

# **Women's Safety and Justice Taskforce Discussion Paper 3: Women and girls' experience across the criminal justice system as victims- survivors of sexual violence and also as accused persons and offenders**

**Submission**

**March 2022**

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## Background

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission regarding third discussion paper of the Women's Safety and Justice Taskforce (the Taskforce): *Women's and girls' experience across the criminal justice system as victim-survivors of sexual violence and also as accused persons and offenders* (the Discussion Paper).

The QFCC is a statutory body of the Queensland Government responsible for promoting the safety, wellbeing and best interests of children and young people.<sup>1</sup> This includes advocating for the voices of children to be heard and their views to be taken into consideration in all decisions affecting them.<sup>2</sup>

As children and young people are an invaluable source of information on the issues that impact them, the QFCC has spoken with members of our Youth Advisory Council about specific issues raised in the Discussion Paper and included their experiences and perspectives in this response.

This submission will respond to sections of the Discussion Paper that align with the QFCC's legislative responsibilities. In addition, the Taskforce will have the opportunity to speak directly to members of the QFCC Youth Advisory Council in Rockhampton and Brisbane.

This submission will also refer to the QFCC's previous submissions to the Taskforce in response to the first discussion paper *Options for legislating against coercive control and the creation of a standalone domestic violence offence* (first discussion paper) and the second discussion paper *Women and girls' experience of the criminal justice system* (second discussion paper) where relevant.<sup>3</sup>

As Australia is a signatory to the United Nations *Convention on the Rights of the Child*, all children in Australia, including in Queensland, have a right to grow up in an environment free from sexual abuse, and where their best interests are paramount.<sup>4</sup> The QFCC welcomes any changes which uphold these rights and improve systems which respond to and prevent sexual violence towards girls and women.

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<sup>1</sup> *Family and Child Commission Act 2014* (Qld), s.4.

<sup>2</sup> United Nations 1989, *Convention on the Rights of the Child*, Article 12 accessed 9 March 2022 <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>3</sup> Queensland Family and Child Commission, *Submission to the Women's Safety and Justice Taskforce: Discussion Paper 1, July 2021*, accessed 14 March 2022 <https://www.qfcc.qld.gov.au/sites/default/files/2021-07/qfcc-submission-womens-safety-justice-taskforce-discussion-paper-1.pdf>; Queensland Family and Child Commission, *Submission to the Women's Safety and Justice Taskforce Discussion Paper 2*, accessed 14 March 2022 <https://www.qfcc.qld.gov.au/sites/default/files/2021-07/qfcc-submission-womens-safety-justice-taskforce-discussion-paper-2.PDF>

<sup>4</sup> United Nations *Convention on the Rights of the Child*, Articles 3 and 19 accessed 9 March 2022 <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

## Cross-cutting issues

### Over-representation

The Discussion Paper outlines the over-representation of Aboriginal and Torres Strait Islander women and girls both as victims of sexual violence and within the criminal justice system.<sup>5</sup>

The QFCC acknowledges the work of the Aboriginal and Torres Strait Islander Social Justice Commissioner June Oscar AO and suggests consideration of the findings of *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* regarding the over-representation of Aboriginal and Torres Strait Islander women and girls' as victims of sexual violence and within the criminal justice system, and the responses needed.<sup>6</sup>

*Wiyi Yani U Thangani* reported that Aboriginal and Torres Strait Islander women are three and a half times more likely than non-Indigenous women to be the victim of sexual assault and that children and young women under 24 years are most at risk.<sup>7</sup>

Aboriginal and Torres Strait Islander women and girls spoke of how they have inherited the pain and trauma of generations of violence against their peoples, and how they continue to experience harms through inequality, discrimination and marginalisation.<sup>8</sup>

*Wiyi Yani U Thangani* states that cultural strengths must be restored as a source of healing and that long-term investment in Aboriginal and Torres Strait Islander community organisations is needed.<sup>9</sup> The QFCC encourages the Taskforce to consider the work of the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council, as an example of what a community organisation led by women's law, culture and authority can achieve.<sup>10</sup>

*Wiyi Yani U Thangani* also outlines the drivers of Aboriginal and Torres Strait Islander women's and girls' overrepresentation within the criminal justice system in detail, stating responses must include greater cultural competence of police, equal partnerships between community and police, effective diversionary programs, alternative sentencing options and justice reinvestment.<sup>11</sup>

### Trauma

There is a need to better understand and improve responses to trauma at each point across the criminal justice system, while acknowledging the value of trauma informed practice to improve service delivery and minimise harm.<sup>12</sup>

During consultations with young women about their experiences of sexual violence, the QFCC was told that having to confront the perpetrator and relive events under the scrutiny of the legal system is an inherently traumatic process for victims. Young women also said that they felt the stakes were so high in a criminal court process that this resulted in unimaginable stress.

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<sup>5</sup> Women's Safety and Justice Taskforce, *Discussion Paper 3: Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons and offenders*, 2022, p.11-13 accessed 9 March 2022

[https://www.womenstaskforce.qld.gov.au/\\_data/assets/pdf\\_file/0010/708418/discussion-paper-3-22.2.22.pdf](https://www.womenstaskforce.qld.gov.au/_data/assets/pdf_file/0010/708418/discussion-paper-3-22.2.22.pdf)

<sup>6</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner June Oscar AO, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report*, 2020, accessed 9 March 2022 <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>

<sup>7</sup> *Ibid*, p. 129.

<sup>8</sup> *Ibid*, p. 126.

<sup>9</sup> *Ibid*, p.164.

<sup>10</sup> *Ibid*, p.140-142 and 147.

<sup>11</sup> *Ibid*, p.166.

<sup>12</sup> *Ibid*, p.18-20.



The QFCC's submission to the second discussion paper highlighted the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) and urged the Taskforce to consider the distinct vulnerabilities of women and girls who have been impacted by sexual violence and the unique barriers they face in reporting sexual violence and engaging in the criminal justice system.<sup>13</sup>

The Royal Commission heard evidence that poor responses to disclosure of sexual abuse may be associated with an increased risk of negative outcomes for victim-survivors and may result in further traumatisation.<sup>14</sup> While investigating the responses to sexual abuse in an institutional context, the Royal Commission acknowledged the varied impacts of trauma on children.<sup>15</sup>

In addition to trauma-informed practices referenced in this Discussion Paper, the Taskforce could consider the implementation of child rights frameworks which seek to protect and support children through the touchpoints of the criminal justice system, shielding them from retraumatisation.

A child rights framework could include having a child-focused complaints handling system that is understood by children, where complaints are taken seriously and responded to promptly.<sup>16</sup> In addition to requirements of continuous education and training for staff to equip them with knowledge, skills and awareness to keep children safe and protected from retraumatisation.<sup>17</sup>

## Women and girls' experience as victim survivors

### Attitudes to consent including impacts of pornography

The Discussion Paper includes concern about how community attitudes to sexual violence influence victims' experiences and interactions with the criminal justice system, and how consent is generally understood and exercised in the community.<sup>18</sup>

During consultations with young women about the Discussion Paper and their experiences of sexual violence, they told the QFCC:

- the community seems more willing to accept a large percentage of women have been sexually assaulted but are not happy to accept the number of men who are perpetrators
- the community needs to be more willing to call out inappropriate behaviour when they see it instead of thinking that it is not their business to say anything
- clear policies are needed in the workplace which enforce rules and ensure there are consequences for perpetrators of assault and harassment, regardless of whether the perpetrator is a staff member or customer

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<sup>13</sup> Queensland Family and Child Commission, *Submission to the Women's Safety and Justice Taskforce Discussion Paper 2*, p.1-2 accessed 14 March 2022 <https://www.qfcc.qld.gov.au/sites/default/files/2021-07/qfcc-submission-womens-safety-justice-taskforce-discussion-paper-2.PDF>

<sup>14</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 4, Identifying and disclosing child sexual abuse* p.71 accessed 14 March 2022 [https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_4\\_identifying\\_and\\_disclosing\\_child\\_sexual\\_abuse.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_4_identifying_and_disclosing_child_sexual_abuse.pdf)

<sup>15</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 6, Making institutions child safe*, p.264 and 359 accessed 14 March 2022 [https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_6\\_making\\_institutions\\_child\\_safe.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_6_making_institutions_child_safe.pdf)

<sup>16</sup> Ibid, p. 214.

<sup>17</sup> Ibid.

<sup>18</sup> Women's Safety and Justice Taskforce, *Discussion Paper 3: Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons and offenders*, 2022, p.36 accessed 9 March 2022 [https://www.womenstaskforce.qld.gov.au/\\_data/assets/pdf\\_file/0010/708418/discussion-paper-3-22.2.22.pdf](https://www.womenstaskforce.qld.gov.au/_data/assets/pdf_file/0010/708418/discussion-paper-3-22.2.22.pdf)

- it is disappointing when women recognise the signs of sexual violence or an abusive relationship happening to other women, but do not provide advice or support until after an incident of violence has occurred, or fail to hold the perpetrator to account socially
- sexual assault is often perceived as violent penetration, however some young people's experiences of forced sexual activity may not involve penetration. The full spectrum of sexual violence needs to be understood within the community
- people may believe that sexually harassing comments are common and therefore okay, but this needs to change.

With respect to issues relating to pornography, the Discussion Paper references the 2018 Youth Sexual Violence and Abuse Steering Committee (the Steering Committee) recommendations and resultant legislation criminalising non-consensual sharing of intimate images and accompanying online educational materials.<sup>19</sup>

The online educational materials inform the community about the offence of sharing intimate images without consent and direct people to police, the eSafety Commissioner and phone counselling services.<sup>20</sup> However the 'raising awareness' recommendation of the Steering Committee goes further, requiring increased understanding and discussion about youth sexual violence, assisting and directing young people and their parents to appropriate services and equipping professionals with the tools to address youth sexual violence.<sup>21</sup>

The Steering Committee noted the changing nature of advancements in communication technology and intervention opportunities.<sup>22</sup> Technology and societal norms will continue to change into the future, therefore education and support services should have the capacity to respond to the changing needs of children, young people and their families.

### Barriers to reporting

The Discussion Paper considers the barriers victims face when disclosing sexual violence and asked for information regarding the factors victims consider when reporting, ways to increase victim confidence in the process and reduce feelings of shame and stigma.<sup>23</sup>

The QFCC's submission to the first discussion paper acknowledged that many Aboriginal and Torres Strait Islander peoples have genuine and understandable distrust of government service. The legacy of colonisation, past policies of child removal, and ongoing systemic issues rooted in societal racism continue to impact Aboriginal and Torres Strait Islander women's experiences of authority and government services.

The views and experiences of Aboriginal and Torres Strait Islander women and girls should be sought to identify the factors they consider when deciding whether to report to police, or report to or seek help from healthcare providers and other services. *Wiyi Yani U Thangani* speaks to what can be done to reduce barriers to reporting and increase the confidence of Aboriginal and Torres Strait Islander women and girls that their experiences will be believed and actioned.

<sup>19</sup> Women's Safety and Justice Taskforce, *Discussion Paper 3: Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons and offenders*, 2022, p.38 accessed 9 March 2022  
[https://www.womenstaskforce.qld.gov.au/data/assets/pdf\\_file/0010/708418/discussion-paper-3-22.2.22.pdf](https://www.womenstaskforce.qld.gov.au/data/assets/pdf_file/0010/708418/discussion-paper-3-22.2.22.pdf)

<sup>20</sup> Queensland Government, *Sharing intimate images without consent*, 23 August 2019, accessed 25 March 2022  
<https://www.qld.gov.au/law/crime-and-police/types-of-crime/intimate-images>

<sup>21</sup> Youth Sexual Violence and Abuse Steering Committee, *Final Report*, 30 March 2017, p.9 accessed 21 March 2022  
<https://documents.parliament.qld.gov.au/com/HCDSDFVPC-48D8/RN956PC201-8B6E/tp-31Jul2018-06.pdf>

<sup>22</sup> Ibid, p.8.

<sup>23</sup> Women's Safety and Justice Taskforce, *Discussion Paper 3: Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons and offenders*, 2022, p.40 accessed 9 March 2022  
[https://www.womenstaskforce.qld.gov.au/data/assets/pdf\\_file/0010/708418/discussion-paper-3-22.2.22.pdf](https://www.womenstaskforce.qld.gov.au/data/assets/pdf_file/0010/708418/discussion-paper-3-22.2.22.pdf)



Young women told the QFCC that when considering whether to report an incident:

- they thought about what will happen when other people, like their family members or the perpetrators' family members, find out what has happened
- they considered the impact reporting an incident will have on the whole family, theirs and the perpetrators, and whether it is worth putting the family members through it
- they thought about how reporting an incident will impact them personally, whether they will be believed, whether they will be told 'told you so' if they were warned about being in a relationship with that person, or how it will impact their job or career prospects
- they thought about the likelihood that a court process will not be successful in holding the perpetrator to account, given the number of convictions are so low
- they experienced challenges when seeking support and referrals from general practitioners when they did not present as the expected or ideal victim, especially when they presented as calm and rational
- they believed the lapse in time since the sexual assault was a deterrent to reporting
- they felt they were delayed by a lack of understanding about what sexual assault is, to be confident that what happened to them was against the law.
- in some cases they did not know the identity of the perpetrator
- some young women blamed themselves thinking they had put themselves in a vulnerable position, when this was not the reality.

To overcome these barriers, the Taskforce is encouraged to consider child-friendly approaches which facilitate reporting and provide immediate holistic responses. The Barnahus model is a multidisciplinary and interagency intervention used in Scandinavia where law enforcement, criminal justice, child protective services, medical and mental health services cooperate to provide a coordinated response for child victims.<sup>24</sup> The structure of this model ensures that the child is the central focus, where the relevant services come to the child at one location to provide an immediate response.

### Public reporting

The Taskforce raises questions in the Discussion Paper regarding the public reporting on sexual offending and domestic violence matters.<sup>25</sup> While girls and young women are more likely to be the victim in sexual violence offences and domestic violence matters, they may also perpetrate or be accused of perpetrating.

Public reporting identifying a youth offender or prohibiting a victim from telling their story are potentially harmful to the young people involved. Any framework recommended by the Taskforce must strike a balance between the rehabilitation of the youth offender, the healing of the victim-survivor and the needs of the community.

### Youth perpetration of sexual violence

The Discussion Paper refers to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), which describes the harmful effects on a young person of being labelled as a criminal, and the associated impact on their rehabilitation and recidivism.<sup>26</sup>

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<sup>24</sup> Barnahus, *About Barnahus*, 2021, accessed 21 March 2022 <https://www.barnahus.eu/en/about-barnahus/#>

<sup>25</sup> Women's Safety and Justice Taskforce, *Discussion Paper 3: Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons and offenders*, 2022, p.40-43 accessed 9 March 2022 [https://www.womenstaskforce.qld.gov.au/data/assets/pdf\\_file/0010/708418/discussion-paper-3-22.2.22.pdf](https://www.womenstaskforce.qld.gov.au/data/assets/pdf_file/0010/708418/discussion-paper-3-22.2.22.pdf)

<sup>26</sup> *Ibid*, p.42.

The Beijing Rules also states young people who offend are particularly susceptible to stigmatisation.<sup>27</sup> The stigmatisation of young people is particularly relevant to Queensland and community perceptions of youth justice and offending.

Under the *Youth Justice Act 1992* it is intended that confidential information relating to a child who has been investigated, detained, cautioned, prosecuted or sentenced for an offence remains so even after the child becomes an adult.<sup>28</sup> This provision reflects the Youth Justice Principles in that Act, which attempt to give a child the opportunity to develop in responsible, beneficial and socially acceptable ways, while recognising their need for guidance and assistance.<sup>29</sup>

While the court has discretion to allow the publication of information which would identify a child in certain circumstances, the Supreme Court of Queensland has noted:

The seriousness of the [offender's] offence is a relevant consideration, but the community also has an interest in the [offender's] rehabilitation, which would likely be prejudiced by allowing the publication of [their] identifying information.<sup>30</sup>

In addition, the *Human Rights Act 2019* states that a child must be treated in a way that is appropriate for the child's age and considers the desirability of promoting their rehabilitation.<sup>31</sup>

The QFCC supports processes which enable young offenders to engage in rehabilitation and learn from concerning behaviours to prevent recidivism and ensure pro-social behaviours into their adulthood.

### Victim survivors of sexual violence

The Discussion Paper refers to a media story from Toowoomba which noted a Crown Prosecutor stating a child victim of a sexual assault was legally prevented from telling anyone that the offender plead guilty.<sup>32</sup> The imagery of a child victim being threatened with legal action not to speak after having their experience validated is powerful.

While it may seem unlikely legal action would actually be pursued in this case, the threat itself is concerning. Legislative and international instruments are clear on the privacy and rehabilitation of young offenders, however the voices of young victim-survivors and recognition of their personal agency is often not considered in these matters.

During consultations with young women about their experiences of sexual violence, the QFCC was told that victims feel 'in the middle' as they feel unable able to tell others about their experiences until they are ready to commit to criminal proceedings. Or that they feel 'stuck' if they are in a situation where they cannot commit to criminal proceedings.

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<sup>27</sup> Rule 8, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*, November 1985, accessed 9 March 2022 <https://www.ohchr.org/documents/professionalinterest/beijingrules.pdf>; Women's Safety and Justice Taskforce, *Discussion Paper 3: Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons and offenders*, 2022, p.42 accessed 9 March 2022 [https://www.womenstaskforce.qld.gov.au/data/assets/pdf\\_file/0010/708418/discussion-paper-3-22.2.22.pdf](https://www.womenstaskforce.qld.gov.au/data/assets/pdf_file/0010/708418/discussion-paper-3-22.2.22.pdf)

<sup>28</sup> Section 283 of the *Youth Justice Act 1992*.

<sup>29</sup> Principle 9, Schedule 1 *Youth Justice Act 1992*.

<sup>30</sup> *R v SBU* [2011] QCA 203 at [38] cited in *R v SDK* [2020] QCA 269 at [33]; Sections 234 and 176(3)(b) of the *Youth Justice Act 1992*.

<sup>31</sup> Section 32(3) and 33(3) of the *Human Rights Act 2019*.

<sup>32</sup> Women's Safety and Justice Taskforce, *Discussion Paper 3: Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons and offenders*, 2022, p.42-43 accessed 9 March 2022 [https://www.womenstaskforce.qld.gov.au/data/assets/pdf\\_file/0010/708418/discussion-paper-3-22.2.22.pdf](https://www.womenstaskforce.qld.gov.au/data/assets/pdf_file/0010/708418/discussion-paper-3-22.2.22.pdf)



The UNCRC includes a right for any child who is capable of forming their own views to express those views freely in all matters affecting them, and the right to impart information and ideas of all kinds.<sup>33</sup> In accordance with these rights, the QFCC supports processes which facilitate the autonomy of girls and young women to choose how and when their healing occurs.

The Taskforce should consider the intersection of the UNCRC when reviewing the publication provisions and definition of 'publish' under the *Youth Justice Act 1992* in addressing this issue.

## Police training

The Discussion Paper asks whether the current training provided to police officers is effective when responding to sexual violence and what training is needed to effectively address the needs of victims in these circumstances.<sup>34</sup>

In the QFCC's report *Changing the Sentence: Overseeing Queensland's youth justice reforms*, young people provided their experiences of interactions with police officers where first contact ranged from eight to 14 years.<sup>35</sup> The young people provided examples where police language and treatment had not been respectful.<sup>36</sup>

Young people and families told the QFCC that improvements to internal police communications between its various units was needed and in addition to advice about how they could be supported in their dealings with police.<sup>37</sup>

During consultations, young women have told the QFCC:

- one thing that could help the confidence of women and girls to report is a section within the police station dedicated to helping women and girls so they can report to someone with care and expertise
- information and education on the process of reporting an incident of sexual violence is needed, including how to proceed with a complaint later in time after if the victim was not ready to progress the matter when it was initially reported to police
- victims are sometimes unsure of where their matters are up to because police and prosecutors are not informing them of what action is being taken or giving progress updates.

The QFCC supports training and community-wide education on reporting and court processes which improves the services provided girls and young women when they report sexual violence to police.

## Adequacy of sexual offence

The Discussion Paper provides a technical discussion on the parameters of consent in terms of its current legal definition in Queensland and considerations of changes to elements of this model.<sup>38</sup>

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<sup>33</sup> Articles 12 and 13 of the *United Nations Convention on the Rights of the Child* accessed 9 March 2022  
<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>34</sup> Women's Safety and Justice Taskforce, *Discussion Paper 3: Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons and offenders*, 2022, p.49 accessed 9 March 2022  
[https://www.womenstaskforce.qld.gov.au/\\_data/assets/pdf\\_file/0010/708418/discussion-paper-3-22.2.22.pdf](https://www.womenstaskforce.qld.gov.au/_data/assets/pdf_file/0010/708418/discussion-paper-3-22.2.22.pdf)

<sup>35</sup> Queensland Family and Child Commission, *Changing the Sentence: Overseeing Queensland's youth justice reforms*, 2021, p.86 accessed 11 March 2022 <https://www.qfcc.qld.gov.au/sites/default/files/2021-06/QFCC%20Changing%20the%20Sentence%20lo%20res%20spreads.pdf>

<sup>36</sup> Ibid.

<sup>37</sup> Ibid, p.47.

<sup>38</sup> Women's Safety and Justice Taskforce, *Discussion Paper 3: Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons and offenders*, 2022, p.50-54 accessed 9 March 2022  
[https://www.womenstaskforce.qld.gov.au/\\_data/assets/pdf\\_file/0010/708418/discussion-paper-3-22.2.22.pdf](https://www.womenstaskforce.qld.gov.au/_data/assets/pdf_file/0010/708418/discussion-paper-3-22.2.22.pdf)



The QFCC would support any improvements which provide clarity on the definition of consent, requisite protection for victims and provisions which ensure children and young people are not unduly criminalised.

### Alternative justice models

The Discussion Paper considers the potential to use restorative justice more often in adult sexual offence cases in Queensland, noting restorative justice conferencing is currently available for youth offenders charged with some criminal offences.<sup>39</sup>

During consultations with young women about their experiences of sexual violence, the QFCC was told that outside of the justice system, rehabilitation was a way to hold people accountable.

In the QFCC's submission to the Taskforce in response to the first discussion paper, we stated children and young people who use violent or controlling behaviours should be given opportunities to take part in programs that help identify, regulate and de-escalate behaviours and take account of past trauma that may present as a backdrop for their actions.<sup>40</sup>

Any program developed should be modelled on the principles of restorative justice, prevention and early intervention.<sup>41</sup>

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

### Drivers of contact with criminal justice system

The Taskforce notes in the Discussion Paper that women represent the fastest growing section of the prison population and are offending at increasingly higher rates.<sup>42</sup>

Current data suggests this may not be the case for girls in Queensland. According to the Childrens Court of Queensland *Annual Report 2020-21*, 28 per cent of child defendants across all court levels were female, a figure which had remained constant since the 2016-2017 reporting year.<sup>43</sup>

In a recent judgement, His Honour Mac Giolla Ri reflected on the inability for systems and services to adequately respond to the needs of a 13 year old girl who exhibited offending behaviours.<sup>44</sup>

Despite the difference in offending patterns for girls and women, the drivers of contact with the criminal justice system for both cohorts include social and economic disadvantage, victimisation, health issues, and racism and inequality.<sup>45</sup> However there are some additional complexities and impacts which require consideration.

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<sup>39</sup> Ibid, p.62.

<sup>40</sup> Queensland Family and Child Commission, *Submission to the Women's Safety and Justice Taskforce: Discussion Paper 1, July 2021*, p.14 accessed 21 March 2022 <https://www.qfcc.qld.gov.au/sites/default/files/2021-07/qfcc-submission-womens-safety-justice-taskforce-discussion-paper-1.pdf>

<sup>41</sup> Ibid, p.14.

<sup>42</sup> Women's Safety and Justice Taskforce, *Discussion Paper 3: Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons and offenders*, 2022, p.64 accessed 9 March 2022 [https://www.womenstaskforce.qld.gov.au/data/assets/pdf\\_file/0010/708418/discussion-paper-3-22.2.22.pdf](https://www.womenstaskforce.qld.gov.au/data/assets/pdf_file/0010/708418/discussion-paper-3-22.2.22.pdf)

<sup>43</sup> Childrens Court of Queensland, *Annual Report 2020-21*, p.18 and 21 accessed 14 March 2022 <https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2021/5721T2116.pdf>

<sup>44</sup> *Commissioner of Police v Jane Dean (a pseudonym)* [2022] QChCM 3, accessed 28 March 2022 <https://archive.sclqld.org.au/qjudgment/2022/QChCM22-003.pdf>

<sup>45</sup> Women's Safety and Justice Taskforce, *Discussion Paper 3: Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons and offenders*, 2022, p.64-67 accessed 9 March 2022 [https://www.womenstaskforce.qld.gov.au/data/assets/pdf\\_file/0010/708418/discussion-paper-3-22.2.22.pdf](https://www.womenstaskforce.qld.gov.au/data/assets/pdf_file/0010/708418/discussion-paper-3-22.2.22.pdf)



A concerning statistic identified in the Queensland Child Death Register data for young people aged 10–17 years was that those who died from external causes in the last 5 years, 21 per cent had evidence of offending behaviour.<sup>46</sup> This information reflects the significant impact the criminal justice system can have on the lives of children.

## Access to legal and support services

The Discussion Paper also touches on the experiences of women and girls in accessing legal advice and support services.<sup>47</sup>

During consultations, young women told the QFCC:

- Kids Helpline was used for mental health support, however the process can take a long time when a young woman does not have access to a phone and is required to use email
- education is needed to inform young people about available support services at their school and in their local area
- much of the focus at the moment is on prevention, however people who are suffering need help now and they cannot get access to it
- education is needed to inform victims about their legal rights and legal options as sometimes legal action was not taken because they were not aware of the steps to take
- workplaces, schools and community groups are not trained or equipped to effectively manage complaints and have been unable direct victims to legal or other support services.

This information indicates improvements to support and legal service awareness and access are needed for girls and young women, as well as the broader community. The QFCC acknowledges the commitment of the Queensland Government outlined in the *Queensland Women's Strategy 2022-27* to improve women's legal literacy, capability and confidence across the stages of their lives.<sup>48</sup>

## Experience of detention

The Discussion Paper seeks information regarding women and girls' experiences of being in watchhouses, custody and detention, asking what is working well and what needs to be improved.<sup>49</sup>

The QFCC has commenced a body of work in relation to the Queensland Youth Justice system called *Oversight of the Youth Justice System – Upholding the rights of children, young people, and families in Queensland* (the Program). The Program seeks to assess the impact of the current Youth Justice system on the wellbeing and rights of children and young people, and ultimately reduce the overall numbers of children and young people within the system.

The Program will examine the impact of systemic inequalities for children and young people by conducting culturally safe conversations with children and young people who have interacted with the Youth Justice system and analysing government and non-government data sources.

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<sup>46</sup> Data from the Queensland Child Death Register [unpublished]

<sup>47</sup> Women's Safety and Justice Taskforce, *Discussion Paper 3: Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons and offenders*, 2022, p.70 accessed 9 March 2022  
[https://www.womenstaskforce.qld.gov.au/\\_data/assets/pdf\\_file/0010/708418/discussion-paper-3-22.2.22.pdf](https://www.womenstaskforce.qld.gov.au/_data/assets/pdf_file/0010/708418/discussion-paper-3-22.2.22.pdf)

<sup>48</sup> Queensland Government, *Queensland Women's Strategy 2022-27*, 2022, p.15 accessed 31 March 2022  
<https://www.publications.qld.gov.au/dataset/womens-strategy/resource/95357068-d24b-4565-a991-7b8be088ced9>

<sup>49</sup> Women's Safety and Justice Taskforce, *Discussion Paper 3: Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons and offenders*, 2022, p.75-86 accessed 9 March 2022  
[https://www.womenstaskforce.qld.gov.au/\\_data/assets/pdf\\_file/0010/708418/discussion-paper-3-22.2.22.pdf](https://www.womenstaskforce.qld.gov.au/_data/assets/pdf_file/0010/708418/discussion-paper-3-22.2.22.pdf)



To date, the QFCC has spoken with young people including girls and young women in community and detention and intend to travel to Townsville, Mackay, Mount Isa and Cairns over the coming months. The QFCC is willing to provide the Taskforce with relevant information arising from these conversations once this portion of the Program is complete.

## Experience of reintegration

The Taskforce asks questions regarding women's and girls' experiences of transitioning back into the community after incarceration and their ability to maintain or re-establish their connection to culture when released from custody or detention.<sup>50</sup>

In the QFCC's submission to the Taskforce in response to the second discussion paper, reference was made to the Taskforce's identification of 72 per cent of female prison entrants who had previously spent time in detention, including youth detention.<sup>51</sup> Programs which support girls and young women leaving youth detention which address their risk factors of recidivism will maximise their prospects for the future.

The QFCC is aware that housing instability can be a precursor to youth crime. A 2020 evaluation of Queensland's former supervised community accommodation (SCA) program noted almost 85 per cent of young people reoffended after leaving SCA, however less than 30 per cent of young people reoffended while staying in SCA.<sup>52</sup>

In Queensland during 2020-21, the Australian Institute of Health and Welfare (AIHW) reported 5,553 young people aged between 15 and 24 years received support from specialist homelessness services.<sup>53</sup> Aboriginal and Torres Strait Islander children aged 0-14 years across Australia were more likely than non-Indigenous children to receive assistance through homeless services.<sup>54</sup>

The closure of the SCA program, the lack of affordable housing and the low vacancy rates of social housing in Queensland,<sup>55</sup> create a risk that girls in contact with the youth justice system will face increasing risks of homelessness impacting their ability to receive bail.

## The rights of children and young people

The QFCC continues to have an interest in the impacts of sexual violence on the rights of children and young people, whether victim-survivor, accused or offender.

We will continue to raise awareness, advocate and seek accountability from government to make sure girls and young women are appropriately supported when reporting sexual violence or when coming into contact with the criminal justice system.

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<sup>50</sup> Ibid, p.90.

<sup>51</sup> Queensland Family and Child Commission, *Submission to the Women's Safety and Justice Taskforce Discussion Paper 2*, p.2 accessed 14 March 2022 <https://www.qfcc.qld.gov.au/sites/default/files/2021-07/qfcc-submission-womens-safety-justice-taskforce-discussion-paper-2.PDF>; Women's Safety and Justice Taskforce, *Discussion paper 2: Women and girls' experience of the criminal justice system*, p.27 accessed 21 March 2022 [https://www.womenstaskforce.qld.gov.au/\\_data/assets/pdf\\_file/0005/687614/wsjt-discussion-paper-2-final.pdf](https://www.womenstaskforce.qld.gov.au/_data/assets/pdf_file/0005/687614/wsjt-discussion-paper-2-final.pdf)

<sup>52</sup> Queensland Family and Child Commission, *Changing the Sentence: Overseeing Queensland's youth justice reforms*, 2021, p.85-86 accessed 21 March 2022 <https://www.qfcc.qld.gov.au/sites/default/files/2021-06/QFCC%20Changing%20the%20Sentence%20lo%20res%20spreads.pdf>; Ernst & Young, *Supervised Community Accommodation Evaluation, Multi-Criteria Analysis and Policy Options Report*, September 2020 p.6 accessed 31 March 2022 <https://www.cyjma.qld.gov.au/resources/dcsyw/about-us/performance-evaluation/program-eval/sca-december-2020-report.pdf>

<sup>53</sup> Australian Institute of Health and Welfare, *Specialist homelessness services annual report 2020-21*, 2021, p.60 accessed 1 April 2022 <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-annual-report/contents/young-people-presenting-alone>

<sup>54</sup> Australian Institute of Health and Welfare, *Australia's Children*, 25 February 2022, p.299 accessed 1 April 2022 <https://www.aihw.gov.au/reports/children-youth/australias-children/contents/about>

<sup>55</sup> Queensland Council of Social Service, *Social housing pressure explodes*, 22 September 2021, accessed 1 April 2022 <https://www.qcross.org.au/social-housing-pressure-explodes/>



We appreciate the opportunity to take part in this process and would be happy to provide more information.