

Women's Safety and Justice Taskforce

Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons and offenders

Discussion Questions

A wide-ranging review of the experience of women across the criminal justice system



Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons and offenders

Discussion Paper 3

Part 1: Cross-cutting issues

Overrepresentation of Aboriginal and Torres Strait Islander women and girls in the criminal justice system as both victims and offenders

1. What are the drivers of First Nations women and girls' overrepresentation as victims of sexual violence? What works to reduce this overrepresentation? What needs to be improved?
2. What are the drivers of First Nations women and girls' overrepresentation as accused persons and offenders in the criminal justice system? What works to reduce this overrepresentation? What needs to be improved?
3. How can the diversity of First Nations women and girls' experiences be better reflected and supported in their experiences as victims and accused persons and offenders in the criminal justice system in Queensland?

Intersecting experiences of disadvantage

4. What are the experiences of women and girls with multiple and complex intersecting needs as victim-survivors of sexual violence in the criminal justice system? What works? What needs to be improved?
5. What are the experiences of women and girls with multiple and complex intersecting needs as accused persons and offenders in the criminal justice system? What works? What needs to be improved?

Recognising and responding to trauma

6. How are the impacts of trauma for women and girls understood and exercised at each point across the criminal justice system?
7. How can the impacts of trauma be better recognised and responded to at each point across the criminal justice system? In your response you might like to consider the understanding and responses of:
 - police
 - forensic medical examinations and processes
 - prosecuting authorities including the police and the Office of the Director of Public Prosecutions
 - lawyers
 - support services

- judicial officers and courts staff

8. How are the risks of vicarious trauma and compassion fatigue recognised and addressed by those working in Queensland's criminal justice system? What works? What needs to be improved?

Protecting and promoting human rights

9. What are your experiences or observations about how the rights of women and girls who are involved in the criminal justice system as either victims-survivors of sexual violence or accused persons or offenders are protected and promoted? What works? What could be improved?

Resourcing, investment and value for money

10. What are the impacts and implications for women and girls who are victims-survivors of sexual assault if matters are delayed across the criminal justice system?

11. What are the impacts and implications for women and girls who are accused persons or offenders if matters are delayed across the criminal justice system? What works? What needs to be improved?

12. How can women and girls who are involved in the criminal justice system be better supported to reduce recidivism and benefit the community?

Appropriate governance and accountability mechanisms

13. How are services and responses to meet the needs of women and girls who are victims-survivors of sexual violence coordinated in Queensland?

14. How can service delivery be better integrated and coordinated to meet the needs of women and girls who are victims-survivors of sexual violence during their involvement in the criminal justice system? What works? What needs to be improved?

15. How are the rights and interests of victims of sexual violence in Queensland met and protected? What works? What could be improved? Relevant matters may include:

- your experiences with Victims Assist Queensland
- your experiences with the Queensland Human Rights Commission
- the establishment of an independent commission with responsibility for victims' rights
- other models to protect and safeguard the rights of victims

16. How are systemic trends and issues arising from the experiences of victims of sexual violence in Queensland identified and addressed?

17. What are the risks and benefits of introducing a mechanism to review and oversee prosecutorial agencies in Queensland?

18. What are your experiences and observations of prosecutors and criminal defence lawyers in cases concerning women and girls who are victims of sexual violence or an accused person or offender?

19. What are your experiences or observations of victims of sexual violence making a complaint about how they have been treated by criminal justice agencies across the criminal justice system? How are complaints about the treatment of victims resolved? Options for consideration:

- your experiences with complaints processes within these agencies
- the benefits and disadvantages of establishing a conduct commission such as in New South Wales
- the benefits and disadvantages of establishing an independent inspector of watch houses, prisons and detention centres in Queensland.

Part 2: Women and girls' experiences as victim-survivors

Community understanding of sexual offending and barriers to reporting

Attitudes to consent including impacts of pornography

20. Do community attitudes and rape myths impact women and girls' experience of the criminal justice system? If so, how?
21. How is consent understood in the community and how does this impact behaviour?
22. Is there a need to improve the general understanding of consent in the community? If so, how?
23. Are current school and community education programs about consent effective? What is working well? What needs to be improved?
24. Do rape myths and gender stereotypes impact community understanding of consent?
25. Is the current approach in Queensland to the non-consensual sharing of intimate images striking the right balance between criminalising non-consensual behaviour and community education?
26. How do pornography, sexting, dating apps or other emerging uses of technology influence community understanding of consent?

Barriers to reporting sexual violence

27. What factors do victims of sexual offences consider when deciding whether to report to police in Queensland?
28. What factors do victims consider when deciding whether to report to, or seek help from others, such as healthcare providers and other mainstream services?
29. What can be done to reduce the barriers to women and girls reporting sexual violence to police, and to other support services?
30. What can be done to make women and girls feel more confident that they will be believed by mainstream services and police when they report sexual violence?
31. What can be done to reduce the feelings of shame and the stigma that surrounds sexual violence in our community?

Public reporting on sexual offending and domestic and family violence

32. Do the current restrictions in Queensland on the publication of information about victims or accused persons relating to sexual offences and domestic and family violence adversely impact either victims or defendants/respondents? If so how?
33. If Queensland were to relax restrictions on reporting of sexual violence and/or domestic violence cases, for example by adopting legislation similar to New South Wales and Victoria, what would be the risks and benefits?
34. If restrictions on publication of information about sexual assault or domestic and family violence cases were relaxed, what measures (if any) should be put in place to protect and promote the rights of victims?
35. Should there be a discretion for courts to allow the publication of the identity of a child convicted of rape or sexual assault with the victim's consent?
36. Are there other issues relating to public reporting of sexual offences that impact women and girls' experience of the criminal justice system?

Reporting, investigating and charging of sexual offences

Victims experiences of reporting sexual violence to police in Queensland

37. What factors influence a victim of sexual violence to either pursue their complaint through the reporting and investigation stage of the criminal justice system or withdraw their complaint? How is this experience different for Aboriginal and Torres Strait Islander women and women from diverse groups?
38. What impact, if any, have recent amendments to the Criminal Code, including the definition of consent and the mistake of fact excuse, had on police and victim responses?
39. What are your experiences or observations of reporting sexual violence to police? What works well? What needs to be improved?
40. What are your experiences or observations of alternative reporting options offered to victims of sexual assault? What works well? What needs to be improved?
41. What are your experiences and observations of police investigative processes to gather admissible evidence after a report of sexual violence is made? What works well? What needs to be improved?

Forensic examinations

42. What are your experiences or observations of victims of sexual violence accessing and using forensic health services in Queensland? What works well? What needs to be improved?
43. How can high quality, timely forensic health services be provided consistently across Queensland including in rural and remote communities?
44. Do forensic health services in Queensland cater to the needs of women and girls from diverse backgrounds?

45. Is the quality of the evidence collected effective in assisting the investigation and prosecution of offences? What works well? What needs to be improved?

Support persons

46. What are your experiences or observations of having a support person for a victim present when a sexual offence is being investigated?

47. How are victims supported and their needs met during the investigation of a sexual offence? What works? What needs to be improved?

Police training

48. What training is needed to address victims' needs including the needs of Aboriginal and Torres Strait Islander women and girls and those from other diverse groups?

49. Is existing training for police officers effective? What works? What needs to be improved?

Legal and court processes for sexual offences

Adequacy of current sexual offences in Queensland

50. Should Queensland's laws on consent be amended again before the impact of amendments recommended by the QLRC can be properly evaluated

51. Are there risks in Queensland not adopting an affirmative consent model as exists in New South Wales and will shortly be adopted in Victoria? Can these risks be mitigated while maintaining an accused person's right to a fair trial? If so, how?

52. Do Queensland's current laws on consent impact on the victim during the court process? If so, how?

53. What are the risks or benefits of further reform such as the following alternatives?

- Redrafting the definition of consent so that consent must be 'agreed' rather than 'given'
- Including a provision that provides a non-exhaustive list of circumstances where consent does not and cannot exist
- Removing the ability for a defendant to rely on self-induced intoxication as a reason for having an honest belief as to consent
- Amending section 348A(2) to provide that regard must be had (rather than may) to anything the defendant said or did (or did not say or do) to ascertain consent when considering whether they had an honest and reasonable belief about consent

54. Should stealthing be explicitly referenced in Queensland law? If so, should stealthing be a stand-alone offence or incorporated into the existing law in the definition of consent or in a provision such as section 218 of the Criminal Code, Procuring sexual acts by coercion?

Victims experiences of the Court process

55. How are victims supported and their needs met during court processes for sexual offences? Should more be done and if so, what?
56. Are the needs of women and girls from diverse backgrounds being met in the court process for sexual offences? Should more be done and if so, what?
57. How can criminal court processes for sexual offences be improved to protect victims from harm while providing a fair trial for the accused person?
58. What are the risks and benefits of video-recorded interviews between police and victims of sexual offences for use as evidence-in-chief in trials?
59. Do key participants in the court process for sexual offences understand and respond appropriately to the trauma experienced by a victim? What works? What needs to be improved?
60. Have you been a victim (or supported a victim) where the perpetrator committed sexual offences against you and/or other victims? Did this impact on how your complaint was handled or the court process? How do victims feel the application of the rules on similar fact and propensity evidence impacts on their rights in a fair trial of the accused person?
61. How is similar fact and propensity evidence being considered in Queensland? Could the law in Queensland be improved to ensure that a fair trial for the accused takes into account the 'triangulation of interests' of the accused, the victim and the public? If so, how?
62. What impact, if any, does the present law about similar fact and propensity evidence have on the experience of victims of sexual offences?
63. Are there misconceptions about sexual offending in Queensland and do jury directions currently effectively address them?
64. What are the risks and benefits in introducing:
- legislation for jury directions based on those in Victoria and NSW and as recommended by the VLRC
 - legislative amendments to enable expert evidence to be admitted about sexual offending as in Victoria?
65. Should the use of preliminary complaint evidence be extended to offences beyond sexual offences, including to the recommended new offence of coercive control?
66. Is the legislation protecting counselling communications for victims operating effectively in Queensland?

Alternative justice models

67. Should restorative justice approaches for sexual offences be expanded in Queensland?

68. How could the use of restorative justice processes improve the experience of victims of sexual offences whilst holding those responsible accountable?

69. How do court case management and processes impact on the experience of victims of sexual offences in Queensland?

70. What changes can be made in court case management and processes concerning sexual offences to improve the experiences of victims of sexual offences?

71. Should a special sexual violence court be trialled in Queensland? What would be the risks and benefits?

72. How can trauma-informed approaches be better embedded in court processes in Queensland to improve the experiences of victims of sexual offences? What works? What needs to be improved?

Part 3: Women and girls' of the criminal justice system as accused persons and offenders

Drivers of women and girls contact with the criminal justice system

73. What are the drivers of women and girls' offending in Queensland?

74. Why are women and girls offending at increased rates?

75. How are women and girls at risk of entering the criminal justice system currently supported to prevent them from offending? What is working well? What could be improved? What is working? What could be improved?

76. What are the experiences of women and girls coming into contact with police as persons suspected of offending?

77. Are women and girls being diverted from the criminal justice system? If so, what are their experiences? What works and what could be done better? Options to consider:

- the introduction of out of court disposals in certain circumstances
- the expansion of restorative justice conferencing
- the introduction of an adult cautioning system
- the introduction of penalty infringement notices for drug possession
- other options

What are the risks and benefits of these options ?

78. What are women and girls' experiences of access to legal advice?

79. Are there any barriers to women and girls accessing good quality legal advice, support and services?

80. How are women and girls who are involved in the criminal justice system supported and their needs met? What works? What could be done better in a cost effective way?

Sentencing women offenders

81. How are Queensland's existing sentencing principles, factors and options applied to women and girls? What works? What needs to be improved?

82. How can government funded supports and services be better coordinated and delivered to meet the particular needs of women and girls in the criminal justice system as accused persons and offenders? What works? What needs to be improved?

Women and girls' experience of incarceration/detention

83. What are women and girls experiences of pregnancy and birth in custody? What works well? What needs to be improved?

84. What are women and girls' experiences of being held in custody or detention, including in watchhouses?

85. How are women and girls who are pregnant or have children with them in custody supported?

86. What are the experiences in custody or detention of women and girls who are mothers? What works? What needs to be improved?

87. How do women and girls maintain relationships with family while incarcerated in Queensland? What is working well? What could be improved?

88. What are women and girls' experiences of accommodation in correctional facilities in Queensland? What works well? What needs to be improved?

89. What is the experience of women and girls from diverse backgrounds who are incarcerated in Queensland? What works well? What needs to be improved?

90. What is the experience of women and girls in maintaining personal hygiene and adequate clothing in custody? What works well? What needs to be improved?

91. What is the experience of women and girls who are searched in custody or detention in Queensland? What works well? What needs to be improved?

92. What is your experience or observation of work in prison including availability, conditions and remuneration? What works well? What needs to be improved?

93. What are your experiences or observations of women and girls in custody or detention accessing education? What works? What needs to be improved?

94. What are your experiences or observations about how women and girls in custody or detention are supported to remain connected to culture? What works well? What could be improved?

95. What are your experiences or observations about women and girls' access to health and wellbeing services and supports while they are in custody or detention? What works well? What needs to be improved?

96. What are your experiences or observations about women and girls' access to adequate food while they are in custody or detention? What works well? What needs to be improved?

Women's experience of reintegration into the community

97. What are your experiences or observations of women and girls' access to safe and stable accommodation after being released from custody or detention? What works well? What needs to be improved?

98. What are your experiences or observations of women's access to parole?

99. What are your experiences or observations of women and girls support to maintain or re-establish their connection to culture when they are released from custody or detention?

100. What is the experience of women and girls from diverse backgrounds on transitioning back into the community after incarceration?



Next steps

Improving the criminal justice system in Queensland to better respond to the needs of women and girls raises complex issues about which there are passionate and diverse views. The Taskforce wants to hear all those views.

You are encouraged to make a submission to the Taskforce. You may choose to respond to all, some or none of the discussion questions posed above. Or you may want to tell us about issues we've not identified and provide your own proposals for reform of legislation or the responses of systems and institutions, including police courts, the legal profession, sexual violence support services or corrective services. The Taskforce will carefully consider all submissions.

Submissions in response to this discussion paper can be made until **Friday, 8 April 2022**.

Taskforce members will soon be undertaking both targeted and broad and wide ranging consultation around Queensland. We will be carefully listening to the feedback and ideas we receive in both consultations and submissions. To find out more details on the Taskforce consultation and engagement activities, please go to our website: [Women's Safety and Justice Taskforce \(womenstaskforce.qld.gov.au\)](https://womenstaskforce.qld.gov.au)