

EVAWQ Submission for Discussion Paper 3

[Ending Violence Against Queensland \(EVAWQ\)](#) would like to thank the Women’s Safety and Justice Taskforce for the opportunity to share our experience and expertise.

EVAWQ drive change to end violence against women and children by providing a united and representative voice. The organisation is a peak body of specialist services within the women’s sector, covering domestic, family and sexual violence, women’s health, and refuge.

EVAWQ knows that the only way to stop the high rates of violence against women and at-risk groups in Queensland is a significant investment in addressing the drivers and creating the structural and social change needed so that violence does not occur in the first place.

When a criminal justice response is engaged in regard to violence against women, EVAWQ makes the following recommendations:

1. **Prevent the overrepresentation of First Nations women as criminalised women.**
2. **Justice proceedings against criminalised women and girls must consider their experience as victims-survivors of gendered violence.**
3. **Ensure equitable access to justice, including and not limited to; victims who are culturally and linguistically diverse, women with disabilities, women living without housing, and women living with low or no income.**
4. **The criminal justice system must hold perpetrators to account for their choice to use violence and alleviate the burden on victim-survivors to keep themselves safe.**
5. **Remove “mistake of fact” as a defence for sexual violence.**
6. **Introduce a set of guiding principles that break down the myths around sexual violence and ensure the criminal justice system functions from a human rights foundation.**
7. **A funded peak is needed to improve coordinated responses and ensure women and girls who are victim-survivors of gendered violence have their needs appropriately met across all aspects of the service system.**
8. **Make a significant investment in the primary prevention of violence, to stop the violence before it occurs.**

1. **Prevent the overrepresentation of First Nations women as criminalised women.**

It’s well known that Aboriginal and Torres Strait Islander peoples are disproportionately represented in Australian prison populations and the criminal justice system. In 2016, Aboriginal and Torres Strait Islander people constituted just 4% of the Queensland adult population but comprised [32% of the national adult prison population](#). This number is even higher in youth populations and juvenile detention.

Understanding the intersectional and systemic issues that lead to overrepresentation is critical to slowing the cycle. Overrepresentation in the justice system is most often driven by a number of challenges facing the First Nations community due to intergenerational trauma caused by colonialism, systemic racism, social and economic disadvantages.

[The criminal justice system is also identified as contributing to overrepresentation through:](#)

- Over policing of First Nations Communities
- The way law enforcement agencies detect and prosecute crime
- High rates of convictions for lower-level crimes
- Greater likelihood of prison sentences for convictions
- Severe sentences
- More frequent bail refusal
- Greater focus on compliance with bail, parole and community orders
- Lack of First Nations legal representatives



Focus needs to be put on the justice system to stop First Nations women being charged or incarcerated in the first place. This may include diverting people from court to culturally safe community-led solutions based on justice reinvestment models. This could include engaging with domestic, family and sexual violence services, drug and alcohol services, and other rehabilitation programs with holistic approaches. Courts also need to consider the important role of First Nations women in community as mothers, carers and leaders.

2. Justice proceedings against criminalised women and girls must consider their experience as victims/survivors of gendered violence.

Most women who are criminalised have experienced significant abuse and trauma that can affect the way they operate in the world, and this should be considered in justice proceedings. Their experience as criminalised women should not be discussed or analysed separately or in opposition from their experiences as victim-survivors. This commonly affects First Nations women, who as discussed in point 1, are overrepresented in the criminal justice system. EVAWQ supports [Sisters Inside Response to Discussion Paper 2 \(2021\)](#) discourse on this issue.

Women may also end up as accused persons in the justice system by being mis-identified as perpetrators in DFV relationships, or from their social connections to partners and family who may put these women in criminal situations. This is why their lived experiences of violence are integral to their offending and they need to be considered as victim-survivors first.

Women and girls accused of committing offences must also have access to high quality legal advice and representation, who can accurately understand their lived experiences of violence and their position as victim-survivors. Lawyers and police need to receive training from a gendered lens to understand the gendered and structural nature of violence and be skilled in providing trauma-informed culturally safe interactions in order for these women and girls' needs to be met.

3. Ensure equitable access to justice, including and not limited to; victims who are culturally and linguistically diverse, women with disabilities, women living without housing, and women living with low or no income.

Ensuring that every woman and girl have equitable access to justice is imperative for improving the criminal justice system. There are many factors that may affect women's ability to access justice. A big barrier for women is understanding the ins and outs of the system, their rights and the specifics of consent law. This is especially harder for young women, and women with cognitive disabilities. WWILD Sexual Violence Prevention Association [in their consultation with the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#) have highlighted that women with cognitive disabilities suffer 'extremely high' rates of sexual violence in the community, and that better supports and services are needed to assist people with disability to both prevent the violence from occurring and navigate the complexities of the justice system as accused and accusing.

Socio-economic status is also a factor in accessing justice, as pro-bono lawyers may not always have capacity and time to dedicate to complex cases. This can lead to women feeling like they need to take legal deals that don't benefit them, not receiving the advocacy that is needed, or feeling like their voice is not being heard, both in situations where they may be accused or accusing.

Women without housing, women working as sex workers, and women who use drugs are just some examples of demographics of women who may experience sexual violence but might not come forward or receive equal access to justice because of social stigmas that surround their situation, or a fear of being criminalised and not believed in some way.



There are also fears for mothers around child safety, and a fear of their children being removed from them (especially First Nations Women) if they report or proceed with a legal response. The system needs to do a better job of supporting these populations to come forward, be believed and have a fair chance at receiving the justice they want and deserve.

4. The criminal justice system must hold perpetrators to account for their choice to use violence and alleviates the burden on victim-survivors to keep themselves safe.

The current justice system puts the burden of keeping safe on victim-survivors. Leading up to court proceedings, the onus is also often put on victim-survivors to make a complaint about sexual or violent offending, which may put them in a dangerous situation if they are blamed for the charges by the perpetrator. In [North Queensland Women's Legal Service submission](#), they say that clients often believe that the police will automatically charge the perpetrator and second guess themselves when this does not occur. They also say that many women are not informed that they can make a formal criminal complaint, or believe they have by telling the police officer what has occurred ([North Queensland Women's Legal Service, 2021](#)).

Often in court proceedings, the victim-survivor is aggressively cross-examined. Whilst there is a right to a "fair trial", a power imbalance already exists against the woman accusing, both from the system and the accused. The process is often re-traumatising for victims and places the burden on their shoulders to prove that their experience was "bad enough" to get justice. It places a certain blame on the victim, and a lack of accountability for the perpetrator's choice to use violence. When a woman goes into court, she often comes face to face with the perpetrator and his family, which can be intimidating and frightening. Improving court processes and designs to ensure the women's safety while giving evidence could support the outcome for better perpetrator accountability.

This lack of accountability for perpetrators is also demonstrated in court proceedings by not recommending men's perpetrator programs to low-level or young perpetrators. As found in the [Evaluation of Uniting Care Men's Behaviour Change Programs](#), due to a lack of sufficient funding for these programs, spaces are limited with long waitlists, and therefore not enough men are being recommended as they have to focus on high-risk cases. Intervention programs are arguably most important for young or low-risk offenders to divert them from escalating their violence in the future and positively impacting their trajectory. Ensuring that effective evidence-based men's perpetrator programs are required, accessible and properly funded is a key tertiary intervention strategy, that may help alleviate the risk of increased perpetrator violence after interactions with the criminal justice system.

5. Removal of "mistake of fact" as a defence for sexual violence

EVAWQ supports the removal of "mistake of fact" as a defence for sexual violence, as summarised by [Women's Health and Equality Queensland in their submission to Discussion Paper 2](#). The Bill retains the mistake of fact excuse which allows a defendant to argue mistaken belief, rather than requiring the defendant to show the positive steps they took to gain consent. The excuse also does not recognise that victims may 'freeze' (tonic immobility); a common and recognised response during an assault. A victim may be afraid of an implied threat of violence, attempt to pacify the aggressor, or it may be safer for them to not resist during an assault. Queensland case law, which these amendments are based on, demonstrate that the mistake of fact defence regularly undermines the model of consent included in the proposed Bill. The proposed changes do not require defendants to show they took positive steps to ascertain consent. This will continue a dangerous precedence that undermines the consent legislation and fails to protect victims.



6. Introduce a set of guiding principles that break down the myths around sexual violence and ensure the criminal justice system functions from a human rights foundation.

Evidence consistently demonstrates that sexual abuse is significantly under reported and there are barriers to reporting and receiving trauma responsive, human rights based criminal justice responses, and to see justice through convictions. This is a particularly significant issue for children who are victims.

EVAWQ supports the introduction of guiding principles to Chapter 32 of the Criminal Code, as summarised by [Women's Health and Equality Queensland in their submission to Discussion Paper 2](#). Guiding principles would assist the criminal justice system in handling rape and sexual assault cases and would assist in improving broader social and cultural issues about the understandings of consent.

The law should provide clarity and guidance to society and play a role in addressing 'rape myths' and challenging rape culture perpetuated by broad misunderstandings of sexual violence. Interpretive or guiding principles would ensure that the interpretation of this law represents the suggested strengthening of the legislation. They can also ensure the proper and adequate function of the law in practice. The Victorian Crimes Act 1958 sets itself apart by having included guiding principles at section 37B for over a decade now, and it is time that Queensland's outdated legislation followed this lead. A model of guiding principles drafted for the [Australian Feminist Legislation Project](#) is a suitable example for the Taskforce to consider.

It is the intention of Parliament that in interpreting and applying this chapter, courts are to have regard to the following matters:

- (a) there is a high incidence of sexual violence within society;
- (b) sexual offences are significantly under-reported;
- (c) a significant number of sexual offences are committed against women, children and other vulnerable persons, including persons with a cognitive impairment or mental illness;
- (d) sexual offenders are commonly known to their victims;
- (e) sexual offences most frequently occur in residential locations;
- (f) there are legitimate reasons why victims of sexual violence may not physically resist an assault, including, but not limited to, physiological responses to aggression and fear of escalating or prolonging the attack;
- (g) sexual offences often occur in circumstances where there is unlikely to be any physical signs of an offence having occurred; and
- (h) there are legitimate reasons why victims of sexual violence may not immediately report an assault to police or another person and a failure to make an immediate report, on its own, does not discredit an allegation (J. Crowe, A. Flynn, and B. Lee, unpublished manuscript.)

7. A funded peak is needed to improve coordinated responses and ensure women and girls who are victim-survivors of gendered violence have their needs appropriately met across all aspects of the service system.

[Recommendation 17](#) of the *Hear Her Voice* report highlighted the need for an adequately resourced independent peak body that integrates the specialist sectors to improve advocacy, communication, coordination, implementation and innovation.

This peak will allow for a more effective and coordinated service system, ensuring accessible, responsive and integrated service responses for both victim/survivors and perpetrators. Funding an independent peak will ensure that specialist services are well supported to implement changes, increase capability, identify and respond to emerging trends, innovate to create cross-sectoral solutions. It will also enhance pathways for all levels of government to consult with a peak representative body on legislative reform, funding priorities and emerging trends.



8. Make a significant investment in the primary prevention of violence, to stop the violence before it occurs.

EVAWQ has spoken extensively about Primary Prevention as the single most important goal to reduce gendered violence. We call for expanded investment and support for primary prevention, with an evidence-based, whole of community approach.

In 2020 sexual assault reports were at a **30 year high**. [In Qld rates increased by 5% between 2019 and 2020. Qld now has the 2nd highest rate sexual violence rate in the country.](#) Addressing the gender-based drivers of domestic, family and sexual violence is the key to prevention for the future, and to addressing these rising figures. Acknowledging that gender inequality is both the core of the problem, and the heart of the solution. Where power and resources are equally distributed between men and women, and people do not believe that men and women have specific characteristics that make them unequal results in reduced violence against women. The Taskforce needs to look into substantial commitment to funding coordinated evidence-based primary prevention of violence initiatives. Investing in prevention creates substantial long-term savings for government and the community by stopping the violence from occurring in the first place.

The best way to address women and girls experience of sexual violence in the criminal justice system is to prevent the violence from occurring in the first place.



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