

Women and the Criminal Code Recommendations

ANNEXURE 2

RECOMMENDATIONS

CHAPTER 1 - THE BIG PICTURE

CHAPTER 2 - COMMUNITY BASED SERVICES AND SUPPORT

PART 1: INTRODUCTION

PART 2: COMMUNITY-BASED SERVICES AND WOMEN'S ACCESS TO JUSTICE

PART 3: SERVICES THAT WOMEN NEED

Recommendation 1 (page 28)

1.1 That, after consultation with relevant stakeholders, an appropriate body be funded to perform an audit of existing information resources on all violence against women for the purposes of collating a resource reference guide; identifying gaps/needs in the format of information resources; and identifying gaps/needs in the availability of information resources.

1.2 That, after consultation with relevant stakeholders, an appropriate body be funded to act in an ongoing manner as a statewide clearinghouse for information resources on all violence against women, and as a distributor of these information resources to service providers and the community generally.

Recommendation 2 (page 29)

2.1 That all Queensland Government departments and agencies be encouraged to display information about violence against women and relevant, local support services:

- in their workplaces; and
- in areas where they have direct interaction with clients or the public have access.

2.2 That the Queensland Government encourage local government agencies to display information about violence against women and relevant, local support services:

- in their workplaces; and
- in areas where they have direct interaction with clients or the public have access.

2.3 That the Queensland Government liaise with business organisations, such as the Chamber of Commerce, to encourage their members to display information about violence against women and relevant, local support services:

- in their workplaces; and
- in areas where they have direct interaction with clients or the public have access.

Recommendation 3 (page 30)

That the Queensland Government fund a collection of telephone numbers for women, comprising government and non-government agencies, in the beginning of telephone directories, including the TTY telephone directory. Included with this information should be the contact number for the Telephone Interpreting Service and Australian Communication Exchange.

Recommendation 4 (page 31)

That as part of providing an integrated response to the women of Queensland, there should be investigation into the viability of creating a single centralised telephone service which is well and broadly advertised and funded to respond by free phone 24 hours a day, and which has direct links to appropriate local services throughout Queensland. The Taskforce stresses that any funding for such a service must be additional to and not detract from the current services available to women in Queensland.

Recommendation 5 (page 32)

That additional and discrete funding be provided to transport women and children in situations of domestic violence from remote/rural areas to safe environments, and to provide for their appropriate relocation.

Recommendation 6 (page 32)

6.1 That the Queensland Government gives a clear commitment to addressing:

- Alternative safe accommodation needs for all women victims/survivors of violence; and
- Long term housing needs for all women victims/survivors of violence.

6.2 That the Queensland Government commission research on the needs and options for women in relation to safe accommodation beyond the refuge.

Recommendation 7 (page 34)

That the feasibility of establishing a 24 hour free telephone counselling service for women experiencing all forms of violence be explored as part of an integrated response to meet the needs of women throughout Queensland.

Recommendation 8 (page 34)

That additional and discrete funding for travel expenses be provided to:

- (a) domestic violence and sexual assault services in regional areas; and
- (b) other community-based services in regional or remote areas where no

domestic violence or sexual assault services exist, where those services are available to provide appropriate support to women;

(c) to assist women in outlying areas to access support on an ongoing basis, when required.

Recommendation 9 (page 35)

That there be continuity of support for women victims/survivors of domestic and sexual violence, up to, and including the end of, the court process, and ongoing support as required.

Recommendation 10 (page 35)

That specific funding for court support be provided to:

- domestic violence and sexual assault services; and
- other community-based services in regional or remote areas where no domestic violence or sexual assault services exist, where those services are available to provide such support to women

Recommendation 11 (page 35)

That appropriate community-based services be adequately funded to enable them to provide ongoing support to women who are victims/survivors of domestic violence and/or sexual assault:

- in prison; and
- post-release, for a period of at least three months.

Recommendation 12 (page 35)

That the Queensland Government commission research into the mortality rates, and the causes thereof, during the three month period following the release of women from prison.

Recommendation 13 (page 35)

That Indigenous women be supported throughout the legal process as offenders so that they can properly understand the importance of being in court and the consequences of non appearance.

Recommendation 14 (page 36)

That all sexual assault services, domestic violence services and refuges receive their funding on a recurrent basis with three year funding cycles, to enable them to fully implement strategic plans for integrated responses to violence against women.

Recommendation 15 (page 37)

That legal information be provided to accused persons at all stages of the legal process.

Recommendation 16 (page 37)

That legal aid be available to all persons charged with criminal offences, particularly women charged with homicide offences, from the time of police interview until completion of the criminal justice process, and that additional funding be provided to legal aid for this purpose if required.

Recommendation 17 (page 37)

That the Queensland Government investigate flexible options for free childcare for women involved in the criminal justice system (including jurors), having regard to the fact that women remain the primary care-givers for families.

Recommendation 18 (page 37)

That the Queensland Government give a clear and definitive commitment to an independent and autonomous community services sector which responds to violence against women, including recognition of the sector's role in socio-policy development and law reform.

PART 4: RESPONDING TO WOMEN'S DIVERSITY

Recommendation 19 (page 39)

That the Queensland Government give a clear commitment to enhancing the ability of existing community-based services to respond to the diverse needs of women who are victims/survivors of violence.

Recommendation 20 (page 40)

20.1 That funding be provided to develop, and deliver on an ongoing basis, appropriate training and professional development to:

- workers with expertise in violence against women;
- a broad range of workers with expertise in areas of marginalisation of women (such as disability, linguistic or cultural diversity, sexuality); and
- workers in generic community-based services in rural and remote areas, to enable all community sector services to respond adequately and sensitively to the diverse needs of women victims/survivors of violence.

20.2 That the nature and form of this training, and models for its delivery, be developed in close consultation with relevant community sector agencies.

20.3 That to maintain and promote awareness of, and response to, the diverse needs of women who are victims/survivors of violence, funding be provided to establish a mechanism to facilitate the exchange of information and support between:

- workers with expertise in violence against women;

- a broad range of workers with expertise in areas of marginalisation of women (such as disability, linguistic or cultural diversity, sexuality); and
- workers in generic community-based services in rural and remote areas, through regular forums which monitor the appropriateness of services and strategies.

Recommendation 21 (page 40)

21.1 That appropriate training be provided to disability workers on violence against women with disabilities, especially women with high support needs, to skill them to recognise and respond to indicators of abuse.

21.2 That sex education and protective behaviour programs for women with intellectual disabilities be expanded.

CHAPTER 3: PROCESS, PROCEDURE AND PROTOCOLS

PART 1: INTRODUCTION

PART 2: LEGAL SYSTEM - ACCESS AND PROCEDURES

Recommendation 22 (page 43)

That a working party made up of representatives from the QPS, JAG (Courts Division), LAQ and the Queensland Aboriginal and Islander Legal Service be established to investigate this issue with a view to developing a practice of funding (means tested) all defendants' attendance at higher courts where the defendant resides in a remote community.

Recommendation 23 (page 44)

Preparation of an instruction sheet in multiple community languages explaining the purpose of the bail undertaking, to be signed by the defendant in addition to the undertaking, and to be used in all bail applications involving non-English speakers whether in inferior or superior courts.

PART 3: SYSTEM PROCEDURES AND PROTOCOLS - SEXUAL VIOLENCE AND DOMESTIC VIOLENCE

Recommendation 24 (page 45)

That QPS protocols for rape and sexual assault be amended to allow a complainant to provide a statement either immediately upon reporting or following a rest period.

Recommendation 25 (page 46)

25.1 That Queensland Health consult with all government and non-government agencies involved in service provision for victims of rape and sexual assault in the development of protocols focused on the needs of victims.

25.2 That these protocols be endorsed by agencies and implemented as a matter of urgency.

25.3 That all government and non-government agencies be appropriately funded to adhere to the protocols.

Recommendation 26 (page 48)

That OPM 9.6.1 emphasise or specifically refer to the possibility of officers taking action under the Criminal Code where the acts of domestic violence also amount to criminal acts.

Recommendation 27 (page 48)

That all police attending domestic violence call-outs be directed to inform the aggrieved spouse of the possibility of pursuing criminal charges where the acts of domestic violence amount to criminal acts.

Recommendation 28 (page 49)

That an End Violence Against Women Council be established in Queensland with representation from relevant government departments and the community sector. Its Terms of Reference should cover service issues, the development and support of integrated responses and advice to government on social and legal issues. The final Terms of Reference and membership should be determined by community consultation.

Recommendation 29 (page 50)

29.1 That the government develop a policy framework for an integrated response to domestic violence. The Departments to involve will include DFYCC, JAG, QH, QPS, DCS and DEFT. The policy should be formulated in consultation with a reference group or steering committee of service providers in the community sector and then broad consultation should occur.

29.2 Liaison with Commonwealth agencies which are part of the response to violence against women including the Family Court, Child Support Agency, and Centrelink be included in this approach.

Recommendation 30 (page 51)

30.1 That government funding for domestic violence services acknowledges the true cost of developing and maintaining coordinated community responses to domestic violence. Any agencies which play a co-ordinating or facilitating role in their community's team require a specific allocation of funding to undertake that work, including any additional direct service provision.

30.2 The funding should cover the cost of on-going evaluation of coordinated community responses so that they can continue to provide the best possible practice to the clients served.

Recommendations 31 (page 52)

31.1 That specific research into police responses to breaches of protection orders be undertaken.

31.2 That improved training for police in this area of their work be developed, covering both training at entry stages and on-going professional development training.

31.3 That the police handling of breaches of protection orders be given high priority in all work undertaken in developing an integrated response to domestic violence.

Recommendation 32 (page 54)

32.1 That, as part of the development of policy around an integrated response to domestic violence, the issue of pro-arrest policies for police be carefully investigated and considered.

96.5 Investigation should include:

- consultation with existing integrated response projects in Queensland, other states and overseas;
- consultation with service providers in the community sector and in those communities where there are particular difficulties with police relations including the Indigenous communities and the lesbian, gay, bisexual and transgender communities.

Recommendation 33 (page 55)

That funding and support be provided for the development of an integrated response to sexual violence, involving community-based agencies, private medical practitioners and government services.

Recommendation 34 (page 59)

34.1 That funding be made available to establish and develop men's groups within Aboriginal communities.

34.2 That funding be made available to establish and develop men's groups within Torres Strait Islander communities.

34.3 That support and resources be provided to both Indigenous communities to facilitate the development of individual models for men's groups based on the needs, culture, traditions and spirituality of each community.

PART 4: VICTIM INVOLVEMENT IN THE CRIMINAL JUSTICE SYSTEM

Recommendation 35 (page 69)

35.1 Victim-offender mediation should not replace the traditional criminal justice system for adult offenders.

35.2 As a matter of principle, offences of violence should result in the prosecution of an offence where evidence supports the charge.

PART 5: VICTIM SUPPORT AND SERVICES

Recommendation 36 (page 71)

The Government undertake community education with respect to the fundamental principles of justice for victims of crime contained in COVA.

Recommendation 37 (page 72)

37.1 That any review of COVA include an investigation of amending provisions to provide a positive obligation on public officials to inform victims of crime of their rights, rather than the status quo which is on request.

37.2 That in a review (as above) that agreement be reached on which criminal justice agency should be responsible for the provision of the information/material referred to above.

Recommendation 38 (page 72)

The Taskforce suggests that the task of explaining the role of the various criminal justice agencies be included in the development of guidelines for public officials, as contemplated by section 8 of COVA.

Recommendation 39 (page 73)

Those Government agencies with responsibilities under COVA be adequately funded to fulfil those obligations.

Recommendation 40 (page 75)

That consideration be given to the establishment of a Victim Advisory Unit within the Queensland Police Service, with a view to enhancing police response and ongoing service delivery to victims/survivors of crime.

Recommendation 41 (page 77)

That funding be provided to DVCAN for the following:

- the development of models of court assistance;
- a training and support unit to provide resources, information and a centralised point of coordination for workers in the Network.

Recommendation 42 (page 78)

Government adequately address the issue of court support for all victims of violent crime with responsibility for it to be taken up by an appropriate agency and coordinated across the State. The necessity for specialist services and the importance of continuity of care should be recognised.

PART 6: COURT DESIGN

Recommendation 43 (page 80)

That the Department of Justice and Attorney-General be required to take into account the views of representatives of support workers (including interpreters) at the same time as consultation with members of the legal profession when developing designs for new court-houses.

CHAPTER 4: EDUCATION AND AWARENESS

PART 1: INTRODUCTION

PART 2: COMMUNITY AWARENESS

Recommendation 44 (page 83)

That Government consider funding campaigns that have been recognised as successful awareness raising processes to ensure their continuity and effectiveness.

Recommendation 45 (page 85)

45.1 While noting the current Education Queensland policies on sexual harassment and gender equality, the Taskforce considers that it is important that education on appropriate behaviour in relationships and non-violent resolution of conflicts be made compulsory.

45.2 This education should be provided by appropriately qualified people in collaboration with local agencies to link children and young adults to community services.

PART 3: ACCESS TO ASSISTANCE

Recommendation 46 (page 86)

46.1 That Government ensure that ongoing training is provided to police and persons working in other public sector agencies which are accessed by women victims/survivors of violence. This training should:

- increase understanding of violence against women, its nature, scale and impact;
- assist service providers in identifying violence against women;
- provide participants with skills and knowledge about preventative approaches, early intervention and reducing the long-term impacts of violence;
- cover relevant legislation and link to any relevant guidelines or policy; and;
- go beyond raising awareness to identifying desired service responses.

46.2 Government should liaise with relevant professional associations and facilities providing tertiary education for persons who are likely to be involved in assisting women who have been the victim/survivor of violence, including doctors, nurses, social workers and teachers in relation to the inclusion of compulsory studies of the social context of the law, including gender, race,

culture, sexuality and divers-ability issues. This education should be aimed at increasing sensitivity to the variety of experiences of women, including experiences of sexual violence and domestic violence.

PART 4: EDUCATION AND ACCESS TO JUSTICE

Recommendation 47 (page 89)

47.1 That all police officers, including commissioned officers, should receive compulsory training in relation to issues relating to gender stereotyping, race, disability, culture, homophobia, sexual assault and domestic violence. This training should be developed by police in conjunction with the support services within individual police regions to encourage a more integrated response. Wherever possible, this education should be provided by trainers who are external to the police service.

47.2 Police should also receive training in relation to:

- gathering evidence in cases of violence and sexual violence against women; and
- the identification and impact of intellectual disability, learning disabilities and physical disabilities

47.3 The Taskforce also considers that the QPS should consider recruitment strategies which will identify any negative attitudes which applicants may have in relation to women, race, ability, culture or sexuality before entering the Service. In appropriate circumstances, recruits should be provided with education which will address these attitudes, or in more extreme cases, excluded from employment with the Service altogether.

47.4 The QPS should also more widely promote opportunities for women drawn from the community to participate in interviewing candidates for employment in the Service.

Recommendation 48 (page 92)

48.1 The Taskforce reiterates the recommendations of the ALRC in relation to education in law schools. It recommends that the Queensland Government liaise with law schools in regard to their implementation.

48.2 The Taskforce recommends that Government liaise with the Queensland Law Society about:

- the development of material in relation to equity issues as part of its continuing legal education program;
- the inclusion of equity issues in its family law accreditation course;
- the offering of accreditation in areas of law that are of obvious concern to women, including criminal law and discrimination law, with course content which includes education in relation to equity issues.

48.3 The Taskforce also recommends that the DPP institute regular internal professional development for staff about equity issues.

Recommendation 49 (page 95)

49.1 That the Supreme, District and Magistrates Courts ensure that issues of gender and cultural awareness are included in any annual conferences or judicial education programs that they administer.

49.2 That magistrates be provided with a jurisprudential allowance to ensure access to external training on these and other issues relevant to their work.

49.3 That the Government explore the possibility of establishing an organisation similar to the NSW Judicial Commission which has a statutory function of providing education (and evaluating its usefulness) to the judiciary and magistrates and provides a framework for the considering of complaints about the attitudes and behaviour of judges and magistrates (that is, matters that cannot be raised on appeal).

Recommendation 50 (page 96)

The Government should develop more effective strategies to increase community awareness of the courts and the legal system.

PART 5: THE ROLE OF THE MEDIA

Recommendation 51 (page 100)

51.1 That Government liaise with the Australian Press Council in relation to the establishment of clear guidelines for the publication of material in relation to crimes of violence against women, taking into account the view of the Taskforce that:

- in general, it is not in the public interest to publish details of a persons private affairs;
- in circumstances where a persons private affairs are identified, the onus should be on the publication to establish the way in which this is in the public interest;
- there is a high public interest in the fair and accurate reporting of issues relating to gender issues, and, in particular, domestic violence.

51.2 That Government actively monitor the way in which the press deals with these issues, and make complaints to either the Australian Press Council or the Australian Broadcasting Authority when appropriate.

51.3 That Government monitor the content of both the print and electronic media with a view to examine the question of any imbalances in the reporting of issues.

51.4 That Government liaise with the Australian Broadcasting Authority and the Australian Press Council about the inclusion of information about the portrayal of women and violence against women in industry codes of practice and guidelines.

51.5 That Government develop a media education initiative designed to combat stereotypes about women and the negative impact of the portrayal of violence against women.

51.6 That the Government liaise with relevant universities in relation to the inclusion of gender and other social context issues into the curriculum for undergraduate journalism students.

CHAPTER 5: WOMEN AND VIOLENCE

PART 1: INTRODUCTION

PART 2: DOMESTIC VIOLENCE

Recommendation 52 (page 117)

52.1 That JAG investigate the creation of a specific offence of domestic or family violence.

52.2 That such an investigation should include research into the extent to which criminal charges are laid in situations of domestic and family violence.

52.3 That section 320A of the Criminal Code (torture) be amended to include an example to demonstrate how the offence could be used for offences involving domestic or family violence.

PART 3: EVIDENCE OF BATTERING AND ITS EFFECTS - WOMEN AS ACCUSED

PART 4: EVIDENCE OF BATTERING AND ITS EFFECTS - WOMEN AS VICTIMS

Recommendation 53 (page 137)

That legislation provide an exception to the hearsay rule, where there are factors making it highly probable that the hearsay statement is reliable, and with directions to juries warning of the need for caution before the evidence is accepted or relied on.

Recommendation 54 (page 140)

That legislation clarify that expert testimony can be led by the prosecution to explain the conduct of the victim/survivor.

PART 5: LEGISLATIVE GUIDELINES FOR ADMITTING EVIDENCE OF BATTERING AND ITS EFFECTS

Recommendation 55 (page 144)

That section 132B of the Evidence Act 1977 be repealed and replaced with a new scheme detailing the admissibility of evidence of the domestic relationship between the accused and the complainant/victim, and including the use of expert and lay testimony, the use to which the evidence can be put, and to which offences or defences it applies.

CHAPTER 6: DEFENCES TO VIOLENCE

PART 1: INTRODUCTION

PART 2: SELF-DEFENCE

PART 3: DURESS

Recommendation 56 (page 170)

That the defence of duress in section 31 of the Criminal Code be amended to provide that conduct is carried out by a person under duress if he or she reasonably believes that a threat has been made which will be carried out unless an offence is committed; and there is no reasonable way in which the threat could be rendered ineffective; and the conduct is a reasonable response to the threat. The defence should not be available on a charge of murder.

PART 4: ACCIDENT

PART 5: PROVOCATION

Recommendation 57 (page 196)

57.1 That JAG investigate the operation of the defence of provocation as a partial defence to murder with a view to determining whether it should be abolished or reformulated.

57.2 That further consultation on this issue is required.

57.3 That research be conducted into how the defence is used, by whom, and with what results.

57.4 That the investigation include whether a new partial defence of "excessive self-defence" is a viable alternative.

Recommendation 58 (page 196)

To extend the availability of the complete defence of provocation to the offences of wounding and grievous bodily harm.

PART 6: DIMINISHED RESPONSIBILITY

PART 7: DEFENCE DISCLOSURE

Recommendation 59 (page 203)

That the Criminal Code provide that the defence be required to disclose the general nature of the defence to be relied on, after the committal and prior to the trial, for example self-defence, provocation, diminished responsibility or accident.

PART 8: MURDER/MANSLAUGHTER DISTINCTION

CHAPTER 7: SEXUAL VIOLENCE

PART 1: INTRODUCTION

PART 2: NAMING SEXUAL VIOLENCE

Recommendation 60 (page 221)

That the offence of rape be extended to include penetration of the vagina, vulva and anus by any body part or object, and penetration of the mouth by a penis.

Recommendation 61 (page 222)

That for the purposes of the Criminal Code, there be legislative recognition of post-operative transgenders as their chosen gender, and that there be further investigation of the status of pre-operative transgenders.

Recommendation 62 (page 224)

That an offence of "forced self-manipulation" be created.

Recommendation 63 (page 225)

That section 578 of the Criminal Code be amended to allow rape and incest as alternative verdicts to each other.

PART 3: CONSENT

Recommendation 64 (page 241)

64.1 That "consent" be defined in the Criminal Code in a way that focuses on the need for a free and voluntary agreement.

64.2 That the circumstances listed in section 347 of the Criminal Code which vitiate consent be retained, with the addition of a false and fraudulent representation as to the purpose of the act, and a mistaken belief that the accused was the complainant's sexual partner.

64.3 That when the defence of mistaken belief in consent in section 24 of the Criminal Code is relied on, the jury be directed to look at what steps the accused took to ensure that the complainant consented. This direction should be contained in the Criminal Code.

PART 4: SPECIAL OFFENCES FOR VULNERABLE PEOPLE

Recommendation 65 (page 243)

That section 215 be amended to apply to unlawful carnal knowledge of "children under 16" instead of to "girls under 16".

Recommendation 66 (page 244)

That section 229B be amended to ensure that the actus reus of the offence is the relationship, rather than the three acts.

Recommendation 67 (page 247)

That a defence of consent be available for sexual activity with a child under the age of consent, where there is a similarity of age between the accused and the child.

Recommendation 68 (page 250)

That a new offence be created protecting young people from sexual exploitation by persons in a position of trust or authority.

Recommendation 69 (page 258)

That consent be defined as being "consent freely and voluntarily given by a person with the cognitive capacity to give that consent".

PART 5: SEXUAL HISTORY

Recommendation 70 (page 281)

70.1 That section 4 of the Criminal Law (Sexual Offences) Act 1978 be amended to apply to all sexual offences.

70.2 That section 4 of the Criminal Law (Sexual Offences) Act 1978 be amended to apply to the complainant's sexual activities with the accused.

70.3 That section 4 of the Criminal Law (Sexual Offences) Act 1978 be amended to set out the purposes for which sexual history evidence should not be admitted, that is, that the complainant is by reason of that conduct more likely to have consented to the conduct at issue or is less worthy of belief as a witness.

PART 6: RECENT COMPLAINT

Recommendation 71 (page 290)

That the Attorney-General further investigate reform of the rule of recent complaint.

PART 7: COUNSELLORS' NOTES

CHAPTER 8: GIVING EVIDENCE

PART 1: INTRODUCTION

PART 2: SPECIAL WITNESSES

Recommendation 72 (page 310)

72.1 That the category of "special witnesses" in section 21A of the Evidence Act 1977 should be expanded, to include people who by reason of age, cultural background, relationship to the accused, the nature of the subject matter of the evidence or any other relevant factor, would be likely to be so intimidated or distressed as to be unable to give evidence, or to give evidence satisfactorily.

72.2 That there should be a rebuttable presumption that other witnesses (such as alleged victims of rape and sexual assault) are special witnesses.

72.3 That special witness provisions should allow the court to make other orders for the giving of evidence by special witnesses including rest breaks in the giving of evidence, a requirement for questions to be simple and allowing the support person to indicate when questions are too difficult for the witness.

72.4 If an interpreter is also required, this should not take the place of the support person.

PART 3: CROSS-EXAMINATION

Recommendation 73 (page 320)

73.1 That section 20 of the Evidence Act 1977 be amended to give the court a power to disallow a question as to credit, if the matter is of such a nature that an admission of its truth would not materially impair confidence in the reliability of the evidence of the witness.

73.2 That section 21 of the Evidence Act 1977, be replaced with a provision that provides -

(1) The court may disallow a question put to a witness in cross-examination, or inform the witness that it need not be answered. If the question is:

(a) misleading, or

(b) unduly annoying, harassing, intimidating, offensive, oppressive or repetitive.

(2)

(a) any relevant condition or characteristic of the witness, including age, personality and education, and

(b) any mental, intellectual or physical disability to which the witness is or appears to be subject

PART 4: LIMITATIONS ON CROSS-EXAMINATION AT COMMITMENT

Recommendation 74 (page 324)

That there be a prohibition on the calling of children, complainants in sexual offences, and complainants in offences involving domestic violence at commitment, unless "special reasons" exist.

PART 5: CROSS-EXAMINATION BY THE ACCUSED IN PERSON

Recommendation 75 (page 328)

That legislation prohibit an unrepresented accused from cross-examining in person, children and victims of sexual or violent crime.

PART 6: COMMUNICATION

Recommendation 76 (page 337)

76.1 That the Evidence Act 1977 (Qld) be amended to provide that a witness shall have the right to an interpreter where the witness requests or appears to need the assistance of an interpreter.

76.2 That developing its Language Service Policy, the Department of Justice should specify that:

- only professional, NAATI accredited interpreters be used if possible, or AUSLAN Sign Language interpreters with higher NAATI accreditation qualifications;
- NAATI accredited AUSLAN Paraprofessional Sign Language interpreters, or Sign Language interpreters who have no NAATI accreditation qualifications (Communicators) screened by the Coordinator of Interpreting Services at the Queensland Deaf Society, should be used whenever NAATI accredited AUSLAN interpreters are not available;
- the appropriateness of an interpreter should be assessed having regard to factors such as gender, religion, cultural origin, size and locality of the witness' community;
- interpreters should be made available at every stage in the process from initial interview by police to completion of a matter in the criminal justice system;
- the accused in criminal proceedings is entitled to have the entirety of legal proceedings interpreted to him/her;
- when allocating trial dates at callovers, legal representatives should be required to specify whether interpreter are to be used and for whom, and request that the court accord trial days appropriately.

76.3 That all Queensland inferior and superior courts:

- install counter telephones in court registries, directly linked to TIS and ACE;
- use of teleconference units in courtrooms to access telephone interpreters for mentions and simple matters;
- improve signage in the courts to assist non-English speakers;
- install videoconferencing facilities (or have access to them) to increase the pool of available, appropriate interpreters.

76.4 That all judges, prosecutors, Legal Aid officers, court staff and court support staff be provided with ongoing training on how to work with interpreters effectively.

76.5 That all criminal justice system agencies be resourced and required to maintain statistics of interpreter usage to enable future budgeting allocations.

76.6 That Queensland Government advocate to the Commonwealth Government appropriate forums the need to, and desirability of, actively recruiting female interpreters.

76.7 That there be a whole-of-government approach to Indigenous language issues, as communication issues are relevant to departments and services other than courts.

76.8 That the Queensland Government, in cooperation and collaboration with relevant Indigenous communities, establish a program to identify and train potential interpreters of traditional indigenous languages.

Recommendation 77 (page 342)

That there be further research and investigation into possible ways for evidence of culture to be placed appropriately before the courts. Such research and investigation should be mindful and respectful of the fact that women's interpretation of their culture may differ to men's.

Recommendation 78 (page 348)

That the Attorney-General investigate developing legislative guidelines to ensure that a witness understands and can effectively communicate in a proceeding, including through the use of communication aids, intermediaries, by giving evidence in narrative form or through the use of leading questions.

PART 7: TAKING THE OATH

Recommendation 79 (page 349)

79.1 That the Oaths Act 1867 be amended to provide specifically for witnesses who, through an intellectual impairment, are unable to comprehend the nature of an oath. The new provision should allow for the taking of evidence as directed by the judge and would have the same effect as section 37 (that is, that the evidence shall be as valid as if an oath had been administered).

79.2 That section 37 be amended to be limited to those who object to taking an oath or, through lack of religious knowledge or belief, are unable to comprehend an oath.

79.3 That in both cases, all that is required is for the judge be satisfied that the person understands that they will be liable to punishment if the evidence is untruthful.

PART 8: ABOLITION OF THE CORROBORATION WARNING

Recommendation 80 (page 350)

That section 632 be amended to remove the inconsistencies between complainants and witnesses.

CHAPTER 9: REPRODUCTION AND SEXUALITY

PART 1: INTRODUCTION

PART 2: ABORTION

Recommendation 81 (page 366)

Repeal sections 224, 225, and 226 of the Criminal Code.

PART 3: SURROGACY

Recommendation 82 (page 385)

That the Surrogate Parenthood Act 1988 be amended such that only commercial surrogacy and associated activities be rendered offences.

PART 4: FEMALE GENITAL MUTILATION (FEMALE CIRCUMCISION)

Recommendation 83 (page 389)

That the Criminal Code be amended to include specific provisions outlawing the practice of female genital mutilation. The definition of female genital mutilation should exclude gender reassignment operations. The prohibition should include an offence of removal of a person from the State for the purpose of performing female genital mutilation.

CHAPTER 10: SENTENCING

PART 1: INTRODUCTION

PART 2: IMPACT OF SENTENCING ON WOMEN

Recommendation: 84 (page 399)

84.1 That the DCS examine the particular needs of inmates who are sole caregivers for their children.

84.2 That the DCS establish policies, procedures and guidelines which will facilitate appropriate contact and support between sole caregivers and their children.

84.3 That the DFYCC examine the issue of communication between prisoners and children in the care of the department and if necessary implement changes to facilitate improved communication.

96.5 That JAG consider amending the PSA to make available non-custodial sentencing options for persons who are sole care givers for their children. Such options may include periodic detention orders, increased use of intensive correction orders and the use of home detention as a direct sentencing option. This is to be done in consultation with appropriate stakeholders, including the DCS and the DFYCC.

96.5 That JAG consider amending the PSA to make available non-custodial sentencing options for persons who are sole care givers for others, such as elderly parents.

Recommendation 85 (page 401)

85.1 That JAG give consideration to amending section 9(2) of the PSA to take account of the issue of culture on sentence.

85.2 That any amendment to section 9 of that Act ensure that cultural considerations are not taken into account for the crimes included in section 9(3) of that Act.

Recommendation 86 (page 403)

That JAG investigate whether a unit fine system would be appropriate for Queensland courts.

Recommendation 87 (page 404)

That JAG examine ways in which offenders can be encouraged to agree to automatic deductions from their social security payments as a way of meeting their fine obligations.

Recommendation 88 (page 407)

That the DCS, in consultation with stakeholder groups, ensure that women and offenders with dependants have equal access to community service orders.

Recommendation 89 (page 408)

89.1 That the Government give consideration to the following reforms:

89.2 That section 15 of the PSA be amended to allow the court to specifically require that a pre-sentence report concerning an offender who is a person with a disability include expert advice on suitable penalty options for the offender.

89.3 That section 201 of the Corrective Services Act be amended to allow for the inclusion of such expert advice in the pre-sentence report.

PART 3: VICTIM IMPACT STATEMENTS

Recommendation 90 (page 412)

90.1 That JAG clarify the purpose of the victim impact statement.

90.2 That if a Victim Impact Statement is not tendered to the court, the court should not draw an adverse inference from that failure.

CHAPTER 11: MISCELLANEOUS

PART 1: POLICE POWERS AND PROCEDURES

Recommendation 91 (page 417)

The Taskforce notes that the CJC is examining the issue of strip-searching, and stresses that the research project must address the impact of strip-searching on women.

Recommendation 92 (page 418)

That the QPS amend the Police Powers and Responsibilities Act 1997 to provide for care arrangements for suspects.

Recommendation 93 (page 420)

93.1 Where police decide not to lay charges against a person on the basis of the victim's inability to give evidence, a formal review mechanism be implemented involving officers of the DPP using such expert assistance as is required resulting in a recommendation by the DPP as to whether the prosecution should proceed.

93.2 Further, the DPP should ensure that services working with people with disabilities be alerted to such a process.

Recommendation 94 (page 422)

That section 101 of the Police Powers and Responsibilities Act 1997 be amended to give the person in custody a right to an interpreter if requested or indicated by that person or if a police officer reasonably suspects a person can not speak the English language with reasonable fluency or does not have a reasonable understanding of the English language, or does not have an ability to understand what is being said to them.

Recommendation 95 (page 423)

95.1 That section 67 of the Police Powers and Responsibilities Regulation 1998 be located in the Police Powers and Responsibilities Act 1997.

95.2 That provision be made for the person's carer or other support person nominated by the person to be present at the questioning to ensure that the support needs of the person with an intellectual disability are met.

PART 2: BAIL

Recommendation 96 (page 430)

96.5 That a further examination be undertaken by the Government on the provisions of the Bail Act 1980 with regard to legislative provisions in other States with specific regard to the New South Wales provisions relating to domestic violence offences.

96.2 That the Bail Act 1980 be amended to provide that an accused person's disability (physical, sensory, intellectual or mental) should be taken into consideration in setting bail conditions

96.3 That the Bail Act 1980 be amended to provide that when police grant bail to an offender with an intellectual disability who does not have a legal representative present when the bail is granted, the officer granting bail will make every attempt to ensure that the offender understands the terms of the bail.

96.4 A mechanism should be provided in the Act which would allow the police to release a person with an intellectual disability into the custody of a "responsible person" if it appears that the person does not have the capacity to understand the terms of bail and the making of such an order would be inappropriate.

96.5 That the Government examine the possibility of establishing bail hostels for women who refused bail.

PART 3: MAJORITY VERDICTS BY JURIES

PART 4: TRIAL BY JUDGE ALONE

Recommendation 97 (page 439)

That the issue of trial by judge alone be further examined by the Government.