Women's Safety and Justice Taskforce

Discussion Paper 3:

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

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

The **Women's** Safety and Justice Taskforce acknowledges and pays respect 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.

Where to seek help

If you, or someone else is in immediate danger please contact police on Triple Zero (000). If you are in Queensland and your matter is non-urgent you can contact Policelink on 131 444 or by visiting the Queensland Police Service website Adult sexual assault | QPS (police.qld.gov.au)

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

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

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

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

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

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

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

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

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Foreword

The Women's Safety and Justice Taskforce was established by the Queensland Government in March 2021 as an independent and consultative taskforce.

Our first responsibility was to provide advice about how best to legislate against coercive control and whether domestic violence should be a stand-alone offence. More than 500 women and girls generously shared their lived experiences of domestic, family and sexual violence with us. Their submissions were instrumental in framing the Taskforce's 89 recommendations to government in the *Hear her voice* report, finalised in late 2021

The Taskforce is now addressing the second part of its terms of reference – an examination of the experiences of women and girls across the criminal justice system.

Faced with the breadth of this task and given the constraints on our time and resources, the Taskforce released a discussion paper in June last year proposing possible themes to focus on during this second stage. After carefully considering the thoughtful and helpful submissions received, the Taskforce announced the focus on women and girls' experiences in the criminal justice system, first as victim-survivors of sexual violence and, second as accused persons and offenders. This discussion paper explores these two themes.

There are some common issues across both themes impacting on the experiences of many women and girls. The most obvious cross-cutting issue is the over representation of First Nations women and girls in the criminal justice system, both as victim-survivors and offenders. Others include intersectional disadvantage and the unique experiences of culturally and linguistically diverse, remote and regional, LGBTQIA+ and elderly women, and women and girls with disability, substance dependence or mental illness. The *Hear her voice report* explored many of these issues, together with the impacts of trauma and the need for a trauma-informed response across the justice system, but primarily from a domestic and family violence perspective.

In part 1 of this paper, we revisit these issues, this time from the perspective of women and girls both as victim-survivors of sexual assault and as accused persons and offenders.

In part 2 of the paper, we delve deeper into the issues related to women and girl victim-survivors of sexual violence. We discuss community attitudes to sexual violence and the barriers and issues that may prevent women and girls from disclosing and reporting sexual offences. We examine the legal and court process for prosecuting sexual offences. We ask whether legislative reform is needed and, if so, we raise possible options.

We also explore the definition of consent and the operation of the excuse of mistake of fact as to consent in relation to sexual offences. The Taskforce acknowledges and thanks the Queensland Law Reform Commission (QLRC) for its insightful work examining these aspects of the law in its valuable 2020 report. The Taskforce also acknowledges that legislative amendments implementing the QLRC recommendations only came into effect on 7 April, 2021. We accept it may be too soon to adequately assess any impacts from these legislative amendments. In response to our second discussion paper, some legal stakeholders understandably cautioned the Taskforce against further reviewing these aspects of the law so soon after the QLRC's review.

These issues, however, have continued to be rigorously critiqued in public debate in all Australian jurisdictions, including Queensland. Other major Australian jurisdictions have since further changed – or indicated their intention to change – these aspects of the law to better protect victim survivors of sexual assault. Advocates like 2021 Australian of the Year, Grace Tame, are calling for uniform laws against sexual assault across Australia.

The Taskforce provides a singular and timely opportunity to directly hear from Queensland women and girls about their experiences of how consent is and should be understood in the community and how the excuse of mistake of fact as to consent is and should be applied to charges of sexual assault. We want to hear whether the current law is having an impact on the commission of sexual assaults, the reporting of those assaults, their investigation, and the treatment of victim-survivors during the trial and sentencing process.

In part 3 of the paper, we focus on the experiences of women and girls as accused persons and offenders. As a minority in a male-dominated criminal justice system, the voices of women and girls risk being muted. We have learned that many may be coerced into criminal behaviour by abusive partners or use reactive violence against their long-term abuser. While acknowledging that each woman and girl has a unique life journey, the Taskforce wants to gain a better understanding of any common drivers bringing them into contact with - and trapping them in- the criminal justice system.

This paper also explores resourcing and investment across the criminal justice system and how best to deliver value for money to the Queensland community, especially when sentencing offenders

We invite input from women and girls about their experiences with police, lawyers and the criminal justice system, including sentencing and whilst in custody, and their re-integration into the community. We want to know what works and what could be done better.

We also seek input from the broader community, including from experts and academics working in these fields, about protecting and promoting human rights and how to best protect the rights of the victim while ensuring the accused person's right to a fair trial.

The Taskforce's gendered terms of reference firmly limit us to exploring the experiences of women and girls. We readily acknowledge, however, that many of the concerning issues facing women and girls in the criminal justice system, both as victim-survivors of sexual offences and as accused persons or offenders, can also apply to men, boys and the non-binary. The Taskforce is conscious that its future recommendations could have an application beyond women and girls.

In response to the first stage of our work we were humbled by the number and quality of the submissions we received. The Taskforce deeply appreciates the time, thought and effort put into them. You do not need to resubmit them. We will again consider all relevant aspects of those submissions in this second stage of work.

Throughout this paper we raise questions to prompt thought and discussion. You can respond to all, some or none of those questions. You may wish to tell us about quite different things.

We welcome and are grateful for all submissions so that we can again hear – and consider - your voice!

The Honourable Margaret McMurdo AC

Chair – Women's Safety and Justice Taskforce

Introduction

What is the Women's Safety and Justice Taskforce?

The Women's Safety and Justice Taskforce (the Taskforce) was established by the Queensland Government in March 2021. We are an independent, consultative taskforce established by the Queensland Government to examine:

1. coercive control and review the need for a specific offence of domestic violence

2. the experience of women across the criminal justice system.

What have we done so far?

The first part of our terms of reference

On 27 May 2021, we released our first discussion paper about the first part of our terms of reference—the best way to legislate against coercive control and the need for a standalone domestic violence offence.

On 2 December 2021, we delivered our first report, *Hear her voice*, which provided 89 recommendations to the Queensland Government for addressing coercive control and domestic and family violence in Queensland.

The second part of our terms of reference

The Taskforce identified that we would not have the time or resources to properly examine *all* of the issues within the broad scope of the second part of our terms of reference.

To help the Taskforce determine how to refine our focus for this part of our work, we released a second discussion paper on 24 June 2021 seeking feedback on the themes that we should explore in the second part of our terms of reference – examining the experiences of women across the criminal justice system in Queensland.

We received 31 submissions in response to that feedback.

This third discussion paper, guided by the feedback we received, identifies the themes and issues that the Taskforce is examining in the second and final part of its work.

The purpose of this discussion paper

The purpose of this discussion paper is to generate discussion and feedback that will assist us to make recommendations to the Queensland Government about necessary reform of the criminal justice system.

The discussion paper is in three parts:

1. Cross-cutting issues in the criminal justice system which impact on women and girls as victims of sexual offences and as accused people or offenders.

2. Women and girls' experiences as victims of sexual violence in the criminal justice system

3. Women and girls experiences as accused and offenders

The Taskforce is seeking written submissions in response to the discussion paper and will be holding stakeholder forums in certain locations across Queensland to also inform its consideration of these themes.

Terminology and scope of this discussion paper

Our focus is on the experience of women and girls

The Taskforce acknowledges that many people, not just women and girls, can be victims of sexual violence, accused of a crime or incarcerated for committing a crime. There are likely to be issues arising from our work that have a relevance beyond solely women and girls, for example, the best justice responses to child and adult victim survivors of sexual abuse. But in accordance with our terms of reference, our focus must be on the experience of women and girls.

In ultimately making findings and recommendations, the Taskforce will be mindful, of this potential broader impact across the criminal justice system and of the need to avoid any unintended consequences.

Use of the terms 'sexual violence' in this paper

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

Where the statistics about sexual offending we quote in this paper exclude non-physical forms of sexual violence we explicitly reference that fact.

Use of the term 'offenders' in this paper

In this paper we use the term 'offenders' to describe people who have been convicted of committing a criminal offence. The Taskforce is aware that that there has been criticism of the use of this term as dehumanising those caught up in the criminal justice system. However, this is the terminology used in our terms of reference and it is a convenient and well understood term to describe those found guilty of offences against the criminal law. For those reasons we have used the term throughout this discussion paper. The use of the terms 'offender' or 'offenders' is not intended to diminish the complexity or humanity of those who offend and that complexity and humanity is acknowledged and discussed at length throughout this paper.

How to make a submission

We want to hear your views so that we can make the best possible recommendations to Government in our report which is to be delivered by the end of June 2022.

If you, or a woman or girl close to you have lived experience of sexual violence and/or as an accused person or a person found guilty of a criminal offence we would like to know what helped you, what made things more difficult for you and what you think needs to be improved.

If you work supporting women and girls who experience sexual violence, who are accused of committing criminal offences, or who are incarcerated for committing criminal offences —including supporting them to navigate the criminal justice system—we would like you to tell us what you think works well for your clients and why, what you see as barriers or issues and what you think needs to be improved. We also want to hear from experts and researchers in the field.

This discussion paper poses a series of questions throughout. These are designed to provoke thought and consideration of specific issues. You may wish to respond to all of these questions, only those that are of interest to you, or none at all. You may wish to raise other relevant matters.

Submissions in response to this discussion paper can be made until 5.00pm Friday, 8 April 2022.

Individuals and organisations can make a submission (confidentially if desired) though our website – www.womenstaskforce.qld.gov.au or by mail at:

Women's Safety and Justice Taskforce
GPO Box 149, BRISBANE QLD 4001

If you are mailing a submission, please ensure you complete and enclose a survey questionnaire with your submission so we know how you would like us to treat your information. The survey questionnaire is available on the website at:

Make a submission | Women's Safety and Justice Taskforce (www.womenstaskforce.qld.gov.au)

Part 1: Cross-cutting issues

A number of issues cut across the topics that the Taskforce is exploring in this discussion paper. This chapter outlines each of these issues and highlights their relevance to the experience of women and girls in the criminal justice system.

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

The impact of colonialism on Aboriginal and Torres Strait Islander peoples

Sisters Inside and the Institute for Collaborative Race Research told the Taskforce:

> Colonialism is repeatedly framed as an inherited trauma that Aboriginal and Torres Strait Islander people bear; the impact of past and present colonialism on Queensland's criminal legal system and other non-Indigenous people and structures is entirely erased. Aboriginal people are described as bearers of 'complex' disadvantage and trauma, without reflection on the structures of continuing racism and colonialism that entrench and sustain this.
>
> … it is not possible to deliver safety and justice for women in Queensland without addressing racism, colonialism and the violence perpetrated by the carceral state.[1]

In order to properly understand the complex issues facing Aboriginal and Torres Strait Islander peoples, it is important to understand the broader context of the colonial history of Australia. The Taskforce acknowledges and accepts that the Aboriginal and Torres Strait Islander experience of the criminal justice system, must 'be placed within a history – and continuing environment – of colonisation, displacement, racism, punishment, regulation and control'.[2]

The creation of 'protectionist' laws in the late 1800s had the effect of 'removing the basic freedoms of all Aboriginal people in Queensland.'[3] The *Aboriginals Protection and Restriction of Sale of Opium Act 1897* established a framework for reserves and government control over the lives of Aboriginal people.'[4] That Act and subsequent legislation until the 1970s gave a Regional Protector (who was usually a local police officer), control over every aspect of the lives of Aboriginal people in their district.[5] This period of time in Queensland's history is sometimes referred to by Aboriginal people as 'living under the Act.'[6]

In the 1800s and 1900s, Aboriginal and Torres Strait Islander peoples were removed from their traditional lands to live on mission stations and reserves in Queensland that were under the control of the local Protector.[7] Aboriginal people living on reserves were 'often referred to as "interns" or "inmates", further marking their status as prisoners and non-citizens. During this time, the everyday lives of Aboriginal people were totally regulated, controlled, and recorded by government officials.[8] This history has contributed to the issues facing Aboriginal and Torres Strait Islander peoples to this day, including overrepresentation in the criminal justice system.

Commonwealth and state governments have introduced policies aimed at rectifying the socioeconomic disadvantage of Aboriginal and Torres Strait Islander peoples.[9] Despite this, Aboriginal and Torres Strait Islander peoples 'experience disproportionately negative life outcomes relative to non-Indigenous Australians' in a number of areas including justice.[10] *The Report of the Special Rapporteur of rights of indigenous peoples on her visit to Australia* found that these policies do not adequately respect the right of Indigenous Australians to self-determination and:

> The compounded effect of the policies contributes to the failure to deliver on the targets in the areas of health, education and employment in the 'Closing the Gap' strategy and fuels the escalating and critical incarceration and child removal rates of Aboriginal and Torres Strait Islanders.[11]

Some argue that the policies of Australian governments should be revised to acknowledge the negative effects of historical policies including intergenerational trauma and racism[12] and be co-designed with Aboriginal and Torres Strait Islander peoples.[13] This would ensure that Aboriginal and Torres Strait Islander peoples are better recognised and able to actively participate in the solution.[14]

Historically, Aboriginal and Torres Strait Islander women have been separated from other women as a result of perceived biological and culturally defined racial differences.[15] The unique position of Aboriginal and Torres Strait Islander women in society and how it can

be addressed has been articulated by Black and Trounson:

> The ongoing colonisation of Australia is not only directed by racial prejudice and discrimination, but by patriarchy too. Aboriginal and Torres Strait Islander women sit at the intersection of these two oppressive forces and are impacted by the consequences of both. To substantially improve the treatment of Aboriginal and Torres Strait Islander women by the criminal justice system, an intersectional approach must be taken.[16]

Aboriginal and Torres Strait Islander women and girls' experiences as victims of sexual violence

In 2019-2020, four in five victims of reported sexual offences were female. This was consistent for both Aboriginal and Torres Strait Islander and non-Indigenous female victims.[17]

In 2016, a report was released by the Judicial Council on Cultural Diversity that considered Aboriginal and Torres Strait Islander women's experience of Australian courts.[18] The study found that there were access to justice barriers in relation to reporting and participating in the criminal justice process for Aboriginal and Torres Strait Islander women.

The study identified the following barriers to the reporting of family violence:

> Factors such as intergenerational trauma and experiences of discrimination, racism and poverty all form a key part of Aboriginal and Torres Strait Islander women's experiences. In addition, Aboriginal and Torres Strait Islander women's perspectives of the justice system were shaped by dealings with the justice system overall - police, child protection, registry staff, corrections authorities, lawyers and judicial officers.[19]

The study also found that there were issues with communication and understanding:

> Many Aboriginal and Torres Strait Islander women have trouble communicating in the language of the justice system, adversely impacting on their ability to deal with police, engage with support services including legal representatives, and communicate with court staff and judicial officers … Difficulty understanding court processes, including communication difficulties, was triggered and amplified by some women's existing fear and distrust of the court.[20]

There were a number of barriers to the full participation at court, including:

> … [T]hat court was often seen by Aboriginal and Torres Strait Islander women as potentially unsafe and not as a place to seek resolution for problems. The consultations recorded a range of factors about the court experience that posed barriers for Aboriginal and Torres Strait Islander women, including: the intimidating process of arriving at court and safety while waiting at court; unpredictable waiting times; difficulty understanding forms, charges, orders or judgments; and courtroom dynamics.[21]

Difficulties have also been identified by courts throughout Australia in the sentencing of Aboriginal and Torres Strait Islander peoples.[22] There is a tension between, on the one hand, 'the legacy of history and the social disadvantages of the individual offender' and on the other hand, a key principle of sentencing being deterrence of 'violence against women and children, especially in remote communities'.[23] These competing considerations make the task of sentencing difficult, particularly when courts can 'apply only the blunt instrument of imprisonment or detention as their means of deterrence'.[24]

Aboriginal and Torres Strait Islander women and girls' experiences as accused people and offenders

The overrepresentation of Aboriginal and Torres Strait Islander peoples as accused people and offenders in the criminal justice system is a complex problem. In 2020, Aboriginal and Torres Strait Islander peoples accounted for 29% of the prison population, while they only make up 3% of the population of Australia.[25]

Further, the rate of imprisonment for Aboriginal and Torres Strait Islander peoples is 13.3 times that of non-Indigenous people in Australia.[26] In Queensland, Aboriginal and Torres Strait Islander peoples represented 13.3% of all victims in 2019–20. This is despite Aboriginal and Torres Strait Islander peoples in Queensland's overall population only comprising 4.6% of the population.[27]

In 2021, Aboriginal and Torres Strait Islander women were imprisoned at just over 14 times the rate of non-Indigenous women in Australia.[1] Further, in the last five years (2016-2021) imprisonment rates for Aboriginal and Torres Strait Islander women increased by 55% in Queensland, from 299 to 462.1 per 100 000 persons.

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The Royal Commission into Aboriginal Deaths in Custody (1991) and the Australian Law Reform Commission Pathways to Justice Inquiry (2017) examined the reasons for overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system and identified a range of risk factors more prevalent among First Nation peoples. These included low socioeconomic status, child maltreatment, unemployment, poor education, cognitive impairment, poor mental health, exposure to violence and family dysfunction, homelessness, and substance misuse.[30]

The high prevalence of these risk factors among Aboriginal and Torres Strait Islander peoples 'stems in part from experiences of dispossession, forced removal, intergenerational trauma and racism.'[31] The 'underlying structural, relational and personal circumstances of Aboriginal and Torres Strait Islander women put them at greater risk of imprisonment.'[32] In addition to the high rates of incarceration, Aboriginal and Torres Strait Islander peoples have higher victimisation rates than non-Indigenous persons.[33]

The physical and psychological health of Aboriginal and Torres Strait Islander women in the prison population is poor.[34] Eighty percent of Aboriginal and Torres Strait Islander women in prison in Australia are mothers[35] and Aboriginal and Torres Strait Islander women often also care for the children of others and extended family.[36] Incarceration of these women impacts Aboriginal and Torres Strait Islander children who are in 'out-of-home care, which is a recognised pathway to youth detention and adult offending.'[37]

While numerous reports have examined the overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system, few have focused specifically on women.[38] In 2017, the Human Rights Law Centre sought to address this gap through its *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment* report.[39] The report highlighted the importance of responding to the distinct rights, histories and circumstances of Aboriginal and Torres Strait Islander women, and makes 18 recommendations for federal, state and territory governments.[40]

The *National Agreement on Closing the Gap* contains outcomes to end the overrepresentation of Aboriginal and Torres Strait Islander peoples and children in the criminal justice system.[41] *Queensland's 2021 Closing the Gap Implementation Plan* outlines how the government will work to address targets to reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent by 2031, and to reduce the rate of Aboriginal and Torres Strait Islander youth (10-17 years) in detention by at least 30 per cent by 2031.[42] Without significant policy adjustment, rates of offending and incarceration trends are likely to continue which means there is a grave risk that Queensland's *Closing the Gap* targets will not be met.[43]

The Taskforce's first report, *Hear her voice*, made a recommendation that 'the Queensland Government work in partnership with First Nations peoples to co-design a specific whole-of-government and community strategy to address the overrepresentation of Aboriginal and Torres Strait Islander peoples in Queensland's criminal justice system and meet Queensland's Closing the Gap justice targets.'[44]

Questions to consider

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

Women and girls whose experiences are shaped by intersecting structural inequality

Women and girls whose experiences are shaped by discrimination, disadvantage, violence, criminalisation and economic disparity continue to be at increased risk of coming into contact with the criminal justice system as victims and/or offenders.[45]

Once in the system, they are vulnerable to adverse and unjust treatment.

The Taskforce's first report, *Hear her voice*, recognised the concept of intersectionality as valuable in bringing to the forefront women's individual experiences of intersecting disadvantage. Acknowledging the intersecting layers of structural inequality including sexism, racism, ageism, and ableism, enables the diverse experiences of women and girls to be represented.[46]

Structural inequality not only disadvantages and marginalises women and girls, pushing them out of view and into the margins - it also silences them. The risk of not recognising diversity in women's experiences is that their interactions with the criminal justice system are inadequately understood and explained through the dominant voices of mainstream women and society more broadly.

When different forms of inequality overlap, individual experiences of marginalisation are compounded.[47] The Taskforce's first report found that women experiencing complex and intersecting forms of disadvantage are too often locked out of a service system that frequently is unable to address their needs.[48] Despite their difficult circumstances, it is important to recognise that women and girls are resilient in finding strength in their culture, community, spirituality and identity.[49]

Discussions about women and girls' experiences in the criminal justice system are often separated into silos that aren't relevant to the realities of women and girls' lived experiences. The Taskforce is interested in understanding the diversity of experiences of women and girls who are involved in the criminal justice system as victims-survivors of sexual violence and as accused persons and offenders.

Often, women and girls who are marginalised through systemic and structural inequality are Aboriginal or Torres Strait Islander, culturally and linguistically diverse (CALD), living with disability, lesbian, gay, bisexual, transgender, intersex, queer or asexual (LGBTIQA+), and/or women and girls who live in regional, rural and remote communities.

Women with disability

Women and girls with disability are vulnerable to sexual violence in different settings (such as in their private home and care settings and institutional facilitates) and by those who hold a position of trust (such as family and friends and carers).[50] They may also be the targets of violence by community members and neighbours.[51] Information on women and girls with disability and their experiences of sexual violence is emerging. The prevalence and extent of the violence is not yet fully understood.[52] Some refer to the issue as a 'hidden'[53] problem and 'invisible'[54].

In 2021, the Disability Royal Commission released a research paper on police responses to people with disability.[55] It reported that women with disability are between four and ten times more likely to be victims of sexual violence compared to women without disability.

> For women with cognitive disability, it reported that between 39% to 60% will be sexually assaulted before the age of 18.

For women with cognitive disability, it reported that between 39% to 60% will be sexually assaulted before the age of 18.[56]

Perpetrators of sexual violence prevent women and girls from reporting through a range of tactics such as isolating the victim from family and friends and removing mobility and communication devices.[57] When women and girls with disability are able to report sexual violence they report having their complaints being dismissed by police and their experiences of violence minimised.[58] Research evidence suggests women with disability have been perceived by criminal justice agencies such as police to be promiscuous or not credible.[59]

While little is known about the prevalence of prisoners with physical disability, cognitive impairment is thought to be over-represented in the prison population[60] and particularly among Aboriginal and Torres Strait Islander prisoners.[61] In 2020, 12% of children supervised in the youth justice system had at least one cognitive, physical or sensory disability.[62] Incarceration can be particularly difficult for women and girls with cognitive disability. Issues such as overcrowding and cell-sharing present

particular challenges and can cause significant stress, as can the lack of specialised services and trained staff.[63] Access for those with physical disabilities is also an issue in a number of correctional facilities.[64] Prisoners with disability may be at higher risk of violence and abuse.[65]

Women from culturally and linguistically diverse backgrounds

An accurate picture of the extent of sexual violence experienced by CALD women and girls' is not well established. [66] Studies show that refugee and immigrant women who come from countries where the laws and culture do not recognise women's rights often carry feelings of guilt and shame about their experiences of sexual violence. CALD women who have been sponsored by a partner to come to Australia or hold a visa with limited rights may fear deportation if they report sexual assault in their relationship. Their visa status may also restrict eligibilities around work, and access to health care and income support. CALD women's vulnerability to sexual exploitation is increased when they have limited access to finances, support networks, and appropriate support services.

In a new country, refugee and migrant women are unfamiliar with the culture and must navigate new social and cultural cues, language barriers, and systems.[67] This can create obstacles for CALD women who are victims of sexual violence when seeking help. Mainstream services also may not fully understand or anticipate the needs of CALD women and apply tools and frameworks that are not culturally appropriate.[68] This leads to a divide between the needs of CALD women and the services delivered to them.

LGBTIQA+ people

Evidence on violence against LGBTIQA+ people is still emerging. However, the levels of violence that sexuality – and gender-diverse people experience is suspected to be high.[69] One survey conducted in 2018 that involved 1,613 trans and gender-diverse participants found more than half experienced sexual violence or coercion at some point.[70] The survey is the first national research to examine the experiences of sexual violence amongst trans and gender-diverse communities.

Homophobic or transphobic jokes or stereotypes reinforce negative attitudes and beliefs about sexuality and gender diverse people that gives rise to and condones abuse, humiliation and violence.[71] These views are formed on the basis that opposite-sex/gender relationships are 'normal' and same-sex/gender relationships are not (known as hetero-normativity), and that people in heterosexual (opposite-sex/gender) relationships are superior to LGBTIQA+ people (known as heterosexism).[72]

Heteronormativity and heterosexism also perpetuate myths and misconceptions about sexuality and gender diverse people such as that sexual violence doesn't happen in same-sex relationships.[73] LGBTIQA+ people experience barriers to accessing support when services base their practice on heteronormative frameworks and tools, and may not be able to recognise the seriousness of violence in their relationships.[74] When attempting to report sexual violence to police, LBGTIQA+ people report not being treated fairly.[75]

Women who live in regional, rural and remote communities

Women and girls' experiences are influenced by geographical remoteness. Those living in regional, rural and remote areas experience similar barriers to reporting gender based violence as women and girls living in urban areas. However, they also face additional barriers to reporting violence that include social isolation, limited access to services, difficulties maintaining anonymity and privacy when reporting or accessing services, limited public transport networks, and restricted access to health and legal services.[7677] Rural areas are known to have their own unique culture that is based on conservatism, traditional gender roles, a strong adherence to keeping family matters private, and a distrust of 'outsiders'.[78] These factors give rise to a sense of privacy and secrecy around women and girls experiences of violence that create barriers.[79]

Older women

Younger age groups are more likely to be victims of sexual assault compared to older people aged 65 years and over.[80] However, older women's experiences of sexual assault are rarely recognised in the community. Indeed, the prevalence of sexual assault amongst older women and their experiences of violence remains largely unclear.[81]

Sexual assault of older women occurs in different contexts. This may involve long-term victimisation by a partner that has continued into older age.[82] It may also begin following older women's physical and mental deterioration.[83] Sexual violence against older women may be carried out by family members, carers or strangers.

Aged care settings can be places where sexual violence against older women goes undetected and unreported.[84] This is because certain characteristics in these settings contribute to 'situational risk factors' for sexual assault.[85] This includes, lack of internal mechanisms to respond appropriately to sexual violence once detected, and barriers to disclosure due to cognitive or communication difficulties, physical disability and mental health issues.[86]

The inmate population in Australia is ageing.[8788] Older women in prisons are more likely to report serious health problems compared to older male prisoners.[89] In some cases, prison staff may be unaware of the health needs of older women, such as those with milder symptoms of dementia, and treat them like other prisoners.[90] Factors such as this contribute to the worsening health of older women in prison.

Barriers to reporting sexual violence and accessing justice

Women and girls with multiple and complex needs face many of the same barriers to reporting violence as other women, but they may also face additional barriers that include:

- limited understanding on how the criminal justice system processes sexual assault cases
- attitudes and beliefs within particular communities about sexual violence[91]
- experiences of shame in being examined, or disclosing sexual violence[92]
- marriage as a contract that implies consent for sexual intercourse [93]
- concern around stigma and risk of being ostracised.
- lack of permanent residency or fear of deportation. [94]

In addition to these factors, structural and systemic inequality materialises in ways that block women and girls with intersecting and diverse needs from accessing and participating in the criminal justice system.

This often includes:

- lack of access to appropriate interpreters when reporting sexual violence[95]
- poor police and legal responses to requests for assistance
- becoming entrapped in violence due to a lack of access to alternative housing options and employment[96]
- cultural stereotypes and misconceptions by services. For example, perceptions that victims lack credibility due to disability or mental health issues
- lack of access to appropriate support services

Systemic and structural inequality disadvantages and creates barriers that lead to poor health, social and justice outcomes.[97]

The concept of intersectionality recognises that for women and girls who experience multiple and complex needs, disadvantage and discrimination are cumulative. For example, all women and girls are confronted by rape myths about sexual violence that minimise and make them responsible for their own victimisation. This is even more likely to be the experience for women and girls with multiple intersecting needs and is further compounded by factors such as racism, ableism, homophobia and transphobia. [98]

Women who work in the sex industry also face attitudes and beliefs that impact on their ability to report and access justice when they are the victims of sexual violence as well as when they are involved in the criminal justice system as accused persons and offenders.

The experiences of women and girls with multiple and complex needs in the criminal justice system

Criminal justice responses are reported to disproportionately affect marginalised women.

Carceral feminism is a term that is sometimes used to describe feminist advocacy that promotes state based solutions to gendered violence. Under this approach, perpetrators are held accountable for their behaviour primarily through police interventions, prosecution and imprisonment.[99] It sends a powerful symbolic message to the community that violence against women and girls will not be tolerated, and perpetrators will be punished

by the full extent of the law. However, critics of this form of advocacy argue that efforts to punish gendered violence have inadvertently led to an increasing number of women and girls from diverse groups being treated as offenders rather than victims – increasing their risk of being arrested and prosecuted.

Research on gendered violence shows that women and girls' offending behaviour often occurs as a result of their own victimisation.[100] In some cases, for example, women are often misidentified as perpetrators of domestic and family violence and are at increased risk of punishment if they breach a domestic and family violence order. Men from diverse communities have also been disproportionately targeted by 'tough on crime' approaches to gendered violence.[101][102]

The Taskforce is interested to understand any harms women and girls experience as a result of punishment based approaches to gendered violence. It is also interested to understand alternative approaches to gender based violence that addresses the criminalisation of women and girls who have multiple and complex needs.

For women and girls who experience intersecting disadvantage, their pathway into the criminal justice system can be paved by experiences of violence, childhood trauma, poverty, institutional care, racism and other forms of discrimination, unemployment, minimal education, mental health issues, and problematic substance misuse.[103][104] Studies show between 70% to 90% of women in custody have experienced abuse.[105]

Women and girls' exposure to violence and victimisation means those who become involved in the justice system don't fit neatly into the box of offender or victim. For these women and girls, their experiences of the justice system are likely to involve both offending and victimisation. Sisters Inside CEO, Debbie Kilroy made this point in her address at a 2016 conference on Current Issues in Sentencing. She stated,

> The vast majority of women prisoners have committed, or been charged with, minor non-violent offences. Too often, these have been driven by their lived experience of abuse and the direct consequences of this victimisation – in particular, poverty, mental health issues and substance abuse'.[106]

A recent study undertaken by ANROWS found well-established links between coercive control, sexual violence and women's imprisonment.[107] ANROWS reported that key factors in women's incarceration include trauma, mental health or housing issues precipitated by women's use of violence in attempting to get away from the perpetrator (for example, driving without a licence) or using resistance to protect themselves.[108]

Prisons can be unsafe for women and girls who have multiple and complex needs. In Australia, trans and gender-diverse people are reportedly at increased risk of criminalisation due to factors such as homelessness, problematic substance misuse, participating in sex work, and mental health issues.[109] A small number of studies show once in custody, transgender people are vulnerable to discrimination, sexual coercion and psychological distress.[110] There is still very little known about this population in Australia.

Similarly, Queensland Advocacy Incorporated,[111] an independent, community-based advocacy organisation and community legal service for people with disability) noted in its submission on the Custodial Inspector Amendment (OPCAT) Bill 2020 that places of detention including prisons can become sites of abuse and exploitation for people with disability.

Questions to consider

4. What are the experiences of women and girls with multiple and complex intersecting needs as victims-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

The impact of trauma

Trauma occurs when our coping mechanisms are overwhelmed in response to extreme stress. The body's response to high levels of stress hormones triggers a range of reactions orientated towards survival. While everyone responds to traumatic events differently, it is common for people to respond with 'fight, flight and/or freeze' responses and may include a person disassociating or 'switching off'. While these responses can initially be protective in the face of a traumatic event, they can have serious detrimental impacts on a person's health and wellbeing over time if the underlying trauma is not resolved.[112]

There is increasing recognition that complex trauma (trauma associated with sustained or repeated violation and betrayal in interpersonal relations) in particular, can have profound and ongoing impacts including chronic alterations to identity, memory and relationships as well as risk of self-harm, suicidality and substance abuse.[113] Social inequalities such as sexism and racism intersect with complex trauma to increase the risk of experiencing trauma and compound its harms.[114]

The intergenerational trauma caused by colonisation and racist policies such as the forced removal of children provides important context for understanding the overall impact of trauma on First Nations peoples.[115]

Women and girls coming into contact with the criminal justice system (as victims or offenders) have a high likelihood of trauma, both recent and/or historical, and thus are at a high level of vulnerability. The experience of sexual violence is the trauma type most strongly linked to long term impacts associated with post-traumatic stress disorder (PTSD),[116] and is the most common source of PTSD in women.[117]

Interactions with the components and processes of the criminal justice system, without the necessary support, can result in further harm through re-traumatisation or impede healing. The impact of trauma can also detract from their ability to participate in criminal justice processes, and the outcome of those processes.

Trauma and memory

Advances in memory research have provided an increased understanding of how memories are stored and retrieved in the context of trauma. The physiological impacts of trauma can disrupt memory storage and retrieval processes in many ways.[118] This may affect a person's observation and recall of detail, or even if they consciously remember the event(s) at all.[119] Strategies employed to help a person cope with trauma after the incident, such as avoidance and dissociation, can also lead to impaired memory performance. [120] The effects of overwhelming stress can also make it difficult for people to retrieve relevant details in a coherent and reliable manner (if at all).[121]

The negative impacts of trauma on memory recall and narrative coherence can result in a victim's memories being fragmented, lacking specific detail and difficult to arrange within a linear narrative. As a result, the accounts of traumatised people can seem fragmented, unreliable or even dishonest.[122] This can undermine the credibility of victim-witnesses in the face of what is commonly considered a 'good' victim account.[123] Equally, accused persons with trauma histories are also disadvantaged by impaired memories and recall of events which can impact the outcomes of their engagement with the criminal justice system.

Impact of trauma on reporting of sexual assault

As a crime that often takes place in private, prosecution of sexual assault offences relies heavily on the account of the victim. The impact of trauma can influence the likelihood of a person reporting a sexual assault, cause delays in reporting, affect the quality, reliability and coherence of information provided and affect how credible a person appears.[124] These factors impact the police response and the assessment of prospects of successful prosecution.[125]

Sexual assault can be dehumanising and disempowering for victims. The trauma response associated with the original assault can be reactivated when reporting, causing further harm. The tone of relationships between survivors and professionals can be key to their access to justice – dismissive, disbelieving or perfunctory interactions can damage their ability to engage[126] and even increase a victim's risk of developing post-traumatic disorders.[127]

Impact of trauma on participation in criminal trials

'If one set out by design to devise a system for provoking intrusive post-trauma symptoms, one could not do better than a court of law'.[128]

The nature of a criminal trial can be extremely challenging for people with trauma history, with some victims describing the experience as being worse than the offence itself.[129] Problematic elements of the trial process include:

- lack of control over process[130] often resulting in a potentially triggering sense of disempowerment

- lack of physical and emotional safety[131] including safety from harm through re-traumatisation
- challenges to credibility and own recall of events (particularly through the experience of being cross-examined)[132]
- delays in the process causing repeated anticipatory stress[133]

For trauma impacted victims, their ability to give their best evidence can be compromised and they can risk re-traumatisation and further harm by participating in the criminal justice system.[134]

It has been suggested that lawyers, judicial officers and juries lack understanding of the impacts of traumatic stress, including common physiological and psychological responses.[135] This can result in inaccurate interpretations of behaviours, both at the time of the offence, its aftermath as well as in the course of giving evidence.

Queensland courts offer a number of options to support vulnerable witnesses (children, victims of sexual assault and people with intellectual disability) such as: the ability to have a support person in court; pre-record evidence or give evidence from a remote witness room; have a screen placed so the accused person is not visible to the witness; and have the court closed to the public and media.[136] These options are generally available upon application by the prosecution.

Impact of trauma on offending and contact with the criminal justice system

Women in the justice system have an especially high prevalence of trauma when compared with women in the general population (and men in the justice system).[137] Research suggests 87% of women in custody have been victims of child sexual abuse, physical violence or domestic violence – 66% of whom have been victims of all three types of abuse.[138] Ninety-three percent of young people within the youth justice system have experienced some form of trauma.[139] Research conducted in Queensland and Western Australia indicates that half (54%) of young females (aged 14-17) in the justice system report psychological distress – much higher than their female counterparts in the community (35%), and one third met diagnostic criteria for two or more mental disorders assessed (including post-traumatic stress disorder).[140]

Unresolved trauma compromises core neural networks and disrupts the way neurons wire together. It leads to 'a cascade of biological changes and stress responses'[141] that can affect all areas of functioning, and limit a person's capacity to respond flexibly to daily stress and life challenges. For those who live with the effects of unresolved trauma, 'normal life stress' can be profoundly destabilising, trapping them in a cycle of physical and psychological reactivity which is devastating to wellbeing and to a wide spectrum of functioning'.[142]

Unresolved early life trauma can cause both adverse physical and psychological health problems in adulthood as well as a range of psychosocial issues[143] including disassociation.[144] Outcomes for 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.[145]

For people already impacted by trauma, the interaction with the criminal justice system can compound and exacerbate the impacts of trauma, and undermine efforts to recover.

Trauma informed practice

Trauma-informed practice (also known as trauma-informed care) refers to models of professional and organisational practice that recognise and aim to address the effects of trauma on clients and staff.[146] Underpinning trauma-informed practice is the need to 'consider *what has happened* to a person rather than what is 'wrong' with them', as a way of understanding behaviour which might initially appear mystifying'.[147]

There is increasing recognition of the value of trauma-informed practice to improve outcomes of service delivery and minimise harm. While many health and human service organisations have adopted trauma-informed practice, there is general consensus in the literature that the criminal justice system is not designed to accommodate people affected by trauma.[148] This may, at least in part, explain the high levels of attrition for sexual assault cases.[149] For trauma impacted accused persons and offenders, the criminal justice system can be a source of re-traumatisation, compounding and entrenching existing impacts of trauma.

In its first report the Taskforce recommended trauma-informed training, education and change management across the domestic and family violence and justice system.[150]

Vicarious trauma and compassion fatigue

Those who work on a regular basis with trauma-affected people such as those in the criminal justice system can themselves experience feelings and symptoms similar to PTSD.[151] Repeated exposure to accounts of violence and abuse can affect workers' understandings about the world, people and themselves[152] and lead to burnout and emotional numbness. This 'vicarious trauma', (also

known as 'secondary traumatic stress' or 'compassion fatigue') can impact people's ability to do their work and their own mental health and wellbeing. When not acknowledged and addressed, these effects can lead to workers resorting to detachment, disbelief and denial of responsibility in order to avoid becoming overwhelmed.

While evidence is limited, high levels of vicarious trauma has been identified in lawyers and judicial officers, particularly when there workplace involves high levels of interpersonal violence.[153] Research has found police officers dealing with rape cases are more likely to have PTSD symptoms than other officers.[154] Not only does vicarious trauma have negative impacts on workers, it can be the source of further stress for trauma survivors who are often acutely sensitive and attuned to the responses of others, particularly in the context of authority structures. Stress experienced by workers can be transmitted to their clients.

Questions to consider

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

Queensland, like all Australian jurisdictions, operates an adversarial criminal justice system for the state to resolve grievances with an accused person.[155] The nature of this system means that victims have traditionally been precluded from actively participating in proceedings, unless as 'passive' witnesses for the prosecution.[156] Victims are not parties to proceedings, and the State is considered to be the wronged party.[157] The lack of a formal role for victims in the criminal justice system means that their human rights tend to be overlooked.[158]

The victims' rights movement

In the 1960s, both in Australia and internationally, a movement began to enhance the rights of victims of crime in the criminal process.[159] The first successes of this movement involved the establishment of victim compensation schemes.[160] In Queensland, such a scheme was first introduced in 1968.[161]

In 1985, the rights of victims were internationally recognised in the *Declaration of Basic Principles for Victims of Crime and Abuse of Power*.[162] Rights for victims of crime are also recognised or implied by other international human rights instruments, including the *Declaration on the Elimination of Violence Against Women*.[163]

Victims of sexual offences have been at the forefront of efforts to strengthen the rights of victims of crime in criminal proceedings. Australian sexual violence law reforms in the 1980s saw the modification of defendant rights in favour of victim interests, in recognition of the vulnerability of such victims in adversarial trials.[164] Efforts to protect the rights of victims of sexual offences have included limitations on defendants' rights to cross-examine on sexual history, and special provisions for how victims give evidence as vulnerable witnesses.

The expansion of victims' rights into law and policy has involved the development of declarations or charters of victims' rights across all Australian states and territories.[165] Some jurisdictions have established victims' commissioners to uphold victims' rights and administer victims' charters.[166] Such commissioners are discussed below in relation to governance and accountability.

In 1995, Queensland legislated *Fundamental principles of justice for victims of crime (Fundamental principles),* based on the *Declaration of Basic Principles for Victims of Crime and Abuse of Power*.[167] A timeline of the recognition of victims in Queensland is at Appendix 1.

Queensland's framework for victims' rights

Charter of victims' rights

In 2017, Queensland legislated a *Charter of victims' rights* (the Charter) within the *Victims of Crime Assistance Act 2009* (VOCA Act).[168] The Charter replaced the existing *Fundamental principles* as recommended by a review of the VOCA Act.[169]

The Charter describes the way a victim should be treated, as far as practicable and appropriate, by both government and non-government entities.[170] It lays out general rights for victims including that they will be treated with courtesy, compassion, respect and dignity, taking their needs into account. Further, it protects the personal information of victims and requires they be informed about available services and remedies.[171]

The Charter also provides rights relating to the criminal justice system. These include obligations to provide information to victims about investigations, prosecutorial decisions, and the trial process. The Charter protects victims from unnecessary contact with the accused, allows them to provide a victim impact statement, and provides for the return of their property.[172]

For eligible victims under the *Corrective Services Act 2006*, the Charter protects the right to be informed about a convicted offenders sentence and custodial status, and to make submissions to the Parole Board.[173] The full content of the Charter is at Appendix 2.

Although described as rights, the Charter does not give legal rights to victims.[174] The rights are not enforceable and do not provide any grounds for review of government decisions.[175] Because of this, the rights in the Charter have been criticised as more closely resembling a 'statement of standards'.[176]

Victims can make a complaint if their rights under the Charter are contravened.[177] Complaints can be made to the responsible person or entity, or to the Victim Services Coordinator (Victim Assist Queensland) who may refer the complaint or try to facilitate a resolution.[178] The Victim Services Coordinator has no powers to enforce compliance with resolution processes.

Human Rights Act 2019

Victims of crime in Queensland also have inherent rights under the *Human Rights Act 2019*. Although the Act does not contain any explicit rights for victims, the protected rights apply equally to all Queenslanders.

Rights of particular relevance to victims of sexual offences include:

- Liberty and security of person (section 29)
- Recognition and equality before the law, including equal protection of the law without discrimination (section 15)
- Protection from torture and cruel, inhuman or degrading treatment (section 17)
- Privacy and reputation (section 25)
- Protection of families and children (section 26)

Concerns about the rights of victims of crime were raised in submissions to the Legal Affairs and Community Safety Committee inquiry into the Human Rights Bill 2018.[179] These pointed to the lack of express rights for victims contained in the Bill,[180] and the distinct differences between the proposed, enforceable rights for defendants and the existing, unenforceable rights of victims. Women's Legal Service Queensland stated:

> "[The Charter] has no legal implication or consequence what so ever, having no legal enforceability. At best, it is aspirational, providing mere guidance on what should be standard practice. It does not have the same complaints process, level of protections or avenues for redress as provided by [the Bill]."[181]

In response to these concerns, the Department of Justice and Attorney-General noted that the Bill (now Act) does not contain specific rights for groups of peoples.[182]

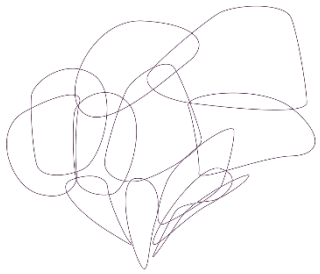
Achieving just outcomes by balancing the rights of victims and defendants

The rights of defendants in criminal proceedings are protected through several rights in the Human Rights Act, particularly the right to a fair hearing (section 31) and rights in criminal proceedings (section 32). These rights are also protected at common law and through the appeals process. The right to a fair hearing entitles an accused to have charges against them decided by a competent, independent and impartial court or tribunal after a fair and public hearing. Rights of an accused person in criminal proceedings include the right to be presumed innocent until proved guilty according to law, and other minimum guarantees such as the examination of witnesses against them.

The presumption of innocence is critical to avoiding the significant injustice of a defendant being wrongfully convicted.[183] It is a fundamental principle of the common law, and imposes on the prosecution the burden of proving charges against the defendant beyond reasonable doubt (the burden of proof).[184] Procedural fairness also protects defendants from unjust outcomes. The ability to test the evidence against them, including through the cross-examination of witnesses, is an important procedural right for defendants. This creates a significant tension in sexual offence proceedings, where efforts to safeguard the rights of victims have largely involved special arrangements for the way they give evidence, and what evidence can be admitted.[185] While evidential safeguards may protect the privacy of victims (section 25) and shield them from potentially degrading questions during cross-examination (section 17), they also have the potential to limit the rights of defendants. This includes the defendant's right to liberty (section 29) should they be convicted on evidence they were unable to challenge.

The Human Rights Act does not grant victims a right to a fair trial. However, international and Australian case law has determined that what is 'fair' in the context of a fair hearing extends beyond the rights of the accused to include the interests of the community and the protection of witnesses.[186] This requires a 'triangulation' of interests to achieve fairness on all sides.[187]

Rights under the Human Rights Act may be limited where this is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.[188] This justification could include the purpose of protecting both victims and the broader community. This evolving concept of a fair trial allows for a reassessment of how vulnerable victims are treated during trials. For many vulnerable victims of sexual offences, including children and victims with intellectual disability, practices such as aggressive cross-examination may be considered 'unfairness to the witness'.[189]



In considering options to protect the rights of victims of sexual offences, the interests of victims must be fairly balanced against the rights of that accused person to a fair hearing and due process.[190] The European Court of Human Rights has noted that:

> in criminal proceedings concerning sexual abuse certain measures may be taken for the purpose of protecting the victim, provided that such measures can be reconciled with an adequate

> and effective exercise of the rights of the defence.[191]

Some argue that procedural changes to protect victims of sexual offences have already gone too far, and are eroding the rights of the accused.[192] Others argue that further protections, such as the use of indirect cross-examination methods have been found in other countries to be consistent with a fair trial.[193]

The rights of victims do not always need to come at the expense of the rights of the accused person.[194] In Europe, the rights of victims have been recognised to include the right to be interviewed without unreasonable delay and to be interviewed as few times as necessary.[195] Delays in the criminal justice system raise significant issues around both victims' access to justice and the rights of accused persons.[196] Delays in proceedings disadvantage victims because the passage of time, stress and anxiety all diminish memory.[197] The right to trial without delay is also a fundamental right of accused persons.[198] Seeing the rights of both victims and accused persons as obligations of the state reduces the conflict between these participants.[199]

A stronger future for victims' rights?

The role and rights of victims in the criminal justice system is evolving. The role of victims was considered in 2016 by the Victorian Law Reform Commission[200] and in 2017 by the Royal Commission into Institutional Responses to Child Sexual Abuse.[201] Both reports acknowledged that victims of crime have an inherent interest in the criminal justice process, and recognised the victim's role as 'a participant but not a party'.[202]

More recent efforts indicate a push to make victims' rights more enforceable.[203] The Victorian Law Reform Commission's 2021 report, *Improving the response of the justice system to sexual assault* (the VLRC 2021 report) recommended strengthening the powers of Victoria's Victims of Crime Commissioner and recognising additional rights in its equivalent Victims' Charter.[204] Following a period of consultation, the Australian Capital Territory passed a new *Charter of Victims Rights* in 2021 which includes contemporary rights such as to an interpreter or intermediary.[205] This is particularly relevant to some First Nations and CALD women as well as some women with disability.

The rights of women and girls as accused persons

As noted above, the rights of accused persons in the criminal justice system are well-established both in international and Queensland law. This is largely due to the significant human rights limitations associated with deprivation of liberty and other criminal justice sanctions and procedures.

Women in the criminal justice system are entitled to the same human rights protections as men. However, due to their particular needs and experiences, women may experience discriminatory treatment in their interactions with the law.[206]

The rights of women in criminal proceedings includes the right, if eligible, to legal aid. However, women are more likely to seek legal aid for family law and family violence than for criminal matters.[207] Gendered differences in the way legal aid funding is distributed has been considered by two Australian Senate inquiries into access to justice.[208] The first in 2004 identified an 'indirect gender disparity in the way that legal aid is granted'.[209] In 2009, the second noted the 'chronic disadvantage' of First Nations women in accessing justice, and supported the development of targeted Indigenous women's law and justice strategies.[210]

Girls in the youth justice system have additional rights under the Human Rights Act. These include the rights of children in the criminal process (section 33), which require the separation of detained children from detained adults, that accused children be brought to trial as quickly as possible, and that convicted children be treated in an age-appropriate way. In 2021, the Queensland Family and Child Commission (QFCC) reviewed Queensland's youth justice reforms. The QFCC raised concerns that the rights of children in the criminal process were at risk of being breached.[211] It also found that the youth justice system would be more effective 'if it viewed at-risk young people through a rights and well-being, rather than just a criminal, lens'.[212]

A significant human rights issue facing girls in the criminal justice system is the age of criminal responsibility. The minimum age of criminal responsibility in Queensland is 10.[213] This is consistent with other Australian jurisdictions, but low compared with other countries.[214] Children aged 10 to 14 are assumed to be 'criminally incapable' unless proven otherwise.[215] However, the Australian Human Rights Commission has found little evidence that this principle is applied.[216] 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.[217]

In Queensland, nearly 20,000 children under 14 were proceeded against for offences in 2019-20.[218] Over half of these children were Aboriginal or Torres Strait Islander (11,169, including 3,113 girls).[219]

The rights of women in prison and girls in detention

The *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Mandela Rules) are universally recognised as providing the minimum standard for the treatment of prisoners.[220] The *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the Bangkok Rules)[221] apply in addition to the Mandela Rules.

The Bangkok Rules recognise the gender-specific vulnerabilities, circumstances, needs and requirements of women prisoners. They highlight the importance of providing gender-specific, non-custodial measures and penalties for women.[222]

The Bangkok Rules also require states to take women's histories of victimisation into account, as well as their background and family ties, when placing them in prison or delivering prison services.

International standards for alternatives to imprisonment are set out in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).[223] The Tokyo Rules promote the development of non-custodial measures and increased community involvement in the management of offenders.

The nature of imprisonment involves some limitation to an extensive number of rights. In addition to deprivation of liberty (section 29), imprisonment restricts prisoners from enjoying their privacy (section 25), freedom of movement (section 19), and, freedom of expression (section 21) to name only a few. While these limitations are experienced by all prisoners, there are factors unique to the imprisonment of women that may involve a greater limitation on their rights.

For example, the small number of women's prisons in Queensland means that prisoners' families may need to travel long distances for visits, or may not be able to visit at all. This could be a limitation on the right to freedom of movement (section 19) and the protection of families and children (section 26).

The fact that women are more likely to be primary carers of children also inhibits the protection of families and children and the right to a private family life.

Prison practices, such as routine strip searches, are considered by many to be a violation of the rights to privacy and security of person.

Access to adequate services in prison, including to appropriate health services and educational opportunities, are relevant to the rights to equality, health services and education contained in the Human Rights Act. Women in Queensland's prisons should be enjoying these rights to the same extent as all prisoners.

The rights of Aboriginal and Torres Strait Islander women in Queensland prisons also require particular consideration. Recently the *Wiyi Yani U Thangani (Women's Voices)* report identified overincarceration 'as one of the greatest human rights issues' facing First Nations peoples in Australia.[224] First Nations women in prison experience a disruption from cultural responsibilities and dislocation from community, limiting their cultural rights (section 28).

In 2016 the Queensland Ombudsman identified the overcrowding of women's prisons as a significant human rights issue.[225] Women who were sleeping on floors were clearly experiencing a violation of their rights to humane treatment when deprived of liberty (section 30). Operation Elevate responded to this overcrowding by repurposing the Southern Queensland Correctional Centre into a women's prison.[226]

The rights of women leaving prison and girls leaving detention

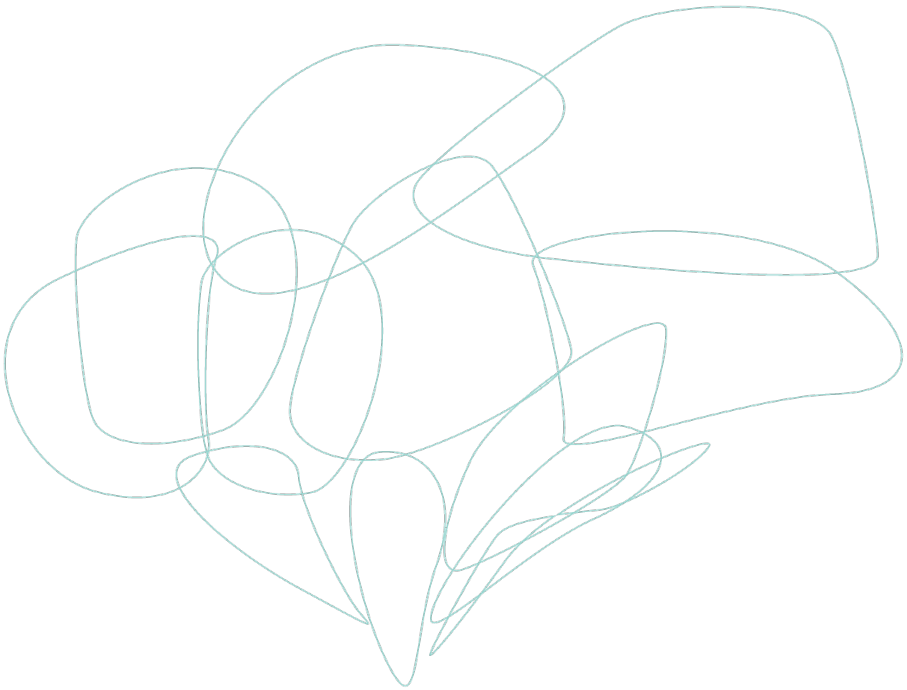
Women exiting prison face significant barriers in returning to normal, safe and rehabilitated lives. For example, parole conditions and the availability of dedicated re-entry services may have an impact on the likelihood that a woman leaving prison will reoffend. First Nations women are particularly vulnerable to re-incarceration 'because they do not have the resources to stay out of prison'.[227] These issues have implications for the right to liberty (section 29) and the cultural rights of First Nations women (section 28).

Women leaving prison face potential discrimination due to their criminal history, and may experience difficulty accessing services or employment. First Nations women with criminal histories may face additional barriers in relation to Blue Card approvals.[228] These barriers are relevant to the right to recognition and equality before the law (section 15) as well as the cultural rights of First Nations Women (section 28).

One right that is relevant to the experience of women leaving prison, as well as those seeking bail, is the right to housing. Women exiting prison need safe accommodation. While recognised at international law as a basic human right,[229] the right to housing is not recognised in Queensland's Human Rights Act.

Questions to consider

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

Resourcing the criminal justice and service system

Australian jurisdictions have identified the need for more investment and resourcing to strengthen existing criminal justice and service systems.[230] This includes developing innovative ways of addressing gaps in current practice. For example, Queensland introduced specialist domestic and family violence courts in 2015.[231] The cost effective nature of these courts in terms of positive victim engagement, perpetrator understanding of outcomes and improved inter-agency collaboration highlights the potential of embracing innovative approaches.[232]

To enable innovation, efficiency and effectiveness across criminal justice or service system responses resources at the prevention, early intervention and crisis levels are needed.[233] The impact of lengthy court delays (such as for sexual offence cases) on victim mental and physical health, education and career prospects (particularly for young victims) can be devastating.[234] Resource limitations in some Queensland courts have been described by one judge recently as an 'atrocity'.[235] The Taskforce's first report *Hear her voice* found evidence of limited resources to adequately respond to crime and victims across the criminal justice and service systems.[236] Table 1[237] (Appendix 3) provides an estimate of current resources expended by the Queensland Government across the criminal justice system. The Taskforce is interested to know if these resources are sufficient to adequately respond to criminal justice needs, are equitably spread across Queensland and are used in the most effective way.

Jurisdictional analysis of expenditure across the criminal justice and health systems

Table 2 (Appendix 3) provides an Australian jurisdictional comparison of police, justice and health expenditure per head of population throughout 2015-16 to 2019-20. As shown in red, the percentage of expenditure for police has decreased in both the Australian Capital Territory and New South Wales and for health in the Australian Capital Territory and Western Australia. Queensland has increased expenditure in all categories over that period but spends significantly less per head of population on prisons and community corrections and criminal courts than other Australian jurisdictions. The Taskforce is interested to know whether this expenditure is sufficient and if it is used efficiently and equitably across Queensland. For example, whether funding required to complete forensic examinations for sexual assault victims is fairly distributed to regional and remote areas.

Questions to consider

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?

Do we have the data we need to know where the resources should be allocated?

To better understand rising incarceration and recidivism rates, appropriate identification and collection of relevant data is required. The Queensland Productivity Commission (QPC) report noted the critical importance of interagency collaboration to ensure changes in one agency do not create unintended consequences in another.[238] The report noted the importance of long term evaluations to adequately assess the effectiveness and appropriateness of programs.[239] This includes data on the driving factors of incarceration (such as policy, legislative and social factors). There is a need for data that supports greater understanding of why incarceration is increasing while rates of overall victimisation are falling (for example, due to more punitive measures, changes in policy, increased policing).[240] This includes exploration of differential rates of First Nations peoples and non-Indigenous incarceration and disadvantage. Additional data on effective programs, including longer term outcomes are also urgently needed to identify best practice and ensure limited funding is used to most effect.[241]

Value of incarceration

Concerningly, in 2020-21, Queensland experienced the highest growth in incarceration of all Australian states and territories (up 15%).[242] This included a 21% increase in Queensland's incarcerated female population.[243]

Since 1992 Queensland has witnessed substantial increases in the rate of imprisonment – coinciding with a decline in rates of offending and overall victimisation.[244] This aligns with the broader Australian experience with factors other than criminality influencing increased rates of imprisonment.[245] These factors include a greater likelihood of people reporting crime, increased numbers of crimes solved (cleared) by police, and greater use of custodial sentences over diversionary and non-court options.[246] Greater numbers of people serving shorter sentences and increased numbers of people on remand in the last decade have also added to growth in imprisonment.[247]

The 2021-22 Queensland Corrective Services budget includes $320 million to *build a modern, sustainable and evidence-based 1,000 bed corrective services centre to rehabilitate and reduce recidivism*.[248] Additional funding has also been provided for installation of additional beds ($8 million) across high security correctional centres and a further $20.6 million for additional beds in Capricornia.[249] Given the extensive costs of new prison construction, a key issue for Queensland is whether short-term investment to expand the capacity of correctional facilities provides the most effective, long-term solution to the complex social problems that underline offending.

The Queensland Government, as with other jurisdictions continue to grapple with how best to ensure community safety whilst addressing complex social issues such as crime, poverty, trauma, and intersectional disadvantage.[250] This includes how best to adapt the current system to encourage rehabilitation and reintegration with limited resources. Both the Queensland and Australian Productivity Commissions have recently analysed the costs and benefits of incarceration. The results of both Commissions' analysis are part of a growing body of evidence demonstrating the cost effectiveness of prevention measures consequently supporting consideration of alternatives to incarceration (for certain types of offenders)[251] such as justice reinvestment.[252]

Queensland Productivity Commission's inquiry into imprisonment and recidivism (the QPC report)

The QPC report was delivered in August 2019. Key relevant findings about the cost of incarceration in the QPC report include:

- the majority of prison terms (62%) served in Queensland in 2017-2018 were for non-violent related offences,[253] with just under half of these offences (30%) committed by low level but prolific offenders.[254]
- in 2017-18 economic costs associated with incarceration for a single prisoner in Queensland amounted to roughly $159,000 per year.[255]
- in 2017-18 the estimated total cost of incarceration to Queensland was $3.5 billion.[256] If Queensland's current policy settings do not change, investment in prisons is likely to cost Queensland between $1.9 to $2.7 billion over the next few years.[257]
- In Queensland, 50% of the approximately 1,000 adult prisoners released each month will reoffend within two years.[258] If alternatives to incarceration were used for non-violent offending prison costs could reduce by around $300 million per year whilst still maintaining community safety.[259]

Australian Productive Commission research paper – 'Australia's prison dilemma'

The Australian Government Productivity Commission research paper: *Australia's prison dilemma* (the AGPC research paper) was published in October 2021.

The AGPC research paper calculated the cost of imprisonment per prisoner in Australia at $330 per day or $120,450 per year.[1] In contrast, the AGPC calculated the costs of offenders subject to a community corrections order to be only $30 per day.[1] These figures increase significantly for youth justice related expenses with Australia spending on average $1,901 per day for youth in detention and $223 per day for youth on community based orders [1]

Even a small shift in the number of people diverted from prison onto a community corrections order could save Australia $45 million per year.[260] The AGPC research paper's conclusions on the cost benefit of community

corrections orders[261] aligns with recommendations of the Queensland Sentencing Advisory Council's (QSAC) final report on intermediate sentencing options and parole published in July 2019 (the QSAC report). The QSAC report recommended community correction orders be considered to replace probation, community service orders and intensive correction orders albeit with several conditions.[262]

The AGPC research paper found that indirect costs associated with incarceration add to the overall economic burden of incarceration. Indirect costs can be particularly high for Aboriginal and Torres Strait Islander peoples as incarceration involves the disruption to family and community bonds and cultural connection as well as negatively impacting general health and wellbeing.[263] Incarceration also adds to the ongoing effects of intergenerational trauma and generational cycles of incarceration within families.[264]

If alternative approaches are adopted the AGPC research paper noted that caution would be required to ensure any changes to current practice do not increase risks to the community.[265] Cost benefit in terms of deterrence, incapacitation and rehabilitation also need to be considered before any broad shift toward community correction orders in Queensland.[266]

Alternative approaches to incarceration - justice reinvestment and incorporating public health models to address criminal behaviour

Justice reinvestment involves identifying key areas of disadvantage and reinvesting prison spending to address underlying issues including health care, housing, poverty, education, and employment opportunities.[267] A range of models are available within the justice reinvestment literature, suggesting place-based, collaborative approaches as potentially beneficial for the Australian context.[268] The New South Wales Maranguka Justice Reinvestment Project commenced in 2013 and has shown promise in terms of economic and social return and reduced offending.[269] In 2016, the Queensland Government committed to a justice reinvestment trial in Cherbourg to provide greater opportunities to Cherbourg youth.[270] This commitment was extended in 2020 to explore opportunities for justice reinvestment in other Queensland communities.[271] The Taskforce is interested to know more about justice reinvestment incorporating a public health model and is one area that the Taskforce wants to consider as part of its work.

Trauma from adverse childhood experiences and other stressful life events can increase risks of victimisation and offending.[272] These risks can be further exacerbated by delayed justice - impeding recovery, and encouraging re-offending and re-victimisation.[273] Intertwined and systemic structural disadvantage – reflected in high rates of incarceration and a revolving door to the criminal justice system (particularly for Aboriginal and Torres Strait Islander women) add to experiences of trauma.[274] A public health approach could more effectively address increased rates of criminal offending in socio-economically disadvantaged communities.[275] The benefits of prevention and early intervention have been shown to produce significant long term reductions in criminal justice costs.[276] It can also assist in the diversion of youth at risk of progressing to adult offending through provision of education, employment and social supports.[277]

Question to consider

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

The fair and effective response of the criminal justice system depends on all stakeholders in the system working together as efficiently as they can. For this to occur, it is important that there are robust processes in place for strategic planning, decision making, accountability, monitoring, and risk management.

Effective governance is not achieved through a single action but through a system and a series of processes incorporating fairness, efficiency, review, transparency and accountability. Appropriate governance and accountability works to strengthen stakeholder and public confidence while ensuring that the system is well positioned to effectively respond to an ever-changing environment. A functional criminal justice system is more than the sum of its parts. Each stakeholder should recognise and respect their obligations to each other and share a vision and an understanding of what they are working to achieve. Good practice is shared and embedded through protocols fostering consistency throughout. Importantly, when challenges or disputes arise, a healthy and transparent system has structures in place to resolve them in the spirit of partnership.[278]

Guidelines and Frameworks

Queensland Sexual Assault Prevention Framework – Prevent. Support. Believe

Prevent. Support. Believe. Queensland's Framework to address Sexual violence[279] (the Framework) sets out the government's vision where 'everyone in Queensland lives free of the fear, threat or experience of sexual violence'[280] based on the medium-term goals of prevention, support and healing, and accountability and justice.[281] The governance arrangements for the Framework align with the Queensland Government's broader violence prevention portfolio.[282]

The long-term outcomes of the Framework are:

- communities are safe and free from violence
- people who have experienced sexual violence are believed and supported
- relationships are respectful
- services meet the needs of all people impacted by sexual violence
- the justice system is responsive to victims and survivors
- perpetrators are held to account and stop committing sexual violence.[283]

These long-term outcomes broadly align[284] with the priorities of the *Fourth Action Plan of the National Plan to Reduce Violence Against Women and their Children 2019-2022*.[285] The Taskforce notes however that the Framework places more focus on justice and accountability while the National Plan focuses on understanding lived experience.

The Framework is now accompanied by an *Action Plan 2021-22* that outlines new and continuing initiatives the Queensland Government is undertaking to implement the Framework.[286] It is a whole-of-government action plan encompassing agencies responsible for children, violence prevention, women, health, education, justice and youth justice, policing, corrections, housing and disability services.[287] A monitoring and evaluation plan was to be developed in 2021 giving consideration to specific indicators and measures to align with the Framework's objectives and long-term outcomes. This is yet to be completed.[288]

The VLRC 2021 report discussed the need for a revised governance structure in Victoria to assist all stakeholders to understand the broader purpose of what they are trying to achieve.[289] It referenced the Framework as an example of such a shared vision.[290]

Interagency Guidelines

In 2014 the Queensland Government developed *Interagency Guidelines for Responding to People who have Experienced Sexual Assault*[291] (the Interagency Guidelines) in conjunction with the QPS, DJAG, the then Department of Communities, Child Safety and Disability Services and Queensland Health. While each agency has its own internal policies, procedures and complaints mechanisms, the Interagency Guidelines were designed to promote whole-of-government interagency cooperation and coordination to improve responses to victims of sexual assault. The Interagency Guidelines support the development of policies and procedures at a local level[292] and encourage teamwork, confidentiality

and appropriate disclosure of personal information, joint training and referrals.[293]

The QPS consider that their role is broader than that stipulated by the Interagency Guidelines and extends to prosecution, support, education, prevention and disruption. They note that the Interagency Guidelines have not been updated since 2014 and question whether they are still fit for purpose.[294] Redeveloping the Interagency Guidelines was a commitment in the *Prevent. Support. Believe* Framework. This has not yet been completed. A review of the Interagency Guidelines may be a chance to enhance the way agencies collaborate to better support victims.[295]

The VLRC 2021 report advocated for systemic changes in how Victoria responds to sexual violence, and highlighted the need for a governance structure that:

- connects victims to services
- supports everyone to work together effectively
- has clear parameters for responsibilities
- allows for feedback to improve the system
- holds those who work in the system accountable
- reports to parliament regarding compliance.[296]

Strategies for women and girls in the criminal justice system

Queensland does not currently have an overarching whole-of-government strategy or framework in place pertaining more generally to women and girls in the criminal justice system, either as victims or as offenders. The Taskforce notes that other jurisdictions are progressing work in this area. For example, in 2019 in England and Wales *London's Blueprint for a Whole System Approach to Women in Contact with the Criminal Justice System* was released.[297] This Blueprint encompasses a wide range of stakeholders including police, health services, prisons, local authorities, and advocacy and rehabilitation organisations.[298] All stakeholders are committed to improving outcomes for women in London who are in contact or at risk of being in contact with the criminal justice system.

Questions to consider

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?

Victims of crime commissions

The integrity of criminal prosecutions and the justice system more broadly rests upon victims' confidence that the reporting of offences will not cause further secondary harm, or exacerbate existing harm.[299]

The Taskforce notes that while victims may feel a sense of grievance that they are treated as participants and not as parties to criminal prosecutions, the Royal Commission into Institutional Responses to Child Sexual Abuse found that reforms should only be contemplated within existing adversarial frameworks so as not to '[encroach] on… the adversarial system.'[300] In 2016, the VLRC similarly proposed that victims should not be made a party to criminal proceedings because 'this would significantly alter the adversarial system and would have very significant cost and resource implications.'[301]

To support and advocate for the needs of victims in the adversarial criminal justice system, most Australian jurisdictions, with the exception of Queensland, Tasmania and the Northern Territory, have established various forms of victims' commissioners.[302] South Australia was the first to establish such a role, with NSW, the ACT and Western Australia following suit in 2013 and Victoria in 2015.[303] Information about these roles is at Appendix 4.

The establishment of a Victims of Crime Commissioner, or similar, could provide access to justice and enhanced participation for Queensland victims while preserving the adversarial character of the criminal justice system.[304]

An important role of commissioners in other jurisdictions is responding to victim complaints about their treatment. While all jurisdictions in Australia encourage such

complaints by victims to be first dealt with internally by the relevant agency, commissioners provide an additional complaints oversight role.

As noted above in relation to human rights, Queensland has a Victim Services Coordinator (VSC), an employee within Victim Assist Queensland (VAQ) in the Department of Justice and Attorney-General,[305] who can help resolve victims' complaints about government entities breaching of the *Charter of Victims' Rights* set out in the *Victims of Crime Assistance Act 2009*.[306] However, the VSC role does not extend to investigating the complaint or overseeing complaint resolution or systemic advocacy.[307] By contrast, a Victims of Crime Commissioner could empower victims by offering an independent statutorily appointed avenue for complaints to be investigated and resolved.[308]

Questions to consider

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

Accountability for the judiciary

Judicial commissions performing such functions as coordinating professional development for judicial officers and assessing complaints against judicial officers successfully operate in other Australian jurisdictions including NSW, Victoria and South Australia.[309] At the 2020 state election, the Queensland Labor party made a commitment that, if returned to government, the establishment of such a commission would be explored.[310] The Taskforce in its first report recommended that a Queensland Judicial Commission performing both professional development coordination and complaints handling should be prioritised and progressed in this term of government.[311]

Director of Public Prosecutions and Police Prosecution Corps

While the Director of Public Prosecutions has significant discretionary powers, including the ability to decide whether a criminal case should proceed and how it will be prosecuted, the reality is that victims have no control or ability to challenge prosecutors' decision making.[312]

Over the last two decades there have been calls for the Queensland Director of Public Prosecutions (ODPP) to implement a formal complaint and review process.

The 2003 Crime and Misconduct Commission investigative report *Seeking Justice* recommended the implementation of a complaints handling process by the ODPP.[313] This was implemented as detailed in the follow-up 2008 performance report by way of a complaints form, complaints handling protocol and tools to monitor types and volume of complaints.[314] It is unclear whether these protocols and tools remain in place.

More recently, in making its final recommendations, the Royal Commission into Institutional Responses to Child Sexual Abuse pointed to the need for each Australian Director of Public Prosecutions to revise their complaint-handling systems.[315]

In response to our second discussion paper the Taskforce has heard support from a number of stakeholders for an examination of the role of the ODPP, particularly in regard to the office's culture, guidelines, engagement with local services and engagement with victims.[316]

The Taskforce notes that following the Moynihan reforms[317] a significant number of offences are able to be disposed of summarily, including a variety of offences of a sexual nature.[318] The Police Prosecution Corps (PPC) prosecute the majority of these matters, as well as running committal hearings in jurisdictions other than those where the ODPP are funded through the committals project. The PPC face considerable challenges in their day to day work. Over the past two years it has been reported in the media that these challenges include staffing issues, large workloads,[319] limited preparation time,[320] varying levels of expertise[321] and training participation, and a statistical focus on charges and clear-up rates as opposed to court results.[322]

Police prosecutors may be sworn police officers or civilians. Those who are sworn officers have also historically been subject to the constraints of a

hierarchical organisation, with experienced investigators often out ranking prosecutors.[323] The Queensland Police Service have advised that efforts to increase the number of police prosecutors over the last five years has seen the PPC grow by approximately 100 staff (including 70 civilian prosecutors and a number of administration staff) to a total of 400 staff.[324]

The PPC holds significant prosecutorial power in Queensland. Despite this, the organisation's governance and accountability mechanisms are not easily apparent to those outside. The QPS has advised that the Prosecution Services Division provides the governance structure for Police Prosecution Corps across Queensland, including Inspector level oversight at local levels.[325] Approval for withdrawal of offences has to be authorised by an Officer In Charge, Commissioned Officer or above. Authorisation comes from the ODPP. While complaints about the withdrawal of charges are able to be lodged through the Policelink website, accessing this part of the website is through the 'reporting' and 'feedback' parts of the website and take a user at least 7 correct clicks to locate the QPS 'feedback' form.[326] It is not clear that this form applies to police prosecutors. Given the confusion that exists within the general community between the roles of police, police prosecutors and the ODPP, there may be benefit in a clearer, more user friendly complaints process.

Right to review

Since 2015 in England and Wales,[327] victims of crime (including close relatives of a deceased or incapacitated person, parents of a child or businesses) have had a right to request a review of certain decisions made by the police or Crown Prosecution Service (CPS).[328] This enables victims to ask for a review where a decision is made not to charge a suspect, not to refer a matter to the CPS, not to start a prosecution or to stop a prosecution. There are two possible outcomes for reviews of CPS matters:

- a new decision is made and the earlier decision is overturned
- the original decision is upheld and the victim notified and provided with an explanation.[329]

Reviews are conducted in two stages, first, locally by a new prosecutor and second, if the original decision not to prosecute is upheld, at the Appeals and Review Unit. Following the CPS review, victims who remain dissatisfied may apply to the High Court for judicial review.

There are six potential outcomes for reviews of police decisions to neither charge nor refer to CPS:

- a new officer reviewing the case agrees with the first decision
- a new officer disagrees with the first decision and the suspect is charged or decision to charge sent to the CPS
- the original decision is overturned and suspect dealt with out of court (low level crimes and anti-social behaviour)
- a new officer disagrees with the decision and the case is sent to CPS for a decision
- police decide that further investigation is needed
- a new officer disagrees with a decision but the statute of limitations prevents further action

Like the CPS process, victims dissatisfied with police reviews can apply to the High Court for judicial review.[330]

HM Crown Prosecution Service Inspectorate

In England and Wales, Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) is an independent statutory body that inspects the CPS and the Serious Fraud Office and reports to the Attorney-General.[331] Operating since 2000, the HMCPSI also inspects other prosecution services in the UK and overseas by invitation and special arrangement.[332]

The HMCPSI avoids judgement and enforcement by instead using open and transparent methods of information gathering and reporting to inform prosecution services of strategies of good practice and issues that need to be addressed.[333] The aim is to improve the quality and accountability of prosecution services and to maintain trust in a fair, efficient and effective prosecution process.[334]

Area inspections of CPS offices across England and Wales are conducted on a rolling program every three years as part of the Area Assurance Programme. Reports assess each area on a comparative basis against other CPS areas, detail strengths identified and specific areas that should be addressed, and work to set a baseline for CPS performance and activities.[335]

Thematic inspections are also conducted focusing on casework, business, and/or functionality.[336] Relevantly, a recent thematic inspection included an examination of victim communication and liaison.[337]

Conduct of lawyers

Like prosecutors, defence lawyers have a profound impact on the victim's experience of the criminal justice system. Insensitive or harassing treatment can compound trauma for victims. Many studies have found that the suspicion and disbelief alleged rape victims experience during trial, particularly during cross-

examination by defence, feels like a repeat of the trauma of being raped.[338] Defence lawyers need to perform a balancing act between putting forward their client's case as best they can while making sure that victims are not unnecessarily traumatised through the process.[339]

Queensland legislation imposes restrictions on the asking of 'improper questions'.[340] It also provides special rules limiting particular evidence in sexual offence matters,[341] such as the asking of any questions about a victim's chastity or sexual history (without leave of the court). Where a lawyer crosses the line on these matters there is power for the judge or magistrate to intervene. Where a judicial officer does not intervene, the only avenue available for a victim to make a complaint is currently the head of jurisdiction for the relevant court. In our first report the Taskforce recommended that the government consult with courts, the Bar Association of Queensland (BAQ) and Queensland Law Society (QLS) with a view to establishing an independent Judicial Commission.

Legal practitioners are obliged by the *Legal Profession Act 2007* to adhere to various ethics and standards including the *Barristers Conduct Rules* (BCR) and the *Australian Solicitors Conduct Rules 2012*. When dealing with persons other than their client a solicitor must not intimidate, threaten or use tactics designed to embarrass or frustrate.[342]

The BCR impose additional obligations on barrister with carriage of sexual offending matters providing that they take account of any particular vulnerability of the witness and forbidding the asking of questions intended to mislead, confuse, annoy, harass, intimidate, offend, oppress or humiliate a witness.[343]

Complaints regarding a wide variety of conduct[344] can be made by anyone,[345] including victims, about members of the legal profession.[346] These are investigated by the Legal Services Commission (LSC).[347] Complaints relating to barristers may be referred to the BAQ[348] for investigation and recommendations. Where this occurs, the LSC retains discretion as to how the investigation proceeds and whether or not to act on the recommendations. Responsibility for investigations has rested with the LSC since September 2015, though the QLS may assist.[349] The LSC has the sole authority of prosecuting professional conduct matters.[350] Disciplinary proceedings may be initiated in either the Legal Practice Committee[351] or, for more serious matters, the Queensland Civil and Administrative Tribunal.

Questions to consider

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?

First Nations peoples

The Taskforce has been told of structural racism inherent in the criminal justice system and the detrimental impact that this continues to have on First Nations peoples.[352] The Taskforce notes that other government departments[353] and jurisdictions[354] are working to invest in separate First Nations community-led governance structures that overlap with other governance frameworks.

Dhelk Dja – Strong Culture, Strong Peoples, Strong Families

The Aboriginal-led Dhelk Dja (Dja Dja Wurrung words for 'good place')[355] Victorian Agreement was formed in 2018 and commits the partners, namely Aboriginal communities and services and the government to work together and be accountable for ensuring that Aboriginal people, families and communities are stronger, safer, thriving and living free from family violence.[356] Dhelk Dja works to foster Aboriginal self-determination by:

- investing in self-determining structures to lead governance, implementation, monitoring and evaluation of family violence reform including policy and program development, services and initiatives for Aboriginal people

- transferring decision making for policy and program development to Aboriginal communities
- investing in community sustainability, resourcing and capacity building to meet the requirements of the new reforms
- growing and supporting the skills and knowledge base of the Aboriginal workforce and sector
- ensuring the government and service system is culturally safe, transparent and accountable
- ensuring the community has access to culturally informed, safe service provision and programs by the non-Aboriginal service sector[357]

The agreement sets out five strategic priorities developed, refined and endorsed by the Dhelk Dja Forum.[358] The current Dhelk Dja 3 Year Action Plan concludes this year and has focused on implementing significant priority investments.[359] A second 3 Year Action Plan will be developed this year.[360]

Improving connection and understanding between the First Nations service sector and broader services, including First Nations representation across system governance, could lead to greater engagement, self-determination, cultural safety and equitable outcomes for women and girls in the criminal justice system.[361] This would also align with the work being undertaken in the Tracks to Treaty initiative,[362] Priority Reform Three of the National Agreement on Closing the Gap[363] and Recommendation 16-2 of the Australian Law Reform Commission *Pathways to Justice Report*.[364]

Police accountability

The Taskforce's first report examined police accountability and how complaints and unprofessional behaviour are currently dealt with.[365] Complaints concerning police misconduct may be devolved to the Ethical Standards Command within the QPS for investigation, with oversight by the Crime and Corruption Commission (CCC)[366] and may result in legal action[367] or internal police disciplinary processes as outlined in the QPS Ethical Standards Command Complaint Resolution Guidelines. [368] Media reporting and Taskforce submissions during the first part of our work brought into question the police complaints and disciplinary process.[369] The Taskforce, with the exception of one member,[370] recommended an independent commission of inquiry to examine widespread cultural issues within the QPS relating to the investigation of domestic and family violence, including consideration of whether Queensland should establish an independent law enforcement conduct commission.[371]

Law Enforcement Conduct Commission

In 2017, the NSW Law Enforcement Conduct Commission (LECC) replaced the Police Integrity Commission and Police Compliance Branch of the NSW Ombudsman. The LECC is an independent body[372] responsible for oversight of both the New South Wales Police Force (NSWPF) and the New South Wales Crime Commission. The LECC provides NSW with simple, strong, fair and impartial oversight by detecting and investigating misconduct and overseeing complaints handling by the NSW Police Force[373] It also has an educative role aimed at preventing future misconduct.

The efforts of the LECC[374] are focused on more serious cases of misconduct and maladministration, for example, an allegation of a police officer using excessive force against a female prisoner and sharing the footage with colleagues on Snapchat.[375] The LECC has also overseen complaints handling and investigation by the NSWPF concerning the conduct of strip searches[376] and has recently monitored investigations relating to excessive use of force, failing to investigate domestic violence reports, sexual harassment and sexual and racial discrimination.[377]

New Zealand example

New Zealand has had various independent police oversight bodies since 1989. The current model known as the Independent Police Conduct Authority (IPCA) has been in place since 2007.[378] The IPCA works to ensure that allegations of misconduct or neglect of duty are properly dealt with. The IPCA provides independent oversight to:

- protect citizens against abuse of powers, including excessive force
- expose misconduct
- improve police practice and policy
- provide accountability
- encourage discipline
- protect against corruption and politicisation of the police
- enhance public trust and confidence in the justice system
- contribute towards the justice sector outcomes of a safe and just society[379]

The Taskforce notes that, on its website, the IPCA clearly identifies itself as 'the only NZ Police oversight body' making this message clear for all who visit the site. The complaints process is transparently laid out and easy to navigate. This contrasts with the QPS and CCC websites where the complaints processes are difficult to locate and navigate.

Accountability while women and girls are in custody

As highlighted above in relation to trauma, women and girls in detention and prison are some of the most vulnerable in the community and must be given appropriate care and support while incarcerated.

The *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT)[380] is a treaty that aims to ensure those in detention are treated with dignity and respect[381] by ensuring, for example, regular coordinated and comprehensive inspections aimed at identifying and preventing potential human rights issues before they occur.[382] The treaty was first adopted by the United Nations General Assembly twenty years ago[383] but was only signed by Australia in 2009 and ratified on 21 December 2017.[384] While the Australian Human Rights Commission has been working to implement OPCAT by incorporating its terms into Australian law, policy and practice,[385] the deadline for implementation – 20 January 2022 – has now passed.[386]

An existing accountability mechanism in corrections is the Office of the Chief Inspector (OCI), a statutory position created under the *Corrective Services Act* to bring impartial scrutiny to the standards and operational practices of QCS.[387] The OCI investigates incidents and, inspects and reviews operations and services within the QCS.[388] The OCI has the power to enter corrective services facilities, interview prisoners or staff and access certain documents.[389] However, OCI reports and recommendations submitted to the QCS Commissioner are not publicly released.[390]

The OCI also coordinates the Official Visitor Scheme under which an official visitor investigates complaints by prisoners.[391] Official visitor recommendations are not binding and an official visitor cannot overrule a decision.[392]

Many places of detention within Queensland presently have their own accountability and oversight frameworks. There is currently no single central body responsible for the independent oversight of these facilities by way of regular or random inspections.[393]

A number of recent independent high profile reviews of prison and parole[394] have considered the existing layers of accountability over Queensland's places of detention and recommended the establishment of an independent inspector of detention services to provide external oversight and scrutiny.

On 28 October 2021 Queensland introduced the Inspector of Detention Services Bill 2021. The Bill seeks to establish an independent inspectorate to promote and uphold the humane treatment and conditions of people in places of detention.[395] It is designed to be OPCAT compliant and provides for the Queensland Ombudsman to be appointed as the inspector[396]. The Bill has been examined by the Legal Affairs and Safety Committee who tabled their report on 21 January 2022, recommending that the Bill be passed.[397] The Committee noted that the independence of the Inspector and sufficient resourcing were significant issues raised by stakeholders.[398] The Committee expressed the view that it is important for the Ombudsman to be adequately resourced to ensure that the Inspector role is effectively fulfilled.[399]

Questions to consider

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

Community attitudes towards sexual violence and gender equality both influence perpetration[400] and can have a profound impact on a victim's experience, including their experience of the criminal justice system. A victim's experience is likely to be influenced by:

- stereotypes about gender that frame people's perception of how men and women should behave or relate to each other generally and sexually[401]
- myths about rape including what constitutes 'real rape' or how a 'typical' perpetrator or 'genuine' victim looks or behaves[402]
- mistrust of women, including the myth that women commonly make false allegations of sexual violence[403].

These, and other societal norms and misconceptions relating to gender and sex, can impact whether a victim identifies that the wrong is a crime, the level of responsibility they attribute to themselves, their likelihood of reporting and of being believed, how people respond to complaints (both within and outside the justice system), and the level of shame and stigma involved. It also influences the response an accused receives, both in the community, and in the criminal justice system.

The Taskforce is interested in better understanding how community attitudes to, and understanding of, sexual violence influence victims' experiences, and their interactions with the criminal justice system.

Attitudes to consent including impacts of pornography

Legislation only contributes to regulating behaviour and preventing offending if the community accurately understands what is, and what is not, lawful. Equally, a person is unlikely to consider reporting an offence to police unless they consider it criminal behaviour.[404] The community's understanding of what consent means and how it should be communicated may also impact upon the response that victims receive when they disclose an assault.

The way that sexual consent is understood in the community has changed over past decades as community expectations and attitudes have shifted.[405] Legislative reforms reflect changing social attitudes and beliefs as evidenced by recent changes to the definition of consent in other Australian jurisdictions (discussed further below).

The Taskforce wants to understand how sexual consent is generally understood and exercised in the community and to what extent misconceptions about sexual violence (or 'rape myths') influence how people think about consent.

The 2017 National Community Attitudes Survey (the NCAS) collected information about Australian's attitudes about violence against women and gender equality.[406] The 2017 NCAS included telephone interviews with over 17,500 Australians aged 16 years and over. Results indicate that overall, respondents have a good understanding of violence against women, support gender equality and reject attitudes supportive of violence against women. However, there were some concerning results relating to community understanding about consent. For example, of those interviewed:

over 1 in 10 agreed that 'women often say 'no' when they mean 'yes' in a sexual context.

over 1 in 10 thought that rape only occurred when physical resistance is involved, or were unsure

1 in 7 thought a man would be justified to force sex if the women initiated it, but then changed her mind and pushed him away.

1 in 8 thought that if a woman is raped while she is drunk or affected by drugs, she is at least partly responsible

1 in 10 thought that if a woman is drunk and starts having sex with a man, but then falls asleep, it is understandable if he continues to have sex with her anyway.

1 in 5 were unaware that it is a criminal offence for a man to have sex with his wife without her consent

The NCAS results *did not* indicate that young people (16-24) held a better understanding about consent than the older people surveyed and suggested that 'a concerning proportion of the young Australians interviewed were unclear about what constitutes consent, and the line between consensual sex and coercion'.[407]

In Queensland, the Youth Sexual Violence and Abuse (YSVA) Steering Committee Final Report noted that young people's ability to process consent 'is an obstacle to breaking the silence around youth sexual violence and abuse', preventing reporting and contributing to secrecy around sexual offending against children and young people.[408] The Committee recommended compulsory education programs that include sexual ethics.[409]

The way in which consent is understood and negotiated is influenced by societal norms about gendered power dynamics.[410] This includes stereotypes generally portraying men as sexually aggressive or 'in control' while women are seen as passive or submissive in sexual matters.[411] These underlying beliefs may frame how the community views behaviour of victims and perpetrators, as well their own behaviours, including about whether a person was consenting. Nearly a quarter (23%) of Australians interviewed by the NCAS thought women find it flattering to be persistently pursued, even if they aren't interested.[412]

Rape myths can also influence understanding of consent.[413] The NCAS found that more than one in four young people interviewed (28%) agreed with the statements, 'When a man is very sexually aroused, he may not even realise that the woman doesn't want to have sex' and 'Rape results from men not being able to control their need for sex'.[414] An Australian study conducted in 2020 involving online focus groups found that persistent rape myths contribute to people's mistrust of women's reports of sexual violence, with community members expecting non-consent to be demonstrated by physical resistance (potentially resulting in injury) and putting the responsibility on women to say 'no' rather than on a perpetrator to affirm consent.[415]

The YSVA Steering Committee also noted how social norms that condone sexual violence and abuse and age-inappropriate sexual behaviours can have a normalising effect.[416] This can result in a level of community acceptance of problematic behaviours, and in a lack of awareness among children and young people about what is and is not acceptable.[417]

Community understanding of consent, couched in these broader constructions of gender, have particular relevance, given the need to prevent sexual assault from occurring in the first place, the barriers that may prevent a victim from reporting sexual assault or seeking help, and the potential for each citizen to sit on a jury in a sexual offence matter. The acceptance of rape myths, for example, may provide a filter through which an individual juror assesses evidence and the complainant's credibility.[418] A substantial body of research into juror decision-making suggests that the acceptance of rape myths is one of the key reasons for low conviction rates.[419]

The Taskforce acknowledges that the extent to which rape myths influence juries is a matter of debate. Research conducted by Professor Cheryl Thomas in 2017-19 surveying jury members immediately post-verdict in England and Wales indicated low acceptance of rape myths amongst jurors.[420] This was the first time researchers had been given access to actual jury members in England and Wales, and the findings were reported as revealing that 'claims of widespread "juror bias" in sexual offence cases are not valid'[421], casting doubt on the validity of previous research using mock juries. [422]

These findings, however, have been challenged by other academics who suggest there were methodological flaws in Thomas' study and that the interpretation of the results failed to consider the high levels of 'myth-ambivalence' and the impact of this ambivalence.[423] Some have suggested that the reporting of Thomas' findings has been misleading and, in particular, that the data does not support the conclusion that juries are not influenced by false preconceptions as asserted by the Queensland Law Reform Commission in its review of consent laws and the excuse of mistake of fact. [424] Others have identified that even if a minority of jurors accept rape myths, this can still have a powerful effect on jury deliberations, with strongly held minority views able to influence 'the tone and trajectory of discussion'.[425]

Nation-wide conversations in the wake of high-profile sexual assault cases, the international *#metoo* movement and testimonies of rape and sexual assault experienced by school students have put a spotlight on women's experience of sexual assault in Australia, and on the importance of educating people about consent. In 2021, the Victorian Government announced that it would make consent education mandatory in public schools[426] and the Queensland Government is reviewing whether existing education adequately addresses sexual consent.[427]

The Taskforce's first report recommended that sexual relationships, consent and pornography be consistently included among core elements of mandatory respectful relationships education across all schools and school sectors.[428]

The influence of pornography, sexting and dating apps

There has been a dramatic increase in young people accessing pornography in recent decades. Australian research suggests that 87% of 15-29 year-olds have viewed pornography with a median age of first viewing being 13 for men and 16 for women.[429] It is increasingly clear that pornography is used as a source (even the main source[430]) of sex education for many young people.[431] Research suggests that pornography creates misleading and inaccurate models of sexuality.[432] Mainstream heterosexual pornography contains high levels of violence and female degradation.[433] It also often depicts sexual interaction where consent is 'assumed rather than negotiated'.[434]

Research suggests pornographic content is influencing expectations about sex and shaping sexual practices including by providing its consumers with a 'preferred sexual script', which then influences real-world expectations and behaviours.

Research suggests pornographic content is influencing expectations about sex and shaping sexual practices including by providing its consumers with a 'preferred sexual script', which then influences real-world expectations and behaviours.[435] It is also suggested that adolescents' use of pornography is associated with stronger beliefs in gender stereotypes in relation to sex[436]. It can lead to consumers viewing women as sex objects[437] with increasing acceptance of rape myths and sexually aggressive behaviour[438].

Pornography does not exist in a vacuum - it 'both reproduces and helps to shape broader social norms'[439] about sex, sexuality, relationships and gender. Some suggest that not all pornography is associated with these negative effects, and that it can play a positive role in challenging problematic attitudes and information about sex, including rape myths.[440] Many suggest there is a need for comprehensive sex education to mitigate against the negative effects of pornography.[441] The Australian Government has responsibility for any restrictions on accessing adult content and this broader issue is beyond the scope of the Taskforce's work. However, past reviews have found that the volume and accessibility of pornography through the internet makes licencing and classification schemes impractical, and that the focus should instead be on supporting parents and others to limit children's access to pornography.[442] The e-Safety Commissioner recently found low community awareness of age verification technology to limit access to pornography.[443] Children and young people should also be educated to understand that violent pornography depicting forced sex does not depict a healthy or lawful sexual relationship.

Social norms about sex, consent and gender are also evident in, and are being influenced by, the use of emerging technology including social media. According to the ABS, in 2016-2017, an estimated 87% of Australians over 15 were internet users, with 98% of people aged 15 to 17 accessing the internet).[444] Also, 80% of people accessed the internet for social networking.[445] In 2020, an estimated one in three children aged 6 to 13 owned a mobile phone.[446]

In 2018, the YSVA Steering Committee noted that the 'sexting' (the sending, or sharing online, of sexual photos, messages and videos) among young people was an issue of growing concern. While recognising that sexting was often consensual, the Committee noted the importance of peer networks as an influence on youth behaviour, and stated that that if not appropriately addressed, behaviour such as sexting 'risks further eroding respectful social norms and contributing to the normalisation of harmful behaviours and attitudes that undermine equality'.[447] In its 2018 report, the Committee made a number of recommendations focused on educating the community and young people, in particular about the risks of social media and sexting.

Since the 2018 YSVA Steering Committee report, the Queensland Government passed new legislation criminalising the non-consensual sharing of intimate images.[448] Online educational materials were created to accompany this change.[449]

There has also been a rapid increase in the use of dating apps – an Australian study found up to 90% of people aged 18-30 use the dating app Tinder.[450] The impact of these platforms on the development of sexual relationships, including understandings of consent, is thus far limited as is research about violence and harassment using this technology.[451] There have also

been a number of high-profile cases involving dating apps and sexual assault reported in the media.[452]

Questions to consider

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?

What works well? What needs to be improved?

Barriers to reporting sexual violence

Victims are motivated to report sexual offences to the police for a variety of reasons. Many want to have the wrongdoing against them and the harm they suffered acknowledged and documented or for action to be taken to stop the perpetrator harming others.[453] Some want retribution by way of punishment of the offender, including to deter others. [454]

But the vast majority of victims of sexual violence do not report the violence to police.

According to the 2016 Public Safety Survey (PSS), as few as 13% of victims of sexual assault between 2006-2016 contacted police about the most recent incident.[455] There are many reasons why victims of sexual violence do not report sexual assault to police, or withdraw a complaint once it is made (discussed further below).

The PSS identified shame and embarrassment as one of the key reasons that victims do not report.[456] Similarly, the YSVA Steering Committee noted that the experience of shame associated with sexual assault can be a powerful deterrent to reporting.[457]

These feelings of shame and embarrassment on the part of victims may be influenced by societal acceptance of rape myths and underlying expectations about how men and women behave. These cultural norms can influence how responsibility is assigned and result in 'victim blaming', including how a victim feels about her own role in the assault. One in six Australians (17%) interviewed by the NCAS agreed with the statement that 'Since some women are so sexual in public, it's not surprising that some men think they can touch women without permission'.[458]

Another common reason identified in the PSS for not reporting to police is victims fear they will not be believed (16%)[459].

In 2017, the Australian Human Rights Commission (AHRC) conducted a survey of over 30,000 students across 39 Australian universities about sexual assault and sexual harassment. The findings indicated that 22% of victims of sexual assault did not report due to fear they would not be believed.[460]

The NCAS results showed that one in six people (16%) interviewed agreed that 'many allegations of sexual assault made by women are false' and a further 9% said they did not know if this was true. [461] More than one in 10 (11%) believe that women who wait weeks or months to report sexual assault are probably lying[462]. This mistrust was equally apparent in young people with nearly two in five young Australians (37%) supporting the statement, 'It is common for sexual assault accusations to be used as a way of getting back at men', with young men (45%) more likely to agree than young women (29%).[463]

Cultural and social taboos can also create a culture of secrecy and contribute to feelings of shame and embarrassment. They also contribute to victims'

unwillingness to speak about or report their experiences of sexual violence or seek help and support.[464]

The confidence of victims to report sexual violence is also influenced by perceptions of the likelihood of a positive response or outcome.

Zig-Zag Young Women's Resource Centre told the Taskforce that poor police and justice responses experienced by peers and knowledge of low rates of convictions are deterrents to reporting.[465] Past negative experiences also influence a person's likelihood to report in the future.[466]

Zig-Zag Young Women's Resource Centre also told the Taskforce that young women had been deterred from making formal complaints after discouraging early interactions with police. [467]

A victim's own assessment of the likelihood of successful prosecution also influences their decision to report. The AHRC survey found that 28% of university students surveyed did not report a sexual assault because they thought it would be too hard to prove.[468] Coupled with the rape myth that sexual assault usually results in physical injury, a myth that was shown in the NCAS to be persistent in at least 6% of the population,[469] this may explain the higher numbers of victims with physical injuries who reported to police (33%) compared with 7.5% of those who were not physically injured[470].

Victims are also influenced by their perceptions of whether the justice system will serve their needs. Research suggests that many victims did not report because they did not want the person responsible arrested or to get in trouble[471]. Others feared legal processes or did not think there was anything the police could do[472].

The acceptance of rape myths may also deter victims from reporting by contributing to them not recognising the assault or blaming themselves for what has occurred.[473] According to both the PSS and the AHRC survey of university students, some of the most common reasons why victims did not report to police include that they did not regard the incident as a serious offence[474] or that they did not understand it to be a crime[475].

Additional and intersecting barriers to reporting are also experienced by women due to age, disability, sexuality, or cultural background. Aboriginal and Torres Strait Islander peoples may face additional barriers to reporting. These barriers may include lack of accessibility or availability of cultural appropriate responses, lack of trust in authorities or fears of community repercussions of reporting.[476]

Police are often not the first point of contact for victims of sexual assault. The 2016 PSS found that one in five sought help from their general practitioner and nearly one in five sought help from another type of health practitioner.[477] Other victims, including children, may disclose sexual abuse to trusted adults, including teachers. Shame and stigma, the acceptance of rape myths as well as the fear of not being believed may also be barriers to disclosing sexual violence to these mainstream services.

The Taskforce is interested in understanding more about the barriers victims face when disclosing sexual violence, and how rates of reporting can be improved.

Questions to consider

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

In Australia, victims are protected from having their identity disclosed in cases of sexual assault, although legislation differs slightly across jurisdictions.[478] An inter-

jurisdictional table of restrictions across Australia is at Appendix 5.

These safeguards operate to protect a victim's right to privacy, providing confidence to victims that they will not be identified if they report. But these restrictions have been criticised for preventing victims from telling their stories in the public domain when they wish to do so, resulting in the silencing and disempowerment of victims. [479] Advocates for legislative change also argue that reporting about individuals' experiences of sexual assault could potentially challenge unhelpful stereotypes, reduce stigma and encourage increased reporting and help-seeking.[480]

The power of victims' voices has played out clearly in Australia over the last few years. Saxon Mullins' public account of her sexual assault on the ABC's Four Corners led the New South Wales Government to announce an inquiry into consent laws the very next day.[481]

The #LetHerSpeak/#LetUsSpeak campaign which targeted so called 'gag-laws' in various Australian jurisdictions did not identify Queensland's laws as problematic.[482] However, a coalition of media organisations argue that Queensland's restrictions on reporting contained in the *Criminal Law (Sexual Offences) Act 1978* (CLSO Act), as well as confidentiality requirements in the *Domestic and Family Violence Protection Act 2012* (DFVP Act), are unduly restricting the public reporting of sexual offences and domestic and family violence.[483] On 20 August 2021, the Taskforce received a letter from the Hon. Shannon Fentiman MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, requesting that the Taskforce consider these legislative restrictions in both domestic violence and sexual violence proceedings. More recently, restrictions on the publication of the identity of young offenders under the *Youth Justice Act 1992* (the YJ Act) have also been criticised in the media.

Restrictions under the DFVP Act

As noted in the Taskforce's first report, Queensland is the only jurisdiction that restricts the publication of any information given in evidence in civil domestic and family violence proceedings and is alone in requiring these proceedings to be held in closed court.[484] Queensland is also the only jurisdiction that requires the consent of both victim and respondent to publish identifying information. It appears that Queensland has the most restrictive requirements when it comes to the identification of domestic and family violence perpetrators in proceedings.[485] An interjurisdictional table of restrictions is provided at Appendix 6.

In consultation for its first report, the Taskforce heard a number of arguments for relaxing the restrictions. This included empowering victims to tell their story and increasing perpetrator accountability by public identification. The Taskforce also heard that these restrictions may contribute to skewed reporting on domestic and family violence incidents, with a disproportionate focus on extreme cases, and that there would be educative value in increasing the diversity of cases reported.[486] Publication of proceedings may support public accountability of the justice system to support improved behaviour of those working in it and in the community generally.

These considerations need to be balanced against the significant risks to the safety of women and children posed by reducing publication restrictions or opening courts to the public. This includes for victims who may be misidentified as a perpetrator. The risks discussed in the Taskforce's first report are set out in Appendix 7. Ensuring that published information does not lead to the identification of victims or their children against their wishes is also a challenge to be considered.

One option would be to allow some limited access by application to courts for deidentified transcripts of proceedings (for example, by the media or other interested persons such as researchers) and to prevent the publication or further disclosure of any information likely to lead to the identification of a victim. While resource-intensive, this would allow the media and public to have some knowledge of, and scrutiny over, court proceedings while protecting the privacy of victims and their children.

Restrictions under the CLSO Act

The CLSO Act contains provisions that prohibit the publication of any details that would identify a victim complainant or prematurely identify an accused defendant.[487]

The CLSO Act prohibits the identification of a victim of a sexual offence in a report about an examination of witnesses or a trial other than in the official recordings of committal proceedings, trials and for appeals[488] Although the wording of the provisions are from clear, it seems likely that victims can be publicly identified if they

consent in writing, are over 18, and have mental capacity.[489] This means that a victim who is offended against as a child cannot consent to publication of their story until they are an adult. This is consistent with other jurisdictions except New South Wales (which allows a victim over the age of 14 to consent[490]), and the Australian Capital Territory which has no age restriction[491]. There are also restrictions

A perceived distinction in Queensland between the inability of a victim of a sexual offence to consent to the publication of their identity in a report about an examination of a witness or a trial while they can consent to other types of reports has been identified and criticised.[492] This criticism may be unjustified and rise from a misunderstanding of the protection given under the CLSO Act for identifying information contained in official transcripts of court hearings. The law in this area may need clarification. Certainly other states and territories do not make any such a distinction. For example, New South Wales and Victoria allow publication of identifying information with the consent of the victim.[493]

The restriction in the CLSO Act on the premature publication of defendants' details has also been criticised as antiquated and giving special treatment to defendants charged with prescribed sexual offences.[494] Only Queensland, the Northern Territory and South Australia operate a restriction of this kind.[495] The media in other jurisdictions often report sexual assault and domestic and family violence allegations against people with public profiles. However if these events occur in Queensland, the media is restricted in its ability to report on the cases prior to conviction. Many question why those charged with sexual offences should be treated differently from other offences and argue that this gives credence to the rape myth that women and girls make false complaints of sexual assault.

Of course, the reporting of investigations and charges relating to sexual violence and domestic and family violence can damage the reputation of alleged offenders who may ultimately not be convicted. On the other hand, defendants charged with most other types of offences are not protected in this way. Further, if handled sensitively, accurate public reporting may contribute to positive community discussions about gender-based violence, challenge stereotypes and reduce the level of secrecy and stigma involved.

The then Crime and Misconduct Commission considered the appropriateness of the CLSO Act provisions in its 2003 *Seeking Justice* report.[496] Its consideration focused on protecting the identity of persons accused of a sexual offence and recommended retaining the existing limitations with minor modifications. [497] It did not consider whether changes should be made to the law enabling a victim to consent to being identified.

Restrictions under the YJ Act

In Queensland, reporting on the identity of a child charged or convicted of a criminal offence including an offence involving sexual violence is generally prohibited.[498] This is consistent with established principles of youth justice (reflected in human rights instruments[499]) that recognise the harmful effects of a young person being labelled as a criminal, including impacts on rehabilitation and future offending. There is a limited discretion for courts to allow for publication of identifying information about a convicted child offender when they are sentenced 'for a particularly heinous offence' 'of violence against a person' to a period of detention up to and including life imprisonment[500]. This could include a conviction for a violent serious sexual assaults such as rape or attempted rape. The publication of the identity of child offenders in Queensland is, however, rare.

Similar restrictions operate in other Australian jurisdictions to limit publication of identifying information about proceedings against children and young people accused or convicted of offences including sexual offences, including information that may identify witnesses.[501] There are also general limitations on disclosure of information obtained as part of the administration of youth justice processes.[502]

These restrictions impact a victim's ability to share their experience as a victim of youth offending, even after the victim and offender are adults.

On 1 February 2022, the Toowoomba Chronicle reported on the sentencing of a 17-year-old boy who had pleaded guilty to the rape of a 13-year-old girl when he was 15 years old. The article reports that the young girl's victim impact statement indicated the rape had a devastating impact on her life. The article expresses anger at the treatment of the victim under the YJ Act stating:

> 'The absurdities of Queensland's Juvenile Justice Act was laid bare before a Toowoomba court on Monday when a teenager who pleaded guilty to raping a 13-year-old girl walked free with no conviction recorded. In a further insult to the victim child, Crown Prosecutor … explained that if a girl told anyone that her rapist had pleaded

guilty to raping her, she would in fact be in breach of the Juvenile Justice Act'[503]

Transparency, privacy, victims' rights and responsibilities

The transparency of the court process or 'open court' is a fundamental principle of justice. [504] It supports public confidence in the justice system, the legitimacy of criminal justice and the accountability of courts and judges.[505] However, the principle of open justice can be limited, for instance to protect victim privacy in special cases. The introduction of the *Human Rights Act 2019* in Queensland heightened the obligation of the Queensland Government to carefully balance the principle of open justice with the protection of human rights. [506] This includes consideration of the rights to privacy and reputation of both the victim and accused/respondent as well as the right to freedom of expression of the victim. An overarching consideration is the desire to reduce barriers to reporting and maintaining the public's confidence in the legitimacy and fairness of the criminal justice system.

Media reporting both reflects and shapes social norms about sexual violence and gender. Media outlets thus wield power through how they represent sexual violence and its consequences, particularly whether they reinforce or challenge gendered rape myths and stereotypes. There may be a need for increased awareness of this in the media industry. Research of media reporting in other jurisdictions, shows a concerning level of reproduction of harmful misconceptions and norms in the public reporting of sexual offences, though there is also evidence of reporting that resists or challenges these norms and myths.[507] This raises important questions about whether current training and ethical guidelines for journalists are sufficient to support the arguments for relaxing of restrictions in Queensland.

Questions to consider

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 just system?

What works? What needs to be improved?

Reporting, investigating and charging of sexual offences

Victims' experiences of reporting sexual violence to police in Queensland

In spite of the barriers to reporting discussed above, now more than ever, sexual assaults are being reported to police.

The Australian Bureau of Statistics (ABS) latest data on sexual assault shows that in the year 2020 there were 5,120 victims of sexual assault in Queensland.[508] This was the highest recorded number of victims in 28 years. The ABS further reported, between 2019 and 2020, victimisation rates increased in Queensland from 95 to 99 victims per 100,000 persons.[509] Females made up the majority of victims of sexual assault. Amongst sexual assault cases, almost half (47%) of all victims were aged under 15 years at the time of the incident.[510] Just over a third of all sexual assault cases were recorded as domestic and family violence related.[511] As noted earlier in the discussion paper, rates of sexual violence are much higher for diverse women, including Aboriginal and Torres Strait Islander women.

While the rate of reported sexual assault cases has increased, the data on sexual violence cases show a funnel like trend during the initial stages of investigation and prosecution.[512] As noted above, research suggests that as few as 13% of sexual assault cases are reported to police and of those reported cases, only 20% result in charges.[513] Fewer cases again progress to court and result in a conviction.[514] This pattern highlights what is sometimes referred to as a 'justice gap' between the number of sexual assaults committed, the number reported to police, and the number that result in charges.[515]

Despite this trend, there appears to be some positive movement in police data on attrition (where a victim's complaint of sexual violence is officially withdrawn). The Queensland Police Service (QPS) told the Taskforce in its second submission in 2021 that between 2016 and 2020, the proportion of sexual assault offences that were withdrawn or unfounded (for victims who were 16 years or older at the time of the offence) decreased from 46% to 35%.[516] The QPS partially attributed this promising data to improved police and court practices, legislative changes and heightened public awareness.[517]

Looking more broadly, however, attrition rates still appear high. The Australian Broadcasting Corporation(ABC) reported in 2020 that police data (obtained under freedom of information laws) from 2018 shows Queensland had the highest rate of withdrawn sexual assault reports (33%) of all states and territories in Australia (excluding the Northern Territory which did not provide data)[518]. The ABC also reported that over a 10-year period 20% of sexual assault cases were assessed as unfounded by QPS (the equivalent of one in five), compared to 1 in 20 in New South Wales.

At different times, national and international reforms and inquiries into sexual assault have sought to remove the 'veil of secrecy' surrounding sexual violence, to put in place strategies to encourage victims to come forward and report, and to prevent victims from withdrawing their complaint if they do report.[519] Many of these reforms have also aimed to address traditional gender bias in the criminal justice system.[520]

In Queensland, there have been two inquiries specifically into sexual violence that have substantially shaped QPS responses - the then Crime and Misconduct Commission's *'Seeking justice'* report in 2003 ('the 2003 *Seeking Justice* report') and the 2017 final report of the Royal Commission into Institutional Responses to Child Sexual Abuse. These inquiries have led to reform in QPS responses to sexual violence, for example, an alternative reporting system [521] and specialist training on sexual violence (see further details below).[522][523]

The 2008 Crime and Misconduct Commission's *'How the criminal justice system handles allegations of sexual abuse: A review of the implementation of the recommendations of the seeking justice report'* (the 2008 *Seeking Justice* report) reviewed the QPS' progress following the 2003 *Seeking Justice* report and concluded,

> 'It is our view that the QPS, in particular, has made significant inroads into the implementation of reforms to improve the handling of sexual offences by the criminal justice system. However, it is also apparent that the reform process (principally the training of staff) will take some time to be fully embedded throughout the QPS'[524]

Since then, there appears to be little publicly available objective information about the impacts and outcomes achieved as a result of responses implemented following these reports, for example the impact for Aboriginal and Torres Strait Islander and other diverse women (see chapter one on discussion on the barriers these groups experience to reporting and accessing justice).

The Taskforce is interested to understand the experiences of victims of sexual offences after a complaint is made to police.

Given the rate of attrition at each stage of the criminal justice process, the Taskforce is also interested to understand why matters don't progress including why complaints are withdrawn. Some of what has been publicly reported on the experiences of victims in Queensland can be found in the Queensland Law Reform Commission's (QLRC) 2020 *Review of consent laws and the excuse of mistake of fact* report (the QLRC report), and *The Queensland Audit Office (QAO) Criminal justice system — reliability and integration of data Report 14: 2016–17 report* (the 2016-2017 QAO report).

The QLRC report found that some victims withdraw complaints because they believed 'the system places the onus on them and they are made to feel they are the victimisers rather than victims'.[525] While the 2016-2017 QAO report found evidence of police officers employing methods intended to persuade victims of various offences to withdraw their complaints to increase clearance rates.[526] This included sending victims letters requiring them to respond within seven days or police will 'presume' the victim wants no further action to be taken and adopting a 'three strikes policy' - if police cannot contact victims after three attempts, the complaint is withdrawn.

The QPS has purportedly addressed data quality issues and practices in managing the withdrawal of complaints.[527]

Later in this discussion paper the Taskforce explores recent amendments to the Criminal Code, including to the definition of consent and the excuse of mistake fact. The Taskforce is interested in understanding whether these changes to the law have resulted in changes to police responses or to the progression of cases through the system.

Questions to consider

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?

Police responses to reports of sexual violence

Investigations into sexual assault complaints are complex police work, and the process is often confronting for victims. The Victorian Law Reform Commission stated in its 2021 *Improving the Justice System Response to Sexual Offences* report (the VLRC report) that

> 'For most people who report sexual offences, the experiences of the criminal justice system is largely an experience of how police respond, and to a lesser extent, how the prosecution responds.'[528]

Reporting and attrition rates are useful measures for assessing victims' engagement at the frontend of the justice system. However, there are other outcomes that are also important for measuring victims' experiences. These include improved police investigation and practices and victims' perceptions and level of satisfaction with police responses.

International and national studies have found that for victims of sexual assault, access to justice is challenging.

Police officers are governed by a code of ethics that requires them to uphold and apply the law fairly.[529] In Queensland, the Standard of Professional Practice sets the standard for police members to 'deliver a professional, ethical and accountable level of policing to the community'.[530] When police officers undertake an investigation into any crime they must be objective and impartial.[531] In sexual assault cases, maintaining impartiality may be affected by an investigating officer's perceptions of victim believability. One study reported blaming questions and poor investigation and follow-up from police.[532] As noted in chapter one, women who do not appear to be the 'ideal' victim, such as women with disability, are less likely to be perceived as credible.

The VLRC report [533] found there was a need to improve the consistency and quality of police and prosecution responses to victims of sexual violence and to promote greater accountability in police decision making, and inter-agency collaboration.

The Queensland Government's *Prevent. Support. Believe. Queensland's Framework to address sexual violence* (the Framework)[534] sets out three priorities for improving responses to address sexual violence:

- prevention
- support and healing

- accountability and justice

The objective of the accountability and justice priority is that the justice system is responsive to the needs of victims and survivors and perpetrators are held accountable for their behaviour. To achieve this objective, the Framework identifies strategies including removing barriers to reporting, providing support to navigate the criminal justice system, strengthening interventions to help perpetrators take responsibility, and review and evaluate justice processes and relevant laws.

The QPS has implemented a number of initiatives to support victims of sexual offences to access justice. The *QPS Sexual Violence Response Strategy 2021-2023* (QPS Sexual Violence strategy) sets a vision for the QPS to address sexual violence by promoting a victim-centric, trauma-informed sexual violence response that protects the community and strengthens public confidence.

In late 2021, the QPS launched a joint safety campaign with the Tinder dating app to increase awareness of personal safety, offender behaviour, reporting and support options.[535]

The QPS has also partnered with Griffith University to develop and implement a crime harm index.[536] The QPS told the Taskforce in its second submission in 2021 that the crime harm index is 'being used in strategic and operational assessments on and/or related to sexual offending areas along with other variables to inform decision making and build situational awareness'.[537]

Questions to consider

39. What are your experiences or observations of reporting sexual violence to police? What works well? What needs to be improved?

Alternative Reporting Options

In response to the 2017 Royal Commission into Institutional Responses to Child Sexual Abuse, the QPS launched a fully online reporting system in 2020, *Alternative Reporting Options* (ARO).[538] The online reporting system is for adult victims of sexual assault who do not wish to make a formal complaint.[539] Victims of sexual assault provide police with details of their assault and are able to remain anonymous.[540] This process empowers victims with the knowledge that the information they provide can be used by police to solve other similar reported offences, and as intelligence to design strategies that target offenders and reduce repeat offending.[541] Alternative reporting systems like ARO give women the opportunity to tell their story, while recognising that not every victim will want to follow the same path through the justice system.[542]

Questions to consider

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?

Evidence gathering following sexual offences

As part of an investigation of a sexual offence, police may undertake a range of activities to gather evidence, such as interviewing witnesses and preparing statements, collecting medical and forensic evidence or taking photographs or recordings.[543] Victims' clothing may be collected.[544] Police may record their interviews with the victim or the defendant.

Whether or not investigating police officers exercise their discretion to charge a person with a criminal offence should depend on the sufficiency and admissibility of evidence.[545] This is likely to turn on different factors including reliability of evidence, possible defences and competency and credibility of witnesses.[546] Before an investigating officer can charge a person with an offence, they should ensure there is sufficient and admissible evidence to prove the offence and justify criminal proceedings.

One way evidence may be gathered in sexual offence cases is through the use of pretext phone calls. This typically involves a phone call between a victim and an accused person that is recorded by police. The call is intended to elicit evidence that may support or counter a victim's version of events,[547] and takes place before the accused person is aware of the accusations or that they are being recorded. Although pretext calls are often highly effective,[548] they can be stressful and re-traumatising for victims. For example, in 2017, the negative experience of one Queensland woman in

cooperating with a pretext phone call received media attention.[549] Advocates warned that 'survivors should not be put in a position where they feel emotionally responsible for investigating their own case.'[550] Further, it may be that as the use of pre-text phone calls becomes more well known in the community, their utility diminishes.

Questions to consider

41. What are you 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?
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?

Forensic examinations

A forensic medical examination may be the first experience a victim of sexual assault has with the criminal justice system, and preferably should be conducted as soon after the assault as possible. It is likely to be a distressing time for the victim.[551] A forensic medical examination for sexual assault victims typically begins with obtaining a history of the nature of assault in order to guide the physical examination.[552] The examination includes the interpretation of injuries and the collection of forensic evidence as it relates to the alleged assault.[553] It is important that the collection of forensic evidence is 'both gender-sensitive and diligent in compliance with protocols'.[554]

In 2019, the Queensland Audit Office published *Delivering forensic services Report 21: 2018–19* (the 2018-2019 QAO report). It recommended reform of forensic medical examinations in response to QPS concerns about longstanding difficulties for sexual assault victims, particularly in regional areas where some victims were not receiving timely, adequate examinations.[555] Delay in conducting examinations may have contributed to the withdrawal of some complaints by victims of sexual violence.[556]

The Queensland Government provided funding of $1.39 million[557] to Queensland Health to improve its forensic medical examinations processes including by providing training and education programs and more forensic nurse examiners. The QAO recommended that Queensland Health continue to develop and deliver reforms to forensic medical examinations in order to improve services to victims, in collaboration with the QPS.[558]

Queensland Health told the Queensland Parliament that this recommendation has been implemented in full.[559] In July 2019, a new *Caring for People Disclosing Sexual Assault Health* service directive became effective, requiring Hospital and Health Services across Queensland to provide 24-hour access to forensic examinations.[560] To support implementation, an education program was developed in partnership with the Central Queensland University to train registered nurses and midwives as Sexual Assault Nurse Examiners. By July 2021, 68 Queensland nurses had been trained.[561]

New Queensland Health policies in 2019 also enabled victims of sexual assault to have a 'just in case' forensic examination, whether or not they have made the decision to report the assault to police.[562] The evidence obtained in 'just in case' examinations is held by Queensland Health for twelve months. Police are not involved in these investigations, and evidence collected can only be provided to the police with the victim's consent.[563] 'Just in case' examinations are offered in every state or territory in Australia, and the VLRC report recently recommended the expansion of the model in Victoria.[564]

While these efforts are commendable, ongoing concerns about the availability of staff to perform forensic medical examinations have been raised.[565] The Taskforce has heard that some victims in recent cases were being required to travel long distances or wait for several days for an examination. This can detrimentally impact on the wellbeing of the victim and the quality of the evidence collected.

> The Cairns Sexual Assault Service (CSAS) told the Taskforce in its second submission in 2021 about the lack of health resources in rural and remote areas that are creating barriers for victims: 'Victims-survivors reporting sexual assault in rural and remote regions outside Cairns will rarely encounter a nurse or doctor with sufficient training or experience to conduct the appropriate forensic examination. They will need to be transferred to Cairns for the examination,

> and often the person themselves has been made responsible for the travel, when either police or health services should be providing/paying for it. This lack of expertise in rural and remote regions means that victims-survivors may wait a very long time until they receive needed care; the knowledge that this is the case may result in people in these regions not proceeding with or dropping their allegations of sexual assault'.[566]

The Taskforce has also heard that it is inappropriate to conduct these examinations in an emergency department of a hospital.[567] There are concerns that victims opting for 'just-in-case' examinations are not aware that the evidence collected may be less effective and is held for a shorter period than when a full examination is undertaken.[568] The use of integrated service responses and 'hub models' as centres of excellence have been suggested as a potential solution to some of these issues[569],perhaps in response to domestic and family violence as well as to sexual violence.

The Women's Centre is a multidisciplinary sexual assault response team of specialists that provides on-call and outreach responses 24 hours a day, seven days a week to victims of sexual assault in Townsville.[570] The team consists of specialist workers from a sexual assault support service, specialist detectives in child abuse and sex crimes, forensic nurse examiners, and allied health staff. The Centre supports victims through the process of forensic examinations and making reports to police.[571]

An independent evaluation carried out when the model was in its trial phase found it improved victims' experiences and delivered rapid response times.[572] Victims reported feeling supported and there were fewer complaints withdrawn. The evaluation also found a 300% increase in victims giving consent for forensic examinations, and an increase in charges from 18% to 21% of complaints.[573] The model has been recognised as a best-practice approach to supporting victims of sexual assault.[574] The Government announced in 2020 that the model would become permanent, and allocated $1.8 million over five-years to the North Queensland Combined Women's Service to continue the use of specialist counsellors, and outreach support for victims.[575]

The 2018-2019 QAO report also found at the time that forensic services were under resourced and struggling with increasing demands to conduct analysis of forensic evidence.[576]

A 2020 Queensland study on forensic DNA analysed data from 36,416 DNA samples collected from crimes attended by the QPS between February 2018 and September 2019.[577] All samples were processed by the Queensland Health Forensic Scientific Services (QHFSS). Samples from sexual assault-related cases were also analysed as part of this study. Amongst these records, it was found of the 320 penis-swab samples collected, 52% were analysed by the forensic laboratory as having 'no DNA'. Without DNA, a profile cannot be recovered from the evidence collected and police are unable to identify a potential suspect. In a 2022 news article published by *The Australian*[578], Dr Kirsty Wright (a forensic biologist with several years of experience in major crime) was reported to have said in relation to the findings from the 2020 study that there is no 'logical explanation why a lab would be getting a 52 per cent failure rate of samples that should always generate a profile'. *The Australian* news article also identified issues with DNA testing in the 2013 case of Shandee Blackburn who was a young woman murdered in Mackay on her way home.

Questions to consider

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

When investigating sexual offences, police officers must advise victims that they may have a support person present during various stages, including when their statement is taken or a medical examination is being conducted.[579] Specific supports are also required when interviewing persons with vulnerability, disability or

cultural need, such as independent support persons or interpreters for spoken, written and sign languages.[580] Legal Aid Queensland has suggested that there is a lack of interpreters for cultural and linguistically diverse people attempting to make complaints of sexual violence, and that interpreter requirements for victims with language barriers should be strengthened.[581]

In 2020, the QPS conducted a 12-month trial of dedicated Sexual Violence Liaison Officers (SVLOs) in Townsville and Logan to provide increased support to victims of sexual violence. The role of SVLOs included providing a central contact point for victims during police investigations. The SVLO trial evaluation identified an increase of reported sexual violence occurrences and a decrease of withdrawn and unfounded occurrences in both trial sites.[582] In October 2021, the QPS announced that SVLOs would be established state-wide.[583]

Questions to consider

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

The QPS has specific training programs relevant to investigating and gathering evidence in sexual offence cases.[584]

The QPS told the Taskforce in its second submission in 2021 about two new online learning products designed to promote victim-centric and trauma informed practice that were to be launched in 2021. The Child Sexual Abuse Fundamentals Education (CSAFE) online training package addresses institutional child sexual abuse, trauma, survivors from diverse backgrounds, child development and effective communication. This training is for all police officers from the rank of Constable to Inspector and Counter Services Officers. The second online training package is designed for generalist investigators and addresses biases and decision making, myths and misperceptions, trauma and complex trauma and vicarious trauma and self-care, in the areas of child sexual abuse, sexual violence, and domestic and family violence.

Another training program delivered by QPS is the Investigating Sexual Assault – Corroborating and Understanding Relationship Evidence (ISACURE) course. The ISACURE course established in 2016 and was developed in partnership with the University of Queensland. The course includes presenters with lived experiences, professionals in the field of trauma and sexual assault services, and practical training in interviewing victims of sexual violence.[585] The Gold Coast Centre Against Sexual Assault recently became involved in the ISACURE program delivery.

The QPS told the Taskforce in its second submission in 2021 that an evaluation of the course found investigators' victims of sexual assault had significantly changed, leading to improved investigative practices. Trained officers also achieved greater rates of solved sexual offences and lower rates of withdrawals.[586]

It has been reported in other sources that the course improves police officers awareness of the impacts of trauma on a victim's memory and mental health, and interview strategies for both victims and offenders.[587] Other publicly available findings also reveal that officers had increased trust and faith in the victim, a greater perceived importance of rapport, and more confidence in being able to progress a sexual assault case to court after taking the course.[588]

Questions to consider

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

Chapter 32 of Queensland's Criminal Code contains Queensland's offences of rape (including attempts and assault with intent) and sexual assault. The key elements which the prosecution must prove beyond reasonable doubt for these offences is that the sexual contact occurred and that it was without *consent*.

The legal definition of consent for sexual offences has been one of the most contested areas of law reform in recent years in Australia.

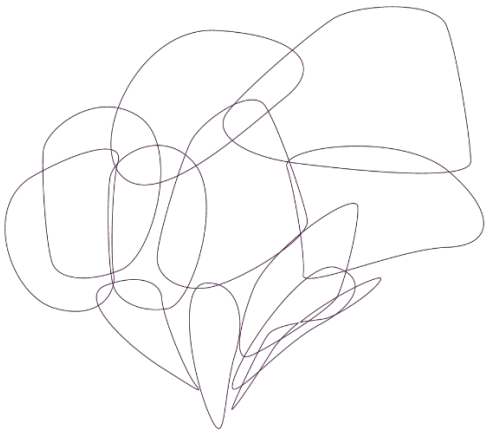
The QLRC report delivered to the Queensland Government on 30 June 2020 was the product of a nine-month review of the definition of consent and the application of the excuse of mistake of fact to sexual offences in Queensland.

How is consent defined in Queensland?

The QLRC report found that the existing definition of consent in Queensland did not require extensive reform but that principles in Queensland's case law should be clarified within the legislative definition of consent.[589]

These amendments sought to clarify, in particular, that:

- silence alone does not amount to consent – a person who does not say or do anything to communicate absence of consent to a sexual act is not, by reason only of that fact, to be taken to have consented to that act (currently reflected in section 348(3))
- consent initially given can be withdrawn (currently reflected in section 348(4))



Section 348 of the Criminal Code incorporates amendments made in March 2021 as recommended in the QLRC report and defines consent as:[590]

> *(1) Consent means consent freely and voluntarily given by a person with the cognitive capacity to give the consent.*
>
> *(2) Without limiting subsection (1), a person's consent to an act is not freely and voluntarily given if it is obtained —*
>
> *(a) by force; or*
>
> *(b) by threat or intimidation; or*
>
> *(c) by fear of bodily harm; or*
>
> *(d) by exercise of authority; or*
>
> *(e) by false and fraudulent representations about the nature or purpose of the act; or*
>
> *(f) by a mistaken belief induced by the accused person that the accused person was the person's sexual partner.*
>
> *(3) A person is not to be taken to give consent to an act only because the person does not, before or at the time the act is done, say or do anything to communicate that the person does not consent to the act.*
>
> *(4) If an act is done or continues after consent to the act is withdrawn by words or conduct, then the act is done or continues without consent*

What 'model' of consent does Queensland have?

The QLRC report found that the current definition of consent in the Criminal Code 'reflects a communicative model [of consent] in that the definition requires consent (as a state of mind) to be "given" (that is, communicated) to the other person.'[591]

In *R v Makary*[592], the President of the Queensland Court of Appeal, the Honourable Justice Walter Sofronoff outlined what constitutes 'the giving of consent' for the purposes of Queensland's definition:

> [49] "Consent" was thus defined to require two elements. First, there must in fact be "consent" as a state of mind. This is also because the opening words of the definition define "consent" tautologically to mean, in the first instance, "consent". The victim's state of mind remains elemental. Second, consent must also be "given" in the terms required by the section.

> [50] The giving of consent is the making of a representation by some means about one's actual mental state when that mental state consists of a willingness to engage in an act. Although a representation is usually made by words or actions, in some circumstances, a representation might also be made by remaining silent and doing nothing. Particularly in the context of sexual relationships, consent might be given in the most subtle ways, or by nuance, evaluated against a pattern of past behaviour.

An affirmative consent model 'requires a person to "take steps" to find out if there is consent.'[593] When the term 'affirmative model' is used it is associated with a requirement that there be a clear and unequivocal positive communication about consent. It has been described as a 'yes means yes' approach, 'where consent is actively and positively expressed by the person giving it.'[594] Affirmative consent has also been said to require the person initiating the sexual activity to obtain 'enthusiastic consent'.[595]

The QLRC report treated Queensland's communicative model of consent as being a positive or affirmative model but expressly rejected amendments that would require a clear and unequivocal 'yes'.[596]

The QLRC ultimately concluded that the law in Queensland 'strikes an appropriate balance between the degree of social harm incurred by acts of non-consensual sexual activity and matters of fairness to a defendant at trial.'[597] In coming to this conclusion, the QLRC not only considered the definition of consent at section 348 of the Criminal Code, it also considered the operation of the excuse of mistake of fact under section 24 of the Criminal Code.

The operation of the excuse of 'mistake of fact' in Queensland in trials for sexual offences

The operation of the excuse of mistake of fact in Queensland's Criminal Code and how Queensland's codified criminal law differs from Australian common law jurisdictions is described in the Explanatory Notes to the *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020*.[598]

The QLRC report contained a comprehensive review of criminal trials for sexual offences in Queensland conducted in 2018. The QLRC's analysis of these trials showed that where sexual contact or penetration was admitted by the defendant, *the conviction rate was higher where mistake of fact was an issue for the jury, than when mistake of fact was not left to the jury.* Based on this analysis, the QLRC report found that the excuse of mistake of fact did not appear to have a disproportionate impact on conviction rates for sexual offences in Queensland.[599]

The QLRC considered and rejected proposals to reverse the onus of proof for mistake of fact[600] or to make the test for mistake of fact purely objective[601] or to require that steps or reasonable steps must be taken by a defendant to ascertain consent before they can claim a mistake of fact.[602] The QLRC's conclusion that these reforms were unnecessary was based largely on its analysis of the transcripts from relevant 2018 Queensland trials for sexual assault and its concern not to compromise a defendant's right to a fair trial. The QLRC did, however, recommend that the Criminal Code be amended to give 'clear expression to the law as it presently stands', that is, a defendant is not required to take any particular steps to ascertain consent, but a jury can consider anything the defendant said or did (or did not say or do) when considering whether they had an honest and reasonable belief about consent.[603] That recommendation is reflected in the current section 348A(2) of the Criminal Code.

Interaction of issues relating to a defendant's voluntary intoxication and the excuse of mistake of fact

The QLRC report recommended that there should be an amendment to clarify the position, reflected in case law, about the relevance of a defendant's voluntary intoxication to their claimed mistaken belief about consent.[604] That is now reflected in section 348A(3) of the Criminal Code, which provides that a defendant's voluntary intoxication can be taken into account when determining whether the defendant may have formed an *honest* but mistaken belief about consent but it is irrelevant and must not be taken into account when determining whether any mistaken belief about consent may have been *reasonable*.[605]

The QLRC report identified that the Queensland case law may be confusing for juries and even some judicial officers but considered that a statutory statement of the existing case law (now reflected in Section 348A(3)) would sufficiently clarify this.

The defendant's voluntary intoxication was a relevant factor in 28 of the 32 trials (88%) from 2018 examined by the QLRC where mistake of fact was left to the jury.[606] In eight of the trials analysed (29%), the jury was not directed at all that evidence of the defendant's voluntary intoxication was irrelevant to the defendant's reasonable belief.[607] Further, in two of the cases resulting in

conviction at trial the Court of Appeal found inadequate directions by the trial judge on the relevance of voluntary intoxication to the defendant's belief about consent.[608]

The QLRC noted that in New South Wales, Victoria, and Tasmania (which has a Criminal Code based on the same Sir Samuel Griffith design as Queensland) the legal position has been simplified so that the defendant's voluntary intoxication cannot be taken into account when considering either the honesty *or* the reasonableness of a defendant's mistaken belief about consent. The QLRC concluded this amendment was undesirable because it might divert attention to the question of 'what a defendant would have believed if sober'.[609]

Developments since the delivery of the QLRC Report

The New South Wales Law Reform Commission delivered its report, *Consent in Relation to Sexual Offences,* in September 2020 (the NSWLRC report).[610] The NSWLRC report made a number of recommendations about consent and new jury directions.[611] As for the QLRC report, the NSWLRC report rejected proposals to remove the excuse of honest and reasonable mistake of fact or to make it only exceptionally applicable.[612] The New South Wales Government generally accepted the NSWLRC recommendations for positive change but ultimately did not accept the NSWLRC's position on the excuse of honest and reasonable mistake of fact. In December 2021, the *Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021* amended the law in New South Wales so that it will *legally require* a defendant to do or say something to find out whether the other person is consenting in order to show that they had an honest and reasonable belief as to consent.[613]

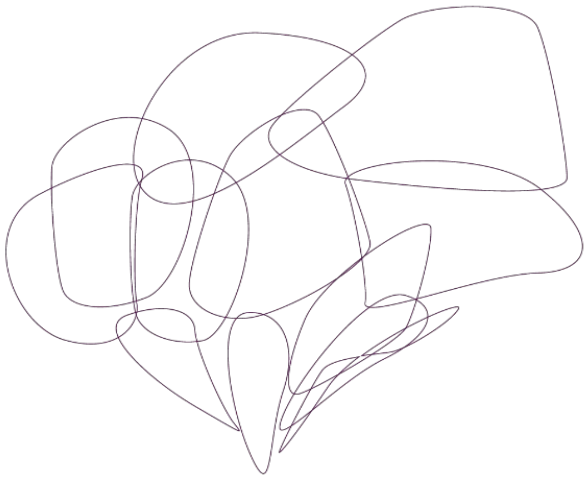
Currently, the consent provisions in Victoria for sexual offences are based upon a model of 'communicative consent'.[614] The VLRC Report delivered in September 2021 and published in November 2021 made recommendations that included reviewing the definition of consent and a 'move to a strong model of affirmative consent.'[615] The VLRC recommended that this affirmative model should include 'a requirement for a person to 'take steps' to find out if there is consent.[616] On 12 November 2021, the Victorian Attorney-General announced that they would introduce legislation to implement this recommendation.[617]

The Law Reform Commission of Western Australia is currently considering Western Australia's laws on consent and sexual offences .[618] This includes whether the concept of affirmative consent should be incorporated into the legislation and how mistake of fact applies to sexual offences.[619] The Western Australian Department of Justice is also commencing a review of the criminal justice process for victims of sexual offending.[620]

Should Queensland move beyond the amendments on consent to the Criminal Code following the QLRC Report?

The QLRC report was delivered to the Queensland Government 20 months ago. The Taskforce is conscious that the QLRC, which comprises highly respected, legal experts, expended considerable time and resources on its analysis of this issue. The amendments they recommended have been in force for less than 12 months and so there is little information available to assess their impact and any outcomes achieved. Given the breadth of issues the Taskforce must consider under its terms of reference, the Taskforce is reticent to use its limited time and resources to conduct an extensive revision of matters traversed so recently by the QLRC.

But this is a consultative Taskforce required to consider women and girls' experience of the criminal justice system. The issue of consent remains of concern to women and girls, the broader community and the legislators, despite the implementation of the recommended QLRC amendments. The law relating to consent has been changed, or flagged for change, in other Australian jurisdictions since the QLRC report. The Taskforce therefore considers it useful to seek feedback from the Queensland community on whether there are aspects of Queensland's present laws on consent that should be reconsidered. The Taskforce is interested to learn what the Queensland community's view is on the current law about consent in relation to sexual assaults. Some alternative suggested approaches to current Queensland laws are discussed below.



Redrafting the definition of consent so that consent must be 'agreed' rather than 'given'

Associate Professor James Duffy has suggested that that the definition of consent for sexual offending in Queensland should be redrafted to state that 'consent means free and voluntary agreement.'[621] This would modify the current definition so that consent must be agreed, rather than given. The definition of consent as something to be agreed, is how it is defined in all states of Australia, with the exception of Queensland and Western Australia.[622]

Including a provision that provides a non-exhaustive list of circumstances where consent does not and cannot exist

Although not taken up by the QLRC, some have proposed that the section be amended to include 'circumstances where agreement does not (and cannot) exist' including when a victim is asleep, unconscious, or due to intoxication is incapable of consenting.[623] Other jurisdictions in Australia 'explicitly reference these factors, and their impact upon consent.'[624] The New South Wales Government adopted a similar recommendation from the NSWLRC in its 2021 amendments[625] Amending the wording of the section in this way, would make the Queensland legislation more consistent with legislation in other Australian jurisdictions.

Removing the ability for a defendant to rely on self-induced intoxication as a reason for having an honest belief as to consent

This would make the law consistent with other Australian jurisdictions which do not allow for the consideration of voluntary intoxication when determining whether a defendant's version of events may be an honest but mistaken belief as to consent.

As noted above, the law in Queensland already provides that voluntary intoxication cannot be taken into account when determining whether a defendant's mistaken belief about consent is *reasonable*. However, retaining the ability to take voluntary intoxication into account when considering the *honesty* of a defendant's belief has caused confusion in the community and amongst police, jurors and even some lawyers and judicial officers.

In Tasmania, 'a mistaken belief by the accused as to the existence of consent is not honest or reasonable if the accused was in a state of self-induced intoxication and the mistake was not one which the accused would have made if not intoxicated.'[626]

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

The current drafting of section 348A(2) only provides that regard *may* be had to steps taken or not taken to ascertain consent when considering whether a defendant had an honest and reasonable believe about consent. This position is a clarification of the current case law. In the QLRC review of trials for sexual offences in 2018, however, no such direction was given in any trial.[627] And nor is there any present legislative requirement to change the practice of not giving jury directions of this kind. Such a jury direction would move Queensland closer to the affirmative consent model being adopted in New South Wales and Victoria without disadvantaging defendants with cognitive impairment or language difficulties.

Stealthing

Non-consensual condom sabotage or removal, often termed stealthing, is a practice that is increasing. Some have observed that '[w]hile stealthing arguably vitiates consent, its classification as rape is dependent on the court's interpretation of the current legislative provision relating to consent.'[628] The QLRC acknowledged that it received submissions about this issue and found it a 'concerning practice'[629] and that '[t]here may well be merit in considering whether this practice should be specifically dealt with as an offence in its own right.'[630] However, it did not recommend amending the definition of consent in the Criminal Code to include 'specific circumstances where the defendant sabotages or removes a condom without consent.'[631]

The New South Wales Government adopted the NSWLRC recommendation of including sex with a condom as an example of a particular sexual activity to which a person may consent, without consenting to any other sexual activity.'[632] The VLRC has recommended a similar approach.[633]

Some commentators have argued that while the practice of stealthing is immoral and should be criminalised the moral culpability of an offender who obtains sexual consent by fraud or misrepresentation is different to the moral culpability of an offender who forces another person to participate in sexual activity against their free will and this is already reflected in Queensland's legislation.[634]

If stealthing is to be specified as an offence in Queensland's Criminal Code, one option would be to include it under section 218 (Procuring sexual acts by coercion).

Questions to consider

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 alternatives discussed above?
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

Role of the Office of the Director of Public Prosecutions and Police Prosecutions Corps

The Office of the Director of Public Prosecutions (ODPP) and Police Prosecutions Corps (PCC) are the bodies that prosecute sexual offences in Queensland. The Queensland Director of Public Prosecutions Guidelines outline the importance of engaging with victims throughout the court process.[635] The Director of Public Prosecutions for the State of Victoria, Kerri Judd QC, recently observed that '[g]oing to court and giving evidence in the courtroom can be particularly difficult for victims of sexual assault and family violence.'[636] She acknowledged the importance of 'helping victims navigate the criminal justice process' and making it 'less traumatic' for victims.[637] The Taskforce is interested in understanding the ways in which the prosecuting bodies in Queensland support victims, including how they meet their obligations under the Charter of Victims' Rights set out in the *Victims of Crime Assistance Act 2009* (Qld). Questions seeking feedback on this and other governance and accountability issues are outlined in Part 1.

Issues with the court process in Queensland

It is important to understand the criminal court process that victims experience in Queensland, including the committal and trial processes while maintaining an accused person's right to a fair trial.

Lord Steyn in Attorney General's Reference (No 3 of 1999)[638] described the 'triangulation of interests' approach to a fair trial as follows:

> There must be fairness to all sides. In a criminal case this requires the court to consider a triangulation of interests. It involves taking into account the position of the accused, the victim and his or her family, and the public.

In Queensland, the Director's Guidelines state that '[a] fundamental obligation of the prosecution is to assist in the timely and efficient administration of justice.'[639] However, research has revealed that 'poor prospects of a conviction, prolonged prosecutions and the stress of giving evidence leads to low victim satisfaction.'[640]

Unfortunately, there are many recent cases in Queensland that raise concerns about the court process, particularly extensive delays in finalisation of cases involving sexual offences. At a recent sentence hearing in the District Court of Queensland at Beenleigh, the presiding judge commented that '[t]he delay is an atrocity.'[641]

The Taskforce is interested in how the court process can be improved to better support victims and improve effectiveness and efficiency, whilst also ensuring just outcomes. This includes seeking information about the current processes and procedures for listing criminal matters, as well as the timeliness or delay in matters proceeding through the criminal court system in Queensland.

The Taskforce also wants to know whether victims of sexual offences feel they are supported during the court process and whether those in control of the processes have an understanding of victims' experiences. The VLRC has recommended that everyone in the criminal justice system receive training in trauma-informed practices.[642]

This Taskforce made a similar recommendation in its first report.[643] As discussed in Part 1, a trauma-informed approach recognises the physical, psychological and social effects of trauma upon a person and is able to appropriately respond to this.[644]

Legislative measures for witnesses giving evidence

Section 21A of the *Evidence Act 1977* (Qld) outlines special measures that a Queensland court can put in place when a special witness gives evidence. A 'special witnesses' is defined to include a person against whom domestic violence[645] or a sexual offence[646] has been or is alleged to have been committed by another person; and who is to give evidence about the commission of an offence by the other person. These measures are in addition to the supports that prosecuting authorities or non-government organisations may generally provide to a victim of a sexual offence and are focused on the victim giving evidence as a witness during the court proceedings. These special measures include:

- the witness giving evidence in the courtroom with the person charged being excluded from the courtroom, or obscured from the view of the witness with a screen
- the exclusion of the public from the courtroom while the witness is giving evidence
- the witness giving evidence in a remote room by audio-visual link
- the presence of a support person while the witness is giving evidence
- the recording of evidence prior to trial which can then be played in court (known as a pre-recording)
- any other directions that the court considers appropriate for the witness such as rest breaks and that questions be kept simple, limited to a reasonable time, and not be excessively repetitive.[647]

The first report of this Taskforce referred to the submission of the Department of Justice and Attorney-General that less than half (46.5%) of Queensland courthouses currently have remote witness capability.[648]

In contrast to Queensland, a New South Wales victim who gives evidence in respect of a prescribed sexual offence, is entitled (but may choose not) to give evidence in a remote room by means of closed-circuit television facilities or other technology.[649] The victim may also choose to give evidence by alternative arrangements made to restrict contact between the victim and the accused person or any other persons in the courtroom, such as through screens or planned seating arrangements.[650] The court, on its own initiative or on application by a party to the proceeding, may make orders that such means not be used[651] but only if there are special reasons and the interests of justice require that the victim's evidence not be given that way.[652]

In New South Wales, there is also a requirement that the evidence of each witness in criminal proceedings must be recorded.[653] Additionally, there are provisions which enables the recorded evidence of the victim or special witness in sexual offence proceedings to be used in any re-trial.[654]

Some perceive that the evidence of a witness from a remote room is less persuasive. A recent report by the Victims' Commissioner for England and Wales, however, questioned that perception:

> The belief that a witness' evidence loses impact and perhaps even authenticity because they are not in the room may well be unfounded but if this is, as we understand, a myth, it needs to be busted as it seems to be widely held. If the current evidence base is not strong enough, more research may need to be carried out on this.[655]

As a result, that report recommended that police and prosecutors be trained about the effects of special measures on quality of evidence so as not to prejudice witness choice of special measures.[656]

In respect of the questioning of a witness in Queensland, a court *may* disallow a question put to a witness in cross-examination or inform a witness that the question need not be answered if the court considers that it is an improper question.[657] In New South Wales, a court *must* disallow improper questions,'. The relevant New South Wales section also sets out examples of improper questions.[658]

In sexual offence trials in Queensland, the defence can apply for leave of the court to cross-examine and receive evidence about the victim's sexual activities with any person.[659] The court shall not grant leave 'unless it is satisfied that the evidence sought to be elicited or led has substantial relevance to the facts in issue or is a proper matter for cross-examination as to credit.'[660] The Taskforce is interested in hearing about how these provisions operate in practice.

Currently, the Law Commission of England and Wales are conducting a review of evidence in sexual offence prosecutions, including the provisions relating to the admission of evidence of the complainant's sexual history.[661].

Video-recorded interviews with police and victim

A related issue is whether video-recorded interviews between police and victims for sexual offences could be used as evidence-in-chief in trials. In Queensland, video-recorded police interviews are regularly admitted as the evidence-in-chief where the victim is a child or person with an impairment of the mind.[662] This ensures the evidence is captured at the earliest opportunity, hopefully when the events are fresh in the mind of the witness. Other arguments in support of this practice include that it has the potential to improve a victim's experience of the court process as well as the quality of the evidence.[663] One study considered that the use of a video-recorded police interview as evidence 'provides an opportunity to provide the most complete evidence from a witness, and hence may improve just outcomes.'[664] Others have noted that '[d]espite the potential benefits, legal professionals from countries where video-evidence has been adopted have mixed views about its success.'[665]

A study was conducted to obtain Australian criminal justice professionals' views on the use of police video-recorded interviews as evidence-in-chief for adult victims of child sexual assault. It revealed that while many professionals 'perceived that adult victims of child assault were vulnerable and supported reforms to evidence sharing', there were concerns about using pre-recorded interviews as evidence due to the poor quality of police interviews.[666]

In another study, prosecutors from New Zealand (where this reform has been implemented) and Australia were asked about their views on the use of an adult victim's video-recorded police interview as their evidence-in-chief in sexual assault cases. Whilst they collectively supported the use of video-evidence for adult victims, they considered that its utility depended upon:

> (1) the quality of the police interview; (2) how credibly the complainant presents on video; (3) contextual factors that influence the complainant's ability to give live evidence; and (4) the degree of stakeholder support.[667]

In Victoria, visual and audio recorded evidence (VAREs) can be used as the evidence-in-chief for victims who are children or have a cognitive impairment. However, the VLRC commented that 'we recognise concerns about their quality. We do not recommend expanding VAREs to more complainants in sexual offence cases at this stage.'[668] Instead, they recommended amending the legislation which allows victims in sexual offence trials and contested hearings to give pre-recorded evidence.[669]

In their submission to the Taskforce on discussion paper two, Legal Aid Queensland noted that '[a] best practice framework would need to be implemented to govern the process of taking evidence in this way', as well as the allocation of significant resources to deliver appropriate training to police officers conducting the interviews.[670]

Body-worn camera footage interviews with police and victim

The admission of video-recorded statements as the evidence-in-chief for victims in sexual offences would potentially include police body-worn camera footage interviews. At present, this cannot be tendered as the victim's evidence-in-chief although it may be evidence of preliminary complaint of sexual assault or constitute real and admissible evidence of other relevant matters. There is currently a pilot program in Queensland, supported by amendments proposed in the *Evidence and other Legislation Amendment Bill 2021*, which will trial the use of video-recorded statements made to police including from body-worn camera cameras, as evidence-in-chief in domestic violence related offences and breaches of domestic violence orders.[671]

Other measures to support victims

In England and Wales, a number of special measures have been introduced to 'help vulnerable and intimidated witnesses give their best evidence in court and help to relieve some of the stress associated with giving evidence'. This included the use of intermediaries to support witnesses.[672]

The Royal Commission into Institutional Reponses to Child Sexual Abuse recommended the use of intermediary schemes in Australia.[673] In July 2021, the Queensland Intermediary Scheme pilot program was introduced. The scheme will pilot 'the use of intermediaries to assist witnesses with communication needs to give their best evidence.'[674] Whilst the pilot phase is limited to certain prosecution witnesses in child sexual offence matters, the scheme could inform the implementation of supports more broadly.[675]

Another special measure used in England and Wales is known as 'ground rules hearings'. Their purpose is to set the 'ground rules' that will apply at trial, including the style and content of questioning of the victim during cross-examination.[676] In Victoria, both ground rules hearings and intermediaries have been introduced.[677]

There are a number of victim advocate models which operate across England and Wales.[678] An assessment of independent victim advocate models from multiple jurisdictions found that victim advocates effectively support victims to navigate legal processes, access practical support, information and advice, and make key decisions.[679] Advocates who build good relationships with

other professionals and agencies are able to link victims to services and facilitate the exchange of information.[680]

There is also growing support for victims of sexual offences to have access to independent legal representation.[681] In Queensland, funded legal services for victims of sexual offences are limited to legal representation in protected counselling communications hearings.[682] This service provides legal representation for victims seeking to challenge defence applications for the disclosure of their counselling records. This representation does not extend to the actual criminal trial.

There has been some interest in victims of sexual offences having legal representation during the trial, in order to improve their experience in this process.[683] Whilst the use of victim legal representation has been considered in recent commissions of inquiry[684], it is a developing area in Australia. It would constitute a fundamental change to the established adversarial process of an Australian criminal trial, which involves the State prosecuting an accused person for a crime.[685]

Questions to consider

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?

The admissibility of evidence for sexual offences

Similar fact and propensity evidence

In sexual offence cases a jury or judge will often be considering a 'word against word' case - they will hear the evidence of the victim and the case for and sometimes the evidence of and for the accused person. It can be difficult in these cases to be satisfied of the guilt of an accused beyond reasonable doubt.[686] In some of these cases, there may be evidence from other complainants or witnesses who allege that the accused person has also committed sexual offences against them. This evidence tends to be both persuasive and prejudicial and judges recognise that there is a danger that juries may unfairly reason that if the accused person has committed another sex offence, he must have committed the charged sex offence, instead of looking only at the actual evidence about the charge against the person.

That is why there are strict rules about when this evidence can be given in trials. If the judge decides the evidence is not allowed, it may mean that trials involving multiple victims of the same accused person must be run separately, with no mention of the other charges or victims allowed. This can result in additional delays and may be confusing for victims.

To allow cases to be run together, or for a jury to consider evidence of similar conduct by the accused, the prosecutor must show the judge the evidence is admissible. In Queensland, the law concerning the admissibility of similar fact (or coincidence) and propensity (or tendency) evidence is contained in the common law. In *Pfennig v The Queen*[687], the majority of the High Court stated that before admitting similar fact evidence:

> … the trial judge must apply the same test as a jury must apply in dealing with circumstantial evidence and ask whether there is a rational view of the evidence that is consistent with the innocence of the accused … Only if there is no such view can [the judge] safely conclude that the probative force of the evidence outweighs its prejudicial effect.[688]

Therefore, the criterion for the admissibility of similar fact evidence depends on its probative force.

Section 132A of the *Evidence Act 1977* (Qld) also deals with similar fact evidence and provides:

> In a criminal proceeding, similar fact evidence, the probative value of which outweighs its potentially prejudicial effect, must not be ruled inadmissible on the ground that it may be the result of collusion or suggestion, and the weight of that evidence is a question for the jury, if any.[689]

In *R v McNeish*[690], Sofronoff P and Henry J observed that similar fact and propensity evidence may be led for purposes, including:

> 1. To remove the implausibility that might otherwise be attributed to the complainant's account of the offence if the offending were thought to be an isolated incident; (sometimes called "relationship evidence").
>
> 2. To demonstrate the sexual attraction felt by the accused so as to show a motive to commit the offence; ("motivation evidence" and sometimes also called "relationship evidence").
>
> 3. To demonstrate that the accused not only had a motive to commit the offence but that he was a person who was prepared to act on his motivation to commit the charged offence because he had committed similar offences against the complainant or others previously (sometimes called "tendency" or "propensity" evidence)
>
> 4. To identify the offender, as in *Pfennig* itself.[691]

An example of a case where the application of these rules resulted in separate trials involved an alleged perpetrator who was the father of the two victims. They were sisters; lived in the same house, were of similar ages; and there was penetration of both victim's vaginas, but there were differences in how the offending occurred. The judge ruled that there should be separate trials in relation to each victim.[692]

An example of a case where a court applied these rules to allow the admission of similar fact evidence so that a single trial could be held, involved nine separate adult female victims who had been sexually assaulted by a masseuse that each had separately engaged in his professional capacity. The Court of Appeal found that the evidence of these victims was properly joined and run as one trial instead of nine. This meant that the trial process for all nine victims finished months or even years earlier than if nine separate trials were ordered and conducted. Further, each case against the masseuse was significantly strengthened by the evidence of victims in the other case[693]

In 2017, the Royal Commission into Institutional Reponses to Child Sexual Abuse made several recommendations about similar fact and propensity evidence including that they were 'satisfied that the

current law needs to change to facilitate more admissibility and cross-admissibility of tendency and coincidence evidence and more joint trials in child sexual abuse matters' (recommendation 44).[694]

In respect of joint trials, a prosecution of an accused person for offences against multiple victims during the one trial will usually depend on whether the similar fact evidence is 'cross-admissible' which means that 'allegations from one complainant can be supported by the evidence of other complainants.'[695]

The Royal Commission found that there were 'unjust outcomes in the form of unwarranted acquittals in institutional child sexual abuse prosecutions as a consequence of the exclusion of relevant evidence in the form of tendency and coincidence evidence.'[696] It was also 'satisfied that these unjust outcomes are not limited to prosecutions in relation to child sexual abuse in an institutional context.'[697]

The Royal Commission recommended a test to admit similar fact and propensity evidence:

> The evidence would be admitted if it will be *relevant to an important evidentiary issue* in the trial – such as whether the alleged abuse happened, and whether it was committed by the accused. The court can exclude the evidence if admitting it is likely to result in the proceeding being unfair to the defendant and, if there is a jury, giving appropriate directions to the jury about the relevance and use of the evidence will not remove the risk of unfairness.[698]

Following the Royal Commission, the Council of Attorneys-General developed a set of reforms in a Model Bill to implement the recommendations of the Royal Commission.[699]

In 2019, the Queensland Government released a draft consultation Bill that proposed amendments to the law concerning similar fact and propensity evidence in line with the Model Bill. There were strong objections to the draft legislation.[700] In Victoria, too, some legal stakeholders expressed concerns about the Model Bill.[701]

While these aspects of the Model Bill's recommended amendments were ultimately not included in Queensland's *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019*, in her introductory speech the former Attorney-General and Minister for Justice, the Honourable Yvette D'Ath MP, acknowledged the need for reform in this area.[702]

In November 2019, the Uniform Evidence Law jurisdictions (the Commonwealth, New South Wales, Tasmania, Victoria, Australian Capital Territory and Northern Territory) agreed to make the following recommended reforms in the Model Bill[703] concerning tendency and coincidence evidence:

> It will be presumed that any tendency evidence about the accused's sexual interest in children, or the accused acting on a sexual interest in children, has significant probative value. This presumption can be overcome only if the court is satisfied that there are sufficient grounds to do so.
>
> The restriction on admitting both tendency and coincidence evidence will be changed, so that the probative value of the evidence need only 'outweigh', rather than 'substantially outweigh', the danger of unfair prejudice to the accused.[704]

New South Wales and the Australian Capital Territory have passed legislation incorporating the reforms. Victoria has indicated that it also intends to introduce legislation implementing the reforms.[705]

In Western Australia (like Queensland a Code jurisdiction):

> *(*2) Propensity evidence or relationship evidence is admissible in proceedings for an offence if the court considers -
>
> that the evidence would, either by itself or having regard to other evidence adduced or to be adduced, have significant probative value; and
>
> that the probative value of the evidence compared to the degree of risk of an unfair trial, is such that fair-minded people would think that the public interest in adducing all relevant evidence of guilt must have priority over the risk of an unfair trial.
>
> (3) In considering the probative value of evidence for the purposes of subsection (2) it is not open to the court to have regard to the possibility that the evidence may be the result of collusion, concoction or suggestion.[706]

This test in Western Australia does not require the court to be satisfied that there is no rational view of the evidence that is consistent with innocence of the accused, in order to conclude that the probative force outweighs the prejudicial effect. This makes the test a less difficult threshold to meet than the Queensland test. The Law Reform Commission of Western Australia is currently considering the admissibility of propensity and relationship evidence in Western Australia.[707]

In England and Wales, similar fact and propensity evidence is considered under the sections of the *Criminal Justice Act 2003* (UK) about bad character evidence. The

provisions of this act presume that evidence of bad character is admissible if, but only if:

> (a) all parties to the proceedings agree to the evidence being admissible,
>
> (b) the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it,
>
> (c) it is important explanatory evidence,
>
> (d) it is relevant to an important matter in issue between the defendant and the prosecution,
>
> (e) it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant,
>
> (f) it is evidence to correct a false impression given by the defendant, or
>
> (g) the defendant has made an attack on another person's character.*708*

However, the court must not admit bad character evidence under subsections (d) or (g), if on application by the defendant, it appears that 'the admission of the evidence would have such an adverse effect on the fairness of the proceedings, that the court ought not to admit it.'[709]

The Taskforce is interested to hear views as to whether the present law in Queensland is working well and should remain the same or whether Queensland should introduce legislation to reflect the Model Bill that is being adopted in other jurisdictions. Alternatively, the wording of the propensity evidence provision in Western Australia could be adopted in Queensland or perhaps there should be other changes not set out in this discussion paper.

Jury directions

Victoria has sought 'to change the direction of rape narratives playing out in rape trials, in order to deliver better, more just, outcomes for the victims of sexual offences while maintaining the rights of the accused to a fair trial.'[710] It has done this through the introduction of jury directions to address 'persistent and harmful myths that continue to dominate societal understandings of sexual offending generally, and about women rape complainants specifically, within the context of the rape trial.'[711]

These jury directions are in the *Jury Directions Act 2015* (Vic) and are set out at Appendix 8 to this part.[712] They deal with 'consent; why people might not report or "delay" reporting; and the effects of trauma and memory on the evidence given by people who have experienced sexual offending.'[713] The VLRC report recommended new directions to address misconceptions about sexual violence.[714] These are set out at Appendix 9. Whilst further research is required about the impact of jury directions on jurors, there is evidence that directions 'have some effect on the use of misconceptions.'[715] The New South Wales Government have adopted the NSWLRC report recommendation for new directions be introduced into the *Criminal Procedure Act 1986* (NSW).[716] New South Wales has now passed the *Crimes Legislation Amendment (Sexual Consent Reforms) Bill 2021*, introducing jury directions addressing misconceptions about consensual and non-consensual sexual activity.[717] The New South Wales jury directions relevant to sexual offences are set at Appendix 10.

In Queensland, jury directions about misconceptions about consent and sexual assault are not commonly given. The QLRC in their report did not recommend their introduction as it was not persuaded of the need for such jury guidance.[718] The research relied upon in support of this conclusion was a study undertaken by Professor Cheryl Thomas QC which involved a survey of jurors who had sat on juries in criminal trials throughout England, Wales and Northern Ireland.[719] The QLRC noted the survey 'does not strongly support the concern that jurors commonly harbour false preconceptions or 'rape myths', or that any such preconceptions affect jury deliberation or verdicts.'[720] As discussed above, the research findings of the study conducted by Thomas have since received criticism from a number of academics.[721]

Expert evidence

The VLRC report identified research which suggests that expert evidence addressing misconceptions about consent and sexual assault can be an effective alternative to jury directions in sexual offence cases.[722] It noted that expert evidence could 'reduce the risk of jurors using their own biases to reach conclusions that are not supported by the evidence.'[723]

Additionally, the VLRC found that expert evidence 'may address the same topics as jury directions, as well as

how memory works (including when and how people repress or recover memories); behaviours that may seem counterintuitive, such as a victim survivor maintaining a relationship with the accused; and the power dynamics and characteristics of family violence.'[724] It noted that expert evidence about sexual offending is 'commonly used in New Zealand, and is given by medical practitioners, clinical psychologists, academics and scientists.'[725]

The QLRC report addressed the use of expert evidence about the nature of effects of sexual assault in their review of consent laws and the excuse of mistake of fact.[726] The QLRC recognised that some jurisdictions admit expert evidence in two areas: 'counter-intuitive expert evidence (otherwise known as myth dispelling or educative evidence) and complainant specific expert evidence.'[727]

In respect of counter-intuitive evidence, the QLRC found that whilst it may have an educative purpose, 'it is general in nature and does not answer the questions that a jury may have to consider in a particular case. A jury may derive little additional benefit in terms of enhancement of their understanding and weighing of the specific evidence before them.'[728] The QLRC also noted that ordinarily directions will be given to a jury by the judge that they are not to act on any preconceptions about factors affecting a complainant's behaviour.[729]

Further, the QLRC report did not recommend the introduction of a provision that authorised the receipt of expert evidence in terms which does not meet the common law requirements for admissibility.[730] It referred to section 388 of the *Criminal Procedure Act 2009* (Vic) as enabling the admissibility of evidence which is 'unlikely to be admissible under current laws in Queensland in a rape or sexual assault trial.'[731]

The QLRC report commented that given recent research about juries, it was 'not persuaded that juries are influenced in their decision-making by false preconceptions about rape or sexual assault or that where there is a need for jury guidance this is best achieved by making expert evidence admissible' by introducing a legislative provision.[732] As noted earlier, the research that the QLRC referred and its effect has since been questioned by some academics who assert it does not support this conclusion.[733]

Preliminary complaint evidence

Currently in Queensland, preliminary complaint evidence is admissible in trials for sexual offences.[734] Preliminary complaint evidence relates to any disclosures by a victim about the offending which is made prior to their first formal witness statement to a police officer or to any complaint made after providing that witness statement.[735]

Preliminary complaint evidence is not proof of the offending occurring. However, it may assist the finder of fact in a trial (usually a jury) when assessing the credibility and reliability of the victim.

The Taskforce is interested in views as to whether preliminary complaint evidence should be made admissible in trials for other offences, such as the proposed new offence of coercive control recommended by the Taskforce in its first report.[736] This would enable body-worn camera footage taken by the police with the victim to be led as preliminary complaint evidence.

Protected counselling communications

In 2017, legislation was introduced in Queensland concerning protected counselling communications in relation to sexual assault offending.[737] Questions have been raised about the workability of the legislative scheme in practice.[738] The Taskforce is interested to hear about the experiences of victims in relation to this scheme.

Questions to consider

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

Restorative Justice

Restorative justice is 'an internationally recognised evidence-based response to criminal behaviour. It views a criminal offence as more than an act of breaking the law and examines the impact on society; the harm caused to the victim, family relationships and the community.'[739] Restorative justice processes can take many forms. It may be an alternate to or complement traditional criminal court proceedings. It can also take place at different points in the criminal justice process.

In Queensland, restorative justice conferencing is currently available for children who have been charged with some criminal offences. It can also be used with adults who have been charged with or convicted of some criminal offences.[740] In response to a recommendation by the Queensland Productivity Commission in its Inquiry into Imprisonment and Recidivism,[741] the Queensland Government acknowledged the benefits of restorative justice approaches 'to improve outcomes for victims, offenders, and communities' and committed to developing an updated Adult Restorative Justice Conferencing model, as well as considering how restorative justice conferencing in Queensland can be expanded.[742] However it appears that referrals for adult restorative justice conferencing in Queensland have declined since 2009–10.[743]

The Taskforce is interested to understand whether restorative justice should be used more often in adult sexual offence cases in Queensland.

The VLRC report recommended that restorative justice options in Victoria should be expanded and strengthened, including for use in cases involving sexual offences.[744] The VLRC report acknowledged how restorative justice can benefit both the person harmed and the person responsible and also reduce reoffending.[745]

There seem to be two main concerns with the restorative justice process being used for sexual offences: that it may suggest sexual violence is unimportant and a private concern; and it could repeat the dynamics of the offence and retraumatise the victim.[746] The VLRC identified ways to minimise these concerns and made recommendations to establish a restorative justice scheme in legislation that applies to all offences.[747]

The implementation of a restorative justice scheme to address sexual offending is supported by various research findings. A study of Adult Restorative Justice Conferencing in cases of gendered violence revealed

strong views from criminal justice actors, as well as social and legal service providers, about the 'perceived failings of conventional justice systems' and the 'potential of restorative justice to deliver more efficacious justice.'[748] Studies about restorative justice being used in cases of intimate partner violence in a supervised way to ensure the victim is empowered have also recorded positive feedback from victims, perpetrators, and victim advocates in Australia.[749]

Specialist Sexual Offence Court or improved processes and training

Another consideration is whether Queensland should create a specialist court that deals only with sexual offences. The VLRC considered this and found that the creation of a separate court 'would not be practical or needed.'[750] Observing the New Zealand Sexual Violence Court Pilot, the VLRC noted that the benefits of that court 'do not come from its status as a separate court', but rather from the 'improved case management and processes, and quality training.'[751] The report suggested that lawyers and judicial officers receive training in trauma-informed approaches.[752] The Taskforce is interested in better understanding all these issues in the Queensland context.

Questions to consider

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' experience of the criminal justice system as accused persons and offenders

Why women and girls come into contact with the criminal justice system as accused persons and offenders

As a minority in the male dominated criminal justice system, the voices and experiences of women tend to be muted.[753] Although many women offenders share common experiences, it is important to acknowledge that women who offend are not a homogenous group. Each woman has a unique and varied life story. While this section considers some of the main characteristics and drivers of female offending, the Taskforce recognises the individual dignity and humanity of women who come into contact with the criminal justice system.

How are women and girls offending?

Women form the minority of recorded offenders in our criminal justice system. In 2019-20, women made up 24.8% of all offenders in Queensland.[754]

However, women are offending at increasingly higher rates. Between 2010-11 and 2019-20, female offenders in Queensland increased by 60.2%. The number of male offenders increased by 32.0% over the same period.[755] Women now represent the fastest growing section of the prison population in both Australia and internationally.[756]

First Nations women are over-represented in the female offender population.[757] This is particularly concerning for girls, with the number of Aboriginal and Torres Strait Islander female offenders aged 10-17 increasing by 71% between 2010-11 and 2019-20.[758]

Women who offend are more likely to be young, with women aged 25-29 years responsible for the largest proportion of female offending between 2008-09 and 2017-18.[759] For Aboriginal and Torres Strait Islander women and girls, the largest proportion of offenders in 2019-20 were aged 15-19 years.[760]

There are significant, gendered differences in the patterns and typologies of criminal offending engaged in by men and women[761], for example female offenders:

- commit less violent offences and offences against the person.[762] Fraud offences account for 14.5% of offences committed by women compared to 3.5% of offences committed by men (2005-06 - 2017-18). Illicit drug offences also account for a greater percentage of cases for female offenders[763]
- are more likely to commit crimes of poverty or disadvantage, including stealing and unauthorised dealing with shop goods[764]
- commit offences that are more likely to involve relationship issues, such as family violence, or have links to the criminal offending of men in their lives[765]

Drivers of women's contact with the criminal justice system

As part of its inquiry into imprisonment and recidivism, the Queensland Productivity Commission (QPC) was asked to consider factors impacting rates of imprisonment for women. However, the QPC report noted that evidence suggests the drivers of female incarceration are not significantly different than for male incarceration.[766]

Social and economic disadvantage are strongly associated with imprisonment, for both men and women.[767] According to the QPC report, exposure to 'risk factors' including birth related events, mental health, personal relationships and substance use increase chances of offending and imprisonment.[768]

Although many 'risk-factors' for offending are consistent between women and men, research indicates that the trajectories by which women enter the criminal justice system are not the same as their male counterparts.[769] A gender-responsive understanding of female offending identifies how the unique life events of women can create distinct offence pathways.[770] A higher threshold of 'risk factors' may be required to push women over the line from prosocial to antisocial behaviour.[771] There are also some factors, such as rates of victimisation, which appear to place women at particular risk of entering the criminal justice system as offenders.

Childhood experiences

Disruptions to childhood and family life are factors contributing to later offending for girls and women.[772] A 2019 study into the trajectories of incarcerated girls in Victoria found common themes of disconnection from education, early caregiver or family disruptions, personal

and family mental health problems, substance abuse, anti-social peers, victimisation and anger problems.[773]

Parental involvement with the criminal justice system also has the potential to trigger intergenerational offending. Seventeen percent of women surveyed on entrance to prison in 2018 had a parent or carer in prison during their childhood.[774]

Childhood experiences of sexual abuse are also common for girls and women in the criminal justice system. This affects both youth offending and offending as adults. An Australian study examining the trajectories of victims-survivors of child sexual abuse in Australia over multiple decades found them to be almost five times more likely to be charged with an offence than the general population.[775]

Contact with the child protection system

The overlap between child protection and contact with the criminal justice system is well documented.[776] However, the overlap is more pronounced for women than for men, and most significant for Aboriginal and Torres Strait Islander women.[777] A 2019 Griffith University longitudinal study of Queenslanders born in 1990 found that three quarters of First Nations women in prison had been involved in the child protection system, had a mental health episode, or both.[778]

Contact with the child protection system also has close links to contact with the youth justice system. In 2016, Australian young people who were the subject of child protection orders were 27 times more likely to be under a youth justice supervision order in the same year.[779]

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.[780]

Although boys significantly outnumber girls in youth justice convictions, the ratio is slowly decreasing (from 3.2 to one in 2012-13 to 2.6 to one in 2017-18).[781] The QPC report found that women were first convicted on average 1.1. years younger than men,[782] and that after first contact with police, women interact with police more frequently than men.[783]

The increasing rate of young women offending is a particular issue for Aboriginal and Torres Strait Islander females, who were 2.2 times as likely to be the subject of a supervision order, compared to non-indigenous females in 2014-15.[784]

Victimisation

Prior exposure to trauma, including childhood or adult experiences of sexual, physical or emotional abuse is common to nearly all women in prison.[785] Queensland Corrective Services reported in 2019 that 87% of women in custody have been victims of child sexual abuse, physical violence or domestic violence. Sixty-six percent of those women have been victims to all three types of abuse.[786]

There are well-established links between experiences of domestic abuse and female offending and imprisonment.[787] The Taskforce considered this issue, including 'social entrapment' approaches to the offending of women experiencing coercive control, in its first report.[788] 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 (e.g. Centrelink offences) in connection to their experiences of financial abuse[789]

The victimisation experiences of women can result in a 'vicious cycle of victimisation and offending'[790] - violence increases the risk of imprisonment, while imprisonment increases the risk and effects of violence.[791]

The high prevalence of victimisation in women who offend means that most hold the dual status of both victim-survivor and offender.[792] A trauma-informed approach is required to understand the experiences of these women, particularly for women in marginalised communities.[793] This involves moving beyond the 'victim-offender binary' and ensuring that responses are tailored to the particular needs and social contexts of victimised women.[794]

Poverty and homelessness

Trauma from high rates of sexual assault and family violence push women into poverty and homelessness, and increase their likelihood of coming into contact with the criminal justice system.[795] Women are more likely to enter the criminal justice system for 'crimes of poverty' including theft and shoplifting.[796] This suggests many women commit crimes out of necessity or desperation.

Homelessness is also a growing issue for women, with Australian women over the age of 55 the fastest growing demographic for homelessness.[797] Being homeless exposes women to increased surveillance and over-policing and to a range of charges associated with homelessness.[798]

Mental health

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, and
- nearly two-thirds (65%) reported that they had received a mental health diagnosis before.[799]

Young women involved with the youth justice system have significant and complex mental health needs. A 2018 survey of justice-involved young people in Queensland and Western Australia revealed that over half (54%) of the young females reported high or very high levels of psychological distress; much higher than their female counterparts in the Australian community (35%).[800] Mental health is also a critical factor in the criminal justice involvement of First Nations women.[801] 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 PTSD.[802]

Understanding how women offenders' experiences of trauma contribute to their mental health problems is vital to improving outcomes for women in the criminal justice system.[803]

Substance misuse

A number of researchers have identified high rates of drug and alcohol usage in the lead up to female criminal behaviour.[804] The QPC report found that drug offences are a key factor in female recidivism and rising imprisonment.[805] Between 2012 and 2018, reported drug offences contributed to 89 per cent of the increase in reported female offenders.[806] 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.[807] A higher portion[808] of female offenders are in prison for drug offences than men.

Although the majority of offending by women is non-violent, co-occurring substance misuse and mental health disorders have a correlation with women's violence.[809]

Poor health or disability

Research from the Australian Institute of Health and Wellbeing (AIHW) indicates that women entering Australian prisons have considerably poorer health than the general population, and are more likely to have a disability.[810] 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.[811] The overrepresentation of women with acquired brain injury in prison populations has been linked to histories of domestic and family violence.[812]

Drivers of contact for First Nations Women

The links between entrenched disadvantage and increased rates of criminal justice contact for Aboriginal and Torres Strait Islander women are well-established.[813] The Australian Law Reform Commission found that Aboriginal and Torres Strait Islander incarcerated women 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 into the child protection system as children
- have earlier and more frequent criminal justice contact
- be living in unstable housing or homeless
- be unemployed; and
- have lower levels of educational attainment.[814]

The experiences and needs of First Nations women are also 'deeply intertwined with historical and ongoing experiences of intergenerational trauma, institutionalisation, and colonisation.'[815]

Racism and inequality

The *Wiyi Yani U Thangani* (Women's Voices) Report (The *Wiyi Yani U Thangani* report) identified intergenerational traumas and inequalities as the main drivers of Aboriginal and Torres Strait Islander women and girls having contact with the justice system in Australia.[816] 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.[817] This includes both over-policing and under-policing,[818] as discussed further below. The *Wiyi Yani U Thangani* report noted that the women and girls consulted spoke of how racism and discrimination

affected their engagement with multiple government systems and services such as health and housing services.[819]

Sisters Inside and the Institute for Collaborative Race Research highlighted the importance of considering racism and colonialism as factors shaping the experiences of First Nations women and girls.[820]

Questions to consider

73. What are the drivers of women 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?

Addressing underlying issues

The Anti-Discrimination Commission Queensland (ADCQ), now the Queensland Human Rights Commission, has 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.'[821]

In preventing the behaviours and circumstances which lead to offending and the growing imprisonment of women, the ADCQ *Women in Prison Consultation Report* (ADCQ report) suggested justice reinvestment, improved public housing and increased availability of substance abuse treatment programs.[822]

"The traumas suffered in childhood are often re-occurring and escalating throughout the lives of justice-involved women and can further impact their recovery. Providing trauma-specific violence prevention treatment for women prior to release and within the community could help to negate the cycle of violence in their lives."[823]

Engagement with police and the legal system

Contact with police

Contact with police is the gateway to women entering the criminal justice system as offenders, and women are interacting with police at increasing rates.

Misidentification

In its first report, the Taskforce noted recent research from ANROWS on the misidentification of the person most in need of protection in domestic and family violence incidents.[824] This research also has implications for the criminalisation of misidentified women. Although domestic violence orders are civil, women misidentified as perpetrators by police risk future criminalisation as a consequence of breaching a protection order or being charged with DFV-related criminal offences.[825]

The experiences of First Nations women with police

The impact of policing responses to Aboriginal and Torres Strait Islander women has been captured by numerous reports.[826] Evidence indicates that Aboriginal and Torres Strait Islander women are more likely to be charged and arrested for public order offences and other forms of minor offending than non-Indigenous women.[827] First Nations Women are also more likely to be charged with offences relating to offensive language and behaviour, driving offences, and justice procedure offences.[828]

Aboriginal and Torres Strait Islander women are simultaneously over-policed as offenders and under-policed as victims.[829] They often go unrecognised as victims of crime,[830] 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.[831]

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.[832]

Gender-responsive policing

Women who offend may be considered 'mad' or 'bad' by police.[833] Research from Scotland demonstrates that traditional gender stereotypes remain significant in shaping police officers' views of young women. Gendered attitudes to what conduct is appropriate for young

women had negative consequences for their interactions with police.[834]

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.[835]

As noted earlier in this paper, Queensland does not currently have a strategy for responding to women offenders, nor an instrument for gender-responsive policing.

Diversion from the criminal justice system

In most circumstances, contact with police during or following the commission of an offence is the first step in a woman's journey through the criminal justice system. Police decisions about how to proceed following an offence will determine whether a woman is charged and goes to court.

The QPC report found that options for police to divert adult offenders from the criminal justice system were limited and underutilised, despite the potential for diversion to save costs and avoid an escalation of offending from initial police contact.[836]

Diverting women from the criminal justice system has significant benefits, particularly if it is combined with tailored support. Diverting women from criminal charges prevents their unnecessary absorption into the criminal justice system.[837] Diversion not only results in cost savings (as discussed in part one), but also supports women's wellbeing and broader family life. Diversion for women who are mothers or carers allows them to continue to care for children – reducing the risk of child protection intervention and reducing their likelihood of future contact with the youth justice system.[838]

Diversion is also important in the context of rising recidivism rates indicating that existing penalties are not working to prevent reoffending. The QPC report found that total recidivism in Queensland increased from a low of 27.6% in 2005-06 to a high of 42.7% in 2017-18.

Diversion is also important in the context of rising recidivism rates indicating that existing penalties are not working to prevent reoffending. The QPC report found that total recidivism in Queensland increased from a low of 27.6% in 2005-06 to a high of 42.7% in 2017-18.[839]

Youth justice cautioning

For young people, diversionary mechanisms are intended to avoid trapping those with a previously good record in a pattern of offending behaviour.[840] Under the *Youth Justice Act 1992*, police must consider alternatives to proceeding against a child, including whether it would be more appropriate to take no action, administer a caution, or refer the child to a restorative justice process, drug diversion program or graffiti removal program.[841]

Cautions in the youth justice system are a way of diverting a child who commits an offence from the criminal justice system by allowing a police officer to administer a caution instead of bringing the child before a court for the offence.[842] Cautioning without other interventions or support, however, is unlikely to deal with any deep-seated problems causing the offending.

Adult cautioning

Cautioning provides a means of dealing with lower-end, non-habitual offending without commencing formal court proceedings. Formal police cautioning for adults is not legislated in Queensland. However, police operational procedures provide guidance on when a caution may be appropriate. Cautions cannot be issued for certain offences including domestic and family violence offences, drug offences or drink or drug driving offences.[843]

In England and Wales a range of 'Out of Court Disposals' (OCDs) are available for objectively less serious criminal offending including: community resolutions, simple cautions, conditional cautions, and cannabis warnings. Research from the University of Cambridge commissioned by the National Police Chiefs of England and Wales about the effectiveness for OCDs found that OCDs:

- are effective at reducing harm and reoffending and sustaining victim confidence and satisfaction
- are promising in reducing harm including domestic violence
- are cost effective compared to court prosecution
- with conditions tailored for women appear to be promising[844]

Proposed reforms to police cautioning are currently being considered by the Parliament of England and Wales and

seek to simplify 'Out of Court Disposals' and ensure consistency across police forces in the way low-level offences are dealt with out of court.[845] The proposed legislation will enable police to issue two types of cautions – a diversionary caution with conditions, and a community caution for low-level offences. Breach of a diversionary caution can be followed by the prosecution of the original offence.[846]

Drug diversion

One police diversion mechanism available in Queensland is the police drug diversion program that is legislated under the *Police Powers and Responsibilities Act 2000*.[847] The program, which only relates to minor drug offences for the possession of small amounts of cannabis, allows police to offer an eligible person with the opportunity to participate in a drug diversion assessment program, as an alternative to prosecution.[848]

Other methods for drug diversion include cannabis cautioning schemes, such as those in place in New South Wales and Victoria.[849] The New South Wales scheme involves a formal caution that warns of the health and legal consequences of cannabis use, but does not involve programs or conditions. An evaluation of the New South Wales scheme identified significant cost savings and a reduction in police charges.[850]

Queensland's drug laws and responses have a significant impact on the criminalisation of women. As noted above, the QPC report found that drug offences are a key factor in female recidivism and rising imprisonment.[851] Research has indicated that drug diversion can reduce the burden on police and courts, increase treatment uptake and improve social outcomes.[852]

Some argue that less serious unlawful drug use should be a health issue rather than a criminal issue. The QPC report recommended significant reforms to Queensland's drug laws, including the adoption of an overarching policy of legalised and regulated supply and possession.[853] The report also encouraged the expanded use of diversionary options for drug possession, including further levels of diversion.[854]

The drug diversion findings and recommendations of the QPC report were consistent with a 2016 review of Queensland drug and specialist courts, which recommended expanded pre-arrest and post-arrest options for minor drug offences.[855] The review recommended consideration of the introduction of an adult cautioning scheme for minor drug offences, with three levels of caution, and the introduction of penalty infringement notices for a broader range of minor illicit drug offences.[856]

The Queensland Government responded to the QPC report stating that it has no intention of altering any drug laws in Queensland.[857] In relation to expanded diversionary options, the Queensland Government committed to supporting all options available to police including existing adult cautioning options, but did not commit to exploring additional drug diversion options.[858]

In 2019, New South Wales began a trial of criminal infringement notices for drug possession including ecstasy following the deaths of six young people at music festivals and a Coroners Court recommendation that the model of policing at music festivals be changed.[859] An evaluation of the trial identified savings and reduced reoffending.[860] The use of cannabis infringement notices have operated previously in Western Australia.[861]

Restorative Justice conferencing

As discussed in Part 2, an adult restorative justice conference is a facilitated meeting between the person who has caused harm and the people most affected by it.[862] Referrals to adult restorative justice conferencing may be made by investigating police as an alternative to commencing proceedings for the offence. Referrals can also be made by police prosecutors after proceedings have commenced, either pre-sentence after a guilty finding in court or post-sentence. Restorative justice processes are more commonly used for youth offenders,

Questions to consider

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 ?

as set out in the *Youth Justice Act 1992*.[863]The QPC report called for the introduction of victim focused restitution and restoration into sentencing processes.864 In response, the Queensland Government committed to developing an updated Adult Restorative Justice Conferencing model and considering opportunities to expand the use of restorative justice conferencing in Queensland with a view for improving outcomes for victims of crimes and offenders.[865]

Legal advice and representation

Access to legal advice and representation is an important factor in ensuring women offenders can access bail, diversion programs and other interventions and treatment, or make early guilty pleas when appropriate.[866] A lack of access to legal advice or representation is a human rights and access to justice issue, as discussed earlier in this paper. The ADCQ report identified a lack of timely legal assistance as a blockage in the criminal justice system for women.[867]

Barriers to bail

The ADCQ report highlighted that a high number of women on remand do not have legal representation and have not applied for bail.[868] 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.[869]

Sisters Inside provides bail support programs, funded by Queensland Corrective Services, so that eligible women on remand can apply for bail.[870] The program identifies barriers to obtaining bail, such as accommodation, substance misuse, domestic violence, mental health and reintegration needs,[871]so that women can be best supported to obtain bail and return to the community.

Questions to consider

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

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.[872] Parliament can and does makes laws about sentencing but the courts (judges and magistrates) interpret those laws and decide the appropriate sentence.[873] If the offender or the State is unhappy with the sentence, there may be an appeal to a higher court.

A judicial officer must consider many factors in deciding the appropriate sentence in each individual case. These include the personal characteristics of the offender, the seriousness and impact of their offending on both the victim and the community, the various competing aggravating and mitigating factors, as well as the maximum penalty and any requirements set by parliament such as mandatory sentences.[874] Sentences may only be imposed for the purposes of punishment, rehabilitation, deterrence, denunciation or the protection of the community.[875]

As noted in our second discussion paper, a range of options are available when determining the most appropriate court outcome for women and girls progressing through the criminal justice system. Non-custodial penalty types include:

- absolute discharge (no conviction recorded and effectively no further punishment)
- recognisance (good behaviour bond)
- fine
- probation order
- community service order
- graffiti removal order
- driver license disqualification

Custodial penalty types include:

- combined prison and probation order
- intensive correction order
- fully or partially suspended sentence of imprisonment
- imprisonment with or without parole recommendation
- indefinite sentence[876]

Restitution orders to victims, with consequences if not met, are commonly made in combination with custodial and non-custodial sentences and individually tailored special conditions are often added to probation, community service or intensive correction orders. The vast majority of women sentenced in Queensland receive non-custodial sentences. A review of court outcomes for all females entering the criminal justice system (inclusive of Supreme, District and Magistrate Courts) between 2010-11 and 2019-20 found the majority (72.8%) of penalties handed down were fines.[877] This was followed by good behaviour orders (7.6%), and probation (6.4%).[878] Overall, 4.3% of women who were sentenced received a period of imprisonment.[879]

Imprisonment as a last resort

Queensland's *Penalties and Sentences Act 1992* contains the principle that a sentence of imprisonment should only be imposed as a last resort[880] although this principle is then qualified by other principles which may lead courts to impose a prison sentence. For example, the principle does not apply to the sentencing of an offender for any offence involving violence against another person or that resulted in physical harm to another person,[881] for an offence of a sexual nature against children under 16[882] or for prescribed offences committed with a serious organised crime circumstance of aggravation.[883]

Analysis by the Queensland Sentencing Advisory Council found that between 2005-06 and 2017-18, there was a 241% increase in non-Indigenous female offenders receiving short sentences (6 months or less).[884] The number of Aboriginal and Torres Strait Islander women serving short sentences also rose by 141%.[885]

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.[886]

The 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.[887] Higher recidivism rates were also a factor[888], suggesting prisons are increasingly ineffective as places of rehabilitation.

Sisters Inside submits that:

> 'Despite overwhelming evidence of the damage even short periods of imprisonment cause to women, girls and their children, imprisonment is not being used as a measure of last resort in Queensland.'

It has been suggested that Parliament's successive amendments to the Penalties and Sentences Act have gradually eroded the principle of imprisonment as a last resort.[889] The use of mandatory sentences imposed by parliament may also have a 'negative gendered impact, particularly on Aboriginal and Torres Strait Islander women'.[890]

One factor that is not necessarily considered in the sentencing of women is their parental care-giving status and the impact that imprisonment may have on the safety and wellbeing of their children and others. In 2019, the ADQC recommended that the Penalties and Sentences Act be amended 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.[891] Women are often primary care-givers to aged parents and extended family. This is particularly common for First Nations and CALD women. When sentencing offenders for Commonwealth offences, a Queensland court must take into account any effect that a sentence may have on the offender's family or dependants.[892] Similar provisions are in place for the *Crimes Act 1914* (Cth), as well as in South Australia and the Australian Capital Territory.[893]

Questions to consider

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

Alternatives to imprisonment

In addition to the principle of imprisonment as a last resort, sentencing courts in Queensland must have regard to the principle that a sentence that allows the offender to stay in the community is preferable.[894]

The ADCQ report notes that placing women in prison on remand or for short sentences is both costly and highly disruptive to their personal life and those of their dependant family members.[895] The ADCQ report highlighted that that there alternative and better ways to deal with women who have offended in relatively minor ways.[896]

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.'[897] Prison may be considered by some as a form of respite for women with chaotic lifestyles or living in danger. However, imprisonment can impact significantly on a woman's relationships with her family and on her social and economic circumstances upon release.[898]

Community-based sentencing

Noting the costly and disruptive nature of imprisonment, the ADCQ report suggests that diverting women from short periods of imprisonment 'ought to be a high priority for politicians and officials who oversee the justice system'.[899]

The ADCQ report was strongly in favour of greater use of community-based sentencing:

> 'Enabling low risk prisoners to be managed in the community in non-custodial services, rather than incarcerated for short sentences, can aid rehabilitation, improve community safety, and enhance continuity of family and community relationships, leading to better outcomes for women and lower recidivism rates, as well as lower costs for the criminal justice system.'[900]

The ADCQ report recommended a 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.[901]

In particular, the ADCQ called for action so that low risk Aboriginal and Torres Strait Islander women are diverted from prison into non-custodial services.[902]

As noted above, a number of non-custodial sentence options are already available. Many of these include conditions to be met within the community (good behaviour bond, community service order, restitution etc). In contrast, an intensive correction order is a custodial sentence of one year or less ordered to be served in the community under supervision.[903]

In 2019, the Queensland Sentencing Advisory Council (QSAC) delivered a report on intermediate sentencing options (the QSAC 2019 Report). The QSAC 2019 report made 74 recommendations to improve intermediate sentencing options and deliver better sentencing outcomes.[904] The Queensland Government is yet to publish a formal response to the recommendations of that report.

The QSAC 2019 report found that intensive correction orders were underutilised.[905] Importantly, it recommended introducing a new flexible community correction order to replace probation, community service, graffiti removal and eventually intensive corrections orders.[906]

Women are generally promising candidates for community-based sentences. They have higher rates of successfully completing community based orders.[907] They

are also more likely to succeed when subject to correction orders that meet their specific needs.[908]

The QSAC 2019 report found that women are more likely than men to receive an intensive correction order (instead of a sentence of actual imprisonment of 12 months or less). The report also identified that Aboriginal and Torres Strait Islander people were less likely than their non-Indigenous counterparts to receive an intensive correction order and more likely to receive a period of imprisonment of 12 months or less..[909]

While community-based orders generally appear more suitable for most women offenders, the QSAC 2019 report warned that those experiencing domestic and family violence may be exposed to further abuse if sentenced to home detention.[910]

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.[911] 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.[912]

Non-indigenous women are most likely to receive a wholly suspended sentence.[913] First Nations women, in contrast, are less likely to receive a wholly or partially suspended sentence than both non-indigenous men and women.[914]

In Victoria, suspended sentences were phased out from 2011 to 2014.[915] Intensive correction orders, combined custody and treatment orders, community-based orders and home detention were also abolished in Victoria in 2012, to be replaced by community correction orders.[916] By 2017, this shift had seen a substantial increase in the involvement of women with community orders in Victoria 'at a rate that far [exceeded] the growth in women prisoner numbers.'[917]

Alternative courts and sentencing

Drug and Alcohol Court

Following the *Queensland Drug and Specialist Courts Review*[918] in 2016, the Queensland Government re-established the Drug and Alcohol Court in 2018. The Drug and Alcohol Court provides an intensive and targeted response to adult offenders with severe drug and alcohol use directly associated with their offending. The Court is able to make a Drug and Alcohol Treatment Order, which is a prison sentence of up to four years wholly suspended while the offender completes a two-year treatment program.[919] The Drug and Alcohol Court is currently only established in Brisbane, pending further evaluation.[920]

The *Queensland Drug and Specialist Courts Review* noted concerns about less favourable outcomes for women in drug treatment contexts.[921] The review considered gender sensitive screening as a way to ensure the gender specific clinical needs of female offenders are adequately addressed. A gender sensitive screening process should identify barriers to women's compliance such are caring responsibilities, consider circumstances relating to housing and relationships, and factor in safety planning for women at risk of domestic and family violence.[922]

Murri Court

In 2019, the ADCQ 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.[923] 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.[924]

The Murri Court is a Queensland Magistrates Court for Aboriginal and Torres Strait Islander offenders, which aims to reduce Aboriginal and Torres Strait Islander overrepresentation in the criminal justice system.[925] To be eligible for Murri Court, a First Nations person must be on bail or granted bail, and must have pleaded guilty or intend to plead guilty to the offence. Once a person is found suitable for Murri Court, a Magistrate will adjourn their matter to provide time for them to work with a Community Justice Group, Elders, and support services to change offending behaviour. After a few months, matters are considered by a Magistrate for sentencing. The Magistrate is provided with a report from the Community Justice Group on how the offender has progressed in the interim period, and may take this into account in sentencing.[926]

Policy responses to women offenders

A gender-informed response to women offenders is not only relevant to police and court interactions, but to all interactions female offenders have with criminal justice system related services.

Queensland does not currently have a criminal justice strategy relevant to female offenders. In 2008, the Queensland Government released a *Queensland Women*

Offenders Policy and Action Plan 2008–2012.[927] The plan (which is no longer in operation) 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.'

In relation to girls, the *Working Together, Changing the Story Youth Justice Strategy Action Plan 2019-2021* includes actions to respond to the different needs of girls and young women. The plan commits to a gender responsive approach in the *Youth Justice Framework for Action*, the design and delivery of youth justice services and responding to the needs of girls and women, and a funded gender response in the Bail Support Program.[928]

Some jurisdictions have implemented whole-of-system responses for women offenders. For example, in 2018 the United Kingdom Government released a Female Offender Strategy.[929] The strategy aims to reduce the number of women coming into the criminal justice system, achieve a greater proportion of women managed successfully in the community, and improve conditions for women in custody. It outlines 65 commitments to achieve these goals, including supporting police and courts to take a more gender-informed approach. Although implementation has been criticised,[930] one successful element is the introduction of a protocol to increase the use of Community Sentence Treatment Requirements, which aim to reduce both reoffending and short term custodial sentences by addressing the health and social care issues of the offender.[931]

Justice reinvestment

Citing both the United Kingdom example and a non-gendered offending reduction strategy from Scotland, the Centre for Innovative Justice recently called on the Victorian Government to establish a Women's Justice Reinvestment Strategy aimed at reducing the incarceration rates of women and their involvement in the wider criminal justice system, including via investment in relevant supports and services in the community.[932]

There are increasing calls for justice reinvestment approaches in Queensland and throughout Australia.[933] As noted in Part 1, justice reinvestment 'proposes re-directing money spent on prisons to community-based initiatives that aim to address the underlying causes of crime, promising to cut crime and save money'.[934] The ADCQ report recommended the establishment of an independent justice reinvestment body, and justice reinvestment trials in partnership with First Nations communities.[935]

Questions to consider

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

Women and girls in detention are some of the most vulnerable in our community. They experience disproportionately high rates of homelessness, insecure housing, mental health issues, drug and alcohol dependence, chronic illness and trauma including sexual assault and domestic and family violence.[936] Prison is, by design, a punitive environment which separates women in prison from their children, family and community.[937] The number of women in prison is growing as a result of factors including 'tough on crime' policy.[938]

Women and girls in prison face unique challenges including pregnancy, separation from children or having a young dependent child with them in custody. This is compounded by the challenges posed generally by custodial sentences, such as internment far away from friends and family (making visits difficult) and increased feelings of isolation and loneliness.

The transitional period out of custody is also a challenging time as they search for accommodation, employment or income support, meet legal obligations and attempt to reunite with and care for their children.[939]

Maternal imprisonment

Also known as "The United Nations Rules for the treatment of Women Prisoners and Non-custodial Measures for Women Offenders", the Bangkok Rules are a set of rules focused on the treatment of incarcerated females adopted by the United Nations General Assembly in 2010.[940] These Rules give guidance to policy makers, legislators, sentencing authorities and those working in correctional facilities on how to reduce the incarceration of women and how to meet their specific needs while they are incarcerated. The Rules encourage the need for research regarding children impacted by maternal incarceration such that policy and programs can be developed giving consideration to the best interests of children.[941] In Australia surprisingly little is known about the extent to which mothers and children are affected by parental imprisonment generally. A recent survey of women in prison found that more than half had at least one dependent child.[942] Data is not routinely collected on the parental status of people in custody and there are no reliable nationwide figures.[943] QCS does not collect data on the number of women with dependent children or the care arrangements in place for any such dependents. The ADCQ report recommended that data collection in this space be improved.[944]

As highlighted in Part 1 of this discussion paper, research released in 2019 suggested that 80% of Aboriginal and Torres Strait Islander women in prison in Australia were mothers.[945]

A recent report by the Australian Institute of Health and Welfare suggests that 17% of incarcerated women had a parent or carer in custody during their own childhood.[946]

Formerly incarcerated women report that one of the most negative aspects of being incarcerated is being separated from their children and families.[947]

When mothers first go into custody they worry about where their children are, whether they are safe, if they will be taken care of and how to tell their children that their mother is in prison.[948] As time goes by, the concerns and needs of mothers evolve to include concerns about maintaining and rebuilding relationships with their children and whether they are having enough regular contact with their children.[949]

Mothers with babies worry about being able to provide them with a good start in life. Those who are pregnant, have recently given birth or who have miscarried worry about receiving good healthcare, nutrition and support.[950]

The separation of women from their children and the removal of babies that are born in custody contribute significantly to the traumatisation of women in incarceration. In many cases babies and children are put into foster care, perpetuating a cycle of family separation and trauma that is a well-documented key driver of future criminal offending and incarceration for the next generation.[951] Feeling responsible for their own children ending up in the same system that let them down only compounds the trauma of incarceration for mothers.[952]

Incarcerated mothers often express that their children provide motivation for change both during and after prison.[953]

The Taskforce has already heard interest from stakeholders in exploring the mother/child relationship of women and girls in detention.

The North Queensland Women's Legal Service commented:

> We would like to see the Taskforce closely consider the role of women (and sometimes girls) as mothers and carers in the community and the effect that incarceration has on those imprisoned and their dependents.[954]

The Gold Coast DV Prevention Centre also told us that it is particularly important to consider the impact of incarceration on the mother/child relationship.[955]

Maternal healthcare

The QCS Healthy Prisons Handbook provides that ante-natal services available to women in custody are equivalent to those available in the community.[956] It provides that physical activity facilities should be broadly reflective of the nature of the community with facilities and options for pregnant women and new mothers.[957] Pregnant and nursing women should have their special dietary needs met with meals properly prepared and served[958]and receive extra food supplies.[959]

The Standard Guidelines for Corrections in Australia 2012 provides that pre-natal and post-natal treatment and accommodation should be made available to women in prison, where practicable.[960] They also provide that there should be equivalence of care, access to primary and specialised health professionals, medical examination within 24 hours of being received into custody and continuity of care between the community and prison.[961]

In their report the ADCQ discussed that while the concept of community equivalence has been adopted as a benchmark for delivery of prison health services, there is an argument that health care should be provided at a greater standard in prison than in the community to account for the increased needs of people in prison.[962]

Minimal research has been conducted into the pre and post-natal care of imprisoned women. The findings of a 2016 literature review of 18 studies of incarcerated women conducted between 1980 and 2014 suggested that increased perinatal care services can improve both short and long-term outcomes (intervention, neonatal death, still birth, birth weight, condition at birth and breastfeeding) for women and babies. There is a lack of data on the outcomes of pregnant incarcerated women. Properly designed programs with rigorous evaluation are needed to better address the health needs of this vulnerable population.[963]

Corrections Victoria is currently operating the *Living with Mum* program in Victoria's two women's prisons. This program, centred around the best interests of the child, not only allows young children to live with their mothers (as occurs in some instances in Queensland and is discussed below), it also provides pregnant women with ante and postnatal health services.[964]

Questions to consider

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

Impact on children

> *The children of prisoners are the invisible victims of crime and the penal system. They have done no wrong, yet they suffer the stigma of criminality. Their rights to nurture are affected both by the criminal action of their parent and by the state's response to it in the name of justice.*[965]

A mother's imprisonment can have major consequences for her children and families. The problems for children can include isolation, behavioral difficulties at school, anxiety, insecurity, withdrawal, anger and mental health concerns. Some women are single parents and their incarceration often leaves children without adequate care and support.[966] These issues can lead to or exacerbate financial, social and psychological challenges and disadvantages that may perpetuate a cycle of criminal justice involvement within the family.[967]

Maintaining and building relationships with children

In December 2020, the Griffith Criminology Institute ran a series of workshops with mothers in four Queensland correctional centres. These mothers spoke of the need for:

- more child-friendly facilities and activities in prisons
- cheaper phone calls and assistance in accessing virtual visits with their children
- community-based residential units for mothers and babies
- support in the community for children and families while mothers were incarcerated[968]

The ADCQ report recommended that QCS:

- facilitate incarcerated women's contact with their children, their children's guardians, and legal representatives; and
- encourage and facilitate children's visits to their mothers in prison;

- ensure that decisions regarding early conditional release (parole) take into account the care-taking responsibilities of incarcerated women. [969]

Supporting children and mothers during visits

The Bangkok Rules promote the importance of facilitating a positive experience for children visiting their mothers in custody.[970] Having an incarcerated mother can be traumatic, confusing and upsetting for children. During visits they must cope with conflicting emotions and a harsh, noisy, busy and generally non child-friendly frightening environment. The tyranny of distance may mean that visits occur sporadically or on a very occasional basis. As visitors are restricted from taking personal items into the visiting area children cannot bring comforting items with them as they cope with engaging with a parent who they may not have spent much time with, if at all.[971]

Griffith University's *Transforming Corrections to Transform Lives* project has conducted a stock take of programs addressing criminogenic needs[972] including those of mothers in prison and support programs for their children. A number of programs are available in Queensland with varying availability depending on the program and provider. These are outlined at Appendix 11.

Raising children in custody

In 2016-2017, 96 women in Queensland prisons were pregnant, and 18 women in prison gave birth. During the same period, 34 children under 5 years were permitted to reside with their mothers in prison.[973]

A recent Australian Human Rights Commission report found that although there are prisons in most states and territories that can accommodate children living with their mothers, they are limited in number and some suggest that non-Indigenous women were more likely to be given the limited places.[974] Sisters Inside told the Taskforce:

> Women don't get to keep their babies inside especially Indigenous women. They will just take them to hospital to express or a give them a hand pump to feed them. There's only a few women can fit in the bubs unit.[975]

Research suggests that mother child residential programs can unintentionally become part of the architecture of power in prison environments as women are motivated to regulate their behaviour and try to repair their 'spoiled' maternal identity in order to gain a place in the program.[976] Qualitative studies have found that these experiences can have health impacts including stress, anxiety, depression, feelings of hopelessness, and re-traumatisation, since only a minority of mothers in prison are offered a place in the programs.[977]

As at 2019, the Townsville Women's Correctional Centre, Numinbah Correctional Centre, Helena Jones Correctional Centre, Southern Queensland Correctional Centre, FLO Centre Townsville and Brisbane Women's Correctional Centre were able to accommodate a limited number of young children of varying ages (maximum 6 years) to reside with their mother either full time or during weekends or school holidays depending on the centre and age of the children.[978]

In 2019 the ADCQ found that the obstacles for providing a stimulating, child-friendly environment for young children in a secure prison (with its rigid rules and routines) were formidable. Obstacles included:

- secure prison lockdowns, sometimes for long periods, prevented children from going outside to play
- strict rules adversely impact on normal childhood behaviours, for example requiring that children spending time outside at BWCC be restrained in a pram or hold their mothers hand[979]
- conflicting rules creating confusion and stress for mothers and children, for example requiring that mothers immediately notify staff regarding concerns about the safety or welfare of a child yet admonishing and verbally abusing a woman who asked for baby Panadol for her distressed teething baby at night when there was a rule that prisoners not call guards at night unless there was a medical emergency.[980]

The Taskforce notes that Victoria's *Living With Mum* program deems children to be "residents" of the program, which ensures that their best interests are maintained through nutritional, developmental and health support. Cells are deemed inappropriate for the program, with mothers and children living in cottage style units with self-contained kitchens, living areas, bedrooms and bathrooms. Full time support workers run the program and monitor the safety of the children. Maternal and child health nurses visit regularly. Mothers are able to nominate alternative caregivers for their children for times that they have to attend court or other programs. These can be another woman in prison trusted by the mother and deemed suitable by the

program or external caregivers from the community nominated by the mother.[981]

Supporting mothers and children after release

Programs are available to support mothers and children as they are released and reintegrate into the community.

Sisters Inside provides a Commonwealth-funded Child and Parenting Support program (CaPS). CaPS aims to increase the parenting capacity of criminalised mothers living in the community, the vast majority of whom have lived experience of domestic and family violence.[982] Highly intensive support is provided based on the *Circle of Security* model to a small number of women in South-East Queensland wanting to improve their parenting skills and/or respond more effectively to their children. The program often proceeds in the woman's own home and includes a peer support group. Length of support varies depending on need. Children's play outings are also conducted after school, on holidays or on weekends [983]

Questions to consider

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?

Communication

Research 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.[984]

As there are relatively few women's prisons in Queensland and women are often imprisoned a distance from their children and families. Prisons are typically located in areas inaccessible by public transport. While some remote prisons offer free bus services for visitors, these services may only run one day a week.[985] This has a significant impact on families, particularly Aboriginal and Torres Strait Islander families living in remote communities.[986] Long-distance imprisonment reduces opportunities for prison visits and makes it difficult for women to maintain relationships, particularly with young children.[987]

Access to phones within prisons can be limited, with time allowed to make calls restricted. Competition for phone use results in conflict and a pecking order among women in prison.[988] The cost of calls from prison is high, particularly to mobile phones. Women with limited financial resources and large families are at a disadvantage trying to maintain relationships through phone calls.[989]

While video conferencing facilities are available at many correctional centres, availability is limited and court and legal advice prioritised. The demand to use this technology has been even greater during the COVID-19 pandemic.

The ADCQ report recommended QCS increase the number of available telephones and explore the use of video technology to enhance contact for women whose families are situated in remote locations.[990] These recommendations align with Bangkok Rule 26 which stipulates that authorities should take measures to counterbalance disadvantages faced by women detained in institutions located far from home. They also align with suggestions made by mothers and stakeholders during the 2020 *Transforming Corrections to Transform Lives* workshop series.[991]

Questions to consider

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

Conditions in Prison and Watchhouses

Accommodation and Overcrowding

The Nelson Mandela Rules are also known as the United Nations Standard Minimum Rules for the Treatment of Prisoners. They enable countries to strengthen prison management with a view to ensuring the secure, safe and humane custody of people in prison.[992] The Rules provide that, where sleeping accommodation is individual cells or rooms, each prisoner shall occupy by night a cell or room by herself. In the event of temporary overcrowding it is not desirable to have two or more prisoners in a cell or room.[993] Dormitories should be occupied by prisoners carefully selected as being suitable to associate. All accommodation, particularly for sleeping, shall meet all requirements of health with due regard paid to climatic conditions and particularly air, minimum floor space, lighting, heating and ventilation.[994]

These requirements are even more essential during the current pandemic.

The *Corrective Services* Act provides that wherever practicable each prisoner in a corrective services facility must be provided with his or her own room.[995] The QCS *Healthy Prisons Handbook* provides only that each prisoner should have enough space in their cell or room to move around comfortably and to sit at a table, whether the cell or room is single or multiple occupancy.[996]

The 2019 ADCQ report assessed the accommodation available at women's correctional facilities throughout Queensland and found overcrowding to be one of the most pressing areas of concern.[997] Brisbane Women's Correctional Centre (BWCC) has experienced significant overcrowding which resulted in cells designed for one person being occupied by two, with the second woman required to sleep on the floor with her head close to an exposed toilet and shower.[998] Competition for food and facilities resulted in arguments, fights and rationing.[999] Overcrowding and excessive lockdowns contributed to frequent toilet blockages, overflows that wet mattresses on floors and bad sewerage odours.[1000] The report made a number of recommendations regarding how QCS should deal with future overcrowding in BWCC including ceasing the practice of floor sleeping and improving facilities.[1001]

The *Wiyi Yani U Thangani* report discussed overcrowding in both women's facilities and youth detention. The report states that at one location in Queensland, the Australian Aboriginal and Torres Strait Islander Social Justice Commissioner heard that facilities were overcrowded, overheated and that children were sleeping on concrete beds.[1002] The Commissioner found that overcrowding is a direct result of the dramatic increase in incarceration over the past four decades. States and territories have responded to high population numbers by doubling and tripling the number of beds in cells, reactivating decommissioned prisons and investing significantly in the construction of new prisons.[1003]

Flow-on effects from overcrowding include difficulty in classification of and separation of persons in prison; difficulty in the provision of health care; strain on infrastructure; restricted access to kitchen space and telephones; diminished capacity for "constructive days" where women and girls are meaningfully occupied in time-out-of-cell or programs;[1004] increased boredom, anger and frustration which leads to higher risk of conflict; and an increase in the risk of corrupt conduct occurring.[1005] These effects also call into question a number of human rights[1006]All these difficulties are likely to have increased during the pandemic with its many lockdowns and lockouts within correctional facilities.

Rising prison population and overcrowding may also be changing the female experience of incarceration. Early research into women's prisons suggested that women tended to create "pseudofamilies" in prison for closeness and support.[1007] There is evidence that the dramatic increase in prison numbers is resulting in women forming fewer close bonds and relationships are less stable and familial than in the past.[1008]

The Human Rights Commissioner heard that in one Queensland location the Safe Custody Memorandum of Understanding between Queensland Police Service and Aboriginal and Torres Strait Islander Legal Service (ATSILS)[1009] requiring police to contact ATSILS regarding any Aboriginal and Torres Strait Islander children or adults in custody was rarely adhered to. Children were locked in watch houses, with adults, without notification to parents or guardians. The failure of custody notification procedures was so common that a dedicated person was nominated to check daily whether there were children in the watch house and to notify families. The Mount Isa Aunty Dolly Group reported:

> They've got children in the watch house locked up with adults. We have a Torres Strait Islander man go down every day to watch house and tell all the parents know [sic] who's down there. My niece had her grandson locked up there but didn't even know … We assume that the kids are

with family, but they are locked up down there with nobody knowing for days. It's illegal but it happens.[1010]

In 2019 Amnesty International examined concerns about watch houses being used as a stop-gap to compensate for at-capacity detention centres and court backlogs. Documents obtained through Right to Information applications revealed 2,655 breaches of international standards, state regulations and police procedures. 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. Designed to hold adults for short periods, the watchhouse has no direct sunlight. Children were given thin mattresses, often no pillow and were locked up with other people sometimes much older than them. Girls had to be isolated for protection. Water fountains were covered in green calcification and the water undrinkable. Cell doors malfunctioned and in one case purportedly severed a child's finger. Children were sometimes kept in the eyeline of adult inmates, understandably causing many immense anxiety.[1011]

Questions to consider

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

Diverse backgrounds

Disability

While little is known about the prevalence of people in prison living with physical disability, cognitive impairment is thought to be over-represented in the prison population[1012] and particularly among Aboriginal and Torres Strait Islander people in prison.[1013] In 2020, 12% of children supervised in the youth justice system had at least one cognitive, physical or sensory disability.[1014]

In recent years QCS has adopted a more systematic approach to screening for disability on the day of admission to custody.[1015] The ADCQ report recommended further improvement to screening incoming women for neurocognitive disability.[1016]

Incarceration can be particularly difficult for women and girls with cognitive disability. Issues such as overcrowding and cell-sharing present their own challenges and can cause significant stress, as can the lack of specialised services and trained staff available in custody.[1017] Access for those with physical disabilities is also an issue in a number of correctional facilities.[1018] People in prison living with disability may be at higher risk of violence and abuse.[1019]

Women with disability in prison are at significant risk of experiencing sexual assault[1020] and at greater risk of experiencing torture and ill-treatment.[1021] People living with disability can be socialised as passive, compliant with authority figures, and dependent on others for care, making them less likely to resist or report assaults by figures of trust or authority.[1022] A Human Rights Watch report on abuse and neglect of people with disability in Australian prisons detailed stories of people with disability who had high needs being repeatedly raped by "prison-carers" and staff sexually harassing incarcerated women:

"(I) got hit on sexually by officers quite regularly…. They catch you when you're working by yourself and touch your boobs, bum, or put a hand around your waist. Or they make stupid comments like, 'You've been here a while, you must be horny.'"[1023]

Human Rights Watch found that prison staff may dismiss accounts of abuse suffered by women with disability as not credible. An Aboriginal woman living with psychosocial disability said:

"I'm an easy target because of mental illness…If we get caught fighting, they will tell the officer, 'She hit first because the voices told her.'"

Queensland uses 'separate confinement' measures for various reasons including punishment, management, protection or treatment.[1024] Human Rights Watch has found that women with disability are overrepresented in isolation units and that some women are sent "down the back" because they are seen as a management issue.[1025]

Transgender people in prison

The Yogyakarta Principles are a set of international principles relating to sexual orientation and gender identity.[1026] Principal 9 outlines the rights of persons with diverse sexual orientation and gender identity to treatment with humanity and respect while in detention.[1027] Studies suggest that transgender people in

prison are more likely to experience problems in prison than the general prison population, including: sexual assault, blackmail, contraction of sexually transmissible infections, mental health issues, lack of social support, denial of hormone therapy, and mortality.[1028] Despite this, there are few estimates of the proportion of people in prison who identify as transgender. In preparing the *Women in Prison 2019* report the ADCQ did not speak with any people in prison who openly identified as transgender. However, a number of transgender people in prison who were assigned male at birth but who identified as female were found to be located within male prisons.[1029] The ADCQ noted and commended work undertaken by QCS to consult with stakeholders and improve processes and procedures for the management of incarcerated transgender people.[1030] They recommended that to ensure the full implementation of improved policies there was a need for:

- QCS officers to be trained on issues impacting the human rights of incarcerated transgender people
- incarcerated transgender people to be offered one of three options prior to a strip search – a male, female or male and female officer
- appropriate gender health services to be available to all transgender people in prison across Queensland without the need for transfer to a different facility[1031]

Older women in prison

Australia's prison population, while still young relative to the general population, is steadily aging.[1032] Older people tend to have higher rates of chronic conditions such as diabetes, heart disease, and liver disease compared to younger incarcerated people.[1033] The prison environment itself can also present difficulties for older people. A 2015 study[1034] found that the majority of older incarcerated people reported at least one area of difficulty including use of bunk beds, air temperature and ventilation and bathroom facilities. Older women were significantly more likely to experience these difficulties than men.[1035]

Questions to consider

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?

Remand

As at June 2021, a very high proportion (80%) of girls in detention were on remand and unsentenced.[1036] Concerningly, Queensland's rate of children on remand (4.2 per 10,000 persons) is almost double that of the national rate (2.2 per 10,000 persons).[1037] Despite obligations to keep accused persons separate from convicted offenders,[1038] children on remand are housed with children serving sentences.

BWCC houses both remand and sentenced women. Both categories of women in prison are housed together but for a small proportion of women who are separated from the main prison population for a variety of reasons.[1039]

Personal hygiene

Rule 18 of the Nelson Mandela Rules states that:

> 1. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.
>
> 2. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.

Rule 19 states at 2:

> All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

Rule number 5 of the Bangkok rules, Personal hygiene, states that:

> The accommodation of women prisoners shall have facilities and materials required to meet

> women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.[1040]

QCS have incorporated some of these principles into the *Healthy Prisons Handbook,* which provides that people in prison have access to necessary supplies of their own personal hygiene items and sanitary products[1041] although it does not give guidance on minimum of frequency of supply or how a supply is to be acquired (for example, at the woman's own cost). The *Handbook* leaves it open for the policy to vary from centre to centre.

The ADCQ report highlighted concerns regarding inadequacies in the provision of items required by women to maintain appropriate hygiene. This included women being denied:

- sanitary items and having to make do with toilet paper
- bras and underwear and having to stick pads to their trackpants
- shampoo and other toiletries but for soap

Concern was expressed that the *Standard Minimum Rules for the Treatment of Prisoners* were not being adequately followed and that the denial of such items might constitute indirect discrimination.[1042] There may also be human rights implications in light of the *Human Rights Act 2019*.

The Taskforce has heard from a woman with lived experience of incarceration that her time in a police watch house was 'hell on earth'. The temperature of the watch house was cold and yet she was provided only with shorts and a t-shirt and was told no warmer clothes were available. Sanitary items had to be requested and could take hours to be delivered to the cell. She bled through her underwear and shorts, was not provided with a change of clothes and spent days in soiled clothing causing her trauma and humiliation. She was allowed only one shower in five days and only a bar of soap and toothpaste (no toothbrush).[1043]

The *Wiyi Yani U Thangani* report notes the Commissioner repeatedly heard from women who did not have access to hygiene and sanitary items and were on many occasions taunted and denied access to these items or to showers during menstruation. The Commissioner was also told that women were often provided with clothing that was ill-fitting or so old and worn that it did not provide sufficient protection or coverage. Most frequently, women spoke about not having enough clothing to maintain basic health and hygiene.[1044]

Questions to consider

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?

Strip searches

Rules 19, 20 and 21 of the Bangkok Rules relate to personal searches including the need to ensure women in prison and their children are treated with dignity and respect during searches, the necessity that women only be searched by women, the need for development of alternative screening methods to replace invasive searches and the need for professionalism, sensitivity and training for staff performing searches.[1045]

The QCS *Healthy prison handbook* contains similar requirements including the need for preservation of the dignity of people in prison, searches to be conducted by officers of the same gender and extra sensitivity when searching children.[1046]

Given the high rate of women in prison having experienced sexual violence, the routine use of strip searches (or removal of clothing searches) in prisons can contribute to the re-traumatisation of women. [1047] Sisters Inside submitted to the Australian Human Rights Commission:

> At Sisters Inside, we consider strip searching to be sexual assault by the State...Data requested from QCS indicates that in 2017 women in Queensland prisons were strip searched 16,258 times. It appears that contraband was recorded on fewer than 200 occasions (i.e. in 0.01% of cases).[1048]

Given the problematic nature of strip searching, a number of jurisdictions including Victoria, NSW[1049] and some USA states have replaced body searches with full body scanners as the primary method of searching for drugs and other contraband.[1050]

In 2019 the ADCQ heard complaints of inconsistency in the method of and the motivation for searches, depending on which officer was conducting it and who was being searched. There was a sentiment that non-routine strip searches were being undertaken to 'pick on or punish some people' rather than for a lawful reason.[1051]

The ADCQ report ultimately recommended that QCS supervise and monitor staff undertaking non-routine strip searches to ensure that the process is not used inappropriately, or for any other reason than detecting or retrieving contraband. They also recommended the implementation of non-invasive screening technology to replace strip searches.[1052]

QCS is currently investigating body scanners that use ionising radiation to detect contraband concealed under clothing and within body cavities.[1053]

Questions to consider

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?

Working in prison

The Nelson Mandela Rules state that sentenced prisoners should have the opportunity to work and improve their earning capacity. They should be entitled to a system of equitable renumeration allowing them to spend at least a portion of their earnings on approved personal items and set aside a portion in savings.[1054]

Research has shown that both men and women engaged in work are less likely to assault others during their incarceration.[1055]

All Queensland women's prisons have opportunities for people in prison to work in prison services including the kitchen, laundry, gardens, cleaning, bulk store or support. Industry work is also available ranging from craft-based industries to equipment assembly and rural produce.[1056]

Historical data shows that between 2006 and 2016 women in prison were keen workers, consistently accessing work at a higher rate than men in prison.[1057]

Some issues that women experience with respect to work in prisons include:

- the impact of overcrowding on job availability
- a lack of work release programs available
- fewer opportunities than men, such as apprenticeships
- differing pay rates at different facilities [1058]

In 2020 Sisters Inside told the Australian Human Rights Commission that women are paid less than men:

> It happens all the time in prison—men get paid more wages than women inside … Men get paid more than women working in the prison across Queensland. The amount women get paid quite a few less dollars then the men do. You get wages when you're in there you get paid to work. If men doing the same job in the kitchen women get paid less. It doesn't matter what job. They get more for the same job.[1059]

The Taskforce has heard from a woman with lived experience of incarceration in Queensland:

> The work in prison is akin to slave labour. My wages ranged from $2.20 to $7.60 per day. For the 6 months of my sentence I earnt under $25.00 a week working 7am to 6pm in the kitchen. After the first year I had progressed to better positions. I remember going to work camp and receiving $60 for working 7 days straight doing landscaping and painting in the summer heat. We would leave at 6:30 and return at 5:00.The issue is that you have the ability to earn so little, but the costs for necessities in prison are high. For example, the phone system is exorbitant in pricing. It would cost me around $1.00 a minute to call my daughter and partner on the mobile. I was only able to afford to call my daughter a couple times a week which impedes on connection. You also have to purchase all your toiletries, underwear and socks. I also had to cover my education expenses, such as text books. Without outside help I would have had to make a decision between education, toiletries, and contact with my daughter.[1060]

Questions to consider

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

Education

The Bangkok Rules provide that appropriate educational and training programs should be available to women to improve employment prospects.[1061]

Women entering prison have lower education levels than women in the wider Australian population. While 71% of Australian women aged 20-64 have completed Year 12 or equivalent, only 17% of those surveyed for the Australian Institute of Health and Welfare's latest report had completed Year 12.[1062]

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.[1063] In 2020-21, 32.6% of eligible people in prison in Queensland were participating in accredited education and training courses.[1064]

1. The ADCQ report found that cost was a barrier preventing women serving longer sentences from completing higher level, more in-depth study. This is because, while entry-level vocational courses are available for free, higher level study such as Certificate III requires payment.[1065] This particularly impacts on women without citizenship who are not eligible for student loans.[1066] Overcrowding, waiting lists and space shortages have been a barrier to education for women at BWCC. Conversely, minimum numbers for courses, What is your experience or observation of work in prison including availability, conditions and renumeration? What works well? What needs to be improved?

at smaller centres such as Numinbah Correctional Centre.[1067] A lack of variety of courses and delay in getting course materials to women prior to the start of semester has also caused issues to women seeking to further their education.[1068] The report made various recommendations with regard to education and vocational programs.[1069]

Girls in detention generally come from complex, traumatic family backgrounds. According to the *Youth Justice Strategy*, 55% of children are totally disengaged from education, employment and training when they come into contact with the youth justice system.[1070] In detention, girls are required to participate in education and training programs 5 days a week. Class sizes are small and girls receive individual attention and instruction relevant to their level of education.[1071] While teachers in detention work to assist girls in developing skills and catching up, research shows that detention separates children from relationships, exposes them to negative peers, and ultimately makes it hard for them to return to education and limits future employment opportunities.[1072]

In consultation for the *Wiyu Yani U Thangani* report many Aboriginal and Torres Strait Islander girls told the Commissioner that they needed more support and resources in detention to allow them to complete their education.[1073]

Questions to consider

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

Connection to culture while incarcerated

The importance of remaining connected to culture has been cited as a critical component to the wellbeing and rehabilitation of Aboriginal and Torres Strait Islander people in prison. Additionally, the importance of and need for employing more Aboriginal and Torres Strait Islander staff to foster an environment that is more culturally informed and respectful of women maintaining cultural and community connections has been identified.[1074]

Sorry business

All people in prison may apply for leave on compassionate grounds in order to attend funerals. Consideration of compassionate leave is based on the relationship between the person in prison and the person who has passed away, but is often assessed strictly on the basis of Western perspectives of family and social

relationships. If Aboriginal and Torres Strait Islander perspectives on familial relationships are poorly understood, the importance of Sorry Business is easily dismissed. The system fails to acknowledge that there can be ramifications for missing Sorry Business that will make reintegration into the community after prison more difficult.[1075]

Questions to consider

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?

Health and wellbeing

Women and girls involved in the criminal justice system are especially vulnerable, having significantly more mental health issues and needs compared to males in the same cohort and compared with their peers in the general population.[1076]

In accordance with national and international standards women and girls in detention have the same right to health and wellbeing as people in the community and therefore equivalent entitlement to health and support services.[1077]

Although there is some level of access to healthcare in prisons within Australia, women have told the Australian Human Rights Commission that they often experienced long waiting times to see health and medical staff in custody.[1078]

The Bangkok Rules provide that individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programs should be made available to women in prison with mental health care needs and that staff should be made aware of times when women may feel particular distress.[1079]

Poor mental health is more common among people in prison than the general community, and incarcerated women are more likely to experience mental health problems than incarcerated men.[1080] Women entering prison are more likely than men to report a history of self-harm, and more likely to be dispensed mental health related medication while in custody.[1081]

A 2018 survey of 899 women in custody accessing prison health services found that the majority of visits were to see a nurse (73%). The most common concerns related to psychological and mental health issues (18%).[1082] The Queensland Women's Prisoner Health Study identified that 60.8% of women in prison had received treatment or, due to resource constraints, been assessed (but not treated) for a mental illness. The most common mental illnesses experienced by incarcerated women are "depression, anxiety and substance dependence."[1083]

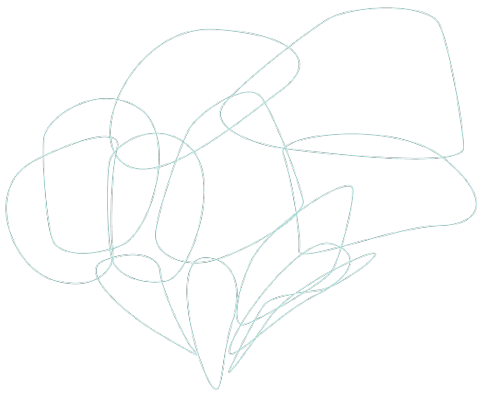
Throughout consultations for the *Wiyu Yani U Thangani* report the Commissioner was told repeatedly by incarcerated women and girls that mental health services were severely limited, culturally inappropriate and of varying quality. A lack of effective mental health support during incarceration can significantly worsen mental health distress and illness.[1084]

Aboriginal and Torres Strait Islander people are less likely to report an improvement in their mental health during their time in custody than their non-Indigenous counterparts.[1085] This suggests that existing services are culturally biased and of limited value to incarcerated Aboriginal and Torres Strait Islander women and girls.[1086]

According to the most recent census, 46% of young people under youth justice supervision have a mental health or behavioral disorder.[1087]

Justice-involved young people experience much greater mental health burdens compared with their peers in the general population.

This burden is significantly associated with past abuse, head injury with loss of consciousness, and alcohol abuse and dependence.[1088]



Substance use issues

Illicit drug and tobacco use is much higher among women entering custody than the general community.[1089]

The significant increase in female prison numbers over the past decade has stretched the limited resources available in prisons for counselling and substance abuse programs. As a result, vulnerable women often have little or no access to support to address these issues during their incarceration.[1090]

During consultation for the *Wiyu Yani U Thangani* report a lack of treatment programs for addiction and substance abuse was frequently raised as an issue adversely impacting incarcerated women and girls.[1091]

The experience of having spent time in any kind of detention, be it the watch house, prison or a youth detention centre, is associated with higher rates of alcohol use disorder among young people.[1092]

The 2020 Census of young people under youth justice supervision found that 80% of young people were known to be using at least one substance – most commonly cannabis, followed by alcohol, tobacco and methamphetamine.[1093]

The Independent Review of Youth Detention Report found that despite the high prevalence of substance use among young people in detention, there is a lack of corresponding programs offered in detention.[1094] Youth Justice Services are currently working to fund a drug and alcohol residential treatment program for young people.[1095]

Questions to consider

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?

Nutrition

As stated above, overcrowding has caused some issues for women at BWCC in terms of insufficient food being available for the prison population.[1096]

One woman who had previous experience of the prison system in Western Australia compared her experience there to BWCC, saying:

> *It's horrible, there are fights over food, food is rationed and there is not enough,... WA had plenty of milk, coffee, sugar — it was not rationed.*[1097]

The Independent Review of Youth Detention heard some stories about withholding adequate food to young people for disciplinary purposes.

The Review understandably found these allegations highly concerning and considered access to food and drink outside regular mealtimes as a fundamental right. The *Youth Justice Regulation* prohibits the deprivation of food as a form of punishment[1098] including in circumstances where a young person has been separated from the general population for disciplinary reasons. The Review recommended that food provided to young persons in separation be accurately recorded, including reasons for failure to provide food should they arise.[1099]

Questions to consider

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

The Bangkok Rules promote the need to ease the transition of women back into the community through lower security accommodation options and leave[1100] and gender-specific pre and post release integration programs[1101] and support.[1102]

The process of transitioning from incarceration to normal life can be very isolating. Women must work to rebuild relationships and find employment and housing as they deal with the stigma of having a criminal record.[1103]

The Queensland Parole System Review described the experience of release:

> When a prisoner returns to the community they may have nothing but the clothes they come to prison in, a small amount of money they earned in custody and the emergency payment they receive from Centrelink. I am informed this is a common picture. There are certainly exceptions, with support from family and friends, some offenders are able to navigate this difficult period with success. But arguably, without appropriate support, it is not a picture that ends with success.[1104]

Several important factors have been identified as key to ensuring women stay out of prison once released back into the community.

These include getting from prison to accommodation safely, flexible parole conditions (supporting maternal and family responsibilities), a healthy daily routine, provision of longer term secure housing and services, continuity of support for reintegration, and the provision of woman-centric, trauma-informed, family focused, strength-based and culturally aware long term support in the community.[1105]

The exit gate

Women in prison often have complex needs that can make retuning to the community a time of increased risk to their health and wellbeing.[1106] It is vital that women and girls leaving custody have a 'game plan' and support from the moment they are released from custody.[1107]

A growing body of literature consistently finds that social support is a strong predictor of successful re-entry to the community after incarceration for women and girls.[1108] It is important that women and girls are able to maintain relationships with loved ones during incarceration to ensure that support is available upon release. This includes simple but vital support such as having a trusted and supportive person there to pick them up at the prison gate and get them safely settled in their home.[1109]

The Taskforce has heard from a woman with lived experience of incarceration that she was chastised and intentionally held up at the gate on the day of her release:

> On the day of my release one of the final things an officer said to me was "you'll be back, you all come back". When my partner arrived to pick me up and I had signed all my paperwork I was advised by the manager to go up to the gate and they would buzz me out. This surprised me as an officer usually walks you up. I waited at that gate for 10 minutes with my partner on the other side, I was petrified to go back down to the office. I physically could not walk back towards the prison. He then called through and I was told they would let me out when they had time. I waited 5 more minutes for them to let me out. It was one button they had to press. It was their final show of their control over me.[1110]

Homelessness

A 2020 survey of 37 women leaving custody in Australia found that within the following 4 weeks most (33) felt prepared or very prepared for release. A third would be staying in emergency or short term accommodation, 3 did not know where they would be staying and most (30) did not have paid employment organised to commence within 2 weeks of release.[1111]

As highlighted in the *Wiyu Yani U Thangani* report, a lack of secure accommodation on release places women who have experienced domestic, family and sexual violence at further risk in that they may be left with no choice but to return to a violent or unhealthy home or relationship. Women with criminal histories are also routinely denied or have limited access to family violence services, further exacerbating their vulnerability.[1112]

In response to the parole system review,[1113] and the Queensland Ombudsman's investigation of the overcrowding at BWCC,[1114] QCS commenced a partnership with the Department of Housing and Public Works[1115] and the women's re-entry service MARA-SERO4 to deliver a pilot of the Next Step Home program. As at 30 June 2021 170 women in South East Queensland had been housed through the program.[1116] MARA works by way of an in-reach team contacting women in custody and working with them to decide what they need in terms of transactional support (information, allying for housing and Centrelink). Referrals are made to the outreach team and a MARA worker supports the woman

on the day of her release and continues working with her, helping her to find ongoing connections within her community.[1117] This program is currently under evaluation.[1118]

The ADCQ report expressed concern that while there has been some improvement in assistance for women planning their release, that needed to be stabilised and enhanced. Further, while those in South East Queensland had the benefit of MARA, those from other regions (but for Townsville who had access to CREST transition) had no such dedicated support.[1119]

The most challenging obstacle for Aboriginal and Torres Strait Islander women leaving prison is finding stable accommodation and employment.[1120] In the preparation of the *Wiyu Yarni U Thangani* report all the incarcerated women with whom the Commissioner met identified that this was where they needed significant support.[1121]

Questions to consider

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?

Post release services

The availability of mental health and drug and alcohol support services are critical for many women and girls as they leave custody. This includes the need for detox and rehabilitation centres that will take people directly from prison. While these facilities do exist, the services are often too expensive for women and girls to access and only offer short-term placements or have substantial waiting periods. Most residential programs do not provide accommodation for families. A lot of the substance abuse issues that women and girls experience are self-medication prior to prison which intensifies after release as they struggle to find their way in the community[1122].

Services that assist women to gain practical skills and seek out and obtain employment are also vital.[1123]

Having adequate support and wrap-around care is particularly crucial to the lives and wellbeing of Aboriginal and Torres Strait Islander women and girls leaving incarceration. Ensuring they are equipped with the supports they need to succeed is further likely to have a dramatic impact on the rate of recidivism.[1124]

Some stakeholders have suggested that the Taskforce examine various aspects of post-release support services including:

- services available to support women in the lead up and after their release focussed on preventing re-offending and promoting re-integration into the community.'[1125]
- programs to prevent offending on release from detention, especially programs for girls and young women leaving youth detention.[1126]
- any barriers to support services faced by girls exiting the youth justice system and how these barriers can impact the girls' transition from detention to the community.[1127]

Some examples of services currently operating in this space are:

Throughcare

Throughcare, delivered by ATSILS in Queensland, is a nationwide service working to support Aboriginal and Torres Strait Islander people in prison including women and girls transitioning back into the community.

The quality of the experience that women and girls have with Throughcare is highly variable from region to region. The service often lacks resources and capacity to provide the required sustained support.[1128] The service is only available to a limited number of people who are assessed as in a higher-risk of re-offending category.[1129]

The Australian Human Rights Commission recommended that Throughcare should include individualised and comprehensive case management to identify what supports women's need, including practical assistance such as obtaining a tax file number or finding employment.[1130]

Building on women's strengths (BOWS) program

Funded by the Queensland Government since 2001 and delivered by Sisters Inside,[1131] the Building on Women's Strengths (BOWS) program, provides support for Queensland women (both First Nations and non-Indigenous)who are being released from prison and are primary care givers. The program offers pre and post release support. It includes assistance such as helping women navigate the child safety system and to see their children; accommodation referral; workshops to build living skills; counselling and support; family mediation; and advocacy and outreach including referral to other agencies[1132].

Gatton re-entry program

Commencing in 2019, and also delivered by Sisters Inside, the Gatton Re-Entry Program aims to reduce recidivism amongst women released from Southern Queensland Correctional Centre. Support is provided up to three months pre-release and up to six months post-release.

Transport to accommodation is provided on the day of release and the program ensures that women have access to support after the program concludes for as long as they want and need it (through other programs). Prior to release the program works with women to identify their post-release needs and to ensure that their immediate survival needs will be met at release. Post-release, the program can provide advocacy as needed and generally supports women to meet their (often competing) obligations, such as to statutory authorities like community corrections, child safety and Centrelink.[1133]

Education and cultural mentorship upon release

During consultation for the *Wiyu Yani U Thangani* report the Commissioner heard from Aboriginal and Torres Strait Islander girls on several occasions that it was the cultural mentorship provided to them during their incarceration that gave them the most stability and guidance. Three girls who had returned to detention a second time spoke of that critical need for the continuation of cultural mentorship and that this was often an overlooked aspect of their release plan.[1134]

The Commissioner also heard that children released from detention can have issues pursuing education without support and a stable home and family environment. While they are in custody there is support and structure. This disappears following release so that they often fail to keep attending school.[1135]

Parole

One of the biggest challenges facing incarcerated people, including women and girls, is the significant increase in prison population numbers as a result of the concerning backlog in parole applications. Shockingly, applications received in June 2021 will not be considered by the Parole Board before March 2022[1136]. The Queensland Parole Board has reached crisis point, receiving more applications than it can process per month[1137]. It has regularly failed to meet its statutory obligation to review applications for release within 120 days.[1138] As at November 2021, there were 2,032 outstanding matters before the Board. Prisoners Legal Service reported routinely seeing people wait more than 10 months for a decision on their application.[1139] On 30 November 2021, new legislation[1140] temporarily extended parole consideration timeframes for 60 days for a period of six months[1141] for the purpose of 'supporting the efficiency and effectiveness' of the Parole Board's operations.[1142]

Sisters Inside expressed concern that these amendments will be detrimental to people applying for release on parole, in part because they will delay when they can apply for judicial review. They raise the potential for serious human rights ramifications and human cost including, but not limited to, the mental harm of being kept in a state of limbo about loss of liberty, housing and other opportunities, and the distress of the families and children of those in prison.[1143] Prisoners Legal Service raised similar concerns, adding that the ramifications for the well-being and the prospects of successful community reintegration of those kept in a state of parole limbo, increased risks of institutionalisation, deterioration in mental health and distress for families and children.[1144]

First Nations women and girls

The process of reintegrating into the community is a difficult time for women and girls. The risk of suicide for women is 14 times higher after leaving prison than that of the general population. [1145]

First Nations women and girls who have been incarcerated face an additional level of discrimination upon their release, compounding their political, social and economic vulnerability. Moreover, parole decisions do not take into consideration the impact of a woman's continued absence from her family as a caregiver.[1146]

Supporting Aboriginal and Torres Strait Islander women through their reintegration may include a supervised, non-custodial parole period as a part of their sentence. Parole is designed to encourage good behaviour and rehabilitation during incarceration and to facilitate reintegration back into community. However, the process of parole and the pathway required to be eligible for parole is sometimes not well understood. A recent review of Aboriginal and Torres Strait Islander access to parole, community corrections orders and parole programs, found that Aboriginal and Torres Strait Islander peoples have greater difficulty in obtaining and completing parole.[1147] Some vulnerable women who could be eligible have difficulty navigating the requirements for parole throughout their incarceration[1148]and spend longer in custody than they should. This in turn contributes to overpopulation, places greater stress on the system and reduces the availability of support upon release.

Release on parole ensures that people who have spent time in prison receive post-release contact with parole officers. First Nations women and girls with a criminal record face additional challenges including finding housing, employment and other services. Parole officers can play a significant role in helping them navigate the complexities of reintegration. Without comprehensive and meaningful support structures in place there is a high likelihood of recidivism in circumstances where women feel powerless to succeed outside of incarceration.[1149]

Concerningly, in consultation for the *Wiyu Yani U Thangani* report the Commissioner heard from women who felt they had been deliberately targeted by prison officers during incarceration and as such they would not meet the behavioural expectations for parole. Many women and girls were unable to meet the requirement for a suitable permanent residential address and as such encountered difficulties in being granted parole.[1150]

Questions to consider

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.

Appendix 1

Timeline of victims' rights in Queensland

1968: State-funded compensation for injury scheme established in the Criminal Code[1151]

1982: First National Symposium of Victimology held in Australia[1152]

1985: United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[1153]

1995: Criminal Offences Victims Act 1995 (Qld) enshrines Fundamental Principles of Justice for Victims of Crime[1154]

1996: Attorneys-General endorse a national Charter for Victims' Rights in Australia[1155]

2008: Victims of Crime Review[1156]

2009: Victims of Crime Assistance Act 2009 (VOCA Act) replaces Criminal Offences Victims Act 1995, establishes Victim Assist Queensland, and enables victims to give Victim Impact Statements[1157]

2014: VOCA Act reviewed[1158]

2017: Charter of Victims' Rights replaces Fundamental principles of justice for victims in VOCA Act, provisions for Victim Impact Statements moved to *Penalties and Sentences Act 1992*[1159]

2019: *Human Rights Act 2019* establishes rights for all Queenslanders, including victims of crime[1160]

Appendix 2

Charter of victims' rights

Victims of Crime Assistance Act 2009, Schedule 1AA

Part 1 Rights of victims

Division 1 General rights

Note— For this division, victim includes a victim of domestic violence that is not a crime. See section 5(3) of this Act.

1. A victim will be treated with courtesy, compassion, respect and dignity, taking into account the victim's needs.

2. A victim's personal information, including the victim's address and telephone number, will not be disclosed unless authorised by law.

3. A victim will be informed at the earliest practicable opportunity about services and remedies available to the victim.

Division 2 Rights relating to the criminal justice system

1. A victim will be informed about the progress of the investigation of the crime, unless informing the victim may jeopardise the investigation. If the investigation may be jeopardised, the victim will be informed accordingly.

2. A victim will be informed of each major decision (including the reasons for the decision) made about the prosecution of a person accused of committing the crime, including decisions about any of the following matters—

   (a) the charges brought against the accused;
   (b) not bringing charges, or substantially changing the charges, against the accused;
   (c) accepting a plea of guilty to a lesser or different charge.

3. A victim will be informed of the following matters—

   (a) the name of a person charged with an offence in relation to the crime;
   (b) the issue of a warrant for the arrest of a person accused of committing the crime;
   (c) details of relevant court processes, including when the victim may attend a court proceeding and the date and place of a hearing of a charge against the accused;
   Example of a relevant court process— an application for bail made by the accused
   (d) details of any diversionary programs available to the accused in relation to the crime;
   (e) the outcome of a criminal proceeding against the accused, including the sentence imposed and the outcome of an appeal.

4. A victim will be informed about the outcome of a bail application made by the accused and any arrangements made for the release of the accused, including any special bail conditions imposed that may affect the victim's safety or welfare.

5. If a victim is a witness at the accused's trial, the victim will be informed about the trial process and the victim's role as a witness.

6. During a court proceeding, the victim will be protected from unnecessary contact with, or violence or intimidation by, the accused, defence witnesses and family members and supporters of the accused.

7. A victim may make a victim impact statement under the Penalties and Sentences Act 1992 for consideration by the court during sentencing of a person found guilty of an offence relating to the crime.

8. A victim's property held by the State for an investigation or as evidence will be returned to the victim as soon as possible.

Division 3 Complaints

Note— For this division, victim includes a victim of domestic violence that is not a crime. See section 5(3) of this Act.

1. A victim may make a complaint about a contravention of a right under this charter, and will be given information about the procedure for making a complaint, under chapter 2 of this Act.

Part 2 Rights of eligible persons

1. An eligible person in relation to an offender will be kept informed of the following matters—
    (a) the offender's period of imprisonment or detention;
    (b) the transfer of the offender to another facility;
    (c) the escape of the offender from custody or whether the offender is unlawfully at large.

2. An eligible person will be given the opportunity to make written submissions to the parole board under the Corrective Services Act 2006 about granting parole to the offender.

Appendix 3

Resource and expenditure tables

Table 1 *Criminal justice system resources per 100,000 population*

Police[1161]		Courts[1162]		ODPP[1163]		Corrections[1164]	
Operational per 100,000	285	Criminal Courts per 100,000	2.4	ODPP staff per 100,000	8.4	Corrections staff per 100,000	120.2
Operational FTE	14,626	Criminal Courts FTE	123.7	ODPP staff FTE	435	Corrections staff FTE	6,224
Non-operation per 100,000	25	Civil Courts staff per 100,000	0.9				
Non-operation FTE	1,268	Civil Courts staff FTE	45.9				

^ *per 100,000 population figures calculated on Queensland 2019-20 population data*

Table 2 *Jurisdictional analysis of expenditure by highest to lowest monetary value and percentage change (±) in average annual growth rate between 2015-16 to 2019-20*

Criminal courts[1165]	NT	ACT	WA	SA	VIC	AUST	NSW	QLD	TAS
2019-20 per person/year $	111	79	59	45	44	43	38	37	35
AAGR 2015-16 - 2019-20 %	-3.4	11.6	3.4	-0.7	5.1	3.4	4.4	2.0	-0.5

Prisons & community corrections[1166]	NT	WA	ACT	AUST	TAS	VIC	SA	NSW	QLD
2019-20 per person/year $	696	274	198	181	180	171	168	161	154
AAGR 2015-16 - 2019-20 %	3.3	2.1	5.0	5.0	6.2	5.8	2.6	7.2	5.2

Youth Justice[1167]	NT	ACT	QLD	TAS	AUST	VIC	SA	NSW	WA
2019-20 per person/year $	335	58	55	44	39	37	28	27	27
AAGR 2015-16 - 2019-20 %	20.6	0.5	10.1	7.6	5.0	10.7	1.9	-0.1	-11.2

Police[1168]	NT	WA	VIC	SA	AUST	TAS	QLD	NSW	ACT
2019-20 per person/year $	1582	589	549	523	518	489	481	468	433
AAGR 2015-16 - 2019-20 %	4.3	1	5.8	3.4	1.8	2.5	0.4	-0.07	-0.8

Health[1169]	NT	ACT	WA	QLD	TAS	AUST	NSW	SA	VIC
2019-20 per person/year $	5697	4490	4122	4104	3996	3762	3632	3621	3450
AAGR 2015-16 - 2019-20 %	5.3	-0.7	-2.1	3.9	3.1	1.7	1.3	2.3	2.5

Note: Total costs per person in population are rough estimates only (refer to notes in reference list), monetary figures have been rounded up, figures are refer to expenditure per jurisdiction based on per 100,000 population. AAGR is the annual average growth rate in expenditure between 2015-16 and 2019-20. Figures in red refer to decrease in AAGR.

Appendix 4

Victims' commissioners in other Australian 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[1170] including legislating to make the role that of an independent statutory officer.[1171] 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[1172] 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.[1173] The powers of the role also go beyond that of a conventional ombudsman.[1174] The South Australian Commissioner also has the ability to represent victims and intervene in proceedings with the approval of the victim.[1175]

New South Wales

The NSW Commissioner of Victims' Rights (NSW Commissioner) has the power to make enquiries, conduct investigations and compel evidence.[1176] 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.[1177] 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.[1178]

Australian Capital Territory

The ACT Victim of Crime Commissioner is an independent statutory appointment.[1179] 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.[1180] 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.[1181]

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, releasing videos related to family violence restraining orders[1182] and a factsheet regarding intimate image laws.[1183]

Victoria

The Victorian Victims of Crime Commissioner is an independent statutory appointment.[1184] 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.[1185] The Commissioner is also empowered to consider complaints from victims about investigatory, prosecuting and victim's service organisations regarding their compliance with the Victorian Victims Charter.[1186] The Victorian Commissioner us currently undertaking a systemic inquiry on victim participation in the justice system.[1187]

Appendix 5

Interjurisdictional comparison - Restrictions on publication in sexual assault proceedings

	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, unless the court orders otherwise or an exemption applies (s6 and s8). Identifying victims other than in a report concerning an examination of a witness or a trial is also restricted (s10(1)(a)), with a defence that the victim gave written authorisation, was over 18, and had capacity to consent (s10(2))	A complainant of 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, 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 is the complainant authorised 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 of sexual offences (194K(1)) that the person consented and was over 18, had consented in writing, understood that they may be identified and were not coerced (194K(4)).	It is a defence to the prohibition of publication of the identify of a complainant in a sexual offence proceedings (s74(1)) that 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)) that there was no proceeding still pending and each complainant has consented in writing to the publication and was a adult with capacity to consent (s6(2)).
When can defendants accused of sexual assault be identified?	Restriction on identifying a defendant charged with a prescribed sexual offence before they are committed for trial or sentence upon that charge unless the court orders otherwise (s7 and s10(1)(b)).	Not restricted	Not restricted	Restrictions on identifying a person accused of a sexual offence before their first appearance in court (s71A(2)).	Not restricted	Restriction on identifying defendants to incest proceedings only (s194K(1)(a)(ii)).	Not restricted	Restrictions on identifying a defendant before 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: $5000 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 6

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 (e.g. 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). Note 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, and at all times 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.** Hearing 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	**Yes.** Restrictions are limited to information which 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 which 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	**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

	consents) (s159(1) and (2)).					desirable in the interests of justice (s32).		matter in a filed document. Reports also 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.[1188] 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/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 only apply 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 and 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 which 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 being identified (s169B). Victim consent can identify the respondent.[1189]	**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 only applies 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 and has agreed that the section not apply.	**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 consent to override this.	**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 consent to override this.	**Unlikely.** The restriction on publication in s149 does not prevent a party from telling someone about an order's contents or giving someone a copy (s150). However, the restriction on identifying that person in a publication would still apply.

Appendix 7

Possible risks of reducing restrictions on publication

The risks to the safety of women and children posed by reducing publication restrictions or opening courts to the public were identified in the following excerpt from the Taskforce's first report.

Excerpt from Hear Her Voice – *Addressing coercive control and domestic and family violence in Queensland:*

> There are significant risks for the safety of victims and their children in opening courts and reducing publication restrictions. Some of the risks of holding civil domestic violence proceedings in open court are that:
>
> - victims may feel exposed, uncomfortable, or even retraumatised at the prospect of
> - strangers witnessing proceedings
> - child victims or witnesses may be more likely to be identified or retraumatised
> - perpetrators may use the opportunity to intimidate victims through the presence of
> - threatening individuals or family members in court
> - it may prevent victims from seeking the protection they need by making an application for
> - a Domestic Violence Order
> - where a victim has been misidentified as a perpetrator, they could be shamed even if later
> - accepted as the victim
> - if publicly identified, perpetrators may be motivated to challenge an application rather than
> - consent.
>
> Even if victims are not identified by name, ensuring that published information does not lead to their identification or that of their children against their wishes is a significant challenge.[1190]

Appendix 8

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.

Appendix 9

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.

Appendix 10

Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021 (NSW)

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.

Appendix 11

Programs addressing criminogenic needs

Program	Description	Structure	Location
Keeping us Together Shine4Kids (parenting program)	Helping mothers in prison to understand the dynamics of and build confidence in building healthy, respectful relationships with their children	6 workshops, 2 hours each, with each focusing on a particular component of the parent-child relationship	Secure, open custody, and transitional correctional centres across Qld
Child/Parent Activity Days Shine4Kids (mother-child connection program)	Extended visit where mother and child can bond with activities, morning tea and lunch	4 hour extended visit once per term and during school holidays	Queensland Correctional Centres
Story Time Shine4Kids (mother-child connection program)	Enables mothers to strengthen bonds with children by reading to them on pre-recorded audio which is then given to their child to listen to	Pre-recorded CD or Hallmark readable book (recording of mother reading book)	Secure, open custody and transitional Correctional Centres throughout Queensland
Prison In-visits Program Shine4Kids (playgroup program)	Provides opportunity for mothers, children and their carers to enhance their relationship through enjoyable and relaxing activities supported by qualified and experienced childcare workers and trained volunteers	Weekly, 2 hours	Secure, open custody, and transitional Correctional Centres throughout Queensland
Rise By Your Side Shine4Kids (children's program)	Mentorship program for children with a mother in prison. Provides children with a supportive, caring and non-judgmental adult mentor who engages with the child as they travel to and from the prison for visitors. Mentoring continues fortnightly beyond release if it is within the 12 month program.	12 month program, monthly on any day.	Queensland Correctional Centres
Rise Shine4Kids	Educational support for children with incarcerated parents	One-on-one mentoring outside of the classroom twice a week for 1 hour.	Queensland Correctional Centres

Source: https://www.transformingcorrections.com.au/queensland-programs/

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[223] UN General Assembly, *United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)* : resolution / adopted by the General Assembly, 2 April 1991, A/RES/45/110

[224] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020) 165.

[225] Queensland Ombudsman, *Overcrowding at Brisbane Women's Correctional Centre* (2016) i.

[226] Queensland Corrective Services website – *Improving outcomes for incarcerated women* (6 March 2019) [Accessed January 2022] https://corrections.qld.gov.au/improving-outcomes-for-incarcerated-women/

[227] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020) 165.

[228] See, for discussion, Queensland Human Rights Commission, *Submission to Legal Affairs and Safety Committee inquiry into the Working with Children (Indigenous Communities) Amendment Bill 2021* (2021).

[229] The International Covenant on Economic, Social and Cultural Rights recognises the 'right of everyone to an adequate standard of living', which includes the right to housing (Article 11).

[230] Victorian Law Reform Commission, *Improving the justice system response to sexual offences* (Report, 2021) XXV; Kay Dibben, 'Sex pest sentence delay an 'atrocity': judge lashes system' *Courier Mail* (Brisbane, 16 December 2021).

[231] See Christine Bond et al, *Evaluation of the specialist domestic and family violence court trial in Southport* (Summary and final reports, February 2017). https://www.courts.qld.gov.au/__data/assets/pdf_file/0007/515428/dfv-rpt-evaluation-dfv-court-southport-summary-and-final.pdf

[232] Christine Bond et al, *Evaluation of the specialist domestic and family violence court trial in Southport* (Summary and final reports, February 2017) 17. https://www.courts.qld.gov.au/__data/assets/pdf_file/0007/515428/dfv-rpt-evaluation-dfv-court-southport-summary-and-final.pdf

[233] See for example Victorian Law Reform Commission, *Improving the justice system response to sexual offences* (Report, 2021) 417; Kay Dibben, 'Sex pest sentence delay an 'atrocity': judge lashes system' *Courier Mail* (Brisbane, 16 December 2021).

[234] Victorian Law Reform Commission, *Improving the justice system response to sexual offences* (Report, 2021) 417.

[235] Kay Dibben, 'Sex pest sentence delay an 'atrocity': judge lashes system' *Courier Mail* (Brisbane, 16 December 2021) 13.

[236] Women's Safety and Justice Taskforce, *Hear Her Voice: Addressing coercive control and domestic and family violence in Queensland* (Report One, 2021).

[237] *Note* all data has been extracted from Report on Government Services 2021 for Courts, Corrections, Police, Health accessible via the website: https://www.pc.gov.au/research/ongoing/report-on-government-services/2021

[238] Queensland Productivity Commission, *Inquiry into imprisonment and recidivism* (Final report August 2019) xxvi. https://apo.org.au/sites/default/files/resource-files/2020-01/apo-nid273991.pdf

[239] Queensland Productivity Commission, *Inquiry into imprisonment and recidivism* (Final report August 2019) 112. https://apo.org.au/sites/default/files/resource-files/2020-01/apo-nid273991.pdf

[240] William R. Wood, 'Justice reinvestment in Australia' (2014). 9(1) *Victims & Offenders* 104.

[241] Queensland Productivity Commission, *Inquiry into imprisonment and recidivism* (Final report August 2019) 135. https://apo.org.au/sites/default/files/resource-files/2020-01/apo-nid273991.pdf.

[242] Note: COVID may have had an impact on criminal activity and the justice system. ABS, *Prisoners in Australia – Queensland* (latest release, 9 December 2021), https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release

[243] Note: COVID may have had an impact on criminal activity and the justice system. ABS, *Prisoners in Australia – Queensland* (latest release, 9 December 2021), https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release

[244] Queensland Productivity Commission *Inquiry into imprisonment and recidivism* (Final Report, August 2019) QPC 30-33. FINAL-REPORT-Imprisonment-Volume-I-.pdf (windows.net); ABS, *Crime victimisation, Australia: National and state/territory crime rates for assault, threat, robbery, break-in/burglary, theft/stealing, property damage, and police reporting rates* (Released 18 February 2021) https://www.abs.gov.au/statistics/people/crime-and-justice/crime-victimisation-australia/latest-release

[245] Queensland Productivity Commission *Inquiry into imprisonment and recidivism* (Final Report, August 2019) QPC 33-35. FINAL-REPORT-Imprisonment-Volume-I-.pdf (windows.net)

[246] Queensland Productivity Commission *Inquiry into imprisonment and recidivism* (Final Report, August 2019) QPC 30-33. FINAL-REPORT-Imprisonment-Volume-I-.pdf (windows.net)

[247] Queensland Productivity Commission *Inquiry into imprisonment and recidivism* (Final Report, August 2019) QPC 37-38. FINAL-REPORT-Imprisonment-Volume-I-.pdf (windows.net)

[248] Queensland Corrective Services, *Services delivery statements* (Queensland Budget 2021-22), 2021, 5. https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2021/5721T844.pdf

[249] Queensland Corrective Services, *Services delivery statements* (Queensland Budget 2021-22), 2021, 5. https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2021/5721T844.pdf

[250] See for example Justin Healey and ProQuest Ebooks, *Issues in Prisons* (Volume 423, The Spinney Press, 2017), 46-50.

[251] AIC, *National crime prevention framework* (Report prepared on behalf of the Australian and New Zealand Crime Prevention Senior Officers' Group, October 2018); Queensland Productivity Commission *Inquiry into imprisonment and recidivism* (Final Report, August 2019) QPC 82. FINAL-REPORT-Imprisonment-Volume-I-.pdf (windows.net). *Note:* cost benefits of incarceration are likely for offenders who cause harm or are frequent offenders. As such alternative options must take into account the type, severity and frequency of offending. https://www.police.qld.gov.au/sites/default/files/2018-10/NCP%20Framework.pdf ; Troy Allard et al, 'The Monetary Cost of Offender Trajectories : Findings from Queensland (Australia)' (2014). 47(1) *Australian & New Zealand journal of criminology* 81, 98.

[252] Hilde Tubex and Dorinda Cox, 'Aboriginal and Torres Strait Islander women in Australian prisons' (Chapter 7) in Lily George et al, *Neo-Colonial Injustice and the Mass Imprisonment of Indigenous Women* (Palgrave Macmillan, 2020), 133, 135; Justin Healey, *Issues in prisons* (Volume 423, The Spinney Press, 2017), 46-50.

[253] Queensland Productivity Commission, *Inquiry into imprisonment and recidivism* (Final report August 2019) x. https://apo.org.au/sites/default/files/resource-files/2020-01/apo-nid273991.pdf

[254] Queensland Productivity Commission, *Inquiry into imprisonment and recidivism* (Final report August 2019) x. https://apo.org.au/sites/default/files/resource-files/2020-01/apo-nid273991.pdf

[255] This figure includes accommodation and indirect costs such as unemployment, homelessness, burden placed on familial supports, government and support services. Queensland Productivity Commission, *Inquiry into imprisonment and recidivism* (Final report August 2019) x. https://apo.org.au/sites/default/files/resource-files/2020-01/apo-nid273991.pdf

[256] This figure includes costs of police, courts and corrections. Prison costs alone amounted to $960,000 in 2017-18. Queensland Productivity Commission, *Inquiry into imprisonment and recidivism* (Final report August 2019) xii. https://apo.org.au/sites/default/files/resource-files/2020-01/apo-nid273991.pdf

[257] Queensland Productivity Commission, *Inquiry into imprisonment and recidivism* (Final report August 2019) xxi. https://apo.org.au/sites/default/files/resource-files/2020-01/apo-nid273991.pdf

[258] Queensland Productivity Commission, *Inquiry into imprisonment and recidivism* (Final report August 2019) x. https://apo.org.au/sites/default/files/resource-files/2020-01/apo-nid273991.pdf

[259] Queensland Productivity Commission, *Inquiry into imprisonment and recidivism* (Final report August 2019) x. https://apo.org.au/sites/default/files/resource-files/2020-01/apo-nid273991.pdf

[260] *Note:* cost saving estimated for 1% shift in number of persons sent to prison moved onto community corrections orders. Australian Government (Productivity Commission) *Australia's prison dilemma* (Research Paper, October 2021) Productivity Commission: Canberra, 47.

[261] Note Community Corrections Orders are a single form of flexible intermediate community-based sentencing orders that can replace the need for community service orders, probation orders and suspended sentences. They enable judicial monitoring as a condition of the order. The benefits of the CCO include ability to tailor the order to individual offender needs, combines punitive and rehabilitative functions and supports continued engagement with the community. Queensland Sentencing Advisory Council, *Community-based orders, imprisonment and parole*

options (Final report, Queensland Sentencing Advisory Council, July 2019) 141. https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0004/623533/final-report-community-based-sentencing-and-parole.pdf

[262] Queensland Sentencing Advisory Council, *Community-based orders, imprisonment and parole*

options (Final report, Queensland Sentencing Advisory Council, July 2019) xxii. https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0004/623533/final-report-community-based-sentencing-and-parole.pdf

[263] Australian Government (Productivity Commission) *Australia's prison dilemma* (Research Paper, October 2021) Productivity Commission: Canberra, 68.

[264] Megan Cox The relationships between episodes of parental incarceration and students' psycho-social and educational outcomes: An analysis of risk factors. (2009). 70(6-A) *Dissertation Abstracts International Section A: Humanities and Social Sciences*, 1936; Eric Martin, Hidden consequences: the impact of incarceration on dependent children (2017). May(278) *National Institute of Justice* 2.

[265] Australian Government (Productivity Commission) *Australia's prison dilemma* (Research Paper, October 2021) Productivity Commission: Canberra, 3.

[266] Australian Government (Productivity Commission) *Australia's prison dilemma* (Research Paper, October 2021) Productivity Commission: Canberra, 47.

[267] Justin Healey, *Issues in prisons* (Volume 423, The Spinney Press, 2017), 46; William R. Wood, 'Justice reinvestment in Australia' (2014). 9(1) *Victims & Offenders* 101.

[268] Queensland Productivity Commission, *Inquiry into imprisonment and recidivism* (Final report August 2019) 128. https://apo.org.au/sites/default/files/resource-files/2020-01/apo-nid273991.pdf; Matthew Willis and Madeleine Kapira (AIC), *Justice reinvestment in Australia: A review of the literature* (Research report 09, 2018) Canberra: AIC.

[269] Note: The Maranguka Project has been operating in Bourke, NSW since 2013. It was initiated by a coalition of local Aboriginal leaders and statewide organisations. The project involved justice mapping and planning, developing initiatives to drive youth programs, health and men's groups. Results suggest the cost-benefit in the millions (see KPMG, 2018 impact assessment report for further details). Queensland Productivity Commission, *Inquiry into imprisonment and recidivism* (Final report August 2019) 139-140. https://apo.org.au/sites/default/files/resource-files/2020-01/apo-nid273991.pdf

[270] Queensland Productivity Commission, *Inquiry into imprisonment and recidivism* (Final report August 2019) 140. https://apo.org.au/sites/default/files/resource-files/2020-01/apo-nid273991.pdf; see also Justice Reinvestment Network Australia Cherbourg, Queensland Cherbourg, Queensland – JUSTICE REINVESTMENT NETWORK AUSTRALIA

[271] Queensland Government, *Queensland Productivity Commission inquiry into imprisonment and recidivism: Queensland Government response* (January 2020) 10. Microsoft Word - DMView_1580370530598_003152020_117036_Attachment_1_Government_response_to_QPC_inquiry_into_imprisonment_and_r (windows.net)

[272] Mengtong Chen and Yuanyuan Fu, 'Adverse childhood experiences: Are they associated with greater risk of elder abuse victimization?' (2021). *Journal of Interpersonal Violence* 1; Eric J. Connolly, 'Further evaluating the relationship between adverse childhood experiences, antisocial behavior, and violent victimization: A sibling-comparison analysis' (2020). 18(1) *Youth Violence and Juvenile Justice* 3; Katie Ports, Derek Ford and Melissa Merrick, 'Adverse childhood experiences and sexual victimization in adulthood' (2016). 51 *Child Abuse & Neglect* 313; Preeta Saxena and Nena Messina, 'Trajectories of victimization to violence among incarcerated women' (2021). 9(18) *Health*

and Justice 1; Wendy Ellis, William H. Dietz and Kuan-Lung Daniel Chen, 'Community Resilience: A Dynamic Model for Public Health 3.0' (2022). 28(1) *Journal of public health management and practice* S19

[273] Victorian Law Reform Commission, *Improving the justice system response to sexual offences* (Report, 2021) 417.

[274] Ross Homel, How community interventions can prevent youth crime 31(24) *Eureka Street* (online, 9 December 2021). Eurekasteet.com.au/article/how-community-interventions-can-prevent-youth-crime see also Note: COVID may have had an impact on criminal activity and the justice system ABS, Prisoners in Australia (latest release, 9 December 2021), https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release; Hilde Tubex and Dorinda Cox, 'Aboriginal and Torres Strait Islander women in Australian prisons' (Chapter 7) in Lily George et al, *Neo-Colonial Injustice and the Mass Imprisonment of Indigenous Women* (Palgrave Macmillan, 2020), 133, 135; Nyari Black and Justin S. Trounson, 'Intersectionality in Incarceration: The Need for an Intersectional Approach Toward Aboriginal and Torres Strait Islander Women in the Australian Prison System' (2019). 22(1-2) Journal of Australian Indigenous Issues 45, 48

[275] See for example T. Vinson and Ross Homel, 'Crime and disadvantage: The coincidence of medical and social problems in an Australian city' (1975). 15(1) British Journal of Criminology 21-31; William R. Wood, 'Justice reinvestment in Australia' (2014). 9(1) *Victims & Offenders* 105.

[276] Queensland Productivity Commission, *Inquiry into imprisonment and recidivism* (Final report August 2019) 129, 134. https://apo.org.au/sites/default/files/resource-files/2020-01/apo-nid273991.pdf

[277] Queensland Productivity Commission, *Inquiry into imprisonment and recidivism* (Final report August 2019) 129. https://apo.org.au/sites/default/files/resource-files/2020-01/apo-nid273991.pdf

[278] Victorian Law Reform Commission, *Improving the justice system response to sexual offences* (Report, 2021) 59.

[279] Queensland Government, *Prevent. Support. Believe. Queensland's Framework to address Sexual Violence* (2019).

[280] Queensland Government, *Prevent. Support. Believe. Queensland's Framework to address Sexual Violence* (2019). The Framework identified important initiatives including:

making respectful relationships education compulsory in all Queensland state schools

strengthening a victim-centric focus in the QPS

conducting a pilot of a dedicated sexual violence liaison officer in the Townsville QPS District

establishing a sexual violence champions group to guide cultural change

strengthening sexual violence initiatives and responses at key events and locations involving young people eg: Schoolies

Raising the profile of Sexual Violence Awareness Month

[281] Queensland Government, *Prevent. Support. Believe. Queensland's Framework to address Sexual Violence* (2019), 11-12.

[282] Queensland Government, *Prevent. Support. Believe. Queensland's Framework to address Sexual Violence* (2019), 1. The Framework builds on significant progress we have made over the past five years in addressing other related and overlapping forms of violence, such as domestic and family violence, through the Domestic and Family Violence Prevention Strategy 2016–2026. We have also made progress on addressing sexual violence, especially violence against women, through the Queensland Women's Strategy 2016–21 and the Violence against Women Prevention Plan 2016–22.

[283] Queensland Government, *Prevent. Support. Believe. Queensland's Framework to address Sexual Violence* (2019), 12.

[284] Queensland Government, *Prevent. Support. Believe. Queensland's Framework to address Sexual Violence* (2019), 20.

[285] Australian Government, Department of Social Services, *Factsheet: Fourth Action Plan of the National Plan to Reduce Violence Against Women and Their Children 2010-2022* (The National Plan).

[286] Queensland Government, *Prevent. Support. Believe. Queensland's framework to address Sexual Violence – Action Plan 2021-22*, 4, 6. The Action Plan states at page 12 that in 2021-2022 the government will review and evaluate justice processes and relevant laws to ensure victims are supported and perpetrators held accountable by, through the work of the Taskforce, undertaking a comprehensive review of women's experience in the criminal justice system, including the experience of women as victim-survivors of sexual offences.

[287] Queensland Government, *Prevent. Support. Believe. Queensland's framework to address Sexual Violence – Action Plan 2021-22*, 5.

[288] Queensland Government, *Prevent. Support. Believe. Queensland's framework to address Sexual Violence – Action Plan 2021-22*, 13.

[289] Victorian Law Reform Commission, *Improving the justice system response to sexual offences* (Report, 2021) 61.

[290] Victorian Law Reform Commission, *Improving the justice system response to sexual offences* (Report, 2021) 61.

[291] Queensland Government, Response to sexual assault, *Queensland Government Interagency Guidelines for Responding to People who have Experienced Sexual Assault* (June 2014)

[292] Queensland Government, Response to sexual assault, *Queensland Government Interagency Guidelines for Responding to People who have Experienced Sexual Assault* (June 2014), 3.

[293] Queensland Government, Response to sexual assault, *Queensland Government Interagency Guidelines for Responding to People who have Experienced Sexual Assault* (June 2014), 13.

[294] Queensland Police Service, submission to Discussion Paper 2, 8.

[295] Queensland Government, *Prevent. Support. Believe. Queensland's Framework to address Sexual Violence* (2019), 19.

[296] Victorian Law Reform Commission, *Improving the justice system response to sexual offences* (Report, 2021) xxiii.

[297] *London's Blueprint for a Whole System Approach to Women in Contact with the Criminal Justice System 2019-2022* Available at: https://moderngov.harrow.gov.uk/documents/s160134/Blueprint%20for%20Women.pdf Accessed 20 January 2022

[298] *London's Blueprint for a Whole System Approach to Women in Contact with the Criminal Justice System 2019-2022,* 1. Available at: https://moderngov.harrow.gov.uk/documents/s160134/Blueprint%20for%20Women.pdf Accessed 20 January 2022

[299] See Lorraine Wolhuter, Neil Olley and David Denham, Victimology: Victimisation and Victims' Rights (Routledge-Cavendish, 2009); Malini Laxminarayan, 'Psychological Effects of Criminal Proceedings through Contact with the Judge: The Moderating Effect of Legal System Structure' (2014) 20(8) *Psychology, Crime & Law* 781; Robyn L Holder, 'Victims, Legal Consciousness, and Legal Mobilisation' in Antje Deckert and Rick Sarre (eds), *The Palgrave Handbook of Australian and New Zealand Criminology, Crime and Justice* (Palgrave Macmillan, 2017) 649.

[300] 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* 10; Royal Commission into Child Sexual Abuse (n 2) pts I–II, 15.

[301] Victorian Law Reform Commission, *The role of victims of crime in the criminal trial process* (Report 34, 2016), 30; 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* 11.

[302] With the exception of the Northern Territory, Queensland and Tasmania – See 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* 1.

[303] 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* 6; Michael O'Connell and Hennessey Hayes, 'Victims, Criminal Justice and Restorative Justice' in Tim Prenzler and Hennessey Hayes (eds), *An Introduction to Crime and Criminology* (Pearson, 5th ed, forthcoming).

[304] 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* 26.

[305] Appointed under Chapter 4 of the *Victims of Crime Assistance Act 2009* (Qld).

[306] *Victims of Crime Assistance Act 2009* (Qld) ss19, 138, 139.

[307] Queensland Government, *Review of the Victims of Crime Assistance Act 2009*, Consultation Paper (October 2014), 22.

[308] Queensland Government, *Review of the Victims of Crime Assistance Act 2009*, Consultation Paper (October 2014), 23.

[309] Women's Safety and Justice Taskforce, *Hear Her Voice: Addressing coercive control and domestic and family violence in Queensland* (Report One, 2021) 211.

[310] Proctor, "Call to Parties Statement: Palaszczuk Labor Government response" 15 October 2020 Available at: https://www.qlsproctor.com.au/2020/10/call-to-parties-palaszczuk-labor-government-response/ Accessed 24 August 2021.

[311] Women's Safety and Justice Taskforce, *Hear Her Voice: Addressing coercive control and domestic and family violence in Queensland* (Report One, 2021) xlvi - Recommendation 3 - The Queensland Government in this term of government consult with Queensland Courts, the Bar Association of Queensland, and the Queensland Law Society with a view to introducing legislation to establish an independent Queensland Judicial Commission. The Taskforce prefers a model that involves the establishment of an independent statutory commission to receive and respond to complaints about judicial officers and provides professional development for judicial officers, based on the New South Wales model with any necessary adaptations.

[312] Angela Lynch, submission to Discussion Paper 2, 4; Mary Illiadis & Kerstin Braun, 'Sexual assault victims can easily be re-traumatise going to court – here's one way to stop this' *The Conversation* (25 March 2021) Available at: https://theconversation.com/sexual-assault-victims-can-easily-be-re-traumatised-going-to-court-heres-one-way-to-stop-this-157428 Accessed 2 February 2021

[313] Crime and Misconduct Commission, *Seeking Justice – An inquiry into how sexual offences are handled by the Queensland criminal justice system* (June 2003), 161. Available at: https://www.ccc.qld.gov.au/sites/default/files/Docs/Public-Hearings/Sexual-offence-matters/Seeking-justice-Report-2003.pdf Accessed 21 January 2022

[314] Crime and Misconduct Commission, *How the criminal justice system handles allegations of sexual abuse – A review* (March 2008), 42. https://www.ccc.qld.gov.au/sites/default/files/Docs/Public-Hearings/Sexual-offence-matters/How-the-criminal-justice-system-handles-allegations-of-sexual-abuse-Report-2008.pdf

[315] Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report Recommendations (December 2017), Recommendation 41, 105.

[316] Examples from submissions to Discussion Paper 2: Respect Inc, 16; Cairns sexual assault service; 1; Gold Coast Centre Against Sexual Violence submission, 8; Micah Projects, 4; Brisbane Rape and Incest Survivors, 6; Centre against Sexual Violence; Legal Aid Queensland, 8.

[317] Queensland Government, Review of the civil and criminal justice system in Queensland, Hon Martin Moynihan AO QC, December 2008 Available at: https://cabinet.qld.gov.au/documents/2009/Jul/Review%20of%20civil%20and%20criminal%20justice%20system%20in%20Qld/Attachments/Review%20by%20Moynihan.pdf Accessed 31 January 2022

[318] Example: Offences of a sexual nature without a circumstance of aggravation can be dealt with summarily (Subject to s552D of the *Criminal Code)* on the defendant's election if the complainant is over 14 years of age and the defendant pleads guilty– *Criminal Code* s 552B (1) (a)

[319] Kelmeny Fraser, 'Police prosecutors struggling with workloads, reading cases for first time in court' *Courier Mail* (Brisbane, 22 June 2020).

[320] Kelmeny Fraser, 'Police prosecutors struggling with workloads, reading cases for first time in court' *Courier Mail* (Brisbane, 22 June 2020).

[321] Queensland Government, Review of the civil and criminal justice system in Queensland, Hon Martin Moynihan AO QC, December 2008, 188. Available at: https://cabinet.qld.gov.au/documents/2009/Jul/Review%20of%20civil%20and%20criminal%20justice%20system%20in%20Qld/Attachments/Review%20by%20Moynihan.pdf Accessed 31 January 2022

[322] Kelmeny Fraser, 'Police prosecutors struggling with workloads, reading cases for first time in court' *Courier Mail* (Brisbane, 22 June 2020).

[323] Queensland Government, Review of the civil and criminal justice system in Queensland, Hon Martin Moynihan AO QC, December 2008, 188. Available at: https://cabinet.qld.gov.au/documents/2009/Jul/Review%20of%20civil%20and%20criminal%20justice%20system%20in%20Qld/Attachments/Review%20by%20Moynihan.pdf Accessed 31 January 2022

[324] Additional information provided by Queensland Police Service, 11 February 2021.

[325] Additional information provided by Queensland Police Service, 11 February 2021.

[326] Available at: https://pims2.police.qld.gov.au/GTConnect/UnifiedAcceptor/QPSWebFramework.Main/site/wss/t/1644823071876#!create-report/CreateCase/CreateCaseAction/CaseType/FeebackForm Accessed 14 February 2021

[327] Rights of Women, A Guide to the victim's right to review scheme, Available at: https://rightsofwomen.org.uk/wp-content/uploads/2018/02/A-guide-to-the-victims-right-to-review-scheme.pdf Accessed 31 January 2022

[328] CPS, Victims' Right to Review Scheme, 16 December 2020 Available at: https://www.cps.gov.uk/legal-guidance/victims-right-review-scheme Accessed 31 January 2022; Metropolitan Police, Victims' Right to Review Scheme, Available at: https://www.met.police.uk/advice/advice-and-information/victim-support/victims-right-review-scheme/?__cf_chl_captcha_tk__=NNiOSIN7tKdUNd7kwu4WlL3ZesVMuQYSC6qaRjZ2Qzk-1643607624-0-gaNycGzNCL0 Accessed 31 January 2022

[329] CPS, Victims' Right to Review Scheme, 16 December 2020 Available at: https://www.cps.gov.uk/legal-guidance/victims-right-review-scheme Accessed 31 January 2022

[330] Metropolitan Police, Victims' Right to Review Scheme, Available at: https://www.met.police.uk/advice/advice-and-information/victim-support/victims-right-review-scheme/?__cf_chl_captcha_tk__=NNiOSIN7tKdUNd7kwu4WlL3ZesVMuQYSC6qaRjZ2Qzk-1643607624-0-gaNycGzNCL0 Accessed 31 January 2022

[331] *Crown Prosecution Service Inspectorate Act 2000* s 2.

[332] HMCPSI, About our inspections, Available at: https://www.justiceinspectorates.gov.uk/hmcpsi/about-our-inspections/ Accessed 1 February 2022

[333] HMCPSI, Annual Report 2019-20 (July 2020), 5. Available at: https://www.justiceinspectorates.gov.uk/hmcpsi/wp-content/uploads/sites/3/2021/04/2020-11-03-Annual-Report-2019-20-accessible.pdf Accessed 1 February 2022

[334] HMCPSI, About HMCPSI, Our Vision, Available at: https://www.justiceinspectorates.gov.uk/hmcpsi/about-hmcpsi/ Accessed 1 February 2022

[335] See for example: HMCPSI Area Assurance Inspection of CPS Cymru-Wales – Findings of file examination and limited court observations, May 2019 Available at: https://www.justiceinspectorates.gov.uk/hmcpsi/wp-content/uploads/sites/3/2019/07/CPS-Cymru-Wales-Area-Assurance-Inspection-Report-May-2019.pdf Accessed 1 February 2022

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[340] *Evidence Act 1977* (Qld) s 21 (4): *improper questions* means a question that uses inappropriate language or is misleading, confusing, annoying harassing, intimidating, offensive, oppressive or repetitive

[341] *Criminal Law (Sexual Offences) Act 1978* s 4

[342] *Australian Solicitors Conduct Rules 2012* Rule 34

[343] Bar Association of Queensland, Barristers' Conduct Rules, Rule 61 – Rule 62 provides that a barrister will not infringe Rule 61 merely because: (a) the question or questioning challenges the truthfulness of the witness or the consistency or accuracy of any statements made by the witness, or (b) the question or questioning requires the witness to give evidence that the witness could consider to be offensive, distasteful or private.

[344] *Legal Profession Act 2007* s 27

[345] See: https://www.lsc.qld.gov.au/for-the-public/complaints-and-the-public/faqs Accessed 2 February 2022

[346] Including solicitors (*Legal Profession Act 2007* s 6), barristers (*Legal Profession Act 2007* s 6), prosecutors (but for those police prosecutors who are sworn officers only and not lawyers)(*Legal Profession Act 2007* s 12) and law practice employees *(Legal Profession Act 2007* s 425)

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[348] *Legal Profession Act 2007* s 435

[349] LSC, Complaints and the role of the Legal Services Commission Available at: https://www.lsc.qld.gov.au/complaints/complaints-and-the-role-of-the-legal-services-commission Accessed 2 February 2022

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[351] *Legal Profession Act 2007* s 619

[352] Example: Sisters Inside, submission to Discussion Paper 2, 10.

[353] Example: The Gurra Gurra Framework has been developed in partnership between First Nations peoples are the Department of Environment and Science. The mob-centred design is underpinned by First Nations terms of reference. Keeping Country and people at the centre, the process takes into account structures and the people who work within those structures; the functions, and the processes that deliver on those functions; governance and leadership. See Queensland Government, Department of Environment and Sciences, *The Gurra Gurra Framework 2020-2026* Available at: https://www.des.qld.gov.au/__data/assets/pdf_file/0010/202033/the-gurra-gurra-framework.pdf Accessed 19 January 2022

[354] Example: The Dhelk Dja partnership agreement with Aboriginal communities referred to at Victorian Law Reform Commission, *Improving the justice system response to sexual offences* (Report, 2021); Victorian Government, Dhelk Dja: Safe Our Way—Strong Culture, Strong Peoples, Strong Families (Agreement, October 2018). Over the next 10 years the Victorian Government will invest in Aboriginal community-ked governance and leadership to drive policy, implementation, monitoring and evaluation across the breath of the service system, including family housing, health, education, child protection and justice agencies, courts an access to legal service.

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[395] Explanatory Notes, Inspector of Detention Services Bill 2021(Qld) 1; *Inspector of Detention Services Bill 2021* (Qld) s 6 (places of detention include youth detention, prisons, community correction centres (eg: the Helena Jones Centre), work camps and police custody)

[396] *Inspector of Detention Services Bill 2021* (Qld) s 33 - with the Office of the Queensland Ombudsman to provide support - *Inspector of Detention Services Bill 2021* (Qld) s 35 - and carry out the function of the Ombudsman by delegation - *Inspector of Detention Services Bill 2021* (Qld) s 36. Note that while other states and territories have designated various entities or combinations of entities to act as the NPM, Queensland is yet to verify whether the Queensland Ombudsman will be the NPM or part of the NPM.

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[411] ANROWS, Are we there yet? Australians' attitudes towards violence against women & gender equality: Summary findings from the 2017 National Community Attitudes towards Violence against Women Survey (NCAS) (2018, ANROWS) https://www.anrows.org.au/NCAS/2017/5-circumstances-in-which-people-justify-non-consensual-sex/

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[418] Anne Cossins *Closing the Justice Gap for Adult and Child Sexual Assault* (2020, Palgrave Macmillan), 113-114

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Visits involving children shall take place in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact between mother and child. Visits involving extended contact with children should be encouraged, where possible.

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Queensland Corrective Services and other agencies implement initiatives to reduce the drivers of growth in prison numbers at BWCC, as proposed by the Ombudsman's report on overcrowding. Should overcrowding occur again in the future, Queensland Corrective Services:

a. ceases the practice of compelling women to sleep on floors;

b. improves privacy for the use of toilet facilities in secure cells, as proposed by the Ombudsman's report on overcrowding;

c. takes action to prevent the occurrence of incidents caused by incompatibility of cell mates if at any time women are doubled-up in cells, regardless of whether women have raised any issue with the authorities;

d. ensures sufficient food is provided to prisoners at, and ensures it is shared equitably in overcrowded units; and

e. increases the number of microwaves, toasters, washing and drying machines available for use by women. Queensland Corrective Services:

f. remedies plumbing issues that result in frequent bad odours and overflowing toilets at BWCC; and

g. provides sufficient cleaning products at all times to ensure the cleanliness of toilet and shower facilities in cells and units.

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[1013] Mick Gooda, 'Mental illness and cognitive disability in Aboriginal and Torres Strait Islander prisoners – a human rights approach' (Speech delivered at the 22nd Annual THeMHS Conference – National Mental Health Services Conference 'Recovering citizenship', Cairns, 23 August 2012).

[1014] Department of Children, Youth Justice and Multicultural Affairs, *Youth Justice census summary* Available at: https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/resources/yj-census-summary-statewide.pdf Accessed 25 January 2022

[1015] In August 2014 the Hayes Abilities Screening Index was introduced. The HASI is a screening tool for intellectual disability only. It correlates significantly with standardised tests for intelligence and adaptive behaviour, but is not a standardised diagnostic test. Refer to www.hasi.com.au for further information. See Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 80-81.

[1016] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019). Recommendation 15: investigates implementing screening of prisoners for neurocognitive disability; b. provides officers with training, skill development, and advice on how to deal with specific types of disability, and the types of adjustments that could be made to enable prisoners with disability to have full and effective access to prison life on an equitable basis; c. provides more specialist support to ensure that highly vulnerable women in prison safety units have full access to prison life on an equitable basis; and makes reasonable adjustments to enable women with physical, mental, and intellectual disabilities to have equal opportunities to be located in low security facilities.

[1017] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 85.

[1018] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019). Recommendations 24, 25 and 26 related to ensuring that facilities are accessible at Numinbah, Helena Jones and Townsville Correctional Centres.

[1019] Human Rights Watch, *"I needed help, instead I was punished,* Abuse and neglect of prisoners with disabilities in Australia (February 6, 2018) Available at: https://www.hrw.org/report/2018/02/06/i-needed-help-instead-i-was-punished/abuse-and-neglect-prisoners-disabilities Accessed 24 January 2022

[1020] ADA Submission for Discussion Paper 2, 5.

[1021] Inspector of Detention Services Bill 2021, Submission by Queensland Advocacy Incorporated (November 2021), 5. Available at: https://documents.parliament.qld.gov.au/com/LASC-C96E/IDSB2021-B426/submissions/00000013.pdf Accessed 25 January 2022

[1022] Inspector of Detention Services Bill 2021, Submission by Queensland Advocacy Incorporated (November 2021), 5. Available at: https://documents.parliament.qld.gov.au/com/LASC-C96E/IDSB2021-B426/submissions/00000013.pdf Accessed 25 January 2022 ; Phillip French, Disabled Justice: The Barriers to Justice for Persons with Disability in Queensland (Brisbane: Queensland Advocacy Incorporated, 2007), 23.

[1023] Human Rights Watch, *"I needed help, instead I was punished,* Abuse and neglect of prisoners with disabilities in Australia (February 6, 2018) Available at: https://www.hrw.org/report/2018/02/06/i-needed-help-instead-i-was-punished/abuse-and-neglect-prisoners-disabilities Accessed 24 January 2022

[1024] *Corrective Services Act 2006* (Qld) s 121; *Corrective Services Regulation 2017* (Qld), s 5.

[1025] Human Rights Watch, *"I needed help, instead I was punished,* Abuse and neglect of prisoners with disabilities in Australia (February 6, 2018) Available at: https://www.hrw.org/report/2018/02/06/i-needed-help-instead-i-was-punished/abuse-and-neglect-prisoners-disabilities Accessed 24 January 2022

[1026] The Yogyakarta Principles Available at: https://yogyakartaprinciples.org/ Accessed 15 February 2022

[1027] The Yogyakarta Principles, Principle 9 – The Right to Treatment with Humanity while in Detention Available at: https://yogyakartaprinciples.org/principle-9/Accessed 15 February 2022

[1028] Australian Institute of Health and Welfare, *The health of Australia's prisoners 2015*, above n 199, 16; Sandor von Dresner, K, LA Underwood, E Suaraz, and T Franklin, 'Providing Counselling for Transgendered Inmates: A Survey of Correctional Services.' (2013) 7(4) International Journal of Behavioural Consultation and Therapy 38–44; Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 88.

[1029] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 87-88.

[1030] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 88-89. Examples of improvements include referring to transgender prisoners by their preferred pronoun; deciding on appropriate placement based on an individualised, case-by-case basis and prescribing hormone replacement therapy while in prison.

[1031] Recommendation 16: transgender prisoners - Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 90.

[1032] Australian Government, Productivity Commission, *Australia's prison dilemma – Research paper* (2021), 22 Available at: https://www.pc.gov.au/research/completed/prison-dilemma/prison-dilemma.pdf Accessed 15 February 2022

[1033] Skarupski, K.A., Gross, A., Schrack, J.A., Deal, J.A. and Eber, G.B. 201 , 'The health of America's aging prison population', Epidemiologic Reviews, vol. 40, no. 1, pp. 157–165.

[1034] C Trotter, S Baidawi, 'Older prisoners: Challenges for inmates and prison management' (2015) 48 Australian & New Zealand Journal of Criminology 200, 201.

[1035] NSW Parliament, Chris Angus, e-brief, Older prisoners: trends and challenges (October 2015), 9-10 Available at: https://www.parliament.nsw.gov.au/researchpapers/Documents/older-prisoners-trends-and-challenges/Older%20prisoners%20-%20trends%20and%20challenges.pdf Accessed 15 February 2022; C Trotter, S Baidawi, 'Older prisoners: Challenges for inmates and prison management' (2015) 48 Australian & New Zealand Journal of Criminology 200, 201.

[1036] Australian Institute of Health and Welfare, *Youth detention population in Australia 2021* Youth detention population in Australia 2021 (aihw.gov.au), 9

[1037] Australian Institute of Health and Welfare*, Youth detention population in Australia 2021* Youth detention population in Australia 2021 (aihw.gov.au), 17

[1038] International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

[1039] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 105.

[1040] https://www.ohchr.org/EN/ProfessionalInterest/Pages/BangkokRules.aspx

[1041] Queensland Corrective Services, Healthy Prisons Handbook (November 2007), 19. Available at: file:///C:/Users/ChristophersonKa/Downloads/cuserst5795desktopfiles-for-migrationqcs-policy-and-researchhealthyprisonshandbook%20(1).pdf Accessed 24 January 2022

[1042] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 121.

[1043] Submission 700367, 4-5.

[1044] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 202.

[1045] Bangkok rules 7. Safety and security

[Supplements rules 27 to 36 of the Standard Minimum Rules for the Treatment of Prisoners]

(a) Searches

Rule 19

Effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures.

Rule 20

Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.

Rule 21

Prison staff shall demonstrate competence, professionalism and sensitivity and shall preserve respect and dignity when searching both children in prison with their mother and children visiting prisoners.

See:https://www.ohchr.org/EN/ProfessionalInterest/Pages/BangkokRules.aspx

[1046] Queensland Corrective Services, Healthy Prisons Handbook (November 2007). Available at: file:///C:/Users/ChristophersonKa/Downloads/cuserst5795desktopfiles-for-migrationqcs-policy-and-researchhealthyprisonshandbook%20(1).pdf Accessed 24 January 2022

2.9 Prisoners entering custody are searched thoroughly in accordance with legislative and procedural requirements. From observation of the reception area, determine whether there is sufficient privacy for the searching of prisoners. Observe staff carrying out removal of clothing search processes. Ask staff to outline their search processes. Establish whether searches (including those requiring the removal of clothing) adhere to agency requirements and where practicable, preserve the dignity of prisoners.

5.2 Security measures such as searching are carried out with regard to the protection of human dignity. Establish that prisoners are only subjected to body searches by officers of the same gender. Review search processes and confirm that searching is not done in a humiliating way. Check that removal of clothing searching is undertaken in accordance with procedural requirements. Confirm that where practicable, prisoners are offered the opportunity to be present when their cells or personal property are being searched.

12.12 The searching of prisoners (including removal of clothing searches), visitors and their property is conducted in an appropriate manner and in accordance with procedures. The searching of children is undertaken with particular sensitivity. Observe normal searching procedures, including that undertaken by drugs dogs. Check that a baby can be safely searched or left safely while their carer is searched. Check removal of clothing search register in visits.

[1047] Sisters Inside submission to the Australian Human Rights Commission - *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 200.

[1048] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 201.

[1049] Queensland Government, Queensland Corrective Services, Annual Report 2020-2021.

[1050] Rich Van Wyk, 'Jails using body scanners to stop deadly smuggling' WTHR Channel 13 Indiana News, 7 June 2017.

[1051] For a non-routine ROC search, the delegated officer must be satisfied the search is necessary for the security or good order of the facility and /or the safe custody and welfare of prisoners, or they must reasonably suspect the prisoner has a prohibited thing concealed on their person. Corrective Services Act s 36, 37.

[1052] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 19. Recommendation 29. Queensland Corrective Services:

a. supervises and monitors staff undertaking non-routine strip searches to ensure the process is not used inappropriately, or for any reason other than detecting or retrieving concealed contraband;

b. ensures officers respect a prisoner's dignity, including at times when a prisoner is placed in a dry cell, or is undertaking urine testing; and

c. implements new, non-invasive screening technology to replace routine ROC/ strip searches in all secure women's prisons.

[1053] Queensland Government, Queensland Corrective Services, Annual Report 2020-2021.

[1054] Nelson Mandela Rules,.Available at: https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0003/17139/2019.03.05-Women-In-Prison-2019-final-report-small.pdf Accessed 24 January 2022

Rule 96: Sentenced prisoners shall have the opportunity to work and/or to actively participate in their rehabilitation, subject to a determination of physical and mental fitness by a physician or other qualified health-care professionals. Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

Rule 98: So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release. Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners. Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, prisoners shall be able to choose the type of work they wish to perform.

Rule 103: There shall be a system of equitable remuneration of the work of prisoners. Under the system, prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family. The system should also provide that a part of the earnings should be set aside by the prison administration so as to constitute a savings fund to be handed over to the prisoner on his or her release.

[1055]Zettler H.R. (2020) The Female Prison Experience. In: Hector J. (eds) Women and Prison. Springer, Cham. https://doi.org/10.1007/978-3-030-46172-0_5; Solinas-Saunders, M., & Stacer, M. J. (2012). Prison resources and physical/verbal assault in prison: A comparison of male and female inmates. Victims and Offenders, 7, 279–311.

[1056] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 157.

[1057] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 158.

[1058] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 160-161.

[1059] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 204.

[1060] Submission 700367, 4-5.

[1061] Bangkok Rule 60:

Appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women's contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects. Such programmes shall take account of the need to provide care for children and women-only services.

See:https://www.ohchr.org/EN/ProfessionalInterest/Pages/BangkokRules.aspx

[1062] Australian Institute of Health and Welfare, Youth detention population in Australia 2021 Youth detention population in Australia 2021 (aihw.gov.au), 5.

[1063] Queensland Government, Queensland Corrective Services, Annual Report 2020-2021, 43.

[1064] Queensland Government, Queensland Corrective Services, Annual Report 2020-2021, 47-49.

[1065] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 153.

[1066] The Australian Government administers the Higher Education Loan Program (HELP) which consists of four HELP loans schemes and the VET Student Loans program to assist students with the cost of their fees. See the Australian Government's StudyAssist website for more details; Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 154.

[1067] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 155.

[1068] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 155-156.

[1069] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 156. Recommendation 38: education and vocational programs Queensland Corrective Services:

a. provides more variety in women's vocational programs, and considers courses such as Certificate III programs in fitness, outdoor power tools, welding, and forklift driving;

b. introduces regular opportunities for career counselling for women seeking to undertake training and education;

c. places greater emphasis on measuring educational outcomes, while continuing to measure participation in education and training;

d. develops partnerships and scholarships with learning institutions to assist women who cannot afford to pay for training, and who do not have access to loans schemes;

e. investigates means to ensure women at Numinbah have equitable access to vocational training, similar to other low security men's prisons.

[1070] Queensland Government, Working Together Changing the Story, Youth Justice Strategy 2019-2023, 6. Available at: https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/reform/strategy.pdf

[1071] Queensland Government, Youth Justice, Educating young people in detention Available at: https://www.qld.gov.au/law/sentencing-prisons-and-probation/young-offenders-and-the-justice-system/youth-detention/helping/educate Accessed 25 January 2022

[1072] Richards, K., and Renshaw, L., (2013) Bail and Remand for Young People in Australia: A national research project, Research and Public Policy Series, No. 125, Australian Institute of Criminology; Queensland Government, Working Together Changing the Story, Youth Justice Strategy 2019-2023, 8. Available at: https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/reform/strategy.pdf

[1073] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 200.

[1074] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 188-189.

[1075] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 188.

[1076] Meurk C, Steele M, Yap L, Jones J, Heffernan E, Davison S, Nathan S, Donovan B, Sullivan L, Schess J, Harden S, Ton B, Butler T. Changing Direction: mental health needs of justice-involved young people in Australia. Kirby Institute, UNSW, Sydney (2019) Changing Direction: Mental Health Needs of Justice-Involved Young People in Australia | Kirby Institute (unsw.edu.au), 24; Australian Institute of Health and Welfare, *The health and welfare of women in Australia's prisons* (2020) 10.

[1077] Australian Institute of Health and Welfare, Australian Government, The Health of Australia's Prisoners 2018 Report (30 May 2019) 11; WHO 2020. Factsheet: Prison and health. Copenhagen: World Health Organization Regional Office for Europe;

[1078] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 203.

[1079] Bangkok Rules:

Rule 12

Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes shall be made available for women prisoners with mental health-care needs in prison or in non-custodial settings.

Rule 13

Prison staff shall be made aware of times when women may feel particular distress, so as to be sensitive to their situation and ensure that the women are provided appropriate support

See:https://www.ohchr.org/EN/ProfessionalInterest/Pages/BangkokRules.aspx

[1080] WHO 2014. Prisons and health. Copenhagen: World Health Organization Regional Office for Europe; Australian Institute of Health and Welfare, Australian Government, The Health of Australia's Prisoners 2018 Report (30 May 2019) 10.

[1081] Australian Institute of Health and Welfare, The Health of Australia's Prisoners 2018 Report (30 May 2019) 40, 43, 44.

[1082] Australian Institute of Health and Welfare, Australian Government, The Health of Australia's Prisoners 2018 Report (30 May 2019) 11.

[1083] 9 Queensland Women Prisoner's Health Survey (2012), cited in Queensland Corrective Services, Submission to the Queensland Parole System Review (2016).

[1084] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 203.

[1085] Australian Institute of Health and Welfare, Australian Government, The Health of Australia's Prisoners 2018 Report (30 May 2019) 33.

[1086] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 204.

[1087] Queensland Government, Department of Children, Youth Justice and Multicultural Affairs, Youth Justice census summary 2020 Available at: https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/resources/yj-census-summary-statewide.pdf Accessed 25 January 2022

[1088] Meurk C, Steele M, Yap L, Jones J, Heffernan E, Davison S, Nathan S, Donovan B, Sullivan L, Schess J, Harden S, Ton B, Butler T. Changing Direction: mental health needs of justice-involved young people in Australia. Kirby Institute, UNSW, Sydney (2019) Changing Direction: Mental Health Needs of Justice-Involved Young People in Australia | Kirby Institute (unsw.edu.au), 24.

[1089] 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 any illicit drug in the past 12 months, suggesting illicit drug use was much higher among the female prison entrants than in the community (AIHW 2020b); More than 4 in 5 (86%) female prison entrants reported being current smokers, with 78% smoking on a daily basis. This is a considerably higher rate of daily smokers than for the general female population in Australia, which is 9.9% (AIHW 2020b). Of the female prison entrants who were current smokers, almost half (46%) reported a desire to quit smoking; Australian Institute of Health and Welfare, Australian Government, The Health of Australia's Prisoners 2018 Report (30 May 2019) 8.

[1090] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 10-11.

[1091] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 204.

[1092] Meurk C, Steele M, Yap L, Jones J, Heffernan E, Davison S, Nathan S, Donovan B, Sullivan L, Schess J, Harden S, Ton B, Butler T. 'Changing Direction: mental health needs of justice-involved young people in Australia' Kirby Institute, UNSW, Sydney (2019) Changing Direction: Mental Health Needs of Justice-Involved Young People in Australia | Kirby Institute (unsw.edu.au), 6.

[1093] Department of Children, Youth Justice and Multicultural Affairs*, Youth Justice Census Summary*, 2020, 1.Available at: https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/resources/yj-census-summary-statewide.pdf

Accessed 25 January 2022

[1094] Queensland Government, *Review of Youth Detention Centres Report* (26 April 2017), 229. Available at: http://www.youthdetentionreview.qld.gov.au/ Accessed 25 January 2022

[1095] Queensland Government, Department of Children, Youth Justice and Multicultural Affairs, Annual Report 2020-2021, 16. Available at: https://www.cyjma.qld.gov.au/resources/dcsyw/about-us/publications/coporate/annual-report/cyjma-annual-report-20-21.pdf Accessed 25 January 2022

[1096] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 110.

[1097] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 110.

[1098] *Youth Justice Regulation 2016* (Qld s 16 (4)

[1099] Queensland Government, Independent Review of Youth Detention Report (26 April 2018), 482. Recommendation 17.R10. Available at: http://www.youthdetentionreview.qld.gov.au/ Accessed 25 January 2022

[1100] Bangkok Rule 45: Prison authorities shall utilize options such as home leave, open prisons, halfway houses and community-based programmes and services to the maximum possible extent for women prisoners, to ease their transition from prison to liberty, to reduce stigma and to re-establish their contact with their families at the earliest possible stage. Available at: https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0003/17139/2019.03.05-Women-In-Prison-2019-final-report-small.pdf Accessed 27 January 20222

[1101] Bangkok rule 46: Prison authorities, in cooperation with probation and/or social welfare services, local community groups and non-governmental organizations, shall design and implement comprehensive pre- and post-release reintegration programmes which take into account the gender-specific needs of women. Available at: https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0003/17139/2019.03.05-Women-In-Prison-2019-final-report-small.pdf Accessed 27 January 20222

[1102] Rule 47: Additional support following release shall be provided to released women prisoners who need psychological, medical, legal and practical help to ensure their successful social reintegration, in cooperation with services in the community. Available at: https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0003/17139/2019.03.05-Women-In-Prison-2019-final-report-small.pdf Accessed 27 January 20222

[1103] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 208.

[1104] Walter Sofronoff QC, Queensland Parole System Review: Final Report, above n 3, page155 at [774].

[1105] Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, ALRC Summary Report 133 (1 December 2017) 5.45; Commonwealth of Australia, Prison to Work Report (2016) 40–43.[1105]

[1106] Thomas EG, Spittal MJ, Heffernan EB, Taxman FS, Alati R & Kinner SA 2016. 'Trajectories of psychological distress after prison release: implications for mental health service need in ex-prisoners' Psychological Medicine 46(3):611–21. doi:10.1017/S0033291715002123; Young JT, Arnold-Reed D, Preen D, Bulsara M, Lennox N & Kinner SA 2015. Early primary care physician contact and health service utilisation in a large sample of recently released ex-prisoners in Australia: prospective cohort study. BMJ Open 5:e008021. doi:10.1136/bmjopen–2015–008021.

[1107] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 182.

[1108] Zettler H.R. (2020) 'The Female Prison Experience' In: Hector J. (eds) Women and Prison. Springer, Cham. https://doi.org/10.1007/978-3-030-46172-0_5; Cobbina, J. E., Huebner, B. M., & Berg, M. T. (2012). Men, women, and post release offending: An examination of the nature of the link between relational ties and recidivism. *Crime & Delinquency, 58*, 331–361; Dowden, C., & Andrew, D. (1999). What works for female offenders: A meta-analysis review. Crime & Delinquency, 45, 438–452; Leverentz, A. (2006). People, places, and things: The social process of reentry for female offenders; Simons, R. L., Steward, E., Gordon, L. C., Conger, R. D., & Elder Jr., G. H. (2002). A test of life-course explanations for stability and change in antisocial behavior from adolescence to young adulthood. Criminology, 40, 401–434. Washington, DC: National Criminal Justice Reference Service; Slaght, E. (1999). Family and offender treatment focusing on the family in the treatment of substance abusing criminal offenders. Journal of Drug Education, 19(1), 53–62; Van Voorhis, P., Salisbury, E., Wright, E., & Ashley, B. (2008). Achieving accurate pictures of risk and identifying gender responsive needs: Two new assessments for women offenders. Washington DC: University of Cincinnati Center for Criminal Justice Research, National Institute of Corrections.

[1109] Griffith University, Transforming Corrections to Transform Lives, *The worries and needs of mothers while they are in prison*, 2. Available at: https://www.transformingcorrections.com.au/wp-content/uploads/2021/07/The-Worries-and-Needs-of-Mothers-in-Prison.pdf Accessed 27 January 2022

[1110] Taskforce submission 700367, 7-8.

[1111] Australian Institute of Health and Welfare, *The health and welfare of women in Australia's prisons* (2020) 12.

[1112] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 207; Sisters Inside submission to Women's Voices.

[1113] Walter Sofronoff QC, *Queensland Parole System Review: Final Report*

[1114]Queensland Ombudsman, Overcrowding at Brisbane Women's Correctional Centre,

[1115] Department of Housing and Public Works is now Department of Communities Housing and Digital Economy post 2020 election machinery-of-government-change

[1116] Queensland Government, Queensland Corrective Services, Annual Report 2020-2021, 37.

[1117] SERO4 – The MARA Project, How MARA works Available at: For Women: The MARA Project | SERO4 Accessed 27 January 2022

[1118] Queensland Government, Queensland Corrective Services, Annual Report 2020-2021, 28.

[1119] Antidiscrimination Commission Queensland, *Women in Prison: a human rights consultation report* (2019), 95

[1120] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 206.

[1121] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 206.

[1122] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 208, Sisters Inside consultation session with BWCC

[1123] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 204.

[1124] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 204.

[1125] Queensland Police Service submission for Discussion Paper 2, 18

[1126] Queensland Family and Child Commission submission for Discussion Paper 2, 2

[1127] Department of Children, Youth Justice and Multicultural Affairs, 3.

[1128] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 206.

[1129] ATSILS, Throughcare services – Factsheet – Available at https://www.atsils.org.au/wp-content/uploads/2014/10/Throughcare_Flyer_Nov2019_Web.pdf Accessed 27 January 2022

[1130] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 206.

[1131] Sisters Inside submission for Discussion Paper 2, 21.

[1132] Australian Indigenous HealthInfoNet, Building on Women's Strengths (BOWS) Program (last updated 4 August 2015) . 236 Australian Institute of Health and Welfare, Australian Government

[1133] Sisters Inside submission for Discussion Paper 2, 21.

[1134] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 208.

[1135] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 209.

[1136] Queensland Government, Parole Board Queensland, Statement regarding parole backlog and application delays. Available at: https://www.pbq.qld.gov.au/wp-content/uploads/2021/08/PBQ-delays.pdf Accessed 28 January 2022

[1137] Queensland Government, Parole Board, Annual Report 2020-21 (September 2021) Available at: https://www.pbq.qld.gov.au/wp-content/uploads/2021/10/PBQ-Annual-Report-2020-2021.pdf Accessed 28 January 2022

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[1139] ABC News, Julius Dennis, *Queensland Parol Board applications backlog forcing prisoners to wait up to a year for a decision* Available at: https://www.abc.net.au/news/2021-11-23/parole-board-backlog-prison-prisoners-debbie-kilroy/100627440 Accessed 28 January 2021

[1140] Police Powers and Responsibilities and other Legislation Amendment Bill 2021

[1141] *Corrective Service Act 2006* (Qld) s 193(3)

[1142] Police Powers and Responsibilities and Other Legislation Amendment Bill 2021 (Qld) Explanatory notes, 15.

[1143] Sisters Inside, Submission to the Committee Secretary re: *Police Powers Responsibilities and Other Legislation Amendment Bill 2021,* 2-3.

[1144] Prisoners Legal Service, Submission to the Committee Secretary re: *Police Powers Responsibilities and Other Legislation Amendment Bill 2021*, 9.

[1145] Australian Institute of Health and Welfare, Australian Government, *The Health of Australia's Prisoners 2018 Report* (30 May 2019) 158.

[1146] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 206.

[1147] Clarke Jones R, Obstacles to Parole and Community-Based Sentencing Alternatives for Aboriginal and Torres Strait Islander Offenders, Report for the Australasian Institute of Judicial Administration (2019).

[1148] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 205.

[1149] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 206.

[1150] *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020), 205.

[1151] *Criminal Code Amendment Act 1968* inserts Chapter 65A (Compensation for injury) (repealed 1995)

[1152] Australian Institute of Criminology, *Victims' Needs, Victims' Rights* (1999) Research and Public Policy Series No. 19, v.

[1153] UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power : resolution / adopted by the General Assembly*, 29 November 1985, A/RES/40/34.

[1154] Criminal Offence Victims Bill 1995, Explanatory Notes, 1.

[1155] Michael O'Connell, The Evolution of Victims' Rights and Services in Australia, in Dean Wilson and Stuart Ross, *Crime, Victims and Policy* (Palgrave Macmillan, 2015) 252.

[1156] Department of Justice and Attorney-General, Victims of Crime Review Report, November 2008.

[1157] Victims of Crime Assistance Bill 2009, Explanatory Notes.

[1158] Department of Justice and Attorney-General, *Final Report on the review of the Victims of Crime Assistance Act 2009*, December 2015.

[1159] Victims of Crime Assistance and Other Legislation Amendment Bill 2016, Explanatory Notes.

[1160] Human Rights Bill 2018, Explanatory Notes; Legal Affairs and Community Safety Committee, Report No. 26, 56th Parliament - Human Rights Bill 2018, 44.

[1161] Data extracted from Table 6A.2 Police staffing (a) Queensland 2019-20 from Report on Government Services 2021 (Part C, Section 6, 22 January 2021) https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/archive/police-services

[1162] Data extracted from Table 7A.28 Judicial officers (FTE and number per 100 000 people) from Report on Government Services 2021 Courts (Part C, Section 7, 22 January 2021) https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/justice/courts

[1163] Office of the Director of Public Prosecutions, Annual report 2019-20 (Report, 2020) 26. https://www.publications.qld.gov.au/

[1164] Number of staff is estimated based on total figure and percentages provided in the QCS Annual Report 2020-2021 https://www.publications.qld.gov.au/

[1165] Courts figures are based on criminal courts excluding family court, Federal Circuit Court and the Coroner's Courts. Criminal courts include children's courts and based on figures including payroll tax where applicable. Courts data extracted from Table 7A.11 and Table 7A.12 Report on Government Services 2021 (Part C, Section 7, 22 January 2021).

[1166] Corrections data extracted from Table 8A.2 Real net operating expenditure, 2019-20 for prisons and community corrections and Table 8A.19 Recurrent expenditure per prisoner and pr offender per day total operating capital and expenditure costs from Report on Government Services 2021 (Part C, Section 8, 22 January 2021). https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/justice

[1167] Youth Justice includes detention, community based and group conferencing figures. Percentages are calculated on total population (adult and children) to ensure measurements are based on like for like. Table 17A.9 State and Territory government real expenditure on youth justice services (2019-20 dollars) (a), (b) from Report on Government Services 2021 (Part F, Section 17, Youth Justice, 22 January 2021). https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/community-services/youth-justice

[1168] Police figures are based on real recurrent expenditure per person in the population. Percentages are based on average annual growth rate ± from 2015-16 to 2019-20. Data extracted from Table 6A.1 Police services expenditure, 2019-20 dollars (a), (b) from Report on Government Services 2021 (Part C, Section 6, 22 January 2021). Limitations to the data include non-comparability of QPS data for 2014-15 with prior years due to machinery of government changes, impact of Commonwealth Games and PSBA changes, WA differences in payroll tax, SA differences in leasing, cessation of payroll tax and increase in depreciation in 2019-20 in Tasmania https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/archive/police-services

[1169] Health data includes data for GP real expenditure costs, Ambulance services, public hospitals including psychiatric services and specialised mental health services. Data extracted from Table 10A.10 Ambulance service organisation' expenditure, 2019-20; Table 12A.2

recurrent expenditure per person, public hospital services (including psychiatric), 2018-19 and Table 13A.3 Total state and territory expenditure on specialised mental health services, 2018-19; Table 10A.2 Australian Government total expenditure on GPs and expenditure per person (crude rates), 2019-20 Report on Government Services 2021 (Part E, Section 10, 11, 12 and 13, 22 January 2021). https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/health/primary-and-community-health#downloads

[1170] 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.

[1171] Victims of Crime Act (SA) (n 8) ss 16, 16E, 31.

[1172] Victims of Crime Act (SA) (n 8) s 16A.

[1173] Victims of Crime Act (SA) (n 8) s 16A.

[1174] 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 [1174] 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.

[1175] 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.)

[1176] *Victims Rights and Support Act 2013* (NSW) ss 11-12

[1177] 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.

[1178] 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.

[1179] Established under *Victims of Crime Act 1994* (ACT) s 7.

[1180] *Victims of Crime Act 1994* (ACT) s 11.

[1181] *Victims of Crime Act 1994* (ACT) s 13.

[1182] Available at: https://www.wa.gov.au/organisation/department-of-justice/commissioner-victims-of-crime Accessed 2 February 2022

[1183] 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

[1184] *Victims of Crime Commissioner Act 2015* (Qld) s 7

[1185] *Victims of Crime Commissioner Act 2015* (Qld) s 13

[1186] *Victims' Charter Act 2006* Division 3A

[1187] 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.

[1188] Statement of compatibility, Family Violence Protection Bill 2012 (Vic).

[1189] Statement of compatibility, Family Violence Protection Bill 2012 (Vic).

[1190] Women's Safety and Justice Taskforce, *Hear Her Voice - Addressing coercive control and domestic and family violence in Queensland* (Report 1, 2021) Volume 2, 97.