- Southern Queensland Correctional Centre (SQCC) – high security
- Numinbah Correctional Centre (Numinbah) – low security
- the Helana Jones Centre (Helana Jones) – low security
- Warwick work camp (aligned to BWCC)
- Bowen work camp (aligned to TWCC).

There are three youth detention centres in Queensland, where girls and boys are segregated:

- Brisbane Youth Detention Centre
- West Moreton Youth Detention Centre
- Cleveland Youth Detention Centre (Townsville).

Women and girls' experiences in the criminal justice system as accused persons and offenders

Recent reviews and reports exploring women's offending and imprisonment

A number of recent reviews have examined prisons and the criminal justice system both in Queensland and Australia. Relevant reports include:

- Anti-Discrimination Commission of Queensland (now the Human Rights Commission), *Women in Prison 2019 – A human rights consultation report*[64]
- Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (2019)[65]
- Productivity Commission, *Australia's Prison Dilemma* (2021)[66]
- Queensland Sentencing Advisory Council, *Community-based sentencing orders, imprisonment and parole options* (2019).[67]

The human rights context

Queensland's *Human Rights Act 2019* (Qld) (the Human Rights Act) identifies 23 human rights that are to be promoted and protected. Women and girl accused persons and offenders are entitled to the protection of the Human Rights Act.

Involvement in the criminal justice system may limit some human rights, particularly when a woman or girl is deprived of liberty while under arrest, in a watchhouse, or in a prison or detention centre.

International instruments of particular relevance to the experiences of women and girls in the criminal justice system (which Australia has ratified, is a signatory to, endorsed or voted in favour of) include the *United Nations Rules for the Treatment of Women Prisoners and Noncustodial Measures for Women Offenders* (the *Bangkok Rules*), the *Convention on the Elimination of All Forms of Discrimination against Women*,[68] the *United Nations Convention on the Rights of the Child,*[69] the *United Nations Declaration on the Rights of Indigenous Peoples*[70] and the *United Nations Convention on the Rights of Persons with Disabilities*.[71]

The *Bangkok Rules* are of particular relevance to this part of the Taskforce's report. They contain a set of 70 rules focused on the treatment of female offenders and prisoners.[72] The rules provide guidance to policy makers, legislators, sentencing authorities and prison staff to reduce unnecessary imprisonment of women, and to meet the specific needs of women who are imprisoned. The *Bangkok Rules* were adopted by the United Nations General Assembly on 22 December 2010. Australia voted in favour of the rules.

Standards for women in prison

The *Guiding Principles for Corrections in Australia*[73] (the Principles) represent a national intent around which each Australian state and territory government will develop practices, policies, and performance standards. The Principles contribute to the achievement of outcomes and are strategic statements rather than procedural instructions or enforceable standards or laws. They are intended to reflect social expectations of Australian correctional services, are aligned to recognise international best practice and are seen as critical to reducing reoffending and providing value for money. The key outcome areas within the Principles are: governance, respect, safety and security, health and wellbeing, and rehabilitation and reintegration. The Principles were last revised in 2018.

The Principles are informed by internationally accepted rules, standards and practices including:

- *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the *Nelson Mandela Rules*)
- the *Bangkok Rules*
- *United Nations Standard Minimum Rules for Noncustodial Measures* (the *Tokyo Rules*).

There are no minimum standards for the management of women in prison under the CS Act.

The *Healthy Prisons Handbook* developed by QCS in 2007 sets out various detailed standards of performance required of correctional centres and outlines the inspection process (the 'Healthy Prison Test') employed by the Office of the Chief Inspector within QCS. These inspections and reviews are based on the concept of a 'healthy prison', which was first set out by the World Health Organisation (WHO). The four key aspects relevant to the test are safety, respect, purposeful activity, and resettlement. The *Handbook* does not specifically respond to the needs of women.

Many other Australian jurisdictions have standards relating to the management and needs of prisoners, mostly developed by detention oversight bodies. Corrections Victoria has established *Standards for the*

Management of Women Prisoners in Victoria, which set the minimum requirements for correctional services in Victorian prisons for women. The Standards provide the basis for ensuring accountability and a consistent level of service delivery across the system.

At present, QCS does not have any policies or Custodial Operations Practice Directives (COPD) designed specifically for women, except for *Female Prisoners and Children,* which covers pregnancy, birth and the management of children in prisons.[74]

Standards for girls in detention

The Australasian Juvenile Justice Administrators' *Juvenile Justice Standards 2009* (the Standards) describe the agreed standards for practice to be delivered by juvenile justice administrators. They are the agreed set of standards that juvenile justice services agencies aspire to meet. The Standards draw upon international rules including:

- *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*
- *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules)
- the Tokyo Rules.[75]

There are no specific minimum standards for the management of girls in detention under the YJ Act. However, under the YJ Act, as far as reasonably practicable, the chief executive of Youth Justice must ensure principles 3 (respect and dignity), 16 (access to legal and other support services), 20 (contacts with community) and 21 (safe and stable living environment) of the Charter of youth justice principles[76] are complied with in relation to each child detained in a detention centre. Principle 21 states:

> A child who is detained in a detention centre under this Act:
>
> - should be provided with a safe and stable living environment
> - should be helped to maintain relationships with the child's family and community
> - should be consulted about, and allowed to take part in making decisions affecting the child's life (having regard to the child's age or ability to understand), particularly decisions about—
>   - the child's participation in programs at the detention centre
>   - contact with the child's family
>   - the child's health
>   - the child's schooling.
> - should be given information about decisions and plans about the child's future while in the chief executive's custody (having regard to the child's age or ability to understand and the security and safety of the child, other persons and property)
> - should be given privacy that is appropriate in the circumstances including, for example, privacy in relation to the child's personal information
> - should have access to dental, medical and therapeutic services necessary to meet the child's needs
> - should have access to education appropriate to the child's age and development
> - should receive appropriate help in making the transition from being in detention to independence.

Youth Justice applies the *Australasian Juvenile Justice Standards* for detention centres.[77]

Many other Australian jurisdictions have standards relating to managing and meeting the needs of young people in detention, mostly developed by detention oversight bodies.

Inspector of detention services

On 28 October 2021, the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence introduced legislation proposing the establishment of a legislated, independent inspector to oversee Queensland detention facilities[78] under the proposed *Inspector of Detention Services Bill 2021* (the Bill).[79]

Most Australian jurisdictions already have an independent office or statutory body with oversight of detention facilities. Queensland's proposed approach (as set out in the Bill) sees the Inspector sit within the Office of the Queensland Ombudsman (see Appendix 14 for comparison).

The Bill provides a framework for the review of detention services and inspection of places of detention to promote the humane treatment of detainees and prevent harm and inhumane or degrading treatment. The proposed Inspector will have jurisdiction to review, monitor and inspect community corrections centres, prisons, watchhouses, work camps and youth detention centres.[80]

The Inspector's oversight will also extend to the transportation of detainees (while in the custody of a relevant custodial entity) from any place of detention; or to a place of detention other than a watchhouse; or to a watchhouse from a court in which the person has appeared or another watchhouse or place of detention. The Inspector will not have jurisdiction to investigate complaints or specific incidents.

Investigation of incidents in corrective services facilities will remain an internal function within QCS under the CS Act. Similarly, the Inspector will not investigate specific incidents within youth detention centres, as this will remain an internal function of Youth Justice. The investigation of incidents at police watchhouses will continue to be carried out by the Ethical Standards Command, QPS. Investigation of deaths in custody will remain the jurisdiction of the Coroner. Where the Inspector reasonably suspects a matter involves or may involve corrupt conduct, the Inspector will be required to notify the Crime and Corruption Commission.[81]

The Inspector will be required to conduct mandatory inspections at set intervals of certain places of detention, consistent with a preventative focus. The Inspector will be required to, at a minimum, inspect every five years each prison that is a secure facility (high-security facilities) and all or a part of a particular place of detention prescribed by regulation. The Inspector will be required to conduct mandatory inspections of youth detention centres at least once every year.

A further key function of the Inspector is reporting directly to the Speaker of the Legislative Assembly after each mandatory inspection and review of a detention service. The Inspector may also prepare a report for the Speaker about any other inspection that is carried out or the performance of another function. Reports will include systemic advice and recommendations that the Inspector considers appropriate. The Inspector may also publish reports separately after they have been tabled in Parliament. The provision of reports to Parliament is intended to facilitate greater transparency and accountability regarding how places of detention are managed, and the conditions and treatment of persons detained.[82]

The Inspector is also required to prepare and publish standards in relation to carrying out inspectorate functions. The standards are intended to reflect best practice, incorporating relevant national and international standards, and contribute to consistency and transparency in places of detention.[83]

Conclusion

This part of the Taskforce's report will give voice to the experiences of women and girls who are accused persons and offenders, while also considering the interests of the community, including victims of crime. The experiences of these women and girls in the criminal justice system are not often talked about publicly. The community often sees these women and girls, particularly once sentenced and incarcerated, simply as people who have broken the law and deserving of punishment. 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. As American social justice activist Bryan Stevenson observed: 'Each of us is more than the worst thing we've ever done.'[84]

Women and girls do not break the law as often or go to prison for as long as men and boys. However, the rate at which women and girls are offending and being held in custody is increasing at alarming and much higher rates than men and boys. Women and girls are often being held in custody without having been found guilty of an offence or having received a sentence of imprisonment for their offending. This part of the Taskforce's report identifies what the causes of this might be and makes recommendations about how the rates of offending and imprisonment can be slowed in a way that will provide the most benefit to the community.

Breaking the law must have consequences for all people, irrespective of where they identify on the gender spectrums. All people who offend must be held accountable for their behaviour. Being held accountable, however, does not excuse the state from its obligation to provide basic human rights and needs to those it has imprisoned. In the chapters that follow, the Taskforce will identify the ways in which the State is failing to meet the needs of these women and girls and make recommendations for improvement to best benefit them and the community.

Women and girls' experiences in the criminal justice system as accused persons and offenders

The Taskforce believes that although the community expects offenders to be held accountable, it also expects that they will be supported to rehabilitate, heal and not reoffend. Rehabilitation and healing does not just benefit an offender - it makes the community safer in a much more cost-effective way than repeated imprisonment. The Taskforce has identified that opportunities to rehabilitate and heal women and girls who are offenders are being lost and has made recommendations for the Queensland Government to address and capitalise on those opportunities for the betterment of our community.

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[1] In Crime Report data, a person aged 10 years or over who, through the clearance of an offence, is alleged to be responsible for committing that offence. A person may be recorded as an offender multiple times, if they were proceeded against by police for multiple offence types within the same incident or multiple times within the reference period. Unless otherwise specified, offender data presented in this report does not represent a count of individual (unique) offenders.
[2] Queensland Government Statistician's Office, *Crime report, Queensland, 2020–21* (2022) 43.
[3] Queensland Government Statistician's Office, *Crime report, Queensland, 2020–21* (2022) 43.
[4] Queensland Government Statistician's Office, Queensland Treasury – Courts Database, extracted November 2019. Estimated resident population data obtained from Australian Bureau of Statistics, 'Estimates of Aboriginal and Torres Strait Islander Australians, June 2016'.
[5] Data from a forthcoming report by the Queensland Sentencing Advisory Council on the sentencing of women and girls.
[6] Data from a forthcoming report by the Queensland Sentencing Advisory Council on the sentencing of women and girls.
[7] Data from a forthcoming report by the Queensland Sentencing Advisory Council on the sentencing of women and girls.
[8] Data from a forthcoming report by the Queensland Sentencing Advisory Council on the sentencing of women and girls.
[9] Data from a forthcoming report by the Queensland Sentencing Advisory Council on the sentencing of women and girls.
[10] Data from a forthcoming report by the Queensland Sentencing Advisory Council on the sentencing of women and girls.
[11] Data from a forthcoming report by the Queensland Sentencing Advisory Council on the sentencing of women and girls.
[12] Data from a forthcoming report by the Queensland Sentencing Advisory Council on the sentencing of women and girls.
[13] Queensland Government Statistician's Office, *Prisoners in Queensland, 2021* (2021), 1.
[14] Queensland Government Statistician's Office, *Justice Report, Queensland, 2020-21* (2021), 113.
[15] Queensland Government Statistician's Office, *Justice Report, Queensland, 2020-21* (2021), 113.
[16] Queensland Government Statistician's Office, *Justice Report, Queensland, 2020-21, Criminal Justice Statistics* (2021), 110.
[17] Data from a forthcoming report by the Queensland Sentencing Advisory Council on the sentencing of women and girls.
[18] Queensland Sentencing Advisory Council, *Community-based sentencing orders, imprisonment and parole options* (Final report, 2019) 314.
[19] Queensland Government Statisticians Office, *Justice Report, Queensland, 2020-21* (2021) 114.
[20] Queensland Government Statisticians Office, *Justice Report, Queensland, 2020-21* (2021) 93.
[21] Queensland Corrective Services, *Improving outcomes for incarcerated women* (2019) (web page) https://corrections.qld.gov.au/improving-outcomes-for-incarcerated-women/
[22] Taskforce submission 5928396.
[23] Queensland Government, *Working Together, Changing the Story, Youth Justice Strategy 2019–2023* (2019) 6.
[24] Queensland Government, *Working Together, Changing the Story, Youth Justice Strategy 2019–2023,* 6.
[25] Legal Aid Queensland submission, Discussion Paper 3, 68.
[26] Meeting with Darumbal Youth Service, 16 March 2022, Rockhampton.
[27] Queensland Productivity Commission, *Inquiry into imprisonment and recidivism* (2019) 222.
[28] Taskforce submission 5928396.
[29] Taskforce submission 6141484.
[30] Meeting with women at Sisters Inside West End Office, 11 April 2022.
[31] Meeting with girls at Cleveland Youth Detention Centre, 9 March 2022, Townsville.
[32] Meeting with women at Sisters Inside West End Office, 11 April 2022, Brisbane.
[33] Taskforce submission 5894942.
[34] Meeting with women at Sisters Inside West End Office, 11 April 2022, Brisbane.
[35] Confidential group submission from women in prison, May 2022.
[36] Meeting with a woman supported by Sisters Inside West End Office, 4 April 2022, Brisbane; Confidential group submission from women in prison, May 2022; Meeting with women at Sisters Inside West End Office, 11 April 2022, Brisbane.

[37] Meeting with women at Southern Queensland Correctional Centre, 5 May 2022, Gatton.
[38] Meeting with a woman supported by Sisters Inside West End Office, 4 April 2022, Brisbane.
[39] Meeting with women at Townsville Women's Correctional Centre, 8 March 2022, Townsville; Meeting with women at Southern Queensland Correctional Centre, 5 May 2022.
[40] Confidential group submission from women in prison, May 2022.
[41] Meeting with women at Sisters Inside West End Office, 11 April 2022, Brisbane.
[42] Meeting with women at Sisters Inside West End Office, 11 April 2022, Brisbane.
[43] Taskforce submission 5894942.
[44] Taskforce submission 5928396.
[45] Taskforce submission 5935939.
[46] Taskforce submission 5894942.
[47] Meeting with women at Southern Queensland Correctional Centre, 5 May 2022, Gatton; Taskforce submission 6141484.
[48] Meeting with women at Townsville Women's Correctional Centre, 8 March 2022, Townsville; meeting with women at Southern Queensland Correctional Centre, 5 May 2022, Gatton.
[49] Taskforce submission 6161457.
[50] Taskforce submission 5928396.
[51] Taskforce submission 6141484.
[52] Meeting with girls at Cleveland Youth Detention Centre, 9 March 2022, Townsville.
[53] Meeting with Sisters Inside Townsville Office, 7 March 2022, Townsville.
[54] Meeting with Sisters Inside Townsville Office, 7 March 2022, Townsville.
[55] Taskforce submission 5894942.
[56] Australian Government, *Australian Institute of Health and Welfare, The health of Australia's prisoners 2018* (2019) 72; Poehlmann J, 'Representations of attachment relationships in children of incarcerated mothers' (2005). 76(3) *Child Development*, 679–96.
[57] Meeting with women at Townsville Women's Correctional Centre, 8 March 2022, Townsville; meeting with women at Southern Queensland Correctional Centre, 5 May 2022, Gatton.
[58] Taskforce submission 5928396.
[59] Constitution of Queensland 2001, *Administrative Arrangements Order (No. 2) 2021,* 14 -17.
[60] Constitution of Queensland 2001, *Administrative Arrangements Order (No. 2) 2021,* 21.
[61] Constitution of Queensland 2001, *Administrative Arrangements Order (No. 2) 2021,* 21.
[62] Constitution of Queensland 2001, *Administrative Arrangements Order (No. 2) 2021,* 33.
[63] Constitution of Queensland 2001, *Administrative Arrangements Order (No. 2) 2021,* 7.
[64] Anti-Discrimination Commission of Queensland, W*omen in Prison 2019 - A human rights consultation report* (2019).
[65] Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (2019).
[66] Australian Government, Productivity Commission, *Australia's prison dilemma* (2021).
[67] Queensland Sentencing Advisory Council, *Community-based sentencing orders, imprisonment and parole options* (2019).
[68] Australia signed the *Convention on the Elimination of All Forms of Discrimination against Women* on 17 July 1980. Australia has two reservations to CEDAW that relate to women in the armed forces and provision of paid maternity leave. Australian Human Rights Commission, *The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* [accessed May 2022} https://humanrights.gov.au/our-work/sex-discrimination/convention-elimination-all-forms-discrimination-against-women-cedaw-sex.
[69] Australia ratified the *United Nations Convention on the Rights of the Child* in December 1990. Australian Human Rights Commission, *About Children's Rights* [accessed May 2022] https://humanrights.gov.au/our-work/childrens-rights/about-childrens-rights#:~:text=The%20CRC%20is%20the%20most,set%20out%20in%20the%20treaty.
[70] The *United Nations Declaration on the Rights of Indigenous Peoples* was endorsed by Australia on 3 April 2009. Amnesty International, *United Nations Declaration on the Rights of Indigenous Peoples* [accessed May 2022] https://www.amnesty.org.au/wp-content/uploads/2017/01/Declaration-Indigenous-Peoples.pdf.
[71] The *Convention on the Rights of Persons with Disabilities* was ratified by Australia on 17 July 2008. The Operational Protocol was ratified on 30 July 2009. Australian Government, Department of Social Services, *Disability and Carers* [accessed May 2022] https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/international-participation-in-disability-issues.
[72] *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders* (the Bangkok Rules) note by the Secretariat, 6 October 2010, A/C.3/65/L.5.
[73] Government of Australia through the Corrective Services Administrators' Council, *Guiding Principles for Corrections in Australia* (2018).
[74] Queensland Corrective Services, Custodial Operations Practice Directive, *Female Prisoners and Children*, version 3 (2021).
[75] Australasian Juvenile Justice Administrators, *Juvenile Justice Standards 2009* (2009).

[76] *Youth Justice Act 1992* (Qld), s 263, sch 1.
[77] Queensland Government, *Youth Detention Policies* [accessed May 2022] https://www.qld.gov.au/law/sentencing-prisons-and-probation/young-offenders-and-the-justice-system/youth-detention/managing-youth-detention-centres/youth-detention-policies
[78] Queensland Government, The Queensland Cabinet and Ministerial Directory, *Laws to establish an independent Inspector of Detention Services introduced* [accessed June 2022] https://statements.qld.gov.au/statements/93629.
[79] *Inspector of Detention Services Bill 2021*.
[80] *Inspector of Detention Services Bill 2021*, Explanatory Notes, 3.
[81] *Inspector of Detention Services Bill 2021*, Explanatory Notes, 4
[82] *Inspector of Detention Services Bill 2021*, Explanatory Notes, 5.
[83] *Inspector of Detention Services Bill*, section 8(1)(d); *Inspector of Detention Services Bill 2021*, Explanatory Notes, 4.
[84] Bryan Stevenson, *Just Mercy - A story of justice and redemption* (One World, 2015).

Chapter 3.2: Understanding the experiences of women and girls who come into contact with the criminal justice system

Trauma, abuse, entrenched disadvantage, discrimination, mental illness, and substance abuse are the primary drivers of women and girls' contact with the criminal justice system.

A gender-responsive and trauma-informed approach is needed to effectively respond to offending by women and girls and to reduce the risk of reoffending.

Investing in early intervention and prevention, including through justice reinvestment, will address the underlying drivers of offending to keep the community safe.

Drivers of women and girls' contact with the criminal justice system

Social and economic disadvantage are strongly associated with offending and imprisonment for both men and women.[1] The former Queensland Productivity Commission's *Inquiry into imprisonment and recidivism* report (QPC Report) found that exposure to 'risk factors', including birth-related factors (Fetal Alcohol Spectrum Disorders (FASD) and in-utero nutrient deprivation), child maltreatment and involvement with child protection, mental health, negative personal relationships and substance use, increase chances of offending and imprisonment.[2]

Many 'risk-factors' for offending are consistent for women and men.[3] However, research indicates that the trajectories of women who offend are not entirely the same as their male counterparts.[4] Women who offend experience unique life events that create distinct and gendered offending pathways.[5] These 'gendered pathways' involve, for example, childhood victimisation leading to subsequent mental illness and substance abuse. They also include social disadvantages in education, family support, and relationship dysfunction leading to employment and financial difficulties and subsequent offending.[6]

Research suggests that a higher threshold of 'risk factors' may be required to push women over the line from prosocial to antisocial behaviour,[7] meaning that women and girls who do offend are likely to have experienced very significant disadvantage.

The results of the Taskforce's consultation are consistent with available research[8] and show the common drivers of women's offending behaviour and criminal justice system involvement include:

- victimisation and trauma history (including domestic, family and sexual violence)
- adverse childhood experiences
- poverty and homelessness
- mental health issues
- substance misuse
- poor health or disability.

First Nations women are more likely to experience each of these 'common drivers'.[9] On top of this, First Nations women experience additional drivers of contact, including inequality, racism, and intergenerational trauma.[10]

For many women and girls who spoke to the Taskforce, there was no 'single thing' that caused their offending. Instead, women spoke of a combination of circumstances and experiences that influenced their path.[11] Consultation forum attendees described things 'snowballing' for women, with abuse and violence leading to mental health issues, drug use, poverty and homelessness.[12] A woman of Māori descent described the accumulation of disadvantage in her own life:

> *'I was raised in a household with severe domestic violence between my parents. At age 11 I developed depression, and always felt angry and sad. At that age I was not able to understand that this depression was a result of the violence I witnessed. I dropped out of high school in Year 9 and started smoking weed, drinking alcohol and eventually pills, anything to escape. I was working full time from a very young age and looking after myself. Most of my relationships through my teens and 20s were domestic violence relationships. In my early 20s I started dealing drugs. At the time I didn't think I was doing anything wrong, I was earning money, I was paying for everything and supporting people. I only saw the good in it and had no understanding of the seriousness of my actions. '*[13]

The Taskforce acknowledges that every woman has unique experiences, circumstances, and responses to the events in her life, and that the 'drivers' identified in this chapter may not impact or be experienced in the same way by all women.

The risk factors and drivers discussed in this chapter are not excuses for the offending behaviour of women and girls, but they are part of the explanation. By better understanding the lives and experiences of women and girls who offend, we can better understand their needs and consider more effective approaches to prevent them from offending in the first place, or reduce the risk of them reoffending.

While this part of the report discusses research and consultation outcomes on the experiences of women and girls, the Taskforce notes that men and boys in the criminal justice system are also likely to have experienced disadvantage and trauma.[14] The Taskforce's terms of reference ask it to focus on women and girls. In doing this, we do not seek to minimise the experiences of men and boys.

Victimisation and trauma history

Women in the criminal justice system have an especially high prevalence of trauma when compared with women in the general population (and men in the criminal justice system).[15] Prior exposure to trauma, including childhood or adult experiences of sexual, physical, or emotional abuse, is common to nearly all women in prison.[16]

Queensland Corrective Services (QCS) reported in 2019 that 87% of women in custody have been victims of child sexual abuse, physical violence or domestic violence. Sixty-six per cent of those women have been victims of all three types of abuse.[17] Ninety-three per cent of young people within the youth justice system have experienced some form of trauma.[18]

Interaction with the criminal justice system can compound and exacerbate the impacts of trauma and undermine efforts to recover. Women can experience a 'vicious cycle of victimisation and offending'[19] – as violence increases risk of imprisonment, while imprisonment increases the risk and effects of violence.[20]

The high prevalence of victimisation in women who offend means that most hold the dual status of victim-survivor and offender.[21] In many instances, the victimisation experiences of women are overshadowed by their offending. Throughout consultations, it became clear to the Taskforce that these women are the 'forgotten victims' of domestic, family and sexual violence in our community.[22] As Sisters Inside CEO Debbie Kilroy OAM explained in a meeting with recently released women:

> *'At one stage in your life you are a victim. But once you're an offender you can never be seen as a victim again. This is the issue with the language used by the state. You're siloed – you're either a victim or an offender. It doesn't matter that you've been abused all your life. Every woman sitting around this table has had violence perpetrated against them in one way or another.'* [23]

Domestic and family violence and coercive control

Experiences of domestic and family violence and coercive control appeared almost universal among the women offenders consulted by the Taskforce. These experiences often began with witnessing or

experiencing domestic and family violence as children, then continued in their own abusive relationships as teenagers and adults.[24] The Taskforce heard that young girls looking for safety and stability in their lives can end up in abusive relationships, often with predatory older men, who draw them in to criminal offending.[25] Distressingly, the Taskforce met with girls aged 14 to 15 in the Cleveland Youth Detention Centre who had already experienced abusive relationships.[26] This supported what the Taskforce heard and reported in *Hear her voice 1* about the prevalence of violence in relationships among young people.

The connection between experiences of domestic abuse and female offending is well established in research.[27] Several women directly linked domestic violence to their offending.[28] For example, one woman explained:

> *'I always had to be the adult in my relationship with my husband and felt intense pressure to provide for my family. I recognise that this pressure and my abusive relationship with my husband contributed to my offending… He utilised coercive control against me daily, making threats, manipulating me. It started small and just got progressively worse. I felt trapped and leaving didn't feel like an option.' [29]*

The Taskforce considered the offending of women experiencing coercive control in *Hear her voice 1*, including in the context of 'social entrapment' as a way of describing and understanding coercive control.[30] Experiences of domestic and family violence and coercive control impact the criminal offending behaviours of women in several ways. For example, abused women may:

- be coerced into criminal activity by an abusive partner
- offend as a way of escaping or responding to violence or coercive control
- offend by using reactive violence against their abuser
- commit theft or fraud offences in connection to their experiences of financial abuse.[31]

The Taskforce heard from women who had been charged for 'co-offending',[32] or who had been misidentified as the primary aggressor in domestic violence situations and been charged for using 'resistive violence' or breaching domestic violence orders.[33] The Taskforce also heard from a number of women in custody who were convinced by coercively controlling partners or ex-partners to take responsibility for their partner's offending and plead guilty to offences they did not commit.[34] Sometimes their decisions to admit to crimes they had not committed were influenced by fear their partner would be imprisoned, which would adversely impact on family income and stability.[35]

Women also told the Taskforce that they had offended either in the context of, or to escape, domestic and family violence.[36] A woman from a culturally and linguistically diverse background in prison told the Taskforce:

> *'I'm in here because I was in an abusive relationship for over 10 years. We came to Australia, and I was completely isolated. I didn't even know what abuse was until recently when they talked about coercive control… I had been abused, sodomised. Anything possible on this earth he had done to me… There's a hundred girls in here who can state that some man brought her down. Any one of us can put her hand up and say, 'A man broke me.' [37]*

Sexual violence

The Taskforce heard that experiences of sexual violence, including childhood sexual abuse, are extremely common among women who offend and women in prison.[38] One sexual assault service provider stated that sexual violence 'seems to become a trajectory for women into the criminal justice system'.[39] They further explained how inappropriate responses to sexual violence isolate women and girls and contribute to their offending:

> *'There is no adult who has taken an interest in their general wellbeing, and they have had to fend for themselves in a difficult community. They have been silenced and not believed in childhood. All they needed was one person to believe them to have changed their life.'* [40]

Childhood experiences of sexual abuse affect both youth offending and adult offending. An Australian study examining the trajectories of victim-survivors of child sexual abuse over multiple decades found them to be almost five times more likely to be charged with an offence than the general population.[41] One woman who had been to prison disclosed:

> *'My mum started dating a man who sexually abused my sister and me from around the age of 9 or 10. In exchange for us putting up with this, he would let us smoke and drive his car. At the time, I felt it was my fault for accepting this treatment and I deserved it. I now realise I was being groomed.'* [42]

Girls in the youth justice system have been exposed to a greater level of maltreatment relative to boys, with sexual abuse and multi-type maltreatment being more pronounced for girls.[43] The Taskforce heard from staff in a youth detention centre about a young girl there who had been sexually abused by a relative. The staff explained:

> *'She's been through something so horrendous. She has been on suicide risk and has been up and down. She feels safer here than she does outside. Her (relative) has been put in prison for beating and abusing her… Her sister is here as well, and you can see how it is impacting both of their lives. She feels trauma and guilt, that it's her fault he went to prison and not his actions. She doesn't feel loved.'* [44]

Grief trauma, pregnancy loss and separation from children

The Taskforce heard from women who connected the loss of pregnancies and the deaths of children and close family members to their offending.[45] One woman explained:

> *'When our daughter was 8 months old, she died. I discovered her in the morning, she had died in her sleep. I felt so guilty. I had nightmares for years where she would crawl towards me. I don't remember being offered any help or support by the hospital or anyone else after her death. I started smoking meth so that I didn't have to sleep and experience these nightmares. I'd be up for four or five days at a time. My mum, dad, and sister looked after my children while I lost control of myself completely.'* [46]

Women also spoke about the grief they experienced in having had children removed by child protection or having lost contact with their children as a result of previous periods of imprisonment, and how this influenced future offending. One woman said, 'I get upset about my kids and my family – so I turn to drugs and crime.'[47] Another said, 'You've lost your kids, you've got nothing left to lose.'[48] In research, the grief associated with the removal of children has also been linked to women's mental health issues and future offending.[49]

Adverse childhood experiences

Disruptions to childhood and family life are factors contributing to later offending for girls and women.[50] Adverse childhood experiences, mental health and offending are strongly linked,[51] as is the overlap

between offending and child protection – especially for First Nations peoples.[52] A recent study of adverse childhood experiences among young people in the South Australian youth justice system found that surveyed young people frequently experienced emotional abuse (64%), neglect (62%), family violence (46%), physical abuse (45%), bullying (44%), neighbourhood violence (39%) and sexual abuse (7%). Surveyed girls had a higher prevalence of each adverse childhood experience, with the exception of neglect and neighbourhood violence.[53] A 2019 study into the trajectories of incarcerated girls in Victoria found common themes of educational disconnection, early family disruption, personal and family mental health problems, substance abuse, antisocial peers, victimisation and anger problems.[54]

Unresolved childhood trauma can cause both adverse physical and psychological health problems in adulthood as well as a range of psychosocial issues[55] including disassociation.[56] Children who are exposed to multiple types of abuse (sexual, physical, neglect and family violence) are at particular risk of developing clinical and personality disorders and poor psychosocial outcomes, including criminal and violent behaviour.[57] One woman explained:

'My story is not unique in the way of brokenness, as many of us women with lived experience. I was born into a drug/alcohol-addicted family fuelled by violence. My mother was a victim of heavy DV before she passed away when I was 6, my brother was 4. We were beaten black and blue on a regular basis from my father. Spent most nights in pubs, our days shoplifting with our dad. I was sexually abused twice at a young age by family members. Drinking and experimenting with drugs & boys at 13. Homeless at 14. Pregnant at 16. Career criminal by 19 also an alcoholic addicted to the party lifestyle and drugs.' [58]

Children who disengage from education, or who have limited educational attainment, are at risk of entering the youth and adult justice systems.[59] The Taskforce heard from girls in youth detention who had not been going to school before their detention.[60] The Taskforce also heard that negative peer associations and peer pressure were significant drivers of offending for girls.[61]

Parental involvement with the criminal justice system is another potential trigger for offending. Seventeen per cent of women surveyed on entrance to prison in 2018 had a parent or carer in prison during their childhood.[62] One First Nations woman told the Taskforce: 'My mum was an 'A', and I was a 'D'. It captures generations.'[63] This woman's reference to letters is about the classification system used by QCS to identify when a person entered the prison system, meaning her mother had been in prison during the woman's youth.[64]

Contact with the child protection system

The overlap between experiencing abuse and neglect during childhood, involvement in the child protection system and contact with the criminal justice system is well documented,[65] although the nature of the correlation and whether there is a causal link is unclear.

Research suggests this overlap is more pronounced for women than for men, and most significant for Aboriginal and Torres Strait Islander women.[66] The impact of this overlap on Aboriginal and Torres Strait Islander peoples is reflected in the *Family Matters Report 2021: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander Children in out-of-home care in Australia*.[67] This report noted a 'well-documented correlation between child protection involvement and the experience of long-term social disadvantage and over-representation in juvenile justice and adult criminal justice systems'.[68]

While the majority of children who are involved in the child protection system do not offend despite their abuse and trauma histories, it is common enough for children with child protection backgrounds entering the youth justice system for them to be referred to by their own name - 'crossover children'.[69] Between 2014 and 2018 in Australia, young people who had received child protection services were nine times more likely than the general population to have also been under youth justice supervision.[70]

There are many more children who receive a child protection service than are subject to a child protection order. As at 30 June 2021, 4.2% of children subject to a child protection order (aged 10 and over) in Queensland were also on a youth justice order.[71]

Children move in and out of the youth justice system and the number of children subject to a youth justice order at a particular point in time does not capture those children who may have been subject to a youth justice order in the past. Data captured at a point in time does not reflect the past experiences or future trajectories of individuals involved in either system.

While a small proportion of children subject to a child protection order are also subject to a youth justice order, a higher proportion of children involved in the youth justice system have also been involved in the child protection system. During 2018-19, 57% of children under youth justice supervision in Queensland had also received a child protection service in the previous five years.[72] In Queensland in 2021, 18% of young people under active youth justice supervision either in the community or in custody who were surveyed were also subject to an active child protection order.[73]

The overlap between youth justice involvement and receiving some form of child protection service reflects that children who have been abused or neglected are at greater risk of engaging in criminal activity.[74] While the data and overlap are of concern, the Taskforce has not identified research that shows a *causative* link between child protection contact and youth offending for girls. It is unclear whether the risk factors relate to girls' experiences of abuse and neglect at home or their involvement in the child protection system, or indeed both.

The Taskforce heard that girls in the care of the Department of Children, Youth Justice and Multicultural Affairs (DCYJMA) may be particularly vulnerable to contact with the criminal justice system.[75] This is supported by research indicating that the overlap between child protection and youth justice involvement appears to be strong for girls, and that girls who offend are more likely than boys to have experienced child protection involvement.[76] During 2018-19, 71% of girls under youth justice supervision in Australia had received a child protection service in the previous five years, compared with 49% of boys.[77] Children with neurodisability are overrepresented among 'crossover children', with one Australian study finding that nearly one half of 'crossover' children had some form of neurodisability. Although this reduced to about 25% when looking at girls only, this is still significant.[78]

Both detention centre staff and police raised concerns about the 'criminalisation of the care system', referring to placement pressures within the child protection system adversely impacting on appropriate accommodation being identified for children in care who are charged with a criminal offence, which can impact on their prospects of being granted bail.[79] One young woman explained:

> *'I was 17 when I went to prison. I was sentenced as an adult. I was a ward of the state and had been in residential care… Kids in child protection going into youth justice is a big issue. I work in the industry now, with kids in residential care. I definitely see [them] going straight into youth justice.'* [80]

Children whose mothers are incarcerated are particularly vulnerable to poor developmental outcomes, behavioural problems, educational difficulties, increased mortality, and exposure to the child protection system and the youth justice system.[81] The Taskforce heard about intergenerational cycles of offending whereby children whose mothers offend enter into the child protection and/or youth justice system.[82] One woman in prison noted:

> *'When you put a woman in jail, you break families apart and kids end up with Child Safety.'* [83]

Contact with the youth justice system

Many women experience their first contact with the criminal justice system as girls. A younger starting age of antisocial behaviours is associated with a trajectory towards future criminal justice involvement.[84] Although boys significantly outnumber girls in youth justice convictions, the ratio is slowly decreasing (from 3.2 to 1 in 2012-13 to 2.6 to 1 in 2017-18).[85] The QPC report found that women were first convicted on average 1.1 years younger than men,[86] and that after first contact with police, women interact with police more frequently than men.[87]

The Taskforce met young women in Cleveland Youth Detention Centre, and heard from a young woman who had recently transitioned from Cleveland to the Townsville Women's Correctional Centre, where her mother was also serving a sentence.[88] This young woman had been in and out of Cleveland many times since she was 14, describing it as 'her home'.[89] She explained that 'most children in Cleveland have been in there many times,' but that once released 'most kids are living on the streets, stealing cars, getting on the drugs'. The Taskforce consistently heard that girls in the youth justice system flow to the adult justice system.[90]

First Nations girls are at particular risk of entering the youth justice system at a young age. Aboriginal and Torres Strait Islander girls were twice as likely to be the subject of a supervision order compared with non-Indigenous girls in 2014-15.[91]

Poverty and homelessness

Women in Queensland are disproportionately impacted by financial hardship compared with men, due to factors including unpaid care, childcare responsibilities, and lower incomes and savings.[92] Women are more likely to enter the criminal justice system for 'crimes of poverty' including theft and shoplifting.[93] The Taskforce heard that women often commit crimes out of necessity or desperation.[94] Trauma from high rates of sexual assault and family violence can push women into housing instability, poverty and homelessness, increasing their likelihood of contact with the justice system.[95]

Housing instability and homelessness were raised as critical factors for women's exposure to the criminal justice system in every location visited by the Taskforce.[96] Queensland is currently experiencing a critical housing crisis with more than 50,000 people on the social housing register.[97] There are low rental vacancies and increasing rents and cost-of-living pressures.[98] Homelessness is also a growing issue for women, with Australian women over the age of 55 the fastest-growing demographic for homelessness.[99] Women are the major victims of domestic and family violence and are often required to leave the family home for their own safety and that of their children.

Homelessness exposes women to increased surveillance and overpolicing and to a range of associated charges.[100] The Taskforce heard that many women experiencing homelessness are vulnerable to being charged with criminal offences as their homelessness makes them 'visible' to police.[101] Australian data indicates that a third of surveyed women in prison were homeless or in short-term or emergency accommodation before entering prison.[102] One woman who was struggling with drug use following significant trauma explained:

> *'I was kicked out of my house and started couchsurfing… I started shoplifting around the time I was homeless and using meth heavily to support my addiction. That is how I first came into contact with the law.' [103]*

Mental health

Research conducted in Queensland and Western Australia indicates that half (54%) of young females (aged 14-17) in the criminal justice system report psychological distress – much higher than their female counterparts in the community (35%), and one-third met the diagnostic criteria for two or more mental disorders assessed (including post-traumatic stress disorder).[104] Of Australian women surveyed on entrance to prison in 2018:

- nearly half (48%) reported fair or poor mental health

- more than half (52%) reported high to very high levels of psychological distress
- nearly two-thirds (65%) reported that they had received a mental health diagnosis before.[105]

The Taskforce heard that mental health issues are a common reason for women to come into contact with police. It also heard that behaviours and circumstances that may more appropriately be responded to as mental health issues often receive a police response, resulting in women being charged with criminal offences.[106]

'I had never spoken about the trauma in my life, I was severely depressed, broken and suicidal. No one would have known it.' [107]

Young women involved in the youth justice system have significant and complex mental health needs.[108] Mental health is also a critical factor in the involvement of First Nations women in the criminal justice system.[109] A 2013 Victorian study revealed that 92% of Aboriginal and Torres Strait Islander women in prison surveyed had received a lifetime diagnosis of a recognised mental illness, and almost half met the criteria for Post-Traumatic Stress Disorder.[110]

Understanding how experiences of trauma contribute to women and girls' mental health and how this in turn impacts offending behaviour is important if we are to help prevent women and girls from offending or reoffending and improve their experiences in the criminal justice system.[111]

Substance misuse

Researchers have identified high rates of drug and alcohol usage in the lead-up to female offending.[112] A higher proportion of female than male offenders are in prison for drug offences in Queensland. [113]

The QPC report found that drug offences are a key factor in female recidivism and the rising rate of imprisonment.[114] Between 2012 and 2018, reported drug offences contributed to 89% of the increase in reported female offenders.[115] The number of women imprisoned primarily for drug offences increased 219 per cent between 2012 and 2018, making drug offences the largest contributor to the increasing rate of female imprisonment.[116]

Although most offending by women is non-violent, co-occurring substance misuse and mental health disorders have a correlation with women's violence.[117]

Many women spoke to the Taskforce about using drugs to cope with or forget about other traumas in their life, particularly connecting their drug use to domestic and family violence.[118] One woman in prison who had been sexually abused as a child explained:

'I've been in and out of jail for a long time. I grew up in a broken home. I've used drugs to cover up my emotions and my trauma. And yeah, I do crime to deal with that.' [119]

Poor health or disability

The Taskforce heard from women with chronic, complex health conditions and women with disability who are in prison.[120] The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability[121] heard from legal stakeholders about the 'criminalisation of disability', in that 'conduct associated with people's impairment, health condition and/or trauma are often interpreted as difficult or defiant behaviours' and that people with disability are disproportionately vulnerable to interactions with police.[122] Research from the Australian Institute of Health and Welfare (AIHW) indicates that women entering Australian prisons have considerably poorer health than the general population, and are more likely to have a disability.[123] Of surveyed women entering prison, 36% reported a current chronic condition; 30% reported a limitation in relation to employment, education, or activities; and 36% reported having had a head injury resulting in loss of consciousness.[124] The overrepresentation of women with acquired brain injury in prison populations has been linked to histories of domestic and family violence.[125]

Women with disabilities, particularly First Nations women, 'face multiple and compounding forms of disadvantage, discrimination, and abuse due to their gender, disability, and ethnicity'.[126] In 2018, Human Rights Watch reported that First Nations women with disability are overrepresented in Queensland prisons, with 86% having a diagnosed psychosocial disability.[127]

Drivers of contact for First Nations women and girls

Aboriginal and Torres Strait Islander people 'face higher rates of socioeconomic disadvantage stemming from experiences of colonisation, dispossession of land, discrimination, forced child removal, and the intergenerational impacts of resulting trauma'.[128] The links between this entrenched socioeconomic disadvantage and increased rates of contact with the criminal justice system for Aboriginal and Torres Strait Islander women are well established.[129] The Australian Law Reform Commission found that Aboriginal and Torres Strait Islander women who are incarcerated are disproportionately more likely to:

- have experienced family violence and sexual assault
- have children or children under their care
- have mental illness or cognitive disability
- have substance abuse issues
- have entered the child protection system as children
- have earlier and more frequent criminal justice contact
- be living in unstable housing or homeless
- be unemployed
- have lower levels of educational attainment.[130]

A NSW report noted at least 80% of Indigenous women in prison indirectly linked their offending to previous experiences of abuse.[131] Further studies noted similar prevalence in Western Australia (90%).[132] A longitudinal study of Queenslanders born in 1990 found that 76% of female First Nations peoples who are incarcerated had previously been subject to a child protection order, hospitalised for a mental health episode or both.[133] This research aligns with the Taskforce's observations about the entrenched disadvantage experienced by First Nations women in the criminal justice system.

The *Over-represented and overlooked* report described the 'complex web of factors' driving over-imprisonment of First Nations women, and their multiple layered patterns of disadvantage as stemming 'from the oppression, violence, trauma and discrimination associated with colonisation, transmitted through generations'.[134]

Racism and inequality

The *Wiyi Yani U Thangani* report identified inequality as a main driver of Aboriginal and Torres Strait Islander women and girls having contact with the criminal justice system in Australia.[135] It also considered ways in which both casual and systemic racism impact the lives of women and girls and their interactions with police and the broader criminal justice system.[136] This includes both overpolicing and underpolicing.[137] The report recommended responses such as equal partnerships between community and police, effective diversionary programs, alternative sentencing options and justice reinvestment.[138]

The Taskforce also heard of the significant impact of racism and inequality on First Nations women and girls. They reported experiencing police racism and having a strong fear and distrust of police.[139] Sisters Inside submitted that 'colonisation and racism remain ongoing realities that structure the legal system's response to women and girls. This is visible in the high numbers of Aboriginal and Torres Strait Islander women and girls in prison and subject to intervention by other state systems of control (e.g. the child protection system).'[140]

In Cleveland Youth Detention Centre, the Taskforce heard from First Nations girls as young as 14 that they felt targeted by police.[141] Another First Nations woman told the Taskforce:

> *'For First Nations women, our kids are criminalised in the belly. Coming from community, our kids are targeted. Even today I see kids and teenagers still in that system and being criminalised. It's a rising problem.'* [142]

Intergenerational trauma

The experiences and needs of First Nations women are also 'deeply intertwined with historical and ongoing experiences of intergenerational trauma, institutionalisation, and colonisation'.[143] The Taskforce witnessed the impacts of intergenerational trauma on women and girls who had entered the criminal justice system, including cycles of poverty, parental incarceration, child protection involvement, and youth justice involvement.[144] One First Nations woman spoke about the intergenerational trauma in her family:

> *'I didn't know my mum and dad until I turned 12. Then my mum started charging me (with domestic violence) for no reason. She kept going to the police. She wasn't showing me motherly love. I just wanted love from my parents. My mum had nothing. My grandmother gave my mum away. My mum gave me away to my grandmother and kept my two brothers… I was sexually abused as a child and my grandmother didn't protect me… I didn't have anyone.' [145]*

Taskforce findings

Women and girls who come into contact with the criminal justice system as offenders are likely to have experienced significant disadvantage and trauma. Pathways to offending behaviour by women and girls are typically characterised by childhood abuse and domestic, family and sexual violence. Adverse experiences as girls and young women contribute to mental health issues and frequently lead to drug abuse. Poverty and homelessness also place women and girls at risk of criminal justice system contact. First Nations women and girls experience greater, more entrenched disadvantage and are overrepresented in the criminal justice system. In addition to the drivers for all women and girls who offend, intergenerational trauma, racism and inequality also contribute to offending behaviour of First Nations women and girls.

Understanding the experiences of women and girls in the criminal justice system is an essential first step in responding to the drivers of their offending.

The need for a whole-of-government approach to prevent and address women and girls' offending

Background

Taking a gender-responsive approach

As outlined in Chapter 3.1, women and girls form the minority of offenders and incarcerated people in Queensland. They are participants in a criminal justice system that is designed for and focuses on the risks, needs and offending of the predominantly male population of offenders.[146] Taskforce consultation has revealed that, due to their minority status, the criminal justice system in Queensland often does not meet the needs of women and girls and is not prioritising them as an offender population.[147] There is evidence that the female offender population is increasing at a rate that far outstrips that of men,[148] and women are the fastest-growing prison population.[149] This is a strong indicator that generic criminal justice responses are not working for women and girls. Failing to tailor criminal justice system responses to the needs of women and girls risks that they will continue to grow as an offender population. Without a timely and specific response, the growth of this cohort will result in increased costs across the system and undermine efforts to reduce offending and reoffending. This will impact on the achievement of targets under the *National Agreement on Closing the Gap* to reduce the overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system[150] and the goal under *Australia's Disability Strategy 2021-2031* of reducing the overrepresentation of people with disability across the criminal justice system.[151]

Women represent a distinct group of accused persons and offenders with specific pathways, risks and needs.[152] For example, the combination of substance dependency, victimisation history and mental illness has been described as forming a 'triumvirate' of women's needs in the criminal justice system.[153] Family connection also plays a more significant role in women's offending, likelihood of recidivism, and

rehabilitation outcomes. Because family obligations fall disproportionately on women, maternal imprisonment has a disproportionate impact on dependent children.[154]

The need to take a gender-responsive approach to women in the criminal justice system was highlighted in the United Kingdom through the seminal 2006 *Report by Baroness Jean Corston of a review of women with particular vulnerabilities in the criminal justice system* (the Corston Report).[155] The report called for 'a radically different, visibly-led, strategic, proportionate, holistic, woman-centred, integrated approach' in the way women were treated throughout the system.[156]

The *Bangkok Rules* recognise the special needs of women as offenders and highlight the need for gender-responsive, trauma-informed approaches to women in the criminal justice system. They also clarify that providing for the distinctive needs of women to accomplish substantial gender equality shall not be regarded as discriminatory.[157]

Taking a trauma-informed approach

A trauma-informed approach is required to understand the experiences of women and girls in the criminal justice system, particularly for those in marginalised communities.[158] This involves moving beyond the 'victim-offender binary' and ensuring that responses are tailored to the particular needs and contexts of victimised women.[159] One woman called for system-wide trauma-informed services:

> *'In prison I came to realise that hurt people hurt people. There wasn't a girl I met in there who didn't have some kind of serious trauma. I want other girls to feel there is hope. The DOCS workers, the cops, the watchhouse guards, the prison guards, they all make you feel like there is no hope – you become a hopeless junky to them – never mind how you got that way to start with.' [160]*

Current position in Queensland

Responses to women

Queensland does not currently have a specific policy approach to respond to the needs of women and girls at risk of or in contact with the criminal justice system. QCS has previously had a policy for its response to women offenders. The *Improving Outcomes for Women Offenders - Women Offenders Policy and Action Plan 2008—2012*[161] provided a framework to improve the gender responsivity of Queensland's adult corrective services system, to improve service delivery to women offenders, to sustain existing initiatives and to develop new strategies in the longer term. The policy and action plan was not renewed after 2012.

QCS commenced the Women's Estate project in 2019. The project's purpose was to develop and implement a service delivery framework that achieves the principles and priority areas that enhance community safety through gender-responsive and trauma-informed services, that are culturally competent and support women to rehabilitate, reconnect with their community and make positive change.[162]

QCS advises that the Women's Estate Blueprint was delivered in 2020. This Blueprint was not publicly released. In 2021, QCS identified that the principles of the Women's Estate Blueprint needed to be embedded into QCS's business as usual, rather than being a stand-alone project. QCS is currently undertaking work on the Women's Strategy 2022-2025 (the Strategy), identifying the key principles and actions from the Blueprint and embedding these into the Strategy.[163] The Taskforce considers that the Women's Estate project, Blueprint and draft strategy represent a significant, positive change in QCS's approach to women in custody or subject to community-based orders.

There have been efforts to recognise and respond to the needs of women in recent years. In 2018–19, the Queensland Government announced an investment of $7.9 million over three years to rehabilitate women in the custodial system, with a specific focus on addressing issues related to trauma, domestic and family violence, and sexual violence. This funding injection saw the establishment of a number of trials relating to women, which will be discussed throughout this report.[164] The Taskforce acknowledges that a range of programs specific to women and girls is delivered or funded by Queensland Government agencies, and discussed throughout this part.

Understanding the experiences of women and girls who come into contact with the criminal justice system

While the efforts within QCS to better meet the needs of women are commendable and should be supported and encouraged to continue, consultation outcomes indicate that responding to the complex needs of women and girls as accused persons and offenders requires a whole systems approach.[165] The Department of Justice and Attorney-General (DJAG) has advised that relevant Queensland Government agencies 'have continued to collaboratively map current services across the system, assess potential efficiencies and any unmet need, and shape a streamlined investment approach' to women in the criminal justice system.[166] However, existing programs do not appear to form a cohesive whole-of-government strategic approach to preventing and responding to women's offending behaviour that recognises the need to take a gender-responsive approach.

Responses to girls

The need to understand and respond to the unique needs of girls was recognised in the Atkinson report on Youth Justice.[167] Queensland's *Working Together, Changing the Story: Youth Justice Strategy 2019–23* notes that gender-appropriate interventions result in behaviour change.[168] *The Youth Justice Strategy Action Plan 2019-2021* includes actions for 'Responding to the different needs of girls and young women'. This includes actions to take a gender-responsive approach in the Youth Justice Framework for Practice, to design and deliver youth justice services and programs that effectively respond to the needs of girls and young women, and to fund a gendered response in the Bail Support Program.[169] However, the Action Plan does not appear to have resulted in an increase in gender-responsive programs for girls, with the two programs listed (*Girls…Moving On* and *Black Chicks Talking*) continuing to be the only programs available. The Youth Justice Framework for Practice Foundations released in 2020 does not include a gender-responsive approach.[170]

How do other jurisdictions address this issue?

Corrections-only policies for women offenders are currently in place in Victoria, South Australia and the Australian Capital Territory, as well as in New Zealand. No Australian state or territory currently has a broader policy agenda in place for women in the criminal justice system, though a whole-of-government policy in Victoria between 2005 and 2009 achieved promising outcomes.[171]

Victoria

Between 2005 and 2009, the Victorian Government implemented a four-year strategy to address the increasing rate of women's imprisonment. *Better Pathways: an integrated response to women's offending and re-offending 2005 – 2009*[172] represented a coordinated plan of action across government and the community. It included deliverables for reducing women's offending, imprisonment, reoffending and victimisation. To support the strategy, the Victorian Government provided $25.5 million in the 2005–06 State Budget to tackle Victoria's growing female prison population.

A 2009 independent evaluation of the impact of the *Better Pathways Strategy* found that it had contributed to a reduction in the rate of imprisonment; that the responsiveness of the corrections system to women and access to services had improved; and that the range of tailored community and transitional support programs provided by Better Pathways had kept women out of prison. It was too soon for the evaluation to determine whether recidivism had been reduced.[173] Unfortunately, the Strategy's outcomes were short-lived because Victoria, like other jurisdictions, for reasons unconnected with the Strategy, saw a rapid increase in the rate of women's incarceration over the following decade.[174]

Corrections Victoria's current strategy, *Strengthening Connections: Women's Policy for the Victorian Corrections System,*[175] builds on the 2005 *Better Pathways Strategy* and the 2014 *Targeted Women's Correctional Response*. Although not a whole-of-government strategy, *Strengthening Connections* involves partnerships with other agencies.

Victoria's *Youth Justice Strategic Plan 2020–2030*[176] includes actions for 'Delivering a gender-responsive system for girls and young women,' which describe how Youth Justice Victoria is taking a gender-responsive, strengths-based approach. This includes a gender-responsive case management approach and a separate operating model for girls.

New South Wales

New South Wales does not have a specific strategy for women who are involved in the criminal justice system as accused persons and offenders. In 2019, 14 new 'Premier's Priorities' were announced including '*Reducing recidivism in the prison population – Reduce adult reoffending following release from prison by 5 per cent by 2023*.' The priority was supported by an action of 'Delivering better programs and continuity of care for people with complex needs', which focused on women who are parents.[177] A Reducing Reoffending Strategy is currently being updated and will be published soon.[178]

South Australia

In 2014 the *Strong Foundations and Clear Pathways* action plan for women offenders commenced in South Australia, embedding a gendered focus within the Department for Correctional Services' strategic policies and operational practice for women.[179] The strategy was renewed in 2019 through the *Strong Foundations and Clear Pathways2 Women's Action Plan 2019-24*.[180] Actions fall under the three priorities of 'correctional services and programs meet women's diverse needs and reduce reoffending; correctional policy and planning is gender responsive; and pathways to community, cultural linkage and support are established for women in custody and community'.

In 2017, South Australia also released *Stronger Together: Safe children & strong families 2017-2020,*[181] a strategy to better coordinate preventative actions to keep children safe and support parenting by women under the supervision of the correction system.

Western Australia

Western Australia does not have a specific strategy for women who are involved in the criminal justice system as accused persons and offenders. However, Corrective Services Western Australian is currently introducing prison standards to promote service delivery improvement. *Women in Prison – Prisons Standard* is the first of these standards and recognises that women in prison have different needs to men. It addresses women's special vulnerabilities and the fact that women in custody have often experienced significant personal trauma. It acknowledges that the high proportion of Aboriginal women in the criminal justice system requires a culturally sensitive response.[182] The Standard is not a public document.

Northern Territory (NT)

In response to the NT Ombudsman's 2008 *Women in Prison* investigation,[183] Northern Territory Correctional Services developed a female-specific policy titled *Addressing the needs of female offenders in prison Policy and Action Plan 2007-2012.* The policy was not renewed after 2012. In 2016, Northern Territory Correctional Services approved a Standard Operating Procedure for its female prison population.[184]

Australian Capital Territory (ACT)

In 2020, ACT Corrective Services released *Walking with Women on the Pathway to Change – Working together to reduce reoffending and meet the needs of women: A framework for ACT Corrective Services.*[185] The Framework was developed to support a gender-responsive, individualised service delivery, which recognises that women are a minority in the correctional service system and have specific needs. The four principles that underpin the Framework are: a gender-informed approach; human rights; cultural sensitivity; and a holistic approach. The principles are intended to implement a *Risk-Need-Responsivity* model for women in the correctional system using strategies that support relationships, rehabilitation, and reintegration.

The ACT Government also has a plan for *Reducing Recidivism in the ACT by 25% by 2025*[186]*,* which sits under its justice reinvestment approach. Pillar 7 of the strategy is 'responding to women in the justice system'. Actions under Pillar 7 include a focus on delivering programs that are specifically designed for women, the development of the above framework, and establishment of a women's reference group.

International approaches

England and Wales

The 2007 Corston Report[187] made 43 recommendations to the United Kingdom Home Office focused on improving responses to women offenders, reducing the use of custodial sentences and remand for women offenders, and improving prison conditions and health services for women offenders. The then United Kingdom Government accepted 41 of the 43 recommendations.[188] In 2013, a committee criticised the report's implementation and called for a strategy for women offenders, pointing to a need to bring initiatives together and to improve cross-agency integration.[189]

In 2018, the United Kingdom Ministry of Justice released the *Female Offender Strategy,*[190] which contained the Government's commitment to a new program of work for female offenders and a cross-government approach - in England and Wales. The Female Offender Strategy aims to:

- reduce the number of women entering the criminal justice system by intervening earlier with support in the community
- have fewer women in custody (especially serving short sentences) and a greater proportion of women managed in the community
- create better conditions for women in custody, including improving and maintaining family ties, reducing self-harm, and providing better support on release.

A 'female offender programme' was established to oversee delivery of cross-government commitments under the Strategy. Initial funding under the Strategy included £5.1 million ($8.9 million (A)) for organisations (mostly women's centres) providing services in the community,[191] and £13.1 million ($22.9 million (A)) for grant funding for women's services, the development and delivery of five pilot Residential Women's Centres, and to help local areas implement whole-system approaches (involving collaborations between government agencies and funded services).[192]

An audit report on the implementation of the Female Offender Strategy was released in January 2022.[193] It found that investment in the female offender programme to oversee implementation had not been prioritised, and that implementation progress had been limited. By January 2022, funding provided under the program was only £18.2 million of the £40 million minimum funding estimated to be required.[194] The report also found that several aspects of program management and accountability, including goals, governance and monitoring and evaluation arrangements, have been weak.[195] Recommendations were made to improve transparency, goal setting and funding, governance, data and management information, and evaluation.[196]

New Zealand

In 2021, the New Zealand Department of Corrections launched *Wāhine - E rere ana ki te pae hou Women rising above a new horizon Women's Strategy 2021-2025*[197]*.* The strategy was developed in consultation with a range of predominantly wāhine Māori, including women with lived experience of the justice system.[198] An earlier 2017 strategy also recognised the needs of women (*Women's Strategy - Wāhine – E rere ana ki te pae hou*).

The current strategy aims to reduce reoffending through gender and culturally responsive programs and services that provide holistic support.[199] The strategy is a powerful example of a culturally responsive approach to women's corrections. This can be seen through the initiatives under the strategy as well as the strategy's focus areas.[200]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons or offenders

Women's experiences shared with the Taskforce generally highlighted the lack of criminal justice system responses appropriate to their needs. Women told the Taskforce that there is a lack of appropriate community services to address the drivers of their offending behaviour (particularly drug rehabilitation services and responses to address abuse and trauma and to heal).[201] Consultation with women also revealed missed opportunities for systems coordination, prevention and early intervention to divert them from offending behaviour and ultimately from custody.[202]

Understanding the experiences of women and girls who come into contact with the criminal justice system

Service system stakeholders

Services generally felt that women and girls with multiple and complex needs were unnecessarily coming into contact with the criminal justice system, and called for more holistic responses to meet the housing, substance misuse, victimisation and mental health needs of women as accused persons and offenders. For example, Australian Red Cross supported 'the development of a gender-responsive, whole-of-government strategy for addressing the unique needs of women and girls who come in contact with the criminal justice system in Queensland'.[203] North Queensland Combined Women's Service criticised persistent building of new prisons and submitted that therapeutic, trauma-informed responses are far more likely to create transformative change for women.[204]

Sisters Inside encouraged a focus on diverting people away from the criminal justice system, keeping children out of prison, keeping families together, and investing resources in Aboriginal-controlled services.[205]

Legal stakeholders

Legal Aid Queensland (LAQ) supported gender-specific services and multi-agency approaches to supporting women with complex needs in the criminal justice system, and called for a coordinated approach between services across areas of mental health, substance abuse treatment, housing and employment.[206] LAQ further submitted that current service systems are unable to meet the complex needs of girls, and that barriers include a lack of coordination and integration, limited information sharing, lack of capacity, limited specialised programs, inflexible service delivery modes, and long waiting lists for specialised services.[207]

Government agencies

The Queensland Police Service (QPS) recognised that many women in the criminal justice system have a history of trauma and disadvantage.[208] QPS noted that while there are no specific requirements in responding to women and girls, officers are required to comply with all safeguards and procedural requirements when dealing with offenders.[209] In 2022, the QPS began work with The University of Queensland to trial a gendered policing model.[210]

QCS advised that it is currently developing a Women's Strategy 2022-2025.[211] Gender-specific programs funded by QCS are discussed in Chapter 3.9.

DJAG advised that it 'currently funds holistic, trauma-informed and culturally safe support and advocacy to women in the criminal justice system, focusing on the impacts of gender-based violence'.[212] DJAG-funded programs, including the Decarceration Program and Women's Early Intervention Service, are discussed in Chapter 3.4.

DCYJMA submitted that a systemic approach to gender responsivity to meet the specific needs of girls and young women in contact with the criminal justice system is required.[213] QFCC noted an inability for systems to adequately address the needs of young women and agreed that girls and women have consistent drivers of contact.[214]

Academic

Academics from the Griffith Criminology Institute pointed to a need for coordinated strategies, effective cross-agency collaboration and improved information exchange.[215]

Other relevant issues

Relevant cross-cutting issues

First Nations women are significantly overrepresented among women offenders. Between 2005-06 and 2018-19, 31.1% of sentenced female offenders were Aboriginal or Torres Strait Islander.[216] The overrepresentation of First Nations women and girls in the criminal justice system and the need for culturally appropriate responses have been consistent themes raised with the Taskforce.[217] The former Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, in her country report on her visit to Australia, also stated that Australia 'urgently needs to move away from detention and punishment towards rehabilitation and reintegration'.[218]

Understanding the experiences of women and girls who come into contact with the criminal justice system

In response to recommendation 1 of *Hear her voice 1*, the Queensland Government committed to developing a whole-of-government strategy and action plan for culturally safe services for Aboriginal and Torres Strait Islander peoples who interact with the criminal justice system.[219]

Taskforce findings

The Taskforce found that there is a clear need for a multi-agency response to prevent women's offending behaviour, reduce the risk of reoffending and improve women and girls' experiences across the criminal justice system. Women in the criminal justice system require a specific approach, not just in prison but in all of their criminal justice interactions. Given that women account for the fastest-growing prison population, this is a crucial opportunity for the Government to understand and invest in curbing this trend. The high and ever-increasing financial cost of imprisonment (which was $305 per person, per day in 2019)[220] is too great to ignore the needs of women as a growing prison population. There are also significant human, social and public health costs associated with an increasing female prison population.

The Taskforce has seen a draft version of QCS's *Women's Strategy 2022-2027*. The Taskforce considers that this strategy is on the right path to recognising and responding to the needs of women in the corrective services system. The Taskforce observed the leadership team within QCS was genuinely committed to improving the experiences of women and girls in prison. This important internal work should continue. However, this strategy is unlikely to address the drivers of women's offending behaviour or provide the integrated and holistic supports that the evidence indicates traumatised women and girls need to prevent them from offending or reoffending.[221] QCS's responsibilities start at what should be the 'end point' in a range of services and justice system interactions to divert women away from the criminal justice system and from potential imprisonment.

It is important that there is a consistent commitment by the Queensland Government and a coordinated approach, based on a public health perspective, that encompasses all government agencies involved in, or relevant to, supporting women and girls in the criminal justice system. Intervening early to address the factors contributing to women and girls' offending behaviour should aim to prevent as many women as possible from coming into contact with the system. This should be in addition to improving responses across the system to better meet the needs of women and girls. This requires a gendered approach.[222] The development of a clear whole-of-government strategy would clearly articulate a Queensland Government commitment and provide the strategic framework for the achievement of outcomes across key priority areas to support the implementation of the Taskforce's recommendations and beyond. This will assist in ensuring gender-responsive approaches are implemented into both prison policies and the broader criminal justice system.

The cumulative effect of the implementation of the recommendations in *Hear her voice 1* will go some way towards reducing the impact of domestic and family violence and coercive control. Achieving the outcomes envisaged by the Taskforce recommendations in *Hear her voice 1* will improve the experiences of women and girls who are involved in the criminal justice system as accused persons and offenders. This should be recognised in the strategy.

As far as the Taskforce is aware, its examination of women and girls' experiences in the criminal justice system as accused persons and offenders has been the first time these issues have been publicly considered. The development of an effective Queensland Government strategy would give enduring voice to, and a platform for action for, the outcomes of the Taskforce's consultation and engagement on this topic. It would provide an important mechanism to assist both the community and some of the most vulnerable women and girls in Queensland, long beyond the term of the Taskforce.

The Taskforce recognises that the development and implementation of a whole-of-government strategy will require commitment, collaboration and investment. It will also take time to be co-designed with people with lived experience (including people from culturally and linguistically diverse backgrounds, people with disability and LGBTIQA+ peoples), service system and legal stakeholders and First Nations peoples. The achievement of outcomes under the strategy will require robust governance and accountability measures that are sustained over time. The Queensland Government should be mindful of and learn from the experience in Victoria, where the *Better Pathways* strategy led to a reduction in women's imprisonment and recidivism in the shorter term, but those benefits were lost over the next decade for reasons unconnected with the strategy.[223]

Understanding the experiences of women and girls who come into contact with the criminal justice system

Taskforce recommendation

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.

Implementation

A whole-of-government strategy for women and girls in the criminal justice system should be informed by the United Kingdom's *Female Offenders Strategy* and Victoria's former *Better Pathways* strategy. Co-design of the strategy should take into account the evaluations of these strategies and aim to incorporate appropriate funding, governance and accountability mechanisms.

To ensure women and girls' needs are being met across the criminal justice system, a public health approach should be incorporated, with the strategy including a focus on intervening early to prevent offending behaviour, targeted responses to reduce the risk of reoffending and divert women and girls from the system, and opportunities to better meet the needs of women and girls during their involvement in the system.

Noting the governance mechanisms established in the United Kingdom following the Corston Report, which included the establishment of a cross-departmental committee and stakeholder advisory board on women in the criminal justice system (including women with lived experience), the design and implementation of the strategy should utilise the governance mechanisms put in place to support the implementation of this report (Chapter 4.1).

The whole-of-government strategy for women and girls should align with:

- QCS's forthcoming *Women's Strategy 2022-2025*
- The planned whole-of-government strategy and action plan for culturally safe services for Aboriginal and Torres Strait Islander peoples who interact with the criminal justice system
- Queensland Court Services' *Strategic Plan 2021-22*, which recognises the need for a 'whole of justice system approach' to responding to the complex needs of Queenslanders (Outcome 4)
- *Queensland Women's Strategy 2022-27,* which commits to 'continuing efforts to address the high rates of incarceration and the overrepresentation of First Nations women in the criminal justice system'
- Queensland's *Statement of Commitment to reframe the relationship between Aboriginal and Torres Strait Islander peoples and the Queensland Government* and *2021 Closing the Gap Implementation Plan*
- Gender-responsive actions under Queensland's *Working Together, Changing the Story: Youth Justice Strategy 2019–23* and *Action Plan 2019-2021.*

Human Rights considerations

The Queensland Government has obligations under both the Human Rights Act and international instruments such as the Convention on the Elimination of All Forms of Discrimination against Women[224]

Understanding the experiences of women and girls who come into contact with the criminal justice system

and the *Bangkok Rules*,[225] which support the taking of a gendered policy approach to women in the criminal justice system.

Women are being disproportionately impacted by Queensland's criminal justice system, which is primarily designed for the needs and offending of men. Not taking action to address this imbalance may be a violation of women's rights to recognition and equality before the law (section 15), which includes an internal limitation allowing for special measures to address inequality. Not responding appropriately to the offending of women, especially if it is leading to women spending unnecessary periods of time in custody, is also a limitation on women's right to liberty and security of person (section 29) and other rights limited by custody.

Human rights promoted

A whole-of-government strategy will protect the rights of women and girls to be treated equally by the law (section 15) by addressing the existing inequalities that women in the criminal justice system experience. A focus on reducing imprisonment rates and recidivism will protect the rights of women and girls, which are limited when they spend unnecessary amounts of time in custody, such as the right to liberty and security of person (section 29), freedom of movement (section 19), and the protection of families and children (section 26).

Human rights limited

This recommendation does not limit any human rights. The *Bangkok Rules* clarify that providing for the distinctive needs of women in an effort to accomplish substantial gender equality shall not be regarded as discriminatory.[226]

Evaluation

The development of the strategy should include the incorporate a monitoring and evaluation framework that clearly identifies the impacts and outcomes sought to be achieved, for whom and when, as well as how these impacts and outcomes will be measured. The strategy and its monitoring and evaluation framework should include the implementation of the recommendations in part 3 of this report.

The achievement of impacts and outcomes sought to be achieved through the implementation of the strategy should be independently evaluated.

Addressing the underlying drivers of women and girls' offending through justice reinvestment

Background

Addressing underlying drivers

It is clear from the outcomes of the Taskforce's consultation and engagement activities that early intervention is required to help women and girls to address the underlying factors that contribute to their offending behaviour. Most notably this includes healing and addressing the impacts of the trauma arising from their experiences of domestic, family, sexual and other physical violence. This means doing things differently in individual cases to better tailor how the needs of individual women and girls are met, as well as a whole-of-system shift in investment and approach.

The Anti-Discrimination Commission Queensland's *Women in Prison 2019* report (the ADCQ Report) stressed that:

> Addressing the underlying issues leading to offending and imprisonment must become the future focus of government, rather than building more prisons and imprisoning greater numbers of prisoners.[227]

In preventing the behaviours and circumstances that lead to offending and the growing rates of imprisonment of women, the ADCQ Report also recommended justice reinvestment, together with improved public housing and increased availability of substance abuse treatment programs, to address the underlying drivers of women's offending.[228]

The QPC Report recommended the Queensland Government prioritise investment in community-led prevention and early intervention in communities with high levels of offending, and that this should include identifying projects that would be suitable for a justice reinvestment approach.[229]

Alternative approaches have been suggested to counter the ever increasing number of women and girls being criminalised.[230] This includes help for women to deal with drug problems, family violence, housing, disconnection from country and culture, and improving confidence and self-worth.[231] For example, Aboriginal and Torres Strait Islander women have expressed their desire to be afforded support from a young age to address trauma, housing instability, and safety so they do not get caught up in the cycle of incarceration.[232]

Justice reinvestment

There is increasing support in Australia for justice reinvestment approaches, which involve 'reallocating funds from the criminal justice system to community-led, place-based initiatives that address the drivers of crime and incarceration and seek to prevent incarceration by providing early intervention and crime prevention, while strengthening communities and building local capacity'.[233] Justice reinvestment can also be described as a 'data-driven approach to reducing criminal justice system expenditure and improving criminal justice system outcomes through reductions in imprisonment and offending'.[234]

Justice reinvestment approaches have been supported by the Australian Human Rights Commission,[235] Australian Law Reform Commission,[236] Queensland Productivity Commission,[237] and an Australian Senate Standing Committee on Legal and Constitutional Affairs.[238]

Justice reinvestment is particularly important in addressing the overrepresentation of First Nations women and girls in the criminal justice system. The *Wiyi Yani U Thangani* report stated that: 'Justice reinvestment provides a good framework to address Aboriginal and Torres Strait Islander incarceration. Rather than focus on an increasingly punitive and reactive approach, justice reinvestment seeks to holistically address the drivers of offending and incarceration.'[239]

Current position in Queensland

Queensland is currently trialling a place-based justice reinvestment approach to youth justice in Cherbourg.[240] In 2016, the Hon Yvette D'Ath MP, then Queensland Attorney-General and Minister for Justice and Minister for Training and Skills, ordered an independent review of youth detention centres. The review recommended that consideration be given to the implementation of justice reinvestment collaborations between existing community-based services and Youth Justice.[241] The Queensland Government accepted this recommendation, and Youth Justice (then DJAG) established a 'proof of concept' project in Cherbourg to explore the feasibility of implementing Justice Reinvestment in Cherbourg.[242] Justice reinvestment in the context of this project is described as 'a data-driven approach to improve public safety and reduce related criminal justice spending to reinvest savings in strategies that can reduce crime and strengthen communities'.[243] The 'proof of concept' project involved community consultation to identify willingness in the Cherbourg community to support justice reinvestment and to identify what justice reinvestment in the area might look like.[244] A 2018 report on initial community consultations found broad support within the community, and identified the four most important responses to social drivers of imprisonment as strong community leadership and support; strong families; better schooling and educational opportunities; and stronger connection to culture.[245]

Following the delivery of the 2018 report, responsibility for the project was transferred to the former Department of Aboriginal and Torres Strait Islander Partnerships. A justice reinvestment panel was then established.[246]

The Taskforce was advised that the Cherbourg project has been significantly stalled by insufficient resourcing and staffing, as well as by the impacts of the COVID-19 pandemic. The project has one project officer working on its implementation and lacks strategic oversight and direction.[247] The Taskforce observed that the expectations of what will be achieved by the project are not clear, including to those

responsible for its implementation. It lacks a clear project management approach, such as defined outcomes, priorities, reporting requirements, targets, or parameters for measuring success. Specific resources have not been allocated, or reallocated from existing investment in the community, to the achievement of goals and outcomes.[248]

The Taskforce heard that one frustration for the project was that other agencies did not seem willing to reallocate resources to support the intent:

> *Everyone likes the concept of justice reinvestment, but when it comes to asking, 'are you willing to actually lose some of your resources… to go towards an initiative that could work?' the appetite diminishes quite rapidly.*[249]

Given that the intent of the project is to create an evidence base for justice reinvestment in Queensland,[250] a renewed focus and revitalised approach are required to enable meaningful learnings to inform a more expansive approach in the future.

In its response to the QPC Report, the Queensland Government stated that it would 'continue to support justice reinvestment activities in Cherbourg, and explore opportunities to build on and expand justice reinvestment endeavours within other communities'.[251]

Queensland's current place-based approach to justice reinvestment can be distinguished from more systemic approaches in some other jurisdictions. Examples of this are discussed below.

How do other jurisdictions address this issue?

A literature review on justice reinvestment in Australia identifies 'a great deal of support' for diverse justice reinvestment approaches across jurisdictions.[252] The approach to justice reinvestment in Australia is described as 'wider' than approaches in the United States and United Kingdom. Rather than focusing solely on reducing costs of incarceration, Australian approaches are also focused on reducing crime, strengthening communities, and addressing key justice problems including the overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system.[253]

Victoria

RMIT's Centre for Innovative Justice's *Leaving Custody Behind* report recently made the case for a 'Women's Justice Reinvestment Strategy' in Victoria to address rising rates of female incarceration and better meet the needs of women.[254]

New South Wales

The Maranguka Justice Reinvestment Project[255] in Bourke is an example of a successful place-based justice reinvestment approach. The project has delivered a range of interlinked activities, driven by Aboriginal leadership, aimed at achieving collaboration and alignment across the service system. It has delivered new community-based programs and service hubs, and worked with justice agencies to evolve their procedures and behaviours towards a proactive and reinvestment model of justice.[256] Evaluations of the project suggest crime reductions can be achieved through evidence-based, community-led approaches. A KPMG impact assessment of the project found that in 2017 (compared with 2016) the project showed a 23% reduction in police-recorded incidence of domestic violence and comparable drops in reoffending; a 30% increase in Year 12 student retention rates; a 38% reduction in charges across the top five juvenile offence categories; a 14 % reduction in bail breaches for adults; and a 42% reduction in days spent in custody.[257]

Funding for the project came from a range of government and non-government donors.[258] Between 2012 and 2015, the set-up phase of the project cost $554,800, and in 2016-17 the project cost $561,000.[259] KPMG estimated that the advances made in Bourke during 2017, corresponding to the operation of the project, resulted in gross savings of $3.1 million (with operation costs of just $0.6 million).[260] In 2019, the Commonwealth and New South Wales Governments jointly allocated an additional $1.8 million to the project.[261]

Australian Capital Territory

The ACT is the first Australian jurisdiction to set a broader Justice Reinvestment Strategy for its criminal justice system, alongside its strategy for *Reducing Recidivism in the ACT by 25% by 2025.*[262] An 'ACT Justice System Cost Model' was developed to form an evidence base for the strategy, and initiatives have been developed under the 'Building Communities, Not Prisons' justice reinvestment program.[263] The ACT's Justice Reinvestment approach was developed over four years in partnership with the community, academia and government.[264] In 2020, the ACT Government announced an investment of more than $132 million over the four years to develop and implement new evidence–based programs focused on rehabilitation and reintegration to address the root causes of people's offending.[265]

England and Wales

As noted above, implementation of the Corston Report through the Female Offender Strategy in the England and Wales involved investment in services to reduce the number of women serving custodial sentences or on remand. In this way, implementation of the Strategy could be described as taking a justice reinvestment approach. Funding was provided for women's centres and other services, together with the implementation of whole-system approaches involving collaborations between government agencies and funded services.[266] The aim of whole-system approaches is to assess a woman's needs at her first contact with the criminal justice system, and to provide gender responsive, multi-agency support at an early stage and throughout her justice journey. Evaluation evidence suggests the whole-system approaches are having a positive impact on recidivism rates and addressing women's complex needs.[267]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons or offenders

As noted earlier in this chapter, consultation with women and girls indicated a lack of appropriate community services to address the drivers of their offending behaviour (particularly drug rehabilitation services, housing support, and responses to address abuse and trauma).[268] Women told the Taskforce that not enough was being done to meet their needs and help keep themselves out of custody.[269] One woman said:

> *'There are a lot of women in here for fighting back in response to violence in their lives – diversion to a program that can help with DFV and help women heal would be better than coming here.' [270]*

Service system stakeholders

The Taskforce heard that there is a need for the justice system to recognise that women have specific drivers of offending and incarceration, and that women should be diverted into supports to assist them to heal, recover from trauma, and address mental health issues and addiction.[271] Sero4 Ltd (MARA Project) submitted that women's unmet needs are driving their alcohol and drug use. For many women, the adverse impacts of their substance misuse are compounded when their 'basic human needs are not dealt with (shelter, food, water, sleep and then safety)'.[272]

The Taskforce consistently heard during stakeholder consultation forums about the need for investment in appropriate social housing for women, both before they offend, while they are on bail, and after release from prison.[273] A critical lack of accessible and affordable drug rehabilitation services (especially in rural and remote areas), and the lack of services that specifically address women's needs that are delivered in a way that are accessible by women, were also frequently raised.[274]

Australian Red Cross (Sisters for Change) submitted that:

> *There is a need for a proactive, preventative justice reinvestment strategy where community-led solutions designed and driven by First Nations peoples can be implemented*

to reduce overrepresentation of Aboriginal and Torres Strait Islander men, women and children in the justice system.[275]

Sisters Inside submitted that the Queensland Government 'should fund women's centres to provide independent and voluntary social support for women and girls both separate from and in connection with the criminal justice system. These services could have a mandate to support both criminalised women and girls and women reporting domestic, family and sexual violence.'[276]

Legal Stakeholders

The Queensland Law Society noted that Queensland has limited sentencing options and recommended that 'funding be redirected to increasing diversion from the criminal justice system and to community-based orders as a way of reducing recidivist offending and avoiding women receiving sentences of imprisonment'.[277]

Government agencies

Government agencies did not specifically comment on the merits of justice reinvestment. The Taskforce benefitted from a presentation by representatives from the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships on the justice reinvestment program operating in Cherbourg (discussed above).[278]

Other relevant issues

Relevant cross-cutting issues

Justice reinvestment approaches in Australia have primarily focused on better meeting the needs of Aboriginal and Torres Strait Islander peoples due to their overrepresentation in the criminal justice system and the importance of the support of their communities. This has mostly taken the form of place-based, grassroots and community-led approaches.[279] More systems-wide approaches to justice reinvestment may not benefit from the same local support and cultural sensitivity.

However, justice reinvestment has been envisaged as both a place-based initiative and a systems approach. A systems approach to justice reinvestment provides opportunities to address factors that contribute to offending and incarceration and can 'influence the way different parts of the justice system function, as changes can be made at the point of arrest, sentence, or parole that can affect an offender's trajectory to prison'.[280]

Investment in the criminal justice system

The Taskforce observed that there is a lack of investment in the criminal justice system, especially in relation to legal and court processes, with Queensland's investment significantly less than in some other Australian jurisdictions. Issues related to court delays and resourcing across the criminal justice system are discussed in other chapters of this report (for example, Chapter 2.10). There is little capacity for reinvestment, at least initially, when parts of the system are struggling to adequately meet demand.

Taskforce findings

Women and girls who come into contact with the criminal justice system tend to be significantly disadvantaged, and require gender-responsive, trauma-informed, individually tailored services and supports to address the underlying drivers of their offending. There is a lack of appropriate, state-wide supports available to achieve this. A justice reinvestment approach that incorporates initial up-front funding should form part of an approach to shift investment over time from predominantly focusing on tertiary criminal justice system responses to earlier supports and services to help women and girls address their needs and prevent them from offending and reoffending. Justice reinvestment is an evidence-based and data-driven approach. However, minimal investment and limited cross-agency collaboration in Queensland's only justice reinvestment project in Cherbourg appears to have stifled progress in developing a robust evidence base, despite the efforts of the few staff involved. This can only partly be attributed to the impacts of the COVID-19 pandemic.

While justice reinvestment across the whole of the criminal justice system would be a significant undertaking, women represent a quarter of all offenders in Queensland[281] and only 9.3% of the prison population.[282] Taking a justice reinvestment approach to women and girls in the criminal justice system is a manageable first step, which would respond to the specific needs of this cohort.

Justice reinvestment is economically more viable than imprisonment, which costs nine times more than community-based orders.[283] The QPC Report considered ways to implement a justice reinvestment approach, noting that:

> *The ongoing application of the principle of justice reinvestment could improve the flexibility of funding within the criminal justice system. There are several options for the practical application of justice reinvestment. The simplest application is to require all criminal justice agencies to apply the principle to its service delivery framework and demonstrate the application of the principle in its annual budget submission.*[284]

However, the QPC Report noted barriers including identifying savings and reinvestment across departments with different funding streams, and accountability between agencies.[285] To address this issue, agencies must collaborate to identify opportunities to support and divert women and girls.

The Taskforce acknowledges that justice reinvestment approaches require a significant initial investment under the promise of long-term costs savings. Given the concept is still relatively new in the Australian context, it is a risk that investment in women's services and other initiatives to divert women from prison will not achieve the desired results. However, the Taskforce notes that several significant reports have now recommended justice reinvestment approaches.[286]

While justice reinvestment approaches may ultimately result in less funding for criminal justice system agencies, including police, legal bodies, courts and corrections, the Taskforce considers this approach also has the potential to reduce demand for the capacity for these systems in the long term. A reduction in existing funding to criminal justice agencies and courts should not occur until the expected savings begin to be realised.

Taskforce recommendation

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.

Implementation

A justice reinvestment approach for women as accused persons and offenders could be achieved in a variety of ways. The Australian Institute of Criminology explains that financial approaches for justice reinvestment could involve:

- realising savings from criminal justice interventions which are then reinvested to build and maintain those outcomes
- upfront investment from other sources, so that savings can be realised that are then used to finance a return on the initial investment.[287]

Throughout this report, the Taskforce makes a number of recommendations focused on diverting women and girls from the criminal justice system, from both first-time offending and reoffending and reducing

the number of women in prison. Implementation of these recommendations and the realisation of outcomes should result in costs savings that could then be 'reinvested' in initiatives and services to address the underlying drivers of offending. However, additional start-up investment will be required to establish supports and services to achieve an initial reduction in offending and an increase in the use of diversion and non-custodial sentencing.

The long-term cost savings of a justice reinvestment approach would enable investment in services to address the drivers of women's offending and contribute to a shift in investment towards earlier intervention and prevention within the criminal justice system.

Human rights considerations

Human rights promoted

Adopting a justice reinvestment approach is consistent with the *Bangkok Rules*, which highlight the importance of providing gender-specific, non-custodial measures and penalties for women.[288] A justice reinvestment approach will protect the personal safety of the community (section 29), while also protecting families and children (section 26) by reducing maternal incarceration and breaking intergenerational cycles of offending. Justice reinvestment will also protect the rights of women and girls, which are severely limited when they spend time in custody.

Human rights limited

Justice reinvestment does not limit human rights. Although it may be criticised as 'soft on crime', justice reinvestment aims to address offenders' underlying needs and ultimately to prevent crime.

Evaluation

As noted by the Australian Institute of Criminology, the data and evidence-driven nature of justice reinvestment 'relies on rigorous evaluation and monitoring of interventions and their outcomes'.[289] Approaches must be 'underpinned by a framework of robust evaluation so that the impacts of interventions and resulting cost savings can be demonstrated, and the results used to generate further savings and positive outcomes'.[290]The evaluation of the Maranguka Justice Reinvestment Project was able to show outcomes approximately two years into operation after a three-year establishment period, and resulted in increased investment after demonstrating cost savings.[291] It is important that evaluation planning commences from the outset including capturing relevant baseline data and incorporates measuring and analysing impacts and outcomes at key milestones.

Conclusion

Women and girls' experiences of abuse and trauma, drug and alcohol misuse, poverty, homelessness, and mental illness directly affect their experiences through the criminal justice system. Many women and girls require supports and services to help them address these underlying factors that contribute to their offending to improve their experiences through the criminal justice system.

This chapter has identified the need to recognise the specific circumstances of women and girls who offend, and for government agencies to set a clear, consistent vision for responding to women and girls' needs across the criminal justice system. A whole-of-government strategy for women and girls in the criminal justice system will articulate outcomes, priorities and actions to better coordinate service delivery, monitor and measure impacts and outcomes, and deliver improved value for money.

Addressing the underlying drivers of women and girls' offending presents the most cost-effective option as it diverts women and girls away from the criminal justice system *before* they offend. This should be supported to be achieved through a justice reinvestment approach, to shift investment in the system towards earlier interventions that better meet the needs of women and girls, while keeping the community safe.

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Chapter 3.3: Women and girls' experiences of contact with police and being charged

Early interactions with police shape the trajectory of women and girls in the criminal justice system. Police should adopt gender-responsive and trauma-informed responses to offending by women and girls.

Diversionary options for women and girls should be encouraged and expanded.

Criminal offences that in effect punish poverty and addiction disproportionately impact vulnerable women and girls. The value and relevance of these offences should be reconsidered by the Queensland Government.

Women and girls' experiences interacting with police

Background

Police are the first point of contact for women and girls entering the criminal justice system, and police interactions represent an early opportunity for appropriate responses. As established in Chapter 3.2, women and girls have gender-specific risks, needs and pathways into the criminal justice system. Women and girls who come into contact with the police as accused persons and offenders are likely to be vulnerable, and to have experienced childhood maltreatment, sexual abuse, or domestic and family violence at some stage in their lives.

Current position in Queensland

Operational Procedures

In Queensland, police powers and safeguards when investigating offences and dealing with offenders are contained in the *Police Powers and Responsibilities Act 2000* (PPR Act) and police procedures are set out in the Queensland Police Service (QPS) Operational Procedures Manual (OPM).[1] Currently, the OPM does not contain specific requirements for responding to or interacting with women and girls as accused persons and offenders.[2]

Police officers are required to comply with the OPM when dealing with all offenders, including Chapter 2 (Investigative process) and Chapter 6 (Persons who are Vulnerable, Disabled or have Cultural Needs). Chapter 6 outlines vulnerability indicators including (but not limited to) mental illness, substance dependence, ethnic or religious factors (encompassing those relating to gender attitudes), and Aboriginal peoples and Torres Strait Islander peoples.[3] Gender and victimisation history are not listed as vulnerability indicators. Chapter 6 also outlines procedures for police to consider when referring someone to supports and services. Vulnerability to victimisation, repeat victimisation or harm are included as relevant factors for assessing whether someone is suitable for referral to a service for support.

Training and recruitment

QPS advised that statewide training has been delivered since 2018 on the 'Behavioural Influence Stairway Model', which focuses on communication techniques and the building relationships with people in crisis who are experiencing or who have suffered traumatic events, including offenders.[4] Police also receive compulsory training on inclusion and diversity (relative to culture and gender), domestic and family violence and coercive control.[5] All QPS members receive compulsory training on compliance with human rights obligations under the *Human Rights Act 2019*.[6]

QPS advised that a First Nations Protocol is currently under development, and that a Police First Nations Advisory Group will be established to lead community consultation on the protocol. New *SBS Inclusion Program – Aboriginal and Torres Strait Islander Course* online training was also introduced in February

2022 to be completed by all QPS members by June 2022. A review of QPS recruitment training is underway and will see First Nations Cultural Intelligence training implemented within the curriculum.[7]

In 2022, the QPS began working with the University of Queensland to pilot a gendered policing model.[8] The Taskforce is not aware of any training offered to police about the specific nature and characteristics of female offending.[9]

How do other jurisdictions address this issue?

Australian jurisdictions

Limited examples of gendered police training and policies exist in Australia. The *Victoria Police Gender Equality Strategy 2020–2030* outlines plans to apply a gendered lens in reviewing policies, training and systems to ensure decisions 'are free from bias and consider gendered impacts'.[10]

The Victoria Police '*Equality is not the same*' report recognised that equality (treating people the same) is not the same as equity (treating people fairly).[11] The 2013 report,[12] which was completed in response to a racial-profiling controversy, included a three-year action plan to improve police responsiveness to diverse communities. The report has led to broader police initiatives and policy changes for diverse cohorts such as the implementation of a social cohesion project across the state for people from culturally and linguistically diverse backgrounds and First Nations peoples, people with disability, and LGBTIQA+ people.[13]

England and Wales

The 2018 *Female Offender Strategy* advocates for gender-responsive policing, recognising contact with police as an early opportunity to identify and respond to women's needs.[14] Alongside the Strategy, guidance for police on working with vulnerable women has been developed.[15] This guidance encourages officers to take a gender-informed approach to all women with whom they come into contact, whether or not they are arrested. It also encourages officers to ensure that women offenders have their needs assessed, are diverted into support where appropriate, or supported to address issues that may underlie their offending while awaiting court.[16]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons or offenders

Women told the Taskforce about being in abusive relationships and being criminalised when they retaliate, being misidentified by police as the primary aggressor of domestic and family violence,[17] taking the blame for and being charged with offences committed by coercive partners,[18] feeling that their history of abuse was not taken into account by police,[19] feeling intimidated by male police,[20] being reluctant to go to police for help after previous negative interactions,[21] and feeling stigmatised by police for their criminal history status.[22] One woman, who had negative experiences reporting sexual violence, explained:

> *'The impacts of trauma for women and girls may be understood, but is not acted upon nor taken seriously. Police are quick to disregard the natural fight/flight response of accused and further traumatise the individual by insulting, belittling or degrading them … Police are quick to dismiss allegations of sexual assault and rape when the victim is guilty or accused of breaking the law themselves.'* [23]

Women with disability reported negative experiences with police and not being able to communicate with police effectively if they have an intellectual impairment. One woman with disability reported having her clothing cut off when police responded to a domestic and family violence in which she was the victim.[24] First Nations women and girls reported a strong fear and distrust of police,[25] and often felt that they had been racially targeted.[26] Some young First Nations women described police use of excessive force, including 'closed-hand tactics' and strangulation.[27]

In a forum with women working in the sex work industry, the Taskforce heard multiple accounts of police use of harassment, racism, entrapment and intimidation against sex workers.[28] One woman recounted:

> *'I was on tour in Mackay. I answered the door and two male police officers pushed it open. They asked if I was a sex worker. I said yes, but I wasn't working. They went through all my things and tore things up. It was traumatising. It didn't matter what I said, they just did whatever they wanted. I was in a towel and I said, 'Can I get dressed?' and they said no. I said, 'I don't do drugs, there are no drugs here'. They finished their search and said, 'Pack up your things and leave'. I came by plane; I had no car. They didn't leave the room for me to get dressed, I had to go to the bathroom.' [29]*

Service system stakeholders

Stakeholder forum attendees identified that women who are particularly visible and vulnerable to police contact include homeless women, women with mental ill health, and sex workers, and recounted examples of police gender bias towards women and mothers.[30] The Taskforce also heard about police discrimination against sex workers[31] and women with criminal histories more generally.[32]

Submissions from Respect Inc and Scarlet Alliance raised significant concerns about the treatment of sex workers by police, including police use of entrapment, predatory targeting, racial discrimination, intimidation and aggressive behaviour.[33] Respect Inc recommended that police culture must change through: implementation of policies and accountability measures to address discrimination against sex workers, sensitivity training, and sex worker police liaison officers.[34] Efforts by QPS to address this issue are outlined below.

Support services consistently pointed to ongoing issues with police misidentification of women as perpetrators of domestic and family violence, particularly for First Nations women.[35] Services noted limited police cultural sensitivity[36] and inconsistent police responses towards First Nations women.[37] These experiences were also recounted during consultations in Bamaga, Yarrabah and Woorabinda.[38] Micah Projects submitted that:

> *'[We] observe stark differences in how women from First Nations backgrounds will be treated in their engagements with the justice system, particularly by Queensland Police Service, compared to non-Indigenous women.' [39]*

Services called for improved police referrals processes and more trauma-informed practice, cultural competency, and misidentification training for police.[40] For example, North Queensland Combined Women's Services recommended that police 'have regular, high-quality and evidence-based cultural safety training as a pre-requisite to interacting with traumatised populations including Aboriginal and Torres Strait Islander women'.[41]

Legal stakeholders

Legal services generally acknowledged the need to improve the understanding of trauma and its impact on those who come into contact with the criminal justice system. Queensland Law Society (QLS), Legal Aid Queensland (LAQ) and Queensland Indigenous Family Violence Legal Service (QIFVLS) all noted misidentification concerns.[42] Women's Legal Service Queensland noted the prevalence of women being coerced into offending under threat.[43] In an earlier submission, LAQ recommended a review of the OPM and how it is being applied to women and girls.[44]

QLS highlighted a tendency for police to apply principles of strict equality rather than contextualising violence in the 'broader and systemic issues that promote domestic violence and gender inequality'.[45] QLS also submitted that 'increased police surveillance and over-policing' of First Nations peoples is a driver of overrepresentation.[46] QIFVLS and LAQ raised issues in policing First Nations women including over-policing, inappropriate communication, and harsher treatment.[47] For example, QIFVLS submitted:

'Misidentification of offenders has set back our clients and played a significant role in the criminalisation of Aboriginal and Torres Strait Islander women and girls. QIFVLS experiences cases of misidentification by police of the real victim on a weekly basis!' [48]

Government agencies

While there are no specific requirements in responding to women and girls, officers are required to comply with all safeguards and requirements in the OPM when dealing with offenders.[49] They are also required to consider a person's human rights and comply with obligations under the Human Rights Act.[50] The QPS submission noted its requirements for police to act impartially, to consider whether charges are in the public interest, and to consider whether alternatives to charging would be more appropriate.[51]

The QPS advised the Taskforce of initiatives intended to reduce misidentification.[52] QPS advised that the first phase of its coercive control training package was rolled out in January 2022, with nearly all officers now registered as having completed the training. The second phase of face-to-face training commences in July 2022.[53] The training specifically deals with misidentification and responding to victims from diverse backgrounds in a trauma-informed way. The QPS has made changes to the information layout on the police Qlite devices used by officers in the field. The simplified view now provides a whole-history snapshot at the front page.[54]

The QPS also advised that it has established a First Nations Unit in an effort to enhance relationships with First Nations peoples and improve its service. The QPS targets First Nations peoples and people from culturally and linguistically diverse communities into pre-recruiting programs to increase organisational diversity and representation of the community it serves.[55]

In relation to the experience of sex workers, QPS advised (as outlined in Chapter 2.5) that it has established a dedicated contact point between the sex worker industry and the QPS via Respect Inc. A newsletter published by Respect Inc advises sex workers to contact them with any unresolved concerns or complaints about QPS. Respect Inc then contacts the dedicated QPS contact to discuss and try to resolve the issue.[56]

Other relevant issues

Gender-responsive policing

The United Nations has called for a gender-sensitive approach to policing, including capacity development to offset discriminatory attitudes and justice system outcomes.[57] Gender-responsive policing has also been recognised in the United Kingdom[58] and in research from the Prison Reform Trust[59] and RMIT's Centre for Innovative Justice[60] as an important prevention and early-intervention tool for women and girls as offenders.

Research literature points to the need for gender-responsive and trauma-informed approaches to policing that take explicit account of women's specific needs, understand the link between trauma and offending, and challenge the victim-offender dichotomy for women in the criminal justice system.[61] Ensuring that police understand the significant overlap between women's use of force and women's own victimisation is particularly important in policing domestic and family violence.[62] The evidence supports tailoring approaches for women to address their needs including mental health, substance misuse, and family contact concerns.[63]

Several issues raised in consultation about police responses to women also relate to broader vulnerabilities including poverty, homelessness, disability, cultural diversity and indigenous status. Vulnerable people, whether as witnesses, victims or offenders, are involved in 75% of police interactions in most international jurisdictions.[64] Some researchers have argued for a streamlining of responses to vulnerable cohorts and improved understanding of vulnerability indicators as a whole, rather than siloed approaches to particular cohorts such as women.[65]

Misidentification

The Taskforce made recommendations in *Hear her voice 1* to address the misidentification of the person most in need of protection (recommendations 34, 37). Misidentification continued to be raised in consultation as a driver for women being criminally charged, particularly First Nations women.[66] ANROWS research on misidentification highlights that criminal charges stemming from misidentification have significant flow-on consequences for women, including criminal records, increased likelihood of future charges, and employment, housing, family law and immigration impacts.[67] The research found a lack of evidence of best practice nationally to mitigate this risk. Although some jurisdictions have guidance on the need to determine the primary aggressor, none provide explicit guidance for police to identify the perpetrator in the context of coercive control.[68] QPS advised that ANROWS reviewed and supported the QPS coercive control training package, which specifically addresses misidentification, before its release in January 2022.[69]

Police callouts to residential care

As noted in Chapter 3.2, the Taskforce heard concerns about girls in the child protection system who are placed in residential care entering the youth justice system, including through police call outs to residential care facilities.[70] The QPS also noted this issue, and highlighted that responding to calls for service from residential care consumes significant and disproportionate policing resources.[71] In 2018, the Queensland Family and Child Commission led development of the *Joint Agency Protocol to reduce preventable police callouts to residential care services* (the Protocol).[72] QPS report that 'ongoing engagement with stakeholders in intervening years has seen a significant and sustained reduction in the number of calls for service to residential care facilities.'[73] Operational Guidelines to support the implementation of the Protocol, published by the Department of Children, Youth Justice and Multicultural Affairs in February 2022, are hoped to further reduce unnecessary police involvement with children in residential care and to subsequently reduce their involvement in the criminal justice system.[74] The Queensland Parliament's Community Support and Services Committee recently recommended an evaluation of training provided to residential care workers to ensure it sufficiently covers diversionary tactics and de-escalation techniques.[75]

Relevant cross-cutting issues

Police interactions with First Nations women and girls

Numerous reports,[76] including the *Wiyi Yani U Thangani* report, have connected the overrepresentation of First Nations women in the criminal justice system with the overpolicing of First Nations peoples.[77] The repercussions of negative and traumatic experiences with police include general fear, distrust, and a reluctance to seek help from police or engage with officers' inquiries. First Nations women are simultaneously overpoliced as offenders and underpoliced as victims.[78] They often go unrecognised as victims of crime,[79] whether due to police responses that minimise their experiences of violence, or distrust of police and fears of children being taken into child protection impacting reporting and engagement.[80]

The Human Rights Law Centre's *Overrepresented and Overlooked* report (2017) made recommendations for improved police responses to First Nations women, including the adoption of education, training and recruitment practices that promote more appropriate police responses to First Nations women as offenders, and the prioritisation of partnership programs (including gendered programs) with First Nations communities to build trust and respect.[81]

Taskforce findings

Given the nature of this Taskforce and the absence of relevant powers, the Taskforce is not in a position to make findings about individual, specific complaints raised in submissions concerning QPS. The frequency of these complaints, however, and the support they received from victim-survivors and many in the service sector, has identified a concerning issue about the way many QPS officers treat vulnerable women and girls, particularly First Nations women.

Current QPS policies and procedures encourage police to be neutral in discharging their duties. However, equal application of the law and procedures can result in inequality of outcomes depending on physical and social characteristics, including gender.[82]

The rapid and disproportionate increase in female offenders indicates a need for targeted responses. Evidence supports police taking a gendered approach when interacting with women and girls as accused persons and offenders. Police responses to women and girls as accused persons and offending has an impact on their safety and willingness to go to police for help and protection. Other Queensland Government agencies that provide services in the criminal justice system are introducing practices to respond to the particular needs of women and girls.

Police policies and procedures should be gender-responsive and trauma-informed. They should recognise that women and girls coming into contact with the criminal justice system are often vulnerable and likely to have experienced significant victimisation and disadvantage. The Taskforce found police should develop and adopt specialist and tailored responses for First Nations women and girls. This should incorporate improving awareness and understanding of inter-generational trauma for First Nations women and girls. This is an essential requirement for Queensland to meet the justice and domestic and family violence targets in the National Agreement on Closing the Gap.[83]

The Taskforce recognises and commends QPS efforts to improve training provided to police in response to vulnerable cohorts. The QPS should continue to enhance this training and ensure that it takes a trauma-informed approach. Police training should take explicit account of women's specific needs.

The Taskforce notes that several recommendations in *Hear her voice 1*, if adequately implemented, may address issues around misidentification, police culture and training, and the overrepresentation of First Nations women in the criminal justice system (recommendations 1, 2, 34, 37).[84] The Taskforce acknowledges that many police officers are responsive to the needs and experiences of vulnerable women and First Nations women.

The Taskforce commends joint agency efforts to reduce unnecessary police involvement with children in residential care. These efforts should continue.

Taskforce recommendations

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 ongoing 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.

Implementation

The review of operational policies and procedures and development of additional guidance for police should be undertaken in consultation with people with lived experience and other stakeholders so that police responses practically address the issues that are important for women and girls. Taking into consideration

the example from the United Kingdom, police should be confident and equipped to provide a gender-responsive approach.

Guidance on appropriate communication practices with First Nations women and girls should be developed with First Nations peoples. The guidance provided to police should be inclusive of gender-diverse and non-binary people, and the broader LGBTIQA+ community. Responses should support improved practice in police responses and interactions with women and girls from culturally and linguistically diverse backgrounds and women with disability, and should incorporate tailored responses for young women and older women.

Improved responses by police should extend to police communications centre staff and front-counter staff in police stations and other QPS staff who interact with the community.

The goals of the guidelines and improved training for police would be to:

- improve women and girls' experiences with police and encourage them to seek help from police when required
- improve police relations with First Nations women and community attitudes to police
- encourage appropriate use of diversion options and referrals to reduce the number of women and girls coming into the criminal justice system and to address the drivers of their offending.

The Taskforce considers the following amendments to Chapter 6 of the OPM would improve procedural responses to vulnerable women and girls, along with the general population:

- including victimisation and abuse history as a vulnerability indicator and guidance on interviewing people with victimisation histories
- including homelessness as a vulnerability indicator
- including more examples relevant to the experiences of women, encouraging police to place a gendered lens over contact with women experiencing intersectional disadvantage.

The Taskforce considers that training on interacting with vulnerable cohorts should include:

- gender-responsivity training on interacting with women, girls, and gender-diverse people as accused persons and offenders
- increased cultural capability training, which should include gendered differences in communication with First Nations men and women
- increased training on trauma and the impact of adverse childhood experiences, to improve police recognition of the drivers of offending for both men and women, and to encourage an empathetic approach to vulnerable offenders.[85]

Implementation of this recommendation is intended to occur alongside work already underway within QPS including training updates and the review of training for police recruits.[86]

Human rights considerations

A number of rights are relevant to police interactions with women and girls including the right to recognition and equality before the law (section 15), the right to privacy and reputation (section 25), cultural rights (sections 27, 28) and the right to liberty and security of person (section 29).

Human rights promoted

Some may consider that the current, gender-neutral QPS policies and procedures to be consistent with the right to equality before the law. But the Taskforce considers the better view is that QPS' current lack of policies, procedures and training to recognise and respond to the specific needs of women and girls undermines the right to recognition and equality before the law, which recognises that measures taken for the purpose of assisting groups disadvantaged because of discrimination does not constitute discrimination. If the practical outcome of police interactions with women, particularly First Nations women, is contributing to discriminatory outcomes for women, then proportionate 'discriminatory' policies are justifiable. Further, gender-responsive approaches to women will have no discernible limitation on the rights of the broader public, especially as most women's offending is usually non-violent. Gender-responsive approaches may actually promote the community's right to safety if successful in encouraging

female victims to report offending against them, with perpetrators being convicted and an expected corresponding reduction in the rate of offending and reoffending by women and girls.

Current policing of women, especially First Nations women, is one factor contributing to the increased population of women in the criminal justice system. Where police interactions, misidentification and over-policing leads to imprisonment, women's rights associated with liberty and security of person and culture are limited. Improving police responses to women and girls would promote these rights. Reducing the likelihood of misidentification of offenders and primary aggressors in domestic and family violence circumstances, and improving police consideration of women's abuse histories, also protects women and girls' right to security of person. This right places a positive obligation on the state to take appropriate measures to prevent future physical and mental violence to individuals, including domestic and family violence carried out by private individuals.[87] Ensuring police responses to domestic and family violence do not wrongfully result in criminal justice sanctions against women promotes this right.

Human rights limited

As explained above, these recommendations do not limit human rights.

Evaluation

The impacts and outcomes achieved as a result of revised operational policies and procedures and additional guidance for police, along with the implementation of gender-responsive and trauma information training, should be regularly measured and monitored and subject to independent evaluation. The impacts and outcomes achieved and the outcomes of an independent evaluation should be made publicly available.

Diverting women and girls from the criminal justice system at the police stage

Background

Diversion offers a viable alternative to court proceedings and potential imprisonment for low-harm or early offending through formal or informal interventions designed to deter a person from further involvement in the criminal justice system at the policing or court stage. Court-based diversion is discussed in Chapter 3.6.

As noted in Chapter 3.1, the number of female offenders in Queensland is increasing at an alarming rate.[88] In 2020-2021, women were most commonly charged with non-violent, less serious offences including drug possession and other minor drug offences, traffic offences, good order offences, theft offences, and fraud offences.[89] Where women do commit violent offences (such as common assault), research suggests that these offences are mostly isolated incidents, and are often related to women's resistance or retaliation to violence and abuse or response to trauma.[90]

Referring to police diversion as an 'early' intervention may be criticised by some, given the underlying issues contributing to the offending are likely to have been present before the offending and the offender is likely to have had prior contact with systems and services that could have intervened even earlier. Police diversion, however, is early in the context of the criminal justice system.

Police decisions to pursue charges have a direct impact on the number of women being sentenced and subsequently the number of women in prison.[91] International research offers strong evidence that when early interventions (including those that are police-led) de-escalate contact with the criminal justice system, reoffending is reduced.[92] Literature also recognises that contact with the criminal justice system has a criminogenic effect due to the social exclusion, stigmatisation, anti-social influences and trauma that may result from time spent in custody.[93] When women and girls spend even short periods in custody, they are likely to return for more serious offending in the longer-term.[94] It is important that appropriate diversion is prioritised for low-level female offending.

The *Bangkok Rules* emphasise the importance of gender-specific and culturally appropriate diversion options.[95] Research about what works in pre-court diversion presents a strong case for government investment in diversion schemes for women. Diversion schemes deliver value for money as women's offending is typically suitable for diversion, women are less likely to reoffend, and criminalisation can have a greater impact on women.[96] Research also indicates that diversion options for women should include

supportive and voluntary intervention, be integrated into support in the community, be gender-informed, and be responsive to the complex realities of women's recovery.[97]

Existing use of diversion in Queensland

Under section 377(4) of the PPR Act, a police officer must release a person at the earliest reasonable opportunity if the police officer reasonably considers it is more appropriate for the arrested person to be dealt with other than by charging the person with an offence, and the person and any victim of the offence agree to the person being dealt with in that way. Operational procedures also require QPS officers to consider whether alternatives including disposition and diversion options would be appropriate before deciding to commence proceedings against a person.[98] This requirement is not legislated.

Adult cautioning

An adult caution is a formal warning that may be administered by an officer to a person who is aged 18 years and over. Cautioning provides a means of dealing with lower-end, non-habitual offending without commencing a proceeding. QPS policy on cautioning adults is outlined in the OPM, but is not legislated.[99] The OPM provides that the purpose of adult cautioning is to:

- manage lower-end offending in a manner that positively contributes to behaviour change and reduced recidivism
- divert appropriate offenders from the criminal justice system
- reduce the disproportionate use of prosecution resources for minor matters by finalising matters in an efficient and effective manner.[100]

Cautions cannot be issued for indictable offences unable to be dealt with summarily and certain other offences including domestic and family violence offences, drug offences, drink or drug driving offences, or offences involving serious injury or financial loss to the victim.[101] To be eligible for an adult caution, the person must not deny committing the offence and must give informed consent to being cautioned. Decisions about cautioning are largely discretionary.

Drug diversion

The PPR Act provides for Queensland's Police drug diversion program.[102] The relevant provision requires a police officer to offer an eligible person the opportunity to participate in a drug diversion assessment program, as an alternative to prosecution for a *minor drugs offence*.[103] A *minor drugs offence* is narrowly defined to include possession of under 50g of cannabis or a thing used for smoking cannabis.[104] Eligibility for adults is limited to those who have not committed another related indictable offence, have not been sentenced to imprisonment for a drug offence before, have not been offered to participate in the program before (for example, they haven't been diverted before), and have admitted on video to the offence.[105]

The key barrier to this program being more effective is that it is only available for cannabis possession. Queensland and New South Wales are the only Australian jurisdictions that do not have a police drug diversion or cautioning option for illicit drugs other than cannabis.[106] Queensland's *Action on Ice* strategy included an action to 'divert minor or moderate illicit drug offenders from the criminal justice system for assessment, education and treatment through drug intervention programs'.[107] Implementation updates on the strategy referred to the police drug diversion program, despite the program's inapplicability to methamphetamine.[108]

Youth justice diversion

Diversion is currently offered to young people by police or courts with options based on the risk/needs/responsivity model (RNR).[109] Under section 11 of the *Youth Justice Act 1992* (YJ Act) a police officer, before starting a proceeding against a child for an offence other than a serious offence, must first consider whether in all the circumstances it would be more appropriate to take no action, administer a caution, refer the young person to restorative justice, or offer that they participate in a drug diversion or graffiti-removal program. The process for administering cautions to children is outlined in section 16 of the YJ Act. Children issued cautions must admit guilt and consent to be cautioned. The process may involve an apology to a victim. If practical, police must arrange for the child's parent, guardian or other chosen adult to be present during the process. For First Nations children, there is provision for a member

of the child's community to administer the caution. In 2019, QPS developed the protected admissions scheme that aimed to address legal limitations requiring a young person to make an admission to the offence to police before diverting them to appropriate support services. As at 30 June 2020, 211 youths had accepted protected admissions and been cautioned.[110]

There are several diversion programs and initiatives aimed at diverting young people from the criminal justice system. These include the establishment of youth co-responder teams (YCRT) consisting of QPS and the Department of Children, Youth Justice and Multicultural Affairs (Youth Justice) employees, that operate in eight police districts throughout Queensland. These teams perform street and home visits to young people who have entered or are at risk of entering the criminal justice system. They also provide links for the young person and their family to support services to help provide holistic support to the family unit.[111] QPS advise that multi-agency collaborative panels have been established in all police districts to provide support and intensive case management for serious repeat young offenders who are consistently entering and exiting detention. These panels include representatives from various government agencies that work together to collaboratively provide support and create pathways for young people to prevent reoffending and incarceration.[112]

In Cairns, the Taskforce heard about Project Booyah, which is a youth mentoring program run by QPS in multiple locations across Queensland. The Taskforce heard that the Cairns model features a gender-specific approach for girls at risk of entering the criminal justice system, and incorporates conversations about healthy relationships. Though participants in Project Booyah have not been charged with crimes, they are identified as 'at risk'. A 2014 Griffith University evaluation of the program confirmed that it was highly successful in reducing youth offending.[113] Project Booyah was permanently funded in 2020.[114]

Diversion is underutilised in Queensland

In 2019, the Queensland Productivity Commission's *Inquiry into imprisonment and recidivism* report (QPC report) found that rising imprisonment rates are driven by system changes (police opting for court options rather than alternatives), entrenched socioeconomic disadvantage and a one-size-fits-all approach rather than increasing crime rates.[115] The QPC report found that diversion was underutilised in Queensland due to limitations on its application and administrative hurdles for police.[116] Adult Restorative Justice Conferencing is discussed at Chapters 2.15 and 3.5.

Recommendations 34 and 35 of the QPC report concern expanding diversion options and incentivising their use. The QPC recommended expanding diversionary options by establishing:

- an adult caution for use in situations where it is a first or infrequent offence and the police are satisfied that such a caution provides sufficient action
- a multi-stage caution and diversion scheme for all drug possession that allows for a staged response and supports further reform to the legal framework for drugs
- a three-tier deferred prosecution arrangement (deferred prosecution is discussed below) that provides: 1) a simple agreement conditional on the offender desisting from further offending for a specified period 2) an agreement for additional conditions relating to assessment, referral and treatment to address offending behaviours 3) an agreement in which additional conditions are developed and monitored by approved community groups, such as community justice groups
- local policing plans based on problem-oriented and community-oriented policing practices, developed in partnership with community groups such as the community justice groups, for communities with high levels of offending and imprisonment.[117]

In response to the QPC recommendations for diversion, the Queensland Government committed to 'supporting all options available to police, including the increased use of existing adult cautioning options, facilitating more police referrals to Adult Restorative Justice Conferencing, and exploring implementation of deferred prosecution agreements'.[118] No legislative amendments are planned to expand or legislate diversion.

The QPC report also outlined a need for a reduction in the 'administrative hurdles' to adult cautions. At the time, the QPC stated 'the use of a caution requires sufficient evidence, admission of guilt by the alleged offender, prior approval by a sergeant (not involved in the investigation) and the agreement of any victims'. During forums, police participants advised that amendments had been made to the OPM to

encourage use of cautions for adults.[119] This appears to have involved a removal of the requirements for sergeant and victim approval. The QPS advised that the use of adult cautions has increased over the last three years. Data provided by QPS indicated that, for several offences, the number of adult offenders receiving cautions doubled or tripled between 2018-19 and 2020-21.[120] Police attendees at stakeholder forums tended to reflect that there was still limited scope for and use of adult cautioning.[121]

The QPC report and the Queensland Drug and Specialist Courts review both recommended expanding diversion options for drug possession by providing 'levels' of cautions (simple caution, online education, face-to-face sessions), allowing expanded ticketing for drug possession, and including other illicit drugs in cautioning options.[122]

Recently the Mental Health Select Committee *Inquiry into the opportunities to improve mental health outcomes for Queenslanders* report recommended the Queensland Government review illicit drug diversion initiatives, including the Police Drug Diversion Program and the Illicit Drugs Court Diversion Program (see Chapter 3.6), and identify opportunities to strengthen the initiatives.[123]

Costs savings from increasing diversion

The Anti-Discrimination Commission Queensland *Women in Prison 2019* report (ADCQ report) noted that diversion programs can be a cheaper alternative to incarceration in terms of financial and individual costs.[124] Diversion can also help to reduce the social costs of parental incarceration, including child protection costs and the cost of intergenerational offending.[125] The correlation between parental criminal activity and children offending is stronger for mothers than for fathers[126] and parental incarceration is associated with negative life outcomes for children.[127]

The QPC report estimated that each diversion for low-harm offending would potentially save $2,105 per diversion from avoided court cost, while diversion to treatment (for example, assistance for drug abuse, mental health issues, homelessness and cognitive impairment) potentially saves $9,200 per diversion from reduced reoffending.[128]

How do other jurisdictions address this issue?

Queensland makes limited use of diversion compared with other Australian jurisdictions, and the least use of non-court proceedings for illicit drugs and public order offences compared with Victoria, South Australia and New South Wales.[129] All jurisdictions have drug diversion options for cannabis possession, and all except Queensland and New South Wales have diversion options for other illicit drugs.[130] Non-attendance at education, assessment or treatment can still lead to criminal charges.[131]

In Victoria, police can issue child cautions, adult cautions, cannabis cautions (adults only), and drug diversion. Like Queensland, adult cautions are not legislated. A recent inquiry into Victoria's criminal justice system found that police use of cautions had declined, and that the application of cautions was discretionary. The inquiry recommended a review of the use of cautions by Victoria Police to inform reform aimed at expanding the use and consistency of cautioning.[132]

Conditional cautioning schemes and deferred prosecutions schemes, which operate similarly, are examples of additional early diversion options. Deferred prosecution agreements involve a police officer or prosecuting authority consenting not to prosecute an offender for an agreed period, providing they do not reoffend and adhere to any other terms (such as receiving treatment). If the offender complies, the prosecution is cancelled, avoiding court and any penalties. If the offender reoffends, proceedings are commenced for both the deferred and new offence. The QPC report noted evidence from the United States that deferred prosecutions work to reduce reoffending and increase employment.[133]

In England, a conditional caution is a type of out-of-court disposal used by police and prosecutors that requires an offender to comply with conditions, as an alternative to prosecution. The conditions that can be attached must be rehabilitative, reparative or a financial penalty. If the offender fails, without reasonable cause, to comply with the conditional caution, they may be prosecuted for the original offence (non-compliance is not an aggravating factor).[134] England has recently committed to legislate a two-tier police 'out-of-court disposals' framework to simplify and encourage consistency in police use.[135] The proposed new 'diversionary caution' is substantially the same as a conditional caution and the new 'community caution' is for low-level offending.[136]

Research from the University of Cambridge commissioned by the National Police Chiefs of England and Wales about the effectiveness of out-of-court disposals found that they are effective at reducing harm and reoffending and are cost effective compared with court prosecution.[137] The research also found that 'tailored conditions for women appear to be a promising approach that deserves further exploration and testing'.[138]

Barriers for the successful uptake and use of conditional cautions in England and Wales have been identified as:

- requirements for Crown Prosecution Service approval before a conditional caution is given limited initial police uptake. Once this requirement was removed low uptake was still reported along with a steady decrease in police use of out-of-court disposals[139]
- requirements for compliance with conditions can actually increase reoffending because they require greater criminal justice involvement in circumstances where a simple caution may have been suitable (known as up-tariffing).[140]

Gender-specific diversion

Successful women-specific police diversion programs in England[141] and Wales[142] have involved partnerships with local services with the aim of helping to address the needs of women who have come into contact with the police and reduce future involvement in the criminal justice system.

There is promising evidence from England that female 'Pathfinder' and 'Female Triage' programs are successful in reducing re-arrest.[143] These programs generally involve diverting women to a women's centre for assistance to address their criminogenic needs before they are charged, rather than process them through the criminal justice system. Evaluation of one triage project in Humberside, England found that intervention was associated with a lower likelihood of rearrest, but that the promising results needed to be replicated using a larger sample.[144]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons or offenders

Women and girls felt that not enough was being done to keep them out of prison.[145] Women in prison called for increased use of cautions, adult restorative justice conferencing, drug diversion and more diversionary options with treatment programs, domestic violence support and trauma counselling.[146] One woman in prison explained:

> *'There are a lot of women in here for fighting back in response to violence in their lives – diversion to a program that can help with domestic and family violence and help women heal would be better than coming here.'* [147]

Another submission noted that when accompanied by adequate support for offenders, diversion can assist 'the most vulnerable members of society to lead a life without having to relapse back into criminal behaviour patterns.'[148]

Girls in youth detention reported positive experiences with youth justice workers in youth justice co-responder teams.[149] One girl told the Taskforce that things had recently started improving in her local area, including more support, education, and 'trying to get kids away from crime.' However, she said that there was a need for more support for 'kids who have limited options' – stating 'there has to be a reason why we are getting into trouble, doing drugs.' [150]

Service system stakeholders

Sisters Inside called for greater use of alternatives to imprisonment, including greater use of justice mediation or restorative justice conferencing, even for violent offences.[151] Ending Violence Against Women Queensland called for a focus on stopping First Nations women being charged or incarcerated in the first place, and that this may include diverting people from court to culturally safe community-led solutions,

and engaging with domestic, family and sexual violence services, drug and alcohol services, and other rehabilitation programs with holistic approaches.[152]

Queensland Network of Alcohol and Other Drug Agencies called for an expansion of police drug diversion and noted that Queensland has the lowest rate of diversion in Australia, with Queensland figures skewing the national data on drug diversion.[153] SERO4 (MARA) also noted that for drug diversion to be effective it must address basic human needs that often go unmet for alcohol and drug users – such as food, shelter, personal security, employment, and health.[154]

Legal stakeholders

LAQ submitted that diversionary options for women and girls should be supported through a legislative framework and improved resourcing[155] and prioritised where appropriate.[156] LAQ further submitted that the potential cost of diversion could fund enhanced community-led, holistic and culturally appropriate responses, while producing cost savings for government.[157]

The Queensland Law Society (QLS) noted that there is no legislation authorising or regulating police cautioning of adults. QLS members 'report the use of the [diversion options] is sporadic and inconsistent and more transparency around consideration of these options by Queensland Police would be highly beneficial'.[158] The QLS also note that drug diversion and alternatives to bringing court proceedings against a person are underutilised by police.[159]

QIFVLS also called for greater use of existing diversion options and greater investment in culturally informed, community-led diversion and early intervention.[160]

Government agencies

The QPS noted that girls have a greater opportunity to be diverted than women, and when coupled with further support, diversion may provide greater long-term benefits.[161] The QPS submits that expansion of adult cautioning and the ability to provide restorative justice conferencing to adults would provide greater options for police when considering responses to offending.[162] QPS attendees at forums often reflected that adult cautioning and restorative justice options for adults were limited.[163]

The Queensland Family and Child Commission submitted that effective diversionary programs alongside equal partnership between community and police, increased police cultural competency, alternative sentencing, and justice reinvestment is needed to support Aboriginal and Torres Strait Islander women and girls.[164]

Other relevant issues

Police use of referrals and service system capacity

The OPM provides that a relevant factor for police deciding whether to administer an adult caution is the person's willingness to consent to a referral to an available support service.[165] QPS referrals to support services are facilitated by a state-wide Queensland police referrals service (known as Redbourne). This is linked to QPRIME so police can access referral history. The system comprises over 530 service providers and 67 different issues, grouped broadly into 22 referral categories and linked to 10 themes. Themes include domestic and family violence (victim and perpetrator); homelessness; health and wellbeing; mental health; seniors; and victim support services.[166] An additional system in police communications allows referrals to be made directly from police communications.[167]

QPS analysis of 2019 referral data suggests there is a significant reduction in both recidivism and revictimisation rates for those people who accept a referral in relation to domestic and family violence. Of the total number of unique offenders who did not accept a referral, 25.87% (n=24,511) reoffended in less than three months. This compared with 4.27% (n=4,041) who had accepted a referral in the same period and reoffended. Similarly, of the total number of unique victims who did not accept a referral, 20.39% (n=19,716) were revictimised in less than three months compared with 6.88% (n=6,647) unique victims who had accepted a referral.[168]

Hear her voice 1 noted significant issues with the existing QPS referrals process in relation to domestic and family violence, including that consulted services were overwhelmed by the number of referrals they were receiving, and that limited information provided by police made it difficult to triage or even contact

referred persons. Additionally, police were frustrated with the lack of advice received back from services.[169] These concerns are also relevant in this report, as a large portion of women and girls as accused persons and offenders may benefit from the support of a domestic and family violence service. There are, however, some locations in Queensland where services are not provided at all and many others where services are available but are already overwhelmed by existing police referrals.

Many women and girls who come into contact with the criminal justice system as accused persons and offenders also require help and support to address issues such as drug and alcohol problems, mental ill-health, housing, parenting, and poverty. While services that may be able to accept a referral to help people to address these issues are provided in some locations, there are significant service system gaps and often a complete lack of availability, particularly in relation to services that meet the needs of First Nations women and girls.

In *Hear her voice 1*, the Taskforce found there were widespread cultural issues within the QPS that are seriously impacting on the delivery of consistent responses to protect victims of domestic and family violence and hold perpetrators to account. These issues especially impact First Nations women and girls. The Taskforce recommended the establishment of a Commission of Inquiry to investigate these concerns (Recommendation 2). The *Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence* has been established and has commenced its inquiry. In this report (Chapter 2.5), the Taskforce has made findings about serious issues relating to police responses to sexual violence, again with specific implications for First Nations women and girls. While not of the same nature as those the Taskforce made in its first report, these concerns must be addressed to ensure public confidence in police responses. The Taskforce has also made findings and recommendations earlier in this chapter about the need for a gendered police response to improve equal access to justice.

Consideration of conditional cautions and deferred prosecution

Deferred prosecution agreements and conditional cautions may support a therapeutic approach to pre-court diversion whereby offenders are connected with the services that they need. These options may also be considered to be more 'punitive' than a simple adult caution because they require the completion of conditions – if not met they do not remove the potential for future prosecution. This will especially be the case if they are applied to offences previously warranting a simple caution.

There are risks associated with conditional cautions and deferred prosecution agreements. These include:

- up-tariffing where women who might be more appropriately given a warning or a simple caution are instead given conditions with which they may struggle to comply
- net-widening where women who do not comply with conditions are exposed to further criminalisation
- discretionary or discriminatory application that may disadvantage particular cohorts, including First Nations women
- women may be referred to services that they do not require or are inappropriate or unavailable causing unnecessary demand on services that are already overwhelmed
- additional administrative burden on police in order to provide protections and safeguards on the exercise of discretion not to charge
- requiring police to assess women and girls needs which may be beyond their expertise and role
- concerning compliance monitoring, including that women with conditions may be exposed to additional monitoring by police.

Admission of guilt and voluntary diversion

Existing cautioning options for adults in Queensland require the admission of guilt, and are not available when people are not prepared to admit guilt to police before they have obtained legal advice. This may disadvantage First Nations women and girls,[170] given their reluctance to admit guilt to police and concerns about over-policing. Relevantly, a lack of appropriate diversion options has been identified as a driver of increased imprisonment of First Nations women.[171] Admission requirements may make it more likely that offenders will admit guilt to receive a caution rather than receive a fair hearing.

Taskforce findings

Increasing rates of female incarceration, especially short sentences, are leading to long term harm for women, their children, and communities, and place additional unnecessary demand on and cost to the criminal justice system. Given the low-level nature of most women's offending, diversion from prosecution and further criminal justice interactions should be a priority.[172]

Current policy and legislative limitations hinder the accessibility of cautioning and drug diversion options for women and girls involved in low-level offending and drug crime.

Strengthening existing diversion options

The Taskforce found that the alarming increase in the rate of women and girls' offending and incarceration, the increasing costs of incarceration, and the suitability of women and girls for these types of responses means that the government must explore the expansion of diversionary options. The current trajectory of women and girls' involvement in the criminal justice system is unsustainable and unacceptable on every level. The increasing costs associated with this demand pressure represent poor value for money, given limited evidence of effectiveness in preventing offending and reoffending or in improving community safety.

The Taskforce observed that police have limited legislative and policy options to divert women and girls from the criminal justice system, and perceived administrative burdens reduce the likelihood of them using these options. The Taskforce notes and commends efforts by QPS to increase the use of adult cautions. However, the Taskforce found that adult cautioning processes should be legislated to ensure consistency of application and provide protections and safeguards for vulnerable people and for police. Legislating to require the consideration of available diversion options before charging a woman with particular offences, would send a clear message to police and provide greater consistency with OPM provisions encouraging diversion.[173] This would also be consistent with existing requirements to offer drug diversion in certain circumstances as provided for in legislation.[174]

The expansion of the police drug diversion program to illicit drugs other than cannabis would bring Queensland in line with the majority of other Australian jurisdictions and would be an effective and efficient response to the rising rates of female offending and incarceration, which the QPC report found to be largely influenced by responses to drug possession.

The Taskforce noted that some members of the community may not support increased use of adult cautioning and expansion of drug diversion for a range of concerns, including community safety and that the policy may encourage illicit drug use and lead to a rise in drug dependency. The Taskforce acknowledged that this reform would be assisted by non-partisan leadership in which both the Government, the Opposition and others, including health and justice experts, engaged in a frank discussion with the wider community, about the value of the investment of public funds in imprisonment and criminalisation versus the value of investment in drug, alcohol and mental health treatment and rehabilitation, for this cohort of offenders. The Taskforce felt that community consultation on draft legislation would assist in this process.

The Taskforce was concerned that persons who could be diverted would benefit from an opportunity to obtain legal advice before making an admission of guilt to police. Expanded use of diversion options should be supported by a bolstering of legal and support services. The Taskforce also considered that there is merit in exploring protected admissions for first-time adult offenders.

Exploring new diversion options

The Taskforce considered the viability of additional diversion models for women including conditional cautions and deferred prosecution agreements. While these options provide opportunities to address the needs of women and reduce criminal prosecutions, there are risks that require careful consideration, given Queensland's large geographical size, dispersed population and existing service system issues.

In light of the Taskforce's findings about the use of police referrals and police responses to domestic and family violence in *Hear her voice 1,* the Taskforce finds it unlikely at present that frontline police would be suitable to determine appropriate conditions for an offender or to make appropriate enquiries with a service about service availability. These decisions might more suitably be made at the pre-court stage between prosecutors and

lawyers. Conditional cautioning and deferred prosecution agreements would also rely on police assessments and exercises of discretion, including in relation to monitoring compliance with conditions. To equip police with this power and responsibility at this stage would be inconsistent with the Taskforce's previous findings about widespread cultural issues within the QPS, and would require police to perform functions beyond their current capability and capacity.

The Taskforce was also concerned that there may be insufficient services across Queensland suitable to accept referrals of people subject to a conditional caution or deferred prosecution. This would result in inequities in terms of access to justice that could exacerbate the over representation of First Nations peoples in the criminal justice system.

The risks identified may be mitigated by adopting the 'tiered' model recommended in the QPC report, whereby police may only issue conditions to not reoffend, while additional conditions may be set by prosecuting authorities. As such, the Taskforce considered that the tiered approach to deferred prosecution agreements recommended in the QPC report (Recommendation 34) should be further examined, with regard to the risks outlined above.

In considering gender-specific diversion, the Taskforce noted that examples of these practices from the United Kingdom rely on forms of conditional cautioning and the availability of suitable services. Queensland does not currently have the framework or service delivery infrastructure to facilitate these kinds of gender-specific diversion initiatives statewide, though these limitations could be addressed through the justice reinvestment approach recommended by the Taskforce (Recommendation 94). The Taskforce supports the underlying concept of gender-specific diversion. The QPS should consider options to pilot an approach that does not involve conditions but which diverts eligible women to appropriate services as an alternative to being charged, in order to develop an evidence base for gender-specific diversion in Queensland. For example, this approach could build on the success of the Project Booyah model to provide a gender-specific diversion program for young women in additional locations and for an expanded age cohort (for example, those aged between 18 and 25).

Taskforce recommendation

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 Minister 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*.

Implementation

Legislative amendments to formalise adult cautioning processes in Queensland, to require police consideration of diversionary options, and to expand the scope of police drug diversion should be progressed together, following consultation with stakeholders. Chapter 3.5 further considers the potential to expand Adult Restorative Justice conferencing in Queensland.

In exploring options for gender-specific pre-court diversion, the QPS should have regard to the outcomes and challenges of equivalent programs in England. The Taskforce also considers that there is potential to build on the success of the Project Booyah model that is operating for young women in Cairns, to expand it to other locations and to develop additional gender-specific diversion initiatives for young adult women. If a pilot is commenced, it should ideally be located in a non-urban setting to ensure results are not skewed for areas with more support services.

Human rights considerations

Diverting women and girls from further involvement in the criminal justice system at the police and pre-court stage engages a number of rights in the Human Rights Act including the right to recognition and equality before the law (section 15), the right to liberty and security of person (section 29), the right to the protection of families and children (section 26), and cultural rights (sections 27 and 28).

The *Bangkok Rules* call for gender-specific options for diversionary measures that take into account the history of victimisation of many women offenders, and their caretaking responsibilities.[175]

Human rights promoted

Providing police with greater options for diverting women and girls away from the criminal justice system promotes the rights that are limited when women and girls receive inappropriate of overly punitive police responses to offending, particularly where those responses result in entrance to custody.

As discussed above, providing gender-responsive diversion options for women and girls also supports their rights to recognition and equality before the law (section 15) by promoting gender-responsive approaches to women's offending characteristics and the drivers of their offending.

Human rights limited

Expanding and legislating diversion options will have broader implications beyond the offending of women and girls. Some may feel that expanding and encouraging greater use of diversion will limit community safety (right to security of person). However, existing safeguards and the low-harm nature of offending likely to attract diversion options reduce this concern, as do the findings of the QPC that expanded use of diversion can be achieved without compromising community safety in the long-term.

If implemented ineffectively, diversionary options which incorporate conditions could limit the rights of women and girls if they result in net-widening or up-tariffing. These risks require further consideration.

Evaluation

The QPC report noted that there are limited incentives for police to use adult diversion options, and there are no reported performance indicators relating to diversion, other than for youth cautioning.[176] The use of adult diversion options should be supported by diversion performance indicators in order to encourage diversion and allow QPS to monitor and evaluate uptake, effectiveness, and community safety. The use of diversionary powers by police should be recorded as enforcement acts under the PPR Act, and information that will allow analysis of who is being diverted, where, and for what offences, should be retained in the enforcement register and reported annually as part of the Queensland Police Service's annual report. The Taskforce notes that QPS ability to capture a person's status is reliant upon the individual volunteering that information to police.

Offences that contribute to women and girls' increased contact with the criminal justice system

Background

Current position in Queensland

A factor driving women into contact with the criminal justice system is the way in which certain offences are legislated, and subsequently investigated and enforced.[177]

As outlined in Chapter 3.1, between 2005-06 and 2018-19 women and girls were most commonly sentenced for traffic and vehicle offences, justice and government offences, and theft and drug offences.[178] Theft accounted for almost half of all sentences for girls (48.4%) while nearly half of all sentences for Aboriginal and Torres Strait Islander women involved public order offences (43.7%).[179]

Data from a forthcoming report by the Queensland Sentencing Advisory Council indicates that offences for which the volume of sentences significantly increased between 2005–06 and 2018–19 include:

- For women: drug offences (163.7%), justice and government offences (66.8%), and theft (53.7%)
- For girls: drug offences (356.1%), theft (96.3%), acts intended to cause injury (158.6%), unlawful entry (147.5%), and public order offences (72.0%).[180]

Reviewing criminal offences

The Queensland Productivity Commission's *Inquiry into imprisonment and recidivism* report (QPC report) called for a stocktake of criminal offences and recommended that 'the Queensland Government should seek to remove those activities from the *Criminal Code Act 1889* and other relevant legislation for which the benefits of being included do not outweigh the costs'.[181] The QPC found that many offences criminalise behaviour without a strong rationale, particularly 'those that do not involve a victim, result in indirect or unintended harm, or are simply seen as offensive'.[182] The QPC identified illicit drug possession offences, motor vehicle and some driving offences, regulatory offences and public nuisance offences as falling within this category. In total, these offences contribute to about 30% of the prison population. The QPC suggested that illicit drug offences have the most scope for reform.[183]

The Queensland Government response to the QPC report recognised the value in examining whether the state's criminal justice system is best positioned to deliver on the objectives of increased community safety, but advised that no legislative amendments or removals of offences were planned. Instead, the Government said it would explore opportunities to increase the capacity of the criminal justice system to provide a broader range of available responses to low-harm offending.[184]

While the Taskforce did not have capacity to undertake a legislative review, the following discussion identifies some criminal offences that appear to have a particular impact on women and girls. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires State Parties to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.[185] Assessing legislation for gender-responsivity has been promoted as a mechanism to achieve substantive gender equality within the law, in compliance with CEDAW.[186]

Drug offences

Queensland's drug offences are contained in the *Drugs Misuse Act 1986*. Drug offences were the most prevalent offence type among all offenders in 2020–21 (22.9%).[187] The vast majority of drug offences involve drug possession as opposed to drug trafficking offences.[188] Offences for drug possession and the possession of things in connection to drug use carry maximum penalties of 15-25 years imprisonment. Police are able to issue a penalty infringement notice of up to 2 penalty units in relation to some offences for possessing things used to consume or administer drugs.[189]

The QPC found that a much greater proportion of imprisonments for women were related to drug crime compared with men.[190] Between 2012 and 2018, reported drug offences contributed 89% of the increase in reported female offenders.[191] The QPC noted its consulted stakeholders 'were virtually unanimous that

criminalising drug use does not achieve its objectives and can create significant problems'.[192] The QPC advocated for the decriminalisation of the use and possession of lower harm drugs as the first step towards an overarching policy of legalised and regulated supply and possession.[193]

Summary offences and move-on directions

The *Summary Offences Act 2005* contains a number of minor criminal offences. Relevant public order offences concerning the quality of community use of public space include:

- Public nuisance (including the use of offensive, obscene, indecent or abusive language) – maximum penalty 10 penalty units or 6 months imprisonment[194]
- Begging in a public place - maximum penalty 10 penalty units or 6 months imprisonment[195]
- Being intoxicated in a public place - maximum penalty 2 penalty units[196] (Note: there are additional offences under PPR Act relating to out-of-control conduct, which includes being intoxicated in a public place).

Men are charged with the majority of public order offences (including public nuisance).[197] However, First Nations people are disproportionately charged with these offences,[198] and First Nations women are particularly overrepresented in sentenced public nuisance offences.[199] Public order offences were the most common offences for which Aboriginal and Torres Strait Islander women were sentenced between 2005-06 and 2018-19 (43.7%).[200] Despite being the most common sentenced offences for this cohort, there was, promisingly, a decrease of 14.5% in sentenced public order offences for First Nations women over this period.[201]

As outlined in Chapter 3.2, the Taskforce heard that women experiencing homelessness were vulnerable to being charged with criminal offences associated with homelessness, including begging in a public place.[202] Research conducted by Justice Connect (Victoria) in 2016 showed that among people who begged, 77% were experiencing homelessness, 87% had a mental illness, 77% were experiencing drug or alcohol dependence, 80% had been unemployed for 12 months or more, 33% had experienced family violence and 37% reported childhood trauma or abuse.[203]

Offences relating to public intoxication are closely tied to deaths in custody of First Nations women.[204] The 1991 *Royal Commission into Aboriginal deaths in custody* Report recommended the abolition of the offence (recommendation 79).[205] The Queensland Government has not implemented this recommendation.[206] Recently, the QLS has advocated for decriminalisation of public intoxication,[207] and the Queensland Government has indicated it will consider steps to abolish the offence.[208] The Taskforce notes that the PPR Act allows a police officer to discontinue an arrest of a person for being intoxicated in a public place and deliver an intoxicated person to their own home, a hospital or diversionary centre that provides care for intoxicated people.

Responses to pubic order issues frequently involve the making of move-on directions, with offences for failure to comply with these directions contained in the PPR Act.[209] Between 2005-06 and 2018-19, contravening a direction or requirement of a police officer was the second most common offence for Aboriginal and Torres Strait Islander women (11% of all sentences for women, compared to 9.3% of all sentences for Aboriginal or Torres Strait Islander men).[210] A 2010 Crime and Misconduct Commission (CMC) legislative review of police move-on powers recommended legislative amendments, such as requiring that police have a 'reasonable belief' rather than 'reasonable suspicion' that a person's behaviour is captured in the causes to issue a direction, and to replace a reference to 'causing anxiety' to 'causing fear'.[211] The CMC found that females (16.0%, n = 162) were significantly more likely than males (9.2%, n = 378) to be moved on more than once.[212] The Queensland Government has not acted on this recommendation.

Theft and related offences

The QPC report found that theft and related offences made up a much larger proportion of all offending and imprisonment for females compared to males.[213] As noted above, theft offences account for almost half of all sentences for girls, and sentences for theft offences are increasing for women and girls.[214] In Queensland, the *Regulatory Offences Act 1985* contains three types of regulatory offences: unauthorised dealing with shop goods (where the value of the goods is $150 or less); leaving restaurants or hotels without paying for food, drink, accommodation, goods or services (where the value is $150 or less); and

unauthorised damage to property (where the damage is $250 or less). The penalty for regulatory offences is a fine, and a person cannot be imprisoned for a regulatory offence. Where offending exceeds the monetary value, or where offending is considered to be more serious by police, an accused person can be charged with comparable (but more serious) criminal offences such as stealing, fraud or wilful damage. These criminal offences carry heavier penalties and can result in imprisonment.

The monetary values in the Regulatory Offences Act have not been updated since 1989.[215] If they had been adjusted for inflation, the value of goods in these offences would have more than doubled by 2022. Another concern is the discretionary application of these offences. For example, it is a matter of police discretion whether a person is charged with unauthorised dealing with shop goods or the more serious offence of stealing. While the most common sentenced offence for non-indigenous girls between 2005-06 and 2018-19 was unlawful dealing with shop goods, the most common sentenced offence for First Nations girls was stealing.[216] This distinction warrants further investigation.

Sex work-related offences

Offences criminalising sex work are contained in the *Prostitution Act 1999* and Chapter 22A of the Criminal Code, and carry maximum penalties between seven and 20 years imprisonment. Women are disproportionately impacted by laws criminalising sex work.[217]

The Queensland Law Reform Commission (QLRC) is currently consulting on a framework for a decriminalised sex work industry in Queensland. A consultation paper released in April 2022 indicates that the QRLC is considering many issues that were also raised with the Taskforce, including police use of immunities in the PPR Act to pose as clients or sex workers, the impact of criminal records and the involvement of sex workers in the criminal justice system, discrimination against sex workers and police interactions with sex workers.[218]

Other offences impacting women

Breach of bail (failure to appear) is an offence which particularly impacts women with dependent children, who may be unable to arrange suitable care for their children or lack the resources to attend court. Between 2008-09 and 2015-16, the proportion of female offenders sentenced for breach of bail as their most serious offences increased each year, while the proportion of comparable male offenders decreased.[219] First Nations women are disproportionately more likely to be sentenced for breach of bail as their most serious offence.[220]

Offences for contravening a domestic violence order disproportionately impact First Nations women. Of 6,888 unique accused persons who were charged with contravention of a domestic violence order in 2013-14, over one-third were Aboriginal or Torres Strait Islander peoples. Aboriginal and Torres Strait Islander women accounted for nearly 40 per cent of the female accused persons who were found guilty, which is higher than Aboriginal and Torres Strait Islander men (33.3% of all male defendants).[221] There has also been a sharp rise in First Nations women who breach domestic violence orders and are sentenced to imprisonment.[222]

Unlicensed driving[223] was the most common sentenced offence for all females in Queensland between 2005-06 and 2018-19.[224] This is a particular risk for First Nations peoples, who the Australian Law Reform Commission (ALRC) identified are more likely to have a licence suspended for unpaid fines, and also more likely to be imprisoned for unlicensed driving.[225] The ALRC made recommendations to avoid the suspension of driver's licences for fine default and to provide driver's licences services in remote and regional areas.[226] In Queensland, Transport and Main Roads runs the Indigenous Driver Licensing Program to reduce unlicensed driving and incarceration rates for unlicensed driving in some remote and Indigenous communities in Far North Queensland.[227]

Women are also vulnerable to Commonwealth offences for social security fraud offences.[228] Women, particularly single mothers, are considered 'high-risk' welfare recipients and are subject to increased levels of 'welfare policing', which sees women being twice as likely to be convicted of welfare fraud offences compared with men.[229] The QPC Report found that a larger share of female offending was fraud-related.[230]

Age of criminal responsibility

The minimum age of criminal responsibility in Queensland is 10.[231] This is consistent with other Australian jurisdictions, but low compared with other countries.[232] In Queensland, nearly 20,000 children under 14 were proceeded against for offences in 2019-20.[233] More than half of these were Aboriginal or Torres Strait Islander children (11,169, including 3,113 girls).[234]

Children aged 10 to 14 are assumed to be 'criminally incapable' unless proven otherwise.[235] However, the Australian Human Rights Commission has found little evidence that this principle is applied.[236] Following Australia's third Universal Periodic Review before the UN Human Rights Council in 2021, 31 countries recommended that Australia raise the age of criminal responsibility.[237]

In November 2021, state Attorneys-General at the national Meeting of Attorneys-General supported development of a proposal to increase the minimum age of criminal responsibility from 10 to 12. They also discussed the need for possible 'carve outs', timing and implementation requirements. In March 2022, the Parliament of Queensland Community and Support Services Committee did not recommend that a Private Member's Bill to raise the age of criminal responsibility be passed, despite widespread support among submissions.[238]

How do other jurisdictions address this issue?

Drug offences

Possession of drug paraphernalia is not an offence in the ACT or Victoria, and is only punishable by penalty units in Tasmania.[239] South Australia, the ACT and the Northern Territory have decriminalised cannabis by applying civil penalties, if eligible.[240] The remaining states do not have decriminalisation options for any illicit drugs, although most have drug-diversion options.[241] Queensland's maximum penalties for drug possession are also comparatively high.

Public nuisance and move-on powers

Public nuisance or equivalent disorderly conduct offences are in place in other Australian jurisdictions. In 2017, the ALRC recommended that state and territory governments review the effect on Aboriginal and Torres Strait Islander peoples of statutory provisions that criminalise offensive language with a view to repealing the provisions, or narrowing the application of those provisions to language that is abusive or threatening.[242]

All Australian jurisdictions adopted 'move-on' powers for police in the 1990s. In 1999, the New South Wales Ombudsman conducted the most comprehensive review of the use of police move-on powers in Australia. It found that young people and First Nations peoples were more likely to be moved on than other community members.[243]

Public intoxication

Victoria has recently passed legislation[244] to decriminalise public drunkenness (though implementation is delayed)[245], making Queensland the last Australian jurisdiction to have not decriminalised this offence. Following decriminalisation, most other states and territories introduced a form of protective custody legislation. However, a Victorian expert review found that powers for police to place an intoxicated person into a police cell were used extensively, given the failure of governments to develop and implement effective health-based responses that provide more appropriate places of safety for intoxicated people.[246] The review also found that protective custody regimes adopted in other jurisdictions following the decriminalisation of public intoxication have largely failed to address the risk of death in police custody.[247]

Begging

Begging is also illegal in Victoria,[248] South Australia,[249] and Tasmania.[250] The Tasmanian Government has proposed to repeal the offence of begging. A Bill to repeal the offence has had difficulty progressing through parliament because it also proposes to strengthen police move on powers.[251] Begging has not been a crime in New South Wales since 1979. Western Australia's anti-begging laws were repealed in 2004 following a recommendation of the Law Reform Commission of Western Australia.

Sex work-related offences

Sex work is decriminalised in New Zealand, New South Wales and the Northern Territory. Victoria is decriminalising sex work under a two-stage process that commenced on 10 May 2022.[252]

Age of criminal responsibility

Currently, the minimum age of criminal responsibility is 10 across all Australian jurisdictions. The Australian Capital Territory and the Northern Territory have both committed to raising the age of criminal responsibility.[253] The Tasmanian Government recently announced that it would raise the minimum age of imprisonment (as opposed to criminal responsibility) to 14.[254]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons or offenders

The Taskforce heard from a number of women who were imprisoned for 'low-level' offending including drug possession, theft and failure to appear.[255] The Taskforce heard from women who were either in prison on drug possession charges, or who had been returned to prison after testing positive for drug usage while on parole.[256] As discussed in Chapter 3.2, women connected their drug use and offending to their experiences of domestic, family and sexual violence, the impacts of trauma and mental health issues. One woman spoke about her experience:

> *'The criminalisation of drugs is a massive factor in the overpopulation of women's correctional centres. Also, the criminalisation of sex workers plays a massive part. As a person who was a drug user and experienced chemical dependency, and a sex worker, and having been to jail myself, I have lived experience of the issue. In my experience, being sent to prison after years of substance use did not help in any way with my use of drugs. Yes, I detoxed in jail and did not use any substance while incarcerated; however, I relapsed shortly after leaving jail and this was far worse than before I went in.' [257]*

Several current or former sex workers told the Taskforce about the impact of sex work-related offences and called for decriminalisation.[258] The Taskforce heard that the criminalisation stigmatises sex work and reinforces unsafe working conditions for sex workers.[259]

Service system stakeholders

Sisters Inside and the Centre for Collaborative Race Research suggested an audit of the Criminal Code and offences committed by Aboriginal and Torres Strait Islander women, girls and non-binary people and that consideration be given to repealing low-level offences that subject them to state-sanctioned violence.[260] Sisters Inside further supported the review and reform of existing criminal offences, stating that:

> *'Minimising the gendered impacts of imprisonment requires implementation of structural alternatives to criminalisation, for example: decriminalisation of minor and/or gendered offences (e.g., public nuisance, public drunkenness, evade fare, begging, possession of drugs under a certain quantity, sex work).' [261]*

The Taskforce consistently heard during stakeholder forums that women's offending was intrinsically linked to poverty, and that women experiencing homelessness are at risk of being charged because of their exposure and visibility.[262] The Taskforce heard that people experiencing homelessness continue to be disproportionately charged with minor criminal offences including those under the Summary Offences Act.[263] Consistent comments raised during stakeholder forums included that women are committing crimes of poverty that require a needs-based response. Some forum attendees called for the decriminalisation of drug possession and sex work.[264]

DVConnect submitted that 'women and girls also actively partake in criminal acts to access resources, find wellbeing and safety, or keep their family safe, especially when other systems are unable to provide for, or address their unmet needs.'[265] The Australian Red Cross submitted that the *Bangkok Rules* require policy makers and legislators to take steps to reduce the imprisonment of women, but that Queensland's legislation is not currently meeting this obligation because the system does not recognise and respond to the gender-specific needs of women.[266]

Queensland Network of Alcohol and other Drug Agencies (QNADA) supported the decriminalisation of drug possession and called for meaningful and transparent consideration to be given to the decriminalisation of low-harm drugs in Queensland, in partnership with peaks and other relevant non-government organisations.[267] QNADA noted that 'the removal of criminal penalties for possession (decriminalisation) … is a prudent, economically beneficial strategy that increases opportunities for people to access treatment when they need it; while correspondingly reducing unnecessary contact with the criminal justice system and the likelihood of future harm'.[268]

Submissions from Respect Inc and the Scarlet Alliance supported the decriminalisation of sex work, noting that current criminal offences create barriers for sex workers accessing justice, bring them into unnecessary contact with the criminal justice system, and force them to choose between working safely and working legally by criminalising safety strategies.[269]

Legal stakeholders

LAQ submitted that a 'significant factor in the rate of offending involving women and girls is the use of illicit drugs' and that 'drug addiction is often linked to experiences of childhood trauma and mental illness. The offending ranges from simple drug possession matters to drug driving, to property offending undertaken in order to finance ongoing drug addiction'.[270]

QIFVLS submitted that 'our women and girls comprise the fastest-growing prison population, outstripping First Nations men, when in many cases, we observe that they have been sentenced to custodial terms for minor offences – offences of poverty, so to speak.'[271] QIFVLS also highlighted that 'Aboriginal and Torres Strait Islander women and girls are more likely to be arrested, charged, detained and sentenced to imprisonment for the same offences and less likely to receive a non-custodial sentence than non-Indigenous women'.[272]

Other relevant issues

Relevant cross-cutting issues

As outlined above, evidence indicates that First Nations women are more likely to be charged and arrested for public order offences and other forms of minor offending than non-Indigenous women.[273] First Nations women are also more likely to be charged with offences relating to offensive language and behaviour, driving offences, and justice procedure offences.[274] Punitive policing and arrest practices towards First Nations women can have devastating consequences. The *Royal Commission into Aboriginal Deaths in Custody* found that, of the 11 female deaths examined, none of the women were incarcerated for serious offences.[275]

The 2017 Human Rights Law Centre *Over-represented and Overlooked* report called for non-punitive alternatives to low-level offending. It recommended state and territory governments review laws and policies to identify those that unreasonably and disproportionately criminalise Aboriginal and Torres Strait Islander women, with a view to decriminalising minor offences that are more appropriately dealt with in non-punitive ways; implementing alternative non-punitive responses to low-level offending and public drunkenness; and abolishing laws that lead to the imprisonment of people who cannot pay fines.[276] Specifically, the report calls for offences for public drunkenness and offensive language (public nuisance) to be decriminalised, consistent with the recommendations of the 1991 *Royal Commission into Aboriginal deaths in custody*.[277]

Taskforce findings

The findings and recommendations in this chapter reinforce the critical imperative to prioritise reducing the overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system. The experiences of women and girls and the data included in this chapter and throughout this report reinforce the need to include a specific focus on First Nations women and girls as part of this important work.

Some criminal laws created to primarily deal with violent male offending have an unexpected disproportionate effect on women and girls, for example, the misidentification of women victims as perpetrators of domestic violence. This is even more pronounced for First Nations women. Despite the gains of recent decades, gender inequality remains starkly pronounced for the most vulnerable women and girls who are involved in the criminal justice system. The proportion of all offenders who are female is increasing (from 20.8 per cent in 2005–06 to 25.6 per cent in 2018–19).[278] Aboriginal and Torres Strait Islander women have experienced the highest rate of increase in imprisonment of any cohort, more than tripling between 2005-06 and 2018-19.[279]

The Taskforce found that some criminal offences have a disproportionate impact on women and girls as a result of net-widening. We concluded that there should be a review to consider whether those offences are unnecessarily resulting in women's involvement in the criminal justice system.

The Queensland Government has not indicated it will review criminal offences as recommended by the QPC report. Such a review would be a significant undertaking likely to take several years. However, based on what the Taskforce heard during its state-wide consultation processes and findings in available research literature, the Taskforce found that there are some criminal offences that should be repealed immediately. Noting the disproportionate adverse impact that these offences have on women, the progress of legislation in other jurisdictions, and relevant recommendations made by other bodies, the Taskforce found that the offences of public intoxication, begging, and sex work should be decriminalised in Queensland.

The Taskforce also found that the Summary Offences Act and the Regulatory Offences Act should be reviewed and there should be a separate review of the Drugs Misuse Act to consider the disproportionate impact on women of low-level offences for which the benefits do not outweigh the costs.[280] These reviews should have a specific focus on the impacts for First Nations women.

The disproportionate number of First Nations women who are charged with public order offences is deeply concerning. The Taskforce heard reports of the overpolicing of First Nations women and girls, and is concerned that some police may be charging First Nations women and girls in circumstances where they would be unlikely to charge non-Indigenous women.

The increasing rate of women's imprisonment is primarily related to convictions for low-harm drug possession offences. The Taskforce has not had the time or resources to undertake the necessary analysis required to recommend drug decriminalisation. However, on the basis of what the Taskforce has heard, the available data, and recent findings and recommendations in the QPC report, a review the Drugs Misuse Act is considered necessary. The review should consider the impact of possession offences on women and girls, the efficacy and value for money of maintaining a criminal justice response, and whether there more socially and cost-effective ways of responding to illicit drug possession.

Although the findings and recommendations in this chapter are made in the context of women and girls' experiences in the criminal justice system, the implementation of the recommendations are likely to benefit all people involved in the system. The Taskforce has not had sufficient time and resources to fully consider the benefits and risks and options for further legislative reform in this regard.

Taskforce recommendations

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.

Implementation

In decriminalising public intoxication and begging, the Queensland Government should adopt health-based responses and be mindful of the lessons from other jurisdictions, as outlined above. During the decriminalising of public intoxication, care should be taken to avoid the risk that intoxicated persons may instead be exposed to more serious charges, such as charges related to out-of-control conduct in the PPR Act. The risks associated with intoxicated people being detained by police to sober up should also be avoided.

An inquiry into the Summary Offences Act and Regulatory Offences Act, possibly by the Legal Affairs and Safety Committee, will form a critical component of the implementation of the Taskforce's recommendation in *Hear her voice 1* about the co-design of a specific whole-of-government and community strategy to address the overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system and meet the targets in the National Agreement on Closing the Gap.[281] This supports the Closing the Gap priority to *build a culturally responsive justice system which is fair, equitable and accessible for Aboriginal and Torres Strait Islander young people in Queensland.*[282]

The review should address concerns about the disproportionate application of public order offences and associated move-on directions to First Nations women and girls. The inquiry should also consider offensive language as it currently stands within the offence of public nuisance, noting recommendation 86 of the *Royal Commission into Aboriginal deaths in custody* and Recommendation 3 of the Human Rights Law

Centre *Over-represented and Overlooked* report. In considering the Regulatory Offences Act, the review should investigate whether the Act continues to be fit for purpose, whether maximum values and scope should increase, and whether the offences are being effectively utilised to prevent criminal prosecutions for low-level offending. The inquiry must incorporate significant and meaningful consultation with First Nations peoples. In implementing this recommendation, the Queensland Government should consider whether the review should also examine the impacts of these offences on the broader population.

It is important that the review of offences in the Drug Misuse Act relating to the possession and use of illicit drugs, which could be undertaken by the Health and Environment Committee, consider alternative health responses to better address the needs of people who use and are addicted to illicit drugs. The review should consider the impacts of these offences on women and girls, including how they contribute to their rising involvement in the criminal justice system, increasing incarceration, and the unacceptable overrepresentation of First Nations women and girls in Queensland's criminal justice system. In implementing this recommendation, the Queensland Government should consider whether the review should also consider the impacts of these offences on the broader population, including the high cost to the community of repeatedly incarcerating offenders who need a health response.

The Taskforce hoped that these reviews would be undertaken by Parliamentary Committees. This process would enable public consultation and encourage non-partisan consideration of these important issues, with a genuine focus on the best interests of the community.

Human rights considerations

Women and girls appear to be disproportionately impacted by certain offences, including drug offences, sex work-related offences and public order offences for First Nations women. It is necessary to address these issues on the basis that they may create inequality before the law (section 15). Punitive legislative provisions which unnecessarily criminalise women have the potential to limit a number of human rights, including when women are held in custody. These include (but are not limited to) the right to recognition and equality before the law (section 15), freedom of movement (section 19), freedom of expression (section 21), privacy and reputation (section 25), protection of families and children (section 26), and cultural rights (sections 27 and 28). For Aboriginal and Torres Strait Islander women and girls, the overuse of public order offences may also limit the right to life, through their close association with Aboriginal and Torres Strait Islander deaths in custody.

Human rights promoted

Decriminalising public intoxication and begging will promote the above rights, particularly the rights to life and liberty of First Nations peoples. Decriminalising sex work will promote the right to liberty and security of person by protecting the safety of sex workers.

Reviewing the operation of public order offences and drug possession offences, with a particular focus on their impact on women, promotes the right to recognition and equality before the law as well as freedom of movement, freedom of expression, and privacy and reputation by potentially reducing the scope and impact of criminal offences on people's lives. Reducing criminal law overreach (particularly into the lives of First Nations peoples) will also protect and promote cultural rights and the rights of families and children by preventing parental incarceration.

Reviewing drug possession offences protects the rights of women, which can be limited when they receive a response to offending that does not address trauma and health issues. Promoting a health response to drug possession and use protects women's right to health services (section 37). However, drug decriminalisation may be seen as limiting the broader rights of the community (section 29). This limitation is likely to be justifiable. As the QPC argued, these reforms could be achieved without limiting community safety. The rights limitations associated with drug offences present an arguably greater limitation to the rights of community.

Human rights limited

Decriminalising public intoxication and begging may be considered to limit the rights of the broader community to personal safety (liberty and security of person). However, as discussed throughout this Part,

evidence indicates that criminal law responses including incarceration can have a criminogenic effect, leading to reduced public safety in the long term.[283]

Any human rights limitations associated with the decriminalisation of sex work is being considered by the Queensland Law Reform Commission. None of the recommended reviews will limit human rights.

Limitations on rights are justified

It might be argued that decriminalisation of public intoxication and begging limits the safety of the community. The purpose of the limitation is to reduce inappropriate criminal responses to behaviours that require a health-based or community response, significantly protecting the rights of vulnerable people, which are limited by inappropriate criminal justice system responses. The limitation achieves this purpose by removing the offences from Queensland's criminal laws, noting that Queensland's Criminal Code contains a wide range of applicable offences that could be used in relation to behaviour that threatens or does harm to a person or property. Any limitation on the rights of liberty and security of the wider community could be justified, as more conservative amendments are unlikely to achieve the same purpose. The benefits of decriminalising these behaviours and prioritising health and community responses will protect the rights of vulnerable people, particularly women. Any potential limitations on community safety are reasonably and demonstrably justified.

Evaluation

The implementation of the recommendations in this chapter should include measuring and monitoring impacts and outcomes achieved, including for women and girls. Any reform initiatives implemented as a result should be evaluated to assess the outcomes achieved, including for women and girls. Evaluation findings and outcomes should be made public. The outcomes of reviews of the Summary Offences Act, Regulatory Offences Act and Drugs Misuse Act should include public reporting.

Conclusion

The important and difficult role of police is to ensure the safety and security of the community. Although bound to uphold the laws of the state, police have considerable discretion in how they communicate, investigate and enforce these laws in consideration of the public interest. When responding to offending by women and girls, police should be aware of and responsive to the vulnerabilities of many in this cohort. This awareness should influence police considerations of appropriate diversion options, to prevent vulnerable women and girls from entering the criminal justice system unnecessarily. To reduce inappropriate charging and the resulting costs and risks, some low-harm behaviours should be decriminalised. Our treatment of other offences for which the benefits of criminalising do not appear to outweigh the social and economic costs also warrants further consideration.

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[1] Queensland Police Service, *Operational Procedures Manual*, Issue 88 Public Edition, Effective 3 June 2022.
[2] Queensland Police Service submission, Discussion Paper 3, 25.
[3] Queensland Police, Operational Procedures Manual – Chapter 6 - Persons who are Vulnerable, Disabled or have Cultural Needs, Issue 88 Public Edition, Effective 3 June 2022.
[4] Queensland Police Service submission, Discussion Paper 3, 23.
[5] Queensland Police Service submission, Discussion Paper 3, 9.
[6] Queensland Police Service submission, Discussion Paper 3, 9.
[7] Queensland Police Service submission, Discussion Paper 3, 10.
[8] Queensland Police Service submission, Discussion Paper 3, 26.
[9] Queensland Police Service submission, Discussion Paper 3, 9.
[10] Victoria Police, *Victoria Police Gender Equality Strategy 2020–2030* (2020) 13.
[11] Victoria Police, *Equality is not the same - Victoria Police Response to Community Consultation and Reviews on Field Contact Policy and Data Collection and Cross Cultural Training* (December 2013).
[12] Victoria Police, *Equality is not the same - Victoria Police Response to Community Consultation and Reviews on Field Contact Policy and Data Collection and Cross Cultural Training* (December 2013).
[13] Victoria Police, Equality is Not the Same … Phase Two Annual Report Card 2017-18 (2018).
[14] United Kingdom Ministry of Justice, *Female Offender Strategy* (2018).
[15] United Kingdom Ministry of Justice, *Managing vulnerability: Women. Fact pack* (2018).

[16] United Kingdom Ministry of Justice, *Managing vulnerability: Women. Fact pack* (2018) 5.
[17] Meeting with women at Sisters Inside West End Office, 11 April 2022.
[18] Case study from Griffith University forum on women as offenders, 14 March 2022.
[19] Meeting with women at Sisters Inside West End Office, 11 April 2022; Taskforce submission 710237.
[20] Meeting with women at Sisters Inside West End Office, 11 April 2022.
[21] Meeting with girls at Cleveland Youth Detention Centre, 9 March 2022, Townsville; Respect Inc submission, Discussion Paper 3, 39.
[22] Meeting with women at Sisters Inside West End Office, 11 April 2022; Taskforce submission 710237; Respect Inc submission, Discussion Paper 3, 1.
[23] Taskforce submission 710237.
[24] Meeting with women with disability at WWILD, 20 July 2021.
[25] Meeting with Darumbal Youth Service, 16 March 2022, Rockhampton.
[26] Meeting with girls at Cleveland Youth Detention Centre, 9 March 2022, Townsville.
[27] First Nations women and girls at both Townsville Women's Correctional Centre and Cleveland Youth Detention Centre reported excessive use of police force, including: use of 'closed-hand tactics' (punching), strangulation (15-year-old girl), and being held against the front of a hot car for half an hour (15-year-old girl). Meeting with girls at Cleveland Youth Detention Centre, 9 March 2022, Townsville. Taskforce submission #5928396 also discusses a serious assault by police in a watchhouse.
[28] Meeting with women in the sex work industry, facilitated by Respect Inc, 28 March 2022.
[29] Meeting with women in the sex work industry, facilitated by Respect Inc, 28 March 2022.
[30] Stakeholder consultation forum, 10 March 2022, Brisbane; Stakeholder consultation forum, 30 March 2022, Sunshine Coast; Stakeholder consultation forums, 1 April 2022, Gold Coast.
[31] Stakeholder consultation forum, 10 March 2022, Brisbane; Respect Inc submission, Discussion Paper 3, 36.
[32] See, for example, SERO4 Ltd submission, Discussion Paper 3, 5.
[33] Respect Inc submission, Discussion Paper 3, 24, 27. Scarlett Alliance submission, Discussion Paper 3, 1.
[34] Respect Inc submission, Discussion Paper 3, 24.
[35] Queensland Indigenous Family Violence Legal Service submission, Discussion Paper 3, 2; Sisters Inside submission, Discussion paper 3, 6; Micah Projects submission, Discussion Paper 3, 2.
[36] Micah Projects submission, Discussion Paper 3, 4; Queensland Indigenous Family Violence Legal Service submission, Discussion Paper 3, 4.
[37] SERO4 Ltd submission, Discussion Paper 3, 3; Queensland Indigenous Family Violence Legal Service submission, Discussion Paper 3, 17.
[38] Meetings conducted with local elders and services in Woorabinda, 17 March 2022, Bamaga, 21 April 2022, and Yarrabah, 21 April 2022.
[39] Micah Projects submission, Discussion Paper 3, 2.
[40] Micah Projects submission, Discussion Paper 3, 4; North Queensland Combined Women's Services submission, Discussion Paper 3, 19.
[41] North Queensland Combined Women's Services submission, Discussion Paper 3, 19.
[42] Queensland Law Society submission, Discussion Paper 3, 19; Legal Aid Queensland submission, Discussion Paper 3, 8; Queensland Indigenous Family Violence Legal Service submission, Discussion Paper 3, 2.
[43] Women's Legal Service submission, Discussion Paper 3, 22.
[44] Legal Aid Queensland submission, Discussion Paper 2.
[45] Queensland Law Society submission, Discussion Paper 3, 19.
[46] Queensland Law Society submission, Discussion Paper 3, 5.
[47] Queensland Indigenous Family Violence Legal Service submission, Discussion Paper 3, 2.
[48] Queensland Indigenous Family Violence Legal Service submission, Discussion Paper 3, 2.
[49] Queensland Police Service submission, Discussion Paper 3, 25.
[50] Queensland Police Service submission, Discussion Paper 3, 9.
[51] Queensland Police Service submission, Discussion Paper 3, 25.
[52] Additional information provided by Queensland Police Service, 20 June 2022.
[53] Additional information provided by Queensland Police Service, 20 June 2022.
[54] Additional information provided by Queensland Police Service, 20 June 2022.
[55] Additional information provided by Queensland Police Service, 20 June 2022.
[56] Additional information provided by Queensland Police Service, 20 June 2022.
[57] United Nations et al, *A Practitioner's Toolkit on Women's Access to Justice Programming* (2018) 289; United Nations Office on Drugs and Crime, Toolkit on gender-responsive non-custodial measures (Criminal justice handbook series, 2020) 15.
[58] Ministry of Justice, Female Offender Strategy (2018) paragraphs 46-48.
[59] Prison Reform Trust, *Fair cop? Improving outcomes for women at the point of arrest* (Discussion Paper, 2017) 16-17.
[60] Centre for Innovative Justice, *Leaving Custody Behind: Foundations for safer communities & gender-informed criminal justice systems* (Issues paper, 2021) 72.

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Chapter 3.4: Women and girls' experiences in watchhouses, on remand, and when applying for bail

Periods of time spent in custody in watchhouses can be long and are often particularly degrading for women and girls. They are places designed exclusively for short stays and generally without women and girls' needs in mind.

Unsentenced women and girls are increasingly being held in prison on remand. This is a costly impost on the community. Remand separates women and girls from their families and significantly disrupts their lives. Women and girls should only be detained on remand as a last resort when it is necessary to protect the community.

Release on bail enables women and girls to prepare for court and provides them with an opportunity to immediately address the drivers of their offending at a time in their lives where they are likely to be motivated to change. Supporting women and girls to access and comply with bail will reduce the remand population and may make a custodial sentence less likely. This would be a cost-effective outcome for the community.

Watchhouses – Background

Watchhouses are used to detain women and girls who fall into three different criminal justice cohorts:

- Queensland Police Service (QPS) prisoners – these are women who have been arrested but not given bail and are being held until their first court appearance
- Queensland Corrective Services (QCS) prisoners – these are women who are awaiting transfer to a custodial correctional centre or who are in a watchhouse for a court appearance
- Youth Justice detainees – these are girls aged 10 to 17 who are awaiting court appearances or transfer to a detention centre.

Watchhouses are usually attached to police stations and are controlled by a watchhouse manager – the police officer in charge of the watchhouse.[1] There are 58 watchhouses in Queensland. Holding cells at police stations are also intended to hold persons in custody for short periods pending release or transfer to a watchhouse.[2] All are the responsibility of QPS.[3]

Current position in Queensland

Women

There are no minimum standards in watchhouses or maximum periods for holding a person in a watchhouse under the *Police Powers and Responsibilities Act 2000* (PPR Act). However, minimum standards of custodial care in watchhouses throughout the state are contained in QPS's *Operational Procedures Manual* (OPM).[4]

Under the *Corrective Services Act 2006* (CS Act), a person sentenced to a period of imprisonment, or required by law to be detained, must be detained for the period in a corrective services facility. If the period is 21 days or less – the person may be detained in a watchhouse for part, or all of the period. If the period is more than 21 days, the person may be detained in a watchhouse until the person can be conveniently taken to a corrective services facility.

The QPS Operational Procedures Manual (OPM) outlines that watchhouses are primarily designed to hold a person overnight, or for 24 hours; but not much longer. These facilities are for the temporary holding of prisoners before they are either released or transferred to a corrective services facility or detention centre. Therefore, prisoners are to be held in police custody for the minimum length of time necessary.[5]

Where it is necessary for the safety and welfare of prisoners, male and female prisoners are not to be held in the same cell or permitted direct access to each other in other areas within a watchhouse.[6]

Police officers and watchhouse officers who manage the custody of women in watchhouses are to ensure that they are treated with dignity and that they are provided with the necessaries of life.[7] The watchhouse manager is to:

- ensure that reasonable necessities are provided for prisoners, including sufficient blankets, food, drinking water, and access to toilets and showers
- ensure that all linen, towels, blankets and mattresses provided are clean
- ensure that all materials used by unclean prisoners or prisoners suspected of being infected by contagious diseases are laundered after use
- where practicable, allow a prisoner one hour of exercise daily under supervision
- supply soap, toilet paper, towels, and sanitary napkins to prisoners, where necessary.[8]

The OPM also requires that medication be obtained and provided where a person has been prescribed medication by a medical practitioner or after a medical assessment of a person in a watchhouse has occurred.[9]

Who is responsible for women in watchhouses?

Under the CS Act, when a person is admitted to a watchhouse for detention, they are taken to be in QPS custody (even if the person is lawfully outside the watchhouse) until the person is discharged or is lawfully given into another person's custody.[10] If a sentenced or lawfully detained person is transported by QPS, they are in the custody of QPS during that period.[11] Likewise, if a sentenced or lawfully detained person is being transported by QCS, they are in the custody of QCS.[12]

QCS told the Taskforce that QPS are responsible for the transportation of prisoners from a watchhouse to prison. QPS also transports people to a watchhouse prior to a court appearance - essentially moving prisoners to all court locations outside cities where prisons are located.[13] QPS indicated that transportation is a combined responsibility between both agencies which has a significant impact on QPS resources and its workforce capacity.[14]

Girls

The *Youth Justice Act 1992* (YJ Act) does not specify the length of time a child (under 18 years) can be held in a watchhouse, or any minimum standards when they are held. However, the YJ Act requires that a child in custody must be brought before the Childrens Court as soon as practicable and within 24 hours after their arrest; or if it is not practicable within 24 hours, as soon as practicable on the next day the court can be constituted.

Until brought before a court, a child arrested on a charge, or named in a warrant issued under the YJ Act, and who is not released, must be held in the custody of QPS or the Department of Children Youth Justice and Multicultural Affairs (Youth Justice). The Commissioner of Police must make arrangements with Youth Justice for an arrested child, wherever practicable, to be placed in a detention centre until brought before a court.[15]

An officer arresting a child is to request a representative from Youth Justice to provide information that would help determine appropriate custodial management for the child (for example, whether the child is violent, potentially suicidal, or has a communicable disease) and where applicable, request a representative from Youth Justice to nominate a detention centre for the child. Once a detention centre is nominated, the watchhouse manager is to arrange for the child's transportation to the nominated detention centre as soon as practicable.[16]

The QPS OPM states that a child is only to be held in custody as a last resort and for the least time that is justifiable in the circumstances. There are also requirements that the child be given a copy of their rights and responsibilities whilst in custody, be segregated from adult prisoners and, if detained for more than four hours, provided with materials for age-appropriate activities, unless any of these items constitute a security risk.[17] The OPM lists watchhouses where children are not to be kept in custody overnight or longer than overnight.[18]

The rights of children whilst in custody in watchhouses include being provided with the necessaries of life, such as:

- food and water
- appropriate clothing
- toilet and shower facilities
- bedding
- exercise
- medication and medical treatment where necessary
- receiving visits from various persons including Youth Justice representatives.[19]

Who is responsible for girls in watchhouses?

Until brought before a court, a child arrested on a charge or warrant who is not released from custody, must be held in the custody of the QPS or Youth Justice.[20] A court that remands a child into the custody of Youth Justice must order the QPS to deliver the child as soon as practicable into the custody of Youth Justice.[21] A child on remand after a court appearance is therefore within the custody of QPS until delivered into the custody of Youth Justice.[22]

Section 304 of the YJ Act enables Youth Justice to enter into an arrangement with QPS under which QPS holds a child in custody on behalf of Youth Justice. QPS indicated that it is in the process of developing a new Memorandum of Understanding (MOU) regarding the detention of children in watchhouses.

The current MOU (2008) incorporates requirements under the YJ Act and formalises arrangements for the custody of children arrested for offences, the standards for their care, and transportation responsibilities. Generally, a child under 14 years should not be accommodated in a watchhouse for more than one night, and a child over 14 should not be accommodated for more than two consecutive nights.[23] The MOU also identifies that transportation of children from watchhouses to courts and detention centres is the responsibility of QPS.[24]

A protocol between Youth Justice and QPS regarding their roles and responsibilities in relation to children held in the Brisbane City watchhouse, or other watchhouses, is also in effect.[25]

Watchhouse stays - women

The fact that there are fewer women's prisons in Queensland (with correspondingly large catchments) affects average watchhouse stay times due to logistical issues with transportation. In their submissions, both QPS and QCS acknowledge the impact that distance has on moving women between watchhouses, prisons and courts.

Overcrowding within prisons can be relevant too. The then Anti-Discrimination Commission Queensland's *Women in Prison 2019* report (ADCQ report) raised concerns about the periods of time women were spending in watchhouses due to capacity issues at the Brisbane Women's Correction Centre (BWCC). Shockingly, in July 2018, BWCC reached 200% capacity. The opening of the Southern Queensland Correctional Centre (SQCC) in 2018 had improved over-crowding issues by 2019.[26]

On 28 March 2022, there were 812 female prisoners in Queensland prisons, with a total bed capacity across all high and low security female correctional centres and work camps (five women's correctional centres and two work camps) of 1,113 beds. QCS reported no current capacity concerns - with no women sleeping on mattresses on the floor. In 2021-22, as part of a system wide approach to address capacity issues, QCS received funding of $8 million to increase bed capacity across the system (there are current overcrowding issues in men's high security prisons) through the installation of purpose-built bunk beds, and $2.4 million to undertake options analysis for prison capacity and health services.[27]

Watchhouse stays – girls

On an average day between 2017 and 2021, most young people held in custody were held in a youth detention centre, except in 2018–19 when capacity constraints in detention centres saw an increase in young people held in locations other than youth detention centres.[28]

According to the Children's Court *Annual Report 2020-21*, during 2020–21, a total of 631 young persons (boys and girls) spent at least one night in a watchhouse while on remand or sentenced custody, for a total of 925 stays. Nearly 71% of stays lasted just one day. Overall, the average length of stay was two days, with a median of one day. The majority (99.7%) of stays lasted for two weeks or less, with a maximum stay length of 19 days. These figures noted that the length of watchhouse stays may be influenced by transit difficulties to remote courts.[29]

In 2019, Amnesty International examined concerns about watchhouses being used as a stopgap to compensate for at-capacity detention centres and court backlogs. Boys and girls as young as 10, at least half of whom were Aboriginal and Torres Strait Islander, were held in the Brisbane Watchhouse for periods of up to 43 days.[30]

An ABC *Four Corners* program in May 2019 reported that children were being kept in adult watchhouses for days or weeks. These instances coincided with security upgrades at the Brisbane Detention Centre and Cleveland Detention Centre.[31] The West Moreton Youth Detention Centre at Wacol (located next to the Brisbane Detention Centre) has since opened with a 32-bed capacity.[32]

Standards for watchhouses

As noted above, there are no legislative provisions regarding minimum standards in watchhouses. The basic requirements for stays in watchhouses are contained in QPS OPMs.

Many jurisdictions in Australia have standards for the management of adults and young people in prison and detention, which have been developed by detention oversight bodies.

Queensland's *Healthy Prisons Handbook* does not include watchhouse standards.

The proposed Inspector of Detention Services functions will include the preparation and publishing of standards in relation to carrying out inspections (section 8(1)(d)). The standards are intended to articulate best practice and contribute to consistency and transparency, as places of detention will be aware of the matters the Inspector will consider during inspections.[33]

The Taskforce has heard that women and girls are spending too long in watchhouses and can experience poor treatment and conditions.[34] Watchhouses themselves are not designed to hold people for long periods and ideally should be used for overnight stays only. Longer stays compound the distress of women and girls, especially when the conditions within some watchhouses are grossly inadequate. The North Queensland Combined Women's Services told the Taskforce:

Cairns watchhouse has been mentioned by several women, that they have been treated with contempt and ridicule, and that Aboriginal and Torres Strait Islander women are subjected to this on a regular basis. Women consistently speak of feeling very unsafe and severely distressed in a watchhouse, and without the opportunity to receive any support…

Immediate grief, due to being wrenched away and displaced from children or from Country and community is experienced as another layer of compounding trauma in addition to the circumstances of arrest and the level of authoritarian, controlling behaviour and attitudes of the arresting officers which is legitimately triggering for women who have experienced violence and abuse in the past.[35]

QPS welfare arrangements

QPS advised the Taskforce that the OPM provides clear direction and expectations of officers working within watchhouses, through policy, procedure, and instruction. It also noted that the health and wellbeing of persons in custody is regularly monitored and recorded.[36]

QPS arrangements with Youth Justice and Queensland Health (QH) include daily visitation by case workers, or phone calls to watchhouse staff in remote areas, to ascertain the welfare of persons in custody.[37] In addition, any concerns for the education of children in QPS custody especially those in custody longer than

seven days is actively managed by Youth Justice and the Department of Education (who can provide education support).[38]

The QPS advise they have been working with groups such as Sisters Inside and Murri Watch, who recently provided awareness training to watchhouse staff on the support network these groups offer to vulnerable persons in police custody. The QPS State Custody Unit has been working with community groups and non-government organisations to better understand the needs and issues that impact vulnerable persons in custody, including children, women, persons with disabilities, and members of First Nations, cultural and linguistic diversity (CALD) and the LGBTIQA+ communities. A community-orientated advisory group is also being established to work collaboratively with the QPS to enhance the cultural, physical and psychological wellbeing of vulnerable persons in custody.[39]

How do other jurisdictions address this issue?

Some jurisdictions within Australia impose limits on the periods adults and children can be held in watchhouses. For example, in New South Wales (NSW), section 72(3) of the *Crimes (Administration of Sentences) Act 1999* requires that an inmate is not to be held in a police station or court cell complex for more than seven days. In Victoria, a child may be temporarily held in certain police gaols for no more than two working days, to facilitate transport to and from court and youth justice facilities.[40]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons or offenders

During taskforce consultations in Central and North Queensland (Mackay, Cairns and Townsville), we heard of women enduring long-stays of up to 14 days in watchhouses, due to a lack of transport options to prisons, including limited flights, as well as overcapacity issues within prisons.[41] The huge catchment area for Townsville Women's Correctional Centre (TWCC) covers Central, Northern and Far North Queensland – including Rockhampton (south), the Northern Territory border (west), the Gulf (Mornington Island) and the Torres Strait Islands (north).[42]

Women at TWCC reported experiences in watchhouses involving overcrowding, denial of hygiene packs (including toothbrushes) and underwear, and poor sanitation (including reports of scabies and filthy conditions).[43] Women described long stays in the Cairns watchhouse during court appearances without clean clothes or underwear. One woman described having to dispose of used sanitary items in front of male officers as being 'degrading'.[44]

'The watchhouse was the worst experience, it was so degrading. I was there for four nights. You are put in a men's tracksuit with no underwear. I was not allowed to brush my teeth and only had one shower with a little piece of soap. When I arrived there was a woman in one of the cells who was throwing herself around the cell, she was unwell psychologically and they took her to hospital. The officers thought it would be funny to tell me that they were going to put us together to keep me company. I was terrified. I was unable to speak to my family or check on my children's wellbeing.' [45]

One woman described her experience in the watchhouse as being 'traumatic':

'Only one officer treated me with care and encouraged me to make this a learning experience and turn my life around. The other officers refused to provide basics in the watchhouse including blankets, soap or a cup to drink from. When first charged I was released from the police station at midnight by myself with a flat phone and no-one to pick me up. I was forced to walk home the distance of six plus kilometres fearful that I might be attacked on my way.' [46]

Service system stakeholders

On the Gold Coast, support agencies noted stays of up to 18 days in the watchhouse for women waiting for transfer to prison, although they agreed that young people were often transferred to detention more quickly.[47]

The Women's Centre in Townsville reported women's intense fear and experiences of humiliation in watchhouses.[48] They recounted women's experiences of having prescribed medication removed, jeopardising mental health stability during an already distressing time.[49]

Government agencies

Queensland Police Service

In their submission to the Taskforce, QPS acknowledged that watchhouses are not designed to respond specifically to the needs of women and girls. Whilst the OPM is clear in relation to best practice, often circumstances and factors beyond their control result in the detention of prisoners for more than 24 hours. These factors include the inability to transport prisoners to and from remote locations in a timely and practical way (often requiring flights or long-distance driving). This is exacerbated when there are limited police resources available. QPS also noted that bed limitations in prisons and detention centres can lead to longer watchhouse stays. Additionally, if a court appearance is imminent, prisoners are often kept in the watchhouse rather than returned to prison for a short time as a better option to ensure attendance, particularly in the Northern and Western parts of the state.[50]

The QPS State Custody Unit was developed in 2021 and aims to provide strategic oversight and drive best practice in respect of custodial services, reducing the time people spend in a watchhouse prior to release or transfer. The unit also continually assesses compatibility with the Human Rights Act, the *United Nations Operational Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). It also builds and maintains effective working relationships with relevant internal and external stakeholders.[51] The State Custody Unit provides daily high-level briefings on the number of children and adults in QPS custody, detailing the times at which these people have been in custody as well as capacity issues within QPS watchhouses. These briefings are provided to Youth Justice, QH, the Department of Education and the Human Rights Commissioner.[52]

QPS provided the Taskforce with data detailing the average hours in custody for adult and juvenile females between 2020 and 2022 (1 January to 21 June 2022). Current averages are 17 hours for juvenile females (10 in 2022 and 24 in 2021) and 27 hours for adult females (25 in 2020 and 24 in 2021).[53] QPS further advised that in some instances it is impractical to remove a person in custody from the location of the court to a prison or a detention centre, only to have to return them when the court is sitting again soon afterwards. Non movement of persons in custody can also be at the request of the person in custody, their family, or their community. This is more likely to occur with First Nations persons in custody who do not wish to be removed from country or from family.[54]

Queensland Corrective Services

QCS and QPS liaise daily to prioritise prisoner movement and consider individual length of stays and watchhouse capacity levels.[55]

Women in watchhouses in Mt Isa and Cairns require QPS Air Wing flights to Townsville, while women in Mackay watchhouse are transported by QPS when operationally viable.[56] Prison intakes can be delayed due to Air Wing availability, restrictions on flights, staff shortages and upcoming court attendances, which are also impacted by adjournments.[57]

The average length of stay in Northern Queensland watchhouses is five to seven days – impacted by timing of flights and QPS staff availability for road transportation. TWCC has a maximum daily intake of six prisoners (seven upon request) and only accepts transfers Monday to Friday.

The average length of stay in watchhouses in South East Queensland is three days. Stays can be affected by COVID-19 status and court appearances. BWCC can accept seven receptions per day (although it is unclear if this includes weekends) and up to 10 upon request. QCS prefers that people are not received on a Wednesday due to QH staffing, but receptions can occur if necessary.[58]

Queensland Health

QH cited instances where young women have been accommodated in adult watchhouses for several days or weeks due to capacity issues at youth detention centres.[59] It noted that in watchhouses, young people have access to only very basic physical and mental health support, despite their health care needs often being very complex. They would benefit from more intensive support.[60] QH noted that young people in watchhouses do not have access to any educational programs.[61]

Youth Justice

Youth Justice told the Taskforce that girls are kept separately from young males in watchhouses.[62] Girls are risk assessed upon admission and Youth Justice works to expedite their release or admission to a youth detention centre. Youth Justice also notifies Sisters Inside of the name and location of any young women in a watchhouse to provide services and supports.[63]

Other relevant issues

Barriers to bail

To reduce watchhouse numbers and average stays, it is essential that women and girls have access to legal representation and are supported to apply for bail at an early stage. This issue is considered in greater detail in this chapter below.

Accountability and transparency

As outlined above, QPS has advised that it maintains detailed custody records for each person admitted to a watchhouse or holding cell[64] and daily briefings are provided to relevant government agencies and the Queensland Human Rights Commission. However, most of this information is not publicly available. Published Queensland Treasury 'length of stay' statistics for imprisoned adults do not include watchhouse stays.[65] Average watchhouse stay statistics for young people, published by the Children's Court, do not identify gender.[66] Further, there is no clear identification of the status of people held in watchhouses - that is, whether they are arrested and waiting for their first appearance, remanded by a court, returned for subsequent court appearances or are sentenced and waiting for transportation to prison or detention. This impedes the public's understanding of length of stay issues and what local or QCS or QPS factors are affecting them.

People in watchhouses can raise complaints through various mechanisms and agencies including:

- upon the half hourly welfare check that is conducted by QPS
- Office of the Public Guardian
- Queensland Ombudsman
- Human Right Commissioner
- Ethical Standards Command
- Crime and Corruption Commission.[67]

The investigation of incidents at police watchhouses is the responsibility of Ethical Standards Command within QPS. Inspectors under the CS Act do not have jurisdiction to inspect or review the operations of a watchhouse.[68] Official Visitors (tasked with managing and resolving prisoner complaints) are allocated to prisons only.[69] The YJ Act provides for a complaints process within detention centres including through Community Visitors (administered by the Office of the Public Guardian). Although 'visitable sites' for Community Visitors do not include watchhouses, they may be 'visitable' or the subject of a complaint when a child is detained under the YJ Act and held in a watchhouse.[70]

Encouragingly, the proposed Inspector of Detention Services will have jurisdiction to review and inspect watchhouses.[71] However, they are not required to be inspected within mandatory timeframes as prisons and youth detention centres are (five years and one year respectively).[72] Additionally, the inspector will not have jurisdiction to investigate complaints or specific incidents - this will remain the responsibility of QPS. The proposed Inspector of Detention Services have broad powers that would enable it to review the process or outcome of a complaint or specific incidents.

The inspector will have powers to issue written notices to responsible persons in charge of places of detention where they suspect there is or has been a serious risk to the security, management, control,

safety, care or wellbeing of a detainee; or that a detainee is being, or has been subjected to torture or cruel, inhuman or degrading treatment. The matter can be escalated to a responsible Minister when necessary.[73]

This means that instances of poor treatment within watchhouses can be identified by the Inspector, but complaints cannot be raised by affected people directly. The proposed new independent inspector role will provide additional transparency and accountability for the conditions and treatment of persons within watchhouses. Legislation to create the independent inspector role is presently before the Legislative Assembly. Subject to passage, it will commence on a date set by proclamation.

Taskforce findings

The Taskforce found that current legislative and administrative arrangements for watchhouses:

- enable women and girls to be held in watchhouses for unreasonably long periods
- have a disproportionate impact on women and girls because of the additional transportation issues associated with there being fewer women's prisons, and the complexity of their needs
- are not providing for women and girls' basic needs or adequately protecting their human rights under the *Human Rights Act 2019*.

QPS, QCS and Youth Justice should have a legislated responsibility to manage women and girls in watchhouses within appropriate timeframes and in ways that meet minimum standards. They should be held publicly accountable for failing to meet minimum standards. However, legislated timeframes for watchhouse stays may have unintended consequences given the geographical distances and logistical issues associated with transporting vulnerable women and girls to correctional and detention centres. There may be unintended consequences, particularly for people in watchhouses in rural, regional and remote areas where there are greater distances to travel and transportation capacity issues. For these reasons, a review into current transportation and capacity issues should be conducted, initially to identify the issues impacting the timely transfer of women and girls from watchhouses to correctional and detention centres in various parts of Queensland, to improve efficiency, and to reduce the time they spend in a watchhouse.

The Taskforce also considered that legislative clarity was required with respect to the agencies responsible for transportation. While there are benefits in enabling some flexibility to ensure arrangements can be made to organise the timely transportation of people in custody, memorandums of understanding do not provide public accountability and transparency. Nor do they adequately protect the rights and interests of individuals. The Taskforce observed an unclear line of responsibility and insufficient accountability for transporting women and girls to ensure they are not held in watchhouses longer than reasonably necessary.

There is an absence of clear minimum standards for the care of people held in police watchhouses. While information is shared with other agencies, there is limited public accountability and transparency about the standards of care provided to people detained in police watchhouses. The Taskforce is pleased that the *Inspector of Detention Services Bill 2021* includes watchhouses as a place of detention requiring oversight by the proposed independent Inspector. Subject to the passage and commencement of the Bill, the Taskforce encourages the Inspector to make inspection standards about how watchhouses meet the particular needs of women and girls.

The Taskforce concluded that QPS should regularly publish performance data about the number of adults and children held in police watchhouses, and the length of stays, including data broken down by location, and the age, gender and Indigenous status of detainees. Although the Childrens Court of Queensland and Youth Justice publish some data about children detained in watchhouses, this is not broken down by identified gender or location.

Taskforce recommendations

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 Services 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.

Implementation

The recommended review should be conducted by an independent body or agency to ensure impartiality and objectivity and ensure public confidence. The review should include consultation with people with lived experience, First Nations peoples, service system and legal stakeholders, and relevant government agencies. The findings of the review should be publicly released.

The Queensland Government should consider whether statutory maximum time periods for women and girls to be held in police watchhouses should generally apply to all persons held in watchhouses, and whether minimum standards of care should also apply generally. The standards of care should incorporate meeting the health and wellbeing needs of detainees and should be culturally competent and trauma-informed. The standards of care should promote and protect the human rights of detainees to enable compatibility with the Human Rights Act.

Human rights considerations

Human rights promoted

Reducing the periods of time people spend in watchhouses, and improving the conditions they experience, will promote human rights including the right to humane treatment when deprived of liberty (section 30) the right to protection from torture, inhuman or degrading treatment (section 17) and the right to health services (section 37). Improvement would also align with Article 37(a) and (c) of the *United Nations Convention on the Rights of the Child*, which requires that state parties ensure that no child be subjected to torture or other cruel, inhuman or degrading treatment or publishment; and that every child deprived of liberty shall be treated with humanity and respect.[74]

Human rights limited

The recommendations will not limit human rights.

Evaluation

The impacts and outcomes achieved as a result of the implementation of these recommendations are likely to form part of the oversight role of the proposed independent inspector of detention services. The particular impacts on women and girls, given the additional issues they experience as a result of the limited number and geographical location of women's correction centres in Queensland and other gendered needs should also be considered.

Legislative amendments made in response to these recommendations should be reviewed five years after their commencement, with a particular focus on any impacts on women and girls with lived experience.

Remand

Background

Current position in Queensland

Approximately 40% of women in custody and 80% of girls in detention are on remand. This means they have been refused bail in relation to a charged offence and are held in custody pending the determination of their case. These women and girls have not been convicted of the offence and are not serving a sentence of imprisonment. In 2020-2021, women in prison were more likely than men in prison to be unsentenced (38.8% of women detained compared to 29.6% of men detained).[75] As of January 2022, there were 330 women on remand in Queensland prisons (39.7% of women in prison). Data also indicates that First Nations women in custody are slightly more likely to be unsentenced (40.7% of First Nations women in prison) than non-Indigenous women (38.9% of non-Indigenous women in prison).[76]

The Queensland Productivity Commission's *Inquiry into imprisonment and recidivism* report (QPC report) highlighted that the number of people in custody on remand had more than doubled between 2012 and 2018 (112%).[77] During that period, the number of people held in custody on remand had increased more than the number of people in custody who were serving a sentence, which increased by 43% over the same period.[78] The cost of remanding a person in custody is high - in 2017-18, each additional day a person spent in prison costed the community $305.[79] This figure can be expected to be higher now due to inflation. The QPC report found that 'there is no single factor behind the growth in remand. Rather, there appears to be a combination of legislative changes, policy and practices which, together, reduce the chance of bail being granted, or if it is granted, increases the chance of it being breached.'[80]

Remand ensures an accused person will attend court and provides protection to victims and the community when it is necessary to address an unacceptable risk that a person will not attend court or will commit another offence if released on bail. While justified when a court has found there is that unacceptable risk, there are significant implications for the accused person's human rights when they are remanded in custody. These include loss of liberty; a risk of exposure to violence whilst in custody; an inability to optimally prepare the case for court; loss of family contact, employment, education, accommodation, or therapeutic treatment; and hardship to family and dependants.[81] Judicial officers deciding bail applications need to balance these impacts and the accused person's right to a fair trial against the risks to the community.

International law encourages limiting the use of 'pre-trial detention' (remand) to when it is a last resort.[82] Rule 57 of the *Bangkok Rules* requires the development of gender-specific options as alternatives to pre-trial detention.[83] Rule 58 requires that women offenders not be separated from their families and communities without due consideration being given to their backgrounds and family ties, and that alternative ways of managing women who commit offences, such as pre-trial detention alternatives be implemented wherever appropriate and possible.[84] Commentary on these rules note that 'the impact of being held in pre-trial detention, even for short periods, can be severe if the prisoner is the sole carer of the children' and that 'even a short period in prison may have damaging, long-term consequences for the children concerned and should be avoided, unless unavoidable for the purposes of justice.'[85]

Whilst QCS has some capacity to separate women on remand from sentenced women within prisons, this does not always occur in practice. In South East Queensland, BWCC primarily holds women on remand while SQCC holds high security sentenced women and some women who are on remand. Numinbah Correctional Centre and the Helana Jones Centre holds low-security sentenced women.

In Northern Queensland, TWCC holds high security women, and currently has an even split between remand and sentenced prisoners. TWCC's farm holds low-security women, primarily those who are sentenced. It does not separate remand and sentenced women within the facility.[86]

Failure to appropriately segregate unsentenced (remanded) women from sentenced women limits remanded women's right to humane treatment when deprived of liberty (section 30 of the Human Rights Act), which provides that an accused person who is detained must be segregated from persons who have been convicted of offences, except where reasonably necessary, and must be treated in a way that is appropriate for a person who has not been convicted.

How do other jurisdictions address this issue?

In general, Australian jurisdictions do not distinguish between prisons (for convicted offenders) and jails (for non-convicted people).[87] Convicted and non-convicted people may be accommodated together.[88] For example, remanded women in Victorian women's prisons are not separated from sentenced women,[89] and the ACT does not accommodate remandees separately from convicted detainees due to a lack of suitable accommodation.[90]

In NSW, the Inspector of Custodial Services delivered a report on *Women on Remand* in 2020.[91] The report noted that in practice, remand and sentenced women were housed together at four of the five prisons accommodating remanded women in the state. It recommended that Corrective Services NSW accommodate remand and sentenced women separately, where practicable.[92] In 2017, the Mary Wade Correctional Centre was opened as a stand-alone remand facility for women. An inspection report published in October 2020 praised the operation of the facility. Although the facility is now planned to be repurposed for male inmates, the report 'outlines the advantages of keeping an unsentenced population separate from sentenced inmates; in that it enables the specific needs of this cohort to be addressed, as distinct from those informing regimes for sentenced inmates.'[93]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons or offenders

The Taskforce heard concerns from women in prison that '30% of women are on remand but get put immediately into [maximum] security settings after reception processing.'[94] Many women the Taskforce met with were on remand, living alongside sentenced women.[95] The Taskforce heard significant concerns that women on remand miss out on programs and services. This is discussed further in Chapter 3.9.

The Taskforce heard that the lack of suitable safe and secure housing for women and girls, including for those with children in their care, impedes women and girls' prospects of being granted bail.[96] Women told the Taskforce that often the only housing options after release are boarding houses, which are generally not safe for women and girls.[97] Some women saw getting bail to live in a boarding house as a steppingstone to more appropriate accommodation;[98] while others saw boarding houses as too unsafe, even in the short term.[99] Housing and accommodation issues for women and girls who are accused persons and offenders is discussed in Chapter 3.10.

Previously incarcerated women told the Taskforce that women on remand experienced significant issues in trying to arrange safe care for their children and in remaining in contact with their children.[100] One woman reported her frightening experience having a baby while on remand. She had applied to have her baby in

custody months before the birth, but only learned her application was refused (because of child protection concerns) two days before the birth. She then had to urgently find a family member to take her newborn so the baby would not enter the child protection system.[101]

Service system stakeholders

Stakeholder forum attendees raised concerns that women were unnecessarily being held on remand, often with sentenced prisoners, and noted that this offended the presumption of innocence.[102] They raised concerns that women on remand have limited ability to make arrangements for children and that this increases the risk of their children entering the child protection system.[103] The Taskforce also heard that women were being held on remand for long periods, with limited access to drug and alcohol treatment or other programs[104] (discussed in Chapter 3.9).

Other Government

The Taskforce met with the current NSW Inspector of Custodial Services and discussed the benefits of separating sentenced and remand prisoners and that a failure to separate them meant there was no distinction in the way they are treated by prison staff.[105] This is a human rights concern.

Legal stakeholders

Legal Aid Queensland (LAQ) noted that remanded women and girls in the three correctional centres and the youth detention centres are incarcerated with those who have been sentenced. LAQ pointed out that this is in distinction to the Arthur Gorrie Correctional Centre at Wacol, which serves as a remand and reception centre for men, who are generally transferred upon conviction to another centre to serve their sentence. The Taskforce notes that Brisbane Women's Correctional Centre now largely serves as a remand and reception centre, with a small population of sentenced women.

In relation to girls, LAQ raised significant concerns about the length of time girls spend on remand,[106] noting:

> *Remand inevitably means separation from family and country. Remand can also have the effect of tying girls to co-offenders and assisting them to form anti-social relationships. We are aware of circumstances where a girl met her now-boyfriend while remanded in youth detention and is now the aggrieved in a Domestic Violence Order where he is the respondent. He has repeatedly been charged with breaches of that order.*[107]

Other relevant issues

The distinct needs of women and girls on remand

Women and girls on remand have needs that are distinct from sentenced women and girls in the general prison and detention centre population. The NSW Inspector of Custodial Services has outlined that women on remand have increased needs for mental health services to respond to the 'peak of poor mental health during the period immediately after entering custody'; access to lawyers, the courts and legal materials; stable contact with family and children; and accommodation styles more replicative of the community.[108] They may also wish to find witnesses or evidence to help their case, all of which is harder to do from prison.

Taskforce findings

The Taskforce found that being held on remand separates women and girls from their families and communities, disrupts their lives and the lives of their children, and exposes women and girls to the criminogenic effects of imprisonment. The Taskforce considered that women should be remanded in custody only as a last resort and the length of time women and girls spend on remand should be minimised as far as possible, in line with international law. Reducing the number of women and girls on remand should be a priority for the Queensland Government. This would be a cost-effective option for the community.

Women and girls on remand, particularly those in Northern Queensland, are not currently being effectively separated from sentenced women and girls, and largely appear to be subject to the same treatment as sentenced prisoners. This is inconsistent with the presumption of innocence and conflicts with the right to

humane treatment when deprived of liberty (section 30 of the Human Rights Act). The Taskforce notes that efforts to utilise BWCC as a remand and reception centre are admirable and should continue. However, women on remand in TWCC are not separated; nor are girls in youth detention. The Taskforce acknowledges that separating sentenced and remand women may pose challenges in terms of prison accommodation. But if the state imprisons Queensland women and girls, it must do so in accordance with those women and girls' human rights under the *Human Rights Act 2019*. Women in North Queensland on remand appear to have their human rights limited in a way that women in South East Queensland do not. This is an unacceptable inequity and arguably a breach of human rights. It must be addressed.

The Taskforce found that women on remand should be treated in a way that is appropriate for their unsentenced status. They should not be assumed to be guilty or treated as such by prison staff. Women on remand should have access to appropriate programs while on remand (discussed further in Chapter 3.9).

Taskforce recommendation

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.

Implementation

Reducing the number of women and girls on remand should form a key priority under the recommended whole-of-government strategy for women and girls in the criminal justice system (recommendation 93), it should also form part of the strategy to address the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system recommended by the Taskforce in *Hear her voice 1* (Recommendation 1). Practical actions for reducing the use of remand include increased bail support (discussed below), and housing support for women and girls applying for bail (discussed in Chapter 3.10).

Separating women on remand from sentenced women will be challenging, due to Queensland's large geographical area and limited number of women's prisons. As such, the Taskforce considers that implementation of this recommendation may appropriately involve accommodating women on remand and sentenced women in different areas within existing correctional facilities.

Ensuring women and girls on remand are treated appropriately should be achieved through guidance to staff and incorporated into staff training.

Human rights considerations

Human rights promoted

As noted above, reducing the use of remand is consistent with international law. Separating women and girls on remand from sentenced prisoners and ensuring that those on remand are treated appropriately,

promotes the right to human treatment when deprived of liberty (section 30) and supports the presumption of innocence.

Human rights limited

These recommendations will not limit any human rights, provided that implementation does not result in women and girls being relocated to facilities or units of low quality or with limited access to suitable programs.

Evaluation

Successful implementation of this recommendation will be partly demonstrated by reduced remand numbers and length of time on remand. This data is currently captured by QCS. The impacts and outcomes achieved as a result of the implementation of these recommendations should form part of the monitoring and evaluation plan for the whole-of-government strategy for women and girls in the criminal justice system and should be measured and monitored as part of Queensland's progress towards achieving its Closing the Gap targets. The views of women on remand should also be canvassed when assessing whether recommended changes have been successfully implemented.

Bail assessments and bail support

Background

Current position in Queensland

Bail is a written promise (a bail undertaking) to appear before a court on a particular date, and to comply with all other conditions of the accused person's bail order.[109] Police have the power to grant bail (watchhouse bail) to an arrested person in relation to a charged offence and must consider whether the person may be granted bail.[110] If police do not grant bail, the person must be brought before a court (usually the Magistrates Court) as soon as reasonably practicable, where they may make an application for bail (court bail) on most charges. Unless the person already has a lawyer, at this stage they are likely to be represented by a duty lawyer. If they are denied bail by the Magistrates Court, the person is remanded in custody and may only reapply for bail to the Supreme Court; unless they can demonstrate there has been a change in circumstances, in which case they may reapply to the Magistrates Court. Bail applications on murder charges can only be made in the Supreme Court.[111]

Section 9 of the *Bail Act 1980* (the Bail Act) contains a presumption in favour of bail. The presumption of innocence is a fundamental principle of criminal law and is enshrined in section 32(1) of the *Human Rights Act 2019*. Under section 16 of the Bail Act, a court or police officer shall refuse bail if satisfied there is an unacceptable risk that, if granted bail, the accused person would fail to appear or would commit an offence, endanger someone's safety or welfare, or obstruct the course of justice. A court or police officer shall have regard to all matters appearing to be relevant to determining whether there is an unacceptable risk.[112] Bail shall also be refused if custody is necessary for the accused person's own protection.[113]

Section 16(3) of the Bail Act provides that the presumption in favour of granting bail to a person charged with a criminal offence in Queensland is reversed when the accused person is in a 'show cause' situation. This means they must show why their detention on remand is not justified. A person will be in a show cause situation when they have been charged with committing a certain type of serious offence or an offence with aggravating features as set out in section 16(3). Examples of show cause offences are a charge of murder, a charge involving firearms or other weapons, a charge against the Bail Act such as breaching bail conditions (section 29 of the Bail Act), and a charge for a serious domestic violence offence including serious breaches of domestic violence orders.[114]

Bail support

Various government-funded programs and services have been established to support women and girls to apply for bail. One of these is the LAQ duty lawyer service. LAQ's Youth Legal Aid Childrens Court of Queensland bail referral program aims to reduce the time children spend on remand by identifying and making meritorious applications to the Childrens Court for bail; regardless of whether LAQ acts for the child on the substantive charges.[115]

QCS has agreements with non-government organisations in certain correctional centres to help women on remand apply for bail. These services help women obtain legal advice, gather material for their application and in some cases, attend court on their behalf to advocate for their release on bail.[116]

QCS has funded the Women's Bail Support Program in all Queensland women's prisons since 2016. The program involves service providers interviewing women prisoners to assess their eligibility for Supreme Court bail and supporting eligible women to make an application. Sisters Inside report that all Supreme Court bail applications they have facilitated since 2003 have been successful.[117]

At the end of 2021, QCS completed an external evaluation of the Women's Bail Support Program. The evaluation identified that, over five years, the program assisted 134 women to be released on bail. During the same period, a further 773 women were released on bail without the assistance of the program.[118] The evaluation identified that diversion services delivered prior to incarceration are more effective in reducing the risk of recidivism and the negative impact of incarceration.[119]

An example of early diversion and bail support is the Decarceration Program delivered by Sisters Inside to women pre-incarceration in South East Queensland and funded by the Department of Justice and Attorney-General. The program supports women held in police watchhouses or appearing in court for the first time on a charge, to improve their prospects of successfully applying for bail. QCS advised that the success of the Decarceration Program has led to a reduction of women being released on Supreme Court bail from prison.[120] Equivalent programs are not available outside South East Queensland.

For girls, Sisters Inside is funded to deliver the Yangah Program, which aims to reduce the number of 10 to 17-year-old girls being held on remand in the Brisbane Youth Detention Centre or police watch houses in the greater Brisbane area. Yangah workers improve the likelihood of a successful bail application by assisting girls to access safe, secure accommodation; community-based services and support; legal representation; and individual and family support. Workers also engage with Youth Justice and provide post-release support and outreach to enable girls to meet their bail conditions.[121]

Another relevant bail-based program delivered in Queensland is the Court Link program (discussed further in Chapter 3.5). It includes a specific referral pathway to the Women's Early Intervention Service (WEIS) for participating women in Brisbane[122]. The Court Link and WEIS programs are only available for people who have been granted bail. Nevertheless, the availability of Court Link for a vulnerable woman seeking bail is likely a factor that courts favourably take into account when considering whether to grant bail.

How do other jurisdictions address this issue?

Increasing numbers of women in prisons on remand and barriers to women accessing bail are not unique to Queensland. Victoria has experienced a significant increase in the number of women on remand following 2018 amendments to Victorian bail laws,[123] intended primarily to address risk associated with men's offending behaviour. Victorian women on remand currently outnumber sentenced women.[124]

A report on the drivers of the increased rate of women on remand in Victoria identified that women are particularly disadvantaged across a range of factors that are relevant to bail applications, including access to housing, personal relationships and family support, mental health, and alcohol and drug supports. The report argued that the 'risks' that women present within the courtroom are not indicators of community safety concerns. Instead, they are more likely to indicate women's disadvantage and marginalisation.[125]

Bail support services operate in various forms in other Australian jurisdictions. For example, in Western Australia (WA), the Department of Justice is currently piloting a Bail Support Service delivered by Legal Aid WA and the Aboriginal Legal Service of WA. The service assists people charged with criminal offences to deal with personal, social and health issues affecting their ability to obtain or comply with bail. This may include support with accommodation and homelessness and access to mental health care, disability care, or drug and alcohol services.[126] This operates largely similarly to Court Link in Queensland, although it is delivered externally to courts.

A 2017 Australian Institute of Criminology literature review of bail support identified principles of best practice for bail support programs, including that they should be:

- voluntary – noting that motivation is essential and that accused persons have not been convicted
- timely and individualised – with access to support services as early as possible on release

- holistic – taking account of the full range of needs and circumstances that led to the individual being charged and appearing before a court
- collaborative - involving intergovernmental and interorganisational responses to ensure the individual's needs are met across different service systems
- based on a consistent philosophy of practice – to achieve consensus and consistency between case managers and service providers
- focused on support before supervision – with a primary focus on the provision of interventions and services, rather than supervision and the monitoring of compliance
- locally responsive and adaptive – particularly for regional and remote areas and for First Nations and culturally and linguistically diverse communities
- court based – to provide authority and support referrals
- facilitated by strong guidelines and processes –to interface with the highly structured court environment and to provide structure to participants lives.[127]

Results of consultation

Women who have experienced the criminal justice system as accused persons or offenders

Women reported being denied bail because of mental health concerns, housing concerns, or for their own protection.[128] For example, one woman told the Taskforce that she was denied bail by police and the Magistrates Court after having cut her wrists in the context of a coercively controlling relationship. She had been cleared for release by a mental health service but was in the watchhouse for breaching a domestic violence order naming her as a respondent. In this case, the coercively controlling perpetrator had obtained a cross order and the woman had clearly been misidentified as the primary aggressor. The woman spent three days in the watchhouse before being granted bail by a female magistrate on her second application for court bail.[129]

The Taskforce heard that women require support to apply for bail, to obtain suitable housing to support bail applications, and to understand and comply with bail conditions. Women in prison told the Taskforce:

'There was a woman here from Aurukun who does not speak English – does not understand charges, got out on bail, but doesn't understand the bail conditions'

'If you are released on bail, you get no support to get back home to community. If you are released on parole – QCS help with cost to get back home.' [130]

Service system stakeholders

Stakeholder forum attendees described the hurdles faced by women in accessing bail. They praised the available bail support programs but noted that a lot of women are not eligible and that only women who have a possibility of success are accepted. Some noted that LAQ is not properly funded to support women to make bail applications.[131] For women granted bail, forum attendees noted that women struggle to comply with complex bail conditions. One attendee noted that the address women are bailed to by police is often not an appropriate or safe address, but women were breached when they moved to more appropriate and safer accommodation.[132] The Taskforce also heard that women were not supported to understand their bail conditions, including that they must report changes of address.[133]

Sisters Inside suggested amendments to the Bail Act to require courts to consider pregnancy and the best interests of the child in bail decisions.[134] In Townsville, Sisters Inside staff noted a need for more crisis accommodation, housing support, support services, and outreach workers with cars to make physical contact with women.[135] The Taskforce also heard that an early bail support program (similar to the Decarceration Program) was needed in Townsville to reduce women being remanded at TWCC.[136]

Sero4 (MARA) on the Gold Coast submitted that the lack of suitable accommodation for women lengthens time spent on remand. They suggested better coordination at court to enable suitable bail addresses to be found and more referrals to support services for transitional support.[137]

Ending Violence Against Women Queensland identified that the criminal justice system contributes to the overrepresentation of First Nations women in custody through more frequent bail refusals and a greater focus on compliance with bail requirements.[138]

Australian Red Cross (Sisters for Change) submitted that 'the simple act of delaying incarceration might allow a woman time to make [appropriate care] arrangements for her children and assist in preventing children from entering the child protection system.'[139]

Queensland Council of Social Services noted significant homelessness issues in Queensland currently and supported the ADCQ report recommendation that the Queensland Government should seek alternative solutions to imprisoning women on remand who would otherwise be eligible for bail, but for the fact that they do not have a suitable home address.[140]

Legal stakeholders

LAQ submitted that women and girls may have restrictive bail conditions that set up a further impediment to obtaining advice. They suggested that consideration be given to unintended consequences of recent Bail Act reforms potentially contributing to the increased incarceration of women and girls.[141]

In Victoria, the Taskforce heard that amendments to the Victorian bail laws to respond to violent offending by men, including the killing and injuring of people in Melbourne when a man drove his car along crowded foot paths, had a significant and unintended impact on women being refused bail.[142]

North Queensland Women's Legal Service highlighted the importance of mothers with dependent children being granted bail so that they have adequate time to receive legal advice and make arrangements for their children should they be imprisoned. They provided a case study and suggested that women denied bail have limited time to make such arrangements, potentially leading to unwarranted child protection involvement.[143] Queensland Indigenous Family Violence Legal Service submitted that alternative options to imprisonment are imperative, highlighting that 58% of children held on remand in Australia are First Nations children.[144]

The Queensland Law Society (QLS) submitted that women on bail may be subject to onerous bail conditions, which impact their work and lifestyle, create barriers to removing themselves from domestically violent relationships, and impact their ability to transport children, attend medical appointments, find alternative care arrangements, and other parental and familial responsibilities.[145] QLS also noted that a lack of stable accommodation often leads to breaches of community-based orders, parole and bail.[146] One lawyer (referred to in the QLS submission) noted the extremely low legal aid preferred supplier rates of pay, and highlighted the lack of funding for either youth or adult offender bail applications.[147] In relation to youth bail, one defence lawyer noted 'sometimes it's like playing chicken and egg getting it sorted, you would say to the magistrate that they can get bailed to an address nominated by Child Safety, once they finally get around to finding a place, they end up staying in custody.'[148]

Government agencies

The QPS advised that in most instances the bail address a person is bailed to is the address nominated by that person - unless there is a specific reason why they cannot return to that address. Except where stipulated by the court, a person may change the bail address by making application to the Officer in Charge of a police station or through a prosecutor.[149]

The QPS advised that during the COVID-19 pandemic, some states including Queensland used a compliance checking mobile phone app that ensured those with COVID-19 were quarantining at home. When making contact with the quarantining person, the app geocodes the address to check the person is where they say they are. The lawful use of this technology was provided in emergency legislation and justified on the basis of the response to the pandemic. It was also reliant on a person having a mobile phone. QPS suggested that similar technology could be used in a trial in relation to persons on bail.

The Department of Children, Youth Justice and Multicultural Affairs advised that conducting pre- and post-court interviews with all young people is a procedural requirement of Youth Justice and that it includes explaining court outcomes, including bail conditions, to a young person to support compliance.[150]

Other relevant issues

Bail eligibility and assessments

Some women may choose not to apply for bail, actually feeling safer in custody, particularly when they have been experiencing domestic and family violence[151], or if they are unable to find suitable, safe and secure accommodation.

As noted earlier, police and courts consider factors set out in section 16 of the Bail Act when considering whether to refuse bail because of an unacceptable risk of a person failing to appear or otherwise breaching bail. Those factors include the 'character, antecedents, associations, home environment, employment and background' of the accused person.[152] This allows a court or police officer to consider factors such as a women's homelessness, unemployment or domestic violence victimisation to assess whether they pose an unacceptable risk. The Taskforce heard examples of women being denied bail for their own protection, or to 'dry out.'[153]

The QPC report found that considering the impact of bail on an accused person and their children will be consistent with maximising the safety of the community and would take a longer-term view.[154] This was in the context of the QPC recommending the adoption of guiding principles for bail.

Risks of breaching bail

Having previously breached bail by failing to appear in court is a relevant factor for police and courts considering bail.[155] If the accused person is charged with failure to appear in relation to the same offence, they will be in a 'show cause' situation.[156] Breach of bail - failure to appear offences make up nearly one quarter of all justice and government cases sentenced for women and girls.[157] Barriers for women appearing in court include a lack of financial resources or transportation to court, and lack of child care on their court date.[158]

A Queensland Sentencing Advisory Council analysis of breach of bail offences identified that women are slightly less likely than men to have breach of bail as their most serious offence at sentencing.[159] More recently, a Northern Territory analysis found that males were 1.6 times more likely to offend while on bail compared to females, after taking other factors into account.[160] While individual risk is always the relevant risk to assess when considering bail, the risk of women reoffending while on bail is likely to be different in nature to that of men. The Taskforce understands that the QPS does not use gender-specific bail risk assessment tools when considering whether to grant police bail or to support an application for court bail.

QCS noted increasing numbers of prisoners on remand[161], and advised that a change in offending profile for women detained on remand is resulting in significantly less women being eligible for bail than in previous years. QCS' analysis of data against the Bail Act eligibility criteria (section 16) indicated that for the majority of women on remand, there would likely be an unacceptable risk of reoffending. For example, 59% of women on remand had at least one breach of bail offence and over 75% had more than 10 criminal charges.[162] QCS advised that, by its assessment, only 6 per cent of the total Queensland female remand population would be considered eligible for bail support.[163] The Taskforce cautions against placing weight on this assessment without understanding its premises more fully, given that QCS is not generally responsible for making bail eligibility assessments and may not have access to all relevant information when making these assessments, which can be skewed by flawed stereotypical views.

Impact of bail reforms on women and girls

The QPC report identified restrictions on bail as one of the key changes to criminal justice legislation contributing to increasing imprisonment rates[164] and the number of remand prisoners.[165] Amendments to the Bail Act in 2017 provided protection to victims of domestic and family violence by reversing the presumption in favour of bail for those charged with a relevant domestic violence offence.[166] A relevant offence includes a number of serious criminal offences if they are alleged to have been domestic violence offences, and the breach of a domestic violence order if it involves the threat or use of violence to person or property.[167] Relevantly, the 2017 amending Act was a Private Members' Bill and the Legal Affairs and Community Safety Committee was unable to reach a majority decision to recommend that the Bill be passed, citing concerns about potential unintended consequences.[168] The amendments in the 2017 amending Act have not been reviewed since it was passed. It is probable that the 2017 amendments are contributing

to an increased number of women who may have been misidentified as perpetrators of domestic violence being denied bail.

Youth Justice bail reforms which came into effect in 2021[169] introduced a limited presumption against bail for children charged with particular offences (including assault, attempted robbery, unauthorised use of a motor vehicle where the child is a driver, and dangerous driving) while on bail for an indictable offence. The amendments also enable those deciding child bail applications to consider the willingness of a parent, guardian or other person to support a young person on bail and advise of any relevant change of circumstances or breach of bail.[170] While only a small proportion of girls who offend are likely to be captured by the limited presumption against bail, it is possible that the suite of amendments as a whole may be having a gendered impact on considerations of bail for girls.

Barriers to bail

Legal support

The ADCQ report highlighted that a high number of women on remand do not have legal representation and have not applied for bail.[171] It identified issues with duty lawyers not seeking bail even though there were sound grounds for a successful application, and a need for specialist training on bail law for lawyers working with First Nations women. The report recommended funding for specialised duty lawyer assistance for vulnerable people in prison, and legal representation for Magistrates Court guilty pleas and trials.[172]

The Taskforce heard in forums that duty lawyers are overwhelmed and have very little time to spend with women to take instructions to support an application for bail.[173] Nevertheless, successful bail applications at an early stage can provide a cost-effective way of stopping women from entering prison and being exposed to violence, trauma, and the potential loss of employment and accommodation. A properly funded and resourced duty lawyer scheme can make an invaluable contribution to achieving that goal (Chapter 3.5).

Suitable housing

Without safe and secure housing, women are less likely to be granted bail and are more likely to re-offend and breach the conditions of their bail. The ADCQ report found that the limited supply of suitable short-term transitional housing and longer-term accommodation resulted in women being refused bail or parole.[174] The ADCQ report recommended that the Queensland Government seek alternative solutions to imprisoning women on remand who would otherwise be eligible for bail, but for the fact they do not have a suitable home address.[175]

A Victorian study found that homelessness is the most significant barrier for women to overcome in applications for bail in Victoria, and that women's lack of safe and secure housing is often the result of domestic and family violence.[176] Disadvantage in securing stable and suitable accommodation has been identified as significantly contributing to the number of First Nations women being denied bail and being remanded in prison.[177]

For girls, accommodation that is readily available, provides proper supervision, is gender-appropriate and enables girls to re-engage with their family, education and the community has also been highlighted as a critical area of need.[178]

The Supervised Community Accommodation (SCA) Program was established in 2017-18 by the then Department of Youth Justice to provide community-based accommodation and supervision for young people. However, SCAs were discontinued in 2020 following an evaluation that found they had not been a cost-effective way to reduce reoffending. The evaluation found SCAs had provided safe, secure and stable accommodation with wrap-around services for young people but recommended the divesting of SCA assets and repurposing some funding to enhance other existing services that also offer wrap-around supports.[179] Of the young people who had been housed in SCAs, 23% were female, and two thirds of the female clients of SCAs stayed in the Logan girls-only SCA. Stakeholders to the evaluation suggested that girls were less likely to be housed in SCAs as they are more likely to receive bail.[180]

During a session with women with lived experience hosted by Sisters Inside, the Taskforce heard that Sisters Inside consider the priority is for women to be released from custody, either on bail or parole.[181] Given the present critical housing shortage in Queensland, they saw this being achieved by seeking bail or parole for a woman to live at a boarding house in the first instance, and then helping the woman apply to the authorities to change her address when more suitable accommodation was found. Some women in

SQCC were critical of this approach, noting concerns about safety and other suitability issues for women in boarding houses and the risk of not finding other more appropriate accommodation.[182]

Complying with bail conditions

A woman granted bail may be given bail conditions in addition to their undertaking to appear in court. These might include requiring a woman to live at a specified address, to report to a named police station on certain days at certain times, non-consumption of alcohol or drugs, or attendance at rehabilitation.[183] The Taskforce heard that women sometimes have difficulty complying with bail conditions. As noted by LAQ:

> *Women on bail may be subject to a number of bail conditions, which, over a period of time can become particularly onerous when matters are delayed. They may impact on work and lifestyle, create further practical or psychological barriers to removing themselves from domestically violent relationships. Further, as they are often the primary caregivers (not just for children, but for aged parents and extended family), conditions can impact on their ability to transport children, attend medical appointments, find alternative care arrangements, and other parental responsibilities. Attendance at court, particularly in the arrest courts or large call-over courts, can mean that an accused may need to attend almost all-day. This can be particularly concerning if a woman has had to make care arrangements for their child and they are delayed beyond what they anticipated.*[184]

LAQ provided a useful case study in which a First Nations woman charged with a violent offence against her partner was refused police bail and then driven 200kms away to the nearest town. She was granted bail with a condition that she did not return to her hometown, despite being pregnant and having three young children there.[185] The outcome was not just unsatisfactorily heartless – it was cruel. Another issue frequently raised in forums was that women's child caring responsibilities put them at risk of breaching bail conditions, such as reporting, and that there is a need for greater flexibility in compliance with bail conditions.

Breach of bail - failure to appear is a common offence for women and girls, being included in nearly one quarter (24%) of all sentenced cases involving justice and government offences for the cohort.[186] It is also the third most common sentenced offence for First Nations women.[187] One initiative intended to combat failures to appear is the SMS reminder service facilitated by Queensland Courts, which texts individuals who have provided their mobile phone number to either police or to courts, both a week before and the day before they are required to appear.[188] The service was first trialled in 2016 in Mackay and was expanded state-wide following successful evaluation.[189]

Relevant cross-cutting issues

The *Wiyi Yani U Thangani* report recommended repealing punitive bail laws as a way of achieving a culturally safe and responsive service system.[190] Further, the *Overrepresented and Overlooked* report recommended amending bail laws to ensure that historical and systemic factors contributing to First Nations peoples' over-imprisonment are taken into account in bail decisions involving them[191]

Taskforce findings

The Taskforce noted that women are proportionally more likely to be refused bail and held in custody on remand than men. Women are likely to experience a combination of circumstances that may place them at an unacceptable risk of failing to appear (such as failing to appear in the past, experiencing domestic and family violence, homelessness, drug addiction, unemployment) or of committing a further offence if granted bail (for example, because they have a number of past convictions for minor offences or are homeless). The Taskforce found that women and girls, because of their particular circumstances and vulnerabilities, may be being disproportionately impacted by existing bail laws, bail processes, and support and legal services (or lack of) to support them applying for bail and complying with bail conditions.

The Taskforce noted that refusing a woman bail significantly limits her ability to seek legal assistance and to make arrangements for the care of dependent children, employment, housing and possessions in

preparation for her trial or sentencing. Bail assessments for women should take into account the effect that a refusal of bail will have on a person's family or dependants.

The Taskforce acknowledges that bail is a controversial issue that attracts a significant amount of media and public attention. Bail laws tend to be amended in haste, without thorough consideration of the consequences, in response to concerns about community safety triggered after tragic fatalities resulting from notorious crimes. The Taskforce appreciates that amendments to liberalise bail laws will likely have a broader application beyond women and girls and may pose a risk to the community because no grant of bail is risk free. This is of particular concern in relation to coercively controlling, manipulative perpetrators of domestic, family and sexual violence, who may seek to exploit any liberalisation of the bail laws and pose a safety risk to victims and their children. It is, however, now five years since the commencement of the 2017 Bail Act amendments. Given the Taskforce's findings about the misidentification of the person most in need of protection in *Hear her voice 1*, the Taskforce concluded it is now necessary to review those amendments to ensure that women and girls are not being unfairly impacted.

The Taskforce considered recommending gendered amendments to the Bail Act, such as to strengthen the presumption of bail for pregnant or breastfeeding women and women with young children. However, the Taskforce was conscious that such amendments may discriminate against women who are mothers of older children, adoptive mothers, and mothers who are unable to breast feed or give birth biologically. In principle, the Taskforce agreed that bail should be preferred for pregnant women who are at risk of giving birth on remand, and for women with dependent children.

The Taskforce found that generally women and girls do not pose the same risks to community safety as men and boys, whose offending involving extreme violence historically triggered the present tightening of bail laws.

While every bail application needs to be considered on its individual merits, the Taskforce considered that there may be utility for police, in assessing bail applications, to take a gender-responsive approach, recognising that women generally present different risks and have different needs to men. The Taskforce were of the view that to facilitate this, police should be provided with the necessary tools to make a gendered assessment of bail eligibility. This could also inform police prosecutors responding to applications for court bail by women and girls. The Taskforce appreciates that assessments of this kind must be independently verified and assessed to ensure they do not inadvertently further criminalise vulnerable groups such as First Nations women or women with intellectual disability, or women living in certain areas.

The Taskforce found that women and girls need more support to apply for bail as early as possible, preferably before they are remanded in custody. The Taskforce considered that early bail support should be expanded state-wide. Similarly, support for women to understand and comply with bail conditions, and to address their needs while on bail, should be more widely available.

In Chapter 3.5, the Taskforce makes a related recommendation for the establishment of legal support officer roles in all women's correctional centres. Part of this role will be to support women in prison to apply for bail.

Taskforce recommendations

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.

Implementation

Proposed amendments to the Bail Act should be made consistently with recommended amendments to the *Penalties and Sentences Act 1992* (Chapter 3.6). The drafting or explanation of the recommended Bail Act amendments should ensure that 'dependants' may include future dependants where a women is pregnant or expecting a child through other means. It is not intended that the recommended amendments reduce or remove the test in section 16 of the Bail Act concerning whether a person is an unacceptable risk of breaching bail, nor impact the 'show cause' provisions in section 16(3).

The review of the 2017 amendments to the Bail Act should consider the extent to which women and girls have been denied bail on the basis of having to show cause, due to being misidentified as a primary aggressor in a domestic violence situation. The review should involve consultation with legal professionals, service providers, women with lived experience and First Nations peoples. The review will align with other recommendations from *Hear her voice 1* to reduce the prevalence of the issue of misidentification of the person most in need of protection.

Development and provision of a gender-responsive bail assessment tool for police is intended to improve the gender-responsivity of police in making bail assessments. However, there are risks that such tools may have unintended consequences including alerting police to issues which work against women and result in increased denial of bail. Noting concerns about police interactions with vulnerable and First Nations women and girls discussed in Chapter 3.3, there is also a risk that the tool may increase incarceration rates of these cohorts. As such, it is important that the tools be evidence-based, designed by experts, gender-responsive and validated and independently assessed before a pilot commences. The scope of a pilot should take into consideration the need to assess impacts and outcomes for a diverse range of women and girls in urban, rural, regional and remote locations.

The Taskforce understands that work is currently underway to identify efficiencies and improvements to women's early intervention services and bail support.[192] However, current funded services of this nature are limited to South East Queensland. Efforts should be made to establish similar services in more locations, commencing with population centres in Northern Queensland.

Human rights considerations

The right to liberty and security of person protects the right of persons awaiting trail to not be automatically detained in custody. Section 29(6) of the Human Rights Act protects this right, providing that the person's release may be subject to guarantees to appear for trial, judicial proceedings and sentencing. Another right engaged in bail considerations is freedom of movement (section 19). The Victorian case of *Woods v Director of Public Prosecutions*[193] *(Woods)* emphasised that the presumption of innocence must be the starting point of all bail applications, being both a fundamental principle of the common law and a human right.[194]

Women appear to be unfairly disadvantaged by existing bail laws and practices, which may amount to a limitation of recognition and equality before the law (section 15). Bail laws and amendments have not been designed for women and do not take account of their needs, thus often making it harder for women to be granted bail. Amendments to bail laws, which are often made in response to risks posed by violent male offenders, appear to have an unintended consequence for some women. Unreasonable denial of bail limits women's liberty and security of person, as they are unnecessarily deprived of liberty despite being unsentenced. This also limits rights in criminal processes and right to a fair trial, because a woman denied bail has limited ability to obtain legal advice and prepare for trial. Women and girls denied bail are separated from family and dependent children, limiting the right to protection of family and children and the right to privacy. Further, bail denial limits other rights more generally limited when women are deprived of liberty.

Human rights promoted

Improving women's access to bail will promote each of these rights that are currently being limited when women are denied bail, particularly the right to liberty and security of person (including the right not to be automatically detained) and the freedom of movement. The presumption of innocence is also promoted. Ensuring bail decisions and conditions are made in a way that is responsive to the needs of women also promoted these rights. *Woods* emphasised that the existence of human rights legislation means an individual's specific circumstances must be taken into consideration by the court in every case, rather than making determinations based on generalised concerns.[195]

Another right that is relevant to the experience of women seeking bail is the right to housing. While recognised at international law as a basic human right, the right to housing is not recognised in Queensland's Human Rights Act.

Human rights limited

Proposed amendments to the Bail Act and changes in the way bail is assessed have the potential to limit the human rights of the community and of victims. For example, any relaxation of bail laws may limit rights to liberty and security of the person in relation to personal safety, and rights to property in relation to any offences committed while on bail. However, the Taskforce considers that such limitations are unlikely to be significant, as the section 16 Bail Act test will continue to apply. Taking a gender-responsive approach to granting bail to women and girls poses minimal risks, as women generally tend to commit less serious and less violent offences.

The recommended review will not in itself limit any human rights. The recommended bail assessment tool is not intended to limit human rights and is unlikely to do so if it is competently independently verified.

Though intended to include gender-responsive elements, it may also improve police responses to and consideration of the circumstances of all vulnerable accused persons, including men. Further, taking a gender-responsive approach to bail assessments is supported by the Bangkok Rules, which clarify providing for the gendered needs of women in order to accomplish substantial gender equality shall not be regarded as discriminatory.

As above, improving women's access to bail and supporting women to comply with bail will promote each of these rights that are limited when women are denied bail. This recommendation does not limit any human rights.

Limitations are justified

The potential limitations on human rights from the recommended amendment to the Bail Act may be reasonably and demonstrably justified. The purpose of the limitation is to ensure a person's family obligations and circumstances are taken into account in making bail conditions. For women, this will ensure that bail assessments and conditions are responsive to their obligations to any dependent children. Noting that the Bail Act section 16 assessment will still apply, and that those subject to section 16(3) will still be required to 'show cause', there is no less restrictive way of successfully achieving this purpose. On balance, promoting bail considerations that are gender-responsive to the needs of women will protect the rights of both women and their children, and disrupt intergenerational cycles of disadvantage. The risks that such considerations will decrease community safety and limit the community's rights are considered minimal, noting that women on bail generally pose a lesser risk to community safety.

Evaluation

The recommended amendment should be reviewed after five years in operation to ensure it has not resulted in any unintended consequences.

As noted above, the police bail assessment tool should be independently reviewed prior to the commencement of the trial, to test whether it could unintentionally result in a decrease in bail for, or disproportionately impact, vulnerable populations. The trial of the tool should be subject to evaluation after use for two years to determine whether the tool is successfully reducing the number of women being denied bail.

Early bail supports and women's early intervention services should continue to be evaluated and expanded. The operation of the expanded model in more locations should be evaluated after two years.

Conclusion

The Taskforce has heard and listened to the voices of women and girls who have told us they want to be detained humanely in watchhouses and managed in ways which preserve their dignity and provide for their needs (as indeed do all detainees). The Taskforce has made recommendations addressing their stays in watchhouses, and for mechanisms to be put in place to improve standards to ensure that their basic human rights are adequately met.

Remand should be utilised for women and girls only as a means of last resort. Women on remand must be treated in a way that reflects their innocent status, including being separated as far as practicable from sentenced women. They should be assisted to apply for and obtain bail where possible.

Women should not be assessed for bail on the same basis as men, because women released on bail generally do not pose equivalent risks to the community. Bail laws should reflect the impact that remand has on women with dependent children, and bail conditions should realistically reflect the practical realities of women's lives. Women and girls in watchhouses and on remand should be supported to make bail applications as early as possible and be supported to comply with bail conditions.

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Chapter 3.5: Women and girls' experiences of the legal and court system

Navigating the criminal legal system can be confusing and challenging for women and girls, particularly those who do not have legal assistance. Accessing publicly-funded legal advice from prison can be difficult. Queensland's legal aid system should meet the needs of women and girls.

The court experience and interactions with lawyers and judicial officers can have a significant impact on women's access to justice.

Alternative and specialist court approaches need to meet the needs of women and girl court users.

Accessing legal assistance and navigating the legal system

Access to legal advice and representation is important to enable accused women and girls to enter into bail, diversion programs and other interventions and treatment; to make early guilty pleas; or to contest charges at trial.[1] The availability of legal advice and representation is a human rights and access to justice issue.

Background

Current position in Queensland

Publicly-funded legal representation

Women involved in the criminal justice system may be assisted by a duty lawyer when appearing in court. The duty lawyer service is free and provides access to a lawyer who may provide legal advice or help with a criminal law matter on an accused person's court date. Duty lawyers generally assist clients to apply for legal aid, adjourn a matter to obtain legal advice, or represent a person who wishes to plead guilty in less complex matters. They can also make an application for bail or to vary bail conditions. A duty lawyer can only assist on the day of a defendant's matter, they do not become their lawyer for future proceedings.[2] Legal Aid Queensland's (LAQ) duty lawyer service is delivered in over 100 Magistrates Courts and Childrens Courts across Queensland[3] by in-house LAQ lawyers and private lawyers.

Women can also apply for legal aid for their criminal matters. To be granted legal aid, a person must satisfy a means test, a merit test, and have a legal problem that meets the guidelines for a grant of aid. These criteria assist to manage limited resources in the context of high demand. Legal aid is available for criminal law, family law, and some civil law matters, in certain circumstances and in accordance with eligibility criteria. LAQ manages the legal aid program in Queensland including assessing applications for legal aid. People granted legal aid funding may be represented by an in-house lawyer or a private lawyer on LAQ's preferred supplier list.

In 2020-2021, under a quarter of all grants of legal aid for criminal matters went to women (6,136 of 26,751).[4] There appear to be barriers for women accessing legal aid in some circumstances, due to funding priorities and merit testing issues. These issues are discussed further below.

LAQ is not the only provider of government-funded legal assistance for criminal matters, with the Aboriginal and Torres Strait Islander Legal Service (ATSILS) and other community legal services also providing assistance. Women and girls may also privately engage legal representation.

For girls, LAQ's Youth Advice Hotline provides young people with improved access to early legal advice with the aim of increasing the likelihood of a young person making an application for bail, their legal matter reaching an early resolution, and promoting police diversionary options in appropriate cases.[5] Recent amendments have attempted to make access to legal advice easier for children. The *Youth Justice and*

Other Legislation Amendment Act 2019 inserted a new provision into the *Police Powers and Responsibilities Act 2000*[6] to require police, before questioning a child about an indictable offence, to contact a legal aid organisation to advise that a child is in custody for the offence in order to encourage early legal representation for the child. The amendment was intended 'to ensure that a young person who is being questioned by police in relation to an indictable offence is provided with legal representation as soon as possible'.[7]

Within LAQ's in-house legal practice, a specialist Violence Prevention and Women's Advocacy team is responsible for increasing women's access to LAQ services and improving LAQ's responsiveness to meet women's legal needs. The team also identifies, reviews and responds to issues impacting on women's access to justice. The team acts for women with complex legal issues in the areas of family law, child protection, discrimination, domestic violence and crime.[8]

Barriers for women accessing legal assistance

In 2014, the Australian Government Productivity Commission conducted an inquiry into access to justice arrangements in Australia.[9] The inquiry found that women are more likely to experience unmet legal need, relative to men. People with disability, First Nations peoples, people from culturally and linguistically diverse backgrounds, people on government welfare or who are unemployed, and people with both civil and criminal matters were also identified as vulnerable to unmet legal need.[10]

The then Anti-Discrimination Commission Queensland's 2019 *Women in Prison* report (the ADCQ Report) identified a lack of timely legal assistance as a 'blockage' in the criminal justice system for women.[11] It noted that there is no guarantee of legal aid being granted for Magistrates Court guilty pleas or trials, and highlighted that timely legal assistance could facilitate more successful grants of bail, early guilty pleas and appropriate diversion from custody.[12] The report recommended the funding of specialised duty lawyer assistance for vulnerable prisoners, and legal representation for Magistrates Court guilty pleas and trials.[13]

Women and girls can experience a number of barriers to accessing legal assistance. Some examples of these barriers were identified in submissions[14] as:

- women and girls with low educational attainment, low literacy or from disadvantaged backgrounds can experience difficulties navigating the unfamiliar legal system
- women whose income exceeds the means test face significant costs in obtaining private legal representation, including women experiencing domestic and family violence or coercive control
- women with dependent children experience difficulties attending legal appointments or accessing legal advice during business hours, due to family and child care obligations
- women and girls in regional locations experience additional barriers including that legal services are limited, service hours may be shorter, and they may have to travel long distances to obtain legal advice
- women and girls experiencing domestic and family violence may be fearful of repercussions for seeking legal advice (especially for violence related criminal matters)
- First Nations women and girls and those from culturally and linguistically diverse backgrounds may be impacted by language and cultural barriers, including where an appropriate interpreter cannot be located, or where they feel uncomfortable speaking with a male lawyer for cultural reasons[15]
- First Nations women and girls also experience barriers stemming from intergenerational trauma, and the difficulty of navigating a legal system that does not recognise their customs, practices, language and laws[16]
- women and girls with disability may face additional barriers to seeking legal advice where they have cognitive impairment or do not have capacity to give instructions
- women and girls with disability may also face barriers where they rely on others (including abusive partners, family members or carers) or are socially isolated[17]
- women and girls experiencing domestic and family violence may also have limited access to legal advice in their local area if the perpetrator has also sought advice locally, due to conflicts of interest.[18]

Obtaining legal assistance while in custody

Women and girls in custody have limited access to appointments with lawyers, especially women in regional locations or places without adequate video conferencing facilities.[19] Requirements relating to access and contact with lawyers for women held in police custody are set out in the Queensland Police Service's (QPS) Operational Procedures Manual (OPM).[20]

LAQ provides legal advice services to people in Queensland prisons, including via the LAQ Prison Advice Service. This service is delivered predominantly by video conference and is available in all Queensland prisons, but it is a small team of 2 lawyers and 2 support staff.[21]

Calls from prison to LAQ's general line are free, however calls to private lawyers or to their LAQ lawyer's direct line may attract charges, unless the call is officer initiated (on behalf of the woman).[22] Time limitations on phone calls (approximately 10-12 minutes) impact on women's ability to understand the issues in their matter and their ability to provide adequate instructions to their lawyers. Women may be waiting on hold to speak to their lawyer, only to have the call cut out before they can get through.

Limited assistance with legal matters within prisons can be provided by other women in prison who are employed as peer and bail support workers. These women may not have legal qualifications.

Obtaining legal assistance for non-criminal matters

Women preparing for court or in prison may require legal assistance for a range of other matters in their life. The Taskforce heard that women will often be involved in child protection proceedings, civil proceedings on an application for a domestic violence order, family law proceedings, and administrative law proceedings, including in relation to complaints made in prison.[23] There are legal services available to assist women in prison with non-criminal matters, including Women's Legal Service Queensland (WLSQ) and the Prisoners Legal Service (PLS).

The PLS may be able to provide assistance with legal issues arising in prison such as human rights violations, the use of solitary confinement, and parole board decision reviews. However, there is high demand for the service, which PLS sometimes struggles to meet. Free calls on the Queensland Corrective Services Arunta system to PLS from inside a prison can only be made one day a week,[24] and those in prison experience difficultly getting through due to high demand. PLS missed 50,000 calls in 2020-21.[25]

The Taskforce also heard that managing multiple legal matters at once is a significant challenge for women in prison, especially where they have to pay to call different legal services.[26]

How do other jurisdictions address this issue?

Women receive only a small portion of legal aid funding for criminal law matters in all Australian jurisdictions.[27] This is generally reflective of less women than men being charged with criminal offences. In 2020-2021, women in Queensland received the largest portion of criminal legal aid grants compared to all other jurisdictions.[28]

In Victoria, where women's imprisonment is rising at an even greater rate than in Queensland,[29] the Law and Advocacy Centre for Women (LACW) works in partnership with RMIT's Centre for Innovative Justice.[30] LACW is the first specialised service for women in Victoria dealing with criminal matters, and combines legal advice and representation for women, with holistic and preventative case management and engagement with therapeutic services.[31]

There is currently no dedicated community legal service for women involved in the criminal justice system in Queensland, although women's legal services including WLSQ, North Queensland Women's Legal Service and the Aboriginal and Torres Strait Islander Women's Legal Service North Queensland (ATSIWLSNQ) support women in various non-criminal matters.

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons

Women the Taskforce met with generally indicated that they felt lost and confused by the legal system and court process.[32] Several women identified not understanding how court works as a challenge.[33] One recently released woman noted:

> *'When a woman is charged, they often have no idea what's going on. I used to do inductions, and I would say 'do you know your charges? Have you got a lawyer? And they would say 'no, I don't know'. That is a part of the system that makes women feel lost.'* [34]

Women who did receive legal assistance highlighted the importance of having a lawyer explain the court process and their charges to them.[35] Others were not so fortunate, with one organisational submission quoting a woman as saying with extreme confusion:

> *'I've pleaded guilty, no not guilty, no, guilty - I'm not sure – what does guilty mean?'* [36]

A woman from a culturally and linguistically diverse background described her experience trying to find a lawyer:

> *'I applied to Legal Aid Queensland (LAQ). I sought help from the middle of June. I got a letter from LAQ but it came after my court date – they missed it. I didn't know how to find a lawyer.'* [37]

Some women felt that they were pressured to accept charges for which they were not responsible, or to plead guilty, in order to receive legally aided assistance.[38] One women described this pressure as feeling 'like entrapment.'[39] Another First Nations woman explained:

> *'It is too hard for women from remote communities. Complex legal jargon and processes are not explained clearly. Women are encouraged to plead guilty in order to close cases quickly and get through volume. Women are not understanding what a brief of evidence is, or QP9, or their legal rights, therefore they don't know what to question or push back on. They think if they sign they get out quicker…what's happening is not okay.'* [40]

Women in prison felt it was too hard to get access to good legal representation, and that they had limited prospects of obtaining legal aid for appeals.[41] Some perceived that they would receive 'better representation' if they could afford private lawyers, but described the near impossibility of affording a private lawyer while in prison on extremely low wages.[42]

The Taskforce heard that legal advice is very difficult to obtain while in prison, and that prison staff are not helpful in supporting women to contact their lawyers.[43] Women in prison told the Taskforce that their lawyers have difficulty getting in touch with them or making bookings.[44] One woman said the:

> *'appointment booking system is hard for women to navigate and not easy for lawyers either as it is unable to take bookings when they are needed.'* [45]

Another explained, somewhat confusingly:

> *'Legal aid subsidy helped me to access [a lawyer]. However, I was kept in the dark. It was too hard to get information through to me while I was remanded in custody. I ended up*

pleading to 6 months because I never had access to the brief of evidence. I only saw the statement of facts. I needed to pay $360 to see the legal brief.' [46]

Women also felt that they needed someone to explain the court proceedings and outcomes to them when they attend court by videoconference from prison. The Taskforce heard these women 'are just left on their own not understanding what the outcome was.'[47]

Service system stakeholders

Stakeholder forum participants told the Taskforce that a lack of access to lawyers meant women spend longer in custody, that lawyers don't spend enough time with women, and that duty lawyers are overwhelmed.[48] Participants praised LAQ clinics and court support services, but reported a need for legal services to be flexible around women's childcare obligations and to embrace telephone or video conference services to improve access.[49] There were also suggestions for more legal aid funding for women pleading not guilty.[50] Some participants felt that women plead guilty because they don't understand the criminal process, or to move on from the process as quickly as possible.[51]

One stakeholder forum participant said:

'In prisons, they are so overwhelmed with people trying to access a lawyer while they are in custody on remand. Women don't know what's happening with their matter. Prisoners Legal Service is only on their free call system one day a week, and women can't get through. Women can't even get a record of their charges, and are suffering poor mental health.' [52]

Sisters Inside submitted that 'there is an obvious lack of well-funded, independent and specialised services to support women and girls in contact with the criminal legal system.' They called for greater resources to be made available 'for legal and advocacy services that specialise in support for women and girls in the prison system, including more funding via Legal Aid for criminal law matters and other sources for independent advocacy services.'[53]

North Queensland Combined Women's Services noted barriers for women accessing legal advice while incarcerated, including delays in speaking to lawyers, lack of privacy, extreme confusion, and women being unaware of their rights.[54] They recommended that women be given prompt opportunities to access high quality and accessible legal services while incarcerated, including for family court and child protection matters, and that privacy be provided for phone link ups with lawyers and other appropriate professionals.[55] They also raised potential issues with community advocacy services, working in prisons as "para-legal" advisors, breaching confidentiality, disregarding privacy, blaming victims and giving incorrect or misleading 'legal advice'.[56]

Legal stakeholders

WLSQ advise that they provide face-to-face, legal advice and assistance to women in the areas of domestic violence, family law and child protection (but not criminal matters) at Brisbane Women's Correctional Centre and Southern Queensland Correctional Centre.[57] WLSQ raised that a significant barrier to women and girls accessing good quality legal advice, support and services is the delay in processing legal aid applications. WLSQ advised this often takes over a month, and takes longer to get through the prison mail exchange.[58]

LAQ highlighted the 'need for additional funding to support [legal aid] services that women are more likely to apply for,' while noting that existing funding priorities limit the grants of assistance available. LAQ advised that recent amendments to the *Police Powers and Responsibilities Act 2000* (outlined above) were not operating effectively to provide girls with earlier access to legal advice and representation. LAQ advised:

Our experience on the Youth Hotline is that many calls are "notification only" and do not result in legal advice in fact being given. A further amendment requiring police to obtain legal advice for children would be supported.[59]

The Taskforce also heard that appearances at court can present practical difficulties for women. Queensland Law Society (QLS) noted that attendance at court can mean an accused person needs to be at court for almost a full day. Where matters are delayed beyond the time anticipated, this can affect a woman's child care arrangements.[60]

Queensland Indigenous Family Violence Legal Service (QIFVLS) told the Taskforce that specialised and culturally safe frontline legal services are underfunded and overworked.[61] They called for greater investment in these services, particularly in regional, rural and remote communities.[62] The Taskforce also heard concerns about the quality of the legal services available to First Nations peoples across the state, with legal aid lawyers flying in from across the state having limited time or resources to get instructions or arrange interpreters.[63]

The Taskforce heard that accused women with intellectual disability often require specialised legal representation and support, particularly where they may not have capacity to give instructions. TASC Legal and Social Justice Services provided information about a previous, funded initiative that involved providing accused people with disability specialist legal assistance and support from disability advocates to ensure they were prosecuted appropriately. This advocacy service had success working with duty lawyers to seek adjournments in the Toowoomba Magistrates Court while the accused person was supported by the specialist service.[64] Services like this appear to be particularly necessary in light of the work of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, which has heard that people with cognitive disability 'are particularly vulnerable to systemic neglect with respect to participation in the justice system, such as giving evidence or defending charges with proper legal representation'.[65]

Government agencies

Queensland Corrective Services representatives confirmed in meetings that women's access to lawyers while in custody is limited by factors such as women having to pay for the phone call and limits on the call length.[66]

The Department of Children, Youth Justice and Multicultural Affairs advised that conducting pre and post-court interviews with all young people is a procedural requirement of Youth Justice services. Confirmation of legal representatives is part of the pre-court interviews, along with a discussion about court procedures and protocols. Post-court procedures require that court outcomes, orders, or bail conditions are explained to the young person, to support compliance.[67]

Other relevant issues

Access to grants of legal aid

In 2020-2021, women and girls received less than half of all legal aid grants in Queensland, and under a quarter of all approved grants of assistance for criminal matters (6,136 of 26,751, 22.9%).[68] The majority of legal aid grants are for criminal matters. This is because of the Dietrich[69] principle, which recognises a de-facto constitutional right for legal representation in serious criminal trials. The principle provides that trials of those charged with serious criminal offences who have been denied legal representation through no fault on their part should, barring exceptional circumstances, have their trial adjourned or stayed until they can obtain legal representation. Some have suggested that the application of the principle has influenced legal aid distribution in a way that disadvantages women, who are more likely to require assistance in civil matters (such as domestic violence order proceedings and family law matters) and who are unlikely to face serious criminal charges.[70] Funding for family law legal aid is provided by the Federal Government and cannot be reallocated to other matters.

Publicly-funded legal assistance in serious criminal cases and in merit-based appeals is a prudent use of public funds. It recognises the Dietrich principle and it makes the expensive court system much more efficient. But the publicly-funded legal aid system should also meet the needs of women and girls who

make up over half the Queensland population. The fact that women receive far fewer grants of legal aid for criminal matters than men, certainly reflects that they are charged with far fewer serious offences. But it may also be because the legal aid system is not equitably catering for their needs.

National Legal Aid statistics indicate that Queensland women are somewhat less likely than men to be granted legal aid for criminal matters. The proportion of grants of legal aid for criminal matters to women is slightly lower than their representation in the offender cohort (women formed 25.1% of offenders and received 22.9% of grants of criminal legal aid in 2020-2021),[71] and applications from women for legal aid funding for criminal law matters are slightly less likely to be approved (approximately 83% for women compared to approximately 86% for men).[72] While these are quite minor statistical differences, they are worthy of further consideration.

Demand for legal aid representation is high. LAQ advised that the overall funds available for legal assistance limit their ability to fund certain types of matters. LAQ told the Taskforce that funding decisions have to be made having regard to various priorities, and that 'On LAQ's current funding priorities there is less funding of less serious, criminal cases dealt with summarily' in the Magistrates Court.[73]

To be granted legal aid funding, in addition to being eligible under a means and merit test, the applicant must have a legal problem which meets LAQ's guidelines. These guidelines are based on priorities set by the Queensland Government and the Federal Government.[74] Current state priorities for legally aiding criminal matters preference matters in the District and Supreme courts, indictable offences in the Childrens Court, appeals, bail, and committals in the Magistrates Court for offences with a maximum penalty over 14 years.[75] LAQ Guidelines 2 and 3 for state criminal proceedings put these priorities into practice.[76]

Current government priorities for LAQ, and subsequent LAQ guidelines, appear to disproportionately disadvantage women. Women are primarily prosecuted for less serious offences with prospects of short periods of imprisonment, and the vast majority of women have their matters heard in the Magistrates Court.[77]

LAQ Guideline 2 for summary trials in the Magistrates Court prioritises matters for which a conviction would be likely to result in a term of imprisonment. Guideline 3 for pleas of guilty in the Magistrates Court provides that guilty pleas will be entered by a duty lawyer, unless the accused person faces a real likelihood of first-time imprisonment or of being sentenced to a lengthy period of imprisonment (over six months).[78]

The application of these guidelines means that women who are charged with less serious offences for which they are unlikely to be imprisoned, are only likely to be imprisoned for a short period, or have been imprisoned before, are less likely to receive a grant of aid.

Pressure to plead guilty

Research involving interviews with sentenced adult women in England found that women are subject to a variety of pressures, ranging from coercion and threats to family responsibilities, which make them more compliant to the suggestions of police and prosecutors.[79]

The Taskforce heard that limited prospects of receiving legal aid may be influencing women to plead guilty to offences which they did not commit.[80]

Taskforce findings

The Taskforce appreciates that public funds for legal assistance in Queensland are limited. We respect the importance of the Dietrich principle and that there should be legal assistance for those facing criminal trials and sentences and for those with merit-based appeal grounds in more serious criminal cases, irrespective of gender. This streamlines the expensive criminal justice system and is a prudent use of government funds. The Taskforce notes, however, that women and girls face significant barriers in equitably accessing public legal assistance. This is particularly so if they live in a regional or remote area, if they are culturally or linguistically diverse, if they have limited legal literacy or intellectual disability, if they have child-caring responsibilities that impact their ability to seek legal advice, or if they are ineligible for legal aid under current guidelines and merit testing.

Many of the issues identified in consultation concerning LAQ relate to the lack of funding for grants of aid for bail applications (which are also subject to a merits test), and for women wishing to plead not guilty in the Magistrates Court, or to lodge an appeal. These resourcing limitations impact the length of time women spend in custody.

Current government priorities and LAQ funding guidelines appear to disproportionately impact women, who are more likely to be facing less serious charges with little prospect of long periods of imprisonment. Given the high social costs of imprisonment, especially for women with dependent children, women facing any period of imprisonment should be identified as a priority in legal aid funding guidelines.

The Taskforce recognises the obligation of lawyers to give their clients realistic, practical legal advice in their best interests and the importance of early pleas of guilty in streamlining the criminal justice system. We are concerned, however, that current limitations on the availability of legal aid and the pressures of a busy court with an emphasis on finalising matters quickly, may sometimes be placing pressure on compliant, traumatised women, who have been coercively controlled in the past, to wrongly plead guilty to offences. Duty lawyers must recognise, and know how to address, the needs of traumatised women offenders.

Women in prison face additional barriers to accessing legal advice and assistance. Issues with phone access to lawyers, meeting booking systems, the tyranny of distance, and mental health concerns leading to feelings of hopelessness, mean that women in prison may struggle to apply for legal aid, contact their lawyer or provide adequate instructions. Issues limiting women and girls' access to legal assistance in watchhouses, prisons and detention centres should be addressed to support their access to justice. In prison, women should be supported to apply for legal aid and to get in contact with lawyers when required. Women in prison may be involved in a variety of legal matters including criminal, family law and child protection matters. These women should not have to choose between having contact with a criminal lawyer, a civil lawyer, or their family.

Women in prison should be supported to obtain legal advice and assistance. They should be provided with information on how to obtain legal advice and representation, supported to apply for legal aid if they desire, and have reasonable access to calls to legal services (including non-criminal legal services) for free.

The Taskforce concluded that there should be a funded service provided regularly within each women's correctional centre to provide legal information, and connect women with necessary legal advice and representation and other tailored services. This could be perceived to be beyond the role and expertise of QCS. However, QCS has oversight of prison populations and controls the access women in prison have to the outside world. This function could be funded by QCS and delivered independently by a non-government or legal service. The Taskforce considered that the costs of this initiative would be outweighed by the benefits to women of having timely access to advice to support them to prepare an application for bail or parole, or prepare for trial and sentence, and transition back into the community; all of which will ultimately help women to spend less time in custody. It would also likely assist in the smooth running of the prison.

Taskforce recommendations

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. That 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.

Implementation

An independent review of Queensland Government funding priorities and LAQ funding guidelines and priorities for criminal law matters should include consideration of issues raised by the Taskforce and outlined in this report. These include that women receive fewer grants of legal aid than men; reported long wait times for the assessment of applications for funding; perceived that they would not be granted legal aid unless they plead guilty; experienced difficulties getting information about charges and court dates and meeting with legal aid funded lawyers before their court date; and reported that overwhelmed duty lawyers were unable to spend time with them before court to explain their charges and the court process.

The independent review should include consultation with women with lived experience, First Nations peoples, service system and legal stakeholders, and relevant government agencies including QCS.

Establishing a legal assistance program in each women's correctional centre in Queensland will support women to gain access to information and assistance to navigate the complex legal system while they are in custody. It is not intended that the recommended legal assistance officer role necessarily be required to be performed by a legally qualified person. However, they should have the qualifications and expertise necessary to assist women with multiple and complex needs by providing confidential information and

assistance, and to follow up on their behalf with service providers and lawyers outside the correctional centre. The role should include helping to identify women needing assistance, and facilitating their access to legal advice, information and representation they need in a variety of criminal and civil matters. It is intended that the program should complement and operate alongside existing legal advice and representation services provided to women in custody via LAQ and PLS. Preferably, the independent legal assistance officer program should be funded by QCS and delivered by a non-government or legal service provider.

Having a dedicated funded role provided in women's prisons to identify women who need legal advice and information, or who are 'confused' and uncertain about their criminal charges, will help to address the issue identified by the ADCQ Report that many women in prison are not legally represented but mistakenly believe they are.[81] The Taskforce envisages this role may involve, for example, assisting a woman to make an application for legal aid, following up on her behalf as to the outcome of the application, connecting women to a First Nations legal service, or supporting a woman to lodge court related documents (including bail and parole applications).

Identifying women who require legal assistance as early as possible will help women obtain independent legal advice about their prospects of bail or parole, and assist women to participate in criminal, family law or child protection proceedings, including to obtain advice from women's legal services or other local legal services.

Human rights considerations

These recommendations do not limit human rights. Rather, they promote rights in criminal proceedings (section 32) and the right to a fair hearing (section 31) by supporting women to be legally represented as early as possible so as to prepare for legal matters.

Evaluation

LAQ should collect baseline data and monitor the impacts and outcomes achieved in response to the independent review of its policies and guidelines.

QCS should review and evaluate the outcomes achieved as a result of the provision of legal information and referral to legal advice for women in custody.

Women and girls' experiences with lawyers and judicial officers

Background

The *Bangkok Rules* highlight the importance of taking a gender-responsive approach to accused women, and are addressed to criminal justice agencies including prosecutors and the judiciary.[82]

The United Nations Office on Drugs and Crime *Toolkit on gender-responsive non-custodial measures* calls for a gender-responsive application of criminal laws and procedures and advises that 'professionals working in the justice sector, such as judges, prosecutors and defence lawyers, should apply key features of the legal system in a more gender-responsive manner.'[83] The Toolkit suggests mandatory training for professionals working in the justice sector on gender-responsive application of the criminal law, covering the provisions of the *Bangkok Rules*, and the underlying causes of women coming in contact with the law.[84] A number of other United Nations resources have been developed to assist lawyers, judicial officers and other professionals to take a gender-responsive approach to women in the criminal justice system.[85]

Current position in Queensland

In *Hear her voice 1*, the Taskforce highlighted significant concerns about lawyers and judicial officers' understanding of domestic and family violence, coercive control, and trauma-informed practice.[86] *Hear her voice 1* outlined existing training and professional development requirements and shortfalls for law students and lawyers in relation to domestic and family violence, and trauma-responsivity.[87] In Chapter 2.9 of this report, the Taskforce makes parallel recommendations about training for lawyers and judicial officers in responding to victim-survivors of sexual violence. These discussions and recommendations remain relevant for women and girls as accused persons and offenders, most of whom have experienced some kind of trauma and are likely to have experienced or witnessed domestic, family or sexual violence.

The Taskforce is not aware of any existing training or professional development for lawyers and judicial officers in Queensland that is specifically designed to increase awareness and capability to provide gendered information responses to women and girls as accused persons and offenders.

How do other jurisdictions address this issue?

Training and professional development for lawyers

In *Hear her voice 1*, the Taskforce outlined that formal requirements for legal education and professional development are largely consistent across Australian jurisdictions. The lack of education or ongoing training on domestic and family violence for lawyers was discussed as a national issue.[88]

Ongoing professional development for judicial officers

In *Hear her voice 1*, the Taskforce recommended the establishment of a judicial commission for Queensland, building upon the models already implemented in other Australian jurisdictions, particularly the Judicial Commission of New South Wales, and the Judicial College of Victoria (Recommendation 3). The Taskforce highlighted the New South Wales model, which incorporates professional development for, and receives and assesses complaints about, judicial officers.[89]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons

Treatment by lawyers

Hear her voice 1 described what the Taskforce heard from victims of domestic and family violence in relation to the conduct of lawyers. The Taskforce heard that defence lawyers and prosecutors were not effectively leading evidence of or providing information about, women's experiences of domestic, family and sexual violence.[90] These concerns continued to be raised in consultation on this issue.[91]

Women told the Taskforce that their defence lawyers did not lead evidence or make submissions on their behalf about their experiences of domestic, family or sexual violence and how the abuse itself, or the impact of their resultant trauma, had impacted their offending behaviour.[92] Some women described being actively discouraged from making submissions to a court about their experiences of violence or their child-caring responsibilities.[93] Women and girls described treatment by prosecutors and defence lawyers that was not trauma-informed. As one woman explained:

> *'Prosecutors and lawyers exhaust accused women and girls to the point that many enter plea deals, not because they are guilty but because they have no more fight left in them. They also attack women and girls in the court room for making any trauma-related claims and accuse them of seeking unwarranted pity.'* [94]

Treatment by judicial officers

During the Taskforce consultation reported on in *Hear her voice 1*, we heard that judicial officers need to better understand the nature of domestic and family violence and its impacts, and be trauma-informed. During consultations informing this report, many women raised consistent concerns, that judicial officers did not take into consideration their victimisation history, either in the conduct of proceedings or at sentencing.[95] Some women even felt that having dependent children was considered by judicial officers to be an aggravating rather than a mitigating factor.[96] These issues are discussed further in Chapter 3.6.

In relation to her treatment by a judicial officer, one woman told the Taskforce:

> *'At sentencing the judge said 'you are like the rest of them who have babies and think they can get time knocked off your sentence.' They did not take into account that I was [my*

> *daughter's] main parent and that she was still very ill and needed my care. The judge did not acknowledge the changes I had made in my life since I found out I was pregnant, only the mistakes that I had made. The courts don't care. They just labelled me and saw me as a bad person and nothing else. I had done all these good things in my life and one bad thing, and the bad thing is all that mattered.' [97]*

The Taskforce heard from women who felt alienated from a justice system designed for men, and operated by men.[98] One woman, who spent three days in a watchhouse, felt that it wasn't until she had a female magistrate who understood her better that the system began to work for her:

> *'When I was denied bail the first time I had not spoken to a female police officer or a female judge. I had only spoken to men. I was released on bail the next day by a female judge.' [99]*

Women also described minimal communication from judicial officers, and not having their sentences or the effect of bail or sentencing conditions adequately explained.[100]

Service system stakeholders

In stakeholder forums, the Taskforce heard about the importance of training for defence lawyers, prosecutors[101] and judicial officers about trauma-informed practice and the potential for misidentification as offenders, particularly for women with trauma histories.[102] Ending Violence Against Women Queensland felt that lawyers needed 'training from a gendered lens to understand the gendered and structural nature of violence and to be skilled in providing trauma-informed culturally safe interactions in order for these women and girls' needs to be met.[103]

Sisters Inside advised that:

> *There is a widespread lack of understanding (or wilful misunderstanding) in the criminal legal system about the context of women's and girls' lives and, consequently, their offences… Where women and girls are charged with offences of violence, there is often little analysis about the reasons for their use of violence, either by their lawyers or the courts, in the broader context of their lives and experiences and in the context of victimisation by officials/authorities.[104]*

Legal stakeholders

The Taskforce heard, consistent with the first stage of our work, that a lack of understanding of domestic and family violence and of empathetic or culturally appropriate communication amongst lawyers, can negatively impact accused women. LAQ noted concerns about lawyers who do not understand the dynamics of domestic violence or demonstrate appropriate communication strategies and empathy.[105] LAQ also raised concerns that some lawyers 'do not have the skill and training to adapt their communication strategies when dealing with First Nations clients, clients who do not speak English as their first language, or clients who are affected by a cognitive deficit or mental health issues.'[106] They called for more cultural competency training for lawyers, police, prosecutors and judicial officers.[107]

North Queensland Women's Legal Service felt that 'trauma and the impacts of trauma are not understood at all well within the justice system' and felt it necessary to 'ensure that police, legal representatives, court staff and judicial officers are educated in and employ trauma-informed approaches at each level of interaction.'[108] QLS noted that the impact of birth, birth trauma, stillbirth, miscarriage and post-natal depression are little recognised mitigating factors that judicial officers and lawyers sometimes fail to consider.[109]

In a consultation forum with defence lawyers, the Taskforce heard about the importance of lawyers being trauma-informed and culturally responsive. One lawyer spoke about needing to use culturally-appropriate communication techniques when representing First Nations women. These included building rapport, adjusting language and asking an Aunty or other member of the woman's community to support her. Unfortunately, the Taskforce heard that 'it is very hard to do that on a legal aid basis.'[110] Defence lawyers also advised that representing young people in criminal matters requires a competent level of psychological and communication skills.[111]

The Thursday Island Community Justice Group noted that Lore and law need to run together. They advised that legal service providers need to think differently about how they respond to women charged with domestic and family violence related offences. They highlighted that service providers need time to hear stories, particularly in First Nations communities.[112]

Other relevant issues

Treatment by prosecutors

The Taskforce met with women serving prison sentences for co-offending with an abusive partner including for very serious offences, despite not being the primary offender.[113] Research literature highlights the significant impact of domestic and family violence and coercive control on female offending, and how co-accused women are often charged despite their victimisation being the cause of their offending.[114]

It is particularly important that when women are charged as co-offenders the relationship between the woman and the primary offender is considered and evidence lead about relevant power imbalances, domestic and family violence, or coercive control. As one article stated, 'women routinely report that their involvement in incidents with male partners is rooted in experiences of violence, coercion and fear, rather than their intention to encourage and assist him in the commission of the substantive offence. To ensure a full understanding of the dynamics between co-defendants who are intimate partners, it is crucial that police and prosecution lawyers investigate the whole relationship, to take into account the breadth of experiences that represent the continuum of coercion.'[115]

Treatment by judicial officers

The Taskforce heard about courts not considering or being sensitive to victimisation history or child caring obligations, and that these factors may actually act as aggravating features at sentencing.[116] As noted above, women reported insensitive, non-trauma-informed comments from judicial officers.[117] While the Taskforce heard that some judicial officers were sensitive to the needs of women and took the interests of dependent children into account, this was certainly not universal.[118]

In Chapter 3.6, the Taskforce recommends amendments to the *Penalties and Sentences Act 1992* to improve practice in making submissions, and for courts to better consider relevant factors when a woman is sentenced. The Queensland Sentencing Advisory Council is currently preparing a sentencing profile on women and girls. The Taskforce has been generously provided with some preliminary data from this work. Once released, the profile will provide important insights into how women and girls are sentenced by judicial officers.[119]

In considering the role of gender in judicial decision making in a publication prepared by the New South Wales Judicial Commission, Justice Basten of the New South Wales Court of Appeal stated: 'Most judges have a limited role in leading social change; our primary function is to administer the law, rather than make it. However, administering the law frequently involves evaluation and choices, and judicial education can at least help to prevent judges from preserving or reinforcing factors that diminish the equal treatment of women in society. There is an increasing insistence that 'partiality' is more than 'conscious bias'. A truly impartial judge must be able to identify and counter unconscious prejudices, stereotyping and predilections.'[120] This publication illustrates the powerful educative importance of a judicial commission in leading reform through continuing professional development for judicial officers.

Research highlights the importance of judicial officers being trauma-informed and responsive to the experiences of women in the courtroom, particularly where they have experienced complex trauma involving domestic and family violence.[121] Trauma-informed sentencing 'requires that judges realise the

presence of trauma, recognise its relevance, respond in a way that is informed by trauma and act to avoid re-traumatisation'.[122] Taking a trauma-informed approach is particularly important when sentencing First Nations women and girls, and women who have experienced trauma through victimisation.

Government response to recommendations about lawyers and judicial officers in Hear her voice 1

Recommendations 38-47 of *Hear her voice 1* are also relevant to defence lawyers and prosecutors working with women and girls as accused persons and offenders, particularly those who have victimisation and domestic and family violence history. The recommendations concern providing education and training on domestic and family violence at law schools, both before admission as a lawyer and throughout practice. Recommendation 47 concerns the implementation of a trauma-informed framework for practice for legal practitioners, which is relevant to all women with trauma histories.

The Queensland Government's response to these recommendations is that 'The Queensland Government will work with the QLS, Bar Association Queensland (BAQ) and LAQ to support enhanced education and training for lawyers and judicial officers, including for undergraduate law students in Queensland to ensure they have learnt about [domestic and family violence] and coercive control and ensure professional development for legal practitioners and judicial officers in [domestic and family violence] and trauma-informed practice, is ongoing.'[123]

The implementation of these recommendations is dependent upon the QLS and the BAQ, which have both responded positively to the relevant recommendations from *Hear her voice 1*.[124]

Judicial commission and professional development for judicial officers

Recommendation 3 of *Hear her voice 1* was that the Queensland Government consult with the heads of each court in Queensland, the BAQ, and the QLS with a view to introducing legislation to establish an independent Queensland Judicial Commission. The Queensland Government has supported this recommendation in principle and committed to further consultation.

Recommendation 48 of *Hear her voice 1* was for 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. The Queensland Government has supported this recommendation in principle.[125]

Relevant cross-cutting issues

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, leading to a more flexible approach by the courts to divert offenders and address the disproportionate rate of First Nations peoples traversing the criminal justice system.[126]

Taskforce findings

The Taskforce's recommendations in *Hear her voice 1* will go a long way to improving the experiences of women and girls with lawyers and judicial officers in the criminal justice system. Women's access to high quality legal support, advice and representation is dependent on the knowledge, experience and expertise of those who provide legal services to them. Improving lawyers' understanding of the nature and impacts of domestic and family violence and trauma-informed practice will improve the quality of legal services provided to women and girls generally.

Women form the minority of offenders in the criminal justice system, and progress through legal and court systems largely designed for male offenders. These systems appear to disadvantage women by taking a 'one-size-fits-all' approach to criminal proceedings. Promoting trauma-informed training for both prosecutors and defence lawyers will assist understanding and awareness when dealing with women as accused persons and will challenge assumptions about female offending and co-offending. Gender-informed training will promote a better response to the needs of women by lawyers representing and prosecuting them.

The participation of judicial officers in professional development about being gender-responsive and trauma-informed when interacting with women as accused persons and offenders will promote a more nuanced and appropriate approach to women and girls who are accused persons and offenders.

Taskforce recommendation

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 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.

Implementation

As noted above, the Queensland Government has committed to working with the QLS, BAQ and LAQ to support enhanced education and training for lawyers and judicial officers, including for undergraduate law students in Queensland, on domestic and family violence, coercive control and trauma-informed practice.[127]

The implementation of these recommendations is intended to occur alongside the implementation of recommendations 3 and 39-48 from *Hear her voice 1* and Chapter 2.9 of this report. While recommendations 38-47 have all been supported or supported in principle by the Queensland Government, the implementation of several rely on the BAQ, QLS and LAQ. BAQ and QLS have responded positively to the relevant recommendations,[128] with the QLS recently publishing a response which supports or supports in principle the recommendations concerning it.[129] The Taskforce notes that LAQ has responded to recommendations directed to it, including supporting in principle required training for lawyers on its preferred supplier list (Recommendation 43).[130]

In reaffirming its recommendation for consultation to occur to inform the establishment of a Queensland Judicial Commission, the Taskforce notes that this is an area where a well-resourced judicial commission could provide advice and guidance to judicial officers (as has been done in New South Wales).[131]

Human rights considerations

In practice, treating men and women the same way in the criminal justice system may actually lead to or perpetuate discrimination against women (recognition and equality before the law - section 15). The *Bangkok Rules* outline that measures taking into account gender-specific needs of women should not be considered discriminatory.[132] Rather, such measures allow lawyers, prosecutors and judges 'to ensure that

women have equal access to justice and the equal protection of the law by taking account of the gendered aspect of their involvement with the criminal justice process.'[133]

Human rights promoted

These recommendations promote 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) by promoting a more trauma-informed and gender-responsive approach to accused women who are likely to have experienced domestic, family or sexual violence in their lives. Encouraging judicial officers to take a gender-responsive approach to accused women will promote the right to recognition and equality before the law by ensuring that factors that may relate to a woman's offending, impact her culpability, disadvantage her or impact her ability to comply with certain positions are taken into account. These recommendations do not limit any rights, provided legal aid eligibility for male accused persons is not diminished.

Evaluation

Evaluation of these recommendations should occur in line with the evaluation of implementation of equivalent recommendations from *Hear her voice 1*.

Women and girls' experiences in courts

Background

The majority of cases involving women and girls in Queensland are heard in the Magistrates Court by Magistrates (or by Childrens Court Magistrates in the Childrens Court).[134] Magistrates Courts can hear matters in around 130 locations throughout Queensland.[135]

Specialist courts and alternative justice programs in Queensland

A number of specialist courts or alternative approaches relevant to women as accused persons and offenders currently operate in Queensland, including:

- Murri Courts located in 15 Magistrates Courts and three Childrens Courts[136]
- The Queensland Drug and Alcohol Court (QDAC) in the Brisbane Magistrates Court
- Specialist Domestic and Family Violence Courts or approaches in five Magistrates Courts[137]
- The High Risk Youth Court in Townsville
- The Mental Health Court in Brisbane (with hearings also conducted via videoconferencing)
- The Court Link integrated court assessment, referral and support program in eight locations[138]
- Adult Restorative Justice Conferencing (discussed in detail in Chapter 2.15)

The Murri Courts, QDAC and Court Link may be better classified as 'problem-solving courts' or 'solution-focused' courts.[139] These courts can be distinguished from courts with 'specialist' jurisdictions like the Childrens Court of Queensland, because they are directly concerned with complex social problems that require a multidisciplinary approach.[140] They are also examples of 'therapeutic jurisprudence' in action.[141]

While these courts and programs offer a more tailored court approach to accused persons, they are only available to a small minority. For example, it is estimated that over 95% of Aboriginal and Torres Strait Islander peoples appearing in court do so in mainstream court settings.[142]

Murri Court

The Murri Court is a specialist court program that links Aboriginal and Torres Strait Islander accused persons on bail, including women, to cultural and support services, to help them make changes in their lives and stop offending.[143] The court is intended to help reduce the over-representation of First Nations peoples in the criminal justice system.[144] A key element of the Murri Court is the preparation of progress and sentence reports. These reports are prepared by a Murri Court assessment panel (which includes Elders, respected persons and Community Justice Group representatives) to update a sentencing Magistrates Court on an accused person's progress and their personal and cultural circumstances.[145] Murri

Court sits under the jurisdiction of the Magistrates Court and is established by practice direction rather than legislation.[146]

Queensland Drug and Alcohol Court

The Queensland Drug and Alcohol Court (QDAC) allows adult offenders, including women, to be supervised and undertake treatment to address drug and alcohol dependency and criminal offending. QDAC is not established as a separate court under legislation. Rather, courts can be prescribed with the ability to a make a Drug and Alcohol Treatment Order[147] (Treatment Order) to facilitate the rehabilitation of participants. The only court that is currently prescribed is the Brisbane Magistrates Court. A Treatment Order is a prison sentence of up to four years wholly suspended, while the offender completes a two-year treatment program (unless otherwise cancelled or extended by the court).[148] A women's list operates within QDAC (discussed below). QDAC was re-introduced in Queensland in 2018 following the 2015-16 *Drug and Specialist Courts Review*.[149]

Specialist Domestic and Family Violence Court:

As outlined in *Hear her voice 1*, a Specialist Domestic and Family Violence Court operates in Southport, dealing exclusively with all civil and criminal domestic and family violence matters. Specialist domestic and family violence court approaches also operate in Beenleigh, Townsville, Mount Isa and Palm Island.[150] These specialist courts have been being rolled out since 2017, following the initial two-year trial in Southport.

High Risk Youth Court

The High Risk Youth Court (HRYC) was introduced as part of the Community Youth Response to concerning youth crime rates in Townsville. The aim of the HRYC is to ensure that high risk and repeat young accused persons, including girls, aged between 10 to 17 years, appear in the Childrens Court and are heard by the same Magistrate to enable consistent monitoring of engagement with intervention programs and services. The HRYC provides a specialist Childrens Court list for young people considered to be at high risk of reoffending. Young people in the HRYC are able to access the Townsville Community Justice Group.[151]

Mental Health Court

The Mental Health Court decides the state of mind of people charged with criminal offences, including whether an alleged offender was of unsound mind when they committed an offence, and whether they are fit for trial.[152] The Taskforce has not had capacity to consider issues relating to the operation of the Mental Health Court.

Court Link

Court Link is a bail-based integrated assessment, referral, and support program that aims to address underlying factors that may contribute to offending. People can participate in Court Link if they are before the Magistrates Court and charged with any criminal offence, regardless of whether they plead guilty or not guilty. A participant's matters are adjourned for 12 weeks to allow Court Link case managers to provide support to achieve a positive change of lifestyle. If participation in Court Link is confirmed by the court, a condition is placed on the participant's bail requiring participation,[153] and Court Link officers update the court as the case progresses. Key elements of Court Link include judicial monitoring of progress, support by Court Link officers, and referrals to treatment providers such as drug and alcohol, mental health, and housing and homelessness services. There is a specific referral pathway to the Women's Early Intervention Service (WEIS) for women participating in the Court Link program in Brisbane.[154]

Restorative justice conferencing

Restorative justice conferencing is considered in detail in Chapter 2.15, primarily in relation to cases involving sexual violence. As noted in Chapter 2.15, restorative justice conferencing can provide both a supplementary and alternative justice model to respond to offending by women and girls. Restorative justice conferencing for girls is well-established and embedded under the *Youth Justice Act 1992*.[155] Adult

Restorative Justice Conferencing (ARJC) is a much smaller program with limited capacity and geographical reach. The Department of Justice and Attorney-General (DJAG) Dispute Resolution Branch facilitates ARJC in Queensland, and operates in Brisbane, Gold Coast, Ipswich, Townsville and Cairns with limited staffing.[156] ARJC receives about 350 referrals and conducts about 200 conferences per year.[157]

ARJC can receive referrals at any stage of the criminal justice process, including before a charge is brought, after a guilty plea or finding of guilt and prior to sentencing, post-sentencing, or even if no criminal complaint has been made (usually only if the referral is victim-initiated). However, most referrals are made by police when a charge has been laid, but before the matter has been finalised in court.[158] A smaller number of referrals are made by the Office of the Director of Public Prosecutions (ODPP) for more serious matters where pursuing a prosecution is not strongly in the public interest and resolution of the matter in ARJC is considered preferable.[159] Magistrates and clerks of the Magistrates Court are also able to make ARJC referrals.[160]

How do other jurisdictions address this issue?

Alternative courts of various types are in operation in other Australian jurisdictions. Aboriginal and Torres Strait Islander sentencing courts also operate in New South Wales, the Australian Capital Territory, South Australia and Victoria.[161] Drug courts also operate in New South Wales (3 locations),[162] Victoria (3 locations),[163] South Australia (1 location),[164] Western Australia (1 location)[165] and the Australian Capital Territory (1 location).[166] Other alternative courts include Community Justice Centres like the Neighbourhood Justice Centre in Victoria[167], and Women's Problem-Solving Courts.[168]

Aboriginal and Torres Strait Islander Sentencing Courts

The Nunga Court model and the Circle Court model are the two primary models of Aboriginal and Torres Strait Islander sentencing courts operating in Australia. Queensland's Murri Courts and the Koori Courts in Victoria both use the Nunga Court model. The Circle Court model is used in NSW and the ACT. Circle Courts differ from Nunga Courts in that they are less formal; hearings are held in places of cultural significance rather than a courtroom; participants are seated in a circle rather than at the Bar table; victims have a clear role in the process; and Elders and respected persons are directly involved in imposing penalties.[169] Victoria and New South Wales have expanded these courts or approaches to the District Court level.

Victoria – Koori Courts

In Victoria, Koori Courts operate under the jurisdiction of both the Magistrates Court and the County Court (District Court equivalent).[170] The Koori Court model was expanded to the County Courts in 2008 in pilot form, with a 2011 evaluation finding strong evidence that the pilot was making significant achievements in providing 'access to fair, culturally relevant and appropriate justice'. The evaluation also found evidence that the Koori Court has some impact in preventing more serious contact with the justice system.[171]

New South Wales – Circle sentencing and Walama List

Circle Sentencing is available in 12 NSW Local Courts. A 2020 evaluation found participants have lower rates of imprisonment and recidivism than Aboriginal peoples who are sentenced in the traditional way.[172] New South Wales has recently formally established the Walama List in its District Court. The list was piloted in Sydney and formalised in response to a recommendation of the NSW Select Committee Report on the high level of First Nations peoples in custody.[173]

Drug Courts

New South Wales – Drug Court of NSW and MERIT program

The Drug Court of NSW sits in three locations. A 2008 NSW Bureau of Crime Statistics and Research (BOCSAR) evaluation of the Drug Court showed it to be more cost-effective than prison in reducing the rate of reoffending among offenders whose crimes were drug related.[174] It found a 38% decrease in recidivism for drug offences during the follow-up period, and a 30% decrease in recidivism for violent offences.[175]

NSW also operates a court based drug treatment program. The Magistrates Early Referral Into Treatment (MERIT) program is a voluntary, pre-plea program for adults in the Local Court with alcohol and drug use issues. MERIT provides access to a wide range of alcohol and other drug treatment services for 12 weeks while court matters are adjourned. MERIT has operated since 2000 and is available at 62 of the 137 Local Courts in NSW. A similar QMERIT program has previously operated in Redcliffe and Maroochydore Magistrates Courts,[176] but has been replaced by Court Link. The MERIT program has much broader coverage than Court Link.

California - Women-only drug court treatment programs

There is strong evidence from a randomised drug court treatment program in California that women who participate in women-only substance abuse treatment programs had reduced symptoms of post-traumatic stress disorder, were more likely to complete treatment, and less likely to be remanded in jail. However, reduced drug use and arrest rates were consistent between female participants across gender-neutral and gender-specific treatment programs.[177]

Court support programs

Victoria - Court Integrated Services Program

The Court Integrated Services Program (CISP) in Victorian Magistrates Courts offers a coordinated approach to the assessment and treatment of accused persons.[178] A three-year evaluation of CISP conducted by the University of Melbourne made several significant findings. These included significant improvement in clients' physical and mental wellbeing, increased compliance with community correction orders, reduced risk of reoffending, reduced harm to the community, and cost savings to the Government through reduced nights in prison and reduced reoffending.[179] Queensland's Court Link program is modelled on the CISP.[180]

Community justice centres

Community justice centres are courts with co-located services that take a therapeutic response to low-level criminal offending. Co-located services work together, both within and outside court, to address the needs of accused persons to reduce their chances of reoffending.[181]

Victoria – Neighbourhood Justice Centre

The Neighbourhood Justice Centre (NJC)[182] in Yarra, Victoria, is Australia's only community justice centre, launching in 2007.[183] The NJC is multi-jurisdictional and sits on different days as a Magistrates Court, a Childrens Court, the Victorian Civil and Administrative Tribunal and the Victims of Crime Assistance Tribunal.[184] The NJC runs on an Embedded Specialist Services Model, which provides its clients with the widest range of treatment and support services in any Australian court, with 19 services at the centre.[185] A 2015 evaluation of the NJC by the Australian Institute of Criminology found that those it dealt with had a 25% lower rate of reoffending, than those dealt with in other Magistrates Courts, and that NJC high risk offenders were almost three times less likely to breach Community Corrections Orders (23.1%) compared to the state-wide average (59.9%).[186]

The Victorian NJC is one of 80 community justice centres worldwide. The United States, Singapore, Israel and Canada have established community justice centres.[187] In 2018 the former Department of Child Safety, Youth and Women and Logan City Council funded research into the design of a community justice centre in Logan. The 2020 *Logan Community Justice Centre Community Consultation and Design Report* recommended that such a centre be established in Logan and flagged that women and girls may require a specific approach within this model.[188]

Women's courts

Women's courts focus on mothers and their children and protecting the family unit.[189] They are currently being trialled at three sites in the United Kingdom and already exist in a number of other jurisdictions including New York, Canada, Pakistan, India and South Africa.[190] An evidence review found that a problem-solving court for female offenders who have complex needs has the potential to reduce reoffending and

address criminogenic needs, and that there was a strong theory of change for a specialised approach, based on an evidence-led, trauma-informed, and gender-responsive practice.[191]

A Women's Problem Solving Court has been proposed in Victoria, based on principles of therapeutic jurisprudence, procedural justice, and the principles that 'equal treatment of men and women in the criminal justice system does not result in equal outcomes.'[192]

United Kingdom – problem-solving courts for women

The United Kingdom (UK) currently has three women's problem-solving courts: Manchester and Salford Magistrates Court, Aberdeen Sherriff's Court, and Stockport Magistrate's Court.[193] In 2020, the UK Government committed to piloting five new problem-solving courts, including projects that focused on female offenders, 'given the high proportion of female offenders in receipt of short prison sentences… and our commitment to addressing the underlying needs of female offenders.'[194]

The Manchester and Salford's women's problem-solving court began operating in 2014 as part of the city's Whole Systems Approach to women in the justice system.[195] The court aims to deliver gender-responsive, joined-up support to women with multiple criminogenic needs.[196] Women offenders are placed on community orders with sentence plans, developed at multi-agency meetings. Women regularly appear before the court to discuss progress and set goals for addressing their criminogenic needs. Most women attend a women's community service as a requirement of their order.[197] There has been no specific evaluation of the women's problem-solving court, but data suggests that the wider Whole Systems Approach is working to reduce reoffending by women.[198]

The existing practice base for problem-solving courts specifically for women is limited.[199] The three women's problem-solving courts in the UK are at an early stage and data on reoffending is not yet available.[200] Nevertheless, implementation lessons for problem-solving courts for women have been identified by Victoria's RMIT Centre for Justice Innovation. In summary, it found that problem solving courts for women should:

- target women at risk of short custodial sentences
- avoid creating overly burdensome orders
- ensure continuity and consistency of judicial officers to foster relationships
- provide training for staff and judicial offices to support a trauma-informed approach
- adopt a non-adversarial and less formal approach
- promote partnership between government and non-government services
- operate within a gender-responsive framework.[201]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons

As discussed earlier in this chapter, many women in prison, especially those on short sentences, felt that their caregiving obligations and their victimisation history could have been better taken into consideration by courts.[202] One woman in prison, speaking about how her domestic violence victimisation history could have been addressed said:

> *'Can a domestic violence counsellor come in and see if domestic violence has played a part in it? You've got Murri Court and Drug Court – but can there be a domestic violence court for women offenders? High numbers of us have been through domestic violence…. Give women stricter conditions but give them the help they need as well. A counsellor, a domestic violence worker. Jail should be a last resort, and it's not. When you send a mum to prison you're taking that mum away and you're breaking up that family.'* [203]

One woman spoke about challenges for First Nations women who face the judgement of traditional courts and their community, and felt that there should be more Murri Courts:

'[There is a] conflict between LAW and LORE – do their time in jail, but then need to go back and be punished by community. Punished twice. There should be a reinvigoration of Murri Court and cultural sentencing options so women only need to be punished once.' [204]

Another woman praised the New South Wales Drug Court model, which she felt is more constructive, provides better accommodation support including parole addresses, and has a better approach to drug testing based on a points system, which rewards honesty. She said this 'encourages you to do the right thing and be honest and upfront, but it also provides you enough points so that you aren't thrown back in at the first mistake.'[205]

Service system stakeholders

Stakeholder forum attendees called for more linking of services at the court stage.[206] Participants praised Murri Court and Court Link but noted access challenges, including the limited availability of these models[207] and the capacity and willingness of magistrates courts to transfer matters.[208]

The Queensland Network of Alcohol and other Drug Agencies Ltd (QNADA) submitted that the design of the QDAC means it is not fit for purpose for women, that the low rate of participation of women is likely associated with the length and type of intervention, and that the requirement to attend court for a health intervention acts as a barrier for women with caring responsibilities.[209] QNADA called for greater consideration to be given to the gender specific clinical needs of female QDAC participants, including identifying barriers to participation and taking account of women's life circumstances, such as domestic, family and sexual violence.[210]

Sisters Inside called for 'greater use of alternatives to imprisonment, including greater use of justice mediation or restorative justice conferencing, even for violent offences.'[211] However, the RMIT Centre for Innovative Justice (CIJ) expressed caution about women's participation in restorative justice. This was particularly so where domestic and family violence is involved or where there is a power imbalance between the woman offender and the victim (who may indeed be the primary aggressor in an abusive relationship). The RMIT Centre for Innovative Justice also cautioned that participation in restorative justice processes requires high level communication skills and can disadvantage some women and girls with disability or who are not able to communicate articulately.[212]

Legal stakeholders

QIFVLS called for greater investment in specialist courts, noting that specialist courts are limited in number and the vast majority of First Nations peoples appear in mainstream courts.[213] QIFVLS highlighted that the Murri Court has seen an increase in appearance rates, thus providing opportunities for access to rehabilitation services.[214]

LAQ noted the limited availability of QDAC and Court Link outside southeast Queensland.[215] LAQ described the benefit of a female specific court list operating within the QDAC and suggested consideration of introducing a female specific court to other diversionary courts such as Court Link and Murri Court.[216] Further, LAQ called for an expanded use of pre-sentence referrals to programs and supports designed to address the drivers of offending by women.[217] The QLS supported the expansion of drug courts, especially in regional and remote areas, and submitted that these programs should provide gender specific support for females including meeting their accommodation needs.[218] The Chief Magistrate and Deputy Chief Magistrates were generally supportive of specialist courts (especially Murri Court), though noted the expense and limited capacity of QDAC, and the need for more services state-wide to support Court Link.[219]

Government agencies

QCS staff noted the resource intensiveness of QDAC, scalability issues, and that it only helps a small number of people.[220]

The Department of Children, Youth Justice and Multicultural Affairs (DCYJMA) highlighted research which showed that a higher proportion of girls than boys who come before the criminal courts in Beenleigh have a current child protection order or have been subject to one at some time in their lives, and that this

association is even stronger for First Nations girls. The research suggested a different approach may be needed for this cohort.[221]

DJAG advised that 'restorative justice is an internationally recognised, evidence-based response to criminal behaviour. Where a defendant accepts responsibility for the harm caused by their actions, [restorative justice conferencing] offers an opportunity for them to make themselves accountable to those they have harmed and take steps to repair it.'[222]

Other relevant issues

Are specialist courts working for women?

It is widely evidenced that women respond better to holistic, multi-agency support that emphasises empowerment and collaboration.[223] Specialist courts and programs are therefore likely to be effective for women by taking a therapeutic approach. However, it is necessary to consider whether existing alternative and specialist courts are operating effectively for women.

Murri Court

The Murri Court 2019 evaluation found that the Murri Court reduces incarceration of First Nations peoples and curbs the 'revolving door of justice'.[224] It also found the court is operating as intended in providing a culturally informed specialist court to assist in the rehabilitative efforts of Aboriginal and Torres Strait Islander peoples convicted of offences.[225] The evaluation did not specifically consider the experiences or outcomes of female participants. Between 1 July 2016 and 30 June 2018, a quarter of Murri Court accused persons were female (287).[226]

Research highlights the importance of programs for First Nations peoples in the criminal justice system being both culturally appropriate and gender-responsive for female participants.[227] Some Murri Courts refer female participants to gender-specific cultural services such as women's groups.[228] Women's Yarning Circles also allow First Nations women to discuss their experiences and gain support from Elders and respected persons of the same gender.[229] Murri Courts are supported by Community Justice Groups, which overall have a majority of female members (65%).[230] The *Wiyi Yani U Thangani* report noted that consulted women and girls 'were unanimously supportive of Murri and Koori Courts wherever they existed.'[231]

The limitations of Murri Court include that a plea of guilty is required for participation (the evaluation recommended this be removed),[232] and that the program is under the jurisdiction of the Magistrates Court and cannot be utilised for District Court matters.

Queensland Drug and Alcohol Court

There is strong evidence that drug courts work to reduce reoffending. Statistically significant reductions in recidivism (including reductions in frequency and severity of offending plus greater time before relapse) have been noted in drug courts in New South Wales, Queensland, South Australia, Victoria, and Western Australia.[233] There is also a body of research that shows women perform better in gender-specific substance abuse treatment groups, or programs that offer gender-specific services.[234] The 2016 *Queensland Drug and Specialist Courts Review* report identified the need to ensure that disadvantaged groups were provided with equitable opportunity to access, participate and complete the drug court program. Women were identified as one of these groups. Aboriginal and Torres Strait Islander peoples were identified as another.[235]

The *Queensland Drug and Specialist Courts Review* report suggested the QDAC should only operate in one location and be expanded once the model has been evaluated and refined.[236] An external evaluation commenced in 2019 and is expected to be completed mid-2023.[237] DJAG advised that the evaluation will explore the benefits of participation across participant cohorts, including women.[238]

The Taskforce was provided with data on women's participation in QDAC and completion of Treatment Orders.[239] DJAG requested that this data not be published.[240] The data revealed that women form a small portion of the cohort sentenced to Treatment Orders, and that only a handful of women have completed Treatment Orders since QDAC commenced in 2018.[241] However, the data indicated that women are a promising cohort for order completion, appearing more likely to complete than their male counterparts. While the Taskforce was advised that successful outcomes for the program should not be limited to

completion or graduation from the order,[242] and that a range of benefits are expected to be experienced by those who have engaged in QDAC treatment, supervision and support, it was clear that only a small number of women have benefited from QDAC to date (noting that QDAC commenced in 2018 and the program takes two years).

DJAG advised that the experience of women accessing QDAC has been a large focus of program improvements since commencement, including considerations regarding trauma-informed practice. Several initiatives have been implemented to ensure the QDAC model provides female participants with a safe and therapeutic environment.[243] Initiatives include:[244]

- a women-only list, providing a safe environment for women to access the court
- a dedicated soft room (comfortable furnishings) in the QDAC office space to provide a secure and comfortable space for participant and key worker interactions
- support for both male and female participants to gain safe and secure housing, including a specialised service supporting women experiencing homelessness
- a Focus on Women Project involving the creation of female only caseloads, links with specialist services and professional development for staff
- a women's only Resilience program for QDAC participants.[245]

LAQ praised the QDAC women's list as a positive move, highlighting the need for flexible and tailored orders for women. They advise:

> *There was overwhelming positive feedback about the introduction of a female-only participant court list; with the advantages being that the female cohort could feel safe discussing any issues regarding domestic violence, or physical or mental health issues with the court, without judgment or fear of humiliation from the male participants. A side effect of this list was also it then created a more supportive understanding environment within the female group of their fellow female participants.*[246]

However, LAQ identified concerns for women participating in QDAC, including that most women do not reach graduation; that the intensive nature of Treatment Orders can be challenging; that women may have to choose between family and caregiving commitments and compliance with court order commitments, and that applying the same for women (even with flexibility) means that orders can take women longer to complete than their male counterparts.[247] The Taskforce understands that QDAC has taken positive steps to address these issues, including scheduling appointments for women participants around their childcare commitments.[248]

Court Link

The *Queensland Drug and Specialist Courts Review* recommended a single generic integrated court assessment, referral and support program for Queensland.[249] Court Link subsequently replaced a number of other local bail support programs in Magistrates Courts across Queensland, including the Queensland Integrated Courts Referral model and QMERIT program.[250] In 2020-2021, Court Link made 172 community referrals for accused persons to receive treatment in the community, and 666 participants were placed on the program for case management. An external evaluation of Court Link commenced in 2019 and will be completed in 2023.[251]

Court Link is not available state-wide, and operates in fewer locations (8) than equivalent or similar interstate programs even though Queensland is the most decentralised of the states. In contrast, the Victorian CISP program operates at 20 of the 52 Magistrates Courts,[252] while the New South Wales MERIT program is in 62 of the 137 Local Courts.[253] One challenge for Court Link's operation is that it relies on support service availability in the areas in which it operates. The *Hear her voice 1* report found that the Court Link program's quality and availability vary considerably throughout Queensland, and noted (in the context of perpetrator programs) that participants referred to programs may experience extensive waiting times.[254] The Taskforce consistently heard that there is a shortage across the state of appropriate services

to help women and girls to address the factors contributing to their offending behaviour, particularly drug and alcohol services and domestic and family violence services.[255]

There are opportunities for the Court Link model to be more responsive to the needs of women, including outside Brisbane. For example, while the Court Link referral form does allow issues around domestic, family and sexual violence to be identified, it does not contain information about children, child caring or child safety concerns.[256]

There is a specific referral pathway to the Women's Early Intervention Service (WEIS) for women participating in Court Link in Brisbane. The WEIS aims to address women's immediate and ongoing support needs to prevent them from entering or re-entering the custodial system, with a specific focus on addressing women's housing needs. The WEIS functions with a collaborative case management model. Specialist Recovery Practitioners provide trauma-informed practical and emotional support for women to actively facilitate and advocate for women's access to support services through an outreach.[257] The WEIS is funded by DJAG and delivered by Anglicare Southern Queensland.[258] In addition to supporting women participating in Court Link, the WEIS also works with women engaged with Community Corrections Brisbane who are serving non-custodial sentences.[259] DJAG advises that evaluation of the WEIS is another matter delayed due to COVID-19, but is expected to be undertaken in 2022. Outcomes of the evaluation will inform future direction of the service model.[260]

Adult Restorative Justice Conferencing

In 2020, DJAG commissioned the Nous Group to partner with it to critically assess and update Queensland's current ARJC model to improve its effectiveness and develop a cost benefit analysis that validates the efficiency of the model and its potential efficacy to reduce demand pressures. The Nous Group recommended the Government pilot a pre-charge diversion focused approach to ARJC, separate from the current ARJC team and its operating locations, in order to test its effectiveness before launching this model more broadly. Increasing pre-charge diversion was deemed to have immediately viable potential to address demand and reduce criminal justice system costs, with possible cost savings across the system. The Nous Group also recommended four foundational and enabling changes to boost performance of ARJC. These included (in summary):

- optimising current systems and processes
- increasing awareness of ARJC to key stakeholders (victims, offenders and referral bodies)
- expanding eligibility criteria
- legislating pathways and allowing offenders to be referred on the basis of protected admissions

Griffith University research on best-practice in the delivery of ARJC indicates that the role of gender has not been well-researched in relation to how female offenders interact with, and how gender may in turn impact, restorative justice processes and outcomes.[261] Limited studies suggest that, generally, female offenders may have a greater emotional reaction to victims' stories than male offenders; and that women may demonstrate more engaged involvement and empathy. However, a major criticism of restorative justice for female offenders is its lack of recognition of the context in which offending and victimisation take place. Female offenders may also be more susceptible to continued shame, guilt, and internalisation of gendered stereotypes regarding appropriate female behaviour.[262] There is also the potential that restorative justice can be misused against women by their abusers.[263]

Research from England and Wales indicates that gender is a relevant factor in restorative conferences, and that although more research is needed, the participation of gender-specific support services and the incorporation of women's needs into restorative justice practices can facilitate restorative justice being beneficial for women.[264]

DJAG advised that ARJC's eligibility criteria considers whether an individual is suitable for ARJC. One of the criteria is that 'power dynamics, which may impact on the process or the ability for the parties to negotiate in their own interests (including the presence of sexual violence, domestic and family violence, or child abuse) can be appropriately managed within the Adult Restorative Justice process.'[265]

Limitations of specialist court approaches

One of the key concerns with specialist and alternative courts is that they afford limited access to services to only a small minority of accused persons.[266] For example, the *Queensland Drug and Specialist Courts Review* noted that re-established specialist courts would only be able to deal with relatively few offenders, are resource intensive, often limited in scope geographically and result in 'postcode justice.'[267]

Specialist courts and programs have particularly limited availability in regional and remote areas. QDAC is only available in Brisbane, Court Link has limited availability outside southeast Queensland,[268] and courts like the Murri Court have limited capacity.[269]

Another limitation of these courts is that they generally require a plea of guilty for participation (as in Murri Court and QDAC). This excludes those who do not wish to plead guilty from accessing the services and supports available through these specialist models. Court Link, in contrast, does not require a guilty plea.[270]

Mainstreaming problem-solving court approaches to a broader range of courts is a way to help more people in the criminal justice system. But the trade-offs for doing so are less specialisation and less targeted services for vulnerable groups, including women. Some key challenges of mainstreaming are ensuring equity of access and targeted responses, management of resources requiring broader distribution, and the need for judicial officers to take a more therapeutic, case management and encouragement role, which may be difficult to replicate more broadly.[271]

Alternative and specialist courts are more resource intensive than mainstream courts. For example, the establishment of the singular QDAC and the restructuring of Court Link required a $22.7 million initial investment.[272] However, as recent reports of both the Queensland and Australian Productivity Commissions clearly demonstrate, money spent rehabilitating offenders, reducing incarceration and reducing recidivism is likely to result in very substantial savings.[273]

Public reporting on outcomes

Specialist courts in Queensland have very limited reporting requirements. Annual information about these courts is primarily captured in annual reports. For example, the *Magistrates Courts of Queensland Annual report 2020 – 2021* contains one page of reporting on QDAC.[274] It notes that in 2020-2021, 43 participants commenced treatment orders[275], but does not break this figure down by gender or otherwise. Similarly, the Murri Court, Court Link, Specialist Domestic and Family Violence Court and the High Risk Youth Court are all minimally reported on within the annual report. By contrast, Queensland's Mental Health Court prepares its own report annually.

Relevant cross-cutting issues

Murri Court expansion

Murri Courts do not operate in the District Court of Queensland. His Honour Chief Judge Brian Devereaux SC raised the potential expansion of Murri Court to the District Court during a meeting with the Taskforce.[276] This discussion was in the context of the overrepresentation of Aboriginal and or Torres Strait Islander peoples in the criminal justice system generally, and specifically in cases of non-fatal strangulation, which must be heard in the District Court.[277]

Taskforce findings

Specialist courts and programs

Women coming before courts as accused persons and offenders are likely to have specific needs in relation to domestic and family violence, child caring arrangements, child protection issues, trauma history, economic security and housing. The Taskforce has consistently heard that women should be connected to suitable (in many cases gender-specific) supports at the court stage to better meet their needs, support them in the community and reduce their likelihood of receiving a prison sentence and/or reoffending.

Queensland's current specialist court models are informed by significant research and review. The Taskforce notes that the Murri Court was evaluated recently, that evaluations of both QDAC and Court Link are currently underway, and that the WEIS is expected to be evaluated in 2022.

The Taskforce is concerned that some specialist court models have been developed for the majority male cohort of offenders, and may incorporate insufficient consideration to the needs of women in their design and operation. While generic non-gendered approaches to alternative courts and court support programs may enable wider roll-out, these models also need to suitable for women offenders. This is particularly important if the value of these approaches in reducing offending is to be realised, given the increasing number of women in the criminal justice system.

To enable this, there must be greater transparency about the impacts and outcomes achieved for women participants, and improved public reporting.

Murri Court

The Taskforce notes that the evaluation of Murri Court, while showing positive outcomes overall, did not specifically consider the experience of female participants. While Murri Court does provide a gender-responsive approach through case management and the use of women's groups and women's yarning circles, it is important that the experiences of women in Murri Court are specifically evaluated to identify strengths and opportunities for improvement, both within the Murri Court and in all Magistrates Courts.

Extension of the Murri Court to the District Court would provide First Nations women charged with the more serious offences in the District Court jurisdiction with more effective, individually-tailored and culturally appropriate bail and sentencing options.[278]

Queensland Drug and Alcohol Court

Queensland Drug and Alcohol Court appears to be providing a gender-responsive service to the small cohort of vulnerable women in Brisbane who are eligible to participate. The Taskforce notes that an evaluation of QDAC is already underway, and that 'any expansion to regional centres is not likely to take place until 2023, after the court has been evaluated.'[279] As such, the Taskforce was not prepared to make recommendations concerning the QDAC model or potential expansion.

However, the Taskforce notes that barriers do exist for women's participation in QDAC, including the length of the program and difficulty balancing engagement with family responsibilities. The Taskforce recommends that the ongoing evaluation specifically consider these issues, along with women's experiences more generally. DJAG has indicated that the evaluation will consider women's participation.[280]

The Taskforce also notes that QDAC, like equivalent courts in other jurisdictions, is unlikely to be able to be provided state-wide, due to its costs and complexity. As the Drug and Specialist Courts Review highlighted, 'the problems of people who come into contact with the criminal justice system with drug and alcohol abuse or dependency cannot be managed by one, or even a small number of problem-oriented courts.'[281] The Taskforce considers there is real merit in giving consideration to an intermediate level, court-based drug treatment program with broader coverage, like the MERIT program in New South Wales. The Taskforce notes that Court Link, which replaced the two QMERIT programs previously running in Queensland, incorporates drug treatment, and that broader capacity and coverage for Court Link may serve this intent.

Women's court list

The Taskforce commends the establishment of the WEIS service, which supports women participating in Court Link in southeast Queensland. Noting the reported positive outcomes of the women's list within QDAC and the evidence in support of gender-specific court approaches to women, the Taskforce considers there is merit in piloting a women's list in the Magistrates Court where Court Link is in operation. Such a list could work 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.[282]

A women's list connected to Court Link would benefit from the existing Court Link infrastructure, including existing case management staff, referral pathways, and relationships with government agencies. Another

benefit of utilising Court Link is that the program does not require a guilty plea. This answers concerns about women's problem-solving courts that they may expose women to further criminalisation and 'up-tariffing'.[283]

The women's list could involve (similarly to the QDAC women's list):

- a recognition that women accused persons and offenders present with different needs and vulnerabilities and require a gendered-approach
- improved referral pathways to women-specific services including domestic and family violence services, drug and alcohol treatment services, women's health services, parenting courses and other relevant supports
- scheduling participant women's court appearance dates together, to improve the atmosphere and safety of court, and to enable better coordination of services and agencies (for example, Child Safety and Housing)
- suitably trained magistrates with interest and capability in gender-responsive, therapeutic approaches to offending by high needs women.

The Taskforce notes that Court Link already takes personal characteristics, including gender and Indigenous status, into account in assessments and case management. Moreover, the intention of Court Link was to achieve consistency in court support and referrals across the state. On one view, a specialist women's list may jeopardise this approach, but this is considered unlikely if the list is established within the Court Link program and is clearly intended to provide equitable access and outcomes. Rather it should enhance consistency in providing a tailored response to the needs of women.

The Taskforce considered standalone women's problem-solving courts. The existing evidence base for these courts is limited.[284] A specialist list can be distinguished from a specialist court because it does not involve a specialist jurisdiction, specific sentencing options or legislation. A pilot specialist list approach is preferable as a cost-effective approach able to be supported by existing Court Link infrastructure. It can be assessed in the future when further consideration can be given to the desirability a specialist women's court.

Adult Restorative Justice Conferencing

ARJC is an option that may divert women from the criminal justice system or supplement conventional criminal justice system processes as a mechanism to address the harm caused and reduce trauma for both parties. In Chapter 2.15, the Taskforce recommends establishing a legislative framework and a plan for the sustainable long-term expansion of ARJC in Queensland.

This will encourage awareness of ARJC and set a clear intention by government to maximise its impact. The design of a legislative framework and planned expansion will enable the particular needs of women and girls to be incorporated in an operating model for Queensland, noting that research suggests women may be more engaged and empathetic in restorative justice processes.[285] Further consultation and evaluative work is needed to understand how to apply a gender-sensitive approach to restorative justice for women as accused persons or offenders.

Taskforce recommendations

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.

Taskforce recommendations

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 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 accessible, safe and effective for women who are accused persons and offenders.

Implementation

Renewed focus on meeting the needs of women and girls

Implementation of these recommendations should involve increased reporting and transparency around women's participation in specialist courts and programs. Ongoing and future evaluations of specialist courts and programs must consider the experiences of women.

Murri Court

The review of women's participation in Murri Court should be undertaken in partnership with Community Justice Groups, Respected Persons, Elders and women and girls who have participated in Murri Court and acknowledge the strengths and success of the program to date. The Taskforce considerers that this review could be incorporated in the implementation of *Hear her voice 1,* recommendation 1.

The design and implementation of any Murri Court program within the District Court is a matter for the Chief Judge and the judges. As the existing Murri Court is established by practice direction and not under legislation, establishment of a pilot Murri District Court may not require legislation and may build on

existing Murri Court procedures and collaborations. However, it is important that the District Court is supported and provided sufficient resources to design and implement an appropriate model.

The implementation of this recommendation would require additional resources for the District Court and for Community Justice Groups. The Taskforce particularly notes the extraordinary role that Community Justice Group members play in supporting the Murri Court, and that any expansion of Murri Court must involve the proper resourcing of these groups, including appropriate payment for members. This is particularly relevant in the context that the majority of Community Justice Group members are women who willingly provide so much of their time and expertise voluntarily to benefit their local and broader community. Their generosity and sense of service must not be exploited.

Queensland Drug and Alcohol Court

Engaging with women participants about their experiences will contribute to improved approaches for women's drug treatment and rehabilitation within the criminal justice system more broadly. The Taskforce notes this is already the intention for the ongoing evaluation.

Women's court list

A women's list with a focus on considering women's particular needs and vulnerabilities will strengthen Court Link's framework and its approach to addressing the needs of offenders. Learnings from the pilot can inform future roll out across other Court Link approaches to ensure that they are meeting the needs of female offenders and have suitable referral pathways. Additional resources will be required to support the establishment and evaluation of the pilot.

Adult Restorative Justice Conferencing

Implementation of this recommendation should occur alongside related recommendations in Chapter 2.15.

Human rights considerations

The human rights engaged by specialist courts and programs include the right to recognition and equality before the law (section 15); right to a fair hearing (section 31); rights in criminal proceedings (section 32); right to liberty and security of person (section 29); right to privacy and reputation (section 25); protection of families and children (section 26); and cultural rights, including for Aboriginal peoples and Torres Strait Islander peoples (sections 27 and 28).

Current court approaches in Queensland do not appear to be optimally considering or meeting the needs of women as accused persons and offenders, a minority cohort with specific needs. Even specialist court approaches appear to create unique barriers for women, who may have to weigh up compliance with specialist responses against their caregiving duties. When women appearing in court are not supported to address their social issues, and where their needs and realities are not adequately considered by a sentencing court, their rights to recognition and equality before the law, and their rights to a fair hearing and in the criminal process, are limited. Where this results in women being inappropriately sentenced to prison (such as where their offending is tied to social issues or domestic and family or sexual violence) their rights to liberty and security of the person and family rights are further limited. Differential access to specialist courts and programs across the state engages the right to equality before the law (section 15).

Human rights promoted

A therapeutic jurisprudence approach to women in the criminal justice system can protect the right of women in the criminal justice system.[286] Greater transparency around women's participation in specialist courts will promote their right to recognition and equality before the law by probing whether women receive equal benefit and treatment from these courts.

In relation to QDAC, Rule 62 of the *Bangkok Rules* is that 'the provision of gender-sensitive, trauma-informed, women-only substance abuse treatment programmes in the community and women's access to such treatment shall be improved, for crime prevention as well as for diversion and alternative sentencing purposes.'[287] The rule 'takes account of the lack of adequate drug treatment programmes in most communities, which are designed specifically for women and the challenges women face in accessing such treatment, including due to the lack of childcare facilities in the community.'[288]

Considering how QDAC can better meet the needs of women will improve Queensland's compliance with Rule 62. It will also promote the rights of female drug offenders, which are currently limited by the 'one size fits all' approach of QDAC Treatment Orders, including equality before the law and women's rights to the protection of family and children.

Identifying opportunities to improve the operation of Murri Court for women will support their right to recognition and equality before the law, as well as cultural and family rights, by reducing the likelihood of women receiving custodial sentences for offences which are tied to social issues.

Concerning the recommended women's list and ARJC, these recommendations take a gender-responsive approach to women, as promoted by the *Bangkok Rules*, and also promote the right to recognition and equality before the law.

Human rights limited

These recommendations do not limit any human rights. Any argument that they would discriminate against men or gender non-binary people on the basis of gender could be countered by ensuring that relevant lessons learned with equal application to men or gender non-binary people are also acted on.

Evaluation

The impacts and outcomes of all specialist court and programs should continue to be scrutinised to demonstrate value for money, including impact and outcomes achieved for women in the reduction of reoffending and recidivism.

Conclusion

The Taskforce has heard the voices of women accused persons and offenders who feel the that the criminal justice system is not listening to them. This chapter has sought to deal with concern they raised.

Accused women and girls face significant hurdles when navigating the criminal justice system. Obtaining high quality legal assistance can be challenging, particularly for those experiencing intersecting disadvantage. This chapter makes recommendations to improve access to legal aid for women accused of criminal offences. Women in prison also face significant difficulties accessing legal advice. The recommended supports will help them navigate legal processes and keep in contact with their lawyers.

Prosecutors, defence lawyers and judicial officers must take a gender-responsive and trauma-informed approach to accused women and girls. This should be factored in to the implementation of recommendations to improve responses by these cohorts contained in *Hear her voice 1*.

Specialist courts and court programs in Queensland must be responsive to the needs of women and girls, including by reporting on their participation and ensuring that outcomes for women and girls are considered in any expansion or evaluation.

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Chapter 3.6: Sentencing women and girls

Sentencing courts should be able to take women and girls' relevant, diverse and varied experiences and characteristics into account, particularly their victimisation history and caring responsibilities.

Custodial sentences for women and girls who have committed non-violent offences should be an option of last resort. Instead, community-based sentences that support them to address the drivers of their offending should be used wherever possible. This is also usually the best and most cost-effective order for the community.

Court-based drug courses and diversion should be accessible to women regardless of where they live in Queensland.

Courts must have access to the right information to consider community-based orders, through the expanded use of pre-sentence reports.

Sentencing considerations for women and girls

Background

Sentencing is the process of determining and applying the appropriate penalty for a person who has either pleaded, or been found, guilty of an offence.[1] Parliament makes laws about sentencing but the courts (judges and magistrates) interpret and apply those laws when deciding the appropriate sentence.[2] If the offender or the State is dissatisfied with a sentence there may, on limited specified grounds, be an appeal to a higher court.

Current position in Queensland

Sentencing women

The guidelines and principles for sentencing offenders in Queensland are set out in the *Penalties and Sentences Act 1992* (PS Act).[3] Sentences may only be imposed for the purposes of punishment, rehabilitation, deterrence, denunciation or the protection of the community.[4] Two important principles provided in the PS Act are that a sentence of imprisonment should only be imposed as a last resort (the principle of imprisonment as a last resort), and that a sentence that allows the offender to stay in the community is preferable.[5] These principles do not apply to violent offences, certain sexual offences against children and organised crime offences.[6]

Section 9 of the PS Act also outlines matters that a court must have regard to in sentencing. These include the personal characteristics of the offender, the seriousness and impact of their offending on both the victim and the community, aggravating and mitigating factors, the maximum penalty and any requirements set by parliament such as mandatory sentences.[7] The guidelines are not exhaustive, with courts able to consider 'any other relevant circumstance'.[8] For those offences to which the 'principle of imprisonment as a last resort' does not apply, a court must primarily have regard to different factors (e.g. factors about risk and community safety for violent offences).[9]

A range of options are available to a court determining the most appropriate sentence for women.

Non-custodial penalty types include:

- absolute discharge (no conviction recorded and effectively no further punishment)

- recognisance (good behaviour bond) – including conditions to attend drug diversion
- fine
- probation order
- community service order
- graffiti removal order
- driver license disqualification[10]

Custodial penalty types include:

- combined prison and probation orders
- intensive correction order
- fully or partially suspended sentence of imprisonment
- imprisonment with or without parole recommendation
- indefinite sentence[11]

Restitution orders to victims, with consequences if the order is not met, are commonly made in combination with custodial and non-custodial sentences. Individually tailored special conditions are often added to probation, community service or intensive correction orders.

Sentencing girls

There are different sentencing principles for children. The *Youth Justice Act 1992* (YJ Act) provides for the sentencing of children, with relevant principles contained in section 150. There are special considerations for sentencing children, including, for example, that a child's age is a mitigating factor, and that sentences served in the community are better than detention in promoting reintegration.[12] A court sentencing a child must have regard to the Youth Justice Principles, including the principle that a child should be detained in custody only as a last resort, in a suitable facility and for the shortest time justified in the circumstances.[13] Courts sentencing children must also have regard, subject to the YJ Act, to the general principles for sentencing all persons (i.e. those in the PS Act).

There are also different sentencing options for children. Section 175 of the YJ Act sets out sentencing options for children including reprimands, good behaviour orders, restorative justice conferencing and orders, conditional release orders, detention orders, and intensive supervision orders. Like adults, sentenced children can receive fines, probation, community service and graffiti removal orders in certain circumstances.[14] Courts cannot make a detention order or intensive supervision order for a child without considering a pre-sentence report (discussed further below).[15]

How are women and girls being sentenced?

The Queensland Sentencing Advisory Council (QSAC) is currently preparing a sentencing profile on women and girls, utilising sentencing data from 2005-06 and 2018-19. This sentencing profile will identify trends in the sentencing of women and girls and will be a valuable resource. QSAC has shared preliminary data with the Taskforce to aid consideration of this issue.

Between 2005-06 and 2018-19, women and girls account for nearly one quarter (23.5%) of all sentenced offenders in Queensland.[16] The most common sentenced offences differed between women and girls, as well as between demographic groups. When traffic offences are excluded, the top three sentenced offences for different groups between 2005-06 and 2018-19 were:

- for non-Indigenous women: possessing dangerous drugs, possession of drug utensils, unauthorised dealing with shop goods
- for Aboriginal and Torres Strait Islander women: public nuisance, contravening a direction or requirement of police officer, breach of bail – failure to appear
- for non-Indigenous girls: unauthorised dealing with shop goods, stealing, public nuisance
- for Aboriginal and Torres Strait Islander girls: stealing, public nuisance, unauthorised dealing with shop goods.[17]

The vast majority (97.8%) of women and girls sentenced in Queensland are sentenced in the Magistrates Court (Childrens Court for girls).[18] As outlined in Chapter 3.1, most sentenced women and girls receive

non-custodial sentences, with monetary penalties being the most common sentence for women (74.9%) and community based orders being the most common sentence for girls (40%).[19] Custodial penalties were given to 6.7% of sentenced women and 3.6% of sentenced girls.[20]

A 2019 review of sentencing options commissioned by the QSAC found that the criminogenic effect of imprisonment compared with probation is stronger for women than men, and is exacerbated by the presence of stress in family relationships.[21] This suggests that sentencing principles that influence rates of imprisonment have a disproportionate impact on women.

The PS Act makes no provisions for considering sex and gender, though the court may consider the offender's character, age and intellectual capacity.[22] These factors may currently be considered in relation to hardship to the offender. At common law, hardship 'may be relevant where an offender will be required to serve their sentence under additionally onerous or burdensome conditions'.[23] It has also been recognised at common law that certain convictions or sentences may result in particular hardships for some offenders.[24]

The PS Act provides that fine option orders and community based orders must, as far as practicable, avoid interfering with the offender's family responsibilities.[25]

Courts sentencing Aboriginal and Torres Strait Islander persons must consider any submissions made by a Community Justice Group (CJG), including submissions about the offender's relationship to their community.[26] The YJ Act contains similar provisions for the court to consider CJG submissions, including those about the child's connection with community, family, or kin, cultural considerations, and programs and services for offenders in which the CJG participates.[27]

How do other jurisdictions address this issue?

Sentencing legislation, guidelines, principles and options differ significantly across jurisdictions.

Principle of imprisonment as a last resort

The principle of imprisonment as a last resort appears in the sentencing legislation of most Australian jurisdictions.[28]

New South Wales also requires a court that sentences an offender to imprisonment for 6 months or less to record and indicate to the offender its reasons for doing so. [29] This includes its reasons for deciding that no penalty other than imprisonment is appropriate, and its reasons for deciding not to make an order for participation in an intervention program or program for treatment or rehabilitation.[30] This provision disincentivises the making of short custodial sentences.

In Victoria, a court must not impose a sentence that involves confinement unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by a sentence that does not involve confinement.[31] Like Queensland, Victoria has significantly restricted the application of this principle for certain offences.[32]

Considering gender and other characteristics

Sentencing legislation in other Australian jurisdictions does not require the consideration of sex or gender, while some allows consideration of 'characteristics' or 'antecedents'. In the Australian Capital Territory, a sentencing court must consider (if relevant) the cultural background, character, antecedents, age and physical or mental condition of the offender.[33] In Western Australia, the court may have regard to the offender's character, antecedents, age, health and mental condition when deciding whether to release without sentence for a 'trivial or technical' offence.[34] For federal offences, sentencing courts must consider the character, antecedents, age, means and physical or mental condition of the person.[35]

In England and Wales, there is a statutory obligation to identify and address women's needs in arrangements for the supervision and rehabilitation of offenders.[36] While no Australian jurisdiction includes gender as a legislated sentencing consideration, provisions allowing consideration of offenders' 'character', 'antecedents', 'background', or allowing consideration of dependent children may be used by judges to consider the particular circumstances of female offenders.

Considering family and dependants

All Australian courts sentencing offenders for federal criminal offences must take into account 'the probable effect that any sentence or order under consideration would have on any of the person's family or dependants' if relevant and known to the court.[37] The Australian Capital Territory is the only other Australian jurisdiction to have replicated this provision in its sentencing legislation.[38]

South Australia has several provisions for considering an offender's family in sentencing, though notably not in relation to imprisonment. A court imposing an intensive correction order with conditions, or a community service order, must not require the person to perform community service at a time that would cause unreasonable disruption of the person's commitments in caring for the person's dependants.[39] Further, a court must consider hardship to dependants and whether an order would unduly prejudice the welfare of dependants of the offender when making a fine or imposing a sum for breach of bond.[40]

Like Queensland, other jurisdictions make minimal provision for the consideration of an offender's family members in relation to discrete sentencing options. For example, courts in Victoria must have regard to the burden a superannuation order may have on an offender's partner or dependants,[41] while courts in New South Wales are restricted in making a non-association order for members of an offender's close family.[42]

Results of consultation

Women and girls who have experienced the criminal justice system as offenders

In Chapter 3.5, the Taskforce outlined significant concerns raised by women and girls about how their circumstances or experiences were considered at sentencing. Some women felt that their gender or status as a mother negatively impacted their sentence.[43] Rather than their family responsibilities being a mitigating factor for sentencing, these women felt they were judged more harshly as 'bad' mothers.[44] Some felt that imprisonment was not being used as a last resort.[45]

Women felt that courts did not consider the impact that a custodial sentence would have on their children.[46] Additionally, women spoke about being separated from their children as the main punishment in being incarcerated.[47] This was particularly so for women who were accommodated in prisons hundreds of kilometres from their children. Many had not seen their children for months, even years.[48] One woman's submission captured the broad concerns that the Taskforce heard from women who had been imprisoned:

'Sentencing does not take into account children's best interests especially where community based sentenced could apply. They are discarded in favour of incarceration, putting further strain on the child safety department. Women who have had lengthy [periods on] bail while their matters have been in the courts may have already taken action to redirect their lives, and correct the wrongs they've done. This is not taken into account and women who may have just obtained employment and gotten clean for the first time in their lives are thrown into incarceration to be further traumatised and lose access to all forms of therapy based support. Sentencing in women's cases does not take into account what led to the offending. Sentences… do not reflect the actual weight of the intention of the female offender but rather reflects… stereotype[s] created for the said crime, not accounting for the causes.' [49]

Service system stakeholders

The majority of participants at stakeholder forums supported greater consideration of the rights and needs of dependent children when their mothers are sentenced.[50] Some services felt imprisonment was not being considered as a last resort, and that First Nations women tend to receive harsher sentences.[51]

Some have suggested that regular amendments to the PS Act, restrictions on the principle of imprisonment as a last resort, and Queensland's existing mandatory sentencing provisions are disproportionately impacting women.[52]

Service system submissions consistently called for a reduction in prison sentences, an increase in diversion and community based sentencing, and greater consideration of the impacts of sentences on children.[53] Ending Violence Against Women Queensland felt that 'courts also need to consider the important role of First Nations women in community as mothers, carers and leaders.'[54]

Australian Red Cross, who provide the Sisters for Change program in the Townsville Women's Correctional Centre, highlighted that the *United Nations rules about the treatment of women prisoners and offenders (the Bangkok Rules)* call for sentencing authorities to reduce the imprisonment of women, but felt that sentencing magistrates 'are not adopting a rights based or protective approach in sentencing women, nor using incarceration as a sentence of last resort'.[55] They recommended that:

> *Sentencing authorities should approach incarceration of a woman as 'last resort' in order to minimise harm to children or vulnerable adults as a consequence of the imprisonment of their primary carer. Most women offenders suffer from trauma of domestic violence or sexual abuse, have mental health-care needs, or are drug and/or alcohol dependent. Diverting women to a suitable gender-appropriate treatment programs would address their needs much more effectively than the harsh environment of prisons, which often does not help but hinder their social reintegration.*[56]

Sisters Inside recommended recognising pregnancy as a relevant factor to be taken into consideration on sentencing with a presumption that pregnant women should not be incarcerated.[57] Further, Sisters Inside strongly supported a requirement for courts to consider the best interests of the child in bail and sentencing decisions:

> *In our submission, decisions that support mothers to remain in the community providing direct care for their children, or maintaining regular contact with their children through reunification processes or alternative parenting arrangements, are in the best interests of the child.*[58]

Legal stakeholders

The Bar Association of Queensland (BAQ) submitted that sentencing factors are non-exhaustive and that factors relevant to women and girls, including victimisation, are already able to be taken into account.[59] For example, BAQ noted that an offender being a victim of domestic and family violence is often relevant in mitigation and can be taken into account by the Court in sentencing.[60]

Legal Aid Queensland (LAQ) submitted that sentencing principles are generally broad enough to include consideration of the needs of women and girls, but supported explicitly recognising the impact of sentences on children and the rights of children in the PS Act.[61] LAQ also noted that 'tough on crime' amendments to the PS Act are potentially contributing to the increased incarceration of women and girls[62]

Queensland Law Society (QLS) noted a need for trauma and disability to be considered in sentencing, highlighting that 'incarceration will likely have a minimal preventative effect for a woman or girl with a cognitive or intellectual disability when they fail to understand the crime they are alleged to have committed and the trauma leading up to an offence has not been appropriately addressed'.[63]

Further, QLS recommended that the court should take into account the best interests of the child when sentencing a person with a dependent child, noting a recent appeal case,[64] and that this may reduce the likelihood of mothers serving time in prison.[65] However, QLS also cautioned that 'such a rule could also act to the detriment of some women, for example in domestically violent relationships where a male offender seeks to obtain a sentence discount, or where it is used to justify the imprisonment of a woman with the

consequence that her child is removed and placed in the child protection system.'[66] QLS noted that there is already scope in the PS Act for a court to consider the impact of a sentence upon dependent children.[67]

Prosecutors from the Office of the Director of Public Prosecutions (ODPP) raised concerns about the potential misuse of a *requirement* to consider caring responsibilities in sentencing, including that it may be used by men who have offended against women yet provide financially for children, and that it would significantly complicate sentencing.[68] In forums with both ODPP lawyers and defence lawyers, concerns were raised about the complexity of courts considering issues related to caring responsibilities and the impacts of sentencing decisions on children. This included concerns about how a court could test the veracity of submissions and determine the best interests of a child in the context of the sentencing process.[69] However, some prosecutors considered that a sentencing principle recognising the effect of 'disrupting the relationship between the offender and the child' may be an appropriate solution.[70]

Academics

Academics from Griffith Criminology Institute's Transforming Corrections to Transform Lives project called on the Queensland Government to 'reduce female incarceration rates at the front and back end of the system by reforming restrictive sentencing, bail and parole provisions'.[71]

Other relevant issues

Gendered sentencing

On its face, taking gender into account in sentencing may promote unequal treatment before the law and preferential treatment for women. However, several international instruments including the *United Nations Convention on the Elimination of Discrimination Against Women* (CEDAW),[72] the *Bangkok Rules*,[73] together with human rights handbooks on women in the criminal justice system,[74] promote a gendered approach to women's offending and sentencing. This is in recognition of women's distinct offending pathways, vulnerabilities, and needs, and that women may experience discriminatory impacts of prison sentences. Some argue that Australia's signatory status to CEDAW and support of the *Bangkok Rules* should influence judges to treat the sentencing of women as exceptional and apply a gendered lens when considering custodial sentences for women.[75]

Several studies have considered whether sex or gender has an impact on sentencing outcomes. These studies tend to indicate that women receive shorter sentences or lesser penalties than men.[76] However, this distinction may be explained by actual or perceived differences in social circumstances of men and women, and the likelihood that most offences committed by women and girls do not to involve the use of violence. For example, women's sentencing may be impacted by high rates of victimisation history, health concerns and familial circumstances.[77] A Victorian study also concluded that women's sentences are shorter as they are more likely than men to have a constellation of factors that can validly reduce the length of a sentence.[78]

Recent research suggests the best way to respond to the specific needs of groups is to 'incorporate high levels of discretion into judicial decision-making, allowing consideration of how gender-, age-, cultural-, and disability-responsive sanctions and programmes can best be incorporated into effective sentencing.'[79]

Consideration of family and dependants

Although exact data is not available for Queensland, it is estimated that over 54% of women in Australian prisons have dependent children.[80] It is well established that imprisoning primary caregivers generally disadvantages their children.[81]

In the absence of any legislative requirements to consider the impacts of sentences on family and dependants, Queensland courts uphold the common law principle that any hardship suffered by the person's family and dependants can only mitigate a sentence in 'exceptional circumstances'.[82] Queensland courts have consistently held that the impact of a sentence on third parties is a relevant consideration on sentence but cannot overwhelm considerations such as the need for denunciation, deterrence and punishment,[83] or be allowed to overwhelm the punishment that would otherwise be appropriate.[84]

As highlighted above, the *Crimes Act 1914* (Cth) (Commonwealth Crimes Act) lists 'the probable effect that any sentence or order under consideration would have on any of the person's family or dependants' as a matter to which the court is to have regard in sentencing.[85] This means that Queensland courts have to take this into consideration when sentencing a person for a federal offence. However, in its 2006 review of federal sentencing law, the Australian Law Reform Commission (ALRC) found that courts had been 'reading down' the provision, and instead applying the 'exceptional circumstances' principle.[86] The ALRC advocated that the impact of sentencing on family and dependants should be taken into consideration *without* the need to establish exceptional circumstances in federal cases.[87] In doing so, the ALRC recognised that:

> *An offender's family and dependants may be seen as indirect 'victims'. They may suffer adverse consequences as a result of the sentencing of the offender, through no fault of their own.*[88]

The ALRC stressed that the consideration of family and dependants does not require that it outweigh other sentencing considerations:

> *[T]he weight attached to this factor should always be a matter for the court's discretion. For example, it may be that certain effects on family and dependants would not warrant a modification in the sentence or order imposed. On the other hand, other impacts may be sufficiently serious—even if not strictly exceptional—to warrant a modification in the sentence or order when considered in the light of other relevant factors.*[89]

The exceptional hardship common law approach for sentencing (for both state and federal offences) has been followed in New South Wales (until recently), Queensland, Victoria, and to a limited extent in South Australia and Western Australia.[90] The only jurisdiction which has legislatively overridden the common law is the Australian Capital Territory, which has replicated the wording of the Commonwealth Crimes Act in its sentencing legislation[91] and differentiated itself from other jurisdictions by not applying the exceptional hardship approach when sentencing state or federal cases.[92]

A 2016 study of 85 Australian sentencing appeal cases where hardship to the offender's dependent children was considered found offenders with children with serious disability or medical conditions were more likely to be considered exceptional, while pregnancy and breastfeeding were not.[93] The research also found that the human rights of dependent children are rarely explicitly considered by Australian judicial officers.[94]

In a recent Queensland case (*Borchardt v Queensland Police Service*[95]), the sentencing magistrate was found on appeal to have failed to properly consider as potentially exceptional in the circumstances that the offender's family responsibilities included seven children under 10 and a nine-month old baby.[96]

Recently, the full bench of the New South Wales Court of Criminal Appeal concluded in *Totaan v R*[97] that decisions which have held that a court imposing a sentence for a *federal* offence may only have regard to hardship to a family member or dependant where the circumstances of hardship satisfy the description of 'exceptional' are 'plainly wrong' and should not be followed.[98] Similarly, the court held that authorities which have held that hardship must rise to the level of 'exceptional' before being given a specified weight or a substantial reduction of sentence have been wrongly decided and should not be followed.[99]

Consideration of the best interests of dependent children

Recommendation 18 of the former Anti-Discrimination Commission of Queensland's *Women in Prison 2019* report (ADCQ report) was that 'the Attorney-General takes steps to amend the [PS Act] to include the principle that the best interests of the child be a factor to be considered when sentencing a person with a dependent child.'[100] The ADCQ had previously made this recommendation in its 2006 *Women in Prison*

report, citing concerns that existing case law on sentencing of parents of dependent children does not fully recognise the principle in Article 3.1 of the United Nations Convention on the Rights of the Child (UNCROC).[101] Article 3.1 states that 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'[102]

In the 2008 Queensland case of *R v Chong; ex parte Attorney-General*,[103] Justice Atkinson felt there was 'a strong argument for the law reform recommended by the ADCQ' in its 2006 report, including in relation to Article 3.1 of the UNCROC, and observed that the best interests of the offender's dependent children fell within the PS Act provision requiring the court to have regard to 'any other relevant circumstance'.[104]

The *Bangkok Rules* stress that non-custodial sentences for pregnant women and women with dependent children should be 'preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.'[105]

Imprisonment as a last resort

Section 9 of the PS Act has been repeatedly amended in recent years to reflect community expectations of harsher sentences for offenders, including limiting the principle of imprisonment as a last resort. However, such amendments may contribute to increasing rates of female incarceration. For example, removing the application of the principle of imprisonment as a last resort for any offence involving violence may disproportionately impact First Nations women, who are more likely to be misidentified in domestic violence order proceedings[106] and may be subsequently charged with breaches involving resistive violence.

Recommendation 1 of QSAC's *Community-based sentencing orders, imprisonment and parole options* report was that Section 9(2)(a) of the PS Act be amended to insert a new principle to which courts must have regard in sentencing, which provides that a sentence that allows the offender to stay in the community *must always be considered* (subject to existing legislative exceptions).[107]

Sentencing First Nations Women

Throughout this report, the Taskforce has highlighted the overrepresentation of First Nations women in the criminal justice system and in prison as a significant issue. As recognised above, the PS Act requires that a sentencing court must have regard to submissions made by a CJG about particular matters relating to a First Nations offender's community, any cultural considerations, or available services or programs. The ALRC's *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* report (ALRC Pathways to Justice report) noted that the provision was intended to address the overrepresentation of Aboriginal and Torres Strait Islander peoples in custody, and the need for greater community-based, culturally-appropriate options. However, the report also noted some limitations of the provision, including that the provision relied on CJG submissions and that there was no requirement for the submissions.[108] The report recommended schemes for 'Indigenous Experience Reports' as well as the development of 'options for the presentation of information about unique systemic and background factors' that have an impact on First Nations peoples coming before the courts. This relates to the ALRC's consideration of 'Gladue specialist sentencing reports', which are 'intended to promote a better understanding of the underlying causes of offending, including the historic and cultural context of an offender.'[109]

In 2021, His Honour Judge Glen Cash QC delivered a speech on '*Customary law and the recognition of systemic disadvantage in the sentencing of First Nations persons*.'[110] In that speech, his honour discussed the *Fernando*[111] and *Bugmy*[112] principles, which relate to the consideration of systemic disadvantage and deprivation in the sentencing of First Nations peoples. His Honour challenged lawyers to give greater consideration to these issues, which have led to over-representation of First Nations peoples in the criminal justice system, and encouraged lawyers to become familiar with key resources relating to sentencing submissions for First Nations offenders, including the 'Bugmy Bar Book' produced by the New South Wales Public Defender's Office.[113] In consideration of the existing legislative provisions in Queensland, His Honour noted that 'There may be room for imaginative applications of section 9(2)(p) [of

the PS Act]. The phrase 'any cultural considerations' seems broad.' The Taskforce notes that, while certainly broad, there is no clear indication within the wording of section 9(2)(p) to encourage the consideration of systemic disadvantage or intergenerational trauma as relevant 'cultural considerations'. The formal recognition of these issues within the criminal justice system would be a useful step towards healing their consequences.

Improving the cultural capability of lawyers and judicial officers and their understanding and application of the principle of self-determination, together with community consultation, including through the CJGs, would also improve sentencing processes and outcomes for First Nations peoples. This should include recognising the diversity of Aboriginal tradition and Torres Strait Island custom and the need for individuals to have a say in the relevant application of culture to their lives. Any improvement to sentencing processes for First Nations peoples should involve consultation with them.

Taskforce findings

The Taskforce notes, as raised by some stakeholders, that the factors that a sentencing court can take into consideration are non-exhaustive and that courts can (and often do) consider many factors relevant to women and girls at sentencing. The Taskforce also acknowledges that any amendments to sentencing legislation risks further complicating the considerable task for judicial officers in weighing up all relevant factors at sentencing, and may even lengthen the sentencing process.

However, the Taskforce was concerned by what it heard from women and stakeholders about relevant factors such as victimisation history, trauma, and hardship to both women and their children not being presented to the courts, or not being adequately considered.

Gendered and other characteristics

The Taskforce found that women are at particular risk of suffering disproportionate hardship when sentenced to custodial sentences or sentences that are inappropriate to their circumstances, exposing them to future criminalisation. Sentenced women and girls are particularly disadvantaged where they:

- have dependent children
- are unable to be visited by their children while in custody
- are accommodated in a prison that is a significant distance from their home
- will receive limited family or financial support while in prison
- are vulnerable to harsh treatment in prison due to their other characteristics, such as their religion, First Nations status, disability or transgender status.

The Taskforce found that courts should consider the hardship that any sentence may impose on an offender, in consideration of their characteristics, including gender and sex. The Taskforce understands that hardship to an offender is regularly considered by the courts and is a recognised consideration at common law. However, providing for this consideration in the PS Act will ensure both that courts must consider an offender's characteristics and that defence lawyers and self-represented offenders will be directed towards making submissions about these factors.

In *Hear her voice 1*, the Taskforce recommended PS Act amendments to require a court, when sentencing an offender, to consider whether the impact of being a victim of domestic and family violence, including coercive control, on their offending behaviour is a mitigating factor. The government has supported this recommendation and committed to an amendment to provide for an explicit mitigating factor. The Taskforce further considers that histories or abuse and victimisation more generally are relevant factors in sentencing and should be reflected in the PS Act.

The Taskforce considered whether the PS Act should be amended to include specifically gendered considerations such as whether an offender is pregnant, breastfeeding or is the mother of young children. The Taskforce decided, however, that there was a risk that such a provision might exclude genuine caregivers who do not fall into these categories, including for example expecting adoptive parents, single father primary care-givers, kinship carers and mothers who cannot biologically give birth or breast feed (including transgender mothers). Instead, the Taskforce concluded that requiring courts to consider the

impacts on family and dependants will broadly protect women with children, pregnant women and other primary caregivers.

Effect on family and dependants

The Taskforce found that Queensland's sentencing principles do not currently reflect the circumstances and experiences of women as mothers or their children, nor the disproportionate impact that custodial sentences have on dependent children. This is particularly the case for First Nations families, and regional and remote families.

The Taskforce reiterates the sentiment expressed by the ALRC that offenders' families and children are indirect victims of the sentencing of their parents.[114] Sentencing courts should take into account the probable effect that any sentence or order may have on any of the offender's family or dependants. A legislative provision that mirrors section 16A(2)(p) of the Commonwealth Crimes Act for state criminal offences would ensure consistency in legislative requirements between federal and state sentencing in Queensland.

The Taskforce considers that an amendment of this kind with a clear legislative intent to override the common law 'exceptional circumstances' test for consideration of hardship to third parties will reduce the likelihood of women with dependent children serving time in prison and being separated from their children and families.

The Taskforce hopes that this will result in an increased use of non-custodial sentences for mothers, where they are appropriate.

Best interests of a dependent child

The Taskforce considered recommending a provision requiring a court to have regard to the best interests of a dependent child of an offender. The Taskforce decided against making a recommendation of this nature, noting that determining what is in a child's 'best interests' is a complex and nuanced process, often requiring additional evidence. A sentencing court may be unable to make this determination without hearing submissions and evidence from other parties (for example the child's other parent, carer or a child protection authority). The Taskforce was concerned this may result in delays, expense and could expose children to intrusive questioning. There is also potential for inconsistency with other decision makers and courts in other jurisdictions that are required to determine a child's best interests. A consideration by sentencing courts of the 'probable effect' on families and dependants, rather than requiring a consideration of 'best interests' will avoid potential difficulties which may arise if the court is required to determine what is in the best interests of a particular child. In making this finding, the Taskforce notes that sentencing courts can, and often should, have regard to the best interests of children when considering 'any other relevant circumstance' in accordance with the UNCROC.[115]

Cultural considerations

First Nations women continue to be significantly overrepresented in the criminal justice system. As outlined in Chapter 3.2, they are simultaneously more likely to be impacted by the common drivers of women's offending, and be additionally impacted by the impacts of intergenerational trauma, racism, colonisation and systemic disadvantage. The Taskforce was of the view that section 9(p) of the PS Act should be amended to require courts to consider submissions made by a CJG that are relevant to cultural considerations that include the impact of systemic disadvantage and intergenerational trauma on the offender. Another potential amendment would be to require this consideration if otherwise established on the evidence, even in circumstances where no CJG submission was made.

Taskforce recommendation

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.

Implementation

The recommended amendments to section 9 of the PS Act should be developed in consultation with heads of jurisdiction, legal stakeholders, support services and First Nations peoples. A draft consultation bill should be circulated for comment before these amendments are introduced to Parliament.

It is intended that the requirement for courts to consider impacts on family and dependants be drafted broadly enough to apply to future dependants, including babies that will be born in prison if a woman receives a custodial sentence. The intent to override the 'exceptional circumstances' test should also be explicitly addressed in the provision or explanatory notes.

The drafting of the amendments should ensure that they also apply to girls. The Taskforce is of the preliminary view that equivalent amendments to the YJ Act may not be required because a court sentencing a child under the YJ Act must have regard, subject to the Act, to the general principles applying to the sentencing of all persons.[116]

In defining family and dependants, the Taskforce notes that the Commonwealth Crimes Act provision defines these terms. In drafting a definition in the Queensland context, it should be ensured that definitions of family are culturally inclusive, including to recognise Aboriginal and Torres Strait Islander kinship.

In amending section 9(2)(p), consideration should be given to whether factors relating to any impacts of systemic disadvantage and intergenerational trauma on First Nations offenders is a relevant consideration and may be taken into consideration by a court, however that information is placed before the court. First Nations peoples should be consulted to inform the drafting of this amendment.

Human Rights considerations

A significant number of rights are relevant to sentencing considerations, including the right to recognition and equality before the law (section 15), right to privacy and reputation (section 25), right to the protection of families and children (section 26), cultural rights (sections 27 and 28) right to liberty and security of person (section 29), and right to humane treatment when deprived of liberty (section 30).

Section 26 of the *Human Rights Act 2019* provides that 'families are the fundamental group unit of society and are entitled to be protected by society and the State', and that 'every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child'. These rights are particularly relevant to the incarceration of mothers and the impact this has on dependent children. It is appropriate, given the commencement of the *Human Rights Act 2019*, for Queensland to reconsider its approach to sentencing offenders with dependants in accordance with the rights of families and children (s26).

As noted above, article 3.1 of the UNCROC states that 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'. However, it could be argued that the sentencing of a child's parent is not an action concerning the child. This article is generally understood to mean in decisions that impact on a child's life and where there are competing interests and rights (for example, parental rights) the best interests of the child prevail.

Human rights promoted

This recommendation, in improving the gender-responsivity of sentencing considerations and the consideration of hardship, abuse, trauma and impacts of sentences on families will promote those rights that are limited when women and girls receive sentences that are inappropriate to their circumstances.

Human rights limited

As these factors are currently able to be considered, specifically listing hardship and victimisation history would not limit any human rights. Instead, such an amendment would promote the right to liberty and security of person by supporting the appropriate sentencing of vulnerable persons. Requiring consideration of families and dependants is also not expected to limit any human rights, as the weight given to such considerations will depend on the seriousness of the offending and other mitigating and aggravating factors.

Evaluation

The recommended amendments should incorporate a legislative review after 5 years.

Non-custodial sentencing options for women

Background

This section considers the use and availability of non-custodial sentencing options for women. It does not give detailed consideration to non-custodial sentencing options for girls, in recognition of the different sentencing regime contained in the YJ Act and the greater flexibilities and non-custodial sentencing options currently available for girls.

Current position in Queensland

As outlined in Chapter 3.1 and earlier in this chapter, the vast majority of women sentenced in Queensland receive non-custodial sentences. However, women are increasingly being sentenced for short periods of imprisonment,[117] and the number of women in prison is increasing. In Queensland, the proportion of incarcerated people who are women is noticeably greater than the national average. In 2021, women made up 9.3% of Queensland's total prison population, compared to 7.7% Australia-wide.[118]

Aboriginal and Torres Strait Islander women experienced the highest increase in imprisonment between 2005-06 and 2018-19. Cases resulting in imprisonment for Aboriginal and Torres Strait Islander women more than tripled (from 178 cases in 2005–06 to 576 cases in 2018–19) during this period.[119] The ADCQ report identified the over-representation of First Nations women within the female prison population as a serious concern, with over one third (35%) of women in prison identifying as Aboriginal and Torres Strait Islander.[120]

The Queensland Productivity Commission's *Inquiry into imprisonment and recidivism* (QPC report) found that Queensland's increase in imprisonment rates is not the result of an increase in crime. Instead, drivers of increased imprisonment included increased policing, the propensity of police to use the court system instead of other options, the imposition of prison sentences rather than other sentencing options, and the rising proportion of people on remand unable to obtain bail.[121] Higher recidivism rates were also a factor,[122] suggesting prisons are increasingly ineffective as places of rehabilitation.

A recent study into the imprisonment of women in Victoria has suggested that, rather than being used as an option of last resort, prisons were 'increasingly functioning as a substitute for social and community infrastructure'.[123] Some may consider that prison can sometimes act as a form of respite, or as a circuit-breaker, for women with chaotic lifestyles or living in danger. However, the reality is that imprisonment can significantly impact a woman's relationships with her family and on her social and economic circumstances upon release, and is seldom helpful.[124]

Current sentencing options

As outlined above, custodial options for women in Queensland include actual imprisonment, suspended sentences, and intensive correction orders. Non-custodial options include fines, probation, good behaviour bonds, and community service orders.[125] More information about some of these sentencing options is provided below.

Intensive correction orders

An intensive correction order (ICO) is a sentence of imprisonment of up to one year or less ordered to be served in the community under supervision.[126] The offender must comply with strict conditions, including reporting twice a week to an authorised corrective services officer, taking part in counselling and other programs as directed, and performing a certain number of weekly community service hours. The offender must agree to the order and to comply with its conditions. If they do not comply with the conditions, a court may revoke it and order the person to serve the remaining period of the sentence in prison.[127] ICOs are a very uncommon sentencing option,[128] and their use has declined with the introduction of court ordered parole.[129]

Court ordered parole

Court ordered parole was introduced in Queensland in 2006. The date of release set by the court can be any day of the sentence.[130] Some sentenced people may be released on court ordered parole (and subject to parole conditions) on the day of their sentence. However, this also means that any breach of court ordered parole risks that the person may be placed in custody.

Suspended sentences

A suspended sentence is a term of imprisonment of 5 years or less, suspended in full or in part for a period of up to 5 years.[131] If the offender commits an offence punishable by imprisonment while serving a suspended sentence, the court may extend the sentence, or order the offender to serve all or part of the sentence in prison.[132] Non-indigenous women are most likely to receive a wholly suspended sentence.[133] First Nations women, in contrast, are less likely to receive a wholly or partially suspended sentence than both non-indigenous men and women.[134]

Probation

A probation order is an order between 6 months and 3 years served in the community with monitoring and supervision. People sentenced to probation are required not to break the law and to meet other conditions set out in the order.[135]

Proposals to amend Queensland's sentencing options

In 2019, QSAC delivered its *Community-based sentencing orders, imprisonment and parole options final report* (the QSAC Report).[136] The report made 74 recommendations to improve intermediate sentencing options and deliver better sentencing outcomes. This included recommendations to:

- amend sentencing legislation to require the court to consider a community-based order
- introduce a new flexible Community Correction Order (CCO) with a maximum term of 3 years to replace probation, community service, graffiti removal and eventually ICOs
- retain ICOs initially with a view to repeal subject to monitoring and analysis of other reforms
- retain suspended sentences.[137]

The Queensland Government is yet to formally respond to the recommendations of that report. However, in its response to the QPC report, the Government noted that 'opportunities to expand sentencing options will be explored in the context of QSAC's *Community-based sentencing orders, imprisonment and parole options final report*. QPC's recommendations complement the work of QSAC'.[138]

Community Correction Orders

CCOs are a single form of flexible intermediate community-based sentencing orders that enable judicial monitoring as a condition of the order.[139] A judicial monitoring condition requires an offender to reappear at a time or times directed before the court for a review of compliance with the order (for the period of the order or lesser period).[140] In contrast to ICOs, CCOs are a non-custodial sentencing option, and are not treated at law as being a term of imprisonment served in the community. The benefits of CCOs include that they can be tailored to individual offender needs, combine punitive and rehabilitative functions and support continued engagement with the community.

The QSAC report acknowledged that, to be effective, community-based sentencing orders must be properly funded, including for mechanisms such as pre-sentence reports, judicial monitoring, supervision of offenders and treatment in the community.[141] Pre-sentence reports are discussed below.

Court based drug diversion

A significant number of women in prison are serving sentences relating to drug offences. The Australian Institute of Health and Welfare has also reported that women in prison experience drug and alcohol dependence at higher rates than men, and that nearly three-quarters (74%) of surveyed female prison entrants reported having used illicit drugs in the 12 months before entering prison.[142]

The Drug and Alcohol Assessment and Referral (DAAR) is available for adults as a bail condition or as part of a condition of their recognisance order (good behaviour bond) on sentence. The program is accessible through all Magistrates Courts in Queensland,[143] and may be provided over the phone if there are no local service providers.[144] Offenders are required to complete a one-off course involving a drug and alcohol assessment, the provision of information about treatment options provided by prescribed service providers funded by Queensland Health, and counselling and education about the use of drugs and alcohol. The DAAR course provides education on drug and/or alcohol use, assesses participants to provide them with a better understanding of their own substance use and can either provide, or refer participants to another specialist service, for intensive treatment and support, if they are assessed as drug and/or alcohol dependant.[145] The DAAR program is not specifically for drug offending, and is available to adults on any charge if a relationship between drug and/or alcohol use and offending behaviour is acknowledged.[146] If a DAAR course participant is assessed as drug and/or alcohol dependent, the course provider can refer them to more intensive treatment and support.[147]

The Illicit Drugs Court Diversion Program (CDP) aims to address defendants' drug use in its early stages and reduce further drug-related offending. It is available in all Magistrates and Childrens Courts in Queensland. The CDP program targets adults and young people who plead guilty to eligible minor drug offences. The court orders these offenders to attend a drug assessment and education session (DAES) as a condition of a recognisance order (good behaviour bond) imposed on sentence. The condition includes that the defendant attend and satisfactorily participate in the DAES and not attend under the influence of drugs and/or alcohol. DAES sessions can be conducted over the phone or in person, in either individual or group sessions.[148] The court refers youth offenders to attend a DAES by way of a verbal direction to attend on a stated date.[149]

How do other jurisdictions address this issue?

Community Correction Orders

In other jurisdictions (Victoria, Tasmania and New South Wales) CCOs have been introduced as part of new regimes that involved phasing out suspended sentences which offer no community supervision or support to often vulnerable and at-risk offenders. Conversely, England and Wales have retained suspended sentences in addition to community corrections orders, recognising that they can be effective for offenders

not in need of supervision or support. In Victoria, Tasmania, New South Wales, and England and Wales, community service and probation are effectively conditions of a CCO or equivalent order as opposed to stand-alone orders.[150]

In Victoria, Intensive correction orders, combined custody and treatment orders, community-based orders and home detention were also abolished in 2012, to be replaced by community correction orders.[151] Suspended sentences were phased out from 2011 to 2014.[152]

The Victorian Court of Appeal's guideline judgment on the proper use of CCOs — *Boulton v The Queen* (2014) - highlighted that one of the key features of a CCO is that it offers courts the best opportunity to promote the best interests of the community and of the offender and their dependants, simultaneously.[153]

To ensure that community corrections are meeting the needs of women, the *Correctional Management Standards for Women Serving Community Correctional Orders* were developed in Victoria. The standards provide specific guidance to correctional staff working with women. This includes requirements that women are placed in worksites that are appropriate to their physical and emotional health, caregiver requirements and their personal circumstances.[154]

In 2017, Corrections Victoria reported that 'involvement of women with community orders [had] substantially increased in recent years and at a rate that far exceeds the growth in women prisoner numbers'.[155] However, analysis by Victoria's Sentencing Advisory Council indicated that female offenders were 1.2 times more likely than males to contravene by non-compliance, although importantly not by further offending.[156] This suggests that women have greater difficulty complying with CCO conditions in Victoria, perhaps because of their family and other commitments.

Court based drug treatment and diversion

Information about specialist drug courts and drug treatment programs in other jurisdictions, such as a bail-based MERIT program in New South Wales, is outlined in Chapter 3.5.

Results of consultation

Women who have experienced the criminal justice system as accused persons and offenders

In meetings with women offenders in prison and those who had recently left prison, the Taskforce heard of the detrimental impact that short sentences of imprisonment had on their personal life and family. Women described losing their homes when they came into prison, having their possessions sold off or disposed of if they were in public housing,[157] losing contact with their children, and losing their employment.[158] Some women supported alternatives to prison sentences including home detention. Having to start again was a huge pressure for these women.[159]

Women in prison also raised concerns about mandatory sentences. For example, some women noted the impact of mandatory life sentences for murder on women who were co-accused with their partner (but did not actually harm the victim) or who killed their abusive partner.[160] Others commented that mandatory sentences for failing to stop a motor vehicle at the direction of police[161] (also known as evading police) were having a negative impact on young women:

'So many young women are here as a result of the mandatory sentencing (50 day mandatory incarceration for evade police). Just another child lost in the system.'[162]

Service system stakeholders

The Taskforce heard that custodial sentences appear to have a disproportionate impact on many women and their families.[163] Anecdotally, the Taskforce heard that imprisoned women are more likely than their male counterparts to be separated from their families and children by great distances (due to the locations and limited number of women's prisons in Queensland[164]), and are therefore less likely to receive visitors, and tend to have less financial support while in prison.[165]

Some stakeholder forum attendees felt there was a need for more community-based sentencing options that are suitable for women, particularly options that better respond to the needs of women or provide case management.[166] Some felt that court based drug diversion options were not sufficient to address addiction and violence issues.[167] Another concern raised was that community service orders are particularly difficult to complete when women have dependent children.[168]

Sisters Inside called for greater use of alternatives to imprisonment, including greater use of justice mediation or restorative justice conferencing, even for violent offences.[169] Sisters Inside further recommended the abolition of all mandatory sentences.[170]

Queensland Network of Alcohol and Other Drug Agencies' submission highlighted the need 'for responses that focus on addressing the broader social, cultural, and structural determinants of health, and prioritise alternatives to imprisonment, particularly for low-harm drug offences'.[171]

Ending Violence Against Women Queensland submitted:

> *Focus needs to be put on the justice system to stop First Nations women being charged or incarcerated in the first place. This may include diverting people from court to culturally safe community-led solutions based on justice reinvestment models This could include engaging with domestic, family and sexual violence services, drug and alcohol services, and other rehabilitation programs with holistic approaches.*[172]

Legal stakeholders

BAQ's submission noted the general lack of community based supervised orders that are available and the difficulties experienced by women in custody who are mothers of children or babies.[173] QLS supported consideration of wider sentencing options.[174] Queensland Indigenous Family Violence Legal Service recommended a review of current sentencing legislation and an investigation of alternative sentencing options, taking into account the impacts of prison on women who have children.[175]

LAQ submitted that 'short periods of imprisonment are counterproductive to rehabilitation, disrupt family connections and lead to poorer overall outcomes' and supported the development of 'innovative sentencing approaches or diversionary alternatives that maintain mother/child relationships, and connection to communities as a preference to custodial sentences.'[176] LAQ highlighted that currently ICOs and probation orders are managed by Queensland Corrective Services (QCS), which has limited ability to provide rehabilitation services directly or to deliver tailored assistance to vulnerable women. Compliance with ICOs is enforced rather than voluntary. LAQ suggests that a better model is one that encourages offenders to address the drivers of their offending before sentencing in a voluntary manner rather than through judicial oversight.[177]

LAQ also noted its opposition to mandatory sentencing:

> *Mandatory sentencing can also have disproportionate effect on women, particularly culturally and linguistically diverse and First Nations women. LAQ does not support mandatory sentence regimes. Mandatory sentences can reduce the sentencing court's ability to balance factors set out in s. 9 of the [PS Act] and to give appropriate weight to mitigating factors which are specifically relevant to women. The Serious Violent Offender scheme is an example of a mandatory sentence regime that impacts on the ability of the court to sentence on a case-by-case basis and to apply all of the relevant sentencing principles with full discretion.*[178]

Academic

Academics from Griffith Criminology Institute's Transforming Corrections to Transform Lives project called on the Queensland Government to 'provide more community-based options and direct resources to support women to remain in the community, recognising women's life histories of disadvantage, trauma and adversity, their maternal responsibilities, and cultural roles in communities.'[179]

Government agencies

QCS advised, in relation to QSAC's recommendations, that the introduction of a new CCO would represent a substantial reform including legislative changes and significant practice implications that would require additional investment from government. QCS considered that existing sentencing options have some flexibility and capacity to be tailored to an offender.[180]

QCS further noted that the QSAC recommendations 'included broader system implications, such as net-widening, pre-sentence risk assessments and court advice, offender-to-staff ratios, infrastructure to support additional conditions including in regional and remote areas, investment in appropriate programs and support services, and the ability to swiftly address escalating offender risk and enable swift breach action to ensure community safety'.[181]

Other relevant issues

Community-based sentencing for women

Women are rightly considered more promising candidates for community-based sentences. They have higher rates of successful completion of community based orders.[182] They are also more likely to successfully complete correction orders that meet their specific needs.[183] Noting that the majority of sentenced women prisoners in Australia are serving sentences for non-violent offences, some argue that the range and use of sentencing options that enable women to remain in the community should be expanded.[184]

The *Bangkok Rules* highlight the need to give priority to applying non-custodial measures to women who have come into contact with the criminal justice system, noting their gender-specificities. Rule 57 requires 'the development and implementation of appropriate responses to women offenders. It states that gender-specific options for diversionary measures and pretrial and sentencing alternatives shall be developed within Member States' legal systems, taking account of the history of victimization of many women offenders and their caretaking responsibilities.[185]

Economic and social benefits

The Australian Government Productivity Commission's (AGPC) *Australia's prison dilemma* research paper calculated the cost of imprisonment per prisoner in Australia at $330 per day, or $120,450 per year in 2021. In contrast, the AGPC calculated the costs of offenders subject to a community corrections order to be only $30 per day.[186] The AGPC found that even a small shift in the number of people diverted from prison onto a community corrections order could save Australia $45 million per year.[187] These figures would be even greater in 2022 due to inflation.

Increased options for non-custodial sentencing would likely be economically and socially beneficial, consistent with findings of both the Queensland and Australian Productivity Commissions in recent reports.[188] An Australian Institute of Criminology research report suggests there may be cost savings if offenders who are parents remain in the community with their children, resulting in reduced need for child protection intervention and costs on the community of other informal care arrangements, as well as the reducing the social costs of imprisoning parents, including negative social outcomes for children with parents in custody.[189]

Drug treatment and diversion sentencing options

The limitations of existing court-based drug treatment sentencing options are:

- the DAAR program is only available if the person has not completed two other DAAR courses within five years
- the CDP program is only available if a person has not been given two previous diversion alternatives (including police diversion) and if the person pleads guilty to all offences[190]
- both programs are very short (one session) and are not suitable to address drug dependency
- the Taskforce heard that lack of regional availability of drug diversion services (which these programs may refer to) is a significant issue.[191]

Women with dependent children have less opportunity to participate in drug diversion programs due to child caring responsibilities.[192] Parents cannot bring children to court-based drug diversion programs, with each program stating that child minding is not provided. This barrier has been somewhat addressed through phone-based options or shorter, less intensive programs.

First Nations peoples have disproportionately low participation in court based drug diversion programs. Research suggests this is because First Nations peoples are both more likely to be excluded based on criminal history and less likely to admit guilt due to a reluctance to talk to police.[193]

Gaps in drug responses in Queensland

As mentioned in Chapter 3.3, the Parliament of Queensland Mental Health Select Committee *Inquiry into the opportunities to improve mental health outcomes for Queenslanders* recently considered the availability of mental health and alcohol and other drug services in Queensland. The Committee found that Queensland's per capita spend on mental health services has been below the national average over the last decade, and that in 2019-20, Queensland had the lowest per capita expenditure on mental health services in Australia.[194]

The Committee recommended the Queensland Government increase funding and expenditure for mental health and alcohol and other drugs services, along with other accountability reforms. In relation to drug treatment, the Committee recommended that the Queensland Government review the CDP, and identify opportunities to strengthen the initiative.[195] The Committee further recommended the expansion of alcohol and other drugs inpatient services, 'step up, step down' and rehabilitation services, and community-based, bed-based care.[196]

An issue for court-based drug programs in Queensland is the vast gap between court based drug diversion for minor drug offences and the eligibility criteria for more intensive Queensland Drug and Alcohol Court Treatment Orders (Chapter 3.5). There are many people for whom a single session of drug diversion is unlikely to achieve outcomes, but for whom a treatment order would be inappropriate or unavailable. This gap could be addressed through the development of an intermediate court-based drug diversion option which is available more broadly than Queensland's single Drug and Alcohol Court (only available in Brisbane) for moderate level offending. The Taskforce was not well-placed to examine the potential benefits and value for money of the former option. CCOs with medium-term drug and alcohol treatment conditions are another option that could facilitate intermediate level drug treatment. This issue deserves further consideration either as part of, or following, the ongoing evaluation of the Queensland Drug and Alcohol Court, and in light of the Mental Health Select Committees report.[197]

The overrepresentation of First Nations women in prison

The ADCQ report recommended the Queensland Government take action so that low risk Aboriginal and Torres Strait Islander women are diverted from prison into non-custodial services. The ADCQ report also recommended placing greater focus on providing wrap-around community engagement and facilitated support to help all eligible low risk women commit to a managed plan that enables them to stay in the community, rather than being placed in custody.[198]

The ALRC's *Pathways to Justice* report recommended that, using the Victorian CCO regime as an example, state and territory governments should implement community-based sentencing options that allow for the greatest flexibility in sentencing structure and the imposition of conditions to reduce reoffending.[199] However, it has been noted that First Nations women tend to be underrepresented in the use of CCOs, suggesting that specific attention should be paid to providing a culturally appropriate form of order,

supervision and support that better meets the needs of First Nations women and considers and responds to their Indigenous status.[200] Another barrier for First Nations women in regional and remote communities receiving CCOs is the limited availability of suitable services, programs and Community Corrections offices and staff in those areas.

Mandatory penalties

As noted above, some stakeholders felt that mandatory penalties have a disproportionately gendered impact, particularly for women co-accused with men. Mandatory penalties in Queensland include mandatory life imprisonment for murder,[201] minimum sentences for evading police,[202] minimum sentences for certain weapons offences,[203] and minimum custodial periods before parole applications can be made under the Serious Violent Offences (SVO) scheme.

A review of the SVO scheme was recently undertaken by QSAC, with a final report released in May.[204] QSAC recommended the retention of a minimum non-parole period scheme for serious offences, but proposed a presumptive model instead of mandatory/discretionary SVO scheme. QSAC found that very few women are sentenced for offences declared to be an SVO, and was therefore unable to conduct any meaningful analysis of the cohort.[205]

The Taskforce was unable to determine the extent to which mandatory penalties are impacting women.

Taskforce findings

The Taskforce observed that short-term prison sentences are highly damaging for women and their families. They often disrupt housing, childcare and healthcare arrangements.[206] The Taskforce considered that increasing non-custodial sentencing options (and encouraging their use) will divert more women from prison, consistent with the *Bangkok Rules*.

The Taskforce is dismayed at the current underutilisation of non-custodial sentencing in Queensland. The Taskforce supports the proposed framework for CCOs recommended in the QSAC report. The research and expertise of QSAC had resulted in a robust proposal to reform intermediate sentencing options in Queensland. The Queensland Government must ensure that these recommendations are properly considered and publicly responded to. A robust CCO scheme also has the potential to support intermediate levels of drug treatment for a larger cohort.

The Taskforce notes that any increase in the use of non-custodial sentencing options will require significant investment in support services to provide programs that can be included as sentencing conditions. However, Queensland currently spends significantly less per head of population on prisons and community corrections and criminal courts than other Australian jurisdictions.[207] This lack of investment means that community-based sentencing options are currently less able to provide the support that women need to address their criminogenic needs in the community. As evidenced by the reports of the QPC and the AGPC, reducing imprisonment has the potential for significant costs savings.[208]

Consistent with the recommendations of QSAC, the Taskforce supports the introduction of CCOs in Queensland. Specifically, the Taskforce highlights the benefits in taking a gendered approach to sentencing women to community-based orders, including factoring in women's caring obligations when setting conditions and ensuring that appropriate services for women, including First Nations women, are available.

The Taskforce further notes that any implementation of CCOs in Queensland will require a significant expansion of Community Corrections (in QCS). The Taskforce is aware that Community Corrections staff are overloaded and that there is not state-wide coverage for the service. However, as above, bolstering this service in favour of increasing the number of women in prison is expected to result in costs savings.

Court based drug diversion

The Taskforce considered that expanding the availability of, and eligibility for, court-based drug diversion (to complement expanded use of police drug diversion, recommended in Chapter 3.3) could contribute towards reducing the number of women with convictions for minor drug offences, and ultimately the number of women in prison.

The Taskforce was of the view that increasing the number of times a person can access CDP for minor drug offences would help to reduce the risk of other sentences being imposed with the cumulative effect over time of increasing the risk of damaging short terms of imprisonment. Further, trialling court-based drug diversion without admission may help address issues for First Nations women in particular, who may be less likely to admit guilt. Culturally appropriate programs for First Nations women should also be available.

Many women the Taskforce heard from had long histories of minor drug offending. This meant they would no longer be eligible for court based drug diversion and had continued to offend after other non-custodial sentences such as fines. This meant that they were likely to serve multiple short prison sentences each time they were convicted of even relatively minor drug charges. This seriously disrupted their lives and their family's life.

The Taskforce found that there is merit in developing more intermediate drug treatment options that offer something more intensive than the court-based drug diversion options but less intensive (in terms of treatment and resources required) than the Queensland Drug and Alcohol Court which is only available to a very small number of women in Brisbane.

Taskforce recommendations

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 should 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:

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

Implementation

The Taskforce was advised that the implementation of the QSAC report has largely been considered by the Queensland Government to be a matter for QCS. However, the Taskforce considers that the infrastructure required to support an increased use of CCOs should be the responsibility of all criminal justice involved agencies. Government agencies must work together to bolster the delivery of services across the state that can meet the needs and conditions of persons sentences to CCOs.

Expanding the eligibility for, and provision of, court based drug diversion will rely, to some extent, on the availability of suitable drug and alcohol treatment services across the state. As noted by the Mental Health Select Committee, these services are very limited in Queensland, and require significant investment. The Department of Justice and Attorney-General should work in partnership with Queensland Health to implement this recommendation in order to expand the delivery of the programs. The Taskforce notes that this recommendation is a short-term solution to increase court-based drug diversion, which should be considered in connection to recommendations to increase police drug diversion. However, should the Queensland Government decide to review court-based drug diversion as recommended by the Mental Health Select Committee, the Taskforce suggests that consideration be given to intermediate court based drug treatment options.

Human Rights considerations

The rights engaged by these recommendations include the right to recognition and equality before the law (section 15), right to the protection of families and children (section 26), cultural rights (sections 27 and 28) right to liberty and security of person (section 29).

Human rights promoted

As noted above, Rule 57 of the *Bangkok Rules* requires the development and implementation of appropriate sentencing responses for women offenders. QSAC's report, if implemented, would support the rights of women in the CJS by expanding the use and suitability of community-based sentencing including the recommended CCOs. In turn, this would reduce the number of women receiving custodial sentences, promoting the rights of women and their children to the protection of families and children. It would also protect the rights of women, which are otherwise limited when they spend periods of time in custody, such as their rights to liberty and security of person, freedom of movement and expression, and cultural rights.

Rule 62 of the *Bangkok Rules* provides that 'the provision of gender-sensitive, trauma-informed, women-only substance abuse treatment programmes in the community and women's access to such treatment shall be improved, for crime prevention as well as for diversion and alternative sentencing purposes.[209] The rule takes account of the lack of adequate drug treatment programmes which are designed specifically for women and the challenges women face in accessing such treatment, including due to the lack of childcare facilities.[210] A recommendation to expand court-based drug diversion would support this rule.

As court based drug diversion options are currently sentencing options (recognisance orders), this option would also be compliant with other *Bangkok Rules* encouraging the use of non-custodial measures for women (Rules 57-62).

Expanding eligibility for the use of court-based drug diversion would protect the rights of women which are otherwise limited when they receive an inappropriate prison sentence that does not meet their treatment needs. It will also protect the rights of families and children by preventing family separation.

Human rights limited

Some may view QSAC's recommendations and the potential for increased use of community-based sentencing as a limitation on the right of the community to safety (security of person). The QSAC report was guided by a fundamental principle that any changes to existing community-based sentencing orders or new sentencing options should aim to reduce Queensland's prison population, while maintaining community safety.[211] QSAC noted that the impact of offences on victims of crime and broader community expectations are key considerations in determining the appropriate use of community-based sentencing orders.[212] Community safety in the use of community-based sentencing is also of significantly less concern for female offenders. As noted in the commentary to the *Bangkok Rules*, 'a considerable proportion of women offenders do not necessarily pose a risk to society and their imprisonment may not help, but hinder their social reintegration'.[213]

Expanding the number of times a person can access drug diversion may be viewed by some as potentially jeopardising community safety by enabling repeat drug offenders to remain in the community. However, as existing court-based drug diversion options relate only to low-level drug offending, and given the long-term benefits to community safety when a person is assisted to rehabilitate, this limitation is likely to be considered justifiable.

Evaluation

Any response to the QSAC report should be monitored and evaluated, consistent with QSAC's recommendations. Expanded court-based drug diversion should be monitored to determine if expanding eligibility is effectively diverting offenders from prison or other sentences.

Provision of information to sentencing courts

Background

Current position in Queensland

Throughout this chapter, the Taskforce has described the myriad of considerations and factors to be considered by courts in sentencing and has recommended additional factors that sentencing courts should be required to consider. Courts making sentencing decisions are guided by the information and evidence before them. This includes submissions by defence and prosecution, as well as any reports or expert evidence that is submitted.

Providing additional information to the court to support sentencing considerations may result in better sentencing decisions. For example, a court that is properly informed of a woman's history, trauma, family obligations, employment status and likelihood of reoffending may be more likely to sentence her to a non-custodial sentence, or indeed to not record a conviction if the offending is trivial.

Pre-sentence reports

A pre-sentence report (PSR) is a report prepared to help a court determine the appropriate sentence and includes information about an offender and matters such as an assessment of their suitability for certain types of orders. PSRs are usually written by QCS. Other types of reports may be prepared for the court to inform sentencing, such as expert reports prepared by psychologists and psychiatrists.[214]

LAQ may fund the preparation of PSRs for legally-aided clients in some limited circumstances.[215] PSRs funded by LAQ are prepared independently and therefore do not require the offender to be interviewed by QCS.

A sentencing court may order a written PSR to be prepared by QCS, to determine the suitability of community supervision,[216] and request the PSR include a psychiatric or psychological report and/or focus on a specific issue.[217] When required to do so, QCS must provide the report to the court within 28 days.[218] QCS advised that written PSRs are prepared by Community Corrections officers, typically take a few hours to complete. Preparation involves an interview with the offender, screening of the offender's history with QCS, and a review of relevant criminal history and the police court brief prior to the interview.[219] The completed PSR is provided to the court, defence and prosecution. QCS may also provide verbal advice to Magistrates Court sentencing hearings to give a broad assessment of an offender's suitability for a community-based order.[220]

QCS advised that dedicated court advisory services aim to increase the Court's confidence in sentencing offenders to community based orders through:

- providing timely, high quality, evidence-based advice regarding an assessment of an offender's risk to community safety and their capacity to undertake an order, including which orders are most suitable to avoid unnecessary returns to court for amendments to the order or order conditions
- providing advice and recommendations to the court for individual interventions and special conditions required to appropriately manage the offender in the community
- assisting the Court in making an informed decision on offenders' risk profile and the ability to access treatment and services in the community.

This assistance could be expanded to bail hearings where the offender is already under supervision of probation and parole, which may assist with reducing the number of prisoners on remand.[221]

QCS advised that 'by providing advice about community-based sentencing options and suitability of those options for a defendant, a defendant may be more likely to succeed on a community-based order and less likely to re-enter the criminal justice system'.[222] QCS' analysis of research on the impact and effectiveness of PSRs found clear outcomes for low-risk offenders, where the presence of a PSR led to less punitive

sentencing outcomes and more diversion than cases where there was no PSR. For high-risk offenders the presence of a PSR did not make a difference to sentencing outcomes.[223]

QCS also noted that culturally considered court advisory services may assist with diverting First Nations peoples,[224] potentially having an impact on overrepresentation.

Pre-sentence reports are underutilised and underfunded

Between 2016 and 2018, only a very small percentage (2.9%) of adult offenders in Queensland subject to community-based orders had a PSR prepared in their cases.[225] The Taskforce heard that PSRs are underutilised and that QCS is under resourced to provide them.[226]

QCS advised that Community Corrections currently has only two dedicated court advisory positions that service the Brisbane Magistrates Court on a full-time basis, and no other district offices are funded for dedicated court advisory activities.[227] The QSAC report recognised that QCS has a very limited ability to provide pre-sentence advice to courts outside of statutory requirements, and acknowledged that PSR preparation would need to be funded to support courts making the proposed new CCOs (discussed above). QSAC also found that 'requiring PSRs in all cases where the making of a CCO is contemplated would not be realistic or recommended in a jurisdiction such as Queensland with a dispersed population, even with the establishment of a new court advisory service'.[228]

Pre-sentence reports for girls

PSRs are utilised more often in youth justice proceedings. If a child is found guilty of an offence, under section 151 of the YJ Act the court may consider requesting Youth Justice to prepare a PSR about the child. The court may request that the PSR contain specified information, assessments and reports relating to the child or the child's family or other matters. The preparation of a PSR can delay the sentencing of a child. To help address this issue, 2019 amendments to the YJ Act now require a court to consider whether a PSR is the most efficient and effective way to obtain information relevant to sentencing the child before ordering one.[229] Amendments also made PSR requirements more flexible by enabling Youth Justice to either prepare a fresh PSR when ordered or to add further material to a PSR provided to a court in the preceding six months.[230]

Under sections 203 and 207 of the YJ Act, a court must ask for a report if it is considering sentencing a child to:

- an intensive supervision order
- a conditional release order or
- a detention order.

As the regime for PSRs in youth justice proceedings is well-established, the remainder of this section will focus on the use of PSRs when sentencing women.

Queensland Health Court Liaison Service reports

A sentencing court can be informed about any underlying mental health or intellectual impairment issues of the person being sentenced through a mental health assessment or report. The Queensland Health Court Liaison Service (CLS) provides medico-legal reports, upon referral, to all Magistrates Courts across Queensland. The CLS reports provide advice on a defendant's Fitness for Trial, and or Unsoundness of Mind at the time of the alleged offences. The reports inform Magistrates and assist in their consideration of utilising powers under the *Mental Health Act 2016* to adjourn and/or dismiss simple matters (higher courts do not have this power).[231] Queensland Health advised that in 2021, the CLS assessed and provided 200 Fitness for Trial and 600 Fitness for Trial and Unsoundness of Mind reports to Magistrates Courts in Queensland. The current wait time for the reports in South East Queensland is three months, and 6-12 weeks elsewhere.[232]

How do other jurisdictions address this issue?

The QSAC report outlined the role of PSRs in other Australian jurisdictions.[233] PSRs have a statutory basis in all states and territories.[234] PSRs are a key part of Victoria's CCO model, with a dedicated court advisory service set up to provide them. Reports are prepared by court assessment and prosecutions officers from Corrections Victoria.[235]

In New South Wales, a sentencing court must obtain a PSR before making an ICO, (unless satisfied it has sufficient information), and before making a community service work condition as part of an ICO or CCO.[236]

Results of consultation

Women who have experienced the criminal justice system as accused persons and offenders

As outlined earlier in this chapter, the Taskforce heard from women who did not feel that sentencing courts were informed about or adequately considered their circumstances.

Service system stakeholders

A frequent concern raised in stakeholder consultation forums was that PSRs are not often obtained for adult women and that these would be useful so that judges were better informed about complex relevant issues contributing to women's offending behaviour.[237] Some stakeholder forum participants noted insufficient funding for defence lawyers to obtain pre-sentence material on mitigating factors like domestic and family violence.[238]

Legal stakeholders

Some lawyers participating in stakeholder consultation forums recommended increasing funding to LAQ to engage independent professionals to prepare PSRs for legally aided women.[239] One lawyer said:

> *'It would be good to have more funding for pre-sentence reports for Magistrates Court matters. Legal Aid Queensland won't consider these for Magistrates Court. Then, by the time a person is in the District Court, they already have a criminal history.'* [240]

LAQ submitted that the diversity of First Nations women and girls' experiences would be better reflected and supported by PSRs presenting a full history and background of the person appearing before the Court. LAQ called for funding to be allocated (presumably to LAQ) for the preparation of those reports.[241]

LAQ also raised concerns about PSRs for girls, including delays in preparation and 'the lack of trauma-informed responses' in their preparation. LAQ felt that girls can be disadvantaged by the gaps in PSRs, including the absence of reference to physical and sexual abuse history. LAQ suggest:

> *There is no appropriate framework to ensure this information is given to courts without leading to re-traumatisation of the child. Even when a girl volunteers this information it doesn't necessarily appear in the report because the perpetrator of the abuse is given the right of reply – and that person is often a family member. If the abuse is denied, then it is not included in the report.*[242]

Other relevant issues

The risks of expanding court sentencing information

There are risks involved in expanding court sentencing information services. In other chapters in this part concerning women's experiences in prison, the Taskforce outlines significant concerns about QCS culture and attitudes to trauma. QCS staff told the Taskforce that QCS does not view trauma as a criminogenic need. In light of this, and consistent with the concerns raised by LAQ regarding youth PSRs, there are risks that PSRs may not be consistently prepared in a trauma-responsive way. Expanded use of PSRs may also disadvantage women if they are not prepared in a trauma-informed way and instead lead to harsher penalties. Sisters Inside raised this concern during the QSAC's intermediate sentencing options inquiry.[243]

QCS has acknowledged that PSR information 'may reduce the volume of offenders sentenced to community-based orders who are unlikely to succeed, for example as a result of responsivity issues'.[244] While it is important that offenders not be sentenced to community-based orders with which they cannot comply, judicial officers will need to be astute not to use them to impose harsher penalties than the offence warrants, simply because the offender is in need of support.

Taskforce findings

Expanded use of pre-sentence reports

The Taskforce considered that well-informed courts make better sentencing decisions. In order for sentencing courts to consider the factors recommended by the Taskforce, courts will need accurate information about these issues. While well-resourced offenders may benefit from privately-sourced expert reports on their circumstances and mental health, legally-aided offenders are unlikely to have access to such reports. Whether they will benefit from a QCS report is likely to depend on their personal circumstances and the empathy of the QCS writer. Offenders who are sentenced outside Brisbane may be less likely to benefit from the preparation of a PSR by QCS if suitable support services and probation officers are not available in their region.

The Taskforce found that the use and availability of PSRs should be expanded to support courts to identify and consider a woman's circumstances and for various sentence options. The expanded use of PSRs for women will assist judicial officers to take their criminal history and circumstances of their offending behaviour (including trauma and victimisation history), personal circumstances (including caregiving obligations) and suitability for various sentence options into account.[245] A PSR could also assist the court to understand the circumstances of an offender's children and take into consideration any potential impacts upon them.

Amendments to the PS Act should also allow for the court to request specific information from QCS, such as information concerning the offender's parenting responsibilities, domestic and family violence history or other circumstances, how suitable the offender is for particular community-based sentencing, and whether the offender would benefit from particular supports or rehabilitation in the community. Given that women are generally more likely to comply with and complete community-based orders,[246] and that such orders are ordinarily well-suited to women, the Taskforce anticipates that this PSR information will encourage sentencing courts to make more non-custodial orders.

The Taskforce discussed the risks of expanding PSRs including that they could cause uncertainty and delays with women spending longer on remand. The Taskforce acknowledged that requiring sentencing courts to consider ordering a PSR in certain circumstances will also require an expansion of resources to support their preparation. The QSAC report noted that the preparation of PSRs would require additional investment for both the agency required to do this work and the justice system, given the potential impact on courts.[247] However, the Taskforce felt there was a compelling economic argument in favour of funding the expansion of PSRs because the cost savings in reduced prison sentences (which cost significantly more per day than community-based orders) would be quickly recouped.

The Taskforce considered whether the use of PSRs may result in 'net-widening' if PSRs result in a court becoming aware of aggravating, rather than mitigating factors, which could support a custodial, rather

than a community-based, sentence. However, the Taskforce concluded that ensuring a sentencing court is aware of all circumstances relevant to sentencing will best support appropriate sentencing, whether that be better protection of the community or better responsivity to offenders' circumstances. It is the best way for courts to maintain community confidence in the difficult and controversial area of sentencing offenders.

The Taskforce agreed that, as part of the expansion of PSRs, QCS would need to build its capacity to provide a trauma-informed and culturally-safe service for the preparation of PSRs.

Taskforce recommendations

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).

Implementation

Legislative amendments should require a court to consider ordering a PSR, and should enable the court to request specific information from QCS. This provision should also allow for, and formalise for consistency, the existing practice of verbal reports provided by QCS.

Those QCS officers preparing PSRs should ideally have psychology or social work qualifications, and receive appropriate training on interviewing vulnerable offenders in a trauma-informed way. The Taskforce considers that QCS should plan for the sustained expansion of this service. Noting the significant need for expansion and improvement of QCS' capacity and capability to prepare PSRs, the Taskforce considers that the legislative amendment should be delayed for two years to allow QCS to develop the recommended plan and capacity.

In order to reduce the administrative burden of producing PSRs, QCS might consider efficiency amendments similar to those made to the YJ Act to allow QCS to decide whether to report in writing or verbally, and whether to prepare a new PSR or to add additional information to an existing PSR prepared within the last six months.

Human Rights considerations

Human rights promoted

Improving the advice provided to the court to assist in the sentencing of women will promote a more gender-responsive and trauma-informed approach to sentencing. This is consistent with Rule 61 of the *Bangkok Rules* that 'when sentencing women offenders, courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women's caretaking responsibilities and typical backgrounds'.

Supporting courts to be better informed about a woman's risk of re-offending, their history and circumstances will protect the rights of women by increasing their likelihood of receiving a just sentence. Appropriate, well-informed sentencing of women offenders protects the rights that are otherwise limited

when a sentence of imprisonment is imposed, including rights to liberty and security of person and the protection of families and children.

Human rights limited

This recommendation does not limit human rights.

Evaluation

QCS should monitor the expanded use of PSRs to ensure they do not result in increased imprisonment.

Conclusion

The Taskforce heard the voices of women and girls telling us that they need more help and support so that they can rehabilitate and re-establish themselves within their families and the broader community.

Women who offend often do so in the context of past and current adverse life events such as victimisation, trauma, disadvantage and challenging circumstances. By the time they are sentenced, many will have taken steps to address their offending or to turn their lives around. Others may be able to do so, with incentive, support and assistance. Courts sentencing women and girls should have regard to their circumstances, including the hardship that a custodial sentence may impose on them or their families. Non-custodial sentences, which allow women and girls to address their offending and make amends within the community, should be preferred. Prison should be a last resort. The Queensland Government should implement recommended reforms to introduce CCOs. To support this reform, and to ensure courts are provided with the necessary information to properly consider sentencing options, the use of PSRs should be reinvigorated through legislative amendments and a plan to increase QCS' capability and capacity to provide them in a way that is trauma-informed and gender-sensitive. It is likely that the costs saved from fewer low level women offenders in prison, and from preventing the health and social costs of separating women from their families will soon cover the costs of this initiative.

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[1] Queensland Sentencing Advisory Council, *Queensland Sentencing Guide* (2021) 4.
[2] Queensland Sentencing Advisory Council, *Queensland Sentencing Guide* (2021) 4.
[3] *Penalties and Sentences Act 1992,* s 9.
[4] *Penalties and Sentences Act 1992,* s 9(1).
[5] Penalties and Sentences Act 1992, s 9(2A).
[6] *Penalties and Sentences Act 1992,* ss 9(2A), 9(4), 9(7A).
[7] *Penalties and Sentences Act 1992,* s 9.
[8] *Penalties and Sentences Act 1992*, s 9(2)(r); Queensland Sentencing Advisory Council, *Queensland Sentencing Guide* (2021) 4, 16.
[9] *Penalties and Sentences Act 1992,* s 9(3).
[10] Queensland Sentencing Advisory Council, Queensland Sentencing Guide (2021) 23-26.
[11] Queensland Sentencing Advisory Council, *Queensland Sentencing Guide* (2021) 23-26.
[12] *Youth Justice Act 1992*, s 150(2).
[13] *Youth Justice Act 1992*, s 150; sch 1.
[14] *Youth Justice Act 1992,* s 175*; Queensland Sentencing Council, Guide to the sentencing of children in Queensland* (2021) 30.
[15] *Youth Justice Act 1992,* ss 203, 207.
[16] Between 2005–06 and 2018–19 women and girls accounted for 23.5% of all sentenced cases in Queensland - Data from a forthcoming report by the Queensland Sentencing Advisory Council on the sentencing of women and girls.
[17] Note: 1) Excludes cases where the Aboriginal and Torres Strait Islander status was unknown.
2) Cases involving traffic and vehicle regulatory offences (ANZSOC Division 14) and dangerous or negligent driving of a vehicle (ANZSOC division 041) were excluded due to data quality issues in recording Aboriginal and Torres Strait Islander status for these offences. - Data from a forthcoming report by the Queensland Sentencing Advisory Council on the sentencing of women and girls.
[18] Data from a forthcoming report by the Queensland Sentencing Advisory Council on the sentencing of women and girls.

[19] Data from a forthcoming report by the Queensland Sentencing Advisory Council on the sentencing of women and girls.
[20] Data from a forthcoming report by the Queensland Sentencing Advisory Council on the sentencing of women and girls.
[21] Karen Gelb, Nigel Stobbs and Russell Hogg, *Community Based Sentencing Orders and Parole: Literature Review* (QUT for Queensland Sentencing Advisory Council, 2019) 112; see also: Michael S. Caudy et al, 'Jail versus probation: A gender-specific test of differential effectiveness and moderators of sanction effects (2018) 45(7) *Criminal Justice & Behavior* 963-964.
[22] *Penalties and Sentences Act 1992*, s 9(2)(f).
[23] National Judicial College of Australia, Hardship to the offender, Commonwealth sentencing database (web page) https://csd.njca.com.au/principles-practice/general_sentencing_principles/s16a_specific_relevant_factors/hardship/ citing: Muldrock v The Queen [2011] HCA 39, [19] (French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ); York v The Queen [2005] HCA 60, [23] (McHugh J); R v Sellen (1991) 57 A Crim R 313, 318 (Gleeson CJ, Kirby P and Campbell J).
[24] National Judicial College of Australia, Hardship to the offender, Commonwealth sentencing database (web page) https://csd.njca.com.au/principles-practice/general_sentencing_principles/s16a_specific_relevant_factors/hardship/
[25] *Penalties and Sentences Act 1992* ss 67(1)(c), 135(1)(c).
[26] *Penalties and Sentences Act 1992* s 9(2)(p).
[27] *Youth Justice Act 1992*, s 150(1)(i).
[28] For example: *Sentencing Act 2017* (SA) s 10(2); *Crimes (Sentencing) Act 2005* (ACT) s 10(2); *Crimes (Sentencing Procedure) Act 1999* (NSW) s 5(1).
[29] *Crimes (Sentencing Procedure) Act 1999* (NSW) s 5(2).
[30] *Crimes (Sentencing Procedure) Act 1999* (NSW) s 5(2).
[31] *Sentencing Act 1991* (Vic) s 5(4).
[32] The principle in s 5(4) is subject to ss 5 (2G), (2GA) and (2H).
[33] *Crimes (Sentencing) Act 2005* (ACT) s 33)(1)(m).
[34] *Sentencing Act 1995 (WA)* s 46.
[35] *Crimes Act 1914* (Cth) s 16A(2)(m).
[36] *Offender Rehabilitation Act 2014* (United Kingdom), s10.
[37] *Crimes Act 1914* (Cth) s 16A(2)(p).
[38] *Crimes (Sentencing) Act 2005* (ACT) s 33(1)(o).
[39] *Sentencing Act 2017* (SA) ss 86(h) and 105(1)(h)).
[40] *Sentencing Act 2017* (SA) ss 114(2)(b), 115(8), 120).
[41] *Sentencing Act 1991* (Vic) s 83F(2).
[42] *Crimes (Sentencing Procedure) Act 1999* (NSW) s 100A.
[43] Meeting with women at Sisters Inside West End Office, 11 April 2022.
[44] Meeting with women at Sisters Inside West End Office, 11 April 2022.
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Chapter 3.7: Health, wellbeing, prenatal and postnatal care and birth experiences in prison and detention

Women's health and wellbeing needs are not being consistently met in prison. Health services can be inadequate and many women feel that their concerns are minimised or dismissed.

There is significant inconsistency in the quality of care that women in prison are receiving during pregnancy, birth, and after the birth of their babies. Some women are able to have their young child stay with them in prison. Responsibility for meeting the health, wellbeing and care needs of these children is unclear.

Health and wellbeing

Background

It is widely accepted that prisoners, and women in prison in particular, have greater health needs than many others in the general population.[1] A 2020 report by the Australian Institute of Health and Welfare, *The health and welfare of women in Australia's prisons,* considered data collected over two weeks from women entering prison across all states and territories, except for New South Wales. It found that fewer than 1 in 5 entrants (18%) rated their physical health as very good to excellent, while 2 in 5 (40%) reported their health as fair to poor. More than one-third (36%) of female prison entrants reported having been diagnosed with a current chronic condition.

People with disability are at increased risk of poverty and social exclusion. They often have complex health and social needs, and experience barriers to accessing health and social services. People with disability are more at risk of incarceration and, without adequate support, of reoffending. Interrupting care also puts those with disability at risk of further incarceration.[2]

Nearly all forms of disability are more common among people in prison than the general population. A study of prisoners across Queensland estimated 1 in 10 had an intellectual disability – inclusion of cognitive and psychiatric impairment dramatically increases the proportion with disability.[3]

Although First Nations people in prison are more likely than non-Indigenous prisoners to experience a disability, their disability is less likely to be identified. Among prisoners with disability, those who identify as First Nations peoples are less likely to have received disability services before incarceration.[4]

A 2018 report by Human Rights Watch, *I Needed Help, Instead I Was Punished* (the Human Rights Watch report), found that 'prisoners with disabilities are viewed as easy targets and as a result are at serious risk of violence and abuse, including bullying and harassment, and verbal, physical, and sexual violence'.[5]

In 2011, the Royal Australian College of Physicians (RACP) developed a policy for the health and wellbeing of incarcerated adolescents. The policy notes that 'incarcerated young people are among the most vulnerable people in our community, but their health is rarely seen as a priority. This is despite the fact that there is now increasing evidence that their health needs are greater than adolescents in non-custodial settings. The RACP recognised that incarcerated adolescents are more likely to experience poorer health and life outcomes and disproportionately high levels of disadvantage over that of the general population.'[6]

Current position in Queensland

Under section 263 of the *Corrective Services Act 2006* (CS Act), the Commissioner of Queensland Corrective Services (QCS) is responsible for the safe custody and welfare of all prisoners. Section 263(1) of the *Youth Justice Act 1992* (YJ Act) states that the Director-General of Youth Justice is responsible for the safe custody and wellbeing of children detained in detention centres.

Queensland Health (QH) is responsible for providing health services for people in all correctional centres in Queensland under a Memorandum of Understanding with QCS.[7] Medical care in detention centres is also

provided by Youth Justice in Department of Children, Youth Justice and Multicultural Affairs (DCYJMA) in partnership with QH.[8]

The current standards for prisons in Queensland are contained in the *Healthy Prisons Handbook* (the Handbook), developed by QCS in 2007. The Handbook sets out a number of detailed standards of performance required to be met by correctional centres. It also outlines the inspection process employed by the Office of the Chief Inspector within QCS in applying the 'Healthy Prison Test'. Key requirements include that:

- prisoners are held in conditions that provide the basic necessities of life and health, including adequate air, light, water, exercise in fresh air, food, bedding and clothing
- prisoners' entitlements are accorded them in all circumstances, without their facing difficulty
- health care is provided to the same standard as in the community.[9]

The Handbook does not specifically address the needs of women but does include requirements for pregnant women and standards for mothers with their children in prison (standard 11).[10]

There are no minimum standards for the management of girls in detention under the YJ A*ct*, however, a number of principles relating to children's rights and needs in detention must be complied with. Youth Justice applies the *Australasian Juvenile Justice Standards* for detention centres.[11] These Standards are not gendered.

Prison accommodation

Whenever practicable, prisoners should be provided with their own cells,[12] and remanded and sentenced prisoners should not be placed in shared accommodation together.[13] Prisoners who require high levels of supervision, management and monitoring are those considered to be at high risk, or risk of escaping (or attempting to escape), and those who are serving the initial portion of a lengthy period of imprisonment. They are generally accommodated within secure cells or blocks. Prisoners who require less oversight and display good behaviour and self-management may be placed in residential accommodation – a less-secure setting within the prison.[14]

Detention units accommodate prisoners (in separate confinement) when they are subject to a safety order or have committed a breach of discipline and have been ordered to undergo a period of separate confinement.[15] Some detention unit cells are 'non-powered'. Non-powered cells contain no power points, which prevents access to items such as televisions, and sometimes there is no running water.[16]

Prisoners can be admitted to a safety unit if the prisoner:

- is assessed as being at a level of risk of self-harm or suicide requiring close monitoring and intensive intervention that cannot be provided in the mainstream corrections system
- has made a suicide attempt and is in need of close monitoring and intensive intervention and cannot be managed in the mainstream corrections system
- has self-harmed and is in need of close monitoring and intensive intervention and cannot be managed in mainstream accommodation
- is considered at risk of harming others and requires specialised confinement and safety intervention.[17]

Under the *Corrective Services Regulation 2017*, prisoners in separate confinement (including detention and safety units) must have access to water, a toilet and shower facilities, be given bedding that is comparable with standards in other units, given appropriate clothing for the conditions, and given the opportunity to exercise in fresh air for at least two daylight hours per day (unless medically exempted).[18] The Taskforce observed that 'exercise yards' attached to detention cells in the women's prison at Southern Queensland Correctional Centre (SQCC) are small, caged areas (roughly the size of the cell itself) – some contain showers.[19]

As noted in Chapter 3.4, women detained on remand are often held in the same prison or work camp as sentenced women.[20]

Youth detention centres

Detention centres are to provide for children's needs including, meals, clothing, shoes, bedding, toiletries and books for school. A child should have their own room (if possible), with a bed, toilet, shower, desk and shelf. Room sharing can occur and necessitates overnight supervision.[21]

Boys and girls will always be accommodated in separate bedrooms and, wherever possible, in separate sections of the detention centre.[22]

Children in detention receive a small weekly allowance from the government (jointly funded by Commonwealth and state governments). Deposits can also be made into their trust accounts.[23] Children on remand in detention centres are generally not separated from sentenced children.

Wellbeing and medical care – women

Hygiene

Women in prison are provided with basic amenities and hygiene products free of charge. These include toothbrushes, razors, soap, toilet paper and sanitary products. The Taskforce understands that other basic products, such as shampoo, are provided upon admission but are not replenished by QCS. This means that women must restock these essential items from the 'buy up list' using their own funds.[24] Women receive a small hygiene allowance but must otherwise earn their money through employment within prison or receive outside financial support. QCS also provides clothing and footwear upon admission.[25]

Nutrition

All prisons are required to deliver the approved *State-wide Prisoner Menu* to ensure that prisoners receive adequate, low allergen, nutritionally balanced meals, from a menu developed in consultation with a registered dietitian.[26] A prisoner who wishes to obtain alternative food options based on cultural or religious reasons must apply through the General Manager of the prison.[27]

Medical

QH is responsible for funding and coordinating the provision of prisoner health services in custody and in QCS facilities, with services provided by relevant Hospital and Health Services (HHSs) including:

- directly providing primary health care services (relating to general health care such as the promotion of health, early diagnosis of disease and disability and treatment and prevention of disease) at the relevant QCS facility
- coordinating the provision of specialised health care services to prisoners (including, mental health services, dental, optometry, radiology, pathology, dietary and sexual health) at the relevant QCS facility
- providing incident reports to the General Manager of the relevant QCS facility
- providing service performance reports and information to the Office for Prisoner Health and Wellbeing within QH.[28]

QCS and QH adopt a shared management approach for prisoners with disability, aged care needs or palliative care needs to ensure their needs are appropriately managed while in a corrective services facility.[29] Governance arrangements include the Prisoner Health and Wellbeing Leadership Group that comprises senior representatives from QH, HHSs and QCS.

The Office for Prisoner Health and Wellbeing, established in 2019 within QH, has implemented a state-wide approach to governance of prisoner health, to ensure accountability and a means to resolve issues both at a state and local level. This Office was established in response to the *2018 Offender Health Services Review*.[30] The Office sits within Clinical Excellence Queensland (CEQ)[31], with overall support provided by the Office of the Deputy Director-General, QH. CEQ partners with health services, clinicians and consumers to drive measurable improvement in patient care.[32]

The *Queensland Prisoner Health and Wellbeing Strategy 2020–2025* aims to address issues with the quality of health services in prisons and includes four objectives, namely:

- enabling and improving health and wellbeing of people in prison
- delivering health care services

- connecting through partnerships
- connecting services in prison with those in the community to give people the best opportunity to transition successfully.[33]

It does not specifically address the needs of women, although one of its objectives, 'deliver health care', includes an action to 'improve the quality of health services and capacity to deliver culturally competent, trauma informed, gender specific services in response to the health needs of all prisoners, including Aboriginal and Torres Strait Islander peoples, women, older people and people with disability.'[34]

Implementation is to be managed through performance reporting, evaluation of service improvements, benefits and impact on prisoner health; and be subject to quality reviews and continuous improvement strategies. The Australian Institute of Health and Welfare report on the health of prisoners will also be used to measure progress. The Strategy will be reviewed by 2023.[35]

In 2021, QH engaged Health Consumers Queensland (HCQ) (Queensland's peak health consumer body) to provide a consumer perspective on health services in prisons. HCQ's consultations with Prisoner Advisory Committee (PAC) members in seven correctional centres identified six key themes – medication management, dental (access and treatment options), health requests (access and response), communication and culture, mental health (access and treatment options) and COVID-19 and flu vaccinations.[36]

The Office for Prisoner Health and Wellbeing (OPHW) has also established an annual prisoner satisfaction survey to offer prisoners a mechanism to share their perceptions about health care received while in prison and identify areas requiring improvement. The first survey was conducted in October 2021, with findings being addressed through quality improvement initiatives in collaboration with HHSs.[37]

Medicare and National Disability Insurance Scheme (NDIS) in prison

Prisoners are not eligible to claim a Medicare benefit while in prison and do not have full access to the Pharmaceutical Benefits Scheme (PBS).[38] This is because state governments are responsible for the delivery of health services to prisoners, and the exclusion, under s 19(2) of the *Health Insurance Act 1973* (Cth), is designed to avoid duplication of services.

The National Disability Insurance Scheme (NDIS) is not fully available to prisoners. The policy rationale for this is that the NDIS was intended to replace state-funded specialist disability services only, and was not intended to replace the things mainstream government services provide to ensure their services are accessible to people with disability – including schools, child protection, health and justice systems. Those mainstream services are expected to make reasonable adjustments to their services so they are available and accessible to everyone.

Federal, state and territory governments in Australia have agreed on responsibilities across service systems, including the criminal justice system. If a person with disability is in custody, the criminal justice system is required to provide things like help with personal care, disability-related health supports and medical supports that are related to any other health conditions.[39]

The National Disability Insurance Agency (NDIA) will fund some reasonable and necessary supports not provided by the criminal justice system, such as assistive technology (e.g. prosthetic limbs), training for staff for specific disability support needs, and capacity-building supports to assist upon release.[40]

In an article in the Medical Journal of Australia, researchers from Melbourne, New South Wales and Griffith Universities stated that adequate health care for prisoners is too expensive for states alone to provide without access to Medicare. They found that cost sharing between the states, territories and Commonwealth would allow prisoners to access the same health care as other Australians. Medicare access could also improve continuity of care after release.[41] Some people in prison, however, are ineligible for Medicare due to their residency status.

Further, academics from the University of Melbourne and the Murdoch Children's Research Institute have argued that excluding prisoners from the NDIS is discriminating against prisoners with a disability, in direct contravention of international human rights obligations.[42] A Human Rights Watch report found that Australia is restricting and violating the rights of prisoners with disability, including Aboriginal and Torres Strait Islander peoples. The report called for an inquiry into the eligibility of, and access to, the NDIS for people with disability held in prisons and involved in the criminal justice system more broadly, to ensure maximum coordinated support for prisoners with disability.[43]

Information sharing in prison

While prisoner privacy is also a significant concern, information-sharing issues between QCS and QH have been identified as affecting appropriate medical treatment. Information sharing about pregnancy is an example of circumstances where QCS does not have appropriate visibility of information relevant to a woman's care needs (a woman has to inform QCS herself for the information to be known). Notification of miscarriage is classified as a medical emergency by QCS and is reviewed and reported on in that context.[44] QH and QCS are in the process of finalising a Memorandum of Understanding regarding information sharing, which aims to improve current arrangements.[45]

Infrastructure in women's prisons

QCS has indicated that its low-security facilities in Numinbah and the Helana Jones Centre are not easily accessible for women with physical disability. Modifications such as ramps and lifts are needed.[46] Some women told the Taskforce about poor ventilation, heating and cooling in prisons, making cells extremely inhospitable at times.[47]

Wellbeing and medical care – girls

Under section 21(f) of the Charter of youth justice principles in the YJ Act (schedule 1), a child who is detained in a detention centre 'should have access to dental, medical and therapeutic services necessary to meet the child's needs'.

Health services are provided in detention centres 24 hours a day, seven days a week. Medical staff who work at each centre include nurses, doctors, psychologists and speech and language pathologists.[48]

In partnership with HHSs (through QH), youth detention centres are to ensure that young people are provided with access to:

- a comprehensive range of health care and health promotion services and programs
- mental health services, including systematic early assessment, diagnosis and treatment of mental health issues
- alcohol and other drugs service, including assessment, education and intervention
- sexual and reproductive health services
- immediate medical assessment and treatment following use of physical interventions on a young person
- services that cater to the needs of young men, young women and infants (should they be accommodated in a youth detention centre)
- as available, a same sex visiting medical officer if requested by the young person
- therapeutic diets, nutritional and diet supplementation as required.[49]

All young people must be assessed by HHS staff upon admission and before being moved to an accommodation section.[50] HHS staff are also responsible for administering all medication to young people.[51]

Targeted strategies for women in prison and girls in detention

Women in prison often come from disadvantaged backgrounds, with histories of poverty, domestic violence, social deprivation and childhood trauma.[52] Female prisoners can have different health and wellbeing needs than male prisoners. For example, women in prison are more likely to have a history of physical and sexual abuse, to have mental health problems, and to experience drug and alcohol dependence than their male counterparts. Women may also enter prison with reproductive health needs, including being pregnant, and may require access to female-specific health care.[53]

Women in prison can have multiple and complex needs, often exacerbated by inadequate access to health care before entering prison. Many of these health issues will require ongoing, long-term care, both during custody and while in transition back to the community after serving a sentence.

Nearly three-quarters (74%) of female prison entrants reported having used illicit drugs in the 12 months before entering prison. In the general community, 13% of female Australians aged 18 and over report having used illicit drugs in the past 12 months. This establishes that illicit drug use is higher among female prison entrants than in the community. Among the female prison entrants surveyed, illicit drug use in the 12 months before entering prison was most common in women aged 18–44, and less common in women aged 45 and over.[54]

QCS is in the process of developing a *Women's Strategy 2022-2027*. The Strategy will build upon the key principles and action items within the *Women's Estate Blueprint*.[55] The Blueprint represents a service delivery framework that achieves the principles and priority areas that enhance community safety through gender-responsive and trauma-informed services, that are culturally competent and support women to rehabilitate, reconnect with their community and make positive change.[56] The Blueprint acknowledges that women in prison are managed through policies, procedures and practices initially designed for men, and that their unique needs must be considered in their rehabilitation.[57]

As noted in Chapter 3.2, the *Youth Justice Strategy 2019-2023* recognises that gender-appropriate interventions result in behaviour change.[58] Queensland's *Youth Justice Strategy Action Plan 2019-2021* states that:

> the problem behaviours of girls and young women are more closely linked to interpersonal relationships, trauma and abuse, mental health issues and developmental transitions. We know that girls and young women are likely to have better outcomes when they have healthy and supportive family and peer relationships, develop empathy and learn ways of positive coping.

Specific rehabilitative needs of girls in detention are not further addressed within the Action Plan, and current detention services, policies, and procedures are not gendered.

A custodial setting provides a significant opportunity for the wellbeing and health needs of often vulnerable and disadvantaged women and girls to be properly assessed and their needs appropriately met. This includes disability assessments and the identification of services that can provide appropriate support in the community.

Transparency

While it is understood that 'Healthy Prisons' inspections continue to be undertaken by the Office of the Chief Inspector, no reviews of women's prisons have been published since 2011.[59] Public standards reviews for youth detention centres do not currently occur. Many other states and territories in Australia have existing detention oversight bodies that conduct reviews and inspections, with public reporting.[60]

At the time of writing this report, the *Inspector of Detention Services Bill 2021* (the Bill) was before the Queensland Legislative Assembly. The Bill proposes to establish an Independent Inspector of Detention Services for Queensland whose powers and functions will extend to police watch houses, adult correctional centres, community corrections services, work camps and youth detention centres.

How do other jurisdictions address this issue?

As outlined in Chapter 3.1, many Australian jurisdictions have standards relating to management and needs of prisoners, mostly developed by detention oversight bodies. Corrections Victoria has established *Standards for the Management of Women Prisoners in Victoria* (the Victoria Standards), which set the minimum requirements for correctional services in Victorian prisons for women. These Standards outline gendered factors relating to women's offending and identify their rehabilitation and other needs (as compared to men). These factors include frequency and seriousness of offending, drug use, relationships through which offending behaviour develops, response to community supervision, incarceration and treatment, dependent care responsibilities, prevalence of victimisation and mental illness, and substance abuse and trauma.[61] The Victorian Standards address issues such as classification and placement (standard 11) and health services (standard 35).

Many other Australian jurisdictions also have standards relating to management and meeting the needs of young people in detention, mostly developed by detention oversight bodies (see Appendix 15). While these standards are not gendered, the *Code of Inspection Standards for Young People in Detention* (Western Australia), standard 8, notes that 'the distinct needs of young women and girls in custody should be recognised and they should have equitable access to services, activities and amenities.'[62] A similar standard (standard 1.7) appears in the *NSW Youth Justice Inspection Standards*.[63]

Results of consultation

Wellbeing

Women who have experienced the criminal justice system as accused persons or offenders

Women who have experienced the criminal justice system as accused persons or offenders told the Taskforce that the cost of shampoo and conditioner in prison was too high.[64] Women can be admitted to prison with untreated scabies and head lice, which spread quickly – one woman spoke about waiting more than two weeks for head lice treatment.[65]

Women also spoke about the poor quality of their clothing and bedding:

> *'Our prison uniforms are falling apart with holes all through them, and we can't get issued new shirts … our sheets are ripped and stained. Towels are disgusting.'* [66]

Food within prisons was perceived to be of low quality due to budget pressures, and of poor nutritional value. Women who worked in the kitchens told others that they struggled to provide decent meals and weren't trained or supported to do so. Buy-ups available to individual prisoners are dominated by unhealthy options.[67]

Hygiene issues in safety units, designed for at-risk women with mental health concerns, were frequently raised. As these women do not have immediate access to bathrooms (they require staff to escort them or unlock doors remotely) they are sometimes forced to urinate or defecate on the ground or in food containers. Women at Townsville Women's Correctional Centre (TWCC) told the Taskforce of experiences where safety units were not properly cleaned prior to new occupants being admitted.[68] Tampons are not permitted in the unit (due to safety concerns) and women who are menstruating must use sanitary pads with paper underwear, or no underwear.[69] At the SQCC, the Taskforce heard that women in the safety unit had to hold a sanitary pad in place with their hands because they were unable to have even paper underwear because it was considered to be a hanging hazard.[70] These conditions are very difficult for already vulnerable women prisoners in need of mental health care.

One woman recounted her experience in a detention unit:

> *'Women have to shower outside in the detention unit and we are on camera while we shower, being watched by officers. No privacy and it is freezing in winter.'* [71]

Women also described their experiences with overcrowding in secure units affecting privacy, security and limiting access to phones and programs. One woman spent six months sleeping on a mattress in a residential unit with her possessions kept in the open.[72] Others told us that bunk beds could be slippery and dangerous, especially for older or less-fit women.[73]

Queensland Corrective Services

QCS provided a list to the Taskforce of all amenities, clothing and footwear provided to women in prison. It noted that sanitary items were available free of charge, both upon admission to a centre and during placement.[74] QCS cited its Food and Nutrition Policy regarding food available within prisons and that food safety programs were consistent with the *Food Act 2006*.

The SQCC has attempted to improve the austere conditions in its women's safety units by painting one wall in colourful 'blackboard' paint so that inmates can draw on it. A staff member at the SQCC also spoke of the challenge of balancing the dignity of women in safety units with the need to keep them alive.[75] QCS noted that overcrowding was not currently an issue for women's prisons.[76]

Medical care

Women who have experienced the criminal justice system as accused persons or offenders

The Taskforce heard of ongoing minimisation or dismissal of women's health needs, and wrong and hurtful accusations of drug seeking.[77] One woman told the Taskforce:

> *…overall, anyone who has a health complaint has to fight and beg repeatedly for months before they are taken seriously.*[78]

Another woman told the Taskforce that medical care in prison was inadequate due to problems with QH. She experienced her physical health needs (a shoulder injured after an assault) being minimised and was accused of drug seeking. She was only taken for a scan after a sympathetic officer advocated for her.[79] Women at the SQCC spoke of significant delays accessing health care – delays in seeing doctors and nurses, and in obtaining test results and appropriate referrals. A regular doctor has not been employed at SQCC for 12 months due to recruitment issues.[80]

Only women on opioid substitution treatment (OST) programs prior to entering prison can access the program while they are incarcerated. Access to over-the-counter medications was delayed and difficult. A prescription was required for Panadol to be given to prisoners, and requests for basic pain relief could take a month to process. These limitations often meant that women could not access pain relief for emergent issues at night.[81] Women spoke of their health concerns being dismissed or minimised, with serious health outcomes – one woman required a hip replacement due to an infection that was not investigated appropriately for months, despite her pleas for medical assistance.[82] Some women spoke about asking to be tested for Hepatitis C, only to be turned away.[83]

> *'Women should be able to manage period pain, headaches or toothaches. We are supposed to have the same access to health care as [the] community. But we can't even manage pain from not being able to get our teeth fixed.'* [84]

Concerns about a lack of confidentiality between treating medical staff and QCS officers were also raised.[85] Women described QCS officers using health information they had provided to nurses and doctors in confidence, for disciplinary purposes.[86]

Service system stakeholders

Service providers told the Taskforce about women in prison experiencing significant delays accessing medical care, all consistent with what women themselves said.[87] Stakeholder forum attendees felt that assessment of cognitive impairments of women in custody was insufficient,[88] and that the lack of NDIS support in prison is a problem.[89] Sisters Inside reported serious problems with women accessing appropriate medical treatment, especially external and independent treatment in a hospital setting, even for life-threatening illnesses like cancer.

> *'It takes four or five months to see a doctor. Even when we bring our prescriptions in with us, they get chucked in the bin.'* [90]

Women are required to complete forms and queue for medical treatment within prison health centres. The Taskforce heard that women often had to speak to medical staff at a 'shopfront' window, where there is no privacy. Women described their reluctance to seek medical attention for fear that their private medical concerns would be overheard by other women in the queue.[91] Many

women also reported difficulties having their needs taken seriously by prison officers. Many interactions with health staff were reported to be demeaning.[92]

Sisters for Change reported that incarcerated women have difficulty accessing prison health and mental health services, as well as basic pharmacy items. Health services are constrained by resourcing limitations, are physically remote from the prison where women reside, women's movement is inhibited and controlled, and demand for health services is high, meaning only the most urgent requests are seen and treated. Valuable preventative health promotion opportunities are lost.[93]

Government agencies

Queensland Corrective Services

Prisoner health services in Queensland correctional centres are delivered by QH. The *Prisoner Health and Wellbeing Strategy 2020-2025* represents a joint commitment between QCS and Queensland Health to improve the health and wellbeing of people in prison by working together across the health and correctional systems, as well as partnering with other sectors and stakeholders. Fitness activities are also offered to prisoners (including yoga, sports days and access to gym equipment).[94]

Queensland Health

HHSs deliver health services to correctional centres in each catchment. Health clinics in prison operate like general practice clinics in the community and provide assessment, diagnostics, treatment services and referral to specialist health services where required.

Medical care for girls

Queensland Health

All young people are seen by nursing staff upon admission, and nursing staff are available 24/7 in youth detention centres. Visiting medical practitioners run clinics three times a week at detention centres, and females can request to see a female doctor if they prefer.[95] Young people can also request a health check at any time during their admission. This can be done by a nurse or a doctor, as clinically indicated. Medication is dispensed to young people three times a day. There is an on-call roster that can be used for urgent psychiatry and medical support outside standard business hours.[96]

The biggest challenge with providing comprehensive health services to young people in detention is the short periods most spend in detention, with the majority rotating in and out of detention very quickly. This makes continuity of care difficult.[97]

The COVID-19 pandemic has had considerable detrimental impacts on the ability of QH to provide clinical care to young people in detention. An area for improvement would be to increase access to secure videoconferencing to provide clinical services to young people and their families. Youth worker shortages are commonplace in detention centres. This means there are often issues escorting or transporting young people to and from their health appointments. Coupled with the small number of rooms available in health centres within detention centres for young people to see medical professionals, there are ongoing challenges for health staff providing these services.[98]

The Taskforce heard that more rooms, youth workers and videoconferencing facilities in detention centres would improve the capacity of health staff to provide clinical care to young people in detention. Moreover, with increased resourcing, health staff could provide more health education to young people to increase their health literacy, which would have helpful preventative benefits.[99]

Taskforce findings

The Taskforce found that women's health and wellbeing needs are not being consistently met in prison. Current standards and initiatives do not sufficiently address the specific needs of women and girls. Health services can be inadequate, and many women feel that their concerns are minimised or dismissed.

Legislative requirements should be strengthened to make clear that a minimum basic level of care is required to meet women's health and wellbeing needs while they are in custody. Placing this obligation on QCS reflects its obligation to ensure QH meets women and girls' health and wellbeing needs. It is important that standards are included in the legislation to ensure transparency, given women and girls in custody are completely dependent on QCS and QH to meet their needs.

While including legislative standards is likely to require additional investment to ensure standards are met, this would significantly improve women and girls' access to health and wellbeing supports and services in custody. Reporting compliance with standards within prisons could increase the administrative burden on QCS, however this is justified by the public interest in transparency, especially given the vulnerability and invisibility of women and girls who are in custody. There may be some duplication with the proposed function of the independent Inspector of Detention Services to issue inspection standards, however it is imperative that there is greater accountability and transparency within prisons to ensure that standards are being met. Equally, it is essential that standards that are not being met are identified early and publicly. Recommendations in relation to Queensland Government obligations to meet the health and wellbeing needs of women and girls in custody are contained in Chapter 3.8.

Women and girls in custody and detention often come from chaotic situations, suffer from disability, and have significant health concerns. The custodial environment presents a valuable opportunity for them to be properly assessed, treated and then connected to agencies able to provide the necessary support once they transition back into the community. Current state arrangements are not providing women in prison with an adequate level of disability and medical support – it is certainly not equivalent to the services and support available in the community. Identified service gaps should be met, with funding by both levels of government.

Taskforce recommendations

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

Implementation

Implementation will require QCS to work with QH to determine required funding (if not currently available) to deliver required services for medical and disability support. QCS and the Office for Prisoner Health and Wellbeing, prioritise the provision of medical and disability support services to women identified as requiring support.

Advocacy for Medicare access (including for psychological services) could be led by the Queensland Minister for Health and Ambulance Services, within the national Health Ministers meetings. Likewise, advocacy for NDIS issues could be undertaken by the Queensland Minister for Seniors and Disability Services and Minister for Aboriginal and Torres Strait Islander Partnerships, within the national Disability Reform Ministers' meeting. Some prisoners will not be eligible for Medicare or other Federal Government support due to their residency status. In these cases, QCS and QH should ensure that the prisoner receives medical and disability care equivalent to those who are eligible for the schemes (assuming changes are made to current arrangements).

Human rights considerations

Human rights promoted

These recommendations promote human rights under the Human Rights Act and international instruments (for adults and children) including the right to health services, recognition and equality before the law, the right to humane treatment when deprived of liberty, and the right to protection from torture, inhuman or degrading treatment.

Human rights limited

The recommendations do not limit human rights however consideration should be made to whether the human rights of men and boys may be limited if equivalent measures are not put in place for both genders.

Evaluation

Evaluation of health, wellbeing and disability outcomes for women and girls should be undertaken as part of the whole-of-government *Queensland Prisoner Health and Wellbeing Strategy 2020-2025,* which includes mechanisms to review and measure service improvements, benefits, and the impact on prisoner health. Key performance indicators include access, effectiveness, efficiency, quality and safety, and patient satisfaction.[100] The Office for Prisoner Health and Wellbeing should include reviews of transition initiatives for women alongside its broader strategy in relation to health care needs. In its public reporting, QCS should identify persons with disability who are supported during transition to the community.

Initiatives to increase access to Medicare and the NDIS for people in prison should be evaluated through the respective national ministers' meetings to identify any cost savings and improved outcomes.

Prenatal and postnatal care and birth in custody

Background

Most women in prison are mothers.[101] These women are more likely to be single parents and more likely to be socioeconomically disadvantaged than those in the community.[102] Research by the University of Sydney suggests that between 5% and 10% of incarcerated women in Australia have been pregnant while in prison.[103] Women on remand, and those incarcerated for short periods of time or multiple times during a pregnancy, may have their prenatal care interrupted, risking poorer outcomes for both themselves and their baby.[104]

A review of international studies of perinatal, maternal or infant health care outcomes of imprisoned women over the past four decades in the United States, the United Kingdom and Germany suggests that increased perinatal care services can improve both short and long-term outcomes for incarcerated women and their babies.[105]

Current position in Queensland

Pregnancy and prenatal care

The *Guiding Principles for Corrections in Australia* make specific reference to the need for health care in correction facilities that is gender responsive, including reproductive health care,[106] and for children living with caregivers in custody to be housed in safe and secure accommodation that meets their needs and facilitates access to essential services.[107]

The *Healthy Prisons Handbook* provides that pregnant women should receive support, and mothers and babies are provided with a safe, supportive and comfortable environment that prioritises the care and development of the child. [108] Provision is to be made for co-parents to be involved with the birth of the baby.[109]

The *Queensland Prisoner Health and Wellbeing Strategy 2020-2025*, 'delivering healthcare services'[110] objective includes ensuring appropriate access to gender-specific health services, and implementing initiatives to improve the health and wellbeing of women and their children who reside in custody.[111]

Prisoner health services conduct a health assessment for women entering Queensland correctional centres. The assessment includes identification of pregnancy where a woman chooses to disclose she is pregnant, as they would do in the wider community. Incarcerated women are able to access pregnancy tests through the prisoner health service.[112]

Health care for both pregnant women in prison and girls in detention is provided by QH.[113] Pregnancy and Escort Plans are developed for women to provide the opportunity for them to receive support during their pregnancy.[114]

Pregnant women in custody are provided antenatal hospital appointments and may receive regular visits from midwives, and routine and specialist medical appointments at a local hospital.[115]

Birth

In general for women in prison, birthing takes place at the nearest hospital. For incarcerated women and girls in South-East Queensland, this is usually at Ipswich Hospital.[116]

A Birth and Escort Plan may be developed to enable a planned response for a woman when her labour begins.[117] The Handbook also requires that an emergency childbirth kit is available in all prisons holding women[118] and that staff receive ongoing training in emergency childbirth.

Postnatal care

Girls in detention receive postnatal care from child health nurses, midwives and mental health services.[119] Adult women in prison are able to receive postnatal visits from health care professionals.[120]

The QCS Custodial Operations Practice Directive provides that, even if the newborn is not returning with the mother to custody, should she wish to offer her baby breast milk, then breast milk expression, storage and hand-out is to be facilitated by QCS.[121]

Children living in custody with their mothers

The effects of separating mothers from their children, even for short periods, can be devastating for the individuals involved.[122] It is also highly detrimental to the child's attachment to their mother. Incarcerated women in Queensland who are pregnant must be informed that they can apply to the QCS Commissioner to have their baby live with them after the child is born[123] and, if successful,[124] that they will have primary responsibility for the baby's care and safety.[125]

Mothers whose applications are unsuccessful are to be given childcare and support plans to ensure contact between the mother and baby is maintained and the mother is supported.[126]

Mother/child units of varying forms are available in the Brisbane Women's Correctional Centre (BWCC), TWCC, SQCC, Numinbah Correctional Centre and the Helana Jones Centre.[127] Purpose-built accommodation units are also available in youth detention centres to support girls to have their child live with them.[128] Care for the mother and baby is to be consistent with the standards and procedures provided in the community,[129] and young children living with their mothers are to be given opportunities to experience community activities and be prepared for when they leave custody, in accordance with their development needs and best interests.[130] The placement of a child with their incarcerated mother may continue, as long as it remains in the best interests of the child or until the child is old enough to attend primary school.[131] Children of primary school age may also live with their mother in custody on weekends or over the school holidays if the mother is in a low-security facility.[132]

Despite their meagre earnings, the Taskforce has heard that incarcerated women approved to have their babies and children live with them are responsible for buying everything their baby or child needs, other than food and drink. This includes essential items like bottles, nappies, dummies, underwear, footwear, baby wipes, rash cream, baby Panadol, children's toothpaste, cot linen and baby food.[133] Women find that there can be long delays in restocking these items, including essentials like formula.[134]

The Taskforce has heard competing information as to the extent to which QH provides health care, medical assessment and treatment for children living with their mothers in custody.[135] While QH has told the Taskforce that children living with their mothers in custody are provided health services consistent with the primary health care services available to children in the community,[136] QCS stated that QH will only treat a child within corrective services in the event of an emergency and that otherwise a child must be transported to an external facility for non-emergent medical care.[137] The result is that it is unclear whether QH provides emergency care only, or care equivalent to that which would be provided in the community. While mothers are expected to manage their child's minor illnesses,[138] there is apparent confusion as to where responsibility for the health care of children lies. This is most unsatisfactory, given the complete vulnerability of young dependent babies, children and their mothers in custody.

The Taskforce notes that there are no national minimum standards for the accommodation of children in custody.[139]

Death of babies and children living in custody with their mothers

The role of the coroner is to investigate who a deceased person is, when, where and how they died, and the medical cause of death.[140] A coroner can hold an inquest into a person's death and make recommendations focused on attempting to prevent similar deaths occurring in the future, rather than laying blame or assigning liability. Coroners only investigate certain types of deaths defined as 'reportable deaths' under the *Coroners Act 2003* (Coroners Act).[141] A death in custody is a reportable death.[142]

A death is considered to occur in custody if, when the person died, they were in custody under arrest or court order, or were escaping or trying to avoid being put into custody.[143] A child who dies living in a prison with their incarcerated mother does not fall within the definition of a 'death in custody' for the purposes of the Coroners Act.[144] The death of a child in custody may also be reportable for other reasons, for example if the child was subject to a child protection order.[145]

Deaths in custody are reportable because the State is responsible for the deceased's care. Where the State has responsibility for the deceased person, there needs to be additional investigation and transparency into the circumstances of the death. Even though a woman in custody has responsibility for her child, she is entirely dependent on the correctional centre and has very little control over many aspects of the child's life, given the restrictions on her and the child. As such, the State bears significant responsibility for children in prisons with their mothers. In the event of the death of a child living with their mother in custody, the Taskforce considers that the same level of scrutiny and transparency should apply under the Coroners Act as would apply had an incarcerated person died.

The death of a baby may be a reportable death when it was an unexpected outcome of health care and was not stillborn.[146] The question of whether an infant was stillborn remains a question of fact in connection with whether a newborn shows any signs of life after leaving the mother's body.[147] This places the onus on the grieving mother to 'prove' the death of their child ought to be investigated by a coroner, which might involve disagreement with the attending medical staff.[148] The death of a baby while the mother is incarcerated may fall within the scope of this category of reportable death, but it could be difficult to establish the child's death fits within the definition. The need to show that the death was an unexpected outcome of health care and was not stillborn, and the trauma associated with this, would become largely irrelevant if the rationale for deaths of babies born while their mothers are incarcerated is because they should more appropriately be considered deaths in custody for the purposes of the Coroners Act.

Stillbirths[149] require a death certificate and a burial[150] but are not reported to the coroner for investigation in Queensland[151] – even when they occur in custody. There is also no requirement to report the death of a baby to the coroner – even those in very late-term pregnancy [152] – when they occur while the mother is incarcerated.

QH advised that stillbirth is only discussed with the coroner when there is a doubt about the presence of signs of life at birth, and neonatal death is only discussed with the coroner when it is an unexpected outcome of health care, or the cause of death cannot be certified. Miscarriages over 20 weeks are reportable to the Perinatal Data Collection Unit within Queensland Health.[153]

Royal Commission into Aboriginal Deaths in Custody

The 1991 *National Report of the Royal Commission into Aboriginal Deaths in Custody* concluded that Aboriginal people die in custody at greater rates than non-Indigenous people as a proportion of the whole population, not as a proportion of people who are in custody – which is totally unacceptable and would not be tolerated if it occurred in the non-Aboriginal community. These deaths occurred not because Aboriginal people in custody were more likely to die, but because the Aboriginal population was grossly over-represented in custody.[154] Over 30 years after the Royal Commission, First Nations women and girls are still overrepresented in custody.[155] The Royal Commission also found that Aboriginal peoples were disadvantaged compared with any other distinct group and with society as a whole[156] and that health was a key vulnerability facing those who died in custody.[157] At the time of the Royal Commission, it was found that reproductive function and complications of pregnancy, childbirth and the puerperium (six weeks following childbirth) were the leading causes of hospitalisation for Aboriginal women and girls.[158]

How do other jurisdictions address this issue?

Pregnancy and prenatal care

The possibility of pregnancy is considered for all women entering custody in New South Wales.[159] Pregnant women in custody in New South Wales are placed at Silverwater.[160] This facility provides health services including 24-hour nursing staff, and disability and mental health care and is located in close proximity to Westmead Hospital. The Taskforce has heard from the Inspector of Custodial Services that the level of care provided to women at Silverwater is good.[161] Pregnant women are seen weekly by a midwife and are supported to give birth in hospital. They are also able to attend specialist and hospital appointments, but find that their appointments may be limited, depending on escort staff availability.[162]

Pregnancy and prenatal health care in Western Australia is provided by King Edward Memorial Hospital and managed by prison health services. Women incarcerated in regional areas without consistent obstetric services are transferred to the metropolitan area to ensure they are given the care they require.[163] Pregnant women are entitled to a care plan, which includes health practitioner referrals, dietary requirements, transport and transfer plans, recreational activities and postnatal treatment.[164] Concerningly, however, a 2020 report by the Inspector of Custodial Services in Western Australia found that restraints, such as handcuff and leg shackles, were routinely being used on pregnant women.[165]

Since 2019,[166] the United Kingdom has required individual care plans[167] for pregnant incarcerated mothers as well as training for all prison staff on supporting vulnerable mothers and pregnant women.[168]

Women's charity Birth Companions offers emotional and practical support and advocacy to pregnant incarcerated women and new mothers in three women's prisons in the United Kingdom.[169] In 2016, the charity published the *Birth Charter for Women in Prison in England and Wales* (the Charter)[170] to inform policy and practice in the care and treatment of incarcerated women and their babies. The Charter covers a range of issues from antenatal care and birth partners to breastfeeding, family visits and counselling[171] and has been widely supported by key stakeholders.[172] A toolkit for implementing the Charter has also been produced with support from the University of Central Lancaster and the British Pregnancy Advisory Service.[173]

Birth

At the onset of labour in New South Wales, pregnant women are transferred to Westmead, Nepean or Campbelltown Hospitals, depending on which is closer. Antenatal reports, ultrasound results and a list of current medications are copied and forwarded to the hospital at the time of transfer.[174]

The Inspection Standards for Adult Custodial Services in Tasmania provides that arrangements are to be made for women to give birth in a hospital outside prison, or if the child is born in prison, this fact should not be recorded on the birth certificate.[175]

Women in South Australia are not able to have their newborn babies live with them in custody, and much of the preparation for birth is focused on planning for the birth and solving issues relating to visits, care and placement of the baby.[176]

Women incarcerated in Western Australia deliver their babies at King Edward Memorial Hospital or in a local hospital providing consistent obstetric services.[177]

Postnatal care

In New South Wales, women receive between four and six weeks' postnatal care from midwives in conjunction with a general practitioner.[178] Policy states that women who choose to express breast milk will be encouraged and supported and provided with a breast milk extraction device. The woman must arrange transport of the breast milk by her family or significant others.[179]

Incarcerated women in Western Australia are seen by health services within one hour of return to the prison after birth and are given postnatal care in line with the care plan developed during their pregnancy.[180]

Children living in custody with their mothers

Babies and children can be accommodated with their mothers in all Australian jurisdictions except South Australia.[181] Applications are generally decided based on the best interests of the child and an assessment of any risk to the management and security of the prison.[182] Children living in custody with their mothers in the Northern Territory are able to attend formal childcare. [183] While mother/child units are available in both high and low-security Queensland prisons, in New South Wales[184] and the Alice Springs Women's Correctional Facility[185] only women in low security are able to have their children live with them; those with higher security classifications and on remand miss out.[186] New South Wales is the only Australian jurisdiction to offer attachment-based interventions to incarcerated women and their children, namely the *Mothering at a Distance* program,[187] a 10-session parenting program centred around supported play groups and a mothers' group with the purpose of breaking the inter-generational cycle of crime.[188]

Victoria operates a 'Living with Mum' program, which provides incarcerated women with pre and postnatal health services[189] administered by dedicated full-time support workers. Applications can be made to participate in the program by women at any stage of the criminal justice process, including while a mother is on bail.[190] Interviews are conducted by phone or in person.[191] When an application is not approved, women are provided an explanation and appropriate counselling and support.[192] Women approved to participate live in dedicated cottage-style units.[193] Women in the program participate in initiatives to enhance their parenting skills and confidence including child health and development. A Maternal and Child Health Nurse visits regularly to assist with nutritional and health requirements of babies and young children.[194]

With the exception of Victoria, Australia generally lacks integrated service provision for children living in adult prisons. Conversely, in the United Kingdom, mother and baby units require all residents to have a written child care plan, nutrition policies, creche or nursery facilities run by qualified child care workers, and a variety of stimulating experiences available for babies.[195]

Women in the United Kingdom who give birth in prison or who have a young baby under 18 months can keep their baby with them for the first 18 months in a mother and baby unit. A separation plan is made when the mother enters prison if the child will reach 18 months before her incarceration is finished. When an infant reaches 18 months, Social Services arrange for the child's care, usually with the mother's family or a foster family.[196] If the mother is refused a place in prison for her baby, she can appeal.[197]

Stillbirths and deaths of babies and children in custody

In Australia, coroners do not investigate stillbirth as a 'coroner has jurisdiction not in respect of injuries or stillbirths but in respect of the deaths of persons who at some stage have been alive after they were born'.[198]

Data from the United Kingdom shows that incarcerated women are five times more likely to have a stillbirth and twice as likely to give birth to a premature baby needing special care.[199] In the United Kingdom, work has been undertaken in recent years in consideration of expanding the jurisdiction of coroners to investigate stillbirth.[200] The Government ran consultations from mid-2019 seeking views on the introduction of coronial investigations of stillbirth cases in England and Wales.[201] The Government is still analysing feedback. In May 2021, the House of Commons Justice Committee recommended that the Ministry of Justice should revive the consultation and publish a proposal for reform.[202] The Government response, published in September 2021, said the delay was due to the impact of COVID-19 on work programs. The Government accepted the Committee's recommendation and said the Department of Health and Social Care and the Ministry of Justice planned to publish a joint response to the 2019 consultation as soon as possible.[203]

In December 2021, following the investigation of a number of controversial stillbirths in custody,[204] the United Kingdom Prison and Probation Ombudsman widened its terms of reference to include a standing responsibility to investigate all stillbirths, neonatal or child births that occur in the prison estate or during transfer from prison to hospital.[205]

Results of consultation

Women who have experienced the criminal justice system as accused persons or offenders

Women with lived experience of incarceration expressed concerns about the adequacy of care that incarcerated women received during pregnancy, birth, and after the birth of their baby. They shared their stories with the Taskforce, including:

- a visibly pregnant woman who was bleeding while in a watch house had to wait until the next day for a doctor. She went to hospital, was told nothing was wrong and was sent from hospital to prison. She went to the medical room where she had more contractions and was calling out but received no assistance. She was simply told that 'this is normal'. She tried to stop the baby coming out. Two days later she was rushed to hospital and gave birth to a son who died. She was returned to prison a week later and did not see a psychiatrist for months. Her baby's body remained in the morgue for months until Sisters Inside helped her to advocate for a funeral.[206]
- a woman falling on her stomach and losing her baby at seven months gestation[207]
- a pregnant mother of four spending two weeks bleeding enough to fill pads, cramping badly and asking to go to hospital. She was told by QCS staff to rest and was seen by a nurse who did not examine her bleeding or her abdomen and simply gave her paracetamol and Nurofen. When miscarriage was eventually confirmed, her curette procedure was delayed for a week because the prison did not have vehicles to take her to hospital.[208]
- a woman waiting two weeks for a curette procedure following a miscarriage[209]
- the rate of miscarriage at one correctional centre seeming to be very high[210]
- women suffering pregnancy loss not being offered grief support[211]
- women are miscarrying without painkillers or examination[212]
- a woman in hospital with a miscarriage being unable to see a cultural officer because of a conflict of interest[213]
- a pregnant woman with a serious yeast infection suffering in discomfort for one month before medical examination[214]
- pregnant women being left to deliver their babies on the floor of their cells[215]
- women being returned immediately to custody after birth with no follow-up care.[216]

The Taskforce also heard concerns about DCYJMA, which is responsible for Child Safety services, not supporting women in custody whose children are in care, to safely look after their children following release. Support workers suggested that women in custody, many of whom are on short sentences, needed help to navigate the child protection system so they could reconnect or reunify with their children when released.[217]

I didn't get any visitation with my youngest son the second, third and most of the fourth time I was in prison. DOCS [Child Safety services] said it would be 'bad for his mental health'. Luckily, my DOCS worker changed halfway through my fourth stint and my youngest was allowed to come visit me with DOCS once a fortnight… This gave me so much hope for the future, it enabled me to feel things would be different.[218]

Women who applied to have their young children live with them in prison spoke of long, anxious waits[219] and, on refusal, being left with little time to find alternative carers for their children.[220]

I applied to have my daughter in prison as soon as I arrived at BWCC, and continued to put requests in every couple of days, but it took four months for the approval to come through. There was no explanation for this; it was just not a priority for the prison.[221]

Another woman told the Taskforce she only learned she could not have her baby with her in prison shortly before the birth. As this did not leave sufficient time for her to find family to care for the baby, Child Safety services immediately took the baby from her after the birth, leaving her distraught.[222]

The Taskforce heard that life could be difficult, restricted and unfair for children living with their mothers:

The hardest thing for my son is that when someone did something wrong, everyone was punished … we would be unable to leave the house and he would be locked down also. How could I explain that there are no snacks … because I can't go shopping, or we couldn't go to playgroup… He was punished alongside the prisoners … officer would do the hourly check and slam the doors, constantly waking the children up. We were made to go to an 8pm muster and we were not allowed to leave the child in the room so we had to wake them up…[223]

Women with multiple young children at TWCC expressed their dismay at being able to have no more than two children live with them and at the heartache of being forced to choose.[224] One woman spoke of the trauma she experienced having twin babies and a toddler and being left with the difficult decision of which child(ren) to choose.[225] Those who were able to have their child live with them spoke of being chastised and shamed by prison officers[226] and of having the custody of their baby used as a threat.[227]

Helana Jones was horrible; you get treated like crap, told you are a terrible mother. If you feed your child something, like noodles, that an officer would not feed their own child, you get yelled at in front of everybody. I was regularly told I should be ashamed as a mother for small parenting decisions. We were treated like this so much that it just became normal. We were given no space to parent, we were watched constantly and criticised.[228]

Any minor infraction, such as not locking your door, would … bring on the threat of losing your child…[229]

Service system stakeholders

Red Cross told the Taskforce that women who are pregnant in custody require antenatal and postnatal care, nutritionally sound meals, access to abortion, and support through miscarriages.[230] It also advocated for sentencing authorities to approach incarceration of pregnant women as a 'last resort' in order to minimise harm to children or vulnerable adults as a consequence of the imprisonment of their primary carer.[231]

Sisters Inside said that there is very limited accountability or oversight regarding antenatal care, pregnancy, birth and decisions in connection with newborns, and that there is a particularly serious gap in the context of the systemic issues relating to pregnancy loss. Sisters Inside pointed out that late-term pregnancy loss and the deaths of babies living in custody with their mothers are not referred to the coroner for investigation.[232]

Sisters Inside raised serious concerns about the appropriateness of children living in custody with their mothers. They observed that, while legislation and procedures are in place to allow children to be accommodated with their mothers in prison,[233] this option is rarely available to women in practice, especially First Nations mothers.[234] Sisters Inside argued that the system needs to be overhauled and the focus shifted to removing pregnant women and women with newborn infants from custody entirely.[235] Sisters Inside advocated for the Queensland Government to amend the *Corrective Services Act 2006,* the *Bail Act 1980* and the *Penalties and Sentences Act 1992* to introduce a presumption that pregnant women should be released from prison, or not serve any time in prison, especially after 20 weeks' gestation.[236]

Sisters Inside also explained that despite the Custodial Operations Practice Directive which provides for birth plans and facilitation of breast milk expression,[237] birth plans do not meaningfully impact the

pregnancy and birth experience. It is practically impossible for women to successfully express milk for newborn babies who have been removed from their care, due to a lack of independent support and education about breastfeeding, and the challenges of the prison environment.[238]

Government agencies

Queensland Corrective Services

QCS told the Taskforce that QH does not provide health care to children in custody with their mothers and will only treat children in custody in an emergency. Children may be transported to an external medical facility if they require care that cannot be provided within the correctional centre.[239] Children's minor illnesses are managed by their mothers, who are able to administer over-the-counter medication or prescribed antibiotics.[240] Community agencies provide mothers with advice about growth and development, including immunisations.[241]

Department of Children Youth Justice and Multicultural Affairs

The Taskforce heard from DCYJMA that the Taskforce that girls in detention who are pregnant are provided with a range of health care services and accommodation considerations through multidisciplinary planning including:

- birth planning
- maternal, antenatal, postnatal and child health education
- physical activity and dietary considerations
- independent living arrangements
- tailored medical appointments with health services[242].

DCYJMA told the Taskforce that if there is a reasonable suspicion before the birth that the child may be in need of protection after birth, Child Safety must conduct an investigation and assessment of the likelihood that the child will need protection after it is born.[243] This is despite section 21A of the *Child Protection Act 1999* requiring Child Safety to take action considered appropriate in these circumstances, including offering help and support to the pregnant young woman.

Queensland Health

QH told the Taskforce that the Queensland Centre for Perinatal and Infant Mental Health (QCPIMH) e-PIMH Telepsychiatry Service is in the process of creating a perinatal mental health plan for incarcerated women to be shared with the obstetric team and reducing the need for a woman to retell her trauma story.[244] Any changes to the woman's birth plan will be able to be made with an understanding of the issues identified in the perinatal mental health plan.[245]

Women who are pregnant in custody receive sessions to increase their mental health literacy, with a focus on attachment and giving children what they need to thrive.[246] All women in detention have access to sexual health care, prenatal care, antenatal care and parenting education and support. Girls have the benefit of prenatal care from nurses in the centre as well as midwives from the community.[247]

Girls who give birth in detention are visited by child health nurses and midwives from the community when they return to detention. They are provided with mental health care by the Forensic Child and Youth Mental Health Service. Girls can access additional support from QCPIMH when necessary.[248] They also receive visits by the Child Health Nurse and Midwives from the community and have access to a mothers' room, play equipment and furniture, and additional youth worker support in detention.[249]

QH suggested that, for many women in prison, the experience of imprisonment with their baby can provide an opportunity for the infant-parent relationship to develop away from the negative influences that exist external to prison settings.[250] Child health support and education is provided for issues around infant nutrition, feeding, sleep, settling, safety, play and development.[251]

When a child is not able to live with their mother in custody because of her mental health, a Children with Parents with Mental Illness Family Support Care Plan can be developed to outline the child's routine, who the mother would like to care for the child, and what the mother prefers the child is told about why she is in custody.

QH advised that any new programs for mothers and their babies and children needed to be flexible and short-term as the women approved to have their babies with them tended to be on shorter and unpredictable timeframes in custody.[252]

QH told the Taskforce that the relevant HHS provides health services to children living in correctional facilities with their mothers, consistent with the primary health care services available to children in the community.[253]

Legal stakeholders

Legal Aid Queensland told the Taskforce that research shows imprisoned women who are pregnant are a high-risk obstetric group and the mother and baby are more likely to have problems and poorer outcomes.[254] Many women in prison are from vulnerable and disadvantaged backgrounds and have a history of drug use, which can contribute to the risks they experience in pregnancy.[255]

The Queensland Law Society (QLS) told us that delays in the criminal justice system and strict bail and remand laws mean a pregnant woman who is refused bail may give birth in custody. Women who are refused bail may spend so long on remand that their children become too old to remain with her and that this is traumatic for both mothers and children. Delays may impact a woman's ability to access prenatal care when she first enters custody.[256] The QLS told the Taskforce that its members report anecdotally that, depending on location, a woman's vulnerability, and her level of engagement with medical services, imprisonment may actually increase a woman's access to prenatal and other medical support.[257]

Academic

Academics at the Griffith Criminology Institute (CGI) who are leading the *Transforming Corrections to Transform Lives* project told the Taskforce that imprisonment increases the vulnerability of pregnant women to adverse perinatal outcomes. This is because they are disconnected from social support and lack control and autonomy, which interferes with sleeping, prenatal vitamins, preparation for childbirth, choice of birthing experience and facilities, and engagement with cultural practices.[258] Women do not know what to expect during or after birth and may be distressed about the placement of their baby if they are not able to have the child with them in custody.[259] There are barriers to breastfeeding, including a lack of appropriate spaces to do it, limited options for pumping and storage, and limited education and support regarding the importance of breastfeeding and techniques.[260] They suggest there is a need for tailored programs to meet the needs of individual pregnant women before, during and after their time in custody.[261]

The CGI academics told the Taskforce that mother and baby units prevent separation, ensure bonding and offer opportunity for parenting young children in a secure and nurturing environment with protection against homelessness, drugs and domestic violence. However, capacity does not meet the needs of an increasing prison population, and the needs of children are often overlooked in an adult prison setting. The Taskforce heard that there is an absence of research about the long-term outcomes for children spending time in custody with their mothers.[262]

The findings of the *Transforming Corrections to Transform Lives* project [263] suggest the need for an individually tailored, culturally appropriate, holistically and supportive continuity-of-care model.[264] The proposed model would support incarcerated mothers through their imprisonment and for two to three years after release by:

- creating systems change that brings people together at a senior level to identify policy barriers that often prevent integrated service provision for mothers and children
- developing communities of practice for front line workers with case scenarios to build skills
- training correctional officers in trauma-informed communication and educational workers to better support mothers in prison and to help them be actively involved in their children's education
- providing a coaching program to mothers and children.

These 'coaches' would be trained psychologists and social workers who knew the incarcerated woman's story and could help her to navigate the system and to communicate with social workers, family, teachers and employers in a positive, constructive manner. The ultimate goal of the coaching model would be for

women and their children to successfully transition and live independently and contribute positively to the community.[265]

The project received initial funding from the Paul Ramsay Foundation to develop a new way of working with mothers and children in prisons. The Foundation has recently announced further funding to develop and trial the proposed model.[266] The academics suggested that, in addition to supporting the project, QCS could improve the lives of incarcerated women and their children by improving nutrition for pregnant women and for children in custody, as well as access to play materials that met the development needs of young children.[267]

Other relevant issues

Relevant cross-cutting issues

Structural and systemic issues that impact on First Nations women and affect their over representation in custody may also impact on their ability to have their baby or children with them in prison.[268]

Taskforce findings

There is significant inconsistency in the quality of care that incarcerated women receive during pregnancy and birth in Queensland. Service delivery gaps can result in women's health and wellbeing issues not being met in prison. The result is that some women are not receiving the pre and postnatal care they would receive outside the prison system, and such care is not mandated.[269] This is despite women in custody having a right to expect the prenatal and postnatal care they receive in custody to be equivalent to what they would receive in the community.[270]

When a woman in custody is pregnant, she should be provided health and wellbeing support to enable the healthy birth of her child. Irrespective of her alleged or convicted offending behaviour, the community expects that her unborn child be given the best opportunity to be born safe and well.

Women recently released from custody told the Taskforce that they believe there are serious systemic failures that adversely impact women's reproductive rights in Queensland prisons.[271] The Taskforce heard distressing stories of women's experiences in custody of pregnancy loss and stillbirth. Given the responsibility of the State to meet the needs of pregnant women and children living in custody with their mothers, and the need for robust and transparent processes inside prisons, the stillbirth or death of a baby born while their mother is in custody, or the death of a child living in custody with their mother, should be defined as a death in custody for the purposes of the Coroners Act, and be reportable to the coroner.[272] As far as possible and appropriate, women in prison should be supported both to maintain contact with their children (including those in care in the child protection system) while they are in custody, and to plan to reunify with them when released. Youth Justice should support mothers in custody whose children are in care to safely look after their children and, where appropriate, work to reunify with them when they are released.

Mothers are responsible for providing essentials other than food for children and babies living with them in custody and at times are faced with long delays obtaining items, including the correct formula.[273] QH and QCS provided unclear and inconsistent information to the Taskforce about the provision of health and medical care and treatment for children living with their mothers in custody, other than in emergency circumstances. Children living with their mothers in custody should expect the same level of health care as children in the community.

Recommendations about standards of care to be provided to women and girls in prison or detention who are pregnant, pre and postnatal care, birth care and support are contained in Chapter 3.8.

Taskforce recommendations

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*.

Implementation

Implementation of recommendation 133 will require Youth Justice and QCS to work together to design and implement a mechanism to enable women in custody to access parenting supports and services. This could include expanding existing family support services funded by Youth Justice, to provide services and supports to women and girls who are mothers, while they are in custody and throughout their reintegration back into the community. The Taskforce acknowledges that it may not be safe or appropriate for some children to return to their mother's care after their release from custody, however, consistent with the principles and provisions in the *Child Protection Act 1999*, support should be provided to a child's mother in custody to help her maintain a connection with her child and help her to meet the child's protection and care needs after her release from custody.

The making of specific recommendations around meeting the needs of pregnant women in custody and their children provides clear guidance to the actions required to deliver on the *Queensland Prisoner Health and Wellbeing Strategy 2020-2025.*[274] Incarcerated women, support services, QH, QCS and Youth Justice should be involved in the finalisation of the steps to ensure that implementation is practical, workable and will truly improve the prenatal and postnatal care of incarcerated women and girls, and the lives of the children who live with them in custody.

Implementation of the legislative amendment to the *Coroners Act* should include consultation on a draft of the amendments with medical professionals, legal and service system stakeholders and women and girls with experience of pregnancy and caring for children while in custody. The QCS, QH and Youth Justice should publicly report in their annual reports about stillbirths experienced by women and girls who are in custody, and the deaths of children living with their mothers in custody. Guidance and training on the amendments should be provided by QH to QCS and Youth Justice.

Human rights considerations

The human rights engaged include the right to recognition and equality before the law (section 15); the right to life (section 16); the protection of families and children (section 26); the right to humane treatment when deprived of liberty (section 30), the right to health services (section 37) and cultural rights of Aboriginal and Torres Strait Islander peoples (section 28).

There is some risk that expanding the definition of reportable deaths in custody to include stillbirths that occur while a pregnant woman is in custody could be seen as creating an unfair distinction between these stillbirths and others that occur outside custodial settings. However, the Taskforce's recommendation is intended to reflect the responsibility of the State in caring for pregnant women in its prisons and the complete dependence of pregnant women prisoners on the State for adequate prenatal care.

Human rights promoted

Recommendations regarding culturally appropriate family and parenting support promote the protection of families and children (section 26) as well as cultural rights of Aboriginal and Torres Strait Islander peoples.

The recommendations relating to better meeting the needs of pregnant women and girls and their children living in custody promote the right to health services (section 37), the right to recognition and equality before the law (section 15), the right to humane treatment when deprived of liberty (section 30), the right to protection from torture, inhuman or degrading treatment (section 17), and the right to protection of families and children (section 26).

The proposed legislative amendment to the *Coroners Act* promotes the right to life (section 16), the right to protection of families and children (section 26), the right to humane treatment when deprived of liberty (section 30), and the right to health services (section 37).

Human rights limited

These recommendations do not limit any rights. The basic principle of the Bangkok Rules is that providing for the distinctive needs of women prisoners in order to accomplish substantial gender equality shall not be regarded as discriminatory.[275]

Evaluation

As part of the development and design of the family and parenting model, a governance and evaluation framework should be developed which, where possible, incorporates feedback from incarcerated women and their children.

The *Queensland Prisoner Health and Wellbeing Strategy 2020-2025* includes mechanisms to review and measure service improvements, benefits and impacts on prisoner health, with key performance indicators including access, effectiveness, efficiency, quality and safety, and patient satisfaction.[276] These mechanisms could be developed to better measure whether the needs of women, girls and children living with them in custody are being met.

The Queensland Government should ensure that data relating to pregnancy and birth outcomes, including pregnancy loss, stillbirth and neonatal death as well as deaths of children in custody, are collected in an extractable form before the commencement of the amendments to the *Coroners Act 2003* and an evaluation of impacts and outcomes achieved is undertaken.

The impact of this amendment to the *Coroners Act* 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 commencement, with a particular focus on any impacts on incarcerated women and their children.

Conclusion

There are many improvements needed to the conditions that Queensland women experience in prison. Many of the issues discussed in this chapter, however, apply equally to girls in detention. As well as being a human rights issue, meeting the wellbeing, health and disability needs of women and girls in custody is critical for their rehabilitation. Linking health and disability support needs upon release will give women and girls the best chance of maintaining health and wellbeing and rehabilitating in the community.

Improving pre and postnatal care for women in prison is an investment in an already vulnerable population. It is also an essential investment in their children, an innocent and even more vulnerable cohort. Prison provides a significant opportunity to support women, including First Nations women, to become healthier, and to nurture and care for their children while preparing for life in the community.

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Chapter 3.8: Treatment in custody, complaints mechanisms and oversight

Women and girls have recounted experiences where they were not treated with respect and dignity in prison. The ongoing practice of strip searches is particularly concerning for women in prison who are victim-survivors of sexual violence.

The small number of women's prisons and other limitations on transfers to low custody facilities can disadvantage women including those who have committed offences in retaliation to sustained domestic and family violence.

Current prison complaints processes lack confidentiality and leave complainants vulnerable to retribution.

It is essential that legislative and administrative arrangements for custodial settings specifically protect and safeguard the rights and interests of women and girls in prison and detention.

Treatment in custody

Background

Under the *Human Rights Act 2019* (Human Rights Act), people deprived of their liberty 'must be treated with humanity and with respect for the inherent dignity of the human person'.[1] Requirements to this effect are also contained within the *Youth Justice Act 1992* (YJ Act)[2] and the *Corrective Services Act 2006* (CS Act).

As discussed in Chapter 3.7, the operations of prisons and detention centres do not adequately address the gendered needs of women and girls. As a minority custodial population, women and girls are managed within systems designed primarily for men and boys.

Current position in Queensland

Strip searching

The CS Act enables corrective services officers to conduct searches of people and places within prison.[3] Searches may occur when an officer reasonably suspects the prisoner possesses something that poses, or is likely to pose a risk to the security or good order of the prison, or the safety of a person in the facility.[4] For female prisoners, searches requiring the removal of clothing, known as strip searches, occur:

- upon admission to a correctional facility
- when entering a health centre
- when entering a safety unit (if subject to an at-risk safety order)
- before transfer or removal from a centre (or for a low custody prisoner, transfer from a low custody farm to an adjoining secure centre for a medical appointment or program participation)
- after a contact visit with a personal visitor, and
- before providing a test sample of urine.[5]

There are a number of requirements for corrective services officers when carrying out strip searches. For example, they must be the same sex as the prisoner, 'must ensure, as far as reasonably practicable, that the way in which the prisoner is searched causes minimal embarrassment to the prisoner, must take reasonable care to protect the prisoner's dignity, must carry out the search as quickly as reasonably practicable and must allow the prisoner to dress as soon as the search is finished.'[6] Women who spoke to the Taskforce described that most officers observe these requirements but they found the practice itself highly distressing and violating.[7] Sisters Inside advocate for the abolition of strip searching in all settings, noting that 'consent must be the right of every woman and girl'.[8]

The Anti-Discrimination Commission Queensland's 2019 *Women in Prison Report* (ADCQ report) recommended that Queensland Corrective Services (QCS) implement new, non-invasive screening technology to replace routine strip searches in all secure women's prisons.[9]

QCS have informed the Taskforce that they are investigating alternatives to strip searches, including the use of non-invasive screening technology to detect items concealed under clothing and within body cavities.[10] Southern Queensland Correctional Centre (SQCC) staff told the Taskforce they are beginning to trial the use of body scanners in some areas of the prison.[11]

Security classification of prisoners

A sentenced prisoner must be given a security classification – maximum, high or low – within six weeks of admission to prison.[12] Maximum Security Units are contained within high security prisons and currently only hold male prisoners.[13] Prisoners on remand must be classified as high or maximum.[14] High security prisons can hold prisoners with both high and low security classification.

The *QCS Custodial Operations Practice Directive, Sentence Management – Classification and Placement* states that female prisoners are considered for low security classification and placement as a first option, where possible.[15] Scheduled and event-based reviews of classification are also to occur.[16]

The ADCQ report identified that the limited number of women's prisons in Queensland means that women with low security classifications often serve their sentences in high security prisons – with high electrified fences, highly enforced rules, increased lockdowns, increased strip searches and a lack of independence compared to low security settings. Ideally, prisoners should be held at the lowest security appropriate for their circumstances to ensure maximum opportunities for rehabilitation.[17]

The ADCQ report found that women are being disadvantaged in comparison to men by not having an equal opportunity to have their classification match their custody type. It recommended that QCS ensure that prisoners with a low security classification be held in a low security prison to the greatest extent possible.[18]

Under section 68A of the CS Act, prisoners are ineligible for transfer to a low security facility if they have been convicted of a sexual offence, murder or are serving life sentences.[19] Section 68A was inserted into the CS Act in July 2020 as part of the Government's position on recommendation 58 of the 2016 *Queensland Parole System Review Final Report* (Parole System Review).

Recommendation 58 recommended a review of the policy restricting placement of sexual offenders and prisoners convicted of murder or serious violent offences in low security. This recommendation was made due to a finding that prisoners sentenced for very serious offences do not automatically pose a risk to other prisoners or the community (through reoffending).[20] The Parole System Review found that if prisoners who have committed very serious offences demonstrate suitable behaviour as they progress through their sentence, they should be assessed for placement in low security at an appropriate time.[21]

The Government did not support recommendation 58 on community safety grounds which included the risk of prisoners escaping from low security facilities.[22]

The Taskforce heard of women being returned to high security facilities, from low security prisons or work camps, due to the commencement of this legislative requirement – disrupting aspects of their rehabilitation.[23] Whilst it is acknowledged that section 68A applies to people convicted of particularly serious offences, the provision itself does not enable any discretion to take into account individual risk profiles, including gender considerations, or a person's role in a crime (for example, as a coerced party rather than an actual perpetrator of violence).

Trauma-informed practices

Considering the gendered needs of women in prison, and their offending pathways, trauma informed practices should be embedded into prison practices and procedures.[24]

As previously noted in Chapter 3.7, QCS is in the process of developing a *Women's Strategy 2022-2027* (the Strategy). The Strategy will build upon the key principles and actions within the *Women's Estate Blueprint* (the Blueprint).[25] The 'Blueprint represents a service delivery framework that seeks to address priority areas that enhance community safety through gender-responsive and trauma-informed services, that are culturally competent and support women to rehabilitate, reconnect with their community and make

positive change'.[26] The Blueprint acknowledges that women in prison are managed through policies, procedures and practices initially designed for men and that their unique rehabilitation needs must be considered in their rehabilitation.[27] The Blueprint, contains the following objectives:

- strengthening family connections
- safety, health and wellbeing
- cultural and gender diversity
- offender management, rehabilitation and recidivism.[28]

It notes (within offender management) that changes to policies and procedures should be responsive to issues including:

- the role of personal relationships, victimisation and trauma in contributing to offending behaviour
- the role that personal and professional relationships have in reducing reoffending
- the length of prison sentences and how this affects community reintegration
- the complex health needs of women including chronic conditions and mental health concerns, and
- how substance abuse links with offending and past victimisation and trauma.[29]

QCS is also developing key initiatives and actions under the Strategy to meet its objectives. Many of the initiatives correspond with issues identified in this chapter, as well as issues addressed in Chapters 3.7, 3.9 and 3.10. Following the release for the Strategy, QCS intends to develop a *Women's Action Plan 2022 - 2027* (the Action Plan), which will be reviewed on an annual basis to monitor progress and ensure activity continues to meet the overarching policy objectives. The Strategy will also be reviewed in 2026, to support the development of the *Women's Strategy 2027-2032.*[30]

Girls in youth detention

Youth Justice recognises that many girls and young women in youth detention have a history of complex trauma that strongly influences their day-to-day behaviour, developmental level and capacity to understand why appropriate behaviour is important.[31]

In response to recommendations in the 2016 *Independent Review of Youth Detention Centres* relating to positive behaviour management and incident prevention, Youth Justice undertook a review of policies and procedures to incorporate trauma-informed practices.[32]

At present, Youth Justice state that their work 'is based on the principles of trauma-informed practice, a framework that emphasises the physical, psychological, and emotional safety of providers and survivors'.[33] The Youth Justice *Framework for Practice* (2020) was developed as part of the *Youth Justice Strategy Action Plan 2019 – 2021* and outlines values, knowledge bases and skills that guide and inform how Youth Justice works. In their submission to the Taskforce, Youth Justice outlined that the framework is a trauma-informed model.[34]

How do other jurisdictions address this issue?

Victoria and Western Australia are two Australian jurisdictions that deliver trauma-informed care to women in prison.[35] Victoria's *Strengthening Connections: Women's policy for the Victorian Corrections System* contains guiding principles for service delivery to women offenders. For example, Principle 8.2 (Be holistic and trauma-informed) states that 'correctional services and programs need to be holistic and recognise the realities of women's lives. This includes being practical and flexible in service delivery and offering services and programs that avoid re-traumatisation and provide healing pathways'.[36] Key enablers for policy principles include workforce capability.[37]

Trauma-informed practice and 'working with women' training is provided in Western Australia. This training was recommended in 2018 by the Inspector of Detention Services (Western Australia) to address the culture at Bandyup Women's Prison. It aims to improve staff responses to distress and pain and was initiated following an incident where a woman gave birth alone in her cell.[38]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons or offenders

The Taskforce heard of instances where women were intimidated and insulted by correctional staff. One woman at the SQCC recounted a time where a custodial officer told a group of women that an assistance dog was 'worth more than any one of you'.[39]

> *'Some officers make it their duty to encourage positive behaviour by providing firm [but] fair treatment but an equal number of officers deliberately insult and taunt women who are either new or suffering from poor mental health.'* [40]

The Taskforce also heard of a woman who was refused access to her washing (clothes, sheets and blankets) by an officer who told her that:

> *'[My] job is to dehumanise you, you are all just animals in cages to me.'* [41]

One woman described having her cell searched by an officer who broke some of her possessions and left her with only a sheet to sleep under – 'I was so cold all night'.[42]

> *'Some correctional officers … seem to think it is incumbent upon them to degrade, mistreat and punish prisoners, as if deprivation and loss of their liberty is not punishment enough… Having ex-military, ex-police, ex-security officers shouting at women from positions of authority, constantly surveiled, limiting women's control and ensuring compliance to changeable interpretations of prison rules is, in itself, re-traumatising for women.'*[43]

Youth Justice

Staff at the Cleveland Youth Detention Centre (CYDC) described the challenges of working with girls in detention, including regular violence. They noted that many girls come from communities where domestic and family violence is prevalent. Staff also spoke about the limited training they receive (mostly theoretical, with one practical week). They also raised issues with staff skills and recruitment – low retention of First Nations staff was of particular concern.[44]

In its submission, Youth Justice suggested that better trauma-informed training could improve practice across the criminal justice system and that more training was required for Youth Justice workers in particular. It submitted that there needs to be more of a practical focus on trauma and other issues such as intimate relationships and addressing vulnerabilities to violence, including sexual violence.[45]

Youth Justice also noted that female-specific resources would support staff to consider particular risk factors associated with young women offending and reoffending, and enable tailored service provision in line with gender responsive practice.[46]

Other relevant issues

Correctional officers – recruitment and training

As noted in the ADCQ report:

> *'Trauma-informed practice is a framework for human service delivery that is based on knowledge and understanding of how trauma affects people's lives and their service needs.*

> *It means that service providers have an awareness and sensitivity to the way in which clients' presentation and service needs can be understood in the context of their trauma history. The broad principles of trauma-informed practice require prisons to provide women with opportunities to experience safety, trust, choice, collaboration, and empowerment.'*[47]

The Taskforce also heard a clear plea from women with experience in prison for more focus on their healing:

> *'Correctional centres should be places of rehabilitation and healing, with support services and trained trauma-informed personnel who understand the abuse and violence women have experienced.'* [48]

The Blueprint acknowledges that competence, training, experience, and attitudes of correctional officers has a major influence on the prison environment. *Corrections 2030*, QCS' 10-year strategy, states that QCS will ensure that corrective services officers are trained to make informed and appropriate treatment and management decisions.

QCS told the Taskforce that some trauma-informed and gender-responsive practice training is currently provided to corrective services officers.[49] However, correctional staff within QCS have also suggested that initiatives such as specific recruitment for women's prisons and more intensive training at the QCS Academy could increase the capacity of correctional officers to work more effectively with women in prison.[50] A person with experience working in women's prisons told the Taskforce:

> *'I sometimes feel that I would like to do more to support women who have experienced sexual abuse however my job does not enable me to do that. Instead I can be a role model. An improvement would be to have more staff training in these areas so staff would have more understanding and compassion… An improvement could be to have specialised areas within a prison that are set up to support vulnerable prisoners who have experienced sexual abuse, that would be invaluable.'* [51]

Prison – standards and oversight

As discussed in Chapters 3.1 and 3.7, current standards for prisons in Queensland are not gendered and inspections by the Office of the Chief Inspector are not routinely published. The proposed new independent Inspector of Detention Services will, subject to the passage of legislation presently before the Legislative Assembly, have jurisdiction to inspect prisons at any time and publish reports with a requirement that the independent inspector inspect all, or part of, a particular place of detention (prescribed by regulation) at least once every 5 years.[52]

Taskforce findings

The Taskforce found that women are not always treated with respect and dignity in prison and that trauma-informed practices should be widespread. The practice of strip searching is highly distressing for many women. An investment in technology is required to provide a suitable alternative, such as body scanners. The Taskforce found that strip searching is particularly repugnant to women in prison as 87% of them are known victims of child or other sexual abuse, physical violence or domestic violence.[53] For these women in particular, the practice could, at least arguably, be a form of torture or cruel, inhuman or degrading treatment, potentially breaching these women's rights under section 17 of the *Human Rights Act 2019.* The Taskforce understands that it may take time for the new equipment to be budgeted for and put in place. In the meantime, the Taskforce considers that the Queensland Human Rights Commission (QHRC) should review QCS policies, procedures and practices involving strip searches in Queensland women's correctional centres. The QHRC should consider whether they are compatible with human rights,

and provide urgent advice on how those rights can be best protected until suitable alternative technology becomes available.

The Taskforce found that women should be held in facilities which match their security classification and the impacts of section 68A of the CS Act on women should be examined further by government. The Taskforce considered that a 'one size fits all' approach, linked only to the offence of which a person is convicted, is unfair and effectively discriminates against women. This is especially so given the high victimisation rates amongst women in custody, with 87% of women in prison being victims of child or other sexual abuse, physical violence or domestic and family violence.[54] In *Hear her voice 1* the Taskforce found that when women commit acts of violence it is often in retaliation to a long history of domestic and family violence perpetrated against them, and that the criminal justice system often fails to recognise this. QCS needs to adopt a more nuanced case-by-case approach, flexible enough to take these circumstances into account, in assessing a woman prisoner's security classification.

The Taskforce found that it is essential for QCS to provide intensive trauma-informed and gender-responsive training to staff and to develop other initiatives to increase their workforce capability to more effectively and appropriately manage women in prison. The QCS should also consider recruitment and transfer strategies to ensure that only correctional staff with trauma-informed, gender-responsive and culturally-capable training and demonstrated capability work in women's correctional facilities. Similarly, trauma informed, gender-responsive and culturally-capable practices should be adopted within youth detention centres.

The Taskforce acknowledges the important work underway in QCS to incorporate a gendered response to women in the correctional system, including the Blueprint and the development of the Strategy. This commendable agency-specific focus on better protecting the rights and interests of women prisoners should continue. Taking a broader perspective, the Taskforce identified that the whole-of-government strategy (recommendation 93) should include focus areas for women and girls in custody and after their release. A whole-of-government strategy will complement and support the work already underway within QCS by providing a whole-of-criminal justice system perspective. The recommended focus areas are required to target and address issues identified by the Taskforce about standards of care, service gaps and rehabilitative needs within prisons. The Taskforce also found that greater accountability is required to ensure that basic standards are met within prisons, with regular public reporting. Amendments to the CS Act in this respect are necessary and well overdue.

Recommendations below also respond to Taskforce findings in Chapters 3.7-3.10 in this report.

Taskforce recommendations

136. The 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 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's 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. The 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.

Taskforce recommendations

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 provide 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 a youth detention in Queensland are managed in ways that meet the standards outlined in recommendation 142.

Implementation

Introducing the use of non-invasive screening technology for use in women's correctional facilities and ceasing the practice of strip searching women will require additional investment and may take some time. During the implementation of this important reform, policies and procedures and practices should be put in place to limit trauma experienced by women as far as possible and ensure compatibility with, or as far as possible limit incompatibility with, human rights. This is a difficult and complex issue about which the QHRC would be well placed to provide advice and expertise.

The development and implementation of a framework for practice for working with women and girls in all correctional services and youth justice services will support a gender-responsive approach.

QCS should also identify and address other initiatives to build workforce capability within women's facilities. This includes professional supervision and support and policies for the recruitment and transfer of staff to ensure suitability to work with women. Exemptions under the *Anti-Discrimination Act 1992* may

be required to ensure that appropriate levels of female staff are recruited and allocated to women's prisons.

Further consideration of section 68A of the CS Act should examine the differing risk profiles between men and women to identify any unintended consequences, including rehabilitative impacts, arising from the mandatory nature of the provision. Any necessary amendments should be progressed to ensure an equitable response.

As part of the whole-of-government strategy, the identified focus areas should include better meeting the needs of women in custody to complement and support the development of an internal QCS Strategy. Relevant recommendations in this report should inform the further development of the Strategy.

Implementation of the CS Act recommendation should include consideration of section 263 of the YJ Act, which outlines the chief executive's responsibilities for meeting the needs of children in detention. The section itself should incorporate and reflect focus areas contained within current Queensland, Australian and international standards for the management of people in prison. QCS will require time and additional resources to implement this section once it comes into effect. Section 263 of the YJ Act should also be reviewed to ensure it aligns with contemporary best practice and provides a consistent approach to women and girls in custody in Queensland.

Human rights considerations

The Queensland Government and its agencies responsible for women and girls in custody have obligations under the Human Rights Act and international instruments to ensure that women and girls in custody are treated humanely and that other basic human rights are met.

Human rights promoted

Improving the experiences, treatment and rehabilitation of women in prison and girls in detention promotes human rights including the right to protection from torture and cruel, inhuman or degrading treatment (section 17), humane treatment when deprived of liberty (section 30), recognition and equality before the law (section 15), freedom of expression (section 21), protection of families and children (section 26), cultural rights generally and cultural rights of Aboriginal peoples and Torres Strait Islander peoples (sections 27 and 28), right to education (section 36) and the right to health treatment (section 37).

Human Rights limited

These recommendations will not limit human rights.

Evaluation

QCS' Action Plan, under the QCS Strategy, will be reviewed on an annual basis and the strategy itself will be reviewed in 2026. Annual reporting by QCS alongside inspection reports by the proposed Inspector of Detention Services (regarding standards compliance within specific prisons) should otherwise improve accountability and transparency for meeting prisoner needs and rights.

The impact of legislative provisions 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 commencement.

Complaints mechanisms and oversight

Background

Women in prison and girls in detention can complain internally and externally about their experiences and treatment in custody. However, many women have expressed concerns about the independence and confidentiality of current complaints processes that leave them feeling helpless and vulnerable to retribution from custodial staff or even other prisoners.

Robust oversight and complaints mechanisms are required to give women and girls a real voice, and access to recourse, within an environment which removes much of their autonomy and freedom and makes them invisible to the outside world.

Current position in Queensland

Women

The General Manager of each prison is responsible for the safe custody and welfare of people in their prison and should deal with complaints when requested to do so. Complaints to the General Manager are made in writing using confidential or privileged mail, known as a 'blue letter'.[55]

Where a person has a complaint about officer conduct that they believe is in breach of the Code of Conduct they may make a complaint to the Ethical Standards Unit within QCS.[56]

The CS Act also provides for the appointment of a Chief Inspector to coordinate both the official visitor scheme (see below), any investigations of incidents, inspections of prisons and any review of operations and services of prisons.[57] The CS Act further provides for the appointment of inspectors to carry out these investigations, inspections and reviews. Section 305 of the CS Act provides that inspectors report to QCS about the results of any investigation and any recommendations. There is no requirement for QCS to have regard to these reports.

Official Visitors (OVs) are appointed under the CS Act to investigate prisoner complaints (they are paid by QCS). They are appointed to prisons and must visit at least once a month, although they can visit any time except when a declaration of emergency is in force.[58] At least one OV appointed to a women's facility must be a woman.[59]

The OV must give a written report to QCS about an investigation, and at least every three months must give a written report summarising the number and type of complaints the OV has investigated. After investigating a particular complaint, the OV may make a recommendation to the General Manager and advise the incarcerated person of the recommendation, but these recommendations are not binding.[60]

External complaint mechanisms available to prisoners are:

- the Queensland Ombudsman (who provides a free telephone line to each prison). Like OVs, the Ombudsman's office has extensive powers of investigation but can only report to QCS and to parliament, and make non-binding recommendations
- the Health Ombudsman (for complaints about health services provided in prison)
- the QHRC (complaints of discrimination, sexual harassment, vilification and human rights), if complaints to the General Manager and OV have not resolved an issue
- the Queensland Police Service (QPS) for complaints about illegal behaviour and activities, and
- the Crime and Corruption Commission for complaints of official misconduct by officers, staff and management of prisons.[61]

Girls

A child in detention (or their parents) can make a complaint about other detainees, youth detention staff, any other person or something alleged to have happened. Complaints can be made to Youth Justice through an official complaint form, or to the Office of the Public Guardian (OPG) through their community visitors and child advocates (employed by the OPG).[62]

If a person is not satisfied with the outcome of a complaint, they can also contact external agencies including the QPS, the OPG, the Queensland Ombudsman and the QHRC.[63]

Inspector of Detention Services – jurisdiction and functions

As previously noted in Chapter 3.7, the proposed Inspector of Detention Services will have jurisdiction to review, monitor and inspect community corrections centres, prisons, watchhouses, work camps and youth detention centres.[64] However, the inspector will not have jurisdiction to investigate complaints or specific incidents in the first instance.

Recommendation 88 of the Parole System Review, relating to an independent inspector for correctional services, included a recommendation that the inspector oversee the OV program to improve transparency.[65] However, this function has not been included in the *Inspector of Detention Services Bill* (the Bill), although the inspector can interview OVs as part of their reviews or inspections and has broad powers to exercise its functions.[66]

During its inquiry into the Bill, the Legal Affairs and Community Safety Committee received submissions from stakeholders including the Queensland Council for Civil Liberties, the QHRC, the Queensland Law Society, the Aboriginal and Torres Strait Islander Legal Service (ATSILS) and Sisters Inside. These submissions raised concerns about the proposed functions of the independent inspector not including jurisdiction to investigate prisoner complaints and critical incidents.

These submissions argued that increasing the inspector's jurisdiction to receiving complaints and investigating critical incidents would promote accountability and transparency of critical incidents, help to identify threats to the safety of individual prisoners or circumstances that amount to inhumane treatment, and increase the effectiveness of the inspector's role. ATSILS submitted that some systemic issues can be so closely intertwined with individual cases that they should not be separated.[67]

The Department of Justice and Attorney-General's response to the issues raised in these submissions noted that the inspector's functions are intended to complement existing oversight mechanisms and not alter their mandate. To support this, the Bill contains provisions to allow the inspector to enter into arrangements with QCS and existing oversight bodies about matters the inspector will be notified about and matters the inspector will notify another entity about. This could include the handling of a review, inspection or other matter by the inspector that could be dealt with by the other entity.[68]

The departmental response also noted that individual cases could lead to a systemic review by the inspector. For example, as noted above, the Western Australian Inspector of Custodial Services conducted a systemic review in response to the circumstances of a woman giving birth in Bandyup Women's Prison alone in her cell in 2018.[69] The Bill also includes broad and significant powers to enable the inspector to undertake its functions.

How do other jurisdictions address this issue?

Most Australian jurisdictions already have an independent office or statutory body with oversight of detention facilities (see Appendix 15). The custodial inspectors in New South Wales, Western Australia and Tasmania do not investigate specific incidents or complaints – although the inspector in the Australian Capital Territory reviews critical incidents. The Office of the Inspectorate in New Zealand investigates complaints from prisoners, offenders in the community and the deaths of people in custody.[70]

Inspectors in New South Wales and Western Australia also manage official visitor and independent visitor schemes.

Results of consultation

Women who have experienced the criminal justice system as accused persons or offenders

The Taskforce heard that women are afraid to speak to the official visitor or Queensland Ombudsman because of a lack of confidentiality and potential for complainants to be punished.[71]

Women at the SQCC stated that officers see who is going to speak to the OV and know who has written a 'blue letter'. The women told the Taskforce that complaints to the OV and blue letters are not worth it because there are repercussions. The women considered that QCS was more concerned about officers' safety and that complaints go nowhere. Their perception is that the OV just talks to the general manager.[72]

'There is no one higher that can help you and say 'hey that isn't right'. It is like a concentration camp. There was no one you could complain to safely. You didn't complain to other officers, or management, or the ombudsman because they would know it was you and you would be punished for it. I was scared to follow the official avenues because they always knew when there were complaints, and who had made them. People who did complain were called into the office and questioned, making it obvious they knew. I was threatened with losing custody of my daughter multiple times. I felt powerless and frightened; they had the ultimate power over me.' [73]

Service system stakeholders

The Taskforce heard from services that support women in custody that the existing complaints processes are insufficient, with systemic issues often ignored.[74] Services were of the view that the role of the Ombudsman is made somewhat redundant in terms of complaints from women in custody as there is little to no confidentiality in the process.[75] Sisters Inside suggested some form of individual complaints process is required for the proposed Inspector of Detention Services to identify systemic issues.[76]

Legal stakeholders

In its submission to the Taskforce, the Queensland Indigenous Family Violence Legal Service argued that independent oversight of criminal justice system reform is essential, with the Inspector of Detention Services seen as an essential first step in addressing First Nations peoples' over-representation in prison.[77]

Government agencies

Queensland Corrective Services

QCS told the Taskforce that blue letters are put in a locked mailbox and are taken directly to the general manager of a prison. Senior QCS staff expressed confidence that management would not tolerate retribution against those who have raised complaints.[78]

Youth Justice

Youth Justice advised that extensive measures are in place to support young people to make complaints arising from their time in youth detention with regular reports provided to the OPG. It stated that Young people are provided a range of complaint pathways that are confidential, and free from reprisals or retribution.[79]

Other relevant issues

Complaints reporting

According to the *Annual Client Complaints Report 2020-21*, QCS complaint management process is guided by the *Client Complaints Management Policy* which defines complaints as 'standard complaints' and 'human right complaints'. Certain details of both types of complaint are required to be published annually by QCS under the *Public Service Act 2008* and Human Rights Act respectively.[80]

Details of human rights complaints arising from the youth justice system are contained in the Youth Justice *Annual Report 2020-21*.[81]

Confidentiality, retribution and support to make complaints

As noted above, there are multiple complaints avenues for prisoners and young people in detention, including internally to responsible agencies and externally to independent authorities. There are issues with the lack of confidentiality of the mechanisms to make a complaint that reduce the efficacy of these mechanisms. Women and girls will not make a complaint if they do not feel safe to do so. The visibility of the process to make a complaint and women's experiences of reprisal, render the current process ineffective or inaccessible to many prisoners. Sisters Inside also raised concerns about the lack of support provided to women in prison in order to raise complaints. In their recent submission related to the Review of Queensland's Anti-Discrimination Act (by the QHRC), Sisters Inside notes that many women in prison are not aware that they can make a complaint about discrimination and, even if they did, 'they are far too busy trying to survive one day to the next' to engage in a system which inherently disadvantages them.[82]

Prison complaints systems were examined as part the Queensland Crime and Corruption Commission's *Taskforce Flaxton* in 2018 which examined corruption risks and corruption in Queensland prisons. The final report made recommendations to improve complaint management processes (consistent with the recommendations made by the Queensland Ombudsman in 2016), and review prisoner complaint processes to:

- improve prisoner understanding of complaint processes
- increase prisoner confidence in the process (with specific objectives of providing confidentiality and reducing the fear of reprisal), and

– provide greater consistency across prisons.[83]

Prisoner advocacy

The Taskforce met with women who were involved in Prisoner Advisory Committees (PACs) in Townsville Women's Correctional Centre and SQCC. PACs provide a voice to women in prison and also support the distribution of important information throughout the prison population. However, the Taskforce heard that PAC meetings were infrequent, and relied on the cooperation of guards and management.[84]

Taskforce findings

The Taskforce was troubled to hear from many women about their concerns that their complaints were not treated confidentially and their experiences or fear of reprisal for making a complainant. The Taskforce noted the limited support available for women who wish to raise complaints in prison. Their vulnerability and lack of visibility to the outside world, combined with this perceived inability to make complaints, renders them effectively voiceless. The Taskforce found that the CS Act should clearly define the internal complaints processes and ensure protections for complainants. It noted that the YJ Act already contains a provision that provides for complaints made by a child or parent of a child detained at a detention centre (section 277). That provision requires the chief executive of Youth Justice to issue instructions about how a complaint can be made (detailing relevant agencies) and dealt with.

The Taskforce also found that the CS Act should be amended to provide minimum protections for complainants including that any complaint must be kept confidential, and that complainants should not be subjected to reprisal, or attempted reprisal, for making the complaint. It should be a punishable offence for a person to knowingly participate, directly or indirectly, in carrying out reprisals against a prisoner for making a complaint, and consideration should be given to making this a more serious offence if the offender is a corrective services officer.

The Taskforce observed that the proposed independent inspector will not have jurisdiction to receive and investigate individual complaints or to investigate incidences in the first instance. The Taskforce acknowledges the concerns of some stakeholders about this limitation. The Taskforce noted that the Queensland Parliament's Legal Affairs and Community Safety Committee provided its bi-partisan support for the passage of this legislation on 21 January 2021 and at the time of writing this report the Bill remains on the Notice Paper for debate in the Legislative Assembly. The Taskforce considered whether further amendments to the Bill were required and decided that this was not required at this stage. There are benefits in agencies having an open and transparent complaints process, and receiving and responding to complaints, including enabling responsible agencies to identify and respond to issues quickly and embed a culture of continuous learning and practice improvement. The proposed Inspector role has functions and significant powers that would enable it to oversee systemic issues arising from complaints or incidents as well as the complaints process implemented by agencies.

However, the Taskforce found that given the Bill proposes to establish a new oversight body with significant responsibility for a very vulnerable cohort, the operation of the legislation and efficacy of the inspector's jurisdiction and functions should be reviewed five years after it commences. It is noted that this is already provided for in the Bill.[85]

The Taskforce was concerned that the standards required to be met by QCS and Youth Justice for the management of women and girls in their custody are not gendered and are not addressing their specific needs and rights. Subject to the passage of the Bill, there is an opportunity for the proposed new inspector to issue inspection standards about the standard of care provided to women and girls, including to address issues identified throughout this part of this report (Chapters 3.7, 3.8, 3.9 and 3.10). While inspection standards will be a matter for the independent inspector to consider, the Taskforce found that it is important that standards consider the gendered needs of women and girls, to create a benchmark for appropriate management and to identify basic human rights which should be met and promoted.

Taskforce recommendations

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.

Implementation

Implementation of the recommendation about the five year review of the Inspector of Detention Services Act should include consideration of whether the powers and functions of the inspector have sufficiently enabled it to oversee complaints handling and incident investigation processes and systemic issues that arise from complaints and incidents. The review should consider how the role of the inspector operates and interacts with OVs. It should also consider whether the proposed separation of the functions of responsible agencies and the oversight body have provided sufficient responsibility and accountability.

Implementation of amendments to the CS Act regarding complaint processes should include consultation with people with lived experience, First Nations peoples, service system and legal stakeholders and oversight bodies.

The development of inspection standards, under the direction of the Inspector of Detention Services, is an opportunity to ensure the issues raised in this report about the management of women and girls in custody are addressed. The Inspector could consider existing standards within other jurisdictions within

Australia and New Zealand as well as international covenants - specifically the *United Nations Rules for the Treatment of Women Prisoners and Noncustodial Measures for Women Offenders* (the Bangkok Rules) and the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules).

Human rights considerations

The Queensland Government and its agencies responsible for women and girls in custody have obligations under the Human Rights Act and international instruments to ensure that women and girls in custody are treated humanely and that their other basic human rights are met. Australia has ratified the *United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), although implementation is ongoing at a national and state level.[86] Whilst not specifically aligned with OPCAT, the Inspector of Detention Services is an important mechanism to promote and safeguard the rights of people in custody within Queensland and the standards themselves should reflect human rights generally.

Human rights promoted

Strengthening the efficacy of complaints mechanisms within prisons as well as the development of standards which identify the needs of women and girls, promotes human rights, including the right to protection from torture and cruel, inhuman or degrading treatment (section 17), humane treatment when deprived of liberty (section 30), recognition and equality before the law (section 15), freedom of expression (section 21), protection of families and children (section 26), cultural rights generally and cultural rights of Aboriginal peoples and Torres Strait Islander peoples (sections 27 and 28), right to education (section 36) and the right to health treatment (section 37).

Human Rights limited

These recommendations will not limit human rights.

Evaluation

The evaluation of the impact of the inspector as well as the meeting of standards within prison and detention will occur through the inspector's inspection and reporting functions.

Conclusion

The Taskforce has heard and listened to the voices of women and girls in custody telling us they need to be treated and managed in ways which acknowledge their lived experience and pathways to offending, including their experiences of trauma (often from gender-based violence). They also need to have their strengths acknowledged and built on. Current systems and practices must be improved to ensure that basic standards and the needs of women and girls in custody are met. Correctional staff require training to implement trauma-informed and gender-sensitive responses within custodial settings.

Ensuring that complaints mechanisms enable women and girls to safely and confidentially make a complaint, which will be fairly and independently determined and acted on, will ensure that the voices of vulnerable women and girls rendered invisible to the outside world will be heard and answered. Creating an offence of subjecting a prisoner to a reprisal, with an aggravating circumstance where the offender is a corrective services officer, will improve confidence amongst women to make a complaint. An open and transparent complaints process enables agencies with responsibility for high risk services and responses to identify and respond to issues early and to embed a culture of continuous learning and practice improvement. It will also assist to ensure responses and services are compatible with human rights.

QCS' proposed Strategy and Action Plan is an important step for the management of women in prison as an identified group with individual needs. This initiative should build upon the findings and recommendations in this report. A whole-of-government and whole-of-system strategy will support QCS in its commendable efforts so far, to better meet the needs and hear the voices of women in its care in Queensland prisons.

[1] *Corrective Services Act 2006,* s 30.
[2] *Youth Justice Act 1992,* Schedule 1.
[3] *Corrective Services Act 2006,* s 33.
[4] *Corrective Services Act 2006,* s 33.
[5] Queensland Corrective Services submission, Discussion Paper 3, Attachment 1, 4.
[6] *Corrective Services Act 2006,* s 38.
[7] Confidential submission from women in prison, May 2022; Meeting with women at Southern Queensland Correctional Centre, 5 May 2022, Gatton.
[8] Sisters Inside submission, Discussion Paper 3, 19.
[9] Anti-Discrimination Commission of Queensland, W*omen in Prison 2019 - A human rights consultation report* (2019), 129 - Recommendation 29.
[10] Queensland Corrective Services submission, Discussion Paper 3, Attachment 1, 5.
[11] Meeting with staff at Southern Queensland Correctional Centre, 5 May 2022, Gatton.
[12] *Corrective Services Act 2006,* s 12
[13] Queensland Corrective Services submission, Discussion Paper 3, Attachment 2, 17.
[14] *Corrective Services Act 2006,* s 12.
[15] Queensland Corrective Services, Custodial Operations Practice Directive, *Sentence Management – Classification and Placement*, 4.
[16] *Corrective Services Act 2006* s 13.
[17] Anti-Discrimination Commission of Queensland, W*omen in Prison 2019 - A human rights consultation report* (2019), 134.
[18] Anti-Discrimination Commission of Queensland, W*omen in Prison 2019 - A human rights consultation report* (2019), 135 - Recommendation 31.
[19] *Corrective Services Act 2006,* s 68A.
[20] *Queensland Parole System Review Final Report,* November 2016, 183-184
[21] *Queensland Parole System Review Final Report,* November 2016, 183-184.
[22] Queensland Government, *Response to Queensland Parole System Review recommendations*, 16-17.
[23] Meeting with women at Southern Queensland Correctional Centre, 5 May 2022, Gatton.
[24] Lorana Bartels, Patricia Easteal and Robyn Westgate *Understanding Women's Imprisonment in Australia*, (2019) Women & Criminal Justice, 5.
[25] Queensland Corrective Services submission, Discussion Paper 3, Attachment 2, 31; Letter from Queensland Corrective Services, 27 May 2022, Attachments 1 and 2.
[26] Queensland Corrective Services submission, Discussion paper 3, Attachment 2, 30-31.
[27] Queensland Corrective Services submission, Discussion paper 3, Attachment 2, 31; Letter from Paul Stewart, Commissioner, Queensland Corrective Services, 27 May 2022, Attachments 1 and 2.
[28] Letter from Paul Stewart, Commissioner, Queensland Corrective Services, 27 May 2022, Attachment 3, 20.
[29] Letter from Paul Stewart, Commissioner, Queensland Corrective Services, 27 May 2022, Attachment 3, 20.
[30] Letter from Paul Stewart, Commissioner, Queensland Corrective Services, 27 May 2022, Attachment 1 and 2.
[31] Department of Children, Youth Justice and Multicultural Affairs submission, Discussion Paper 3, 6.
[32] Department of Children, Youth Justice and Multicultural Affairs, Positive behaviour management and incident prevention recommendations (2021) (web page) https://www.cyjma.qld.gov.au/about-us/reviews-inquiries/youth-detention-review/implementing-review-recommendations/positive-behaviour-management-incident-prevention-recommendations.
[33] Queensland Government, *How the youth justice system works*, (2021) (web page) https://www.qld.gov.au/law/sentencing-prisons-and-probation/young-offenders-and-the-justice-system/youth-justice-in-queensland/how-the-youth-justice-system-works.
[34] Department of Children, Youth Justice and Multicultural Affairs, *Youth Justice Framework for Practice Foundations* (2021); Department of Children, Youth Justice and Multicultural Affairs submission, Discussion Paper 3, 5.
[35] Lorana Bartels, Patricia Easteal and Robyn Westgate (2019) *Understanding Women's Imprisonment in Australia*, Women & Criminal Justice, 5.
[36] *Strengthening Connections: Women's policy for the Victorian Corrections System* (2017), 19.
[37] *Strengthening Connections: Women's policy for the Victorian Corrections System* (2017), 19.
[38] Office of the Inspector of Custodial Services (WA), *2020 Inspection of Bandyup Women's Prison*, (2020), iv.
[39] Meeting with women at Southern Queensland Correctional Centre, 5 May 2022, Gatton.
[40] Taskforce submission 6141484.
[41] Confidential group submission from women in prison, May 2022.
[42] Confidential group submission from women in prison, May 2022.
[43] Confidential group submission from women in prison, May 2022.
[44] Meeting with staff at Cleveland Youth Detention Centre, 9 March 2022, Townsville.
[45] Department of Children, Youth Justice and Multicultural Affairs submission, Discussion Paper 3, 5.
[46] Department of Children, Youth Justice and Multicultural Affairs submission, Discussion Paper 3, 5.
[47] Anti-Discrimination Commission of Queensland, W*omen in Prison 2019 - A human rights consultation report* (2019), 61.

[48] Confidential group submission from women in prison, May 2022.
[49] Letter from Paul Stewart, Commissioner, Queensland Corrective Services, 27 May 2022, enclosure 1, 16-17; Meeting with staff at Southern Queensland Correctional Centre, 5 May 2022, Gatton.
[50] Meeting with staff at Southern Queensland Correctional Centre, 5 May 2022, Gatton.
[51] Taskforce submission 6155533.
[52] *Inspector of Detention Services Bill*, proposed, s 8.
[53] Queensland Corrective Services, *Improving outcomes for incarcerated women* (March 2019) (web page) https://corrections.qld.gov.au/improving-outcomes-for-incarcerated-women/
[54] Queensland Corrective Services, *Improving outcomes for incarcerated women* (March 2019) (web page) https://corrections.qld.gov.au/improving-outcomes-for-incarcerated-women/.
[55] Caxton Legal Centre, *Prisoners' Grievances* (web page) https://queenslandlawhandbook.org.au/the-queensland-law-handbook/offenders-and-victims/prisons-and-prisoners/prisoners-grievances/
[56] Caxton Legal Centre, *Prisoners' Grievances* (web page) https://queenslandlawhandbook.org.au/the-queensland-law-handbook/offenders-and-victims/prisons-and-prisoners/prisoners-grievances/.
[57] *Corrective Services Act 2006* s 296.
[58] *Corrective Services Act 2006* ss 291 and 286(2).
[59] *Corrective Services Act 200* s 286(1)(c).
[60] Caxton Legal Centre, *Prisoners' Grievances* (web page) https://queenslandlawhandbook.org.au/the-queensland-law-handbook/offenders-and-victims/prisons-and-prisoners/prisoners-grievances/
[61] Caxton Legal Centre, *Prisoners' Grievances* (web page) https://queenslandlawhandbook.org.au/the-queensland-law-handbook/offenders-and-victims/prisons-and-prisoners/external-complaints-mechanisms-available-to-prisoners/
[62] Queensland Government, *Complain about a youth detention centre* (web page) https://www.qld.gov.au/law/sentencing-prisons-and-probation/young-offenders-and-the-justice-system/youth-detention/complain-about-a-youth-detention-centre.
[63] Department of Children, Youth Justice and Multicultural Affairs, Youth Detention Centre Operational Policy (2020) *YD-1-10 Youth Detention – Complaints to External Agencies*.
[64] *Inspector of Detention Services Bill 2021,* proposed, ss 2 and 6.
[65] Queensland Parole System Review, *Final Report* (2016), 236.
[66] *Inspector of Detention Services Bill 2021,* proposed, s 15(1)(b)(iii).
[67] Department of Justice and Attorney-General, Office of the Director General, *Response to written submissions received by the Legal Affairs and Safety Committee, as part of its inquiry into the Inspector of Detention Services Bill 2021*, proposed, ss 7 – 9.
[68] *Inspector of Detention Services Bill 2021*, proposed, s 20.
[69] Department of Justice and Attorney-General, Office of the Director General, *Response to written submissions received by the Legal Affairs and Safety Committee, as part of its inquiry into the Inspector of Detention Services Bill 2021*, 7 – 9.
[70] Office of the Inspectorate, *Making a complaint*, (web page) https://inspectorate.corrections.govt.nz/about_us/making_a_complaint.
[71] Taskforce submissions 5894941; 5894942; 703195.
[72] Meeting with women at Southern Queensland Correctional Centre, 5 May 2022, Gatton.
[73] Taskforce submission 5894942.
[74] Meeting with women supported by Sisters Inside West End Office, 11 April 2022, Brisbane.
[75] Meeting with women supported by Sisters Inside West End Office, 11 April 2022, Brisbane.
[76] Sisters Inside submission, Discussion Paper 3, 24.
[77] Queensland Indigenous Family Violence Legal Service submission, Discussion paper 3, 17.
[78] Meeting with Queensland Corrective Services, 13 May 2022, Brisbane.
[79] Department of Children, Youth Justice and Multicultural Affairs submission, Discussion Paper 3, 8.
[80] *Public Service Act 2008* s 219A(3); *Human Rights Act 2019* s 97.
[81] Department of Children, Youth Justice and Multicultural Affairs, *Annual Report 2020-21*, 35.
[82] Sisters Inside, *Submission to Anti-Discrimination Act Review* (February 2022), 4
[83] Recommendations 28 and 29, Queensland Crime and Corruption Commission, *Taskforce Flaxton An examination of corruption risks and corruption in Queensland prisons* (2018), 42.
[84] Meeting with women at Southern Queensland Correctional Centre, 5 May 2022, Gatton; Meeting with women at Townsville Women's Correctional Centre, 8 March 2022, Townsville.
[85] Inspector of Detention Services Bill, proposed, s 50.
[86] Australian Human Rights Commission, *Implementing OPCAT in Australia released* (2020) (web page) https://humanrights.gov.au/our-work/rights-and-freedoms/publications/implementing-opcat-australia-2020#_edn1; Parliament Legal Affairs and Safety Committee, Inspector of Detention Services Bill 2021 (January 2021), 28.

Chapter 3.9: Rehabilitating women in prison and girls in detention

While incarceration often negatively impacts the lives of women and girls, periods of custody should provide an opportunity to rehabilitate women and girls by identifying and addressing needs, promoting wellbeing, developing skills and providing education. Women and girls must also be supported to maintain contact with children, family and community, as a human rights and rehabilitative issue, and in the interests of their children.

For women, employment in prison should impart training and skills, preparing them for their return to the community. Their pay rates, while not at community rates, should be fair and provide some incentive. Prison should also provide an opportunity to work towards repayment of accrued fines and monetary penalties to help women have a 'clean slate' when they are released. This will also help their rehabilitation.

Programs

Background

Prison and detention should be designed to rehabilitate.[1] Good practice should facilitate rehabilitation, reduce recidivism and provide appropriate services to women and girls at all stages of the criminal justice process, including remand.[2] Time in prison provides a window of opportunity for incarcerated women and girls to participate in programs that assist them in developing skills that help reduce reoffending.[3] Appropriate programs are vital to address what has been described as the 'third space' – the link between life in custody and life on the outside.[4]

Current position in Queensland

The *Corrective Services Act 2006* (Corrective Services Act) states that the purpose of corrective services is 'community safety and crime prevention through humane containment, supervision and rehabilitation of offenders'.[5] The Corrective Services Act requires Queensland Corrective Services (QCS) to establish programs and services to:

- initiate, keep and improve relationships between incarcerated people, their families and the community
- support the health and wellbeing of prisoners
- help them reintegrate into the community after release, including by acquiring skills.[6]

Programs in Queensland prisons are structured and delivered by QCS or funded providers. The funded programs currently offered to women target general offending, violence prevention, motivation for positive change, substance misuse, emotional coping and wellbeing and cultural connection.

The *Youth Justice Act 1992 (*YJ Act) requires the establishment of programs and services to support incarcerated children and to help them reintegrate into the community after release.[7] Behavioural programs, social programs and cultural programs are currently offered in detention centres. Programs specifically for girls are, *Girls…Moving On* which aims to enhance motivation, increase skill development and enhance personal resources; and *Black Chicks Talking,* which is a cultural program for First Nations girls to support cultural connections.[8]

Remand and short sentences

While a range of programs are available to women in correctional facilities throughout Queensland, they vary significantly between correctional centres. While almost all of these programs are technically available to women on remand and those serving short sentences, participation often depends on a woman being in custody for a sufficient period of time to complete the program.

While sentence lengths are increasing,[9] a large proportion of women in prison in Queensland are on remand or serving short sentences and remain in prison for less than six months. Fewer than 20% remain in custody for 12 months or longer.[10]

Many women in prison are either not eligible for in-prison programs or, if they are eligible, do not complete them. Hence the system-wide data on program participation disguises a significant groups of prisoners who are exposed to the criminogenic effects of imprisonment without any program participation to offset those impacts.[11] Further, since around 60% of remandees are released on the day of sentence, many are being released without having participated in rehabilitative programs during their time in prison.[12]

As noted in Chapter 3.1, the length of time that young people stay in detention is significantly less than that of adults and allows even less time for participation in programs.

How do other jurisdictions address this issue?

All Australian jurisdictions provide various rehabilitative programs for incarcerated people. In 2016, Corrections Victoria partnered with Justice Health to conduct the *Women's Services Review*[13] (the review). The review examined the programs and services on offer across prisons and community corrections, including their responsivity and suitability to the needs of women and their alignment with current evidence and best practice.[14]

The review led to the development of a brand new Women's Service Delivery Model (the model) and a new policy framework to inform approaches to working with women in the corrections system. The model seeks to ensure that all incarcerated women, including those on remand and serving sentences, regardless of length, are provided with programs and services that meet their needs and match their involvement with the corrections system.[15]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons or offenders

Women told the Taskforce that drug and alcohol courses need to be easier to access, better publicised, build up women's confidence and teach essential life skills.[16] Women told the Taskforce they wanted to rehabilitate but access to programs was difficult, with the suboxone program only being available to women who were on the program before entering prison.[17]

One woman at Southern Queensland Correctional Centre (SQCC) said that she has applied to do every course available but could not get into anything because her short sentence meant she was not given priority.[18] Women expressed frustration that there are no domestic violence programs available to help them recognise the danger of being in an abusive relationship or how to recover and heal.[19]

Women have told the Taskforce that they received no help to address the underlying factors that contributed to their offending behaviour including mental health, drug and alcohol misuse, domestic and family violence and sexual offending.[20] One woman explained:

> *'My offending was never addressed in prison, I was offered nothing to help work through my triggers or to understand what led me to offending. I was just punished. I walked out of prison with no counselling, no education, no help, just a see you later.'* [21]

The Taskforce heard that more gender-specific programs were needed in prisons, including domestic and family violence programs and financial literacy.[22] These types of programs could begin to address

underlying issues such as compound disadvantage. Accessibility and capacity issues were frequently raised. Availability of rehabilitation services in the community is a significant problem.

Women and girls told the Taskforce that Queensland does not have enough publicly-funded services to address substance use and mental illness.[23] For example, the waitlist for community diversion programs on the Sunshine Coast was 8 weeks and counselling was 12 weeks.[24] An example was given in Townsville of a woman released without an opioid treatment plan, resulting in her relapsing within a week.[25]

A recently released woman supported by Sisters Inside spoke of the challenges of talking about offending prior to conviction:

> *'I wasn't actually convicted at the time ... It was very hard to have to talk about [my alleged offending] before being convicted.'* [26]

A group of incarcerated women told the Taskforce of the need to expand parenting programs and playgroups beyond biological parents and grandparents to recognise the diversity of family structures, and for QCS to work with child safety to deliver programs.[27]

Service system stakeholders

The Taskforce heard that more gender-specific programs were needed in prisons, including programs about domestic and family violence, financial literacy and life skills.[28]

Sisters Inside spoke of the lack of programs available for women on remand even in circumstances where they are remanded for long periods of time.[29]

A wide range of stakeholders across Townsville, Mackay, Brisbane and the Gold Coast told the Taskforce that there are waitlists for appropriate programs and that priority is given to sentenced women, meaning that women on remand are often excluded from participation altogether.[30]

SERO4 (the MARA Project) informed the Taskforce that additional resources are required to broaden the scope of programs to support more women, including those on remand. It called for a stronger coordinated and integrated approach with courts and community organisations and for additional funding to implement a state-wide model with one provider to ensure consistent, effective practice across all women's correctional facilities.[31]

Staff from the Darumbul Youth Service in Rockhampton spoke of the limited programs available for girls including current programs that target parenting, being pregnant, domestic and family violence or work skills.[32]

Legal stakeholders

Legal Aid Queensland (LAQ) told the Taskforce that greater access to programs should be offered via community-based orders and transition from imprisonment orders, which are designed to improve educational and employment opportunities.[33] LAQ called for an increase in gender-specific substance abuse programs, not only in South East Queensland but in regional areas and Far North Queensland, both in custody and post-release. LAQ suggested a multi-agency approach to support women and girls with mental illness, neuro cognitive impairments, intellectual impairments and disabilities to enable equitable access to prison programs and to have their health and treatment needs met.[34] LAQ explained there was a need for more culturally-led programs such as those run by Sisters Inside, which connect girls with cultural healing, cultural art therapy and cultural camps.[35] They highlighted the need for funding of domestic violence and healthy relationships programs targeted at young girls prior to the resolution of their matters. These programs need to be delivered before young girls become entrenched in a violent relationship or the criminal justice system.[36]

Academic

Researchers behind the *Transforming Corrections to Transform Lives* project from the Griffith Criminology Institute (the Griffith Project) noted that there are no formal peer-reviewed evaluations available on

existing programs for women in prison in Australia (and limited international evaluations), nor is there evidence of best practice to guide investment in these programs. [37] They also highlight that there are key gaps in knowledge in Australia and internationally regarding maternal imprisonment and the development and wellbeing of children with a mother in prison, along with understanding how to achieve sustainable change in social service delivery systems.[38]

Government agencies

Queensland Corrective Services

QCS told the Taskforce that there are various issues that restricted their ability to provide programs to women.

Staff from the Assessment Unit at TWCC told the Taskforce that women miss the opportunity to undertake programs because of program capacity which has reduced further since the COVID-19 pandemic.[39] The Taskforce heard that there are not enough staff rostered on to meet demand.[40] The length of programs was designed for those serving longer sentences and were subject to waiting lists. Because of this, women serving short sentences and on remand often miss out[41] - an issue exacerbated by increasing remand numbers and high turnover of women on remand.[42] Programs did not cover the subject range needed, and while domestic and family violence specific programs are being trialled in South East Queensland, no regular such programs are available in Townsville.[43]

Staff at SQCC pointed out that many programs are designed for men, with gender specific themes and terminology, and that these programs need to be amended to suit women. [44] The Taskforce was told by managers at TWCC and staff at SQCC that there was a lack of infrastructure to deliver programs.[45] More generally, QCS confirmed that the backdating of sentences reduces the time that prisoners are able to access and complete programs, as much of the time they spend in custody is on remand.[46]

The Taskforce has seen a draft version of the QCS *Women's Strategy 2022-2027* (the QCS Strategy). This includes some planned work about programs including increasing opportunities for women to access evidence-based programs and services that are gender-responsive and trauma-informed. QCS intends that this work will include programs aimed at addressing offending behaviours and programs focussed on improving employability. The QCS Strategy acknowledges the need to avoid siloing and for programs to complement each other so as to reflect the inter-related nature of issues experienced by incarcerated women.[47]

Psychologists at SQCC told the Taskforce that many of the women entering the centre have drug addiction problems that require specialist support.

Youth Justice

Staff from Cleveland Youth Detention Centre (CYDC) told the Taskforce that short periods of detention don't enable significant intervention. [48] The Department of Children, Youth Justice and Multicultural Affairs (Youth Justice) noted that programs for young people on remand cannot address any unproven offences due to the presumption of innocence. As most young people on remand have prior proven offences these can be used to discuss targeted program responses.[49]

Staff at CYDC told the Taskforce that while there are programs available, the average remand period for young people is 30 days and that this short period does not give much time for them to engage in support and change their lives.[50]

Government responses to previous inquiries and reports

Four reports and inquiries have made recommendations regarding prison programs in recent years.

The 2016 *Queensland Parole System Review* (the QPSR report)[51] recommended increasing the number and diversity of rehabilitation programs[52] and evaluating the programs currently on offer.[53] QCS has told the Taskforce that these recommendations have been completed, although further funding and program evaluation is needed to continue to meet demand for programs and services in the future.[54] QCS has also developed a four-year Program Evaluation Plan that outlines a forward strategy for the evaluation of QCS rehabilitation programs delivered in correctional settings.[55]

Recommendation 35 of the Anti-Discrimination Commission of Queensland's *Women in Prison 2019* report (ADCQ report) recommended increasing the number and diversity of rehabilitation programs as well as training and education opportunities.[56] Recommendation 44 called for the expansion of re-entry services to ensure that all prisoners have access to services, including specialty services.[57] There has been no formal Queensland Government response to the ADCQ report and no additional funding has been provided to QCS.[58]

Recommendations by the former Queensland Productivity Commission in its *Inquiry into imprisonment and recidivism* report (QPC report) expanded on the work of the QPSR and ADCQ reports by recommending improved access to rehabilitation activities (recommendation 17),[59] more effective throughcare (recommendation 19), [60] and commissioning research into recidivism reduction and developing an implementation plan (recommendation 21).[61] The Queensland Government has responded that it will undertake a range of activities targeted at improving rehabilitation and reintegration services including developing an enhanced throughcare service delivery model.[62] No additional funding has been provided to QCS to implement the recommendations of the QPC report.[63]

The 2018 *Report on Youth Justice* from Bob Atkinson AO (the Atkinson Report) recommended that all remanded children have access to rehabilitative programs addressing criminogenic factors and that these programs continue following release.[64] The Queensland Government accepted this recommendation.[65]

Other relevant issues

Lack of gender-specific rehabilitation programs for women

The Taskforce heard that current rehabilitation programs are not targeted specifically to women. In their submission to the Taskforce, LAQ noted that there is a large body of research that shows that women perform better in gender-specific substance abuse treatment groups, or programs that offer gender-specific services.[66]

Poor continuity

Illicit drug offences are a key driver for the increase in imprisonment and recidivism for women, with the QPC report highlighting that between 2012 and 2018, 89% of the increase in reported offences committed by women were associated with drug offences. The number of women who were primarily imprisoned for drug offences increased by 219% during the same time period.[67]

QCS has developed a *Drug and Alcohol Strategy 2020-2025* that includes an objective to reduce demand through key initiatives such as an 'end-to-end' case management system (discussed in more detail later in this chapter) and expanded re-entry services to address need.[68]

However, the Taskforce has heard that there is a lack of continuity between rehabilitation programs in prison and the community. It was reported that there is insufficient information shared between custodial services within QCS and community corrections so that women's needs are not immediately identified upon release on parole.[69] It was regularly reported that women's rehabilitation needs were not being adequately assessed until they were in the community.

Community based rehabilitation programs - low availability and accessibility

Additionally, there are limited community-based rehabilitation programs that women released from prison can access. The Taskforce heard that availability varies but that women can fall through the gap between their release and connection with community based support.[70]

QCS informed the Taskforce that they have some 'black spots' across Queensland where there are no QCS programs being offered due to limited resources. These areas include Mt Isa, the Central Coast and North Coast (Caboolture to Gympie including the Sunshine Coast). Community and non-government organisations are solely relied upon in those regions to deliver programs and other services.[71]

Taskforce findings

The Taskforce found that current rehabilitation programs are not addressing women and girls' needs and that this is partly because they are not gender-specific. Gender-specific programs are important to meet the unique needs of women and girls, including victimisation history, substance dependency, mental illness and family responsibility, with integrated, holistic and trauma informed supports.

The Taskforce heard that although many programs technically admit remanded women, this is generally dependant on women being in custody for a sufficient time to complete the program. The indeterminate period that women and girls remain on remand is resulting in priority for placement in rehabilitation programs being given to women serving sentences who have greater certainty about the minimum time they will be in custody. The Taskforce also found another barrier to the participation in programs while on remand is a concern that to do so may be perceived as an admission of guilt. The Taskforce was of the view that all programs offered and commenced in prison, including drug and alcohol rehabilitation programs, should be able to be completed in the community.

The Taskforce found that there is a need to review all programs and services currently on offer across all women's correctional centres and community corrections (and in youth detention and beyond) to examine their responsivity and suitability to the needs of women and girls, and their alignment with current best practice. It is intended that such a review would pave the way to increased accessibility and the availability of quality programs for both remanded and sentenced women and girls. The Taskforce notes that a similar review in Victoria lead to the creation of a new policy framework dedicated to informing approaches for working with women in the corrections system.

The ADCQ report made recommendations for increasing the number and diversity of rehabilitation programs and training and education opportunities (recommendation 35) and expanding re-entry services (recommendation 44). Similar recommendations by the QPC included recommending improved access to rehabilitation activities (recommendation 17), more effective throughcare (recommendation 19) and commissioning research into recidivism reduction and developing an implementation plan (recommendation 21) (see Appendix 16). The Taskforce is aware that the ADCQ and QPC had significantly more time and resources than the Taskforce to consider the programs and services available to incarcerated women. Their findings and recommendations are consistent with what the Taskforce has seen and heard during its consultations.

The Taskforce considers that implementing the recommendations of the ADCQ and QPC reports as part of a whole-of-government strategy will help to ensure that women on remand receive productive rehabilitation and support to help them settle into custody, to address addiction, to receive cultural support, to understand and respond to domestic violence, to continue to parent – either in custody or at a distance, to become physically, mentally and spiritually healthier, and ultimately to transition successfully back into the community.

Incarcerated women, and those who support them, are fearful that participation in programs which often require admitting offending behaviour, might detrimentally impact their defence. The Government can remove this anxiety by providing legislative confirmation to women and girls that their participation in rehabilitation programs and any admissions made will not be used against them in future legal proceedings.

Taskforce recommendations

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, domestic and family violence, sexual violence and trauma support 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.

Implementation

Increasing the availability and delivery of programs will require additional investment both within QCS and Youth Justice and for the delivery of services and programs by non-government organisations. Programs that address domestic, family and sexual violence should be integrated with and complimented by specialist psychological care and trauma support services. The Taskforce observed a particular lack of program availability in TWCC and CYDC, which is exacerbated by their broad catchment areas and limited capacity.

The Taskforce would urge QCS and Youth Justice to meet with representatives from the Victorian Services Review in order to learn as much as possible from their processes.

QCS and Youth Justice should consult with women and girls with lived experience, First Nations peoples, and service system and legal stakeholders, including prisoner support services and non-government bodies who provide rehabilitation services to offenders about the design and implementation of programs for women and girls in prison and detention. These groups should also be consulted on legislative amendments before a Bill is introduced to the Legislative Assembly.

Human rights considerations

This recommendation engages the right to recognition and equality before the law (section 15); the right to humane treatment when deprived of liberty (section 30); the right to a fair hearing (section 31) and rights in criminal proceedings (section 32).

The *Bangkok Rules* require individualised, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programs for women with mental health-care needs in prison[72] as well as women-centric[73] substance abuse treatment programs.[74]

Human rights promoted

A focus on increasing access to programs, including gender specific programs (including for remanded women), promotes the rights of women and girls to be treated equally by the law (section 15), the right to humane treatment when deprived of liberty (section 30) and the right to health services (section 37). Remand programs involving secondary or vocational education promote the right to education (section 36).

The delivery of women-centric rehabilitation programs also aligns with the *Bangkok Rules*. [75]

Human rights limited

These recommendations do not limit any human rights. The *Bangkok Rules* clarify that providing for the distinctive needs of women in order to accomplish substantial gender equality shall not be regarded as discriminatory.[76]

Evaluation

Data should be obtained about the number and cohorts of women and girls accessing particular programs including remanded women.

The impacts and outcomes achieved should be independently evaluated to inform ongoing service delivery and to develop the evidence base about what works to address the underlying factors that contribute to women and girls offending behaviour and prevent reoffending.

As far as possible, the evaluation should include consideration of value for money.

Psychological care and trauma support

Background

QCS have reported that 87% of women in custody have been victims of child sexual abuse, physical violence or domestic violence and 66% of those women have been victims to all three types of abuse.[77] First Nations women in prison experience high levels of psychological distress, depression and anxiety connected to social and emotional wellbeing, such as unresolved trauma, removal from their families as children, and separation from their community.[78]

Statistics published by Youth Justice indicate that the children who come into the youth justice system generally come from tough and often traumatic family backgrounds, and many have issues and problems that affect their behaviours, lifestyles and decisions. Of the children and young people who come into contact with the youth justice system, 58% have a mental health or behavioural disorder diagnosed or suspected.[79]

These statistics demonstrate that women and girls in prison and detention require significant mental health treatment and support.

Current position in Queensland

QCS employs psychologists in prisons who conduct assessments and provide support to prisoners with immediate mental health concerns, focussed on the safety of prisoners and staff.

Queensland Health (QH) Prison Mental Health Service (PMHS) deliver specialist mental health services for prisoners with severe and complex mental illness.[80] QH otherwise have responsibility for the initial assessment of immediate mental health needs on reception of a prisoner and clinical consultations including primary mental health services.[81] The current *Queensland Prisoner Health and Wellbeing Strategy 2020-2025* and Office for Prisoner Health and Wellbeing within QCS notes that increased access to primary mental healthcare should be explored through greater collaboration between primary healthcare clinicians and QCS clinicians.[82]

The forensic Child and Youth Mental Health Service (forensic CYMHS) provides mental health and drug and alcohol services to young people in detention and follow-up care in the community.[83] Each Queensland detention centre also has an onsite multidisciplinary team which includes psychologists. The primary role of these psychologists is to cater to the therapeutic and psychological wellbeing of young people, and oversee the implementation of the suicide/self-harm risk assessment framework and the positive behaviour support model.[84]

Key gaps in mental health services in prison

The Taskforce heard that mental health treatment and support in prisons is targeted at acute need only.[85] The QCS psychologists with whom the Taskforce met were primarily focused on suicide prevention, not addressing underlying trauma or psychological distress.[86] The Taskforce heard that this very narrow focus was a result of limited resources being used to meet the high demand for acute care.[87] QH intervene in cases of severe and complex mental illness but there is no focus on assessment, early psychological intervention and ongoing support.[88] A staff member at a women's prison submitted:

> *'There needs to be an improvement in the way of support/counselling. I see prisoners being counselled from the officer's station desk as opposed to being in a private environment, it is appalling to witness.'* [89]

Information sharing issues between QCS and QH also affects appropriate medical treatment (including mental health care). A revised Memorandum of Understanding between QCS and QH, which aims to improve the sharing of confidential information, is near completion.[90]

In its submission to the Taskforce, QH noted that mainstream models of mental health care do not meet the needs of Aboriginal and Torres Strait Islander peoples and act as a barrier to help-seeking.[91] As such, culturally responsive and safe models that incorporate Aboriginal and Torres Strait Islander concepts of social and emotional wellbeing are required.[92]

Medicare eligibility

As previously outlined in Chapter 3.7, prisoners are not eligible to claim a Medicare benefit whilst in prison and do not have full access to the Pharmaceutical Benefits Scheme (PBS).[93] This is because the State is responsible for the delivery of health services to prisoners and the relevant exclusion, under section 19(2) of the *Health Insurance Act 1973* (Cth), is designed to avoid duplication of services.

QH noted that correctional settings can suffer from 'the missing middle' in relation to addressing mental health needs.[94] PMHS provide care for major mental illnesses such as psychosis and major mood disorder but have limited ability to meet the needs of all mental health conditions.[95] Services in the primary health system operate within the remit of the federal Government and provide care at the level of local general practitioners.[96] In the broader community, individuals may have access to psychology sessions under a mental health plan and the Medicare system. However, there is no access to Medicare-type systems within the custodial environment.[97]

Some of Australia's peak health and medical advocacy groups have criticised the Medicare exclusion, arguing that it breaches human rights, results in suboptimal care, and perpetuates the cycle of ill health and disadvantage.[98]

How do other jurisdictions address this issue?

Western Australia's Wandoo Rehabilitation Prison delivers a therapeutic community model in a standalone facility. Eligible women can undertake a program that includes routine drug-testing, daily rehabilitation and group therapy sessions supported by trained staff and peers. Goals include facilitating a better adjustment to post-release life within the community and offering continuing support to the women post-release.[99] Bandyup Women's Prison in Western Australia also has a 32-bed mental health unit designed to provide therapeutic and counselling support.[100]

In Victoria, the Marrmak Program for women, within the Dame Phyllis Frost Centre (maximum security prison), is an integrated mental health service that includes a 20-bed residential unit, outpatient program, outreach service and day program.[101]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons or offenders

Women reported significant difficulty accessing any form of non-acute mental health support.[102] QCS psychologists wear uniforms which create a therapeutic barrier, and many women are forced to raise mental health concerns at kiosks without any privacy.[103]

In order to access to psychologists, women told us they must escalate their symptoms - often resulting in transfer to a safety unit where conditions are harsh.[104] Women at SQCC spoke about their abuse and trauma histories being a significant driver for their offending behaviour and believed that support should be provided to them while they are in custody.[105] Women told the Taskforce that mental health and counselling services would assist them to heal and that this would help them rehabilitate and avoid recidivism.[106] One woman told the Taskforce:

> *'There is limited support available. Women in jail have no choice but to rely on their peers for the majority of their mental health, welfare… The services within the centre exists to offer support but they are over stretched and unable to meet the demands…Prisons need therapy-based supports for rehabilitation.' [107]*

Conditions in the safety unit at SQCC are austere, with limited clothing, food and activities and often 24-hour lighting and observations.[108] Women told the Taskforce that conditions in safety units compound psychological distress and harm, and that they are not therapeutic environments.[109]

Women at TWCC spoke to the Taskforce about delays in accessing toilets within the safety unit (staff must provide supervised access). As a result, women often defecate and urinate inside the safety cells, which the Taskforce was told were not properly cleaned, even before the next woman occupied the cell.[110] Women described conditions that were so bad, they would not seek mental health assistance for fear of being put in these cells, where their already at risk mental health would greatly deteriorate.[111]

Women told the Taskforce they are concerned that they are not being medicated or assessed properly by health staff.[112] They described specialist mental health staff in the prison as 'pretty pathetic'.[113] One woman said psychologists do not offer ongoing support and coping strategies must be implemented 'on your own'.[114]

Service system stakeholders

Sisters for Change reported that some of the basic features of a prison, including the level of surveillance, lack of autonomy and the practice of strip searching, can function as significant trauma triggers for women prisoners.[115]

Staff from the Darumbal Youth Service in Rockhampton told the Taskforce that many children they support see custody and youth detention as a safe refuge from the trauma and chaos of their lives in the community. They are fed and away from the violence they often experience at home or on the streets. For many girls, this includes respite from domestic violence.[116]

Queensland Corrective Services

Correctional staff at TWCC spoke about how QCS and QH work in silos.[117] They felt there was a need to be more client centred particularly around information sharing, especially diagnoses and treatment.[118] They recognised that continuity of treatment can be a problem,[119] and that the harsh conditions in detention and safety units are apt to compound psychological distress.[120]

A staff member at the SQCC told the Taskforce that nearly 100% of the women in the prison needed help to address their trauma. Another staff member described the majority of the women in the centre as having multiple and complex needs beyond those of male prisons in protection units. Staff spoke about resourcing issues impacting on psychological input as resources are focused on the women with the

highest needs, with only two psychologists on staff to care for 95 women with multiple and complex mental health needs.[121]

Mental health staff working with vulnerable women prisoners balance the tension between their responsibilities to the women and those to their agency. They are obliged to report anything notable to QCS intelligence, with this then documented on the prisoner's file. For example, concerns about safety, whether to the prisoner or others, need to be reported.[122]

The Taskforce also heard from mental health staff that, although prison provides an opportunity to work with women on their past abuse and trauma issues, there are also risks. For many women, their significant trauma histories makes the work required to assist them to heal, complex and difficult. Prison may not be a safe place to do the kind of intense therapy and treatment they require.[123]

QCS' Women's Estate Blueprint (the Blueprint), which will inform the QCS Strategy, includes safety, health and wellbeing as a priority area. The Blueprint acknowledges the prevalence of mental health issues and experiences of trauma within the female prison population. QCS are developing key initiatives within the Women's Action Plan 2022-2027 (the Action Plan) to improve the support and programs available to women relating to mental health and experiences of trauma and domestic and family violence.[124] Senior leadership staff within QCS and within SQCC were supportive of the Blueprint and saw it as an important mandate for them to better meet the needs of women and girls in custody, which they described as a priority.[125]

Youth Justice

Staff at CYDC told the Taskforce that short periods of detention don't enable significant intervention.[126] The detention centre staff advised that many children look at Cleveland as a safe place with structure, where they are protected and heard.[127] The Taskforce heard that 'it is a vicious cycle for these girls' – violence, coercive control, sexual abuse. Staff told us that they try to get them what they need emotionally while they are in there, but when they leave they go back into the same environment.[128]

Queensland Health

The forensic CYMHS have Aboriginal and Torres Strait Islander mental health clinicians and health workers who work with First Nations young people to increase engagement, maintain cultural connection, facilitate access to culturally appropriate services, and support them to receive culturally appropriate clinical care.[129]

Young women in youth detention have very high levels of trauma, and some feel vulnerable and unsafe around predominantly male youth workers and detention centre staff.[130] All staff in youth detention receive some training in trauma-informed practice but their skills and experience vary considerably.[131]

Other relevant issues

Inquiry into the opportunities to improve mental health outcomes for Queenslanders

In its June 2022 report into the *Inquiry into the opportunities to improve mental health outcomes for Queenslanders,* the Mental Health Select Committee noted that:

There is reportedly almost no individualised, tailored psychological treatment currently provided in Queensland's correctional facilities. The committee also heard that without continuity of care, people who are released from custody die from suicide and overdose rates that are 'dramatically higher than any other health cohort…

These populations require greater access to mental health and [alcohol and other drugs] services while in custody to support positive transitions back into the community when they are released.[132]

The Mental Health Select Committee made recommendations including that the Queensland Government invest in:

- more mental health services in Queensland's correctional facilities and for people on remand, including delivery of one-to-one psychological treatment and group interventions
- withdrawal, alcohol and other drugs recovery services in correctional facilities, including for people on remand
- programs like 'Sisters for Change' facilitated by the Australian Red Cross across more correctional facilities.[133]

Trauma as a criminogenic risk factor and addressing trauma in a corrections setting

A 2021 paper, *Understanding the Relationships between Trauma and Criminogenic Risk Using the Risk-Need-Responsivity Model* noted that:

> *Despite the high rates of trauma histories in offenders and the link between trauma and subsequent criminal behaviour, the mechanisms underlying the relationship between trauma and criminogenic risk factors have not received adequate attention… Current correctional models are disproportionately informed by studies of male offenders despite findings of disparities between offending pathways based on gender and histories of complex trauma.*[134]

The paper examines the relationship between trauma and criminal behaviour according to each dynamic criminogenic need proposed by the Risk-Need-Responsivity (RNR) model, and offers examples of the links between these factors and exposure to trauma as a cohesive understanding of how trauma can create multiple pathways to offending. These pathways may parallel the dynamic risk factors currently recognised as criminogenic.[135]

A report prepared for the Women's Advisory Council of Corrective Services NSW, *Women as offenders, women as victims – the role of corrections in supporting women with histories of sexual abuse* (2014) includes an evidence-informed framework to inform interventions for women with sexual abuse histories. The framework acknowledges the ideological mismatch between correctional settings and trauma intervention including the nature of the prison environment, the presence of coercive and retraumatising operational practices, and the tendency for women to cycle rapidly through the correctional system. It notes, however, that entering custody can present as a period of stabilisation for some women. Trauma-informed and gender-responsive approaches for women should be integrated into correctional practice, from reception to release.[136]

Short periods in custody and continuity issues

QH identify that the biggest challenge with providing comprehensive health services to young people in detention are the short periods of time they are in custody including on remand, as the majority of young people rotate in and out of the detention quickly, which makes continuity of care difficult.[137] Similarly, short periods of time in prison for adult women also impacts on the accessibility and efficacy of interventions.[138]

A significant recommendation of the QPSR report was the design and implementation of an end-to-end case management system, which represents a consistent pathway for an individual, beginning at the point of entry to the correctional system. QCS established a Case Management Unit (CMU) in the Townsville Correctional Complex in December 2020, which allocated a dedicated case manager to work with individuals in custody, and later whilst being supervised in the community. The CMU is designed to support progression through the custodial environment through:

- incremental behaviour change
- desistance from offending
- improved readiness for release into the community through evidence-based, person-centric assessments and case management of individuals in our care and custody.[139]

QCS plans to roll out this model following positive reviews of the Townsville CMU project.[140]

Researchers behind the Griffith Project argue that 'recidivism rates are high, in part because short-term solutions don't work to address and overcome the entrenched disadvantage and harm experienced by women prior to their incarceration. Analysis of QCS administrative data found that 36% of women reoffended within six months and 50% reoffended in their first year post-release. It is clear that the factors that predict returning to prison cannot be readily addressed with short-term or crisis-driven interventions.'[141]

Taskforce findings

The Taskforce found that the current mental health care within prison is not meeting the multiple and complex needs of women. There is a significant need for expanded psychological care and trauma support. Non-acute and ongoing support is not available to women who require it. Despite the risks that must be managed, the prison setting provides a significant opportunity away from the chaos and violence in women's lives in the community for their mental health and trauma histories to be appropriately assessed and supported. This is not currently occurring, with mental health interventions provided by QCS and QH primarily addressing acute need only. Current resourcing of mental health support in prison is not enabling broader psychological support to rehabilitate women and promote wellbeing – a situation which must be better addressed through the Office for Prisoner Health and Wellbeing and other work underway within QCS.

The Taskforce was concerned to learn that trauma itself is not treated as a criminogenic need for women in prison.[142] The Taskforce has heard that these women have complex needs and many are victims of violence and abuse. Women themselves have told the Taskforce that they require support to address and heal their trauma whilst in prison.

Many women in prison are relying on their peers, peer-to-peer support workers and chaplains for essential support and counselling. Whilst acknowledging the important role that peer-support plays for women in prison, the Taskforce found that mental health interventions provided to women in prison (by QCS, QH or other service providers) and programs to address trauma associated with past domestic, family and sexual violence must be done appropriately, by qualified persons and with transition planning, or risk being ineffective or worse - doing further damage. This is also relevant to the wellbeing of QCS psychological and other staff, who have insufficient capacity and resources to perform their jobs effectively and safely. Some women and services have expressed concerns about QCS psychologists wearing uniforms and consider this creates a barrier to building and maintaining therapeutic relationships with women in prison.

Tailored and supported transitions for mental health needs upon release are also essential. The Taskforce found that there is insufficient continuity of support for women when they leave prison. Further investment for transitions are required and should form part of the proposed QCS Strategy and Action Plan.

The Taskforce found that Medicare access for prisoners could improve psychological support and treatment and continuity upon release, and that appropriate advocacy is required at a federal level (recommendation 132, Chapter 3.7).

Finally, the Taskforce found that women's human rights, including the right to recognition and equality before the law (section 15) and right to health services (section 37) are not being adequately met through current systems and practices. This must be urgently addressed as a human rights and rehabilitation issue.

Legislative standards within the Corrective Services Act should be strengthened to make clear that a minimum basic level of care is required to meet women's psychological needs while they are in custody (recommendation 142). Additional recommendations in relation to obligations to meet the psychological needs of women and girls in prison and detention are contained in Chapter 3.8.

Taskforce recommendation
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 reoffending.

Implementation

Implementation of this recommendation should form part of the QCS Strategy and Action Plan and be included in the broader whole-of-government strategy for women and girls in the criminal justice system. It will require collaboration between QCS, Youth Justice and QH (including the Office for Prisoner Health and Wellbeing) to design a model of care which includes expanded psychological care and trauma support. Additional investment will be required to implement this recommendation. The value for money of this investment should be measured and monitored and take into consideration whether there have been reduced rates of reoffending for women and girls who receive services through the program.

Human rights considerations

Human rights promoted

This recommendation promotes the right to health services (section 37), recognition and equality before the law (section 15), the right to humane treatment when deprived of liberty (section 30) and the right to protection from torture, inhuman or degrading treatment (section 17). It also aligns with Rule 12 of the Bangkok Rules.

Human rights limited

This recommendation does not limit human rights.

Evaluation

The impacts and outcomes achieved for women and girls should be measured and monitored. The program should be independently evaluated to consider the outcomes achieved for women and girls and the system.

Maintaining contact with family and culture

Background

The Taskforce was told that women in prison receive significantly fewer visits than men.[143] Phone calls in prison are expensive and time restricted,[144] greatly impacting upon women's ability to maintain contact with their children, families and other social support.

The 2021 Centre for Innovative Justice (RMIT University) *Leaving Custody Behind* report cited a Victorian study which found that:

'Women who had been separated from their children were more likely to return to custody than women whose connection with their children had been supported. Other studies have shown that even short periods of separation can have profoundly devastating impacts on the mother-child bond, with custody functioning as a "double punishment". When in prison, women who have lost custody of their children are usually at higher risk of self-harm. Further, time in custody, presently offers little opportunity for mothers to prepare for re-entry back into a family environment.' [145]

Research also suggests that whether women and girls have social support from their friends and family within their community is a strong predictor of successful re-entry to the community after incarceration. Research shows that people in prison who receive visits are 26% less likely to reoffend.[146]

Current position in Queensland

People in prison can make phone calls to approved numbers using the Prisoner Telephone System (PTS) but must pay for personal calls.[147] Video calls are also available for approved prisoners.[148]

Under relevant QCS policies, prisoners may have reasonable access to the PTS without limitation, other than for disciplinary reasons or in the event of industrial action, riot, general unrest or for the good order and security of the facility.[149]

Some agencies have a free phone line that prisoners can access through the Common Auto Dial List (CADL), including the Prisoners' Legal Service Telephone Advice Line, LAQ, the Aboriginal and Torres Strait Islander Legal Service (ATSILS), the Queensland Ombudsman, the State Penalties and Enforcement Registry and the Child Support Agency. Unlike standard calls, calls to legal representatives, an office of a law enforcement agency, the Parole Board Queensland, and the Queensland Ombudsman are not recorded.[150]

Prisoners must pay for their mail, although QCS may cover the cost if satisfied that a prisoner does not have enough money to pay postage costs. Prisoner email was introduced in 2020. It enables a prisoner to receive print outs of received emails, and reply using a reply sheet which is scanned and emailed back to the sender. Small fees are charged.[151]

If approved, a prisoner may have up to two hours of personal contact visiting time each week -either a single two-hour visit, or two hour long visits-- and perhaps other special visits.[152]

For children, the Charter of Youth Justice Principles in Schedule 1 of the YJ Act states that a child who is detained in a detention centre should be helped to maintain relationships with the child's family and community, and should be consulted about decisions about contact with the child's family.[153]

Youth Justice operational policy *Visits to young people* states that 'the department will promote and support a young person's right to receive visits from their parents, guardians, family members, Elders, kin, community members, peers and other persons of significance in the young person's life. The department recognises that positive family, peer and community relationships are critical to a young person's successful transition back into their community.'[154]

Children are permitted 120 minutes of phone time each week to talk to approved people. Calls to lawyers, case workers and community visitors (through the Office of the Public Guardian) do not count towards this allocated phone time.[155] Phone contact cannot be withheld for disciplinary reasons.[156]

Barriers to visits and other contact

The limited number of women's prisons and detention centres across the state means that many women and girls are incarcerated far away from their families. The Youth Justice *Visits to young people* policy includes scope for financial assistance to facilitate visits.[157] There is no equivalent for those visiting adult women in prison, although there is some assistance with transport to some prisons. Many women in prison have limited access to funds, the rates of pay for work is also low (discussed in more detail below). When phone calls are expensive, the Taskforce heard that women often have to choose between buying essential items and maintaining contact with their families.[158]

Infrastructure and technology

The ADCQ report noted that there are inadequate phone lines available in BWCC and that the usual permitted length of a phone call was 10 to 15 minutes.[159] QCS have acknowledged that their PTS requires upgrades to improve functionality and to make it more affordable for prisoners. An upgrade plan should be finalised by the end of 2022. QCS has also advised that an 'in-cell' technology project (computer tablets with high security specifications) designed to serve multiple functions, including telephone and video calls, is under consideration and development.[160]

In 2022, the Prisoners' Legal Service (PLS) advocated for improved access to telephone calls for prisoners subjected to COVID-19 restrictions.[161] These restrictions were impacting access to legal advice.[162] Staff at SQCC told the Taskforce that prisoners in quarantine or isolation have been given access to phone calls by being provided a headset whilst a corrective services officer holds a mobile phone.[163]

How do other jurisdictions address this issue?

Prisoners in other Australian jurisdictions also commonly pay for their phone calls. However, Corrective Services NSW meets the cost of three personal local phone calls and all legal telephone calls per week for an unconvicted prisoner, and one personal local phone call per week for a convicted prisoner.[164] During a meeting with the Taskforce, the Inspector of Custodial Services in NSW advised that, during the COVID-19 pandemic response and since, people in custody in NSW have access to a suitably configured iPad to enable them to make permitted phone calls after lockdown in their cells until a certain time each night.[165]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons or offenders

Women consistently identified the high cost of phone calls in prisons as a significant barrier to contact. Calls can cost up to $1.00 per minute and many women go into debt in order to maintain contact with family.[166] Women in TWCC spoke about phone contact with family as being good for their wellbeing and mental health.[167] Women in prison also spoke about phone calls and visits being considered a privilege that can be used by prison staff as a leverage over them, and as a reward for 'good' behaviour.[168]

Service system stakeholders

The cost of phone calls and lack of privacy for women using phones in prisons is a significant issue.[169] Sisters Inside highlighted that the lack of contact between women in custody and their children is impacting children's reunification with their mothers upon their release.[170] Sisters for Change in TWCC told the Taskforce that given women's low incomes from prison employment and limited hygiene allowance, women can quickly go into debt buying essential items - meaning they cannot call their children for weeks:[171]

'You shouldn't have to choose between washing your hair and calling your children.' [172]

Legal stakeholders

LAQ proposed improvements to reduce barriers to connection to communities and families, including reasonably priced telephone calls, and more assistance for family to visit prisons in remote locations.[173] LAQ also cited the innovative use of technology, such as the provision of virtual visits is an example of a successful initiative in this regard.[174]It told the Taskforce:

'A woman on remand at a regional prison reported weekly virtual visits with her best friend, gave her emotional support and greatly assisted her in maintaining her mental health during her lengthy period on remand. Such an initiative led to a reduction in her needing to access Prison Mental Health Services for her deteriorating mental health whilst on remand'.[175]

Academic

Researchers behind the Griffith Project noted the key areas where mothers most needed support include help in maintaining, repairing and rebuilding relationships with their children, and having the opportunity and ability to positively contribute to their development.[176]

Queensland Corrective Services

Staff at SQCC noted that women receive few face-to-face visitors. Distance from the centre is an issue as well as the demands of travelling on younger children (and their carers). Virtual visits have been fully-booked over weekends and hourly sessions are offered to women with large family groups. The cost of these visits are free for prisoners. The Taskforce heard that virtual visit arrangements can be challenging for women and family members who are not particularly computer literate.[177] QCS also fund playgroups which operate at TWCC, SQCC and BWCC.[178]

QCS advised that their current phone system is contracted and outdated.[179] Pricing is managed by the contract provider and was put in place prior to prevalent mobile phone use (around 20 years ago). The phone system location affects prices and it seems that women in metropolitan areas pay less than women in regional areas – including TWCC.[180] Women at Helana Jones Correctional Centre (low security) can use Telstra phones with purchased credit. Their calls are not recorded and they are able to send text messages.[181]

The QCS Strategy, which is under development, contains an objective to strengthen family connections, noting the high number of women in prison who are mothers. Draft initiatives aim to increase family involvement to maximise rehabilitative and social benefits.[182]

Other relevant issues

Withheld contact for breaches of discipline

Women in prison regularly reported threats to cancel phone contact or face-to-face visits on disciplinary grounds.[183] This suggests that contact with family is not perceived by some prison staff as a basic human right or as a rehabilitative priority.

Statutory declaration requirements for visitors (including children)

Visitors to correctional centres must provide certified copies of their identification and the identification of any proposed accompanying child to the facility prior to visiting the prisoner.[184]

Access for a visit must not be granted to a child if the child is precluded from seeing the prisoner under the terms of a court order (for example, family law, child protection or domestic violence), or does not have the consent of the child's legal guardian to visit the prisoner.[185] Staff at one correctional centre described it as being difficult and taking a long time to obtain authority from Child Safety for a child in care to visit their mother in custody, even where the mother retains guardianship of the child.[186]

Women in prison report that statutory declaration requirements for their children can be a barrier to access, including where children are cared for in informal care arrangements (i.e. no legal guardian external to their parents), or in the care of a person who is unable to access appropriate documentation or witnesses for statutory declaration forms.[187]

Child Safety (Department of Children, Youth Justice and Multicultural Affairs)

Many women spoke about difficulties maintaining contact with their children when they are in care. Women described difficulties communicating with Child Safety whilst in prison. Some women perceived that calls to Child Safety are not free (the Taskforce heard that this may have occurred in the past in TWCC).[188] Women who can afford to make calls are put on hold and are often cut off due to time limitations.[189] Women feel unable to engage with a system which prevents them working towards reunification or reconnecting with their children when they are released. The Taskforce heard that a Child Safety in-reach officer would be beneficial to help women navigate the system and meaningfully communicate with Child Safety.[190]

Taskforce findings

The Taskforce found that women in custody are not adequately supported to maintain contact with community, children and family. The cost of phone calls is prohibitive and far higher than rates for calls within the community. The outdated PTS system requires upgrading as a matter of urgency. Whilst upgrades will require investment, current systems are potentially not compatible with human rights, including cultural rights (sections 27 and 30) and the protection of families and children (section 26).

QCS should increase facilitation of calls with family, children and Elders via the internet – as a popular and cost effective way to support contact. The Taskforce acknowledges, however, that digital literacy, affordability and other accessibility issues disproportionately affect First Nations peoples and those in regional areas.

Family contact should not be considered a luxury or available only to women who can afford it, bearing in mind the low rates of pay and the limited access to paid work in prison. Family contact should not be withheld for disciplinary reasons as outlined in the *Bangkok Rules*.[191] Equally, women prisoners should not have to bear the cost of an expensive monitoring system (ARUNTA). It is unfair that women in regional areas, including Townsville, pay more for calls – impacting on First Nations women acutely. Further, QCS should fund some, or all phone calls, letters and emails to family, children and Elders to encourage and support connection with family and culture.

Women whose children are in care must have free telephone access to Child Safety on an ongoing basis to maintain engagement with the agency and their children.

These initiatives and practices should be embedded in the QCS Strategy and associated Action Plan and form part of the whole-of-government strategy for women and girls in the criminal justice system recommended by the Taskforce.

Legislative standards within the Corrective Services Act should be strengthened to support people in prison maintaining contact with family and culture (recommendation 142). Recommendations for the Queensland Government in relation to this issue are also contained in Chapter 3.8.

Taskforce recommendation

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

- urgently progress the replacement of their 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.

Implementation

Implementation of these recommendations should occur as part of the QCS Strategy and Action Plan and will require additional financial investment from government to improve current infrastructure within prisons and absorb any costs which are currently covered by prisoners.

Human rights considerations

Human rights promoted

These recommendations promote the right to humane treatment when deprived of liberty (section 30), right to freedom of expression (section 21), right to protection of families and children (section 26) and cultural rights of Aboriginal peoples and Torres Strait Islander peoples (section 28). Prohibition on family contact for disciplinary reasons is contrary to Rule 23 of the *Bangkok Rules*.

Human rights limited

These recommendations do not limit human rights.

Evaluation

QCS should include as part of the implementation of the QCS Strategy and Action Plan a monitoring and evaluation plan that includes clear outcomes sought to be achieved and targets and measures for the achievement of those outcomes. The outcomes achieved under the QCS Strategy and Action Plan should be independently evaluated with outcomes publicly released.

Education

Background

Many women entering prison have poor employment histories, limited education, and lower literacy levels than the general Australian population. Access to accredited education and training provides the opportunity to gain competencies so that women are more employable and independent when they leave prison. This will help to reduce the risk of reoffending, and maximises the chances of successful reintegration into the community.[192]

According to the current *Youth Justice Strategy*, 52% of children are totally disengaged from education, employment and training when they come into contact with the youth justice system.[193] Rates of school suspensions and exclusions have a particularly significant impact on First Nations students, and have been identified as a factor which increases the likelihood of children being exposed to, or entering, the youth justice system.[194] The *Youth Justice Strategy* also acknowledges that detention makes it harder to return to education and limits future employment opportunities.[195]

Current position in Queensland

The QPS Custodial Operations Practice Directive (COPD), *Prisoner Development – Education*, states that 'adult education is a rehabilitation priority and is available at all corrective services facilities'.[196]

QCS provides education and training in the form of vocational training, literacy programs, secondary-level Mathematics and English and tertiary education through partnerships with universities. In-prison education courses are delivered by external providers, primarily TAFE, with non-teaching, correctional education officers determining service needs and coordinating service provision.[197]

In 2020-21, 32.6% of eligible people in prison (male and female) in Queensland were participating in accredited education and training courses.[198] Current female participation rates are unknown, although the ADCQ Report noted a decline in the number of women in prison undertaking full-time study since 2006.[199]

The Charter of Youth Justice Principles, in Schedule 1 of the YJ Act, states that 'a child who is detained in a detention centre…should have access to education appropriate to the child's age and development'.[200]

Through a Memorandum of Understanding with Youth Justice, the delivery of education programs in youth detention centres are provided by on-site educational units staffed by the Department of Education.

Education and training programs and services are provided to young people in all youth detention centres five days a week, for 48 weeks of the year. Youth Justice also works with other education providers such as the Queensland Pathway College and with flexi and alternate education providers to strengthen young people's pathway options through education and training. To maximise continuity of service, young people are supported to re-engage with education and training in the community upon their release from detention.[201]

The 2018 *Report on Youth Justice* noted all stakeholders reported that engagement with education, training or work was critical to reducing children's offending behaviour.[202] The report made six recommendations relating to education, vocational training and employment. In December 2018, all six recommendations were accepted or accepted in principle by the Queensland government, including a trial program based on the Victorian Education Justice Initiative being implemented in Brisbane and Townsville, led by the Department of Education. The government response also noted that the *Youth Justice Strategy* also includes initiatives to strengthen school engagement in, and post detention.[203]

How do other jurisdictions address this issue?

In Victoria, education programs vary between prisons. They are structured to ensure prisoners are able to continue their course as they move through the prison system. Eligible prisoners can be permitted to have computers in their cells for study – although they do not have internet access.[204] In Western Australia, all prisoners serving sentences of six months or more should have their literacy and numeracy levels assessed when they enter prison.[205] New South Wales operates Intensive Learning Centres (within certain prisons) which provide full-time education programs aimed to reduce a person's risk of reoffending.[206]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons or offenders

The Taskforce heard that internet access and technology remains a significant barrier to undertaking higher education in prisons. There are programs that are available to people with literacy and numeracy issues, but there is no continuity upon release.[207]

There are some vocational education qualifications at Certificate II level available, including in hospitality, business, sport and recreation, and retail.[208] Women spoke about their tertiary study having to be deferred due to a lack of distance education support, noting that the capacity of the education officer had been reduced, and they were often not available or too busy. Women felt that tertiary courses are limited and not practical for employment.[209]

'Being incarcerated, students face a large number of daily challenges, set-backs, and disappointments. This sad fact especially applies to those seeking to change their lives for the better, while studying does offer a foundation for a better life, it takes a lot of commitment and resilience on the part of the incarcerated student to maintain engagement.' [210]

Other persons

A staff member who delivers industries training at SQCC said that he was trying to shorten the furniture making course because a number of women do not achieve completion due to their short sentences. He had previously volunteered his time on weekends (under private provider Serco) to enable women to undertake personal projects (such as making gifts for family). He started this as a way of providing women who did not receive visitors on the weekend something to do to help pass the time.[211] He advised that he could longer do this since QCS has been responsible for SQCC, as he is no longer classified as a 'custodial officer'. This requires another officer to be present and is cost-prohibitive.[212]

Service system stakeholders

Stakeholder forum participants told the Taskforce that internet restrictions remain a barrier to tertiary study.[213] Some noted that more choices for apprenticeships and courses are required and should be well matched to need within the community - not just to keep people busy.[214] Service system stakeholders also told the Taskforce that higher education is difficult to access - the application process is difficult and internet access is restricted to one hour per day (supervised and pre-approved websites only) which makes researching for assignments impossible.[215]

In its submission to the Taskforce, the SERO4 MARA Project (re-integration service) said that there is a need to review education offerings to include women-centred group work and other life skills.[216] A MARA representative understood that education rooms at Numinbah had reportedly been closed at times due to termites and other issues.[217]

Women in SQCC told the Taskforce that Serco, the private service provider previously operating some of Queensland's privately managed prisons including the SQCC, offered a full-time distance education officer who is no longer available since the prison transitioned to QCS management.[218] The current education

officer cannot supervise research undertaken by women to identify appropriate courses due to time constraints.[219]

Sisters Inside advocated for a clear focus on education of women in custody as a priority, that includes legislative changes that would support women to access free and meaningful education through the internet (for example, through devices with restricted access). This would allow women to enrol in useful external courses and programs of study that can be continued upon release.[220]

Queensland Corrective Services

Staff at the TWCC told the Taskforce that a lot of limitations on education are related to funding. Many women in prison are not eligible to undertake further certificate III training without payment. Registered training organisations deliver many courses online, and women in prison cannot access the required systems.[221]

The QCS *Blueprint* identified increased access to education and training as a key action to improve rehabilitation and reduce recidivism. It also noted that education and training which is transferable to the community can optimise women's capacity to live independently post-release.[222]

In 2019, QCS provided funding for a research grant to the University of Southern Queensland to deliver its project report, *Understanding the post-release technology experiences of women ex-prisoners: Do they have the access and literacies to support employment and study?*[223] The project identified significant barriers to technology use, including low knowledge and skills, that technology is not prioritised or recognised as relevant, problems related to access to devices and data, and a lack of explicit teaching and support in digital skills.[224]

It concluded that there is evidence to suggest that digital literacy training in the prison context can support prisoners in preparing for release, reintegrating into society and redressing some of the impact of 'digital disconnection'.[225] QCS is investigating the introduction of various technologies to improve services for prisoners.[226]

A new integrated Vocational Education and Training (VET) model is being trialled at SQCC, with QCS staff working as VET trainers in kitchen operations and industries, providing a range of stand-alone courses, and partial and full qualifications while the women work and apply those skills. The accredited VET course is provided under an auspice arrangement with a registered training organisation. It is hoped this will improve cost effectiveness and employment outcomes for women after release.[227]

Youth Justice

The Taskforce learned that education facilities at CYDC had been closed during COVID-19 pandemic restrictions, due to both safety risks and issues related to the availability of detention centre officers to supervise sessions. Girls can be provided with work books (when school is unavailable) but many do not have the literacy and numeracy skills to complete these unsupervised. Structured days with schooling can only occur where there is adequate staffing.[228]

At CYDC, the Taskforce observed a small group of around eight students being escorted to school, when the education unit can hold around 150 students. Staff told us of their concern that insufficient teachers were available to educate all young people detained in CYDC and that young people were not getting the education they desperately needed.[229]

Department of Education

Low school attendance at CYDC is related to continuous cell occupation (where children are kept in their cells for long periods, reportedly common at the height of the COVID-19 pandemic),[230] arising from limited staff availability to accompany and supervise students in classrooms and incidents within accommodation blocks. Attendance is also affected by student meetings with detention centre and other Youth Justice staff and court attendances. The Department notes that arrangements have now been made to deliver teaching in the accommodation if required (not as standard practice).[231]

Other relevant issues

Education for women in prison

Cost of education in prison

The ADCQ report noted that women considered cost to be an educational barrier as only one Certificate III course is free and any additional Certificate III courses required payment (Certificate II courses are entry level courses and usually do not require prerequisite knowledge or education). Many women did not have the capacity to pay for training.[232] Student loans could be accessed for vocational and tertiary education, although some women who were not citizens were ineligible.[233]

This issue was also raised as a barrier to education by women at the SQCC.[234] Their perception was that the Certificate III Guarantee program means that if a person is already qualified they can't do another program without paying.[235] Hairdressing was an example of a course that would lead to employment for women but is unaffordable for many.[236]

Lack of tailored support to plan for education in prison and upon release

Stakeholders reported that women in prison do not receive adequate support to identify and access appropriate education in prison.[237] Assessments are required to better identify the needs of prisoners, including numeracy and literacy.[238] Stakeholders also reported that women participate in courses depending on availability rather than actual employment prospects.[239]

'They have low aspirations for us.' [240]

The Taskforce also heard about continuity issues with education programs and courses upon release.[241]

Insufficient internet access to facilitate study

Limited or no internet access (even on restricted devices) impedes women's ability to undertake tertiary education as many institutions no longer offer paper-based course materials and assessments. The University of Southern Queensland offers learning materials for five programs in an offline format, with some courses unable to be completed within prison, however, this is the exception not the rule.[242] Women at the SQCC reported limited opportunities to discuss tertiary study with the education officer and that no research could be supervised. The Taskforce heard some courses have been deferred as a result.[243]

People in prison cannot have access to the internet without restriction and supervision.[244] However, QCS advised that an 'in-cell' technology project (computer tablets with high security specifications) designed to serve multiple functions, including digital education, is under development.[245]

Education leave

Whilst educational leave is available under QCS' Practice Directive, *Education and Community Service leave*, rates of access are unknown. In its submission to the Taskforce, Sisters Inside advocated for legislative mechanisms to more consistently support temporary release for study (for example, leaves of absence).[246]

Education for girls in detention

Short periods in custody for girls

Correctional staff at CYDC told the Taskforce that the short stays of girls in detention make it difficult to have a significant impact on their rehabilitation and educational engagement.

School closures and low attendance rates

Recent attendance rates for schools within detention centres are not publicly available.[247] The Taskforce heard from staff within the CYDC, that if teachers cannot deliver classes for various reasons (including safety concerns), staff are not trained or available to assist girls with their reading or workbooks. CYDC staff expressed their concerns about the lack of availability of teachers to work at the school within the CYDC, given the critical importance of literacy and numeracy for these children and young people. Little wonder, then, that staff reported low school attendance generally.[248]

Poor numeracy and literacy rates (including computer literacy)

Detention staff identified that poor literacy and numeracy (including computer literacy) was a significant barrier to educational participation in detention, particularly when children were not accessing the classrooms.[249]

Taskforce findings

Whilst education is stated to be a rehabilitation priority for both QCS and Youth Justice, the Taskforce found that there are too many barriers to education. Women and girls' right to education under the Human Rights Act (section 36) is not being consistently met and promoted.

The Taskforce was concerned about reports of low participation rates within the CYDC. It is imperative that girls and young women in detention are able to regularly participate in education. The Taskforce found that access to quality education programs, including numeracy and literacy (including financial literacy) programs, requires urgent improvement for both women and girls. This is basic education that must be provided in custodial settings when need is identified.

Women and girls engaged in education in custody need adequate internet access to complete essential research and course work. Whilst security is a legitimate concern, this should be balanced with the right to education and the benefits for the individual and the community. The Taskforce found that internet access should be used as an educational enabler rather than another barrier to rehabilitation.

Additionally, the Taskforce found that the cost of tertiary education and vocational training is a significant barrier to educational participation for women and girls in custody. QCS and Youth Justice should work with vocational education and training providers to develop initiatives to further promote and enable access to courses and programs in prisons and detention centres.

The Taskforce also identified the need to improve transitions from custody into the community and to support continuing engagement with education at any level and at any stage. All recommendations relevant to QCS should be adopted and embedded in its Strategy and Action Plan.

Taskforce recommendation

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 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 (recommendation 169, 170), to actively facilitate ongoing participation in educational programs commenced in prison or detention, when they are released.

Implementation

Implementation of these recommendations should form part of the QCS Strategy and Action Plan and be reinforced and supported in the whole-of-government strategy for women and girls in the criminal justice system recommended by the Taskforce.

Women and girls' numeracy and literacy needs (including financial literacy) should be assessed when they enter prison or detention, and programs to improve their capabilities should be provided while they are in custody. QCS and Youth Justice should engage with the Department of Education, Department of Employment, Small Business and Training, universities and providers to identify opportunities to further increase the diversity of programs available and individual women's participation. A diverse range of programs and courses should be available to provide educational opportunities that are relevant and of interest to women and girls in custody.

Human rights considerations

Human rights promoted

These recommendations promote the right to education (section 36), recognition and equality before the law (section 15), the right to humane treatment when deprived of liberty (section 30). Additionally, promoting the education of women and girls aligns with Article 28 of the *United Nations Convention on the Rights of the Child* (children have the right to an education) and the *Bangkok Rules*.

Human rights limited

These recommendations do not limit human rights.

Evaluation

Evaluation of these recommendations should occur through standards reporting by QCS (recommendation 142) as well as inspections by the Inspector of Detention Services. Evaluation should also occur as part of the QCS Strategy. QCS' Action Plan, under the QCS Strategy, will be reviewed on an annual basis whilst the strategy itself will also be reviewed in 2026.

Employment

Background

The majority of women are either unemployed or underemployed prior to entering custody[250] and most do not have paid employment organised to start within the first two weeks of their release.[251] Despite the issues that they experience accessing work in the community, the numbers tell us that Queensland women in prison are keen workers. Between 2006 and 2016, incarcerated women were consistently employed at a higher rate than incarcerated men.[252]

Current position in Queensland

All Queensland prisons have some employment for incarcerated people who are expected to work,[253] whether they are serving a sentence or on remand. There is no power to compel a prisoner to work, but most choose to do so to earn money to pay for telephone calls to family and personal items.

QCS consider that the primary purpose of prisoner employment is rehabilitation but that skills acquisition and positive behaviour development are also desired outcomes.[254] Working in prison can help incarcerated women move towards a lower security classification[255] and increase their chances of release on parole. [256] When women in prison work, they learn skills, receive stimulation,[257] and develop a routine closer to what they would have in the community. This is particularly important, given that many incarcerated women are unemployed before entering prison and will depend on employment to successfully transition back into the community. [258]

Employment opportunities and renumeration

Employment opportunities for incarcerated Queensland women including landscaping, farm work, kitchen and cleaning duties, stores and clerical work. Women in low security facilities can also engage in

community service projects where they prepare food, clean, sew and maintain grounds.[259] Some jobs provide opportunities to work with trade instructors and learn skills.[260]

QCS determines pay structures based on minimal payments. Workers are not protected by industrial laws. Employment is available through 'work streams' for which the women are remunerated on an increasing scale relevant to the complexity of the role.[261] Examples of the lowest to the highest daily remuneration are as follows:

- Services Work Stream: S1 - $2.90 (Cleaner) to S4 - $7.75 (Stores Team Leader)
- Kitchen Work Stream: K1 - $4.65 (Kitchen Hand) to K3 - $7.00 (Kitchen Stores Assistant)
- Industries Work Stream - I1 - $4.65 (Industries Worker) to I5 - $8.70 (Carer)
- Work Camp Stream - $7.75 - $8.75.[262]

This renumeration is significantly less than the award wage a person doing comparable work in the community would receive. For example, a full-time entry level cleaning service employee over 21 years of age is paid at least $21.71 per hour or $825 per week.[263] An incarcerated woman in prison undertaking the same work earns about 1/56th of the award wage.[264]

Prisoners who are willing to work, but for whom there is no job available or who have a disability which precludes them from working, are entitled to a small unemployment allowance.[265]

Responses to previous inquiries and reports

Work release is not available to women in Queensland correctional centres.[266] The QPC report found that prisoners' incentives to participate and complete in-prison programs are being weakened by the absence of work release programs, and that QCS should remove regulatory impediments to the use of work release (Recommendation 23).[267] While the Queensland Government has responded to the QPC report, they provided no specific response to this recommendation.[268] The QCS has not been funded to implement the recommendations of the QPC report.[269]

The ADCQ report also recommended investigating the merit of work release in Queensland (Recommendation 39).[270] During consultation for this report a number of working conditions and pay issues were raised including a lack of outside work for low security women, fewer opportunities for women than men (e.g. apprenticeships) and differing rates of pay at different facilities.[271] The Taskforce's observation from our consultation and submissions was that these are still live issues for incarcerated women in Queensland in 2022.

How do other jurisdictions address this issue?

Incarcerated women in New South Wales,[272] Victoria,[273] South Australia,[274] Tasmania,[275] the Northern Territory[276] and Western Australia[277] are afforded similar employment opportunities to those in Queensland with pay rates and policies differing.

Incarcerated people in Victoria are able to gain work experience in an Angus cattle stud while undertaking rural studies through the Federation University.[278] The Australian Capital Territory has an industry-standard artisan bakery employing incarcerated people under the supervision of qualified tradespeople. Participants are able to complete nationally accredited vocational courses at Certificate I and II level.[279]

A paid work release program called 'Sentenced to a Job' is available in the Northern Territory.[280] Participants train in prison workshops and in some cases undertake study at the Batchelor Institute (a First Nations tertiary provider).[281] Salaries and conditions must be aligned, at minimum, with the minimum award wage relevant to the industry they are working in.[282] Participants keep a small amount of money from their salary (around $60 per week in 2014)[283] and the remainder goes to their board, victims of crime,[284] and fine debt - with any leftover held on trust for their release.[285]

International approaches

Work release programs have long been used in the United States.[286] Evaluations of these work programs indicate that they can reduce recidivism, help former prisoners to find and maintain employment[287] and reduce the costs of incarceration to the community.[288]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons or offenders

Women with lived experience and those who support them told us that items on the 'buy-up' list can be more expensive than they are in the community, despite women having significantly less ability to pay for them due to low wages and the limited products available free of charge through the hygiene allowance.[289]

A First Nations woman told the Taskforce that she had lost her mother, father and brother during her incarceration and had no family left who were able to send her money. Despite this she was never allowed to work because of her behaviour and had to live on $14.95 per week for six years.[290]

'The work in prison is akin to slave labour. My wages ranged from $2.20 to $7.60 per day…The issue is that you have the ability to earn so little, but the costs for necessities in prison are high…Without outside help I would have had to make a decision between education, toiletries, and contact with my daughter.' [291]

Women from TWCC expressed concern about the lack of work available for older women, given they are not entitled to the age pension.[292] While some are able to undertake needle and repair work, many rely on their families and their amenities allowance to survive.[293] Women at TWCC also told the Taskforce that those moved to the low security farm-style accommodation were faced with even lower paying jobs.[294]

Women in SQCC spoke of long delays to secure employment and very low pay.[295] Women spoke of earning $12.00 per week and a lack of available positions (30 in total) in the higher paid prison industries stream ($2 per hour, or about $50 per week).[296] There was a perception that the kitchen would not employ Muslim women or black women.[297] One woman said that the managers wanted to place her in protective custody and that it took a year for her to secure work as an art tutor making toys for children in domestic violence centres.[298]

Taskforce findings

The Taskforce was concerned that incarcerated women's human rights may be being breached by their current working conditions and that the basic needs of incarcerated women may not be being met by their very low wages. QCS may be subjecting incarcerated women to hardship beyond that experienced by virtue of detention alone, by paying them extremely low wages while charging high prices for buy-ups and telephone calls. Deprivation of liberty in detention as punishment for offending can be expected to compromise some of the rights incarcerated women would enjoy in the community, but not being able to earn enough to buy basic items, or to pay for phone calls to family, seems repressive.

Contrary to the *Nelson Mandela Rules*,[299] incarcerated women in Queensland do not earn enough money to care for themselves and their children, pay for education needs, stay connected to family or put anything aside for themselves or their families. These extremely low wages appear to be hindering rehabilitation.

There are insufficient positions to meet employment demand for women in Queensland prisons. Pay rates vary considerably. While there is incentive for women to work towards low security classification, when they reach that goal they are often faced with a significant reduction in employment opportunities and lower wages.

When women are denied employment opportunities they are denied the opportunity to broaden their skills and prepare for their ultimate transition back into the community.

The Taskforce considers that there is strong merit in examining the viability of a work release scheme for Queensland women prisoners, in line with recent recommendations of the ADCQ report and the QPC report. A system of work release would allow women to gain real world work experience and employment connections prior to their release from custody. This would be extremely beneficial in assisting women to ultimately transition and reintegrate back into the community. Income earned could be used to support themselves while in custody, save for their release and support their families.

Taskforce recommendation

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.

Implementation

The review of employment, wages and working conditions for all women in custody, whether on remand or serving a sentence in Queensland should include an examination of current wages, allowances available to women. It should also consider the cost of living for women in custody including the cost of phone calls, education expenses and the price of items on current buy-up lists throughout Queensland.

There may be fewer work release opportunities in regional areas and external monitoring may be more costly in more remote areas.[300] Effort should be made to ensure that despite these challenges all women are given equal opportunity to undertake work release.

The implementation of these recommendation should form part of the QCS Strategy and Action Plan and be supported by the whole-of-government strategy for women and girls in the criminal justice system as recommended by the Taskforce.

Human rights considerations

The right to protection from torture and cruel, inhuman or degrading treatment[301] prohibits bad conduct towards any person (imprisoned or not)[302] while the right to humane treatment when deprived of liberty[303] mandates good conduct towards people who are incarcerated.[304] QCS may currently be subjecting incarcerated women to hardship beyond that experienced by virtue of detention alone[305] by paying them extremely low wages while charging high prices for buy-ups and telephone calls. While deprivation of liberty in detention is expected to compromise some of the rights incarcerated women would enjoy in the community, not being able to earn enough to buy basic requirements and phone calls to family is repressive.[306]

The current position in Queensland appears incompatible with the *Nelson Mandela Rules* in that the earnings of incarcerated women are not equitable[307] in that they do not provide women with sufficient income to buy what the need for their own use, [308] send some to family and save some for release. [309] In some cases women are barely earning enough to pay for a couple of phone calls.

The introduction of a work release scheme engages the right to recognition and equality before the law (section 15); the right to humane treatment when deprived of liberty (section 30); the right to protection of families and children (Section 26).

International human rights obligations are also engaged including rules 96-103 of the *Nelson Mandela Rules*.[310] These rules provide that:

- incarcerated people have the right to undertake work of a useful nature to keep them actively employed[311]
- the work should maintain or increase the prisoner's ability to earn an honest living after release[312]

- the hours allow sufficient time for education and other rehabilitative activities[313]
- prisoners should be provided equitable renumeration for their work[314]
- prisoners should be allowed to spend at least part of their earnings on approved articles for their own use and send part of their earnings to their family.[315]
- a portion of earnings should be set aside in savings to be given to the prisoner on release[316]

Human rights promoted

The review promotes:

- the right to recognition and equality before the law (section 15) and humane treatment when deprived of liberty (section 30) in that the inequality between incarcerated women with financial assistance and women without will be reduced. The rights of incarcerated persons should only be limited by confinement itself,[317] and women should not be doubly punished for being economically disadvantaged.
- the right to protection of families and children (section 26). Every child has the right to protection that is in their best interests[318] and the incarceration of a parent needs to be considered in light of this right.[319] It is in the best interests of children of incarcerated mothers that their mothers are able to earn enough money to provide the essentials to break the cycle of disadvantage.
- the right to protection from torture and cruel, inhuman or degrading treatment (section 17) mandates good conduct towards people who are incarcerated and is relevant to policies that impact the access of goods and services for incarcerated women.[320] This right is promoted when incarcerated women are able to earn money to meet their basic needs.

The review also promotes Queensland's obligations under the *Nelson Mandela Rules* which stipulate the need for incarcerated people to be provided opportunity of employment which maintains or increases their ability to earn an honest living after release in exchange for equitable renumeration.[321]

The establishment of a work release scheme would assist incarcerated women to overcome their disadvantage.[322] This action would promote the right of incarcerated women to recognition and equality before the law. The inclusion of a new work release scheme would widen the services and opportunity for rehabilitation, which would promote the right of incarcerated women to humane treatment when deprived of liberty (section 30). [323] Increasing the ability of incarcerated mothers to earn an income and provide for the needs of their children is in the best interests of their children and promotes the right to protection of families and children (section 26).

The Taskforce have considered whether a specialised scheme for incarcerated women would be discriminatory to incarcerated men. The ADCQ report noted that women were given fewer employment opportunities than men.[324] The basic principle of the *Bangkok Rules* is that the distinctive needs of women prisons should be taken into account and that it is not discriminatory to provide for such needs in order to accomplish substantial gender equality.[325]

Human rights limited

These recommendations do not limit human rights.

Evaluation

The implementation of the QCS Strategy and Action Plan should be supported by a monitoring and evaluation plan that includes clear outcomes and targets as well as measures for achieving them. The impacts and outcomes achieved through the implementation of these recommendations should be measured and monitored as part of that plan.

Work and Development Orders

Background

Many women and girls who offend rely on government support payments[326] and experience significant poverty and homelessness prior to incarceration, and return to those circumstances on release.

This disadvantage is compounded when a woman enters custody with outstanding financial obligations, including unpaid fines. If the State Penalties Enforcement Registry (SPER) [327] does not know the woman is incarcerated, enforcement action may continue without her knowledge and the burden grows. Unpaid debt, including fine debt, greatly hinders the capacity of women to manage their financial affairs as they eventually try to transition back into the community.[328]

Current position in Queensland

Fine enforcement

In Queensland, unpaid fines and penalties[329] may be registered with SPER for collection and enforcement.[330] SPER will send an enforcement order to a debtor for the amount owed.[331] If the debtor does not act and pay the fine, make a payment arrangement or elect to go to court by the due date,[332] SPER has a number of powers to recover unpaid debts. These include licence suspension, [333] vehicle immobilisation,[334] collection of moneys from a debtors account,[335] employer or Centrelink, or seizure and sale of property.[336] Imprisonment for non-payment is also a legislative option, but this has not been enforced as a matter of policy for some time and as such is not listed on the SPER website as an enforcement action.[337]

Work and Development Orders

Since November 2019, Work and Development Orders[338] (WDOs) have provided a way to help people in hardship to reduce their SPER debt by doing relevant courses, counselling, treatment programs, unpaid work or mentoring programs[339] through an approved sponsor[340] or 'hardship partner'.

Hardship Partners[341] are approved community organisations or financial or health practitioners.[342] These partners set the rate that debt can be reduced through their sponsored activity, with rates starting at $30 per hour and successful applicants being allowed to pay off up to $1000 per month.[343]

SPER has 165 active WDO approved hardship partners servicing approximately 500 locations across Queensland.[344] All these sponsors are operating within the community, not in correctional centres.[345] The current hardship partners enable people on WDOs to undertake the following types of activities:

- unpaid work – 292 locations
- medical or mental health treatment – 65 locations
- educational, vocational or life-skills – 143 locations
- financial counselling – 157 locations
- drug and alcohol treatment – 95 locations
- mentoring programs – 41 locations
- culturally-appropriate programs – 37 locations.[346]

An application by a debtor to go on a WDO takes about 30 minutes to process.[347]

Hardship Partners

Through consultation, the Taskforce has learned that, rather than seeking out approved sponsors[348] or 'Hardship Partners' to meet the needs of debtors, would-be Hardship Partners must proactively apply to SPER to sponsor WDO activities. Approval is based on whether the applicant meets the requirements.[349]

Work and Development Orders in custody

Incarcerated women in Queensland are currently unable to resolve their debts by way of WDOs. Despite QCS being the only approved hardship partner specifically named in the legislation,[350] they have not acted as a sponsor, but for a twelve month period in 2019-2020 when 243 WDOs were created in women's low security prisons including Helana Jones, Numinbah, Townsville and Bowen Work Camp.[351] The Taskforce has heard that QCS ceased acting as a hardship partner in December 2020.[352] No specific reason for this has been provided and the Taskforce apprehends that there is scope for activities currently being undertaken in women's prisons, such as crochet programs, to become the subject of QCS approved sponsor programs in the future.[353]

Previous inquiries and reports

The QPC report considered that WDOs would assist the rehabilitation of incarcerated people by providing incentive to partake in non-mandatory programs.[354] The QPC report cautioned that, despite the identified benefits, implementation of WDOs in correctional centres would require significant adjustment to prisoner management processes and procedures. [355] It ultimately recommended that to improve rehabilitation outcomes the Queensland Government should work with SPER to determine whether there was a cost effective option to make WDOs available in prison[356] and, provided the benefits exceed the costs, work with SPER to make WDOs available in prisons as soon as is practicable.[357]

The Government response did not directly address this recommendation, but did state generally that the Queensland Government is committed to enhancing the provision of rehabilitation and reintegration services to offenders in order to reduce recidivism.[358]

The ADCQ report noted that, at the time of consultation, a pilot WDO program was being trialled for women at Helana Jones Correctional Centre and was expected to be of major benefit to women leaving prison to re-establish their lives with a 'cleaner slate'.[359]

Girls in detention

The powers of enforcement under the *State Penalties Enforcement Act 1999* do not apply to children,[360] other than to a child aged at least 17 years who has been served with an infringement notice for a transport demerit points offence.[361] As such, the issue of SPER debt is of limited relevance to girls in detention.

How do other jurisdictions address this issue?

WDOs in New South Wales enable incarcerated people to pay down their fine debt through a range of activities. Clear published policy has been developed acknowledging the need for the scheme,[362] the activities available,[363] and the rate at which debt is reduced.[364]

A similar Work and Development Permit scheme exists in Victoria,[365] mirroring the Qld and NSW schemes and including financial counselling as an additional activity.[366] This has been piloted at the Dame Phyllis Frost Centre in Victoria.[367]

A similar scheme operates in Western Australia, although is not currently available to incarcerated people.[368] Fine debt can be reduced by community service-type orders in Tasmania[369] and South Australia.[370] These are undertaken in the community and are not available to incarcerated people.

The Victorian 'Time Served Scheme'[371] allows people in prison to convert unpaid fines into concurrent or additional imprisonment days or community service through a 'time served order'.[372] A similar 'Fine Expiation Order' is available in Western Australia for court fine debt.[373]

Results of consultation

Service system stakeholders

In Townsville, the Taskforce was told by a number of stakeholders that unpaid SPER debts are a significant issue for incarcerated women following release and can even impact their ability to secure housing.[374] In Brisbane, the Taskforce heard there needs to be more WDO options to pay off SPER debts to get women out of the cycle of debt.[375] Stakeholders on the Sunshine Coast told the Taskforce that women who drive after their licence has been suspended due to a SPER debt, risk being drawn back into the criminal justice system after release from custody. Licence disqualification makes it difficult for previously incarcerated women living in regional areas to successfully transition back into the community.[376] Rockhampton stakeholders spoke of instances where women with unpaid fines and mental health issues had been imprisoned.[377]

Queensland Revenue Office

The Queensland Revenue Office (QRO) told the Taskforce that SPER enforcement actions and payment plans are able to be suspended or withdrawn once SPER confirms with QCS that the debtor is in custody.[378] Debtors are able to inform SPER themselves using a free dedicated telephone line located within correctional facilities. A third party is also able to advise SPER on behalf of the debtor. Debtors are

advised to contact SPER again closer to release to update their details.[379] Any enforcement action still outstanding can be deferred for a further month after release to allow time for reintegration into the community.[380] The QRO acknowledges that more can be done to support women in these circumstances during their reintegration back into the community.[381] The QRO is considering extending the one month period during which enforcement actions (driver licence suspensions and Centrelink deductions) are deferred after people leave prison.[382]

The QRO acknowledged the issue of domestic and family violence victims receiving penalty infringement notices for camera detected or tolling offences when the perpetrator of violence is the actual offender.[383] Where these infringement notices are not paid they are referred to SPER for collection and enforcement. Consistent with the *2016-2026 Domestic and family violence prevention strategy*[384] and in an effort to ensure that victims have a single point of contact, functions relating to the issue and administration of infringement notices previously undertaken by the Department of Transport and Main Roads and Queensland Police, are now be integrated into the QRO. The benefit of this is that the QRO officers are able to withdraw infringement notices for camera-detected and tolling offences committed by perpetrators of domestic and family violence and incorrectly attributed to victims of domestic and family violence.[385]

A range of options are available to support vulnerable members of the community including incarcerated women.[386] These include extended payment terms, deferrals and the option to undertake prescribed activities to discharge their debt through WDOs.[387]

The QRO do not collect gender and demographic data including First Nations status for SPER debt holders because they consider that to collect this information may compromise their objectivity and impartiality as an enforcement agency and raise privacy concerns. The QRO was concerned that, as they are an agency with coercive powers, the community may be concerned about how they might use that information.[388]

Queensland Corrective Services

QCS told the Taskforce that there is currently no work being conducted to review the introduction of WDOs within correctional centres and that the consideration of introducing the orders should be included as an action item for the QCS Action Plan.[389] QCS considered that there may be scope for secure correctional facilities to become sponsors using activities currently offered, such as crocheting prosthetic breasts for cancer survivors between surgeries, sewing sanitary items for disadvantaged women and girls overseas, landscaping, maintenance, tidying and cleaning.[390]

Taskforce findings

When women enter custody they are in a highly stressful situation. As they deal with more immediate concerns such as coping with prison life, the safety and wellbeing of their children, and what will happen to their home and belongings, the status of their SPER debt will not be front of mind. The Taskforce considers that the onus placed on incarcerated women to inform SPER that they are entering and exiting custody is too high.

The process of transitioning from incarceration to the community can be isolating and stressful. Women must work to rebuild relationships, find a job and secure safe and stable accommodation as they deal with the stigma of a criminal record and perhaps try to reunite with their children. The current one month deferral post imprisonment does not allow women enough time to make solid headway on their transition.

The Taskforce consider that women should be able to take advantage of WDOs so they can aim to be SPER debt free when they transition back into the community. It is clear from the legislation that QCS was intended to be an active partner in the WDO scheme. The expansion of WDOs so they are available to people who are in custody or subject to community based orders would assist their rehabilitation and reduce their risk of reoffending.

The Taskforce notes that there is some confusion within QCS as to the types of activities that could be undertaken in custody as part of a WDO. The Taskforce believes that QCS would benefit from looking to New South Wales where there is clear published policy outlining how WDOs can be used for incarcerated people.

The Taskforce noted that Hardship Partner selection is reactive as opposed to proactive. The process for selecting Hardship Partners depends on sponsors approaching SPER. There is no strategic mapping of who the debtors are, what they need and what activities might benefit them in any given location. An

overarching policy objective of reducing recidivism and developing a clear service delivery model enabling relevant supports to be put in place, may be more likely to contribute to delivering outcomes for SPER debt holders. It would also reduce the costly administrative burden of the debt recovery.

There is no current scheme in Queensland equivalent to the Victorian 'Time Served Scheme'. Such a scheme would enable incarcerated people to address their unpaid fines by converting them into imprisonment days that can be served concurrently with other days served in custody, including time spent on remand. The intention of the scheme would be to support the rehabilitation and transition of incarcerated people into the community by allowing them to reduce or discharge their fine debt while in custody such that they are released with a 'clean slate'.

Gender and demographic data relating to SPER is not collected by Queensland Revenue Office. The Taskforce considers the concerns of the QRO about collecting this important data can be met if the data is adequately deidentified and the firm restrictions on its use are specified.

Taskforce recommendations

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.

Queensland Corrective Services should ensure the policy is made available to women on reception in all women's prisons and the Queensland Revenue Office should 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 of 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.

Implementation

QCS and the QRO in consultation with people with lived experience, First Nations peoples, service system and legal stakeholders should review the activities that could be offered to women in prison as part of a WDO.[391] Consideration should be given to rehabilitative activities beyond unpaid work, including courses, counselling, treatment and mentoring programs.[392]

QRO should extend the suspension of enforcement actions for SPER debt beyond the current period of one month after a person is released from custody for a reasonable time to enable them to transition back into the community and gain and have reasonable means to repay the debt. WDO activities should suit the rehabilitative needs of participating women and this will require active engagement with suitable providers. A streamlined process for notifying the QRO when a person with SPER debt is in custody will avoid unnecessary impacts for the debtor and administrative burden associated with debt recovery activities.

Gender specific trauma-informed training should be developed and delivered to QCS and SPER staff to ensure that incarcerated women are supported in undertaking WDOs best tailored to their needs.

QRO should develop policies and processes to collect deidentified demographic data in an extractable form about people with SPER debt. The mechanisms used to collect, store and use the data should include appropriate safeguards, such as seeking consent in accordance with the relevant legislation including the *Information Privacy Act 2009.*

The provisions of the 'Time Served Scheme' should be modelled on the Victorian model. The Taskforce believes that it is imperative that the proposed scheme count any time served towards paying back fine debt but that unlike the Victorian scheme there should be no provision for people to serve extra time in custody. It is not the intention of the Taskforce to increase the number of incarcerated women in prison and to allow unpaid fine debt to be converted into additional days in custody would have this effect.

Human rights considerations

These recommendation engage the right to recognition and equality before the law (section 15), property rights (section 24) , the right to protection of families and children (section 26), the right to health services (section 37) and the right to education (section 36). Section 58 of the *Human Rights Act 2019* also imposes obligations on public entities to act in a way that is compatible with human rights and in doing so, not to fail to give proper consideration to human rights.

Human rights promoted

Deferring the seizure, sale or registration of an interest against property promotes property rights (section 24). Where women engage in WDOs involving medical or mental health treatment or education and training courses the rights to health services (section 37) and education (section 36) are promoted. Tailoring WDOs to suit the needs of women with children also promotes the protection of families and children (section 26).

A 'Time Served Scheme' promotes the right of recognition and equality before the law (section 15) because it lessens the burden that incarcerated people face meeting financial obligations as they try to rebuild their lives following release from custody. The protection of families and children (section 26) is promoted by the option because it allows mothers to focus the income they have on building a home and caring for their children instead of paying for old fines.

Human rights limited

Recommending that the Queensland Revenue Office collect and extract demographic data potentially limits the right to privacy and reputation (section 25) insofar as it requires the collection of personal information.

Limitations on rights are justified

The Taskforce is proposing to collect gender, Indigenous status and disability data from SPER debtors for the legitimate purpose of improving the SPER scheme which would include tailoring WDO orders to suit the individual needs of women and girls. The information sought to be collected is narrow and the information itself de-identified. The purpose could be made less burdensome on the rights of debtors by

making them aware of why the information is being collected and how it will be used. The Taskforce notes the scope of the right to privacy is broad and protects personal information and data collection from arbitrary interference[393] and unlawful attack. The right to privacy can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom. In this case the scope of the information collected will be narrow and deidentified. The purpose of the collection is to create a more rehabilitative WDO scheme based on the specific needs of various cohorts of women.

Evaluation

The impacts and outcomes achieved for women through the implementation of WDOs for women in custody and a Time Served Scheme should be measured and monitored.

Conclusion

Time spent in prison and detention centres should be well used to address the rehabilitative needs of women and girls. The Taskforce has heard and listened to the voices of women in and recently released from prison. While accepting of their punishment, they want to use prison time to gain knowledge and skills to improve their lives – and their children's lives – when they are released. Current systems and practices are not sufficiently identifying need, providing adequate support and building upon strengths and ambitions.

Whilst the Taskforce acknowledges that planned QCS initiatives, including their Strategy and Action Plan, are an important step for women in prison, it is essential that relevant recommendations in this report are embedded into the Strategy itself as well as into future planning and practice more broadly. Sufficient funding and evaluation are also necessary.

Increasing and appropriately funding services and initiatives that improve rehabilitation will benefit the community as much as the individual and their family. Importantly, improvements to rehabilitation support and initiatives will promote the human rights of women and girls. These initiatives are cost-effective. In helping to break the cycle of offending and in reducing recidivism, these will reduce the heavy cost to the community of imprisoning offenders.

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[376] Stakeholder consultation forum, 30 March 2022, Sunshine Coast.
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Chapter 3.10: Reintegrating women and girls into the community

Incarcerated women and girls are returning to the community every day. The challenges for women reintegrating into the community include finding housing, reuniting with family, being safe from violence, dealing with health issues and finding employment.

Women and girls face a battle to reintegrate because they often return to the community with the same issues that forced them into contact with the criminal justice system in the first place, including poverty, violence and health issues.

Planning for transition should begin when women and girls first enter custody, and support should continue well after they are returned to the community.

Housing

Background

Failure to adequately plan for and support safe transition from custody into secure and affordable housing can have terrible consequences for incarcerated women or girls trying to reintegrate back into the community.[1] Incarcerated women face significant difficulties accessing safe and affordable[2] housing for themselves and their children.[3] Accommodation is essential for women to successfully transition from prison and to be reunited with their children.[4]

Current position in Queensland

Guidelines and standards

The *Guiding Principles for Corrections in Australia* (the Principles) require that prisoners have access to relevant staff, external services/agencies and community groups to assist in meeting their reintegration needs.[5] The Principles recognise the strong correlation between housing instability and crime.[6]

Residential tenancy vacancy rates and social housing waiting list

Residential tenancy vacancy rates in Queensland are at record lows. For the March 2022 quarter, the average vacancy rate for Queensland was just 0.7%.[7] During that period, 18 Local Government Areas experienced record lows for the past decade including Brisbane, Ipswich, Logan, Toowoomba, Moreton Bay, Caboolture, Cairns and the Tablelands.[8]

In February 2022, the Queensland Council of Social Services (QCOSS) reported that over 50,000 people were on Queensland's social housing register and low-income households were spending more than half of their income on housing costs.[9] In its *Town of Nowhere* campaign, QCOSS calls for the Federal and state governments to invest more in building social housing.[10]

How the Queensland Government deals with social housing

The Queensland Government's whole-of-government *Housing and Homelessness Action Plan 2021-2025* (the Action Plan)[11] supports the vision of the *Queensland Housing Strategy 2017-2027*.[12] Through the Action Plan the Government aims to increase social and affordable homes and transform the way housing services are delivered. The Action Plan includes a focus on developing a framework to prevent people exiting government services (including those delivered by Queensland Corrective Services, Queensland Police Service (QPS), and the Department of Children, Youth Justice and Multicultural Affairs (Youth Justice)) moving into homelessness.[13]

Public housing reduces future engagement with the criminal justice system and provides a net benefit of between $5,200 and $35,000 per person relative to private rental and homelessness assistance.[14]

Australian Productivity Commission figures show that the Queensland Government is spending less on social housing per capita than any other Australian state or territory. In 2020-21, the Queensland Government spent $121.40 per person – below the national average of $174.73. Queensland's expenditure compares to $134 per person in Victoria, $172 in New South Wales, $220 in Western Australia, $311 in Tasmania and $869 in the Northern Territory.[15] The same figures show that, between 2016 and 2020, Queensland was consistently the second lowest per capita spender after Victoria.

The Queensland Government has pledged $1.813 billion to commence building 6,365 new social housing homes before 30 June 2025.[16]

A recent Supreme Court of Queensland judgement included comments demonstrating the frustration of courts in Queensland about the lack of cost-benefit analysis being undertaken in regard to funding transition housing for incarcerated people.[17] While the judgement related to an application for supervision under the *Dangerous Prisoners (Sexual Offenders) Act 2003* for a man in custody, the court strongly criticised the lack of appropriate housing options for people in custody. The court expressed that this results in people staying in prison for longer – a more expensive and in this case, less safe option.

Applying for and maintaining social housing while in prison

Incarcerated women may apply for social housing assistance while they are in custody providing they have a parole eligibility or release date within three years.[18]

Department of Communities, Housing and Digital Economy (DCHDE) policies state that social housing is provided to those in greatest need.[19] Incarcerated women with public housing tenancies are able to retain their tenancy while they are in prison and defer rent for a period of up to five months[20] through the 'fair absence from your home' policy, which seeks to balance the very high demand for public housing across Queensland, with the rights of tenants to be absent from home from time to time.[21] Should a woman remain in custody for more than five months, she can apply to further extend her tenancy if there are 'extraordinary circumstances'. Each case is considered on the individual circumstances of the household[22] balanced against the needs of other Queenslanders in housing need.[23]

Personal property left behind

The management of goods and personal documents left behind is prescribed by the *Residential Tenancies and Rooming Accommodation Act 2008.*[24] Should a woman lose her tenancy during her incarceration, any personal items determined by DHCDE to be valued at less than $1,500 are disposed of. If the goods are valued at $1,500 or more they will be stored for one month, contact with the tenant attempted and then either sold or disposed of.[25] Personal documents must be given to the tenant, the Office of the Public Trustee or the issuer of the personal document.[26]

Services available

Women exiting custody who will be homeless or at risk of homelessness may also be assisted with a range of services to meet their housing and wellbeing needs through the DCHDE *Pathway Planning* program.[27] DCHDE told that Taskforce that this program offers a strengthened service delivery response that supports customers to identify their needs and match them with appropriate housing responses and referrals.[28]

The MARA project is accredited to deliver 'Skillsets for Successful Tenancies – Dollars and Sense' to women in custody.[29] This program, developed by the Queensland Government in partnership with real estate agencies, provides a free, competency-based training program that helps to build tenancy and life skills of people renting in the private market.[30] DCHDE advised that MARA have delivered the training to women in several South East Queensland correctional centres.[31]

Next Step Home Program

The *Next Step Home – Women on Parole pilot* program,[32] evaluated in 2020,[33] was developed as part of the *Queensland Housing Strategy 2017-2020 Action Plan*.[34] The pilot, which is delivered by MARA projects and Sisters Inside, aims to reduce recidivism by providing women who are transitioning onto parole or at risk of being remanded, with subsidised housing for up to 12 months and access to culturally appropriate support.[35]

Over 200[36] women have been assisted across the two pilot locations.[37] Participants[38] are supported to apply for housing, maintain their tenancy for a year, and arrange an ongoing independent tenancy after the initial 12 months. The program includes the use of head leasing, which is when a government agency or non-government service provider enters a private rental agreement through a real estate agent and then sub-leases it to the client at a subsidised rate.[39] At the end of the term, the agency works with the client and real estate agent to transition the lease to them. This provides an address so that participating women can apply for parole, with a property secured for them prior to their release from custody.[40]

The evaluation identified that the cohort of women targeted to participate, (women who 'understand and express a commitment to sustaining a tenancy and working towards living independently in the community' once the housing subsidy is withdrawn)[41] are less likely to be at risk of homelessness than others.[42] However, it was also a program requirement for participants to have complex, more serious or longer criminal histories.[43] The evaluation noted that the combination of these criteria may mean the program was not suited to or intended for those women with the most complex needs who would have the most difficulty finding housing.[44] Concerningly, no First Nations women were able to be recruited for the evaluation.[45]

DCHDE has undertaken a procurement process that will see the continuation of services from June 2022.[46]

Responses to other reports and inquiries

Recommendations 23 and 25 of the 2019 Queensland Productivity Commission *Inquiry into Imprisonment and Recidivism* report (QPC report), whilst primarily about reintegration more broadly, included components that Queensland Corrective Services (QCS) investigate options for a prisoner housing program similar to the Corrections Victoria Housing Program (CVHP); report on housing outcomes for released prisoners; and provide short term housing for prisoners without accommodation when they are released (see Appendix 17).[47] In response, the Queensland Government has committed to undertake a range of activities targeted at improving rehabilitation and reintegration activities in the correctional system, including providing housing reintegration responses to address the needs of people who would otherwise be ineligible for bail, or who would exit prison into homelessness.[48] QCS advised that it has not received additional funding to implement these recommendations.[49]

Recommendation 10 of the Anti-Discrimination Commission of Queensland's *Women in Prison 2019* report (the ADCQ report) was that the Queensland Government continue to seek alternative solutions to imprisoning women on remand who would otherwise be eligible for bail, but for the fact that they do not have a suitable home address (see Appendix 17).[50] The Queensland Government has not yet responded to this report.

How do other jurisdictions address this issue?

The Corrections Victoria Housing Program (CVHP) provides individuals at risk of homelessness and reoffending with access to transitional housing placements. CVHP can also work in conjunction with the Corrections Victoria Brokerage Program to assist individuals with securing long-term housing outcomes.[51] An evaluation of the CVHP found that the program reduced housing disadvantage.[52] It also reduced recidivism for medium and high-risk offenders who were referred to the program but did not receive a tenancy.[53] A transition triage assessment is undertaken when a person enters custody to identify any existing housing arrangements that, if left unaddressed, would exacerbate debt and lead to financial burden.[54]

The Extended Throughcare pilot program in the Australian Capital Territory (ACT) provides a number of services including housing for 12 months after release, which significantly reduces the likelihood of participants reoffending.[55] While the ACT has a significantly smaller cohort of female offenders than Queensland, the costs of running these supports is small compared to those of ongoing imprisonment. While other jurisdictions offer similar support, the ACT example demonstrates the benefits of well-designed assistance provided over a longer period.[56]

Prisoners Aid New South Wales (an association providing practical help to incarcerated people) is funded by Corrective Services New South Wales to collect and store personal property including clothing, electrical appliances/devices, small tools, personal effects and identity documents of incarcerated men and women.[57] In 2013 alone, the organisation was providing storage for 1,000 incarcerated people in New South Wales (NSW).[58]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons or offenders

> *There is a desperate need for parole approved accommodation for women and CHILDREN. Women in custody are clean and want to be reunited with their children and their major motivation is reunification.*[59]

Women with lived experience of incarceration who made a submission to the Taskforce, and those who spoke to the Taskforce during visits to the Townsville Women's Correction Centre (TWCC) and Southern Queensland Correctional Centre (SQCC), described housing instability and insecurity as a significant contributing factor to their offending.[60]

Women at TWCC stressed the need for more public housing. The Taskforce were told that women are stealing food and taking drugs to deal with homelessness, and are losing public housing tenancies when they go to jail for even short periods.[61] Women also described their experience of losing their personal belongings while they are in custody, and some suggested a service is needed to collect personal belongings and store them until their release from custody.[62]

A group of women with lived experience of incarceration expressed their dismay at the absence of any parole-approved accommodation options in Cairns and Mackay.[63]

> *'Parole eligible accommodation for women is a big gap here, which means women spend a longer time incarcerated than they need to'.* [64]

Service system stakeholders

The Taskforce heard from a range of stakeholders across Queensland that the housing crisis makes it hard for women leaving prison to find safe, stable and affordable housing that meets their needs and that of their families.[65] Sisters For Change said investment is needed in accommodation particularly in Brisbane, Gold Coast and Townsville.[66]

Sisters Inside told the Taskforce that the *Next Step Home* program is an important initiative for women[67] that should be funded, extended and expanded to include criminalised girls in the child protection system.[68] Women are fearful that this service will disappear because funding has not been confirmed.[69] Sisters Inside called for more skilled housing workers who understand the lives of incarcerated women.[70]

Sisters Inside also told the Taskforce that there is a perception that applications for public housing cannot be made until after release.[71] Sisters Inside told the Taskforce that women in prison apply for public housing, but their applications lapse and they are required to re-apply when they are released. As a result, they lose their spots on already lengthy waiting lists.[72] Some suggested there would be benefit in allowing parole applications to include a list of accommodation options so that, if the preferred accommodation is no longer available when the application is considered and another options is, there is no need for a fresh application.

MARA Projects spoke of the need for First Nations women to be linked to culturally appropriate service providers, including specific Aboriginal and Torres Strait Islander supported accommodation providers.[73] MARA Projects said their data indicates that housing is a support need for nearly twice as many non-Indigenous participants (35%) as First Nations participants (19%).[74]

Legal stakeholders

Legal Aid Queensland (LAQ) told the Taskforce about the need for more housing, and drug and alcohol rehabilitation options for girls. LAQ described a case study of a girl who was ineligible for rehabilitation in Queensland due to her young age, and who ultimately had to travel to Western Australia to stay in a facility there, removing her from her family and home environment.[75]

Queensland Law Society (QLS) told the Taskforce that homelessness is the most significant barrier for women to overcome in applications for bail, and this is often the result of domestic and family violence.[76] QLS considered that increasing numbers of women on remand is a product of systemic inequalities in the operation of bail laws rather than individual issues or 'crime' trends.[77]

Academic

The research team from the Griffith Criminology Institute who are leading the *Transforming Corrections to Transform Lives* project told the Taskforce about how difficult it is for women to establish a non-offending life after release from prison, because of the multiple intersecting challenges they face, including finding safe and secure housing.[78]

Queensland Government

Queensland Corrective Services (QCS)

QCS advised that no additional funding has been provided to QCS to implement the recommendations of the QPC report.[79]

Department of Communities, Housing and Digital Economy (DCHDE)

Some women in custody have been able to secure private-market leases through the *Next Step Home* program prior to their release from custody.[80] Women are also able to access other housing products and services through DCHDE Housing Service Centres including through Pathway Planning, RentConnect, bond loans, rental grants and subsidies.[81]

DCHDE told the Taskforce that a range of boarding houses are regulated under the *Residential Services (Accreditation) Act 2002.* DCHDE ensures that properties meet the building code and fire arrangements, and that services are delivered as necessary.[82] Boarding houses fall within different tiers depending on the needs of the people residing in them:

- Tier one – accommodation only
- Tier two – accommodation and food service
- Tier three – accommodation, food service and personal care.[83.]

While DCHDE has some powers under the Act, these are limited and there is a need for the department to take more action to ensure the health, safety and wellbeing of people who use boarding houses. Residential services legislation has not been reviewed for a long time and offers few regulatory powers.[84] The Taskforce heard that women with children in the care of the Department of Child Safety would be unlikely to be reunified with their children in unsafe accommodation such as a boarding house.[85] Information on whether any boarding houses offer women-only accommodation is not currently captured.[86]

DCHDE advised that work is being progressed on developing a formalised service delivery framework between state government agencies to prevent people exiting government services into homelessness.[87] The Director-General of DCHDE sits on a Senior Executive Group comprising of senior executives from Queensland Health, Queensland Corrective Services, Department of Justice and Attorney-General and the Department of Children, Youth Justice and Multicultural Affairs that is overseeing the action plan, construction work, and working together on targeted solutions.[88]

DCHDE confirmed that women on 'fair absence' from public housing during their incarceration can defer their rent for five months and after that time, the arrangement is able to be reviewed. It can be a challenge to determine how long a person will remain in custody.[89]

In response to women telling the Taskforce that their possessions left in public housing accommodation when they were taken into custody were sold off or disposed of, DCHDE stated that in many cases possessions are abandoned, and that if property is of little value, it is disposed of.[90]

DCHDE confirmed that money has been allocated towards continuing the *Next Step Home* program for the next four years following its positive evaluation.[91]

DCHDE told the Taskforce that housing availability is a complex problem with the popularity of Airbnb and short term rentals contributing to shortages in housing stock and affordability. DCHDE also noted that it encounters issues with members of the public not wanting to live near social housing.[92]

DCHDE noted that it is not advised by QCS ,as a matter of course, when women who are public housing tenants go into custody.[93]

DCHDE noted that they have been involved in successfully assisting Drug Court participants to find housing. This began as an ad hoc arrangement that has continued as a permanent arrangement.[94]

Parole Board Queensland

The Parole Board Queensland (PBQ) told the Taskforce that the safe release of women and girls from custody can only be achieved if they have stable accommodation.[95] To satisfy this requirement, the accommodation needs to be at least medium-term and have an environment free from violence. There must also be effective case management in order to reduce the likelihood of illicit substance use.[96] Lack of access to stable accommodation is a barrier to applicants being granted parole.[97] PBQ told the Taskforce that decisions to grant parole are 'subject to' the applicant finding suitable accommodation in the vast majority of cases.[98] As at 28 February 2022, 15 of the 292 people in custody that PBQ considered suitable for release, subject to obtaining suitable accommodation, were women.[99]

Other relevant issues

The impact of housing stability on wellbeing and recidivism

Living in unstable housing has a detrimental effect on the health[100] and wellbeing[101] of women and girls.[102] Forced moves and unaffordability are strong drivers of a decline in wellbeing.[103] The experience of physical violence is a key driver that precipitates a fall into unstable housing, or extends the time that a women remains in unstable housing.[104]

The effectiveness of post-release housing assistance in improving wellbeing and stopping recidivism depends on there being real, long-term, stable accommodation options available. Last- minute planning and placing women in insecure, temporary accommodation causes more stress and diverts the attention of recently released women into addressing the immediate need of having a roof over their head, rather than allowing them to focus on their rehabilitation.[105]

It is an eligibility criteria to access social housing in Queensland for an applicant to have complex wellbeing factors that prevent them from otherwise accessing stable housing.[106]

Boarding houses are not safe for women and are not suitable for children

The Taskforce has been told that the only options for some women following their release from prison are boarding houses, hostels[107] and other transitional accommodation.[108] Some accommodation rejects women based on their criminal history. Others that accept people from prison were described by one woman as being 'worse than prison',[109] 'unsafe'[110] and 'unsuitable for children'.[111] The focus of many incarcerated women the Taskforce spoke to was addressing the issues which led to their incarceration so that they could reunify with their children. Women and those who support them raised concerns that the absence of suitable accommodation for women leaving prison and their children would further delay reunification.[112] A lack of suitable accommodation for mothers and children could hinder efforts towards rehabilitation.

The Taskforce heard that women will often go back to abusive partners because that is the only accommodation option available to them.[113] In many regional and remote areas, women do not have boarding houses available to them at all, or have a limited choice of places to go.[114] Stakeholders told the Taskforce that despite the serious shortcomings, limited availability of spaces in transitional accommodation makes competition fierce[115] and has been known to lead to potential applicants fighting.[116] The Taskforce heard that rather than transitional accommodation, women need stable supported housing.[117]

National housing and homelessness agreement

The *National Housing and Homelessness Agreement* (NHHA) provides $1.6 billion each year to states and territories to improve Australians' access to secure and affordable housing,[118] including $129 million for homelessness services which states and territories are to meet under bilateral agreements.[119] The NHHA requires that 'homelessness priority cohorts' are incorporated into the homelessness strategy of each stage. People exiting institutions, women and children affected by family and domestic violence, and children and young people are all classified as priority homelessness cohorts.[120] The Australian Productivity

Commission is currently preparing a report examining how well the Australian, state and territory Governments have achieved the objectives, outcomes and outputs set out in the NHHA and the suitability of the NHHA for the future.[121] In its submission to the Productivity Commission, the Queensland Government states that, while Queensland has met its responsibilities under the NHHA and housing demand is increasing, the Australian Government funding to Queensland for housing and homelessness,[122] is decreasing from a peak of $429.3 million in 2018-19 to a projected $332.2 million in 2023-24.[123]

The 2021 Commonwealth Parliamentary Inquiry into homelessness made a number of recommendations relating to incarcerated people including that the Australian Government work with state and territory governments to implement strategies to address the risk of exiting into homelessness from correctional institutions.[124] The Australian Government response supported this recommendation in principle and stated that while the Australian Government funds two service providers who support young people exiting correctional facilities, correctional facilities are the responsibility of states, and states have discretion over implementing housing and homelessness initiatives within their jurisdictions.[125]

Taskforce findings

The Taskforce heard at almost every consultation forum and meeting it held, from the Torres Strait to South East Queensland, that a lack of suitable housing and accommodation for women and girls, either as victims of domestic, family or sexual violence, or as accused persons and offenders (or indeed both), was a major issue. Women and girls who have been victims of violence, and those who are involved in the criminal justice system, are at high risk of housing instability.

The Taskforce found that a lack of safe and secure housing is causing feelings of anxiety and hopelessness for incarcerated women and girls. Some women are staying in prison because they are not able to find suitable accommodation. In some instances, women have opted to return to accommodation where they have previously experienced domestic and family violence because there were no other viable options.[126]

While the 'fair absence from your home' policy is a commendable effort to balance managing precious limited public housing stock and high demand, with enabling women who are incarcerated for short periods to keep their public housing and not exit custody into homelessness, some women are not aware of the policy and do not apply. Better co-operation between QCS and DCHDE accompanied by greater awareness of the DCHDE's fair absence policy, would enable increased uptake and alleviate the anxiety felt by women.

Women are concerned that their belongings left in public housing while they are incarcerated may be destroyed. Not all women entering custody have family or friends who are able to collect and keep their belongings safe. The Taskforce heard that it is hard for women to re-establish themselves when they leave custody, and found that a program like the one funded by Corrective Services NSW and delivered by Prisoners Aid NSW in that state, warranted consideration in Queensland.

The Taskforce heard that private house rentals are in very limited supply and unaffordable for women and girls exiting prison. Public housing waiting lists are long and women on remand cannot apply. Women are either unable to get the support they need to make an application, or they find their application lapses and they have to reapply and go back to the bottom of the waiting list. When women do manage to secure public housing and are subsequently incarcerated they often lose their home, as well as their personal belongings, even while serving shorter sentences.

The Taskforce found that some girls and women are being denied bail and parole because they have nowhere safe and stable to live. Prison and detention are a costly and unacceptable alternative to suitable housing.

Improved collaboration and integration between government agencies and non-government services would help to ensure that, whenever possible, bail is not denied to a woman or girl; parole is not refused to a woman solely on the basis that she does not have access to safe accommodation; and that women and girls are supported to address factors contributing to their offending behaviour and to not reoffend. Although limited to Brisbane and a small number of participants, the support provided by DCHDE to participants in the Queensland Alcohol and Drug Court program, is a promising example of how collaborative efforts could support vulnerable people involved in the criminal justice system to find suitable accommodation and to prevent reoffending.

Given the very limited supply of suitable accommodation and a tight rental market, it is exceptionally difficult for vulnerable women and girls with limited resources and capacity to find a suitable place to live.

The expansion of the *Next Step Home* program is an urgent necessity. The Taskforce also considered that the Queensland Government should accept and implement recommendation 10 of the ADCQ report and continue to seek alternative solutions to imprisoning women on remand who would otherwise be eligible for bail, but for the fact they do not have a suitable home address.

To meet the needs of individual women and girls, individually tailored responses are required that extend beyond providing suitable accommodation. Government and non-government agencies should work together collaboratively to provide an integrated response to meet women and girls 'needs around housing, 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 so as to reduce reoffending.

The Taskforce heard that boarding houses and transitional accommodation are often the only option for women applying for bail or parole and women and service providers consider them to be unsafe and unsuitable for them and their children. The *Residential Services (Accreditation) Act 2002* should be reviewed to ensure DCHDE has sufficient regulatory oversight to ensure residents are provided appropriate standards of hygiene, maintenance, safety and powers to ensure standards can be enforced.

There is a critical problem with housing supply and this is having a profound impact on women and girls. Unstable housing and homelessness are both a consequence and cause of violence against women. Given the consistency and scope of the concerns the Taskforce has heard about this issue, right across Queensland, addressing it must be an urgent priority for every level of government. There is an opportunity for the Queensland Government to demonstrate leadership and urge the Federal Government and local councils to come together to identify how this important issue can be best addressed.

Taskforce recommendations

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 reoffending.

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 state-wide.

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.

Implementation

Implementation of the recommendation about the review of the operation of the 'fair absence from your home' policy should consider how accessible information about the policy, and how women can apply, is provided at critical points of their involvement in the criminal justice system, including on entry into prison or detention. Consideration should be given to a reasonable assessment of the likely length of time a women or girl is likely to be in custody, to enable this information to be included in a housing application and considered by DCHDE. Given the data available and outlined in this report (Chapter 3.1) about the average length of time women and girls spend in custody, including on remand, consideration should be given to allowing the operation of the policy to be extended beyond five months in some circumstances.

The Queensland scheme to enable the collection and safe storage of some personal belongings and documentation belonging to women and girls while they are in custody should take into consideration the operation and lessons learned from a similar scheme operating in New South Wales. The scheme should operate state-wide, such that a woman or girl is able to have some personal belongings stored, regardless of where she lives and which correctional facility she is placed in. The scheme should enable the collection and safe storage of a modest quantity of personal belongings and documentation rather than bulky goods.

The design and implementation of a model for collaborative and integrated responses to meet the needs of women and girls to apply for bail or parole will require cross-agency and whole-of-government input and should be supported by necessary governance arrangements. Consideration should be given to which agency is best placed to lead the design and implementation of the model, necessary information sharing arrangements, timely access to relevant services and supports and access to legal advice and representation. The model should complement and support the provision of services to women and girls in custody recommended by the Taskforce (Chapter 3.4).

The pilot and evaluation of the *Next Step Home* program has shown promising outcomes. The Taskforce heard from women and service providers that it had provided valuable responses. The Taskforce was pleased to hear that DCHDE has taken steps to continue the program beyond June 2022. Taking into consideration the outcomes of the evaluation, the program should be expanded to women and girls from additional locations across Queensland.

The review of the Residential Services (Accreditation) Act 2002 is overdue, Embedding standards of hygiene, maintenance and safety and powers to ensure standards can be enforced, is timely, given current pressures in the housing and rental market, Boarding houses and transitional accommodation, often of questionable quality and safety, are the only option for many women and girls leaving custody. This review should be progressed as a priority.

Many of the housing products and services provided by government and available to women and girls in the criminal justice system, while important and commendable, do little to resolve fundamental issues related to limited supply of suitable housing and accommodation. With the cost of housing increasing and supply dwindling, the impacts and risks for those most vulnerable are profound. The Taskforce was shocked and alarmed about the depth and breadth of these issues across Queensland, their impacts for women and girls in the criminal justice system, and the resultant downward demand on QCS. This is not sustainable or acceptable and should be a matter of national priority.

Human rights considerations

While recognised at international law as a basic human right, the right to housing is not recognised in Queensland's Human Rights Act.[127]

These recommendations engage the right to recognitions and equality before the law (section 15); the right to protection of families and children (Section 26); the right to humane treatment when deprived of liberty (section 30); the right to protection from torture and cruel, inhuman or degrading treatment (section 17) and the right to life (section 16). The Bangkok rules regarding post-release support and the need for particular support with housing and reunification with family are also engaged.[128] The Taskforce notes that Property Rights (section 24) are unlikely to extend to leasehold interests and therefore do not extend to public housing tenancies.[129]

Human rights promoted

The provision of a housing program and short-term housing by QCS would link incarcerated women with housing more quickly, and would ensure that, at the very least, women are not released onto the street or denied bail or parole solely because they have nowhere to go. Housing assistance would promote recognition and equality before the law (section 15). The recommendation would assist recently released women in stabilising their lives and in reconnecting with children, which would promote the right to protection of families and children (section 26).

When women lose their personal property while incarcerated it is dehumanising and can contribute to their lack of self-worth and ability to cope while in custody. A storage scheme for the personal belongings of women and girls promotes the right to humane treatment when deprived of liberty (section 30).

Women on remand are being unfairly disadvantaged by their lack of access to housing. The expansion of the *Next Step Home* program to remanded women to improve their chances of bail promotes their recognition and equality before the law (section 15).

Legislative amendment to the *Residential Services (Accreditation) Act 2002* to better protect the safety of residents to ensure that boarding houses are safe spaces, and that regulatory powers are sufficient to protect vulnerable residents, promotes the right to life (section 16) and the right to protection from torture and cruel, inhuman or degrading treatment (section 17).

The coming together of Commonwealth, State and Territory and local governments to find innovative solutions for the current housing crisis would go some way towards better meeting the needs of women and girls who are living with the disadvantage of housing instability. This promotes the right to recognition and equality before the law (section 15). This recommendation may examine how all levels of governments are addressing the needs of mothers and children living with violence and the welfare of children in these families and therefore promotes the right to protection of families and children (section 26).

Human rights limited

This recommendation does not limit any human rights. The Bangkok Rules clarifies that providing for the distinctive needs of women in order to accomplish substantial gender equality shall not be regarded as discriminatory.[130]

Evaluation

The operation of the 'fair absence from your home' policy should be evaluated to consider the impacts and outcomes for women and girls in the criminal justice system. The Taskforce is mindful that while significantly valuable for these women and girls, this policy potentially has impacts on already long waiting lists likely to include women and girls in need of urgent housing. The review and evaluation of the operation of the policy should also consider the broader context and implications for all women and girls.

The design and implementation of a model collaborative and integrated service system responses should include a monitoring and evaluation plan to measure impacts and outcomes for women and girls and the collection of baseline data.

The review of the *Residential Services (Accreditation) Act 2002* should incorporate mechanisms to review the impacts and outcomes for women and girls achieved as a result of strengthened standards, oversight and enforcement mechanisms.

Transition services and responsibilities

Background

Re-entry services play an important role in helping people to transition from custody to the community by assisting them to plan matters such as accommodation, family reintegration, accessing treatment for alcohol and other drugs or mental health needs and wellbeing, amongst other things.[131] The support that women receive while incarcerated has a significant bearing on whether they will commit further offences, return to custody or reform.[132] The transition and reintegration period is a critical time in terms of preventing reoffending.

Current position in Queensland

Guidelines and services

The Principles provide that all prisoners, including those on remand and unsentenced, are provided access to reintegration programs and services to meet their individual needs both prior-to and at the time of release.[133]

The *Healthy Prisons Handbook* (the Handbook) includes a section on resettlement,[134] namely the preparation of incarcerated people for release into the community.[135] The Handbook emphasises that resettlement underpins the work of the whole corrective services establishment and the need for a whole of service approach. Incarcerated people should have access to accurate information about all resettlement services[136], be given support to reduce institutional dependence, and help to prepare for reintegration into the community.[137]

Re-entry services in Queensland

Re-entry programs and services for women are funded by QCS and delivered by various non-government organisations. Re-entry services include the MARA project[138] and the *Gatton Re-Entry* Program delivered by Sisters Inside.[139] The current service delivery model places the onus on women to take the initiative to connect with a service and plan for their release from custody.[140] A women needing assistance is asked to contact a staff member who will put her in touch with the right service, depending on her needs.[141]

In 2017-18, QCS was allocated additional funding to engage non-government organisations to provide re-entry services to better support the needs of people on remand and short sentences, and for the prioritisation of services for First Nations peoples, young people under 24 years of age, and those with cognitive disability or impairment.[142] In 2018–19, existing re-entry services for women in Northern Queensland were expanded to allow an integrated and culturally safe model of throughcare support for women returning to the community in locations throughout Queensland. This allowed more women to access assistance in line with services available in other locations, and included enhancements of both in-prison and post-release supports. Through the allocation of this additional funding, the number of women engaged in post-release support has significantly increased. As at 30 June 2021, demand for these services continued to grow as 461 women accepted support; compared to 387 women in 2019–20.[143]

Responses to other reports and inquiries

Transition of incarcerated people into the community following release was a major issue examined in the QPC report, the 2016 *Queensland Parole System Review* and the *Anti-Discrimination Commission of Queensland's (QPSR) and the* ADCQ report.

The *Queensland Parole System Review* (QPSR) called for the design and implementation of an end-to-end case management system representing a consistent pathway for incarcerated people beginning at entry to the correctional system, supporting progression through the system, and continuing beyond release.[144] The Review stated that the lack of such a system was unacceptable and likely to produce inefficiency and inadequate preparation for parole.[145] The Queensland Government supported this recommendation and stated an intention to 'increase rehabilitation opportunities for prisoners and offenders'.[146]

The ADCQ report recommended that QCS continue to expand re-entry services to ensure that all prisoners have access to services, including speciality services, as proposed by the QPSR.[147] It recommended that particular attention be focused on providing these services to women who live outside the South East Queensland and Townsville Regions. There has been no formal Queensland Government response to the ADCQ report and no additional funding provided to QCS to implement the recommendations of the QPC report.[148]

The 2019 QPC report found that a large proportion of prisoners appear unprepared for release, even when release dates are known.[149] The QPC report noted that there is no direct accountability for post-prison reintegration support,[150] no agency carries the responsibility to make sure the immediate needs of prisoners are met on release,[151] and there is a lack of cross-agency collaboration and consistency in preparing women for release.[152] This results is prisoners being released into the community who are ill-prepared for the adjustment from a highly-structured prison life to independent living.[153] The QPC emphasised that successful reintegration into the community is not a goal that can be achieved with

fragmented interventions.[154] Opportunities for intervention are missed by siloed service delivery systems that are complex to understand and navigate.[155] Recommendation 25 of the QPC report was that QCS be assigned the responsibility for, and required to report on, the provision of a minimum standard of post-release support[156] including:

- adequate documentation for proof of identity to open bank accounts and apply for other services
- a Medicare card to access health services
- assistance to establish an email account and procure a mobile phone
- copies of educational qualifications attained in or before custody
- information on support services available to assist with reintegration
- financial support for the first week of release
- appropriate transport to accommodation.[157]

Recommendation 26 in the QPC report was that QCS commission an independent evaluation of its contracted reintegration services to assess outcomes in terms of recidivism, value from the perspective of those in prison, benchmarking of services against those operating interstate, reporting frameworks, and the length of time services are provided.[158]

In its response to the QPC report, the Queensland Government committed to enhancing the provision of reintegration services with a range of activities including the development of an end-to-end case management system, improved and extended re-entry services for incarcerated women in South East Queensland and Townsville, and the piloting of an Aboriginal and Torres Strait Islander Women's Rehabilitation and Healing Program. [159] QCS advised the Taskforce that it has not received additional funding to implement these recommendations.[160]

How do other jurisdictions address this issue?

Support is provided in all Australian jurisdictions to assist incarcerated people to transition back into the community.[161]

The Corrections Victoria Reintegration Pathway (CVRP) provides a range of pre-release assessments, and pre-and-post release support programs responsive to the transitional needs of each prisoner. Transition planning starts when a person enters prison and continues throughout the sentence. Post-release support is available to prisoners assessed as requiring more intensive assistance.[162] When a person enters custody, they receive a Reception Transition Triage (RTT) assessment, which includes an assessment of any debt they are carrying, including existing housing arrangements that, if left unaddressed, would lead to additional financial burden.[163] People serving longer than 12 months in custody also receive a Case Planning Transition (CPT) assessment to build on issues identified in the RTT and identify further transitional needs.[164] A 'ReGroup' phase is applied to all sentenced prisoners up to 12 months before their release, or immediately on entry for those serving short sentences. The Victorian Association for the Care and Resettlement of Offenders (VACRO) guides incarcerated people through a two-component program called Relink, with group and individual sessions focused on practical strategies and planning for release. Goals are set with manageable steps to achieve them, medical assessments are provided, and housing applications and referrals for post-release support are made.[165] Dedicated transitional staff assist people to apply for identification documents.[166]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons or offenders

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'There is no help really. Women just get pushed out the door. Then they are on their own trying to navigate housing, child safety, and justice system requirements on their own'. [167]

Women with lived experience of incarceration at TWCC told the Taskforce that it would be good to see Child Safety working more closely with the women who had their children with them in prison and offer

them parenting programs.[168] The women also felt that a pamphlet laying out all of the programs and services available to them would help them to better navigate the system and prepare for their transition back into the community.[169]

Incarcerated women at SQCC spoke of the pressure they felt having to return to the community and restart their lives in a short amount of time with no support services or transition assistance. They spoke of the need for transition and planning for release to start when women enter custody.[170]

One woman shared with the Taskforce that she was offered no assistance during her incarceration to work through her triggers or to understand what had led to her offending. She was simply punished and walked out of prison with nothing more than a 'see you later'. She was offered no counselling, education or any help to work through her triggers so that she might have a better chance to reintegrate into the community.[171]

Service system stakeholders

The Taskforce heard that some women are released without identification documents.[172] There is a need for women to have a plan for transition in place before they are released, including wrap-around services to support them as they reintegrate back into the community.[173]

MARA told the Taskforce that when women are released to immediate parole or bail, nothing is provided to them in terms of practical support. As a result, women may end up committing offences to meet their basic needs.[174] Between 2% and 9% of MARA clients return to custody for reasons including old charges, homelessness and drug and alcohol use. MARA advocated for a state-wide model provided by a single service provider to ensure consistency and effective practice across all women's correctional centres.[175] MARA also expressed concern that women released from court have to find their own way back to the correctional centre they were released from to retrieve personal belongings and money in the prison trust account. They called for more consistent coordination to simplify the process of release.[176]

Red Cross said that the Sisters for Change program at TWCC was helping women to reduce self-harm and violence, improve hygiene, enhance cultural wellbeing and reduce sexual assaults within the correctional facility. These changes not only improve women's wellbeing in custody, but also help women to transition to low custody prior to their release. The program also builds pathways for women to volunteer after their release, provides skill certification and helps women build links with support services to access support as they reintegrate into the community.[177]

Legal stakeholders

LAQ said that many women identify that support following release from custody is integral for them to re-integrate successfully back into the community.[178] Properly supported and funded programs need to be specifically designed for female participants, encouraging cultural mentorship, education and family-focused services.[179] LAQ noted that Caxton Legal Centre's *Bail Support* Program for men on remand at Arthur Gorrie Correctional Centre, Brisbane Correctional Centre and Woodford Correctional Centre is working well to better support recently released men and to reduce recidivism.[180]

Academic

Researchers from the Griffith Criminology Institute leading the *Transforming Corrections to Transform Lives* project (the Griffith Project) told the Taskforce that many women disengage from support services once released from custody. If this occurs, the high demand for services means that, rather than follow the woman up and encourage her to re-engage with support, her place simply goes to the next person on the list.[181] The Griffith Project involves the creation of a new model of service for incarcerated mothers and their children that 'flips prison on its head' and focuses on rehabilitation first.[182] The service would pair 115 women with a 'coach' (generally a psychologist)[183] who connects with the woman from the beginning of her sentence. The coach takes time to get to know the woman, her history and her goals, and puts together a system of support. This support includes the coach helping the woman to navigate the system and advocate for herself during her time in custody and for at least two to three years after her release. Coaches also help women to navigate systems that involve their children, including the education system.[184] QCS has given its provisional approval for the program and for it to bring in its own psychologists to act as coaches. The goal is to enable women to live independently, gain employment, and make a positive contribution to society.[185]

Queensland Government

Department of Children, Youth Justice, and Multicultural Affairs

The experience of Aboriginal and Torres Strait Islander girls transitioning back into the community after they are released from custody depends on what family and community supports are available to them.[186] If young people are not engaged with services and supports within the first 30 days after release, their chances of reoffending are higher. [187]

Queensland Corrective Services

QCS told the Taskforce that additional resources are needed to establish a service that can support women in custody and beyond their release into the community, including end-to-end case management and reintegration. QCS noted that sometimes agencies working with women have different service access requirements, which incarcerated women can find difficult to meet.[188] The concept of end-to-end case management in corrective services is relatively new and work is being done to streamline processes and tools used for transitioning women in custody back into the community. Programs offered directly by QCS for women are limited, and QCS rely on non-government organisations funded to provide services. Some regions lack resources. In other areas, case management community corrections staff co-facilitate programs. There is a clear need for more holistic support for women in a trauma-informed context.[189] Funding is needed for more transitional support services and for more trained people to deliver programs. There are still a number of regions where no community corrections support programs are available after release (for example, in Mount Isa, the Sunshine Coast, and Caboolture through to Gympie.)[190]

Queensland Police Service

A new state-wide initiative, a '72 hour Release from Detention Plan', has been implemented in Queensland providing a dedicated plan for youth aged 10-17 years. The plan provides support to young people including supervision and engagement opportunities. Consideration could be given to establishing a similar model for women exiting prison to ensure that appropriate supports are available to them to re-establish their connections within the community.[191]

Other relevant issues

End-to-end case management

Work has been undertaken to develop an *End-to-End Offender Management Framework* (the Framework), as well as a Case Management Unit pilot, at Townsville Correctional Centre involving front-end assessment, planning and case management for incarcerated men.[192] While it is intended that planning for transition commences when a woman enters custody, and continues as she moves through the system towards re-entry and beyond, the reality is that although the Framework was launched in 2021,[193] it has not received specific additional funding[194] and has not yet been rolled out throughout Queensland.[195] Further, there is a lack of clarity as to how the Framework will apply to those people who are released into the community without supervision.

Identification documents

When women and girls are released and do not have necessary identification documentation, it is difficult for them to reintegrate back into the community smoothly. Securing housing, employment and health care is more difficult to access without identification. The high rate of unregistered births for First Nations peoples[196] further complicates this issue because many other forms of identification can only be obtained by first having a birth certificate.[197] As highlighted above, the QPC recommended that QCS take responsibility for ensuring that incarcerated people are provided with these documents.[198] QCS has progressed several initiatives, including partnering with the Department of Transport and Main Roads, and the Registry of Births Deaths and Marriages, to develop state-wide processes for prisoners to apply for identification documents from within a correctional settings prior to their release from custody.[199]

Reintegration support and services for girls in youth detention

It is critical that girls in youth detention be supported to transition back into the community. The 2018 *Atkinson Report* found that 'a short time in detention, without adequate intervention and support to transition effectively back into the community, can normalise a child's experience of the criminal justice

system, expose them to negative role models and may lead to increased offending'.[200] The report made recommendations for supported transition back to school after periods of custody, and flexibility around spending time outside of custody to support transition and reintegration.[201]

Principle 21(h) of the *Youth Justice Act 1992* (YJ Act) provides that young people should receive appropriate help in making the transition from being in detention to independence. There is a legislative requirement on the Chief Executive to ensure, as far as reasonably practicable, that this principle is complied with.[202]

Youth Justice advised that specialist mental health supports are provided to young people in youth detention centres who have complex mental health and substance misuse needs. This includes assessments, individualised and group interventions and transition support for young people who are experiencing severe emotional and behavioural mental health concerns.[203]

Youth Justice also told the Taskforce that the experience of Aboriginal and Torres Strait Islander girls transitioning back into the community after they are released depends on what family and community support is available to them.[204]

Youth Justice initiated the *Transition to Success* Program in 2014 in partnership with schools, registered training organisations, not-for-profit organisations and private businesses. It operates in 10 sites state-wide, and is available to young people aged 15 years or older, involved in the youth justice system or assessed as being at-risk of entering it. The program involves support staff who remain in contact with a young person until they are secure in their employment or education destination.[205] The *Transition to Success* Program was evaluated in 2019. The evaluation found positive results from the program. However, it also highlighted that while girls made up 25% of the youth justice population at the time, they were only 13% of participants in the program.[206] This highlights the need for transition planning and programs to be suitable for girls.

The issue of transition is covered in a number of youth detention operational policies. These recognise the importance of positive family, peer and community relationships to a young person's successful transition back into their community.[207] Relevant operational policies also cover casework and acknowledge the importance of various roles within a youth detention centre, contributing to case planning activities through the provision of information and reports.[208] It is also acknowledged that, in partnership with the Department of Education, youth detention centres will ensure that transitional arrangements are put in place that support young people through existing regional and local infrastructure, including TAFE institutes and other publicly-funded registered training organisations.[209]

Youth Justice noted that transition to community toolkits from other jurisdictions highlight that if young people are not engaged within the first 30 days after release, their chances of reoffending are higher.[210] Staff at Cleveland Youth Detention Centre (CYDC) advised the Taskforce that they had a transition team working to support young people to transition to education upon release, and that the centre engages with a transitional service. The Taskforce also heard that when children exit CYDC, they still have a case manager who assists with their transition, meaning they have two case workers – one onsite and one outside.[211]

Taskforce findings

The Taskforce found that planning for a woman's release should begin at the time she enters custody. This approach should encourage women to take responsibility for their own care and wellbeing after release, and empower them to seek assistance to reduce their vulnerability, and reduce the risk of reoffending.

The Taskforce found that comprehensive information about the services and supports available to help women plan for their transition should be provided to all women entering custody. This should include clearеasy-to-understand information about how and when these services and supports can be accessed. This information should include the role and responsibility of QCS and Youth Justice, to ensure women and girls have a release plan prior to their release from custody.

When women leave custody they need to have a bank account, be able to receive income protection and other benefits, find a job, pay rent and access health services. The planning for this needs to occur before women and girls leave custody as far as possible. The time spent in custody should be used to help women to prepare for their release in useful, practical ways, for example, applying for a birth certificate, Medicare card, and engaging with Child Safety to develop a case plan to work towards reunification or re-engagement with their children in care.

While women should be encouraged and supported to exercise agency and self-determination to plan for their release, the Taskforce heard that women and girls are sometimes released with little notice, without a clear plan, or the basic tools and supports they require to reintegrate into the community. It is not clear which agency, if any, is directly responsible for ensuring that women have a plan for their release.

The QPC report and the ADCQ report both made recommendations about improved responsibility and accountability for reintegration planning when people are released from custody. The validity of the findings and recommendations in each of these reports have been reinforced during the Taskforce's examination.

It should be a legislative requirement that QCS has responsibility to ensure each woman in its custody has a transition plan in place for their release. Planning should commence from when a woman first enters custody and be in place within a reasonable time from entry. The plan should include information about how a woman's basic needs will be met during transition from custody and after release. The details of the plan should remain a matter for the woman, with QCS held accountable for ensuring an appropriate plan that includes relevant prescribed elements is in place. The responsibility for ensuring a plan is in place should be delegable to a non-government agency funded by QCS. Non-government organisations funded to provide this delegated function should include Aboriginal and Torres Strait Islander community controlled organisations. Delegated non-government organisations should also be funded to provide support to a woman, for a reasonable period, to implement her plan after her release in the community. Youth Justice should have similar responsibilities in relation to girls.

The Taskforce found that QCS has undertaken significant work to develop the End-to-End Offender Management Framework (the Framework). While there are plans to expand the model, QCS is experiencing some challenges in terms of custodial centres and community corrections using different tools. While QCS is constrained in terms of its capacity and capability, further work needs to be undertaken to streamline processes and to continue to rollout the model across Queensland[212]. The Taskforce notes that a significant focus of the Framework and the accompanying Case Management Unit pilot in Townsville is on providing continuity of case management and support once an incarcerated person is released on parole.[213] There is a lack of clarity as to whether the Framework is designed to meet the transition needs of women on their release.

The Taskforce sees merit in the *Transforming Corrections to Transform Lives* project.[214] The Taskforce has been advised that the project has received funding from the Ramsay Foundation to move to its next phase. Such a model can provide long-term, holistic, supportive interventions that facilitate the development of warm, positive and trusting therapeutic relationships. Support can be tailored to the individual needs of each woman and her children.

The project has been designed in collaboration with incarcerated mothers and seeks to respond to what they need and provide the support they are not able to get from existing services.[215] The model would help mothers to gain the confidence and skills they need to advocate and care for themselves and their children during their incarceration, to successfully transition back into the community, and to receive the necessary support going forward to respond to their needs so that they are able to make a positive contribution to the community and not reoffend. This will make life better for mothers and their children and save the community the enormous cost of further arrest, prosecution and imprisonment.[216]

Taskforce recommendations

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.

Taskforce recommendations

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.

Implementation

The provision of information to women and girls about supports and services, and the roles and responsibilities of respective agencies, should include plain English and easy read versions and information in a variety of languages.

QCS should build on the partnerships already developed with Births, Deaths and Marriages and Department of Transport and Main Roads, and also partner with other agencies providing essential services to ensure that incarcerated women apply for and have access to relevant documentation before their release from custody. This will support the implementation of their transition from custody plan immediately upon their release.

Consultation should be undertaken prior to the introduction of legislative amendments to make clear that QCS and Youth Justice have a statutory obligation to ensure a transition from custody/detention plan for women and girls. This should include consultation on the needs that should be address as part of a release

plan. There may be benefit in these provisions have broad application to all people in custody and detention, noting the need for a gendered-response to be implemented to ensure the needs of women and girls are met.

Designing and implementing a state-wide model to support women plan for their release from custody and to provide and coordinate supports and services for a reasonable period after their release should build on the success and learnings of the already established re-entry services operating in some locations in Queensland.

QCS should continue to work in partnership with the Griffith Criminology Institute to implement the next stage of the *Transforming Corrections to Transform Lives* project. The evaluation of this initiative should inform ongoing rollout of the program.

Human rights considerations

This recommendation engages the right to recognition and equality before the law (section 15); the right to humane treatment when deprived of liberty (section 30); the protection of families and children (section 26); the right to education (section 36); the right to health services (section 37) and cultural rights of Aboriginal and Torres Strait Islander peoples (section 28).

Human rights promoted

An evaluation and expansion of reintegration services to ensure that all incarcerated women receive the support they need during their transition to the community promotes the right to recognition and equality before the law (section 15).

Providing greater opportunities for women, including incarcerated mothers, to participate in programs aimed at successful transition to the community promotes the right to recognition and equality before the law (section 15); the right to humane treatment when deprived of liberty (section 30); and the protection of families and children (section 26). The model helps incarcerated mothers to work across the multiple departmental systems that parents and children have contact with, including schools and health services. This promotes the right to education (section 36) and right to health services (section 37).

The provision of information that is culturally appropriate, multi-lingual and available in easy read promotes recognition and equality before the law (section 15) and cultural rights of Aboriginal and Torres Strait Islander peoples (section 28).

The introduction of a legislative obligation for the development and implementation of a re-integration plan promotes the right to recognition and equality before the law (section 15) and the right to humane treatment when deprived of liberty (section 30).

Ensuring that women and girls are provided with essential documentation and services prior to release will ease their transition into the community, and make them more able to perform basic tasks including driving, going to the doctor, and applying for a job or rental property. This promotes the right to recognition and equality before the law (section 15) and the right to health services (section 26). The protection of families and children is also promoted because women will be more readily able to provide for their children.

Human rights limited

This recommendation does not limit human rights.

Evaluation

The impact of this legislative obligation for QCS and Youth Justice Services 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 and outcomes achieved for women and girls.

The state-wide service delivery model should be evaluated to ensure it meets the needs of women and girls and is providing equitable access across the state. A monitoring and evaluation plan should be developed as part of the design of the model, including the collection of baseline data and the measuring and monitoring of impacts and outcomes for women and girls.

Transitioning into employment

Background

As women and girls leave prison and transition back into the community, their ability to secure employment is instrumental to the success of their release and whether they are able to avoid contact with the criminal justice system in the future. A lack of employment history before incarceration, limited education and stigma associated with having a criminal history, makes it difficult for many women to secure employment after incarceration.

Current position in Queensland

Guidelines and standards

The Principles require that people in custody participate in targeted programs and services that address criminogenic and wellbeing needs and support their transition to a prosocial law abiding lifestyle.[217] To achieve this outcome, the Principles provide that eligible and suitable prisoners are provided meaningful opportunities to engage in community work and projects that assist in developing or utilising existing skills necessary to gain employment and contribute to the community.[218] The Principles further stipulate the availability of temporary leave programs for eligible prisoners to support employment opportunities.[219]

The Handbook[220] sets out a number of performance standards for correctional centres. The Handbook requires all prisoners to be assessed to provide a clear understanding and record of their learning and skills needs, including literacy, numeracy and language support, employability and vocational training, and social and life skills.[221] Facilities and resources for learning, skills development, and employment should be appropriate, sufficient, and suitable for purpose.[222] The Handbook states that work placements provide purposeful and structured training for prisoners and wherever possible, vocational qualifications be obtained alongside their work.[223]

Preparation for employment during incarceration

Many women entering prison have poor employment histories, limited education, and lower literacy levels than the general Australian population.[224] Over half of children entering detention are disengaged from education, employment and training.[225] Participating in education and training in prison or detention can help women and girls to find employment after their release.

Incarcerated women in Queensland are able to participate in work and undertake courses during their incarceration. The employment and renumeration available for incarcerated women in Queensland was detailed in Chapter 3.9. In addition to working, incarcerated women are able to undertake various courses to increase their knowledge and skills.

There is an option to complete vocational courses through Registered Training Organisations[226] and university courses by correspondence.[227] The Taskforce heard there are limited options, given restrictions in access to online learning. The QCS *2020-21 Annual Report* lists the courses available in correctional centres as arts, asset maintenance, automotive business, clothing production, community services, conservation, construction, engineering, first aid, fitness, furnishing, hairdressing, health, horticulture, hospitality, information technology and mining, and warehousing logistics.[228] While vocational education and training (VET) courses are available in all Queensland correctional centres[229], it appears that course availability varies from centre to centre.

A new integrated VET model is also being trialled at the SQCC. QCS staff working as VET trainers in kitchen operations and industries provide a range of stand-alone courses as well as partial and full qualifications. The women have the opportunity to work, learn and apply new skills. The accredited VET course is provided under an auspice arrangement with a registered training organisation.[230]

The *Time to Work Employment Service* (TWES) is also offered to Aboriginal and Torres Strait Islander women in low security facilities and in the SQCC. Delivered through a partnership between QCS and the Department of Education, Skills and Employment, the TWES is a Commonwealth initiative aiming to strengthen employment outcomes through the provision of employment services. These include an assessment of employment barriers and transfer of the woman from the in-prison service to post-release service providers.[231]

How do other jurisdictions address this issue?

Various initiatives are being undertaken in other jurisdictions to assist incarcerated women in finding gainful employment as they transition to the community.[232]

The South Australian and Federal Governments are partnering to build a *Prison to Work Learning Centre* at Port Augusta Correctional Centre, providing 120 First Nations peoples in custody with intensive support on release to help their transition back into the community and provide skills to help them find work.[233] A *Work Release* Program allows incarcerated women who find suitable employment to attend work in the community each day, and return to the correctional centre at night.[234] The South Australian Department for Corrective Services also funds *Work Ready, Release Ready*, a program delivered by Workskill Australia supporting incarcerated, pre-release and post-release people to develop skills, confidence and readiness to engage in employment. [235]

As detailed in Chapter 3.9, the Northern Territory's *Sentenced to a Job* employment program allows for work release where incarcerated people earn, at a minimum, the relevant award wage.[236]

In NSW, eligible low-security incarcerated women may participate in the *Work Release* Program where they gain paid work in kitchens, cafes, printing and logistics.[237]

Victoria has three specialised Jobs Victoria services that work with people in custody, transitioning back into the community, and on community orders. These provide specialist support such as resume and interview skills, work and vocational education, training in custody and assistance with literacy, numeracy and digital skills. Of the 1,500 people who have participated in these, more than 640 have remained in jobs for at least six months.[238]

In the United Kingdom the *Going Forward into Employment* program (GFIE)[239] provides people transitioning from prison with the opportunity to apply for employment in the Civil Service. Government departments and agencies share appropriate vacancies with the GFIE team and prisons can identify suitable candidates. The GFIE team match candidates with roles, and candidates are able to commence when they leave custody. A 'buddy'[240] within the civil service but outside of the transitioning person's line management chain helps them with their transition into the workplace and society.[241]

Results of consultation

Women and girls who have experienced the criminal justice system as accused persons or offenders

> *'I am… limited with the jobs I can work in with a criminal history. There is no help for me to overcome barriers to gain employment, so I am stuck on welfare'.* [242]

Women at TWCC spoke about the stigma attached to having been in prison, and the barrier it created in accessing services and employment. They felt that the community did not want to give them a second chance. The women felt overwhelmed about going back into the community where they would have to worry about finding a job, earning an income and paying bills.[243] One woman spoke of the trouble she had experienced trying to apply for jobs as a homeless person following prior release from custody.[244]

At a meeting organised by Sisters Inside, the Taskforce spoke with women about the difficulty criminalised women faced trying to get a blue card following incarceration, and of the fact that even with advocacy and support, it could take 18 months to two years to get a decision.[245] The women felt that if a woman has 'done her time', she should be allowed to get a job; and that blue cards were an individualised punishment by the government that created another barrier to employment for women, particularly First Nations women. They suggested that organisations should be allowed to give provisional blue cards to employees.[246]

Women in prison are able to undertake courses including Certificate II (entry level courses usually without prerequisites, qualifying people to undertake routine work and laying groundwork for further learning)[247] and Certificate III (entry level qualification, most often needed to gain employment in many skilled industry sectors and to lay groundwork for higher learning for example, a Certificate IV or Diploma).[248]

The Taskforce heard from some women that these courses alone are not helping women build the experience they needed to find work, 'you can't build a skill if it is just being told to you'. [249]

A woman who provided an individual submission spoke of the difficulty she experienced getting back on her feet after incarceration. She had preconceived notions that she would find help in prison to heal and would be able to make a fresh start. Instead she received no support to gain employment and found that her criminal history was a significant barrier.[250]

Another woman spoke of the difficulty she encountered obtaining a blue card, despite the fact that seven years had passed since her offending and her charges were not related to children, or classified as disqualifying[251] or serious[252]. Almost three years passed between her original application, the issue of a negative notice, and the ultimate decision by QCAT to overturn that decision.[253] She has had further issues with local media periodically reporting about her offending, including an article 10 years after the original offences describing her as 'one of the Gold Coast's worst employees'.[254]

Service system stakeholders

Blue cards are an issue. An Aboriginal woman with a child who has experienced domestic and family violence, including strangulation, was constantly struggling and trying to get away. She ultimately got away, got her child back and became a peer worker. She was then unable to get a Blue Card and lost her job. Even with support of people from Micah Projects she lost her job.[255]

Sisters Inside spoke of the lack of access incarcerated women have to education and training.[256] It stated that adult prisons focus on programs that address offending and short courses that do not lend themselves to the realistic employment opportunities that will be available for incarcerated women. The Taskforce also heard from Sisters Inside that blue card legislation discriminates against incarcerated women and girls. This legislation, as well as criminal history checks, are a barrier to employment and reintegration.[257] It contends that the Queensland Government must amend the *Working with Children (Risk Management and Screening) Act 2000* (Qld) to end the legalised discrimination against criminalised women and girls.[258] The basis of this is that the current provisions make it practically impossible for criminalised women and girls to pursue valuable careers as peer support workers. They also disproportionately impact Aboriginal and Torres Strait Islander women, including in relation to reunification with family members as carers through the child protection system. [259]

The Taskforce was told that a lot of First Nations women decide the process is too difficult and pointless, and do not attempt an application.[260] Views about blue cards and the impact of the scheme on women and girls seeking employment were shared in multiple meetings in various communities.

Sisters Inside shared its observation that the government focus had shifted from 'education, education, education' to 'jobs, jobs, jobs' and that women do not have the basic education they need to secure work.[261]

Women with lived experience of incarceration in the Prisoner Advisory Committee in the Townsville Women's Correctional Centre told the Taskforce that the Red Cross 'partnerships for employment' program is good. Those who undertake it appear to have an 80% chance of getting work.[262]

Legal stakeholders

LAQ referred to published Department of Children, Youth Justice and Multicultural Affairs data that shows 52% of girls in the youth justice system are disengaged from education, employment and training.[263] In LAQ's view, detention makes it harder for girls to return to education, which in turn limits future employment opportunities.[264] LAQ suggested that consideration be given to providing greater access to programs via community-based orders and transition from imprisonment orders, which are designed to improve educational and employment opportunities.[265] They recommend that there be an investigation into whether a woman or girl's educational attainment, employment and training affects her experience in the criminal justice system.[266]

Academic

The Griffith Criminology Institute told the Taskforce that, compared to women who have never been imprisoned, women in prison are characterised by low educational attainment and high unemployment prior to prison.[267]

Government

Department of Justice and Attorney-General

Blue Card Services are provided by the Department of Justice and Attorney General (DJAG). Blue Card Services has implemented a number of reforms in an effort to improve the accessibility and outcomes of the blue card system for First Nations peoples. These include the establishment of a dedicated team of professionals, including two Indigenous liaison officers, to assist First Nations peoples with the application process and to provide a cultural lens into the decision-making process.[268] These teams undertake targeted travel to remote communities to provide one-on-one support, provide free workshops and deliver resources and cultural capability training to staff.[269] Arrangements are in place to extend these initiatives to the Logan region over the next 12 months.[270] These initiatives form part of the broader *Safe children safe communities*[271] action plan, a five-year strategy and action plan developed by Blue Card Services in partnership with First Nations stakeholders to provider greater support to First Nations peoples through each part of the blue card system.[272] Blue Card Services provided further information to the Taskforce regarding screening and assessment processes and options for review.[273]

Queensland Corrective Services

QCS has not been provided additional funding to implement the recommendations of the QPC report into imprisonment and recidivism.[274] As noted above recommendation 23 included the need to include work release as a reason for granting a prisoner leave from custody.

Program staff at SQCC[275] told the Taskforce that women have difficulty finding work after release. Many have never held a job before and have poor literacy and numeracy skills. These issues create barriers to employment. Staff at SQCC identified blue cards as a significant barrier to women's re-entry into the workforce because the cards are required for areas of work the women traditionally seek to go into, QCS was trying to get women working in 'white card' general construction industries and courses.[276] Program staff at SQCC suggested that there would be benefit in linking incarcerated women with potential employers and spoke of a success story they had heard about regarding incarcerated men transitioning from prison into employment building steel frame houses.

Other relevant issues

The importance of education and training for incarcerated women and girls

Research has found that completing education and training while in prison can mitigate the negative side effects of prison-related stigma on perceived employability post-release.[277] Australian research has shown that employers tend to perceive offenders who have undertaken training while incarcerated as more employable than those who had not participated in training. [278] Programs offered to women need to be practical while helping women to set realistic expectations for working life after prison. Employment for women after release is a factor in their rehabilitation, however, the value of employment-based programs offered in prison or after is questionable if there is little likelihood of the women securing work. Programs that establish expectations in women that cannot be met on release are problematic.[279]

Blue cards

Queensland's blue card system is intended to help keep children safe by assisting organisations to be child-safe and to screen people who work with children. Persons wishing to work with children in regulated employment[280] or businesses[281] must obtain a blue card through Blue Card Services.

Women are more likely to work in child-related employment. For example, the Workplace Gender Equality Agency reports that in 2018, women made up 79% of employees in the Health Care and Social Assistance industry (for example, child carers, aged and disability support workers and nurses) and 73.2% of employees in the education and training industry (for example, teachers and early childhood educators).[282]

Working with Children Checks (blue cards) are intended to check and monitor the people working or volunteering in relevant areas and to create safe environments for children.[283] The system is regulated by the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act) and the Working with Children (Risk Management and Screening) Regulation 2020.

The WWC Act allows information including national criminal history information, disciplinary information and other relevant information to be considered in the assessment of a person's eligibility for a blue card.[284] The WWC Act is protective, and the paramount consideration in assessing eligibility is the best interests of children and young people.[285]

If Blue Card Services is not aware of any relevant information about a person, and no other requirements for a refusal under the Act exists, a blue card must be issued.[286] If there is relevant information (excluding convictions for a serious or disqualifying offence) and there is an exceptional case in which it would not be in the best interests of children for the person to be issued with a clearance, their application must be refused.[287]

If a person has a conviction for a 'disqualifying offence'[288], they are disqualified from applying for a blue card. The policy position underpinning the legislation is that people convicted of a disqualifying offence who are sentenced to a period of imprisonment should not work with children. However, if a person is convicted of a disqualifying offence and is not sentenced to a period of imprisonment, they can apply for an eligibility declaration. An eligibility declaration *must be refused* if there is relevant information about the applicant, unless it is an exceptional case in which it would *harm* the best interests of children for them to be issued a working with children clearance. Once a person has an eligibility declaration, they are able to make an application for a blue card which must be approved if there is no new relevant information.

The WWC Act also includes a list of serious offences. These are offences such as manslaughter, torture, grievous bodily harm with intent, armed robbery and trafficking in dangerous drugs. If a person has a conviction for a serious offence, they can apply for a blue card, but it must be refused, unless there is an exceptional case in which it would not harm the best interests of children for them to be issued with a working with children clearance.

Before making a decision in relation to whether a person is issued with a blue card, the WWC Act requires that an applicant is given an opportunity to respond.[289] Decisions on an application for a blue card can generally be reviewed by the Queensland Civil and Administrative Tribunal (unless the person is a disqualified person).

Timeframes for the assessment of blue card applications vary. Blue Card Services told the Taskforce that for people with no criminal history the assessment process takes about five business days. For those with minimal criminal history, the process extends to about 28 days, and for those with more serious criminal histories, it could take as long as four months.[290] Sisters Inside recently reported that the application process can take up to nine months and a further 12 to 18 months for final decisions on appeal.[291]

The Taskforce heard repeatedly from women with lived experience of incarceration and those that support them, that blue card ineligibility has dire consequences for women leaving custody seeking to work.[292] The Taskforce has been told that over the last five years approximately 96% of women with a criminal history who engaged with the assessment process (including not just applying but responding to submissions) were ultimately issued with a blue card.[293] While these figures appear to be positive, they do not take into account the number of women that are not engaging with the assessment process, either by not applying at all or by not responding to requests for further submissions. Misconceptions about eligibility and an inability to navigate the application and appeal process may prevent individuals from obtaining a blue cards,[294] or from even attempting to apply for one.[295]

The Taskforce has anecdotally heard that recent reforms[296] are having a significant impact on women with criminal histories, particularly First Nations women.[297] The barriers that the blue card system pose for First Nations communities have also been recently considered in two parliamentary committee inquiries. The Taskforce heard that potential employers regularly request applicants to have a blue card, irrespective of whether there is a legal requirement for them to do so. This is likely a result of the 'No Card, No Start' changes that removed the requirement for an applicant to be in regulated employment or business before applying for a blue card.[298]

The 'relevant information' that can be taken into consideration has been recently expanded through the *Child Protection Reform and Other Legislation Amendment Bill 2021*[299] *(CPROLA Bill),* which was passed in May 2022. The amendments enable the Chief Executive to request domestic violence information from the police commissioner where there is a reasonable belief a domestic violence order may have been made against the person, and to have regard to domestic violence information as part of a working with children check assessment.

Consistent with the Taskforce's findings concerning misidentification of persons most in need of protection in *Hear her voice 1*,[300] submissions to the Community Support and Services Committee's inquiry into the CPROLA Bill highlighted that the consideration of domestic violence information in working with children checks has the potential to negatively impact women who have been misidentified as perpetrators, especially First Nations women.[301]

The Community Support and Services Committee, while recommending that the Bill be passed, also recommended (recommendation 3) that the Department of Justice and Attorney-General investigate the barriers facing First Nations people obtaining blue cards to access employment.[302] The Queensland Government accepted this recommendation and stated that the Department of Justice and Attorney-General will continue to implement the *Safe Children and Strong Community Strategy and Action Plan* and address barriers experienced by First Nations peoples applying for blue cards.[303]

Working with Children (Indigenous Committees) Bill 2021

The Legal Affairs and Safety Committee is currently examining the Working with Children (Indigenous Committees) Bill 2021, a Private Member's Bill[304] which attempts to resolve issues related to the employment of First Nations peoples as a result of the blue card scheme.[305] The objectives of the Bill are to empower First Nations communities to make decisions that best serves their interests in relation to child protection and employment of community members.[306] The basis of the Bill is that many Queenslanders who do not pose a threat to children and have not been not convicted with *disqualifying offences* are being denied blue cards and access to work and opportunity.[307] The Bill's explanatory notes provide that the current blue card system contains significant limitations in the way it applies to the unique circumstances of Indigenous communities.[308] No mechanism is provided for local community input or recognition of the positive impacts of employment. This in turn creates significant barriers for employment in First Nations communities.[309] After the Parliamentary Committee finalises its scrutiny of the Bill, its report will be tabled and the Bill will be placed on the Notice Paper for debate.

Taskforce findings

Some incarcerated women and girls do not have reasonable prospects of gaining meaningful employment when they are released from custody. The stigma of incarceration, numeracy and literacy issues, limited access to education and training, and a lack of work experience are factors that impact on women and girls' prospects of employment. Many women find they are unable to navigate the blue card application and appeal process.

Whilst reforms to the blue card system are complex and ongoing, it is clear from Taskforce consultations that application processes, waiting times, and perceptions about blue card processes continue to create a barrier to women gaining meaningful employment, including women exiting prison. Assisting incarcerated women to apply for blue cards while they are in custody would be a valuable opportunity to provide much needed assistance to navigate a complex process. The Taskforce also considered that the blue card system may be operating in a way that means it is creating a barrier to women and girls' employment, which is inconsistent with the original objectives of the blue card legislation. The Taskforce found that the operation and implementation of the WWC Act should be reviewed to determine whether processes can be further simplified to reduce impacts and barriers for women who have a criminal history.

Having a criminal history, including a history of incarceration, is a significant barrier to women finding meaningful employment. Women may also benefit from support to develop social enterprise activities if regular employment is unsuitable or unavailable. Employment is an important factor that contributes to rehabilitation to reduce the risk of reoffending. The Taskforce notes that in the United Kingdom incarcerated women are given the opportunity to apply for appropriate jobs within the Civil Service. Many entry level public service and private sector jobs in Queensland do not involve working with children and do not require a blue card. The Queensland public service and private sector employers should develop a program that enables women and girls with a criminal history, including those who have been in custody,

to gain the experience they need to gain longer term meaningful employment. Such a program could include a 'buddy system' similar to that used in the United Kingdom to assist women to transition into the workplace.

Taskforce recommendations

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 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. 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.

Implementation

QCS and DJAG should collaborate to arrange for representatives from Blue Card Services to visit correctional centres to conduct information sessions and provide assistance to women in custody to assist them to apply for a blue card, if necessary to enable them seek employment when they are released. Members of the Blue Card Services assessment teams should regularly attend correctional facilities to support women in making applications, and in responding to requests for further information including the appeal process.

Implementation of the review of the operation and implementation of the WWC Act should involve the Queensland Government working with community groups and with First Nations peoples, including those in rural, regional and remote communities, to explore opportunities for more to be done to assist people to apply for a blue card and to participate in the assessment process. This should include consideration of opportunities to simplify the process and incorporate plain English explanations in correspondence to applicants. This work should build upon efforts already underway by Blue Card Services to engage with and support people to apply for blue cards.

The whole-of-government strategy recommended by the Taskforce should include a focus on education, training and employment, and recognise the importance of employment for women and girls' in rehabilitation and to reduce the risk of reoffending.

Implementation of a scheme similar to *Going Forward into Employment* (GFIE) would need to involve consideration of entry level roles suitable for women and girls with a criminal history or a history of incarceration. Unlike the model in operation in the United Kingdom, the Queensland Government should

also explore the viability of engaging private sector employers to participate, so as to provide a broader range of employment opportunities across the state.

Human rights considerations

Increasing the ability of incarcerated women to access the support they need to make a Blue Card application and engage in the assessment process promotes the right to recognition and equality before the law (section 15), and the right to humane treatment when deprived of liberty (section 30). Increasing the ability of incarcerated women to gain employment protect families and children (section 26) in that the ability of women to earn an income is improved.

A review of the operation and implementation of the WWC Act for women involved in the criminal justice system promotes the cultural rights of Aboriginal and Torres Strait Islander people (section 28).
The Queensland Government and its agencies responsible for women and girls kept in custody have obligations under the Human Rights Act and international instruments, to ensure that they are treated humanely and that other basic human rights are met.

Human rights promoted

Improving the ability of women and girls to overcome barriers to gainful employment promotes the right to recognition and equality before the law (section 15); humane treatment when deprived of liberty (section 30); protection of families and children (section 26); and the right to education (section 36).

International human rights obligations relating to the right of incarcerated people to work[310]; undertake education and training programs to improve employment prospects[311]; and receive special assistance to overcome marginalisation[312] when seeking employment are also promoted.

The right to humane treatment when deprived of liberty (section 30)[313] mandates good conduct towards people who are incarcerated.[314] Giving incarcerated women the opportunity to apply for jobs within the public service would contribute to their rehabilitation and successful transition by providing employment and income on release from custody. This promotes the right to recognition and equality before the law (section 15). The protection of families and children (section 26)[315] would be promoted in that women would earn an income and be better positioned to provide for their children. The rights under the Bangkok Rules would also be promoted in that linking incarcerated women with appropriate public service jobs would acknowledge that women are likely to need support to find employment.[316]

Human rights limited

Although some may feel that to increase the ability of and support for incarcerated women to engage with the blue card process may limit the safety of children, women who are more engaged with the blue card process will still be subject to the same assessment process and rigorous safeguards as any other applicant. This risk is mitigated by focusing the review on the impacts of the operation and implementation of the WWC Act on women.

The Bangkok Rules clarify that providing for the distinctive needs of women in order to accomplish substantial gender equality shall not be regarded as discriminatory.[317]

Evaluation

The whole of government strategy for women and girls in the criminal justice system should include a monitoring and evaluation plan that includes targets and measures for women and girls' employment. Impacts and outcomes for women and girls, including those relating to employment should be measured and monitored.

It is important that evaluation planning commences from the outset and captures relevant baseline data.

Conclusion

The Taskforce has heard and listened to the voices of women, both in prison and recently released. They have told us they want help to transition back into the community, to find homes and jobs, and to reunite with their families. They need this help to begin in prison, well before their release.

If I could change one thing in the prison system it would be that we as women get the opportunity to heal and grow. As a priority. That we would be empowered to become women that can face society, change lives, stop living in guilt and shame of the past trauma that was handed to us as children. To be educated in the disease of addiction, encouraged to reach out and to know where to reach out.[318]

While programs and services are available to women and girls to help them transition from custody and reintegrate back into the community, not all are benefiting from these. The time that women and girls are incarcerated provides an opportunity to set them up for success when they are released.

In this chapter, the Taskforce has made findings and recommendations aimed at ensuring that women and girls transition from custody back into the community into safe and stable housing, and that they are supported to successfully reintegrate and not reoffend.

Recommendations have been made with a focus on ensuring that transition planning starts as soon as women and girls enter custody, and supports and services continue for a reasonable period after their release. The recommendations give attention to practical measures such as ensuring that women are not released empty handed, and have the documents they need to perform basic functions such as opening a bank account or driving a car. Recommendations enable women and girls to be provided ongoing support and services during the transition period and beyond, including dedicated support for mothers.

Supporting women and girls to find housing and gain meaningful employment should be a priority, together with supporting them to access the education, training and experience they need to participate in the workforce. Funding programs like this will save the community the exorbitant costs of continuing the expensive cycle of imprisoning and re-imprisoning recidivist women offenders.

Helping incarcerated women and girls to transition into the community and live productive, safe and fulfilling lives breaks the cycle of victimisation and offending and makes the community a better, safer place for everybody.

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- are registered and regulated by the Australian Skills Quality Authority
- can issue nationally recognised qualifications.

RTOs include:

- TAFE colleges and institutes
- adult and community education providers
- community organisations
- schools and higher education institutions
- commercial and enterprise training providers
- industry bodies
- other organisations that meet registration requirements.

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[244] Meeting with women at Townsville Women's Correctional Centre, 8 March 2022, Townsville.
[245] Meeting with women at Sisters Inside West End Office, 11 April 2022.

[246] Meeting with women at Sisters Inside West End Office, 11 April 2022.
[247] Such courses are ideal if the student is new to studying (or hasn't taken a course in a long time) or if they need a very basic introduction to a particular field. It gives a taste of what an industry has to offer, and provides skills so a student can improve their employment opportunities. See https://hnh.org.au/difference-between-certificate-i-ii-iii-iv-and-diploma/ Accessed 18 May 2022.
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[307] Letter from Robbie Katter MP, Member for Traeger to Mr Peter Russo MP, Legal Affairs and Safety Committee Chair, 5 October 2021.
[308] *Working with Children (Indigenous Communities) Amendment Bill 2021* (Qld) Explanatory notes, 1.
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[311] United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 60.
[312] United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 55.
[313] *Human Rights Act 2019*, s 30.
[314] Owen-D'Arcy v Chief Executive, Queensland Corrective Services [2021] QSC 273 at page 50 [180] – "I respectfully agree with the description of the similar provisions in the Victorian Charter by Emerton J in Castles98 to the effect that… s 30 mandates good conduct towards people who are incarcerated."
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[318] Taskforce submission 714443.

Part 4, Chapter 4.1: Data, investment, evaluation and implementation

The lack of data about victim-survivors in sexual violence cases and women and girls as accused persons and offenders in the criminal justice system exacerbates their invisibility in the system.

Without reliable and extractable data, government agencies are not able to identify trends and issues and put in place timely strategies to address them.

Demand pressures impact on the delivery of effective and efficient services. When agencies have capability to analyse data and project and model demand and the anticipated consequences of changes, they are better able to demonstrate the need for the resources they need to influence future investment.

Implementation of the Taskforce's recommendations requires appropriate governance and a focus on achieving outcomes for women and girls.

Strengthening data collection and analysis

As observed in *Hear her voice 1*, there is a significant and concerning limitation of available and consistent criminal justice system data. Strict safeguards around the collection, storage and use of such data are clearly needed from a human rights and privacy perspective but adequate, accurate and timely data and reliable analysis is essential for building capacity and capability across the system and to inform policy, practice and investment decisions. This includes the ability to analyse and predict demand, flexibly allocate resources and understand how reforms in one part of the system impact others. It can also support transparency and accountability of the whole-of-government system and support community confidence. The following section of this chapter discusses issues related to a lack of reliable data and analysis across the criminal justice system in Queensland.

Background

Current position in Queensland

The Queensland Government statistical agency was re-established in 1984 to provide a broad range of expert services to support national, whole-of-government and agency policies, programs, and service delivery decisions.[1] In 2014, the agency was renamed the Queensland Government Statisticians Office (QGSO).The QGSO provides support to national, whole-of-government and agency policies, programs and service delivery decisions.[2]

In 2016, the Taskforce on Organised Crime Legislation recommended the establishment of an independent statistical research body to collect and publish regular analysis of Queensland crime data that prioritises the collection and analysis of data relevant to organised crime (recommendation 1).[3] The Queensland Government accepted this recommendation in full.[4] QGSO was an existing government body providing a broad range of expert services to support national, whole-of-government and agency policies, programs and service delivery decisions.[5] To respond to the recommendation, the Crime Statistics and Research Unit within QGSO was established.

The Crime Statistics and Research Unit within QGSO supports the provision of reported crime, criminal justice statistics and research examining ongoing and emerging criminal justice system issues. The Unit also publishes regular crime and justice reports.[6]

The Queensland Government Customer and Digital Group (QGCDG) replaced the former Queensland Government Chief Information Office to strengthen existing systems, support transformation of services and service delivery.[7] The Queensland Government Enterprise Architecture website provides information for government agencies and the public on where and how to access government generated data.[8] The QGCDG also advises agencies and executive government on:

- setting the Information and Communication Technology (ICT) strategy, policy and standards
- adopting best practice and identifying and managing risks
- developing proposals for major whole-of-government investment
- identifying and managing strategic workforce capacity issues and facilitating industry partnerships.[9]

The Queensland Government operates on an open data policy with the government committed to *building a trusted data ecosystem that is open and accessible*.[10] The open data policy statement is designed to support public service improvements through:

- sharing of government data
- increased transparency, accountability and public trust
- stimulation of economic activity through innovation.[11]

These aims will be achieved by developing co-ordinated action plans and identifying existing mechanisms and policies to support implementation, establishing consistent metadata standards across government and promoting achievements through open data.[12]

Findings from the *Domestic and family violence and disability data mapping and evaluation* report commissioned by the former Department of Child Safety, Youth and Women in November 2020 established gaps in data collection at the national and state level.[13] Although not specifically targeting sexual violence, data mapping did identify limited data collection on sexual violence.[14]

How do other jurisdictions address this issue?

Commonwealth

The Australian National Research Organisation for Women's Safety Limited (ANROWS), is a research organisation, tasked with building, translating and disseminating the evidence base to inform policy and practice on women's and children's safety.[15] It was established as an initiative of the *National Plan to Reduce Violence against Women and their Children 2010–2022* by the Federal and all state and territory governments of Australia. ANROWS delivers research and associated reports, research synthesis papers, tools and resources across all priority areas of the National Plan.

The National Outcome Standards for Perpetrator Interventions (NOSPI) is an established set of core principles to guide government, system and services in relation to perpetrator interventions in response to domestic, family, and sexual violence.[16] Outcomes and indicators developed to be consistent with national standards are used to measure and assess the performance of perpetrator interventions, and the perpetrator interventions system as a whole.[17]

An update on the NOSPI indicators notes ongoing data limitations. This includes gaps in comparability of data between jurisdictions due to different policy, practice and legislative requirements.[18] Data on specific population groups is also limited, impacting our understanding of experiences for these populations and what works to address offending.[19] Information on children and young people is also lacking – meaning tailored interventions for this population and the types of services required remains unclear.[20]

A specialist family, domestic and sexual violence data collection service was announced in the 2020-21 national budget. This is designed to address limited data at the national level in relation to specialist services such as crisis, family/relationship counselling and perpetrator programs.[21]

The Australian Institute of Criminology (AIC) is Australia's national research and knowledge centre on crime and justice, compiling trend data and disseminating research and policy advice.[22] The AIC undertakes, funds and disseminates relevant research of national significance. A Criminology Research Advisory Council comprised of representatives from the Federal and each state and territory government, advises the AIC on strategic research priorities and on the Criminology Research Grants program.

The National Crime and Justice Data Linkage Project – proof of concept commenced in 2018 and is still in progress.[23] The proof of concept investigates the feasibility of linking administrative data from across the criminal justice sector to provide a picture of the journey of a victim and/or offender through the criminal justice system. Using police, courts, corrections and juvenile justice data, it aims to test various data linkage methods to identify what works.[24] It is expected the benefits of this approach will provide greater insight into a person's journey through the criminal justice system.[25]

The *Data Availability and Transparency Act 2022* (Cwlth) establishes the National Data Advisory Council.[26] The Council is comprised of the Australian Statistician, Australia's Chief Scientist, the Australian Information Commissioner and Privacy Commissioner, Academics and business representatives.[27] The Council work from a foundational basis of leadership, data strategy, governance and asset discovery.[28]

New South Wales

New South Wales (NSW) has a dedicated body to provide crime statistics and research. The NSW Bureau of Crime Statistics and Research (BOCSAR) was established in 1969 within the Department of Communities and Justice.[29] Its aims are to:

- identify factors that affect distribution and frequency of crime
- identify factors that affect the effectiveness, efficiency or equity of the NSW criminal justice system
- ensure that information on these factors as well as crime and justice trends is made available and accessible.[30]

BOCSAR provides crime statistics, crime mapping tools, recorded crime reports, popular crime maps, and Local Government Area (LGA) excel tables that can be accessed by the public.[31] Additional tools include the NSW adult sentencing tool, NSW Criminal Court Reports, and Criminal Court Infographics. These tools provide users with the ability to filter data according to key criteria.[32] Data on custody can also be drawn from various reports and data tables.[33] BOCSAR provides a range of criminal justice related datasets that can be viewed and downloaded from its site – including progress of sexual offences through the NSW criminal justice system.

BOCSAR operates in accordance with relevant legislation including the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Government Information (Public Access) Act 2009* (NSW). BOCSAR is also guided by the *Bureau of Crime Statistics and Research Privacy Code of Practice*.

Victoria

The Victorian Government established DataVic to enable access to government open data.[34] DataVic is owned by the Victorian Government and administered through the Victorian Department of Premier and Cabinet.[35] DataVic operates using the DataVic Access Policy, which was endorsed in 2012 to:[36]

- enable public access to government data to support research and education
- promote innovation, support improvements in productivity and stimulate growth in the Victorian economy
- enhance sharing of, and access to, information-rich resources to support evidence-based decision making in the public sector.[37]

DataVic uses a Single Digital Presence (SDP) meaning that all data is stored on a single, secure digital platform.[38] Implemented in 2016, the SDP makes it easier to find and interpret data and provides access to a Community of Practice.[39] The SDP was implemented in part to reduce the time and money spent on building websites, with money reinvested to increase user experience, content creation and innovation.[40]

The Victorian Crime Statistics Agency (VCSA) is responsible for processing, analysing, and publishing crime statistics.[41] It is independent of Victoria Police, and operates under the *Crime Statistics Act 2014*.[42] The Act enables publication and release of crime statistics, and research on crime trends.[43] The strategic objectives of VCSA include:

- improving accessibility of crime statistics
- strengthening integrity and quality of recorded crime data
- instilling public confidence in crime statistics
- building the evidence-base to support decision making and policy development
- providing tools to improve statistical literacy of stakeholders and clients.[44]

VCSA publishes quarterly crime statistics, including the number and rate of offences, victim and offender demographics and family violence incidents.[45] As with BOCSAR, VCSA also undertakes research and analysis into recorded crime and criminal justice issues and trends.[46] VCSA creates and maintains a comprehensive database of recorded crimes and acts as data custodians.[47] VCSA also provides advice and

assistance to government, the media and the public as well as support data users to understand and accurately interpret data.[48]

Results of consultation

Service system stakeholders

Aged and Disability Advocacy Australia (ADA) raised concerns in relation to ongoing collection of information sought for reviews such as the Women's Safety and Justice Taskforce, noting the re-traumatising impact of consultation for advocates and survivors.[49] The Centre against Sexual Violence, Logan and Redlands (Logan CASV)[50] and ADA suggested there is a need to develop a depository of qualitative datasets that researchers, government agencies and future reviews can access .[51] This would significantly reduce the burden placed on victim-survivors, their advocates and community to re-tell their stories. It would also provide greater insight for policy makers into what works and does not work to address drivers of violence.

The Queensland Sexual Assault Network (QSAN) recommended that data on attrition rates of sexual violence matters through the criminal justice system be recorded, published and regularly updated.[52] This should be accompanied by publication of comprehensive data on prosecution and conviction rates in sexual violence matters.[53]

Gaps in data collection and reporting mean that attention is often focused on matters proceeding through the courts and the issue of how few cases make it that far can be missed in reviews and inquiries. This included the recent Queensland Law Reform Commission review of consent laws and the operation of the excuse of mistake of fact, which QSAN was concerned failed to address:

- the criminal justice system as a barrier to victims
- the under-prosecution and under-conviction of sexual offences
- the attrition rate of sexual violence matters through the criminal justice system.[54]

DVConnect told the Taskforce that greater data collection and retention capacity would support increased understanding and identification of the risks incarcerated women face and are likely to experience post-release.[55] This is also true for victims of violence. Data should include domestic, family and sexual violence histories and offending behaviours of women in prison.[56] This information would also assist in policy development and whole-of-government and service system reform.[57]

Sisters Inside noted limitations including gaps in collection of data about Aboriginal and Torres Strait Islander girls involved in the child protection and criminal justice systems.[58] Sisters Inside stated that the exclusion of girls in public policy that often uses a male lens fails to identify the experiences of girls and the impact of non-gendered system responses.[59] A lack of transparency due to limited data collection on women and girls as well as the lives of women in prison also impedes monitoring of systemic changes and failures.[60]

WWILD Sexual Violence Prevention Association explained that incorrect recording of police data continues to negatively impact women with disability seeking support from police and Victims Assist Queensland.[61] During Brisbane consultations, the Taskforce heard of the need for a centralised database that includes history, risk factors, and context of relationships.[62]

Legal stakeholders

The Queensland Law Society (QLS) stated that data on the nature and extent of women with cognitive or intellectual disability that experience victimisation is limited, as is knowledge on how to best respond and prevent it.[63] QLS said there was a lack of quantitative and qualitative data on the effectiveness of existing consent laws.[64] It suggested the planned evaluation of recent legislative changes may provide insight into this.[65]

Queensland Indigenous Family Violence Legal Service (QIFVLS) identified data on age, gender identity, sex, race, disability, socio-economic status and family dynamics as lacking.[66] QIFVLS recommended that a consistent data collection system that can track Aboriginal and Torres Strait Islander women's trajectories through the criminal justice system be developed to effectively understand factors related to criminal pathways and journeys through the system.[67]

Government agencies

Department of the Premier and Cabinet

The Criminal Justice System Reform Director-General Steering Committee (the Steering Committee) was formed in 2018 to support the implementation of the Criminal Justice System Reform Framework and Action Plan (the Framework and Action Plan). It comprises Directors-General whose agencies deliver services across the criminal justice system. Work to support the Framework and Action Plan was driven by a program management office within the Department of the Premier and Cabinet (DPC). The objective of the Framework and Action Plan was to keep communities safe and reduce demand on the criminal justice system, through a whole-of-system-approach to policy, service delivery and investment.

One of the initiatives led under the Framework and Action Plan was the development of a criminal justice system Demand and Financial Model to consistently model demand and the impacts of changes across the criminal justice system to inform future planning.

The work of the program management office ceased on 30 June 2020, during the COVID-19 pandemic. Since then, the Department of Justice and Attorney-General (DJAG) has supported the Steering Committee and existing Framework and Action Plan initiatives. DPC told the Taskforce that DJAG has an important role in providing leadership of the criminal justice system as a whole including in relation to strategic policy and system performance and reform. DPC established the Framework and Action Plan and Steering Committee to set the reform agenda and approach and it was appropriate that this transition to DJAG to reflect its leadership role and portfolio responsibility.[68]

When the program office ceased, the QGSO took over as the custodian of the Demand and Financial Model with the intent that it be used by trained officers within individual criminal justice system agencies.

The majority of the initiatives that formed part of the Framework and Action Plan have now transitioned to responsible agencies to become part of their ongoing business as usual responsibilities. Eight initiatives continue to be monitored by the Steering Committee including the Criminal Procedure Review being led by DJAG to renew criminal justice procedure in the Magistrates Courts, the review of the *Justices Act 1886* and the recently announced allocation of $6 million as part of the Queensland Government 2022-23 Budget to establish a Criminal Justice Innovation Office within DJAG.[69] The Criminal Justice Innovation Office will provide expert advice on systemic issues, lead evidence-based policy making and advise government on system priorities. The Taskforce understands this is proposed to include the use of the Demand and Financial Model.

Queensland Corrective Services

The Queensland Corrective Services (QCS) Integrated Offender Management System (IOMS) collects data in accordance with the Australian National Classification of Offences (QANCO).[70] Data about court outcomes for offences is electronically transferred via the DJAG Queensland Wide Inter-linked Courts (QWIC) system, with criminal code offences mapped onto the QANCO codes.[71] Identified limitations of IOMS include the inability to collect data on disability,[72] the type of program or intervention offered and recorded in an easily extractable form, whether females in custody have dependent children and how many they have, whether they speak a first language other than English, identify as LGBTIQA+, or whether they have been victims of sexual, domestic or family violence.[73] The system is also unable to identify women who have substance abuse issues, chronic health conditions, psychiatric or psychological needs, physical or intellectual/cognitive disability or impairment.[74] A barrier to accessing and recording this information is that Queensland Health is responsible for delivery of offender health services and privacy concerns hinder information sharing.[75]

QCS told the Taskforce that when de-identified data is sent to QGSO it is difficult for it to undertake thorough analysis of criminal justice issues.[76] QCS told the Taskforce that the Demand and Financial Model developed as part of the Framework and Action Plan, is not often used.[77] Few people within QCS are trained or have access and results produced by the tool do not always match data from QCS analysis.[78] Having a robust mechanism to measure and model the potential impacts of demand pressures and proposed changes within the system is important because it enables better advice to be given to government to help it make contestable policy and investment decisions.[79]

Queensland Police Service

The Queensland Policy Service (QPS) relies on the Queensland Police Records and Information Management Exchange (QPRIME) for storing and accessing administrative data related to offending and victimisation.[80] QPRIME holds a substantial amount of information including demographic data, crime characteristics, domestic violence orders, intelligence reports and case management files. Like other systems established for administrative purposes in other agencies, QPRIME relies on timely input of quality data by QPS officers, which can be a limitation. While some information can be extracted for quantitative analysis, information such as narrative text is not easily extracted.

Legislative constraints impact data and analysis from the Queensland Health Forensic and Scientific Services being uploaded to the national database designed to support interjurisdictional investigations of sexual violence and other serious crimes.[81] This can impact finalisation of sexual violence and other offences.

Department of Justice and Attorney-General

DJAG relies on the QWIC data management system to record data about court events in Queensland. QWIC mandatory (for example, the date when a person was charged) and non-mandatory fields.[82] There are data quality issues with non-mandatory fields because quality is dependent upon the information being entered.[83] QWIC does not collect data on disability,[84] and does not require a victim's details to be recorded.[85] Costs associated with some court diversion programs are unavailable.[86] DJAG advised it is not possible to obtain reliable figures for the number of indictments for sexual offences lodged before 2019 because of the way data was recorded in the case management system.[87]

Courtroom utilisation and vacancy rates cannot be determined due to the lack of available and reliable data. The Taskforce was told that data about the outcome of appeals against conviction for sexual offences is not able to be extracted easily from the Court of Appeal Management System (CAMS).[88] DJAG advised it is currently undertaking a Data Enhancement Project. It is also participating in national work to support evaluation and monitoring of the next *National Plan to Reduce Violence against Women and their Children* including sexual assault indicators.[89]

DJAG told the Taskforce that the Demand and Financial Model that provides a focus on capability across the criminal justice system was effective when it was implemented through DPC because it provided a centralised policy and funding perspective to influence the process.[90] Having a model that is used consistently across the criminal justice system should support agencies to better designate funding and identify potential cost savings within individual departments.[91]

Queensland Treasury, Queensland Government Statisticians Office

QGSO advised the Taskforce that it has considered its ability to replicate the Victorian *Attrition of sexual offence incidents through the Victorian criminal justice system: 2021 update* report, conducted by VCSA, in Queensland.[92] This would require further exploration with QPS regarding the availability and extractability of 'unfounded' data (cases that do not proceed), non-contact offences (such as possession of child sexual abuse material and 'grooming' as well as image-based sexual offences).[93]

QGSO has forecast increased rates of reported offences, court lodgements and incarceration over the next two to three years.[94] These increases come on top of already unsustainable growth across the criminal justice system since 2014-15.[95]

QGSO, as custodian of the whole of system Demand and Financial Model, told the Taskforce that the Demand and Financial Model maps historical annual stocks and flows through Queensland's criminal justice system.[96] It is then used to project impact using 'informed assumptions' based on data from the previous year. A financial component exists to assist in understanding financial implications of system demands for different criminal justice agencies.[97] The model goes through an annual cycle, with five-year baseline forecasts that are reset each year. The system works by enabling consideration of demand and finances across the whole system, rather than impacts on each agency operating within the system individually.[98] For example, if QPS are allocated funding for additional police officers, more charges will be progressed which has a flow on effect on the courts and corrective services.[99]

This helps to better understand how changes in policies, procedures and initiatives in one agency impact other agencies involved in the criminal justice system. QGSO is currently undertaking a thorough review,

including mapping of all criminal justice agency administrative data.[100] This mapping exercise includes mapping each agency's data against standardised offence codes[101].

QGSO provide registered users in each agency with an introductory training session and ongoing assistance if required. The Demand and Financial Model and an associated dashboard that enables further analysis of data is accessible by registered users.[102] The data incorporated into the model is extracted from QPS, DJAG, Legal Aid Queensland, QCS and the Department of Children, Youth Justice and Multicultural Affairs.[103] QGSO noted in consultation that the data used is not always reliable. For example, when discussing QPS data, QGSO noted that information on offences with a domestic and family violence indicator is limited to what is provided by QPS, with this field not always recorded. The reason for breaches of domestic violence orders are not always recorded along with the context of the behaviour.[104] QGSO advised the Taskforce that it plans to coordinate a working group with appropriate representation from criminal justice agency data custodians.[105] This working group will identify and address whole-of-criminal justice system data issues, including standardisation of statistical standards and counting rules.[106]

QGSO intends to establish the Queensland Interlinked Data Resource[107] to provide a linked database of individuals in contact with various agencies across the criminal justice system.[108] This will be separate to the current Demand and Financial Model also operated by QGSO.[109]

The integrated criminal justice senior officers group (ICJ), which was established in 2021 is comprised of senior executives from various criminal justice agencies.[110] It aims to identify and fund proposals to streamline justice processes, increase information sharing and promote innovation. The ICJ has an annual budget of approximately $1 million.[111]

Taskforce findings

Insufficient data is collected about victim-survivors of sexual violence by agencies involved in the criminal justice system. This means that data collections do not exist to identify trends and issues across the system, including about demand pressures and performance issues. While some criminal justice system agencies collected some data about victim-survivors, it is difficult to find clear data to track system performance from the point of a report being made to police through the system to a court outcome, including when offences are not progressed.

Substantial gaps remain in the understanding of sexual violence victimisation in populations such as people from culturally and linguistically diverse backgrounds, people with disability, people who identify as LGBTIQA+, children and young people, Aboriginal and Torres Strait Islander peoples, including in particular locations. The lack of quantitative administrative data means systems are not able to identify issues in a timely way and respond flexibly and adaptively.

Collecting qualitative information from women and girls directly, while providing an important opportunity for their voices and individual experiences to be heard, does take its toll and takes time. The Taskforce's recommendation to establish of a victims' commissioner will provide an enduring opportunity for the voices of women and girls who are victim-survivors to be heard and the commissioner should have a role to develop mechanisms to do this that are empowering for them.

The DJAG QWIC captures data about court events making it difficult to track the progress of matters through the courts or repeat involvement in the system by individual accused persons and offenders or victim-survivors of sexual violence. Data and information that is recorded is not easily extractable.

Limited demographic data about women and girls who are accused persons is recorded and able to be extracted across the criminal justice system. This adds to their invisibility as a minority group within the system. For example, data about women and girls from culturally and linguistically diverse backgrounds and those with disability is not sufficiently collected by agencies. There is also a lack of consistency in definitions, inadequate sample sizes for understanding experiences of those outside the general population, limited opportunities for data linkage, non-comparability of datasets and lack of timeliness in reporting.[112] The lack of data on different populations for both qualitative and quantitative analysis is impeding the ability to adequately identify and address ongoing issues within and across the criminal justice system. This includes developing policies and programs to tackle sexual violence in different communities.

Data gaps lead to ineffective problem identification, inadequate policy development and implementation. Not having access to timely and reliable data or adequate expertise to analyse available data means agencies are not able to measure and model demand pressures to allocate funds and ensure service delivery continues to meet community expectations. Better understanding of individual experiences, prevalence rates, demand pressures in particular locations, underlying factors at individual, community and institutional levels is needed to truly address violence against women including sexual violence in Queensland. The development of the Demand and Financial Model intended to be used to improve consistency across the criminal justice system in data analysis and the analysis of cost implications and investment requirements is dependent on individual agencies having access to adequate reliable administrative data. The ongoing relevance of the Model is dependent on agencies having the required data analytics capability to keep it up to date and to ensure its value is appreciated and tools used. The Model is not being used by agencies across the system and, despite the efforts of the QGSO as its custodian, there is a lack of leadership across the system to support the value and use of tools such as the Model.

DJAG lacks the required capacity to record, extract and analyse demand pressures and service delivery requirements including in relation to domestic and family violence and sexual violence including impacts on the courts. This impedes the ability of these agencies to advise the government about projected demand pressures over time, to model the anticipated impacts of these pressures and to model the impact of additional investment to improve responses at critical times and locations. Each agency with responsibility for key components of the criminal justice system should have a fit for purpose, contemporary administrative data base that meets the operational requirements of the agency, captures relevant event and demographic information, and enables relevant data and information to be extracted for analytical purposes. These systems should be able to work together to track and follow cases and individuals across the system. Data and information presented in a way that is easy for the community to understand (and the performance of the system should be made publicly available to improve transparency and accountability.

In addition to improving individual agencies' data collection and extraction, consideration should be given to creating a standalone and dedicated office of research and statistics similar to NSW BOCSAR. The Queensland Government should consider the viability and value of establishing an independent body in Queensland to provide independent 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 should 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.

Resourcing and investment across the health, criminal justice and service systems

Queensland has experienced increased rates of female incarceration, extensive court delays,[113] delays in parole board application hearings[114] and increased use of remand over the last decade.[115] In 2020-21, Queensland experienced the highest growth in incarceration of all Australian states and territories.[116] This included a 21% increase in the total number of females in prison.[117] During the same period, the total number of males in prison increased by 14%. Despite increased investment in the criminal justice system over the last five years, Queensland continues to spend less per capita than other Australian jurisdictions.[118]

If the issues impacting women and girls as victim-survivors of sexual violence and those who are accused persons and offenders are not prioritised and addressed, efforts to reduce offending and re-offending and reduce the rate of incarceration are not likely to be successful. Efforts to reduce the overrepresentation of First Nations peoples in the criminal justice system will also need to specifically respond to the needs of First Nations women.

Background

Current position in Queensland

In 2021-22, the Queensland Government budget expenditure for capital purchases and departmental expenses totalled approximately $5.454 billion on criminal justice services – inclusive of police ($2.856 billion),[119] youth justice ($113.5 million),[120] corrections ($1.456 billion),[121] Legal Aid Queensland ($182.7 million),[122] and DJAG ($846.4 million).[123] Approximately 26,048 Queenslanders are employed across key areas of the criminal justice system with 3,837 staff employed within the justice portfolio,[124] around 6,255 people in QCS and 15,956 employees in the QPS.[125] The Queensland Health Forensic and Scientific Services (QHFSS) is responsible for forensic analysis, research and investigation.[126] QHFSS has over 150 employees including pathologists, scientists, laboratory technicians and administrative staff.[127]

The Queensland Government's *Women's Economic Statement* outlined a suite of policies and programs specific to the needs of women.[128] Acknowledging the importance of equitable employment and education opportunities, the *Women's Economic Statement* aligns with policies such as *Skilling Queenslanders for Work* and *Back to Work programs*.[129] Whilst this is promising, continuing gaps remain. Gender-responsive budgeting practices have been implemented in Queensland in an attempt to better address inequality by placing a gender lens over investment and capacity building.[130] A gendered lens is important for understanding the unintended consequences that policies may have on men and women. For example, research highlighted the unequal impact of COVID-19 policies on women who were more likely to work in roles heavily impacted by business closures.[131] It can also support changing attitudes toward traditional gender roles. For example by supporting policies that encourage men to take on more caring responsibilities for children.[132]

The Queensland Government Budget 2021-22 outlined considerable investment for increasing safety for women and girls. This expenditure amounts to roughly $691.7 million and covers:

- domestic, family and sexual violence counselling, crisis and support services,
- perpetrator programs
- specialist domestic and family violence courts
- initiatives to support youth
- improving housing for Aboriginal and Torres Strait Islander peoples
- strengthening Community Justice Groups.[133]

Funding for social housing of $526.2 million in 2020-21 included constructing of new dwellings, upgrading existing properties and providing housing services, including in First Nations communities.[134] This investment will benefit women who are more likely to need housing due to a range of factors such as job loss, increasing house prices and fleeing violence in their homes.[135] The Queensland Council of Social Service (QCOSS) identified more than 50,000 people on Queensland's social housing register, exacerbated by rental availability of less than 1% in regional towns and cities.[136] The waitlist for housing affects women transitioning from the prison system,[137] making it difficult for them to achieve success post-release (Chapter 3.10).

(QSAN, the Gold Coast Centre for Sexual Violence (GCCASV), Full Stop Australia and the North Queensland Combined Women's Service Inc (NQCWS) told the Taskforce about the limited and inconsistent funding of sexual assault support services across Australia.[138] QSAN and GCCASV described how core funding had not substantially increased since 1996, a period of 26 years.[139] This is despite considerable growth in the number of people seeking support. Access to services is more difficult in regional, rural and remote locations, as well as some urban centres (Chapter 2.4). As QSAN explained, there are huge swathes of regional Queensland without a specialist sexual violence response, including Mt Isa and 'blackspots' associated with service delivery in other areas.[140]

Queensland Health raised concerns in relation to lack of emergency and crisis accommodation options for victim-survivors, especially for those in rural and remote locations.[141]

How do other jurisdictions address this issue?

New South Wales

The NSW BOCSAR undertook a social impact investment and recidivism field experiment with high-risk parolees – On TRACC (Transition, Reintegration, and Community Connection).[142] Social impact is when investment is raised from the finance sector to finance non-government organisations to deliver social services.[143] On-TRACC aims to complement existing parole supervision through extra support services to reduce recidivism.[144] Although there was no evidence to suggest On TRACC reduced recidivism, it did show that it was possible for public, private and non-government sectors to work in partnership with the right tools.[145] This partnership can then support building the evidence for what works.[146]

The Maranguka Justice Reinvestment Program in Bourke, NSW was developed in 2013.[147] The success of the Program has been the whole-of-community approach and strong evidence to support it. This evidence has been gathered using crime mapping and analysis, developing options to reduce offending, implementation and evaluation.[148] The Program has achieved positive outcomes by bringing together organisations from different sectors and working from a single, shared agenda.[149] Appropriate infrastructure to support the Program, philanthropic funding and established shared measures have supported its success to date.[150]

Australian Capital Territory

The Australian Capital Territory (ACT) began exploring justice reinvestment opportunities in 2011.[151] It developed a whole-of-government justice reinvestment approach aimed at reducing recidivism and diverting offenders and potential offenders, away from the criminal justice system.[152]

The *Building Communities, Not Prisons* initiative includes:

- prioritising reducing recidivism by funding programs to assist detainees and vulnerable community members to try and remove the need to expand high security facilities
- enhancing the rehabilitation framework, including construction of a purpose-built reintegration centre and increasing the range of rehabilitation programs available to detainees
- providing more supported housing options for people on bail and existing detention
- providing early support for people living with a mental illness or disability
- providing more pathways for safe and sustainable bail
- enhancing community building capabilities.[153]

Results of consultation

Service system stakeholders

Victim-survivor support services

DVConnect told the Taskforce that there is a lack of investment in sexual assault services that are delivered by First Nations community-controlled organisations and the service system is not meeting their needs.[154] This drives women to develop alternative help-seeking behaviours or coping mechanisms that can lead to criminalization.[155] DVConnect suggested First Nations focused and led services are needed to provide safe and supportive spaces for women and girls to heal.[156] Safe spaces and time to discuss their experiences was important for victims of sexual violence.[157]

Full Stop Australia described a state of emergency in terms of access to crisis services in rural and remote areas, explaining services are critically underfunded and not universally available.[158]

GCCASV[159] and NQCWC,[160] told the Taskforce that increasing community awareness and discussion of sexual assault has led to a rise in referrals and complex circumstances for women using these services.[161]

The Queensland Network of Alcohol and other Drugs Agencies Ltd (QNADA) noted that alcohol and drug treatment and harm reduction services were not always available, accessible or acceptable in Queensland.[162] QNADA told the Taskforce that investment in alcohol and other drug treatment and harm reduction programs is said to save $7 for every dollar spent.[163]

The Taskforce heard that longer term analysis of sexual violence specialist services should be undertaken[164] to fully determine current and future need, and current gaps, to properly fund prevention. This is discussed in more detail in Chapter 2.4.

Support services for women and girls as accused persons and offenders

The Taskforce heard that current funding models often fail to provide for holistic support that incorporates practical assistance, healing, advocacy and safety.[165]

ADA spoke of insurmountable barriers for women experiencing multiple and intersecting disadvantage and a lack of support for women, including incarcerated women.[166]

The Australian Red Cross noted significant barriers for women including a lack of resourcing available for programs that have demonstrated positive outcomes in correctional centres.[167] NQWCS suggested that programs and support should be well-funded and resourced to address drivers of crime and stop the 'revolving door' of incarceration.[168] NQWCS also suggested wrap-around supports for women leaving custody including specialist support and affordable and safe accommodation.[169] Investment must also focus on housing and accommodation needs of women pre and post release.[170] With one in two women expected to be homeless upon release from incarceration,[171] there is an urgent need to address gaps in service to reduce the likelihood of recidivism (Chapter 3.10).

The Australian Red Cross highlighted the need to shift to a community-led justice re-investment model to address these issues.[172] This is because for many women involved in the criminal justice system, their pathway has been 'paved by experiences of violence, abuse, poverty, and trauma.'[173]

QNADA told the Taskforce that there is a need for increased investment in alcohol and other drugs treatment and harm reduction services for women and children in contract with the criminal justice system, in accordance with the *International Guidelines on Human Rights and Drug Policy*.[174]

Government agencies

Department of Justice and Attorney-General

DJAG noted findings from *Hear her voice 1* that court and justice services were chronically under-resourced and noted this has a detrimental flow-on effect for victims and the administration of justice.[175] This includes limited access to remote witness facilities.[176] DJAG explained that staff are struggling with current workloads and that courts and other services require additional investment to meet increased demand and to expand the role of court and registry staff.[177] DJAG also noted that, should restorative justice approaches be expanded, further resourcing to create appropriate training for partner organisations would be required.[178] DJAG told the Taskforce that it 'faces significant workforce challenges across policy development, operational implementation and legislative reform'.

Queensland Treasury

Queensland Treasury told the Taskforce that funding is based on government priorities and competing claims for services.[179] Government decisions about investment are complex and need to balance competing priorities. There are issues with workforce capacity, and the ability to attract people to live and work in remote locations. A lack of data makes it difficult for agencies to justify greater expenditure because it is hard to demonstrate increasing need.[180] Queensland Treasury also acknowledged that cost savings could be made across government.[181]

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

A justice reinvestment 'proof of concept' was established in Cherbourg in partnership with Youth Justice, stakeholder agencies and community representatives.[182] The proof of concept was designed to address youth offending with a focus on early intervention.[183] The Taskforce heard that the project has been stalled during the COVID-19 pandemic and requires revitalisation. Limitations of the initiative included a lack of guidance on the terms of reinvestment in community, lack of clarity about how and what funding would be allocated.[184]

The Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP) advised that fundings has been provided in the 2021-22 Budget to continue to work towards

a Treaty, with the aim of creating new relationships and opportunity to improve the lives of First Nations peoples.[185] Initiatives such as Local Thriving Communities and the establishment of local decision-making bodies that are able to respond to community need, also strive to improve the lives of First Nations peoples.[186]

Queensland Police Service

The QPS discussed increasing demand on its services to respond 24 hours a day, 7 days a week to health and natural disasters, along with traditional policing responsibilities and the transformational nature of increasingly complex crime and social justice issues.[187] The QPS described significant challenges in terms of resource allocation, prioritisation, demand management and the ongoing psychological wellbeing of staff.[188] For police in rural locations additional impediments to delivering timely responses included an inability to transport prisoners to and from remote locations, and a lack of beds at correctional or detention centres that leave people in the watchhouse longer than desired.[189]

Queensland Corrective Services

QCS has described increasing prisoner numbers as one of the most significant issues facing the department.[190] The impact of rising numbers is reduced space and resources which can contribute to anti-social behaviour, assaults and general non-compliance.[191] QCS explained that staff numbers can impact upon the capacity to deliver programs. QCS explained that geographic location and program delivery staffing levels can impact whether people on community corrections orders complete programs, with some regions having limited or no capacity.[192]

Other relevant issues

2022-23 Queensland Budget announcements

The Taskforce acknowledges the Queensland Government announced as part of the 2022-23 Budget that it is will provide $291 million over four years, including $21.3 million for Legal Aid Queensland and $22.9 million held centrally, as part of a total funding package of $363 million to deliver a Queensland Government response to the Taskforce's first report, *Hear her voice 1*. It also announced $246.8 million over five years, including $71 million held centrally from 2024–25 to 2026–27, to deliver safe, fair and responsible communities via an efficient and effective justice system underpinned by contemporary technology and safe, accessible and functional infrastructure and $6.0 million in additional funding over two years, including funds held centrally, to establish a Criminal Justice Innovation Office to provide expert advice on systemic issues, lead evidence-based policy making and advise Government on system priorities. It also announced $5.0 million over four years to assist with the sustained workload increases in matters referred for prosecution in the Office of the Director of Public Prosecution's northern chambers of Cairns, Townsville and Rockhampton.[193]

Taskforce findings

Government budget and investment decisions are complex and involve weighing and balancing competing priorities. There are trade-offs – investment in one area means limited funds are not available for use elsewhere. Budgets must also account for unexpected issues such as natural disasters and health emergencies.[194] The community expects government to respond immediately in a crisis and this can ultimately impact longer term investment priorities.[195] There are long term cost-benefits of investing in prevention, but policies and programs need to be attractive to government if they are to successfully attract funding. Government prefers a slow and methodical process of incremental change based on a deliberate, integrated and well-developed plan for sustainable long term change.[196] Successful budget bids also rely on a strong evidence-base supported by qualitative and quantitative data to tell the story of success and why further funding is required.[197]

While some programs can demonstrate effective reduction in the overall costs to the service and criminal justice systems, it is hard to secure sufficient ongoing funding to provide certainty or expand beyond trial or pilot locations.[198]

Throughout *Hear her voice 1* and this report, the Taskforce has incorporated a focus on independent evaluation and measuring and monitoring impacts and outcomes, including for victim-survivors. Strengthening capacity for data collection, collation and analysis along with commissioned research, will

help to support future funding bids and strengthen the overall response to women and girls involved in the criminal justice system as victims, accused persons or offenders.[199]

It is clear from the many submissions, consultation forums and meetings the Taskforce has undertaken that the criminal justice and service system responses does not adequately meet the needs of women and girls in Queensland as victims, accused persons and offenders, and require urgent reform.[200] This effects women and girls who are involved in the system, their families, and the broader community.

The program of reform recommended by the Taskforce across both of its reports is transformational. While focused on women and girls, the recommendations made by the Taskforce will ultimately contribute to the modernisation of Queensland's criminal justice system for the benefit of all. It will require significant additional investment over time. However, some parts of the criminal justice system have been chronically underfunded in Queensland for decades. Without additional investment, Queensland risks falling further behind other jurisdictions and ultimately failing to deliver justice for all through safe, fair and responsible communities. Priority should be given to meeting the needs of victim-survivors, diverting women and girls from the criminal justice system, and improving conditions for women in custody and rehabilitation.

Taskforce recommendations

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).

Taskforce recommendations

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.

Implementation

The Taskforce is not aware of any work already underway to replace the QWIC system. Designing a replacement system is likely to be a lengthy and expensive proposition. However, the Taskforce considers it is important that design work and engagement with Queensland Treasury and the government commence. A replacement system should be fit for purpose to support the administration of courts and also enable the extraction of relevant data and information.

It is understood that the recently announcement establishment of a Criminal Justice Innovation Office within DJAG will have a focus on facilitating innovative solutions to reduce the rate of imprisonment and deliver the Queensland Government's response to the Queensland Productivity Commission *Inquiry into imprisonment and recidivism* report. Improving data analytics capability and performance monitoring within DJAG will assist the administration of DJAG justice services and also complement the role and function of the new office.

Clarifying roles and responsibilities of agencies across the criminal justice system including responsibility for whole-of-system strategic policy will provide authority to the relevant agency and ensure it is clear of its responsibilities and can be held accountable in relation to them.

Mechanisms to improve 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 will assist to identify issues and impacts for victims and for accused persons and offenders that occur in one part of the system but may manifest in another. This could include exploring the benefits, risks and costs of the use of a single person identifier and other options.

A Queensland victims' commission should have functions including to develop and coordinate a multidisciplinary research program to inform policies and practices, in consultation with stakeholders and relevant agencies. This should include a budget to commission research, as well as coordinating research priorities in relation to victim-survivors across the criminal justice system. The commission should also have a function that enables it to regularly seek and analyse the views and perspectives of victims, including victims of particular types of crimes such as domestic and family violence and sexual violence to inform ongoing system improvement. This could include, for example, regularly undertaking surveys and establishing a victims' advisory group.

A single agency responsible for providing independent advice on crime rates and contributing factors, the criminal justice system, and providing information to agencies and the community should build and leverage upon the role and functions of the Crime Statistics and Research Unit within QGSO. It should provide a single point of truth and raise community awareness about matters relevant to its function. The investigation of the viability, benefits and value for money of establishing such a body in Queensland should include consideration of the NSW BOCSAR.

DSDSATSIP advised the Taskforce that the Cherbourg Justice Reinvestment project has the potential to produce cost savings but the current model is limited by a lack of resourcing, and clarity around how cost savings should be realised. The project was stalled during the COVID-19 pandemic. There is an opportunity for the government to revitalise it by recommitting to its original intent, providing strengthened government and clearer project objectives and timeframes. The project should be adequately resourced and independently evaluated. This should draw upon the successes and lessons learned by the justice reinvestment project in Bourke in NSW.

Human rights considerations

Rights impacted by the recommendations in this section include the right to recognition and equality before the law (section 15) and right to liberty and security of person is also important for upholding trust in the criminal justice and corrections systems (section 29). The identification, and design of, necessary improvements across the criminal justice system, and evaluation of outcomes and impacts, are dependent on access to quality data and analysis. Any work related to data collection, collation, analysis or storage can impact the right to privacy and reputation (section 25). Care should be taken to embed necessary protections and safeguards to protect an individual's right to privacy.

Human rights promoted

An increased focus on getting data measures, collection and systems likely to produce long term benefits for people involved in the criminal justice system. This includes benefits for victims, accused persons and offenders. Strengthening data collection systems and analysis to inform system improvements potentially promotes the right to recognition and equality before the law and the right to liberty and security of person.

Australia is a signatory to international human rights law and has obligations under relevant human rights instruments to collect and use reliable data as an evidentiary basis for developing, funding and implementing prevention and protection initiatives.[201] As noted by the Australian Human Rights Commission, this obligation includes the duty to design intervention and prevention activities based on accurate empirical data, reliable statistics and indicators as well as evaluations of programs to identify best practice.[202]

Human rights limited

The recommendations in this section may limit the right to privacy due to the collection and retention of personal and sensitive information about victims, accused persons and offenders and witnesses. The risk of limitation could be mitigated by embedded protections and safeguards in the system, including limiting the disclosure and use of personal information to aggregate level de-identified information and restricting access to, and sharing of, personal information with significant penalties for intentional breaches.

Limitations on rights are justified

With the suggested protections, the limitation of the right to privacy is likely to be justified and proportionate given the benefits to the system of recording and storing personal information for the administration of the criminal justice system and its ongoing improvement.

Evaluation

The implementation of the recommendations contained in this section will support and promote the recommendations made by the Taskforce in *Hear her voice 1* and throughout this report.

The Taskforce has recommended considering the establishment of a body to provide independent advice on factors that affect the distribution and frequency of crime and 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. If found viable and of value and benefit, this body should include a suitable evaluation plan for it to review the value and benefits it provides to the criminal justice system and the community.

The independent evaluation of the justice reinvestment project in Cherbourg should inform the future expansion of justice reinvestment approaches in other locations and throughout Queensland.

Monitoring, evaluation, and implementation governance

Throughout this report, the Taskforce has had a clear focus on the impacts and outcomes sought in individual recommendations and as a package of reform to improve the experiences of women and girls across the criminal justice system as victim-survivors of sexual violence and as accused persons and offenders.

This part of this chapter discusses and makes recommendations about the monitoring and evaluation of impacts and outcomes across the whole-of-government response to domestic and family violence, including the implementation of the recommendations in this report. The Taskforce recommends building upon existing frameworks to measure and monitor outcomes achieved through the implementation of the recommendations made in this report, and for the system as a whole.

Finally, this part of the chapter makes recommendations for governance arrangements that will ensure the Taskforce recommendations are fully implemented and outcomes achieved. These recommended governance arrangements build upon the recommendations made by the Taskforce in its first report *Hear her voice 1*.

Background

Monitoring and evaluation

Throughout this report, the Taskforce focused on individual recommendations and packages of reform to improve the experiences of women and girls across the criminal justice system as victim-survivors of sexual violence and as accused persons and offenders. The Taskforce heard throughout its extensive consultation and across hundreds of submissions that women and girls faced substantial barriers throughout the criminal justice, health, and service systems.

The *Queensland Women's Strategy 2022-27* provides a framework to strengthen and support the rights of Queensland women and girls and work towards achieving a gender-equal Queensland. It includes commitments that cover five impact areas including: economic security; safety, health and wellbeing; elevating First Nations women; women with diverse backgrounds and experience; empowerment and recognition. The Queensland Government has committed to collaborate with government, community and industry to deliver the commitments made in the strategy.[203]

In terms of measuring the progress of the strategy in achieving gender equality the strategy notes that there are factors that influence achieving its vision and objects that are beyond the control of government. A monitoring and evaluation framework will be developed based on a three-tiered system of measures under a 'spheres of influence' model:

- what the Queensland Government can lead on
- what the Queensland Government can influence or advocate for
- what relies on community action.[204]

The Queensland Women's Strategy also includes governance arrangements to monitor change, including reporting to relevant oversight bodies.

The *Prevent. Support. Believe. Queensland's framework to address Sexual Violence*[205] (the Framework) sets out the Queensland Government's vision for a Queensland where everyone lives free of the fear, threat or experience of sexual violence. It identifies priority areas for action that will guide the government's responses to sexual violence including prevention; support and healing; and accountability and justice. The government committed to develop a series of whole-of-government Action Plans to address sexual violence and implement the Framework. The first was released in 2021.[206]

The Framework recognises that major goals, such as reducing the prevalence of sexual violence, will take time to achieve and will be measured through existing data sources such as the Australian Bureau of Statistics Personal Safety Survey and the National Community Attitudes to Violence against Women Survey. Progress to achieve other shorter term outcomes will be measured through Queensland and national data sources.[207]

In *Hear her voice 1*, the Taskforce recognised the work already undertaken across government to strengthen data collection and monitoring of outcomes achieved under the *Domestic and Family Violence Prevention Strategy 2016-26*, and the *Evaluation Framework for the Domestic and Family Violence Prevention Strategy 2016-2027*[208] including the Revised Indicator Matrix. *Hear her voice 1* also acknowledged the need for a staged approach to implementation of a whole-of-government monitoring and evaluation framework as data collection capability expands.

Recommendation 85 from *Hear her voice 1* called for the development and implementation of a whole-of-government monitoring and evaluation framework to measure and monitor outcomes achieved across the domestic and family violence service system. The Queensland Government supported this in principle stating:

'The Queensland Government will consider other existing public reporting obligations relating to the Domestic and Family Violence Prevention Strategy 2016-2026 and Domestic and Family Violence Death Review and Advisory Board reports, to identify opportunities to integrate and streamline where possible and appropriate.'[209]

Recommendation 86 in *Hear her voice 1* was that the government ensure the monitoring and evaluation framework is underpinned by quality and consistent data through development of a data quality strategy. This recommendation was supported by the government.

How do other jurisdictions address this issue?

Australian Government

The Personal Safety Survey[210] (PSS) is undertaken and published by the Australian Bureau of Statistics. The most recent survey was conducted from November 2016 to June 2017 in all states and territories and across urban, rural and remote locations and included approximately 21,250 people.

The survey collected information from men and women aged 18 years and over about the nature and extent of violence experienced since the age of 15. It also collected detailed information about experiences of violence including current and previous partner violence and emotional abuse since the age of 15, and physical and sexual abuse before the age of 15.

The survey was previously conducted in 2012 and 2005. The need for data on the prevalence of violence and sexual assault is discussed in *The National Plan to Reduce Violence Against Women and their Children 2010-2022*.[211]

The periodic National Community Attitudes towards Violence against Women Survey (NCAS),[212] is a population survey conducted every four years about community understanding and attitudes to violence against women in Australia. It is conducted every four years and provides data about change over time. The NCAS was last conducted in 2017 by the Australian National Research Organisation for Women's Safety (ANROWS) and the next survey was due to be undertaken from 2021 with a report published by the end of 2022. The NCAS does not include a detailed breakdown of findings and outcomes for each state and territory, although it does include a high level note for each jurisdiction on any differences to the rest of the country and changes over time.

Victoria

The Victorian Family Violence Reform Implementation Monitor (FVRIM) position was created in 2016 in response to recommendations made by the Royal Commission into Family Violence. It is established under the *Family Violence Reform Implementation Monitor Act 2016* (VIC) and reports directly to Parliament.

The FVRIM independently monitors and reviews the Victorian Government and its agencies in delivering state-wide family violence reform and reporting publicly on its findings. The FVRIM developed a monitoring plan in consultation with relevant stakeholders. The monitoring plan included specific topic areas of focus aligned with the *Victorian Family Violence Reform Rolling Action Plan 2020-23*. Recognising the need to understand differences across populations and circumstances, the monitoring plan includes the following cross-cutting themes:

- intersectionality
- children and young people
- Aboriginal self-determination
- priority communities including LGBTIQA+, people with disability, culturally and linguistically diverse communities, rural, regional communities, older people and criminalised women
- service integration
- data, evaluation, outcomes and research.[213]

The monitoring plan also incorporates input received from consultation with government agencies, community organisations, and victim-survivor groups.[214]

The *Free from Violence: Victorian strategy to prevent family violence and all forms of violence against women* was developed in response to the Royal Commission into Family Violence.[215] The strategy outlines a three-phased approach to responding to family and gendered violence, including building on what works and scaling up.[216] The first phase focuses on:

- strengthening and skilling the workforce
- increasing investment
- expanding research
- evaluation and monitoring.[217]

Development of a high-quality evaluation and monitoring framework is identified as a key priority area of the strategy.[218]

Other relevant issues

Robust mechanisms to support implementation, and monitoring impacts of reform are essential. Strong and accountable governance mechanisms will enable government, service providers and professionals to better understand what works, where gaps exist, and how changes impact people with lived experience.

Implementation and evaluation processes should be focused on achieving impacts and outcomes for people with lived experience.

Throughout the period of its examination, the Taskforce has been overwhelmed by the volume of people willing to share their experiences. The richness of information gathered from submissions, consultation forums, and meetings highlights the importance of understanding the dynamics of violence against women and girls and hearing their voices. It also supports the need for greater awareness of the drivers of women's offending and victimisation, and the impact policies, legislation, and practices have on the lives of Queenslanders. Implementation and evaluation processes should include engagement with people with lived experience.

Taskforce findings

The implementation of the recommendations included in this report should be accompanied by a robust monitoring and evaluation plan that includes indicators and measures to track progress towards achieving better outcomes for women and girls who are victim-survivors and accused persons and offenders. Demonstrating impacts and outcomes achieved will help maintain community confidence in the program of reforms and the government's commitment to make a difference.

The *Prevent. Support. Believe. Queensland's framework to address Sexual Violence* is not accompanied by a monitoring and evaluation plan. Instead progress will be measured through existing processes including the NCAS. The Taskforce considers that a whole-of-government monitoring and evaluation plan for the framework and the implementation of the Taskforce's recommendations is warranted.

The Taskforce has recommended the development of a whole-of-government strategy to improve the experiences of women and girls who are involved in the criminal justice system as accused persons and offenders. This strategy should be accompanied by a comprehensive monitoring and evaluation plan to measure and monitor progress and demonstrate impacts and outcomes achieved.

Taskforce recommendations

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, including as part of the implementation of legislative reforms introduced in response to this report 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*,.*Penalities 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.

Implementation

The monitoring and evaluation plans should be developed as part of the early implementation planning to respond to the recommendations and reforms in this report. The plans should include outcomes that focus on women and girls, the government, and service and criminal justice systems. Appropriate indicators and

measures should be developed, and include the collection and analysis of baseline data. The plans should incorporate qualitative and quantitative measures.

Each plan should identify short, medium and longer term outcomes. Each plan should incorporate the evaluation of relevant initiatives implemented in response to recommendations in this report.

Legislative amendments progressed to the *Bail Act 1980,* Criminal Code, *Criminal Law (Sexual Offences) Act 1978, Corrective Services Act 2006, Evidence Act 1997*,.*Penalities and Sentences Act 1992*, *Police Powers and Responsibilities Act 2000* and the *Youth Justice Act 1992.* should include a statutory requirement that the operation of the amendments should be reviewed five years from their commencement. The review should considered whether the amendments are operating as intended and the impacts and outcomes achieved for women and girls.

Human rights considerations

Human rights promoted

A robust approach to monitoring and evaluating reforms will promote the personal rights that are engaged to keep victim-survivors safe, including section 16, right to life, section 29 right to liberty and security of person, and section 26, the right to protection of families and children.

An approach that specifically considers the impact and outcomes on First Nations peoples will promote section 28, cultural rights of Aboriginal and Torres Strait Islander peoples. Further measures to consider the impact on culturally and linguistically diverse peoples will promote section 27 – cultural rights.

A strong monitoring and evaluation plan will help build the evidence-base on what the issues are, what works or does not work to address them, and how effective policy, legislative and program development is in responding to sexual violence and women and girls as accused persons or offenders. This will support public entities to take human rights into consideration and make decisions that are compatible with human rights, as obliged under the *Human Rights Act 2019*.

Human rights limited

The collection, analysis and storage of data required to support monitoring and evaluation of systemic impacts and outcomes may potentially limit section 25 – rights to privacy. The level of detail of the data that is collected and stored will impact the level of the limitation. Appropriate safeguards must be in place to limit privacy and human rights breaches.

Limitations on rights are justified

The right to privacy may be limited where reasonably and demonstrably justifiable. The collection and use of personal information for evaluative research purposes could limit an individual's right to privacy. However, this limitation could be mitigated if only aggregate level or deidentified data is used for these purposes and with other safeguards as to the storage and use of the information, with penalties for intentional misuse. Any limitation could be justified if it is for the purpose of measuring and monitoring outcomes to improve service and criminal justice system responses for others.

Governance to support implementation

In *Hear her voice 1*, the Taskforce recognised that, as a complex social problem, a range of government agencies and service responses intersect to address domestic and family violence. Sexual violence and the range of contributing factors that underly women and girls' offending behaviour are no different. These are also complex social problems that require governments to work 'horizontally' across all government and non-government agencies and the community to achieve an integrated whole-of-system response. Success requires good planning, sufficient resources, well-coordinated participant agencies and external stakeholders. It also, as discussed above, requires regular monitoring, and comprehensive evaluation. To ensure services and responses meet the needs of people who use them, they should be engaged and involved at every point.

The successful implementation of the recommendations in this report also requires strong governance, coordination, and oversight to assure public funds are spent in a way that maximises desired outcomes and manages risk to deliver value for money.

As recommended in *Hear her voice 1* (recommendation 88, 89) the independent implementation monitor, the directors-general implementation group, and the ministerial oversight committee should be established as soon as possible.

Once again the Taskforce makes recommendations for adequate governance mechanisms be put in place. This includes expanding the role of previously recommended independent oversight supervisor to monitor and oversee the progress of reforms and whether or not agreed impacts and outcomes across the system are being achieved.

To provide strong governance to implement and oversee the reforms, the Taskforce recommends the role of the three bodies it recommended be established in its first report be expanded to encompass oversight of the recommendations in this report. These include:

- a ministerial level oversight committee (*Hear her voice 1*, recommendation 87)
- an interagency implementation group comprising directors-general (*Hear her voice 1*, recommendation 87)
- an independent implementation supervisor with an adequately resourced secretariat within the Department of Justice and Attorney-General (*Hear her voice 1*, recommendation 88).

To support public accountability and transparency, the Taskforce recommends the Attorney-General also report to the Queensland Parliament annually on the progress of implementation of recommendations in this report and tables the biannual (twice yearly) reports of the independent implementation supervisor (*Hear her voice 1*, recommendation 89).

The Queensland Government supported recommendations 87, 88 and 89 in *Hear her voice 1*, stating it supported the need for appropriate governance and would consider how it could utilise existing governance arrangements to ensure appropriate oversight and accountability for implementation of the government response to the Taskforce recommendations. The response includes that the government will appoint an independent implementation supervisor, and will prepare annual reports on its progress in implementing the government response to the Taskforce recommendations, for tabling in Parliament by the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence. The Queensland Government will also consider options for reporting by the implementation supervisor.

How do other jurisdictions address this issue?

Victoria

The Victorian FVRIM [219] independently monitors and reviews the Victorian Government implementation of state-wide domestic and family violence reform outlined in the government's 10 year implementation plan for *Ending Family Violence: Victoria's Plan for Change* and publishes reports on its findings. It provides oversight for the implementation of reforms, the independent review of legal provisions, supports the Family Violence Information Sharing Scheme, and the risk assessment and management framework.[220]

The Implementation Monitor monitors progress within priority topics outlined in the *Monitoring Plan 2021-22*. This plan sets the priorities for implementation, cross-cutting themes, and high level monitoring topics.[221]

To support implementation and monitoring, a Family Violence Reform Advisory Group was established with sector stakeholders.[222]

Taskforce findings

The Taskforce found that implementation governance arrangements and oversight mechanisms put in place at the ministerial and Directors-General levels and the independent implementation supervisor appointed to monitor implementation of the recommendations in *Hear her voice 1*, should be expanded to encompass monitoring and overseeing implementation of the recommendations in this report.

While the Queensland Government response to recommendation 87 was that it would consider how it could use existing governance arrangements to ensure appropriate oversight and accountability for implementation of the government response to the Taskforce recommendations, it is not clear what those arrangements may be. An independent implementation supervisor is yet to be established.

To support public accountability and transparency, the Taskforce recommends the Attorney-General report annually to the Queensland Parliament to provide an update on progress. The Attorney-General should also table biannual (twice yearly) reports of the independent implementation supervisor.

Taskforce recommendations

187. The Women's Safety and Justice Taskforce reaffirms recommendations 87 and 88 made in its first report, *Hear her voice: Report One, Addressing domestic and family violence and coercive control in Queensland*, and recommends that the roles of ministerial and directors-general level governance mechanisms implemented I 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

Implementation

As recommended in *Hear her voice 1* (recommendation 87, 88, 89) the independent implementation monitor, the directors-general implementation group, and the ministerial oversight committee should be established as soon as possible. How existing governance arrangements could be utilised should be considered with the ultimate arrangements put in place made clear and transparent.

The establishment and appointment of an independent implementation supervisor role should occur as soon as possible to support and oversee implementation from the outset. The role and function of the supervisor should be made clear to maintain public confidence in the reform process and the government's commitment to improve the experiences of women and girls across the criminal justice system.

Human rights considerations

The establishment of a ministerial oversight committee, a directors-general implementation group, and an independent implementation supervisor will promote rights under the Human Rights Act. These rights include the right to recognition and equality before the law (section 15) the right to life (section 16), the right to protection from degrading treatment (section 17), the right to protection of families and children (section 26) and the right to liberty and security of the person (section 29). These levels of accountability will also promote cultural rights for culturally and linguistically diverse peoples (section 27), and cultural rights for Aboriginal and Torres Strait Islander peoples (section 28).

Human rights promoted

The establishment of adequate governance arrangements and independent supervision and oversight for the implementation of systemic reform will promote the rights and interests of victim-survivors of sexual violence and women and girls involved in the criminal justice system as accused persons and offenders.

Human rights limited

No human rights will be limited by the implementation of these recommendations.

Conclusion

This chapter 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 use of data provides an important component of the advice needed to be given to government about trends and issues and the resources required to provide adequate public services for the administration of a fair and equitable justice system.

The Taskforce is concerned about the lack of investment in Queensland's criminal justice system, particularly the courts, which have been underfunded for decades. A fair and equitable justice system is a critical component of our democratic system of government. Without much needed additional investment, Queensland risks falling further behind other jurisdictions and failing to provide essential services across the criminal justice system. This must include providing fair and equitable access to justice for victim-survivors of sexual violence and women and girls who are accused persons and offenders.

Throughout its important work, the Taskforce has been mindful of its responsibility to accurately reflect the diverse voices, views and perspectives of women and girls and their experiences across the criminal justice system as victim-survivors and offenders. The recommendations in this report reflect what the Taskforce heard during its examination. 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 many women and girls, service providers and legal stakeholders, members of the community and other people who came forward to lend their voices, views and perspectives to the work of the Taskforce deserve the respect and dignity of an implementation process that is truly focused on better outcomes.

The implementation of the Taskforce recommendations in *Hear her voice 1* and in this report require transformational change across Queensland's criminal justice and service systems. The Taskforce is mindful of the magnitude and significance of the program of reform it has recommended. But change is long overdue and the Queensland community expects justice for all through safe, fair, cost-effective and responsible government services for functional and safe communities right throughout the state. Clear, accountable and bipartisan governance arrangements are required to ensure this vision is delivered and the opportunity for meaningful reform and better outcomes is realised. The Queensland community and the women and girls whose voices are at the centre of this report deserve nothing less.

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Appendix 1 - List of stakeholders the Taskforce met with

Aboriginal & Torres Strait Islander Women's Legal Service North Queensland (ATSIWLSNQ)*
Aboriginal and Torres Strait Islander Legal Service (ATSILS)*
Act for Kids*
Anglicare*
Australian Association of Social Workers QLD Branch*
Australian Human Rights Commission
Australian Red Cross*
Bamaga Community Justice Group
Blue Card Services
Bond University*
Brisbane Domestic Violence Service*
Brisbane Rape and Incest Survivors Support Centre*
Brisbane Youth Service*
Cairns Regional Domestic Violence Service*
Cairns Sexual Assault Service
Centacare*
Centre Against Sexual Violence Inc. staff and clients
Centre Against Sexual Violence*
Cherbourg Regional Aboriginal & Islander Community Controlled Health Services*
Chief Judge BG Devereaux SC
Chief Justice CE Holmes AC
Chief Magistrate Judge Gardiner
Children by Choice*
Cleveland Youth Detention Centre staff and prisoners
Community Corrections*
Crime and Corruption Commission
Criminal Procedure Review Team
Darumbal Community Youth Service
Department of Children, Youth Justice and Multicultural Affairs*
Department of Communities, Housing and Digital Economy
Department of Education
Department of Justice and Attorney-General*
Department of Premier and Cabinet
Department of Seniors Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP)
Deputy Chief Magistrate Brassington
Deputy Chief Magistrate Gett
Director of Public Prosecutions
Dispute Resolution Branch*

Domestic Violence Action Centre*
Domestic Violence Prevention Centre*
Dr Cathy Lincoln
Dr Kirsty Wright
DV Connect*
Elena Campbell
Elena Marchetti
Ending Violence Against Women QLD*
Federal Circuit and Family Court of Australia Family Violence Committee
Fiona Rafter
Full Stop Australia*
Gold Coast Hospital and Health Service*
Griffith University, MATE Bystander program
Gumbi Gunyah, Woorabinda
Healing Foundation
Helem Yumba Inc
High Risk Team, Cairns*
Hub Community Legal*
Immigrant Women's Support Service
Johnathan Thurston Academy, Woorabinda
Judge Smith
Justice Bowskill
Laurel Place*
Lawright*
Legal Aid Queensland*
Lifeline*
Lloyd and Sue Clarke*
Mackay Base Hospital*
Mackay Housing Service Centre*
Mackay Regional Community Legal Centre*
Mackay Regional Council*
Mackay Women's Services*
Mackay Youth Support Service*
MADEC*
Mara Project (SERO4)*
MARABISDA Inc*
Member for Clayfield, Tim Nicholls MP
Member for Whitsunday, Amanda Camm MP
Men & Co. Services*
Multicultural Australia*
Multidisciplinary Centre, Melbourne

Navarro Lawyers*
North Queensland Domestic Violence Resource Service*
Northern Peninsula Area Community Justice Group
Northern Peninsula Area Family and Community Support Services
One Women Project*
Palm Island Community Company*
Parole Board Queensland
Professor Susan Dennison
Queensland Audit Office
Queensland Corrective Services
Queensland Council of Social Services*
Queensland Disability Advocacy Network
Queensland Family and Child Commission (QFCC)*
Queensland Family and Child Commission Youth Advisory Council
Queensland Health*
Queensland Indigenous Family Violence Legal Service*
Queensland Law Reform Commission
Queensland Law Society*
Queensland Police Service*
Queensland Sentencing Advisory Council
Queensland Sexual Assault Network
Queensland University of Technology*
R4Respect*
Relationships Australia Queensland*
Respect Inc*
Safir Cairns*
Salvation Army*
Sexual Violence Prevention Roundtable
Sisters Inside, Townsville and Brisbane*
Small Steps 4 Hannah *
South Burnett CTC Inc*
Southern Queensland Correctional Centre staff and prisoners
St Vincent de Paul Society Queensland*
TASC National*
The Allison Baden-Clay Foundation*
The Centre for Women and Co.*
The Domestic and Family Violence Implementation Council*
The Women's Centre Townsville
Townsville Community Law*
Townsville Women's Correctional Centre staff and prisoners
Truth, Healing and Reconciliation Taskforce

UnitingCare*
Victim Assist Queensland
Victoria Law Reform Commission
What about us? *
Women's Health and Equality Queensland*
Whitsunday Counselling and Support Service*
Women's Legal Service*
Woorabinda Aboriginal Shire Council
WWILD Sexual Violence Prevention Association Inc.
Yarrabah Leaders Forum
Yarrabah Women's Shelter
Youth Empowered Towards Independence (YETI)*
YFS Ltd*
Yoonthalla Services, Woorabinda
Youth Justice*
Youth Offender Support Services on Palm Island*
Yumba-Meta LTD*
Zhanae Dodds
Zig Zag Young Women's Resource Centre*

Appendix 2 - Glossary of Terms

Term	Definition
Aboriginal and Torres Strait Islander peoples	Also referred to as First Nations peoples or Indigenous peoples refers to two distinct peoples of Aboriginal or Torres Strait Islander descent who identifies as an Aboriginal person or Torres Strait Islander person and is accepted as such by the community in which they live.[1]
ADCQ	Anti-Discrimination Commission Queensland - now the Queensland Human Rights Commission
ALRC	Australian Law Reform Commission
ARJC	Adult Restorative Justice Conferencing
ARO	Alternative Reporting Options
ATSILS	Aboriginal and Torres Strait Islander Legal Service
ANZPAA	Australia New Zealand Policing Advisory Agency

Term	Definition
Attrition	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.
Bangkok Rules	The *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* ('the Bangkok Rules') were adopted by the UN General Assembly in December 2010 and fill a long-standing lack of standards providing for the specific characteristics and needs of women offenders and prisoners.[2]
BAQ	Bar Association of Queensland
Blue Letter	Refers to a confidential complaint to the General Manager of a prison made by a person in custody[3]
BOCSAR	Bureau of Crime Statistics and Research
BWCC	Brisbane Women's Correction Centre
CASCG	Child Abuse and Sexual Crime Group
CAMS	Court of Appeal Management System
CALD	Culturally and linguistically diverse peoples in the community who have various language or cultural backgrounds.
CCC	Crime and Corruption Commission
CEDAQ	Committee on the Elimination of Discrimination against Women
CEDAW	United Nations Convention on the Elimination of Discrimination Against Women
CCO	Community corrections order
Complainant	The party who makes the complaint in a legal action or proceeding
Court Link	An integrated court assessment, referral and support program that assists participants by connecting them with treatment and support services to address housing, employment, substance, health, and other social needs. Support is based on risk of re-offending, needs, ability and willingness to receive help.[4]
CSAFE	Child Sexual Abuse Fundamentals Education
CS Act	Corrective Services Act
CIB	Criminal Investigation Branch
CIC	Crime and Intelligence Command
CPIU	Child Protection Investigation Unit
Cth	Commonwealth
Criminal Code	Criminal Code Act 1899 (Qld).
Criminogenic	Cause or likely to cause criminal behaviour
CYDC	Cleveland Youth Detention Centre

Term	Definition
DCYJMA	Department of Children, Youth Justice and Multicultural Affairs
Defendant	Or suspect is a person or institution against whom an action is brought in a court of law
DJAG	Department of Justice and Attorney-General.
DoE	Department of Education
DNA	Deoxyribonucleic Acid
DRB	Dispute Resolution Branch
DVConnect	A statewide telephone service offering free 24 hour per day, seven day a week support for victims and perpetrators of domestic and family violence across Queensland.
EVAWQ	Ending Violence Against Women Queensland
FASS	Forensic and Analytical Science Service
FMO	Forensic Medical Officer
FTE	Full Time Equivalent
GCCASV	The Gold Coast Centre Against Sexual Assault
Gender-responsive	This approach is designed to address issues that impact a particular gender. For example, research on women's co-occurring substance use and mental health disorders. Women offenders who have been exposed to trauma and have substance abuse histories are at higher risk for mental health disorders compared with men offenders and women in the general population.[5]
Hear her voice 1	Hear her voice Report one: Addressing coercive control and domestic violence in Queensland, 2021. The Women's Safety and Justice Taskforce was established in March 2021 to examine: 1. coercive control and review the need for a specific offence of commit domestic violence; and 2. the experience of women across the criminal justice system
HHS	Health and Hospital Services
IOMS	Integrated Offender Management System
Intersectional diversity	For example, Aboriginal and Torres Strait Islander women with disability, CALD who identify as LGBTIQA+, older woman with disability.
IWSS	Immigrant Women's Support Services
ISACURE	The Investigating Sexual Assault – Corroborating and Understanding Relationship Evidence course is a training program delivered to Queensland Police Service officers
JIRT	Joint Investigation Response Teams

Term	Definition
Judicial officers	Judicial officers include magistrates.
LAQ	Legal Aid Queensland
Legislation (General)	Legislation of the Queensland Parliament does not appear with the jurisdiction identifier '(Qld)' at the end of the title for example, *Human Rights Act 2019*. However, legislation from all other jurisdictions will carry a jurisdiction identifier, for example, *Charter of Human Rights and Responsibilities Act 2006* (Vic)
LGBTIQA+	This is an acronym used to collectively describe people who are gender diverse and stands for lesbian, gay, bisexual, transgender, intersex, queer, asexual. The plus acknowledges that the acronym does not fully capture the full spectrum of diversity.
MDC	Multi-disciplinary centres
MHC	Mental Health Court
Mistake of fact	See Section 24 of the Criminal Code Act 1899 for explanation
MOU	Memorandum of Understanding
NCAS	National Community Attitudes towards Violence against Women Survey
NCRVWC	National Council to Reduce Violence against Women and Children.
Nelson Mandela Rules	The *United Nations Standard Minimum Rules for the Treatment of Prisoners* ('the Nelson Mandela Rules') were adopted by the UN General Assembly in December 2015 and are composed of observations, rules and principles of good practice in the treatment of prisoners and the management of penal institutions.
NQCWS	North Queensland Combined Women's Services Inc
ODPP	The Office of the Director of Public Prosecutions
OV	Official Visitors
OIC	Officer in Charge
OPG	Office of the Public Guardian
OPM	Operational Procedures Manual
OPCAT	United Nations Operational Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
NATA	National Association of Testing Authorities
Not Now, Not Ever report Also referred to as the Special Taskforce	Not Now, Not Ever: Putting an end to domestic and family violence in Queensland report of the Special Taskforce into Domestic and Family Violence in Queensland, 2015.

Term	Definition
	The Special Taskforce was established on 10 September 2014 to examine and make recommendations to inform long term strategies to stop domestic violence in Queensland.
Penalties and Sentences Act	*Penalties and Sentences Act 1992* (Qld)
Perpetrator	In this report, perpetrator and offender are used interchangeably to describe a person who commits a sexual violence offence, or other criminal offence
PPRA	Police Powers and Responsibilities Act 2000
PLS	Prisoners' Legal Service
QAO	Queensland Audit Office
QCEC	Queensland Catholic Education Commission
QCOSS	Queensland Council of Social Service
QDAN	Queensland Disability Advocacy Network
QH	Queensland Health
QHFSS	Queensland Health Forensic and Scientific Services
QHRC	Queensland Human Rights Commission
QFCC	Queensland Family and Child Commission
QGSO	Queensland Government Statistician's Office
QLRC	Queensland Law Reform Commission
QPRIME	Queensland Police Record and Information Management Exchange
QLS	Queensland Law Society
QPC	Queensland Productivity Commission
QPS	Queensland Police Service
QSAC	Queensland Sentencing Advisory Council
QSAN	Queensland Sexual Assault Network
QWIC	Queensland Wide Interlinked Court data management system
PSS	2016 Personal Safety Survey
RCIRCSA	Royal Commission into Institutional Responses to Child Sexual Abuse
Recidivism	The term used to describe a person who persistently commit large numbers of offences over a long time period.[6]
RNR	Risk-Need-Responsivity is a model used to assess different levels and types of risk, needs and responses to address criminal offending[7]
RREP	Respectful relationships education program

Term	Definition
SAIK	Sexual Assault Investigation Kit
SAL	Social Analytics Laboratory
SANE	Sexual Assault Nurse Examiner
SARC	Sexual Assault Resource Centre (Western Australia) Sexual Assault Referral Centres (United Kingdom)
SART model	Sexual Assault Response Team
SCA	Supervised Community Accommodation
SLA	Service Level Agreement
SATU	Sexual Assault Treatment Unit
SOCIT	Sexual Offences and Child-Abuse Investigation Teams
SOP	Standard Operating Procedure
SQCC	Southern Queensland Correctional Centre
Stealthing	Removing a condom without the other person's permission or knowledge
SVLO	Sexual Violence Liaison Officers within the Queensland Police Service
Trauma-informed	Trauma-informed responses can reduce re-victimisation, improve the quality of victim statements, and produce positive results in terms of attitudes towards victims and greater knowledge of the impacts of victimisation.[8] Trauma-informed means avoiding exacerbating existing trauma, preventing additional trauma, reduce staff burnout and removing potential triggers within the environment.[9]
TWCC	Townsville Women's Correctional Centre
UEL	Uniform evidence law
UNCROC	United Nations Convention on the Rights of the Child
UNODC	United Nations Office on Drugs and Crime
Victim-survivor	Victim-survivor is used to acknowledge that victims can survive and thrive after experiencing violence and trauma
VLO	Victim Liaison Officer
VIFM	Victorian Institute of Forensic Medicine
VLRC	Victorian Law Reform Commission
WLSQ	Women's Legal Service Queensland
WWILD	WWILD Sexual Violence prevention Association Inc. A service providing support to people with intellectual or learning disabilities who have experienced sexual abuse or have been victims of crime. The service also works with families, carers, and services.[10]

Term	Definition
YAC	Youth Advocacy Centre
YJA	Youth Justice Act 1992

Appendix 3 - The Taskforce Secretariat

The Women's Safety and Justice Taskforce was supported by the following Secretariat staff:

Name	Position	Biography
Ms Megan Giles	Executive Director	LLB, Executive Masters of Public Administration. Megan is a lawyer who practiced in criminal, family and child protection areas of the law in private practice and within Legal Aid Queensland. For the last 16 years Megan has worked in senior executive roles primarily in strategic policy and legislative reform in the Queensland Public Service.
Ms Sarah Kay	Director	B Bus (Distinction), LLB, Grad Dip (Laws), Grad Cert (Laws). Sarah is a lawyer who has worked in private practice, non-government organisations and prosecutions in Queensland, Thailand and England and Wales. For the last 10 years Sarah has worked in the Strategic Policy and Legal Services division of the Department of Justice and Attorney-General.
Ms Carly Whelan	Principal Legal Officer	LLB (Hons), BIntBus (IntR) (Griff), GradDipLegPrac (CollLaw), LLM (UNE), MPhil (Crim) (Cantab). Carly is a Barrister appointed as a Senior Crown Prosecutor and has worked for the Office of the Director of Public Prosecutions in Queensland since 2003. Carly is also a Sessional Academic. She specialises in the areas of criminal law, evidence, criminology and criminal justice.
Ms Kathleen Christopherson	Principal Legal Officer	B.Bus/LLB (QUT), Grad Dip (Legal Prac) (CollLaw), LLM (Applied Law) majoring in Government and Public Sector Law (CollLaw). Kathleen has worked for the Queensland Office of the Director of Public Prosecutions since 2008 and is the Legal Practice Manager at the Southport Chambers. Kathleen has been awarded a Churchill Fellowship to assess the efficacy of prosecuting the offence of coercive control in the United Kingdom and Ireland.
Ms Anna Cunningham	Principal Legal Officer	LLB (Hons), BCI (Media Communication) and Grad Dip (Legal Prac) (QUT). Anna is a Principal Lawyer at Crown Law in the Attorney-General Advocacy team. Her practice background includes criminal and statutory prosecutions, commissions of inquiry, child protection and mental health law.

Name	Position	Biography
Ms Peta Harrington	Principal Policy Officer	BA/LLB (Hons), GradDipLegPrac. Peta is a lawyer and policy officer who has worked for Queensland Government since 2018, commencing as a Policy Futures Graduate. Peta has primarily worked in domestic and family violence and child protection legal policy.

Name	Position	Biography
Ms Wren Chadwick	Principal Policy Officer	BA (Government and French), Juris Doctor. Wren has worked on social justice policy and legislative reform in Australia and internationally. In recent years she has focused on domestic, family and sexual violence prevention, including as a member of the Secretariat for the Special Taskforce on Domestic and Family Violence (Not Now, Not Ever report).
Dr Nancy Grevis-James	Principal Policy Officer	BJus (First Class Honours); GradCert (DFV Practice) and PhD. Nancy has worked in Queensland Government and non-government and as a sessional academic. Nancy has over ten years of experience in researching and working in the area of police interactions with vulnerable persons, and domestic and family violence.
Ms Christine Carney	Senior Policy Officer	BA CCJ, MA(Criminology& Criminal Justice), PhD Candidate (GCI). Christine is a research and policy officer who has worked for the Queensland Government since 2014. Christine specialises in domestic and family violence and policing research.
Ms Wendy Sheather	Principal Media and Communications Officer	BA (Journalism), Wendy has worked as a journalist (in Australia and the UK) and in public relations and marketing. She joined the Department of Justice and Attorney-General (DJAG) in 2015 as a senior communication officer for domestic and family violence (DFV), promoting the department's work implementing recommendations from the Special Taskforce on DFV's *Not Now, Not Ever* report. She is currently Principal Communication Officer with DJAG.
Ms Kate Boyle	Business Officer	Diploma in Project Management. Kate has provided business, executive and project support in the Queensland Government for over 13 years.
Ms Kate Bruhn	Administration Officer	BCCJ, GradCert (DV). Kate has worked for Queensland Government since 2019, primarily in Magistrates Courts.

Appendix 4 - Multi-agency responses to victims of sexual offences

Jurisdiction	Multi-agency response	Accessibility
Queensland	Sexual Assault Response Team (SART) – Specialist Sexual Assault Support Service, established in 2016, Detectives from Child Abuse and Sexual Crimes Unit, Nurse examiners, Allied Health – crisis intervention and advocacy, medical attention, investigative expertise, follow-up, referrals, longer-term counselling, support through court and CJS Funding through DCSYW for two-year pilot and evaluated by CQU 2018	24-hour response – limited to Townsville
Victoria[1] 2017	Multi-Disciplinary Centres (MDC) – single location with police, trauma counsellors, child protection workers, Victorian Institute of Forensic Medicine and integrated family and individual support for victims of sexual violence	Available across multiple locations
Victoria[2]	Sexual Offence and Child Abuse Investigation Teams Multi-Disciplinary Centres (SOCIT-MDC) – establishment of specialist teams of investigators responsible for investigation and victim support and service sites (MDC) where all key services are provided to victims in a single location separate from police stations	Lack of public transport and environmental design of MDC hindered accessibility
Western Australia[3]	Sexual Assault Resource Centre (SARC) is a free service offering crisis medical services, forensic evidence collection and crisis counselling for people who have experienced sexual assault in the last two weeks and counselling for those who experienced recent or past sexual assault/abuse	24-hour crisis line and daily crisis telephone counselling from 8:30am to 11pm to people aged 13 years and over SARC is located in Perth[4]
UK[5]	Sexual Assault Referral Centre (SARC) – introduced in 2001 to respond to the UK low conviction rates for sexual assault. This includes forensic medical examination, trained female examiners, independent support and advocacy, and counselling and screening for sexually transmitted diseases. This model uses proactive contact and support through the criminal justice process	39 SARCs across England
USA[6]	Sexual Assault Nurse Examiner (SANE) – multidisciplinary team including police, advocates and health, providing quality and compassionate care to sexual assault victims, reducing wait times for forensic medical examinations, completing full	Telehealth for rural and under-served locations in the United States

[1] Victorian Law Reform Commission Improving the justice system response to sexual offences (Report, online); Premier of Victoria, The Honourable Daniel Andrews, 'Family violence support under one roof' (Media release, Premier of Victoria, 21 April 2017).
[2] Martine B. Powell, and Rita Cauchi, 'Victims' Perceptions of a New Model of Sexual Assault Investigation Adopted by Victoria Police' (2013). 14(3) *Police practice & research* 228, 237.
[3] https://www.healthywa.wa.gov.au/Articles/S_T/Sexual-Assault-Resource-Centre-SARC
[4] https://www.wnhs.health.wa.gov.au/Other-Services/SARC
[5] Tammi Walker, Rabiya Majeed-Ariss, Rebecca Riley & Catherine White, 'Women's experiences of attending an English sexual assault referral centre: an exploratory study' (2020). 31(1) *The Journal of Forensic Psychiatry & Psychology* 123-136, DOI:10.1080/14789949.2019.1683217
[6] Arthur S. Chancellor and ProQuest Ebooks, Investigating Sexual Assault Cases (CRC Press, Second ed, 2022;2021)

	medical evaluation including forensic photography, injury identification, evidence collection, detailed history of events, and provision of expert testimony related to medical forensic process.[7] The SAFE-T Centre offers comprehensive, high-quality healthcare through a nurse-led model.[8]	
USA[9]	SART – multidisciplinary response to sexual violence including coordination of response to sexual assault.[10] SART are based on a structured model that includes a mission statement, formal protocols, subcommittees, individual and agency level leadership roles, multidisciplinary cross-training, formal meetings and case reviews.[11] The aim of SART is to support victim help-seeking, increase perpetrator accountability and prosecution, provide community education and foster relationships by bringing together police, advocates and medical/forensic examiners to respond to sexual assault.[12]	172 teams across the USA
Ireland[13]	Sexual Assault Treatment Units (SATU) – collaboration between police, rape crisis centres and allied agencies providing medical, psychological and emotional needs, and forensic examinations. The SATU provides 3 options including forensic examination with police involvement, health check (excluding forensic examination) or forensic examination without police involvement and storage of evidence at SATU for 1 year, plus a further year with patient consent	24-hour response to people 14 years and over in 6 locations.

Appendix 5 - Victims' commissioners in other jurisdictions

South Australia

In 2006 South Australia constituted the first such Commissioner by renaming the Victims of Crime Coordinator as the Commissioner for Victims Rights and progressing fundamental changes to the role and its powers,[11] including legislating to make the role that of an independent statutory officer.[12] This jurisdiction provides a basis for model reform given the established history of the Office and the progressive work undertaken in that time. The role is likened to that of a crime victim ombudsman[13] 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.[14] The powers of the role also go

[7] Arthur S. Chancellor and ProQuest Ebooks, Investigating Sexual Assault Cases (CRC Press, Second ed, 2022;2021)
[8] Sheridan Miyamoto et al, 'The Sexual Assault Forensic Examination Telehealth (SAFE-T) Center: A Comprehensive, Nurse-led Telehealth Model to Address Disparities in Sexual Assault Care' (2021). 37(1) The Journal of rural health 92
[9] Megan Greeson, Rebecca Campbell and Deborah Bybee, 'Sexual assault response team (SART) functioning and effectiveness: Findings from the National SART Project' National Institute of Justice (online)
[10] Megan Greeson, Rebecca Campbell and Deborah Bybee, 'Sexual assault response team (SART) functioning and effectiveness: Findings from the National SART Project' National Institute of Justice (online) https://www.nsvrc.org/sites/default/files/publication_researchbrief_sexual-assault-response-team-functioning-effectiveness.pdf
[11] Annie Wegrzyn, Megan R. Greeson and Martina Mihelicova, 'A Qualitative Examination of Collaborative Infrastructure within Sexual Assault Response Teams' (2021). 68(1-2) *American journal of community psychology* 154.
[12] Annie Wegrzyn, Megan R. Greeson and Martina Mihelicova, 'A Qualitative Examination of Collaborative Infrastructure within Sexual Assault Response Teams' (2021). 68(1-2) *American journal of community psychology* 154, 157-162.
[13] Kane, Daniel et al, 'Collection and Storage of Forensic Evidence to Enable Subsequent Reporting of a Sexual Crime to the Police "Option 3"—an Irish Experience' (2021). 190 *Irish journal of medical science* 1591

beyond that of a conventional ombudsman.[15] The South Australian Commissioner also has the ability to represent victims and intervene in proceedings with the approval of the victim.[16]

New South Wales

The NSW Commissioner of Victims' Rights (NSW Commissioner) has the power to make enquiries, conduct investigations and compel evidence.[17] These powers provide the NSW Commissioner with the capacity to look into complaints where charter rights have been denied to victims, including, potentially, the right to be kept informed and consulted as to pre-trial prosecutorial decisions.[18] So while the NSW Commissioner lacks any specific power to represent victims, they do arguably have power to take up a victim's case, where the Commissioner decides to investigate a failure to maintain a right provided under the charter.[19]

Australian Capital Territory

The ACT Victim of Crime Commissioner is an independent statutory appointment.[20] Their functions are less investigative than other jurisdictions and focus more on advocacy, education and collaboration. Such functions include managing victims' services and financial assistance schemes; advocating for the interests of victims; monitoring and compliance with victims' rights; ensuring victims concerns are dealt with promptly and efficiently; promoting awareness of the interests of victims of crime and advising the ACT Attorney-General on matters relating to victims of crime.[21] The ACT Commissioner is entitled to be present at the hearing of a proceeding in court in respect to any offence, including any part of the proceeding held in private, unless otherwise directed by the court.[22]

Western Australia

The Office of the Commissioner for Victims of Crime in Western Australia promotes and safeguards the interests of victims of crime in Western Australia. The Commissioner is not statutorily appointed and does not have the powers of Commissioners in other jurisdictions. The Commissioner currently helps to facilitate laws, assist victims in navigating the criminal justice system and seeks to educate the community, for example by releasing videos related to family violence restraining orders[23] and a factsheet regarding intimate image laws.[24]

Victoria

The Victorian Victims of Crime Commissioner is an independent statutory appointment.[25] The functions of the Victorian Commissioner include advocacy, and the power to inquire into systemic issues impacting large number of victims and particular groups. The Victorian Commissioner reports to the Attorney-General on these issues and gives advice to the government regarding improvements to the justice system to meet the needs of victims of crime.[26] The Commissioner is also empowered to consider complaints from victims about investigatory, prosecuting and victims' service organisations regarding their compliance with the Victorian Victims Charter.[27] The Victorian Commissioner is currently undertaking a systemic inquiry on victim participation in the justice system.[28]

England and Wales

The Victims' Commissioner for England and Wales is 'dedicated to improving how the criminal justice system works for all victims and witnesses'.[29] Its role is to raise awareness of the common issues faced by victims and witnesses; monitor how criminal justice and victim support agencies comply with the Victims' Code and Witness Charter; conduct detailed research and produce comprehensive reviews; use their independent voice to influence national policy-making and hold partner agencies to account; and speak up about what works best for all victims and witnesses, especially the most vulnerable. [30]

The Domestic Abuse Commissioner is appointed by the Secretary of State to 'encourage good practice' in: the prevention of domestic abuse, the investigation and prosecution of offences involving domestic abuse, the identification of perpetrators, victims and children affected and the provisions of protection and support to people affected.[31] The Commissioner can assess, monitor and publish information about the provision of services, make recommendations to public authorities, undertake research, provide training and cooperate with public authorities and voluntary organisations. The Commissioner's website says that she is 'an independent voice that speaks on behalf of victims and survivors' and that she 'will use her statutory powers, which are set out in the Domestic Abuse Bill, to raise public awareness and hold both agencies and government to account in tackling domestic abuse'.[32]

[1] Australian Law Reform Commission, *Legal definitions of Aboriginality* [online, 28 July 2010]. https://www.alrc.gov.au/publication/essentially-yours-the-protection-of-human-genetic-information-in-australia-alrc-report-96/36-kinship-and-identity/legal-definitions-of-aboriginality/
[2] Penal Reform International UN Bangkok Rules (online, nd) https://www.penalreform.org/
[3] Caxton Legal Centre, Prisoners' Grievances [accessed May 2022] https://queenslandlawhandbook.org.au/the-queensland-law-handbook/offenders-and-victims/prisons-and-prisoners/prisoners-grievances/
[4] Queensland Courts, '*Court Link: what is court link?*' [online, 6 April 2021]. https://www.courts.qld.gov.au/services/court-programs/court-link
[5] See Saxena, Preeta, Nena P. Messina and Christine E. Grella, 'Who Benefits from Gender-Responsive Treatment?: Accounting for Abuse History on Longitudinal Outcomes for Women in Prison' (2014). 41(4) *Criminal justice and behavior* 417-418
[6] See Georgia Zara, David P. Farrington and ProQuest Ebooks, Criminal Recidivism: Explanation, Prediction and Prevention (Routledge, 2016;2015;) 1
[7] For discussion see Michael C. Gearhart and Riley Tucker, 'Criminogenic Risk, Criminogenic Need, Collective Efficacy, and Juvenile Delinquency' (2020). 47(9) *Criminal justice and behavior* 1116
[8] See Karen Rich, 'Trauma-Informed Police Responses to Rape Victims' (2019). 28(4) *Journal of aggression, maltreatment & trauma* 463
[9] See Karen Rich, 'Trauma-Informed Police Responses to Rape Victims' (2019). 28(4) *Journal of aggression, maltreatment & trauma* 463, 465
[10] WWILD, https://wwild.org.au/
[11] South Australia, The South Australian Government Gazette, No 61, 19 October 2006, 3724; South Australia, The South Australian Government Gazette, No 39, 17 July 2008, 3350.
[12] Victims of Crime Act (SA) (n 8) ss 16, 16E, 31.
[13] Victims of Crime Act (SA) (n 8) s 16A.
[14] Victims of Crime Act (SA) (n 8) s 16A.
[15] Victims of Crime Act (SA) (n 8) s 16; by, for example advising the Attorney-General on how to marshal resources to effectively and efficiently help victims; assisting victims in dealing with the criminal justice system; consulting with prosecutors in the interest of victims; consulting with judges about court practices and procedures and their effect on victims and monitoring the effect of the law on victims and their families – See [15] Tyrone Kirchengast, Mary Iliadis and Michael O'Connell, 'Development of the Office of Commissioner of Victims' Rights as an Appropriate Response to Improving the Experiences of Victims in the Criminal Justice System: Integrity, Access and Justice for Victims of Crime' (2019) 45(1) *Monash University Law Review* 7; Victims of Crime Act (SA) (n 8) s 16 ss 16, 32A. See also Michael O'Connell, 'Commissioner for Victims' Rights: Strengthening Victims' Rights?' in Hidemichi Morosawa, John JP Dussich and Gerd Ferdinand Kirchhoff (eds), Victimology and Human Security: New Horizons (Wolf Legal Publishers, 2012) 191.
[16] Section 32A of the *Victims of Crime Act 2001* (SA) authorises the Commissioner, with the victim's approval, to either in-person or through legal counsel, exercise any right that the victim is entitled to under the Declaration of Principles Governing Treatment of Victims (*Victims of Crime Act (SA)* s 32A, pt 2 div 2.)
[17] *Victims Rights and Support Act 2013* (NSW) ss 11-12
[18] Eg: those provided in support of victims of sexual violence under s 6.5(2) of the *Charter of Rights of Victims of Crime:* (*Victims Rights and Support Act 2013 (NSW))* - A victim will be consulted before a decision referred to in paragraph (b) above is taken if the accused has been charged with a serious crime that involves sexual violence or that results in actual bodily harm or psychological or psychiatric harm to the victim, unless: (a) the victim has indicated that he or she does not wish to be so consulted, or (b) the whereabouts of the victim cannot be ascertained after reasonable inquiry.
[19] Tyrone Kirchengast, Mary Iliadis and Michael O'Connell, 'Development of the Office of Commissioner of Victims' Rights as an Appropriate Response to Improving the Experiences of Victims in the Criminal Justice System: Integrity, Access and Justice for Victims of Crime' (2019) 45(1) *Monash University Law Review* 8.
[20] Established under *Victims of Crime Act 1994* (ACT) s 7.
[21] *Victims of Crime Act 1994* (ACT) s 11.
[22] *Victims of Crime Act 1994* (ACT) s 13.
[23] Available at: https://www.wa.gov.au/organisation/department-of-justice/commissioner-victims-of-crime Accessed 2 February 2022
[24] Government of Western Australia, Office of the Commissioner for Victims of Crime, *Western Australia's Intimate Image Laws Frequently Asked Questions* Available at: https://www.wa.gov.au/system/files/2021-03/intimate-image-laws-faqs.pdf Accessed 3 February 2022
[25] *Victims of Crime Commissioner Act 2015* (Qld) s 7
[26] *Victims of Crime Commissioner Act 2015* (Qld) s 13

[27] *Victims' Charter Act 2006* Division 3A
[28] Victims of Crime Commissioner (Victoria), Systemic Injuries, How victims of crime can be involved in the systemic inquiry Available at: https://www.victimsofcrimecommissioner.vic.gov.au/victim-engagement-inquiry Accessed 3 February 2022.
[29] Victims' Commissioner for England and Wales website 'What we do' https://victimscommissioner.org.uk/about-us/what-we-do/ Accessed 6 June 2022
[30] Victims' Commissioner for England and Wales website 'What we do' https://victimscommissioner.org.uk/about-us/what-we-do/ Accessed 6 June 2022
[31] *Domestic Abuse Act 2021, s7*
[32] Domestic Abuse Commissioner website https://domesticabusecommissioner.uk/ Accessed 6 June 2022

Appendix 6 - Criminal Procedure Act 1986 (NSW) and Evidence Act 1995 (NSW)

Special witness measures

In New South Wales, the section enabling a complainant who gives evidence about a prescribed sexual offence to choose to give evidence in a remote room or by alternative arrangements, is outlined in the *Criminal Procedure Act 1986* (NSW):

294B Giving of evidence by complainant in prescribed sexual offence proceedings--alternative arrangements

(1) This section applies to evidence given in proceedings (including a new trial) in respect of a prescribed sexual offence.

(1A) This section applies (with any necessary modifications) to the giving of evidence in apprehended violence order proceedings by a protected person in the same way as it applies to the giving of evidence in criminal proceedings by a complainant but only if--

(a) the defendant in the proceedings is a person who is charged with a prescribed sexual offence, and

(b) the protected person is the alleged victim of the offence.

(2) This section does not apply to or in respect of the giving of evidence by a vulnerable person if Division 4 of Part 6 applies to the giving of that evidence.

(2A) This section applies in addition to Part 4B, if the complainant is a domestic violence complainant.

(3) A complainant who gives evidence to which this section applies is entitled (but may choose not)--

(a) to give that evidence from a place other than the courtroom by means of closed-circuit television facilities or other technology that enables communication between that place and the courtroom, or

(b) to give that evidence by use of alternative arrangements made to restrict contact (including visual contact) between the complainant and the accused person or any other person or persons in the courtroom, including the following--

(i) use of screens,

(ii) planned seating arrangements for people who have an interest in the proceedings (including the level at which they are seated and the people in the complainant's line of vision).

(4) If, to enable evidence to be given as referred to in subsection (3), the court considers it appropriate to do so, the court may adjourn the proceeding or any part of the proceeding from the courtroom to another court or place.

(5) Despite subsection (3) (a), a complainant must not give evidence as referred to in that paragraph if a court, on its own initiative or on application by a party to the proceeding, orders that such means not be used.

(6) A court may make an order under subsection (5) only if it is satisfied that there are special reasons, in the interests of justice, for the complainant's evidence not to be given by such means.

(7) In any proceedings in which evidence is given as referred to in subsection (3), the judge must--

(a) inform the jury that it is standard procedure for complainants' evidence in such cases to be given by those means or use of those arrangements, and

(b) warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because it is given by those means or by use of those arrangements.

(8) Any place outside the courtroom from which a complainant gives evidence under this section is taken to be part of the courtroom in which the proceeding is being held.

(9) If a complainant gives evidence as referred to in subsection (3) in a place other than a courtroom, the court may order that a court officer be present at that place.

(10) This section extends to evidence given in proceedings instituted before the commencement of this section, including a new trial that was ordered to take place before that commencement and proceedings that have been partly heard.

Note: Part 3B of the Witness Protection Act 1995 provides for alternative arrangements for the giving of evidence by a person who is, or was, a participant in a witness protection program under that Act.

Cross-examination in relation to an 'improper question'

In New South Wales, the section about improper questions is outlined in the *Evidence Act 1995 (NSW)* as follows:

41 Improper questions

(1) The court must disallow a question put to a witness in cross-examination, or inform the witness that it need not be answered, if the court is of the opinion that the question (referred to as a "disallowable question")--

(a) is misleading or confusing, or

(b) is unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive, or

(c) is put to the witness in a manner or tone that is belittling, insulting or otherwise inappropriate, or

(d) has no basis other than a stereotype (for example, a stereotype based on the witness's sex, race, culture, ethnicity, age or mental, intellectual or physical disability).

(2) Without limiting the matters the court may take into account for the purposes of subsection (1), it is to take into account--

(a) any relevant condition or characteristic of the witness of which the court is, or is made, aware, including age, education, ethnic and cultural background, gender, language background and skills, level of maturity and understanding and personality, and

(b) any mental, intellectual or physical disability of which the court is, or is made, aware and to which the witness is, or appears to be, subject, and

(c) the context in which the question is put, including--

(i) the nature of the proceeding, and

(ii) in a criminal proceeding--the nature of the offence to which the proceeding relates, and

(iii) the relationship (if any) between the witness and any other party to the proceeding.

(3) A question is not a disallowable question merely because--

(a) the question challenges the truthfulness of the witness or the consistency or accuracy of any statement made by the witness, or

(b) the question requires the witness to discuss a subject that could be considered distasteful to, or private by, the witness.

(4) A party may object to a question put to a witness on the ground that it is a disallowable question.

(5) However, the duty imposed on the court by this section applies whether or not an objection is raised to a particular question.

(6) A failure by the court to disallow a question under this section, or to inform the witness that it need not be answered, does not affect the admissibility in evidence of any answer given by the witness in response to the question.

Note: A person must not, without the express permission of a court, print or publish any question that the court has disallowed under this section—see section 195.

Recording the evidence of victims and special witnesses to be used in any retrial

In New South Wales, the sections which allow for the evidence of the complainant or special witness in sexual offence proceedings to be used in any retrial are contained in Chapter 6, Part 5, Divisions 3 and 4 of the *Criminal Procedure Act 1986* (NSW):

Chapter 6, Part 5, Divisions 3 and 4

Division 3 – Special Provisions Relating to Retrials of Sexual Offence Proceedings

306A Definitions

306B Admission of evidence of complainant or special witness in new trial proceedings

306C Complainant or special witness not compellable to give further evidence

306D Complainant or special witness may elect to give further evidence

306E Form in which record of original evidence of complainant or special witness is to be tendered

306F Access to audio visual or audio recording

306G Exhibits may also be tendered

Division 4 – Special Provisions Relating to Subsequent Trials of Sexual Offence Proceedings

Note

306H Definitions

306I Admission of evidence of complainant or special witness in new trial proceedings

306J Whether complainant or special witness compellable to give further evidence

306K Complainant or special witness may elect to give further evidence

306L Application of provisions dealing with form of record of original evidence, access to recordings and exhibits

Appendix 7 - Criminal Procedure Act 2009 (Vic)

389A Application of Division

(1) This Division applies to a criminal proceeding that relates (wholly or partly) to a charge for—

(a) a sexual offence; or

(b) an offence if the conduct constituting the offence consists of family violence within the meaning of the Family Violence Protection Act 2008; or

(c) an indictable offence which involves an assault on, or injury or a threat of injury to, a person; or

(d) any offences against section 23 or 24 of the Summary Offences Act 1966 if the offences are related offences to an offence specified in paragraph (a) or (c), despite whether any such related offences are withdrawn or dismissed before an offence against section 23 or 24 of the Summary Offences Act 1966 is heard and determined.

(2) This Division applies at any stage of the criminal proceeding, including an appeal or rehearing.

(3) This Division applies to a witness (including a complainant) other than the accused in a criminal proceeding referred to in subsection (1) if the witness is—

(a) a person under the age of 18 years; or

(b) a person with a cognitive impairment.

(4) In this Division, "witness" means a witness referred to in subsection (3).

389B Ground rules hearing to be held

(1) The court may direct that a ground rules hearing under this Division is to be held.

Note

Section 337(1) enables this direction to be made by the court on the application of a party or on its own motion.

(2) An application for the court to direct that a ground rules hearing is to be held may be made orally or in writing.

(3) A ground rules hearing must be held if an intermediary is appointed under Division 2.

389C Time limits for ground rules hearing

(1) If a ground rules hearing is to be held, it must be held before the commencement of any hearing at which a witness is to give evidence.

(2) The court may extend the time for holding a ground rules hearing if the court considers that it is in the interests of justice to do so.

(3) The court may extend time under subsection (2) before or after the time expires.

(4) More than one extension of time may be granted under subsection (2).

389D Attendance for ground rules hearings

(1) The following persons must attend a ground rules hearing—

(a) a person acting for the prosecution;

(b) the legal practitioner representing the accused or, if the accused is unrepresented, the accused;

(c) the intermediary appointed for a witness, if any.

(2) A witness is not required to attend a ground rules hearing.

(3) The court may make an order that a witness for whom an intermediary is appointed not attend a ground rules hearing.

389E Directions which may be given at ground rules hearings

(1) At a ground rules hearing, the court may make or vary any direction for the fair and efficient conduct of the proceeding.

(2) Without limiting subsection (1), the court may give one or more of the following directions—

(a) a direction about the manner of questioning a witness;

(b) a direction about the duration of questioning a witness;

(c) a direction about the questions that may or may not be put to a witness;

(d) if there is more than one accused, a direction about the allocation among the accused of the topics about which a witness may be asked;

(e) a direction about the use of models, plans, body maps or similar aids to help communicate a question or an answer;

(f) a direction that if a party intends to lead evidence that contradicts or challenges the evidence of a witness or that otherwise discredits a witness, the party is not obliged to put that evidence in its entirety to the witness in cross-examination.

Note

A direction referred to in paragraph (f) may exclude all or part of the operation of the rule attributed to *Browne v Dunn* (1893) 6 R 67 followed and applied in criminal proceedings in Victoria in *R v McDowell* [1997] 1 VR 473 (CA), *R v MG* (2006) 175 A Crim R 342, *R v SWC* (2007) 175 A Crim R 71 and *R v Ferguson* (2009) 24 VR 531 in the circumstances in which, and in relation to witnesses to which, this Division applies.

Appendix 8 - Royal Commission into Institutional Reponses to Child Sexual Abuse recommendations about tendency and coincidence evidence

44. In order to ensure justice for complainants and the community, the laws governing the admissibility of tendency and coincidence evidence in prosecutions for child sexual abuse offences should be reformed to facilitate greater admissibility and cross-admissibility of tendency and coincidence evidence and joint trials.

45. Tendency or coincidence evidence about the defendant in a child sexual offence prosecution should be admissible:

a. if the court thinks that the evidence will, either by itself or having regard to the other evidence, be 'relevant to an important evidentiary issue' in the proceeding, with each of the following kinds of evidence defined to be 'relevant to an important evidentiary issue' in a child sexual offence proceeding:

i. evidence that shows a propensity of the defendant to commit particular kinds of offences if the commission of an offence of the same or a similar kind is in issue in the proceeding

ii. evidence that is relevant to any matter in issue in the proceeding if the matter concerns an act or state of mind of the defendant and is important in the context of the proceeding as a whole

b. unless, on the application of the defendant, the court thinks, having regard to the particular circumstances of the proceeding, that both:

i. admission of the evidence is more likely than not to result in the proceeding being unfair to the defendant

ii. if there is a jury, the giving of appropriate directions to the jury about the relevance and use of the evidence will not remove the risk.

46. Common law principles or rules that restrict the admission of propensity or similar fact evidence should be explicitly abolished or excluded in relation to the admissibility of tendency or coincidence evidence about the defendant in a child sexual offence prosecution.

47. Issues of concoction, collusion or contamination should not affect the admissibility of tendency or coincidence evidence about the defendant in a child sexual offence prosecution. The court should determine admissibility on the assumption that the evidence will be accepted as credible and reliable, and the impact of any evidence of concoction, collusion or contamination should be left to the jury or other fact-finder.

48. Tendency or coincidence evidence about a defendant in a child sexual offence prosecution should not be required to be proved beyond reasonable doubt.

49. Evidence of:

a. the defendant's prior convictions

b. acts for which the defendant has been charged but not convicted (other than acts for which the defendant has been acquitted)

should be admissible as tendency or coincidence evidence if it otherwise satisfies the test for admissibility of tendency or coincidence evidence about a defendant in a child sexual offence prosecution.

50. Australian governments should introduce legislation to make the reforms we recommend to the rules governing the admissibility of tendency and coincidence evidence.

51. The draft provisions in Appendix N provide for the recommended reforms for Uniform Evidence Act jurisdictions. Legislation to the effect of the draft provisions should be introduced for Uniform Evidence Act jurisdictions and non–Uniform Evidence Act jurisdictions.[2716]

Appendix 9 - *Evidence Act 1995* (NSW) Part 3.6

97 The tendency rule

(1) Evidence of the character, reputation or conduct of a person, or a tendency that a person has or had, is not admissible to prove that a person has or had a tendency (whether because of the person's character or otherwise) to act in a particular way, or to have a particular state of mind unless—

(a) the party seeking to adduce the evidence gave reasonable notice in writing to each other party of the party's intention to adduce the evidence, and

(b) the court thinks that the evidence will, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, have significant probative value.

(2) Subsection (1) (a) does not apply if—

(a) the evidence is adduced in accordance with any directions made by the court under section 100, or

(b) the evidence is adduced to explain or contradict tendency evidence adduced by another party.

Note—

The tendency rule is subject to specific exceptions concerning character of and expert opinion about accused persons (sections 110 and 111). Other provisions of this Act, or of other laws, may operate as further exceptions.

97A Admissibility of tendency evidence in proceedings involving child sexual offences

(1) This section applies in a criminal proceeding in which the commission by the defendant of an act that constitutes, or may constitute, a child sexual offence is a fact in issue.

(2) It is presumed that the following tendency evidence about the defendant will have significant probative value for the purposes of sections 97(1)(b) and 101(2)—

(a) tendency evidence about the sexual interest the defendant has or had in children (even if the defendant has not acted on the interest),

(b) tendency evidence about the defendant acting on a sexual interest the defendant has or had in children.

(3) Subsection (2) applies whether or not the sexual interest or act to which the tendency evidence relates was directed at a complainant in the proceeding, any other child or children generally.

(4) Despite subsection (2), the court may determine that the tendency evidence does not have significant probative value if it is satisfied that there are sufficient grounds to do so.

(5) The following matters (whether considered individually or in combination) are not to be taken into account when determining whether there are sufficient grounds for the purposes of subsection (4) unless the court considers there are exceptional circumstances in relation to those matters (whether considered individually or in combination) to warrant taking them into account—

(a) the sexual interest or act to which the tendency evidence relates (the **tendency sexual interest or act**) is different from the sexual interest or act alleged in the proceeding (the **alleged sexual interest or act**),

(b) the circumstances in which the tendency sexual interest or act occurred are different from circumstances in which the alleged sexual interest or act occurred,

(c) the personal characteristics of the subject of the tendency sexual interest or act (for example, the subject's age, sex or gender) are different to those of the subject of the alleged sexual interest or act,

(d) the relationship between the defendant and the subject of the tendency sexual interest or act is different from the relationship between the defendant and the subject of the alleged sexual interest or act,

(e) the period of time between the occurrence of the tendency sexual interest or act and the occurrence of the alleged sexual interest or act,

(f) the tendency sexual interest or act and alleged sexual interest or act do not share distinctive or unusual features,

(g) the level of generality of the tendency to which the tendency evidence relates.

(6) In this section—

child means a person under 18 years of age.

child sexual offence means each of the following offences (however described and regardless of when it occurred)—

(a) an offence against, or arising under, a law of this State involving sexual intercourse with, or any other sexual offence against, a person who was a child at the time of the offence, or

(b) an offence against, or arising under, a law of this State involving an unlawful sexual act with, or directed towards, a person who was a child at the time of the offence, or

(c) an offence against, or arising under, a law of the Commonwealth, another State, a Territory or a foreign country that, if committed in this State, would have been an offence of a kind referred to in paragraph (a) or (b), but does not include conduct of a person that has ceased to be an offence since the time when the person engaged in the conduct.

98 The coincidence rule

(1) Evidence that 2 or more events occurred is not admissible to prove that a person did a particular act or had a particular state of mind on the basis that, having regard to any similarities in the events or the circumstances in which they occurred, or any similarities in both the events and the circumstances in which they occurred, it is improbable that the events occurred coincidentally unless—

(a) the party seeking to adduce the evidence gave reasonable notice in writing to each other party of the party's intention to adduce the evidence, and

(b) the court thinks that the evidence will, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, have significant probative value.

Note—

One of the events referred to in subsection (1) may be an event the occurrence of which is a fact in issue in the proceeding.

(1A) To avoid doubt, subsection (1) includes the use of evidence from 2 or more witnesses claiming they are victims of offences committed by a person who is a defendant in a criminal proceeding to prove, on the basis of similarities in the claimed acts or the circumstances in which they occurred, that the defendant did an act in issue in the proceeding.

(2) Subsection (1) (a) does not apply if—

(a) the evidence is adduced in accordance with any directions made by the court under section 100, or

(b) the evidence is adduced to explain or contradict coincidence evidence adduced by another party.

Note—

Other provisions of this Act, or of other laws, may operate as exceptions to the coincidence rule.

101 Further restrictions on tendency evidence and coincidence evidence adduced by prosecution

(1) This section only applies in a criminal proceeding and so applies in addition to sections 97 and 98.

(2) Tendency evidence about a defendant, or coincidence evidence about a defendant, that is adduced by the prosecution cannot be used against the defendant unless the probative value of the evidence outweighs the danger of unfair prejudice to the defendant.

(3) This section does not apply to tendency evidence that the prosecution adduces to explain or contradict tendency evidence adduced by the defendant.

(4) This section does not apply to coincidence evidence that the prosecution adduces to explain or contradict coincidence evidence adduced by the defendant.

Appendix 10 - Royal Commission into Institutional Responses to Child Sexual Abuse recommendations about jury directions

64. State and territory governments should consider or reconsider the desirability of partial codification of judicial directions now that Victoria has established a precedent from which other jurisdictions could develop their own reforms.

65. Each state and territory government should review its legislation and introduce any amending legislation necessary to ensure that it has the following provisions in relation to judicial directions and warnings:

a. Delay and credibility: Legislation should provide that: i. there is no requirement for a direction or warning that delay affects the complainant's credibility

ii. the judge must not direct, warn or suggest to the jury that delay affects the complainant's credibility unless the direction, warning or suggestion is requested by the accused and is warranted on the evidence in the particular circumstances of the trial

iii. in giving any direction, warning or comment, the judge must not use expressions such as 'dangerous or unsafe to convict' or 'scrutinise with great care'.

b. Delay and forensic disadvantage: Legislation should provide that:

i. there is no requirement for a direction or warning as to forensic disadvantage to the accused

ii. the judge must not direct, warn or suggest to the jury that delay has caused forensic disadvantage to the accused unless the direction, warning or suggestion is requested by the accused and there is evidence that the accused has suffered significant forensic disadvantage

iii. the mere fact of delay is not sufficient to establish forensic disadvantage

iv. in giving any direction, warning or comment, the judge should inform the jury of the nature of the forensic disadvantage suffered by the accused

v. in giving any direction, warning or comment, the judge must not use expressions such as 'dangerous or unsafe to convict' or 'scrutinise with great care'.

c. Uncorroborated evidence: Legislation should provide that the judge must not direct, warn or suggest to the jury that it is 'dangerous or unsafe to convict' on the uncorroborated evidence of the complainant or that the uncorroborated evidence of the complainant should be 'scrutinised with great care'.

d. Children's evidence: Legislation should provide that: i. the judge must not direct, warn or suggest to the jury that children as a class are unreliable witnesses

ii. the judge must not direct, warn or suggest to the jury that it would be 'dangerous or unsafe to convict' on the uncorroborated evidence of a child or that the uncorroborated evidence of a child should be 'scrutinised with great care'

iii. the judge must not give a direction or warning about, or comment on, the reliability of a child's evidence solely on account of the age of the child.

66. The New South Wales Government, the Queensland Government and the government of any other state or territory in which Markuleski directions are required should consider introducing legislation to abolish any requirement for such directions.

71. 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.

Appendix 11 - Jury Directions in New South Wales and Victoria

New South Wales

Crimes Legislation Amendment (Sexual Consent Reforms) Bill 2021

Subdivision 3 Directions to jury—consent

292 Directions in relation to consent

(1) This Subdivision applies to a trial of a person for an offence, or attempt to commit an offence, against the Crimes Act 1900, section 61I, 61J, 61JA, 61KC, 61KD, 61KE or 61KF.

(2) In a trial to which this Subdivision applies, the judge must give any 1 or more of the directions set out in sections 292A–292E (a consent direction)—

(a) if there is a good reason to give the consent direction, or

(b) if requested to give the consent direction by a party to the proceedings, unless there is a good reason not to give the direction.

(3) A judge is not required to use a particular form of words in giving a consent direction.

(4) A judge may, as the judge sees fit—

(a) give a consent direction at any time during a trial, and

(b) give the same consent direction on more than 1 occasion during a trial.

292A Circumstances in which non-consensual sexual activity occurs

Direction— Non-consensual sexual activity can occur—

(a) in many different circumstances, and

(b) between different kinds of people including—

(i) people who know one another, or

(ii) people who are married to one another, or (iii) people who are in an established relationship with one another.

292B Responses to non-consensual sexual activity

Direction—

(a) there is no typical or normal response to non-consensual sexual activity, and

(b) people may respond to non-consensual sexual activity in different ways, including by freezing and not saying or doing anything, and

(c) the jury must avoid making assessments based on preconceived ideas about how people respond to non-consensual sexual activity.

292C Lack of physical injury, violence or threats

Direction—

(a) people who do not consent to a sexual activity may not be physically injured or subjected to violence, or threatened with physical injury or violence, and

(b) the absence of injury or violence, or threats of injury or violence, does not necessarily mean that a person is not telling the truth about an alleged sexual offence.

292D Responses to giving evidence

Direction—

(a) trauma may affect people differently, which means that some people may show obvious signs of emotion or distress when giving evidence in court about an alleged sexual offence, but others may not, and

(b) the presence or absence of emotion or distress does not necessarily mean that a person is not telling the truth about an alleged sexual offence.

292E Behaviour and appearance of complainant

Direction— It should not be assumed that a person consented to a sexual activity because the person—

(a) wore particular clothing or had a particular appearance, or

(b) consumed alcohol or another drug, or

(c) was present in a particular location.

Victoria

Jury Directions Act 2015 (Vic)

46 Direction on consent

(1) The prosecution or defence counsel may request under section 12 that the trial judge direct the jury on consent.

(2) In making a request referred to in subsection (1), the prosecution or defence counsel (as the case requires) must specify—

(a) in the case of a request for a direction on the meaning of consent—one or more of the directions set out in subsection (3); or

(b) in the case of a request for a direction on the circumstances in which a person is taken not to have consented to an act—one or more of the directions set out in subsection (4).

Note

Section 36 of the Crimes Act 1958 provides that consent means free agreement. That section also sets out circumstances in which a person has not consented to an act.

(3) For the purposes of subsection (2)(a), the prosecution or defence counsel may request that the trial judge—

(a) inform the jury that a person can consent to an act only if the person is capable of consenting and free to choose whether or not to engage in or allow the act; or

(b) inform the jury that where a person has given consent to an act, the person may withdraw that consent either before the act takes place or at any time while the act is taking place; or

(c) inform the jury that experience shows that—

(i) there are many different circumstances in which people do not consent to a sexual act; and

(ii) people who do not consent to a sexual act may not be physically injured or subjected to violence, or threatened with physical injury or violence; or

(d) inform the jury that experience shows that—

(i) people may react differently to a sexual act to which they did not consent and that there is no typical, proper or normal response; and

(ii) people who do not consent to a sexual act may not protest or physically resist the act; or

Example

The person may freeze and not do or say anything.

(e) inform the jury that experience shows that people who do not consent to a sexual act with a particular person on one occasion, may have on one or more other occasions engaged in or been involved in consensual sexual activity—

(i) with that person or another person; or

(ii) of the same kind or a different kind.

(4) For the purposes of subsection (2)(b), the prosecution or defence counsel may request that the trial judge—

(a) inform the jury of the relevant circumstances in which the law provides that a person does not consent to an act; or

(b) direct the jury that if the jury is satisfied beyond reasonable doubt that a circumstance referred to in section 36 of the Crimes Act 1958 existed in relation to a person, the jury must find that the person did not consent to the act.

47 Direction on reasonable belief in consent

(1) The prosecution or defence counsel may request under section 12 that the trial judge direct the jury on reasonable belief in consent.

(2) In making a request referred to in subsection (1), the prosecution or defence counsel (as the case requires) must specify one or more of the directions set out in subsection (3).

(3) For the purposes of subsection (2), the prosecution or defence counsel may request that the trial judge—

(a) direct the jury that if the jury concludes that the accused knew or believed that a circumstance referred to in section 36 of the Crimes Act 1958 existed in relation to a person, that knowledge or belief is enough to show that the accused did not reasonably believe that the person was consenting to the act; or

(b) direct the jury that in determining whether the accused who was intoxicated had a reasonable belief at any time—

(i) if the intoxication was self-induced, regard must be had to the standard of a reasonable person who is not intoxicated and who is otherwise in the same circumstances as the accused at the relevant time; and

(ii) if the intoxication is not self-induced, regard must be had to the standard of a reasonable person intoxicated to the same extent as the accused and who is in the same circumstances as the accused at the relevant time; or

(c) direct the jury that—

(i) a belief in consent based solely on a general assumption about the circumstances in which people consent to a sexual act (whether or not that assumption is informed by any particular culture, religion or other influence) is not a reasonable belief; and

(ii) a belief in consent based on a combination of matters including such a general assumption is not a reasonable belief to the extent that it is based on such an assumption; or

(d) direct the jury that in determining whether the accused had a reasonable belief in consent, the jury must consider what the community would reasonably expect of the accused in the circumstances in forming a reasonable belief in consent; or

(e) direct the jury that in determining whether the accused had a reasonable belief in consent, the jury may take into account any personal attribute, characteristic or circumstance of the accused.

(4) A good reason for not giving the direction set out in subsection (3)(e) is that the personal attribute, characteristic or circumstance—

(a) did not affect, or is not likely to have affected, the accused's perception or understanding of the objective circumstances; or

(b) was something that the accused was able to control; or

(c) was a subjective value, wish or bias held by the accused, whether or not that value, wish or bias was informed by any particular culture, religion or other influence.

Victorian Law Reform Commission, Improving the Justice System Response to Sexual Offences Report

Recommendation

78 New jury directions should be introduced in the *Jury Directions Act 2015* (Vic) to address misconceptions about sexual violence on:

a. an absence or presence of emotion or distress when reporting or giving evidence

b. a person's appearance (including their clothing), use of drugs and alcohol, and presence at a location

c. behaviour perceived to be flirtatious or sexual

d. the many different circumstances in which non-consensual sexual activity may take place, including between:

i. people who know one another

ii. people who are married

iii. people who are in an established relationship

iv. a consumer of sexual content or services and the worker providing the content or services

v. people of the same or different sexual orientations or gender identities

e. counterintuitive behaviours, such as maintaining a relationship or communication with the perpetrator after non-consensual sexual activity.

Recommendation

79 The *Jury Directions Act 2015* (Vic) should be amended so that existing jury directions and jury directions on topics in Recommendation 78 can be:

a. given by the judge to the jury at the earliest opportunity, such as before the evidence is adduced or as soon as practicable after it features in the trial, and

b. repeated by the judge at any time during the trial, and

c. in addition to the judge's own motion, requested by counsel before the trial or any time during the trial.

Appendix 12 - Expert Evidence in Victoria and Uniform Evidence Law jurisdictions

Victoria

Criminal Procedure Act 2009 (Vic)

388 Evidence of specialised knowledge in certain cases

Despite any rule of law to the contrary, in a criminal proceeding that relates (wholly or partly) to a charge for a sexual offence, the court may receive evidence of a person's opinion that is based on that person's specialised knowledge (acquired through training, study or experience) of—

(a) the nature of sexual offences; and

(b) the social, psychological and cultural factors that may affect the behaviour of a person who has been the victim, or who alleges that he or she has been the victim, of a sexual offence, including the reasons that may contribute to a delay on the part of the victim to report the offence.

Commonwealth

Evidence Act 1995 (Cth)

76 The opinion rule

(1) Evidence of an opinion is not admissible to prove the existence of a fact about the existence of which the opinion was expressed.

(2) Subsection (1) does not apply to evidence of an opinion contained in a certificate or other document given or made under regulations made under an Act other than this Act to the extent to which the regulations provide that the certificate or other document has evidentiary effect.

Note: Specific exceptions to the opinion rule are as follows:

- summaries of voluminous or complex documents (subsection 50(3));
- evidence relevant otherwise than as opinion evidence (section 77);
- lay opinion (section 78);
- Aboriginal and Torres Strait Islander traditional laws and customs (section 78A);
- expert opinion (section 79);
- admissions (section 81);
- exceptions to the rule excluding evidence of judgments and convictions (subsection 92(3));
- character of and expert opinion about accused persons (sections 110 and 111).

Other provisions of this Act, or of other laws, may operate as further exceptions.

Examples:

(1) P sues D, her doctor, for the negligent performance of a surgical operation. Unless an exception to the opinion rule applies, P's neighbour, W, who had the same operation, cannot give evidence of his opinion that D had not performed the operation as well as his own.

(2) P considers that electrical work that D, an electrician, has done for her is unsatisfactory. Unless an exception to the opinion rule applies, P cannot give evidence of her opinion that D does not have the necessary skills to do electrical work.

77 Exception: evidence relevant otherwise than as opinion evidence

The opinion rule does not apply to evidence of an opinion that is admitted because it is relevant for a purpose other than proof of the existence of a fact about the existence of which the opinion was expressed.

78 Exception: lay opinions

The opinion rule does not apply to evidence of an opinion expressed by a person if:

(a) the opinion is based on what the person saw, heard or otherwise perceived about a matter or event; and

(b) evidence of the opinion is necessary to obtain an adequate account or understanding of the person's perception of the matter or event.

78A Exception: Aboriginal and Torres Strait Islander traditional laws and customs

The opinion rule does not apply to evidence of an opinion expressed by a member of an Aboriginal or Torres Strait Islander group about the existence or non-existence, or the content, of the traditional laws and customs of the group.

79 Exception: opinions based on specialised knowledge

(1) If a person has specialised knowledge based on the person's training, study or experience, the opinion rule does not apply to evidence of an opinion of that person that is wholly or substantially based on that knowledge.

(2) To avoid doubt, and without limiting subsection (1):

(a) a reference in that subsection to specialised knowledge includes a reference to specialised knowledge of child development and child behaviour (including specialised knowledge of the impact of sexual abuse on children and their development and behaviour during and following the abuse); and

(b) a reference in that subsection to an opinion of a person includes, if the person has specialised knowledge of the kind referred to in paragraph (a), a reference to an opinion relating to either or both of the following:

(i) the development and behaviour of children generally;

(ii) the development and behaviour of children who have been victims of sexual offences, or offences similar to sexual offences.

80 Ultimate issue and common knowledge rules abolished

Evidence of an opinion is not inadmissible only because it is about:

(a) a fact in issue or an ultimate issue; or

(b) a matter of common knowledge.

108C Exception: evidence of persons with specialised knowledge

(1) The credibility rule does not apply to evidence given by a person concerning the credibility of another witness if:

(a) the person has specialised knowledge based on the person's training, study or experience; and

(b) the evidence is evidence of an opinion of the person that:

(i) is wholly or substantially based on that knowledge; and

(ii) could substantially affect the assessment of the credibility of a witness; and

(c) the court gives leave to adduce the evidence.

(2) To avoid doubt, and without limiting subsection (1):

(a) a reference in that subsection to specialised knowledge includes a reference to specialised knowledge of child development and child behaviour (including specialised knowledge of the impact of sexual abuse on children and their behaviour during and following the abuse); and

(b) a reference in that subsection to an opinion of a person includes, if the person has specialised knowledge of that kind, a reference to an opinion relating to either or both of the following:

(i) the development and behaviour of children generally;

(ii) the development and behaviour of children who have been victims of sexual offences, or offences similar to sexual offences.

Appendix 13 - Interjurisdictional comparison – Restrictions on publication of identifying information in sexual offence proceeding

Interjurisdictional comparison – Restrictions on publication of identifying information in sexual offence proceeding								
	Queensland	New South Wales	Victoria	South Australia	Western Australia	Tasmania	Australian Capital Territory	Northern Territory
Legislation	*Criminal Law (Sexual Offences) Act 1978*	*Crimes Act 1900*	*Judicial Proceedings Reports Act 1958*	*Evidence Act 1929*	*Evidence Act 1906*	*Evidence Act 2001*	*Evidence (Miscellaneous Provisions) Act 1991*	*Sexual Offences (Evidence and Procedure) Act 1983*
When can victims of sexual assault be identified?	Offence to identify a victim in a report concerning an examination of a witness or a trial (s6). There is no specified defence. It is a defence to the restriction on identifying victims other than in a report concerning an examination of a witness or a trial (s10(1)(a)) that they gave written authorisation, were over 18, and had capacity to consent (s10(2)).	A complainant in a prescribed sexual offence shall not be identified (s578A (2)) unless the publication is authorised by a judge, made with the consent of a complainant over 14 years old, or made after a complainant's death (s578A(4)).	It is a defence to the offence of publishing identifying information of a victim of a sexual offence that the victim gave permission, was an adult with capacity, or a child (with a supporting statement from a doctor, psychologist or prescribed person) and the publication was in accordance with the limits set by the victim (s4(1BB)). Victims can self-identify (s4(1BA)).	A person must not publish anything identifying a person alleged to be the victim of a sexual offence unless the judge authorises or the victim consents to the publication (the victim must be an adult) (s71A (4)).	A publication identifying a complainant is not prohibited if the complainant authorised it in writing, was at least 18, and was not because of mental impairment incapable of consenting (s36C(6)).	It is a defence to the offence of publishing identifying information of victims or witnesses in sexual offence proceedings (194K (1)) that the person identified consented in writing, was over 18, understood that they may be identified and was not coerced (194K(4)) and all criminal proceedings had been finalised (194K(3)(v)).	It is a defence to the prohibition of publication of the identify of a complainant in a sexual offence proceeding (s74(1)) if the complainant consented to the publication (s74(2)). No age restriction is included.	It is a defence to the offence of disclosing the identity of a sexual offence complainant (s6(1)) if there was no proceeding still pending and each complainant has consented in writing to the publication and was an adult with capacity to consent (s6(2)).
When can accused persons in sexual assault offences	Restriction on identifying an accused person charged with a	Not restricted	Not restricted	Restriction on identifying an accused person in a sexual	Not restricted	Restriction on identifying accused persons in incest proceedings	Not restricted	Restrictions on identifying an accused person before they are

be identified?	prescribed sexual offence before they are committed for trial or sentence upon that charge (s10(1)(b)).			offence before their first appearance in court (s71A(2)).		only (s194K(1)(a)(ii)).		committed for trial or sentence on a charge of having committed the sexual offence (s7).
Maximum penalty (Penalty unit = PU)	Sections 6, 7 & 10: 100 PUs or 2 years imprisonment for an individual, 1000 PUs for a corporation.	Section 578A: 50 PUs or 6 months imprisonment for an individual, 500 PUs for a corporation.	Section 4(1A): 20 PUs or 4 months imprisonment for an individual, 50 PUs for a corporation.	Section 71A: $10,000 for a natural person, $120,000 for a body corporate.	Section 36C: $5,000 for an individual, $25,000 for a body corporate.	Section 194K: 60 PUs or 12 months imprisonment for an individual, 400 PUs for a body corporate.	Section 74: 50 PUs, 6 months imprisonment or both.	Section 6: 50 PUs or 6 months imprisonment. Section 7: 40 PUs or 6 months imprisonment.

Appendix 14 - Interjurisdictional Comparison: Publication of evidence and identifying parties in domestic violence proceedings

Note: This comparison is largely limited to provisions within the family violence legislation of each state and territory. Provisions for court procedures, evidence and suppression orders may be present in other Acts not captured in this table.

	Queensland	Victoria	New South Wales	South Australia	Western Australia	Tasmania	Northern Territory	Australian Capital Territory
Legislation	*Domestic and Family Violence Protection Act 2012*	*Family Violence Protection Act 2008*	*Crimes (Domestic and Personal Violence) Act 2007*	*Intervention Orders (Prevention of Abuse) Act 2009*	*Restraining Orders Act 1997*	*Family Violence Act 2004*	*Domestic and Family Violence Act 2007*	*Family Violence Act 2016*
Are proceedings open to the public?	**No.** However, the court has discretion to open all or part of proceedings to the public (eg when in the public interest) (s158).	**Yes.** However, the court may close proceedings if considered necessary to prevent an affected family member, protected person or witness from being caused undue distress or embarrassment (s68).	**Yes.** Proceedings are open unless the defendant is under 18 (s58). Proceedings involving children are to be heard in the absence of the public unless the court otherwise directs (s41). New provisions require the court to be closed for domestic violence offences or where the respondent in a civil matter is charged with a domestic violence offence (*Criminal Procedure Act 1986* s289U(1)). Note also additional powers under the *Court Suppression and Non-publication Orders Act 2010*.	**Yes.** However, orders to clear the court can be made under section 69 of the *Evidence Act 1929* (SA) if considered in the interests of the administration of justice, or to prevent hardship or embarrassment. An order must be made for child victims of sexual offences.	**Yes.** Hearings are held in open court. The only exception is where the applicant wants the first hearing of the application to be held in the absence of the respondent (s27).	**Yes.** There are no provisions for proceedings under the Act to be heard in closed court.	**Yes.** However, court is to be closed while a vulnerable witness (including victim) is giving evidence or being cross-examined, if the only protected person is a child, unless the court directs otherwise (s106). Court may order a person to leave while a witness gives evidence (s106(3)).	**Yes.** Hearings are usually in public (s58) unless they are interim hearings, a party is not present (s59), or the court makes an order for a closed hearing under s60. The court can order that proceedings be closed, if it is in the interests of safety, justice or the public to do so.

Can information about the evidence of proceedings be published?	**No.** A person must not publish information given in evidence unless an exception applies (e.g. the court authorises or each person consents) (s159(1) and (2)).	**Yes.** Restrictions are limited to information that may identify any person involved or the subject of the order (s166(2)).	**Yes.** There are no restrictions on publishing information about evidence of proceedings.	**Yes.** Restrictions are limited to information that may identify or tend to identify any person or child involved (other than the defendant) (s33).	**Yes.** There are no restrictions on publishing information about evidence of proceedings.	**Yes.** However, the court may make an order forbidding the publication of any material relating to proceedings if considered desirable in the interests of justice (s32).	**Yes.** There are no restrictions on publishing information about evidence of proceedings.	**Yes.** However, under section 60 the court may make an order prohibiting or restricting the publication of evidence or a matter in a filed document. Reports cannot identify parties (s149).
Can identifying details be published?	**No.** Information identifying parties, witnesses or children involved in proceedings cannot be published unless an exception applies (e.g. the court authorises or each person consents) (s159(1) and (2)).	**Yes and no.** Because court is open, in most cases the names of the victim and the respondent can be published.[14] However, identifying particulars of any person involved in the proceeding or the subject of the order cannot be published, unless the court orders otherwise (ss166, 169).	**Yes.** While children cannot be identified, adults involved in proceedings can be identified unless the court directs otherwise (s45). Identifying information includes information that is likely to lead to the identification of the person or child (s45(5)).	**No.** Information which identifies or would tend to identify a person involved (including a witness), a protected person or a child of a protected person or defendant cannot be published without the consent of that person (s33). The restriction does not include persons involved in an official capacity or defendants (s33(a)).	**No.** However, the restrictions apply only to information that would, or would be likely to, reveal or lead to the revelation of the *whereabouts* of a party or a person giving evidence in a proceeding (s70(2).	**Yes.** However, a court may make an order under section 32 forbidding publications. Also, a person must not publish material subject to such an order or material identifying an affected child (s32(2) and (3)).	**Yes.** However, DVO may include an order prohibiting publication of personal details of a protected person or witness if the court is satisfied it would expose the person to risk of harm (s26). It is an offence to breach this order (s 124), or to publish the name of a child involved in a proceeding (s123).	**No.** It is an offence to publish a report that identifies a party, associated person, or witness (s149). The courts may make an order allowing publication including when in the public interest (s 150). There are also technical exceptions in Schedule 1.
Can the victim consent to being identified?	**No.** The consent of 'each person to whom the information relates' is required. This means both the aggrieved and the respondent would likely have to consent ((s159(2)(b)).	**Yes.** Adult victims can consent to information about the order being published. However, they cannot consent to any other person protected by the order or involved in the proceeding	**Yes.** Section 45 does not prohibit the publication or broadcasting of the name of a person with the consent of the person or of the court (s45(2)(b)).	**Yes.** The offence in section 33 applies only if information is published identifying a person without the consent of that person. The consent of the defendant is not required in order to identify them.	**Yes** – but only to the court. Section 70 does not apply if the court is satisfied that the person who would otherwise be protected understands the section	**N/A** – there is no requirement for victim consent for publication. However, if the court does make an order under section 32, there is no provision for victim	**N/A** - there is no requirement for victim consent for publication. However, if the court does make an order under section 26, there is no provision for victim	**Unlikely.** The restriction on publication in s149 does not prevent a party from telling someone about an order's contents or giving

[14] Statement of compatibility, *Family Violence Protection Bill 2012* (Vic).

		being identified (s169B). Victim consent can identify the respondent.[15]			and has agreed that the section is not to apply and has specified that in the order (s70(3).)	consent to override this.	consent to override this.	someone a copy (s150). However, the restriction on identifying that person in a publication would still apply.

[2716] Royal Commission into Institutional Reponses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I - II* (Report, 2017) 71-74.

[15] Statement of compatibility, *Family Violence Protection Bill 2012* (Vic).

Appendix 15 – Custodial Inspectors and Standards: Australia and New Zealand

Jurisdiction	Independent oversight body	Functions and powers	Incident/complaints jurisdiction	Standards for jurisdiction
Queensland	Inspector of Detention Services (Office of the Ombudsman)	*Inspector of Detention Services Bill 2021* *Functions* – To review or monitor a detention service at any time. – To inspect a place of detention at any time. – Inspect each youth detention centre at least once every year; inspect each prison that is a secure facility at least once every 5 years; inspect all or part of a particular place of detention prescribed by regulation at least once every 5 years. – To prepare and publish standards in relation to carrying out inspections. – Report to the Legislative Assembly on each review carried out, all mandatory inspections and any other inspections considered appropriate. – Report to the Legislative Assembly on any matter relation to the functions of the inspector. – To include in a report to the Legislative Assembly advice or recommendations the inspector considers appropriate about a detention service or place of detention.	The Inspector's functions do not specifically include investigating incidents (such as riots, deaths and escapes) or alleged misconduct or alleged corruption by a staff member. While the Inspector will not investigate specific incidents or complaints, the Inspector's reviews may consider systemic themes that arise from the individual experience of detained individuals or groups of people and/or an issue in one or more places of detention.[2717]	N/A

Jurisdiction	Independent oversight body	Functions and powers	Incident/complaints jurisdiction	Standards for jurisdiction
		– Any other functions conferred on the inspector under this Act or any other Act.		
New South Wales	Inspector of Custodial Services	*Inspector of Custodial Services Act 2012* *Functions* – To inspect each custodial centre (other than juvenile justice centres and juvenile correctional centres) at least once every 5 years. – To inspect each juvenile justice centre and juvenile correctional centre at least once every 3 years. – To examine and review any custodial service at any time. – To report to Parliament on each such inspection, examination or review, – To report to Parliament on any particular issue or general matter relating to the functions of the Inspector if, in the Inspector's opinion, it is in the interest of any person or in the public interest to do so. – To report to Parliament on any particular issue or general matter relating to the functions of the Inspector if requested to do so by the Minister.	The mandate of the office is to provide independent scrutiny of the conditions, treatment and outcomes for adults and young people in custody, and to promote excellence in staff professional practice. The Inspector does not investigate individual complaints made by staff, inmates, young people or their families. We do consider the type and frequency of complaints made to authorities, to inform inspections and identify systemic issues.[2718] Official Visitors also submit reports which assist the Inspector to identify broader issues within the custodial environment.[2719]	Inspection Standards for adult custodial services in NSW Inspection Standards for youth custodial services in NSW

Jurisdiction	Independent oversight body	Functions and powers	Incident/complaints jurisdiction	Standards for jurisdiction
		– To include in any report such advice or recommendations as the Inspector thinks appropriate (including advice or recommendations relating to the efficiency, economy and proper administration of custodial centres and custodial services), – To oversee Official Visitor programs conducted under the *Crimes (Administration of Sentences) Act 1999* and the *Children (Detention Centres) Act 1987*, – To advise, train and assist Official Visitors in the exercise of the functions conferred or imposed on them under those Acts. – Such other functions as may be conferred or imposed on the Inspector under this or any other Act.		
Western Australia	Inspector of Custodial Services	*Inspector of Custodial Services Act 2003* *Functions* – Inspection of places: mandatory at least once every 3 years the Inspector is to inspect each — (a) prison; (b) detention centre; (c) court custody centre; and (d) lock-up. – Inspection reports – Inspection of places: occasional – Review of custodial services: occasional	The Inspector of Custodial Services does not investigate complaints made by staff, prisoners, detainees or their families. While it is often important that the Office understands the nature of a complaint this information is only used to understand whether systemic issues are occurring in the corrections system. The Office cannot facilitate a resolution of a complaint for an individual.[2720] Information gathered by Independent Visitors provides regular and fresh intelligence.	Revised Code of Inspection Standards for Adult Custodial Services (2020) Code of inspection standards for young people in detention (2010)

Jurisdiction	Independent oversight body	Functions and powers	Incident/complaints jurisdiction	Standards for jurisdiction
		– Reporting on occasional inspections and reviews – Providing reports, draft inspection reports to interested persons – Notifications.	This merges with the Office's own assessment of the performance of prisons and detention centres.[2721]	
Australian Capital Territory	Inspector of Correctional Services	*Inspector of Correctional Services Act 2017* *Functions* – The examination and review of ACT Correctional centres and services; and – reviewing critical incidents at correctional centres or provision of correctional services. Broadly, their powers include: – the right to enter a correctional centre, including at any time without notice – the right to inspect any documents relating to a detainee or the provision of a correctional service – the right to speak to or privately interview a persons at the correctional centre, including detainees with their consent; and – the right to require provision of information or documents.[2722]	The inspector has jurisdiction to review critical incidents including: – the death of a person – a person's life being endangered – an escape from custody – a person being taken hostage – a riot that results in significant disruption to a centre or service – a fire that results in significant property damage – an assault or use of force that results in a person being admitted to a hospital – any other incident identified as a critical incident by a relevant Minister or relevant director-general. The Inspector does not handle individual complaints.[2723]	ACT Standards for Adult Correctional Services ACT Standards for Youth Detention Places: Interim Version
Tasmania	Office of the Custodial Inspector Tasmania	*Custodial Inspector Act 2016* *Functions* – Mandatory and occasional inspections and reviews of each	The Custodial Inspector cannot investigate individual complaints except insofar as they relate to systemic issues present in the correctional environment. Individual complaints can be directed to	Inspection Standards for Adult Custodial Centres in Tasmania Inspection Standards for

Jurisdiction	Independent oversight body	Functions and powers	Incident/complaints jurisdiction	Standards for jurisdiction
		custodial centre in Tasmania – Preparing and publishing guidelines in relation to the conduct of inspection and reviews – Reporting to the Minister and Parliament on inspections and any issues or general matters relating to his or her functions providing an annual report to Parliament – Providing advice or recommendations relating to the safety, custody, care, wellbeing and rehabilitation of prisoners and detainees – Providing information relating to education and programs to assist in the rehabilitation of prisoners and detainees. – The legislation also prescribes the power of the Custodial Inspector. Broadly, these powers include: – The right to visit and examine custodial centres including areas that are related to the custodial centre – Obtaining information, access to documents and information relating to custodial centres or persons in custody, including obtaining information from persons in any manner.[2724]	the Tasmanian Ombudsman.[2725]	Youth Custodial Centres in Tasmania

Jurisdiction	Independent oversight body	Functions and powers	Incident/complaints jurisdiction	Standards for jurisdiction
Victoria	Nil	N/A	N/A	Standards for the Management of Women Prisoners in Victoria Correctional Management Standards for men's prisons in Victoria
Northern Territory	Nil	N/A	N/A	Some standards appear in legislation[2726]
New Zealand	Office of the Inspectorate	*Corrections Act 2004* *Functions* – inspections of prisons – investigating complaints from prisoners and from offenders in the community – investigating all deaths of people who are in Corrections' custody – carrying out other investigations where necessary and monitoring situations where there are concerns	The Office of the Inspectorate investigates complaints from prisoners and from offenders in the community. Generally, complaints should be resolved at the lowest level. If, after that, a person believes they have been treated unfairly or unreasonably, they can make a complaint to the Inspectorate.[2727]	Inspection Standards: Criteria for assessing the treatment of and conditions for prisoners (2019)

Appendix 16 - Rehabilitation of women in prison and girls in detention

Report	Recommendation	Queensland Government Response
Queensland Productivity Commission Inquiry into Imprisonment and Recidivism	*Recommendation 17* To assist the rehabilitation of prisoners, the Queensland Government should ensure that prisoners on remand are able to access suitable programs and other activities likely to aid their rehabilitation. *Recommendation 19* Queensland Corrective Services should, within 12 months: • establish and report against performance indicators in the statement of intent to increase accountability and report on performance • extend its performance framework to individual prisons and negotiate service agreements with them • include performance indicators for reducing recidivism in senior executives' performance agreements • assist the government to establish its priorities for throughcare by ensuring that policy options are assessed within an effective risk management framework • align its strategic and operational priorities more closely to actions that would make throughcare more effective • publish information on its strategies for achieving its objectives including the progress and results of any reviews it is undertaking. *Recommendation 21* To improve rehabilitation outcomes, Queensland Corrective Services should: • ensure that prisoners have incentives to participate successfully in rehabilitation activities	Recommendations 14 to 17 propose a series of measures to increase the efficient and effective use of bail and remand, including new risk assessment tools, increased support services, increased noncustodial options including electronic monitoring and home detention, bail accommodation for homeless offenders, amendments to the Bail Act 1980, investigation of opportunities to reduce system delays and increased access to programs for prisoners on remand. The Queensland Government recognises that the efficient interaction of the bail and remand systems is crucial to the effective functioning of the criminal justice system and the productive use of prison as an element of that system. The government is committed to improving the use of bail and remand and will implement a suite of measures including: • Improving the capacity of courts to consider applications for remand by establishing a Remand Registrar and a dedicated, actively managed remand list • Undertaking Magistrate-led training for prescribed police officers on granting police bail • Delivering a Bail Bench Book to support consistent decision making on bail matters across the Magistracy • Delivering a Rapid Remand Assessment process to fast-track applications for grants of aid for summary pleas by eligible applicants who are remanded in custody • Expanding the operations of Court Link, which assesses defendants' suitability for a bail support program before they are remanded to more locations • Establishing a bail service that assesses remandees for bail eligibility and supports defendants to meet bail conditions following release. Specific QPC proposals will also be considered as part of this process.

	• improve the measurement and reporting of in-prison rehabilitation, including performance indicators for individual prisons. It should review the impact of these indicators on incentives within two years of implementation • work with the State Penalties Enforcement Registry, to determine within six months, whether there is a cost-effective option to make work and development orders available in prisons • publish its implementation plan for moving individuals under its care onto the National Insurance Disability Scheme, and report regularly on its progress in implementing it • undertake public reviews of its assessment, case management and mental health programs and publish review reports and outcomes • develop initiatives for reducing recidivism among remand and short-sentence prisoners, by commissioning research, drawing on expert advice and developing an implementation plan • consider a process that will help prisoners to deal with the barriers they face in addressing financial matters, particularly debt, due to their imprisonment, where that would help to reduce reoffending. *Recommendation 23* To improve reintegration of prisoners, Queensland Corrective Services should: • remove regulatory impediments to reintegration, including those that impede the use of work release and day release options • introduce measures to ensure that parole worker caseloads support effective community supervision • investigate options for a prisoner housing program similar to the Corrections Victoria Housing Program, and report on housing outcomes for released prisoners	Recommendations 18 to 27 propose a range of changes in the operation and governance of corrective services with a view to improving rehabilitation and reintegration of offenders. Proposals include publication of, and reporting against: • A corrective services statement of intent • Measures to address the impacts of overcrowding on rehabilitation • Changes to improve rehabilitation outcomes • Establishment of an Independent Inspectorate of Prisons • Changes to support improved reintegration • Transfer of responsibility for post-release mental health and substance abuse treatment • Implementation of a minimum standard of post-release support • Evaluation of contracted reintegration services • Management of technical breaches of parole. The Queensland Government acknowledges that to effectively support community safety, our correctional system needs to be focused on doing all that it can to reduce the risk of prisoners reoffending when they re-enter the community. The Queensland Government is committed to enhancing the provision of rehabilitation and reintegration services to offenders in order to reduce recidivism. This commitment sits within the government's broader commitment to enhancing Queensland's correctional system and is demonstrated and progressed through a range of initiatives including: • Delivering a world-class probation and parole system in response to the Queensland Parole System Review

	• establish a panel of providers who can deliver reintegration services. To support these changes the Queensland Government should amend the Corrective Services Act 2006 to include work release as a reason for granting a prisoner leave from prison.	• Developing a mature, corrupting resistant culture in the correctional system in line with the recommendations of the Crime and Corruption Commission's Taskforce Flaxton report • Transforming Queensland Corrective Services into a forward-thinking, top tier, public safety agency through implementation of a 10-year strategic vision Corrections 2030. In light of the QPC's recommendations, the Queensland Government will undertake a range of activities targeted at improving rehabilitation and reintegration activities in the correctional system. This will include: • Developing an enhanced throughcare service delivery model for rehabilitation programs and services for remandees, prisoners and offenders • Developing an end to end case management system that supports prisoners to become parole-ready and then assists with the exit on parole • Improving and extending re-entry services for women prisoners in South East Queensland and Townsville • Providing housing reintegration responses to address the needs of people who would otherwise be ineligible for bail or exit prison into homelessness • Continuing the Aurukun prisoner reintegration program • Addressing the health needs of prisoners through initiatives including improved primary healthcare for prisoners, an expanded range of Alcohol and Other Drugs programs, continuation of the Indigenous Mental Health Intervention Program, and piloting an Aboriginal and Torres Strait Islander Women's Rehabilitation and Healing Program • Establishing an Independent Inspectorate of Prisons to oversee certain primary places of detention (namely adult and youth correctional facilities and watch houses) • Developing a therapeutic health and rehabilitation model for the new Southern

		Queensland Correctional Precinct prison near Gatton.
ADCQ Women in Prison Report	*Recommendation 35*: programs for prisoners Queensland Corrective Services increases the number and diversity of rehabilitation programs (including short-term programs) and training and education opportunities available to prisoners, as proposed by the Sofronoff review report. *Recommendation 39*: work Queensland Corrective Services: a. investigates and eliminates potential systemic discrimination of Aboriginal and Torres Strait Islander women prisoners in accessing work camps; and b. investigates the merits of reinstituting a work release program. *Recommendation 44*: post-prison support Queensland Corrective Services: a. expands its re-entry services to ensure that all prisoners have access to services, including specialty services, to assist remandees and short-sentenced prisoners, as proposed by the Sofronoff review report; and b. gives particular attention to providing post-prison support to women who reside outside the South-East Queensland and Townsville regions.	No response

Appendix 17 - Reintegration of women and girls

Report	Recommendation	Queensland Government Response
Queensland Productivity Commission Inquiry into Imprisonment and Recidivism	*Recommendation 23* To improve reintegration of prisoners, Queensland Corrective Services should: • remove regulatory impediments to reintegration, including those that impede the use of work release and day release options • introduce measures to ensure that parole worker caseloads support effective community supervision • investigate options for a prisoner housing program similar to the Corrections Victoria Housing Program, and report on housing outcomes for released prisoners • establish a panel of providers who can deliver reintegration services. To support these changes the Queensland Government should amend the Corrective Services Act 2006 to include work release as a reason for granting a prisoner leave from prison. *Recommendation 25* To lower the risk of an offender reoffending immediately following release, Queensland Corrective Services should be assigned the responsibility for the provision of a minimum standard of post-release support. This should include: • short-term housing for prisoners who do not have accommodation on release • adequate documentation for proof of identity to open bank accounts and apply for other services and a	Recommendations 18 to 27 propose a range of changes in the operation and governance of corrective services with a view to improving rehabilitation and reintegration of offenders. Proposals include publication of, and reporting against: • A corrective services statement of intent • Measures to address the impacts of overcrowding on rehabilitation • Changes to improve rehabilitation outcomes • Establishment of an Independent Inspectorate of Prisons • Changes to support improved reintegration • Transfer of responsibility for post-release mental health and substance abuse treatment • Implementation of a minimum standard of post-release support • Evaluation of contracted reintegration services • Management of technical breaches of parole. The Queensland Government acknowledges that to effectively support community safety, our correctional system needs to be focused on doing all that it can to reduce the risk of prisoners reoffending when they re-enter the community. The Queensland Government is committed to enhancing the provision of rehabilitation and reintegration services to offenders in order to reduce recidivism. This commitment sits within the government's broader commitment to enhancing Queensland's correctional system and is demonstrated and progressed through a range of initiatives including: • Delivering a world-class probation and parole system in response to the Queensland Parole System Review • Developing a mature, corrupting resistant culture in the correctional system in line with the

	Medicare card to access health services • assistance to establish an email account and to procure a mobile phone • copies of educational qualifications attained in prison (or obtained before prison) • information on support services available to assist with reintegration including employment agencies and social welfare support • financial supports for the first week of release • appropriate transport to accommodation. The government should require Queensland Corrective Services to regularly report against this standard *Recommendation 26* To ensure value for money, Queensland Corrective Services should commission an independent evaluation of its contracted reintegration services. This evaluation should assess: • the outcomes of the services in terms of recidivism • the value of the services from the prisoners' perspective • benchmarking the services against similar programs interstate • the reporting framework • the appropriate length of time to provide reintegration services. Queensland Corrective Services should complete this evaluation and make it publicly available by June 2021.	recommendations of the Crime and Corruption Commission's Taskforce Flaxton report • Transforming Queensland Corrective Services into a forward-thinking, top tier, public safety agency through implementation of a 10-year strategic vision Corrections 2030. In light of the QPC's recommendations, the Queensland Government will undertake a range of activities targeted at improving rehabilitation and reintegration activities in the correctional system. This will include: • Developing an enhanced throughcare service delivery model for rehabilitation programs and services for remandees, prisoners and offenders • Developing an end to end case management system that supports prisoners to become parole-ready and then assists with the exit on parole • Improving and extending re-entry services for women prisoners in South East Queensland and Townsville • Providing housing reintegration responses to address the needs of people who would otherwise be ineligible for bail or exit prison into homelessness • Continuing the Aurukun prisoner reintegration program • Addressing the health needs of prisoners through initiatives including improved primary healthcare for prisoners, an expanded range of Alcohol and Other Drugs programs, continuation of the Indigenous Mental Health Intervention Program, and piloting an Aboriginal and Torres Strait Islander Women's Rehabilitation and Healing Program • Establishing an Independent Inspectorate of Prisons to oversee certain primary places of detention (namely adult and youth correctional facilities and watch houses) • Developing a therapeutic health and rehabilitation model for the new Southern Queensland Correctional Precinct prison near Gatton.
ADCQ Women in Prison Report	*Recommendation 10:* bail applicants and housing The Queensland Government continues to seek alternative solutions to imprisoning women on	No response

	remand who would otherwise be eligible for bail, but for the fact they do not have a suitable home address. *Recommendation 44:* post-prison support Queensland Corrective Services: a. expands its re-entry services to ensure that all prisoners have access to services, including specialty services, to assist remandees and short-sentenced prisoners, as proposed by the Sofronoff review report; and b. gives particular attention to providing post-prison support to women who reside outside the South-East Queensland and Townsville regions.	

Appendix 18 - Terms of Reference

Taskforce on Coercive Control and Women's Experience in the Criminal Justice System

An independent, consultative Taskforce will be established to examine:

1) coercive control and review the need for a specific offence of commit domestic violence; and

2) the experience of women across the criminal justice system.

The Taskforce will undertake independent consideration of issues within scope of the review and make recommendations to the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence (Attorney-General).

The Taskforce will be comprised of a Chair and other subject matter experts

The Taskforce will be supported by a secretariat provided by the Department of Justice and Attorney-General (DJAG) and will regularly engage with women with a lived experience, including survivors of Domestic, Family and/or Sexual Violence (DFSV).

Timeframe

The Taskforce will provide a report on its findings and recommendations to the Attorney-General as follows:

(a) in relation to 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", by October 2021; and

(b) in relation to other areas of women's experience in the criminal justice system, by March 2022.

Scope

In making recommendations, the Taskforce may consider:

- how best to design, implement and successfully operationalise legislation to deal with coercive controlling behaviour in a domestic and family violence context with regard given to the Government's existing commitments relating to coercive control, training for first responders and public education and awareness;
- whether a stand-alone offence of domestic violence is required;
- actual or perceived barriers which contribute to the low reporting of sexual offences and the high attrition rate throughout the formal legal process of those who do report;
- the need for attitudinal and cultural change across Government, as well as at a community, institution and professional level, including media reporting of DFSV;
- the unique barriers faced by girls, Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, incarcerated women, elderly women, women in rural, remote and regional areas and LGBTIQA+ women, when accessing justice as both victims and offenders;
- policing and investigative approaches, including the collection of evidence and specialist training and trauma-informed responses to victims and survivors;
- how best to improve capacity and capability across the criminal justice system to understand and respond to the particular issues experienced by women as victims and offenders including for support and advocacy services, police, prosecutions, defence representation, courts and the judiciary;
- the adequacy of DFSV service system integration with the justice system;
- other legislative and policy issues, including in relation to the criminal justice system and the interface between the criminal justice and domestic and family violence and sexual violence systems; and
- any other policy, legislative or cultural reform relevant to the experience of girls and women as they engage with the criminal justice system.

Guiding principles and considerations

In undertaking the Review, the Taskforce should have regard to the principles and considerations related to:

i. keeping victims safe and holding perpetrators to account;
ii. a trauma-informed, and evidence-based approach that takes into consideration the lived experience of women who are involved in the criminal justice system;
iii. just outcomes by balancing the interests of victims and accused persons;
iv. efficacy, efficiency and value for money, including in relation to current investment across the system;
v. consideration of the Queensland Government's current domestic and family violence, sexual violence prevention and criminal justice system reform program and achievements;
vi. the diversity of women involved in the criminal justice system and their individual experiences;
vii. the opportunity to learn from, leverage and build upon local, national and international research, evidence and best practice approaches;
viii. the need to protect and promote human rights, including the rights protected under the *Human Rights Act 2019*; and
ix. any other related matters the Taskforce considers relevant.

Consultation

The Taskforce's examination should be informed by broad and wide-ranging consultation with:

a. DFSV survivors and victims, and women with personal experience of the criminal justice system;
b. DFSV service providers and networks;
c. other relevant advocacy groups, including the Queensland Police Union;
d. prosecution and policing agencies, including the Queensland Police Service and Director of Public Prosecutions;
e. the Domestic and Family Violence Prevention Council;
f. government departments, agencies, local governments and relevant statutory bodies;

[2717] *Inspector of Detention Services Bill 2021* Explanatory Notes, [Accessed May 2022] https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2021/5721T1841.pdf.
[2718] Inspector of Custodial Services, *About us*, [Accessed May 2022] https://www.inspectorcustodial.nsw.gov.au/inspector-of-custodial-services/about-us.html
[2719] Inspector of Custodial Services, Official Visitor Program, [Accessed May 2022] https://www.inspectorcustodial.nsw.gov.au/inspector-of-custodial-services/official-visitor-program.html.
[2720] Officer of the Inspector of Custodial Services, *What we do*, [Accessed May 2022] https://www.oics.wa.gov.au/about-oics/what-we-do/?doing_wp_cron=1651980907.9669430255889892578125.

[2721] Officer of the Inspector of Custodial Services, Independent Visitor Service, [Accessed May 2022) https://www.oics.wa.gov.au/about-oics/independent-visitor-service/.
[2722] ACT Inspector of Correctional Services, *Our role* [Accessed May 2022] https://www.ics.act.gov.au/about-us/our-role.
[2723] ACT Inspector of Correctional Services, *Our role* [Accessed May 2022] https://www.ics.act.gov.au/about-us/our-role.
[2724] Office of the Custodial inspector Tasmania, *About us* [Accessed May 2022] https://www.custodialinspector.tas.gov.au/about_us.
[2725] Office of the Custodial inspector Tasmania, *About us* [Accessed May 2022] https://www.custodialinspector.tas.gov.au/about_us.
[2726] *Correctional Services Act 2014* (NT).
[2727] Office of the Inspectorate, *Making a complaint*, [Accessed May 2022] https://inspectorate.corrections.govt.nz/about_us/making_a_complaint.

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY (1)

RESEARCH BACKGROUND

The overall objective of the research is to explore current community understanding, attitudes and behaviours towards sexual consent in Queensland. The research involved conduct of 14 focus groups that included a total of 94 Queensland residents aged 18 and over across Queensland between late March and April 2022.

A content and language warning is given for this report. In line with the topic of sexual consent it includes references to sexual assault and violence. Community member quotes are used throughout the report to illustrate findings and in some cases use explicit language and/or recount past experiences. Support is available and key support service contact details are listed on page 15.

HOW DOES THE COMMUNITY APPROACH THE TOPIC OF SEXUAL CONSENT?

Knowledge and confidence in discussing consent varies across the community. Some find it difficult to express their views on the topic or find the right words and can be self-conscious about saying the 'wrong' thing amongst peers.

Society's understanding of sexual consent is thought to have improved and advanced in recent years due to discussions about sex, and consequently sexual consent, becoming more socialised.

However, generational differences in confidence of speaking on the topic appear present across the community.

Across age groups, issues of sexual consent are thought to be more relevant to single people or people engaging in 'hook-up' culture and it is acknowledged that these days there are greater perceived risks of reputational damage and prosecution when navigating sexual consent.

When community members refer to non-consensual sexual activity, the term 'sexual assault' is commonly believed to refer to a spectrum of non-consensual sexual behaviour, with rape being considered the most extreme form of sexual assault.

When referring to a sexual assault, many community members assume the extreme of rape, when there is an absence of further details available.

Sexual assault allegations are considered very serious claims that will negatively affect the lives of both parties. It is a commonly held assumption that if the accused is found not guilty, the allegation will still negatively impact them for the rest of their life.

When referring to sexual assault allegations, community members often focus on comprehending the situation with the intent to understand how clearly sexual consent was communicated.

There is a perception that it is unfair to label someone as having committed a sexual assault if they weren't made aware that the sexual act was non-consensual.

HOW IS CONSENT GENERALLY UNDERSTOOD?

Community members are generally confident in their own understanding of consent on a conceptual level. However, they acknowledge that in real life sexual consent is not a black and white concept and can be a difficult 'grey' area to navigate.

At an overall level, sexual consent is perceived to be permission between parties to undertake and participate in sexual activity. It is considered a form of communication and respect between people and is always necessary when undertaking a sexual act.

Additionally, on a conceptual level, it is perceived that sexual consent:

- Can be communicated both verbally and through body language
- Needs to be continuously monitored throughout a sexual act
- Involves both parties having responsibility for ensuring the sexual activity is consensual
- Can be withdrawn during a sexual act.

However, several real-world situational factors impact expectations of sexual consent and contradict or challenge the community's conceptual understanding.

Situational factors that influence perceptions of consent include:

- How well each party knows the other
- Whether the sexual acts are new or considered intense
- How far the sexual activity has progressed.

EXECUTIVE SUMMARY (2)

HOW CAN CONSENT BE COMMUNICATED?

On a conceptual level, it is believed that sexual consent can be communicated in a variety of ways, including verbally and physically through body language. However, verbal and physical consent are thought to have varying degrees of clarity.

Verbal communication is commonly perceived as the clearest form of consent and consequently the clearest form of refusal or withdrawal of consent.

Body language while considered a legitimate form of consent is contentious as it is considered subjective and at risk of being misinterpreted or misunderstood.

Expectations also exist in how consent should be communicated based on how well the parties know one another.

Body language is considered more appropriate to communicate consent for parties in a relationship or who know each other well, as they are expected to be familiar and more accurate at reading each other's body language.

Verbal consent is considered more appropriate if the parties don't know one another well, such as casual sex or new relationships, as these parties aren't familiar with each other's body language and therefore the risk of misinterpretation of body language is perceived to be higher.

WHEN IS SEXUAL CONSENT NEEDED?

On a conceptual level, it is believed that consent needs to be monitored throughout a sexual act. However, some community members question the feasibility of reading body language throughout a sexual act.

Some believe that as a sexual act progresses, it is feasible for parties to get caught up in the heat of the moment and miss or misinterpret body language consent cues.

Most community members believe that consent can only be given in the moment and cannot be assumed based on factors such as prior behaviour or the clothing someone wears.

However, some believe that consent can partially be assumed, based on prior sexually explicit behaviour, such as 'sexting' or sending nude images, until indicated otherwise.

Conceptually it is believed that sexual consent can be withdrawn at any point during a sexual act. However, there are mixed opinions about when consent can be withdrawn.

For most, it is strongly felt that sexual consent can be withdrawn at any point during a sexual act.

However, some community members perceive that there is a point during sex beyond which consent can no longer be withdrawn, but had trouble articulating when this point is.

Again, while conceptually there is an understanding that consent can be withdrawn, there are also expectations around how it is withdrawn in real-world scenarios.

Many in the community expressed an expectation that if consensual sexual activity is underway, and a party changes their mind and withdraws their consent, the withdrawal needs to be communicated clearly, through explicit body language or verbal communication.

WHO IS RESPONSIBLE FOR CONSENT?

On a conceptual level, it is strongly felt that both or all parties are responsible for ensuring sexual activity is consensual. However, in reality, once there is initial consent, it appears the onus falls on the party who is withdrawing consent.

It is also commonly expected that communication will escalate to verbal or explicit physical refusal in situations of withdrawal or refusal of consent, such as pushing or slapping, if other cues are not recognised.

While conceptually, both parties are considered responsible for ensuring consensual sexual activity, some community members acknowledge not all are equal in their ability to express consent.

EXECUTIVE SUMMARY (3)

It is common for women and LGBTIQ+ community members to acknowledge that communicating consent or a lack of consent requires confidence and agency, which not all in the community have in equal share. Those in domestic violence relationships, young people, in particular young women, are often associated with being most at risk of lacking the confidence or agency to give informed consent.

In addition, it is also recognised that consent requires an understanding of what they are consenting to (informed consent). Women and parents of teens often express concern about young people and sexually inexperienced people lacking the life experience or sexual knowledge to give informed consent.

Amongst men, little discussion was had of the confidence and agency required to give and refuse consent, suggesting these factors are not as top of mind amongst the men in the community, and education may be required.

Social pressures are also seen to be influencing factors across men and women regarding giving or refusing consent.

Young women and parents with teens or young adult children spoke of the social and personal pressure young people can feel to engage in sexual acts and how this can make saying no or refusing consent more difficult. Some men in the community acknowledge specific social pressures that could impact men's ability to refuse or withdraw consent.

Women and LGBTIQ+ community members also appear more knowledgeable about how power dynamics and imbalances, such as age and authority, can complicate the ability to give consent.

Amongst men, acknowledgment of power dynamics influencing someone giving or refusing consent is limited in discussions to a man's physical strength potentially intimidating a woman. This suggests the influence of power dynamics on consent are not top of mind amongst men, and education may be required.

Suspicions are raised for some men and women when a woman consents in the moment and later claims the sex was non-consensual. These community members become suspicious that the woman regretted a sexual encounter rather than it being an issue of sexual consent. This view is more likely to be expressed amongst those less attuned to the influence of power dynamics on giving informed consent.

While both parties are considered responsible for ensuring sexual activity is consensual, stereotypes are thought to exist in society that place a greater onus on women as receivers of sexual advances to communicate or clarify consent.

Many community members acknowledge that in real life, a convention exists of the initiator 'trying something on' and the onus falling on the receiver of sexual advances to either confirm or refuse consent.

In addition, a heteronormative gender stereotype is believed to exist within society, that men typically initiate sex and seek consent, and women, as the receivers of sexual advances, give consent.

Through discussions, it was also observed that community members often defaulted to asking questions about how the woman informed the man of her withdrawal or refusal of consent rather than asking questions about how the man confirmed or gauged consent. This further suggesting a stereotype exists where the onus of consent falls on the woman.

HOW DOES ALCOHOL INFLUENCE PERCEPTIONS OF CONSENT?

Alcohol consumption is not considered a valid excuse for sexual assault. However, community members struggle to articulate how claims of sexual assault should be navigated when alcohol is involved.

Alcohol consumption is considered to make the communication and understanding of sexual consent more problematic and, therefore, the ability to assign fault more contentious.

It is generally agreed that a person can be too drunk to give consent. Again, however, community members struggle to articulate how to identify someone as too drunk to consent, beyond extremes of alcohol consumption.

EXECUTIVE SUMMARY (4)

When someone is tipsy, they are generally considered capable of consent, and when someone is slurring their words, stumbling or passed out, it is generally assumed they are incapable of giving consent. However, community members are unsure how to navigate sexual consent between these ends of the spectrum of intoxication.

On a conceptual level, all community members agree that the sober or more sober person has greater responsibility when it comes to gauging consent. However, they acknowledge that this implies an ability to identify greater sobriety, which can be challenging.

People can react to alcohol differently, making identifying who is the more sober party difficult in real life. Community members can also easily envisage how a sober person may not have full control of a situation when alcohol is involved, therefore challenging the concept of the sober person having more responsibility.

OTHER INSIGHTS SURROUNDING RAPE MYTHS

Attitudes to sexual consent do not change if the parties are husband and wife.

All community members are firm in their own belief that a relationship between husband and wife does not influence the ability for either party to give or refuse consent. However, some acknowledge they think some within society do not hold this belief.

Freezing during sex is not unanimously considered a clear refusal or withdrawal of consent.

A spectrum exists in how community members consider freezing during a sexual act. On one end of the spectrum, they consider it a clear sign of refusal or withdrawal of consent.

Others consider it to be an indicator of needing to re-confirm consent. Some at the other end of the spectrum consider freezing an unclear form of refusal or withdrawal of consent.

A spectrum exists within the community of how a delay in reporting sexual assault is interpreted, and this impacts perceptions of a woman's believability.

Some community members appear more trauma-informed and understand that it may take time for someone to report an assault.

For these community members, a delay in reporting does not impact the believability of a woman's sexual assault claim.

However, others in the community appear to struggle to understand why a woman may delay her reporting and this leads some to be suspicious of ulterior motives motivating sexual assault allegations.

Suspicions raised about a delayed sexual assault allegation are:

- Why she might be reporting the sexual assault now rather than earlier?
- Whether revenge might be motivating her?
- Whether she might be financially motivated by the idea of receiving hush money through settlements?

Women appear to be more knowledgeable of potential barriers to reporting sexual assault than men.

Potential barriers to reporting sexual assault were not brought up in discussions among men, suggesting barriers to reporting are not as top of mind for men, and education may be required.

Rape myths about women's sexual assault allegations being motivated by fame or financial benefit or regretful sexual encounters appear to be present within the community.

EXECUTIVE SUMMARY (5)

SEXUAL CONSENT EDUCATION

Generally, the community believes consent is learnt through several sources, such as:

- Parents and family role models
- Life and sexual experience
- Friends and peers
- News, entertainment and social media reporting of sexual assault cases.

Very few community members recall learning about sexual consent at school. Amongst those that do, their sex education experiences varied and specific education on sexual consent is considered limited.

Educative metaphors of sexual consent are being consumed within the community; however, to varying degrees. Several younger community members have been indirectly or directly consuming sexual consent media, often in sexual consent metaphors, such as the *Tea and Consent* video.

Some younger women and LGBTIQ+ community members report seeking out and engaging with articles and podcasts about sexual consent. Those consuming specific sexual consent media, such as articles and podcasts, reflect that it has been key in informing their understanding and opinions about consent.

While not considered relevant for their personal learning about consent, pornography is thought to influence younger and sexually inexperienced people's understanding of consent in negative ways.

THE RESPONSIBILITY OF COMMUNICATING ABOUT SEXUAL CONSENT

Parents and family role models and schools are considered to have the largest responsibility when it comes to education about sexual consent.

Parents and role models are considered responsible for educating children about sexual consent. However, it is acknowledged that not all parents or households are appropriately equipped to teach children about sexual consent.

A key perceived strength of schools educating children about sexual consent is that schools provide the opportunity to standardise consent messaging and education. However, some felt that independent teaching professionals (as opposed to regular classroom teachers) would be better suited for such an important but sensitive topic.

An appetite is expressed for social marketing and messaging around consent within the community.

Consent is considered a legitimate social issue that warrants communication. Several community members compared this topic to other social issues addressed by marketing campaigns, such as drink driving and road safety. A role for the government is often seen in sexual consent messaging in either an ownership or supportive sense.