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Our ref: BC/HS;CrLC/DFV

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By email: [REDACTED]

Dear Dr Popple

Attorney-General's Department consultation on justice responses to sexual violence (ALRC Report 143)

Thank you for the opportunity to provide feedback on the Attorney-General's Department consultation on justice responses to sexual violence (ALRC Report 143). The Queensland Law Society (QLS) participated in roundtables conducted by the Attorney-General's Department late last year and appreciates the opportunity to provide input to the Law Council at this stage of the consultation.

This response has been compiled by the QLS Criminal Law Committee and Domestic and Family Violence Committee, whose members have substantial expertise in this area.

Priority recommendations

QLS considers that the highest priority recommendations for implementation are those that relate to:

- safe, informed and supported services: recommendations 1, 9 and 10
- restorative justice framework: recommendations 58 – 64
- consent laws: recommendations 35 – 38
- trauma informed education: recommendations 11 – 17
- improved research and data: recommendations 2 – 5

Taking into account the matters that were prioritised for discussion at the roundtable, we expect that the Department may be most interested in the following matters.

Safe, informed and supported services

Recommendation 1

Recommendation 1 is strongly supported because it recognises that accessing independent legal advice early is a gateway to understanding all available pathways before any decision is made. The ALRC's model ensures that complainants can make informed decisions about criminal, civil, restorative or therapeutic options, rather than being funnelled prematurely into a

single adversarial criminal process. This early option for independent legal advice, paired with supported navigation and safe places to disclose, is critical to reducing barriers to engagement and empowering complainants to pursue justice in a way that best meets their needs.

Recommendation 9

The provision of a free, independent legal advice session for complainants presents the greatest opportunity to empower their engagement with the criminal justice system. For this service to have the desired impact it needs to be provided by experienced legal practitioners with demonstrated expertise in this area. The same legal practitioners who represent defendants in these matters pursuant to grants of Legal Aid are perfectly placed to provide this service to complainants utilising the existing structure of Legal Aid. This could involve:

- Establishing a grant of Legal Aid for a 2-hour advice session available to complainants at any stage of the proceedings; and
- Establishing a panel of approved preferred suppliers for this service who have demonstrated expertise in this area.

This would operate in the same way that preferred suppliers of legal aid already provide legal advice and representation. The existing structure is already there to be utilised.

Practitioners, especially criminal defence practitioners, have experience relevant to delivering such a service, though this experience should also be complemented by appropriate training to ensure the service is trauma-informed. It is a service that our members practising in criminal defence are already providing either for a fee or pro bono. A specific grant of Legal Aid and an approved preferred supplier panel would allow all complainants to access this service. The knowledge and comfort that legal advice can provide to complainants in a one to two-hour initial consultation is invaluable. Complainants walk away with a full explanation of their available justice pathways, answers to their questions and concerns about each option, and any necessary referrals for ongoing support.

To extend the role of independent legal advisors throughout the criminal justice process the funding available through Legal Aid to cover specific critical stages of the proceeding. In addition to the initial consultation / advice grant, there should also be grants of Legal Aid established to fund:

- Independent legal advice for complainants at the committal stage if an application for cross examination is granted (prior to the complainant being required to give evidence)
- Independent legal advice for complainants at the pre-trial hearing stage (prior to any pre-trial hearing including PCC hearings)
- Independent legal advice for complainants where the matter is proceeding to trial (prior to the complainant being required to give evidence)
- Independent legal advice for complainants where the matter is proceeding to sentence (prior to the sentence hearing)
- Independent legal advice for complainants in relation to disclosure including responding to applications for subpoenas.

Recommendation 10

A grant of Legal Aid is already available in Queensland to counselled persons for representation at domestic violence and criminal law proceedings to determine:

- If leave will be granted to subpoena protected counselling notes (regarding a related sexual assault); and
- If material produced under a subpoena can be disclosed.

Funding is available to a state-wide, specialised panel of lawyers, supported by Legal Aid's in-house lawyers employed in 14 offices across Queensland to facilitate state-wide service delivery. Women's Legal Service provides a gender-based model focusing on delivering services to women while a universal model is provided by Legal Aid, preferred suppliers and community legal centres.

Ideally, the same practitioner engaged for the initial independent legal advice grant of aid would then apply to extend funding for the additional available grants at each stage of the proceedings. This would provide the complainant with continuity and expert, independent legal advice at critical junctions in the criminal justice process.

Criminal justice – victim/survivor experience

Recommendations 11, 28, 34

As stated in recommendation 11, it is important that all those working in the criminal justice system in respect of sexual violence matters, including police, court staff, judicial officers and legal practitioners, have appropriate education and training regarding myths and misconceptions and trauma-informed and culturally safe practices.

In order to improve and expand recorded evidence measures and flexible victim impact statement measures there is a need for immediate and sufficient resourcing for specialist trauma-informed training of police officers. Dealing with, and taking statements from, victim-survivors is a fundamental requirement for the objectives of expanding recorded evidence measures to be realised.

The lack of trauma-informed specialist training will continue to put victim-survivors at further risk of re-traumatisation, acting as a barrier to reporting and in securing a victim-survivor's best evidence. A stress-inducing video recorded interview may of itself generate inconsistencies, impeding the very recall it is designed to elicit.

The pressing issue of providing sufficient resourcing for specialist training must be addressed. There is little to be gained by amendments which, if implemented, may cause more distress for victim-survivors and fail to generate the evidence necessary for a successful prosecution.

In terms of video recorded evidence, it is worth noting the current position in Queensland where an initial pilot of Video Recorded Evidence in Chief for complainants in domestic violence criminal proceedings currently operates in summary criminal proceedings and committal proceedings across three Magistrates Court locations (Ipswich, Southport, and Coolangatta). Turning to flexible victim impact statements, many measures already exist in Queensland. A significant barrier to these existing measures being effectively utilised is complainants not being empowered to use them. A phone call from police the afternoon prior to a sentence hearing requesting a written Victim Impact Statement is at best what a significant number of

complainants receive. Improved access to flexible measures would be facilitated by the availability of timely, free, independent legal advice to complainants as discussed above.

Recommendations 39, 40 and 41

The equivalent provision of s 41 of the *Evidence Act 1995* (Cth) is s 20A of the *Evidence Act 1977* (Qld). While appropriate legislative provisions are crucial to the ability of the court to appropriately intervene in respect of improper questioning, the selection and education of judges is also critical. The selection criteria for any judicial appointment to a jurisdiction which will hear and determine matters involving sexual violence should require demonstrated experience of practicing in the area. A barrister who has practiced exclusively in civil law has a completely different experience and skill set to a criminal defence lawyer or prosecutor who has been running criminal trials, pre-trial hearings and sentence hearings for sexual violence matters for years and experienced the full spectrum of legal and practical issues specific to this area of law.

QLS has also long called for the creation of a judicial commission, which would play an important role in judicial education.

Topic 3: Criminal justice – accountability

Recommendations 6 – 8

First, we note that Queensland has a Charter of Victims' Rights (**Charter**) which is currently under review.

Charter aside, early and consistent allocation of prosecutorial responsibility is a critical factor in the consistent application of victims' rights and communication standards.

The late allocation of prosecutorial responsibility frustrates the early resolution of matters and leaves complainants in the dark for months and sometimes years without a proper understanding of how the matter is proceeding.

Mandatory complainant communication at critical stages of the proceedings should form part of the Director's Guidelines.

It is a priority that justice agencies make guidelines and information for complainants clear, current and transparent.

The Queensland ODPP has established a new Victim's Portal with the aim of providing victims with timely and secure updates about their matter. We will be interested to monitor the utility of the portal.

Communications with complainants is also relevant to the ALRC recommendations regarding restorative justice (recommendations 58 and 60).

Too frequently, submissions, including submissions for restorative justice, have been rejected by the Crown without any consultation with the complainant. Further, due to a reduction in funding for restorative justice in Queensland last year, matters involving sexual violence are no longer being considered. This is a serious failure of our current system which requires immediate action. It is the experience of our members who practice in this area that access to restorative justice for complainants is an essential component to improving victim / survivor experience, noting recommendations 58 and 60 to make the restorative justice pathway more

accessible by legislating for restorative justice in sexual violence matters so this pathway is widely available.

Restorative justice options are a critical component of the broader criminal justice framework. Restorative options provide complainants with a safe, supported avenue to seek acknowledgement, accountability and repair. This aligns with the Charter in Queensland, which expressly recognises restorative justice as a legitimate justice pathway.

Criminal justice – enhanced protections

Recommendations 21, 23 - 25

Recommendations in chapter 28 address jury directions and expert evidence in sexual violence matters.

The critical issue for any model jury direction is striking the appropriate balance to provide consistent guidance whilst also allowing for appropriate judicial discretion to tailor directions to the individual needs of each case. This balance requires drafting which provides flexibility in its application and is not overly prescriptive.

In Queensland, the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (Qld) substantially amended the *Evidence Act 1977* (Qld). It inserted Part 6B, Division 3, which commenced by proclamation on 23 September 2024, creating a new category of jury directions for sexual offences. The directions are divided into subdivision 3 'Directions to jury – consent and mistake of fact' and subdivision 4 'Directions to jury – other'.

Section 103ZQ requires that one or more of the directions in subdivision 3 must be given:

- (a) if there is a good reason to give it; or
- (b) if a party requests the direction, unless there is a good reason not to give it.

The directions in subdivision 4 must be given where there is, or is likely to be, evidence or a question tending to suggest a matter mentioned in the provisions.

In either case, the direction is to be given at the earliest time the judge determines is appropriate, which may be from before the adducing of evidence through to during the summing up. It may also be repeated.

The directions are as follows:

- Section 103ZS – Direction about circumstances in which non-consensual sexual activity occurs
- Section 103ZT – Direction about responses to non-consensual sexual activity
- Section 103ZU – Direction on lack of physical injury, violence or threats
- Section 103ZV – Direction on responses to giving evidence
- Section 103ZW – Direction on behaviour and appearance of complainant
- Section 103ZX – Direction on mistake of fact in relation to consent

- Section 103ZY – Direction on differences in complainant's account
- Section 103ZZ – Direction on lack of complaint or delay in making complaint
- Section 103ZZA – Direction on evidence of post-offence relationship

Queensland has also implemented change in recent years regarding expert evidence, though it is the experience of our members that the practice of calling experts remains rare due to cost, limited availability and uncertainty about admissibility.

In response to recommendations made by the Women's Safety and Justice Taskforce (WSJT) *Hear her voice - Report Two*, the Department of Justice has established a Sexual Offence Expert Evidence Panel (Panel) for sexual offence proceedings that can be used by the prosecution, defence or court.

There are two separate functions of the Panel:

- Stream 1 allows an expert to give relevant evidence about the defendant in a proceeding for a relevant offence. Specifically, in matters where the defendant's cognitive and/or mental health impairment at the time of the alleged offence was a substantial cause of the person not saying or doing anything to ascertain whether the other person consented to the sexual act; and
- Stream 2 will allow experts to give counterintuitive evidence about the nature of sexual offences and evidence about the social, psychological and cultural factors that may affect the behaviour of a complainant of a relevant sexual offence as requested by the prosecution, defence, or court.

The Panel is a two-year pilot program. Stream 1 operations commenced on 3 February 2025 and Stream operations on 20 September 2025.

Recommendations 31, 33

The availability of sufficiently trained intermediaries and interpreters is a key component of effective service delivery.

In Queensland, the Queensland Intermediary Scheme (QIS) has been funded to continue to offer its intermediary services for eligible witnesses to child sexual offences in Brisbane and Cairns until the end of June 2029.

Improved research, data and feedback

Recommendations 2 - 6

If commissioning a national inquiry, as contemplated in recommendation 2, accurate and timely data collection will be imperative. This could be conducted by a court service, justice department or research body and should capture all relevant, deidentified information including:

- Matter duration
- Plea (guilty / not guilty) with reasons
- Outcome (conviction / acquittal)
- Sentence imposed
- Appeal lodged (yes / no)

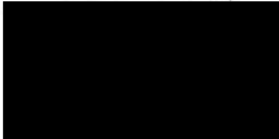
- Issues identified (opportunity for either party to identify an area for improvement and/or a process that worked effectively, e.g. significant delay in a brief of evidence being provided due to police resources, intermediary program utilised successfully, etc)

There could also be structured surveys or targeted research projects to gain insights from legal practitioners and opportunities for complainants to provide feedback on their experience of the process.

The provision of timely, free, independent legal advice to complainants would also facilitate the utilisation of existing complaint mechanisms within the QPS, ODPP or to the Office of the Victims' Commissioner.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED] [REDACTED]

Yours faithfully



Peter Jolly
President